

Summary of Rajya Sabha Debates on The Transgender Persons (Protection of Rights) Bill, 2019

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 Sathyathanth, 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 2nd 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. Hanumanthaiyah, 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 judgment 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 center 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* judgment. 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 recognized 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 criminalized 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. Honorable 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 judgment. 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 Honorable 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 Honorable Minister to clear my doubts.

Jaya Bachchan, SP, Uttar Pradesh

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.

November 21, 2019

Suresh Prabhu, BJP, Andhra Pradesh

Sir the other day you made an important remark about the 250th session of this august House, and, you gave an evolution about the passage of the other bill on surrogacy, which has just been referred to the Select Committee of the Rajya Sabha. And, I was saying that this House and Parliament generally is looking at some issues which over a passage of time have been stigmatized as a taboo. At the time when not even the first session of the Rajya Sabha took place, not even a definition of the term transgender existed. The description of a peculiar characteristic that a person has and their description as a transgender is something that has evolved over a period of time. But, even after that we are seeing that members of the transgender community have been discriminated against, have been suffering in their treatment from the society and therefore there has been a demand that there should be a proper regulation and if possible, now a legislation to ensure that this kind of discrimination will disappear over a period of time. So, I am very happy that the Hon'ble Minister has introduced this legislation, which covers many important aspects related to the issues of the transgender community.

First, this is a legislation in which you are talking about discrimination per se. And, this is a very important issue. And, when you talk about discrimination, all types of discrimination have been prohibited and I am glad that the list itself is very comprehensive. So, I must congratulate the Minister for doing that. All employment, healthcare, education, buying of properties and all kinds of similar acts – discrimination in these activities is forbidden under the law. I just want to request the House to add one more particular aspect on prohibition of verbal abuse. As you know many times discrimination of persons also arises from verbal abuses that a person has to receive for being a member of the transgender community. And sometimes this form of verbal abuse is more painful and mora damaging to a person than just physical abuse. Thus, it is far more important to address issues of mental abuse. And, thus in our legislative wisdom we tried to introduce very stringent provisions for prohibition of verbal abuse in the SC/ST (Prevention of Atrocities) Act. So, if you discriminate against a person by abusing him verbally – this causes far more severe damage to the person's ability to perform properly. Thus, this is one aspect that is

missing in the Transgender Persons (Protection of Rights) Bill 2019, and its inclusion will make the Bill more comprehensive in its reach.

Then, on Chapter 3 of the Bill, which deals with the recognition of the identity of a transgender person. This is a welcome provision, which requires a transgender person to go to a District Magistrate, and the District Magistrate has to follow a procedure to be prescribed under the Rules. That is also right as the rules are to be made on such matters. But, in this regard, one thing that we must prescribe in the Act itself is the time limit for the District Magistrate to dispose off the application for a transgender person obtaining a certificate of identity. Let the District Magistrate follow a thorough procedure but if he does not dispose off this petition for a long time as there is no time-limit prescribed by the Act, this will amount to a denial of the right of the person to be identified with a particular gender.

Then, the welfare measures to be taken by the government, which are a part of Chapter 4, which are also ‘obligations’ on the part of governments. These are important obligations that we are trying to put on the part of the government. And, I feel that while we talk about government, it is also better to clarify that the government includes not only the Central Government and the State Government but even the government at the local level such as the zila parishads, the village panchayats – as the persons living within their jurisdiction need access to welfare measures and protection against discrimination. Thus, welfare measures must be taken at that level of governance also as that is an equally important place where a person can be provided with welfare measures.

As regards Chapter 5, which deals with obligations on the parts of establishments and other persons. It occupies a rightful place within the Bill. One thing to be noticed is that the transgender persons face mental torture in the household itself because the family itself may not be able to accept the reality that how can my child not belong to one of two sexes that we are aware of. So, therefore we must have more education at that level so that people will understand the reality of transgender persons and the stigma against them will disappear. So, when we talk about establishments of various kinds in Chapter 5, household itself is one place which is not establishment per se but should be also included within its ambit.

I think one of the parts of Chapter 7 deals with the National Council for Transgender Persons. It has members from various categories from clauses (a) to (i) in Section 16, wherein in clause (g) only five members of the transgender community by rotation are included. Just imagine, you are making a council for transgender persons and in that, except for those 5 persons obviously all others are not transgenders. So, what is the purpose of creating a transgender council in which barring 5 people all other members are non-transgenders. Thus, my request is for you to increase the number of representatives of the transgender community within the Council and this will also help the transgender community to participate in the working of the Council in a proper manner.

