



# Gendering of Development Data in India: Beyond the Binary #2

## Legal Rights and Enumeration Process

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## Note

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Please read the full report here:

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# 1. Introduction

An understanding of the gendering of development data in India begins with assessing the processes through which state agencies in India undertake the enumeration of transgender people for the purposes of carrying out various activities related to civic governance and provision of development schemes, and the legislations that enable them. This second part of the report offers an overview beginning with the first recorded history of transgender persons' inclusion in enumeration processes in India. It then goes on to understand the subsequent legal processes and legislations that identified the rights of transgender individuals in the country.

This part discusses the different critiques of the legal, legislative, and enumerative processes in India to set the context for understanding the struggles for citizenship and rights of transgender individuals, and the concerns with their representation in different sets of data critical for delivery of welfare services. It specifically discusses the recording of individuals self-identifying beyond the gender binary of *male* and *female* in the national Census of 2011, Supreme Court verdict of 2014 to the National Legal Services Authority (NALSA) Versus Union of India and Others case, and the Transgender Persons (Protection of Rights) Act of 2019.

## 2. History of legal processes, legislations, and enumeration related to transgender people in India

The first recorded official statistics on transgender people in India can be found in the Census of 2011 released by the Census Department. 4,87,803 individuals self-identifying as 'Other' (than male or female), including 54,584 children, were recorded in the Census 2011.<sup>1</sup> Prior to 2011, there was no official record on transgender people at the national level in India.

The earliest official enumeration of transgender people in any Indian state happened in Tamil Nadu in 2004, when some trans women and one trans man were issued Voter ID cards. Transgender women were issued with 'Transgender' as sex, and the transgender man with 'Male' as sex in their respective Voter IDs, notes Selvam,<sup>2</sup> the transgender man who was issued a Voter

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<sup>1</sup> Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India. Primary Census Abstract Data for Others (India & States/UTs). Retrieved from [http://censusindia.gov.in/2011census/PCA/PCA\\_OTH\\_0000\\_2011.xlsx](http://censusindia.gov.in/2011census/PCA/PCA_OTH_0000_2011.xlsx)

<sup>2</sup> Selvam is a transgender rights activist.

ID card as the only exception in 2004. Trans women have also been issued voter IDs<sup>5</sup> and included in voters' lists as female even as early as 1993-94, notes A.Revathi.<sup>4</sup> During this time, the address of hamams<sup>5</sup> were used as the address to provide voter IDs and ration cards. Ration cards were issued with the head of the hamam as the head of the family. In 1994, the Election Commission recognised the right of transgender persons to vote.<sup>6</sup> However, the Election Commission recognised only the right of hijras,<sup>7</sup> one group of transgender persons, to vote.<sup>8</sup> In 2013, the Election Commission had issued voter ids to transgender persons for the first time.<sup>9</sup>

In 2012, the National AIDS Control Programme IV (NACP IV) recognised transgender people as a separate group to be considered for targeted intervention programmes.<sup>10</sup> It is worth noting that inclusion in the AIDS Control programme did not involve issue of any identification document or inclusion in any enumeration process. Several respondents note that registering with any Non-governmental Organisation (NGO) or Community Based Organisation (CBO) working on HIV was sufficient to become a part of the programme. However, as part of the intake process, the individuals would be classified as transgender or MSM by the NGO/CBO staff, often based on their assumptions, which were based on the individual's attire, affiliation with the hijra/thirunangai culture, operative status, etc.

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<sup>3</sup> Satyal, A. (2001). *Hijras and the Politics of Empowerment in Contemporary India*. Harvard Asia Quarterly. Retrieved from [https://projects.iq.harvard.edu/files/har/files/vol\\_5.3\\_summer\\_2001.pdf](https://projects.iq.harvard.edu/files/har/files/vol_5.3_summer_2001.pdf)

<sup>4</sup> A.Revathi is a writer and activist working for the rights of gender and sexual minorities.

