



University of Dundee

Lost Identity

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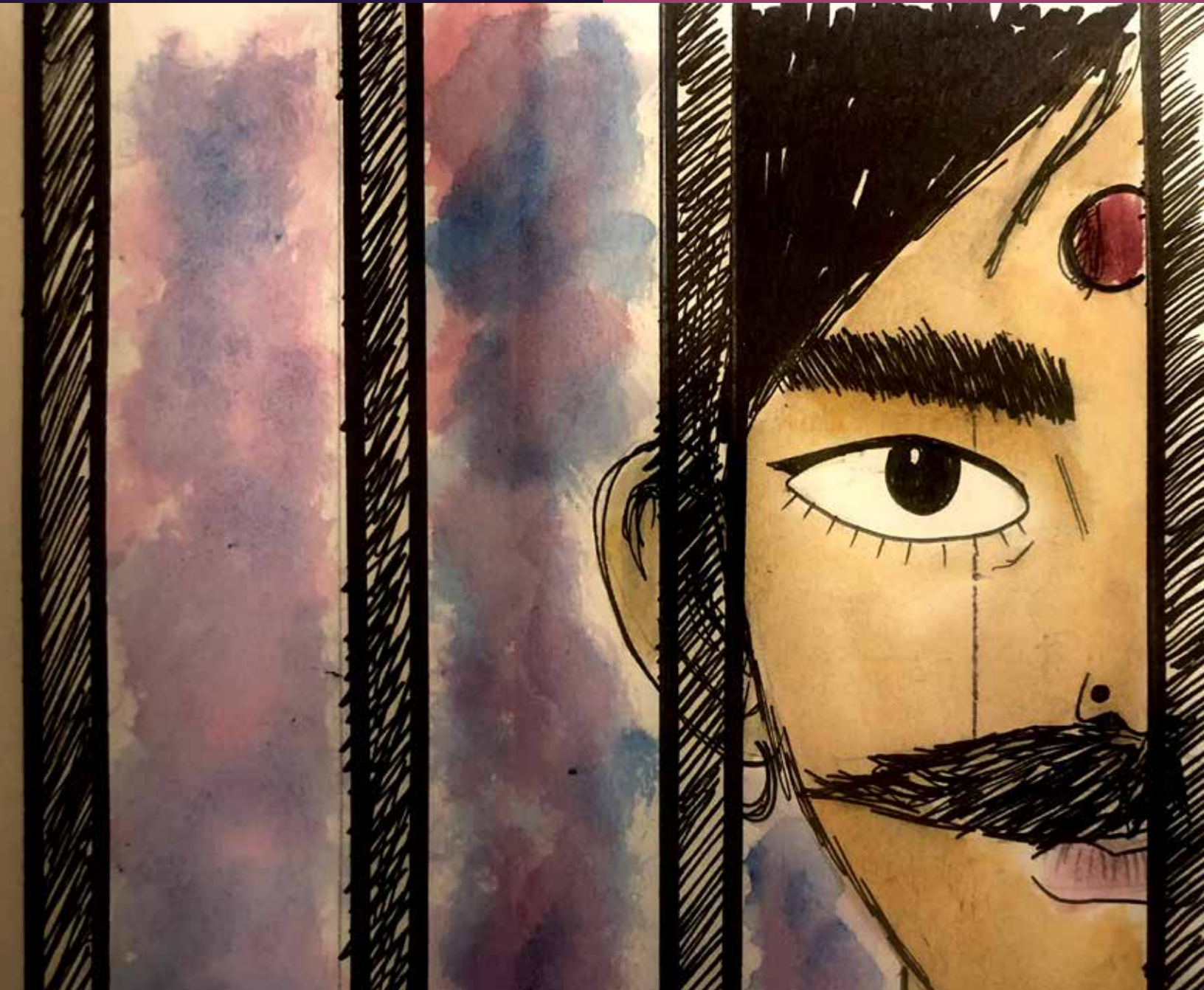
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LOST IDENTITY

TRANSGENDER PERSONS INSIDE INDIAN PRISONS



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CHRI
Commonwealth Human Rights Initiative
working for the practical realisation of human rights in
the countries of the Commonwealth

THE COMMONWEALTH HUMAN RIGHTS INITIATIVE

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Although the Commonwealth, an association of 54 nations, provided member countries the basis of shared common laws, there was little specific focus on human rights issues in member countries. Thus, in 1987, several Commonwealth professional associations founded CHRI.

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LOST IDENTITY

TRANSGENDER PERSONS INSIDE INDIAN PRISONS



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Dr Fernando Fernandes, University of Dundee, UK, helped coordinate and conceptualise this study while Mr Arijeet Ghosh, former Project Officer, CHRI, led the study and Ms Madhurima Dhanuka, Programme Head, Prison Reforms Programme, co-authored it. Ms Sai Bourouthu, Project Officer, CHRI provided valuable inputs and worked consistently to bring this report to fruition. We also convey our thanks to other team members of the Prison Reforms Programme whose support has been instrumental in the completion of this study. Mr Sanjoy Hazarika, International Director, CHRI and Mr Aditya Sharma reviewed and provided essential edits to the report.

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ABOUT THE REPORT

This report sheds light on challenges faced by Transgender persons in Indian prisons. The report analyses the international and legal frameworks in the country which provide the foundation for policy formulations with regard to confinement of LGBT+ persons, with particular reference to the Transgender community. This report also documents the responses received to right to information requests filed to prison headquarters across the country, which in addition to providing the number of Transgender prisoners in Indian prisons between 1st May 2018 to 30th April 2019, also provides relevant information on compliance within prisons with existing legal frameworks relevant to protecting the rights of Transgender persons in prisons, especially in terms of recognition of a third gender, allocation of wards, search procedures, efforts towards capacity building of prison administrators etc.

The finalisation of this report has involved an intense consultative process with individuals and experts, including representatives from the community, community-based organisations as well as researcher and academicians working on this issue.

This report aims to enhance the understanding of these issues among stakeholders such as prison administrators, judicial officers, lawyers, legal service providers as well as other non-state actors. It is aimed at better informed policy making, and ensuring that decisions made with respect to LGBTI+ persons in prisons recognize and are sensitive of their rights and special needs.

I. INTRODUCTION

Prisons are closed spaces. A person who has been sentenced to prison, or, has been subjected to any form of deprivation of liberty, is acknowledged as one who lives with a high degree of vulnerability.¹ This vulnerability can be attributed to multiple factors including a power imbalance between prison administrators and prisoners, with prisoners being completely dependent on the prison institution for their survival,² and undergo curtailment of certain basic fundamental rights such as personal liberty.³ The significantly reduced autonomy of prisoners within prison settings,⁴ combined with the social stigma that surrounds incarceration, further increases the vulnerabilities of prisoners.⁵ As prisons result in the separation of a prisoner from their communities of support, family and friends, it is often argued that being sentenced to prison causes the “social death” of that person.⁶

While all prisoners are vulnerable, there is widespread acknowledgement of certain groups of prisoners who are more vulnerable and require additional attention and protection.⁷ The United Nations Standard Minimum Rules for the Treatment of Prisoners 2015 (also known as the *Nelson Mandela Rules*)⁸ recognises the same and emphasises that prison administrators need to take into account the rights of prisoner’s with special needs.⁹ For example, in the Indian discourse on prison reforms, women prisoners are recognised as a vulnerable group based on their gender, which has entitled them to additional protection and care within prison settings. Additionally, children of women inmates,¹⁰ foreign national prisoners (FNPs), inmates suffering from disabilities are also considered as vulnerable groups. However, even with the recognition of various groups as vulnerable, there is one group which remains largely invisible within prisons, which has received little, if at all any, attention in the Indian prison reform discourse. This group comprises prisoners belonging to lesbian, gay, bi-sexual, Transgender, intersex (LGBTI+) communities. While there is much international discourse on the issue, similar discourse in India on LGBTI+ communities and prisons is still evolving.

As early as 2001, the UN Special Rapporteur of the Commission on Human Rights, in his report to the General Assembly had stated, ‘When detained, members of sexual minorities are often

¹ Richard Edney, ‘To Keep Me Safe from Harm? Transgender Prisoners and the Experience of Imprisonment’, *Deakin Law Review*, Vol 9(2), at pp. 327-338, at p. 328.

² Association for Prevention of Torture (APT) (Detention Focus), ‘Groups in Situation of Vulnerability’, available at: <https://www.appt.ch/detention-focus/en> (last accessed on 27th December, 2019).

³ *Sunil Batra v Delhi Administration & Ors*, (1978) 4 SCC 409.

⁴ Richard Edney (n 1) at p. 328.

⁵ Joshua M. Price, ‘Crossing the Abyss’, Chapter 1 in Joshua M. Price, ‘Prison and Social Death’, at pp. 3-22, Rutgers University Press, at p. 5.

⁶ *Ibid.*

⁷ APT (Detention Focus) (n 2).

⁸ Nelson Mandela Rules, 2015, Available at: <https://undocs.org/A/RES/70/175> (last accessed on 27th December 2019).

⁹ *Ibid.* Rule 2 (2).

¹⁰ Irena Gabuina, ‘Children of Women in Prison’, *Penal Reform International*, 6th August, 2019, Available at: <https://www.penalreform.org/blog/children-of-prisoner-mothers/> (last accessed on 28th December 2019).

considered as a sub-category of prisoners and detained in worse conditions of detention than the larger prison population.¹¹ The report further acknowledged that sexual minorities, in particular, transsexual and Transgendered persons, especially male-to-female transsexual inmates, are at greater risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men's prisons.¹² In 2007, *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*¹³ were adopted, which affirmed that sexual orientation¹⁴ and gender identity¹⁵ are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. The principles affirm that LGBTI+ persons must be treated with humanity and respect within detention settings, as sexual orientation and gender identity are integral to a person's dignity.¹⁶

It is in this context, that CHRI has undertaken the present study with the objective to further the discourse on rights of LGBTI+ communities confined in Indian prisons, with a focus on Transgender prisoners. This report was conceptualised on the basis of pre-consultations with experts, organisations and stakeholders engaged in this area. It further recognises the considerable dialogue around the rights of LGBTI+ persons in both legal and policy spaces with the passage of landmark decisions of the Supreme Court in India in *National Legal Services Authority (NALSA) v. Union of India* (hereinafter, *NALSA Judgment*)¹⁷ and most recently *Navtej Johar vs. Union of India* (hereinafter, *Section 377 Judgment*).¹⁸

Part I of the report is divided in five chapters. Following the introduction (chapter I) and research methodology (chapter II), Chapter III highlights both the international and national scenario and emphasises on the need to recognise issues of LGBTI+ prisoners as a prison's issue. Chapter IV establishes standards and principles which should inform the treatment of Transgender persons confined in prisons. Chapter V provides an analysis of the findings, and Chapter VI highlights the conclusions and recommendations of the report. The aim is to ensure that rights of Transgender persons are recognised, respected and protected when incarcerated through extensive consultation with organisations, collectives and individuals of the Transgender community. Part II contains annexures for the reference of readers.

¹¹ Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/56/156, 3rd July, 2001, at para 23. available at: <https://digitallibrary.un.org/record/446206?ln=en> (last accessed on 29th December 2019).

¹² Ibid.

¹³ Yogyakarta Principles (2007), Available at: <https://yogyakartaprinciples.org/> (last accessed on 29th December 2019); Additionally, in 2017, Yogyakarta Principles Plus 10 were drafted, which recognised the distinct and intersectional grounds of gender expression and sex characteristics. available at: <https://yogyakartaprinciples.org/principles-en/yp10/> (last accessed on 29th December 2019).

¹⁴ Ibid, 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. See http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

¹⁵ Ibid, 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. See http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

¹⁶ Yogyakarta Principles, 2007 (n13) Principle 9 & 10.

¹⁷ AIR 2014 SC 1863.

¹⁸ (2018) 10 SCC 1.

II. RESEARCH METHODOLOGY

SCOPE OF THE REPORT

This report is a collation of standards, safeguards, protocols which apply to meaningful realisation of rights for Transgender persons in Indian Prisons. Broadly, the scope of the report extends to address larger issues concerning sexual orientation, gender identity and expression, and sexual characteristics with a more specific exploration concerning Transgender Persons in India. The historicisation of gender, leads to assertions by academics that intersexuality paved the way for creating the sex-gender divide¹⁹. The shift from the discourse from sex to gender also symbolised a challenge to the “bio-medecialisation of sexuality”²⁰ which use the lens of pathologisation (through categorisation as abnormalities or diseases). Consequentially, these categorisations were based on and rooted in the pathologisation, and clubbed various experiences of intersex, and gender diverse individuals together. People with intersex variations, due to these established structures, are categorised within/ along with gender and gender identity. The report also addresses, in policy, the gaps that have substantial consequence for people with intersex variations while reading these structures with historical criminalisation that the broader LGBTI+ communities faced. Further, gender non- binary individuals and agender individuals are also clubbed together in creating medical - legal categories of gender.

The report is an important resource for policy makers, prison officials and prison staff, prison trainings institutes to understand the issues of rights and vulnerabilities that members of the LGBTI+ communities, but specifically the Transgender persons and people with intersex variations. The conclusions and recommendations are initial conversation points to highlight certain policy gaps and challenges faced by Transgender persons (as defined under the Transgender Persons (Protection of Rights) Act²¹). Also, this report could be a resource in implementing Directives 7 and 8 of the NALSA v. Union of India judgment²² (Chapter IV).

The exploration of criminological, socio-legal and historical context for the imprisonment of Transgender persons and people with intersex variations makes this report a resource for academicians in corresponding or intersecting fields.

¹⁹ Rubin, David A. ““An Unnamed Blank That Craved a Name”: A Genealogy of Intersex as Gender.” *Signs* 37, no. 4 (2012): 883-908. Accessed September 21, 2020. doi:10.1086/664471.

²⁰ Spurlin, W.J. *Queer Theory and Biomedical Practice: The Biomedicalization of Sexuality/The Cultural Politics of Biomedicine*. *J Med Humanit* 40, 7-20 (2019). <https://doi.org/10.1007/s10912-018-9526-0>.

²¹ Transgender Persons (Protection of Rights) Act, 2020, Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf> (last accessed on 10th January 2020).

²² NALSA Judgement (n 17).

RIGHT TO INFORMATION DATA

This report is based on responses received under Section 6²³ of the Right to Information (RTI) Act, 2005. The RTIs were filed to the Prison Head Quarters (PHQ) of all the States and Union Territories in India, except the State of Jammu & Kashmir.²⁴ The RTI application asked a set of eight questions, which were based on directives of the *NALSA Judgment*. It is important to point out here that this report does not engage with the recently enacted *The Transgender Persons (Protection of Rights) Act, 2019*,²⁵ in as much as it dilutes the principle of gender identity as propounded under the *NALSA judgment*. With several provisions of the Act being challenged in the Supreme Court of India²⁶ as well as the vociferous opposition against the Act by members of the Transgender community and many others, the report only refers to the non-challenged sections of the Act, which pertain to prohibition against discrimination (Section 3), obligations of establishments and other persons etc.

The RTI questions enquired about issues related to the recruitment of Transgender persons within the prison department (between 1st January 2014 to 1st January 2019), population of Transgender inmates (between 1st May 2018 to 30th April 2019), information regarding awareness programmes by the state and training modules in Prison Training Institutes, recording of data Transgender persons and the process of segregation of Transgender persons (if any). RTIs were drafted in both English and Hindi. The draft samples of the RTI applications have been attached as Annexure A.

a) Scope of the RTI Applications

As stated earlier, the present report **only focuses on the preliminary issues regarding Transgender persons confined in Indian prisons**. In the study, a partial definition (only related to ethno-religious Transgender groups) of the term Transgender is drawn from the order of the Supreme Court in the *NALSA Judgment* which is as follows:

“Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex.”²⁷

²³ Section 6 of the RTI Act, 2005 states that: *A person, who desires to obtain any information shall make a request in writing or through electronic means to the Central Public Information Officer or State Public Information Officer of the concerned Public Authority.*

²⁴ On the date of filing the RTI, Jammu & Kashmir was still a State, which has been subsequently converted to the Union Territory of Jammu & Kashmir and Union Territory of Ladakh. Both these Union Territories do not fall within the ambit of this report. The reason for non-filing of RTI's to the State of Jammu & Kashmir lay in the non-applicability of RTI Act, 2005 in the State of Jammu & Kashmir. This has subsequently changed but continues to remain outside the scope of this report.

²⁵ Transgender Persons (Protection of Rights) Act, 2020 (n 21).

²⁶ *Swati Bidhan Baruah v. Union of India*, Writ Petition (Civil) no. 51 of 2020.

²⁷ *NALSA Judgment (n 17)*, para 11.

“ Transgender community comprises of Hijras, eunuchs, kothis, aravanis, jogappas, shiv-shaktis etc....”²⁸

b) RTI Responses: Time Frame

The RTI applications to the PHQs of 34 States and Union Territories were filed in the month of May 2019. While the RTI Act clearly prescribes a one-month time period for response, the responses kept trickling in from May 2019 up until January 2020, i.e. for a period of over eight months. Follow ups through emails and phone calls were also made for multiple States. Eventually, information from all 34 states and union territories was received.

Additionally, in specific relation to the States of **Uttar Pradesh and Uttarakhand**, in their first response, the PIOs directed to file individual RTI Applications to the respective prisons in their State. RTIs to individual jails in these two States were made in the month of June 2019. In the case of Uttar Pradesh, RTIs applications to Central Jails, Deputy Jails and Special jails were filed on 20th June 2019. For the remaining district jails in Uttar Pradesh, RTI applications were filed on 24th and 26th June 2019. RTIs to all the jails in Uttarakhand were cumulatively filed on 26th June 2019.

c) Quality of Responses Received

The responses to the RTI applications filed to the PHQs were received in two ways: 1) In some States and Union Territories (UTs), the responses were received from the PHQ itself; 2) In some States and UTs, the RTI application was transferred by the PHQ to the individual jails,²⁹ wherein direct responses were received from the respective jails of the State and UTs. Below is a tabulation of the responses received:

S. No.	State and Union Territories	Responses Received from
1.	Andhra Pradesh	PHQ
2.	Arunachal Pradesh	PHQ
3.	Assam	PHQ
4.	Bihar	PHQ
5.	Chhattisgarh	PHQ
6.	Goa	Both PHQ and Jail (1/1)
7.	Gujarat	Both PHQ and Jails (15/29)

²⁸ NALSA Judgment (n 17), para 12.

²⁹ For the Total number of Jails in each State and Union Territory, Prison Statistics India, 2018 has been referred to. Please see Chapter 1, at p. 2, available at : <http://ncrb.gov.in/StatPublications/PSI/Prison2018/PrisonStat2018.htm> (last accessed on 14th January 2020).

