

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

SWATI BIDHAN BARUAH

... PETITIONER

VERSUS

UNION OF INDIA

... RESPONDENT

PAPER BOOK

(FOR INDEX: PLEASE SEE INSIDE)

VOL- I Pages B to 202 ..

ADVOCATE FOR THE PETITIONER: **RASHMI NANDAKUMAR**

413

IN THE SUPREME COURT OF INDIA
[CIVIL/CRIMINAL ORIGINAL/APPELLATE JURISDICTION]
S.L.P./W.P./T.P./ Contempt Petition/(Civil/Crl.) No.(s) /2019

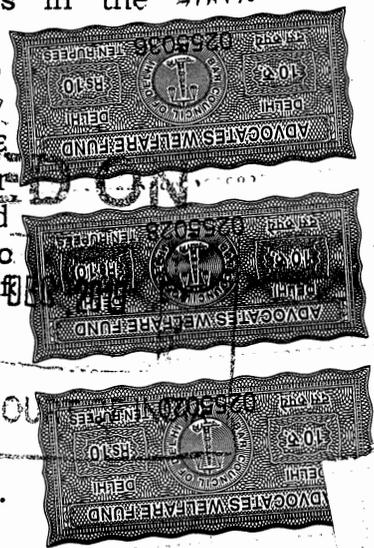
.....SWATI BIDHAN BARUAH.....Petitioner(s)/
Appellant(s)

VERSUS

.....UNION OF INDIA.....Respondent(s)

VAKALATNAMA

I/We..Swati Bidhan Baruah.....Appellant(s)/Petitioner(s)/Respondent(s)Opposite party in the above Suit/Appeal/Petition/Reference do hereby appoint and retain **Ms. RASHMI NANDAKUMAR** Advocate of the Supreme Court of India to act and appeal for me/us in the above Suit/Appeal/Petition/Reference and on my/our behalf prosecute (or defend) the same and all proceedings that in respect of any application connected with the same or any passed therein, including proceedings in taxation and application to file and obtain return of documents and to deposit and receive on my/our behalf in the said Suit/Appeal/Petition/Reference and Review, and to represent me/us and take all necessary steps in the above matter. I/We agree to ratify all acts done by the advocate in pursuance of this authority.



Dated this the 6 day of 12 2019

Accepted & Identified
Rashmi

[RASHMI NANDAKUMAR]
Advocate, Supreme Court of India

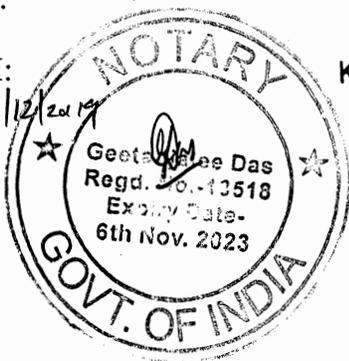
Swati Bidhan Baruah
Swati Bidhan Baruah
APPELLANT(S)/PETITIONER(S)/RESPONDENT(S)

MEMO OF APPEARANCE

To
The Registrar
Supreme Court of India,
New Delhi

Sir,
Please enter my appearance on behalf of the Petitioner(s)/Appellant(s)/ Respondent(s) Opposite Parties/Intervener No.....in the matter above.

NEW DELHI:
FILED ON: 11/12/2019



NOTARY
GEETA ANIL DAS
Kamrup & Metro Guwahati
Regd. No.- 13518
GOVT OF INDIA

Yours faithfully,

Rashmi
(RASHMI NANDAKUMAR)
[CODE No - 2190]
Advocate for Petitioner/Respondent
A-187, DEFENCE COLONY, NEW DELHI
PH: +91 9810931343

RECORD OF PROCEEDINGS

Sl. No.	Date of Record of Proceedings	Pages
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		

INDEX

S. No.	Particulars of Document	Page no. of part to which it belongs		Remarks
		Part 1 (contents of Paper Book)	Part II (Contents of File alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Court Fees	510		
2.	Listing Proforma	A1 - A2		
3.	Cover Page of Paper Book		A3	
4.	Index of Record of Proceedings		A4	
5.	Limitation Report prepared by the Registry		A5	
6.	Defect List		A6	
7.	Note Sheet		NOS...	
8.	Synopsis List of Dates	B - H		
9.	Writ Petition with affidavit	1 - 13		
10.	Annexure P-1: A copy of the Report dated 27/01/2014 of the Expert Committee of the Ministry of Social Justice and Empowerment	14 - 202		

Continue as Volume II Page No. 203 to 413

Proforma First Listing

A

The case pertains to (Please tick/check the correct box):

- Central Act: (Title).N/A
 - Section : N/A
 - Central Rule : (Title) .N/A
 - Rule No(s): N/A
 - State Act :
 - Section : N/A
 - State Rule : (Title) N/A
 - Rule No(s): N/A
 - Impugned Interim Order: (Date): N/A
 - Impugned Final Order/Decree : (Date): N/A
 - High Court : (Name): N/A
 - Names of Judges: N/A
 - Tribunal / Authority: (Name): N/A
-

1. Nature of matter : CIVIL [] CRIMINAL
2. (a) Petitioner/Appellant No.: Swati Bidhan Baruah
(b) E-mail ID: N/A
(c) Mobile phone number: N/A
3. (a) Respondent No. Union of India
(b) E-mail ID:..... N/A
(c) Mobile phone number:... N/A
- 4 (a) Main category classification:0818
(b) Sub classification:08

5. Not to be listed before: A2
6. (a) Similar disposed of matter with citation, if any, & case Details: No Similar Disposed of matter
- (b) Similar pending matter with case details: No similar mater pending
7. Criminal Matters:
- (a) Whether accused/convict has surrendered: yes No.
- (b) FIR No. _____ Date: _____
- (c) Police Station: _____
- (d) Sentence Awarded: _____
- (e) Period of Sentence undergone including period of detention/custody undergone: _____
8. Land Acquisition Matters:
- (a) Date of Section 4 notification: N/A
- (b) Date of Section 6 notification: N/A
- (c) Date of Section 17 notification: N/A
9. Tax Matters: State the tax effect: N/A
10. Special Category (first petitioner/appellant only) :
- Senior citizen 65 years SC/ST Woman/child
- Disabled Legal Aid case In custody
11. Vehicle Number (in case of Motor Accident Claim matters):N/A

Date:11/12/2019

Ms. Rashmi Nandakumar
AOR for Petitioner(s)/appellant(s)
AOR CODE: 2190
A-187, LGF, Defence colony
New Delhi-110024
Phone No + 919810931343
E-mail:Rashmi.nandakumar@gmail.com

SYNOPSIS

B

This writ petition under article 32 of the Constitution questions the constitutional validity of the Transgender (Protection of Rights) Act, 2019. The Act, instead of furthering or protecting the fundamental rights of transpersons, violates and facilitates the violation of the right (s) to life, privacy and equality of transpersons.

The judgment of this Hon'ble Court in *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 [hereinafter referred to as '**NALSA**'] recognized the marginalization of and discrimination against trans-persons in India and directed the Union and State Governments to take necessary remedial steps to ensure that fundamental rights of transpersons are not violated. This recognition of the struggles of transpersons was a signal to Parliament and the state legislatures to enact progressive legislations giving full effect to the fundamental rights of transpersons.

The Petitioner, (a transperson and a transgender rights activist), submits that the impugned Act, however, sets the clock back and negates even the protections secured to transpersons by this Hon'ble Court in its judgment in *NALSA*.

First, the right to self-identification of gender identity is a fundamental right that forms part of right to life under Article 21 of the Constitution (*NALSA*). The impugned Act provides for a method of state-identification of transpersons by a process of

certification by the District Magistrate. The Petitioner^C submits that this method is a disproportionate invasion into the right to privacy of transpersons and is manifestly arbitrary. Sections 4 to 7 of the impugned Act violate Article 14 and 21 of the Constitution.

Second, the provisions intended to grant a right against non-discrimination are completely toothless and no remedy has been provided for the violation of these provisions. The Petitioners submit that these provisions are contrary to Articles 14, 15 and 16 of the Constitution of India.

Third, Section 18 permits the imposition of as little as six months imprisonment for acts such as "endangering the life of a transperson" or sexual abuse of a transperson. It is submitted that the provision is completely arbitrary and irrational. The provision violates the right to life of transpersons by prescribing grossly inadequate punishment for heinous acts.

Fourth, this Hon'ble Court in NALSA expressly directed the Union and State Governments to take steps to treat Transpersons as Socially and Educationally Backward Classes of citizens for the purposes of reservation in educational institutions and in public employment. The Act contains no such measure. In fact the Act contains no specific measure to be adopted by the appropriate Government for furthering the right to equality of transpersons.

The Petitioner submits that the impugned Act is a regressive piece of legislation which is more likely to harm the interests of

the transgender community in India. The impugned^D legislation has several provisions which suffer from the vice of arbitrariness and vagueness. The Petitioners invites the attention of the Court to the grounds in the petition where the specific challenges to these provisions have been set out.

The Petitioner submits that provisions of the Act are built around the unconstitutional concept of state-identification of transpersons. The Act treats transpersons with suspicion and several provisions of the Act evince and reinforce the very prejudice that the legislation ought to have aimed at eliminating. The Petitioner submits that the Transgender (Protection of Rights) Act, 2019 is wholly and irreparably in violation of the right to life with dignity of transpersons.

LIST OF DATES

E

- 1950 The Constitution of India which was adopted by the Constituent Assembly on 26th November, 1949 came into force on 26th January 1950. The Preamble declares that the Constitution secures Liberty, Equality and Fraternity to the citizens of India. The guarantee of fraternity, in turn, assures the protection of the dignity of each individual citizen. Part III of the Constitution makes these guarantees effective by recognizing fundamental rights including the right to life, the right to equality and the prohibition of discrimination.
- 27/01/2014 An expert committee constituted by the Ministry of Social Justice and Empowerment submitted a report on Issues relating to Transgender Persons. The Report recognized the rights of transgenders to a limited extent.
- 15/04/2014 In 2014, this Hon'ble Court in *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 declared that the continued discrimination against the transgender community in India is contrary to the Constitution. This Hon'ble Court recognized that gender identity is one of the most

fundamental aspects of life and that every individual has a right to self-identification of one's gender identity. This Hon'ble Court expressly noted that depriving persons who are transgender of rights, benefits and privileges available to other persons in India is contrary to Article 14 of the Constitution. Further, this Hon'ble Court noted that the term 'sex' in Articles 15 and 16 of the Constitution includes gender as a distinct component. Thus, any discrimination against transgenders, the Court held, violates Article 15 and 16 which prohibit discrimination on the basis of sex. Most importantly, the Court noted that self-determination of gender is an integral part of personal autonomy protected under Article 21 of the Constitution. Further, the expression of one's self-identified gender is protected under Article 19 (1) (a). In furtherance of these declarations, this Hon'ble Court directed *inter-alia* the Central and State Governments to grant legal recognition to transgender persons and to take steps to treat them as Socially and Educationally Backward Classes of citizens for the purposes of reservation in educational institutions and in public employment.

- 24/04/2015 A private member's Bill titled 'The Rights of Transgender Persons Bill 2014'⁶⁷ was introduced in the Rajya Sabha on 12/12/2014. The Bill was passed by the Rajya Sabha on 24/04/2015.
- 2016 Despite the Bill being passed unanimously in the Rajya Sabha, Respondent No.1 took upon itself to pilot a fresh draft of the Bill incorporating the features of the private member Bill.
- 02/08/2016 Respondent No.1 introduced the Transgender Persons Bill 2016 in the Lok Sabha. The Petitioners submit that this Bill was fundamentally flawed and had a set of provisions which were more likely to harm the interests of transgender persons.
- 27/09/2016 The Bill was referred to the Parliamentary Standing Committee on Social Justice and Empowerment.
- 21/07/2017 The Parliamentary Standing Committee laid a report before both the houses of Parliament pointing out several flaws in the draft Bill. It was pointed out that the Bill fails to guarantee the right to self-determination of gender. It was also pointed out by the Committee that the Bill lacks

teeth in so much as there is no ^H grievance redressal mechanism. The non-discrimination provisions, the provisions for health benefits, and the provisions for social empowerment and inclusion were all found to be inadequate.

12/2018 The 2016 Bill was passed by the Lok Sabha with 27 amendments accepting some of the suggestions of the Standing Committee. However, the fundamental flaws at the heart of the Bill remained and were left untouched by the Union of India.

2019 The 2016 Bill lapsed on the dissolution of the Sixteenth Lok Sabha on completion of its term in 2019. The aforesaid Bill was introduced once again in Seventeenth Lok Sabha. The Bill was passed by the Lok Sabha on 05.08.2019. The Rajya Sabha passed the Bill on 26.09.2019

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Swati Bidhan Baruah, Petitioner
D/o Supit Ranjan Baruah, R/o Pandu
Cabin, Near Rly B.G. Office, P.O.
Pandua, District Kamrup (M), Guwahati,
Assam

Versus

Union of India, Respondent
Through the Secretary, The Ministry
of Social Justice and Empowerment, A-
Wing, Shastri Bhawan, New Delhi -
110 001

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA SEEKING DIRECTIONS AGAINST THE RESPONDENTS

TO

THE HON'BLE THE CHIEF JUSTICE AND HIS OTHER
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF
INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED:

MOST RESPECTFULLY SHEWETH:

1. This Writ Petition is being filed in public interest to highlight the gross violation of the fundamental rights of transpersons under Articles 14, 15, 16, 19 and 21 of the Constitution of India by the Transgender (Protection of Rights) Act, 2019.

- 1A. The Petitioner, Bidhan Baruah, resident of Pandu Cabin, near Rly B.G. Office, P.O.- Pandu, District- Kamrup (M), Guwahati, Assam, is an advocate by profession. Her e-mail address and her phone number are baruahbidhan2@gmail.com and +91 9678911371 respectively. The Pan number of the Petitioner is AWTPB6255B and the National Unique Identity Card number is 7891 5967 6638. The Petitioner has an annual income of Rs. 50,000/-, most of which is donated to the transgender community. The Petitioner has not moved the concerned Government Authority for relief in the instant petition.
2. The Petitioner is a transperson and a transgender rights activist and, therefore, has considerable experience of the issues that transpersons are faced with on an everyday basis. The Petitioner herein is the founder of All Assam Transgender Association. She has also been a part of one of the first transgender-rights litigations before the Hon'ble Bombay High Court being Writ Petition (LODG) No. 1092 of 2012. Further, the Petitioner had filed a Public Interest Litigation before the Hon'ble Gauhati High Court (being PIL 15/2017) praying for a direction against the State Government to implement the decision of this Hon'ble Court in NALSA. The State Government, in fact, constituted a core committee to implement the decision of this Hon'ble Court in response to the Public Interest Litigation filed by the Petitioner.
3. It is submitted that there is no civil, criminal or revenue litigation which involves the Petitioner with respect to the issues

raised in the instant Writ Petition. Further, it³ is respectfully submitted that the Petitioner has not approached the concerned Government with respect to the relief sought in the instant Writ Petition.

FACTS OF THE CASE:

4. The Preamble declares that the Constitution secures Liberty, Equality and Fraternity to the citizens of India. The guarantee of fraternity, in turn, assures the protection of the dignity of each individual citizen. Part III of the Constitution makes these guarantees effective by recognizing fundamental rights including the right to life, the right to equality and the prohibition of discrimination.
5. The Ministry of Social Justice and Empowerment had constituted an expert committee and authorized it to submit a report on Issues relating to Transgender Persons. The Report recognized the rights of transgenders to a limited extent. A copy of the Report dated 27/01/2014 of the Expert Committee of the Ministry of Social Justice and Empowerment is annexed herewith and marked as **Annexure P-1 (Page no. 14 to 202)**.
6. In 2014, this Hon'ble Court, in the NALSA judgment, declared that the continued discrimination against the transgender community in India is contrary to the Constitution. This Hon'ble Court recognized that gender identity is one of the most fundamental aspects of life and that every individual has a right

4

to self-identification of one's gender identity. This Hon'ble Court further expressly noted that depriving persons who are transgender of rights, benefits and privileges available to other persons in India is contrary to Article 14 of the Constitution. Further, this Hon'ble Court noted that the term 'sex' in Articles 15 and 16 of the Constitution includes gender as a distinct component. Thus, any discrimination against transgenders, the Court held, violates Article 15 and 16 which prohibit discrimination on the basis of sex. Most importantly, the Court noted that self-determination of gender is an integral part of personal autonomy protected under Article 21 of the Constitution. Further, the expression of one's self-identified gender is protected under Article 19 (1) (a). In furtherance of these declarations, this Hon'ble Court directed *inter-alia* the Central and State Governments to grant legal recognition to transgender persons and to take steps to treat them as Socially and Educationally Backward Classes of citizens for the purposes of reservation in educational institutions and in public employment. A copy of the judgment of this Hon'ble Court in *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 is annexed herewith and marked as **Annexure P-2 (Page no. 203 to 274)**.

7. Following the NALSA judgment, a private member's Bill titled 'The Rights of Transgender Persons Bill 2014' was introduced in the Rajya Sabha on 12/12/2014. The Bill was passed by the

Rajya Sabha on 24/04/2015. Despite the Bill⁵ being passed unanimously in the Rajya Sabha, Respondent No.1 took upon itself to pilot a fresh draft of the Bill incorporating the features of the private member Bill.

8. Following this, Respondent No.1 introduced the Transgender Persons Bill 2016 in the Lok Sabha. The Petitioners submit that this Bill was fundamentally flawed and had a set of provisions which were more likely to harm the interests of transgender persons.
9. The Bill was subsequently referred to the Parliamentary Standing Committee on Social Justice and Empowerment.
10. The Parliamentary Standing Committee laid a report before both the houses of Parliament pointing out several flaws in the draft Bill. It was pointed out that the Bill fails to guarantee the right to self-determination of gender. It was also pointed out by the Committee that the Bill lacks teeth in so much as there is no grievance redressal mechanism. The non-discrimination provisions, the provisions for health benefits, and the provisions for social empowerment and inclusion were all found to be inadequate. A copy of the Report of the Standing Committee dated 21/07/2017 is annexed herewith and marked as **Annexure P-3. (Page no. 275 to 403).**
11. The 2016 Bill was passed by the Lok Sabha with 27 amendments accepting some of the suggestions of the Standing Committee. However, the fundamental flaws at the

heart of the Bill remained and were left untouched by the Union of India.

12. The 2016 Bill lapsed on the dissolution of the Sixteenth Lok Sabha on completion of its term in 2019. The aforesaid Bill was introduced once again in Seventeenth Lok Sabha. The Bill was passed by the Lok Sabha on 05.08.2019. The Rajya Sabha passed the Bill on 26.11.2019 and received the assent of the President on 08.12.2019. A copy of the Transgender persons (Protection of Rights) Act, 2019 is attached herewith and marked as **Annexure P-4 (Page no. 411 to 411)**.

GROUND:

1. For that Sections 4 to 6 of the Transgender (Protection of Rights) Act, 2019 violate the right to life with dignity guaranteed under Article 21. The Act restricts the right of a transperson to self-identification of gender identity by making it conditional on a certificate issued by the District Magistrate. (*National Legal Services Authority v. Union of India* (2014) 5 SCC 438)
2. For that Sections 4 to 6 the Transgender (Protection of Rights) Act, 2019 violate Article 14 of the Constitution by making self-identification of gender of transperson subject to certification by the State. The prescription of this method is discriminatory as a non-transperson in India is not required to subject himself or herself to such a process for certification of gender identity.

3. For that Sections 4 to 6 of the Transgender (Protection of Rights) Act, 2019 is manifestly arbitrary as a District Magistrate (hereinafter DM) as there is no rationale in vesting the DM with such a power. The Petitioners submit that this provision of the Act is likely to lead to discrimination of transpersons. (*Shayaro Bano v. Union of India* (2017) 9 SCC 1)
4. For that Section 7 of the Transgender (Protection of Rights) Act, 2019 violate the right to life with dignity guaranteed under Article 21. In cases where a transperson undergoes a gender affirming surgery is required to be certified by a Medical Officer in addition to the DM.
5. For that Sections 4 to 7 of the Act constitute disproportionate interferences with the right to privacy of a transperson. The right to privacy in respect of gender identity and sexual orientation protects the most intimate sphere of a person's individuality and personhood. The scope for any interference by the State in this sphere is extremely limited. (*Justice Retd. KS Puttaswamy v. Union of India* (2017) 10 SCC 1)
6. For that the process of certification fails to pursue any legitimate state aim and hence is disproportionate. It cannot be said that the aim of the state is to give effect to the right to self-identification as the process in its very nature is state-identification of transpersons and not self-identification. The process of certification fails to pursue the legitimate state aim of giving effect to the right to self-identification.

7. For that the process of certification is not a suitable method of giving effect to the right to self identification. The means adopted in fact is completely contrary to the stated aim of giving effect to the right to self-identification.
8. For that the process of certification in the present case is unnecessarily invasive and fails to achieve a balance between the right in question and the state aim of effectuating self-identification. The method prescribed completely deprives transpersons of their right to privacy.
9. For that Section 3 of the Transgender (Protection of Rights) Act, 2019 is unconstitutional as it fails effectively protect the right against non-discrimination guaranteed by Article 15 and 16 of the Constitution. The Act fails to set out the consequences of violation of Section 3 thus falling short of being a guarantee against discrimination.
10. For that Section 17 which states that the National Council for Transgender Persons shall perform the function of redressing the grievances of Transgender Persons suffers from the vice of vagueness and arbitrariness. Further, Parliament, in doing so, has abdicated an essential legislative function.
11. For that the right against non-discrimination being a constitutional right, any violation of the same including a provision which gives effect to the same calls for a quasi-judicial determination of the violation of the right and its consequences. It is submitted that Parliament, despite the

question and the court which is referred to as a competent. The Petitioners submit that this section, as a result of its vagueness, is liable to be misused to the detriment of transpersons.

17. For that this Court in *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 expressly directed the Union and State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens for the purposes of reservation in educational institutions and in public employment. Section 14 of the Act on the other hand merely states that the appropriate Government shall formulate welfare schemes and programmes to support transpersons. The Petitioners submit that reservation being a facet of equality is a necessary measure that Parliament should have incorporated in the Act.
18. For that Section 18 of the Act is vague and arbitrary as it groups dissimilar offences including grave offences and prescribes a common penalty/punishment for the same.
19. For that Section 18 (1) (d) of the Act is completely arbitrary as it combines dissimilar offences. The provision attempts to punish "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". None of the provisions in this section is defined thus leaving the *actus reus* that is to be punished completely vague.

20. For that Section 18 permits the imposition of six months imprisonment for acts such as "endangering the life of a transperson" or sexually abuse of a transperson. It is submitted that the provision is completely arbitrary and irrational. The provision violates the right to life of transpersons by prescribing grossly inadequate punishment for heinous acts.
21. For that under Section 18 of the Act, the punishment prescribed is grossly inadequate. To further this contention, the Petitioner would like to rely on the various legislations which prescribe punishments for the offences made punishable under Section 18 of the Act. For instance, the punishment for bonded labour under the Bonded Labour System (Abolition) Act, 1976 is extendable to three years and also with fine. Similarly, while the punishment for offences such as rape against women are punishable with upto life imprisonment under the Indian Penal Code, Section 18 of the Act prescribes a mere six months to two years of punishment for sexual abuse against transpersons. This clearly indicates the discriminatory nature of the Act under challenge.
22. For that Section 15 the Act fails to guarantee the right to health of transpersons by merely requiring the provision of a comprehensive insurance scheme for transpersons.
23. That the present petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition.

PRAYER

12

In the above premises, it is prayed that this Hon'ble Court may be pleased:

- (i) To issue a Writ declaring the Transgender Persons (Protection of Rights) Act, 2019 as ultra vires the Constitution of India;
- (ii) to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL BE DUTY BOUND, EVER PRAY.

DRAWN BY: 06.12.2019

Shankar Narayanan, Adv.

FILED BY:

Place: New Delhi
Dated: 11.12.2019

RASHMI NANDAKUMAR
(ADVOCATE FOR THE PETITIONER)

IN THE SUPREME COURT OF INDIA ¹³
CIVIL ORIGINAL JURISDICTION

Sl. No. 8
Date. 05 DEC 20

WRIT PETITION (C) NO. _____/2019

IN THE MATTER OF

SWATI BIDHAN BARUAH

PETITIONER

VERSUS

UNION OF INDIA

.RESPONDENTS

AFFIDAVIT

I, SWATI BIDHAN BARUAH, D/o Supti Ranjan Baruah, aged about 27 years, R/o Pandu Cabin, Near Rly B.G. Office, P.O.- Pandu, District- Kamrup (M), Guwahati, Assam do hereby solemnly affirm and state as under:

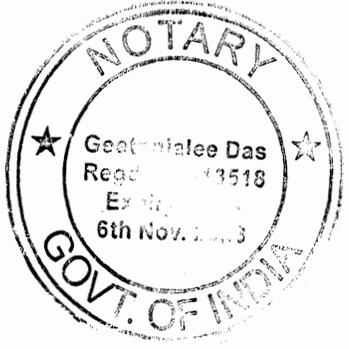
1. I am the Petitioner in the aforesaid matter and I am fully conversant with the facts and circumstances of the case and I am competent to swear this affidavit.
2. The contents of the synopsis from pages 13 to 14 and Writ Petition from pages 1 to 12 and I.A.s have been understood by me and I say that the facts mentioned therein are true to the best of my knowledge and belief.
3. The Annexures P-1 to P4 from pages 14 to 411 filed with the Petition are the true typed copies of its original.
4. I have no personal gain, private motive or oblique reason in filing the Public Interest Litigation.

Swati Bidhan Baruah
DEPONENT

VERIFICATION:

I the Deponent above named do hereby verify that the contents of the paras 1 to 4 of the aforesaid Affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified at Guwahati on this the 5th day of December, 2019.



[Signature]
Geetanjalee Das
Kamrup & Metro Guwahati
Regd. No.- 13518
GOVT OF INDIA

Swati Bidhan Baruah
DEPONENT

Solemnly affirmed before me this day, I Certify that I read over and explained the Contents to the declarant and that the declarant Seemed perfectly to understand them.

14 Annexure P-1

PREFACE

The problems being faced by the Transgender community have been brought to the notice of the Government in the recent past. In this regard, a meeting was organized by the Ministry of Social Justice & Empowerment on 23rd August, 2013 to discuss the issues relating to Transgender community such as social stigma, discrimination, lack of education, public health care, employment opportunities, issue of various government documents, etc. In this meeting, the representatives from State Governments, Transgender Community, University Professors, etc., were invited. It was suggested to constitute a Committee to study the problems of Transgender Community and suggest suitable measures to address them. Further, two Public Interest Litigations have also been filed, one in the Hon'ble Supreme Court of India and the other in High Court, Mumbai. Accordingly, the Government constituted an Expert Committee to make an in-depth study of the problems being faced by the Transgender community and suggest suitable measures to ameliorate them. An order for constitution of the Expert Committee on the issues relating to 'Transgender' was made on 22nd October 2013.

As per the terms of Reference, the Committee was given a time frame of three months to submit its report with effect from the date of its constitution. The Committee met four times i.e. on 6th November 2013, 29th November 2013, 3rd January 2014 and 21st January 2014 to discuss the issues. It also invited various other experts in the meetings as Special Invitees.

The Ministry acknowledges with gratitude the valuable suggestions and contributions made by the Committee Members and Special Invitees in the deliberations of the meeting and in the preparation of the Report. The report of the Committee is submitted to the Ministry of Social Justice & Empowerment on 27.1.2014.


[Anoop Kumar Srivastava]

Additional Secretary

M/o Social Justice and Empowerment

New Delhi

Dated: 27.01.2014

Report of the Expert Committee on the Issues relating to Transgender Persons

Process followed by the Committee in Submission of the Report

A consultation meeting on the issues relating to Transgender community was held in Shastri Bhawan on 23rd August, 2013 with a view to finding out the status and problems of Transgender community and to obtain the views of Transgender community, experts, researchers, concerned Central and State Governments and to find ways and means to mainstream the Transgender community. This meeting was attended by representatives from Central Ministries of Law & Justice, External Affairs and the Department of Aids Control, few State Governments, University Professors, NGO functionaries and Transgender community. Minutes of this meeting are at Annexure-1. In the meeting it was, inter alia, recommended to constitute a Committee to study the problems of the community. Concerned with the problems being faced by the Transgender community, the Department of Social Justice and Empowerment constituted this Expert Committee to make an in-depth study of the problems being faced by the Transgender Community and suggest suitable measures that can be taken by the Government to ameliorate their problems.

2. Ministry of Social Justice & Empowerment (MSJE) vide Order No.17-08/2013-DP-II dated 22nd October, 2013 (Annexure-2) constituted an Expert Committee on issues relating to transgender persons to make an in-depth study of the problems being faced by the transgender community and suggest suitable measures that can be taken by the Government to ameliorate those problems. The Expert Committee was required to submit its report with recommendations within three months of its constitution.

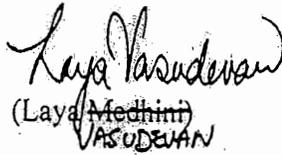
3. MSJE requested all State Governments and UT administrations to give their comments and suggestions on the issue by 22nd November, 2013. The comments and suggestions received from States/UTs have been consolidated and placed at Annexure-3. MSJE had also issued an advertisement in newspapers and also hosted it on the official website of the Ministry, inviting comments and suggestions from individuals, organizations and institutions by 22nd November, 2013. The comments and suggestions received from them have been consolidated and placed at Annexure-4.

4. The Expert Committee held four meetings on 6th November, 2013, 29th November, 2013, 3rd January, 2014 & 21st January, 2014. The minutes of the meetings held on 6th November, 2013, 29th November, 2013, 3rd January, 2014 and 21st January, 2014 are at Annexures 5, 6, 7 and 8 respectively.

5. The Chairperson of the Committee also made a visit to Chennai on 26th-27th November, 2013 and interacted with State Government officials and representatives of transgender community to get a first-hand account of the functioning of the Aravanis Welfare Board set up by the State Government. The minutes of the said meeting are at Annexure-9.

6. The report of the Expert Committee was finalized and approved by the Committee in its Fourth Meeting held on 21st January, 2014, and is appended.


(Ghazala Meenai)

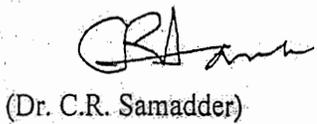

(Laya Medhini)
VASUDEVAN

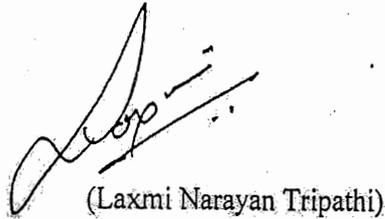

(Dr. Sanjai Bhatt)

(Dr. Rajesh Kumar)

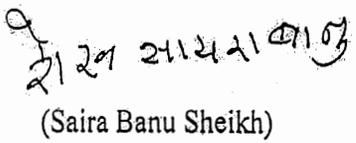

(Dr. Ketki Ranade)

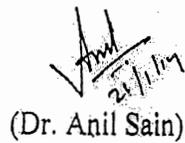

(Dr. Archana Dassi)


(Dr. C.R. Samadder)


(Laxmi Narayan Tripathi)

(Seeta Kinnar Bharti)

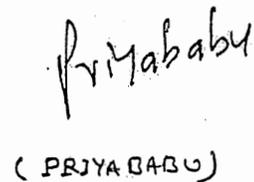

(Saira Banu Sheikh)

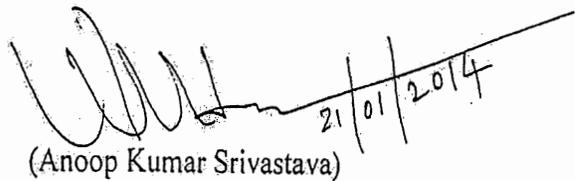

(Dr. Anil Sain)

(Naba Kumar Pal)

(Shanti Kumari)


(Dr. Venkatesan Chakrapani)


(PRIYABABY)


(Anoop Kumar Srivastava)
21/01/2014

17

Report of the Expert Committee on the Issues relating to Transgender Persons

Process followed by the Committee in Submission of the Report

A consultation meeting on the issues relating to Transgender community was held in Shastri Bhawan on 23rd August, 2013 with a view to finding out the status and problems of Transgender community and to obtain the views of Transgender community, experts, researchers, concerned Central and State Governments and to find ways and means to mainstream the Transgender community. This meeting was attended by representatives from Central Ministries of Law & Justice, External Affairs and the Department of Aids Control, few State Governments, University Professors, NGO functionaries and Transgender community. Minutes of this meeting are at Annexure-1. In the meeting it was, inter alia, recommended to constitute a Committee to study the problems of the community. Concerned with the problems being faced by the Transgender community, the Department of Social Justice and Empowerment constituted this Expert Committee to make an in-depth study of the problems being faced by the Transgender Community and suggest suitable measures that can be taken by the Government to ameliorate their problems.

2. Ministry of Social Justice & Empowerment (MSJE) vide Order No.17-08/2013-DP-II dated 22nd October, 2013 (Annexure-2) constituted an Expert Committee on issues relating to transgender persons to make an in-depth study of the problems being faced by the transgender community and suggest suitable measures that can be taken by the Government to ameliorate those problems. The Expert Committee was required to submit its report with recommendations within three months of its constitution.

3. MSJE requested all State Governments and UT administrations to give their comments and suggestions on the issue by 22nd November, 2013. The comments and suggestions received from States/UTs have been consolidated and placed at Annexure-3. MSJE had also issued an advertisement in newspapers and also hosted it on the official website of the Ministry, inviting comments and suggestions from individuals, organizations and institutions by 22nd November, 2013. The comments and suggestions received from them have been consolidated and placed at Annexure-4.

4. The Expert Committee held four meetings on 6th November, 2013, 29th November, 2013, 3rd January, 2014 & 21st January, 2014. The minutes of the meetings held on 6th November, 2013, 29th November, 2013, 3rd January, 2014 and 21st January, 2014 are at Annexures 5, 6, 7 and 8 respectively.

5. The Chairperson of the Committee also made a visit to Chennai on 26th-27th November, 2013 and interacted with State Government officials and representatives of transgender community to get a first-hand account of the functioning of the Aravanis Welfare Board set up by the State Government. The minutes of the said meeting are at Annexure-9.

18

6. The report of the Expert Committee was finalized and approved by the Committee in its Fourth Meeting held on 21st January, 2014, and is appended.

(Ghazala Meenai)

(Laya Medhini)

(Dr. Sanjai Bhatt)

(Dr. Rajesh Kumar)

(Dr. Ketki Ranade)

(Dr. Archana Dassi)

(Dr. C.R. Samadder)

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(Seeta Kinnar Bharti)

(Saira Banu Sheikh)

(Dr. Anil Sain)

(Naba Kumar Pal)

(Shanti Kumari)

(Dr. Venkatesan Chakrapani)

(Anoop Kumar Srivastava)

Minutes of Consultation meeting on the issues relating to Transgender held on 23rd August 2013 at conference Hall, Central Secretariat Library, G Block, Shastri Bhawan, New Delhi.

Ministry of Social Justice and Empowerment (MSJE), Government of India organized a consultation meeting on the issues relating to Transgender (TG) on 23rd August 2013 in the Conference Hall, Central Secretariat Library, G Block, Shastri Bhawan, New Delhi, with the objective of finding out the status and problems of transgender community and to obtain the views of TG Community, experts, researchers, concerned Central and State Governments for mainstreaming the transgender community. Meeting was attended by representatives from Central Ministries of Law and Justice, Health and Family Welfare, External Affairs etc, concerned State Departments, University Professors, NGO functionaries, Transgender community leaders etc. The list of participants is at Annexure-I.

Shri Anoop Kumar Srivastava, Additional Secretary, MSJE welcomed all the participants and gave his key note address. He mentioned that the Ministry was organizing this consultative meeting on transgender for the first time. He further added that the Ministry had been receiving the information pertaining to these groups but wanted to get better educated on the issues by listening to the representatives of TG community and subject experts. He emphasized that the Ministry was committed to improve the condition of Transgender and this meeting was an important step in this direction. He requested the participants to share their views and inputs on what can be done for the welfare of the community.

Shri T.R. Meena, Joint Secretary (SD) informed that MSJE had been designated as the Nodal Ministry for TG with effect from July 2012 and had taken other ministries/departments on board. He pointed out that MSJ&E will coordinate with other Ministries and Departments to mainstream them. He mentioned that in olden days, TGs used to be considered a divine creation. Today they are, however, highly marginalized population. They live their life in difficult conditions and face stigma in their day to day life. The Ministry was committed to change the mindset of general public favorable to TG community. Further, he informed that Govt. of Sikkim, Rajasthan and Tamil Nadu provide pension to TG community people. Rural Ministry employs them under Rajiv Awas Yojana. He further emphasized that there are many issues and problems faced by them but some issues need immediate intervention like enumeration, health, employment, identity etc and MSJE had taken up the matter with the concerned Ministries and Departments for appropriate intervention.

20

Shri Balkrishna Shukla, M.P, Rajya Sabha, New Delhi expressed that MSJE had responded well by initiating the developmental measures for the welfare of the Transgender Community. He further stated that he had taken up the matter of the community including the issue of 'other' column in the electoral roll with Prime Minister. He stated that political will was essential for development of programs and policies for the community. He assured the participants, specially the community representatives that he is committed to the cause of the community and will continue to raise the issues of Transgender in political forums.

Shri G.P. Upadhyaya, Principal Secretary, Govt. of Sikkim pointed out that the State had formulated an appropriate definition of Transgender and a special Committee on Transgender had been constituted in Sikkim state. He stated that a Medical Certificate was enough to have access to programmes of the State Government. Further, the State had started a pension scheme and other welfare measures for the community. The State has also constituted a medical board to verify the status of Transgender to make them eligible for the schemes.

Ms. Laxmi Narayan Tripathi, Mumbai pointed out that Thailand is a model country wherein all the required facilities are being made available to the Transgender Community. Further, she suggested for the establishment of a Commission on Transgender and protection of Transgender culture. She strongly recommended that the nodal Ministry should coordinate with all the State Governments and departments to integrate them into the Society.

Ms. Sairabanu said that most of the Transgender are poor and illiterate and Govt. of India is the only source for the rehabilitation and upliftment of Kinnar community. Government should take housing and health measures for the welfare of Transgender Community. Tamil Nadu Govt. has a provision of Rs. 2000/- per month for every Transgender.

Ms. Rani Patel, representing Aarohan, said that Arohan is running programmes for under privileged children and has conducted many Studies on Transgender Community. She suggested that parents of the Transgender need to be counseled appropriately in order to treat Kinnar children at par with other normal children. She also added that vocational training may be imparted among the Kinnar Community in order to enable them to lead a life worth living. She further suggested that the Educational facilities should be extended to the Kinnar Community.

21

Ms. Kamla Mausi, representing TG from Mumbai, stated that 'Hijra' community is facing discrimination and stigma in every sphere of life. She stated that discrimination starts from the family and continues for the entire life. Taking corrective actions and sensitizing the society and family would be a great contribution to the community's cause. She suggested setting up a 'Hijra' Welfare Commission on the lines of the Commission for SCs & OBCs.

Ms. Shabnam Mausi, a senior community leader from MP, highlighted the plight of 'Hijra'/TG community. She stated that most families do not accept if their male child starts behaving in ways that are considered feminine or inappropriate. After rejection by their family, they lose their identity and face many challenges and live their entire life in fear of discrimination and stigma, but a Guru or Nayak gives them protection and shelter. She suggested that the Gurus of Transgender be recognized as guardian and be given more power.

Ms. Sita from Kinnar Bharti, Delhi raised the problems of violence and harassment and torture of Transgender by police. She stated that stakeholders and community should be careful as some people with criminal behavior change their dress and pose themselves as 'Hijra', thus maligning the image of their community.

Ms. Mridu, Technical Officer, Department of AIDS Control, NACO informed about the initiatives taken by NACO. She stated that sentinel surveillance reports of NACO revealed high level of HIV prevalence in the community. As a result, NACO has designed exclusive intervention for the 'Hijra'/TG community.

Ms. Shabnam Mausi expressed that in addition to problems of identity proof and hindrances, the community faces police atrocities. Authority should be given to Transgender Gurus for authorizing them to identify the community members to enable them to get identity document as they don't have Birth/Father/Mother Certificates etc. She requested all to have a positive attitude towards the Community.

Shri Anoop Kumar Srivastava, Additional Secretary (SJE) intervened and informed that as per information provided by the Election Commission of India, the Commission had already issued directions under provisions of Rule 4 of the Registration of Electoral Roll, 1960 that in Forms (Form 6, 7, 8) relating to enrolment in the electoral roll, eunuchs/transsexual may include their sex as 'other' where they did not want to be described as male or female. Further, the Election Commission had directed the Chief Electoral Officers of all States/UTs to make necessary modifications in the form of Electoral Roll and all the forms relating to enrolment. As per the final electoral roll, with reference to 1st

22

January, 2012, as the qualifying date, there were 11601 electors who had been enrolled under the 'other' category. All such persons enrolled in the 'other' category are also entitled to get the elector's photo identity card.

Ms. Abhina stated that the transgender face the problem of unemployment even after proper education. Further, she said that average cost of living for Transgender is 3 times higher than the male or female. She suggested there should be Welfare Board for TG population in each State and cited the example of Tamil Nadu. She suggested that actual population should be identified and accordingly welfare measures should be planned. The concept of Transgender should cover all categories of people such as female to male, male to female, etc.

Ms. Simaran Sheikh requested the Ministry to identify and enumerate Transgender Population to have an authenticate data. She informed that UNDP has some data on Transgender which is more authentic but not complete and same can be used for planning welfare schemes.

Ms. Akriti Patel, Transgender, Gujarat informed that in the Govt. hospitals there are only male and female wards but there is no separate ward for the Transgender Community. Further, the Govt. hospitals should have medical facilities for Transgender Community for undergoing feminization treatment. The Transgender people are also interested in pursuing their studies in the arts and classical dance but they are denied admissions which must be rectified.

Ms. Kinnar Madhvi, Transgender, Gujarat informed that in the absence of any employment for Transgender, they turn towards begging for living. She said that the Kinnar Community craves recognition of their identity and emphasized that parents should take care of their Kinnar Children and when the parents are aged, the Kinnar will take care of them.

Ms. Rudrani pointed out that there should be toilet facilities for transgender in schools, colleges and hospital wards. Further the Policy Makers should treat Transgender Community at par with other people, and the society has to change.

Shri C.S. Randev, CPV Division, MEA, informed about the documents required by MEA for issue of passport. He said that they have the provision of third gender in their software and can be incorporated provided it is demanded by the concerned beneficiaries and

23

approved by the competent authority. At the same time he insisted that the passport cannot be issued unless certificate for age and address is produced. He further added that police verification and affidavit would also be the choices for consideration of address proof in near future. However, he did not agree with the suggestion to accept the Gurus' recognition or certification for age.

Shri Sylvester Merchant, Project Manager, Lakshya, Gujarat suggested that research and documentation need to be carried out on transgender and name of Kinnar should be replaced by a Holy name.

Asstt. Director, Deptt.of Social Welfare Govt. of Delhi informed that Transgender Community are eligible for old age pension of Rs. 1000/- per month in Delhi State. She stated that the scheme will help recognize the community as a beneficiary in other schemes of the government.

Shri Raj Sarvanakumar, Joint Director, Dept. of Social Defence, Govt. of Tamil Nadu informed that Tamil Nadu Govt. had established Aravanis Welfare Board and identified 4294 Kinnars. The Board has distributed ID cards to 3328 aravanis so far and Ration Cards have been issued to 1544 Transgender, House Patta issued to 1053 Transgender, and tailoring machines distributed to 102 Transgender, Insurance Certificate given to 660 Transgender Community people so far. Self Help Groups have also been formed and Rs. 154 lakhs so far have been given as loan to SHGs. Further, 20% subsidy also has been given to this loan amount.

Ms. Shomita Biswas, Member Secretary, State Women commission, Dept. of Women and Child Development, Govt. of Maharashtra informed that her Department had organized a Consultation Meeting to bring to the knowledge of Govt., marginalization of this group i.e. Transgender Community. Also Mahila Policy is in the pipeline which covers the issues of sexual workers and Transgender. Further, she said that proposed policy include components like ID Cards, health measures, shelter facilities and establishment of SHG Group.

Shri Piyush Saxena, representing Salvation of Oppressed Eunuch, Mumbai gave a historical perspective of the issue. He informed about his PIL and other follow up actions which led to create an enabling environment for the community. He highlighted that census exercise had not given the correct estimation. There are various flaws in sample methodologies. There was no orientation of enumerators about the community which resulted

24

into underestimated figures. He informed that the Election Commission had already issued a notification regarding relaxation in the matter of date of birth, address proof and parents' name.

