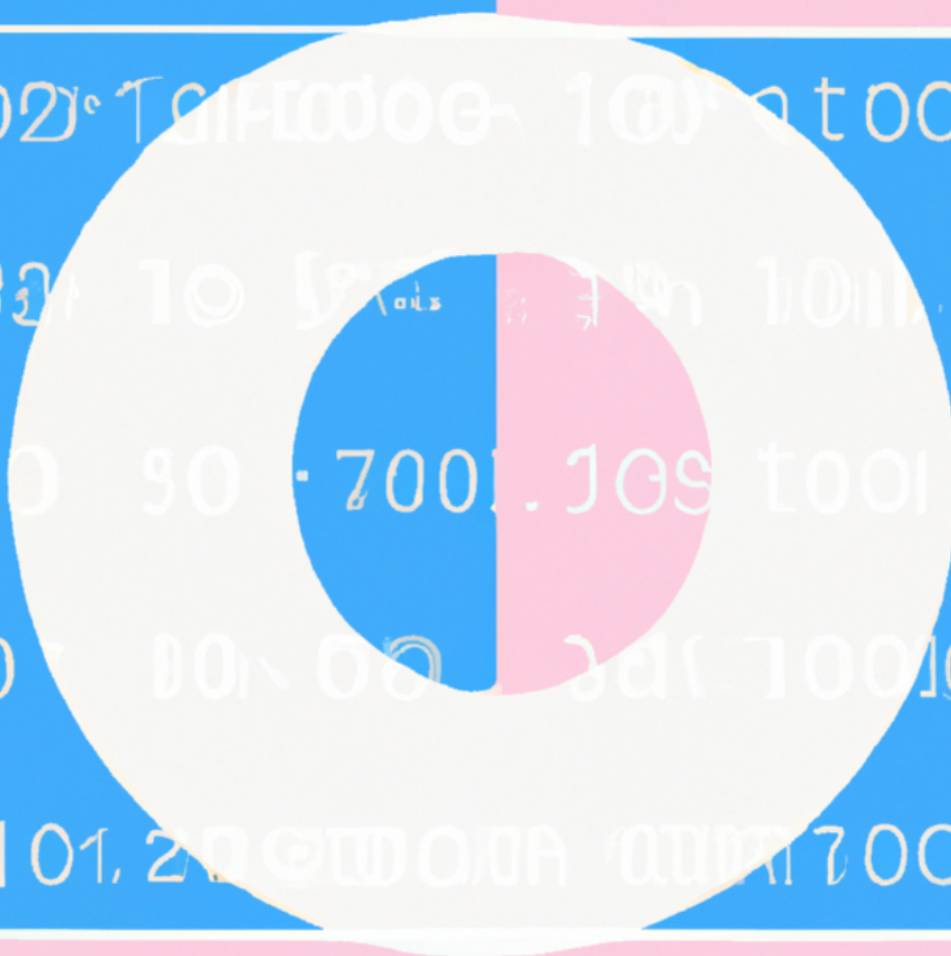


# Gendering of Development Data in India: Post-Trans Act 2019

#2 Data challenges due to  
Transgender Persons (Protection of Rights) Act 2019



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## Note

This is the second part of a report titled Gendering Development Data: Post-Trans Act 2019 authored by Brindaalakshmi.K for the Association for Progressive Communications supported by the Our Voices, Our Futures Project

Please read the full report here:

<https://genderit.org/articles/gendering-development-data-india-post-trans-act-2019>

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# 1. Introduction

Individuals are enumerated into different state (data) systems using government-issued identification documents for carrying out various civic governance activities and for the provision of development schemes. Different functional and foundational identification documents are essential to access different services, including state-sanctioned welfare. Linking these documents to Aadhaar, India's biometric<sup>1</sup>-based digital ID, has been made mandatory in 42 schemes.<sup>2</sup> Biometrics may be defined as "any automatically measurable, robust and distinctive physical characteristic or personal trait that can be used to identify an individual or verify the claimed identity of an individual". In *Surveillance as Governance*, Shivangi Narayan writes, "The government wants to use this data to decide whether citizens as a whole need welfare at all. Not just what it says in Aadhaar promotions - to target welfare better - but over a period of time decide whether welfare in itself is a good strategy... Government also wants to know whether you really are who you claim to be. In other words, are you destitute enough to warrant social security?"<sup>3</sup> It is therefore important to understand the manner in which transgender persons, a population group with a history of marginalisation and surveillance, enter the state's data systems to become eligible to access welfare.

An understanding of the 'gendering' of development data in India: Post-Trans Act 2019 begins with understanding the Transgender Persons (Protection of Rights) Act 2019<sup>4</sup> (henceforth referred to as the Trans Act). This statute defines the manner in which the Indian State recognises individuals who do not identify with the gender assigned to them at birth, also known as transgender persons, as valid human beings and issues them identity documents in their self-identified gender and name. Despite its problematic provisions, the Trans Act remains a significant development in recognising the rights of transgender persons. Building on the findings from the study, *Gendering of Development Data in India: Beyond the Binary*,<sup>5</sup> the second part of this study will discuss the challenges for transgender persons in procuring identification (foundational and functional) documents in their self-identified name and gender after the enactment of the Trans Act in 2019

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<sup>1</sup> Alan Gelb and Julia Clark (2013, Jan). Identification for Development: The Biometrics Revolution. Pg 8. Centre for Global Development Retrieved from [https://www.cgdev.org/sites/default/files/1426862\\_file\\_Biometric\\_ID\\_for\\_Development.pdf](https://www.cgdev.org/sites/default/files/1426862_file_Biometric_ID_for_Development.pdf)

<sup>2</sup> Narayan, Shivangi (2021). *Surveillance as Governance - Aadhaar | Big Data in Governance*. Pg 11. Peoples Literature Publication

<sup>3</sup> *ibid* pg 6

<sup>4</sup> Ministry of Law and Justice (2019, Dec 9). Transgender Persons (Protection of Rights) Act 2019. NO. 40 OF 2019. Retrieved from: [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2019/The%20Transgender%20Persons%20\(Protection%20of%20Rights\)%20Act,%202019.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2019/The%20Transgender%20Persons%20(Protection%20of%20Rights)%20Act,%202019.pdf)

<sup>5</sup> Brindaalakshmi. K (2020, June 29). *Gendering of Development Data in India: Beyond the Binary*. Centre for Internet & Society India. Retrieved from: <https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

and, consequently, the challenges with entering data systems in order to access different public and private sector services.

