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Gender Identity Behind Bars: Human Rights, Prison Administration and the Protection of Transgender Inmates in India

ANGEL HABAMON SYIEM*

ABSTRACT

Institutional practices traditionally structured by a binary understanding of gender give rise to distinctive challenges for transgender persons in prison. Constitutional jurisprudence and judicial and statutory developments in India have recognised transgender identity and welfare and provide protection against discrimination. The effective implementation of that protection within custodial institutions, however, requires closer examination. This article critically examines the existing legal and administrative framework governing the treatment of transgender persons in Indian prisons, with particular reference to the Transgender Persons (Protection of Rights) Act, 2019, its Rules of 2020, the Ministry of Home Affairs advisory dated 10 January 2022, and relevant international human rights standards. It considers the challenges associated with self-identification, accommodation, searches, healthcare, complaint mechanisms, staff sensitisation and access to rehabilitation. A review of the existing literature also reveals important information gaps, the limitations of available prison data and their implications for monitoring compliance. The central argument is that the formal recognition of gender identity must be accompanied by consistent administrative safeguards, individualised and consultative accommodation decisions, appropriate healthcare, independent oversight and effective remedies for violations. The paper concludes by recommending a rights-based framework that seeks to reconcile legitimate institutional concerns with the constitutional, statutory and judicial guarantees of dignity, equality and personal liberty.

Keywords: *Incarcerated Transgenders, Prison, Human Rights, Nelson Mandela Rules, Bangkok Rules, Yogyakarta Principles*

I. INTRODUCTION

The recognition and protection of the rights of transgender persons have emerged as a significant concern in contemporary human rights discourse. Although the transgender community has been recognised by judicial pronouncements[1] and by the Transgender Persons

* Author is an Assistant Professor at Department of Law, Tezpur University, Tezpur, Assam, India. ORCID: https://orcid.org/0009-0003-2431-133X

[1] *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (treating hijras and eunuchs as a "third gender", upholding the right of transgender persons to decide their self-identified gender without any insistence on

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(Protection of Rights) Act, 2019,[2] a stark distinction remains between formal legal recognition and substantive protection during incarceration. The Indian prison system is traditionally organised around a male-female binary and may therefore fail to address adequately the distinct identities and needs of persons belonging to the transgender community.[3] Incarcerated transgender persons are vulnerable to abuse, harassment, humiliation and discrimination.[4] The protection of privacy, personal safety, healthcare, gender identity and freedom from discrimination in custodial settings is essential to upholding the dignity and fundamental rights of transgender inmates. These protections impose a heightened responsibility on the State to ensure humane, gender-sensitive and rights-based custodial practices consistent with the

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sex reassignment surgery, and directing that they be treated as socially and educationally backward classes for reservation in educational admissions and public appointments); *Arunkumar v. Inspector General of Registration*, W.P. (MD) No. 4125 of 2019 (Mad. HC Apr. 22, 2019) (India) (holding valid the marriage of a man and a transgender woman); *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (affirming the right to privacy under Article 21 of the Constitution of India, including personal autonomy and gender identity); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (reading down Section 377 of the Indian Penal Code, 1860 to the extent that it criminalised consensual sexual conduct between adults); *Shanavi Ponnusamy v. Ministry of Civil Aviation*, 2022 SCC OnLine SC 1581 (order of Sept. 8, 2022) (directing the Union Government, in consultation with the National Council for Transgender Persons, to devise a policy framework for reasonable accommodation of transgender persons in employment under the Act of 2019); *Supriyo v. Union of India*, 2023 SCC OnLine SC 1348 (holding that there is no fundamental right to marry; the opinion of Chandrachud, C.J.I. also issued directions to the Union, the States and the police to protect queer persons from discrimination, harassment and treatments aimed at changing gender identity or sexual orientation); *Jane Kaushik v. Union of India*, (2026) 1 SCC 336, 2025 INSC 1248, ¶¶ 132–133, 214–218 (India) (holding that the Act of 2019 gives horizontal application to the prohibition of discrimination by both State and private establishments, awarding compensation against the State respondents and a private school, and directing the Union to frame an equal opportunity policy).

