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Struggle for Substantive Justice and Community Development: Transgender Subjects in Contemporary India

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Abstract This paper discusses the transgender community's fight for justice and developmental rights since 2014 and the response of the Indian Government toward this assertion. The point of choosing 2014 as the starting point is not because the fight for their justice actually begins in this year but because India witnessed an intensification and an increase in public visibility of transgenders' mobilization following the recognition of members of transgender communities as legal citizens through the landmark Indian Supreme Court (Court) verdict called the National Legal Services Authority Union of India (NALSA). In documenting transgenders' mobilization and the state's response, the author has substantially relied on secondary sources—newspaper articles and pieces in magazines, blogs, and other online community networks. The narratives of a few transgender activists and intellectuals reaffirm the critiques offered through the media and online community blogs and networks. It gives one the impression of a neoliberal state, which, while willing to protect the constitutional rights of many marginalized groups, finds it hard to fulfill promises that might require the allocation of substantial fiscal and monetary resources. The consistent collective mobilizations of the transgender communities, however, resulted in some concrete gains and developmental rights.

Keywords: community development; India; justice; neoliberal; transgender.

1. Introduction

This paper discusses the transgender community's fight for justice and developmental rights since 2014 and the response of the Indian Government toward this assertion. The choice of 2014 is not because the fight for justice began in that year but because India witnessed intensification and increased public visibility of transgender mobilization following the recognition of members of transgender communities as belonging to a legal third gender and being legal citizens through the landmark Indian Supreme Court (SC) verdict, the *NALSA* Judgment. Transgender communities, including mainly the

transfeminine identities, such as *hijras* and *kothis*, have been frontrunners of the larger mobilization of LGBTQ communities since the late 1980s and early 1990s, which has mostly been around the repeal of Section 377 of the Indian Penal Code promulgated by the colonial administration in 1861 and continued until August 2018. The other context for trans mobilization is the HIV/AIDS pandemic during the early 1990s (Bhaskaran, 2004). In these two contexts, the transgender communities, to a certain extent, internalized the language of rights—sexual rights and identity-based rights. However, these two contexts were rather narrow and limited in scope in contrast to NALSA, which offers and makes it incumbent upon the state to ensure substantive rights to the community.

In addition to formally recognizing transgender persons as citizens, NALSA extended their substantive rights on the grounds of the multiple and intersectional marginalities of the trans community, which were historically instituted through colonial interventions via law and surveillance, and the implantation of transphobia and homophobia (Chatterjee, 1999; Vanita & Kidwai, 2008). What became apparent from the mobilization of the transgender communities across India post-2014 were the inability and unresponsiveness of the neoliberal state in translating the substantive provisions of NALSA into policy and practice. The Indian Government has not only ignored the transformative and empowering provisions laid out in NALSA but also has shown apathy and indifference to major concerns raised by the trans community. It is against this backdrop that the continuing struggles of the transgender movement in India should be understood and contextualized. Recently, however, the Indian Government has begun to respond to the fierce criticism and mobilization of the trans community by considering certain demands through the transgender person (Protection of Right) Rules, 2020 (Rules). This development definitely points to some success of the transgender community mobilizations, yet many other critical issues remain unaddressed in the Rules, so the movement for developmental concerns and community justice continues

These mobilizations and protests involve profound engagement of transgender communities, civil society groups, and a few academics who are a part of the trans community or are friends or allies of queer and transgender groups. There are instances where some of the transgender intellectuals and leaders have left their privileged corporate and NGO employment and become fulltime activists in their fight against statist

injustices. This action has brought public visibility and prestige to transgender activists, but as trans studies scholars and activists in the West have pointed out, this visibility does not ensure the receipt of entitlements or justice (Alimahomed, 2010; Aizura, 2017; Johnson, 2015). In the US, for example, transwomen activists of color often are invited to speak at fancy private colleges and non-profits but cannot find permanent jobs to pay their rent (Aizura, 2017). Transgender YouTube stars can engage in commodity activism by appearing in videos sponsored by major skincare brands but remain financially dependent on haphazard contributions to crowdfunding sites like Kickstarter and Patreon (Aizura, 2017). In sum, an improvement in their overall material condition through robust welfare interventions and affirmative action of the state is required (Sircar, 2017).

In India, the transgender community has been demanding interventions from the government as promised in the NALSA Judgment of the apex Court. Some civil society groups engaged in community mobilization and protests and that have developed a radical and nuanced critique of the various drafts of Transgender Bills introduced by the government of India include Sampoorna, an online trans and intersex collective in India; the Lawyers Collective, which is an initiative to empower marginal groups through legal advocacy and interventions; and the Tata Institute of Social Sciences (TISS) Queer Collective, a student organization. These organizations have been fundamental in exposing the fallacies of these draft bills and acts and have contributed toward shaping the agenda of community mobilizations. Every single member of the transgender community participating in these collective mobilizations constitutes an important voice against the injustice and discriminations of the state.

Despite the intensification of transgender protests post-NALSA and their growing media coverage and visibility, there is hardly any academic writing considering this significant community mobilization around developmental and welfare rights issues. A few publications from various legal scholars, however, engage with the critical textual reading of NALSA. They mostly take a Foucauldian perspective in highlighting how the juridical discourse, in this case, the text of NALSA, while purporting to deliver justice to the transgender subjects and acknowledging the diversity of embodiments, nonetheless, engenders a very restricted and hegemonic understanding of transgender subjects, defining them as the "third gender," beyond the fundamental and "natural" binary of male and female. This position not only results in "othering" but also imposes a symbolic

subordination of this third gender to the supposedly paramount and naturalized binary of male and female, reinforcing heterosexism and transphobia.

[Dutta and Roy \(2014\)](#) claim that the NGOs, the funding agencies on HIV/AIDS, and the Supreme Court of India clearly distinguish transgender from cis-gender in their discussion regarding gender. Such attempts universalize and colonize identities by erasing diversities, multiple discourses, and practices spanning multiple regions of South Asia ([Dutta & Roy 2014](#)). Reflecting on NALSA and its “othering” of transgender communities, [Redding \(2017\)](#) surmised that the text of the verdict incorporates a paradigmatic understanding of Transgenderism; it iterates the idea that only reproductively challenged men and women choose a gender different from binary. Under this theory, the reproductively capable need not bother to choose their gender; they are naturally placed in appropriate genders, an assignment that precedes their arrival in the social world ([Redding, 2017](#)). Gender practices are much more complex than this would have us believe. While many members of the transgender communities do participate in reproduction, indeed, they sometimes appear cis-normative and perform prescribed and accepted gender norms for strategic reasons.

