



# NATIONAL LEVEL CONSULTATION ON TRANSGENDER PERSONS ISSUES

In the even of the passing of the Transgender Persons (Protection of Rights) Act, 2019 there are a number of issues with regard to how each state has treated Transgender Persons in particular with regard to implementation of the NALSA Judgement. This meeting coalesces a range of concerns of experiences of Gender Non – Conforming Bodies, Trans Bodies and Intersex Bodies that have been precipitated over the last five years since 2014

28th and 29th  
December 2019

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# Report – National level consultation on Transgender Persons Women's issues- 28th & 29th December, 2019

## Introduction

As of April 2020 it would've been six years since the NALSA judgement was passed by the Hon'ble Supreme Court under the aegis of Hon'ble Justice Radhakrishnan and Hon'ble Justice Sikri. It was one of the first instances that Transgender Persons were not considered as criminals. It was the first instance when legal systems and legal process considered the existence of Transgender Persons and the gave a slew of directions protecting their rights.

The observations made by the court were numerous, encompassing within it the diverse nature of abuse that transgender persons have faced over ages. The court gave a set of 9 directives which were to be implemented by the center and the state within a period of six months. The judgement was followed by a period of inactivity by the states and the center for a long time. But with the judgement in hand and the directives of the court Transgender Persons, Activists and various Civil Society Organisations across the country had started work at every level, within their respective districts, states and also nationally began campaigns and lobbied with the government.

The first signs of results were observed when Tiruchi Siva came out with [The Rights of Transgender Persons Bill, 2014](#), and presented it in the Rajya Sabha as a private members Bill which was passed unanimously in the Rajya Sabha since then it has been pending in the Lok Sabha. This bill received enormous support from community members and was drafted through extensive consultation with the community.

Through sustained work by community members and activists in their individual states, state governments have taken action in their individual states, which in some cases goes far ahead of what NASLA demands the state to do, in some cases toed the line that NALSA had drawn and in some run contrary to the directives of NALSA. Though in most cases the states have continued to remain passive and maintain complete apathy to the concerns of the Transgender Community and continue to maintain their reluctance with regard to implementing directives in NALSA. In such cases the persons went to their individual High Courts to push forward the directives as described in NALSA. The High Courts have been a space where there has been a number of results that have been obtained, from the Tamil Nadu High Court banning intersex surgery on infants to Rajasthan High Court passing an order against demanding the sex or gender of a person for government jobs unless it is absolutely necessary to the requirement of the job, the courts have yielded some significant results.

Amidst this in 2016 the ruling government introduced [Transgender Persons \(Protection of Rights\) Bill, 2016](#). More than it being a poorly written legislation large parts of it ran completely contrary to the NALSA Judgement and avoided covering certain parts of the judgement that are required of such a law. Through protests around the country and large scale movements it was referred to the select committee by the Ministry of Social Justice and Empowerment, which came out with the [report on the Bill](#). In a pretense of



taking in the considerations of the Standing Committee and the concerns of the community there were a few changes made, which barely took into the changes suggested and continued with the same transphobic and patriarchal narrative as was there in the previous bill, a mere twisting of words which are highly inadequate in covering the concerns of the Transgender and Gender Non-Binary community. This resulted in the Lok Sabha re-introducing the Bill as [Transgender Persons \(Protection of Rights\) Bill, 2018](#) on December 17<sup>th</sup> 2018 and passing it on the very same day. Human Rights Law Network (HRLN) came out with a [critique of the Bill](#) as it was introduced in the Lok Sabha.

As soon as the Bill was passed by the Lok Sabha [protests](#) erupted around the country. Due to the large scale protests across the country the Bill was stalled in the Rajya Sabha. In the meantime due to Lok Sabha Elections, the bill lapsed. After the elections there were claims made by the Minister of Social Justice and Empowerment to get the Bill passed within a period of 100 days. [Transgender Persons \(Protection of Rights\) Bill, 2019](#) was reintroduced in the Lok Sabha on the 19<sup>th</sup> of July 2019 without incorporating the changes proposed by the community with the previous bill. As soon as it was passed by the Cabinet, HRLN came out with a [comprehensive critique of the Bill](#). The 2018 version of the Bill was reintroduced without any suggestions and the changes proposed and was passed by the Lok Sabha on the 5<sup>th</sup> of August 2019. On the 26<sup>th</sup> of November 2019 it was passed in the Rajya Sabha and subsequently received the president's assent on the 5<sup>th</sup> Of December 2019.

It is in this context that HRLN organized a National Level Consultation on Transgender Persons and Women's Issues on the 28<sup>th</sup> and 29<sup>th</sup> of December 2019 to collate data on policies and schemes related to transgender persons that have been started by different states and the differential manner in which individual states have attempted to implement the directives in the NALSA Judgement. It was also critical to identify the points at which legal intervention is both necessary and could be done to aid and catalyse the work that is already being done by activists, Civil Society Organizations (CSOs) and the movements (both large scale national level movements and the localized state level movements).

The primary concern was to chart out a an effective future plan and strategy following the passing of the Transgender Persons (Protection of Rights) Act, 2019. Also to fill in the missing gaps that could be better tackled through legal intervention therefore to move ahead with getting the state to implement schemes specific to Transgender Persons much more effectively.

## Day - 1

### Introduction to the Session

The session was introduced by **Rachana Mudraboyina**, the Director of the Gender and Sexual Minorities Initiative of HRLN. After a brief background into the work that HRLN has done with regard to Transgender Rights, looking at it historically including earlier work done prior to the NALSA Judgement, the Indian People's Tribunal in 2016, the Meeting in 2018 and a comprehensive look at the work done in the past year, which included **cases filed in Telangana, Andhra Pradesh, Manipur and West Bengal**. In addition there were multiple **Fact Findings done by HRLN in Telangana and immediate legal aid and assistance** that was provided in terms of assistance to **persons who had run away from their home**, assistance of **changing name and gender documents**, assistance in **providing police protection** among a range of other case to case work that was being done.

Colin Gonsalves, Designated Senior Counsel Supreme Court and Founder Human Rights Law Network (HRLN) gave a description of Transgender jurisprudence and the effectiveness of the NALSA Judgement in court and outside courts. Further described the particular nature of how courts have been negligent towards the rights of Transgender Persons. Further on accounting for the continuous negligence of the state with regard to rights of Transgender Persons pointing to the **need to file cases in the High Courts and the Supreme Court** and the need for **targeted and strategic litigation** to further Transgender Rights and also **build jurisprudence** around Transgender Persons.

## First Panel Discussion – NALSA Judgement and the status of implementation in different states

### Ranjita, Kolkata

Ranjita from Kolkata who has been working with HRLN over an extended period of time. She has been working with HRLN Kolkata through building greater collaborations between CBOs and legal work. She went on to suggest that various Community Based Organizations (CBOs) would be able to **assist and support HRLN financially with cases, organizing meetings and fact findings**. In addition to getting work done in courts and fact findings conducted she also points to the need of increasing awareness amongst three primary groups:

1. **State Functionaries** – On issues of Transgender Persons and laws that govern and protect rights of Transgender Persons
2. **General Populace** - On issues of Transgender Persons and laws that govern and protect rights of Transgender Persons
3. **Transgender Persons, CBOs and Activists** – Laws that are to be used to protect the rights of Transgender Persons

She talked about state apathy with regard to rights of transgender persons and in addition a lack of intersectionality that organizations need to include to work on issues of Transgender Persons. Further underlining the importance of the need for greater **legal awareness and legal support** for the community.

### Reshma, Bihar

Reshma has also been working with HRLN since 2016, she also heads an organization **Dostana Humsafar** working across Bihar and multiple other states of Chhattisgarh and Jharkhand. She talked about the case of including third gender within the form one has to fill forms for applying for their PAN Card, which built pressure on the government leading to the government passing a [Gazette Notification](#) directing to include the third gender within the form for applying for PAN Card.

