

WOMEN'S DECLARATION INTERNATIONAL

India Chapter

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Date: 03 May 2022



Subject: Concerns regarding W.P. No. 19706/2021 filed before the Hon'ble High Court of Karnataka on 28.10.2021

Madam/Sir,

We are the [Indian](#) chapter of the Women's Declaration International.

Women's Declaration International (WDI) is a group of volunteer women from across the globe dedicated to protecting women's sex-based rights. The [Declaration on Women's Sex Based Rights](#) was drafted to lobby nations to maintain language protecting women and girls on the basis of sex rather than "gender" or "gender identity." With signatories from 150 countries, WDI is one of the largest volunteer-run International women's rights groups. WDI is also supported by more than 400 organizations worldwide.

We are writing to you as concerned citizens to share our objections to the petition filed by petitioner Dr. Trinetra Haldar Gummaraju titled **W.P. 19706/2021** before the Hon'ble High Court of Karnataka which names your Department among the respondents.

In his petition, the petitioner seeks an order that higher and professional educational institutions allot hostels to students on the basis of their "gender identity" instead of biological sex. We wish to point out the dangers of such a move, especially for the rights of female students and staff. As well as an overarching appeal to spokespersons from communities that are critical of gender identity ideology - women like us who are opposing this from a clinical and feminist standpoint.

We believe that the allotment of hostels to students on the basis of "gender identity" would harm the physical, psychological, and emotional well-being and safety of women. And as a group of women who have worked in the field for several years, and inspired by the policies brought about by countries facing similar requests, we would like to point out some glaring issues with the above-mentioned petition.

The conflation of ‘sex’ and ‘gender’:

The petitioner argues that the current policy of allocation on the basis of sex “assigned at birth” discriminates against students who “identify” as a member of the opposite sex. However, in reality, biological sex is not “assigned at birth” to humans, it is observed and recorded. Biological sex is not externally determined by someone else for us to “choose” differently later.

This conflation of sex and gender is fundamental to the promotion of “gender identity.” For it argues that whether a person is a man or a woman is not dependent on biology; instead, it is based on some innate, self-perceived feelings.

Biological sex is dimorphic and immutable in humans; whereas gender is the socially constructed roles considered appropriate for the members of each sex – men (masculinity) and women (femininity). Therefore, no extent of surgery, cross-hormones, or puberty blockers can change the fact that women are [adult human females](#) (large gamete: ovum) and men are [adult human males](#) (small gamete: sperm).

The term “assigned at birth” is only relevant to babies born with DSD (Disorder of Sex Development) whose conditions have been [co-opted](#) by the “gender identity” ideologists. DSD has been wrongly used as an argument by gender ideologues to claim that sex is somehow a [spectrum](#). Persons with DSDs ([0.02% of the population](#)) are still identifiable as one of the two sexes. The existence of persons with DSDs does not negate the utility of sex as a basis for categorisation and non-discrimination. Additionally, that some people have DSD conditions does not negate the fact that biological sex is real and [dimorphic](#) either.

Therefore, the petitioner’s case has no basis in material reality because it is not possible for an individual to have a “gender identity” that is somehow a special category outside of biological sex.

Problems with NALSA v Union of India (2014), the Transgender Persons (Protection of Rights) Act, 2019, and the Transgender Persons (Protection of Rights) Rules, 2020:

The petitioner cites the judgment of the Hon’ble Supreme Court of India in [NALSA v Union of India](#) in the petition to support his argument that trans-identifying people have the right to reside in hostels of chosen “gender identity.”

In the NALSA judgment, the Hon’ble Supreme Court held that trans-identifying persons are to be accorded a legal status under Indian laws. The Transgender Persons (Protection of Rights) Act, 2019 and the Rules, 2020 are a culmination of the efforts to give effect to NALSA and to enact a legislative framework to protect the rights of the trans-identifying community at the central level.