Based on James Scott, [Redding \(2017\)](#) argues that the state's measuring and demarcation exercises involve a peculiar way of seeing powerless people wherein some kinds of people are created inferior to others. Thus, the legal text of NALSA not only created a new gender category but also hierarchized those reproductively capacious and uncapacious, while, at the same time, erasing complex and overlapping practices of trans and cis people. [Jain and Rhoten \(2020\)](#) also point out that even when the Court is sympathetic and passes judgments in favor of transgender litigants, the latter group's sense of selfhood may be constructed from an inaccurate, culturally imposed paradigm. These critical writings deepen our understanding of juridical discourse and its liberatory and anti-liberatory tropes concerning transgender identity. Still, there has yet to be any academic writing putting transgender mobilization in India in a broader perspective.

2. Methods

Considering the neoliberal governance of contemporary India, this paper seeks to understand its reluctance in extending substantive socioeconomic entitlements to transgender communities with the concept of [O'Connell \(2011\)](#). He talks about the death

of socioeconomic rights under the neoliberal state implying a de facto harmonization of the constitutional protection of rights with privatization and a drastic cut in welfare funds. The reduced budget for social-sector spending makes it difficult for the government to consider offering the trans community anything that ensures socioeconomic entitlements (Gudavarthy & Vijay, 2020). The demands of transgender communities for benefits, such as free Sex Reassignment Surgery, trans-friendly health care, gender-neutral washrooms in public places, trans-friendly prisons, and pensions, would require concrete budgetary allocations and the provision of official and bureaucratic channels to implement them.

In times of intensifying privatization and constant reduction of welfare funding (Gudavarthy & Vijay, 2020) in India, the lack of commitment to substantive justice can be put into perspective. What also informs my understanding are the writings of Aizura (2017), and Gray (2013), who suggest that legal recognition does not necessarily translate into justice and empowerment for marginalized groups/communities. In documenting transgender mobilizations and the state's responses, this research has substantively relied on secondary sources—primarily newspaper articles and reflections in magazines and webzines.

Articles from The Hindu and Times of India, two leading national dailies; contents and criticisms from Sampoorna, a blog representing a network of transgender and intersex communities; from Orinam.net, an online resource of LGBTIQ+ people and their allies; and the Government of India's online resources, particularly the texts of transgender draft bills, acts, and Rules, have been used in mapping out the trajectories of transgender mobilization in India since 2014. In addition, interviewing two transgender leaders—intellectuals from Hyderabad city have also generated significant insights for the present exercise.

The paper seeks to document the issues around which the protests of transgender communities have been focused from 2015 to 2020. It is divided into three parts. The first part discusses transgender subjects in India, the second includes the substantive provisions within NALSA, and the third charts out the transgender mobilization for developmental and substantive justice and the state's response to these mobilizations. By mobilization, the paper not only refers to the collective protests in the streets but also constant critical reflections on the government's attempt to dilute and weaken the substantive underpinnings of NALSA while translating the latter into laws. By

substantive provisions, the paper refers to the state policy provisions that attempt to address the historical injustices, institutionalized violence, and deprivations imposed on the trans community, while aiming to ensure concrete socioeconomic entitlements to eliminate structural inequalities and dehumanization. These are adequately addressed in NALSA despite its othering and transphobia highlighted by academic critiques.

Transgender rights were further affirmed through a Private Member Bill in 2015 introduced by Tiruchi Shiva, a member of the upper house of Parliament. Mr. Shiva's Bill has 58 clauses in 10 chapters dealing with different aspects of trans rights, ranging from social inclusion, rights and entitlements, financial and legal aid, education, and skill development to prevention of abuse, violence, and exploitation (Gandhi & Ramchandran, 2015).

3. Results and discussion

3.1. Perspectivizing the transgender subjects in India: Pre- and post-colonial and contemporary assertions

It is difficult to provide a systematic history of transgender and gender nonconforming subjects in India because of the heterosexualized historiographical traditions followed in both pre-and postcolonial India, along with a heterosexualized colonial and postcolonial modernity (Srivastava, 2007; Vanita & Kidwai, 2008) rendering the indigenous gender nonconforming cultural identities criminal and subjecting them to legal surveillance and policing. Although Vanita and Kidwai (2008) attempt a queer history of the Indian subcontinent from the ancient to the modern period based on literary sources, which is an undoubtedly commendable attempt constituting a painstaking effort to de-heterosexualize historical sensibilities in India, they have not been able to provide a substantive account of transgender and gender nonconforming groups and communities in these different historical phases of Indian history.

Their work remains more focused on sexuality than it does on gender. In the case of transgender communities, gender and sexuality become intersecting and inseparable, and writings that primarily focus on sexuality and sexual practices may not fully capture the complexities of an intersecting subjecthood embodied and articulated in and through trans bodies. The cis-normativity of many sexually nonconforming persons might allow them

privileges and power similar to normative genders, but the hypervisibility of gender-nonconformity creates a specific marginality (Namaste, 2000; Kumar, 2018).

It needs to be reiterated here that in the popular imagination, transgender subjects are predominantly understood as hijras and non-Hijra (male) cross-dressers, who both beg and dance for their livelihood, leaving various indigenous and modern transgender identities outside public discussion. In the end, only the law and the combined struggles of the transgender communities bring all these identities into the legal and statist discourse. Later in the discussion, the paper explores these visible and not-so-visible identities, focusing on certain historical materials to delineate the status of cross-dressers and sometimes-emasculated males to obtain a sense of their positioning in precolonial and colonial times in the Indian subcontinent. By doing this, the paper does not privilege these identities within the broader transgender identity, but my choice is based on the availability of historical materials within academic and legal discourses. The article also acknowledges the simultaneous invisibility of female cross-dressers and other transgender and gender transgressive identities in colonial and postcolonial accounts here.

The article first considers Chatterjee's (1999) description of the centrality of eunuchs in the Nizamat polity in eighteenth- and nineteenth-century Bengal to reflect the legitimacy of trans existence within the precolonial polity of the subcontinent. Second, it delineates the famous *Queen Empress Versus Khairati* of the Allahabad High Court case to demonstrate the homophobia and transphobia implanted through colonial governance. This viewpoint was re-strengthened through the Criminal Tribes Act (1871), again introduced by the colonial administration, that further criminalized gender transgressions and pathologized certain indigenous groups and communities. The paper then describes the various indigenous groups of transgender identities, as well as the post-NALSA visibility of the intersex, transmen, and gender-queer identities articulated in NALSA, and the open-endedness of transgender identities.

