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# **LGBTI Rights in India: A Shadow Report for India's Third Cycle Universal Periodic Review**

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## **INTRODUCTION**

1. The Centre for Health Law, Ethics and Technology (CHLET) at Jindal Global Law School (JGLS)<sup>1</sup> undertakes research on issues related to sexuality, gender and healthcare from a developing world perspective on social justice. CHLET adopts a multidisciplinary approach and focuses particularly on gender minority rights, sexual minority rights, reproductive rights, realization of a constitutional right to health and the implication of advancement in technology on access to healthcare.
2. The India HIV/AIDS Alliance<sup>2</sup> supports community action to prevent HIV infection, meet the challenges of AIDS, and build healthier communities. Their work includes the Pehchaan Program, which supports HIV prevention efforts for marginalised and vulnerable MSM, transgender, and *Hijra* communities; the Hridaya Program, which focuses on expanding harm reduction services for people who inject drugs (PWID), their partners, and families; the Abhaya Program, which addresses the shortage of sexual and reproductive health services targeted towards female sex workers; and the Wajood Project, which supports transgender persons in Delhi, Andhra Pradesh, Telangana, Karnataka and Gujarat through community system strengthening, violence mitigation, access to sexual health, linkages to social welfare services, and policy advocacy.
3. In this submission, CHLET and the India HIV/AIDS Alliances brings to the attention of the Human Rights Council's Working Group on the UPR (Working Group) human rights abuses against lesbian, gay, bisexual, transgender, and intersex (LGBTI)<sup>3</sup> persons since India's second cycle review in 2012 (Second Cycle). This submission will rely on reports, news articles, and the authors' own research with the transgender community to document the widespread mistreatment and discrimination against LGBTI persons in India.
4. While we have attempted to be inclusive in this report, reports on discrimination and mistreatment are far more prevalent for some sub-groups within the LGBTI community, especially gay men, transwomen and transmen. We recognize that the LGBTI community in India is far from homogenous, and therefore, that the human rights concerns discussed below may not apply equally to all within this community. We also acknowledge the need for additional engagement and documentation of the human rights concerns of bisexual, genderqueer and intersex persons.

## **LGBTI RIGHTS IN INDIA'S 2012 UPR**

5. During India's Second Cycle review, several shadow reports noted that discrimination against the LGBTI community continued despite the Delhi High Court's 2009 decision in *Naz Foundation v. Government of NCT of Delhi*.<sup>4</sup> In that case, the Court ruled that Section 377, which criminalized "carnal intercourse against the order of nature," cannot be applied to consensual sexual acts between adults.<sup>5</sup>
6. Another shadow report noted that male and transgender sex workers are unable to access human rights protection mechanisms because Section 377 criminalizes sodomy.<sup>6</sup>

7. In its final report, The Working Group specifically recommended that India “Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment.”<sup>7</sup> However, India did not accept this recommendation.<sup>8</sup>

## **SUBSEQUENT LEGAL DEVELOPMENTS**

8. As mentioned, in 2009, the Delhi High Court held that applying Section 377 to consensual, homosexual acts between adults violated the Indian Constitution. This landmark decision had several important effects, including increased self-confidence among LGBTI persons, a reduction in police harassment (at least for some groups), and a greater level of social acceptance.<sup>9</sup>
9. However, these positive effects were short-lived. In December 2013, in *Suresh Kumar Koushal v. Naz Foundation*, the Supreme Court overturned the Delhi High Court’s decision and held that Section 377 did not violate the Constitution, even when applied to consensual, homosexual conduct.<sup>10</sup> Petitioner *Naz Foundation* moved several times for post-decision review, which the Supreme Court originally denied.<sup>11</sup> However, *Naz Foundation* subsequently filed a curative petition, and in February 2016, the Supreme Court referred the petition to a five-judge constitutional bench to reconsider the constitutionality of Section 377.<sup>12</sup> The curative petition is currently pending (as of the date this report was submitted).
10. Another troubling legal development, apparently not considered during India’s 2012 UPR, is that the state of Karnataka amended its Police Act in 2011 to insert discriminatory Section 36A. The stated purpose of this section is to “suppress or control undesirable activities of eunuchs” and it empowers the Commissioner of Police to prepare and maintain a register of the names and addresses of “all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences.”<sup>13</sup> The Commissioner can also prohibit a registered “eunuch” from doing any activities that he specifies in an order.<sup>14</sup> This section appears to have its roots in the long-since repealed Criminal Tribes Act, 1871, which had similar sections circumscribing the lives of “eunuchs.”<sup>15</sup>
11. On a more positive note, the Supreme Court in 2014 laid down important protections for the transgender community. In *National Legal Services Authority (NALSA) v. Union of India*, the Court held that the prohibition of discrimination based on “sex” in Articles 15 and 16 of the Indian Constitution includes discrimination based on gender identity and that transgender persons are entitled to legal recognition of their gender identity, including as a third gender if they so desire.<sup>16</sup> The Court also ordered the State and Central and State to, *inter alia*, treat them as “a socially and educationally backward class,” entitling them to affirmative action in schools and public appointments; combat stigma and discrimination; allow changes in gender-markers without sexual-reassignment surgery based on self-identification; and provide targeted social welfare schemes.<sup>17</sup> Significantly (and apparently in conflict with its prior decision in *Koushal*), the Supreme

the Court recognized that Section 377 has served as an “instrument of harassment and physical abuse against Hijras and transgender persons.”<sup>18</sup> The Court subsequently clarified that the protections extended to the transgender community in *NALSA* decision do not apply to lesbian, gay, or bisexual persons.<sup>19</sup>

