

**Minutes of the Meeting/Recommendation of the Core Group on LGBTI Issues held on  
11<sup>th</sup> November, 2020**

1. The National Human Rights Commission organized the third meeting of Core Group on LGBTI Issues on 11<sup>th</sup> November, 2020 at 11:00 a.m. under the Chairpersonship of Smt. Jyotika Kalra, Hon'ble Member, NHRC. **The list of the participants is placed at Annexure I.**
2. While welcoming all the participants **Dr. M.D.S Tyagi, Joint Director (Research)**, apprised the participants about the under mentioned agenda of the Core Group meeting:-
  - a) **Unequal protection in the matter of sexual offences for LGBTQI Community**
  - b) **Issue of forced gender and sexuality conversion**
  - c) **Right to self-perceived gender identity**
  - d) **Invisibility of the issues and concerns particular to the Intersex Community**
3. **Shri Bimbadhar Pradhan, Secretary General, NHRC** gave the welcome address and stated that the Commission since its inception has been playing an important role in protecting and promoting human rights in our country. He lauded several initiatives by the Supreme Courts, Ministries and CSOs which contributed towards the betterment of the LGBTQI+ community. Following the abrogation of Section 377 of IPC he was of the opinion that the Judiciary has done its part, however we still have a very long way to go in securing their basic rights such as; right to education, right to livelihood and right against discrimination.
4. **Smt. Jyotika Kalra, Hon'ble Member** delivered the inaugural address where she stressed upon the fact that gender is a fluid concept and society needs to be inclusive of all types of gender and sexuality. She further stated that transgender are part of our ecosystem and their contribution to our society is as important as anyone else's. Therefore, it is very important for the society as a whole to protect and promote the rights of this community and give them equal opportunity to prosper.
5. The participants of the Core Group highlighted several important issues which are as follows:-
  - a. Rising violence, act of extortion and blackmail against the LGBTQI+ Community. The participants highlighted that such acts of violence have increased after the abrogation of Section 377 of IPC.
  - b. The Section 18 of the Transgender Person (Protection of Rights) Act, 2019 provides for penal offences; however, it clubs acts ranging from discrimination, coercion, boycott, abuse and physical violence in one group. The provision appears to confuse distinct civil and penal offences, namely, discrimination, domestic violence, sexual harassment, sexual violence and none of these offences are defined in the law. **The detailed submission of Ms. Grover is placed at Annexure II.**
  - c. Unequal protection in the matter of sexual offences against LGBTQI+ Community. For example, rape against women is punishable for more number of years as compared to sexual offences against the transgender community. Such difference in the severity of punishment discriminates against the transgender community.
  - d. Unavailability of shelter homes, food and housing facilities and violence against transgender both outside and within the community needs to be resolved at the earliest.
  - e. Serious lack of understanding of the LGBTQI+ community among the general population which needs to be addressed through range of sensitization programmes for law

enforcement agencies, ministries, commissions at both national and state level.

- f. Lack of understanding with regards to the community's varied range of health and mental health issues. Similar sensitization programmes needs to be promoted by the Medical Associations and the Indian Association of Clinical Psychologist.
- g. Need of strict law condemning the conversion therapy which is a very common issue in India where family forces and perpetrates violence against their own children who are a part of this community.
- h. The invisibility of the intersex community is an important issue that needs to be addressed by identifying and addressing their issues separately from that of the problems faced by the transgender community.
- i. Lack of access to education for the children of transgender community.
- j. Intersex children should not be forced to undergo sex reassignment surgery.

To all these issues that were flagged during the meeting, **Ms. B. Radhika Chakravarthy, Joint Secretary, MoSJE** stated that the transgender Act and Rules are among the first few steps which the government has taken towards securing the rights of LGBTQI+ community. Stating that the country has a long way to go to bring about social transformation, she highlighted that the Ministry is promoting 13 pilot projects for establishing shelter homes in various parts of the country. Further, a web portal is being setup to provide identity cards/certificates to transgender and intersex persons.

Major recommendations which emanated from the discussion during the meeting are as follows: -

### **I. Spreading awareness regarding LGBTQI+ rights**

- Popularise the direction given in *NALSA* and *Navtej Singh Johar* judgements using media as stated in the judgements to reduce stigma in the society and disseminate information about the rights of the LGBTQI community.
- The law enforcement agencies need to be sensitized towards people belonging to LGBTQI community.
- Proper advocacy and sensitization programmes should be organised in Ministries both at Central and State level including National and State Human Rights Commission to have better understanding of the issues which this community faces

**(Ministry of Social Justice and Empowerment and NHRC)**

### **II. Capacity building and increasing inclusivity**

- Capacity building and skill training programmes should be conducted for the transgender community and greater employment opportunities should be generated for them.
- Attempts needs to be made at workplace to encourage inclusivity and participation of the LGBTQI community.

