Legal Definition of "Woman" and Transgender Women's Rights in Criminal Law

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Why in News?

While a constitutional challenge to the Transgender (Amendment) Act, 2026 remains pending before the Supreme Court, Indian High Courts have delivered conflicting rulings on a critical legal question.

What is the core legal debate?

- **The Constitutional Foundation (*NALSA v. Union of India*, 2014) -** The Supreme Court recognized gender identity as an integral part of dignity and personal autonomy under **Article 21**, affirming a person's right to self-identify their gender.
- **The Legislative Gap -** Although Parliament enacted the **Transgender Persons (Protection of Rights) Act, 2019**, it created only limited, piecemeal offences for abuse, coercion, and exploitation against transgender persons under Section 18, carrying a maximum punishment of just two years.
- It is far lighter than penalties for comparable offences against women under the BNS.
- **The Resulting Vacuum -** If a transgender woman is excluded from the definition of "woman" under penal laws, she faces a severe protection gap against serious sexual and domestic violence.

How different high courts have ruled?

High Court & Case	Context of Dispute	Judicial Reasoning
Bombay High Court (*Vishal Sunil Ingle*, 2026)	Outraging modesty under the BNS (complainant on hormonal therapy, dressing/identifying as a woman, without surgery)	**Inclusive:** Held that the charge can be sustained by a transgender person identifying as a woman; self-identification cannot be questioned at the discharge stage.
Bombay High Court (*Vithal Manik Khatri*, 2023)	Domestic Violence Act (transgender woman post-surgery in a heterosexual marriage)	**Inclusive:** Recognized her as an "aggrieved person," noting the law is not confined to rigid binary assumptions.
Andhra Pradesh High Court (*Vishwanathan Krishna Murthy*, 2025)	Cruelty provisions in marriage	**Inclusive:** Held that a transgender woman living in a heterosexual marriage can invoke statutory provisions on cruelty.

Allahabad High Court (*Mohd Saakir*, 2026) & **Himachal Pradesh HC**	False promise to marry (even where gender-affirming surgery was undergone)	**Exclusive:** Held that transgender women do not fall within the statutory definition of "woman" in penal law, treating transgender and cisgender women as separate legal categories.

What are the two legal categories?

- **When Legal Gender Conforms to Sex (Post-Gender-Affirming Surgery)**
- Under **Section 7(1)** and **Section 7(3)** of the 2019 Act (leaving aside narrowing amendments), a person who undergoes gender-affirming surgery can obtain updated identity documents reflecting their affirmed female gender, and the proviso to Section 7(3) preserves entitlements alongside statutory protections.
- Denying such a woman the protection of penal laws merely because her female characteristics were acquired medically rather than present at birth is irrational and arbitrary under Article 14.
- **When Gender Identity Does Not Conform to Sex Assigned at Birth (Non-Surgical / Intersex Variations)**
- Conditioning fundamental protection from violence on undergoing surgery undermines bodily autonomy and the right to self-perceived gender identity.
- Discrimination and gender-based violence against transgender women stem from their **identification with the feminine gender**, meaning biological characteristics alone should not decide whether criminal law protects a victim.
- Where the physical ingredients of an offence are satisfied, courts should read the class of victims broadly so protection is not denied solely due to sex assigned at birth.

What are the key challenges in ensuring equal legal protection?

- **Conflicting Judicial Precedents -** Divergent High Court rulings create legal uncertainty across states until a definitive Supreme Court ruling settles the law.
- **Weak Penal Deterrence Under the 2019 Act -** Capping punishments at two years under Section 18 of the Transgender Persons Act leaves a stark disparity compared to BNS provisions for rape, cruelty, and outraging modesty.
- **Narrowing Statutory Definitions -** Legislative changes that restrict recognition or tie rights strictly to medical/biological criteria risk rolling back the spirit of *NALSA*.

What is the way forward?

- Until Parliament enacts comprehensive reforms, courts should interpret protective and penal provisions inclusively—focusing on whether the ingredients of the offence occurred rather than disqualifying victims based on birth-assigned sex.
- Parliament should harmonize criminal laws—either by explicitly clarifying inclusion in existing offences or by enacting robust, proportionate penalties for sexual and gender-based violence against transgender persons.
- Ensure that access to justice, dignity, and legal recognition does not force individuals into mandatory medical or surgical procedures.

Reference

Indian Express | In crime and punishment, who is a ‘woman’?



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