

South Asia Human Development Sector

Charting a Programmatic Roadmap
for Sexual Minority Groups in India

July 2012



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List of Acronyms

AIDS	Acquired Immunodeficiency Syndrome
ART	Assisted Reproductive Technology
CARA	Central Adoption Resource Authority
HIV	Human Immunodeficiency Virus
INFOSEM	Integrated Network for Sexual Minorities
IPC	India Penal Code
KII	Key Informant Interview
LGBT	Lesbian, Gay, Bisexual and Transgender
MSM	Men who have Sex with Men
NRT	National Round Table
SRS	Sex Reassignment Surgery
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Program
UNGASS	United Nations General Assembly Special Session

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We have tried to ensure that all facts have been checked. Any mistakes that remain are the responsibility of the authors.

Foreword

I am very pleased to present this report on ‘Charting a Programmatic Roadmap for Sexual Minority Groups in India’ which has been carried out under our Regional AIDS program for South Asia. At a recent seminar at the World Bank to celebrate diversity month, we had the opportunity to hear persons from South Asia describe their struggles to wrest acknowledgement of their identity and their rights. This report is also very timely in the context of the focus on gender that the World Development Report 2012 brings.

The World Bank has partnered with Amaltas and the Humsafar Trust to develop a programmatic roadmap towards a more enabling environment for gender-based minorities, to facilitate their access and use of reproductive and sexual health services, including HIV and AIDS. This report provides insights and inputs for policies and actions that encourage and support the equal rights of lesbian, gay, bisexual and transgender (LGBT) people as citizens. We believe it will help to strengthen India’s response to HIV and AIDS as it enters its fourth phase, as well as support similar thinking across social sectors and countries in the region.

The sexual minority movement in India and the South Asia region is relatively nascent. Although the HIV epidemic put the spotlight on the needs of some sexual minority groups, especially transgender groups as vulnerable groups at high risk for HIV, many marginalized groups have remained hard to reach due to widespread stigma and discrimination. Therefore, the need to tackle the broader structural amplifiers related to stigma and discrimination and to create a more enabling environment for gender and sexual minority groups, triggered this effort to charter a roadmap and develop an action agenda.

Today, the LGBT community in India stands at a critical juncture: they have been decriminalized through the reading down of Section 377 of the Indian Penal Code in 2009, a judgment that has been challenged in the Supreme Court of India. Other challenges continue to confront them, those of discrimination, of violence, poor access to education and health services, laws that do not recognize their right to live with or inherit from partners, to adopt, or indeed, even to choose to be identified as a person of alternative gender or sexual identity.

Through this assignment we have gone beyond the narrow confines of health problems that confront gender and sexual minorities, such as their access to sexual and reproductive services. We have developed a fuller understanding of the barriers that confine their realisation of the civil liberties that their fellow citizens enjoy and the laws that continue to impede their day to day lives.

We look forward to work with civil society, development partners and key policymakers in government, to discuss the road map that has been chartered through these regional and national consultations and the remedy of these matters proposed in this report.

I hope that this report will contribute to inform policies and programs that support the aspirations of the community of gender based minorities, and to help create a more inclusive world for all of us to enjoy, equally, as citizens of a free world.

Isabel Guerrero

Vice President, South Asia Region

The World Bank

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Executive Summary

Discrimination and stigma are constant companions in the life of the rainbow people. Apart from the demand for decriminalization, the main issues that confront the community are discrimination and violence, recognition of alternative family structures, adoption and property rights, and access to social security measures including identity documentation, welfare schemes, and education and health services. In order to establish a realistic plan for their inclusion into State provided services and liberties, it was important to understand what prevents them from doing so at this time, and to develop a carefully crafted roadmap for actions that the State, community and other stakeholders can program into their day-to-day work.

In September 2011, the World Bank partnered with Amaltas, a research and consulting organisation based in Delhi and the Humsafar Trust, a male sexual health agency, based in Mumbai; to develop a programmatic roadmap to establish an enabling environment for improved access by the lesbian, gay, bisexual and transgender (LGBT) community to sexual and reproductive health services. The task was carried out under the World Bank Regional Program on HIV and AIDS and utilised the platform of the Integrated Network of Sexual Minorities (INFOSEM) to reach out to groups and organisations working for same sex rights in India.

The task involved an intensely consultative process, in which the LGBT community played a leadership role. An open recruitment of participants drew people of the community into three meetings across India with the active participation of over 100 persons from the community with solicited participation from lesbian and bisexual groups which represented about a quarter of the total. The agenda of the regional consultations were developed during the consultations which were facilitated by leaders and experts of the community. In depth interviews were held with about 25 persons and a detailed document review was undertaken of published and grey literature. The findings of these activities were then taken up at a discussion held with experts from the legal community at two national round tables with approximately 50 participants who provided exhaustive advice on legal issues that pertain to the community. Issues were discussed threadbare with development partners, government functionaries, legal experts and community members to develop the programmatic roadmap.

Sexual minorities have fought a long battle against discrimination. Criminalization of Hijra and homosexuals took place during the colonial period and Lord Macaulay drafted the now infamous Section 377 of the Indian Penal Code (IPC). According to the law, voluntary carnal intercourse ‘against the order of nature’ could be punished by imprisonment. Laws such as Section 377 have long been removed in most Western democracies, although they persist in many post-colonial countries in Asia and Africa. In 2009, the Delhi High Court also ‘read down’ the law, legalizing same sex consensual homosexual activities between adults. This judgment is unfortunately now challenged at the Supreme Court of India which is currently hearing the arguments of either side. The decriminalization of the community remains a fundamental issue which needs resolution if the community is to attain its rightful due. Continued advocacy on the part of the community and education of its people in the implications of the 2009 High Court judgment are important steps.

Discrimination and violence is an inescapable aspect of the life of the community which needs to be addressed decisively. The consultations raised the demand for the enactment of an Anti Discrimination Law to address issues of discrimination against minorities along the lines of the Scheduled Castes and Scheduled Tribes Act 1989. Other important actions that the State would need to consider are the review of the Domestic Violence Act 2005 to address issues of violence between partners, and a review the Rape Laws (Section 375 & 376).

Two Bills are currently being debated and need to be revised to take into account the needs of the community: these are the Bill on Sexual Harassment of Women in the Workplace 2010 and the draft Bill on Sexual Assault. The community on its part, needs to regularly document cases of discrimination against the LGBT community; build a compendium of cases for which recourse could not be sought under current laws; and document progressive judgments which challenge discriminatory behavior towards the community.

The State has social security provisions for citizens that are often not available to the community as their identity documentation is not clear. Identity documentation that described their chosen gender was not available. This also had implications for their ability to access social security schemes of the government. The consultations suggested that procedures to obtain identity documents need to be simplified, equal access to public spaces needs to be assured by local authorities, and difficulties in accessing public facilities, employment and social security schemes needs to be systematically addressed. A specific suggestion was to create Boards or Commissions to safeguard the interests of the community as has been done for the Aravani community in Tamil Nadu. The community must sensitize the community members on entitlements provided by the State, and set up counseling centers and community run support groups at educational institutions for LGBT students and support.

In particular, the consultations indicated that access by the community to education and health services was gravely compromised. Sound sex education which caters to the needs of the LGBT community needs to be mainstreamed along with the institution of strong anti-ragging laws, and safeguards provided for the LGBT community during admission and term tests. A long-standing demand has been the legalization of Sex Reassignment Surgery (SRS) by reviewing Section 320 & 326, after development of a protocol for SRS. The National Health Bill 2009 and HIV Bill 2007 need to be reviewed to ensure that the community is adequately protected through the provisions of the Bills.

Property rights commensurate with those of heterosexual couples were an important issue that came up during all three regional consultations. For this to happen, it is necessary that same sex relationships are recognized under law and provisions made under law. This demand was also linked to the recognition of alternate family structures which are often found in less accessible regions of the country. The Special Marriage Act 1954 needs amendment to allow same sex marriage; while new laws are needed for same sex domestic partnerships. The Juvenile Justice Act 2000 must be reviewed to allow same sex couples to adopt jointly. New legislations such as the Central Adoption Resource Authority (CARA) Guidelines 2010 and Assisted Reproductive Technologies (ART) Regulation Bill 2010 to accommodate live in and same sex couples. *Hijra gharanas* must be recognized through a legal process and extensive consultations must be held with this subsection to identify how to safeguard their property rights.

Society at large can also contribute to the full inclusion of LGBT populations. Homophobia and transphobia must be countered and linkages developed between wider social movements such as the women's movement, networks of people living with HIV etc. with the LGBT movement. LGBT issues must become everybody's issues by participation in events that celebrate life and the open society advocated by LGBT community such as Pride Marches, film festivals and blood donation camps etc. Media must be galvanized to cover issues on LGBT in order to sensitize mainstream society and initiate greater discussion on LGBT issues. The power of secondary groups must be utilized. Formal institutional mechanisms such as the workplace, organizations, clubs, media, religious places etc. must be used to educate people on LGBT issues.

A road map has been chartered with important next steps identified above. One critical next step is to further analyze the rich information collected during this brief study in order to present a fuller discussion of the issues as experienced by the community. A detailed synthesis needs to be done of these and other consultations and additional studies, which could provide the evidence base for a clear way beyond the mainstreaming work on HIV-AIDS that the health sector and other social sectors may wish to support.

A special knowledge dissemination event that launches such a synthesis report would be important for key development partners, including the World Bank, in supporting a service-based approach that sustains and furthers human rights. Held with high-level policymakers and Government representatives, it would garner support for an *inclusive approach* to analytical and operational work carried out by its development programs. It would also permit the community to work with the appropriate government representatives at the country and state levels to discuss the feasibility, timeframe and responsibilities to implement necessary actions.

