



**Republic of India’s Compliance with the International Covenant on Civil and Political Rights: LGBTQ+ Human Rights**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

**For the 141st Session of the Human Rights Committee**

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Founded in 1983, **The Advocates for Human Rights** (hereinafter, “The Advocates”) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact-finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States, including LGBTQ+ individuals who have experienced discrimination and violence based on sexual orientation, gender identity and expression, and sex characteristics.

## EXECUTIVE SUMMARY

1. This report addresses compliance by the Republic of India (“India”) with its human rights obligations concerning people who are lesbian, gay, bisexual, transgender, queer, and other sexual or gender minorities (“LGBTQ+”).
2. Although India has strengthened its legal framework to combat LGBTQ+ discrimination, LGBTQ+ individuals in India live in an environment where they do not enjoy the same rights and freedoms as non-LGBTQ+ individuals, including, for example, the ability to enter into a same-sex marriage or same-sex civil partnership.
3. LGBTQ+ individuals in India face discrimination in almost all facets of their lives from both State and non-State actors, including in health, education, and economic support, and there is little redress for LGBTQ+ individuals who experience discrimination. While the Government of India has implemented a healthcare scheme which contains medical health for transgender people and certain economic support, numerous structural and legal barriers prevent transgender individuals from accessing these services.
4. LGBTQ+ people also face physical violence from State and non-State actors, and many LGBTQ+ people who experience violence do not report violations of their human rights to the State for fear of further persecution.
5. In this report, we use the acronym LGBTQ+ to refer to individuals who self-identify as lesbian, gay, bisexual, transgender, and/or queer. These terms necessarily do not include everyone who may experience violations of their human rights on the basis of their real or perceived sexual orientation, gender identity, and/or gender expression (SOGIE) status, which is why we also include a “+” with the acronym. Any use of a modified acronym is intentional in that we are speaking only about certain members of the LGBTQ+ population. India also has several “third genders,” most notably hijras. Although some hijras may also self-identify as transgender women, it is important to note that not all hijras do, nor do all transgender women identify as hijras.
6. Information for this report includes published information and first-hand material collected by local non-governmental organizations (NGOs) and human rights defenders in India that work on LGBTQ+ issues.

### **India fails to uphold its obligations under the International Covenant on Civil and Political Rights (“ICCPR”)**

#### **I. Discrimination Against LGBTQ+ People (List of Issues Prior to Reporting paragraph 9)**

7. In its 2019 List of Issues Prior to Reporting (“LOIPR”), the Human Rights Committee (the “Committee”) asked the Government of India for information on “measures taken to combat societal discrimination and violence, including abuses by the police, against lesbian, gay, bisexual, transgender and intersex persons, and fully implement the 2014 Supreme Court judgment in *National Legal Services Authority v. Union of India and others*, in which the rights of transgender persons were recognized.”<sup>1</sup>

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<sup>1</sup> Human Rights Committee, *List of issues prior to submission of the fourth periodic report of India*, (Aug. 22, 2019), U.N. Doc. CCPR/C/IND/QPR/4, ¶ 9.

8. The Committee also asked for information on “whether revisions are being considered to the Transgender Persons (Protection of Rights) Bill [which is different from the Transgender Persons (Protection of Rights) Act in Paragraph 25 below], which was passed by the Lok Sabha (lower house of Parliament) on 17 December 2018, with a view to bringing it into compliance with the [ICCPR], including as regards mandatory sex reassignment surgery [gender-affirming surgery] for transgender people and the light sentences imposed for serious offences against transgender people.”<sup>2</sup>

### *Legal Challenges*

9. In its Fourth Periodic Report (the “Report”), the Government of India notes that it has “strengthened” India’s legal framework to “combat” LGBTQ+ discrimination.<sup>3</sup>
10. The Government of India also notes in the Report that “the Supreme Court of India through its 2018 decision in *Navtej Singh Johar v. Union of India* decriminalized homosexuality [same-sex sexual activity] among consenting adults in private, removing the unreasonable restriction on freedom of choice and expression of [LGBTQ+] community. This ruling also created enabling environment for [LGBTQ+] individuals to access justice as envisaged by the [ICCPR].”<sup>4</sup>
11. The Indian Constitution defines certain rights for all citizens of India, regardless of an individual’s sexual orientation, gender identity or expression, or sex characteristics.<sup>5</sup> Such rights include equality before the law or the equal protection of the laws within the territory of India, and equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.<sup>6</sup>
12. Despite the rights enshrined in the Indian Constitution and in the *Navtej Singh Johar v. Union of India* decision, progress for the rights of LGBTQ+ people has been slow. Although India’s ruling party — the Bharatiya Janata Party (“BJP”) — told the press that they will follow the Supreme Court’s ruling, the BJP has not officially supported LGBTQ+ individuals rights in India.<sup>7</sup>
13. For example, the BJP stalled the appointment of a candidate to the Delhi High Court because he is gay.<sup>8</sup>

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<sup>2</sup> Human Rights Committee, *List of issues prior to submission of the fourth periodic report of India*, (Aug. 22, 2019), U.N. Doc. CCPR/C/IND/QPR/4, ¶ 9.

