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ISSN: 3049-4311 (Online)

# GEHU LAW REVIEW

A Journal of Contemporary  
Legal Research

**Volume & Issue:**  
Volume [I], Issue [I]

**Publication Period:**  
June 2025

**Institutional Affiliation:**  
School of Law, GEHU  
Dehradun, Uttarakhand,  
India



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**NAVIGATING THE REALIZATION OF THE RIGHT TO EDUCATION  
OF TRANSGENDER PERSONS IN INDIA WITH SPECIAL  
REFERENCE TO HIGHER EDUCATION IN ASSAM: A CRITICAL  
EXAMINATION OF LEGISLATIVE AND SOCIAL BARRIERS**

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*“Education breeds Confidence,  
Confidence breeds Hope,  
Hope Breeds Peace”*  
- Confucius

**Abstract:**

The fight for education has not been unfamiliar to the world; it previously existed between men and women, and now it has shifted to focus on the challenges faced by individuals from sexual minorities compared to those from the sexual majority. This paper aims to examine the concept of education through the perspectives of individuals from the transgender community and to identify the factors that hinder their access to the education they deserve. It discusses how realizing the right to education for transgender persons is crucial and emphasizes the need for proper provisions in educational institutions to support the transgender community. Focusing specifically on the issue in the state of Assam, the paper also examines international and national frameworks related to education. Additionally, it highlights the social barriers faced by transgender individuals when seeking education. It discusses several judgments from the Gauhati High Court related to the right to education and the harassment experienced by students from transgender communities while attempting to access the education they desire.

**Keywords:** - Education, Transgender Persons, Social Barrier, Institutional Barrier

## **Introduction**

Education is the most powerful tool that can enlighten an individual by opening doors to opportunities. As a tool, education possesses the capability to develop not just individuals but entire communities and societies. Over time, various legislative, administrative, and policy reforms have been implemented; however, despite these advancements, certain marginalized groups continue to face discrimination in accessing education, with transgender individuals being among those who encounter such discrimination due to societal stigma.

The reality of violence against sexual minorities is well-known. Discrimination occurs in many parts of the world, and India is no exception. Several barriers hinder transgender individuals from obtaining an education. They often endure bullying from peers and teachers, leading to high dropout rates among these minority groups in educational institutions. The lack of facilities such as accommodation and grievance redressal mechanisms denies them their right to education, perpetuating cycles of poverty and exclusion. Today, India has established numerous rules, regulations, and policies designed to facilitate education. The struggle for education has long been gendered, and it has now shifted to encompass the challenges faced by the third gender in their quest for educational opportunities. The social conditioning of society fosters deep-rooted discrimination against sexual minorities. The prevailing attitudes toward these groups push them further away from their rights and opportunities, leaving them in a state of uncertainty.

This paper seeks to explore the challenges faced by transgender individuals in accessing their right to education, with a particular focus on Assam. It will further examine the policy framework and the experiences that transgender individuals in Assam encounter when seeking education. The paper will discuss potential solutions and recommendations for promoting inclusive education policies and practices that recognize and respect the rights of transgender persons.

## **Who is a Transgender Person?**

The idea of who a transgender person is remains unclear to many. People often perceive transgender individuals as having a mental disorder and claiming to be someone they are not.

The biggest confusion arises from the inability to differentiate between the terms “Gender” and “Sexuality”. Gender generally refers to societal constructs; for example, in many societies, pink is associated with girls and blue with boys. Thus, gender reflects how a person presents themselves to society through expression, clothing, and mannerisms. In contrast, sexuality pertains to the physical, emotional, and mental connections a person seeks in a partner. Understanding these two distinct terms is crucial for comprehending the identity of transgender individuals. Traces of transgender individuals can be found throughout human history. References to transgender people can be seen in ancient tales such as the Ramayana and Mahabharata, where male deities often assumed female forms to defeat evil. Historically, transgender individuals were present in royal courts, taking care of queens and princesses in spaces where only the king was permitted. However, during British colonial rule in India, they were frequently viewed as criminals and faced judgment for their identities. Today, the life of a transgender person remains challenging. However, conditions improved somewhat after the NALSA judgment, which opened the door to rights for individuals belonging to the third gender, as recognized by the Supreme Court of India. This judgment offers a comprehensive definition of who a transgender person is, framing transgender as an umbrella term that includes those with various gender identities, expressions, and behaviors that differ from the biological sex assigned at birth. Transgender individuals also encompass those who do not identify with the gender assigned to them at birth; they may lack certain physical characteristics or may not menstruate, yet still belong to the third gender. Additionally, the term encompasses men, whether emasculated or not, as well as intersex individuals, including those who have or have not undergone sex reassignment surgery.<sup>1</sup>

