

MEMORANDUM TO THE GOVERNMENT

Telangana Hijra Transgender Samiti submits the following memorandum on the “Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill”, 2018. Our major concerns are the criminalization of begging with a minimum of 10 years of imprisonment and with a penalty upto Rs.1 lakh, and which will hugely affect the transgender community of India as a large number of transgender people are involved in begging or its traditional form known as “badhai” as a last resort form of livelihood.

The recent anti trafficking bill falls short on many counts:

1. The provision in this bill which proposes a separate class of aggravated forms of trafficking which includes trafficking for the purpose of forced labour and begging, directly affects the hijra/trans community which is dependent on begging as their livelihood. Though the Bill claims to address most pervasive yet invisible crimes affecting the most vulnerable persons, especially women and children, from the point of view of prevention, rescue and rehabilitation it also creates further vulnerabilities by criminalizing the traditional structures of the hijra/trans community which depended on such badhai/begging as a culture developed within the community over the ages which has sustained them despite the institutionalised exclusion from traditional educational and employment systems. This widespread employment and educational exclusion and discrimination has led to a nearly complete situation of lack of formal unemployment options for the community.
2. It fails to count the transgender community on the one hand as one of the potential victims of trafficking per se. Hence no collective or NGO which represents trans people across the spectrum has been consulted for recommendations, even though as victims of the system their experiences are also crucial because they know exactly where and how the existing penal provisions or state structures have affected their lives.
3. The clause that trafficking by administering chemical substance of hormones to a person for the purpose of early sexual maturity is also alarming because it poses a risk to many trans people who take hormones during their process of gender affirmation, often with the help of older transgender people who guide them. Though the hijra/trans families aren't involved technically in such administering of hormones, they may be involved in helping younger transgender people gain access to medical practitioners or unlicensed sources. This unawareness on their part should not be criminalized, and safe medical options should be provided by the government instead.
4. The clause that provides for a punishment of upto 1 lakh rupees as fine and five years of imprisonment for managing or up to three years of imprisonment for even living in a space deemed to be a place for trafficking persons is also a serious threat to the hijra/trans community, because many trans persons leave their natal homes early in their lives, even when they are minors, and run away to join hijra/trans communes

where they can safely live in their chosen gender identity. If all the members of the commune are detained under this Act simply because they provide shelter to runaway transgender people, this will create immense fear as just visiting police station, let alone arrests and detention are still treated as a major source of humiliation to hijra culture per se.

5. The provision in this bill saying 'Punishment for promoting or facilitating or commits fraud for procuring or producing, printing, issuing or distributing unissued, tampered or fake certificates, or commits fraud for procuring or facilitating the acquisition of clearances and necessary documents from Government agencies' has also raised suspicions that if the biological gender or name of a trans person doesn't not match with that on their legal documents this trans person has acquired in good faith like their adhaar card, voter id, PAN card etc., this may be used to penalise such trans persons under this clause in case of any legal conflict.

Overall, the history of transgender people being persecuted by officers of the law suggests that these provisions will provide plenty of scope for the discretion of police to play a role in how these sections will actually get implemented, and how transgender people will actually face criminalization. The provision for the trial, repatriation and rehabilitation of the victims within a period of one year from taking into cognizance may lead to lot of physical and mental trauma to trans people because it is unclear whether rehabilitation homes and prisons have the infrastructure set up to house trans people without worsening their dysphoria, or whether such prisons have any trained medical or psychological expertise to provide gender affirming medical care while they are in state custody and deal with their mental and physical counselling needs.

In the context of breaking the organized nexus, both at the national and international level, the Bill provides for the attachment and forfeiture of property and also the proceeds for crime will further marginalise by taking away the years long savings of the trans community in the form of houses where the Government has failed to provide them enough shelter or housing facilities confined to below poverty line citizens of this nation.

As per National Crime Records Bureau trafficking of minor girls – the second most prevalent trafficking crime – increased 14 times over the last decade and increased 65% in 2014 (Hindustan Times: provide link!) where as on other hand the NCRB data in 2014 shows 122 deaths of transgender persons which are unnatural deaths and also consists of suicides. In 2015 the same data has drastically come down to 52 after the Supreme Court NALSA vs UOI judgement provided for the recording of crime and deaths to transgenders people, at least in the online FIR format. It is important to realize that crimes such as trafficking minor girls into sex work or domestic work does not constitute an aggravated form of trafficking according to this bill, but begging does.

In this context, involving the National Investigation Agency (NIA) to perform the tasks of Anti-Trafficking Bureau at the national level present under the MHA, takes the criminalization of transgender communities proposed by this bill to another level of

national security threats. Punishments for trafficking for begging range from rigorous minimum 10 years to life and fine not less than Rs. 1 lakh - this further adds levels of criminalisation along with the Transgender Persons Bill 2016 which prescribes a maximum of 2 years for begging.

In short, the bill will not address the serious issues of trafficking and forced labour, since it does not make a distinction between coerced labour and the limited choices made by transgender people to engage in begging as a form of livelihood, given the barriers to all other employment options. We would urge that the bill be amended with respect to all these clauses.