



**SOGIESC Rights in India  
An unfinished agenda**



## **SOGIESC Rights in India: An unfinished agenda**

This publication is commissioned by ILGA Asia - the Asian Region of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association, representing more than 170 LGBTI organizations in East, South, Southeast, and West Asia. The document has been produced in consultation with member organisations and key partners as suggested by member organisations in the country. Permission to quote or otherwise use the information has been provided by the informants.

The analysis in the report is intended to recommend ILGA Asia to produce a strategic plan for 2021-2025. Positions in the report lie with the participants of the consultations and interviews and do not reflect the values and viewpoints of the collective network.

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# Executive Summary

In the past decade, there have been many developments pertaining to LGBTI rights in India. While there is growing acceptance of LGBTI identities in society in the current generation, challenges related to acceptance and inclusion continue in formal and informal institutions like families, schools, and workplaces. The acceptance also varies from urban to rural areas where the literacy rates are quite low.

The developments have been most prominent in the legal landscape. While the rights provided under the 1950 Constitution of India extend to all persons, including LGBTI people, they were implicit. Subsequent judgments and the proactive role played by the judiciary have led to the explicit recognition of these rights. These judgements have led to the takedown of Section 377 (which prescribed punishment for consensual sexual relations between people of same-sex), recognition of self-determination rights of transgender people, and a ban on sex-reassignment surgeries in one state of India, among others. Recently various high courts have played a positive role in directing the government to ensure a supply of necessities to transgender people and persons with HIV during the outbreak of the COVID-19 virus.

The Government of India has also legislated its first law to address the basic violations of human rights against the community. The Transgender Persons Act seems to be the beginning of efforts toward the protection of LGBTI people. Other developments including the government order allowing trans people to use a restroom of their choice and the establishment of Transgender Welfare Boards and other welfare policies by various federal governments. However, this law is not without its infirmities. The legal landscape still lacks a viable protection mechanism for LGBTI people and there exist several voids which hinder the recognition of their basic civil rights like the right to marry or adopt. The criminal law also adheres to the traditional conception of gender, resulting in unequal treatment of LGBTI people in the grievance redressal process.

Despite these developments, the stigma associated with gender and sexual identity has created many challenges for LGBTI communities. These challenges include non-acceptance in society, violence by partners, physical and sexual assault by state and non-state actors, discriminatory treatment in educational and medical institutions, illegal detention, corrective rapes, non-recognition of personal rights to marry or adopt, etc. These challenges continue to create barriers for them. While there is a visible change in the attitudes of MNCs towards employing LGBTI people, these changes are intended more towards seeming inclusive. Meanwhile, in the absence of equal opportunities, these people continue to work with small ration shops, or as beggars or sex workers. The latter also puts them on the wrong side of the law as such practices are not legal in India.

The issues faced by transgenders in the traditional commune system are also very complex and brutal. The commune system was conceived as a protection mechanism for transgender people but has degenerated into various forms of bonded labour, coercion, extortion, and violence. It is a hierarchical system where those at the base are forced to pay a tax called 'moorcha' or 'kamaayi'. Failure to pay this tax can have very adverse and serious consequences on the life, liberty, dignity, and safety of transgender persons. Significant sections of this system have ended up becoming a form of slavery only because there is no escape for people trapped in it. As such, these people end up being dependent predominantly on sex work and/or begging to subsist and pay the taxes which left them vulnerable to physical and sexual violence, and sexually transmitted diseases. They also become emotionally and physically distraught in exchange for a meagre sum of money, most of which would be used as taxes.

Civil society organisations that have played a very positive role in the LGBTI movement have their challenges which include legal hassles, financial restraint, mobilisation of communities that are dispersed because of social, cultural and language barriers, and the lack of human resource expertise. These organisations have employed various strategies to face these challenges like organising consultations with families, raising awareness, and engaging in legislative and policy advocacy.



# Introduction

India is a very diverse country with a population of 1.2 billion as per the last held census of 2011. There is no official record about the population of the LGBTI communities in India. However, in 2012, the Government of India had informed the Supreme Court of India that there were 2.5 million people in India who identify themselves as gay men.<sup>1</sup> These men were reported as Men Having Sex with Men (MSM). The data reported was specific to gay men and did not include other people who identified themselves as lesbian, transgender, intersex, queer inter alia. The Supreme Court of India has observed that the LGBTI population constitutes 7 - 8% of the overall population of India.<sup>2</sup>

While there is growing acceptance of LGBTI identities in society in the current generation, challenges related to acceptance and inclusion continue in formal and informal institutions like family, schools, and workplaces. The acceptance also varies from urban to rural areas, where the literacy rates are quite low.<sup>3</sup> It is concerning as most of the population resides there.<sup>4</sup> While the acceptance is negligible in rural areas, it has just started to develop in urban areas. In 2018, Tech Mahindra sacked the Chief Diversity Officer over her homophobic remarks.<sup>5</sup> Furthermore, significant sections of such urban spaces also have different ideologies on gender and sexuality and give precedence and primacy to educated, elite and suave cisgender bisexual, pansexual and gay masculinities, and men over transgender persons, Below Poverty Line (BPL)

<sup>1</sup> "India has 2.5m gays, government tells Supreme Court," BBC News, 14 March 2012, <https://www.bbc.com/news/world-asia-india-17363200>.

<sup>2</sup> Suresh Kumar Kaushal & Anr vs. Naz Foundation & Ors., Civil Appeal No. 10972 OF 2013.

<sup>3</sup> "International Literacy Day 2020," The Times of India, 8 September 2020, <https://timesofindia.indiatimes.com/india/international-literacy-day-2020-how-literacy-rate-is-calculated-in-india/articleshow/77991200.cms>.

<sup>4</sup> "India-Rural Population," Trading Economics, December 2020, [https://tradingeconomics.com/india/rural-population-percent-of-total-population-wb-data.html#:~:text=Rural%20population%20\(%25%20of%20total,compiled%20from%20officially%20recognized%20sources](https://tradingeconomics.com/india/rural-population-percent-of-total-population-wb-data.html#:~:text=Rural%20population%20(%25%20of%20total,compiled%20from%20officially%20recognized%20sources).

<sup>5</sup> Tech Mahindra sacks its Chief Diversity Officer & Training Head for homophobia & Islamophobia," Economic Times, 17 September 2018, <https://economictimes.indiatimes.com/tech/ites/tech-mahindra-sacks-chief-diversity-officer-for-discrimination/articleshow/65840078.cms?from=mdr>.

and wage-earning working-class *kothi*,<sup>6</sup> *hijra*<sup>7</sup> persons and lesbian and bisexual women.