This part of the report will trace the developments that led to the enactment of a statute recognising the rights of a population group with a history of marginalisation and surveillance, the challenges with the statute, the process defined in the Trans Act for changing an individual's name and gender on any identity document, digitisation of this process and the (data) challenges that remain. The focus of this part is to highlight the manner in which the state qualifies transgender bodies for their recolonisation as described by Paola Ricaurte<sup>6</sup> and datafication, the different layers of entry barriers, the efforts required on the part of these individuals for state recognition, and the data challenges that still remain for this historically criminalised and pathologised population group due to a law that is meant to recognise their personhood and rights in a digital welfare state<sup>7</sup> like India.

## 2. Enactment of the Transgender Persons (Protection of Rights) Act 2019

Prior to the passing of the National Legal Services Authority (NALSA) Vs Union of India verdict<sup>8</sup> by the Supreme Court of India in 2014, there was no legal recognition of the right to self-identify as transgender in India. Post-independence, the colonial practice of criminalisation and surveillance of transgender persons has continued using Section 377 of the Indian Penal Code,<sup>9</sup> Telangana Eunuch's Act,<sup>10</sup> and Karnataka Police Act<sup>11</sup> until as recent as 2018, 2016 and 2018, respectively. In

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<sup>6</sup> Ricaurte, P. (2019). Data Epistemologies, The Coloniality of Power, and Resistance. *Television & New Media*, 20(4), 350–365. <https://doi.org/10.1177/1527476419831640>

<sup>7</sup> Digital Welfare State as described by Professor Philip Alston, UN Special Rapporteur on extreme poverty and human rights in his October 2019 report to the UN General Assembly - Office of the High Commissioner, Human Rights, United Nations. (2019, October 17). World stumbling zombie-like into a digital welfare dystopia, warns UN human rights expert. Retrieved from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25156>

<sup>8</sup> Supreme Court of India. (2014, April 15). National Legal Services Authority Versus Union of India and others. Writ Petition (Civil) No. 400 of 2012 with Writ Petition (Civil) No. 604 of 2013. Indian Kanoon. Retrieved from <https://indiankanoon.org/doc/193543132/>

<sup>9</sup> Supreme Court of India (2018, Sept 6). Navtej Singh Johar v. Union of India, Ministry of Law and Justice Secretary. Writ Petition (Criminal) NO. 76 OF 2016. Indian Kanoon. Retrieved from: <https://indiankanoon.org/doc/168671544/>

<sup>10</sup> Vyjayanti Vasanta Mogli & Ors. v. State of Telangana. WP (PIL) 44/2018. Centre for Legal and Policy Research. Retrieved from: <https://clpr.org.in/litigation/pil-challenging-the-constitutionality-of-the-telangana-eunuchs-act-1919/>

<sup>11</sup> Prakash, Rakesh (2016, Jul 15). Karnataka govt deletes 'eunuchs' from police records. Times of India. Retrieved from: <https://timesofindia.indiatimes.com/city/bengaluru/Karnataka-govt-deletes-eunuchs-from-police-records/articleshow/53230231.cms>

the NALSA verdict, the Supreme Court of India recognised the right of an individual to self-identify as male, female or transgender without any medical intervention.

“In spite of the adoption of Universal Declaration of Human Rights (UDHR) in the year 1948, the inherent dignity, equality, respect and rights of all human beings throughout the world, the transgender [people] are denied basic human rights. This denial is premised on a prevalent juridical assumption that the law should target discrimination based on sex (i.e., whether a person is anatomically male or female), rather than gender (i.e., whether a person has qualities that society considers masculine or feminine...” – NALSA Vs Union of India<sup>12</sup>

Nine directives detailed in this verdict were to be complied with by all state governments for the inclusion of transgender persons, a historically silenced population group in India. This included the introduction of an additional gender category on different application forms and services for the inclusion of transgender persons who identify beyond the gender binary of female and male. However, the scope of this verdict did not extend clarity around civil rights such as marriage, divorce or inheritance from their natal family.

The findings of *Gendering of Development Data in India: Beyond the Binary*<sup>13</sup> (the study) show the challenges in the implementation of the Supreme Court’s directives such as lack of uniform inclusion of transgender as a gender category across all identity documents, across Indian states. Neither was a clear process defined nor established by the states to change name and gender on identification documents.<sup>14</sup> Several states continued performing violative physical checks to determine the validity of an individual's self-identified gender identity. Arbitrary demand for a certificate of gender affirmative surgery has also been a common practice.<sup>15</sup> An existing identity document in given name and assigned gender was required to change to their self-identified name and gender. Many transgender individuals are ostracised by their natal family for their gender identity and expression and even thrown out of homes.<sup>16</sup> Many of them often run away from their

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<sup>12</sup> See footnote 7

<sup>13</sup> Brindaalakshmi K.(2020, June). Gendering of Development Data in India: Beyond the Binary #2, Pg.10-12. Centre for Internet & Society India. Retrieved from: <https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

<sup>14</sup> Brindaalakshmi K.(2020, June). Gendering of Development Data in India: Beyond the Binary #3, Pg. 4. Centre for Internet & Society India. Retrieved from: <https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

<sup>15</sup> Ibid Pg 7

<sup>16</sup> Padhi, M., & Mohanty, P. A. (2019). Securing Transgender Rights through Capability Development. Engage. Economic and Political Weekly. Vol. 54, Issue No. 1, January 05. <https://www.epw.in/engage/article/securing-transgender-rights-education-finance>

natal homes to escape domestic abuse and violence<sup>17</sup> so they do not possess an existing identification document in their assigned gender and given name. Owing to these challenges and other forms of systemic gender-based violence against them, transgender persons continued to struggle with changing their documents required to enter data systems, thus leading to further (data) exclusions.

After the NALSA verdict in 2014, Dravida Munnetra Kazhagam (DMK)<sup>18</sup> Member of Parliament Tiruchi Siva moved a private member's bill in the Rajya Sabha, the upper house of Indian parliament to protect the rights of transgender people.<sup>19</sup> Subsequently, in 2015, a modified version of the bill after community consultation, was drafted by the government as The Rights of Transgender Persons Bill, 2015 and sent to the law ministry. It was then tabled in the Lok Sabha, the lower house of Indian Parliament, in August 2016 after considerable revision to the 2015 version.<sup>20</sup> The 2016 version was referred to the Standing Committee on Social Justice and Empowerment. Among its many recommendations, the Standing Committee on Social Justice and Empowerment in its 43rd Report on the 2016 Bill before the Lok Sabha, the lower house of Indian Parliament, was the recommendation for 'defining the term "persons with intersex variations" to cover those who show variations in their sexual characteristics'.<sup>21</sup> The report pointed out the conflation between transgender and intersex in the definition of the 2015 version of the bill and the need to specifically address and protect the interests of intersex persons.<sup>22</sup> This report also recommended that every clause of the bill should explicitly mention trans men and intersex persons while providing facilities and rights.<sup>23</sup> After rounds of public criticism and government consultations, a new version of the

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<sup>17</sup> See footnote 13 Pg.6, PUCL and National Network of LBI Women and Trans Persons (2023, Apr 1). APNON KA BAHUT LAGTA HAI (OUR OWN HURT US THE MOST) Centering Familial Violence in the Lives of Queer and Trans Persons in the Marriage Equality Debates. Orinam. Retrieved from: [http://orinam.net/content/wp-content/uploads/2023/04/JS\\_Report\\_23\\_04\\_23.pdf](http://orinam.net/content/wp-content/uploads/2023/04/JS_Report_23_04_23.pdf)

<sup>18</sup> DMK (Dravida Munnetra Kazhagam) is a regional political party from the state of Tamil Nadu, India.

