

Defining the Subaltern: A Spivakian Assessment of the Transgender Persons Amendment Act, 2026 and *Darling Diana*

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Abstract: Who am I? This is a rudimentary question about the self, which we decipher with individualistic confidence and freedom of thought. Upholding this individualistic vein, the Supreme Court of India in *NALSA v/s Union of India* (2014) decided that the right to self-identification of gender is a fundamental right. However, the Transgender Persons (Protection of Rights) Amendment Act, 2026 contradicts this judicial precedent. Is the right to self-identification limited to individuals who conform to the norms of the dominant class? How does the amendment marginalise the transgender community in India? The paper attempts to answer these questions through an analysis of the amendment of 2026, the connected parliamentary debates, and *Darling Diana* by Sanika Dhakephalkar to comprehend the subaltern from a Spivakian perspective. The paper employs a multidisciplinary approach, focusing on law and literature through close reading of the above-mentioned texts and the application of post-colonial theory.

Keywords: Subaltern, transgender, epistemic violence, representation, marginalisation

Introduction

The Transgender Persons (Protection of Rights) Amendment Act, 2026 (hereinafter, the Act of 2026 or the amendment or the bill) shall go down in history as one of the diabolical Central laws passed post-independence and opposed to human rights. The amendment rejuvenates the oppression of transgender people that was formerly operative via the Criminal Tribes Act, 1871 (Act of 1871) and S. 377 of the Indian Penal Code, 1860 (S.377). While the Act of 1871 and S. 377 expressly othered and formulated the transgender as the colonial subject, the amendment does the same, albeit under the garb of providing protections, which reflects how the post-colonial individual/organization/government continues to internalise European sensibilities, disguising it as *sanskriti* in ignorance of indigenous Indian knowledge. It is this oppression that cements the position of the transgender in India as a subaltern. A subaltern can be understood as the margin, the silenced, extinguished by epistemic violence (Spivak, 78). The current discourse shall analyse the Act of 2026, the concomitant parliamentary debates, and the biographical illustrative essay on a Goan transgender activist titled *Darling Diana* by Sanika Dhakephalkar in light of the elements of subalternity elucidated in the seminal theoretical work by Gayatri Chakravorty Spivak, *Can the Subaltern Speak?* These elements can be enumerated as follows:

1. the problem of representation
2. epistemic violence
3. ethnocentrism
4. ideology
5. agency
6. misconstruction of religious texts
7. spatial exposure from the private to public sphere
8. patriarchal social relations, and
9. extinguishment of the subaltern.

The paper attempts to comprehend the texts to form a well-rounded perception of subalternity and establish that the law in question marginalises the transgender community. This paper is not a legal analysis to test the constitutional validity of the amendment, but rather a close reading of the text to study the marginalisation of a group.

Literature Review

Before we examine the texts, let us briefly review published scholarship on law and literature through a Spivakian lens. We will first consider how Spivak's theory, applied to autobiographical texts, helps us deconstruct heteronormative structures and consequently makes a case for self-representation. Further, we will assess how 'queer' can be self-emancipatory and facilitate an internal revolution as a response to epistemic violence. Lastly, we investigate whether Spivak's subaltern theory enables the queer to be heard. These discourses will contextualise and locate the significance of the current paper.

Roy highlights that Spivakian theory presents the subaltern as the displaced (210) and is anti-imperialist in matters concerning sex and sexuality (212). Indigenous knowledge is pushed to the margins to make space for imperialist norms (213). We clearly see this in the ignorance of the *tritiya prakriti* and various other Indian scriptural references to queerness, which are sidelined to make way for the Abrahamic gender norms of the coloniser imposed on transgender people in pre-independence India through the Act of 1871 and S. 377 IPC (213). Promoted by ethnocentric presumptions, the nationalist agenda does not accommodate the sexual subaltern, pushing them into a liminal space leading to erasure (214). Roy further states that A. Revathi's memoir acts as an episteme of the racial Other and is an opposition to imperialist perspective; a balm, an epistemic reconstruction as a counter to epistemic violence (215, 218).

