

**IN THE HIGH COURT OF JUDICIATURE AT HYDERABAD FOR THE STATES  
OF TELANGANA AND ANDHRA PRADESH**

**(Rule 4(e) of the High Court of Judicature at Hyderabad for the States of  
Telangana and Andhra Pradesh Public Interest Litigation Rules, 2015)**

**Writ Petition (PIL) No. \_\_\_\_\_ of 2017**

**BETWEEN:**

1. Vyjayanti Vasanta Mogli

D/o Mr. 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

2. KMV Monalisa

D/o K. Sambasiva Rao

Aged 42 years

Residing at 8-2-231/F/2223, Indira Nagar,

Road # 5, Jubilee Hills,

Hyderabad - 500033.

3. Sayantan Datta

C/o Chandan Datta

Aged 21 years

Residing at MH-D, Room no. 616,

University of Hyderabad,

Prof C. R. Rao Road, CUC, Gachibowli,

P O Central University,

Hyderabad - 500046.

...Petitioners

And

1. The State Government of Telangana  
Room Nos. 301 & 302, iii floor, "A" block,  
Telangana Secretariat, Hyderabad – 500 021  
Represented by its Principal Secretary

2. State Government of Telangana  
Social Welfare Department,  
D-Block, Ground Floor,  
Secretariat, Hyderabad  
Represented by its Principal Secretary

3. State Government of Telangana  
Home Department,  
Hyderabad  
Represented by its Principal Secretary

4. The Commissioner of Police

Address \_\_\_\_

Telangana

...Respondents

**AFFIDAVIT OF THE PETITIONERS**

I, (1.) Vyjayanti Vasanta Mogli, the petitioner herein authorized by 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, do hereby solemnly affirm and state as follows:

1. I am the Petitioner No.1 herein and is authorized by Petitioner No.2 and 3 in this petition and am well acquainted with the facts of the case.
2. That the present writ petition is filed as Public Interest Litigation under Article 226 of the Constitution challenging the constitutional validity of the Telangana Eunuchs Act, 1329F (hereinafter referred to as "**The Act**"), as being violative of Articles 14, 19 and 21 of the Constitution.
3. That the Present Writ Petition is being filed by way of Public Interest Litigation and the Petitioners does 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 the respondents.
4. That the Petitioner is a social worker and the entire costs of litigation is borne by the petitioner.

**LOCUS STANDI:**

5. I submit that I am working as Transgender Rights Activist I have to protect the interest of our community i.e., their needs, education, development and social awareness including protection from such acts and laws enacted by the state that violate the basic fundamental rights of members of the Transgender Community like the Act in question being the Telangana Eunuchs Act, 1329 F which is an outdated and discriminatory law that criminalizes the transgender community unfairly and without any legal basis.

**PARTICULARS OF THE CAUSE/ORDER AGAINST WHICH THE PETITION IS**

**MADE:**

6. That the Telangana Eunuchs Act, previously referred to as the Andhra Pradesh (Telangana Area) Eunuchs Act, 1329F, was first enacted in 1919 and is applicable to “eunuchs” as defined within the legislation. The impugned Act mandates the maintenance of a register of “eunuchs” residing in the city of Hyderabad who are suspected of kidnapping or emasculating boys, or of committing unnatural offences or abetting in the above. The impugned Act further permits the arrest of transgender persons without a warrant and imprisonment if found in female clothing or ornamented, or singing, dancing or participating in public entertainment in a street or public place, or when a transgender person is found in the company of a boy below the age of 16. The impugned Act is arbitrary as it targets the transgender community and treats them as a distinct class with no reasonable basis for such classification, and further permits discrimination against persons on the basis of their sex/gender, thus violating Article 14 of 15(1) of the Constitution. In curbing their right to freedom of speech and expression, and in invading upon their fundamental right to life, privacy, family life, personal liberty and basic dignity of life, the impugned Act further violates Article 19(1)(a) and Article 21 of the Constitution.

7. The Hon’ble Supreme Court in the ***NALSA v. Union of India***, held that the right to equality has been declared as a basic feature of the constitution and 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. It is submitted that the Act works unequally against transgender persons, making an unreasonable classification against them, based on the non-recognition of their gender identity.

8. The Telangana Eunuchs Act, 1329 F is against the letter and spirit of Article 14 of the Constitution of India. The provisions of the impugned Act amount to discrimination on the basis of gender and is an act of profiling against the transgender community, amounting to violation of their rights under Articles 14 and 15(1) of the Constitution. By permitting a register to be maintained of “eunuchs” and by only criminalizing acts under Section 4 and 5 if done by a eunuch, the Act violates Article 14 of the Constitution, which prohibits any kind of discrimination that does not meet the test of reasonable classification and rational nexus.
9. **THAT** the Act discriminates against transgender persons only based on impotency and is clearly a case of targeted discrimination. The transgender community is particularly vulnerable community that has faced social stigma and ostracisation over the course of decades. Members of the Transgender community are publicly identifiable by their mannerisms making them further susceptible to violence at the hands of public authorities. The transgender community has been stigmatized and discriminated against in the criminal justice system. The impugned Act permits arrests without warrant of any transgender person who is in public with female clothing, and especially targets them when found involved in begging. The Hon’ble Supreme Court of India in **Ram Prasad v. State of Bihar** [AIR 1953 SC 215] has cautioned against any legislation which allows for targeted discrimination and held:“... *Legislation based upon mismanagement or other misconduct, as the differentia and made applicable to a specified individual or corporate body, is not far removed from the notorious parliamentary procedure formerly employed in Britain of punishing individual delinquents by passing of Bill of Attainder, and should not, I think, receive judicial encouragement.....It is impossible to conceive of a worse form of discrimination than the one which differentiates a particular individual*

from his fellow subjects and visits him with a disability which is not imposed on anybody else.”

