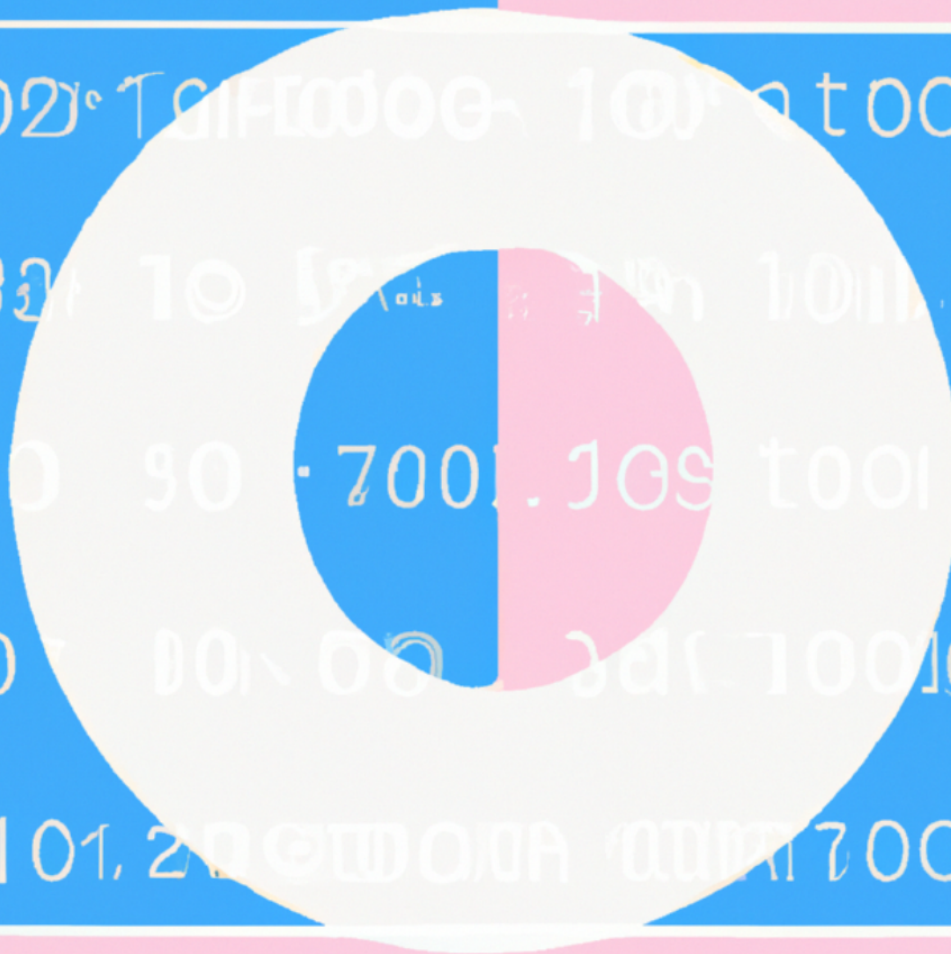


Gendering of Development Data in India: Post-Trans Act 2019

#1 Introduction, Research Method, and Summary of
Findings



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1. Introduction

1.1 Transgender persons, their history of surveillance and rights recognition in India

Historically, transgender, specifically transfeminine, persons in India have been subject to state surveillance since the colonial era. The Criminal Tribes Act 1871¹ called for the 'surveillance and control of certain criminal tribes and eunuchs.' The intent was to eliminate transgender persons, leading to their gradual extinction.² In *Exclusion as Language and the Language of Exclusion: Tracing Regimes of Gender through Linguistic Representations of the Eunuch*, Shane Gannon traces the history of the term eunuch.³ Eunuch as a term has served as evidence for the existence of hijra – their contemporary sexual representation being in the works of many scholars. However, the term encompassed individuals from various different social groups including priests of the goddess Bahuchara and Huligamma, 'hermaphrodites',⁴ who were castrated men who served in the royal courts, harems of houses of wealth identified as mukhanna and other various castes and social groups.⁵ Gannon credits translators for the compression of such diverse groups of individuals into the singular term, eunuch – a constructed entity defined by its legal sanction, one that was based on notions of containment and control. Anyone who crossed over, beyond the colonial binary categories of sexual, gender and biological characters were slotted under the category of eunuch – a category of individuals whose gender was assigned male at birth. *Gendering of Development Data in India: Beyond the Binary* (2020⁶) shows that this understanding of being transgender has continued into independent India, impacting the ability of individuals to self-identify their gender as well as the lack of sufficient understanding of other transgender identities like trans men and trans women, especially among government officials. The conflation of gender identity and sex from the colonial understanding of being a eunuch also serves as the

¹ Criminal Tribes Act 1871 (Act No. 27 of 1871). Bare Acts Live. Retrieved from: <http://www.bareactslive.com/ACA/act3164.htm>

² Henchy, Jessica (2019, Jul 02). The long history of criminalising Hijras. Himal South Asia. Retrieved from: <https://www.himalmag.com/long-history-criminalising-hijras-india-jessica-hinchey-2019/>

³ Gannon Shane (2011, Jan 1). Exclusion as Language and the Language of Exclusion: Tracing Regimes of Gender through Linguistic Representations of the "Eunuch", Pg 2. Journal of the History of Sexuality University of Texas Press. Retrieved from: <https://www.jstor.org/stable/40986353>

⁴ Hermaphrodite is a stigmatising term that was used to describe intersex persons and is considered pejorative by intersex persons, although its medical usage continues in some parts of the world. <https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf>

⁵ Ibid

⁶ Brindaalakshmi. K (2020, June 29). Gendering of Development Data in India: Beyond the Binary. Centre for Internet & Society. Retrieved from: <https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

evidence for the present-day understanding of the term hijra in India. Of note, some parents hand their intersex children over to the hijra community due to the stigma of raising a child with ambiguous genitalia and not all hijras are intersex.⁷

In 1992, the setting up of the National AIDS Control Organisation (NACO) under the Ministry of Health and Family Welfare saw the emergence of the category of 'high-risk groups' in public health literature which includes truck drivers, sex workers and hijras persons – a categorisation based on their non-normative sexual behaviour in the biomedical assemblage.⁸ In 2012, NACO National AIDS Control Programme IV (NACP IV) recognised transgender people as a separate category⁹ under the HIV intervention programme for the first time, although this did not involve issuing of any identification documents to them. Prior to NACP IV, transgender persons were categorised as a sub-type under men who have sex with men (MSM) based on their sexual behaviour.¹⁰ The categorisation under HIV continues to remain one of containment of those with predisposition and risk of disease,¹¹ as well as an association of stigma. Although the Criminal Tribes Act was repealed in 1949 and the tribes were denotified in 1952,¹² transgender persons continued to be criminalised by the Indian state under different laws such as the Karnataka Police Act 1963,¹³

⁷ Solidarity Foundation (2018). What if it is neither?"A report on the historic seminar on intersex persons' issues in India. Pg 24. Solidarity Foundation. Retrieved from <https://drive.google.com/file/d/1UPfOTRFbtzZGpH6PJnv9vdBp7-c1gF04/view?pli=1>

⁸ Asha Achuthan (2021): Gender-affirmative technologies and the contemporary making of gender in India, Pg.9. Economy and Society, DOI: 10.1080/03085147.2021.1883322

⁹ Laxmi T., et al. (2011, May 05). Transgender - Hijra Strategy. National AIDS Control Programme IV Working Group. National AIDS Control Organisation. <http://www.naco.gov.in/sites/default/files/4%20TG%20Strategy.pdf>

¹⁰ Brindaalakshmi. K (2020, June 29). Gendering of Development Data in India: Beyond the Binary #2 Legal Rights and Enumeration Process. Pg 5. Centre for Internet & Society India. Retrieved from <https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

¹¹ See footnote 8 Pg.14

¹² Kongari, Sion(2023, Jul 31). More than 70 years from liberation, former "Criminal Tribes" continue to endure stigma and discrimination. ActionAid Association India. Retrieved from: <https://www.actionaidindia.org/more-than-70-years-from-liberation-former-criminal-tribes-continue-to-endure-stigma-and-discrimination/>

¹³ The Karnataka Police Act, 1963. Department of Parliamentary Affairs, Government of Karnataka. Retrieved from: [https://dpal.karnataka.gov.in/storage/pdf-files/acts%20alpha%20and%20dept%20wise%20acts/28%20of%202021%20\(E\)%2014.pdf](https://dpal.karnataka.gov.in/storage/pdf-files/acts%20alpha%20and%20dept%20wise%20acts/28%20of%202021%20(E)%2014.pdf)

Telangana Eunuchs Act¹⁴ and under Section 377 of the Indian Penal Code¹⁵ until as recent as 2016¹⁶ and 2018^{17,18} for their gender identity, expression, and/or sexual behaviour.