The judgment has mentioned various terms and identities in India that are to be considered to be a transgender person such as:-

(a) Hijras – they refer to persons assigned male at birth but have rejected their male identity and have accepted the identity of a woman. The Western term transgender can be applied to people belonging to the *hijra* community. They are known by different names in various parts of the country; for example, they are referred to as *kinnar* in Delhi and *aravanis* in Tamil Nadu.

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<sup>1</sup> *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863 (11).

They are generally seen performing a ritual called *badhai* in various parts of the country, where they offer blessings to the newborn or otherwise dance in various ceremonies.<sup>2</sup>

(b) Eununch – are individuals who are emasculated males or have ambiguous genitals at birth.<sup>3</sup>

(c) Aravanis or Thirunangi – they belong to the state of Tamil Nadu and are individuals who claim that they are women trapped in a man's body.<sup>4</sup>

(d) Kothi – individuals who are male at birth but show behavior or characteristics similar to that of a female.<sup>5</sup>

(e) Jogtas/Jogappas – individuals who are male but dress like females and are devotees of goddess Renuka.<sup>6</sup>

(f) Shiv-Shaktis – individuals who are close to female gods and show a feminine gender expression. They are seen generally cross-dressing and wearing ornaments that are worn by females.<sup>7</sup>

### **International Perspective of Education for Transgender Persons**

The international human rights law has been very active in realizing the right to education for all, and various international instruments address the issue of education. The Universal Declaration of Human Rights (UDHR) 1948, provides under Article 26 (1) that education is the right of everyone, and it should be free in elementary and fundamental stages, technical and professional education shall be made available for all, and higher education should be made available to everyone based on merit.<sup>8</sup> The International Convention on Economic, Social, and Cultural Rights (ICESCR) 1966, provides under Article 13 that it is a right for everyone to get an education. It further stresses the point that education will result in the full development of individuals, which will help them make sound decisions in life.<sup>9</sup> Article 13(2) of ICESCR further provides that for the realization of the right to education, certain directives are to be

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<sup>2</sup> *Id.* at 46.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Universal Declaration of Human Rights, 1948.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights, 1966.

adopted. Article 13(2) (c) provides that everyone should be able to access higher education based on their capacity and by the introduction of other means such as free education.<sup>10</sup> All the above-mentioned human rights instruments have mentioned the term everyone making these instruments inclusive of the population belonging to the LGBTQIA++ spectrum. Although, these instruments in their explanation or meaning are not very queer-friendly the interpretation of these instruments can result in making the queer population inclusive.

The application of human rights principles to sexual minorities is one of the biggest concerns in today's time. A group of experts from diverse fields came together to give us the Yogyakarta Principles that address the issues of the application of human rights principles on sexual orientation and gender identities. Principle 16 provides for the right to education for everyone irrespective of their sexual orientation and gender identity. Principle 16 further puts certain obligations on the state parties to make education accessible and affordable to sexual minorities. It provides that, states should take certain legislative and administrative measures to make education accessible to everyone and students, staff, and teachers are treated equally without discrimination in educational institutions.<sup>11</sup> The state parties are under obligation to ensure that the education results in the overall development of an individual along with addressing the needs of students of sexual minorities.<sup>12</sup> Education should be provided in such a manner that it results in the students respecting human rights, respect for individuals, parents, family members, diverse cultural identities, and language so that everyone can respect diverse sexual cultures.<sup>13</sup> The education curriculum should be developed in such a way that it is respectful towards sexual minorities.<sup>14</sup> The state parties are to formulate policies that will address the issue of sexual minorities in educational institutions by protecting them in terms of social exclusion and violence.<sup>15</sup> The policies and rules made for the protection of sexual minorities should be as that that it does not seclude them from the rest rather the identification of best interests be done and issues addressed in a participatory fashion.<sup>16</sup> The state parties are

