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## Bureaucratization of Transgender Rights: Perspective from the Ground

Cover Page Footnote

# BUREAUCRATIZATION OF TRANSGENDER RIGHTS: PERSPECTIVE FROM THE GROUND

—Dipika Jain, Gauri Pillai, Surabhi Shukla and Justin Jos\*

*The Supreme Court directive in National Legal Services Authority v. Union of India brought in a transformative change by granting legal recognition to transgender<sup>1</sup> persons. The Court issued several dicta, aiming to provide rights to transgender people and protect them from discrimination. The case marked a landmark shift in the legal regime, previously often characterized by the constant persecution and denial of rights to transgender persons. Yet, there have been multiple records indicating that the Supreme Court orders have not been adequately implemented by the states in India. To monitor and record the progress in various states, the Centre for Health Law, Ethics and Technology, JGLS initiated the RTI mechanism. Eleven questions, modeled on the Supreme Court directives in the case, were asked to several departments of all states. The responses received have been presented in a tabular form,*

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We would like to thank Aishwarya Singh for assisting us with filing the RTIs. We would also like to acknowledge the contribution of Srishti Mukherjee and Rhea Bagaria in tabulating the RTIs. We would like to thank Elizabeth Carty for her research assistance. We are grateful to the editorial team of Socio-Legal Review for their excellent editorial assistance. We would especially like to acknowledge Dhruva Gandhi and Shubhangi Maheshwari. Our gratitude to CHLET Fellow, Samuya Maheshwari and CHLET Research Assistant, Vandita Khanna for their excellent editorial and research assistance. Further, we are grateful to Dr. C. Raj Kumar and O.P. Jindal Global University for their constant support to CHLET initiatives at JGLS. Finally, we are indebted to transmen, transwomen, intersex, Hijra, gender variant and gender non-conforming friends and activists in India who continue to inspire our work. As cis gender academics and researchers, we remain attentive to our location of privilege.

<sup>1</sup> We have used the term ‘transgender’ in this article mainly because the term ‘transgender’ was used by the Supreme Court in the judgment. We are aware that the term ‘transgender’ is not inclusive and its meaning varies across regions, cultures and nations.

*accompanied by analysis comparing the responses to media reports about measures taken by various states to implement the Supreme Court decision. The uneven implementation of the Supreme Court directives in various states and union territories is telling, and reiterates the gap that exists between a landmark judgment and its implementation on the ground. The responses indicate that though states have taken positive steps in some fields, action remains lacking in others. We further detail the contradictions in the replies presented by a few states, and the difficulties we faced in initiating the RTI mechanism. This information can be utilized by activists and other relevant civil society actors to engage with their respective state departments in advocacy efforts.*

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## I. INTRODUCTION

In *National Legal Services Authority v. Union of India*,<sup>2</sup> ('NALSA') decided on April 15, 2014, the Supreme Court gave legal recognition to the rights of transgender persons. This decision was hailed as a landmark victory for the transgender community. The Court recognized the right to self-determination of gender identity of transgender persons as part of the fundamental right to freedom of speech and expression, the fundamental right to life and personal liberty, and the right to equality and freedom from discrimination.

The Supreme Court recognized the abysmal treatment, stigmatization and abuse of persons belonging to transgender communities in India. Accordingly, it issued wide-ranging directions to the Central and state governments to build legal structures that may enable transgender persons to effectively realize their fundamental rights. Some of these directions include taking steps to treat transgender persons as socially and educationally backward classes of citizens ('SEBC'); establishing and operating sero-surveillance centres; and providing other health care facilities. Further, the Court directed the Central and state governments to address problems of fear, shame, depression and suicidal tendencies faced by such persons, and provide for separate public toilets and other facilities. The Court also mandated that steps be taken to increase public awareness about transgender persons in order to create an inclusive social environment.<sup>3</sup>

<sup>2</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

<sup>3</sup> See paragraph 129 of the judgment for a complete list of directives issued to the Central and state governments.

Governments had been directed to comply with these directions within six months (i.e. by October, 2014). In 2017, four years after the Supreme Court decision, concerns have been voiced about the inadequate implementation of the directives of the Court.<sup>4</sup> While two Bills have been drafted to implement the decision, i.e. 'The Rights of Transgender Persons Bill, 2014', a private member's bill, and 'The Transgender Persons (Protection of Rights) Bill, 2016'; the latter is pending passage in the Parliament. This article will focus on the implementation of the directives by the Central and state governments.

## II. METHODOLOGY

Given that the directives are only about four years old, and the progress made by the state governments towards their implementation is not yet available in the public domain, the Right to Information Act, 2005 ('RTI Act') was chosen as a resourceful and time-efficient tool for accessing this data, as it guarantees access to information from public authorities within a period of thirty days.<sup>5</sup>

Therefore, in order to document the extent of the implementation, or the lack thereof, of the NALSA decision, the Centre for Health Law, Ethics and Technology, Jindal Global Law School initiated the Right to Information ('RTI') process. The Centre submitted RTI applications to different government departments of all states and union territories. Over 300 RTI applications were filed in March 2016 in various departments of all states and union territories. Eleven questions, which correspond to the final directions of the Supreme Court in the NALSA decision with regard to official recognition of identity, self-determination of gender, grant of reservations, access to healthcare, development, and awareness generation, were asked.<sup>6</sup>

The Court had directed the Central and state governments to grant legal recognition to each person's self-determined gender identity. State-issued identity cards, the essential markers of one's identity and indispensable for availing services, are critical for state recognition of gender identity. Given the judgment's emphasis on self-determination, the examination of criteria laid down by states for the issue of such identity cards to transgender persons was critical. Therefore, the first two questions were asked to assess the extent to which the primary directions under NALSA were met, and whether or not medical assessment of a person's gender identity continues to play a role in state recognition of their personhood.

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<sup>4</sup> Briefing Paper: Implementation of the NALSA decision, INTERNATIONAL COMMISSION OF JURISTS, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2016/04/India-QA-NALSA-Advocacy-Analysis-brief-2016-ENG.pdf> (Last visited Sept. 4, 2016); See also Shreya Ila Anaya, Over Two Years after Landmark Judgment, Transgender People are still struggling, THE WIRE (May 15, 2016), <http://thewire.in/35978/over-two-years-after-landmark-judgment-transgender-people-are-still-struggling/>.

<sup>5</sup> Section 7(1), RIGHT TO INFORMATION ACT, 2005 (India).

<sup>6</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para 135.2.

The Court, in its assessment of the discrimination faced by transgender persons, held that affirmative action was necessary to make access to education and employment a reality. The fourth question was thus asked to assess the extent to which state governments have taken measures to implement this direction of the Court.

The judgment had taken special note of the lack of access to health facilities for transgender persons. Responding to the petitioner's averments regarding the lack of special sero-surveillance centres for transgender persons, who are usually put in the category of men who have sex with men ('MSM'), the Court had directed the Central and state governments to operate such centres specially for transgender persons. The fifth question sought to examine the extent of the implementation of this direction. To address the issue of lack of access to healthcare and public sanitation facilities, the Court directed the Central and state governments to provide medical care to transgender people in hospitals. The extent of the implementation of this direction was sought to be gauged through responses received to the sixth and eighth questions.

The Court was cognizant of the linkage between the lack of public awareness about gender fluidity, and the issues of shame experienced by transgender persons. Consequently, it had directed that the Central and state governments undertake public awareness campaigns, and additionally, seriously address issues of fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. faced by transgender persons. The implementation of these directions were sought to be assessed through questions seven, nine, and ten. Since the decision, Welfare Boards have become the chosen vehicle for the implementation of these directions in a few states, including Kerala. The third question was asked to determine whether other states had also set up welfare boards to assist in the implementation of the Court's directions.

Further, the Court had asked the government to implement the findings of the Expert Committee, which was constituted to study the problems faced by the transgender community, within six months. However, the Committee had not released its findings by the time the judgment was pronounced. Finally, question eleven was asked to monitor the functioning of the Committee.

The text of the questions sent to various state departments is stated below:

1. Whether identity cards have been rolled out, recognizing transgender people?
2. What are the criteria to have an identity card under third gender? Is a medical certificate required?
3. Whether welfare boards have been set up for socio-economic upliftment of the transgender community?
4. Whether steps have been taken to treat the transgender community as a socially and educationally backward class for the purpose of enforcing the constitutional mandate of reservation?

5. Whether HIV sero-surveillance centres have been set up to monitor health issues?
6. Whether basic public health facilities and hospitals have been provided to supplement healthcare afforded to transgender people?
7. Whether social welfare and public awareness schemes have been undertaken for the betterment of transgender people?
8. Whether facilities like separate public toilets, separate wards in public hospitals and prisons have been initiated?
9. What measures have been taken to address issues of shame, fear, suicide, and depression faced by the transgender people?
10. What measures have been taken to raise awareness about transgender people?
11. Whether the Expert Committee constituted to study the problems faced by transgender people has submitted a report entailing recommendations to resolve the problems?

