

**MINUTES OF THE CONFERENCE ON ‘HUMAN RIGHTS OF LGBTQI:  
CHALLENGES AND WAY FORWARD’, HELD ON THE 26<sup>TH</sup> FEBRUARY, 2020  
AT THE INTERNATIONAL TRAINING CENTRE, NATIONAL LAW SCHOOL  
OF INDIA UNIVERSITY, BENGALURU.<sup>1</sup>**

**Background**

1. The conference was organized by the National Human Rights Commission (NHRC) in collaboration with the National Law School of India University, Bengaluru (NLSIU). The conference was attended by representatives from the Union Ministry of Social Justice and Empowerment, State Departments of Women and Child Development and Police of the Southern region of India, State Human Rights Commissions (SHRCs), domain experts, academia, counsellors, LGBTQI organisations, members of civil society organisations and law students.
2. The conference was organised to discuss and understand the human rights violations and challenges faced by the LGBTQI community and to make recommendations for protection of these rights. The conference also briefly shed light on the projects and schemes taken by various state government departments to ensure equal protection to all the members of the community. The main objectives of the conference were:
  - a. Deliberation and documentation of the issues and challenges faced by the LGBTQI community in accessing their basic rights.
  - b. Reviewing the initiatives and efforts made by the state governments for the protection and promotion of human rights of LGBTQI community.
  - c. Arriving at recommendations and suggestions emanating from the deliberations for the betterment of the community

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<sup>1</sup> This document consists of proceedings briefly, points raised by panelists and recommendations from the panelists and that emerged through deliberations.

3. The panelists<sup>2</sup> and audience participated actively in the deliberations throughout the day. Majority of the panelists and a considerable number of audiences were members of the community.

### **Inaugural Session**

4. The inaugural session was presided by Justice Shri H.L. Dattu, Hon'ble Chairperson, NHRC and Former Chief Justice of the Supreme Court of India. Prof. Sarasu Esther Thomas, Registrar of NLSIU began the session by welcoming the dignitaries and the gathering. Smt. Jyotika Kalra, Hon'ble member of NHRC gave her opening remarks and introduced the conference by throwing light on the recent developments and referring to the relevant international and national documents. She pointed to the reference made by the Supreme Court in *Navtej Singh* judgment to constitutional morality. Smt. Kalra referred to the obligations of National Human Rights Institutions under the Yogyakarta principles and shared that a core group at NHRC has been set up to look into challenges and issues faced by the LGBTQI community (community) and the meetings held with core group. The transgender persons will have to be either transgender F or transgender M to fit in the binary that is acceptable. She also stressed on the rights that transgender children must enjoy in the families including performing last rites of a parent. Following this, Justice N. Kumar, Chair Professor, NHRC Chair at NLSIU addressed the audience highlighting the discrimination the community is facing in the recent days as opposed to the respect transgender persons had in the past. Drawing attention to the Supreme Court's observation on applicability of all constitutional rights to the community without discrimination he emphasised the need for creating awareness to protect their rights and to ensure that they live with dignity in the society.
5. In the inaugural address, the Chairperson of NHRC pointed out that it was not the Centre but the Judiciary which upheld the rights of the LGBTQI community and commended the Supreme Court Judges who took the bold step to uphold their right to live a decent life. He recounted the judicial developments, developments

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<sup>2</sup> A list of panelists with their brief profiles is annexed to this document.

in the field and urged for integration of members of the community into the mainstream. Smt. Anita Sinha, Joint Secretary, NHRC concluded the inaugural session with a vote of thanks. Reiterating the words of the Chairperson and Smt. Jyotika Kalra, she informed the gathering that NHRC has been striving to protect and promote rights of the community, meeting groups of members from the community and has constituted a core group. The group has met twice to discuss violation of their rights, the challenges faced by them, to review policies of the government and improve its understanding to identify measures for inclusion of the community with diverse groups according to their sexual orientation, gender identity, gender expression and sexual characteristics.

### **Session 1– Part I (Government Presentations)**

**Chairperson:** Justice G. Chandraiah, Chairperson, Telangana State Human Rights Commission. As an introduction to the session and before inviting speakers to make their presentations, he said that once a person is said to be a human being, he is entitled to have all the rights at par with others and hence, there cannot be any exception in applying human rights to any person. He added that the community members must not feel inferior as they are entitled to all rights that other citizens enjoy..

#### **Presentations:**

1. Mr. Khagesh Garg, Director, Ministry of Social Justice and Empowerment, Government of India (MSJE)
2. Mr. Kumar Raja\_Deputy Director, Department for Women, Children, Differently Abled & Senior Citizens, State of Andhra Pradesh

#### **Presentation by Mr. Khagesh Garg**

Mr. Garg gave a background to the passing of the Transgender (Protection of Rights) Act, 2019 which was the result of the developments in *NALSA* judgment and recommendations of the expert committee constituted by MSJE. The Bill was drafted with the involvement of members of the community and also considering the recommendations made in a consultation at Delhi. He shared the salient features of the legislation and assured that the problems that transgender persons are facing today may

not be there in the future. In addition, in his presentation he also shared the actions taken as follows-

1. Issuance of identity certificates through District Magistrates after the passing of the Act.
2. Skill development programmes organized through Corporations such as National Backward Classes Finance & Development Corporation (NBCFDC) and National Institute of Social Defence (NISD).
3. Constitution of a committee for drafting rules under the Transgender Persons (Protection of Rights) Act.
4. Conducting of health camps in Andhra Pradesh, Delhi, Tamil Nadu and Karnataka through NVCFDC.