This report encapsulates contextual information and updates on issues around LGBTI rights. The objective of this report is to provide:

- An overview of the human rights situation and civil society in India.
- LGBTI rights in the areas of laws and policies, social and cultural perception, and religious context.
- Strategies and approaches employed by the LGBTI communities and allies in protecting and advancing their human rights.
- Challenges and opportunities for the interventions of (national, regional, and international) LGBTI civil society in addressing above mentioned issues.
- Issues of the local communities in terms of lobbying and advocacy for the upcoming five years

## RESEARCH METHODOLOGY

The authors interviewed 26 Civil Society Organisations (CSOs), of which nineteen are members of ILGA Asia. Respondents are spread across all the five regions of India viz. East, Northeast, North, South, and West across twenty-one states viz. Andhra Pradesh, Assam, Chattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Odisha, Punjab, Rajasthan, Tamil Nadu, Telangana, Uttarakhand, Uttar Pradesh, and West Bengal and four union territories viz. Chandigarh, Chattisgarh, Delhi, Jammu & Kashmir, and Puducherry. Some respondents require anonymity, and we are bound by law to ensure total confidentiality.<sup>8</sup>

<sup>6</sup> A female-identified person assigned male at birth who desires and engages in receptive (same-sex) intercourse and adopts "feminine" mannerisms of discourse and practice. Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India*, Glossary, (Chicago, The University of Chicago Press, 2005), pp. 269

<sup>7</sup> A social-cultural and socio-religious transgender identity that follows the guru chela system of traditional subaltern social organization of transgender communes who worship the Goddess Bahuchara Mata aka Murgi Mata. Serena Nanda, *Neither Man nor Woman: The Hijras of India*, (Wadsworth Publishing Company, 2005), pp. 169

<sup>8</sup> Dhananjay Mahapatra, "Disclosing rape victim's identity is punishable", *Times of India*, 6 November 2007, <https://m.timesofindia.com/india/Disclosing-rape-victims-identity-is-punishable/articleshow/2520492.cms>.



Apart from our qualitative research interviews held between October and December 2020, we also did a desk review of existing literature. The primary source for the testimony and case studies that appear in the report are from online or telephonic, individual and/or group interviews conducted in a private and secure environment. The data from these interviews has been supplemented by secondary research including autobiographies, media reports, court judgments and research studies, as well as through information obtained through the filing of Right to Information (RTI) applications.



# Legal Developments

The Constitution of India is the supreme law of India. It sets out the fundamental rights guaranteed to every person in India. While these rights extend to every person and therefore apply to LGBTI people by implication, it is not stated so expressly. However, it does not provide any specific rights and duties exclusively to LGBTI people. The Constitution of India mandates justice - in terms of social, political, and economical and equality of status for all.<sup>9</sup>

The Delhi High Court and the Supreme Court in some judgments have recognized the fundamental rights of the LGBTI communities enshrined in Article 14 and 21 of the Constitution which guarantees the right to equality and the right to a dignified life to all people of India.<sup>10</sup> Furthermore, Articles 15, 19, 23 and 25 in the Indian Constitution provide for the right to anti-discrimination, anti-human-trafficking, and the freedoms of expressions and freedom of religion and beliefs to everyone, including LGBTI persons.

## THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

The Government of India legislated the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as “Transgender Persons Act”) (Appendix 1) and its subsequent rules to protect the rights of transgender persons. A study conducted by the National Human Rights Commission found that almost 99% of transgender people experienced social rejection on multiple occasions.<sup>11</sup> Furthermore, the study also revealed that almost 52% of

<sup>9</sup> The Constitution of India, 1950, The Preamble.

<sup>10</sup> Naz Foundation v. State of Delhi, 160 Del Law Times 277; NALSA vs. UoI, WP (Civil) 400 of 2012, Justice K. S. Puttaswamy (Retd.) & Anr. vs UOI & Ors., WP (Civil) 494 of 2012, Navtej Singh Johar & Ors. v. Union of India. The Secretary Ministry of Law and Justice, WP (Crl.76 of 2016)

<sup>11</sup> The National Human Rights Commission, India has been set up by an Act of Parliament under the Protection of Human Rights Act, 1993 for the protection and promotion of human rights. The functions of the Commission as stated in Section 12 of the Act and apart from enquiry into complaints of violation of human rights or negligence in the prevention of such violation by a public servant, the Commission also studies treaties and international instruments on human rights and make recommendations for their effective implementation to the Government.

transgender people experienced harassment by school classmates and 15% experienced it from their teachers, leading them to drop out of their studies. It also affirmed that 96% of transgender people are forced to take low-paying work as their livelihood such as begging and sex work.<sup>12</sup>

At the governmental level, India has just begun making some efforts to protect the rights of the LGBTI persons in some ways. The Transgender Persons Act is a modest and the first legislative step to address the basic violations of human rights against the community. The mechanism adopted by the Act for being legally recognized as transgender involves applying for a "Transgender Certificate"; whereby any person applying for it shall submit a psychologist's report. The Act and rules further include the procedure to get a certificate if anyone is undergoing surgery to change their gender. It also has provisions for support to undergo Sex Reassignment Surgery (SRS). However, in its current form, it ends up precluding transition within the gender binary without SRS, thus mandating it for transition within the gender binary. Under this law, the punishment for sexual assault towards transgender persons is only between a mere six months to a maximum of two years imprisonment with fine. On the other hand, those convicted of sexual assault of cisgender women are liable for a punishment of seven to ten years of imprisonment under section 376 section 375 of the IPC respectively. The punishment under the Transgender Persons Act instead of being a deterrent may very well incentivize criminals, history sheeters and criminally predisposed gangs and persons and traffickers to sexually assault transgender persons instead of women.<sup>13</sup>

## CHOICE OF PUBLIC RESTROOM

On 6 April 2017, it was reported that the Ministry of Housing

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<sup>12</sup> "Transgender people in India experience widespread discrimination and severe isolation, the National Human Rights Commission said in a new study," Asia Pacific Forum, 20 August 2018, <https://www.asiapacificforum.net/news/landmark-study-finds-entrenched-discrimination-against-transgender-people/>

<sup>13</sup> Ramya Kannan, "Why are there objections to the Transgender Persons Bill?" The Hindu, 1 December 2019, <https://www.thehindu.com/news/national/why-are-there-objections-to-the-transgender-persons-bill/article30125894.ece>; "Sexual offences: Govt reply sought on equal protection for transgender persons" Hindustan Times, 13 October 2020, <https://www.hindustantimes.com/india-news/sexual-offences-govt-reply-sought-on-equal-protection-for-transgender-persons/story-tlbRzrccRG0800vk17FcNK.html>

and Urban Affairs had issued an advisory allowing trans people to use the public restroom of their choice.<sup>14</sup>

## SURROGACY RULE

On 9 July 2012, the Ministry of Home Affairs issued an order which provided that a medical visa may only be granted to couples who have been married for more than two years seeking to enter commercial surrogacy arrangements, and only if it is legal in their home country. Also, in India, same-sex marriage/unions are not legal.<sup>15</sup>

