**National Human Rights Commission, India**

**Subject:** Response for suggested questions for including in the thematic report to the 56th Session of the UN Human Rights Council on the issue relating to sexual orientation and gender identity (SOGI) – regarding

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The UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (IE SOGI) intends to present a thematic report to the 56th session of the UN Human Rights Council in June 2024 on the right to freedom of expression, association and assembly in relation to sexual orientation and gender identity (SOGI).

In this regard, an email dated 8th January 2024 was received from National Institutions and Regional Mechanisms Section (NIRMS), Field Operations and Technical Cooperation Division, United Nations Office of the High Commissioner for Human Rights (OHCHR) vide which they requested the National Human Rights Institutions to provide inputs requesting inputs on the above–mentioned issue. They requested to submit the requisite input by 31st January, 2024. In view of this, the draft response for the suggested questions (*highlighted in bold)* has been prepared which are given below against each questions.

1. **Does your country have any laws, policies, or practices that, explicitly or implicitly, ban, restrict or make more challenging the exercising of freedom of expression or activists advocating for LGBT persons’ human rights?**
2. **This could include, but is not limited to, laws on the so-called propaganda of homosexuality, morality policies or codes, censorship of media content, restrictions, on school curriculum, censorship of any content or scenes, censorship of literature, printed materials, blocking of sites or social media platforms, persecution of artists and authors working with the topic, etc.**

**Response:** No. India does not have any laws, policies, or practices that explicitly or implicitly prohibit, restrict, or complicate the exercise of freedom of expression or activism advocating for the human rights of LGBTQIA + persons. On the contrary, the Parliament of India has passed The Transgender (Protection of Rights) Act, 2019, which not only prohibits discrimination against transgender individuals but also includes provisions requiring authorities to take affirmative action for the complete justice of transgender persons.

In addition to these, the Hon’ble Supreme Court of India in its landmark NALSA case judgement in the year of 2014 held that transgender persons fall within the purview of the Indian Constitution and thus are fully entitled to the rights guaranteed therein. In the landmark ruling, Justice K. S. Radhakrishnan observed that “*recognition of transgenders as a third gender is not a social or medical issue, but a human rights issue*”. The Court in the said judgment had clearly spelled out that discrimination on the grounds of sexual orientation and gender identity represents inequality before the law and unequal protection of the law and violates Article 14[1]. It is also noteworthy that Article 19 of the Indian Constitution protects the Fundamental Right to Speech & Expression of all citizens of India.

Furthermore, in the year of 2017, in the *Justice K.S. Puttaswamy vs. Union of India*, the Supreme Court of India rules that the Fundamental Right to Privacy is intrinsic to life and liberty and thus, comes under Article 21 of the Indian constitution. The apex court declared that bodily autonomy was an integral part of the right to privacy and this bodily autonomy has within its ambit sexual orientation of an individual. Finally, the Supreme Court decriminalized homosexuality in the famous *Navtej Singh vs. Union of India case* in the year of 2018 by declaring Section 377 as unconstitutional.

Moreover, the Government of India has initiated several initiatives both at national and regional level to ensure that individuals from LGBTQIA+ communities can effectively exercise their fundamental rights of freedom of speech and expression. The Election Commission of India issued direction in 2009 to all provinces to amend the format of the registration forms to include an option of “others”. The Transgender Act, 2019, envisions the provision of issuing identity certificate to transgender persons. The National Portal for Transgender was created to act as one stop centres for availing the schemes meant for Transgender persons and getting the certificate. In January 2022, the Ministry of Home Affairs sent an advisory to Heads of Prisons in the States/ UTs to ensure privacy, dignity of the third gender inmates. The advisory for ensuring the welfare of transgender persons, issued by the National Human Rights Commission issued on 15th September, 2023, also mentions that all forms for whatever purpose, which require candidates to indicate their sex, must provide ‘third gender’ as a category in the options. In compliance the NHRC advisory, the Transgender Protection Cells are being set up in various states to monitor the cases of offences against Transgender Persons. In the State of Uttar Pradesh, an officer in every police station is being designated to act as a focal point for transgender persons.

The National Council for Transgender Persons has been set up at national level as per the provision of Transgender Act, for advising the government on important matters which has representatives from transgender community themselves. The Joint Secretary of the National Human Rights Commission, India, is an *ex officio* member of the Council. At the state level, the transgender boards are being created. Few states like Meghalaya, Odisha are setting such boards at district level as well. The State of Odisha is framing policy at department level.

