Gendering of Development Data in India: Beyond the Binary #1

Introduction, Research Method, and Summary of Findings

June 2020

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Note

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1. Introduction

India is often represented as a country that has historically acknowledged and accepted individuals who identify as transgender,[1] outside the binary genders of female and male.[2] However, these individuals were not granted equal citizenship and have mostly existed at the fringe of the society.[3] Even with this supposed acceptance, the understanding of a transgender individual has been often confused with that of an intersex individual, or someone born with both female and male genitalia.[4] This state of transgender individuals has continued even into the modern times.[5] They continue to struggle for social and economic inclusion, especially equal citizenship in the country.[6] The understanding of many transgender individuals identifying within the binary genders of female and male has been a relatively recent phenomenon i.e. an assigned female sex at birth individual identifying as a man or an assigned male sex at birth individual identifying as a woman, given the historical precedent of individuals from the traditional hijra/thirunangai communities[7] tending to identify as a third gender. Further, even many working within Non-governmental Organisations (NGOs) for the transgender community in India do not understand the difference between gender and sexuality.

> *They do not understand various identities, they do not understand queer identities, they do not understand difference between gender and sexuality. For them to call a 'gay person' as 'trans'*

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[1] An umbrella term for people whose gender identity differs from the sex they were assigned at birth. The term transgender is not indicative of gender expression, sexual orientation, hormonal makeup, physical anatomy, or how one is perceived in daily life. For details, please visit: http://www.transstudent.org/definitions http://www.transstudent.org/definitions/

[2] John, D. (2017). *Living a Life of Exclusion: Being a Transgender in Modern India*. Fokus Menschenrechte 09/17. Friedrich-Naumann-Stiftung für die Freiheit. Retrieved from https://fnst.org/sites/default/files/uploads/2017/11/20/focuahumanrights-rightsoftransgenderinindia-donajohn.pdf

[3] Ibid.

[4] 'Intersex' is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn't seem to fit the typical definitions of female or male. For details, please visit: http://www.isna.org/faq/what_is_intersex

[5] See footnote 2.

[6] DailyO. (2018, August 13). How India has condemned its transgenders to social exclusion. DailyO. Retrieved from https://www.dailyo.in/variety/transgender-rights-transgender-bill-2016-transphobia-gender-issues-supreme-court-obcs/story/1/26037.html

[7] "Hijras: Hijras are biological males who reject their 'masculine' identity in due course of time to identify either as women, or "not- men", or "in-between man and woman", or "neither man nor woman". - Supreme Court of India. (2014). NALSA Vs Union of India, 2014. https://indiankanoon.org/doc/193543132/

or for them to ask 'Can a trans person be gay?' was very surprising for me to know. - Shaman Gupta[8]

Many in NGOs and other persons with other transgender identities also seem to be unaware about trans men due to the lack of recognition of their presence in culturally integrated systems.

The awareness about trans men is negligible because trans men haven't ever been integrated into cultural systems. It is now that we see them coming up in some of the meetings. So now they have started to understand but it is also only the janta (people) that are there in such meetings, which include hardly few NGOs . If you go out into the city and ask any random trans woman, they will also not know. - Shaman Gupta

National Legal Services Authority (NALSA) Versus Union of India & Others verdict of 2014 acknowledged the right of individuals to self-identify their gender as female, male, or transgender.[9] With this verdict, the rights of transgender individuals were recognised and the need for equal rights of other citizens of India was acknowledged. The verdict detailed out nine directives to the Central government and all State governments, including framing of social welfare schemes to ensure equal citizenship of transgender individuals in all Indian states. Framing of social welfare schemes and the subsequent fund allocation would require information on transgender persons in the country. The Census of 2011 for the first time enumerated individuals identifying as 'Other', apart from 'Female' and 'Male', which has been taken to represent the transgender persons in the country. However, the validity of the census data under the 'Others' category has been questioned by the transgender community.[10]

The Sustainable Development Goal 5 (SDG 5) aims to achieve gender equality and empower all women and girls.[11] UN Women, in a 2018 report, acknowledges the need for a rights-based approach to data, adhering to international human rights norms and principles in data collection

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[8] Shaman Gupta is a part of TWEET (Transgender Welfare Equity and Empowerment Trust), a community based organisation working for empowerment and welfare of trans persons. The organisation specifically concentrates on providing psycho-social support and guidance to trans masculine persons across India with respect to healthcare, legal changes, education and employment.