Delineating the significance of androgyny in eighteenth-century Mughal Bengal in the eastern part of the Indian subcontinent, Chatterjee (1999) elaborates on eunuchism as the embodiment of commercial and political agency. Eunuchs were the most trusted, highly paid officials of local rulers and often the heads of harems, holding essential responsibilities, ranging from wealth management to gathering information, based on which the rulers made important decisions (Chatterjee, 1999). Chatterjee, through

archival data, demonstrates that some eunuchs were royal teachers and managers of royal property and were bestowed with prestigious titles and favors by the kings and harem heads. She further notes that these eunuch officials could prevent and manage conflicts in bazaars and public spaces and act as interlocutors between East India Company officials and royal heads. Besides this, the divinization of the rulers and emperor and the ritualization of Court life were mediated through eunuchs, who were deemed neither child nor adult, nor fully male or fully female, nor fully God or fully human (Chatterjee, 1999).

Chatterjee (1999) suggests that the in-betweenness of eunuchs or gender ambivalence was a valued political attribute and much appreciated within the Nizamat polity of Bengal. Having no progeny of their own, the eunuchs were loyal and trusted servants of their respective royal associates. The status of eunuchs eventually began to decline because of the increasing influence of the East India Company (Company) in Mughal Bengal. Officers of the Company, who later emerged as the virtual, unabashed sovereigns of Bengal by the 1770s (Travers, 2005), resented the privileges enjoyed by eunuchs. The West-centric, heterosexist, and transphobic attitude of Company officials associated the presence of eunuchs with depravity and saw it as being against modern sensibility. In its subsequent policy of retrenchment, the Company removed all eunuch officials from their essential services, leaving the latter unemployed and pushed to precarity and marginality (Chatterjee, 1999).

The colonial masters furthered transphobia and homophobia by enacting specific laws and systems of surveillance. Most noted among them were Section 377 of the Indian Penal Code introduced in 1861 to regulate and criminalize homosexuality and the Criminal Tribes Act of 1871; the latter was subtitled as an “Act of Registration of Criminal Tribes and Eunuchs.” Under the provisions of this latter statute, a eunuch was “deemed to include all members of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent” (Banerjee, 2018). The local government was required to keep a register of the names and residences of all eunuchs who were “reasonably suspected of kidnapping or castrating children or of committing offenses under Section 377 of the Indian Penal Code” (Banerjee, 2018).

Any eunuch so registered who appeared “dressed or ornamented like a woman in a public street, or who dances or plays music or takes part in any public exhibition, in a public street, [could] be arrested without warrant and punished with imprisonment of up

to two years or with a fine or both” (Banerjee, 2018; Hinchy, 2013). “If the eunuch so registered had a boy under the age of 16 years within his control or residing in his house, he could be punished with imprisonment of up to two years or fine or both” (Banerjee, 2018).

It is important now to note that the first use of Section 377 in *Queen vs. Khairati* was against a male cross-dressed as a female, with a group of women from the village. This article elaborates on this case to reflect on the transphobia and precarities of gender nonconforming persons instituted and sustained by the colonial regime with their continuing legacy in post-independent India. Only five years before, these transgender communities were recognized as citizens, and the draconian Section 377 of the Penal Code was only repealed as late as 2018.

Ruhnke (2018) writes that the British rulers in India accentuated the divide between the ruler and the ruled by associating perverse and homosexual criminal identity with the natives while claiming for themselves a moral and racial superiority. This understanding provided a context for introducing Section 377 of the IPC to criminalize homosexuality. Khairati, a native cross-dresser, was prosecuted in 1884, which, as brought out earlier, is the first known case registered under this section in the Indian subcontinent. This timing reaffirms Chatterjee’s (1999) claim that precolonial India was generally accommodative toward nonconforming genders and sexualities even when we do not have much evidence to claim that such persons and communities did not face challenges and subordination.

To come back to Khairati's story, to demonstrate the criminalization of gender-nonconformity by the colonial masters, it is relevant to reiterate that the former was accused of sodomy without any evidence. Only based on open cross-dressing, Khairati was accused of engaging in sodomy, and his body was subjected to medical investigation. The only incriminating offense found by the authorities was the distortion of the opening of his anus in the shape of a trumpet which was read as a mark of a habitual sodomite (Gupta, 2006). Gupta (2006) observes “Here we are confronted with the crux in the enforcement of 377—is this law meant to criminalize the act of sodomy or people who appear to be likely to commit this offense?”. Narrain (2018) argues that Khairati's case demonstrates how a person articulating gender freedom could be criminalized by colonial legal arrangements even in the absence of evidence of sodomy.

Although there are no systematic accounts of harms done to those expressing gender-nonconformity and gender transgressive practices in colonial India, one can find certain linkages between the retrenchment of eunuch officials by the Company discussed earlier and the criminalization of cross-dressers like Khairati. It reflects the heterosexism and transphobia introduced by the colonial administration as working with the medicolegal establishment instituted to pathologize transgender bodies. The oppression of transgender communities continued in the post-independence period with very few documented accounts; the experiences of violence and dehumanization were only captured in the Karnataka Peoples' Union of Civil Liberties' Report of 2003 and in the transgender autobiographies that surfaced after 2010. The stigma, discrimination, and violence transformed the transgender into abject entities and virtual noncitizens, rendering them either invisible or hyper visible, at both instances relegating them to a shadowy and precarious existence.

It was only in the 1990s that transgender communities, particularly hijras and kothis entered public discourse because of being considered high-risk groups within the HIV/AIDS context (Bhaskaran, 2004; Reddy, 2005). Transgender subsequently became an umbrella term that came to represent many forms and subcultures of gender-nonconformity, encompassing all subjects who are not stereotypically masculine, feminine, or cis-gender (Chatterjee, 2018). In its current deployment, and at the risk of creating a new binary between cis-gender and transgender subjects, this category is an ever-expanding one, with its boundaries porous enough to include the myriad demonstrations of atypical masculinities and femininities (Chatterjee, 2018).