Kapur foregrounds Spivak's epistemic violence as a result of the white man's mission to bring civilisation to its colonies through legal interventions. Additionally, a case is made for the separation of the 'queer' from the LGBT since the latter does not question the normative. It is difficult to agree with this argument as the LGBT, through same sex communion, threatens the heteronormative sex/gender order. While Kapur calls for an exploration of the epistemology of the subject, the use of the word "imaginaries" tends to downplay queer lived experience and knowledge as unreal. Kapur calls attention to the queer history of the Sabarimala temple, the fact that Lord Ayyappan was born from the union of Lord Shiva and Lord Vishnu in his Mohini avatar. We are also told about Vavar, a Muslim companion of Ayyappan. Kapur asserts how dominant narratives overshadow narratives of the Other, alluding to how the temple debate is viewed solely from the women's rights lens. In contrast, Ayyappan preferred the company of men and abjured calls to engage with the heteronormative.

Mukherjee, in her project on the queer subaltern through a series of interviews (transman, Hijra, cis pansexual man, cis homosexual man, lesbian, transwoman) foregrounds the muting of the subaltern in the family and among friends, which are meant to be one's immediate support system (4-10, 12-14). In some of these testimonies, we are unable to ignore the insidious role of the family as an institution which imposes the heteronormative and silences the subject through coercion (12). This institution is the strongest agent of patriarchy, which is duty-bound to keep the conventional system intact. These interviews perform a crucial role in giving voice to the marginalised by the intellectual; however, it is pertinent to heed Spivak's caution against misrepresentation of the subaltern (Spivak, 70, 75, 80, 82). While scholars tend to be obsessed with the question: *Can the subaltern speak?*, the testimony of the homosexual cisgender man reveals to us an alternative question: *Does the subaltern wish to speak?* The respondent has made peace with his heteronormative family life and his sexuality, portraying how the subject can respond to such an environment with sacrifice and hedonism at the same time (9).

At this stage, Mukherjee, as an intellectual, misrepresents the subject. She avers that social exclusion compels the subject to engage in behavioural excesses: 'feminine clothes, wear glistening lip and nail varnishes' (13). Moreover, the intellectual backs this argument with a testimony of a transwoman recorded while she was on a break

from begging on the streets, who states that the reason for wearing makeup, gaudy clothes, and flamboyant accessories was to grab attention (13). Begging can be understood as a result of exclusion. The identifiers of femininity and womanness are depicted as symptoms of a psychological ailment. These identifiers assist in the constitution of a gender identity, not a disease. These identifiers are self-empowering, leading up to an internal revolution. Subjective experience cannot provide us with universal conclusions. The premise is lacking; the intellectual has misrepresented the subaltern! On a positive note, Mukherjee quotes Pattanaik, who states that the Hijra is the 'most vocal manifestation of queerness in India, refuses to stay invisible' despite the stigma. She further quotes: "Ignored by the mainstream . . . she claps in the crowded street demanding to be seen" (14). The subaltern demands an audience. In light of the above discussion, the present paper seeks to decipher subalternity *via* the Spivakian lens.

Spivakian Elements of Subalternity

The Transgender Persons (Protection of Rights) Amendment Bill, 2019 was introduced in the Lok Sabha on 13th March 2020 to amend the Transgender Persons (Protection of Rights) Act, 2019 (PRS). The most concerning clause of the amendment was the definition, which limited the term 'transgender' to include a speck of the total population of transgender people. The bill immediately sent shockwaves across the trans and queer community, with online discussions held to organise the community. The main responses to this assault on basic human rights by the far-right Hindutva government were protests across the nation and an email campaign (Reject...) in which concerned citizens sent emails to their respective MPs urging them to oppose the bill (Henry and Chadha).

The opposition adequately opposed the bill (The Indian Express) but to no avail. The Lok Sabha passed the bill on 24th March (PRS). The community did not lose hope and continued the email campaign, this time focusing on the Rajya Sabha M.Ps. The Rajya Sabha passed the bill on 25th March (PRS). At this stage, it was a given that the bill would become law, as the President would, in all certainty, assent to it. The President is the nominal head of the country, and the incumbent has never opposed/withheld assent under Art. 111 of the Constitution to a Central bill, although there are prolific examples of the exercise of the said power under Art. 201 against bills from non-BJP/non-NDA States (Ranjani, The Print, ANI). However, the queer community blindly held on to hope that the President would exert her veto power under Art. 111.