### **Responses from the Community**

1. A community member pointed out that no community awareness was conducted in Telangana and the lack of space for discussion of the Act in the state.

### **Response from SHRC**

In response to this, the Chairperson of Telangana SHRC promised to attend to any grievance that the community may bring before them. He also clarified to the audience that the Act cannot be enacted without the rules and the need for the government to draft rules immediately. He also suggested that the gaps could be identified and the possibility of their inclusion in the rules be explored.

2. Another member stated that GO No 20 is not implemented in Andhra Pradesh and the government does not take any representation from the community.
3. Few others in the audience demanded to know NHRC's stand on the Act on the controversial aspects of the Act as members of the community believe those aspects to go against the *NALSA* judgement.
4. The idea of framing of rules for the transgender children to be supported by their family was strongly objected as impractical as they are shunned by their families.

- They claimed that most harassments start at the family level for a member of transgender community.
5. Another member of the community informed that members of the community are getting impatient as there is no method for self-identification of transgender persons. She requested for the members to be considered in the process of identifying mechanisms.
  6. Reference was made to *NALSA* judgment which allowed for self- recognition and to the contrasting view in the Act and to Mr. Garg's presentation on certification. He sought clarity on whether it will be considered in the rules?

### **Response of the presenter**

Mr. Garg talked about a screening committee that was set up in 2016 in State of Tamil Nadu and clarified that it was included in the Bill based on the report of the expert committee. The Ministry of Social Justice and Empowerment is working on rules for identification and he assured that it was going to be a simple process without any harassment involved during certification.

7. A police officer's suggestion to involve doctors in the process of screening was not taken well by the LGBTQI community members, stating that they lack expertise and are not trained. A gynaecologist present confirmed that doctors are neither trained nor sensitized on determination of gender and ascribe binaries of male and female to newborns, an identity to which they have to adhere to for life.

### **Response of Chairperson, Karnataka SHRC**

Mr. Dutta, objected sharply to the certification and questioned the need for transgender persons to provide certificate to prove their identity when males and females are not required to provide it.

### **Presentation by Mr. Kumar Raja, Deputy Director, Department for Women, Children, Differently Abled & Senior Citizens, State of Andhra Pradesh**

Mr. Raja shared that plans for implementation of various welfare schemes for transgender persons in Andhra Pradesh are underway and a government order has been prepared and is being discussed. They are taking suggestions from the community before passing the

order. Budgets for welfare of transgender persons and another amount for pensions for them have been allocated. The activities undertaken for the benefit of transgender persons in the State include-

1. Issuance of medical certificates, pensions disbursed, and vocational programmes conducted. He presented the number of beneficiaries from 13 districts.
2. Self-employment opportunities are created and students from the community are provided with scholarships.
3. Housing and health care issues concerning transgender persons are being addressed.

He concluded his presentation with a promise that the Government will consider the problems in certification.

#### **Responses from the community**

1. An intersex woman challenged that she had not come across any transgender person who had received the benefit of driving classes or any other classes provided to them. She also shared her own example of applying for the post of Sub-Inspector of Police three years back and that she was never contacted regarding the application. Mr. Raja promised to send the details via email.
2. A similar point was made by a transman regarding benefits for transman. He was not aware of any person receiving it.

Due to paucity of time, representatives from other States were requested to send their presentations and questions to NHRC.

#### **Response from police officer**

1. A police officer raised an issue regarding medical examination and certification. He shared the procedures in investigation of a case of reported sexual assault of a woman which involves medical examination. He was certain that as a procedure if in a similar case, a transgender person will mandatorily be sent for medical examination and hence self-certification may not work. Similarly, he also said

that the issue may arise with respect to entitlements to ensure that it goes only to a transgender person.

Smt. Anita Sinha pointed that there is lack of awareness amongst people and assured that NHRC will conduct training programmes and special sessions for police as well.

Mr. Garg said that the certification process can be made simpler and clarified that self-recognition will not be a problem for general purpose but for any benefit or entitlement from the State it is important to get the certification from the State.

### **Response from participant**

1. A transman responded to Smt. Sinha and Mr. Garg arguing that there was no need for a transgender person to prove gender before registering a case of sexual assault when a man or woman who comes for registration of a similar case is not required to do so for them. He also pointed to the prejudice that police have against transgender persons in situations of harassment by family members. He also shared the procedures followed by the Transgender Justice Board consisting of mental health professionals, district medical officer and community representation for identification of gender in Kerala without having to go through physical examination as an example of good practice.