NALSA generally describes transgender as an umbrella term for persons whose gender identity, gender expression, or behavior does not conform to their biological sex (NALSA Judgement, 2014). This expansive definition provided a ground for different gender nonconforming persons to assert and articulate their identity. In the spirit of the judgment, claims were made for inclusion by trans masculine persons and communities using the NALSA open-endedness of gender-nonconformity. The Delhi High Court order of September 22, 2015, to provide protection to Shivy, a self-identified transman, against the combined violence of family and police (Nazariya, 2015) shows the significance of NALSA for different constituencies within the transgender identity.

It further led to the assertion of the right of intersex communities to be identified as separate entities and not conflated with other transgender identities. The other traditional transfeminine cultural and religious identities, such as *jogata*, *shivashaktis*, and *mangalmukhi*, apart from *hijras* and *kothis*, are given due acknowledgment and inclusion within the community assertions and mobilizations. The struggle for the recognition of different constituencies within the transgender community is reflected in the Transgender Act of 2019, which identifies transmen, transwomen, intersex, gender-queer, and cultural identities like *kinnar*, *Hijra*, *aravani*, and *jogata* as different groups constituting the broader identity of transgender. The community has also asserted transsexuals as a separate identity with their own specific claims and assertions. Transgender collectives have gone online in recent years with transwomen, transmen, intersex, nonbinary genderqueer, and many others who stake out their presence in cyberspace. These online groups debate issues of common and specific concerns.

3.2. NALSA Verdict of the Supreme Court, 2014: A document of substantive justice

This section outlines the key provisions of substantive justice embodied within the 103-page NALSA Verdict of April 15, 2014, drawing upon the original text of NALSA and summaries and reflections from activist groups on the provisions within the judgment. The following are some of the key provisions that indicate a tendency toward substantive justice and form the agenda of the transgender mobilizations.

3.2.1. Right to personal autonomy: Revolutionizing and democratizing the concept of gender

Underscoring the right to personal autonomy and self-determination under Article 21 of the Indian Constitution, the Court observed that “the gender to which a person belongs is to be determined by [the] person concerned” ([Lawyers Collective, 2014](#)). The Verdict states:

“... Gender Identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with [the] sex assigned at birth, including the personal sense of body, which may involve a freely chosen modification of bodily appearance or functions by medical, surgical, and or other means or other expressions of gender including dress, speech, and mannerisms ...” ([NALSA Judgment, 2014](#)).

The Court emphatically noted that dignity could not be realized if a person is forced to grow up and live in a gender with which they do not identify or relate ([Lawyers Collective, 2014](#)). The decision also implied that a person's sense of gender should match their official identity, without the necessity for any certificate from a doctor or proof of having undergone Sex Reassignment Surgery (SRS), as the Court clarified that ‘any insistence for SRS is immoral and illegal’ ([Lawyers Collective, 2014](#)).

3.2.2. Recognition of intersecting inequalities and ensuring state’s responsibility

Recognizing the entrapment of intersecting inequalities of the majority of sexual and gender nonconforming persons, NALSA states, “In all their responses for discrimination on the basis of sexual orientation and gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination” ([NALSA Judgement, 2014](#)). It holds the state responsible for ensuring gender nonconforming persons' access to medical care and counseling, addressing the particular needs of persons based on sexual orientation and gender identity. According to NALSA, health care should also include reproductive health and access to HIV/AIDS information and care, access to hormonal and other therapy, and gender reassignment surgery where desired ([NALSA Judgement, 2014](#)). Besides this, the prison and detention systems and other public spaces should be made trans-friendly ([NALSA Judgement, 2014](#)).

Transgender women may be able to seek protection under gender-specific laws for women ([Lawyers Collective, 2014](#)). The Court issued a series of directives to the Central and State governments, including granting legal recognition to persons' self-identified gender, providing separate HIV zero-surveillance for transgender persons and appropriate health policies, treating transgender persons as socially and educationally backward classes, and extending reservations in public education and employment, which the transgender communities are still debating about how to map as a provision, and other protections ([NALSA Judgement, 2014](#)).

NALSA also holds the state responsible for instituting a health care system that is competent and sensitive in providing health care services to *Hijras* and TGS, and stigma and discrimination reducing measures at various settings ([NALSA Judgement, 2014](#)). It mentions intersex persons and outlines specific discriminations and exclusions from families, as well as subjecting intersex children's bodies to heterosexist medical

establishments to assign a gender identity in alignment with dominant gender norms or dispensing off the intersex fetus through medical technology (NALSA Judgement, 2014).

3.2.3. Struggle for developmental justice: Transgender communities' mobilizations and the Indian state's response

Given the progressive and substantive justice approach of the Supreme Court, the Indian Government's response in translating the NALSA text into law appears ironic and even contradictory in many instances. Owing to strong all-India mobilizations by the trans community, the government was pressured to introduce different bills, but they were all found problematic and regressive by the transgender communities. This situation was followed by a series of community resistances in response to these bills, finally culminating in the transgender persons (Protection of Rights) Act 2019 (TPA). As a prelude to the discussion that follows, this research submits that there has been continued resistance by the community since 2014 toward the various versions of the TPA introduced by the Indian Government. The TPA is considered problematic on many counts. At the same time, the government has recently promulgated Rules, also called Transgender [Protection of Rights] Rules, 2020, accommodating some of the demands of transgender communities. The latter still feel betrayed as not all the provisions of NALSA are included in the Rules.

Those members of the transgender communities who also belong to marginal caste backgrounds find the Rules inadequate in accommodating caste-based discriminations within and outside the community. In a recent International Transgender Conference organized by the Centre for Law and Policy Research, Bangalore, some of the Dalit transgender members raised objections to the National Council for Transgender (Council) formed by the Ministry of Social justice and Empowerment under the Transgender Act 2019. In the view of some transgender activists, the trans members of the Council are not those who represent the voice of the community but rather those who are favored by those in power and the establishment. To the Dalit transgender groups, the above members belong to privileged backgrounds within the transgender community. Dalit transgender persons have been pressing their demand for horizontal reservations by filing cases in the High Courts.

Highlighting the government's reaction to NALSA, an article was published in the Indian Express, “Government Objects to SC Empowering the Third Gender” (Anand, 2014), while another one in The Hindu wrote

“... Hardly five months after the Supreme Court judgment, the Central Government raised several objections against the verdict... The Ministry asked the Court if it expected the government to suo moto [on its own motion] include all transgender in the Other Backward Classes (OBCs). There was an established procedure under the National Commission for Backward Classes Act, 1993 for this ...” (Rajgopal, 2014, The Hindu).