<sup>5</sup> Originally, public bath houses which later became a place of stay for transgender people and also for sex work. See: <https://www.dictionary.com/browse/hammam>

<sup>6</sup> UN News. (2014, May 06). Sexual minorities given right to vote in India's elections. Retrieved from <https://news.un.org/en/audio/2014/05/588452>

<sup>7</sup> "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, April 15). National Legal Services Authority Versus Union of India and others. Writ Petition (Civil) No. 400 of 2012 with Writ Petition (Civil) No. 604 of 2013. Indian Kanoon. Retrieved from <https://indiankanoon.org/doc/193543132/>

<sup>8</sup> Chakrapani, V., & Narrain, A. (2012). Legal Recognition of Gender Identity of Transgender People in India: Current Situation and Potential Options. UNDP India. [https://www.undp.org/content/dam/india/docs/HIV\\_and\\_development/legal-recognition-of-gender-identity-of-transgender-people-in-in.pdf](https://www.undp.org/content/dam/india/docs/HIV_and_development/legal-recognition-of-gender-identity-of-transgender-people-in-in.pdf)

<sup>9</sup> Thomas. S. (2015, March 05). In a first Mumbai Activist's Passport lists sex as transgender. Times of India. Retrieved from <https://timesofindia.indiatimes.com/city/mumbai/In-a-first-Mumbai-activists-passport-lists-sex-as-transgender/articleshow/46460177.cms>

<sup>10</sup> Laxmi T., et al. (2011). Transgender - Hijra Strategy. National AIDS Control Programme IV Working Group. National AIDS Control Organisation. May 05. <http://www.naco.gov.in/sites/default/files/4%20TG%20Strategy.pdf>

Prior to NACP IV, transgender people were included under the umbrella group of MSM (Men who have Sex with Men). Several respondents observe the lack of clarity with respect to the categorisation of individuals as MSM or TG (transgender) under the HIV programmes. Definition of transgender under the AIDS programmes has primarily only indicated trans women or hijras. Trans men are not included under the categories of transgender or MSM, as it is assumed they would be sexually active only with cis women, and not be at risk of acquiring or transmitting HIV.

*Even the SACS (State AIDS Prevention and Control Societies) have not mentioned anything specifically about trans men and there is still a common notion that transgender means only trans women. - Amrita Sarkar<sup>11</sup>*

Historically, there have been laws in the different states of India like the Telangana Eunuchs Act of 1919, which allows for surveillance of transgender persons under the pretext of suspicion,<sup>12</sup> Criminal Tribes Act of 1871 and Karnataka Police Act of 1963 that penalised eunuchs (a term that is considered derogatory to address transgender people).<sup>13</sup>

In 2014, for the first time in the history of India, the Supreme Court recognised the right of every individual to self-identify their gender as male, female, or transgender in its verdict to the NALSA Vs. Union of India and Others case.<sup>14</sup> This verdict detailed out nine directives to be followed by the state and central governments in India for the inclusion of transgender individuals in the country. Prior to the NALSA judgement, identification and inclusion of transgender people in HIV programmes has been primarily through Community Based Organisations (CBOs) working on HIV. Since enrolment in any HIV programme was not seen as an enumeration process, being included in these programmes did not include them into a general government database in their preferred name and gender.

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<sup>11</sup> 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. Amrita is currently working with Solidarity and Action Against The HIV Infection in India (SAATHII).

<sup>12</sup> Jain, M. (2018). Plea To Declare Telangana Eunuchs Act Unconstitutional As It Violates The Fundamental Rights Of Transgenders: AP HC Issues Notice To State. Live Law. February 28. <https://www.livelaw.in/plea-declare-telangana-eunuchs-act-unconstitutional-violates-fundamental-rights-transgenders-ap-hc-issues-notice-state/>

<sup>13</sup> Government of Karnataka. (1963). The Karnataka Police Act, 1963. [http://dpal.kar.nic.in/pdf\\_files/4%20of%201964%20\(F\).pdf](http://dpal.kar.nic.in/pdf_files/4%20of%201964%20(F).pdf)

<sup>14</sup> Supreme Court of India. (2014, April 15). National Legal Services Authority Versus Union of India and others. Writ Petition (Civil) No. 400 of 2012 with Writ Petition (Civil) No. 604 of 2013. Indian Kanoon. Retrieved from <https://indiankanoon.org/doc/193543132/>

It is worth noting that several respondents mentioned that the NALSA verdict did not specify the process for change of identification documents to an individual's preferred name and gender. Different states are following different processes for name and gender change in different documents. There is no standardised process prescribed by the central government.