<sup>19</sup> P., Anuvinda, & Tiruchi, S. (2016). A Story of Two Bills. Indian Express. October 28. <https://indianexpress.com/article/opinion/columns/transgenders-persons-bill-rajya-sabha-private-member-bill-3195872/>

<sup>20</sup> Abraham. R. (2017). All you need to know about the Transgender Persons Bill, 2016. The Hindu. November 30. Retrieved from <https://www.thehindu.com/news/national/all-you-need-to-know-about-the-transgender-persons-bill-2016/article21226710.ece>

<sup>21</sup> Standing Committee on Social Justice and Empowerment (2017). Standing Committee Report Summary: The Transgender Persons (Protection of Rights) Bill, 2016. PRS Legislative Research. Retrieved from: <https://prsindia.org/billtrack/prs-products/prs-standing-committee-report-summary-2659>

<sup>22</sup> Standing Committee on Social Justice and Empowerment (2017). The Transgender Persons (Protection of Rights) Bill, 2016: Forty-third report. Pg 27. PRS Legislative Research. Retrieved from: [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2016/SCR-%20Transgender%20Bill.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2016/SCR-%20Transgender%20Bill.pdf)

<sup>23</sup> *ibid* page 114

bill was tabled in Lok Sabha, in December 2018.<sup>24</sup> The bill, with some changes, which did not include the aforementioned Committee recommendations, was enacted by the Lok Sabha on August 5, 2019 and by the Rajya Sabha, on November 26 and published on December 05, 2019 as 'The Transgender Persons (Protection of Rights) Act, 2019'.<sup>25</sup>

The Trans Act was passed in November 2019 amidst much uproar<sup>26</sup> from the transgender community due to several problematic provisions.<sup>27</sup> These provisions included mandatory sex reassignment surgery to identify within the binary genders of male and female, lack of reservation for transgender inclusion, non-recognition of the traditional hijra families and lower punishment for offences committed against a transgender person as opposed to a cisgender woman, among others. The draft rules of this statute were released after the outbreak of the COVID pandemic, when the entire world was under a global lockdown in 2020.<sup>28</sup> Respondents of this study mention that the transgender community was severely affected during the pandemic in terms of livelihood, access to healthcare and other relief support. Many were forced to return back to living with their natal families under severely transphobic and violent circumstances, often even subject to severe domestic violence<sup>29</sup> and corrective rape in case of individuals gender assigned female at birth. Under such circumstances, the ability of transgender persons to engage with the government to provide feedback on the draft rules was severely affected. Unlike in the pre-COVID times, extensive on-ground community consultations on the statute and the draft rules were not possible. Consultations were limited to people who had Internet access.

Speaking to The Wire during the lockdown in 2020, Bittu Karthik, assistant professor of biology and psychology at Ashoka University, said, "The attempt by the government to unveil new rules now is

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<sup>24</sup> Bhatia, G. (2019). The Rajya Sabha must amend the Transgender Persons Bill. Hindustan Times. January 05. <https://www.hindustantimes.com/analysis/the-rajya-sabha-must-amend-the-transgender-persons-bill/story-WEyPFztPVA BpfaQyDYBt5I.html>

<sup>25</sup> See footnote 4

<sup>26</sup> Mantri, Geetika(2020, Apr 22). Ill-timed, insensitive: Govt's Trans Act rules in the middle of a lockdown draw flak. The News Minute. Retrieved from: <https://www.thenewsminute.com/article/ill-timed-insensitive-govts-trans-act-rules-middle-lockdown-draw-flak-123109>

<sup>27</sup> Pathak, Sushmita.(2019, Dec 4). India Just Passed A Trans Rights Bill. Why Are Trans Activists Protesting It? NPR. Retrieved from: <https://www.npr.org/sections/goatsandsoda/2019/12/04/784398783/india-just-passed-a-trans-rights-bill-why-are-trans-activists-protesting-it>

<sup>28</sup> Singh. P, Shankar. G (2020, May 05). Modi govt releasing draft rules on Transgender Persons Act in lockdown a blow to community. The Print. Retrieved from: <https://theprint.in/opinion/modi-govt-releasing-draft-rules-transgender-persons-act-lockdown-a-blow/414331/>

<sup>29</sup> PUCL and National Network of LBI Women and Trans Persons (2023, Apr 1). APNON KA BAHUT LAGTA HAI (OUR OWN HURT US THE MOST) Centering Familial Violence in the Lives of Queer and Trans Persons in the Marriage Equality Debates. Orinam. Retrieved from: [http://orinam.net/content/wp-content/uploads/2023/04/JS\\_Report\\_23\\_04\\_23.pdf](http://orinam.net/content/wp-content/uploads/2023/04/JS_Report_23_04_23.pdf)

not acceptable. The trans community is struggling for basic survival at this time and there is an urgent need to provide social security, food security and accessible healthcare, both general healthcare and trans specific healthcare. Given restrictions on movement, the objections we raised in our letter to the government are not comprehensive because we have only been able to consult transgender people with internet access to the government's rules, which are provided only in the English language."<sup>30</sup>

Respondents of this study note that even the limited advocacy with government officials, however, led to reading down the mandatory surgery requirement for the binary identification in the rules of the Act. Despite its inadequacies, the rules came into effect in September 2020<sup>31</sup> –nearly a year after the enactment of the Trans Act. Owing to the lack of uniform implementation of the NALSA verdict as well as the delay in publishing the rules of the Trans Act, the situation of transgender persons worsened as they struggled without valid identity documents or be seen as part of the system to access COVID-19 relief from the state during the lockdowns.<sup>32</sup>

### **3. Problematic Provisions of the Trans Act**

The Trans Act provides transgender persons with a legal identity to exist in a country that previously legitimised the surveillance of transgender persons. Inclusion of an additional gender marker on identification documents directly impacts the ability of transgender persons who identify beyond the gender binary to access different human rights. Prior to the Trans Act, there was no clearly defined process for changing one's gender and name on any identification document. That said, this statute, though meant to recognise the rights of transgender persons, includes several provisions that act as barriers for transgender persons from securing a valid legal identity or entering data systems. After severe pushback from the transgender community, some of the problematic provisions were changed, as respondents have observed. However, many of their concerns, especially those that impact the data on transgender and intersex persons, remain unaddressed.