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<sup>10</sup> *Id.*

<sup>11</sup> *Relating to the Right to Education (Principle 16)*, YOGYAKARTA PRINCIPLES (n.d.), <https://yogyakartaprinciples.org/relating-to-the-right-to-education-principle-16> (last visited on April 11, 2025).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

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



under an obligation to make administrative and legislative reforms in such a manner that it maintains the human dignity without discrimination and penalty based on students' sexual orientation or gender identity.<sup>17</sup> The state parties are under an obligation to make sure that the lifelong learning of sexual minorities is taken care of by providing learning resources and opportunities and such obligations are to cater to those people also who couldn't complete their education due to the failure of the education system in addressing their issues.<sup>18</sup>

International human rights law is very comprehensive in addressing the issue of education and how the confusion concerning sexual minorities was also cleared, but the analysis of these instruments takes us to the old discussion that all law students have done in class about whether international law is a weak law or not. All the rules, regulations, and obligations are in place, but the dreams with which these instruments were drafted seem like a distant reality.

## Overview of Assam

Assam, the land of blue hills and red rivers, is situated in the foothills of the Himalayas. It has the largest area and population among all the northeastern states. The people of the state are blessed by the mighty Brahmaputra, which provides breath to the state's luscious greenery. The state's topography is uneven and a mixture of both land and hills. International borders with Bhutan and Bangladesh surround it. The land is fit for paddy cultivation therefore the people of Assam are rice eaters. The population of Assam is heterogeneous consisting of people from different tribes and having their own set of rules and cultures. The population of Assam as per the 2011 census was 312.05 lakh comprising both males and females.<sup>19</sup> As per the 2011 Census, the population of transgender persons in Assam is 11374.<sup>20</sup> The literacy rate of transgender persons in Assam is 53.69%.<sup>21</sup> There are various colleges spread over the entire state but most of the population in Assam migrate to Guwahati city for the purpose of education. Guwahati

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

<sup>18</sup> *Id.*

<sup>19</sup> *State Profile of Assam*, GOVERNMENT OF ASSAM: DIRECTORATE OF ECONOMICS AND STATISTICS (Mar. 27, 2025), <https://des.assam.gov.in/information-services/state-profile-of-assam>, (last visited on Apr. 11, 2025).

<sup>20</sup> *Welfare of Transgenders*, PIB (Jun. 25, 2019), <https://pib.gov.in/PressReleasePage.aspx?PRID=1575534> (last visited on Apr. 11, 2025).

<sup>21</sup> Office of the Registrar General & Census Commissioner, India, 2011 Census Data, *Population Enumeration Data, Transgender Population by Age*.

has numerous colleges that offer general degrees, and professional and other courses. There are various names all over India that are used to refer to a transgender person. In Assam, the most common terminology that has been used is *Hijra*. They are presumed to be begging at bus stops, railway stations, and other places. There is another presumption that, other than begging, they are also involved in sex work.



**Source:** <https://www.mapsofindia.com/maps/assam>.

### **Legal Framework for the education of transgender persons in India**

The watershed moment regarding the Right to Education in India was the 86th Amendment Act of 2002, which made education a fundamental right. The 86th Amendment Act, which inserted Article-21 A, made education free and compulsory for children between six and fourteen under Part III of the Constitution, which was held in the famous case of *Mohini Jain v. State of Karnataka*.<sup>22</sup> The validity of the judgment was later tested in the case of *J.P. Unnikrishnan v. State of Andhra Pradesh*.<sup>23</sup> The Right to Children to Free and Compulsory Education (RTE) Act 2009 was the legislative development that was made as envisioned under Article 21A of the Constitution of India. The major idea behind making education a fundamental right was that no child's opportunity to get primary education should be snatched away. The confusion regarding the applicability of the RTE Act on transgender persons was cleared with the passing of the NALSA judgment, which along with providing the status of the

<sup>22</sup> AIR 1992 SC 666.

