

## Category-wise rights for trans/gender minority communities

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**Abstract:** *It is said that on January 26 of some year within a few decades of independence, hijras and sex workers along with Namdeo Dhasal organised a rally for dignity and equality from Chaityabhoomi to Foras Road, in Bombay/Mumbai. Unfortunately, despite numerous attempts to ascertain the year, the events and to find narratives of hijras and transwomen who participated in this rally from publicly available sources on the internet, I have had little luck. One participant says this march took place in 1960, another documenter says 1995; that's how ill-recorded our histories are. Wikipedia and savarna queer historians in India will tell us that 'queer azaadi' marches in Bombay/Mumbai began in 2005, and it continues as a yearly mela, with no end in sight. Roots and routes have been erased. I have no idea how many actual years have passed since this historic rally that started from Chaityabhoomi but we are nowhere close to achieving liberation of trans/gender minorities in the country. In the following paper, I try to look at three documents that have emerged from the government-NGO apparatus over the past four to five years, which became the foundation for the bill currently hanging over our heads. And from there I discuss the possibility of articulating category-wise rights for our communities, as conceptualised by Periyar. Somewhere in between I also argue for the impossibility of narrow anti-discrimination politics in the current state of our society.*

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## Introduction

Everything about the many versions of the transgender bill<sup>1</sup> (henceforth, TG bill) that keeps getting passed in the Lok Sabha is wrong. This much is clear to most of us. But every administrative and political process that has led up to this devastating moment for the trans/gender diverse communities is equally, if not more, wrong. Every process that has led up to this moment is a sham that has disguised itself using cloaks of 'expertise', 'fundamental rights' and 'anti-discrimination'. At various points in recent time, the very same people who consciously or unconsciously contributed to setting up this sham have turned into active protestors against the bill and trusted 'allies' or 'voices' of the community with no cost to their bodies, their basic existence. While a vast majority of the trans/gender minority communities have been forced into deeper mires of disenfranchisement, further and further away from affirmative, representative participation in the political processes that will determine our identities, lives, and rights.

Most of what is written here may be already known, in sum and substance. But at times, when one's existence is tied up it is helpful to think and, if possible, type. It is helpful to document how political processes have been carefully designed to destroy the lives of your people. It is hoped that the facts and arguments placed here will strengthen one's resolve not only to reject every element of the bill but to also challenge every documentation and insidious argument that has come out of the state-NGO establishments as being non-representative, oppressive and wholly worthless to the cause of liberation of trans/gender diverse communities residing in India.

Through the following paragraphs, I look at the information available to me surrounding three documents that have become foundational to the bill, namely, the NALSA judgment, the MSJE Expert Committee Report and the 43rd Parliamentary Standing Committee Report. Aiding my reading from beginning to end is Periyar's imagination (as translated from Tamil and explained by G Aloysius (2016)) of a world that works towards substantive equality and Self-respect through category-wise rights. The reasons for depending on this text are simple and two-fold: a) the first amendment to the Indian constitution that made it possible to demand some limited form of category-wise rights and provisions for affirmative action as a result of the efforts of the anti-caste Dravidian movement catalysed by Periyar; b) it is my understanding that trans/gender minorities are not yet apprehended as a complex and dynamic category of oppressed peoples that can absolutely upend all existing notions of everyday life and revolutionary thought. Therefore, we have fast become an easy additive layer to all social movements without getting space and resources for the articulation of a separate but equal and connected existence – a possibility existing within Periyar's articulation of category rights.

## Disenfranchising political processes

As Disha Pinky Shaikh (2018) has pointed out, 'There has been a lot of talking going on about transgenders in the last few years. Especially after 2014. Because we have got voting cards, na?'

And now how can such a huge class be allowed to go to waste? How can so many votes be allowed to go to waste? So every faction is targeting it. A display is being made of trying to dialogue with us, trying to work for us. But before the nineties, not ancient times, before the nineties, nobody even considered us worthy of a side glance.' In this same speech she also underscores how, post the nineties, there was a boom in funding for HIV treatment, unchecked NGO entry into the lives of sex workers and transfeminine communities up until the first decades of the 21st century when the funds started drying up. This was the extent of 'real' engagement with one section of the trans/gender diverse communities, the rationale of which she captures as follows, 'It was not possible to speak on condoms with ordinary women, so sex worker women and transgenders were targeted, and they were made to understand what a condom is. We were used according to their convenience, and the day their targets were completed, the funding for these NGOs was stopped.'

## The judgment

And then suddenly in 2012, there were 'public interest' petitions filed in the appellate courts, apparently to secure our rights. One in the Supreme Court filed by NALSA and one in Bombay High Court filed by Salvation of Oppressed Eunuchs (SOOE) formed in 2011 and run by one questionable Dr. Piyush Saxena. This was followed by additional petitions in the Supreme Court by one organisation working for the welfare of Kinnars and by Laxmi Narayan Tripathy in 2013. The 2012 Supreme Court petition was clubbed with the 2013 petitions that ultimately resulted in the 2014 judgment. According to this judgment the Bombay High Court petition was dismissed and the favourable petitioner (SOOE) cleverly absorbed into the central ministry's 'expert' committee. It must be noted that the stated purpose of each of these petitions was different: the NALSA petition, being the most ambitious (as mentioned on their website), wanted to protect the rights of transgender people<sup>2</sup>; Poojaya Mata Nasib Kaur Ji Women Welfare Society was seeking relief specifically for the Kinnar community (one category of the trans/gender diverse communities) and Laxmi Narayan Tripathy wanted for Hijras to be recognised as the third gender; the SOOE petition in the Bombay High Court wanted some ministry to be made responsible for 'hapless eunuchs' and to criminalise the guru-chela system as bonded labour<sup>3</sup>. And so the Ministry of Social Justice and Empowerment (MSJE), at the instance of the court, took responsibility even as Hijras, Kinnars and other transfeminine communities (tied together against their will) were declared the third gender. Because we were all grouped under NALSA's ambitious petition, the 2014 judgment came to be wrongly read as the liberation manifesto of *all* trans/gender minority peoples.

The petitions of one Kinnar organisation and Laxmi Narayan Tripathy, taken individually are difficult to raise the issue with. Each community that has organised itself over time, must, of course, appoint its representatives and it is well within the democratic process for such representatives to seek rights and relief through all means possible.