The Indian State moved from surveillance and suspicion to recognising the rights of transgender persons in 2014. In that year, the Supreme Court of India recognised the right of every individual to self-identify their gender as male, female or third gender without needing any medical intervention in the National Legal Services Authority of India (NALSA) vs Union of India¹⁹ verdict. This verdict also includes the first judicial mention of 'intersex persons'²⁰ and affirms the rights of intersex persons under the transgender umbrella.²¹

"(2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender."²²

The operational section of the NALSA verdict listed out nine directions to the government for the inclusion of transgender persons. This included reservation for transgender persons in employment and education and introduction of an additional gender category.²³ In 2015, Dravida Munnetra Kazhagam (DMK) Member of Parliament Tiruchi Siva moved a private member's bill in the Rajya Sabha, the upper house of the Indian Parliament, to protect the rights of transgender

¹⁴ Telangana Eunuchs Act. India Code. Retrieved from https://www.indiacode.nic.in/bitstream/123456789/8633/1/act_16_of_1329_f.pdf

¹⁵ Indian Penal Code. § 377 (1860). Indian Kanoon. Retrieved from: <https://indiankanoon.org/doc/1836974/>

¹⁶ 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>

¹⁷ 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/>

¹⁸ 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/>

¹⁹ 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/>

²⁰ Jayna Kothari, Krithika Balu and Rohit Sarma (2020). Beyond the Binary: Advocating Legal Recognition for Intersex Persons in India. Pg 3. Centre for Legal and Policy Research, Solidarity Foundation.

²¹ Ibid. Pg 5

²² See footnote 19 Pg 47

²³ Ibid

people.²⁴²⁵ Subsequently, a modified version of the bill after community consultation was drafted by the government as The Rights of Transgender Persons Bill, 2015, and tabled in the Lok Sabha, the lower house of Indian Parliament, in August of 2016 after considerable revision to the 2015 version.²⁶ The 2016 version was referred to the Standing Committee on Social Justice and Empowerment. The recommendations made by the Standing Committee on Social Justice and Empowerment in its 43rd Report on the 2016 Bill before the Lok Sabha included “defining the term persons with intersex variations to cover those who show variations in their sexual characteristics.”²⁷ 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.²⁸ It also stated that, “A provision providing penal action against abortions of intersex foetuses and forced surgical assignment of sex of intersex infants should be there in the Bill.”²⁹

Subsequently, despite severe opposition from the transgender community, the Transgender Persons (Protection of Rights) Act 2019 (Trans Act) statute recognising several rights of transgender persons was passed on November 26, 2019, by the Parliament and published on December 05, 2019.³⁰ The stipulation within this statute that has elicited significant opposition from the transgender community is the mandatory ‘sex reassignment surgery’ for individuals to legally self-identify their gender within the gender binary of male and female. This imposes a certain kind of control by the state to determine the authenticity of the bodies and authentic way to access and be qualified as being male and female using medicalisation. To aid this, the biomedical

²⁴ DMK (Dravida Munnetra Kazhagam) is a regional political party from the state of Tamil Nadu, India.

²⁵ P., Anuvinda, & Tiruchi, S. (2016, Oct 28). A Story of Two Bills. Indian Express. Retrieved from <https://indianexpress.com/article/opinion/columns/transgenders-persons-bill-rajya-sabha-private-member-bill-3195872/>

²⁶ Abraham. R. (2017, Nov 30). All you need to know about the Transgender Persons Bill, 2016. The Hindu. Retrieved from: <https://www.thehindu.com/news/national/all-you-need-to-know-about-the-transgender-persons-bill-2016/article21226710.ece>

²⁷ 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>

²⁸ 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

²⁹ Ibid. Pg 93

³⁰ 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)

assemblage mobilises a culture that offers a more scientifically 'real' or authentic way to access the binariness.³¹

“At the point of entry to the clinic, then, we see that there is one essentialized figure – the hijra; there is one goal – re-inscription of binariness; and there is one kind of body that can result.” – Asha Achuthan, Gender-affirmative technologies and the contemporary making of gender in India³²

The stipulation demanding gender-affirming surgery (formerly 'sex reassignment surgery') is violative of the NALSA vs Union of India 2014³³ verdict. The constitutionality of the Trans Act 2019 has been challenged in the Supreme Court of India owing to several problematic provisions including the double certification process to self-identify one's gender, lower punishment for crimes against transgender persons as opposed to cisgender women and lack of reservation in education and employment, among others.³⁴ Further, by mentioning intersex as a subcategory of transgender, this statute has provided legal sanction to the conflation 'gender identity, which is a social role, and sex, which is a biological identity'.³⁵ According to the United Nations,³⁶ between 0.05% and 1.7% of the population is born with intersex traits.³⁷ India lacks reliable statistics on intersex persons, as noted in the report, *What if it is neither? A report on the historic seminar on intersex persons' issues in India*.³⁸

The outbreak of the COVID-19 pandemic led to a global lockdown in March 2020.³⁹ In the middle of this lockdown, the Government of India released the draft rules of the statute and sought feedback. Furthermore, only 12 days were given initially to submit feedback. This timeline is inconsistent with

³¹ See footnote 8 Pg 12

³² *ibid.*

³³ See footnote 19

³⁴ Shaikh, Almas(2020, Jun 18). Grace Banu Ganesan & Ors. v. Union of India & anr. | A constitutional challenge to The Transgender Persons (Protection of Rights) Act 2019. Centre for Legal and Policy Research. <https://clpr.org.in/litigation/grace-banu-ganesan-ors-v-union-of-india-anr/>

³⁵ See footnote 18

³⁶ United Nations (2021). UN Fact Sheet Intersex. Retrieved from: https://intersexgreece.org.gr/wp-content/uploads/2021/09/UNFE-Intersex_en.pdf

³⁷ Intersex people: OHCHR and the human rights of LGBTI people. United Nations Office of the High Commissioner. Retrieved from: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people>

³⁸ See footnote 7

³⁹ Onyeaka H, Anumudu CK, Al-Sharify ZT, Egele-Godswill E, Mbaegbu P. COVID-19 pandemic: A review of the global lockdown and its far-reaching effects. *Sci Prog.* 2021 Apr-Jun;104(2):368504211019854. doi: 10.1177/00368504211019854. PMID: 34061685.

the Pre-Legislative Consultation Policy (PLCP) 2014, which mandates a 30-day window.⁴⁰ The consultative process was in English and thereby inaccessible to those who do not know English.⁴¹ The draft rules released on April 18, 2020, denied an individual's right to self-identify their gender without a certificate of surgery. Owing to the push-back from the community,⁴² the final version of the rules published in September 2020 mentions the need for a medical certificate in place of sex reassignment surgery to identify within the gender binary.⁴³

1.2 Struggles of transgender persons during COVID-19 pandemic and access to relief measures

Transgender persons were among the worst affected during the COVID lockdowns. With begging, sex work and other forms of informal labour being the primary source of income for many, the social distancing regulations put in place made it hard for them to access any means of income.⁴⁴ The situation was far worse for persons living with HIV, especially sex workers due to the associated stigma.⁴⁵ It is worth noting that in May 2022, the Supreme Court of India recognised sex work as a profession and their right to a dignified life under Article 21 of the Indian Constitution.⁴⁶ The 2021 Intersex Asia report, *Invisibility Amplified*, highlights the adverse impact of COVID on the livelihood of individuals living with multiple forms of discrimination such as sexual orientation, gender expression, disability, and citizenship status, among others.⁴⁷ Activists from several states

⁴⁰ Counterview. (2020, April 20). Transgender community 'shocked' at timing, manner of seeking feedback on draft rules. Counterview. Retrieved from: <https://www.counterview.net/2020/04/transgender-community-shocked-at-timing.html>

⁴¹ Singh, P and 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/>

⁴² Mantri, Geetika (2020, May 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>

⁴³ 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>

⁴⁴ Thakur, Jyoti (2020, Apr 06). Coronavirus Has Compounded the Ostracisation of LGBTQ Community. The Wire. Retrieved from: <https://thewire.in/lgbtqia/coronavirus-lgbtq-rights>

⁴⁵ Ray I, Hasan MM, Shah PA, Sahito AM, Sarkar A, Ghosh D, Bardhan M, Mukerjee N, Essar MY. HIV epidemic amidst COVID-19 pandemic in India: a conundrum for the country's healthcare system. *Epidemiol Infect.* 2022 May 26;150:e112. doi: 10.1017/S095026882200098X. PMID: 35615920; PMCID: PMC9203355.

⁴⁶ Rajagopal, Krishnadas (2022, May 25). Supreme Court recognises sex work as a 'profession'. The Hindu. Retrieved from: <https://www.thehindu.com/news/national/supreme-court-recognises-sex-work-as-a-profession/article65461331.ece>

⁴⁷ Singh, Prashant and Chiu, Hiker (2020). *Invisibility Amplified*. Pg 6. Intersex Asia. Retrieved from: https://intersexasia.org/wp-content/uploads/2021/06/2021_06_01_IA-COVID-19-Report-1.pdf

including Tamil Nadu,⁴⁸ Telangana,⁴⁹ Karnataka,⁵⁰ and others were forced to file petitions in the high courts seeking reparation due to insufficient COVID relief provisions by the government targeting transgender persons in the country. However, these government relief measures were available to transgender persons and did not target intersex persons. Any kind of relief available to intersex persons during the pandemic was through civil society organisations working on intersex rights, notes Prashant.⁵¹ Individuals were also subject to different forms of discrimination while accessing community based COVID relief measures.