<sup>3</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 28.

<sup>4</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 28.

<sup>5</sup> Constitution of India, (Part 3: Fundamental Rights), 1950. Also available online at <https://www.constitutionofindia.net/read/#parts>.

<sup>6</sup> Constitution of India, (Part 3: Fundamental Rights), 1950. Also available online at <https://www.constitutionofindia.net/read/#parts>.

<sup>7</sup> Zeenat Saberlin, . “*India decriminalises gay sex in landmark verdict*,” Al Jazeera, Sept. 6, 2018, <https://www.aljazeera.com/news/2018/09/india-decriminalises-gay-sex-landmark-verdict-180906051219637.html>.

<sup>8</sup> Karishma Mehrotra and Anant Gupta, *India’s government objects to openly gay judge candidate, says court*, The Washington Post, Jan. 20, 2023, <https://www.washingtonpost.com/world/2023/01/20/india-saurabh-kipal-bjp-gay-judge/>.

14. There is also no provision in Indian law for civil partnerships or same-sex marriages.<sup>9</sup> The Indian government has resisted the legal recognition of same-sex marriage, arguing that a marriage is only between a biological male and a biological woman.<sup>10</sup>
15. In November 2022, a group of LGBTQ+ couples and individuals filed a constitutional challenge to allow legal recognition same-sex marriage under the Special Marriage Act of 1954.<sup>11</sup> In response, the Supreme Court of India court ruled that the right to marry is not a fundamental right for same-sex couples.<sup>12</sup>

#### *Discrimination Against LGBTQ+ Individuals*

16. Although the Court has ruled the law criminalizing consensual sexual acts between adults of the same sex to be unconstitutional, discrimination against LGBTQ+ individuals in India continues.<sup>13</sup>
17. According to a 2022 joint submission by stakeholders to the Working Group on the Universal Periodic Review on the promotion and protection of human rights, “[LGBTQ+ individuals face] discrimination, harassment, and violence in all spheres of life.”<sup>14</sup>
18. As detailed in a 2019 International Court of Justice report regarding LGBTQ+ rights in India, “[LGBTQ+] persons in India typically face serious difficulties in seeking access to rental accommodation, adverse consequences of a lack of security of tenure, and vulnerability to homelessness. This includes discrimination and sometimes violence committed against [LGBTQ+] persons by landlords and property owners, as well as by family members in their own homes – violence that often forces them to leave the house” or leads to displacement.<sup>15</sup>
19. A 2021-2022 Human Development Report by the United Nations Development Program (UNDP) provides evidence of how LGBTQ+ discrimination in India affects young people. The Human Development Report found that “over 75% of young LGBTQ+ people reported having experienced discrimination based on their sexual orientation or gender identity.”<sup>16</sup>

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<sup>9</sup> United Kingdom Visas and Immigration, *Country Policy and Information Note: India – Sexual orientation and gender identity and/or expression*, August 2023, accessed May 9, 2024. Also available online at: [https://assets.publishing.service.gov.uk/media/64dba4a760d123001332c5c7/IND\\_CPIN\\_Sexual\\_orientation\\_and\\_gender\\_identity\\_and\\_expression.pdf](https://assets.publishing.service.gov.uk/media/64dba4a760d123001332c5c7/IND_CPIN_Sexual_orientation_and_gender_identity_and_expression.pdf).

<sup>10</sup> PBS: News Hour, “*India’s Supreme Court declines to legalize same-sex marriage, saying it’s up to Parliament*,” Oct. 17, 2023, assessed May 9, 2024, <https://www.pbs.org/newshour/world/indias-supreme-court-declines-to-legalize-same-sex-marriage-saying-its-up-to-parliament>.

<sup>11</sup> Supriya Chakraborty & Anr. V. Union of India (2023).

<sup>12</sup> Supriya Chakraborty & Anr. V. Union of India (2023).