The questions were primarily formulated to understand the extent of implementation of the directions of the Supreme Court by states and union territories in India. The term 'transgender' was used primarily because of usage of the same term by the Supreme Court in the judgment. It is also important given that most of the HIV/AIDS funding in India is currently allotted to the 'transgender population.' Therefore, this term would most likely cover any state scheme for gender non-conforming persons. However, the term 'third gender' was used in the second question because of its use by the Supreme Court in reference to legal recognition of gender identity. In particular, paragraph 135.2 of the judgment reads:

(2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

This article seeks to present an analysis of the responses received to the questions stated above, in order to assess the extent of implementation of the directives of the Supreme Court in NALSA.

### III. ANALYSIS OF RESPONSES RECEIVED

While the Centre received responses from 29 states and union territories, not all of the respondents answered all of the questions; thus, the number of questions answered by each body varied. The Centre received responses until April, 2017. Certain states like West Bengal, Andhra Pradesh, Telangana, and

Chandigarh answered all questions, while other states like Jharkhand provided answers to only one question. A few states, such as Arunachal Pradesh, Uttar Pradesh, and Rajasthan, transferred the RTI applications from one department to another.

States such as Tamil Nadu, Jammu and Kashmir, and Gujarat rejected the RTI applications on technical grounds as stated in the tables below, while other states like Mizoram and Madhya Pradesh rejected the applications stating that there is no transgender ‘population’ in these states and thus, no projects are run for transgender persons. The Ministry of Social Justice and Empowerment merely reiterated the recommendations provided by the Expert Committee in their report, without providing specific answers regarding the implementation of these recommendations as well as that of the directives of the Supreme Court in NALSA. The information collected is presented in a tabular format in Table 1.

**Table No. 1**

**A. Bihar**

<b>Question Number Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
SW	No	No	Yes	Yes	UA	NR	Yes	Yes	MT	MT	Yes	10
BSACS	NP	NP	No	NR	No	NR	Yes	NR	No	MT	No	6

**B. Assam**

<b>Question Number Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
ASACS	No	No	NA	NA	Yes	No	No	NA	MT	MT	NA	7

**C. West Bengal**

<b>Question Number Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
SRCW	No	No	Yes	UP	Yes	NP	UP	UP	UP	MT	Yes	11

**D. Chandigarh**

<b>Question Number Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
CPIO/ Chief Electoral Officer.	Yes	No	X	X	X	X	X	X	X	X	X	2
CSACS	NA	NA	NA	NA	Yes	NA	Yes	NA	MT	NA	NA	3
SW	X	X	No	No	X	Yes	UA	X	MNT	MT	Yes	8

**E. Goa**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
GSACS	No	IA	IA	No	Yes	Yes	No	IA	MT	MT	IA	8

**F. Dadra and Nagar Haveli**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
SW	X	X	X	X	X	X	NIL	X	X	X	X	0
Directorate of Medical and Health Services, Shri Vinoba Bhave Civil Hospital	No	No	No	NR	Yes	Yes	NA	No	NA	NA	NA	6
SDPO	No	Nil	Nil	Nil	Nil	No	Nil	Nil	Nil	Nil	Nil	2

**G. Delhi**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
Chief Electoral Officer	Yes	Yes	X	X	X	X	X	X	X	X	X	2
SJ & E	UP	UP	No	UP	X	X	Yes	X	UP	UP	Yes	8
DSACS	X	X	X	X	Yes	Yes	Yes	X	X	X	X	3

**H. Nagaland**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
NSACS	No	MNT	No	No	No	No	No	No	MT	MT	No	11

**I. Pondicherry**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
PACS	X	X	X	X	Yes	Yes	Yes	X	X	X	X	3
Dept. of Women and Child Development	NA	NA	NA	NA	NA	NA	monthly pension after completion of 21 years of age	NA	NA	NA	NA	1

**J. Himachal Pradesh**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
State AIDS Control Society	IA	IA	IA	IA	IA	Priority treatment.	IA	IA	Priority treatment.	Priority treatment.	X	3

**K. Uttar Pradesh**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
UPSACS	No	No	NA	NA	No	UA	No	No	MT	MT	NA	5

**L. Tripura**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
SW	UA	IA	No	UP	No need	Yes	Yes	No need	Does not arise	MT	IA	8
Tripura State AIDS control Society	X	X	X	X	Yes	X	X	X	X	X	X	1

**M. Kerala**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
SPIO, Social Justice	No	No	No	Yes	Yes	X	Yes	X	MT	MT	UA	8

**N. Maharashtra**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
Women and Child Development Commissionerate	X	X	UP	X	UP	Yes.	Yes.	No	X	X	X	5

**O. Orissa**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
OSACS	NR	NR	NR	NR	Yes	NR	NR	NR	NR	NR	NR	1

**P. Manipur**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
Manipur State AIDS Control Society	NA	NA	NA	NA	Yes	NA	NA	NA	NA	NA	NA	1

**Q. Haryana**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
	X	X	X	X	Yes.	X	X	X	X	X	X	1

**R. Meghalaya**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
Meghalaya AIDS Control Society	Nil	Nil	Nil	Nil	Nil	Nil	Nil	No.	Nil	Nil	Nil	1
Office of director of health Services, Shillong	X	X	X	X	Yes	Yes	X	No	X	X	X	3

**S. Daman and Diu**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
PIO	UP	UP	UP	UP	Yes	UP	UP	UP	UP	UP	UP	11
State AIDS Control Society	UA	NP	NP	NP	UA	Yes	NP	NP	NP	NP	UA	1

**T. Uttarakhand**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
USACS	IA	IA	IA	IA	Yes	IA	IA	IA	IA	IA	IA	1

**U. Sikkim**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
Social Justice, Empowerment & Welfare	No.	Yes	No	Yes	No	No	Yes	No	No	MT	No	11

**V. Telangana**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
TSACS	NA	No	NA	NR	Yes	UA	Yes	NR	MT	MT	No	6

**W. Andhra Pradesh**

<b>Question Number</b> <b>Department</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q.</b> <b>Answered</b>
APSACS	NA	No	NA	NR	Yes	UA	Yes	NR	MT	MT	No	6



**AC. Gujarat**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
Gujarat State AIDS Control Society	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	0

**AD. Chhattisgarh**

<b>Question Number</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>No. of Q. Answered</b>
<b>Department</b>												
Dept. of Social Welfare	Yes.	Yes	Yes	Yes	D	D	UP	D	UP	MT	Yes	8

<b>Nature of response</b>	<b>Total number of responses received</b>											
	<b>Q. 1</b>	<b>Q. 2</b>	<b>Q. 3</b>	<b>Q. 4</b>	<b>Q. 5</b>	<b>Q. 6</b>	<b>Q. 7</b>	<b>Q. 8</b>	<b>Q. 9</b>	<b>Q. 10</b>	<b>Q. 11</b>	
Yes	3	3	3	4	19	9	12	2	-	-	5	
No	13	11	10	5	6	7	7	10	4	1	7	
Measures Taken (MT)	-	-	-	-	-	-	-	-	9	14	-	
Measures Not Taken (MNT)	-	1	-	-	-	-	-		1	-	-	
Not provided for by this department (NP)	1	2	1	1	-	1	1	1	1	1	-	
Not related to this department (NR)	3	3	4	7	2	5	3	6	3	3	4	
Unsatisfactory/ Unrelated Answer (UA)	4	-	-	-	2	3	1	-	-	1	2	
No response (X)	12	14	14	15	11	13	11	15	16	15	16	
Under Process (UP)	2	2	2	4	1	1	3	2	4	2	1	
Not applicable (NA)	5	5	8	7	1	4	3	5	4	5	7	
Contact another department for information (D)	-	-	-		1	1	-	1	-	-	-	
Information not available with this department (IA)	2	4	3	2	1	1	2	3	1	1	3	
NIL (This indicates that states have replied with 'Nil'. For instance, Meghalaya stated that "I am to inform you that the department of social welfare has not taken up any issue/ welfare related to transgender and information required is not available/not known to the department and may be treated as nil.")	1	2	2	2	2	1	3	1	2	2	2	
Other	1	-	-	-	1	1	1	1	2	2	-	

<b>S. No.</b>	<b>Abbreviation for Department</b>	<b>Name of the Department</b>
	JSACS	Jharkhand State AIDS Control Society
	CPIO	Central Public Information Officer
	BSACS	Bihar State AIDS Control Society
	ASACS	Assam State AIDS Control Society
	SRCW	State Resources Centre for Women
	CSACS	Chandigarh State AIDS Control Society
	SPIO	State Public Information Officer
	GSACS	Goa State AIDS Control Society
	UPSACS	Uttar Pradesh State AIDS Control Society
	SDPO	Sub Divisional Police Officer
	DSACS	Delhi State AIDS Control Society
	PACS	Pondicherry AIDS Control Society
	APSACS	Andhra Pradesh State AIDS Control Society
	NSACS	Nagaland State AIDS Control Society
	OSACA	Orissa State AIDS Control Society
	USACS	Uttarakhand State AIDS Control Society

<b>S. No.</b>	<b>States where the application has been transferred (with no reply)</b>	<b>States where the application has been rejected</b>
	Rajasthan	Jammu and Kashmir
	Arunachal Pradesh	Tamil Nadu
	Uttar Pradesh	Madhya Pradesh
	Andaman & Nicobar Islands	



16 states and union territories replied to question one. Of the 16 states, only Chhattisgarh has issued identity cards recognizing transgender people as the 'third sex' and set up a committee for that purpose. Other states have provided for limited recognition of transgender individuals as the 'third gender' in different documents, such as certificates of recognition, electoral and peer educator cards. With respect to electoral identity, Delhi and Chandigarh have enrolled transgender electors as the 'third gender', and Delhi has issued Electors Photo Identity Cards. None of the state governments seem to have issued any state-specific identity cards (for example, driver's licenses) for transgender people.