Therefore, on 3 November 2015, the Ministry of Home Affairs decided to allow newborns – commissioned by gay and single foreigners after a July 2012 ban – to leave the country when they are born. Only heterosexual married couples are eligible for a medical visa to travel to India to commission surrogacy under the new visa rule.<sup>16</sup> Also, the government is still deliberating over the 2019 Surrogacy Bill, which does not recognize the reproductive rights of LGBTI communities and thereby is violative of the fundamental right to life of such individuals.<sup>17</sup>

## JUDICIAL DEVELOPMENTS

In recent years the judiciary has been very active in upholding the rights of LGBTI people. In 2018, the Supreme Court, in a landmark judgment, held that section 377 of the IPC is unconstitutional "in so far as it criminalizes consensual sexual conduct between adults of the same sex". It was also emphasized that discrimination based on sexual orientation is unconstitutional considering it is a natural phenomenon as proven by scientific and biological facts. The Supreme Court also directed the government to create public awareness regarding LGBTI rights and to eliminate the stigma surrounding the LGBTI people. The judges further elaborated upon the issues surrounding mental health, dignity, privacy, the right to self-determination, and transgender persons.<sup>18</sup>

<sup>14</sup> Ministry of Housing and Urban Affairs, Advisory on Public and Community Toilets, Government of India 2018, <http://164.100.228.143:8080/sbm/content/writereaddata/Advisory%20on%20Public%20and%20Community%20Toilet.pdf>.

<sup>15</sup> Ministry of Home Affairs, File No.25022/74/2011-F-1, [https://www.mha.gov.in/PDF\\_Other/surrogacy03112015.pdf](https://www.mha.gov.in/PDF_Other/surrogacy03112015.pdf).

<sup>16</sup> Ministry of Home Affairs, File No.25022/74/2011-F-1, [https://www.mha.gov.in/PDF\\_Other/surrogacy03112015.pdf](https://www.mha.gov.in/PDF_Other/surrogacy03112015.pdf).

<sup>17</sup> The Surrogacy (Regulation) Bill, 2019.

<sup>18</sup> Navtej Singh Johar v. Union of India, (2016) 7 SCC 485.

Previously, the court also upheld the rights of transgender persons to self-identify their gender.

*It declared "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."<sup>19</sup>*

The Supreme Court also clarified that gender identity did not refer to biological characteristics but rather referred to it as *"an innate perception of one's gender"*. Thus, it held that transgender persons should not be subjected to any medical examination or biological test which would invade their right to privacy.<sup>20</sup> Recently in a landmark judgment related to privacy it was asserted that sexual orientation also falls within the wide ambit of right to privacy.<sup>21</sup>

The High Court of the State of Tamil Nadu delivered a landmark judgment on the ban of sex reassignment surgeries.<sup>22</sup> The judgment marks the beginning of a journey of intersex human rights in India. It held that the consent of the parent cannot be considered as the consent of the child. Hence, such surgeries should be prohibited. The judgment declared a prohibition on sex-selective surgeries on intersex children in Tamil Nadu. Further, the draconian and repressive Telangana Eunuchs Act was stayed and suspended by the High Court of Judicature at Hyderabad for the *State of Telangana and Andhra Pradesh in Vyjayanti Vasanta Mogli & Ors vs. State of Telangana*.<sup>23</sup> The said law was an archaic and a regressive pre-constitutional colonial vestige enacted during the British colonial administration that gave broad and sweeping powers to the police to arrest any gender non-binary, gender non-conforming and transgender persons without a warrant. It made them liable for imprisonment if they are found in female clothing, singing, dancing in public, or when a transgender person is found in the company of a boy below the age of 16.

<sup>19</sup> National Legal Services Authority (NALSA) v. Union of India. AIR 2014 SC 1863.

<sup>20</sup> Ibid

<sup>21</sup> K.S. Puttaswamy v Union of India (2017) 10 SCC 1.

<sup>22</sup> Arunkumar and Ors. v. The Inspector General of Registration and Others., Writ Misc. Petition 3320 of 2019.

<sup>23</sup> Vyjayanti Vasanta Mogli & Ors vs. State of Telangana, WP (PIL) 44 of 2018; Vyjayanti Vasanta Mogli & Ors. v. State of Telangana (CLPR, 17 September 2019) <https://clpr.org.in/litigation/pil-challenging-the-constitutionality-of-the-telangana-eunuchs-act-1919/>; S A Ishaqui, "Hyderabad High Court suspends use of eunuchs law," Deccan Chronicle, 19 September 2018, <https://www.deccanchronicle.com/nation/current-affairs/190918/hyderabad-high-court-suspends-use-of-eunuchs-law.html>

Recently, various High Courts across India stepped in and stepped up to pass a slew of directions and interim orders to the state governments and to the Government of India on COVID-19 relief measures ranging from free food and rations supplies, non-insistence of Aadhar and ration cards from transgender persons, free provision of Antiretroviral Therapy (ART) medicines for transgender Persons Living with HIV (PLHIV), and subsistence allowances to separate wards for COVID-19 transgender persons. The Telangana High Court, the Karnataka High Court, the Patna High Court, the Jharkhand High Court, and the Kerala High Court passed orders to step up COVID-19 relief measures for transgender persons.<sup>24</sup>

## PROGRESS ACHIEVED BY DIFFERENT STATE GOVERNMENTS

### Transgender Welfare Boards, Schemes & Policies

In April 2008, almost six years before the NALSA judgement of the Supreme Court, the state of Tamil Nadu was the first to set up a welfare board for transgender women viz. Tamil Nadu Aravanigal Welfare Board.<sup>25</sup> However, its effective functioning has come under a considerable criticism from various quarters of the transgender communities.<sup>26</sup> In April 2015, the West Bengal government set up its Transgender Development Board to protect the rights of transgender persons.<sup>27</sup> Its functioning too was censured by one of its own members.<sup>28</sup> In April 2016, the state of Rajasthan set up

<sup>24</sup> Vyjayanti Vasanta Mogli vs. State of Telangana & Ors, WP (PIL) 74 of 2020 in the Telangana High Court. <https://www.newindianexpress.com/states/telangana/2020/jul/01/earmark-special-covid-19-wards-for-transgender-community-in-hospitals-telangana-high-court-2163627.html>; Sagar Kumar Mutha, "Telangana high court quizzes government on separate wards for transgenders," The Times of India, 2 July 2020, <https://timesofindia.indiatimes.com/city/hyderabad/hc-quizzes-govt-on-separate-wards-for-transgenders/articleshow/76718963.cms>.