12. Some steps have been taken at both central and state levels to implement this decision. The Ministry of Social Justice and Empowerment has constituted an Inter-Ministry Coordination Committee to implement recommendations by the Expert Committee on Transgender people; the Ministry of Information and Broadcasting has directed its media units to publicize issues facing the transgender community; the Ministry of Labour and Employment directed all states to provide vocational training to transgender persons; and the University Grants Commission directed educational institutions to specifically provide for admissions to transgender students.<sup>20</sup> Since the *NALSA* decision, Chhattisgarh, West Bengal, Kerala, Maharashtra, Jammu and Kashmir, Bihar and Odisha have set up or made plans to set up a transgender welfare board or similar bodies.<sup>21</sup> Individual states have also drafted explicit transgender policies.<sup>22</sup> In addition, Delhi University recently started allowing applicants to apply as third gender, and transgender persons will be admitted under this separate category.<sup>23</sup>
13. Despite these positive steps, the *NALSA* decision still remains largely neglected two years out. There has been little effort to give effect to one of the decision’s key holdings—that transgender persons must be given legal recognition for the self-identified gender.<sup>24</sup> Instead of a clear procedure, community members face numerous, unclear administrative barriers.<sup>25</sup> In fact, despite the Supreme Court’s explicit holding that “any insistence for [sexual reassignment surgery] declaring one’s gender is immoral and illegal,”<sup>26</sup> some community members are still not allowed to change their gender markers on official documents without proof of surgery.<sup>27</sup> Welfare programs and state-level policies are also lacking, echoing findings of a 2013, pre-*NALSA* survey conducted by CHLET of state-level laws, policies, and welfare programs for the transgender community.<sup>28</sup> As the International Commission of Jurists recently noted, “the Indian Central and state governments have still not implemented some of the core directions set out in the judgment.”<sup>29</sup>
14. More generally, activists’ reports make clear that the *NALSA* decision has failed to improve the lives of LGBTI persons on the ground. Trans-men, for example, face restricted movement, forced marriage, bullying in schools and colleges, and verbal and physical attacks.<sup>30</sup> They are also often left out of the government’s efforts to help the transgender community.<sup>31</sup>
15. The Delhi High Court also issued positive ruling in 2015 in *Shivani Bhat v. State Of NCT of Delhi*.<sup>32</sup> The petitioner in that case was a transman visiting India from the U.S. Upon arriving in India, his parents took away his passport and green card and tried to forcibly marry him off to a man.<sup>33</sup> With the assistance of local activists, he requested and was given police protection by the Delhi High Court.<sup>34</sup> The court explicitly stated that the harassment was a form of “bigotry.”<sup>35</sup> The court also praised the petitioner’s “indomitable spirit.”<sup>36</sup>

16. Finally, in July 2016, the government Cabinet approved The Transgender Persons (Protection of Rights) Bill, 2016.<sup>37</sup> However, the bill has been criticized by activists and transgender persons for several reasons.<sup>38</sup> The bill defines “transgender person” as (a) neither wholly female nor wholly male, or (b) a combination of female or male, or (c) neither female nor male.<sup>39</sup> This displays a misunderstanding of what the term “transgender” means and appears to reject the notion of self-identification which was so important in the *NALSA* decision. To receive legal recognition as a transgender person, the bill requires making an application to the District Magistrate, who will refer it to the District Screening Committee.<sup>40</sup> This bureaucratic process may be difficult to navigate and goes against the right to self-identification. In addition, the bill states that, if a member of a transgender person’s family is unable to care for them, “the competent court shall by an order direct such person to be placed in rehabilitation centre.”<sup>41</sup> This is a step backwards from a prior version of the bill, which provided that, in such circumstances, the court “shall make every effort to place such child within his or her extended family, or within the community in a family setting.”<sup>42</sup> Given that family was defined in the prior version as “a group of people related by blood, marriage or adoption,”<sup>43</sup> this appeared to allow recognition of the *Hijra* family structure. The prior version of the bill also stated that sex-reassignment surgery should be available free of cost, but the 2016 bill merely states that the government must provide for medical facilities for sex-reassignment surgery (but not require it be free or subsidized).<sup>44</sup> Furthermore, it fails to define what constitutes discrimination and lacks meaningful enforcement mechanisms.<sup>45</sup>

## **MISTREATMENT BY POLICE**

### ***Arbitrary arrest and harassment in public spaces***

17. LGBTI persons are frequently subjected to arbitrary arrest and detention by police. Since the Supreme Court upheld the constitutionality of Section 377 in the *Koushal* decision, there have been numerous arrests under this provision. Data released by the National Crime Records Bureau reveals that, in 2014 alone, 778 cases were registered under Section 377 and 587 persons were arrested in pursuance of the same.<sup>46</sup> It is impossible to discern from this data the number of cases filed against consenting homosexuals and the number filed for other conduct (before the enactment of the POCSO Act, 2012 and the 2013 amendments to the Penal Code, Section 377 was the only way to prosecute sexual abuse against male children or non-peno-vaginal sexual abuse against women). However, there are specific documented instances of the law’s misuse. In 2014, a man in Bangalore was charged under Section 377 after being caught by his wife having sexual relations with another man.<sup>47</sup> That same year, five transgender persons were arrested under 377 while they were just sitting in a park.<sup>48</sup> In November 2013, even before the Supreme Court’s ruling in *Koushal*, police in Hassan used Section 377 to arrest 13 men working for an NGO that provides HIV prevention services to sexual minorities.<sup>49</sup>

18. Other legal provisions are also misused against LGBTI persons. In November 2014, 167 transgender persons (known locally as *Hijras*) were detained under the Karnataka

Prohibition of Beggary Act.<sup>50</sup> Interviews conducted by CHLET in collaboration with Pehchaan, India HIV/AIDS Alliance in Delhi in 2015 revealed that transgender persons are frequently detained on suspicion of engaging in sex work. For example, the police arrested one transwoman, apparently on suspicion of sex work, simply because she was hugging a friend.<sup>51</sup> Another interviewee was forcibly detained in a police vehicle because she was waiting for a rickshaw in an area known for sex work.<sup>52</sup> Several other interviewees were arrested, for no apparent reason, while they were walking home at night.<sup>53</sup>