“During COVID lockdown, when an intersex person in Hyderabad reached out to an NGO working with queer/trans community to provide them with ration, they were asked for their caste and religion. On revealing their identity, they were told that they provide ration only to non-abrahamic religions. I have heard other instances of other organisations in north India asking for a person’s caste and religion and refusing ration to people of certain castes and religions.” - Duha⁵²

“Enactment of the Trans Act did not really help anyone with getting access to COVID relief but especially those at the margins like trans persons who are not educated, without computer literacy, those in the suburbs, those who are Dalit and those who belong to a geographically secluded region,” - Koyel Ghosh⁵³

Access to the limited available government relief was dependent on valid identification documents with the gender marker as transgender. As seen in the study *Gendering of Development Data in*

⁴⁸ Prabhu, C (2021, June 09). Grace Banu v. The Chief Secretary, Government of Tamil Nadu. Centre for Legal and Policy Research. Retrieved from: <https://clpr.org.in/litigation/grace-banu-vs-the-chief-secretary-government-of-tamil-nadu-4-ors/>

⁴⁹ Express News Service (2020, Jul 01). Earmark special COVID-19 wards for transgender community in hospitals: Telangana High Court. New Indian Express. Retrieved from: <https://www.newindianexpress.com/states/telangana/2020/jul/01/earmark-special-covid-19-wards-for-transgender-community-in-hospitals-telangana-high-court-2163627.html>

⁵⁰ Bhat, Prajwal (2020, Apr 10). Transgender community to be paid two months pension amid lockdown: K’taka HC. The News Minute. Retrieved from: <https://www.thenewsminute.com/article/transgender-community-be-paid-two-months-pension-amid-lockdown-k-taka-hc-122289>

⁵¹ Prashant is currently working with Intersex Asia (a Taiwan-based regional intersex organisation) as the Research and UN Advocacy Officer. His academic work focuses on citizenship, transitional justice and SOGIESC issues.

⁵² Duha (she/they) is one of the cofounders of IHRI: Intersex Human Rights India. She is a community organiser and works extensively in spaces that intersect with Queer rights and science. She is a biologist by training and her current area of focus is on vaccine equity and research.

⁵³ 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.

India: Beyond the Binary (2020⁵⁴) procuring valid identity documents in their self-identified name and gender has long been a struggle for transgender persons in India. The existing struggles of the transgender community due to lack of valid identification documents were exacerbated during the pandemic. Some state high courts took cognisance of the lack of valid identification documents among transgender persons. Madras High Court directed the Government of Tamil Nadu to consider the plea to provide the relief amount to transgender persons who do not possess ration cards⁵⁵ while Telangana,⁵⁶ and Patna High Courts⁵⁷ also dismissed the need for ration cards to access relief due to the lack of identification documents among transgender persons.

In addition to the complexities involved in the name and gender change process, the study *Gendering of Development Data in India: Beyond the Binary*⁵⁸ also highlights the challenges of digitising the identification document changing process. Digitisation replicates and further complicates the existing challenges for transgender persons. Replication of existing offline challenges by digital systems in multiple data sources continues to keep transgender persons excluded. Owing to social distancing during the global lockdowns, many transgender persons were forced to live with their natal families. Gender-based violence against transgender persons is common. These instances increased during the pandemic, especially domestic violence of Lesbian Bisexual and Transgender (LBT⁵⁹) individuals.⁶⁰ Even with limited availability of internet access, there was increased dependency on the internet to seek as well as provide support to individuals in distress, despite insufficient safety and privacy measures in place for protection.⁶¹

⁵⁴ Brindaalakshmi. K (2020, June 29). Gendering of Development Data in India: Beyond the Binary Part #3 Identity Documents and Access to Welfare, Pg 5-8. Centre for Internet & Society. Retrieved from <https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

⁵⁵ See footnote 47

⁵⁶ See footnote 48

⁵⁷ Socio-Legal Information Centre (2020, Sept 04). Patna High Court Order to ensure social and financial security to Transgender Persons. Socio-Legal Information Centre. Retrieved from: <http://www.slic.org.in/litigation/patna-high-court-issues-notice-regarding-the-petition-highlighting-the-pitiful-condition-of-the-transgender-community-5ebf3565d4ec5>

⁵⁸ *ibid.* Pg 49

⁵⁹ LBT is a term used to denote Lesbian, Bisexual and other queer cis women and all transgender persons

⁶⁰ Bose, Adrija (2020, Apr 06). India's Domestic Abuse Survivors are in Lockdown with their Monsters, But Helplines Are Not Ringing. News18. Retrieved from: <https://www.news18.com/news/buzz/indias-domestic-abuse-survivors-are-in-lockdown-with-their-monsters-but-the-helplines-are-not-ringing-2563955.html>

⁶¹ Brindaalakshmi, K (2021, Feb 15). Using the Internet During the Pandemic: Is it a Choice?. Gender IT. Retrieved from: <https://www.genderit.org/feminist-talk/using-internet-during-pandemic-it-choice>

1.3 Impact of digitisation and 'Data for Development' on the rights of transgender persons in India

The paper *Between surveillance and recognition: Rethinking digital identity in aid* points to several complex reasons for the acceptance of new identity systems by data subjects, ranging from recognition and belonging to efficiency and convenience.⁶² In India, entering government data sets is important for individuals to be able to access state-sanctioned welfare and schemes. The acknowledgement of an individual's legal identity has been by means of different identity documents. It is necessary that a person gets into the system with these documents in their chosen name and self-identified gender, and consequently into different development datasets needed to determine eligibility for government welfare schemes. The global development community's push for digital ID is for the sake of a legal ID for those without one and is included within the UN Sustainable Development Goals, "providing legal identity for all, including birth registration".⁶³ Further, big data is being pushed as the solution to address all exclusions faced by individuals by international organisations such as the United Nations,⁶⁴ the World Bank⁶⁵ and the World Economic Forum.⁶⁶ According to a 2019 report by Digital Future Society, "current international assessments [of digital inclusion] collect few indicators on gender equality, and many do not differentiate between different types of users. Without disaggregated data on gender, age, income and educational level, the digital inclusion of marginalised communities cannot be assessed over time and is of limited value for decision-makers to refine initiatives and target resources to specific communities."⁶⁷ The UN Sustainable Development Goal 5 (SDG 5) aims to achieve gender equality and empower all women and girls.⁶⁸ Although the intention is to 'leave no

⁶² Weitzberg, K., Cheesman, M., Martin, A., & Schoemaker, E. (2021). *Between surveillance and recognition: Rethinking digital identity in aid*. *Big Data & Society*, 8(1). <https://doi.org/10.1177/205395172111006744>

⁶³ Amba Kak, Jochai Ben-Avie, Alice Munyua, and Udbhav Tiwari(2020). *Bringing Openness to Identity*. Pg 2. Mozilla Foundation. Retrieved from: <https://blog.mozilla.org/netpolicy/files/2020/01/Mozilla-Digital-ID-White-Paper.pdf>

⁶⁴ United Nations (2014). *A world that counts: Mobilising the data revolution for sustainable development*. New York. Available at: <http://www.undatarevolution.org/wp-content/uploads/2014/12/A-World-That-Counts2.pdf> (accessed on July 22, 2023)

⁶⁵ World Bank Data Team(2014, Oct 30). *New report: Big Data in Action for Development*. World Bank. Retrieved from: <https://blogs.worldbank.org/opendata/new-report-big-data-action-development>

⁶⁶World Economic Forum (2012). *Big Data, Big Impact: New Possibilities for International Development*. World Economic Forum. Retrieved from: https://www3.weforum.org/docs/WEF_TC_MFS_BigDataBigImpact_Briefing_2012.pdf

⁶⁷ Digital Future Society (2019, Dec). *Measuring the margins: A global framework for digital inclusion*. Pg 7. Digital Future Society. Retrieved from: https://collections.unu.edu/eserv/UNU:7584/n201219_Report-7_A_global_framework_for_digital_inclusion-2.pdf

⁶⁸ United Nations. (2019). *Progress of Goal 5 in 2019*. United Nations. Retrieved from <https://sustainabledevelopment.un.org/sdg5>

one behind,' by specifying women and girls, SDGs have limited the understanding of gender to the biological assigned binary gender,⁶⁹ excluding those identifying beyond the binary.

A 2018 UN Women report on gender equality and sustainable development acknowledges the need for a rights-based approach to data, adhering to international human rights norms and principles in data collection and data dissemination processes.⁷⁰ This report says that a person's gender identity may or may not correspond with their biological sex. It points to the need for data on gender identity for comprehensive and effective monitoring of SDGs. It also highlights the lack of an international standard for collecting and measuring gender identity data. Thus, globally, current development data sets operate with certain hidden biases towards a historically silenced section of the population. The importance of a statistical standard for gender identity has been highlighted by this report since it is likely to assist in ensuring that policies and public services are inclusive of the specific needs of those who are gender-diverse.⁷¹

The *Global Multidimensional Poverty Index 2022* in its notes mentions 'people who live with disabilities, and lesbian, gay, bisexual, transgender, queer and other sexual and gender minority populations' under the excluded population groups in the index.⁷² *Measuring Sex, Gender Identity, And Sexual Orientation* by the National Academics Press points to the need for collecting disaggregated sex and gender data: "In human populations, collection of data on sex as a biological variable should be accompanied by collection of data on gender.... Asking respondents to separately identify their sex and their gender—in particular, their sex assigned at birth and gender identity—improves overall measurement quality and also allows researchers and other data users to identify individuals with transgender experience by comparing their sex assigned at birth to their current gender identity. This two-step gender measure has become an increasingly common and validated way to identify people with transgender experience because it identifies a wider range of transgender people than single-step methods that ask respondents whether they identify as transgender." ⁷³

⁶⁹ Katherine Wyers. 2022. Leaving No-One Behind? A Research Agenda for Queer Issues in ICT4D. Freedom and Social Inclusion in a Connected World, pages 533-552.