<sup>23</sup> AIR 1993 SCR 549.

third gender to transgender persons also provided them with the status of economically backward classes of citizens making them eligible for all the benefits available under the RTE Act. India is also a signatory to various international instruments and conventions, viz., Jomtien Education, UNCRC, MDC Goals, Dakar Declaration, and SAARC SDG Charter for children. These instruments and conventions aim to make education a reality for every individual. The confusion with regards to the applicability of the Act has been cleared, and we look back in time, education has become accessible for boys and girls, for that matter, we can also consider groups like OBC, ST, and SC, but what is the status of transgender persons remains a mystery. If the individual's access to elementary education is made better, only then the access to higher education become a reality. Various Articles under the Constitution of India touch upon the issue of education but the Articles that run very close to transgender persons and their education would be Article 46. Article 46 of the Indian Constitution provides for the promotion of education of economic and backward classes of citizens. The Article aims to bridge the gap between the minority population and education. The Transgender Persons (Protection of Rights) Act, 2019 under Chapter -6 provides provisions concerning education, social security, and health of transgender persons. Section 13 of the Act provides that the educational institutions that are aided or recognized by the appropriate government are under an obligation to make education inclusive for transgender persons along with provision on an equal basis with others such as sports, leisure, and recreational activities.<sup>24</sup> The Act under section 2(d) has defined the term inclusive education. According to the section, inclusive education refers to a kind of education where transgender persons are put together with other students and they learn together without the fear of any discrimination, neglect, harassment, or intimidation furthermore, the teaching learning method to be of such nature that it meets the learning needs of transgender students.<sup>25</sup> The Act further under Section 3 provides provisions regarding prohibition of discrimination done on transgender persons. Section 3(a) provides that transgender person shall not be discriminated by any person or establishment in forms such as denial, discontinuation or unfair treatment of transgender persons in educational institutions and services.<sup>26</sup> The Transgender Persons (Protection of Rights) Rules, 2020 provides under

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<sup>24</sup> The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

<sup>25</sup> *Id.* at ss .2, d.

<sup>26</sup> *Id.* at ss. 3, a.

Section 10 welfare provisions related to education, social security, and health of transgender persons. The obligations set forth under Section 10 are as follows, a transgender welfare board is to be constituted by the appropriate government to facilitate access to schemes and welfare measures.<sup>27</sup> All welfare schemes including education should be made inclusive of transgender persons by the appropriate government.<sup>28</sup> The appropriate government is under an obligation to formulate schemes related to all the welfare measures which also includes education in such a way that it is sensitive towards transgender persons, does not bring any stigma, and is non-discriminatory.<sup>29</sup> The appropriate government is under an obligation to take necessary steps to curb any discrimination happening in educational institutions.<sup>30</sup> The appropriate government is under an obligation to provide sensitization in various institutions and establishments, including teachers and faculty in schools and colleges, and formulate the curriculum in such a way that it is gender sensitive and not derogatory to transgender persons.<sup>31</sup> Educational institutions are under an obligation to formulate a committee to address the incidents of harassment or discrimination by peers and teachers so that their access to education is not hindered.<sup>32</sup>

The state of Assam to supplement and complement the Transgender Persons (Protection of Rights) Act, 2019 have formulated the State Policy for Transgenders 2019. The policy contains many rules and regulations, and also provides a comprehensive survey throwing light on the plight of transgender persons. The provisions with regard to education are as follows: transgender persons are to be provided scholarships, free books, and free accommodation facilities, and other things at subsidized rates, reservations to be made available for transgender students in schools, colleges and intuitions providing professional education, make provisions for non-formal basic education for transgender students, schools to admit transgender students and integrate them with the society.<sup>33</sup> The Assam government furthermore, formulated the rules on Assam Policy for Transgenders, provides that it should be ensured that transgender persons

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<sup>27</sup> The Transgender Persons (Protection of Rights) Rules, 2020, G.S.R. 592(E).

<sup>28</sup> *Id.* at s.10.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at s. 7.

<sup>32</sup> *Id.* at s. 8.

