

## Summary of Debates

**20 November 2019**

### Thawarchand Gehlot, Minister of Social Justice and Empowerment

As the Minister of Social Justice and Empowerment he moved the Transgender Persons (Protection of Rights) Bill, 2019 for consideration by the Rajya Sabha.

In 2012, a PIL was filed in the Bombay High Court with a view to provide protection and justice to transgender persons. A civil writ petition was preferred before the Supreme Court of India in January 2012. The Ministry of Social Justice and Empowerment was informed of this litigation, and it constituted a Special Committee to make recommendations on the basis of which the Supreme Court issued its decision. Further, a private member Bill was introduced by Tiruchi Shiva here in the Rajya Sabha and was passed. At that time, we told Shiva that the Supreme Court has issued a decision wherein it was expected from the Ministry of Social Justice and Development, Government of India, to frame a law to extend protection to transgender persons and to extend to them social justice and to bring them into mainstream society. Thus, this matter was referred by the said Ministry to the Standing Committee for their recommendations. The Standing Committee gave its recommendations in 2017 and on the basis of it a Bill was presented in the Lok Sabha. However, the Bill was lapsed due to the Lok Sabha being dissolved on account of general elections. Once again, the Bill has been presented in the Lok Sabha and has been duly passed by it on August 5, 2019.

The Bill as passed by the Lok Sabha is presented before the Rajya Sabha for its consideration. The Supreme Court's decision issued certain directions for the government and we have tried to address most of them in this Bill leaving aside one or two of such directions.

Even after the Bill was referred to the Standing Committee, Tiruchi Shivaji has recommended for this Bill to be sent to the Select Committee.

The Bill has been discussed by the Standing Committee, its provisions have been debated upon in detail, views of the organizations associated with transgender persons have been taken, experts have been consulted, legal advice has been sought and the Bill has been introduced after great thoughts.

The main recommendations made by the Standing Committee have been deliberated upon and accepted in the Bill – such as reintroducing the definition of transgender persons, extending the provision of health insurance for transgender persons, reintroducing provisions relating to inclusive education, constitution of a National Commission of Transgender Persons etc. Despite all these provisions, Tiruchi Shivaji has recommended for the Bill to be referred to the Select Committee.

I seek to request him that he keep in mind that detailed deliberations have been made by the Government before the introduction of this Bill on various different occasions. Thus, he

proposes that the Bill be deliberated in the Rajya Sabha today and be passed after detailed discussion being held in the House.

### Sasmit Patra, BJD, Odisha

I have mixed feelings, it's good that we have decided to provide rights and protections for transgender persons but we should also think about why it took us 70 years to get here.

The trans person has to stand in front of the DM and convince the DM that they are transgender. If the DM remains unconvinced, the Bill does not provide for a recourse.

Problems :

Chapter 4 : Who is the appropriate government? What is the differentiation between the state and central government? No clarity on this.

Chapter 6 : What about other institutions that are not government-recognised and government-aided? This should be changed.

Chapter 7 : National Council is fine. But why not a State Council? The Bill has not paid attention to the need to have Councils at the State and district levels. A person from a district in Odisha would have to travel all the way to Delhi for grievance redressal as mentioned in 17D of the clause. Many transgender persons do not have the socio-economic capacity to do this and the Bill does not factor this in.

Chapter 8 : Existing laws like IPC, CrPC does not talk about transgender persons. What is the penalty for harassment or rape against a transgender person? This is missing in the Bill.

The law will not help mainstream transgender persons into society. It is a social and cultural issue, not just a legal issue. The Bill doesn't talk about mainstreaming them, bringing them together, bringing society closer to them and them closer to society. Without this, it will not be a fruitful Bill.

In 2016, Odisha included transgender into the BPL category. Many more steps will be taken. But there are gaps that need to be looked at.

