

## I. EXECUTIVE SUMMARY

1. “India's Stakeholder Report on LGBTQIA+ Human Rights for the United Nations’ Universal Periodic Review, 4th Cycle 2022, 41st Session” addresses how LGBTQIA+ persons are impacted by different social as well as formal systems- from education, the job market, families, government, and the law, to medical and mental health practitioners (MHPs). From pathologized identities to claiming subjecthood as legal citizens has been a long and arduous journey. This report discusses how far we have come and how many more miles we have to travel.

2. The report is structured to take into account recommendations for LGBTQIA+ matters from India’s 3rd Cycle Universal Periodic Review (2017) and report on current status and ground realities in relation to those recommendations including existing violations and causal actors. In addition to recommendations, this report highlights some of the existing best practices that can be emulated by different sectors in countering the dominant social codes of heteronormativity and heterosexuality, and in making India not simply a queer-friendly country, but queer-affirmative in its stance.

3. One of the most important aspects of this report is that along with secondary sources, information has been gathered from grassroots organisations working in the field of gender and sexuality rights.

4. For this, we conducted a multiple-stakeholder consultation with LGBTQIA+ collectives and organizations, recorded their responses with their consent and divided them thematically into different sections: Education, Housing and Shelter, Food Security, Employment and Livelihood, Physical and Mental Healthcare, Violence, COVID-related impacts, Best Practices and Recommendations with a view to reworking towards queering frameworks and policies.

5. The participants echoed most of the previous cycle’s recommendations such as in subjects of “police harassment, recognizing self determination of gender, (sensitization of) medical practitioners, mental health professionals and service providers, (protection) against discrimination on multiple grounds including gender identity and sexual orientation with respect to health care, education, housing, employment and access to public spaces.”<sup>i</sup>

## II. BACKGROUND AND FRAMEWORK

### A. 2017 Universal Periodic Review of India- Recommendations and Status:

**Decriminalize same-sex relations<sup>ii</sup>: Status of Implementation: Supported/Noted, Fully Implemented**

6. In 2009, the Delhi High Court declared Section 377 of the Indian Penal Code (IPC), that decriminalizes homosexuality, as unconstitutional. In 2018, the Supreme Court unanimously pronounced decriminalization of consensual same-sex relations in the case of *Navej Singh Johar and Ors. v. Union of India, The Secretary, Ministry of Law and Justice*. The Court considered that Section 377 is unconstitutional as it violated Article 14 of the Indian Constitution which guarantees the right to equality for all; Article 21 that provides the rights to dignity, privacy, and sexual autonomy of all individuals (including LGBTQIA+ persons); and the right to freedom of expression under Article 19(1)(a) of the Constitution.<sup>iii</sup>

**Guarantee Equality and Non-Discrimination<sup>iv</sup>: Status of Implementation: Supported/Noted, Partially Implemented**

7. According to a 2020 mid-term report that assesses India's implementation of 3<sup>rd</sup> UPR Recommendations of 2017, "People belonging to gender and sexual minorities continue to face discrimination, harassment, and violence in all spheres of life; (and) it gets further compounded as a result of other intersecting identities, including caste, class, and religion. ... Discussions around their inherent rights are still not a part of the mainstream discourse."<sup>v</sup>

8. The National Human Rights Commission (NHRC) had advised the government to sensitize the general public, the law enforcement agencies, and the medical community on the rights of LGBTQIA+ communities.<sup>vi</sup> However, the latter abstained from voting on renewing the mandate of the Independent Expert on sexual orientation and gender identity during the 41<sup>st</sup> Session of the United Nations (UN) Human Rights Council in Geneva.

## **B. The NALSA Judgment 2014 and the Transgender Persons (Protection of Rights) Act 2019**

9. The *National Legal Services Authority v. Union of India* (the NALSA Judgment) of 2014 recognized transgender persons as the "third gender"; pronounced their fundamental rights granted by the Constitution of India such as prohibiting discrimination, and affirming the right to self-identify one's gender.<sup>vii</sup>

10. In relation to the Transgender Persons (Protection of Rights) Act 2019 (Trans Act), - a recommendation by Israel in India's previous UPR to adopt measures to effectively protect transgender persons, which India also supported<sup>viii</sup>, one participant from the LGBTQIA+ Consultation mentioned that mandating a medical certificate by a District Screening Committee to validate one's gender identity violates an individual's right to self-identify their gender. This is not only in violation of the NALSA judgement of 2014, but also in violation of the 2015 report of the UN Human Rights Council<sup>ix</sup>, whereby it is mentioned that the right to self-identification should not have any medical barrier placed upon it.

11. Section 18 (d)<sup>x</sup> of the Trans Act sets the maximum penalty for sexual abuse against transgender persons as less than what it is for cis gender women under section 376 of the IPC. This violates the right to equality as well as rights espoused in the Universal Declaration of Human Rights. Section 12 of the Trans Act<sup>xi</sup> compels transgender persons to either live with their birth family or in rehabilitation centres. It delegitimises the alternative chosen families that many transgender people have historically and traditionally created in the sub-continent. The criminalization of begging- a traditional source of livelihood for most Hijras<sup>xii</sup> impacts the livelihood of a large majority in the community.

## **C. Human Rights Violations and Causal Actors (Sector-wise)**

### **Education**

12. A Factsheet report on India's 3<sup>rd</sup> UPR cites that - "Despite India's Right to Education law banning discrimination in schools, there is wide spread discrimination faced by ... children from LGBTQ (communities).<sup>xiii</sup> Therefore, UPR recommendation for India was to "track and eliminate educational inequalities at all levels across children (of) ... LGBTQI communities"<sup>xiv</sup>

13. Participants mentioned that there has been no representation of the LGBTQIA+ community and integration of their concerns in the educational curricula. In recent times, when the National Council of Educational Research and Training (NCERT)<sup>xv</sup> released training material to sensitise teachers and administrators about inclusion of gender-nonconforming children in schools<sup>xvi</sup>, it received severe reaction with the National Commission for Protection of Child Rights (NCPCR) issuing a notice to the NCERT when

the latter's manual was labelled "woke" and a "criminal conspiracy...to psychologically traumatise school students under the name of gender sensitisation"<sup>xvii</sup>. The NCERT was forced to pull down the manual from its website within hours of the material getting uploaded. Backlash against sensitisation and awareness attempts is not aligned with India's National Education Policy to support Socially and Economically Disadvantaged Groups (SEDGs)<sup>xviii</sup>.