<sup>13</sup> Michael Safi and Aarti Singh, “*There are few gay people in India’: stigma lingers despite legal victory*,” The Guardian, March 13, 2019, <https://www.theguardian.com/global-development/2019/mar/13/gay-people-india-stigma-lingers-despite-legal-victory>.

<sup>14</sup> Human Rights Council, *Summary of Stakeholders’ submissions on India*, (July 22, 2022), U.N. Doc. A/HRC/WG.6/41/IND/3, ¶ 161.

<sup>15</sup> International Commission of Jurists, *Living with Dignity Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India*, (June 2019), 37. Also available online at <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>.

<sup>16</sup> Ambika Pandit, “*LGBTQI+ community face bias across nations due to sexual orientation, gender identity: UNDP Report*,” The Times of India, updated Apr. 20, 2023, <https://timesofindia.indiatimes.com/india/lgbtqi-community-face-bias-across-nations-due-to-sexual-orientation-gender-identity-undp-report/articleshow/99633821.cms>.

20. For example, in May 2024, a transgender woman alleged that a hotel that she had booked in advanced had cancelled her reservation and would not give her a room because she is transgender.<sup>17</sup>
21. Widespread discrimination against LGBTQ+ people – and transgender people in particular – has left many people without housing and employment. Some LGBTQ+ people have turned to begging on the street as a means of survival. In turn, there are reports that police occasionally harass and arrest LGBTQ+ people begging street, including subjecting them to degrading genital examinations to “verify” the individuals’ gender identity despite genitals providing no information to a person’s gender identity.<sup>18</sup>

### *Transgender Rights*

22. The Indian Constitution does not refer to gender identity or expression in defining the rights of citizens, and provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth.<sup>19</sup>
23. The Supreme Court of India interpreted the term “sex” in to include gender identity, and has recognized that “third gender”<sup>20</sup> and transgender people (which the Government treats as people of a third gender) were entitled to fundamental rights under the Constitution and international law. Further, the Court directed the Government to provide legal recognition of gender identity, including a “third gender.”<sup>21</sup>
24. Common understandings of transgender women in India are often subsumed under the hijra (the third gender, neither male or female) identity, and many transgender women may identify as hijra.<sup>22</sup> Transgender men, however, “are often rendered invisible, and many have a hard time getting government officials and medical providers to understand they are transgender too.”<sup>23</sup>
25. In 2019, the Parliament of India passed the Transgender Persons (Protection of Rights) Act to provide for welfare measures, provisions of non-discrimination, equal opportunity in employment as well as redressal of grievances.<sup>24</sup> The Transgender Persons (Protection of Rights) Act also established “the right to self-perceived gender identity and mandate issuance on the certificate of identity solely on the basis of affidavit submitted by the person without any medical examination.”<sup>25</sup> Self-declaration, however, only pertains to transgender individuals who wish to change their legal gender from male or female to

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<sup>17</sup> Marathi actor Pranit Hatte denied accommodation in hotel for being transgender, Hindustan Times, May 10, 2024, <https://www.hindustantimes.com/entertainment/others/marathi-actor-pranit-hatte-denied-accommodation-in-hotel-for-being-transgender-101715334340830.html>.

<sup>18</sup> Lakshmi Priya, ‘Begging racket crackdown’ sheds light on Hyd police’s ignorance about trans persons, The News Minute, Aug., 26, 2023, <https://www.thenewsminute.com/telangana/begging-racket-crackdown-sheds-light-hyd-police-s-ignorance-about-trans-persons-181583>.

<sup>19</sup> Constitution of India, (Part 3: Fundamental Rights), 1950. Also available online at <https://www.constitutionofindia.net/read/#parts>.

<sup>20</sup> India has several third genders, or individuals who do not necessarily identify as either men or women. These third genders have a long history in different regions of India and existed before colonization by the British. Third gender individuals may or may not identify as transgender; these terms and concepts are not interchangeable.

<sup>21</sup> Supreme Court India, ‘Writ Petition (Civil) no 400 of 2012’, (paragraph 59), Apr. 15, 2014.

<sup>22</sup> Priti Salian, “Protecting Trans Lives Goes Deeper than Laws and Representation,” New Internationalist, March 8, 2023, <https://newint.org/features/2023/03/08/india-trans-rights-decolonize-how>.

<sup>23</sup> Priti Salian, “Protecting Trans Lives Goes Deeper than Laws and Representation,” New Internationalist, March 8, 2023, <https://newint.org/features/2023/03/08/india-trans-rights-decolonize-how>.

<sup>24</sup> Transgender Persons (Protection of Rights) Rules 2020 (India), accessed May 9, 2024.