CONTEXT OF THE LGBT MOVEMENT

International Perspectives

Sexual relationships represent a fundamental element of individual identity and are an intimate aspect of an individual's private life. They generate a degree of rancor and reaction that is rarely accorded to other aspects of living. "Although people can be intolerant, silly or pushy about what constitutes proper diet, differences in menu, rarely provoke the kinds of rage, anxiety and sheer terror that accompany differences in erotic taste. Sexual acts are burdened with an excess of significance".¹

Human sexual behavior or human sexual activity refers to the manner in which humans experience and express their sexuality. Sexual orientation is a social construct used to describe a pattern of emotional, romantic, and/or sexual attraction to men, women, both genders, either gender, or another gender. One might argue that these orientations exist along a continuum that ranges, in its most simplistic description, from exclusive heterosexual to exclusive homosexual, while including various forms of bisexuality along the continuum. Such a continuum between heterosexual and homosexual does not suit everyone; some people identify as being asexual that is, report a lack of sexual attraction. Also, this linear scale that evolved in the industrialized West does not always capture the more subtle details of sexual orientation and sexual identity, and many experts criticise it as oversimplified.

It needs to be noted, however, that sexual behavior does not exist or operate in a vacuum. Human sexual behavior, like other human activities, is governed by social rules that are culture-specific. When an individual engages in a social behavior which goes against the dominant cultural practice, then, he must either challenge the prevailing social order to accept such behavior as his or her orientation, and possibly develop it as an identity, or in a more negative scenario, accept the social more and reconcile to subverting his or her own personal sexual inclinations. Thus individuals who have a homosexual orientation that does not align with their sexual identity may or may not express their orientation in their public posture or behavior.

Human Rights in India

Law in India has evolved from religious prescription to the current constitutional and legal system. India has a recorded legal history from the Vedic ages and it can be presumed that some sort of civil law was in place during the Bronze Age and the Indus Valley civilization. The common law system – a system of law based on recorded judicial precedents - came to India with the British East India Company. Following the First War of Independence in 1857, the control of company territories in India passed to the British Crown. Coding of law and criminal procedure began under the stewardship of its chairman, Lord Thomas Babington Macaulay. The work was completed and put into force in 1862.

In India, the concept of human rights emphasizing the pivotal position of individual citizen stretches back to the first millennia. Human rights have been an inherent component of various philosophies that have flourished in India. The rights of vulnerable groups have received special mention in India since Independence and the Constitution itself contains extensive provisions for the promotion and protection of the rights of all

¹ Kapur R. (2005) *Erotic Justice*. New Delhi: Permanent Black.

minorities, including some special groups of people unique to Indian society known as Scheduled Castes and Scheduled Tribes. The Indian Constitution, as a result, stands as one of the most comprehensive and self-contained documents on human rights.

After installation of the Constitution of India, it became the guiding light in all matters executive actions, legislative enactments and judicial decisions in the country. However common law, inherited from the British continued. This has been gradually fine-tuned in the intervening years through judicial pronouncements and legislative enactments for Indian conditions. Yet several laws remain untouched.

The Constitution is regarded as the fundamental law of the land. The rights elucidated in chapter III of the Constitution of India are the Fundamental Rights. These rights are fundamental because without these rights the all-round development of the personality of an individual is not possible and an individual may not be able to live with dignity in absence of any of these rights. These rights ensure effective enjoyment of certain privileges that are essential in a democratic society.

The Six Fundamental Rights Enshrined in the Constitution of India:

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies

India took an active part in drafting of the Universal Declaration of Human Rights. Dr. Hansa Mehta, a Gandhian politician and social activist who had led the Indian delegation, made important contributions to the drafting of the Declaration, especially highlighting the need for reflecting gender equality. India is also a signatory to the UN Human Rights Treaty System.

Preamble to the Constitution of India

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

The six core human rights covenants are²:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965)
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)
- International Covenant on Civil and Political Rights (ICCPR, 1966)
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1979)

² India & United Nations Human Rights. URL: <http://www.un.int/india/india%20&%20un/humanrights.pdf>

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
 - (CAT, 1984)
- Convention on the Rights of the Child (CRC, 1989)

The National Commission for Human Rights established in India in 1993, serves as an independent and autonomous body for protection of human rights in the country.

The Preamble to the Constitution of India captures the essence of the Constitution of India. The Preamble describes the values that are central to the spirit of the Constitution, namely justice before law; liberty of being; equality of status and opportunity; and fraternity ensuring brotherhood and dignity.

In the context of LGBT rights, Article 14 (Right to equality); Article 15 (Prohibition of discrimination); and Article 21 (Protection of life and personal liberty) are most pertinent.

Article 14 talks about equality before law. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 strengthens citizens' right to equality and states that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 19 further strengthens the right to equality by conferring on the citizens the rights regarding freedom of speech.

Article 21 establishes the right to protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law. The objective of Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law.

If there is a Constitutional tenet that can be said to be the underlying theme of the Indian Constitution, it is that that of 'inclusivity'. Whether the Indian socio-legal system has successfully walked hand in hand with the Constitution to encompass the sexual minorities is a question that needs an answer.

Homosexuality in India

Often the stigmatizing attitudes and discriminatory actions towards homosexuals or persons with alternative sexuality are hostile, and justified on the pretext of them being anti-religious, anti-social or just anti-tradition. Such hostile behavior infringes upon fundamental rights. Sexual minorities have existed and still exist in India sometimes in forms which are culturally sanctioned - such as the Hijra - and at other times in invisibility and silence. Their issues have never seriously been articulated. It is only recently that the rights of sexual minorities as an issue have been taken seriously in India by various civil society organizations.³

³ *Sexual Minorities and Police in India: Towards a regime of accountability*; a submission to the Soli Sorabjee Committee set up to reform the Police Act (2006).

While the scope of human rights has been extended to include hitherto marginalized communities at the global level, a similar movement is a very recent phenomenon in India. In fact, most human rights organizations in India have not begun to address the question of rights of gays, lesbians, bisexuals, transgender, hijras and others who are oppressed due to their sexuality. Sexuality is sometimes viewed even in liberal and radical circles as a frivolous, bourgeois issue. In such a context, homosexuality is seen implicitly as something deviant and unnatural that is at best defended as an individual freedom but not a matter of priority for the human rights movement. Generally, issues of poverty, class and caste oppression are seen as more important than that of gender and sexuality – especially gender and sexual minorities - and the links and interdependencies are often not recognized. This ignores the fact that issues of gender minorities and sexuality are integrally linked to ideologies and structures of social oppression such as patriarchy, capitalism, the caste system and religious fundamentalism. Hence, the struggle for sexual rights cannot be separated from the broader human rights struggle for economic, political and social liberation.⁴

Anthropologists and historians have discovered evidence of transgenderism in many cultures, both contemporary and historical, including the Native American ‘Two Spirit’ people (present in some form in many of the various Native American cultures); the Hijra of India (who are men that choose to worship the feminine aspect of the divine through voluntary castration or because they were born intersexed); and the many myths and cultural practices of the Greco-Roman peoples that feature transgender elements (i.e., the god Hermaphrodites, son of Hermes and Aphrodite; and the acceptance of the cross-dressing behavior of Hercules and Achilles). Many deities of older religions sported both masculine and feminine characteristics, or were known to shape-shift from one gender to the other like Dionysus.⁵

Same sex love in some form or the other continued to be evident in the medieval period. There are evidences in the literature where poets wrote in celebration of such love. A large number of royal slaves were attached to the court. Many, if not most, of the slaves were eunuchs, and their histories provide evidence of the tolerance with which same sex love was treated. Some of the greatest nobles in Indian history were eunuchs. Imaduddin Rayhan, the Chief Minister under Sultan Balban, and Kafur Hazardinari, the Army Commander and Vice-Regent of Allauddin Khilji, were eunuchs.⁶

With the colonial period came a marked change. The past’s more subtle or tolerant ways of perceiving same sex love were now reduced to a judgmental emphasis on the sexual aspect of same sex relations. Indian nationalists imbibed the Victorian morals of the colonial overlords and heterosexual monogamy, and disowned anything in indigenous traditions that seemed to flout these ideals. Part of this change in the belief and value system consisted of an imported and virulent homophobia. It found its expression in the introduction of Section 377 into the IPC during British rule and remained in force until the Delhi High Court read it down in 2009. Lord Macaulay drafted Section 377 in 1860. According to this law, voluntary carnal intercourse ‘against the order of nature’ could be punished by imprisonment. Although no separate mention was made of homosexuality, the law was interpreted to prevent homosexual associations.⁷ The Law reads: “...whosoever

⁴ People’s Union for Civil Liberties-Karnataka-K (2001) Human Rights violation against sexuality minorities in India, A PUCL – K fact finding report about Bangalore.

⁵ Emberger R. (2008) *Discrimination & the Transgender Population*. Capella University. URL: <http://www.rebeccaemberger.com/transdiscrimination.htm>.

⁶ Lal K.S. (1992) *Legacy of Muslim Rule in India*

⁷ (2009) *The Right that Dares to Speak its Name*. Naz Foundation vs. Union of India and Others. Decriminalizing Sexual Orientation and Gender Identity in India. Bangalore: Alternative Law Forum.

voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine...”

Sexual minorities have fought a long battle against discrimination visited upon them both from society and the state. This is inextricably linked to the defined gender roles and the positions of power that people occupy based on social norms and individual perceptions. Collectively this has had implications on their freedom to lead a life of dignity and free will. Most transsexuals are deeply wounded by the difficult challenges of negotiating the transition from male to female or from female to male: the social, emotional, financial costs can be extraordinary. It takes a very strong person to endure the process.⁸

In 1994 when a group of physicians recommended that condoms be distributed in a Delhi prison where there were reports of high homosexual activity, the prison authorities refused since homosexual sex was a crime under section 377.⁹ In 2001, some HIV and AIDS outreach workers from Bharosa Trust and Naz Foundation International were arrested for running a gay racket in Lucknow and charged for offences under the obscenity and the indecency provisions of the IPC. The workers were beaten, kept hungry, forced to drink sewer water and refused treatment when they got sick⁷. They were released after many days in custody following nationwide protests. Countless episodes of gay men entrapped in public spaces and parks by police and threatened with arrest and prosecution under Section 377 have been reported. In 2010 an academician, Prof. Siras was suspended from Aligarh University after having been surreptitiously photographed in a compromising position with another man within the privacy of his home. These incidents showed that the mere existence of a law that labels same sex relations as criminal provides the space in which abuse and exploitation can fester.