14. Participants also highlighted that lack of accessible dressing rooms and toilets in schools make it unsafe for gender non-conforming students. There is also imposition of dress codes for trans teachers and children.

15. Transwomen who are admitted to men's colleges are often forced to leave if they decide to go through the process of transition. There is no policy allowing them to continue with their studies, thereby affecting their education.

16. There is lack of sensitisation, respect, and education about gender non-conforming/non-binary and non-heterosexual identities which has caused bullying and violence in schools. For example, the recent suicide of a 16-year-old student in a reputed school in greater Faridabad area, who was allegedly harassed due to his sexuality<sup>xix</sup> and driven to take the extreme step.

17. The updated University Grants Commission's (UGC's) Anti-Ragging policy (3rd amendment June 2016) prohibits ragging based on "gender (including transgender), sexual orientation"<sup>xx</sup>. However, participants felt that there has been no implementation in colleges as students are not even made aware of these existing policies or authorities maintaining discreet silence around the same. This is in spite of one of the recommendations to India during its 3<sup>rd</sup> UPR vis-à-vis "the mainstreaming of RTI awareness (and) raising efforts as part of its human rights education and legal empowerment programmes with particular focus on vulnerable and marginalized groups such as ... LGBTQ communities"<sup>xxi</sup>.

18. One participant mentioned how the Coimbatore district administration in Tamil Nadu offered financial assistance of Rs. 1,00,000 to students belonging to the transgender community. However, it could be availed only for higher studies, for students who have the enrolled in college during 2019-2020 and has a minimum of 40 per cent in Class 12<sup>xxii</sup>. The participant, despite considering it as a welcome move, found it very unrealistic as people from the transgender community can barely finish high school owing to the lack of support environment in educational institutions.

### **Causal Actors**

19. **Media:** Media's prejudiced representation of trans and homosexual individuals reinforces prejudice already prevalent in society.

20. **Family:** As queer people come out to their families, they have often been compelled to discontinue their education or work. Participants also mentioned that parents have often withheld the educational certificates of their children.

21. **Medical Practice:** There is a lack of comprehensive education about LGBTQIA+ individuals, their diverse bodies, genders, and sexualities. The fields of medicine and psychology often reflect and promote society's prejudiced views. Medical malpractice shows up as both in i) its self-appointed role of 'correcting' bodies and genders and ii) performing affirming procedures without proper accountability which renders trans persons vulnerable to botched surgeries and zero consequences for doctors.

22. **Law:** Despite the scrapping of Article 377 of the IPC, LGBTQIA persons are still vulnerable to harassment and bullying. There is a need for a rigorous anti-discrimination law and policies.

23. **Infrastructure:** One participant highlighted that most colleges are yet to implement a 2016 UGC notification which states that it is the responsibility of the educational institution to provide trans accessible infrastructure, including but not limited to, bathrooms and hostels.

### **Housing and Shelter**

24. The welfare of minor trans persons needs more attention. Family and community violence against LGBTQIA+ persons can happen at any age. There is no provision of shelter homes in case they want to escape violent homes. Existing shelter homes are limited to adult trans persons alone and doesn't include their partners or other queer persons who may need shelter.

25. One participant shared an experience where a trans person was forced to take his partner-a transman- to a shelter home for women. Not only was the trans person and his identity not recognized, but the authorities forced him to wear feminine clothes for that was all they had.

### **Causal Actors**

26. Trans persons undergo shaming and attempts at 'conversion therapy' in shelter homes. The management and staff can be extremely transphobic due to lack of sensitisation. There are also no consequences to transphobic behaviour in the homes. Attempts are made to separate couples and send them back to their respective families.

27. Participants highlighted the infantilization of queer people. The decision to live with their natal families is thrust upon them and their consent is not taken in the matter.

28. There is no separate shelter home for gender non-conforming children, and they are often forced to live in the homes that are provided by the Juvenile Justice Department. Gender non-conforming children are vulnerable to bullying and harassment in these shelters.

29. There is a dearth of study and research regarding shelter homes of LGBTQIA+ folk, the Garima Grehs<sup>xxiii</sup> and their functioning. These studies will help discover gaps in sensitisation and awareness for their staff and promote accountability.

### **Food Security**

30. Lack of proper documents and dearth of channels for documentation disrupt accessing ration card utilities provided by the government. One participant mentioned that discrimination and lack of gender-affirming support further compounds the documentation processes, especially for trans folk.

31. Queer individuals often face food security issues as they are forced to leave their natal homes once they come out to their families, leaving them with no social safety nets and exposing them to extremely vulnerable situations.

### **Causal Actors**

32. Within the LGBTQIA+ community, with respect to state recognition, the focus is on the transgender community. The invisibility of other identities leads to lack of support, especially when all these groups are vulnerable to urban poverty and food insecurity.

### **Employment and Livelihood**

33. LGBTQIA+ individuals are unable to access the job market because of lack of proper documents. One participant narrated about cases where candidates applying for jobs and despite clearing different interview levels, could not obtain the jobs as their dead names were reflected in some of their documents and their newly taken names in a few others. Gaps in recruitment of trans persons may happen owing to lack of proper sensitization amongst company officials about deadnaming and how LGBTQIA+ individuals may take names suiting their authentic identities post transitioning or otherwise.