### Vijila Sathyananth, AIADMK, Tamil Nadu

This Bill is unclear on a trans person's right to self-identity as decreed by the Supreme Court judgement in 2014. I want this to be referred to a Select Committee. This Bill is a remarkable achievement for a long persecuted community, but the current draft that the govt. has prepared has failed on the trans person's fundamental right to self-identity. The Bill mandates a two-step process : it requires that the person apply for a transgender certificate. This can be done on the basis of the person's self-declared identity. Then certificate holder can apply for change in gender certificate which signals to the authority to change their legal gender to male or female. This 2<sup>nd</sup> step appears to require surgery, because they have to get it confirmed by medical authority, then only will they get a certificate. The Bill empowers the DM to judge correctness. The Bill is silent on whether a trans person holding male or female gender certificate will have

access to govt. welfare schemes and programmes for trans persons. Transgender persons are not treated as humans. Not their fault, not the curse of God. They are God's children. They possess innate talents, they need to be trained. They are eligible for voting, citizenship, then why aren't we accepting them? We have to guarantee them employment. We have reservation for economically weaker sections, likewise, look into 5% reservation for the transgender community. Provide employment guarantee. They should be able to inherit property. Parents and siblings should give them equal opportunities at home.

Main point : Fast track courts in all districts for grievance redressal. They should be brought under backward community, not under MBC. They must be given inclusive reservation in education and employment.

### Dr. L. Hanumanthaiah, INC, Karnataka

The problems faced by transgender persons has legal, social and economic dimensions. Unless we consider the social stigma against them, unless we create job opportunities for them in private and public sector, they cannot come into the mainstream.

If the Bill doesn't take care of economic opportunities for the trans person, we are not going to help them substantively. To protect rights and confer more rights through capability development of trans persons. While making a law for them, while bringing them into the mainstream, we must remember they are human beings. The Bill and its provisions have not kept pace with contemporary discourse on trans rights. This is a human rights problem. Transgender persons asserted that they are not 'other'. Today some of our states have taken progressive steps, now we are formulating a law which is applicable to the whole country.

In 2008, TN government set up the Transgender Welfare Board. Gender identity and gender expression was given to the community. The Rajasthan govt. directed schools across the state to admit transgender children.

There is a need for separate curriculum for trans persons, I don't think they can be brought into the mainstream otherwise. Building economic independence, the Kerala govt., for the Kochi metro project, employed transgender persons in large numbers. This is how we can help them and bring them into society. A govt. owned company in Kerala is providing employment for this community in a big way. In most states, they haven't thought of the transgender community. Therefore, I welcome the bill, but we must address the lacunae.

Self-employment and entrepreneurship has to be developed for members of the community. Skill India should be able to train members of the community, develop their capabilities, give them employment and make them entrepreneurs. They are not able to work in the public space because of the discrimination they face.

The certificate mandates that the trans person appear before the DM. A physically handicapped person is certified by a doctor, so why shouldn't a doctor certify the trans person as well instead of having them appear before the DM? I suggest to the government that a district surgeon, a district medical officer, should be authorized to certify that a person is transgender.

Trans persons running away from home face a great deal of cruelty. Senior transgender persons conduct surgeries in a cruel manner devoid of medical ethics and procedure. Therefore, the Bill

should allow them to have access to safe medical procedures and medical care to facilitate sex reassignment they might choose for.

Penalty for rape against a woman (life term-death) is different from that against a trans person (6 months-2 years). Such a discrepancy should not exist. Article 376 should be automatically invoked regardless of whether the crime is committed against a woman or transgender person. There is no urgency to pass this Bill. This Bill should be sent to a Select Committee for rectifications.

### Wansuk Syiem, INC, Meghalaya

Sporadic attempts have been made to encourage the transgender community in all walks of life. For instance, Kochi Metro recruited and trained them to be part of the operating staff. Before making a legislation, we must do a lot of homework in identifying the areas where they need special rights. This requires a lot of deliberation by a cross-section of members. It is advisable that the Bill be sent to a Select Committee for a deeper examination.

### Prof. M.V. Rajeev Gowda, INC, Karnataka

The Bill that has been brought by the govt. is missing many of the features of the Bill that was passed unanimously four years ago.

Key issues :

First, this contradicts the *NALSA* judgement. The Supreme Court mandated that State and Union govts extend reservations in education and public employment. We still see that the current Bill does not treat the transgender community as a socially and economically backward class. This is a community that is deserving of this status.

Right to self-identification : There must be no mandatory requirement for a mental assessment or a medical procedure. In Section 6 (1), because the procedure hasn't been laid out, this part of the Bill essentially contradicts the judgement and can create more problems for members of the community seeking protection of rights.