As regards the offences and penalties mentioned in the Bill, there should be some sort of understanding that the people who are discriminated against are not the only victims. The

offence is not only committed against the individual concerned but also the community at large. So, it is important to see how we can create an awareness of a wrong being perpetuated against the community as a whole.

So, by and large it is a very important piece of legislation and I must congratulate the government and the Minister for bringing a part of this public policy as law. It is important to see how we look at some of our fellow citizens just because by birth or by some other process they have some problem in identifying with a particular sex but they don't actually have an attitude to that sex. Thus, it is important to identify how we must as a society deal with the community of transgender persons.

Therefore, I really congratulate the government and support the Bill. I only hope that that the few points raised by me will be incorporated to ensure that when you are making such a good piece of legislation that is comprehensive. Thank you very much.

Sanjay Singh, AAP, NCT of Delhi

Respected Tiruchi Siva had earlier introduced in the Rajya Sabha a private member bill for the protection of rights of transgender persons and newspapers had reported in this regard that after decades a private member bill has been passed by the House and it was on the rights of transgender persons. A positive message was sent out to the entire society on the activities of this House, its decisions, on the provisions of the private member bill when the private member bill was passed unanimously by the members of this House. However, this bill was changed when it was taken before the Lok Sabha. If the private member bill was passed by the Lok Sabha in its original form, it would have sent out a positive message to the society on the role of the ruling party. Yet, the ruling party made several changes to the text of the private member bill.

Several representatives of the Kinnar community have come to meet us. Arvind Kejriwal's government has set up a transgender board in Delhi for providing them with their legal rights, for framing policies to help them with government services to ensure everything from proper education to proper healthcare.

The original bill introduced by Tiruchi Siva demanded for 2% reservation to be provided for members of the transgender community. The private members bill referred to the need to create a national commission for transgender persons (in a way similar to the backward classes commission, the SC/ST commission etc.) for the protection of their legal rights and for ensuring that justice is done to them. However, the reference to the national commission for transgender persons and 2% reservation has been excluded in the Bill under consideration right now.

And in its place a new provision was inserted in the Bill, which goes on to insult the entire community of transgender persons. This is because if a male declares his gender identity as such he is considered to be a male. Same is the case with women. However, for the members of the

kinnar community/transgender community you included a provision to insult their sense of identity. This is because under the present Bill they now need to go through medical examination before they can be declared as having the identity of a transgender person. What sort of provision is this? What sort of rule is it? Why is this provision made a part of the Bill?

Therefore, I request the government to keep in mind that already the youth, farmers, workers, businessmen, women etc., are unhappy with your work. Our society believes that we should seek blessings from the members of the kinnar community in order to seek prosperity in our lives. Therefore, at least do justice with the members of the transgender community. Do not make them unhappy – rather seek their blessings. Thus, I request on behalf of my party that certain provisions of this Bill, which seek to insult the members of the kinnar community, and therefore, this Bill must be sent to the Select Committee and to incorporate the valuable suggestions made by the various MPs.

Ashok Siddharth, BSP, Uttar Pradesh

The bill is a late step taken by the government, but it is a welcome move. The transgender persons are discriminated in our society, however, what they require is the sympathies and compassion from the other members of the society. There is still discrimination based on caste, sex, gender, class and this has existed from time immemorial. Discrimination on these grounds has been clearly prohibited in the Indian Constitution. The discrimination on these grounds continues to this day due to the lack of the political will on part of the different political parties to combat such discrimination through the use of law.

The concerns of transgender persons has not been a part of the agenda of any of the State of Central governments. We were only awakened to their concerns post the recognition of the third gender accorded to transgender persons by the Supreme Court's decision on 15/04/2014 in NALSA vs. Union of India. NALSA refers to self-identification, and reservation in public employment and education.

Chapter 7 : National Council for Transgender Persons – those individuals included as ex-officio members are already burdened by their own official duties, and it may result that this will end up as a formality (for instance holding only one meeting for namesake per year), quorum will never be there; does not clarify how many meetings to be held in one year, how it will perform, what the rules are – is unclear and not specified in the Bill.

5% of the Indian population identifies as transgender persons (about 2 crore people). 40% of transgender persons face harassment (mental and physical harassment, rape, discrimination in the workplace) in public spaces and in jobs. 90% of families reject transgender persons usually from their birth. Thus it is the family of choice (the guru-shishya parampara of the Kinnar community) that provides transgender persons with family. This community is so closely knit that there is no space for religious distinction between its members inter se.

