The Transgender’s (Protection of rights) Act 2019

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The Transgender Persons (Protection of Rights) Act, 2019- Murder of gender justice?

1. Abstract
This paper is predicated upon a grounded theory analysis of the The Transgender (protection of rights) Act 2019. During a 2014 judgment, the Supreme Court of India affirmed the right of each Indian citizen to settle on their identity irrespective of gender affirmation surgery. The Transgender Persons (Protection of Rights) Bill 2019 was passed in the rajya sabha on 26th of November, 2019 and signed into a law by the president of India. This was contended to be the one law that might safeguard transgender individuals from any sort of discrimination which is being referred as murder of gender justice by the trans community itself. Transgender people say certain provisions within the law are unconstitutional, including the formation of district-level, five-member screening committees to certify the gender of a transgender person—a provision that apparently runs against the Supreme Court’s 2014 judgement that granted the freedom to self-recognition of gender to transgender individuals. This paper examines this act in conjunction with the Supreme Court verdict to study how law discursively produces the transgender citizen and the way India’s transgender communities are reacting to such constructions. A discourse analysis of the legal and popular representations of transgender individuals alongside reactions from India’s transgender communities towards law allows me to look at the varied contestations of transgender act 2019 in India.

• what next for transgender people, as India clears a bill the Transgender Persons (Protection of Rights) Act, 2019, that activists call “murder of gender justice”?

2. Introduction
In short lesbians, gay men, bisexual individuals, and transgender people haven’t been understood and accepted as a part of the conventional spectrum of the human condition. Instead, they had been stereotyped as deviants stricken by marginalized social station relative to society’s cultural norm of the exclusively heterosexual individual who conforms to traditional gender roles and expectations, by and huge these groups share the common status of ”other” thanks to their members' departures from heterosexuality and gender norms. Their “otherness” is that the basis for disgrace and its attendant prejudice, intolerance, and violence, which underlie society's general lack of attention to their well-being and lots of the health dissimilarities discussed during this report For some, this “otherness” is also complicated by additional dimensions of inequality like race, ethnicity, and socioeconomic status, leading to stigma at multiple levels. During this world, a number of issues would threaten the health of LGBT individuals: major chronic and communicable diseases; mental disorders; environmental hazards; the threat of violence and terrorism; and also the many other factors that jeopardize human “physical, mental and social well-being.

Ancient Evidences of Homosexuality in India
The Manusmriti, which lists the oldest codes of conduct suggested to be practiced by a Hindu, does contain mention of homosexual acts, but only as something that needs to be regulated. While homosexuality was seen as part of sexual activities, it was not always recognized well. Punishments for homosexual conduct is prescribed. For example the verse pertaining to sexual activity between an older woman and a virgin (woman) reads “... a lady who pollutes a damsel (virgin) shall instantly have (her head) shaved off...” However, the verse referring to sexual intercourse between two virgins suggests a relatively milder punishment—“... a damsel who pollutes (another) damsel must be fined two hundred (panas), pay twice her (nuptial) fee, and receive ten (lashes with a rod. “These provisions, quoted out of context, appear against lesbianism, but in fact they do not concern the partner’s gender but with the loss of virginity that decreed a young woman unworthy of marriage.

In Rigveda, an earliest Scripture of Hinduism says that Vikruti Ivm Prakruti, it means Vikruti is also Part of Prakruti, and there is no Vikruti without Prakruti. Many prehistoric Scripture defines presence of Homosexuality in India, Like in Stories of Padma Purana, Mahabharatha.

• One of the most liberal voices in the Supreme Court, Justice Dhananjaya Chandrachud, recognised that gender and sexuality disregard simple binaries and lazy labels. “An individual’s sexuality cannot be put into boxes or compartmentalised,” he wrote in the influential Right to Privacy judgment, “it should rather be viewed as fluid, granting the individual the freedom to ascertain her own desires and proclivities.”

Landmark Judgement
National Legal Services Authority (Nalsa) Vs. Union Of India (Nalsa)
This case was filed by the National Legal Services Authority of India (NALSA) to legally recognize persons who fall outside the male/female gender binary, including persons who identify as “third gender.”
This was a landmark decision where the apex court legally recognised “third gender”/transgender persons for the first time and discussed “gender identity” at length. The Court recognised that third gender persons were entitled to fundamental rights under the Constitution and under International law. Further, it directed state governments to develop mechanisms to realise the rights of “third gender”/transgender persons.

