

**STANDING COMMITTEE ON SOCIAL JUSTICE AND  
EMPOWERMENT (2016-2017)**

**(SIXTEENTH LOK SABHA)**

**MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT  
(DEPARTMENT OF SOCIAL JUSTICE AND EMPOWERMENT)**

**[THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016]**

**FORTY-THIRD REPORT**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**July, 2017/Ashadha, 1939 (Saka)**

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**Presented to Lok Sabha on 21.07.2017**

**Laid in Rajya Sabha on 21.07.2017**



**LOK SABHA SECRETARIAT  
NEW DELHI**

**July, 2017/Ashadha, 1939 (Saka)**

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**COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL  
JUSTICE AND EMPOWERMENT (2016-2017)**

**SHRI RAMESH BAIS - CHAIRPERSON**

**MEMBERS**

**LOK SABHA**

2. Shri Kantilal Bhuria
3. Shri Santokh Singh Chaudhary
4. Shri Sher Singh Ghubaya
5. Shri Jhina Hikaka
6. Shri Sadashiv Kisan Lokhande
7. Smt. K. Maragatham
8. Shri Kariya Munda
9. Prof. Seetaram Azmeera Naik
10. Shri Asaduddin Owaisi
11. Sadhvi Savitri Bai Phule
12. Dr. Udit Raj
13. Smt. Satabdi Roy (Banerjee)
14. Kunwar Bhartendra Singh
15. Prof. Sadhu Singh
16. Smt. Mamata Thakur
17. Shri Mansukhbhai Dhanjibhai Vasava
18. Shri Tej Pratap Singh Yadav
19. Vacant\*
20. Vacant\*
21. Vacant#

**RAJYA SABHA**

22. Smt. Jharna Das Baidya
23. Dr. Tazeen Fatma
24. Shri Chunibhai Kanjibhai Gohel
25. Shri Ahamed Hassan
26. Smt. Sarojini Hembram
27. Dr. Narendra Jadhav
28. Smt. Vijila Sathyananth
29. Smt. Wansuk Syiem
30. Smt. Chhaya Verma
31. Shri Ramkumar Verma

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\* Shri Bhagwant Khuba and Shri Mohanbhai K. Kundariya changed their nomination w.e.f. 19.10.2016.

# Shri Prakash B. Hukkeri changed his nomination w.e.f. 23.11.2016.

### **LOK SABHA SECRETARIAT**

1. Shri Ashok Kumar Singh - Additional Secretary
2. Shri S.C. Chaudhary - Joint Secretary
3. Shri Ashok Sajwan - Director
4. Smt. Mamta Kemwal - Additional Director
5. Smt. Shilpa Kant - Sr. Executive Assistant

## PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (2016-17) having been authorized by the Committee to present the Report on its behalf, do present this Forty Third Report of the Committee on "The Transgender Persons (Protection of Rights) Bill, 2016".

2. The Bill was introduced in Lok Sabha on 02.08.2016 and referred to the Standing Committee on Social Justice and Empowerment on 08.09.2016 for examination and Report.

3. The Committee issued a Press Release inviting memoranda/views from individuals and other stakeholders. In response, a large number of individuals/organizations/stakeholders/NGOs submitted their written representations to the Committee. The Committee considered all these representations/submissions.

4. The Committee held five sittings during the course of examination of the Bill, *i.e.*, on 5.10.2016, 30.11.2016, 28.12.2016, 25.04.2017 and 19.07.2017.

5. The Committee considered the draft Report and adopted the same on 19.07.2017.

6. The Committee relied on the following documents in finalization of the Report:-

- (i) The Transgender Persons (Protection of Rights) Bill, 2016.

- (ii) The Report of the Expert Committee, constituted by the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment).
- (iii) Background Notes on the Bill received from the Department of Social Justice and Empowerment.
- (iv) Presentation, clarifications, briefing, oral evidence and replies to the list of points furnished by the Department of Social Justice and Empowerment.
- (v) Memoranda/Submissions received by the Committee on the Bill from various institutes/ organizations/ associations/ NGOs/ stakeholders/ Experts.
- (vi) NGOs/ stakeholders/ Experts who appeared before the Committee to express their views/ make their submissions on the Bill in Delhi were :-
  - 1. Vidhi Centre for Legal Policy
  - 2. Sampoorna Working Group
  - 3. Amnesty International India
  - 4. South Indian Transgenders Federation
  - 5. Lawyers Collective
  - 6. All India Hijra Transgender Samiti
  - 7. Kinnar Bharti



8. Dr. Kaveri Rajaraman, Neuroscientist and Genderqueer Transgender boy

7. The Committee also undertook on-the-spot study visit to Mumbai on 5<sup>th</sup> November, 2016 and interacted with Lakshmi Narayan Tripathi, Consultant, UNDP; Dr. Ketaki Ranade, Professor; Brandt D'mello; Shals Mahajan; Shri Siddhant More and Dr. Piyush Saxena, Chairperson, SOOE.

8. On behalf of the Committee, I would like to acknowledge with thanks the huge contribution made by not only those who deposed before the Committee but also those who gave their valuable suggestions to the Committee through written submissions. The Committee, no doubt, benefitted immensely by their views and valuable suggestions.

9. ***The Committee would like to assure and remind to all the members of transgender community that, "A historic shift is underway, you are not alone in your struggle for the end of violence and discrimination. It is a shared struggle. Transgender is not an anomaly. It is a part of the spectrum of people's realities. While there is no shame in being gay, lesbian, bisexual, transgender or intersex or even straight - there is a most certainly shame and dishonor in being a homophobe, a transphobe and a bigot".***

New Delhi;  
19 July, 2017  
28 Ashadha, 1939(Saka)

**RAMESH BAIS,**  
Chairperson,  
Standing Committee on  
Social Justice and Empowerment

~ 9 ~



## REPORT

### PART A

#### INTRODUCTION

***"Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change."*** (Justice K.S. Radhakrishnan of Hon'ble Supreme Court, while delivering judgement on 15<sup>th</sup> April, 2014 in Writ Petition No.400/2012 filed by National Legal Services Authority Vs Union of India).

**B.** Eunuchs are ubiquitous in India, standing out in crowds throughout the length and breadth of the country. Their fortunes are determined to a large extent by their looks. Intersexual people are not visibly distinguishable in the West. In marked contrast, eunuchs in the Indian subcontinent are

found to dress and behave differently, in addition to living apart in bands and groups.

**C.** India and other South Asian countries are the only places where the tradition of eunuchs is prevalent today. According to a survey carried out by Salvation Of Oppressed Eunuchs (SOOE), the number of eunuchs in India is around 19 lakhs, as of March 1, 2011. The figures are approximate, since eunuchs live in a secretive, shadowy world that they have created for themselves, away from the abuse and persecution of society in general. Here, the term 'eunuch' refers to only those people who wish to be treated as neither male nor female and embrace a lifestyle that is in conformity with their sexual divergence. This group does not include those intersex people who pretend to lead their lives as either males or females and embrace a normal lifestyle. For most Indians today, eunuch are 'diabolic creatures', a source of eternal disgust and perennial fear. They are looked upon as hapless and strange creatures, bereft of sexual potency. This is evident from the way the word 'hijra' is used in the day-to-day conversations of people. It is often found being used to abuse people. Even dictionaries in Hindi define hijra in derogatory terms. The very utterance of the word carries with it an obvious sense of denigration. In India they are a stigmatised, socially marginalised and economically impoverished people.

**D.** The eunuch community and its traditions, including their very basic form of 'gender change' from male to eunuch, has a recorded history of over 2,000 years in India. This widespread practice enables transsexual kids to escape the trauma and fate of masculinisation as teenagers and provides a safe though very low place in society. The agonising extremes to which these transsexual youngsters will subject themselves to in order to 'approximately have a female gender', with the full knowledge that they will never see their families again and will face social degradation for the rest of their lives, is a testimonial to the reality and extremity of the gender conflict that they face within themselves.

**E.** Eunuchs lived fairly secure lives working as domestic 'girls' in the homes of wealthy people and by performing during numerous ritual ceremonies. This role of eunuchs ended with the advent of the British rule and abolition of many kingdoms. Eunuchs were left with no means of supporting themselves. Hence, they exist in this pitiable condition in the Indian subcontinent.

**F.** The roots of contemporary violence against the hijra community can in fact be traced back to the historical form that modern law in post-colonial India has adopted. It took the form of the enactment of the Criminal Tribes

Act, 1871, which was an extraordinary legislation that departed from the principles on which the Indian Penal Code was based. Once a tribe was notified as a criminal tribe, all members of the tribe including women and children, would have to register with the specified authority, with non-registration rendering the person liable to prosecution.

**G.** The link between criminality and sexual non-conformity was made even more explicit in the 1897 amendment to the said Act, which was subtitled 'An Act for the Registration of Criminal Tribes and Eunuchs'. Under the provisions of this statute, a eunuch was 'deemed to include all members of the male sex who admit themselves or on medical inspection clearly appear to be impotent'. Being a eunuch was itself a criminal occurrence, with surveillance being the everyday reality. The surveillance mechanism criminalised the quotidian reality of a eunuch's existence, by making its manifest sign, i.e. cross-dressing, a criminal offence.

**H.** A Public Interest Litigation (PIL) No.1 of 2012 was filed in Bombay High Court by Salvation Of Oppressed Eunuchs (SOOE) in the year 2012 in which Union of India was made the respondent. The Cabinet Secretariat, in July 2012, decided that the Ministry of Social Justice and Empowerment (Department of Social Justice and Empowerment) would handle that PIL

and the related matters thereto, in consultation with other relevant sectoral Ministry/Ministries. Subsequently, the work relating to the welfare of Transgender Persons has been allocated to this Ministry in the Government of India (Allocation of Business Rules), 1961 vide notification dated 21.5.2016.