She had talked about the using contempt of court to further the implementation of NALSA. There is an added issue of **effective documentation** with regard to the identity of Transgender Persons. Because of the range of issues and the manner in which documents are issued officials require persons to perform their gender explicitly which disallows persons who are closeted with their gender and want to maintain privacy to access the same services with regard to documentation, making it difficult for Transgender Persons to sensitize the government about issues of Gender Minorities. Therefore what has become the norm is the **government apathy** and **resistance to implement the guidelines and recommendations of NALSA Judgement** and a continued disregard of the recommendations provided by various CBOs, CSOs and LGBTIQ+ Collectives.

Reshma went on to say that it is because of the constant and the continued work done by the movement and the push that it gives the government, that the government is forced to look into issues of Transgender persons and it is only through better laws that govern trans bodies that greater freedom is achievable. Since laws govern people and their bodies, it can be either supportive or repressive, but it will always seem to sustain. She suggested drafting affidavits on our discontent with the persons Transgender Persons Act, 2019 and how it both takes away rights and is horribly inadequate to protecting our rights. People individually working would not be able to provide the kind and manner of protection provided by the law.



She talked about the non-implementation of the directive of **reservation for Transgender Persons** across state. In Bihar, **Transgender Persons were clubbed together with the Other Backward Classes (OBCs)** whereas there is a **need for a separate category** to provide reservation for Transgender Persons. Therefore considering reservations for Transgender Persons to be limited to the vertical reservation is highly unfair. Since we as a community need to be given horizontal reservation. She talked about the discrimination faced by members of the Transgender Community while travelling in public transport and how both the government and the society at large continues to shroud them under the ambit of culture while ignoring their gender. Therefore a need for a concerted effort towards increasing awareness on gender identities and not just cultural identities.

These concerns also continue as and when Transgender Persons try to access housing and health services. Though there are multiple orders, schemes and policies with on providing transgender persons with housing and health services but the implementation of these orders to say the least is questionable. When groups question the government on the same, there seems to be a lack of funds to implement the policies. While carrying out gender budgeting, there has been no inclusion the “Third Gender” or Transgender Persons while carrying out gender budgeting, which is completely discriminatory. Though there are stakeholders from feminist organizations representing concerns of women there is no representation of members from the Transgender Community while meetings on Gender Budgeting are carried out.

### Laila, Telangana

Even though Andhra Pradesh was split prior to the NALSA Judgement, into Telangana and Andhra Pradesh. The collective of the Transgender Community across Andhra and Telangana continued to be united and continue to form an unified front to the government which was being resistant to providing rights to Transgender Persons.

The community has actively been filing PILs in the High Courts of both Telangana and Andhra Pradesh. Though as a response to the petition on NALSA Non-Implementation the state has refused to provide information on the status of its implementation. The police in the state continues to abuse – physically, sexually, mentally and emotionally – not just the Transgender Community but the LGBTQIA+ community as a whole. Though there have been multiple representations and demands made to the state to implement NALSA to oppose the atrocities done by the police. The state seems to retain their recalcitrant attitude towards our concerns and both the police and state functionaries continue to abuse the persons from Gender and Sexual Minorities.

### Meera, Odisha

HRLN has been working with Meera and her organization for an extended period of time. They had collectively drafted how various schemes on housing, financial assistance and employment among others are to be looked into and implemented but the government at both the state and the center continue to ignore our concerns. Despite the resistance from the state there are a number of changes that have taken place in Odisha, which include providing government jobs for Transgender Persons, policies and schemes with regard to their welfare but after the passing of the Transgender Persons Act, 2019 the law seems to have taken multiple steps backward.

The work being done at state level is of enormous proportions but it is quite scattered as there is neither a road map nor a strategy that with a long term perspective in place. The movement is quite haphazardly organized and fragmented leading to various voices pulling and pushing in different directions.



With regard to the data that was collected in the Census in 2011 she questions the veracity of the census itself, whether the officers were trained to determine who persons from gender minorities are? This is keeping in mind the directives of the NALSA Judgement requiring the state to conduct a survey and the National Register of Citizens, which is to be implemented across the country from 1<sup>st</sup> of April 2020. With respect to access to health schemes, she points to how the Ayushman Bharath scheme does not cover money one would have to spend for Gender Affirmation Surgery (GAS). Further the insistence of there being a screening committee and the need to go through such a committee to process documentation forms a vicious cycle that keeps feeding into the issue therefore Transgender Persons then remain stuck in an unending cycle of abuse and denial of their rights

There is an acceptance by Meera that each individual community of gender and sexual minority has different set of needs and requirements pertaining to their context and history. Thus, discussions of the manner that occurred here is to be done in every state and with various groups and implementation of NALSA. A long terms strategy therefore needs to happen according to the needs of Transgender Persons from each particular state. She briefly talked about the “Umbrella Scheme” brought about by the Odisha Government.

She points to the **lack of reservation** for Transgender Persons while **standing for Elections**, therefore a lack of rights of transgender persons in the political sphere. Though through NALSA there is a protection of their rights through the constitution therefore sometimes the state provides them **Aadhar Cards, PAN Cards but they don't translate into rights politically** such that they can assert their rights publicly.

She mentioned the **UNDP report on the need of using psycho-social assessment** which assesses the psychological standpoint of the person in place of their physical anatomy in order to decide a person's gender. Even though one is addressing the issue of forceful rehabilitation, the means through which transgender persons earn their livelihood is extremely restricted and even though begging is not banned under law, the **police and state functionaries continue to crackdown** on Transgender Persons when they engage in begging.

#### Mr Usha Kirannayak, Karnataka

As a Disabled, Adivasi, Transman he has faced a range of discrimination from both the Transgender Movement as well as the Disability Movement. He got married in 2008. He has been campaigning for the rights of Dalits and Adivasis, along with working on rights of Transgender Persons. Though he was born in Telangana he moved to Karnataka and as of now working for an organization called **Society for Transmen Action and Rights (STAR)**.

He is closely involved in Adivasi Rights and rights of disabled persons, as a part of his work he had approached two district level judges and collectors and also 6 ministers from Telangana to look into implementation of NALSA. He describes the number of issues he had to go through due to his identity as a Trans person. He along with his organization had shown a movie to the state functionaries with regard to issues of Transgender Persons that covered a range of concerns such as bodily screening, Sexual Reassignment Surgery (SRS), accessing housing among a range of other concerns. Even after he worked on increasing sensitivity the state functionaries and ministers continue to ignore it, therefore pointing to a **need of working more with the grassroots organizations at the village and taluka level**.

Presenting his case he said that he had managed to get a few policies using the NALSA judgement such as his name and gender change, an SRS and now he has even got housing in Karnataka. Even though

Karnataka is one of the few states with a policy for Transgender Persons, prima facie it is poised to only benefit Trans women and not Trans men. After the BJP Government came into power, the present government has been ignoring the issues of Trans persons unlike the previous government that used to engage with the community and regularly organize meetings and discussion on issues and concerns of Transgender Persons.

Trans men face the added marginalization of being a smaller community amongst the Sexual and Gender Minorities thus a clamp down of voices of trans men as well. He pointed to the **need for a national network that would look consider issues of Trans persons and provide legal support** to various communities. Even though the NALSA judgment provided for such legal aid to be provided for Transgender Persons there has been no work done so far towards realizing such a goal.

### Santa Khurai (AMaNA), Manipur

She points to the complete **apathy of the state governments in the North East**, in addition to the apathy that the center displays to the concerns of the North East as a whole. It is only Manipur that has worked towards the rights of Transgender Persons to some extent albeit only because of the work that CSOs and CBOs have done based on the NALSA Judgment. There is a continued resistance from both the state authorities and various cultural organizations even though issues are clarified beyond doubt in NALSA. Though she comes from a socio-cultural space that he stays in a society that is supportive and acceptive of gender fluidity and alternate sexualities such is not the case with everyone.

### Shambhavi, Tamil Nadu

Prior to the Supreme Court passing NALSA she recounted how the Transgender Community would face a number of issues with regard to a number of concerns of rights such as earning a livelihood, housing, health among others. Right after NALSA was passed, **Tamil Nadu was one of the first states to give welfare cards for Trans Women**. Even after which they faced a number of issues with their day to day survival.

