

Comments of NHRC India on the questionnaire of the independent expert on protection against violence and discrimination based on sexual orientation and gender identity.

Q.1 LGBTI community has always been here. They are oppressed but they are not merely products of oppression. People should be able to live and express their gender identities and sexual orientation without criticism or threats of violence. But that is not the case today. There are legions of women and men whose self-expression, is repeatedly caged into stereotypes- at odds with their sex. Some are forced underground or “pass” because of the repression and ostracism they endure. Issues concerning LGBTI are as under:-

- Struggle for self identification/recognition as a person
- Health issues; Mental Health, HIV, Medical treatment
- Family acceptance
- Discrimination in education, safety in schools on the basis of sexual orientation and gender identity
- Domestic Violence and Violence by Police

Q.2 and 3

Enumeration and Estimates of Transgender People

There is a need for a reliable population data of transgender people. It is important to identify and enumerate transgender population to have an authenticate data. The reliable transgender population data can be used for planning, implementation and monitoring welfare schemes. Government has taken certain measures to identify and enumerate transgender population. These measures need more streamlining and inter-ministerial cooperation is also required.

Mechanism and Schemes to Address the Stigmas

There is an urgent need for creating a strong mechanism and introducing schemes to challenge the stigmas attached with the transgender people and hence, the following steps may be taken.

Sensitization of Parents and Society: Our field survey reported a few cases of abandoning the child to overcome the trauma of abnormal sex appearance. A transgender child is not accepted by most of Indian families and the society. Right to life and to live in the family and society are denied to transgender people in India. It is important to sensitize parents of transgender children and other members of our Society with regard to the human rights of transgender community. We need to create more awareness and understanding among them on the culture, gender, and sexuality of transgender community. Most of the transgender people are poor and illiterate and now government is the only source for their rehabilitation and upliftment. Proper counseling should be provided to parents to enable them to treat transgender children at par with other children. Criminal action should be taken against those parents who disown transgender

child. The mindset of society, parents and teachers towards the transgender needs to be changed. At present, transgender people are not invited to social gatherings in our neighborhoods and there is a need for a major shift in people's attitudes towards transgender. On the other hand, transgender children are under severe stress and low self-esteem and counseling services needs to be provided to transgender children also. Government can consider creating a component of such counseling services under the Integrated Child Protection Schemes.

Sensitization of Police: Transgender people have not received any attention with respect to right to privacy.. In India our constitution does not contain a specific provision as to privacy but the right to privacy has been spelt out from the provisions of Article 19(1) (a) dealing with the freedom of speech and expression, Article 19(1)(d) dealing with the right to freedom of movement and from Article 21, which deals with right to life and liberty. Sensitization of police about the human rights abuse of the transgender community is an urgent need. As there are several allegations of police atrocities and crime against transgender persons, police personnel should be given special training. Appropriate steps should be taken to stop the abuse and there should be a code of conduct both for transgender persons and police authorities. Training and sensitization of police on transgender issues can be on the lines of trainings and sensitization should be made for treatment of issues related to women, children and other vulnerable section of s. Advocacy with police and other law enforcement agencies should be carried out to address the issues of harassment Special Grievance Redressal Cells for their protection should be set up in all the police stations.

Access to Gender Segregated Spaces for Trans gender . 'Similar to female and male line/ queue /section, transgender line/ queue /section should be set up in all gender segregated spaces like malls or airports, or public transportation, etc. Proper Urinal/Latrine facilities should be provided. There should be separate toilet facilities for transgender in schools, colleges, hospital wards and other public places.

ICT based Campaigns and Awareness Programmes: It is important to organize various types of ICT based campaigns and awareness programmes. This will enable the society to accept transgender people as third gender. In a few states of India transgender icons and role models have emerged in different fields such as education, politics and governance, media and transgender activism. They can be involved in the various awareness campaign programmes. Transgender people can work on community issues, as they can work as a field worker on various campaign programmes such as safe sex awareness campaign. The recruitment of transgender people as civic police volunteers to manage traffic in Delhi was a good step. By providing more responsibilities and role to these marginalized people can be brought to mainstream life.

Documents for Transgender

Each state government should take suitable steps to ensure recognition of transgender in the areas of social entitlements like passport, driving license, bank

account Appropriate legislation and its enforcement needs to be carried out to ensure their legal marriage, family inheritance of property and assets.

National Policy on Transgender

While several States formulated schemes for the transgender community, a national policy is not yet ready in India. (4,1.2). A national policy on transgender people is urgent and it can deal with various issues of transgender people in various parts of India. Transgender must be included as a category for formulation of specific provisions in planning policies including land rights, right to have own family, entitlements to state services as well as education opportunities.