Supports the Bill as the national leader of his party Mayawati is for combating discrimination against individuals in all its forms.

Rakesh Sinha, BJP, Nominated

I would at the very outset like to thank the government led by Prime Minister Narendra Modi for making this extremely progressive intervention for the betterment of the society. This is an extremely 'well drafted and most inclusive Bill'. This Bill is not only important for bringing in progressive social change in the country, it is an issue that is not only global, but it is an issue that has held relevance from ancient civilizations onwards.

The gender division between males and females is not only biological, it is rather a social and cultural construct. And, when anything is a social and cultural construct, it becomes a part of our social imagination. The people so included in the social imagination are a part of the societal mainstream and those excluded from it are the unfortunate people who exist on the margins of the society. Within this social imagination, the discourse on sex and gender, which has been going on around the world, has constructed an image for a normal relationship between males and females as a part of the mainstream.

Globally, the population of transgender persons is 1.2%. In India there are around 4,28,000 transgender persons as per the 2011 census. There are about 250 transgender persons for every one lakh of the population in USA, coming up to a total of one million people. In Britain, transgenders are 1% of the total population coming up to a total of 6.5 lakh people. Their population in Australia is really low, it is around 1,200 people. Thus, the debates we are engaging in today will not be remembered in history for the making of special provisions for a special community, rather, this debate will have an impact on the people and legislatures Denmark, Canada, America, Britain and other nations. Thus, it is important to see this debate and its ramifications in the proper perspective and not see it only in the narrow terms of social progress only within the Indian society.

Because this debate is likely to be looked upon by the Parliament of Denmark and Britain as well, I want to clarify one thing expressly. The Indian Parliament is special. Making a comparison, in 2019 a law was made in Australia, but many people were against the Bill as seen by the divided votes. 56 people were in support of the Act whereas 27 people from the far-right parties were against it. Our situation is different. All of us are keen to work together to support the Bill. All of us are keen to add new progressive provisions for the benefit of the transgender community.

But we are all forgetting one thing. All of us have repeated the same thing in our speeches, but I want to make one new point. Some of us have talked about amending certain provisions of the Bill, however, I want to raise a much more substantial and important point. Before that I want to congratulate my friend Tiruchi Sivaji for introducing the private member bill and initiating a

comprehensive discussion in the Rajya Sabha. We should not be comparing the government and the private member bills as this not important. It is crucial to notice that the basic paradigm between the two bills is common/the same. This discussion in the Indian Parliament is going to be reference point across the world for transgender rights. Therefore, I want to tell all citizens of this world one important thing. 22 transgender persons were killed in America last year. And, as per the 2007 census 31% of transgender persons are blackmailed for money, 28% of transgender persons are subjected to physical violence, 33% of transgender persons are subjected to sexual violence.

One point that needs to be underscored is the role played by transgender persons in the Indian as well as foreign traditions. We are part of a long-standing tradition. The Vedas talk about Tritiya-Prakriti. What is Tritiya-Prakriti? It is the recognition of a third species apart from male and female. The acceptance of gender diversity within the Indian tradition has existed since the Vedic times. Arjun's son Raavan's marriage to Mohini (an avatar of Lord Krishna), these are the identities with whom the transgenders from Andhra Pradesh associate themselves. In Mahabharat and Valmiki's Ramayana the existence of transgenders has been accepted. In the west, the transgenders were the victims of exclusion but in the Indian society, they were an important and essential part of auspicious ceremonies across India. The world needs to know that transgender persons were not excluded in the Indian tradition.

Where did the exclusionary treatment of the transgender community start? The Victorian morality which was imposed on us during the British rule was the basis of the Criminal Tribes Act. This law declared entire groups of persons as criminal – including the transgender persons and nomadic tribes.

I want to congratulate Narendra Modi's government repeatedly. The entire House should be congratulating the government for taking initiatives to protect the rights of both members of transgender community and nomadic tribes. During the session of the previous Lok Sabha and Rajya Sabha we constituted a welfare board for nomadic tribes. And now, after the passage of this Bill, we are in the process of constituting a National Council for Transgender Persons. I want to tell my dear friend who commented that Council is weak, that the Cabinet Minister is a chairperson of this Council, State Minister is the Vice-Chairman. Such a powerful committee is being constituted for addressing the concerns of 4,28,000 transgenders across the country. It is one of the primary concerns of the present government that we are prioritizing the concerns pertaining to the welfare of this community.