### **Session 1- Part II (Presentation on a Study Commissioned by the National Human Rights Commission)**

#### **Chair: Continued**

Dr. Kalicharan, Professor and Director, School of Legal Studies, Reva University, Bangalore presented the findings and recommendations his research project. The study was undertaken in the five southern states with Andhra Pradesh and Telangana taken as one state. He mentioned that their recommendations are more for social problems than for the legal issues. Certain observations made by him on the basis of his study were:

1. History or constitution did not discriminate on the basis of sex but there was no recognition.
2. The number of transgender persons may be much higher than what the official records show.

3. Education was found to be one requirement and there is a need for reservation. Problems with washrooms were highlighted. Due to several practical problems in accessing regular schools, they are in open school system and they find difficulty to pursue secondary education.
4. Begging and prostitution are means of livelihood.
5. Offences against and by them are the problems as shared by police.
6. Government faces the challenge of placing transgender persons when they are arrested.
7. Dr Kalicharain suggested that psychological factors and not biological features are to be considered for identification of LGBTQI persons.
8. In the end he suggested that the law needs to be amended. Also, he promised to make revisions in his project report to be submitted to the Commission on the basis of certain important responses and recommendations given during the conerence.

## **Session II - Anti- Discrimination: Challenges and Way Forward**

**Chair:** Mr. R. K. Dutta, Member, Karnataka State Human Rights Commission

### **Panelists:**

- 1) Mr. Arvind Narrain, Founder member of Alternative Law Forum, Bengaluru.
- 2) Mr. Vihaan Peethambar, Transactivist and board member Queerala, Bengaluru.
- 3) Ms. Amrita Sarkar, Programme Manager (Project Samata), SAATHI, New Delhi
- 4) Ms.Veena S, Vice President, Samara, Sexuality Minorities Organisation, Bengaluru.

### **Panelist 1-Arvind Narrain**

- Mr. Narrain spoke about discrimination and believes that rights of the LGBTQI community and discrimination against them should be seen within the constitutional framework. He made a number of pertinent points with respect to anti-discrimination. He pointed to the language of the Constitution that it uses ‘person’



and citizen with no divisions of gender binary. This had to be affirmed by the Supreme Court through interpretation and the two judgments viz., *Navtej Singh* and *NALSA* are vital in shedding light to different aspects of the issue of anti-discrimination.

- The *Navtej Singh Johar vs Union of India* judgment upheld everyone's right to life, dignity, autonomy and choice. The panelist chose to focus only on the judgment's contribution to the issue of discrimination as per the theme of the session. The interpretation of Article 15 was derived from an earlier judgment of the Supreme Court in *Anuj Garg* case, which struck down a law that barred men and women under the age of twenty five from working in a bar on the grounds that the ban was based on incurable stereotypes and paternalism. He stated that he believes that the Supreme Court's contribution in *Navtej Singh*'s judgment in tackling the discrimination against LGBTQI is immense as it points out that interpretation of the Constitution and the law is bound by incurable prejudices and stereotypes.
- Mr. Narrain stated that the law has encoded certain stereotype and dealt with problem with the language used in Section 377 of IPC. The language in the provision gives an understanding that LGBTQI people are people who commit unnatural offences. The perception of LGBTQI people as unnatural comes from this law and it pervades all aspects of their life. He illustrated it with the response of police towards the community.
- He also quoted Nariman J's observation on conducting awareness programmes for various stakeholders and pointed out that no action has been taken towards that end.
- He also referred to one dimension of right to equality from the *NALSA* judgment which points out that the rights of transgender persons are violated because they do not have recognition as persons before law. It leads to a range of discrimination in family space, work space and public space. Drawing attention to similarities to the situation of Jews under the Nazi rule he explained that Jews were not recognized before the law and therefore they had no rights.
- The last point of his presentation was relating to self-recognition of gender identity. He clarified that when a case for self-recognition of gender identity is made for

transgender community it is not a request for benefits or privileges. The point is that if they are not recognized as a person then all rights are also denied to them. There can be mechanisms and ways to judge a person as transgender for receiving benefits. Recognition for civil rights such as passport, driving licence, etc. should only be self-recognition. In this context, self-identification becomes a matter of utmost importance in India but the Act takes away what the *NALSA* judgment had given.

### **Panelist 2-Vihaan Peethambar**

- The panelist spoke about his experience as a transman which is a minority in the transgender community. Discrimination permeates very differently for the members of the community.
- He highlighted how the state functionaries see them and also highlighted the low levels of legal awareness. He mentioned that most people do not use the Domestic Violence Act, 2005 for protection thinking it is only for cisgender women. People lack knowledge regarding its use by queer women, lesbian women and pre-surgical transmen for any violence that they face within the families when they face violence. He quoted instances of transmen who get locked up, forced into religious retreat centres, sent to de-addiction centres or are raped. When members of community approach the police, they are largely empathetic towards family and discourage filing cases stating that it is family issue.
- He also shared the difficulties he faced in changing his identity related documents when he returned to India after working abroad. He was mandated to get a certificate from the government hospital even though he had certificates from private hospitals. There was a lack of information regarding developments in the area, reluctance to accept documents from private hospitals and they face humiliation at the government hospitals. His own experience showed that the doctors did not know how to handle him, he had to go through body screening and undergo a number of ultrasound scanning to prove that he does not have any internal female organs. He also mentioned that there has been some improvements since 2016. A Transgender Justice Board and mechanisms to provide identity by the Board have been put in place.