<sup>25</sup> Tamil Nadu Aravanigal (Transgender) Welfare Board: Case Study – UNDP Report – 2012 (CLPR), <https://translaw.clpr.org.in/laws-policies-reports/tamil-nadu-aravanigal-transgender-welfare-board-case-study-report/>

<sup>26</sup> Zubeda Hamid, "TN's Transgender Welfare Board in limbo," The Hindu, 15 October 2015, <https://www.thehindu.com/news/cities/chennai/transgender-welfare-board-in-limbo/article7764631.ece>; Divya Kartikeyan, "Tamil Nadu, once a pioneering state for welfare of transgenders, now shuns the third gender," The First Post, 25 May 2017, <https://www.firstpost.com/india/tamil-nadu-once-a-pioneering-state-for-welfare-of-transgenders-now-shuns-the-third-gender-3476538.html/amp>

<sup>27</sup> Shiv Sahay Singh, "Bengal to set up Transgender Welfare Board," The Hindu, 16 July 2014; <https://www.thehindu.com/news/cities/kolkata/bengal-to-set-up-transgender-welfare-board/article6216502.ece>

<sup>28</sup> Sumanata Roy Chaudhari, "Bengal's transgender development board all-around failure, alleges member," Hindustan Times, 4 July 2017),

its Transgender Welfare Board and has begun work to train and develop skills of transgender persons.<sup>29</sup>

On 18 February 2019, the Gujarat government 'Transgender Welfare Board' was reported to have been constituted by the Department of Social Justice and Empowerment to provide social security to the community.<sup>30</sup> In December 2018, Maharashtra government set up its Transgender Welfare Board and allocated five crores' rupees to it.<sup>31</sup>

In June 2016, the Odisha government framed and deployed its transgender welfare scheme, Sweekruti.<sup>32</sup> In December 2017, the Andhra Pradesh government cleared its Transgender Welfare Policy and in March 2018 issued an order which was problematic at many levels as *inter alia* it required transgender persons to undergo medical examination to be recognised as transgender.<sup>33,34</sup> It was challenged and was later read down on 30 April 2019 by the Andhra Pradesh High Court which held

*"Hence, the said G.O. is quashed to the extent of biological or physical examination of a transgender seeking benefits under the schemes of the State Government screening and medical examination."*<sup>35</sup>

On 27 October 2017, the Karnataka Government introduced a State Policy for Transgender Persons, a much-needed step for the social integration of the transgender community. The Cabinet approved the Policy three

<sup>29</sup> "Andhra transgender policy: It's a first step, but has many problematic clauses," The News Minute, 11 January 2018, [https://m.timesofindia.com/city/jaipur/rajasthan-to-train-transgenders-in-livelihood-skills-sets/amp\\_\\_articleshow/64983094.cms](https://m.timesofindia.com/city/jaipur/rajasthan-to-train-transgenders-in-livelihood-skills-sets/amp__articleshow/64983094.cms)

<sup>30</sup> "Gujarat Govt forms Transgender Welfare Board," Business Standard, 18 February 2019, [https://www.business-standard.com/article/pti-stories/gujarat-govt-forms-transgender-welfare-board-119021801069\\_1.html](https://www.business-standard.com/article/pti-stories/gujarat-govt-forms-transgender-welfare-board-119021801069_1.html)

<sup>31</sup> "Maharashtra Government Sets Up Transgender Welfare Board," NDTV, 23 February 2019, <https://www.ndtv.com/india-news/maharashtra-government-sets-up-transgender-welfare-board-1998189>

<sup>32</sup> Jatindra Dash, "Odisha becomes first state to give welfare to transgender community," Thomas Reuters Foundation, 2 June 2016), <https://www.reuters.com/article/india-odisha-lgbt-poverty/odisha-becomes-first-state-to-give-welfare-to-transgender-community-idINKCN0Y01S7>

<sup>33</sup> "Government clears policy for transgenders," The Hindu, 30 December 2017, <https://www.thehindu.com/news/national/andhra-pradesh/government-clears-policy-for-transgenders/article22335804.ece>

<sup>34</sup> "Andhra transgender policy: It's a first step, but has many problematic clauses," The News Minute, 11 January 2018, <https://www.thenewsminute.com/article/andhra-transgender-policy-it-s-first-step-has-many-problematic-clauses-74550>

<sup>35</sup> Matam Gangabhavani v. The State of Andhra Pradesh, W.P 18644 of 2020.

years after it was first framed.<sup>36</sup> Sadly, the policy suffers from a few infirmities.<sup>37</sup> Also, it is largely on paper and optically limited. Its benefits have not percolated down to transgender persons yet.<sup>38</sup> On 12 November 2015, the state of Kerala unveiled its transgender policy. In July 2018, it also announced the reservation of spaces for transgender students in colleges.<sup>39</sup>

In January 2015, Madhu Kinnar, a Dalit transwoman was elected as the mayor of Raigarh in Chattisgarh.<sup>40</sup> In May 2018, Chhattisgarh government opened the doors to recruitment of transgender persons into its police force.<sup>41</sup> The state of Uttar Pradesh happens to be the first to set up a university exclusively for transgender persons in Fazilnagar block, Kushinagar district.<sup>42</sup> By July 2019, the Bihar government constituted its Transgender Welfare Board and also announced financial assistance to members of the transgender community who undergo SRS.<sup>43</sup>

### Financial Help to Legally Married Transgender Couples

On 26 October 2018, it was reported that the State of Kerala had approved the financial aid of Rs 30,000 to legally

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<sup>36</sup> "Karnataka introduces a State Policy for Transgender Persons, CLPR, 16 November 2017, <https://clpr.org.in/blog/karnataka-introduces-a-state-policy-for-transgender-persons>

<sup>37</sup> Bindu N. Doddahatti, "Karnataka Trans Policy May Be a Step in the Right Direction, But Needs Work," *The Wire*, 20 March 2018, <https://thewire.in/igbtqia/karnataka-trans-policy-may-be-a-step-in-the-right-direction-but-needs-work>

<sup>38</sup> Chitra V Ramani, "Many policies, but transgender community yet to reap benefits," *The Hindu*, 27 February 2019, <https://www.thehindu.com/news/cities/bangalore/many-policies-but-transgender-community-yet-to-reap-benefits/article26382240.ece>

<sup>39</sup> "Kerala announces reservation for transgender students in colleges," *The Hindustan Times*, 4 July 2018, <https://www.hindustantimes.com/education/kerala-announces-reservation-for-transgender-students-in-colleges/story-qHixW6XIPTExuXkCrrv45K.html>

<sup>40</sup> Manas Mithul, "Word 'Dalit' Has Its Origin in Gandhi and Ambedkar's Poona Pact," *The News18*, 5 September 2018, <https://www.news18.com/amp/news/india/word-dalit-has-political-and-cultural-context-intellectuals-weigh-in-on-ministrys-advisory-1867913.html>