Assam, under its targeted intervention scheme, provides employment to transgender persons as Peer Educators (PE). In this regard, transgender persons have been issued identity cards as PE in Assam. Further, screening committees have been established for the issuance of certificates to transgender persons.

Delhi has set up a District Level Screening Committee, which is responsible for issuing certificates of recognition to transgender persons. The Office of the Sub-Divisional Magistrate in Delhi stated, though not in response to a specific question, that the Department of Social Welfare of Delhi on May 24, 2015 constituted a District Level Screening Committee to address issues of the transgender community; although, as of March, 2018, the Committee has not yet started its work. The Office of the Sub-Divisional Magistrate also noted that on August 24, 2015, vide order F 41(182)/DSW/FAS/TGP-DLSC/2015-16/4091-4125, the Department of Social Welfare set out the composition of the Committee to consist of the Collector/ District Magistrate as the Chairperson, the District Social Welfare Officer, a psychiatrist, a psychologist, a social worker of an NGO working in the field, two representatives of the transgender community, and any other person deemed appropriate by the state. The order also set out the functions of the Committee as, "Issue certificate of being transgender person, extend support to departments and monitor implementation of the different schemes for transgender persons, approve awareness programmes of different departments about these schemes, take decision on new initiatives taken by the departments and act as Appellate Authority for grievances received pertaining to these schemes."

West Bengal and Daman and Diu stated that the mechanisms for legal recognition of transgender persons are in process, with Daman and Diu planning to establish a screening committee for issuance of certificates to transgender persons. West Bengal, however, did not specify any details of the mode of recognition. Another response also suggested limited progress; while Sikkim has not issued identity cards, it has framed rules for providing payment of 'grants' to transgender persons.<sup>7</sup>

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<sup>7</sup> Notification No. 5/SJE & WD, dated 27/8/2013 (Social Justice, Empowerment and Welfare Department, Government of Sikkim), available at <https://www.sikkim.gov.in/stateportal/Link/467-588.pdf> (Last visited on Feb. 24, 2018).

In contrast, several responses suggested a clear disregard for the Supreme Court's directives. Jharkhand merely stated that transgender persons are "kept in others as gender", without providing any further clarification. Mizoram replied that transgender persons have not been recognized in the 'public/private' league, and no special care facilities have been set up for such individuals. However, it emphasized that there is no discrimination, against any gender, in the state. Tripura remarked that the Central government would issue identity cards to the third gender, while Meghalaya, Nagaland, Uttar Pradesh, Kerala, Goa and Dadra and Nagar Haveli stated that no identity cards have been issued.

On March 4, 2016, Hindustan Times reported that the recent West Bengal elections marked the first instance where transgender voters were allowed to vote as members of the third gender.<sup>8</sup> However, other reports argue that merely allowing them to vote as the third gender is ineffectual. As reported by the Times of India on April 1, 2016, many members of the community were previously coerced into registering as male or female voters.<sup>9</sup> These members were not given an opportunity, post-NALSA, to change their gender on their voter identification cards, and therefore, could not exercise their right to vote as the third gender. As a consequence, only 513 voters in West Bengal were registered under the category of the third gender, even though there are approximately five lakh transgender voters in West Bengal.<sup>10</sup> On July 21, 2014 in Maharashtra, the Times of India reported that the Election Commission refused to replace the term 'other' with 'third gender' on electoral rolls, despite the Supreme Court's ruling in NALSA.<sup>11</sup>

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<sup>8</sup> Bibhas Bhattacharyya, Transgenders will vote as the third sex in Bengal polls, HINDUSTAN TIMES (Mar. 4, 2016), <http://www.hindustantimes.com/assembly-elections/transgenders-will-vote-as-the-third-sex-in-bengal-polls/story-YaULqBxo5MssEwsHb4LZLO.html>; Neeti Vijaykumar, Responsible Citizens: Transgenders Register to Vote as 'Third Gender' in Upcoming WB Elections, THE BETTER INDIA (Mar. 15, 2016), <http://www.thebetterindia.com/49208/transgenders-vote-wb-elections/>.

<sup>9</sup> Third gender yet to get proper representation in voters' list, THE TIMES OF INDIA (Apr. 1, 2016), <http://timesofindia.indiatimes.com/city/kolkata/Third-gender-yet-to-get-proper-representation-in-voters-list/articleshow/51645805.cms>.

<sup>10</sup> Transgenders feel rejected as voters list reduces them to 513, ABP NEWS (Apr. 18, 2014), <http://www.abplive.in/india-news/transgenders-feel-rejected-as-voters-list-reduces-them-to-513-22278>.

<sup>11</sup> Clara Lewis, EC rejects demand for 'transgender' on voter ID, THE TIMES OF INDIA (July 21, 2014), <http://timesofindia.indiatimes.com/india/EC-rejects-demand-for-transgender-on-voter-ID/articleshow/38772144.cms>.



17 states and union territories replied to question two. However, only Chhattisgarh and Sikkim indicated the criteria for obtaining a transgender identity card.

Sikkim has issued transgender certificates and medical certificates to transgender persons.<sup>12</sup> In Chhattisgarh, medical certificates are required to obtain a third gender identity card. This is in contravention of the ruling of the court in NALSA.<sup>13</sup>

Assam, in contrast, does not require a medical certificate as a precondition for a PE card under its targeted intervention program. Similarly, Chandigarh and Delhi do not mandate a medical certificate for enrollment as electors in the third gender category. Andhra Pradesh and Telangana did not directly answer the question. However, they stated that a medical certificate is not required for availing healthcare services under the State AIDS Control Organization. Bihar clarified that the identity card would be available upon the 'satisfaction' of the Committee, though no information on the constitution of the Committee was provided. While the criteria in West Bengal have not yet been specified, Daman and Diu has divested this responsibility to the screening committee, which is yet to be set up.

Dadra and Nagar Haveli, Uttar Pradesh, Kerala, Jharkhand, and Meghalaya have no criteria for the issuance of third gender identity cards. Nagaland stated that there is no transgender project in the state. The Social Welfare Department of Tripura stated that identity cards for transgender persons will be rolled out by the Government of India, while the Chief Medical Officer at Sepahilaja stated that no identity cards have been provided till date.

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<sup>12</sup> A copy of the medical certificate issued can be accessed at <https://www.sikkim.gov.in/stateportal/Link/467-588.pdf>.

<sup>13</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para 135.2.

### Question 3: Constitution of Welfare Boards

Bihar	Assam	West Bengal	Chandigarh	Goa	Dadra and Nagar Haveli	Delhi	Nagaland
SW	BSACS		CEO	CSACS	SW		
Yes	No	Yes	X	NA	No	X	No
Pondicherry	NA	Uttar Pradesh	Tripura	IA	Orissa	Nil	X
	Himachal Pradesh		Maha-rashtra	Kerala	Manipur	Haryana	Daman and Diu
			SW	TSACS		MACS	PID
PACS						DHS	SACS
X	IA	NA	No	X	NA	Nil	UP
Sikkim	Andhra Pradesh	Jharkhand	JSACS	HD	Laksha-dweep	Mizoram	Gujarat
	Telangana	AJTNP	SP	KSAPS	SW	SPIO	SACS
No	NA	No	X	X	NR	No	NR
						X	X
							Yes

14 states and union territories replied to question three. However, only two states, West Bengal and Chhattisgarh, have set up a Transgender Welfare Board. The establishment of the board is reportedly in progress in Maharashtra and Daman and Diu.