There is a foundational difference between the traditions of India and the West. Underscoring this difference, I shall conclude by making three minor points. After this debate, it is necessary to do three things in the society – first thing is rationalization. Sharmila, Shabnam and Sabi are three people who we must remember. Sabi Giri is the first transgender who became a soldier. Shabnam became an MLA. To ensure that transgender persons do not face discrimination, there is a transformation in the social imagination taking place currently. In this connection, I want to

discuss one event. Right now in one small town in Italy, a transgender person called Negri become a Mayor for the first time. Negri said that this is a kindness revolution that is taking place. But I say that this is not a kindness revolution. This is a rationalization revolution, which is going on worldwide and where India is leading.

I want to say that the steps you want to take as welfare measures for the transgender community, the Bill uses an appropriate phrase for this purpose. The need of the hour is to transform our social imagination to make it more inclusive – by engaging in rationalization, reconciliation and inter-mixing.

I stand in support of the Bill.

Vandana Chavan, NCP, Maharashtra

It is our fortune that a member of our House, Mr. Tiruchi Siva moved a Private Member's Bill that was passed in this House and would have been history had the same Bill been passed and become law of the land. But unfortunately, the Government intervened and brought its own Bill which sought several amendments and is now before us.

There were two contentious issues in the earlier Bill of the Government and one was regarding the definition of transgender which was unscientific and primitive according to the Standing Committee itself, because the terms itself said that a person who is transgender is neither male nor female or is a combination of male and female, which is absolutely absurd, and now this Bill seeks to change this definition but it is still not inclusive. The *NALSA* judgement and international norms say that it is a psychological sex and self-identified gender that is contemplated as a transgender. But unfortunately, the present definition does not take this into consideration.

Second point of contention : In the earlier Government Bill, there was the mention of a District Screening Committee, which violated human rights of transgender persons and according to me, it has made a back-door entry again and I'd like to point out to pertinent clauses to prove the same.

In clause 5, the transgender person has to make an application to the DM for issuing a certificate of identity. Now this itself is violative of human rights, if we don't need a certificate for being male or female, why does a transgender person have to do that? It has to be a self-identified gender and therefore this is violative of human rights.

Clause 6 (3) states that a certificate issued to a person shall confer rights to be a proof of his identity as a transgender. So does this mean that if a person does not take a certificate of transgender, his rights will not be identified at all?

Worse still, clause 7, which talks about change in gender after undergoing surgery, where sub-clause 2 says that the DM shall, on receipt of an application, along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate. Now there is a cloud of suspicion, is the content of the certificate suspicious, is it the doctor that is suspicious or is it just because it is a transgender person that suspicion is aroused? This shows that being satisfied with correctness of such certificate, that itself means that again the transgender is exposed to scrutiny and it is screening which was absolutely contentious in the earlier Bill.

Prohibition against discrimination, there is no enforcing authority.

Under the National Council for Transgender Persons, only 5 of the 30 members belong to the community. Most of them are Government employees and the others are nominated by the Central Government. How would such a body be able to hold the Government accountable?

There should have been State Council and a Welfare Board. The penalties are less than those for crimes committed against women as laid out in the IPC. There is no provision for reservations. Send the Bill to a Select Committee.

Shiv Pratap Shukla, BJP, Uttar Pradesh

The decision of the Hon'ble Supreme Court in the case of *NALSA vs Union Of India*, formed the basis for our discussion of the issue of rights of transgender persons. We are thinking of persons who are a deprived and marginalized section of our society, and they are a section of persons from whom others try to maintain a distance. There are many people who disown their own family member for being a transgender person. And it is good that other members of the transgender community who were marginalized and shunned from the society took care of other such persons disowned by the family of their birth. Today I congratulate this government, Prime Minister Narendra Modi, the Minister of Social Justice and Empowerment for taking an appropriate decision to implement the Supreme Court's judgment in *NALSA*.

I want to share with all of you a small thing. There is a Divya Prem Seva Mission. One of my friends (Ashish Gautam) associated with them for serving the patients suffering from leprosy. When I went looking for my friend, I spent 2-3 days helping them. I tried to find out from the patients as to why they have come to the Divya Prem Seva Mission. These patients shared the fact that they belonged to decent families but that they were disowned by them when they were infected with leprosy as it was seen as an outcome of their misdeeds in the past. The pain that I experienced on that day decades ago, I have not been able to forget until today. These patients belonged to rich zamindari families, and, yet they were engaged in acts of begging for alms. The members of the transgender community belong to the same class of persons. Members of the transgender community beg on the streets, at people's home etc. I also thank the Supreme Court,

this government that they recognized the transgender persons as members of a 'third gender' and the government is framing laws to secure to them all the necessary benefits.