<sup>25</sup> Transgender Persons (Protection of Rights) Rules 2020 (India), accessed May 9, 2024.

“transgender,” not for individuals who wish to change their gender from male to female or vice-versa.

26. All transgender people, whether having undergone gender-affirming surgery or not, can apply for an identity certificate indicating their gender identity. Yet, subject to the process set out in the Transgender Persons (Protection of Rights) Act, changing their gender in all their official documentation is still subject to a complex bureaucratic process – the individual must first make application to the District Magistrate of the jurisdiction to obtain a certificate and transgender identity card, which indicates that the individual is a transgender person.<sup>26</sup> Then, if the individual wants to change their gender from “transgender” to either male or female, the individual must undergo gender-affirming surgery before applying for a revised certificate identifying their binary change in gender (male or female) and name with the District Magistrate.<sup>27</sup> The revised certificate can then be used to change the gender marker in the individual’s other official documents.
27. The National Portal for Transgender Persons enables transgender individuals to apply online for a certificate and identity card recognized nationally by the Indian government’s Department of Social Justice & Empowerment, and which are essential for accessing welfare benefits under the Support for Marginalized Individuals for Livelihood & Enterprise (the “SMILE”) scheme.<sup>28</sup> Applicants can track and manage their application process online, ensuring transparency, and use a grievance redressal system for any delays.<sup>29</sup> The portal simplifies the interaction between district authorities and applicants, facilitating the issuance of documents based on self-identified gender as mandated by Transgender Persons (Protection of Rights) Act.<sup>30</sup>
28. According to the data presented on the portal as of April 2024, the number of total applications for transgender certificates and identity cards is 23,585, 80% of which have been issued.<sup>31</sup> This number does not appear to encompass a significant majority of the transgender population in India (many of whom are likely hidden due to cultural and religious pressures), however, which means there are still a vast number of transgender individuals who have not been legally recognized in their gender identity<sup>32</sup>

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<sup>26</sup> Transgender Persons (Protection of Rights) Act, 2019, art. 6 & 7.

<sup>27</sup> Transgender Persons (Protection of Rights) Act, 2019, art. 6 & 7.

<sup>28</sup> Ministry of Social Justice and Empowerment - Government of India, “National Portal For Transgender Persons”, accessed May 9, 2024, <https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm1>.

<sup>29</sup> Ministry of Social Justice and Empowerment - Government of India, “National Portal For Transgender Persons”, accessed May 9, 2024, <https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm1>.

<sup>30</sup> Ministry of Social Justice and Empowerment - Government of India, “National Portal For Transgender Persons”, accessed May 9, 2024, <https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm1>.

<sup>31</sup> World Population Review, “Transgender Population by Country 2024”, accessed May 9, 2024, <https://worldpopulationreview.com/country-rankings/trans-population-by-country>.

<sup>32</sup> World Population Review, “Transgender Population by Country 2024”, accessed May 9, 2024, <https://worldpopulationreview.com/country-rankings/trans-population-by-country>.

29. In the Report, the Government of India states that following the enactment of the Transgender Persons (Protection of Rights) Act, “to facilitate application for certificate and identity card by transgender persons in a digital mode, the National Portal for Transgender Persons was made operational in November 2020, which offers an end-to-end online facility for this purpose.”<sup>33</sup>
30. The Report further provides that a “[p]enalty is prescribed under the law for violence, abuse of transgender persons, for restraining them from public places, removal from residence or for subjecting them to forced labour. It ranges from six months to two years of imprisonment and fine. Penalty prescribed under the Act is in addition to and not in derogation of any other law.”<sup>34</sup>
31. The Government of India also states in the Report that it is “working on an umbrella scheme to address issues of access to health, education, welfare, skill upgradation, shelter and economic support and livelihood for the transgender community” such as through the establishment in 2020 of the first of its kind “shelter home called ‘*Garima Greh*’” to provide “shelter, food, medical care, recreational facilities, and support for capacity-building and skill development.”<sup>35</sup> The Government of India has identified ten cities to establish thirteen *Garima Greh*.<sup>36</sup>
32. In addition, “the Ministry of Social Justice and Empowerment has allocated funds to National Backward Classes Finance and Development Corporation for conducting skill development of members of transgender community,” and “various States in India have adopted initiatives to develop and improve the quality of life of transgender persons, including launching of an umbrella scheme by the state of Odisha called *Sweekruti* to create an enabling environment to ensure equal opportunities, equity, social justice and empowerment of transgender persons, and introducing reservation of seats in educational institutions and public employment.”<sup>37</sup>
33. With respect to access to justice, it is unclear whether the Government of India is enforcing the penalties prescribed under the law for violence against transgender individuals. In contrast, and as discussed in this report, there are various documented incidents of violence against transgender individuals, including acts of violence perpetrated by police personnel and non-State actors. It is also unclear what the full extent of State and non-State violence against transgender individuals is because many individuals choose not to report violations of their human rights to police.
34. With respect to healthcare, the Government of India is implementing the SMILE scheme, which contains the composited medical health for transgender people. Under the regime, transgender individuals are entitled to the Ayushman BharatTG Plus health insurance, which includes coverage for gender-affirming surgery and offers an annual insurance

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<sup>33</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure*, due in 2020, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 29.