**Significance:**
This is a landmark decision because it is the first to legally recognise non-binary gender identities and uphold the fundamental rights of transgender persons in India. The judgement also directed Central and State governments to take proactive action in securing transgender persons’ rights. The Court clarified that gender identity did not refer to biological characteristics but rather referred to it as “an innate perception of one’s gender”. Thus, it held that no third gender persons should be subjected to any medical examination or biological test which would invade their right to privacy.

3. Legal definition—Gender and law
   - The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment, Mr. Thaawarchand Gehlot.
   - **Definition of a transgender person:** The Bill defines a transgender person as one whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra. Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.
   - **Prohibition against discrimination:** The Bill prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of, goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment in whose care or custody a transgender person is.
   - **Right of residence:** Every transgender person shall have a right to reside and be included in his household. If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation centre, on the orders of a competent court.
   - **Employment:** No government or private entity can discriminate against a transgender person in employment matters, including recruitment, and promotion. Every establishment is required to designate a person to be a complaint officer to deal with complaints in relation to the Act.
   - **Education:** Educational institutions funded or recognised by the relevant government will provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.
   - **Health care:** The government must take steps to provide health facilities to transgender persons including separate HIV surveillance centres, and sex reassignment surgeries. The government shall review medical curriculum to address health issues of transgender persons, and provide comprehensive medical insurance schemes for them.
   - **Certificate of identity for a transgender person:** A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as ‘transgender’. A revised certificate may be obtained only if the individual undergoes surgery to change their gender either as a male or a female.
   - **Welfare measures by the government:** The Bill states that the relevant government will take measures to ensure the full inclusion and participation of transgender persons in society. It must also take steps for their rescue and rehabilitation, vocational training and self-employment, create schemes that are transgender sensitive, and promote their participation in cultural activities.
   - **Offences and penalties:** The Bill recognizes the following offences against transgender persons: (i) forced or bonded labour (excluding compulsory government service for public purposes), (ii) denial of use of public places, (iii) removal from household, and village, (iv) physical, sexual, verbal, emotional, or economic abuse. Penalties for these offences vary between six months and two years, and a fine.
   - **National Council for Transgender persons (NCT):** The NCT will consist of: (i) Union Minister for Social Justice (Chairperson); (ii) Minister of State for Social Justice (Vice-Chairperson); (iii) Secretary of the Ministry of Social Justice; (iv) one representative from ministries including Health, Home Affairs, and Human Resources Development. Other members include representatives of the NITI Aayog, and the National Human Rights Commission. State governments will also be represented. The Council will also consist of five members from the transgender community and five experts from non-governmental organisations. The Council will advise the central government as well as monitor the impact of policies, legislation and projects with respect to transgender persons. It will also redress the grievances of transgender persons.

The Union Cabinet Wednesday approved a bill which provides a mechanism for social, economic and educational empowerment of transgenders by defining their identity and rights to prohibit discrimination against them. The bill will benefit large number of transgender persons, mitigate the stigma, discrimination and abuse against this marginalised section and bring them into the mainstream of the society, an official statement said.

- This will lead to inclusiveness and make them productive members of the society, it said.
- The Bill provides a mechanism for their social, economic and educational empowerment,” the statement said.
The bill will bring greater accountability on the part of the central government, state governments and UTs for issues concerning transgender persons, besides making all the stakeholders also responsive and accountable for upholding the principles underlying the Bill.

Going by the bill, a person would have the right to choose to be identified as a man, woman or transgender, irrespective of sex reassignment surgery and hormonal therapy. It also requires transgender persons to go through a district magistrate and “district screening committee” to get certified as a transperson.

The bill prohibits discrimination against a transgender person in areas such as education, employment, and healthcare. It directs the central and state governments to provide welfare schemes in these areas.

Offences like compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to two years’ imprisonment and a fine.

4. Stiff opposition to Transgender Persons (Protection of Rights) Act, 2019

A SERIES OF BILLS BEGINNING WITH THE 2015 BILL FOLLOWED BY THE ONE IN 2018, WERE BUT A DEATH WARRANT ON THE TERMINATION OF HOPES OF THE COMMUNITY.

The trans society didn’t want to believe that the respite would be so short lived. On the 10th of July 2019 when the Cabinet approved and passed the Transgender Persons (protection of rights) Bill 2019, it was apparent that the state was engaging the same strategy it employed with the earlier bills. As an added component the bill was not made available to the affected group and the public at large till the morning it was tabled in the Lok sabha. The trans society, activists tried their best, organised press conferences across the country. But the community’s best was still the state holding the whole group at gunpoint leaving the transgenders as sitting ducks, knowing not what to expect.