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<sup>30</sup>Mohan, Ram G(2020, Jun 5).Halt Implementation of the Trans Act 2019: Activists. The Wire. Retrieved from: <https://thewire.in/lgbtqia/trans-act-2019-rules-feedback-activists>

<sup>31</sup>Ministry of Social Justice and Empowerment (2020, Sept 6). Transgender Persons (Protection of Rights) Act 2019 Rules. Centre for Legal and Policy Research. Retrieved from: <https://translaw.clpr.org.in/wp-content/uploads/2020/10/222096-1.pdf>

<sup>32</sup>Kumar, Saurav (2021, Jul 18). The COVID-19 Pandemic Has Had a Debilitating Effect on Transgender People. The Wire. Retrieved from: <https://thewire.in/lgbtqia/the-covid-19-pandemic-has-had-a-debilitating-effect-on-transgender-people>



The transgender community continues to be discomfited by the legal need for medical certification to validate their identity. Unlike cisgender persons, transgender persons are subject to an additional process of medical verification to be recognised as a valid person by the state. Owing to the different issues with the Trans Act, transgender rights activists have challenged its constitutionality in the Supreme Court of India under Articles 14, 15, 19 and 21 of the Indian Constitution.<sup>33</sup> Provisions that impact the data on transgender and intersex persons include:

- **Medicalisation:**

Contrary to the NALSA verdict, Section 7 of the Trans Act 2019 requires transgender persons to undergo sex reassignment surgery to identify within the binary genders of male and female.<sup>34</sup> This limits the ability of every individual to exercise their bodily autonomy to self-identify their gender and name on different identity documents and limits their access to a life with autonomy, freedom, dignity, self-determination and privacy. By demanding a medical certificate to issue identification documents, certain bodies are being subject to surveillance. The Supreme Court petition challenges the surgery requirement on the grounds of it being violative of several Supreme Court verdicts –NALSA vs. Union of India, K.S.Puttaswamy and Another vs. Union of India,<sup>35</sup> and Navtej Johar and others vs. Union of India,<sup>36</sup> as well as Principle 10 of the Yogyakarta Principles.<sup>37</sup> Further, it is relevant to point out that the World Health Organisation (WHO) had classified gender dysphoria as a mental illness until 2018 continuing the colonial practice of pathologising non-heteronormative and non-cisnormative behaviours.<sup>38</sup> Thus the demand for a medical certificate continues to (re)colonise these bodies, reiterating the classification of being transgender as a mental illness. There are many transgender individuals who do not wish to undergo medical transition owing to the expenses involved as well as the physical pain during the process, note respondents. Rule 6 mentions if a person undergoes medical intervention towards a gender affirming procedure (instead of sex reassignment surgery as mentioned in the statute), the Medical Superintendent or

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<sup>33</sup>Shaikh, Almas (2020, Jun 18). Grace Banu Ganeshan & Ors. v. Union of India & anr. | A constitutional challenge to The Transgender Persons (Protection of Rights) Act 2019. Centre for Legal and Policy Research. Retrieved from: <https://clpr.org.in/litigation/grace-banu-ganeshan-ors-v-union-of-india-anr/>

<sup>34</sup> See footnote 24

<sup>35</sup> Supreme Court of India(2018, Sept 26). Justice K.S.Puttaswamy(Retd) vs Union Of India on 26 September, 2018, Writ Petition (Civil) No. 494 of 2012 & connected matters. Indian Kanoon. Retrieved from: <https://indiankanoon.org/doc/127517806/>

<sup>36</sup> See footnote 8

<sup>37</sup> Principle 10: The Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment. Yogyakarta Principles. Retrieved from: <https://yogyakartaprinciples.org/principle-10/>

<sup>38</sup> World Health Organisation (2018, Jun 18). WHO releases new International Classification of Diseases (ICD 11).World Health Organisation. Retrieved from: [who.int/news/item/18-06-2018-who-releases-new-international-classification-of-diseases-\(icd-11\)](http://who.int/news/item/18-06-2018-who-releases-new-international-classification-of-diseases-(icd-11))

Chief Medical Officer of the medical institution in which that person has undergone the said medical intervention is supposed to issue a medical certificate. This could also be a medical certificate from a psychologist, point out respondents of this study.

- **Conflation of transgender and intersex identities and lack of intersex-specific provisions:**

The recommendations made by the Standing Committee on Social Justice and Empowerment in its 43rd Report on the 2016 Bill stated that, “A provision providing penal action against abortions of intersex fetuses and forced surgical assignment of sex of intersex infants should be there in the Bill.”<sup>39</sup> However, apart from a mere mention of intersex in the definition section of the Trans Act, the statute does not cover any specific provisions related to intersex persons. Intersex persons may or may not be transgender. Therefore, the lack of provisions to protect the rights of intersex persons, such as protection against non-consensual surgery of intersex infants, has a direct impact on the data collected on intersex and transgender persons and the enumeration of both these populations groups. The conflation of gender identity (transgender), which is a social role, and sex, which is a biological identity, continues to misrepresent both these groups within datasets impacting the policy decisions taken for their welfare. Some intersex persons<sup>40</sup> feel only a separate statute can comprehensively address the needs for intersex persons while some other intersex persons<sup>41</sup> feel the inclusion of specific provisions to address the needs of intersex persons within the scope of the Trans Act would be a more efficient and faster means to address the concerns of intersex persons and their rights. Many intersex persons feel that despite knowing their intersex status, the state is pushing them to identify as transgender (regardless of whether or not they disidentify with the gender assigned at birth) in order to access state benefits and reservation.