The National Council of Educational Research and Training (NCERT) has been working towards developing inclusive curricula that consider the diverse needs of students, including those who identify as transgender. It has release a draft training module titled "*Integrating Transgender Concerns in Schooling Processes*", to address transgender concerns, suggesting teaching methods in order to develop an inclusive environment in education centres. Scholarships are being provided to non conforming students for pursuing their studies. Also, in compliance with the NHRC advisory a few state educational authorities have directed the head of educational institutes to set up an anti-discrimination committee to address the issue of prejudices, discrimination, sexual abuse and other types of violence against transgender persons.

1. **If there are no such laws or policies, have there been attempts or incentives in the last ten years (2013-2023) to introduce such explicit or implicit restrictions, either nationally or locally? If so, who were the actors/ groups/ individuals or organizations behind these attempts, and what is the current situation?**

**Response:** In the last ten years, no instance of any attempts or incentives to introduce any law or policies that explicitly or implicitly put any restrictions on LGTQIA + person either nationally or locally has been reported from anywhere in India by the National Human Rights Commission, India.

In fact, the lat 10 year has been proved to be blessing for the LGTQIA + community. As in the year of 2014, the landmark verdict of the Supreme Court in the NALSA case was spelled out; the right to privacy was declared as part of the Fundamental Right under Article 21 of the Indian constitution in the year of 2017; homosexuality was decriminalized in the year 2018, the Parliament of India enacted The Transgender (Protection of Rights) Act in the year of 2019 and subsequently schemes comprehensive scheme like SMILE - Support for Marginalized Individuals for Livelihood and Enterprise was launched at central level. The Ministry of Social Justice and Empowerment has formulated a National level umbrella scheme namely “SMILE - Support for Marginalized Individuals for Livelihood and Enterprise”, which includes two sub-schemes - ‘Comprehensive Rehabilitation for Welfare of Transgender Persons’ and ‘Comprehensive Rehabilitation of persons engaged in the act of Begging’. This umbrella scheme cover several comprehensive measures including welfare measures for both transgender persons and persons who are engaged in the act of begging with focus extensively on rehabilitation, provision of medical facilities, counseling, education, skill development, economic linkages etc with the support of State Governments/ UTs/ Local Urban Bodies, Voluntary Organizations, Community Based Organizations (CBOs) and institutions and others. Composite medical health element of the scheme provide health Insurance coverage to all Transgender persons living in India to improve their health condition through proper treatment including sex re-assignment surgeries as well as medical support. The Ministry of Social Justice & Empowerment is providing scholarships studies in India to Transgender students studying in classes IX and above to provide financial assistance to the Transgender students studying in classes IX and X, and at post matriculation or post-secondary stage and beyond that till post-graduation to reduce the incidence of drop-out and aid the transition from the elementary to the secondary stage through an automated online system for transgender students using a single login credential. Garima Greh were opened with an aim to provide shelter to Destitute & abandoned Transgender persons with basic amenities like shelter, food, medical care and recreational facilities. Besides that, it will provide support for the capacity-building/s kill development of Transgender persons. Further various schemes like SWEEKRUTI in the State of Odisha, were launched at state level. The sanitation programme has been also included in the school curriculum.

Furthermore, the National Human Rights Commission also has taken various steps to protect the right of LGBTQIA+ persons in the mentioned years. The Commission constituted a dedicated Core Group on LGBTI Issues in the year of 2018, which mostly has representative from LGBTI community, to deliberate on the issue of LGBTI persons. In the view of COVID-19 pandemic outbreak, the Commission constitutes an expert group of Committee which came up with an advisory that was issued to the authorities. The Commission also appointed the prominent trans-women activist, Ms. Laxmi Narayan Tripathi as its Special Monitor on the subject of Transgender. Furthermore, in last year only, the Commission has issued the advisory for ensuring the welfare for transgender persons on 15th September 2023 and asked the concerned authorities to submit the Action taken Reports within three months. The Commission is please to acknowledge that its recommendations are being seriously taken by the authorities. The said advisory may be seen at

<https://nhrc.nic.in/sites/default/files/Advisory%20for%20ensuring%20the%20welfare%20of%20Transgender%20Persons_Sep2023.pdf>

**3. Does your country have any laws, policies, or practices that, explicitly or implicitly, ban, restrict or make more challenging the exercising of freedom of association and freedom of peaceful assembly by civil society organizations or activists advocating for LGBT persons’ human rights?**

1. **Those can include –but are not limited to– explicit bans on registration of organizations working on LGBT persons’ human rights or related topics, procedures making the registration impossible or almost impossible, obstacles for applying for and receiving funding (foreign or otherwise), ignoring or indirectly encouraging attacks and threats on LGBT-related events and using such attacks as a justification for banning peaceful marches/ protests, refusing to guarantee the protection of the peaceful protests by State security forces, etc.**

**Response:**India does not have any such laws and policies, or practices that, explicitly or implicitly, ban, restrict or make more challenging the exercising of freedom of association and freedom of peaceful assembly by civil society organizations or activists advocating for LGBT persons’ human rights. In contrary to that, the government at various levels encouraging the association of transgender communities in the form of Self Help Group to make economically independent and ensure dignifies jobs to them. For instance, the Transgender Self Help Groups were created in the Union Territory of Puducherry to uplift the financial status of transgender persons. Also, it is noteworthy that historically, in India, the transgender individuals have been known to reside in groups and formed various associations. In India it is considered auspicious to have the blessings of transgender persons in important events like marriage, child birth, etc.

