

Retrieved from: <http://orinam.net/labia-response-msje-trans-rights-bill/>

LABIA responds to MSJE Transgender Rights Bill (2015)

4th January, 2016

To
Smt. Ghazala Meenai,
Joint Secretary,
Ministry of Social Justice and Empowerment
New Delhi

Reg: Comments/suggestions regarding the Rights of Transgender Persons Bill , 2015

Dear Madam,

We are a group of feminist queer activists and are members of LABIA, a queer feminist LBT (lesbian, bisexual women and trans persons) collective based in Bombay (www.labiaincollective.org).

We have looked at the bill put up by the Ministry and have discussed the same within our collective. Please find below some of our comments/suggestions that we would like you to consider.

Comments on the Rights of Transgender Persons Bill, 2015

1. First of all, we welcome the efforts taken by your Ministry to address the concerns of trans persons. While we think that the bill takes several positive steps in the right direction, there are still many concerns that would need to be addressed and the bill in its present form would need a lot more working on before it can be finalised as a document addressing comprehensively concerns of the trans community in India.
2. The main concern with the bill is that it makes it mandatory to undergo a screening process through a committee to ascertain one's transgender identity. We would like to submit that identity and experience of one's gender is a personal matter and there cannot be any 'expert' deciding this for a trans person. Even the NALSA judgement of 2014 recognises the right to **self-identification** and this would only be in line with the thrust of the current bill in its guiding principles on autonomy, dignity, full participation, freedom of making one's choices and so on. Further in the definition of transgender in the current bill, it is stated that, "*Transgender Person should have the option to identify as 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones*". Here too there is emphasis on person's right to choose. We therefore submit that gender identity should be based on self-declaration and not on the recommendations of a committee.
3. We do agree that **certification would be necessary** in cases where trans persons would have to avail of special benefits/welfare measures from the state in the form of reservation, scholarships, loans and so on. In this case the certification process can be carried out by a committee. However the focus of this certification cannot be to decide whether a person's gender identity is transgender or not; it will

be to decide whether the particular trans person is eligible for benefits? Here too we suggest that the decision of eligibility be based on factors such as socio-economic class, caste of the individual as well as individual factors such as levels of family support, extent of violence, discrimination faced by the individual and so on.

We strongly recommend that identification as trans person and issuing of identity related documents for the same should be based on self-identification and separated from the process of certification through a committee, which would be linked to access to special measures and programs.

4. The bill constantly mentions “transgender children”. We are not sure how these will be identified since it is well established that many people who may identify as trans persons as adults may not do so when they are children for various reasons including the fact that they do not have the language to do so. So the Bill needs to talk about protection to all gender non-conforming persons as well from victimisation, discrimination and violence that they face because of their gender non-conforming expression and behaviour.

This also raises the issue of age at which a person can self identify as a trans person, which is not addressed in the Bill at all. Usually one would expect this to be made possible for adults (which would be above the age of 18). However, research across the world and in India has established that some people know of their gender identity from a very early age and do choose to access medical interventions around puberty. We hence need more discussion on this as far as persons under the age of eighteen are concerned.

5. While the idea of ‘**reasonable accommodation**’ is introduced in the definitions and stated a few times in the bill, it does not figure in the guiding principles of the document or in the section (Chapter III) on rights and entitlements. We submit that, this is really at the core of any law/policy that aims to achieve **inclusion of trans persons**. Since we live in a world that is structured around the idea of gender binary i.e. there are only two genders, reasonable accommodation for trans persons would mean that these social structures allow for people to present in their preferred gender without exclusion. For instance, reasonable accommodation in the context of schools would mean that gender non-conforming children are allowed to wear the clothes they prefer and not stick to the gender binary uniform or allowed to choose the sport they would like to play etc.

6. Thus reasonable accommodation means, some reasonable changes in all public institutions and structures that are based on this understanding of binary gender. Considering that there are already protections for “women” through gender segregated spaces such as train compartments, security lines in malls and airports, school uniforms, public toilets and so on, each of these will have to also be revisited to accommodate trans persons so that they can access all of these with their preferred gender expression. This idea needs to be reflected in the bill and cut across all chapters on education, employment and so on.

7. One of the spaces where such accommodation needs to be made is within law itself. Laws related to family, marriage, adoption, are very gender specific and are modelled on this binary gender understanding. With the recognition that this law gives to trans persons as a gender category, and an acknowledgement of their being included as full citizens in this country, all of these need to be revisited and looked at to include the families created by trans persons with their partners and children.