At the end of the Meeting, Additional Secretary, Ministry of Social Justice & Empowerment summed up the deliberations and following observations were made:-

Suggested steps/Key Recommendations

- It was suggested to constitute a Committee to study the problems of the community and suggest, within a specified time frame, suitable measures to address them. The Committee should be properly represented by the community.
- Passport authorities and Election Commission may consider replacing the existing column of 'other' by the term 'Transgender Gender'. These authorities should also consider accepting their existing residence for the address proof and Gurus as their parents. This suggestion was made by the representatives representing the TG Community.
- Sensitize police about the human rights abuse of the TG community and take appropriate steps to stop abuse, and consider creation of special cell for this purpose.
- To customize intervention in health prevention and issues like Sexual and Reproductive Health (SRH), Sex re-assignment Surgery (SRS). Train and sensitize public health care providers on SRS and other health issues and provide community friendly services free of stigma and discrimination.
- There should be a special exercise to obtain the correct estimate of the population of the community. The community should be involved in this exercise.
- District authorities should be advised to protect the community from harassment. Advocacy with police and other law enforcement agencies should be done to address the issues of harassment, violence and other crisis.
- The Government should take steps to sensitize the general community so as to create a supportive and enabling environment for the TG community.
- The Transgender community should be involved in designing any programs and interventions for the community.
- MSJE should take up research studies to generate more evidence to design the programs and interventions for the community.
- MSJE should compile the existing experiences /interventions taken by many States like Tamil Nadu, Maharashtra, Sikkim, and Delhi etc.

25

- Address the social needs of Transgender including housing and employment needs. There should be a focus on establishing linkages with livelihood programs, literacy program and other development programs like Rajiv Gandhi AwasYojna, Indira AwasYojna and other schemes of MSJE for needy persons from TG community. MSJE should take efforts to make these social welfare schemes more accessible to the community.

List of Participants

I. Lok Sabha

1. Shri Balkrishna Shukla, M.P, Lok Sabha, Vadodara

II. Central Government

1. Shri Anoop Kumar Srivastava, Additional Secretary, Ministry of Social Justice and Empowerment, Govt. of India.
2. Shri T.R. Meena, Joint Secretary, Ministry of Social Justice and Empowerment, Govt. of India
3. Shri J.C. Sharma, Legislative Department, Ministry of Law and Justice, Shastri Bhawan, New Delhi.
4. Shri C.S. Randev, Litigation Consultant, MEA, Patiala House.
5. Shri Sandeep Gupta, Director, National Institute of Social defence, New Delhi
6. Shri Surendra Rawat, Deputy Secretary (SD), Ministry of Social Justice and Empowerment, Govt. of India
7. Dr. R. Giriraj, Deputy Director, NISD, Ministry of Social Justice and Empowerment, Govt. of India
8. Dr. Mani Lal & Ms. Midhu Maken, Dy. Director General, TI Division, NACO

III. State Governments

9. Shri G.P. Upadhyaya, Principal Secretary, Social Justice & Empowerment Dept. Govt. of Sikkim.
10. Smt Shomita Biswas, Member Secretary, Maharashtra State Commission for women, Woman and Child Development Dept, Govt. of Maharastra, Secretariat, Mumbai.
11. Shri Raj Saravanan, Joint Director, Dept. of Social Defence, Govt. of Tamil Nadu, Central Secretariat, Chennai.
12. Mr. Vimal Kumar Sharma, Joint Housing Commissioner, Meerut.
13. Ms. Renu Love, Assistant Director, Dept. of Women & Child Development, Delhi.
14. Ms Anjali, Welfare Officer, Delhi

IV. Transgender Experts.

27

15. Ms Seeta, Kinnar Bharati , 2363 IInd Floor Jivan Building Opp. Metro Pill No.218 Main Road West Patel Nagar, New Delhi-110008.
16. Shri Amit Kumar, Nipun, GH-5 & 7/883, Paschim Vihar, Delhi-87.
17. Ms Rani Patel, Aarohan, B-127, Malviya Nagar, New Delhi-17
18. Ms Laxmi Narayan Tripathi, Mumbai, Subject Expert
19. Sh Sylvester Merchant, Project Manager, Lakshya, Gujrat
20. Sh Manvendra Singh Gohil, Chairperson, Lakshya Trust, Gujrat
21. Sh Abhina Aher, Programme Manager, Pehchan, N.D
22. Ms Simran Sheikh, Transgender.
23. Ms Sheikh SairaBanu, Transgender.
24. Su. Sh. Shabnam Mausi Ji, Transgender, Chetna, Madhya Pradesh
25. Su. Sh. Kamla Bua Ji, Transgender, Nagar Nigam Itwari District, Madhya Pradesh.
26. Ms. Akriti Patel, Transgender, Gujarat.
27. Ms. Kinnar Madhvi, Transgender, Gujarat.
28. Sh. Y.D. Ahire, Salvation of Oppressed Eunuchs
29. Ms. Meena Malhotra, Salvation of Oppressed Eunuchs
30. Sh. K. Narayana, Salvation of Oppressed Eunuchs
31. Ms. Swati, Salvation of Oppressed Eunuchs
32. Sh. Shashi Sahai, Aarohan
33. Ms. Mridu Markan, Department of AIDS control
34. Sh. Yushant Kashta, Naya Nigar Sagar
35. Sh. Vijay Singh, Nipun
36. Ms. Rudrani Chettri
37. Sh. Atharv Nar, Astitva, Mumbai
38. Md. Aslam Naved, Dept. of Adult Continuing & Extension Education

39. S.P. Saxena, Ex IoFS

28

V. University Professors

40. Dr. Archana Dassi, Associate Professor, Dept. of Social Work, Jamia Milia Islamia University, New Delhi.

41. Prof. Indrani Mukharji, Dean of Social Sciences, Centre for Spanish Language, Faculty of Social Science, JNU, JNU Campus, New Delhi.

42. Dr. Rajesh Kumar, HoD, Dept. of Distance & Continuing Education, Faculty of Social Science, Delhi University.

VI. Other Experts

43. Dr. Piyush Saxena, Salvation of Oppressed Eunuchs, Mumbai

29

Annexure-2

No.17-08/2013-DP-II

Government of India

Ministry of Social Justice & Empowerment

Shastri Bhawan, New Delhi

Dated 22nd October 2013.

ORDER

Subject: Constitution of an Expert Committee on the issues relating to 'Transgender'.

The problems being faced by the Transgender community have been brought to the notice of the Government in the recent past. Two Public Interest Litigations have also been filed, one in the Hon'ble Supreme Court of India and the other in High Court, Mumbai. A meeting was organized by the Ministry of Social Justice & Empowerment on 23/8/2013 to discuss the issues relating to Transgender community. The Government have decided to constitute a Committee to make an in-depth study of the problems being faced by the Transgender community. The composition of the Committee will be as follows:

- | | | |
|-------|---|-------------|
| (i) | Additional Secretary, Department of Social Justice & Empowerment | Chairperson |
| (ii) | Dr. Sanjai Bhatt, Professor, Delhi School of Social Work | Member |
| (iii) | Dr. Rajesh Kumar, HoD, Deptt. of Distance & Continuing Education, University of Delhi | Member |
| (iv) | Dr. Ketki Ranade, Professor, Tata Institute of Social Sciences | Member |
| (v) | Dr. Archana Dassi, Associate Professor, Department of Social Work, Jamia Milia Islamia University | Member |
| (vi) | Dr. C.R. Samadder, I.A.S. (Retd) Former Principal Secretary Govt of Assam | Member |
| (vii) | Dr. Fatima Vasanth, Principal Cum Secretary, | Member |

30

Madras School of Social Work

- | | | |
|---------|--|------------------|
| (viii) | Professor Dipesh Chandra Nath, D/o Applied Psychology,
Kolkata University, 92, A.P.C. Road, Kolkata | Member |
| (ix) | Ms. Laxmi Narayan Tripathi, Consultant, UNDP | Member |
| (x) | Ms. Priya Babu, No-153, Nagaraniillam, 6th West Extn
Krisnapuram colony, Madurai (TN) | Member |
| (xi) | Ms. Seeta Kinnar Bharti, 2363, IInd Floor, Jivan Building,
Opp Metro Pillar no. 218, West Patel Nagar, N. Delhi-8 | Member |
| (xii) | Ms. Saira Banu Sheikh.5/1202, NRI Complex, Nerul (West)
Navi Mumbai- 400706 | Member |
| (xiii) | Representative of Ministry of Health & Family Welfare | Member |
| (xiv) | Representative of Ministry of Home Affairs | Member |
| (xv) | Representative of Ministry of External Affairs | Member |
| (xvi) | Representative of Ministry of Human Resource Development | Member |
| (xvii) | Representative of Ministry of Rural Development | Member |
| (xviii) | Joint Secretary (SD) | Member-Secretary |

2. The Chairperson of the Committee may nominate any other Member to chair the meeting during his absence. He will also be authorized to invite any other expert in the field or representative of any other Ministry/Department of the Government of India or State Government to the meeting, for seeking their views and suggestions.

3. The Terms of Reference of the Committee will be as follows:

"The Committee shall make an in-depth study of the problems being faced by the Transgender community and suggest suitable measures that can be taken by the Government to ameliorate their problems. The Committee shall submit its report with recommendations within three months of its constitution".

31

4. TA/DA: The meetings of the Committee shall be held in New Delhi. The non-official members will be allowed TA/DA equivalent to the entitlement of Group "A" officers of the Government of India in the Grade Pay of Rs.5400/- as per relevant rules and instructions of the Government.

Secretarial assistance to the Committee will be provided by the NISD.

Sd-

(T.R. Meena)

Joint Secretary to the Government of India

To:

1. AS (SJ&E)
2. All members of the Committee
3. Secretary, Ministry of Health & Family Welfare: for nominating a representative not below the rank of Deputy Secretary.
4. Secretary, Ministry of Home Affairs: for nominating a representative not below the rank of Deputy Secretary.
5. Secretary, Ministry of External Affairs: for nominating a representative not below the rank of Deputy Secretary.
6. Secretary, Ministry of Human Resource Development: for nominating a representative not below the rank of Deputy Secretary.
7. Secretary, Ministry of Rural Development: for nominating a representative not below the rank of Deputy Secretary.
8. Director (NISD)

Copy for information to:

1. PS to Minister (SJ&E)
2. PPS to Secretary (SJ&E)

Comments received from various States/UTs on Transgender Issue:

1. Rajasthan Govt.

Provision to provide the benefit in the pension schemes is available to transgender by state Govt. Besides, those TGs who want to live in old age homes are given shelter in old age homes. They are also given benefits in the states schemes like allotment of house/ land.

2. UT Administration of Dadra & Nagar Haveli

There is no facility/concession/benefit etc. available for transgender community in Dadra & Nagar Haveli.

3. Govt. of Kerala

There are no officially identified transgender in the state. No programme or scheme targeting the transgender community is being implemented in the state.

4. Govt. of Manipur

Instruction for survey of TG with in the state has been issued. The survey is yet to be completed. No benefits, facilities, concessions etc. have been extended to the transgender community by the State so far

5. Govt. of Mizoram

There is no transgender community in the state of Mizoram. Hence, the Government of Mizoram has no comments/suggestions to offer .

6. Suggestions given by the Govt. of M.P.

- Transgender should be defined under particular sex for social respect.
- Special school should be established for Kinnar and provision of free education from 1 to 12 std.
- Scholarship schemes for Higher Education should be effective for Transgender with the help of Central and State Govt.
- Transgender should be included under the National urbane housing schemes and Indira Gandhi rural housing schemes on the priority basis
- There should be provision of employment
- Benefit of reservation should be provided in 3rd and 4th grade administrative services.
- Government of India should declare special central Helping Programmes for this Group

“Kinnar Diwas” should be declared once in year to give them respect and recognition.

7. Govt. of Gujarat

- It is important to bring them into the mainstream of society by making them live with their parents and community.
- Transgender should be included in definition of Child given under the Juvenile Justice (Care and Protection of Children). Hence, the definition includes Boy, Girl or Transgender.

Action should be taken to provide counseling services to Transgender Children under the Integrated Child Protection Schemes.

8. Government of NCT of Delhi

- The Government of NCT of Delhi is in the process of launching a scheme of Financial Assistance of 1000/- per month to the Kinnars who are living in Delhi at least for 3 years. Food subsidy for Rs 600/- per month has already been started under Dilli Annashree Yojna. The targeted intervention programme to deliver HIV counseling & testing through 8 projects are operational in Delhi to cover 5200 TG persons.

9. Chandigarh UT Administration

There is no scheme for the benefits of TG in the state.

10. Government of Haryana

- Transgender Community should be covered under any pension scheme so that they can get any benefit.

34

Annexure-4

Compilation of comments/suggestions received on Transgender Issue

1. Shri M.P. Bhardwaj, Retd. Joint Director, Rajya Sabha Secretariat-

- Appropriate intervention by the Govt. of India.
- Census/population enumeration of Transgender people.
- Registering and Issuing Identity Cards to Transgender people.
- Rehabilitation and financial assistance to Transgender People.
- Including Transgender people in Persons with Disabilities (PwD) Category.
- Reservation in Education and Employment.
- Special Grievance Redressal Cells for their protection.
- Creating awareness.

2. Shri K.K.Sharma, President of a N.G.O, New Delhi –

- Special facilitation may be extended by MoH&FW as given to Persons with Disabilities. That includes sex complications.
- Reservation at par with above category in Education & Govt. Jobs
- Law should be accommodated in the matter of dishonor comments and molestation if any.
- Categorization of Transgender as per their body frame with percentage of Male or Female bend.

3. Ms. Sandhya Sinha, Citizen

- They can be employed as guards in security agencies & for VIP covers
- Sensitizing the masses of their problems. An Awareness drive is must.

4. **Shri Arvind Gupta, Citizen-**

35

Bringing transgender into the mainstream of Society

5. **Ms. Ranjita Sinha, Association of Transgender & Hijra (ATHB)**

- State Govt. to take steps to ensure separate recognition for transgender in the areas of social entitlements like passport, driving license, bank account and enforce legal actions in the matter of family inheritance of property and assets.
- Health Services should be provided like Govt. Hospitals, Shelter homes and rehabilitation centers etc.
- The Govt. of West Bengal has taken initiative to open shelter homes for senior Female Sex Workers (FSWs) and have already identified a first cut number of those aged sex workers who need to be rehabilitated life long. Similar initiative needs to be taken for the Transgender and Hijras also as they are also marginalized as FSWs.

6. **Ms. Pooja Aggarwal, Citizen**

Transgender must get equal rights like any other male or female.

7. **Shri M.K.Pande, Citizen**

- Integration in Society
- Vocational Training for adults in Transgender Community
- Provide Reservation for TG Community in Central & State Govts. Job
- Provide self-employment opportunities

8. **Mr. Aslam, Citizen**

Size Estimation and Risk Profile of Hijras and Transgender (TG) Population in Delhi

9. **Shri Hari Shankar Sharma, Citizen**

- Imparting training in food preparation
- Imparting training in decoration
- Imparting training in driving

- Imparting training in dancing
- Imparting training in hotel reception/aasha worker/child development deptt/education/teaching/she taxi driver-all female taxi as is done in Kerala

10. Shri K.K. Sharma, Vidrohi, Kullu, H.P Citizen

Mixed breed marriages of Father-Mother or Mother Father relations must be encouraged/promoted by honoring with cash prizes or prosperous Standard of Living. There off-springs must be provided with free education, noble employments and professions and avocations.

11. Prof. Dr. M. Manoharan, Abirami Kamadhenu Medical Trust

- Identify the cause and the period during which a person transforms into the stage of Thirunangai (Transgender) in order to avoid such occurrences.
- As and when it comes to the notice of the count (Census) or any other institution, the transgender must be included in the count.
- Depending upon the age, they should be given proper education, vis. Technical, non-technical, Skilled & Semi-skilled.
- Employment for Transgender People for ensuring an independent life to them.

Social Status and enactment of safeguards for them to prevent name callings.

12. Shri Gurdial Sahota, Ludhiana

Proper Urinal/Latrine facilities should be provided.

13. Shri Subhash Chandra Agrawal, Delhi Citizen

- National Eunuch Commission should be constituted. Govt. should announce unrestricted admission to any educational institution (Private or public) for free education to eunuchs without needing any reserved quota.
- Criminal action should be taken against those parents who may disown transgender child. Eunuchs forcing parents to part away with transgender children should likewise be arrested and punished with stringent most framed legal provisions.

37

Not only Eunuchs should be given priority and reservation in government jobs, but also private institutions giving employment of eunuchs should be encouraged by providing special subsidy on wages paid to eunuchs by private establishments. Some seats should be reserved for eunuchs in legislature and in public-sector jobs.

14. Dr. Jacob John, Director, Kerala Development Society, Delhi

- Benefit of Govt. Programme to Transgender Community: Members of the community should be allowed to participate in economic and social platforms just the way other male or female do.
- Local Government/Panchayat and Transgender Community: Possible ways of their representation in local self-Government (elected representatives from this group) like the Government of Tamil Nadu established a Transgender Welfare Board in April 2008.
- Education: The major programmes aiming at universalization of education (such as Sarva Shiksha Abhiyan) and higher education should have a separate entitlement for this group.

Study on Transgender Community: The individuals belonging to third gender are generally not highly educated or uneducated and consequently find it difficult to get jobs. Most employers deny employment for even qualified and skilled transgender people. The encouragement to commence their own entrepreneurial entities (under Small Scale Industries or others) can provide great benefits for their independence.

15. Shri Sylvester Merchant, Lakshya Trust, Baroda

- Sensitizing Police regarding the issues and problems faced by the Transgender Community.
- Sensitizing doctors and staff at Hospitals to prevent Psycho-social harassment & discrimination.
- Providing reservations in jobs
- Transgender should be counted in population census
- Property rights should be given to them
- PAN Card, Aadhar Card, Ration Card must have Transgender column
- Transgender Welfare Board should be made and insurance and medi-claim facilities must be extended
- Transgender chowky should be made in each area so that proper security is provided to them

- Prevention of trauma, violence, physical torture, emotional harassment by society
Awas yojna benefit should be extended to Transgender Community.

16. Ms Kalki Subramaniam, Founder, Sahodari Foundation:

Transgender people should have:

- The right to be treated fairly with compassion and free from unjust treatment, cruelty, discrimination, and exploitation in all private & Govt. institutions and other entities.
- The right to be recognized as a marginalized group thus appropriate representation be afforded to transgender in all Government instrumentalities and all other groups & organizations whether local or international.
- The right to be given equal opportunities in employment as transgender.
- The right to participate in all socio-economic, political & cultural activities, programs & services that directly concern and affect us.
- The right to build a family and home without prejudices and biases.
- The right to form and organize groups to freely redress their grievances against the government and other institutions without fear of being imprisoned or killed.
- The right to adequate access to health care and support, appropriate information and attain the highest standard of sexual and reproductive health.

The right to bodily autonomy and to decide freely the matters concerning their health and reproduction that is free of discrimination, coercion, violence and deceit.

17. Shri Yashpaul, Punjab (Resume attached), Citizen

- Separate special schools, colleges, higher educational institutions may be constructed to educate them.
- Rules must be framed so that no one may call them in any disrespectful way
- They must be provided opportunities for better education, for this some schemes may be announced for their social as well as economic development.

Development in all respects including social development.

39

18. Mr. E.Venkatesh, Citizen

Establishing platform for political entry of TGs.

19. PAHAL Foundation Khanpur New Delhi

- Education system needs to be strengthened with school and college administration need to be sensitized on issues of stigma.
- Child protection laws need to be strengthened by adding issue faced by Transgender adolescents.
- Law enforcement agencies including police need to be sensitized on issues of trans-people to end their harassment and discrimination.
- Procedures of change of sex and gender identity on ids need to be simplified. Adequate resources need to be provided in public health system for trans-people who wish to undergo Sex Re-assignment Surgery.

20. Jindal Global Law School O.P. Jindal Global University

The gender column in govt. identity card forms should be left blank so that people may fill in the gender they identify with.

A person should not be required to go under Sexual Reassignment Surgery in order to identify as a different gender.

- Welfare schemes applicable in each state should cater to the category of "Gender Minorities".
- There should be a Transgender Welfare Board in every state.
- There should be compulsory sexuality/gender education at grade school and at college level. School syllabus must be modified to include education on LGBTI persons. Introduction of scholarships for gender non-conforming persons at state and national ..
- Gender non- conforming persons should have access to vocation training, formal education, and scholarships and access to subsidized govt. loan or bank loan to start their business.
- Housing and Land allocation schemes for gender non-conforming persons should be effective.
- Sexual harassment mechanisms should be gender neutral and domestic violence based on gender should be recognized as a separate offense.

40

- The parliament should pass an Anti-Discrimination Bill that penalizes discrimination and harassment on the basis of gender.
- There should be free or subsidized access to sexual reassignment services and should include pre and post-operative treatment.
- Gender non-conforming persons should have the right to adopt children, marriage as well as divorce.

21. LABIA Stree.sangam@gmail.com

- The state must be supportive in various ways when it comes to enabling each person to live in accordance with their gender.
- State subsidies must be available for Gender- related medical interventions.
- Anti -discrimination laws are needed to safeguard the basic citizenship rights of Transgender persons. Various stakeholders within the protection of Women from Domestic Violence Act, 2005 should be sensitized to issues faced by transgenders.
- Teachers, and administrators needs to be sensitized to issue faced by gender transgressive children and sexuality education being made accessible to all schools
- There needs to be a deregulation of gender within the school structure.
- The choice of attire, playing a certain game or participating in a certain activity must be left to the individual regardless of gender.
- Doctors and health care providers must be responsive to the specific needs of all Transgender persons. Sensitization campaigns for counselors, psychiatrists and other mental health professional should be developed
- When people access gender segregated spaces like malls or airports, or public transportation such as buses and train, etc allowed to choose which section/line/ queue to be part of irrespective of the gender assigned to them at birth.

22. Shri T.D. Sivakumar, Founder and Board Member, Nirangal, C/o SIAAP, Chennai

- Family acceptance shall be given to change their lifestyle.
- National Level Commission exclusively for transgenders with their participation in it.
- Monitoring the drop- outs of community people in all education level and need to encourage them for further study by providing support in monetary aspects

41

- Need better laws to protect them from family especially at the adolescent stage.

23. Thakur Rajpal Singh Rastriya Social Progressive Movement President, Ghaziabad

A Certain amount should be fixed for Hijras community to improve their social and economic condition.

24. Sanya, Research Scholar

- Social attitude is the most important factor which needs to be considered in this regard. To make a change in social attitude the best method is through religious institution because religious institution can influence the mind of people easily. as pope, for gays recently mentioned statement like "churches should be home for all."
- They should be given equal status and rights according to law like voting, govt. jobs etc. Once such status is given, with the time, society will also accept them accordingly.
- There should be some strict laws against their discrimination.
- They should be taught equally in the schools and other institution.
- NGO's should also participate for welfare programmes.
- There should be policies meant for their welfare like health, education, jobs etc.
- There should be comprehensive sex education programmes in schools, vocational training centres, access to free and concessional housing schemes and free sex realignment or reconstruction surgery (SRS) in selected govt. hospitals (as it is there in Tamil Nadu).
- ECI has taken a historic decision to indicate their sex as "others" in the electoral roll but I believe that the decision will be more useful if it should replace "others" with "transgender" or "third sex" as others category deprive them of an identity because in our society male, female genders have their identity likewise they should also be allowed to maintain their separate identity.
- There is no doubt that transgender community in India will have to traverse a long and uphill path in the quest for equal rights as Indian citizens. Delivery of the promises made by politicians and govt. will have to be reviewed and followed up.

42

Annexure-5

Minutes of first meeting of the Expert Committee on the issues relating to Transgender held on 6th November 2013 in the Conference Room in the Ministry of Social Justice and Empowerment, Shastri Bhawan, New Delhi

Ministry of Social Justice and Empowerment (MSJE), Govt. of India organized the first meeting of the Expert Committee on the issues relating to Transgender (TG) on 6th November 2013 in the Conference Room, Shastri Bhawan, New Delhi, with the objective of making an in-depth study of the problems being faced by the Transgender community. The list of participants is at Annexure I.

2. Shri Anoop Kumar Srivastava, Additional Secretary, MSJE and the Chairperson of the Committee welcomed all the members. Since, it was the first meeting, the Chairperson requested everyone to give their introduction. Thereafter, he outlined the mandate of the Committee. He stated that the objective of the Committee is to make an in-depth study of the problems being faced by the Transgender community and suggest suitable measures to ameliorate those problems. He said that outer limit for submitting the report of the Committee is 21st January, 2014 but he requested the members in collectively ensuring that the report of the Committee is finalized and submitted well before this date. He further gave a detailed presentation, a copy of which is at Annexure II.

3. The Chairperson informed that the Ministry of Social Justice has been impleaded as a Respondent in two Public Interest Litigations, one in Supreme Court of India and the other in Mumbai High Court. He added that a Consultation Meeting with various experts and the representatives of Transgender (TG) Community was held on 23rd August 2013 preceded by a few inter-ministerial meetings. He enumerated the problems faced by the Community which have come to the knowledge of this Ministry through various PILs and as reported during the consultation meeting held on 23.8.2013.

4. The Chairperson said that their problems can broadly be categorized in two parts: (i) Denial of various rights and facilities and (ii) social injustice. Smt. Laya Medhini intervened and said that there is no representative from Ministry of Law and Justice in the Committee. She requested that a representative may be called from Department of Legal Affairs and the same was agreed to by the Chairperson. It was also decided that the representatives from the Ministry of Women and Child Development, Registrar General of India, UIDAI and NHRC may also be invited in the next meeting.

Discussion on the definition of Transgender

5. A need was felt that there should be a clear definition of Transgender. Ms. Laxmi Narayan Tripathi referred to the international definition for consideration. She also drew attention to WHO Guidelines in this regard and informed that UNDP had also proposed a definition of transgender which may be considered. Ms. Laya Medhini suggested that the

43

definition should be comprehensive and legally valid. It was felt that the proposed definition should consider the context of the Indian Transgender and should be easily understood. Dr. Ketki Ranade informed that in India the main focus has always been on male to female transgender; she proposed that female to male transgender may also be given importance while formulating a definition of transgender. She also talked about Cisgender people. Thereafter, Ms. Laxmi intervened and said that all the definitions should be tabled before the committee along with the international definition for consideration.

Discussion on Medical Issues

6. Sex Reassignment Surgery (SRS) was a subject of extensive discussion. Smt. Laya informed that this surgery should only be performed after a person has reached adulthood. Some members were of the opinion that this surgery should be performed at the initial age in the childhood itself. Since there were no medical experts in the committee, the representative from Ministry of Health was requested to come out with a solution on this issue in the next meeting. He was also requested to refer to the Harry Benjamin Guidelines in this regard.

Discussion on Social Issues

7. The members expressed that broadly all the social problems have been included in the agenda. Some of the initiatives have also been taken by the Government of India in this regard like enrolment of transgender community in the Voter's list by the Election Commission of India. There is no prohibition against the transgender persons for contesting election to the Parliament or State Legislature. Besides, Registrar General of India, during the Census year 2011 had given the option of "other" for enrolling the persons who did not wish to be recorded as either male or female. UIDAI has also provided an option of "T" for transgender. However, many issues are still to be addressed.

Decisions Taken in the Meeting

8. After detailed discussion the following decisions were taken in the meeting:
- i. The members unanimously agreed that there should be a third category of gender to be called "Transgender".
 - ii. Dr. Ketki Ranade was requested to come out with a detailed paper on suggested definition after referring to the other available definitions on Transgender. She was requested to consult Ms. Laya Medhini and any other member or other experts in this regard. Dr. Ketki Ranade & Ms. Laya Medhini will collaborate and come out with a joint paper on this issue.
 - iii. Dr. V.S. Salhotra from Ministry of Health was requested to go through the problems being faced by the Transgender Community with regard to Health Issues/ SRS /HIV and suggest suitable measures for their redressal. The issues like the age at which SRS should be performed; should an individual has a choice for opting the male/female sex

44

- or should it be the choice of the Medical Officer, etc. may be carefully considered. He was requested to associate a representative from the Department of NACO also.
- iv. Dr. Rajesh Kumar from Delhi University was requested to look into the problems of education and employment of the Transgender Community. He was requested to associate with himself Dr. Fatima Vasanth and Mohammad Aslam Naved from Delhi University.
 - v. Smt. Praveen Kumari Singh, Director, MHA was requested to look into the issues relating to Crime and Police Atrocities being faced by the Community and prepare a paper to be discussed in the next meeting.
 - vi. Ms. Laxmi Narayan Tripathi was requested to look into the remaining issues of the community and suggest suitable measures for resolving them. She was also requested to suggest names of few more experts of their community whose views can be useful to the Committee.

9. The Chairperson requested the Committee Members that the above tasks may kindly be performed by them before 21st November, 2013 and detailed papers on issues assigned to them be circulated to all other members for their perusal. It was decided that the next meeting will be held on 29th November, 2013. The time and venue of the meeting will be informed to all the members in due course. The information received from the general public would also be discussed in detail in the next meeting. It will also be passed on to the Member concerned with the issue for prior examination. Ms. Laya Medhini was also co-opted as a member of the Committee.

The meeting ended with a vote of thanks to the Chair.

45

Annexure IList of Participants**I. Representatives from M/o Social Justice and Empowerment**

S, No	Name	
1	Shri Anoop Kumar Srivastava, Additional Secretary	In Chair
2	Shri T.R. Meena, Joint Secretary	Member-Secretary
3	Shri Anand Katoch, Director	
4	Shri Surendra Rawat, Deputy Secretary	
5	Shri Rajesh Kr Sinha, Under Secretary	
6	Dr. R. Giriraj, Dy Director, NISD	

II. Representatives from other Central Ministries

7	Smt Praveen Kumari Singh, Director	MHA	Member
8.	Shri Vinod Kumar	Director, HRD	Member
9	Dr V.S. Salhotra	M/o Health & F W	Member
10	Dr Neeraj Dhingra	D/o Aids Control	
11	Smt Mridu Markan	D/o Aids Control	
12	Shri Naba Kumar Pal, Under Secretary	M/o External Affairs	Member

II. Other Members and Experts in the field of Transgender

13	Shri Dipesh Chandra Nath	D/o of Applied Psychology, Calcutta University	Member
14	Dr Fatima Vasanth	Madras School of Social Work	Member
15	Dr Rajesh Kumar	HOD, D/o Adult Education, D.U.	Member
16	Md Aslam Naved	D/o Adult Education, D.U.	
17	Ms Sita Kinnar Bharati	Transgender	Member
18	Ms Yonne Ahire	Transgender (SOOE)	
19	Ms Saira Banu Shekh	Transgender	Member
20	Ms Malini	Transgender (SOOE)	
21	Ms Rudrani Chettri	Mitr Trust	
22.	Smt. Laya Vasudevan	Center for Legal Aid and Rights	
23.	Ms Laxmi Narayan Tripathi	Transgender (working for an	Member

46

		Organization for the Support and Development of Sexual Minorities)	
24.	Dr. Archana Dassi	D/o Social Work, Jamia Milia University	Member
25.	Dr. Ketki Ranade	Tata Institute of Social Sciences	Member

47

Annexure-6

Minutes of the second meeting of the Expert Committee on the issues relating to Transgender community held on 29th November 2013 in the Committee Room 'A' of Vigyan Bhawan Annexe, New Delhi

The second meeting of the Expert Committee on the issues relating to Transgender (TG) was held on 29th November 2013 in the Committee Room 'A', Vigyan Bhawan Annexe, New Delhi, with the objective of making an in-depth study of the problems being faced by the Transgender community and suggest suitable measures for ameliorating those problems. The list of participants is at Annexure I.

2. **Shri Anoop Kumar Srivastava**, Additional Secretary, MSJE and the Chairperson of the Committee welcomed all members and special invitees. Since there were many special invitees present in the meeting, he requested all the participants to give their introduction. **Shri T. R. Meena**, Joint Secretary, MSJE briefly recapitulated the discussion in the first meeting held on 6th November, 2013.

3. Thereafter, **Dr. Ketki Ranade**, Assistant Professor, School of Social Work, Tata Institute of Social Sciences, Mumbai was invited to make a presentation on 'Definition of transgender'. She mentioned that in order to define or describe who is a trans gender person, it is necessary to establish a basic understanding of what gender is and how and who it is determined by. She stated that gender is assigned at birth but it may or may not match the person's idea of their own gender as they grow up. She explained that gender determines every aspect of our life including our name, clothes, hair length, appearance, behaviors, occupation, mobility and so on. It is also present in every document of identity, including birth certificate, ration card, voter id, pan card, passport, driving license, mark sheets/grade cards and so on. Even the public utilities like toilets, security check at airports etc. are also gender specific. In terms of categories of gender, one may use the two categories of i.e. cis gender and trans gender. The category of cis gender is commonly referred to as man/male or woman/female. However, when people choose a gender other than the one assigned at birth, they fall under the category of trans gender. Further she also mentioned about the Sex reassignment surgery (SRS) related to transgender issue. She also informed that in India, there are also several local terminologies and identities in different States that are used to describe transgender persons. Some of these may further have specific socio-cultural religious connotations such as in the case of 'Hijras' and 'Jogtas'. While concluding the presentation she stated that the term trans spelt with an asterix (trans*) is an umbrella term used to refer to all non-cis gender identities and expressions and suggested that the term trans* be used in the place of the term trans gender.

4. **Ms. Laya Vasudevan**, Centre for Legal Aid and Rights then made a presentation on Transgender definitions – Socio Legal implications. She mentioned that transgendered people are individuals of any age or sex whose appearance, personal characteristics and behaviors differ from stereotypes about how men and women are "supposed" to be, or in its

48

broadest sense, transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms. She explained that *Sex* refers to biological status as male or female and *Gender* is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be. She mentioned that "Gender identity" refers to a person's internal, deeply felt sense of being either male or female, or something other or in between. While explaining the term 'transsexual person', she mentioned that there is a conflict between one's physical sex and one's gender identity as a man or a woman. Female-to-male transsexual (FTM) people are born with female bodies, but have a predominantly male gender identity. Male-to-female transsexual (MTF) people are born with male bodies, but have a female gender identity. Many, but not all, transsexual people undergo medical treatment to change their physical sex through hormone therapy and sex reassignment surgeries. In India there are a host of socio-ethnic groups of transgenders like hijras/ kinnars, and other trans identities like - shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi etc. **Sunil Mohan** from Lesbit mentioned that application of concept of trans gender should not be limited to such socio-ethnic groups alone, but should cover all categories including female to male transgenders.

5. **Ms. Laya Vasudevan** further explained about the relevant recent provisions in Law related to transgender in the Countries of Argentina in 2012 and Australia in 2013. While concluding the presentation she mentioned that on a harmonious reading of the relevant provisions/ sections in Indian Constitution, Citizenship Act 1955 and General Clauses Act 1897, there is no conflict or limitation imposed on the concept of 'person' by any of these laws and a Transgender person would undoubtedly fall within the definition of 'person'.

6. **Shri Anoop Kumar Srivastava**, Additional Secretary, MSJE mentioned that a generic definition of transgender is one thing and a socio-cultural identity, with which a group of persons identify, is another. There could be many socio-cultural identity groups falling under the generic definition of transgender. He suggested that a generic definition of transgender person could be 'a person who chooses to identify himself/herself with a gender different from the one assigned at birth'. This should include all categories such as Trans-man/Female to Male trans person, Trans-woman/Male to Female trans person, Gender queer and transsexual, irrespective of whether a person belongs to a socio-cultural groups (such as Kothis, Hijras, Aravanis, etc and whether or not a person has undergone Sex Reassignment Surgery. This was broadly agreed to by the Committee members. He also cautioned that while talking about transgender persons; one must be able to distinguish between the notion of 'sexual orientation' and the notion of 'inner sense of gender identity' as the two aspects are different. He also opined that the definition of transgender should be clear and unambiguous and terms like transsexual and transgender should not be used interchangeably as these convey different connotations. Further, a person should normally be considered as a transgender, irrespective of whether he/she has undergone SRS. He also expressed that the term trans* may not be used in place of transgender, as it may not be understood by everyone. He further explained about the model adopted in Tamil Nadu state, visited by him recently, where district level screening committees have been constituted to identify the

49

Transgender persons. The recommendation of these screening committees go to the state level screening committee, after whose clearance, Welfare Board issues an identity card to the identified transgender person. This entire process doesn't take too long. In this context, **Dr. Ramakrishnan**, SAATHI, Chennai told that presently there is no uniform guidelines/criteria among districts for identification of transgender. It was felt that this could be an implementation issue, as the guidelines may not be uniformly understood by all concerned. It was decided to bring this to the notice of Government of Tamil Nadu.

7. **Dr. Piyush Saxena**, Mumbai cited the recent case in Madhya Pradesh where the result of a candidate was upturned in an election of Mayor, as a transgender persons had contested the election from a seat reserved for women. He further informed about Election Commission's decision of giving an option to transgender persons to identify as 'others'.

8. **Dr. Rajesh Kumar**, Department of Distance & Continuing Education, University of Delhi made a presentation on 'Education and Employment issues' pertaining to transgender persons. He mentioned that the participation of transgender community in mainstream education including higher education/professional education and employment is extremely low. Majority of the population is uneducated or under-educated. They face high level of stigma apart from physical, sexual and emotional violence, which leads to dropping out of their studies. The exclusion from society and family is one of the main hindrances in access to education. Some of the suggestions made by him were:

- Create more awareness & understanding on the culture, gender, and sexuality of transgender community.
- The fulfillment of the obligation under RTE Act is critical for the improvements in the educational conditions of transgender community. Sensitization towards Transgender at schools/universities/ educational institutions by appropriate authorities with respect to the need of this community and to bring them in the mainstream.
- Review the existing schemes and educational program to assess their suitability to the transgender community.

9. He also suggested approach for enhancing employment opportunities for transgender persons which are as follows:

- Empowerment process has to be broad and should cover the following aspects:
 - Awareness generation
 - Skill and Capacity Building
 - Employment and entrepreneurship
- Efforts should be made to register transgender persons in the employment exchange of the central and state governments.
- Enhanced credit/subsidized loan as capacity building support.
- Create a supportive environment involving community leaders and their Gurus.

50

10. **Ms. Rashmi Singh**, Executive Director, National Mission for Empowerment of Women opined that there has to be a systematic process in identification of transgender persons and also there is a need to generate a database by the concerned Departments. Facilitation centers to be called as gender resource centres may also be set up. Social inclusion Plan and ground work strategy is also required to be chalked out.

11. **Ms. Meenakshi Jolly**, from M/o HRD informed that Sarvshiksha Abhiyan for socially disadvantage groups does not include Transgender. Further, transgender community is not mentioned in elementary education (6 to 14 years). However, she said that the matter is being looked into by M/b Human Resource Development and is also being taken up with the States. She also stated that sensitization of teachers need to be included in the teacher's training module. She was requested by the Chairperson to give detailed comments of the Ministry on the paper submitted by Dr. Rajesh Kumar.

12. **Tanmay** from Labia (Mumbai) stated that drop out issue at school is mainly due to gender discrimination. He suggested that school uniform should also be made gender neutral. **Ms. Priya Babu** also expressed that one of the reasons for Transgender persons dropping out is their sexual abuse. She felt the need for creating Gender Counselling Centres. **Ms. Laya Vasudevan** opined that care home for transgender needs to be set up by the States; otherwise vulnerable children may be exploited. **Sunil Mohan** from Lesbit mentioned that measures should also be taken for the present generation of trans people to continue their education and get employment. **Dr. Sanjai Bhatt**, Professor, Delhi School of Social work suggested that M/o Social Justice & Empowerment may come up with a Central Sector Scheme for the TG Community which may include provision of scholarship for transgender students. He also expressed that the mind-set of the people involved also needs to be changed.

13. **Shri T. R. Meena**, JS mentioned that there is a Government policy for Scheduled Caste community to deal with the stigma of discrimination in employment and education. In schools the teachers should create a suitable environment for Transgender children.

14. The presentation on education and employment was summed up the **Chairperson** by mentioning that social stigma and discrimination is the main problem affecting the Transgender community. He opined that if transgender persons are mentioned in policies, programmes & schemes of the Government, they will get due recognition which will help in mainstreaming them into the society. He stated that the problem of transgender persons, as many have stated, start with their family. Sensitization of society including the parents and teachers is needed. In this context, the Chairperson mentioned that abandonment of child is a punishable offence under Section 317 of the IPC. Some members mentioned that this section is applicable if the abandoned child is under the age of twelve years; but the abandonment of transgender children takes place usually between the age of twelve & eighteen years. The Chairperson suggested that MHA should be requested to consider enhancing the age of child for this offence to eighteen years. **Ms. Lopamudra Mohanti** of Ministry of Women & Child Development supported this and stated that their Ministry has been advocating a uniform age for consideration as child in all laws.

51

15. The **Chairperson** further suggested that economic empowerment scheme prevailing in Tamil Nadu can also be studied and adopted by other states. He suggested that this Committee may recommend a centrally sponsored Scholarship scheme, as suggested by Dr. Sanjai Bhatt, as it will provide positive incentive to the parents of transgender children, enhancing their acceptability by the parents. On the question of employment opportunities including that of self-employment opportunities through skill up-gradation and concessional loans, he said that similar interventions for SCs, OBCs & PwDs may be studied for designing suitable interventions for transgender persons. The mindset of society, parents and teachers towards the transgender needs to be changed.

16. **Dr. Anil Sain**, CMO (HA), Directorate General of Health Services (DGHS), Ministry of Health & Family Welfare made a presentation on transgender/third category related issues. He informed that a committee has been constituted in the Directorate General of Health Services under the Chairmanship of Dr. S. Y. Kothari (Spl. DGHS) for examining the issues of Transgender. The Committee had met on 26th November, 2013. He informed that the said Committee, in its first meeting, had made their observations and recommendations as follows:

- i) Being a 'Transgender' is essentially a Gender Identity Disorder suffered by any individual.
- ii) Gender Identity Disorder may be considered like any other disorder suffered by an individual and all possible assistance and facilities may be accessible to persons suffering from such disorder, in the health facilities, as for any other member of the general population.
- iii) Transgender persons wishing to live the gender of their liking may be provided assistance and facilities like any other member of the community including Sex Reassignment Surgery.
- iv) Sex/Gender of the transgender may be accepted as per their anatomic gender for all practical purposes till they are transformed anatomically to the other gender by any of the treatment modalities and not merely by their choice.
- v) In case a separate third category is recognized for all practical purposes by the competent authority it may be made compulsory to provide for separate In-patient Ward/Cubicle and Toilet facilities commensurate with the work load expected in all future Hospital / Health Care Projects.
- vi) Necessary instructions can be issued to all the existing government hospitals that while admitted in the hospital for any kind of medical/surgical treatment the privacy of the patients of the third category should be protected to the extent possible.
- vii) All treatment/facilities, whatever and wherever available, is provided free of cost to all the patients coming to the Government Hospitals without any discrimination on any ground whatsoever except that some nominal charges are levied for certain

specialized investigations. The same is also recommended for transgender persons also.

viii) Possibility of providing any specific procedure/treatment required by the patients of the third category, which is not presently available in the public health facilities, can be explored on the basis of need.

ix) While conducting medical examination at the point of entry into civil government services/any other service or institution, such candidates may be medically examined as per the format for any other candidate. However, regarding physical parameters like Height, Weight and Chest expansion the limits as applicable to females may be accepted. While examining the genital region, the physical characteristics may be examined for 'Male', 'Female' or the third category.

x) For any endeavor of Sex reassignment Procedure/Surgery, the willing person should be thoroughly examined by a Psychiatrist/Clinical Psychologist, Endocrinologist, Urologist, Plastic Surgeon/Surgeon and Gynecologist before the procedure is undertaken and any attempt otherwise will lead to Human Rights Violation. So far as the three Central Government Hospitals under the Directorate General of Health Services, Min. of Health & Family Welfare, Government of India are concerned, a Standing panel of the above said experts has already been constituted for the purpose.

xi) Time at which the Sex Reassignment assistance may be offered differs from case to case. However, psychiatric/psychological help may be provided as and when required, medical/hormonal treatment is recommended around adolescence and surgical treatment for genitalia may be offered only at attaining Majority and that too when patients have lived continuously for at least 12 Months in the gender role that is congruent with their gender identity. The age threshold should be seen as a minimum criterion and not an indication in and of itself for active intervention. However, corrective surgery for birth defects of genitalia may be done in childhood with due consent from the parents.

xii) Health being a state subject, respective State governments may like to designate appropriate hospitals in their state for the purpose of SRS, depending on the availability of the required specialists in that particular hospital. The committee also informed that Indian Council of Medical Research (ICMR) has also done some work on Disorders of Sex Development and Gender Identity related issues. Inputs from ICMR may also be taken to finalize the definition and nomenclature to be used for the third category and other issues.