- Age of coming out for most transmen is between 18 to 25 years. Usually transmen are more vulnerable and owing to the same vulnerability it is difficult for them to leave their homes and live on the streets as it is of immense danger to their lives.
- With respect to the Act, his view was that transgender persons are being forced to go through surgeries to get identity certificates. The success rate of surgeries on transmen is low and the doctors who are trained and capable to do this surgery are few in India. This is putting the life of several transmen to risk.
- He highlighted the discriminations faced in accessing basic facilities such as a washroom or benefits that any cisgender person would easily access.
- Many transgender people are offended by the term 'third gender' as it was mostly used to refer to Hijras. The transgender identity is very diverse. Right terms should be used and stated that 'transgenders' is wrong. Transgender is an adjective and not a noun and as such should not be used by itself to refer to anyone or group. It should always be used in conjunction with another word which would be person, people etc.
- The Act refers to insurance but most insurance companies view all surgeries required by transgender people as cosmetic surgery. They do not cover hormone therapy or voice therapy. Speaking of his experience, he stated that without hormones his life will be in danger and if he does not undergo voice therapy his identity would be mistaken over the phone or might be discriminated because of his voice. This would cause him dysphoria which would in turn threaten his life.

### **Panelist 3 - Amrita Sarkar**

- Ms. Sarkar representing SAATHI briefly shared the activities undertaken by the NGO for the transgender community. She also presented the state of implemented the state of schemes for transgender persons. The Ministry of Social Justice and Empowerment had sent letters to the state governments proposing five schemes (namely, financial support of Rs.1000 for parents of transgender children, monthly scholarship for students in Classes VII to X, monthly scholarship to pursue higher studies in India Scheme to train transgender persons in developing their vocational skills, monthly pension of Rs 1,000 to transgender persons after the age of 40 and till

they reach 60 years of age) with Central contribution of 75% and State contribution of 25%. The State of Odisha is the only state where it was implemented with 100% state funding.

- To substantiate her view on discrimination against the community, she shared findings of studies undertaken by various agencies. She also shared some of the findings of a study undertaken by SAATHI in 2013 on functioning of Tamil Nadu Third Gender Welfare Board. The findings showed diverse understanding of the term transgender by the community members and leaders. The study also showed discrimination faced by the community from government officials, denial of loans for Aravani SHGs, long waiting in government hospitals, lack of legal services and so on. Some transgender persons had accessed certain services but others could not as there was a need for ID cards.

#### **Panelist 4- Veena S**

- The panelist introduced herself as a transsexual Dalit belonging to the working class community. She insisted on talking about it as there is a lot of discrimination and untouchability based on various factors and intersections. She said that the discrimination faced her community is far higher than the discrimination based on other factors. She demonstrated the difficulty of a transwoman to access her basic human rights with her own experience.
- According to her, the identity of transgender person has become a section by itself that cuts across all communities and transgender community has become an untouchable category itself. She showed the inhumanity of the practice of the gender certificate which has her height, weight, blood group, details about her body (internal and external organs). She was examined by two male and two female doctors and put her through ultra sounds scans. The examination was more than what a terrorist may be going through, according to her. It took one month for the officials to issue the certificate. She questioned the necessity for such a document. She had to get it only to get the transfer certificate from school.
- The panelist stated that institutional discrimination leads to dropouts in education and limited job opportunities. Most transwomen dropout of school around the age of

13 to 15 years. At that time attention is drawn to their feminine behavior and their identity due to puberty. Uninformed teachers and students start making cruel jokes, bully and abuse them forcing them to discontinue their studies. She has tried very hard to complete her 10<sup>th</sup> standard and was unable to do so for several such reasons.

- When she wanted to contest in elections as a Dalit candidate, she approached government officials to obtain her caste certificate. They delayed it considerably stating that she is a special case. The fact that gender and caste has no connection did not matter to them. Finally, with the involvement of media and activists she was issued the certificate.
- She also recounted her ordeal of obtaining her passport, being ‘a special case’. It took her a year and 2 months to get a passport. She made sure to get her gender recorded as female in her passport. She pointed that these problems are faced by every transperson and it is very difficult for every transgender person to have the resources to fight as hard for their rights.
- She also faced problems with respect to loans from HDFC bank for self - employment. She was rejected the loan for being a transgender person.

The Chairperson stressed on the point that the community suggestions should be taken before passing the rules. He also emphasized the need for having gender neutral places and involvement of the community while taking decisions that affect them.