Though Tamil Nadu has established a Transgender Welfare Board and are provided with concessions for Sexual Reassignment Surgeries they are forced to earn their livelihood through begging and sex work as there are a **number of areas where neither the welfare boards nor the government is able to provide** protection for Transgender Persons. There are no services for financial assistance that is provided to Transgender Persons and the CBOs that are working and support them are supported with money from the community members themselves. There is **need for the government to expand the schemes to increase access to employment** for Transgender Persons. Shambhavi is a Photoshop Designer and runs a CAD Centre, she is one of the few people who are able to run organisations of their own accord and through their own funding.

Pritika Yashini, whose case has been one of the landmark cases with regard to recruitment of Transgender Persons by the government, is the only Transgender Person who has a job with the Police Department. Even Prithika had to take 16 attempts before getting through the selection process furthermore it was only after an intervention by the court that this could take place. She mentioned about physical issues that Trans Persons face especially with regard to running for long distances, standing for extended periods of time or other extraneous physical activities, which is used against them and they are ruled as unfit for the job and denied any opportunity to work.



### Daniel Francies Mendoca, Mumbai

Daniel talked about issues faced by intersex persons, particularly in the context of identification. Since Daniel's chromosomes are XXY it is an extremely difficult choice to make with regard to identifying with one particular gender. It is therefore the case where from an external perspective Daniel may seem like performing the gender of a male, internal genitalia is that of a female.

Daniel recounts how for ages, intersex bodies have been used as materials and specimens for experiment and studies, even though **they have undergone about 26 operations** Daniel is still unsure which gender would they identify as. Therefore the urgent need to talk and **increase awareness about sex variations** in the human body and the subsequent need to do so.

They further talk about **rainbow capitalism** where the LGBTQIA+ community has been used as propaganda for elections and as vote banks but both parties and society continue to ignore their concerns after elections.

Further elaborating on how intersex persons have been called "disordered" which is extremely dehumanizing and discriminatory as disorders are conditions that can be cured but intersex variations is not an issue that can be cured. Therefore the process, journey and a conclusion that one would definitely belong to a particular gender is extremely difficult. The Transgender Persons Act, therefore affects intersex persons disproportionately as they lose their right and ability to self-determination, in this case their individual right of self-determination and forces Daniel to opt exclusively for the "Third Gender" Category.

The **discrepancy with documentation** processes and the lack of order or organization with it leads to an increased chaos with regard to the state recognizing intersex persons. Specific schemes for health such as **Aayushman Bharath also continue to ignore the existence of intersex** persons. Clubbing intersex persons within the ambit of Transgender would not only be unfair but is an attempt blatantly treats unequals equally since intersex persons have different anatomy as compared to male and female bodies.

### Vidya Rajput, MITWA, Chhattisgarh

She began by showing her Transgender Card issued by the District Authority which can be used to change name and gender in all other identity documents such as birth certificate, Aadhar Card, Driving License among others. Coming from **Chhattisgarh where there has been a committee at the district level** that issues the Transgender Card and has had a screening committee and how she **increased the effectiveness and made the screening committee avoid physical examination** to issue Transgender Cards. She **made a gender diagnosis chart**, describing what gender is and how one should go about self-determining one's own gender. The **circular by the Chhattisgarh government accepting the right to self-determination** along with the support of NALSA made it clear how it is every person's individual right to determine their gender and not an authority that ought to be given to someone else.

Even after the extensive work she has done with state functionaries she talks about how the whole process of **documentation is extremely inefficient and tedious**. Though there have been orders to implement the directives of NALSA, it is not done and there is **no monitoring** of the work done either. A report on the work done is to be released at least three times a year but there has been no review to date. It is the community and members from the community themselves that continue to monitor the activities but which is also quite limiting since the community does not have any authority to carry out such an act. Despite all the positive steps that the state has taken with regard to protecting rights of Transgender

Persons, the largest issue that is still plaguing **the community is the issue of unemployment**. The **lack of reservation** continues to be a concern for the Transgender Community, and unless reservation is provided it is going to be increasingly difficult for them to be rehabilitated and look towards better lives.

Sowmya Gupta, Humsafar Trust, New Delhi

She re-emphasized the importance of the NALSA judgement and the work done because of it and the furthering of Transgender Rights because of it. Humsafar Trust did a National Consultation on the Transgender Persons Bill, 10 months after the Bill was introduced.

Humsafar Trust works on various sectors with regard to rights of Transgender Persons, they regularly carry out fact findings and studies in. As of now they have **carried out studies in three cities – Bangalore, Mumbai and Delhi** through it was done on a shoe-string budget the study covered concerns of **financial status, family background, educational background, issues with housing, issues with earning livelihood, their status of with regard to SRS and other aspects of their daily life**. Though it was a small study they came out with a set of recommendations:

- There **needs to be a census** of the number of Transgender Persons in the country. Since there is no available data on it.
- There has to be **disaggregated data** that has to be collected on the basis of their **age, financial status, educational background and employment status**.

Similar studies carried out in Delhi and Uttar Pradesh revealed that only **15% of Transgender Persons earn more than ₹25,000 per month**. **99% of Trans Persons in have been facing the brunt of various atrocities throughout their lifetime, whereas only 2% of the Trans Persons live with their families**. There is an urgent **need for a socio-economic survey** with regard to Transgender Persons. Only after such data has been collected can further planning and strategizing be done.

Humsafar collaborated with NITI Aayog at different levels, along with sensitization of women and sensitization of people in Delhi with regard to rights of Transgender Persons. Furthermore she points to the **lack guidelines and rules and regulations while conducting surgeries** on Transgender Persons therefore putting their lives in danger. Pointing to a **need of guidelines** that ought to be enforced for various surgeries especially **Gender Affirmation Surgeries**. As of now what has been said by the state is that there are **no talks of establishing state level bodies for Transgender Commissions** but only in the center. If such a process is indeed followed questions as to how the decisions taken by the commission still remain further on there is also a question on the implementing authority.

Furthermore the case with most **Transgender Welfare Boards is that there isn't an equal representation** of persons across the gender spectrum even of Transgender Persons on such boards . Therefore there is an urgent need to **increase representation and inclusion** in the welfare boards therefore increasing the representation.



### The room was open to discussion on various concerns

Milin from Assam compared the procedure of transitioning in the United States and India, delving into how there isn't a need to go through a bodily screening process. Furthermore pointing to the **lack of access to education** for transgender persons. He went on to differentiate between trans man and trans women going on to classify trans women then have may more different classification, which he believes that has led to more chaos and confusion. Portending to the case that most Trans Persons are unaware of their rights therefore a need to **increase awareness and education** on the same to be considered essential to a progress of rights of transgender persons.

Furthermore there was a decision to move towards **pressurizing the NACO to make concrete** recommendations since NACO started working with Gender and Sexual Minorities initially in the 1990s to tackle the HIV/AIDS epidemic. Since then there has been a lot of work that was done for the progress of rights of gender and sexual minorities through NACO and other organizations that were working on checking the spread of HIV/AIDS, but since then it has been observed that there is minimal work that has been done by NACO and has continued to ignore the concerns of Gender and Sexual Minorities.

Another concern that was to be addressed was that **Transgender Persons right to ancestral property** isn't protected, especially when they continue to **face threats from their siblings** of denial of their right to their property. There is in additional need to train the Transgender Community about their own rights and force **universities to make their policies inclusive** of persons with alternate gender expression and sexualities.

## Panel Discussion on Schemes related to Right to Food, Housing and Health

Rachana pointed to the **discrepancy in accessibility to food and food systems**, for which HRLN had made a number of **interventions through both Fact Findings and Litigation**. Through the interventions made by HRLN, Supreme Court made a number of observations and instructions to the state and central government. The directives with regard to Right to Food have been poorly implemented and in most cases they have not been implemented at all. Therefore a need **to further the implementation of the Right to Food Act**.

### Meera Parida, Sakha, Odisha

As is the case with Odisha, if one **declares oneself as a Transgender Person one would therefore fall under the category of Below Poverty Line (BPL)** where each Transgender Person would get 35Kgs per month under the BPL scheme, though **there isn't a baseline data of Transgender Persons who fall within the BPL scheme**.

The welfare schemes implemented by the state should also be provided to areas where Transgender Communities reside, such as water ATMs. Transgender Persons get their ration on the card only because persons using the ration card have passed away and the Transgender Persons are put in a waiting list to get ration using ration cards.