S. No.	State and Union Territories	Responses Received from
8.	Haryana	PHQ
9.	Himachal Pradesh	PHQ
10.	Jharkhand	Jails (24/30)
11.	Karnataka	PHQ
12.	Kerala	Jails (12/55)
13.	Manipur	PHQ
14.	Madhya Pradesh	PHQ
15.	Maharashtra	PHQ and Jails (8/64)
16.	Meghalaya	PHQ
17.	Mizoram	PHQ
18.	Nagaland	PHQ
19.	New Delhi	PHQ and Jails (15/16)
20.	Odisha	PHQ and Jails (18/91)
21.	Punjab	PHQ
22.	Rajasthan	PHQ and Jails (16/130)
23.	Sikkim	PHQ
24.	Tamil Nadu	PHQ and Jails (6/138)
25.	Telangana	PHQ
26.	Tripura	PHQ and Jails (4/13)
27.	Uttarakhand	PHQ and Jails (8/11)
28.	Uttar Pradesh	PHQ and Jails (60/71)
29.	West Bengal	PHQ and Jails (37/59)
30.	Chandigarh	Jail (1/1)
31.	Dadra & Nagar Haveli	PHQ and Jail (1/1)
32.	Puducherry	PHQ
33.	Lakshadweep	Jail (1/4)
34.	Andaman & Nicobar Islands	Jail (1/4)

Table 1: List of RTI Responses Received, India

As evident from *Table 1*, it needs to be kept in mind that responses from all the jails have not been received in case of transfer of application from the PHQs to individual jails. There were also cases, where responses were not received when PHQs transferred the RTI application to various departments within the PHQ.

LIMITATIONS OF THE STUDY

Some of the limitations of the study are explained as under:

- **The Definition of ‘Transgender’ and its implication**

The definition of Transgender as per the *NALSA Judgement* suggests that it is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. In conversations and interactions, we had realised that the understanding of Transgender persons among prison/police officials might be confined to a peripheral acquaintance of ethno-religious Transgender groups, and might be in the exclusion of Transgender-men (persons gender female assigned at birth), Transgender-women (other than the ethno-religious Transgender groups), Gender Non Binary individuals and many other communities under the broader Trans umbrella. Further, people with intersex variations might also be construed as Transgender, given the processes of “identifying” gender in the prison context. Further, the negotiations of the reality of incarceration and queer identities makes ample space for people not being recorded as Transgender/ Person with Intersex variation/ Gender non- binary/ Agender/ Gender Queer. This might mean that the actual number of persons from the Transgender communities and intersex communities confined in prisons might be higher than the data we received. However, that still would not change the experiences of persons from the Transgender communities in prisons, their rights and basic standards that prisons must ensure within prisons.

- **Inability to include issues related to persons identifying as lesbian, gay, bi-sexual or MSM persons**

With the recognition of third gender/Transgender as a legal identity by the Supreme Court in the *NALSA Judgement*, it becomes imperative on State institutions (including prisons) to recognise the same legally as a gender marker in all its official documents.³⁰ This is in contradistinction to the aspect of recognising sexual orientation (such as in the case of lesbian, gay, bi-sexual or queer individuals) which is not recognised as a legal identity marker, and therefore not included within the scope of this study. The exclusion is also being cognizant that any recognition of one’s sexual orientation as queer in the prison context might escalate into multiple vulnerabilities.

³⁰ See Chapter 4 (2) for more details.

Additionally, there are also possibilities of people whose sexual orientation develop in places of deprivation of liberty such as prisons, but do not translate into changes in a person's sexual orientation once released i.e. women who have sex with women and men who have sex with men. As such persons might not identify as “lesbian” or “gay”, or as “Transgender persons”, they do not fall within the scope of this report, with due respect to self-identification as a signifier of identity in terms of sexual orientation and gender identity. However, it needs to be highlighted that this report should not be considered as one to the exclusion of the above-mentioned identities, as the report discusses the applicable international human rights framework in this context. CHRI also plans to bring forth reports covering these issues in the future.

- **Quality of RTI Responses**

During the analysis of the responses, it was observed that in certain instances, questions were wrongly answered while in others, there appeared to be a lack of understanding of the questions asked. While it is plausible that lack of comprehension of the questions might be a result of majority of RTIs filed in English, it also raises doubts over the competency of the RTI framework and in specific, the Public Information Officers (PIOs) in regard to responding to RTIs.

III. VULNERABILITIES OF LGBTI+ PERSONS CONFINED IN PRISONS

1. INTERNATIONAL STANDARDS

To cater to the specific needs of the LGBTI+ communities in detention, international standards provide persuasive and valuable guidance to legislative drafters and policy makers, in order to ensure adherence to the basic minimum standards. However, there are not many international documents that refer to the specific vulnerabilities of LGBTI+ communities in prisons. Of the few that do, the *Yogyakarta Principles (2007)*, the *Yogyakarta Principles plus 10 (2017)* and the *Nelson Mandela Rules (2015)* and are vital to the discourse.

a) The Yogyakarta Principles and Yogyakarta Principles plus 10

In 2007, an International Panel of Experts in International Human Rights Law and on Sexual Orientation and Gender Identity drafted the Principles on the application of international human rights law in relation to sexual orientation and gender identity in 2007. Also known as the *Yogyakarta Principles*,³¹ these acknowledge concerns of human rights violations targeted towards persons because of their actual or perceived sexual orientation or gender identity. They aim to address the broad range of human rights standards and their application to issues of sexual orientation and gender identity and also affirm the primary obligations of States to implement these standards. In 2017, additions were made to these principles through the *Yogyakarta Principles plus 10*, which provided 'additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta principles'³². These principles made further additions to state obligations for incarcerated persons from the LGBTI+ community.

Of the 38 principles laid down in both documents, principles 7 to 10, 33 and 35 are relevant to the discourse around the deprivation of liberty, trial and incarceration of LGBTI+ persons. Principle 7 affirms the right to freedom from arbitrary deprivation of liberty, and sets forth state responsibility to 'take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention', Principle 8 affirms the right to fair trial, and puts forth state responsibility to 'take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on

³¹ Yogyakarta Principles, (n 13).

³² Yogyakarta Plus Principles, 2017, These were adopted on 10 November 2017 in Geneva. Available at http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf. Last accessed on 15 April 2020.

the basis of sexual orientation or gender identity at every stage of the judicial process'. Principle 9 affirms the right to treatment with humanity while in detention whereas Principle 10 emphasises on the right to freedom from torture and cruel, inhuman or degrading treatment or punishment.

Principle 33 establishes the right to freedom from criminalisation and sanction on the basis of sexual orientation, gender identity, gender expression, or sex characteristics, and sets forth state obligation to ensure that legal provisions, including in customary, religious and indigenous laws, whether explicit provisions, or the application of general punitive provisions such as acts against nature, morality, public decency, vagrancy, sodomy and propaganda laws, do not criminalise sexual orientation, gender identity and expression, or establish any form of sanction relating to them. Principle 35 which establishes the right to sanitation, further affirms the state responsibility to ensure that places of detention have adequate sanitation facilities.

In the context of this study principles 9 and 10 require utmost attention. The extensive state responsibilities set forth under these principles are instrumental to ensure that rights of the LGBTI+ persons are protected in custody. State responsibilities within these principles encompass the importance of training and sensitisation of prison administrators, independent monitoring of places of detention, and the importance of ensuring that prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity. The principles duly recognise that torture, and cruel, inhuman or degrading treatment or punishment can be perpetrated for reasons relating to sexual orientation or gender identity can be considered of vital importance, and sets forth state obligation to take measures to prevent and provide protection from any such acts for LGBTI+ persons, and ensure training for police, prison and other personnel who are in position to prevent or perpetrate such acts.

The relevant principles and state obligations are reiterated below:-

YOGYAKARTA PRINCIPLES AND YOGYAKARTA PRINCIPLES *plus 10* RELEVANT PRINCIPLES

Principle 7. The right to freedom from arbitrary deprivation of liberty

No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and

the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

States shall:

- A. Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;
- B. Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention;
- C. Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity;
- D. Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

Principle 8: The right to a fair trial

Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender identity.

States shall:

- A. Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-maker is impugned by reason of their sexual orientation or gender identity;
- B. Take all necessary and reasonable steps to protect persons from criminal prosecutions

or civil proceedings that are motivated wholly or in part by prejudice regarding sexual orientation or gender identity;

- C. Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality.

Principle 9: The Right to Treatment with Humanity while in Detention

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall:

- A. Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- B. Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;
- C. Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;
- D. Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;
- E. Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;
- F. Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;
- G. Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.
- H. Adopt and implement policies to combat violence, discrimination and other harm on

grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches, items to express gender, access to and continuation of gender affirming treatment and medical care, and “protective” solitary confinement;

- I. Adopt and implement policies on placement and treatment of persons who are deprived of their liberty that reflect the needs and rights of persons of all sexual orientations, gender identities, gender expressions, and sex characteristics and ensure that persons are able to participate in decisions regarding the facilities in which they are placed;
- J. Provide for effective oversight of detention facilities, both with regard to public and private custodial care, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics.

Principle 10. The right to freedom from torture and cruel, inhuman or degrading treatment or punishment

Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.

States shall:

- A. Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts;
- B. Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support;
- C. Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.
- D. Recognise that forced, coercive and otherwise involuntary modification of a person’s sex characteristics may amount to torture, or other cruel, inhuman or degrading treatment;
- E. Prohibit any practice, and repeal any laws and policies, allowing intrusive and irreversible treatments on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including forced genital-normalising surgery, involuntary sterilisation,

unethical experimentation, medical display, “reparative” or “conversion” therapies, when enforced or administered without the free, prior, and informed consent of the person concerned.

Principle 33. The right to freedom from criminalisation and sanction on the basis of sexual orientation, gender identity, gender expression, or sex characteristics

Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person’s actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.

States shall:

- A. Ensure that legal provisions, including in customary, religious and indigenous laws, whether explicit provisions, or the application of general punitive provisions such as acts against nature, morality, public decency, vagrancy, sodomy and propaganda laws, do not criminalise sexual orientation, gender identity and expression, or establish any form of sanction relating to them;
- B. Repeal other forms of criminalisation and sanction impacting on rights and freedoms on the basis of sexual orientation, gender identity, gender expression or sex characteristics, including the criminalisation of sex work, abortion, unintentional transmission of HIV, adultery, nuisance, loitering and begging;
- C. Pending repeal, cease to apply discriminatory laws criminalising or applying general punitive sanctions on the basis of sexual orientation, gender identity, gender expression or sex characteristics;
- D. Expunge any convictions and erase any criminal records for past offences associated with laws arbitrarily criminalising persons on the basis of sexual orientation, gender identity, gender expression and sex characteristics;
- E. Ensure training for the judiciary, law enforcement officers and healthcare providers in relation to their human rights obligations regarding sexual orientation, gender identity, gender expression and sex characteristics;
- F. Ensure that law enforcement officers and other individuals and groups are held accountable for any act of violence, intimidation or abuse based on the criminalisation of sexual orientation, gender identity, gender expression and sex characteristics;
- G. Ensure effective access to legal support systems, justice and remedies for those who are affected by criminalisation and penalisation on grounds of sexual orientation, gender identity, gender expression and sex characteristics;
- H. Decriminalise body modification procedures and treatments that are carried out with prior, free and informed consent of the person.

Principle 35: The right to sanitation

Everyone has the right to equitable, adequate, safe and secure sanitation and hygiene, in circumstances that are consistent with human dignity, without discrimination, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics.

States shall:

*A to D **

E. Ensure that places of detention have adequate sanitation facilities which can be accessed safely and with dignity by all detainees, staff and visitors without discrimination on grounds of sexual orientation, gender identity, gender expression or sex characteristics.

b) The Nelson Mandela Rules 2015

Another relevant international document that may be referred to in the context of standards for treatment of LGBTI+ persons in detention are the United Nations Standard Minimum Rules for the Treatment of Prisoners 2015, more famously known as the *Nelson Mandela Rules*.³³ These rules were adopted by the United Nations General Assembly in December 2015. These rules, a revised version of the 1955 rules³⁴ have universal acceptability regarding minimum standards for the management of prison facilities and treatment of prisoners.

At the outset, one must critique the absence of any specific reference to rights of LGBTI+ communities within the Nelson Mandela Rules. It appears from the language, that the rules, continue to operate within the normative binary of man and woman. While the rules recognise the vulnerability of women prisoners, and include provisions regarding their segregation, healthcare and medical facilities as well as on their children, there appear to be no direct reference to the special vulnerability of LGBTI+ persons inside prisons.

However, the rules do reiterate the principle of non-discrimination based on 'any other status', and incorporate in Rule 2 the general obligation of prison administrations to take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.³⁵ This rule is applicable to the LGBTI+ communities too, thus obligating prison administrators to take into account their specific needs and challenges while formulating policies.

³³ *Nelson Mandela Rules* (n 8).

³⁴ The UN standard Minimum Rules for the Treatment of Prisoners 1955 were adopted by the first United Nations Congress on the Prevention of Crime & the Treatment of Offenders. Available at: https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (last accessed on 5th January 2020).

³⁵ Penal Reform International and Association for Prevention of Torture, "LGBTI persons deprived of their liberty: a framework for preventive monitoring", 2015, pp 5.

Rule 2:

1. *The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.*

2. *In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.*

2. INTERNATIONAL EXPERIENCES

A review of literature from various jurisdictions indicates that the recognition of rights violations for LGBTI+ persons in prisons has been gradual. This has been the case generally when it comes to recognition of the rights of LGBTI+ persons. One of the first references that highlighted the vulnerability of LGBTI+ persons in detention was done in 2001 by the UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment.³⁶ He stated that,

“When detained, members of sexual minorities are often considered as a sub-category of prisoners and detained in worse conditions of detention than the larger prison population. The Special Rapporteur has received information according to which members of sexual minorities in detention have been subjected to considerable violence, especially sexual assault and rape, by fellow inmates and, at times, by prison guards. Prison guards are also said to fail to take reasonable measures to abate the risk of violence by fellow inmates or even to have encouraged sexual violence, by identifying members of sexual minorities to fellow inmates for that express purpose. Prison guards are believed to use threats of transfer to main detention areas, where members of sexual minorities would be at high risk of sexual attack by other inmates. In particular, transsexual and Transgendered persons, especially male-to-female transsexual inmates, are said to be at great risk of physical and sexual abuse by prison guards and fellow prisoners if placed within the general prison population in men’s prisons.”³⁷

³⁶ UN Special Rapporteur (n 11).

³⁷ Ibid. at para 23.

Additionally, reputed international organisations such as Penal Reform International (PRI) and Association for Prevention of Torture (APT) have also recognised the specific vulnerability that people from the LGBTI+ communities face (including by fellow detainees), not only in detention, but across the various facets of the criminal justice system. Through the publication of its report titled “LGBTI+ persons deprived of their liberty: a framework for preventive monitoring” in 2013,³⁸ an attempt was made to document vulnerabilities of LGBTI+ persons at various stages of the criminal justice process. These included:³⁹

- After arrest and in police custody;
- During interrogation;
- Placement of Transgender detainees during various forms of detention;
- Search procedures and the dignity and privacy of LGBTI+ persons;
- Violence on LGBTI+ detainees by fellow detainees;
- Abuse by prison personnel/ staff;
- Risk of solitary confinement as a protective measure; and
- Discrimination in accessing facilities such as adequate healthcare, education, vocational trainings, conjugal visits etc. while in detention facilities.

In addition to recognising the specific vulnerabilities, the report also provides practical guidance to monitoring bodies of individual countries so as to effectively use law, policy and training methods⁴⁰ to help prevent and reduce the vulnerability of LGBTI+ persons within the criminal justice system.

Other internationally reputed organisations such as the National Centre for Transgender Equality have also published a detailed guidebook in 2018, designed specifically for prison/correctional officials and advocates. The resource acts as a comprehensive policy guide to address barriers faced by trans prisoners.

Additionally, a significant amount of literature on vulnerabilities of LGBTI+ persons in detention has been published in the United States,⁴¹ followed by countries such as the United Kingdom⁴²,

³⁸ LGBTI persons deprived of their liberty: a framework for preventive monitoring (n 35).

³⁹ Ibid. at pp. 7-13.

⁴⁰ Ibid, at pp. 14-15.

⁴¹ Allen J Beck, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12, Supplemental Tables: Prevalence of Sexual Victimization among Transgender Adult Inmates”, available at: https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf (last accessed on 15th January 2020); Christine Peek, “Breaking Out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment,” Santa Clara Law Review, Vol 44, (2004); S. Tarzwell, “*The gender lines are marked with razor wire: addressing state prison policies and practices for the management of Transgender prisoners*,” Columbia Human Rights Law Review, Vol 38, at pp. 167-219; Darren Rosenblum, “Trapped” in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism, Michigan Journal of Gender and Law, Vol. 6, at pp. 499-571; Sylvia Rivera Law Project, “Its War in Here: A report on the Treatment of Transgender and Intersex People in New York State Men’s Prisons”, 2007, available at: <https://srp.org/files/warinhere.pdf> (last accessed on 15th January 2020).

⁴² Please see: Sarah Lambie, “Rethinking Gendered Prison Policies: Impacts on TransgenderPrisoners”, ECAN Bulletin (16), pp. 7-12; Peter Dunn, “Slipping off the Equalities Agenda: Work with LGBT Prisoners”, Prison Service Journal, Vol 206, 2013, at pp. 3-11; Laura Jones and Michael Brooks, “Transgender Offenders: A Literature Review”, Prison Service Journal, Vol 206, 2013, at pp. 11-19, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/PSJ%20March%202013%20No.%20206.pdf> (last accessed on 14th January 2020); Jacqueline Beard, “Transgender Prisoners,” Briefing Paper, Number 07420, 19th September 2018, available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7420#fullreport> (last accessed on 14th January 2020).

Republic of Ireland⁴³, Australia⁴⁴ and Canada⁴⁵. These texts indicate that world-over, the discourse on vulnerabilities of LGBTI+ persons in detention revolves around the following aspects:

- A. The specific vulnerability of Transgender and inter-sex prisoners (as an extension to the vulnerabilities of LGBTI+ prisoners as a whole).
- B. Targeted violence (including harassment and sexual violence) meted out by fellow inmates as well as prison administrators/ personnel against persons of the LGBTI + community.
- C. Issues regarding placement of Transgender prisoners inside prisons with special focus on *identity-based placement v. genitalia/anatomy-based placement*.
- D. Use of segregation and protective custody.
- E. Issues regarding medical care of LGBTI+ inmates including issues regarding sexual health (treatment for HIV+), access to hormone therapy inside prisons and access to sexual re-assignment surgeries.
- F. The adequate preservation of right to privacy and dignity of Transgender and inter-sex inmates in regard to search procedures and separate toilet and shower facilities.
- G. Equality of access in regard to facilities such as conjugal visits.
- H. General need for safer prisons vis-à-vis the need for sensitisation and awareness regarding rights of LGBTI+ persons amongst the prisons staff as well as the general prison population.