“Being intersex doesn't mean that we should be transgender. The Government of India fails to understand these differences because when they introduced the Transgender Act, in the definition, they said that, by transgender we also mean intersex persons. There are so many intersex people who don't want to identify as transgender. And in India, unfortunately, there is no marker where we can say that this person is an intersex. There is a marker for transgender people. And what they did is they included intersex people, whether they may

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<sup>39</sup> See footnote 32

<sup>40</sup> This includes 11 respondents who participated in the focus group discussions of the intersex rights in India research that I'm doing for Intersex Asia in 2023

<sup>41</sup> Ibid

identify as a transgender or not, to be included in the transgender marker. And I think that is very wrong.” - Dit Thoudam<sup>42</sup>

- **Disproportionately lower punishment for crimes against transgender persons:**

Under Section 18 of the Trans Act, the punishment for crimes against transgender persons is imprisonment of 6 months to a maximum of 2 years, which is lesser than the punishment prescribed under Sections 375 and 376 of the Indian Penal Code for sexual assault against cisgender women by men. In case of rape against cisgender women, the law presently prescribes a punishment of 7 years to life imprisonment.<sup>43</sup> Further, there are no rules in the Trans Act that address the violence and exclusions faced by transgender persons. The Indian legal system’s unequal treatment between transgender persons and cisgender women impacts the ability of transgender individuals to safely self-identify their gender. It is evident that the legal system does not provide equal protection to all genders. The State differentiating the punishment based on the survivor’s gender establishes a gender-based hierarchy to access both fundamental rights to life, equality and privacy as well as legal remedies for survivors of sexual assault.

- **Lack of reservation:**

The NALSA vs Union of India verdict directed the Government of India to provide reservations in education and public employment for transgender persons under socially and educationally backward classes. The Trans Act does not include any provisions for reservation in education or public employment, note respondents. The petition challenging the Trans Act in the Supreme Court states<sup>44</sup> that the present statute is violative of Principle 12 of the Yogyakarta Principles.<sup>45</sup> The petition demands that reservation be introduced in education and public employment for transgender and intersex persons. The expectation is the introduction of horizontal reservation also accounting for the caste-based marginalisation faced by transgender persons.

“Transgender community having an unspecified fraction of the reservation within OBCs is relatively useless for transgender Dalit people, Adivasi and even OBC (Other Backward

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<sup>42</sup> Dit Thoudam (He/They), is founder of The Intersex and Trans Collective (TITC), a support group based in Manipur, India. Dit is also the fellowship coordinator of Intersex Asia and a board member of Youth LEAD Asia Pacific.

<sup>43</sup> Section 376(1) in the Indian Penal Code. Indian Kanoon. Retrieved from: <https://indiankanoon.org/doc/455161/>

<sup>44</sup> See footnote 23

<sup>45</sup> Principle 12: The Right to Work. Yogyakarta Principles. Retrieved from: <https://yogyakartaprinciples.org/principle-12/>

Class) people, unlike horizontal reservation that provides for intersecting categories of caste and gender,” - Bittu Karthik<sup>46</sup>

“Due to the confusion between transgender and intersex identities, we as intersex persons, don’t have any individual right to speak for ourselves. If we continue to remain as a group that includes both transgender and intersex persons, transgender persons will continue to dominate. This is similar to what trans men face. Trans men are prohibited from speaking during transgender board meetings (in Tamil Nadu). Therefore, the reservation for transgender and intersex persons should be separate so that there is no misunderstanding between transgender and intersex persons.” - Mx.Vinodhan<sup>47</sup>

## 4. Process to change identification documents

Recognising the right to a legal identity of every individual, Article 6 of the Universal Declaration of Human Rights states, “Everyone has the right to recognition everywhere as a person before the law.”<sup>48</sup> The Trans Act of 2019 is significant since it defines a process for individuals to secure a valid legal identity with their self-identified name and gender on identification documents. There was no clear process in place prior to the Trans Act. Individuals who transitioned on their identity documents prior to the Trans Act are not required to redo their documents. However, the process defined under this statute continues to remain inaccessible to transgender persons for several reasons. The gender and name change process is not inclusive by design. According to the respondents of this study, this process does not factor in the lived reality or inaccessibility experienced by individuals due to their level of literacy, digital literacy or disability status, among others. In case of transgender persons living with disability, they are expected to go through a double certification process for their disability status as well as gender identity. The online process to procure the disability certificate is also inaccessible and arduous.<sup>49</sup> Thus their access to a valid

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<sup>46</sup> Brindaalakshmi K.(2020, June). Gendering of Development Data in India: Beyond the Binary 3, Identity Documents and Access to Welfare. Pg. 11. Centre for Internet & Society India  
<https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

<sup>47</sup> Mx. Vinodhan is based in Coimbatore. They are a poet, writer, and social activist who studied Applied psychology, Masters in Human Genetics and an activist for issues of persons with intersex variations, persons with disability and dalit community. Vinodhan is a co-founder of Intersex Human Rights India (IHRI), a CREA and UN Mechanism Fellow for 2022\_23 and 3rd Intersex Asia fellow Member of Intersex Asia, they were a lead of VOIS INDIA collective group for South Indian Dalit Disability, intersex, Queer moment, they have been a part of one of the LGBTIQ+ policy drafting committee constituted by the Government of Tamil Nadu.

<sup>48</sup> Universal Declaration of Human Rights. Retrieved from:  
[https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>49</sup> Singhal, Sowmya (2021, July). Aadhaar, Accessibility, and Ableism: Gauging the Responsiveness of Public Services Framework towards PwDs. Social and Political Research Foundation. Retrieved from:  
[https://sprf.in/wp-content/uploads/2021/08/SPRF-2021\\_Comm\\_Aadhaar-and-Ableism\\_Final.pdf](https://sprf.in/wp-content/uploads/2021/08/SPRF-2021_Comm_Aadhaar-and-Ableism_Final.pdf)

legal identity and identity documents remains elusive and the data gap on transgender persons persists.

The rules of the Trans Act stipulates a two-step name and gender change process for transgender individuals who identify within the gender binary. According to rule 3(2) of the Trans Act, both steps involve submitting an application in the prescribed format to the 'District Magistrate in person or by post till online facilities are developed by the State Government concerned and thereafter the application shall be made by online only.'<sup>50</sup> As per rule 5, Issue of certificate of identity for a transgender person under section 6,<sup>51</sup> the District Magistrate (DM) will issue a certificate of identity and a transgender identity card to the applicant on verifying the application. Based on this transgender identity card, the said individual can change their name, and gender to transgender on all other identity documents including Aadhaar. As per rule 6 and 7,<sup>52</sup> in order to change one's gender within the binary of male or female, individuals are expected to submit another application with a medical certificate.