According to a report dated December 25, 2015 in the Hindustan Times, West Bengal is the first state in India to set up a 'Transgender Development Board',<sup>14</sup> as opposed to a 'welfare board'.<sup>15</sup> The difference in terminology is informed by the need to adopt empowering measures that enable transgender persons to access various opportunities, instead of rolling out benefits that are often seen as 'charity'.<sup>16</sup> The state cabinet will appoint the chairperson of the Board and it will have representatives from various transgender communities in the state. The mandate of the Board is to secure identity cards for transgender people, monitor health and education opportunities, and ensure the overall development of transgender people.<sup>17</sup>

Chhattisgarh, in its response, stated that the Board will focus on housing, education, employment and health of the transgender community. In addition, Kerala stated that the establishment of a Welfare Board was under consideration. On November 14, 2015, Livelaw reported that the 'State Policy for Transgenders in Kerala, 2015' provides for the establishment of State and District Welfare Boards.<sup>18</sup> The Policy, as per a report in Hindustan Times dated January 11, 2016, also envisages the setting up of a justice board to hear transgender issues exclusively.<sup>19</sup>

In the RTI responses, Maharashtra and Daman and Diu stated that the establishment of Transgender Welfare Boards is in process, and Maharashtra has passed a state government resolution to this effect. However, both The Hindu and Asian Age have reported that while the Board was formally constituted in

<sup>14</sup> Social Inclusion: Bengal Government rains sops on transgenders, HINDUSTAN TIMES (Dec. 25, 2015), <http://www.hindustantimes.com/kolkata/social-inclusion-mamata-s-bengal-govt-rains-sops-on-transgenders/story-OzDLHS60pF5QL52o1owcDJ.html>.

<sup>15</sup> Bengal Govt. announces Transgender Development Board, THE INDIAN EXPRESS (Mar. 19, 2015), <http://indianexpress.com/article/cities/kolkata/bengal-govt-announces-transgender-development-board/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> GOVERNMENT OF KERALA, STATE POLICY FOR TRANSGENDERS IN KERALA, 2015, <https://kerala.gov.in/documents/10180/46696/State%20Policy%20for%20Transgenders%20in%20Kerala%202015> (Last visited on Jan 15, 2018); Apoorva Mandhani, Transgender Welfare Boards, 24x7 helpline, monthly pension, self employment grants: Kerala Govt. releases historic transgender policy, LIVE LAW (Nov. 14, 2015), <http://www.livelaw.in/transgender-welfare-boards-24x7-helpline-monthly-pension-self-employment-grants-kerala-govt-releases-historic-transgender-policy/>.

<sup>19</sup> Ramesh Babu, In a first, Kerala to set up justice board for welfare of transgenders, HINDUSTAN TIMES (Jan. 11, 2016), <http://www.hindustantimes.com/india/in-a-1st-kerala-to-set-up-justice-board-for-welfare-of-transgenders/story-7TL6m8nKcH4glrw3MN3xCP.html>.

Maharashtra in 2014,<sup>20</sup> through the government resolution, it is yet to commence functioning.<sup>21</sup> A Welfare Board has been set up in the state of Bihar through state legislation. However, reports in DNA India and Times of India indicate that no such board has been set up yet; it has only been announced.<sup>22</sup> These reports do not mention the passage of a state legislation for this purpose.

Further responses indicated that no Welfare Boards have been set up in Chandigarh, Dadra and Nagar Haveli, Tripura, Meghalaya, Delhi, Bihar, Nagaland, Jharkhand and Sikkim. However, recent media reports specify that a Welfare Board has been set up in Chandigarh.<sup>23</sup> The Board aims to grant recognition to “their gender identity, such as male, female or third gender (hijras, eunuchs, binary gender)” to ensure access to rights; take steps to treat transgender people as SEBCs for reservation in admission to educational institutions and public appointments; establish and conduct HIV sero-surveillance centres; address issues such as shame, fear, gender dysphoria, social pressure, depression, suicidal tendencies, and social stigma often faced by transgender people; take steps towards providing medical facilities for transgender people and building separate public toilets; institute social welfare schemes for the benefit of transgender people; and provide scholarship/entitlement, fee-waiver, free textbooks, free hostel accommodation, and other facilities at subsidized rates to students belonging to the transgender community.<sup>24</sup>

<sup>20</sup> Meena Menon, Maharashtra forms board for transgender welfare, *THE HINDU* (Aug. 28, 2014), <http://www.thehindu.com/news/national/national-policy-on-transgenders-still-awaited/article6360734.ece>; Dhawal Kulkarni, Welfare board for transgenders in Maharashtra, *DNA INDIA* (Aug. 29, 2014), <http://www.dnaindia.com/mumbai/report-welfare-board-for-transgenders-in-maharashtra-2014559>.

<sup>21</sup> Mehul R. Thakkar, Transgender welfare board, approved a year ago, remains on paper, *THE ASIAN AGE* (Dec. 27, 2015), <http://www.asianage.com/mumbai/transgender-welfare-board-approved-year-ago-remains-paper-465>.

<sup>22</sup> To help transgenders claim equality, Bihar announces welfare board for community, *DNA INDIA* (Mar. 31, 2016), <http://www.dnaindia.com/locality/patna-sahib/help-transgenders-claim-equality-bihar-announces-welfare-board-community-89315>; Madan Kumar, Bihar to consider financial assistance to transgenders for sex change by medical intervention, *THE TIMES OF INDIA* (Mar. 30, 2016), <http://timesofindia.indiatimes.com/city/patna/Bihar-to-consider-financial-assistance-to-transgenders-for-sex-change-by-medical-intervention/articleshow/51619943.cms>.

<sup>23</sup> Himani Bahuguna, Chandigarh gets its first Transgender Welfare Board with 14 members, *THE INDIAN EXPRESS* (Aug. 30, 2017), <http://indianexpress.com/article/india/chandigarh-gets-its-first-transgender-welfare-board-with-14-members-4820148/>. (“The Board, which is chaired by the additional deputy commissioner, comprises members from police department, social welfare department, law department, GMCH-32, health services, state liaison officer (education department), Registrar, Panjab University, Registrar, Birth and Death Department, SCBC Corporation, programme manager, Union Territory Child Protection Society (UTCPS), and two non-official members.”).

<sup>24</sup> Siddarth Banerjee, Chandigarh becomes 1st UT to have transgender board, *THE TIMES OF INDIA* (Aug. 29, 2017), <http://timesofindia.indiatimes.com/city/chandigarh/chandigarh-becomes-1st-ut-to-have-transgender-board/articleshow/60278866.cms>.

Question 4: Recognition of Transgender Persons as OBCs

Bihar	Assam	West Bengal	Chandigarh	Goa	Dadra and Nagar Haveli	Delhi	Nagaland
SW	BSACS		CEO	CSACS	SW		
Yes	NR	UP	X	NA	No	X	No
Pondicherry	NA	Uttar Pradesh	Tripura	Kerala	Maha-rashtra	Orissa	Uttarakhand
	Himachal Pradesh		SW	TSACS	Manipur	Haryana	Daman and Diu
					DMHS	SDPO	DSACS
					SW	CEO	S&E
						MACS	DHS
							PIO
							SACS
PACS	WCD						
X	NA	NA	UP	X	NR	Nil	IA
Sikkim	Telangana	Jharkhand		Yes	Laksha-dweep	X	Gujarat
	Andhra Pradesh		JSACS	Karnataka	Punjab	Mizoram	Chhattisgarh
		AJTNP	HD	KSAPS		SW	SACS
Yes	NR	No	X	NA	No	SPIO	Yes
			X	X	NR	X	NR
				X			

Of the 14 states and union territories that replied to question four, only one state, i.e. Bihar, has taken measures to implement the Supreme Court directive declaring all transgender persons as members of the SEBC. However, the response from Bihar does not indicate the nature of measures taken in this regard. On September 14, 2014, Business Standard reported that Bihar has included transgender people within the Other Backward Classes category.<sup>25</sup> In either case, the transgender community is guaranteed a separate quota of reservation for government jobs.<sup>26</sup>

Steps for implementation of SEBC are under process in West Bengal and Tripura. Kerala stated that the state government has approved a State Transgender Policy for the welfare of transgender persons. The Social Welfare Department of Daman and Diu replied stating that though all steps would be taken to treat transgender persons as SEBC, reservation of seats for transgender persons in higher education would be difficult. However, the State AIDS Control Organization stated that the Government of India guidelines would be followed with respect to SEBC status.

Jharkhand stated that “such incidents” have not happened. Sikkim furnished information regarding a scheme that provides financial assistance to children of transgender persons,<sup>27</sup> while Chandigarh, Dadra and Nagar Haveli, Nagaland, Lakshadweep and Meghalaya replied stating that no measures have been taken to provide transgender persons with the benefit of their SEBC status.

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<sup>25</sup> Quota will help fulfill dreams: Bihar's transgenders, BUSINESS STANDARD (Sept. 14, 2014), [http://www.business-standard.com/article/news-ians/quota-will-help-fulfill-dreams-bihar-s-transgenders-114091400192\\_1.html](http://www.business-standard.com/article/news-ians/quota-will-help-fulfill-dreams-bihar-s-transgenders-114091400192_1.html).