To that extent the NALSA judgment may be considered a partial success for the petitioning communities. But as has been clarified over time<sup>4</sup>, Laxmi Narayan Tripathy and one Kinnar welfare organisation do not represent or form the entirety of the trans/gender minority communities, let alone the entirety of transfeminine communities. There is no documentation (apart from the judgment itself) that has been made available in public domain that indicates the nature and extent of consultations undertaken by NALSA, SOOE or the two petitioners from the community (whose geographical area is Northern India) with trans/gender minority communities across the country, before or during the period of litigation. In sum, the heterogeneous 'public' in whose interest the litigation was undertaken was completely divested of the right to represent itself. The very right that NALSA is meant to guarantee. And in the past four years NALSA has been unable to get the State to edit its source code (Section 12, Legal Services Authorities Act 1987) to include trans/gender minority communities in the categories of people who are eligible for free legal services. As far as SOOE is concerned, they continue to exert their power and influence over the entire bureaucratic process while maintaining on their website a definition (for the community they continue to refer to as 'eunuch') that is not only utterly demeaning and preposterous but must also be interpreted as being in direct contempt of the ever so marginally redeemable NALSA judgment.

I will not delve too much into the contents of the NALSA judgment as it has been separately critiqued (Semmalar, 2014; Dutta, 2014) for its relative impossibilities of implementation, substantial negation of rights of self-determination and many contradictions in interpretation. What these critiques make apparent is that the central question of self-determination of identity has not been properly represented in the judgment. This further fortifies the previous argument that all the petitioners completely failed in representing the interests of the many sections of the community and challenging the contradictions in the judgment that forcibly created a category of 'third gender' and collapsed every trans/gender minority identity into it.

### **The 'expert' committee report**

There was another stream of activity occurring at the ministerial level (after the MSJE was forced to accept responsibility) that would feed into the NALSA judgment and future state action. This was the MSJE Expert Committee hastily constituted on October 22, 2013. Before the committee was constituted the MSJE conducted a consultation on August 23, 2013. This consultation was meant to understand the 'issues relating to the Transgender community' and to 'find ways and means to mainstream the Transgender community'. In this meeting, as per the list of participants, there were at least 8-10 self-identified transgender people representing hijra, kinnar, and transfeminine communities. They were all largely from North Indian states such as Delhi, Gujarat, Madhya Pradesh, and Maharashtra. Counted among 'experts' were patrons of SOOE. There were no representatives from North-Eastern states. The caste constitution remains unclear, but it would be safe to say that space had been monopolised by the Brahminical state and academic apparatus. From among this skewed pool of representatives finally, only four persons from the community made it to the expert committee. All four were from transfeminine communities and only one was

from a South Indian state (Tamil Nadu). Thereafter the expert committee held four meetings between November 6, 2013, and January 21, 2014 (three months). Of the 25 participants in the first meeting, 6 (24%) were from transfeminine communities, of which 2 were representing SOOE; of 36 participants in the second meeting, 9 (25%) were from trans/gender diverse communities – 7 out of the 9 were from transfeminine communities, including members from SOOE; of the 30 participants in the third meeting only 5 were representing the communities (16%); of the 18 participants who finally passed the expert committee report on January 21, 2014, only 3 (16%) were self-identified members of the communities and that means not even all of 4 community representatives who were inducted into the expert committee were present when the report was finalised.

The entire process of forming and running this expert committee was fraught with problems of representation and is reminiscent of how the Constituent Assembly was formed. As Aloysius (2016) points out, 'Periyar saw that something was amiss and wrote and spoke vigorously against this semi-clandestine and hasty process of appropriation of power even before Independence, by the mostly Brahminical Indian National Congress. Conducted mostly as an internal affair...the Assembly...produced a massive and mixed up document...' This was exactly the nature of constituting the Expert Committee – clandestine and hasty appropriation of power by a few from cisgender state-NGOs and cisgender savarna queer communities from university institutions and a handful of transgender persons who may have risen through the ranks of urban state-supported NGO establishments. And the nature of the final report – massive and mixed up. The entire affair was closed in less than six months. This was despite criticisms regarding inadequate representation and demands for wider consultations from various sections of the community, some on record<sup>5</sup> and some not.

Therefore, the report fails on three counts that are the most relevant to the liberation of trans/gender diverse communities: dignity and self-determination, well-defined category-wise rights, and democratic representation. This is made clear in the introduction where the report defines its goal as follows: 'The broad remit of the Committee is to suggest appropriate workable solutions to the problems being faced by the transgender people' (p. 5). Workable for whom? In the first three chapters, they regurgitate whatever they can find from constitutional principles to national and international definitions and a long list of available legal precedents. These chapters provide no identifiable discussion of identities and rights that are specific to the Indian context, or that adequately bring out the contradictions in law, between laws and the rules of such laws. If they do, it doesn't lead to what can be called a fairly debated 'workable solution'. And so on is an endless barrage of chapters that achieve nothing. Each argument in the report establishes that this expert committee's primary concern is to secure the cisgender monopoly over public space and limit the rights and entitlements of the trans/gender diverse communities. The three clear tendencies for this (finally reflected in the bill as well) are given below.

Definition and all sorts of screening: After copy-pasting all definitions from available useful and useless sources, when it comes to discussing the legal recognition of self-determined gender identity the report shows its true colours. They never had any intention of stepping outside the screening committee framework. As per Appendix 7, on December 6, 2013, the Directorate of Health Services held a separate meeting, consisting only of doctors, to decide on 'the' definition of transgender and whether or not our people may be permitted to self-determine gender identities and access the full range of SRS services that we may need. They of course wanted a Medical Board to determine our 'status as transgender'. But it was not only the anxiety of the medical industry that was factored into the recommendations of the report, but it was also the anxiety of cisgender people that was at stake. When discussing the matter of legal recognition as one's self-determined gender, the report notes one of the 'demerits' of this 'approach' as: 'Cis women may not feel comfortable with trans women categorised as women and share benefits exclusively for women, such as reservation in local bodies.' and 'Creates some confusion as some transgender persons will get registered as men or women; the question will be how to take care of them.' (p. 32) Therefore, the report states, 'MoHFW needs to consider providing the necessary surgical procedures for individuals who are *diagnosed* to be transgender people (persons with gender dysphoria) and who desire surgery.' (p. 74; emphasis added) and after lengthy paragraphs about laws on self-determined gender identity, the main text of the report recommends (p. 89) that a screening committee be constituted to certify a person as transgender.

Along with screening genders, they also sneak in a lower age-limit on such identification. As per Appendix 4 of the report they mention an age limit of 'above 18 years', saving the expert committee from breaking their heads on how to provide legal recognition to gender non-conforming children, thereby preventing us from accessing the entitlements and advantages of such recognition from an early age. At the same time, this does not expressly prevent non-consensual surgeries performed routinely on children with intersex variations at the insistence of their parents.