34. The integration for queer and transgender people in development plans requires resolve and effort as there is a systemic exclusion of them from education and the job market.

35. One participant, who comes from the Hijra<sup>xxiv</sup> community of West Bengal, mentioned how despite 25 years of work experience in the development sector, she, like many others, had to go back to the traditional Badhai pesh<sup>xxv</sup> to earn her livelihood.

### **Physical and Mental Healthcare**

**36.** There is a dearth of sensitive and trained professionals for the queer community, often handled by practitioners who suggest ‘cure’, corrective treatments and experimentation on LGBTQIA+ folk. There is also a lack of a standard procedure regarding guidelines for gender affirming surgery or the process involved in issuing a certificate of gender dysphoria. Participants recalled with sorrow the case of Anannayah Kumari Alex<sup>xxvi</sup>, who took her own life, being unable to bear the physical and emotional pain of complications following a botched surgery on which she was forced to sign off as satisfactory.

**37.** No resources are allotted in Central or State healthcare budgets for gender-sexual minority groups and their issues. One participant also noted that owing to the lack of proper enumeration, the government's estimate of the number of LGBTQIA+ people is several times lower than their actual population. The 2011 census estimated the population of transgender persons to be 0.488 million, while estimates state that the number of LGBT persons in India amount to 45.4 million. <sup>xxvii</sup>

**38.** Transmen do not get the right kind of counselling support during transition for challenges like mood fluctuations, menstruation and its stress etc.

**39.** Intersex individuals are often clubbed with trans persons, which harms both communities and identities since their needs are different.

**40.** Another challenge is that with respect to the LGBTQIA+ community, government programs tend to focus only on the issue of Human Immunodeficiency Virus (HIV) infection, but does not look at other health issues affecting the community- be it gender or sex reassignment surgery, mental health, gynaecological, and endocrinological issues.

**41.** One of the participants, who identifies as asexual, highlighted that asexuality is often misunderstood. It is medicalised and seen as abnormal. Asexual persons are also at risk of being ‘cured’ or ‘corrected’.

**42.** A participant noted that lack of pre-operative and post-operative counselling during sex/gender reassignment surgery adds to mental distress. Trans persons require information as to how gender affirming procedures will impact their mental health. Currently, post operative care is often limited to prescribing just three days of painkillers, while there are a lot of physical and mental health concerns that need support. Another participant highlighted that the demand from healthcare authorities for adult trans persons to bring along their family members while availing their trans certificate or while wanting to undergo surgery makes it difficult for them to access life-saving care. Families can be hostile and withhold support. Under law, all they need is a bystander who need not be related by blood or marriage.

### **Causal Actors**

**43.** One participant observed that many hospitals in large metropolitan cities are offering gender and sex reassignment surgeries at discounted prices as a marketing gimmick. The discounted prices do not cover the entire process and trans persons have to shell out for various hidden costs and procedures that follow.

**44.** In Bijapur district in Karnataka, at a government hospital, an intersex teenager's identity was revealed without their or their parents'/caregivers' consent, thereby traumatizing them. In Anantapur district in Andhra Pradesh, an intersex lady with a mild cold was compelled to stay in a government-run women's shelter with minimal healthcare support and insufficient water, food, and sanitation.

**45.** Trans persons, especially the poorer trans women are vulnerable to police violence. There is record of physical, sexual, and verbal violence; registering of false complaints/cases; forcing transwomen to migrate to minimize ‘misbehaviour’ within their jurisdiction; harassing transwomen seeking alms or doing sex work.

**46. Media** misrepresents and reinforces negative stereotypes.

47. Many **families** reject queer identities and find various means to harass them. Some lodge false complaints and cases against adult queer persons' partners.

48. **Medical and Psychiatry:** The legacy of violence and discrimination, in mental health and medical practice was also highlighted. That it is not only parents of queer persons, but many professionals including endocrinologists, gynaecologists, 'sexologists', surgeons, and mental health practitioners prescribe correctional hormonal therapy or enforce conversion practices, the latter being in strict violation of the Mental Healthcare Act, 2017 which prohibits discrimination on the grounds of gender and sexual orientation.

## **Violence**

### **Violence in the public space**

49. Two participants mentioned the harassment that LGBTQIA+ folx have to undergo in prisons, be it in terms of being physically checked and in providing them wards. The Union Home Ministry of India has sent an advisory in January 2022 to States and Union Territories to ensure privacy and dignity of transmen and transwomen inmates by providing them exclusive space vis-à-vis their self-identification, search protocols in a private room or in a partitioned place by a medical professional of their preferred gender, while not intending to determine the gender of the person, separate toilets and showers, protecting them from isolation and social stigma as well as training of prison medical authorities<sup>xxviii</sup>. Although this has been considered a very welcome move by participants, they highlighted that there has not been any research to determine how much of these have actually been implemented.

50. There is discrimination and harassment for gender nonconforming children and teens in juvenile shelter spaces, lack of provisions in prisons for trans persons thereby leading to compromised safety and protection of LGBTQIA+ folx.

51. Safety of trans folx is of prime importance and the school/college management does not take responsibility or accountability for the same. If a trans person wants to continue their education, they may need to stay in the hostel. And hostels are not the safest of spaces.

52. Another participant echoed the above point by sharing their own lived experience and how they have been forced to pick a very strongly gender segregated hostel, while knowing that the boys' hostel is not a safe place and without proper sensitization, the girls hostel also becomes a very hostile place to live in. There is in fact an entire infrastructure of wardens, hostel mates, and even roommates, who might not be the most welcoming towards LGBTQIA+ individuals.

53. Students face discrimination/violence/abuse/bullying at the hands of their peers or classmates. School authorities do not have mechanisms in place for their protection or grievance redressal.

54. One participant claimed that people who are from the LGBTQIA+ community often face sexual abuse. There have also been instances of authorities creating a hostile environment to push them out of the educational institution in a pre-planned manner. Many methods are used to push them out like alleging incompetence in their studies, attendance etc.