I. An Expert Committee was constituted in the Ministry to make an in-depth study of the problems being faced by the Transgender Community and suggest suitable measures to ameliorate their conditions. The Committee submitted its report on 27<sup>th</sup> January, 2014. The recommendations of the Committee, *inter alia*, include declaring transgender as 'third gender'.

J. The key recommendations of the Expert Committee were:

i. Transgender should be declared as the third gender, and a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used.

- ii. Certificate that a person is a transgender person should be issued by a State level authority duly designated or constituted by the respective State/UT on the lines of Tamil Nadu Aravanis Welfare Board on the recommendation of a District Level Screening Committee headed by Collector/DM and comprising District Social Welfare Officer, psychologist, psychiatrist, a social worker and two representatives of transgender community and such other person or official as the State/UT Administration deems appropriate.
- iii. Change of gender either as male, female or transgender should be allowed to be carried out on the birth certificate of the person after the age of eighteen years or above. The certificate issued should be acceptable to all authorities for indicating the gender on official documents like driving license, ration card, passport, etc.
- iv. The third gender i.e. transgender may be recognized by a Government order and for the long run, it may be examined whether a separate law will be desirable for this purpose. For this purpose, the Government may refer the matter to the Law Commission.
- v. An Umbrella Scheme for transgender persons may be formulated for empowerment of this community.
- vi. To cope up with trauma and violence, Crisis Counselling Services could be set on the model of Rape and Crisis Intervention Centres.



- vii. Formation of groups of transgender children for meetings, holding film screening for sensitization of students and staff, setting up of resource centre, augmenting libraries with books and audio-visual materials on transgender issues.
- viii. Existing forums such as the Anganwadi Centres and Self-Help Groups may be oriented on transgender issues, and involved in providing information to parents of gender non-conforming youths.
- ix. Criminal and disciplinary action against delinquent police officials in cases of violation of human rights of transgender persons.
- x. Work place sexual harassment policies should be made transgender inclusive.
- xi. Ministry of Rural Development and Ministry of Housing and Urban Poverty Alleviation to ensure housing assistance schemes to help transgender persons.
- xii. Another Section under IPC to cover the cases of sexual assault on transgender persons.
- xiii. Slurs based on real or perceived gender identity may be included in Section 153A of the IPC.
- xiv. Government should provide scholarship/entitlements, fee-waiver, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to this group.

- xv. All the educational institutions/Universities should establish an anti-discrimination cell to monitor any form of discrimination against the transgender community.
- xvi. Contents on transgender to be included in the curriculum of adolescent education in schools.
- xvii. Abandonment of child is a punishable offence under Section 317 of the IPC if child is abandoned under the age of twelve years. The Ministry of Home Affairs (MHA) may be requested to consider enhancing the age of child for this offence to eighteen years.
- xviii. Generate more data/information to identify and understand the problems related to various aspects of their life and help frame policies through research and academic program.
- xix. Establishment of Helpline for Career Guidance and Online Placement Support.
- xx. Widening the mandate of one of the Corporations for providing the economic support to transgender community.
- xxi. Establishment of effective linkages with vocational training centres run by private and Government agencies for providing vocational training to this community.
- xxii. A National Council for Transgender persons may be considered on similar lines as that of the National Councils for Senior Citizens.

- xxiii. To carry out survey in association with Ministry of Statistics for ascertaining their population in the country.
- xxiv. Bureau of Police Research and Training (BPR&D) may undertake a study on crime against transgender persons, as also about cases registered against them as accused.
- xxv. Intensive publicity campaigns.

### **Supreme Court Judgement in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs Union of India**

**K.** In a landmark judgement dated 15.04.2014 delivered by Hon'ble Supreme Court in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs UOI, the Court has given following directions:

- (i) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- (ii) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

- (iii) Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
- (iv) Centre and State Governments to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders (TGs) face several sexual health issues.
- (v) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
- (vi) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- (vii) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- (viii) Centre and State Governments should take steps to create public awareness so that TGs feel that they are also part and parcel of the social life and be not treated as untouchables.

(ix) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

**L.** The Hon'ble Court directed the report of the Expert Committee be examined in the light of legal declarations in its judgement and its recommendation be implemented within a time frame of six months. Accordingly, Expert Committee's recommendations should have been implemented by 14<sup>th</sup> October, 2014. Meanwhile, a clarificatory application was filed by the Ministry of Social Justice and Empowerment in the Supreme Court in September, 2014 seeking, *inter alia*, clarification in definition of transgender. The Hon'ble Court in its judgement dated 30<sup>th</sup> June, 2016 has clarified that lesbian, gay or bisexual may not be included in the category of Transgender.

**M.** A Private Member Bill titled "The Rights of Transgender Persons Bill, 2014" was introduced in Rajya Sabha on 12<sup>th</sup> December, 2014 by Shri Tiruchi Siva, MP. The Bill was passed by Rajya Sabha on 24<sup>th</sup> April, 2015.

**N.** A Private Member Bill was also introduced in Lok Sabha in May 2015. The Bill is, however, pending for consideration.

**O.** As the Private Member Bill (of Shri Tiruchi Siva, MP) suffered from some infirmities, it was not possible for the Ministry of Social Justice and Empowerment to agree to all the provisions of the Private Member Bill in *toto* viz. (i) Special Employment Exchange for Transgender (ii) National and State Commissions for Transgender Persons (iii) Transgender Right Courts; and (iv) Reservation in Primary, Secondary and Higher Educational Institutions. The Minister of Social Justice and Empowerment during the discussion in Rajya Sabha, assured that the Ministry would bring its own Bill in view of the Expert Committee's detailed recommendations. Accordingly, a draft Government Bill was uploaded on the Ministry's website on 3.12.2015 seeking comments of general public. Thereafter, a pre-legislative consultation meeting with stakeholders was conducted on 18.01.2016. Subsequently, a Drafting Committee was constituted in the Ministry to finalize the draft Bill. After two meetings of the Drafting Committee on 4<sup>th</sup> February, 2016 and 23<sup>rd</sup> February, 2016, the draft Bill was finalized by the Legislative Ministry on 20<sup>th</sup>-21<sup>st</sup> April, 2016. The Cabinet approved the Bill on 20<sup>th</sup> July, 2016.

**P.** The Government introduced the Bill (present Bill) in Lok Sabha on 2<sup>nd</sup> August, 2016.

**Q.** Though most of the provisions of the Private Member Bill of Shri Tiruchi Siva, MP have been accommodated in the present Bill except provisions for Exclusive Transgender Rights Courts, reservation in primary, secondary and higher educational institutions, incentives to employers in private sector, special employment exchanges and National and State Commissions for Transgender Persons.

**R.** Some salient features of the Transgender Persons (Protection of Rights) Bill, 2016 are as under:

- (i) Transgender Person is defined as a person who is (i) neither wholly female nor wholly male; or (ii) a combination of female or male; or (iii) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers.
- (ii) Non discrimination against a Transgender Person in educational institutions, employment, healthcare services etc.
- (iii) Recognition of identity of Transgender Persons and to confer upon them right to self perceived gender identity.

- (iv) Provision of certificate by the District Magistrate to a Transgender Person on the recommendation of a District Screening Committee under Chief Medical Officer.
- (v) Provision for Transgender Persons to change gender and in consequence to change the first name in the birth certificate and all other official documents relating to the identity of such person.
- (vi) Provision of Right of Residence with parents and immediate family members.
- (vii) Provision for formulation of welfare schemes and programmes for education, social security and health of Transgender Person.
- (viii) Provision for National Council for Transgender Persons to advice, monitor and evaluate measures for the protection of their rights.
- (ix) Provisions for penalties for offences against Transgender Persons.

**THE PRESENT POSITION OF TRANSGENDER PERSONS IN THE COUNTRY AND THE LIKELY IMPACT ON THEIR LIVES AFTER ENACTMENT OF THE BILL:**

**S.** Transgender community is among one of the most marginalized communities in the country because they don't fit into the stereotypical categories of gender of 'men' or 'women'. Consequently they face problems ranging from social exclusion to discrimination, lack of education facilities, unemployment, lack of medical facilities and so on. The discrimination



based on their class and gender makes the 'Transgender' community one of the most disempowered and deprived groups in Indian Society.

**T.** The presence of the Transgender Person in the country is highly scattered and they are unevenly settled. As per the information provided by the Registrar General of India (RGI) "Census of India does not collect any data specifically on transgenders. During Population Enumeration of Census 2011, three codes were provided *i.e.*; Male-1, Female-2, and Others-3. In case the respondent wished to record neither '1' nor '2', then enumerator was instructed to record sex as "other" and give code '3'. Thus the category of 'Other' would not only include transgenders but also any person who desired to record sex under the category of 'Other'. It is also possible that transgenders would also have registered themselves either male or female depending on their choice. Thus, the precise number of transgender persons in the country is not known. However, as per Census of India 2011, it is stated that population of persons who has registered as 'others' as their gender (Neither male nor female) constitutes 4,87,803. Further, there was no enumeration of data on others which may include transgender engaged/employed.