[2] The Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India). The Act was amended by the Transgender Persons (Protection of Rights) Amendment Act, 2026, No. 3, Acts of Parliament, 2026 (India), brought into force on May 25, 2026 by Notification S.O. 2620(E) (May 22, 2026) of the Ministry of Social Justice and Empowerment. The amendment substitutes a new definition of "transgender person" in section 2(k), which no longer lists trans-men, trans-women or genderqueer persons, and omits section 4(2), which had conferred a right to self-perceived gender identity. Transgender Persons (Protection of Rights) Amendment Act, 2026, §§ 2(iv), 3. The Statement of Objects and Reasons of the Bill described the earlier definition as vague; PRS Legislative Research observed that while the Bill "seeks to be precise about identifying beneficiaries, in doing so, it may be denying persons the right to their self-perceived gender identities". PRS LEGISLATIVE RESEARCH, *Issues for Consideration: The Transgender Persons (Protection of Rights) Amendment Bill, 2026* (2026), https://prsindia.org/billtrack/prs-products/issues-for-consideration-1774350113. Petitions challenging the amendment are pending before the Supreme Court, which issued notice on May 4, 2026. Debby Jain, *Supreme Court Seeks Union's Response On Challenge To Transgender Rights (Amendment) Act, Asks If Self-Identification Could Be Misused*, LIVELAW (May 4, 2026), https://www.livelaw.in/top-stories/supreme-court-pleas-challenging-transgender-persons-protection-of-rights-amendment-act-self-perceived-gender-identity-532714.

[3] As reported in THE HINDU, the report of the Commonwealth Human Rights Initiative found: "Not only prisons, but courts too fail to recognise a 'third gender' and the gender of transgender persons continues to be identified as per their genitalia, and documented in the male/female binary categorisation. This lack of recognition seeps into all prison processes including search procedures and placements within prisons. Further, prisons continue to cater to primarily male populations, and fail to acknowledge the vulnerabilities of transgender prisoners." *Prisons Lack Awareness About Needs of Transgender Inmates: Report*, THE HINDU (Nov. 28, 2020), https://www.thehindu.com/news/national/prisons-lack-awareness-about-needs-of-transgender-inmates-report/article33196736.ece.

[4] ARIJEET GHOSH & MADHURIMA DHANUKA, LOST IDENTITY: TRANSGENDER PERSONS INSIDE INDIAN PRISONS 1 (Commonwealth Human Rights Initiative 2020), https://production.ruralindiaonline.org/uploads/Lost_Identity_Transgender_Persons_Inside_Indian_Prisons_5b5bf5c05a.pdf ("Prisons are closed spaces. A person who has been sentenced to prison, or, has been subjected to any form of deprivation of liberty, is acknowledged as one who lives with a high degree of vulnerability.").

fundamental rights guaranteed by the Constitution of India, particularly Articles 14, 15 and 21. An important administrative development in this regard came through an advisory issued by the Ministry of Home Affairs.[5] It addresses matters such as gender identity, accommodation, searches, healthcare, maintenance of records, communication and staff sensitisation. The advisory, however, raises important questions concerning its implementation across States and Union Territories,[6] the consistency of prison practices and the availability of effective mechanisms for monitoring compliance.[7] Another relevant document is a parliamentary reply of April 2022[8] that reported 70 transgender inmates in prisons as on 31 December 2020,[9] while acknowledging that data on trans men and trans women among inmates, and on the availability of separate facilities, were not available centrally.[10] These historical figures highlight the importance of reliable data and should not be treated as a statement of the present prison population.

Against this background, this paper examines how far the existing legal and administrative framework for the dignity, safety, welfare and substantive equality of transgender persons translates into practice in Indian prisons, what reforms are needed to bridge the gap, and whether, given the limitations of available prison data, the State can establish that these protections are actually being delivered.