This list should be considered as indicative of the issues, and not as an exhaustive representation of the issues faced by the LGBTI+ persons in detention. A recognition of these issues has also led to some progress with several countries taking policy measures to address them. For instance, a significant amount of policies have been drafted by the National Institute of Corrections, Department of Justice in the United States which revolve around the rights of Transgender, inter-sex and gender non-conforming persons; and include the adoption of sex-reassignment surgery policy for prisoners; cross-hormone therapy for transsexual and inter-sex prisoners; as well as training programmes for administrators of correctional institutions.⁴⁶ Advancements in policies have also been made in the United Kingdom and Australia, wherein Her Majesty's Prison and Probation Services (erstwhile known as National Offender Management Service) and the Queensland Correctional Services have come out with specific policies in regard to care and management of Transgender offenders.⁴⁷

⁴³ Irish Penal Reform Trust, "Out on the Inside: The Rights, Experiences, and Needs of LGBT People in Prison", 1st February 2016, Available at: <https://www.iprt.ie/iprt-publications/out-on-the-inside-the-rights-experiences-and-needs-of-lgbt-people-in-prison/> (last accessed on 14th January 2020).

⁴⁴ Jenny Samiec, "Transgender Prisoners: A Critical Analysis of Queensland Corrective Services' New Procedure", Queensland Law Student Review, Vol 2(1), 2009, at pp. 33-44; Also see: Richard Edney (n 1); Jake Blight, "Transgender Inmates", Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, 2000, available at: <https://aic.gov.au/publications/tandi/tandi168> (last accessed on 14th January 2020)

⁴⁵ Rebecca Mann, "The Treatment of Transgender Prisoners, Not Just an American Problem—A Comparative Analysis of American, Australian, and Canadian Prison Policies Concerning the Treatment of Transgender Prisoners and a "Universal" Recommendation to Improve Treatment, Law and Sexuality, Vol. 15: at pp. 91-133; Also see: Barbara Findlay, "Transsexuals in Canadian Prisons: An Equality Analysis", June, 1999, available at: http://www.barbarafindlay.com/uploads/9/9/6/7/9967848/199906_transsexuals_in_canadian_prisons_-_an_equality_analysis.pdf (last accessed on 14th January 2020).

⁴⁶ Available at: <https://nicic.gov/assign-library-item-package-accordion/lgbt-laws-policies-policy> (last accessed on 20th January 2020).

⁴⁷ Ministry of Justice, United Kingdom, 9th November 2016, available at: <https://www.gov.uk/government/publications/care-and-management-of-transgender-offenders> (last accessed on 20th January 2020); also see: Queensland Government, 20th December 2019, <https://www.publications.qld.gov.au/dataset/qcs-procedures/resource/c4782e0a-b06b-4877-96b0-fae43846dfc> (last accessed on 20th January 2020).

However, despite these developments internationally, the discourse on rights of LGBTI+ persons in custody has been conspicuously absent in India. The next section discusses rights violations that have been reported with respect to LGBTI+ persons in detention in India.

3. ISSUES FACED BY LGBTI+ PERSONS IN INDIAN PRISONS

Although reporting on the issues faced by LGBTI+ persons inside prisons has been scarce, one of the first documented report of violence against a person from the *kothi*⁴⁸ community was done by a report published by PUCL-Karnataka in 2003.⁴⁹ This report provided a gruesome testimony of the instances of sexual abuse and violence faced by LGBTI+ persons whilst incarcerated in Bangalore prison. In 2015, incidents of sexual assault, harassment and rape of five Transgender persons lodged in a jail in Mysuru has also been reported.⁵⁰ Further, and more recently, allegations made by cis gay men such as Arif Jafar and inter-sex athlete, Pinki Pramanik⁵¹ regarding harassment, abuse and torture during incarceration also highlights the targeted rights violations of LGBTI+ persons in detention.

However, the instances of rights violations are not only limited to violence. Specific issues pertaining to Transgender prisoners have also been reported. For instance, in Telangana⁵² and Karnataka⁵³ prisons, it has been alleged that segregation of Transgender persons inside prisons is made based on genitalia. In such cases, a report is sought from the medical officer at the time of admission, and if the person has female genitalia, then they are kept in the female section and if they have male genitalia they are kept in the male section.

Additionally, reports have also included issues relating to medical negligence w.r.t. Transgender persons inside prisons. In 2016, a medical lapse in treatment of a Transgender was reported wherein the medical staff of Bengaluru Central Prison was found to be inept in treating an infection in the silicone implants of a Transgender prisoner. It was also contended that medical officers employed in prisons across the state of Karnataka were ill-equipped to look after Transgender prisoners.⁵⁴

⁴⁸ As per the *NALSA Judgment*, (n 17), para 44, *kothis* have been defined as a heterogeneous group of biological males who show varying degrees of being effeminate. They prefer to take the feminine role in same-sex relationships, though many *kothis* are bisexual. Some hijras identify as *kothi* as well, while not all *kothis* identify as hijra or even Transgender.

⁴⁹ People's Union for Civil Liberties, (PUCL-Karnataka), *Human Rights Violations against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore, India*, September 2003, available at: http://pucl.org/sites/default/files/reports/Human_Rights_Violations_against_the_Transgender_Community.pdf (last accessed on 3rd January 2020), at p. 37.

⁵⁰ N. Kaggere & R. Chetan, 'Transgenders move to Women's Wing after rise in Violent sex crimes,' *The Bangalore Mirror*, 31st March, 2016, available at: <https://bangaloremirror.indiatimes.com/bangalore/crime/Transgenders-to-move-to-womens-wing-after-rise-in-violent-sex-crimes/article-show/51623176.cms> (last accessed on 13th January 2020).

⁵¹ IANS, 'I was harassed in jail, says Pinki Pramanik,' *The Hindustan Times*, 11th July, 2012, Available at: <https://www.hindustantimes.com/kolkata/i-was-harrassed-in-jail-says-pinki-pramanik/story-QRuk4g5Pd0SSA4efJc0THM.html> (last accessed on 13th January 2020).

⁵² D. Jose, 'Telangana Prisons too prejudiced against Transperson,' *The New Indian Express*, 17th January, 2019, available at: <http://www.newindian-express.com/cities/hyderabad/2019/jan/17/prisons-too-prejudiced-against-Transpersons-1926129.html> (last accessed on 13th January 2020).

⁵³ M. Roy, 'Transgender prison inmates face abuse, neglect in Bengaluru,' *Reuters*, 23rd January, 2017, available at: <https://in.reuters.com/article/india-Transgender-prison-health-idINKBN1570S9> (last accessed on 13th January 2020).

⁵⁴ *Ibid*.

Experiences of LGBTI+ persons in custody, and instances of rights violations necessitate government attention and prompt action to ensure that rights of LGBTI+ persons in detention are protected. Any discussion on prison reforms remain incomplete without due considerations of the specific vulnerabilities of LGBTI+ persons in detention. The International standards discussed above, as well as the experiences of other countries on this issue provide substantial guidance for both state and non-state actors to work towards promoting and ensuring the practical realisation of rights of LGBTI+ persons in detention.

IV. TRANSGENDER PERSONS CONFINED IN INDIAN PRISONS

In order to understand the vulnerabilities of Transgender persons confined in prisons, one must first understand the historical legislative frameworks within which the community has, since the colonial era, been criminalised and prosecuted. It is also important to discuss rights related to gender identity in light of landmark judicial pronouncements and its implication in the context of prisons. This chapter puts forth information on these aspects, while also discussing in detail the applicable standards, as per international and national law for Transgender persons in prisons. But first it is important to understand Transgender communities, and various persons it includes.

The word Transgender is generally used to refer to any person whose gender identity is different from the sex they were assigned at birth. There has been, in recent times, a convulsion between the terms “Transgender” and “Intersex”. People born with intersex variations are people who, at birth, have a reproductive or sexual anatomy that does not strictly fall into the biological definitions of male and female. In the Indian context, intersex and certain Transgender individuals are placed at ritualistic socio-cultural positions, terms for which vary regionally as Hijra, Kinnar, Jogappa, Aravani, NupiManbi etc. (see box for further details) These are the most visible communities in India and are organised into a non-traditional family structure, the intricacies of which again may vary regionally. However, these communities are largely people assigned male at birth apart from individuals with intersex variations. There also exist communities that are largely made invisible both by mainstream portrayals and lack of understanding. These include various communities of people assigned female at birth who identify as trans, people who are non-binary and gender non-conforming individuals.

There are a wide range of Transgender related identities, cultures or experiences which are generally as follows⁵⁵:

Hijras: Hijra communities are a socio-cultural group of Trans people in India, who have historically organised into alternative family units, with a ritual role of being granted the power to bless and curse. Hijra individuals can be considered as the western equivalent of Transgender (male-to-female) persons though Hijra communities have also articulated their gender identity as the “third gender” borrowed from the term “Tritya Prakriti” or “Third Nature”. There are regional variations in the use of terms referred to Hijras. For example, **Kinnars** (Northern plains) and **Aravanis** (Tamil Nadu).

⁵⁵ NALSA Judgement (n 17).

The traditional livelihoods of the Hijra community predominantly include Badhai Toli⁵⁶ (commonly mistaken as begging) and sex work.

Eunuch: Eunuch is a term which literally means a “castrated male”. The term has been used historically to denote to “eunuchs” who were employed as guards in royal and noble households across Asia while it is also used as a translation for impotence at certain times. It is offensive to refer to a person as “eunuch” as it has nothing to do with their gender identity.

Aravanis and ‘Thirunangi’ – Aravanis are a socio-religious group of Trans people in Tamil Nadu and neighbouring regions which revolve around the temple of Aravan.⁵⁷ The Trans people in Tamil Nadu, including Aravani communities have opted for the terminology of “Thirunangi” in Tamil.

Kothi – Kothis are a heterogeneous group. ‘Kothis’ as an identity is usually assigned with individuals assigned gender male at birth who perform varying degrees of ‘femininity’. Kothi as a term signifies, to a certain extent, both sexual orientation and gender identity for many individuals. The usage of the term was popularised with the work of HIV/ AIDS organisations who primarily worked in the “cruising spot” and “hotspots” in urban and rural areas.

Jogtas/Jogappas: Jogtas or Jogappas 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 ‘Jogti Hijras’ 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.⁵⁸

Shiv-Shakthis: Shiv-Shakthis are usually individuals assigned male gender at birth who are famed to have a divine connection with the Goddess (in many village and regional Goddess cultures). Usually, Shiv-Shakthis are inducted into the Shiv- Shakti

⁵⁶ Badhai Toli is a traditional practice of seeking alms in return for blessings, performed by socio-cultural and religious groups of Trans people in India. This usually includes attending, dancing and singing at auspicious events within Indian households.

⁵⁷ Shaju John, Many Weddings and a Funeral, 5th May 2018, available at: <https://www.thehindu.com/news/national/tamil-nadu/koovagam-many-weddings-and-a-funeral/article23787435.ece/photo/1/> (Last accessed: 22nd June 2020).

⁵⁸ Aneka Trust, “Jogappa: Gender Identity and the Politics of Exclusion” at pp. 1-5, October 2014, Available at: https://in.boell.org/sites/default/files/jogappa_gender_identity_and_the_politics_of_exclusion.pdf (Last Accessed: 18th June 2020).

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- Shakthis thus become the bride of the sword.

Nupi Manbi: Male to female Transgender people of Manipur are known by this local term which means “effeminate” or “looks like a woman”. Another variation of the term is “Nupa Manba” which is used for transmasculine individuals.

Further, Transgender people affirm self-determined gender through various means and mechanisms. This affirmation is usually termed as “transition”, which could start at asserting verbally or through choice of fashion/ appearance as Transgender. As per Section 2(k) the *Transgender Persons (Protection of Rights) Act, 2020*⁵⁹, a person does not need to have undergone any sexual re-assignment surgeries, hormone therapies, laser therapy or any such therapy to identify as Transgender. However, there are various such therapies and surgeries a Transgender person may undergo to affirm their gender identity. These may include intake of feminising/ masculinising hormones or intravenous surgeries. A comprehensive list of surgeries possible are enlisted below⁶⁰:

Surgeries for Male to Female (MtoF) Transgender Persons

- A. MtoF Chest Surgery**
 - Augmentation Mammoplasty (implants/lipofilling)
- B. MtoF Genital Surgeries**
 - Penectomy: Removal/amputation of Penis
 - Orchiectomy: Removal of testes
 - Vaginoplasty: Reconstructive surgery to create a vagina
- C. MtoF Non-Genital, Non-Breast Surgeries**
 - Facial feminization surgery, liposuction, lipofilling, voice surgery, thyroid cartilage reduction, gluteal augmentation, hair reconstruction, and various aesthetic procedures.
- D. Revision Surgeries**
 - Clitoroplasty: adjusting the size, shape, location or hooding of the neo-clitoris.
 - Vulvoplasty or Labiaplasty: adjusting the size or shape of the labia minora or majora.

⁵⁹ Transgender Persons (protection of Transgender Persons (Protection of Rights) Act, 2019 (n 21).

⁶⁰ Coleman, Eli & Bockting, Walter & Botzer, Marsha & Cohen-Kettenis, Peggy & Cuypere, Griet & Feldman, Jamie & Fraser, Lin & Green, Jamison & Knudson, Gail & Meyer, Walter & Monstrey, Stan & Adler, Richard & Brown, George & Devor, Aaron & Ehrbar, Randall & Ettner, Randi & Eyller, Evan & Garofalo, Robert & Karasic, Dan & Zucker, Kenneth. (2012). Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7. International Journal of Transgenderism. 13. 165-232. 10.1080/15532739.2011.700873.

- Commisuroplasty: narrowing the superior aspect of the labia majora (the anterior commissure).
- Deepening the neo-vagina: occasionally the neo-vagina will not be long enough or will contract in size. This is usually the result of inadequate dilating.

Surgeries for Female to Male (FtoM) Transgender Persons

A. FtoM Breast/Chest Surgery

- Subcutaneous Mastectomy (removal of breast), creation of a male chest.

B. FtoM Genital Surgeries

- Hysterectomy /Salpingo-oophorectomy:Removal of uterus/ Fallopian tubes and ovaries.
- FtoM genital reconstruction : Reconstruction of the fixed part of the urethra, which can be combined with a metoidioplasty (creation of a micro-penis) or with a phalloplasty (creation of a penis employing a pedicled or free vascularized flap), vaginectomy (removal of vagina), scrotoplasty (reconstruction of scrotum), and implantation of erection and/or testicular prostheses.

C. FtoM Non-Genital, Non-Breast Surgeries

- Voice surgery (rare), liposuction, lipofilling, pectoral implants, and various aesthetic procedures.

D. FtoM Revision Surgeries

The aim of chest surgery in the FtoM is not just to remove all of the breast tissue, but also to re-contour the chest to create a masculine appearance. Individuals with larger breasts or poor skin quality have a higher chance of requiring revision surgery. Typical revisions include, but are not limited to –

- Liposuction: To improve contour abnormalities
- Scar revisions
- Excision of skin excess, wrinkling or puckering
- Adjustment of nipple-areola complex position

While these communities have had a strong historical presence as has been referenced in the Hindu mythology and other religious texts, their situation changed drastically, with the onset of colonial rule from the 18th century onwards.

1. HISTORIC AND CONTINUED CRIMINALISATION OF TRANSGENDER PERSONS IN INDIA

There has been significant documentation, and consequent acknowledgment of the diverse forms of violence and stigmatisation against the LGBTI+ community in India. Starting from the citizen's report titled "*Less than a Gay*"⁶¹ in 1991 to the report by People's Union of Civil Liberties-Karnataka (PUCL-Karnataka) in 2003,⁶² a considerable amount of documentation is available highlighting the discrimination by the state as well as instances of societal violence (including physical and psychological violence) amongst the community.⁶³ Such instances are intrinsically linked to the sexual orientation and gender identity of LGBTI+ persons. The PUCL-Karnataka report documented various forms of harassment, specifically in regard to the ethno-religious Transgender communities such as *hijras*⁶⁴ which included harassment by police authorities, harassment by family at home, police entrapment, and abuse/harassment including rape in police stations and prisons.⁶⁵

These observations made by PUCL-Karnataka in 2003 regarding the Transgender community was corroborated by the National Human Rights Commission of India (NHRC) in 2018. The NHRC had conducted a survey on the human rights of Transgenders in Delhi and Uttar Pradesh,⁶⁶ where in it was found that 99% of the community had faced social rejections and discrimination on more than one occasion in the past⁶⁷. Additionally, 96% of them reported that they were denied employment opportunities⁶⁸ and 92% of them had been subject to economic exclusion.⁶⁹ It was further reported that harassment by police officials and inability of the community to pay bribes resulted in discrimination in access to law and justice.⁷⁰ These revelations, while startling, necessitate an exploration of the reasons behind the persecution of Transgender communities. In this context, it is necessary to analyse the role that laws have played in promoting state sanctioned persecution as well as prosecution, which continues to exist.

⁶¹ AIDS Bhedbhav Virodhi Andolan (ABVA), "*Less than a Gay*", A Citizen's Report on the status of Homosexuality in India, November-December 1991. Available at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/1585664/less-than-gay-a-citizens-report-on-the-status-of.pdf> (last accessed on 3rd January, 2020).

⁶² PUCL-Karnataka (n 50), Chapter 3 & 4, at pp. 26-60.

⁶³ *Ibid.* at p. 24.

⁶⁴ The ethno-religious community of *Hijras* (known as *Kinnars* in north India, *Aravani* in Tamil Nadu and *Shiv-Shakthis* in Andhra Pradesh) and *Jogti/Jogtas/Jogappas* (they refer to male-to-female trans-people who devote themselves to the service of a particular God) (in Maharashtra and Karnataka), who typically dress as women, fall under the so-called "Transgender umbrella" of people, are gender-non-confirming people and might have varied sexualities as well. They may either identify as male or female or neither and may include emasculated men, non-emasculated men, intersex persons, people who intend to undergo or have already undergone sex-reassignment surgery (SRS) and even cross-dressers (generally termed as transvestites); For further discussion please see: *NALSA Judgment* (n 17), at para 11.

⁶⁵ PUCL-Karnataka (n 50) at p. 30.

⁶⁶ National Human Rights Commission, India (NHRC), "*Study on Human Rights of Transgender as Third Gender*", 2018. Available at: https://nhrc.nic.in/sites/default/files/Study_HR_Transgender_03082018.pdf(last accessed on 3rd January 2020).

⁶⁷ *Ibid.* at 47.

⁶⁸ *Ibid.* at 48.

⁶⁹ *Ibid.* at 47.