10. **THAT** in the instant case, it is only transgender persons as opposed to any other person or group of persons who are suspected of kidnapping, emasculation and unnatural offences, etc. who are made vulnerable under the Act for monitoring and regulation. It is only eunuchs, as opposed to any other person acting suspiciously, who is registered and behavior controlled. To be protected under the ambit of Article 14, the Hon'ble Supreme Court in **State of West Bengal v. Anwar Ali Sarkar** [AIR 1952 SC 75] enunciated the classic nexus test. It is necessary to prove that there is a clear intelligible differentia between two or more classes of persons treated unequally by the legislation and further that such a classification is made and has a rational nexus to the object sought to be achieved. In **D. S. Nakara v. Union of India** [(1983) 1 SCC 305], the Hon'ble Supreme Court relying on **Ram Krishan Dalmia v. Justice S. R. Tendulkar** [AIR 1958 SC 538] held, “*In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the statute in question.*” The Hon'ble Supreme Court has observed that “[i]n order to consider the question as to the reasonableness of the classification, it is necessary to take into account the objective for such a classification” in the case of **Deepak Sibal & Ors. v. Punjab University & Anr** [AIR 1989 SC 903]. Further in this case, the Hon'ble Supreme Court has stated that “*If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable.*” In the current case, the objective of the

classification seems to be to target and discriminate solely against eunuchs and is wholly illogical, unfair and unjust.

11. **THAT** impotency of men cannot in any way be treated as an intelligible differentia for the purpose of classification for the basis of Article 14 to discriminate in treatment towards all persons and towards impotent men. The Act does not equally discriminate against impotent women, nor does it create an intelligible classification based on non-gender conforming identity. Such a classification has no rational nexus with the object sought to be achieved. If the object sought to be achieved is the maintenance of law and order, then targeting transgender persons alone has no reasonable nexus with such an object sought to be achieved.

12. **THAT** the Hon'ble Supreme Court has in several cases ruled that Article 14 is in dissonance with arbitrariness. In the case of ***E.P.Royappa v. State of Tamil Nadu*** [1974 AIR 555], a five judge bench of the Hon'ble Supreme Court ruled that "*equality is antithetic to arbitrariness...Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14...Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment*". This has further been stated by the Hon'ble Supreme Court in the case of ***Ajay Hasia v. Khalid Mujib Sehravardi & Ors.*** [1981 AIR 487] where the Court stated that "*what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality.*" The current Act is a clear case of arbitrary legislation which violates Article 14 of the Constitution.

13. **THAT** the Hon'ble Supreme Court in the ***NALSA judgment*** 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.*”

14. **THAT** the Act is violative of the Constitutional guarantee under Article 15(1). Article 15(1) of the Constitution of India prohibits discrimination on the basis of religion, race, caste, sex, place of birth or any of them. The Act in identifying eunuchs as males who admit to being impotent or appear to be impotent on examination, and in penalizing certain behavior by them, is intrinsically discriminatory against eunuchs on the basis of sex. The law is a stark form of sex discrimination and is violently exclusionary. The law in its application to impotent men, and its criminalization of emasculation, inevitably links the two as the same. In ignoring the realities of biology and the natural physicality of impotency, it punishes persons for the same.

15. **THAT** the Hon’ble Supreme Court in the **NALSA judgment** has referred to this and held: *“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.”* Thus, the Act violates Article 15(1) of the Constitution and hence deserves to be held to be invalid.

16. **THAT** as held by this Hon'ble Court in the **NALSA judgment**, the right to freedom of speech and expression, includes in the context of transgender persons, their freedom to express their chosen gender identity through varied means, including clothing, words, action and conduct, and that the values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a). The Hon'ble Supreme Court in the **NALSA judgment** has held that Article 19(1)(a) of the Constitution which states that all citizens shall have the right to freedom of speech and expression shall include one's right to expression of his/her self-identified gender. The Court states that such self-identified gender may be expressed through dress, words, action or behavior or form. Further it held that no restriction can be placed on one's personal appearance or choice of dressing.

17. **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". The Court stated: "*Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A transgender's personality could be expressed by the transgender's behavior and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold that values of privacy,*

*self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights.*” It is submitted that in light of this, Section 2 and 5 which seeks to maintain constant vigilance on transgender persons, and Section 4 which curbs their freedom of speech and expression are wholly violative of Article 19(1)(a) of the Constitution.

18. **THAT** the Hon’ble Supreme Court in ***Maneka Gandhi v. Union of India*** [1978 AIR 597] while making note of the ambits of freedom of speech and expression under Article 19(1)(a) has stated that “*Similarly, the right to paint or sing or dance or to write poetry or literature is also covered by Article 19(1)(a), because the common basic characteristic in all these activities is freedom of speech and expression, or to put it differently, each of these activities is an exercise of freedom of speech and expression...What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right.*” In criminalizing the act of signing or dancing in public, as well as of being dress in female clothes or being ornamented in a public place, under Section 4 of the Act, the Act unfairly and unjustly infringes on the rights of transgender persons and their right to freedom of speech and expression. The Hon’ble Supreme Court has recognized the freedom of speech and expression to include several things. In ***Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*** [AIR 1952 SC 1236] the Court has ruled that the right to freedom of speech and expression includes the right to educate, to inform and to entertain and also the right to be educated, informed and educated. In seeking to curtail only the rights of transgender persons by penalizing any form of public

entertainment, the law discriminates against eunuchs and infringes upon their fundamental right to freedom of speech and expression.

19. **THAT** the Act is not in consonance with the current legal stand of the country. The Hon'ble Supreme Court stated in the **NALSA judgment** that “[g]ender identity refers to each person’s deeply internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms.” The Act in curtailing eunuchs from adorning female dresses and ornaments, and from singing, dancing or engaging in public entertainment seeks to discriminate against eunuchs without consideration of the directions issued by the Hon'ble Supreme Court on the matter.

20. **THAT** the Act violates Article 21 of the Constitution of India which guarantees to all persons the right to life and personal liberty. The Hon'ble Supreme Court in **Francis Coralie Mullin v. Administrator, Union Territory of Delhi** [(1981) 1 SCC 608] has held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”. Personal autonomy under Article 21 has been held to include the positive right of individuals to make decisions about their life, to express themselves, and to choose which activities to take part in, as well as the negative right of not being subjected to interference, in the case of **Anuj Garg v. Hotel Association of India** [(2008) 3 SCC 1]. It is submitted that acts described under Section 4, 5 and 7 of the Act are part and parcel of the right of an individual to personal autonomy and the penalization of the same is violative of Article 21 of the Constitution.