The Transgender Persons Bill, 2019 has failed the community on various accounts, specifically:

a) Validation of one’s gender by the district magistrate:

The process of acknowledgment of identity of transpersons is affected by the same issues with the earlier Bill. While the District Screening Committee has been dismantled, recognition of a transgender person’s individuality is then to be decided by the District Magistrate, who will then issue the certificate grounded on a certain set of documents that would be prescribed. The fundamental question that arises is then to what are the documents that would allow transgender persons to be identified with regard to their identity as a transgender person. These follow on with additional set of issues that muddle how gender identity is to be determined :

i) If a person is to then change their preferred gender to male or female, the Transgender Persons Bill heeds back to the antiquated understanding, enforcing the need for a Sex Reassignment Surgery (SRS) in order to change their gender identity to their chosen gender of either male or female. Moreover the legitimacy of the SRS would be decided by the District Magistrate.

ii) Post the alteration in gender identity, the person is then allowed to only change their first name, which produces the question as to the sacrosanct position that the last name holds such that under no condition then can the person be aided in changing their last name. The lone reason for such an impediment of changing one’s last name, is the impervious nature of caste in Indian society. Thereby asserting one from changing one’s last name is the primary manner through which caste system and the hierarchy holds its ossified state.

Meera Sanghamitra, a transgender woman and activist, said the current bill would make life more difficult for the community, especially by refusing the right to self-determine one’s own gender.

“What is between my two legs does not determine my gender. My gender is my experience, my gender is my decision and my exclusive decision - and this is not being recognised by this country’s parliament,” she said.

iv) The bill will create a system of Doorkeepers and Policing by the recommended District Screening Committee.

On the receipt of an application under section 5, the District Magistrate shall refer such application to the District Screening Committee to be constituted by the appropriate Government for the purpose of recognition of transgender persons.

The District Magistrate shall, on receipt of an application under sub-section (1), and on the recommendation made by the District Screening Committee, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

This is in direct paradox to the rights established by the Supreme Court in terms of self identification, further Section 4. (2) encounters with Sections 6. (1) and 8. (2). The NALSA judgement and the later Private members bill of Tiruchi Siva, and the draft bill of 2015 by MSJE accepted a trans person’s rights to self identify as either male, female or transgender, but this current bill mentions both self identification, as well as, determination by a committee: If a person can self-identify, why is a committee required?

Even if a committee is made, what’s the thing of getting a medical doctor on it? NALSA is oblivious that there shouldn't be medical/physical evaluation or any surgical or hormonal method as a prerequisite for transgender identification. “At most”, a psychological assessment is desired. Having one representative of transgender community can cause gate-keeping, backing a politically well-connected or advantaged transgender person. it's going to cause exclusion of non-operative trans persons, exclusion of trans men, etc., because the multiplicity of trans identities and expressions might not be represented on the committee. it's possible that trans men willing to get on the committee would be hard to seek out.

Sai, a trans man, speaking to the press on Wednesday contended, “Without that certificate, you won't have the right to live with dignity, and no access to any other rights. Then where should we go? There are no reservations for us in education or jobs unless we have surgery.” Case law:
Arunkumar Vs. The Inspector General Of Registration

The primary issue before the Court was whether the term “bride”, as mentioned in Section 5 of the Hindu Marriage Act (HMA) meant only women, or included transgender persons as well, given that Sreeja was a transwoman.

Significance:

This is the first judgment in India where the right to marry under Article 21 of the constitution has been affirmed for transgender persons and holding that “bride” under the Hindu Marriage Act would cover transgender persons who identify as women. The Court affirmed Ms. Sreeja’s self-identification as a woman and recognised her right to self-identify her gender and be included, along with other intersex/transgender persons who identify as women, within the definition of ‘bride’. It noted the violation of her fundamental rights by the State authorities that refused to register her marriage.

b) Transhealthcare

Transgender people’s access to healthcare is firmly restricted, and therefore the act doesn't address this space. Activists have involved free access to gender-approving medical practices, insurance and access to the ward of their pick (male, female, or separate wards for trans people) in hospitals.

Strangely, the bill appears to cap the chastisement for mental and physical abuse of transpeople at two years.