Section 12 (3) reflects the understanding of gender as a psychiatric issue and places the individual in a rehabilitation centre under the direction of a competent Court, if their parents cannot support them. This is a general problem faced by trans children and trans persons, that they do not find a welcoming home and have to seek refuge with others of the community. This violates their right to live freely, granted by the Constitution and supported by the *NALSA* judgement. Importantly, gender should not be turned into something that requires rehabilitation and psychiatric evaluation. I urge the Government to revisit the Bill and expand the scope and definition of gender and not confine it to Biology.

Non separation of gender non-conforming children from parents and family : The Bill originally provided that no trans person can be separated from their family, owing to their identity, except on Court's order. Clause 12 of this Bill, now seeks to limit it to transgender children and not transgender persons, pursuant to the recommendations of the Standing Committee, para 5.15. I have moved an amendment to replace the term children with persons

and to also add the right to inherit property. People may discover their sexual identity when they are no longer children by the definition of the law, and then they may be thrown out of their parental home. So by restricting this right to children, we are committing an injustice.

There is no grievance redressal mechanism for discrimination : Standing Committee pointed out the lack of definition of discrimination in the Bill and without a definition, it would be impossible to prohibit the same. I have proposed an amendment to spell this out. Then we can look for violations and provide redressal.

Establishments have no real obligation to prohibit discrimination against trans persons (Clauses 9-12) : But there is no mechanism that would make these establishments comply with the law. Trans persons face tremendous challenge in getting and retaining a job. But if they face discrimination, where is the redressal? The law merely asks the establishment to appoint a Complaint Officer, but what are the functions, how would they respond to a complaint of discrimination? None of this is spelt out in the Bill.

There are a number of provisions in the original Bill that should have been included in this Bill. This law is a little restrictive in its concept of who transgender persons are, what are the challenges, what are the ways in which they can enforce their rights which are their due as equal citizens under law. I urge that the Bill be sent to a Select Committee.

### Shanta Chhetri, AITC, West Bengal

Before I place my views on this Bill, I would like to remind this House that the All India Trinamool Congress strongly believes that Bill must be scrutinized by a Standing Committee before passing it.

There are around 5 lakhs transgender persons in the country, however the community is one of the most marginalized communities in the country, because they don't fit into the categories of men and women. They have always been considered far from equal from the other two genders in a country whose constitution values equality, liberty, justice and fraternity. At the very outset, the Bill has fallen short of human rights obligations. The Bill is being passed very hastily. The Bill is unclear on the transgender person's right to self-identity which is the basic purpose for which the Bill was conceived. The transgender person's Bill has laid out a broad and inclusive definition of transgender persons and a clear distinction between an identity-based recognition right and the medical procedures some transgender persons might want. The Bill says that a transgender person shall have a right to self-perceived gender identity, its language could be interpreted to mean that trans persons are required to undergo certain medical surgeries before legally changing their gender identity. This Bill clearly fails on the fundamental right to self-identity as laid down by the Supreme Court. I would like to urge the honourable Minister that it is crucial that the law be in line with the Supreme Court's historic ruling on trans rights. This Bill to protect trans rights would not provide full protection and recognition. It is important to mention the work done by the West Bengal government under Mamata Banerjee in this area.

Bengal was the first state in the country to set up the Transgender Development Board. It has distributed identification cards to all the members of the transgender community which will take care of education, health, employment-related issues. Manavi Bandopadhyay, India's first