If data were to be amalgamated, an infinite compendium of such stories on blackmail, beating, extortion, threat, sexual assault including rape by policemen, and other hate crimes on homosexuals would be revealed. It is common for police to misuse their privilege with impunity against alternate sexuality since intolerance is built into the social structure. Moral policing replaces the policing that is protective of human rights, laid down by the law of the land.

Laws such as Section 377 have long been removed in most Western democracies although they still persist in many post-colonial countries in Asia and Africa. In the 1980s, the European Court of Human Rights ruled that criminalizing same-sex sexual behavior was a violation of protection of private life. Britain, the author of the IPC and Section 377 decriminalized homosexuality in 1967.¹⁰

LGBT groups have sought the amendment of Section 377 in order to reduce the social ostracism that they face which prevents their access and use of health and other social services. Many rights based groups working with the sexual minorities and the HIV groups had started speaking against Section 377 of IPC. A Writ

⁸ Green J. and Larry B. (1994) *Investigation into discrimination against transgendered people*. A Report by the Human Rights Commission City and County of San Francisco.

⁹ Rukmini S. (2009) Breaking silences, celebrating new spaces: Mapping elite responses to the ‘inclusive’ judgment. NUJS LAW REVIEW. Rev 481, pp. 481-503

¹⁰ Geetanjali M. (2009) *Decriminalizing homosexuality in India*. Reproductive Health Matters. Vol.17 No. 34, pp. 20-28.

Petition was filed by Naz Foundation (India) Trust, an activist peer group in the Delhi High Court in 2001 for the reading down of Section 377 so that it would not be applicable to sexual acts between same sex consenting adults. A Delhi-based coalition of LGBT and women and human rights activists called 'Voices Against 377' was founded to support the demand to amend section 377 in order to exclude adult consensual sex from within its purview. 'Voices Against 377' filed an intervention application before the Delhi High Court in support of the petition filed by the Naz Foundation. Crucial support was provided by the National AIDS Control Organization, which argued in support of the decriminalization of the community. By doing so, the government agency provided a greater justification and thrust to the cause championed by non government organizations and civil society.

In a historic judgment delivered on 2 July 2009, Delhi High Court overturned the 150-year-old law, legalizing consensual homosexual activities between adults. "The essence of the section goes against the fundamental right of human citizens", stated the High Court.

However the law is yet to be amended and its amendment would represent the fruition of rightful inclusion of the LGBT community into society at large. Apart from Section 377, other legal provisions in place in India are used to harass and discriminate against the LGBT communities. These include the provisions regarding loitering and indecency in public place; Adoption laws; Inheritance and property laws; etc. Such laws have been detrimental in the way of the sexual minorities to access services provided by the State and also to live a life with dignity.

In recent years, India has witnessed a growing activism of various non-government organizations and civil society institutions towards the mainstreaming of sexually minority groups. Such efforts consists of advocating for the rights of LGBT groups, campaigning against laws that discriminate against their rights, seeking public petition for withdrawal of such laws, and efforts to normalize the recognition and acceptance of LGBT identity categories in India. The 2009 judgment in its essence released a community from being labeled as criminals for a life choice that is rightfully theirs.

Some government agencies and international development partners support these issues in of themselves. But also, these agencies feel that efforts to normalize and legalize LGBT minorities and ensure their rights would help to reduce their marginalization in society and contribute to inclusive policies, enabling access and effective utilization of social services including sexual and reproductive health services. This would help to accelerate efforts to achieve national health and development goals that are still lagging behind among vulnerable population groups, especially as a result of HIV in the LGBT community.

PROCESS OF CONSULTATION

Through this task the World Bank's Regional AIDS programme for South Asia, has partnered with Amaltas and the Humsafar Trust to develop a programmatic roadmap to contribute to an enabling environment for the marginalised LGBT community to access reproductive and sexual health services. The assignment intended to provide insights and inputs for policies and actions that encourage and support the equal rights of the LGBT people as citizens of India. This would help to strengthen India's HIV-AIDS response, as well as support similar thinking in other sectors and countries in the region.

Amaltas is a research and consulting organization based in New Delhi which has core competencies in public health, HIV and AIDS, and objective and impartial documentation. Amaltas works within the broad scope of development to provide high-quality consulting and research services in support of accelerated improvements in people's lives in the South and South East Asia region. Amaltas has extensive experience, having completed a large portfolio of projects with National and State Governments, international donors, non-government organizations and for-profit entities. Very recently, the organization has completed a relevant project for UNDP entitled 'Growth of Community Collectivization and Mobilization among Sexual Minority Groups in India' and has written the 'UNGASS Country Progress Report India 2010' on behalf of the Government of India with funding for UNAIDS among other assignments of interest.

The Humsafar Trust is a male sexual health agency started in April 1994 as a community-based organization by self-identified homosexual men with the mission to strive for the human rights of sexual minorities and for the provision of quality health services to Men who have Sex with Men (MSM) and tritiya panthi. Today Humsafar implements seven holistic intervention projects, providing prevention, care, support and treatment services and reaches out to thousands of peers every year. Humsafar is implementing three research studies in partnership with Centre for AIDS prevention Society in San Francisco and Fenway Community Health in Boston with funding support from the National Institutes of Health, USA. The research unit of Humsafar provides technical support in conducting community based research on social and behavioral issues of MSM and Hijras.

INFOSEM is a collective national effort by sexual minorities to ensure equality for themselves in all spheres of life, free from discrimination. It is arguably India's largest membership organization comprised of sexual minority (e.g., lesbian, gay, bisexual, transgender, intersexed et al) serving community based organizations. As Convener of INFOSEM, Humsafar played a seminal role in reaching out to the community and ensuring that the consultative process was inclusive. Humsafar also provided legal expertise for the assignment.

An Inclusive Process

At the outset it was clear that the effort to develop a programmatic roadmap must be grounded in the LGBT community and be a response to their needs and wants. Thus the assignment took a three step process.

A review of the literature, both published and grey, was undertaken to get fully acquainted with issues that the LGBT community has been facing and efforts that have taken place in the recent past to mainstream the issues of the community. Progressive initiatives that have taken place around the world to address the vulnerabilities and change the positioning of the LGBT community in the mainstream society were also studied. Since much

of the grey literature exists in the libraries of peer organisations across India, these were accessed to reproduce the material for the study. Further popular media such as newspaper and internet were also consulted liberally.

The second step was to get an understanding of the actual reality of experience of members of the LGBT community in India. The effort was to get perceptions of members of these communities across India on issues of particular importance. Special care was taken to identify the participants of the three consultations. As an initial step, invitation was made to the community through INFOSEM with clear instructions regarding the selection process. In order to ensure that participation was as inclusive as possible, an invitation was also floated on popular LGBT list serves and sites to attract the attention of the community. The venue for each consultation was selected with utmost care. Where representation from particular subsets of the community was felt to be low, special efforts were made to contact and get participation from those organisations.

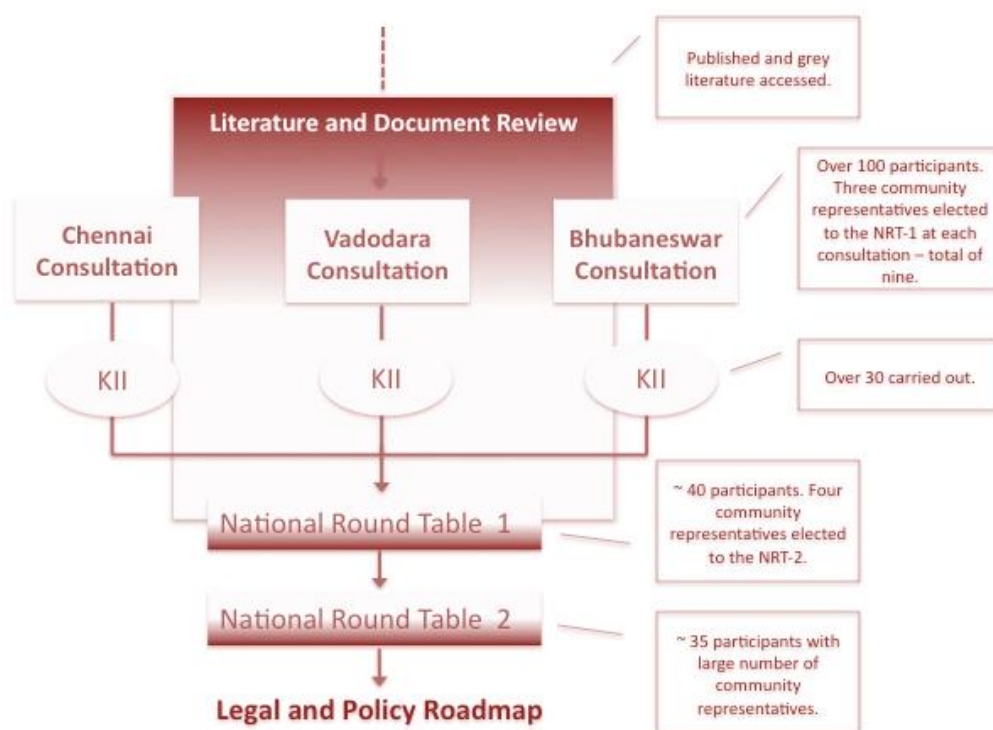
Three Regional Consultations were held in three regions of the country: the South in Chennai on 4 November 2011; North and West in Vadodara on 11 November 2011; and East in Bhubaneswar on 19 November 2011. The target participation for each of the consultations was 30. Apart from participants, care was also taken to create a panel of experts from the community to help to facilitate the consultations. Through the three consultations we were able to reach out to more than 100 participants from the community. Owing to the strategies used, 25 percent representation was possible from lesbian women and bisexual persons. The consultations utilised a unique participatory methodology called the Open Space Technology to conduct these Regional Consultations. The Open Space technique allows participants to set their own agenda. Discussions were participant-led with expert facilitators at each consultation supporting the dialogue. Each meeting also ‘elected’ three representatives to attend the proposed National Round Table (NRT) 1 through a show of hands. Efforts were made to ensure lesbian and bisexual representation at the NRT 1. Reports of the three consultations are attached as Annex 1a, 1b and 1c.