Criminalising meagre hijra/kinnar/transfeminine support systems: Hidden somewhere in the 200-page report is a mention of the support systems developed by the hijra jamaats (p. 44). But like much else this is also lip-service. The report (like the bill) ultimately seeks to criminalise these systems. SOOE, a key participant in the proceedings of the committee, has forcefully described the guru-chela system as one of servitude and bondage that should be abolished under the Bonded Labour System (Abolition) Act. And this is wrongly highlighted as one of the key problems faced by the transgender community in the introduction of the report. The report further mentions, under an unbelievably short paragraph titled 'social structure of Hijra/TG community' that 'The social hierarchy and community norms among Hijra communities influence their behaviors and decision-making ability both positive and negative. However, most of the community members feel that these norms sometimes become too strict and are not supported for mainstream efforts or allow them to explore other opportunities and lean [sic] other skills.' (p. 111). These lopsided observations are followed by no clear road map for protecting the interests of those from the

transfeminine communities who may wish to exit the guru-chela/jamaat/gharana system. Instead, they wax eloquent about skill development, employment exchanges, and vocational training. What about across-the-board reservations in education and employment, pass percentage and age-limit relaxations, evening colleges, night schools? There is no need to carry on the argument of whether or not the guru-chela system is oppressive. It is only less or as oppressive as the savarna cis-heteronormative family systems where too many are made to work and live against their desires in return for the safety of a roof and protection of socially sanctioned existence. Just as many transwomen who have routinely criticised, tried to reform and even left these spaces in search of self-determination, may also have found warmth, love, family, and safety within them. In sum, there is no system or social formation that does not require constant internal democratic reform. And our people are just as firm in our demands for liberation from caste patriarchy. But by seeking to villainise these spaces and not drafting a clear path for democratic reform based on community-centered alternatives (prioritising the needs of elder, homeless, disabled and child members) the report creates the exact legislative vacuum needed to push for criminalisation. One must also recognise the creative collusion between the state and NGO establishments here: all or most skill development and vocational training sops, like other 'welfare measures' have been contracted out to NGOs. By carving out a state-sanctioned single 'new backward category' deserving of welfare measures, and attempting to prove that the very same support structures that have helped them exist and survive are the reason for their 'backwardness' the report helps hasten processes for dismantling these structures, rendering them even more vulnerable to state-NGO exploitation. In fact, most of the NGOs that came into being as part of the HIV/AIDS related funding have now completely transformed themselves into 'voices' for trans people and 'human rights' organisations. If you ask who will provide shelter and care to disabled and older members of the communities? The cursory two lines on page 93 don't offer much hope.

Complete absence of modalities of reservation: Suffice to say that the report fails in charting out a 'workable solution' for our demands for affirmative action. It is mentioned in passing in the introductory chapter, in relation to ciswomen's fear of loss of space in elections, vaguely in the section on education and in an appendix.

### **The standing committee report**

At first glance, it may appear indeed heartening to see this committee's acceptance of the problems faced by the community and the fact that it notes everything from domestic violence to inheritance rights to insurance requirements to the recognition of alternate support structures and absence of meaningful employment for members of the community. It is safe to say that a more clear articulation of issues faced by the community has been possible in this report because of a slightly altered representational component. To my understanding, even this representation was highly skewed, and inadequate, with just four community organisations and five individual members being deposited over 2-3 meetings. Among these, there was only one organisation – South Indian

Transgender Federation, again from Tamil Nadu. There is no sense of the caste constitution of these representations. SOOE continued to be a key participant in these meetings as well. And the extent of influence of this one group is reflected in the fact that the report opens by referring to us as 'eunuchs'. There is no clear indication in the report as to how the representatives were approached or found sufficient to represent the interests of all-trans/gender diverse people in the country. None of the members of the community approached were involved in the final meeting that passed the report. The proceedings of the meetings were in the nature of depositions, not consultations with the community. Depositions are witness statements – a form of recording 'the truth' before arriving at a considered judgment, where the witness and the judge, the statement and the judgment are never considered equal.

Then what can be the overall purpose served by the Standing Committee report? Based on a complete reading of the report one can answer: to make an elaborate pretense of holding the ministry accountable, then concurring with most of everything offered in the bill, and firmly taking a stand against passing the Tiruchi Siva Bill. The report cites four 'infirmities' with the Tiruchi Siva bill, as raised by the Ministry: '(i) Special employment exchanges for transgender (ii) National and State commissions for transgender persons (iii) Transgender Right Courts; and (iv) Reservation in primary, secondary and higher educational institutions.' (p. 11) It is legitimate to demand a reason for why these suggested provisions qualify as infirmities of the bill, but the report offers no such reason, raising questions as to why the ministry and the report is keen to stamp the private member bill from a Dravidian state and party ineffective.

One point of concurrence between the community and the standing committee may be regarding the definition used in the bill. Everyone disagrees with it because it has been illogically copied from the senseless excess of definitions made available in the expert committee report. The stand of this report on that count may be well taken. But once again when it comes to legal recognition of self-determined gender identity everyone is rushing back to the screening committee. Between pages 42-54 the standing committee travels wildly without logical reasoning from taking a stand that screening committees are violative of Article 19 and 21, to recommending a 'hassle-free' district screening committee which, the report affirms, is 'very critical in declaring a person as transgender and the role of the Chief Medical Officer too is equally important.' The report also continues its patronage for the NGO industry by affirming that the District Social Welfare Officer may be 'a renowned person in the field of welfare of transgender persons' (p. 56).

Carrying forward the liberal angst surrounding force, choice and volition, this report takes nothing more than a muddled view on the issue of beggary. As is apparent, the bill has imported wholesale the argument put forward by the SOOE that beggary is 'forced or bonded labour' imposed upon the hijra communities from within. No doubt due to the intervention from members of the community during the depositions, the committee attests to the misuse of such clauses in the bill, observes persons 'begging of their own volition' (is it even possible to define what constitutes



volition here?) and the eventual criminalisation of transgender persons. However, after receiving a very prosaic response from the ministry as to why this clause has been included, the report concurs with the ministry and states, 'that beggary/beggary syndicates and bonded labour system must be discouraged being a crime under various Acts irrespective of any gender. The Committee strongly feels that the Bill must recognize these offences as crimes against transgender persons, and provide for sentences commensurate with the gravity of their offenses.' (p. 90) Then follows the usual drivel about skill development and vocational training among other things.