*This is a process that lawyers and activists have logically figured out. It has worked in many cases. There is a nuance to this. Actually no government record says even in writing as to how one changes one's name legally. It's been a convention to get one's name changed through an affidavit in the court and the same convention has been adapted for change in gender identity as well.* - Pawan Dhall<sup>15</sup>

The first state-level Transgender Welfare Board, the Aravani Welfare Board (for trans women), was established in the state of Tamil Nadu in 2008. Subsequently, post the NALSA verdict, the Tamil Nadu government was directed to change the name of the board to Third Gender Welfare Board. However, there is no representation of trans men on the board, notes Jaya.<sup>16</sup> This Aravani Welfare Board was primarily set up to issue transgender identification card to trans women that will enable them to procure other identification documents required to access welfare services in the state.

*Since its inception it is called the Trans women's Welfare Board leaving absolutely no scope for dialogue around trans men. After NALSA, it would have been better to rename it as Transgender Welfare Board but since it is dominated by trans women, it was renamed as Moondraam Paalinam Board (Third Gender Welfare Board).* - Sivakumar<sup>17</sup>

After the NALSA judgement, DMK<sup>18</sup> MP Tiruchi Siva moved a private member's bill in the Rajya Sabha to protect the rights of Transgender people in 2014.<sup>19</sup> Subsequently, in 2015, a modified version of the bill after community consultation, was drafted by the government as The Rights of

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<sup>15</sup> 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 now leads Varta Trust, a Kolkata-based gender and sexuality publishing, research, advocacy and training non-profit agency ([www.vartagensex.org](http://www.vartagensex.org)).

<sup>16</sup> 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).

<sup>17</sup> 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.

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

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

Transgender Persons Bill, 2015 and sent to the law ministry. It was then tabled in the Lok Sabha in August 2016 after considerable revision to the 2015 version.<sup>20</sup> After rounds of public criticism and government consultations (which were criticised as well), including a 2017 report of a Standing Committee of the Parliament on the draft bill, a new version of the bill was tabled in Lok Sabha, the lower house of Indian Parliament, in December 2018.<sup>21</sup> The bill, with some changes, was enacted by the Lok Sabha on August 5, 2019 and by the Rajya Sabha, upper house of Indian parliament, on November 25, 2019 as The Transgender Persons (Protection of Rights) Act, 2019.<sup>22</sup>

In September 2018, the Supreme Court of India decriminalised homosexuality in the country by reading down Section 377 of the Indian Penal Code. Prior to this judgement, Section 377 has been used as an instrument of harassment and physical abuse against hijras and transgender persons. Following this judgement, in April 2019, Madurai bench of the Madras High Court passed an order stating that marriage solemnised between a man and a transgender woman is valid under the Hindu Marriage Act.<sup>23</sup> In this verdict, the Court also passed a historic order directing the Secretary to Government, Health and Family Welfare Department, Government of Tamil Nadu to pass a Government Order (G.O) prohibiting the non-consensual surgeries on intersex babies.

### 3. Critiques of the Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 has been severely criticised by the transgender community in India for several reasons,<sup>24</sup> including no reservation in employment and education for transgender people, mandatory SRS to be identified within the binary genders of male and female, among others.