17. There was a detailed discussion on the presentation made by Dr. Sain. The Chairperson requested Dr. Sain to complete the work of the Committee and send its final recommendations for consideration by this Expert committee. He mentioned that the definition of transgender should be taken as the one agreed in this meeting. The Chairperson also requested Dr. Sain that the Committee may also examine whether a person can choose to

53

undergo only castration and penectomy, provided the protocol of SRS is followed, which will be short of full-scale SRS. Though Dr. Sain, mentioned that while it seems possible, because the choice of a procedure is with the person concerned, yet he will place it before the Committee and come back on this issue. With regard to the issue of Castration Vs. 'Penectomy and Orchidectomy' Vs. 'Emasculation', **Dr. Venkatesan Chakrapani** expressed that castration technically refers to removal of testis alone and not the entire male external genitalia (penis/testis). So, the medical term – penectomy and orchidectomy – can be used to denote “removal of male external genitalia”. He further cautioned that even though the term 'emasculation' is sometimes used to denote this in lay language, it may be seen as an inappropriate term by some people. Further, in regard to the issue of 'Gender identity Disorder' Vs. 'Gender Dysphoria / Gender incongruence', **Dr. Venkatesan Chakrapani** mentioned that in the current DSM-5 (Diagnostic and Statistical Manual – 5th edition of American Psychiatric Association - APA), the previous 'gender identity disorder' category is replaced by 'Gender dysphoria / Gender incongruence'. DSM-5 states that being a transgender person by itself does not mean that person is a psychiatric patient. In the forthcoming (2015) 11th edition of International Classification of Diseases, ICD-11 (by World Health Organisation), WHO is planning to replace the term “disorder” with 'Gender incongruence' [proposed, not finalised] or other non-stigmatising terms (Drescher et al., 2012). In India, the field-testing of the proposed ICD-11 categories (of Gender incongruence) is planned at AIIMS, New Delhi.

18. **Smt. Praveen Kumari Singh**, Director, MHA mentioned about the allegations of police atrocities and crime against Transgender persons and said that consultation with police authorities and special training to them could be done once the definition of transgender is finalized. She mentioned that there should be a code of conduct both for transgender persons and police authorities. As regards, the question of amending Section 375 IPC so as cover the cases of sexual assault on transgender persons, she mentioned that while it may be examined, but cautioned that it is a lengthy process requiring wider consultation with all stakeholders including the State Governments. A detailed account of oral presentation made by Smt. Praveen Kumari Singh is at Annexure II.

19. **Shri Ashok Kumar**, ADG (Director level) UIDAI explained about the procedure adopted by them while enrolling for Aadhaar number. He said that in Aadhaar system, the gender is taken as what is declared by the resident without the requirement of any document and the resident can declare his gender as male, female, or transgender. It was pointed out by some members that instructions were not clear to those at the field and many a time, they were either asking for document/proof or recording the gender just by looking at the clothes a person was wearing. The representative was requested to look into this as this could be an implementation issue. From the number of residents enrolled as transgender (about 38,000) out of 49 crore residents to whom Aadhaar cards had been issued, it appeared that not many residents from transgender community had come forward to enroll for Aadhaar number.

20. At the end, the Chairperson requested the Committee Members to refine their recommendations and send within a week or ten days so that the draft report may be prepared and circulated well in advance of the next meeting. It was decided that the next meeting will

54
be held on 3rd January, 2014 & commence at 10.00 am to deliberate on the draft report. The venue of the meeting will be informed to all the members in due course.

The meeting ended with a vote of thanks to the Chair.

55

Annexure IList of Participants**I. Representatives from M/o Social Justice and Empowerment**

S, No	Name	
1.	Shri Anoop Kumar Srivastava, Additional Secretary	In Chair
2.	Shri T. R. Meena, Joint Secretary	Member Secretary
3.	Shri Anand Katoch, Director	
4.	Shri Rajesh Kr Sinha, Under Secretary	
5.	Dr. R. Giriraj, Dy Director, NISD	

II. Representatives from other Central Ministries

6.	Smt Praveen Kumari Singh, Director	MHA	Member
7.	Shri Naba Kumar Pal, Under Secretary	M/o External Affairs	Member
8.	Shri Ashok Kr, Director	UIDAI	Special Invitee
9.	Dr Anil Sain	Dte General of Health Services	Member
10.	Shri Deepak Rastogi	RGI	Special Invitee
11.	Shri Mahesh Tyagi	M/o Law and Justice	Special Invitee
12.	Lopamudra Mohanti	M/o WCD	Special Invitee
13.	Smt Meenakshi Jolly	D/o SE&L, HRD	Special Invitee
14.	Smt Swati Chakraborty	NHRC	Special Invitee
15.	Shri Shahanshah Gulpham	NHRC	Special Invitee

III. Other Members and Experts in the field of Transgender

16.	Dr C.R. Samadder	Retd IAS, Former Principal Secy, Assam	Member
17.	Dr Rajesh Kumar	HOD, D/o Adult Education, D.U.	Member
18.	Md AslamNaved	D/o Adult Education, D.U.	
19.	Ms Sita Kinnar Bharati	Transgender	Member
20.	Ms Yonne Ahire	Transgender (SOOE)	
21.	Ms Saira Banu Shekh	Transgender	Member
22.	Ms Rudrani Chettri	Mitr Trust	
23.	Smt. Laya Medhini	Center for Legal Aid and Rights	Member
24.	Dr. Archana Dassi	D/o Social Work, Jamia Milia University	Member

56

25.	Dr. Ketki Ranade	Tata Institute of Social Sciences	Member
26.	Roja	TG Community	
27.	Prof Sanjai Bhatt	Delhi School of Social Work	Member
28.	Dr. Piyush Saxena	SOOE	Special Invitee
29.	Tanmay	Labia (Mumbai)	Special Invitee
30.	Sunil Mohan	LesBIT	Special Invitee
31.	Bharathi Kannamma	B K Trust Madurai	
32.	Dr. L. Ramakrishanan	SAATHI, Chennai	Special Invitee
33.	Dr Venkatesh Chakrapani	C-SHaRP	Special Invitee
34.	Priyababu	TG Community	Member
35.	Anjali Gopalan	NAZ FOUNDATION	Special Invitee
36.	Smt. Rashmi Singh	National Mission for Empowerment of Women	Special Invitee

POLICE ATROCITIES ON TRANSGENDERS: Cases of atrocities by Police against Transgenders have been highlighted in media and brought to the notice of Courts, although no separate data is maintained by National Crime Record Bureau (NCRB). However, there has been no evidence or study of systemic bias or discriminatory attitude in law enforcement agencies against Transgenders. The issues of atrocities and harassment by police mainly are due to lack of proper awareness on applicable legislations on Transgenders and sensitization in police. In cases of reported crimes by Transgenders, the law enforcement agencies are often at loss to ascertain applicable provisions of law and sometimes these have led to accusation of excesses by Police on Transgenders. On the other side, Transgenders sometimes take advantage of the lacunae of law and resort to antisocial activities which become difficult to contain. Training and sensitization of police on transgender issues can be on the lines of trainings and sensitization done for treatment of issues related to Women, Children and other vulnerable section of society.

Provisions in IPC

Sec. 375 of the IPC: The Criminal Amendment Bill 2011, introduced in Parliament, proposed to replace the word 'rape' wherever it occurs, in relevant sections of IPC by the words 'sexual assault', to make the offence of sexual assault gender neutral, and also widening the scope of the offence sexual assault. However this has been expunged in the Criminal Law Amendment Act 2013.

In view of the above, Ministry of Social Justice and Empowerment as a nodal Ministry, is requested to provide a broad framework of suggestions to Ministry of Home Affairs so that process of amendment can be initiated.

Sec. 377 of the IPC: Since the petition against the order and judgment of Hon'ble Delhi High Court for repealing sec. 377 IPC is sub-judice before the Supreme Court, no comments can be made in this regard.

Extremely demeaning remarks are used against Transgenders: If a eunuch is a SC/ST then the provisions of SC/ST (PoA) act will be applicable. However they can always resort to the Protection of Civil Rights (PCR) Act where there are applicable. Moreover Section 153A of the penal code says, *inter alia*:

Whoever (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional

58

groups or castes or communities, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, . . . shall be punished with imprisonment which may extend to three years, or with fine, or with both

Transgenders cannot escape punishment when they are accused of committing crimes. The word 'Person' in the Indian Penal Code and General Clauses Act means all human beings.

Another way of approaching the problem might be creation of a separate legislation similar to the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act 1989 which will comprehensively incorporate the definition, scope, intent and rights of the Transgender people. More importantly before formulating legislation extensive studies needs to be conducted to get a comprehensive picture of their condition, societal structure, acceptance to society, crimes and atrocities against them, their capabilities, orientation and most importantly their aspirations. It has been observed that inspite of their presence and visibility in the society no exhaustive study in modern parlance is available which may provide the bedrock for creation of a new legislation

Minutes of the third meeting of the Expert Committee on the issues relating to Transgender community held on 3rd January 2014 in the Committee Room 'A' of Vigyan Bhawan Annexe, New Delhi

The third meeting of the Expert Committee on the issues relating to Transgender (TG) was held on 3rd January 2014 in the Committee Room 'A', Vigyan Bhawan Annexe, New Delhi, with the objective of making an in-depth study of the problems being faced by the Transgender community and suggest suitable measures for ameliorating those problems. The list of participants is at Annexure I.

2. **Shri Anoop Kumar Srivastava**, Additional Secretary, MSJE and the Chairperson of the Committee welcomed all members and special invitees. Since there were many special invitees from the State Governments attending the meeting for the first time, he requested all the participants to give their introduction.

3. After introduction, the Agenda of the meeting was discussed and it was decided that the Committee will discuss, chapter-wise, the Draft Report circulated through email to all the members. The Draft Report consisted of the following chapters preceded by an 'Introduction' chapter:

Chapter- I [Definition of Transgender]

Chapter- II [Constitutional protection & jurisprudence]

Chapter- III [International practices]

Chapter- IV [Transgender Identity]

Chapter- V [Inclusive Approach]

Chapter- VI [Convergence Approach]

Chapter- VII [Addressing Stigma, Discrimination and Violence faced by Transgender People]

Chapter- VIII [Exploring Education and Employment Opportunities for Transgender Persons]

Chapter- IX [Adolescents- A transgender perspective]

Chapter- X [Access to Healthcare including SRS, physical & mental health]

Chapter- XI [Tamil Nadu Transgender Welfare Board]

Chapter- XII [The Role of Ministry of Social Justice & Empowerment]

Chapter- XIII [Summary of Conclusions & Recommendations]

4. The discussion started with Introduction and Chapter I [Definition of Transgender] of the Draft Report. The Introduction and first chapter was agreed to by all the members and accepted by the Chairperson with minor modifications.

5. The Second chapter which was on the subject of Constitutional protection & jurisprudence was discussed in brief. Ms. Amritananda Chakravorty (an associate lawyer with Shri Anand Grover) suggested that articles 14, 19(1) and 21 may also be included in this chapter as these articles of the Constitution guarantee important rights to all citizens. It was agreed to by everyone that since the Constitution of India guarantees right to equality and principle of non-discrimination to all persons, this may be included in chapter II. The Chapter II was thus approved with this modification.

6. The other chapters, except chapter no. IX (Adolescents- a transgender perspective) and chapter no. XIII (Summary of Conclusions & Recommendations), were also discussed in detail and accepted by the Committee with minor changes except Chapter VII and Chapter X. As regards Chapter VII, it was decided that Dr. Archana Dassi and Dr. L. Ramakrishnan will recast this Chapter. The issue and chapter on Adolescents were not discussed, but a decision was taken to look at a chapter on the issue and Smt. Laya Medhini Vasudevan volunteered to write it. This chapter will be discussed in detail at the next meeting. Similarly, Chapter X will be re-written by Dr. Venkatesan Chakrapani in consultation with Dr. Ketki Ranade & Dr. L. Ramakrishnan. Thus, chapters VII, IX, X & XIII will be discussed and finalized in the next meeting, to be held on 21st January 2014.

7. With regard to the issue of 'leti' system, Chairman mentioned that Shri Priyadarshan Patankar, Secretary, Salvation of Oppressed Eunuchs (SOOE) had requested him to put the matter before the Committee to decide by voting whether the issue should be discussed. Accordingly, the Chairperson sought the vote of the Committee. The overwhelming majority of the members were not in favour of discussing the issue in the meeting, as the members representing the transgender community stated that there is no system such as 'leti'. Accordingly, the issue of 'leti' system was not discussed. Chairman added that this matter was also sub-judice in the High Court, Mumbai and the Government may look into this separately.

61

8. Smt K. Kanmani, the representative from Tamil Nadu Government was requested to verify the contents of Chapter XI (Tamil Nadu Transgender Welfare Board) of the Report and confirm by 15th January 2014. It was decided that the next meeting will be held on 21st January, 2014 at 10.00 AM to finalize the draft report.

9. The meeting ended with a vote of thanks to the Chair.

62

Annexure IList of Participants**I. Representatives from M/o Social Justice and Empowerment**

S, No	Name	
1.	Shri Anoop Kumar Srivastava, Additional Secretary	In Chair
2.	Smt Ghazala Meenai, Joint Secretary	Member Secretary
3.	Shri Anand Katoch, Director	
4.	Shri Rajesh Kr Sinha, Under Secretary	
5.	Dr. R. Giriraj, Dy Director, NISD	

II. Representatives from other Central Ministries and State Governments

6.	Shri Bhagirath	Additional Director, SJ&E, Jaipur	Special Invitee
7.	Smt K Kanmani	Dy Director, Directorate of Social Welfare, Tamil Nadu	Special Invitee
8.	Smt Kavitha.V. Padmanabhan	Joint Secy, Govt of Assam	Special Invitee
9.	Dr Anil Sain	Dte General of Health Services	Member
10.	Sh Rajender Prasad	Under Secretary, M/o Human Resources Development	Special Invitee
11.	Dr. S.Y. Kothari	Spl DGHS M/o. Health and FW	Special Invitee
12.	Shri Sunil Kumar	Principal Secretary, D/o Social Welfare, UP	Special Invitee
13.	Shri P.K. Banerjee	DRG, O/o RGI	Special Invitee
14.	Shri Ujjwal Uke	Principal Secretary, Govt of Maharashtra	Special Invitee
15.	Shri T. Ravi Kumar	Principal Secretary, WCD, Govt of Karnataka	Special Invitee
16.	Shri Bikramjit Choudhury	S.O., M/o Home Affairs	Special Invitee

63

II. Other Members and Experts

17.	Shri Anand Grover	Advocate	Special Invitee
18.	Dr Rajesh Kumar	HOD, D/o Adult Education, D.U.	Member
19.	Ms Sita Kinnar Bharati	Representing Community	Member
20.	Ms Saira Banu Shekh	Representing Community	Member
21.	Smt. Laya Medhini	Center for Legal Aid and Rights	Member
22.	Dr. Archana Dassi	D/o Social Work, Jamia Milia University	Member
23.	Dr. Ketki Ranade	Tata Institute of Social Sciences	Member
24.	Ms Laxmi Narayan Tripathi	Astitiva	Member
25.	Shri Priyadarshan Patankar, Secretary	Representing SOOE	Special Invitee
26.	Tanmay	Labia (Mumbai)	Special Invitee
27.	Sunil Mohan	LesBIT	Special Invitee
28.	Dr. L. Ramakrishanan	SAATHI, Chennai	Special Invitee
29.	Dr Venkatesan Chakrapani	C-SHaRP	Special Invitee
30.	Ms Amritananda Chakravorty	Lawyer	

Minutes of the fourth meeting of the Expert Committee on the issues relating to Transgender community held on 21st January 2014 in the conference Hall, Central Secretariat Library, G Block, Shastri Bhawan, New Delhi.

The fourth meeting of the Expert Committee on the issues relating to Transgender (TG) was held on 21st January 2014 in the Conference Hall, Central Secretariat Library, G Block, Shastri Bhawan, to finalize the report of the Committee. The list of participants is at Annexure I.

2. **Shri Anoop Kumar Srivastava**, Additional Secretary, MSJE and the Chairperson of the Committee welcomed all members and special invitees. He stated that the present meeting had been convened to finalize the Report which was already discussed in detail in the meeting held on 3.1.2014. Three Chapters of the Reports (Chapters VII, IX and X) were not finalized in that meeting. He requested the authors to initiate the discussion in respect of these chapters.

3. The discussion started with Chapter X regarding access to health care by Dr. Venkatesan Chakrapani. This chapter was agreed to by the members and approved by the committee with an additional paragraph on 'clinical management of Intersexed People'. Thereafter, Dr. Archana Dassi presented chapter VII which pertained to stigma, discrimination and violence faced by the transgender persons. This Chapter was also approved with modification of the definition of term 'stigma'. It was also reported to the Committee by the community members that transgender persons face stigma even after death when their bodies are taken for funeral. Chapter IX [Transgender Adolescents, Youth and Young Adults] was explained by Smt Laya Medhini. It was also decided to include the concerns of Female to Male transgender persons in Chapters VII & IX. With these changes, these Chapters were finalized.

4. At the end the report was gone through once again chapter-wise and was finalized in the meeting. The Chairperson informed that the report would be fine-tuned with regard to grammatical errors, formatting, changes of editorial nature and presented to the Government within a couple of days. He whole-heartedly thanked all the members for their co-operation and concerted efforts in bringing out the report in the assigned time- frame.

65

5. The meeting ended with a vote of thanks to the Chair.

66

Annexure IList of Participants**I. Representatives from M/o Social Justice and Empowerment**

S, No	Name	
1.	Shri Anoop Kumar Srivastava, Additional Secretary	In Chair
2.	Smt Ghazala Meenai, Joint Secretary	Member Secretary
3.	Shri Anand Katoch, Director	
4.	Shri Rajesh Kr Sinha, Under Secretary	
5.	Dr. R. Giriraj, Dy Director, NISD	

II. Representatives from other Central Ministries and State Governments

6.	Dr Anil Sain	Dte General of Health Services	Member
7.	Sh Rajender Prasad	Under Secretary, M/o HRD	
8.	Shri Bikramjit Choudhury	S.O., M/o Home	

II. Other Members and Experts

9.	Ms Saira Banu Shekh	Representing Community	Member
10.	Smt. Laya Medhini	Center for Legal Aid and Rights	Member
11.	Dr. Archana Dassi	Jamia Milia University	Member
12.	Dr. Ketki Ranade	Tata Institute of Social Sciences	Member
13.	Ms Laxmi Narayan Tripathi	Astitiva	Member
14.	Dr Venkatesan Chakrapani	C-SHaRP	Member
15.	Dr. C. R. Sammaddar	Former Principal Secretary, Assam	Member
16.	Ms Priya Babu	Representing Community	Member
17.	Prof Sanjay Bhatt	Delhi School of Social Work	Member
18.	Ms Ambalika Roy	Lawyer	

67

Annexure-9

**Visit of Additional Secretary to Government of India,
Ministry of Social Justice Empowerment**

**Minutes of the meeting held with all Stakeholders on
Transgender Welfare on 27.11.2013**

The Additional Secretary to Government of India, Ministry of Social Justice and Empowerment, visited Chennai, to discuss with Transgender persons and the officials about the welfare measures provided to the Transgender persons, through the Transgender Welfare Board in Tamil Nadu. The meeting / discussion was held in the PWD Conference Hall, 5th Floor, Namakkal Kavingnar Maaligai, Secretariat, Chennai-9 at 11.00 a.m.

2. The following officials and members of Transgender Self Help Groups were present:
 1. Secretary, Social Welfare and Nutritious Meal Programme Department
 2. Secretary, Adi Dravida and Backward Class Department
 3. Director, Adi Dravidar Welfare
 4. Director of Social Welfare and Nutritious Meal Programme Department
 5. Deputy Secretary to Government, Social Welfare and Nutritious Meal Programme
 6. Assistant Inspector General of Police, Chennai
 7. Additional Director, Rural Development
 8. The Representative from the Health Department
 9. Deputy Director Woman Welfare (Incharge), Social Welfare and Nutritious Meal Programme Department
 10. Asst. Director, Women Welfare, Social Welfare and Nutritious Meal Programme Department
 11. District Social Welfare Officer, Chennai District (Incharge)
 12. District Social Welfare Officer, Thiruvallur District
 13. Two Transgender Self Help Groups namely Kadalmeengal and Everest group Transgender members (totaling 20 numbers)

3. Secretary, Social Welfare and Nutritious Meal Programme Department, welcomed the gathering and explained the purpose of the visit of the Additional Secretary to Government of India, Ministry of Social Justice and Empowerment. The Secretary, Social Welfare and Nutritious Meal Programme Department outlined in brief about the welfare measures provided to the Transgender through the Transgender Welfare Board. He explained that Transgenders are registered by the District Social Welfare Offices and identified, Photo Identity Cards by Tamil Nadu Transgender Welfare Board, then issued to the Transgender, whose names are recommended by the District Social Welfare Offices. The members of the Kadalmeengal and Self Help Groups present were requested to voice their views, problems, expectations and the activities which they carry to generate income through the funds provided by the Transgender Welfare Board.

68

The Transgenders from Chennai District explained about the economic activities, they are carrying out to earn income. They stated that they had received subsidy from the Government and also obtained loans from the Indian Bank to set up cloth business. They stated that they do their business from their houses. They sell sarees, nighties and other clothes within their Transgender Communities and also to the surrounding people. They stated that the monetary help given by the Government through the Transgender Welfare Board has helped them to earn a decent living and has weaned them away from their earlier ways of earning their living.

The Transgenders present also showed the ID Cards issued to them by the Board. They stated that their lives have changed dramatically after the ID Cards were issued to them. They are able to get ration cards, pension, voter ID cards etc. because of the ID Card.

The Transgenders also stated that their foremost pressing problem is housing. They are unable to get proper houses or otherwise the rent and advance demanded is very high.

Transgenders Vijaya and Dhanam, stated that more employment opportunities should be provided to them in the Government sector. Contract works and jobs like sanitary workers, sweepers etc., in the City Corporation and hospitals could be provided to them.

Roopakala, President of Kadalmeengal Transgender Self Help Group, Washermanpet, Chennai, explained the biological aspect of the birth of the Transgender and that they are in no way responsible for such a birth and hence need a more respectful life and hence requested more help from the Government in terms of housing, employment and creating more awareness among the public.

She also stated the police are harassing them for no fault of theirs. Therefore, awareness about their problems, and how to treat the Transgender in public, should be created among the Police personnel.

In the context of the various issues raised by the transgenders, the concerned officials present gave their opinions.

The Additional Director, Rural Development Department stated that the Chief Minister's Green housing Programme was well implemented in the rural areas. With regard to Transgenders, he stated that in 2012-13 – 35 houses were provided to rural Transgenders and in 2013-14 – 68 houses have been allotted to the Transgenders and are under construction. He further stated that rural transgenders are benefitted through the Green House Scheme.

The AIG of Police stated that do their duties only and during the nights, the police patrol the roads / streets and beaches, and question not only transgenders but also any person whom they find during the nights on the roads. However, he stated that a common circular would be issued to all police stations in the city regarding this.

69

Secretary, Social Welfare requested the transgenders to get their change of name officially gazetted.

The Additional Secretary, Government of India, Ministry of Social Justice and Empowerment, New Delhi, stated that he made this visit to be educated and get a personal experience by interacting with all the stakeholders particularly the transgenders. He also stated that, Tamil Nadu is perhaps the only State taking substantial measures for the welfare of transgenders. He further stated that a committee has been formed by Government of India, to study the problems of Transgenders and to suggest solutions for those problems.

A PowerPoint presentation was made by the Deputy Director (Women Welfare, incharge), Department of Social Welfare on the measures taken by the Tamil Nadu Transgender Welfare Board for the welfare of Transgenders. Discussions were held during the presentation, on the issues pointed out. The District Social Welfare Officer, Thiruvallur District, explained the process of sanction of funds (subsidy) by the Board, obtaining of bank loan and the economic activity of production and sale of bricks from the Brick kiln set up by the Transgender Self Help Group in Nallur Village, Cholavaram Block, Thiruvallur District, etc.,

During the course of discussion, Secretary, Social Welfare and Nutritious Meal Programme Department, suggested that TAHDCO was one agency capable of handling the issue of providing further loans if needed.

Transgenders also raised the issue of providing them the jobs of sanitary workers who are to be recruited by the Chennai Corporation Health wing on contract basis. It was agreed by the Secretary, Social Welfare and Nutritious Meal Programme Department and stated that the Chennai Corporation can be requested to consider the Transgenders also for the sanitary workers posts. The Official of the Health Department also stated that he would take up this issue with his department.

Further discussions on the issue of housing was held, wherein, the Director, Adi Dravida Department stated that in some places, people are objecting to providing housing to Transgenders within their areas. However, in many other places pattas have been issued. He suggested that shelters can be constructed by the Collectors for transgenders in groups with beds, kitchen, etc., Secretary, Social Welfare and Nutritious Meal Programme Department stated that housing is a real issue and needs to be addressed. He also stated that all put together, funds are required.

The Rural Development Department has informed that on furnishing details of pattas for Transgenders they will take appropriate action to construct group houses.

The Additional Secretary, Government of India, enquired about the Sex Reassignment Surgery done by the Transgenders, post-operative problems and care given to them. He also enquired if sexual assault complaints are received from Transgenders by the Police, since

70

they are vulnerable to sexual assaults. Since there is no provision in Indian Penal Code, if such cases are reported, what action are the Police taking? He suggested that this aspect has to be looked into.

Finally, the meeting concluded with the proposing a vote of thanks.

Director of Social Welfare.

71

Visit of Additional Secretary to Government of India, Ministry of Social Justice and Empowerment, New Delhi to Transgender Self Help Group, Chennai District

The Additional Secretary to Government of India, Ministry of Social Justice of Empowerment and Deputy Secretary to Government, Social Welfare and Nutritious Meal Programme Department visited the Transgender Self Help Group Kadalmeengal functioning at No.69-A, J Block Backside Hut, East Cemetery Road, Chennai-21 on 27.11.2013 at 03.00 p.m.

During the visit, the members of the Kadalmeengal Self Help Group were present. The President of the group explained about the Income Generating activities in the cloth business by the group and they have got Rs.2.00 lakhs. Out of Rs.2.00 lakhs, they have got Rs.50,000/- as Government subsidy and Rs.1.50 lakh as loan. They have completed the repayment of loan amount and requested to enhance the loan amount.

They have expressed their thanks to Social Welfare and Nutritious Meal Programme Department for issue of ID Cards through Transgender Welfare Board and informed based on the ID Card they were able to get Ration Card, Voter ID, etc.,

The Group members explained that they are selling the cloth to the people residing around the nearest area.

The Additional Secretary to Government of India enquired about the profit gained through the cloth business. The President of the Group informed that they are getting Rs.2,000/- to Rs.3,000/- per month as saving after meeting out all the expenditure.

The Deputy Secretary to Government, Social Welfare and Nutritious Meal Programme Department enquired about the area where they have purchased cloth for their business. The members responded that they are purchasing the cloth in the nearest area which is at walkable distance.

The members also informed that they are engaged in other seasonable work like Idli making, Vegetable and Flower selling and selling of cooked maize etc.

The members also exposed that their primary need is house and requested to provide house and employment opportunity in Government Hospitals and AmmaUnavuThittam.

The members also requested to issue ID Card in English Version.

The Deputy Secretary to Government, Social Welfare and Nutritious Meal Programme Department pointed out to include the age of the transgender in ID Card.

As the end of visit, the Additional Secretary to Government of India thanked all the members of the group.

INTRODUCTION

Transgender people and their problems

Who are transgender people?

Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviors differ from stereotypes about how men and women are “supposed” to be. Transgender people have existed in every culture, race, and class since the story of human life has been recorded. Only the term “transgender” and the medical technology available to transsexual people are new. In its broadest sense, transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms.

What is the difference between sex and gender?

2. Sex refers to biological status as male or female. It includes physical attributes such as sex chromosomes, gonads, sex hormones, internal reproductive structures, and external genitalia. Gender is a term that is often used to refer to ways that people act, interact, or feel about themselves, which are associated with boys/men and girls/women. While aspects of biological sex are the same across different cultures, aspects of gender may not be.

Gender Identity and Gender Expression

3. “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.

What does transgender mean?

4. The contemporary term “transgender” arose in the mid-1990s from the grassroots community of gender-different people. In contemporary usage, transgender has become an “umbrella” term that is used to describe a wide range of identities and experiences, including but not limited to transsexual people; male and female cross-dressers (sometimes referred to as “transvestites,” “drag queens” or “drag kings”); intersexed individuals; and men and women, regardless of sexual orientation, whose appearance or characteristics are perceived to be gender atypical. In its broadest sense, transgender encompasses anyone whose identity or behavior falls outside of stereotypical gender norms. That includes people who do not self-identify as transgender, but who are perceived as such by others and thus are subject to the same social oppressions and physical violence as those who actually identify with any of these categories. Other current synonyms for transgender include “gender variant,” “gender different,” and “gender non-conforming.”

5. In India there are a host of socio – cultural groups of transgender people like hijras/ kinnars, and other transgender identities like – shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi, etc. However, these socio-cultural groups are not the only transgender people, but there may be those who do not belong to any of the groups but are transgender persons individually. Though an accurate and reliable estimate of transgender people is not available, it cannot be denied that their number is miniscule compared with the total population of the country.

6. The definition of transgender people in India has been dealt with in detail in Chapter One. The definition recommended in that chapter is intended to bring more clarity and uniformity in the understanding of the term ‘transgender’ for the purpose of this report as well for it to serve as a guide for all stakeholders such as administrators, police officers, judicial officers, NGOs and the society at large.

7. Transgender people in India face a variety of issues. So far, these communities perceive that they have been excluded from effectively participating in social and cultural life; economy; and politics and decision-making processes. A primary reason (and consequence) of the exclusion is perceived to be the lack of (or ambiguity in) recognition of the gender status of hijras and other transgender people. It is a key barrier that often prevents them in exercising their civil rights in their desired gender. So far, there is no single comprehensive source on the basis of which an evidence-based advocacy action plan can be prepared by transgender activists or possible legal solutions can be arrived at by policymakers. Reports of harassment, violence, denial of services, and unfair treatment against transgender persons in the areas of employment, housing and public accommodation have been discussed in local media, from time to time.

8. The problems being faced by the Transgender community have also been articulated in a few Public Interest Litigation (PIL) petitions. As per available information, two PIL petitions [WP (C) No. 400 of 2012 & 604 of 2013] have been filed in the Supreme Court of India and one PIL [No. 01 of 2012] in the High Court of Mumbai.

9. The problems faced by the Transgender community as articulated in the PIL petition WP (C) No. 400 of 2012 filed by the National Legal Services Authority (NLSA) mentioned above, in short, are that Transgender persons are deprived of the fundamental rights available to the other two sexes i.e. male and female, and are not considered as the third sex. They are deprived of many of the rights and privileges which other persons enjoy as citizens of India. The transgender are deprived of social and cultural participation, are shunned by family and society, have only restricted access to education, health services and public spaces, restricted rights available to citizens such as right to marry, right to contest elections, right to vote, employment and livelihood opportunities and various human rights such as voting, obtaining Passport, driving license, ration card, Identity Card etc. The transgender community is treated as a legal non-entity in violation of Article 14, 15, 16 and 21 of the Constitution of India. Other important submissions of NLSA are:

“(i) The transgender community, generally known as “Hijras” in this country, are a section of Indian citizens who are treated by Society as unnatural and generally as objects of

74

ridicule and even fear on account of superstition. All human beings are born free and equal in dignity and ought to be entitled to enjoyment of human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and equal protection of the law without any such discrimination. Transgenders are also part of society and have equal rights as are available to other persons. The discrimination based on their class and gender makes the transgender community one of the most disempowered and deprived groups in Indian society.

“(ii) In view of the constitutional guarantee, the transgender community is entitled to basic rights i.e. Right to Personal Liberty, dignity, Freedom of expression, Right to Education and Empowerment, Right against violence, Discrimination and exploitation and Right to work. Moreover, every person must have the right to decide his/her gender expression and identity, including transsexuals, transgenders, hijras and should have right to freely express their gender identity and be considered as a third sex.

“(iii) The problems, faced by transgenders are discrimination, lack of educational facilities, unemployment, lack of shelter, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse and problems relating to marriage, property, electoral rights, adoption. Ministry of Law and Ministry of Social Justice and State Governments need to recognize the deprivation suffered by transgender people and work on much needed reform.

“(iv) In 2003, the Hon`ble High Court of Madhya Pradesh upheld the order of an Election Tribunal which nullified the election of a Hijra, Kamala Jaan, to the post of Mayor of Katni, on the ground that it was a seat reserved for women and that KamlaJaan, being a ‘male’ was not entitled to contest the seat. It is submitted that all the citizens of India have a right to vote and to contest elections. But in the electoral rolls only two categories of the sex are mentioned – male and female. This is unfair to the third sex of India as they are deprived of their statutory right to vote and contest elections.

“(v) Transgenders, though human beings are not recognized as persons in violation of human rights as they are deprived of their fundamental rights as well as also other civil rights. The lack of recognition isolates transgenders, especially eunuchs, in the matter of civil rights. The Constitution of India prohibits discrimination on the basis of sex. Since gender is taken to mean only male and female, the eunuchs and transgenders cannot effectively exercise or avail the benefits of constitutional rights and avail of facilities and benefits available to the male and female genders.

“(vi) Transgenders have very limited employment opportunities. Transgenders have no access to bathrooms/toilets and public spaces. The lack of access to bathrooms and public spaces access is illustrative of discrimination faced by transgenders in availing each facilities and amenities. They face similar problems in prisons, hospitals and schools.

“(vii) So far as criminal liability is concerned, transgenders cannot escape punishment when they are accused of committing crimes. The word ‘person’ in the Indian Penal Code and

75

General Clauses Act means all human beings. Persons who can be punished for committing offences include transgenders, though they are consciously deprived of their civil rights.

“(viii) Transgenders have very limited employment opportunities as most jobs are confined to male and female sexes. Transgenders, being a third sex, cannot even apply for most of the jobs.

“(ix) Transgender persons must be properly documented in census. There is need for statutory reservation in education, elections and employment both in the public and private sectors. They need to be empowered and uplifted by facilities for higher education and vocational training to upgrade their earnings and status in society so as to promote their acceptability in society.

“(x) Since transgenders are prone to health risks and setbacks, they need to be provided proper medical facilities, including health insurance and clinics, where free or subsidized treatment should be made available.

“(xi) The different manifestations of discrimination and deprivation are a consequence of the practice of recognizing and providing only for the male and/or the female sex. This gets reflected in prescribed forms for applying for various privileges, facilities or amenities, as these do not reflect that a person may belong to a gender, other than male or female.”

10. In the other WP No. 604 of 2013 by Poojya Mata Nasib Kaur ji Women Welfare Society, the petitioner has made similar submissions and referred to transgenders as Kinnars. They have prayed to the Supreme Court to direct the Respondents (Central & State Governments) to inter alia bring a policy for upliftment and for socio-economic development of the Kinnar Communities in India.

11. The Salvation of Oppressed Eunuchs (SOOE), the petitioner in PIL No. 1 of 2012 in the High Court, Mumbai has brought out some issues, which are different from the above and are as follows:

“(i) Eunuchs are forced by their ‘gurus’ to lead a life of servitude and bonded labourers. A prayer has been made to ensure that the condition of eunuchs living as bonded labour be ended forthwith under the provisions of the Bonded Labour System (Abolition) Act, 1976.

“(ii) The word ‘rape’ in Section 375 of Indian Penal Code (IPC) should include all sexual crimes against women, men, children and transsexuals/eunuchs, as eunuchs are often the targets of some of the worst sex crimes, more so, if they happened to be sex workers. It has, therefore, been prayed to direct appropriate modification/interpretation of section 375 to include transsexuals and eunuchs in the definition of the term ‘rape’.

“(iii) There is an order of the Hon’ble High Court, Delhi about Section 377 of IPC, validating rights of the homosexual people and that right has been denied to eunuchs until now, simply because their disability was attempted to be concealed. A prayer has been made in this context for directing appropriate modification/ interpretation of Section 377 of IPC,

76

validating the rights of homosexual people be modified/interpreted to include transsexuals and eunuchs in the definition of the term 'homosexuals'."

12. In a lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.2011 "Rights of Transgender People – Sensitising Officers to Provide Access to Justice"¹ by Hon'ble Mr. Justice P.Sathasivam, then Judge, Supreme Court of India (presently Chief Justice) had stated thus:

"The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgenders) continues to be ostracized. *The Constitution affirms equality in all spheres but the moot question is whether it is being applied.*

"The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, penectomy and problems related to marriage and adoption."

13. The broad remit of the Committee is to suggest appropriate workable solutions to the above problems being faced by the transgender people.

¹ Lecture delivered on Refresher Course for Civil Judges (Junior Division)-I Batch at Tamil Nadu State Judicial Academy on 12.02.2011 **Rights of Transgender People – Sensitising Officers to Provide Access to Justice** by Hon'ble Thiru. Justice P.Sathasivam, the Judge, Supreme Court of India (presently Chief Justice): <http://www.hcmadras.tn.nic.in/jacademy/Article/PSJ-CJO-SPEECH-Royappetah.pdf> ..

Chapter One

Definition of Transgender

Understanding Gender: Some basic concepts

In order to define or describe who is a transgender person, it is necessary to establish a basic understanding of what gender is and how and who it is determined by. Since gender is one of the most pervading and given social category, one may not be aware of it on a daily basis and yet while going about the business of daily living, gender is present at every step. It determines every aspect of our life including our name, clothes, hair length, appearance, behaviours, occupation, mobility and so on. It is present in every document of identity, including birth certificate, ration card, voter ID, passport, mark sheets/grade cards and so on.

2. Then there are spaces that are strictly gender segregated such as toilets for men and women, queues and lines in several public utilities that are separate for men and women, for instance security checks at malls, metros, airports, separate compartments in trains or separate seating in buses and other public transport. In essence what this implies is that, while living out one's life in a rural or an urban area, in a poor or a rich neighborhood, nationally or globally, gender is constantly present, both in our minds and our interactions.

3. To the question, how and by whom is this gender determined, we first need to understand that none of us are born with a gender, but gender is assigned to each one of us based on the kind of primary sexual characteristics or external genitalia that we are born with. Thus an infant born with genitalia looking like a "vagina" is assigned gender female at birth and an infant born with genitalia looking like a "penis" is assigned gender male at birth. This basic idea of 'gender as assigned' is expressed through the two terms - person assigned gender female at birth (PAGFB) and person assigned gender male at birth (PAGMB). So in this chapter, rather than simply using the terms 'male' and 'female', which imply gender to be inborn, the terms PAGFB and PAGMB would be used.

4. Having established that gender is assigned, it should be understood that this assigned gender at birth may or may not match the person's idea of their own gender as they grow up. As a result there would be those, who grow up with a sense of comfort and alignment between their 'felt' or own sense of gender and the gender assigned to them. These would be persons who are 'cisgender', both cismen and cis women. And there would be those whose own/inner sense of gender does not match the gender assigned to them. These would be persons who are 'transgender'.

Transgender Persons: Some basic names and identities used

5. In terms of categories of gender, one may use the two categories of cisgender and transgender. The category of cisgender is expressed as cis man and cis woman, commonly referred to as man / male or woman / female (In place of cis man and cis woman, the terms cis male and cis female are also used). However when people choose a gender other than the gender assigned at birth, then they express their gender through several identity terms and names, all of which largely fall under the category of transgender.

6. Some of these terms used are described below. Several of these terms may have similar or overlapping meanings.

Trans* - This is a term used in the discipline of gender studies to refer to all persons whose own sense of gender does not match with the gender assigned to them at birth. Spelt with an asterix, trans* is an umbrella term used to refer to all non-cisgender identities and expressions. This includes transgender, transsexual, male to female (MtF), female to male (FtM), gender queer, third gender, other and so on.

Transgender person – A person, who does not identify with the gender assigned to them at birth.

Trans-man; A person who is assigned gender female at birth (PAGFB), but identifies with the gender male. The person may or may not have undergone sex reassignment surgery/procedures.

Trans-woman: A person who is assigned gender male at birth (PAGMB), but identifies with the gender female. The person may or may not have undergone sex reassignment surgery/procedures.

Male to Female Trans person (M to F / MtF): A person who is PAGMB, but identifies with the female gender.

Female to Male Trans person (F to M / FtM): A person who is PAGFB, but identifies with the male gender

Transsexual: Transsexual refers to a person who firmly identifies oneself as belonging to a gender that is opposite to that of the birth-assigned gender.

Genderqueer: The term Transgender may mean for some people a 'sense of transition' from one gender to the other as is implied in terms such as M to F or F to M transgender (male to female or female to male transition) and this description may work for some, while some others may be more comfortable choosing terms that do not adhere to the notion of gender binaries of male and female. They may see gender as less rigid and may prefer to use the term Genderqueer to refer to their gender identity. Genderqueer implies persons who identify as non cis gender and is used as an umbrella term to refer to a range of non-normative gender expressions.

All of the above names except transsexual may be taken by persons who have undergone a sex reassignment surgery (post-operative), who may wish to undergo a sex reassignment surgery eventually (pre-operative) or who may not want a medical intervention for changing their bodies to match their own sense of gender.

□ Persons with Intersex Variations : 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. All persons with intersex variations are also assigned a gender at birth. And like with everyone else, some of these persons may feel comfortable with their assigned gender and will be cis gender and others may not, and be transgender. A detailed description of Persons with Intersex Variations is given at Appendix-1.

7. Sex reassignment surgery/procedure refers to a range of medical procedures, including surgical procedures that people undergo to transform their bodies and or genitalia to that of the supposed opposite sex. This includes a range of procedures such as injection of hormones, laser treatment for removal of body hair, genital re-constructive surgery and so on.

8. In India, there are also several local terminologies and identities that are used to describe gender transgressions. Some of these may further have specific socio-cultural religious connotations such as in the case of 'Hijras' and 'Jogtas'. Some of these are described below:

□ Kothi: A local language term used in South East Asia to refer to PAGMB, who identify with characteristics, roles and behaviors conventionally associated with the feminine. Kothis have also been defined as effeminate PAGMBs, who like to cross dress and see themselves as women and use the female pronoun to describe themselves. They may take on this identity only while among their peers, but may continue to dress and act like men otherwise.

□ Hijras: Hijras are usually PAGMBs and rarely persons with intersex variations but identify with the characteristics, roles and behaviours conventionally associated with the feminine. They cross dress and live their life as women or may identify as belonging to the 'third gender'. They may or may not undergo castration and often live in a group with their guru. Most Hijras earn a living through sex work, begging or dancing during festivals and auspicious occasions. Similarly there are 'jogtas', who are PAGMBs and who as children are dedicated to a goddess and later ritually cross dressed¹.

9. Kothi persons present themselves as males in most spheres of their lives and only reveal their feminine identity in certain social circles, unlike Hijra identified persons who present themselves in their feminine attire all the time. Despite this difference, in present times, the two identities may often overlap, especially in terms of the social and community networks they are associated with.

1. ¹Singh S, Dasgupta S, Patankar P, Sinha M. (2013). A People Stronger – The collectivization of MSM and TG Groups in India, UNDP Publication, New Delhi: Sage Publications Pvt. Ltd.

30

10. For the purpose of this report, and for all practical purposes, the Committee recommends that the term 'transgender' (not trans*) will be used, as an inclusive term and will cover various gender identities and expressions, as described in paragraph 6 above. 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 & 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.

11. The Committee further recommends that a compilation of all known transgender socio-cultural groups should be prepared & circulated for guidance of all concerned, with a disclaimer that the said compilation is "suggestive and not exhaustive and all such persons who qualify as transgender as per the generic definition above and pass the mandatory psycho social assessment (see paragraph 6 of Chapter Four) should be categorized as transgender persons." The criterion/test for qualifying as a transgender person will apply on individual basis and the fact such a person belongs to a known transgender socio-cultural group will act a corroborative evidence and not conclusive. As a starting point, a compilation of various transgender socio-cultural groups has been prepared by the Committee, based on available information, and is at Appendix-2.