⁷⁰ UN Women. (2018). Turning Promises Into Action: Gender Equality in the 2030 Agenda for Sustainable Development . Page 64. Retrieved from <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/sdgreport-gender-equality-in-the-2030-agenda-for-sustainable-development-2018-en.pdf>

⁷¹ *ibid.*

⁷² United Nations Development Programme and Oxford Poverty and Human Development Initiative(2022).Global Multidimensional Poverty Index 2022: Unpacking deprivation bundles to reduce multidimensional poverty. Pg 28. United Nations Development Programme and Oxford Poverty and Human Development Initiative. Retrieved from: <https://hdr.undp.org/system/files/documents/hdp-document/2022mpireportenpdf.pdf>

⁷³ National Academies of Sciences, Engineering, and Medicine 2022. *Measuring Sex,*

As seen in the study *Gendering of Development Data in India: Beyond the Binary (2020)*,⁷⁴ there are several limitations in State-generated (big) data sets like Census 2011. These cannot be used to make development decisions for inclusion of transgender persons due to several reasons including but not limited to: lack of valid identity documents, lack of understanding the difference between sex and gender among enumerators, conflation of intersex status and transgender gender identity and erasure of different transgender identities by enumerators, among others. Owing to the limitations in State-generated big data, public-private partnerships to enable data-driven development are being pushed globally through different initiatives such as the UN Global Pulse initiative launched in 2009⁷⁵ and the World Bank's Open Data initiative launched in 2010.⁷⁶ As pointed by Nick Couldry and Ulises A. Mejias, data colonialism normalises exploitation of human beings through data, just as historic colonisation appropriated territories and their resources for profit.⁷⁷

The aforementioned 2020 study⁷⁸ shows the inadequacy in the use of big data to aid development decisions for transgender persons in India, a population group with a history of surveillance and control. Linking social media accounts to access services and apps compromises individual privacy. Further, online services continue to depend on government-issued identification documents for verification purposes. The dependency of private services on government-issued documents and the continued misrepresentation of transgender people impacts the big data generated by private service providers and cannot be used to make development decisions concerning their inclusion. Social media data also presents privacy concerns and harassment.⁷⁹ In the paper, *In the name of Development: Power, profit and the datafication of the global South*, Taylor, L and Broeders, D point to the need to monitor the boundary between care and control in low and

Gender Identity, and Sexual Orientation. Pg 8. Washington, DC: The National Academies Press.
<https://doi.org/10.17226/26424>.

⁷⁴ Brindaalakshmi K.(2020, June). *Gendering of Development Data in India: Beyond the Binary 2*, Legal Rights and Enumeration Process, Pg.12-14. Centre for Internet & Society India. Retrieved from:
<https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

⁷⁵ UN Global Pulse (May 2012). *Big Data for Development: Challenges and Opportunities*. Pg 7. United Nations. Retrieved from: <https://unglobalpulse.org/wp-content/uploads/2012/05/BigDataforDevelopment-UNGlobalPulseMay2012.pdf>

⁷⁶ World Bank (2010, Apr 10). *World Bank Group Opens Data to All*. Retrieved from:
<https://www.worldbank.org/en/news/press-release/2010/04/20/world-bank-group-opens-data-to-all>

⁷⁷ Couldry, N., & Mejias, U. A. (2019). *Data Colonialism: Rethinking Big Data's Relation to the Contemporary Subject*. *Television & New Media*, 20(4), 336–349. <https://doi.org/10.1177/1527476418796632>

⁷⁸ See footnote 5

⁷⁹ Brindaalakshmi K.(2020, June). *Gendering of Development Data in India: Beyond the Binary 4*, Digital Services and Challenges, Pg.9. Centre for Internet & Society India. Retrieved from:
<https://cis-india.org/raw/brindaalakshmi-k-gendering-development-data-india>

middle income countries that are becoming the new laboratories of data science— particularly to reevaluate the nature and priorities of privacy in these countries where the accountability for data use and intervention may be minimal.⁸⁰ Evidently, in the context of transgender persons in India, control seems to weigh higher than care through state-welfare schemes and policies owing to the long history of surveillance and the relatively recent recognition of their rights. This calls for a reevaluation of the nature and priorities of privacy and access to their rights for transgender persons in the country.

1.4 Privacy of transgender persons: A choice between surveillance and recognition

In *Data Epistemologies, The Coloniality of Power and Resistance*,⁸¹ 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. Questioning the power relations that affect populations that exist outside the knowledge order, Ricaurte argues that ‘data-centric rationality should be understood as an expression of the coloniality of power manifested as the violent imposition of ways of being, thinking, and feeling that leads to the expulsion of human beings from the social order, denies the existence of alternative worlds and epistemologies, and threatens life on Earth.’ Transgender and intersex persons are two such population groups that exist at the margins in India.

With the introduction of the National Digital Health Mission,⁸² the Government of India is moving towards providing healthcare services to individuals using a health information exchange interlinking different digital public goods.⁸³ The issuance of health ID⁸⁴ and the interlinking of health information presents a complex situation with respect to access and privacy for transgender persons who often don’t possess valid identity documents. While this could lead to denial of a

⁸⁰ Taylor, L., & Broeders, D. (2015). *In the name of Development: Power, profit and the datafication of the global South*. *Geoforum*, 64, 229-237

⁸¹ Ricaurte, P. (2019). *Data Epistemologies, The Coloniality of Power, and Resistance*. *Television & New Media*, 20(4), 350–365. <https://doi.org/10.1177/1527476419831640>

⁸² See footnote 29

⁸³ National Health Authority, Ministry of Health and Family Welfare, Government of India (2021, Mar) Consultation paper on Unified Health Interface. Pg 10. Government of India. Retrieved from: https://abdm.gov.in:8081/uploads/UHI_Consultation_Paper_60a9201c1d.pdf

⁸⁴ Dogra, Sarthak (2021, May 24). Took Covid vaccine using Aadhaar? Your National Health ID has been created without your permission. *IndiaToday*. Retrieved from: <https://www.indiatoday.in/technology/features/story/took-covid-vaccine-using-aadhaar-your-national-health-id-has-been-created-without-your-permission-1806470-2021-05-24>

health ID and, consequently, basic healthcare, the interlinking also means interlinking of sensitive personal data like HIV status for transgender persons⁸⁵ who are categorised as a 'high-risk group' and carry along its associated stigma.⁸⁶ Further, the COWIN app used to access COVID vaccine has an additional option for transgender persons who identify beyond the binary. However, accessing vaccination continues to demand an identification document in one's self-identified name and gender.⁸⁷ This acts as a barrier for transgender persons attempting to access a COVID vaccination – a constitutionally sanctioned right.⁸⁸

In 2018, Swatantra, a community organisation representing the transgender community, was one of the petitioners fighting against the use of Aadhaar, India's biometric-based digital ID. In their petition, they argued that the use of personal biometric and demographic information provided by the transgender community under the Aadhaar Act would violate their privacy⁸⁹ and expose them to violence, surveillance and harassment by the State and private persons.⁹⁰ The access struggles of transgender persons continues even years after the Supreme Court of India upheld⁹¹ the constitutional validity of using Aadhaar to provide State-sanctioned welfare. *Transforming Lives, Transgender-Inclusive India: A Framework*, a report by the UNDP highlights the need for the Unique Identification Authority of India (UIDAI) to facilitate easier access to Aadhaar for transgender persons with minimum requirements.⁹²

⁸⁵See footnote 74

⁸⁶ See footnote 8, Pg. 2

⁸⁷ Brindaalakshmi K (2021, May 14). The Intertwined Realities of India's Transgender Act 2019, Digitisation, and the COVID Vaccination Drive. The Smashboard. Retrieved from: <https://smashboard.org/the-intertwined-realities-of-indias-transgender-act-2019-digitisation-and-the-covid-vaccination-drive/>

⁸⁸ Roy, Radhika and Unny, P Mukund (2021, Jan 17). Right to free vaccine – a constitutional mandate. The Indian Express. Retrieved from: <https://indianexpress.com/article/opinion/right-to-free-vaccine-a-constitutional-mandate-7150267/>

⁸⁹ Rautray, S (2018, Mar 21). Transgenders cite identity issues to oppose Aadhaar Act in SC. The Economic Times. Retrieved from: <https://economictimes.indiatimes.com/news/politics-and-nation/transgenders-cite-identity-issues-to-oppose-aadhaar-act-in-sc/articleshow/63390738.cms?from=mdr>

⁹⁰ Indo-Asian News Service (2018, Mar 20). Aadhaar exposes transgenders to violence, discrimination and surveillance: SC told. IndiaToday. Retrieved from: <https://www.indiatoday.in/india/story/aadhaar-exposes-transgenders-to-violence-discrimination-and-surveillance-sc-told-1193964-2018-03-20>

