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LBT and ally groups write to Standing Committee on Trans Bill 2016

LETTER 1

Date: October 20th 2016

To,
Director
Standing Committee on Social Justice and Empowerment Lok Sabha Secretariat
Parliament House
New Delhi

Subject: Suggestions on Transgender Persons (Protection of Rights) Bill, 2016 Respected Madam/ Sir,

We are writing to you in reference to the recent **Transgender Persons (Protection of Rights) Bill, 2016** (and the subsequent call for recommendations by the Parliamentary Standing Committee), that has moved away from the **NALSA judgement (2014)**, Private Member's **Bill by Tiruchi Siva (2014)**, and **MSJE Bill (2015)** to such an extent that we strongly believe that it will result in further discrimination and violence towards the transgender community.

While the NALSA judgement and the subsequent bills provided a ray of hope to the community, the current bill of 2016 has grossly undermined NALSA'S spirit and technicalities. Based on preliminary readings of the bill we would like to flag certain concerns. Going forward, we believe the aspects we are objecting to are non-negotiable and need to be addressed and revised urgently. Additionally, consultations across the country are already under way. Hence, for a detailed analysis, we insist that the government allow us (activists, organisations and people from the community), a minimum period of 30 days in order to produce a cohesive list of objections to the bill.

Concerns and suggestions:

1. Definition: The definition takes away the right of a transgender person of self-identification and is instead based on a biological determinist argument and the hegemonic notions of gender binary. **Private Member Bill of Tiruchi Siva in 2014** had a far more inclusive and gender-sensitive understanding of the transgender identity that has not been opposed till date. The bill defined a transgender person as “‘Transgender Person’ means a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as — kinnars, hijras, aravanis, jogtas etc. A transgender person should have the option to choose either ‘man’, ‘woman’ or ‘transgender’ as well as have the right to choose any of the options independent of surgery/ hormones.” This definition was echoed in the **MSJE Expert Committee Report**. Such an understanding is absent from the current bill. It conflates the definition of transgender and persons with intersexed variations, who may or

may not identify as transgender. This conflation is harmful for both groups. We reject this definition stated in the newly revised Bill.

2. Inclusion of Trans persons assigned gender female at birth: The transgender bill also lacks an explicit recognition of the trans persons who are assigned the female gender at birth. While the violence and struggles faced by trans persons assigned male at birth and those assigned female at birth are a result of class and caste-based heteropatriarchy, the visibility and mobilisation of the former is higher as compared to the latter, because of the cultural and historical recognition. The issues of trans persons assigned female at birth are also different and need to be addressed specifically by the bill as well.

3. Screening Process: The recent bill contains several contradictory statements. On the one hand it states that “A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity”, on the other it demands that an individual make an application and go through an elaborate screening process that will determine whether the applicant is trans or not through a certificate. The bill clearly says that the certificate is needed to confer rights and also as proof of identity. This negates the very idea of self-identification of transgender persons. The idea of ‘trans’ is a vast spectrum that includes several identities within it. For instance, there are several individuals assigned male at birth who identify as ‘woman’ and not ‘trans’. Such a process pushes people to identify only as ‘trans’. Hence, the screening process violates a person’s dignity and denies the right to choose from the multiplicity within the gender spectrum that extends far beyond the limited definition mentioned in the recent bill. It is also likely to create gate keepers and power brokers within different levels. Furthermore, in case such a screening committee comes into force, there is no provision mentioned to challenge its decision. We strongly demand the scrapping of such a discriminatory screening committee that has been repeatedly included in the NALSA judgement and in subsequent bills.

4. Family: The bill upholds the institution of the family as a primary unit of support, which shows how negligent the bill has been towards the everyday realities and violences faced by trans persons within the family structure. The lack of awareness shown to the violence from families to those who transgress gender norms is evident from the clauses that keep underlying the forcible separation from the family. The insertion of a clause like clause 13(1) means that this will be used against those who may help young people get out of violent homes or families. Furthermore, Section 13 (3) states that if a family member is unable to take care of an individual, then he/she shall be sent to a rehabilitation centre. The use of the term rehabilitation itself reeks of a moralist position and moves away from a language of rights. We have seen violence and force that is being exerted on young persons asserting their choices around sexuality and choice of partners in the name of protection within the family. Here saying that all persons shall be rescued, protected and rehabilitated seems like a way to push people back into violent homes especially when they are dependant. “Rehabilitation” will also severely curb the freedom of expression and the freedom of movement of a trans person, and here the Bill contradicts itself again. The recent document refuses to recognise and acknowledge the importance of community structures, such as Gharanas or Hammams that have been established by the Hijra community and function as alternate family support systems. Nor does the Bill acknowledge adoptive families and families of choice by transgender persons.