**U.** This will benefit a large number of transgender persons, mitigate the stigma, discrimination and abuse against this marginalized section and

bring them into the mainstream of society. This will lead to inclusiveness and will make the transgender persons productive members of the society. Through this Bill, the Central Government and the State Governments will extend support for financial security, health care, shelter, welfare and other needs of Transgender Persons, make available opportunities for development of their potential, seek participation, and provide services so that they can improve the quality of their lives. The Bill will also bring greater accountability on the part of the Central Government and State Governments/Union Territory Administrations for issues concerning Transgender persons. The Bill will make all the stakeholders responsive and accountable for upholding the principles underlying the Bill.

### **The Transgender Persons (Protection of Rights) Bill, 2016**

V. The Transgender Persons (Protection of Rights) Bill, 2016 to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto was introduced in Lok Sabha on 2<sup>nd</sup> August, 2016. The statement of objects and reasons of the Bill states as under:

"Transgender community is one of the most marginalized communities in the country because they do not fit into the general categories of gender of 'male' or 'female'. Consequently, they face problems ranging from social exclusion to discrimination, lack of

education facilities, unemployment, lack of medical facilities and so on.

Though Article 14 of the Constitution of India guarantees to all persons equality before law, Clauses (1) and (2) of Article 15 and Clause (2) of Article 16, *inter alia* prohibit in express terms discrimination on the ground only of sex and sub-clause (a) of Clause (1) of Article 19 ensures freedom of speech and expression to all citizens, yet the discrimination and atrocities against the transgender persons continue to take place.

The Hon'ble Supreme Court, vide its order dated 15<sup>th</sup> April, 2014, passed in the case of National Legal Services Authority vs. Union of India, *inter alia*, directed the Central Government and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution and other laws made by the Parliament and the State Legislature."

- W.** The Transgender Persons (Protection of Rights) Bill, 2016 seeks to -
- (a) define a transgender person;
  - (b) prohibit discrimination against transgender person;
  - (c) confer right upon transgender person to be recognised as such, and a right to self-perceived gender identity;
  - (d) issue of certificate of identity to transgender persons;
  - (f) provide that no establishment shall discriminate against transgender person in matters relating to employment, recruitment, promotion and other related issues;
  - (g) provide for grievance redressal mechanism in each establishment;

- (h) establishment of a National Council for Transgender;
- (i) punishment for contraventions of the provisions of the Bill.

The Bill seeks to achieve the above objects.

**PART B**  
**CHAPTER I**  
**PRELIMINARY**

**Title of the Bill**

1.1 The title of the Bill is "The Transgender Persons (Protection of Rights) Bill, 2016"<sup>1</sup>. The Committee find that the Bill does not *per se* include, address and protect the interest of intersex persons as concerns of transgender persons and intersex persons continue to be different. The Committee feel that the Bill should be renamed as "The Transgender and Intersex Persons (Protection of Rights) Bill, 2016.

1.2 When the Ministry were asked to furnish their views on this, the Ministry in their written submission stated that:

"Transgender is an umbrella term which includes intersex persons also. Re-wording the title of the Bill would not serve any purpose".

1.3 The Committee are convinced with the reply of the Ministry. The Committee are of the view that there is no need to change the title of the Bill as transgender persons would also include intersex persons and therefore, the Bill will take care and address the concerns of the intersex persons.

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<sup>1</sup> Please see Appendix (i)

## **Definitions**

1.4 Clause 2(c) of the Bill defines 'inclusive education' as " a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students".

1.5 The Committee interacted extensively with large number of stakeholders so as to ascertain their views on 'inclusive education'. The Committee find that transgender persons face severe hardships and discrimination in accessing education, primarily owing to their gender non-conformity.

1.6 The Committee feel that the term 'transgender student' appears to be a misnomer since children, though gender non-confirming, often may not be in a position to identify as 'transgender persons' and therefore, the phrase 'transgender and gender non-conforming students' may be used instead of 'transgender students'.

1.7 The Committee also feel that any notion of 'inclusive education' has to take into account the specific concerns regarding bullying and harassment suffered by the gender non-confirming students.

**1.8 The Committee, therefore, recommend that Clause 2(c) may be reframed as under:-**

**"inclusive education" means a system of education wherein transgender and gender non-conforming students along with other students learn together without the fear of bullying, singling out and other forms of harassment and the system of teaching and learning is suitably adapted to meet the learning needs of such students.**

1.9 Clause 2(d) of the Bill defines 'institution' as " an institution, whether public or private, for the reception, care, protection, education, training, rehabilitation or any other service of transgender persons".

1.10 During their interaction with many stakeholders, the Committee were informed that the word 'rehabilitation' has a negative connotation indicating lack of agency for the transgender persons and would be better if substituted with the word 'housing' in order to take care of the pressing shelter needs of the transgender persons.



**1.11 The Committee, therefore, desire that in Clause 2(d) the word 'rehabilitation' be replaced with the word 'housing' in order to take care of the pressing shelter needs of the transgender persons.**

1.12 Clause 2(i) of the Bill defines the 'transgender person'. It says 'transgender person' means a person who is -

- A. neither wholly female nor wholly male;
- B. a combination of female or male; or
- C. neither female nor male, and

whose sense of gender does not match with the gender assigned to the person at the time of birth, and includes trans-men and trans-women, persons with inter-sex variations and gender-queers.

1.13 The Committee feel that the definition of 'transgender person' will be the fulcrum of any legislation on transgender rights and welfare and the whole law would depend on the scope of this definition. The Committee feel that the proposed definition of 'transgender person' in the Bill is in stark contrast to global developments, where transgender persons have been granted the right to self determine and to seek benefits according to such identity/expression. More so, it not only violates the fundamental rights to equality, dignity, autonomy but also freedom of transgender persons guaranteed under Articles 14, 19 and 21 of the Constitution.

1.14 Attention of the Ministry was drawn by the Committee towards the landmark judgement of Hon'ble Supreme Court in 2014 (in WP No.400/2012 filed by National Legal Services Authority (NALSA) vs Union

of India) which *inter-alia* stated that "every person must have the right to decide his/her gender expression and identity, including transsexuals, transgender, hijras and should have right to freely express their gender identity and be considered as a third sex."

1.15 The Ministry were even reminded that the above decision of the Hon'ble Supreme Court was also accepted by the Expert Committee, constituted by the Ministry which recommended that "Transgender should be declared as the third gender, and a transgender person should have the option to choose either 'man', 'women' or 'female' or 'transgender'.

1.16 When the Ministry were confronted that why it should not be left to the transgender person to have the option to choose either 'man', 'women' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones and on what basis the definition of 'transgender person' has been framed in the Bill, the Ministry in their written note stated as under -

"An Expert Committee was constituted in the Ministry in October, 2013 under the chairmanship of Additional Secretary(SJE) to make an in-depth study of the problems being faced by the Transgender Community. The Committee has submitted its report on 27<sup>th</sup> January, 2014. The Committee has recommended that transgender should be declared as the third gender, and a Transgender Person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. Only the nomenclature 'transgender' should be

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used and nomenclatures like 'other' or 'others' should not be used. The Expert Committee further recommended that the term 'transgender' (not trans) will be used, as an inclusive term and will cover various gender identities and expressions like trans-men, trans-women, male to female transpersons, female to male transpersons, transsexuals, genderqueer, persons with intersex variations etc. It will not be confined to any one of the specific socio-cultural identity groups, such as hijras, kothis, etc but will include all such persons who fall under the generic definition of transgender persons as follows:

Transgender Persons: All persons whose own sense of gender does not match with the gender assigned to them at birth. They will include trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormonal treatment or laser therapy, etc.) genderqueers and a number of socio-cultural identities, such as Kinnars, hijras, aravanis, jogtas, etc. The term 'transgender' shall be construed accordingly."

1.17 Subsequently, the definition of Transgender persons was also revisited with respect to international practices as per Sex Discrimination Amendment (Sexual Orientation, Gender, Identity and Intersex Status) Bill, Australia, 2013. Intersex status means the status of having physical, hormonal or genetic features that are :

- (a) neither wholly female nor wholly male; or
- (b) a combination of female and male; or
- (c) neither female nor male.

1.18 The definition of the Transgender Person has been framed in Section 2(i) Chapter-I of the Bill. However, as per Section 4(2) of the Bill, a person

recognized as Transgender under sub-section(1) has right to self perceived gender identity".

1.19 An official of the Ministry during the evidence before the Committee further submitted that, "We have taken this present definition as given by the Expert Committee. We have only made certain clarifications in the definition given by the Expert Committee".

1.20 The Committee also note that the proposed definition of transgender persons appears to be two-fold; the first part focuses on '*biological sex*', as mentioned in sub-clauses (A) to (C), while the second part focuses on '*psychological sex*'. NALSA has explicitly laid emphasis on the '*psychological test*' and not '*biological test*', wherein the psychological factor and thinking of that person has to be given primacy over the binary notion of gender of that person. In fact, the jurisprudence in the last 30 years from most parts of the world has rejected the emphasis on 'biological sex' and has given way to self-identified gender for the purpose of legal recognition. Thus, any definition of 'transgender person' only should relate to gender identity and not to biological sex of that person.

1.21 Further, the phrases '*neither wholly female nor wholly male*', '*a combination of female or male*' and '*neither female nor male*' are

unscientific and primitive, and are based on the underlying assumption of '*biological determinism*', i.e., all persons are born with innate and immutable biological attributes, i.e., chromosomes, hormone prevalence and internal and external sexual anatomy. It further fails to recognise that many persons are born with ambiguous or typical sexual organs, whether external or internal, and identify themselves as male, female or transgender (generally known as persons with intersex variation).

1.22 In view of the foregoing, it is clear that the term 'transgender person' refers to a category of persons who identify in a gender that is different from their gender assigned at birth, including identifying as 'male', 'female' or 'third gender' (inclusive of distinct socio-cultural identities in India, i.e., hijras, kinnars, aravanis and jogappas, amongst others.