<sup>41</sup> "Chhattisgarh becomes the first state to recruit transgenders in police force," *Times Now News*, 4 May 2018, <https://www.timesnownews.com/india/article/chhattisgarh-becomes-the-first-state-to-recruit-transgenders-in-police-force/224444>

<sup>42</sup> "Country's first university for transgender community to come up in UP's Kushinagar," *Times of India*, 25 December 2019, [https://m.timesofindia.com/city/lucknow/countrys-first-university-for-transgender-community-to-come-up-in-ups-kushinagar/amp\\_articleshow/72969195.cms](https://m.timesofindia.com/city/lucknow/countrys-first-university-for-transgender-community-to-come-up-in-ups-kushinagar/amp_articleshow/72969195.cms)

<sup>43</sup> "Bihar to help transgenders with Rs 1.5 lakh for sex change operation," *Times of India*, 16 July 2019, <http://cms.newindianexpress.com/nation/2019/jul/16/bihar-to-help-transgenders-with-rs-15-lakh-for-sex-change-operation-2004729.html>



married transgender couples and sanctioned an amount of Rs 3 lakh for the current fiscal year. Eligibility conditions include possession of genuine transgender identity card, a time of 6-12 months after marriage for submitting application and submission of attested copy of marriage certificate, and a certificate from the respective ward member/councillor to prove that the couple lives together, along with an application form to apply for the aid.<sup>44</sup>



<sup>44</sup> "Government aid for legally-married transgender couples," The Times of India, 26 October 2018, <https://timesofindia.indiatimes.com/city/thiruvananthapuram/govt-aid-for-legally-married-tg-couples/articleshow/66369507.cms>



# Barriers and Challenges

## CHALLENGES FACED BY LGBTI COMMUNITIES IN INDIA

Due to the stigma from various sections of the society, most LGBTI communities are afraid of coming out to their families, at their workplaces, or to their friends, adding onto the many challenges faced by them daily. The following findings derived from questions posed to the organisations and respondents during the consultation process – major challenges, crises and difficulties faced by the LGBTI communities:

- Non-acceptance by family and society that often leads to abandonment, excommunication, rejection, and ostracism. This often leads to predominant dependence of community members on sex work or begging (for essentials such as food or shelter).
- Violence of varied forms such as that from their intimate partner/s, from their own family members and from society.
- Transgender respondents specifically spoke of both the manifold physical and sexual violence within families, from colleagues and employers at workplaces, from law enforcement officers and police and particularly from within certain sections of the exclusively transfeminine hierarchic communes.
- Discriminatory and exclusionary treatment in schools, colleges, workplaces, places of worship, government institutions, hospitals, police, and in courts, both from the bar and the bench.
- Adverse and deleterious impact on mental health causing depression.

- Bullying and severe ragging at schools.
- No special wards in hospitals or seats in local transport.
- Illegal detention, custodial torture, and violence of physical and sexual nature during illegal detention and incarceration.
- LBT persons usually face emotional blackmail from natal families, forced marriages and marital rape.<sup>45</sup>
- Corrective rapes of LGBTI persons, especially LBT persons.<sup>46</sup>
- Personal rights such as the right to marry are still not recognized, neither by society nor by law. One such void is the adoptions law, which does not allow same sex couples to legally adopt a child. Law needs to be dynamic in an ever-changing society. It needs to change with the changing social and cultural attitudes of the society. Therefore, efforts need to be stepped up to fight against such social and cultural prejudices & stigma. Only then can each individual feel have valued regardless of their identity.

About the question of social and cultural acceptance of the LGBTI rights, we have asked the organizations to address the question whether the organizations and individuals have experienced or felt any change in the attitudes of people and law in the past six and a half years. The reply to the question was in the affirmative but not on a large scale. Some said,

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<sup>45</sup> Distinct & unique identifiers and identities of interviewees and respondents of any form of sexual assault cannot be disclosed under Indian law and is a punishable crime; Sandip Roy, "Marital rape is a problem. Section 377 is not the solution," First Post, 5 March 2014, <https://www.firstpost.com/living/marital-rape-is-a-problem-section-377-is-not-the-solution-1420245.html/amp>; Nandita Saikia, "Rape laws: Why the Supreme Court must read down Section 377 – but not strike it down in its entirety," The Scroll, 12 June 2018, <https://scroll.in/article/886189/rape-laws-why-the-supreme-court-must-read-down-section-377-not-strike-it-down-in-its-entirety>.

<sup>46</sup> "Indian parents arrange 'corrective rape treatment' for son after discovering his sexuality," Independent, 19 January 2017, <https://www.independent.co.uk/news/world/asia/parents-gay-son-corrective-rape-treatment-gay-son-discover-sexuality-kolkata-homosexual-lgbt-a7535741.html>; Nita Bhalla, "INTERVIEW-Film lifts lid on 'corrective rape' in families of gays in India," Thomas Reuters Foundation, 11 June 2015, <https://www.reuters.com/article/india-lgbt-rape/interview-film-lifts-lid-on-corrective-rape-in-families-of-gays-in-india-idINL3N0YW57Z20150611>.

*“The change in attitude has been mostly observed among children, in the youth and some urban people, but there remains a void of steep ignorance in the rural areas.”<sup>47</sup>*

15 organizations stated that there is a marginal positive change in the approach and behaviour of Multinational Corporations (MNCs) in providing employment to LGBTI individuals. However, eleven of them strongly felt that the change in the corporate sector is cosmetic rather than innately attitudinal. They felt that they are much more interested in appearing and looking “inclusive” than championing change and inclusion. As examples, they spoke of how the private sector predominantly ends up employing cisgender gay, bisexual and queer men, and sometimes queer women, rather than transgender persons in India.<sup>48</sup>

Maya Sharma of Vikalp Women’s Group said that the traditional conception of gender acts as a barrier and prevents access to educational and employment opportunities. These barriers are intensified when they intersect with existing disparities of class, caste, and religion. In the absence of equal opportunities, many people are self-employed. They either have a small ration shop or work as sex workers or bar dancers. These people also face challenges as small shops run on the whims and fancies of police officers and the current legal scenario embedded with a heightened sense of morality does not permit sex work.

In our consultations, Sandipan Kushary, President of Mobbera Foundation in Hyderabad and Jayati Mathur, President of Wajood Society and some interviewees and respondents, who wish to remain anonymous as they work very closely with the private sector, mentioned,

*“the informal sector, with brick kiln workers, construction labourers, domestic workers, landless agricultural labourers, migrant workers inter alia, that manages to employ some hijra, jogti, kinnar, kothi, queer, shivashakthi<sup>49</sup> and transgender*

<sup>47</sup> Undisclosed ILGA Asia Interview, 2020.