New Law and Guidelines and the Role of Ministries State Departments

Relevant Ministries of Government of India such as Ministry of Home Affairs and Ministry of Social Justice and Empowerment will have to take action to make appropriate legislation and to formulate guidelines for the welfare of transgender people in India. The abandonment of child is a punishable offence under Section 317 of the IPC. The abandonment of transgender children takes place usually between the age of twelve and eighteen years. Ministry of Home Affairs can enhance the age limit of a child for this offence to eighteen years. Child protection laws need to be strengthened to address issues faced by transgender adolescents. A section can be added to the Indian Penal Code to deal with cases of sexual assault on them. Separate law is to be enacted centrally to suit their mandatory needs and to solve their problems that may be very different from others. A separate legislation, similar to the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act 1989, which can comprehensively incorporate the definition, scope, intent and rights of the transgender people will address most of their problems. Rape and trauma centers should be set up for transgender people. It will be ideal to dedicate a day for transgender. For instance, "Transgender Diwas" may be declared once in a year to give them respect and recognition. A few Indian states have initiated welfare programmes in line with the state of Tamil Nadu. However, a large number of states have been quite slow in designing and implementing welfare programmes for transgender persons (see Chapter 4). There should be welfare board for transgender population in all states/UTs while a few states such as Tamil Nadu have an active welfare board.

Legal Recognition of Right to marry, Right to have a family and Children

Legally transgender cannot enter into a marriage, having spouse and setting up of own family in India. Right of sexual orientation has been recognized without protecting the right to marry. Though there are several cases of living-in-relation among transgender people, right to marry, a fundamental right, is now denied to transgender people. Transgender people should be given legal recognition of right to marry, right to have a family and children.

Sex Re-assignment Surgery and Gender Transition Services

A significant number of transgender people cannot afford Sex-Reassignment Surgery due to the cost involved. Many young transgender people cannot get operated upon without consent of parents. Unfortunately, transgender people are deprived of all these health services as they are poor and isolated. Proper public health care services should be made available to transgender people including those who wish to undergo Sex Re-assignment Surgery. All treatment and other facilities should be provided free of cost or at a subsidized rate to all the transgender patients both in government and private hospitals. In the case of transgender people seeking, Indian doctors should adhere to internationally accepted standards of care. Transgender persons may be supported to choose gender by providing them 'gender- transition services', as a vast section of them come from the poor segment. Transgender people have a raft of surgeries to make the transition. For those wishing to be female, the available procedures are neovagina creation, penectomy (removal of the penis), orchidectomy (removal of testes), clitoroplasty (construction of a clitoris), breast augmentation, rhinoplasty and hair transplants. For adopting the male gender, bilateral mastectomy, hysterectomy, oophorectomy (removal of ovaries) and phalloplasty (construction of penis) are among the processes. Government may consider providing gender transition services.

Gender Recognition Certificate

Gender recognition certificate or document by a government authority should be made available to all transgender people. A medical certificate from a doctor that states the current sex/gender of the transgender person will be useful to each transgender especially when a change of gender is taken place. A state-level authority is to be set up in all states/UTs to address the critical issues of transgender people such as certification of a person as transgender and recording of change of gender on the birth certificate of a person after the age of 18.

Parliament, State Legislatures and Local Government Institutions

A few legislations are already made for the empowerment of transgender in India. Empowerment of transgender can be achieved in Indian states, through reservation of seats in parliament, state legislatures and local government institutions. Since the number of transgender people is quite small, reservation may not be feasible and hence a system of nomination can be used to ensure the representation of transgender people in these government institutions. Local government needs to play a positive and proactive role in the removal of taboos and discriminations and creation of positive attitude towards transgender people. Organizing programmes for greater sensitization on issues of diversity to enhance inclusion, exercise restraint and punishment against offenders who may target or assault transgender community. Awards and incentives for villages and communities promoting inclusive local governance will also help to create a more conducive environment. After making necessary laws for the protection of their human rights, the subjects related to them can be transferred to the local governments for their upliftment and

social protection. The local bodies can be entrusted the responsibilities starting from registration up to their various need satisfaction. Responsibility of dealing with any atrocities and social out-casting against them can be entrusted to the "Jagratha Samithis" (Vigilance Committee) under the local governments.

Transgender Rights and Role of Civil society Organizations and Political Parties

In Yogyakarta principles every citizen has a right to take part in the conduct of public affairs including right to stand for elected office, to participate in the formulation of policies effecting their welfare, and to have equal access to all levels of public service and implementation in public functions without discrimination on the basis of sexual orientation or gender identity. In India the right to contest election has been recognized and provided to all persons without discrimination on the basis of sexual orientation or gender identity. But it seems to be just the beginning; there is a long journey ahead. All political parties, national and state level, should give role to transgender people in the respective party. Moreover, welfare of transgender people should be made the part of their political agenda. Civil society organizations need to carry out advocacy programmes for providing ownership of land and shelter to transgender at family level and to recognize their various rights in the family and society. There should be counseling centers, shelter homes and rehabilitation centers for transgender people who face violence and harassment. Civil society organizations can partner with government organizations in setting up of these facilities. All the respondents covered under the survey have suggested that there should be a local community support group and Transgender Welfare Board so that their issues are addressed and their voice heard.