The insights gained from the consultations were further explored in greater detail through 26 key informant interviews (KII) with persons who have had experiences which are of particular pertinence to the objectives of the assignment. (See Annex 2). Both the consultations and the interviews yielded a wealth of information on what communities perceived to be their greatest challenges. Findings from the consultations and interviews provided issues which communities and their prominent spokespersons considered most important. These were: Adoption; Discrimination; Education; Family; Health; Identity documentation; LGBT Organizations; Safe Spaces; Section 377; and Violence.

The third step of the assignment was to hold two NRT. The first round table discussed the issues excavated through the consultations and interviews and attempted to identify what needs to take place for the issues to be addressed. The participants of the first round table were legal experts, representatives of the private sector who have particular expertise in matters of interest to marginalised communities; and the community representatives. An invitation was made to leading lesbian, bisexual and transgender organisations to ensure that there was adequate representation from this sub-population of the community. Each session of the round table began with a community member describing the experience of issues faced by the communities, first hand. The voice of the community thus formed the basis on which further discussion took place and was informed by the active participation of several community leaders. Small working groups coalesced to discuss issues closest to them – either by way of lived experience or of practice. NRT 1 had the benefit of the advice of some of the most respected lawyers in the country, who deliberated on the issues facing the communities with their long years of specialization in particular aspects of the law. (See Annex 3a & 3b).

By the end of the NRT 1, a level of prioritization of the issues identified by the community was achieved. It also became quite clear that several issues identified by the community are interrelated; and that a change in one is bound to bring about a change in the other. Further some are related in terms of law and policies while others such as discrimination and violence, are overarching. Hence the set of issues identified for NRT 2 were categorized into five heads – discrimination; violence; property and inheritance; alternative family structures – encompassing marriage and adoption; and social security safeguards – encompassing education, health, identity documentation, safe spaces and LGBT organizations. NRT 1 community representatives had elected four representatives to attend the NRT 2 on their behalf and ensure that the matters that had been discussed at the community consultations and NRT 1 remained at the centre of the discussions. Additional community representatives were invited from across the country to ensure a high level of participation from the leadership of the community. NRT 2 discussed existing laws and policies identified during NRT 1 to have bearing on the situation of sexual minorities and considered what would be needed in terms of actions on the part of the State, the community and society at large to offer a place of equal position to the rainbow people.

Legal & Policy Roadmap



The Chief Election Commissioner and architect of several inclusive measures for the LGBT community, Dr. S.Y. Quraishi, provided a keynote address. Dr. Quraishi spoke out passionately about the deep-rooted stigma prevalent in the mainstream community about LGBT persons. He also described at length the National AIDS Control Program and its positive impact on the LGBT movement. NACP had brought visibility to the community particularly gay, bisexual and transgender persons. Rajya Sabha Member of Parliament Mr. Oscar

Fernandes graced the occasion and shared his thoughts. He emphasised the issue of universal access in realizing the right to health. He too touched upon the role that stigma and discrimination play in the denial to access of rights. He highlighted that the marginalised condition of the LGBT communities do not allow them to make claims on the social protection schemes provided by the state. Mr. Fernandes assured the gathering of the full support of the Forum of Parliamentarians on HIV/AIDS in this endeavor. Participants included development partners; representatives from the National AIDS Control Program and the National Human Rights Commission; legal practitioners; and community representatives. The NHRC representative expressed her keen interest to remain engaged with the subject and to arrange for a formal interaction with the communities.¹¹ Representatives from government departments responsible for the issues that the community had brought up were invited to NRT 2, such as Ministry of Human Resources Development, Ministry of Health and Family Welfare, Ministry of Social Justice and Empowerment, Ministry of Law, Ministry of Labor and Employment, Ministry of Women and Child Development, Women's Commission, and Planning Commission; however none of them attended the meeting. Each session of NRT 2 began with the voice of the community who laid out the issues that they faced, and that from the legal fraternity which described the hurdles that presently existed within law, to the enjoyment of liberties and social protection promised by the country to every citizen by these subpopulations. A discussant from the development partners provided a commentary on the situation. A facilitator was identified for each session and provided expert comments and guided the discussions. (See Annex 4a & 4b).

Issues of the Community

Interestingly, while each consultation did bring up some specific issues, a majority of the issues were common to all consultations. What varied was how communities prioritized their issues. The movement in the south is long-standing and gains have been seen in the establishment of supportive state institutions such as the Aravani Welfare Board in Tamil Nadu. The community suggested extension of those structures to fight discrimination and violence; and State support for education and the economic condition of the communities. In the west also, LGBT community based organizations (CBO) are very strong; the demand was primarily for legislation to fight discrimination, followed by sensitization of educational institutions to include the LGBT community. In both the regions, relationships and family came lower on the prioritization ladder. However in the east and north where CBO are comparatively new, the demand for reform relating to relationships and social acceptance issues was high. The main issues that came up across the 3 consultations were: Discrimination, Violence, Education, Health, Identity Documentation, Safe Spaces, LGBT Organizations, Social Security, Property and Inheritance, Marriage, Adoption, and Section 377 and the 2009 judgment.

The KII also tended to bring up many of these areas, but each interview added new understanding to the issues. Several interviews pointed out that Section 377 of the IPC has been used sparingly in the 150 odd years since it was enacted. However, the challenge to Section 377 provided a need-based platform and rallying point for the entire rainbow community. And the consequent reading down of the Section created positive spaces both within the communities and within mainstream society especially the media. However, it was emphasized that Section 377 is not the only the only legal issue that the communities must address. Several other laws are used more often to harass, intimidate or otherwise discriminate against the community, such as those relating to Public Nuisance, Indecency, among others. Because of the ambiguity in the definitions of these terms, these are differently interpreted by the courts and applied differentially in different states. Laws such as those

¹¹ Savita Bhakry, National Human Rights Commission, NRT 2

relating to rape, workplace harassment and others often do not take cognizance of offences against homosexuals. There are Specific state laws for e.g. The Bombay Police Act which has a provision for arrest of a person if that person is carrying a house breaking instrument on him at night, but the house breaking instrument has not been defined, these kind of provisions provide a tool in the hands of the authorities for harassment of the LGBT community. There are several instances in Mumbai where the police has detained gay men returning home late after the parties and threatened them with arrest under the Bombay Police Act.

Civil entitlements for those of the communities are difficult or impossible to access. Documentation of identity provides the initial challenge. This is most advanced for those belonging to the Hijra communities, but dissemination among administrators of progressive provisions are poor and is compounded by poor awareness of rights by those of the communities. Other civil rights that pose particular challenges are those relating to marriage, adoption, inheritance, property, registration of organizations etc.

The educational system is often the point at which many community members face their greatest initial challenge. Ostracized by their classmates and sometimes facing extreme forms of violence, several interviews spoke about how the educational system was 'blind' to the needs of young persons with a different experience of sexual awakening. The consequent high dropout from the school systems leads to poor educational outcomes and perpetuates poor social acceptance and achievement within mainstream society.

The provision or even sensitivity to, the health needs of those of the communities was cited as being absent. Several key informants placed a very high premium on access to sexual and reproductive health services, or even of general health services. Training of medical providers is poor and attitudes to those of the communities are homophobic. While some designated clinics do exist, these are far and few between and often cannot service the specific needs of those who approach them.

Alliances with other social movements are necessary to help to gain public participation in reform of society to account for the rights of all citizens, be they from the rainbow community, or from other marginalized groups within society.

Homophobia and transphobia in the general community needs to be tackled at all levels within society. Discriminations are practiced which are both overt and covert. Several interviewees pointed out that for persons of the LGBT communities to be able to experience their rights as citizens of a free and progressive country, it would not only take legal reform, but also a mainstreaming of the needs of these marginalized groups.

Policy and Legal Framework

The first NRT took issues as they had been identified by the Regional Consultations and the KII and discussed the possible legal and policy solutions to them. The second round table discussed the suggestions and expert advice from NRT 1 in the context of international and national experiences provided by discussants of each group. What follows is a discussion of the main issues and the arguments presented and debated at the round tables.

Decriminalize people of alternative sexual orientation

Key discussions at the two NRT revolved around the present status of *Section 377 of IPC* and the on-going legal battle in the Supreme Court of India. Some groups have appealed the judgment of the Delhi High Court in reading down Section 377 of the IPC. Several threads of the argument buttress the view that decriminalization of the community must precede every other action.

Since the enjoyment of full rights as a citizen of India must begin with acceptance as a valuable member of society, an ever-present aspect of the life of every person of alternate sexuality in India is their criminalization under Chapter XVI, Section 377 of the IPC. This legislation introduced during the British rule of India, criminalizes sexual activity that is "against the order of nature". This law posed a peculiar challenge in being drafted. In every other section of the IPC except this one, there was a victim and a perpetrator and the law acted on behalf of the victim to extract retribution from the perpetrator by prescribed punishments. This was in consonance with the prevailing criminal jurisprudence of the time. However the conundrum in this case was, that if Section 377 were to be applied in the case where the sexual relationship was by mutual consent between the parties, who would the victim be? It was then that Macaulay came up with the innovative solution that in such a situation, the victim would be nature itself and therefore the terminology "unnatural sex" and "crimes against the order of nature". This simple statement turns every member of the large community of LGBT persons into criminals without them having even contemplated an unlawful act. While prosecutions and convictions under almost 150-year-old Section 377 for the homosexual acts have not been many, the law has frequently been used to harass and intimidate LGBT people.