II. Legal and Conceptual Framework

A. Constitutional protection

The fundamental rights framework of the Constitution of India protects the transgender community against discrimination and safeguards its identity, dignity and autonomy. In the *NALSA* judgment,[11] the Supreme Court recognised the constitutional rights of transgender persons and affirmed that gender identity is integral to personal autonomy and dignity.[12] These

[5] Ministry of Home Affairs, Government of India, *Treatment and Care of Transgender Persons in Prisons*, No. 17013/26/2021-PR (Jan. 10, 2022) [hereinafter MHA Advisory].
[6] The advisory states that "State/UT authorities may like to suitably brief and sensitize the prison officials of the above and take appropriate action for the protection of rights of transgender prisoners and their welfare, etc." MHA Advisory, *supra* note 5, ¶ 4.
[7] *See* Ghosh & Dhanuka, *supra* note 4.
[8] Ministry of Home Affairs, Government of India, *Transgender People Currently as Inmates in Jails*, Rajya Sabha Starred Question No. 369 (answered Apr. 6, 2022).
[9] *Id.* annex (State/UT-wise details of transgender inmates as on December 31, 2020, totalling 70).
[10] *Id.* at 3 ("Specific data of trans men and trans women, and jails with separate wards, facilities for transgender people, etc. is not available centrally."). This illustrates the difficulty of evaluating implementation when gender-specific prison data and infrastructure information are incomplete. By comparison, the National Crime Records Bureau recorded 114 transgender prisoners as on December 31, 2024. National Crime Records Bureau, Prison Statistics India 2024 (2026).
[11] *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.
[12] *Id.* ¶¶ 72, 75.

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protections are particularly significant in prisons, where individuals depend on the State for their safety, dignity and basic needs.

Equality before the law and the equal protection of the laws[13] apply to all persons, including incarcerated transgender persons. They require prison authorities to avoid arbitrary and discriminatory practices in matters such as accommodation, healthcare and access to facilities, and to secure substantive equality by addressing the specific vulnerabilities of transgender inmates without subjecting them to unnecessary segregation or exclusion.[14]

The Constitution of India also prohibits discrimination against citizens on grounds including sex.[15] In *NALSA*, the Supreme Court held that discrimination on the ground of "sex" under Articles 15 and 16 "includes discrimination on the ground of gender identity".[16] Prison security measures must not become a justification for discriminatory treatment. Incarcerated transgender persons should therefore not be denied facilities or subjected to unfavourable treatment merely because their gender identity or expression differs from conventional gender norms.

The freedom of speech and expression[17] encompasses the expression of gender identity through appearance, clothing and personal presentation.[18] Although reasonable restrictions may be imposed in custodial settings for legitimate institutional purposes, such restrictions should not arbitrarily suppress a prisoner's identity or perpetuate gender stereotypes.[19]

The right to life and personal liberty[20] has been interpreted to encompass dignity, privacy and personal autonomy. In *NALSA* and *Puttaswamy*, the Supreme Court recognised the right to self-identify one's gender[21] and the constitutional significance of privacy and autonomy.[22] These rights are essential for transgender persons in prison settings, where custodial violence has often been reported.

Together, these constitutional safeguards establish that incarceration does not extinguish the fundamental rights of any individual, including transgender persons. Prison administration must therefore balance legitimate security requirements with equality, non-discrimination and human dignity.

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[13] INDIA CONST. art. 14.
[14] *See* MHA Advisory, *supra* note 5, ¶ 3(b), (f).
[15] INDIA CONST. art. 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.").
[16] *National Legal Services Authority*, *supra* note 11, ¶ 66.
[17] INDIA CONST. art. 19(1)(a).
[18] *National Legal Services Authority*, *supra* note 11, ¶ 72.
[19] *See* MHA Advisory, *supra* note 5, ¶ 3(c) (self-identity to be respected in matters including clothing).
[20] INDIA CONST. art. 21.
[21] *National Legal Services Authority*, *supra* note 11, ¶¶ 75, 135.2.
[22] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

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B. Statutory framework

In analysing the rights of incarcerated transgender persons, the Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020 provide an important statutory framework. They provide for the prohibition of discrimination, the recognition of gender identity, and obligations relating to welfare, healthcare and protection.

i. Recognition of gender identity

The Act recognises transgender identity and provides the procedure for obtaining a certificate of identity.[23] Since 25 May 2026, the amended Act no longer confers a right to self-perceived gender identity, and the District Magistrate issues a certificate of identity after examining the recommendation of a medical board.[24] Recognition is significant in prisons because a person's recorded identity may affect admission records, forms of address, searches, clothing, accommodation and access to appropriate services. The MHA advisory of 2022[25] addresses these custodial concerns, including respect for self-identity and suitable accommodation.[26] Certification alone, however, does not resolve every question: prison administration must take into consideration the applicable legal framework and relevant custodial guidance in the practical treatment of an inmate.