### Chandramukhi, THTS, Telangana

She conducted Fact Findings in 5 districts of Telangana on access to food welfare schemes by Transgender Persons. They had covered a couple of issues :-

- **If they have ration cards?**
  - **Most persons replied by saying that they weren't provided with ration cards**
  - **There were a number of people who were not aware of the use of ration cards and believed that they could be used only as a proof of identity.**
- **Representations were made to the collector to provide rations cards and voter ID cards**

She was **removed from her family's ration card** because her deadname was Rajesh and not Chandramukhi. Such issues are faced by multiple transgender persons since their gender in government documentation is also mentioned as women/female and not transgender. Furthermore in documents of the government there is no representation of the "Third Gender"

Most Trans persons **do not have a permanent address** because of which it becomes extremely difficult to procure an address proof. In Telangana the importance of a ration card is much more, since **using a ration card one can access multiple health schemes and is also able to access housing schemes**. Another concern which was raised was since ration cards and the decision of the government to put persons in the BPL category depends on the family's income a critical issue to be addressed was the case **when parents of Transgender Persons were earning much more** and fall outside the bracket of BPL therefore meaning that the whole family was not considered to be so, how is it then that transgender persons would be able to access the services.



### Vinnu, Society for Transmen Action and Rights, Telangana

The position of both trans-men and trans-women is extremely poor in Telangana as a whole as the state government has not considered the issues of Transmen in Telangana. Furthermore the police continues to **abuse trans-men in Telangana sexually, physically and verbally**. To complete the process of name and gender change in their documents, people are required to undergo a police verification where the **police routinely asks inappropriate questions** to trans-men.

Trans-men specifically face a range of issues due their physical appearance while searching for **accommodation**, especially in hostels and shelter homes, due to their gender expression. As a result of the attire they wear they face the **threat of sexual violence** if they stay outside, therefore are forced to **seek help and assistance from shelter homes**. Employment is another concern that trans-persons across are discriminated when applying for jobs. Vinnu reiterated that there has to be a **policy to change one's gender and name in every state**, which would cover a large chunk of their concerns.

### Mayuri, Maharashtra

Though there was not much of an issue with getting ration cards but recently the issues seem to have increased. When they apply for ration cards and homes they are **asked extremely insensitive questions** of their need for homes when they have cash at their disposal therefore are denied homes. She emphasized the **need for sensitization of officers** that ought to be done since the community itself cannot go around training everyone about gender and rights of a trans-person.

### Other Schemes

*There were a number of other schemes that were discussed*

#### Mudra Loans

One of the people who had applied for loan had their loan rejected by the bank manager because Transgender Persons don't stay in one place so their loan got rejected. There is a presumption within the banking system that Transgender Persons who take loans are later unwilling to pay back the loans. The issues of different names in different documents also lead to issues with processing bank documents and accessing loans. Therefore it would help if the process of name and gender change is streamlined and make a process to have documents in place.

#### Educational Loans

The loan applications made by Transgender Persons due to **inconsistency in the name and gender** in various documents, which is largely due to the lack of a streamlined format for persons to change their name and gender. The banks have **been regularly denying loans** because of the ensuing confusion among with regard to the documents of the persons. Moreover the **lack of a permanent address**, since they keep migrating there is an added difficulty of recording addresses on their identity documents, therefore the banks keep functioning under the assumption that Transgender Persons have no use of such loans.

### Livelihood

There were a number of people who went on to say that members from the Transgender Community were not willing to start with their own entrepreneurial initiatives and self-funded initiatives and work. It was also pointed out that the **government regularly failed to provide effective subsidies** for Transgender Persons and provide pathways for them to access effective employment.

Similarly the **banks also have consistently been denying loans** to Transgender Persons due to a number of reasons mentioned above which include – **lack of comprehensive documentation, discrepancies in documentation, discrimination against trans persons, lack of a permanent address** among a range of other issues.

### Shambhavi, Tamil Nadu

She talked about the scheme in Tamil Nadu where instead of a loan they **provide grants of ₹20,000 for small businesses and ₹50,000 for big businesses**, but there are a number of persons who are unaware of their rights and information about these rights are not spread across widely. Those who had taken the grants were informed by the Ministry of Women and Child Welfare only after which many Transgender Persons were given the grants

Rachana went on to say that Aayushman Bharath under the medical insurance also covered the medical conditions of Transgender Persons. The CM's Contingent Fund under the Rajiv Aarogya Scheme would also cover the medical ailments of Transgender Persons.

## Effect of Citizenship Amendment Act, 2019 (CAA) and National Register of Citizens (NRC) on Transgender Persons

Primarily the National Register of Citizens would affect Transgender Persons because of a lack of proper documentation, since till 2014 the only lens that law applied to Transgender Persons has been that of a criminal through the Criminal Tribes Act and Eunuchs Acts of various states. It is only after the NALSA judgement that documents that with a gender “Third Gender” separate from Male and Female was included.

Thus the documents with their name and gender they identify with would be available only after 2014 if not much later. Furthermore there is an inconsistency with the manner in which different government authorities and agencies aid in name and gender change in documents. The case this being that where some documents would have a different name and gender while it would be different in others. Therefore pointing to the extreme position of vulnerability that Transgender Persons are at with regard to a lack of documentation.

Furthermore with respect to NRC it is imperative to prove one’s lineage by showing land records of one’s ancestors owning land in the country. Due to the unacceptance of persons with alternate gender and sexualities, most people with alternate gender and sexualities moved out of their houses to choose alternate families.

The lack of documentation therefore can be placed clearly on the incompetence of the government and the inherent transphobia and discrimination against Transgender Persons by both society and state institutions.



## Issues with the Surrogacy Bill

Iswarya, HRLN

Iswarya described how the Surrogacy Bill, 2019 passed by the Lok Sabha would cause a number of issues to the LGBTQI+ communities and also to cis-women. The **definition of the term couple** in the present version of the Surrogacy Bill is **exclusively a cis-man and a cis-woman**. Furthermore within the present Bill the couple have to prove that they require a surrogacy and it is not for commercial purposes. Moreover there are very specific directions as to the age of the intending couple and the addendum that they ought to be **married for at least 5 years** along with being a citizen of India, which after the implementation of the National Register of Citizens and Citizenship Amendment Act, 2019 would be a rather complicated space to navigate around.

Furthermore the surrogate mother has to be a relative of the person who is trying to get a surrogate child, which is extremely difficult for Transgender Persons who leave their families and hardly retain any relations with their family. There are two major issues with the bill :-

1. It is a **service that is available exclusively to heterosexual couples** to have surrogate children, therefore violative of the rights of an individual
2. It also **restricts single mothers** from having a surrogate child, needing a woman to be married and have relatives

Therefore the Bill is blatantly discriminative against persons from the LGBTQI+ community and single women. Similarly issues with under this Bill there is no way that a Transgender Person can have a surrogate child.

Amrita, SAATHI, New Delhi

The definitions of a couple as described in the Surrogacy Bill, 2018 and the Hindu Marriage Act, 1956 are inherently contradictory, the former talks about a union between a man and a woman. Therefore denying Transgender Persons from getting married or even getting their own children. As the law stands neither Surrogacy nor Adoption is a viable solution for Transgender Persons to become parents. Therefore how and where do Transgender Persons stand vis-à-vis the Surrogacy Bill and the need to change the definitions in it

Usha Kirannayak, STAR, Karnataka

A question that remains yet to be answered is what is it that happens after a Trans couple adopts or has a surrogate child. Since the present Surrogacy Bill does not consider Trans Persons or includes sensitization for the community it would lead to a number of issues if it is passed. Therefore the interrelation between the Surrogacy Bill and the Citizenship Amendment Act, in particular the need for one to be a citizen to have a surrogate child itself makes issues multifarious when one considers these issues

## Transgender Persons and the Trafficking Bill

### Rachana, Telangana

Reshama talked briefly about the Trafficking Bill, 2018 which as of now has been lapsed since the government has changed since the Bill was passed in the Lok Sabha in the previous term of the present Government. The Trafficking Bill, 2018 has multiple concerns that would directly affect the Transgender Community such as criminalizing the begging and sex work. Other ways in which it would affect is the ban on using hormones, which would directly affect the Transgender Community. In 2018 since the Transgender Persons (Protection of Rights) Bill, 2018 and Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 were both introduced in the Lok Sabha in 2018 at the same time. There was a collective movement by both the Transgender Rights Movement and the Sex Workers Movement due to which both the Bills were stalled and lapsed. Unlike the Transgender Persons (Protection of Rights) Bill, 2018, the Trafficking Bill is yet to be re-introduced in the parliament. Through various interactions with the government it doesn't seem that the present government is too keen on re-introducing the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill again but the Women and Child Ministry seems to be rather keen on starting work on pushing the Bill through once again.

