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Sampoorna*

a network of trans and intersex Indians around the globe

SPWG STATEMENT ON TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL 2019

July 19, 2019 July 20, 2019 Posted in Uncategorized

BACKGROUND

In December 2015, the Ministry of Social Justice and Empowerment released the draft of the Transgender Persons (Protection of Rights) Bill. In August 2016, after receiving much feedback from trans, intersex and gender non-binary persons and communities, including the Sampoorna Working Group, the Government released a more regressive version of their own previous bill. After hearing in-person depositions and receiving written recommendations, the 43rd Report on TG Bill 2016 by the Parliamentary Standing Committee On Social Justice was released in July 2017. Later that year, the Ministry rejected most of the recommendations by the Parliamentary Standing Committee. During the Winter Session of Parliament in 2018, the Lok Sabha passed the Transgender Persons (Protection of Rights) Bill, 2018. The Bill was not tabled in the last Rajya Sabha within the term of the last government.

There have been widespread protests against the bill by trans, intersex and gender non-binary persons and communities in Delhi, Bangalore, Bihar, Manipur, Tamil Nadu, Kerala, Karnataka, Maharashtra, Telangana, Hyderabad, West Bengal, Orissa and many more states with large numbers of trans, intersex and gender non-binary people coming out to protest even in small towns and cities. This co-ordinated mass action across the country is unprecedented in the history of LGBTI activism in India. Across caste, class and gender spectrums, there is unanimous opposition to this bill that claims to empower us but instead seeks to oppress us further.

Ever since news reports about problematic sections of the bill being dropped came out in the last week, trans groups have demanded the release of the draft bill 2019 before it is tabled in the Parliament. However, today, the bill was listed to be introduced in the Lok Sabha by MOSJE Minister Shri Thawar Chand Gehlot.

It is clear that the current government has neither any intention of upholding the Supreme Court judgment on trans rights passed in 2014 nor any will to listen to the demands from trans, **intersex and gender non-binary** communities.

ISSUES WITH THE BILL

1. The issue of identification

According to this Bill, only a person identifying as transgender has the right to “self-perceived” gender identity. Such a person should apply for a certificate to the District Magistrate, who on the basis of as yet unnamed procedures and documents, will issue a certificate to the person as a transgender person.

If a person wants to identify as male or female, surgery certificate has to be issued by a Medical Superintendent or Chief Medical Officer of the hospital, in the prescribed format [yet to be formulated] and submitted to the District Magistrate for revision of the identity to male or female.

This is a gross violation of the Supreme Court NALSA judgment passed in 2014 that granted the right to self-determination of gender as male, female or third gender irrespective of surgical or hormonal interventions. In fact, the judgment clearly states that “any insistence for SRS for declaring one’s gender is immoral and illegal” (Pg 110 of the SC decision)

2. Issue of Change of Name

According to this bill, a person who has been issued a certificate of identity as transgender or a revised certificate as male or female can change “the first name in the birth certificate and all other official documents relating to the identity of such person”. We fail to understand why such a provision has been included specifying only the provision for change in the first name! Does the govt want to not give us the option to change our last names because, in the Indian context, last names very often denote caste? When there is provision for cisgender persons to change their last names also due to marriage or change in religion why has this been denied to trans persons?

3. Issue of Intersex Persons

The Bills states: (k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations,genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

The Bill continues to conflate the intersex persons as transgender, despite the warning from the World Professional Association of Transgender Health [WPATH].

4. Reservations/Affirmative action

The Supreme Court judgment has clearly stated that trans persons must be considered socially and economically backward and affirmative action in cases of admission in educational institutions and for public appointments must be extended. However, the Bill is silent on this crucial issue inspite of us demanding consistently for horizontal reservations to be implemented.

4. Attack on hijra households

The Bill defines “family” as “a group of people related by blood or marriage or by adoption made in accordance with law.

Additionally the Bill states: “Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre”.

By these measures, the Bill denies the continuous demand since the earliest version of this bill, to recognise hijra households as 'family', since historically these have been the only protective space for trans, intersex and gender non-binary people, who were disowned by their natal families.

Not redefining the concept of 'family' and forcing such persons to be placed in rehabilitation centres, is a violation of our fundamental rights and historical right to chosen families.

5. Nominations for National Council of Transgender Persons

The clause states that the National Council for Transgender Persons is to "have five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government".

No democratic mechanisms and structures have been proposed in the formation of this National Council. As a result, the National Council of Transgender Person is going to be massively disproportionate towards Government presence. Out of at least 25 such nominated members, only 5 trans persons are to be onboard. In addition, the most worrying aspect regarding the constitution of this Council is that all nominations are in the control of the Government. Even the NGO representations onto this Council are mandated to be made by the Government.

Given this level of control by the Government, it is clear what kind of corruption and sycophancy this will unleash and how only the powerful groups who are aligned with the Central Government will be nominated to these posts. It's also clear that any dissenting voices will be kept out, as has been happening in various sectors of public life, in the last term of this government.

6. Problematic language of "rehabilitation"

Under Chapter IV, Welfare Measures by the Govt, it says "The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons". We have previously pointed out the issue with this language of rehabilitation. It is unclear what the government wants to "rescue, protect and rehabilitate" us from!

7. Lesser punishments for crimes against trans people

The Bill says, anyone who "harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine". Since 2016, we have raised the issue of the Bill proposing lesser punishments for perpetrators of crimes against trans persons. There must be proportional punishments for crimes against us if this is indeed a Bill that will uphold our right to equality, dignity and life.

8. Attack on legal rights

The Bill says "No suit, prosecution or other legal proceedings shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder."

The right to contest the law is a fundamental right granted to all citizens. By including this provision, the government is attempting to take away our right to contest provisions and violations under this Bill and its implementation. We condemn this.

Moreover, the Bill also states that the Central Govt can by order, published in the Official Gazette, make such provisions, for expediting or removing any difficulties arising out of this Bill, provided **that no such order shall be made after the expiry of the period of two years** from the date of commencement of this Act. We know the reality of govt processes and how long it takes for the wheels of bureaucracy to move. By attempting to remove any possibilities of amendments after 2 years, the government wants to ensure that everything related to this Bill is done within its term in office and no subsequent government can make changes. This is against the spirit of democracy and we strongly register our opposition to this.

We urge all our trans, intersex and gender non-binary families, allies and opposition parties to come together to stop this disastrous bill and protect our rights.

Nothing about us, without us!

THE END.

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