



Intersex Justice in India

Inspiring Action through Research

*Country report on the situation of
Intersex Rights in India*

2024

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Preface

This report focuses on the current state of intersex rights and services in India setting it within the larger context of LGBTIQ rights and activism. It begins with a focus on issues of medicalization that intersex people often experience and how that impacts their health and lives. In this vein, the report highlights several initiatives in the country to protect right to bodily integrity for intersex people through initiating bans on unnecessary medical surgeries on intersex infants.

Acknowledgement

This report has been developed based on the reports and publications developed by activists, researchers, and practitioners working on intersex issues around the country. I would like to acknowledge and recognise efforts made by several individuals and non-profit organisations who have been consistently working to create better living conditions for intersex people throughout the country particularly through enactment and implementation of robust laws and policies to uphold intersex rights. This report has also benefited from informal conversations with two intersex activists who showed willingness to share their stories and knowledge. This report has been possible due to the efforts of Intersex Asia. Specifically, I would like to thank Prashant Singh for his extensive feedback and comments which has strengthened this report. Thank you also to the Egale Canada team for envisioning and funding this report.

Executive Summary

The report presents desk research on existing discourses on intersex rights and concerns. It scans through laws and policies, beginning with colonial laws such as the anti-sodomy law and the Criminal Tribes Act that have affected and continue to affect intersex people. It also zooms in on contemporary laws including the NALSA verdict, and the Transgender Persons (Protection of rights) Act of 2019 to bring attention to intersex rights, as well as underline limitations of these laws. It is peppered with several case laws related to intersex individuals that serve as examples to highlight intersex experiences. Furthermore, this report discusses other laws and policies including international human rights frameworks and legislations to point toward future activism and advocacy initiatives. Including informal conversations from two intersex activists, this report also presents several civil society and advocacy initiatives in recent years in India. This report is aimed at contributing to current knowledge and understanding of intersex issues and concerns in the country and provide useful recommendations for further activism, advocacy and research on intersex issues.

Intersex Asia

WE DEFEND **Intersex**
HUMAN RIGHTS IN ASIA



Intersex Asia Timeline

Intersex movement in Asia started in the 1990s from Japan, develops internationally since 2008 from Taiwan.

1. Introduction

- 1.1 **Setting the Context**
- 1.2 **Intersex**
- 1.3 **Intersex in the Indian Context**
- 1.4 **Discourses around Intersex in Sport**

1.1 Setting the Context

In the last few decades there has been growing awareness on LGBTQ+ rights in India. In September 2018, in *Navtej Johar v. Union of India*¹, the Supreme Court of India read down the antiquated and colonial anti-sodomy law in the form of section 377 of the Indian Penal Code ensuring that adult same-sex consensual sex activity is taken away from the purview of this law². Revoking of the anti-sodomy law has meant that same-sex desiring people can now live their lives without fear of legal persecution. The presence of the anti-sodomy law has galvanized movement building against discrimination on queer and gender-variant people. For instance, *Voices Against 377*, a coalition of individuals and institutions, was instituted to fight against the discrimination perpetuated by the anti-sodomy law; this movement building against the anti-sodomy law has ultimately led to the eventual reading down of the law³. This progress in law however does not necessarily percolate into positive experiences for all LGBTQ+ people in their overall lives. LGBTQ+ people living at the intersections of other axes of marginality including that of class, caste, gender, education etc. can experience oppression at an even more accentuated level. Despite the revocation of the law, queer people are still denied equality and respect in their families, communities and workspaces⁴. Revoking of the law however is definitely a step forward in the right direction.

The Indian sub-continent's culture has historically allowed for diverse ways of being. For instance, India has numerous people of gender-variant identities including genderqueer, intersex, Hijra, Aravani, Kothi, Shiv-Shaktis, Jogti, Kinnar, Aradhi among others⁵. Understanding of different gendered identities in the subcontinent is culturally constituted and may not easily fit into western conceptualizations of sex/gender binary frameworks. These cultural identities have always existed and continue to exist in India, although they have been adversely impacted by processes of colonisation. Each of these groups comes with its own cultural understanding and ways of being that exists beyond binary frameworks of sex and gender. These cultural identities, with meanings and rituals of their own, are not easily translatable into western languages or ways of organization. As Dutta and Roy⁶ argue, "the attempted universalization of transgender as a transnational umbrella term by the development (nongovernmental) sector, the state, and their funders tends to subsume South Asian discourses and practices of gender/sexual variance as merely "local" expressions of transgender identity". Processes of universalization hold true not only for 'transgender' as a category but can be extended to other categories as well.

Besides the existence of gender and cultural diversity, there have also been a

¹Navtej Singh Johar v. Union of India, September 6, 2018. <https://indiankanoon.org/doc/168671544/>

²Dipika Jain, Kimberly Rhoten and Surabhi Shukla, "Recent Legal Reforms on Gender Recognition: A Global Review," Centre for Health Law, Ethics and Technology (2019).

³Voices Against 377, "History," Accessed April 5, 2023, <http://www.voicesagainst377.org/history/>.

⁴Annie Banerji, "One Year After Landmark Ruling for LGBT+ Rights in India, Challenges Persist," Reuters, September 7, 2019, <https://www.reuters.com/article/us-india-lgbt-idUSKCN1VR256>

⁵Jain, Rhoten and Shukla, "Recent Legal Reforms."

⁶Aniruddha Dutta and Raina Roy, "Decolonizing Transgender in India: Some Reflections," *TSQ: Transgender Studies Quarterly*, 1, no. 3 (2014): 321.

growing number of pride parades and marches across the country demonstrating a growing acceptance of diversity in gendered identities and sexual categories. The oldest pride parade in India and in South Asia took place in Kolkata in 1999⁷. Currently, pride parades take place in different parts of the country such as in Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Dehradun, Gangtok, Goa, Guwahati, Hyderabad, Imphal, Jaipur, Jamshedpur, Kolkata, Lucknow, Mumbai, New Delhi, Patna, Pondicherry, Shillong, and Thrissur⁸. However, despite increasing awareness on LGBTQ issues, there has been little attention to intersex peoples' rights and concerns within the country. There is also a lack of awareness on intersex as a (medical) category in itself. Although intersex people may share overlaps with other gender identities and categories, it is a distinct entity in and of itself. This report will focus on intersex people's rights and concerns particularly in areas of law and medicine. It will analyze some of the existing laws and policies that continue to impact intersex people and also reflect on recommendations and strategies to go forward.

1.2 Intersex

Intersex is a term used to connote people whose sex characteristics do not easily align to medical binary understanding of male or female bodies.^{9,10} Intersex Human Rights Australia (IHRA) defines sex characteristics as "physical features relating to sex, including chromosomes, genitals, gonads, hormones, and other reproductive anatomy, and secondary features that emerge from puberty."¹¹ As such, intersex is a category based on sex characteristics (and not gender). Sex and gender are however intricately entangled within society with people making inferences on gender based on sex, as well as one's gender identity leading to assumptions on one's anatomy. Although gender has been understood and argued as a social construction, there is increasing agreement on sex itself being a result of construction.¹²

Intersex is a medical diagnosis,¹³ which is based on an understanding of binary medicalized organization of society as male/female. The category of intersex comes alive in a clinical setting. Intersex people are often subjected to medical interventions including surgeries as soon as they are diagnosed. Some medical interventions on infants may be necessary for their health, for instance in

⁷Hamsadhvani Alagarsamy, "The History of Pride Parades in India," *Feminism in India*. June 24, 2019, <https://feminismindia.com/2019/06/24/pride-parades-india-history/>.

⁸Alagarsamy, "The History."

⁹IHRA, "What is Intersex," Accessed April 5, 2023, <https://ihra.org.au/18106/what-is-intersex/>.

¹⁰Caroline Medina, and Lindsay Mahowald. "Key Issues facing People with Intersex Traits," CAP, October 26, 2021, <https://www.americanprogress.org/article/key-issues-facing-people-intersex-traits/>

¹¹IHRA, "What is Intersex."

¹²Fausto-Sterling, Anne, *Sexing the Body: Gender Politics and the Construction of Sexuality*. New York, NY: Basic Books, 2000.

¹³Iain Morland, "Intersex," *TSQ: Transgender Studies Quarterly*, 1, no.1-2 (2014): 111-115.

cases where they may have high risk of gonadal tumors or if the infant has an inability to urinate¹⁴. However, most medical interventions including surgeries on intersex infants and children are unnecessary, irreversible and may have long-term effects.¹⁵ Intersex surgeries and interventions reflect and fulfill more of a societal need, rather than a need felt by intersex individuals themselves.¹⁶ As Iain Morland¹⁷ argues, what “intersex diagnoses have in common is the medicalization of a failure to classify the body as one of two sexes”.

Intersex is a heterogeneous population with many different kinds of sex variations.¹⁸ Globally, there are approximately 1.7 percent people who account as people with intersex variations.¹⁹ It is difficult to arrive at an agreed statistic as there are many different kinds of intersex variations and some are difficult to be diagnosed. Some variations can be detected at birth whereas many others might be detected much later. It is possible to test some variations (such as Congenital Adrenal Hyperplasia, 45,X and 47,XXY) prenatally through amniocentesis.²⁰ It is also possible for many intersex people to grow up without the knowledge of their variation. This is especially the case when the variation lies in their internal organs, chromosomes and hormones. They may also be unaware of the medical interventions they may have undergone as doctors and families may actively keep away information about their intersex status from intersex children.²¹

Intersex people have been variously called over the ages. They have been called as hermaphrodites, which is an erroneous term with limited meaning. It is also considered offensive by some intersex people.²² They are also referred to as people with Disorders of Sex Development, a term used by many medical doctors to refer to intersex people. Intersex is the preferred term that is widely used and accepted by different intersex individuals and activists globally. It is worthwhile to note that these terms and definitions may not be part of people’s lives and experiences. Many people may not be aware of or be comfortable in using any of these terms and labels. Intersex people are a varied and heterogeneous population and they do not share a singular gender identity or sexual orientation.²³ Thus, there are differences in variations, Moreover, there may be differences in how different individuals choose to identify and represent themselves.

Intersex people often have a shared sense of stigma and shame. Not everyone is comfortable to use intersex as an identity for themselves particularly because

¹⁴ IHRA, “What is Intersex.”

¹⁵ IHRA, “What is Intersex.”