[9] Supreme Court of India. (2014). *National Legal Services Authority (NALSA) Vs. Union of India & Others*. AIR 2014 SC 1863. Retrieved from https://main.sci.gov.in/jonew/judis/41411.pdf

[10] Ministry of Social Justice and Empowerment, Government of India. (2013). Annexure 1: Minutes of Consultation meeting on the issues relating to Transgender held on 23rd August 2013 at conference Hall, Central Secretariat Library, G Block, Shastri Bhawan, New Delhi. In *Report of the Expert Committee on the Issues relating to Transgender Persons*. Page 7. Retrieved from http://socialjustice.nic.in/writereaddata/UploadFile/Binder2.pdf

[11] United Nations. (2019). *Progress of Goal 5 in 2019*. Retrieved from https://sustainabledevelopment.un.org/sdg5

and data dissemination processes.[12] It details out six tenets namely participation, disaggregation, self-identification, transparency, privacy and accountability as the guiding principles for any data collection and dissemination process. This report says that a person's gender identity may or may not correspond with their biological sex. It also states the need for data on gender identity for comprehensive and effective monitoring of SDGs.

Currently, there is no international standard for collecting and measuring gender identity data says the 2018 report by UN Women. The current data sets, therefore, operate with certain hidden biases towards an already marginalised section of the population who face diverse forms of discrimination and even violence. This is continuing to cause further marginalisation of those who are vulnerable to discrimination and inequality because they identify outside the binary genders of female and male. UN Women in this report, further highlights the importance of a statistical standard for gender identity 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.[13]

Across the different global development data efforts to bridge the gender gap - such as SDG 5,[14] Human Development Report 2019,[15] and Data2X[16] - it appears that transgender identities are presently only included within the umbrella of LGBTI in different development contexts and not considered as a gender identity while assessing gender gap. Historically, the data on trans feminine individuals had been conflated within the category of MSM (men who have sex with men) for HIV treatment and prevention.[17] This leads to limited access to availability of trans-friendly health services to transgender persons due to lack of this distinction between gender identity and sexual orientation.[18] Sexual orientation and gender identity are two distinct

[12] 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/sdg-report-gender-equality-in-the-2030-agenda-for-sustainable-development-2018-en.pdf

[13] UN Women. (2018). *Turning Promises Into Action: Gender Equality in the 2030 Agenda for Sustainable Development.* Retrieved from
http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/sdg-report-gender-equality-in-the-2030-agenda-for-sustainable-development-2018-en.pdf

[14] United Nations. (2019). SDG5: Gender Equality. Retrieved from
https://in.one.un.org/page/sustainable-development-goals/sdg-5/

[15] UNDP. (2019). *Human Development Report 2019*. Retrieved from
http://hdr.undp.org/sites/default/files/hdr2019.pdf

[16] Data2X. (2019). What is gender data? Retrieved from https://data2x.org/what-is-gender-data/

[17] Perez-Brumer, A. G., Oldenburg, C. E., Reisner, S. L., Clark, J. L., & Parker, R. G. (2016). Towards 'reflexive epidemiology': Conflation of cisgender male and transgender women sex workers and implications for global understandings of HIV prevalence. *Global Public Health*, 11(7-8), 849–865.
https://doi.org/10.1080/17441692.2016.1181193

[18] Burgess, C., Kauth, M. R., Klemt, C., Shanawani, H., & Shipherd, J. C. (2019, June). Evolving Sex and Gender in Electronic Health Records. *Federal Practitioner*, 36(6), 271–277.

data categories and both these data sets have to be dealt with differently[19]. There's a need to explicitly separate the data category of *gender identities* from that of *sexual orientations* in the context of inclusion of gender-diverse people, including but not limited to those who identify beyond the gender binary of *female* and *male*, in the efforts towards sustainable development of all.

In 2006, the Government of India approved the National E-Governance Action Plan for the digitisation of different government processes including income tax, issuing passport and other identity documents to create citizen centric environments.[20] The acknowledgement of an individual's citizenship has been by means of different identity documents. It is with these documents in their preferred name and gender that a person gets into the system and consequently into different development data, needed to determine eligibility for government welfare schemes. Ten years later, NALSA verdict was passed for the inclusion of transgender individuals in different spaces and development programmes and services. Even with the government's attempt to create more citizen-centric environments with digitisation, transgender persons have been facing challenges with respect to procuring any identity document in their preferred name and gender.[21] Besides, different states seem to be at different stages of progress with respect to the inclusion of transgender individuals.[22] Five years after the NALSA verdict, the transgender community in India continues to face exclusion of varying degrees on different fronts.