Post-independence, the Founding Fathers described a Constitution for India which would be the guiding principle for all matters executive, legislative and judicial in the country. An important constitutional tenet that can be said to be underlying theme of the Indian Constitution, it is that of 'inclusiveness'. It holds that discrimination is the antithesis of equality and that the recognition of equality will foster the dignity of every individual. At Independence, it was decided that the principle of British Common Law would continue with the understanding that laws would be modified as the need to do so arose.¹² This situation arose in 2001 when the Naz Foundation (India) Trust challenged Section 377 through a writ petition before the Delhi High Court. The Hon'ble judges of the Delhi High Court when pronouncing their judgement on the appeal in July 2009, referred to Articles 21, 14 and 15 of the Constitution in reading down Section 377 insofar as it criminalises consensual sexual acts of adults in private.¹³ In February 2012, the Supreme Court has taken up hearings on appeals against the Delhi High Court verdict. While many religious groups filed the appeal in the Supreme

¹² *Indian Courts*. URL: <http://www.ipc.in/>

¹³ Naz Foundation (2009) Delhi High Court Judgment

Court against the judgment of the Delhi High Court some interventions have been filed in support of the Delhi High Court judgment.

While the matter is presently under review by the Supreme Court, the consultations felt that unless the community is decriminalized, they would continue to suffer the humiliation and exploitation that marks their everyday existence. Their enjoyment of rights guaranteed to all other citizens of India will be constrained, through no fault of their own but rather through the prevailing prejudices that marked Victorian prudery of a century and half ago.

Address discrimination and violence

Discrimination: The prejudicial treatment of an individual based on their membership - or perceived membership - in a certain group or category. It involves the actual behavior towards groups such as excluding or restricting members of one group from opportunities that are available to another group. Discrimination was identified as the core issue in the LGBT movement.

In the case of the sexual minorities, discrimination has been experienced in the form of exclusion from the mainstream society. Two policewomen were dismissed when it was discovered that they were lesbians. Two gay men were refused housing in societies on account of their sexuality. An heir of a royal family was disowned due to his sexual preferences. Women are murdered on discovering that they have women partners. A man in Haryana is beaten everyday simply because he chooses to cross-dress. These are just a few of the cases that have actually come to light. The consultations reported that most cases of discrimination against the LGBT persons go unreported or take place so covertly that discrimination cannot be pinpointed. Discrimination almost always begins as close as within families or schools and continues through a large part of the adult life. Community representatives described discrimination as being evident in the everyday reaction of the larger community; as well as discrimination faced in availing and accessing services provided by the State. The community strongly felt the need for a platform to discuss discrimination.

During NRT 1, it was felt that an overarching ‘Anti-Discrimination Law’ covering the LGBT community would be useful to address issues around discrimination. The NRT 2 generally supported this position with civil society and development partners unanimously agreeing on the need to formulate such a law. However there was note of caution. Discrimination according to law is overt manifestation of stigma and prejudice. Yet many situations experienced by the community (such as transsexuals being asked to expose their genitals) would not fall under the definition of discrimination. Legally this would be termed as impairing dignity and private space. Thus in order to be effective, an anti-discrimination law should cover prejudices, but also issues of violating dignity and intruding privacy (Article 21)¹⁴.

Violence: Defined by the World Health Organization as the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, or deprivation.

Violence is an everyday reality faced by those of the LGBT communities. The issues of violence faced by the LGBT community can be from within the community and that faced from outside the community. Violence

¹⁴ Anand Grover, Lawyers Collective, NRT 2

faced from outside the community includes violence against gay persons and transgenders by the police or domestic violence against the lesbians.

There is evidence of physical violence and mental abuse in same sex relationships particularly within the Hijra community which is never openly discussed. Although physical violence in itself can be dealt with under various provisions of the penal laws, in most cases physical violence and mental abuse goes unreported since there is no legal recognition of same sex relationships or the Hijra communities and there is fear of exposing the sexual orientation of the victims to the law enforcement authorities.

Conceptually in law, violence is an aspect of discrimination. Internationally this is well recognized; with sexual harassment also falling within the ambit of an anti-discrimination law. Hence it would be appropriate to deal with violence within the rubric of a general anti-discrimination law.

Facilitate access to social security services provided by the state

Education: The community visualizes education as a fundamental issue, both in respect of discrimination faced by persons of alternative sexuality as well as the high drop-out rates which lead inevitably to poorer economic opportunities for those of the community.

In the present scenario as soon as a student is identified as a person with different gender/sex orientation the attitude of the teachers and the students change. Discrimination by the teachers or the administrative staff is evident during admission and evaluation. While discrimination faced from the students is mainly in the form of ragging. There also instances of abuse physical as well as mental of LGBT community at institutions like hostel, for example an open male gay person in a boy's hostel. All these instances lead to early drop out of the LGBT community from the educational institutions which in turn have a very negative impact on the lives of the LGBT community.

The need today is for a more inclusive education where the teachers and the students would be sensitive to the LGBT community.

Health: The findings of the Regional Consultations and the KII show very clearly that the LGBT community prefers to stay away from the mainstream health services. The reason for staying away is the stigmatization faced by the LGBT community in the hands of the health service providers. The stigmatization doubled for MSM and transgenders. Other than stigmatization the community also feels that service providers specially the doctors are not oriented about the health issues faced by the community.

The participants also felt very strongly about legal recognition of SRS and formulation of protocols and guidelines. Castration is considered to be illegal in our country falling under *Section 320 of IPC*, which deems emasculation to be a grievous offence. *Section 326* states that whosoever voluntarily causes grievous hurt shall be punished, makes doctors vulnerable to prosecution. Unless the above laws are reviewed it is difficult to legalize SRS countrywide.

There is ambiguity regarding the legal status of SRS; in some states SRS is allowed through the government run medical facilities and in some it is not allowed. SRS covers surgical operation, hormone treatment and also counseling both before and after the operation. However even in states where SRS is carried out in state run medical facilities counseling is missing or of extremely poor quality. Cost of the operation is highly variable between states. Because of such ambiguity, transgenders prefer to conduct SRS in private settings.

WORKPLACE POLICIES

Workplace policies are locally defined and many organizations, big or small, are not necessarily inclusive, sensitized or protective towards LGBT persons. In recent times, some organizations in the IT and other sectors have turned their attention to addressing the issues of discrimination and stigma associated with being of the LGBT community. Measures that have been taken include:

1. Advocate for an inclusive environment that respects LGBT professionals.
2. Start an LGBT employee resource group and launch networking groups.
3. Extend equal opportunity policy to include sexual orientation
4. Enable LGBT professionals to perform to their fullest potential and contribute to the greater goals of the firm.
5. Help create a safe environment where LGBT employees can bring their “whole selves” to work.
6. Peer mentoring; provide diversity training to employees with specific references to LGBT.
7. Engagement: raise awareness and encourage involvement.

Identity Documentation: This has primarily been an issue with transgenders, F to M and M to F (see glossary). In the recent past some very progressive steps have been taken in this regard. The administration has offered to provide documents like PAN Card, Passport, election ID, Driving License where the transgender can show their gender as T (transgender) or O (other); and F to M can record their gender as male; while M to F can record their gender as female. The requirement for such change in documents is a valid SRS certificate.

However the concern voiced by the community is that getting a valid identity document with the preferred gender or sex is not very easy. There is little State or community support; much of the time, it is the result of individual effort and in many cases, only community leader have been able to get it done. For a poor, working class transgenders, F to M, or M to F, it remains a challenge to get such documentation.

Safe Spaces: Public spaces are fraught with danger for the average LGBT person. Commonplace interactions with those of the mainstream result in stigmatization, derision and often, violence. The community has no safe spaces. Community activities such as simple get-togethers are met with suspicion and complaints of public nuisance. There are various incidents where gay parties have been ‘raided’ by the police on the pretext of drugs and sex. Even in the southern states where the LGBT mobilization has been quite strong, there have been instances where people from the LGBT communities have not been allowed to enter hotels, restaurants or clubs. During KII, leaders of the community have also shared their unease that outside four walls of their homes, no place is safe for them.

In the recent past, particularly after the Delhi High Court judgment on reading down section 377, some spaces have opened for the LGBT communities in urban settings. For

example, in Delhi some restaurants and clubs began ‘Gay Nights’ once in week. The participants of the round table felt that the communities should have free and untrammelled access to public spaces. Unisex public toilets and unisex hospital wards came up as strong need from the community and immediate State actions have been demanded.

LGBT Organizations: The Regional Consultations threw up two main issues of interest: LGBT communities are poorly engaged in existing social structures in both the government and private sectors; and that there were few bodies that have been set up to espouse the rights of the sexual minority.

Social Security: India, being a welfare State, has taken upon itself the responsibilities of extending various benefits of Social Security and Social Assistance to its citizens. The social security legislations in India derive their strength and spirit from the Directive Principles of the State Policy as contained in the Constitution of India. Although Social Security has not been recognized as one of the fundamental rights it does require that the State should strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice social, economic and political shall inform all the institutions of national life. Article 41 of the Constitution especially requires that the State should, within the limits of its economic capacity, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement. Article 42 requires that the State should make provision for securing just and humane conditions of work and for maternity relief. Article 47 requires that the State should raise the level of nutrition and the standard of living of its people and improvement of public health as among its primary duties. The obligations cast on the State through the above Articles constitute Social Security.

Categories of the LGBT such as Transgender, M to F, F to M and lesbians remain practically, an invisible population. As a result of this, they are excluded from social security schemes provided by the State.

Allow full enjoyment of property rights

Property and Inheritance: Property laws differ between religious sections and from state to state. While the *Hindu Succession Act 1956* acknowledges an equal share of ancestral property for the son and the daughter, the existing provisions for Muslims provide a greater share to the male heir and a lesser share to the female. Laws also differ from state to state.

