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Enforce Ruling Protecting Transgender People

(New York) – Authorities in India should fully enforce a Supreme Court ruling to protect the rights of transgender people and help end discrimination, social exclusion, and abuse, Human Rights Watch said today. They should also credibly investigate several recent incidents in which police allegedly abused transgender people.

In April 2014, in a landmark judgment in National Legal Services Authority (NALSA) v. Union of India and Others, the Indian Supreme Court ruled that transgender people should be recognized as a third gender and not only enjoy all fundamental rights, but also receive special benefits in education and jobs.

“India’s Supreme Court last year finally recognized the rights of transgender people to vote, to get an education, or to find a job,” said Meenakshi Ganguly, South Asia director. “Now it’s up to the authorities to enforce the ruling by prosecuting those that target transgender people, denying their right to live in dignity and without persecution.”

Nearly a year after the Supreme Court’s judgment, implementation has stalled, even as recent attacks on transgender communities highlight their vulnerability. In particular, section 377 of the Indian penal code, which criminalizes same-sex relations among consenting adults, has made both transgender people and homosexuals vulnerable to police harassment, extortion, and abuse.

The nongovernmental organization Telangana Hijra Transgender Samiti, based in the southern city of Hyderabad, reported 40 attacks on transgender people in the last six months. In several cases, the police refused to even register complaints, the rights group told Human Rights Watch.

Most recently, the group said that on January 20, 2015, police detained a young hijra, a distinct transgender and intersex community that has a formal system of shared residence and mutual support, for questioning about the murder of another hijra, Pravallika, four days earlier. The police brought the person, a friend of Pravallika who identifies herself as a woman, to a police station where she was allegedly stripped naked and verbally abused and humiliated. Without any female police official present, the hijra was kept at the station for four hours.

The police might have beaten her, but when she revealed she was HIV positive, they covered their faces and shrank away. They still humiliated her and questioned her gender identity, and released her in the early hours of the morning insisting that she wear men’s clothes.

In this case, the police held an inquiry and acknowledged wrongdoing, but activists say that transgender people across the country still live with fear of violence and police abuse. On January 22, police picked up a transgender woman in the southern city of Chennai for interrogation in a case of murder. At the police station, officers allegedly suspended her by her legs with a rope and penetrated her post-operative genitals with a baton. They left her bleeding overnight, releasing her in the morning. She is still in a government hospital recovering from her injuries.

Transgender people in India are frequently publicly ridiculed and excluded from general society. They endure discrimination and humiliation not just from the police but often also medical authorities. The Indian government policy of recognizing only two sexes had the effect of depriving transgender people of basic rights, including the right to vote, own property, marry, and claim a formal identity through a passport or other government identification. They have also been unable to secure government services such as food subsidies, education, employment, and health. Many hijras have no option but to either beg or engage in sex work. This exposes them to further violence at the hands of law enforcement authorities.

In June 2014, the police arrested eight hijras in the western city of Ajmer for assaulting a policeman. Seven alleged that the police beat them while in custody; one said that she was taken into a separate room early in the morning and raped by three policemen. She said that a policeman also demanded a bribe to not file charges against her. She was released on bail after four days of judicial custody during which she said she had no access to medical help. She has reported the rape to the police.

The hijra community was criminalized under British colonial rule, and some states in India continue to have provisions that have their roots in the abusive colonial-era laws.

In April 2011, the Karnataka government amended the state's police act to regulate "undesirable activities" and keep a record of "eunuchs" in every police jurisdiction to prevent them from committing "unnatural offences."

Section 377 of the Indian penal code is also used to target transgender people as well as homosexuals. These laws, although rarely used for arrests, make both transgender people and homosexuals vulnerable to police harassment, extortion, and abuse.

In the NALSA ruling, the judges noted that although section 377 was associated with specific sexual acts, it "highlighted certain identities, including Hijras and was used as an instrument of harassment and physical abuse against Hijras and transgender persons."

While the Delhi High Court ruled that section 377 violates fundamental freedoms, the Supreme Court has overturned the judgment to recommend that the decision on whether to repeal the law be taken by the parliament as it is the responsibility of the legislature. The Supreme Court is still hearing the matter.

"Instead of waiting for the courts, the government should propose that parliament repeal section 377," Ganguly said. "These colonial-era laws have no place in India today."

In its ruling in NALSA, the Supreme Court said that the government should follow the international conventions to which it is a party as well as the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, saying they were "not inconsistent with the various fundamental rights guaranteed under the Indian Constitution." The Yogyakarta Principles encourage countries to consider measures that allow all people to define their own gender identity.

The Supreme Court also endorsed many of the recommendations laid out in a January 2014 report by an expert committee set up by the Ministry of Social Justice and Empowerment to look at issues related to transgender persons. The report recommended that transgender people be declared a third gender and have the option of identifying as "man," "woman," or "transgender," independent of surgery or hormones, and that the third gender be identified on all official documents. It also recommended that central and state government schemes that provide benefits such as housing, education, health care, and livelihoods should be extended to transgender persons and efforts should be made to create awareness regarding gender diversity in families, educational institutions, in health care, in workplaces, and among law enforcement authorities, including police.

"Transgender communities in India have long suffered abuse, ridicule, and a denial of basic rights," Ganguly said. "The government should scrap laws that discriminate against transgender people, prosecute those who commit abuses against them, and sensitize its police and other officials."