The situation of transgender persons in India has further worsened with the recent legislations passed in the country. In 2019, despite severe opposition from the transgender community,[23] the Government of India passed the Transgender Persons (Protection of Rights) Act of 2019,

[19] LGBTFunders. (2019). *Data Collection*. Retrieved from https://lgbtfunders.org/resources/best-practices-for-foundations-on-collecting-data-on-sexual-orientation-and-gender-identity/

[20] Ministry of Electronics and Information Technology, Government of India. (2018). *National e-Governance Plan*. Retrieved from https://meity.gov.in/divisions/national-e-governance-plan

[21] Samanwaya, R. (2018, March 21). Transgenders cite identity issues to oppose Aadhaar Act in SC. Economic Times. https://economictimes.indiatimes.com/news/politics-and-nation/transgenders-cite-identity-issues-to-oppose-aadhaar-act-in-sc/articleshow/63390738.cms?from=mdr

[22] Human Rights Law Network. (2018, February 14). *Meeting Report - Symposium on Legal Support for Accessing Transgender Rights*. New Delhi. Retrieved from https://hrln.org/wp-content/uploads/2018/05/Transgender-Consultation-Report.pdf

[23] Lalwani, V. (2019, November 27). What next for transgender people, as India clears a bill that activists call "murder of gender justice"? Quartz India. https://qz.com/india/1756897/indias-transgender-rights-bill-disappoints-the-lgbtq-community/

retracting from the rights conferred by the Indian Constitution to its people.[24] Additionally, with the passing of the Citizenship Amendment Act 2019, the transgender community fears further exclusion due their inability to prove their identity and consequently their citizenship, affecting their access to basic human rights.[25]

Clarifying the often mistakenly interchanged used of *sex* and *gender* in scientific literature, health policy, and legislation, World Health Organisation defines gender as a term that "describes those characteristics of women and men that are largely socially created, while 'sex' encompasses those that are biologically determined."[26] Data2X explains that gender data is data that "is collected and presented by sex as a primary and overall classification."[27] Gender disaggregated data, thus, is possible only when there is gender data i.e., when collected data includes sex as a primary and overall classification. However, global development data collection efforts at present, even when collected and presented by sex (of the data subjects), leaves out individuals whose gender identity is different from the gender of their assigned sex at birth or who do not identify within the gender binary. This *gender-disaggregated data* therefore does not reflect the reality of all gender minorities and cannot be used to make development decisions, especially for the inclusion of transgender and intersex persons, who are often misrepresented or absent in this data. 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 no limited to official statistics, affects the access to rights and welfare by transgender and intersex persons. In India, development data collected and presented in the binary genders of female and male is used to deliver welfare to citizens and this affects the rights of transgender persons.

Given this situation of transgender persons in India, this report seeks to understand the gendering of development data in India, collection of data and issuance of government (foundational and functional) identity documents to persons identifying outside the cis/binary genders of female

[24] Gandhi, D., & Ghia, U. (2019). A Constitutional Challenge to the Transgender Persons Act in India. I·CONnect. Retrieved from: http://www.iconnectblog.com/2019/12/a-constitutional-challenge-to-the-transgender-persons-act-in-india/

[25] PTI. (2020, January 04). CAA: Transgenders, Queers ask how will we prove lineage. Deccan Herald. https://www.deccanherald.com/national/national-politics/caa-transgenders-queers-ask-how-will-we-prove-lineage-791276.html

[26] WHO. (2019). Gender Definitions. Retrieved from https://www.who.int/genomics/gender/en/

[27] Data2X. (2019). What is gender data? Retrieved from https://data2x.org/what-is-gender-data/

and male, and the data misrepresentations, barriers to accessing public and private services, and informational exclusions that still remain.

This report is organised in four parts:

- **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** looks at the history of enumeration and legal processes and legislations related to transgender people in India, challenges with the implementation of NALSA verdict of 2014, critique of the Transgender Persons (Protection of Rights) Act 2019, and data discrepancies with respect to Census 2011.

- **Part 3** delves into identity documents for transgender persons, the recording of (preferred) name and gender on identity documents, the difficulties of changing such recorded data, and implications of the same for transgender persons when accessing welfare services.