⁹¹ Supreme Court of India (2018, Sept 26). Justice K.S.Puttaswamy Vs Union India, Writ Petition (Civil) No. 494 of 2012 & connected matters. SC Observer. Retrieved from: <https://www.scoobserver.in/cases/puttaswamy-v-union-of-india-constitutionality-of-aadhaar-act-case-background/>

⁹² United Nations Development Programme (2021). *Transforming Lives, Transgender Inclusive India: A Framework*, Pg 63. United Nations Development Programme. Retrieved from: <https://www.undp.org/sites/g/files/zskgke326/files/migration/in/0e9d30cf9ba6865600f1ff29136f5837ebf52c4d4095b2fd749eeb397259fc4f.pdf>

While the struggles for recognition by the marginalised continues, the routine exercise of Socio-Economic Caste Census used to deliver benefits to the poor has been turned into an exercise of building a mass surveillance system – all in the guise of poverty eradication. In March 2020, the Huff Post reported that the Indian government is in “the final stages of creating an all-encompassing, auto-updating, searchable database to track every aspect of the lives of each of India’s over 1.2 billion residents.”⁹³ This Aadhaar-seeded National Social Registry will be a 360-degree database built using Aadhaar numbers to integrate “religion, caste, income, property, education, marital status, employment, disability and family-tree data of every single citizen.”⁹⁴ Privacy experts have warned about the government’s ability to arbitrarily designate individuals as citizens or non-citizens. In a similar exercise linking Aadhaar to Voter IDs using data-sorting algorithms resulted in millions of voters being stripped of their right to vote, a constitutionally sanctioned fundamental right.⁹⁵ These developments have taken place without any privacy law in the country. Draft versions of the Data Protection Bill of 2018 underwent various rounds of discussions and iterations over a period of four years before being scrapped-off in August 2022.⁹⁶ In December 2022, the Digital Personal Data Protection Bill 2022 was introduced in the Parliament⁹⁷ and this bill was passed in August 2023.⁹⁸ This statute on digital personal data protection has been severely criticised by opposition lawmakers and digital experts for increased surveillance by government, weakening of the Right to Information Act 2005, collecting personal data of individuals without their consent, and collecting private data by government and its agencies including access to user data from companies, among others.⁹⁹

⁹³ Shrivastava, K.S (2020, Mar 16). EXCLUSIVE: Documents Show Modi Govt Building 360 Degree Database To Track Every Indian. HuffPost. Retrieved from: https://www.huffpost.com/archive/in/entry/aadhaar-national-social-registry-database-modi_in_5e6f4d3cc5b6dda30fcd3462

⁹⁴ Ibid.

⁹⁵ Khaira, R and Sethi, A (2018, Nov 8). UIDAI's Voter ID-Aadhaar Linking Plans May Have Cost Millions Their Vote. HuffPost. Retrieved from: https://www.huffpost.com/archive/in/entry/election-commission-uidai-plan-to-link-aadhaar-to-voter-ids-may-have-robbed-millions-of-their-vote_in_5c128de4e4b0e15b460af0ba

⁹⁶ Lele, S(2022, Aug 04) Centre withdraws Personal Data Protection Bill, industry disappointed. Business Standard. Retrieved from: https://www.business-standard.com/article/economy-policy/centre-withdraws-personal-data-protection-bill-industry-disappointed-122080301781_1.html

⁹⁷ Ministry of Electronics and Information Technology (2022, Dec 07). The Digital Personal Data Protection Bill 2022. Retrieved from: <https://pib.gov.in/PressReleasePage.aspx?PRID=1881402>

⁹⁸ Reuters (2023, Aug 10). India passes data protection law amid surveillance concerns. Reuters. Retrieved from: <https://www.reuters.com/technology/india-passes-data-protection-law-amid-surveillance-concerns-2023-08-09/>

⁹⁹ Al Jazeera and News Agencies (2023, Aug 09). India passes data protection bill amid surveillance concerns. Aljazeera. Retrieved from: <https://www.aljazeera.com/economy/2023/8/9/india-passes-data-protection-bill-amid-surveillance-concerns>

2. Scope of Gendering of Development Data in India: Post-Trans Act 2019

The Transgender Persons (Protection of Rights) Act 2019, a law to address the rights of transgender persons, was enacted during a time when the Indian State is building a 360-degree surveillance system tracking its citizens in the guise of providing benefits to those below the poverty line. It is important to take into account this population group's history of surveillance and criminalisation as well as its continued impact in the present realities of transgender persons. The process of changing one's name and gender on identification documents has been digitised. Given the rampant digitisation of citizenship and access to state-sanctioned welfare, there is a need to recognise the role of government, public services and private services in the data (re)colonisation of individuals¹⁰⁰ in order to understand the datafication of transgender persons to be recognised as valid human beings and access rights within a digital welfare state.¹⁰¹

With the aforementioned developments as context, this study seeks to understand the gendering of development data in India 1. after the enactment of the Transgender Persons (Protection of Rights) Act 2019; 2. collection of data and issuance of government (foundational and functional) identity documents to persons identifying outside the cisgender/binary genders of female and male; 3. the data misrepresentations, 4. barriers to accessing public and private services; 5. and the resultant informational exclusions as well as privacy challenges that still remain. With the history of surveillance (control) and recognition (for care) as two ends of the spectrum, this study builds on the findings from the study, *Gendering of Development Data in India: Beyond the Binary*.

This study examines the datafication of transgender persons using transgender as a gender (data) category within (digital) data systems that has evolved, undergoing several kinds of legal and policy developments over time. This includes but is not limited to the developments related to different forms of surveillance, pathologisation, rights recognition, provision of welfare and other services and the continued erasure of transgender and intersex realities within data systems leading to insufficient or total lack of access to services. With digitisation, the data system's understanding about this data category is likely to influence the access to different services for transgender as well as intersex persons (legally a subcategory of transgender). The introduction of

¹⁰⁰ See footnote 76

¹⁰¹ 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>

a digital ID to access state-sanctioned welfare as well as other services makes it essential to understand transgender as a gender (data) category within digital data systems. Acknowledging the distinct needs of transgender and intersex individuals, this study highlights the need for two distinct data categories to understand transgender and intersex persons. That said, understanding intersex as a separate data category is not within the scope of this study. There are 40 known intersex variations.¹⁰² Therefore, deeper studies are necessary to understand the data challenges faced by intersex persons. While the primary focus of this study is to understand the data challenges and the rights and exclusions of transgender persons, this report has also attempted to highlight the challenges faced by intersex persons wherever information was available and relevant. The primary intent of this study is to understand the privacy challenges experienced by transgender individuals within the current 'digital welfare state' that promises inclusion and care for transgender persons while having historically silenced and surveilled this population group. With privacy as a focus, this study attempts to understand the 'boundary between care and control'¹⁰³ exercised by the system to render inclusion to transgender persons using a digital ID and its linkage to accessing essential services including healthcare.

Similar to my previous study, in this report, gendering of development data refers to the way in which (binary) gender as a data category directs collection of data only of individuals who identify with the gender of their assigned sex at birth, and the implications of that on development decisions for transgender individuals or individuals who do not identify with the gender of their assigned sex at birth. Gendering of development data, including but not limited to official statistics, affects the access to rights and welfare by transgender and intersex persons. As seen in the 2020 report, development data collected and presented in the binary genders of female and male is used to deliver welfare to citizens in India and this affects the rights of transgender and intersex persons.¹⁰⁴ The report traced the challenges with implementing the Supreme Court's directives in the NALSA Vs Union of India verdict. It also delved into the enumeration of transgender persons in India, the challenges involved, the issuance of identification documents and the resultant data and rights exclusions faced by this population group.¹⁰⁵

This report (2023) is organised in four parts:

¹⁰² Carpenter M. Intersex Variations, human rights, and the International Classification of Diseases. *Health Hum Rights*.2018;20:205-214

¹⁰³ See footnote 76

¹⁰⁴ See footnote 6

¹⁰⁵ *ibid*

- Part 1 of the report, that is this document, offers an introduction to the report, describes the method of the study, and presents a summary of the findings.
- Part 2 traces the developments that led to the enactment of the Transgender Persons (Protection of Rights) Act 2019, the problematic provisions within this statute, digitisation of the name and gender change process and resultant data discrepancies. This part focuses on the process of recolonisation and datafication, the efforts and challenges involved for a historically criminalised and pathologised population group using a law that is meant to recognise their personhood and rights in a digital welfare state.
- Part 3 traces the evolution of transgender as a gender category through law, policy and data systems and the implications of the same for transgender persons while accessing their rights and services and the potential use of machine learning and Artificial Intelligence (AI) to address their needs.
- Part 4 delves into the digitising of the access to services, the possibilities and the challenges with the resultant data generation, the inherent risks and their impact on accessing right to life and right to privacy for transgender persons, the play-off between access to services, especially state-sanctioned welfare and right to privacy, and the impact of the fight between data colonisation and data sovereignty on the access to services for transgender persons.