¹⁶ Morgan Holmes, “Mind the Gaps: Intersex and (Re-productive) Spaces in Disability Studies and Bioethics,” *Bioethical Inquiry* 5 (2008): 169–81.

¹⁷ Morland, “Intersex,” 111.

¹⁸ IHRA, “What is Intersex.”

¹⁹ IHRA, “What is Intersex.”

²⁰ IHRA, “What is Intersex.”

²¹ Preves, Sharon. *Intersex and Identity: The Contested Self*. New Brunswick, NJ: Rutgers University Press, 2003.

²² IHRA, “What is Intersex.”

²³ IHRA, “What is Intersex.”

of the stigma attached. It is also important to note that intersex is not a gender identity. Even when a person may be diagnosed with intersex variations they may identify themselves within the gender binary as man or woman. Some may identify as intersex man or intersex woman; still others might identify as non-binary. Because of socio-cultural conditioning most intersex people may also identify within the heteronormative framework.

1.3 Intersex in the Indian Context

One of the first cases under judicial review that was recognized pertaining to an intersex person is that of Faizan Siddique v. Sahastra Seema Bal²⁴ in 2011. The petitioner, Faizan Siddique, interrogated the rejection of her candidature as a Constable in the Sahastra Seema Bal, which is India's guarding force deployed in the borders of Nepal and Bhutan. Siddique's candidature was rejected on grounds of medical 'unfitness' in 2008. In 2002, Siddique had been diagnosed with a hormonal variation after which she had undergone surgery and was undergoing hormone therapy. Siddique's doctor, an endocrinologist, certified that although Siddique was under hormonal treatment, she was medically fit and capable of performing the duties of a female constable. This case brought to public attention issues of intersex people and how they may be perceived in the public domain. Although this was one of the first few cases in a legal court which explicitly talked about people with intersex variations, it must be recognized that intersex people have always existed but may not have received recognition or attention as intersex. Non-recognition of intersex people in legal courts highlights the invisibilisation of intersex people in public domain, and the lack of understanding and awareness on intersex issues.

Although there maybe many indigenous terms that could be used for intersex people in India, they are not widely used or known. Activists working with intersex people in different parts of the country have been working on creating awareness on intersex identities as well as using different indigenous terms and labels to identify members of the community. For example, the term Idailingam Makkal is used in some parts of Southern India.²⁵ In 2021, on the bequest of the Madras High court the Tamil Nadu government came up with a glossary of Tamil and English terms used for LGBTQ+ people, thus making Tamil Nadu the first state to come up with an official glossary.²⁶ While it is commendable that the state has come up with its own glossary, it is an inexhaustive and dynamic document. The queer community has also been active in collating their own glossary of

²⁴Faizan Siddique vs Sahastra Seema Bal on 3 May, 2011. <https://indiankanoon.org/doc/176981719/>.

²⁵Priya Menon, "LGBTQIA+ Community Welcomes Tamil Nadu Govt's Glossary Addressing Them," The Times of India, August 24, 2022, <https://timesofindia.indiatimes.com/city/chemmail/new-glossary-on-lgbtqia-some-terms-a-problem/articleshow/93742010.cms>

²⁶Menon, "LGBTQIA+."

preferred terms.²⁷ For example, although the term Oodupal was used for intersex, Gopi Shankar, an intersex activist has expressed his reservation for the term as it denotes sex identity (and not sex characteristics) and has expressed that the term Idailingam Makkal be used instead.²⁸ Tamil Nadu provides a pathway for other states and communities to develop similar glossaries in different languages.

Intersex people are often confused with transgender people. Although intersex people share commonalities with the transgender community particularly in terms of the stigma and discrimination they face, these communities are distinct and have specific concerns.²⁹ Intersex people are also confused with hijras within the Indian subcontinent. Hijra is a cultural identity and comprise of “‘men’ who wear women’s clothes and sacrifice their genitalia in return for the power to ritually confer fertility on others.”³⁰ Taparia³¹ describes hijras as “a religious community of biological men or hermaphrodites who dress and act like women, organize themselves in fictive kinship groups, and whose culture is deeply encrusted in the mythical structures and historical processes of the Indian civilisations”. They often go through a “sacrificial ritual of emasculation” through a process of castration.³² As such, hijras are “located outside the binary sex/gender framework” and are treated as a stigmatized community because of their sex/gender difference.³³ Although hijras are assumed to comprise of intersex people, in reality, very few people within the community are intersex.³⁴ Despite this, there exists an entanglement in the identities of hijras and intersex in the public imagination.

1.4 Discourses around Intersex in Sport

Conversations around intersex as an identity in India have also picked up in the last two decades through news reports around sex testing in sports. For instance, in 2006, 25-year old Santhi Soundarajan, an athlete from Tamil Nadu who finished second in the 800 meters race at the Doha Asian Games, had to undergo sex testing.³⁵ Although the International Olympic Committee (IOC) and International Association of Athletics Federation (IAAF) had stopped gender

²⁷ Menon, “LGBTQIA+.”

²⁸ Menon, “LGBTQIA+.”

²⁹ Georgiann Davis, Jodie M. Dewey and Erin L. Murphy, “ Giving Sex: Deconstructing Intersex and Trans Medicalization Practices,” *Gender and Society*, 30, no. 3 (2016): 490-514.

³⁰ Gayatri Reddy, “Geographies of Contagion: *Hijras*, *Kothis*, and the Politics of Sexual Marginality in Hyderabad,” *Anthropology and Medicine*, 12, no.3 (2005): 256.

³¹ Swadha Taparia, “Emasculated Bodies of *Hijras*: Sites of Imposed, Resisted and Negotiated Identities,” *Indian Journal of Gender Studies*, 18, no.2 (2011): 169.

³² Taparia, “Emasculated Bodies,” 169.

³³ Reddy, “Geographies of Contagion,” 256.

³⁴ Taparia, “Emasculated Bodies.”

³⁵ Ruth Padawer, “The Humiliating Practice of Sex Testing Female Athletes,” *The New York Times Magazine*, June 28, 2016, <http://www.joelvelasco.net/teaching/3334/The%20Humiliating%20Practice%20of%20Sex-Testing%20Female%20Athletes%20-%20The%20New%20York%20Times.pdf>.

testing in the previous decade, they retained the right to do so in select cases.³⁶ Soundarajan’s ability to run fast along with her “deep voice and flat chest” drove suspicions about her gender and this was used to justify her sex testing.³⁷ Soundarajan “failed” the gender test, and was stripped of her silver medal.³⁸ She was diagnosed with Androgen Insensitivity Syndrome (AIS), where a person is ‘genetically male’ but is resistant to ‘male hormones’ and therefore has physical traits that are ‘like’ women.³⁹ Soundarajan was not just rejected by the local sports community but also experienced intense scrutiny and stigmatization. After a long struggle, Soundarajan received some support from the state government and was appointed to the state Sports Development Authority.⁴⁰ Similarly, in 2014, 18-year old Dutee Chand, who was preparing for the upcoming Commonwealth games in Glasgow, was directed by the Athletics Federation of India (AFI), to undergo a routine ultrasound test.⁴¹ Chand’s good performance in a national championship in Taipei along with her ‘masculine’ physique prompted authorities to direct her to a sex test.⁴² Her tests revealed that her ‘male hormones’ were higher than ‘normal’ levels for females thus barring her from participating in competitive sports.⁴³ Along with her legal team, Chand challenged the decision and approached the Court of Arbitration for Sport (CAS) which stayed the case for two years while it was being evaluated.⁴⁴

These stories are not isolated; many female athletes across several decades have had to go through gender testing and regulation. Both the IOC and the IAAF have been known to regulate gender boundaries in female athletic events.⁴⁵ These regulatory measures have been justified on grounds of maintaining equity and to prevent ‘males from masquerading as females’ in sports. These procedures therefore serve the purpose of assessing if an athlete is ‘female enough’ to compete in sport events. These regulatory measures often take place only in female sporting events. Higher testosterone levels are considered to provide an advantage to female athletes. Although testosterone is considered a ‘male hormone’, scholars have refuted such claims.⁴⁶ Testosterone is also present in female bodies and therefore does not qualify as a male-only hormone. Additionally, whether or not testosterone provides an edge to participants is also contested.⁴⁷ These

³⁶ Padawer, “The Humiliating Practice.”

³⁷ Padawer, “The Humiliating Practice.”

³⁸ Padawer, “The Humiliating Practice.”

³⁹ Manuja Veerappa, “A Life Changed Forever,” *ABC News*, December 17, 2022, <https://www.abc.net.au/news/2022-12-17/where-is-santhi-soundarajan-now-asian-games-medal-stripped/101737534>.

⁴⁰ Solidarity Foundation, ““What if it is neither?”: A Report on the Historic Seminar on Intersex Persons’ Issues in India,” Accessed April 5, 2023, <https://www.solidarityfoundation.in/post/what-if-it-is-neither-report-of-seminar-on-intersex-persons-issues/>.

⁴¹ Padawer, “The Humiliating Practice.”

⁴² Padawer, “The Humiliating Practice.”

⁴³ Padawer, “The Humiliating Practice.”

⁴⁴ Solidarity Foundation, “What if it is Neither.”

⁴⁵ Madeleine Pape, “Expertise and Non-Binary Bodies: Sex, Gender and the Case of Dutee Chand,” *Body & Society* 25, no.4 (2019):3-28.

⁴⁶ Cordelia Fine, Rebecca Jordan-Young, Anelis Kaiser, and Gina Rippon, “Plasticity, Plasticity, Plasticity ... and the Rigid Problem of Sex,” *Trends in Cognitive Sciences* 17, no.11 (2013): 550–51.

⁴⁷ Katrina Karkazis, and Rebecca M. Jordan-Young, “The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes,” *Feminist Formations* 30, no. 2 (2018): 1–39.

regulatory measures also disproportionately impact athletes from global south country contexts barring them from playing and winning in sports at the global level. According to Human Rights Watch, “World Athletics, the sport’s global governing body, targets women from countries in the global south for “abusive sex testing” based on arbitrary definitions of femininity and racial stereotypes.”⁴⁸ Both Soundarajan’s and Chand’s cases have been debated in Indian media thus leading to increased awareness on intersex as a medical classificatory category. These cases have also led to intense discussions around defining the boundaries of sex and gender for all people.