Although the clarification sought by the Government of India was less alarming than the above articles suggested, the community was concerned over the two issues raised in the government's clarifications to the Court (Orinam, 2014). First, the application from the government mentioned that the six months stipulated in NALSA was not enough to implement all provisions mandated by the Court, and hence, the recommendations would be rolled out in a phased-in manner (Orinam, 2014). In the understanding of the trans community, this procedure could lead to indefinite delays and backtracking of NALSA (Orinam, 2014). Second, the application's viewpoint that the categorization of transgenders under the OBCs is consigned to the National Commission for Backward Classes would again result in indefinite delays until the National Commission considers the issue (Orinam, 2014).

3.3. The transgender bill 2015 and critique from transgender communities

Following NALSA, the Ministry of Social justice and Empowerment (MSJE) drafted the Transgender Bill in 2015 and invited comments, suggestions, and reflections from the trans community and civil society, in general, to be submitted to the secretary, Gazala Meenal, by January 16, 2016 (Seikh, 2016). The MSJE's call was followed by numerous civil society consultations in the limited time provided and the submission of several significantly detailed comment documents (Seikh, 2016). S, a transwoman from Hyderabad says-

“... At that time in 2016, the opposition to the Transgender Bill, 2016... the transgender persons and communities were snowballing exponentially by the day. In Hyderabad, all the six Havelis (referring to Hijra households) heads met Trichy Siva, a Rajya Sabha MP of Dravida Munetra Kazhagam (DMK) who came to Hyderabad. He assured the Havelis that he would do his best to oppose that Bill in its form at that time. There was significant approval and support for The Rights

of Transgender Persons Bill, 2015 of Trichy Siva. Protests like *Hijra thehjob bachao* (save the Hijra way of life) rallies were nonetheless held by the Havelis at Dharma Chowk, Indira Park (Hyderabad) against the Transgender Bills 2015 and 2016. There were protests also organized by other queer Hijra transgender collectives viz. Queer Swabhimana Yatra and Telangana Hijra Transgender Samiti. In fact, the opposition was not limited just to the Transgender Bills of 2015 and 2016 but later spilled over to the Trafficking Bill and the Surrogacy Bills as well. Monthly protests erupted across Bangalore, Baroda, Chandigarh, Chennai, Delhi, Guwahati, Hyderabad, Imphal, Indore, Kolkata, Kochi, Mumbai, Rajkot, and Vijayawada, among other cities and towns. Representatives were given to the members and the Chairperson of the Standing Committee of the Ministry of Social Justice & Empowerment ...”

It is worth mentioning the critique offered by Sampoorna, an online collective of trans and intersex people, which is more comprehensive and represents all the opposition and suggestions made by the community in response to the disappointing Transgender Bill, 2015. The important critical observations of Sampoorna regarding the above 2015 Bill included eight things.

First, with Omission of Intersex Persons. In its critique of the Draft Bill 2015, Sampoorna ([Orinam, 2016](#)), highlighted the omission of intersex persons and communities from the Bill and suggested that the Bill be renamed The Right of Transgender and Intersex Persons Bill ([Orinam, 2016](#)). The above critique reads as follows: All intersex people face acute issues like lack of access to healthcare, education, employment and face violence, stigma, and discrimination at multiple levels. Moreover, there are people with intersex variations who also identify as transgender. We recommend that the Bill be renamed *The Rights of Transgender and Intersex Persons Bill* ([Orinam, 2016](#)).

Second, Removal of Diagnosis and Certification of Transgender Persons. The 2015 Bill included a mandate for the diagnosis and certification of intersex and transgender persons by appropriate authorities for access to benefits as a transgender person, which Sampoorna strongly criticized. The apprehension expressed was that the process of diagnosis and certification would lead to gatekeepers and power brokers at multiple levels within both the state mechanism and the trans–intersex communities ([Orinam, 2016](#)). The diagnosis also goes against the spirit of self-determination of gender reiterated within the text of NALSA. V, a transwoman from City H, reflects on this outrageous moment. It felt downright draconian and outrageous. Also, felt like a toy at the hands of an all-powerful

juggernaut of a Government of India or like a lab rat being dissected against my will by it. We, as transgender persons, collectivized, did many media and press conferences, sit-in protests, rallies, and met our MPs and the functionaries of the Ministry of Social Justice & Empowerment to register our opposition to the Bill.

Third, Health as a Major Concern. Sampoorna's critique (Orinam, 2016) emphasized using nonpathologizing diagnostic frameworks for trans and intersex people following the standard international practice recommended by World Professional Association of Transgender Health (WPATH). It mentioned that "Health is a huge concern of trans and intersex people, and hence, a separate chapter on health should be brought into the Bill that fully addresses the trans and intersex health care as well as general health care of these communities" (Orinam, 2016). The appropriate and best trained medical professionals, including endocrinologists, gynecologists, and urologists for intersex persons, as well as nonpathologizing mental health professionals, should be provided to respond to the specific and general health needs of the trans community. The critique implied that these health professionals should have the sensibility and understanding set out in WPATH guidelines. Therefore, according to Sampoorna, trans health should be an additional chapter in the Bill because physical and mental health are significant concerns for the community (Orinam, 2016). Emphasizing the special attention toward transgender health, V, the transgender woman from City H, shared the specific needs of transgender health:

"... It felt downright draconian and outrageous. Also, I felt like a toy at the hands of an all-powerful juggernaut of a Government of India or like a lab rat being dissected against my will by it. We, as transgender persons, collectivized, did many media and press conferences, sit-in protests, rallies, and met our MPs and the functionaries of the Ministry of Social Justice & Empowerment to register our opposition to the Bill ..."

Fourth, Responsibilization of the State. In Sampoorna's view, the government's draft only mentioned raising awareness about transgender communities without the responsabilization of the state through formulating and implementing legal protections and safeguards of trans and intersex people as a prime responsibility of the government (Orinam, 2016). A mere awareness-raising process without instituting concrete mechanisms for the empowerment of marginal communities would appear tokenistic and cosmetic.

Fifth, Affirmative Action. The Sampoorna letter (Orinam, 2016) to Ghazala Meenai, the Joint Secretary, MSJE, states the following:

“... We recommend that all trans and intersex people be considered socially backward and affirmative action be sought in education and employment. Special consideration in terms of benefits and affirmative action be given to trans and intersex people who are SC/ST/OBC and a mechanism be instituted for issuing caste certificates for trans and intersex people who leave home young ...”