19. Police have also filed false charges against LGBTI persons, including for the murder of a person who died of a heart attack.<sup>54</sup>
20. Police use the threat of arrest to harass LGBTI persons and extort money, property, or sexual acts. A gay man in Delhi was accosted by police in Nehru Park who threatened to take him to the police station because “homosexuality is a crime” (even though he was not doing anything illegal); however, they let him go because he paid a bribe.<sup>55</sup> A gay man in Chennai was assaulted verbally and physically by several police officials. While this was happening, one noted his address from his ID cards and threatened to press charges—“Since IPC section 377 has been criminalized which makes your kind illegal, we can do anything we want and nobody will question us . . . .”<sup>56</sup> A transwoman in Rajasthan was sexually assaulted by the police and they threatened her with narcotic charges if she did not cooperate with them.<sup>57</sup> In another case, after disclosing to police that they were gay, two men in Nagpur were locked up the entire night and then asked for a huge sum of money to prevent a complaint under Section 377 from being filed.<sup>58</sup> Many similar cases have been documented.<sup>59</sup>
21. More generally, many police officers use abusive and degrading language, such as asking a transgender person if they are “really” a man or a woman,<sup>60</sup> or deliberately using the wrong gender to address them,<sup>61</sup> and calling gay men derogatory names.<sup>62</sup>
22. Police also frequently stop transgender persons in public places to ask what they are doing, presumably on the assumption that they are engaging in sex work,<sup>63</sup> which has instilled a sense of vulnerability among community members.<sup>64</sup> Police are quick to resort to violence, especially with transgender persons, whom officers will hit with sticks to get them to leave an area<sup>65</sup> or stop begging.<sup>66</sup> The interviews also indicate that law enforcement authorities will aggressively demand money or sex from transgender persons.<sup>67</sup>
23. There are also cases of more severe abuse. A transgender interviewee told CHLET and Pehchaan that police beat her friend because she was involved in sex work, and it took her 15–20 days to recover from the injuries.<sup>68</sup> Another interviewee explained that the police beat one *Hijra* so badly with a rod that she was not able to walk.<sup>69</sup> One man in Mumbai was forced to perform oral sex on two officers after he admitted he was gay.<sup>70</sup> In a similar incident in Delhi, two officers took a transgender person inside an electrical transformer and forced her to give them oral sex.<sup>71</sup> Seven police officers in Ahmedabad sexually assaulted a gay man near Chennai.<sup>72</sup> Moreover, when police commit sexual

assault, they often do not use condoms,<sup>73</sup> potentially exposing the victims to sexually-transmitted diseases such as HIV.

24. Apart from members of the LGBTI community, the activists who assist them and advocate their cause have also faced police harassment. For instance, when a transgender man was assisted by LGBTI activists in escaping from confinement by his parents, police personnel harassed the activists to find his whereabouts, raided their houses, and lodged FIRs against them for kidnapping.<sup>74</sup>

### ***Mistreatment in custody***

25. Custodial abuse by police against LGBTI persons is rampant in India. This report will provide just a few examples:
  - a. In January 2015, a young *Hijra*, while detained by the police for four hours, was stripped naked and verbally abused and humiliated.<sup>75</sup>
  - b. That same month, police arrested a transwoman in Chennai and suspended her by her legs with a rope and penetrated her post-operative genitalia with a baton. She was left bleeding overnight, and only released the next morning.<sup>76</sup>
  - c. In June 2014, after police in Ajmer arrested nine transgender persons, they gang-raped one of them in the police station that night, even filming part of it.<sup>77</sup>
  - d. CHLET and Pehchaan interviews confirmed numerous cases of custodial rape of transgender persons.<sup>78</sup> Sometimes, they are able to avoid abuse by paying a bribe.<sup>79</sup>
  - e. One transperson in Andhra Pradesh committed suicide after being abused by police in 2014.<sup>80</sup>
  - f. Several people were physically beaten in the police station after being arrested under Section 377.<sup>81</sup>
  - g. A transgender person stated in 2013 that she has lost count of the number of times she has been raped by both police and criminals.<sup>82</sup>
26. Other prisoners are also a danger to LGBTI prisoners. One person, arrested under Section 377 in 2013, noted that, “In jail every inmate talked about us in a filthy manner . . . . [They] joked at us and said we are *diwali* offer for them and that they will have good time using us.”<sup>83</sup> In addition, there is no national-level policy on where to place transgender prisoners, and many continue to be placed based on their genitals (which are inspected by prison officials).<sup>84</sup> This results in transwomen who have not had sexual-reassignment surgery being placed in male prisons, where they are vulnerable to rape.<sup>85</sup>

### ***Denial of access to justice***

27. Police officials often refuse to assist LGBTI persons. In January 2015, a transperson was returning home from the office when some young men started harassing her. She approached some traffic police who were standing nearby, but they did not listen and instead told the boys to take her home.<sup>86</sup> Another CHLET/Pehchaan interviewee explained that her transgender friend was beaten right in front of a police van, but the



officers only watched the incident unfold; even after other bystanders yelled at the police to intervene, they did nothing.<sup>87</sup>

28. Police officers also refuse to register complaints by LGBTI victims. Employees at the NGO Humsafar Trust were threatened by three men, who had been harassing homosexual men on other occasions as well. The police, however, refused to file an FIR (First Information Report), and let the offenders go with a mere warning.<sup>88</sup> CHLET and Pehchaan have documented many similar instances involving the transgender community.<sup>89</sup> In one case, the interviewee was kidnapped and raped by two men, who then proceeded to blackmail her. She informed the police about this, and even took them to the place where the abuse occurred, but they took no action whatsoever.<sup>90</sup> Similar cases have been reported in the news.<sup>91</sup>
29. LGBTI persons are reluctant to register a complaint with the police, fearing what action would be taken against them. Police often blame transgender victims who are attempting to report a crime.<sup>92</sup> A doctor reported a case of extortion to police involving two men who had filmed him engaging in homosexual activity, but instead of pursuing charges against the extortionists, the police charged the doctor.<sup>93</sup> In Uttar Pradesh, a transgender person reported an assault to the police, but instead of arresting the perpetrator, the officer tried to molest the victim.<sup>94</sup> Filing a complaint is particularly difficult (and useless) if it is against a police officer.<sup>95</sup>