12. It is also important that while talking about transgender persons, one should be able to make clear distinction between 'sexual orientation' and 'gender identity'. Significantly, this distinction has been clearly explained in the Yogyakarta Principles on the application of International Human Rights Law in relation to sexual orientation and gender identity, as follows:

"Sexual orientation" is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

"Gender identity" is understood to refer to each person's deeply felt 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 or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

13. It is also clear from the Yogyakarta Principles that while the perception of being a Lesbian, Gay or Bisexual is a function of sexual orientation, in case of transgender persons, it is a function of gender identity. This is evident from the following excerpt from preamble of the said principles:

“...historically people have experienced these human rights violations because they are or are perceived to be lesbian, gay or bisexual, because of their consensual sexual conduct with persons of the same gender or because they are or are perceived to be transsexual, transgender or intersex or belong to social groups identified in particular societies by sexual orientation or gender identity;”

14. However, what is significant is that under these principles both Sexual orientation and gender identity are integral to every person’s dignity and humanity and must not be the basis for discrimination or abuse. All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated.

15. The remit of this Committee being limited to the issues of transgender persons, it doesn’t intend to discuss the issues of lesbian, gay and bisexual persons.

16. In the context of ‘sexual orientation’ and ‘gender identity’ being different in concept, it is recommended that the terms ‘sex’ and ‘gender’ should not be used interchangeably (as are often used presently) and only the term ‘gender’ should be used in various official documents including identity documents, application forms, returns, reports, etc.

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1. LABIA, (2013) Breaking the Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities, Mumbai: LABIA
2. Singh S, Dasgupta S, Patankar P, Sinha M. (2013). A People Stronger – The collectivization of MSM and TG Groups in India, UNDP Publication, New Delhi: Sage Publications Pvt. Ltd.
3. Vaidya, S. (2013). Between Places and Spaces – Exploring Gender Binaries through the narratives of trans-persons, (Unpublished) M.A. Dissertation submitted to Tata Institute of Social Sciences
4. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity: http://www.yogyakartaprinciples.org/principles_en.htm

Chapter Two

Constitutional Protection & Jurisprudence

The Constitution of India

In essence, 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 & 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. These articles are reproduced below:

“14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4)

(5)

“16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

83

(3)

(4)

(4A)

(4B)

(5)

“19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(g) to practise any profession, or to carry on any occupation, trade or business.

“21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

2. In Part III of the Constitution, the beneficiaries of the rights are identified as 'person' or 'citizen'. In the absence of any specific or implied exclusion or denial of such recognition, by virtue of the fact that a transgender is a human being, all constitutional rights must necessarily flow to a transgender. The 'Transgender' community falls within the purview of the Constitution of India and thereby they are entitled to all the rights as guaranteed under the same.

3. Article 5 of the Constitution identifies the persons who are entitled to be citizens of India. None of the conditions specified therein require a determinate sex or gender identity as a pre-condition of acquiring citizenship.

4. The Citizenship Act, 1955 which provides for the acquisition and determination of Indian Citizenship also does not, expressly or impliedly require a determinate sex or gender identity as a pre-condition for acquiring citizenship. For a person to be a voter (elector), he/she has to be a citizen of India. The Election Commission of India has taken special measures to enroll the transgender persons as electors.

5. The definition of person under the General Clauses Act, 1897 is couched in even wider terms. Section 3(42) of the Act of 1897 defines a person to 'include any company or association or body of individuals, whether incorporated or not'. Though Section 13 of the 1897 Act stipulates that words importing the masculine gender shall be taken to include

females, this stipulation is itself conditioned by the statutory direction that this is so unless there is anything repugnant in the subject or context.

6. A harmonious reading of the Constitutional provisions set out hereinabove as well as the provisions of the Citizenship Act, 1955 and the General Clauses Act, 1897 Act would show that in fact there is no conflict or limitation imposed on the concept of 'person' by any of these laws and a Transgender person would undoubtedly fall within the definition of 'person'.

7. Interestingly, the Registration of Births and Deaths Act, 1969 doesn't mention anything about 'sex'/'gender' of a person to be registered in case of birth or death. The Act is gender neutral. The requirement of indicating the sex/gender of a person in case of a birth or death in the Birth or Death certificate, as the case may be, doesn't seem to flow from the provisions of the Act itself. Such a requirement may have been put in the formats of such certificates prescribed in the Rules under the Act, which are made by the States.

Naz Foundation Vs NCT of Delhi

8. In the case of Naz Foundation Vs NCT of Delhi in the context of inclusiveness¹ it has been held that "Where society can display inclusiveness and understanding, such persons can be assured of a life of dignity and non-discrimination. It cannot be forgotten that discrimination is antithesis of equality and that it is the recognition of equality which will foster the dignity of every individual"².

"Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or career status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds."

9. Further it has been laid down in Naz Foundation Vs NCT of Delhi, "Sexual orientation is a ground analogous to sex and that discrimination on the basis of sexual orientation is not permitted by Article 15. Further, Article 15(2) incorporates the notion of horizontal application of rights. In other words, it even prohibits discrimination of one citizen by another in matters of access to public spaces. In our view, discrimination on the ground of sexual orientation is impermissible even on the horizontal application of the right enshrined under Article 15"³. The above judgment was set aside by the Supreme Court in its order dated 11-12-2013. Review petitions have been filed against the said order of the Supreme Court.

10. It is therefore evident that the Constitution of India guarantees right to equality and non-discrimination for all including transgender persons.

¹Declaration of Principles on Equality 2008

²160 Delhi law times 277

³160 Delhi law times 277

Chapter Three

International Practices

Legal definitions

In many of the countries who have a strong anti-discrimination law, the definitions of transgender seem to have been observed only to make it as inclusive as possible. To this effect, the laws emphasise the Anti-discrimination aspect of the issue rather than the definition and wherever definitions have been used, they have been derived from WPATH guidelines¹ and are internationally accepted definitions. It is accepted that transgender people are citizens with equal rights under the various Constitutions; the only clarification is the recognition and strengthening of the anti-discrimination aspect of their laws to ensure that protection measures laid out by the state are engaged in full.

Canada

2. In Canada, a private member's bill protecting the rights of freedom of gender expression and gender identity was passed in the House of Commons on February 9, 2011. It amends the Canada Human Rights Code to help protect gender-variant people from discrimination by including gender identity and expression in the list of prohibited grounds for discrimination, as well as including gender identity and expression in the description of identifiable group, so that offences deliberately against gender-variant people can be punished to a similar extent as a racial-based crime². The bill may or may not be passed by the Senate³.

United States of America (USA)

3. In the USA, a federal bill to protect workers from discrimination based on sexual orientation and gender identity – called the Employment Non-Discrimination Act – has stalled and failed several times over the past two decades⁴. Still, individual states and cities have begun passing their own non-discrimination ordinances. In New York, for example, Governor David Paterson passed the first legislation to include transgender protections in September 2010⁵.

¹ The Harry Benjamin International Gender Dysphoria Association's Standards Of Care For Gender Identity Disorders, Sixth Version, February, 2001.

² <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3906520&file=4>

³ Ibbitson, John (2011-02-10). "Transgendered-rights bill headed for defeat in Tory-held Senate". The Globe and Mail (Toronto).

⁴ Gay and Lesbian Alliance Against Defamation. "LGBT Advocates Call for Action on ENDA", "GLAAD Blog", USA, May 2010.

⁵ Gay and Lesbian Alliance Against Defamation. "Governor David Paterson Signs New York's First Bill Ensuring Transgender Protections", "GLAAD Blog", USA, September 2010.

86

4. Nicole, took a case of whether she is allowed to use her high school's girl's bathroom, as a transgender girl, to Maine's Supreme Court in June, 2013. She claims being denied such access is a violation of Maine's Human Rights Act, though a state judge has already disagreed with her⁶.

5. The current status of US policy on transgender persons is at Appendix-3.

Argentina & Australia

6. There are two recent examples of clarity of definition in Laws and Acts passed recently, by Argentina in 2012 and Australia in 2013.

Gender Identity Law, Article 2 – Argentina, 2012

7. Gender identity is understood as the internal and individual way in which gender is perceived by persons, that can correspond or not to the gender assigned at birth, including the personal experience of the body. This can involve modifying bodily appearance or functions through pharmacological, surgical or other means, provided it is freely chosen. It also includes other expressions of gender such as dress, ways of speaking and gestures.

Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill, Australia, 2013⁷:

8. Gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

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.

From the Yogyakarta Principles⁸ –

Principle 3 – The right to recognition before the Law, —Understanding 'gender identity' to refer to each person's deeply felt 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 or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms;

⁶ June, Daniel, "Transgender Girl in Maine Seeks Supreme Court's Approval to Use School's Girls Room

⁷ Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill, Australia, 2013

⁸ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity: http://www.yogyakartaprinciples.org/principles_en.htm

87

States shall —Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity;

The right to Education, civil and political rights, inheritance and succession rights must be clearly identified and defined. States must —Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;

The International Bill of Gender Rights, 1995 (As adopted June 17, 1995 Houston, Texas, U.S.A.)⁹

"The International Bill of Gender Rights (IBGR) strives to express human and civil rights from a gender perspective. However, the ten rights enunciated below are not to be viewed as special rights applicable to a particular interest group. Nor are these rights limited in application to persons for whom gender identity and gender role issues are of paramount concern. All ten sections of the IBGR are universal rights which can be claimed and exercised by every human being."

The Right to define Gender Identity

All human beings carry within themselves an ever unfolding idea of who they are and what they are capable of achieving. The individual sense of self is not determined by chromosomal sex, genitalia, assigned birth sex, or initial gender role. Thus, the individual's identity and capabilities cannot be circumscribed by what society deems to be masculine or feminine behavior. It is fundamental that individuals have the right to define, and to redefine as their lives unfold, their own gender identities, without regard to chromosomal sex, genitalia, assigned birth sex or initial gender role.

The Right to Free Expression of Gender Identity

All human beings have the right to free expression of their self – defined gender identity; and further no individual shall be denied Human or Civil Rights by virtue of the expression of a self-defined gender identity.

The Right of Access to Gendered Space and Participation in Gendered Activity

Given the right to define one's own gender identity and the corresponding right to free expression of a self-defined gender identity, no individual should be denied access to a space or denied participation in an activity by virtue of a self-defined gender identity which is not in accord with chromosomal sex, genitalia assigned birth sex or initial gender role.

⁹ <http://my.execpc.com/~dmmonson/billrights.htm> ; <http://www.transgenderlegal.com/ibgr.htm>

The Right to control and change one's body

All human beings have the right to control their bodies, which includes the right to change their bodies cosmetically, chemically or surgically, so as to express a self-defined gender identity. Therefore, individuals shall not be denied the right to change their bodies as a means of expressing a self-defined gender identity; and further, individuals shall not be denied Human or Civil Rights on the basis that they have changed their bodies cosmetically, chemically, or surgically, or desire to do so as a means of expressing a self-defined gender identity.

The Right to competent medical and professional care

No individual should be denied access to competent medical or other professional care on the basis of the individual's chromosomal sex, genitalia, assigned birth sex, or initial gender role.

The Right to freedom from psychiatric diagnosis or treatment

Individuals shall not be subject to psychiatric diagnosis or treatment as mentally disordered or diseased solely on the basis of a self-defined gender identity or the expression thereof.

UN Declaration on Sexual Orientation and Gender Identity presented to the UN General Assembly dated 18.12.2008 (First ever statement on sexual orientation and gender identity at the UN General Assembly: The statement read by Argentina¹⁰)

We have the honour to make this statement on human rights, sexual orientation and gender identity on behalf of Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

The statement is non-binding, and reaffirms existing protections for human rights in international law. It builds on a previous joint statement supported by 54 countries, which Norway delivered at the UN Human Rights Council in 2006¹¹.

Principle 1 - We reaffirm the principle of universality of human rights, as enshrined in the Universal Declaration of Human Rights, whose sixtieth anniversary is celebrated this year, article 1 of which proclaims that —all human beings are born free and equal in dignity and rights.

¹⁰ <http://ilga.org/ilga/en/article/1211>

¹¹ <http://www.hrw.org/news/2008/12/11/un-general-assembly-address-sexual-orientation-and-gender-identity>

89

Principle 2 - We reaffirm that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as set out in article 2 of the Universal Declaration of Human Rights, and article 2 of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as in article 26 of the International Covenant on Civil and Political Rights.

Principle 3- We reaffirm the principle of non – discrimination, which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity.

Principle 4- We are deeply concerned by violations of human rights on fundamental freedoms based on sexual orientation or gender identity

Principle 5- We are also disturbed that violence, harassment, discrimination, exclusion, stigmatization and prejudice are directed against persons in all countries in the world because of sexual orientation or gender identity, and that these practices undermine the integrity and dignity of those subjected to these abuses.

Principle 6- We condemn the human rights violations based on sexual orientation or gender identity wherever they occur, in particular the use of the death penalty on this ground, extrajudicial, summary or arbitrary executions, the practice of torture and other cruel, inhuman and degrading treatment or punishment, arbitrary arrest or detention and deprivation of economic, social and cultural rights, including the right to health.

Principle 10 – We call upon all states and relevant international human rights mechanisms to commit to promote and protect the human rights of all persons, regardless of sexual orientation or gender identity.

Principle 11 – We urge states to take all the necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention.

Principle 12 – We urge States to ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice.

Principle 13 – We urge States to ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity.

Judgments:

DECISIONS ON GENDER IDENTITY

Australia: Attorney General v. Kevin and Jennifer, Full Court of the Family Court of Australia at Sydney, 2003

90

... taking the view that psychological factors take precedence over biological ones, and stating "where a person's gender identification differs from his or her biological sex, the [psychological] should in all cases prevail. It would follow that all transsexuals would be treated in law according to the sex identification, regardless of whether they had undertaken any medical treatment to make their bodies conform with that identification".

Australia: AB and AH v State of Western Australia and Anor¹²

HCA 42- 6 October 2011

An appeal in AB & AH v State of Western Australia & Anor in the Australian High Court, that jurisdiction's highest court, has been won by two transgender persons. The applicants are now legally recognised as men, although they did not undergo complete sex-change surgery. Transgender and intersex organisations have welcomed this decision.

The Australian High Court held that a person may be identified as male or female as characteristics are "confined to external physical characteristics that are socially recognisable" and "such recognition does not require knowledge of a person's sexual organs". Peter Hyndal, of the organisation Gender Agenda commented that the ruling was in keeping with decisions in South Africa, Britain and other European countries. Sally Goldner, a spokesperson for Transgender Victoria said that the decision "is in line with the findings of the Australian Human Rights Commission's Sex Files Report in 2009 which recommended that surgery should not be considered a necessary pre-requisite for the legal recognition of a change of sex."

Additionally, Australia has recently changed their passport laws so that transgender people can alter their passports without sex-change surgery.

B VerfGE [Federal Constitutional Court], May 27, 2008: Germany

The case¹³ was brought by prominent lawyer Maria-Sabine Augstein, who also filed the Constitutional Court case that led to the introduction of the 1981 transsexuality law (Transsexuellengesetz - TSG in German), and was supported in a brief LSVD.

The German Constitutional Court considerably strengthened the rights of transgender people under German law, particularly the rights of non-operative transsexual people who live in same-gender relationships.

In Germany pre- or non-operative transsexuals can change their first name to reflect their new identity (so called "small solution" as opposed to the "big solution" of full surgery) – however legally they remain in their birth sex. In the case decided by the Const. Court, a male-to-female non-operative transsexual who had opted for the small solution and had changed her first name wanted to get her relationship with her female partner recognized by

¹² <http://www.gaylawnet.com/laws/cases/ABvStateofWesternAustralia.pdf>

¹³ [http://www.ilga-](http://www.ilga-europe.org/home/guide/country%20by%20country/germany/landmark%20transgender%20case%20in%20german%20constitution%20al%20court)

[europe.org/home/guide/country by country/germany/landmark transgender case in german constitution al court](http://www.ilga-europe.org/home/guide/country%20by%20country/germany/landmark%20transgender%20case%20in%20german%20constitution%20al%20court) and [http://slu.edu/Documents/law/Law%20Journal/Archives/Knott Article.pdf](http://slu.edu/Documents/law/Law%20Journal/Archives/Knott%20Article.pdf)

91

the state – in her perspective she is living in a same-sex relationship. When she went to the marriage registrar and got married, she was told that under the TSG, her first name had changed back to her previous male name – thus losing her female gender identity in the process.

This rule was enacted in 1981 to prevent what would be seen as “same-sex marriage”. Since she is still legally male she can also not get a registered partnership – as these are only available to partners of the same legal gender.

The current law in effect is a prohibition of marriage and partnership for pre- or non-operative homosexual transsexuals in Germany (under the partnership law, heterosexual pre- or non-operative transsexuals can register a partnership without having to change their first names back). This aspect of the TSG has been found to violate the Constitution by the Court today as it contravenes the intimate sphere (including the right to one’s first name) and gender identity of the affected individuals. Crucially the Court in its opinion also stresses that many pre-operative transsexuals in Germany do not desire to undergo full surgery and that their gender identity has to be respected by the law. The Court also notes that the 1981 TSG is outdated in its expectation that all transsexuals will be heterosexual – noting that there are many transsexuals who are in fact homosexual.

The German Government and Bundestag now have to reform the TSG to allow pre- or non-operative homosexual transsexuals the ability to get their partnerships recognized.

LSVD has urged the government to use this Court decision as an opportunity to reform the TSG as a whole and make it less burdensome for transgender people as a whole (including the requirement for full surgery to legally change their gender and the requirement for divorce in that case). Also we hope that this Court decision is a good basis to lobby for pre- or non-operative transsexuals with the “small-solution” to receive passports that reflect their gender identity rather than their legal sex – enabling them to travel without hassles outside Europe (in Europe they can use identity cards that do not identify sex).

XY v. Ontario¹⁴, Canada, 11 April 2012

The 11 April 2012 decision of the Ontario Human Rights Tribunal to no longer require sex reassignment surgery in order to change a sex designation on an Ontario birth registration has been hailed by Egale Canada as a significant step toward recognizing the discrimination faced daily by trans people in Canadian society and respecting the inherent dignity and equality of trans people.

According to the ruling, entitled XY v. Ontario (Government and Consumer Services), "Section 36 of the [Vital Statistics Act] in particular perpetuates disadvantage and prejudice against transgendered persons because it gives force to the prejudicial notion that transgendered people are not entitled to have their gender recognized unless they surgically alter their bodies."

¹⁴ <http://www.scribd.com/doc/89708239/Ontario-Tribunal-Decision-on-Vital-Statistics-Act-surgery-requirement>

92

While the Tribunal does not have the jurisdiction to set aside or strike down legislation, it has directed the Government of Ontario to revise the criteria for changing a sex designation in order to remove the discriminatory effect of the current system on trans people and comply with the Ontario Human Rights Code—namely, without the requirement for surgery. The ruling sets a 180 day deadline for the amendments to be made.

Sunil Babu Pant and Others v. Nepal Government and Others¹⁵,

Supreme Court of Nepal (21 December 2007)

In April 2007, the Blue Diamond Society, MITINI Nepal, Cruse AIDS Nepal, and Parichaya Nepal, all organizations representing lesbians, gays, and “people of the third gender” filed a writ petition under Article 107(2) of the Interim Constitution of Nepal seeking recognition of transgender individuals as a third gender, a law prohibiting discrimination on the basis of sexual orientation and gender identity, and reparations by the State to victims of State violence and discrimination.

Under Nepal’s citizenship card system, all adult citizens with citizenship cards were given access to certain benefits, such as ration cards, passports, and residency cards. Officials frequently denied citizenship cards to individuals who wished to register as a third gender rather than as male or female. In addition, although not used to prohibit same-sex sexual relationships, Nepal’s Criminal Code criminalised “unnatural sexual intercourse”. People of the third gender (metis) frequently faced police violence and harassment because of their gender expression.

The petitioners argued that international instruments as well as the decisions of other national courts protected people, including those of the third gender, against discrimination on grounds of sexual orientation. People of the third gender (homosexual, transgender, and intersex people) had not been treated equally. It was the responsibility of the State to provide identity documents, including birth certificates, citizenship certificates, passports and voter identity cards, specifying sex in accordance with the identity of “gender minorities”. Without identity cards, people of the third gender were deprived of education and other public benefits and were dishonored and disrespected.

The Court considered the following questions:

- (1) Whether the writ petition regarding the rights of homosexuals and people of the third gender, considered as minorities on the basis of gender identity or sexual orientation, fell under the category of public interest litigation.
- (2) Whether homosexuals and people of the third gender were so naturally or because of some mental perversion.
- (3) Whether the State had acted in a discriminatory manner with respect to the petitioners.
- (4) Whether the order sought by the petitioners should be issued.

¹⁵ <http://www.gaylawnet.com/laws/cases/PantvNepal.pdf>

93

First, the Court found that the writ petition fell within the category of public interest litigation because it concerned a matter of social justice. It was a “constitutional duty and responsibility of the state to make the deprived and socially backward classes and communities” able to enjoy their rights as others did. Protection of the rights of disadvantaged groups fell within the realm of public interest litigation the Court had previously widened locus standi under its extraordinary jurisdiction in cases of public interest litigation.

The Court next considered the origin of non-conforming sexual orientations and gender identities. It used the Yogyakarta Principles to define sexual orientation and gender identity and defined the terms lesbian, gay, bisexual, transsexual, homosexual, transgender, and intersexuality.

The Court concluded that sexual orientation was a natural process rather than the result of “mental perversion” or “emotional and psychological disorder”. It rejected the notion that people of the third sex were “sexual perverts”.

As for the question of whether the State had discriminated against citizens whose sexual orientation was homosexual and whose gender identity was transgender, the Court found that the petitioners and the people they represented did indeed face violence, stigmatization, and discrimination. It based this finding on the Yogyakarta Principles.

The petitioners argued that international instruments as well as the decisions of other national courts protected people, including those of the third gender, against discrimination on grounds of sexual orientation. People of the third gender (homosexual, transgender, and intersex people) had not been treated equally. It was the responsibility of the State to provide identity documents, including birth certificates, citizenship certificates, passports and voter identity cards, specifying sex in accordance with the identity of “gender minorities”. Without identity cards, people of the third gender were deprived of education and other public benefits and were dishonored and disrespected.

The Court ordered the Government to make the necessary arrangements, including making new laws or amending existing laws, to ensure that people of different gender identities and sexual orientations could enjoy their rights without discrimination. The Court further ordered that the new Constitution should guarantee non-discrimination on the grounds of gender identity and sexual orientation. Finally, the Court directed the Government to form a committee to study issues related to same-sex marriage.

DECISION ON CUSTODY OF CHILDREN

Kantaras v. Kantaras

In June 2005, love, patience, and persistence, combined with a visionary judge led to an historic settlement agreement between NCLR client Michael Kantaras and his former wife. Michael, a transsexual father, has been fighting for almost seven years to retain his parental rights to his two children, aged 16 and 13. This case first made national and international news in 2002, when Court TV aired the entire three week dissolution and custody trial. Michael's former wife knew he was transgender when they married, but when Michael filed

for divorce, she attacked the validity of their ten-year marriage and Michael's status as a legal parent to the couple's two children based solely on Michael's transgender status. In February 2003, Circuit Court judge Gerard O'Brien issued a groundbreaking decision holding that Michael was legally male, affirming the validity of the marriage, and awarding Michael primary custody of the couple's two children. In July 2004, the Court of Appeal's reversed Judge O'Brien's historic Order, voiding the former couple's marriage. The appeals court sent the case back to the trial court to determine Michael's parental rights. After hearing about the case, television celebrity Dr. Phil invited the couple to be on his show and encouraged them to mediate the case for the sake of the children. After two all-day mediation sessions, the parties reached a settlement in which Michael retains all of his parental rights and responsibilities and will continue to share legal custody with the children's mother.

JEAN DOE v. BELL

In January 2003, SRLP working with the Peter Cicchino Youth Project of the Urban Justice Center and Debevoise & Plimpton LLP, helped achieve a groundbreaking victory for transgender youth in foster care in the Jean Doe v. Bell case.

In this case, a 17-year-old transgender woman won the right to dress in women's clothing while a resident in foster care facilities run by the Administration for Children's Services (ACS). The court ruled that dress codes barring transgender youth in foster care from wearing clothing appropriate to their gender identity was illegal discrimination.

In the suit, the legal team argued that ACS was discriminating against the young woman based on her gender identity disorder (GID) diagnosis and on her sex. SRLP also charged that ACS was violating her First Amendment right to free expression. On January 7, State Supreme Court Judge Louise Gruner Gans ruled that the Commission of ACS had engaged in unlawful discrimination.

Employment Tribunal Decisions

P v (1) S and (2) Cornwall County Council (1996 IRLR 347) (ECJ)

P was employed as the general manager of an educational establishment operated by Cornwall County Council, and was originally recruited as a man. When P informed her employer that she intended to undergo gender reassignment, she was dismissed. She brought a sex discrimination complaint. The industrial tribunal decided that the true reason for P's dismissal was her employer's objection to her intention to undergo a gender reassignment operation. The tribunal did not believe, however, that P had a remedy under the Sex Discrimination Act (SDA), because the SDA prohibits only adverse treatment for men and women because they belong to one sex or the other, not because they are transsexual people, and the tribunal was satisfied that P would have been dismissed for undergoing gender reassignment surgery whether she had been a man or a woman. The tribunal decided to ask the European Court of Justice (ECJ) for a ruling on whether the Equal Treatment Directive is wider in scope than the SDA. In its judgement, the ECJ pointed out that the Equal Treatment Directive stipulates that there should be 'no discrimination whatsoever on grounds of sex',

95

and that the right not to be discriminated against on the ground of sex is one of the fundamental human rights whose observance the ECJ has a duty to ensure. Accordingly, the scope of the Directive cannot be confined simply to discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights, which it seeks to safeguard, the Directive must also apply to discrimination arising from gender reassignment. Such discrimination is based, essentially if not exclusively, on the sex of the person concerned. Where a person is dismissed on the ground that he or she intends to undergo, or has undergone, gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment. Dismissal of a transsexual person for a reason related to a gender reassignment is therefore in breach of the Directive. When P's case returned to the industrial tribunal, her discrimination complaint was upheld. The parties agreed compensation of an unstated sum before the hearing on compensation was concluded.

Chessington World of Adventure v Reed (1997 IRLR 556) (EAT)

Ms Reed was subjected to a prolonged campaign of abuse and harassment from her colleagues at work when she announced her change of gender identity from male to female. The Employment Appeal Tribunal (EAT) held that discrimination arising from a declared intention to undergo gender reassignment was unlawful under the SDA (Sex Discrimination Act).

M v West Midlands Police (1996 ET)

M, who had undergone male to female gender reassignment, applied to join the West Midlands Police Force as a police constable. She passed the assessment procedures and was informed that she was suitable for appointment. As the school certificates she would have to supply would show that she had previously been a man, M decided to inform the West Midlands Police that she was transsexual. She subsequently received a rejection letter indicating that because of her gender reassignment, West Midlands Police considered that it would be inappropriate for her to carry out some of the duties of the post including searching suspects. The Industrial Tribunal found that discrimination on the grounds of gender reassignment did not come within the SDA/Equal Treatment Directive (ETD) but even if it did, West Midlands Police had a defence under s7 of the SDA which deals with genuine occupational qualifications and under Article 2.2 of the ETD. M's case was unsuccessful. Since this case was heard, the EAT has decided that the SDA and the ETD does cover discrimination on the grounds of being transsexual (see P v S and Cornwall County Council and Chessington World of Adventure v Reed above). However, since then, the SDA has been amended to make it lawful to discriminate against transsexual people in recruitment to a job if the work involves the holder conducting intimate searches pursuant to statutory powers as contained in, for example, The Police and Criminal Evidence Act.

Malone v Ministry of Defence (1997 ET)

Ms Malone was dismissed from the Royal Air force in 1993 and believed that it was because she was transsexual. She made her complaint to the tribunal in 1994 well outside the 3

96
months' time limit. The tribunal considered that it was just and equitable to hear the claim as it had not been known at the time of the dismissal that the SDA/ETD would cover discrimination arising on the ground of being transsexual. Furthermore, as the ETD on this issue had not been transposed into domestic legislation (the SDA), the time limit had not begun to run.

Clare v Fairburn t/a The Old Rectory Nursing Home (1997 ET)

Ms Clare believed that she had not been selected for the job of care assistant after her interview because she was a transsexual person. The respondents claimed she had been rejected because of her lack of qualifications, experience and age and not because of being transsexual. The tribunal accepted the reasons put forward by the respondents. Ms Clare's claim was unsuccessful.

A v Chief Constable of the West Yorkshire Police [2004] 2 All ER 145

A underwent gender reassignment from male to female in 1996. In 1997 she applied to join West Yorkshire Police. She made it clear from the outset that she was a transsexual person and was told that, in accordance with the Force's equal opportunities policy, this would not be a problem. She was invited to continue with her application and she successfully completed the various selection tests. However, she was then informed that since her initial application had been received; the issue of transsexual applicants had been further considered and a decision had been made that transsexual people would not be appointed to the Force. The Force argued that as a transsexual person, A would be unable to conduct intimate and body searches of suspects, and could not therefore comply with the full range of policing functions. (The Police and Criminal Evidence Act requires that suspects are searched by a police officer of the same sex). The case reached the House of Lords who upheld a previous ruling by the Court of Appeal that to refuse A's application was contrary to the Sex Discrimination Act.

INDIA: DECISION ON POLICE HARASSMENT:

Jayalakshmi vs The State of Tamil Nadu, 10 July, 2007, Madras High Court

The petitioner was the sister of a young transgender named Pandian, in Tamil Nadu, who was being interrogated by the Police regarding a theft case. The Police officials took him to the Police station for interrogation and he was then released on bail on condition that Pandian would report to the Police station regularly. Pandian was sexually harassed and abused by the Police personnel inside the police station every day. They even threatened Pandian against disclosure of the sexual harassment.

Pandian later set himself on fire and after a few days succumbed to the injuries. In his dying declaration, he stated that he was unable to bear the torture and pain so he had wanted to end his life.

The Court ordered that:

97

The State Government shall pay compensation of a sum of Rs.5 lakhs to the petitioner for the harassment meted out to her brother Pandian.

The State Government was asked to initiate disciplinary action against respondents for the treatment meted out to Pandian.

A BRIEF DESCRIPTION OF GENDER IDENTITY-RELATED LAWS IN OTHER COUNTRIES (IN RELATION TO SEX CHANGE OPERATION, AND FEMINISATION PROCEDURES; AND PROCEDURES FOR CHANGING THE SEX IN LEGAL DOCUMENTS)

Argentina¹⁶:

The law legally recognize self-perceived gender identity of the both male-to-female and female-to-male trans* communities

The law acknowledge the rights of trans* communities under Article 11 to free ‘personal development’ – sex transition by surgical interventions and or hormonal treatment

The law allows legal minors to change their legal sex & name and undergo sex transition with some additional legal requirements such as accompanied informed consent, authorization by competent judicial authorities etc

The law permits self-identified trans* communities to change their legal sex (from male to female or from female to male) and first name in birth certificate and national identity card even before sex transition by straightaway applying to National Bureau of Vital Statistics.

In other words, surgical intervention and or hormonal treatment is not required for self-identified trans* members to change their legal sex and name in official records. However, it is not clear, if minimum attire of trans* communities are taken into consideration (in practice).

Change in legal sex and name will not have implications in the existing legal entitlements to rights and legal obligations.

UK – Gender Recognition Law¹⁷:

The law legally recognizes gender identity of trans* communities who have gender dysphoria, lived in ‘acquired gender’ for more than 2 years, and intends to live in the ‘acquired gender’ until death (within binary gender model. That is from male to female or, from female to male)

¹⁶<http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>; also Legal recognition of gender identity of transgender people in India: current situation and potential options, authored by Venkatesan Chakrapani & Arvind Narrain, UNDP publication 2012.

¹⁷ <http://www.gires.org.uk/assets/Legal-Assets/GRA.pdf>; Also ‘Legal recognition of gender identity of transgender people in india:current situation and potential options’, authored by Venkatesan Chakrapani & Arvind Narrain, UNDP publication 2012.

98

Trans* communities can change their legal sex by sending an application along with requisite documents (that includes medical certificate for gender dysphoria) to gender recognition panel. After scrutinizing the documents/applications, the panel will provide full or interim gender recognition certificate based on marital status of applicants (heterosexual marriage)

After getting full gender recognition certificate, the person acquires for all purpose, the sex to which he or she has changed (marriage, child adaptation). However, there are some restrictions levied to transsexuals relating to gender-affected sports and gender-specific offences for exercising their rights in newly acquired sex.

It ensures confidentiality of information (former life/identity of trans*communities)

Change in legal sex does not affect parenthood, succession rights, and peerages

Change in legal sex has effect on marriage and social security benefits/pensions

Jersey –Gender Recognition (Jersey) Law 2009¹⁸

The law legally recognize gender identity of the both male-to-female and female-to-male transsexuals.

It allows transsexuals of 'full' age to change their legal sex and name by applying to the Royal court for gender recognition certificate. After getting full gender recognition certificate, relevant changes will be made in birth certificate and other official records/registers. From there afterwards, the person acquires for all purpose in Jersey, the sex to which he or she has changed (marriage, child adaptation).

However, there are some restrictions levied to transsexuals relating to gender-affected sports and gender-specific offences for exercising their rights in newly acquired sex.

Transsexuals heterosexually married will not be given full gender recognition unless they provide evidence of annulment/divorce/death of their spouse.

Transsexuals based in Jersey who have done SRS and marriage outside Jersey need to apply for gender recognition certificate to get legal recognition of their sex and marriage respectively. It ensures confidentiality of information.

Change in legal sex does not affect parenthood and succession rights.

South Africa¹⁹ – Alteration of Sex Description and Sex Status Act

The law allows a transgender person to apply to the Department of Home Affairs to have the 'sex description' altered on their birth record. Once the birth record is altered they can be issued with a new birth certificate and identity document, and are considered "for all purposes" to be of the new sex. The specific definition of gender reassignment in this Act

¹⁸ [http://www.jerseycommunityrelations.org/library/document/185310_Gender_Recognition_\(Jersey\)_Law_2009](http://www.jerseycommunityrelations.org/library/document/185310_Gender_Recognition_(Jersey)_Law_2009); also *ibid.*

¹⁹ http://en.wikipedia.org/wiki/Legal_aspects_of_transsexualism

refers to reassigning a person's sex by changing physiological or other sexual characteristics, and includes any part of such a process. Thus, the transgender person is not required to have had genital surgery in order to have the sex description altered.

Japan²⁰ – Act on Special Cases in Handling Gender for People with Gender Identity Disorder – with effect from 16 July 2004

The law enables transsexual people to change their legal sex. Despite the fact that sex reassignment surgery and hormone replacement therapy are mandatory for a legal sex change, it is not paid for by national health insurance.

Germany - The German Gender Recognition Act

The German Gender Recognition Act (Transsexual Act - Transsexuellengesetz) provides regulations on the change of the civil status of a person concerning his or her gender. The so-called “small solution” allows the transsexual person to change his/her first name (Sec. 1 Transsexual Act). The so-called “big solution” allows for the change of the gender status (Sec. 8 Transsexual Act). In all cases, a judge decides on the change of the name and the change of the gender status (Sec. 2 and 8 of the Transsexual Act).

The Transsexual Act is vastly criticized as it requires a psychiatric examination procedure, requiring the transsexual to agree to be mentally ill. In addition to this, Sec. 8 of the Transsexual Act provided that the change of the gender status required that the married transsexual had to be divorced, and that the transsexual had to undergo a permanent sterilization and a sex change surgery. The German Constitutional Court has declared the prerequisites of Sec. 8 of the Transsexual Act are unconstitutional. In 2008 the judges declared the requirement of a divorce (in order to avoid marriages between people of the same sex) as void. It has been removed from the Transsexual Act. In 2011 the judges argued that the juridical recognition of transsexual people may not be made conditional upon genital surgeries. Thus, they declared the provision as inapplicable until such time as a new provision comes into force²¹.

On the question of legal treatment of transgenders, the German legislation differentiates between transsexual and intersexual persons. The opinion of the German Ethics Council makes clear that intersexuality or the general term DSD (disorders or differences of sex development) are variations of the anatomic appearance, in which the assignment of the individual to the male or female sex is doubtful due to the internal and external genitals. The term transsexuality has to be clearly differentiated from the terms DSD and intersexuality. Transsexuality is typically existing when individuals note that their physical sex is polar to their psychological sex. The German Ethics Council draws a clear dividing line between intersexuality and transsexuality and thus confirms the opinion that there are two different groups of people concerned: In contrast to transsexuality in which people concerned feel related in the course of their lives to the other than their biological sex and in which the

²⁰ http://en.wikipedia.org/wiki/Legal_aspects_of_transsexualism

²¹ <http://www.impowr.org/content/current-legal-framework-transgender-issues-germany#sthash.IrlXvPOG.dpuf>

100

question of gender identity and gender role plays an important part, the term intersexuality comprises a host of biological-somatic given ambiguities of the sexual characteristics, which can exist already at birth.

In its legal evaluation the German Ethics Council arrives at the conclusion that intersexual people have – also based on the constitution – a claim to registration of their personal legal status of (different from male or female) belonging to a gender and sees changes in the register of births as necessary. Consequently, the German Bundestag has put into force by 1 November 2013 the Law on the Amendment of Personal Registration Regulations (Personal Registration Legislation-Amendment Law – PStRÄndG). Based on the stipulations of the Personal Registration Law (PStG) the birth register documents the gender of the child. Even based on the former legal situation the registrar was in a position to leave the gender of a child open in the birth register, if the child could not be associated to the male or female gender. In registration practice, however, the gender was hardly left as unclear, since parents and doctors usually agreed on a gender association based on the dominating sexual characteristics. The new regulation in § 22, paragraph 3 PStG envisages that the personal case without indication of the gender has to be entered in the birth register, if the child can neither be associated to the female nor the male sex. Thus the legislator adopted the topic “intersexuality” discussed by the German Ethics Council and clarified that the gender indication remains open in the birth registration if it is not clear without doubt. The regulation aims at relieving the parents from pressure to lay down a gender right after the birth of a child and for that reason to have sex reassignment medical interventions done on the child too soon. The fact that the registrar may leave the data field “sex” open in the birth register does not lead to the introduction of a new gender category. In the entire legal order, especially in the constitutional and civil right, only the genders male and female exist. The personal status right as register right only reflects the family law position of a person as a kind of “mirror of the family right”. Regulations for registrar’s entry cannot answer the questions resulting from intersexuality for the marriage right and the other legal order.

France

France treats discrimination on grounds of transgenderism as a form of sexdiscrimination.

In France, hormonal treatment and/or surgery are required for gender reassignment.

The individual must demonstrate:

- a) that (s)he has followed a medically supervised process of gender reassignment - often restricted to certain state appointed doctors or institutions;
- b) that (s)he has been rendered surgically irreversibly infertile (sterilisation), and/or
- c) that (s)he has undergone other medical procedures, such as hormonal treatment.

France permits a 'post-operative transsexual' to marry a person of the sex opposite to their acquired gender. Also, the name can be changed after medical health evaluation and/or surgery, and/or hormonal treatment.

101

Transgender persons are defined as a distinctive "social group". They have the right to change their civil status, first name and the sex stated on their birth certificate, but this right does not appear in law, only in jurisprudence.

In 2009, France became the first country in the world to declassify transsexualism as a mental illness. Transsexualism is part of the ALD (31) and treatment is funded by Securite Sociale. The French Senate voted unanimously in July 2012 to prohibit discrimination against transgender people.

Some case laws on above points:

Transsexuals have the right to change the sex stated on their birth certificate. This right appears in no law, but in jurisprudence. In 1992, France was found guilty by the European Court of Human Rights on 25 March (B. v. France) of violating Article 8 of the European Convention on Human Rights. Seized by a complaint by Miss B., a transsexual man who had become a woman, The European Court found that French law, by requiring constant revelation of her official sex, placed the complainant in a situation that was incompatible with her right to privacy. Following this European verdict, the Plenary Assembly of the Court of Cassation amended its jurisprudence relative to transsexualism. It now allows the birth certificate to be amended after a sex change in the name of privacy rights: "the principle of the right to privacy justifies that the civil status of the transsexual person indicate the sex he or she appears to be"²².

Transsexuals also have the right to change their forename. Changing the sex stated in one's civil status automatically gives one the right to change one's forename if one so wishes. Like any person, a transsexual has the right to the respect of his or her family life, as protected by article 8 of the E.C.H.R. He or she may marry in his or her new sex, a right which has never been prohibited in France. Finally, a transsexual may be granted visiting rights to an ex cohabiting partner's children²³.

²² 11 December 1992, JCP 1993, II, 21991.

²³ V. CA Aix-en-Provence, 12 March 2002.

Chapter Four

Transgender identity..

A crucial issue for consideration is whether a transgender person should be categorized as male or female depending on his/her choice, or a separate category of third gender, namely, 'transgender' should be created.

2. The Committee referred several papers, laws and policies from around the world in general, as well as to the paper submitted by Dr. Venkatesan Chakrapani and Arvind Narrain to UNDP titled "Legal Recognition of Gender Identity of Transgender People in India: Current Situation and Potential Options"¹, in particular. In this paper, the authors have proposed three options for consideration for gender identity of transgender people in India:-

Option 1 - Legal recognition of gender identity of transgender people as women or men

Option 2 - Legal recognition of gender identity of transgender people as separate gender ('Third Gender' or 'Transgender')

Option 3 - Legal recognition of gender identity of transgender people based on their choice- women, men or a separate gender ('third gender' or 'transgender')

3. Parameters that can be considered for the above options have also been provided by the authors and are listed in Appendix-4. The Committee considered the pros and cons of each of the above options, as under:

Option 1 - Legal recognition of gender identity of transgender people as women or men

- Merits:
 - Easy to implement
 - Protects privacy of the transgender persons

¹Legal Recognition Of Gender Identity Of Transgender People In India: Current Situation and Potential Options, authored by Venkatesan Chakrapani & Arvind Narrain, UNDP publication 2012.

103

- Demerits:
 - Doesn't provide an option to a person wanting to be seen as transgender
 - Transgender identity remains obscure as the document will not show it; may pose problems in availing specific benefits designed for transgender persons; number of transgender persons difficult to obtain
 - Cis women may not feel comfortable with trans women categorised as women and share benefits exclusively for women, such as reservation in local bodies

Option 2 – Legal recognition of gender identity of transgender people as separate gender ('Third Gender' or 'Transgender')

- Merits
 - Creates three distinct categories of 'male', 'female' and 'transgender' with no overlapping – easy to implement
- Demerits
 - Takes away the right of a person to choose his/her gender
 - Obscures the chosen gender identity of transgender person

Option 3 - Legal recognition of gender identity of transgender people based on their choice – women, men or a separate gender ('third gender' or 'transgender')

- Merits
 - Protects everyone's rights to choose gender
 - Easy to implement
- Demerits
 - Creates some confusion as some transgender persons will get registered as men or women; the question will be how to take care of them
 - Number of transgender persons cannot be assessed

4. After considering the pros and cons of all options, *the Expert Committee recommends Option 3 to be adopted in which a transgender person will have the*

104

choice to declare himself/herself as either man, woman or transgender. It was noted that this model is already being followed, in practice, by the Election Commission of India and UIDAI. Even the RGI had followed this model during 2011 census. However, the Committee recommends that only the nomenclature 'transgender' should be used and nomenclatures like 'other' or 'others' should not be used.

5. The Committee next discussed the issue of certification of gender identity of transgender people. The Committee, in this respect also examined the three options suggested by the authors mentioned above, which are as follows (This can also include a combination of the options below – for example it can start with a self-identity affidavit, and go on to a more formal 'gender recognition/change certificate' from a government authority like a board.):

- A 'gender recognition certificate/document' by a government authority (e.g., similar to the panel constituted by Gender Recognition Act of UK or the Tamil Nadu Aravani Welfare Board) that usually deploys a committee to endorse gender identity.
- A medical certificate from a doctor that states the current sex/gender of the transgender person (this procedure is already being followed in some states of India). This would be specifically for change of gender from man to woman or woman to man. (Care will have to be taken to ensure that this is just one part of the process, many in the community already have issues of denial, neglect and discrimination at the hands of health care providers.)
- A self-affidavit or self-endorsement of gender identity submitted via a proper channel (e.g., similar to the process in Argentina or the UID or Aadhaar in India – in which the person can self-declare as 'transgender'). This could be for persons who want to identify as 'transgender' or other. (This could be the first part of the process of gender change, we reinforce existing mechanisms and also integrate it as a part of the change.)