Because many transgender and intersex persons are forced to leave their respective birth homes, they fail to acquire caste and similar documents that would have entitled them to access welfare schemes offered by the government. Given this severing of ties with natal homes, it would be difficult to produce any document to acquire other important documents, such as caste certificates. Thus, the above suggestion made by the community holds special weight.

Sixth, Inclusion and not Rehabilitation. Opposing the rehabilitation framework, which the transgender communities found pathologizing and oppressive, Sampoorna rejected the model because it was borrowed from an outdated disability discourse. Instead, rehabilitation should be conceived of as the removal of barriers that mainstream society has placed in the way of trans and intersex communities, leading to their historical disenfranchisement (Orinam, 2016).

Sex workers, for example, have found the rehabilitation model not only forced but also draconian and disempowering, and transgender activists view these as instruments of institutional dehumanization and violence. M, the transgender leader and intellectual from City H, argues that the rehabilitation model is deeply entrenched in the raid and rescue model of the US State Department and does not acknowledge the free will of sex workers who freely choose it as a livelihood. She further adds that under the framework of the most recent Trafficking in Persons (Prevention, Care, and Rehabilitation) Bill, 2021, this process will become even more brutal, leading to further criminalization, incarceration, and forced rehabilitation.

Seventh, Self-Identification versus Third Gender. Both NALSA and the 2015 Bill represent a contradiction as far as self-identification of gender is concerned. While they suggest that a trans person can choose male, female, or “third gender” identity, they also propose that all transgender persons be declared third gender. In Sampoorna's critique, a

transgender and/or intersex person should have the right to self-identify their own gender and should be free to choose among any of the gender categories: man, woman, transgender, or third gender (Orinam, 2016).

Eight, Budgetary Allocation, amendment of IPC, Medical Education, Helpline, sensitization, Sex Reassignment Surgery and Medical Education. Sampoorna (Orinam, 2016) also recommended a budgetary allocation to implement the suggested programs for transgender empowerment and development, along with amendments to the Indian Penal Code to include the wide spectrum of trans and intersex identities that exist in society. It emphasized specific sensibilities within human rights commissions and the prison system toward trans needs. It argued that gender-affirming procedures or sex reassignment procedures, including counseling, surgery, and hormone therapy, should be made free and that sensitization programs on transgender and intersex communities should be part of the syllabus (Orinam, 2016).

For Sex Reassignment Surgery, appropriate leave should be available in government and private jobs (Orinam, 2016). Sampoorna argued that Hostel, Helpline, and emergency services should be made available and that trans and intersex sensibilities should be brought within the curriculum of medical education (Orinam, 2016). According to transgender community leaders, some states have taken initiatives to facilitate transgender welfare, but there have been hardly any concrete measures taken at the national level despite the guidelines incorporated in *NALSA*.

3.4. 2016 bills of transgender rights, a more regressive version: Transgender communities' response

Apart from Sampoorna, many other pro-trans civil society groups across the country responded to the 2015 Bill draft, suggesting changes and amendments, but the government in August 2016 passed a more regressive version of its own 2015 Bill, which caused protests, mobilization, and critical reflection from the transgender communities. Sampoorna (2017), in its critique, described the Bill as a dangerous form of tokenism. As per this critique, the regressive clauses in the Bill completely eliminated the right to self-determination of gender through a rigid and injurious definition of “transgender” as being part male and part female. The option of choosing either a male or female identity, which was included in the earlier drafts, was made impossible (Seikh, 2016).

According to the current draft, a transgender person is one who is: a) neither wholly male nor female, b) a combination of female and male, c) neither female nor male (Seikh, 2016). Although NALSA has remained far from being ideally implemented, the principle of self-identification and its broad understanding of gender had opened a space for transgender persons to obtain documents that identify them by the gender of their choice (Seikh, 2016). With the definitional clause, that space was firmly eliminated (Seikh, 2016).

Chapter three of the Bill provides the mechanism for the recognition of identity (Seikh, 2016). As per the draft, a transgender person may apply for a certificate of identity to the District Magistrate, who will then refer the application to a district screening committee, which will issue a certificate of identity to the person (Seikh, 2016). The issue is that such an onerous procedure violates the self-identification principle (Seikh, 2016). The draft Bill also included a single chapter on discrimination in certain spaces, such as educational institutions, health care services, and employment. However, it failed to define the term discrimination itself (Seikh, 2016). The Bill further vitiated the discrimination clause by not including any enforcement provision. Another fallacy in the Bill was the criminalization of beggary.

This prohibition ignored the reality that begging is one of the few income-generating options available to many transgender persons. Criminalizing it would simply provide another avenue for the misuse of power by the police and authorities (Seikh, 2016). There have been several instances where transgender individuals were disproportionately targeted under the general law relating to beggary. The idea of affirmative action in educational institutions and employment has entirely disappeared from the 2016 Bill (Seikh, 2016). A massive bureaucratic apparatus in the form of the National Council for transgender persons was created; however, that has also been rendered toothless without any significant powers (Seikh, 2016).

3.5. Parliamentary standing committee and progressive recommendations

Responding to criticism from the community, the government referred the draft Bill to a Parliamentary Standing Committee. After hearing in-person depositions and receiving written recommendations, the Parliamentary Standing Committee on Social Justice released the 43rd Report on Transgender Bill 2016 in July 2017 (Sampoorna, 2019).

Notwithstanding the criticism from the transgender community, some of the important suggestions of the parliamentary committee (43rd Report, 2017) aimed at empowering the trans community included the following:

1. A transgender person should have the option to choose either man, woman, or transgender as the person's gender, as well as have the right to choose any of those options independent of surgery/hormones (43rd Report, 2017: 41-52).
2. A definition of discrimination should be included in Chapter I of the Bill, which must cover a range of discriminatory violations that transgender persons face (43rd Report, 2017: 32-34).
3. The 2016 Bill does not refer to important civil rights like marriage and divorce, adoption, etc., which are critical to transgender persons' lives and reality, given that many are engaged in marriage-like relationships, without any legal recognition from the state (43rd Report, 2017: 94).
4. The Bill is silent on granting reservations to transgender persons under the category of socially and educationally backward classes of citizens (43rd Report, 2017: 79).
5. There should be separate HIV Sero-Surveillance Centers (since *hijras*/transgenders face several additional sexual health issues) operated by Centre and State Governments (43rd Report, 2017: 93).

