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Livelihood, Exclusion and Opportunity: Socioeconomic Welfare among Gender and Sexuality Non-normative People in India

Pawan Dhall and Paul Boyce

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LIVELIHOOD, EXCLUSION AND OPPORTUNITY: SOCIOECONOMIC WELFARE AMONG GENDER AND SEXUALITY NON-NORMATIVE PEOPLE IN INDIA

Pawan Dhall[a] and Paul Boyce[b]
[a] Varta Trust, Kolkata and Solidarity and Action Against The HIV Infection in India, Chennai
[b] Department of Anthropology, School of Global Studies, University of Sussex

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Abbreviations

AAY	Antyodaya Anna Yojana
AIDS	acquired immune deficiency syndrome
AMaNA	All Manipur Nupi Maanbi Association
ASLP	Agency for Socio-Legal Protection
BJP	Bharatiya Janata Party
BPL	Below Poverty Line
CBO	community-based organisation
FGD	focus group discussion
GDI	Gender Development Index
GDP	gross domestic product
HDI	Human Development Index
HIV	human immunodeficiency virus
IMF	International Monetary Fund
LGBT	lesbian, gay, bisexual and transgender
MGNREGS	Mahatma Gandhi National Rural Employment Guarantee Scheme
MSM	men who have sex with men
NACO	National AIDS Control Organisation
NACP	National AIDS Control Programme
NALSA	National Legal Services Authority
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OSACS	Odisha State AIDS Control Society
PLHIV	people living with HIV
SAATHII	Solidarity and Action Against The HIV Infection in India
SHGs	self-help groups
STI	sexually transmitted infection
TG	transgender
UNDP	United Nations Development Programme

Executive summary

Overview

In 2014, its 67th year as a sovereign country with a population of 1.21 billion (Government of India 2011a), India is the second most populous country in the world, the most populous democracy and has the longest written constitution among all sovereign countries. Its gross domestic product (GDP) is ranked tenth in the world (out of 184 countries) when measured through current prices (2014) and third on the basis of purchasing power parity (IMF 2014). In 1990, just before India embarked on an unprecedented economic liberalisation, the ranking by current prices was eleventh but by purchasing power parity it was ninth, indicating a significant jump forward in a 25-year period. Commensurate with the GDP growth (from around 5.5 per cent in the early 1990s to a peak of 10.3 per cent in 2010) (World Bank 2014), in spite of differences in poverty measurement between the Government of India, World Bank and the United Nations Development Programme (UNDP), it is widely believed that there was significant reduction in poverty and that the government's emphasis on economic growth was responsible for this (Aiyar 2011).

Against this background, this case study explores the socioeconomic experiences of gender and sexuality minority peoples in India, especially in respect of ways in which sexual and gender 'difference' may be correlated to economic hardship and restricted opportunities for livelihood in the context of Indian socioeconomic 'modernity'. Growth of economic opportunity through neoliberal models of economic expansion is typically achieved via the extension of economic opportunity for some people amidst the endurance of ongoing socioeconomic precarity for most others. In this report we consider these issues in the context of livelihood, poverty, economic opportunity and restraint in the lives of gender and sexuality non-conforming people in India, with a specific focus on the eastern Indian states of Odisha and Manipur. These sites were chosen because in the last five years they have been among the states that have witnessed a number of community, government, non-governmental organisation (NGO) and donor-backed initiatives undertaken on economic inclusion for people with non-normative genders and sexualities.

While this case study does not have the mandate to investigate at length into the rich tapestry of non-normative sexual orientations, gender identities and sexual practices in India, one has to be mindful of the tension that exists between many of the identity formations (and 'non-identity' formations) implicated in the present study. This is not just borne out of which identities have greater cultural authenticity, but also a struggle for access to a common resource pool that holds promises of a better standard of life (Das and Dhall 2012; Boyce 2012).

Methodology

The study aimed at gaining a qualitative understanding of the economic inclusion status of people with non-normative genders and sexualities in India, the barriers and facilitators to such inclusion, and strategies to improve inclusion. To this end, the study examined government poverty alleviation programmes, their capacity to include people with non-normative genders and sexualities, and the responses of the people affected. The study adopted a mix of primary and secondary research methods to find answers to a set of broad and specific research questions. It started with a preliminary literature review, which informed subsequent semi-structured interviews with people with non-normative genders and sexualities, government officials, NGO representatives and donor officials involved in social security provision. Parallel to the interviews, focus group discussions (FGDs) were conducted with people with non-normative genders and sexualities. The data from all three methods were triangulated for the purpose of assessment. Furthermore, the lived experience of the

authors of this report as development professionals and activists contributed to the analysis of the data collected.

Findings and conclusions

The Indian legal environment, in spite of its contradictions and uncertainties, provides a good opportunity for the government to strengthen and demonstrate its commitment to social welfare and economic inclusion of people with non-normative genders and sexualities. Leaving aside contentious issues such as Section 377 and its criminalising impact for the long term, the government can build up on a number of progressive developments and legislations such as the Supreme Court's NALSA (National Legal Services Authority) judgement, the Census of India's inclusion of transgender persons, the Legal Services Act and the Right of Children to Free and Compulsory Education Act 2009 to scale up social security access for people with non-normative genders and sexualities, both quantitatively (improved coverage) and qualitatively (reduced stigma). It can even justifiably commence the scale-up with trans women, trans men and intersexed persons, given the urgency of translating the Supreme Court NALSA judgement into action.

Similarly, targeting socioeconomically poorer MSM (men who have sex with men) – irrespective of femininity, masculinity or sexuality identity – can be prioritised on the grounds of greater vulnerability to HIV infection. Specific provisions of the Mental Health Care Bill, 2013, if applied carefully, may also provide grounds to enhance social security access for people with non-normative genders and sexualities, including females with non-normative genders and sexualities. Of course, conflation between mental ill health and specific sexual orientations or gender identities must be avoided, and the mental health needs of people with non-normative genders and sexualities have to be seen as potential outcomes of stigma, discrimination and violence, rather than as inherent to their sexualities.

According to government and donor officials engaged in HIV mainstreaming issues in Odisha, economic inclusion efforts for people with non-normative genders and sexualities need to focus on not just supply of social security but also demand generation. They also foresee a sustained role for NGOs and community-based organisations (CBOs) in both demand generation and supply assurance. Together, the immediate-term recommendations from the respondents and authors of the study for policymakers and donors are summed up in the following section.

Recommendations

Table 0.1   Immediate-term recommendations

No.	Demand generation	No.	Supply assurance
1	Support community discourse[1] on issues of gender, sexuality and human rights to generate awareness and address self-stigma among people with non-normative genders and sexualities through community meetings/events/other forums.	1	Ensure the establishment of state-level welfare boards for people with non-normative genders and sexualities with community engagement – to begin with, at least for trans women and trans men as directed by the Supreme Court NALSA judgement.

(Cont'd)

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[1] This may be a term preferred over 'community education', which may carry patronising overtones.

Table 0.1 (cont'd)

No.	Demand generation	No.	Supply assurance
2	Support efforts to inform and educate people about social security issues: (a) key policies that form the basis for government social security or poverty alleviation programmes; (b) legal developments such as the Supreme Court's NALSA judgement; (c) benefits and limitations of different social security schemes.	2	Facilitate discourse, sensitisation, training on gender, sexuality, human rights, social security policies and legal developments to generate awareness and address stigma among government officials at all levels of the hierarchy, health and legal service providers, educational institutions and media agencies.
3	Facilitate continuing initiatives that train and handhold people in negotiating the rules and regulations (paperwork) in applying for and accessing social security schemes, including timely follow-up.	3	Engage legal service providers (especially the government legal services authorities) in facilitating gender identity change and associated changes in relevant identity proof and citizenship documentation.[2]
4	Facilitate awareness-generation sessions on psycho-social, medical and legal processes involved in feminisation/masculinisation (gender identity change, sexual reassignment surgery, hormonal therapy) for transgender people with linkages to sensitised, inexpensive and suitably trained and equipped legal and health service providers.[3]	4	Facilitate widespread availability of quality (unbiased, state-of-the-art) and affordable feminisation/masculinisation medical services in government health centres and ensure that these services are covered by insurance schemes for the poor; in parallel, facilitate discourse on instituting protocols for feminisation/masculinisation procedures relevant to the Indian context among apex health-care associations (including those dealing with mental health).
5	Ensure one-stop windows to streamline and reduce the paperwork required for access to different social security schemes (similar to the Sanjog scheme of OSACS or the 'out-of-court dispute settlements' facilitated by the government legal services authorities to avoid lengthy and expensive litigation).	5	Improve public health programmes around HIV to better align them to vulnerabilities of all sections of people with non-normative genders and sexualities; around mental health to delink gender and sexuality non-normativity with mental ill health and ensure easy access to mental health services for people with non-normative genders and sexualities; around disability to ensure sensitivity to the specific needs of people with non-normative genders and sexualities.
6	Ensure effective and unbiased complaint mechanisms that address stigma in social security services as well as educational, health and legal settings in an inexpensive and speedy manner (similar to the alternate dispute redressal systems of government legal services authorities that help avoid lengthy and costly litigation).	6	Run comprehensive and sustainable livelihood and entrepreneurial skills-building programmes that are based on an in-depth understanding of interest levels of the trainees, their sociocultural realities and market research; extend this learning also to other economic inclusion initiatives such as self-help groups to ensure durability
		7	Ensure workplace security by sensitising organisations across all sectors to adopt inclusive and non-discriminatory human resources policies.

(Cont'd)

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[2] Other than the birth certificate, which records the 'official' gender status at birth.
[3] A key element of such awareness-generation efforts should also be to inform people of the wider range of options available under feminisation or masculinisation. For example, the possibility of opting for only a gender identity change without sexual reassignment surgery or hormonal therapy (both collectively often referred to as 'sex change'); or of hormonal therapy without sexual reassignment surgery (though the reverse may not be possible); or of various genital change possibilities within the context of sexual reassignment surgery.

Table 0.1 (cont'd)

No.	Intermediary actions
1	Adoption of a gender and sexuality education framework that infuses gender and sexuality equity in the entire syllabi of schools and colleges (rather than the introduction of just a standalone subject on 'sex education') and encourages appreciation and respect for people with non-normative genders and sexualities among students and faculty alike in educational institutions (Walikhanna 2012).
2	Facilitate a long-term mass media campaign to address negative social attitudes against people with non-normative genders and sexualities and bring about a lasting 'image overhaul' that reduces stigma.

Source: Authors' own.