21. **THAT** the Hon'ble Supreme Court in ***Justice K. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*** 2017 SCC OnLine SC 996 has recognized the right to privacy as one of the facets of the right to life and dignity. The right to identity, personal autonomy and the right to be left alone, all form a part of this right to privacy that is infringed by implementation of the Act. In the ***NALSA judgment***, the Supreme Court of India held that Article 21 of the Constitution protects one's right to privacy. This has been recognized by the 9 judge Supreme Court bench in ***Justice K. Puttaswamy (Retd.)*** (supra) wherein the Hon'ble Supreme Court has held that the ***NALSA judgment*** indicated the rationale for grounding the right to privacy in the protection of gender identity in Article 15, and that the intersection between Article 15 and 21 "*locates a constitutional right to privacy as an expression of individual autonomy, dignity and identity.*" The Hon'ble Supreme Court has further critiqued the view taken up by the Division Bench of the Supreme Court in ***Suresh Kumar Koushal v. NAZ Foundation*** [(2014) 1 SCC 1] (hereinafter referred as ***Koushal judgment***) stating that the argument that only a miniscule fraction of the population are lesbians, gays, bisexuals or transgenders would not deny them the right to privacy. The Hon'ble Supreme Court states: "*The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular. The guarantee of constitutional rights does not depend upon their exercise being favorably regarded by majoritarian opinion.*" The Hon'ble Supreme Court has further recorded observations on the *de minimis* rationale espoused in ***Koushal judgment*** as regards prosecutions under Section 377 and held that "*The de minimis hypothesis is misplaced because the invasion of a fundamental right is not rendered tolerable when a few, as opposed to a large number of persons, are subjected to hostile treatment. The reason why such acts of hostile discrimination are constitutionally impermissible is because of the chilling effect which they*

*have on the exercise of the fundamental right in the first place...The chilling effect on the exercise of the right poses a grave danger to the unhindered fulfilment of one's sexual orientation, as an element of privacy and dignity. The chilling effect is due to the danger of a human being subjected to social opprobrium or disapproval, as reflected in the punishment of crime."* The impugned Act however permits interference with the private lives of transgender persons by attempting to also regulate their actions within their homes and as a result, the exercise of their personal autonomy and liberty, thereby violating Article 21 of the Constitution.

22. **THAT** the Hon'ble Supreme Court in ***Justice K. Puttaswamy (Retd.)*** (supra) has held that the right to privacy secures for every individual an autonomy over personal and intimate decisions. Such a right would therefore protect acts of cross dressing as acts done in furtherance of expressing the gender identity of an individual, a decision over which an individual enjoys autonomy free from state intrusion. The impugned Act, in allowing criminal prosecution of "eunuchs" under the provisions for such acts thus amounts to a violation of the constitutionally protected right to privacy as recognised by a 9 Judge Bench of the Hon'ble Supreme Court in ***Justice K. Puttaswamy (Retd.)*** (supra).

23. **THAT** the Section 7 of the Act which criminalizes consensual emasculation or the abetment of the same by any person is an outdated provision. Persons may seek to undergo surgical operations to align their body with their self-perceived gender. It is submitted that the decision to alter or modify one's body is intrinsic in an individual's fundamental right to life with dignity. It is submitted that the act of voluntary emasculation is not criminal under any law in force. While Section 320 of the Indian Penal Code, 1860 considers emasculation a form of grievous hurt, Section 88 of the Indian Penal Code, 1860 acts as an exception. Section 88 states: "*Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be*

*intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.*" Thus, the Indian Penal Code recognizes acts done in good faith based upon consent of an individual. In *State v. Bobby Kinner*, (Session Case No. 63/2014) the Delhi Addl. Sessions Judge, by order dated 20.12.2014 has held: "*The law as it stands, of now, is that Emasculation/Castration of a male by his own volition and consent is not an offence and it is only forcible Emasculation/Castration which is an offence.*" Section 7 of the Act however does not consider consent of an adult, and instead criminalises emasculation, regardless of consent.

24. **THAT** the principles highlighted in the ***NALSA judgment*** 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.
25. **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**. The Telangana Eunuchs Act is in complete violation of the recognition of fundamental rights as laid down in the **NALSA judgment** and is ultra vires Part III of the Constitution.

26. **THAT** the Telangana Eunuchs Act, 1329F is based on the Criminal Tribes Act, 1871, which was repealed in the year 1952. Further, the Hon’ble Supreme Court in the **NALSA judgment** refers to the Criminal Tribes Act, 1871 as a “draconian legislation” as it treated, per se, the entire community of Hijra persons as innately ‘criminals’, ‘addicted to the systematic commission of non-bailable offences’. Justice A. K. Sikri in his opinion, making note of the treatment of transgender community in the past, states: “*Attrition in their status was triggered with the passing of the Criminal Tribes Act, 1871 which deemed the entire community of Hijara persons as innately ‘criminal’ and ‘adapted to the systematic commission of non-bailable offences’.* This dogmatism and indoctrination

*of Indian people with aforesaid presumption, was totally capricious and nefarious. There could not have been more harm caused to this community with the passing of the aforesaid brutal Legislation during British Regime with this vicious and savage mind set.”*

27. **THAT** the Act is in firm opposition of several International Conventions to which India is a party or ratified member. The Universal Declaration of Human Rights under Article 1 and 3 states that all human beings are born free and equal in dignity and rights and that everyone has a right to life, liberty and security of person, respectively. The United Nations Resolution A/HRC/RES/32/2 adopted by the Human Rights Council on 30.06.2016 is for the protection against violence and discrimination based on sexual orientation and gender identity. In 2006, the Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity was adopted by meeting of human rights and international law experts. The Yogyakarta Principles lay down that all human beings, regardless of sexual orientation and gender identity, are entitled to the full enjoyment of their human rights. It terms discrimination on the basis of sexual orientation and gender identity to include, *“any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.”* The current Act is a clear case of discrimination against a group of individuals based upon their sex and gender identity. Further, the Yogyakarta Principles lays down that States should endeavor to amend all legislation, including criminal legislation, that is inconsistent with the universal enjoyment of human rights. The Telangana Eunuchs Act, 1329F is one such legislation still in force in the country, which must be struck down to ensure the universal enjoyment of human rights.

