

# Charter of Demands: Revision on Transgender Bill 2016 introduced By Social Welfare Ministry India

4 November 2016, New Delhi

UNAIDS Consultation with Transgender Hijra Community and Experts

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## **We, the transgender and hijra community of India, acknowledge that**

The 2014 NALSA judgment issued by Hon'ble Supreme Court of India recognizes transgender and hijra community as the 'third gender' and provides directives to ensure transgender welfare and wellbeing. It is unfortunate that the implementation of the NALSA judgment has been delayed. Community engagement in strategic planning has not been sought. It is crucial now that rigorous follow-up with the community, policy makers and government is done on a priority basis to enhance transgender wellbeing. The recently approved 'Transgender Persons (Protection of Rights) Bill 2016' dilutes the solid directives that had been provided in the NALSA judgment. The Bill needs stronger inputs from the community and collective planning is essential to ensure transgender and hijra welfare at both the state and national level. Greater resources, stronger policies and joint community action should be prioritized.

## **We, the transgender and hijra community of India, believe that**

Dignity, respect, and access to health are non-negotiable basic rights for all transgenders and hijras. Self-identification should be the sole criterion for legal gender recognition without the need of any other psychological, medical, or "expert" intervention. This self-declared identity should form the basis for access to all social security measures, benefits and entitlements. The basic principle of '**nothing about us, without us**' must be applied for trans and hijra health and welfare activities. National consultation on Health, HIV issues and social welfare needs to be organized to strategize plan of action on Transgender issues.

## **We, the transgender and hijra community of India, offer**

To organize and work with government and any other stakeholders who will invest in trans wellbeing. To ensure best possible representation and inclusive processes, we will ensure that every voice within the community is heard and the views of all sub-groups, such as jogappas, jogtis, arvanis, kinnars, etc, are taken into account. We will coordinate and respect views and priorities expressed by all, and contribute meaningfully to strengthen trans wellbeing through constructive dialogues between all stakeholders and government departments.

## **We, the transgender and hijra community of India, demand**

- **Identification as 'Transgender'**: There are issues around any **screening committee** authoritarian for giving approval for the person to identify as 'Transgender'. Transgender people are born free and as per the NALSA judgment in April 2014, identification of the Transgender is subject to his/her/their own self-identification. The Transgender Bill 2016 put heavy weightage on district supervisory committees and medical professionals to take decision on gender recognition for transgender person in India. The last paragraph of the bill gives supreme power to the screening committee to take decision on the gender identity of the transgender individual which has not scope for revision or challenge from the individual concern.
- **Reservation for transgender person under 'Other Backward Class' (OBC)** : NALSA judgment in 2014, provides special provision for reservation benefits for the transgender and Hijras to cope up with the socio-economical gaps to uplift transgender wellbeing. However, the recent Transgender Bill lacks with such provisions. There needs to be reservation in the HR policies, parliaments seats for the transgender and Hijras.

- **Resources and socio-economical survey for transgender community is missing :** There is no scope for provision of the special budgetary provision support or directives to understand the real universe of the transgender and hijra people in India. The welfare board formation and its support is lacking from the current transgender bill which needs to be included.
- **Safeguarding Transgender people from violence, stigma discrimination:** The bill only talks about the physical harassment punishment which is 6 months to maximum 2 years to the person who is causing harassment to the transgender person. However, it is not up to the mark with the harassment laws and policies with women where the punishment is up to the 7 years. There are no directives about what is the exact nature of 'discrimination and harassment' which makes it difficult to prove in court and comply for law enforcement actions which is transphobic in India. There is no provision for the penalty towards the judiciary or law enforcement agencies for harassing Transgender people or forcing injustice. There is no provision on safeguarding the hate crimes against transgender community. Social stigma needs to be addressed sufficiently under the transgender bill. Sexual assault laws are not trans friendly and protective.
- **Fundamental rights are missing in bill:** The bill is silent on the fundamental rights about the basic facility provision (washrooms, public transport) recommended in the Ministry of Social Welfare Justice Report; also lack any directives on the property rights, inheritance, adoption and marriage. The bill does not talk about the punishment for discriminatory action for institutions or person for denying basic rights of the transgender people.
- **Medical and health support on feminization and gender transition :** While the bill puts lot of unnecessary focus on medicalization of the transgender identity recognition; it fails to talk about the mental health counseling support, gender transition surgery free facilities in government hospitals and also process for the gender transition for Transgender and hijra person. There are no directives on the establishment of the medical and psychological guidelines for the gender transition. In India the gender transition process are diverse for various communities and a community consultation is required to take forward the agenda on any community guidelines. There is no directives on the health care sensitization and training pertaining to the transgender and hijra needs.
- **Lack of directives on the economic wellbeing (livelihood) and empowerment:** The bill do not talk about the economic development or support for the transgender people. It has no plan on the poverty eradication and no directives on the educational support to bridge the socio-economical disparity.
- **Issues around 'Rehabilitation' word:** The policy states that any failure of the biological family support to the transgender will reflect in to the admission of the transgender person in a 'rehabilitation centres' run in India. Rehabilitation word is not approved and accurate and it sound like jail. Transgender individuals and children's have specific requirement for the safety and care. Rehabilitation centres run by government do not have expertise or capacity to deal with the transgender issues and role of the community family support concept (community family) need to be included in the support system.

Clarity on the family support is missing, how transgender person can stay with the families and how the wellbeing of the trans person will be protected in the families needs to be defined further in the transgender bill.

- **Definition of the Transgender in Bill leads more towards Intersex people:** Current definition of the bill clings toward intersex identity. All the transgender are not born as intersex people. The recent bill also ignores the support for the 'intersex' people in India. The current definition presumes that all transgender are intersex or all intersex people are transgenders.
- **Unfriendly to protect the traditional culture of Hijras :** 'Mangati' or 'Badhai' are the traditional cultural practices of the Hijra culture. As per the bill its criminalizing under begging act. Hijras families are the stronger support system for the younger transgender and Hijras; however the bill does not talk about the 'inheritance' procedure or provision for non-biological families. Begging act is still questionable and disputed In supreme court how can policy take decision in this regard.
- **Non-inclusion of various trans identities:** The current definition of the transgender under this bill do not acknowledge the various trans identities such as jogti, maistya, jogappa, mangalmukhi. The bill has to be inclusive to all gender people who comes under the transgender umbrella. The bill do not protect interest of the 'trans-men' enough and there is special attention and directives required towards transmen.
- **Directives on the Transgender welfare board formation is missing** in the current bill. Its extremely important to ensure the trans welfare in the states and districts.
- **It does not protect sexuality:** Transgender people may have various sexualities and this bill do not protect their interest if they want to exercise their preferred sexuality. There is no directives towards the section 377 IPC since many of the transgender sex workers are booked under the same act. Issues related to the transgender who are married to other sex is not been addressed sufficiently and quite often leads to the discrimination.
- **No support for the older Transgender and hijra people and transgender with disabilities:** Transgender bill fails to provide any further support or special provision to the older transgender and hijra people and the transgender people with physical or mental disabilities.
- **No protection for Transgender who are booked under criminal offence :** The bill do not talk about special treatment or precautions to be taken towards the transgender and hijra people who are arrested for the criminal charges (i.e. special cells, treatment, freedom to wear preferred cloths)

**We, the transgender and hijra community of India, appeal to standing committee**

- Include our suggestions mentioned above
- Have face to face meeting with us to understand and reciprocate our issues
- Prepare 'community friendly' Transgender bill which will benefit in long run

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