

21 June, 2011

To

H. R. Bharadwaj

Hon'ble Governor of Karnataka.

Re: Karnataka Police Act Amendment's Criminalisation of Karnataka Hijra Communities

Dear Sir,

The Campaign for Sexual Minorities and Sexworkers Rights (CSMR) requests the Hon'ble Governor of Karnataka to withhold ratification to a recent amendment to the *Karnataka Police Act 1964* that reenacts discriminatory provisions of the repealed *Hyderabad Eunuchs Act (1329 F. XVI)*. This amendment was passed as a part of the *The Karnataka Repealing and Amending (Regional Laws) Bill, 2009*, was approved by the Karnataka Legislative Assembly in March 2011 to repeal defunct or old laws from the former States of Bombay, Coorg, Hyderabad, Madras and Mysore in the respective Areas of those States that are now part of Karnataka. Acts repealed by this law include the *Hyderabad Eunuchs Act*: a regressive law that endorses draconian police measures against an already marginalized and vulnerable community. However, the government instead of merely repealing this Act has included provisions based on the Act in an amendment to the Karnataka Police Act.

The *Hyderabad Eunuchs Act* was directly derived from the colonial-era *Criminal Tribes Act 1871*, which was amended in 1891 to include "Eunuchs" in its ambit. The Criminal Tribes Act is a result of the repugnance of the British towards certain tribes and communities that they considered criminal at birth. The idea of criminal tribes was based on the notion that 'crime as a profession passed on from one generation of 'criminal caste' to another. Jawaharlal Nehru, in a strong criticism of the Criminal Tribes Act had stated,

"I am aware of the monstrous provisions of the Criminal Tribes Act which constitute a negation of civil liberty...An attempt should be made to have the Act removed from the statute book. No tribe can be classed as criminal as such and the whole principle is out of consonance with all civilized principles of criminal justice and treatment of offenders"

The Criminal Tribes Act was repealed by the government of independent India in 1952, but continued in the statute books of some states. One such example is the *Hyderabad Eunuchs Act*. By bringing these provisions back into the Karnataka Police Act, the state government is bringing back into force an extremely regressive and notorious legislation.

Background to the Amendment: The amendment to the *Karnataka Police Act of 1964* was proposed by a One-Man Committee (K.R. Chamayya Committee) in the same bill and passed the Karnataka Legislature without democratic discussion. The resulting Amendment, entitled "36A Power to regulate eunuchs," empowers the Commissioner, "in order to prevent or suppress or control undesirable activities of eunuchs," to make orders for: the preparation and maintenance of a register of the names and places of residence of all eunuchs reasonably suspected of "kidnapping or emasculating boys" or of committing "unnatural offences" or "any other offences," or abetting the commission of such offences, and prohibiting a registered eunuch from

doing such activities as may be stated in the order and “any other matter [the Commissioner] may consider necessary.”

This amendment grants the Karnataka Police broad powers to violate the human rights of hijras and other gender minorities according to the Commissioner’s unlimited discretion. The amendment also raises serious Constitutional questions on various fronts. We request the Hon’ble Governor to withhold assent to these amendments given the serious implications it has for the civil liberties and human rights of gender minorities in the state.

Yours Sincerely

Akkai Padmashali (On behalf of CSMR)