- **Part 4** document shows how the respondents of this study assess the opportunities - as well as the inherent risks - created by digital technologies, and big data generated by the same, for transgender persons to be more effectively enumerated and represented in datasets that determine access to development programmes.

2. Research method

This study of development impacts of official data and statistics collected (and otherwise) from transgender persons in India begins with a focus on the inherent assumption that large-scale data sets are the best available reference points for designing development solutions. Kate Crawford calls this 'data fundamentalism' in the article titled *The Hidden Biases of Big Data*.[28] 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. Data systems can also contribute to removing inappropriate human biases and consequent discrimination if designed using the principle of 'equal opportunity by design,' notes the *Big Data: A Report on Algorithmic Systems, Opportunity and Civil Rights* report by Government

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[28] 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

of USA.[29] The report acknowledges the assumption of objectivity of big data techniques due to sheer scale of the data. It specifically highlights the possibility of discriminatory outcomes if historical biases or blind spots are not taken into account within the algorithm used.

Development data, including official statistics and data used for specific development programmes, collected and presented in the binary genders of female and male is used to deliver welfare services to all Indian citizens, including those who do not identify within the gender binary. Therefore, an understanding of the gendering of development data and resultant exclusion of transgender and intersex persons in India would require a study of the enumeration processes and data collection initiatives. With this in mind, a qualitative study was designed to understand the different aspects namely history of transgender and intersex persons' inclusion in India, enumeration of transgender and intersex persons into development data, digitisation of identity documents, development data as big data, 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 19 individuals were interviewed for this study during October-December 2018. The identified respondents have played and continue to play important roles in struggles of transgender persons in India for their dignity, social justice and citizenship. The respondents included individuals who are researchers, legal professionals, and activists/individuals associated with different organisations that work on the rights of transgender persons at the state, regional, and national levels. 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. See Appendix (page 16) for the list of respondents with description of their works and the organisations they are associated with. Semi-structured interviews were undertaken with the respondents either in person or via telephone, and recorded. Relevant sections of the questionnaire can be found in parts 2-4 of this report.

As a respondent noted, there is insufficient information with respect to intersex individuals in India and their enumeration into the development data in India.

> *Historically, intersex people have not been allowed to self identify. Intersex people have been assigned a sex literally at birth, sometimes with the help of a surgeon. If they have ambiguous genitalia, the doctor would say that the person will not adjust successfully as a man. So let's chop it off and create a vulva and tell the parent that the person is a girl. So doctors have historically assigned the sex even surgically and the person would have been reared as gender*

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[29] Executive Office of the President, Government of the United States of America. (2016, May). *Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights*. Retrieved from https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf

female. They may have other syndromes like klinefelter syndrome and external anatomy more or less typical for a male who has been cisgender male. One thing to remember is not all intersex people consider themselves as transgender or want to identify as anything other than cisgender. - Dr. L. Ramakrishnan[30]

The structural challenges faced by transgender individuals in accessing rights and services due to government and private sector generated big data is an important part of this study. The insights on the structural challenges and the different layers of discrimination a transgender individual faces with respect to various markers of marginalisation/privilege, such as religion, caste, formal education, income, etc. were discussed and identified through the interviews with individuals working on the rights of transgender persons - within the limited scope of this study.

The interviews for this study were conducted in late 2018 and this report was completed in the beginning of 2020, after India went through an extended national debate on and finally enactment of the Transgender Persons (Protection of Rights) Act during 2019. Although being published in June 2020, this report presents the discussions had with the respondents in the context of events with respect to the rights of transgender persons in India til December 2019.

The Transgender Persons (Protection of Rights) Act, 2019 has been severely criticised by the transgender community, human rights activist groups[31] and even opposition political parties[32] in India for several reasons.[33] The criticisms include not establishing reservation in employment and education for transgender people and mandating Sex Reassignment Surgery (SRS) as necessary to be identified within the binary genders of female and male, among others. At the time of publication of this report, India is going through an extended national lockdown due to the global outbreak of the COVID-19 pandemic. Even with the announcement of government's relief packages, the transgender and intersex community has been unable to completely access them due to the lack of proper enumeration of transgender individuals combined with their lack of identification documents in their preferred name and gender. This has brought the working class transgender individuals under severe mental and physical distress.

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[30] Dr. L. Ramakrishnan is a public-health professional working with the NGO SAATHII. His areas of focus are advocacy and capacity-building towards strengthening access to healthcare and legal services for LGBTI+ and populations affected by HIV/AIDS.