The President has rarely exercised this power, especially in light of Art. 74, which makes it mandatory for the President to function under the advice of the Council of Ministers. Nevertheless, history shows us instances when Presidents vetoed central bills. In 1954, it was exercised by Rajendra Prasad against the PEPSU Appropriation Bill 1954 (Basu). In 1991, President R. Venkataraman vetoed the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill (Raje). In 1986, Zail Singh exercised the veto against the Indian Post Office (Amendment) Bill (Jain). In 2006, A. P. J. Abdul Kalam used this power on the Office of Profit Bill (Bhattcharjya). If President

Murmu had exercised her power of veto on the Transgender Persons Amendment Bill, she would've scripted history in parliamentary procedure in India. That was not to happen; Murmu has consistently supported the government, even when the three criminal bills (Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adiniyam) were passed without sufficient parliamentary debate (PTI). As such, the queer community was utterly ill-advised to send similarly fashioned emails to the President to persuade her against the bill (email content).

Representation is crucial to the amelioration of any class, and Spivak stipulates two types: representation/*vertreten* and re-presentation/*darstellen* (Spivak, 70-71). The former implies a more potent form of substitution: someone who acts on behalf, is more persuasive, and is an appropriate proxy who can speak for a class. A woman novelist can effectively represent a narrative about another woman; the type we see in Arundhati Roy's Ammu in *The God of Small Things*. The latter refers to an individual who depicts a class although he is not part of it. An elite man can depict the perspective of an unprivileged man like Arvind Adiga's Balram in *The White Tiger*. Spivak calls the attention of Marxists to expose this difference between the two (72). Small groups, she says, lack effective representation (73).

Although there is a subaltern to speak for a representable subaltern, the intellectual must continue to engage with the subject. However, the untraceable subaltern history can dampen these intellectual efforts (80). Notwithstanding this nature of the intellectual, he must not give up on the task of representation, for the subaltern subject cannot speak for itself (80). As a solution to the problem of the intellectual gaze towards the subject, Spivak suggests suspension of the clamour of consciousness or thought processes put in place by their training (82). The dominant class misrepresents the subaltern, as we see in the East India Company records wherein women's names who committed *sati* were recorded as common nouns (93). Some names available to us are Ray Queen, Garland, and Echo, which were probably *sati*-named *Roshan Rani*, *Mala*, and *Gunj* (101-102).

Spivak highlights the role of epistemic violence in the subalterning of the subject. This violence can be achieved by ideological imposition, scientific production, and institutions of law (Spivak, 75). The intellectual who seemingly espouses the cause of the subject may well be the one unknowingly responsible for the creation of the Other and for the epistemic violence of that Other (75). It involves the destruction of every ounce of the Other (76). She explains this violence through the codification of Hindu Law by the British, complemented by the education reforms associated with Macaulay's Minutes, whereby an artificially produced narrative becomes the normative (76-77). Spivak further states that the subaltern must not be understood by imposing upon it the First World perspective or European ethnocentrism (89). Spivak brings to our notice Althusser's ideological necessities in the reproduction of labour power: submission to, and manipulation of ideology for the 'domination of the ruling class' (Spivak, 68). This ideology is false ideology where the masses choose to be deceived and yearn for a fascist political regime (69). It is perhaps in this vein that some of these willfully deceived, popularly known as *andhbhakt*s (blind devotees of the Sangh Parivar)

in India, can be seen as citizens who desire the political regime despite the falling value of the Rupee (Mukherjee, M) and the ever-increasing gap between the rich and the poor (Frontline). Macherey's ideology encourages us to ask: 'what it (ideology) does not say' and 'what it refuses to say', which is important to measure silence. Both deliver a swift and silent epistemic blow to the subaltern way of knowing life (81-82).

In deciphering the subaltern by employing the erstwhile Hindu practice of *sati*, Spivak conveys how the dominant supplies a false agency to the subject in total disregard of its true intentions (Spivak, 93). She quotes, "The women actually wanted to die" (93). Agency is attributed to the subaltern in a manner that suits the cause of the dominant class. Suicide is generally disapproved of in the Hindu scriptures, with *sati* as one of the exceptions, as it "brings praise for the act of choice"; a dutiful wife performs *sati* (96). Oddly, for the colonialist, the "white men . . . saving brown women from brown men", the subject's choice/agency was identified as when she would retreat from the decision of committing *sati* (96), "kill yourself on your husband's pyre" (99). You shall attain *moksha* (freedom from rebirth). The male-dominated society is awestruck by the historical retelling of *jauhar* (suicide by aristocratic women to avoid abuse). We witness this obsession in the movie *Padmaavat*.