6. It was noted that authors have suggested a simple model to be followed on the lines of Argentina where a self-declaration by the person concerned is enough for change of gender. It was felt that in the Indian context it would be appropriate to follow the model suggested in the first option above in which the certification of transgender identity should be done by an authority, similar to the one adopted by the Tamil Nadu Government, wherein a transgender identity card is issued by the Aravanis Welfare Board on the basis of the clearance given by the District Level Screening Committee headed by District Magistrate/Collector and comprising Deputy Director (HS), District Social Welfare Officer, psychologist/psychiatrist and a representative of transgender community. The details of Tamil Nadu model are provided in chapter ten. The Committee also recommended that Tamil Nadu model

105

may be adopted by other States, with suitable modifications compatible with their conditions, in respect of the other measures taken by the Welfare Board in Tamil Nadu. For example, the addition of a social worker in the Committee may be considered by the State Governments. It is recommended that the Screening Committee should have two members from the transgender community. It is also recommended that in place of the term 'medical exam', 'psycho social assessment' will be used. Members of this Screening Committee will be required to undergo training/ orientation/ sensitization on the issue to enable sensitive functioning.

7. The Committee further recommends that a third 'gender' identity known as '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, Government may refer the matter to the Law Commission.

8. In sum, the Committee recommends that:

- i) A Transgender person should have the option to identify as '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 respective the State/UT on the lines of Tamil Nadu Aravanis Welfare Board, on the recommendation of a District level Screening Committee headed by the Collector/District Magistrate 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 Govt/UT Administration deems appropriate.
- iii) The certificate issued as at (ii) above should be recognised and acceptable to all authorities for indicating/changing the gender on official documents like ration card, passport, birth certificate, AADHAAR card, etc.
- iv) The third 'gender' identity known as '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, Government may refer the matter to the Law Commission.

Chapter Five

Inclusive Approach

“.....we must keep in mind that growth must not only be rapid, it must be inclusive and sustainable. The benefits of growth must reach the SCs, STs, Minorities and other disadvantaged groups in our society.....”

- Dr. Manmohan Singh, Prime Minister¹

Inclusion

The genesis of the problems of Transgender persons in India lie in the stigma and discrimination they face in the society, resulting in their exclusion from socio-economic-political spectrum. They are one among the marginalized sections of the society. The solution of their problems will, therefore, require concerted efforts to mainstream them and adoption of an inclusive approach in all spheres of life. The transgender community is one of the disadvantaged groups and without their inclusion in the development efforts; the objective of inclusive growth cannot be fully realised.

Meaning of Inclusiveness

2. According to the Twelfth Five Year Plan (2012-17), inclusiveness means many different things and each aspect of inclusiveness poses its own challenges for policy². Different facets of inclusiveness are inclusiveness as poverty reduction, inclusiveness as group equality, inclusiveness as regional balance, inclusiveness and inequality, inclusiveness as empowerment and inclusiveness through employment programmes. While all aspects are important, inclusiveness as group equality and inclusiveness through employment programmes assume special significance for transgender community. As per Twelfth Five Year Plan (2012-17), inclusiveness as group equality is also about a growth process which is seen to be 'fair' by different socio-economic groups that constitute our society. Inclusiveness must also embrace the concern of other groups such as the Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), Minorities, the differently abled and **other marginalised groups**³. Transgender persons, being a marginalized group, should be included in any effort to achieve inclusiveness as group equality. In so far as the inclusiveness through empowerment is concerned, MGNREGA has been its plank during the eleventh plan⁴. This continues to be important during the twelfth plan. Transgender persons

¹Twelfth Five Year Plan (2012-17): Faster, More Inclusive & Sustainable Growth, Volume I, Foreword, page vi.

² Ibid, page 5

³ Ibid, page 6

⁴ Ibid, page 7

107

living in rural areas may be brought in the ambit of MGNREGA. In urban areas, they need to be brought in the ambit of National Urban Livelihood Mission (NULM).

3. The Twelfth plan document states: "To summarise, the Twelfth Plan must be guided by a vision of India moving forward in a way that would ensure a broad-based improvement in living standards of all sections of the people through a growth process which is faster than in the past, **more inclusive** and also more environmentally sustainable."⁵

Developing capabilities

4. The Twelfth Plan focuses on developing capabilities as it states "....., we focus on the capabilities we need to develop to achieve the objective of faster, more inclusive and sustainable growth. We first consider the development of human capabilities, which are in many ways the most important. Then we focus on institutional capabilities and the development of infrastructure which is a general capability enhancer for all agents. Both the Central and State Governments have a large role to play in developing these capabilities and the Twelfth Plan at the Central and State level should accord high importance to this effort."⁶

5. Development of human capabilities involve efforts towards improving life and longevity, education, skill development, nutrition, health, drinking water and sanitation and information technology. The Experts Committee is of the view that in all these efforts to develop human capabilities, the needs of transgender persons should also be taken into account. Significantly, the Twelfth Plan also states "The longer-term objective of Health Policy must be the provision of Universal Health Care (UHC), whereby anyone who wants it is assured of access to a well-defined set of health care entitlements."⁷ This is a laudable objective. It is expected that this will universalize health care in which transgender persons will also be benefitted.

6. The Committee is of the view that inclusive approach should be the bedrock of Government's strategy to mainstream the transgender Community. The Ministry of Social Justice & Empowerment should take up with all concerned Ministries/Departments of Government of India and State Governments to include development of transgender community in their policies, programmes and schemes.

7. The Twelfth Five Year Plan (2012-17); Social Sectors, Volume III has a section on transgender communities as follows:

"23.71. The Twelfth Plan proposes empowerment of the transgender community by advocating that line Ministries support their education, housing, access to healthcare, skill development, employment opportunities and financial assistance. Identification will be provided for transgendered persons in all Government and non-Government records by introducing a separate column to include the third gender. The Ministry of Social Justice and Empowerment along with the Ministry of Statistics and Programme Implementation will

⁵ibid, page 10

⁶ibid, page 10

⁷ibid, page 13

108

determine the number of transgendered persons in India, map their socio-economic status in order to create a law to protect interests of the community and improve their living conditions.”⁸

8. In keeping with above intent, the Committee recommends to the Ministry of Social Justice & Empowerment to seek convergence with other Ministries and their existing schemes for a more targeted and focused approach towards welfare of transgender people, as detailed in next Chapter Six; while considering an Umbrella Scheme for direct targeted intervention in certain areas.

⁸Twelfth Five Year Plan (2012-17): Social Sectors, Volume III, Foreword, pages 176-77

Chapter Six

Convergence Approach

Various Ministries/Departments of the Government of India are implementing a number of schemes which target a variety of beneficiaries. In most of such schemes, special emphasis is given to cover the weaker sections of the society and other disadvantaged groups. *The Expert Committee is of the view that these schemes could be effectively utilized for providing benefits to such transgender persons who are eligible under those schemes.* Some of such schemes/programmes are mentioned below (this list is not exhaustive):

Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)

2. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was a major initiative of the 11th Five Year Plan period. This aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work¹. *The implementing agencies of the MGNREGA may be advised to provide employment opportunities under this Act to such transgender persons who are willing to do unskilled manual work.*

National Rural Livelihoods Mission (NRLM) – AAJEEVIKA

3. As per the 12th Five Year Plan Document: Economic Sectors, Volume-II, the NRLM will emerge as the centerpiece of India's battle against the rural poverty. The NRLM is to be implemented in a phased manner and in each phase select districts and blocks which will be identified by each State for intensive implementation of NRLM activities. The range of activities under the given components of the Mission is²:

- Building institutions of the poor
- Promotion of financial inclusion
- Diversification and strengthening of the livelihoods of the poor
- Promotion of convergence and partnerships between institutions of the poor and the government and non-government agencies
- Promotion of skills and placement support
- Support for livelihoods and social innovations

¹ <http://nrega.nic.in/netnrega/home.aspx>

² Twelfth Five Year Plan (2012-17): Economic Sectors, Volume II, page 297

4. *It is recommended that the transgender community should also be considered as a target group under the NRLM. Special SHG (Self Help Group) status may be granted to the transgender community to help ease access to finances, services, etc. Rules/ policies may also be relaxed in terms of numbers along with subsidies, loans.*

National Social Assistance Programme (NSAP)

5. This is an important programme aimed at providing succour to senior citizens, differently abled people and others who have suffered due to mishaps in life through unconditional cash transfers. At present, NSAP comprise the Indira Gandhi National Old Age Pension Scheme (IGNOAPS), the Annapurna Scheme and National Family Benefit Scheme (NFBS), the Indira Gandhi National Widow Pension Scheme (IGNWPS) and the Indira Gandhi National Disability Pension Scheme (IGNDPS)³. *It is recommended that transgender persons who are 60 years and above should be targeted under the Indira Gandhi National Old Age Pension Scheme.*

National Urban Livelihood Mission (NULM)

6. An important initiative of the Ministry of Housing and Urban Poverty Alleviation is the National Urban Livelihood Mission (NULM). It aims to reduce poverty and vulnerability of the urban poor households by enabling them access to gainful self-employment and skilled wage employment opportunities, resulting in an appreciable improvement in their livelihoods on a sustainable basis, through building strong grassroots level institutions of the poor. The mission would aim at providing shelters equipped with essential services to the urban homeless in a phased manner⁴.

7. Majority of transgender persons are known to be living in urban areas. *The transgender community could tremendously benefit if the concerns of the transgender persons are taken into account in the NULM. Special SHG (Self Help Group) status may be granted to the transgender community to help ease access to finances, services, etc. Rules/ policies may also be relaxed in terms of numbers along with subsidies, loans.*

Healthcare facilities

8. The inclusive agenda for health enunciated in the 12th Five Year Plan document: Social Sectors, Volume III mentions that in order to ensure that all the services in the 12th Five Year Plan are provided with special attention to the needs of marginalized sections of the population, the emphasis will *inter alia* be given to

³ *ibid*, page 313

⁴ http://mhupa.gov.in/NULM_Mission/NULM_Mission.htm

access to services. Under this, barriers to access would be recognized and overcome especially for the disadvantaged and people located far from facilities⁵.

9. Keeping in line with the above, *it is recommended that the Ministry of Health and Family Welfare should issue an advisory to all concerned including the State Governments and Union Territory Administrations to provide to transgender persons easy access of healthcare facilities.*

Rashtriya Swasthya Bima Yojana (RSBY)

10. Rashtriya Swasthya Bima Yojana (RSBY) provides for 'cashless' smartcard based health insurance cover of Rs.30,000 per annum to each enrolled family comprising up to five individuals. The beneficiary family pays only Rs.30 per annum as registration/renewal fee. The Scheme *inter alia* covers hospitalization expenses (out-patient expenses are not covered) and pre-existing diseases. A transport cost of Rs.100 per visit is also paid⁶. Different target groups have been added under RSBY from time to time. *The Committee recommends that transgender persons should also be covered under RSBY. Since the Scheme is implemented on the basis of family, the coverage could be provided either to a group of five transgender persons, or alternatively, coverage of Rs.6,000 per annum could be provided to each transgender person on payment of Rs. 6 per annum as registration/renewal fee. The first model would be administratively more convenient for implementation.*

National Health Mission (NHM)

11. As mentioned in the 12th Five Year Plan document: Social Sectors, Volume III, the gains of flagship programme of National Rural Health Mission (NRHM) will be strengthened under the umbrella of National Health Mission (NHM) which will have universal coverage. While the focus on covering rural areas and rural population will continue, a major component of NHM is proposed to be a Scheme for providing primary healthcare to the urban poor, particularly those residing in slums⁷. *The Committee recommends that the concerns of transgender community should be adequately taken care of under the NHM.*

Education

12. Education is the most important lever for social, economic and political transformation⁸. The need for proper education of transgender children cannot be over-emphasized. The integration of transgender children in the Sarva Shiksha

⁵ Twelfth Five Year Plan (2012-17): Social Sectors, Volume III, page 10

⁶ *ibid*, page 20

⁷ *ibid*, page 26

⁸ *ibid*, page 47

112

Abhiyan (SSA) and Right to Education Act would go a long way in addressing the education issues of transgender community. The real empowerment of transgender persons will happen when an enabling environment is created in which the transgender children are not pushed out of the education system, but well-integrated into the system through measures that have been detailed in a chapter eight.

National Policy on Skill Development, 2009

13. The National Policy on Skill Development formulated in 2009 envisions empowering all individuals through improved skills, knowledge and nationally and internationally recognized qualification to gain access to decent employment and ensure India's competitiveness in the global market⁹.

14. The Policy presently does not include transgender persons among the target groups in the chapter on skill development for the unorganized sector¹⁰. As the 12th Plan document proposes empowerment of transgender community by advocating that line Ministries support their education, housing, access to healthcare, skill development etc., *it is recommended that the transgender persons may be specifically mentioned in the said National Policy as one of the target groups in the chapter on skill development for the unorganized sector.*

15. The National Skill Development Agency (NSDA) may include transgender persons in its mandate¹¹, where it talks of skilling needs of marginalized groups like SCs, STs, OBCs, minorities, women and differently abled persons.

Indira Awas Yojana

16. Housing is an important need of the transgender persons. The Committee notes that transgender persons are included as a priority in selection of beneficiaries in para 4.1 of its guidelines¹². *The Committee recommends that this should be widely publicized so that maximum number of transgender persons could be benefitted.* Tamil Nadu Government has assisted a number of transgender persons under IAY.

17. Government may also relax norms for transgender persons, wherever required, in various programmes/schemes cited above.

⁹ *ibid*, page 142

¹⁰ <http://labour.nic.in/upload/uploadfiles/files/Policies/NationalSkillDevelopmentPolicyMar09.pdf>, page 28

¹¹ <http://www.skilldevelopment.gov.in/>

¹² http://iay.nic.in/netiay/more_benefcry.htm

Chapter Seven

Addressing Stigma, Discrimination and Violence faced by Transgender People¹

Introduction

Despite a pre-colonial heritage that recognized and celebrated gender diversity in temple sculptures, mythology and religious treatises⁴, transgender people in India, today, face intolerance, stigma, discrimination and violence. Human rights violations against transgender people pervade families, educational institutions, workplaces, institutions such as law-enforcement, healthcare, media, and society at large.

Stigma, discrimination and violence stem from intolerance of lives that transgress binary gender norms and expression, and threaten the gendered power relations of patriarchy.

In this chapter, the authors¹ describe the nature of stigma, discrimination and violence experienced by transgender individuals through their life-courses⁵, and suggest interpersonal and structural interventions needed to address these.

Stigma against transgender people refers to devaluing of transgender-identified or gender non-conforming people, and negative attitudes toward and lower levels of status accorded to non-cis-gender identified people and communities.

Discrimination: "an action that treats people unfairly because of their membership in a particular social group."²

Violence: "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal development, or deprivation."³

Children and Adolescents

While most transgender individuals behave in ways that do not conform to expected gender roles during childhood, not all gender-nonconforming children grow into a transgender

¹Drafted by Dr. ArchanaDassi and Dr. L. Ramakrishnan with assistance from Mr. Sunil Mohan and other members of the expert committee. Thanks to Dr. KaveriRajaraman, Mr. Gee Ameen Suleiman, and Mr. Thaddeus Alfonso for valuable suggestions

²United Nations Cyberschoolbus.http://cyberschoolbus.un.org/discrim/id_8_ud_print.asp

³Krug EG, LL Dahlberg, JA Mercy, AB Zwi and R Lozano.Eds. 2002.World report on violence and health. Geneva, World Health Organization

⁴Kalra, G. 2012. Hijras: the unique transgender culture of India. International Journal of Culture and Mental Health 5(2). 121-126.

⁵Elder GH, MK Johnson and R Crosnoe. 2003. The Emergence and Development of Life Course Theory. In: Jeylan T. Mortimer and Michael J. Shanahan (ed.). Handbook of the Life Course. Springer, ISBN 0-306-47498-0, pp. 3-19.

identity. However, gender-nonconforming children are subjected to harassment and violence at home and schools⁶, regardless of whether they consider themselves transgender as adults. Hence the authors use the term 'transgender and gender non-conforming' while referring to children in this chapter.

Most families do not accept gender-nonconforming behavior in their children, which may manifest as early as three to five years of age. For many parents, the news that their child is transgender or gender non-conforming can bring an array of emotions along with it: some feel sad, fearful and disappointed while others feel shocked, angry and upset. Very few are willing to support their loved ones without trying to make them change⁷.

Parents may threaten, scold or even assault their male child for behaving in ways considered girlish or feminine, and their female child for behaving like a boy. They may have several reasons for doing so: fear that a gender-nonconforming child will bring disgrace and shame to the family, apprehension that their child will not marry, perpetuate the family line and/or discharge family responsibilities. This ostracism within families often continues across the lifespan of such children. Gender non-conformity both among PAGFBs and PAGMBs often leads to violence and a range of corrective measures from families as well as extended networks including neighborhood, school etc. These measures also tend to be gendered. For instance, corrective rape of PAGFBs by family members to convert/cure gender and sexual non-conformity; this may lead to (in addition to severe psychological trauma) unwanted pregnancies, infections and injuries. Another example of violence inflicted by family members, especially among middle class urban families is seeking services of quacks and mental health professionals to force cure on their child. Forced marriage is again common for both PAGFBs and PAGMBs. Transgender and gender-nonconforming youth are sometimes expelled from the family, or run away unable to bear the taunts and violence.⁸

Puberty is a difficult time for all transgender persons, but differently so for PAGFBs as puberty and attaining menarche is marked by rituals and celebrations in most communities; however it is a time of heightened distress for the Trans-PAGFB. With puberty, in most communities there is increased surveillance and decreased mobility for most PAGFBs. Thus even when a trans-PAGFB or trans man may want to leave their natal home and migrate to a bigger city, which lends anonymity and where the person may want to live out freely as a trans-man (a common narrative among trans-women/hijras), the families of PAGFBs are more likely to pursue this with the police and neighborhood or extended family networks and bring the person back home. After all it is seen as an issue of family 'izzat' if the 'daughter' of the family runs away. This puts major restrictions on spaces where Trans-PAGFBs can express their gender non-conformity.

⁶Roberts, AL, M Rosario, HL Corliss, KC Koenen and SB Austin. 2012. Childhood Gender Nonconformity: A Risk Indicator for Childhood Abuse and Posttraumatic Stress in Youth. *Pediatrics*. <http://pediatrics.aappublications.org/content/early/2012/02/15/peds.2011-1804>

⁷Chakrapani, V. & Dhall, P. (2011). Family Acceptance Among self-identified men who have sex with men (MSM) and Transgender people in India, Family Planning Association of India (FPAI): Mumbai

⁸UNDP (2013). Transgender Health and Human Rights, Discussion Paper. Available at: <http://on.undp.org/sjt3E>

Anxious parents attribute gender-nonconformity in children to a variety of causes including mental illness, sexual abuse, confusion, rebellion or poor socialization. Believing that the best way to help their children thrive as adults is to help them try to fit in with their gender-normative peers, seek to make their children conform to their gender assigned at birth through abuse, bullying, threats and medical "treatment". It is understandable that parents fear the consequences of non-conforming to the child's ability to exist and thrive in society. However, attempts to change or force his/her gender expression to conform are futile, unethical and contrary to findings from established science around gender identity development⁹. Further, these reactions undermine the self-esteem and sense of self-worth of gender-nonconforming and transgender children.

Stigmatization of gender-nonconforming and transgender children and youth is amplified in the educational system, which mirrors the rest of society in reinforcing strictly binary and patriarchal gender norms. A study done with 50 queer identified PAGFBs in Mumbai reveals that school uniform, certain kinds of sports and a few school subjects, choice of which is gendered, for instance bakery or cooking for girls and carpentry for boys; are sources of immense stress for several Trans-PAGFBs¹⁰. Classmates and teachers alike bully, taunt and harass gender nonconforming children. Extensive evidence suggests that gender-nonconforming children are at higher risk of sexual abuse.¹¹

A recent study¹² that followed gender-nonconforming children through a period of 11 years showed that gender nonconformity strongly predicted depressive symptoms beginning in adolescence, and that physical and emotional bullying and abuse, both inside and outside the home, accounted for much of this increased risk.

Absence of a supportive family and a hostile or abusive peers and school environment are the reasons many gender-nonconforming children drop out of the educational system entirely, foreclosing opportunities for gainful employment during adulthood. The traditional hijra jamaat system offers space for transgender and gender-nonconforming children assigned male at birth, and may offer income through limited avenues such as seeking alms, blessing married couples and newborn children, and/or sex work. An equivalent to the hijra jamaat system does not exist for those who are assigned female at birth. Absence of such an alternate support system, in addition to the limited mobility and patriarchal subjugation, are reasons for the relative invisibility of FtM transgender people.

⁹Halim ML, DN Ruble, CS Tamis-Lemonda, KM Zosuls, LE Lurye, FK Greulich. Pink Frilly Dresses and the Avoidance of All Things "Girly": Children's Appearance Rigidity and Cognitive Theories of Gender Development. *Dev Psychol*. 2013 Nov 25.

¹⁰ Nevatia, S., Raj, Mahajan, S., Shah, C. (2012). Bound by Norms and Out of Bounds: Experiences of PAGFB within the formal education system, *Contemporary Education Dialogue*, 9 (2), 173-96

¹¹Chakrapani, V. & Dhall, P. (2011). Family Acceptance Among self-identified men who have sex with men (MSM) and Transgender people in India, *Family Planning Association of India (FPAI): Mumbai*

¹²Roberts AL, M. Rosario, N Slopen, JP Calzo, SB Austin. 2013. Childhood gender nonconformity, bullying victimization, and depressive symptoms across adolescence and early adulthood: an 11-year longitudinal study. *J Am Acad Child Adolesc Psychiatry*. 2013 Feb;52(2):143-52.

Addressing stigma, discrimination and violence against gender-nonconforming and transgender children and adolescents:

Families: Awareness and information are needed for parents to support their gender-nonconforming or transgender children, setting aside their discomfort and deeply held normative attitudes. Such information could be made available in health settings (pediatrics, child development specialties), as well as through educational institutions. Parents and siblings should be alert to the risk of the children facing bullying and other violence outside the home – in the extended family, at schools, on the playground, and support them accordingly. They also need to take cognizance of the escalation in stress faced by a gender-nonconforming or transgender child as he/she grows into adolescence and experiences dysphoria when he/she develops secondary sexual characteristics at odds with his/her sense of gendered self.

Counseling and other mental health services that affirm the child's gender identity are needed for the children and their parents alike. The model of parents' support groups facilitated by the Center for Counselling in Chennai and Swabhava in Bangalore may be examined for replication by government and civil society groups working for transgender welfare. Support groups help parents to (i) overcome misconceptions, understand the difference between sex, sexuality, gender, and intersex variations (ii) realize that they, as parents, are not alone (iii) that their children's gender-nonconformity is not the result of bad parenting (iv) be able to work through their negative feelings of anger, disbelief, shock, or disappointment in a safe space. Additionally, 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-nonconforming youth.

Besides a supportive family environment, gender-conforming and transgender youth need counseling and support for their self-stigma, and for coping with the trauma of violence and abuse. Such support could be made available in schools, through various child-welfare services, and through youth and suicide hotlines.

Educational institutions: Awareness of gender diversity and the need to safeguard transgender youth from hostile school environments is a dire need. Orinam, a support and advocacy group for transgender and other sexual/gender minority groups (collectively referred to as lesbian, gay, bisexual and transgender) in Chennai has recommended¹³ certain interventions in schools and colleges. The recommended interventions include formation of groups of transgender children for meetings, holding film screenings, setting up of resource centre, augmenting libraries with books and audio-visual materials on transgender issues, holding periodical sensitization events, and adopting policies for preventing sexual harassment and bullying of transgender children. Some schools in Tamil Nadu have initiated

¹³Orinam. 2009. Resources for Educational Institutions. Online at <http://orinam.net/resources-for/educational-institutions/>

efforts in this direction by inviting transgender spokespersons¹⁴ and counselors to educate their students and staff. The Committee recommends that these recommendations may be studied by Governments and suitably adopted for creating a conducive environment for transgender children in educational institutions.

Healthcare: Interventions to reduce discrimination against transgender persons in the healthcare system have been described in Chapter 10, and are summarized in the Table of Interventions appended to this chapter. The authors emphasize here the need to prevent physical and psychological violence inflicted on gender-nonconforming and transgender children and adolescents through conversion therapy attempts such as electric shock treatment.

Shelter and Residence: While it is imperative that every effort be made to provide gender-nonconforming and transgender children safe residence within their natal homes, there is a need to ensure that short-stay homes, orphanages, adoption and fostering services are sensitive to the needs and concerns of such children. Those who have run away or been abandoned by their families need to be considered by the Juvenile Justice (Care and Protection of Children) Act and efforts made to ensure safe shelter for them, as well as sensitization of the caregivers in the facilities.

Transgender Adults

Stigma, discrimination and violence against gender-nonconforming and transgender children in families and school systems, are further compounded by economic marginalization. There is a perception that laws have been formulated in a binary framework and do not acknowledge their existence either as a third gender or as people whose gender identity is the opposite of that assigned at birth. This gives an impression that they have no legal protection and because of this, transgender adults are vulnerable to violence and discrimination from a range of institutional structures^{15,16,17,18}.

Transgender adults who remain within their families are also subjected to “curative” attempts by family members, who seek to rid them of their non-conforming behavior by aversion

¹⁴ Menon, P. 2013. Tamil Nadu schools begin gender identity sessions. Times News Network. NN Nov 29, 2013. Online at http://articles.timesofindia.indiatimes.com/2013-11-29/news/44574103_1_gender-identity-sessions-students

¹⁵ UNDP. 2013. Discussion Paper : Transgender Health and Human Rights. UNDP HIV, Health and Development Group

¹⁶ Peoples' Union for Civil Liberties, Karnataka. 2003. Human Rights Violations against Transgender Community, A study of kothi and hijra sex workers in Bangalore, India September 2003

¹⁷ Moran, L and A Sharpe. 2004. Violence, identity and policing: The case of violence against transgender people. *Criminal Justice*. 4(4), 395-417.

¹⁸ Rhonda, JF and DR Esther. 2007. A Study of Transgender Adults and Their Non-Transgender Siblings on Demographic Characteristics, Social Support, and Experiences of Violence, *Journal of LGBT Health Research*, Vol. 3(3) 2007

therapies, or by forcing them to get married. They are also often denied their share of the family property.

Those transgender individuals who manage to survive the hostility they encounter as children and youth, find their employment opportunities as to be curtailed, both by the limited formal education many have had, and by stigma and discrimination in recruitment practices of many employers, as well as hostility in most workplaces, absence of gender-appropriate rest rooms, etc.. This leaves many MtF transgender people, especially those from working class backgrounds, with no alternative but begging and sex work. Both MtF and FtM transgender individuals also have to contend with sexual harassment in the workplace, across both formal and informal sectors¹⁹.

The discrimination inherent in institutions whose policies and systems reflect a binary-gendered worldview prevents transgender people from applying to social welfare schemes, writing competitive exams, and seeking employment. Fear of being stigmatized or discriminated against, also causes many individuals to avoid processes (such as scheme applications) that may require an identity verification and disclosure of their transgender status.

Sometimes, excessive powers given to the Police under laws provide scope for harassment and abuse. An amendment made in the Karnataka Police Act, 1963 on 26.04.2011 [by Act 26 of 2011] through insertion of Section 36A gives powers to the Commissioner to order preparation and maintenance of a register of names and places of residence of all MtF transgender persons residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences, and prohibit them from doing such activities as may be stated in the order.

Many cases of human rights violations by police have been reported from time to time across the country. There is no systematic research done on the subject of transgender persons and violence, often the only reports are those few that reach the media. A case in recent memory was that of Pandian/Pandiammal, a transgender person who was repeatedly and brutally sexually abused by the police in Chennai, leading her to immolate herself in front of the police station. In a 2007 ruling²⁰, Chief Justice AP Shah and Justice P Jyothmani ordered the Government of Tamil Nadu to provide compensation to the next of kin.

Our societal discomfort with transgenderism has rendered transgender victims of sexual assault, and domestic violence without necessary services. Rape Crisis Intervention Centers and domestic violence shelters are unprepared to address the issues of transgender people. Medical personnel, criminal justice and the legal systems often re-traumatize victims. The

¹⁹Rebello-Fernandes. 2013. The Booby Trap. Times News Network. TNN Jun 2, 2013. Online at http://articles.timesofindia.indiatimes.com/2013-06-02/deep-focus/39690654_1_breasts-gender-mastectomy

²⁰Shah, AP and P. Jyothmani. 2007. Jayalakshmi vs. Government of Tamil Nadu. Common judgement, Madras High Court. Online at <http://indiankanoon.org/doc/1373799/>

complexity of issues facing the transgender person who is sexually assaulted can only be addressed by broad changes in the delivery system and extensive education regarding the needs of this community.

The right to security includes the right to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group. In 2011, the United Nations High Commissioner for Human Rights, Navanethem Pillay, said that while racism, xenophobia and sexism have been condemned by many countries, issues like "transphobia are too often overlooked." "History shows us the terrible human price of discrimination and prejudice. No one is entitled to treat a group of people as less valuable, less deserving or less worthy of respect," she said, while calling on States to address the issue²¹.

In the absence of State protection, many transgender people will not report such human rights violations.

Addressing stigma, discrimination and violence against transgender adults

In addition to the recommendations previously made for transgender children, their families, educational institutions, and healthcare systems, the following measures are suggested to address stigma, discrimination and violence against transgender adults.

Workplace: In consultation with community groups and human resource professionals experienced in the area of Diversity and Inclusion, workplaces in public and private sector need to sensitize employers and employees on issues of transgender persons. Anti-discrimination policies must be instituted and meaningfully applied to the processes of hiring, retention, promotion, and employee benefits. Workplace sexual harassment policies should be made transgender-inclusive.

Law and Law Enforcement: Cases of violations of human rights of Transgender persons have been highlighted in the media and brought to the notice of Courts, although no separate data is maintained by the National Crime Record Bureau (NCRB). Further, there has been no empirical evidence or study of systemic bias or discriminatory attitude in law enforcement agencies against Transgender persons. The incidents of atrocities and harassment by police occur mainly due to lack of proper knowledge of applicable legislations and sensitization in police. *There is a need for training and sensitization of police on transgender issues on the lines of training and sensitization done for treatment of issues related to Women, Children and other vulnerable sections of society.* The legal and law-enforcement systems need to be sensitized on issues of transgender people and be empowered to take actions such as:

- (i) Criminal and disciplinary action against delinquent police official in cases of violations of human rights of transgender persons.

²¹ UN News centre: Homophobic hate crimes on the rise, UN human rights chief warns: <http://www.un.org/apps/news/story.asp?NewsID=38406&Cr=pillay&Cr1=#.UttsZPvhXs0>

120

- (ii) Taking action against parents who neglect or abuse their gender-nonconforming or transgender children and against doctors who practice electro-shock or other kinds of unethical "conversion" therapy.
- (iii) Making free legal aid available to transgender individuals seeking redress against discrimination and violence.

Taking into account of the difficulties faced by transgender people in securing their legal right to live with dignity, NALSA²² has taken steps to provide legal services to such persons by way of an innovative and diversified programme. NALSA felt that the first step in this regard is to create awareness amongst the other people about the rights of transgenders to live with dignity as human beings and citizens. As a first step in this direction a Conference was organised in Chennai on 14th August, 2010. Hon'ble Executive Chairman, NALSA has directed the State Authorities to organize similar awareness programmes throughout the country. The State of Haryana and many others have included transgender people as persons eligible for free legal services, in their Rules.

- (iv) Where transgender individuals need to be incarcerated, care must be taken to ensure they are not in circumstances where they are vulnerable to sexual assault.
- (v) Sexual assault, sexual harassment and domestic violence laws must be made transgender-inclusive. Presently, Section 375 of IPC, as amended doesn't cover the transgender persons as victims of sexual assault (only cis women can be the victims of sexual assault). Alongside Section 375, another section should be included to cover the cases of sexual assault on transgender persons.
- (vi) Slurs based on real or perceived gender identity may be included in Section 153A of the Indian Penal Code.
- (vii) Bureau of Police Research & Training (BPR&D) may undertake a study on crime against transgender persons, including alleged excesses by Police, with a view to investigate their causes and suggest preventive measures.
- (viii) National Crime Records Bureau may, from now on, collect and compile statistics of crime against transgender persons, as also about cases registered against them as accused.

For the long run, the possibility of a law to prevent discrimination and atrocities may be considered.

Social Welfare: Policy and institutional reforms that enable access to social protection schemes, targeting the poor and other at-risk groups, must be made transgender inclusive.

Community strengthening and involvement: The capacity of community organizations to monitor, document and respond to discrimination and human rights violations must be strengthened. Training in legal literacy, and public speaking for advocacy are needed.

²² <http://nalsa.gov.in/>; NALSA newsletter Vol1, April-November 2010.

Transgender representation in dialogues around social and legal protection, policy and legal reform, and public sensitization is necessary.

Housing: Given the poverty experienced by many transgender people, and discrimination encountered in finding housing, it is imperative that the Ministries of Rural Development and that of Housing and Urban Poverty Alleviation ensure that housing assistance schemes help transgender people to obtain non-discriminatory and safe housing.

Media and Society: Transgender human rights issues must be highlighted in the media and other public forums so as to improve public awareness, and increase transgender people's ability to realize those rights. Stigmatizing coverage in the media must be curbed.

Elderly Transgender People

The concerns of senior citizens who are transgender have received limited attention. Besides, the issues affecting transgender adults, senior citizens are likely to be further impoverished because of limited work opportunities, and discrimination in housing because of destitute status. It was informed that discrimination continues in the transgender's life well after death with burial grounds or crematoriums refuse access or the use of the facilities due to transgender status.

There is a need for pension scheme for elderly transgender people regardless of gender assigned at birth, adopting a model such as that available for MtF transgender people in Tamil Nadu²³, as well as non-discriminatory and affordable housing schemes.

²³Times News Network. 2012. Transgenders to get Rs 1,000 monthly pension
Times News Network, Aug 2, 2012, 07.25AM IST http://articles.timesofindia.indiatimes.com/2012-08-02/chennai/33000445_1_transgenders-sahodari-foundation-kalki-subramaniam

Chapter Eight

Exploring Education and Employment Opportunities for Transgender Persons

Background and Rationale

The transgender community is a highly marginalized and vulnerable¹ one and is seriously lagging behind on human development indices mainly in the area of education and employment. Majority of this community is either not educated or less educated due to which they are not able to participate fully in social, cultural, political and economic activities. There are many factors responsible for the low level of education of this community but main reasons are exclusion from family/society, poverty, social stigma² and discrimination³, insensitive attitude of teachers/staff, violence and sexual abuse.

2. The Committee after discussing the paper (**Appendix-5**) prepared by its authors suggests the following approaches for mainstreaming the transgender persons and help them to provide better opportunities for education and employment:

Access to Education: Key Barriers

3. Following factors appear to deny adequate education and employment opportunities to transgender persons. They are:

- High level of stigma and physical, sexual, emotional violence leading to most of them dropping out of their studies
- Exclusion from family and society
- Insensitivity of the teachers and fellow students towards them
- High dropout rate and low average of school years

¹ From Wikipedia, free encyclopedia for the channel 4 documentary about voluntary eunuchs, see Eunuchs (Channel 4 Documentary)

² Terminology guidelines, UNAIDS (October 2011, page 27) define stigma as dynamic process of devaluation that significantly discredits an individual in the eyes of others. Within particular cultures or settings, certain attributes are seized upon and defined by others as discreditable or unworthy. When stigma is acted upon, the result is discrimination that may take the form of actions or omissions

³ Terminology guidelines, UNAIDS (October 2011, page 27) :Discrimination refers to any form of arbitrary distinction, exclusion, or restriction affecting a person, usually but not only by virtue of an inherent personal characteristic or perceived belonging to a particular group

123

- Low level of education either push them to other occupations like sex work making them more vulnerable to HIV/STI, or force them to take sub optimal jobs like begging.
- Social structure of transgender community
- Lack of skill based education opportunity

Suggested Approach to Mainstream with Education System

4. There is an urgent need for addressing the community's concerns in education sector in a holistic way that implies giving attention to Access⁴, Equity⁵, Enabling Environment⁶ and Employment. Addressing stigma and discrimination at early stage will help in bringing transgender children to school and retaining them upto the higher level. The following strategies can be considered:

- Ensure equal access to educational opportunities at all levels without stigma and discrimination: Affirmative actions are needed to reduce stigma and discrimination associated with the community. Schools and colleges need to play a supportive role in such instances. There has to be proper sensitization of society in general and particularly parents, teachers and students.
- The fulfillment of the obligations under Right to Education (RTE)⁷ Act is critical for the improvements in the educational conditions of transgender community.
- Enhance understanding on transgender issue: Better understanding of socio-cultural and human rights aspects would help in attitudinal shift towards the transgender community.
- Dropout of transgender persons from schools - not by choice but by force: Dropout has to be seen from different perspective. The transgender persons do not dropout from schools not by choice but by force due to acute discrimination and abuse. The perception of dropout may require review and reform of structural constraints, legal procedures and policies that impede access to mainstream education.
- Ensure safety of transgender children in educational institutions: Transgender children face physical, mental and emotional violence forcing them to leave. Proper mechanism has to be evolved to ensure their safety. This also requires fixing the responsibility.

⁴ Accessibility indicates that the educational system is non-discriminatory and accessible to all, and that positive steps are taken to include the transgender persons.

⁵ Equity looks into the dimensions of disadvantage, social exclusion, gender disparity, and special needs for marginalized section like Transgender persons and other neglected groups. It focuses on gaps in enrolment, infrastructural provisioning, management, and governance issues social groups (teachers, students), training, motivation and so on.

⁶ Enabling Environment refers to supportive environment that harmonize policies with laws, reduce harassment, violence, stigma, remove structural barriers to the use of services.

⁷ <http://mhrd.gov.in/rte>

124

- Sensitization towards transgender community should be an integral part of student counselling at schools. The transgender persons also feel that their student community should be given adequate opportunity to interact with trained counsellors as they undergo a lot of gender dilemmas.
- Contents on transgender can be included in the curriculum of adolescent education in schools to sensitize children. This can become an effective step to address the stigma/discrimination at schools.
- Activities organized at schools to be inclusive to ensure participation of all children. This will enable other children to understand better and give space for the transgender children in their friendship. School Management Committee (SMC)⁸ members in their training programmes should include separate sessions on the issues/challenges faced by transgender. SMC members should also talk to community members to create greater awareness.
- Mainstreaming of transgender persons can also be done by institutions and individuals working in the education sector, particularly NGOs and activists through advocacy and capacity building.
- Review the existing schemes (Education and Training): Educational and training schemes/programmes like Sarva Shiksha Abhiyan⁹ (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA)¹⁰, Jan Shikshan Sansthan (JSS)¹¹ at various levels i.e. primary, secondary and senior level need to be reviewed to include the concerns of transgender persons. M/o Human Resource Development (MHRD) may take up this with the States. MHRD through National Council for Teacher Education¹² may take up sensitization of teachers through a series of training programmes for which a separate module can be prepared. Since SSA is a vehicle for implementation of RTE Act, as per the mandate all children 6-14 years of age have a right to education. States can include transgender children among disadvantaged group so that they are also admitted in private schools under section 12(1) (c) of the RTE Act.
- There is a need to harmonize different schemes available for children to make them suitable and accessible to transgender children. The Juvenile Justice Act (JJA)¹³ should also address the concerns of transgender children and should be suitably modified/amended.
- Development of community friendly customized pedagogy for skill based learning: Vocational skill development training should be provided to the community for introduction of new skills or providing additional skills for those who have skill in a particular vocation which can enable them to look for better job opportunities and economic empowerment. The

⁸ The constitution of a School Management Committee (SMC) is an important provision of the RTE Act. SMA aims to improve the monitoring and management of schools.

⁹ <http://mhrd.gov.in/schemes>

¹⁰ http://mhrd.gov.in/rashtriya_madhyamik_shiksha_abhiyan

¹¹ http://mhrd.gov.in/jan_shikshan

¹² <http://www.ncte-india.org/>

¹³ wcd.nic.in/childprot/jjact2000.pdf

125

tailor-made skill based training programmes need to be developed with the help of Jan Shikshan Sansthan, National Skill Development Agency (NSDA)¹⁴ and lifelong learning programmes¹⁵ of universities and colleges.

- Financial incentives/scholarship for the transgender persons: Government should provide scholarship/entitlements, fee-waiver, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to this group.
- Establishment of anti-discrimination cell: All the educational institutions/universities should establish an anti-discrimination cell to monitor any form of discrimination/harassment against the transgender students.
- Create an enabling environment: There is a need to work closely with community and different school based committees like School Management Committee (SMC), village management committee as recommended under the RTE Act.
- Section 317 of the IPC: Abandonment of child is a punishable offence under Section 317 of the IPC if the child is abandoned under the age of twelve years. However, the abandonment of transgender children takes place usually between the age of twelve & eighteen years. The Ministry of Home Affairs (MHA) may be requested to consider enhancing the age of child for this offence to eighteen years.
- Research: 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 programme that would bring an effective and long-term change in their lives.

Improving Employment opportunities for transgender community

5. The interrupted education and social exclusion further limits the employment and livelihood opportunities for transgender community. There are several factors responsible for their economic deprivation which are as under:

Access to Employment: Key Barriers

- Exclusion from Family and Society
- Stigma and Discrimination at work place¹⁶
- Lack of knowledge and training in vocational skill development

¹⁴ NSDA is an autonomous body to coordinate and harmonize the skill development efforts of the Government and the private sector to achieve the skilling targets of the 12th Plan and beyond and ensure the skilling needs of the disadvantaged and marginalized groups like SCs, STs, OBCs, minorities, women and differently-abled persons are taken care of through the various skill development programmes (<http://www.skilldevelopment.gov.in>)

¹⁵ Lifelong learning encompasses learning at all ages and subsumes formal, non-formal and informal learning. Lifelong learning principles contribute to more just and equitable societies. <http://uil.unesco.org/home/programme-areas/lifelong-learning-policies-and-strategies/>

¹⁶ People's Union for Civil Liberties, Karnataka. (2001). Human rights violations against sexuality minorities in India.

126

- Lack of opportunities
- Lack of confidence in engaging them by employers

Suggested Approaches

The economic empowerment of transgender community is located in a complex set of identities, community norms, culture and policy support. In this context, the empowerment process has to be broad based and should cover the following aspects:

- Awareness generation
- Skill and Capacity Building
- Employment and entrepreneurship

Suggested Strategy to improve Access to Employment

- Create opportunities for Information and counselling
- Establish Helpline for Career Guidance, Promotion and online Placement Support
- Capacity Building and Entrepreneurship Development
- Liberal credit facilities and other needed support for economic activities
- Provision of social entitlement to the community
- Convergence with existing schemes of Ministry of Social Justice & Empowerment (MSJE)¹⁷: MSJE may explore the possibility of widening the mandate of one of the Corporations for providing the economic support to transgender community.
- Vocational Skill Building: Design customized vocational training programmes for the transgender community as per their needs and interest and establish effective linkages with vocational training centers run by private and government agencies.
- Create a supportive Environment: The efforts should be made to sensitize all concerned stakeholders like government officials in relevant departments, banks, private employers, corporate, community leaders like Gurus.
- Convergence with existing schemes: Mention of transgender community across all existing schemes specially centrally sponsored schemes like National Rural Livelihood Mission¹⁸, National Urban Livelihood Mission¹⁹ NREGA²⁰, National Finance Development Corporations (NFDC)²¹ will help in giving them due recognition.

¹⁷ <http://socialjustice.nic.in/schemespro.php>

¹⁸ <http://aajeevika.gov.in/>

127

- Adopt good model/intervention: There are some good models like Transgender Welfare Board in Tamil Nadu²² which helps through Self-Help Groups (SHG) for economic security of this community. The Board provides 25% subsidy to such SHGs for starting self-employment. The proven models can be adopted by other States also.

¹⁹ mhupa.gov.in/NULM%20mission%20

²⁰ <http://nrega.nic.in/netnrega/>

²¹ The Government of India has set up seven 'National Finance Development Corporations' for upliftment of women, weaker section, minorities and PWDs. <http://enabled.in/wp/national-finance-development-corporations/>

²² Chakrapani, V. (2012). *The Case of Tamil Nadu Transgender Welfare Board: Insights for Developing Practical Models of Social Protection Programmes for Transgender People in India*. A Policy Brief published by UNDP –India

Chapter Nine

Transgender Adolescents, Youth & Young Adults

Like all young people in supportive environments, transgender youth are entitled to bias-free attention to their unique needs and to be safe in their homes, schools, placements and services. They should be supported in their gender identity and never required to conform to traditional conceptions of gender in order to receive appropriate care. Families, schools and child welfare professionals who work with transgender young people should be educated about transgender issues and prepared to work sensitively with these young people.