[31] Knight, K. (2019, December 05). India's Transgender Rights Law Isn't Worth Celebrating. Human Rights Watch. Retrieved from
https://www.hrw.org/news/2019/12/06/indias-transgender-rights-law-isnt-worth-celebrating

[32] Dharmadhikari, S. (2019). Trans Bill 2019 passed in Lok Sabha: Why the trans community in India is rejecting it. The News Minute. August 05. Retrieved from
https://www.thenewsminute.com/article/trans-bill-2019-passed-lok-sabha-why-trans-community-india-rejecting-it-106695

[33] Editorial. (2018, December 20). Rights, revised: on the Transgender Persons Bill, 2018. The Hindu. Retrieved from https://www.thehindu.com/opinion/editorial/rights-revised/article25783926.ece

Additionally, amidst the global lockdown, the Government of India also released the draft of the rules of the Transgender Persons (Protection of Rights) Act for feedback. Further, the community was initially given only 12 days' time to submit their feedback, inconsistent with the Pre-Legislative Consultation Policy (PLCP) 2014 that mandates a 30 day window for feedback.[34] The draft rules in the version released on April 18, 2020 continue to be in violation of the NALSA verdict. It denies an individual's right to self-identify their gender as male, female or transgender without a certificate for a Sexual Reassignment Surgery.[35] Given the stigma around being transgender, the mandatory requirement for any individual to first identify as Transgender on their Certificate of Identity to change their name and gender before changing to a binary gender, will further discourage individuals from disclosing their identity. In essence, the discriminatory new law and its rules will further aggrevate and worsen the situation of the transgender persons in the country, with respect to their enumeration and consequently, their access to their constitutionally guaranteed human rights.

Although this report does not include an analysis of the rules of the Transgender Persons (Protection of Rights) Act of 2019, the observations and insights shared through the interviews and presented in this report, we hope, continue to remain relevant to and inform ongoing struggles by transgender persons for social justice and economic well being.

3. Summary of findings

Globally, discussion of *gender* in the context of *development data* is still framed within the binary of *female* and *male*. Even with the intent of Sustainable Development Goals to *leave no one behind,*[36] the dominant binary gender data conversation is in fact leaving people behind, especially those who do not identify within the gender binary. Currently there is no international standard for collecting and measuring gender identity data, states a 2018 report by UN Women.[37] Development

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[34] 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

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

[36] UN Statistics (2016). *The Sustainable Development Goals Report 2016.* United Nations Statistics. Retrieved from: https://unstats.un.org/sdgs/report/2016/leaving-no-one-behind

[37] UN Women. (2018). *Turning Promises Into Action: Gender Equality in the 2030 Agenda for Sustainable Development.* Retrieved from http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/sdg-report-gender-equality-in-the-2030-agenda-for-sustainable-development-2018-en.pdf

data available at present, therefore, operate with inherent biases against an already marginalised section of the population who face diverse forms of discrimination and even violence. **Thus, India's efforts to produce development data (including official statistics, data collected for specific welfare programmes, and private big data) that records gender of data subjects within the binary of *female* and *male*, is only reflective of the current state of global approaches to development data.**

This study, titled *Gendering of Development Data in India: Beyond the Binary*, describes and highlights the implications of this binary gendering of development data on transgender and intersex persons in India. **Through the course of this study and given the responses from the participants interviewed, it is evident that the transgender community faces several data challenges with respect to enumeration and identification systems, which in turn prevents them from accessing different services.** Digitisation has, in fact replicated the existing challenges within offline systems and has further accentuated their challenges in many instances instead of solving the existing issues. Some Indian states have a screening committee to issue Transgender Identity Cards to transgender individuals. These Cards are then used as a reference to change details on other identity documents. Transgender individuals are often subjected to horrific human right violations by the screening committee due to the need to prove their identity. Digitisation has not removed these human rights violations to make it easier for transgender individuals to self-identify in their preferred name and gender on government-issued identity documents, and therefore on official statistics.

There are significant issues with respect to enumeration of transgender population in India for purposes of producing official statistics and data on the basis of which development programmes are planned. **Transgender people have not been consulted to understand if and how they would want to be represented in the data. Neither were they used as enumerators for collecting data from the community members.** The national Census of 2011, for the first time in India's history, allowed citizens to self-identify as a third gender category ('Other') beyond the binary of female and male.