In Goa, certain regions celebrate the festival of *Karavleo/Karvalyo* (two *satis*/two boys dressed as women) in March and is observed by the *kulwadi* community (Khedekar). Each family from the community eagerly awaits their turn to perform *Karvalyo*, for it is believed to bring good fortune (Kudtarkar and Gawas). The festival traditionally involves men dancing and swaying to the rhythm of the *dhol* (double-sided drum), *taso* (side drum), and *kasale* (copper cymbal). It also involves singing of the folksong, *sakarati*, which makes references to the ecological fabric of Goa (Kerkar, Not Just...). It is said that the festival is celebrated as a remembrance of women who committed *sati* (Kerkar, Malkarnekar). It can also be seen as a lament of a patriarchal society for the loss of a dear tradition to the civilising exercise of the European white man and/or as a glorification of the bygone tradition. Section 5 of The Commission of Sati (Prevention) Act 1987 punishes an act that glorifies *sati*.

Spivak attempts to show how the Dharmashastras were likely misinterpreted to the detriment of the widow (99-100). Moreover, the imperialist preferred *sati* to the fierce *Maa Durga* so that the subject can be 'saved' (103). This use of myths and misconstruction of the religious text erases the subaltern voice. Issues concerning the subaltern, as with *sati*, experience a spatial leap from the private to the public sphere where Western culture is a catalyst challenging the traditional folks to prove their purity and commitment to the culture of the civilised (94). The 'patriarchal social relations' exacerbate the position of the female so much so that even if the intellectual creates space for this subject, she cannot acknowledge her exploitation and raise her voice against it (Spivak, 84).

The subaltern is crushed between patriarchy and colonialism and convention and modernity (Spivak, 102). Selective use of myth can erase spaces from which the subaltern can speak (103). Bhuvaneswari's suicide during her menstrual cycle informs us that "The subaltern as female cannot be heard or read" (104).

The Transgender Persons (Protection of Rights) Amendment Act, 2026

As ludicrous as it sounds, the intellectual in our reading is the Member of Parliament (M.P), and our Parliament lacks transgender representation; perhaps the reason 'intersex' was included in the amending definition of transgender is that intersex is not a gender identity. This reflects that the government is ill-informed, leading to misrepresentation. The amendment redefines transgender only to include *kinner*, *hijra*, *aravani* and *jogta*, or eunuch, or a person with intersex variations. The Act of 2019 had a broader definition in line with international standards.

The amendment excludes transmen, transwomen, transmasculine, transfeminine, genderqueer individuals, and indigenous communities like *kothis*, *jogappas*, *shiv-shaktis*, *khwaja siras*, *mangalamukhis*, *nupi manbis*, etc., which amounts to epistemic violence towards the community's way of living and knowing this world. The amended definition is selective as to who can be classified as transgender, which leads to the muting of this group. The impact of this violence is surreal as the proviso to the amended definition states: "Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities."

Does this mean that individuals who've already secured their identity under the Act of 2019 will be affected? The nature of the proviso to the amended definition is unique and highlights how deeply entrenched the political regime is in the two gender theory, a First World/Western sensibility. The erroneous definition under the amendment is akin to the mistranscription of names of *sati* by the colonialists (Spivak, 101). Additionally, by omitting S. 4 (2) of the Act of 2019, the State has expressly and legislatively withdrawn the right to self-perceived gender, which has been recognised in *NALSA v. Union of India* (AIR 2014 SC 1863) by the Supreme Court. The amendment to S. 7 of the Act of 2019 increases surveillance by mandating the individual who has undergone gender surgery to apply for a revised certificate. It also mandates the medical institution where the surgery was carried out to share information of such patients with the District Magistrate. These provisions enable epistemic violence and contribute to the effective implementation of the ideology. Similar laws do not exist for the medical surveillance of cisgender individuals.

The amendment to S. 6 (1) of the Act of 2019 takes away self-identification. Such a process does not apply to men and women since they comply with heteronormativity. This ignores the agency of transgender citizens. The amendment is unabashed in its contradiction of the spatial exposure element because if the Act of 2019 took a step forward to recognise transgender, the amendment takes several steps back to strip them of their identity and criminalise them. Spivak suggests that "protection of women" is a qualification for a good society (94). I submit that in the current times, the protection of transgender people becomes a "signifier for the establishment of a good society".