### **MISTREATMENT BY FAMILY**

30. Many LGBTI persons in India also face mistreatment from and/or rejection by their families. This can range from disapproval<sup>96</sup> to being thrown out.<sup>97</sup> In fact, a 17-state study conducted by the National Institute of Epidemiology conducted revealed that most of the transparticipants were rejected by their biological families.<sup>98</sup>
31. Some LGBTI youth are forced into heterosexual marriages.<sup>99</sup> In 2014, a gay Indian student was granted asylum in Australia because, if he returned back to India, “he would be assaulted and probably forced to marry, and if he were to refuse he would probably face more serious harm and be killed.”<sup>100</sup>
32. Parents also try to “cure” LGBTI children through a variety of treatments, ranging from Ayurveda and Homeopathy to medication, psychological therapy, hormone therapy, and even electric shocks under the supervision of licensed doctors.<sup>101</sup> These treatments can have severe effects—one gay man was subjected to 21 shock treatments in three months, leaving him unable to speak properly.<sup>102</sup> A 2015 investigation found several doctors in Delhi claiming they can “fix” homosexuality<sup>103</sup> despite the fact that the Indian Psychiatric Society has publicly stated that “there is no evidence to substantiate the belief that homosexuality is a mental illness or a disease.”<sup>104</sup> Of particular concern, a government official from the State of Goa said in 2015 that the government would create centers for LGBTI youth to make them “normal.”<sup>105</sup> This would reportedly also include a new law that would categorize LGBTI youth as a problem group in need of government intervention, just like academic dropouts, drug addicts, and illegal migrants.<sup>106</sup>

33. Instances of “corrective rape” have also been reported. The LGBT Collective in Telangana recently noted that there have been fifteen instances of corrective rape of transgender people reported to the group over the last five years.<sup>107</sup> However, there are likely many more such incidents that go unreported. In one instance, a transboy was repeatedly raped by his male cousin with the sanction of his parents.<sup>108</sup> Another transboy was gang raped by six men. In another, a family forced a gay son to have sex with his mother in an attempt to turn him straight.<sup>109</sup>

## **DISCRIMINATION IN EDUCATION, EMPLOYMENT AND HEALTHCARE**

34. Section 377 creates legal and social barriers to accessing critical healthcare, including for the prevention and treatment of HIV/AIDS. In the four years after the Delhi High Court decriminalized same-sex activity, HIV/AIDS treatment centers for men who have sex with men (MSM) and transgendered persons increased by more than 50 percent.<sup>110</sup> The re-criminalization of same-sex conduct in December 2013, and the concomitant increase in social stigma and institutional discrimination, impedes access to both preventative and treatment services. A 2012 World Bank Report revealed that the LGBTI community in India often prefers to stay away from mainstream health services, primarily on account of the stigmatization at the hands of the health service providers.<sup>111</sup> The U.S. State Department’s 2013 India Human Rights Report noted that transgender persons living with face difficulty in obtaining medical treatment.<sup>112</sup>
35. Transgender persons in particular have difficulty accessing healthcare. Saikat, a transgender individual, died following a train accident while doctors debated whether to admit her to the male or female ward.<sup>113</sup> After a transwoman was raped by three men, the doctors at a public hospital refused to treat her, and would not even prescribe the anti-HIV medication recommended for rape victims.<sup>114</sup> Community members report that doctors are “afraid to even feel our pulse.”<sup>115</sup> Medical staff, particularly in smaller clinics and government hospitals, pass judgment on the “deviant” behaviour of transgender persons, often asking them invasive questions about their genitals or their sex lives.<sup>116</sup> When transpersons visit hospitals, they are subjected to unwanted curiosity from other patients and derogatory remarks from the hospital staff.<sup>117</sup> Their treatment is also often delayed, as they are made to wait, or approach different departments.<sup>118</sup> Doctors admit that they shy away from associating with transgender persons, due to the prevailing stigma.<sup>119</sup> In fact, one clinic in Kolkata asks transgender patients to visit early in the morning or late at night, when there would be minimal contact with other patients.<sup>120</sup> Health care professionals in India are also inadequately informed about treatments such as hormone replacement therapy and sex-reassignment surgery, compelling trans persons to obtain services in ill-equipped places, putting their lives and health at risk.<sup>121</sup>
36. Workplace discrimination against LGBTI persons also remains rampant, with the State Department’s 2013 Report noting instances of slurs by colleagues and supervisors as well as unjustified dismissals.<sup>122</sup> The World Bank Report, 2012 also identifies that most organizations in India are not inclusive, sensitized, or protective towards LGBTI persons.<sup>123</sup> There have been limited efforts at creating more inclusive workspaces, with

Infosys, Godrej, IBM, Goldman Sachs, Google, Accenture, and Amazon introducing anti-discrimination policies and support groups for LGBTI employees.<sup>124</sup> However, a recent study conducted by the Indian Institute of Management revealed that 98 percent of companies have admitted to not hiring persons from the LGBTI community or not taking concrete steps to make their work place LGBTI friendly.<sup>125</sup>

37. Several instances of discrimination against LGBTI persons have been recorded at workplaces in India. A transwoman working at a business processing unit in Mumbai was not allowed to use the female washroom, since the other women complained that they felt uncomfortable in her presence. She refused to use the men's washroom, since she identifies as a woman, and was finally compelled to use the disabled person's washroom.<sup>126</sup> A bisexual woman, who confided in her superior about her sexuality, was harassed by her colleagues and ultimately quit her job and had to undergo counseling sessions as a result.<sup>127</sup> A gay man was ostracized at work after he revealed his sexual orientation, with his superior becoming openly hostile and referring to his homosexuality as a "communicable disease" which could spread to others in the office, forcing him forcing him to quit.<sup>128</sup> A professor at an engineering college was open about his identity as a gay man, and during the course of conversation with students, he discussed the Supreme Court's decision in *Koushal*. The next day, he was warned by the dean to refrain from "promoting homosexuality." He soon became an object of ridicule, and was forced to leave his job.<sup>129</sup>
38. In schools, LGBTI persons face rejection by their classmates and sometimes extreme forms of violence.<sup>130</sup> This leads to high dropout rates and poor educational outcomes.<sup>131</sup> For example, a boy who identified as gay at the age of thirteen was harassed by his juniors, who rubbed his genitals and called him a transgender, and also forced themselves on him in private.<sup>132</sup> Extortion by other students has also been reported in schools.<sup>133</sup>