transgender College Principal, has been made Vice Chairman of the board. The Board has initiated the employment of transgender persons into the Civic Police and has also started building separate toilets and modifying existing ones for transgender students at all state-run and state-aided colleges. In Chapter 3, which deals with recognition of identity of transgender person, the Bill appears to mandate a two-step process for legal gender recognition. First, it requires a transgender person to apply for a transgender certificate. This can be done on the basis of person's self-declared identity. Then a certificate holder can apply for a change in gender certificate which signals to authorities to change the legal gender to male or female. This second step appears to require surgery and then documentation by a medical authority confirming it. The Bill empowers the District Magistrate to judge the correctness of the application and decide whether to issue the change in gender certificate, but does not give the guidelines and how the decision should be made. In another Chapter 4, welfare measures by the government, the transgender people in India should be able to live with dignity and non-discrimination and have equal access to education, employment and health service. To enact a law that meets international standards, it is critical that Parliament fully bring transgender people into the conversation. The Supreme Court in *NALSA vs. Union of India* decreed that transgender people should be recognised as a third gender and enjoy all the fundamental rights while also being entitled to specific benefit in education and employment. In 2018, in a historic decision upholding privacy and non-discrimination of LGBT persons, the Supreme Court struck down the colonial era sodomy law that criminalised consensual same sex relations. In this Bill, panel provision for sexual assault against the transgender person is imprisonment for a period of minimum 6 months and maximum 2 years only. Whereas for others, sexual assault is punishable by imprisonment not less than seven years and maximum of life imprisonment. Honourable Minister, this is probably the biggest flaw with the Bill in its present form. It clearly encourages the rape and sexual assault of the transgender persons. The Bill should properly enlist the rights of transgender persons to marry and inherit property. Since they are basically unemployed and without a definitely regular income, the Bill should provide free sex reassignment surgery, hormonal therapy, laser therapy or any other health treatment for transgender in both public and private hospitals. The Bill should include setting up of National and State Transgender Commission on the lines of Women's Commission. The ultimate goal of this Bill is to provide gender identity, the creation of third gender, we have to create space for third gender and not accommodate them within first and second gender, as according to the landmark NALSA judgement. When the third gender comes into being we have to provide facility of all kinds of socio-economic et cetera as provided to the other two genders. Lok Sabha, known as the House of People and now we call the 'House of Haste', but we are the 'House of Elders', we have to act sensibly, after all, we are the House of Maturity and Sensibility. This half-baked Bill if becomes a law will surely be chaotic on the ground, our already over-burdened Judiciary will be flooded with avoidable litigation.

I would like to remind the Honourable Minister that trans persons are born in every religion in every caste and every language, every community around the world. We can safely state that this mega Bill will have far reaching consequences in the lives of the other two genders and that it should be referred to a Select Committee at the State.

I would like the Honourable Minister to clear my doubts.

### Jaya Bachchan, SP, UP

I think we should be a bit more sensitive about this Bill. I have certain reservations about this Bill :

Certification is discrimination and humiliation of a human being. They are not different from other human beings. They are like us. What is the need to humiliate them in this manner, that you have to go in front of a Committee or the DM and state that you are transgender, we shouldn't be doing this to any human being. You have already segregated an individual differently/separately by mandating the need for a certificate declaring their transgender identity (the procedure itself segregates). A person can be made a transgender forcibly through this procedure. We have overlooked the finer details. What is the transgender person's fault in this? We haven't thought about this. We need to be more sensitive, we need to give it more thought (the Bill) and send it for a revision and rethinking.

### Prof. Manoj Kumar Jha, RJD, Bihar

I stand in principle that we need a Bill like this. But there are certain issues that are difficult to accept. I remember Siva's Bill which was much more progressive, I think we should include important points from there.

This Bill goes against the *NALSA* judgement of the Supreme Court. Mandating of Screening Committees and surgery to certify gender, why not self-certification? Many countries across the world are preferring self-certification.

The Bill imposes discrimination : Penalty of 2 years only for assault on transgender person. For other crimes, petty in nature, the penalty is greater. That could be looked into.

It has no provision for reservation. Why I say this, right from our childhood, our values have been shaped in a particular way. The Bill should speak to prejudicial representation of the community promoted in media and literature.

Forcing them to live with natal families : If you look at data, transgender persons have had a difficult time with natal families. Why not agree to families of choice?

Affirmative action component : Recently we went for 10% reservation for economically weaker sections, I think we can straight away draw 5% reservation for transgender persons. I think this will be a milestone in our journey

### Dr. Anil Agarwal, BJP, Uttar Pradesh

Stands in support of the Bill.

As per Article 14 of the Constitution, all persons have the right to be treated equally. However, the reality reflects that transgender persons do not enjoy such equal treatment, which is very unfortunate.