S. 18 (d) stipulates punishment for physical, mental, and economic abuse of a transgender individual that is comparatively wanting in severity when compared to

punishment for these offences against a heterosexual under the Bharatiya Nyaya Sanhita (BNS). The provision provides for punishment of imprisonment for a period between six months and two years and a fine. This is comparatively less than the punishment stated under Ss. 63-71 and 74-77 BNS dealing with sexual abuse, which can extend to the sentence of death, and S. 351 that punishes criminal intimidation, which can extend to seven years' imprisonment. The idea to punish differently for an offence against one class of humans as opposed to another class of humans is discriminatory in nature and stems from a lack of representation. It also amounts to epistemic violence against the subaltern because such laws will barely act as a deterrent, fail to protect the group, and not ensure a dignified life. The arbitrary maximum punishment for sexual abuse and administrative control over gender identity both form part of the challenge against the Act of 2019 in the *Swati Bidhan Baruah v Union of India* (WP(C) 51/2020). This amendment could've been used to cure the Act of 2019, but the government chose to marginalise the community. The transgender community in India has been violently shuttled from obscurity to judicial recognition (NALSA) to legal recognition and certification (Act of 2019), and finally to legal derecognition and surveillance (the amendment). This approach is heavily anchored in heterosexist ideology and dominant prejudices. The protests against the law widely termed it as a *kachcha* (raw/incomplete and not fully formed) bill in its main slogan: *Bill toh kachcha hai* (The bill is raw) (Colaco), but it is patently a *pakka* (ripened/complete and fully formed) bill of hate and prejudice.

The offences stated in S. 18 (e) to (h) of the amendment relate to protection of adults and children from being made to conduct themselves as transgender and to engage in bonded labour. Consent is crucial if the victim is an adult; however, this is not the case if the victim is a child, specifically in reference to S.18 (f). This raises concerns that the law may be potentially used against parents, medical professionals, and the support system of a minor transgender individual. Ideally, until a person attains majority, a parent or guardian has the authority to take decisions in the interest of the child, but the current amendment makes no such provision. As such, if the phrase "undue influence" is interpreted widely, the law acts as a detriment to anyone who provides crucial gender-affirming care to a minor transgender individual for their physical and mental well-being. A parent who affirms (sometimes imposes) gender behaviour of their child within the binary faces no legal action.

In contrast, a parent who affirms transgender behaviour of their child potentially faces rigorous imprisonment for life and a fine not less than rupees five lakh. There are no general definitions for the terms 'man' and 'woman' to the extent 'transgender' is defined in the amendment. This leads to a form of epistemic violence against a way of life (transgender) merely because it does not conform to the gender binary ideology of the society.

The Statement of Objects and Reasons of the amendment clarifies that the law protects individuals based on biology and not choice, but gender identity is not a choice (6). There is a difference between self-perceived (internal experience) and chosen (deliberately selected). Let us hypothetically consider what X, a

transgender/genderqueer individual, has to say about this conflation that appears to be a ruse to dislocate the transgender through the legal machinery: I did not choose to be genderqueer. That's the only way I know to exist and have been existing since childhood; ridiculed and bullied by students and teachers. All the while, I was made to sense shame and an unexplained sadness. As a school student, I questioned: what was the wrong I committed, and why would anyone mistreat me? Why would I acquire such a life? Why would anyone? It is what I am. It is what I'm recognised as by myself, my support system, and even my bullies! From the Statement, we can surmise that the government intends to protect a group of transgender individuals for biological reasons; however, this is a narrow view of social issues faced by the community since not all transgender individuals possess the biological qualifiers. The real determinants ought to be identity as upheld in the NALSA judgement, historical oppression, and want of representation.