⁷⁰ *Ibid.* at 48.

a) **Colonial Era Laws:** Violence against the LGBTI+ community, and in particular the *hijra* community is believed to have had its roots in laws legislated during colonial India. A prime example was *the Criminal Tribes Act, 1871*, which was a legislation entrenched in British colonial morality and ethos. Considering that ‘civilized jurisprudence’ was inadequate in dealing with certain tribes and communities in India.⁷¹ The Act, designated certain communities and tribes to be criminals from birth wherein criminality was being passed on from one generation to another.⁷²

In 1897, the colonial government targeted the *hijra* community and established a link between criminality and sexual non-conformity by amending the 1871 Act to include “*eunuchs*”⁷³ under its purview.⁷⁴ The Act mandated the registration of names and registration of all eunuchs by the local government, as they were suspected of kidnapping or castrating children or committing offences under Section 377⁷⁵ of the Indian Penal Code.⁷⁶ Further on, any eunuch who appeared to be ‘dressed or ornamented like a woman in a public street... or who dances or plays music or takes part in public exhibition could be arrested without warrant and punished with imprisonment, fine or both’.⁷⁷ While the community could be punished for having in their house a boy under the age of 16 years, they were also further restricted from acting as guardian, making a gift, drawing up a will or adopting a son.⁷⁸

Another imposition of colonial British morality was through Section 377 of the Indian Penal Code, 1860 (IPC). A product of Lord Macaulay’s legacy, Section 377 defined ‘Unnatural offences’, which criminalised any voluntary “*act of carnal intercourse against the order of nature with any man, woman, or animal.*” This provision not only criminalised consensual sexual acts such as oral sex, anal sex but any kind of sex which did not result in procreation.⁷⁹ Such a provision criminalised any kind of gender-non-confirming sexual activity by presuming that any *hijra* would be engaging in ‘carnal intercourse against the order of nature’.

b) **Laws in Post-Independent India:** Although *the Criminal Tribes Act, 1871* has been repealed and Section 377 of IPC has been read down,⁸⁰ its colonial legacy still continues to exist. In 2012, the State of Karnataka, passed a controversial Bill amending the *Karnataka Police Act, 1963*. This amendment inserted Section 36A, which gave the Commissioner of Police the

⁷¹ PUCL-Karnataka (n 50) at pp. 43-44.

⁷² Ibid.

⁷³ “*Eunuchs*” was defined under the *Criminal Tribes Act, 1871* to include all members of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent’. It needs to be mentioned at this point that the usage of the word “Eunuch” is shunned as non-acceptable within the Transgender community in India due to its derogatory connotation since colonial era.

⁷⁴ PUCL-Karnataka (n 50) at p. 45.

⁷⁵ Section 377 of IPC is defined as:

Unnatural offences - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

⁷⁶ PUCL-Karnataka (n 50) at p. 45.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ PUCL-Karnataka (n 50) at p. 47.

⁸⁰ *Section 377 Judgment* (n 18).

power to “prevent, suppress or control undesirable activities of eunuchs”.⁸¹ On similar lines as the *Criminal Tribes Act, 1871*, it allowed the preparation and maintenance of register of names and residences of all eunuchs suspected of “kidnapping and emasculating boys or committing unnatural offences or any other offences or abetting the commission of such offences.”⁸² After a strong grassroots movement and resistance from the Karnataka Sexual Minorities Forum, the Karnataka High Court found that Section 36A was violative of Articles 14 (Right to Equality), 15 (Right against Non-Discrimination), 19 (Right to Freedom of Expression and Speech) and 21 (Right to Live with Dignity) of the Indian Constitution and directed the State government to amend the provision.⁸³ Following this, an amendment was made successfully substituting the word ‘eunuch’ for ‘person’.⁸⁴

Another similar legislation continues to remain in force in Telangana. *The Telangana Eunuchs Act, 1919* has similar provisions as the *Criminal Tribes Act, 1871* and empowers the police and state authorities to maintain registers of ‘eunuchs’ and make arrests, thereby criminalising the entire Transgender community in the State of Telangana. Currently the Act has been challenged in the Andhra Pradesh High Court, which has temporarily stayed the application of the Act, even though the final judgement remains pending.⁸⁵

- c) Continuing Criminalisation of the Transgender Community:** Since the colonial era, the relegation of the Transgender community to a criminal tribe by extension, also led to criminalisation of their traditional practice of *badhai* (or performance) in return of right to alms as akin to “begging” or “vagrancy”.⁸⁶ Further, not only has there been criminalisation of the feminine embodiment of *hijras* and crossdressing as ‘perverted’ and ‘obscene’, but there has also been inferences linking their performances in public to the criminalised acts of “addicted” sodomites as well as prostitution.⁸⁷

Even today, similar to the situation in the colonial era, governments (both at the centre and state) continue to criminalise the Transgender community, and have provided little, if any special attention to the community’s upliftment. This argument can be substantiated on the basis of the findings of the NHRC report of 2018.⁸⁸ The report found that from amongst

⁸¹ Litigation, Centre for Law and Policy Research, 22nd September 2016. Available at: <https://clpr.org.in/litigation/karnataka-sexual-minorities-forum-vs-state-of-karnataka-ors/> (last accessed on 4th January 2020).

⁸² *Ibid.*

⁸³ *Karnataka Sexual Minorities Forum v State of Karnataka & Ors.*, WP 1397/2015, Order dated 12/01/2016.

⁸⁴ The Karnataka Police (Amendment) Act, 2016. Available at: [http://dpal.kar.nic.in/ao2016/22%20of%202016%20\(E\).pdf](http://dpal.kar.nic.in/ao2016/22%20of%202016%20(E).pdf) (last accessed on 4th January 2020).

⁸⁵ *Vijayanti Vasanta Mogli, Monalisa & Sayantan Dutta v. State of Telangana*, WP (PIL) No. 44/2018. Also see: Litigation, Centre for Law and Policy Research, 17th September 2018. Available at: <https://clpr.org.in/litigation/pil-challenging-the-constitutionality-of-the-telangana-eunuchs-act-1919/> (last accessed on 4th January 2020).

⁸⁶ Jessica Hinchy, ‘Obscenity, moral contagion and masculinity: Hijras in public space in colonial North India,’ *Asian Studies Review*, Vol. 38(2), 2014, pp. 274-294, at p. 280.

⁸⁷ *Ibid.* at pp. 279-280.

⁸⁸ NHRC (n 67), at p. 28.

the Transgender population in Delhi and Uttar Pradesh, 24.44% were engaged in *badhai*, 10.44% were engaged in begging and around 4.56% were engaged in sex work. One can safely assume that these figures would be similar for other Indian states, thus one can conclude that the state hasn't provided adequate measures to the Transgender community to seek other venues of employment.

However, despite the same, the State continues to criminalise the only few existing sources of livelihood for Transgender persons, which is evident from the existence of State anti-beggary laws. These laws, which have enabled the police to abuse, harass and exploit the members of the Transgender community⁸⁹, currently exist in 22 States (including Union Territories) and prescribe severe punishments for the same⁹⁰. Additionally, nuisance laws (Section 268 & 290 of IPC)⁹¹ are also constantly abused by the State level police and have a direct impact on the Transgender community⁹². Additionally, in regard to the persons involved in sex work for livelihood amongst the Transgender community, *the Immoral Trafficking Prevention Act, 1956* through its provisions⁹³ continues to provide the legal basis for the police to use it against the community through arbitrary arrests and detention.⁹⁴

While these laws continue to exist, further laws are being legislated and passed in the Parliament, with no consideration of the impact of the legislation, including the criminalisation of the trans community. One such Bill, that was introduced and passed by the Lok Sabha in 2018 was the *Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018*.⁹⁵ A perusal of the provisions of the Bill indicate that, not only does it continue to criminalise begging⁹⁶ and imposes heavy fines and punishment up to 10 years imprisonment, it also criminalises administration of hormones for early sexual maturity as an aggravated form of trafficking⁹⁷. As a result, it fails to understand the distinction between coerced administration of hormones, and hormone replacement therapy which is often accessed by the trans

⁸⁹ International Commission of Jurists (ICJ), "Unnatural Offences: Obstacles to Justice in India based on Sexual Orientation and Gender Identity", February 2017, available at: <https://www.icj.org/india-end-rampant-discrimination-in-the-justice-system-based-on-sexual-orientation-and-gender-identity/> (last accessed on 4th January 2020) at p. 21.

⁹⁰ Nyaaya, "In Most Indian States and UTs, You Can Be Arrested For 'Looking Poor'", India Spend, 1st April, 2017. Available at: <https://archive.indiaspend.com/cover-story/in-most-indian-states-and-uts-you-can-be-arrested-for-looking-poor-10060> (last accessed on 4th January 2020). Recently, in a landmark decision by the Delhi High Court in *Harsh Mander v. Union of India*, WP (C). No 10498/2009, Date of judgement: 8th August, 2018, has held the Bombay Prevention of Begging Act, 1959, unconstitutional on grounds that it violates the Article 14 (equality before the law) and Article 21 (right to life and personal liberty) rights of persons who have no other means of sustenance but to seek alms for sustenance. The future implications of this judgment remain to be seen.

⁹¹ Section 268 criminalises any act of public nuisance and Section 290 prescribes punishment for the same.

⁹² ICJ (n 90), at p. 22.

⁹³ Section 4 punishes living on the earnings of prostitution; Section 7 punishes prostitution in vicinity of public place; and Section 8 punishes seducing or soliciting for the purposes of prostitution.

⁹⁴ ICJ (n 90) at p. 22.

⁹⁵ The Bill was passed by the Lok Sabha on 26th July 2018.

⁹⁶ Section 31 (ix), *Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018*, available at: https://www.prsindia.org/sites/default/files/bill_files/The%20Trafficking%20of%20Persons%20%28Prevention%2C%20Protection%20and%20Rehabilitation%29%20Bill%2C%202018.pdf (last accessed on 4th January 2020).

⁹⁷ Ibid. Section 31 (iv).

community.⁹⁸ Activists claim that the Bill fails to recognise the distinction between voluntary sex work and conflates it with trafficking, thereby criminalising the members of community engaged in voluntary sex work.⁹⁹ If this Bill is introduced and subsequently passed, it would have severe consequences for the community.

It is important to make reference here to the recently enacted *Transgender Persons (Protection of Rights) Act 2019*, which not only has implications on the right to self-determination of gender, but also contains provisions which continue to criminalise certain acts such as compelling or enticing ‘a Transgender person to indulge in the act of forced or bonded labour’. While the Act has been challenged in the Supreme Court, for now it remains in force.

To conclude, an analysis of previous and current legislative regime permits the state to both criminalise as well as prosecute the Transgender communities, in particular the ethno-religious Transgender groups in India. Thus, there is a high probability, that in future a large number of Transgender persons will be prosecuted and consequently incarcerated. This further necessitates that robust policies are set in place to protect the rights of the Transgender communities as well as the LGBTI+ community in detention.

2. RECOGNITION OF RIGHTS OF TRANSGENDER COMMUNITIES IN INDIA: LOCATING THE PRINCIPLES OF GENDER IDENTITY AND SEXUAL ORIENTATION WITHIN THE INDIAN CONSTITUTION

The year 2014 saw the culmination of decades long struggle of Transgender persons for the recognition and realisation of their rights. While drawing attention to the “extreme discrimination Transgender persons faced in all spheres of the society”, the Supreme Court of India in the *NALSA Judgement* for the first time recognised non-binary gender identities and upheld the fundamental rights of Transgender persons in India. While discussing ‘gender identity’ at length, the court invoked the various fundamental rights under the Indian Constitution such as Article 14 (Right to Equality), Article 15 (Prohibition against discrimination), Article 16 (equality of opportunity in matters of public employment), Article 19 (1) (a) (Freedom of expression) and Article 21 (Protection

⁹⁸ Balakrishna Ganeshan, “Redraft Trafficking Bill: Activists, Trans persons tweet against Legislation”, *The News Minute*, 20th December 2018. Available at: <https://www.thenewsminute.com/article/redraft-trafficking-bill-activists-trans-persons-tweet-against-legislation-93698> (last accessed on 4th January 2020).

⁹⁹ Liliana il Graziosco Merlo Turan, “Why The Trans Bill and the Anti-Trafficking Bill of 2018 Reek of Transmisogyny” *Feminism in India*, 7th January 2019. Available at: <https://feminisminindia.com/2019/01/07/trans-bill-anti-trafficking-bill-2018-transmisogyny/> (last accessed on 4th January 2020).

of life and personal liberty). The court also relied on various international human rights treaties as well as the *Yogyakarta Principles* and reiterated key principles including those relevant to the detention of such persons.

Additionally, the court made certain important observations during the course of the judgment such as the entitlement of ethno-religious Transgender communities *hijras* to legally identify as third gender; defining gender identity as one not referring to biological characteristics, but rather as “an innate perception of one’s gender”; and the right to express one’s gender “through dress, words, action or behavior” under Article 19 (1) (a) to name a few. The court also affirmed that, ‘discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India’. (See box for a brief overview of the case)

The court went on to define the principles of gender identity and sexual orientation. Gender identity was defined as 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 a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms; whereas sexual orientation was defined as an individual’s enduring physical, romantic and/or emotional attraction to another person. Sexual orientation includes Transgender and gender-variant people with heavy sexual orientation and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual etc.

The court concluded with the observation that ‘discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution’. In this context, and in order to safeguard the constitutional rights of the members of the Transgender community, the court laid down the following nine declarations and directions¹⁰⁰ which place a positive obligation on the State to ensure the protection of the rights of Transgender persons.

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

¹⁰⁰ *NALSA Judgment* (n 17), at para 129.

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

NALSA v Union of India: A brief overview

It was in 2014, in the NALSA judgment, that the rights of Transgenders as a third gender, were formally acknowledged for the first time in India. It was also the first time, that the Supreme Court (SC) defined the concepts of both gender identity and sexual orientation, locating them within the ambit of Part III of the Indian Constitution as fundamental rights. In its judgment, the SC acknowledged that social exclusion and discrimination on the ground of gender stating that one does not conform to the binary gender (male/female) is widely prevalent in India. It also recognised that 'non-recognition of identity of Hijras / Transgender persons results in them facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. The observations made and directives issued by the SC in the context of Articles 14, 15, 16, 19 and 21 of the Constitution are reproduced below.

Article 14: "Article 14 does not restrict the word 'person' and its application only to male or female. Hijras/Transgender persons who are neither male/female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of State activity,

including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country. Non-recognition of the identity of Hijras/ Transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police.”

Articles 15 & 16: “Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalisations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one’s self image, the deep psychological or emotional sense of sexual identity and character.

The discrimination on the ground of ‘sex’ under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression ‘sex’ used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female. Articles 15(2) to (4) and Article 16(4) read with the Directive Principles of State Policy and various international instruments to which Indian is a party, call for social equality, which the Transgenders could realize, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders.”

Article 19(1)(a): “The freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one’s chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc. Gender identity, therefore, lies at the core of one’s personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A Transgender’s personality could be expressed by the Transgender’s behavior and presentation. State cannot prohibit, restrict or interfere with a Transgender’s expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the Transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights.”

Article 21: “Recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one’s sense of being as well as an integral part of a person’s identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution. Article 21, as already indicated, guarantees the protection of “personal autonomy” of an individual. Self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.”

3. APPLICABLE STANDARDS AND PRINCIPLES VIS-À-VIS TRANSGENDERPERSONS CONFINED IN PRISONS

The Prisons Act, 1894 or State prison acts along with the respective state jail manuals comprise the legislative framework that governs the administration of prisons in India. Prisons are state institutions, and thus are obligated to adhere to the directives and principles laid down by the Supreme Court. They must also comply with national laws that provide for the treatment of persons in deprivation of liberty as well as the standards established under international human rights frameworks.

In this context, the implications of the *NALSA Judgment* on prison administration, and obligations cast upon the state authorities vis-à-vis the Transgender communities confined in prisons assume importance. The *Yogyakarta Principles 2007* and *Yogyakarta Principles plus 2017*, as discussed in detail in the previous chapter, are applicable too. It is also important to take into account implications of the recently enacted *The Transgender Persons (Protection of Rights) Act, 2019*.¹⁰¹ However, several sections of the Act, enacted in December 2019, have been challenged in the Supreme Court of India.¹⁰² These sections prima facie indicate an attempt to dilute the principle of gender identity, thus this report refrains from referring to any of the impugned sections. [See box for a snapshot on the main challenges raised against the Act.]

The Transgender Persons (Protection of Rights) Act, 2019: Key challenges

The Act, enacted in December 2019, has been challenged in the Supreme Court through multiple petitions by representatives of the Transgender communities and civil society organisations. The primary points of contentions raised in these petitions are given below:

1. **Section 2 (c)** defines family as “a group of people related by blood, or marriage or by

¹⁰¹ Available at: <http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf> (last accessed on 10th January 2020)

¹⁰² *Swati Bidhan Baruah v. Union of India* (n 26).

adoption made in accordance with law". It has been contended that this section denies all agency of Transgender individuals to the families of choice including the Gharana system for Hijra/Kinnar/Aravani and many other trans people of socio-cultural and religious sects.

2. **Sections 5-7:** These sections elaborate on the procedure for obtaining a "Transgender certificate" from the District magistrate, and the procedure for "post-operative" trans individuals to identify within the gender binary. This calls for a provision in Section 7(2) where a certificate by the chief medical officer would be required for the change in certificate by the District Magistrate. This has been contended as being in contradiction to the 'Right to self-determination of gender' as affirmed in the *NALSA Judgment*.
3. **Section 12:** This Section suggests that "no child shall be separated from parents or immediate family, on ground of being Transgender, unless ordered by a competent court." The point of contention is that this confuses the categories of "intersex" with "Transgender" while speaking about a "Transgender" child. Moreover, though a competent court has been specified, the vulnerability of the child has not been elaborated upon, neither do most courts have child friendly infrastructure. The point of contention could also be the duplicity of mandate of the Child Welfare Committees as set up under the Juvenile Justice (Care and Protection of Children) Act, 2015.
4. **Section 18:** This section defines the various offences against the person of a Transgender individual, including emotional, sexual, economic and physical violence and lays down the punishment as a period not less than 6 months, up to two years with a fine. This has been challenged as being disproportionately less punishment when compared to punishments for similar offences against women. Further there is no clarity or amendments for the inclusion of trans people as victims in laws related to sexual offences.

Yet, Section 3 of the said Act assumes much importance in the present context. Section 3, prohibits any person or establishment to discriminate against a Transgender, including unfair treatment in educational establishments, in employment, in healthcare services and when the person is care or custody of a government or private establishment; as well as denial of right to movement, right to property, or opportunity to hold public office. This section thus, when read in context of prisons, **explicitly prohibits the unfair treatment of Transgender prisoners.**

In context of the dicta laid down in by the Supreme Court in the *NALSA judgement* Transgender persons **are entitled to legal protection of laws in all spheres** as enjoyed by any other citizen of this country, a protection which is extended to persons in custody as well. Further, **the values of privacy, self-identity, autonomy and personal integrity** being recognised by the SC as fundamental rights guaranteed to members of the Transgender community, must be protected and respected even within prison settings.