<sup>33</sup> Assam Draft Policy for Transgenders, 2019 (SWD.128/2019/82).

are provided fee waiver, textbooks, accommodation at subsidized rates, the rules further provides for revamping of the curriculum to remove anything discriminatory or wrong about transgender persons.<sup>34</sup> The rules and regulations are in place, but in order to realize these rights, these rules are to be implemented. There are no rules and regulations that talk about penalty if these rules are not fulfilled, no further policy formation to supplements these rules.

The arguments remain the same, the rules and policies are in place, but are these rules and regulations able to maintain checks and balances in terms of their implementation and follow-up in case of nonfulfillment? It is time that we revisit these provisions and make them more robust.

### **Social Barriers and Institutional Challenges to Education for Transgender Persons in Assam:**

The biggest problem transgender individuals face in daily life is the public gaze, which stems from how they look, dress, and conduct themselves. With constant bullying in schools, it becomes nearly impossible for them to pursue an education. During the vulnerable age of schooling, they often lack adequate support from their parents to understand what they are experiencing. A recent incident at South Point School in Guwahati drew public attention when a transgender student was asked to either delete a personal Instagram post featuring her in a swimsuit or leave the school permanently. Such incidents exacerbate the trauma that transgender individuals already endure. The fear of societal rejection and the feeling of being different can lead to depression. Higher educational institutions in Assam present another set of challenges for transgender individuals. Many educational facilities lack gender-neutral restrooms, denying transgender individuals a safe space to relieve themselves. Although there are numerous government-run institutions in Assam, only a few, like Tezpur Central University, J.N. College Boko, and Dispur College in Guwahati, provide these essential facilities. Another significant barrier in higher educational institutions in Assam is the lack of appropriate lodging options. Transgender individuals are typically placed in lodging facilities based on their outward appearance, which makes them uncomfortable being themselves. Many

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<sup>34</sup> Rules on Assam Policy for Transgenders, 2019 (SWD.128/2019/82).

are assigned to boys' and girls' residences, with little recourse, as the financial burden of housing alternatives is prohibitive. Furthermore, there are no suitable forums within these institutions to help them address the challenges they encounter.

### **Role of the Judiciary in Addressing the Issue of Education for Transgender Persons in Assam**

There has been a massive change in rules and regulations after the NALSA judgment, but the people from the community are still fighting for acceptance. The judiciary has come to the rescue of many transgender persons. In this part of the paper, the researcher will throw light on the cases held by the Guwahati High Court, which involved a transgender person and their right to education.

The first case is *Bevin Basumatary v. Cotton University and Anr.*<sup>35</sup> In this case, Bevin Basumatry was assigned female at birth but has always felt like a man and has changed their name to Bevin from Bandhana. The petitioner had already consulted a psychologist, and the case has been affirmed as a case of gender dysphoria. Gender dysphoria is a condition where a person is completely uncomfortable with their body and does not feel that they were born in the right gender. The petitioner is an M.A. economics degree holder from Cotton State University, Assam. The entire issue started when the change in the name and gender of the petitioner was delayed and denied. The change in gender and name that was sought by the petitioner was one of the rights confirmed by the NALSA judgment and not allowing or delaying is simply a violation of the rules and regulations provided in the judgment. One of the major problems in this case was the long procedural aspect needed to obtain a transgender person certificate from the appropriate authorities. The arguments of the counsel fighting the case on behalf of the respondent has also given the same arguments that the gender change has to be done through the appropriate forum and rules stated therein. The court held that the petitioner should submit an application form to the competent authority i.e the District Magistrate (Kamrup) in the instant case and after deliberation within 30 days the certificate to be issued to the petitioner if found fit and the same certificate to be submitted to the controller of

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<sup>35</sup> WP(C)/321/2022

examination Cotton State University and within 4 weeks to complete the entire procedure of change in name or gender.