The Statement puts forth a premise for the amendment that does not align with international standards such as the Yogyakarta Principles, which define gender identity as 'a person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth' (Introduction). The Statement also argues that a definition cannot be of a nature whereby the status which qualifies for a right can be acquired (Transgender, 6). This premise stems from prejudice against transgender people. It is a flawed premise because people do not choose to be transgender. Any transgender person would rather choose to conform to heteronormative norms to have a better quality of life in a predominantly heterosexist society to reduce the experiences of prejudices. Therefore, it is asserted that legal benefits from citizenship, marriage, etc. can be 'acquired' by choice, whereas gender identity is not; 'tis an experience, a sensation! This sleight of words involving 'self-perceived' and 'chosen' arises from ignorance or malice of the Parliament, for it lacks transgender M.Ps. The amendment proves that there is a dire need to extend reservation of seats for transgender people throughout all legislatures in India to stall the continued assault on the transgender episteme. Let us now consider the parliamentary debates on the impugned amendment to intimately grasp the marginalisation of the transgender at the hands of the incumbent M.Ps.

Parliamentary Debates

As of 1st May 2026, the Lok Sabha and Rajya Sabha websites have not provided the official version of the debates. Reliance is placed on the *verbatim* recording of the Lok Sabha and Rajya Sabha debates provided by *The Indian Express* (TIE) and *The Federal* (TF) respectively. Lack of representation in Parliament contributes to the othering of transgender people. The opposition highlighted that the bill replaced constitutional morality with "administrative superstition," which is a reference to the ideology and prejudice of the ruling parties (TIE, 5:49:20). The law mandates verification of identity before dignity is granted. The minister also called attention to the efforts of the Tamil Nadu State in establishing the first Transgender Board and its use of respectful Tamil terms for transgender individuals like *thirunangai* (திருநங்கை: transgender woman), *thiru* (male), *nangai* (female) and *thirunambi* (திருநம்பி: transgender man). At the same

time, the bill uses the words like eunuch which are cliché and offensive (5:53:35). The bill also reframes rights as privileges (6:01:05). This is evinced from the Statement of Objects and Reasons at clause 4 of the bill and is rooted in the far right politics in India which tends to portray Hindus in danger (*Hindu khatre mein hai*) (Jagani) and the minority classes being the aggressors against whose stratagems the right wing political class shall act as a defence. We ought to understand this rhetoric of the far right in the context of the Economically Weaker Section (EWS) reservation, which accommodates the upper caste Hindus (thus saving them) in contradiction of long-held constitutional tests for reservation, i.e., the group has experienced historical oppression and lacks representation (Kumar). Interestingly, the Supreme Court upheld the constitutional validity of the EWS reservation (Janhit Abhiyan). This creation of a right for the socially privileged in spaces reserved for the under-privileged explains the blurring of the line between rights and privileges. While one class enjoys the benefits through this tactic, another class (transgender), which requires welfare benefits, is deprived. The subaltern is denied amelioration and representation.

Defending the bill of 2026, a ruling party M.P expressed concerns that people will identify (falsely) themselves as women and avail women's reservation benefit and that fake transgender cases have also been increasing (TIE, 6:17:00). This is a flawed legislative approach. If the minister is to be believed, will similar gender identifying laws be introduced against all women for the effective implementation of the women's reservation bill? Will a cisgender woman be sent to the District Magistrate to confirm her gender? Even if there are fake transgender cases, is it prudent to discriminate against the entire transgender community and treat it like a *criminal tribe*? The government has no such concern, for there is no punitive provision in the amendment to tackle false identification of gender. The ruling party has attempted to present this strike on human rights within the trappings of protection and welfare policy. Another ruling M.P argued that just as there is a system to certify SC, ST, OBC, and the disabled community, there should be a parallel system for transgender people to avail the benefits (TIE, 6:49:00). The status of Schedule Caste and Transgender stand on different footings; one is a social status, while the other is a gender identity; the comparison does not stand.

While several M.Ps from the opposition accentuated the absence of the subject as representative in the Parliament (TF, 1:02:50 - 1:04:40), some of these very M.Ps exhibited a lack of knowledge about the transgender community referring to the community as people who can be seen on the streets (TF, 2:33:45 - 2:34:25). Referencing to the subject in this manner promotes a stereotypical image; not all transgender people beg on the streets, some are teachers, Ph.D. scholars, writers, artists, etc. To set the streets as the sole or principal qualifier for the definition of a transgender person is exclusionary and a bigoted view. Being part of a professional collective does not erase transphobia. It exists at every level of society, and the Central government has been found lacking in putting in place effective measures to ameliorate this group. The language of the bill is a reflection of transphobia in India. A ruling member elucidated the number of transgender people in different States across India: Uttar Pradesh at 1.40 lakh, Andhra Pradesh at 45, 000, Maharashtra at 40,000, West Bengal at 30,000; and