1.23 The Committee would even like to remind the Ministry that the draft Bill which they had uploaded on their website in December, 2015 used the following definition of 'transgender person' :-

"Transgender Person means a person, whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as - kinnars, hijras, aravanis, jotgtas, etc."

1.24 The Committee find that there are fundamental issues with this definition since it conflates intersex and transgender persons even though 'intersex' and 'transgender' are not the same in any jurisprudence. Intersex status means the status of having physical, hormonal or genetic features that are :(a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male. The Committee also note that by conflating these definitions, the Bill completely misunderstands trans identities and severely restricts the constitutionally guaranteed right of transgender persons to self-identify, which NALSA has upheld. Even a transgender person who identifies as a woman, for instance, would be seen under this Bill as a combination of male or female, or as neither of the two and the law would thus completely fail to recognise her self-perceived identity as female.

1.25 The Committee, therefore, are of the firm view that the present definition of 'transgender person' does not conform with the definition prescribed by the Hon'ble Supreme Court in NALSA, the Expert Committee Report and not even with the Clarification Petition filed by the Government before the Hon'ble Supreme Court.

1.26 The Committee, therefore, are of considered view that the proposed definition of transgender person not only takes away the right to self determined gender identity which was guaranteed by the Hon'ble Supreme Court in NALSA judgement but also adversely effects significant part of the transgender population - specially pre-op/non-op transmen and transwomen, trans people who cannot or do not wish to undergo surgical interventions, gender fluid, gender neutral, and intergender persons.



**1.27 In view of the foregoing, the Committee conclude that a transgender person should have the option to choose either 'man', 'woman' or 'transgender' as well as have the right to choose any of the options independent of surgery/hormones. The Committee, therefore, recommend that Clause 2(i) of the Bill may be reframed as under :**

**"transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-men and trans-women (whether or not they have undergone sex reassignment surgery or hormone therapy or laser therapy etc.), gender-queers and a number of socio-cultural identities such as - kinnars, hijras, aravanis, jogtas etc.**

## CHAPTER II

### PROHIBITION OF CERTAIN ACTS

2.1 In Clause 3 of the Bill, there are 9 Clauses from 3(a) to 3(i), which elaborate prohibition of discrimination against transgender persons. Clause 3 states:

"3.No person shall discriminate against a transgender person on any of the following grounds, namely:-

- (a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;
- (b) the unfair treatment in, or in relation to, employment or occupation;
- (c) the denial of, or termination from, employment or occupation;
- (d) the denial or discontinuation of, or unfair treatment in, healthcare services;
- (e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;
- (f) the denial, or, discontinuation of, unfair treatment with regard to the right of movement;
- (g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;
- (h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;

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- (i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be."

2.2 The Committee find that Clause 3 of the Bill prohibits the denial or discontinuation of, or unfair treatment in, several areas including employment, healthcare, and the right of movement. The Committee, however, do not find any definition of 'discrimination' in the Bill.

2.3 It is an open fact that Transgender persons have historically faced a range of discrimination by the State and citizens which go beyond the categories enumerated in Articles 15(1) and 15(2) of the Constitution. For example, transgender persons routinely face discrimination in access to education, employment, healthcare, and housing. The Committee are of the view that without a definition of 'discrimination' for the purpose of this Act/law, it would be almost impossible to prohibit the same by the appropriate Governments.

2.4 The Committee also find that the Bill does not provide for any mechanism by which the acts prohibited in Clause 3, if committed, either by the Government or by a private establishment/individual, can be made liable. In other words, if a transgender person faces discrimination in any of the listed fields, there is no remedy provided in the Bill to rectify the same.

2.5 It is well known that, anti- discrimination legislations have clearly spelt the specific acts that would amount to discrimination and the procedure for bringing a claim of discrimination by an affected individual, including providing for a presumption in favour of the affected individual that he/she/they have been discriminated on the basis of prohibited grounds.

**2.6 The Committee, hence, recommend that a definition of 'discrimination' be included, in Chapter I of the Bill which must cover a range of violations that transgender persons face. If need be, the Government can utilize the definition of discrimination given in the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, which the Hon'ble Supreme Court also mentioned and referred to in NALSA judgement.**

2.7 The Committee note that Clause 3 of the Bill prohibits acts of discrimination by 'person(s)'.

2.8 The Committee, in this connection, perused the General Clauses Act, 1897. According to section 3 of the Act, the term 'person' would include natural persons and private establishments i.e., companies, associations and bodies of individuals (whether incorporated or not). However, public establishments are excluded entirely from the purview of this provision.

**2.9 The Committee feel that discrimination on the grounds so listed may be faced not just from private individuals and establishments, but also from the State too. The Committee, therefore, recommend extension of this provision not just to 'person(s)', but also to all establishments (public and private) as defined in Clause 2(b) of the Bill. The Committee also recommend that the word 'or establishment' be added after the words "No person" in Clause -3.**

2.10 The Committee observe that there is no grievance redressal mechanism proposed in the Bill by which these acts prohibited under Sub-clauses (a) to (i) in Clause 3, if committed, either by Government or by a private establishment, can be made liable.

2.11 The Committee believe that the Transgender Persons have a right to formal recognition of their self-defined gender identity, and Governments are obligated to respect this right. The Yogyakarta Principles expect States to "take all necessary legislative, administrative and other measures to fully respect and legally recognize each person's self-defined gender identity." The Supreme Court has also clarified that transgender persons have a right to decide their self-identified gender. In NALSA case, the Court ruled that self-determination of gender flowed from the rights to freedom of expression and personal liberty under Articles 19 and 21 of the Constitution of India. It ruled: "We, therefore, declare that...transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender."



2.12 When the Ministry were asked as to why there is no grievance redressal mechanism in the Bill, the Ministry in their written submission stated as under:-

"Chapter VII of the Bill provides for a National Council of Transgender Persons which shall perform functions as assigned to it under the Act. While framing the rules, provision could be made that in case a person violates the provisions contained in Clause 3 in Chapter II, the aggrieved Transgender Person may approach National Council for Transgender Persons for redressal of his/her grievance. Moreover, the mechanism of Indian Judicial system is robust for taking care of any violations of the Act either by a person or an Establishment."

**2.13 The Committee note that Clause 3 of the Bill provides nine provisions for prohibition of certain acts for the welfare of transgender persons. However, the Committee find that there is no mechanism provided in the Bill by which acts prohibited in the proposed Clause 3 either by Government or a private establishment can be made liable in case of violation of these prohibited acts. The Committee also observe that the National Council for Transgender Persons is not empowered to address or penalize a person or establishment in case of violation of the prohibited acts mentioned in Clause 3. As the nature and powers of the National Council have not been defined, neither there is any provision of redressal of grievance mechanism under functions or power of the National Council, the Committee recommend that an appropriate provision in Clause 3 of the Bill be added, providing a mechanism by which the acts prohibited in the proposed Clause 3, if committed, either by Government or by a private establishment, can be made liable, should be incorporated.**

## CHAPTER III

### RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

3.1 Clauses 4-7 of the proposed Bill provide for the recognition of identity of transgender persons along with laying down the procedure for issuance of certificate of identity by a District Screening Committee. In particular, under Clause 4, a transgender person shall have the right to be recognised as such in accordance with the provisions of the Act as well as the right to be self-perceived gender identity. Clause 5 provides for the procedure for certification, wherein a transgender person may make an application to the District Magistrate for issuing a certificate of transgender identity in such form and documents that may be prescribed.

3.2 The Committee also note that detailing the procedure, Clause 6 provides that the District Magistrate ('DM'), on receipt of such application, shall refer the same to the District Screening Committee to be set up by the appropriate Government for the purpose of recognition of transgender persons. The Committee would comprise of the Chief Medical Officer, District Social Welfare Officer, a Psychologist/Psychiatrist, a representative of transgender community and an officer of the appropriate Government.

Clause 7 mandates the DM to issue a certificate of transgender identity, based on the recommendation of the Committee, which shall be recorded in all official documents and be a proof of recognition of transgender identity.

3.3 The Committee note that the Bill makes the recognition of identity of transgender persons contingent on the issuance of certificate of transgender identity, pursuant to the recommendation of the District Screening Committee, in turn changing the nature of the issue from 'identification' of transgender persons, to 'recognition of transgender persons in law'. When the Ministry were asked to offer their views in this regard, the Ministry in their written submission stated as under :-

"The Constitution does not discriminate against transgender persons. The Constitution of India is 'sex blind', that is to say, the basic premise of equality before the law and equal protection of the law is based on a Constitutional mandate that the sex of a person is irrelevant save where the Constitution itself requires special provisions to be made for women [Article 15(3)]. Article 14 guarantees to all persons equality before the law. Article 19(1) ensures for all citizens freedom of speech and expression. Article 21 guarantees life of dignity to all persons. Articles 15(1), 15(2) and 16(2) in express terms prohibit discrimination on the ground of sex. Recognition of identity of Transgender persons is being made contingent on the issuance of certificate of transgender identity is to their recognition availing of different benefits and opportunities thereby mainstreaming them".

3.4 In this context, the Committee examined the Report of the Expert Committee on the issues relating to transgender. It says "gender identity"

refers to a person's internal, deeply felt sense of being either man or woman, or something other or in between. Because gender identity is internal and personally defined, it is not visible to others. In contrast, a person's "gender expression" is external and socially perceived. Gender expression refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions.