<sup>26</sup> *Id.*

<sup>27</sup> Mention of such scheme can be found at: Chief Minister of Sikkim, Message on the Occasion of the 70<sup>th</sup> Independence Day (Aug. 15, 2016), <https://www.sikkim.gov.in/stateportal/NotificationsAndAlerts/HCM's%20Independence%20Day%20MESSAGE%202016.pdf>.



Of the 26 states and union territories that responded to question five, four states, i.e. Goa, Karnataka, Tripura and Pondicherry, replied stating that they have a separate sero-surveillance centre for transgender persons.

Two contradictory replies were received from Tripura; therefore, the status of Tripura is unclear. While the Tripura State AIDS Control Society said “yes”, they have set up separate sero-surveillance centres, the Social Welfare Department of Tripura said, “no need”. Similarly, while the ‘Draft State Policy for Transgenders in Karnataka, 2014’ states that separate HIV sero-surveillance centres would be set up for transgender persons,<sup>28</sup> the policy continues to remain in its drafting stage.

Nine other states and two union territories, West Bengal, Kerala, Manipur, Haryana, Meghalaya, Andhra Pradesh, Uttarakhand, Jharkhand, Telangana, Chandigarh, Dadra and Nagar Haveli, have HIV sero-surveillance centres in place through the establishment of Integrated Counseling and Testing Centres (‘ICTCs’).

A few states in fact have several ICTCs in place – for instance, Manipur has 54 ICTCs, Haryana has 16, and Chandigarh has both stand-alone and mobile ICTCs. Jharkhand also provided a list of sero-surveillance centres. However, from the responses provided by these states, it is not clear whether the ICTCs were established particularly to deal with HIV surveillance among transgender persons, post the Supreme Court dictum in *NALSA*, or whether they deal with other high risk groups as well. Kerala has, as reported by *Governance Today* on April 4, 2016, specified that separate ICTCs have not been set up for transgender persons alone since that would lead to stigma.<sup>29</sup> Meghalaya has noted that HIV sero-surveillance centres monitor health of all patients, indicating that they are not restricted to transgender persons alone. Similarly, Uttarakhand stated that ICTCs are established in government facilities and that anti retro-viral treatment (‘ART’) centres are being established in Dehradun, Haldwani and Pithoragarh “irrespective of sex.” Therefore, three states have clarified that their ICTCs are not separately run for transgender persons.

RTI responses reflect that despite being silent on the question of the presence of ICTCs, Delhi, Orissa and Maharashtra have included transgender persons in the Integrated Biological and Behavioural Survey (IBBS) by National AIDS Control Organization (‘NACO’), which provides reference to HIV

<sup>28</sup> GOVERNMENT OF KARNATAKA, DRAFT STATE POLICY FOR TRANSGENDERS IN KARNATAKA, 2014, <http://www.karnataka.gov.in/spb/Reports/draft%20State%20Policy%20forTransgenders.pdf> (Last visited on Jan. 15, 2018).

<sup>29</sup> Lekshmi Parmeswaran, *Defying the stereotypes*, *GOVERNANCE TODAY* (Apr. 4, 2016), <http://www.governancetoday.co.in/defying-the-stereotypes/>; GOVERNMENT OF KERALA, STATE POLICY FOR TRANSGENDERS IN KERALA, 2015, <https://kerala.gov.in/documents/10180/46696/State%20Policy%20for%20Transgenders%20in%20Kerala%202015> (Last visited on Jan. 15, 2018).

sero-surveillance sites. Although the Social Welfare Department of Delhi has constituted a District Level Screening Committee for transgender persons,<sup>30</sup> the establishment of separate sero-surveillance centres is not on the stated agenda of this Committee. Bihar, Nagaland, Lakshadweep, Uttar Pradesh and Sikkim stated that they have not set up sero-surveillance centres.

While the Department of Health and Family Welfare, Dadra and Nagar Haveli stated that HIV sero-surveillance and provision of basic health facilities for transgender persons have been undertaken in the union territory, the Police Department expressed that no such schemes were in operation. The Department of Health and the State AIDS Control Society, Tripura stated that sero-surveillance centres have been set up in the state, in contrast to the reply by the Social Welfare Department of Tripura, which stated that there was “no need” for the same.

Further, though not in response to a specific question, the Assam State AIDS Control Society provided information regarding the HIV/AIDS prevention program in place for transgender persons. Acknowledging that transgender persons form a high-risk group, due to the “high number of concurrent sexual partners” and “high rates of partner change”, the Assam State AIDS Control Society has targeted interventions in place to control the HIV pandemic. In fact, the Society identified the problem as: “Members of the TG population who have many male partners are also at high risk since many of them engage in anal sex because many men who have sex with high risk MSM and transgender individuals also have other partners, both male and female.” Programs have been instituted in Assam to address such vulnerabilities and reduce the risk of transmission through proper intervention. The 54 targeted intervention programs, they stated, cover up to 240 transgender persons. The programs focus on quality of interventions by involving community members as counselors, thereby “creating an enabling environment” and “reducing stigma amongst stakeholders”.

Similarly, the Orissa AIDS Control Society stated that the National AIDS Control Organization has listed transgender persons as a high-risk group under the National Aids Control Programme (‘NACP’). Accordingly, Orissa was assigned the task to implement the targeted intervention program for the “hijra/transgender population in the state” during financial year 2014. In response to this, a targeted intervention program has been initiated for 250 members of the “hijra/transgender population” to provide services under six components: behavioural change communication, enabling environment, sexually transmitted infection (‘STI’) treatment, referral and linkages, condom promotion, and community mobilization.

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<sup>30</sup> As per Government of Delhi notification dated August 24, 2015, a Screening Committee has been constituted in every district in Delhi. (available at <http://delhi.gov.in/wps/wcm/connect/69e8888049c7ccf185beed124fa22605/scan0011.pdf?MOD=AJPERES&lmod=-1346758143>).

Question 6: Availability of Healthcare

Bihar	Assam	West Bengal	Chandigarh	Goa	Dadra and Nagar Haveli	Delhi	Nagaland
SW	BSACS		CEO	CSACS	SW		
NR	No	NP	X	Yes	X	Yes	No
Pondicherry	Himachal Pradesh	Uttar Pradesh	Tripura	Kerala	Orissa	Meghalaya	Daman and Diu
			SW	Maharashtra	DMHS	MACS	Uttarakhand
			TSACS		SW	SDPO	PIO
					DMHS	SI&E	SACS
PACS						CEO	DSACS
Yes	Priority Treatment	UA	Yes	X	NR	Nil	UP
Sikkim	Andhra Pradesh	Jharkhand		Karnataka	Lakshadweep		Gujarat
			JSACS	KSAPS	DCE	SPIO	Chhattisgarh
No	UA	ATNP	X	NA	X	SACS	
		No	No	X	NR	X	NR
							D

Of the 16 states and union territories that replied to question six, 15 states, including Assam, Goa, Delhi,<sup>31</sup> Himachal Pradesh,<sup>32</sup> Uttar Pradesh, Kerala, Meghalaya, Andhra Pradesh, Telangana, Chandigarh, Tripura (with the exception of West Tripura district), Pondicherry, Dadra and Nagar Haveli, and Daman and Diu, provide health care facilities to transgender persons within the existing health care machinery of the respective states, and have specified that their hospitals provide health care to all persons (irrespective of gender).

The Chandigarh government has sanctioned Rs. 125 crore for “pre-natal and peri-natal screening in which all pregnant women and new born will be subjected to special tests regarding detection of disease/ chromosomal abnormalities pertaining to transgenders. For the transgender having ambiguous genitalia, and further detected with any hormonal changes, the acceptance at various levels, schools and colleges, psychotherapeutic treatment may be taken by the mental health program.”

This apparently benign but misconceived program once again relegates the status of being intersex and transgender to a “disease/chromosomal abnormality” that may be corrected through therapeutic treatment. Additionally, the program effectively negates the Supreme Court ruling in *NALSA*, which explicitly recognized that being transgender is not a mental disease but a “benign normal variant of the human experience akin to left-handedness”.<sup>33</sup>

Delhi provides services such as HIV testing, STI medicine, blood testing, ultra-sonography, ART medicine to treat HIV and directly observed treatment, and short course (‘TB-DOT’), a tuberculosis treatment strategy, free of cost to transgender persons. Himachal Pradesh has mandated that all transgender persons be treated on priority basis while maintaining their dignity. While Maharashtra provides for a specialist at government hospitals, Tripura and Dadra and Nagar Haveli have stated that basic health facilities are provided to transgender persons, without specifying the nature of such facilities. On the other hand, Sikkim, Jharkhand and Nagaland replied admitting that such facilities do not exist for transgender persons.