Speaking from legal perspective, Section 16 (h) of the Transgender (Protection of Rights) Act, 2019 mandates that five experts, to represent non-governmental organizations or associations working for the welfare of transgender persons, to be nominated by the Central Government, to act as the members of the National Council for Transgender Persons.

Furthermore, as mentioned above (under question 1), the Supreme Court in NALSA judgment made it very clear that LGBTQIA+ individual are entitled to all the Fundamental Rights enshrined in the Constitution of India. It is pertinent to note that Article 19(b) & Article 19 (c) provides that all citizens shall have the right to assemble peaceably and without arms; and, right to form associations or unions respectively. There is thousands of NGOS/ CSO currently operating in India and working for the rights of LGBTQI+ persons. Some of the prominent organizations across the country include the Sahodari Foundation (Tamil Nadu), Udaan Trust (Maharashtra), Gay Bombay (Maharashtra), Sappho for Equality (West Bengal), the Humsafar Trust (Maharashtra), Integrated Network for Sexual Minorities (INFOSEM–Delhi), Naz Foundation Trust (Delhi), Sangama (Karnataka), Social Awareness Service Organization (SASO- Manipur), and so on. Also, the LGBTQI+ communities have been organizing pride march and such events receive due protection and support from government institutions.

1. **If there are no such laws or policies, have there been attempts or incentives in the last ten years (2013-2023) to introduce such explicit or implicit restrictions, either nationally or locally? If so, who were the actors/ groups/ individuals or organizations behind these attempts and what are the current situation?**

**Response:** No such attempts or invectives have been reported in the last ten years (2013-2023) to introduce such explicit or implicit restrictions, either nationally or locally from anywhere in India.

1. **Are there practices, procedures, groups or actors, societal and political trends, incentives, civil society and constituency mobilization, laws, bills or policies, which you have not mentioned above but that already affect or are likely to affect in the future, directly or indirectly, the exercising of the human rights to freedom of expression, association and/ or peaceful assembly by LGBT people, activists and civil society organizations in your country, nationally or locally?**

**Response:** The Article 13(2) of the Constitution of India reads that “The State shall not make any law which takes away or abridges the rights conferred by this Part (Part III) and any law made in contravention of this clause shall, to the extent of the contravention, be void”. As explained above, LGBTQIA+ persons are also entitled to this fundamental right. The Constitution of India does not allow any state agency to frame any law, policy, rule which can snatched away the fundamental right provided under Part-III of the Constitution of India from any citizen of India. Hence, no such law or policy can be framed in India.

1. **Given that laws and policies regulating internet use, access and content can have especially restrictive effects on the protection of the human rights of LGBT persons, are there laws, policies and practices which appear neutral or otherwise not specifically addressed to LGBT or SOGI issues, which nonetheless have discriminatory effects on the exercising of the human rights to freedom of expression, association and/ or peaceful assembly by LGBT people, activists and civil society organizations in your country, nationally or locally?**

**Response:** Any law or policy including the laws and policies regulating internet use, access and content cannot be framed in such a way that it infringes the rights of any citizen of India including LGBTQIA+ persons.  The human rights such as right to speech & expression, right to assemble peaceably and right to form union or associations are protected as fundamental rights under Part –III of the Constitution of India and thus justifiable in the court of law. It is imperative that no law or policy be crafted that infringes upon these fundamental rights. For instance, Clause 1(y) of *The Digital Personal Data Protection Act, 2023* defined “she” which has been used to referred to individuals, ‘*as in relation to an individual includes the reference to such individual irrespective of gender’.* In fact, recent years have witnessed the production of numerous films that portray the challenges faced by transgender individuals, serving to raise awareness among the general population. Furthermore, the Directorate of Social Welfare, Government of Puducherry is celebrating the Transgender Day on 15th April since 2018 every year marking the Supreme Court verdict in NALSA v. Union of India case. This underscores the ongoing efforts to acknowledge and celebrate the rights and contributions of transgender individuals.

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[1] Article 14 of the Constitution of India: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.