This simply means that the rape of a transperson could mean lighter punishment than that of cis women. There's simply no excuse for this type of repulsive discrimination within the law. The current Act gives no parameters for the fixing of Transhealthcare Centres in Government Hospitals. within the 2015 draft, there was a clear mention of the state’s duty to supply this, e.g free sex relocation measures. the power of separate wards for trans people in hospitals, lucidly mentioned within the Private Member’s Bill of Truchi Shiva, has also been released.

Transhealthcare is completely unwarranted. For trans people to travel on living their lives, key services like counseling, hormone therapy, other gender affirming procedures need to be made binding and people services could be reachable to all or any the underprivileged sections of the trans communities.

Jay M., a transgender man, told Human Rights Watch that when he sought treatment for a fever, "The doctor asked me, ‘But are you a woman or a man?’ I said, ‘That doesn’t matter, but what I can tell you is I’m a trans man.’ He said, ‘What’s a trans man? You know we don’t offer services to gay people here. You people are not even supposed to be in our community. I can even call the police and report you...’"

c) Mistaking intersex variations with transgender identity

The current act contains persons with intersex differences under the transgender umbrella. This is strongly difficult on many levels. Sex and Gender are not similar concepts. Sex and gender are not binary concepts. While sex is a biological/medical term to signify male, female and intersex, gender is a profound sense of oneself as a gendered being and may not have a one-to-one co-relation with sex. E.g. someone allocated ‘sex female’ at birth, even when sustained by all physical, physiological and chromosomal evidence of being female, may not self-identify as ‘gender female’. And vice-versa.

On the opposite hand, intersex variation refers to the ways during which one’s sex is seen to vary from the binary idea of sex as Male or Female – operation of one’s chromosomes, hormones, and external genitalia. Not all intersex persons may identify as transgender. And not all transgender persons got to be intersex. In fact, there are many intersex variations that do not manifest physically, and often those with intersex variations may not be aware of this themselves; they may identify solely with the gender they were assigned at birth.

People with intersex variations will need access to medical attention in the event they chose to seek it, and employment and non-prejudiced treatment. These are where transgender persons and those with intersex variations need policy intersects.

The bill needs to enlarge scope for intersex persons’ rights, and have separate clauses that cover areas and apprehensions that Intersex community have. For instance, it must be firmly enforced that no doctor or hospital perform medical and surgical interference to assign either the female or male gender, for intersex infants and children. Further, it must be ensured that sex/gender markers are not documented on birth certificates of intersex infants.

However, the current bill has glossed over these points of differences and have amalgamated transgender and intersex persons into one category. This could lead to future troubles, especially an over-emphasis on medicalisation of identities and expressions.

Case law:

Shri Santosh Kumar Kappu Vs. Public Information Officer, Delhi Police

Whether transgender persons’ begging in public places with or without misconduct is a cognizable offence or not Santosh Kumar’s RTI is significant because several activists have argued that criminalising begging adversely affects transgender persons and has been a key criticism of the Transgender Persons act There is considerable apprehension that the Act seeks to undo many of the achievements of the Supreme Court’s NALSA judgment, and a constitutional challenge to the Act, if it is passed by the Rajya Sabha, cannot be ruled section of Rights) Bill, 2019. “This Bill exists to erase us. By having complete control over us from the way we identify to what socioeconomic opportunities we should get and condoning violence against us, it places us in a vulnerable position,” says Liliana il Graziosco Merlo Turan, a law student from Bengaluru.

d) Criminalized begging

The government’s Act also bans those “whoever coerces or entices a transgender person to indulge in the act of begging”. Though there is no all-India law that outlaws begging, a 1949 Bombay statute has been widely adopted by state governments around the country. Earlier last year, the Delhi supreme court struck down its function within the capital, effectively decriminalising begging. For the Centre to now seek to criminalise begging by transgender persons across India deceives an intense unawareness of the way
certain transgender communities (like hijras and kinnars) are regulated, functioning on conventional systems such as badhai and mangti. This is particularly cruel since transgender people do not have access to employment in the way that other Indians do.

The Act makes it a crime to compel transgender persons to beg or do forced or bonded labour (excluding compulsory government service for public purposes); to forbid them the use of public space or place of dwelling; and to indulge in corporeal, sexual, vocal, emotional or economic abuse of transgenders. These offences will entitle imprisonment of six months to two years and a fine.