28. **THAT** the Hon'ble Supreme Court of India in ***Vishaka v. State of Rajasthan*** [(1997) 6 SCC 241] has held that, "Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee." The Hon'ble Supreme Court in a following judgment of ***Apparel Export Promotion Council v. A.K. Chopra*** [(1999) 1 SCC 759] observed that "international instruments cast an obligation to give due regard to international conventions and norms for construing domestic laws." Further, the Hon'ble Supreme Court in ***T.N. Godavarman Thirumalpad v. Union of India*** [(2002) 10 SCC 606] observed that it is necessary for the government to take into account the international obligations and act on it, unless there are 'compelling reasons' to depart from it. In light of the above, it is humbly submitted that the act of the Respondent in allowing the Act to remain in force is in disregard of these international conventions and obligations.

29. **THAT** the Hon'ble Supreme Court in ***NALSA*** (supra) has observed that *"But, certainly, if the Indian law is not in conflict with the International covenants, particularly pertaining to human rights, to which India is a party, the domestic court can apply those principles in the Indian conditions..Article 51 of the Directive Principles of State Policy, which falls under Part IV of the Indian Constitution, reads as under: "Art. 51. The State shall endeavour to – (a)promote international peace and security; (b) maintain just and honourable relations between nations; (c)Foster respect for international law and treaty obligation in the dealings of organised peoples with one another; and (d)Encourage settlement of international disputes by arbitration."* Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If the parliament has made any legislation which is in conflict with the international law, then Indian Courts are bound to give effect to the Indian Law, rather than the international law. However, in the absence of

*a contrary legislation, municipal courts in India would respect the rules of international law.”* **THAT** in light of the above facts, the Hon’ble Supreme Court directed the Central and State governments to take measures for ending discrimination against transgender persons, to provide social welfare schemes for their betterment and to set up a committee to look into the problems faced by the transgender community. It is submitted that if the judgment of the Hon’ble Supreme Court is to be given effect to, then the Telangana Eunuchs Act, 1329F cannot be upheld and ought to be struck down as it takes away the right to life, dignity, freedom of speech and expression, and equality of transgender persons and seeks to criminalize them.

30. **THAT** the impugned Act, owing to the arbitrary powers conferred on the Police, places members of transgender community in a vulnerable position with the possibility of increased instances of state authorized violence against them purely on the basis of mere suspicions. Therefore, it is just and necessary that the impugned Act must cease to be operative until its is formally repealed by the due legislative process pending disposal of this Writ Petition, in the interest of equity and justice.

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

**2) PARTICULARS OF THE PETITIONERS:**

2.1. The Petitioners are Transgender persons

2.2. The Petitioner No.1 is a transgender Rights activist who is based in Telangana. The Petitioner 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 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 also freelanced for the BBC

on gender issues. 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 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 deposed with the interparliamentary 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 – A**)

(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 – B**)

(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 – C**)

(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 – D)**

(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 – E)**

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

(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 – G)**

(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 – H)**

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

(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 – K)**

(True Copy of the letter titled “Recommendations on Rights of Transgender Persons Bill, 2015 released by the Ministry of Social Justice & Empowerment” from the Telangana Hijra Intersex Transgender Samiti along with other groups is annexed herein and marked as **ANNEXURE- L)**

- 2.3. The Petitioner No. 2 is a transgender rights activist based in Hyderabad. She has recently 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. The Petitioner No. 2 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-M**)

- 2.4. 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 successfully ran a postcard campaign along with other activists to stop the Transgender Person's (Protection of Rights) Bill 2016. 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, participating especially in the growing resistance against the Transgender Person's (Protection of Rights) Bill 2016.

(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-N**)

(A Copy of the Article titled "***Pushback against wrongs in Bill on Transgender Rights***" authored by the Petitioner and published on the online portal VARTA in December 2017 is annexed herein and marked as **ANNEXURE-P**)

**3. FACTS IN BRIEF:**

3.1. It is humbly submitted that the **Andhra Pradesh (Telangana Area) Eunuchs Act** was passed by the State government of Andhra Pradesh in the year 1329F or the year 1919 and has been in force since then.

(A copy of the Andhra Pradesh (Telangana Area) Eunuchs Act 1329F is annexed herein and is marked as **ANNEXURE – Q**)

i. After the recent formation of the State of Telangana, vide G.O.Ms. No. 46, LAW (F), a Notification dated 1.6.2016 was passed called the ***Telangana Adaptation of Laws (No.2) Order, 2016***. The Order states that all Acts/Regulations in the First Schedule of the Order which were in force in the Telangana area before the formation of the State of Telangana, shall, unless repealed or amended, have effect and continue to be in force in the State of Telangana. The above Act is listed under the First Schedule as an existing Act, currently in force. The Government Order has renamed the Act as The Telangana Eunuchs Act, 1329 F. While the Respondent State Government of Telangana repealed several old legislations and enactments in the Second Schedule of the Government Order, the Telangana Eunuchs Act has not been repealed and continues to be in force.

(A copy of the Notification dated 01.6.2016 bearing GO.Ms. No. 46, LAW (F) is annexed herein and marked as **ANNEXURE – R**)

ii. It is submitted that the Telangana Eunuchs Act is an outdated and discriminatory law that criminalizes the transgender community unfairly and without any legal basis. It uses the deeply stigmatizing term 'eunuchs' to target transgender persons, and requires the Government to maintain a register of "eunuchs" in the city of Hyderabad, with their names and residence addresses, based on a suspicion of kidnapping, emasculation or commission of unnatural offences or abetment of the above. It violates their freedom of speech and expression and takes away their right to privacy, family life and criminalizes an entire community of people without any reasonable basis. It seeks to punish

any form of cross-dressing or other acts that are key to the freedom of expression of one's gender identity, a right which has categorically been upheld by the Hon'ble Supreme Court in **NALSA** and further affirmed in the recent decision of the Hon'ble Supreme Court in **Justice K.S. Puttaswamy vs. Union of India** 2017 SCC OnLine SC 996 wherein the Court has recognised a fundamental right to privacy under the constitution which grants an individual autonomy over gender identity.

- iii. The term "transgender" is an umbrella term that encompasses various other terminologies and groups of persons who are referred to under different names. 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.