NRT 1 highlighted several issues relating to the rights of the communities in respect of inheritance and transfer of property. There are various instances where the persons belonging to LGBT community have been disinherited from the ancestral and parental property because of their sexual orientation or different gender orientation. In case of transgenders and Hijra the issue of inheritance from her/his biological family becomes complicated once the gender identity of the person changes, especially in cases where the person has undergone surgery and changed his/her sex.

In particular, those from the Hijra community face problems. In many cases, both their sex and religion are changed. The Hijra community follows the Islamic traditions. They suffer from lack of documentation of each and this leads to their being denied their rightful due from their natal families. Added to this is the particular manner in which the Hijra community functions, preventing a simple transfer of property or asset to an individual when the ‘Guru’ of the community passes on. Thus there are major issues with share / devolution of property in the Hijra community. The primary reason behind such problems is that the gharanas

are not legally recognized, and are administered arbitrarily. The common fear is that the Guru may give away the property belonging to the gharana to an individual person or her biological family member or a less capable and less acceptable chela.

Any couple can buy property in their joint name. However, LGBT persons do not have the right to inherit property as a couple owing to the lack of recognition of their relationship within current laws. In most cases, the partner has no redress under law to inherit such property upon the death of the partner unless there is a will or a gift deed¹⁵. There have been instances of violence when an LGBT person wanted to give away the property to the partner or friend and not the family.

Recognize alternative family structures

Marriage: A social union or legal contract between people that creates kinship. The definition of marriage varies according to different cultures, but usually denotes an institution in which interpersonal relationships, usually intimate and sexual, are acknowledged. Such a union is often formalized by a wedding ceremony. In some conservative cultures, marriage is recommended or compulsory before pursuing any sexual activity. Most cultures limit marriage to two persons of the opposite sex, but some allows forms of polygamous marriage, and a few recognize same sex marriages.

In our country there is currently no recognition of same sex marriages or civil unions. The right to marry or form civil unions is gradually emerging as a demand from the community. Although featured low in the priority list, it has always come up as an important agenda for the communities.

India being a multi-religious society is tolerant of the personal laws of its citizen. As a result, each citizen of India is entitled to have his own personal laws in the matter of marriage and divorce. Hindu marriages are governed by the *Hindu Marriage Act 1955*. Muslims are governed by their personal laws under which ‘Nikah’ (i.e., marriage) is a contract permits a man four wives provided he treats all of them equally. Parsees are subject to the *Parsee Marriage & Divorce Act 1939* which governs the provisions of marriage and law; and Indian Christians follow the *Indian Christian Marriage Act 1889*.

While the personal laws are different from religion to religion, the *Special Marriage Act 1954* applies to all citizens of India irrespective of religion or faith followed by either party. Marriages performed under the Special Marriage Act are a civil contract and therefore require no religious rites or ceremony.

India does not currently recognize same sex unions of any type. But at the same time it should also be taken into consideration that no explicit prohibition against same sex unions currently exists. The existing Special Marriage Act is also equipped to accommodate transgender marriage with the transgender who has undergone SRS providing proper documentation of sex change. An amendment in the existing Special Marriage Act could also accommodate same sex marriages.

Apart from Special Marriage Act, formulations of civil unions can also be another means of recognizing same sex relationships. Civil Unions or Domestic Partnerships is a legally recognized form of partnership similar to marriage. In civil unions and domestic partnerships the couples are given similar rights as married couples concerning legal issues such as inheritance and immigration. Beginning with Denmark in 1989, civil unions

¹⁵ Maharukh Adenwalla, Independent lawyer, NRT 2

under one name or another have been established by law in many developed countries in order to provide same sex couples rights, benefits, and responsibilities similar (in some countries, identical) to opposite sex civil marriage. In some jurisdictions, such as Brazil, New Zealand, Uruguay, France and the US states of Hawaii and Illinois, civil unions are also open to heterosexual couples.

An important contribution of the NRT 2 was the discussion of alternative family structures which are often a feature of unions between persons of the sexual minorities who wish to set up a long term relationship. While present day constructs of marriage are heterosexual and patriarchal, this has not always been the case in India or indeed in many other countries around the globe. The meeting suggested that there was a need to look beyond the conventional descriptions of marriage and document other forms of long term relationships and dependencies.¹⁶

Adoption: A process whereby a person assumes the parenting for another and, in so doing, permanently transfers all rights and responsibilities from the original parent or parents. Unlike guardianship or other systems designed for the care of the young, adoption is intended to effect a permanent change in status and as such requires societal recognition, either through legal or religious sanction. Historically, some societies have enacted specific laws governing adoption whereas others have endeavoured to achieve adoption through less formal means, notably via contracts that specified inheritance rights and parental responsibilities. Modern systems of adoption arising in the 20th century tend to be governed by comprehensive statutes and regulations.

In India same sex couples are not allowed to adopt jointly as a couple. Hijras are also not allowed to adopt. There is lack of any uniform law on adoption in our country. The common legislations related to adoption are *Hindu Adoption and Maintenance Act 1956* and the *Guardians and Wards Act 1890*. Under the existing Hindu Adoption and Maintenance Act a Hindu male can adopt only with the consent of his wife unless and until the wife has given up Hinduism or is of unsound mind. Thus it is clear that single males are not eligible to adopt. As per the above laws other than the Hindus no other religious communities are eligible to adopt.

In recent times, the *Juvenile Justice Act (2000) Section 41* which is most commonly used for adoption, states that a person can adopt irrespective of his/her marital status, and that childless couples and couples already having children can also adopt. Since same sex partners are not recognised in law as a couple, the provision prevents the same sex partners from adopting the child jointly as a couple.

Some of the recent legislations like the *CARA Guidelines (2010)* or the *ART Regulation Bill 2010* has excluded the LGBT community from its ambit. CARA which deals with inter – country adoptions in accordance with the provisions of the Hague convention on Inter Country Adoption 1993 allows only married couple to adopt, thus it automatically leaves out the same sex couples. As per the CARA guidelines single male and single female are allowed to adopt but single males are not allowed to adopt a female child.

The concept of surrogacy is quite popular among the LGBT community in the west. Recently a draft ART Bill 2010 has been cleared by the Ministry of Health and Family Welfare which also deals with the issue of surrogacy. The Bill is waiting the approval of the Ministry of Law. The Bill does allow single males and single females to become a parent. The Bill also says that in case of a child born to an unmarried couple through use

¹⁶ Ashok Row Kavi, Humsafar Trust, NRT 2

of ART - with the consent of both the parties - the baby will be their legitimate child. Thus marriage is not seen any longer, as a precondition to parenthood in the Bill.

PROGRAMMATIC ROADMAP

I am pleased to address this historic Human Rights Council session. Some say sexual orientation and gender identity is a sensitive subject. I understand. Like many of my generation, I did not grow up talking about these issues. But I learned to speak out because lives are at stake...

We see a pattern of violence and discrimination directed at people just because they are gay, lesbian, bisexual or transgender. There is widespread bias at jobs, schools and hospitals. And appalling violent attacks, including sexual assault. People have been imprisoned, tortured, even killed...

To those who are lesbian, gay, bisexual or transgender, let me say: You are not alone. Your struggle for an end to violence and discrimination is a shared struggle. Any attack on you is an attack on the universal values the United Nations and I have sworn to defend and uphold.

Secretary-General Ban Ki-Moon

Geneva, 7 March 2012

The findings from the Regional Consultations, KII and two NRT lead to specific recommendations for action to change the situation of those of the LGBT community in India. This requires a change in the laws that prevent them from enjoying their full rights as citizens of India and at the same time, their situation with respect to their fellow citizens. Acceptance of those of an alternative sexuality by mainstream society will redress much of the discrimination that they face. Concrete, feasible actions must form the basis of a programmatic roadmap that will provide the change that the people of the rainbow community seek.

The consultations suggested that action could be located at three levels:

- I. Actions on part of the State
- II. Actions on part of the Community
- III. Actions on part of the Society

Movements by their very nature comprise the effort by a minority to articulate, vocalize and present their demands to an indifferent majority. Minorities groups coalesce, mobilize and collectivize to demand their rights. The LGBT movement in India has followed a similar journey. Over the past three to four decades, LGBT people in India have come out of the closet and embraced their sexual orientation and gender identity in growing confidence and have found support from friends, family and wider society. In doing so, they have successfully generated a popular following, united around a common agenda and created a strong movement to demand a right that should always have been theirs – to follow their heart and live life as fully as other citizens of this country.

The time is now right for the State and society at large to do their share in making what should always have been theirs, to community that has undeservedly faced stigma and discrimination for far too long.

Actions on Part of the State

The State has the responsibility to see that each person who is a citizen of India should enjoy all the rights and privileges that citizenship of this country brings. It does so through the establishment of laws and policies that furthers this aim and redresses any prejudice that they may face. Actions of the State are thus particularly important in both making rights available, but also in righting the wrongs that individuals or groups might face.

Decriminalize people of alternative sexual orientation

This forms the most important first step to the remaining rights that the community seeks. Section 377 of the IPC criminalizes persons of alternate sexual orientation.

- The Supreme Court could uphold the 2009 Delhi High Court Judgement and thereby complete the reading down of Section 377 in the case of adults engaging in consensual sex in a private space. Thus the Section will continue to be a safeguard against the abuse of the minors or sodomy as long as there is no separate law for the same. Discussions at NRT 2 were conscious that a lot depends on the Supreme Court Judgment. If the verdict were in favor of the LGBT community, it could become the springboard to demand other rights for the LGBT community.

Address discrimination and violence

Discrimination is a core issue in the life of the LGBT communities. Discrimination ranges from ridicule and social exclusion to denial of services.