According to Directive 5 of the NALSA vs Union of India verdict, the use of a medical process was deemed illegal for individuals to self-identify their gender.<sup>53</sup> Further, respondents of this study point to several implementational challenges with the above process. Lack of access to formal education for transgender persons has led to dismal levels of literacy as well as digital literacy rates among transgender persons in India. A 2017 study supported by the National Human Rights Commission (NHRC) of India observed that 29% of the transgender respondents from a Tier-1 city and 33% among those from non-Tier-1 locations have not attended school. Further, 45% respondents from a Tier-1 city and 48% among those from non-Tier-1 locations have attended school but have failed to complete Class X. The authors of the NHRC 2017 study note that, '[i]t is a matter of serious concern that transgender persons are denied the right to education even after the enactment of Right to Education Act 2009.'<sup>54</sup> Currently, there remains a lack of clarity regarding the process to change identity documents among the transgender community – even among those with education and smart devices. This lack of awareness is higher among working class transgender persons, observe respondents. The forms prescribed in the rules of the Trans Act are

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<sup>50</sup>Ministry of Social Justice and Empowerment (2020, Sept 6). Transgender Persons (Protection of Rights) Act 2019 Rules, Pg.15. Centre for Legal and Policy Research. Retrieved from: <https://translaw.clpr.org.in/wp-content/uploads/2020/10/222096-1.pdf>

<sup>51</sup> *ibid* Pg 16

<sup>52</sup> *Ibid.*

<sup>53</sup> See footnote 7

<sup>54</sup> Kerala Development Society. (2017, February). Study on Human Rights of Transgender as a Third Gender. Retrieved from [https://nhrc.nic.in/sites/default/files/Study\\_HR\\_transgender\\_03082018.pdf](https://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf)

available either in English or Hindi and are not user-friendly. These forms need to be notarised. Owing to the low literacy rates and the language in use being different from their native tongue, transgender persons find it difficult to fill out these forms without assistance. Only those affiliated with a community based organisation or with a sufficient level of education can complete this process on their own.

The process of changing documents continues to be dependent on existing documents with their given name and assigned gender. This poses a problem for those with no existing documents. Existing identity documents are also used as proof of address. Rule 6(3) of the Act states, "The applicant shall be currently residing in the area under the jurisdiction of the District Magistrate as on the date of application and an affidavit to this effect shall be submitted along with the application in Form-1 and no additional evidence shall be called for." Owing to their gender identity, transgender persons are often forced to shift houses frequently and landlords refuse to provide them a valid rental or lease agreement. The situation has worsened with the COVID-19 pandemic. "I am living in a rented house. How can a trans person like me get lease contracts? Transgender ID card is a basic one, why can't they give it without too many support documents?" asks Grace Banu.<sup>55</sup> Evidently, the process and requirements mentioned in the rules of the Trans Act do not take into account the lived reality of transgender persons. This further impacts their ability to enter data systems and widens the access gap. Additionally, there are some intersex people who don't want to identify as transgender since they identify themselves as being intersex. So these individuals haven't applied for the gender change certificate, notes Dit Thoudam. Thus the inclusion of intersex within the transgender umbrella is insufficient to capture information on intersex persons. This also continues to misrepresent intersex and transgender persons within data systems.

Another observation made by most respondents is that the state government department designated to address the concerns of transgender persons seems to vary across different states and these departments are often unaware of the responsibility assigned to them. There is a lack of information sharing between departments within states. At the time of the interview, all respondents mentioned a lack of awareness among many District Magistrates (DM) about the Trans Act and its provisions, although this varied across different states. Often, DMs are not clear about the differences between the Trans Act and the rules. There seems to be a definite lack of clarity between the writing of the law and its implementation, which may be traced back to a lack of will. Although the law prescribes a medical certificate for transgender persons to identify within the

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<sup>55</sup> Emerging from lived experiences as a Dalit Trans Woman, Grace Banu has worked with the traditional Trans women community in Tamil Nadu and with various levers of the government to ensure young trans individuals (especially folks from rural-oppressed caste backgrounds) can find a supportive chosen family, continue their secondary and tertiary education, and join public sector jobs - all without having to hide their gender identity. Grace has been able to create many role-models from within the community who are college graduates and are working in aspirational government jobs - including Tamil Nadu's first openly Trans Sub-inspector of Police.

binary, there continues to be confusion in practice. Some DMs continue to demand a certificate of surgery even from individuals who wish to change their gender marker to transgender. There have been several instances when individuals who identify outside of the gender binary were expected to provide a certificate of surgery. In some cases, legal notices were required to be sent to government departments to resolve this issue. Respondents of this study and their organisations have supported transgender persons with this process.

“After the final rules was published in September 2020, a person in Mumbai district was looking to change their documents within the binary identity. They did not have a surgery certificate. They had a letter of gender dysphoria, but the district magistrate's office said that we cannot approve the application unless you have a surgery certificate.” – Dr.L.Ramakrishnan<sup>56</sup>

The demand for a medical certificate to identify within the binary poses its own set of challenges. The lack of congruence between the rules and the Act seems to be a concern within the transgender community, note respondents. Some note that since the Trans Act demands a surgery and the rules don't, the language of the statute would matter more if there ever was a challenge in the court of law. Some within the transgender community believe that non-surgical interventions wouldn't count. However, the understanding among lawyers working with the community is different. “Whenever rules are introduced, they have to be read along with the Act, and if there is a contradiction, you challenge it in the court,” clarifies Oindrila Sen,<sup>57</sup> an advocate working with transgender persons in India. There is a lack of clarity about which medical practitioner can certify them and the kind of medical intervention to be done. Finding a transgender-friendly medical professional to issue a certificate can also be a challenge, especially in rural areas. Even within metro cities, accessing trans-friendly medical professionals is dependent on the individual being clued into community organising in the city so that they can stay informed about the handful of trans-affirmative doctors. In the absence of any network connection, explaining their identity to any medical professional to procure a certificate can also become a privacy violation, notes Mridul.<sup>58</sup>

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<sup>56</sup> Dr. L. Ramakrishnan is an integrative biologist by training, and has been associated with the public health NGO SAATHII for the past 20 years. He works towards inclusive healthcare, justice and social protection for marginalised communities such as LGBTIQ+ communities and those vulnerable to HIV. He has advocated successfully for LGBTIQ inclusion in state policies, and was part of the team consulted by the Madras High Court in the Sushma and Seema vs. Commissioner of Police landmark orders of 2021.

<sup>57</sup> Oindrila Sen is a practising advocate in the Supreme Court of India, the High Court of Delhi as well as various District Courts and Tribunals. She has worked as a Law Researcher with Hon'ble (Retd.) Justice Dr. S. Muralidhar at the High Court of Delhi, and as a Law Officer with Human Rights Law Network, Delhi. She has worked on cases pertaining to gender, labour, housing, and rights of persons with disabilities.

<sup>58</sup> Mridul is a trans masculine technology professional. He is a full stack developer who works on developing technology solutions with a special focus on end-user privacy and accessibility. He is a queer feminist trans\* activist and has been associated with a few LBT collectives in Mumbai. He has also conducted digital privacy workshops with members of the queer community in different parts of the country.