5. Reservations: The MSJE Bill had a section on reservation in employment. It reads, “Those transgender persons who by birth do not belong to Scheduled Caste or Scheduled Tribe may

be declared as Backward Class and be entitled to reservation under the existing ceiling of OBC category.” The recent bill does not declare transgender persons as Backward Class nor does it list any clear entitlements and takes away the promise in MSJE report of affirmative action in terms of reservations. Here we ask, what about those transgenders who belong to the SC/ST category? Will they receive additional benefits and protections? The bill does not clarify these details.

6. Implementation: Although the Bill lays out obligations of establishments and persons, there it does not lay out redressal mechanisms. There are no clear guidelines which mention competent authorities that transgender persons may turn to or ways to seek justice while facing discrimination.

7. Begging: The Bill criminalises begging which will leave the already vulnerable population that depends on begging and sex work with fewer means of livelihood. Defining begging as “forced or bonded labour” as mentioned in the Bill, reflects the prejudices against the trans community. The community is not seen as a space where people get support and affirmation. In the absence of any affirmative action, this kind of attack on spaces where there is affirmation is unacceptable. The bill seems like a direct attack on the hijra family system and the right of trans people. Hence the bill, rather than protecting the rights of transgender persons, ends up curtaining their rights and harming their lives. For the above reasons we (the below signed organisations and individuals) demand an extension in the sincere hope that a revised version will eventually lead to a more inclusive and just bill that fights violence, stigma and discrimination against the transgender community.

Sincerely,

Organizations

1. Alternative Law Forum
2. Astitva Trust – CBO
3. Balaram Dey Street Ananadam
4. CREA
5. Equations – Karnataka
6. Forum Foundation, Vadodara
7. Good As You – Bangalore
8. JEEVA NGO – Karnataka
9. Karnataka Sexual Minority Forum, Karnataka
10. Karnataka Transgender Samithi, Karnataka
11. Kerala Network of Sexworkers, Kerala
12. LABIA: A Queer Feminist LBT Collective, Mumbai
13. Lesbit- Bangalore
14. Maharashtra Tiritiya Panthi Sangatana -CBO
15. Mara Media Collective – Bangalore
16. MUSKAN, MSM and TG sex worker Sanghatana, Sangli
17. The Naz Foundation (India) Trust
18. Nazariya: A Queer Feminist Resource Group, Delhi
19. Partners for Law in Development
20. Payana – Community Managed and Run Organisation, Karnataka
21. Peoples Union of Civil Liberties – Karnataka
22. Queer Collective- TISS

23. Samakami, Meghalaya
24. Sanhati – Karnataka
25. Sappho for Equality, Kolkata
26. Sarathya – Karnataka federation of Trans CBOs, Karnataka
27. Stree Sangathan, Chhota Udaipur
28. Swabhava Trust – Bangalore
29. Swatanthra – NGO, Bangalore
30. The Equals Centre for Promotion of Social Justice
31. The Naz Foundation (India) Trust
32. Vikalp (Women’s Group) – Subrung
33. Xukia, Guwahati

Individuals

1. Mani
2. Suneetha, Researcher, Hyderabad
3. Abha Bhaiya – Feminist
4. Aditi – Equations
5. Aditya Prasad, Activist and Writer, Bangalore
6. Advocate Mary Scaria
7. Ajita
8. Akansha, Mumbai
9. Akhil Kang – Lawyer
10. Akkai Padmashali – Transgender Rights Activist
11. Amalina KD, queer feminist, Delhi
12. Amba Salelkar – Advocate
13. Angarika
14. Ankur – Forum Foundation
15. Annie
16. Archana Dwivedi
17. Arundhati Dhuru
18. Ashwin Thomas – Researcher
19. Astha
20. Atharv S – Transgender Activist
21. Aatreyee Sen – Forum for Human Rights and Justice – Himachal Pradesh
22. Balaram Dey Street Ananadam
23. Bhuvana Balaji – Researcher
24. Bindu Doddahatti – Advocate
25. Chandini – Transgender Rights Activist
26. Charupriyan – Transman
27. Darshana Mitra – Advocate
28. Deepan Kannan
29. Deeptha Rao – Advocate
30. Dipakanta Mitra – Activist
31. AK Jayashree – Professor, Community Medicine, Academy of Medical Sciences –
Kannur
32. Sylvia Karpagam – Public Health Doctor
33. Ekta Mittal
34. Gautam Bhan
35. Gowthaman Ranganathan – Advocate