One of the vocal members amongst all of us questioned the need to issue transgender persons a certificate of their identity. A lot of injustice has been done against the members of this community in the past. Despite having suffered for all these years, if members of the transgender community are victims of physical violence or sexual harassment, and they approach the court to complain of the incident, and if they do not possess a certificate from the District Magistrate, if they do not possess a medical certificate, then the other side can contest their identity as a transgender person and they will have no certificate to prove their identity as such. Thus, the provisions relating to certificate of identity are very much needed.

Just now the Kumbh Mela is over. The celebration was greatly appreciated for the way it was organized. I want to thank the saints involved in organization of the Kumbh Mela who valued the Kinnar Akhada and recognized them as an important part of our society. The saints who were organizing the mela accepted the members of the Kinnar community without scrutinizing the religion to which they belong. They gave the members of the Kinnar Akhada equal status and recognition as their own selves solely on account of them being transgender persons. They also allowed members of the Kinnar Akhada to bathe in the Holy Ganges.

I want to make 2-3 suggestions in regard to the Bill, whose provisions are worthy of appreciation. Strict provisions should be made in the Bill to combat any actions, which seek to subject transgender persons to fear, shame or any other form of gender discrimination, extending up to death threats. This is required in order to prevent them from suffering from atrocities, which members of the Scheduled Castes had to face in the past.

Secondly, the Central and State government run hospitals should make complete provision for the care and treatment of transgender persons so that they can access health care facilities on equal terms with others.

Thirdly, the government should make community toilets for transgender persons as is done for all other members of our society.

Fourthly, the Central and State government should make and implement special welfare schemes for their protection and upliftment.

Finally, I recommend that the government must make special provisions for their education.

Binoy Viswam, CPI, Kerala

By taking up this Bill, our House proclaims its maturity. We have to congratulate Tiruchi Siva for his far-sighted initiative.

The Government is to be appreciated that most of the contents of Siva's bill, they have tried to incorporate, but not all. That Bill was an effective Bill. Because of their own reasons, the Government chose to make a less effective Bill to save the rights of transgender persons.

We talk about ending discrimination. We have to ask whether only by passing this Bill, discrimination can be eliminated.

Now the Government has a chance to send the Bill to a Select Committee, and there is ample scope to make the Bill effective by doing so.

If the Government is not for a Select Committee, at least in the rules it must be there, the main thing I'm drawing from is the *NALSA* judgement :

That any procedure for identification of transgender persons that goes beyond self-identification and is likely to involve an element of medical biological or mental assessment would violate transgender persons under articles 19 and 21 of the Constitution. They are equal to us. But their equality is not taken seriously in this Bill.

Many sustained traditions of the community have to be taken into account. Begging is to be illegalized in this Bill, for many years, this has been the source of living as part of the custom, like Badhai. But you arrest them and keep them in a detention house or beggars' home, it is the most criminal thing to do. Don't criminalize customs and traditions, the right to live is also very important.

The Bill lacks any horizontal provisions for their employment and education. Only the name of equality will not help them. When we talk about the Bill giving them equal rights, their education and employment rights are being denied here.

What about their property rights, their civil rights, marriage rights and adoption matters? Such matters have to be addressed seriously. What lacks in this Bill is that such important matters are neglected and the Government claims that we are here to take care of the neglected. I again repeatedly state that the Bill should be sent to a Select Committee.

P. Wilson, DMK, Tamil Nadu

DMK opposes this Bill to be passed in the present form and request that it be sent to a Select Committee. Tiruchi Siva passed a Bill by unanimous consensus in 2015 and today a Bill has been introduced by the Government quite opposite to the Bill proposed by Siva.

Now, so far as this Bill is concerned, it does not recognize transgender as third gender. This will result in several problems in implementing the Bill. This transgender importance was felt by our then CM and our Party President Dr. Kalanya and he named them 'Thirunangai'. He was the first person to recognize their rights and importance in society. He set up a Welfare Board in 2006 and he fought throughout for transgender rights.