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

<sup>21</sup> Bhatia, G. (2019). The Rajya Sabha must amend the Transgender Persons Bill. Hindustan Times. January 05. <https://www.hindustantimes.com/analysis/the-rajya-sabha-must-amend-the-transgender-persons-bill/story-WFyPFztPVABpfaOyDYBt5I.html>

<sup>22</sup> Ministry of Law and Justice, Government of India. (2019). The Transgender Persons (Protection of Rights) Act, 2019. <http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

<sup>23</sup> Madras High Court. (2019, April 22). Arunkumar Vs The Inspector General Of Registration & Others. Retrieved from <https://indiankanoon.org/doc/188806075/>

<sup>24</sup> Editorial. (2018, December 20). Rights, revised: on the Transgender Persons Bill, 2018. The Hindu. <https://www.thehindu.com/opinion/editorial/rights-revised/article25783926.ece>

According to this Act, any individual who wishes to identify as transgender should first make an application to the district magistrate. The Act then mandates that all transgender persons should undergo screening by a District Screening Committee to be certified as a transgender person. Further, individuals who wish to be identified within the binary genders of male and female are required to go through SRS. Mandating SRS is in serious violation of the NALSA verdict of 2014 which recognised self-identification of one's own gender.<sup>25</sup>

This Act has also been criticised for prescribing lower punishments for sexual violence against transgender persons compared to cisgender women, essentially discriminating against transgender people.<sup>26</sup>

The definition of transgender in this Act includes persons with intersex variations posing an enumeration challenge. As discussed in Part 1, not all intersex persons may identify as being transgender. Additionally, the Act does not provide any protection against the violation faced by intersex persons including non-consensual surgical interventions altering the sex characteristics of intersex infants and children.<sup>27</sup> Besides, the rape laws in the country do not cover transgender persons who are rape survivors.<sup>28</sup> However, a recent Delhi High court verdict ordered the police to accept complaints of sexual harassment from transgender persons.<sup>29</sup>

The Act has also been criticised for a lack of clarity with respect to the rights of intersex individuals. According to Section 12.3 of the Act, transgender individuals even over eighteen years of age can be separated from their natal family/parents and placed in a rehabilitation centre.

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<sup>25</sup> Masih, N. (2019). A bill meant to protect India's transgender community instead leaves them angry and aggrieved. The Washington Post. November 30. Retrieved from [https://www.washingtonpost.com/world/asia-pacific/a-bill-meant-to-protect-indias-transgender-community-instead-leaves-them-angry-and-aggrieved/2019/11/29/6c2c7b7e-116b-11ea-924c-b34d09bbc948\\_story.html](https://www.washingtonpost.com/world/asia-pacific/a-bill-meant-to-protect-indias-transgender-community-instead-leaves-them-angry-and-aggrieved/2019/11/29/6c2c7b7e-116b-11ea-924c-b34d09bbc948_story.html)

<sup>26</sup> Ibid.

<sup>27</sup> Murphy. (2019). India's transgender rights Bill faces 'unanimous opposition' from trans people. Radio New Zealand. January 07. <https://www.radionz.co.nz/news/world/379624/india-s-transgender-rights-bill-faces-unanimous-opposition-from-trans-people>

<sup>28</sup> India Today Web Desk. (2018). Up to Parliament to make rape law gender-neutral, says Supreme Court. India Today. November 12. <https://www.indiatoday.in/india/story/up-to-parliament-to-make-rape-law-gender-neutral-says-supreme-court-1386633-2018-11-12>

<sup>29</sup> Times News Network. (2018). Transgenders can file sexual harassment case: Cops to HC. The Times of India. November 28. <https://timesofindia.indiatimes.com/city/delhi/cops-refused-to-file-fir-transgender-girl/articleshow/67278564.cms>



<sup>30</sup> This clause takes away the agency of any transgender individual over eighteen to take decisions about their living conditions, a right that is available to cisgender men and women.

Additionally, this Act defines family as only those related by blood or marriage, or adoption made by law.<sup>31</sup> This goes against the kinship that the transgender community forms outside its family. Many transgender individuals are ostracized by their natal family for their gender identity and expression and even thrown out of homes.<sup>32</sup> In these situations, it is these extended kinships and adopted family that offer support to them. This Act is against that form of family and in direct violation of the Hijra family system and the right of transgender people to live with family and partners of their choice.<sup>33</sup>

There are no provisions for any reservation for transgender persons in employment or educational institutions in this Act. NALSA verdict of 2014 mandated the inclusion of transgender people with a reservation under OBC (Other Backward Classes) category. However, Grace Banu<sup>34</sup> notes that this reservation serves no purpose for transgender people who are also Dalit, another historical marginalised population group in India. Besides, even with other things being equal, usually cisgendered persons are preferred over transgender persons, if they are considered equivalently within the OBC category, thereby making vertical reservation relatively useless even for trans Dalit, adivasi and even OBC people, unlike horizontal reservation which accounts for the intersection of caste and gender, notes Bittu Karthik.<sup>35</sup>

The transgender community wants horizontal reservation within each class to access better educational and employment opportunities. This is one of the main concerns of the transgender community against the Transgender Act.

