



4. State of Telangana,  
Women and Child Development,  
Represented by its Secretary,  
Hyderabad,

4. The Commissioner of Police  
Hyderabad City, Basheerbagh  
Hyderabad, Telangana

....Respondents

### **AFFIDAVIT OF THE PETITIONERS**

We, (1.) KMV Mona Lisa, D/o K. Sambasiva Rao, Aged 42 years, Residing at 8-2-231/F/2223, Indira Nagar, Road #5, Jubilee Hills, Hyderabad – 500033, (2.) Vyjayanti Vasanta Mogli, D/o Mogli Jagdish Kumar, Aged 40 years, Residing at 3-5-139/2/A, Shiva Nagar, Hyderguda, Attapur, Rajendra Nagar Mandal, Ranga Reddy District, Hyderabad – 500048 and (3.) Sayantan Datta, C/o Chandran Datta, Aged 21 years, Residing at MH-D, Room No. 616, University of Hyderabad, Hyderabad - 500046 do hereby solemnly affirm and state on oath as follows:

1. We are the Petitioners in this petition and the deponents herein and we are well acquainted with the facts of the case and are competent to swear to this affidavit.

#### **I. PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH THE PETITION IS MADE:**

#### **SUBJECT MATTER IN BRIEF:**

2. The present writ petition is filed as Public Interest Litigation under Article 226 of the Constitution seeking reliefs for the welfare and

protection of rights of transgender persons in the State of Telangana. The Hon'ble Supreme Court in **NALSA v. Union of India & Ors.** [(2014) 5 SCC 438], recognized the discrimination faced by transgender persons and directed several measures to be undertaken for their welfare and equal rights but even now after more than 4 years of the said decision, no steps have been taken by the Respondents in the state of Telangana. The specific directions given by the Hon'ble Supreme Court in NALSA were as follows:

*“(1) Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.*

*(2) Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.*

*(3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.*

*(5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one’s gender is immoral and illegal.*

*(6) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.*

*(7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment. (8)*

*Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.*

*(9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.”*

3. That the Hon'ble Supreme Court held in NALSA held that Article 14 guarantees to everyone the equal protection of laws so that everyone

including transgender persons are afforded equal protection of the laws. It acknowledged that the non-recognition of the identity of transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail and also by the police. Further, noting the centuries of discrimination faced by the transgender community, the Hon'ble Supreme Court directed that steps and measures are required to be taken by the Centre and State Governments to integrate the transgender community into society.

4. **THAT** the Hon'ble Supreme Court in **NALSA** held that, “...[a]rticle 14 does not restrict the word ‘person’ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country...Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India.”
5. **THAT** the Hon'ble Supreme Court in the **NALSA** judgment held: “Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not

*being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female."*

6. **THAT** the Hon'ble Supreme Court of India in the **NALSA** judgment has held that "*Gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person.*" Further, the Hon'ble Supreme Court categorically states that the determination of gender to which a person belongs is to be decided by the person concerned. Thus, the Hon'ble Court states that gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination".
7. **THAT** the Hon'ble Supreme Court noted in **NALSA** that transgender persons have been systematically denied their rights under Article 15 and further, have not been granted special provisions in respect of admission into educational institutions under Article 15(4) despite

being a socially and educationally backward class of citizens. The Hon'ble Supreme Court categorically held that transgender persons are entitled to receive the benefits that are given to socially and educationally backward classes and that the State is required to put in place affirmative action measures for the advancement of the transgender community.

8. **THAT** the Hon'ble Court has held that transgender persons have been discriminated against in respect of employment opportunities under the State and are entitled to reservations in matters of appointment under Article 16(4) i.e. the State is required to implement affirmative action measures to increase the representation of transgender persons in public employment. It is submitted that drawing on various international principles, the Hon'ble Supreme Court noted that public facilities and services are out of reach for many transgender persons and ensuring equality not only implies preventing discrimination but also includes taking steps to remedy the systematic discrimination faced by the transgender community.
  
9. **THAT** the Hon'ble Supreme Court in **NALSA** noted that the common problems faced by the transgender community include harassment by the police in public spaces, harassment at home, lack of educational facilities, lack of appropriate medical facilities, inability to access medical care due to high costs involved, homelessness, unemployment, depression and are denied basic human rights. In light of the above facts, the Hon'ble Supreme Court directed the Centre and State Governments to take measures for ending discrimination against

transgender persons, to provide social welfare schemes for their upliftment and to set up a committee to look into the problems faced by the transgender community. Further, the recommendations of the committee were to be examined and implemented within a period of six months of the release of the report.

10. **THAT** despite the various directions of the Hon'ble Supreme Court in **NALSA** for instituting special measures and social welfare schemes for the benefit of the transgender community, and the passage of four years since the decision, no such steps have been taken by the State of Telangana.