### **Session III- Identity and Self-Recognition of Gender**

**Chairperson-** Smt. Jyotika Kalra, Hon’ble Member, NHRC.

#### **Panelists:**

1. Pushpa Achanta, Associate Director, Solidarity Foundation, Bengaluru.
2. Akkai Padmashali, Transgender and sexuality minorities’ activist, Founder Ondede, Bengaluru.
3. M. Ganga Bhavani, Transvision, Hyderabad.
4. Dr. Ashley Tellis, Independent LGBT activist, Hyderabad.

#### **Panelist 1- Pushpa Achanta**

- She identifies herself as asexual and as gender fluid person and prefers not to be referred to as female or male.
- She spoke about two things “identity of a person and self-determination”. Her argument was that no one can decide the identity of others and they should be allowed to decide what they want to be called. It is an inherent quality. Others including family, state or any institution cannot decide identity.
- She questioned the State’s powers to examine and grant identity under “The Transgender Persons (Protection of Rights) Act, 2019”. She challenged the ability of others to certify identity if a person is not considered capable of identifying themselves. Further, she wanted to know how others judgment can be trusted in a subject like this.
- Her point was that gender identity may be fluid and is capable of changing from time to time and hence, cannot be certified. Her final point was that the status of personhood is denied to transgender persons if they are not allowed to decide on their gender identity.

**Panelist 2 – Dr. Ashley Tellis**

- The panelist began by sharing his experience of being part of the second core group meeting at NHRC as a special invitee for assessment of “The Transgender Persons (Protection of Rights) Bill”. He mentioned that the suggestion of the state officials’ to have some method for identification of transgender persons was objected by the community because their identity is fluid and such identification is unacceptable and offensive to them.
- He shared the suggestion he had made at the meeting as follows-
- The heart of the problem was the definition of the transgender in the Bill. Trans was the wrong word to use. There was conflict with the identity of hijra and trans. ‘Hijra’s’ are not ‘Trans’. This Bill is for hijras and is being hijacked by transgender people.

He made additional observations as follows-

- Hijra are not trans.

- Trans and LGB activist have exploited the indigenous community of India i.e. Hijra.
  - ‘Trans’ cannot be made the faces of an appeal to the state and law.
  - ‘Trans’ and ‘LGB’ are not the community for whom the law has been made.
  - ‘Trans’ needs to work as a separate law and not damage the law which is made for the purpose of protection of underprivileged and indigenous people of the society i.e. Hijra.
- He went to the jurisprudence of the term ‘Hijra’ which has been identified by different terms in different regions of the country.
  - His point was that if ‘Hijra’ is conflated with ‘Trans’ it will lead to the mainstream in a prejudiced situation. In this context he referred to the *NALSA* judgment where ‘trans’ is defined as an umbrella term for the person whose gender identity, gender expression and behaviour do not conform to their biological sex. He also relied on the definition of ‘transgender person’ under Section 2(k) of the ‘Act’.
  - He suggested that there should be screening and doctor’s examination because of the scope of corruption by the non-Hijra on Hijra people. Hijra people are the one for whom the protection is needed. He supported the need for some form of identification to avoid counterproductive results.
  - He argued that it is not the limitation of law that it demands the identitarian fixity and said that ‘Hijra’ is the stable identity for the centuries.
  - Finally, he stated that the law is for Hijras and not trans. The critiques of the Bill have come from trans politics and a US-style identity politics have no basis in reality of India law.

### **Panelist 3- Akkai Padmashali**

- Akkai started by reminding the years of struggle of the community to get the judgments. The panelist stated that in spite of NHRC having a duty to intervene in cases of human rights violation and to provide protection there is a lot of intolerance across the country. She posed a question as to the role of NHRC in curbing the

violence. This prevalent intolerance will directly affect the existence, identity, sexuality, class, caste, religion.

- Few basic questions were raised and addressed. Firstly, what is an identity and what is sex? Sex could refer to either biologically born sex which is inclusive of male and female or the sexual act performed by two consenting adults in privacy. She questioned how anybody could invade their privacy in this area. Secondly, what is gender? What one decides for themselves is irrelevant of sex and the binary male and female identities.
- She also listed the names used for transgender community members and stated that they were traditionally, locally and socially accepted identities, at the same time socially and legally discriminated and region wise excommunicated. She stated that it is not easy to understand the diverse identities.
- What is sexuality? It's a notion, something that you carry from the time you know till the end of life.
- She also spoke about the work that her organization "Ondede" meaning 'convergence' does with sexual minorities and the trainings conducted for various institutions on invitation. She urged that we should accept constitutional morality and be non-judgmental.
- She requested for government jobs for members of transgender community, identity to be accepted and ensure that local environment is mature enough, ensure a decent housing and equal acceptance in the mainstream.
- She questioned State's attitude towards them and recounted the manner in which in a matter of few years the community was decriminalized and when they started to breathe with relief judiciary passed another judgment and recriminalized them by referring to the *Naz Foundation* judgment of Delhi High Court followed by the *Suresh Kumar Koushal* judgment of the SC.
- She also questioned the manner in which the Act was passed without consultation with the community.