The comparatively trivial punishments have disappointed the activists. The immense majority of members of the trans community, the activists point out, has resorted to taking charities in the face of social ostracisation and the lack of efforts by governments to create livelihood options.

This Bill is a total violation against civil rights. How can they compel us to opt for surgery and then validate us as transgender? We must all have the freedom to express ourselves the way we want to. The fact that we have to confirm our identities with surgery makes no sense to me,” says Megh, an HR Consultant from Bengaluru.

The Act has an inconsistent impact on transgender persons, a number of who migrate from smaller towns after being rejected by their families and believe in seeking alms to sustain. Criminalised under the antibeggary provisos and laws governing common nuisance and vulgarity, transgender persons are subjected to harassment, arbitrary arrest, illegal detention and custodial torture, violating their most significant rights. Police often arbitrarily arrest transgender persons under the pretext of such laws whose ambiguity allows for misuse and disproportionate violence against the foremost marginalised communities.

By checking our gender and giving us certificates, they are being insensitive. This is not an Act by us for us, it’s an Act by them against us,” adds a student from Bengaluru, who prefers to stay anonymous.

In November 2014, many trans women in Bangalore were randomly picked up from public places and illegally arrested in the disreputable “Beggar's Colony”, a “rehabilitation” centre for beggars where unusual deaths and dreadful living conditions have been reported. They were taken under the Karnataka Prohibition of Beggary Act, 1975 [which interestingly, exempts “holy mendicants” who beg, from criminalisation].

It has to be comprehended that begging arises out of organizational inequalities in our societies which have led to deficiency of education and employment opportunities, which then have co-relations with activities like begging. Not only is this proviso a human rights violation, but it will also be used with immunity by parts of the state like the Police, [as in the above mentioned case] to criminalise trans women who beg on the roads and their trans gurus/mothers.

e) Caste based reservation
The Supreme Court’s NALSA ruling had signified that transgender people would be included in the OBC category, and had further clarified that, if familial caste were SC or ST, the transgender individuals would be able to claim aid and protection under reservation, on account of being both OBC and trans. Unfortunately there is no provision for OBC or caste-based reservations in the present Act, which is a big lacuna. This is despite the explanation that the Supreme Court has provided on the matter and therefore is in encroachment of that. Transgender individuals continue to be denied educational and employment prospects because of their gender identity, and reservations are exceedingly critical to addressing general inequalities & barriers.

f) Discrimination in employment not focussed.
The act says that “no establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.” (Chapter V, Section 10). They have also established a redressal system (Chapter V, Section 12) — Every establishment consisting of one hundred or more persons shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act. Establishment is stated as (Chapter I, Section 2(b)) — “establishment” means—?(i) any body or authority established by or under a Central Act or a State Act or an agency or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and contains a Department of the Government; or?(ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

This explanation of establishment leaves out notches of unorganised division workers, and trans persons in organisations with less than 100 employees. There is prejudice in the process of differentiating between women and trans persons. In comparison to this bill, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has wide definitions of employee, workplace and denotes that women should compulsorily head workplace harassment committees. District complaints committee can be contacted by women working in organisations with less than 10 people, and unorganised sector workers including domestic workers. This wide-ranging and inclusive definition of workplace/establishment should be implemented in the current act as well.

g) The restriction of movement
The constraint of movement with respect to transpersons in separating from their parents and allowing a person to move out only through an order of ‘a competent court’. Splitting the community on class lines with only those being able to approach court even having a chance at separating from their family. Moving out of the family has been the requirement of a large number of transpersons, primarily due to the discrimination and violence they would face from their immediate family and the immediate neighbouring community. The sovereignty and choice of family has been effectively restricted and ripped to pieces through this clause. Furthermore, the only alternative made accessible to the community other than the family is a rehabilitation centre, the errors and fears of which have been restated multiple times.

“FOR YEARS, WE HAVE STAYED AND LIVED SELF- SUFFICIENTLY WITH SUPPORT FROM THE
COMMUNITY, AMONGST THE DISCRIMINATION AND VIOLENCE. WE DON’T NEED AN POINTLESS POLICING OF OUR EXISTENCE BY THE STATE. DO NOT RESTRICT OUR LIVES, WE NEED PROTECTION MECHANISMS FROM THOSE WHO KEPT ON VIOLATING OUR IDENTITIES, BODIES AND LIVES.”