⁴⁸Kaamil Ahmed, “World Athletics Accused Over ‘Abusive Sex Testing’ of Athletics from Global South,” *The Guardian*, December 5, 2020, <https://www.theguardian.com/global-development/2020/dec/04/world-athletics-accused-over-abusive-sex-testing-of-athletes-from-global-south>.

2. Methodology

2. Methodology

This study adopts a qualitative research methodological approach to understand the status of intersex people in India. It is largely based on a thorough literature review of scholarly literature and texts on intersex concerns globally as well as with a specific focus on India. The literature includes desk review of academic texts, medical literature, reports and studies developed by civil society organisations, legal case studies, and non-academic news articles. Desk review has however been mostly limited to texts in English and therefore excludes literature that are available in regional and local languages. For instance, Bindumadhav Khire's Marathi book 'Intersex, Ek Prathamik Kodak' traces the history of intersex exploring the presence of androgynous characters in mythological texts.⁴⁹

This report has also benefited from semi-structured, informal conversations with two intersex activists, Dit Mangang, and Mohammad Duha, who graciously consented to share their experiences. They have also expressed their consent to include their names as part of the study. It was intentional not to conduct formal interviews with many intersex people keeping in mind the ethical imperatives of such endeavours. These activists were recruited through their associations and work with Intersex Asia. This study does not delve on details of personal narratives shared by the activists. Instead, their narratives have been included to discuss the needs and concerns experienced by some intersex people. Although not generalizable to all intersex people, these narratives add important perspectives.

⁴⁹Ananya Barua, 'Bindumadhav Khire on Why Intersex Are Minorities Even Within LGBTQ Community,' *Hindustan Times*. <https://www.hindustantimes.com/pune-news/bindumadhav-khire-on-why-intersex-are-minorities-even-within-the-lgbtq-community/story-2ii1SvjjMSDoiXswf1mltK.html>

3. Civil Society & State Initiatives

3. Civil Society & State Initiatives

Intersex mobilizing and activism is in its nascent stages in India. Political mobilisation around intersex has been rendered difficult partly because intersex discourses are rooted in a biological essentialist view.⁵⁰ It is only in recent times that intersex people's rights have gradually begun to gain attention in the context of queer rights.⁵¹ There is however a growing movement around the prevention and ban on medically unnecessary and irreversible early surgeries. In 2019, Tamil Nadu became the first state to ban unnecessary gender assignment surgeries on intersex infants because of concerted efforts by Srishti Madurai, a self-funded, student volunteer movement working on a variety of issues including intersex human rights.⁵² Soon after, in 2021, the Delhi Commission for Protection of Child Rights (DCPCR) recommended a similar ban on medically unnecessary surgeries on intersex children.⁵³ These bans have been the outcomes of advocacy and activism by a growing intersex movement and advocacy in the country, which is in line with other Western contexts such as in Australia, and the USA where there exists advocacy arguing for late surgeries.

Apart from legal measures, several civil society initiatives have been initiated as well. In October 2017, Solidarity Foundation⁵⁴ in collaboration with the National Institute of Mental Health and Neurosciences (NIMHANS)⁵⁵ organized a public consultation on intersex persons' rights. It was the very first time such a seminar was held focusing on intersex concerns. Following from the consultation, Solidarity Foundation also organized a fellowship program to create a network for intersex people and provide a space to voice concerns. The first national intersex human rights conference took place in Delhi in 2019 creating a space for important conversations on concerns and needs of intersex people.⁵⁶ The conference was attended by intersex people from India and outside to discuss the enactment of a nationwide legislation to prohibit gender reassignment surgeries on intersex infants.

The formation of Intersex Asia in the region has also been crucial to initiate intersex movement building in the region. Intersex Asia is a regional network of intersex-led organisations that advocates for the rights of intersex persons and raises awareness on discrimination faced by intersex people. It was formed at the first Asian intersex forum organized in Bangkok in February 2018, which brought together 14 intersex people from the region including from India. The Asian

⁵⁰ Suchaita Tennesi, "Curative Violence Against LGBT+ People in India: Key Issues and Perspectives," R. Rajaram GRIT Research Fellowship Paper 1, *The Prajnya Trust*, 2020:6.

⁵¹ Tennesi, "Curative Violence," 6

⁵² Srishti Madurai, "Conference Report: First National Conference on Intersex Human Rights in India," April 5, 2023, <https://intersexindia.files.wordpress.com/2020/05/conference-report.pdf>.

⁵³ Meenakshi Ganguly, and Kyle Knight, "Momentum Builds Around Intersex Protection in India," *Human Rights Watch*, January 14, 2021, <https://www.hrw.org/news/2021/01/14/momentum-builds-around-intersex-protection-india>

⁵⁴ Solidarity Foundation is a Bangalore-based organization which supports sex workers and gender minorities. To know more about the organization, visit: <https://www.solidarityfoundation.in/about-us/>

⁵⁵ NIMHANS is a world-renowned medical institution on mental health. It is based in Bangalore in Southern India. To know more about the institution, please visit: <https://nimhans.ac.in>.

⁵⁶ Srishti Madurai, "Conference Report."

Intersex Statement, developed during the forum, underlined the discrimination and stigmatization faced by intersex persons and called on human rights organizations, and national governments to put an end to non-consensual medical interventions on intersex people.⁵⁷ Intersex Asia also organized a fellowship program in 2020 to develop leadership within the region. The first fellowship program worked with 8 intersex activists from the region, including from India. One of the fellowship attendees, Duha, lamented the lack of local movements, the daunting nature of initiating a national movement around intersex solidarity and highlighted the need to build solidarities with local networks. Attending the fellowship program was instrumental in getting fellows connected with local, national and international networks, and provide momentum to movement-building in the region.

⁵⁷ Intersex Asia, “Asian Intersex Movement: Public Statement,” Accessed on April 5, 2023, https://intersexasia.org/wp-content/uploads/2019/08/IA-Stat_English_pages.pdf



4. Findings & Discussion

- 4.1 **Intersex Medicalisation**
- 4.2 **Consent and Curative Violence**
- 4.3 **Protecting Right to Bodily Integrity**
- 4.4 **Gender Assignment Decisions and Son Preference**
- 4.5 **Colonial Laws**
- 4.6 **Ignorance and Invisibilisation**
- 4.7 **Anti-Discrimination**
- 4.8 **Gender Registration at Birth & Legal Gender Recognition**
- 4.9 **Education and Employment**
- 4.10 **Comprehensive Sexuality Education**
- 4.11 **Health**

4.1 Intersex Medicalisation

Intersex as a category is highly medicalized. This is reflected in the terminology used to refer to intersex people. Since the intersex consortium held in Chicago in 2006,⁵⁸ the term people with ‘Disorders of Sex Development’ or DSD has been used to label intersex people and to highlight the biological differences in intersex bodies. The adoption of this term has however received criticism as it was adopted without the active engagement of intersex communities.⁵⁹ In addition, as many intersex activists contend, using the label ‘people with DSD’ posits more attention to the medicalization of intersex bodies, and “inherently disorders intersex traits.”⁶⁰

Intersex medical management is a specialized field of work. In India, specialized medical diagnosis and interventions for intersex people largely takes place in bigger cities and hospitals.⁶¹ Patients with intersex variations are often referred by local healthcare institutions to tertiary clinics and hospitals with greater experience.⁶² Some local healthcare institutions however also told parents not to bother about the child’s variation and instead seek help later.⁶³ Although it is ideal that medical decisions for intersex people are taken by a multidisciplinary team of doctors, because of lack of adequate resources and time, doctors in India are often unable to consult with other team members on a regular basis.⁶⁴ While some clinical settings do afford consultative processes, these processes differ across different hospitals, both public and private.

Most hospitals do not maintain a registry of intersex patients; therefore there is inadequate information available on the nature of medical interventions on intersex people.⁶⁵ While some infants with intersex traits might be diagnosed in the first few months after birth, others may get diagnosed later. Many intersex patients do not get diagnosed or treated in their infancy because of marked differences in medical resources, and infrastructural constraints.⁶⁶ Some might approach doctors during their pubertal years either because they may not have developed secondary sexual characteristics commensurate with their assigned gender or they may have developed sex characteristics of the ‘opposite’ gender.⁶⁷ For instance, people may approach doctors when their female assigned children

⁵⁸ The Chicago consortium was held in 2006. The term DSD (Disorders of sex development) grew out of this consortium. This consortium has been heavily critiqued because of the limited participation of intersex activists. The term DSD has therefore been used with limited consultation with intersex individuals and community members. To read more about this, please refer to: <http://www.intersexinitiative.org/articles/dsdfaq.html>.

⁵⁹ Morgan Carpenter, “The “Normalization” of Intersex Bodies and “Othering” of Intersex Identities in Australia,” *Journal of Bioethical Inquiry*, 15 (2018): 487-495.

⁶⁰ IHRA, “What is Intersex.”

⁶¹ Arpita Das, “Aching to be a Boy’: A Preliminary Analysis of Gender Assignment of Intersex Persons in India in a Culture of Son Preference,” *Bioethics*, 34, no.6 (2020): 585-592.

⁶² Angela Ann Joseph, Bindu Kulshreshtha, Iram Shabir, Eunice Marumudi, Tony Sam George, Rajesh Sagar, Manju Mehta and Ariachery C. Ammini, “Gender Issues and Related Social Stigma Affecting Patients with a Disorder of Sex Development in India,” *Archives of Sexual Behavior*, 46 (2017): 361-367.

⁶³ Joseph et al, “Gender Issues and Related Social Stigma.”

⁶⁴ Das, “Aching to be a Boy.”

⁶⁵ Das, “Aching to be a Boy.”

⁶⁶ Joseph et al, “Gender Issues and Related Social Stigma.”

⁶⁷ Das, “Aching to be a Boy.”

might not have adequate breast development, or may not have started their menstrual cycles. Male assigned children may be brought in when they have inadequate facial hair growth or have inadequate penile growth.