- iv. The Telangana Eunuchs Act does not recognize any of the above categories of transgender persons and instead defines the word 'eunuch' in Section 1-A of the Act to include: "***all persons of the male sex who admit to be impotent or who clearly appear to be impotent on medical inspection.***" In loosely defining the term 'eunuch', the above section grants liberty to the state to characterize all persons who fall beyond the heteronormative structure of 'masculinity' as 'eunuchs'. The transgender community is identifiably distinct from the rest of the society, making them vulnerable to repeated harassment through complaints under the Act. The definition isolates males who either (a) admit to be impotent or (b) appear to be impotent on medical inspection. This Section characterizes impotency in males as a trait worthy of criminal action and discrimination. Thus being impotent is treated as a prerequisite to be classified as a "eunuch" under the Act. By identifying and targeting persons based on impotency, the Act permits public officials to take action against any person who does not

appear to be 'traditionally male', in their characteristics, behavior, or gender identity. Thus any person may be arrested without warrant if they 'appear' to fall within the category of the term "eunuch".

- v. Section 2 of the Act requires the Government to maintain a register of the names and place of residence of all eunuchs residing in the City of Hyderabad, and who are "***reasonably suspected of kidnapping or emasculating boys, or of committing unnatural offences or abetting the commission of the said offences***". The Section reads as under:

***"The Government shall cause a register to be kept of the names and place of residence of all eunuchs residing in the City of Hyderabad or at any other place to which the Government may specially extend this Act and who are reasonably suspected of kidnapping or emasculating boys, or of committing unnatural offences or abetting the commission of the said offences; and it shall direct such register to be maintained by the officer appointed for this purpose, from time to time, and the Government shall, from time to time, make rules regarding the responsibility of preparing and maintaining it."***

- vi. Thus, the Act permits the officer appointed for the purpose of the Act to create a "register of eunuchs" and also indirectly implies that all transgender persons should be registered with the police. This section is *prima facie* discriminatory as it presumes that transgender persons are committing and/or abetting the offences of kidnapping and emasculating boys, as well as committing and/or abetting the commission of unnatural offences and that a separate register for maintaining them should be maintained. The section criminalises a group of persons on the basis of their gender identity without any legal

basis for such classification. It permits constant surveillance by public officials on all transgender persons and is violative of the right to privacy under Article 21 of the Constitution. Under the impugned Act, public officials are vested with absolute power powers to make arbitrary arrests, to detain and to harass transgender persons. It is submitted that in view of Section 2 of the Act, mere suspicion as opposed to proof beyond reasonable doubt, is sufficient for a transgender person to find his/her name in the register.

- vii. Section 3 of the Act permits any person aggrieved by the entry or entry that will be made in the register, to lodge a complaint regarding the same when the register is first made or subsequently. No opportunity to be heard is given to the person before being targeted. Section 3 of the Act states:

***“Any person aggrieved by any entry made or proposed to be made in the aforesaid register, may either at a time when the register is first made or subsequently lodge a complaint with the aforesaid officer, who shall either enter, remove or retain the name of such person in the register, as he thinks fit.***

***Every order for removal of the name of such person shall contain the grounds of the removal thereof.***

***The District Magistrate shall have power the review the order passed by such officer on such complaint either on appeal by the petitioner or otherwise.”***

No notice of the entry in the register is issued to the person to allow for a fair and reasonable opportunity to avail the provisions of Section 3. Further, the officer-in charge is not required to give any reasons or basis for recording the name and particulars of a person in the register. However, a removal of a person's name from the register under Section 3 requires the Officer to list the grounds of removal in every

order of removal. The said provisions are in contravention to the principles of natural justice.

viii. Section 4 of the Act impose a punishment on transgender persons if being found in a public place. It states:

***“4. Every registered eunuch found in female dress or ornamented in a street or a public place or in any other place with the intention of being seen from a street or public place or who dances or plays music or takes part in any public entertainment in a street or a public place may be arrested without warrant and shall be punished with Imprisonment for a term which may extend to two years or with fine or with both.”***

Such a section is arbitrary, unjust and discriminatory against the Transgender community. The term Transgender is an umbrella term describing a wide range of identities and experiences and this includes those who like to cross-dress in clothing of the opposite gender. It is submitted that choice of clothing and ornamentation are intrinsic choices of an individual, forming an essential part of an individual's right to personal liberty. Gender identity refers to a person's deeply felt internal and individual experience of gender, and this includes one's personal sense of the body, through expressions of gender such as clothing and mannerisms, which may not correspond to the sex assigned at birth. Choosing to dress in a particular manner is intrinsic to an individual's personal autonomy as well as their freedom of speech and expression. Further, the Section criminalizes their freedom of speech and expression guaranteed under Article 19(1)(a) through public singing, dancing and entertainment but remains silent on the rights of all other citizens to do or not do the same. By punishing behavior of wearing female clothes or being ornamented in public spaces, the Act seeks to curb the fundamental rights of the transgender

communities and seclude them from the society. As such forms of expression are deeply intrinsic and part of these individual, the Act punishes transgender persons for their most basic fundamental identity.

- ix. It is submitted that further discrimination is purported under Section 5 of the Act. Section 5 of the Act states:

***“Any registered eunuch who has with him or in his house under his control a boy of less than sixteen years of age shall be punished with imprisonment for a term which may extend to two years or with fine or with both.”***

It is submitted that this section is wholly unjust and arbitrary. It criminalizes any ‘eunuch’ for having with him in his company a boy below the age of sixteen and for having under his control at his house such a boy. The section is based on a presumption of wrongdoing and criminal intent on part of the “eunuch” who may be with the company of a boy child below the age of sixteen. The section completely discredits situations where such a boy child might be the transgender person’s brother, relative, friend etc. or where such minor boy may also be under the registered eunuch’s guardianship. The section also does not acknowledge that boys below the age of sixteen, who find themselves grappling between their born sex and their self-perceived gender identity are often mistreated and abused at their homes and societies. In such situations, such young boys often flee the violence they face at home and seek the care and shelter provided by Transgender communities.

- x. In the Report by People's' Union for Civil Liberties, Karnataka titled ***“Human Rights violations against the Transgender community- A study of kothi and hijra sex workers in Bangalore, India”*** the authors note that *hijras* and *kothis* are subject to constant surveillance

by the police force, which results in an intrusion into the private spaces of the home as well as a continuation of harassment on the streets. Thus, a home which should guarantee a private space with a sense of security becomes another method of intervention and intrusion. In punishing all transgender persons for having in their company or in their house a boy below the age of sixteen, the provision acts as a mandatory penalty clause with a blanket penalty on any or all reasons that may lead to such of the above situations. The provision is similar to Section 27 in the Criminal Tribes Act, 1871, where eunuchs were not allowed to keep boys below the age of sixteen under their control at their homes, or in their charge and could face criminal prosecution for doing so. In seeking to prevent the abuse or emasculation of boys below the age of sixteen, the Section instead punishes the transgender Community and the protection it offers to young persons who may be fleeing from abuse and violence in their own homes.