55. The Karnataka government's recruitment of transgender people in the state police requires a gender certificate from the district magistrate, which failing to do so, nullifies the application itself. A participant from one of the organizations which had filed a petition for job reservations in Karnataka for the transgender community and was also successful in obtaining it, highlighted that asking for identity cards violates the NALSA Judgement of 2014. See Paragraphs 9-10.

### **Family Violence**

56. Queer persons are thrown out of their homes and face abuse when their gender non-conforming identity is revealed. There have also been instances of their being locked in, their

freedom curtailed and their being subjected to ‘correction’ attempts.

### **Causal Actors**

**57. Medical Practice:** Trans persons have experienced misgendering, inappropriate touching either by technicians, doctors, and MHPs, and ‘correctional’ or ‘conversion therapy’.

**58. Family:** Rejection of their queer identities causes severe trauma and mental distress amongst LGBTQIA+ individuals.

**59. Police:** A Working Group on Human Rights in India and the UN (2020) report on India’s 3<sup>rd</sup> UPR corroborates this by citing that accessing justice is particularly problematic for vulnerable groups including the LGBTQ population and gender non-conforming people<sup>xxix</sup>. It impacts their access to redressal mechanisms.

## **D. COVID-19 related impact**

### **Education**

**60.** Financial insecurities led to a lot of students having to leave education in order to help with earnings in their homes.

**61.** Lack of accessibility to technology for people belonging to the LGBTQIA+ community, especially during the last two years of the COVID-19 pandemic.

### **Housing and Shelter**

**62.** There is no separate shelter home for LGBTQIA+ folk if they test COVID positive in the event of not having access to public healthcare. Despite inconvenience, during the lockdowns many had to stay wherever they were owing to different travel restrictions by different states.

**63.** One participant mentioned, how during the lockdowns, people from the LGBTQIA+ community had very little income, savings, or support and much of it went only for food rations, protective gear, and personal hygiene items. During the first lockdown, some people were at least provided with medicines; during the second one, when the situation exacerbated, people were evicted from homes as they were unable to pay rent. People from the community were forced to return to their biological families facing violence, rejection, and even forced marriages at times.

### **Food Security**

**64.** Access to food rationing was dependent on documents-such as Voter ID Cards, AADHAR cards, Municipal Chairman’s certificates or having to be present with family members to access ration kits. The latter became especially difficult as the Hijra community are often estranged from their natal families, and the law only recognises kinship networks through marriage or blood. Producing documents to access food supplies becomes a huge impediment for those who cannot read and write- an issue that severely affects the Hijra community, as many are abandoned by families or pushed out of the schooling system due to bullying. Another participant echoing this sentiment mentioned that asking for so many documentary proofs to access ration kits intrudes into the queer person’s privacy.

### **Employment and Livelihood**

**65.** One participant mentioned how the traditional livelihood sources of the Hijra community like the Badhai peshha, which involves dancing in marriages and blessing newborns, got heavily affected during this pandemic. See Paragraph 35.

### **Healthcare**

66. During the first lockdown, there were shortages of Anti-retroviral Therapy (ART) supplies with very few ART centres remaining open<sup>xxx</sup>. In 2021, the ART medication was changed without much prior notice. People belonging to gender and sexual minorities and who are also HIV positive, suffered side effects with very little information or guidance about the new medicines.

67. There was no resource allocation for medicines or testing of other comorbidities like hypertension and diabetes for queer persons. And because of inequity in healthcare delivery and social security, lack of income and savings, many from the community had to face severe physical health issues

68. People from the LGBTQIA+ community were living with unsupportive or abusive biological family or partners during the lockdown. This kind of home environment pushed them into homelessness, reduced nutrition, unique mental stressors, and physical health issues.

## **E. Best Practices That Should Be Applied More Widely**

### **Education**

69. The NCERT training material on gender and sexuality should be included in the education system. See Paragraph 13.

70. The trans community has been seeking horizontal reservations in jobs and the education sector for LGBTQIA+ people. The Karnataka government in July 2021 had notified 1% reservation for transgender persons in any service or post for all employment categories<sup>xxx</sup>.

71. The state government of Tamil Nadu announced in 2018 that all colleges affiliated to the Manonmaniam Sundaranar University would offer free education to the transgender community of the state. The University happens to be the first in India to offer free education to the community. The Tamil Nadu Higher Education Minister also announced a monthly stipend of Rs. 3,000 to all meritorious transgender students under the scheme<sup>xxxii</sup>.

72. UGC Anti-ragging policy Amendment 3 should be a part of information provided to students, teachers, and everyone working in the education sector. See Paragraph 17.

73. The Madras High Court suggested sensitization measures on the LGBTQIA+ community by offering changes in the school curriculum to educate students on the same<sup>xxxiii</sup>.

74. The Ministry of Social Justice & Empowerment, India provides scholarships to Transgender students studying in classes IX and X, at post matriculation, secondary stage, and till post-graduation with a view to reduce drop-outs<sup>xxxiv</sup>. The award once made continues only if the student displays “good conduct and regularity in attendance”<sup>xxxv</sup>. This becomes problematic with transgender students often facing harassment in educational institutions leading to their drop-out or being thrown out of schools/colleges deliberately. See Paragraphs 17, 18, 51, 52 and 54.

### **Housing and Shelter**

75. Participants considered that the Smile Garima Greh: Shelter Homes for Destitute & Abandoned Transgender persons is a welcoming step by the Ministry of Social Justice and Empowerment of India. The scheme provides basic amenities like shelter, food, medical care, recreational facilities, as well as provides capacity-building/skill development support for transgender persons<sup>xxxvi</sup>.

### **Food Security**

76. During the pandemic the Kerala government supplied ration kits to transgender folk<sup>xxxvii</sup>, however it needs to include lesbian, gay individuals, and other sexual minorities

within its purview.