- She expressed her happiness with respect to inclusion of the community in the 2011 census but also expressed her disappointment in the manner the officers handled it. She stated that they did not ask for sex of the person in the house but asked the number of males and females in the house. She rejected the result as it was not done scientifically.
- With respect to the budget allocated by the Ministry of Social Justice and Empowerment she questioned how any skill development can be done with the meagre Rs 42 person that was allocated.
- She also raised objection to the research presentation made by Dr. Kalicharan who had wrongly mentioned that Section 377 was deleted and for the usage of the term prostitution.
- She also drew attention to the confusions caused in the provisions in Chapter III of the Act and urged that the community should be involved to avoid such errors.

#### **Panelist 4- Ganga Bhavani**

- After talking about her identity as an intersex woman she said that she has to identity herself as a transgender person without choice.
- She stated that the prospect of self-recognition of gender was recognised in Argentina & Netherlands in 2012 later some part of this practice was seen in the *NALSA* judgment. Gender identity is an umbrella term and it varies from culture to culture, geography to geography and region to region. Under this gender identity are multiple but unfortunately in the Indian society & culture, they are limited by patriarchy. She stated that there is a socio-cultural imposition on people like female is expected to be a submissive and meek creature and identifying as a transgender is very tough.
- Gender in India is often viewed as binary and spectrum even amongst transgender persons is barely know or acknowledged. . She questioned that when trans people struggle with privacy on a regular basis how can there be dignity, as they both go hand in hand.

- When it relates to employment, a male or a female is considered based on their skills and are not required to produce gender certificate. She challenged the discriminating practice of demanding a certificate from them.
- She also made a very relevant point about when transgender persons can barely access the toilets how are they expected to go to courts and fight for their rights. She shared the practice in the State of Tamil Nadu of their acceptance and inclusion in mainstream by providing them employment opportunities and quoted a few names who have got appointed as Sub- Inspectors, nurses etc. She urged the neighbouring states to follow the same.
- She pointed to the failure of implementing schemes for reservation in employment and humiliation they are subjected to during screening in the country.
- Lack of documentation is creating refugees in the country. Difficulty in getting certificate for their preferred identity and the consequences of possible criminalization was shared.

#### **Session IV- Socio Economic and Cultural Rights**

**Chair:** Smt. Anita Sinha, Joint Secretary, NHRC

Panelists

1. Dr. Shekhar Seshadri, Senior Professor, Department of Child and Adolescent Psychiatry, NIMHANS
2. Dr. Shaibya Saldanha, Co- Founder, Enfold India, Bengaluru.
3. Vinay Chandran, Executive Director, Swabhava Trust & Peer Counselor, Sahaya Helpline and Counseling Services, Bengaluru.
4. Kunal Ambasta, Assistant Professor, National Law School of India University, Bengaluru
5. Deekshitha Ganesan, Senior Research Associate, Centre for Law and Policy Research, Bengaluru
6. Kiran Nayak. B, Founder, Karnataka Vikalachetanara Samsthe

### **Panelist 1 – Dr. Shekhar P Seshadri**

- A pertinent issue raised by Dr. Seshadri was regarding intersectionality. He pointed out that the National Commission for Protection of Child Rights (NCPCR) is not very interested in gender dysphoria of children and enquired regarding collaboration of NHRC and NCPCR for gender dysphoria of children.
- Attention was drawn to the difference between rights violation and rights enablement and stated that commission cannot focus its attention completely on rights violation. It must extend and expand its mandate to programmes to look into enablement.
- Another point was raised from mental health perspective. LGBTQI community is characterised by high levels of mental health morbidity due to experience of exclusion and marginalization that they endure and go through, therefore what mandate can commission have in terms of intersectionality.
- These issues are important as there are cases of suicide, substance abuse and relationship issues which lead people to a state of despair and dysphoria. Extent of self-harm arising out of exclusion is high. Therefore, it is necessary to identify medical programmes that can offer support.
- One-stop crisis centres can prevent the fragmentation of services for the community as is done in Tamil Nadu. The trouble that the community needs to go through to access basic medical needs should also be looked into.

### **Panelist 2 – Dr. Shaibya Saldanha**

- The second panelist focused on the difficulty of the community to access health services. She pointed that only a very small population of the LGBTQI community approach doctors for normal diseases like cough or cold or urinary tract infection. She illustrated this with an example of a possibility of urinary tract infections in homosexual relations. They do not go to doctor as the doctor will not respect them when they tell him about their homosexual relation.
- She also shared that as a medical student she has not been sensitised during her nine years of medical school experience about the specific issues faced by the LGBTQI community.

- She wanted to know how a medical professional could be asked to give a certificate and on what grounds. She also questioned the process of doing the genetic testing or physical testing to prove gender identity. She doesn't believe that people would really go for physical examination for a false certificate for the small amount of pension or benefit that government gives.
- Most doctors do sex reassignment surgeries without training.