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- 19 Sandip Roy, *What The Supreme Court Clarification On Third Gender Means for LGBTQ Indians*, HUFFINGTON POST (July 18, 2016), <http://www.huffingtonpost.in/2016/06/30/what-the-supreme-court-clarification-on-third-gender-means-for-l/>.
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<sup>22</sup> *Kerala Becomes First State to Unveil Transgender Policy*, INDIAN EXPRESS (Nov. 12, 2015), <http://indianexpress.com/article/india/india-news-india/kerala-becomes-first-state-to-unveil-transgender-policy/>; B.R. Rohith, *Inclusive Policy for Transgenders*, TIMES OF INDIA (June 19, 2014), <http://timesofindia.indiatimes.com/city/bengaluru/Inclusive-policy-for-transgenders/articleshow/36780521.cms> (Karnataka).

<sup>23</sup> Manash Pratim Gohain, *Transgenders Get Space in DU's PG Admission Forms*, TIMES OF INDIA (Aug. 13, 2014), <http://timesofindia.indiatimes.com/home/education/news/Transgenders-get-space-in-DUs-PG-admission-forms/articleshow/40135765.cms>.

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<sup>27</sup> *See* Shreya Ila Anasuya *Over Two Years After Landmark Judgment, Transgender People Are Still Struggling*, THE WIRE (May 15, 2016), <http://thewire.in/2016/05/15/over-two-years-after-landmark-judgment-transgender-people-are-still-struggling-35978/>.

<sup>28</sup> Dipika Jain, Kimberly Rhoten and Surabhi Shukla, *Legally Invisible*, SEMINAR, Jan. 2014, *available at* [http://india-seminar.com/2014/653/653\\_dipika\\_jain\\_et\\_al.htm](http://india-seminar.com/2014/653/653_dipika_jain_et_al.htm).

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<sup>30</sup> *Trans Men Write to Social Justice Ministry Demanding Inclusive Policy Reforms*, FEMINISTS INDIA (Jan. 25, 2014), <http://feministsindia.com/tag/trans-men-india/>.

<sup>31</sup> Satya, *Why the Transgender Verdict is an Incomplete One*, LIVE MINT (Apr. 18, 2014), <http://www.livemint.com/Leisure/Nv9Azw4bFA30CGbyCWSXUJ/LOUNGE-OPINION-Why-the-transgender-verdict-is-an-incomplete.html>.

<sup>32</sup> W.P.(CRL) 2133/2015 (Delhi H.C. 2015), *available at* <https://indiankanoon.org/doc/10525112/>.

<sup>33</sup> *Transgender US College Student Trapped in India*, INDIA WEST (Sept. 25, 2015), [http://www.indiawest.com/news/global\\_indian/transgender-us-college-student-trapped-in-india/article\\_a1590cfe-63cd-11e5-b804-5bc978a8b302.html](http://www.indiawest.com/news/global_indian/transgender-us-college-student-trapped-in-india/article_a1590cfe-63cd-11e5-b804-5bc978a8b302.html).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> The bill is available at <http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf>.

<sup>38</sup> Danish Sheikh, *The New Transgender Bill Fails the Community*, THE WIRE (Aug. 4, 2016), <http://thewire.in/56299/failures-of-the-new-transgender-bill/>; *Community Frets Over Loopholes in Transgender Persons Bill to Protect Their Rights*, NEW INDIAN EXPRESS (Aug. 10, 2016), <http://www.newindianexpress.com/states/teelangana/Community-frets-over-loopholes-in-Transgender-Persons-Bill-to-protect-their-rights/2016/08/10/article3571950.ece>.

<sup>39</sup> The Transgender Persons (Protection of Rights) Bill, 2016, § 2(i), *available at* <http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf>.

<sup>40</sup> The Transgender Persons (Protection of Rights) Bill, 2016, §§ 5–6.

<sup>41</sup> The Transgender Persons (Protection of Rights) Bill, 2016, § 13(3).

<sup>42</sup> Vyjayanti Vasanta Mogli, *Responses From Trans & Intersex Communities On The Transgender Rights Bill 2016*, FEMINISMININDIA.COM (Aug. 9, 2016), <http://www.feminisminindia.com/2016/08/09/trans-community-response-transgender-rights-bill-2016/#.V-AibpMrJZ1>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