Doctors often term the birth and diagnosis of an intersex child as a “social emergency.”⁶⁸ This was reiterated in many of the interviews conducted with medical doctors in more recent times.⁶⁹ The diagnosis of intersexuality often brings into motion a host of medical decisions towards diagnosis and gender assignment of the child. It also gears families towards maintaining the secret of the child’s variation as a strategy to ‘protect’ them from potential bullying. In India, it is not only the immediate family but an entire community (consisting of extended family members, neighbors and family friends) that comes into close contact with the child. Parents and immediate family members therefore have to take added precautions to keep the intersex status of the child a secret.⁷⁰ In addition, decisions about the gender of the child are dictated not just by medical factors but also by sociocultural factors.⁷¹ Parents and family members play a crucial role in gender assignment decision-making processes for the intersex child.⁷²

According to several doctors practicing in India, it is recommended that surgeries be conducted soon after one’s sex is assigned, preferably in infancy or before the child started going to school.^{73,74} Doctors call for an urgency in assigning a definite and unambiguous sex and gender to the child as early as possible.^{75,76} This urgency for a quick diagnosis and early gender assignment is in line with western intersex case management protocols based on the optimum gender of rearing model that was initiated by John Money and his team.⁷⁷ Money asserted that a quick diagnosis and assignment (within the first 1.5 to two years) was necessary for the child to feel confident in their body and their gender identity and to be well adjusted in society.⁷⁸ It was important that the doctors assigned a definitive gender and the families followed the assigned gender roles strictly for the child.⁷⁹

In the Indian context as well, Warne and Bhatia⁸⁰ discuss how late surgery is often not preferred. In their study based in India, ten intersex patients aged 12 years and above were interviewed about their preferences for the timing of the genital surgery.⁸¹

⁶⁸ R. Rajendran, and S. Hariharan, “Profile of Intersex Children in South India,” *Indian Pediatrics*, 32 (1995): 666

⁶⁹ Das, “Aching to be a Boy.”

⁷⁰ Gary Warne, and Vijayalakshmi Bhatia, “Intersex, East and West,” *In Ethics and Intersex* (ed. S. E. Sytsma), 2006.

⁷¹ Warne and Bhatia, “Intersex, East and West.”

⁷² Warne and Bhatia, “Intersex, East and West.”

⁷³ Das, “Aching to be a Boy.”

⁷⁴ Rajendran and Hariharan, “Profile of Intersex Children.”

⁷⁵ Das, “Aching to be a Boy.”

⁷⁶ Rajendran and Hariharan, “Profile of Intersex Children.”

⁷⁷ Jennifer Germon, *Gender: A Genealogy of an Idea*. New York: Palgrave-Macmillan, 2009.

⁷⁸ Germon, “Gender.”

⁷⁹ Germon, “Gender.”

⁸⁰ Warne and Bhatia, “Intersex, East and West.”

⁸¹ Warne and Bhatia, “Intersex, East and West.”

All ten respondents in the study had surgeries performed in late childhood or in their adolescence with their median age being 16 years.⁸² All patients in the study “unequivocally expressed a preference for early surgery and for it to be performed early enough” for them not to remember the event.⁸³ Moreover, early surgery was preferred as that was perceived to help intersex people gain better self-confidence, and reduce their chances of being teased and bullied by their peers.⁸⁴ Despite this unequivocal preference for early surgeries in the above-mentioned study however, it is noteworthy that the factors stated by respondents are based on external influences in how intersex people might be perceived in society by others. It would be relevant to examine whether their preference of early surgery would be different in cases where there was no bullying or being compared to ‘normal’ children.

4.2 Consent and Curative Violence

Intersex individuals often go through medical interventions and surgeries without their knowledge or consent.⁸⁵ Intersex infants and children are neither legally competent nor are they socially and economically independent to make autonomous decisions.⁸⁶ They also experience lack of autonomy within the clinical set-up where they have little control over medical decisions being taken for them.⁸⁷ Decisions regarding medical interventions on intersex infants are complex and are usually taken by doctors in consultation with family members.⁸⁸ Because there exists a definite hierarchy between doctors and patients within India, family members also tend to rely on doctors for their advice and decision-making.⁸⁹

Lack of privacy and confidentiality is common in clinical settings. For instance, in a hospital in north India, hospital attendants revealed information about the uncertainty of an intersex child’s gender to the detriment of the child and their family members.⁹⁰ These incidents are hardly uncommon. In their guidelines for different stakeholders, the Solidarity Foundation emphasises the need to adhere to principles of dignity and worth of all human beings, the right to equality and non-discrimination, respecting children’s right to privacy and confidentiality, recognizing children’s right to participate in decisions that affect their interests, and the significance of recognizing the best interests of the child.⁹¹

⁸² Warne and Bhatia, “Intersex, East and West.”

⁸³ Warne and Bhatia, “Intersex, East and West,” 190.

⁸⁴ Warne and Bhatia, “Intersex, East and West.”

⁸⁵ Arpita Das, “Examining Autonomy and Consent in Gender Assignment Decisions on Intersex People in India,” in *Interdisciplinary and Global Perspectives on Intersex*, ed. Megan Walker, (New York: Palgrave Macmillan, 2022), 141-154.

⁸⁶ Das “Examining Autonomy.”

⁸⁷ Das “Examining Autonomy.”

⁸⁸ Das, “Aching to be a Boy.”

⁸⁹ Das, “Aching to be a Boy.”

⁹⁰ Joseph et al, “Gender Issues and Related Social Stigma.”

⁹¹ Solidarity Foundation, “Intersex Children and their Rights: Guidelines for Families, Educational and

Tenneti⁹² argues that “forced gender assignment/reassignment surgeries on intersex babies is a subject that has not received mainstream attention in LGBT+ discourses in India but remains a seminal area of concern.” “Normalizing’ medical procedures “violate [an intersex] child’s right to life, liberty, and security of the person, to bodily integrity, to health, and to self-determination of sexual orientation and gender identity.”⁹³ Tenneti uses the term ‘curative violence’ to talk about use of medication and hormone administration to “eliminate queerness or suppress its expression.”⁹⁴ Curative violence pathologizes queerness on one hand and in a broader sense signifies all kinds of violence against LGBT+ people to make them conform to normative gender.⁹⁵

Several health concerns may arise for intersex people because of medical interventions. While doctors often advise medical interventions in order for them to have a sense of stable gender and to protect them from bullying, these medical interventions (which are often multiple and sometimes continue over lifetimes) can cause health concerns for intersex people. Intersex people often have scar tissues, bleeding, and pain from the ‘corrective’ procedures.⁹⁶ There is thus a need for more research on the health impact of corrective surgeries on intersex people as well as the need to develop policies and strategies to prevent unnecessary corrective surgeries on intersex infants without their knowledge and consent.

4.3 Protecting Right to Bodily Integrity

*The National Legal services Authority v. Union of India*⁹⁷ judgement is the first instance where the Supreme Court recognized discrimination faced by intersex people and affirmed their rights.⁹⁸ Following this, there have been several instances of intersex people seeking judicial intervention. For instance, in *Nangai v. The Superintendent of Police*⁹⁹, the petitioner, Nangai, sought to be reinstated as a woman constable.¹⁰⁰ The court upheld her right to self-identify her gender and observed that not doing so would “violate her fundamental right to equality, non-discrimination, freedom of speech and expression, life and personal liberty guaranteed by the Constitution of

Childcare Institutions and Legal and Healthcare Professionals,” *Centre for Child and the Law, National Law School of India University and Solidarity Foundation*.

⁹² Tenneti, “Curative Violence,” 7.

⁹³ Shardha Rajam, and Atreyo Banerjee, “Right to Genital Integrity: Law, Limbo, and the Status of Intersex Children in India,” *Columbia Journal of Gender and Law*, 42, no. 2 (2022): 132.

⁹⁴ Tenneti, “Curative Violence,” 2.

⁹⁵ Tenneti, “Curative Violence.”

⁹⁶ Holmes, Morgan, *Intersex: A Perilous Difference*. Selinsgrove: Susquehanna University Press, 2008.

⁹⁷ National Legal Services Authority v. Union of India. April 15, 2014. <https://indiankanoon.org/doc/193543132/>.

⁹⁸ Centre for Law and Policy Research (CLPR) and Solidarity Foundation, “Beyond the Binary: Advancing Legal Recognition for Intersex Persons in India,” Accessed May 23, 2023. https://clpr.org.in/wp-content/uploads/2020/07/CLPR_PolicyBrief_2.pdf.

⁹⁹ Nangai v. The Superintendent of Police. April 17, 2014. <https://indiankanoon.org/doc/144523857/>.

¹⁰⁰ CLPR and Solidarity Foundation, “Beyond the Binary.”

India.”¹⁰¹ The court stated that “no individual should be forced to undergo medical procedures (including sex-reassignment surgery) in order for the government to recognize their gender identity.”¹⁰² This is important especially in cases of intersex children and infants¹⁰³ who often undergo unnecessary and irreversible medical interventions and surgeries without their informed consent and knowledge.

Although there have been some substantive legal interventions because of the NALSA judgement, it is important to recognize that intersex rights and issues are often subsumed under transgender identity and are not given the explicit focus that intersex people need.¹⁰⁴ Furthermore, although the Transgender Persons (Protection of Rights) Act passed in 2019 defines a ‘person with intersex variations’ and also includes intersex people within the ambit of transgender persons, it fails to include intersex rights in a substantive manner.¹⁰⁵ While these legislations are an important part of the history of the intersex and transgender movement, they also point towards some missed opportunities.

Globally, an explicit ban on unnecessary and involuntary surgeries has been the foremost priority for intersex activists and organizations.¹⁰⁶ Efforts at preventing unnecessary medical interventions on intersex people have also been initiated in India. As mentioned earlier, in April 2019, the High Court of Madras in Tamil Nadu (a state in southern India) delivered a judgement banning gender reassignment surgeries on intersex infants and children.¹⁰⁷ It was the first such instance where the Indian judiciary recognized intersex persons’ right to bodily integrity.¹⁰⁸ In declaring a prohibition on intersex surgeries on intersex infants in the case of *Arun Kumar & Sreeja v. Inspector General & Ors.*, the judgement recognized intersex people’s right to consent and to bodily integrity.¹⁰⁹ The court called for a deferment of “intersex genital mutilation” till the intersex person is old enough to provide informed consent.¹¹⁰ The judgement also reiterated that “the consent of the parent cannot be considered as the consent of the child.”¹¹¹ Tamil Nadu was thus the first state in India to issue an executive order to ban medically unnecessary surgeries on intersex infants and children until the person is old enough to consent to such procedures.^{112,113} To mark the anniversary of the Tamil Nadu judgement, India celebrates National Intersex Day on April 22.¹¹⁴

¹⁰¹ CLPR and Solidarity Foundation, “Beyond the Binary.”