Now this Bill has a lot of lacunae. They have actually forgotten that transgender persons are fellow beings like us, flesh and blood. There is no justice rendered to transgender persons; if you see, in clause 3 of chapter 2, the rights set out for transgender persons are limited. It should have a clause that this is inclusive rights and these rights are the only rights transgenders have and therefore the present rights laid out in the Bill are not adequate for transgender persons. So far as other rights are concerned, right to property and adoption and one more thing regarding sexual harassment, there is no penal provision in the Bill with regard to harassment. Therefore they are exploited in society, what do we do for them? And for reservations, unless you consider them legally as third gender, then only can you give them a passport, you can give them reservations and treat them as human beings. The Bill should be sent to a Select Committee.

Amar Patnaik, BJD, Odisha

Under Section 4 (2) of the Bill that has come, a person recognised as transgender under subsection 1 shall have a right to self-perceived gender identity. I'm trying to highlight an inconsistency :

Clause 4 (2) when read with clause 7 (1) which talks about surgery; is there some kind of confusion that people who have not undergone surgery and have declared themselves, will not be accepted at all?

UNDP report on transgender persons in India gives the following statistics :

46% have faced forced sex, 44% have faced physical abuse, 56% verbal abuse and 24% have faced threat to abuse. Given this scenario, the provision against sexual abuse in clause 18D, the maximum penalty is 2 years. We know that for rape against women the maximum penalty is 7 years. Are we trying to say that sexual abuse against transgender persons is condonable to about 2 years instead of 7 years?

A transgender person had spoken to me, whose concerns I am airing, one of which is : reservations for students - simply giving scholarships when they are not even admitted in educational institutions, is not going to do any good. So give them reservations in schools, if not jobs.

Husain Dalwai, INC, Maharashtra

A similar bill for the rights of transgender persons was earlier introduced by Tiruchi Siva, and if the Bill remained in the form as that private member bill it would be more desirable. However, the government has introduced this new Bill, and it is a testament of the fact that India as a nation is progressing. Our Minister for Social Justice and Empowerment is a progressive person. However, there are some problematic provisions in the Bill. For instance, when women are

harassed, a different penalty is prescribed by the law. And, a lower penalty ranging from 6 months to 2 years has been prescribed in case of harassment faced by transgender persons. This is entirely wrong. Thus, the penalty prescribed under the Act has to be appropriately amended and enhanced. There should be equal treatment in this regard as between women and transgender victims. The discrimination that results from the different levels of punishment being prescribed has to be done away with. Rather than the Bill providing for minimal levels of punishment ranging from 6 months – 2 years of imprisonment, it should be enhanced to encompass even the provision of the death penalty in appropriate cases. Thus, more stringent punishments need to be prescribed for offences being committed against transgender persons in the Bill.

Another point that needs to be deliberated upon is the fact that transgender persons are often disowned by their family. Sometimes they are disowned right from the time of their birth when the family identifies that they are transgender. Therefore, they lose all share in the property of the family. This is completely wrong in my opinion, and they should under any circumstance retain the rights over property.

Another issue deliberated upon was pertaining to the reservation for transgender persons. And, the Standing Committee in this regard recommended that they should be given the benefit in the form of reservation.

And, the biggest thing is that the transgender persons are to be identified by the District Magistrate. In this regard, the Standing Committee had recommended that there should be in place a screening committee, and, in my opinion, it is necessary to implement that recommendation so that the District Magistrate will ensure that justice is done with the transgender persons. Otherwise looking at the levels of corruption in our country, the transgender persons will never get justice. Thus, it is very important to have in place a screening committee.

Finally, I want to mention that pension is provided for disabled persons. In a similar way it is important to provide for pensions for the transgender persons as well.

November 26, 2019

Tiruchi Siva, DMK, Tamil Nadu

When we are celebrating the 70th year of celebrating the constitution. This day is very important, we are law makers, we make the laws to resolve the issues in the society. I am very proud to talk on TG bill as I belong to a progressive party which has always fought for the downtrodden, the suppressed and the oppressed parties. I Moved a private member bill in August 2014 which was passed unanimously and sent to Lok Sabha. What prompted me to bring the bill, is one of the questions asked by many. The state of Tamil Nadu under the chief minister ship of Kalanidhi of

DMK party, was the first to constitute the welfare board for Transgender. Later, Kerala, WB, Maharashtra etc. also formed similar boards. I felt that a Central Law applicable across the country will serve the purpose. I should say that NALSA judgment was a historic judgment and my bill was in conformity of the Supreme Court.

The purpose of the bill: in our society the TG community is being abused and ridiculed. They are sidelined in the public spaces. Justice Radhakrishnan, in NALSA observed that “ this sort of being treated as untouchable by the society they are conveniently forgetting that the moral failure is with the society who refuse to adopt and embrace the gender identities and the expression. This is the mindset that we have to change.”