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- <sup>45</sup> Danish Sheikh, *The New Transgender Bill Fails the Community*, THE WIRE (Aug. 4, 2016), <http://thewire.in/56299/failures-of-the-new-transgender-bill/>.
- <sup>46</sup> Ministry of Home Affairs, Answer to Question No. 4883 (2014), available at <http://mha1.nic.in/par2013/par2014-pdfs/ls-231214/4883.pdf>.
- <sup>47</sup> K. Praveen Kumar & P.K. Prakruti, *Sec. 377 Slapped on Infosys Techie after Wife Catches His Gay Acts on Spycam*, BANGALORE MIRROR (Oct. 24, 2014), <http://www.bangaloremirror.com/bangalore/cover-story/Sec-377-slapped-on-Infosys-techie-after-wife-catches-his-gay-acts-on-spycam/articleshow/44964745.cms>.
- <sup>48</sup> Mridula Chari, *Arrests for 'Unnatural Sex' Soar. So Do Cases of Gay People Being Blackmailed*, SCROLL.IN (Jan. 13, 2015), <http://scroll.in/article/700121/arrests-for-unnatural-sex-soar-so-do-cases-of-gay-people-being-blackmailed>.
- <sup>49</sup> *13 People Arrested Under Section 377 of the Indian Penal Code in November 2013*, ALTERNATIVE LAW FORUM, <http://altlawforum.org/gender-and-sexuality/13-people-arrested-under-section-377-of-the-indian-penal-code-in-november-2013/> (last visited Aug. 12, 2016).
- <sup>50</sup> Mitch Kellaway, *167 Indian Trans Women 'Arbitrarily' Jailed, Protestors Demand Justice*, ADVOCATE (Nov. 28, 2014), <http://www.advocate.com/world/2014/11/28/167-indian-trans-women-arbitrarily-jailed-protestors-demand-justice>. For first-hand accounts from those who were detained, see ONDEDE, A REPORT ON THE HUMAN RIGHTS VIOLATIONS AGAINST TRANSGENDERS IN KARNATAKA 8–19 (2014), available at <http://orinam.net/content/wp-content/uploads/2015/08/FINAL-REPORT-ON-HUMAN-RIGHTS-VIOLATIONS-OF-TRANSGENDER-PERSONS.pdf>.
- <sup>51</sup> interview with C., in Delhi (May 3, 2015) (“I met some of my friends there and we were hugging each other, then around three or four suspicious policemen in civil dress came and arrested me. They took me to a traffic police room nearby and questioned me. Over there they beat me up and accused me of doing bad things.”).
- <sup>52</sup> Interview with C., in Delhi (May 3, 2015).
- <sup>53</sup> Interview with Anon., in Delhi (Apr. 25, 2015) (“I was coming back from my Guru’s place . . . , when the police took me to the station thinking that I was out for sexwork.”); Interview with S., in Delhi (Feb. 21, 2015) (“A police officer stopped me and asked, Where are you coming from?” To which I replied, ‘From a friend’s place.’ He then asked, ‘Where were you and where are you going in this dress, at this hour?’ . . . There were three police officers who asked me to sit in the car. I asked them to call my home but they insisted that I sit. They took me to the station then.”).
- <sup>54</sup> COALITION FOR SEX WORKERS AND SEXUALITY MINORITY RIGHTS, DIGNITY FIRST: ONE YEAR OF RESISTANCE TO RE-CRIMINALIZATION OF LGBT LIVES 31–33 (2014), available at <https://www.scribd.com/document/249770116/Dignity-First-One-Year-of-Resistance-to-Re-Criminalisation-of-LGBT-Lives>; see also ONDEDE, A REPORT ON THE HUMAN RIGHTS VIOLATIONS AGAINST TRANSGENDERS IN KARNATAKA 20–26 (2014).
- <sup>55</sup> Ravi Kanth, *I’m a Gay Man, and I am Not a Criminal*, ALLIANCE INDIA (Dec. 15, 2014), <http://www.allianceindia.org/im-gay-man-criminal/>.
- <sup>56</sup> Ajay Sathyan, *Gay Man Shares His Story of Brutal Antigay Attack By Police In India*, QUEERTY (June 28, 2014), <https://www.queerty.com/gay-man-shares-his-story-of-brutal-antigay-attack-by-police-in-india-20140628>.
- <sup>57</sup> Danish Sheikh and Sanhita Ambast, *How India’s Law Fails LGBT People*, ASIA & THE PACIFIC POLICY SOCIETY (Apr. 26, 2016), <http://www.policyforum.net/indias-law-fails-lgbt-people/>.
- <sup>58</sup> Payal Gwalani, *Gay Mens’ Abuse by Nagpur Police on the Rise*, TIMES OF INDIA (Oct. 9, 2015), <http://timesofindia.indiatimes.com/city/nagpur/Gay-mens-abuse-by-Nagpur-police-on-the-rise/articleshow/49279475.cms>.
- <sup>59</sup> Interview with S., in Delhi (May 8, 2015) (“Once I was coming back from a program, on the way I met a friend, we were coming back together when two police men stopped us and started threatening us that they would take us to the station. I begged before them and tried to persuade them to leave us, they agreed but only on the condition that we have sex with them.”).
- <sup>60</sup> Interview with R., in Delhi (Apr. 18, 2015).
- <sup>61</sup> Interview with S., in Delhi (Feb. 21, 2015) (“I don’t know whether the intention was to derogate or what, but when it comes to us, even though we identify ourselves with the other gender, and it is visible, still they address us by the opposite pronoun saying ‘aur tu kya kar raha tha.’”).
- <sup>62</sup> Daniel Thimmayya and R. Prince Jebakumar, *Gay Man Alleges Abuse, Assault by Cops*, NEW INDIAN EXPRESS (June 14, 2014), <http://www.newindianexpress.com/cities/chennai/Gay-Man-Alleges-Abuse-Assault-by-Cops/2014/06/14/article2279588.ece1>.

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<sup>63</sup> Interview with P., in Delhi (May 8, 2015) (“The police regularly stop us when we are going from one place to another and ask us question regarding our whereabouts. They refuse to understand that we also have a social life and we have to visit our near and dear ones. The questions that are put to us are never put to the people who are coming in late in the night after going to clubs and parties. Boys roam around the whole city till 3 and 4 a.m. in the morning but nobody cares about what they are doing. We are however harassed again and again even if we are simply visiting our friends.”).

<sup>64</sup> Interview with R., in Delhi (Feb. 21, 2015) (“Yes, because even when we hear the ambulance we run as we are scared. Even when we walk on the road and police comes, we ask everyone to walk on properly, with heads down or cover their faces etc. We are scared.”); Interview with R., in Delhi (Mar. 29, 2015) (“I try to reach home as soon as possible because of the fear of police harassment and stereotypes about me being a sexworker although I am not.”).

<sup>65</sup> Interview with R., in Delhi (Feb. 21, 2015) (“They create more problems. They beat us more. They don’t even ask before hitting us.”); Interview with S., in Delhi (May 3, 2015) (“Yes, some of us have been harassed a lot. We were mercilessly hit with the ‘danda,’ severe injuries were inflicted on our bodies, including our heads.”).

<sup>66</sup> Interview with R., in Delhi (Apr. 18, 2015) (“What generally happens is that if a normal heterosexual couple is standing on the road, the police will vocally ask them to leave that place. If we are standing on the road they directly hit us with lathi even before saying or asking or telling anything to us. This is no Justice, we are also human . . . .”); Interview with S., in Delhi (Feb. 21, 2015) (“Police beat me with a stick about 3 months ago. It happened while I was asking for a ‘toll.’ A female police officer came from behind and hit me.”).