**(Ministry of Social Justice and Empowerment; Ministry of Skill Development and Entrepreneurship; Ministry of Labour and Employment)**

### **III. Laws and welfare schemes**

- The Transgender Persons (Protection of Rights) Act, 2019 must protect the rights of the

transgender persons from atrocities from outside and within the community. In the regard, the Act must not resort to merely extend the application of the existing penal provision but define the atrocities meted out against them with specific and equal punishments as enumerated in Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- The Transgender Persons (Protection of Rights) Rules, 2020 must give detailed enumeration of the welfare scheme which the transgender persons can avail.
- Strict and mandatory laws against forced sex reassignment surgery and conversion therapy should be formulated.
- Introduce horizontal reservations within caste, tribe and other categories of reservation for transgender persons in furtherance of the NALSA judgement.

**(Ministry of Social Justice and Empowerment)**

#### **IV. Healthcare systems and Facilities**

- Indian Medical Association should train medical practitioners for medical examination of transgender persons. Sensitize the medical community regarding sex, gender, sexuality and self identity.
- An advisory may be issued to all medical students and the Indian Association of Clinical Psychologists to train them about the medical and health issues and requirements of person from this community and to discourage medical intervention attempted due to gender incongruence.

**(Ministry of Social Justice and Empowerment; Ministry of Health and family Welfare)**

#### **V. Shelter Homes and Housing**

- Separate shelter homes and access to food should be ensured for all the estranged individuals from this community.
- Introduce one-stop grievance redressal centres with representation from this community exclusively for the LGBTQI+ community on similar lines as One -Stop Centre for female to address the issue of sexual violence and abuse.
- Housing discrimination faced by transgender people and same-sex couples can affect where they live and the resources available to them. Therefore, fair and equal housing rights for LGBTQI community should be provided.

**(Ministry of Social Justice and Empowerment; Ministry of Housing and Urban Affairs)**

#### **VI. Representation from Intersex Community**

- The issues of intersex community should be dealt separately from the Transgender community. The Core Group on LGBTI should have representation from the intersex community so that their issue may have equal representation.

**(Ministry of Social Justice and Empowerment; NHRC)**

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**Annexure I**  
**Participant List**

**Core Group Members**

**Mr. Ashok Row Kavi**, Chairman Founder, The Humsafar Trust, Mumbai  
**Ms. Laxmi Narayan Tripathi**, Transgender Rights Activist  
**ShreeGauri Sawant**, Transgender Rights Activist  
**Dr. Piyush Saxena**, Founder, Salvation of the Oppressed Eunuchs, Mumbai  
**Mr. Harish Iyer**, Advisory Board, MINGLE, Mumbai  
**Ms. Anjali Gopalan**, Founder & Executive Director, Naz Foundation, New Delhi  
**Mr. Anand Grover**, Senior Advocate, Supreme Court of India, New Delhi  
**Ms. Rudrani Chettri**, Mitr Trust, New Delhi  
**Ms. Rani Patel**, President, Aarohan, New Delhi  
**Mr. Aryan Pasha**, Transman Rights Activist, New Delhi  
**Ms. Chayanika Shah**, Labia Foundation, Mumbai  
**Mr. Arif Jafar**, Founder, Bharosa Trust, Lucknow

**Representatives from Ministries**

**Ms. Radhika Chakravarty**, Joint Secretary, Department of Social Justice & Empowerment  
**Dr. Veerendra Mishra**, Director, National Institute of Social Defence (NISD)  
**Dr. Shobini Rajan**, SAG Officer, Ministry of Health & Family Welfare

**Special Invitees**

**Ms. Vrinda Grover**, Senior Advocate Supreme Court of India, New Delhi  
**Ms. Ankita Chaudhary**, Advocate on Record Supreme Court of India, New Delhi  
**Ms. Manisha Aggarwal**, Assistant Advocate General, Supreme Court of India  
**Ms. Jayna Kothari**, Executive Director, Center for Law & Policy Research  
**Dr Bilali Camara**, UNAIDS, Country Director for India  
**Ms Nandini Kapoor Dhingra**, UNAIDS