They are also humans. They are living among us. When they are treated otherwise by the family and the society, it is the government who has to step up for their protection. This bill passed in the Lok Sabha does not serve the purpose. THAT IS MY CONTENTION. My private bill when placed in Lok Sabha was supported by BJP, who is opposing the Bill in Rajya Sabha. They dissolved and changed my bill; the critique should also go to them. I do not wish that it comes only to me. I want the issue to be resolved. They want them to be treated equally, I want their welfare. Maybe BJP thought that if the private member bill is passed, there will be no critique to BJP proposing a dissolved bill in Rajya Sabha. Our mentor Periyar used to say, “I am involved in this cause not because I am the only person, since no one has come forward I am doing this.” It was a Kickstarter point; I just sensitized the government. Instead of accepting my bill and passing it as an Act in Lok Sabha. Why can't a private member bill become an Act. In Canada there are 249 private member Bill which have become an Act, similarly in Britain 19 private member bills have become an Act. In India only 7 private members bill have become an Act. If my bill was smoothly passed in Lok Sabha and made into an Act, it would have been 40 years since a PMB bill became an Act. This would also have brought good name to the country; how private member bills are being regarded and recognized. This is also a concern I raised in 250th Rajya Sabha debates that private member bills are not given consideration. What is a private member's bill? It is an issue that has not yet reached the governments knowledge; even if it has reached, they do not intend to do something; even if they intend but do not have time the members have the equal right and opportunity to do the same. Bringing a law is not an easy thing, how much labor we put into it, the researches we do. It requires a lot of hard work, our attempt to bring the legislation should also be recognized. My bill was passed and not accepted there (LS), it was dragged and discussed in 9 sessions only to scuttle this, after the debate the government said okay we will pass the bill. When the bill was passed in 2016, there was opposition from the Transgender community, they said it is totally absurd because one of the definitions in it was Transgenders which is still in debate. What the 2016 bill defined a transgender, “one who is neither a male nor a female.” There is no bigger insult to be inflicted on a person than this. They withdrew the bill and brought it again in 2018 which included many portions from my original bill, which means that my bill had substance in it. the 2018 bill also did not receive a good response. Why is this sir? The 2019 bill was simultaneously passed with

the Article 370 bill without any debate on it. A bill which concerns with issues rights and welfare of a side lined section of society is not debated in Lok Sabha. It has already been sent to a standing committee they would say, but what is the experience of a standing committee; one of the witnesses the standing committee said “I saw only ignorance there, and the questions posed to us were more humiliating than what we are facing in the society.” Further, several recommendations made by the standing committee are not included by the government in the Bill. The bill is not for me or my party, it is for the community who are citizens of the society.

Why don't you send the bill to the select committee, which will scrutinize the bill? He compared it to the passing of surrogacy bill, which was passed even when doctors were protesting against it. The bill was passed in 8 days without being sent to the select committee. Then why is TG bill being held?

The lacunas in the bill, one of the major things, TG community has called this bill regressive and half hearted. They say we need a comprehensive bill. First issues, definitions; if you compare my bill with the government's bill you can find the difference. There is no definition for discrimination in the governments bill. My bill says “any distinction, exclusion or restriction on basis of gender identity and expression which has the purpose of impairing or nullifying recognition, enjoyment or exercise on a equal basis with others in public.” The definitions given in the bill are not in coherence with my bill. The bill requires them to go to doctor and proof their identity, such kind of humiliation should not be inflicted upon any citizen of the country.

The government has given an option that there should be a National Council to deal with the complaints of TGs. My suggestion is that let there be a commission in form of women commission or SC/ST commission. The commission should have the powers of a Civil Court as given under Code of Civil procedure 1908. It will have power to issue summons, attend witness and examine them on oath, discovery and production of evidence etc.

Sexual violence or rape on TGs is not taken seriously. The law which protects women should also be applicable to TG. Reservation must be given to them in occupation and educational institutions. Asking for horizontal reservation of 2%.

V.Vijay Sai Reddy, YSRCP, Andhra Pradesh

I support the Bill. I have no objection if the bill is sent to select committee. The bill prohibits the discrimination and unfair treatment and denial of services. I have two suggestions to be made. Sec. 4(2), talks about the self perceived gender identity. What is this? If a person is given to decided his/her identity as TG it will lead to confusion and misuse of self-certification. Can be misused by people to claim benefits. The second suggestion: recognition of identity by district magistrate- in view of this, it is difficult to gauge how the self-identification will pan out in law. I support this bill and this bill should be voted yes in benefit of the humanity.