11. **THAT** the principles highlighted in the **NALSA** have been followed by various High Courts in the country. The Hon'ble High Court of Madras in **K. Prithika Yashini (Transgender) v. Chairman, Tamil Nadu Uniformed Services Recruitment Board** [(2015) 8 MLJ 734], in a petition filed by a transgender person during the recruitment of Sub-Inspector posts, held that post-**NALSA**, it was mandatory for every public authority to enforce and safeguard rights of persons from transgender community and ordered the recruitment authority to mandatorily include third gender as a separate category for the purpose of recruitment and selection. In **Nangai v. Superintendent of Police**, [(2014) 4 MLJ 12], the Hon'ble High Court of Madras referred to **NALSA** and observed that termination of service of the employee by labeling her as 'transgender' was against the fundamental rights of the person as no service could be terminated on the basis of sexual identity of the person.

12. **THAT** the Hon'ble Allahabad High Court in ***Ashish Kumar Misra v. Bharat Sarkar*** [AIR 2015 All 124], recognized the rights of transgender persons to obtain a ration card in the context of Section 13 of the National Food Security Act, 2013. The Hon'ble Court, relying on the **NALSA** judgment, held: "*Preventing discrimination in all walks of life is one facet of the right of transgenders to live in dignity, with the confidence that they can lead their lives on their own terms in realization of gender identity.*" The Hon'ble High Court of Delhi, in a case of harassment complaint by a transgender person in ***Shivani Bhat v. State of NCT & Ors.*** [2016 II AD (Delhi) 12], explained the need to protect transgender persons by highlighting the vulnerable status of the community: "*Transgenders have long lived on the fringes of society, often in poverty, ostracized severely, because of their gender identity. They have for too long had to endure public ridicule and humiliation; have been socially marginalized and excluded from society, their basic human rights have been severely denuded.*" The Hon'ble Court noted, "*Despite the decision of the Hon'ble Supreme Court in National Legal Services Authority v. Union of India and Ors., the trauma, agony and pain, which members of the transgender community have to undergo continues unabated.*" Therefore, the law laid down in the **NALSA** judgment has become a settled proposition and the High Courts have imbibed the spirit of the principles laid down in **NALSA**.

13. **THAT** despite the passage of 4 years since the decision of **NALSA** and despite the release of the ***Report of the Expert Committee on***

***the Issues Relating to Transgender Persons*** (“Expert Committee Report”) in January 2014 which provided a series of recommendations in relation to self-identification of gender of transgender persons and for instituting schemes in the field of education, employment, healthcare etc to integrate transgender persons into society, no substantial measures have been taken yet in the State of Telangana to implement the directions of the Supreme Court with respect to securing the rights of transgender persons.

14. **THAT** the Hon’ble Supreme Court of India in **NALSA** directed the Centre and State Governments to take steps to treat transgender persons as socially and educationally backward class of citizens and extend all kinds of reservation in cases of admission in educational institutions and public employment. Thereafter, the National Commission for Backward Classes vide Advice No. 1/AllIndia/2014 dated 15.05.2014 has also recommended that the transgender community be treated as a socially and educationally backward class of citizens.

2. A copy of the Annual Report of the National Commission of Backward Classes for 2014-15 referencing Advice No. 1/AllIndia/2014 dated 15.05.2014 is annexed hereto and marked as **ANNEXURE – A.**

1. **THAT** the Hon’ble Supreme Court in ***Indra Sawhney v. Union of India, (1992) Supp (3) SCC 217*** held that reservations in educational institutions and public employment may be made in favour of socially and educationally backward classes of citizens, and such social and educational backwardness manifests in the form of illiteracy, isolation,

poverty, mental degradation etc. The Hon'ble Supreme Court in **NALSA**, noting the discrimination faced by the transgender persons, held that transgender persons constitute a socially and educationally backward class of citizens who have faced discrimination on the basis of their gender identity and directed that reservations be provided in admission into educational institutions and public employment.

2. **THAT** in 2014, the Hon'ble High Court of Madras in **Swapna & Ors. v. The Chief Secretary, W.P. No. 31091 of 2013** had directed the State Government to look into the question of a post or percentage based reservation in educational institutions and public employment for transgender persons, in furtherance of the decision in **NALSA**. Further, in July 2018, the State Government of Kerala, through the Department of Higher Education, issued an order directing an additional two seats be reserved for transgender persons for various courses in Universities and Affiliated Arts and Science Colleges.

(A copy of the G.O. (Ms) No. 153/2018/HEDN dated 03.07.2018 is annexed hereto and marked as **ANNEXURE - B)**

3. **THAT** various High Courts and State Governments in India have, in pursuance of the decision in **NALSA**, undertaken steps to provide for reservation for transgender persons in admission into educational institutions and public employment and as such, this Hon'ble Court should direct that similar such measures be implemented in the State of Telangana as well, in keeping with the letter and spirit of the **NALSA** decision.