The Hon’ble Supreme Court took into account certain International guidance and laws, which are not of uniform status. The Hon’ble Supreme Court extensively uses the Yogyakarta principles, which, it must be highlighted, are [not international law](#), nor indeed, best practice. (Petitioner too uses Yogyakarta principles in paragraph 37)

Furthermore, the Hon'ble Supreme Court held that the word "sex" as given under Article 15 includes "gender identity". While it [said](#) that "Both gender and biological attributes constitute distinct components of sex", instead of defining "gender" as a set of sex stereotypes, it referred "gender identity" to mean the same, and concluded that protection from sex-based oppression under Article 15 includes "gender identity" along with sex.

As mentioned, "gender" is a set of social roles and stereotypes that are externally imposed on members of each sex. And these roles traditionally accord a higher social status to men over women. It is also pertinent to mention here that "gender identity" has changed the very meaning of the word "gender." The latter is no longer understood as a social structure riddled with hierarchical structures wherein women are accorded an inferior status; instead, genderists claim "gender" to be some unique feeling which it is not. Therefore, the Hon'ble Supreme Court should not have included "gender identity" within the meaning of "sex" under Article 15 because sex stereotypes are attached to a particular sex; and not individual or personal feelings.

Moreover, the claimants in NALSA did not make a claim to change sex, but only recognition as a third category. Yet, the Transgender Persons (Protection of Rights) Act of 2019 provides for self-identification as the opposite sex. Therefore, both the NALSA judgment and the Act of 2019 dwell on the same problematic idea of the conflation of sex and gender.

We argue that there is no right to self-identify as a member of the opposite sex. And that is because one cannot change sex.

Men cannot become women no matter what they feel; and vice-versa. Therefore, self-identification, with or without surgical procedures, is only a superficial endeavor to fool the world. While this superficial make-believe may be desired by advocates of gender neutral facilities, it has deleterious consequences on the rights of women and girls to physical integrity, privacy, and safety on all of which we shall elaborate below.

Violation of the Right to Privacy of Women:

The petitioner argues that not having access to hostels on the basis of "gender identity" i.e. not having access to female hostels is a violation of the right to privacy of trans-identifying students. However, the petitioner completely ignores that women have the fundamental right to privacy as well. And this right would be violated if trans-identifying men (pre or post-operative) were to be allowed access to a space which is meant to be exclusive for women. Sex-segregated spaces offer refuge to women from the ubiquitous threat of male aggression and voyeurism. Therefore, if trans-identifying men are allowed access to women's hostels, it is women students and staff who stand to lose.

Women’s rights to Safety and Access to Education:

The petitioner argues that allotment of hostels on the basis of “gender identity” is essential to ensure the *safety* of trans-identifying people, entirely ignoring the safety of a much larger group of female students. Women and girls in India and elsewhere navigate the world – including supposedly private spaces like homes – under the constant threat of male violence. They face such acute violence and discrimination not because of “gender identity,” but because they are born as the female sex.

According to a [report](#) of the United Nations Population Fund, 45.8 million Indian girls are ‘missing’, which is a descriptor for prenatal or postnatal mortality in girl children due to son preference. These missing girls make up the world-wide morality numbers not because of an innate “feeling” of being female; but because they were biologically female and hence not wanted.

Indian girls, some as young as [five](#) years-old, are sold and trafficked into the sex trade not because of their “gender identity,” but because of their sex. Even today, many Indian women are able to exercise their right to free movement and [safety](#) because of women-only [compartments](#) in public transport. These women-only coaches, hostels, toilets, changing rooms, and medical wards offer women and girls safety from the ever-present threat of male aggression.

The very purpose of the existence of women-only spaces is to separate potential male abusers from women. Therefore, allowing male members into women-only spaces does the opposite of safeguarding. In several cases, such a provision could hinder women’s access to education.

India has a huge amount of dropouts among female students due to family pressure, early marriage, pregnancy, and for religious reasons. In many cases, families ‘allow’ their daughters to attend college ONLY because it has sex-segregated hostel rooms.