No state mentioned the provision of facilities for sex reassignment surgeries for transgender persons. According to a Hindustan Times report dated December 25, 2015, West Bengal has introduced provisions for sex reassignment surgeries in government hospitals.<sup>34</sup> Similarly, on September 4, 2015, the Press Trust of India

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<sup>31</sup> HIV testing, STI medicine, blood testing, ultrasonography, ART medicine and DOT treatment is provided free of cost.

<sup>32</sup> Himachal Pradesh has mandated that all transgender persons be treated on priority basis while maintaining their dignity.

<sup>33</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para 118.

<sup>34</sup> Social inclusion: Bengal govt rains sops on transgenders, HINDUSTAN TIMES (Dec. 25, 2015), <http://www.hindustantimes.com/kolkata/social-inclusion-mamata-s-bengal-govt-rains-sops-on-transgenders/story-OzDLHS60pF5QL52oIowcDJ.html>.

reported that facilities for sex reassignment surgeries were to be introduced in Chhattisgarh as well, and that government officials have visited hospitals in Tamil Nadu to attempt to emulate a similar system in Chhattisgarh.<sup>35</sup> While the Social Welfare Department, Tripura, stated that basic public health facilities and hospitals have been provided to supplement healthcare afforded to transgender persons, the State AIDS Control Society replied that no separate arrangement has been provided for transgender individuals.<sup>36</sup>

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<sup>35</sup> Chhattisgarh to soon have SRS facility for transgenders, *THE HINDU* (Sept. 4, 2015), <http://www.thehindu.com/news/national/other-states/chhattisgarh-to-soon-have-srs-facility-for-transgenders/article7613486.ece>; Annie Philip, For the cause of a transgender clinic, *THE HINDU* (June 8, 2015), <http://www.thehindu.com/news/cities/puducherry/for-the-cause-of-a-transgender-clinic/article7293640.ece>.

<sup>36</sup> The reply received from the State AIDS Control Society, Tripura reads: “No separate arrangement has been provided. Health care facilities to TGs in health institutions under west Tripura district.”



Of the 21 states and union territories that replied to question seven, six states/union territories stated that social welfare and public awareness measures for the betterment of transgender persons are being implemented, and four of them enlisted these measures.

Bihar attempts to improve awareness regarding HIV/AIDS through counseling, testing, STI management, and distribution of medicine. Chandigarh has taken several measures to improve HIV response among transgender people through sensitization and awareness generation by use of films, books, and other audio-visual materials. Existing Central government schemes for this purpose have also been implemented in Chandigarh. STI/HIV/AIDS awareness schemes are implemented in Pondicherry through targeted intervention programs. Pondicherry also provides a monthly allowance to transgender persons beyond 21 years of age, with different amounts for different age groups. In order to obtain the allowance, Pondicherry mandates the presence of a certificate from a medical authority.<sup>37</sup> While the nature of such certification was not elaborated upon in the RTI response, the mere requirement of a medical certificate is in contravention of the NALSA ruling, which is foregrounded in self-determination.

Tripura and Sikkim replied stating that social welfare and public awareness schemes for transgender persons have been initiated; however, they did not provide any details about such schemes. West Bengal stated that the implementation of social welfare and public awareness schemes is in process.

Delhi has submitted a financial community scheme for the transgender community; however, approval for the same has not yet been received from the relevant authority. Certain states provided vague replies: for instance, Andhra Pradesh and Telangana stated that transgender persons are linked to different departments for different schemes, while Daman and Diu stated that all measures shall be taken to treat transgender persons as SEBCs, which is entirely unrelated to question seven. Maharashtra merely listed existing Central government schemes, without indicating whether or not these schemes have been given effect to in the state. Chhattisgarh stated that such programs are under consideration.

Nagaland, Lakshadweep, Uttar Pradesh and Kerala replied that such schemes have not been initiated. However, Kerala also clarified that a transgender welfare policy for the state has been approved by the state government. Jharkhand, in its reply, stated that such policies were “not required in the municipal council”. Assam stated that social welfare programs, as prescribed under NACO, are at the stage of inception. While the government of Assam has not rolled out specific schemes yet, various NGOs in the state are conducting advocacy workshops and awareness meetings. The Social Welfare Department of Dadra and Nagar Haveli

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<sup>37</sup> Notification governing the scheme can be found at [http://wcd.puducherry.gov.in/Oap\\_Eng.htm](http://wcd.puducherry.gov.in/Oap_Eng.htm).

stated, in their response, that there are “no transgender persons” in the union territory, and therefore schemes for their benefit are not in operation.<sup>38</sup>

Media reports indicate that pension schemes for transgender persons have also been introduced in Kerala,<sup>39</sup> Tripura,<sup>40</sup> Odisha<sup>41</sup> and Karnataka.<sup>42</sup> However, with respect to the scheme in Karnataka, on April 20, 2015, The Hindu reported that in reality, it benefits few transgender persons. The primary hurdle in identifying beneficiaries is the absence of an estimate of the number of transgender persons in a state.<sup>43</sup>

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<sup>38</sup> The reply received from the Social Welfare Department of Dadra and Nagar Haveli read: “I am directed to inform you that transgender community does not exist in in the UT of Dadra and Nagar Haveli. So it would not be feasible to implement any scheme for the welfare of transgender person in this UT. Hence, the information in respect of your point g may be treated as NIL as far as this UT is concerned.”

<sup>39</sup> Shyam P.V., Kerala announces pension scheme for transgenders, THE TIMES OF INDIA (July 8, 2016), <http://timesofindia.indiatimes.com/city/kochi/Kerala-announces-pension-scheme-for-transgenders/articleshow/53111387.cms>.

<sup>40</sup> Mukul Mishra, Tripura: Govt launches pension scheme for transgenders, ONE INDIA (July 29, 2015), <http://www.oneindia.com/india/tripura-govt-launches-pension-scheme-transgenders-1820923.html>.

<sup>41</sup> Odisha government introduces scholarships, pension schemes for transgenders, FIRSTPOST (Sept. 22, 2015), <http://www.firstpost.com/india/odisha-government-introduces-scholarships-pension-schemes-for-transgenders-2441728.html>.

<sup>42</sup> Arjun Mahendran, Schemes for transgenders benefit too few, THE HINDU (Apr. 20, 2015), <http://www.thehindu.com/news/cities/bangalore/schemes-for-transgenders-benefit-too-few/article7120497.ece>.

<sup>43</sup> *Id.*

## Question 8: Special Public and Healthcare Facilities

Bihar		Assam	West Bengal	Chandigarh	Goa	Dadra and Nagar Haveli	Delhi	Nagaland
SW	BSACS			CEO	CSACS	SW		
Yes	NR	NA	UP	X	NA	X	X	No
Pondicherry		Himachal Pradesh	Uttar Pradesh	Tripura	Kerala	Orissa	Meghalaya	Daman and Diu
				SW	TSACS		MACS	PID
PACS	WCD							SACS
X	NA	IA	No	No Need	X	No	No	UP
Sikkim	Telangana	Andhra Pradesh	Jharkhand	JSACS	HD	SP	SPI0	Gujarat
No	NR	NR	No	X	X	Yes	X	NR
								D

While 13 states and union territories replied to question eight, only Jharkhand has set up separate public toilets, and wards in prisons for transgender persons. In Jharkhand, separate prisons and toilets exist in Ghageri and Bokaro districts. In the remaining districts, while there are no separate prisons, other facilities such as “residence and toilet and other necessities” are available prior to jail term.

Tripura stated that there are common facilities for all individuals, including transgender persons, and therefore measures on this front have not been initiated. Daman and Diu stated that since there was no identified transgender ‘population’ in the state, implementation of such measures would only be done once such ‘population’ is identified. However, other schemes announced by the government of Daman and Diu make reference to the transgender people in the union territory.<sup>44</sup> Dadra and Nagar Haveli, Meghalaya, Nagaland, Uttar Pradesh, Maharashtra, Lakshadweep and Sikkim stated that no such measures have yet been initiated.

West Bengal replied that such measures were under process, substantiated by the media reports. On December 25, 2015, Hindustan Times reported that the West Bengal government has sought financial assistance from corporate entities, under their corporate social responsibility schemes, for the construction of public toilets for transgender individuals.<sup>45</sup> The government has also directed all colleges operated and aided by the government to construct public toilets for transgender people.<sup>46</sup> On July 9, 2016, ENA India reported that the government took into consideration the recommendations of the West Bengal Transgender Development Board, which suggested that either new separate toilets should be constructed in state colleges, or existing ones should be modified to suit the requirements of the transgender community.<sup>47</sup>

Times of India reported on May 7, 2015 that the transgender community in Chhattisgarh continues to await the construction of separate public toilets for members of their community.<sup>48</sup> On November 13, 2015, Scroll reported a story

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<sup>44</sup> For instance, Draft Guidelines released by the government for identification of priority households under the National Food Security Act, 2013, makes reference to the transgender ‘population’ of the union territory, providing for automatic inclusion of transgender households to priority households (available at <http://www.daman.nic.in/downloads/2013/Obj-sug.PDF>).