Transgender youth are children and adolescents who identify as transgender. Because transgender youth are usually dependent on their parents for care, shelter, financial support, and other needs, and because most doctors are reluctant to provide medical treatments to them, transgender youth face different challenges related to their condition when compared to adults. Transgender conditions manifest at different times in life in different individuals. In most cases of gender identity disorder¹ (GID), the condition is often apparent in early childhood, when such a child may express behavior incongruent with and dissatisfaction related to his, or her assigned gender. However, many of these children experience rejection as a result of their differences and quickly attempt to repress them. Therefore, people who see these children regularly may be unaware that they are unhappy as members of their assigned gender.

The incongruity between a person's internal sense of self as either male or female and their anatomical or birth sex can lead to depression and severe emotional distress. When these feelings rise to clinically significant levels, a person may be suffering from gender identity disorder (GID), a diagnosable medical condition found in the Diagnostic and Statistical Manual (DSM). Treatment of GID is focused on providing support, not changing a person's gender identity. It may include services like individual and family counseling and such medical care as hormone therapy and surgery to align the physical body with the internal sense of self as male or female. Once transgender people are able to express their gender identity, they are able to go on to lead happy, fulfilled lives. As a result, some people oppose the classification of transgender identity as a disorder, while others recognize the advantages of having explicit standards of health care for transgender individuals. All concur, however, that transgender youth need to be supported, affirmed and safe and free to express their identities². This diagnosis of gender identity as a disorder was held until DSM-IV was revised, and in 2012, on the basis of the standards set by the DSM-V, individuals will be

¹ American Psychological Association (APA)(2000) "Gender Identity Disorder in DSM IV TR.

² http://data.lambdalegal.org/publications/downloads/gdtb_working-with-transgender-youth.pdf

129

diagnosed with Gender Dysphoria (and not 'Disorder') for displaying "a marked incongruence between one's experienced/expressed gender and assigned gender".

The following are some of the recommendations³ made by agencies working with transgender youth that are applicable to India as well.

Understanding and being aware of health care protocols for transgender individuals:

The World Professional Association for Transgender Health (www.wpath.org) has developed internationally recognized protocols for diagnosing and treating youth and adults with GID. These protocols recommend that transgender young people gain real-life experience through dressing in the clothes and using names and pronouns associated with their preferred gender. Young people age 16 years and older are seen as candidates for an individualized assessment for medical treatment to enable them to begin their physiological transition from one gender to another.

Allow transgender youth to express their gender identity:

Allow transgender youth to express their gender identity through their chosen attire, names and mannerisms without punishment or ridicule. Don't assume that transgender youth are "acting out" when they express their gender identity. The clothing and personal style that an individual chooses are an important aspect of self-expression. Support transgender youth in these choices and challenge restrictive policies that may not allow such freedom.

Use young people's preferred names and pronouns:

Respect a transgender young person's choice of name and gendered pronouns that best reflects their sense of self as woman or man. By doing so, you validate their identity and sense of self-worth. If there is an uncertainty about which pronoun an individual youth prefers, they should be asked sensitively rather than simply assuming what they would prefer.

Ensure that transgender youth have access to trained and affirming medical and mental health care providers:

Advocate for transgender youth to receive competent and affirming mental health and medical services, including access to monitored use of hormones if deemed medically appropriate. When youth don't have access to the health care services they need, they may resort to buying illegal medications and hormones from the streets. Using hormones without medical supervision can lead to serious medical injury, HIV and other sexually transmitted infections.

Make room assignments & housing decisions based on the well-being of individual youth:

In gender-segregated facilities, don't assign transgender youth to the girls' or boys' units strictly based on their anatomical sex. Instead, make individualized decisions based on the physical and emotional well-being of the youth, taking into account their level of comfort and

³ http://data.lambdalegal.org/publications/downloads/gdtb_working-with-transgender-youth.pdf

130

safety, the degree of privacy afforded, the types of housing available and the recommendations of qualified mental health professionals. The safety of transgender youth should be protected without resorting to isolating or segregating them from the general population. However, single occupancy rooms, if available, may be an acceptable alternative for transgender youth in sex-segregated facilities.

Avoid assumptions about transgender young people's sexual orientation:

Transgender youth may identify as gay, lesbian, bisexual, heterosexual or differently. It's important to keep in mind that sexual orientation is separate from, and not determined by, one's gender identity and expression

Locate and develop resources to help transgender young people with unique legal issues:

Transgender young people may need assistance and advocacy to obtain proper legal identity documents like birth certificates, state identification cards and driver's licenses that reflect the gender with which they identify. They may also need help to obtain a legal name change. Child welfare systems have the responsibility to locate and help develop these resources for transgender young people in their care. Transgender youth and young adults should also have the right to privacy concerning their transgender status and gender transition. Any such information that is recorded in school records must be treated as confidential and not disclosed to others without their consent.

Provide transgender-friendly role models and mentors:

Transgender youth, like all youth, need connections to adult role models and mentors. For transgender young people in out-of-home care systems, these positive connections can be harder to find but are nonetheless crucial for their healthy development. Frequently cut off from their families of origin, and part of a misunderstood minority, transgender young people can find a sense of family and belonging from mentors and community role models.

Provide support in finding employment:

Transgender youth face especially steep barriers to employment. Finding employment is even more complicated for those transgender youth whose identity documents do not match their chosen names and gender expression. Without adequate educational and job training opportunities, they're at a further disadvantage. Transgender young people aging out of child welfare systems or schools can be left with few options other than to engage in illegal and harmful activities in order to survive.

There are clearly some specific areas where interventions and creating a stable environment in the life of transgender, are required. The issues can be broadly classified into the following including but not limited to families, schools – educational policies, gender school resources, medical and mental health issues, social or state led protection (such as the CWC), legal, organisational – support for transgender youth as well as their caregivers, etc.

For example, Trans Youth Family Allies contains a simple reminder to their country's leading agency's brief for families with transgender youth⁴:

According to the American Academy of Pediatrics, "A child's awareness of being a boy or girl begins in the first year of life. Their gender identity is stable by age 4 and they know that they will always be a boy or a girl."

Trust yourself and your child, you've done nothing wrong. Children don't always have the words to "TELL" you that they are trans or gender variant. Pay more attention to their cues and behaviors. You and your child will know best.

Accept where you and your child are now. You didn't cause this and you can't change it. Difference isn't wrong, it just is. You didn't "decide" what your gender was, you just knew. Your child didn't decide either, he/she just knows. There is nothing as meaningful to a gender variant child as the support and acceptance of family, friends, teachers and the community.

Confidence and knowledge are essential. Viewing your child's condition as a blessing and celebrating your child as one of your greatest gifts will bolster your child's confidence and self esteem, as well as setting an example for others to view your child in the same light. Confidence and knowledge equal power.

Treatment is available. Making informed decisions to medically intervene at appropriate intervals may be essential to your child's mental health and well being. Investigate the possibilities and don't put off making decisions out of fear or denial. Seek support and/or therapy if you, your child or your family are struggling to accept your child's gender expression. Nurture yourself, your child, and the rest of your family physically and mentally during this journey.

Trans Youth Equality has some guidelines for Caregivers of Gender Non-Conforming Children & Youth⁵

- ❖ The child may not experience their gender as others see them.
- ❖ This is significant and the child takes it very seriously.
- ❖ Continue providing unconditional love.
- ❖ If you feel overwhelmed or under-informed, get support and accurate information.
You are not alone!
- ❖ This isn't about something anyone has done or is doing wrong.
- ❖ This isn't about the child's current or future sexual orientation.
- ❖ Sexual Orientation is unrelated to Gender Identity.
- ❖ Substantial research indicates that gender identity is hard-wired. It is not a mental or physical illness.
- ❖ Support the child for who they are today rather than trying to change who they might someday become.
- ❖ The child, if supported in their gender expression, has every good chance of growing up to be an exceptional and successful person.
- ❖ Above all, respect the child's feelings about their gender identity.

⁴ <http://www.imatyfa.org/resources/parents/tips-for-parents/>

⁵ from the Trans Active Education & Advocacy Document Library;
http://www.transyouthequality.org/documents/Top_11_Tips.pdf; also see
http://www.transyouthequality.org/documents/Rosetta_Stone_1.pdf
http://www.transyouthequality.org/documents/Rosetta_Stone_2.pdf

- ❑ While this may be confusing at first, do not assume the child or youth is confused about their gender identity. They most likely are not.

When looking at health pertaining to transgender youth, there are some issues to consider. Care providers are often the first people parents of gender non-conforming and transgender children and youth turn to for guidance, reassurance and supportive medical care for their child. As first responders, it is vitally important that up-to-date, accurate and gender identity-affirming services be offered. A physician, counselor or nurse practitioner armed only with rudimentary or trans adult-centric knowledge of gender dysphoria or transgender identity might, with the best of intentions, send a parent off in the wrong direction with regard to her child's immediate and short-term needs. At worst, sharing information based on trans adult stereotypes, social challenges, medical and psychological care might lead a parent to shut down completely and decide to just "wait it out" when it comes to dealing with their child's gender non-conforming identity and self-expression⁶.

When providing care, treatment, or services to a transgender child or youth, it is important to understand that they are not simply "shorter/younger" versions of adult transgender people; many aspects of the adult transgender patient/client model do not apply.

Taking a passive, "wait and see" approach can lead to irreversible damage. Using a transgender or gender non-conforming child's growing anxiety, depression, negative self-esteem and social isolation as a diagnostic tool is not only ineffective and misguided clinical methodology, it is inhumane⁷.

While there are broad guidelines available across the world for standards of health care, one particular area of health and transgender young has been the cause for substantial debate, discourse and even research. The ethics of treatment, weighing the needs of the adolescent while yet being firm in the principle of doing no harm, becomes the bedrock principle of care. The first step of the debate begins with the age of consent of the young person involved in the issue and what constitutes the right age. The definition of "child" and age varies in each country, and studies from practical interventions in countries such as the US and the UK; some of the Commonwealth countries like Australia have suggested that the age of the young person is critical in the consent aspect. One aspect of this is clear is that any surgical intervention, cannot be done before the age of eighteen, which in most countries is the legal coming of age.

In 2004, an Australian Family Court⁸ looked at the issue of age and consent of a transgender teenager and treatment. It led to the publishing of a paper which said⁹, "The

⁶ <http://www.transyouthequality.org/health.html>

⁷ <http://www.transyouthequality.org/health.html>

⁸ 2004 Fam CA 297, "Re Alex" was a legal case decided in the Family Court of Australia on 13 April 2004. It examined the rights of a thirteen-year-old adolescent affirming his male sex and seeking hormonal medical treatment "Sex Affirmation Treatment".

issues surrounding treatment of children prior to puberty is even more difficult than that posed by treatment in adolescence. In children the issue is not whether to facilitate change, since hormonal treatment is not recommended prior to the onset of puberty, but instead whether GID can or should be suppressed. Currently there is insufficient data to know whether psychiatric treatment can reduce gender dysphoria and change the adult outcome.

Moreover, as for psychiatric treatment to alleviate GID, one has to question whether the motivation is to prevent GID given that either outcome may occur. Although once considered so, homosexuality is no longer considered a psychiatric condition, and therefore treatment to prevent it would be inappropriate¹⁰. On the other hand, GID remains a disputable psychiatric disorder¹¹.

Thus, if parents desire such treatment, ethical issues arise concerning the objective of treatment and whether parents have authority to consent to such treatment. Put simply, there is no single answer as to how to treat children and adolescents with GID. Instead, professionals must exercise clinical judgment in developing and proposing a care plan. Even when sound clinical judgment is exercised, there are substantial risks in treating and in not treating these minors.

In light of this, how best can the legal system assist children and adolescents to achieve a satisfactory short and long term outcome?

What role can the law play in lessening the social and psychological problems of these youth?

This issue becomes particularly important in India when looking at standards of care. Currently none exist specifically, but when they are drafted, care must be taken to look at the WPATH guidelines that have been developed with the best experts around the world, who have looked at the issues such as these for decades in their countries. Studies reveal that "there is a considerable narrowing of [gender] plasticity with age, with regard to long-term gender identity differentiation." The apparent fluidity of gender identity in childhood, even into adolescence (albeit to a lesser degree), coupled with inadequate empirical studies to predict outcome and establish reliable treatment necessarily justifies a relatively cautious approach in treating adolescents as well as children¹². Another crucial factor, not mentioned before, needs be taken into account. It is now not uncommon for many diagnosed with GID

⁹ Ethical Concerns Related to Treating Gender Nonconformity in Childhood and Adolescence: Lessons from the family court of Australia; Authors: Hazel Beh Ph.D. J.D. and Milton Diamond Ph.D. Published in Health Matrix: Journal of Law-Medicine. Case School of Law. Volume 15 Number 2, Summer 2005

¹⁰ In 1973 homosexuality per se was removed from the DSM-II classification of mental disorders and replaced in DSM-III by the category Ego-dystonic Homosexuality. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM II) 39 (2nd ed. 1968); *Ibid*.

¹¹ There are currently, in the United States, Australia and elsewhere, differing opinions as to the suitability of considering Gender Identity Dysphoria a psychiatric disorder any more than homosexuality. See Rachel Wallbank, *Re Alex Through a Looking Glass*, AUSTL. CHILD. RTS. NEWS, May 2004, at 28.; *Ibid*

¹² Kenneth J. Zucker, Gender Identity Development and Issues, 13 CHILD & ADOLESCENT PSYCHIATRIC CLINICS OF N. AM. 551, 554 (2004); *Supra* note 8

when adolescents to elect to live as transsexuals without surgery as adults¹³. Thus, treatment plans for adolescents need not assume surgery will be the desired

134
 “Although the care afforded Alex conforms to standard care, the case is nevertheless important and noteworthy. Alex’s case offers a rare and comprehensive view into the life of a transsexual minor.¹⁵⁶ A few generalizations are evident. Developmentally, the gender and sexual orientation of children and even young adolescents remains in flux and treatment must therefore be well considered and cautious. There is urgency to the need to treat them, however, because psychological distress, depression, and suicide are real risks. The legal status of children and adolescents and their lack of maturation may prevent them from consenting to treatment but their wishes must be valued and respected. Society can be intolerant to gender incongruity and adults must take responsibility for removing stigma and ostracism. The condition is mysterious, rare, and complicated, so experts must be consulted for diagnosis and treatment. Treatment in every case must be individualized and responsive. For all these reasons, these youth are in for a difficult and protracted struggle that will require them to have the support of adults and social institutions.

“The judge’s approach to Alex was extraordinary, exemplary, compassionate, cautious, and well-informed. He was not bogged down with rhetoric of gender construction. Alex’s dignity, best interest, current needs and future potentiality were the court’s only concerns.”

Ethical Concerns Related to Treating Gender Nonconformity in Childhood and Adolescence: Lessons from the family court of Australia; Authors: Hazel Beh Ph.D. J.D. and Milton Diamond Ph.D. Published in Health Matrix: Journal of Law-Medicine. Case School of Law. Volume 15 Number 2, Summer 2005;

Transgender Youth and high suicide risk coupled with prejudice - understanding the dangers

A staggering 41 percent of transgender people in the United States have attempted to commit suicide, according to a new survey. About 19 percent of transgender people report being refused medical care because of their gender-nonconforming status, and a shocking 2 percent have been violently assaulted in a doctor's office. These statistics are just some of the sobering findings from a survey of more than 7,000 transgender people conducted by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, released in October 2010¹⁴.

13

Milton Diamond, What's In a Name? Some Terms Used In the Discussion of Sex and Gender, 102 TRANSGENDER TAPESTRY J. 19 (2003); Supra 8

¹⁴<http://www.livescience.com/11208-high-suicide-risk-prejudice-plague-transgender-people.html>

Psychologists say transgender people often face what feels like a stacked deck against them. The disapproval and confusion of friends, family and people around them creates a burden of stress. This is particularly true in the case of young transgender teenagers.

In a landmark report¹⁵, "Injustice At Every Turn: A Report Of The National Transgender Discrimination Survey", it was seen that a "staggering" 41 percent of the more than 6,400 respondents said they had attempted suicide, compared to a rate of 1.6 percent for the general population, according to the survey by the National Gay and Lesbian Task Force and the National Center for Transgender Equality¹⁶. The respondents had double the rate of unemployment and were four times more likely to have a household income of less than \$10,000 compared to the general population.

"Transgender and gender nonconforming people face injustice at every turn," the report

• • •

"My mother disowned me. I was fired from my job after 18 years of loyal employment. I was forced onto public assistance to survive. But still I have pressed forward, started a new career, and rebuilt my immediate family. You are defined not by falling, but how well you rise after falling. I'm a licensed practical nurse now and am studying to become an RN. I have walked these streets and been harassed nearly every day, but I will not change. I am back out there the next day with my head up."

—Survey Respondent

• • •

says, "in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors' offices and emergency rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers¹⁷."

There are limited studies available in India, those that exist are unambiguous. A study conducted across seven cities of the country with 50 queer persons, assigned female at birth (of whom some identified as FtM or Trans Man) stated that depression, self harm, cutting, staying away from home for long periods, running away from home were common responses to family violence among the respondents (LABIA, 2013). The same study indicates that thirteen respondents among the 50, attempted suicide while still living with their family in young age due to stigma, control and violence at home¹⁸.

Despite the highly specific medical and mental health needs of transgender adolescents, they continue to be an underserved and poorly studied group. Primary care clinicians are uniquely positioned to improve physical and mental health outcomes among transgender youth.

¹⁵ "Injustice At Every Turn: A Report Of The National Transgender Discrimination Survey", authors - Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

¹⁶ http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf

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http://www.abajournal.com/news/article/staggering_rate_of_attempted_suicides_by_transgenders_highlight_s_injustices/

¹⁸ LABIA, (2013) Breaking the Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities, Mumbai: LABIA. Available at: <https://sites.google.com/site/labiacollective/>

136

Transgender youth are at increased risk for multiple psychosocial problems, including family and peer rejection, harassment and bullying, trauma, abuse, insufficient housing, legal problems, lack of financial support, and educational problems.

It is often highly problematic for transgender youth to find needed comprehensive medical and mental health services.

Some of the key challenges faced by transgender youth, can be summarized as –

- ❖ **Deliberately incorrect and disrespectful use' of names and pronouns**—When a transgender youth identifies as a particular gender (irrespective of biological sex), it is respectful to the youth's human dignity to use the name chosen and the pronouns appropriate to that particular gender. To persevere intentionally in the use of a prior name and other pronouns is to be deliberately disrespectful. Transgender youth can understand and sympathize with some confusion, so long as there is continuous, good faith progress in using the proper name and pronouns.
- ❖ **Lack of access to appropriate restroom facilities**—Transgender people often lack safe access to public restrooms. They may be assaulted if they use the restroom that conforms to their gender identity or forced to use a restroom that does not conform to their gender identity.
- ❖ **Privacy** - Transgender youth and young adults should also have the right to privacy concerning their transgender status and gender transition. Any such information that is recorded in school records must be treated as confidential and not disclosed to others without their consent.
- ❖ **Confidentiality**—Transgender youth may have unsupportive families and may even face violence and/or ejection from their home if their gender identity or gender expression is disclosed to the family.
- ❖ **Lack of role models; lack of accurate information**—Transgender youth often feel alone in the world. Few programs for youth employ transgender people; few libraries offer information about biological sex and gender, gender identity, or being transgender.
- ❖ **Arrange for transgender awareness training for faculty, staff, and administrators from a qualified community-based trainer.** Most people do not receive training or support in transgender awareness throughout their education or professional careers; it is not fair to assume that educators will arrive at their work already having learned the skills they need to work respectfully and effectively with youth from these communities. **Transgender awareness trainings are most effective when they are mandatory and regular.**
- ❖ **Incorporate positive information about transgender issues into curricula.** The existence of transgender people is often erased or only included in a highly

137

stigmatized way in the teaching of any subject, as well as in media and popular culture. The lack of any positive acknowledgment of transgender issues or history makes it difficult for transgender, gender nonconforming, or questioning young people to feel that they have a place in the world and supports a worldview among other students that transgender people do not exist or are an appropriate object of scorn.

Therapists working with transgender adolescents must be accustomed to working with adolescents and be able to discuss sensitive topics, including sexuality.

The Medical Council of India along with leading mental health institutions and organizations working on transgender issues would be required to **develop practice protocols for the care of transgender adolescents/ youth under the age of 18**. This would also involve **development of detailed protocols for counseling of family members** of adolescents and **SRS related guidelines** for adolescents bearing in mind that an appropriate age criterion is required to be formulated in India. It is also pertinent to note that for any surgery to be done on an individual, the age of consent for that person is 18 years, and if younger parental/ guardian consent is necessary. International guidelines and best practices lessons learned will also help India achieve this standard when setting the age threshold.

Youth younger 18 are strongly advised to see a mental health professional experienced in transgender issues prior to hormone treatment to ensure readiness to transition. Before initiating hormonal therapy with youth over 18, the primary care provider should encourage them to consult a qualified mental health professional to assist them in exploring the ramifications of gender transition, potential complications, etc.

There are some frameworks that are already in place to protect children/ adolescents and young adults; families have the obligation to look after a child/ young adult and in the event that the child is unable or unwilling to access this protection, the State has an obligation to step in. This means that the JJ Act would need to be equipped to help young transgenders in need, shelter homes for those who run away or forced to leave, re-integration into schools, the best standards of health care access including psycho social health, and so on.

The international and therefore the nationally accepted formula for this remains the best interests of the child in the expectation that no child, adolescent or young adult is allowed to fall through the cracks. The right to education framework entitles that they stay in schools which have a supportive and nurturing environment, with adequate training and protection given to the system to ensure that the high instances of reported bullying, abuse and coercion into accepting forced gender roles are removed from that young person's life.

World over, in countries where research and studies have been done, there is documented evidence that young transgenders are at considerable risk to many things – loss of family, loss of education, bullying, depression, assault, violence and the risk of suicide because

138

supporting frameworks do not exist or because they are unable to access it. India cannot be the exception to this, that there is a distinct lack of evidence to show that all of these factors exist to compound a young person's vulnerability in our society does not mean that the matter ends here.

On the contrary, it simply means that this is an issue that needs to be studied, incorporated; and all existing laws that our country has regarding the rights and protection of children be used to protect these young people as well. Experts need to be brought together to look at all of these pressing needs and the time to do this is imminent. Health care professionals, psychologists and psychiatrists, lawyers to look at issues of confidentiality and legal change, educationists to look at integration, reform in schools and policies, law enforcement to look at issue of harassment, violence and then not at the least – protection, social workers to look at a holistic protection framework etc, all have to be brought into the matter of children and young adult transgenders.

Chapter Ten

Access to Healthcare¹: General Health Services (Physical / Mental), and Gender Transition Services (including Sex Reassignment Surgery)

The World Health Organisation (WHO) has defined health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”² Transgender people too, like any other people, have the right to enjoy physical and mental health and contribute to their families and the society.

In this chapter, the Expert Committee mainly focuses on what can be done in the public health settings³ in India:

- A. Improving access to and use of general health services for transgender people
- B. Improving access to and use of gender transition-related health services for transgender people
- C. Enabling better understanding and enhancing competency among health care providers (HCPs) in dealing with transgender-specific health issues

A. Improving access to and use of general health services for male-to-female transgender people

Fear of discrimination or experience of discrimination faced by male-to-female transgender people in health care settings¹ have been shown to hinder access to HIV testing^{ii, iii}, antiretroviral treatment^{iii, iv} and sexual health services^{i, v} in public hospitals. Barriers to access and use of these services in the public hospitals are identified at individual (self-stigma, poverty), institutional (registration policies) and structural levels (societal stigma). These barriers are inter-related. Previous experiences of discrimination within the health care settings and/or fear of anticipated discrimination from HCPs prevented many MtF TG people to access and use even the otherwise free health services in public hospitals.

At the *individual level*, some of the barriers faced by HIV-positive MtF transgender people such as lack of money to travel to antiretroviral treatment centres are partly addressed by travel support for people living with HIV (of any gender identity) in some states of India (e.g., Tamil Nadu).

¹ Public and Private health care settings (private includes corporate and non-governmental health sector).

² Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

³ Even though the principles of non-judgemental and non-discriminatory care for transgender people should be irrespective of the type of health sector – public or private.

140

At the *institutional level*, some of the stigma and discrimination experiences documented to have occurred in public hospitals include:

- Lack of hospital policies on whether [MtF] transgender people can get registered as 'man' or 'woman' in the outpatient department; and where in which ward (male or female ward) they get admitted. For example, it has been reported that a MtF transgender person who was living full-time as a woman and who had undergone male genital removal was asked to put on male attire and admitted in male wards.
- Verbal abuse from the physicians, counsellors, nurses and paramedical workers within the hospital settings.
- Harassment from the relatives of the co-patients in the outpatient and in-patient departments.

These underscore the need for hospital policies for registration and admission of transgender people, training and sensitization of the health care providers about the transgender people and their health issues, and the need to educate the general public (here co-patients and relatives) about the transgender people.

At the *structural level*, societal stigma against people who transgress gender norms, especially against transgender people, is internalized by the HCPs themselves. MtF transgender people face intersecting stigmas – stigma related to being a transgender person, being a sex worker, and being a person suspected to be at high risk for HIV. Thus, steps to decrease stigma faced by transgender people need to address all of these intersecting stigmas.

Limited information is available on the access issues faced by FtM transgender people in health settings. Information from a study from Mumbai conducted among 50 queer-identified FTM people (LABIA, 2013^{vi}) and interactions with FtM people reveal that:

- Heteronormativity (people are assumed to be heterosexuals) among HCPs or previous negative experiences with HCPs delayed treatment initiation in some FTM people with symptoms suggestive of sexually transmitted infections.
- While gynecologists provide pills to delay (or stop) menses for working cis-women, FtM people are not provided prescription for the same (or FtM people need to lie to get those pills).

(Note: The current situation of HIV programme for male-to-female transgender people is enclosed as Appendix-6)

B. Improving access to and use of gender transition-related health services for transgender people

Not all transgender people desire surgery or hormone therapy. Some proportion of transgender people would like to undergo surgery and/or hormonal therapy to align their bodies with their gender identity. The common gender transition-related service needs of transgender people are summarized in Table 10.1.

Except in a few government hospitals, sex reassignment surgery and other gender transition-related services are not available for free in tertiary level government hospitals in different

parts of India^{vii,viii}. A study conducted in 2013^{viii} to assess the situation of gender transition-related health services for MtF transgender people reported that:

- Lack of free sex reassignment surgery (SRS) in public hospitals and the prohibitive cost of SRS in private hospitals seem to be the key reasons behind why some hijras and other MtF trans people go to unqualified medical practitioners for surgery - resulting in post-operative complications that could have been avoided had the surgery been provided by qualified medical practitioners in public hospitals.
- Unwillingness among qualified medical practitioners to prescribe hormone therapy (for feminization), and self-administration of female hormonal tablets among hijras and other MtF transgender people.
- Lack of national guidelines on gender transition services and ambiguous legal status of SRS mean even qualified medical practitioners are hesitant to perform SRS.

Gender transition-related needs	MtF transgender people	FtM transgender people
Common needs	<ul style="list-style-type: none"> • Proper counselling about options available in relation to gender transition • Proper post-operative follow-up counselling and support 	
Types of surgical procedures required	<ul style="list-style-type: none"> • Neovagina creation (construction of a vagina) • Penectomy (removal of the pen) • Orchidectomy (removal of the testes) • Clitoroplasty (construction of a clitoris) • Breast augmentation (breast enlargement) • Rhinoplasty (reshaping the nose) • Hair transplants 	<ul style="list-style-type: none"> • Bilateral mastectomy (removal of the breasts) • Hysterectomy (removal of the uterus) • Oophorectomy (removal of the ovaries) • Phalloplasty (construction of penis)
Types of non-surgical procedures required	<ul style="list-style-type: none"> • Female hormone therapy • Hair removal: Electrolysis and laser therapy • Voice modulation: Vocal therapy 	<ul style="list-style-type: none"> • Male hormone therapy • Voice modulation: Vocal therapy

It was brought to the notice of the Expert Committee that doctors in India perform male genital removal (orchidectomy and/or penectomy) for patients with invasive testicular or penile cancer, and perform vaginoplasty on biological females with certain urogenital conditions (such as absence of vagina at birth among biological females or persons having

142

urogenital sinus-related problems). Thus, one can find general and plastic surgeons, whether in public or private hospitals, who should be familiar with these surgical procedures, which can be adapted for SRS among MtF transgender people.

Very little academic or grey literature is available on access to gender transition services for FTM transgender people in India. Information from a study conducted among 50 queer-identified FTM people in Mumbai (LABIA, 2013^x) and interactions with FTM people who are part of support groups or activist collectives indicate:

- *Limited expertise in India on SRS (especially penile construction or metadioplasty⁴) for FtM people:* This means many FtM transgender persons wait for years before they undergo penile construction (phalloplasty). *Note:* Expertise for other surgical procedures such as hysterectomy, oophorectomy, and mastectomy already exist in India, as these surgeries are commonly performed among cis-women with certain medical/surgical conditions.
- *Limited knowledge among health care providers on the range of surgical and non-surgical options available for FtM transgender people.* Examples:
 - Lack of awareness about devices used by FtM transgender people such as binders, packers, urinating devices, and penile prosthesis (with air pumps to facilitate erection)
 - Limited knowledge about male hormone therapy (for FtM transgender people) among HCPs. This means many FtM transgender people self-administer male hormones.

Indian psychiatrists and mental health professionals follow either International Classification of Diseases (ICD-10) of the World Health Organisation (WHO) or the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV or V) by American Psychiatric Association. These guidelines are primarily diagnostic guidelines. Diagnosis of whether or not a person is a transgender can be made using any one of these guidelines. Regarding the treatment guidelines, an internationally reputed set of guidelines for gender transition (called 'standards of care') is that of the World Professional Association of Transgender Health (WPATH)⁵, which is now in its 7th version^{xi}. In the absence of national guidelines on gender transition services, UNAIDS India in 2011 convened a group of clinicians/practitioners (plastic surgeons, psychiatrists, counselors) to propose the content of what could be the national guidelines on SRS for male-to-female transgender people⁶, so that it can be placed before the government for its consideration. The content of those draft guidelines was primarily adapted from the 7th (latest) version of the WPATH guidelines. Because that document only focused on the SRS among MtF transgender people, and such a proposal (for any national guidelines on health-related issues) needs to be finalized and approved by the Ministry of Health, the following recommendations are made for consideration of the Ministry of Health:

⁴ While penile construction maybe a difficult surgical procedure, the alternative – metadioplasty (enlargement of clitoral tissue), which may be preferred by some section of FtM transgender people are not offered by surgeons.

⁵ Formerly known as the Harry Benjamin International Gender Dysphoria Association, HBGDA

⁶ National Working Group convened by UNAIDS India. (November, 2011). Towards the development of Interim National Guidelines: Good Practices for Sex Reassignment Surgeries (SRS) For Male-To-Female Transgender People in India.

143

1. To prepare a policy statement (and/or an executive government order) on providing essential gender transition services, including SRS, in suitable public hospitals
 2. To prepare national clinical guidance (standards of care) document in line with the international WPATH guidelines
 3. To provide penectomy/orchidectomy (removal of male external genitalia) for people who are confirmed to be '[MtF] transgender people', based on clinical diagnostic criteria
 4. To prepare policy guidelines for providing gender transition services in public hospitals
 5. To train relevant health care providers on offering gender transition services
- 1. To prepare a policy statement (and/or an executive government order) on providing essential gender transition services, including SRS, in suitable public hospitals:**

MoHFW may explicitly state its intent to provide gender transition services (especially SRS, to start with) in at least select public hospitals, as gender transition services are seen as essential and medical necessary for the well-being of transgender people⁷ (Note: Not all transgender-identified people would want to undergo surgery or would want all available types of gender transition services). The Expert Committee is of the view that the issue of defining transgender and certifying each person as transgender should be delinked from the issue of how the SRS (surgical procedures) should be conducted and what should be its protocol, as the latter is largely a medical issue. As suggested by the Committee of doctors of MoHFW, SRS, like any other surgery, may be undertaken as per extant prudent procedures/guidelines given in the medical literature and following due medical, ethical and legal process details of which can be worked out in due course. This procedure should be initiated only after 'informed consent' of the individual is available wherein the individual has been explicitly explained about his/her present condition and what all options are available to achieve the desired outcome by the individual along with advantages/disadvantages of all the options.

- 2. To prepare national clinical guidance (standards of care) document in line with the international WPATH guidelines:**

As the MoHFW has agreed that SRS can be provided within the public hospitals (based on the minutes of the meeting enclosed as Appendix-7 of this report), the Committee recommends that not just SRS, but the essential set of gender transition services such as mental health counselling (pre-/post-surgical), SRS, and cross-sex hormone therapy be provided. For national clinical guidance document, MoHFW may adapt the 7th version of the WPATH's standards of care (SOC) for the Indian context⁸. For example, for the Indian context adaptation of WPATH guidelines, changes might be needed regarding the duration of living in a 'cross-gender' role^{xii} (formerly 'real life test') and whether to offer removal of external genitalia alone (penectomy/orchidectomy alone for some MtF

⁷ Also see: 'WPATH Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.' http://www.wpath.org/uploaded_files/140/files/Med%20Nec%20on%2008%20Letterhead.pdf

⁸ WPATH guidelines say: "Because most of the research and experience in this field comes from a North American and Western European perspective, adaptations of the SOC to other parts of the world are necessary."

transgender people who request such a surgery). The suggestions from the committee on the possible content for the national SOC document are summarized in Box 10.1.

The Committee recommends that the national SOC can be drafted by a multi-disciplinary team of mental health professionals (psychiatrists, psychologists, counselors, psychiatric social workers, etc.), surgeons (plastic surgeons, general surgeons, urologists; etc.), physicians, endocrinologists, researchers and transgender community representatives, and finalized by the MoHFW. The committee can include representatives from Indian Psychiatric Society (IPS) and other relevant professional organisations.

Note: These standards of care are for clinical guidance for health care providers, and not policy guidelines for public hospitals. So the latter also need to be developed for public hospitals who are providing or consider offering gender transition services for transgender people. Again, some of the suggestions for the latter are given below.

Box 10.1: Suggestions for what can be addressed in the national guidelines / standards of care (SOC) for gender transition for transgender people in India

1. Purpose (Clinical guidance)
2. Target audiences (Primarily practitioners)
3. Diagnosis (Summary of current diagnostic guidelines - ICD-10/DSM-V)
4. Suggested role and competency of mental health professionals working with transsexual, transgender and gender non-conforming people
5. Psychological assessment and psychosocial support needs assessment for transgender people and their family/friends/partners
6. Relationship of Mental Health Professionals with Hormone-Prescribing Physicians, Surgeons, and Other Health Professionals
7. Hormone therapy (informed consent, regimens, follow-up care)
8. Surgery:
 - Relationship of Surgeons with Mental Health Professionals, Hormone-Prescribing Physicians (if Applicable), and Patients (Informed Consent)
 - Criteria for surgeries (medical criteria and legal age criteria⁹)
 - Competency of Surgeons Performing Breast/Chest or Genital Surgery
 - Post-operative follow-up care
9. Linkage and referral services
 - Linkages with psychosocial support services
 - Linkages with social welfare schemes and support in terms of legal name/sex change

Other areas that can be addressed in the national guidelines/SOC:

- Surgery or hormonal therapy request by transgender adolescents and/or their parents/guardians
- Role of puberty delaying-hormones until a decision is made by the adolescent

⁹ The Committee also recommends that the Health Ministry should consider the recent *Bidhan Baruah Vs SR Baruah and Ors, 2012*, regarding age of consent and SRS.

145

or until the legal age is reached
- Age criteria for undergoing SRS

3. To provide penectomy/orchidectomy (removal of male external genitalia) for people who are confirmed to be '[MtF] transgender people', based on clinical diagnostic criteria:

MoHFW needs to consider providing the necessary surgical procedures for individuals who are diagnosed to be transgender people (persons with gender dysphoria) and who desire surgery. Some hijras/MtF transgender people (who are diagnosed as transgender people or people with gender dysphoria [using the existing diagnostic guidelines of ICD-10 or DSM-V] by mental health professionals) may just want removal of male genitals without wanting a complete SRS (that is, neovagina creation). The MoHFW, as part of its guidelines for gender transition, can provide guidance on when it can be provided by qualified medical personnel. The committee suggests the following criteria be used when such a request from a transgender person is considered:

- a. person is diagnosed as a [MtF] transgender person by one or more mental health professional (for example, usually psychiatrists consider differential diagnosis such as 'Body dysmorphic disorder', which needs to be ruled out)
- b. that person has been provided the option of neovagina creation as well, in addition to the range of gender transition surgical procedures that are provided in the institution;
- c. pressure from other people (peers or partners etc.) are reasonably ruled out;
- d. adequate time is provided for that person to confirm the decision for this surgery, and the person is being provided mental health counselling and support from the time of entry into clinical care until the finalization of decision to undergo surgery to remove male genitalia alone.

As 'emasculatation' (legal meaning of which seems to be ambiguous) is listed as a 'grievous injury' (Section 320 of IPC) and a punishable offence (Section 325 of IPC), the Committee recommends that if MoHFW wishes, it may get clarification from Law Ministry on the legality of offering penectomy/orchidectomy alone for a transgender person, as the context is different and the interpretation of a law is usually dynamic^{xiii}. According to Section 88 of IPC, an exception can be made if an action (here penectomy/orchidectomy) is undertaken in good faith and the person gives consent to suffer that harm. The section reads: "Nothing which is not intended to cause death is an offence by reason of any harm which it may cause or intended by the doer to cause any person whose benefit it is done in good faith, and who has given a consent...to suffer that harm, or to take the risk of that harm". MoHFW may get clarification from the Law Ministry about this, too.

4. To prepare policy guidelines for providing gender transition services in public hospitals:

MoHFW may provide guidance on the policies for providing gender transition services in public hospitals (e.g., availability of certain essential services – such as mental health

146

counselling for gender transition, whether services will be free or charged nominally, or a mix of both for different services). For example, a policy decision might need to be locally made (at the state govt. or hospital level) that if a MtF transgender person wants breast augmentation whether breast implants need to be bought by that person or the costs for the same will be borne by that government hospital.

5. To train relevant health care providers on offering gender transition services:

There is a need to develop programmes to train and build the capacity of health care providers and public health institutions that provide or willing to provide gender transition services. The Expert Committee suggests that the MoHFW identify a few institutions that have been providing gender transition services (especially SRS) for transgender people as possible training institutions for other government hospitals from different States. Resources can be allocated for one or more of these experienced hospital departments to be centres of excellence for transgender health (with a focus on gender transition services). The Committee further notes that relatively few institutions have been providing SRS and related services for female-to-male transgender people: this is an area where much in-country training and expertise needs to be developed.

C. Enabling better understanding and enhancing competency among health care providers (HCPs) in dealing with some transgender-specific health issues

Health care providers' limited understanding about and prejudice against transgender people may result in suboptimal care or even denial of care. Discrimination against transgender people in health care settings, as noted earlier, has been well documented in Indian literature. So far, there have been primarily ad hoc training for HCPs on transgender health issues by a few agencies¹⁰ and almost all of these are in relation to STI/HIV-related training for health care providers (including capacity building programmes for HCPs within NACO programmes). One ongoing pilot intervention to promote providers' acceptance of transgender people is currently being implemented in Mumbai ('Shakti' project¹¹), the results of which will be useful in fine-tuning curriculum for training HCPs on transgender health issues. As part of 'Saksham project', Tata Institute of Social Sciences (TISS) too have prepared guidelines for LGBT-affirmative counselling practice¹², which can be used for counselors within HIV programmes and any other health programmes.

To improve better understanding of the health issues of transgender people and to make health care settings welcoming and non-discriminatory, the following steps need to be taken:

1. Curriculum and Training on transgender health:

Health care providers need to better understand about transgender people, and what are some of the trans-specific health issues which they need to be aware of (some of these are listed in Table 10.2. There is also a need to sensitize HCPs of their professional obligation and ethical mandate to provide non-judgmental care to people from any background, including transgender people. The Committee feels that there is a very strong need for the Medical Council of India to incorporate curriculum on transgender health in

¹⁰ www.indianLGBThealth.info, www.c-sharp.in, www.humsafar.org, www.allianceindia.org

¹¹ <https://apha.confex.com/apha/141am/webprogram/Paper291258.html>

¹² TISS. Annual Report 2010 to 2011

148

undergraduate and postgraduate medical, nursing and paramedical professional education - for the new batches of HCPs. Other HCPs can be reached through continuous medical education (CME) programmes and targeted training programmes.

2. Trans-friendly hospital policies/guidelines:

There is a need for explicit trans-friendly registration and admission policies for the public hospitals (at the institutional level), and a model policy can be provided by MoHFW.

3. Non-discrimination policy/guidelines:

A non-discrimination policy (to prevent discrimination on the basis of sexual orientation or gender identity) can be explicitly stated. The Expert Committee was informed that the Committee of MoHFW¹³ held a meeting on 6th December, 2013. (The minutes of that meeting are enclosed as Appendix-7). The Experts Committee appreciated the MoHFW meeting points that specified: "All treatment/facilities, whatever and wherever available, are provided equitably and free of cost to all the patients coming to the Government hospitals without any discrimination on any ground whatsoever, including sex/gender." In relation to this the Experts Committee recommends that the MoHFW may issue an advisory to all concerned including the State Governments and Union territory Administrations to emphasize this point and ensure that equal access to and use of all health care services is realised for transgender people.

Table 10.2. Examples of certain transgender-specific health issues that general medical practitioners need to be aware of	
General sensitivity	<ul style="list-style-type: none"> Addressing transgender people in their preferred pronouns, and being sensitive in physical examination (e.g., being aware of and not expressing shock in finding male genitalia in a MtF transgender person in woman's attire) Not to assume that all the health issues (especially mental health issues) of transgender people are related to their gender identity or sexual behavior
Vaccination	<ul style="list-style-type: none"> Hepatitis-B vaccination is recommended for those who practice anal sex
HIV-positive persons and persons with Tuberculosis	<ul style="list-style-type: none"> Ask for self-administration of hormones or (other) physician-prescribed hormonal therapy. Hormones can interact with antiretroviral treatment or TB treatment.
Cancer screening	<ul style="list-style-type: none"> Prostate cancer screening among post-operative persons (usually prostate is not removed in SRS in MtF transgender people) Breast cancer screening needed for those who are on long-term hormone therapy

¹³ This committee of MoHFW was formed to examine the aspects of healthcare access for transgender persons and their need for undergoing Sex Reassignment Surgery (SRS).

• Cervical and/or ovarian cancer screening among those who are living as man, but with intact vagina/cervix, and/or ovaries	
Cardiovascular disease, Hypertension, Osteoporosis, Hypercholesterolemia	History of cross-sex hormone therapy (current or past history) needs to be enquired among those who have these conditions. For example, there is a possible elevated risk of cardiovascular disease among MtF transgender people. Also, these medical conditions need to be managed and controlled when administering hormone therapy

Research and evidence-base to promote transgender health

The Committee also recommends that the Indian Council of Medical Research (ICMR) can develop and fund a research agenda to gather and use relevant health-related data and information to improve the health of transgender people; operations research to fine-tune the clinical guidelines for gender transition services; and research to develop and test interventions to decrease stigma and discrimination faced by transgender people in the health care settings.

Clinical Management of Intersexed People

National guidelines are also needed in terms of management of intersex disorders (now called 'Disorders of Sex Development'), which can be prepared by a multi-specialty committee (e.g., pediatrician, endocrinologist, development psychologist, etc.), in consultation with key stakeholder groups such as intersexed people. That guidelines, among other topics, need to cover when non-urgent appearance-altering surgery can be conducted, and when and whether early surgical genital reconstruction (feminizing or masculinizing genital surgery) and when sex assignment surgery, if requested, needs to be conducted among intersexed people. The national guidelines can be based on the latest international consensus statement or guidelines, adapted to the Indian context.