3. Research methods

Building on the findings of the study *Gendering of Development Data in India: Beyond the Binary*, this study begins with a focus on the inherent assumption that large-scale data sets are the best available reference points for designing development solutions, especially for the inclusion of historically marginalised (silenced and surveilled) population groups like transgender persons. Kate Crawford calls this 'data fundamentalism' in the article titled *The Hidden Biases of Big Data*.¹⁰⁶ She describes 'data fundamentalism' as the notion that sees massive data sets and predictive analysis as always reflecting the objective truth. Crawford questions this notion by stating that data and data sets are human creations and hence are bound to carry hidden biases, both during collection and analysis. This is crucial since big data processes codify the past.¹⁰⁷ It is important to understand this codification for marginalised population groups like transgender and intersex persons who have experienced erasure due to historical criminalisation and pathologisation that legitimised the denial of their fundamental rights.

¹⁰⁶ Crawford, K. (2013, April 1). The Hidden Biases of Big Data . Harvard Business Review. Retrieved from: <https://hbr.org/2013/04/the-hidden-biases-in-big-data>

¹⁰⁷ O'Neil, Cathy. 2016. Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy. Pg 162. New York: Broadway Books.

An understanding of the gendering of development data, the resultant systemic gender-based exclusions and the privacy concerns of transgender and intersex persons in India especially with the introduction of digitisation, machine learning and AI to administer constitutionally sanctioned rights and welfare would require a study of the transgender and intersex persons in India. It would also require a study of the identification document changing process as detailed in the Trans Act as a starting point to understand transgender as a gender data category in law, policy and within data systems; the intersectionality of multiple marginalisation experienced by an individual; and the privacy challenges and exclusions that still remain.

With this in mind, a qualitative study was designed to understand the different aspects, namely enumeration of transgender and intersex persons under the Trans Act 2019, digitisation of the process of changing identity documents, transgender as a gender category in law, policy and data systems and accessing right to life and right to privacy for transgender and intersex persons, among others. Experts from northern, southern, eastern and western parts of India, associated with different organisations working with the transgender community in the country, were interviewed for this study. A total of 14 individuals were interviewed for this qualitative study between October 2021 and December 2021. Information on intersex variations and the lives of intersex persons continues to be limited. I managed to interview one intersex rights activist in India in the later part of 2022. In July 2023, I began a qualitative research study on the rights of intersex persons in India for Intersex Asia,¹⁰⁸ a civil society organisation working for the rights of intersex individuals in Asia. Relevant findings from the focus group discussions conducted with 11 primary respondents (anonymised) as well as 3 interviews with intersex rights activists (identified with consent) has been included in this report to provide context about intersex realities. Challenges with connecting to individuals working on transgender and intersex rights was exacerbated owing to the COVID-19 pandemic, as organisations and individual activists were busy with resuscitating the transgender and intersex community. Since my previous study, *Gendering of Development Data in India: Beyond the Binary* is foundational for this (2023) study, the 18 interviews conducted as part of my previous study and the findings from them were also used to trace and analyse the evolution of gendering of development data in India after the passing of the Trans Act 2019 and its impact on accessing right to life and right to privacy for transgender persons. Therefore data from a total of 38 interviews (18 in 2018, 14 in 2021, 2 in 2022 and 4 in 2023) with secondary respondents as well as 3 focus group discussions (conducted in July 2023) with 11 intersex persons (primary respondents) were used to write this research report. 3 respondents of this study that I interviewed between 2021-23 did not want to be named in this report. Although interviews were conducted at

¹⁰⁸ Intersex Asia. Retrieved from: <https://intersexasia.org/>

different intervals between 2021-2023, it is important to note that the responses from the respondents and the challenges noted have remained consistent through this period.

Owing to the study being conducted during the COVID pandemic, semi-structured interviews were undertaken with the respondents either via telephone or on video call, and recorded upon receiving their oral consent on record. The focus group discussions for Intersex Asia were conducted in person. Relevant sections of the interview schedule can be found in the appendix section of this part of the report. The identified respondents have played and continue to play important roles in struggles of transgender and intersex persons for their dignity, social justice and citizenship in India. The respondents included individuals who are researchers, legal professionals, petitioners challenging the Trans Act in the Supreme Court and activists/individuals associated with different organisations that work on the rights of transgender and intersex persons at the state, regional, and national levels. Building on the gaps of the previous study, the respondents also included individuals who work on intersectional issues such as caste and disability along with transgender identity of an individual. This set of organisations and individuals associated with them are not representative of all transgender rights organisations in India, and neither have they engaged with every transgender rights issue. Deeper studies are recommended to understand the data realities, challenges and data categorisation experienced by intersex individuals as well as persons living with disabilities, which is beyond the scope of this study. (See Appendix for the list of respondents with description of their works and the organisations they are associated with.)

An important part of this study is the structural challenges faced by transgender individuals in accessing rights and services due to government and private sector generated big data and the consequent access and privacy challenges. The insights on the structural challenges and the different layers of systemic gender-based violence and marginalisation a transgender individual faces with respect to various markers such as religion, caste, disability, formal education, income, et cetera were discussed and identified through the interviews with individuals working on the rights of transgender persons – within the limited scope of this study. Owing to the introduction of machine learning and AI, intersectionality is one of the key areas of focus for this qualitative study on understanding data on transgender persons in India. Similar to respondents working on intersex issues, there were challenges with finding respondents working at the intersection of transgender rights and disability rights.

“Every organisation says we don’t have transgender persons in our organisation so it is not important. Even very large (disability rights) organisations say that they have never seen transgender persons anywhere, even in their speciality schools. And that gives you a lot of

ideas. They don't even accept that they (transgender persons) exist." – Shampa Sengupta¹⁰⁹

The interviews for this study were conducted between late 2021 and July 2023 and this report was completed in August 2023, after India enacted the Transgender Persons (Protection of Rights) Act during 2019 and passed its rules in September 2020. The Supreme Court of India began hearing the petitions for marriage equality in April 2023.¹¹⁰ To support these proceedings, People's Union for Civil Liberties¹¹¹ and the National Network of LBI women and Transgender persons organised a closed door public hearing centering familial violence in the lives of queer and trans persons.¹¹² In October 2023, the Supreme Court of India declined to legalise same-sex marriage, although the verdict emphasized the need for LGBTQ+ persons to be free of prejudice and discrimination.¹¹³ Although being published in November 2023, this report presents the discussions had with the respondents in the context of events with respect to the rights of transgender persons in India until December 2021 and relevant developments that followed until June 2023 that will impact the big data on transgender persons. Although this study does not include an analysis of the developments after the introduction of the Digital Personal Data Protection Bill 2022 in December 2022¹¹⁴ and the passing of this statute in August 2023,¹¹⁵ the observations shared through the interviews and presented in this report continue to remain relevant to and inform ongoing struggles by transgender persons for agency, social justice and economic well being.

4. Summary of Findings

With the increased emphasis on data for development and Artificial Intelligence (AI) for development as the panacea for all development and rights access challenges, it has become quintessential for all individuals to become a part of different data sets. Globally, the discourse on data for development continues to remain in the gender binary. Currently, it appears that there is no

¹⁰⁹ Shampa Sengupta is the Director of Sruti Disability Rights Centre

¹¹⁰ Treisman, Rachel (2023, Apr 18). Will India legalize same-sex marriage? Its top court hears arguments this week. NPR. Retrieved from <https://www.npr.org/2023/04/18/1170581210/india-same-sex-marriage-supreme-court>

¹¹¹ People's Union for Civil Liberties <https://pucl.org/>

¹¹² Orinam (2023, Apr 17). Our Own Hurt Us the Most: Centering Familial Violence in the lives of Queer and Trans Persons in the Marriage Equality Debates. Retrieved from: <http://orinam.net/familial-violence-marriage-equality/>

¹¹³ Mogul, Rhea. Suri, Manveena. Sud, Vedika. Farooqui, Sania. Pandey, Tanushree (2023, Oct 17). India's top court declines to legalize same-sex marriage in landmark LGBTQ ruling. CNN. Retrieved from: <https://edition.cnn.com/2023/10/17/india/india-same-sex-marriage-verdict-intl-hnk/index.html>

¹¹⁴ See footnote 92

¹¹⁵ Reuters (2023, Aug 10). India passes data protection law amid surveillance concerns. Reuters. Retrieved from: <https://www.reuters.com/technology/india-passes-data-protection-law-amid-surveillance-concerns-2023-08-09/>

standard for collecting and measuring gender identity data. Global development agenda with the Sustainable Development Goals (SDGs) and Human Development Index continues to exclude transgender persons from the discourse on privacy related to digitising healthcare. This erasure is a result of the emphasis to record gender in the binary by the SDGs. SDG 5¹¹⁶ on gender ‘aims to achieve gender equality and empower all women and girls.’ Using the explicit mention of women and girls as target, SDGs limit the understanding of gender, and “its capacity to encompass meaning related to gender identities beyond the biological assigned binary gender is thus suppressed.”¹¹⁷

This study *Gendering of Development Data in India: Post-Trans Act 2019* describes and highlights the implications of this binary gendering of development data on transgender persons in India. The Transgender Persons (Protection of Rights) Act 2019¹¹⁸ [henceforth Trans Act] was enacted in December 2019 to protect the rights of the transgender population in India. Through the course of this study and given the responses from the participants interviewed, it is evident that the transgender community continues to face severe data challenges and, consequently, rights-related challenges that are deeply rooted in the historical discrimination and marginalisation experienced by them since the colonial era.