### **Panelist 3 - Vinay Chandran**

- The third panelist highlighted the discrimination faced by the community in accessing medical services. Several problems are faced by the community such as lack of information and sensitization regarding LGBTQI.
- There are doctors who are engaged in converting the sexuality minorities into heterosexual and providing damaging treatments. These treatments sometimes damages self-esteem of these people and make them suicidal and a lot of them are based out of religion.
- In a family LGBTQI people face exclusion and they cannot object when their families fix their marriage in spite of knowing their sexuality or gender identity.
- They face employment discrimination because they do not have confidence of going to a work place as people sometimes harass and bully them when they see a female dressed up in masculine way or male dressed up in feminine way. He stated that anti-harassment policies are only found in MNCs or corporate sector but not in public jobs and unorganised sector.
- He tried to bust the myth surrounding the desire of all people in same sex relationships to be married. He questioned if there is any law that will protect such relationships. Giving an example of the writ petition filed in Kerala by transgender people to register their marriage under Special Marriage Act, he clarified that not all transgender LGBTQI people's priority is marriage.
- He also shared the problem with respect to ignorance of language which causes a lot of anger in the community. He concluded by saying that they are willing to educate if people are willing to listen.

#### **Panelist 4 - Kunal Ambasta**

- He reiterated the point raised by Dr. Seshadri on right enablement and not focus on inquiries only. The panelist raised one pertinent question - How to go about same sex partnership?
- He also guessed that the next step may be to legalise marriages between same sex persons. There is a petition pending in Kerala High Court regarding this.
- He presented a broad picture of various issues that may arise in same sex partnerships and stated that there are different ways to look at a social institution. To clarify the point, he stated that marriage can be social and religious and the state may consider marriage as a civil institution and permit it between people of different religions, caste etc. It also predicates how certain other civil rights are going to be distributed such as inheritance, decisions during medical emergencies, adoption etc. It is all linked to marriage. Marriage, thus, becomes important from that point of view.
- In case of a same sex partnership, the issue is how State is going about other civil rights in marriage like right to take emergency medical decisions on behalf of the spouse, adoption of children, under the Evidence Act is there privilege of not giving testimony, and so on. These rights are civil in nature but they are tagged with marriage. He insisted that it should not be linked to marriage but be available to other forms of relationship and kinship.
- If it is decided that marriage is the way forward it should be remembered that marriage and divorce are in the concurrent list and hence, the centre and the states can legislate upon them. Why should the community always fight for their rights and suggested that NHRC as an enabling organization should recommend that institution of marriage be available to all.

#### **Panelist 5 - Deekshitha Ganesan**

- The major point the panelist considered was ways in which the socio-economic rights of the transgender community be secured through reservation. She started by referring to the direction in *NALSA* judgment regarding reservation but noted that the

implementation has been minimal. The state is bound to take affirmative action measures for their advancement.

- She shared her experience of handling legal matters relating to reservation in employment to LGBTQI community.
- She also shared the study undertaken by her organization on Dalit transgender people. The study showed that majority of them was not educated and those who were educated did not get opportunity of employment. The private sector is opening up but change through reservations is the best way forward.
- Referring to developments post the *NALSA* judgment which had held that State should give reservation to LGBTQI community as socially and educationally backward class citizens and all kind of reservations to be given in education and public employment.
- References were drawn to experiences in other states. The State of Tamil Nadu is leading in terms of providing rights to transgender persons. The State of Kerala has 2 seats for transgender persons reserved for all courses in the university in Arts and Science colleges. She stated that these are only *ad hoc* measures.
- The 2019 Act does not talk about reservation and hence, one has to rely on the *NALSA* decision. How do we implement reservation for the transgender persons? She analysed the complexities involved in the distribution of reservation of 5% and suggested that the most ideal way would be to have horizontal and compartmentalized reservations to implement *NALSA* direction.

#### **Panelist 6 - Kiran Nayak**

- The last panelist introduced himself as lambani adivasi transman. He spoke on intersectionality of transgender identity and disability and shared his personal experience as a transman with disability and the affect it had on his education and employment opportunities.
- He spoke on education and employment rights of transman. He got married during college and had to drop out of college.

- As a person who had migrated, continuing education became difficult and lack of communication between teacher and students caused road blocks for education.
- He had to try for six years to get employment due to lack of certificates. Due to gender identity transgender people faces problem in getting basic certificates.
- In the rural area, schemes are not implemented and benefits are not available for a person with gender identity different from the biological sex one is born with and disability.
- Applying policies in Karnataka becomes difficult due to his gender identity. They are focused only on one issue. There is a system to identify disability or to identify a transgender person but no schemes for transgender persons suffering from a disability.
- He stated that transgender people with disabilities face more problems in terms of identity and getting medical facilities.

**Conclusion of panels-** At the end of each session, the Chairpersons thanked the panelists for raising pertinent points and for their excellent presentations and concluded the sessions with their own recommendations. The Member, Joint Secretary and representatives of the NHRC requested the community to send in their additional recommendations for consideration. They promised to act on them.

