



## Women's Human Rights Campaign, India

### UN Women's call for public comments to the Commission on the Status of Women

Date: 30 July 2021

This submission is in response to the UN Women's call for public comments /complaints /appeals /petitions to the Commission on the Status of Women containing information relating to violations of human rights that affect the status of women in my country: India

This submission highlights that, in the rush to give a legal status to transgender individuals, the law has created legal fictions and confusion which will have disastrous effects on women's rights and status in India, particularly their [sex based rights](#).

#### **SEX, NOT GENDER, IS THE PRIMARY BASIS FOR NON-DISCRIMINATION AND EQUALITY LAWS**

Male / Female, as we can see in our daily usage, describes the sex of a mammal - and is species generic i.e. - the same terms (male/female) are used across various animals and mammals. In humans, 'sex' is used as the primary basis for categorization because it is based on objective, immutable, characteristics - biological facts. Any attempt or usage of the word 'woman' to refer to anyone but 'adult human females' has implications for the legal rights of 'women', the term used in all laws and policies. The extreme, crucial importance of not confusing or conflating sex and gender cannot be understated.

#### **THE CONSTITUTION OF INDIA ENSHRINES EQUALITY ON THE BASIS OF SEX**

Fundamental Rights in the Constitution of India - particularly Article 15 and Article 16, enshrining equality and prohibiting discrimination only mentions sex in its enumeration of characteristics.

#### ***Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth***

Article 15 - "15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

Article 16(2) – (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Beyond the Constitution of India, human rights law has also recognized and used 'sex' - the immutable biological distinction between the two biological sexes, as the basis of legal and political categorisation.

### **INTERNATIONAL HUMAN RIGHTS LAW ENSHRINES NON-DISCRIMINATION AND OTHER RIGHTS ON THE BASIS OF SEX, NOT GENDER**

- Article 2 of the International Covenant on Civil and Political Rights (ICCPR)  
Article 2 - "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language..."

The crucial importance of this distinction for women's rights and empowerment can be seen from the use of 'sex' as the basis in international treaties regarding women's rights - these treaties are applicable in Indian law.

- Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women recognizes that 'sex' not 'gender' is the primary basis for oppression, discrimination towards, and subjugation of women and girls.

### **THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) RULES 2020 CONFLATE SEX AND GENDER AND HAVE ILL EFFECTS FOR SOCIETY ([link](#))**

***Allowing the change of sex, i.e. allowing persons who are not female to be certified as 'women' will impact women's rights in the areas of scholarships, hospital wards, prisons, women's hostels, women's colleges, women's quotas and crime statistics.***

Among other things, Rules 5 and 7 of the Transgender Persons (Protection of rights) Rules 2020 enable erasure of legal history, and therefore misrepresentation and identity fraud on society. Rules 5(7) and Rules 7(7) also give effect to further dangerous consequences by **facilitating the complete erasure of a person's legal history.**

According to the effect of Rules 5(7) and Rules 7(7) the new documents issued under these Rules, would bear the same serial number or reference number as in the original official documents of the applicant. In effect, this would lead to the issue of identity documents that would overlay the original identity documents, and hence data related to it.

With a new name, and new sex marker (wrongly referred to as gender), this enables the erasure and denial of a person's legal history, and information connected to it. In effect then, a person who changes their gender gets a new name, attached to the same serial number / reference number, and the previous legal identity will disappear.

This will have disastrous effects on all involved, especially when it comes to accurate information pertaining to crime statistics, legal offences, defaults, bank records etc, as the earlier identity is 'disappeared' legally, and for all intents and purposes, that identity is equivalent to a person who has died - although the individual is still alive, just under a new name and new identity documents.

This legal manoeuvring is unprecedented in the history of laws regarding identity and records. It is a fundamental requirement for a civilized society to have accurate, unfalsifiable records regarding the objective identity of its citizens. Major ID documents such as driving license, voters ID, and passport, use name, parents names and sex as primary parameters.

By issuing documents containing the same serial / reference number of the applicant, these Rules give effect to a completely new legal identity which erases and replaces the former named legal identity of the individual.