<sup>48</sup> “India Inc is not creating inclusive workplace for LGBT employees,” Economic Times, November 24 2018, [https://m.economictimes.com/news/politics-and-nation/india-inc-is-not-creating-inclusive-workplace-for-lgbt-employees-people-with-disabilities/articleshow/66778071.cms?utm\\_source=whatsapp\\_pwa&utm\\_medium=social&utm\\_campaign=socialsharebuttons](https://m.economictimes.com/news/politics-and-nation/india-inc-is-not-creating-inclusive-workplace-for-lgbt-employees-people-with-disabilities/articleshow/66778071.cms?utm_source=whatsapp_pwa&utm_medium=social&utm_campaign=socialsharebuttons).

*persons too, albeit very temporarily, is very unorganised. The workforce has no annual leave, the weekly offs are often flouted, no public holidays, there is no medical insurance and labour laws are observed more in breach than in compliance.”<sup>50</sup>*

They also spoke of how background check policies, procedures and practices in the private sector are designed to exclude transgender communities and persons many of whom are generationally and historically dependent on begging and sex work, both of which are criminalized in various forms. Consequently, many transgender persons end up landing on the wrong side of the law and the criminal justice system. The respondents also spoke of how relaxations of background check stipulations are not new to the private sector and has already been in practice with employer’s world over and even in India in the space of employment and livelihoods of survivors of human and sex trafficking.<sup>51</sup>

Brijesh Dubey and Gajraj Kunwar, Founders of Rajasthan Network of People Living with HIV/AIDS stated.

*“Some many employers in the private sector insist on pre-employment medical tests that include HIV tests viz. ELIZA, Western Blot, P24 Antigen and PCR. How fair is that when the law clearly forbids pre-employment HIV screening? How do they expect our people to give them their HIV test results? It is a double whammy. In the public sector, there are more remedies to discrimination, but it is very very difficult to prove discrimination in the private sector.”<sup>52</sup>*

## **ISSUES FACED BY TRANSGENDER PEOPLE IN THE COMMUNE SYSTEM**

A practice which is prevalent in different parts of India for protecting transgender persons is the transgender commune system. It is in practice throughout India under many names viz. *dayyaar, dera, gharana/gharaana, haveli*

<sup>50</sup> ILGA Asia interview, 2020; Undisclosed ILGA Asia interview, 2020.

<sup>51</sup> “Apple Stores to employ human trafficking victims,” BBC News, 14 November 2018, <https://www.bbc.com/news/technology-46206622>; “UPDATE 1-Apple to employ trafficking survivors in efforts to eradicate slave labour,” Thomas Reuters Foundation, 15 November 2018, <https://www.reuters.com/article/instant-article/idINL8N1XQ1QV?edition-redirect=in>

<sup>52</sup> ILGA Asia Interview, 2020.

and/or *jamaath/jammaath*. All these different names refer to the same *naayak aka nayak-guru-chela aka guru-chela* system. While these transgender communes were set up to collectivize and protect transgender persons, the realities of this system are very complex and has a multitude of contestations, contradictions and much worse, brutalities and monstrosities within certain quarters and sections of itself and at varying points of time.

Most transgender persons in this system are largely those who were either abandoned, ostracized, or have fled away from their natal families due to domestic violence from their family members, non-acceptance, and the abject rejection of their identities as transgender persons. The commune system was conceived as a protection mechanism for transgender people, but has degenerated into various forms of bonded labor, coercion, extortion, and violence. It is a hierarchical system where those at the base are forced to pay a tax called '*moorcha*' or '*kamaayi*'.

Failure to pay this tax can have very adverse and serious consequences on the life, liberty, dignity, and safety of such transgender persons.<sup>53</sup> Significant sections of this system have ended up becoming a form of slavery because there is no escape for people trapped in it. As such these people end up being dependent predominantly on sex work and/or begging to subsist and pay the taxes which left them vulnerable to physical and sexual violence and sexually transmitted diseases. They also become emotionally and physically distraught in exchange for a meagre sum of money, most of which would end up as taxes. This was further made worse by the complete absence of any medical care. Transgenders engaged in the sex trade are constantly abused and harassed by the police officers.<sup>54</sup> Intra-community violence between members of different communes is also very common. Many such instances like forced castration, financial exploitation, domestic violence among others is documented by various transgender

<sup>53</sup> "Transgender woman succumbs to burns in Hyderabad," *Telangana Today*, 13 October 2020, <https://telanganatoday.com/transgender-succumbs-to-burns-in-hyderabad>.

<sup>54</sup> A. Revathi, *The Truth About Me: A Hijra Life Story* (Penguin Books, 2010)

<sup>55</sup> A. Revathi, *Our lives our words: telling aravani lifestories* (Yoda Press, 2011), ; A. Revathi, *The Truth About Me: A Hijra Life Story* (Penguin Books, 2010) , ; Living Smile Vidya, *I am Vidya: A transgender's journey* (New Horizon Media Pvt. Ltd & Rupa Publications India Pvt. Ltd, 2007) , ; Laxminaryan Tripathi, *Me Hijra Me Laxmi* (Oxford University Press, 2015) ; *Neither Man nor Woman: The Hijras of India* (Wadsworth Publishing Company, 1999); *With Respect to Sex: Negotiating Hijra Identity in South India* (The University of Chicago Press, 2005)

persons, activists and anthropologist in various books.<sup>55</sup> Olga Aaron, a transwoman, and the founder of Bringing Adequate Values of Humanity (BRAVOH), a movement that strives to make a dignified life accessible to transwomen, states in her interview,

*"In 1998 while I was traveling to work for a mainstream employer, from Chennai to Mumbai, was trafficked by some dayyaar hijra transgender women to Delhi from Mumbai and held against my will for a few weeks till I managed to escape and flee the dayyaar aka dera aka gharaana aka haveli aka jammaat system. Whether it is called dayyar or dera or gharaana or haveli or jammaat, it is all the same. I was sold by a hijra transwoman guru in the Mumbai haveli to another hijra transwoman guru in the Delhi haveli. I had to escape that system and gradually reunited with my biological family. How many transgender persons manage to do that?"*

In 2020, a news source also reported that a transgender woman was held for enticing underage minors and children into sex work.<sup>56</sup> The news source cites that the underage boy was "forced to consume alcohol and was subjected to sexual assault and forced into prostitution."<sup>57</sup>

## CHALLENGES FACED BY CIVIL SOCIETY ORGANIZATIONS

LGBTI civil society organizations are playing a major role to bring the scattered population of the LGBTI communities together. India is a nation with inherent orthodox thinking, and the majoritarian cisgender heterosexual population hardly accepts LGBTI individuals as part of the society. This is the reason that LGBTI individuals become the target of discrimination and face atrocities from the cisgender heterosexual population and the public/government departments. The major challenges faced by the LGBTI people in India are as follows:

### Acceptance of the Identity by the Family

The heterosexual family unit, which stands as the guardian of a child, finds it hard to accept the non-normative

<sup>56</sup> Kathelene Antony, "Three Transwomen Booked," The Hindu, 28 November 2020, <https://www.thehindu.com/news/cities/Tiruchirapalli/three-transwomen-booked/article33201315.ece>.