ii. Prohibition of discrimination

The Act prohibits discrimination against transgender persons in several contexts, including healthcare, access to goods, facilities and services available to the public, the right of movement, and access to any Government or private establishment in whose care or custody a transgender person may be.[27] For incarceration, the reference to a "Government or private establishment in whose care or custody a transgender person may be"[28] is particularly relevant. It provides a statutory basis for evaluating whether an incarcerated transgender person has been denied services, subjected to unfair treatment or excluded from facilities because of their identity, and it bears directly on access to health, sanitation, accommodation and other basic services. These provisions should not, however, be read as a comprehensive prison-management code; they must be supplemented by prison rules and specific custodial guidance.

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[23] The Transgender Persons (Protection of Rights) Act, 2019, §§ 4–7. Sections 4, 6 and 7 were amended by the Amendment Act of 2026, and the amendments have been criticised; *see supra* note 2. The scope and constitutional implications of the amendments warrant critical discussion, which this paper does not undertake.

[24] The Transgender Persons (Protection of Rights) Amendment Act, 2026, §§ 2(ii), 3, 4 (defining the medical board, omitting section 4(2) and amending section 6(1) of the Act of 2019); *see supra* note 2.

[25] MHA Advisory, *supra* note 5.

[26] *Id.* ¶ 3(b)–(c).

[27] The Transgender Persons (Protection of Rights) Act, 2019, § 3(d)–(f), (i); *see also id.* § 15 (healthcare).

[28] *Id.* § 3(i).

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iii. Welfare, healthcare and rehabilitation

The welfare needs of incarcerated transgender persons are varied, ranging from immediate physical safety to mental health care, social support and rehabilitation after release. The Act of 2019, elaborated by the Rules of 2020,[29] obliges the appropriate Government to promote inclusion,[30] take welfare measures,[31] facilitate access to welfare schemes,[32] and take steps for rescue, protection and rehabilitation.[33] The MHA advisory of 2022 also addresses several aspects of the welfare of incarcerated transgender persons.[34]

Despite the broad protection under the Act of 2019 and the Rules of 2020, the central question remains whether the protections recognised in law translate into safe, non-discriminatory and dignified custodial conditions. The distinction between formal recognition and actual protection is particularly important in prisons, where institutional dependence can make it difficult to report abuse or challenge discriminatory decisions.

C. International standards

Several international instruments provide useful benchmarks for assessing the treatment of incarcerated transgender persons, particularly the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015),[35] the Yogyakarta Principles (2006) and the Yogyakarta Principles plus 10 (2017),[36] the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010), and the technical brief of the United Nations Office on Drugs and Crime (UNODC) on transgender people and HIV in prisons and other closed settings (2022). Not all of these documents create independently enforceable domestic obligations in the way that domestic legislation or binding treaty provisions do. Nevertheless, international standards can provide interpretative and evaluative guidance where they are not inconsistent with constitutional guarantees and domestic law.[37]

[29] The Transgender Persons (Protection of Rights) Rules, 2020 (notified Sept. 25, 2020).
[30] The Transgender Persons (Protection of Rights) Act, 2019, § 8(1).
[31] *Id.* § 8(2).
[32] *Id.* § 8(2)–(3).
[33] *Id.* § 8(4).
[34] MHA Advisory, *supra* note 5, ¶ 3(f)–(h).
[35] G.A. Res. 70/175, annex, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Dec. 17, 2015).
[36] The Yogyakarta Principles are not a treaty but principles formulated by a group of experts.
[37] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

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i. The Nelson Mandela Rules

These rules establish internationally recognised minimum standards for the humane treatment of prisoners. Their central principle is that every prisoner must be treated with the respect due to their inherent dignity and value as a human being. They prohibit torture and other cruel, inhuman or degrading treatment or punishment, and require that all prisoners be protected from it.[38] The rules are to be applied impartially and prohibit discrimination on specified grounds and on any other status.[39] Although the Nelson Mandela Rules do not establish a comprehensive, transgender-specific prison regime, they are directly relevant to evaluating the treatment of transgender inmates.