Derek O' Brien, AITC, West Bengal

I come from a state which has been forward in emancipation of women and their rights. 7-9 lakhs/ 40 lakhs (2 estimation) of numbers of TGs. History of how the bill was unanimously passed- Arun Jaitely was the speaker and got all people together to consent to the bill. The task of passing the bill was done, but where are we on the quality of the bill. I plead to send this bill for examination before passing it. Secondly, when you look at this TG bill, you have to in future look at other legislations which can empower TGs like POSCO, Indecent Representation of Women, Domestic Violence Act, POSH Act.

The rape laws for women and children under 12 years are stringent but what happens if a man rapes a TG? The max listed in the bill, is 6 months to 2 years. What is the message we are giving to the society? In Bengal, TG have ID cards, they get education and health care. A college principle in Bengal is from TG community. As of now there are 20-25 colleges which have TG toilets. This will be a half-baked legislation if proper scrutiny is not put to the bill.

K. Keshava Rao, TRS, Andhra Pradesh

If we are trying to make a bill which is more emotional then will not be good on paper. The legislation is very new to us, very few states like US, Canada, UK has this bill. Issues: the definition has to be looked into, the determination of identity (certification) as per SC judgment, an individual can determine no need to have certification. Confidentiality of the person. Need for more fund for the welfare.

Rupa Ganguly, BJP, Nominated

Supported the identification by district magistrate. Gave the reason that this will prevent people from harassing and discriminating them as identification will go through the government.

A Navaneethakrishnan, AIADMK, Tamil Nadu

Rename it to third gender bill, formulate National Council, reservation to be provided and employment to be provided.

Satish Chandra, BSP, Uttar Pradesh

Three sections to be flagged:

Sec. 16: It defines who will be the members of the council. It is almost 30 in numbers who will be members of the council and all of them are top hierarchy. (Ministers read in section). Thirty members are required to sit together and take decisions on the functions mentioned in section 17. The entire act will be controlled by the functioning of the council but nowhere it is mentioned how many times this council will meet. It is not possible for such a large number to function properly and speedily. Only if the rules mention the mandatory periodical meeting of the council the sections will be functional else the council will just be on the paper.

Section 18, offences and penalties have been defined: the section does not provide for the penalties if the police, doctors etc. do not register their complaints or refuse to provide them services. The penalties are only provided for violation of certain rights. But if these person deny the rights, no penalties are provided. It should be added.

Thaawar Chand Gehlot (Minister of Social Justice and Empowerment):

The bill has been formed on the basis of the clarifications given by the SC. We have taken into consideration the bill provided by Tiruchi Shiva, other members and SC. Keeping in mind the Sections 14 and 15, the SC of India in the case of NALSA v. Union of India on April 15, 2014, directed the Central and State governments to take steps for the welfare of the third gender and amend other laws to include third gender as an identity. This has been followed by the ministry. Apart from these various states have also formulated laws for welfare, these have also been studied.

The purpose for which this bill has been brought are; defining transgender, prohibiting discrimination against transgenders, providing the right for self-identification, providing identity certificates to the TG people, etc. (read the preamble of the Bill). The provides for prohibition of discrimination in educational institutions, etc. etc. He basically read the provisions of the bill and stated whatever is provided in the bill.

Replied to the contestations made by other members regarding the punishment provided (6 months- 2 years) stating that this cannot be equated to rape laws, this is sexual abuse. There is a distinction between the two. The offences against TGs will be dealt with under IPC, this section is only for *sexual abuse*.

The suggestions of the standing committee have been incorporated in the Bill like, changing the definition of TG and providing Health care coverage. Concluded by saying that the suggestions will be incorporated.

Anand Sharma: If the Bill cannot be passed by consensus of all, then let it be passed by consensus of some. Instead of saying we are trying to make a good law, try to implement it properly.

Chair: Tiruchi Shiva: we are requesting that bill should be scrutinized in the select committee and be a comprehensive law. Requested for division.

Ministry: has been to standing committee, so there is no need for select committee. The recommendations are provided by Arun Jaitely, should be followed. Not in favor of sending to select committee.

Chair: Whether or not the bill be sent to select committee for scrutiny?

Members: No.

Chair: Moving for amendment by Tiruchi Shiva?

Members: No.

Chair: Rajeev Gowda amendment for including the period of the meeting?

Members: No

Voting time: 48 yes, 67 no, 1 absent; total 116