3.5 The Committee also find that the Hon'ble Supreme Court has also clarified that transgender persons have a right to decide their self-identified gender. In the NALSA case, the Court ruled that self-determination of gender flowed from the 'rights to freedom of expression and personal liberty' under Articles 19 and 21 of the Constitution of India. It ruled: "We, therefore, declare that...transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender." More so, the requirement of a screening process runs counter to progressive international jurisprudence.

3.6 The Committee observe that the Bill does not even spell out specific and concrete procedure to be followed for legal gender recognition which is likely to violate this right. It does not specify any grounds for the District

Screening Committee to make its recommendations, or for the District Magistrate to follow them. The presence of medical professionals on the panel increases the risk that the recognition of the gender identity of the applicant will be based on some kind of assessment of medical, biological or psychological 'eligibility', which would risk pathologising trans identities, and violate the right of transgender persons ' under the Supreme Court judgement and international human rights law and standards - to have their self-identified gender recognized.

3.7 The Committee strongly feel that any procedure for 'identification of transgender persons' which goes beyond self-identification, and is likely to involve an element of medical, biological or mental assessment, would violate transgender persons' rights under Article 19 and 21 of the Constitution.

3.8 The Committee also note that the Bill only provides for applicants to receive identity certificates as transgender persons, which restricts the right to recognition of their gender identity. In accordance with the Supreme Court ruling, trans persons must be able to secure recognition of their self-identified gender as male, female or transgender. The Bill, by stating that persons who receive identity certificates will be able to change their first names, also implies that transgender persons will not be able to change

their last names on official identity documents. Since cisgender persons can officially change both their first and last names, this provision can create a discriminatory restriction against trans persons.

3.9 The Committee also do not find any clarity on the role of District Screening Committee or the nature of assessment by the same and has been left to the Government to frame rules. Further, it is unclear on what basis the Committee would make recommendations to the District Magistrate, and whether the Committee can refuse to make recommendations or reject any application.

**3.10 The Committee after examining the provisions of Clause 4(1) and 4(2) thoroughly are of the firm view that it is essential in the Bill to explicitly define the terms 'gender identity' and 'gender expression' since the right to self determination has been recognised and upheld in the directions given in NALSA judgement. NALSA judgement also upholds the right to self-identified gender i.e. male, female or third gender in absolute terms. The Committee, therefore, recommend that such key definition of 'gender identity' may be adopted in the Bill as "gender identity' refers to each person's internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and/or functions by medical, surgical or other means) and other expressions of gender such as dress, mannerisms, speech patterns and social interactions".**



3.11 The Committee further note that by a cursory inspection of Clause 4, it is not clear as to what recognition is being envisaged, whether only as a transgender person or as a male/female/transgender, irrespective of gender assigned at birth. Further, the Bill doesn't address the issue of those transgender persons who identify in the binary of 'male' or 'female' and do not want a certificate of transgender identity, since they want to be identified as 'male' or 'female', in accordance with their self-identified gender and not in gender assigned at birth. Though they are covered under the definition of 'transgender persons', they would require recognition as 'male' or 'female'.

3.12 When the Ministry were asked to comment, the Ministry replied that they have proposed the definition of Transgender Persons as follows:

"A person who is :

- (A) neither wholly female nor wholly male; or
- (B) a combination of female or male; or
- (C) neither female nor male; and

whose sense of gender does not match with the gender assigned to that person at the time of birth and include trans-men and trans-women, persons with intersex variations and gender-queers."

3.13 The Ministry further clarified that "it may be seen that if the word 'and' in (C) above is replaced by 'or' any person can approach the Screening

Committee for getting the certificate of Transgender Person stating that their gender is not matching with their present gender and it would be difficult for the Screening Committee to assign him or her a certificate of Transgender Person. Provisions in Clauses (A) to (C) are the basic criteria for defining a Transgender Person. Therefore, it is envisaged that by replacing the word 'and' by 'or' would widen the scope of inclusion of any person in the definition of Transgender Person and in turn may be misused".

**3.14 The Committee concur with the contentions of the Ministry that by replacing the word 'and' by 'or' would widen the scope of inclusion of any person in the definition of Transgender Person and in turn may be misused. The Committee, however, recommend that Clause 7(1) may be redrafted indicating clearly that certificate will be issued only as a 'transgender person', not as a 'male' or 'female'. Accordingly, the word 'only' may be inserted after such person in Clause 7(1) and Clause 7(1) may be redrafted as under:-**

**"The District Magistrate shall issue a certificate of identity to the applicant under Section 5 on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person only as 'transgender'."**

3.15 The Committee observe that for the purpose of recognition of identity, a provision for constitution of a District Screening Committee is there in the Bill. Clause 6(1) and (2) provides the details of the District Screening Committee as follows:

- 6 (1) "On the receipt of an application under Section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons."
- (2) "The District Screening Committee referred to in sub-section (1) shall comprise -
  - (a) the Chief Medical Officer;
  - (b) District Social Welfare Officer;
  - (c) a Psychologist or Psychiatrist;
  - (d) a representative of transgender community; and
  - (e) an officer of the appropriate Government to be nominated by that Government."

3.16 The Committee also note that there is no clarity on the role of District Screening Committee or the nature of assessment by the same and has been left to the Government to frame rules. Further, it is unclear on what basis the Committee would make recommendations to the District Magistrate, and whether the Committee can refuse to make recommendations or reject any application.

3.17 The Committee observe that Clause 7(2) also does not specify which official documents are being referred to and how the gender of transgender persons would be recorded in such documents. Does it include

education certificates too, i.e., Class X or XII or college certificates? Does it mean that following the certificate issued to a person under Clause 7(1), other State authorities like Passport Authority, Election Commission, Income Tax Ministry, etc would automatically record the transgender identity of persons in their documents (Passport, Voter's ID, PAN card)?

3.18 Further, Clause 7(3) is unable to specify whether the proof of recognition as a transgender person is for all purposes, including marriage, divorce, adoption, inheritance, criminal law, etc or is it limited to recognition of transgender identity only.

3.19 During the briefing of the Committee by the stakeholders, the Committee were informed that "the State can lay down a procedure to facilitate the recognition of self-identified gender of persons, whether as male, female or transgender, but cannot prescribe a procedure that does against the principles of self-determination and self-identification". It was also suggested that "for recognition of identity of Transgender Person, the Screening Committee may comprise only three persons, one representative from the Male to Female (MTF) trans community, one representative from the Female to Male (FTM) trans community and one from the Social Welfare Ministry".

3.20 When the Ministry were confronted on this, the Ministry stated that, "the District Screening Committee is being constituted on the lines of Transgender Welfare Board constituted by the Government of Tamil Nadu in order to help the Transgender persons lead a decent life and mainstream them into the society. In order to enlist the transgender persons as members of the Transgender Welfare Board and provide them welfare measures, the Government has constituted the District Level Screening Committees. The District Level Screening Committee comprises the District Collector as the Chairperson, and Deputy Director, Medical and Rural Health Services, the District Social Welfare Officer, Clinical Psychologist / Psychiatrist and a representative of the Transgender Community nominated by the District Collector as members of the Committee. This Committee examines the Transgender persons and certifies them as Transgender. After certification by the District Level Screening Committee, they are registered with Transgender Welfare Board and given an identity card. By recognizing them as Transgender, they are also provided with ration cards, health insurance cards, house site pattas, voter ID, housing, etc. This procedure is successful in Tamil Nadu".

**3.21 The Committee, after a careful examination of Clauses 5 and 6, recommend that process of obtaining a certificate from the Screening Committee be made as simple as possible, hassle free and applicant friendly. A strict and reasonable timeline must be mentioned for issuance of a certificate of identity. Further, a strict code of guidelines may also be introduced to ensure that the screening process neither becomes an arbitrary affair nor a source of any harassment to transgender persons.**

3.22 As regards, the presence of the Chief Medical Officer in the Screening Committee and medical examination of a transgender person, the Committee note that "the screening procedure envisaged under the proposed provision seems to involve a medical assessment, which is intrusive and demeaning and subjects the transgender person to unnecessary scrutiny of their non-confirming gender. This procedure of 'screening' of transgender persons is problematic and constitutes violation of fundamental rights to equality, dignity, autonomy and bodily integrity and freedom of gender expression guaranteed under Articles 14, 19 and 21 of the Constitution, as affirmed by the Supreme Court in NALSA judgement."

3.23 When the Committee perused the NALSA judgement, the Committee found that the Supreme Court also made it amply clear in the judgement that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity.

3.24 When the Ministry were asked to offer their comments on this, the Ministry stated that, "if the medical practitioner is not involved, it is likely that certificate may be misused. Therefore, involvement of medical practitioner in the Committee for deciding a gender of the person is essential".



**3.25 The Committee are in agreement with the contention of the Ministry and feel that the role of Screening Committee is very critical in declaring a person as transgender and the role of the Chief Medical Officer too is equally important while issuing a certificate to a transgender person and without it, it would be difficult to check the misuse of the certificate. As the role likely to be played by the Chief Medical Officer has not been defined in the District Screening Committee, the Committee recommend that the role of the Chief Medical Officer be clearly defined.**

3.26 The Committee observe that in Clause 6(2)(b), it has been mentioned that the District Screening Committee referred to in sub-section (1) shall comprise, among other members, (b) 'District Social Welfare Officer'.

3.27 When asked the reasons for appointing a District Welfare Officer in the Screening Committee and not prescribing any qualification for him, the Ministry during their evidence before the Committee submitted as under:

"...a District Social Welfare Officer is responsible for looking after social welfare of all the people in that District. Therefore, we have appointed District Social Welfare Officer also in the Screening Committee... District Social Welfare Officer is there by virtue of his designation in this Committee. As a representative of transgender community is already there in the District Screening Committee, it is not necessary to replace the District Social Welfare Officer with a representative of transgender community again on this position."