### **Employment and Livelihood**

77. In 2017, the Odisha government implemented the Sweekruti scheme to promote equality and justice for the transgender community, protect them from discrimination as well as provide them with employment, and scholarship opportunities. The scheme provides financial assistance to parents of gender questioning children and also provides pre-and-post-matric scholarship so that they can complete their education. The assistance to the parent under this scheme is Rs. 1000/- per child every month till the child attains the age of 18 years<sup>xxxviii</sup>.

78. The Karnataka government has become the first state in India in providing 1% reservation for the transgender community across all government services<sup>xxxix</sup>. One participant from the Jeeva Trust- an organization which had filed a petition to the Karnataka government to do so- considered it a very welcome move that can be widely applied across other states.

79. Another participant noted that the Tamil Nadu Aravanigal (Transgender) Welfare Board (TGWB, 2008) was formed as the nodal body to address the social protection needs of transgender people- in their income assistance, housing, education, employment, and health care, which included free sex reassignment surgery (SRS) through select government hospitals in Chennai. This scheme, which only ran for some time, could have provided action plans for other states to follow suit and introduce similar state level schemes in protecting the specific needs of gender and sexual minorities.<sup>xl</sup>

80. Kerala government has constituted a Transgender Welfare Cell withing the state Social Justice Department. The cell works directly with the Trans community and supports them in matters ranging from livelihood to SRS procedures.

### **Healthcare**

81. In 2019, the Madurai Bench of the Madras High Court delivered a landmark judgement that banned sex-selective surgeries on intersex infants, except in the case of life-threatening situations. Based on this verdict and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the Delhi Commission for Protection of Child Rights (DCPCR) has sought a ban on sex selective surgeries on intersex infants and children, thereby recognizing their human right and their right to bodily integrity<sup>xli</sup>.

### **Violence**

82. As a result of a Public Interest Litigation (PIL) by a same-sex police constable couple, the Gujarat High Court in July 2020 ordered the Mahisagar district's Superintendent of Police (SP) to look into the matter, "take immediate steps", and "provide police protection" to the petitioners<sup>xlii</sup>. The 24-year-old couple had entered a *maitri karar*- a friendship contract on a notarized document- that is now "often being used to legitimise relationships which don't enjoy social sanction, like inter-faith marriages and same sex relationships"<sup>xliii</sup>. As they started getting threats from their families, they approached the police for protection, which went unheeded. Following which they filed a PIL and the Gujarat High Court showcased a very positive development that can be emulated by other states as well.

83. *The S. Sushma and Anr. v. Commissioner of Police, Chennai and Others, 2021*: The Madras High Court passed a unique judgement in 2021 when a lesbian couple filed a case before the Court seeking protection as they were facing threat from their families. The case's uniqueness lies in the Judge presiding over the case, who took different measures and arranged counselling sessions for the petitioners, parents, and the court from MHPs to understand the case better from the lens of LGBTQIA+ perspectives, the mental trauma they

undergo, the rejection meted out to them, and their right to live with dignity. The court-appointed MHPs were certified and trained in Queer Affirmative Counselling Practice by Mariwala Health Initiative, Mumbai thus resulting in relevant recommendations for the Judge to consider. Going beyond this case, the Court ordered several measures which are worth-emulating by other states<sup>xliv</sup>. Read more [here](#).

**84.** After the Madras High court asked the state administration to sensitise the police force about LGBTQIA+ issues, the Tamil Nadu government recently published an order saying: “No police officer shall indulge in any act of harassment of any person belonging to the LGBTQIA+ Community and the persons working for the welfare of the said community”. This has been considered a welcome move by activists and our respondents alike.<sup>xlv</sup>

**85.** In the *Nangai vs. Superintendent of Police, 2014 case*, Nangai (name changed) had to undergo several medical examinations where the Medical Officer declared her as “transgender”, while she had applied as a woman constable in Tamil Nadu police, leading to the termination of her job. The Court not only reversed the order but asked Tamil Nadu police to reinstate Nangai at her position.<sup>xlvi</sup>

## **F. Recommendations**

### **86. Education**

- Need a policy that facilitates gender transitioning without persons having to discontinue/disrupt their education if they are over 18 as this would adversely impact their livelihood options.
- Building gender-neutral toilets and changing rooms and allowing gender neutral uniforms in schools and colleges.
- Inclusive education about different gender and sexual identities and LGBTQIA+ representation in curricula. For instance, courses like Queer Affirmative Counselling Practice need to be inbuilt into the formal curricula of psychology as current curriculum, courses, trainings or materials do not represent the lived realities of queer individuals.
- Open ended question regarding sex/gender on forms. Having the right to leave the sex/gender boxes unfilled in school certificates if required, especially for intersex children.
- Any scholarship or education support, if introduced, has to be in consultation with the LGBTQIA+ communities.
- There needs to be sensitization throughout and across institutions and the latter must take the responsibility for providing infrastructure to trans students.

### **87. Housing and Shelter**

- Need for sensitisation and change in guidelines of shelter homes. For example, trans men should not be forced to wear feminine clothes. See Paragraph 25.
- There needs to be shelter provisions for gender nonconforming children, which would address their specific needs as well as protect them at this vulnerable stage.

### **88. Food Security**

- When it comes to alleviating food insecurity, special attention needs to be given to the additional nutritional requirements of elderly trans persons, senior LGBTQIA+ individuals, persons with disabilities, and those who live with HIV.
- Food supply by the government should be equal for everyone and accessible to all.

### **89. Inclusive Healthcare**

- Proper sensitization and training should be provided to all healthcare professionals-including therapists, technicians, nurses, doctors, surgeons, and MHPs so that they understand the realities, needs, and challenges of LGBTQIA+ communities.
- There should be pre-operative and post-operative counselling sessions when a trans person undergoes sex/gender reassignment surgery to support them in the gender affirming process.
- Participants mentioned that trans healthcare is not standardized and needs regulation and a mechanism to redress grievances.