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<sup>30</sup> Section 12.3 of Transgender Persons (Protection of Rights) Act, 2019 states: “Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.” See Footnote 22.

<sup>31</sup> Borpujari, P. (2019). India’s Trans Community Faces Continued Discrimination. The Diplomat. January 24. <https://thediplomat.com/2019/01/indias-trans-community-faces-continued-discrimination/>

<sup>32</sup> Padhi, M., & Mohanty, P. A. (2019). Securing Transgender Rights through Capability Development. Engage. Economic and Political Weekly. Vol. 54, Issue No. 1, January 05. <https://www.epw.in/engage/article/securing-transgender-rights-education-finance>

<sup>33</sup> Mogli, V. V. (2016). Responses From Trans & Intersex Communities On The Transgender Rights Bill. Feminism in India. August 9. <https://feminisminindia.com/2016/08/09/trans-community-response-transgender-rights-bill-2016/#.V6tIUZN949d>

<sup>34</sup> Grace Banu is a dalit and transgender activist and writer. She is the Founder Director of Trans Rights Now Collective.

<sup>35</sup> 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.

## 4. Challenges with implementation of the NALSA judgement

The judgement by Supreme Court of India in the National Legal Services Authority (NALSA) Versus Union of India and Others case in 2014 recognised every individual's right to self-identify their gender.<sup>36</sup> This verdict acknowledges the fundamental rights of transgender persons including right to life. However, the scope of this verdict does not extend clarity around civil rights such as marriage, divorce or even inheritance from their natal family.

*Further, there seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to transgender people. Now it's time for us to recognize this and to extend and interpret the Constitution in such a manner to ensure a dignified life of transgender people. All this can be achieved if the beginning is made with the recognition of TG as third gender. - NALSA Vs. Union of India and Others<sup>37</sup>*

The directives given by this judgement required state governments to ensure the inclusion of transgender people in different spaces. As a first step this meant including transgender as a gender category on different forms and applications, online and offline, for those transgender persons who did not identify within the binary. However, all state governments did not act on these directives. Apart from that, all respondents note that the gender category shown on the different identification documents such as ration card, PAN card, driver's license, bank passbook, Aadhaar, voter ID, among others, are different.

While some identity documents use 'Transgender' to signify anyone who identifies outside the binary genders, other identity documents use 'Other' or 'Third Gender' as categories to denote transgender people. Transgender Welfare Boards have been set up in some states like West Bengal, Tamil Nadu, Kerala, Manipur, among others.

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<sup>36</sup> Wikipedia contributors. (2019, December 23). National Legal Services Authority v. Union of India. In *Wikipedia, The Free Encyclopedia*. Retrieved from [https://en.wikipedia.org/w/index.php?title=National\\_Legal\\_Services\\_Authority\\_v\\_Union\\_of\\_India&oldid=932081070](https://en.wikipedia.org/w/index.php?title=National_Legal_Services_Authority_v_Union_of_India&oldid=932081070)

<sup>37</sup> Supreme Court of India. (2014, April 15). *National Legal Services Authority Versus Union of India and others*. Writ Petition (Civil) No. 400 of 2012 with Writ Petition (Civil) No. 604 of 2013. Indian Kanoon. Retrieved from <https://indiankanoon.org/doc/193543132/>

Participants at the Symposium on Legal Support for Accessing Transgender Rights in 2018 noted that most of these boards are not fully functional. In Odisha, the government had announced loans and schemes for transgender persons, and these were starting to be rolled out in the second quarter of 2018.<sup>38</sup>

All respondents of this study expressed dissatisfaction with implementation of the directives issued by the Supreme Court. Government officials including district magistrates and gazetted officers, continue to ask transgender individuals for a Sex Reassignment Surgery (SRS) certificate for any identification document to be changed to their preferred name and gender when in fact directive 5 clearly defines any insistence on SRS as immoral and illegal.