The long-term recommendations for facilitating economic inclusion typically focus on further discourse around non-normative genders and sexualities leading to continuing policy and legal reforms. While decriminalisation of people with non-normative genders and sexualities (primarily through a repeal of Section 377) is now a long-standing matter (the campaign against it started in the mid-1990s) and should be seen as an immediate measure to facilitate economic inclusion, the positive spin-offs of decriminalisation are likely to take longer. The spin-offs can be in the contexts of legal recognition of queer marriages,[4] non-normative family structures, property inheritance by queer romantic partners (live-in or marital), and child adoption by queer couples. However, these will require changes in the legal definitions of marriage and family, which understandably will have to engage law-makers through a due process and will therefore take time. Yet, government and donor agencies can at least initiate a wide discourse on these matters in the context of legal developments such as the Supreme Court's NALSA judgement.

Another legal issue that needs reform is sexual assault. Again, the NALSA judgement provides a crucial opening to revisit India's laws against sexual assault and at the very least extend them to provide protection to trans women, for many of whom sexual assault in various forms is a day-to-day experience.

Finally, the government's poverty alleviation efforts can become far more accessible for people with non-normative genders and sexualities if there is a comprehensive anti-discrimination law in place. Civil society discourse in this regard is under way in the contexts of gender, caste, religion, disability and mental health, and efforts to include the issue of non-normative genders and sexualities are also under way. Activists argue that decriminalisation of people with non-normative genders and sexualities is only part of a larger battle against discrimination that needs to be bolstered with a strong legislation in line with constitutional values. Government and donor support in this regard will strengthen and speed up the process of economic inclusion.

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[4] The term 'queer' has been used to indicate not just same-sex relationships, but also mixed gender identity relationships, say, as between MSM and trans women, a 'common' phenomenon in India (in the context of people with non-normative genders and sexualities).

1   Introduction

In 2014, its 67th year as a sovereign country with a population of 1.21 billion (Government of India 2011a), India is the second most populous country in the world, the most populous democracy and has the longest written constitution among all sovereign countries. Its GDP is ranked tenth in the world (out of 184 countries) when measured through current prices (2014) and third on the basis of purchasing power parity (IMF 2014). In 1990, just before India embarked on an unprecedented economic liberalisation, the ranking by current prices was eleventh but by purchasing power parity it was ninth, indicating a significant jump forward in a 25-year period. Commensurate with the GDP growth (from around 5.5 per cent in the early 1990s to a peak of 10.3 per cent in 2010) (World Bank 2014), in spite of differences in poverty measurement between the Government of India, World Bank and UNDP, it is widely believed that there was significant reduction in poverty and that the government's emphasis on economic growth was responsible for this (Aiyar 2011).

Against this background, this case study explores the socioeconomic experiences of gender and sexuality minority peoples in India, especially in respect of ways in which sexual and gender 'difference' may be correlated to economic hardship and restricted opportunities for livelihood. Growth of economic opportunity through neoliberal models of economic expansion is typically achieved via the extension of economic opportunity for some people amidst the endurance of ongoing socioeconomic precarity for most others. In this report we consider these issues in the context of livelihood, poverty, economic opportunity and restraint in the lives of gender and sexuality non-conforming people in India, with a specific focus on the eastern Indian states of Odisha and Manipur. These sites were chosen because in the last five years, they have been among the states that have witnessed a number of community, government, NGO and donor-backed initiatives undertaken on economic inclusion for people with non-normative genders and sexualities.

In the context of ongoing economic growth, recent general poverty estimates as measured by the Government of India indicate that as much as 29.5 per cent of the population in 2011–12 was still below the poverty line (Singh 2014). That works out as a staggering figure of nearly 360 million people, which is higher than the 2014 population of the US, the world's third most populous country (US Census Bureau 2014). The poverty measure adopted by the government was itself controversial and much criticised – those spending over a mere 32 rupees a day in rural areas and 47 rupees in towns and cities were not to be considered poor.[5] Data from the UNDP *Human Development Report 2014* further added nuance to India's economic growth and poverty status – with a value of 0.586 in 2013, India ranked 135 out of 187 countries in terms of the Human Development Index (HDI).[6] Life expectancy was at 66.4 years, expected years of schooling at 11.7 years and gross national income per capita at US$5,150 (measured at 2011 purchasing power parity figures) (UNDP 2014) – well behind Sri Lanka on most counts, the leading country in South Asia in terms of HDI, as well as China, often cited as India's key economic and geopolitical rival.

A gendered analysis of the HDI data shows that the female HDI (0.519) was around 18 per cent lower than the male HDI (0.627) in 2013. The Gender Development Index (GDI) worked out to 0.828 and this was behind not only Sri Lanka and China, but also India's eastern neighbour Bangladesh. The mean years of schooling were a mere 3.2 years for females compared to 5.6 years for males for the period 2002–12 (this being well below the figure of *expected* years of schooling cited above); the difference in gross national income per capita was more stark – US$2,277 for females as against US$7,833 for males – a difference of 71 per cent (UNDP 2014). It should also be noted that while the GDI has shown significant

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[5] The figures amount to US$0.52 and US$0.76, respectively – based on the exchange rates prevalent on 1 October 2014.
[6] A composite statistic of life expectancy, education, and income indices used to rank countries every year into four tiers of human development.

improvement over the years (it was only 0.590 in 2006), other gender parameters have either worsened or not shown significant improvement. The rate of cognisable crimes[7] against women went up from 14.1 per cent in 2000 to 18 per cent in 2010; and the child sex ratio declined from 927 in 2001 to 914 in 2011. The proportion of seats held by women in Parliament went up from 8.9 per cent in 2000 only to 10.7 per cent in 2011 (UNDP 2011).The maternal mortality ratio at 200 maternal deaths per 100,000 live births in 2013 (rank 127 out of 187 countries) was only a few notches lower than 212 in 2007–09.

The socio-legal scenario also points at serious and persistent gender-based inequalities. The falling child sex ratio has been attributed to the prevalence of deep-seated cultural gender bias and resultant female foeticide and infanticide. The practice of dowry lives on in more subtle forms despite laws against it since 1961, and in spite of Section 498A of the Indian Penal Code (to protect women from cruelty by their husbands or husband's relatives) and the Protection of Women from Domestic Violence Act 2005 (Government of India 2005a), the National Crime Records Bureau under the Ministry of Home Affairs reported that crimes punishable under Section 498A went up by nearly 12 per cent in 2013 over the previous year (Government of India 2013a). It was only after a series of particularly grievous sexual crimes against women in 2012–13 (reported widely in the media and leading to massive apolitical public protests) that the Government of India moved to overhaul the country's sexual assault laws and worked out the Criminal Law (Amendment) Act 2013 (Government of India 2013b). On the face of it, this is yet to have a salutary effect on sexual crimes against women, but it is also argued that the 'increase' in sexual crimes against women is also a result of increased reporting to the police and visibility in the media.

If the socioeconomic barriers and crimes faced by women provide one facet of gender-based inequalities in India, people with non-normative genders and sexualities provide yet another, indicating that the challenge lies in resisting hetero-patriarchy rather than just patriarchy. 'People with non-normative genders and sexualities' can be considered the broadest possible umbrella term that captures not just a wide spectrum of non-heteronormative gender identities, sexual orientations and sexual behaviours, but also various politically and culturally located 'identity' terms. Of these, *hijra*, *kothi*, *maichiya* and *nupi maanbi*,[8] or gay, lesbian, bisexual and transgender, are but a small sample of a rich diversity of 'indigenous' *and* nominally western identities (or as some would say 'Indo-western' fluid identities) (Chakrapani *et al.* 2002). This can be seen as a reflection of the complex and intersecting ways in which regional and transnationally located terms for genders and sexualities increasingly exist in dialogue and relationship with one another, in the context of global flows of popular media, the internet, political discourses, access to resources and other influences on contemporary sexual lives and subjectivities.

There is also the phenomenon of a large number of people with non-normative genders and sexualities that does not take recourse to any identity terminology for a variety of reasons. From a perspective that imagines the open expression of non-normative gender and sexual *identities* as an aspect of an intrinsically modern way of being-in-the-world, people who do not conceive of their non-normative genders and sexualities in terms of identity might be

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[7] A cognisable crime is a serious offence where a police officer has the authority to make an arrest without a warrant.
[8] *Hijras* are biological males, or rarely intersexed individuals, who identify either as women, not-men, in-between man and woman or neither man nor woman. Contrary to popular belief, all *hijras* are not castrated and 'eunuch' is not an appropriate translation. *Hijras* have a long tradition and culture of a matrilineal community, membership to which is formalised through the ritual of *reet* (christening ceremony). There are several *hijra* clans or *gharanas* across India (and South Asia); the term *hijra* itself has many regional variations. *Hijra* clans consist of gurus and *chelas* (disciples) who often live in close-knit, rigidly governed, self-created families. It is argued that *hijra* is a cultural and professional identity. Part of Hindu legends and once a part of the royal courts in key positions, the community fell from grace when the British criminalised them. Today, equally feared, reviled and revered by society, they are one of the most disadvantaged communities. Apart from traditional occupations of *chhalla* (clapping and seeking alms) and *badhai* (blessing newborns and dancing at weddings), many *hijras* have to depend on exploitative sex work for a living. *Kothis* can be described as biological males who show varying degrees of femininity and who often (but not always) play a receptive role in sex with other males; *kothis* too are generally from lower socioeconomic strata and many engage in sex work for survival. *Maichiya* may be considered a variation of *kothi* in Odisha state, while *nupi maanbi* roughly translates into feminised male or (male-to-female) transgender in Manipur.

seen as suffering from social isolation and lack of opportunities for self-articulation (even in the era of the Internet), fear of stigma and discrimination and so on. From an alternative perspective it is important not to simply naturalise assumptions that same-sex desiring people ought to self-identify in terms of such desires. Such an assumption might impose an expectation of self-identification into people's lives, failing to recognise other ways of living and experiencing genders and sexualities that are not bounded by categories and identification. This is an important perspective in a context such as India where, for many, the language or discourse of (non-normative) gender and sexual identities may be unfamiliar or alien, even as non-normative genders and sexualities are widely practised.

Another facet of this complexity concerns identity terms used amidst the prevalence of overlapping and clashing terminologies. For instance, in the pan-Indian sense both *kothi* and *hijra* denote distinct (male-to-female transgender or trans women) communities, but in some parts of India, *kothi* is how some *hijras* identify themselves (Chakrapani *et al.* 2002). The *kothi* community also has a matrilineal structure that closely resembles the *hijra* community structure, though *kothis* do not live in self-created families like many *hijras* do. Some *kothis* aspire to join *hijra* clans, which appear to have a stronger traditional base and seem to offer greater social security in a heavily stigmatised (transphobic) family and larger social environment (Narrain 2003). Then again, including these communities under the transgender umbrella is itself problematic for some who prefer the term 'gender variant' to 'transgender' – while the latter has more limited western connotations of a strict gender binary, the former allows for identification with diverse indigenous gender identities that can be 'both man and woman', 'neither man nor woman' or a 'third gender'.