The rules also make the provision of health care for prisoners a State responsibility, to be provided without discrimination on the grounds of their legal status.[40] They further require prompt access to medical attention in urgent cases.[41] They therefore support the principle that imprisonment should not be used to justify withholding medically appropriate treatment merely because a patient is transgender.

ii. The Yogyakarta Principles and Yogyakarta Principles plus 10

Principle 9 of the Yogyakarta Principles[42] affirms that "[e]veryone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person", and calls for placement in detention that avoids further marginalisation or exposure to violence on the basis of sexual orientation or gender identity.[43] It also addresses adequate access to medical care and counselling, including healthcare needs associated with gender identity.[44] It further requires States to "[e]nsure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity".[45] Conversely, placing all transgender prisoners in a separate ward as an automatic administrative response

[38] Nelson Mandela Rules, *supra* note 35, r. 1.
[39] *Id.* r. 2(1).
[40] *Id.* r. 24(1).
[41] *Id.* r. 27(1).
[42] *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Mar. 2007). Formulated in 2006, these principles articulate the application of existing international human rights standards to sexual orientation and gender identity. In 2017, the Yogyakarta Principles plus 10 supplemented them by addressing additional concerns, including gender expression, sex characteristics and evolving human rights challenges. *The Yogyakarta Principles plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (Nov. 10, 2017).
[43] Yogyakarta Principles, *supra* note 42, princ. 9, 9(a).
[44] *Id.* princ. 9(b).
[45] *Id.* princ. 9(c).

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may amount to exclusion rather than protection.[46] Protective measures must be put in place for "all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression".[47]

iii. The Bangkok Rules

These rules[48] respond to the particular needs of women in prison and women subject to non-custodial measures,[49] including their healthcare needs, experiences of trauma, family relationships and vulnerability to abuse.[50] They call for attention to the distinctive needs of women prisoners[51] and address health screening and aspects of physical and mental health care.[52] They also require that personal searches of women prisoners be carried out only by women staff.[53] The instrument thus highlights the relevance of dignity, sensitivity and safeguards against conditions that may expose a transgender woman to vulnerability.

iv. The UNODC technical brief

The brief[54] translates human rights principles into practical guidance for prison authorities, healthcare workers and policymakers. As its title suggests, it focuses on preventing HIV and other sexually transmitted infections, ensuring adequate healthcare, and protecting the rights and dignity of incarcerated transgender persons. It calls for comprehensive, non-discriminatory policies, consultation with transgender people and their civil society representatives, and regular evaluation of institutional practices. It thus treats incarcerated transgender persons not merely as recipients of rights and protection but as individuals who participate in decisions about themselves. In short, the brief emphasises that prison security must not justify denying healthcare or fundamental rights.

These four instruments provide complementary perspectives on the rights of incarcerated transgender persons.

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[46] MHA Advisory, *supra* note 5, ¶ 3(b) (separate enclosures should not "result in their complete isolation or propagate social stigma among such prisoners").
[47] Yogyakarta Principles, *supra* note 42, princ. 9(d).
[48] G.A. Res. 65/229, annex, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Dec. 21, 2010).
[49] The rules are therefore not a comprehensive instrument for all transgender or gender-diverse people in prison, but they are relevant to transgender women.
[50] Bangkok Rules, *supra* note 48, rr. 1, 6–18, 19.
[51] *Id.* r. 1.
[52] *Id.* rr. 6–18.
[53] *Id.* r. 19.
[54] UNITED NATIONS OFFICE ON DRUGS AND CRIME ET AL., TECHNICAL BRIEF: TRANSGENDER PEOPLE AND HIV IN PRISONS AND OTHER CLOSED SETTINGS 3 (2022), https://www.unodc.org/documents/hiv-aids/2022/2225461_Transgender_HIV_E_eBook.pdf.

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III. Indian prison policy and implementation

This part moves from the law in the statute book to the institutional arrangements through which it is to be implemented. Few documents bear directly on the lived experiences of incarcerated transgender persons, on the safeguards already in place, or on those advised for protecting the life and dignity of members of the community.