36. Gurukiran Kamath – Activist
37. Ishani Cordeiro – Women's Rights Lawyer
38. Jaya Sagade
39. Kalpalatha – Teacher – Hyderabad
40. Kamayani Bali Mahabal, feminist and human rights activist
41. Kanaka Murthy – Sculptor Bangalore
42. Kavita – Activist
43. Kavita Krishnan – Secretary AIPWA
44. Kiran Shaheen
45. Kishore Govinda – Scientist St Johns Research Institute
46. L Ramakrishnan
47. Lata Singh
48. Laxmi Narayan Tripathi – Transgender Activist
49. Lekha Adavi – Activist
50. Mallu – Transgender Rights Activist
51. Manish Gautam – Project Assistant IISc
52. Meena Saraswati Seshu, Sangram, Sangli.
53. Meet Tara Dnyaneshwar, Mumbai
54. Midhun – Transman
55. Moulee, Chennai
56. K. Ramalingeshwarara Rao, Manager, -WINS, Tirupati
57. Mridul Dudeja, Transman and activist
58. R. Meera, Founder Secretary – WOMEN'S INITIATIVES (WINS), Tirupati
59. N Jayaram – Journalist Bangalore
60. Narayana Murthy
61. Neha Gupta, Communications Officer
62. Niruj Mohan – Astronomer
63. Noor Enayat, New Delhi
64. OP Ravindran – Dalit Rights Activists
65. Padma Deosthali, CEHAT
66. Pawan Dhall – Queer Activist
67. Pushpa Achanta- (WSS-Karnataka)
68. Rachana Johri AUD
69. Radhika Raj – Researcher
70. Rajeshwari – Transgender Rights Activist
71. Rakshita – Transgender Rights Activist
72. Ranjitha – Transgender Rights Activist
73. Rekha Raj – Dalit Feminist
74. Richa Minocha – Jan Abhiyan Sanstha, Himachal Pradesh
75. Ritambhara Mehta
76. SapAna Mhatre – GenderQueer Person
77. Saptak Narula – Mathematician – Delhi
78. Savitha – Transgender Rights Activist
79. Seema Srivastava
80. Shakun Doundiyakhed – Womens Rights Activist
81. Shals Mahajan, Writer, Mumbai
82. Shambhavi Madhan – Queer Feminist
83. Shravanti Dasari – Researcher
84. Shreekanth Kannan – Transman
85. Shruti Arora

86. Siddarth Narrain
87. Sonu Niranjan – Transman and Activist – Bangalore
88. Soumyashree Bharghava – Transgender Rights Activist
89. Suma – Transgender Rights Activist
90. Sumathi
91. Sumitra – Actor and Transgender Rights Activist
92. Sunil
93. Sunil Gupta – Artist
94. Swati Sheshadri – Activist
95. Tanmay, Jan Jagran Shakti Sangathan, Bihar
96. Tanushree – Transgender Rights Activist
97. Uma (Umesh.P) Individual, Transgender Rights Activist, Bangalore
98. Uma V Chandru – WSS
99. Umesh P – Activist
100. Vani Subramaniam
101. Veena Shivalingaiah – Transgender Rights Activist and Politician
102. Vinay Chandran – Counselor – Sahaya Helpline
103. Vinay Sreenivasa – Member Bruhat Bengaluru Beedi Vyaparigala Sanghatanegala Okkoota
104. Virginia Saldanha – Activist, Mumbai
105. Yogesh – MPhil Scholar

LETTER 2: ADDENDUM

Date: November 4th, 2016

To,
Director
Standing Committee on Social Justice and Empowerment
Lok Sabha Secretariat
Parliament House
New Delhi

Subject: Addendum to Letter “*Suggestions on Transgender Persons (Protection of Rights) Bill, 2016*”

Addendum to Letter from LBT groups, individuals, and allies to the Standing Committee of the Ministry of Social Justice and Empowerment

We are writing in continuation to our letter dated October 20th (*Subject: ‘Suggestions on Transgender Persons (Protection of Rights) Bill, 2016’*). We the undersigned met on November 1st to discuss and examine the bill with groups and individuals across the country. On looking at the bill more closely, we are confirmed in our opinion that this bill needs to be redrafted after a process of extensive deliberation and in depth consultations with the transgender and intersex communities before it can be considered as sufficiently addressing the needs of the communities it is intended to benefit. We say this for the following reasons:

1. **Regarding the begging clause:** The begging clause in the 2016 Bill is highly discriminatory and criminalizes persons who are already vulnerable. We cannot accept such provisions.
2. **Process of arriving at the language and content of the bill:** The Private Member's Bill of 2014 contained clauses and language that came very close to meeting the needs of the community, but the government did not pass it to the Lok Sabha, saying that it was in the process of drafting a separate bill along similar lines. The MSJE Bill of 2015 reflected the content of the 2014 bill and called for responses from stakeholders. Recommendations were accordingly sent in by transgender and intersex individuals, groups, and organizations as well as allies. We see none of these recommendations reflected in the revised bill of 2016. Conversely, the clauses that were originally contained in the 2014 and 2015 bills, and should have been retained, have also been removed.
3. **Definition of Transgender in the Bill:** NALSA, Private Member 2014, and MSJE 2015 maintained a consistency of definition for transgender persons, while the 2016 Bill is completely different from these documents and the definition it uses does *not* align with our identities and lived realities. There is also no explicit mention of transgender and gender non-conforming persons who were assigned gender female at birth. A nuanced understanding of gender identity needs to be the crux of the bill.
4. **Conflation of Transgender with Intersex:** In 2015, the bill was framed as the "Rights of Transgender Persons" and there was no conflation between the understanding of the terms "transgender" and "intersex." We find that both these identities have been clumped together in the 2016 Bill without a clear understanding of each separately.
5. **Naming of the bill:** We further recommend a renaming of this bill to "The Intersex and Transgender Rights Bill." While doing this, the Bill should clearly give two separate definitions, one for transgender persons and one for persons with intersex variations, and in each clause of the bill, there should be an understanding of how that particular clause affects different communities of transgender persons and persons with intersex variations.
6. **Regarding persons with intersex variations:** In addition, there should be a separate chapter on persons with intersex variations, which none of the previous bills have. In particular, there is urgent need to make sure that so-called corrective surgeries and corrective procedures by medical doctors on intersex infants/children are not allowed by law. The other issues related to persons with intersex persons and communities have to be understood through face-to-face consultations so that their concerns are included in this bill.
7. **Regarding the provision for a screening committee:** The NALSA judgement underlined the need for self-identification. A screening committee should not be required for self-determination of gender identity, which is a basic right of every citizen. Validity of this self-identification is also required for redressal of violation of rights accorded by this law. The notion of self-identification should be retained in the bill.
8. **Regarding legal documentation processes:** The process to assert one's self identification via documents and identity cards should be simple, uniform across country, and as accessible as possible. We find different states are instituting different processes and people are currently finding it very hard to navigate these systems. It is necessary to make the procedures accessible in remote parts of the country, and also for people who have limited resources.

9. **Affirmative Action for access to education, employment, and other benefits:** We definitely think that there is a need for affirmative action in terms of special schemes and reservations for access to education, social security, employment, pension, and other such benefits for transgender persons and persons with intersex variations. Many of these have been spelt out in the MSJE Expert Committee report of 2014 and were reflected in the Private Member's Bill of 2014. We insist that these be spelt out in greater detail in the 2016 Bill.
10. **Special status as OBC, Socially Backward Classes (SBC) / Economically Backward Classes (EBC):** SBC/EBC status has been spoken about in the NALSA judgement, the MSJE Expert Committee report, and in the Private Member's Bill of 2014 and, yet, is absent in the 2016 Bill. Since the transgender community is diverse, there have to be clear rules laid out for who is eligible for these schemes and the process of screening for access to these. It is imperative that these decisions are made in complete consultation with the transgender and intersex communities.
11. **Dalit transpersons:** The bill does not address the particular case of Dalit transgender persons. Will they receive additional benefits and protections as they are multiply marginalized? How would these benefits be categorized? It needs to be clarified in consultation with the Dalit transgender community as the main stakeholders.
12. **Transgender / gender-nonconforming children:** The 2014 and 2015 Bill did address some specific issues of transgender/gender non-conforming children. However, in the 2016 Bill, there is absolutely no recognition of the special needs of these children. For example, there is ample evidence of the violence from natal families and the pressures put on the transgender/gender-nonconforming child to conform to the gender they are assigned at birth. There needs to be serious thought and discussion on the measures that need to be taken to address these situations, and to ensure violence free environments for all children.
13. **Clause regarding the natal family:** Further, this bill criminalizes the adult transgender person and makes it compulsory for them to stay with their natal family; any outside support to escape from violence perpetrated by the natal family is, in effect, being penalized. This same natal family later becomes the social and financial responsibility of the trans person and stands to inherit their property in the event of their death despite the lack of support for the person's own needs. The transgender person's chosen family is delegitimized and not given space or protection. There is also no recognition of adoption, custody of children from prior marriages, or partnership rights and of Hijra families/gharanas, which are presently a source of support and care for many transgender persons.
14. **Violence:** Specific targeted violence is perpetrated against transgender persons and persons with intersex variations by a variety of actors and institutions, including the natal family and the state. There is no mention of this violence, or how it will be addressed. Targeted violence can take multiple forms – verbal, emotional, physical and sexual. The bill needs to explicitly recognize that sexual violence in such contexts is highly prevalent and is part of this targeted violence and hence needs to be included in any clauses on violence and discrimination.
15. **Implementation Committee:** The Tiruchi Siva Bill speaks of a National Commission for Transpersons, which is responsible to make policies and laws, as well as investigate complaints. This commission should be decentralized to ensure there is balanced representation as well as reflection of regional concerns. It should have adequate representation from within various trans and intersex communities. As the Tiruchi Siva Bill states, this committee should be instrumental in both creating and implementing policies.