This report too continues with the absence of clear principles for affirmative action and instead moves focus completely to 'anti-discrimination and rehabilitation'. The fact that the committee planned to focus on the committee's better 'judgment' and not on the more useful 'witness statement' is clear upon going through the minutes of the first four meetings associated with drafting this report. In the first minutes of October 5, 2016, the Secretary of the Department of Social Justice and Empowerment seemed to think that the two most violent misconceptions regarding the trans community – 'forced conversions of small children to include them into Transgender community by the persons of Transgender community', and 'means of livelihood of Transgender persons and their involvement in criminal activities' – are issues to be considered at par with 'provision of rights and facilities for transgender persons'. There is no record in the minutes of anyone objecting to such blatant maligning and misrepresentation of the community. In the following two minutes (November 30, 2016 and December 28, 2016) where the committee interacts with five individual members of the community there is a range of suggestions and interventions in the law that are suggested and noted down, but not reflected in the final recommendations of the report. In the penultimate meeting, before the report was adopted, apart from bullet points on matters discussed there is no detail available. And the matters discussed were limited to the definition, identity recognition, constituting a screening committee and anti-discrimination and rehabilitation provisions for transgender persons. There is no time found suitable in any of the meetings (each of which did not last more than 3 hours) to discuss matters of reservations – a key provision in the Tiruchi Siva bill and the very provisions that are declared 'infirmities' by the ministry and the standing committee.

### **Individual, category-wise and state-wise rights**

Both the committee reports attempt to identify the genesis of the problems of the trans/gender diverse communities. The expert committee pins all the problems of the transgender persons in India on 'stigma and discrimination they face in the society, resulting in their exclusion from socio-economic-political spectrum' (p. 35) whereas the standing committee, focusing on the hijra community, traces roots of contemporary violence to the Criminal Tribes Act, 1871 (p. 3), a tendency reflected in the judgment as well. There is no doubt that the said act played a key role in criminalising transgender communities along with a multitude of tribal communities. But were the pre-colonial period and the so-called Hindu mythological paradise any better for our people?

Elsewhere I have noted (kothazham, 2019) that the criminalisation of our communities (and the hierarchy between savarna queer and bahun trans identities) can be clearly and directly traced to the diktats in Manusmriti. Here, let's consider two 'legends' built within the Hindu mythological universe: Bahuchara Mata and Aravan. First of all, are either of these two characters themselves transgender? No. Bahuchara Mata is a cisgender woman of the Charan caste and Aravan is a cisgender man who is supposed to be the son of Arjuna, the Pandava. As per the first legend, a marauder named Bapiya who tried to assault Bahuchara during one of her travels was cursed with impotence and forced to forgo his masculinity and live like a woman. As per the second legend, before Aravan was to sacrifice himself on the battlefield he prayed that he be married and because no cisgender woman was to be wedded to a dying man, Mohini (Krishna's so-called transgender avatar) married him for a day. How are these legends proof of a 'golden' period for transgender persons in ancient India? In one, the myth that transwomen are 'criminal impotent men dressed as women who must be subservient to savarna ciswomen throughout their life' is propagated. On the other, it is reiterated that transwomen are no more than sexual objects for cisgender men who 'are at war'. Where, in any of these legends, can we find an affirmative tale, devoid of shame, curse, criminality and ultimate subjugation by cisgender iconography? It is again said that the Mughal period was one of the 'golden' periods for persons who are recorded in history as 'eunuchs'. There are great stories of such persons who were an integral part of the royal palace and its functioning. This may well be the case, but were such persons not often forced into specific biology and a specific role/function within the royal halls? Yes. It is said that they were essentially male assigned persons who had been castrated and hence found perfectly 'safe' to guard the cisgender women as well as some treasures and tombs (the logic: since they could have no progeny they would not be greedy or steal)<sup>6</sup>. Undoubtedly at certain moments in this limited role a few of them may have risen to access some power and prestige, but could they have freed themselves from their enforced instrumental identity and existence under the cisgender rule? Would all the people being referred to here self-identify as transgender and express a life of complete control over their bodies? And therefore, the question, do any of these legends or historical anecdotes – whether true or false, but accepted and celebrated in currency – bring forth a tale of self-determined identities outside the subjugation and enslavement to powerful, caste-ridden, cisgender icons and causes? No. Hindu and Hindu-ised societies do not believe in the concept of self-determination after all.

Therefore, we must restate the genesis of our problems (as we have time and again): the genesis of the problems of our trans/gender minority communities lies in the careful historical monopolisation of all public and private spheres of human identity and self-fulfillment by cisgender caste communities, such that our existence, history, and role in this society are rendered completely irrelevant, or limited to the fulfillment of their lives and subjugated by their never-ending oscillations between sexual fetish, shame, frivolity, voyeurism, and overt violence.

The 'stigma and discrimination' are a visible result and symptom of the Criminal Tribes Act and are one of the many tools of such monopolisation. As are all the beggary and trafficking prevention legislation enacted and so will be this current bill in the parliament.

If we roughly agree on this as the genesis of our problem, we can also roughly agree that in the current time we require at least three sets of rights to undo this monopolisation – individual, category-wise and state-wise rights. It would be wrong to imagine the trans/gender minority communities as an amalgamated, homogeneous whole. Sometimes, it appears almost comical to say this; it has now become a tautology. Everyone repeats it but does little for it. There is undoubtedly a friction, a tussle and a collection of contradictions between individual and collective rights in our communities, the society *and* in the constitution (Aloysius 2016). And the same is expressed to our complete detriment in the judgment, the bill, and other associated documents.

The presence of a definition, a promise of self-determination and the enforcement of a backward 'third gender' category all at once is the perfect coming together of these contradictions and the effort of the Brahminical state to perpetuate a false narrative of our 'criminal, impotent and backward' origins. The question is: if we exercise the right to self-determination *and* we are a beautifully heterogeneous lot, what is the purpose of defining us? They want to find out if we qualify to be persons. And they conclude: "harmonious reading of the Constitutional provisions set out hereinabove as well as the provisions of the Citizenship Act, 1955 and the General Clauses Act, 1897 Act would show that there is no conflict or limitation imposed on the concept of 'person' by any of these laws and a Transgender person would undoubtedly fall within the definition of person." (Expert committee report: p. 13) It is unclear to me whether we are the unluckiest or simply the most disenfranchised lot that in the second decade of the 21st century we must have to live in a 'free country' that is said to be ruled by the principle of equality of all beings where the governing apparatus needs to consult its rules to arrive at the uncontestable, irrevocable truth of our personhood. Words cannot express how small those lines in the report can make one feel – the arrogance of the authors who believe they can look at a book and 'confer' on us, human individuals, our existing, guaranteed right of personhood, and then immediately fail to grasp the full meaning of being a person. So, on the one hand, is the offer of self-determination, but immediately on the other is the effort to define an individual transgender person with respect to one's biology *and* psychology. Here, I must take a moment to challenge those cisgender persons who in their eagerness to oppose only the bill have taken to embracing a distinction between the biological test and the psychological test, and then pushing the latter in our faces<sup>7</sup>. It is important to clarify that there can be no test – biological or psychological, in the self-determination of identity. I would submit that along with no test in the self-determination of identity, to experience and express the full range of our self, there cannot also be a definition of 'transgender' written into this country's law. All definitions, if we truly believe in self-determination, will be exclusionary and closed to interpretation (or worse, open to interpretation by the ruling cisgender classes). What can be defined on the other hand is this: gender identity (as being self-determined). Such an approach to