A. The Ministry of Home Affairs advisory

The advisory[55] is the most important administrative initiative addressing the rights and welfare of incarcerated transgender persons in India. It responds to the need to ensure the safety of transgender persons in prisons organised around a binary classification of male and female inmates, a classification that may not adequately address their identity, safety concerns and healthcare needs. Its significance lies in translating the broader constitutional principles of equality, dignity and personal liberty into everyday custodial practice.

i. Recognition of self-identified gender

In a prison setting, identity classification may determine accommodation, searches and the overall treatment a person receives. The principle of recognising self-identified gender is therefore relevant. In *NALSA*, the Supreme Court upheld the right of transgender persons to decide their self-identified gender.[56] The advisory also recognises it, providing that a person recognised as transgender under the Act of 2019 has a right to self-perceived gender identity and that self-identity must be respected at all times.[57] That formulation mirrors section 4(2) of the Act of 2019, which the Amendment Act of 2026 omitted with effect from 25 May 2026; the amendment is under challenge before the Supreme Court.[58] The practical significance of the principle depends on how recognition is operationalised. An inmate's identity should be respected not merely when records are completed but also in daily interactions, access to services and decisions affecting personal safety.

ii. Accommodation and separate facilities

Accommodation, one of the most complex issues in a prison setting, is addressed by the advisory. As noted earlier, conventional prison classification may expose transgender inmates to risks of harassment, abuse, violence and exclusion. Attention to accommodation is therefore essential to protect the safety and dignity of incarcerated transgender persons. It is not, however,

[55] MHA Advisory, *supra* note 5.
[56] *National Legal Services Authority*, *supra* note 11, ¶ 135.2.
[57] MHA Advisory, *supra* note 5, ¶ 3(a), (c).
[58] The Transgender Persons (Protection of Rights) Amendment Act, 2026, § 3; *see supra* note 2.

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free of a tension between protection and segregation or exclusion. Separate accommodation can provide protection, but it can also restrict social interaction and integration. Accordingly, separate accommodation may not always be the appropriate solution in every prison. Decisions must take account of the individual's gender identity, expressed preferences and individual safety risks, and must be reviewed periodically as risks and individual circumstances change.

iii. Admission registers and prison-management records

The MHA advisory recommends that the prison admission register and prison-management records include "transgender" as a category other than male and female, consistently with the *NALSA* judgment. It also suggests that, where a court warrant does not mention a person's self-identified gender or the gender recorded is disputed by the person, the prison superintendent may, with the assistance of legal services authorities, assist the person to apply for a change in gender identity.[59] Taken together with confidentiality protections,[60] this will also improve visibility in prison statistics and support the development of appropriate policies.

iv. Searches and medical examinations

The advisory recommends that "[t]he search of a transgender person may be conducted by a person of their preferred gender or by a trained medical professional or a para-medic with necessary training on conducting the search."[61] It also provides that "[t]he person conducting the search must ensure the safety, privacy and dignity of the person being searched", and adds that "[a]t the stage where the search procedure requires stripping, it must be done in a private room or partition. The search procedure should be confined to compliance with security protocols and restriction of contraband and should not be aimed at determining the gender of the person."[62]

v. Healthcare, family contact and aftercare

The principles of equality and non-discrimination are to be ensured when standards of healthcare[63] are applied to inmates. The advisory provides that where in-house expertise of health professionals does not exist, the inmate may be referred to doctors or professionals who specialise in that area of health care.

[59] MHA Advisory, *supra* note 5, ¶ 3(d).
[60] Confidentiality matters because disclosure may expose inmates to stigma, harassment or violence.
[61] MHA Advisory, *supra* note 5, ¶ 3(e).
[62] *Id.*
[63] This may include mental health support, continuity of existing treatment and access to clinically indicated gender-affirming healthcare. *See* MHA Advisory, *supra* note 5, ¶ 3(f).

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The advisory also provides for reasonable facilities for meeting or communicating with family members, relatives, friends and legal advisers,[64] expressly including natal and chosen family.[65]

Its aftercare recommendations call for attention to families of choice, mental health and gender-affirming needs.[66] Rehabilitation planning should begin before release rather than being treated as an administrative formality at the end of the sentence.

vi. Training and sensitisation of prison personnel

Discriminatory treatment may arise not only from the absence of formal policies but also from stereotypes, misinformation and routine institutional practices. Training and awareness programmes for prison personnel, inmates and medical officers[67] are therefore essential. Sensitisation should be continuous[68] rather than a one-time exercise. The advisory recommends developing training modules in collaboration with the Ministry of Social Justice and Empowerment, prison training institutes, State health departments, human rights commissions, legal services authorities and representatives of transgender communities.