While this case study does not have the mandate to investigate any deeper into the rich tapestry of non-normative sexual orientations, gender identities and sexual practices in India, one has to be mindful of the tension that exists between many of the identity formations (and 'non-identity' formations) implicated in the present study. This is not just borne out of which identities have greater cultural authenticity, but also a struggle for access to a common resource pool that holds promises of a better standard of life (Das and Dhall 2012). This issue will be explained in greater detail with an example from India's national HIV programme in Section 4.1.

Beyond the tension between contesting identity claims and subjectivities, India's socio-legal environment is also currently at a crossroads for people with non-normative genders and sexualities. First, in December 2013, the Supreme Court of India overturned an earlier Delhi High Court judgement of 2009 and reinstated the archaic and arbitrary Section 377 of the Indian Penal Code, which was enacted by the British in 1860 and criminalises 'carnal intercourse against the order of nature'. In 154 years the code has resulted in less than 200 prosecutions (Supreme Court of India 2013). In these terms, Section 377 has been most salient in terms of its symbolic value as opposed to its enactment in case-law *per se* (Boyce 2014; Boyce and Dutta 2013). Section 377 has reportedly served the purpose of unjustified discrimination rather than protection or restoration of any order; it has been a tool for threats and blackmail by the police and families; and has acted as a barrier to health service access for people with non-normative genders and sexualities. In overturning the High Court judgement, the Supreme Court ignored the unconstitutionality of Section 377 and criminalised non-penile–vaginal sex, irrespective of adult consent. The law also made gender identity and sexual orientation neutral. But its impact was mainly on (re)criminalising people with non-normative genders and sexualities, given the social stigma against them and the popular belief that only these groups of people have non-normative sexual behaviours (Lawyers Collective 2014; Sathyanarayana Rao and Jacob 2014). A reversal of the Supreme Court's verdict has been sought through curative petitions, which await a hearing (Gupta 2014c).

Second, in April 2014, the Supreme Court also ruled on the matter of transgender identities and rights, granting an unprecedented recognition to the right to gender self-determination (without the need for any medical certification), as well as the existence of people with a 'third gender'. It also ruled that the historical socioeconomic and socio-legal injustice meted out to transgender people be addressed by ensuring them equal opportunities in the spheres of education, livelihood and health, but stopped short of exact directions on how this should be done (Lawyers Collective n.d.). Apart from leading to a situation where the central and state governments are trying to come up with their own implementation mechanisms through specific departments, the two verdicts of the Supreme Court have led to a contradiction where trans persons are now criminalised because of their sexual behaviours but 'protected' because of their gender identities or sexual orientations (as if to take the sex out of sexuality). On the ground, the reality is more complicated because the shadow of the Criminal Tribes Act 1871,[9] though repealed in 1949, still influences how the police treat *hijras* and other trans women in public spaces and police stations with suspicion and violence (Narrain 2003). The Immoral Traffic (Prevention) Act 1956 also criminalises male and transgender sex workers (as it does female ones). Equally, it is unclear whether India's anti-sexual assault laws, revised in early 2013 but not to the extent of recognising gender neutrality of either the perpetrator or victim of assault, will now also protect trans women, estimated to have a population of 490,000 according to the 2011 Census of India, the first time that trans women were counted in the Census (Gupta 2014b; Nagarajan 2014).

It is notable then that beyond a single focus on a single law – such as Section 377 – it is important to recognise and petition against a plethora of different laws that are used to punish people with non-normative genders and sexualities. Gender and sexuality non-conforming people do not only or first meet the law in its most overt expressions of discrimination, but also and often through other 'smaller' laws on public vagrancy or public indecency. This then calls for a broadening in strategies to change legal frameworks, while also extending a necessary analytical attention to a focus on social welfare policies and their day-to-day implementations as these may impact negatively on the lives and wellbeing of sexual and gender minority peoples, beyond more obvious aspects of legislation that may explicitly target sexual and gender minority rights. The present study focuses on people's experiences of social welfare policies and provision in the context of a macro-analysis of health and welfare provisions, in India in general and Manipur and Odisha in particular.

Returning for a moment to the wider political and legal environment in India, one positive outcome from the Supreme Court ruling on Section 377 was that for the first time many major political parties included the decriminalisation of people with non-normative genders and sexualities in their manifestos ahead of the 16th general elections held in the earlier part of 2014. The only key party not to have taken a decisive stand on the issue – the Bharatiya Janata Party (BJP) – now runs the Indian government with a clear majority in Parliament. But the BJP may find dealing with the Supreme Court verdict on transgender identities and rights more palatable. While the Section 377 matter requires taking a stand on politically risky issues of sexuality and sexual autonomy in the face of opposition from conservative religious and political bodies, the verdict on transgender identities and rights fits in better with the agenda of a welfare state. Transgender subjectivities and identities can be more readily represented within discourses of Indian traditional culture, whereas critiques of same-sex sexual rights praxis more typically associate with modern identity claims, located in reference to both transnational and local sexual rights praxis (hence not requiring political recognition in the 'indigenous' terms that have animated some transgender rights claims and recognition).

All Indian governments – of different political dispensations – since the early 1990s have taken the path of economic liberalisation and economic growth. At the same time, India is a

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[9] Legislation enforced in India during British rule against nomadic and other communities defined as 'habitually criminal' – these communities were systematically registered by the government, restrictions were imposed on their movement, their adult male members were forced to report weekly to the local police; any defiance of these rules could result in arrest without a warrant.

welfare state, which requires a commitment to correct historical social wrongs around gender, caste, race and religion that have contributed to economic exclusion and a growing income disparity (according to the Organisation for Economic Co-operation and Development (OECD), by 2011, income inequality in India had doubled in 20 years) (Times News Network 2011). Thus all governments have undertaken economic redistribution through poverty alleviation programmes, often in the form of subsidies delivered through a variety of social security schemes or entitlements.[10] In spite of much criticism for being politically expedient, inefficient because of misappropriation, inducing dependence on the state instead of generating enterprise, and for diverting resources from health and education systems that could provide equal opportunities[11] and increase productivity (Bhalla 2014), these schemes seem set to continue even under the new government. The Supreme Court judgement on transgender issues is likely to resonate in the same sense with the government.

Going by the broad assumption that economic redistribution has a place in larger efforts to ensure economic inclusion and that it does not necessarily contradict an emphasis on economic growth (Bhalla 2014), this case study will look at how India's economic policies and welfare principles and programmes pan out for people with non-normative genders and sexualities, who by their very existence provide a test case for India's claim to be a mature democracy. What kind of space does Indian democracy provide for dissent and plurality around issues of gender and sexuality in the context of economic inclusion? Do India's aspirations of an emerging global power factor in social security for some of its most socially and legally stigmatised communities? What kind of social security schemes are available to people with non-normative genders and sexualities in India? What is their 'quality' (accessibility) *vis-à-vis* the socioeconomic, cultural and legal realities of people with non-normative genders and sexualities? Based on this assessment, the case study will also recommend better strategies for economic inclusion of people with non-normative genders and sexualities.

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[10] Used as an umbrella term in this study for citizenship and identity documents, social welfare measures and legal aid services.
[11] A related line of argument says that social entitlements should not be confused with rights; that they should be seen as only one aspect of realisation of rights that costs money and so should not be allowed to grow beyond a point: 'Rights are freedom from oppression by the state or society (through ethnicity, religion and gender)… entitlements, however, are welfare measures entailing government handouts. Rights are not limited by budget constraints, but entitlements are. So, rights are universal but entitlements are not' (Aiyar 2010).

2 Methodology

The study aimed at gaining a qualitative understanding of the economic inclusion status of people with non-normative genders and sexualities in India, the barriers and facilitators to such inclusion, and strategies to improve inclusion. To this end, the study examined government poverty alleviation programmes, their capacity to include people with non-normative genders and sexualities, and the responses of the people affected. The study adopted a mix of primary and secondary research methods to find answers to a set of broad and specific research questions. It started with a preliminary literature review, which informed subsequent semi-structured interviews with people with non-normative genders and sexualities, government officials, NGO representatives and donor officials involved in social security provision. Parallel to the interviews, FGDs were conducted with people with non-normative genders and sexualities. The data from all three methods were triangulated for the purpose of assessment. Furthermore, the lived experience of the authors of this report as development professionals and activists contributed to the analysis of the data collected.

Given the study's aim of acquiring a qualitative understanding of the situation rather than any statistical generalisation, the respondents to the interviews and FGDs were chosen through purposive sampling from among all the key stakeholders involved – people with non-normative genders and sexualities and their community peers or leaders, government bodies, NGOs and donor agencies. The key consideration for selection was engagement with social security service provision, either as an applicant, facilitator or supplier of such services. Specific guides were prepared for the interviews and FGDs, with informed consent and confidentiality considerations built into them.

In the case of respondents with non-normative genders and sexualities, the focus was on questions and pointers for discussion that helped gain an experiential understanding of the economic precarity and opportunity among the respondents. Apart from their profile in terms of age, place of residence, educational level, occupation, family and relationship status, they were asked if they had information about government poverty alleviation programmes or social security schemes and, if yes, the experience in accessing these schemes. These questions usually helped start the ball rolling as it helped explain the objective of the research (even though the objective was also explained at the time of recruiting the respondents, breaking it down with the help of examples of specific programmes or schemes was necessary to start the discussion). Subsequently, the problems or barriers experienced by the respondents in accessing the schemes were discussed, as also how these programmes or schemes intersected with the day-to-day lives of the respondents. Some respondents shared how they responded to or chose not to respond to the barriers.

The last part of the discussion (interview or FGD) was typically focused on suggestions from the respondents on what the government should do to ensure better access to social security schemes. In one of the FGDs, where many of the respondents were exposed to studies on HIV in the past, the researchers were asked to ensure that the case study resulted in constructive advocacy with the government to change their situation for the better and did not remain 'just another study'.

The FGD respondents included *hijras* and other trans women (TG)[12] in Odisha; *nupi manbi* in Manipur), trans men (*nupa maanba* in Manipur), women who have sex with women, and men who have sex with men (MSM). All identity terms used here are those used by the respondents or closest possible 'explanations' in English (in two or three instances, the respondents expressed a sense of sexuality in terms of their sexual and romantic relationships, or through expressions like 'feel like a real man' or 'female' in relation to how

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[12] In the context of relevant communities in this context the term 'TG' is used popularly as term to express a transgender identity.

sexual attraction might confer a sense of gender). The respondents in the interviews and FGDs were not necessarily asked what identity terms they preferred. In the interviews, this came through in the course of the discussion, but in the FGDs, where most respondents were associated with support forums for people with non-normative genders and sexualities, most were forthcoming with the information without being prompted.