¹⁰² Jain, Rhoten and Shukla, “Recent Legal Reforms,” 30.

¹⁰³ Solidarity Foundation, “What if it is Neither.”

¹⁰⁴ CLPR and Solidarity Foundation, “Beyond the Binary.”

¹⁰⁵ CLPR and Solidarity Foundation, “Beyond the Binary.”

¹⁰⁶ Srishti Madurai, “Conference Report.”

¹⁰⁷ Srishti Madurai, “Conference Report.”

¹⁰⁸ Intersex Asia, “Intersex Justice in India,” Last Modified April 22, 2022. <https://intersexasia.org/intersex-justice-in-india-an-unfinished-agenda/>.

¹⁰⁹ Srishti Madurai, “Conference Report.”

¹¹⁰ Srishti Madurai, “Conference Report.”

¹¹¹ Srishti Madurai, “Conference Report.”

¹¹² Kyle Knight, “Indian State Bans Unnecessary Surgery on Intersex Children,” *Human Rights Watch*, August 29, 2019, <https://www.hrw.org/news/2019/08/29/indian-state-bans-unnecessary-surgery-intersex-children>.

¹¹³ Srishti Madurai, “Conference Report.”

¹¹⁴ Intersex Asia, “Intersex Justice in India.”

Soon after, the Delhi Commission for Protection of Child Rights (DCPCR) recommended that the Delhi government institute a ban on medically unnecessary ‘normalizing’ surgeries on intersex children.¹¹⁵ In 2020, the DCPCR took cognizance of the petition, formed an expert committee, and sent a notice to the Delhi Medical Council and two departments of the Delhi government – the Health and Family Welfare, and the Social Welfare departments.¹¹⁶ In July 2022, the Delhi High Court, on hearing a petition by Srishti Madurai, asked the Delhi government to take an appropriate decision on the recommendation of the DCPCR to ban unnecessary gender assignment surgeries on intersex infants.¹¹⁷

The Tamil Nadu judgement cites India’s Supreme Court decision in 2014 which upholds the rights of transgender and gender-diverse people.¹¹⁸ It also refers to Malta’s gender identity and sex characteristics law in 2015 which recognized the rights of transgender people and banned unnecessary surgeries on intersex children.¹¹⁹ In September 2015 twelve United Nations agencies released a joint statement to call on states to urgently end violence and discrimination against LGBTI adults, adolescents and children.¹²⁰ The United Nations Committee on the Rights of Persons with Disabilities (UNCRPD) while reviewing India’s country report in 2019 had also expressed concern regarding sex-assignment surgeries on intersex children.¹²¹ It recommended that India “adopt measures to prevent sex-assignment or “sex-normalizing” surgery, stigmatization and bullying against intersex children and ensure their right to respect for their physical and mental integrity.¹²² Earlier, in 2011, the United Nations Committee against Torture had similarly expressed concern at non-consensual, medically unnecessary surgeries and interventions on intersex infants.¹²³ Currently, there are more than 500 treaty bodies’ concluding observations at the United Nations that recognize human rights violations against intersex people.¹²⁴

¹¹⁵ Ganguly, and Knight, “Momentum Builds Around Intersex Protection in India.”

¹¹⁶ Intersex Asia, “Intersex Justice in India.”

¹¹⁷ The Hindu, “HC Asks Delhi Govt. to Decide Whether to Ban Sex-Selective Surgeries,” July 30, 2022, <https://www.thehindu.com/news/cities/Delhi/hc-asks-delhi-govt-to-decide-whether-to-ban-sex-selective-surgeries/article65698800.ece>

¹¹⁸ Kyle Knight, “Indian Court Decides in Favor of Informed Consent Rights for Intersex People,” *Asia Times*, <https://www.hrw.org/news/2019/04/29/indian-court-decides-favor-informed-consent-rights-intersex-people>.

¹¹⁹ Knight, “Indian Court Decides in Favor of Informed Consent Rights.”

¹²⁰ United Nations, “Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People,” Accessed May 24, 2023. https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

¹²¹ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), “Concluding Observations on the Initial Report of India,” Accessed May 23, 2023, <https://www.ecoi.net/en/file/local/2019534/G1931348.pdf>.

¹²² UNCRPD, “Concluding Observations on the Initial Report of India.”

¹²³ IHRA, “United Nations Committee against Torture Makes Historic Statement on Intersex, Redress for Intersex Genital Mutilation (IGM), Education and More. Accessed May 24, 2023. <https://ihra.org.au/15837/united-nations-committee-torture-historic-intersex-recommendations-germany/>.

¹²⁴ Ernesto Zelayandia-Gonzalez, “The Growing Visibility of Intersex Demands at the United Nations: A Review of the Treaty bodies’ Concluding Observations,” *Social Sciences*, 12, no. 2(2023).

4.4 Gender Assignment Decisions & Son Preference

Gender assignment decisions on intersex people are influenced by a strong preference for a male child.^{125, 126} Parents of intersex infants often prefer male gender assignment.¹²⁷ The sex ratio in India was skewed at a dismal 933 women per 1000 men in 2001.¹²⁸ Although there has been a rise in the ratio in 2015-2016 to 991 women per 1000 men¹²⁹, it is still demonstrative of a history of discrimination against women and girls. Sex ratios also differ across different states thus showing differential levels of preferential treatment for male children. Preference for the male child also impacts decisions regarding gender assignment of intersex children. A pediatric endocrinologist based in India mentioned that even if she was convinced that the child ought to be raised as female, parents and family members would often choose to raise the child as male.¹³⁰ According to a news report, because of a patriarchal mindset in the country, over 90 percent parents of intersex children opted for male gender assignment at the Sanjay Gandhi Post Graduate Institute of Medical Sciences in Lucknow.¹³¹ This is despite the fact that male gender assignment surgeries are often more complicated than female gender assignment surgeries.¹³² In another news report from Mangaluru, a couple's decision for male gender assignment for their two-months old intersex child against the advice of the doctor led to a debate within medical circles around whose decision should be given precedence in such cases.¹³³

In more recent research in India, Das¹³⁴ highlights this preference for male child as an important factor influencing gender assignment decisions. Doctors and families often justify having a male child based on sociocultural, economic and religious factors.¹³⁵ Sons are expected to be the income-earners and therefore families prefer to have sons to ensure socio-economic security. In contrast, daughters are considered to belong to their matrimonial families. They are often considered an economic burden partly because of the practice of giving and receiving dowry. Sons are also preferred as they are expected to carry forward the family name and lineage as well as conduct the last rites for their parents. These factors often impact decisions on gender assignment. Doctors related how parents often preferred to have their intersex children assigned as male, against medical advice.¹³⁶ Preference for sons and for male assignment of intersex

¹²⁵ Das, "Aching to be a Boy."

¹²⁶ Warne and Bhatia, "Intersex, East and West."

¹²⁷ Joseph et al, "Gender Issues and Related Social Stigma."

¹²⁸ Mary E. John, "Sexing the Fetus: Feminist Politics and Method across Cultures," *Positions* 19, no. 1 (2011): 7–29.

¹²⁹ NFHS-4. "India: National Family Health Survey (NFHS-4)," *Ministry of Health and Family Welfare, Government of India*, 2017. <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>

¹³⁰ Warne and Bhatia, "Intersex, East and West."

¹³¹ Shailvee Sharda, "90% Want Doctor to Turn Baby with Deformed Parts into Boy," *Times of India*, March 3, 2017, <https://timesofindia.indiatimes.com/city/lucknow/90-want-doc-to-turn-baby-with-deformed-parts-into-boy/articleshow/57443180.cms>

¹³² Sharda, "90% Want Doctor."

¹³³ Stanley Pinto, "Against Doc's Advice, Parents Pick male Gender for Child with Sex Disorder," *The Times of India*, February 28, 2019, <https://timesofindia.indiatimes.com/city/mangaluru/against-docs-advice-parents-pick-male-gender-for-child-with-sex-disorder/articleshow/68190968.cms>.

¹³⁴ Das, "Aching to be a Boy."

¹³⁵ Das, "Aching to be a Boy."

¹³⁶ Das, "Aching to be a Boy."

children poses additional challenges as it leads to male gender reassignment surgeries and interventions to actualize family's desires for a male child.

4.5 Colonial Laws

Several laws and policies have affected and continue to affect gender variant people in India. For example, the anti-sodomy law under section 377 of the Indian Penal Code (IPC), as discussed in the beginning of the report, has led to the persecution and discrimination against homosexual people. Although the law criminalized “all non-penile-vaginal sex irrespective of sexual orientation, it had a disproportionate impact on those engaged in same-sex relationships.”¹³⁷ In 2009, this law was struck down by the Delhi High Court in the *Naz Foundation v. State (NCT of Delhi)*¹³⁸ taking out of its purview all adult consensual same-sex behaviors. However, the Supreme Court overturned this decision in 2013 in *Suresh Kumar Koushal v. Naz Foundation*¹³⁹ leading to disappointment within the LGBTQ+ community. Finally however, in September 2018, the Supreme Court passed the landmark judgement in the *Navtej Johar v. Union of India*¹⁴⁰ reading down the anti-sodomy law and decriminalizing adult consensual same-sex sexual behavior.¹⁴¹ This law has been used not only against gay men but also to discriminate against other sexual and gender minorities.¹⁴² It has been used to arrest and prosecute men who have sex with men and hijras/transgender women.¹⁴³

Apart from the anti-sodomy law, the Criminal Tribes Act is another law that adversely impacts gender-variant people. The law was again enacted in India in 1871 during colonial rule to control and surveil people who belonged to criminal tribes including “eunuchs.”^{144,145} As per this act, a government register was maintained listing ““eunuchs” who were “reasonably suspected of kidnapping or castrating children or of committing offences” under section 377 of the Indian Penal Code.¹⁴⁶ The law restricted the social life of gender-variant people. Even if this law was repealed, it continues to impact gender-variant people resulting in the continued stigmatization of and discrimination against gender-variant communities.¹⁴⁷

¹³⁷ Jain, Rhoten and Shukla, “Recent Legal Reforms,” 28

¹³⁸ *Naz Foundation v. State (NCT of Delhi)*, July 2, 2009. <https://indiankanoon.org/doc/100472805/>.