The right to treatment with humanity while in detention, is also enshrined in Principle 9 of the *Yogyakarta Principles 2007*. The principles reiterate that everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of human persons, and affirm that sexual orientation and gender identity are integral to each person’s dignity. States are also obligated to ‘put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population’.

These are the basic foundations which must inform policies for the treatment of Transgender persons confined in prisons. When applied to specific prison processes, there are various state obligations and principles that prison systems must adhere to in order to ensure that rights of Transgender persons are protected and effective opportunities for realisation of all such rights are afforded to them. The basic minimum standards as applicable for various prison processes, are discussed below.

a. PRISON PROCESSES: ADMISSION, SEARCH AND ASSIGNING OF WARDS

A perusal of the state jail manuals and the Model Prison Manual, 2016,¹⁰³ indicates that the admission process includes recording of prisoner information, physical search and allocation of wards. In particular, the following aspects comprise admission procedures in prisons:



¹⁰³ Model Prison Manual, 2016, available at: https://bprd.nic.in/content/423_1_model.aspx (last accessed on 7th January 2020).

In context of Transgender persons and these prison processes, the Yogyakarta Principles obligates governments to adopt and implement policies to combat violence, discrimination and other harm on grounds of gender identity, gender expression or sex characteristics for persons who are deprived of their liberty in processes such as placement and body searches. They further obligate states to adopt and implement policies that ensure that Transgender persons are capable of participating in decisions regarding their placement in places of detention. The recognition of Transgender persons as a third gender also attains importance in this context, with prison administrators mandated to uphold the right of gender identity and self-identification.

- i) **Recording of prisoner information in warrants, history tickets and admission registers:** A history ticket is an essential document for documenting the identity and case particulars of a prisoner. It contains essential information such as the prisoner's identity, economic background, dates of admission, transfer and release, medical record, legal record and name of family members to name a few.¹⁰⁴ The warrant and admission registers too contain some of these particulars. All three documents have a column for denoting gender for each person, which should, in compliance with applicable standards, permit recording of gender of prisoner as male, female or Transgender. This would be in adherence of directions cast upon the Centre and State Governments by the Supreme Court to grant legal recognition to Transgender persons of their gender identity as male, female or as third gender.
- ii) **Search procedures:** A thorough search of inmates is essential and mandatory when being admitted to prisons, and both the Prison Act, 1894¹⁰⁵ and jail manuals of States contain provisions regarding the same. Traditionally, these provide guidelines to the effect that male prisoners are searched by male staff, and female prisoners by female staff. However, prison administrators are mandated to ensure that these provisions accommodate preference of Transgender persons and permit search by officials of their preference based on their self-identified identity and not the identity given to them at birth.
- iii) **Placement inside prisons:** Once admission procedures are completed, prisoners are allocated wards. In some prisons, the first 24 hours are spent in the admissions ward, before being allocated space in accommodation with other prisoners. For Transgender persons, state policies must acknowledge and protect their placement preference based on self-identity and not the identity given to them at birth. The existence of male or female genitalia should not be the determinant factor for establishing gender identity,

¹⁰⁴ Commonwealth Human Rights Initiative, "History Ticket: The Prisoner and his Right to Information", available at: <https://humanrightsinitiative.org/download/1456998631History%20Ticket%20Pamphlet%20English.pdf> (last accessed on 7th January 2020).

¹⁰⁵ Section 24 (3), Prison Act, 1894.

as affirmed in the NALSA Judgment.¹⁰⁶ Thus, Transgender persons must be allowed to choose whether to be placed in male or female section, or a separate section altogether.

b. PRISON HYGIENE AND HEALTHCARE FACILITIES

State governments and prison administrators must frame policies that accommodate the needs and requirements of Transgender persons in furtherance of their right to equitable, adequate, safe and secure sanitation and hygiene.¹⁰⁷ Thus, they must ensure that places of detention have adequate sanitation facilities which can be accessed safely and with dignity¹⁰⁸ by all prisoners including the provision of separate toilets and other facilities.¹⁰⁹

Additionally, prison administrators must provide all Transgender persons adequate access to medical care and counselling, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired.¹¹⁰ Medical healthcare facilities are an important part of prison management, and prison manuals contain provisions towards this. Prison administrators should ensure that these provisions include measures to ensure medical care for Transgender persons, including the operation of HIV sero-surveillance centres within prisons to address their health issues and risks.¹¹¹

c. TRAINING AND AWARENESS

State governments must ensure that placement of Transgender persons in detention avoids their further marginalisation, or subjects them to risk of violence, ill-treatment or physical, mental or sexual abuse.¹¹² This necessitates that programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities be undertaken, regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.¹¹³ Awareness is important to ensure that Transgender persons feel that they are part and parcel of the social life,¹¹⁴ and thus adequate steps must be taken by prison training institutes for inclusion of specialised training programmes for prison officers, warders, visitors etc. Awareness programmes must not only be limited to prison staff and should include prisoners too.

¹⁰⁶ *NALSA Judgment* (n 17) para 129 (5). – ‘Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders.... and any insistence for SRS for declaring one’s gender is immoral and illegal.’

¹⁰⁷ Yogyakarta Plus Principles, 2017 (n 32) Principle 35.

¹⁰⁸ Yogyakarta Plus Principles, 2017 (n 32) Principle 35 D.

¹⁰⁹ *NALSA Judgment* (n 17), para 129(6).

¹¹⁰ Yogyakarta Principle 2007 (n 13) 9 B.

¹¹¹ *NALSA Judgment*(n 17) para 129(4) and 129(6).

¹¹² Yogyakarta Principles, 2007 (n 13) Principle 9A.

¹¹³ Yogyakarta Principles, 2007 (n 13) Principle 9G.

¹¹⁴ *NALSA Judgment* (n 17), Para129(8).

d. SPECIALISED CARE & TREATMENT

Prison administrators are mandated to take into account individual needs of prisoners, particularly vulnerable categories, when formulating policies.¹¹⁵ They are mandated to take steps to secure full and effective participation of Transgender persons and take welfare measures to protect the rights and interests of Transgender persons.¹¹⁶ This requires the formulation of schemes and programmes that are Transgender sensitive, non-stigmatising and non-discriminatory. It also necessitates adoption of measures to promote and protect the right of Transgender persons to participate in cultural and recreational activities within prisons.¹¹⁷ Therefore, prison administrators must take into account the specific needs and requirements of Transgender persons in provisioning for care and treatment of Transgender prisoners, and in recreational and educational activities conducted inside prisons.

4. PRISON MONITORING & OVERSIGHT

Prisons are envisaged to have a two fold system for regular inspections of prisons and penal services which comprises internal or administrative inspections conducted by the prison administration; and of external inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.¹¹⁸ The objective of these inspections is to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.¹¹⁹ In context of Transgender persons, state governments should provide for effective oversight of detention facilities, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with Transgender persons. The independent monitoring process should include non-governmental organisations including those working in the spheres of sexual orientation and gender identity as well.¹²⁰

In India, the Prisons Act of 1894 recognised the concept of external monitoring of prisons and provides for the states to frame rules for prison visitors. Consequently, the states framed rules for prison visitors which mandated appointment of official and non-official visitors and constitution of a Board of Visitors (BOVs) for the prisons in states. A Board of Visitors (BOV) includes official and non-official visitors who regularly visit prisons and hold meetings to address the issues of prisons and prisoners. Official visitors include judicial officers, district magistrate, medical officers,

¹¹⁵ Nelson Mandela Rules 2015 (n 8) Rule 2.

¹¹⁶ Transgender Persons (Protection of Rights) Act 2019, (n 21), Sec 8(1) & (2).

¹¹⁷ Transgender Persons (Protection of Rights) Act 2019, (n 21), Sec 8(3) & (5).

¹¹⁸ Nelson Mandela Rules 2015 (n 8), Rule 83(1).

¹¹⁹ Nelson Mandela Rules 2015 (n 8), Rule 83(2).

¹²⁰ Yogyakarta Principles 2007 (n 13), 9F.

welfare officer, etc. and Non-Official Visitors (NOVs) are public spirited individuals having interest in prisons who are appointed as independent visitors to a prison.

In context of Transgender persons, state governments must consider inclusion of experts working in the sphere of sexual orientation and gender identity in the Board of Visitors, as well as ensuring regular monitoring of places where Transgender persons are confined. Further, the government must also designate a person to be a 'complaint officer' to deal with complaints relating to violation of rights of Transgender persons in prisons.¹²¹

5. PRISON ADMINISTRATION AND RECRUITMENT OF TRANSGENDER PERSONS

Everyone has the right to decent and productive work without discrimination on the basis of sexual orientation or gender identity. Governments are mandated to ensure equal employment and advancement opportunities in all areas of public service, including all levels of government service and employment in public functions.¹²² A Transgender person cannot be discriminated against in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.¹²³ This implies, that there must be no inhibitions in the employment of Transgender persons within prison systems as prison administrators or any other functionary. And when employed, all protection must be afforded to them against all forms of discrimination. This is further corroborated by Section 3 (C) of the Transgender Persons' Protection of Rights Act, 2019 which enlists "denial of, or termination from, employment or occupation" as a ground to claim discrimination.

The applicable standards that ensure protection of rights of Transgender persons in Indian prisons, are still evolving. The preceding sections have outlined the basic standards that have specific implication on some key prison processes and mechanisms. It is however, also important to understand ground realities and assess compliance of existing prison processes to the standards set out in this section. This will help identify gaps in implementation and framing of policies.

¹²¹ Transgender Persons (protection of rights) Act 2019, (n 21), Sec 11.

¹²² Yogyakarta Principles 2007 (n 13), Principle 12.

¹²³ Transgender Persons (protection of rights) Act 2019, (n 21), Sec 9.

V. GROUND REALITIES: AN ANALYSIS OF FINDINGS

The previous chapter outlined the standards applicable for the treatment of Transgender persons in prisons. However, experiences of Transgender persons who have been confined in prisons indicate that the ground realities for treatment of Transgender persons are far removed from the standards. In order to document these ground realities, information was sought from all states and union territories in India. Though data has its own limitations, and cannot provide comprehensive information, it can still provide specific information that enables an assessment of compliance by states/UTs of the basic minimum standards applicable. An analysis of the key findings and gaps in securing rights of Transgender persons is provided in this chapter.

A. INCLUSION OF 'THIRD GENDER' CATEGORY IN DOCUMENTATION PROCESSES BY PRISONS:

Information was sought from prisons on whether they record data on Transgender prisoners separately i.e. under the third gender category or the male/female binary categorisation. This question is pertinent, as the latest available data on prisons in India – National Crime Records Bureau's Prison Statistics India 2018¹²⁴ – continues to report data of prisoners within the male/female binary. Interestingly, the responses received from 34 states and union territories indicate that there is no uniformity in recording of data of Transgender persons inside prisons. Out of the 28 states and six union territories that responded to this particular question, only nine of them (Andhra Pradesh, Goa, Himachal Pradesh, Karnataka, Meghalaya, Sikkim, Uttarakhand, Dadra & Nagar Haveli and Puducherry) stated that the data of Transgender inmates was being recorded apart from male and female. Nine of them (Arunachal Pradesh, Assam, Chhattisgarh, Mizoram, Nagaland, Tamil Nadu, Telangana, Chandigarh, and Andaman & Nicobar Islands) stated that the data of Transgender inmates was not being recorded separately.

Additionally, in states like Gujarat, Jharkhand, Kerala, Maharashtra, New Delhi, Rajasthan, Tripura, Uttar Pradesh and West Bengal, there existed a lack of uniformity in regard to recording of data by jails within the State itself. While some of the jails in these States stated that data of Transgender persons was being recorded separately from male and female, other jails responded that there was no provision to record the data of Transgender persons separately. Varied reasons were provided by them for not recording the data separately, such as:

¹²⁴ Prison Statistics India, 2018, available at: <http://ncrb.gov.in/StatPublications/PSI/Prison2018/PrisonStat2018.htm> (last accessed on 7th January 2020).

- They had no occasion to record data of Transgender persons previously, as no Transgender person had ever been detained in their jails.
- There were no provisions for maintaining separate data in their respective jail manual (other than male or female), as a result of which, the data of Transgender persons was being recorded as either male or female, based on the gender identity assigned to them at birth.
- Many jails responded to the question as “nil”, “not applicable” or “zero” – which indicates a lack of understanding of the question itself.

From amongst the States (and jails within the States) which responded that the data of Transgender persons was being maintained, some jails from the States of Uttar Pradesh (District Jail, Hamirpur, District Jail, Hardoi, District Jail, Jaunpur, District Jail, Kaushambi) and West Bengal (Siliguri Special Correctional Home, Krishnagar District Correctional Home, and Mathabhanga Subsidiary Correctional Home) stated that they were maintaining their records in the **E-Prison software**, which had the option of recording the data of Transgender persons as “eunuch” (Please see Annexure B).

S. No	States and Union Territories	Population of Transgender Prisoners	Whether data of Transgender persons is recorded?
1.	Andhra Pradesh	19	Yes
2.	Arunachal Pradesh	0	No
3.	Assam	0	No
4.	Bihar	Not answered	Not answered
5.	Chhattisgarh	Not answered	No
6.	Goa	0	Yes
7.	Gujarat	2	Yes (Some Jails)
8.	Haryana	0	Not answered
9.	Himachal Pradesh	0	Yes
10.	Jharkhand	2	Yes (Some Jails)
11.	Karnataka	18	Yes
12.	Kerala	0	Yes (Some Jails)
13.	Manipur	Not answered	Not answered
14.	Madhya Pradesh	18	Not answered
15.	Maharashtra	9	Yes (Some Jails)

S. No	States and Union Territories	Population of Transgender Prisoners	Whether data of Transgender persons is recorded?
16.	Meghalaya	0	Yes
17.	Mizoram	Not answered	No
18.	Nagaland	0	No
19.	New Delhi	6	Yes (Some Jails)
20.	Odisha	20	Not answered
21.	Punjab	9	Not answered
22.	Rajasthan	2	Yes (Some Jails)
23.	Sikkim	0	Yes
24.	Tamil Nadu	1	No
25.	Telangana	40	No
26.	Tripura	0	Yes (Some Jails)
27.	Uttarakhand	9 ¹²⁵	Yes
28.	Uttar Pradesh	47	Yes (Some Jails)
29.	West Bengal	7	Yes (Some Jails)
30.	Chandigarh	0	No
31.	Dadra & Nagar Haveli	0	Yes
32.	Puducherry	5	Yes
33.	Lakshadweep	Not Answered	Not answered
34.	Andaman & Nicobar Islands	0	No
Total		214	--

Table 2: Population and Recording of Data of Transgender prisoners, India

Population of Transgender prisoners: As per the data received, in the period between May 2018 and April 2019, a total of 214 Transgender persons were incarcerated in different jails across the country. Uttar Pradesh and Telangana reported the highest number with 47 and 40 Transgender inmates respectively. While the RTI response from Telangana did not provide information on the exact jails where these persons were incarcerated, in Uttar Pradesh, the maximum number of

¹²⁵ In regard to the response received from District Jail, Dehradun, there existed a discrepancy in response. While the PHQ stated that Nine inmates were lodged in District Jail, Dehradun, the RTI response received from District Jail, Dehradun stated that seven inmates were lodged for the above-mentioned time period.

Transgender persons were incarcerated in Central Jail, Ghaziabad (19), followed by District Jail, Agra (6), District Jail, Bareilly (4), District Jail, Firozabad (3), District Jail, Hardoi (3), District Jail, Mathura (2), District Jail, Shahjanpur (2), District Jail, Rae Bareilly (2), District Jail, Muzaffarnagar (2), District Jail, Gonda (1), District Jail, Etah (1), District Jail, Moradabad (1) and District Jail, Kanpur Rural (1).

The other States which had high number of incarcerated Transgender persons were **Odisha (20), Karnataka (18), and Madhya Pradesh (18)**. In regard to Odisha, the jail with maximum numbers were Sub-Jail, Jharsuguda (11) followed by Special Jail, Bhubaneswar (9). While Karnataka did not provide a breakup of the jails where the Transgender persons were incarcerated, in Madhya Pradesh, the jail with maximum numbers were Circle Jail, Jabalpur (11) followed by Circle Jail, Bhopal (4), Circle Jail, Hoshangabad (1), Circle Jail, Ratlam (1) and Circle Jail, Ujjain (1).

It is important here to highlight that there may have been more than 214 Transgender prisoners confined in prisons across the country. With no proper mechanism or uniformity in the maintenance of data regarding Transgender persons, it is highly likely that this figure might be skewed, and actual numbers might be higher. The recognition of a 'third gender' and respecting 'self-identification' are mandatory requisites which prison administrations must adhere to. Inclusion of a policy to record information on Transgender prisoners separately is a positive affirmation of Transgender persons right to self-identification. It will also enable documentation of Transgender prisoner cases, which are essential to understand impact of criminalisation and incarceration on such prisoners, as well as help understand special needs of Transgender prisoners.