There were two FGDs, each with eight individuals, and one each in Manipur and Odisha states (the two study sites). The respondents chose the FGD venues – an NGO office in Manipur and an NGO drop-in centre attached to the residence of a *hijra* leader in Odisha. The interviewees, seven in all (spread across the two sites), included one of each of the following – *hijra* community leaders, trans men, women involved in romantic and sexual relationships with other women, NGO representatives engaged in facilitating access to social security, free legal aid providers, government officials engaged in the national HIV programme, and multilateral donor officials. The interviews took place either at the residences or work places of the respondents.

The interviews and FGDs took place in Imphal, capital of Manipur state in Northeast India, and Bhubaneswar, capital of Odisha state in eastern India. The respondents were either residents of these cities or neighbouring rural areas. Respondent access and local logistics were facilitated through SAKHA,[13] a CBO of 'sexual minorities' in Odisha, and a network of MSM and transgender CBOs in Manipur called All Manipur Nupi Maanbi Association (AMaNA). Though income class was not specified as a selection criterion, respondent selection was influenced by the reach of the study partners and was biased towards individuals from the lower- and middle-income classes.

Both study partners, SAKHA and AMaNA, are community initiatives that mobilise and organise people with non-normative genders and sexualities around their health, development and rights concerns. Further, they each advocate on these concerns while also undertaking implementation of government or donor-funded programmes on similar issues. Though not perceived to be the primary organisations addressing these concerns in their respective states, they are often seen as spearheading the campaign for queer rights in the state level media, including Odia and Manipuri media, and increasingly in dialogue with their state governments.

In terms of social security schemes, the analysis was both India-wide and state specific. Though many of the social security schemes have all-India coverage and are based on central government policies and laws, their implementation differs from state to state (because of local factors and state-specific priorities and systems). Some of the national schemes may also have local counterparts; equally some schemes may be unique to the states. Thus this study offers a national overview while looking at specificities in Manipur and Odisha that can also inform economic inclusion action elsewhere in India.

The preliminary preparations for the study were carried out in May 2014, including development of the research questions and instruments, dialogue with the study partners and guiding them for respondent recruitment and logistics arrangements. Literature review for the study was conducted in June–July 2014, while the primary data collection activities were spread over August and September 2014.

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[13] SAKHA (Our Rights…Our Dignity…).

3 Legal and policy background

This section outlines the legal and policy background that informs the socioeconomic context in which people with non-normative genders and sexualities live in India. It examines the economic inclusion measures available in the form of government poverty alleviation programmes, with a focus on social security schemes. It outlines a series of factors that make some of the most important social security schemes easy or difficult to access.

3.1 Socioeconomic context and 'non-normative genders and sexualities': an assessment

In a social and legal environment that is still largely entangled with the issue of criminalisation of non-normative genders, sexualities and sexual behaviours, it is not surprising that government, donor and civil society initiatives have not prioritised large-scale and detailed quantitative socioeconomic and demographic assessments, nationally or regionally. Indeed, as noted above, there is some ambiguity about how the socioeconomic circumstances of same-sex desiring and transgender people might be categorised and quantified, given that terms of identity may be ambivalent; not neatly mapped onto bodies and subjectivities in straightforward terms. 'Where is the social recognition of our identities and families?' asked a *hijra* FGD respondent in Odisha.

In respect of population numbers, until recent years, the only estimations available were for MSM and trans women (often taken together) in the context of epidemiological monitoring of the HIV epidemic. This kind of monitoring has been discussed as a process via which specific sexual subject categories, such as *kothi*, have been 'produced', popularised and made accessible as a term of identity among non-normative sexual subjects (Boyce 2007). This is not to suggest that such terms are not contextually local and meaningful outside of the registers of HIV prevention work, but that the use of such a term as a fixed category of identity in epidemiological monitoring can be at odds with the complex and varied ways in which a term such as *kothi* is used to evoke varied aspects of gendered and sexual experience that are not necessarily related to discrete, non-normative gender and sexual identities (as noted above).

In 2006, the National AIDS Control Organisation (NACO) estimated that the country had around 2.35 million MSM and trans women particularly at risk of HIV infection (Haldar and Kant 2011). The Census of India in 2011 provided the first broader estimates of the trans woman population in India at 490,000 (Odisha 20,000) (Nagarajan 2014), though this figure was considered as an under-estimate because of stigma that discourages people from talking about their sexual orientation or gender identity. Possibly this is the reason that no population estimates exist for females with non-normative genders and sexualities. As the Indian queer movement gathered momentum and engaged the judiciary, law-makers and policymakers over the last two decades, government bodies have been pressed to commit health and development resources for people with non-normative genders and sexualities. Indeed much of the activism pertaining to the initial 2009 'reading down' of Section 377 was initially instigated by HIV prevention activism (pressing forward the point that effective HIV prevention aimed at working with people of transgender and MSM required a legal environment that did not criminalise such genders and sexualities). In the context of such activism, the question of 'how many' arises repeatedly and answers have to be found jointly by all the stakeholders concerned, even if this may in part complicate the relationship between 'fixed' population estimates in relation to ambiguous sexual and gender identities. This issue is intrinsic, for example, to how some MSM are imagined as being 'hard-to-reach' for the purposes of HIV prevention. In practice, it may be policy and practice-oriented strategies aimed at classifying such men according to identifiable and measurable categories of sexual identity that may obscure understanding of the subjective complexity and social

diversity of male-to-male sexualities, in India and elsewhere, inhibiting the inclusion of such men within HIV prevention strategies (Boyce, Chakrapani and Dhanikachalam 2011).

Moving beyond questions pertaining to elusive population estimates, the situation is similar for income and education data. Among the most recent estimates for MSM and trans women are studies conducted under Project Pehchan, a large-scale 18-state sexual and reproductive health and HIV programme led by the India HIV/AIDS Alliance and supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria. The Pehchan midline study in 2012 estimated that the average monthly income for MSM and trans women (n = 550 across six Indian states) was 6,394 rupees;[14] and 87 per cent of the respondents (n = 601) were literate, but only 10 per cent were graduates and more trans women were illiterate than MSM (19 per cent against 10 per cent) (India HIV/AIDS Alliance 2012). Programmatic and anecdotal evidence provided by NGOs and CBOs, and also the information provided by respondents to this study, showed that feminine MSM and transgender students faced bullying and sexual violence in schools and colleges, often with no redress if they complained to the authorities or their families, leading to many early drop-outs (Vagneron and Houdart 2013; Ghosh 2008). Community respondents in Odisha said that for many *kothi* adolescents and youth, dropping out of school was as inevitable as separation from their biological families and the communities they grew up in, where they also faced extreme violence for not living up to the social norms and family expectations. After being evicted from home or leaving voluntarily, for many of them joining *hijra* families was the only recourse (Narrain 2003). In Manipur, trans men respondents narrated a similar experience of dropping out from educational institutions because of stigma and discrimination.

Not surprisingly, loss of education, shelter and property rights translated into a severely limited set of occupational choices. The present study found that for *hijras* in Odisha, apart from the traditional *chhalla* and *badhai*, (unprotected and exploitative) sex work and small trades seemed to be the only choices available to them. Other trans women and feminine-identified MSM depended also on sex work as a secondary occupation. This finding is corroborated by the Pehchan midline study that reported that sex work was the secondary occupation for more than 40 per cent of the respondents, though overall MSM were better off in that about a third had salaried employment as the primary occupation. Trans men respondents to the present study in Manipur were almost all engaged in running small businesses such as poultry farms, rice mills and grocery shops. Many of their trans women and/or feminine-identified MSM preferred running beauty parlours or being employed by one, or working as actors in Shumang Leela, a popular folk theatre form in Manipur where many of the female roles are played by cross-dressed men and which seem to accord them a degree of social acceptance (Samom 2014). In both Manipur and Odisha, a small number of MSM and trans women were also engaged with NGOs and CBOs as outreach staff in HIV-focused programmes. In all of these circumstances conditions of economic precarity were seen to prevail, as research participants reported making choices for livelihood in circumstances of limited options.

The health impact of the adverse social, legal and economic conditions on people with non-normative genders and sexualities is another area of concern. This is a relatively better documented area, though much more research remains to be done. In terms of mental health, the impact of emotional, physical, sexual, financial and structural violence is felt across all sections of people with non-normative genders and sexualities. Depression, anxiety disorders, suicidal tendencies as well as actual suicides, a large number of them by lesbian couples, have been reported by several health programmes and studies (Arasu 2008). Among MSM and trans women, researchers have begun to explore the linkages between stigma, violence, mental health and HIV-related risk behaviours (Thomas *et al*. 2011), which might explain why HIV prevalence among MSM and trans women was 16 and

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[14] Approximately US$1,245 annually at exchange rates prevalent on 1 October 2014, which is far lower than India's gross national income per capita.

61 times higher, respectively, than the prevalence in the overall population in 2009–10 (World Bank 2012). Unfortunately, the National AIDS Control Programme (NACP) still prefers to emphasise a restricted approach to its HIV interventions, focusing largely on behaviour change (safer sex education), condom distribution and sexually transmitted infection (STI)/HIV testing and treatment, with little invested in upgrading the advocacy and counselling components to address social stigma and psycho-social concerns.

A related medical and psycho-social aspect for trans women and trans men is access to quality and affordable feminisation or masculinisation services (which include gender identity change, sexual reassignment surgery and hormonal therapy). The biggest impediments are lack of legal clarity, expensiveness and availability only in big urban centres (Gupta and Murarka 2009). The Pehchan midline study recorded that few trans women managed to access these services from registered medical practitioners and most depended on quacks or *hijra* gurus, who adopted medically unreliable methods that led to complications such as urinary tract infections and post-operative trauma. Non-medically guided feminisation processes that involve hormonal therapy can also interfere with antiretroviral therapy for HIV (Singh *et al.* 2013). The implications of the Supreme Court verdict on transgender identities and rights are still not clear in this regard, though it has made the process of gender identity change much easier legally, as no medical certification is required for the purpose (Gupta 2014a).The Supreme Court judgement states that gender change does not require sexual reassignment surgery or any kind of medical tests and approvals – it is enough for a person to self-claim a trans gender identity for the purpose of getting an affidavit made in a court of law to record the gender change.

The issue of economic inclusion for people with non-normative genders and sexualities is therefore complex and embedded with myriad challenges, relating for example to socioeconomic precarity relating to sexual and gender non-conformity, poor health-care conditions and difficult legislative environment. In the words of a respondent from Manipur: 'Most of the LGBT [lesbian, gay, bisexual and transgender] people are not interested in getting married to the opposite sex. On the other hand, society has not recognised same-sex relationships and couples. Therefore they are getting old and aged, and there will be no one to look after them. Looking into such destitution of the community, the government should provide more schemes for LGBT people.'