<sup>34</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure*, due in 2020, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 29.

<sup>35</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure*, due in 2020, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 30.

<sup>36</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure*, due in 2020, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 30.

<sup>37</sup> Human Rights Committee, *Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure*, due in 2020, (May 31, 2022), U.N. Doc. CCPR/C/IND/4, ¶ 30.

cover.<sup>38</sup> The comprehensive package covers transition-related healthcare, including hormone therapy and gender-affirming surgery, with post-operative care, redeemable at both private and governmental healthcare facilities.<sup>39</sup> Transgender people with certificates from the National Portal for Transgender Persons are automatically eligible for this insurance.<sup>40</sup>

35. As a result of systemic issues such as discrimination based on their gender identity, inaccessibility of public health facilities in under-developed regions, and lack of accountability and transparency in the delivery of services or prohibitive costs of treatment in the private sector, however, many transgender individuals struggle to access essential health care services.<sup>41</sup> There remain structural and legal barriers that permit discrimination against transgender individuals in the healthcare system.
36. Most areas of the country do not provide adequate medical services for transgender people.<sup>42</sup> Only some states provide gender-affirming surgeries, while states such as Kerala have formulated a policy on the subject but have no government-run hospitals that actually provide gender-affirming surgeries.<sup>43</sup>
37. Transgender individuals also face significant discrimination in the education system due to societal stigma and a lack of supportive facilities.<sup>44</sup>
38. The Indian Government has taken a progressive step by introducing the Equal Opportunity Policy for Transgender Persons, which is designed to require consent from transgender individuals before identity disclosure. The policy is also designed to foster an environment free from discrimination, harassment, and bias and to promote the sub-scheme,

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<sup>38</sup> India's flagship public health insurance/assurance scheme implemented by National Health Authority, [https://stglms.pmjay.gov.in/local/staticpage/view.php?page=aboutnha#:~:text=National%20Health%20Authority%20\(NHA\)%20is,technological%20infrastructure%20and%20implementation%20of%20%22](https://stglms.pmjay.gov.in/local/staticpage/view.php?page=aboutnha#:~:text=National%20Health%20Authority%20(NHA)%20is,technological%20infrastructure%20and%20implementation%20of%20%22), accessed on May 9, 2024.

<sup>39</sup> India's flagship public health insurance/assurance scheme implemented by National Health Authority, [https://stglms.pmjay.gov.in/local/staticpage/view.php?page=aboutnha#:~:text=National%20Health%20Authority%20\(NHA\)%20is,technological%20infrastructure%20and%20implementation%20of%20%22](https://stglms.pmjay.gov.in/local/staticpage/view.php?page=aboutnha#:~:text=National%20Health%20Authority%20(NHA)%20is,technological%20infrastructure%20and%20implementation%20of%20%22), accessed on May 9, 2024.

<sup>40</sup> India's flagship public health insurance/assurance scheme implemented by National Health Authority, [https://stglms.pmjay.gov.in/local/staticpage/view.php?page=aboutnha#:~:text=National%20Health%20Authority%20\(NHA\)%20is,technological%20infrastructure%20and%20implementation%20of%20%22](https://stglms.pmjay.gov.in/local/staticpage/view.php?page=aboutnha#:~:text=National%20Health%20Authority%20(NHA)%20is,technological%20infrastructure%20and%20implementation%20of%20%22), accessed on May 9, 2024.

<sup>41</sup> Somitra Ghosh, *Battle for right body: the reality of sex reassignment surgeries in India*, The New Indian Express, February 24, 2020, [www.newindianexpress.com/cities/delhi/2020/feb/24/battle-for-right-body-the-reality-of-sex-reassignment-surgeries-in-india-2107686.html](http://www.newindianexpress.com/cities/delhi/2020/feb/24/battle-for-right-body-the-reality-of-sex-reassignment-surgeries-in-india-2107686.html).