B. PLACEMENT OF TRANSGENDER PERSONS INSIDE PRISONS:

Policies must be in place to guide the placement and segregation of Transgender persons within prison. Data was sought on the process adopted by prisons for the segregation for male, female and Transgender prisoners and placement in specific enclosures or barracks after admission. The information received indicated a lack of any uniform policy regarding placement of Transgender persons in prisons. Varied responses were received from both the PHQs as well as individual jails in regard to the question of segregation of male, female and Transgender prisoners during admission (See figure 2). Non-uniformity was observed not only across the States but was also observed across the jails within the same State. Based on the various responses received, below is a summarisation of the responses received:

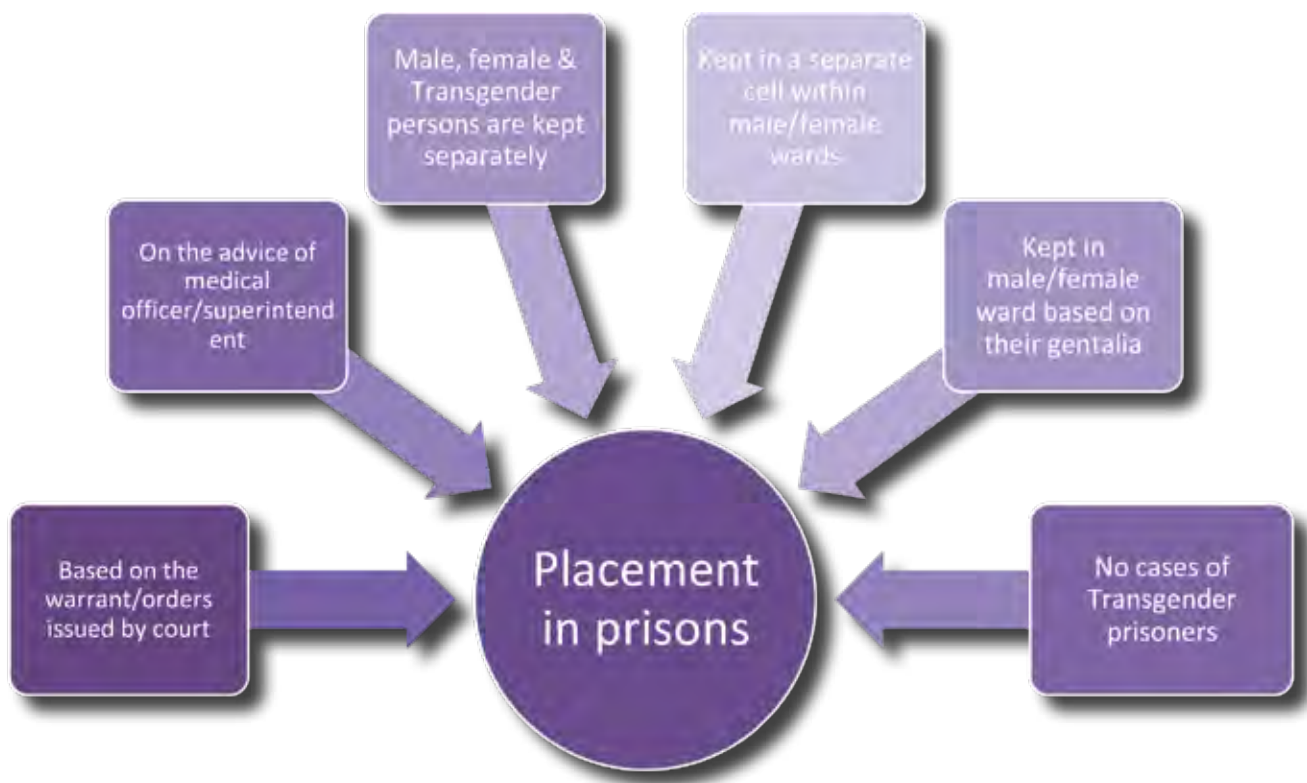


Figure 2: Responses Regarding Placement of Transgender Persons inside Prisons, India

1. Placement based on gender mentioned in court warrant: In the responses given by the State of Punjab and some jails in the States of Jharkhand¹²⁶ and Kerala¹²⁷, it was stated that whenever a Transgender person is admitted to the prison, the segregation happens on the basis of the gender mentioned in the warrant issued by the Court for judicial custody. This however, does pose further questions i.e. where the court does mention Transgender/third gender in the warrant for judicial custody, what steps does the prison administration take in these States and jails for the process of placement of Transgender/third gender inmates? Also it is unclear that if, the courts mention gender assigned at birth of the Transgender person, i.e. male or female, then what steps do the prison administration take vis-à-vis placement? Do they place them in the male or female wards of the jails? Or do they provide them with a separate space within the jail for Transgender inmates?

2. Placement based the advice of the medical officer: Majority of the responses informed that the placement of Transgender persons is premised on the report of the medical examination conducted by the medical officer at admission. For example, in some of the responses received from the States of Himachal Pradesh, Jharkhand,¹²⁸ and some jails in Goa,¹²⁹ Uttarakhand¹³⁰

¹²⁶ Sub-Jail, Ghatshila, East Singhbhoom.

¹²⁷ District Jail, Poojappura, Thiruvananthapuram.

¹²⁸ District Jail, Garhwa.

¹²⁹ Sub-Jail, Colvale.

¹³⁰ District Jail, New Tehri, Tehri Garhwal, District Jail, Dehradun.

and Uttar Pradesh,¹³¹ it stated that Transgender persons were placed based on the recommendation of the medical officer and/or jail superintendent. However, it was not clearly mentioned where the Transgender persons would be placed i.e. in male ward, female ward or separately. A perusal of the responses, indicates two approaches that prison administrators were taking:

- *They were placed in the Male/Female wards based on their genitalia:* In the responses received from Mizoram, Delhi, and some jails in the Uttarakhand¹³² and Uttar Pradesh¹³³ it was informed that the segregation was happening primarily on the basis of the genitalia/birth sex as identified by the medical officer. To this extent, the NCR of Delhi was the only State which attached the rules (**Delhi Prison Rules, 2018**)¹³⁴ that recognised Transgender inmates as a category of inmates with special needs and mandated their separation. A circular was also shared, which lays down procedure for segregation of Transgender persons based on their genitalia. For the Mizoram, Uttarakhand and Uttar Pradesh, it was merely mentioned that they segregated in adherence with their jail respective jail manuals, but the specific rules were not provided.
- *Male/Female/Transgender Persons are kept Separately:* In the responses received by the States of Andhra Pradesh, Telangana, Gujarat, Maharashtra, Kerala, Rajasthan, Karnataka, Sikkim, Puducherry, and Andaman & Nicobar Islands, and some jails in Tamil Nadu,¹³⁵ and Uttar Pradesh,¹³⁶ it stated that after admission to prisons, Transgender persons were kept separately from male and female inmates. However, some further states that the segregation was maintained by either confining Transgender prisoners in separate cells, isolation wards or inside hospitals.

3) No separate provisions for placement, or no previous cases in prisons:

Some states like Arunachal Pradesh, Assam and Nagaland, claimed to have no information on segregation, as there were no such persons confined. States like Odisha, West Bengal and Tripura, stated that their jail manuals only contained provisions regarding the segregation and placement of male and female inmates. Their response did not contain the process undertaken, if a Transgender person was admitted to their prison.

4) None or incomplete response: Bihar, Chhattisgarh, Haryana, Manipur, Madhya Pradesh and Lakshadweep, provided no answer in this regard. In the response received by the Union Territory of Chandigarh, reference was made to Rule 496 of Punjab Jail Manual, 1996, which

¹³¹ District Jail, Ghazipur, District Jail, Gautam Buddha Nagar, District Jail, Agra, District Jail, Moradabad, District Jail, Jaunpur, District Jail, Kannauj.

¹³² District Jail, Haridwar.

¹³³ District Jail, Hamirpur, District Jail, Mathura, District Jail, Kasganj, District Jail, Shahjahanpur, District Jail, Maharganj, Central Jail, Gaziabad, District Jail, Sahranpur, Sub-Jail, Deoband, Sahranpur, District Jail, Rae Bareilly, District Jail, Muzzafarnagar, District Jail, Pratapgarh, District Jail, Badaun, District Jail, Khiri.

¹³⁴ Please see: Annexure C.

¹³⁵ Women's Prison, Vellore.

¹³⁶ Central Jail, Bareilly, District Jail, Bareilly, District Jail, Firozabad, District Jail, Bulandshahar, District Jail, Gorakhpur, District Jail, Mainpuri, District Jail, Mirzapur, District Jail, Deoria, District Jail, Chitrakoot, District Jail, Etah, District Jail, Pilibhit, District Jail, Ayodhya, District Jail, Kanpur (Rural), District Jail, Sultanpur.

provides for separation of inmates and enlists “homosexuals” as a category of inmates that should be separated, but no guidance on how to identify such persons.

Therefore, it is apparent that there are no uniform circular/order/guidelines that can guide the placement of a Transgender person.

C. AWARENESS AMONG PRISONERS:

Since 2014, apart from the State of Karnataka, all the other States and Union Territories revealed that no awareness campaigns or activities were undertaken by their respective State Governments in regard to the legal recognition of third gender as an identity.

D. PRISON ADMINISTRATION: RECRUITMENT AND TRAINING

Between 1st January 2014 and 1st January 2019, the responses reveal that no Transgender person had been recruited by the prison department in any of the States or Union territories between the above-mentioned time period.

E. PRISON ADMINISTRATION: STAFF TRAINING:

None of the prisons reported of inclusion of any course/module in the Prison Training Institute's curriculum which focused on the aspect of awareness and sensitisation regarding the rights of LGBTI+ communities. However, although Karnataka, in its response, did mention that a training class was conducted in the prison training institute regarding the Transgender Persons (Protection of Rights) Bill, 2019.¹³⁷ Additionally, although the response from Dr Sampurnand Jail Training Institute, Uttar Pradesh, Lucknow stated that at present, they did not have any module/course included in their trainings regarding the awareness of rights of LGBTI+ community, they shared Unit-6 (Rights of Special Category of Prisoner) of the Training Manual of Basic Course for Prison Officers, 2017 by Bureau of Police Research and Development (hereinafter termed as BPRD Training Manual).¹³⁸ This Unit contained topics on “unspecified special category prisoners” which included a discussion on Transgender prisoners, *Nelson Mandela Rules* and the *Yogyakarta Principles* on the application of international human rights law in relation to sexual orientation and gender identity. The response also added that the BPRD Training Manual was under consideration by the government, and once approved all courses would be included within their curriculum.

¹³⁷ Please see Annexure D for the PowerPoint presentation of the Training class regarding the Transgender Persons (Protection of Rights) Bill, 2019.

¹³⁸ Please see: Annexure E for the copy of the Training Manual of Basic Course for Prison Officers, 2017 by Bureau of Police Research and Development (BPRD).

VI. CONCLUSIONS AND RECOMMENDATIONS

The analysis and discussions provided in preceding sections affirm that there is little, if any compliance of the standards applicable to the treatment of transgender persons confined in prisons. It is evident from the information received on select aspects of prison administration that governments have failed to comply with standards applicable for ascertaining special needs of transgender prisoners. Not only prisons, but courts too fail to recognise a 'third gender' and the gender of transgender persons continue to be identified as per their genitalia, and documented in the male/female binary categorisation. This lack of recognition seeps into all prison processes including search procedures and placements within prisons. Further, prisons continue to cater to primarily male populations, and fail to acknowledge the vulnerabilities of transgender prisoners. Even with a mandate to ensure inclusivity, and have special programmes – no such initiatives are undertaken within prisons. There are no awareness camps for prisoners, nor specialised trainings for prison officers. Recruitments continue to be a non-inclusive process, with not a single transgender person having been recruited since 2014, i.e. the year when the *NALSA Judgment*¹³⁹ was pronounced.

This indicates both a neglect as well as ignorance by functionaries within the criminal justice system. This necessitates that various functionaries of the criminal justice system resolve to take initiatives to address these gaps and ascertain framing of policies, in consultation with experts from the community. As the discourse on transgender persons and prisons is relatively new, it would be pertinent to mention as an overarching principle that all policy and legal measures must be adaptive and devised through consultative processes with members of the Transgender community and people/organisations working on the issues of the same. A diverse but non-exhaustive list of suggestions, that can be pursued by civil society organisations or individuals with the concerned stakeholders are provided below:-

A. ASCERTAINING THAT PRISON PROCESSES ARE INCLUSIVE AND TAKE INTO ACCOUNT THE SPECIAL NEEDS OF TRANSGENDER PERSONS

Central Government/Ministry of Home Affairs

- The central government may formulate a model policy on ascertaining special needs of transgender persons in prisons, and outline guidance on documentation, search procedures, placement, medical facilities and recreational/welfare/educational activities within prisons.
- The central government may direct the BPR&D to prepare the model policy, in consultation with expert groups and individuals.

¹³⁹ NALSA Judgment (n 17).

- The central government may direct BPR&D to revise the Model Prison Manual 2016, to be inclusive of transgender persons, and provide specific provisions for their proper care and treatment inside prisons.
- The central government may direct the National Crime Records Bureau to include data on persons belonging to Transgender persons in their annual statistics on prisons and crime i.e. Prison Statistics India and Crimes in India.
- The central government may direct the National Informatic Centre (NIC) to refrain from classifying persons as 'eunuchs', and incorporate a non-binary approach in data records.
- The central government may strengthen coordination and communication between the National Council for Transgenders, National Human Rights Commission and other prison oversight bodies including official/ non- official visitors.

State Governments/Prison Departments

- State governments/prison departments should make available the facility for inmates to self-identify as Transgender and facilitate the process of acquiring the Transgender certificate as per section 5 of the Transgender Persons' (Protection of Rights) Act, 2019 from the District Magistrate, if such a request is made by the person concerned.
- State governments/ prison departments should devise recruitment processes which include the recruitment of Transgender Persons including sensitive and responsive guidelines/ qualifications for physical fitness and attributes for Transgender Persons.
- State governments/prison department should review their existing acts or rules to ensure that the special needs of transgender persons are taken into account, including recognition to 'third gender' as a separate category in documentation, special search procedures and define the placement criteria, with specific emphasis on '*identity-based placement*' instead of '*genitalia-based placement*'. Medical facilities including access to hormone therapy or sexual re-assignment surgery, should also be included. They must also ensure that the recreational/welfare/educational activities undertaken in all prisons within the state/union territory are inclusive of transgender persons.
- State governments/prison departments should designate a complaint officer in each prison or at the prison headquarter, in compliance with Sec 11 of the Transgender Persons' (Protection of Rights) Act.
- State governments should designate members of Transgender Welfare Board established under the NALSA v. Union of India judgment as part of the Board of Visitors.
- All procedures provided in the state prison rules must be administered on transgender persons based on their self-identity, for example, medical examinations and reference to outside hospitals, requisition of police escorts to court/hospital, etc.
- Prison monitors, particularly, the official visitors like the District Magistrate, the District & Sessions Judge and the representatives of National/ State Human Rights Commissions,

must interact with transgender persons, if any, during their periodic visits to the prison to ensure that their rights are protected at all times.

B. RAISING AWARENESS AMONG PRISONERS REGARDING TRANSGENDER PERSONS

National Legal Services Authority/State Legal Services Authority

- NALSA and SLSAs may develop awareness programmes for sensitisation of prisoners on issues related to gender identity and sexual orientation, which can be organised inside prisons on a regular basis. These can either be stand-alone programmes, or included in existing awareness programmes.
- NALSA/SLSAs may direct the jail visiting lawyers and paralegal volunteers who operate the prison legal aid clinics to report and document any discrimination or rights violations faced by transgender prisoners to the concerned DLSA.
- NALSA/SLSAs may develop legal awareness posters and pamphlets documenting standards applicable for transgender prisoners, and make them available in local languages inside prison libraries.

Prison Departments

- Prison departments may develop awareness programmes for sensitisation of prisoners on issues related to gender identity and sexual orientation.
- Prison departments may develop and display awareness posters and pamphlets documenting standards applicable for transgender prisoners, inside prisons and make available copies of relevant resources in the prison libraries.

C. STRENGTHENING OF TRAINING PROGRAMMES FOR OFFICERS AND WARDERS

Central Government/Ministry of Home Affairs

- The central government may direct the BPR&D to prepare compliance report on adaptation of BPRD Training Manual, with prison training institutions across the country.
- The central government may direct the BPR&D to revise and update Unit 6 (Rights of special categories of prisoners), which contains a module on rights of transgender persons, to include recent developments.

State Governments/Prison Departments

- State governments/prison departments should ensure that training curriculums for prison officers and warders include specialised courses on '*Gender Identity and Sexual Orientation: Protection of rights of LGBT+ persons in prisons*'.

D. INCREASED DOCUMENTATION OF EXPERIENCES OF TRANSGENDER PERSONS IN INDIAN PRISONS

It is also important to document experiences of transgender persons, as well as others from the LGBT+ community, who have been confined within prisons. Apart from an active role of community based organisations, collectives and individuals in this process, media plays a crucial role in ensuring this. Media must take conscious efforts for sensitive reporting regarding Transgender persons, specifically regarding those in prisons. A few areas which require documentation are:-

- documentation of instances of discrimination or targeted violence against the prisoners from LGBTI+ communities,
- documentation of instances of privacy violations in regard to search violations, access to separate washrooms, and maintaining confidentiality of sensitive information on medical history (such as person suffering from HIV+ or AIDS),
- documentation of issues faced by the community in police custody, observation homes, court processes etc,
- documentation of cases where the community could not access free legal assistance, or was provided poor quality of legal services, and
- documentation of issues arising out of the intersectional impact of the stigma based on gender identity and sexual orientation.

Documentation of these experiences, would enable the assessment and evaluation of ground realities. This knowledge would enable organisations and individuals to effectively address the situation on the ground, and ensure that prisons are administered in a manner that duly acknowledges the rights of transgender persons.

PART: II

ANNEXURES

ANNEXURE A

13th May, 2019

From,

--

To,

The Public Information Officer

Respected Sir/Madam,

Sub: Application for information under section 6(1) of the Right to Information Act, 2005.

I request you to kindly provide me the following information as per Section 6 (1) of the Right to Information Act, 2005:

1. Whether any people from the Transgender/third gender have been recruited by your department between 1st January, 2014 to 1st January, 2019?
2. Whether there exists a module/course regarding the awareness of Transgender/third gender and LGBT+ groups in Prison Training Institutes? If yes, please provide a true copy of the same.
3. Whether any kind of awareness drive has been undertaken by the State government for the legal recognition of gender identity as male, female or Transgender/third gender since judgment of *Supreme Court of India in NALSA v Union of India* in 2014?
4. Whether the jail records inmates data of Transgender/Third gender, i.e. other than male or female?
5. What is the process of segregation of Male, Female and Transgender/Third gender during admission to the jail?
6. If Yes, please provide a true copy of any State specific circular/orders/guidelines issued by the State, the prison department, judiciary or any other authority in relation to recording of inmate data for Transgender/Third Gender, if any.
7. Please provide a population statement of Transgender/third gender inmates (both convicts and under-trials) as on 30th April, 2019.
8. Please provide a population statement of Transgender/third gender inmates (both convicts and under-trials) from 1st May, 2018 to 30th April, 2019.

I have also attached an IPO for Rs. 10/- towards payment of the prescribed application fee as under the section 6(1) of the Right to Information Act.

I request you to kindly provide me with the information requested above at my postal address as mentioned above.