(A Copy of the Report titled “Human Rights violations against the Transgender community- A study of kothi and hijra sex workers in Bangalore, India” dated September 2003 is annexed herein and marked as **ANNEXURE – S**)

xi. Section 6 of the Act states:

***“The District Magistrate may direct that any such boy be delivered to his parents or guardian, if they can be delivered, and they are not eunuchs; if they cannot be delivered or they are eunuchs, the Magistrate may make such arrangements as he thinks necessary for the maintenance, education and training of such boy and may direct that the whole or any part of a fine inflicted under Section 5 may be applied for such arrangement. The Government may direct that out of any Local or Municipal Fund or other amount the cost of such arrangement as is not met by the fine shall be defrayed.”***

The Section lays a duty upon the District Magistrate to locate such boys under the age of sixteen found in the company of a registered “eunuch” or in his house under his control, and to “deliver” them to their parents or guardians. The section is based on the presumption that transgender persons cannot look after and take care of their children or minors under their guardianship, and that the State must intervene in such situations. It invalidates the parental or guardianship relation established by law and custom between the child and the guardian if the guardian is a transgender person and is wholly discriminative of the right to family. Sections 5 and 6 grant the Government a right to close surveillance of the lives of the transgender community.

- xii. Section 7 of the Act imposes a penalty for emasculation or for abetting it thereof. It states:

***“Any person who emasculates himself or any other person with or without his consent or abets in emasculation shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”***

The Section criminalizes the act of emasculation regardless of whether an adult seeks to undergo the same consensually. The Act is wholly outdated and does not concur with the current legal regime or Government of India’s stance on the rights of Transgender persons. Gender identity is an intrinsic and fundamental aspect of one’s life. Persons may be born with a sex they do not perceive as their gender identity. The conflict between one’s sex at birth and one’s perceived gender may lead to great psychological and mental health issues. The World Health Organization defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Grappling with such a conflict, individuals may

choose to alter and modify their bodies to acquire gender characteristics of the sex conforming to their perceived gender. Such a freely chosen modification of bodily appearance or functions by medical, surgical or other means is a right of every individual.

- xiii. It is submitted that the ***Report of the Expert Committee on Issues relating to Transgender Persons*** constituted by the Ministry of Social Justice and Empowerment, discusses access to healthcare and gender transition services in detail. The Report notes that the lack of national guidelines on such gender transition services leads to ambiguity regarding the law on the matter, which results in few unqualified medical practitioners conducting these surgeries, leading to grave health consequences in the future. The Report recommends that the Ministry of Health prepare a policy statement regarding provision of essential gender transition services, including Sex-reassignment surgeries (“**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 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. It is submitted that Sex Reassignment Surgery is an expensive process and many Hijras and Male-to-Female transsexuals opt for *nirvana*, i.e. emasculation surgery, or the surgical removal of penis and testicles, to align their body with their gender identity. This Section which seeks to criminalize such an act, without due consideration given to consent of the individual, is wholly violative of the individual’s personal autonomy and personal liberty guaranteed under Article 21 of the Constitution.

(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 – T**)

xiv. It is submitted that the Telangana Eunuchs Act, 1329F is almost identical to the Criminal Tribes Act, 1871 which was repealed in 1952. The Criminal Tribes Act, 1871 deemed the entire 'Hijra community' as innately criminal and provided for the registration, surveillance and control of certain criminal tribes as well as eunuchs. Part II of the Criminal Tribes Act, 1871 exclusively dealt with 'eunuchs', which it too defined as all males "***who admit themselves, or on medical inspection clearly appear, to be impotent.***" Section 24 of the Criminal Tribes Act, similar to Section 2 of the Telangana Eunuchs Act, mandated the maintenance of a register of the names and residences of all eunuchs residing within the jurisdiction of the Local Government, as well as their property, "***who are reasonably suspected of kidnapping or castrating children, or of committing offences under section three hundred and seventy-seven of the Indian Penal Code, or of abetting the commission of any of the said offences***". Section 25 of the Criminal Tribes Act is almost identical to Section 3 of the Act, in permitting persons aggrieved by entry in the register to complain regarding the same. Any erasure from the register is subject to the officer stating the grounds of erasure or removal of the name. Section 26 of the Criminal Tribes Act, 1871, similar to Section 4 of the Act, penalized transgender persons who appeared to be dressed or ornamented as women in public streets or places, or who danced or played music or took part in a public exhibition in a public street or place or for hire in a private house, to arrest without warrant with imprisonment up to two years or fine or both. Similar to the Telangana Eunuchs Act, if a registered eunuch kept a boy under 16 years of age under his charge or in his house, he could be imprisoned for up to two

years or with fine or both under Section 27 of the Criminal Tribes Act, 1871. Section 28 of the Criminal Tribes Act, 1871 is almost identical to Section 6 of the Telangana Eunuchs Act. The 2013-2014 India Exclusion Report details the history of the Criminal Tribes Act, 1871. The Report states that the roots of the violence faced by transgender persons can be traced to this Act, which is the source of the perception of *Hijras* today as thieves and criminals. The Report notes, “[*thus, every aspect of the eunuch’s existence was subject to surveillance, premised on the threat of criminal action, making the police an overt and overwhelming presence in their lives...The very concept of personhood of eunuchs was done away with through disempowering them from such basic rights.*” The Criminal Tribes Act, 1871 was repealed in 1952 as a result of the recommendations of the Ayyangar Committee and was replaced by the Habitual Offender’s Act, 1952.