In this regard, in the case of *NALSA vs. Union of India* (decided on 15.04.2014), the Supreme Court directed the Government to work towards securing the rights of transgender persons.

The Government of India prepared a detailed report in this connection and it was deliberated upon, and eventually resulted in the drafting of the present Bill.

He feels that all the provisions, which could have been made in the Bill have already been made and he believes that these provisions will go a long way in improving the conditions in which the transgender persons live.

Our opposition parties are seeking to refer the said Bill for review to a select committee. In his opinion, the introduction of this Bill is already delayed. From time immemorial, transgender persons are not treated in the way in which they ought to be treated.

Referring the Bill to a Select Committee means further delay in passing of the Bill and this is not desirable in his opinion.

‘Justice delayed is justice denied’.

If the rights and benefits extended to transgender persons under the Bill are not made available immediately, the members of the community will not forgive us.

The biggest advantage of the Bill is that it seeks to define the term ‘transgender’. This definition will remove several doubts and misconceptions relating to the identity of transgender persons, and it will extend to them the appropriate respect that they deserve.

The Bill makes several provisions to improve the socio-economic life of the transgender persons.

Any form of misbehaviour or differential/discriminatory treatment by persons towards members of the transgender community is prohibited and upon breach the perpetrators will be investigated under the provisions of the Bill. Such provisions of the Bill will encourage the society to adopt a positive outlook towards transgender persons and will give to them the respect that is due.

Transgender persons are made to suffer extensively in our society, and when a transgender person is born some members of the same community take steps by force to ensure that they are not allowed to live in the family of their birth. It is the biggest hurdle to see some members of the transgender community in creating problems for other members of the same group.

Thus, the rules made under the Act should prohibit any form of misbehaviour or forceful treatment by one member of the transgender community against another member of the same community.

Requests his own party members and members of the opposition to come together and pass the Bill unanimously.

Even if there are some technical issues with the provisions of the Bill, or if some important points have been missed out we can always amend the same in future. The Parliament always holds this power with itself to amend and re-amend the law as many times as it deems fit. Thus, any point that needs to be rectified should be amended in the future diligently.

But, if the Bill is referred to the Select Committee today, it will delay in granting of the proper respect and equal treatment to transgender persons, which has long been due and the members of the community will never forgive us for such delay.

## Dr. Ashok Bajpai, BJP, Uttar Pradesh

Even after 60 years of independence, trans-men and trans-women continue to face discrimination in the Indian society, and such discrimination is on the rise. This Bill has been introduced by the Government to address these concerns.

Last time a Bill was introduced in the Lok Sabha for the protection of rights of transgender persons and was passed by it, however, it could not be passed in the Rajya Sabha. Now, this present Bill has come before us after being passed by the Lok Sabha.

This is a sensitive issue that looks particularly at the denial of the right to self-identification of their gender of the transgender persons.

The Supreme Court in *NALSA* has decided that transgender persons have the right to self-identify their gender. This is a constitutional right of all persons to determine the gender they identify with, and this right was extended to transgender persons explicitly by the Supreme Court's decision in *NALSA*.

Even the present Bill has the provision that any transgender person, whether he/she identifies as a male or a female, they can self-identify and declare the gender they identify with. And, if such person needs recommendation for a government job or for any other purpose, there will be a screening committee at the district level headed by the District Magistrate will issue a certificate of identity.

Article 14 of the Constitution guarantees to all persons the right to equality. Article 15(1), (2) and Article 16(2) of the Constitution prohibit discrimination inter alia on the grounds of sex. Article 19(1)(a) gives all citizens the right to freedom of speech and expression. Yet, transgender persons to this day face various forms of discrimination and atrocities. After the passing of the present Bill, this inequality in treatment and social inequality will be reduced.

Transgender persons were discriminated in such a manner that they had no access to education, health etc. After passing of this Bill, several government schemes relating to education and health will be extended to them. Until now the community has been deprived of claiming benefits under several social welfare schemes of the government.

As per the 2011 Census, there are about 5 lakh trans-men and trans-women. These transgender persons have been denied to be a part of the mainstream of society until now. After the passing of this Bill, the transgender persons can access the various social welfare schemes of the government, the transgender children can access their right to education, they can work in the social sector etc.