4. **THAT** recently, the Uttarakhand High Court, vide order dated 28.09.2018 in ***Rano & Ors v. State of Uttarakhand & Ors, W.P. (Cri) No. 1794 of 2018***, noted that the living situation of transgender persons and held that despite the various directions of the Hon'ble Supreme Court in ***NALSA***, no reservation in public employment and educational institutions has been provided and no measures for medical care or other social welfare schemes have been framed for the upliftment of the community. The Hon'ble High Court held that transgender persons must be protected from exploitation, they have a right to work and the State Government must take all reasonable steps to provide habitable, accessible and culturally appropriate houses to transgender persons and the right to education. Further, separate facilities, including toilets, must be provided in transgender persons in public utility buildings.
5. **THAT** the Hon'ble High Court of Uttarakhand directed the State Government to *inter alia* (a) provide reservation in admission in educational institutions and for public appointments to the transgender persons by framing a scheme and to ensure that there is no discrimination with regard to employment or occupation, (b) frame various social welfare schemes/programmes for the betterment of transgender persons, (c) create public awareness to enable transgender persons to come into the main stream and also to take measures to regain their respect and place in society, (d) frame a scheme of housing for transgender persons by giving suitable accommodation, (e) provide financial assistance and scholarships up to the post graduate level, (f) constitute a welfare board for the

upliftment of transgender persons, (g) provide free medical access in all hospitals, (h) provide access to all public institutions and spaces, and (i) provide separate toilets in all public utility buildings. It is submitted that this Hon'ble Court should direct the State Government to implement similar such measures relating to education, employment, housing, medical care and access to public spaces for the betterment of the transgender community and to integrate them with the society in the State of Telangana.

6. **THAT** various States in India have established Transgender Welfare Boards to devise and implement welfare programmes for transgender persons. The State of Tamil Nadu, as noted by the Expert Committee Report, was one of the first States to establish a Transgender Welfare Board, which initiated schemes such as issuance of an identity card, financial approvals for income generating activities, undertaking awareness programmes. Further, the Board also coordinated the implementation of free Sex Reassignment Surgery ("SRS") procedure in two hospitals in Tamil Nadu for transgender persons.
7. **THAT** It is submitted that after the **NALSA** decision, other States like West Bengal, Rajasthan and Chattisgarh have also established Transgender Welfare Boards, and a Transgender Welfare Board is set to be established in Maharashtra. These Boards are for the welfare of transgender persons and assist the trans community on obtaining identity cards, access to welfare schemes, providing financial assistance etc. It is submitted that the constitution of a Transgender Welfare Board in the State of Telangana, similar to the

abovementioned States, would be beneficial for the interests of the transgender community and the board can be the authority that issues identity cards for transgender persons as well as coordinate the implementation of various measures and schemes in favour of transgender persons in Telangana.

(A copy of the notification constituting the Third Gender Welfare Board dated 4.10.2014 is annexed hereto and marked as **ANNEXURE - C**)

8. **THAT** various State Governments such as Karnataka, Orissa and Kerala have framed a policy for the upliftment of transgender persons and a similar policy may be framed and implemented in the State of Telangana as well.
  
9. **THAT** the Karnataka State Policy on Transgender Persons takes note of the range of gender identities and the problem of discrimination, fear, shame, gender dysphoria and insistence on SRS before self-identification of gender which is commonly faced by transgender persons. It provides a mechanism for self-identification of gender by transgender persons and recognizes the need to increase access to public spaces, ensure non-discriminatory treatment of transgender persons and increase access to public transport and public spaces. The policy also provides that State run financial institutions, housing and insurance companies must be made more inclusive and further that there should be a preference for transgender persons in admission into educational institutions, workplaces to be made more inclusive and financial assistance and skill development programmes for the benefit of transgender persons must be instituted. Significantly, the policy also

provides for convergence of existing schemes to include transgender persons as well. A Transgender Cell and Transgender Support Unit are also to be established to coordinate the implementation of the policy in Karnataka, issue identity cards, initiate welfare programmes etc. With regard to medical care, the policy provides for counselling and mental health services to be provided to transgender persons.

(A copy of the State Policy for Transgender Persons, 2017 in Karnataka is annexed hereto and marked as **ANNEXURE - D**)

10. **THAT** a similar 'Sweekruti' policy has been instituted in Orissa, which envisages the provision of financial assistance in education, skill upgradation and development training, support for critical health care and financial assistance in group insurance support, provision of legal aid etc for transgender persons, social security benefit, all of which may be claimed using the multi-purpose SMART card to be issued by the State Government of Orissa. The detailed policy lays down eligibility conditions, sanctioned amount and mode of disbursement of the financial assistance for various programmes.