The government's welfare intentions therefore need to be backed with the political willingness to address a number of challenges: (a) dealing with social stigma at the family and community levels; (b) decriminalisation and protection from sexual assault; (c) ensuring that children and adolescents with non-normative genders and sexualities remain within the education fold, while the adults who missed out on earlier opportunities have access to non-formal education, skills-building programmes and a wider range of livelihood options than currently; (d) ensuring non-discrimination at the workplace; (e) housing and food security support; and (f) access to quality and inexpensive physical *and* mental health services. Underlying these challenges is also the need to ensure that people with non-normative genders and sexualities enjoy the fruits of health and development in their desired genders and that the family structures that support them or the sexual/romantic relationships that are meaningful to them be respected and acknowledged.

3.2   Analysis of social security availability

The present study attempted to assess whether the government's economic inclusion efforts measured up to the challenges described above concerning factors that impact the wellbeing of non-normative sexual and gender minority peoples, and the roles that may be played by donor agencies, NGOs, CBOs and the communities concerned in addressing such circumstances. A quick overview of the social security schemes or social entitlements that form the mainstay of the government poverty alleviation efforts shows that there are three broad, inter-linked aspects: (a) citizenship and identity proof documentation; (b) social

welfare schemes; and (c) legal aid services. Additionally, a related aspect is the social welfare approach built into the government public health programmes, such as the NACP and health insurance schemes.

Essential citizenship documentation in India includes the issuing of birth certificates, passports, voter identity cards and ration cards – these also serve as proof of identity and address. Ration cards are mainly for access to subsidised food through the Public Distribution System (India's largest subsidy-based social welfare programme) and are of three varieties – Below Poverty Line (BPL) ration cards, Antyodaya ration cards (for the poorest of the poor who cannot buy food grains throughout the year even at BPL tariffs), and Above Poverty Line ration cards (which provide limited access to subsidised food).

The BPL is a poverty threshold used by the central and state governments to indicate economic disadvantage and to identify individuals and households in need of government assistance and aid through its food security programme and other social welfare schemes. It is determined using several parameters of deprivation such as food security, literacy, education, housing, clothing, sanitation, means of livelihood and status of children, among others – with variations in parameters for urban and rural areas, and between states. Special surveys are conducted to identify individuals and households that are living below the poverty line (the last such survey was conducted in 2002). Families identified as BPL are issued ration cards that include the names of all family members covered. If a child in a BPL family grows up to get married, s/he can also apply for a card for his/her family by marriage. The BPL threshold has been criticised over the years for not taking into account all relevant deprivation parameters, apart from being open to misuse (in the form of fraudulent BPL ration cards) and political manipulation. 'Corruption, bribe and nepotism – these are the realities of our lives,' complained many of the FGD respondents in Manipur, not just in relation to BPL ration cards but also government programmes in general.

The Antyodaya ration cards are issued as part of the Antyodaya Anna Yojana welfare scheme started by the central government in 2000, when it was estimated that there were one crore (10 million) eligible families. Antyodaya ration card holders must necessarily have BPL enlistment and are issued the cards by Block Development Officers – government officials at the sub-district level (Indian Yojana n.d.).

Among other documents that serve only as identity proof which are issued to all Indian nationals (whether or not citizens) are the permanent account number or PAN cards (alpha-numeric identifiers of Indian income tax payers) and Aadhaar cards,[15] the most recent additions to the long line of identity documentation in India.[16] Aadhaar cards are unique and life-long identity number cards based on demographic and biometric information, and linked to the National Population Register. The key objective behind Aadhaar is to facilitate easier access to financial services for the rural and urban poor, including ease in opening a bank account, and it complements the Reserve Bank of India's efforts to ensure greater economic inclusion through a liberalisation of banking policies and strategic use of internet and mobile telephony (Reserve Bank of India n.d.).

There are government proposals to link Aadhaar cards to individual bank accounts to facilitate flow of direct cash transfers to the poor (as a substitute to the provision of subsidised food, utilities and other public services through a gamut of schemes and systems that are susceptible to corruption, leakages and financial misappropriation). Y. Ranjit, an FGD respondent in Manipur, reported that he had once applied for a social security scheme, but was so fed up with the corruption involved that he decided to never make another

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[15] Issued by the Unique Identification Authority of India – established by the government in 2009 as an attached office of the Planning Commission of India.
[16] Yet other identity documentation for more specifically targeted social security objectives includes caste and tribe certificates.

attempt and waste his time! This observation points to the complexities involved in accessing social welfare schemes in equitable and fair terms.

One of the biggest social welfare schemes undertaken by the Government of India in the last decade is the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS; institutionalised through an Act of the same name in 2005) (Government of India 2005b). A job card is issued to each adult member of a family registered with the Gram Panchayat,[17] who is willing to take up unskilled work options in rural areas. The job card is supposed to guarantee 100 days of wage employment a year. The scheme covered 644 districts in the financial year 2013/14, with 13.1 crore (131 million) households registered and 220.3 crore (22.03 billion) person days of employment created. But this translated to an average wage rate per day per person of only 132.70 rupees (just above US$2), and only 46.6 lakh (4.66 million) or less than 4 per cent of the registered households actually received 100 days of employment support.

Much criticised for being wasteful, corrupt, populist and increasing wages without increasing productivity (and thereby fuelling inflation), it has also been credited for having improved rural wages, provided rural homes with greater ability to withstand economic shocks and building rural infrastructure to complement the works of other government departments (Pande and Mann 2014). Proponents of the scheme believe that the new central government will scale back the scheme, if not close it entirely. For people with non-normative genders and sexualities, as iterated by respondents in the present study, a scale-back does not matter so much as actual access in the first place.

On the housing front is the Indira Awaas Yojana (dating back to 1985), which is a public housing scheme for rural homeless[18] families and those living in dilapidated and *kutcha*[19] houses, with a component for providing housing sites to the landless poor as well. The scheme is meant for BPL households, which are provided financial and technical assistance from the Government of India to get housing sites or build their houses. The scheme prioritises the Scheduled Castes and Scheduled Tribes and other marginalised communities and minorities based on specific criteria.[20] Odisha State has a local counterpart for this scheme called the Mo Kudia Yojana started in 2008–09. It has similar characteristics and prioritises women in distress, women-headed households and people living with HIV (PLHIV), apart from a number of other groups of people. It requires ownership of land as a criterion for eligibility to the scheme.

In the sphere of public health, paradoxically, while criminalisation of people with non-normative genders and sexualities has a negative impact on their socioeconomic inclusion, it does not seem to stop or debilitate the process entirely. For instance, in spite of criminalisation of people with non-normative genders and sexualities, India's NACP has for more than a decade prioritised interventions for MSM and trans women (and as noted, HIV prevention activism was instrumental in changing the legal environment regarding non-normative genders and sexualities in India, albeit that this has more recently taken a more regressive turn). This has had its own share of controversy in that 'targeting' already vulnerable communities for 'controlling the spread of HIV' is not quite progressive as it leaves out the structural factors that make them vulnerable in the first place. On the other hand, the HIV programme was for a long time the only government programme that acknowledged the existence and right to life of people with non-normative genders and sexualities (albeit only those assigned male gender at birth) (Government of India 2011b).

Over time, the HIV programme sought to acquire a more progressive face. Thus for some time now it has had the beneficial impact, however limited, of facilitating social security

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[17] The lowest tier of India's Panchayati Raj rural self-governance system.
[18] To be differentiated from those who may have houses but are landless.
[19] Houses made with wood, mud, straw and dry leaves – of a crude build, often for temporary dwelling.
[20] See Indira Awaas Yojana, Ministry of Rural Development website (http://iay.nic.in/netiay/home.aspx).

access (including legal aid) for trans women through programmes supported by NACO, UNDP India and NALSA[21] – on the grounds that most at-risk populations need social security access to counter HIV vulnerability. In fact, this phenomenon pre-dates the Supreme Court verdict on transgender identities and rights by a few years (roughly since 2009–10) and in effect the Supreme Court verdict can be seen as an outcome of successful legal and structural advocacy that originated in and expanded from the national HIV programme.

However, the Legal Services Act 1987 (amended 1994), which provides for free legal aid for weaker sections such as women, children, victims of trafficking, Scheduled Castes, Scheduled Tribes and those earning below 100,000 rupees[22] annually, is yet to formally include trans women (and PLHIV) in its purview.[23] Currently its benefits are extended to trans women earning below the stipulated limit through a special order issued by NALSA to the State and District Legal Services Authorities. According to a key official interviewed from the Manipur State Legal Services Authority in Imphal, Manipur is one of the few states that have formally enlisted trans women in the list of beneficiaries.

Other noteworthy public health programmes in relation to social welfare include the central government's Rashtriya Swasthya Bima Yojana[24] and the Odisha government's Madhu Babu Pension Yojana.[25] The first is a health insurance scheme launched by the Ministry of Labour and Employment to protect BPL households from financial liabilities arising out of health shocks that involve hospitalisation. Coverage extends to five members of the family: the head of household, spouse and up to three dependants. Beneficiaries need to pay a nominal sum as registration fee while the central and state governments pay a premium to the insurers selected by the state governments on the basis of a competitive bidding.

The second programme is a monthly pension scheme of 300 rupees[26] per month launched by the state government of Odisha in February 2008 for PLHIV and AIDS widows (provided their annual family income does not exceed a certain level) and is supposed to be a life-long pension. It is also applicable for other marginalised sections of society. In the case of PLHIV, it does not involve any physical verification of the beneficiaries. Consent for inclusion is taken at the post-HIV test counselling stage at the Integrated Counselling and Testing Centres. Thereafter the entire chain of communication between government officials and beneficiaries functions on the principle of shared confidentiality and beneficial disclosure, and the beneficiaries receive the pension at home through account payee cheques. The scheme has been criticised for its small amount of pension and irregular payouts, but it continues to run. According to OSACS, 22,000 people benefited from the scheme up to 2014, but as mentioned in Section 4, according to trans women leaders in Odisha, most trans women living with HIV have not benefited.

With this background in mind, the following section turns to explore the key findings from the research. It discusses initiatives undertaken by people with non-normative genders and sexualities to improve their socioeconomic status, often with the support of donor agencies and NGOs and through CBOs. These measures are then closely linked to the recommendations for policymakers and donors outlined in Section 7.