**NHRC Participants**

**Smt. Jyotika Kalra**, Hon'ble Member  
**Shri Bimbadhar Pradhan**, Secretary General  
**Smt. Anita Sinha**, Joint Secretary  
**Dr. M.D.S Tyagi**, Joint Director (Research)  
**Dr. Seemi Azam**, Research Officer  
**Ms. Chandrali Sarkar**, Junior Research Consultant  
**Ms. Atishya Kumar**, Junior Research Consultant  
**Ms. Diana Thomas**, Junior Research Consultant  
**Ms. Sakshi Thapar**, Junior Research Consultant

Annexure II

Protection of Transgender Persons From Sexual Violence, Sexualised Violence And Sexual Torture

The Section 18 of the Transgender Person (Protection of Rights) Act, 2019 creates penal offences, however, it clubs acts ranging from discrimination, coercion, boycott, abuse and physical violence in one group. None of the offences are defined.

The provision appears to confuse distinct civil and penal offences, namely, discrimination, domestic violence, sexual harassment, sexual violence. This is a preliminary problem.

For example, "Sexual abuse" is penalised in Section 18(d) but "sexual abuse" is not defined.

Further, Section 18, creates a gender neutral perpetrator, by the use of the term "whoever", this opens up the penal provision, punishable with imprisonment of upto 2 years, to be used *against* transgender persons as well. Such a provision would be counter-productive. The Transgender Person (Protection of Rights) Act, 2019 should, protect transgender persons from atrocities committed by persons from outside the transgender community.

This has been done in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, under "*Section 3. Punishment for offences of atrocities- (1) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe,-*"

The Transgender Persons (Protection of Rights) Act, 2019 should, based on consultation and field based collection of testimonies, evolve offences that reflect the experiences of transgender persons. It should recognise, define and penalises acts of discrimination, abuse, domestic violence, sexual harassment, sexual violence, rape, torture, and police violence against transgender persons.

While specific penal provisions are required to criminalise the entire range of sexual violence that transgender persons are subjected to, sexual offences should not be defined by employing "gender-neutral" terms.

The use of the phrase "gender-neutral" while appearing to be equitable may in reality cause grave injustice and suppress the specific experiences of violation that persons belonging to non hetero-patriarchal/normative sexual orientations or gender identities(SOGI) are subjected to.

The purpose of the law is to provide protection, ensure non-discrimination, assure safety. Those who are marginalised and discriminated, in the manner that persons of non-normative Gender Identities are, require the active protection of the law, as opposed to resorting to a shortcut by merely extending the application of existing penal provisions.

Persons belonging to marginalised Gender Identities are subjected to violence, including sexual violence, and in certain circumstances men may also be subjected to sexual violence from other men, particularly in custodial situations, in situations of conflict, in situations of caste and communal violence, from police and security forces personnel, etc. Any legal reform must address the experience of sexual and sexualised violence that non-normative Gender Identities persons are subjected to. It is necessary to provide specifickinds of *protection* and not merely amend the law to reflect a gender neutral language.

**A necessary prerequisite would be for criminal/penal law and the criminal justice system, including the multiple points of interface from the stage of registration of F.I.R, medical care, investigation, up till trial to recognise and affirm an individual's self- determination of gender identity.** The Hon'ble Supreme Court in *NALSA v. Union of India (2014)5SCC438* has held self-determination of gender identity to be an essential facet of Articles 14, 15, 16, 19 and 21 of the Constitution.

Non-recognition of gender self-determination is a concern particularly in light of the fact that the Trangender Persons (Protection of Rights) Act, 2019 provides for a process of gender-identification which is being contested and criticised by sections of the transgender community,

on the grounds that it undermines the right to self-determination of gender identity. The notification of the Rules to the Transgender Persons (Protection of Rights) Act, 2019, in July 2020 demonstrate that the government has rejected the concerns about self-determination that have been raised by the trans community and rights groups.

The primary concerns regarding gender neutral laws on sexual assault is that they must provide adequate and appropriate redressal and protection to vulnerable and marginalised gender identities, including the street based hijra community and male to female transpersons.

As opposed to merely being “gender-neutral”, criminal law which aims to provide such redressal and protection must reflect and understanding of the particular and unique discrimination, oppression, targeting, violation, abuse and violence, that these groups face, including their access to justice, the history of persecution of these groups by the police, that the police or the police station is not a safe space for these communities to access, the specific forms of sexual and sexualised violence these persons are subjected to due to their gender identity, the relationship of these persons to public spaces, their means of livelihood etc.