definitions alone can open up the law to a reality of multiple historically subjugated non-binary expressions of gender, and at least mark a start to considering cisgender and trans/gender minority identities as equal, making it possible for us to fearlessly interrogate them with the same sense of powerful equanimity as they do us, while also creating space for a future of marginalised identities to articulate themselves within and outside the limits of law. Within this broad definition/understanding of gender identity, we articulate the notion of gender minorities who are – and this is the part that scares cisgender caste overlords – and have the right to be everywhere. That would bring us to multiple category rights.

But before any of this could happen, we have all been bundled into the 'backward' category of 'third gender'. It was in December 2015 that A Revathi affirmed my discomfort with this persistent 'backwardisation' (Aloysius 2016) made almost permanent by the Supreme Court judgment when she asked at a meeting organised in Bombay (I paraphrase), 'if we are the third gender, tell us who is first and second gender?' As Aloysius (2016) points out the folly of conceding to the 'backwardness' principle: "for one, it moved the focus away from and deflected the challenge to the Brahminical monopolisation of the public sphere; two it was premised on the acknowledgment and acceptance of 'real' backwardness (that is non-deserving) and thus self-degradation by the beneficiaries; three this also had its corollary of acknowledging and reproducing the superiority of the Brahminical." (p. 54) We don't even need to underline the cisgender in the Brahminical above to capture in short, the problem of a forced 'third gender' categorisation.

We are and have the inalienable right to be, everywhere. The difficult side of this for us is that we are, by being a category of gender, part of every other existing enforced category of human inequality – caste, race, tribe, religion, ability, age, region and so on – within each of which there is a hierarchy of unequals. And within each of these, the dominant definition of our people is as sub-human. If such is the case, how do we articulate category-wise rights for trans/gender minorities? Clearly, not by certifying us as 'backward'. In their respective discussions on the NALSA judgment, Dutta (2014) and Semmalar (2014) note some of the problems and possible permutations and combinations of affirmative action, as articulated by the communities. Apart from pointing out that a blanket OBC classification forces gender minorities from SC/ST categories out of their entitlements, Dutta (2014) mentions two options suggested: some representatives from West Bengal suggested a separate OBC-T category and THITS suggested a separate gender-based category outside caste classifications, so that people may combine category-wise entitlements. Apart from this, there are state-wise efforts initiated at individual and community levels for reservations<sup>8</sup>. Beyond this, we have not been able to (to the best of my knowledge) put together a comprehensive agenda for affirmative action that is available to all. And this is part of my problem with blanket support for the Tiruchi Siva bill as well – how did the bill arrive at the arbitrary figures of 2% reservation in education and not less than 2% in employment by direct recruitment only?

Are we all in agreement that this figure is apt for the historical oppression we have faced and our share in the state-wise populations (including the states to which we have, over time, been forced to migrate)? And because this doesn't speak to the reservation policy across categories and states, we have no way of knowing what share of these reservations will be accessible to the most marginalised among us. In his book titled 'Why reservation in services?', B T Jiwane (2005) has looked at existing government orders, committees and rulebooks to point out that 'the loopholes, lacunae and vague instructions are deliberate attempts to cause hindrances for the implementation of the scheme of reservation.' In this, he underscores the presence of at least 9 forms of public employment including transfer, deputation, promotion, temporary appointment, scientific and technical posts and ministry vacancies that are simply not covered under the scheme of reservation for SC/ST categories. He also discusses the Presidential order of 1947 that limited entitlements of SC/ST category reservations to the individual's home state alone which is clearly in opposition to the right to free movement (with one's entitlements), a stand enforced further by the Supreme Court as recently as August 2018. Given this complicated and disingenuous model of reservations in education and employment across the country, given our long history of oppression, why are we to settle for this 2%? And who are the leaders amongst us who are willing to settle for this?

If we are everywhere, we must get our rights from everywhere – ie, in every category, every state, and every institution of at least education, employment and political representation, and these rights must be available to every category of gender minorities. But unfortunately, it appears that another liberal agenda – led in no small measure by the savarna cisgender queer folk – has overshadowed these demands for affirmative action.

### **Affirmative action before clichés of anti-discrimination**

There might not be a trans/gender diverse individual you will find in this country who has existed in a normative private space or entered into a public space and returned without a tale of discrimination, shaming, and violence. We are unequal in this society and before the law and the discrimination we face is real and continuing. No law is going to magically end it. Quite a bit of the bearable media discussions around the bill in 2018 – handled completely by cisgender writers and editors – located undue focus on what they called the 'discriminatory' nature of the bill. One journalist cried foul—carefully modulating her voice to give viewers goosebumps—about the difference in punishments given to sexual predators who attack cisgender women as against transgender persons. Isn't that discrimination, sir? She almost cried. Yes, madam, it is. I do not intend to provide an 'intersectional analysis', it doesn't fit my expertise or the scope of this piece. Suffice to say, discrimination, "social divisiveness is the premise and promise on which all elite politics was" and is being conducted here (Aloysius 2016, p. 39). So, what is the purpose to be had in digging it up and making an empirical display of it, time and again? Our pain is not eroded, they often get burdened by the need to keep providing proof, making a display. And when we desire to seek justice – justice of a real kind, of a meaningful kind, justice birthed in our unique

understanding of the world and the limits of humanity – we are pushed to seek their blood-thirsty vengeance that goes by the name of justice, so they can claim procedural equality at the very least.

But today, anti-discrimination is a key agenda among savarna liberal intelligentsia who intend to save the world and its many marginalised souls. They often claim 'intersectionality' as their perspective and currently, there is a substantial amount of resources being spent on digging up proof of discrimination and building a world of 'anti-discrimination policies'. But there is a theoretical problem with the anti-discrimination doctrine. And if one reads Kimberle Crenshaw (1989) – to whom we owe one of the earliest theoretical articulations of intersectional analysis – then it appears that there would also be an inherent contradiction in calling oneself an 'intersectional theorist' while also demanding a 'universal anti-discrimination policy'. In the following paragraphs, I try to look at Crenshaw's simple and beautiful critique of the anti-discrimination doctrine in law and arrive at how, in many ways, having a conversation with Periyar's thoughts on category-wise rights appears to be one of the inevitable paths for us.