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[21] Key petitioners in the matter of the Supreme Court verdict on transgender identities and rights.
[22] Approximately US$1,620 – based on the exchange rate as of 1 October 2014.
[23] See National Legal Services Authority website (http://nalsa.gov.in/).
[24] See Rashtriya Swasthya Bima Yojana website (www.rsby.gov.in/about_rsby.aspx).
[25] See Odisha State AIDS Control Society website (http://wcdodisha.gov.in/node/64).
[26] Less than $5 – based on the exchange rate as of 1 October 2014.

4 Key findings

4.1 Barriers to accessing social security

Keeping aside the problems of inadequate budgets, misappropriation of funds, leakages (flow of resources away from intended beneficiaries) and illiteracy, which affect all sections of the beneficiaries, let us take a look at the factors or barriers that particularly impact people with non-normative genders and sexualities. First and foremost, as a donor agency official in Odisha observed in the context of the present study: 'Trans women in Odisha have some access to social security schemes, but not in their desired gender'. There may be no explicitly stated discrimination against people with non-normative genders and sexualities in India's policies, but there is a conceptual lack of acknowledgement of gender diversity at the policymaking level, on which the Supreme Court verdict on transgender identities and rights is yet to make a serious dent. Citizenship and identity documents such as voter identity cards have an option for 'other', but passports and ration cards still do not in all states of the country. Similarly, to add a further nuance, it is true that the Census now acknowledges a 'third gender', but this is a specifically boundaried categorisation; does it acknowledge the right of, say, a biological male individual to identify and be counted as a woman? Or, since gender self-determination and a 'third gender' are now accepted, will trans women living in hardship qualify for the Mo Kudia housing scheme in Odisha which covers poor women in distress?

It may be argued that a lot depends on how the Supreme Court verdict pans out in day-to-day implementation. But as of now, unless supported by a special order as in the case of the Legal Services Act or a strategic decision as in the case of the NACP, people with non-normative genders and sexualities are yet to be acknowledged institutionally by many social security schemes in their desired genders. For instance, the donor agency official interviewed for the present study pointed out that Odisha would soon have new ration cards, but the gender options still remain the same. This may not appear to pose a direct barrier to accessibility, as many people may be willing to compromise on the matter of their gender identity while filing their applications, but it has the potential to confuse some people on what gender basis to apply or put them off from applying at all.

W. Tilotama, a 46-year-old primary school teacher who identifies as a trans man and has been in a relationship with a woman for 24 years, said in the Manipur FGD:

> *I have never applied for any schemes because of lack of money and well-wishers. We need to come together to rectify the negative mindset of people towards our gender identity. I also want to get help and knowledge from learned people.*

The conceptual lack of acknowledgement extends beyond gender identity to diversity in family structures and intimate relationships entered into by people with non-normative genders and sexualities. For instance, the definition of 'family' in the MGNREGS is decidedly hetero-normative and bio-deterministic: '"Household" means the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card'. This definition potentially rules out the possibility of a self-created *hijra* family, for example, being counted for inclusion in the scheme, or for that matter from being included in a BPL survey or in Odisha's Mo Kudia housing scheme. The latter covers women-headed households but will it consider the matrilineal *hijra* households?

Similarly, when S. Thounoujam, a 32-year-old trans man in Manipur applied for a job card under the MGNREGS for himself and his female partner (as a family unit) in 2009, the Gram Panchayat official refused to entertain his request pointing out that they were 'not a normal man–woman married couple'. Or let us take the example of 45-year-old T. Bimola from Imphal, Manipur, who has been in a relationship with another woman since 2001 and works

for a small bakery near her home. She wants to plan for old age for herself and her partner, who works as a security guard. But she has only a vague idea about government housing schemes for the poor. She is also uncertain whether she and her partner can apply for a housing loan as a couple, and adds that if required she will apply as an unmarried woman and not reveal the status of her relationship with her partner.

There is also stigma at the implementation level against gender non-conformity. However well-intentioned the efforts of policymakers, interview and FGD respondents in both Odisha and Manipur pointed out that frontline government officials wield considerable social power at the ground level and they need an attitudinal change that will stop them from turning away people who don't fit the norm 'visually'. Meera Kinner, a long-time *hijra* community leader in Odisha, feels that stigma and the inhibition created by it is the reason why to date hardly any trans women living with HIV have been able to access the Madhu Babu Pension Yojana. An NGO official in Odisha corroborated that a common refrain among block- and district-level government officials is: 'Why should we help these people who beg and earn so much money?' The Pehchan study further adds that though the NACP has made available free antiretroviral therapy drugs for all people living with HIV, irrespective of income levels, most trans women and MSM living with HIV are unable to access these benefits because of stigma in health settings.

The policy level barriers also include instances of incomplete acknowledgement of nuances around diverse sexualities. For instance, as noted above, the Mo Kudia housing scheme requires a beneficiary to own their own plot of land to be eligible. But this completely ignores the reality that many trans women are evicted from their home and denied property rights. Such a prerequisite, therefore, acts as a barrier to social welfare access for the very groups of people who need it the most.

In a related example from the public health context, since the early 1990s until recent years, the NACP was the only government health or development initiative that acknowledged the existence of people with non-normative genders and sexualities, albeit only MSM to begin with. Trans women were subsumed within this category of 'high-risk groups' or 'most-at-risk populations', and it was after much debate and discord that trans women were considered as a separate category for targeted HIV interventions in the fourth phase of the programme that began in 2012 (NACO n.d.). The arguments put forward were that trans women were culturally distinct from MSM and socioeconomically more vulnerable to HIV.

While the NACP surveillance data for 2010 did bear out that HIV prevalence was nearly four times higher among trans women (including *hijras*) than MSM (World Bank 2012), what was not debated clearly was that the national HIV programme has always been biased towards feminine-identified MSM, particularly *kothis*,[27] who were easier to access given their greater social visibility in outreach hotspots (sexual and social networking cruising areas) and greater willingness to access drop-in centres set up by NGOs and CBOs. Their masculine counterparts (often labelled *panthis* or *giriyas* by the *kothis*) remained elusive and quite out of the purview of the programme, as did upper-middle and upper-class gay men who did not mix with the largely lower- and middle-class *kothis*. Little government or community effort went into accessing these or any other section of the faceless mass of MSM, who were not only at risk themselves but also contributed to the vulnerability of their feminine male *and* female sexual partners through their unprotected sexual behaviours. So should the frame of debate for better allocation of HIV programmatic resources have been between 'MSM (in a monolithic sense) and trans women', or between '*kothis* and trans women', or something else? In a larger gender justice sense, why are there no HIV resources for women who have sex with women or for trans men in India – many of whom are neither able to resist compulsory marriage nor say no to unprotected sex with their husbands?

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[27] *Kothis* are categorised as feminine MSM in the NACP, though beyond the HIV programme, the jury is out on whether *kothis* 'should be' considered MSM or trans women.

The reason for highlighting this example from the public health context is to alert policymakers, donors and civil society actors alike to the potential futility and dangers of addressing economic inclusion issues through a narrow identity lens. If parameters have to be framed at all for prioritising which people with non-normative genders and sexualities should have greater opportunities for economic inclusion, then there should be a more objective set of criteria to identify and address exclusion rather than only default association with specific gender or sexual identities.

At the implementation level, based on the interviews conducted in Manipur and Odisha, there seems to be a distinct possibility that many frontline government officials are still not aware that the Supreme Court has ruled that a person can now change his or her gender legally (through a court affidavit, without the need for medical certification) and apply for social welfare schemes in a gender that may not match their gender by birth. Also, it may be that it is not enough for an applicant to produce only a court affidavit – he or she may also need to reflect the gender identity change in all citizenship/identity documents relevant to the social welfare schemes concerned. Government officials too need to be made aware and trained thoroughly on these formalities so that they do not deny access to deserving applicants and guide them appropriately. During the present study Ch. Momon, advocate with the Manipur State Legal Services Authority and Lecturer at LMS Law College, Imphal, informed that the Manipur state government has not even moved on the Supreme Court verdict and expressed his opinion that it is necessary for the government to honour the verdict at the earliest. In comparison, the Odisha government is at least in dialogue with trans women CBOs to start transgender and *hijra* welfare activities (Dhall 2014b).

This issue is related to the need for 'evidence of marginalisation' that facilitates access to social security schemes. Sriharsha Mohanty, Programme Officer for the State Mainstreaming Unit, Odisha State AIDS Control Society (OSACS) noted that: 'A rights-based approach is necessary for social security access, but the government also follows an evidence-based approach. Government rules and regulations and documentation must be followed by all beneficiaries.' He admitted that the paperwork involved in providing evidence of one's marginalisation can be confusing and inhibiting. Indeed, from the point of view of a marginalised person, it could be said that the absence of evidence documents should itself be considered proof of marginalisation. But assuming that a certain amount of paperwork will be inevitable and even desirable (as it will strengthen a person's claim to many benefits and services), the challenge remains in how the paperwork can be simplified – especially for the illiterate.

For people with non-normative genders and sexualities, the process of simplification may also reduce the need to depend on 'local power centres', whether in the form of government officials or political leaders, who have the power to authenticate a person's identity but can be extremely judgemental about gender non-conformity. Thangjam Manao, a *nupa maanba* respondent in the Manipur FGD, said he had applied for a loan from a 'local official' to organise a community sports event. The official 'charged' him money, but eventually did not help him obtain the loan. The respondent knew that the government provided loans to encourage sports, but since the respondent did not know about the loan procedures, he could not proceed on his own, and had to organise the event with personal funds.

Sriharsha Mohanty thinks that NGOs and CBOs have a significant role to play in not only informing people with non-normative genders and sexualities about the social security schemes available to them, but in also motivating them to demand access to the schemes and in guiding them to complete the relevant paperwork. FGD respondents in Odisha said that even now trans women in the state do not know that they can obtain voter identity cards in the 'other' gender option, but they expect the government to take the lead in issuing guidelines and ensuring that these options can be exercised. In the Manipur FGD, the respondents were keen to learn about social security schemes as they felt that they would be

better able to deal with the hurdles faced by them in accessing the schemes – primarily around which departments to approach for different schemes. Also, as the example of T. Bimola from Imphal (p.20) shows, if people have the right information, they will be able to work out their own strategies to negotiate exclusion around non-normative genders and sexualities. Fortunately, the government itself is also willing to address the matter. For instance, OSACS has instituted the Sanjog card for PLHIV, which requires them to complete all identity and HIV status-related documentation on a one-time basis, after which the card facilitates pre-antiretroviral therapy registration at government health centres as well as easy access to all government social welfare schemes.

