

Two years ago, Tharika Banu became the first registered transgender person to clear the Class XII exams in Tamil Nadu. In the months that followed, thanks to a 2017 Madras High Court order, Tharika went on to join a government medical college in Chennai. Tharika credits her mother, Grace Banu, for ensuring her gender identity didn't come in the way of her education.

On paper, Tharika is not Banu's daughter. But Banu informally adopted Tharika after the latter's biological parents refused to accept her transgender identity. Indian laws currently have no provision for a member of the third-sex community to adopt a child, and Grace Banu is a transgender woman. She is also an engineering student and activist for transgender and Dalit rights. She found her way to a transgender community in Chennai after her own family distanced themselves from her, after briefly incarcerating her in a mental institution.

About two weeks ago, the Lok Sabha passed the Transgender Persons (Protection of Rights) Bill, 2018. "It says 'protection', but if this Bill becomes a law, then by its logic I am a criminal, and so are the people who took me in," says Grace Banu.

Section 13 of the Bill states that no child shall be separated from parents or immediate family on the grounds of being a transgender, except on order of a competent court. "This provision does not take into account the reality that often many young transgender persons face violence from their own families and are forced to run away from home," says Jayna Kothari, senior advocate at the Karnataka High Court and founder, Centre for Law & Policy Research, Bengaluru.

"Families are often very abusive, to the extent that many [transgenders] are subjected to corrective rape," adds Coimbatore-based Shyam Balasubramanian, chip design engineer, activist and a trans-masculine person. Corrective rape, also known as homophobic or curative rape, is a hate crime in which a person is violated to "fix" their gender identity in line with traditional societal norms. Queer activists say these are often sanctioned by the person's family.

In 2014 the Supreme Court effectively recognised transgender persons as the "third sex" through the *National Legal Services Authority vs Union of India* decision, better known as the Nalsa judgment. Transgender is an umbrella term that covers a spectrum of gender identities: a woman born with male physical attributes, a man with female attributes, as well as inter-sex variations. (People whose gender identity matches their sex at birth — male or female — are referred to as cisgender.) This Bill also includes those "having such socio-cultural identities as kinner, hijra, aravani and jogta". The 2011 Census estimated the transgender population in India at around 488,000. Activists believe the actual number to be much higher.

Over the past few months, and especially in the past two weeks since the Bill was passed, voices of activists, advocates and members of the transgender community have gained strength as many begin to understand why the present Bill portends a nightmare for the community. Not only are parts of it vague, much of it calls into question a transgender person's agency.

For instance, the Bill says that when a parent or immediate family is unable to take care of a transgender person, "the competent court shall by an order direct such person to be placed in a rehabilitation centre". The Bill doesn't define or explain "rehabilitation centre", and is unclear on whether this directive is limited to minors.

The Bill also questions the ability of a transgender person to lead an independent life. Ironically enough, India has seen its first transgender lawyer, judge, police officer, college principal, and naval officer — all in the last three years.

The Bill prescribes a two-step process for getting a transgender identity card. It starts with the person going to the district magis-



Demonstrators hold placards during a protest against the Transgender Persons (Protection of Rights) Bill, 2018, in Mumbai

BITTER BILL

Nikita Puri on why India's trans community is furious about a legislation that seeks to police its bodies and lives

trate, who directs him or her to a district screening committee to be physically examined. The committee is to comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person. After the transgender person gets an ID card on being cleared by this committee, a process that can take up to eight months, he or she can finally access welfare schemes (such as free sex reassignment surgery or, as in Kerala as of last year, free accommodation and education).

Tamil Nadu was a pioneer in setting up a welfare board for the transgender community in 2008. While Chandigarh got its committee in 2017, Andhra Pradesh and West Bengal have also formed these in recent years. But, "Screening committees are a complete violation of privacy," says Balasubramanian. "Do cisgender people have to go through a [gender] screening committee for getting ID cards? Then why us?" he demands.

The Bill is violative of more than privacy: the second step for registration as a transgender person is surgery (paid for by the state). "The Bill says that only if you surgically change your body will your gender be set right. This goes against the Nalsa judgment, which says that gender reassignment surgery isn't mandatory," points out Balasubramanian.

The Supreme Court had held it was a basic human right that a person be able to self-identify their gender without medical treatment or mental diagnosis. "Not clearly stating this and setting up a screening committee, which would decide whether a

transgender person gets an identity certificate, goes against the Supreme Court ruling and takes away the rights affirmed by it," says Kothari.

In 2014, the same year that the apex court through Nalsa recognised the third gender, Tiruchi Siva, a Dravida Munnetra Kazhagam (DMK) Rajya Sabha MP, introduced a Bill in the upper house to ensure equality for transgender people. It was the first private member Bill to pass in the Rajya Sabha in 45 years, but it didn't make it through the Lok Sabha.

In 2016, a watered-down version of the Bill did the rounds. It was thoroughly criticised on several counts, including the definition of a transgender person ("neither wholly female nor wholly male"). The same Bill was introduced this past December with 27 amendments. But these amendments are allegedly only cosmetic.

"I would not say that the Bill is intentionally trying to discriminate against the trans community, but the manner in which it is drafted, where members of the community have not been involved, shows complete disregard for the experiences of transgender and intersex persons' lives and ends up criminalising transgender persons and harming them," says Kothari.

Among the numerous provisions that might negatively impact the community is one that cracks down on begging. In a tangled directive, the Bill makes it an offence if someone "compels or entices a transgender person to indulge in the act of begging or other sim-



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ilar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government".

Kothari says that this would effectively criminalise many transgender persons without recognising that a large section of the trans population has no other option for earning a livelihood.

Present-day India is slowly beginning to

recognise and honour transpeople who lost their lives in their fight for a more equal life. In 2017 in Chennai, for instance, a mural was painted on a 60-foot-high wall in memory of Tara, a 28-year-old trans-woman victim of a hate crime who was found with 90 per cent burns on her body. At the ongoing Kochi-Muziris Biennale, artist Aryakrishnan has created an installation in honour of Sweet Maria. It's a 16-foot-long red skirt in a room made to resemble a bedroom complete with a dressing table. Sweet Maria aka Anil Sadanandan was a transgender activist from Kerala who was found brutally murdered in 2012, with chilli powder sprinkled all over the body.

Atrocities such as these help clarify why the Bill is little short of a travesty. It stipulates that in cases of harassment or even rape, the perpetrator's sentence should be raised from six months to two years. The rape of a cis-woman, in contrast, now invites a minimum imprisonment of 10 years, extendable to life — the more stringent rules were pushed through last year. "This is serious discrimination. Why should the violation of a transgender person carry a lesser sentence? We don't understand this at all," says Balasubramanian.

Mythology has it that when Rama returned from his 14 years of exile, he found the transgender community waiting for him on the outskirts of Ayodhya. When he asked them why they were there, they reportedly said, "You told the men who followed you to return home. You told the women to return home. You had no instructions for us, so we waited until you returned." Many believe this was when Rama decided his *rajya* would be inclusive to all.

In modern-day India, a Bill that enshrines "protection of rights" is silent on job and education reservations, as it is on adoption. Unsurprisingly, it makes no mention of civil rights such as marriage, civil partnership, property rights, and so on. "Each and every line of this Bill is against the interests of the community. It will be the death of us," says Banu. Unfortunately, India's transgender community continues to wait on the outskirts of society.