



PRESS STATEMENT

CHRI releases new report on transgender persons in prisons, urges model policy to protect rights

New Delhi, November 27, 2020 – The Commonwealth Human Rights Initiative (CHRI) today launched a unique report ‘Lost Identity: Transgender Persons Inside Indian Prisons’ which reviews compliance of prisons with existing legal frameworks relevant to protecting the rights of transgender persons in prisons.

The report, launched by Justice Madan B Lokur, former Supreme Court Judge, analyses international and domestic legal frameworks as well as Right to Information (RTI) requests from 34 States/Union Territories to ascertain the recognition of a third gender in Indian prisons. It enhances the understanding of stakeholders over the need to formulate placement policies, search procedures among others issues and engage in capacity building of prisons administrators to that end.

“Training and awareness (of prison staff, lawyers, police etc. on this issue) is very important,” said Justice Lokur. “All institutions dealing with the police, the judiciary, institutions dealing with civil servants ... need to get together to deal issues facing transgender persons”

The former Supreme Court justice underlined that since India was a welfare state. “A welfare state cannot say that we cannot give certain facilities to some people. Answers to questions about the problems transgender persons face can come only through adequate training, awareness and recruitment,” he added, calling for reviewing “issues with compassion.”

Justice S. Muralidhar of the Punjab and Haryana High Court called for the process and dialogue in this area to be led by transgender persons. The event, which was virtually attended by more than 300 persons. Participants included prison and correctional services officials from across the country, at the state and district levels, as well as members of State human rights commissions, metropolitan magistrates, state and district legal services authorities, researchers and civil society groups.

“I do not think that the judiciary has completed its task. We need to look at transgender persons in the criminal justice system as a whole,” he said. He urged the high courts and the supreme court to actively pursue the issue and expand the scope growing out of Supreme Court judgement. He met with a positive response from the National Human Rights Commission when he urged its Secretary General B Pradhan to pick up the issue of strip searching in prisons.

The Supreme Court of India in its NALSA judgement dated April 15, 2014, for the first time, recognised non-binary gender identities and upheld the fundamental rights of Transgender persons in India. While discussing ‘gender identity’ at length, the court invoked the various fundamental rights under the Indian Constitution such as Article 14 (Right to Equality), Article 15 (Prohibition against discrimination), Article 16 (equality of opportunity in matters of public employment), Article 19 (1) (a) (Freedom of expression) and Article 21 (Protection of life and personal liberty).



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“The Government of India, in consultation with relevant government agencies and civil society organisations, must formulate a model policy towards making prison processes more inclusive so that the special needs of transgender persons are taken into account. The policy may outline guidance on documentation of experiences of transgender persons in detention, search procedures, placement, medical facilities etc. in prisons,” said Madhurima Dhanuka, Programme Head, Prisons Reforms at CHRI.

Raising awareness among prisoners and prison authorities regarding transgender persons and strengthening of training programmes for officers and warders is a key aspect in such a model policy or guidelines, she added.

Key findings of the report, based on RTI information, include the following :

- In only 9 states data of Transgender inmates was recorded apart from male and female.
- No awareness programs among prisoners were conducted since 2014, apart from the state of Karnataka, on the recognition of Transgender persons as a legal identity.
- No Transgender person was recruited by the prison department in any of the states or Union territories between January 2014 and January 2019.
- None of the prisons reported of inclusion of any course/module in the Prison Training Institute’s curriculum which focused on the aspect of awareness and sensitisation regarding the rights of LGBTI+ communities.

Recommendations in the report were finalised by CHRI through a consultative process with individuals and experts, including representatives from the community, community-based organisations as well as researchers and academicians working on this issue.

‘Lost Identity: Transgender Persons Inside Indian Prisons’ is authored by Mr Arijeet Ghosh and Ms Madhurima Dhanuka, with research and inputs from Ms Sai Bourouthu. It was prepared as a part of a joint project between CHRI and the University of Dundee, UK project titled ‘Exploring the Enablers and Barriers for the Protection and Promotion of the human rights of LGBTI+ persons inside Prisons: Dialogues Between Brazil and India.’

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