**3.28 The Committee find that the membership of a District Social Welfare Officer is only by virtue of his designation in that District. The Committee feel that there is no need of a District Social Welfare Officer in the Screening Committee. The Committee, however, are of the considered view that if at all there has to be a District Social Welfare Officer, he should have atleast five years experience of working with/among transgender persons, must have a fair knowledge about their specific needs, activities and be well acquainted with the temperament and aptitude of the transgender persons.**

**3.29 The Committee are also aware that it would not be easy for any State Government to find a person with above qualification for being nominated as a District Social Welfare Officer in every District. The Committee, therefore, recommend that instead of a mandatory membership of a District Welfare Officer, renowned person in the field of welfare of transgender persons in that District may be appointed as a member of the District Screening Committee in place of the District Social Welfare Officer.**

3.30 For applying for certificate of identity in Clause 5 of the Bill, it is provided that:

"5. A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child."

3.31 Clause 7(1) states as follows:

"7(1). The District Magistrate shall issue to the applicant under section 5 a certificate of identity as transgender person on the basis of the recommendations made by the District Screening Committee in such form and manner, within such time, as may be prescribed, indicating the gender of such person as transgender."

3.32 Clause 8 states as follows:

"8(1). After the issue of a certificate under sub-section (1) of section 7, if there is any change in the gender of a transgender person, he shall make an application to the District Magistrate for revised certificate."

"8(2). The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed."

3.33 Asked to elaborate and clarify the procedure for applying for a revised certificate, the Ministry in their written submission stated that :

"Sex Re-assignment Surgery (SRS) would not be mandatory for a person to be declared as a transgender person in the first instance. Their gender shall be recorded in all official documents like passport, ration card, voter card, Aadhar card etc. as per the certificate issued

by the District Magistrate. However, as per the provision under Clause 8(1), if transgender persons (either trans-men or trans-women) desire to change their gender after going through SRS, they, for the second time, may make an application to the District Magistrate for the revised certificate. On production of certificate from a competent Medical Officer regarding their SRS, the District Magistrate shall, *suo-motu*, issue them the revised certificate regarding their being either a trans-man or trans-woman under Clause 8(1) of the proposed Bill".

3.34 The Ministry further submitted that "however provisions contained in Clause 8(2) viz 'The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed' may be deleted from the Bill."

**3.35 The Committee, after going through the submission of the Ministry on one hand and hearing the contentions of the stakeholders on the other hand, observe that the transgender persons, no doubt, are reluctant to undergo physical examination in front of the District Screening Committee for obtaining a certificate of a transgender person in the first instance. The Committee wonder why will then the same person would apply again for a certificate and undergo the same procedure which he went earlier. Concurring with the views of the Ministry, the Committee recommend that Clause 8(2) may be deleted from the Bill, being superfluous.**

**3.36 The Committee also desire that the right to appeal against the decision of the Screening Committee may also be incorporated in the Bill itself.**

## CHAPTER -IV

### WELFARE MEASURES BY GOVERNMENT

4.1 Clause 9 of the Bill states:

- "9(1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.
- (2) The appropriate Government shall take such measures as may be necessary to protect the rights and interests of the transgender person, and facilitate their access to welfare schemes framed by that Government.
- (3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.
- (4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such person.
- (5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities."

4.2 The Committee observe that Clause 9 provides for the obligation of the appropriate Government, including to secure full participation of transgender persons in society, take measures to protect the rights of transgender persons and facilitate their access to welfare schemes, which are non-stigmatizing and non-discriminatory, and to take steps for the

rescue, protection and rehabilitation of transgender persons, amongst others.

4.3 The Committee find that welfare measures to be undertaken by the 'appropriate Government', without clarifying the duties of different agencies, unclear and undefined division of responsibilities between the Central and State Governments would lead to passing the buck on each other resulting in delays in implementation of welfare measures for the transgender persons besides diluting the accountability. More so, there is no obligation on the Government to redress the grievances of transgender persons, in case of violation of any provision of the Bill.

4.4 With respect to Clause 9(4), the Committee note that the policy of institutionalization of marginalised individuals, especially adults, whether women, or those charged with begging offence, or persons with intellectual/mental disabilities, amongst others, has not made much headway over the last 65 years in India. The notion of institutionalization denudes people of their agency to decide for themselves and to live a life of dignity and respect. The transgender persons do not need to be rehabilitated by the State, but need protection of their rights guaranteed by



the Constitution as well as redressal of their grievances, whether of discrimination, violence or financial penury.

4.5 When enquired from the Ministry as to why there is no obligation on the Government to redress the grievances of transgender persons and why specific welfare measures to be undertaken by the Union Government and the State Governments have not been laid down or explicitly spelt out, the Ministry replied that, "it is informed that welfare measures undertaken by the Centre as well as State Government, do not make any discrimination on the basis of their gender. The present Bill seeks to reiterate their rights and is a step in protection of their rights. Accordingly, Clause 9 (1 to 5), which pertain to welfare measures by the Government highlight directions to appropriate Governments for taking specific measures for their welfare. As far as redressal of their grievance is concerned, Chapter VII of the Bill provides for National Council of Transgender persons. It shall perform such functions assigned to it under the Act. Further, Clause 18(d) brings out the functions of the National Council. The Council is a broad based entity including representatives from transgender community. It is expected that their grievances shall be addressed by the Council. Chapter VIII further provides penalties for the offenses and lays down stringent measures for securing the rights of transgender persons with respect to their life, safety,

well being etc. The State law and order mechanism shall take care of their immediate concerns".

**4.6 The Committee find that there is a lack of clarity in the division of responsibilities between the Central and State Governments, as well as other authorities where relevant. The Committee are of the considered opinion that this lack of clarity in the division of responsibilities would lead to administrative delays, confusion, and added regulatory costs, apart from impeding the effective implementation of the provision of Clause 9. The Committee recommend that the responsibilities of the Central and State Governments be clearly demarcated so as to avoid administrative delays.**

**4.7 As there are no provisions in the Bill regarding directions to the State Governments and civil society to implement measures for awareness generation and sensitization, the Committee desire that there should be a separate Clause directing Central Government, States and civil society to adopt measures for generating awareness at various levels such as schools/colleges, Government and private**

**offices, police stations, etc. regarding concerns of transgender persons.**

**4.8 The Committee also desire that there should be a separate provision directing that application forms or any other documentation required for accessing welfare schemes provided to the general public, should also provide an option for 'transgender', in place of 'other' .**

## **CHAPTER V**

### **OBLIGATION OF ESTABLISHMENTS AND OTHER PERSON**

5.1 Clauses 10-12 provide for the obligation of establishments, whether Government or private, to ensure that no transgender person is discriminated in any matter relating to employment, and provide for the setting up of a Complaint Officer in every establishment (with 100 or more persons).

5.2 It is a fact that most transgender persons either are not employed or have to leave their jobs, owing to diverse reasons. Many transgender persons, in particular, trans-men and trans-women, do not even apply for jobs, on account of discrepancy between the gender recorded in their educational certificates and their gender identity and expression, while others are forced to leave jobs, when they start transitioning or after undergoing SRS.

5.3 The Committee observe that no proper and effective enforcement mechanism exists in the Bill to make the private sector comply with the provisions of the Bill. In fact, the only obligation is on establishments with more than 100 'persons' to establish a Complaint Officer. The Bill also does not lay down the exact powers of the Complaint Officer or what action can

be taken by such an officer, in case of discrimination against a transgender person. Further, the Bill does not specify any obligation on the private establishments with less than 100 employees/persons.

5.4 When the Committee confronted the Ministry as to why the Bill does not specify any obligation on the private establishments with less than 100 employees/persons and why the definition of establishment provided in the Bill leaves out scores of unorganized sector workers, and trans persons in organization with less than 100 employees, the Ministry responded as under:

"the obligation to ensure compliance with the provisions of this Act is for all establishments including which have less than 100 persons. However, Clause 12 provides for designation a person to be a Complaint Officer for establishment having more than 100 persons to deal with the complaints relating to violation of the provisions of this Act. It is not practically feasible for small establishments to designate a Complaint Officer. However, the mechanism of police system is robust in India for taking care of such grievances".

5.5 The Ministry further submitted that "this Clause may be reworded as every establishment shall designate a person to be a Complaint Officer to deal with the complaints relating to violation of the provisions of this Act".

**5.6 The Committee take note of the fact that restricting the obligation to set up grievance redressal mechanisms at the institutional level to establishments with more than a hundred employees might potentially leave transgender persons exposed to harassment and discrimination with no recourse except in the courts. The Committee feel that, since the designation of one Complaint Officer in an institution is not an onerous or resource-intensive measure, this requirement should ideally be extended to all establishments under the Act. The Committee, therefore, recommend that it should be clearly mentioned in this Clause of the Bill that all establishments, including Government and private, irrespective of the number of employees, shall designate a Complaint Officer to deal with the complaints relating to violation of provisions of this Act.**

**5.7 The Committee note that the Bill currently does not specify the functions of the Complaint Officer or vest the authority with any powers. To ensure effective implementation of the Act, it is imperative to specify the types of complaints the Complaint Officer can look into, and the kinds of orders it can pass and remedies it can provide. The Committee desire that duties and responsibilities of the Complaint Officer be specified and the types of complaints he can look into and**

remedies offer, be also mentioned on the lines of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

## 5.8 Clause 13 of the Bill States :

- "13(1) No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person.
- (2) Every transgender person shall have -
- (a) a right to reside in the house-hold where parent or immediate family members reside;
  - (b) a right not to be excluded from such house-hold or any part thereof;
  - (c) a right to enjoy and use the facilities of such house-hold in a non-discriminatory manner.
- (3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre."