The case that the researcher will be discussing is the case of Paridhi Prisha Saikia v. The State of Assam and 2 Ors.<sup>36</sup> The petitioner was 21-year-old when this petition was filed and assigned male at birth. The petitioner changed their faith to Christianity and was given the name Jishnu Kanti Saikia. The petitioner has undergone some serious changes physical and mental that resulted in the medical opinion given by NIMHNS, Bangalore, as a case of gender dysphoria. The petitioner identified as a transgender person and over the years obtained her Aadhar and Pan Cards with the name Paridhi Prisha Saikia. The petitioner prayed in this writ petition that the SEBA and AHSEC, which conducts the 10<sup>th</sup> and 12<sup>th</sup> Boards in Assam, change her gender. The arguments provided in favor of the authorities were that they have a stated procedure in their regulation, and it would not be conducive to changing things as per the request of the petitioner. The court made a reference to the judgment made by the Supreme Court in the case of Venkateshwara Theatre v. State of Andhra Pradesh and Others.<sup>37</sup> In this case, the court made an observation that the applicability of the same law in two different classes of persons is arbitrary and violates Article 14 of the Indian Constitution. The observation of the court in exact words was “Just as a difference in the treatment of persons similarly situated leads to discrimination, so also discrimination can arise if persons who are unequal, i.e., differently placed, are treated similarly. In such a case, failure on the part of the legislature to classify the persons who are dissimilar in separate categories and apply the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions, or persons would be condemned as discriminatory if there is an absence of rational relation to the object intended to be achieved by the law”.<sup>38</sup> In this case, as well similar precedent was applied and the court ordered the authorities to use their special powers provided under their regulations and allow the change in the name and gender of the petitioner as per her request. The court also stressed the point that the petitioner is applying for higher education, and this certificate is a mandatory requirement for her admission.

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<sup>36</sup> WP(C)/2373/2020

<sup>37</sup> AIR 1993 SCC 677

<sup>38</sup> *Id.* at s.23.

In both cases, we noticed that the rules and regulations were in place, but the petitioner had to resort to the court and exercise their rights. If these procedural aspects are not made simple and issues are not resolved inside the office itself, the person has to spend a lot of money and is subjected to trauma and loss of time, which hinders their day-to-day activities in life.

### **Conclusion and Suggestions**

The right to education has been a struggle for various marginalized communities. Individuals belonging to the third gender are surrounded by a web of complex legislative and social barriers in India, particularly in Assam. Progressive judgments such as NALSA have sparked a watershed movement regarding the rights of transgender persons in India. Despite these developments, transgender individuals continue to face exclusion and discrimination, not only in educational institutions but also from public authorities meant to free them from harassment. The main issue with realizing the right to education is addressing many barriers, such as institutional ones, which could improve educational access for the third gender. The greatest challenge faced by individuals of the third gender is the inadequacy of lodging facilities provided to them. Institutions could make an effort to offer separate or preferred accommodation for individuals belonging to the third gender community. Another significant issue is constant bullying and harassment, which is not limited to peers but also comes from teachers and staff. To tackle this issue, there should be appropriate forums where their concerns can be addressed and recourse provided. The unavailability of restroom facilities in educational institutions also hinders third gender individuals from emergency access, potentially leading to various illnesses requiring proper medical care. Therefore, gender- neutral restrooms should be available in educational institutions. Most transgender community members lack support from their parents or legal guardians; thus, proper scholarship or fellowship systems should be established to allow them to focus on their education and secure sustainable employment later in life. India has seen various educational policies that were progressive for their time. These policies were continually updated to meet societal needs and provide world-class educational facilities, yet they have excluded transgender students, making them more vulnerable to issues. Educational policies should include transgender individuals and establish rules to ensure they can complete their education. However, Chapter 6 of the National Education Policy 2020 discusses 'Equitable and Inclusive Education: Learning for All'. Sociological barriers, coupled



with bullying, compound the challenges faced by transgender persons. There should be proper representation of transgender individuals in higher authorities to ensure their voices are heard. The narrative regarding transgender persons in Assam needs transformation. Many people view transgender individuals merely as entertainers at functions; therefore, proper sensitization of teachers and staff in higher education institutions could significantly improve the lives of transgender students.

If we look at the rules, policies, and regulations, all fall into place, but the missing part of the puzzle, which has caught no one's attention, is the realization of these rights. The right to education for transgender persons needs to be realized by forming more policies that are transgender friendly and the ones that make the lives of transgender persons in educational institutions better and worth living.