(A copy of the State Policy for Transgender Persons, 2017 in Orissa, is annexed hereto and marked as **ANNEXURE - E**)

11. **THAT** the State Policy for Transgender Persons in Kerala, 2015 also recognizes that the right of transgender persons to live with dignity and enjoy a life free from all forms of violence. It identifies various rights available to transgender persons, as recognised in **NALSA**, and provides for proposed activities for each of those rights. For instance, with regard to: (a) right to equality, the policy provides that all

application forms must contain a third category called 'transgender', (b) right to employment, the policy provides that self-employment grants must be made available and workplaces must be sensitized, (c) right to education, the policy provides that anti-discrimination cells must be established in educational institutions and forms must be amended to provide the 'transgender' option, (d) right to healthcare, the policy provides that a fund is to be set up for SRS in Government Hospitals, health insurance should be provided, proper counseling to transgender persons on the options available in relation to gender transition and post-operative follow up and counseling.

(A copy of the State Policy for Transgender Persons in Kerala, 2015 is annexed hereto and marked as **ANNEXURE - F**)

12. **THAT** in accordance with the aim of promoting the equality of transgender persons and integration of transgender persons with society through the 9 directions laid down by the Hon'ble Supreme Court in **NALSA**, this Hon'ble Court should direct the State of Telangana to frame a similar policy for the upliftment of transgender persons which *inter alia* provides for a self-identification mechanism, a scheme for reservations in educational institutions and public employment, financial assistance with regard to education, skill development programmes, loans and subsidies in relation to self-employment opportunities and to transgender self-help groups, schemes for access to medical care, mental health services and particularly free SRS treatments for transgender persons etc.,

The facts which have a bearing in this Writ Petition are set out herein after:

**II. PARTICULARS OF THE PETITIONERS:**

13. The Petitioners are Transgender persons, all residing in the State of Telangana.

14. The Petitioner No.1 is a transgender Rights activist who is based in Telangana. She has partnered with the National Institute for Rural Development and Panchayati Raj (NIRD & PR) under the Ministry of Rural Development, Government of India to mobilize 500 people from the transgender community in various alternative livelihoods and occupations. She has encouraged many transgender persons to acquire and develop skills to enable them to take up occupations in order to earn a livelihood. The Petitioner has also taken an initiative to partner with the Government in the Open Defecation Free Campaign and Swachh Bharat Abhiyaan. The Petitioner's work has recently been featured in the press and media.

(A Copy of the news item titled "***The way we are***" featuring the petitioner No 2's work published by the Week on 07.01.2018 is annexed herein and marked as **ANNEXURE- G**)

15. The Petitioner No.2 is a transgender rights activist and was one of the founding members of the Telangana Hijra, Intersex and Transgender Samiti, which is an unregistered organization working for the welfare and the rights of transgender persons in Telangana. She has also been a public policy student at the Tata Institute of Social Sciences

and has been a fellow of the International Visitors Leadership Program of the State Department of the United States of America. The Petitioner No.2 has actively worked for the improvement of the conditions of the transgender community. She is also a recipient of the Vocational Excellence award from the Rotary Club of Hyderabad Midtown and Barclays Bank for her contributions to the advancement of the welfare of women and transgender people. She has helped the community in many instances of violence to file First Information Reports against atrocities, which are focused on the transgender community. The Petitioner No.2 has fought for the rights of the entire Transgender community, and works towards creating awareness on the government policies as well as corporate policies of companies, which exclude transgender persons. As a founding member of the Telangana Hijra Intersex and Transgender Samiti, she has actively worked with the collective in promoting and protecting the rights of the Transgender community. The Telangana Hijra Intersex and Transgender Samiti is an unfunded collective of transgender, hijra, non-hijra intersex, trans-women, trans-men and gender non-conforming people. It has participated in and organized several protests against the inaction of the police and the government in securing the rights of transgender persons. The Samiti has been vocal in addressing the lacuna in the legal system, and has made recommendations on the Rights of Transgender Persons Bill, 2014 and on the Transgender Persons (Protection of Rights) Bill, 2016. It deposited with the inter-parliamentary Standing Committee of Social Justice & Empowerment on the Transgender Persons (Protection of Rights) Bill, 2016. It has initiated and taken part in awareness

campaigns and protests condemning the murder of trans-women and the violence faced by the community as a whole.

(A Copy of the news article titled “US should borrow our NALSA verdict” dated 10.11.2016, in New Indian Express, is annexed herein and is marked as **ANNEXURE – H)**

(A Copy of the news article titled “#100Women: ट्रांसजेंडर होने के दंश से लड़ती वैजयंती” “dated 28.11.2016, in the BBC Hindi, is annexed herein and is marked as **ANNEXURE – I)**

(A Copy of the news article titled “Being LGBT in India: Some home truths” dated 27.08.2016, in Live Mint, is annexed herein and is marked as **ANNEXURE – J)**

(A Copy of the news article titled “We need sensitivity, not sensationalism” in the January-March 2017 release of the Press Institute India, is annexed herein and is marked as **ANNEXURE – K)**

(A Copy of the blog post titled “The Story of Vyjayanti Vasanta Mogli” dated 14.01.2016 in ‘Mahitha’s Blog’, is annexed herein and marked as **ANNEXURE – L)**

(A Copy of the press release titled “Telangana Hijra Intersex Transgender Samiti” dated 05.07.2015 is annexed herein and is marked as **ANNEXURE – M)**