<sup>67</sup> Interview with Anon., in Delhi (Mar. 29, 2015) (“During sex work, they used to come harass me and whoever was with her and extort money.”); Interview with R., in Delhi (May 8, 2015) (“Police try to harass us by either having sex or by snatching our money.”); Interview with P., in Delhi (May 8, 2015) (“One of my friends . . . was caught by the police late in the night, and they asked for a bribe of Rs 2000/- or to have sex with them . . . .”); Interview with R., in Delhi (Feb. 21, 2015) (“What is the purpose of them coming after you . . . ?” “They definitely want money . . . . If they catch us, they have sex with at least one or two.”); Interview with N., in Delhi (Feb. 21, 2015) (a male officer pulled up on a bike said he wanted to have sex with her; when she refused, he followed her on his bike as she continued walking); Interview with Anon., in Delhi (May 3, 2015) (after catching her engaging in sex work with a client, the police beat up the client and then immediately asked her to have sex with them); Interview with R., in Delhi (Apr. 18, 2015) (two on-duty police officers approached her and asked for sexual favors; she refused, and the officers persisted, and she had to run away).

<sup>68</sup> Interview with R., in Delhi (Feb. 21, 2015).

<sup>69</sup> Interview with Anon., in Delhi (May 3, 2015).

<sup>70</sup> ‘I Was Raped by Policemen’, MUMBAI MIRROR (Feb. 11, 2014), <http://www.mumbaimirror.com/news/india/I-was-raped-by-policemen/articleshow/30177404.cms>.

<sup>71</sup> Interview with R., in Delhi (Apr. 18, 2015).

<sup>72</sup> Daniel Thimmayya and R. Prince Jebakumar, *Gay Man Alleges Abuse, Assault by Cops*, NEW INDIAN EXPRESS (June 14, 2014), <http://www.newindianexpress.com/cities/chennai/Gay-Man-Alleges-Abuse-Assault-by-Cops/2014/06/14/article2279588.ece1>.

<sup>73</sup> Interview with Anon., in Delhi (May 3, 2015) (“On account of their advantage, the policemen generally don’t use condoms, because if they do so, it will leave medical evidence.”); Interview with R., in Delhi (Apr. 18, 2015) (“All of them raped me, and in spite of requesting them to at least use a condom, they did not listen to me.”).

<sup>74</sup> Aneesha Mathur, *UP Cops Harassing Us for Helping US Transgender, Allege LGBT Activists*, INDIAN EXPRESS (Sept. 24, 2015), <http://indianexpress.com/article/cities/delhi/up-cops-harassing-us-for-helping-us-transgender-allege-lgbt-activists/>.

<sup>75</sup> *India: Enforce Ruling Protecting Transgender People*, HUMAN RIGHTS WATCH (Feb. 5, 2015), <https://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people>.

<sup>76</sup> *India: Enforce Ruling Protecting Transgender People*, HUMAN RIGHTS WATCH (Feb. 5, 2015), <https://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people>.

<sup>77</sup> Maria Akram, *Transgender Raped by Cops Fights for Justice*, TIMES OF INDIA (Sept. 12, 2014), <http://timesofindia.indiatimes.com/india/Transgender-raped-by-cops-fights-for-justice/articleshow/42319820.cms>.

<sup>78</sup> Interview with Anon., in Delhi (Mar. 29, 2015) (after refusing an officer’s demand for sexual favors, she was taken to the station and raped and her money was also stolen); Interview with R., in Delhi (Apr. 18, 2015) (she was raped by six or seven officers, who refused to use a condom despite her requests; her entire body was covered with injuries); Interview with S., in Delhi (May 8, 2015) (the police threatened to throw her off the terrace or charge her for a crime if she did not have sex with them; she was mistreated the entire night and warned against reporting it).