¹³⁹ *Suresh Kumar Koushal v. Naz Foundation*, Dec 11, 2013. <https://indiankanoon.org/doc/58730926/>

¹⁴⁰ *Navtej Singh Johar v. Union of India*, September 6, 2018. <https://indiankanoon.org/doc/168671544/>

¹⁴¹ Jain, Rhoten and Shukla, “Recent Legal Reforms.”

¹⁴² Dennis H. Lee et al., “Harassment and Violence against Men Who Have Sex with Men (MSM) and Hijras After Reinstatement of India’s “Sodomy Law,”” *Sexuality Research and Social Policy*, 14 (2017): 324-330.

¹⁴³ Lee et al., “Harassment and Violence Against Men Who Have Sex With Men.”

¹⁴⁴ The term ‘eunuch’ which has been used liberally in colonial times is inaccurate. In this report, the term is used in keeping with its application and usage in laws and policies.

¹⁴⁵ Jain, Rhoten and Shukla, “Recent Legal Reforms,” 26.

¹⁴⁶ Jain, Rhoten and Shukla, “Recent Legal Reforms,” 26.

¹⁴⁷ Jain, Rhoten and Shukla, “Recent Legal Reforms,”

4.6 Ignorance and Invisibilisation

There exists widespread ignorance about intersex issues. For instance, Koushumi Chakraborty, a single parent raising an adopted intersex child in India, highlights the lack of awareness among governmental authorities, who are entrusted with handling the adoption of children, on intersex issues.¹⁴⁸ According to Chakraborty, government authorities often do not understand the difference between transgender and intersex children. Such ignorance can lead to a lot of problems in raising intersex children. It can also lead to administrative and bureaucratic concerns leading to inaccuracies in administrative documents exacerbating intersex peoples' (and their families') struggles for accurate gender recognition and representation. There is also ignorance about intersex people in the medical community. For instance, at a national conference on intersex people in India, a family from Vishakhapatnam shared the lack of reliable medical opinion on the condition of their intersex infant.¹⁴⁹ At birth, the infant was assigned female and there were no tests conducted to reach a reliable diagnosis. The non-reliability of medical opinion could be to do with the lack of immediate diagnosis of the intersex variation, the lack of diagnostic mechanisms for an accurate diagnosis, as well as the lack of knowledge about intersex variations within the medical community (apart from a few experts located in urban and specialized medical centres). Knowledge of intersex variations can therefore be siloed.

Lack of awareness could lead to struggles for intersex people and their families in different spheres. For instance, adoption of intersex children can be harder. Chakraborty also related the challenges she faced in attempting to adopt an intersex child.¹⁵⁰ Apart from the struggles of the adoption process and the effort to adopt an intersex child, Chakraborty also faced challenges in getting the child's administrative documents changed to represent their gender accurately. While the child was raised as a male at the adoptive agency, Chakraborty's requests to the adoptive agency to get the child's name and gender changed in their records as female (based on the recommendations of the doctor) were denied.¹⁵¹

4.7 Anti-Discrimination

Although the constitution of India guarantees the right to protection of human dignity, intersex people often experience discrimination, bullying and stigmatization.¹⁵² Even so, there are no specific anti-discrimination laws for intersex people.¹⁵³ There are however laws and policies that can be used to protect intersex people against discrimination. In 2014, in response to a public interest lawsuit filed by the National Legal Services Authority (NALSA) the

¹⁴⁸ Srishti Madurai, "Conference Report."

¹⁴⁹ Srishti Madurai, "Conference Report."

¹⁵⁰ Srishti Madurai, "Conference Report."

¹⁵¹ Srishti Madurai, "Conference Report."

¹⁵² Srishti Madurai, "Conference Report."

¹⁵³ Srishti Madurai, "Conference Report."

Supreme Court of India passed the historic *National Legal services Authority v. Union of India*¹⁵⁴ judgement recognizing transgender persons and hijras as Indian citizens.¹⁵⁵ It was “pathbreaking” as it sought to remedy centuries of oppression “for people who were not protected under the law so far.”¹⁵⁶ This judgement aimed to safeguard the fundamental right of all people to live life with dignity under Article 21 of the Constitution.¹⁵⁷ The judgement recognized a clear distinction between sexual orientation, gender identity and sex characteristics.¹⁵⁸ Drawing upon the Yogyakarta principles and the Universal Declaration of Human Rights, the court held that “one’s “deeply felt experience of gender” constitutes a basic element of individual self-determination.”¹⁵⁹ It “directed the central and state governments to give full legal recognition” to transgender people and rendered them eligible for welfare schemes including for health and employment.¹⁶⁰ Rights accorded through this judgement have ramifications for intersex people as well. For instance, rights related to self-identified gender which are upheld by the NALSA judgement also apply to intersex persons.¹⁶¹ However, despite the positive impacts of the NALSA judgement on gender-variant minorities, it however mistakenly conflates the intersex identity with that of hijras and thus ignores the particular experiences of intersex people.¹⁶² The umbrella term of transgender fails to recognize many people of diverse genders.¹⁶³

Similarly, the Transgender Persons (Protection of Rights) Act of 2019 was enacted with the aim to protect the rights of transgender people and prevent discrimination against them in the fields of education, employment and healthcare. This defines ‘transgender person’ as:

“ A person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.¹⁶⁴ ”

¹⁵⁴ National Legal Services Authority v. Union of India. April 15, 2014. <https://indiankanoon.org/doc/193543132/>.

¹⁵⁵ Solidarity Foundation, “What if it is Neither.”

¹⁵⁶ Rajam and Banerjee, “Right to Genital Integrity,” 162

¹⁵⁷ Ministry of Information and Broadcasting, “Welfare of Transgender Persons in India: Slew of Measures by Central Government in Last Three Years,” Accessed May 24, 2023. <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2022/jun/doc202263068801.pdf>

¹⁵⁸ Srishti Madurai, “Conference Report.”

¹⁵⁹ Jain, Rhoten and Shukla, “Recent Legal Reforms,” 30.

¹⁶⁰ Vishnu Varma, and Nida Najar, “India’s Supreme Court Recognizes 3rd Gender,” *The New York Times*, April 15, 2014, <https://archive.nytimes.com/india.blogs.nytimes.com/2014/04/15/indias-supreme-court-recognizes-3rd-gender/>

¹⁶¹ Solidarity Foundation, “What if it is Neither.”

¹⁶² Rajam and Banerjee, “Right to Genital Integrity.”

¹⁶³ Rajam and Banerjee, “Right to Genital Integrity.”

¹⁶⁴ Ministry of Information and Broadcasting, “Welfare of Transgender persons in India.”

This law has received criticism as it was passed without adequate consultation with the transgender community.¹⁶⁵ Pride parades all over the country have also collectively condemned the 2016 version of the Transgender bill before it was enacted as law.¹⁶⁶

This act takes an expansive definition for transgender persons and clearly includes people with intersex variations under its ambit. However, it fails to draw a distinction between transgender people and intersex people.^{167, 168} Although the act provides a separate definition for ‘intersex persons,’ they are conflated with transgender people leading to a misrepresentation and invisibilisation of intersex persons.¹⁶⁹ Despite its flaws however, this act includes intersex persons whose rights are not addressed elsewhere.¹⁷⁰

The Ministry of Social Justice and Empowerment has also constituted the National Council for Transgender Persons in August 2020 to advise the state on the formulation of policies and programmes for transgender people; to monitor and evaluate the participation by transgender persons; and to redress transgender persons’ grievances.¹⁷¹ The council was formed under the Transgender Persons (Protection of rights) Act of 2019 and comprises members of the transgender community. Intersex activist, Gopi Shankar, who is part of the council has stated the need to include intersex issues in legal and policy discourses, as well as raise awareness on intersex rights.¹⁷²

There are other regional and local state-level laws and policies that impact transgender and intersex people. For instance, most states in India have gender-specific laws for legal recognition and registration of marriage, which can be challenging for intersex people.¹⁷³ In Tamil Nadu, the Madras High Court came up with a decree in April 2019 which recognizes marriages of intersex and transgender persons in the state as legal and valid.¹⁷⁴ The decree came about when marriage registry officials refused to register the marriage between an intersex person and her partner.¹⁷⁵ In a separate legislation, as a result of an intervention made by Jeeva, an organization working on the rights of transgender persons and

¹⁶⁵ Rachana Mudraboyina, Sammera Jagirdar, and Philip C. Philip, “A Critique of Transgender Persons (Protection of Rights) Bill, 2019,” *Feminism in India*, August 5, 2019. <https://feminisminindia.com/2019/08/05/critique-transgender-persons-protection-of-rights-bill-2019/>.

¹⁶⁶ Alagarsamy, “The History.”

¹⁶⁷ Rajam and Banerjee, “Right to Genital Integrity.”

¹⁶⁸ Srishti Madurai, “Conference Report.”

¹⁶⁹ Mudraboyina, Jagirdar, and Philip, “A Critique of Transgender Persons.”

¹⁷⁰ Solidarity Foundation, “What if it is Neither.”

¹⁷¹ Ministry of Social Justice & Empowerment, “Central Government Constitutes National Council for Transgender persons,” Accessed May 23, 2023. <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1648221>.

¹⁷² Dhruvo Jyoti, “National Council for Transgender persons Formed,” *Hindustan Times*, August 22, 2020. <https://www.hindustantimes.com/india-news/national-council-for-transgender-persons-formed/story-QXO57cxN8jhrpdmZZaWtbM.html>

¹⁷³ Srishti Madurai, “Conference Report.”

¹⁷⁴ Srishti Madurai, “Conference Report.”