Although data from Census 2011 is being used as the primary official statistics for fund allocation across different states for transgender people's inclusion into development programmes and services, it recorded only a minority of the actual transgender population in India. **This is leading to misallocation and under-allocation of funds for development priorities of transgender persons across Indian states.**

This access gap further widens when individuals do not own identification documents in their preferred name and gender. Prior to the passing of the Transgender Act of 2019, there was no standardised single process for transgender individuals to change their name and gender across

different identity documents, through either offline or online means. So far, transgender persons have either sought the support of the legal system to help them with these processes or have repeated the process followed by others who have done so, in the absence of a singular process and government assistance for the same. It requires them to personally engage with the government departments and officials concerned. **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, though the NALSA verdict was given in 2014.[38]

The Supreme Court of India, for the first time in Indian history, recognised the right of every individual to self-identify their gender as female, male, or transgender in its verdict to the NALSA Vs. Union of India and Others case. **Many government officials, however, do not consider the NALSA verdict as an official order to be followed. Not all states offer 'Transgender' as a category of response for the question about gender on application forms for public services.** Though NALSA verdict of 2014 recognised self-identification of an individual's gender, many states continue to demand Sex Reassignment Surgery (SRS) from individuals who identify (on government-issued identity documents and statistics) within the binary genders of female and male. SRS is not an option for all due to costs and medical conditions of several transgender individuals. This further jeopardises the possibility of procuring identification documents in their preferred name and gender. Access to health insurance is not an option for all due to the lack of identification documents and lack of insurance coverage for SRS.

Due to above mentioned reasons among others, many transgender persons are compelled to retain their identity documents in their given name and gender. Multiplicity of identity documents of transgender people is structurally produced and is not a symptom of bad/fraudulent data collection process. **The welfare system in India has not been structured or equipped to be inclusive of transgender persons i.e individuals who don't identify with the gender of their assigned sex at birth or who identify outside the gender binary.** This structural problem is instead being seen as a symptom of an inefficient data collection process by the Government of India increasing the emphasis on data collection instead of a systemic change of planning, delivery, and monitoring of welfare services. This emphasis on data collection is a 'hidden bias' that assumes the efficiency of a non-inclusive system without considering its shortcomings.

Most welfare programmes are not fundamentally inclusionary. **Most states have made little to no effort at consulting the transgender community with respect to understanding their**

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[38] Supreme Court of India. (2014). *National Legal Services Authority (NALSA) Vs. Union of India & Others*. AIR 2014 SC 1863. Retrieved from https://main.sci.gov.in/jonew/judis/41411.pdf

needs and challenges. Further, even when consulted, their inputs have not been fully taken into consideration while designing programmes targeting the transgender community.

This further accentuates the challenges due to the lack of clarity with respect to prioritisation of welfare service for transgender persons by different government bodies. **State governments across India continue to focus on the need for enumerating transgender persons as part of official statistics instead of making all welfare programmes inclusive of transgender persons based on human rights, independent of numbers.** It is evident that welfare programmes and services are not designed inclusive of transgender persons, and they do not enable them to step forth and claim their rights without fear.

This systematic exclusion of transgender people is not one that is limited to the public sector and services. **The private sector has made no exceptional efforts to include transgender persons with respect to data collection or catering to their needs.** However, it definitely contributes to breach and abuse of personal data of users, irrespective of gender. Surveillance is a serious concern of the transgender community while using social media and connected services. Popular social media platforms offer the community the freedom to express their gender identity but at the price of disclosing their identity to third parties without informed consent or effective control over how such personally identifiable information may be used by third parties. Private sector services definitely need to be more responsible towards, both including and using the data of transgender people, a historically marginalised population group.

That said, there is an urgent need for more sensitive systems especially for data collection with respect to an already marginalised group like the transgender community. Digital systems need to be more responsible towards preventing replication of existing challenges faced by a marginalised group to avoid further marginalisation. **The onus seems to be on the transgender person to prove their identity to be able to access their rights, the lack of which has resulted in the erasure of their existence as individuals and as a population group.** This process is being further accelerated with the passing of regressive laws like the Citizenship Amendment Act and the Transgender Persons (Protection of Rights) Act.

Presently, the emphasis continues to be on designing digital systems that collect data, from both the government designed public services and private services, and especially on automation of such data collection. The present design and structure of the welfare system in India, however, is non-inclusive of transgender persons. **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.** This data collected by a structurally flawed system is indicative of neither the reality nor the causes of exclusions faced by the transgender persons in the country, but is a

clear sign of 'data fundamentalism'. 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.