### Kusum, New Delhi, All India Network of Sex Workers (AINSW)

The Trafficking Bill would significantly **affect Sex Workers** and moreover it would **highly impact all persons related to sex workers** such as their immediate relatives, clients among others. Her concern lies in the manner in which it would be reintroduced in the parliament. With regard to the present situation through a combination of Immoral Traffic Prevention Act, Section 370 of the Indian Penal Code and other **laws Sex Workers are regularly put behind bars in detention or in rehabilitation homes**, even when they are seen to be walking on the road and not engaging in sex work.

It is therefore a matter of shame that sex workers are treated in such a pathetic manner almost as if their rights are non-existent to begin with, furthermore the **lack of access to education** limits the choice of livelihood and means through which they can earn their living. Furthermore there is a need to start a concerted movement to oppose the Bill or even amend certain clauses in the Bill.

### Ayesha, New Delhi, National Network of Sex Workers (NNSW)

In all kinds of legislations and popular narratives the term **trafficking in intricately associated with sex work** since 1951. She explained how multiple clauses of Immoral Traffic Prevention Act is to be related to putting a stop to trafficking. Section 370 of the Indian Penal Code (IPC) explicitly mentioned that voluntary sex work has to be dealt with separately under law and not clubbed with trafficking for sexual exploitation. This was further talked about in the Justice Verma Report that would have also covered sexual violence against Sex Workers as harassment and violence, furthermore the history or occupation of the woman is not to come unto consideration while reporting the complaint by a woman.

The primary concern with the National Register of Citizens and the Citizenship Amendment Act, 2019 has been that it would **considerably affect sex workers who already don't have any documents**, furthermore there is a lack of access to education and are marginalized in all spaces.

The Trafficking Bill itself is **violative of Article 19 (1) (g)**, the citizens of India are the victims of these violations and it is imperative that their rights are protected. Moreover there has been no consultation with the persons who are going to be affected by the Bill, both directly and indirectly, neither is there any

consultative process while framing rules, policies, schemes and laws that govern bodies of sex workers. This is the situation when sex workers are marginalized at every position.

There have been discussions with sex workers, state functionaries and various CSOs and CBOs on raids that have been done by the police on red-light districts in Mumbai, Pune and other places. Sex workers are further **treated like criminals**, where **police take away personal belongings** of the sex workers, **enter their houses and destroy their property**. A petition with regard to this violence has also been filed in the Bombay High Court.

Reshma talked about an instance in Purnia, where the sex workers constructed a temple with the money that they had earned. Through a number of complaints by people living in the locality the police raided the whole area leading to an arrest of 53 people which included minor girls. The **girls were tortured and raped while in police custody**, they suffered intense physical abuse and were kept in inhumane conditions.

Chandramukhi talked about the instance in Yadagirigutta where **the children of sex workers separated from their parents** and taken to the police station, FIRs were registered, said that they were trafficked children who were given hormones and were expected to continue doing sex work. From various testimonies by the women it was clarified that these children were their biological children, and they were taken away from them because of their occupation.

### Sonali Dalvi, Pune

Pune DLSA in an advertisement talked about issuing cards to Transgender Persons, where Chaitan Bhagwat, organized a press conference to do a medical checkup of Transgender Persons. When she had gone to the police station to check with regard to the process about which the DLSA had taken they talked about the existence of fake Transgender Persons. She continued her action with a letter to Chaitan Bhagwat vis-à-vis the issue.

There is a need to take up sensitization programmes to **clarify the difference between Transgender Persons and Sex Workers**. Even though both the communities are regularly harassed and abused, Transgender Sex Workers are doubly marginalized and treated like terrible by both the society and state functionaries.



## Day 2

### Discussion on Transgender Persons (Protection of Rights) Act, 2019

The Act is completely **ambiguous and arbitrary** and from observing the discussions in the Rajya Sabha it was clear that they weren't interested in taking up the issues that were presented to the members by various members of the Transgender Rights Movement, displaying a complete lack of empathy with regard to the concerns of the community. The Act effectively breaks the integrity and unity of the community, creating rifts among various groups and reinforcing stereotypes, it reflects as a purposeful attempt to target and dismantle the unity of the Transgender Movement.

There are a number of major concerns with the Act :-

#### Self-Declaration of Gender Identity

It takes away the rights of a person to self-declare their gender. Therefore with specific inscriptions on **requiring medical tests and forcing people to go through an Sexual Reassignment Surgery** to identify with their self-declared gender, **forcefully putting them in Rehabilitation Homes** and **treating Transgender Persons like second class citizens** it is an active attempt to take away the rights of Transgender Persons rather than protecting their rights. Therefore these are **violative of Articles 14, 19 and 21 of the Constitution of India, as read into by NALSA, Puttaswamy and Navtej Singh Johar Judgement.**

There were discussions on whether guidelines should be formed as to conducting body screening of persons without touching them.

#### Forceful Rehabilitation

This is the first time that in a central legislation there is the mention of a term called **"Rehabilitation Home"** in other Acts there are descriptions of "Protection Homes" and "Shelter Homes". This is **mentioned under Section 12 (3)** where **if a family is unable to take care of a transgender person through an appropriate court order can be moved to a rehabilitation home.** This clause is applied to all Transgender Persons irrespective of the fact whether they actually want to be "rehabilitated" or "relocated", there is **no mention of the consent** of the Transgender Person within the ambit of the Act.

There is no clarity on the amount that would be given to maintain Rehabilitation Homes and people who do not have issues being forcefully sent to Rehabilitation Homes defeats the purpose of Rehabilitation Homes. Furthermore in Rehabilitation Homes there is a **constant threat of being**. These institutions are touted to be the only option for having a better life which also effectively curbs the freedom of people. There seems to be no reason for a Rehabilitation Homes, therefore the question arises as to the need for Rehabilitation Homes. If Rehabilitation Homes do therefore come into existence there is a need for **continuous monitoring** of the homes. If there is a need for Rehabilitation Homes, the need arises only when all Acts, Policies and Laws would fail. Therefore if a person does need a Rehabilitation Home it means that the **state has failed in all its attempts to protect the rights of Transgender Persons.** Therefore if the State is building Rehabilitation Homes without accepting its failure, it is only to put them in silos separate from rest of society.

Another issue that arises with Rehabilitation Homes is the one's **ability to express one's sexuality** and the restrictions on one's sexual freedom, while in Rehabilitation Homes. There is a suggestion to change the term from "Rehabilitation Homes" to "Restorative Homes", there could also be a demand for short stay

homes, which would provide sustenance as per the needs of the person. Another alternative proposed for Rehabilitation Homes has been “Community Care” Centers. There is no clarity as to whether there is prescribed amount time in which people should be let out of the homes or the amount of control that the “Rehabilitation Homes” have over the individual inmates.

The **Kerala State Government has set up Shelter Homes for Trans Men where they can stay for a 3 month period.** Rehabilitation Homes have to be differentiated from Shelter Homes since Rehabilitation Homes are those where a person is forced to restart their lives.

Since Sex Workers and Transgender Persons are already considered marginalized and labelled as such Rehabilitation Homes would then function as a place to have Sex Workers and Transgender Persons as **geographically separate from people.** In “Rehabilitation Homes” in Hyderabad, what has been observed has been **electric fenced walls, where the inmates are restricted movement and made to work continuously for over 18 hours a day and provided with just a day’s meal in the home without freedom to move around.** The opinion of persons who have been in “Rehabilitation Homes” claim that prisoners in jail have a better life than the inhabitants of Rehabilitation Home.