3.6. Rejection of Parliamentary Standing Committee's Recommendations by the Government

The Ministry rejected most of the recommendations of the Parliamentary Standing Committee (Sampoorna, 2019). During the Winter Session of the Parliament in 2018, the Lok Sabha passed the Transgender Persons Protection of Rights Bill (Sampoorna, 2019). The Bill was not tabled in the *Rajya Sabha* (Sampoorna, 2019). Because of the pan-India protest against the Bill in December 2017 by the transgender, intersex, and gender nonbinary communities, the government only considered changing two parts of the Bill, viz. the problematic definition of the transgender person as incorporated in the 2016 Bill mentioned above and the removal of medical Screening Committees at the district level (Sampoorna, 2019). The Bill was passed in the lower house of the Parliament on August

5, 2019, amid protests from the community, civil society, and many members of the Rajya Sabha from different opposition parties; it was passed by the Rajya Sabha on November 25, 2019 (Sampoorna, 2019).

Opposition Members of Parliament (MPs) from the DMK and the Congress Party requested the ruling Bharatiya Janata Party (BJP) to send the Bill to a Select Committee for further legislative scrutiny in order to develop a more comprehensive Bill, making a motion in this regard (Dutta, 2019). This motion was defeated by voting in the upper house of the Parliament (Dutta, 2019). The Bill was signed into law by the President on December 5, 2019, despite petition campaigns and appeals to the President of India by the trans community (Sampoorna, 2019).

3.7. Problems with TPA (Transgender Persons [Protection of Rights] Bill in 2019)

The transgender and intersex communities were disappointed and upset about the TPA, 2019 owing to the following points:

1. A surgery certificate is required if a trans person wants to identify either as male or female. This mandate goes against the spirit of NALSA, which is unequivocal about the self-determination of gender for which no surgery is required (Sampoorna, 2019)
2. The Bill continues to conflate intersex persons with transgender, despite warnings from the World Professional Association of Transgender Health [WPATH] (Sampoorna, 2019). In the view of the community, this constitutes a horrifying misrepresentation and invisibilization of intersex persons and their specific concerns (Mudraboina et al., 2019). This issue is of extreme importance in the aspect of health as there is a range of distinct issues that intersex persons face, from forced corrective operations on intersex infants to continuing health issues that the medical system is both unequipped to handle and is inaccessible to a large number of intersex persons (Sampoorna, 2019)
3. The Act is completely silent about affirmative action mandated through NALSA even as the state government of Karnataka has agreed to provide reservation to transgender persons under the Other Backward Class (OBC) category (Banerjee, 2020).
4. The draft is silent about alternative families and households, such as Hijra

households and families that have historically provided a protective space to transgender persons and to intersex and nonbinary people (Banerjee, 2020). The community, in its critique, emphasized the need to incorporate the chosen family in the Act and to drop the outdated rehabilitation model (Mudraboina et al., 2019). V, the transgender intellectual from City H, explained that the Act does not address adoption, bequests, civil unions, domestic partnerships, domestic violence from parents and siblings within birth families, intimate partner violence, inheritance, amendments to the labor code, live-in relationships, marriage, prison reforms, and divorce among many other contentious issues.

5. The trans community finds the provision for forming the National Council of Transgender highly problematic. Under the Act, the members of the Council are to be nominated by the government with a massively disproportionate under- representation of trans communities. Out of 25 members, only five transgender persons are to be on board (Mudraboina et al., 2019)
6. The Act prescribes lesser punishments for violence and assault on transgender persons when compared with cis-women. [A case has been filed in the Supreme Court of India addressing this differential punishment based on gender (Agarwal, 2020). The petitioner, Reepak Kansal, prayed to the Court to give specific directions to the central government to deal with harassment against transgender persons, making alterations in the Indian Penal Code, 1860.]
7. The Bill says No suit, prosecution, or other legal proceedings shall lie against the appropriate Government, any local authority, or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder (Sampoorna, 2019). As per the critique from the community, the right to contest the law is a fundamental right granted to all citizens (Sampoorna, 2019).
8. Moreover, the Bill also states that the central government can, by order published in the Official Gazette, make such provisions for expediting or removing any difficulties arising out of this Bill, provided that no such order

shall be made after the expiry of the period of two years from the date of commencement of this Act (Sampoorna, 2019). Sampoorna (2019) writes:

“... We know the reality of government processes and how long it takes for the wheels of bureaucracy to move. By attempting to remove any possibilities of amendments after two years, the government wants to ensure that everything related to this Bill is done within its term in office, and no subsequent government can make changes. This is against the spirit of democracy ...”

3.8. Transgender rules in 2020, the community’s reflections and continuing struggle

The community filed several petitions challenging the constitutional validity of the TPA, 2019 (Shaikh, 2020). In February 2020, five transgender activists filed a petition in the Supreme Court (Grace Banu v Union of India) pleading that the Act conflicts with both the Constitution of India and NALSA, 2014 and raised the issues of self-determination of gender, affirmative action, differential punishment, and alternative family structures, which are either unaddressed or incorporated in unjust, inadequate, and discriminatory ways. Two months after the Parliament passed the transgender persons (Protection of Rights) Act, 2019, the Court issued a notice to the Centre on a petition filed by a transgender activist, Swati Bidhan Baruah, who alleged that while the Act had been passed with the stated objective of protecting transgender persons, in effect, it negated their rights. She alleged that the Act was “completely toothless,” as there was no remedy provided in it to deal with the violation of its provisions (The Tribune India, 2020).

Probably, in response to these petitions and constant critique from the community, the government finally came up with the “transgender persons (Protections of Rights) Rules, 2020,” on September 25 (Shaikh, 2020). The Rules seem to have tried to bridge the vast gap between the 2019 Act and the NALSA verdict of 2014 (Shaikh, 2020). The trans community has been raising the issue since 2015 that the prohibited discrimination against transgender persons is not expressly defined in the draft bills, including the Transgender Act 2019.

The final Rules introduced in September 2020 were preceded by two drafts of the same in April 2020 and August 2020. There are certain differences in these drafts (Shaikh, 2020). Although the second draft of the Rules provides an elaborate definition of discrimination, the definition was removed from the final Rules promulgated (Shaikh, 2020). The significant success of transgender and intersex mobilizations that surfaced in

the Transgender Rules, 2020, was in terms of the self-determination of identity to a considerable extent. [Shaikh \(2020\)](#) appropriately summarizes the provisions related to self-determination of gender, which was made convenient for transgender persons as follows:

“... Rule 3 prescribes that all applications for obtaining a Certificate of Identity must be submitted to the District Magistrate within whose jurisdiction the transgender person resides ([Shaikh, 2020](#)) ...”