Although the Trans Act was enacted for the recognition of the rights of transgender persons in India, the process to change one’s name and gender on identification documents is fraught with challenges. The Trans Act 2019 prescribes a two-step digital process for changing name and gender on different identification documents under Section 6 and Section 7 of the statute¹¹⁹ with details for the process under Rules 5-7 of the Trans Act Rules 2020.¹²⁰ The name and gender changing process continues to be dependent on existing identification documents in an individual’s given name and assigned gender at birth. Since many transgender persons run away from their natal homes to escape abuse and discrimination, many do not possess these documents and this continues to widen the data and access gap for transgender persons. Procuring a medical certificate from trans-friendly medical professionals continues to remain a major challenge for transgender persons identifying within the binary gender of male and female. Only those clued into

¹¹⁶ See footnote 65

¹¹⁷ Katherine Wyers. 2022. Leaving No-One Behind? A Research Agenda for Queer Issues in ICT4D. Freedom and Social Inclusion in a Connected World, pages 533-552.

¹¹⁸ See footnote 30

¹¹⁹ *ibid.*

¹²⁰ 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>

the community networks have access to the limited list of trans-friendly medical professionals. Languages used in the government application forms also pose another set of challenges for those who do not know English or Hindi, especially in rural parts of states such as Karnataka, Andhra Pradesh, Telangana, Tamil Nadu, among others, where individuals might not know either of these two languages.

The delay in the approval process of the applications continues, especially for the second step with medical certification under Section 7 of the Trans Act.¹²¹ Although this statute explicitly deems physical checks as illegal, such arbitrary physical checks continue in several parts of the country, note respondents of this study. Due to the delay in the digital approval process, individuals are often forced to visit government offices and engage with government officials. Engaging with government officials becomes a challenge for most due to the stigma attached to being transgender. Not all government officials have been sensitised about the rights and concerns of transgender citizens even after the enactment of the Trans Act. Digitisation has not removed these human rights violations to make it easier for transgender individuals to self-identify in their chosen name and gender on government-issued identity documents, and therefore on official statistics.

In the case of transgender persons, the state has legitimised the medical certification process using the Trans Act, which then inherently violates the right to privacy of transgender persons in the name of protection. This understanding of being transgender by the legal, policy and data systems can be traced in the inconsistencies that exist within these systems, leading to further exclusions for transgender persons. This reiterates the lack of equal citizenship and rights for transgender persons, a historically surveilled and marginalised population group in the country. Thus, the state reiterates the body politics surrounding certain bodies and their hierarchies that existed pre-digitisation using digital gatekeeping to surveil the bodies that enter its data systems in order to determine the kinds of bodies that are eligible for and deserving of human rights and state sanctioned welfare.

There is a continued conflation between gender and sex/sex characteristics within the scope of the Trans Act. By mentioning intersex under the transgender umbrella, all intersex persons wanting to access any state welfare are expected to certify themselves as being transgender. The Trans Act does not provide an option for intersex persons to identify themselves as intersex. Instead, intersex persons are expected to certify themselves as transgender if they wish to change their name and gender on their identification documents. Although intersex is mentioned under the definition of

¹²¹ See footnote 30

transgender in the Trans Act,¹²² the statute does not have specific provisions to address the violations experienced by intersex persons like the non-consensual surgeries on intersex infants. Further, the processes to change different identity-specific identification documents and digitisation of these processes is tougher for individuals living with multiple identities of marginalisation such as being Dalit or intersex or living with a disability, among others. Caste certificate¹²³ and Unique Disability ID (UDID¹²⁴) are identification documents that require a copy of other identification documents making it a continued challenge for transgender persons who may be from the Dalit community and/or living with a disability, thereby further marginalising them. Dalit trans persons continue to face both caste-based and gender-based discrimination while changing their caste certificate.

Thus, the processes required for transgender persons to change their name and gender on different documents to enter the system in their different identities and the interdependency of documents continues to keep them excluded in a digital welfare state. The need for multiple digital certifications for different marginalised identities adds to the existing complexities further marginalising the most vulnerable. This systemic flaw of the welfare system makes it necessary for transgender people to repeatedly prove their identity at different points to claim their right to equal citizenship in the country, which more often than not results in compromises with no guarantees for the sake of being represented on official statistics and government records. While a proof of identification is necessary for all individuals, the expectation from a certain group of individuals to undergo medical certification as proof of existence – a process that cisgender persons aren't expected to undergo – violates the right to privacy of individuals who are transgender. Besides, the presence within data systems does not guarantee access to welfare. It is only to be seen as making them eligible and part of the system. Persons from marginalised communities are subject to multiple rounds of different certifications that further marginalises them making it harder for them to become a part of the digital welfare state.¹²⁵

These exclusions are not limited to public sector services. The private sector has made little to no effort for the inclusion of transgender persons. Access to basic services like healthcare and banking continues to remain limited for transgender persons. Not all nationalised banks have

¹²² *ibid*

¹²³ Staff Desk(2023, May 9). What Are the Documents Required for Caste Certificate?. Vakil Search. Retrieved from: <https://vakilsearch.com/blog/documents-required-for-caste-certificate/>

¹²⁴ Department of Empowerment of Persons with Disabilities: Ministry of Social Justice and Empowerment. Persons with Disability Registration <https://www.swavlambancard.gov.in/pwd/application>

¹²⁵ Brindaalakshmi K (2023, Oct 31). The labour of certifying and digitising transgender bodies. Heinrich Boell. Retrieved from: <https://in.boell.org/en/2023/10/31/labour-certifying-and-digitising-transgender-bodies>

included an additional gender category. However, the private sector's contribution to data breaches and abuse of user data has increased in recent times. Transgender persons are constantly made to choose between their right to life and right to privacy in order to prove their personhood and get access to both public and private services. While popular social media platforms offer the freedom to express an individual's gender identity, this freedom comes with its own set of limitations and violations including the lack of informed consent to its users, note respondents of this study.

Datafication of individuals using digital processes has been prioritised over accessible processes for those already marginalised. This data collected by a structurally flawed system is indicative of neither the reality nor the causes of exclusions faced by transgender persons in the country, but is a clear sign of 'data fundamentalism.'¹²⁶ The prioritisation of the need for data, to enable development interventions, has led to the state sidestepping its responsibility to address the needs and human rights of its citizens. And, the processes introduced to enable the inclusion of marginalised groups like transgender persons, intersex persons, persons living with disabilities, are exclusionary by design, further widening the data gap on these population groups and leading to erasure. With the introduction of automated decision making, the lack of presence within data systems results in lack of representation of transgender realities within different decision making systems, leading to systemic erasure of both transgender persons as a population group as well as their developmental needs. Despite the many challenges and other entry barriers, the onus continues to remain on the individuals to turn themselves into data to be digitised into data systems to be viewed by the state as valid human beings. The inability to do so leads to lack of access to welfare, rights, and more importantly, erasure for the most vulnerable in our country.

Shivangi Narayan, the author of *Surveillance as Governance*¹²⁷ on the use of data generated from citizens through identification systems, 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?" Building on the words of Shivangi Narayan, I say digitalisation of welfare access and the medicalisation and digitisation of the name and gender change process to verify an individual's identity is moving into the realm of the state deciding whether transgender and intersex citizens as a whole need welfare at all and if these individuals are destitute enough to warrant social security after facing centuries of state-sanctioned discriminations against them.

¹²⁶ See footnote 101

¹²⁷ Narayan, Shivangi (2021). *Surveillance as Governance - Aadhaar | Big Data in Governance*. Page 6. Peoples Literature Publication

Recommendations

For better inclusion of transgender and intersex persons, following are recommendations put forth by the respondents of this study:

1. The officers at the district level need to be sensitised around the lived realities of transgender persons. They also need technical training to navigate the National Portal for Transgender Persons. The experiences of transgender persons vary greatly between states because in some states the community has done this work with the officials.
2. There are substantial delays within the system, which needs to be improved. What makes matters worse for trans persons is that there is no indication of how long an application will take until approval. Real-time updates of an application's current state, in addition to the contact information of the official holding up the process, needs to be implemented.
3. The insistence on Aadhaar numbers is unnecessary. The lived realities of trans persons can often make it difficult for them to have multiple IDs. The system needs to ease this burden and let them provide whichever ID they have available. This also needs to be introduced in the sensitisation module for officials.
4. People might register on the portal for a host of reasons. Just because someone is choosing to register on the portal doesn't mean they are 'out' as transgender or intersex to their peers. Every effort needs to be made to keep the whole process as anonymous as possible because outing a trans person without their consent could have grave consequences for them.
5. Inter-department communication needs to be greatly improved. A lot of previously mentioned delays have been found to be a result of the lack of this communication.
6. Heightened sensitisation amongst the police, including setting up of separate help desks or booths to help transgender persons to make complaints or express their grievances and issues.
7. Set up helplines or help desks to assist with documentation process, for changes in documentation such as official government IDs, even in areas that are unreachable or inaccessible.
8. The inclusion of gender and privacy in academic courses.
9. Awareness on laws, cases and development in jurisprudence to combat physical and sexual violence against transgender persons is necessary for police and legal professionals. Information regarding recent case laws that have tackled the issues and taken strong stances on cases with respect to violence against transgender persons need to be used for sensitisation.