Santa while talking about Rehabilitation Centers, went on to say that Rehabilitation Centers in the North East are **mostly associated with people who are trying to get out of drug dependency.** If Community Homes are set up it should be imperative that there isn’t any interference with the functioning of the Community Homes. In order to protect their privacy Transgender Persons need not be required to declare their gender in open court, which would compromise their privacy.

### Punitive Action for Sexual Crimes against Transgender Persons

The **section (Section 18)** that gives punishments clubs a range of punishments together (Mental, Physical, Emotional and Economic abuse) where there is **no differentiation nor a gradation of the crimes** committed against a Transgender Person. Therefore sexual harassment, and assault and a rape all would fall under the same category, wherein one would get punished with a minimum of 6 months to a maximum of 2 years. Therefore there is **a need to grade the crimes and therefore have the punishment according to the magnitude of the crime.** Furthermore **since these would be hate crimes based on Identity they are more grievous in nature therefore the Punishment doled out should be incremental and not detrimental to the already existing laws.**

### Concerns of the Intersex Community

Another major concern with regard to Intersex Persons being clubbed under the definition of Transgender since **Intersex Persons had a range of concerns of their own.** The only concern that was there though was that **if Intersex wasn’t included within the ambit of Transgender Persons then they would be excluded** from the Act itself and would receive none of the protection given by the act and continue to face the discrimination therein. A parallel requirement that came about was to then make a demand for a separate Act for Intersex Persons

### State Response to NALSA Judgement

There is **no mention of Reservation for Transgender Persons, a Universal Basic Income or a Uniform Pension** to be provided within the Act. In the present situation Transgender Persons once they grew old and couldn't continue with their informal professions are pushed into Rehabilitation Homes and Old Age Homes with no financial assistance.

From 2015 to 2017 there were various schemes that were funded by the government but in the past two years the constant response that one receives from the states is that there is no budget for the persons. Therefore questions arise as to what would then be the source of allocating budget for the Rehabilitation Centers.

With regard to schemes and policies in Andhra Pradesh there were a number of Health Schemes by the Andhra Pradesh Government which came under Government Order (G.O.) 37 while there was G.O. 16 which restricted one's access to those schemes, by enforcing a physical examination of a person before they start identifying as Transgender and therefore being able to access the Schemes.

**Testimony of Gangabhavani (Intersex Person)** – She didn't have visible genitalia when she was born and through the period of 2014 – 17 she was asked to undergo Chromosomal and Radiological Tests mandated by doctors because she started having internal bleeding because of menstruation and there was nowhere for the blood to go. After a surgery there was an opening that was made for the blood to flow out.

When G.O. 37 and G.O. 16 came out, in order to access the medical and health services she went to apply for a Transgender Certificate. Where the **Physiotherapists tested her using pens and pencils and inserted it in her body**, as a part of the screening process. Due to this she was bleeding continuously for 2 days before she was awarded with a certificate declaring that she is a Transgender Person.

The argument proposed by the state was that the **screening is necessary because if it is scrapped then Cis People would take undue advantage to avail certificates**, and avail the benefits of the welfare schemes. If the State is insisting on surgeries, then Gender Affirmation Surgeries should be made free of cost, the compulsion of surgery to for Transgender Certificates is clearly violative of the NALSA Judgement.



## National Register of Citizens and Citizenship Amendment Act, 2019 and its effect of Gender Non – Conforming Bodies

Another concern with regard to National Register of Citizens has been how it is directly going to affect Transgender Persons and Sex Workers, particularly because the **lack of documents** and since both communities are those that are **primarily a migrant population and a population that moves away from their home therefore lack of access to their ancestral documents**. Similarly it has become clear that Transgender Communities from different states therefore have different experiences and come from different situations.

## Possible responses to concerns of Gender Non – Conforming Children

There are instances where **family members kill family members who come out as Trans**, due to the persisting **non-acceptance, discrimination and stigma from society**. Therefore there is a need to build a homely and a friendly environment therefore a need to bring back normalcy rather than rehabilitate a person. Furthermore the **universities are spaces that are discriminatory** and continue to discriminate against Transgender Students there continues to be issues with **encountering issues of sexual abuse, harassment** among others, therefore what is the next step that is taken

Should one **prescribe punitive action** for not accepting Transgender Children (Gender Non-Conforming Children), preventing them from accessing education and restricting their freedom. Various members of the Transgender Community have faced sexual violence and rape in their childhood. Leaving them vulnerable and are now face post-traumatic stress disorder, bullying and harassment.

### *Testimony by Samantha –*

As a Trans Woman she had faced considerable amount of discrimination. As she started working in her village as an Auto Driver, it was only after a period of 2 years that people in the village came to accept her. Initially no one would agree to take a ride auto rides on her auto. It is only after an extended period of time that the village started accepting her for who she is.

## National Council as established by Transgender Persons (Protection of Rights) Act, 2019

Establishing a National Council which would there for the whole country in contrast to individual State Justice Boards. There **needs to be an establishment of state counselling boards** and State Pay Department to cover budget and pensions for Transgender Persons need to be established.

## Crimes against Transgender Persons

Furthermore over the past few years the courts have been interpreting the law. In contrast to Courts blindly following the word of the law, they have reasoned out in order to decide the individual matters. In most of the spaces other than courts, rest of the state functionaries and civil society are extremely Transphobic. Especially **Doctors are extremely insensitive** while dealing with concerns of Transgender Persons. Even when one goes **to Police they refuse to file cases of rape against Transgender Persons under Section 376 of the IPC**, since the police claims that Section 376 doesn't cover Transgender Persons.

## Health, Education and Employment

There is a requirement for **separate wards in Hospitals** as the Hospitals are unsure as to where to put Transgender Persons and consistently refuse to let Trans Women use the women's ward.

As a part of education there ought to be **a chapter describing Transgender Identity** and the community in primary schools. There should be **clear differentiation drawn between sex and gender** when students are learning about reproductive organs in Higher Secondary schools. Medical Schools also should take into account Transgender Identity, Gender Non-Conforming Identity and Intersex Persons while teaching Medicine and not treat these as diseases. What has been observed is that the particular chapter on Transgender Persons is skipped in schools, whereas it should be mandatory that the chapters be taught.

**Government Policies, Schemes and Laws** have to be studied thoroughly and places where it excludes Transgender Persons, one has to take active steps through litigation/lobbying or campaigning to include transgender persons within it. UN Women has to take active steps towards **including issues of Transgender Persons** within their ambit. Gender Budgeting Programmes by the Government need to include concerns of Transgender and Intersex Persons and attempts towards making **Section 375 of the Indian Penal Code need to be made Gender Neutral**.

Among health issues there are a number of issues that affect Transgender Persons, being treated outside society they face issues with **HIV/AIDS, Poly Cystic Ovary Syndrome (PCOS) and Pregnancy** due to **forced marriages** are issues that Trans Men often go through. **Gynecologists often discriminate** against Trans men and regularly send them back **denying them services**. There are **no guidelines for the medical community as to how they should be treating persons from the LGBTQIA+ Community**. The confidentiality about the results of the tests on HIV/AIDS has to be maintained retaining the privacy of the persons not only on paper but also not revealed by word of mouth.

## Disability and Gender

In the intersection of disability, gender and sexuality there are multiple marginalizations a person is forced to face. For if one is a disabled person and a Transgender Person then one is both pitied upon and **Doctors try to convince that one's Gender Incongruence is because of their disability**. Therefore it becomes even more difficult to get certificates and permissions to undergo transition both hormonal and a surgery as well, access to health services to assist one in Transition is extremely difficult for a disabled person. Furthermore the **Right to Persons With Disability Act, excludes Transgender Persons**, therefore ignoring the concerns of disabled Transgender Persons. There have to be specific laws addressing this intersection since Rehabilitation Centers for Disabled Persons are a complete failure with regard to protecting rights of disabled persons. There should be an active involvement of building of shelter homes for disabled persons and not rehabilitation centers for Transgender Persons who are differently abled.

### Workplace and Family

Along with the discrimination one faces from state functionaries and persons in public authority such as the police and doctors, Transgender Persons continuously face discrimination in both their workplace and their family. In workplaces they are regularly harassed both sexually and physically, while even the Prevention of Sexual Harassment at Workplace Act does not account for sexual harassment of persons who are not Cis Women, therefore Trans Women are forced to quit such jobs and therefore end up begging on the streets.