Additionally, the time taken for the approval of both the steps in the document change process is not uniform across all states. While some transgender individuals received the approved forms within the prescribed duration, many others have experienced a delay, sometimes even a delay of 8 to 9 months, notes Vyjayanti.<sup>59</sup> This often happens during the second step prescribed under Section 7 of the Trans Act. Seeing medical transitioning as the only way to handle their severe gender dysphoria, there are those who start their medical transitioning process without changing their documents. The delays in the documentation changing process does not help their mental health, notes Koyel Ghosh.<sup>60</sup> Thus, changing one's identity documents within the gender binary continues to remain a serious challenge for most.

This process of validating one's identity is more complex for transgender persons with a disability. They undergo double certification – both for their disability status as well as gender identity. The doctor certifying their disability is often not trans-friendly. Due to the lack of awareness among doctors about gender identities, it continues to be a challenge for transgender persons with disability to find a doctor who would understand both their disability and their gender identity. This further worsens with the erasure of the gender and sexuality of persons with disability, observes Shampa Sengupta.<sup>61</sup> The focus remains limited to their disability, and the medicalisation due to their disability status impacts their ability to self-identify their gender in different identification documents. It is more challenging in rural areas where the access to community organisations working on transgender rights are limited. Prior to the Trans Act, transgender persons with disabilities had to approach the court citing the NALSA judgement to procure an order to change their name and gender. "I appealed to the court and changed my voter ID. Then I did it again to change my Aadhar and a third time to change my Unique Disability ID (UDID<sup>62</sup>) card by using the voter ID and Aadhar," recalls Kiran Nayak B.<sup>63</sup>

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<sup>59</sup> Vyjayanti Vasanta Mogli's preferred name is Vyjayanti and pronouns are she, her and her's. She is a transgender human rights and RTI activist precipitating Public Interest Litigation (PIL) in the High Courts and the Supreme Court. She has volunteered pro bono with human rights law & social policy think tanks viz. Alternative Law Forum (ALF), Centre for Law & Policy Research (CLPR), Human Rights Law Network (HRLN) inter alia.

<sup>60</sup> A gender non-conforming, non-binary queer feminist activist, Koyel Ghosh is the Managing Trustee of Sappho for Equality and a trained educator who continues to impart knowledge and love to young minds over half a decade.

<sup>61</sup> Shampa Sengupta is the Director of Sruti Disability Rights Centre

<sup>62</sup> Department of Empowerment of Persons with Disabilities: Ministry of Social Justice and Empowerment. Registration Open for UDID (Unique Disability ID) Card. Retrieved from: <https://www.swavlambancard.gov.in/cms/who-can-apply>

<sup>63</sup> Kiran Nayak B is a disability, equity and gender equality activist. Kiran is a passionate, industrious and a competent disabled transman keen to enhance skills as a disability, gender and sexuality rights activist. Kiran is currently the General Secretary of Society for Transmen Action & Rights (STAR) and the General Secretary of Vikalachethanara Samasthe (CBO of Persons with disabilities) in Chikkaballapura, Karnataka.



The application for a UDID includes an additional gender category, 'Transgender'.<sup>64</sup> An additional category on the application form is insufficient support for trans persons with disability who need to undergo a double certification process to access any state-sanctioned welfare. It is not merely a matter of categorisation but the exclusion of certain marginalised categories of people using processes that reiterate those categories as well as marginalisation to determine their risk and govern them accordingly.<sup>65</sup> Evidently, in the case of transgender persons with multiple identities of marginalisation, the state introduces multiple check-points for each of their different identities in the name of verification, be it gender, caste or disability, leading to further exclusion.

## **5. Digitisation of the process to change identity documents**

As seen in the previous section, the gender and name change process is not inclusive or accessible by design. This section will detail out the additional layer of challenges faced by individuals due to the digitisation of this cumbersome process. Rules of the Trans Act mentions a digital process to change the name and gender on identification documents. Following the publication of the final rules of the Trans Act in September 2020, the Government of India launched a National Portal for Transgender Persons in November 2020 to submit applications for gender and name change.<sup>66</sup> Without a clear understanding of the accessibility needs of the transgender community, the government has prioritised the digital process over an offline one. Datafication of transgender bodies seems to be the focus of this document change process since the digitisation of this process has led to replication of existing challenges,<sup>67</sup> and has worsened the situation in other instances.

“There is no fundamental problem in adopting digital technology in governance. But the problem is of cluelessness about who you are doing it for and the purpose. Is it for the benefit of the (marginalised) community or are you just interested in data mining? You

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<sup>64</sup>Department of Empowerment of Persons with Disabilities: Ministry of Social Justice and Empowerment. Persons with Disability Registration <https://www.swavlambancard.gov.in/pwd/application>

<sup>65</sup> See footnote 2 Pg. 8

<sup>66</sup> Ministry of Social Justice and Empowerment (2020, Nov 25). e-Launch of National Portal for Transgender Persons & Garima Greh : Shelter Home for Transgender Persons. Retrieved from: <https://webcast.gov.in/events/ODgw>

<sup>67</sup> See footnote 4

expect a community that has been excluded for centuries to master a process which is so cumbersome.” —Amritananda Chakravorty<sup>68</sup>

As mentioned earlier, the low literacy and digital literacy make it inaccessible for transgender individuals to use smartphones or computers. This study’s respondents observe a slight increase in smartphone usage owing to the pandemic; however, this is not necessarily enough to change their identity documents online.

“My community begs on the streets and does menial jobs. How can they apply online? Further, the website asks for all the basic documents. Only after submitting all the documents, one can move to the next level of the application process.” — Grace Banu

The respondents also observe several technical challenges during the application process. Individuals have to register on the website with their mobile phone number. Similar to any Aadhaar-enabled process, a One-Time Password (OTP) is sent to their mobile phone number. Respondents note delays in receiving the OTP. Sometimes, the OTP is received a day or even a week later. The forms may be rejected without any explanation. Progress of the application process cannot be tracked. It is difficult to rectify any mistake once the application is submitted. Technical issues have also been cited as a reason for the non-approval of applications. The application form for issuing a transgender certificate of identity under the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6\* / 7\* of the Trans Act, 2019<sup>69</sup> has a confidentiality declaration to be signed by the applicant that states, ‘Information provided in this application will be treated as confidential and shall not be shared with any person or organisation save the Central and / or State security agencies, any other agency as provided by Law; and for statistical and policy framing purposes.’ However, there have been several complaints regarding the privacy and security of the portal, or the lack thereof. All personal details of individuals who had filed for a name and gender change on the National Portal for Transgender Persons was available online with a simple Google search, note respondents. On sending a legal notice on behalf of a client, the government responded agreeing to fix the problem and the portal is now compliant with NIC rules, highlights Amritananda Chakravorty.