5.9 As may be seen, Clause 13 provides for right to residence of transgender persons, including right to reside in the family household, right not to be separated from parents or immediate family, right not to be excluded from such household or right to enjoy and use the household facilities.

5.10 The Committee, in other words, find that the Bill assumes the 'family' as a protection unit for transgender persons. However, the truth is that most transgender persons face severe abuse and harassment at the hands of their family/immediate relatives, including physical and sexual violence. In fact, it is the family that is the seat of violence, abuse and a denial of



identity for young trans-person. For transgender children and minors, the family and the natal home become places where the right to self determine gender and to express that gender through various means, are severely curtailed. They have to often leave their homes to escape from the domestic abuse and have nowhere to go, including no legal protection for domestic violence. The only recourse for such transgender children is to run away from the natal home. For them, the Hijra families, the 'Jamaats' or 'dormitories' are places of refuge, the 'Hijra elders' their adoptive parents, the 'Hijra community' their family and friends. The Bill ignores this critical aspect of transgender persons' lives.

5.11 The Committee also observe that Clause 13(3), which is about rehabilitation of transgender persons, in case the parents/family of transgender person being unable to take care, is extremely elusive. It is not clear what the nature of these 'rehabilitation centres' is, or what the rehabilitation of transgender persons would entail. As is well-known, families either abandon transgender persons or compel them to live and behave in their gender assigned at birth. As a result, transgender persons often leave their families and homes at an adolescent age, owing to stigma and discrimination, and do not need rehabilitation, but they require State assistance to rebuild their lives, either through education or employment.

They require protection against domestic violence, since majority of violence faced by transgender persons is on account of their self-identified gender.

5.12 The Committee, further, find that the Bill does not mention about the inheritance rights of transgender persons, wherein they cannot be disinherited from their rightful share in parental property on the ground of gender entity.

5.13 When asked how the Ministry propose to address these important issues and problems of transgender persons, the Ministry in their written submission stated as under:

"Clause 13 (1to 3) was primarily aimed at retention of transgender children within their immediate family. Punishments envisaged in chapter VIII are expected to bring down cases of domestic/familial violence. The spirit of the Bill is to integrate transgender persons and community in to the society rather than to create separate structures. If we allow two parallel systems to exist then the Bill have no meaning for the transgender community. However, where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre".

5.14 The Ministry further submitted that "as long as Transgender Person is a child, he/she should not have a choice to reside other than the household where parent or immediate family reside as it would increase the chances of his physical and sexual abuse. Such child may also not get a chance of

proper education. It would, therefore, be in the interest of the child to be with his/her family. A Transgender Person, after becoming an adult may have his choice of residing anywhere".

**5.15 The Committee, after going through the wordings of Clause 13(1) carefully *vis a vis* reply of the Ministry, are not convinced by the justification given by them. The Committee recommend that Clause 13(1) may be redrafted as:**

**"No child who is a transgender shall be separated from his or her parents or immediate family on the ground of being a transgender except on an order of a competent Court, in the interest of such child."**

**5.16 Further, the Committee feel that it is imperative that alternative family structures are recognized, especially in the context of transgender persons. Accordingly, there is a need to recognize alternate support structures in the transgender community. The Committee desire that there is a need to define the word 'family' so that the Hijra or Aravani community elders, who adopt young transgender children are not put under risk and the Hijra family system is not criminalized. The Committee, therefore, recommend that a sub-clause may be added in Clause 2 of Chapter-I of the Bill giving appropriate definition of the word 'family', *viz.*, a group of people related by blood, marriage or by adoption of a transgender person.**

**5.17 The Committee further recommend that Clause 13(3) may be reworded as under:**

**"Where any parent or a member of his immediate family is unable to take care of a transgender child or the child does not want to live with them, the competent court shall make every effort, if need be, by an order, to place such child with his or her extended family, or in the Community in a family setting or rehabilitation centre".**

**5.18 The Committee find that there are no specific directions to the States to establish rehabilitation centres for transgender persons. The Committee feel that general rehabilitation centres meant for male, female and children would not cater to the specific needs of the transgender persons. The Committee, therefore, recommend that directions should be given to the State Governments to set up specific rehabilitation centres meant only for transgender persons, which would cater to their specific needs.**

**CHAPTER VI**  
**EDUCATION, SOCIAL SECURITY AND HEALTH OF**  
**TRANSGENDER PERSON**

6.1 Clause 14 of the Bill states:

"14. All educational institutions funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others."

6.2 The Committee note that above Clause provides obligation of educational institutions to provide inclusive education to transgender persons, but there is lack of clarity on inclusive education. When asked to comment, the Ministry in their written note stated that "Clause 2 (c) of the proposed Bill defines "inclusive education " as a system of education wherein transgender students along with other students learn together and the system of teaching and learning is suitably adapted to meet the learning needs of such students. However, a transgender child enjoys full right as others. However, in order to protect the education, social security and health care of transgender persons, Clauses 14 to 17 have been added as a safeguard".

6.3 The Committee wonder when a transgender child enjoys full and all rights as enjoyed by other normal children, what and where is the need to

bring this legislation for protection of their rights. The Committee find that this Clause does not impose any tangible obligation on the educational institutions.

6.4 The Committee also find that, education remains one of the least accessible options for the transgender persons, due to plethora of reasons, including bullying for gender non-conformity in schools, lack of recognition of gender non-conforming children in the Right of Children to Free and Compulsory Education Act, 2009, recording of gender assigned at birth in educational certificates, which are impossible to change, and entrenched stigma and discrimination in colleges and university campuses against gender non-conforming behaviour and expression, resulting in frequent drop outs and discontinuation of education, etc.

**6.5** The Committee desire that a provision for obligations imposed on private educational institutions in line with the provisions of the Right to Education Act, 2009 should be there in the Bill. There should also be a provision regarding obligations on the Government for formulation of educational and communication programmes which are 'age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory'.

**6.6** The Committee also urge the Ministry to include following sub-Clauses under Clause 14 of the Bill:

**"14(1) It is unlawful for an educational authority to discriminate against a person on transgender grounds:**

**(a) by refusing or failing to accept the person's application for admission as a student, or**

**(b) in the terms on which it is prepared to admit the person as a student.**

**14(2) It is unlawful for an educational authority to discriminate against a student on transgender grounds:**

**(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or**

**(b) by expelling the student or subjecting the student to any other detriment."**



6.7 The Committee after carefully perusing Clause 15, do not find any schemes and programmes which are being provided by the Government to support livelihood of the transgender persons nor any meaningful livelihood options for vocational training or self-employment to the transgender persons.

6.8 The Committee wish to draw the attention of the Ministry towards the fact that very few transgender persons are part of formal employment system, owing to lack of equal and non-discriminatory educational and employment opportunities as well as gender-incongruent identity norms.

6.9 When the Ministry were asked as to what specific schemes and programmes have been provided in the Bill, the Ministry replied that "it is not possible to put everything in the Bill as the same is derivative in nature".

**6.10 The Committee observe that with regard to vocational training and self-employment of the transgender persons, the proposed Clause 15 is too vague and limited and will hardly provide any meaningful livelihood option to the transgender persons. It is important that the Government provide appropriate facilities for vocational and technical training to transgender persons, many of whom are interested in creative fields like fashion design, photography, interior designing, etc. in order to make them self sufficient and self-reliant. Due to lack of equal and non-discriminatory educational and employment opportunities in addition to gender-incongruent identity documents, very few transgender persons are part of formal employment system. Therefore, the Committee desire that adequate facilities for vocational and technical training to transgender persons should be provided in the Bill.**

**6.11 Further, a separate provision should also be made under which directions should be issued to undertake specific measures such as counselling, career guidance and sensitizing employers regarding concerns of transgender persons, a suggestion which was also made by the Expert Committee constituted by the Ministry on the issues relating to transgenders.**

6.12 Clause 16 of the Bill states :

"16. The appropriate Government shall take the following measures in relation to the transgender persons, namely :-

- (a) a separate human immunodeficiency virus Sero-surveillance Centres;
- (b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;
- (c) pre and post sex reassignment surgery and hormonal therapy counselling;
- (d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;
- (e) review of medical curriculum and research for doctors to address their specific health issues;
- (f) to facilitate access to the transgender persons in the hospitals and other healthcare institutions and centres;
- (g) provision for coverage of medical expenses by a comprehensive insurance scheme for transgender persons."

6.13 Commenting on the provisions made in this Clause, the Ministry stated that "...Clause 16 provides for taking measures in relation to their medical care facilities including Sex Reassignment Surgery (SRS) and hormonal therapy and bringing out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines".