<sup>57</sup> Ibid.

identity of their children. Most families completely deny the existence of the LGBTI identities in their children and treat this as a disease. Families end up coercing their children into conversion/repetitive therapy by forcibly taking them to homophobic and transphobic doctors who claim to “treat” claim to cure homosexuality, queerness, and transgender identities. LGBTI persons have been driven to suicide through such repressive, unscientific, and unethical mental health practices.<sup>58</sup> Children are also subjected to honor killings.<sup>59</sup>

### Legal Hassles

There are very few laws that directly address the violations of human rights of the LGBTI communities. After 73 years of independence, India finally adopted a legislation to protect the rights of the transgender communities. Even the courts in India responded very late in recognizing the rights of the LGBTI communities. Not until 2018, did the Supreme Court of India decriminalize the offence of same sex relationships. However, Indian laws still do not recognize the marriage between two consenting adults of the same sex. While the Supreme Court decriminalised same sex relationships, rape laws in Indian are not gender neutral but gender specific. The rape laws only acknowledge those victims who are assigned-female-at-birth. In this kind of a legislative vacuum, civil society organisations working for the rights of the LGBTI communities face overwhelming impediments in fighting for justice for the communities. Also, as answered by most of the organizations, police officials who are duty bearers of the rights of the citizenry and our societies are often hostile, indifferent, and insensitive to the rights of the LGBTI individuals. Below poverty line and working-class kothi, transgender and male sex workers dependent on traditional livelihoods of begging and sex work have often been brutalised by the police with custodial sexual and violence, and face atrocities and custodial torture of physical and sexual natures.<sup>60</sup>

<sup>58</sup> Navamy Sudish, “Shock treatment, exorcism, psychotropic drugs: behind ‘conversion therapy’ for queers,” *The Hindu*, 27 June 2020, <https://www.thehindu.com/society/it-is-dangerous-and-unethical-but-queer-people-continue-to-be-subjected-to-conversion-therapy/article31922458.ece>

<sup>59</sup> Undisclosed ILGA Asia Interview, 2020.

<sup>60</sup> Information received during the consultation with the informants. Such custodial crimes are also widely published by the media. Also refer to the historic verdict in a case of custodial sexual assault and violence in *Jayalakshmi v. State of Tamil Nadu*, (2007) 4 MLJ 849, Madras HC; “I was raped by cops’ multiple times and then left writhing in pain,” *Hindustan Times*, 2 December 2013, <https://www.hindustantimes.com/india/i-was-raped-by-cops-multiple-times-and-then-left-writhing-in-pain/story-iy0D1QpjjBaxyd7N42cr2K.html>; “Transgender alleges gang-rape by



### **Mobilising the Dispersed LGBTI Communities**

LGBTI communities are a small fraction of the Indian society and are yet scattered throughout India. Due to the multitude of languages, religions, social mores, stigma, and lack of resources, most of the community members are devoid of the necessities. Therefore, this is an overwhelming challenge for the Civil Society Organizations to mobilise the dispersed communities.

### **Garnering Support from Mainstream Society**

Indian society is not very welcoming towards the LGBTI communities. This is also one of the reasons that the atrocities committed on LGBTI individuals mostly end up with no redress. Garnering support from mainstream society is also one of the major challenges for civil society working at the regional, national, or international level. Most of the heterosexual population do not care much about the rights and rights violations of LGBTI communities. Many allies are trying to raise awareness that being LGBTI is a natural part of society. This is one of the most important areas for regional, national, and international organizations to work on.

### **Financial Crunch with the Civil Society Organisations**

Most of the civil society organisations working on a small scale are almost always devoid of financial support. Even organisations that are working at the state level such as Durbar Mahila Samanwaya Committee (Balaram Dey Street Anandam), Queerhythm, Queerala, Transgender Resource Centre, Sahodaran, Vikalp Women's Group informed during the consultation that finances are always constrained in the workings of LGBTI civil society organisations. Here, the international and regional LGBTI organizations can help these small-scale organizations.

### **Lack of Expertise**

Strategy and required expertise are needed for any task or event. Most of the LGBTI organizations in India lack this.

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cops in Ajmer," Times of India, 11 June 2014, <https://timesofindia.indiatimes.com/city/jaipur/Transgender-alleges-gang-rape-by-cops-in-Ajmer/articleshow/36365899.cms>; "Kolkata traffic police officer harasses transgender activist, 2 women; arrested," Times Now News, 24 September 2020, <https://www.timesnownews.com/kolkata/article/kolkata-traffic-police-officer-harasses-transgender-activist-2-women-arrested/657105>

They do not have the expertise for executing any task or event on a very large scale. For instance, organizations working on the ground level are resourceful for assisting in policy making work for the community, but being a non-profit organisation, they often lack people having the required knowledge. This is another area where regional and international organisations intervene and conduct training sessions like Programme Management, Report Writing, Financial Management, etc. During the consultation, when we raised questions on what the main hindrances are in achieving the aim of the organisation, the results varied from the obstacles of expertise to financial crunch and the lack of support from the government and the common public.

## **CHALLENGES RELATED TO ADVOCACY AND LOBBYING**

### **Financial Resources**

Most of the local organizations lobbying and advocating for LGBTI rights are non-profit organizations. These organizations lack financial resources for the capacity building of the communities and advocating for their rights.

### **Lack of Expertise**

Any task requires resource personnel who have expertise and skills for that task. Most of the people from the LGBTI communities seldom have the resources and support to attain higher education and acquire skills. This creates a huge skill deficit in the organizations as the people employed with them are mostly from the LGBTI communities. The effect of this clearly reflects in the capacity of the organization.

### **Lack of Cooperation from Government Departments**

The consultation reveals that it is difficult to have cooperation from the government departments. This is because of the stigma within society and officials of the relevant departments. One such debate in India is related to Transgender Person Act, which does not have any reservation in the employment for LGBTI individuals.

### **Insensitive and Indifferent Media**

The media is one of the prime mediums in any nation which helps in lobbying and advocating the rights of marginalized communities. Employing the help of the media is often a challenge in any event concerning the rights of LGBTI communities.

### **Social and Cultural Cooperation**

Local communities working for the rights of the LGBTI community often lack social and cultural cooperation from the society in India. The mainstream society is not welcoming towards the idea of advocating the rights of the LGBTI communities. This mostly results in the suppression of the voices of the LGBTI communities when raising concerns about their rights and the atrocities and discrimination they face.

