Backgrounder on the Minutes of the Transgender Community Meeting on The 2016 Transgender Bill

We write as a collective of transgender individuals, leaders, and community based organizations from Mumbai to express our extreme disappointment with the recent Transgender Persons Protection of Rights Bill (2016) approved by the Union Cabinet in July 2016. The bill comes over two years after the Supreme Court ruled to recognize the rights of transgender persons as equal to those of any other citizen of India. Since then, there has been little to no implementation of the Court’s recommendations, nor have there been any substantial changes in the welfare, rights, and basic respect for transgender individuals across India.

Instead we know that the Central Government moved an application seeking to modify the NALSA judgment to the effect of taking away the OBC status conferred upon Transgenders, which the Supreme Court, rightly disallowed. We are disconcerted by the sense of urgency that the Central Government has shown in introducing the Transgender Persons (Protection of Rights) Bill, 2016. Contrary to standard practice only 10 days were provided to call for consultations. In spite of numerous requests, this was only extended by another 10 days. The bill was drafted in about 20 days without any public consultation with the community. The bill itself is riddled with ambiguous provisions, inaccurate language for describing transgender persons, and virtually no descriptions for how the provisions will be funded, enacted, or enforced. The following portions of the bill are the most objectionable:

1. **The bill eliminates the right to self identify:** The cornerstone of both the 2014 NALSA Judgment and the 2014 Tiruchi Siva Bill, was that transgender persons should have the right to choose their own identity. The 2016 Government Bill has replaced this right with a complex, medico-legal bureaucratic process. The bill requires transgender persons to apply to the district magistrate in order to receive a transgender certificate. The magistrate sends the application to a district committee. The District Committee will comprise of the local CMO, Psychiatrist, Social Worker, a transgender person and a Government Representative. Screening committees reinforce a Medical Model that the Supreme Court has rejected. A token representation to transgender persons on the committee bodes ill for a community that is both vibrant and diverse. Interestingly the District Magistrate could reject the recommendations of the Committee and refuse a transgender person the Certificate. The requirement for a certificate and approval from a legal body also directly contradicts the initial spirit of the NALSA judgment’s protection of an individual’s right to decide their own identity. Now, the only way that individuals may legally change their name and gender will be through a transgender certificate issued by a magistrate and committee.

2. **Narrowing Gender Identity Options:** The certificate provided by the magistrate upon approval of an application will only list a person’s gender identity as transgender. This eliminates the possibility for transition, where some individuals may want to go from being male to female or female to male. The bill inaccurately labels everyone as transgender, when some individuals may actually desire to be recognized as male or female.

3. **Lack of Reservations:** The 2014 bill provided reservations in employment and education for transgender persons. The 2016 bill promises inclusive education, the right to participate in cultural activities, and even sports, but makes absolutely no recommendations for reservations for transgender persons. Transgender persons still face immeasurable amounts of discrimination in educational, professional, and social institutions. Much of this discrimination happens at the level of selection or admission. Reservations are a key check to institutional discrimination.

4. **A National Council with No State/regional councils or legal aid:** The 2016 Bill as against the 2014 Bill seeks to replace the provision for National and State Transgender Commissions with a National Council for Transgender Persons, comprised of over thirty representatives from various national offices.
Furthermore the mandate of the Council is restricted to advising the Government on steps to be taken. Similarly unlike the 2014 no provisions have been made on access to Justice through Special Courts etc.

5. **The bill is a diluted version of NALSA and the Tiruchi Siva Bill:** A Private Members Bill introduced by Tiruchi Siva into the Rajya Sabha was expansive and detailed in its calls for reservations, separate courts for transgender persons, state level commissions for transgender welfare, and a range of other goods and services clearly defined and outlined. That bill is scheduled for discussion in the Lok Sabha this winter session. We are confused as to why, when the 2014 Bill that seems to meet the mandate set out in the directives of the Supreme Court, would the Government introduce a 2016 Bill, especially one with fewer mandates and less clarity.

6. **Language:** The language used obviously reflects the lack of expertise of those who have drafted this proposal. The definition for transgenders is offensive and misconceived (neither wholly male nor female; a combination of male and female, etc). This we believe reflects the mindset of those who commissioned and drafted the bill. This definition is inconsistent with the judgment of the Supreme Court.

While we can agree that something needs to be done to ensure the welfare, equal rights, and respect for transgender persons in India, we also cannot accept a bill that does more to criminalize transgender persons than to protect them. This bill does not make good on the promises laid out in the Supreme Court and enshrined in other bills, such as the Tiruchi Siva bill.

Sincerely,

Transgender Community Members of Mumbai