Employment and Livelihood Opportunities

Article 14 of the Constitution of India guarantees equal rights and opportunities to men and women in political, economic and social spheres. Article 16 guarantees equality of opportunity in matters of public employment. However, each and every employer avoid the recruitment of transgender people. The transgender community is highly deprived of several rights including their right of participating in economic activities including employment. The interrupted education and social exclusion further limits their employment and livelihood opportunities (See section 5.3.6). Just 6 percent of transgender people are employed and moreover, they are employed in private/ NGO sector. Majority of transgender people are engaged in informal sector.

Transgender people should get equal employment opportunity in India and every employer should be made to declare policy statement on bans recruitment. The institutions should be asked to revise their recruitment policy and even recruitment application form should be revised accordingly. There can be a recruitment phases in each state, to start with. It is difficult to identify employable transgender people. Employment, regular or contractual, should be provided to transgender people both in government and private sectors. Government should introduce reservations in

government jobs for them. Contract works and jobs like sanitary workers, sweepers etc., in the local government institutions and institutions managed by Panchayats, Municipalities and Corporations could be provided to them. Benefit of reservation should be provided to them in 3rd and 4th grade administrative services. Government should reserve certain portion of its contracts to transgender people for catering in government canteens. Transgender should be given priority and reservation in government jobs and private institutions giving employment to transgender should be encouraged by providing special subsidy. It is significant to note that in the post Supreme Court judgment phase, state governments have started recruiting transgender people. However, the implementation of the Supreme Court judgment is quite slow.

Training of transgender is an important issue to be addressed as an element of equality training for employees. The attitude of employer towards those issues needs a thorough change as there are several cases of denial of employment of skilled and educated transgender people.

Transgender persons can be employed in special jobs apart from the common jobs which may be more suitable to them. Mainstream jobs such as agents for Life Insurance Corporation of India and other insurance companies can be offered to transgender people. After undergoing some certificate courses, they may be given the opportunity to work as music teachers in select education institutions. Benefits under various government schemes should be made available to them. The art performance can provide much-needed supplementary income to transgender. Ministry of Culture can take suitable steps to promote performing arts and cultural activities focusing on transgender. Arts are effective tools that can communicate messages to public about various rights of transgender people.

Success stories of self-employed transgender people who run retail shops, conducting cultural programs are reported from a few States. A sector focus approach may be devised to provide livelihood opportunities to transgender people. Self Help Groups of transgender people may be promoted under government programme such as National Rural Livelihood Mission. Special support may be given to them under entrepreneurship development scheme and micro credit programmes of various government agencies. There should be a focus on establishing linkages with livelihood programmes, literacy programmes and other development programs like Rajiv Gandhi Awas Yojna, Indira Awas Yojna and other schemes of relevant ministries of Government of India. Transgender can work on community issues, as they can work as a field worker on various campaign programmes such as safe sex awareness campaign. The recruitment of transgender people as civic police volunteers to manage traffic in Delhi was a good step. By providing more responsibilities and role to these marginalized people can be brought to mainstream life. In nutshell, Transgender people should be given financial freedom and economic independence.

School Education and Vocational Training

The staff and faculty, of education institutions are totally unaware of transgender issues. Transgender students faces harassment at school level. The prevailing guru-chela system is an obstacle for youngsters in availing education opportunities. The insensitivities of teachers and staff towards the community have adverse impact on the mainstreaming transgender persons in educational institutes. The teachers and staff do not have adequate knowledge and sensitivities about the community to support the transgender community in making education accessible and mainstream them into the system. The social hierarchy and community norms among Hijra communities influence their behaviors and decision making ability. These norms sometime become too strict and are not supportive for mainstream efforts or allow them to explore other opportunities and lean other skills.