While the advisory is an important policy document for ensuring the safety and dignity of incarcerated transgender persons, a useful question is whether its recommendations are translated into consistent State-level rules, standard operating procedures, budgets and review mechanisms.

B. Federal responsibility and uneven implementation

Prisons and persons detained in them are a State subject, and the States are responsible for jail infrastructure and for implementing the Act of 2019 in their prisons.[69] This federal distribution of responsibility for prisons creates an important challenge for ensuring consistent protection of transgender inmates. The implementation of the MHA advisory therefore depends substantially on State-level rules, prison manuals, administrative capacity and budgetary priorities. The reply to Rajya Sabha Starred Question No. 369 records that data on trans men and trans women among inmates, and on jails with separate wards and facilities for transgender people, were not available centrally at the time of the response.[70] This absence limits the ability

[64] MHA Advisory, *supra* note 5, ¶ 3(g).
[65] Contact with family and chosen family may also provide emotional support, assist with legal proceedings and facilitate reintegration after release.
[66] MHA Advisory, *supra* note 5, ¶ 3(h).
[67] On gender identity, human rights, legal frameworks, healthcare standards and awareness of the rights of transgender persons. *See* MHA Advisory, *supra* note 5, ¶ 3(i).
[68] Through induction training, periodic refresher programmes, clear professional standards and accountability for misconduct.
[69] INDIA CONST. sch. VII, list II, entry 4; Rajya Sabha Starred Question No. 369, *supra* note 8, at 2.
[70] Rajya Sabha Starred Question No. 369, *supra* note 8, at 3. The reply notes that the "National Crime Records Bureau (NCRB) compiles prison statistics reported to it by the States and Union Territories (UTs) and publishes

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to evaluate whether the advisory's recommendations have been implemented consistently. The available figures are also historical and should not be treated as current statistics.

IV. CORE HUMAN RIGHTS CHALLENGES

Despite constitutional and statutory safeguards, incarcerated transgender persons face risks because of their gender identity and expression.[71] Globally, their principal human rights concerns include physical and sexual violence, harassment, discriminatory treatment and placement in accommodation inconsistent with their gender identity. Protective segregation, although sometimes intended to prevent abuse, may result in isolation, restricted access to services and further stigmatisation.[72] Custodial violence has long been a matter of concern, and transgender inmates may face aggravated risks of harassment, sexual violence, coercion and abuse.

Access to healthcare is another critical concern. Incarcerated transgender persons may face difficulties relating to hormone therapy, inadequate gender-affirming care, barriers to confidential HIV and sexually transmitted infection services, and insufficient mental health support. The medical neglect of Ishu, a transgender prisoner in Bengaluru Central Prison, was reported by several news outlets.[73] According to one account, Ishu had developed an infection in her silicone breast implants; although she informed the prison medical officer of her condition, she was given only generic painkillers, and she was shifted to hospital only after her condition worsened and her lawyers intervened.[74] Intrusive searches,[75] inappropriate medical examinations, misgendering and the disclosure of personal information can violate privacy, dignity and bodily autonomy. Limited complaint mechanisms and fear of retaliation further discourage the reporting of abuse.[76]

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the same in its annual publication 'Prison Statistics India'. The latest published report is of the year 2020." Its annexure records 70 transgender inmates nationally as on December 31, 2020.

[71] The seventeen months that Kiran Gawli spent in Nagpur Central Prison are particularly relevant here. *See* Sukanya Shantha, *Misgendering, Sexual Violence, Harassment: What It Is to Be a Transgender Person in an Indian Prison*, PULITZER CENTER (Feb. 11, 2021), https://pulitzercenter.org/stories/misgendering-sexual-violence-harassment-what-it-be-transgender-person-indian-prison.

[72] UNITED NATIONS OFFICE ON DRUGS AND CRIME ET AL., *supra* note 54, at 4.