## RECOMMENDATIONS

The following are the recommendations drawn from presentations and audiences on different issues and proposed during deliberations:

### **1. Gap- Lack of awareness regarding LGBTQI issues and rights**

#### **Recommendations:**

- Popularise the directions given in the *NALSA* and *Navtej Singh Johar* judgments using media as stated in the judgment to reduce stigma in the society and Disseminate information about the rights of the LGBTQI community using media.

*Action by: Ministry of Social Justice and Empowerment*

- Educate and teach people to empathise with transgender people facing discrimination regularly. Universities need to follow latest UGC policy 2016 that includes gender identity and sexual orientation.

*Action by: Ministry of Human Resource Development*

- At the workplaces, serious attempts should be made to encourage inclusivity and participation of the LGBTQI community. If possible, ensure their representation at positions of decision-making. Protection of LGBTQI community from sexual harassment at workplace should also be ensured.

*Action by: Ministry of Labour and Employment*

- Spread awareness that Protection of Women from Domestic Violence Act, 2005 is applicable to biological females who identify themselves as transmen.

*Action by: Ministry of Women and Child Development*

- Create LGBTQI friendly public spaces in the society.

*Action by: Ministry of Social Justice and Empowerment*

- Create a support platform wherever a transgender person with disability is working. Juvenile Justice Boards must have separate residential facilities for gender non-conforming children.

*Action by: Ministry of Social Justice and Empowerment*



## **2. Gap- Lack of acceptance of self perceived gender identity of transgender persons**

### **Recommendation:**

- The Transgender Protection Act Section 4 (2) recognises self determination of identity of a transgender person. The draft rules published on the website of Ministry of Social Justice and Empowerment, Rule 4 states that an affidavit by the transgender person with the report of a psychologist will have to be submitted to the District Magistrate for the consideration of certificate of identity. These provisions be followed in letter and spirit without any undue harassment & humiliation to the transgender persons.

*Action by: Ministry of Social Justice and Empowerment*

## **3. Gap: Application for issuing the Certificate of identity has to be by their parents**

### **Recommendation:**

- Families often disown transgender children and hence, self identification of children with the help of civil society organizations and other individuals who fulfill the role of their guardian, should be allowed to move the application.

*Action by: Ministry of Social Justice and Empowerment*

## **4. Gap- Non availability of safe residences and spaces for transgender children**

### **Recommendation:**

- State and Central governments should make institutional homes for safe residence and ensure education, skill development, employability, etc.

*Action by: Ministry of Social Justice and Empowerment*

## **5. Gap- Transgender persons not getting the benefits of reservation**

### **Recommendations:**

- Introduce horizontal reservations within caste, tribe and other categories of reservation for transgender persons in furtherance of the *NALSA* judgment. Question of false cases should not be impediment in giving reservation.

*Action by: Ministry of Social Justice and Empowerment*

- Relax qualifying marks and age in addition to reservations.

*Action by: Ministry of Social Justice and Empowerment*

## **6. Gap- Challenges in access to healthcare system**

### **Recommendations:**

- Most insurance companies consider surgeries and therapies that a transgender person has to go through as cosmetic surgeries. Awareness needs to be created that they are lifesaving surgeries for them and need to be covered.

*Action by: Ministry of Health and Family Welfare*

- Introduce “one-stop medical centre” exclusively for LGBTQI community where all the medical facilities can be provided especially in relation to hormone replacement surgery and sex re-assignment surgery to avoid victimization in the fragmented medical system. Provide counselling sessions for LGBTQI people before sex reassignment surgeries.

*Action by: Ministry of Social Justice and Empowerment and Ministry of Health and Family Welfare*

- Train medical practitioners for medical examination of transgender persons. Sensitize medical community with respect to sex, gender and sexuality and help them understand the importance of self-identity through Indian Medical Association. They should also be sensitive in cases where a physical examination after reassignment surgery for identification is required.

*Action by: Ministry of Health and Family Welfare*

- More specialized doctors are required for sex-reassignment surgeries and related procedures in India.

*Action by: Ministry of Health and Family Welfare*

## **7. Gap- Lack of suitable redressal mechanisms**

### **Recommendation:**

Constitute a commission exclusively for sexual minorities/ transgender with majority numbers of members from the community and with a transgender person as the Chairperson.

*Action by: Ministry of Social Justice and Empowerment*

**8. Gap- Lack of participation of the community**

**Recommendation:**

- Consult and involve the community while framing any law, policy or schemes pertaining to them. Decisions affecting the community should be taken with the consent the members of the community.

*Action by: Ministry of Social Justice and Empowerment*

**9. Gap- Issues of LGBTQI persons with disability not addressed**

**Recommendations:**

- Transgender persons with disability should be recognized differently from other transgender persons and there should be specific welfare measures for them.

*Action by: Ministry of Social Justice and Empowerment*

- This intersectionality should be kept in mind while framing policies and programmes for the LGBTQIs.

*Action by: Ministry of Social Justice and Empowerment*