Education system needs to be strengthened with school and college administration through sensitizing them on issues of transgender. The fulfillment of the obligation under Right to Education Act 2009 is critical for the improvements in the education status of transgender children. Transgender community should be covered in elementary education promotion scheme. Ministry of Human Resource Development should take suitable steps to address drop out and other relevant issues of transgender at school level. The existing schemes of education promotion programme should be reviewed to assess their suitability to the transgender community. For example, socially disadvantage groups should include transgender community as target beneficiaries of Sarva Shiksha Abhiyana (SSA), a centrally sponsored programme. The environment prevails at schools and other educational institutions should be made favorable for transgender students to continue their study as several transgender students are forced to leave education institutions in order to avoid the mocking and harassment which leads to the mental trauma. Vocational training programmes for transgender should be introduced. Skill development of transgender persons can strengthen their employability. Training of transgender persons can make them employable in different fields such as beauticians, cook, dancers, decorators, tailors, data entry operators and video camera operators. Skill development programmes within the framework SHG programme under NRLM can be a better.

Higher Education of Transgender Students

The UGC has issued a notification on July 2014 to facilitate the education of the third gender and accordingly, universities have started taking action. Some of the Indian universities and colleges have started action to admit transgender students. Admission forms have an option for transgender in the gender column. All the education institutions should conduct orientation programme so that students and teachers can learn how to make transgender students "feel comfortable" and to create a friendly atmosphere. Scholarship schemes for higher education should be made effective for transgender with the help of available government programmes.

Housing and Accommodation

According to The Yogyakarta Principles, everyone has the right to adequate housing, including protection from eviction, without discrimination on the basis of sexual orientation or gender identity. Care home for transgender children needs to be set up in all the States to prevent the exploitation of vulnerable transgender children. Government should take steps to provide housing facilities to transgender people. Construction of group houses for them at state or district level may be encouraged. Transgender should be given a special focus in centrally sponsored and state sponsored housing schemes. Legal actions should be initiated against land lords who refuse to give house on rent to transgender people. Similarly, owners of hotels and guest houses should be given clear instructions not to refuse their facilities to transgender.

To conclude, human rights of transgender people of India are highly xornprise dip India. There is an urgent need for safeguarding their rights by providing access to social resources, institutional facilities such as banks, educational and skill opportunities, housing and employment opportunities. Support for shelter and support services for health are immediate requirements. Awareness creation of the transgender people, families, society and police is essential for the mainstreaming of the third gender. Proactive participation of transgender in all democratic spaces should be facilitated. Legal and constitutional safeguards are essential to prevent human rights violations of transgender people in India.

The Supreme Court of India has in September 2018 decriminalized sensual adult sex on the basis that sexual orientation is natural and that people have no control over the same. The Court also set aside Section 377 of the IPC, according to which whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal was punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and was also liable to a fine.

With regard to Question No.4 of the Questionnaire – ‘Complaints mechanisms available and accessible to LGBT people facing discrimination’, it is stated that any person including those belonging to LGBT can bring grievances of their discrimination/human rights violation to the notice of the Commission. The Commission inquires into each of the complaint it receives on merits. The Law Division has recently added an Incident Code on LGBT people’s right. It has received only three complaints in 2019. Two were dismissed in limini there being no specific violation of human rights, and in one case (Case No.425/35/6/2019), it was transmitted to Sr. Superintendent of Police, Haridwar, Uttarakhand for appropriate action. The crux of the complaint was that two major girls got married with each other on 30th March, 2019. However, their parents got enraged over this, and threatened them of physical elimination.

- In respect of India, the landmark judgement of Sep 2018 was given by the Apex Court the Supreme Court of India which decriminalized Sec. 377 of the Indian Penal Code. Homosexuality in India was criminalized in India in the colonial era that banned the consensual relationship between two adults of same sex. Since then there have been many protests and petitions filed in Courts by LGBTQ Communities to recognize their gender inclinations and include them in the mainstream of the society.
- In 2009, Delhi High Court had declared Sec. 377 as unconstitutional but this decision was overturned by a Supreme Court bench in 2013 and again it was criminalized. However, the above SC judgement dated 6 Sep 2018, which has declared Sec.377 IPC as unconstitutional has been received well by the modern educated and changing society of India.
- The Supreme Court has ruled that the Homosexuality is a part of human sexuality and they have the right of dignity and right to freedom from discrimination. Any such discrimination entails a violation of fundamental right of an individual.

- The Supreme Court also directed the Government to take all measures to properly broadcast the fact that homosexuality is not a criminal offence, and to create public awareness through training and sensitization and eliminate the stigma that members of LGBTQ Community face. The judgement also included an inbuilt safeguard to ensure that it cannot be revoked again under the 'Doctrine of Progressive Realization of Rights'.
- The judgement in India was hailed as the 'Second Independence Day' and widely published by all media and newspapers. Barring a few orthodox and conservative groups, this step has gone a long way in legitimizing the rights of LGBTQ Community. More and more number of people are voicing out their experiences, sharing public forums on the issue and making efforts to integrate the LGBTQ Community particularly the youth in social and economic fabric of the society especially in field of education and employment. Overall the verdict has opened a window for the community to seek dignity in every sphere of life.