<sup>45</sup> Social inclusion: Bengal govt rains sops on transgenders, HINDUSTAN TIMES (Dec. 25, 2015), <http://www.hindustantimes.com/kolkata/social-inclusion-mamata-s-bengal-govt-rains-sops-on-transgenders/story-OzDLHS60pF5QL52oLowcDJ.html>.

<sup>46</sup> Sonal Joshi, Indian state asks colleges to build separate toilets for transgender students, MASHABLE INDIA (Jul. 8, 2016), [http://mashable.com/2016/07/08/west-bengal-colleges-transgender-toilets/#k9L\\_o2\\_dGaqQ](http://mashable.com/2016/07/08/west-bengal-colleges-transgender-toilets/#k9L_o2_dGaqQ).

<sup>47</sup> West Bengal colleges may soon have separate toilets for third gender, THE INDIAN EXPRESS (Jul. 10, 2016), <http://indianexpress.com/article/india/india-news-india/west-bengal-colleges-may-soon-have-separate-toilets-for-third-gender-2904363/>.

<sup>48</sup> Rashmi Drolia, Chhattisgarh transgenders await separate toilets at public places, govt fears of contagious diseases, THE TIMES OF INDIA (May 7, 2015), <http://timesofindia.indiatimes.com/city/raipur/Chhattisgarh-transgenders-await-separate-toilets-at-public-places-govt-fears-of-contagious-diseases/articleshow/47192255.cms>.

indicating that a high security prison in Thrissur, in Kerala is to have a block designated exclusively for transgender persons, seeking to protect their privacy.<sup>49</sup>

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<sup>49</sup> Kerala Prison to Have Exclusive Third Gender Block, NDTV (Oct. 12, 2015), <http://www.ndtv.com/kerala-news/kerala-prison-to-have-exclusive-third-gender-block-1231173>; T.K. Devasia, Why a separate prison block is a symbol of hope for Kerala's transgender community, SCROLL (Nov. 13, 2015), <http://scroll.in/article/762798/why-a-separate-prison-block-is-a-symbol-of-hope-for-keralas-transgender-community>.



Of the 18 states and union territories that replied to question nine, 11 are undertaking measures to address issues of shame, fear, depression and tendency to commit suicide among transgender individuals.

Assam, Nagaland, Uttar Pradesh, Andhra Pradesh, Telangana and Kerala<sup>50</sup> conduct counseling programs for transgender persons, while several government departments in Bihar have organized workshops and gender sensitization programs. Chandigarh has initiated targeted intervention programs to address stigma and discrimination against transgender individuals. The State AIDS Control Society, Andhra Pradesh listed a series of measures and policies formulated and implemented for the betterment of transgender persons. However, the Department of Welfare of Disabled and Senior Citizens, Andhra Pradesh stated that no policies have been formulated in the state for transgender persons.<sup>51</sup>

Goa has implemented awareness programs, while Himachal Pradesh has instructed its medical officers to provide medical treatment to transgender persons with dignity and on a priority basis. Such schemes are under process in West Bengal, with DNA India's report dated July 11, 2015 indicating that the awareness and sensitization programs would take into account all stakeholders, including the police.<sup>52</sup>

Daman and Diu once again merely stated that transgender persons would be treated as SEBCs. Tripura, Meghalaya, Sikkim and Dadra and Nagar Haveli have not yet implemented schemes to address these issues. Jharkhand stated that such incidents have not been reported in the area.

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<sup>50</sup> As detailed in the State Policy for Transgenders in Kerala, 2015.

<sup>51</sup> The reply received from the Department of Welfare of Disabled and Senior Citizens reads: "No schemes and policies are formulated for transgender persons including formation of a transgender welfare board."

<sup>52</sup> West Bengal's initiatives to empower transgenders is phenomenal!, YOUR STORY (Oct. 6, 2015), <https://yourstory.com/2015/10/west-bengal-transgenders-initiatives/>; West Bengal government initiates steps to upgrade status of transgenders, DNA INDIA (July 11, 2015), <http://www.dnaindia.com/india/report-west-bengal-government-initiates-steps-to-upgrade-status-of-transgenders-2103567>.



Of the 20 states and union territories that replied to question 10, 13 have put awareness programs into place, as required by the Supreme Court in NALSA.

Bihar and Uttar Pradesh highlighted STI/HIV/AIDS related awareness programs conducted in these states. Goa has built awareness about transgender persons into its information, education, and communication programs. Chhattisgarh stated that workshops are arranged periodically for this purpose.

Other states, like Assam, West Bengal, Chandigarh, Goa, Nagaland, Tripura, Kerala, Andhra Pradesh and Sikkim, have focused on the larger question of increasing awareness about the transgender community as a whole, rather than focusing merely on STI/HIV/AIDS prevention. Several innovative methods have been adopted by these states for improving awareness of transgender persons. For instance, West Bengal uses radio jingles, Chandigarh uses films, books and other audio-visual media, and Andhra Pradesh and Telangana rely on mass media, mid-media and interpersonal communication. Nagaland conducts sensitization workshops among government and legal authorities. Awareness meetings are conducted in Assam, Tripura and Sikkim.

Dadra and Nagar Haveli, Jharkhand, and Meghalaya stated that measures to improve awareness have not been initiated in their state. Lakshadweep stated that there are no 'hijras', though no such response was made to the other questions.



While 14 states and union territories replied to question 11, most of them (Bihar, Assam, Dadra and Nagar Haveli, Nagaland, Meghalaya, Andhra Pradesh, Jharkhand and Telangana) stated that the Expert Committee has not submitted a report entailing recommendations to address problems faced by the transgender community.

West Bengal, Chandigarh and Daman and Diu stated that recommendations have been issued by the Expert Committee set up by the Ministry of Social Justice and Empowerment. Assam noted that while an Expert Committee has not been set up in the state, a TI (Transgender and Intersex persons) NGO Crisis Committee has been formed. Kerala stated that while an Expert Committee has not submitted a report, the State Transgender Welfare Policy has been formulated and has received approval. Bihar replied that a welfare board has been set up, while Delhi stated that the District Level Screening Committee has been established.

#### IV. CRITICAL OBSERVATIONS

As demonstrated above, the Centre received differing responses from various departments within each state and union territory, which reflects the lack of an integrated approach to the implementation of the Supreme Court's directions in NALSA. Convergence of the approaches toward the implementation of NALSA and recognition of transgender rights by different departments in each state and union territory is therefore strongly recommended.

A few states stated that the responsibility of taking various measures, such as rolling out identity cards to transgender persons and formulating schemes to assist transgender persons, fell upon the Central government. This was an attempt to shift any blame for lack of implementation onto the Centre.

Even so, the results from this process highlight that the NALSA decision has indeed initiated positive changes in official government stances towards the transgender community. Measures have been and are being taken by a number of states and union territories to increase awareness about transgender persons and to meet their specific social welfare and medical requirements. While identity cards have not yet been issued, this measure is in process in a number of states. Processes to set up Welfare Boards and treat transgender persons as SEBCs are also being considered across the country. It is apparent from the aforementioned section that a few states have implemented the decision within the rights framework and others have violated NALSA.

In addition to providing much needed information on the progress made towards implementation of the aforementioned directions, the data collection process has also shed light on the obstacles in access to information under the

RTI Act. Therefore, it would be remiss to not mention the difficulties involved in using the mechanism prescribed under the RTI Act, especially for the purposes of obtaining information relating to transgender persons.

The RTI process has revealed several difficulties involved in using the mechanism prescribed under the RTI Act. These include:

Difficulties in addressing the application to a department that is willing to respond:

- a. RTI applications were transferred from one department to another without providing an adequate, if any, response. For instance, a few states, like Arunachal Pradesh and Rajasthan, merely transferred the application from one department to the other, without providing replies for any question.
- b. Inconsistency in responses between departments of the same State was noticed. While one department of a State replied, another department rejected the application. For instance, the Ministry of Health and Family Welfare of Karnataka rejected the RTI application on the ground that the questions asked did not amount to “information” under Section 2(f) of the RTI Act,<sup>53</sup> while the State AIDS Control Society of Karnataka provided responses to the same questions. The Ministry of Social Justice and Empowerment, Himachal Pradesh and the General Administration, Chhattisgarh rejected the application on similar grounds.
- c. A few departments, such as the Ministry of Health and Family Welfare and the Ministry of Social Justice and Empowerment, Himachal Pradesh, Ministry of Law and Justice, Uttarakhand, and Additional General of Police, Maharashtra, rejected the RTI application on the ground that they were not the correct department. However, they refused to transfer the application to the correct department.
- d. In a few instances, RTI applications were rejected on the ground that different questions should have been addressed to different departments, and that it was not the duty of any one department to collect information from the other departments. For instance, the Department of Health and Family Welfare, Tamil Nadu noted that the questions mentioned in the application raised queries to be addressed by several departments. Instead of transferring the questions to the relevant department, they rejected the application stating that the RTI Act does not make provision for one department to collect information from other departments and provide it to the applicant. Therefore, they directed that separate applications be filed afresh to different departments.