List of some of the resources from India for training health care providers on the health issues of transgender people

1. Training manuals for doctors and counselors on MSM and MtF transgender people from the HIV programme of National AIDS Control Organisation (NACO), as part of the HIV capacity building programme. (<http://naco.gov.in/NACO>)
2. Ketki Ranade, Shruti Chakravorthy, TISS. (2012). LGBT-affirmative counselling practice. Resource and Training Manual. TISS: Mumbai.
3. Training powerpoints on MSM and transgender people from I-TECH (www.go2itech.org)
4. Training manuals on hijras/TG people from India HIV/AIDS Alliance (www.allianceindia.org)
5. Venkatesan Chakrapani. (2005). Understanding men who have sex with men (MSM) and Hijras & Providing HIV/STI risk reduction information. Basic Training for Clinicians & Counselors in Sexual health/STI/HIV. Trainer's manual. http://www.indianlgbthealth.info/Training/Downloads/TOT_FINAL_Sep2005.pdf

149

6. Venkatesan Chakrapani. (2005). *Understanding men who have sex with men (MSM) and Hijras & Providing HIV/STI risk reduction information. Handbook for Participants* (STI/HIV and Sexual health care providers).
http://www.indianlgbthealth.info/Training/Downloads/Parti_Hdbook_FINAL_Sep2005.pdf
7. Venkatesan Chakrapani. (2005). *Providing quality sexual health care to men who have sex with men (MSM) and Hijras in India. Clinical Manual*.
http://www.indianlgbthealth.info/Training/Downloads/ClinicalManual_FINAL_Sep2005.pdf

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^{viii} India HIV/AIDS Alliance. (2013). *Transforming Identity: Access to Gender Transition Services for Male-to-Female Transgender People in India*. © India HIV/AIDS Alliance: New Delhi. http://www.allianceindia.org/publications/38657-issuebrief_feminisation_WEB.pdf

^{ix} Adapted from: "Policy brief: Health Policies and Sexual and Reproductive Health Needs of People Living with HIV and Sexual Minorities in Orissa and West Bengal." Prepared as part of SAATHII Project in Partnership with Interact Worldwide. Report Prepared by Lead Consultant Dr. Venkatesan Chakrapani, M.D, March 2011. <http://www.saathii.org/sites/default/files/papers/coap-policy-research-report.pdf>

^x *Breaking The Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities. A study conducted by LABIA – A Queer Feminist LBT Collective*. 2013.

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Tamil Nadu Transgender Welfare Board

In order to help the Transgender persons lead a decent life and mainstream them into the society, the Government of Tamil Nadu constituted the Transgender Welfare Board on 15th April, 2008.

2. The Tamil Nadu Transgender Welfare Board consists of the Minister of Social Welfare as its Chairperson, eleven official members and nine non-official members who are Transgender persons. Its official members are:

1.	Minister of Social Welfare	Chairperson
2.	Special Commissioner / Secretary Social Welfare & NMP Department	Vice - Chairman
3.	Director, Social Welfare	Member Secretary
4.	Secretary, Finance Department	Member
5.	Secretary, Law Department	Member
6.	Chairperson, Tamil Nadu Women Commission	Member
7.	Chairman, Tamil Nadu Human Rights to Social Justice Commission	Member
8.	Managing Director, Tamil Nadu Corporation for Development of Women Ltd.,	Member
9.	Director, College Education Department	Member
10.	Director, Medical Education Department	Member
11.	Director, Employment & Training	Member

3. The Board initiates welfare programmes for the upliftment of Transgender persons. Its other functions are to:

- Obtain funds from the State Government and to distribute to various projects approved by the Board;
- Issue ID Cards;
- Give financial approval for various Income generating programmes;
- Initiate awareness programmes; and
- Take decision on new initiatives taken by the Department.

4. The Government of Tamil Nadu initially designed a survey format and conducted a survey of Transgender persons in all districts. Wide publicity was given through District Administration in this regard.

152

5. 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.

6. 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.

7. This Committee examines the Transgender persons and certifies them as Transgender.

8. 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.

9. In order to empower them economically, loan up to Rs.15.00 lakh for Transgender Persons' Self Help Groups with 25% subsidy and 75% as Bank loan is provided for self-employment activities by Government of Tamil Nadu. So far, 51 Transgender Self Help Groups have been sanctioned with 25% of subsidy to the tune of Rs. 55 lakh and Rs.1.45 crore as Bank loan is being distributed for starting various economic activities like provision stores, rearing of milch animals, canteens, production units (like soaps etc.), napkin, milk products, plying passengers Autos, load autos and business activities related to cloth, coir, rice, etc.

10. A sum of Rs.100.00 lakh was provided in the Revised Budget Estimate 2011-12 for the welfare of the Transgender persons.

11. In order to provide financial assistance for the aged transgender persons who have nobody or means to take care of, the Government of Tamil Nadu has introduced the Monthly Pension Scheme for Destitute Transgender persons.

12. For the year 2012-13, the State Government allocated Rs.1, 17, 59,000 for the old age pension for destitute Transgender persons, who are in the age group of 40 years and above. Out of the total budget allotment of Rs.1, 17, 59,000, Rs.35 lakh has been released and distributed to all District Collectors for provision of monthly pension at the rate of Rs.1000 per month to 500 Transgender persons.

13. For the year 2013-14, the State Government has allocated Rs.1.28 crore for the old age pension for destitute Transgender persons, who are in the age group of 40 years and above. Out of total budget allotment of Rs.1.28 crore, Rs. 89, 16,000 has been released and distributed to all District Collectors for provision of monthly pension at the rate of Rs.1000 per month to 743 Transgender persons.

153

Tamil Nadu Transgender Welfare Board
Expenditure Details
(2011-12, 2012-13)

Sl. No.	Subject	Year	Budget Allotment Rs.	Expenditure Rs.	Bene ficiaries
1.	a) Educational Assistance	2011 - 12	1.00 crore [@ Rs.1 lakh allocated for education assistance]	*48,250	1
	b) ID Cards Issued (Transgender)	2011 - 12		15,610	487
	c) 25% subsidy for Transgender SHGs for economic activities.	2011 - 12		55,44,875	442
		Total		56,08,735	930

* Actual claimed.

154

Transgender Pension Scheme

Sl. No.	Subject	Year	Budget Allotment (Rs.)	Expenditure (Rs.)	Beneficiaries
1.	Transgender's pension Scheme (age group 40 and above)	2012 -13	1.18 crore	* 10,00,000 ** 25,00,000	333 500
			Total	35,00,000	833

* For three months (August, September, October 2012)

** For five months (November, December 2012, January, February and March 2013)

Sl. No.	Subject	Year	Budget Allotment (Rs.)	Expenditure (Rs.)	Beneficiaries
1.	Transgender's pension Scheme (age group 40 and above)	2013 -14	1.28 crore	60,00,000 16,00,000	500 243
			Total	89,16,000	743

155

Details of Welfare Assistance Given Through Transgender Welfare Board

Sl. No.	District	No. of Transgender Persons as per census	No. of Identified Transgender Persons	No. of Identity cards supplied	No. of Transgender Persons for 25% Subsidy (Self Help Groups)	No. of Self Help Groups for Transgender Persons	Ration cards	House Pattas	Sewing machines	Health Insurance Cards
1.	Ariyalur	30	24	10	10	2	10	0	0	0
2.	Chennai	688	638	638	71	6	223	0	17	205
3.	Coimbatore	332	332	332	12	1	281	29	5	0
4.	Cuddalore	185	131	131	11	2	28	43	4	30
5.	Dharmapuri	87	87	85	36	3	53	87	5	0
6.	Dindigul	148	148	146	10	2	50	29	0	0
7.	Erode	164	141	137	31	5	13	102	5	57
8.	Kancheepuram	119	85	68	14	1	32	15	3	0
9.	Kanyakumari	41	41	39	24	2	39	39	4	0
10.	Karur	110	44	29	24	2	28	28	0	0
11.	Krishnagiri	32	26	24	0	0	12	15	0	22
12.	Madurai	317	237	225	0	4	67	91	4	0
13.	Nagapattinam	49	36	28	8	1	17	0	4	0
14.	Namakkal	159	123	123	0	0	63	29	4	0
15.	Nilgiris	16	1	1	0	0	1	0	0	0
16.	Perambalur	19	19	19	15	2	17	19	0	0
17.	Pudukottai	20	14	14	0	1	10	10	3	0
18.	Ramanathapuram	104	51	51	15	2	23	21	3	0
19.	Salem	189	189	182	0	0	80	71	3	5
20.	Sivagangai	32	32	32	5	2	18	15	3	10
21.	Thanjavur	73	40	40	13	2	10	15	1	0
22.	Theni	127	125	125	51	5	68	72	0	0
23.	Thiruppur	68	45	26	11	3	16	7	4	0
24.	Thiruvallur	222	105	105	11	2	48	0	4	105
25.	Thoothukudi	68	62	62	0	5	3	0	5	0
26.	Thirunelveli	62	62	47	16	2	21	12	4	0
27.	Thiruvannamalai	133	86	68	5	1	22	57	5	0
28.	Thiruvarur	14	14	14	7	1	7	7	0	0
29.	Trichy	162	127	121	13	2	60	58	5	13
30.	Vellore	181	143	143	0	0	80	20	4	35
31.	Villupuram	160	149	148	10	1	86	36	6	76

156

Sl. No.	District	No. of Transgender Persons as per census	No. of Identified Transgender Persons	No. of Identity cards supplied	No. of Transgender Persons for 25% Subsidy (Self Help Groups)	No. of Self Help Groups for Transgender Persons	Ratioh cards	House Pattas	Sewi- ng mach- ines	Health Insurance Cards
32.	Virudhunagar	116	114	114	19	2	16	36	3	31
	Total	4227	3471	3327	442	64	1502	963	108	589

Chapter Twelve

The Role of Ministry of Social Justice & Empowerment

The Department of Social Justice & Empowerment in the Ministry of Social Justice & Empowerment should be the nodal agency of the Government of India for the transgender persons. The Department of Social Justice & Empowerment should coordinate with various line Ministries/Departments of the Government of India and State Governments for ensuring welfare measures for the transgender persons.

2. For the above purpose, the Ministry may set up a Standing Coordination Mechanism in the form of an Inter-Ministerial Committee comprising representatives of Ministries of Social Justice & Empowerment, Human Resource Development, Health & Family Welfare, Housing & Urban Poverty Alleviation, Rural Development, Labour & Employment and the Department of Financial Services. The Committee may also associate representatives of State Governments by rotation, representing different regions of the country. The representatives of the transgender community and experts may also be included as members of the Committee or be invited as special invitees. This Committee should ensure preparation of time bound action plans by all concerned Ministries, monitor their implementation status and suggest measures for removing bottlenecks, if any, encountered during their representation.

3. A National Council for Transgender Persons may also be considered on similar lines as that of the National Council for Senior Citizens.

4. With a view to ascertain a quick estimate of the population of transgender persons in the country as also their socio-economic condition; the Ministry may, in collaboration with the Ministry of Statistics & Programme Implementation, carry out a survey. This may also help the concerned Ministries in preparing appropriate schemes for improvement of their socio-economic status. This is also mentioned in the Twelfth Five Year plan document.

5. To begin with, the Ministry may consider launching an Umbrella Scheme for the benefit of transgender persons with following components:

- (i) Scholarship for transgender persons on the lines of similar scholarship schemes for SC students;
- (ii) Loan with 25% subsidy for transgender persons to enable them to take up self-employment ventures;

158

- (iii) A pension scheme for transgender persons above 40 years up to 60 years, who for some reasons cannot be assisted under any scheme of economic empowerment, for ensuring financial security; and
- (iv) Grant-in-aid to Voluntary and other Organizations working for Empowerment of Transgender People, particularly for providing them vocational training.

6. As discussed in Chapter seven, the press and media have to play an important role in sensitizing the society and families on the issues of transgender persons. The Ministry, in concert with the Ministry of Information & Broadcasting, may carry out an intensive publicity campaign for this purpose.

Chapter Thirteen

Summary of Conclusions & Recommendations

Definition of Transgender

1. The Committee recommends that the term 'transgender' (not trans*) will be used, as an inclusive term and will cover various gender identities and expressions, as described in paragraph 6 of chapter one. 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 & 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.

2. A compilation of all known transgender socio-cultural groups should be prepared & circulated for guidance of all concerned, with a disclaimer that the said compilation is "suggestive and not exhaustive and all such persons who qualify as transgender as per the generic definition above and pass the mandatory psycho social assessment (see paragraph 5 of Chapter Four) should be categorized as transgender persons." The criterion/test for qualifying as a transgender person will apply on individual basis and the fact such a person belongs to a known transgender socio-cultural group will act a corroborative evidence and not conclusive. As a starting point, a compilation of various transgender socio-cultural groups has been prepared by the Committee, based on available information, and is at Appendix-2.

3. The terms 'sex' and 'gender' should not be used interchangeably (as are often used presently) and only the term 'gender' should be used in various official documents including identity documents, application forms, returns, reports, etc.

Constitutional protection

4. In essence, 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.

160

5. A harmonious reading of the Constitutional provisions as well as the provisions of the Citizenship Act, 1955 and the General Clauses Act, 1897 Act would show that in fact there is no conflict or limitation imposed on the concept of 'person' by any of these laws and a Transgender person would undoubtedly fall within the definition of 'person'. It is evident that the Constitution of India guarantees right to equality and non-discrimination for all including transgender persons.

Transgender Identity

6. In this regard, the Committee recommends:

- i) Transgender should be declared as the third gender, and a Transgender person should have the option to identify as '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 respective the State/UT on the lines of Tamil Nadu Aravanis Welfare Board, on the recommendation of a District level Screening Committee headed by the Collector/District Magistrate 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 Govt/UT Administration deems appropriate.
- iii) The certificate issued as at (ii) above should be acceptable to all authorities for indicating the gender on official documents like ration card, passport, birth certificate, aadhaar card, etc.
- iv) The third 'gender' identity known as '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, Government may refer the matter to the Law Commission.

Inclusive Approach

7. The genesis of the problems of Transgender persons in India lie in the stigma and discrimination they face in the society, resulting in their exclusion from socio-economic-political spectrum. They are one among the marginalized sections of the society. The solution of their problems will, therefore, require concerted efforts to mainstream them and adoption of an inclusive approach in all spheres of life.

161

8. The Committee is of the view that inclusive approach should be the bedrock of Government's strategy to mainstream the transgender Community. The Ministry of Social Justice & Empowerment should take up with all concerned Ministries/Departments of Government of India and State Governments to include development of transgender community in their policies, programmes and schemes.

Convergence Approach

9. The Twelfth Five Year Plan (2012-17); Social Sectors, Volume III has a section on transgender communities as follows:

"23.71. The Twelfth Plan proposes empowerment of the transgender community by advocating that line Ministries support their education, housing, access to healthcare, skill development, employment opportunities and financial assistance. Identification will be provided for transgendered persons in all Government and non-Government records by introducing a separate column to include the third gender. The Ministry of Social Justice and Empowerment along with the Ministry of Statistics and Programme Implementation will determine the number of transgendered persons in India, map their socio-economic status in order to create a law to protect interests of the community and improve their living conditions."

10. In keeping with above intent, the Committee recommends to the Ministry of Social Justice & Empowerment to seek convergence with other Ministries and their existing schemes for a more targeted and focused approach towards welfare of TG community, while considering an Umbrella Scheme for direct targeted intervention in certain areas.

11. Various Ministries/Departments of the Government of India are implementing a number of schemes which target a variety of beneficiaries. In most of such schemes, special emphasis is given to cover the weaker sections of the society and other disadvantaged groups. The Expert Committee is of the view that these schemes could be effectively utilized for providing benefits to such transgender persons who are eligible under those schemes. Some of such schemes/programmes are mentioned below (list is not exhaustive):

- MGNREGA
- National Rural Livelihoods Mission (NRLM) – AAJEEVIKA
- National Social Assistance Programme (NSAP)
- National Urban Livelihood Mission (NULM)
- Healthcare facilities
- Rashtriya Swasthya Bima Yojana (RSBY)
- National Health Mission (NHM)
- National Policy on Skill Development, 2009
- Indira Awas Yojana

Addressing Stigma, Discrimination and Violence faced by Transgender People

Addressing stigma, discrimination and violence against gender-nonconforming and transgender children and adolescents:

12. *Families:* Awareness and information are needed for parents to support their gender-nonconforming or transgender children, setting aside their discomfort and deeply held normative attitudes. Such information could be made available in health settings (pediatrics, child development specialties), as well as through educational institutions. ••

13. Counseling and other mental health services that affirm the child's gender identity are needed for the children and their parents alike. The model of parents' support groups facilitated by the Center for Counselling in Chennai and Swabhava in Bangalore may be examined for replication by government and civil society groups working for transgender welfare.

14. Besides a supportive family environment, gender-conforming and transgender youth need counseling and support for their self-stigma, and for coping with the trauma of violence and abuse. To cope up with trauma and violence crisis counseling services could be set on the model of RCICs (rape and crisis Intervention Centres). Such support could be made available in schools, through various child-welfare services, Childline services and through youth and suicide prevention helplines. Additionally, 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-nonconforming youth.

15. *Educational institutions:* Awareness of gender diversity and the need to safeguard transgender youth from hostile school environments is a dire need. The recommended interventions include formation of groups of transgender children for meetings, holding film screenings for sensitization of students and staff, setting up of resource centre, augmenting libraries with books and audio-visual materials on transgender issues, holding periodical sensitization events by collaborating with organisations working with transgender, and adopting policies for preventing sexual harassment and bullying of transgender children. Some schools in Tamil Nadu have initiated efforts in this direction by inviting transgender spokespersons and counselors to educate their students and staff. The Committee recommends that these recommendations may be studied by Governments and suitably adopted for creating a conducive environment for transgender children in educational institutions.

16. *Healthcare:* Interventions to reduce discrimination against transgender persons in the healthcare system have been described in Chapter 10. The authors emphasize here the need to prevent physical and psychological violence inflicted on gender-nonconforming and transgender children and adolescents through conversion therapy attempts such as electric shock treatment.

17. *Shelter and Residence:* While it is imperative that every effort be made to provide gender-nonconforming and transgender children safe residence within their natal homes, there is a need to ensure that short-stay homes, orphanages, adoption and fostering services are sensitive to the needs and concerns of such children. There is also a need for sensitization and capacity building of the caregivers for addressing the concerns of Transgender children in the institutional setting.

Addressing stigma, discrimination and violence against transgender adults

18. *Workplace:* In consultation with community groups and human resource professionals experienced in the area of Diversity and Inclusion, workplaces in public and private sector need to sensitize employers and employees on issues of transgender persons. Anti-discrimination policies must be instituted and meaningfully applied to the processes of hiring, retention, promotion, and employee benefits. Workplace sexual harassment policies should be made transgender-inclusive.

19. *Law and Law Enforcement:* The legal and law-enforcement systems need to be sensitized on issues of transgender people and be empowered to take actions such as:

- (i) Criminal and disciplinary action against delinquent police official in cases of violations of human rights of transgender persons.
- (ii) Taking action against parents who neglect or abuse their gender-nonconforming or transgender children and against doctors who practice electro-shock or other kinds of unethical "conversion" therapy.
- (iii) Making free legal aid available to transgender individuals seeking redress against discrimination and violence.
- (iv) Where transgender individuals need to be incarcerated, care must be taken to ensure they are not in circumstances where they are vulnerable to sexual assault.
- (v) Sexual assault, sexual harassment and domestic violence laws must be made transgender-inclusive. Presently, Section 375 of IPC, as amended doesn't cover the transgender persons as victims of sexual assault (only cis women can be the victims of sexual assault). Alongside Section 375, another section should be included to cover the cases of sexual assault on transgender persons.
- (vi) Slurs based on real or perceived gender identity may be included in Section 153A of the Indian Penal Code.
- (vii) Bureau of Police Research & Training (BPR&D) may undertake a study on crime against transgender persons, including alleged excesses by Police, with a view to investigate their causes and suggest preventive measures.
- (viii) National Crime Records Bureau may, from now on, collect and compile statistics of crime against transgender persons, as also about cases registered against them as accused.

20. For the long run, the possibility of a law to prevent discrimination and atrocities may be considered.

21. *Social Welfare:* Policy and institutional reforms that enable access to social protection schemes, targeting the poor and other at-risk groups, must be made transgender inclusive.

22. *Community strengthening and involvement:* The capacity of community organizations to monitor, document and respond to discrimination and human rights violations must be strengthened. Training in legal literacy, and public speaking for advocacy are needed. Transgender representation in dialogues around social and legal protection, policy and legal reform, and public sensitization is necessary.

164

23. *Housing:* Given the poverty experienced by many transgender people, and discrimination encountered in finding housing, it is imperative that the Ministries of Rural Development and that of Housing and Urban Poverty Alleviation ensure that housing assistance schemes help transgender people to obtain non-discriminatory and safe housing.

24. *Media and Society:* Transgender human rights issues must be highlighted in the media and other public forums so as to improve public awareness, and increase transgender people's ability to realize those rights. Stigmatizing coverage in the media must be curbed.

Elderly Transgender People

25. There is a need for pension scheme for elderly transgender people regardless of gender assigned at birth, adopting a model such as that available for MtF transgender people in Tamil Nadu, as well as non-discriminatory and affordable housing schemes.

Suggested Approach to Mainstream Transgender People with Education System

26. There is an urgent need for addressing the community's concerns in education sector in a holistic way that implies giving attention to Access, Equity, Environment and Employment. Addressing stigma and discrimination at early stage will help in bringing transgender children to school and retaining them upto the higher level. The following strategies can be considered:

- Ensure equal access to educational opportunities at all levels without stigma and discrimination: Affirmative actions are needed to reduce stigma and discrimination associated with the community. Schools and colleges need to play a supportive role in such instances. There has to be proper sensitization of society in general and particularly parents, teachers and students.
- The fulfillment of the obligations under Right to Education (RTE) Act is critical for the improvements in the educational conditions of transgender community.
- Enhance understanding on transgender issue: Better understanding of socio-cultural and human rights aspects would help in attitudinal shift towards the transgender community.
- Dropout of transgender persons from schools - not by choice but by force: Dropout has to be seen from different perspective. The transgender persons do not dropout from schools not by choice but by force due to acute discrimination and abuse. The perception of dropout may require review and reform of structural constraints, legal procedures and policies that impede access to mainstream education.
- Ensure safety of transgender children in educational institutions: Transgender children face physical, mental and emotional violence forcing them to leave. Proper mechanism has to be evolved to ensure their safety. This also requires fixing the responsibility.
- Sensitization towards transgender community should be an integral part of student counselling at schools. The transgender persons also feel that their student community should be given adequate opportunity to interact with trained counsellors as they undergo a lot of gender dilemmas.

165

- Contents on transgender can be included in the curriculum of adolescent education in schools to sensitize children. This can become an effective step to address the stigma/discrimination at schools.
- Activities organized at schools to be inclusive to ensure participation of all children. This will enable other children to understand better and give space for the transgender children in their friendship. School Management Committee (SMC) members in their training programmes should include separate sessions on the issues/challenges faced by transgender. SMC members should also talk to community members to create greater awareness.
- Mainstreaming of transgender persons can also be done by institutions and individuals working in the education sector, particularly NGOs and activists through advocacy and capacity building.
- Review the existing schemes (Education and Training): Educational and training schemes/programmes like Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA), Jan Shikshan Sansthan (JSS) at various levels i.e. primary, secondary and senior level need to be reviewed to include the concerns of transgender persons. M/o Human Resource Development (MHRD) may take up this with the States. MHRD through National Council for Teacher Education may take up sensitization of teachers through a series of training programmes for which a separate module can be prepared. Since SSA is a vehicle for implementation of RTE Act, as per the mandate all children 6-14 years of age have a right to education. States can include transgender children among disadvantaged groups so that they are also admitted in private schools under section 12(1) (c) of the RTE Act.
- There is a need to harmonize different schemes available for children to make them suitable and accessible to transgender children. The Juvenile Justice Act (JJA) should also address the concerns of transgender children and should be suitably modified/amended.
- Development of community friendly customized pedagogy for skill based learning: Vocational skill development training should be provided to the community for introduction of new skills or providing additional skills for those who have skill in a particular vocation which can enable them to look for better job opportunities and economic empowerment. The tailor-made skill based training programmes need to be developed with the help of Jan Shikshan Sansthans, NSDC and lifelong learning programmes of universities and colleges.
- Financial incentives/scholarship for the transgender persons: Government should provide scholarship/entitlements, fee-waiver, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to this group.
- Establishment of anti-discrimination cell: All the educational institutions/universities should establish an anti-discrimination cell to monitor any form of discrimination/harassment against the transgender students.
- Create an enabling environment: There is a need to work closely with community and different school based committees like School Management Committee (SMC), village management committee as recommended under the RTE Act.

166

- Section 317 of the IPC: Abandonment of child is a punishable offence under Section 317 of the IPC if the child is abandoned under the age of twelve years. However, the abandonment of transgender children takes place usually between the age of twelve & eighteen years. The Ministry of Home Affairs (MHA) may be requested to consider enhancing the age of child for this offence to eighteen years.

- Research: 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 programme that would bring an effective and long-term change in their lives.

Suggested Approach for Improving Employment opportunities for transgender persons

27. Following approach is suggested:

Create opportunities for Information and counselling

- Establish Helpline for Career Guidance, Promotion and online Placement Support
- Capacity Building and Entrepreneurship Development
- Liberal credit facilities and other needed support for economic activities
- Provision of social entitlement to the community
- Convergence with existing schemes of Ministry of Social Justice & Empowerment (MSJE): MSJE may explore the possibility of widening the mandate of one of the Corporations for providing the economic support to transgender community.
- Vocational Skill Building: Design customized vocational training programmes for the transgender community as per their needs and interest and establish effective linkages with vocational training centers run by private and government agencies.
- Create a supportive Environment: The efforts should be made to sensitize all concerned stakeholders like government officials in relevant departments, banks, private employers, corporate, community leaders like Gurus.
- Convergence with existing schemes: Mention of transgender community across all existing schemes specially centrally sponsored schemes like National Livelihood Mission, NREGA, NFDC will help in giving them due recognition.
- Adopt good model/intervention: There are some good models like Transgender Welfare Board in Tamil Nadu which helps through Self-Help Groups for economic security of this community. The Board provides 25% subsidy to such SHGs for starting self-employment. The proven models can be adopted by other States also.

Transgender Adolescents, Youth and Young Adults

28. The international and therefore the nationally accepted formula for looking at issues pertaining to children, adolescents and young adults remains the best interests of the child, in

167

the expectation that no child, adolescent or young adult is allowed to fall through the cracks. The right to education framework entitles that they stay in schools which have a supportive and nurturing environment, with adequate training and protection given to the system to ensure that the high instances of reported bullying, abuse and coercion into accepting forced gender roles are removed from that young person's life. World over, in countries where research and studies have been done, there is documented evidence that young transgenders are at considerable risk to many things – loss of family, loss of education, bullying, depression, assault, violence and the risk of suicide because supporting frameworks do not exist or because they are unable to access it.

29. The Medical Council of India along with leading mental health institutions and organizations working on transgender issues should develop practice protocols for the care of transgender adolescents/ youth under the age of 18. This would also involve development of detailed protocols for counseling of family members of adolescents and SRS related guidelines for adolescents. It is also pertinent to note that in India, for any surgery to be done on an individual, the age of consent for that person is 18 years, and if younger, parental/ guardian consent is necessary. International guidelines and best practices lessons learned will also help our country achieve this standard when setting the age threshold. Some of the other issues are:

- Deliberately incorrect and disrespectful use of names and pronouns
- Lack of access to appropriate restroom facilities
- Privacy and Confidentiality
- Highest standards of health care – including psycho
- Lack of role models; lack of accurate information
- Transgender awareness training for faculty, staff, and administrators from a qualified community-based trainer

Access to Healthcare: General Health Services (Physical/Mental), and Gender Transition Services (including Sex Reassignment Surgery)

Improving access to and use of general health services for male-to-female transgender people

30. All public hospitals need to have hospital policies on registration and admission of transgender people, training and sensitization of the health care providers about transgender people and their health issues, and the need to educate the general public (here, co-patients and relatives/care-givers in hospitals) about transgender people.

31. As a transgender person can be a sex worker and HIV-positive, within the health care settings, steps need to be taken to decrease stigma faced by transgender people in relation to these intersecting stigmas (stigma related to being transgender, sex work and HIV status).

Improving access to and use of gender transition-related health services for transgender people

32. The common gender transition-related service needs of transgender people are summarized in the Table below:

Table 10.1: Gender transition-related needs of transgender people		
Gender transition-related needs	MtF transgender people	FtM transgender people
Common needs	<ul style="list-style-type: none"> • Proper counselling about options available in relation to gender transition • Proper post-operative follow-up counselling and support 	
Types of surgical procedures required	<ul style="list-style-type: none"> • Neovagina creation (construction of a vagina) • Penectomy (removal of the penis) • Orchidectomy (removal of the testes) • Clitoroplasty (construction of a clitoris) • Breast augmentation (breast enlargement) • Rhinoplasty (reshaping the nose) • Hair transplants 	<ul style="list-style-type: none"> • Bilateral mastectomy (removal of the breasts) • Hysterectomy (removal of the uterus) • Oophorectomy (removal of the ovaries) • Phalloplasty (construction of penis)
Types of non-surgical procedures required	<ul style="list-style-type: none"> • Female hormone therapy • Hair removal: Electrolysis and laser therapy • Voice modulation: Vocal therapy 	<ul style="list-style-type: none"> • Male hormone therapy • Voice modulation: Vocal therapy

33. The following recommendations are made for consideration of the Ministry of Health:

1. To prepare a policy statement (and/or an executive government order) on providing essential gender transition services, including SRS, in suitable public hospitals
2. To prepare national clinical guidance (standards of care) document in line with the international WPATH guidelines
3. To provide penectomy/orchidectomy (removal of male external genitalia) for people who are confirmed to be '[MtF] transgender people', based on clinical diagnostic criteria

169

4. To prepare policy guidelines for providing gender transition services in public hospitals (e.g., which hospitals, whether gender transition services will be free or subsidized)
5. To train relevant health care providers on offering gender transition services
6. To develop national guidelines on clinical management of people with intersexed conditions (now called 'Disorders of Sex Development')

Enabling better understanding and enhancing competency among health care providers (HCPs) in dealing with some transgender-specific health issues

34. To improve better understanding of the health issues of transgender people and to make health care settings welcoming and non-discriminatory, the following steps need to be taken:

- Curriculum and Training on transgender health
- Transgender-friendly hospital policies/guidelines
- Non-discrimination policy/guidelines
- Research and evidence-base to promote transgender health

The Role of Ministry of Social Justice & Empowerment (MSJE)

35. The Department of Social Justice & Empowerment in the Ministry of Social Justice & Empowerment should be the nodal agency of the Government of India for the transgender persons. The Department of Social Justice & Empowerment should coordinate with various line Ministries/Departments of the Government of India and State Governments for ensuring welfare measures for the transgender persons.

36. For the above purpose, the Ministry may set up a Standing Coordination Mechanism in the form of an Inter-Ministerial Committee comprising representatives of Ministries of Social Justice & Empowerment, Human Resource Development, Health & Family Welfare, Housing & Urban Poverty Alleviation, Rural Development, Labour & Employment and the Department of Financial Services. The Committee may also associate representatives of State Governments by rotation, representing different regions of the country. The representatives of the transgender community and experts may also be included as members of the Committee or be invited as special invitees. This Committee should ensure preparation of time bound action plans by all concerned Ministries, monitor their implementation status and suggest measures for removing bottlenecks, if any, encountered during their representation.

37. A National Council for Transgender Persons may also be considered on similar lines as that of the National Council for Senior Citizens.

38. With a view to ascertain a quick estimate of the population of transgender persons in the country as also their socio-economic condition; the Ministry may, in collaboration with the Ministry of Statistics & Programme Implementation, carry out a survey. This may also

170

help the concerned Ministries in preparing appropriate schemes for improvement of their socio-economic status. This is also mentioned in the Twelfth Five Year plan document.

39. To begin with, the Ministry may consider launching an Umbrella Scheme for the benefit of transgender persons with following components:

- (i) Scholarship for transgender persons on the lines of similar scholarship schemes for SC students;
- (ii) Loan with 25% subsidy for transgender persons to enable them to take up self-employment ventures;
- (iii) A pension scheme for transgender persons above 40 years up to 60 years, who for some reasons cannot be assisted under any scheme of economic empowerment, for ensuring financial security; and
- (iv) Grant-in-aid to Voluntary and other Organizations working for Empowerment of Transgender People, particularly for providing them vocational training.

40. As discussed in Chapter seven, the press and media have to play an important role in sensitizing the society and families on the issues of transgender persons. The Ministry, in concert with the Ministry of Information & Broadcasting, may carry out an intensive publicity campaign for this purpose.

Persons with Intersex Variations

Though many people believe that all infants are born clearly male or female, in fact Nature is not so binary-minded. At least one in every 2,000 children is born with a sexual anatomy that mixes male and female characteristics in ways that make it difficult, even for an expert, to label them male or female. Although no one is ever born with two full sets of genitals, male and female, some intersexed infants may have ambiguous genitalia, such as a penis that is judged "too small" or a clitoris that is judged "too large."

Parents concerned about their infant's health and well-being are often frightened by this variation. Although genital ambiguity does not in itself represent a health problem, parents often fear that their children will be adversely affected by being different, or that somehow the child will grow up to be lesbian or gay.

Some intersexed people are born with genitals that look like most girls' or boys' genitals, but may have internal reproductive organs usually associated with the other sex. Others have bodies that do not spontaneously go through puberty, or that exhibit pubertal changes many years ahead of the usual schedule, or go through pubertal changes usually associated with the opposite sex, or experience some of the pubertal changes of both sexes. Conditions such as congenital absence of the vagina (1 in every 5000 female births) and hypospadias, in which the urethral opening does not occur at the tip of the penis (1 in every 200 male births), are also considered by many physicians to be intersexed conditions.

Around the late 1950s, it became widespread practice to subject intersexed children to surgeries and hormone treatments intended to ensure that the child is viewed as clearly female or clearly male. These procedures are not medically necessary; instead, they are designed to make the child's genitals look more "normal." In recent years a growing number of people who were subjected to genital surgeries as infants and children have spoken out against these medical interventions as harmful, unethical, and based upon nothing more than social prejudice. Their voices have now begun to create dissent among the doctors who recommend and perform these surgical interventions. Medical practice has been based upon the idea that sexual ambiguity is shameful and must be surgically "disappeared." For that reason, doctors have been taught that they must not give intersexed children or adults accurate information about procedures, or about their medical history. Often intersexed people are able to adapt somewhat to their assigned gender, but sometimes this does not work out the way the doctors believe it will. Sometimes the person's gender turns out to be the opposite of their surgically assigned sex; in other cases, the person always feels "in between." Some intersexed people have a problematic relationship with their own genitalia, and struggle

172

with doubts about their ability to relate intimately with other people because of surgically created sexual dysfunction.

A sense of inadequacy created by years of disapproving medical attention to their bodies, 15 and a medical posture that sexual ambiguity is shameful and freakish can create severe problems with self-esteem. In some cases, intersexed people must undergo the same medical treatments as transsexual people and face the same social obstacles and prejudices.

The view that there is a continuum of sexual development along which all individuals fall, is parallel to the contemporary understanding that gender identity and sexual orientation also reside on a continuum. Contemporary theorists hold that every point on this continuum is a manifestation of human diversity—not a matter of “correct or incorrect” or “right or wrong,” but just what happens in life. These views have been quickly gaining favor in the medical/psychological profession since the advent of an organized self-advocacy movement by intersexed people, led by the Intersex Society of North America.

Please also see:

<http://www.wpath.org/>

http://geneq.berkeley.edu/lgbt_resources_definiton_of_terms

<http://www.intersexinitiative.org/articles/intersex-faq.html>

http://www.isna.org/faq/what_is_intersex

Transgender Communities in India

Kothi: A local language term used in South East Asia to refer to PAGMB(Person Assigned Gender Male at Birth), who identify with characteristics, roles and behaviors conventionally associated with the feminine. Kothis have also been defined as effeminate PAGMBs, who like to cross dress and see themselves as women and use the female pronoun to describe themselves. They may take on this identity only while among their peers, but may continue to dress and act like men otherwise. Kothi persons present themselves as males in most spheres of their lives and only reveal their feminine identity in certain social circles, unlike Hijra (*see below*) identified persons who present themselves in their feminine attire all the time. Despite this difference, in present times, the two identities may often overlap, especially in terms of the social and community networks they are associated with.

Hijras: Hijras are biological males who reject their 'masculine' identity in due course of time to identify either as women, or "not-men", or "in-between man and woman", or "neither man nor woman". Hijras can be considered as the western equivalent of transgender/transsexual (male-to-female) persons but Hijras have a long tradition/culture and have strong social ties formalized through a ritual called "reet" (becoming a member of Hijra community). There are regional variations in the use of terms referred to Hijras, for example, Kinnars (Delhi) and Aravanis (Tamil Nadu) (See below). Hijras may earn through their traditional work: 'Badhai' (taking money from hosts at auspicious occasions like weddings etc), blessing new-born babies, or dancing in ceremonies. Some proportion of Hijras engage in sex work for lack of other job opportunities, while some may be self-employed or work for non-governmental organisations.

Aravanis and 'Thirunangi': Hijras in Tamil Nadu identify as "Aravani". Tamil Nadu Aravanigal Welfare Board, a state government's initiative under the Department of Social Welfare defines Aravanis as biological males who self-identify themselves as a woman trapped in a male's body. Some Aravani activists want the public and media to use the term 'Thirunangi' to refer to Aravanis.

Jogtas/Jogappas: Jogtas or Joggappas are those persons who are dedicated to and serve as a servant of Goddess Renukha Devi (Yellamma) – whose temples are present in Maharashtra and Karnataka. 'Jogta' refers to male servant of that Goddess and 'Jogti' refers to female servant (who is also sometimes referred to as 'Devadasi'). One can become a 'Jogta' (or Jogti) if it is part of their family tradition or if one finds a 'Guru' (or 'Pujari') who accepts him/her as a 'Chela' or 'Shishya' (disciple). Sometimes, the term 'JogtiHijras' is used to denote those male-to-female transgender persons who are devotees/servants of Goddess Renukha Devi and who are also in the Hijra communities. This term is used to differentiate them from 'Jogtas' who are heterosexuals and who may or may not dress in woman's attire when they worship the Goddess. Also, that term differentiates them from 'Jogtis' who are biological females dedicated to the Goddess. However, 'JogtiHijras' may refer to themselves as 'Jogti' (female pronoun) or Hijras, and even sometimes as 'Jogtas'.

174

Shiv-Shakthis: Shiv-Shakthis are considered as males who are possessed by or particularly close to a goddess and who have feminine gender expression. Usually, Shiv-Shakthis are inducted into the Shiv-Shakti community by senior gurus, who teach them the norms, customs, and rituals to be observed by them. In a ceremony, Shiv-Shakthis are married to a sword that represents male power or Shiva (deity). Shiv-Shaktis thus become the bride of the sword. Occasionally, Shiv-Shakthis cross-dress and use accessories and ornaments that are generally/socially meant for women. Most people in this community belong to lower socio-economic status and earn for their living as astrologers, soothsayers, and spiritual healers.

U.S. Policy Regarding Transgender Community (As in November, 2013)

Transgender: Transgender individuals are recognized as those with a gender identity that is different from the sex assigned to them at birth. An individual assigned the male sex at birth but who self-identifies as female is a *transgender woman*. Likewise, an individual assigned the female sex at birth but who self-identifies as male is a *transgender man*. Some individuals who would fit this definition of transgender do not identify themselves as such, and instead identify themselves simply as men and women, consistent with their gender identity.

It is the policy of the U.S. Federal Government to treat all of its employees with dignity and respect and to provide a workplace that is free from discrimination, whether that discrimination is based on race, color, religion, sex (including gender identity or pregnancy), national origin, disability, political affiliation, marital status, membership in an employee organization, age, sexual orientation, or other non-merit factors.

In the United States, classifying a person's sex as male or female is a power left to the jurisdiction of the states. The requirements and procedure to change the sex designation on a birth certificate vary from state to state. The majority of states, with the exception of Idaho, Ohio, Kansas, Tennessee, and Oklahoma, permit name and sex change on a birth certificate, either through amending the existing birth certificate or by issuing a new one. Texas allows necessary changes to a birth certificate, including amendment of sex, if a court order is presented.

The State Department, which determines what identifying biographical information is placed on passports, amended the policy on gender changes in June 2010 to allow permanent gender marker changes to be made with a physician's statement indicating that the applicant has had appropriate clinical treatment for transition to the new gender.

Twenty-one U.S. states and the District of Columbia have laws prohibiting workplace discrimination based on sexual orientation, while 17 states and the District also bar discrimination based on gender identity. On November 8, the U.S. Senate passed the Employment Non-Discrimination Act (ENDA), by a vote of 64 to 32. At the Federal level, ENDA would bar employers from discriminating based on sexuality and gender identity. The draft legislation is now with the U.S. House of Representatives, where it has not yet been taken up for a vote. Currently, there is no federal law designating transgender as a protected class, or specifically demanding equal treatment for transgender individuals.

The Department of Justice Civil Rights Division's primary responsibility is to protect the rights of lesbian, gay, bisexual, transgender, and Intersex (LGBTI) individuals. The Division enforces a number of laws that prohibit various forms of discrimination in areas covering education, employment, housing, police practices and other Department-funded programs. Although these laws do not explicitly refer to sexual orientation or gender identity, they prohibit sex discrimination, which protects all people (including LGBTI people) from gender-

based discrimination, including discrimination based on a person's failure to conform to stereotypes associated with that person's real or perceived gender.

- **Education:** The Division enforces Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex (among other factors) in public schools, colleges, and universities. The Division, in partnership with the Department of Education, also enforces Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally funded educational programs and activities. Both laws prohibit severe or pervasive harassment based on a student's gender, including nonconformity with gender stereotypes.
- **Employment:** The Division enforces Title VII of the Civil Rights Act of 1964 against public employers. Title VII prohibits discrimination in the workplace, including sex discrimination in recruitment, hiring, assignments and promotions, and pay and benefits. It also prohibits gender-based harassment and retaliation for complaining about discrimination.
- **Housing:** The Division enforces the Fair Housing Act and the Equal Credit Opportunity Act, which prohibit discrimination, including sex discrimination, in the sale or rental of housing and in other residential real-estate transactions.
- **Police Practices:** The Division enforces laws that prohibit discrimination and other misconduct by police. Prohibited practices include, among other things, anti-LGBTI harassment or abuse by police officers and bias in police investigations, including the failure or refusal to investigate certain kinds of crimes or to respond to complaints by LGBTI victims.
- **Hate Crimes:** The Division enforces the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which criminalizes acts of violence that cause bodily injury (and attempts to do so with a dangerous weapon) when motivated by a person's actual or perceived sexual orientation or gender identity.

President Obama's December 6, 2011 memorandum "International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons" formalized a "whole of government" approach by directing all agencies working abroad to ensure that U.S. diplomacy and foreign assistance promote and protect the human rights of LGBT persons. President Obama made it clear that "the struggle to end discrimination against LGBT persons is a global challenge, and one that is central to the United States commitment to promoting human rights." Through the memorandum, he directed U.S. agencies to combat criminalization of LGBT status or conduct abroad, protect vulnerable LGBT refugees and asylum seekers, use foreign assistance to protect human rights and advance nondiscrimination, develop and implement swift responses to human rights violations against LGBT persons, and engage international organizations in the fight against LGBT discrimination.

The State Department's priorities for advancing the human rights of lesbian, gay, bisexual, and transgender (LGBT) persons abroad are to eliminate violence and discrimination based

177

on sexual orientation and gender identity. This includes encouraging governments to hold perpetrators of violence against LGBT individuals accountable, encouraging governments to decriminalize LGBT status and conduct, and engaging the public to promote acceptance of LGBT individuals. Human rights are universal – no group or individual falls outside the framework of human rights protections. As Former Secretary Clinton wrote in a 2010 cable, “In America and in the pursuit of the foreign policy of the United States, distinctions based on race, ethnicity, gender, ability, religion, sexual orientation and gender identity are irrelevant to a person's entitlement to the protections of human rights. In our work as a department, we must openly and explicitly affirm our commitment to the human rights of all persons, including LGBT people.”

**Options for recognition of gender identity of transgender people in India:
Parameters/Criteria that can be considered**

<i>Parameters/Criteria</i>	Option 1 –Recognition of gender identity of transgender people as women or men	Option 2 – Recognition of gender identity of transgender people as third gender	Option 3 – Recognition of gender identity of transgender people based on their choice – women/men or third gender
<i>Citizenship</i>	Citizen of India	Citizen of India	Citizen of India
<i>Age limit</i>	Above 18 years	Above 18 years	Above 18 years
<i>Diagnosis of gender dysphoria/Self-identification</i>	Medical certificate that the person deeply identifies with the gender of his or her choice and hence to be legally recognized as that self-identified gender.	Affidavit that such a person is a 'third gender' or 'transgender' (if seen as a separate gender category) given by trans community members/leaders who know the person as a transgender or third gender person.	Affidavit by the trans person, along with affidavits by friends or community members, that the applicant is man or woman or third gender/transgender. For recognition as man or woman, a medical certification process would be required.
<i>Requirement for SRS and/or hormonal therapy</i>	<i>If the person desired, hormonal therapy can be provided, unless there are medical contraindications.</i> SRS: Either undergone SRS or emasculation Valid medical certificate by one or more members of a team of SRS providers to this effect to be produced.	Not a pre-requisite	Not a pre-requisite for trans persons who do not want to be recognized as man/woman.
<i>Parents' or Legal guardian's consent</i>	Not necessary for people aged above 18 years.	Not necessary for people aged above 18 years.	Not necessary for people aged above 18 years.