The final confirmation that the savarna 'queer fraternity' may not have understood the concept of intersectionality appeared about three years ago when, at one among many 'sensitisation workshops', a self-proclaimed intersectional feminist, savarna gay man rose to the board and explained intersectionality by drawing a two-dimensional mesh – a criss-cross of lines that created boxes. He said this is intersectionality, and there was a wave of constriction that I could feel sinking me. Kimberle Crenshaw (1989) had a simple and effective explanation for the nature of discrimination faced specifically by Black women, she says, 'Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another.' It may not be apparent immediately, but her focus is on 'direction' and therefore it can be interpreted as 'movement' (If interpreted in terms of Physics, a vector representation, not a scalar one). In other words, her conception of intersectionality vis-a-vis Black women is that the experience of discrimination cannot be frozen in a two-dimensional moment, its origin traced back to one or other oppressive structures, and justice served. She talks about this as the contradiction of being 'same and different', one that arises from 'our assumption that their claims of exclusion must be unidirectional'. She says, 'Black women are regarded either as too much like women or Blacks and the compounded nature of their experience is absorbed into the collective experiences of either group or as too different...' But, as she points out, the anti-discrimination doctrine cannot grasp this.

Before going further, it might be useful to refresh our memory about liberal notions of anti-discrimination. For this, I reproduce here some of the quotes (that are used for representational purposes only) from Tarunabh Khaitan's interviews surrounding the proposed Anti-discrimination and equality bill 2016 in India. In one he says, 'The value of a comprehensive, multi-ground, antidiscrimination Bill like the one Dr. Tharoor has introduced lies in its ability to challenge our inconsistent (and sometimes hypocritical) attitudes to discrimination. It shows us that the primary

wrong behind being denied a job because you are a Dalit or a house because you are Muslim, harassed for being a woman, unable to use public transport because of the absence of accommodation for the disabled, *is the same*.<sup>9</sup> (emphasis added) In another, he talks about 'symmetric laws that are less likely to cause resentment', and says 'Antidiscrimination laws that protect majorities as well as minorities ("symmetric protection"), while *permitting* affirmative action for minorities, are the global norm. There are several good reasons for this. First, for an anti-discrimination law to be successful, it needs to secure the buy-in of majorities. Symmetric laws are less likely to cause resentment. Secondly, while it is true that usually minorities suffer discrimination, sometimes members of majority groups do so as well.'<sup>10</sup> (emphasis added)

To minds that has been discriminated against, multiple fold, with no language left to express it, the fundamental problems with these ideas expressed by Khaitan will be immediately clear. And in 1989, it seems these are the exact ideas and interpretations of the law that Crenshaw spoke against when she critiqued the anti-discrimination doctrine as operational in US law then. She spoke, very vividly, about this basement where all marginalised groups are stacked one on top of the other (the multiply marginalised holding up the bottom) till the ceiling, which separates them from those who are not discriminated against at all. The anti-discrimination law works as a hatch that lets out those discriminated against by a single identifiable factor. She says, 'Those who are multiply-burdened are generally left below unless they can somehow pull themselves into the groups that are permitted to squeeze through the hatch.' How are we to understand 'symmetric protection' for those who hold the key to the hatch and those stuck below? Further, how will the complication of intersections be reflected if you are premising your doctrine on the principle that discrimination occurs across discrete single-identity categories and that its root is always the same?

Even though Crenshaw (1989) herself does not wish to perhaps move away from the 'discrimination' framework completely and is optimistic that a better intersectional dialogue between feminist theory and anti-racist politics may lead to a different outcome, I find in her one particular observation the fundamental reason for us to keep away from the thrust of anti-discrimination politics, at least for now. She says, 'According to the dominant view, a discriminator treats all people within a race or sex category similarly. Any significant experiential or statistical variation within this group suggests either that the group is not being discriminated against or that conflicting interests exist which defeat any attempts to bring a common claim.' I submit that despite the broadest definition of anti-discrimination, this fundamental problem – the problem of individuality, multiplicity, heterogeneity, internal hierarchies, call it what you may – will continue to exist, defeating heterogeneous collectivisation, assuaging the egos of oppressor elites that settle for anti-discrimination instead of fighting for fearless equality, difference and justice. I would also argue that when faced by this particular critique, the very same ones pushing for universal anti-discrimination laws based on multiple categories, will quickly devolve into a happy puddle of individualism with some prosaic provision of 'case-by-case basis'. So, when Khaitan says that it is

a global norm, we must ask how the globally marginalised have historically fared under this so-called norm.

Now, even if anti-discrimination must be the shepherd to be followed, we must realise that these legislations, as even Khaitan agrees, co-exist with affirmative action or (ideally) *after* a significant period of successful affirmative action. Unfortunately, ours is not a country with successful affirmative action. Jiwane's (2005) analysis can be seen as incontrovertible proof that reservation provisions are purposefully convoluted and ill-conceived by the governing classes to restrain the marginalised in the 'backward' position. This suggests that our society and its law is logically not prepared for meaningful anti-discrimination provisions. How can we demand anti-discrimination when the promised land is of backwardisation, inequality, and divisiveness? How can we demand anti-discrimination when its fundamental inability (in a society built on principles of plunder, exploitation and murderous inequality) to serve the needs of the multiple and heterogenous enforces a kind of defeated individualisation – individuals, without the full scope of self-determination, community strength and support, and without the real possibility of ever being treated as equals within or outside their communities, who must forcibly forge themselves before the law, sometimes become 'community voices', and prepare for endless battles with an unchanging society? Why then must we focus our energies on demands of anti-discrimination when we can demand full-fledged, comprehensive affirmative action and equality?