The everyday practises of Hijra’s for example include soliciting money/begging, street based soliciting of sex and sex-work. There is a serious apprehension that such practises, which inherently involve physical contact and overt, effeminate performance, including exhibitionism, and sexually explicit speech, will not be embroiled in the heteronormative articulation of “harassment” and “sexual harassment”.

Aggravated forms of sexualised violence or abuse/violation directed at the gender performance/identity of the persons, like custodial violence perpetrated by police or armed/security forces, and violence perpetrated by family members must be cognizant of the specific experiences of violence and discrimination suffered by these groups.

Rape, sexual violence, sexualised violence, sexual torture, violence targeting gender- identity, that is committed in custodial situations, or by public servants or in coercive circumstances, against persons of non-normative Gender Identities or against cisgendered men, must be codified as a criminal offence, in a comprehensive manner, to be able to do justice to each of these distinct forms of violation. Recognising these aspects of gender specific violence will also necessitate amendments in procedural and evidentiary law.

Sexual violence perpetrated upon “women”, on non-binary persons, on persons who identify as transgender, on male to female transgender persons and on female to male transgender persons must be understood by the law and criminal justice system as related but specific and distinctive forms of patriarchal violence perpetrated by “men”. Consequently, in law, the range of acts defined as sexual assault and rape, nature of evidence that may be available in such cases, appreciation of evidence, character and conduct of the victim-survivor, consent and resistance and several other issues need to be factored in. **Any alteration of the gender- specificity of the provisions on sexual offences, must necessarily be accompanied by concomitant amendments in policing, investigation, procedural and evidentiary law as well as jurisprudence. Further, provisions for reparative justice, including compensation, shelter, livelihood must be structured, keeping in mind the differential impact of sexual assault and gender based violence on persons belonging to non- normative Gender Identities, instead of mechanically extending the existing provisions that have been devised for the specific experiences and needs of “women”.**

Attention must be given to a social environment which by default criminalises the behaviours and existence of persons belonging to non-normative Gender Identities. Special care needs to be taken to ensure that “gender-neutral” laws are not used against persons of non-normative Gender Identities. Simply expanding the existing criminal law to include as victims persons belonging to all genders, and thus making it “gender-neutral” is bound to expose persons belonging to already targeted Gender Identities to further discrimination and violation by the criminal law and police action.

A more effective option would be to conceptualise a protective legislation along the lines of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for persons belonging to non-normative Gender Identities. Such legislation, should possibly have a

combination of criminal and civil penalties, and must take into account not just ‘sexual violence’ but also violence and a range of other discriminatory practises that transgender persons are subjected to on account of their gender identity and sexual practises. The trivialisation of sexual violence against Transgenders is manifest in the Transgender Persons (Protection of Rights) Act, 2019, where Section 18 criminalises “sexual abuse”, although the term has nowhere been defined, and prescribes a punishment of 2 years, inconsistent with punishment for sexual offences under the IPC, demonstrating a complete lack of application of mind:

*(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.”*

<http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

**Special care must be taken to ensure that these vulnerable communities are not subjected to further police control.** There is documentation to show that persons of certain Gender Identities, particularly ‘Hijras’ are subjected to illegal detention, extortion, blackmail by police. The Committee’s attention is drawn to the instrumental use of certain provisions of the IPC (S.268, S.359, S.362, S.377 IPC, and others) as well as certain special laws (Criminal Tribes Act, 1871; Karnataka Police Act, 1919; Hyderabad Eunuchs Act; Karnataka Prohibition of Beggary Act, 1975; Immoral Trafficking Prevention Act, 1956.) to falsely implicate persons of non-normative Gender Identities and threaten and harass them with false implication. Apart from the deliberate false implications, several penal provisions are used to criminalise the livelihoods and public expression of members of non-normative Gender Identities. There is a need to ensure that such penal provisions are not used to persecute.

Any intervention in criminal law for the protection of persons belonging to non- normative Gender Identities, must:

**Document, and analyse the testimonies/narratives/experiences of persons of non- normative Gender Identities and their interface with the police, health system, criminal justice system and courts. Such an exercise will allow the codification of criminal law interventions that are rooted in and drawn from the lived experiences of discrimination and violence that perons of non-normative Gender Identities are subjected to.**

**Seek expert inputs/expertise on Gender Identities and law reform and on sexual violence.**