#### 90. Law

- The NALSA Judgment, 2014<sup>xlvii</sup> needs to be more widely and thoroughly implemented. See Paragraph 9.
- The Trans Act contains gaps which have been mentioned above and those need to be addressed. Under this act, there is a national portal but transgender individuals in various states often face issues in accessing their identity card within stipulated time periods.

### END NOTES

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<sup>i</sup> Factsheet - UPR 2017 - India 3rd Cycle Universal Periodic Review, p.14, (Accessed: March 25, 2022, <http://wghr.org/wp-content/uploads/2022/03/WGHR-Factsheets-India-UPR-III-copy.pdf>).

<sup>ii</sup>“3rd Universal Periodic Review of India- January 18, 2017”, (Accessed: March 16, 2022, [https://www.mea.gov.in/Uploads/PublicationDocs/27953\\_3rd\\_Universal\\_Periodic\\_Review\\_of\\_India.pdf](https://www.mea.gov.in/Uploads/PublicationDocs/27953_3rd_Universal_Periodic_Review_of_India.pdf)) & “UPR of India (3rd Cycle – 27th session) Thematic list of recommendations”, (Accessed: March 16, 2022, [https://www.upr-info.org/sites/default/files/document/india/session\\_27\\_-\\_may\\_2017/upr27\\_india\\_thematiclistofrecommendations\\_e.pdf](https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/upr27_india_thematiclistofrecommendations_e.pdf)):

138.89: Study the possibility of eliminating any criminalisation of same sex relations ( Argentina )- India ‘Supported’; 161.76: Repeal section 377 of the IPC and ensure that consensual same-sex relations are not criminalized (Iceland)- India ‘Noted’; 161.77: Take steps to end the criminalization of same-sex relations (Israel)- India ‘Noted’; 161.78: Amend or revoke section 377 to decriminalize same-sex relations (Norway)- India ‘Noted’; 161.79: Repeal section 377 of the IPC, which criminalizes same-sex conduct between consenting adults, and enact legislation consistent with the Supreme Court’s recognition of the rights of transgender persons (Canada)- India ‘Noted’.

<sup>iii</sup> Universal Periodic Review (UPR): Mid-Term Report 2020: Assessing India’s Implementation Of UPR-III Recommendations- Report by The Working Group on Human Rights in India and the UN”, p. 46, (Accessed: March 16, 2022, [https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR\\_Mid-Term\\_Report2020-WGHR-India.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR_Mid-Term_Report2020-WGHR-India.pdf)).

<sup>iv</sup> Ibid., p. 2, 161.70: Strengthen the national framework to reduce all kinds of Discrimination (Iraq)- India ‘Supported’ and ‘Partially Implemented’

161.71: Intensify efforts to guarantee equality and non-discrimination in line with its international obligations, by developing public human rights awareness programmes and taking concrete steps to advance the rights of women and girls, members of religious minorities, LGBTI persons and to combat caste-based discrimination including to: criminalize marital rape; decriminalize consensual same-sex relations; and establish appropriate policies and practices for registering, investigating and prosecuting violence against women, girls and members of religious minorities (Ireland)- India ‘Noted’ and ‘Partially implemented’.

<sup>v</sup> Universal Periodic Review (UPR): Mid-Term Report 2020: Assessing India’s Implementation Of UPR-III Recommendations- Report by The Working Group on Human Rights in India and the UN, pp. 46-47” (Accessed: March 16, 2022, [https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR\\_Mid-Term\\_Report2020-WGHR-India.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR_Mid-Term_Report2020-WGHR-India.pdf)).

<sup>vi</sup> Ibid.

<sup>vii</sup> Ibid. (pp. 46-47).

<sup>viii</sup> Universal Periodic Review (UPR): Mid-Term Report 2020: Assessing India’s Implementation Of UPR-III Recommendations- Report by The Working Group on Human Rights in India and the UN”, p. 46 (Accessed: March 22, 2022, [https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR\\_Mid-Term\\_Report2020-WGHR-India.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR_Mid-Term_Report2020-WGHR-India.pdf)).

161.80 Adopt measures to effectively protect transgender persons, including the implementation of the Transgender Persons (Protection of Rights) Bill (Israel); India ‘Supported’. (Accessed: March 30, 2022, [https://www.upr-info.org/sites/default/files/document/india/session\\_27\\_-\\_may\\_2017/upr27\\_india\\_thematiclistofrecommendations\\_e.pdf](https://www.upr-info.org/sites/default/files/document/india/session_27_-_may_2017/upr27_india_thematiclistofrecommendations_e.pdf)).

<sup>ix</sup> UN Human Rights Council Report: “Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity” (Accessed: March 17, 2022, [https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/A\\_HRC\\_29\\_23\\_One\\_page\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/A_HRC_29_23_One_page_en.pdf)).

<sup>x</sup> “Challenges to Transgender Persons Act”, (Accessed: March 17, 2022, <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>).

<sup>xi</sup> Ibid.

<sup>xii</sup> Hijras are considered the third gender in the Indian subcontinent as well as in the legal system. The term Hijra is not only used to denote a person, but also a community.

<sup>xiii</sup> Working Group on Human Rights (WGHR), “Factsheet - UPR 2017 – India 3rd Cycle Universal Periodic Review”, p. 6 (Accessed: March 12, 2022, <http://wghr.org/wp-content/uploads/2022/03/WGHR-Factsheets-India-UPR-III-copy.pdf>).

<sup>xiv</sup> Ibid.