Most times **family tends to be the first point of violence** where due to both ignorance and transphobia family members ostracize and exclude Transgender Persons from their family further abuse their family mentally and physically. Hospitals, **continue to forcefully strip Transgender Persons** for screening and are humiliated, they are looked down upon in the hospitals making it a traumatic experience leading to **PTSD and suicidal ideation**.

### International and Local Issues with Discrimination

The issue with neglect lie both at international levels with the LGBTQIA+ community being **excluded from the Sustainable Development Goals** of the UN; **denial of Employment, Housing** and other rights continue to be denied to the LGBTQIA+ Community. In their own house they continue to hear taunts such as “Inhe apne viradri mein de do”. “Aapke ghar mein chakka paida hua hain”

It is not the job of the state to decide our title, job or forcefully decide a manner of dressing or forcefully make them undergo a surgery to identify with their gender, but to therefore provide and ensure that every Transgender Person is to be provided with food, clothing, shelter, Right to Health and Privacy.

There has to be an effective budgeting done as to the amount of resources that would be required to ensuring health services and providing Transgender Persons with Health facilities. Being from various parts of the spectrum, from different regions and from different intersections we do realize the manner on inequality between people within the LGBTQIA+ community. Therefore both homophobia and transphobia has to be eliminated in various institutions and also from within the larger queer umbrella.



## Discussion on the Petition Challenging The Transgender Persons (Protection of Rights) Act, 2019

Philip, HRLN Delhi, Summarizing the points of the Challenge

The Act itself is a terribly drafted legislation, with a **lack of clarity in both every clause and section**. Most of the provisions are both arbitrary and ambiguous. Though there are three main issues with the bill that can be considered to be blatantly unconstitutional:

1. Since the inception of the new Bill in 2015, it has always been **against self-declaration** of one's own gender. Initially there were constitution of screening committees. Now applications have to be made to the District Magistrate and the demands from the District Magistrate for required documents and such. This has continued into the Act as it was passed in 2019.
2. Transgender Persons (Protection of Rights) Act, 2019 has been the **first central legislation to mention Rehabilitation Homes**, prior to this there has been no mention of Rehabilitation Homes in central legislations. Though there have been mentions of "Shelter Homes" and "Protection Homes". It is the first time that there has been a demand for Rehabilitation Homes.
3. **Chapter on Offences and Penalties** itself is an terribly drafted piece of legislation. It is **extremely vague** and none of the **terms are properly defined**. There is no definition for crimes that have been mentioned. Furthermore if Transgender Persons are prevented from entering public spaces there isn't a reflection of what the community goes through with regard to public spaces. The punitive measures taken against rape and sexual violence against transgender persons are lesser than cis-women. It is clearly running in contravention of the NALSA Judgement. Furthermore the implementation of NALSA is also extremely poor.

Siddharth Seem, Advocate Supreme Court, HRLN Delhi

Structure of the Petition :-

1. **Rules for Screening Bodies itself has to be held unconstitutional** and is violative of the clause on self determination of one's own gender as clarified in the NALSA Judgement, it is also violative of right to privacy as described in Puttaswamy Judgement which enshrines Right to Privacy under the Right to Life (Article 21 of the Constitution of India)
2. As to Section 12(3) which reads as –
 

*"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."*

Therefore if a family member is unable to take care of a Transgender Persons, the person would be forcefully shifted to a Rehabilitation Home against their wish. Thus directly criminalizing the identity of a Transgender Person. Other than this section being **manifestly arbitrary, it is a direct violation of one's Right to Life**. The concept of Rehabilitation Homes ought to be something that is voluntary but if someone is arbitrarily moved from their home to a Rehabilitation Home, it is therefore a violation of their Right to Life.

3. Section 18 clubs all the offences together increases the spectrum of crimes to be extremely broad. Therefore being **a failure on aspects of following a reasonable classification based on an intelligible differentia**. Furthermore when followed up with general laws like Indian Penal Code, these penal provisions should be harsher since this would be violence which is inflicted upon a

vulnerable group, a comparison can be drawn to SC/ST (Prevention of Atrocities) Act. Violence against Transgender Persons would therefore have to be considered as a hate crime against a particular community due to their identity. Therefore the punishment should be even more severe depending on the gravity of the offence committed, thus the **section is a contravention of Article 14, 19 and 21.**

### Open Discussion

The chapter that prescribes definitions, intersex community is also included within it even though the Act **does not talk about the rights of intersex persons**, which should have been taken into consideration.

Sarita talked about the **inadequacy with regard to Rehabilitation Funds** and the issues related to it and the effect Rehabilitation Homes have of them.

Amrita raised the question of the need for Rehabilitation by Transgender Persons at all, since **forceful rehabilitation points to Transgender Persons being mentally or physically abnormal.**

Daniel raised the issue and concerns of **gender non-conforming and intersex children being raped in Juvenile Homes.**

Vidya talked about the **advantages about having Rehabilitation Homes.** Transgender Persons can be provided with a **room until the time they are independent.** Recognizing the advantage of having such Rehabilitation Homes there should be a specified period until which a person can stay in a Rehabilitation Home in order to gain education and learn life skills for employment.

Amrita talked about the Act **forcing people into Rehabilitation Homes**, therefore it is not an option but a decision that is taken by someone else, without providing any alternatives. Furthermore, the brutal screening process also needs to be taken into consideration.

Reshma talked about how the **choice of going to Rehabilitation Homes should not be with family members but with the persons themselves.** The option of staying in a Rehabilitation Home as being available to access is beneficial for those who have no other means to livelihood.

According to Chandramukhi, the **Act has paved a way for the government to misuse and harass Transgender Persons.** Instead of outing Transgender Persons in Rehabilitation Homes, punitive action should be taken against parents who are rejecting their children because they identify as being from the Transgender Community.

Meera Parida talked about **restrictions that the Rehabilitation Homes place on mobility and on persons in general.** The restrictions to freedom is much more when one compares it to the free lifestyle as desired by members from the Transgender Community. Whenever Transgender Persons leave their homes the major question they are forced to deal with is to get shelter.

Rachana pointed to the **intersection that National Register of Citizens and Transgender Persons (Protection of Rights) Act**, since the Transgender Community has been harassed over owning property and there are always instances where the state takes away their right to property and the state continues to abuse them. Therefore there is a need to oppose both of these through any modes possible – petitions in courts, protests or lobbying.

Saumya elaborated on the language of the Act pointed to how it is both **inadequate in talking about the concerns of the Transgender Community** which has then been reiterated time and again by academicians and activist scholars. There is a significant need to alter the terminology used and have it as changed to those pertaining to the Transgender Community. There needs to be a shift in articulation from using derogatory terms such as “Rehabilitation Homes” to terminology such as “Community Care Homes” or “Shelter Homes”

Sarita went on to say that from the period of 2014 – 2017, there were multiple health schemes that were started, whereas in the last two years, the budget has reduced significantly. The **center has been diluting its share of disbursing budget, by increasing the state’s share**, therefore the state is not being able to procure the funds as well. Therefore budgeting also needs to be taken into consideration.

**Yogyakarta principles** were a set of principles that were discussed at a conference in Indonesia, of which India is also a signatory. Therefore, by being a party to this and the Transgender Persons (Protection of Rights) Act, 2019 running contrary to the same becomes an issue of serious concern. Since family has always been the first point of contact of a person with the world, therefore acceptance and denial by the family therefore family can also become the first point of violence. Therefore sensitivity towards issues of Transgender Persons and inclusion of Transgender Persons in society needs to be a critical part of the Act.

Kiran talked about **Centers where Trans men can stay for a period of three months** where persons against whom false cases have been filed can stay.

Ayesha talked about how “**Rehabilitation Homes**” **should not be conflated with “Shelter Homes**” since there are also no separate homes for Trafficked Persons.

Sadhana when she visited a **Rehabilitation Home for women in Hyderabad she noticed extremely High Walls and electric fencing on the walls**. They work in a factory like format and are disbursed with money just when they feel like it. The life led in these homes seem **oddly congruent to lives led in prison**. There could be care or support homes, but not such limiting institutions. These homes are **prohibiting people** from doing anything they please be it sex work, adopting or working. Therefore there seems to be a large blank space that is left onto as to “What the future of a Transgender Person would be?”