### **THE RULES FACILITATE MEDICAL EXPERIMENTATION ON VULNERABLE MINOR GIRLS**

#### ***1. Rule 10, operationalising S. 15 of the Act, does not provide for protection against Experimentation***

Rule 10 mandates State governments to provide for Welfare measures, education, social security and health of transgender persons by appropriate Government under sections 8, 13, 14 and 15 of the Act. S. 15(b) of the Act demands provision for hormonal therapy, S. 15(k) demands coverage of insurance for hormonal therapy and S 15(c) only specifies 'hormonal therapy counselling. However, firstly, the medical research on 'sex reassignment surgery' as being a 'good outcome' for transgender people is highly disputed, with emerging medical research on its ineffectiveness as a solution to mental distress and long-term ill effects.

Secondly, S. 15 has no prohibitions against prescription of hormonal therapy to minor children i.e. human beings under the age of 18. Some of the common hormones used are documented to have ill effects on the normal development of teenagers, as it retards the regular process of growth.

The effects, and wisdom of hormonal therapy on teenagers and 'gender dysphoric' children is also questioned and disputed by emerging medical research. Given the shifting nature of the medical developments on this, and the fact that previous 'medical consensus' on hormonal therapy for teenagers has been recently reversed, Rule 10, and therefore Section 15 of the Act does not provide for protection from unethical medical experimentation and gender - confused children being given hormones that have long term ill effects, and retard the normal, healthy development of human bodies. It is necessary to highlight here, that hormones play a vital role not only in sexual development, but in general development as well, and S. 15 of the Act, with Rule 10, do not protect children from being given harmful drugs with long-term ill effects.

## ***India and Radical Trans Rights Activism Directly Affects Women's Sex-Based Rights***

There appears to be a steep rise in the cases of ROGD ([Rapid-Onset Gender Dysphoria](#)) in India. While there is a dearth of research on the issue, conversation with therapists from the US and UK backs this up. They tell me about desperate Indian parents reaching out to find someone to help their teenager—the kind of help they can't find in India because, for one, we have the most despicable mental health service that is nascent at best, and most Indian therapists seem to want to instantly “affirm.”

Many Indian mental health service providers advocate for rights of minorities but, in the case of gender, they espouse the same logic as the West in treating transgender as if it was the same as homosexuality. Many advocates campaign against “conversion therapy” towards “LGBTQI” individuals without realizing that the “T” is [a part of the problem](#). Enthusiastic professionals offer [helpful advice](#) about HRT (Hormone Replacement Therapy) and SRS (Sex Reassignment Surgeries) by using vocabulary like “assigned sex,” a factitious phrase that must be abolished from clinical jargon. Some offer [trainings](#) on Queer Affirmative Counselling Practice, which focuses on the [oppression faced by the “LGBTQI”](#) community (which may be true, but does not challenge young women who want to be boys with holistic mental health support, or understand the reason for such distress in the first place). The futility and ambiguity of the characteristics as described by the DSM (Diagnostic and Statistical Model) only makes matters worse. These Indian websites also engage in rampant and [irresponsible](#) fear mongering with [unsubstantiated numbers](#) of suicidal ideation.

The government of India submitted figures to the Supreme Court in 2012 which claim there were about [2.5 million gay people](#) recorded in India. These figures are based on those individuals who have self-declared their orientation to the Ministry of Health. While gay marriage is still illegal, the number of lesbians opting for SRS is on a steady increase with no speculation over the reasons. Meanwhile, an active cheerleading campaign for transgender identity spreads through the gay community.

### CASE IN POINT:

- ***“Had same-sex marriage been allowed in India I would have not undergone sex-change.”*** CISF Jawan changes sex for love, recognised as male constable after 6 years - [Hindustan Times](#), 05 July, 2017

After an alleged four years of bureaucratic indecisiveness and lack of precedence, she was put through multiple fitness and “gender” tests. She took a loan for a whopping 10 lakhs INR (about \$14,000 USD) for surgery and painful (lifelong) hormonal injections.

- **Odisha woman undergoes sex-change surgery to marry girlfriend – [The New Indian Express](#) 08 Feb 2020**

Spending close to 7 lakhs INR (over \$9,000 USD), a woman of a remote village in Orissa underwent a sex change surgery to marry her lesbian partner. On February 4, 2020 the couple married as “heterosexuals.”