[73] Mrinalika Roy, *Transgender Prison Inmates Face Abuse, Neglect in Bengaluru*, REUTERS (Jan. 23, 2017), https://www.reuters.com/article/india-transgender-prison-health-idINKBN1570S9.

[74] Harsh Mahaseth & Sparsh Jain, *The Indian Prisons and the Search for Equality: The Problems Faced by Transgender Inmates*, 58(1) ECON. & POL. WKLY. (Engage) (Jan. 7, 2023), https://www.epw.in/engage/article/indian-prisons-and-search-equality-problems-faced.

[75] *Id.* (quoting KVM Monalisa, General Secretary, Telangana Transgender People's Association) ("Even though we asserted continuously that we are transwomen, the prison officials stripped us. They poked and probed at our bodies and were visibly amused, while cracking jest among themselves, at the fact that we identified as transwomen. They did not let us wear back our clothes until we were utterly humiliated."). Several other accounts are documented there.

[76] UNITED NATIONS OFFICE ON DRUGS AND CRIME ET AL., *supra* note 54, at 2, 5; *see also* Nelson Mandela Rules, *supra* note 35, rr. 56–57.

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V. WHAT CAN BE DONE?

In light of the issues discussed above, the following reforms are essential to ensure that the protection of dignity and substantive equality is given the highest priority in prisons, regardless of an inmate's gender identity or expression.

First, model prison rules and standard operating procedures should be developed, prescribing minimum safeguards relating to accommodation, searches, healthcare, privacy, complaint procedures and rehabilitation. Although prisons fall in the State List, national standards are necessary to promote consistency while allowing States to adapt implementation to local conditions. The Model Prisons and Correctional Services Act, 2023, which the Ministry of Home Affairs forwarded to the States and Union Territories in May 2023, already provides for separate enclosures for transgender prisoners, access to their specific health-care and psycho-social needs and to correctional programmes, and searches in a manner to be prescribed by rules;[77] as of August 2025, however, no State had confirmed its adoption.[78] The MHA advisory is a good start, but it does not assign clear implementation responsibilities or establish monitoring mechanisms.

Second, automatic placement based on sex assigned at birth, or compulsory segregation, should not be treated as a universal solution. The individual's self-identified gender and informed preferences should be considered in placement decisions.

Third, prisons should provide confidential complaint mechanisms, prompt and impartial investigation, protection against retaliation and access to appropriate medical professionals.

Fourth, periodic training on gender identity, respectful communication, non-discrimination and search procedures should be mandated in prisons.

Fifth, standardised and privacy-protective reporting, independent inspections, transparent compliance assessments, community participation and gender-responsive release planning should be required in every prison.

Lastly, and most importantly, protection should not become a justification for exclusion. A policy that ostensibly safeguards transgender prisoners can still undermine equality if it results in involuntary segregation, loss of access to services or unnecessary disclosure of identity.

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[77] MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, *Model Prisons and Correctional Services Act, 2023*, §§ 21(1) proviso, 34.

[78] MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, *Adoption of Model Prison Rules and Support for Prison Libraries*, Rajya Sabha Unstarred Question No. 2004 (answered Aug. 6, 2025).

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VI. Conclusion

This paper reveals a persistent gap between formal recognition, through constitutional and statutory safeguards, judicial pronouncements and administrative guidance, and the practical protection of incarcerated transgender persons. The constitutional guarantees of equality, non-discrimination, dignity, privacy and personal liberty remain challenged by the gender-binary classifications of Indian prisons. Limitations in accommodation, search procedures, healthcare, staff training and accountability undermine the effective realisation of these rights.

The MHA advisory represents a landmark step in the protection of incarcerated transgender persons. Its effectiveness, however, depends on whether its recommendations are implemented through State-level rules, adequate funding and meaningful monitoring mechanisms. The federal distribution of prison administration further complicates uniform implementation. Policy effectiveness depends not merely on the existence of advisories but on their consistent implementation, independent monitoring and accessibility to every transgender prisoner.

Ultimately, the paper recommends model prison rules and standard operating procedures; consideration of the individual's self-identified gender and informed preferences in placement decisions; confidential complaint mechanisms; periodic training; standardised and privacy-protective reporting; and a guarantee that protection does not become a justification for exclusion.

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