(A Copy of the press release titled “Transgenders denied entry into city mall” dated 28.09.2015 is annexed herein and is marked as **ANNEXURE – N)**

(A Copy of the news article titled “Eunuchs face assaults, rape” dated 21.11.2014, in Deccan Chronicle, is annexed herein and is marked as **ANNEXURE – O)**

(A Copy of the news article titled “Hijras blame govt. for murder” in Prime Post is annexed herein and marked as **ANNEXURE – P)**

(A Copy of the news article titled “Transgender people seek separate welfare board” dated 11.10.2014, in The Hindu, is annexed herein and marked as **ANNEXURE – Q)**

16. The Petitioner No.3 is a queer feminist activist and poet and is currently pursuing M.Sc. from the University of Hyderabad. The Petitioner identifies as a genderfluid queer individual and has been advocating for trans and queer rights on various platforms. The Petitioner is also a prolific writer and has been published in various reputed forums. The Petitioner had also made a mark with their public speaking skills both in academic and activist circles. Currently, they are involved in pro bono activism in both Kolkata and Hyderabad, on transgender rights issues.

(A Copy of the Article titled "***We refuse to be subjects of Experiment for those who do not understand us: Transgender Persons Bill***" authored by the Petitioner and Published in EPW Engage on 08.12.2017 is annexed herein and marked as **ANNEXURE - R)**

### III. **LOCUS STANDI:**

17. It is submitted that the Petitioners are working for the interests of the transgender community i.e., for their needs, education, development and social awareness on the issues relevant to the community. I submit that despite the 2014 decision of the Supreme Court in *NALSA*,

no steps have been taken in the State of Telangana to implement the directions of the Supreme Court on various aspects, including but not limited to reservations in higher education and public employment and on framing of social welfare schemes for the benefit of transgender persons. Therefore, I submit that the present Writ Petition is being filed by the Petitioners, who are actively working for transgender rights, to seek appropriate directions to be passed to implement the directions of the Supreme Court in the State of Telangana.

18. That the present Writ Petition is being filed by way of Public Interest Litigation and the Petitioners do not have any personal interest in the matter. This petition is being filed in the larger interest of the public, who are within the jurisdiction of this Hon'ble Court.

19. That the Petitioners are social workers and activists and the entire costs of litigation is borne by the Petitioners.

#### DECLARATION AND UNDERSTANDING OF THE PETITIONER:

1. The Petitioners state that the present petition is being filed by way of Public Interest Litigation and they do not have any personal interest in the matter. The Petition is being filed in the interest of Transgenders and gender non-conforming persons living in the state of Telangana and are being discriminated against and whose fundamental rights under the Constitution of India are being violated by this Act being challenged in this Petition.
2. The Petitioners state that the entire litigation costs, including advocate's fee and; other charges are being borne by them.

3. The Petitioner submits that a thorough research has been conducted in the matter raised through the Petition. Information gathered through research is annexed herewith.
4. The Petitioners state that to the best of their knowledge and research, the issue raised was not dealt with or decided and they also state that a similar or identical petition was not filed earlier by them.
5. The Petitioners state that they have understood that in the course of hearing of this Petition the Court may require any security to be furnished towards costs or any other charges and the Petitioners shall comply with such requirements.

#### **IV. FACTS IN BRIEF:**

20. It is submitted that in 2014, in **NALSA**, the Hon'ble Supreme Court of India legally recognised transgender persons as the 'third gender' and held that non-recognition of their gender identity violates Articles 14, 15, 19 and 21 of the Constitution of India, 1950. In particular, the Hon'ble Supreme Court held that 'gender' and 'biological attributes' constitute distinct components of 'sex' under Articles 15 and 16 and therefore, discrimination of transgender persons on the ground of their gender identity would be in violation of Article 15.
21. The Hon'ble Supreme Court noted in **NALSA** that the term "transgender" is an umbrella term that encompasses a range of gender identities and experiences who are referred to by different names and covers all persons whose gender identity does not conform to their biological sex. In order to clarify the meaning of

“transgender” as referred to in this Petition, the following definitions may be referred to:

- a. Transgender: A transgender person is someone whose sense of gender is different from his/her physical characteristics at the time of birth. A person may be a female-to-male transgender (FtM) in that he has a gender identity that is predominantly male, even though he was born with a female body. Similarly, a person may be a male-to-female transgender (MtF) in that she has a gender identity that is predominantly female, even though she was born with a male body or physical characteristics.
- b. Hijra: An indigenous cultural term used in South Asia to refer to male or female transgender persons.
- c. Transsexual: A transsexual person is one who has undergone physical or hormonal alterations by surgery or therapy in order to assume new physical gender characteristics.
- d. Transvestite: A transvestite is a person who derives pleasure from cross-dressing.
- e. Intersexuality: Intersexuality is a general term used for a variety of conditions in which a person is born with a particular reproductive or sexual anatomy but does not fit the typical definitions of female or male.
- f. Kothi: A feminine homosexual man who usually is the receptive sexual partner.
- g. Eunuch: A castrated male.
- h. Aravani: The Tamil name for hijras. Aravanis trace their name back to the myth of Aravan, Arjuna’s son who was given in sacrifice by the Pandavas before the Mahabharata war.

i. Queer: The word queer is increasingly being used to connote a diversity of ways of living that contest the embedded nature of heterosexism in law, culture and society. The term denotes a diversity of sexual orientations and gender identities in the Indian context that includes gay, lesbian, bisexual, transgender, hijra, kothi, transsexual, and intersex persons.