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<sup>68</sup> Amritananda Chakravorty is a lawyer based in New Delhi, India, with extensive experience in LGBTI rights litigation and advocacy. As part of Lawyers Collective, Ms. Chakravorty has been involved in several landmark cases, including challenging the mandatory death penalty for drug offences, removal of the anti-sodomy law, recognition of transgender persons, commutation of death sentences, and challenging the beef ban. Presently, she is handling many strategic cases, including challenging the termination of a transgender woman from the Indian Navy, medical negligence, discrimination in employment, challenging educational bye-laws that exclude trans persons, discrimination in access to insurance, and seeking reservation for transgender persons in public employment.

<sup>69</sup>See footnote 50, Pg 19

Owing to the need for approval by DMs, the digital process under the Trans Act is not entirely digital either. As per the rules, the DM of a specific jurisdiction is expected to approve the application for name and gender change. While the website which receives these applications is controlled by the central ministry in New Delhi, the last-mile approval is with the DM in each district. Due to the centralised control of the website, an approval by the central ministry is required for the document to be processed by the DM in each district. DMs do not have any control over this process. There is an informational gap from the centre to the state, note respondents. All DMs are to be provided with a user ID and password to access the portal for approving applications. In many instances, DMs have admitted to not being aware of the user ID or password to access the portal, recollects Amritananda Chakravorty, who issued a legal notice on behalf of a client in Indore for their application to be eventually processed.

The Trans Act does not account for the needs of transgender persons living with disability and their struggles to change identity documents, especially using a digital process. Kiran Nayak B's organisation, Vikalachethanara Samasthe, provides training to persons with disability to use the Internet to access some basic functions including sending an email, using Google search, sending location information to another person, etc. "Although the idea behind the training is to enable individuals to use a smartphone, they have a fear of using them. If a person with a disability makes a mistake, the family tends to admonish them. This dissuades them from using a smartphone. There are also instances of forgeries," shares Kiran Nayak B. Thus an online process to change ID documents is far more challenging for a person with disability. Due to the stigma of being transgender, persons with disability procure a Unique Disability ID (UDID<sup>70</sup>) card under the Rights of Persons with Disability Act 2016 using their given name and assigned gender. This card is necessary to access any state-sanctioned benefit for persons with disability. For transgender persons with disability, the name on the UDID card has to match with other identity documents. The process to procure the UDID card is entirely online, notes Kiran Nayak B. In rural areas due to limited access to technology and digital literacy, transgender persons with disability have no alternative but to access the local cyber centre<sup>71</sup> and take the aid of the person there to fill out the application forms for both UDID and Trans ID card. These cyber centres are often physically inaccessible to persons with disability. Individuals also find it hard to explain their transgender status and the application for the name and gender change to the person at these cyber centres. Additionally, the application forms are available only in English or Hindi. Individuals from rural areas

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<sup>70</sup> Department of Empowerment of Persons with Disabilities: Ministry of Social Justice and Empowerment. Registration Open for UDID (Unique Disability ID) Card. Retrieved from: <https://www.swavlambancard.gov.in/cms/who-can-apply>

<sup>71</sup> Cyber centres are centres with computers connected to the Internet located in a specific locality. These centres are common and affordable to individuals in rural areas who may not have access to the Internet otherwise.

of states such as Karnataka, Telangana or Andhra do not read either of these two languages, observes Kiran Nayak B.

Many people who are visually impaired cannot get an Aadhaar due to their inability to submit their iris scan. In the commentary *Aadhaar, Accessibility, and Ableism: Gauging the Responsiveness of Public Services Framework towards PwDs*, Soumya Singhal writes, "Persons with problems related to dexterity find fingerprint scans tedious since many may not qualify for a medical certificate exempting them from the biometric process. The process is similarly inconvenient for anyone with minor physical disfigurements. Persons with visual impairments who do not qualify for a retina scan exemption might face irritation and discomfort due to photosensitivity or may be unable to focus their eyes on a fixed spot."<sup>72</sup>

Without an Aadhaar, a UDID cannot be procured.<sup>73</sup> Individuals are expected to include their Aadhaar number in their UDID application. The Government of India expects persons with disabilities to link their Aadhaar to UDID. While UDID is necessary to access disability-related benefits or schemes, linking one's UDID to Aadhaar does not serve much purpose beyond escaping long service queues, which is again dependent on the government official being aware of the needs of persons with disabilities.<sup>74</sup> Thus, Aadhaar linkage does not aid in providing services to persons with disabilities. Due to the repeated demand for biometric validation, Aadhaar's system and processes continue to remain inaccessible without an alternative to persons with certain disabilities. The system seeks to profile persons with disabilities and transgender persons by issuance of a disability certificate and certificate of identity, respectively, using inaccessible processes. Thus, the use of digital processes and the interdependency on existing IDs to change name and gender is widening the access gap for all transgender persons, especially those living with a disability.

"Well, it would be naive to think that this governance would be done without any discrimination or that the already discriminated societies would not go down further with such profiling. For any technocrat, such a kind of profiling would be a dream come true of an ordered society, but social scientists need to ask how much information is too much? Would profiling of Dalits, Muslims, Women, Christians, Adivasis lead to their extinction?" - Shivangi Narayan, *Surveillance as Governance*<sup>75</sup>

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<sup>72</sup> See footnote 44 Page 5

<sup>73</sup> Department of Empowerment of Persons with Disabilities: Ministry of Social Justice and Empowerment. Persons with Disability Registration <https://www.swavlambancard.gov.in/pwd/application>

<sup>74</sup> See footnote 44 Page 5.

<sup>75</sup> See footnote 2 pg 8

Transgender persons and persons with disabilities are also a part of the aforementioned groups that are already discriminated against. Apart from recolonising<sup>76</sup> and profiling certain bodies with specific medical certification processes, the inaccessibility of these processes designed for the inclusion of marginalised populations is further excluding them by limiting their ability to verify and validate their existence leading to erasure. Thus, the data sets on transgender persons (and persons with disabilities) will continue to misrepresent their realities and cannot be used to make meaningful decisions for their welfare.

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<sup>76</sup> In *Data Epistemologies, The Coloniality of Power and Resistance*, Paola Ricaurte highlights the recolonisation of those who are still outside the scope of the data extraction systems through datafication and public policies including digital citizenship policies by governments and public institutions within non-western contexts Ricaurte, P. (2019). *Data Epistemologies, The Coloniality of Power, and Resistance*. *Television & New Media*, 20(4), 350–365. <https://doi.org/10.1177/1527476419831640>