Rejecting the application on grounds of lack of information:

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<sup>53</sup> Section 2(f), RIGHT TO INFORMATION ACT, 2005 (India).

- a. A few departments, such as the Ministry of Law and Justice, Madhya Pradesh, Ministry of Social Justice and Empowerment, Himachal Pradesh, General Administration, Chhattisgarh, and Government Medical College, Chandigarh, rejected the application on the ground that the questions asked required the creation of information that was not possible under the RTI Act.
- b. A few other departments, such as the Office of Health Commissionerate of Health, Medical Services and Medical Education, Gandhinagar, similarly rejected the application stating that the RTI Act only permitted the dissemination of available records. Since the applicant had asked questions and not claimed an available record, the application could not be considered under the RTI Act.
- c. Another RTI application was rejected by the Gujarat State AIDS Control Society on the ground that they did not maintain records of transgender persons and therefore, could not respond to any queries.
- d. The Public Information Officer for Punjab State AIDS Control Society said that “At present no exclusive intervention for TG is being implemented by PSACs. Therefore, the information asked from a-k does not pertain to this department.”

Certain departments, such as the Ministry of Social Justice and Empowerment, Himachal Pradesh, required a separate application in respect of each subject as per Rule 3(2) of the Himachal Pradesh Right to Information Rules, 2006.

Rejecting the application on grounds of lack of compliance with formalities:

- a. One department, the Department of Health and Family Welfare, Odisha, rejected the application stating that the application ought to have been made in Form 6 with a copy of the identity card enclosed.
- b. Rejected on grounds related to the fee:
  - i. A few departments, like the State AIDS Control Society, Puducherry, Department of Health and Family Welfare and Department of Law and Justice, Kerala, Department of Health and Family Welfare, Tamil Nadu, State AIDS Control Society, Rajasthan and State AIDS Control Society, Gujarat, rejected the applications and stated that postal orders were an incorrect method for payment of fee.
  - ii. In one instance, the Department of Women and Child, Delhi refused the application on the ground that it was drawn in favor of the incorrect person, and that it ought to have been drawn in favor of the Pay and Accounts Officer.

- iii. In another case, the Department of Social Security and Empowerment of Persons with Disabilities Odisha requested cash payment.
- iv. In the case of the Department of Health and Family Welfare, Tamil Nadu, the application was rejected because the fee paid was in excess of the fee required to be paid under the RTI Act.

There is evidently a lack of clarity on the department responsible for providing the relevant information, which results in multiple transfers and undue delay in access to information. Some departments simply rejected the application without transferring it to the correct one. Section 6(3) of the RTI Act requires public authorities to transfer the application to the relevant public authority in the event that the information requested for in the application is or may be held by another public authority.<sup>54</sup> Not only is the department concerned statutorily required to transfer such an application within five days from the date of receipt of the application, but also immediately inform the applicant of such transfer.<sup>55</sup> Merely rejecting the application without transferring it to the correct authorities is a blatant violation of the RTI Act.

In other cases, the transferee department failed to respond to the query. In one case, the department failed to satisfactorily respond to the query on the ground that a few of the questions in the application fell within the domain of another department. A few departments also adopted purely technical and, at times, illegal grounds, to refuse information. According to section 7 of the RTI Act, the State Public Information Officer is permitted to reject requests for information only on grounds specifically enlisted in sections 8 and 9 of the Act.<sup>56</sup> The exemptions concern themselves with overriding considerations, such as the sovereignty and integrity of India, contempt of court in the event of disclosure, breach of Parliamentary privilege, intellectual property rights violations, interference with investigation or prosecution of offenders, and privacy considerations.<sup>57</sup> Resort to grounds, other than the abovementioned, to refuse access to information falls foul of the RTI Act and is liable to payment of penalty and/or disciplinary action under section 20.<sup>58</sup>

While a few instances were in direct violation of the RTI Act, there were a few hurdles that the RTI Act did not adequately contemplate and provide safeguards against. For instance, information pertaining to transgender persons is not always collated and maintained, making it convenient for the public authority to refuse access to such information. Various departments refused to furnish information on the ground that the questions asked did not comprise “information”

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<sup>54</sup> *Id.* at s 6(3).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at s 7(1).

<sup>57</sup> *Id.* at ss 8-9.

<sup>58</sup> *Id.* at s 20.

under section 2(f) of the RTI Act, which seems to indicate that only material already available in any form, i.e. any existing form, would amount to information.<sup>59</sup> Data that is yet to be collated and produced in an existing form would then be excluded from the purview of the RTI Act. Not only does this loophole preclude access to material that ought to be collated but is not; it further allows public authorities to conveniently and selectively avoid collating certain material to absolve themselves from providing access to such material.

Further, where access to information was available, the quality of information was not always satisfactory. Section 20 of the RTI Act provides for payment of penalty or initiation of disciplinary action in the event that, inter alia, “incorrect, incomplete or misleading information” is provided to the applicant.<sup>60</sup> However, the existing safeguard may not sufficiently guard against provision of information that is not qualitatively satisfactory, especially when the same is compounded with the ability of public authorities to not collate and compile all relevant and satisfactory data in the first place.

## V. CONCLUSION

To conclude, while the RTI process is difficult to navigate for the reasons outlined above, it can yield interesting and fruitful results.

Several of the 29 states and union territories reported on the initial measures that have been taken to implement the directions. Several states have issued identity cards, provided separate hospitals and healthcare facilities, and set up Welfare Boards; Jharkhand has even set up separate wards for transgender prisoners. A few states have begun the process of providing separate reservation quotas to transgender persons.

However, on the other end of the spectrum are states and union territories, such as Mizoram, Madhya Pradesh, and Tripura, that have failed to recognize the existence of transgender persons altogether, thereby dismissing the need for any enabling measures. Such responses highlight the struggle to guarantee social recognition of persons with non-conforming gender identities, a pre-requisite to implementation of law reform. Further, while a few states and union territories have initiated implementation of the NALSA judgment, the demand for medical certificates and pathologization of transgender people in their policies and initiatives directly violates the NALSA judgment. These responses further underscore the need for awareness programmes and community interventions.

This research further highlights the fact that good law and judgments in and of themselves are not necessarily sufficient to bring about concrete societal or

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<sup>59</sup> *Id.* at s 2(f).

<sup>60</sup> *Id.* at s 20.

practical change. The challenges of implementing laws and judgments are manifold, including delays due to bureaucracy and lack of political will. A similar implementation gap exists in relation to women's rights; while progressive legislation relating to sexual violence may be put in place, this does not necessarily correspond to increased vindication of women's rights and increased prosecution in sexual violence cases. The international human rights framework, in the form of both treaties and case law, faces similar challenges, resulting in an implementation gap.<sup>61</sup>

The direct value of law to social change may still be contested; however, the value of its existence in a matrix that principally guarantees constitutional protection and an individual sense of security may be a more modest claim. Brenda Cossman and Ratna Kapur have complicated and layered the link between law, feminist politics, and social justice by theorizing feminist engagement with the law. The power of law to shape, crystallize, challenge, and deconstruct identities is central to its indirect impact in society, and law can then be reimagined as playing a constitutive role in movement dynamics.<sup>62</sup> Litigation in this regard can be used as an enabling instrument by activists and community-based leaders to leverage power, build organizational resources, mobilize constituents, and lend movements their discursive character.<sup>63</sup> Recognizing the potential of law as a site for discursive struggle is arguably sufficient to attribute value to legal pronouncements even if they do not directly contribute to or augment social transformation. Notwithstanding their inability to directly augment social change, Stuart Scheingold argues that Courts facilitate the "placement of issues on the public agenda and serve as catalysts for potential transformation".<sup>64</sup> Thus, while an implementation gap persists, the Supreme Court's landmark decision in *NALSA* is not to be undervalued. It has brought transgender rights to the fore of public agenda, and serves as a catalyst for developments across India. It is hoped that the progress made by state governments will continue, in consultation with the community members and stakeholders, and serve as inspiration for other state governments that are lagging behind in implementing the Supreme Court's orders.

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<sup>61</sup> Open Society Justice Initiative, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions*, OPEN SOCIETY FOUNDATIONS (2010), <https://www.opensocietyfoundations.org/reports/judgment-justice-implementing-international-and-regional-human-rights-decisions>.

<sup>62</sup> MICHAEL W. McCANN, *RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION* (1994).

<sup>63</sup> Ratna Kapur, *Revisioning the Role of Law in Women's Human Rights Struggles*, LAW EXPLORER (Apr. 3, 2016), <https://lawexplores.com/revisioning-the-role-of-law-in-womens-human-rights-struggles/>.

<sup>64</sup> STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE*, (2nd ed., 2004).