These transgender persons have showcased their talents in many different sectors of our society – for instance they have been holding important political posts such as that of Major, Vidhan Sabha member, they are serving satisfactorily in government jobs etc. However, they were denied equal opportunities in this regard. After the passage of this Bill members of this community will be able to participate in the mainstream social life.

Keeping in mind the noble purpose with which the Minister has introduced this Bill, with the same zeal, the government will seek to remedy the injustices done to them in the past and to

extend justice to the members of the transgender community particularly in the areas of education and health.

On several occasions transgender persons have been harassed, made to engage in begging, they were sexually exploited; they have also been made to work as sex-workers, etc. All of these activities are made punishable offences under the Bill. In view of this, we can see that this Bill is a legislation that is pro-rights of the general public, and it will encourage social change in a positive direction.

-Society has transformed in its views pertaining to transgender persons. Therefore, in *NALSA*, the Hon'ble Supreme Court of India directed the Central and State governments to make appropriate law in order to protect the rights of transgender persons. The present Bill is introduced by the government to implement this direction of the Supreme Court.

If any important points are left out in the Bill, they can later be added by way of amendment once it is enacted as law.

However, this Bill must be passed today to remedy the wrongs perpetuated against the members of the transgender community and to grant them rights to equality in treatment. This Bill will give them important rights to access education, healthcare and other services on equal terms and will also seek to bring about a change in the mindset and behaviour of the members of the society. After the enactment of this Bill, transgender persons will be able to access the different welfare schemes of the government, which was earlier only extended to other classes of people to the exclusion of transgender persons.

This Bill extends justice to the members of a marginalized community and reflects how the present government does not seek to differentiate between any groups of persons. This Bill seeks to end discrimination on the grounds of gender.

Hopes that the Bill will be passed unanimously as the Bill provides protection to their rights.

### Jharna Das Baidya, CPI (M), Tripura

I have been a part of the Social Justice standing committee for the last two years and the issue of transgender persons is discussed time and again.

Transgender persons are just like all of us.

In one of the Social Justice Standing Committee meetings held in Mumbai, transgender persons attended and one of them cried and shared their agonizing experience working as a Professor, where they were imitated and laughed upon by the students as to their talking, walking style etc.

Notes that when a person is born as a transgender, the family does not keep them at home.

In this background wants to question the Minister introducing the Bill as to what has been done in it for ensuring the socio-economic development of the transgender persons? What has this Department of Social Justice done?

Transgender persons are included in the slogan '*sab ka saath sab ka vikas*'. Yet, how many government jobs have they been provided with? How many transgender persons availed benefits under the Pradhan Mantri Awas Yojana? Do you have a list of this?

Similarly for electrification, water supply, rehabilitation, and special education – what has been done for transgender persons? Nothing. Transgender persons reported getting none of these benefits from the government.

They are in the profession of asking for money on auspicious occasions such as birth of children in a house ('*nek mangna*').

The Bill says it is necessary for transgender persons to possess a certificate of identity issued by the District Magistrate after examination. Why will transgender persons go for this process of identification? They won't. For them to avail such benefits, there needs to be socio-economic development of the members of this community.

The Bill needs to have express provisions to ensure the employment and other aspects of the socio-economic development of transgender persons.

It is impossible to pass this Bill in its current form.

She supports the Bill being sent to the Select Committee for review.

### Ghulam Nabi Azad, Leader of Opposition

The MPs have given several suggestions with regard to the Bill. I seek to give some more recommendations.

The biological attributes we are born with are not within our control – in this regard no one can compete with god. But, it is within the hands of the lawmakers to give respect, rights and justice to the members of the marginalized communities. For instance, our Constitution has made several provisions for the benefit of Dalits. Then, in the day of Rajiv Gandhi's government, the Prevention of Atrocities Act was introduced, and later amended several times. The members of the Dalit community who severely discriminated in the past (for instance, not allowed to walk through farm lands, not allowed to enter temples, not consuming food/water from their hand etc.) and politicians across party lines felt the need to protect their sense of dignity and to extend to them respect, justice and rights. Thus, the Prevention of Atrocities Act was introduced and their pain was reduced.