(A copy of the Criminal Tribes Act 1871 dated 12.10.1871 is annexed herein and marked as **ANNEXURE – V**)

(A Copy of the relevant extracts of the India Exclusion Report dated 2013-2014 is annexed herein and marked as **ANNEXURE – W**)

- xv. It is submitted that a provision almost identical to Section 2 and 3 of the Act was inserted into the Karnataka Police Act, 1963 as Section 36A. Section 36A was amended and introduced into the Karnataka Police Act, 1963 by the Karnataka Act No. 26 of 2011 titled “***The Karnataka Repealing and Amending (Regional Laws) Act, 2009***”. This Act sought to repeal and amend several existing legislations based on the recommendations of the One Man Committee headed by Sri. K. R. Chamayya. The Statement of Objects and Reasons of the Act show that Section 36A was introduced based on the ***Hyderabad Eunuchs Act XVI 1329F*** which was in force in Gulbarga Area of Karnataka State. The Hyderabad Eunuchs Act XVI 1329F required the maintenance of a register of names and places of residence of all eunuchs in the State,

imposed restrictions on dresses to be worn by them, prohibited certain activities by them and specified penalties for offences under the Act. The Committee suggested that an amendment be made to the Police Act empowering the Police Commissioner to make orders for registration and control of eunuchs etc. instead of creating a new and separate law on the subject. Thus, the Hyderabad Eunuchs Act, which was a regional law in force in Gulbarga, was repealed under Schedule I and Section 36A of the Karnataka Police Act was introduced in the State of Karnataka. Section 36A of the Karnataka Police Act, 1963 is identical to the Telangana Eunuchs Act, 1329F in profiling transgender persons and giving power to the Commissioner to order for the preparation and maintenance of a register of their names and places of residence and presumes that they are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any offences or the abetment of such offences. Section 36A stated:

***“36A. The Commissioner of Police, may, in order to prevent or suppress or control undesirable activities of eunuchs, in the area under his charge, by notification in the official Gazette, make orders for,-***

- (a) preparation and maintenance of a register of the names and places of residence of all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences;***
- (b) filing objections by aggrieved eunuchs to the inclusion of his name in the register and for removal of his name from the register for reasons to be recorded in writing;***
- (c) prohibiting a registered eunuch from doing such activities as may be stated in the order;***
- (d) any other matter he may consider necessary.”***

xvi. This Section was challenged before the Hon'ble Karnataka High Court in Writ Petition No. 1397/2015. After this petition was filed, the Karnataka Government amended the Karnataka Police Act vide Karnataka Police (Amendment) Act, 2016 on 27.07.2016 and removed the word "eunuch" from Section 36A and replaced it with the word "persons." The petition was thereafter disposed vide order dated 06.02.2017.

(A True Copy of the Karnataka Repealing and Amending (Regional Laws) Act, 2009 dated 26.04.2011 is annexed herein and marked as

**ANNEXURE – X**)

(A copy of the order of the Karnataka High Court in W.P.No 1397/2015 passed on 06.02.2017 is marked and annexed herein as **ANNEXURE – Y**)

(A True Copy of the Karnataka Police (Amendment) Act, 2016 dated 27.07.2016 is annexed herein and marked as **ANNEXURE – Z**)

xvii. It is submitted that transgender persons are faced with prejudice and violence from all sections of society, particularly the police. The experiences of the transgender community facing violence at the hands of the police has been documented. In 2012, the United Nations published a report on the **Legal Recognition of Gender Identity of Transgender People in India**, which analyses the current situation of transgender persons in India and the potential methods for the legal recognition of their gender identity. In a study titled "Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion" published by the United Nations Development Programme, India, in the December Issue, 2010, it was observed that significant number of members within the Transgender Community suffered from depression, anxiety and suicidal tendencies as a consequence of societal stigma, lack of social support, violence related stress and sexually transmitted diseases. 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. This discrimination, exclusion and violence faced by community is further noted in the India Exclusion Report of 2013-2014.

(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 – AA**)

(A copy of the United Nations Development Programme, India report titled "*Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion*" dated 2010 is annexed herein and marked as **ANNEXURE – AB**)

xviii. The Central Government has in the recent years 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 report was submitted in 2014. The Report takes note of the plight of the Transgender community, and points towards measures needed to be taken by the Central and State Government to ameliorate the conditions of the Transgender persons.

xix. The Central Government has also proposed to enact a law catering to the rights of transgender persons. The Transgender Persons (Protection of Rights) Bill, (hereinafter referred to as "**The Transgender Bill, 2016**"), was introduced in the Lok Sabha on August 2nd, 2016 and is currently pending before the lower house of the Parliament. The Transgender Bill 2016 seeks to prohibit the discrimination of

transgender persons in educational institutions, employment and occupational opportunities, in the access/provision/enjoyment/use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to use of the general public or customarily available to the public, with regard to the right to reside/purchase/rent or occupy property, in the standing/holding of public office etc. However, the Bill falls short of addressing this question substantially as it does not define what is meant by the term discrimination. The Transgender Bill, 2016 seeks to recognize the identity of all Transgender persons based on their right to self-determine/perceive their gender identity. It also seeks to create an obligation on the Government to secure the full and effective participation of transgender persons, and to protect their rights and interests, as well as to formulate welfare schemes accessible to transgender persons in a non-stigmatizing and non-discriminatory manner. However, there has been considerable backlash from the Transgender Community against the Bill, for it suffers from lacunae and does not satisfactorily address the concerns of the Transgender Community in India. Further, the definition of the term Transgender fails to take into account all such persons who fall beyond the gender binary and do not identify with the gender assigned at birth and restricts itself to persons who are part male or female, or neither wholly male or female. This is contrary to the dictum of the decision in **NALSA** where the Hon'ble Supreme Court offered an expansive understanding of the umbrella term Transgender.

(A Copy of the Transgender Persons (Protection of Rights) Bill, 2016 is annexed herein and marked as **ANNEXURE – AC**)

xx. Despite these developments, the Telangana Eunuchs Act which criminalizes transgender persons continues to be in force and in operation and acts as an obstacle 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.

xxi. The Petitioner 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 following provisions of the Telangana Eunuchs Act, 1329 F:

- a. **Section 2:** *"The Government shall cause a register to be kept of the names and place of residence of all eunuchs residing in the City of Hyderabad or at any other place to which the Government may specially extend this Act and who are reasonably suspected of kidnapping or emasculating boys, or of committing unnatural offences or abetting the commission of the said offences; and it shall direct such register to be maintained by the officer appointed for this purpose, from time to time, and the Government shall, from time to time, make rules regarding the responsibility of preparing and maintaining it."*
- b. **Section 3:** *"Any person aggrieved by any entry made or proposed to be made in the aforesaid register, may either at a time when the register is first made or subsequently lodge a complaint with the aforesaid officer, who shall either enter, remove or retain the name of such person in the register, as he thinks fit.*