The implementation of the NALSA judgement has not been uniform across the country. Even in Tamil Nadu, the first state to establish a Transgender Welfare Board, government initiatives have been in an attempt to gather a vote bank rather than implement the NALSA judgement.

*In Tamil Nadu, the social welfare schemes for transgender people have been delivered not to implement NALSA directives but to gather a vote bank for the ruling party by providing homes, loans for self-help groups and job opportunities. - Sankari<sup>39</sup>*

Even with the passing of the NALSA verdict of 2014, there continues to be a lack of awareness about the verdict among the transgender people except in some states like Tamil Nadu. Rural areas often suffer from a lack of information regarding the rights guaranteed by the NALSA judgement and sometimes there's no access to CBOs and similar organisations, notes Amrita Sarkar. Apart from that, NALSA verdict looks at all transgender people as a third gender which can be problematic notes Bittu Karthik. However, many transgender people identify within binary genders of male and female.

Since the verdict allows for self-identification but boxes all transgender people as 'Third Gender', many trans men do not come out as being transgender. This further leads to lack of numbers for trans men due to a no show even for those who want to avail any benefits under the transgender welfare schemes.

*Trans men predominantly refuse to disclose their identity of being transgender due to the vulnerability that they face due to their assigned gender at birth. As a combination of*

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<sup>38</sup> Human Rights Law Network. (2018, February 14). Meeting Report on Symposium on Legal Support for Accessing Transgender Rights. Retrieved from <https://hrln.org/wp-content/uploads/2018/05/Transgender-Consultation-Report.pdf>

<sup>39</sup> 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.

*self-identification and facing vulnerability, trans men have so far not been forthcoming about getting identification cards as transgender in states other than Kerala. - Selvam*

The prerequisites for procuring any identification document in an individual's preferred name and gender changes from place to place and even from person to person depending on the government official in a particular state. There are officers who would approve all applications whereas there are those who have denied applications of applicants (who identify as a woman) with a male sexual organ, observe respondents.

## 5. Census 2011 and data discrepancies

Given the historic exclusion and continued negligence by the government, the transgender community in India continues to face challenges with respect to accessing public welfare schemes. Respondents note that the national Census data of 2011 misrepresents the transgender community and is nonetheless being used to design development and welfare schemes for the community.

*Certainly I know a lot of trans people who were not part of the census. All the trans people I know have not been counted. So there are certainly more people not counted. 4.8 lakh people is a vast underestimation. - Bittu Karthik*

Primary Census Abstract data of 2011 identifies a total population of 4,87,803 persons in India who identified their gender as 'Other', that is neither as 'Male' nor as 'Female'.<sup>40</sup> The Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, clarifies that the 'category of "Other" would not only include transgender but also any person who desired to record sex under the category of "Other' ... [and] that transgenders might have returned [sic] themselves either male or female depending on their choice.'<sup>41</sup>

*The 2011 census is flawed in many ways. Some trans individuals have their identity as female and others as transgender. I don't know if they were issued based on the NALSA judgement. I got my Voter ID before the NALSA judgement. I am addressed as female in my Voter ID. So I would have entered the census as a woman and not a trans woman. So how then can one expect accurate census data with respect to transgender individuals in the country? - Sankari*

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<sup>40</sup> Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India. Primary Census Abstract Data for Others (India & States/UTs). Retrieved from [http://censusindia.gov.in/2011census/PCA/PCA\\_OTH\\_0000\\_2011.xlsx](http://censusindia.gov.in/2011census/PCA/PCA_OTH_0000_2011.xlsx)

<sup>41</sup> Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India. Brief Introduction to Primary Census Abstract Data for 'Others'. <http://censusindia.gov.in/2011census/PCA/Primary%20Census%20Abstractother.pdf>

The respondents of this study observed serious concerns about the negative impacts of the underestimation of the transgender population in the country by the Census data of 2011. This Census data remains instrumental in informing policy decisions and planning of welfare schemes although the limits to its accuracy have been well documented.