“... Applicants seeking a revised Certificate of Identity and who have undergone medical intervention toward a gender-affirming procedure must submit a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of that medical institution to the District Magistrate. In any case, the District Magistrate shall only verify the documents and is not permitted to order a physical examination, as given under Rule 6. ([Shaikh, 2020](#)) ...”

“... Rule 6 uses the term medical intervention, as opposed to the term surgery. As used in this section, "medical intervention" is defined in Rule 2(i) and includes any gender-affirming medical intervention undertaken by an individual to facilitate the transition to their self-identified gender, including but not limited to, counseling, hormonal therapy, and surgical intervention, if any. While the Rules have tried to broaden the ambit through this provision, it remains to be seen how the two provisions in the Act and the Rules will coexist ([Shaikh, 2020](#)) ...”

The above instance shows the success of mobilizations, critiques, and litigations already pending in the Supreme Court. The government, not by promising affirmative action but by providing concrete reservations under the Rules, makes a provision to constitute a welfare board (Rule 10), provides a mechanism for ensuring nondiscrimination against transgender persons in public life, including setting up a Transgender Protection Cell (Rule 11) and drafting an Equal Opportunity Policy. The latter provides equal opportunities by incorporating infrastructure adjustments, recruitment, employment benefits, and promotion of transgender persons (Rule 12) ([Shaikh, 2020](#)).

The community, however, wants both a vertical and horizontal reservation policy in place that is substantive and will immediately affect the lives of transgender and intersex persons aspiring entry into the bureaucracy, police, and judicial services and other formal sector jobs. The Centre for Law and Policy Research, Bangalore, in 2018, released a policy brief on Reservations for Transgender and Intersex persons. Grace Banu, a *Dalit* transgender activist and the first *Dalit* transgender engineer in India, has been filing

petitions in the Court for ensuring horizontal reservations for transgender persons in Tamil Nadu and other states in India ([Business Standard, 2019](#)).

There are other merits to the Rules as they make it binding upon formal institutions to designate a complaint officer within 30 days of the effective date of the Rules to inquire into the complaints of the trans community and provide grievance resolution ([Shaikh, 2020](#)). This complaint process, however, remains only on paper as [Shaikh \(2020\)](#) writes:

“... Since the notification of the Rules, there has been no training or sensitization made available to District Magistrates, who are the focal point in all the applications. In many places, they are not aware of the duties imposed upon them through the Rules ...”

She further observes that the different criteria adopted in the TPA 2019, and the Rules 2020 are bound to create confusion regarding its implementation, and these variations make it difficult on the ground to avail the rights guaranteed to trans and intersex persons. Certain states, such as Madhya Pradesh, have come forward to provide special rights to transgender persons, such as parental property rights, free SRS surgery, and others ([Sengar, 2020](#)), but there is still a long way to go.

There is no systematic survey of the trans community, nor is there any attempt by the government to understand micro realities. In the post-trans Rules context, many transgender persons detained by the police under some criminal accusations were groped, inappropriately touched, and stripped naked recently in Hyderabad City. These accused transgender persons then were sent to the male section of the prison, where they experienced dehumanization and the lustful gazes of the male prisoners. The prison system needs a thorough reform and changes from the trans community's perspective. The medical science and biology textbooks for children also require a thorough overhaul. The sex work and begging adopted as livelihoods by many hijras and non-hijra transwomen need specific discussion and policy intervention in consultation with the community.

All these would require the allocation of a substantial budget by the central government. In the absence of budgetary allocations in concrete terms, the promises in the Rules and many other aspirations of the community have remained unfulfilled. During the COVID-19 pandemic, intra-group rivalry and conflicts are intensifying within the community, leading to gruesome violence, murder, and physical assault. This assault is ironic for a period when the allegedly progressive Transgender Rules are in place.

3.9. Discussion

Despite the definitional and epistemic problems, the Supreme Court Verdict of 2014 promises a substantive transformative potential for transgender persons, the most marginalized and stigmatized community in India. While the government is obliged to adhere to the provisions in NALSA by translating the legal text into an Act and ensuring its implementation toward the empowerment of transgender persons, the state has been apathetic and sometimes even antithetical to the community's interests.

The transgender communities, however, have been resilient and firm in opposing the regressive aspects of the various government Bill drafts and the Act of 2019. The persistence of mobilizations, not only through organized protests but also through a fierce critique of governmental interventions, culminated in the acceptance of some of the demands of the community in the Transgender Rules, 2020. It appears that a neoliberal state, while willing to claim to protect the constitutional rights of marginalized groups, finds it hard to fulfill promises that might require the allocation of substantial fiscal and monetary resources.

The demands such as free trans-friendly health services, free SRS surgery, and gender-neutral washrooms would certainly require investment and sustenance of those resources. In the government's estimation, the transgender communities may not constitute a vote bank such as Scheduled Castes, Scheduled Tribes, and the Other Backward Castes, and the democratic decisions of political establishments rely on the numerical voting strength of such a community. Nonetheless, the strategic and persistent collective mobilizations of transgender communities have made the government at least consider some of their demands. The community continues its fights in expectation of further democratization and a better future.

4. Conclusion

The transgender mobilizations in India since 2014 can best be understood through the contradictions between the Supreme Court of India extending substantive rights and entitlements to the trans community and the approach of the ruling government in consistently delaying and truncating those rights. The different draft bills of the government since 2015 have been purportedly aimed at converting NALSA into law but in actuality went against the spirit of the decision. In violation of the fundamental

postulate of self-determination of gender, the most detrimental stipulation was the multiple screenings for certification incorporated within the 2016 draft. Beyond this, the government has been reluctant to consider affirmative actions and many other stipulations of NALSA, such as livelihood entitlements.

The government's reluctance can be understood through a reflection on the modus operandi of the largest neoliberal governance across the globe. The techniques adopted by the state may provide a reconciliation between the extension of civil rights and reductions in welfare and public expenditure, leading to a weakening of socioeconomic entitlements. The consistent collective mobilizations of the transgender communities, however, resulted in some concrete gains and developmental rights. The community has not given up and has been filing petitions in different High Courts for reservations in government jobs and educational institutes. The universalization of a trans-friendly health infrastructure is a bigger challenge ahead on the road to development for the community.

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Author Contribution

Conceptualization and methodological frameworks were developed by Pushpesh Kumar. The same author also carried out collecting and collating the qualitative data and analysis.

Declaration of Conflicting Interest

There is no conflict of interest for this manuscript.

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