10. Specific efforts need to be taken to make stakeholders understand that transgender persons, as recognised by NALSA and the Trans Act, are not limited to the hijra and kinnar communities, but also include transmasculine persons (those assigned female at birth who identify as men or on the masculine spectrum).
11. While intersex persons are included under the legal category of Transgender in the Act, stakeholders need to realise that intersex persons may or may not seek change in name or gender, and would still be eligible for protections and benefits based on the Act and associated schemes such as SMILE (Support for Marginalized Individuals for Livelihood and Enterprise)
12. Ban continued physical examination of trans men, trans women and intersex persons in order to certify their gender identity within the binary by medical professionals.

5. Appendix

List of Respondents

Amritananda Chakravorty is a lawyer based in New Delhi, India, with extensive experience in LGBTI rights litigation and advocacy. She has degrees in Political Science (Hons.) from Lady Shri Ram College for Women (2003), and an LL.B. from Faculty of Law, University of Delhi (2006). She was awarded the DFID Commonwealth Scholarship (2006-2007) for her LL.M. at the University of Warwick, UK. 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. In 2017, she started her own practice, and currently runs a law firm, Chakravorty, Samson and Munoth, with two other partners. 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. She is actively involved in policy advocacy and research, and regularly liaisons with the parliamentarians and the Ministries.

Debjyoti Ghosh (he/him) is an Indian human rights lawyer and academic, currently based at the Centre for Asian Studies in Africa, affiliated with the Department of Sociology, University of Pretoria, South Africa. His area of work includes HIV, queer health, with a particular focus on access in India, Brazil and South Africa, and is expanding into studying decriminalisation of same-sex sexual behaviour in Southern Africa.

Duha (she/they) is one of the cofounders of IHRI: Intersex Human Rights India. She is a community organiser and works extensively in spaces that intersect with Queer rights and science. She is a biologist by training and her current area of focus is on vaccine equity and research.

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.

Grace Banu is breaking systemic barriers of entry to education and employment that force young trans individuals into sex work and begging for their livelihood. Emerging from lived experiences as a Dalit Trans Woman, Grace 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. She also works with the traditional Trans women community (which has historically been restricted to sex work & begging) to recognise and celebrate these role-models for other young trans folks to see alternative possibilities. The Trans Rights Now Collective is also leading the campaign nationally to demand for horizontal reservation for trans persons in government-funded higher education and employment. This enables access to such opportunities for trans persons facing double marginalisation due to their gender and caste identity.

Kiran Nayak B is a disability, equity and gender equality activist. Kiran is a passionate, industrious and a competent disabled trans man, 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.

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 for over half a decade. Their vision is to collectively create a gender just society, where no one is excluded on the basis of their gender identity or sexual orientation. A theatre enthusiast and a lover of felines, Koyel empathises with animals and considers them to be their alter ego. Koyel has completed their Masters in English from Lady Brabourne College, Kolkata and has a PG diploma in Mass Communication from Jadavpur University. They are also a certified peer counsellor who has supported many young queer-trans* persons in times of distress. They are currently hell-bent in trying to connect with various sectors and get queer-trans* individuals hired as for them, livelihood sustainability tops their priority list. They are focussed on collective healing and radical kindness as their motto to sustain the legacy of the activist rights forum Sappho for Equality. They have coedited Sappho for Equality's latest publication "Gender Chemistry-Non binary life Scripts".

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.

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. She is also associated with organisations providing training and advocacy to vulnerable groups in understanding legal processes and pursuing legal remedies. She is currently assisting Senior Advocate Mr. Rana Mukherjee, Supreme Court of India along with continuing her own practice in areas of commercial, civil and criminal law.

Pawan Dhall is a Kolkata-based queer activist, archivist, researcher and writer. He was a founding member of Counsel Club, Kolkata (1993-2002), among India's earliest queer support groups, and edited its house journal 'Pravartak'. He worked with SAATHII from 2002-14 on universal access to health and social justice. He is now associated with Varta Trust as Founding Trustee. His latest publications include 'Queer Potli: Memories, Imaginations and Re-imaginings of Urban Queer Spaces in India' (Queer Ink, 2019) and 'Out of Line and Offline: Queer Mobilizations in '90s Eastern India' (Seagull Books, 2020).

Prashant is currently working with Intersex Asia (a Taiwan-based regional intersex organisation) as the Research and UN Advocacy Officer. His academic work focuses on citizenship, transitional justice and SOGIESC issues. He has worked with intergovernmental organisations like the Asian Development Bank, the World Bank and a range of civil society organisations at the national, regional and international levels. He completed his undergraduate law degree from National Law University, Punjab and his LL.M. from Jindal Global Law School. In 2023, he completed his graduate studies in human rights at the University of Gothenburg, Sweden as an Erasmus Mundus Scholar.

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 contributed to developing and delivering gender-sexuality content for teachers, students of medicine, law and nursing, professional medical associations, DLSA lawyers, judicial and police training academies; and to the 2022 module for Supreme Court judges. 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. SAATHII, the NGO with which he is associated, operates Legal Aid Clinics for the transgender community in partnership with the government in Odisha and Manipur, and has helped nearly 2000 individuals obtain legal name and gender change in government identity documents.

SAATHII has also contributed to HIV testing of 14 million pregnant women, provided sexual health services to 500,000 prisoners, and over 100,000 LGBTIQ individuals.

Sowmya is a passionate individual and she is always loud & clear regarding her gender identity. She had two decades of experience working with LGBTQ communities. She started her career working as a field worker and now working at policy making level. She is now working with the Network of Transgender Persons as Project Director. She effectively demonstrates her skills in empowering communities and providing them technical expertise to help them advocate for equal rights across the country with community based organisations.

Shampa Sengupta is the Director of Sruti Disability Rights Centre.

Mx. Vinodhan is based in Coimbatore. They are a poet, writer, and social activist who studied Applied psychology and Masters in Human Genetics. They are 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.

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. At the onset of COVID-19 in April 2020, she filed a PIL in the High Court of Telangana which resulted in the High Court ordering the Telangana government to supply free medicines & rations under the PMGKY to all transgender persons in Telangana regardless of their possession or otherwise of Aadhaar and ration cards in so far as they have any one government ID proof as transgender which does not need to be Aadhaar. In June 2020, the High Court issued interim orders on her PIL seeking separate wards for transgender persons infected by COVID 19 wards as there are exclusive wards for men and women but none for transgender persons. On the orders of the High Court, the Government of Telangana issued a circular to that effect. In January 2020, she challenged the constitutionality and the structural monstrosities of the Transgender Persons (Protection of Rights) Act, 2020. In February 2018, she got the archaic, draconian & regressive Telangana Eunuchs Acts 1329F stayed and suspended by the Telangana High Court. Her other PILs have also extended welfare schemes like Aarogyashri to transgender persons. She was a co-petitioner in the marriage equality case in the Supreme Court.

Her Public Interest Litigation work were quoted twice as citations on pages 59 and 71 in the Judges Sensitization Module for all of the Judiciary on the LGBTIQ+ community designed by the e-Committee, Supreme Court of India. Along with her other transgender friends, she happens to be a co-founder of the Telangana Hijra Intersex Transgender Samiti (THITS), Queer Swabhimana Yatra (QSY), Telangana Queer & Transgender Janulu (TQTJ) all of which are yet unfunded and unregistered community and people's collectives of queer & transgender persons. In August 2022, she was appointed by the Government of Telangana as a member of the Telangana State Welfare Board for Transgender Persons constituted vide G.O. Ms. No. 21 dated 19.08.2022 of the Department of Women, Children, Disabled and Senior Citizens (PROG. II).

Questionnaire

Below is the questionnaire that structured the interviews with respondents of this study, and that are relevant for the analysis presented in this study's research report

On Trans Act 2019

- What was the transgender and intersex community response to the passing of the Trans Act?
- What was their response to the rules being released during the pandemic and with little time for consultation?
- What is the level of awareness among the community regarding accessing the online ID change process?
- How has the situation worsened for the transgender and intersex community with the enactment of the Trans Act?
- What are the challenges that they faced during COVID? What was the kind of help offered by the government? What were the challenges in accessing them for the community?
- How helpful has the Trans act been in solving these challenges for the community in these dire times? Has the ID changing process become simpler?
- What has been the experience of people who have attempted to change their ID documents?
- How many states have made policy changes after the Trans Act?

Privacy challenges:

- What are the privacy issues that transgender and intersex persons have been facing during the COVID pandemic due to their ID documents?
- What is the kind of support that they need?

- What are the challenges that they face with accessing private sector services? How is it different from the government? Is there any difference?
- What is their level of awareness with respect to the kind of data that individuals are giving away while using different apps or services?
- What are the privacy challenges faced by individuals involved in formal and informal modes of livelihood including sex work and begging?

Right to Life vs Right to Privacy:

- What is the awareness level among the transgender and intersex community regarding accessing remedies with respect to any rights violation?
- What kind of choice do you think transgender and intersex persons have in exercising their right to privacy?
- What kind of privacy compromises do transgender and intersex persons make in terms of accessing their right to life?
- How easy or difficult has the access to COVID vaccination been for transgender and intersex persons?
- How aware is the community about the digital health ID and the linking of this ID to all the different health services?
- What are the network efforts taken to support the community? How much room is there in these efforts to prioritise the privacy of individuals along with their access to their other basic needs and rights?