Building on the work of Dr. Usha Ramanathan, a renowned human rights activist, I say that data collection and monitoring systems that tag, track, and profile transgender persons placing them under surveillance, have consequences beyond the denial of services, and enter into the arena of criminalising for being beyond the binary.[39] The vulnerabilities of their gender identity exacerbates the threat to freedom. **With their freedom threatened, expecting people to be forthcoming about self-identifying themselves in their preferred name and gender, so as to ensure that they are *counted* in data-driven development interventions and can thus access their constitutionally guaranteed rights, goes against the very idea of sustainable development and human rights.**

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[39] Ramanathan. U. (2014, May 02). Biometrics Use for Social Protection Programmes in India Risk Violating Human Rights of the Poor. UNRISD. Retrieved from http://www.unrisd.org/sp-hr-ramanathan

Appendix: List of respondents

Amrita Sarkar has been involved with transgender activism for two decades and she has also been involved in numerous capacity building initiatives for transgender communities at the national and international level. She is one of the founding members and the Secretary of IRGT – A Global Network of Trans Women and HIV. She is an active member of TPATH (Transgender Professional Association for Transgender Health). She has made two films on transgender issues and those have been screened at various platforms. She is a trained counsellor and has completed her post graduation in social welfare. Amrita is currently working with Solidarity and Action Against The HIV Infection in India (SAATHII). At SAATHII she is leading a project titled 'Samata', focused on improving access of LGBTIQ+ communities to inclusive services in the field of health, education, legal aid and livelihood in the Delhi National Capital Region (NCR). SAATHII, a Non-profit organization registered in 2002, works towards Universal access to healthcare, justice, and social welfare for socio-economically marginalized women and children, communities impacted by the HIV/AIDS epidemic, and groups marginalized on account of their sexuality and/or gender identity in India. At present, SAATHII operates through its 12 state offices overseeing operations in 400+ districts across the 28 states and 9 UTs of India. For more information, visit www.saathii.org.

Aparna Banerjee, a hijra activist working for the sexual minorities and gender nonconforming people since 2000, remained a member of the State Transgender Development Board (West Bengal) and contributed to the state figures and welfare measures and believes in equity rather than equality.

A.Revathi is a writer and activist working for the rights of gender and sexual minorities.

Bittu Karthik is a biologist and a genderqueer transman, from THITs. THITS is an unfunded, unregistered mass organisation of transgender, hijra and intersex activists from across Telangana.

Delfina is an activist, playback theater artist, and social worker. They are associated with Nirangal, an organization based in Chennai, Tamil Nadu, India, which works for the rights and welfare of those with alternate gender and sexual identities. They have presented papers or led workshops at over a dozen university and college conferences and seminars in South India during the course of the last three years. They are also a coauthor of about half a dozen papers published in international journals like Studies in Family Planning, Women's Reproductive Health, and International Journal of Sexual Health.

Ditilekha Sharma is a queer researcher-activist.

Grace Banu is a dalit and transgender activist and writer. She is the Founder Director of Trans Rights Now Collective.

Jaya as General Manager of Sahodaran, manages multiple projects across 2 locations in Chennai concerned with HIV prevention among gay, bi men and trans women and also plays a key role in organising city-wide and state-wide LGBT visibility events through the Chennai Rainbow Coalition and the Tamil Nadu Rainbow Coalition (respectively). Sahodaran, established in 1998 by Dr. Sunil Menon.C, Founder and Director, is the first Community Based Organization in Chennai run by and for the MSM community. Although focused primarily on MSM, since 2010, Sahodaran has fostered CBOs catering to the needs of TGs (transgender women), and begun to serve as a referral point for LGBT community members more broadly.

Dr. L. Ramakrishnan is a public-health professional working with the NGO SAATHII. His areas of focus are advocacy and capacity-building towards strengthening access to healthcare and legal services for LGBTI+ and populations affected by HIV/AIDS. SAATHII, a Non-profit organization registered in 2002, works towards Universal access to healthcare, justice, and social welfare for socio-economically marginalized women and children, communities impacted by the HIV/AIDS epidemic, and groups marginalized on account of their sexuality and/or gender identity in India. At present, SAATHII operates through its 12 state offices overseeing operations in 400+ districts across the 28 states and 9 UTs of India. For more information, visit www.saathii.org.