*The census data is very small and the government is using this data to design development and welfare schemes for trans people which are very slow and very pathetic. They allot only a minimum amount because the census data is just a fraction, say 5% to 10% of the actual trans population in the country. This happened because the enumerators were not well-trained. Transgender enumerators who understood the pulse of the community and can get into the pockets should have been inducted by the government. But the government did no such thing. Now the trans community is suffering because of this false data. They are not getting benefits assured by the NALSA judgment. - Aparna Banerjee<sup>42</sup>*

In Tamil Nadu, the transgender (woman and third gender) population was included in the Census not through door to door surveys but their count was approximated based on the transgender ID cards issued by the Aravani Welfare Board, notes Jaya.<sup>43</sup> Given that the Aravani Welfare Board has never issued a transgender ID card to any trans man, it is safe to say that the census data from Tamil Nadu does not include trans men. Respondents also mentioned that many transgender people identifying within the binary have been recorded in the census as female or male. Some respondents also note that the family of a child may not admit to the real gender of their child to the enumerators in a census or other government enumeration processes.

*NALSA says that you need not identify as a third gender even, if you are a trans person. So it will never get recorded in such a situation [like enumeration for Census]. So if I write male, I will be male. I will never be included in the Census. Transgender people who identify within the binary and have identity documents in a binary gender don't get accounted for in the transgender category in the census - Shaman Gupta<sup>44</sup>*

Official statistics collection seems to be making transgender individuals further vulnerable by asking them to *come out* to the state in order to access the human rights based welfare services

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<sup>42</sup> 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 and contributed to the state figures and welfare measures and believes in equity rather than equality.

<sup>43</sup> 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).

<sup>44</sup> 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.

and their citizenship rights, emphasising the latent shift from human rights to data as the basis for welfare decisions. Government asking marginalised groups of people to come out just to avail specific benefits, is not a safe option for a marginalised group like the transgender community. With the passing of the Transgender Persons (Protection of Rights) Act 2019, transgender individuals, who are an already marginalised group of people unlike cisgendered individuals, are now being compelled to reveal their preferred name and gender to government officials and databases for the sake of being represented on official statistics and sectoral databases, and to access their rights.

## Appendix: Questions on legal rights and enumeration process

Below is a set of questions that were part of the longer questionnaire that structured the interviews with respondents of this study, and that are relevant for the analysis presented in this part of the report.

- What were the early initiatives to enumerate and/or issue identity documents by the central or the state governments? Were there any initiatives apart from HIV programmes?
  - When did HIV-related intervention begin in India? Do you know if HIV interventions programmes were the first to recognise transgender population in India in terms of national data?
  - How were transgender people defined in the HIV intervention programmes? When was MSM segmented into MSM and transgender people? Does it also include transmen?
- What was the experience and process of participation for transgender persons in such initiatives (prior to Census 2011)? Were these effective initiatives, in the sense of these identity documents being provided to all/most transgender persons, and the transgender persons being effectively use these identity documents to access public and private welfare schemes? Do you know of instances, personal or otherwise, that you might want to share?
- Do you know of individuals who participated openly in the 2011 census? What were their experience of being enumerated in the Census as a transgender individual?
- What does the NALSA judgement say with respect to identity documents and enumeration processes?
  - In the NALSA case and in subsequent relevant cases, what kind of data and statistics have been relevant and effective in demonstrating the difficulties that transgender persons face? What kind of data made an impact on the NALSA and Section 377 verdict?
  - Conversely, have they felt the lack of any specific data sets (either collected by public authorities or organisations fighting for transgender rights) that undermine or become a barrier in making an effective argument in such cases?

- How has inclusion of non-binary or third gender identifying trans and intersex people in national data collection initiatives changed since Census 2011 and the NALSA verdict of 2014?
- How would you say the implementation of NALSA judgement has been in across India with respect to the inclusion of transgender people? What are the barriers and exclusions that still remain?