- <sup>xv</sup> The National Council of Educational Research and Training (NCERT) is an autonomous organisation set up in 1961 by the Government of India to assist and advise the Central and State Governments on policies and programmes for qualitative improvement in school education (Accessed: March 12, 2022, <https://ncert.nic.in/about-us.php?ln=> ).
- <sup>xvi</sup> *Firstpost*, “NCERT releases training material to sensitise teachers, administrators about transgender, gender-nonconforming children”, (Accessed: March 12, 2022, <https://www.firstpost.com/art-and-culture/ncert-releases-training-material-to-sensitise-teachers-administrators-about-transgender-gender-nonconforming-children-10101731.html>).
- <sup>xvii</sup> *The Hindu*, “NCPCR issues notice to NCERT on transgender inclusion manual”, (Accessed: March 12, 2022, <https://www.thehindu.com/news/national/ncPCR-issues-notice-to-ncert-on-transgender-inclusion-manual/article37328033.ece>).
- <sup>xviii</sup> National Education Policy 2020, p.24, (Accessed: March 12, 2022: [https://www.education.gov.in/sites/upload\\_files/mhrd/files/NEP\\_Final\\_English\\_0.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf)).
- <sup>xix</sup> *Hindustan Times*, “Faridabad police form team to probe suicide of 16-year-old pvt school student” (Accessed: March 12, 2022, <https://www.hindustantimes.com/cities/gurugram-news/faridabad-police-form-team-to-probe-suicide-of-16-year-old-pvt-school-student-101646246651605.html#:~:text=Six%20days%20after%20a%2016,the%20school%20ignored%20her%20complaint.>).
- <sup>xx</sup> Queerala, “Silence of Universities and Colleges towards the updated UGC Anti-Ragging policy(3rd amendment June 2016)”, (Accessed: March 12, 2022, <http://queerala.org/silence-of-universities-and-colleges-towards-the-updated-ugc-anti-ragging-policy3rd-amendment-june-2016/>).
- <sup>xxi</sup> Working Group on Human Rights (WGHR), “Factsheet - UPR 2017 – India 3rd Cycle Universal Periodic Review”, p. 23, (Accessed: March 12, 2022, <http://wghr.org/wp-content/uploads/2022/03/WGHR-Factsheets-India-UPR-III-copy.pdf>).
- <sup>xxii</sup> *The Logical Indian*, “Coimbatore to Provide Scholarship Worth Rs 1,00,000 To Transgender Students” (Accessed: March 13, 2022, <https://thelogicalindian.com/lgbtq/transgenders-scholarship-31846>).
- <sup>xxiii</sup> See End- Note xxxvi.
- <sup>xxiv</sup> See End-Note xii.
- <sup>xxv</sup> Rezwana Karim Snigdha: “Beyond Binaries: An Ethnographic Study of Hijra in Dhaka, Bangladesh”. ‘Badhai’ is a form of performance involving blessing the newly married couple and newborn by dancing, singing, and loud clapping, in exchange of money to hijra. The badhai hijra lives a traditional life including collecting money from markets (Bazar tola), blessing newborn babies (bacha nachano), and newly wedding couple”, p. xxv, (Accessed: March 13, 2022, <https://openrepository.aut.ac.nz/bitstream/handle/10292/14422/SnigdhaRK.pdf?sequence=3&isAllowed=y>).
- <sup>xxvi</sup> *The Times of India*, “Kerala: Transgender Anannya Kumari Alex's death; Social welfare, health departments order probe”, (Accessed: March 22, 2022, [http://timesofindia.indiatimes.com/articleshow/84623428.cms?utm\\_source=contentofinterest&utm\\_medium=txt&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/84623428.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst)).
- <sup>xxvii</sup> Universal Periodic Review (UPR): Mid-Term Report 2020: Assessing India’s Implementation Of UPR-III Recommendations- Report by The Working Group on Human Rights in India and the UN, p. 93” (Accessed: March 17, 2022, [https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR\\_Mid-Term\\_Report2020-WGHR-India.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/UPR_Mid-Term_Report2020-WGHR-India.pdf)).
- <sup>xxviii</sup> *The Hindu*, “Transgender persons to get separate jail wards, facilities”, (Accessed: March 13, 2022, <https://www.thehindu.com/news/national/transgender-persons-to-get-separate-jail-wards-facilities/article38238322.ece>).
- <sup>xxix</sup> Working Group on Human Rights (WGHR), “Factsheet - UPR 2017 – India 3rd Cycle Universal Periodic Review”, p. 10, (Accessed: March 12, 2022, <http://wghr.org/wp-content/uploads/2022/03/WGHR-Factsheets-India-UPR-III-copy.pdf>).
- <sup>xxx</sup> *The Hindustan Times*, “National lockdown over COVID-19 leads to drug shortage for HIV patients”, (Accessed: March 15, 2022, <https://www.hindustantimes.com/india-news/national-lockdown-leads-to-drug-shortage-for-hiv-patients/story-81uSkJbhDACZzbkAmZSjO.html>).
- <sup>xxxi</sup> *The Hindu*, “Govt. notifies 1% reservation for transgender persons in jobs”, (Accessed March 12, 2022, <https://www.thehindu.com/news/national/karnataka/govt-notifies-1-reservation-for-transgender-persons-in>

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[jobs/article35181785.ece\).](https://www.indiatoday.in/education-today/news/story/madras-high-court-suggests-changes-in-school-and-university-syllabus-for-lgbtq-education-of-students-1811926-2021-06-07)

<sup>xxxii</sup> Asianet Newsable “TN university to be the first in India to provide free education for transgenders” (accessed: March 13, 2022, <https://newsable.asianetnews.com/tamil-nadu/tn-university-to-be-the-first-in-india-to-provide-free-education-for-transgenders>).

<sup>xxxiii</sup> *India Today*, “Madras High Court suggests changes in school, university syllabus for LGBTQ education of students”, (Accessed: March 13, 2022, <https://www.indiatoday.in/education-today/news/story/madras-high-court-suggests-changes-in-school-and-university-syllabus-for-lgbtq-education-of-students-1811926-2021-06-07>)

1. Parent Teachers Association (PTA) meetings to be used as sensitization platforms to ensure supportive family environment for gender nonconforming students.
2. Including students belonging to LGBTQIA+ community through:
  - Gender-neutral restrooms
  - Allowing change of name and gender on academic records for transgender persons.
  - Inclusion of ‘transgender’ in the gender columns in application forms
  - Appointment of counsellors who are LGBTQIA+ inclusive, so that staff and students can address their grievances.