she enquires rhetorically: Is this natural selection? She responds to her own question, that the phenomenon should've been random and that it raises aspersions if trans identity is forced on some or youths are forced by community pressure or used as a means to earn income (TF, 1:07:35 - 1:08:57). Moreover, she points out that there are more than the recorded number of transgender people in Pune, their aggression has increased, and transgender people are seen drinking alcohol (1:09:10 - 1:10:15). The blame is placed on the community without any consideration that the issue can lie in the methodology of the State to collect the data. The reasoning of the M.P is subjective in nature. An opposition M.P rightly compared the budget allocation with the spending to emphasise the abysmal government commitment to the welfare of the group (1:29:12 - 1:33:00).

Another M.P quipped the members present if they can tell the fullform of LBGTQIA; she asserts, "there is no awareness" (29:20). Further, she mentioned that amidst wars this bill was prioritized to harm the community (36:58). She hoped the bill was brought due to ignorance and not consciously (43:20). It was also enquired as to why such a bill was introduced when the next day was Ram Navmi (2:13:45). So much for highlighting the role of transgender people in the Ramayana, this is compounded by the fact that the group is not a strong vote-bank (2:14:10).

The ideological worldview of the ruling parties in the context of transgender is reflected in their condescension and performative rhetoric clearly audible in the house. The opposition warned that assessment of identity based on mental, physiological or biological basis can lead to categorising a group as a sickness/disease (TIE, 5:43:10). A ruling M.P stated that "we give the transgender the full right to be human" (TIE, 06:58:33). The Minister for Social Welfare & Empowerment affirmed that the bill will empower the community. He recalled how on 26th January 2026 around 60 transgender people from 15 states were invited for the Republic Day function and that they were teary eyed because for the first time in independent India a Prime Minister had invited members of their community (7:33:00). He further pointed to the canteen of the Social Welfare Department in the National Institute of Social Defense (NISD) as it is run by a transgender person who cook scrumptious dishes (7:34:05). At the Dr. Bhimrao Ambedkar International Centre, the Souvenir Shop is managed by a transgender person (7:34:55). In the Rajya Sabha, he stated that at Bhupendra Yadav's daughter's wedding a transgender advocate was at the entrance to greet the guest. It was a sign of societal inclusion (TF, 3:38:55). The government is disconnected from the people. It follows Trump's theory of gender (1:18:30). Ethnocentrism or Western constitution of the subject contributes to transgender subalternation.

The government declined to recognise the agency of the transgender community to think for themselves. It was highlighted that the transgender community was not consulted for the bill (TIE, 5:22:13). An M.P emphasized that the society is a product of mental discipline known as modern science and that the role of medical experts is central to the implementation of penal provisions in favour of the transgender community failing which the administration will fail to differentiate a transgender person from one falsely claiming the identity (6:30:00 - 6:34:00).

References were made to various transgender characters in Hindu mythology (TIE, 6:13:45 - 6:20:45; 6:59:40 - 7:06:25; TF, 2:54:15 - 3:04:44) only to sugarcoat a bill averse to inherent rights as a protection law. It puts at risk even the categories of transgender mentioned in the amended definition, especially when they engage in the provision of necessities to minor transgender people who escape their oppressive natal families. Whom does the new law protect? Does it, in essence, protect the social fiction of the heteronormative gender binary structure?

The ruling M.Ps did not attempt to deconstruct in clear terms the criticism of the proposed definition, rather focusing on showcasing the bill as protective and supposedly in line with Indian mythology. At this stage, if we ask the pivotal Spivakian question, we get a frail yes and resounding no. In lacking representation, it cannot speak, but by speaking through email campaigns, protests, and intellectuals/Members of Parliament, it has spoken to some extent, yet it is ignored. Between the tradition of Hindu mythologies and the modern dominant legal sensibilities of gender, the transgender person disappears (refer to Spivak, 102). Taking inspiration from *A Vindication of the Rights of Woman* by Mary Wollstonecraft, it must be said that the transgender does not wish to have power over other genders; but merely themselves and most importantly over their gender identity!