22. The Hon'ble Supreme Court further held in **NALSA** that Articles 15(2) to 15(4) and Article 16(4), read in conjunction with the Directive Principles of State Policy and other international instruments promote social equality which may be realized only if transgender persons are provided with facilities and opportunities that enable them to live a life of dignity and equal status with other genders.

23. It is submitted that the Hon'ble Supreme Court noted that the test to be applied with respect to persons who have undergone medical and surgical operations including SRS to affirm their gender identity is the psychological test, where primacy should be given to the person's notion of their gender identity. In this regard, the Supreme Court noted that the transgender community faces unimaginable levels of discrimination in all spheres of society, especially in the fields of education, employment, healthcare and access to public spaces such as restaurants, cinemas, malls, public toilets etc. and their rights are required to be protected irrespective of their birth sex and adopted gender identity.

24. The Hon'ble Supreme Court, held that “...*discrimination on the basis of sexual orientation and gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.*” Therefore, the Hon'ble Supreme Court issued 9 directions to the Centre and State Governments *inter alia* to permit self-identification of gender, provide reservations in educational institutions and public appointments, frame social welfare schemes etc to enable transgender persons to regain their respect and place in society.

25. It is submitted that notwithstanding the decision of the Hon'ble Supreme Court, transgender persons face prejudice and violence from all sections of society, particularly from the police, lack of access to health care and are discriminated severely in access to education, employment and housing. The transgender community grapples with profound socio-economic problems ranging from lack of education and employment to absence of opportunities for participation in public life. Thus, there need to be specific social welfare schemes for transgender persons and appropriate changes needs to be reflected in the laws and policies.

26. The Central Government, since the decision of the Hon'ble Supreme Court in **NALSA**, has worked towards ensuring that the rights of the Transgender community be protected. The Union Ministry of Social

Justice and Empowerment has been working on matters relating to the Transgender community since mid-2012. The Ministry constituted an Expert Committee to conduct an in-depth study of the problems being faced by the Transgender Community and the Expert Committee Report was submitted in 2014. This Report discusses access to healthcare and gender transition services in detail. And recommends that the Ministry of Health prepare a policy statement regarding provision of essential gender transition services, including SRS, in public hospitals and to issue national guidelines on the same in consonance with the Guidelines by the World Professional Association of Transgender Health (WPATH). Further, the Expert Committee Report also recommends that the essential set of gender transition services such as mental health counseling (pre/post-surgical) and cross-sex hormone therapy be provided by the State, besides SRS procedures.

(A copy of the Report of the Expert Committee dated 27.01.2014 is annexed herein and marked as **ANNEXURE – S**)

27. Significantly, the Expert Committee Report noted that policy and institutional reforms that target the poor and other at-risk groups to further access to social protection schemes must be extended to transgender persons as well, including the provision of housing assistance schemes to assist transgender persons in securing non-discriminatory and safe housing. To bring transgender persons within the fold of the mainstream education system and economy, the Expert Committee Report recommends a host of measures such as fulfilment of obligations under the Right to Education Act, providing

financial incentives and scholarships, establishing anti-discrimination cells in educational institutions, providing 25% subsidy to self-help groups for starting self-employment, vocational skill building through training programmes etc. It also recommended provisions of scholarships for transgender students similar to that provided to Scheduled Castes students, loan with 25% subsidy for transgender persons for self-employment ventures and pension scheme for transgender persons above 40 years up to 60 years of age.

28. It is submitted that recently, vide order dated 18.09.2018 in **PIL No. 44 of 2018**, this Hon'ble Court granted an interim order staying the operation of the Telangana Eunuchs Act, 1329 F, which discriminated against the transgender community on the basis of their gender identity and criminalized *inter alia* their gender expression and very existence.

(A copy of the order dated 18.09.2018 in PIL No. 44 of 2018 is annexed hereto and marked as **ANNEXURE - T**)

29. However, despite the directions of the Supreme Court in **NALSA** and the other efforts taken by the Central Government, no policy, scheme, action plan or special measures have been enacted by the State of Telangana for protecting the rights of transgender persons and enabling their development and integration with society. It is submitted that the absence of such measures undertaken by the State Government are obstacles to the full realization of the rights of transgender persons and the meaningful recognition of their right to life with dignity, personal autonomy and self-determination.