For all the above reasons and the ones that we have stated earlier in our earlier letter (also attached), this bill cannot be passed in this form under any circumstances. We insist that the standing committee conduct face-to-face meetings with stakeholders spread over all regions of the country to fully understand the shortcomings of the proposed bill. For now, we urge the standing committee to send the bill in its current form back to the drafting board.

Sincerely,

Organisations:

1. CREA, Delhi
2. Critical Action – Centre in Movement (CACIM)
3. LABIA – A Queer Feminist LBT Collective, Mumbai
4. LesBiT, Bengaluru
5. MARG, Delhi
6. Nazariya: A Queer Feminist Resource Group, Delhi
7. Nirangal, Chennai
8. Pratyay Gender Trust, Kolkata
9. Sahayatrika, Kerala
10. Sappho for Equality, Kolkata
11. Vikalp Women's Group, Vadodara
12. XUKIA, Guwahati

Individuals:

1. Aahana Mekhal, Sahayatrika, Kerala
2. Aarav Singh, CACIM, Delhi
3. Abhisikta, LABIA – A Queer Feminist LBT Collective, Mumbai
4. Akanksha, Mumbai
5. Amalina KD, Delhi
6. Anindya Hajra, Pratyay Gender Trust, Kolkata
7. Aryan Pasha, MARG
8. Asha Achuthan, LABIA – A Queer Feminist LBT Collective, Mumbai/ Sappho for Equality, Kolkata
9. Astha, Bangalore
10. Avimannyu, Sappho for Equality, Kolkata
11. Barsa, Kerala
12. Brandt D'Mello, Mumbai
13. Chayanika Shah, LABIA – A Queer Feminist LBT Collective, Mumbai
14. Chinju Ashwathi, Sahayatrika, Kerala
15. Christy Raj, Bangalore
16. Deepa Vasidevan, Kerala/Goa
17. Ditilekha, Xukia, Guwahati
18. Ketki Ranade, LABIA – A Queer Feminist LBT Collective, Mumbai
19. Kiran, Solidarity Foundation Bangalore Fellow, Bangalore
20. Malobika, Sappho for Equality, Kolkata
21. Maya Sharma, Vikalp Women's Group, Vadodara
22. Pramada Menon, Delhi
23. Poushali, Sappho for Equality, Kolkata

24. Provat, Sappho, Kolkata
25. Pushpa Azad, CACIM, Delhi
26. Raj Merchant, LABIA – A Queer Feminist LBT Collective, Mumbai
27. Ritambhara, CACIM, Delhi
28. Rituparna Borah, CACIM, Delhi
29. Selvam M, Nirangal, Chennai
30. Shambhavi Madhan, CREA, Delhi
31. Sho, Jan Jagran Shakti Sangathan, Bihar/LABIA – A Queer Feminist LBT Collective, Mumbai
32. Shruti, LABIA – A Queer Feminist LBT Collective, Mumbai
33. Smriti Nevatia, LABIA – A Queer Feminist LBT Collective, Mumbai
34. Sonu Niranjan, Bangalore
35. Sumathi N, Bangalore
36. Sunil Mohan, Bangalore
37. Sunita Kujur, CREA, Delhi
38. Sutanuka, Sappho for Equality, Kolkata
39. Svati Shah, Delhi
40. Tanmay, Jan Jagran Shakti Sangathan, Bihar/LABIA – A Queer Feminist LBT Collective, Mumbai