**Approach Paper on Education and Employment opportunities &
Challenges for Transgender**

**National Expert Committee on Issues of Trans gender Persons
Ministry of Social Justice and Empowerment, Government of India**

New Delhi

November, 2013

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Exploring Education and Employment Opportunities for Transgender in India**Background and Rationale**

The Transgender community is one among the most marginalised and vulnerable communities in India. They face high levels of stigma in almost every sphere of their life such as health, schools/colleges, employment, social schemes and entitlement. Extreme social exclusion diminishes self-esteem and sense of social responsibility. The community needs to be included in the mainstream development program of the country and be protected from all forms of abuse and exploitation¹.

This paper is as a step towards enhancing the participation of transgender in mainstream education including higher education, professional education and employment. The paper has analysed the present educational and employment status of transgender community in India, the social, cultural and educational factors and forces hindering their participation in education and employment against the backdrop of existing policies, programmes and schemes. The paper has attempted to build extensive information on the status of transgender community in education and employment to facilitate the work of policy makers, planners and researchers and for generating better understanding of their present situation and specific needs.

The authors have analysed and interpreted the existing data available from primary and secondary sources, official documents, reports and earlier studies on transgender community. The focus group discussion (FGD) with community members, stakeholders also helped increase our understanding on the issues related to education, both general and specific.

Section I: Inclusive Education for Transgender Community

Every child of the Age of six to fourteen years shall have a right to free and compulsory education in neighbourhood school till completion of elementary education '**Section 3(1), Right to Education Act, 2009**', **Government of India.**

'The education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential' **Article 29, United Nations Convention on the Rights of Child (UNCRC)², 1989**

¹ From Wikipedia, free encyclopedia for the channel 4 documentary about voluntary eunuchs, see Eunuchs (Channel 4 Documentary)

²<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

The United Nations Convention on the Rights of Child, 1989 (UNCRC) and the 'Constitution of India consider 'education' as a fundamental right for children³. Government of India promulgated Right to Education Act (RTE) 2009 to re-affirm its commitment to provide free and compulsory education to children up to the age of 14 year. Promulgation of a separate Act further provided impetus to the government efforts in providing free compulsory education to children, as it has now become constitutional obligation for the state to provide free education.

India has achieved significant growth and development. It has improved on crucial human development indices such as levels of literacy, education and health. There are indications, however, that not all disadvantaged groups have shared equally the benefits of the growth process. Among these, the transgender community, one of the marginalized and vulnerable communities in the country is seriously lagging behind on human development indices including education. What is appalling is that despite affirmative action (reservation policies, Right to Education, etc.) the disparities remain substantial among the transgender community in India. Majority of the population is uneducated or undereducated thereby excluding them from participating in social, cultural, political and economic activities. Along with teachers' apathy towards transgender community, exclusion from society, poverty, continued discrimination, violence are some of the important factors which can be attributed to the poor participation of transgender persons in educational activities.

Some chilling facts are:

- ❖ Transgender persons face high level of stigma and Physical, sexual, emotional violence, violence in terms of neglect and discrimination in educational institutions leading to most of them dropping out of their studies
- ❖ Exclusion from society and family is one of the main hindrances for accessing education
- ❖ The insensitive teachers and staff towards the community have adverse impact on the continuity of a transgender persons in an educational institutes
- ❖ The low level of education either push them to other occupation like sex work making them vulnerable to HI and Sexual Transmitted Infection⁴, or force them to take sub optimal jobs like begging etc.

³The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.http://india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

⁴Sexually transmitted infections (STIs) are infections that are spread primarily through person-to-person sexual contact. There are more than 30 different sexually transmissible bacteria, viruses and parasites.http://www.who.int/topics/sexually_transmitted_infections/en/

PROBLEM ANALYSIS AND GAPS

182

High level of stigma, discrimination⁵ and violence: Hijra/Transgender community faces high level of stigma and discrimination in almost every sphere of their life making educational opportunities inaccessible to them. Transgender persons face, especially in their growing up years – physical, sexual, emotional violence, violence in terms of neglect and discrimination as well. They often experienced loneliness and abusive treatment, not allowed to share with classmates, both in the classroom and the playground.

Families and schools can both be seen as extremely violent sites for children and also adults at later stages. The teachers accused effeminate boys of violating school and societal decorum. These are some of the main factors forcing them to leave schools or other educational institutes at an early stage

High dropout rate and lower average of school years: Deprived from family and school environment, transgender discontinue their education and risk their future career opportunities. A close analysis of various reports and discussion with community and stakeholders suggest that transgender are most uneducated or undereducated, become reluctant to continue schooling. The average qualification is secondary (Matric) or senior secondary level. The enrollment is significantly low and dropout rate at the primary and secondary level is still very high. Therein bridging the gap of gender disparity and social exclusion remain a huge challenge for the community

Absence of community sensitive teachers: Influenced by predominant norms and values of society, teachers accused transgender persons. 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 transgender person who is already excluded from the family and society does not find any support with the teachers and therefore forced to discontinue the education in between.

Social structure of Hijra/TG Community: The Hijra/TG community has a unique social structure and community norms⁶. These norms vary from Gharana (clans) to Gharana and are determined by various factors like their culture, norms and economic factors. The social hierarchy and community norms among Hijra communities influence their behaviors and decision making ability both positive and negative. However, most of the community members feel that these norms sometime becomes too strict and are not supportive for mainstream efforts or allow them to explore other opportunities and learn other skills.

⁵Terminology guidelines, UNAIDS (October 2011, page 27) :Discrimination refers to any form of arbitrary distinction, exclusion, or restriction affecting a person, usually but not only by virtue of an inherent personal characteristic or perceived belonging to a particular group

⁶Mostly Hijra live and work under a *guru* who is a senior hijra, called 'mother' of a group of hijra. The hijra who are under this *guru* are called *chela* that mean 'child'. *Guru* and *chela* relationship always go through some disciplines and rules in their community.

Lack of skill based education opportunity: One of the serious gaps in our education system is the absence of a skilled based education opportunity especially at the secondary level. In India, as the children move to the higher classes the learning gap increases especially among weaker section/disadvantaged groups, which either results into higher drop out or creation of an unproductive workforce with little skill to sustain in the Job market. By providing opportunity for skilled based education at secondary and higher secondary level, these glaring gaps in the education system particularly for the transgender community can be addressed.

An Approach to mainstream the community in the Education System

In the midst of our many achievements in education sector, there lies a severe flaw in our approach to deal with the issue of inequality and inclusive education for the community. There is no contrary belief that addressing stigma and discrimination at early stage has been a huge problem in bringing transgender children to school and retaining them to the higher level.

The transgender community experts also argue that there is an urgent need for addressing the community concerns in education sector in a holistic way-that implies giving attention to the *Four core issue* of:- *Access*⁷, *Equity*⁸, *Enabling Environment*⁹, and *Employment*.

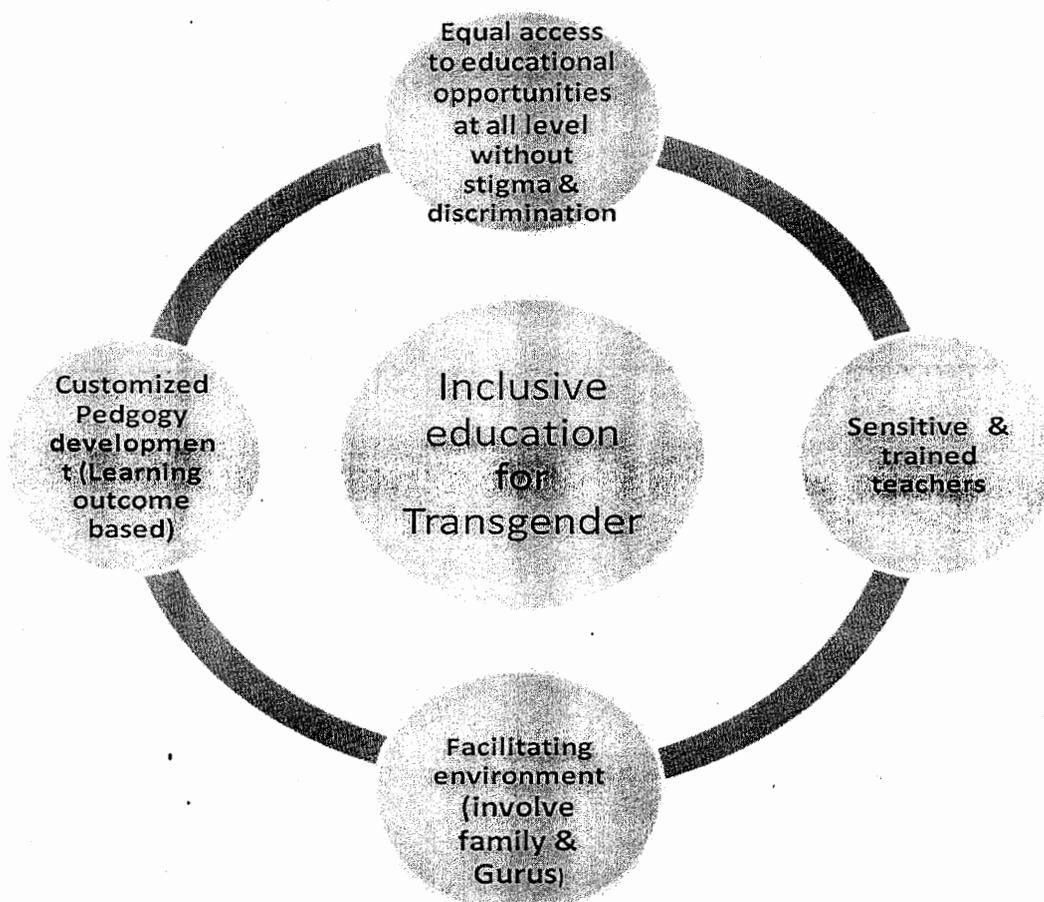
The policy and programmatic framework on education has to ensure that all the important aspects as highlighted above are addressed to improve *access* and infuse equality in our education sector (primary, secondary and higher level). The framework should address the aforesaid *four core areas* in education sector to ensure that a holistic approach is being adopted in addressing the gaps. The framework will revolve around *four pillars* which are dwelled upon as;

⁷ Accessibility indicates that the educational system is non- discriminatory and accessible to all, and that positive steps are taken to include the transgender persons.

⁸ Equity looks into the dimensions of disadvantage, social exclusion, gender disparity, and special needs for marginalized section like Transgender persons and other neglected groups. It focuses on gaps in enrolment, infrastructural provisioning, management, and governance issues social groups (teachers, students), training, motivation and so on

⁹ Enabling Environment refers to supportive environment that harmonize policies with laws ,reduce harassment, violence, stigma, remove structural barriers to the use of services

184



Other measures suggested are:

Equal access to educational opportunities at all level without stigma & discrimination

The mainstream society does not understand the culture, gender, and sexuality of transgender community and their social deprivation and harassment have never received attention by policy makers. The better understanding of the socio-cultural and human rights aspects of discrimination against the transgender and Hijra community would help in attitudinal shift towards the community. The mainstreaming efforts would require a review and reform of structural constraints, legal procedures and policies that impede access to mainstream education. Affirmative actions are needed to reduce stigma and discrimination associated with the community and to improve the access to educational opportunities at all level. Schools and colleges need to play a supportive role in such instances, stepping in to ensure that education and/or vocational training is made available to these individuals.

The following actions may help in improving the access:

- Free and compulsory education up to the age of 14 is the responsibility of the State. The fulfillment of this obligation is critical for the improvements in the educational conditions of transgender community. The proper instructions should be issued to

states and district level to include the transgender community under Economically Weaker Section (EWS)¹⁰ category to provide them necessary benefits as per the Right to Education Act.

- Sensitization towards Transgender/Hijra should be included in student counseling at schools. The community feels that it is an essential to create an opportunity for students to interact with trained counselors as they experience gender dilemmas.
- A chapter on TG/Hijra can be included in the adolescent education curriculum in the school to sensitize the larger society on Transgender. This can be an effective step to address stigma/discrimination at school level.
- Advocate with and build capacities of people and organizations working in education sectors (NGOs, education activists, teachers, principals and other authorities) to facilitate the mainstream efforts.
- State and Central Education Board (ICS/CBSE) and the University Grants Commission (UGC), National Council for Vocational Training (NCVT)¹¹ and other relevant authorities should be encouraged to evolve a system to sensitize their schools/universities/educational institutions with respect to the need of the community and mainstream them into the system.
- Review the existing schemes and educational program to assess their suitability to the transgender and hijra community.
- Develop advocacy, social mobilization and communication strategies at various level (society, transgender community, governments) to address the structural barriers to improve utilization of existing educational schemes/courses and create an enabling environment for inclusive education for the community.

Development of community friendly customized pedagogy for skill based learning

India is facing acute shortage of skilled manpower in different sectors. There is a need to provide vocational education and training to the community within the mainstream education system. At the secondary and higher secondary levels, vocational training should be provided to the community for additional skills which can prepare them for job. The tailor made skill based programme need to be developed at this level. The strategic convergence with Jan Shikshan Sansthan¹², National Skill Development Agency (NSDA)¹³ and lifelong learning program of universities and colleges will help in mainstreaming the efforts.

¹⁰The RTE Act makes it mandatory for all schools, except minority unaided (religious and linguistic minorities included), to reserve 25 per cent of seats for children from the disadvantaged sections/EWS category (http://mhupa.gov.in/W_new/EWS_OFFICE_MEMORUNDUM_14_11_2012.pdf)

¹¹ NCVT is the vocational training schemes of Directorate General of Employment & Training (DGET), Ministry of Labour & Employment, Government of India. The scheme aims at creating opportunities for central government recognized certificate courses, (<http://dget.gov.in>)

¹² Jan Shikshan Sansthans (JSSs) are established to provide vocational training to non-literate, neo-literate, as well as school drop outs by identifying skills as would have a market in the region of their establishment. (http://mhrd.gov.in/jan_shikshan)

¹³ NSDA is an autonomous body to coordinate and harmonize the skill development efforts of the Government and the private sector to achieve the skilling targets of the 12th Plan and beyond and ensure the skilling needs of the disadvantaged

Financial incentives for higher education/professional education

Government should provide fee-waiver, fee-reimbursements, scholarships, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to the this group in order to make higher education and professional education accessible by the community. Special coaching should be provided to the candidates for competitive examinations and National Eligibility Test (NET)¹⁴ examination.

Establishment of anti-discrimination cell

All the educational institutions/universities should establish an anti-discrimination cell to monitor any form of discrimination against the transgender community. On the line of strict anti-ragging cell, there should be zero tolerance towards any incidence of the discrimination or complain.

Create an enabling environment

It is increasingly recognized by experts and other key stakeholders that transgender need a facilitating environment to continue their education and live a decent life. There is need to work closely with community and different school based committees like; school management committee, village management committee- as provided under RTE Act. There has to be proper sensitization and capacity building about the issues and needs of the transgender community. The involvement of gurus and other opinion leaders from the transgender community will help in building the confidence and create a supportive environment. An advocacy strategy has to be worked out at each level to influence the stakeholders.

Research

There is need for a focused institutionalized mechanism of research and academic activities to 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 that would bring an effective and long-term change in their lives.

and marginalized groups like SCs, STs, OBCs, minorities, women and differently-abled persons are taken care of through the various skill development programmes (<http://www.skilldevelopment.gov.in>)

¹⁴ National Eligibility Test (NET) determine the eligibility of Indian nationals for the Eligibility for Assistant Professor only or Junior Research Fellowship (JRF) and Eligibility for Assistant Professor both in Indian universities and colleges (<http://ugc.ac.in>)

Convergence with existing schemes on education

The strategic networking and building partnership with the wide range of stakeholders should be established for leverage of resources, cross fertilization of ideas, sharing knowledge, showcasing good practices, joint implementation of programme and advocacy. MSJE can facilitate this convergence to bring NGO networks, Corporates, UN agencies and other departments of the Government in one platform and work collectively to achieve a common goal in a judicious and symbiotic way.

The following table is suggestive list of existing schemes/program on education which can be useful for the community:

Name of the Scheme/Program	Strategy to mainstream the transgender community
Sarve Shiksha Abhiyaan (SSA) ¹⁵ Ministry of Human Resource Development	SSA is a part of Universalization of the elementary education. The main thrust includes -All children to be in a regular school and bridging all gender and social category gaps at primary level. <i>State level data can be collected to assess the gaps. Advocacy with concerned authorities at state/district level to make special provisions for transgender community. Increase awareness and community mobilisation on SSA program in the context of RTE</i>
Rashtriya Madhyamik Shiksha Abhiyaan (RMSA) ¹⁶ Ministry of Human Resource Development	RMSA aims to widen access to women, SC/STs, and other deprived categories of children. Schemes like Model schools, ICT@school, Inclusive education for disabled at secondary state, National merit cum means scholarship are also implemented. The financial incentive is given to girls. <i>The schemes should be made available to transgender community. Financial incentives to transgender can be given for Secondary Education (as per the provision to girls)</i>
Vocationalization of Secondary Education ¹⁷ Ministry of Human Resource Development	This centrally sponsored scheme is being implemented since 1988 to enhance individual employability and to reduce the mismatch between the demand and supply of skilled manpower and provides alternative for those pursuing higher education. <i>The schemes can be beneficial for community members who wish to go for vocational education</i>

¹⁵ <http://mhrd.gov.in/schemes>

¹⁶ http://mhrd.gov.in/rashtriya_madhyamik_shiksha_abhiyan

¹⁷ http://mhrd.gov.in/scheme_vocationalisation

<p>Adult Education – Sakshar Bharat¹⁸</p> <p>Ministry of Human Resource Development</p>	<p>The program aims to achieve 80% literacy by 2012 at national level and by reducing the Gender Gap. The program focuses on women and excluded groups like SCs, STs and Minorities etc. This enables non and neo literate adults to continue their learning beyond basic literacy and acquire equivalency to formal education system</p> <p><i>The scope of adult education should be expanded to give a different focus -life skills and meeting other felt needs of the community e.g. life skill, coping up mechanism, counselling etc.</i></p>
<p>Jan Shiksha Santhan (JSS)¹⁹</p> <p>Ministry of Human Resource Development</p>	<p>JSS have been established to promote vocational training to disadvantaged groups of adults such as neo-literates, less-educated slum dwellers, SC and ST and women etc. to raise their efficiency and increase their productive ability. Majority of the beneficiaries are women.</p> <p><i>The schemes can be integrated with other projects for the community. Special directives can be issued to have special provision for the transgender community.</i></p>
<p>Open Schooling</p> <p>Ministry of Human Resource Development</p>	<p>NIOS aims to provide education inexpensively to remote and hard to reach areas. It is a national board that administers examinations for Secondary and Senior Secondary examinations of open schools similar to the other boards like <u>CBSE</u> and the <u>CISCE</u></p> <p><i>The community members can continue their education while doing other things. There are courses for dropouts to finish their class 12 studies and then opt for higher education through institutional based education or distance learning.</i></p>
<p>Distance Education²⁰</p>	<p>It offers high-quality, innovative and need-based programmes at different levels. IGNOU, which is the leading institution in distance education, started a course for transgender population through distance mode. Other universities also provide graduate/post graduate and other diplomas in various subjects including professional education. Distance mode can provide access to higher education to all segments of the society.</p> <p><i>The distance mode can be useful medium for continuing education</i></p>

¹⁸ http://mhrd.gov.in/saakshar_bharat

¹⁹ http://mhrd.gov.in/jan_shikshan

²⁰ <http://detc.org>

		<i>especially in hard to reach areas.</i>
Coaching Academy Residential Coaching Academy for Minorities and SC/ST ²¹		Universities and Colleges establish Residential Coaching Academy for UG/PG level students to prepare for NET, Coaching students for entry into services covered under Central and State Governments. <i>The scope of the schemes can be widened to include the transgender persons. Special remedial coaching can be provided as in the case of SC/ST and the Minority population for the various competitive examinations.</i>
Merit Scholarship Scheme/Merit cum means scholarship ²² MHRD		Under this scheme scholarships are directly credited to the bank account of the student beneficiary <i>The awareness about the schemes can motivate the community to go for higher education.</i>

Improving Employment opportunities for the transgender community

Article 14 of the Constitution of India guarantees equal rights and opportunities to men and women in political, economic and social spheres.

Article 16 - Equality of opportunity in matters of public employment.

Article 42 directs the State to make provision for ensuring just and humane conditions

Problem Analysis and Gaps

The transgender community is highly deprived of several rights including their right of participating in economic activities including employment²³. The interrupted education and social exclusion further limits their employment and livelihood opportunities. There are several factors responsible for their economic deprivation which have been analysed as below.

- **Exclusion from Family and Society:** Hijras/Transgender are excluded from their families and do not get any support related to, livelihood. There are no employment opportunities for even qualified and skilled transgender person. Lack of livelihood

²¹ <http://www.socialjustice.nic.in/pdf/freecoach.pdf>

²² http://mhrd.gov.in/national_merit_scheme

²³ Chakrapani, V. (2010). Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion. Issue brief published by UNDP-India.

options is a key reason for a significant proportion of transgender people to choose or continue to be in sex work - with its associated HIV and health-related risks. The discussion with the community members and experts revealed that if employment opportunities are provided, the community would take any alternative livelihood option or job.

- **Stigma and Discrimination at work place:** Transgender persons face high level of stigma and discrimination at work place forcing them to leave the work in short period of time²⁴. They are abused verbally, physically, and sexually at workplaces for which they never received any justice. Denied in the job market, transgender forced to take optimal or low paying work or go for begging, sex work and *badhai*²⁵ as their livelihood. Even in these occupations, they are exploited by clients, beaten up but hardly report any incidence to police because of fear of further harassments by the police.
- **High level of economic deprivation:** Lack of education and social support force transgenders to survive in difficult economic conditions. There is no economic security for the community in case of some crisis or medical emergency especially with poor transgender persons or old age transgender. Many transgenders do not have enough savings to go for treatment for serious illness and some other complicated illnesses, saving schemes or health insurance schemes can be of great help.
- **Lack of documentary proof:** Majority of the transgender persons do not have any legal document like Election Photo Identity Card (EPIC), Aadhaar Card, and PAN Card. The low level of educational status, mobility from one place to other, apathy of officials and complex procedure are some of the factors which demotivate transgender to obtain these documents. The lack of basic documents further hinder their access to other social protection and livelihood promotion schemes like pension, micro credit, bank loan, etc.
- **Lack of vocational skill:** As traditional occupations of transgender are becoming difficult particularly in urban areas, most transgender expresses their desire to be involved in any occupation. However low level of education skill and absence of vocational skills push them to low paying jobs or unemployment. Studies reveal that inequality in access to and quality of education among social groups leads to inequality in wages and employment (Heckman et al. 200). Besides labour market outcomes, lower status group like transgender also deprive of non-market benefits and the stand to lose these benefits. Overall, the low level of skill and educational access

²⁴http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-ilo_aids/documents/publication/wcms_165448.pdf

²⁵ Badhai is ethnic profession is transgender persons which means blessing people on auspicious occasions (birth, wedding, festivals etc) and seeking alms by dancing and singing

191

would hinder full and effective utilization of resources and eventually lead to slower economic growth.

AN APPROACH FOR ENHANCING EMPLOYMENT

The economic empowerment of transgender community is located in a complex set of identities, community norms, culture and lack of policy support. In this context, the empowerment process has to be broad and should cover the following aspects:

- ❑ Awareness generation
- ❑ Skill and Capacity Building
- ❑ Employment and entrepreneurship

The suggested strategy would cover the following:

Create opportunities for Information and counseling:

There is a need to create a knowledge base within the community and organisation working for transgenders on the issues related to economic empowerment. Special awareness drive in the form of camps/melas, communication campaign should be initiated to enhance the awareness on economic opportunities, various government schemes for employment and livelihood. This should ensure participation from all relevant departments of the state and central government and NGOs/CBOs and networks of transgender etc. The melas/camps can work as single desk to help the community on getting basic documents like Election Card, Bank account, Aadhaar, etc. Special counselling on career guidance, self-employment, financial schemes of banks/loans etc can be provided.

Establish a Helpline for Career Guidance and Online Placement Support

A telephonic helpline can be set up to provide the information regarding opportunities related employment, jobs, existing schemes of the government, financial schemes of banks. The helpline can also work as crisis management centre to record the company of any harassment at work place and report it to the concerned agencies for necessary actions.

A dedicated online placement portal can be maintained which can maintain the online data of skilled manpower from transgender community with detailed profile of a person. This can be accessed by the employers, corporates, and placement agencies for suitable placement.

Capacity Building Support on Entrepreneurship Development

A comprehensive model of market led approach for economic empowerment of transgender person need to be developed. This would require a strategic shift from income generation activities to enterprise development by the community. In order to address the combined need of skill and market access, a comprehensive program for building the entrepreneurship skill is required. The program will include the knowledge, confidence and skills for

entrepreneurship development (curriculum of for start-up) and functional education and literacy consisting of simple maths, language and life skills. The program will also include specialised nature of income generation and microfinance activities, market understanding, market linkages, retails and business development strategy. The training will also cover life skills including soft skills like spoken English, communications, client management, dispute resolution, workplace etiquette and leadership skills.

Enhanced credit and other support to economic activities:

Bank credit/subsidized loan/micro credit should be provided for creating and sustaining self-employment initiatives which may include small and micro scale enterprises and small businesses, retail trade, professionals and self-employed occupations.

The agencies like National Scheduled Castes Financial & Development Corporation, National Backward Classes Financial & Development Corporation²⁶ should be approached to provide the economic support to transgender community, their networks, community based organizations (CBOs) to support the initiatives related to micro enterprises, cooperatives etc.

Vocational Skill Building

As highlighted above, the lack of skills and limited training opportunities for skill building prevent transgender from improving their capacity to sustain their livelihoods and enter into strategic employment opportunities in new market conditions. To address this concern, a two pronged strategy can be worked out.

- ❑ Design the customized vocational training program for the community as per their needs and interest and
- ❑ Effective linkages with vocational training centers run by private and government agencies

Create a supportive Environment

The transgender need a facilitating environment to explore the alternative employment opportunities. Efforts should be made to sensitize all concerned stakeholders like government officials in relevant departments, banks, private employers, corporate, community leaders like Gurus etc.

The transgender community has unique culture of dance, folk songs and arts etc. It gives great strength and a sense of identity to the community. These expressions of culture and arts are inseparable parts of the community and should be integrated with livelihood activities to ensure a greater community involvement. The efforts with adequate fund support should be made to link it to employment opportunities.

²⁶ <http://socialjustice.nic.in/schemespro.php>

Networking and Linkages

The strategic networking and building partnership with the various departments, industries/corporate, placement agencies etc. should be established for integration, leverage of resources and sharing knowledge etc. Ministry of Social Justice and Empowerment (MSJE) can facilitate this networking by forming a special working group for enhancing the employment opportunities for the transgender. The necessary instructions may be issued to all concerned to make special provision in the existing schemes for the community.

The MSJE can facilitate to make educational skills and training opportunities available for the transgender community so that they are able to find stable, sustained and meaningful employment, or set up their own enterprises. The following are some agencies which can be contacted

- *National Institute for Open Schooling (NIOS)²⁷, National Skills Development Agency (NSDA), National Council for Vocational Training (NCVT), State Council for Vocational Training (SCVT), The Ministry of Labor and Employment²⁸, Ministry of Human Resource Development (MHRD), Ministry of Rural Development²⁹ and Ministry of Urban Development³⁰, along with 14 other ministries, have come up with various schemes on skill development.*
- *The Modular Employable Skills (MES) and Skills Development Initiative Scheme (SDIS³¹) adopted by the Directorate General of Employment and Training (DGET), Ministry of Labor and Employment, Government of India, provides a new strategic framework for skill development for early school leavers and existing workers, especially in the un-organized sector.*
- *Self-employment and Wage employment (Ministry of Rural Development) schemes like Swarnajayanti Gram Swarozgar Yojana (SGSY)³² for self-employment programme for rural areas, can have special provisions for the community with some physical and financial targets earmarked for beneficiaries belonging to the transgender communities specially living below the poverty line.*
- *Swarnajayanti Shahari Rozgar Yojana (SSRY)³³, Urban Self-Employment Programme and Urban Wage Employment Programme (Ministry of Urban Development) should be made accessible to the transgender community*

²⁷ <http://www.nios.ac.in/>

²⁸ <http://labour.nic.in>

²⁹ <http://www.rural.nic.in/>

³⁰ <http://moud.gov.in/>

³¹ <http://dget.gov.in/>

³² <http://rural.nic.in/sites/programmes-schemes-SGSY.asp>

³³ <http://www.indianyojana.com/rojgar-yojana/swarnajayanti-gram-swarozgar-yojana.htm>

194

- *Sampoorna Grameen Rozgar Yojana (SGRY), which aims at providing additional wage employment in rural areas, can have some special provision for beneficiaries from transgender community.*

General Recommendations

- ⊕ Efforts should be made to register transgender in the employment exchange of the central and state government
- ⊕ A nodal unit/department should be constituted within MSJE to coordinate with the relevant departments and stakeholders and facilitates access to existing government schemes/ programmes such as education, employment, insurance and other social protections schemes.
- ⊕ Transgender who receive vocations skill development training and other entrepreneurship development training often lack access as well as the necessary support structures to be able to use their skills. Therefore, some mechanism has to be established to provide them continued support and hand holding. Some effective linkages with the like-minded agencies (e.g. Ministry of Small and Micro Enterprises (MSME)³⁴, Indian Institute of Management (IIMs), Adult Education (MHRD) etc. needs to be explored.

³⁴ <http://msme.gov.in/>

Interventions for Transgender persons under the National AIDS Control Programme

i. In order to prevent the spread of HIV infection, a comprehensive National AIDS Control Programme (NACP) was started in 1992 in all states as a centrally sponsored scheme. Over the years, the programme has evolved adopting a multi-pronged strategy with a focus on prevention of HIV in the country. The National AIDS Control Programme (NACP) has two strong components – Prevention for those who are not yet infected and Care, Support and Treatment for those who are infected. This is consonant with the global response to HIV/AIDS epidemic in the world. Due to this dual strategy of prevention and treatment, India is able to contain the HIV epidemic and the infection has been confined to high risk population and those who interact with them.

ii. HIV infection is characterized by presence of specific risk behaviours. Because of this nature, the prevalence of HIV infection in various sub-populations is different on account of varied risk of acquiring and transmitting HIV. Information reported by the HIV positive cases detected at Integrated Counseling and Testing Centres (ICTC) across the country indicates that more than 85% of HIV transmission is through sexual route on account of unprotected, multi-partner sex (NACO – Computerised Management Information System). The other routes of transmission such as sharing needles and syringes among Injecting Drug Users (IDU), contaminated blood and blood products and mother to child transmission also contribute to HIV infections. Under sexual transmission, the two distinct groups identified for prevention programmes to reduce spread of HIV are Female Sex Workers (FSW) and Men who Have Sex with Men (MSM) including Transgender persons.

iii. Under the programme, MSM are defined as all men who have sex with other men as a matter of preference or practice, regardless of their sexual identity or sexual orientation and irrespective of whether they also have sex with women or not. These groups are provided services at cruising sites or hotspots, where these MSMs are found in significant numbers where they may solicit, interact or have sex. (Operational Guidelines for Targeted Interventions under NACP-III, Section 1.2.2)

iv. During the third phase of the National AIDS Control Programme (NACP-III; 2007-12), programmatic experience has shown that Transgenderpersons may have different HIV prevention and care needs although some commonalities remain between men who have sex with men (MSM) and transgender people. Considering the high HIV prevalence among transgender persons when compared with other high risk groups, it is crucial that HIV interventions among them are scaled up. The national strategy drafted by the NACP-IV working group acknowledges the unique HIV prevention, care, and treatment needs of transgender people as the community itself is complex, and modalities of implementation need to be adapted to the needs of these groups (e.g. Gharana based Hijra, transgender sex workers etc.). Hence exclusive interventions were initiated by DAC in 2012. Currently more than 20 exclusive transgender persons targeted interventions are being implemented by DAC and covering around 23000 transgender persons. HIV Sentinel Surveillance 2010-11 in sites

shows the prevalence of 8.82 among Transgender population. Many activities have been initiated by DAC for working with Transgender population for HIV prevention. These include a mapping study; draft Operational Guidelines for TG interventions, consultations addressing stigma, legal issues and social inclusion.

v. DAC has always been alert to the needs of this community and the fact that it is crucial to work with this population sensitively, in order to ensure that they access HIV-related services. In fact, DAC, from 2009 onwards, had commissioned studies through UNDP and DFID to understand the community better and also to gain insight on what the best modalities of implementation might be. For example, involving gharanas, jamat leaders etc. The epidemiological data on this community is limited but still shows that there is high prevalence of HIV. The HIV sentinel surveillance (2011) among transgender persons in Mumbai showed as prevalence of 18%. Two sites in Tamil Nadu showed a prevalence of 7% and 0.8% respectively.

vi. In 2012, DAC went a step further and with the support of UNDP and National Institute of Epidemiology (NIE), initiated a study to map estimate of TG population who are most at risk of HIV. In this workshop, the findings of this study will be shared and these estimates will also guide the placement and design of programmes at the ground level. Apart from giving reliable estimates of most at risk TG population in each State/Site, data has also been compiled on demographics, service uptake, community dynamics etc.

vii. For the Department of AIDS Control protecting the health of the community is of utmost importance and currently the Department is implementing a globally recognized programme for prevention and control of HIV and AIDS among most at risk populations. The scope of work of the Dept. of AIDS Control is to prevent the spread of HIV. In the case of transgender persons, DAC implements Targeted Interventions (TI) projects in 22 sites. These projects are peer-led interventions, implemented by NGOs and Community-Based Organisations.

viii. TI projects provide HIV prevention messages through Behaviour Change Communication (BCC). These messages address the high risk behaviour and aim to give out messages on safer sex and health-seeking practices. In addition, counselling and treatment for Sexually Transmitted Infections (STIs) is provided. The key aspects of TI projects are the provision of free condoms and linkages to health facilities for HIV testing and HIV related care & support services. The projects also facilitate community mobilisation, ownership building and creation of an enabling environment by involving not just the community but also key stakeholders.

ix. Targeted Interventions follow a peer-led approach wherein transgender persons themselves are designated as "Peer Educators" who reach out to others from the community. Each peer educator is to regularly contact others for providing them with free condoms and linking them to HIV-related services. This is done through interpersonal communication on safe sex practices and information on treatment of sexually transmitted infections and HIV. Since these peer educators are also TG and face similar problems, the level of confidence and

197

faith in each other is high and makes the communication of HIV-related information more effective. Furthermore, these Peer Educators act as role models for other TG by demonstrating the benefits of health seeking behaviour, correctly and consistently using condoms. The peer-led approach ensures that information on the community is updated and that their vulnerabilities are addressed.

- x. Focus of the fourth phase of the National AIDS Control Programme IV
 - a) Scaling up of comprehensive prevention and care package to achieve significantly increased coverage, particularly where TG people are concentrated and then scale up coverage where TG population are sparse or spread out over a larger geographic area
 - b) Improving the quality and intensity of transgender specific prevention services
 - c) Building the technical skills and organizational capacity of Community Based Organizations of TG and provide support to effective implementation of prevention activities.
 - d) Strengthening the involvement of TG population in HIV/AIDS response through community development and mobilization
 - e) Strengthening the partnership between government, CBOs, TG population and technical assistance providers
 - f) Reducing stigma and discrimination against TG and creating an enabled environment for the community.
 - g) Implementing interventions to reduce and address multiple vulnerabilities
 - h) Flexibility to design interventions to respond to local/cultural requirements
 - i) Provide prevention services like Behaviour Change Communication (BCC), STI care, promotion of condoms and lubricants and creating enabling environment for a conducive environment.

xi. Currently, approximately 23,000 TG people across different States are being covered through 22 TI projects. A comprehensive care package has been designed for TG persons at risk under NACP. Three broad outreach strategies have been adopted in order to ensure saturation of this key population with services. The three key strategies are: a) Hotspot-based outreach, b) Through support of Gurus or Gharana/Jammath/Dera leaders and c) Through melas/functions in which transgender people gather. Apart from this, diverse activities have been proposed to promote enabling environment. The component of linkages has been given tremendous focus to cater to the needs of TG persons.

xii. However, there are also several challenges that will be faced in implementing prevention strategies for TG, for example – powerful gatekeepers, clan dynamics, higher levels of marginalization, crime and human rights violations against and within the community. In addition, the access and awareness of health care services is low. The Department of AIDS Control through various consultations has attempted to address these

198

challenges in the fourth phase of the National AIDS Control Programme (NACP IV). A separate working group of Transgender population was established in order to lay down clear strategies for the next phase of the programme. It is also in course of this workshop that a scale up plan focusing on both quantitative and qualitative aspects can be developed.

xiii. To strengthen HIV-related services for TG community, DAC is developing a training module, a communication package, Operational Guidelines and also establishing a separate Technical Resource Group (TRG). DAC with SACS is in the process of developing strategic, evidence informed scale up plan for transgender specific interventions in the country. The workshop conducted with SACS and community was vital from a programme planning and design perspective to operationalize the vision of NACP IV for transgender interventions. An Operational Guideline has been developed by DAC for effective TG intervention.

xiv. Department of AIDS Control is closely working with other Ministries on various related to this population. DAC is also continuously working with development partners to create an enabling environment for this marginalized population.

Minutes of the meeting held on 6th December, 2013

A meeting was held under the Chairmanship of Dr. Mohd. Shaukat, DDG, Directorate General of Health Services on 06.12.2013 at 4.00 pm to discuss the following agenda points:

- Defining transgender;
- Whether the transgender should be recognized as third category besides male and female for the purpose of equality under articles 15, 16 and 21 of the Constitution of India as well as for all other social and educational purposes;
- Whether transgender should be permitted to get themselves recognized as male or female depending upon their choice and they should not be subject to any kind of medical or physical compulsory verification for the said purposes; and
- To examine whether a person can go through only castration (testicles removal) & penectomy (penis removal), which will be short of full-scale Sex Reassignment Surgery (SRS), provided all pre-requisites of SRS are followed.

2. Following attended the meeting:

1. Prof. A.C. Ammini, HoD, Department of Endocrinology, AIIMS, Ansari Nagar, New Delhi.
2. Dr. Pratap Sharan, Prof. Psychiatry, AIIMS, Ansari Nagar, New Delhi.
3. Prof. M. Bajpai, Professor, Paediatric Surgery, AIIMS, Ansari Nagar, New Delhi.
4. Dr. Manju Mehta, Psychologist, AIIMS, Ansari Nagar, New Delhi.
5. Dr. L.K. Makhija, HoD, Department of Burns and Plastic Surgery, Dr. RML Hospital, New Delhi.
6. Dr. (Mrs.) S.N. Deshpande, Consultant & HoD, Psychiatry, Dr. Ram Manohar Lohia Hospital, New Delhi.
7. Dr. R.P. Beniwal, Specialist, Psychiatry, Dr. RML Hospital, New Delhi.
8. Dr. Pankaj Verma, Specialist Grade II, Psychiatry, Safdurjung Hospital, New Delhi.
9. Dr. Devendra Kumar Yadav, Associate Professor, Paediatric Surgery, Safdurjung Hospital, New Delhi.
10. Dr. H.K. Chellani, Professor & Consultant, Department of Paediatrics, Safdurjung Hospital, New Delhi.
11. Dr. Krishna Biswas, HoD, Endocrinology, Safdurjung Hospital, New Delhi.
12. HoD, Department of Burns and Plastic Surgery, Safdurjung Hospital, New Delhi.

200

13. Dr. Tripti Khanna, Scientist 'E', ICMR, Ansari Nagar, New Delhi.
14. Dr. Sanjeev Kumar Tudu, Professor, Surgery, LHMC, New Delhi.

After due deliberations the Committee agreed to the following:

Definitions:

Transgender

3. Transgender is an umbrella term used to describe people whose gender identity (sense of themselves as man or woman) or gender expression differs from that usually associated with their birth sex.

(Adopted from definitions developed by American Psychological Association and World Professional Association for Transgender Health).

According to WHO:

"Sex" refers to the biological and physiological characteristics that define men and women.

"Gender" refers to the socially constructed roles, behaviour, activities and attributes that a given society considers appropriate for men and women.

4. In humans, biological sex is determined by five factors present at birth: the chromosomal constitution, the type of gonads, the sex hormones, the internal reproductive anatomy (such as the uterus in females) and the external genitalia. People whose internal psychological experience differs from their biological sex are **transgender**.

5. When a child is born it has certain biological and physiological characteristics according to which the Doctor/Society around it decides about its 'Sex' and a 'Gender' is assigned to it. In case, the biological/physiological characteristics of the child are ambiguous then the child is labeled as 'intersex'/ 'having ambiguous genitalia'/'others' etc. At this point of time the child itself does not have any gender identity. As the child grows up it may behave as per the gender assigned to the child or infrequently it may behave otherwise. When the person identifies itself with the opposite gender, than what was assigned to it at birth then the person is labeled 'Transgender'. Thus 'Transgender' cannot be decided at birth like 'male' or 'female' and a person is a 'transgender' only when the person on its own starts identifying himself/herself with the opposite sex than that was assigned to the person at birth.

201

6. Transgender persons may be given equal opportunities like any other individual for participating in any activity except in exclusive sex domains. All treatment/facilities, whatever and wherever available, are provided equitably and free of cost to all the patients coming to the Government hospitals without any discrimination on any ground whatsoever, including ex/gender. There are some nominal charges levied for certain specialized investigations for all patients, without any discrimination on any ground whatsoever, which are also waived off with the approval of the competent authority of the hospital for BPL/deserving patients.

7. To provide identity to the transgender persons, we may agree to adding a column in the forms/proforma which are required to be filled when a person starts interacting with the society, where an individual may declare his/her status as transgender or not. Such provision may be there on forms required to be filled for admission to educational institutions, voter I card, PAN card, passport, job application forms etc. However, while declaring the status as 'transgender' it should be supported by a certificate obtained from an authorized 'Medical Board' to be decided by the competent authority. Such Medical Board may consist of experts from relevant fields like psychology/psychiatry, endocrinology/medicine, surgery, gynecology, urology and any other field felt necessary.

8. This is important as while giving admission into exclusive sex domains, it will have a definite implication during decision making by the authorities. While respecting the fact that the transgender persons may identify themselves as one of the opposite gender than what was assigned to them at birth, we may not be able to ignore, what the major part of the society around them perceives about them. Hence they may not be allowed in the exclusive sex domains like gender specific toilets, hostels, jobs meant exclusively for male or female gender, sports activities which are undertaken with 'men' and 'women' as separate category and other such areas. This is in the best interest of the society and also in the best interest of transgender population. For example, females may be threatened by the presence of a TG who is perceived to be of male gender by the society, in female toilet or hostel. Similarly, safety of such transgender persons who are perceived to be of 'female' gender by the society may be at risk while working in exclusively/predominant 'male' domains like combat formation in army/paramilitary forces/sailors etc.

9. Self-declaration as 'male or 'female' may not be allowed by choice.

Regarding Sex Reassignment Procedure/Surgery:

10. Sex Reassignment Procedure/Surgery, like any other procedure/surgery, may be undertaken as per extant prudent procedures/guidelines given in the medical literature and following due medical, ethical and legal process details of which can be worked out in due course. This subject is evolving very fast and also perceptions and requirements of the target population may vary from country to country and also from region to region in a vast country like India.

202

11. This procedure should be initiated only after 'informed consent' of the individual is available wherein the individual has been explicitly explained about his/her present condition and what all options are available to achieve the desired outcome by the individual along with advantages/disadvantages of all the options.

12. We may agree to provide the Sex Reassignment Procedure/Surgery to the seeking individuals to the extent consented by them, so as to alleviate the distress suffered by them due to the discrepancy between the individual's gender identity and the gender assigned to that individual at birth. However, it needs to be clarified here that while there will be individuals seeking complete SRS, i.e. complete assignment of the opposite sex to the extent of creation of sex organs of the opposite sex, there will be others who will be merely seeking **deletion** of their existing sex organs without seeking the surgical procedure for creation of sex organs of the opposite sex (i.e. **sex deletion surgery** rather than **sex reassignment surgery**). This is pertinent, as ethically speaking and also going by the extant laws of the country, removal of functional organs is illegal.

13. Thus, while agreeing to the above, it is also felt necessary that the above should be endorsed by the Medical Council of India, the body which regulates the medical practice in the country, from ethical angle and also by the Law Ministry for examining legal angle to the issue.

T-C