Sincerely,

--

Annexure-1

Glossary for Reference:

1) **Transgender /Third Gender** comprises of Hijras, Kinnars, Eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc. They also do not identify as either male or female. (paras 11 & 12 *NALSA v Union of India*¹⁴¹)

¹⁴¹ W.P. (Civil) No. 400 of 2012

ANNEXURE B

leg

कार्यालय अधीक्षक जिला कारागार, हरदोई।

पत्रांक-1729/सू0अ0अधि0-2005 (37)/2019

दिनांक 21 जुलाई, 2019

की अरिजीत चौध

नि० 55 ए०, तीसरा तल, सिद्धार्थ बौधवास-1,

फालू सराय, नई दिल्ली-110016

सूचना अधिकार अधिनियम-2005 के अन्तर्गत प्रेषित अपने आवेदन पत्र दिनांक-26-06-2019 जो इस कार्यालय में दिनांक-04-07-2019 को प्राप्त हुआ है का संलग्न है।

- माँछित सूचना निम्नवत है:-
- बिन्दु सं०-1 जिला कारागार, हरदोई के कार्यालय स्तर से सूचना दिया जाना संभव नहीं है।
- बिन्दु सं०-2 जिला कारागार, हरदोई के कार्यालय स्तर से सूचना दिया जाना संभव नहीं है।
- बिन्दु सं०-3 जिला कारागार, हरदोई के कार्यालय स्तर से सूचना दिया जाना संभव नहीं है।
- बिन्दु सं०-4 जेल में प्रवेश करने वाले प्रत्येक बंदी का डाटा ई-प्रिजन के अन्तर्गत आनलाइन फीड किया जाता है। विपरीत लिंगी/किन्वर कैदियों का डाटा फीड करते हुए लिंग में ENUNCIATION चिन्होक्कन किया जाता है।
- बिन्दु सं०-5 जेल में प्रवेश के दौरान पुरुष, महिला और विपरीत लिंगी/किन्वर को अलग करने की प्रक्रिया क्या है-पुरुष, महिला को पृथक किया जाता है।
- बिन्दु सं०-6 जिला कारागार, हरदोई के कार्यालय स्तर से सूचना दिया जाना संभव नहीं है।
- बिन्दु सं०-7 30 अप्रैल, 2019 तक विपरीत लिंगी/तीसरा जेन्डर कैदियों (विचाराधीन बन्दी की संख्या-03 है) का विवरण ई०-प्रिजनर्स की प्रति संलग्न है।
- बिन्दु सं०-8 मई, 2018 से 30 अप्रैल, 2019 तक विपरीत लिंगी/तीसरा जेन्डर विचाराधीन की जनसंख्या-03 है विवरण हेतु ई०-प्रिजनर्स की प्रति संलग्न है।
- यदि आप उपर्युक्त सूचना से असंतुष्ट है तो आप अधिनियम की धारा-19 (1) के अधीन इस पत्र के प्राप्त होने के दिनांक से तीसरे दिन के भीतर प्रथम अपीलिय प्राधिकारी के समक्ष अपील दायर कर सकते हैं।

संलग्नक

उपरोक्तानुसार।
(30/7/19 46 पं-3)

माँछा
अधीक्षक/जन सूचना अधिकारी,
जिला कारागार, हरदोई



Name: SHAILI RAGHUVeer
 Gender / Age: M / 46
 Father Name: MANCHAR
 Location: 01
 JID: 23-4254-2018-UT(4254)
 PID: 949702



Prisoner Management System

Prisoner Master Details for PID 949702

- Home
- Prisoner Induction
- Court Management
- Sentence Management
- Case Management
- Search
- Reports
- Administration
- Logout

Manual Reg. No: 4254
 Prisoner Name: SHAILI RAGHUVeer
 Father/Husband Name: MANCHAR
 Mother Name:
 Gender: /
 Age: / 46
 Nationality: INDIAN
 Religion: Hindu
 Caste: Scheduled Caste
 Identification Marks: DOND KAN S JAGNY SE CHHIDE RIGHT BH/

First Admission Date: 29/11/2017
 Current Admission Date: 01/11/2017
 Present Address: NO 31/11, KANHA CAPE, MUMBAI
 State: UTTAR PRADESH
 District: LUCKNOW
 Permanent Address: Same As Present
 State: UTTAR PRADESH
 District: LUCKNOW

Classification Details

Prisoner Type: Under Trial
 Security Type: S1->LOW
 HandCuff: Baparca
 Casual/Habitual: C (C->Casual, H->Habitual)
 Entry Type: (C->Coerce, T->Transfer)
 Category: General
 Association with:

Family Details

Marital Status: Unmarried
 Spouse Name:
 No of Children: 0
 Relative Name:
 Relative Address:
 Mobile / Phone:

Other Details

ID Proof: NOT AVAILABLE NA

Literacy Code: SELECT

Occupation: UNKNOWN

Experience (Yr)

Income Category: SELECT

Qualification:

Spl. Qualification:

Enmity / Threat from others:

Injury / Illness (if any):

Remarks:

Note: * Fields are required



Name : VIVEK
Gender / Age : M / 26
Father Name : MITHLESH
Location : OT
JID : 23-3669-2013-UT(3699)
PID : 915615



Prisoner Management System

- Home
- Prisoner Induction
- Court Management
- Sentence Management
- Gate Management
- Search
- Reports
- Administration
- Logout

Prisoner Master Details for PID 915615

Manual Reg. No: 3655

Prisoner Name: VIVEK

Father/Husband Name: MITHLESH

Mother Name: CHHOTI BIRIYA

Gender: * / Age: * Eunuch / 26

Nationality: INDIAN

Religion: * Hindu

Caste: * General

Identification Marks: * SAMANE MATHE PER DAG CUT PEECHHE

First Admission Date: * 07/01/2013

Current Admission Date: * 07/01/2013

Present Address: * R/O TARGAWAN PG MANUPRA

State: * UTTAR PRADESH

District: * HARDOI

Permanent Address: * R/O TARGAWAN PG MANUPRA

Same As Present: * Same As Present

State: * UTTAR PRADESH

District: * HARDOI

Classification Details

Prisoner Type: * Under Trail

Entry Type: * (C->Counts, T->Transit)

Security Type: * S1->LOW

HandCuff Baparda

Casual/Habitual (C->Casual, H->Habitual)

Category: General

Association with:

Family Details

Marital Status: * Unmarried

Spouse Name:

No of Children: 0

Relative Name:

Relative Address:

Mobile / Phone:

Other Details

ID Proof: NOT AVAILABLE

Qualification: Illiterate

Literacy Code: SELECT

Sp. Qualification

Occupation: UNKNOWN

Enmity / Threat from others

Experience (Yr)

Injury / Illness (if any)

Income Category: SELECT

Remarks:

Note: * Fields are required

Update



Name : POOJA KINNAR
Gender / Age : F / 39
Father Name : LAXAMAN SINGH
Location : CT
JID : 73-4255-2018-UT(4255)
PID : 949704



Prisoner Management System

- Home
- Prisoner Induction
- Court Management
- Sentence Management
- Gate Management
- Search
- Reports
- Administration
- Logout

Prisoner Master Details for PID 949704

Manual Reg. No: 4255
 Prisoner Name: POOJA KINNAR
 Father/Husband Name: LAXAMAN SINGH
 Mother Name:
 Gender: * / Age: * Female / 39
 Nationality: INDIAN
 Religion: * Hindu
 Caste: * Other Backward Class
 Identification Marks: * LEFT BHAIJ KE UPER TIL RIGHT HANTH KE

First Admission Date: 2018/01/01
 Current Admission Date: 2018/01/01
 Present Address: * JED A/HEV 7 TOLA KASBA SAKH PUN BENAOLI
 State: * UTTAR PRADESH
 District: * HARDOI
 Permanent Address: * Same As Present
 State: * BIHAR
 District: * SIWAN

Classification Details

Prisoner Type: * Under Trial
 Security Type: * S1->LOW
 HandCuff: * Bapatia
 Casual/Habitual: * C (C->Casual, H->Habitual)
 Entry Type: * (C->Courts, T->Transit)
 Category: * General
 Association with:

Family Details

Marital Status: * Unmarried
 Spouse Name:
 No of Children: 0
 Relative Name:
 Relative Address:
 Relative Phone:

Other Details

ID Proof: NOT AVAILABLE NA
 Literacy Code: SELECT
 Occupation: UNKNOWN
 Experience (Yr):
 Income Category: SELECT

Qualification: Illiterate
 Spl Qualification:
 Enmity / Threat from other injury / illness (if any)
 Remarks:

Note: * Fields are required

Upd



ANNEXURE C


OFFICE OF THE SUPERINTENDENT CENTRAL JAIL NO.15, MANDOLI, DELHI-110093

SUB: APPLICATION UNDER RIGHT TO INFORMATION ACT, 2005

Refer to your letter received in this office vide letter No. F.10(3476489)/ID-8306-E/CJ/Legal/2019/23592 dated 20.05.2019 on the subject cited above. In this regard, point wise information in respect of this prison is as under:-

1. Not Available in this office.
2. Not Available in this office.
3. Not Available in this office.
4. Yes.
5. Separate lodging.
6. Copy enclosed.

In case you are not satisfied with the above reply, you may file an appeal as per Section 19 of Right to Information Act, 2005, before the First Appellate Authority i.e. Adl. Inspector General (Prisons), Prisons Head Quarters, Tihar, New Delhi-110064 within 30 days.


Superintendent of Prison/P.I.O.
Central Jail, No.15
Mandoli Delhi

No.F-15/SCJ-15/AS (RTI)/2019/ 1252

Date 06/06/19

SP. Arijjeet Ghosh R/o 55-A, 3rd floor, Siddhartna Chambers-1, Kalu Sarai, New Delhi-110016.

Copy to:-
APIO/Law Officer, PHQ, Tihar for information please.

- II. Any place specially appointed by government under section 417 of the Code of Criminal procedure 1973 (2 of 1974):
- III. Any place which has been declared by the government by general or special order to be a special prison.
- 40) **PRISONER/INMATE** means any person confined in prison under the order of a competent authority.
- 41) **PRISONERS WITH SPECIAL NEEDS** means Prisoners who have the propensity to inflict self-harm, have suicidal tendencies and/or are suffering from addiction and/or substance abuse, differently abled persons or transgender.
- 42) **PROBATION/WELFARE OFFICER** means an officer appointed as such by the State government to undertake probation work under the Probation of Offenders Act of 1958, or any other law.
- 43) **PROHIBITED ARTICLE** means an article, the introduction or removal of which into or out of a prison is prohibited by any rule made under this Act.
- 44) **REMAND PRISONER** means a person who has been remanded by court to prison custody, pending investigation by the police.
- 45) **REMISSION SYSTEM** means the system for regulating the award of marks to, and the consequent shortening of sentence, of prisoners in prison.
- 46) **RULES** mean a rule for the time being in force, made under or in pursuance of, the Act.
- 47) **SECTION** means a Section of the Act.
- 48) **SECURITY PRISONER** means any prisoner against whom there is a threat from any person.
- 49) **SEMI-OPEN PRISON** means any place within the prison complex so declared by the Government for temporary or permanent use for the detention of prisoners in which the prisoners are trusted to serve their sentences with minimal supervision and perimeter security and are not locked up in prison cells and do the work within the area demarcated by the Inspector General inside the prison complex as assigned to them from time to time while serving their sentence.

ANNEXURE C (1)

**OFFICE OF THE DIRECTOR GENERAL OF PRISONS
PRISONS HEADQUARTERS: TIHAR
JANAK PURI: NEW DELHI**

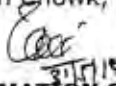
F.10 (3476489)/ID-8306-E/CJ/Legal/2019/25929 Dated: 31/5/19

This reply shall dispose of the application filed by Sh. Arjeet Ghosh, 55-A-3rd Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi-110016 seeking information under Right to Information Act, 2005.

In this regard, the point wise reply is as under:-

Point	Reply
1.	Notransgender /third gender has been recruited by Delhi Prison Department between 01/01/2014 to 01/01/2019.
2.	No such course/module exists in Delhi Prison.
3.	As per Delhi Prison Rules 2018.
4.	Yes
5.	As per the circular, the Doctor recognizes and certifies the gender to have female organ then she should be lodged in female jail separately and if recognized having male organ then he should be lodged in male jail separataely.
6.	Copy of circular attached.
7-8	The application has already been forwarded to all PIOs of Central Jail Tihar, Rohini and Mandoli for further necessary action.

If you are not satisfied with the above reply, appeal can be filed within thirty days from the date of receipt of this letter before Addl. Inspector General (Prisons), 1st Appellate Authority under Right to Information Act 2005 in his office at Prisons Headquarters, Lajwanti Garden Chowk, New Delhi.


PUBLIC INFORMATION OFFICER (PHQ)/
TIHAR: PHQ: DELHI

Sh. Arjeet Ghosh, 55-A, 3rd Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi-110016.

TIME BOUND
OUT TODAY

GOVT. OF NCT OF DELHI
OFFICE OF THE DIRECTOR GENERAL (PRISONS)
PRISONS HEADQUARTERS; TIHAR; NEW DELHI

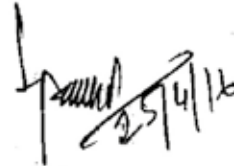
CIRCULAR

In continuation to the previous circular issued with regard to the necessity and time for the Criminal Justice System to effectively recognize the third gender (transgender) and create separate lock-up, prisons, toilets and so also to arrive at a consensus to suitably amend the rules relating to their lodging in prisons and lock-ups in this regard.

It is once again reiterated that the Jail Superintendents/RMO should ensure that the lodging of the transgenders should be separate and every care should be taken while dealing with their cases in person during judicial custody. Moreover, the Jail Superintendents should follow the medical opinion of the doctor transgender in female/male jail. In case if the Doctor recognize and certify the gender to have female organ then she should be lodged in female jail separately and if recognized having male organ then he should be lodged in male jail separately. It is to be ensured that appropriate balance between the needs of the transgender inmate should be kept in mind according to the Gender Recognition and as certified by the concerned Doctor.

A report regarding their lodgement on the basis of certification of the concerned doctor should also be filed in the concern court for appraisal. The system Analyst, PHQ should also ensure that PMS contains a field of third gender (transgender) also.

371
The above instruction should be scrupulously followed by the Jail
Superintendents/RMO and any deviation would be viewed
seriously.



MUKESH PRASAD
ADDL . INSPECTOR GENERAL PRISONS
DELHI

0(21070)/CJ/Legal/2016/5342-49 Dated : 25/4/16

All Superintendent Jails
RMO, Central Jail Hospital
All SMOs through RMO, CJH
System Analyst, PHQ

S

Copy to:—

Commandant TSP/CRPF/ITBP/DCP IIIrd Bn. DAP
Law officer, PHQ
SO to DG(P)
PA to AIG(P)

ANNEXURE C (2)



GOVT. OF NCT OF DELHI
**OFFICE OF THE SUPERINTENDENT
CENTRAL JAIL NO. 2, TIHAR, NEW DELHI**



Tele Fax: 011-28522110, Ph.: 011-28520695, 28520895, 28520684
E-mail: scj.tihar2@yahoo.com, superintendentcj2tihar@gmail.com Website: tihartj.nic.in
No. F.2/SCJ-2/CJ-2/RTI/2019/ 105 Dated: 17/06/2019


INFORMATION UNDER RIGHT TO INFORMATION ACT, 2005.

With reference to the RTI application filed by **Sh. Arijeet Ghosh**, 55-A, 3rd Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi-110016 duly forwarded by PIO, PHQ, Vide No. F.10 (3476489)/ID-E/CJ/Legal/2019/23592 Dated 20.05.2019 to provide information on the application under Right to Information Act, 2005.

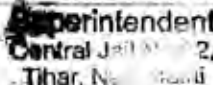
In this regard, the requisite information is as under:

- 1: No.
- 2: Prison Department follows all the necessary orders from GNCT of Delhi.
- 3: Yes.
- 4: Yes.
- 5: As per Delhi Jail Manual-2018.
- 6: Attached.
- 7: This is a convict Jail and "NIL" Transgender/Third Gender inmates lodged in this jail.
- 8: This is a convict Jail and "NIL" Transgender/Third Gender inmates lodged in this jail.

If you are not satisfied with above information you may file an Appeal u/s 19 of the RTI Act, 2005, to the First Appellate Authority, **Additional Inspector General (Prison)**, PHQ, Tihar, New Delhi within 30 days.


SUPERINTENDENT (PIO)
Central Jail No.2,
Tihar New Delhi-110064

Arijeet Ghosh,
3rd Floor, Siddhartha Chambers-1,
Kalau Sarai, New Delhi-110016


Superintendent
Central Jail No. 2,
Tihar, New Delhi

4. Separate Prisons

- (i) The Government of National Capital Territory of Delhi will establish sufficient number of prisons, as far as possible and provide minimum needs essential to maintain standards of living in consonance with human dignity.
 - (ii) Prisons' administration will ensure that the prisoners' human rights are respected.
 - (iii) Prisons' administration will ensure separation of the following categories of prisoners (a) Women (b) Young offenders (c) Under-trials (d) Detenues (e) High-risk offenders (f) Transgender (g) Convicts (h) Civil Prisoners (i) Prisoners with special needs.
 - (iv) Prisons' administration will endeavour to prepare prisoners to lead a law abiding, self-supporting, reformed and socially rehabilitated life.
 - (v) Diversified institution will be set up according to the requirement.
 - (vi) In order to make prisons efficiently manageable units, norms regarding maximum population for different types of prisons will be laid down by Government from time to time.
 - (vii) Service conditions of prison personnel will be such as to secure and retain the best suited and qualified persons.
 - (viii) Efforts will be made to enlist community participation in effective administration of prison programmes.
5. The Government of National Capital Territory of Delhi will adequately provide for the diversification of institutional resources to cater the differential requirements of prisoners in terms of custody and correction. The factors to be considered will include age, sex, legal status of the prisoner, nature of crime, length of sentence, security requirements, state of health and correctional needs. Such a course implies the setting up of separate institutional facilities for different categories of prisoners, such as:
- Prisons/Annexes/ yards for Under-trial prisoners.
 - Maximum security prisons/annexes/yards for high-risk prisoners and hardened or habitual offenders.
 - Open Prisons and Semi-Open Prisons.
 - Prisons/Annexes/Enclosures for Women prisoners.

ANNEXURE D

Transgender Bill- 2019

Dr. Sheela Khare
Assistant Professor,
Department of Social Work,
St. Philomena's College, Mysuru,
Karnataka.

Photo of Hijras -1860




Verdict of Supreme court of India -2014

- **In 2014, The judgment upheld the right of a transgender person to self-perceived gender identity, guaranteed by the Constitution of India, in the absence of sex reassignment surgery.**¹

- The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot.

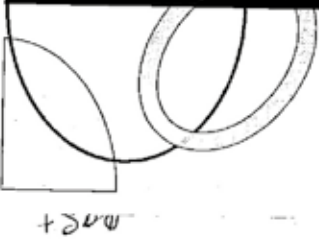




National Council for Transgender persons (NCT)

- The NCT will consist of:
 - (i) Union Minister for Social Justice (Chairperson);
 - (ii) Minister of State for Social Justice (Vice- Chairperson);
 - (iii) Secretary of the Ministry of Social Justice;
 - (iv) one representative from ministries including Health, Home Affairs, and Human Resources Development.

- Other members include representatives of :
- The NITI Aayog, and the National Human Rights Commission. State governments
- The Council will also consist of five members from the transgender community
- five experts from non-governmental organizations.



Definition of a transgender person

- The Bill defines a transgender person as one whose gender does not match the gender assigned at birth.
- It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra.