### **Lack of Regional Intergration**

India is a nation with multiple regional languages. There are 29 states in India and most of these states have their regional language. The multiplicity of the languages and lack of knowledge of the common language English for the local organisations always act as a hindrance in the integration of the LGBTI communities. It was observed that the local communities mostly have people from regional and rural backgrounds. Many of them do not have expertise in a common language or in English, which leads to the lack of regional integration amongst the different states in India.





## Strategies & Approaches Employed by the LGBTI Communities & Allies in Protecting & Advancing their Rights

For many LGBTI persons in India, a truly inclusive society remains a distant dream. The person who identifies themselves as LGBTI faces discrimination and violations of their basic human rights either at the hands of the public servants, government officials or society itself. Owing to the fear of being discriminated against and treated badly, most individuals do not reach out to the authorities. During the consultation process with 26 organizations representing thousands of LGBTI persons, many put forth their views.

Our questions were on whether LGBTI persons ever felt discriminated at the hands of public servants/government departments or faced discriminatory behaviour in their school education. Furthermore, on asking whether LGBTI persons feel comfortable in reaching out to the officials concerned for any violation of human rights, most of them replied that they do not. Another pertinent question asked surrounds workplace discrimination. The organizations reported most cases where the individual had been treated unfairly by both the employer and the colleagues. That is the reason why most BPL and working-class LGBTI individuals do not feel comfortable and safe working in predominantly heterosexual spaces. Particularly among the intersex and transgender communities, those who are employed are very few and many of them prefer to work in an organization led by an LGBTI group or one concerned with LGBTI rights.

## **POLICY ADVOCACY**

LGBTI Civil Society Organisations also play an important part in policymaking. During the consultations with Humsafar Trust, Queerala, Queerythm, Vikalp Women's Group, Sahodaran, Srishti Madurai Educational Trust and other organizations, most of them that are financially capable have consulted the community members to draft policies to address their concerns. For instance, Humsafar Trust is currently working on the guidelines to be released by the Government in relation to the 2019 Transgender Act. Srishti Madurai is similarly working very closely with the Government of India to formulate guidelines for intersex persons. Vikalp Women's Group was instrumental in working very closely with the Gujarat government in the setting up of the transgender welfare board in Gujarat. Sahodaran is closely working with the Government of Tamil Nadu in the administration of welfare schemes for transgender persons, in organising Know Your Rights (KYR) campaigns and workshops. Swabhava has held workshops to sensitize judges in Karnataka. Queerala and Queerythm are working and have already worked very closely with the Kerala government in formulating the transgender policy of Kerala and in the administration of various welfare schemes respectively.

## LITIGATION

Most civil society organizations have prepared specific strategies to address the concerns of the LGBTI communities and have helped them attain justice for the violation of their human and fundamental rights by providing paralegal and legal support.

## AWARENESS-RAISING

Most of the organizations have published their helpline numbers on social media to address the concerns of the LGBTI communities. Any community member facing any violation of human rights can contact them for assistance. For instance, Sappho for equality has created a helpdesk. Community members can call that number for assistance in the event of rights violations and in cases of distress. Apart from that, social media has become an epicentre for revolutionizing and advocating the human rights of LGBTI persons and it also helps to bring the community together. Today, almost all organizations have their presence on social media.

Organizations also initiate workshops and events to educate the LGBTI community. They organise Know Your Rights (KYR) campaigns and training interventions, film screenings, art exhibitions to mass communicate through arts and the visual media. All of this and more enables and encourages closeted and fearful community members to figure out their coping strategies when facing societal stigma. Events also include educational campaigns and training programmes for the community members as well as different government departments, judges and judicial officers and officials of the State and District Legal Services Authorities.

## ORGANIZING HEALTH CAMPS AND PROVIDING ASSISTANCE TO HEALTH PROBLEMS

LGBTI organisations often organize health camps to protect the human rights of the LGBTI communities. During health camps, community members can seek help in relation to their health problems. For instance, Durbar Mahila

Samanwaya Committee (Balaram Dey Street Anandam) shared during the consultation process that they frequently organize health camps and provide free condoms, sanitary pads, and lubricants for the needy community members. Mobbers Foundation, Wood Society and Sahodaran too have organised such health camps in their respective states.

LGBTI organisations are also tied up with professional and queer and transgender-affirming counsellors and mental healthcare practitioners for helping community members who are facing mental health challenges. In today's times of COVID-19, mental well-being is one of the prime concerns for many. In these times, organizations like Sappho for Equality have arranged telephonic counselling for the community members.

## COMMUNITY MOBILIZATION

It is crucial to mobilize LGBTI persons and rally forces to amplify their voices. Civil society plays a pertinent role in organizing this disorganized community together. As reported by Humsafar Trust, Sangini Trust and many other civil society organizations, the civil societies have a consortium called the Integrated Network for Sexual Minorities (INFOSEM), through which the civil society's efforts to organize the society together spread and reach everyone identifying themselves as LGBTI.

## CONSULTATION WITH THE FAMILIES

Organisations also aim to communicate with and help the family members of LGBTI individuals understand and accept their children. They assist the families in helping them understand that being LGBTI is not unnatural. Based on consultation, it is found that the most difficult aspect for civil society organizations is to explain to the family that being LGBTI is not unnatural and that LGBTI people deserve the same respect accorded to the cisgender heterosexual population. Swabhava, through its sister collective called Good as You (GAY), has organised many meetings with parents and families to help them understand and accept their queer and transgender children.



## ANNEXURE 1- FEATURES OF THE TRANSGENDER ACT

- The Transgender Act aims to address the discrimination against transgender people by providing them with the right to education, employment, health and directs the Central and State Government to come up with welfare schemes.
- The Act also lays down a detailed procedure to apply for a “Transgender Certificate” with the District Magistrate which will help the transgender person obtain official recognition as a transgender person.
- The Act strictly prohibits and penalizes the practice of discrimination or any denial of service or any unfair treatment against the transgender person in education, employment, healthcare, enjoyment of goods, services, opportunities, right to movement, right to reside or rent, stand for public office, right to access government or private organizations.
- Some specific provisions in the Transgender Act include that no person should be separated from their parents or close family on the grounds of being transgender. The Transgender Act also prescribes that in case of any parent is unable to take care of the transgender person, then it is the duty of that parent to place the transgender person in the rehabilitation center, but that can be done only on the order of a competent court.
- The Transgender Act also establishes the National Council for Transgender persons, which will mainly advise the Government of India on policies, and legislation related to transgender persons.



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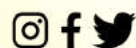


**ILGA Asia** is the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 member organizations in East Asia, South Asia, Southeast Asia and West Asia.

Our vision is a world where Asia is a safe place for all, where all can live in freedom and equality, be properly informed in the nature of sexual orientation and gender identity & expression and sex characteristic (SOGIESC) rights, have access to justice, and diversity is respected.

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