*Every order for removal of the name of such person shall contain the grounds of the removal thereof.*

*The District Magistrate shall have power to review the order passed by such officer on such complaint either on appeal by the petitioner or otherwise.”*

- c. **Section 4:** *“Every registered eunuch found in female dress or ornamented in a street or a public place or in any other place with the intention of being seen from a street or public place or who dances or plays music or takes part in any public entertainment in a street or a public place may be arrested without warrant and shall be punished with Imprisonment for a term which may extend to two years or with fine or with both.”*
- d. **Section 5:** *“Any registered eunuch who has with him or in his house under his control a boy of less than sixteen years of age shall be punished with imprisonment for a term which may extend to two years or with fine or with both.”*
- e. **Section 6:** *“The District Magistrate may direct that any such boy be delivered to his parents or guardian, if they can be delivered, and they are not eunuchs; if they cannot be delivered or they are eunuchs, the Magistrate may make such arrangements as he thinks necessary for the maintenance, education and training of such boy and may direct that the whole or any part of a fine inflicted under Section 5 may be applied for such arrangement. The Government may direct that out of any Local or Municipal Fund or other amount the cost of such arrangement as is not met by the fine shall be defrayed.”*
- f. **Section 7:** *“Any person who emasculates himself or any other person with or without his consent or abets in emasculation shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.”*

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

The Petitioner is a Transgender Rights activist who is based in Telangana. She 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 Telangana Eunuchs Act, 1329 F criminalizes the transgender community unfairly and without any legal basis. It uses the deeply stigmatizing term 'eunuchs' to target transgender persons, and requires the Government to maintain a register of "eunuchs" in the city of Hyderabad, with their names and residence addresses, based on a suspicion of kidnapping, emasculation or commission of unnatural offences or abetment of the above. It violates their freedom of speech and expression and takes away their right to privacy, family life and criminalizes an entire community of people without any reasonable basis. The Petitioner being a member of the Transgender community may be subject to such violation of rights and freedoms if the impugned Act is allowed to be in force and has therefore approached this Hon'ble Court to seek redressal of the grievances of not only the Petitioner, but the transgender community on the whole.

6) **DELAY IF ANY:**

It is submitted 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) **DOCUMENTS RELIED UPON ARE:**

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

1. Copy of the news article titled “US should borrow our NALSAR verdict” dated 10.11.2016, in New Indian Express, is annexed herein and is marked as **ANNEXURE – A**
2. 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 – B**
3. 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 – C**
4. 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 – D**
5. 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 – E**
6. A Copy of the press release titled “Telangana Hijra Intersex Transgender Samiti” dated 05.07.2015 is annexed herein and is marked as **ANNEXURE – F**
7. (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 – G**
8. 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 – H**
9. A Copy of the news article titled “Hijras blame govt. for murder” in Prime Post is annexed herein and marked as **ANNEXURE – J**
10. 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 – K**

11. True Copy of the letter titled "Recommendations on Rights of Transgender Persons Bill, 2015 released by the Ministry of Social Justice & Empowerment" from the Telangana Hijra Intersex Transgender Samiti along with other groups is annexed herein and marked as **ANNEXURE- L**
12. A Copy of the news item titled "***The way we are***" work published by the Week on 07.01.2018 is annexed herein and marked as **ANNEXURE-M**
13. A Copy of the Article titled "***We Refuse to be subjects of Experiment for Those Who Do Not Understand Us: Transgender Persons Bill***" published by EPW Engage on 08.12 2017 is annexed herein and marked as **ANNEXURE-N**.
14. A Copy of the Article titled "***Pushback Against wrongs in Bill on transgender rights***" published by VARTA in December, 2017 is annexed herein and marked as **ANNEXURE-P**
15. A Copy of the Andhra Pradesh (Telangana Area) Eunuchs Act 1329F is annexed herein and is marked as **ANNEXURE -Q**
16. Copy of the Notification dated 01.6.2016 bearing GO.Ms. No. 46, LAW (F) is annexed herein and marked as **ANNEXURE - R**
17. A Copy of the Report titled "Human Rights violations against the Transgender community- A study of kothi and hijra sex workers in Bangalore, India" dated September 2003 is annexed herein and marked as **ANNEXURE - S**
18. 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 - T**
19. A copy of the Criminal Tribes Act 1871 dated 12.10.1871 is annexed herein and marked as **ANNEXURE - V**
20. A Copy of the relevant extracts of the India Exclusion Report dated 2013-2014 is annexed herein and marked as **ANNEXURE - W**

21.A True Copy of the Karnataka Repealing and Amending (Regional Laws) Act, 2009 dated 26.04.2011 is annexed herein and marked as

**ANNEXURE – X**

A copy of the order of the Karnataka High Court in W.P. No 1397/2015 passed on 06.02.2017 is marked and annexed herein as **ANNEXURE –**

**Y**

22.A True Copy of the Karnataka Police (Amendment) Act, 2016 dated 27.07.2016 is annexed herein and marked as **ANNEXURE – Z**

23.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 – AA**

24.A copy of the United Nations Development Programme, India report titled “*Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion*” dated 2010 is annexed herein and marked as **ANNEXURE – AB**

25.A Copy of the Transgender Persons (Protection of Rights) Bill, 2016 is annexed herein and marked as **ANNEXURE – AC**

8) 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.

9) I further state that I have not filed any writ petition or instituted any civil proceedings questioning the action of the respondents.

**10) INTERIM PRAYER WPMP - (PIL):**

It is most respectfully prayed that pending final disposal of the above petition, this Hon’ble Court may be pleased to stay the operation of the Telangana Eunuchs Act, 1329 F, in the interest of justice and equity.

**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 issue a Writ Order or direction, more particularly one in the nature of Writ of Mandamus or any other writ or direction in the nature of the writ and declare the Telangana Eunuchs Act, 1329F as ultra vires Articles 14, 15, 19 and 21 of the Constitution of India, and declare the Telangana Eunuchs Act, 1329 F as wholly unconstitutional and invalid and 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 opposite party.

*Solemnly affirm and signed*

before me on this the      day

of                      , 2018.

DEPONENT

Before Me

Advocate / Hyderabad

**VERIFICATION STATEMENT**

I, 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, 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 February, 2018.

ADVOCATE

DEPONENT