

No. 17013/26/2021-PR
Government of India
Ministry of Home Affairs

Women Safety Division, Hall No. 2,
Major Dhyan Chand National Stadium,
India Gate, New Delhi – 110001
January 10, 2022

To

1. **The Chief Secretaries/Administrators of all States and UTs**
2. **Director General/IG (Prisons) of all States and UTs**

Sub: Treatment and Care of Transgender Persons in Prisons.

Sir/Madam,

The Government of India has enacted 'The Transgender Persons (Protection of Rights) Act, 2019. The Act defines a "transgender person" as a person whose gender does not match with the gender assigned to that person at birth and includes Transgender persons as defined in the act trans-man or trans-woman (whether or not such person has undergone gender reaffirmation surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, 'genderqueer' and person having such socio-cultural identities as 'kinner', 'hijra', 'aravani' and 'jogta'. The Act inter-alia provides for recognition of identity of transgender persons, prohibition against discrimination, and welfare measures to be taken by the Government, etc.

2. In exercise of the powers conferred under the Act, the Government of India notified the Transgender Persons (Protection of Rights) Rules, 2020 on 25th September, 2020. These Rules inter-alia specify the procedure by which a transgender person can obtain a certificate of identity, welfare measures for transgender persons, their education, social security, health, and provisions for non-discrimination, etc.

3. Keeping in view the need for ensuring the safety of transgender persons and to protect them against any form of exploitation in the context of Prisons and Correctional facilities, the following suggestions are shared with all State/UT Prison authorities:

a) **Identity:** A transgender person shall have the right to be recognized as such, in accordance with the provisions of the Transgender Persons (Protection of Rights) Act, 2019. A person recognized as a transgender

person under the provisions of the said Act shall have a right to self-perceived gender identity.

b) **Infrastructure in Prisons:** Appropriate arrangements for providing suitable accommodation and facilities in accordance with their gender identity may be made in the prisons. A separate enclosure/Ward for transgender inmates for transmen and transwomen may be ensured and also such enclosures should be separate from male and female wards/enclosure. However, while making provision for a separate enclosure for transgender prisoners, due care may be taken by the prison authorities that this may not result in their complete isolation or propagate social stigma among such prisoners. There should also be adequate preservation of right to privacy and dignity in regard to separate toilets for transmen and transwomen as well as shower facilities.

c) **Self-identity to be respected:** Self-identity of transgender persons must be respected at all times in regard to admission procedures, medical examination, search, lodging, clothing, requisitioning of police escorts, treatment and care inside prisons. The prison department may facilitate the process of acquiring the Transgender identity certificate under the provisions of The Transgender Persons (Protection of Rights) Act, 2019, if such a request is made by the person concerned by registering them on the Online National Portal for Transgender Persons to avail welfare measures. Link: <https://transgender.dosje.gov.in/>.

d) **Admission in Prison:** The Prison Admission register may be suitably revised to include 'transgender' as a category other than male and female gender. Similar provision may also be made in the Prison Management System in maintaining electronic records of the prisons. In case the Court Warrant does not mention the self-identified gender of the person or if the gender mentioned is disputed by the person, the Superintendent may, with the assistance of legal services authorities, assist the person to make an application for change in gender identity.

e) **Search of Transgender prisoners:** The search of a transgender person may be conducted by a person of their preferred gender or by a trained medical professional or a para-medic with necessary training on conducting the search. The person conducting the search must ensure the safety, privacy and dignity of the person being searched. At the stage where the search procedure requires stripping, it must be done in a private room or partition. The search procedure should be confined to compliance with security protocols and restriction of contraband and should not be aimed at determining the gender of the person.

f) **Access to Healthcare:** Transgender prisoners shall enjoy the same standards of health care available to other inmates and should have access to necessary health-care services without discrimination on the grounds of

their gender identity. If in-house expertise of health professionals does not exist to assess and/or provide appropriate care, they may be referred to doctors/ professionals who specialize in this area of health care.

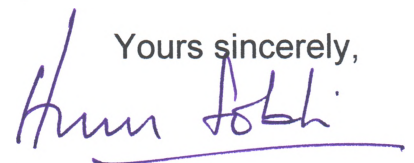
g) **Communication with Outside World:** Every prisoner shall be allowed reasonable facilities of meeting or communicating with their family members (natal or chosen) relatives, friends and legal advisers for the preparation of appeal or for procuring bail or for arranging the management of their property and family affairs. They shall be allowed to have interviews with their family members, relatives, friends and legal advisers.

h) **After care and Rehabilitation:** After care planning by the Probation/ Welfare/ Rehabilitation Officer to include and affirm families of choice of the transgender person and specific health needs of transgender persons with regard to their mental health and gender affirmative processes, over and above the scope of rehabilitation/ aftercare/ welfare of prisoners.

i) **Training and Sensitization of Prison Personnel:** Training modules may be devised in collaboration with Ministry of Social Justice & Empowerment, prison training institutes, state health department, human rights commission, Legal Services Authorities and with representatives from transgender communities, etc. for developing an understanding of gender identity, gender dysphoria, Human Rights, sexual orientation and legal frameworks for transgender persons; training of medical officers on the standards of care for transgender persons, transgender person's right to decide their self-identified gender and designing public and Prisoner awareness programs on the rights of transgender persons.

4. State/UT authorities may like to suitably brief and sensitize the prison officials of the above and take appropriate action for the protection of rights of transgender prisoners and their welfare, etc.

Yours sincerely,



(Arun Sobti)

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