With regard to encounters of stigma and discrimination at the point of service delivery, Sriharsha Mohanty suggested that these should be promptly reported to the higher authorities. Similarly, Ch. Momon promised legal intervention into any complaints of discrimination. Both agree that government officials and lawyers need to be educated about the concerns of people with non-normative genders and sexualities for the complaints to be effective and see a role for NGOs and CBOs to facilitate this. However, a donor official from Odisha expressed that there could be no quick fix in this regard: 'Short duration sensitisations and training sessions won't be enough. Nothing short of a complete image overhaul in the popular media and literature will change social attitudes towards people with non-normative genders and sexualities. When even women's issues are still ignored, how can just workshops lead to gender equity?'

An NGO worker in Odisha engaged in facilitating social security access for marginalised communities (including MSM and trans women) agreed that stigma in government systems needs to be addressed. But self-stigma was perhaps a bigger barrier. While NGOs and CBOs can inform, educate, motivate and handhold people to a certain extent, they cannot be present every time an applicant needs to take follow-up action to the primary application submitted. Many applications, therefore, remain pending. To add to the complexity, MSM and trans women in Odisha, especially *hijras*, have a high degree of mobility, often travelling to different parts of India for a living and being away from their place of residence for long stretches of time.

4.2   Key omissions in the social security net

One of the areas where government initiative is missing is in ensuring protection for children and adolescents with non-normative genders and sexualities (particularly those who are gender variant) in family and educational settings.[28] India's extensive set of child protection laws and institutions fail to ensure family support for children and adolescents with non-normative genders and sexualities, and measures to prevent them from dropping out of school or college because of stigma, discrimination and violence. While the Right of Children to Free and Compulsory Education Act 2009 (Government of India 2010) entitles every child in the age group 6–14 years to free and compulsory elementary education, there exist Child Welfare Committees at the district levels – under the Juvenile Justice (Care and Protection of Children) Act 2000 – 'to determine the best interest of the child and find the child a safe home and environment either with his/her original parents or adoptive parents, foster care or in an institution' (ChildLine India n.d.). The Protection of Children from Sexual Offences Act 2012 addresses child sexual abuse, irrespective of the gender of the victim (an improvement on earlier sexual assault laws that ignored the boy child) (Government of India 2012). There also exists the National Commission for Protection of Child Rights to oversee the appropriate implementation of all child protection laws in the country.[29] But anecdotal evidence from NGOs and CBOs suggests that the Child Welfare Committees are often unable to deal satisfactorily with cases of runaway gender-variant children or adolescents. They are unable to decide whether to provide them with shelter in the male or female section, and neither are

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[28] A child is defined as anyone below 18 years of age in India.
[29] See National Commission for Protection of Child Rights website (http://ncpcr.gov.in/).

they able to appreciate gender diversity or transphobia as a compelling reason for a young person to leave home.[30]

The Supreme Court verdict on transgender identities and rights provides a good opportunity to ensure that the definition of 'best interest of a child' takes into consideration aspects of his or her gender and sexuality, as it may be at a particular stage of his or her life, without being judgemental. A focus on protection for children and adolescents with non-normative genders and sexualities will also imply much needed emphasis on 'prevention of economic exclusion' rather than sole dependence on finding a 'cure for economic exclusion' through a plethora of social security schemes. So far the only response seen in the context of education to the Supreme Court judgement has been rather tokenistic. The University Grants Commission and a few universities in different parts of India have expanded the gender options to new faculty joining universities and for students seeking admission to various courses. But this does not quite address the larger problem of denial of equal opportunities (Chhapia 2014; Dhall 2014b). FGD respondents in Odisha suggested that scholarships for trans women would be something far more substantial as a means of explicitly targeting unequal access pertaining to gender and sexuality non-conforming people within educational settings.

The issue of equal opportunities also needs to be addressed in the context of the workplace. While India has a comprehensive set of procedural guidelines for use in cases of sexual harassment at the workplace in the form of Visakha Guidelines – promulgated by the Supreme Court in 1997 and superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act – their applicability to people with non-normative genders and sexualities is still a matter of debate. In this context, only multinational corporate bodies in India seem to have taken some action, especially after the Delhi High Court ruling on Section 377 in 2009, in the form of more inclusive and non-discriminatory human resources policies (Community Business 2012). But this action seems to be limited to a certain class of the workforce, and there is a need to ensure that similar initiatives are undertaken to cover all kinds of employers and employees across all rungs of an organisational hierarchy.

Finally, in the context of public health too, the government, donors and civil society agencies have new opportunities to address crucial gaps. For instance, with the Supreme Court verdict in place, health insurance programmes like the Rashtriya Swasthya Bima Yojana should be expanded to cover needs such as sexual reassignment surgery for transgender people. The impact of the Indian queer movement has begun to be felt also on issues such as mental health and disability. Key proposed legislations on these issues framed in recent years speak about non-discrimination on the grounds of sexual orientation and gender identity. The Mental Health Care Bill 2013[31] and Rights of Persons with Disabilities Bill 2012[32] both provide a basis for the government to initiate public health programmes that focus on people with non-normative genders and sexualities or ensure their inclusion in larger programmes.[33] Initiatives in these areas of public health will not only promote cross-sectionality in working on non-normative genders and sexualities, they will also help to change the narrow 'HIV lens' with which MSM and trans women in India are often regarded *and* bring in hitherto less visible groups of people such as lesbians, bisexual women and trans men into the public health and social security fold.

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[30] Case studies of human rights violations maintained by NGO Solidarity and Action Against The HIV Infection in India (SAATHII) (www.saathii.org), Bhubaneswar Office.
[31] See www.prsindia.org/administrator/uploads/general/1376983253~~mental%20health%20care%20bill%202013.pdf.
[32] See http://socialjustice.nic.in/pdf/draftpwd12.pdf.
[33] The Mental Health Care Bill 2013 takes care to adhere to the latest World Health Organization stand on issues of sexual orientation and gender identity.

5 Community responses to exclusion

This section looks at community-level responses to the challenges of economic exclusion, and analyses successes and failures in this domain. It also highlights good practices and weaknesses within government poverty alleviation programmes (with reference to the findings described in the previous section). Combined with inputs received from the respondents to the study, Sections 6 and 7 then set out key recommendations for policymakers and donors. These are categorised into steps that can be taken immediately and those that will require longer-term deliberations and legal and systemic changes.

5.1 Community efforts on economic inclusion

The community level responses can broadly be classified into individual entrepreneurship, initiatives undertaken by CBOs of people with non-normative genders and sexualities, and donor-supported NGO initiatives. There may be no recorded analysis of individual enterprise among people with non-normative genders and sexualities in India, but the experience of NGOs such as Solidarity and Action Against The HIV Infection in India (SAATHII) can be illuminating. In 2006–07, when SAATHII started a partnership with Santi Seva[34] in Bhadrak, possibly the first exclusive CBO for trans women in Odisha, resource mobilisation for an income-generation programme was a key component (Sarkar *et al.* 2008). A preliminary situational analysis showed that all six initial beneficiaries of the programme were already small traders running businesses – grocery stores, bicycle repair shops, domestic poultry units, small eateries and tea shops – and the resources (interest-free loans) provided through the programme were used to enhance these. Some of them had more than one occupation, including sex work. This pattern was visible for the programme's duration as it reached a greater number of beneficiaries. Similarly, among the respondents to this study in Manipur, many were small traders.

Thus, government economic inclusion efforts for people with non-normative genders and sexualities should not presume absence of enterprise among the intended beneficiaries, and should rather build up on these aspects through skills building and marketing support. Additionally, the Santi Seva experience showed that sex work continued to be a primary or secondary occupation for some of the beneficiaries of the income-generation programme.[35] This may be because sex work was a way of life for them, perhaps both a means of expressing a sexuality in social circumstances that offer limited opportunities to do this otherwise and/or a strategy of hedging ones' economic risks borne out of distrust about the sustainability and transparency of civil society and government 'development' programmes. In the same vein, close-knit *hijra* communities (which require all members of a *hijra* household to deposit their earnings to the guru) can also be seen as an example of self-help and enterprise in the face of extreme stigma. In providing economic inclusion opportunities to them, external agents such as the government, donors and NGOs need to respect their 'traditional' choices as well, and note that in many instances these social welfare methods may be effective. For example, in the early stages of Santi Seva's formation, one of the priorities for some members was 'government identity cards' that would allow them to claim areas in and around Bhadrak town and the trains passing through for *badhai* and *chhalla* operations, and keep out other *hijra* networks from neighbouring districts. While no such identity cards could have been forthcoming, this expectation was an indicator of the intra-community concerns and it had to be factored into the group's strategy discussions.[36] In this instance, it was important to mediate the introduction of a welfare initiative *with* existing community-based means of welfare, achieving commensurable expectations such that

[34] Bhadrak, a trading centre famous for its worship of the goddess Kali, is the headquarters of a coastal district of the same name in Odisha State.
[35] Project records maintained by SAATHII.
[36] Author's personal experience in working with Santi Seva through association with SAATHII.

programme initiatives were not experienced as disrupting existing means of livelihood, or as promising unrealistic means of livelihood protection.

Among CBO-led initiatives, possibly the most common have been self-help groups (SHGs) for MSM and trans women. Inspired by the successes of women-dominated SHGs and associated microfinance opportunities in rural India (Ghosh 2012), many CBOs of MSM and trans women implementing HIV-targeted interventions have experimented with SHGs, but not many have lasted. In the experience of CBOs such as Santi Seva and others in different parts of India, social stigma, difficulties in acquiring banking linkages, scattered geographical locations of members that make conveyance and participation uneconomical, and high levels of migration are factors that seem to militate against an SHG for MSM and trans women. This is an area that requires more action research to understand how the SHG model can be better adapted for people with non-normative genders and sexualities.

Other CBO and NGO-led examples relate to vocational or livelihood training programmes, but in the experience of agencies such as SAATHII these need to be priced (even if nominally), closely linked to market research, interest levels, sociocultural realities, provision of seed capital and handholding in finding job opportunities.[37] Often, a majority of trainees may want to opt for the same skill (such as running beauty parlours) without much enquiry into the experience of other players in the same field, expectations of potential buyers in the planned geographical area of operation and the possibility of overcrowding. The training programmes need to be customised in terms of timings, say, for trans women engaged in sex work and other traditional occupations, or settings to help people still battling the fear of visibility. CBOs, NGOs and government bodies also have to attend to the psycho-social counselling needs of trainees to prevent drop-outs and persist with the programmes in spite of likely poor uptake in the early stages.