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- 79 Interview with Anon., in Delhi (Apr. 18, 2015) (“I’ve been to a Police Station, but then I settled it out with money. There is not one incident, there are many.”); Interview with N., in Delhi (Apr. 18, 2015) (“When I was involved in sex work, they took me to the station. But nothing as such happened as they left me after extracting some money.”).
- 80 Dhruvo Jyoti, *Andhra Transgender Commits Suicide After Police Harassment*, GAYLAXY (Nov. 2, 2014), <http://scl.io/eUzdHDNu#gs.67S89kU><http://www.gaylaxymag.com/latest-news/andhra-transgender-suicide-after-police-harassment/#gs.67S89kU>.
- 81 *13 People Arrested Under Section 377 of the Indian Penal Code in November 2013*, ALTERNATIVE LAW FORUM, <http://altlawforum.org/gender-and-sexuality/13-people-arrested-under-section-377-of-the-indian-penal-code-in-november-2013/> (last visited Aug. 12, 2016).
- 82 *I Was Raped by Cops Multiple Times and Then Left Writhing in Pain*, HINDUSTAN TIMES (Dec. 2, 2013), <http://www.hindustantimes.com/india/i-was-raped-by-cops-multiple-times-and-then-left-writhing-in-pain/story-iy0D1QpjiBaxyd7N42cr2K.html>.
- 83 *13 People Arrested Under Section 377 of the Indian Penal Code in November 2013*, ALTERNATIVE LAW FORUM, <http://altlawforum.org/gender-and-sexuality/13-people-arrested-under-section-377-of-the-indian-penal-code-in-november-2013/> (last visited Aug. 12, 2016).
- 84 Interview with R., in Delhi (Apr. 18, 2015) (“the first thing they do after arresting someone is that they check whether the person is castrated or not and if he is castrated he goes to female cell and if not he goes to the male cell.”); Interview with K., in Delhi (May 8, 2015) (“The Jail authorities physically examine before deciding . . . by asking us to take the clothes off. They check if the person is castrated or not, so if the person is castrated, then is put in female prison, and if not, then in male.”); Interview with Anon., in Delhi (Apr. 18, 2015) (“They determine the gender on the basis of the sexual organs and then send to the respective cells accordingly.”).
- 85 Interview with Anon., in Delhi (Apr. 18, 2015) (“My friend was raped. She was put in the male prison with 100 people who are deprived of sex, so they forced themselves upon her. Therefore many are raped when they are being sent in the male cell.”).
- 86 Interview with R., in Delhi (Apr. 18, 2015).
- 87 Interview with S., in Delhi (Feb. 21, 2015); *see also* Interview with R., in Delhi (Apr. 18, 2015) (men were teasing her, and she complained to the police, but they did nothing).
- 88 Bhavya Dore, *How Section 377 Is Being Exploited by The Police and Blackmailers To Extort Men*, THE CARAVAN (Nov. 3, 2015), <http://www.caravanmagazine.in/vantage/how-section-377-became-payday-extortionists-and-police-alike>.
- 89 Interview with R., in Delhi (Mar. 29, 2015) (“Police refuse to file reports even when our clothes are removed, and we are beaten with lathis.”); Interview with S., in Delhi (May 8, 2015) (her transgender friend was beaten up by a group of men; she went to the police to report the incident, “but they refused to take any complaint and sent her away because she was a transgender”); Interview with K., in Delhi (May 8, 2015) (boys beat her up and she went to police department to complain, “but nothing was done by them”); Interview with R., in Delhi (Mar. 29, 2015) (“Police refuse to file reports even when our clothes are removed, and we are beaten with lathis.”).
- 90 Interview with D., in Delhi (May 3, 2015).
- 91 *India: Enforce Ruling Protecting Transgender People*, HUMAN RIGHTS WATCH (Feb. 5, 2015), <https://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people> (“The nongovernmental organization Telangana Hijra Transgender Samiti, based in the southern city of Hyderabad, reported 40 attacks on transgender people in the last six months. In several cases, the police refused to even register complaints . . .”).
- 92 Interview with R., in Delhi (Feb. 21, 2015) (“This is about also the fact that we can’t file a case. If we go and say we were beaten, they will not file a case as they consider as to be at fault.”); Interview with Anon., in Delhi (Apr. 18, 2015) (“I once went to the police to lodge a complaint but then he started blaming me.”); Interview with S., in Delhi (Feb. 21, 2015) (“They say outright, “Now they are also victims of a crime?,” “They themselves create disorder.”); Interview with S., in Delhi (Feb. 21, 2015) (“If I file an FIR they won’t do anything, and rather charge me [with] standing on the road at night, of being a sex worker, or teasing someone, picking a pocket or snatching a chain. One hundred charges will be levied against me.”).
- 93 Nita Bhalla, *Blackmail and Abuse: Gay Sex Ban in India Stirs Violence*, REUTERS (Apr. 6, 2015), <http://www.reuters.com/article/us-gay-rights-india-idUSKBNOMY00P20150407>.
- 94 *Sans Security, LGBT Community Sees Red, Not Pink*, THE TRIBUNE (Mar. 7, 2016), <http://www.tribuneindia.com/news/jalandhar/sans-security-lgbt-community-sees-red-not-pink/205725.html>.
- 95 Interview with P., in Delhi (May 8, 2015); *see also* Interview with R., in Delhi (Apr. 18, 2015) (“Whom do we complain against? If the police himself is harassing me, there is no point in complaining, he would get away by using his authority.”); Interview with C., in Delhi (May 3, 2015) (“You will come across many cases, where the rape



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charges are against the police officers only. They can do whatever they want in their locality. It gets more problematic since now we do not know whom to approach. If the agents of law are the violators, then to whom shall we go and complain?”).

<sup>96</sup> Vinay Chandran, *No Need for Treatment*, LIVE MINT (Dec. 5, 2014),

<http://www.livemint.com/Leisure/jgi1PVubC08K8hEfXdzwiM/Vinay-Chandran-No-need-for-treatment.html> (the mother of a 29 year old gay man told him that they hoped that no mother would ever have a child like him); Shaminder Dulai, *Back in the Shadows: The Perils of Being LGBT in India*, NEWSWEEK (Dec. 29, 2014), <http://www.newsweek.com/india-gay-lgbt-modi-transgender-us-kolkata-civil-rights-coming-out-295483> (when Sudipta Das, a gay man, tried to reveal his sexual orientation to his parents, they refused to hear it and thought he had a mental disorder).

<sup>97</sup> Mugdha Variyar, *LGBT Community Needs More Than A Law for Less Discrimination*, HINDUSTAN TIMES (Dec. 22, 2012), <http://www.hindustantimes.com/india/lgbt-community-needs-more-than-a-law-for-less-discrimination/story-u2zpKRFNTyJI8E8xAZxkvN.html> (“We have seen so many cases in Delhi wherein families have thrown them out . . .”).

<sup>98</sup> Thilakavathi Subramanian et al, *Social Support System of Hijras and Other Trans Women Populations in 17 States of India*, 6(4) INT’L J. HEALTH SCI. & RES. 8, 12 (2016), available at <http://www.scopemed.org/fulltextpdf.php?mno=224655>.

<sup>99</sup> Payal Gwalani, *Shame Forcing Gay Men to Get Married to Straight Women*, TIMES OF INDIA (Sept. 4, 2015),

<http://timesofindia.indiatimes.com/city/nagpur/Shame-forcing-gay-men-to-get-married-to-straight-women/articleshow/48795234.cms>; Rupam Jain, *I Am Gay and I Was Forced into Marriage*, TIMES OF INDIA (May 22, 2015), <http://timesofindia.indiatimes.com/life-style/relationships/man-woman/I-am-gay-and-I-was-forced-into-marriage/articleshow/47285394.cms>.

<sup>100</sup> *Indian Gay Student Forced into Arranged Marriage Granted Asylum in Australia*, HINDUSTAN TIMES (Apr. 23, 2014), <http://www.hindustantimes.com/india/indian-gay-student-forced-into-arranged-marriage-granted-asylum-in-australia/story-gtQeJN9dD5jfw8v3R80KCP.html>.

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