Transgender persons belong to all castes, religions, sects etc. They are discriminated in ways similar to the treatment of Dalits in the past. Particularly, they face discrimination and harassment from the time they go to school until their death. The government and leader of the house are well positioned to understand the sufferings of this community of transgender persons. We need a law like SC/ST Prevention of Atrocities Act for them – so that any person who misbehaves or discriminates against transgender persons, they should be punished under a law similar to one that exists for SCs and STs. This would bring about a major revolution in our nation.

They need to be provided employment and services by the State.

The practice is to register the sex as male/female of a child upon birth by looking at the genital organs. Now, when the child is old enough to determine their instinct as to their gender identity by looking at the way they behave, dress etc., we should have a provision in the law that enables them to go to the same place where their sex was recorded on birth to get it changed so as to preclude any harassment in the future due to a different sex being recorded on the official documents when compared to the gender they self-identify with.

### Ram Chandra Prasad Singh, JD(U), Bihar

I am in support of the present Bill.

After the directions of the Supreme Court of India issued in the year 2014 in the case of *NALSA*, a case where both the Central and State government were parties, the issue of transgender persons came to be discussed in several forums. Earlier the talks used to be centred around male and female persons – now at least the talk about transgender persons is a part of the political agenda.

He saw the list of the voters of the different constituencies of Bihar and saw that it identified voters as either male, female or transgender. The process of recognizing transgender persons as a third gender has started.

This point relating to need of a certificate for confirming the transgender persons has been hotly debated. In the alternative, it is seen as an issue of self-proclamation by the individual concerned. The confirmation of identity is important as it is tied to claiming a host of benefits and, for this having a certificate is essential. And, we shouldn't worry much about certificates. All of us are required to provide certificates to prove our place of residence, income and caste etc. issued by different authorities at the grassroots level. In this regard, with regard to the certificate of gender identity to be issued under the Bill, the responsibility is entrusted to the District Magistrate. Rules under the proposed Bill must be framed to provide for a certificate of identity to be issued to transgender persons in a manner similar to that followed for other certificates.

Boards have been constituted for transgender persons both at the Central level and at the State level, for instance a board has been constituted in Bihar.

Transgender persons are to be given reservations as socially and educationally backward classes of citizens (SEBCs) as per the decision of the Supreme Court. In Bihar, the list of SEBCs is divided into Annexure-1 and Annexure-2. Annexure-1 contains the list of extremely backward classes of citizens and Annexure-2 contains a list of classes who are slightly better off. Transgender persons are included in Annexure-2 by the Bihar government, which enables them to access reservation in education and employment. Alongside this, wherever they need medical services, for instance some transgender persons undergo sex reassignment surgery, and for this the State Government of Bihar gives them 1.5 lakhs rupees.

Transgender persons face high levels of stigma in the society. It must be tackled through education, skill development programs and employment under the state for transgender persons. By this way they will be included in the mainstream of society and they will feel that members of the general society care for them.

We all must take an oath to create an equal environment that is welcoming of transgender persons.

### Ramkumar Verma, BJP, Rajasthan

Thanked Prime Minister Narendra Modi and the Minister of Social Justice and Empowerment, Thawarchand Gehlot for introducing the Bill.

Narendra Modi cares with great compassion for the concerns of all persons. Narendra Modi has always compassionately and deeply thought of those who are denied justice, those who are marginalized and deprived and those who are in need of respect in our country. After his assumption of office of Prime Minister, Narendra Modi and his government has taken several decisions to provide justice to those persons who have long been deprived of it – for instance, he has helped change the societal perception towards disabled persons and has provided them protection and justice through the enactment of a special legislation. His government has also tried to amend laws appropriately so as to provide SC, ST and OBC people their constitutional rights, which had been deprived through some Supreme Court decisions in matters relating to reservations and protection from atrocities.

This Bill has been introduced for that class of persons, which has been deprived of social justice so far. This Bill has been proposed in order to protect the rights of the transgender persons. This Bill is an outcome of several efforts taken from 2013 onwards in the form of recommendations of the Election Commission, the 2014 decision of the Supreme Court in *NALSA*, the introduction of the private member bill earlier by Tiruchi Sivaji for the protection and benefit of transgender persons, deliberation of the Standing Committee on the said private member bill in 2016 through practical research on ground reality of transgender persons through involvement of members of the community such as Lakshminarayan and other representative organs, gurus etc. Upon learning of the lives of transgender persons by interaction with them, the Standing Committee was grasped of the extent of difficulties faced by them.