¹⁷⁵ Srishti Madurai, “Conference Report.”

sexual minorities, the Karnataka state government became the first state in 2021 to provide one percent reservation for transgender persons in civil service jobs across caste categories.¹⁷⁶

4.8 Gender Registration at Birth & Legal Gender Recognition

Intersex people face challenges with regard to their gender identity in different spaces. For instance, they may face challenges in obtaining identity documents.¹⁷⁷ They may especially face challenges in cases where their gender assignment at birth may not match their self-identified gender identity. Because intersex variations are not very well understood or easily diagnosed, (even among doctors), many intersex people may go through gender reassignment and therefore need to change their gender identity in legal and administrative documents to match their self-identified gender. In those cases however, there may be a resistance amongst administrators to change intersex peoples' official names and gender identities in their birth registration or school registration documents. This resistance is further accentuated with the lack of understanding of intersex as a category. For instance, in the case of *Mulla Faizal @ Fazilabanu Suleman v. State of Gujarat and Ors.*,¹⁷⁸ the petitioner was born with intersex variations and was assigned female at birth.¹⁷⁹ However, the child felt more like a boy when growing up; he started growing facial hair and began to have a husky voice.¹⁸⁰ The Lokhat Sarvajanik Medical Trust of Surat supported the petitioner providing him with a certificate ascertaining his male gender identity.¹⁸¹ However, when the parents appealed for his birth registration documents to be changed based on the gender certificate, his application was rejected. However, when the case was taken to the court, it supported the petitioner's gender identity which the court determined was based on his 'natural' gender.¹⁸²

The 2014 NALSA verdict upholds the right to a self-identified gender. This could be extended to the issuance of birth certificates and change of legal documents for intersex people.¹⁸³ The verdict has been useful in legal gender recognition for

¹⁷⁶ Tanya Arora, "Reflecting on Transgender Rights in 2023: Have Legal Recognition and Advocacy Efforts Broken the Cycle of Discrimination and Ostracism?," CJP. Accessed May 23, 2023. <https://cjp.org.in/reflecting-on-transgender-rights-in-2023-have-legal-recognition-and-advocacy-efforts-broken-the-cycle-of-discrimination-and-ostracism/>.

¹⁷⁷ Srishti Madurai, "Conference Report."

¹⁷⁸ *Mulla Faizal @ Fazilabanu Suleman v. State of Gujarat & Ors.*, February 16, 2000. <https://indiankanoon.org/doc/1273545/>.

¹⁷⁹ Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸⁰ Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸¹ Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸² Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸³ Solidarity Foundation, "What if it is Neither."

intersex people. For example, in *Nangai v. the Superintendent of Police*,¹⁸⁴ the Madras High Court recognized and reinstated Nangai, a woman police officer who was disqualified from service because she was diagnosed with intersex variations.¹⁸⁵ In this instance, the court upheld the principle of self-determining gender identity and ordered that Nangai be reinstated.^{186, 187} Further, the court argued that since there are no specific tests that are stipulated by law to determine a person's sex identity, Nangai could not be terminated on grounds of a medical test.¹⁸⁸

The Trans Act on the other hand does not mention self-affirmation of gender, and thus contradicts the NALSA judgement.¹⁸⁹ The Trans Act states that any transgender person desirous of obtaining a certificate of identity shall need to submit an application to the District Magistrate along with an affidavit and a report by a psychologist.¹⁹⁰ There is however no medical examination required. The District Magistrate refers it to a District-level screening committee for further assessment.¹⁹¹ The certificate of identity shall be the basis to record or change gender and name of the transgender person in all official documents.¹⁹²

Considering that the definition of 'transgender person' as per the Trans Act includes people with intersex variations, this process to apply for change of gender and/or name could apply to intersex people as well. However, these may not translate easily at a practical level. In an informal conversation, Dit, an intersex person, also talked about similar challenges he faced in changing his name and gender in legal documents. Assigned female at birth, Dit was diagnosed with intersex variation during puberty. Although Dit identifies and presents as male, his legal documents present him as female. While there is a possibility to change one's gender in legal documents, section 7 of the Trans Act, requires individuals to undergo sex reassignment surgery in order to change one's gender.^{193, 194} Individuals are expected to submit a medical certificate along with their application.¹⁹⁵ For individuals like Dit, this presents other challenges. In order to obtain a gender certificate in his home state, Dit is required to go through sex reassignment surgery. Therefore, although the Trans Act is a central law and is applicable across all states, the implementation of the law might

¹⁸⁴ *Nangai v. The Superintendent of Police*. April 17, 2014. <https://indiankanoon.org/doc/144523857/>.

¹⁸⁵ Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸⁶ Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸⁷ Solidarity Foundation, "What if it is Neither."

¹⁸⁸ Jain, Rhoten and Shukla, "Recent Legal Reforms."

¹⁸⁹ Shamayeta Bhattacharya, Debarchana Ghosh and Bandana Purkayastha, "'Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community," *Journal of Human Rights Practice* (2022): 1-22.

¹⁹⁰ Ministry of Social Justice and Empowerment, "Transgender Persons (Protection of Rights) Rules, 2020," Accessed May 24, 2023. [https://thc.nic.in/Central%20Governmental%20Rules/Transgender%20Persons%20\(Protection%20of%20Rights\)%20Rules,%202020.pdf](https://thc.nic.in/Central%20Governmental%20Rules/Transgender%20Persons%20(Protection%20of%20Rights)%20Rules,%202020.pdf)

¹⁹¹ Bhattacharya, Ghosh and Purkayastha, "'Transgender Persons (Protection of Rights) Act'."

¹⁹² Ministry of Social Justice and Empowerment, "Transgender Persons (Protection of Rights) Rules, 2020."

¹⁹³ Ministry of Social Justice and Empowerment, "Transgender Persons (Protection of Rights) Rules, 2020."

¹⁹⁴ Brindaalakshmi, K., "Transgender Act in India: A Law that Replicates Existing Challenges with Digitization?" GenderIT.org, July 15, 2021, <https://genderit.org/feminist-talk/transgender-act-india-law-replicates-existing-challenges-digitisation>.

¹⁹⁵ Brindaalakshmi, "Transgender Act in India."

differ across states. This demonstrates the challenges faced by intersex people in making changes to their gender in legal documents including birth certificates. The possibility of keeping the sex/gender option open and being allowed to change sex/gender in legal documents can make a significant difference to intersex people.¹⁹⁶

4.9 Education and Employment

Right to education is recognised as a fundamental right under Article 21A of the constitution. India has also adopted the global education development agenda reflected in the Sustainable Development Goals, which seeks to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’ by 2030.

The National Educational Policy (NEP) of 2020 recognises the need for education for all people. Furthermore, it identifies transgender children as a socio-economically disadvantaged group and provides for equitable quality education for all students.¹⁹⁷ In discussing equitable and inclusive education, the policy states the need for inclusion of girls and transgender children.¹⁹⁸ It states that the government will constitute a Gender-Inclusion fund to provide quality education for girls and transgender students; the fund could be used by states for assisting access to education such as provision of sanitation and toilets, bicycles, conditional cash transfers etc.¹⁹⁹ It could also be used to scale community-based interventions at the local level to address context-specific barriers.²⁰⁰ Furthermore, this policy “aims to eliminate any remaining disparity in access to education (including vocational education) for children from any gender or other socio-economically disadvantaged group.”²⁰¹

The Department of Women’s Studies at NCERT (National Council of Educational Research and Training) has recently been renamed as the Department of Gender Studies in response to the landmark NALSA judgement. The department is committed to incorporating gender as “an important organising principle of the national and state curriculum frameworks and their transaction.”²⁰² It is committed to work towards a gender-inclusive society through sensitization of educators on gender concerns in education, including transgender; elimination of

¹⁹⁶ Jayna Kothari, Krithika Balu, and Rohit Sarma, “Beyond the Binary: Advocating Legal Recognition for Intersex Persons in India, Centre for Law and Policy Research (CLPR) and Solidarity Foundation, 2020, https://clpr.org.in/wp-content/uploads/2020/07/CLPR_PolicyBrief_2.pdf.

¹⁹⁷ Ministry of Information and Broadcasting, “Welfare of Transgender persons in India.”

¹⁹⁸ Ministry of Human Resource Development, “National Education Policy 2020,” Government of India. https://www.education.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf.

¹⁹⁹ Ministry of Human Resource Development, “National Education Policy 2020.”

²⁰⁰ Ministry of Human Resource Development, “National Education Policy 2020.”

²⁰¹ Ministry of Human Resource Development, “National Education Policy 2020.”

²⁰² NCERT, “Department of Gender Studies,” Accessed May 23, 2023. <https://ncert.nic.in/dgs/index.php?ln=en>

gender bias in the curriculum and teaching materials; and inculcation of positive self-image among all children including transgender children.²⁰³ In addition, the NCERT has been training teachers and educators on gender sensitization under the National Initiative for School Heads' and Teachers' Holistic Advancement (NISHTHA), a nation-wide teacher training programme.²⁰⁴

At the state level, the Madras High Court in October 2022 ruled that transgender people or people who identify as 'third gender' are entitled to admission to educational institutes.²⁰⁵

The Trans Act (chapter 6 subclause 13) also states that every educational institution "shall provide inclusive education and opportunities for sports, recreation, and leisure activities to transgender persons without discrimination on an equal basis with others."²⁰⁶ Although the act allows for inclusive education for all children including transgender children, there are other impeding factors that impact their education. For instance, the act does not address protection from sexual abuse and violence in schools,²⁰⁷ which can be a serious deterrent for gender-diverse children and young people from access to education. Intersex people face additional challenges with education and employment. They are often ostracized and compelled to discontinue their education.

The government has also launched the SMILE (Support for Marginalized Individuals for Livelihood and Enterprise) scheme in February 2022 with a specific schemes for the comprehensive rehabilitation for welfare of transgender people, and for the rehabilitation of people engaged in begging.²⁰⁸ The scheme is aimed at provision of medical facilities, counselling, education, skill development and other support facilities.²⁰⁹ This scheme includes measures such as financial assistance in the form of scholarships to transgender students from class IX until post-graduation, skill development training and livelihood, setting up of shelter facilities for abandoned and orphaned transgender persons, and setting up of transgender protection cells for quick redressal of offences and crimes against transgender persons.²¹⁰ The government has also launched initiatives to provide short-term and long-term skill development training to all youth including transgender youth through the Skill India Mission.²¹¹ Skill development training programmes for transgender persons have been sanctioned in six states in various job roles such as beauty therapist, make-up artists, and customer care executives

²⁰³ NCERT, "Department of Gender Studies."

²⁰⁴ Ministry of Information and Broadcasting, "Welfare of Transgender Persons in India."

²⁰⁵ Arora, "Reflecting on Transgender Rights in 2023."

²⁰⁶ The Transgender Persons (protection of Rights) Act, 2019. Accessed May 24, 2023. <https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf>.

²⁰⁷ Bhattacharya, Ghosh and Purkayastha, "'Transgender Persons (Protection of Rights) Act' of India."

²⁰⁸ Ministry of Social Justice and Empowerment, "SMILE Scheme," Accessed May 23, 2023. <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1806161>.

²⁰⁹ Ministry of Social Justice and Empowerment, "SMILE Scheme."

²¹⁰ Ministry of Information and Broadcasting, "Welfare of Transgender Persons in India."