Despite what the 'intelligentsia' may want and unfortunately always get, it is clear that in this decade the various fragmented groups in the country have consistently rejected notional anti-discrimination for substantial equality and category rights, even though they may not directly refer to Periyar's imagination of the same. Periyar's notion of category-wise rights meant 'democratic distribution of rights and resources among the fragmented groups of the country, always prioritising the weaker, the more relegated and the more marginalised' (Aloysius 2016, p. 33). Aloysius (2016) further clarifies Periyar's position as dynamic, 'if any group organising itself comes up to the public sphere and claims that it was left behind or still worse, dominated, that it does not trust the other groups and that it should be represented by itself and not by the others, such a group is certainly fit to be considered for separate rights. In this way, when applying the principle of category-wise rights, one should be ready to face the proliferation of such demands for separate rights.' (p. 35)

It is clear that the country was never committed to category-wise rights and we cannot term the reservation policies in its current form either adequate for the most marginalised or commensurate to overcome the historical oppression faced. Periyar had always been clear that the distribution of rights must be proportionate to the share in population, but the current system is nowhere near the share in population, which in turn must be decided not at a national level, but the state level. Had category-wise rights been provided from the beginning of independence, as per Periyar's dynamic conceptualisation – with each known and mobilised group being provided its rightful share in



education, employment, and political representation – we, as the trans/gender minority communities of today, could have logically claimed our share within each category/group/community if they so existed (as it is also our right to not be forced to give up any one part of our identity for another) and also given to ourselves through due political process separate rights and entitlements specific to our gender identity. We would have been able to hold not only the state but also the society and our own cultural/religious communities accountable for their failure to respond to our demands, instead of the current and persistent situation where each marginalised category and community, except the most privileged, the most Brahminical, is feeling the insurmountable pressures of imminent disenfranchisement and vulnerability. And we are here, now, being forced into categories and cages of 'rehabilitation and welfare', nowhere near reconciling the many categories within us either.

So then, where lies our liberation? Of course, it is in the social revolution. But before this could happen, they have already got us tied up in laws we do not want. Of course, our liberation is tied to the liberation from all systems of oppression – present and future, but how does that prevent us from generating from within a principle of action based on category-wise rights for our people? In fact isn't this tied-up-ness the precise reason why such a principle of action is of the utmost value in this present moment? And if so, how do we separate the welfare/saviour/sevak language of the state and anti-discrimination goals of liberals from our demands for complete, unconditional, irrevocable equality and self-respect?

### **Towards a conclusion**

It would be presumptuous of me to offer a definitive conclusion to the problem of category-wise rights for the trans/gender minority communities at this stage, and that is not the attempt here. The primary aim of this discussion is to underscore that those who have signed off on documents about and impacting our existence and rights are nowhere near, in the final analysis, appropriate, adequate or chosen representatives of our communities. The second was to draw attention to a creative and appropriate framework for rights and representation that already exists in the long history of struggles for equality, and some of the inherent complications in a simple application of such a framework to the current state of our laws and society. The third was to sound a note of caution about getting swallowed by the wave of anti-discrimination politics that presumes notional equality and cleverly surpasses any talk of substantive equality.

Before wrapping up, it appears that I may have to address two questions: who forms the category, and what is the immediate institutional contradictions set-up in the way of this approach. Who forms the category – or in Periyar's terms, the *vahuppu* – has so far been a tumultuous question. Despite the right to complete self-determination being the central aspect of our existence and struggles, as human beings living in a society that is harshly divided on the principle of insiders and outsiders, it has been almost impossible to exist and form our communities without

establishing rules and conditions of entry, political participation, and democratic representation. Having rules are not, in and of itself, necessarily wrong. A little bit of self-discipline in the face of chaotic oppression never hurt us. But it is important to interrogate the basis and implications of these rules we set for ourselves. Can the basis of our rules be questioning self-identified gender when our final goal is securing complete equality and freedom? Unfortunately, transfeminine and transmasculine communities have, for some time now, had such rules concerning each other as well as concerning genderqueer, gender non-conforming, non-binary/fluid and androgynous or agender identities. I contend that these rules need to be re-examined. As they are operational now these rules tend to form an implicit and hasty judgment about which struggle and how much political space is whose, based only on one's gender self-identification and not on the degree of self-determination so far achieved (often as a result of social capital, family support and the lack of disabling environments), access to public and private spaces of freedom and right to democratic representation within one's communities. Here, I am making a subtle but important distinction between self-identification and self-determination. To self-identify always means to retain the role of another, before whom we identify ourselves, underscoring any one aspect of our identity that may be under scrutiny. But to self-determine means to carry oneself – body, identities and all – along one's chosen paths to one's fulfillment. In putting weight behind the former, we may be losing space for the broadest articulation of shared struggles that will result in self-education about limits and possibilities, a sense of equality and self-respect from within, and importantly, representative and democratic formulation of political demands with a promise of transparency and documentation of processes that can be accessed, reinterpreted and challenged by our future communities as well. Hence, to the question who forms the *vahuppu* anywhere, the answer would be simple. But to the question who represents and leads the *vahuppu* anywhere, the answer has to be simpler still. And in a representative democracy (however farcical it may be), the latter will be a question of greater relevance than the former.

In terms of institutional contradictions—well isn't the entire caste-colonial architecture of our society filled with those—the most immediate structural and conceptual one to my mind is the fifty percent cap on reservations enforced by the 1993 Supreme Court judgment in *Indra Sawhney v Union of India*. Without going into a detailed reading of the judgment and its antecedents (described thoroughly in the judgement itself and discussed by many in detail) I wish to underscore two related aspects of the judgment that have a direct relationship to my arguments here. One is that it imagines society as a static one where (unlike Periyar's imagination of a dynamic rise of oppressed communities over time) the so-called backward classes can be politically contained within the 50% cap. Secondly, and relatedly, it believes in the principle of adequate representation rather than proportionate representation. The judgement states in para 94A - "We must, however, point out that Clause [16](4) [of the Constitution] speaks of adequate representation and not proportionate representation. The adequate representation cannot be read as proportionate representation.

The principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favor of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of the population of backward classes to the total population would certainly be relevant." First of all, who gets to decide what is adequate? Can proportionate, in the interest of justice, be represented only in terms of the population without considering terms of historical oppression, erasure, and due reparations? Further, even if one were to believe in this fictional separation between adequate and proportionate, how will any oppressed community access the rights guaranteed in Article 330 and 332 without first building themselves through basic rights to education, employment and equal participation in public life?

Unfortunately, those liberals who desire to challenge the unconstitutional 10% reservation for EWS from savarna communities seek to fall back on these and similar problematic segments of Indra Sawhney to affect a temporary resolution. But we must not forget that Indra Sawhney is someone who is motivated by a blanket anti-reservation stand, as are most liberals. Her reason for opposing the 10% reservation is that of "deserving candidates in general category losing out on opportunities," and not historical injustice to marginalised who have not been allowed adequate, forget proportionate, rights! And as expected, the Centre has utilised technicalities of the same judgment to attribute constitutional validity to this 10% reservation<sup>11</sup>. And the more we get lost in the interpretation of this one judgment, the more remote becomes the possibility of securing category-wise rights for transgender people – we will forever be limited as beneficiaries of benevolent sops. Because this society's illusory justice system, if at all it mulls over the question of substantive equality, operates on the notion of a singular 50-50 as equality in a world of multiple nested 90-10 realities.