<sup>42</sup> Prashant Padmanabhan, *“Transgender Woman's Death, and the Need for Urgent Revamp of Sex Reassignment Surgery,”* The Leaflet, July 30, 2021, <https://theleaflet.in/a-transgender-womans-death-and-the-need-for-urgent-revamp-of-sex-reassignment-surgery/>.

<sup>43</sup> Cris, Neethu Joseph, *“Anannyah's story isn't new: Kerala lacks support for trans persons undergoing surgery,”* The News Minutes, Aug. 7, 2021, [www.thenewsminute.com/article/anannyah-s-story-isn-t-new-kerala-lacks-support-trans-persons-undergoing-surgery-153592](http://www.thenewsminute.com/article/anannyah-s-story-isn-t-new-kerala-lacks-support-trans-persons-undergoing-surgery-153592).

<sup>44</sup> Government of India, Ministry of Education, National Education Policy, 2020 provides for setting up a Gender Inclusion Fund (GIF) especially for girls and transgender students to provide them equitable quality education, July 31, 2023, accessed May 9, 2024, [https://www.education.gov.in/sites/upload\\_files/mhrd/files/PIB1944287.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/PIB1944287.pdf).



“Comprehensive Rehabilitation for Welfare of Transgender Persons” under the SMILE scheme.<sup>45</sup>

39. Nevertheless, transgender individuals face significant discrimination, social stigma, and a lack of supportive infrastructure, which creates educational challenges such as a substantially lower literacy rate for the transgender community than the general population.<sup>46</sup> Even if they are enrolled in an educational institute, transgender individuals face harassment so severe that they are often forced to drop out.<sup>47</sup>
40. Top-down approaches to social change often face enforcement challenges, however, and may not quickly alter deep-seated cultural attitudes or systemic discrimination.<sup>48</sup> The financial situation of transgender individuals is often precarious due to widespread societal discrimination that limits their access to stable and dignified employment.<sup>49</sup> Many face challenges in obtaining formal jobs, pushing them towards informal economies where they are vulnerable to exploitation and instability.<sup>50</sup> Financial institutions further marginalize them by denying access to credit, savings accounts, and other essential financial services, frequently due to a lack of proper identification documents that reflect their gender identity.<sup>51</sup> Social protection schemes that could alleviate their economic hardships are often out of reach, as these programs may not be designed with the inclusivity necessary to address the specific needs of transgender individuals.<sup>52</sup> This systemic exclusion from economic support mechanisms perpetuates the cycle of poverty within the transgender community.

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<sup>45</sup> Government of India, Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, “Support for Marginalized Individuals for Livelihood & Enterprise, National Portal for Transgender Persons,” accessed May 9, 2024, <https://transgender.dosje.gov.in/>. Ankush Kumar, “*Indian government announces equal opportunity policy for transgender people*,” Washington Blade, Feb. 29, 2024, [https://www.washingtonblade.com/2024/02/29/indian-government-announces-equal-opportunity-policy-for-transgender-people/#:~:text=The%20Indian%20government%20has%20announced,of%20Rights\)%20Rules%202020%20requirements.](https://www.washingtonblade.com/2024/02/29/indian-government-announces-equal-opportunity-policy-for-transgender-people/#:~:text=The%20Indian%20government%20has%20announced,of%20Rights)%20Rules%202020%20requirements.)

<sup>46</sup> Anamika Biswas and Nandini Soora, *Education of Transgenders in India: Status & Challenges*, 4 International Journal of Law Management & Humanities 415, 418-420 (2021). Ankita Mohapatra and Prasanta Kumar Mohapatra, *Choosing my gender: Challenges faced by transgender persons in India*, 18 Odisha Journal of Psychiatry 21, 22-24 (2022).

<sup>47</sup> M. Gnana Kamalia, Dr. J. Antony Rajamb, Dr. K.C. Bindhuc, and Dr. J. Maria Prema, *Educational Challenges of Transgender*, Turkish Journal of Computer and Mathematics Education, Vol.12, No.10 (2021), 7004-7007.

<sup>48</sup> UAB Institute for Human Rights, “The Economic Status of Transgender People in India,” accessed May 9, 2024, <https://sites.uab.edu/humanrights/2022/10/12/the-economic-status-of-transgender-people-in-india/>.

<sup>49</sup> UAB Institute for Human Rights, “The Economic Status of Transgender People in India,” accessed May 9, 2024, <https://sites.uab.edu/humanrights/2022/10/12/the-economic-status-of-transgender-people-in-india/>.