30. The Petitioners having no other equally efficacious alternative remedy has filed the present Writ Petition on the following grounds amongst others in the interest of the public for invoking the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. The Petitioner has not filed any other Writ Petition either before this Hon'ble Court or any other Court in respect of this course of action.

#### **4) SOURCES OF INFORMATION:**

I submit that the source of information for filing of the said Writ Petition (PIL) have been acquired by referring to the 2014 decision of the Hon'ble Supreme Court in *NALSA*, where the following directions were passed:

*"129. We therefore declare:*

- 1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.*
- 2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.*
- 3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.*

- 4) *Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.*
- 5) *Centre and State Governments should seriously address the problems faced by the Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.*
- 6) *Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.*
- 7) *Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.*
- 8) *Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.*
- 9) *Centre and State Governments should take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.”*

**5) NATURE OF EXTENT OF INJURY CAUSED/APPREHENDED:**

The Petitioners are Transgender Rights activists who are based in Telangana. Petitioner No. 2 was one of the founding members of the Telangana Hijra, Intersex and Transgender Samiti, which is an unregistered organization working for the welfare and the rights of

transgender persons in Telangana. The Petitioner has actively worked for the improvement of the conditions of the transgender community. She is also a recipient of the Vocational Excellence award from the Rotary Club of Hyderabad Midtown and Barclays Bank for her contributions to the advancement of the welfare of women and transgender people. She has helped the community in many instances of violence to file First Information Reports against atrocities, which are focused on the transgender community. The Petitioners, being members of the Transgender community, have approached this Hon'ble Court seeking directions for the implementation of the 2014 decision of the Hon'ble Supreme Court in **NALSA** where the Centre and State Governments were directed to address the problems faced by the Transgender community by way of social welfare schemes, reservations, medical care etc. However, despite the passage of 4 years since the decision of the Supreme Court, no measures or steps have been taken by the State of Telangana for the betterment of the transgender community. Therefore, the Petitioners have approached this Hon'ble Court seeking directions in this matter on behalf of not only the Petitioners, but the transgender community on the whole.

**6) DELAY IF ANY:**

I submit that there is no delay in approaching this Hon'ble Court invoking the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.

## 7) REPRESENTATIONS MADE TO THE STATE GOVERNMENT:

On 14.03.2018, the Petitioners made representations to the Hon'ble Chief Minister, Chief Secretary, Minister of Women and Child Development, Minister of Law, State of Telangana and on 20.03.2018 to Law Secretary of State of Telangana, bringing to their notice the lack of implementation of **NALSA** in the State of Telangana, and further requesting the implementation of the judgment at the earliest by way of a list of measures and schemes. On 23.05.2018 and 31.05.2018, follow up representations for the implementation of the judgment were made to the above mentioned ministries by the Petitioners. However, despite these representations, no steps have been taken in the State of Telangana to implement the decision in **NALSA**. Copies of the representations made are annexed herewith as **Annexure – U**.

## 8) DOCUMENTS RELIED UPON ARE:

The relevant documents are filed as material in the Public Interest Litigation Case:

1. A copy of the Annual Report of the National Commission of Backward Classes for 2014-15 referencing Advice No. 1/AllIndia/2014 dated 15.05.2014 is annexed hereto and marked as **ANNEXURE – A**.
2. A copy of the G.O. (Ms) No. 153/2018/HEDN dated 03.07.2018 is annexed hereto and marked as **ANNEXURE – B**
3. A copy of the notification constituting the Third Gender Welfare Board dated 4.10.2014 is annexed hereto and marked as **ANNEXURE - C**

4. A copy of the State Policy for Transgender Persons, 2017 in Karnataka is annexed hereto and marked as **ANNEXURE - D**
5. A copy of the State Policy for Transgender Persons, 2017 in Orissa, is annexed hereto and marked as **ANNEXURE - E**
6. A copy of the State Policy for Transgender Persons in Kerala, 2015 is annexed hereto and marked as **ANNEXURE – F**
7. A Copy of the news item titled "***The way we are***" featuring the petitioner No 2's work published by the Week on 07.01.2018 is annexed herein and marked as **ANNEXURE- G**
8. A Copy of the news article titled "US should borrow our NALSA verdict" dated 10.11.2016, in New Indian Express, is annexed herein and is marked as **ANNEXURE – H**
9. A Copy of the news article titled "#100Women: ट्रांसजेंडर होने के दंश से लड़ती वैजयंती" "dated 28.11.2016, in the BBC Hindi, is annexed herein and is marked as **ANNEXURE – I**
10. A Copy of the news article titled "Being LGBT in India: Some home truths" dated 27.08.2016, in Live Mint, is annexed herein and is marked as **ANNEXURE – J**
11. A Copy of the news article titled "We need sensitivity, not sensationalism" in the January-March 2017 release of the Press Institute India, is annexed herein and is marked as **ANNEXURE – K**
12. A Copy of the blog post titled "The Story of Vyjayanti Vasanta Mogli" dated 14.01.2016 in 'Mahitha's Blog', is annexed herein and marked as **ANNEXURE – L**