Intersex variations

- **Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.**



Gender Queer

Accepts as both
male and female



Denies either
male or female



Gender Queers

- A person who identifies with neither, both, or a combination of male and female genders.



Prohibition against discrimination:

The Bill prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to:

- i. Right of Residence.
- ii. Employment.
- iii. Education.
- vi. Health Care.
- v. Access to, or enjoyment of goods, facilities, opportunities available to the public.
- vi. Right to reside, rent, or otherwise occupy property.
- vii. Opportunity to hold public or private office.
- viii. Access to a government or private establishment in whose care or custody a transgender person is.

Right of residence

- Every transgender person shall have a right to reside and be included in his household.
- If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation center, on the orders of a competent court.



Employment

- **No government or private entity can discriminate against a transgender person in employment matters, including recruitment, and promotion.**
- **Every establishment is required to designate a person to be a complaint officer to deal with complaints in relation to the Act.**

Education:

- Educational institutions funded or recognised by the relevant government shall provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.



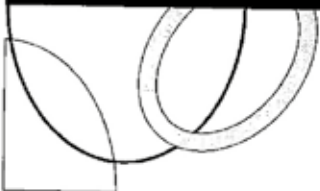
250th

Health care

- The government must take steps to provide health facilities to transgender persons including separate HIV surveillance centers, and sex reassignment surgeries.
- The government shall review medical curriculum to address health issues of transgender persons, and provide comprehensive medical insurance schemes for them.

Certificate of identity for a transgender person

- A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as 'transgender'.
- A revised certificate may be obtained only if the individual undergoes surgery to change their gender either as a male or a female.




Welfare measures by the government

- The Bill states that the relevant government will take measures to ensure the full inclusion and participation of transgender persons in society.
- It must also take steps for their rescue and rehabilitation, vocational training and self-employment, create schemes that are transgender sensitive, and promote their participation in cultural activities.



Offences and penalties

- The Bill recognizes the following offences against transgender persons:
 - i. Forced or bonded labor (excluding compulsory Government service for public purposes),
 - ii. Denial of use of public places, removal from household, and village,
 - iii. physical, sexual, verbal, emotional or economic abuse.Penalties for these offences vary between six months and two years, and a fine.



Opposition from TG community for the bill

- The 2018 Bill was opposed for criminalizing begging – which made the trans community particularly vulnerable since many trans people in India are forced to take to begging due to lack of employment opportunities.
- This provision has been removed from the Bill, which now specifies the following offences:
 - i. Compelling transgender persons to do forced or bonded labor (excluding compulsory government service for public purposes);
 - ii. Denial of use of a public place;
 - iii Removal from household, village or other place of residence; and
 - iv Physical, sexual, verbal, emotional or economic abuse.

•Thank you

ANNEXURE D (1)

Registered post

GOVERNMENT OF KARNATAKA
(Prisons and Correctional Services)

No.RS/CR-24/2019-20

Office of the
Director General
Prisons and Correctional Services
No.4, Sheshadri Road, Bengaluru-09
Dated: 19.12.2019

To,

Sri. Arijet Ghosh,
55-A, 3rd Floor, Siddhartha Chambers-I,
Kalu Sarai, New Delhi-110016,
India.

Sir,

Sub: Providing Information to RTI Application.
Ref: Your e-mail dated; 13.05.2019


With reference to above, following information is provided as sought by you
in your application.

Sl No.	Questions	Remarks
1	Whether any people from the Transgender/third gender have been recruited by your department between 1 st January, 2014 to 1 st January, 2019?	NIL
2	Whether there exists a module/course regarding the awareness of Transgender/Third gender and LGBT+groups in Prison Training Institutes? If yes, Please provide a true copy of the same.	Training class was Conducted for prison staff on Transgenders Bill 2019 in Training Institute. (Copy enclosed)
3	Whether any of awareness drive has been undertaken by the State government for the legal recognition of gender identity as male, female of Transgender/Third gender since judgment of Supreme Court of India in NALSA v Union of India in 2014?	Awareness has been undertaken for transgender identification and segregation to the prison staff. Any further clarification required by the prison staff same will be provided medical and para-medical staff.
4	Whether the jail records inmates data of Transgender / Third gender, i.e. other than male or female?	Yes.
5	What is the process of segregation of Male, Female and Transgender / Third gender during admission to the jail?	Male, Female and Transgender / Third gender prisoners are kept in separately.
6	If yes, please provide a true copy of any State specific circular / orders/guidelines issued by the State, the prison department, judiciary or any other authority in relation to recording of inmate data for Transgender /Third gender, if any.	As for the Karnataka Prison Manual-1978 Rule 476, the Male and Female prisoners are kept separately, however no specific circular/ Orders/ guidelines issued by the state in this regard.

--2

SI No.	Questions	Remarks
7	Please provide a population statement of Transgender / Third gender inmates (both convicts and under-trials) as on 30 th April, 2019.	As on 30 th April-2019 Total 07 Undertrial Prisoners across the State.
8	Please provide a population statement of Transgender/ Third gender inmates (both convicts and under-trials from 1 st May, 2018 to 30 th April, 2019.	Total 18 Undertrial Prisoners across the State.

Yours faithfully


For Director General
Prisons and Correctional Services
Karnataka state

(Central Act 52 of 1974) are governed with regards to their maintenance ; facilities food clothing and other amenities as per conditions and detention orders issued under Government Notification, dated 19th December 1974.

CHAPTER XXV

WOMEN PRISONERS

Sanitary provision

476. Under Section 26 of the Karnataka Prisons Act, 1963 in the prisons confining women as well as men, prisoners in the prisons shall be confined in a separate building or women prisoners shall be confined in a separate building or separate part of the same building so as to prevent their seeing or conversing or having any connection with men prisoners. Under 26 (3) of the Act unconvicted criminal women prisoners shall be kept apart from convicted criminal women prisoners.

Restriction of movement of women prisoners

477. Every female prisoner authorised to leave the female prisoner enclosure for release transfer or to attend court shall ordinarily be accompanied by female Warden from the time she leaves the enclosure till she returns to it or quite the jail premises.

Warders acting as escorts to visitors and officials visiting female yard shall remain outside the enclosure.

Lookups of women enclosure

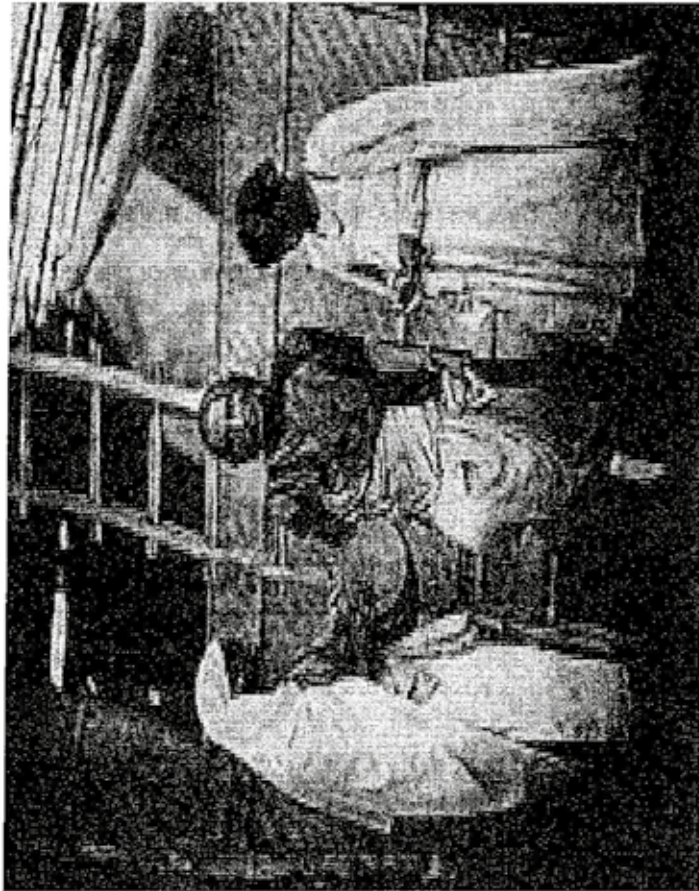
478. The locks of the enclosure and compartments where females are confined shall be different from those in use in other parts of the Jail, so that keys of the latter may not open the former.




Transgender Bill- 20

Dr. Sheela Khare
Assistant Professor,
Department of Social Work,
St. Philomena's College, Mysuru,
Karnataka.

Photo of Hijras -1860





Verdict of Supreme court of India -2014

- **In 2014, The judgment upheld the right of a transgender person to self-perceived gender identity, guaranteed by the Constitution of India, in the absence of sex reassignment surgery.¹**

- The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot.





National Council for Transgender persons (NCT)

- The NCT will consist of:
 - (i) Union Minister for Social Justice (Chairperson);
 - (ii) Minister of State for Social Justice (Vice- Chairperson);
 - (iii) Secretary of the Ministry of Social Justice;
 - (iv) one representative from ministries including Health, Home Affairs, and Human Resources Development.

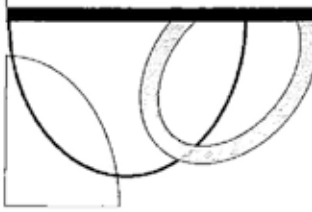


- Other members include representatives of :
- The NITI Aayog, and the National Human Rights Commission. State governments
- The Council will also consist of five members from the transgender community
- five experts from non-governmental organizations.



Definition of a transgender person

- The Bill defines a transgender person as one whose gender does not match the gender assigned at birth.
- It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra.



Intersex variations

- **Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.**

Gender Queer

Accepts as both
male and female



Denies either
male or female



Gender Queers


- A person who identifies with neither, both, or a combination of male and female genders.



Prohibition against discrimination:

The Bill prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to:

- i. Right of Residence.
- ii. Employment.
- iii. Education.
- vi. Health Care.
- v. Access to, or enjoyment of goods, facilities, opportunities available to the
- vi. Right to reside, rent, or otherwise occupy property.
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 - iii Removal from household, village or other place of residence; and
 - iv Physical, sexual, verbal, emotional or economic abuse.

•Thank you



ANNEXURE E



कार्यालय वरिष्ठ अधीक्षक जिला कारागार गोरखपुर

पत्रांक 2391 / सूचना

दिनांक 27.07.2019

श्री अरिजीत घोष

55-ए, तीसरा तल, सिद्धार्थ चौमबर्स-1

कालू सराय, नई दिल्ली-110016

सूचना अधिकार अधिनियम 2005 के अन्तर्गत प्रेषित प्रार्थना पत्र दिनांकित 24 जून 2019 के द्वारा मांगी गयी बिन्दु संख्या-2 से सम्बन्धित सूचना का सम्पूर्णानन्द कारागार प्रशिक्षण संस्थान, उत्तर प्रदेश, लखनऊ अन्तर्गत किया गया था, जो पत्रांक 802/अघ-1/2019 दिनांकित 20 जुलाई 2019 के द्वारा इस कार्यालय में प्राप्त हुआ, जिसकी मूल प्रति इस पत्र के साथ संलग्न कर आपको प्रेषित।
संलग्नक-यथोपरि।

वरिष्ठ अधीक्षक
जिला कारागार, गोरखपुर

कार्यालय, डा0 सम्पूर्णानन्द कारागार प्रशिक्षण संस्थान
उत्तर प्रदेश, लखनऊ- 226005

पत्रांक : 802 /अध-1/2019

दिनांक : 20 जुलाई, 2019

सेवा में,

जन सूचना अधिकारी/वरिष्ठ अधीक्षक,
जिला कारागार, गोरखपुर।

विषय : जन सूचना अधिकार अधिनियम-2005 की धारा-6 (1) के प्राविधानों
अनुसार सूचना उपलब्ध कराए जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या 2311/सूचना, दिनांक 15 जुलाई, 2019
का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा पत्र के साथ संलग्न श्री अरजीत घोस,
55-ए, तृतीय तल, सिद्धार्थ चैम्बर-1, कालू सराय, नई दिल्ली-110006 के सूचना अधिकार
अधिनियम-2005 की धारा-6 (3) के अधीन आवेदन पत्र के बिन्दु संख्या-2 से सम्बन्धित
सूचना उपलब्ध कराने की अपेक्षा की गई है।

उक्त वांछित सूचना के सन्दर्भ में अवगत कराना है कि डा0 सम्पूर्णानन्द
कारागार प्रशिक्षण संस्थान उत्तर प्रदेश, लखनऊ में विपरीत लिंगी/किन्नर और एलजीबीटी
(समलिंग कामी महिला, समलैंगिक, उभयलिंगी विपरीत लिंगी) व अन्य समूहों की जागरूकता
के लिए वर्तमान समय में इस विषय को प्रशिक्षण में शामिल नहीं किया गया है, किन्तु
बी0पी0आर0एण्ड डी0, गृह मंत्रालय, भारत सरकार, नई दिल्ली द्वारा प्रस्तावित ट्रेनिंग प्रशिक्षण
मैनुअल 2017 (छायाप्रति संलग्न) में इस विषय को सम्मिलित किया गया है जो शासन में
विचाराधीन है। शासन द्वारा स्वीकृति होने पर इसे संस्थान के प्रशिक्षण कार्यक्रम में सम्मिलित
किया जायेगा।

संलग्नक : यथोपरि।

भवदीय,

(वी0 कै0 जैन) 20.7.19

अपर महानिरीक्षक कारागार (प्र0/वि0),
डा0 सम्पूर्णानन्द कारागार प्रशिक्षण संस्थान,
उत्तर प्रदेश, लखनऊ।

**Training Manual of Basic Course
for
Prison Officers
2017**

**Bureau of Police Research and Development
Ministry of Home Affairs
NH-8, Mahipalpur
New Delhi – 110 037**



Unit – 6

Rights of Special Category Prisoners

Overview:

All prisoners are vulnerable to a certain degree. When the liberty of a group of individuals is restricted and they are placed under the authority of another group of people, and when this takes place in an environment which is to a large extent closed to public scrutiny, the abuse of power has proven to be widespread. However, there are certain groups that are in a particularly vulnerable position in prisons and who therefore need additional care and protection. This vulnerability may be stemmed out of their trial status (remand/UT), gender (women/transgender), age (adolescent/older), health condition (mentally ill/terminally ill/with communicable disease), nationality (foreign national) etc. The prison environment itself will exacerbate their existing problems. Most of these prisoners are, in fact, vulnerable due to more than one reason. The high proportion of vulnerable prisoners means that their special needs cannot be considered as a marginalized component of prison management policies. Therefore it is necessary to address the wide range of challenges relating to the supervision, care and protection of prisoners with special needs. This unit specifically cover the issue of rights of various special category prisoners.

Learning objectives:

Upon successful completion of this Unit, the trainee officer will:

- Develop a comprehensive understanding about various special category prisoners.
- Have thorough understanding of the human rights framework and norms relating to the need of special category prisoners.

Sl. No.	Topics	Dur.	Method of Instruction (as applicable)
14.	Specified-Special Category Prisoners: Un-convicted (Remand/UT) prisoners - High security prisoners –Adolescent and young prisoners - Women prisoners – Prisoners under sentence of death – Detenues.	3 hrs	<ul style="list-style-type: none"> ▪ Lecture ▪ PPT ▪ Videos ▪ Discussion
15.	Unspecified-Special Category Prisoners: Prisoners with mental healthcare needs - Prisoners with disabilities – Transgender Prisoners (Mandela Rules and The Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity) - Life and long term prisoners - Prisoners with terminal illness	6 hrs	<ul style="list-style-type: none"> ▪ Group Discussion ▪ Role Play ▪ Q & A



prisoners—Adolescent Offenders - Drug and alcohol addicted prisoners - Prisoners living with terminal illness - Mentally ill prisoners - prisoners with suicidal ideation - Transgender prisoners.		
Practical/Assignment: a. Assignments b. Field Visits.		
Total duration	6 hrs	



Training Manual Title	Training Manual of Basic Course for Prison Officers
Module Category	Specialised Short-term Programme
Module No.	SSP- 4
Module Title	Gender Sensitization
Duration	3 Days
Medium of Instruction	English

Overview

Gender sensitization is a basic requirement for the normal development of an individual. Without being sensitive to the needs of a particular gender, an individual may refrain from understanding the opposite gender and in some acute cases even him or herself. Prison officers need to develop and exhibit a gender sensitive approach in their profession. This course is intended to sensitize and help them have necessary knowledge and skills in gender related issues.

Materials required for the sessions:

White board, marker, LCD projector, computer, power point presentations, printed handouts on each topics, videos, other materials as specified by the trainers etc.

Sl.No.	Topics / Sessions	Duration
1.	Social Construction of Gender	1.5 hrs
2.	Crime, Women, and Violence Against Women	1.5 hrs
3.	Representation of Women in Media	1.5 hrs
4.	Gender and Human Rights Abuses in Prisons	3 hrs
5.	Gender Sensitivity and Prison Personnel	1.5 hrs
6.	Gender-sensitive Prison Management - Women and Third Gender – Women Friendly Prisons	1.5 hrs
7.	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.	3 hrs
8.	Institutional Mechanisms for Grievance Redressal of Women Staff	1.5 hrs
9.	Management of Women Prisoners: From the Field-Case Studies	3 hrs
Total		18 hrs

Note: As this programme is intended to instil certain specialized skills and competencies to the prison officers, **only professionally qualified and experienced trainers/faculty with proven track record in Gender Sensitization shall be engaged** to handle the sessions.

CHRI PROGRAMMES

CHRI seeks to hold the Commonwealth and its member countries to high of human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

1. Access to Justice (ATJ) *

* **Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

* **Prison Reforms:** CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstays, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

2. Access to Information

* **Right to Information:** CHRI's expertise on the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised the efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervene to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, enabling CHRI bring valuable insights into countries seeking to evolve new RTI laws.

*** Freedom of Expression and Opinion --South Asia Media Defenders Network (SAMDEN):** CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with RTI movements and activists.

3. International Advocacy and Programming

Through its flagship Report, *Easier Said Than Done*, CHRI monitors the compliance of Commonwealth member states with human rights obligations. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7 (see below), monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

4. SDG 8.7: Contemporary Forms of Slavery

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.' In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and to strengthen collective advocacy.

“Transgender people, as a whole, face multiple forms of oppression in this country. Discrimination is so large and pronounced, especially in the field of health care, employment, education, leave aside social exclusion.”

“Transgenders are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the Constitutional guarantee of equality before law and equal protection of laws.”

“Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex.”

“Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.”

- NALSA v Union of India (2014)



COMMONWEALTH HUMAN RIGHTS INITIATIVE

55A, THIRD FLOOR, SIDDHARTH CHAMBERS, KALU SARAI

NEW DELHI 110017, INDIA

TEL: +91 11 4318 0200; FAX: +91 11 2686 4688

EMAIL: info@humanrightsinitiative.org

WEBSITE: www.humanrightsinitiative.org