<sup>50</sup> UAB Institute for Human Rights, “The Economic Status of Transgender People in India,” accessed May 9, 2024, <https://sites.uab.edu/humanrights/2022/10/12/the-economic-status-of-transgender-people-in-india/>.

<sup>51</sup> UAB Institute for Human Rights, “The Economic Status of Transgender People in India,” accessed May 9, 2024, <https://sites.uab.edu/humanrights/2022/10/12/the-economic-status-of-transgender-people-in-india/>.

<sup>52</sup> United Nations Development Programme, India, *A framework for Transgender-Inclusive India*, Apr. 15, 2021, 66-76, available for download at <https://www.undp.org/india/publications/framework-transgender-inclusive-india>.

## *Violence Against LGBTQ+ Individuals*

41. Despite the enshrined legal protections discussed herein, LGBTQ+ individuals also face widespread violence from State and non-State actors, including physical attacks and rape.<sup>53</sup>
42. The International Commission of Jurists has recorded numerous examples of violence against LGBTQ+ individuals in India. According to the report, “[i]nterviewees [have been] subject to many different forms of violence, including: physical violence (often sexual violence including rape); psychological abuse (including verbal and emotional attacks); economic abuses (including extortion and deprivation of basic necessities); forced confinement; participation in “corrective therapies”; and involuntary admission to mental health institutions.”<sup>54</sup>
43. One such interviewee provided the following testimony that exemplifies the familial violence that takes place against LGBTQ+ individuals: “[w]hen I was in class nine, my brother told me to grow my hair. I refused and went to my home with short hair. My brother told me that he’d auction me off in public since I didn’t listen to him... He then shaved off my head completely. I locked myself for 2 days in my room and cried.... I was very depressed; I was feeling suicidal. He continued to harass me for years... During my father’s funeral, my family told me to wear the traditional female dress. I refused and told them that I’d only wear the male dress. I said that God has seen my inner feelings, and my father must also have seen, so it shouldn’t matter what I wear. All my family members and neighbours started shouting at me.”<sup>55</sup>
44. Another interviewee provided the following testimony that exemplifies the types of community violence that takes place against LGBTQ+ individuals: “R, who eloped with her partner Q, a [trans man], described how they had to keep shifting houses for months while being chased by family members and police. The environment had become very hostile and unsafe, so [R and Q] decided to go far away to a village where it was difficult to track [them]. [R comes] from the caste where honor killings are common, and prestige is a very big thing. [R feels] that if [R’s] parents find [R and Q], they will kill [them]. For a very long time, people from [R’s] village, around 150 men, were roaming around with swords looking for [R and Q] at all of the railway stations.”<sup>56</sup>
45. Furthermore, according to the International Commission of Jurists, “while legal redress for most forms of violence and harassment is available under the regular provisions of the

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<sup>53</sup> United Kingdom Visas and Immigration, *Country Policy and Information Note: India – Sexual orientation and gender identity and/or expression*, (August 2023), accessed Apr. 24, 2024, [https://assets.publishing.service.gov.uk/media/64dba4a760d123001332c5c7/IND\\_CPIN\\_Sexual\\_orientation\\_and\\_gender\\_identity\\_and\\_expression.pdf](https://assets.publishing.service.gov.uk/media/64dba4a760d123001332c5c7/IND_CPIN_Sexual_orientation_and_gender_identity_and_expression.pdf). United States Department of State, 2022 Country Reports on Human Rights Practices: India, accessed May 9, 2024, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>.

<sup>54</sup> <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>, 38.

<sup>55</sup> International Commission of Jurists, *Living with Dignity Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India*, June 2019, <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>, 39.

<sup>56</sup> International Commission of Jurists, *Living with Dignity Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India*, June 2019, <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>, 39.

Indian criminal law, the specific applicability of most of these provisions to [LGBTQ+ individuals] ...is sometimes unclear, and often go unenforced.”<sup>57</sup>

46. According to LGBTQ+ human rights defenders, there is inadequate record of LGBTQ+ violence in India, which makes tracking incidents of violence against LGBTQ+ people particularly difficult.<sup>58</sup>
47. As further reported by the U.S. Department of State with respect to violence against LGBTQ+ individuals in India, “police officers’ [commit] crimes against LGBTQ+ persons and used the threat of arrest to coerce victims not to report the incidents.”<sup>59</sup> The U.S. Department of State also notes that “[e]xperts acknowledged a disconnect between court action and state action to create an enabling environment for queer persons.... some law enforcement officials tended to side with family interests against the queer community.”<sup>60</sup> NGOs in India also report “discrimination and violence including physical attacks and rape against members of the LGBTQ+ community.”