- Enact an overarching ‘Anti-Discrimination Law’ to address issues around discrimination for all population groups which experience discrimination including LGBT communities, and require protective provisions within the law. The law could be modeled on the *Scheduled Castes and Scheduled Tribes Act* (1989). The latter is based primarily on *Article 17* of the Constitution which declares that practicing untouchability is a punishable offence. The Anti-Discrimination Law should refer to *Article 14* (equal protection of law) and *15* (prohibition of discrimination on the basis of religion, race, caste, sex and place of birth) and *Article 21* (violating dignity and intruding privacy) of the Indian Constitution. The Anti-Discrimination Law need not be punitive in nature.

An important consideration in drafting the law would be to ensure that it covers all those conditions that impair the dignity of those within its ambit, while ensuring that the law enforcing machinery is clear about actions that are contrary to its provisions. Violence forms an aspect of discrimination within the conceptual framework of law. Hence it would be appropriate to deal with violence within the rubric of such a general anti-discrimination law.

Other State actions to address violence

- Review the Domestic Violence Act 2005 to address the issue of violence between partners.

The term domestic violence includes all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. The definition is wide enough to cover child sexual

abuse, harassment caused to a woman or her relatives by unlawful dowry demands, and marital rape¹⁷. Thus it is clear that the Act only covers women and children. Lesbians by the virtue of being women are covered under the Act. There is need for legal awareness of lesbians about the provision and safeguards provided in the Act. However the incidents described as domestic violence are also occurring within same sex relationships. A review of the Act and expansion to make it applicable to same sex relationships would help to address partner violence within LGBT communities especially the gay and transgender sub populations.

- Review the Rape Laws (Section 375 & 376 IPC)

In India, rape and sexual harassment are considered an escalating enactment of the same intent. However in either case, it is considered to be an outrage that is committed by a man to dominate a woman. *Section 375 of IPC* which deals with rape describes rape as a man having sexual intercourse with a woman against her will or consent. Thus the law does not cover rape or sexual assault of a transgender or a kothi. In the present situation, the rape of a kothi could be addressed through Section 377 of IPC. But the laws are not clear how it could address the rape of a transgender. Thus from the LGBT perspective, there is need to look again at the rape laws and amend them in order to include sexual assault on transgender and Hijra persons.

- Revise Bill on Sexual Harassment of Women at the Workplace 2010

This Bill is currently in circulation and is expected to shortly be placed before the Cabinet. The Bill is intended to ensure a safe environment for women at workplace – public or private, in the organized or unorganized sectors. There is need for advocacy to include harassment of men and transgenders at the workplace.

- Draft Bill on Sexual Assault

The Home Ministry is presently working on a draft Bill which will replace the word 'rape' from the IPC with 'sexual assault' in order to broaden the ambit of crimes covered. The Bill proposes amendments to existing laws to widen the definition of rape to include non-penetrative sexual assault, and to deal with other forms of sexual assault on women and minors. This can be taken as an opportunity to propose and advocate for gender-neutral laws on sexual assault.

Facilitate access to social security safeguards provided by the State

This domain calls for progressive policy decisions by the government rather than legal amendment. However, it should be recognized that a strong Anti-Discrimination law would form the bedrock of access to state sponsored social security services.

Education

Identified as a particularly problematic area, attention to issues of education could have far-ranging impact on the mainstreaming of vulnerable LGBT people.

- Mainstream a sound sex education curriculum, which caters to the needs of the LGBT community which would also result in gender sensitization among the student community.

¹⁷ Singh K H. (2010) *Domestic Violence Information*. URL: <http://www.domesticviolences.com/domestic-violence-act-2005/>

- Institute strong anti-ragging laws to protect and safeguard the interest of the LGBT communities within educational institutions. States such as Maharashtra (*Maharashtra Prohibition of Ragging Act 1999*) and Tamil Nadu (*Tamil Nadu Prohibition of Ragging Act 1997*) have anti-ragging acts. These Acts can be strengthened to accommodate and amended to accommodate the interest of the LGBT students. States which do not have such anti-ragging laws should formulate them keeping the needs of the LGBT community in mind.
- Provide safeguards for the interests of the LGBT community particularly during admission process and term tests.

Education falls in the Concurrent List of Duties; therefore action has to be taken at both national and state.

Health

Legalization of SRS is a major demand of the community. Castration is presently against the law in our country and leads to great suffering among those who have to resort to illegal means.

- Review *Section 320* (emasculatation considered as grievous offence) and *Section 326* (voluntarily causing grievous hurt is punishable) of IPC. These two laws pose the greatest hurdles to legalizing SRS.
- Develop protocol for SRS applicable throughout the country.

Other actions on the part of the State to improve access to health services:

- National Health Bill 2009 awaiting ratification by the Parliament can be used as a platform to provide health rights of the community. The Health Bill primarily addresses the health rights of marginalized and vulnerable communities which could be extended to cover the LGBT community.
- The HIV Bill 2007 which is likely to be introduced in the Parliament soon could also be used to address the health rights of the LGBT community particularly the gay, bisexual and transgender subpopulations who have been designated as vulnerable populations by the National AIDS Control Organization.

Identity Documentation

The seemingly simple fact of documentation of identity as a citizen of this country, can pose insurmountable problems for those of the community, particularly those that choose a different gender than the sex they were born into.

- Create the option to choose a gender different from one's sex in official identity documents.
- Simplify procedures to obtain Identity Documents especially for transgendered persons. Make forms required for obtaining such identity documents easily available and provide easy to understand instructions for use.

Safe Spaces

While the demand of the mainstream person might be for more personal safety, the average LGBT person is concerned even with the right of entry and right to use of many public places.

- Assure equal access to the public spaces like clubs, restaurants, and banks to the LGBT community.
- Create separate toilets, wards in the hospitals, ward in jails for transgenders.

LGBT Organizations

LGBT persons are poorly engaged in institutions of the mainstream, be they State-sponsored or private. Their lack of education due to early drop out from school prevents their full participation in the workforce later in life and constrains their life chances.

- Facilitate access of the LGBT communities to the government employment through awareness programs, advertisement and people friendly service provision.

Social Security

An important concern is that the State ensures access of this community to the schemes and provisions that it makes through appropriate actions and institutions.

- Facilitate access of the LGBT communities to the social security schemes provided by the State through awareness programs, advertisement and people friendly service provision.
- Create Boards / Commissions to safeguard the interests of the LGBT community such as the Aravani Welfare Board in Tamil Nadu at the State and National level.

Allow full enjoyment of property rights

Existing laws adequately address the needs of the LGBT community in respect of succession or inheritance of parental property. However, issues arise with respect to same sex relationships and with regard to the Hijra community.

- Recognize same sex relationships to allow same sex couples to own property as heterosexual married couples do and/or to inherit the property of the partner after his or her death.
- Recognize Hijra gharanas through the Trust Act 1882, Waqf Act 1995 or along the lines of the Hindu Undivided Family. Consultation and consensus building within the Hijra community would be an essential prior step.

Recognize alternative family structures

Marriage/Civil Unions

Marriages fall presently within Personal Laws based on religious tenets which are difficult to change. Secular forms of marriage are possible in India through provisions of the Special Marriage Act 1954.

- Amend the *Special Marriage Act 1954* to accommodate same sex unions in India.
- Formulate new laws to allow LGBT and other citizens to enter into civil unions or domestic partnerships. These are basically contracts which confer on adult couples, similar rights as married couples.

Adoption

This demand of the LGBT community represents their desire to experience and express their social need for children.

- Review the *Juvenile Justice Act 2000 Section 41* to include the right of LGBT couples to adopt.
- Review *CARA Guidelines 2010* to accommodate live in and same sex couples for adoption.
- Provide clarification that the *ART Bill 2010* includes LGBT persons through Section 2(h): couple means two persons living together and having a sexual relationship considered legal in India; and Section 2 (dd): unmarried couples means two adult persons living together with consent, without getting married are eligible for ART. Subsequent to the Delhi High Court judgment, the understanding is that the same sex couples would be allowed to adopt children as couple.

Actions on Part of the Community

The LGBT community has been subject to discrimination by society and narratives of such discrimination have marked its collective consciousness. This leads to the assumption of a position of victim. Albeit understandable, there is now need for the community to take a proactive stance. This has already begun as collective action by all of its segments using platforms such as INFOSEM, Voices against 377, Pride Marches, Film Festivals e.g., Kashish, Aravani board, LGBT party organizing groups and LGBT businesses. More action is now necessary to capitalize on the efforts of the community so far and demand the rights which the community is yet denied.

Decriminalize people of alternative sexual orientation

The community is at a particular crossroads in its existence. It represents a cusp between an age when the community was criminalized to one in which it has tentatively been permitted an existence. This unfettered existence is presently at risk with the appeal to the Supreme Court made by religious groups challenging the Delhi High Court judgment in 2009. The future of the demand for an anti-discrimination law, favorable laws for same sex marriage or adoption must precede the continued reading down of Section 377.

- Continued advocacy by the community in order to influence public opinion, garner media support on various issues of the LGBT community.
- Disseminate the Delhi High Court Judgment among community members and provide clarification about the rights that it allows of interest to the LGBT communities.

Address discrimination and violence

There is no second opinion within the community that discrimination and violence are the core day-to-day issues in the lives of LGBT communities. Once shielded from these outrages to dignity and life, the community will be able to live a life like that of any other citizen of this country.

- Regularly document cases of discrimination happening with the LGBT communities. This can act as evidence to push forward the demand for the anti-discrimination law.
- Make efforts to register every act of discrimination and violence directed towards the community, based on different gender and sexual orientation. This will build a compendium of cases for which no legal recourse was possible under the existing provisions of law. Use the compendium as a tool for advocacy with the State to demand for an anti-discrimination law.
- Document instances in which progressive judgments have been taken in legal action to challenge discriminatory behavior toward LGBT persons, thus building up a body of jurisprudence, which can be used to establish precedent in subsequent cases.
- Advocate for sexual assault laws which take into consideration the sexual assault on transgender persons, expand sexual harassment at workplace definition to be applicable to men and transgender persons being harassed by other men. Expand the ambit of domestic violence to same sex relationships including men living in relationship with men and transgenders.
- Educate the lesbian and bisexual segments on provisions and safeguards provided by the Domestic Violence Act.
- Create more crisis mitigating centers which can guide the community members as to the possible legal recourse.
- Sensitize the police and other service providers on LGBT issues.