Rajitha looked at the **advantages of Rehabilitation Homes** as it would **help adolescent Transgender Persons** who still don’t have clarity about their occupation or don’t want to associated with the Hijra Tradition.

Samantha talked about how she is an auto driver but faced multiple issues with it. Since once she started her work, people refused to take rides on her auto. It was only after two years that people finally accepted her working as an auto driver. Since there is such an immense amount of stigma around the person, the person might be able to the support a Rehabilitation Home can provide.



## Panel Discussion

Government Order on Screening – The Doctors ask people to get naked for the screening process, as experienced by Gangabhavani in Andhra Pradesh.

**Testimony by Gangabhavai** – As she was born intersex she had no sexual organs. During puberty her parents had thrown her out of her house. With the help of the Church, she came to Delhi and undertook Vagina construction. Post 2014 she approached the District Magistrate for her Transgender Certificate when the Gender Board referred her to a 5 member board. The physicians referred her to a chromosomal test. For two years, she was made to go **to different hospitals in 5 different districts**. During the screening, in 2017 the **physician used pointed objects such as pens and pencils to check for sexual organs**. A Gynecologist checked through her **two finger test leading to bleeding for two days** which was extremely painful. In 2018, with the help of **legal intervention G.O. 16 was scrapped and self-determination of one's gender identity for Transgender Persons was brought back**.

Rachana intervened by questioning how there can be **effective legal interventions to end this kind and manner of intrusive examinations** that contravene the right to privacy of the individual. Through legal intervention there have to be guidelines in place for doctors and physicians to do screening without **stripping the Transgender Persons of their dignity and their right to privacy**.

## Panel Discussion – What does Sexual and reproductive Rights mean to Transgender Persons and what steps can be taken?

Amrita

As human beings it is pertinent to **consider universal health coverage (sexual, mental, physical and reproductive)** all of these are critically important in a Transgender Persons Life. There are multiple instances when healthcare is denied to persons because of their identity as a Transgender Person. With the multiplicity of issues in accessing healthcare it is incredibly difficult for persons to access SRS.

The **constitution of healthcare started from AIDS healthcare, then moving towards SRS then covering a range of other issues.** The issue is that the Transgender Persons healthcare should not be limited to that of HIV/AIDS. There has to be **inclusion of Transgender Persons within UHC.** For Gender Rights, people in the room were being told to approach NITI Aayog, where there were only cis-women and one sex worker. So therefore, there were no strong voices raising issues of gender non – conforming persons in the NITI Aayog.

Rachana talked about the need for a political will to include issues of Transgender Persons within laws and legislations like how Chandrababu Naidu did, but by continuously abstaining from rights of LGBTQIA+ persons, or Global Human Rights one cannot take away those rights.

Amrita talked about how HIV is a very important issue that was considered critical in the 1990s and when such a program was started there was no mention of Transgender Persons and were put under the umbrella of MSM. Since it is very important to maintain one's health both physically and mentally prior to an SRS or even before taking hormones, information on SRS and HIV/AIDS need to be distributed as much as possible.

Milini talked about issues faced by Trans Men in the Health Care system. Doctors fail to understand how to deal with issues of Transgender Persons. **Trans men also menstruate and they also have associated problems such as PCOS,** for which they need to approach a Gynecologist, even though doctors are not aware of these issues either. There are several instances of misbehavior with Trans men and very specific instances of violence and abuse that Transmen face in addition to health concerns specific to Transgender Persons. Gynecologists need to be more sensitive about these issues. Due to forced marriages there are a number of Trans Men that get pregnant, their reproductive health therefore needs to be taken into consideration. Since it is a very small number of Trans men who go through a bottom surgery, there are a **number of Trans Men who have children.** Therefore there is a whole spectrum of variation of treatment that a Trans man may or may not access therefore all Trans men cannot be seen as a unitary group and through a singular lens. Since they have different experience, needs and wishes according to which they take an appropriate treatment.

Ranjitha talked about different playing with the sentiments of the Transgender Community. It is disappointing that there is still **no National Guideline for Doctors** while dealing with concerns of Transgender Persons, especially with regard to their health. There has been no implementation of health policies. In the programmes by NACO there is inadequate funding for the programmes for which they have approached HRLN with litigation.

Daniel talked about the **exclusion of rights of LGBTQIA+ persons from many fields**. There are multiple cases of **abortions of intersex fetuses**. Though now there are organizations that are working on Transgender Rights, they are also those that support the Transgender Act. Now the different identities are associated with different sexual orientations. The politics within the community has worked against the community. Bonnie who was born female and was a gold medalist in Football but when she began playing on a global level, for chromosomal tests, the test results displayed that she was intersex and everyone framed her as a fraud. Even when Daniel was born the doctors had said that they were a Hijra. Therefore raising the question as to who is the state to decide if one wants to be a female even if they didn't go through SRS. The State has been crossing all boundaries to take control over lives of intersex persons and lives of Transgender Persons. Even while doing Sex Work she was raped for demanding protection while she was doing work. There is an immense amount of stigma and vulnerability that is associated with the intersex community and there are no guidelines for the violence and discrimination when someone is detected with AIDS. Right to Privacy has to be maintained through all fields. Quoting a minister, Daniel went on to exclaim how they said – “ Human Rights is not an Indian Concept, it is rather a western concept.” Therefore there is a need to consider where is it that this Act will take us where it doesn't treat Trans Bodies and Intersex Bodies as not human. There is not a single organization that has worked towards bringing SRS into health policy.

Sarita went on to say that there is **very little information on what kind of medical intervention is necessary and the amount of funds required**. SAATHII has worked on visibility of the Transgender Community within the Sexual and Reproductive Rights Framework, even though all organizations talk about equality they constantly miss out on equality vis-à-vis trans bodies. Therefore there needs to be a policy on the treatment for members from the community by medical experts. There is rampant Transphobia and Homophobia all around us therefore one has to work on strategies to break these institutional stereotypes. Therefore a need to breakdown such medical institutions and view it from the lens of justice and infer if there is a need to eliminate those forces which are sabotaging the proper procedure and if there is a need to study and research these policies on their implementation.

Reshma talked about how there is a **denial by policy makers** when such problems are discussed in public spaces. There is a need to take up the issue on **making Section 375 gender neutral**.

Rachana talked about how **vulnerability cannot be seen in isolation**, as during the feminist movement when there were a number of setbacks they **had left a number of communities behind**.

Vidya talked about how **Healthcare of the Transgender Community** cannot be the sole responsibility of Welfare Boards or the Civil Society by **should be a matter of respective Central and State Ministries**.



## Conclusion

As a result of the two day meeting. A comprehensive plan of action with regard to the meetings to be conducted and cases to be filed were decided upon. The number of people and details of people to be following up with the work to be done were decided up. The following is the list work to be completed in the following year.

### State Level Meetings and Trainings on the Law

There will be **meetings in each state with National Law Universities** on “**Issues of Transgender Persons and the Law**” with people working on these Individual state. Shaoni Mukherjee would be coordinating the meetings at a National Level

S. No.	State	Persons Responsible
1.	West Bengal	Indrajeet
2.	Meghalaya	Olivia, Santa, Milin
3.	Odisha	Sneha
4.	Telangana	Rachana Mudraboyina
5.	Andhra Pradesh	Matam Gangabhavani
6.	Chhattisgarh	Vidya Rajput
7.	Maharashtra	Vicky, Sonali, Daniel and Mayuri
8.	Assam	Jaya, Milin
9.	Manipur	Santa
10.	New Delhi	Amrita, Sowmya, Ray
11.	Karnataka	Kirannayak, Nisha Gullur, Rajesh Srinivas
12.	Tamil Nadu	Grace Banu, Shambhavi
13.	Gujarat	Kiran, Pallay (Vikalp)

The initial work that the persons responsible would have to do would be to **get in touch the Vice Chancellors of each of the National Law Universities** in their respective states. Furthermore **HRLN, Delhi Team would contact NALSA** for assistance in organizing these meetings