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<sup>57</sup> International Commission of Jurists, *Living with Dignity Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India*, June 2019, <https://www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf>, 50.

<sup>58</sup> Sumedha Pal, “*Why Lives and Deaths of Trans Persons Remain Underreported, Undocumented*,” Behanbox, Nov. 20, 2023, <https://behanbox.com/2023/11/20/why-lives-and-deaths-of-trans-persons-remain-underreported-undocumented/>.

<sup>59</sup> United States Department of State, 2022 Country Reports on Human Rights Practices: India, accessed May 9, 2024, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>.

<sup>60</sup> United States Department of State, 2022 Country Reports on Human Rights Practices: India, accessed May 9, 2024, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>.

## II. Suggested recommendations for the Government of India

48. The co-authors of this report suggest the Committee make the following recommendations to the Government of India:

- Adopt comprehensive anti-discrimination legislation that prohibits discrimination by State and non-State actors on the basis of sexual orientation, gender identity, and gender expression (SOGIE), including, but not limited to, in education, housing, employment, and access to services. Include clear penalties for violations of discrimination on the basis of SOGIE and provide redress for individuals experiencing discrimination on the basis of SOGIE.
- Create pathways for legal recognition of same-sex partnerships, ensuring access to all the benefits of married, different-sex couples.
- Ensure that transgender men are equally recognized and protected under laws for transgender and third sex people.
- Remove all requirements for medical, hormonal, or surgical interventions as a condition for transgender or third sex individuals from achieving legal gender recognition.
- In collaboration with civil society organizations that work on LGBTQ+ issues, adopt measures to combat public misinformation about and stigmatization towards the LGBTQ+ community.
- Support LGBTQ+ public events and conduct public education campaigns in collaboration with civil society organizations that work on LGBTQ+ human rights.
- Include units on gender and sexuality in university and medical school curriculum, specifically on LGBTQ+ social, legal, political, and medical concerns.
- Provide schools with guidance counsellors trained in working with LGBTQ+ youth and create capacity training programs for school guidance counsellors where required to provide counselling and support to LGBTQ+ youth across India.
- Implement rigorous monitoring and evaluation of reserved seats for transgender students, including tracking enrollment and completion rates.
- Develop and mandate training comprehensive anti-discrimination training for educators to foster an inclusive educational environment.
- Develop and mandate training for government officials and healthcare providers with respect to LGBTQ+ issues.
- Ensure that there are sufficient and accessible healthcare facilities in rural areas to provide sufficient healthcare to LGBTQ+ people outside of urban areas.
- Modify the current rules regarding gender self-determination to reduce bureaucratic red tape.

- Increase funding to reduce inequality gaps and improve access to and use of gender-affirming medical care. The inclusion of hormonal medications (e.g., pills, injections, patches) under “National Essential Medicines List” will help improving access to these medications in governmental hospitals.
- Accelerate the process of standard setting for the health management of transgender individuals using the World Professional Association for Transgender Health Standards of Care Version 7 as a reference.
- Construct and implement “*Garima Greh*” shelters with greater resources for effective security in all states across India.
- Make clear that laws preventing and providing redress for violence include protections for LGBTQ+ people.
- Impartially and thoroughly investigate all reports of violence perpetrated against an individual because of their real or perceived SOGIE status, including violence perpetrated by State and non-State actors.
- In collaboration with civil society organizations that work on LGBTQ+ issues, collect and publish at least annually disaggregated data on violence experienced by LGBTQ+ individuals, including location of incident; legal and self-reported gender of victim; legal and self-reported gender of perpetrator; self-reported sexual orientation of victim; self-reported sexual orientation of perpetrator; case of victim; caste of perpetrator; relationship, if any, between perpetrator and victim; and whether the incident was reported to police, and, if so, the outcome of the report.
- Develop and mandate police training and procedures for responding to claims of discrimination and violence against LGTBIQ+ people in a manner consistent with India’s obligations under the International Covenant on Civil and Political Rights.
- Hold members of law enforcement and other State and non-State actors accountable for human rights violations against LGBTQ+ individuals.
- Enact specific hate crime legislation that protects individuals on the basis of real or perceived sexual orientation, gender identity, and/or gender expression.
- Establish an independent body tasked with overseeing LGBTQ+ protection. Ensure that this body has resources for proper functioning and sufficient sub-offices in various regions to be able to provide refuge, support, and redress to LGBTQ+ individuals.
- Ensure transparency in funding and outcomes for LGBTQ+ support programs and implement robust monitoring and evaluation to refine support measures based on impact assessments.