Presently this Bill only suggests changes within the sexual assault laws. These are necessary but far from sufficient to grant legal rights and protection to all aspects of trans persons' lived realities. So there is need to state that all necessary amendments will be made in the IPC and in all law to make sure that trans persons can avail of the legal system to attain their full citizenship rights.

8. We are extremely glad that the Bill recognises the existence of targeted violence and discrimination against trans persons in both public spaces as well as families and communities. We, however, feel that no measures have been actually put in place to address such acts. The Bill does not clearly state the mechanism by which this will be redressed and the kind of support that shall be extended to trans persons to deal with the aftermath of such attacks. No penalties are prescribed in the law for perpetrators of violence.

We believe that the extent of stigma, discrimination, and violence that trans persons face requires a separate law addressing targeted violence along the lines of the "Scheduled Castes and Tribes (Prevention of Atrocities) Act" or/and the provisions made for protection of women from violence in the domestic space and the workplace. This law needs to make a definite commitment towards formulation of such laws and the procedures required to implement them.

9. In the chapter (III) on Rights and Entitlements, subsection 11 (Protection from torture or cruel, inhuman or degrading treatment or punishment) and 12 (1) (Protection from abuse, violence and exploitation), where the role of the appropriate authority is mentioned in taking appropriate measures, legal measures should be added to the existing list of measures that they are expected to take.

10. The sub-section 12 (2) is one of the most problematic sections of the Bill. First of all it does not recognise the amount of violence that some trans persons face from the police themselves. Secondly a mention of police officers as social workers to guide trans persons to appropriate authority or to advise them of their rights or to guide them to an organisation, is a ridiculous understanding of the police as social worker instead of law enforcer. This needs to be discarded and instead there should be a commitment to identifying specific sections of the IPC that can be applied and in what ways for trans persons.

11. Further, the definition of violence in the current bill includes violence towards self. Self inflicted injury cannot be placed on the same platform as violence – sexual, physical, emotional enforced by family members, neighbours, general public, police, pimps and so on. Self-harm does require a response in the form of formal and informal support services, but not in the form of criminalisation and punishment. In fact the Home Ministry has recently recommended that the controversial Section 309 of the IPC dealing with suicide attempts be effaced from the statute book. Thus the definition of violence needs to be changed to exclude self directed harm/injury.

12. While there are several welfare measures suggested in the area of education, which would enhance access to education, reservations in educational institutions, especially in those for higher education (as given under the chapter on employment) are missing.

13. Another big problem with the Bill is its inadequacy in laying down a clear structure or guidelines for effective implementation. For example, while the district screening committees are to make recommendations for certification, the process by which they will do so or guidelines to do so are missing. There is concern over uniformity of the functioning of these committees across the country and moreover about whether these committee members would function of their own unique understanding of the issues at hand including prejudice or misinformation about trans persons.

Similarly, the constitution of the state level authority, which is the certifying authority is unclear. The guidelines for the working of this state level authority needs to be expanded upon and not merely referenced as “on the lines of the Aravani Welfare Board”. Even if these are to be State matters, some guidelines in the Central Bill would always help maintain some uniformity without taking away the specificity of each region.

14. The Bill also needs to state very clearly the process of monitoring the implementation of this Bill. Inclusion of community members from varied backgrounds and identifying in different gender identities and academics/activists working on issues of gender, at all levels is also important for any meaningful implementation of this Bill.

15. Finally, there are many issues of language. As we know language itself is very gendered and so has to be looked at carefully throughout in the drafting of this Bill and all laws in general. Use of pronouns has to be carefully made. His/her as pronouns are inadequate to include all genders and this Bill at the very least should pay attention to such details. In our submission we have constantly referred to “trans persons” though the Bill has used “transgender persons” all along. In our understanding since this Bill is talking of “transgender” as a new gender category along with “man” and “woman”, “transgender person” does not sound right and so there is growing usage of trans persons as a more inclusive and descriptive category.

Considering the various things that need to be addressed within this Bill, we do think that while welcome, it is not acceptable at all in its present form. We request the Government to firstly extend the date for comments and suggestions and then hold consultations with various persons to arrive at a resolution of some of these unresolved issues like age at which self identification can be done; certification for what purpose and criteria for giving these; changes within civil and criminal laws required; process to redress and deal with targeted violence, discrimination, and abuse; composition and structure of implementation and monitoring bodies; etc.

These set of recommendations have been a collective effort of members of the **LABIA – A Queer Feminist LBT Collective**, a group of lesbian and bisexual women and trans* persons. Since our inception in 1995 as Stree Sangam, our foremost concern has been to break the invisibility around queer lives and create safe spaces for LBT persons. We have framed our comments on the basis of our experiences as well as the experiences of people we have come in contact with during the course of our outreach and research work as a collective.