- **Bombay High Court allows Transgender person to contest Panchayat election as female from ward reserved for women. [Bar and Bench](#) - 05 Jan, 2021**

On January 5, 2021, the Bombay High Court allowed a trans-identified male to contest village *panchayat* (town council) polls as “female” from a ward reserved for women, saying that such persons have the right to a “self-perceived gender identity.” These women-only election slots are allotted on rotational quotas as a form of affirmative action that would benefit the women of a constituency and encourage female participation in politics.

- **Kerala High Court allows transgender woman to join NCC, calls for changes in enrolment criteria. - [Hindustan Times](#), 15 March, 2020**

March 15th, the Kerala High Court allowed a trans identified male to join NCC (National Cadet Corps) and called for changes in enrollment criteria. The single bench of Justice Anu Sivaraman (a woman) said the Transgender Persons (Protection of Rights) Act, 2019, recognizes a transgender person's right to a self-perceived gender identity. "In view of the specific provisions of the 2019 act, a transgender person has the right to be recognised not only as a transgender but also a right to self-perceived gender, i.e. the female gender," she said.

- **Union Public Service Commission - EXAMINATION NOTICE NO.03/2021-NDA-I DATED 30.12.2020 – [clause](#) in the UPSC website**

The Union Public Service Commission that conducts national level competitive exams for the National Defence Academy and Naval Academy is riddled with hypocrisy. According to a clause, female and "transgender" candidates are not allowed to take the NDA exam. “Trans women” whose legal “gender” is still male are eligible. Trans men, however, are neither allowed on the basis of their sex or their "gender identity."

- **Man claims to be transitioning into a woman, seeks quashing of molestation case – [The Indian Express](#) December 24, 2019**

Asserting that he has gender dysphoria since childhood and identifying himself as a woman before the court, the accused alleged that the relation between him and the complainant was that of two "sisters", so he could not have molested her.

- **“Motherhood is beyond gender,” says Pune’s first transgender mother Gauri Sawant – [Hindustan Times](#) MAY 14, 2018**

Gauri Sawant, an Indian [transgender activist](#) - a trans identified male - who [adopted](#) a girl in 2001 and filed a [petition](#) in the Supreme Court of India in 2014 for the rights of transgenders to adopt, says this about motherhood: “Motherhood is beyond gender; it is more of a behaviour.” Sawant's adoption wasn't [formally](#) registered under the Hindu Adoptions and Maintenance Act, 1956.

**Summary:** The Rules, and the Act, therefore has attempted to create a separate set of legal statuses without an impact assessment for the effects on the rest of society, particularly women. Additionally, it contains a number of provisions that enable the erasure of legal

history, and hence misrepresentation, while facilitating unethical experimentation on children. These problems arise because the basis for the recognition of the identity weakens the overall framework of protection.

## IN CONCLUSION

The majority of trans rights advocacy in India today stems from the vantage points of caste, poverty, and illiteracy—a way of alleviating the members of the marginalized communities from their shackles. But other “civil rights movements” don’t entirely destroy the hard-fought rights of another community for their own gain. The gullibility of the marginalized communities in India is squeezed dry by the corporations. They get away with being called “intersectional,” wearing a veneer of social conscience, but are only after the money.

According to the [UNFPA](#), 142.6 million females in the world are ‘missing’ (a term used to signify absence, death, murder or otherwise) due to families preferring sons over daughters. Indian females make up [45.8 million](#) of this figure. These girls are ‘missing’ not because of any innate feeling; but because they are female and hence unwanted. This Indian reality quintessentially underpins the foundational idea of Article 1 - that women are oppressed on the basis of sex and not “feeling.”

The replacement of sex with gender identity would lead to the erosion of, among other things, Indian women and girls’ right to safety from the pervasive threat of male violence. Male violence against women in India is widespread: [rape](#), [prostitution](#), [sexual harassment](#), [acid attacks](#) or domestic violence (highest [number](#) of complaints recorded this year since 2000).

A developing country riddled with abject [poverty](#), illiteracy, despicable healthcare, and a [fascist government](#), makes for a dangerous society for women. Add to this the evils of the [caste system](#), religious [extremism](#), and [racial](#) prejudices. There is no scope for feelings in this debate. Sex is immutable; and no matter how much one advocates against it, it doesn’t alter the facts.

Thank you for your time and consideration,  
Country Contact for India, Women’s Human Rights Campaign  
[www.womensdeclaration.org](http://www.womensdeclaration.org)