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Sappho for Equality responds to MSJE Transgender Rights Bill (2015)

To,

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

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

Dear Madam,

Sappho for Equality (<http://www.sapphokolkata.in/>) is a Kolkata based activist forum fighting for the rights of lesbian, bisexual women and transmen since 1999.

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 Transgender Bill 2015 (MSJE) by *Sappho for Equality*

CHAPTER I: PRELIMINARY

Definitions

1. *Violence*: The bill defines ‘violence’ as ‘the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation’ – this definition of violence 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.

CHAPTER II: TRANSGENDER IDENTITY

Identification of Transgender Persons

1. *Identity*: The definition of a Transgender person mentions ‘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.’ – what gender category would be mentioned in the certificate for those transgender persons who identify as ‘man’ or ‘woman’? In case a transgender person’s gender is mentioned as male or female in his/her id documents and at the same time he/she have a transgender certificate where his/her gender is mentioned as transgender – will this not create practical problems for the concerned person? How these issues will be addressed?

2. *Certification*: In the certification process for the transgender people the Bill mentions: ‘a District level Screening Committee headed by the Collector/District Magistrate and comprising District Social Welfare Officer, psychologist, psychiatrist, a social worker and two representatives of transgender community and such other person or official as the State Govt/UT Administration deems appropriate.’ – it has to be mandatory to include a transman, a transwoman, a hijra person and a kothi person in this committee.

CHAPTER III: RIGHTS AND ENTITLEMENTS

Right to live in Community

1. *Community support services*: The sub-sections (2a and b) of clause (9) mentions: ‘The appropriate Government and local authorities shall take appropriate measures to ensure full enjoyment of the right ...— (a) ensuring that Transgender Persons have access to a range of in-house, residential and other community support services, including assistance necessary to support living and inclusion with community; and (b) making community services and facilities for the general population available on an equal basis to Transgender Persons.’ – it will be helpful if the Bill specifically list the community support services.

Protection from abuse, violence and Exploitation

1. *Awareness raising*: The sub-sec (3) of clause (12) mentions: ‘The appropriate Government shall take all appropriate measures to prevent abuse, violence and exploitation against Transgender Persons by, inter alia providing information and raising awareness on: (a) taking cognizance of incidents of abuse, violence and exploitation; (b) the legal remedies available against such incidents; (c) steps to be taken for avoiding such incidents; (d) procedure for reporting such incidents; and (e) steps required for the rescue, protection and rehabilitation of Transgender Persons who have been victims of such incidents’ – this list should also include help line for transgender persons which would be handled by trained trans-sensitive counselors.

CHAPTER IV: EDUCATION

Duty of Educational Institutions to provide Inclusive Education to Transgender Students

1. *Anti-discrimination cell* – The sub-section (vi) of clause 15 mentions: ‘All the educational institutions/universities should establish an anti-discrimination cell to monitor any form of discrimination against the transgender community’ – it has to be mandatory to include a transgender community member/s and/or person having work experience with transgender community/groups/organizations in this cell.

CHAPTER V: SKILL DEVELOPMENT & EMPLOYMENT

Non Discrimination in Employment

1. *Non Discrimination Workplaces* – The sub-section (1) of clause (18) mentions: ‘No establishment shall discriminate against any Transgender Person in any matter relating to employment including but not limited to recruitment, promotion and other related issues’ – it has to be mandatory that all establishments should have anti-discrimination policies based on gender-sexual identities.

CHAPTER VII: DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENT

Awareness Raising

1. *Awareness raising obligation* – The sub-section (3) of clause 25 mentions: ‘Without prejudice to the general awareness raising obligation in sub-section (1) of section 25, such programmes, campaigns and workshops shall inter-alia,— (a) Promote values of inclusion, tolerance, empathy and respected for diversity; (b) advance recognition of the skills, merits and abilities of transgender persons and of their contributions to the workforce, labour market and professional fee; (c) Foster respect for the decisions made by Transgender Persons on all matters related to family life, relationships, bearing and raising children; (d) Provide orientation and sensitization at the school, college, university and professional training level on the human condition of transgenderism and the rights of Transgender Persons; and (e) Provide orientation and sensitization on transgenderism and rights of Transgender Persons to employers, administrators and co-workers’ – this list should include mandatory gender and sexuality curriculum from school level.

The Bill is completely silent on the below points, therefore we recommend that these points should be included –

1. It has to be mandatory for all establishments, institutions, registered organizations, public buildings etc to have trans-friendly infrastructure e.g. unisex toilets, hospital wards, hostels, security checks, queue etc.
2. It has to be mandatory to provide free legal aid to transgender persons.
3. The overall development of Transgender persons is not possible in presence of section 377 of IPC. Therefore, for effective implementation of this Bill/Act section 377 has to be repealed.
4. Discussion on situation of intersex persons should be brought forth and relevant provisions should be laid down.

Thanking you.

Yours Sincerely,

Members of *Sappho for Equality*