13. A Copy of the press release titled “Telangana Hijra Intersex Transgender Samiti” dated 05.07.2015 is annexed herein and is marked as **ANNEXURE – M**
14. A Copy of the press release titled “Transgenders denied entry into city mall” dated 28.09.2015 is annexed herein and is marked as **ANNEXURE – N**
15. A Copy of the news article titled “Eunuchs face assaults, rape” dated 21.11.2014, in Deccan Chronicle, is annexed herein and is marked as **ANNEXURE – O**
16. A Copy of the news article titled “Hijras blame govt. for murder” in Prime Post is annexed herein and marked as **ANNEXURE – P**
17. A Copy of the news article titled “Transgender people seek separate welfare board” dated 11.10.2014, in The Hindu, is annexed herein and marked as **ANNEXURE – Q**
18. A copy of the United Nations Development Programme, India Policy Brief, titled “*Legal Recognition of Gender Identity of Transgender People in India: Current Situation and Potential Options*” dated 2012 is annexed herein and marked as **ANNEXURE – R**
19. A copy of the Report of the Expert Committee on the Issues relating to Transgender Persons dated 27.01.2014 is annexed herein and marked as **ANNEXURE – S**
20. A copy of the order dated 18.09.2018 is annexed hereto and marked as **ANNEXURE – T**
21. Copies of representations made to the Telangana Government are annexed hereto and marked as **Annexure – U.**

9) In the circumstances stated above, I have no other alternative remedy except approaching this Hon'ble court seeking redress under Article 226 of the Constitution of India.

10) I further state that I have not filed any writ petition or instituted any civil proceedings in this matters.

**11) MAIN RELIEF PRAYER IS AS FOLLOWS -WP (PIL):**

In the circumstances, it is therefore prayed that this Hon'ble Court may be pleased to:

- A. Issue a writ, order or direction to the Respondents to frame a comprehensive policy in the State of Telangana to secure and protect the rights of transgender persons, and which will also lay down guidelines for self-identification of transgender persons and obtaining legal identity documents in their self-identified gender;
- B. Issue a writ, order or direction to the Respondents to constitute a Transgender Welfare Board within a period of three months, in which there will be at least 50% representation from the transgender community;
- C. Issue a writ, order or direction to the Respondents to provide reservation in admissions in educational institutions and in public employment for transgender persons and frame a scheme for such reservation;
- D. Issue a writ, order or direction to the Respondents to provide scholarship for education for transgender persons at all levels of education, including secondary school and high school education

- as well as at the graduate and post-graduate levels and vocational training institutes;
- E. Issue a writ, order or direction to the Respondents to frame social welfare schemes / programmes, including but not limited to housing schemes for the betterment of transgender persons, financial assistance for self-employment opportunities, skill development programmes, ration cards within a period of three months;
- F. Issue a writ, order or direction to the State Government to frame schemes for providing access to free medical care for transgender persons in all Government Hospitals, including the operation of HIV centres and provision of related medical care;
- G. Direct the Respondents to provide gender transition and sex reassignment surgery services (with proper pre-and post-operation/transition counseling) for free in public hospitals in Telangana;
- H. Direct the Respondent State Government to make available the medical facility of Sex Reassignment Surgery to transgender persons free of cost in all Government Hospitals;
- I. Issue a writ, order or direction to the Respondents to provide separate toilets for transgender persons in educational institutions and every public utility building including hospitals, bus stations, railway stations, public toilets etc. within a period of three months;
- J. Issue a writ, order or direction to the Respondent State Government to implement a pension scheme for transgender persons;

- K. Direct the Respondents to implement stigma and discrimination reduction measures at various settings through a variety of ways, including gender sensitization curriculum in schools, colleges, universities, mass media awareness for the general public to focused training and sensitization for government officials, public servants, police officials and health care providers.
- L. Issue a writ, order or direction to the State Government to take necessary measures to create awareness among the public to integrate transgender persons to be part of family and social life and further to enable transgender persons to freely access all public institutions, public spaces, public toilets, parks, playgrounds, roads, educational institutions, malls, market places, hospitals, hotels, restaurants etc without discrimination; and
- M. Pass such other order(s) as may be seen fit in the facts and circumstances of the case in the interest of justice and equity.

**12) CAVEAT:**

That no notice has been received of lodging a caveat by the Respondents.

Solemnly affirm and signed  
before me on this the      day  
of      , 2018.

DEPONENT

Before Me

Advocate / Hyderabad

**VERIFICATION STATEMENT**

I, KVM Mona Lisa \_\_\_\_\_, D/o \_\_\_\_\_ Aged \_\_\_\_\_years, residing at \_\_\_\_\_do hereby verify that the contents in paras filed in support of

the Writ petition are true and correct to the best of my knowledge and belief.

Verified at Hyderabad on this the      day of October, 2018

ADVOCATE

DEPONENT