Therefore, if we are to achieve category-wise rights while also asserting that the constitution is a living document with flaws, limitations and complicated origins, our beginnings must be with the assertion of a clear, undiluted presence in the Constitution itself, an assertion that this text is unequivocally ours too. To highlight the multiplicity of our oppressions, we must also first have access to independent existence. Moving away from the NALSA judgment's interpretation of Article 15 and 16 that 'sex' encompasses both gender and sexual orientation, gender, and sexual orientation must be introduced as separate categories in the Constitution. This is required to not forget the historical oppression faced by fetuses, infants and individuals assigned biological sex female, to not continue to erase those who are biologically intersex, to establish the differences between sex, gender and sexual orientation (till they cease to matter), and to prevent our complete dissolution into the 'socially and educationally backward classes'.

As a separate category, with multiple nodes of oppression, and as citizens with equal rights we must also be enumerated to determine our presence in the population for which the Registrar General of India – in consultation with the communities to address the inadequacies and contradictory tendencies in the rules (that read sex and gender as equivalent), not to overlook cultural specificities, and ensure a respectful process – must undertake a gender census. It is only after the enumeration of a population and their demands and carving out of adequate space for proportionate representation in all aspects of public life and democratic processes that any overarching legislation of lasting effect upon a community can be made in a democracy.

Therefore, if we demand that the current bill go back to a Select committee for review—unless that Select committee, through state-wise community consultations, offers this or any other democratically arrived alternative that fully grasps the pulse of the most marginalised among us—we must prepare for the truth that they will eventually return to the same documents (listed above) that reek of nothing but cisgender savarna anxiety and arrogance. With the understanding that there is a possibility that my imagination of solutions may be incomplete at best and impractical at worst, I must continue to insist that the problems namely, cisgender caste monopolisation of this society, this bill and all its antecedents must go.

## Endnotes

1. Since the acceptance of this paper, the Transgender bill was passed by both houses of Parliament and signed into an act by the President on December 5, 2019. Some of the concluding points here may now appear ‘irrelevant’, but they continue to inform our struggles and form a record of our histories.
2. As mentioned here: <https://nalsa.gov.in/content/social-action-litigation>
3. See: <http://sooe.org.in/campaigns/milestones/ms-a.pdf>
4. See statement from the intersex and trans/gender diverse community challenging the leadership of Laxmi Narayan Tripathy:  
<https://sampoornaindiablog.wordpress.com/2018/11/24/trans-gender-nonconforming-intersex-collectives-strongly-condemn-kinnar-akharas-support-for-ram-temple-at-ayodhya-india/>

5. This letter was written to oppose the undemocratic method of constituting the expert committee:  
[http://roundtableindia.co.in/index.php?option=com\\_content&view=article&id=7185:open-letter-by-trans-men-to-ministry-of-social-justice-and-empowerment&catid=129&Itemid=195](http://roundtableindia.co.in/index.php?option=com_content&view=article&id=7185:open-letter-by-trans-men-to-ministry-of-social-justice-and-empowerment&catid=129&Itemid=195)
6. I have not gone into detail about the historical positions enforced on trans/gender diverse communities and these examples are indicative only, as work on the historical excavation is ongoing. An indicative reference: <https://indianexpress.com/article/research/eunuch-security-guards-bihar-mughal-empire-history-5266102/>
7. In this piece Adv Tripti Tandon appears to take a position that falls back on, and even upholds the notion of psychological tests (as put forward by the NALSA judgment) while critiquing the Standing Committee Report. <https://theleaflet.in/analysis-the-transgender-persons-protection-of-rights-bill-2016-standing-committee-report/>
8. To name a few in recent history: as recently as Dec 2018, the Madras HC has issued a notice on reservations in jobs for transgender people on the petition of trans person P Sudha: <https://www.livelaw.in/plea-for-job-reservation-for-transgenders-madras-hc-issues-notice-to-tn-govt/> ; More than a year back the Karnataka government promised reservations in schools: <https://www.indiatoday.in/education-today/news/story/karnataka-transgenders-reservation-1070883-2017-10-27>, and followed it up with a policy that has been analysed here: <https://www.thenewsminute.com/article/karnataka-state-transgender-policy-well-meaning-needs-changes-79613>; Kerala provided just two seats in colleges for gender non-conforming applicants: <https://www.hindustantimes.com/education/kerala-announces-reservation-for-transgender-students-in-colleges/story-qHixW6XIPTEXuXkCrrv45K.html>
9. I have taken Tarunabh Khaitan's views into consideration as his work on Discrimination law has become central to the proposed Antidiscrimination and Equality Bill 2017 and also anti-discrimination work being undertaken by savarna queer groups and organisations: <https://www.nationalheraldindia.com/news/interview-a-comprehensive-anti-discrimination-law-is-long-overdue-in-india-says-dr-tarunabh-khaitan>
10. <https://www.livelaw.in/shashi-tharoors-equality-bill-way-realising-ambedkars-vision-discrimination-free-india-says-oxford-academic-tarunabh-khaitan/>
11. See: <http://www.newindianexpress.com/nation/2019/mar/12/centre-in-sc-justifies-law-for-10-per-cent-quota-to-economically-weaker-sections-1950209.html>

12. Semmalar, Gee Imaan. (2014). Gender outlawed: The Supreme Court judgment on third gender and its implications. Roundtableindia.co.in. Retrieved from: [https://roundtableindia.co.in/index.php?option=com\\_content&view=article&id=7377:because-we-have-a-voice-too-the-supreme-court-judgment-on-third-gender-and-its-implications&catid=120:gender&Itemid=133](https://roundtableindia.co.in/index.php?option=com_content&view=article&id=7377:because-we-have-a-voice-too-the-supreme-court-judgment-on-third-gender-and-its-implications&catid=120:gender&Itemid=133)
13. Shaikh, Disha Pinky. (2018). Hi goshta tevhachi ahe: This is a story of those times. Roundtableindia.co.in. Retrieved from: [https://roundtableindia.co.in/~roundta3/index.php?option=com\\_content&view=article&id=9320:hi-goshta-tevhachi-ahe&catid=129:events-and-activism&Itemid=195](https://roundtableindia.co.in/~roundta3/index.php?option=com_content&view=article&id=9320:hi-goshta-tevhachi-ahe&catid=129:events-and-activism&Itemid=195)
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