5. Scope for reform

1. It could have let the NALSA orders hold the field, like it did with the Vishakha directives on Sexual Harassment for over 15 years. The threat it ran was that leaving the course unexplored could allow the Constitutional Courts to develop jurisprudence it may not be in agreement with. There is little stress on the intersex, gender queer and even transmen.

2. The Act Enforces a minor’s right of residence forcing any transperson below 18 to cohabit with their biological family. Families are often a source of grisly violence against the trans community leading them to separate from their natal family.

3. The Act is dead silent on the direction of Horizontal or Vertical reservations for transpersons in educational institutions and public appointments

4. It could affect them through a corresponding enactment like it did with the Right to Food case with the Act on Food Security or say the NREGA. This too we must remember was done to limit determined judicial progress to combat hunger and malnourishment in the face of government’s lack of concern.

5. It could otherwise break rank with the Supreme Court like it did in response to the ruling in the Shah Bano case and its recent attempt to undo the Privacy Judgment viz-a-viz private players.

• Legal Measures

1. Every one must have the right to make a decision on their gender expression and identity, including transsexuals, transgenders, transvestites, and hijras. They ought to even have the proper liberty to freely express their identity. This includes the demand for hijras to be considered female or as a 3rd sex.

2. There should be a special legal protection against this kind of discrimination inflicted by both state and civil society which is extremely similar to the offence of practicing untouchability.

3. The Immoral Trafficking Prevention Act, 1956, as has been acknowledged earlier, is employed less for preventing trafficking than for intimidating those that are the foremost vulnerable i.e., the individual sex worker as against brothel keepers. This law must be reformed with a transparent understanding of how the state is to manage those engaged in sex work.

4. Civil rights under law like the right to urge a passport, ration card, make a will, inherit property and adopt children must be available to all or any notwithstanding change in gender / sex identities.

6. Conclusion

The right to recognition as an individual before the law is guaranteed in numerous international human rights conventions, and may be a fundamental aspect of encouraging the dignity and pride of every person. Legal gender recognition is additionally an important element of other fundamental rights — including to privacy, to freedom of expression, to be free from arbitrary arrest, and rights regarding employment, education, health, security, access to justice, and therefore the ability to maneuver freely. Activists in India decide to challenge the new law on this and a number of various other fronts.

That the law expressly prohibits prejudice against trans people in education, employment, health care, and a number of other spheres offers productive ground for challenging those provisions of the law that are discriminatory. The new law also identifies intersex people but offers them no specific protections. Impetus to guard intersex children from medically needless “normalizing” surgeries, like a 2019 ban on operations in Tamil Nadu, should guide amendments thereon front also. Put simply, the method for identification before the law and control over one’s own body should be break away any medical intrusions. But if an individual’s identity or conversion process requires medical support, those services should be available and accessible. These clauses put Hijra and Aravani community elders – the adoptive parents of young transgender persons – under undue risk. The Hijra family system becomes gratuitously and unfairly criminalised during this act. This act – contrary to protecting transgender persons’ rights, finishes up severely shortening them and even harming the lives of members of the community. India has a long road in the future of gender justice, and the transgender community wants intensive efforts made to bring about legal revolution so that transgender people are as free and galvanized in their public and private lives as any other citizen of India

“In a conflict between the court judgement and legislations, such as this, it is the legislation that will take precedence. Till its constitutionality is challenged in courts and such a challenge is established and the absurd law is struck down. It is not a novel concern that the law has been opposed to us, and has continued to ignore our existence. What is surprising in this case is the law being used as an applicable mechanism to validate our existence, but place us at a plane subordinate to that which the rest of the society rests on, thus legitimizing the violence that we are put through.”

“We will continue to oppose this. Our throats cracked ages ago, hands bled and bodies tired. None of it has put a halt to our demand for what is rightfully ours. Through the fight we spent moments mourning our losses, these weren’t losses in courts or in legislation; these were losses of our kith and kin. These were losses when our partners in the fight were stripped naked and paraded, their bodies examined, their bodies raped, bodies stared at till they were bloodied in shame, minds torn apart and pushed to them taking their own lives. The absurdity of the whole fight has been that as much as we would have wanted to, we didn’t have time to stop and mourn these losses. Each incursion against an individual was then followed by structural violence to massacre the movement.
Now it isn’t just an apology that we want, for an apology will not wash away the incursions carried out against us. We have spoken in voices clear, through throats that bled with our demands. It seems now as this was to no avail. All that is for certain is that we will continue to exist and we will resist any subjugation.”

India can — and should — do better.

Bibliography