²¹¹ Ministry of Information and Broadcasting, "Welfare of Transgender Persons in India."

etc.²¹² Although these are exemplary initiatives by the state, the gendered nature of the jobs and skill development training initiatives, is noteworthy.

4.10 Comprehensive Sexuality Education

A primary challenge for intersex people has also been the lack of comprehensive sexuality education in India as well as the explicit exclusion of intersex people within discourses of sexuality education. Sexuality education goes beyond the ambit of bodies and includes sexual behaviors, identities, expressions and desires. In analyzing the Adolescent Education Programme (AEP), Das²¹³ discusses how intersex people are routinely excluded from sexuality education curricula. Sexuality education, when it exists, upholds binary sexes and explicitly mentions two sexes – male and female.²¹⁴ Modules that discuss anatomical and pubertal changes in adolescents lack any mention of intersex variations.²¹⁵ Schools often do not include content regarding non-heteronormative identities in sexuality education curricula.²¹⁶ This exclusion of intersex people from representation within texts obliterates intersex young peoples' experiences and adds to further shame and invisibilization in society. It is especially important to reflect on this lack in comprehensive sexuality education in a context where doctors and families are driven to have a clear and quick diagnosis of the child's intersex variation, enforce a definitive gender assignment process as well as administer quick medical interventions to 'correct' intersex bodies before they are ready to go for school. Sexuality education which includes and is representative of intersex peoples' experiences is critical to discuss sex and gender variance in peoples' bodies as well as inculcate better understanding and acceptance of variant bodies and expressions.

4.11 Health

The Trans Act ensures access to health and healthcare facilities to all transgender persons. According to chapter six of the act, the state shall provide for medical care facility including sex reassignment surgery and hormone therapy counselling for transgender people both pre and post-surgery, and facilitate access to healthcare institutions and hospitals for all transgender people.²¹⁷ The state aims to develop a health manual related to sex reassignment surgery in accordance with global

²¹² Ministry of Information and Broadcasting, "Welfare of Transgender Persons in India."

²¹³ Arpita Das, "Sexuality Education in India: Examining Rhetoric, Rethinking Future," *Sex Education: Sexuality, Society and Learning*, 14, no. 2 (2014): 210-224.

²¹⁴ Das, "Sexuality Education."

²¹⁵ Das, "Sexuality Education."

²¹⁶ Bhattacharya, Ghosh and Purkayastha, "'Transgender Persons (Protection of Rights) Act' of India."

²¹⁷ The Transgender Persons (Protection of Rights) Act, 2019.

transgender health guidelines.²¹⁸ It also aims to provide for the coverage of medical expenses by a comprehensive insurance scheme for sex reassignment surgery, hormone therapy, laser therapy or any other health issues of transgender persons.²¹⁹

Under the SMILE scheme, the central government also provides for composite medical health for all transgender people to improve their health conditions through treatment including sex reassignment surgeries and other medical support.²²⁰ It provides for health insurance in the form of Ayushman Bharat with an insurance cover of five lakh per year related to all aspects of transition related healthcare which can be redeemed at all private and government healthcare facilities.²²¹

²¹⁸ The Transgender Persons (Protection of Rights) Act, 2019.

²¹⁹ The Transgender Persons (Protection of Rights) Act, 2019.

²²⁰ Ministry of Information and Broadcasting, “Welfare of Transgender persons in India.”

²²¹ Ministry of Information and Broadcasting, “Welfare of Transgender persons in India.”

5. Recomendations

5.1 Awareness Generation

A multifaceted approach is needed to work towards intersex health and rights. A primary concern is the lack of awareness on intersex issues. This lack in awareness is all pervading across society. It is important to raise awareness not only on anatomical and sex variations but also on working with specific challenges and concerns that intersex people face. Awareness generation could include working with intersex persons and their families and preparing them to work with and manage socio-cultural perceptions of intersex variations, getting them connected to other associations and organisations working with intersex people and families, addressing issues of stigma and discrimination at educational institutions, and addressing administrative challenges such as change of identity documents. One way to bring about more awareness and understanding would be to work with the LGBTQ+ movement across the country.

5.2 Medical Training and Sensitization

Medical and healthcare professionals need to go through training and sensitization to understand and manage the needs and challenges of intersex individuals.²²² Awareness must be raised amongst medical professionals across different specializations including through training on intersex peoples' concerns not only from a medical perspective but also through incorporating the social and cultural aspects of growing up as an intersex person such as addressing issues of stigma, shame and discrimination. Healthcare professionals should be well attuned to and be able to effectively respond to changes in child's behavior due to bullying.²²³ Sensitization should also include respecting privacy and maintaining confidentiality for intersex patients and their families. This includes situations where intersex people are often subjected to medical examinations, and being photographed without their informed consent.²²⁴

For long-term and effective change to happen, changes need to be incorporated at the level of medical curricula to integrate the specific challenges intersex people face.²²⁵ It would be significant for the Medical Council of India to include content related to intersex persons in the medical education syllabus, and to develop appropriate guidelines and protocols to work with intersex people and their families.²²⁶ These guidelines and protocols must be developed in consultation with intersex individuals and organisations working with intersex people to include specific concerns and challenges. It would also be useful to integrate the short and long term impacts of medical interventions on intersex peoples' bodies and health.

²²² Solidarity Foundation, "Intersex Children and their Rights."

²²³ Solidarity Foundation, "Intersex Children and their Rights."

²²⁴ Das "Examining Autonomy."

²²⁵ Neeraja Sajan, Vino and Solidarity Foundation, "Intersex Persons and Their Rights: Brief Guidelines for Healthcare Professionals," Solidarity Foundation.

²²⁶ Sajan, Vino and Solidarity Foundation, "Intersex Persons and Their Rights."

5.3 Prevention of Unnecessary Medical Intervention

While there has been some progress in Tamil Nadu and in Delhi to prevent unnecessary medical surgeries on intersex infants, it is important to ensure on-ground implementation of such a ban. Such surgeries need to be restricted until intersex people grow older and are able to make informed decisions for themselves. Restrictions on medically unnecessary surgeries also need to percolate to the rest of the country so that intersex human rights can be upheld across India. Several organizations and activists have been advocating for a comprehensive human rights law for protection of intersex persons in the country.²²⁷

5.4 Psychosocial Counselling and Support

Intersex people and their families are in need of comprehensive medical and psychosocial counselling on the diagnosis and treatment options in order to make informed decisions about their health. For this to happen, counsellors and therapists must be sensitized to the specific needs and challenges of intersex persons and their families. Intersex people and their families need to be supported with the knowledge about the variation itself, the need for any medical interventions as well as the pros and cons of such interventions. Intersex people and their families often go through extreme shame and stigma because of the intersex identity; it is therefore important that there are open conversations about diagnosis and treatment options.²²⁸ Counselling must incorporate not only the medical aspects of intersexuality but also the sociocultural aspects of growing up as an intersex person in society such as addressing experiences of shame and stigma, helping in building confidence in their gender identity and expression, and helping build relationships. Psychosocial counselling must also be geared towards addressing discrimination and bullying in schools and other spaces.²²⁹

5.5 Implementation of laws and policies

Although there have been a judicial interventions that recognize rights of gender diverse people including intersex people, efforts must be made to ensure greater awareness around those laws and policies, guarantee effective implementation of such laws and policies to ensure better access to education and employment opportunities, and prevent and address bullying and stigmatization in educational institutions. Efforts must be made for effective utilization of the Gender Inclusion Fund provided through the National Education Policy 2020 to ensure access to education for gender diverse people.

²²⁷ Srishti Madurai, "Conference Report."

²²⁸ Solidarity Foundation, "What if it is Neither."

²²⁹ Solidarity Foundation, "Intersex Children and their Rights."

5.6 Address Bullying

Medical interventions including surgeries are often recommended with the intention to ‘protect’ the child. Urgency in gender reassignment and medical interventions is often justified and encouraged in the name of potential bullying and discrimination on gender-variant people within schools and in larger society. ‘Normalizing’ medical surgeries and interventions are often justified on the grounds of avoiding bullying in schools. The need for these ‘normalizing’ surgeries is however external and comes from the larger society instead of from intersex people themselves. It is relevant to address all kinds of bullying and stigmatization of intersex people in all spheres including in schools to help intersex people make informed decisions about their bodies and identities.

5.7 Comprehensive Sexuality Education

An important way to respond to bullying and stigmatization in schools is to ensure the availability of comprehensive sexuality education in all schools. Such education must incorporate representation of intersex people within its content. Intersex representation can go a long way in intersex children and adolescents feel included. Incorporation of intersex concerns in the sexuality education curricula can foster a space for more candid conversations and acceptance of difference and diversity within society.

5.8 Addressing Administrative Challenges

Intersex persons often experience administrative challenges with updating their identity documents in situations where their gender is reassigned.²³⁰ Intersex people should have the right to self-determine their own gender identity in schools and colleges and not be excluded or denied admission based on their intersex identity and status.²³¹ Efforts must be made to make administrative transition easy for intersex people.

²³⁰ Solidarity Foundation, “What if it is Neither.”

²³¹ Solidarity Foundation, “Intersex Children and their Rights.”

6. Way Forward

6. Way Forward

While ban on medically unnecessary surgeries and interventions is a promising first step, it is important to focus on the holistic life experiences of intersex people throughout the country. Such an approach must not only ensure restrictions of such interventions throughout the country but also ensure strict implementation of such bans. Advocacy and activism on intersex issues needs to incorporate awareness generation on intersex concerns and challenges, work to address stigma and discrimination, and access to various opportunities including for education and employment. Additionally, although the state has made some significant changes in recognizing intersex people through the NALSA verdict as well as the Trans Act, there needs to be focus on specific laws and policies that take into consideration intersex people's challenges and concerns, instead of being subsumed under concerns of transgender people. Efforts must be made not only towards enactment of robust laws and policies but also towards effective implementation of such legal measures, through the inclusion of intersex voices in all such efforts and responses by the state.

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Intersex Asia is an autonomous regional network of intersex-led organisations and individuals from Asian countries that work to support, educate and advocate for the rights and lives of intersex individuals and raise awareness on human rights violations and discrimination faced by intersex communities. It envisions a world where the beauty of intersex people is celebrated, and where intersex persons can love themselves and grow together as a community. It seeks to create a space for intersex people where they can come forward and act as a stakeholder of the global intersex rights movement



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