**6.14 The Committee note that there are several measures which have been recommended by the Expert Committee and are germane for the welfare of transgender persons but have not been explicitly incorporated in the Bill, such as, developing trans-friendly hospital policies/guidelines, developing non-discriminatory policies so that transgender persons can have barrier free access to healthcare and funding research for promoting transgender health, etc. The Committee urge the Ministry to ensure that transgender individuals and health activists are part of the consultation process to design any guidelines for SRS or for larger trans-health issues or to incorporate the same into medical curricula.**

**6.15 The Committee, therefore, desire that these measures should be incorporated in this Clause of the Bill.**

**6.16 The Committee find that under Clause 16(c), counselling is limited only to Sex Reassignment Surgery, and hormonal therapy and there is no provision for psychological counselling or counselling related to mental health. Therefore, the Committee desire that measures on counselling, review of medical curriculum and insurance**

**coverage must explicitly incorporate mental health concerns of transgender persons.**

**6.17 Further, the Committee find that Clause 16(g) does not make it clear if the comprehensive insurance scheme is simply for Sex-Reassignment Surgery (SRS) and hormonal therapy, or for any health issues. Therefore, the Committee recommend that Clause 16(g) may be redrafted as follows:**

**"provision for coverage of medical expenses by a comprehensive insurance scheme for SRS, hormonal therapy and other health issues."**

## CHAPTER VII

### NATIONAL COUNCIL FOR TRANSGENDER PERSONS

7.1 Clause 17 provides for the establishment of a National Council for Transgender Persons by the Central Government, comprising several members from different Ministries and Departments of the Central Government, representatives from the State Governments, autonomous statutory bodies, representatives from the transgender community from different States on a rotation basis and five experts working with transgender persons. All members are to be nominated by the Central Government and will hold office for a period of three years, except the Member Secretary. Clause 18 lists the functions of the Council, including, to advise the Central Government on the formulation of policies, programmes and legislations for the transgender persons, and monitor and evaluate the impact of policies and programmes on transgender persons, amongst others.

7.2 The Committee note that Clause 17 and 18 of the Bill describe the constitution and functions of National Council for Transgender Persons. The Committee find that the National Council is merely an advisory body and does not have any effective powers. The Council is not even empowered to record evidence, call for documents, and does not have the

powers of a Civil Court within the ambit of the Code of Civil Procedure, 1908, unlike the Statutory Commissions.

7.3 When asked why there is no clarity on the nature and powers of the National Council, the Ministry stated that "nature and powers of National Council are clearly outlined in Clause 18 of the Bill. The National Council is headed by Union Minister of Social Justice and Empowerment and is a fairly empowered body". The Ministry, on the functions of the National Council, further, stated that "...in case a person violates the provisions contained in Clause 3 in Chapter II of the Bill, the aggrieved Transgender Person may approach National Council for Transgender Persons for redressal of his/her grievance".

**7.4 The Committee are dismayed to find that 'functions' of the National Council for Transgender Persons as detailed by the Ministry in their written submission have not been precisely mentioned in the Bill. The Committee do not find anything in the Council's role for the grievance redressal of the transgender persons in Clause 18. The Committee are equally not satisfied with the reply given by the Ministry. The Committee observe that the National Council has been reduced merely to an advisory body and does not have any effective enforcement powers. The Committee are, therefore, of the opinion that the Council be vested with more teeth and its powers and functions need be elaborated. The Committee recommend that a new Clause indicating clearly the function of the National Council for redressal of grievances as "to redress the grievances of the transgender persons" may be added as sub-clause (e) to Clause 18 of the Bill. The mechanism for enforcing the orders of such body must be clearly expressed in the Bill. A provision for allowing enforcement of the orders of such body should be incorporated in the Bill and non-compliance of which must attract penalties.**

**7.5 The Committee also recommend that a provision for constitution of State Councils for Transgender Persons should be there in the Bill**



**so that enforcement bodies must be set up at the State level by the State Governments.**

**CHAPTER - VIII**  
**OFFENCES AND PENALTIES**

8.1 Clause 19 of the Bill states :

"19. Whoever,-

- (a) compels or entices a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government;
- (b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;
- (c) forces or causes a transgender person to leave house-hold, village or other place of residence;
- (d) harms or injures or endangers the life, safety, health, or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine."

8.2 As may be seen from the above Clause, the Bill recognizes certain categories of crimes committed against transgender persons, including the compelling of transgender persons to engage in begging. All these offences are punishable with imprisonment for up to two years.

8.3 The Committee feel that Clause 19(a), though well-intentioned, is likely to be misused against the other transgender persons, in the garb of protecting them. It is an open fact that most transgender persons are harassed or booked under the begging prohibition laws, even when they are not begging or merely present at public places.

8.4 The Committee observe that the Bill does not fully recognize the range of violence that transgender persons face, and, therefore, does not provide for sentences commensurate with the gravity of the offences. The Indian Penal Code was amended in 2013 to expand the definition of rape and recognize a broader range of offences against women, including acid attacks, voyeurism, stalking, sexual harassment and disrobing. Transgender persons often face similar abuses.

8.5 The Committee also observe that there is also a risk that the Bill could end up criminalizing transgender persons begging of their own volition. The Committee further observe that criminalizing the act of "compelling or enticing transgender persons in begging and other forms of forced or bonded labour" increases the risk that transgender persons - many of whom have limited employment opportunities - will be criminalized due to misuse of the law. The Committee feel that provisions on beggary

under other laws already exist, and are already used to harass and abuse transgender persons.

8.6 The Committee also find that Clause 19(d) is not specific, since there is no definition of 'sexual abuse' given in the Bill. The words "tends to do acts" are vague and ambiguous and have no place in a provision prescribing a criminal offence. This Clause, the Committee feel has to be precise and specific. Though there exists an urgent need to provide for protection against sexual assault and rape of transgender persons, the present provision falls woefully short, since it does not specify the exact non-consensual acts that are sought to be prohibited. Moreover, there is no clarity on how these acts would interplay with Section 377, IPC that criminalizes all penile non-vaginal sexual acts between individuals.

8.7 When asked to give their views on Clause 19 and what the Ministry have to say on the Committee's observations, the Ministry stated as under:

" As far as Clause 19(a) of the Bill is concerned, it speaks only about compelling and enticing transgender persons in begging and other forms of forced or bonded labour. The aim of this provision is to discourage forced beggary/bonded labour system which is a crime under various Acts. However, forced beggary/beggary syndicates shall be dealt with under appropriate provisions of the IPC Act. After the Bill is approved, all efforts would be made to mainstream the transgender community by providing skill training."

**8.8 The Committee concur with the suggestion of the Ministry to the extent that beggary/beggary syndicates and bonded labour system must be discouraged being a crime under various Acts irrespective of any gender. The Committee strongly feel that the Bill must recognize these offences as crimes against transgender persons, and provide for sentences commensurate with the gravity of their offences. As Clause 19 provides for the same/similar punishment for offences that are varied in nature and in the harm caused, which violates the principle of proportionality under Article 14 of the Constitution, the Committee recommend that there should be graded punishment for different offences and those involving physical and sexual assault must be met with higher punishment. Further, the Indian Penal Code may be used as a guideline while determining penalties of such abuses/crimes so that principle of proportionality is also preserved.**

**8.9 The Committee further recommend that the Bill should also specifically recognize, and provide appropriate penalties for, violence that transgender persons face from officials in educational institutions, healthcare institutions, police stations, jails, shelter and remand homes and other places of custody.**

**8.10 Although beggary is a criminal act but the transgender community does not enjoy parity with other genders when it comes to alternative modes of employment. The Committee, therefore, exhort the Ministry to issue directions to State Governments to provide alternative employment opportunities for transgender persons, such as, recruitment as drivers, conductors, traffic policemen etc. in the Central and State Departments. To provide more employment avenues to transgender persons, the Committee desire that directions may also be given to States to introduce various short term courses designed according to their abilities and requirements for skill development of transgender persons as well.**

## **CHAPTER -IX**

### **MISCELLANEOUS**

**9.1 The Committee further recommend that the Ministry should consider suitably incorporating the following suggestions in "The Transgender Persons (Protection of Rights) Bill, 2016". which the Committee feel are equally important and will have a direct bearing on the welfare of transgender persons:**

- (1) In NALSA, the Supreme Court directed the Central Government and the State Governments to take steps to treat transgender persons as socially and educationally backward classes of citizens and extend all kinds of reservation for admission in educational institutions and for public appointments. The Bill is silent on granting reservations to transgender persons under the category of socially and educationally backward classes of citizens.**
- (2) The Bill does not refer to important civil rights like marriage and divorce, adoption, etc, which are critical to transgender persons' lives and reality, wherein many are engaged in marriage like relations, without any legal recognition from the State.**

- (3) There should be separate HIV Sero-surveillance Centres since hijras/transgenders face several sexual health issues operated by Centre and State Governments.**
- (4) There should be a provision to provide the transgender persons separate public toilets and other such facilities.**
- (5) There should be counseling services provided to the transgender persons to cope up with trauma and violence on the model of Rape and Crisis Intervention Centres.**
- (6) Helping for career guidance and online placement support should be established.**
- (7) At the end of Clause 2(i) in Chapter-I of the Bill, definition of 'persons with intersex variations' should be given as "Persons who at birth show variations in their primary sexual characteristics, external genitalia, chromosomes, hormones from the normative standard of female or male body are referred to as persons with intersex variations".**
- (8) A provision providing penal action against abortions of intersex fetuses and forced surgical assignment of sex of intersex infants should be there in the Bill.**
- (9) A provision for separate frisking zones of transgender persons at public places such as airport, Government and**



private office complex, etc. should be there. For this purpose, transgender persons should be appointed.

- (10) Transgender persons remain at risk of criminalization under Section 377. The Bill must at the very least recognize the rights of transgender persons to partnership and marriage.
- (11) The Bill must recognize transgender persons' right to marriage, partnership, divorce and adoption, as governed by their personal laws or other relevant legislation.
- (12) A census for transgender persons is a separate exercise from the drafting of guidelines for self-registration. The Census can be proceeded with independently.

**New Delhi;  
19 July, 2017**  

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**28 Ashadha, 1939(Saka)**

**RAMESH BAIS,  
Chairperson,  
Standing Committee on  
Social Justice and Empowerment**