<sup>xxxiv</sup> Accessed: March 13, 2022, (<https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm2>).

<sup>xxxv</sup> Accessed: March 23, 2022, (<https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm2>).

<sup>xxxvi</sup> “SMILE GARIMA GREH: SHELTER HOMES FOR TRANSGENDER PERSONS” (Accessed: March 13, 2022, <https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm5>).

<sup>xxxvii</sup> *The Hindu*, “Food kits for transgender persons”, (Accessed: March 13, 2022, <https://www.thehindu.com/news/national/kerala/food-kits-for-transgender-persons/article61702965.ece>).

<sup>xxxviii</sup> South Asian TransLaw Database, “Sweekruti Odisha (A Scheme For Promotion of Transgender Equality & Justice), 2017”, (Accessed: March 13, 2022, <https://translaw.clpr.org.in/reports-and-policies/sweekruti-odisha-a-scheme-for-promotion-of-transgender-equality-justice-2017/>).

<sup>xxxix</sup> News 18, “Karnataka Becomes First State to Provide 1% Reservation for Transgenders”, (Accessed: March 14, 2022, <https://www.news18.com/news/india/karnataka-becomes-first-state-to-provide-1-reservation-for-transgenders-3988571.html>).

<sup>xi</sup> UNDP, “The Case of TAMIL NADU TRANSGENDER WELFARE BOARD: Insights for Developing Practical Models of Social Protection Programmes for Transgender People in India”, (Accessed March 15, 2022, [https://www.undp.org/content/dam/india/docs/HIV\\_and\\_development/the-case-of-tamil-nadu-transgender-welfare-board--insights-for-d.pdf](https://www.undp.org/content/dam/india/docs/HIV_and_development/the-case-of-tamil-nadu-transgender-welfare-board--insights-for-d.pdf)).

<sup>xii</sup> Dailyhunt, “Based on Madras HC verdict, DCPCR recommends ban on sex change surgeries on intersex children”, (Accessed: March 16, 2022, <https://m.dailyhunt.in/news/india/english/the+commune-epaper-thecom/based+on+madras+hc+verdict+dcpcr+recommends+ban+on+sex+change+surgeries+on+intersex+children-newsid-n245236500>).

<sup>xiii</sup> *The Indian Express*, “Gujarat HC directs SP to look into concerns of same-sex couple”, (Accessed: March 13, 2022, <https://indianexpress.com/article/india/homosexual-police-couple-approaches-gujarat-hc-for-protection-6525736/>).

<sup>xiii</sup> *The Times of India*, “Court comes to rescue of Gujarat police’s ‘first’ lesbian couple”. Maitri Karar was created in Gujarat in the 1970s to make it easy for married Hindu men to have a mistress without violating the Hindu Marriage Act. (Accessed: March 13, 2022, <https://timesofindia.indiatimes.com/city/ahmedabad/court-comes-to-rescue-of-gujarat-polices-first-lesbian-couple/articleshow/77296590.cms>).

<sup>xiv</sup> Mariwala Health Initiative, “Building Allyship: The Mental Health Community and LGBTQI+ Rights”, (Accessed: March 16, 2022, [https://mhi.org.in/media/insight\\_files/Building\\_Allyship.pdf](https://mhi.org.in/media/insight_files/Building_Allyship.pdf))

- “Police were directed to close missing person’s complaints when it involves consenting adults in a relationship.
- The Ministry of Social Justice and Empowerment was directed to compile a list of NGOs working on LGBTQI+ rights and issues who can be approached by community members to consult on services and the best course of action, including free legal services through District Legal Services Authority (DLSA).

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- Shelter homes were directed to make their policies and practices more inclusive of LGBTQI+ persons.
  - The government was ordered to conduct awareness programs and activities to combat prejudice against LGBTQI+ persons in the system, including prison authorities, educational institutes, workplaces, DLSA, and physical and mental health practitioners.
  - Specifics of this direction included ordering prison authorities to not house transgender persons with cis-men, banning the practice of conversion or corrective medical/therapeutic practices, changing processes in admission and university facilities - such as bathrooms to be inclusive of gender diversity.
  - Changing curricula on gender and sexuality within education systems to be more affirmative.”

<sup>xiv</sup> Hindustan Times, “Tamil Nadu amends law to punish cops for harassing LGBTQ people”, (Accessed: March 16, 2022, <https://www.hindustantimes.com/india-news/tamil-nadu-amends-law-to-punish-cops-for-harassing-lgbtq-people-101645123047218.html>).

<sup>xvi</sup> South Asian Translaw Database, “Nangai vs. Superintendent of Police” (Accessed: March 16, 2022, <https://translaw.clpr.org.in/case-law/nangai-vs-superintendent-of-police-woman-police-constable/>) The Court noted that “compelling a person to undergo a medical examination of gender violated Article 21, ...(while upholding) a person’s right to self-identify their own gender (and) disregarded medical proof of gender and noted the consistent emphasis on binary gender identities in Indian and international documents”.

<sup>xvii</sup> South Asian Trans Law Database, “NATIONAL LEGAL SERVICES AUTHORITY (NALSA) VS. UNION OF INDIA” “This case was filed by the National Legal Services Authority of India (NALSA) to legally recognize persons who fall outside the male/female gender binary, including persons who identify as “third gender... This was a landmark decision where the apex court legally recognised “third gender”/transgender persons for the first time and discussed “gender identity” at length. The Court recognised that third gender persons were entitled to fundamental rights under the Constitution and under international law. Further, it directed state governments to develop mechanisms to realise the rights of “third gender”/transgender persons,” (Accessed: March 13, 2022, <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>).