Furthermore, allotment of trans-identifying female students into men’s hostels cannot not be considered safe either, as these are adult human females in a space populated by adult human males. Therefore, allotment on the basis of “gender identity” would only serve to make female students unsafe either way.

Ignorance of Examples of Male Violence in Women-only Spaces:

In different parts of the world, there have been recorded cases of male violence meted out by trans-identifying men when they were granted access to women-only spaces on the basis of their “gender identity” – an important information the petitioner has conveniently ignored.

India:

- Women have [reported](#) incidents of trans-identifying men traveling in women-only compartments in metro trains.

Canada:

- A trans-identifying man was [found](#) to have been violent towards women while housed in a women-only prison.

United Kingdom:

- A female victim of rape [left](#) her women-only survivor's group when a trans-identifying man joined the same.
- Boys in a school in Scotland were [reported](#) to have engaged in misconduct in gender-neutral toilets and the fear of the same discouraged girl students from using the facilities.
- A hospital [admitted](#) that a trans-identifying man was housed in the female ward where he allegedly committed rape of a female patient.
- Women have shared [accounts](#) of harassment and abuse by trans-identifying men in women's prisons across the Kingdom.

United States of America:

- A trans-identifying man who was a [registered](#) sex offender was reported to have allegedly raped a woman with disabilities while housed in a women's prison for different offences.
- A 15-year old boy allegedly [sexually assaulted](#) a girl student in a '[gender fluid](#)' bathroom in a school.

Australia:

- Women are [reporting](#) incidents of trans-identifying men as staff in women-only pool facilities who use women's locker rooms, thus making women uncomfortable in using these spaces meant for them.

A comprehensive list of crimes by trans identifying men can be found on [this website](#) too. Furthermore, the myriad instances of online abuse, harassment, and vitriol inflicted upon women who dare to argue that sex is real and oppose the inclusion of trans-identifying males into women-only spaces is documented [here](#).

Not only has the petitioner not alluded to the potentially harmful consequences for women, there seems to be an implicit reference to violence faced only by the likes of the petitioner himself.

Use of False Language

The petitioner uses the word "cis" in his petition. The word "cis" is used by the practitioners of "gender identity" ideology to distinguish between individuals who adopt a "trans" identity, and those who don't. So women – adult human females – now become "ciswomen," and men who "identify" as women are "trans women."

Despite years of trans rights advocacy, the ideologues have still not managed to successfully define what 'trans' means without resorting to circular arguments or logical fallacies riddled with meaningless terms like "assigned sex." So, as explained before, men, whatever they identify as, remain male, and the terms "cis" or "trans" are meaningless.

Moreover, the dichotomy between "cis-women" and "trans-women" is spurious as it creates a sub-class of oppression that these men claim they face. It is particularly sinister because males claim a much inferior

status than that of women – by performing femininity and this will set a dangerous precedent of diminishing the gory everyday violence women and girls face.

This fictitious dichotomy is then used to assert that “transwomen” should have [access](#) to “cis” women’s bathrooms, hostels, changing rooms, reserved seats and other sex-segregated categories because “transwomen,” by virtue of their “gender identity,” are more oppressed than “ciswomen.”

Women (and girls) have every right to exclude males from these sex-segregated spaces, and usage of vacuous jargons to deny women that right must be considered deplorable.

Conclusion:

We argue that the case of the petitioner is untenable against the rights of women to privacy, safety, and access to education.

The question of replacement of sex with “gender identity” cannot be addressed without taking into account the concerns of women who stand to lose their rights.

We hope that you would incorporate our concerns as you respond to the petitioner later this year. WDI India will be happy to offer feedback and present a case for women’s sex-based rights going forward.

Yours sincerely,

Signatories of the Declaration of Women’s Sex-based Rights and the Country contact, [WDI India](#)