Maya Sharma is a feminist, queer activist and a writer in English and Hindi. She is the co-author of the book on single women in Hindi titled *Kinaroe Peh Ugathi Pechan*. published in 1996 Later she wrote the book *Loving Women: Being Lesbian in Unprivileged India*, published in 2006. Currently, she works with Vikalp (Women's Group) in Vadodara, founded in 1996. As a community based organization it attempts to bring issues of vulnerable women to the fore and seek resolutions through articulation and protection of their rights. In 2003, through organizational response to issues on the ground and the the larger queer and the women's movements it began to work with LBT people across Gujarat.

Pawan Dhall has been engaged with gay, lesbian, bisexual, transgender and other queer community mobilization in eastern and other parts of India since the early 1990s. He was a founder member of Counsel Club (1993-2002) and Pravartak (1991-92, 1993-2000), among the first queer support forums and publications in India. He studied economics in college, and worked as a journalist, copywriter and social communicator in his early years as a professional. From 2002-2014, he worked with SAATHII (www.saathii.org), an NGO that promotes universal access to health and social justice, as part of the top-level management. He now leads Varta Trust, a Kolkata-based gender and sexuality publishing, research, advocacy and training non-profit agency (www.vartagensex.org). His association with Varta Trust enables him to take up social research,

journalistic writing, training and advocacy initiatives on queer health, legal and socio-economic inclusion issues.

Rebina Subba is a social justice lawyer working with marginalized communities since 2008. She is the founder of 'Shamakami – One Who Desires One's Equal,' the only registered organization working on LGBTQI issues in Shillong. She has been working to make people aware of sexuality and gender issues. She is a former member of the Meghalaya State Commission for Women. Rebina has carried across the message to incorporate trans-activism into women activism as trans-issues are women issues and feminists should support in protecting all people, from both sex and gender discrimination. The umbrella of Shamakami runs a legal unit, Legal Rights Forum, with a small collective of lawyers who advocate for the rights and dignity of the LGBTQI population and render legal services to the marginalized population with special focus on people living with HIV and people with special challenges.

Sankari, along with **Siva**, co-founded Nirangal. She has over a decade of experience in advocacy and crisis intervention for communities of diverse gender and sexual identities and is well known among the activist groups in Chennai. Sankari was the first trans woman in Tamil Nadu to receive training on principles of counseling from a professional trainer. She also uses theater and performing arts to promote understanding and acceptance of marginalized communities. She has also been a part of various national level consultations on the transgender bill.

Sivakumar, along with **Sankari**, co-founded Nirangal. He has over a decade of experience in advocacy and crisis intervention for communities of diverse gender and sexual identities and is well known among the activist groups in Chennai. While Siva takes up key responsibilities for organizing Chennai LGBT Pride every year, he also identifies as a feminist and Dalit rights activist.

Shaman Gupta is a part of TWEET (Transgender Welfare Equity and Empowerment Trust), a community based organisation working for empowerment and welfare of trans persons. The organisation specifically concentrates on providing psycho-social support and guidance to trans masculine persons across India with respect to healthcare, legal changes, education and employment.

Swati Bidhan Baruah is an advocate practising in the Guwahati High Court. Swati is a transgender rights activist from Assam and is a Founder of the All Assam Transgender Association. She is the first transgender person in India to be appointed as a judge to the Lok Adalat in Guwahati. Swati filed one of the first cases in India seeking permission from the court to undergo sex reassignment surgery. She also filed an intervention application in the Honourable Supreme Court against the biased nature of the National Register of Citizens. Moreover, she also filed an intervention application in the matter of setting up a Human Rights Court in the Indian

Supreme Court. She has filed several petitions before the Guwahati High Court and also in the Supreme Court of India and for protection of rights of transgender persons in Assam and the North-East. She also filed a PIL in the Guwahati High Court challenging the Ayushman Bharat for accommodating transgender persons under the said scheme.

Vihaan Peethambar is a Board Member of Queerala, an LGBTIQA+ Organization (Kerala). Queerala is a Community Based Organization for Malayali LGBT+ people, focused on advocacy of Sexual Orientations and Gender Identities to create and advance safe spaces for LGBT+ people in Kerala. We aim for a society free of discrimination against queer people by creating awareness about LGBT+ lives engaging with the government, media and other institutions.

Vyjayanti Vasanta Mogli Is a Transgender RTI Activist & Co-founder, Queer Swabhimana Yatra (QSY) & Telangana Hijra Intersex Transgender Samiti (THITS).