A relevant example of a donor-supported NGO programme focused on economic inclusion for MSM and trans women was the Agency for Socio-Legal Protection (ASLP) project implemented by SAATHII and supported by NACO and UNDP.[38] The project covered districts with high HIV prevalence in six states, including Odisha and Manipur. Its objectives included: 'Increasing access to public services, government schemes and legal aid for PLHIV and most at-risk populations like MSM, trans women, injecting drug users and female sex workers'. Completed in 2013, SAATHII continues to implement similar projects funded by other donors. However, these too have their basis in the HIV programme and so are limited in their coverage geographically and do not address the needs of females with non-normative genders and sexualities. While these programmes play a key role in mobilising, motivating and guiding people to access social security schemes, they can provide only limited advocacy and handholding support to complete all the processes involved. At some point, the applicants have to deal with the challenges of stigma and time-consuming follow-up on their own.

5.2   The need for caution in approaches to economic inclusion

Before we look at the recommendations arising from the present study, a note of caution about a reservationist approach to economic inclusion is in order. In the context of the Supreme Court NALSA judgement, any move to 'reserve' access to economic inclusion opportunities should be well thought out as it may prove to be inadequate or even self-defeating. For instance, in a recent development, the Delhi National Capital Region government invoked the Right of Children to Free and Compulsory Education Act 2009 to reserve a specific quota of seats for 'transgender children'[39] to take admission in schools (in their desired genders) across the region and pursue studies free of cost (Press Trust of India

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[37] Project records maintained by SAATHII.
[38] See SAATHII website (www.saathii.org/projects/aslp).
[39] The expression 'transgender children' is contested by people who argue that children should be given the time and space to choose their gender expression as they grow up rather than be labelled or stamped with specific identity terms.

2014). But will this be enough to ensure that 'transgender children' remain in school even in the face of stigma and discrimination? Media reports in this matter do not spell out any plans for sensitising and preparing faculty, parents or the students, or ensuring that complaints from 'transgender students' will be heard and anti-bullying measures deployed by school authorities.[40]

In Odisha, trans women leaders are even advocating for exclusive colleges for trans women as they do not believe that 'sensitisation and mainstreaming' efforts in existing centres will work. Exclusive colleges for women are cited as a precedent, but there has been little debate on whether exclusive colleges will reduce or strengthen social stigma in the long run. How many such exclusive colleges may be needed and how many will be possible, or why existing institutions should be excused from making the efforts at becoming inclusive are other questions that need to be answered (Dhall 2014a).

Apart from recognising the limits of identity-based and reservationist economic inclusion approaches, all the stakeholders involved – government, donors, NGOs, CBOs, community leaders – also need to consider prioritising social welfare schemes that focus on skills building. In 1997, the Government of India started a comprehensive employment support programme for the urban poor called the Swarna Jayanti Shahari Rozgar Yojana.[41] While the implementation of this scheme could be a matter of separate analysis, its stated objectives seem to have a greater focus on training and skills development than that of the rural behemoth MGNREGS, which guarantees employment for a limited period of time every year but does not focus on sustainable skills building.

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[40] Perhaps at a later stage, the larger issue of potential gender fluidity also needs to be addressed, since individuals may experience a change in gender identity as they grow up in years.
[41] See www.indg.in/social-sector/urban-poverty-alleviation/swarna_jayanti_shahari_rozgar_yojana_sjsry_guidelines.pdf.

6   Conclusion

The Indian legal environment, in spite of its contradictions and uncertainties, provides a good opportunity for the government to strengthen and demonstrate its commitment to social welfare and economic inclusion of people with non-normative genders and sexualities. Leaving aside contentious issues such as Section 377 and its criminalising impact for the long term, the government can build up on a number of progressive developments and legislations such as the Supreme Court's NALSA judgement, the Census of India's inclusion of transgender persons, the Legal Services Act and the Right of Children to Free and Compulsory Education Act 2009 to scale up social security access for people with non-normative genders and sexualities, both quantitatively (improved coverage) and qualitatively (reduced stigma). It can even justifiably commence the scale-up with trans women, trans men and intersexed persons, given the urgency of translating the Supreme Court NALSA judgement into action.

Similarly, socioeconomically poorer MSM (irrespective of femininity, masculinity or sexuality identity) can be prioritised on the grounds of greater vulnerability to HIV infection. Specific provisions of the Mental Health Care Bill 2013, if applied carefully, may also provide grounds to enhance social security access for people with non-normative genders and sexualities, including females with non-normative genders and sexualities. Of course, conflation between mental ill health and specific sexual orientations or gender identities must be avoided, and the mental health needs of people with non-normative genders and sexualities have to be seen as potential outcomes of stigma, discrimination and violence rather than as inherent to their sexualities.

According to government and donor officials engaged in HIV mainstreaming issues in Odisha, economic inclusion efforts for people with non-normative genders and sexualities need to focus on not just supply of social security but also demand generation. They also foresee a sustained role for NGOs and CBOs in both demand generation and supply assurance. Together, the immediate and long-term recommendations from the respondents and authors of the study for policymakers and donors are summarised in the following section.

7 Recommendations: the immediate and long-term future

Table 7.1 Immediate term recommendations

No.	Demand generation	No.	Supply assurance
1	Support community discourse[42] on issues of gender, sexuality and human rights to generate awareness and address self-stigma among people with non-normative genders and sexualities through community meetings/events/other forums.	1	Ensure the establishment of state-level welfare boards for people with non-normative genders and sexualities with community engagement – to begin with, at least for trans women and trans men as directed by the Supreme Court NALSA judgement.
2	Support efforts to inform and educate people about social security issues: (a) key policies that form the basis for government social security or poverty alleviation programmes; (b) legal developments such as the Supreme Court's NALSA judgement; (c) benefits and limitations of different social security schemes.	2	Facilitate discourse, sensitisation, training on gender, sexuality, human rights, social security policies and legal developments to generate awareness and address stigma among government officials at all levels of the hierarchy, health and legal service providers, educational institutions and media agencies.
3	Facilitate continuing initiatives that train and handhold people in negotiating the rules and regulations (paperwork) in applying for and accessing social security schemes, including timely follow-up.	3	Engage legal service providers (especially the government legal services authorities) in facilitating gender identity change and associated changes in relevant identity proof and citizenship documentation.[43]
4	Facilitate awareness-generation sessions on psycho-social, medical and legal processes involved in feminisation/masculinisation (gender identity change, sexual reassignment surgery, hormonal therapy) for transgender people with linkages to sensitised, inexpensive and suitably trained and equipped legal and health service providers.[44]	4	Facilitate widespread availability of quality (unbiased, state-of-the-art) and affordable feminisation/masculinisation medical services in government health centres and ensure that these services are covered by insurance schemes for the poor; in parallel, facilitate discourse on instituting protocols for feminisation/masculinisation procedures relevant to the Indian context among apex health-care associations (including those dealing with mental health).
5	Ensure one-stop windows to streamline and reduce the paperwork required for access to different social security schemes (similar to the Sanjog scheme of OSACS or the 'out-of-court dispute settlements' facilitated by the government legal services authorities to avoid lengthy and expensive litigation).	5	Improve public health programmes around HIV to better align them to vulnerabilities of all sections of people with non-normative genders and sexualities; around mental health to delink gender and sexuality non-normativity with mental ill health and ensure easy access to mental health services for people with non-normative genders and sexualities; around disability to ensure sensitivity to the specific needs of people with non-normative genders and sexualities.

(Cont'd)

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[42] This may be a term preferred over 'community education', which may carry patronising overtones.

[43] Other than the birth certificate, which records the 'official' gender status at birth.

[44] A key element of such awareness generation efforts should also be to inform people of the wider range of options available under feminisation or masculinisation. For example, the possibility of opting for only a gender identity change without sexual reassignment surgery or hormonal therapy (both collectively often referred to as 'sex change'); or of hormonal therapy without sexual reassignment surgery (though the reverse may not be possible); or of various genital change possibilities within the context of sexual reassignment surgery.

Table 7.1 (cont'd)

No.	Demand generation	No.	Supply assurance
6	Ensure effective and unbiased complaint mechanisms that address stigma in social security services as well as educational, health and legal settings in an inexpensive and speedy manner (similar to the alternate dispute redressal systems of government legal services authorities that help avoid lengthy and costly litigation).	6	Run comprehensive and sustainable livelihood and entrepreneurial skills-building programmes that are based on an in-depth understanding of interest levels of the trainees, their sociocultural realities and market research; extend this learning also to other economic inclusion initiatives such as SHGs to ensure durability.
		7	Ensure workplace security by sensitising organisations across all sectors to adopt inclusive and non-discriminatory human resources policies.
No.	**Intermediary actions**		
1	Adoption of a gender and sexuality education framework that infuses gender and sexuality equity in the entire syllabi of schools and colleges (rather than the introduction of just a standalone subject on 'sex education') and encourages appreciation and respect for people with non-normative genders and sexualities among students and faculty alike in educational institutions (Walikhanna 2012).		
2	Facilitate a long-term mass media campaign to address negative social attitudes against people with non-normative genders and sexualities and bring about a lasting 'image overhaul' that reduces stigma.		

The long-term recommendations for facilitating economic inclusion typically focus on further discourse around non-normative genders and sexualities leading to continuing policy and legal reforms. While decriminalisation of people with non-normative genders and sexualities (primarily through a repeal of Section 377) is now a long-standing matter (the campaign against it started in the mid-1990s) and should be seen as an immediate measure to facilitate economic inclusion, the positive spin-offs of decriminalisation are likely to take longer. The spin-offs can be in the contexts of legal recognition of queer marriages,[45] non-normative family structures, property inheritance by queer romantic partners (live-in or marital), and child adoption by queer couples. However, these will require changes in the legal definitions of marriage and family, which understandably will have to engage law-makers through a due process and will therefore take time. Yet, government and donor agencies can at least initiate a wider discourse on these matters in the context of legal developments such as the Supreme Court's NALSA judgement.

Another legal issue that needs reform is sexual assault. Again, the NALSA judgement provides a crucial opening to revisit India's laws against sexual assault and at the very least extend them to provide protection to trans women, for many of whom sexual assault in various forms is a day-to-day experience.

Finally, the government's poverty alleviation efforts can become far more accessible for people with non-normative genders and sexualities if there is a comprehensive anti-discrimination law in place. Civil society discourse in this regard is under way in the contexts of gender, caste, religion, disability and mental health, and efforts to include the issue of non-normative genders and sexualities are also under way. Activists argue that decriminalisation of people with non-normative genders and sexualities is only part of a larger battle against discrimination that needs to be bolstered with a strong legislation in line with constitutional values. Government and donor support in this regard will strengthen and speed up the process of economic inclusion.

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[45] The term 'queer' has been used to indicate not just same-sex relationships, but also mixed gender identity relationships, e.g. between MSM and trans women, a 'common' phenomenon in India (i.e. people with non-normative genders and sexualities).

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Brighton BN1 9RE

T +44 (0)1273 606261
F +44 (0)1273 621202
E ids@ids.ac.uk
www.ids.ac.uk