The minister also noted the great personal agony experienced by the parents who give birth to a transgender person who is not accepted by the prevailing social norms. In light of these traumatic experiences, the Supreme Court issued its decision in *NALSA* and the present government has introduced this Bill for the protection of transgender persons. Thanks the Ministry of Social Justice and Empowerment for introducing the Bill.

This Bill has already an outcome of detailed deliberations from 2013-19 and thus it should not be delayed by being referred to a Select Committee at this stage.

The provisions of the present Bill are organized in 9 chapters. There are 23 total sections in the Bill.

The biggest issue was deciding upon a definition for the term transgender. The families of birth would classify them either as male or female. However, from the experiences of the transgender persons it was learnt that their sense of gender identity does not conform with the biological sex assigned to them at birth. Keeping this in mind, the definition of the term transgender is

broad enough to include all those individuals who belong to the kinnar, hijra etc. community. The definition of the term is thus inclusive.

The next biggest issue was regarding the recognition of their identity. Transgender persons were consulted before drafting of these provisions – they shared their traumatic experiences. The instinct pertaining to their gender identity is understood properly not by the doctors, nor the family members, only the transgender individuals themselves can understand this feeling. To confirm the identity of a transgender person, the Bill talks about the role of a screening committee, medical board consisting of scientists, doctors and psychologists etc. This Bill also provides for the self-recognition of the gender identity of the transgender persons.

Articles 14, 15, 16 and 19 of the Constitution prohibit inter alia the right to equality and prohibition of discrimination on grounds of sex. All citizens have also been granted the freedom of speech and expression under our Constitution. Keeping these provisions in mind, the Bill makes provisions for prohibition of discrimination against transgender persons.

Another practical problem was raised by the group of transgender individuals. Sometimes after several years of their lives, transgender persons have a feeling that although they are recognized as members of one gender, they feel they belong to the other gender. Through the provisions of the Bill, there is space for the transgender persons to apply for change of gender even after issuance of certificate of identity by the authority. Thus, the Bill addresses several important issues highlighted by the members of the transgender community.

The Supreme Court had directed for the proper recognition of their gender identity as per the Constitution, for provision of measures to ensure their welfare etc. In this regard, Chapter 4 of the Bill provides for the need to extend welfare measures related to education, employment, health etc. by the government. The Bill also prohibits discrimination against 'such persons' in the workplace.

Chapter 5 of the Bill has several provisions to prohibit discrimination and humiliating treatment of transgender persons. The Bill also has provisions for the constitution of a Grievance Redressal Cell in the institution where they are employment or any other place in the society where they work. Thus, the Bill envisages the appointment of a nodal officer to address the grievances of the transgender persons. The transgender person's right to stay with their parents has also been duly recognized in the Bill. The Bill also provided that transgender persons cannot forcefully be separated from their families.

Provisions have also been made for the education, social security and health of the transgender persons so that they receive these services on equal basis with other persons. These provisions are made from Section 13 to 15 of the Act in a detailed and clear manner.

A National Council for Transgender Persons is sought to be constituted under this Bill for the ensuring the welfare and upliftment of the members of this community. The Bill has detailed provisions for the constitution of this National Council for Transgender Persons – it shall consist of members from various departments such as Ministry of Social Justice and Empowerment, member of the Human Rights Commission, officers of the Government of India above the level of joint secretary, it also has representatives of the state etc.

This Bill will surely bring relief to the lakhs of transgender persons in India. The Bill gives power to the Government to make decisions for the welfare of transgender persons.

This is a very detailed Bill in itself that has been drafted after great effort from 2013 onwards. If we delay this Bill further, even by a couple of months, we shall be denying justice of the members of this community who have long been waiting for it.

This Bill protects transgender persons in individual capacity, their community life with gurus, and it also fulfils the demands of the organizations of transgender persons existing at the international level.

Thus, this Bill should not be delayed any further. Prays to all members to pass the Bill unanimously.