Darling Diana by Sanika Dhakephalkar

To understand subalterning of the subject through the institution of law is futile unless we engage with lives affected. We must, therefore, visit the biographical account of Daina Dias by Sanika Dhakephalkar. Diana was a transgender activist based in Vasco, Goa, who died on 12th January 2024 under unknown circumstances in her natal home (Dhakephalkar). She left home at a tender age of 13/17, secured a Master's degree, and taught in various colleges. Diana's family never accepted her gender identity and imposed gender binary norms upon her, always deadnaming her. Her sister was the exception. She would go on to set up an NGO called *Wajood* (being/existence), catering to the welfare of the transgender community in Goa. During the pandemic, Diana developed encephalitis (inflammation of the brain), and she turned to her mother, who instead of providing her medical care, sent her to a psychiatrist for conversion therapy (an unscientific practice to change sexual orientation). She was under the control of her parents for two years until she was located in the Institute of Psychiatry & Human Behaviour (IPHB), Goa, where she was administered shock therapy. In January 2024, she was discharged and taken to her natal home in Vasco. Her condition deteriorated, and she was admitted to the Goa Medical College (GMC), where she passed away a week later. Let us now analyse the biographical text as an exercise to measure how epistemic violence operates against the subaltern subject.

Spivak's epistemic violence is the assault on the subject group's way of knowing life and the world through distortion, erasure, censorship, or ignoring, which leads to the debasement or muting of the subject group. When Diana had to leave home due to her gender identity, she was compelled to beg and engage in sex work (Dhakephalkar, 1,10), which denied her a normal childhood. Her brother burnt her clothes, makeup,

and every ounce of her being (1). As per the 2011 census, Goa recorded 398 transgender people, and the voter records for 2022 show a mere six registered transgender voters (6). Central welfare policies are not being implemented by the government (6). Diana stated that issues concerning identification papers left the community invisible and unable to access government welfare benefits launched during the pandemic (16). Deadnaming further contributes to the subalterning of the subject and is often practised by the natal family (refer to Dhakephalkar, 18). Deadnaming can have a visceral and toxic impact on the subject (Lane). When Diana developed encephalitis, her family subjected her to conversion therapy, confiscated her phone, and deleted all the data from it (Dhakephalkar, 19-20). Diana was defined by her family as “possessed”, not as transgender (Datta and Sonawane). The author expresses concern about the use of Electroconvulsive Therapy (ECT) on Diana; her condition got worse after the treatment (23). Diana’s gender identity wasn’t spared even during her funeral, distorted as per the wishes of her family members and deadnamed (Datta and Sonawane). What adorned her corpse was not a bridal gown as she had wished for, but shorts and a t-shirt (Datta and Sonawane). When mainstream society does not acknowledge transgender people, the subject is left in a precarious situation. The author rightly questions why Diana had no support system and why she had to rely on her toxic family when she became ill (14-15). Shuttling between the traditional and the modern, Diana truly disappeared (refer to Spivak, 102).

In the midst of my journey to find the subaltern and perform my duty as an intellectual among the dark elements of subalternity in the texts I have analysed above, I seem to have stumbled upon a response to epistemic violence, i.e., epistemic reconstruction. Although part of Diana’s natal family tried to erase her *wajood*, another part helped build it. Her niblings (siblings’ children) would refer to her as *meemo* since the heteronormative *mama* did not suit her (17-18). One of the six illustrations in the text depicts Diana and her sister seated together on the kitchen floor discussing their dreams (22). It is a paper collage which is meant to fill a void created by Diana’s brother, who had destroyed her photos, including the ones where they were photographed together. *Darling Diana* acts as a reconstruction which lays an epistemic foundation for many more Dianas to come.

Conclusion

The above close reading of the Transgender Persons (Protection of Rights) Amendment Act 2026, the related parliamentary debates in the Lok Sabha and Rajya Sabha, and the biography *Darling Diana* by Sanika Dhakephalkar exposes the process of marginalisation of the subaltern from a Spivakian lens. In deciphering this marginalisation, we applied elements of subalternity as laid down in the essay *Can the Subaltern Speak?* by G. C. Spivak. An analysis of the amendment shows us how the defining and punitive provisions contribute to the marginalisation of the subject group. The parliamentary debates confirm this hypothesis by laying bare the intention and incompetence of the Parliament in matters concerning transgender rights. Diana’s biography informs us about how epistemic violence plays a major role in the process of subalternation. Although the subaltern speaks, it is seldom understood and is ignored.

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