Facilitate access to social security safeguards provided by the State

The main actions of the community in this regard would be to:

- Sensitize the community members on entitlements provided by the State to its citizens.
- Continuously advocate for an overarching anti-discrimination law safeguarding the interests of the LGBT communities along with other marginalized and vulnerable communities.
- Advocate for a sex education curriculum which covers the issues of the LGBT communities. Ensure that their inputs are used to formulate such a curriculum.
- Set up counseling centers at educational institutions to reach out to students from the LGBT communities.
- Set up community run support groups to guide and help community members to get their identity documentation done after they have undergone SRS or when certain of gender assumption.

- Advocate for the creation of structures like the Transgender Board at the State level and similar Board or Commission at the National level to address instances of violence directed towards the community.

Allow full enjoyment of property rights

Current legal provisions are adequate to address issues around succession for the LGBT communities in case of parental property.

- Advocate for recognition of same sex relationships to gain marital rights similar to heterosexual couples.

Recognize alternative family structures

While present day norms suggest that patriarchal, heterosexual, monogamous marital relationships are the only acceptable family structure, this was different in the not so distant past in India and other parts of the world. Nor is it the only format in many corners of our country today. There is need to ensure that room is allowed for alternative family structures.

- Advocate for legal recognition of same sex relationships.
- Document same sex marriages in the country to use it as a tool for advocacy.

Consultations and interviews with the community members abound with the tales of rampant exploitation socially and by State authorities themselves. The boundaries between the social acceptance and legal sanction are blurred and the interlacing relationship between the two forms the heart of the rights movement for the LGBT community. Only making it an integral part of the general consciousness of the society, can abolish the isolation of the LGBT community. The people who can knock the loudest on the socio-legal door will indisputably be the ones who have suffered from rejection, and which is the LGBT community themselves.

Action on Part of the Society

In the ultimate analysis, the LGBT community cannot enjoy rights as citizens of the Indian society unless society is ready to accept it. To make the society more inclusive and welcoming, actions are needed to part of the larger society, some of which are ongoing in various subsections of society.

Tackle homophobia and transphobia

Homophobia and transphobia became a common feature of the Indian society in the colonial and post-colonial period. In a more recent past, India has also witnessed collectivization and mobilization of the LGBT communities since the nineties. But the movement remained quite isolated and the movement concentrated locally to fight issues of violence or discrimination; and organized to access services like health. In other words, the issues that pose insuperable difficulties to these communities seldom touch the lives of those of the wider society.

- Develop linkages between wider social movements. Related movements include the women's movement, networks of people living with HIV etc. Connection with bigger social movements would

help to influence the policy makers effectively. These movements have challenged stereotypical gender notions and the patriarchal structure of the society.¹⁸

Make LGBT issues everybody's issues

Until recently, the issues of the LGBT community were spoken of by the community itself. This is now gradually changing, and this trend needs to be taken much further.

- Participate in events that celebrate life and the open society advocated by LGBT community such as Pride Marches, film festivals such as Kashish, Nigah Collective, Bangalore Film Festival, Kolkata Film Festival, blood donation camps etc. together with LGBT persons to build visibility and acceptance.
- Hold family events which demonstrate the acceptance and support from families of those of the community.

Galvanize the Media

The media has also played a very important role, particularly after 2009. Both print and the visual media now cover issues related to the LGBT communities on a regular basis.

- Cover issues on LGBT in order to sensitize mainstream society.
- Initiate more discussion on LGBT issues involving mainstream society.
- Encourage movies which discuss issues of the LGBT community as part of mainstream society.

Utilize the power of secondary groups

Any society comprises of various secondary groups organized along various functions of the group and the needs of the individual. These groups are based on secondary affiliations like Indian Medical Association, teachers union, workers union, students union etc. It is quite natural that all these groups will in some way or the other also draw membership from the LGBT communities. Further, there may be other groups which respond to particular attributes such as kinship, friendships, work, religion etc.

- Use formal institutional mechanisms within society such as the workplace, organizations, clubs, media, religious places etc. to educate members on LGBT issues. These groups can be a powerful vehicle to support non-discrimination of LGBT communities as they go about their everyday lives as students in schools and universities, workers in factories and so on.

¹⁸ Manohar Ellavarthi, Sangama, NRT 2

WAY FORWARD

The work that has been carried out under this assignment has provided important learning on the main issues which prevent marginalized sexual minorities from enjoying the benefits of citizenship of India.

These issues are located within laws and policies discriminatory to the community and which require reform for this situation to be redressed. Through consultations with the community, legal fraternity, development partners, and a few government representatives, this report provides a concise account of the issues that pertain and what might be done. Progressive legal actions and policy development have been outlined. Suggestions have been made to amend existing laws and create the space for the aspirations of the LGBT community to be met; and in other cases, new laws have been proposed to safeguard the interests of the community. Some landmark steps have already have been taken at the policy level, many of these relating to the imperatives of the HIV epidemic. The need of the hour is to build on such achievements through continuous advocacy to attain the human rights that are the entitlement of every citizen. This report provides a clear way forward to mainstream the needs of the community into the work of government.

Additional analysis of the rich information gathered during this assignment, its location within dominant discourses on this topic in the country and globally, and a pragmatic discussion of sequencing of necessary actions now needs to take place. A synthesis report needs to be developed to fully discuss the issues faced by the communities, outline their situation in the country, provide a comprehensive description of the legal opinion about the issues, and develop an account of how the Bank can support the inclusion of this marginalized group. It will outline a clear way forward for mainstreaming work on HIV-AIDS that the health sector wishes to support. Such a report would provide impetus to analytical and operational work that development partners including the World Bank do, not only in the health sector but more widely across social sectors, to enhance human development.

A dissemination event that launches the report would be important advocacy for the role of development partners, government and civil society in supporting a service-based approach that sustains and furthers human rights. Held with high-level policymakers and Government representatives, it would garner support for an inclusive approach to work carried out by its development programs. It would also permit the important next step to take place, which is to work with the appropriate government representatives at the country and state levels to discuss the feasibility, timeframe and responsibilities to implement necessary actions.

Glossary

Aravani	Male to female transgendered person, equivalent term for Hijra in the south of India. The Aravani take their name from Arjun's son Aravan in the Gita who they consider to be their husband.
Aravani Welfare Board	A transgender welfare board established by the government of Tamil Nadu in April 2008. This effort is reportedly to be the first in India and in the world.
Bisexuality	Bisexuality is a sexual behavior or orientation involving physical or romantic attraction to males and females . It is one of the three main classifications of sexual orientation , along with a heterosexual and a homosexual orientation, all a part of the heterosexual – homosexual continuum.
Chela	Disciple.
Gay	Gay is a word (a noun or an adjective) that primarily refers to a homosexual person.
Gharana	Clan or unit with generational hierarchy, a culture and the most powerful tradition that forms the Hijra community.
Guru	Teacher or the leader of the Hijra group.
Heterosexuality	Heterosexuality is romantic or sexual attraction or behavior between persons of opposite sex or gender in the gender binary .
Hijra	Hijras are born as biological males who reject their 'masculine' identity and identify either as women, or not men, or in between man and woman or as neither man nor woman.
Homophobia	Irrational antipathy/fear or other negative prejudice towards homosexual people or homosexuality.
Homosexuality	Homosexuality is romantic or sexual attraction or behavior between members of the same sex or gender .
Intersex	Intersexuality is a set of medical conditions that feature congenital anomaly of the reproductive and sexual system; that is, intersex people are born with sex chromosomes, external genitalia, or internal reproductive systems that are not considered 'standard' for either male or female.
Jogta	Hijra who follow Hinduism; male children dedicated to the goddess and ritually cross-dressed for religious purposes.
Kashish	The Mumbai International Queer Film Festival, Kashish, offers cinema as a means to understand what being queer means today, and how it impacts both the queer community and the society at large and foster better understanding of queer thoughts, desires and expressions.
Kothi	Identified homosexual males who are feminine and mostly receptive. The kothi identity is shared by both feminine homosexual men and hijra i.e., male to female.

	transgender/transsexuals.
Lesbian	Lesbian is a term used to describe sexual and romantic desire between females.
MSM	Men who have sex with men (abbreviated as MSM) are male persons who engage in sexual activity with members of the same sex, regardless of how they identify themselves; many men choose not to (or cannot for other reasons) accept sexual identities of homosexual or bisexual .
Queer	Queer is an umbrella term for sexual minorities that are not heterosexual , heteronormative , or gender-binary .
Rainbow community	‘Rainbow Community’ is an umbrella term for all who identify as lesbian, gay, bisexual, transgender, transsexual, two-spirit, intersex, queer, questioning, fluid, labeled, asexual, straight allies and all others in the community who are interested in increasing awareness and inclusivity of gender and sexual diversity.
Sexual Minority	A sexual minority group is one whose sexual identity, orientation or practices differ from the majority of the surrounding society. The term was used as analogous to ethnic minority. The term refers primarily to lesbians and gays, bisexuals and transgender people who are often grouped together under the rubric LGBT.
Transphobia	Irrational antipathy/fear or other negative prejudice towards transgender people.
Transsexual	Transsexual refers to a person who experiences a mismatch of the sex they were born as and the sex they identify as. A transsexual sometimes undergoes medical treatment to change his/her physical sex to match his/her sex identity through hormone treatments and/or surgically. Not all transsexuals can have or desire surgery.
Transgender [M to F and F to M]	Transgender is an umbrella term to describe a wide range of identities and experiences including Hijra, Aravani, male to female (M to F) and female to male (F to M) sexually reassigned persons, cross dressers, drag queens, and drag kings, hijras, transwomen, transmen.
Tritiya Panthi	Another term used for transgenders.