

**HINA HANEEFA V. STATE OF KERALA: TOWARDS DECONSTRUCTING
GENDER BINARY AND PROMOTING SOCIAL ACCEPTANCE**

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“All human beings are born free and equal in dignity and rights.”¹

Over the years, the world has witnessed several groups of people struggle for recognition and realisation of their inherent rights. The events that led to the drafting of article 1 of the Universal Declaration of Human Rights (‘UDHR’) serve as a grim reminder of the blatant disregard for core principles of liberty, equality, and brotherhood during World War II. The discrimination and violence that are being meted out to some are based on the presumption of inequality by others.² One such case is that of individuals of gender nonconformity, who have been struggling for the legal recognition of their gender identity across the globe.

Traditionally, the human gender is classified into male and female based on sex organs. The individuals who do not conform to this traditional classification were often shunned, abandoned, and denied the enjoyment of their inherent rights. Instances of a wide range of violence and discrimination have been reported in various jurisdictions.³ Even though article 1 of UDHR is couched in unequivocal terms with no scope for differentiation in its application based on gender identity, the transphobic attitudes that are deeply embedded in our society, and the lack of adequate legal protection, pose challenges to the individuals of gender nonconformity in realising their rights. These assertions and societal expectations act as roadblocks in actualising the foundational core of article 1 of UDHR, *i.e.* unity amongst human beings across the globe. Ending such violence and discrimination meted out to individuals of gender nonconformity and subsequently ensuring their safe and fair inclusion into mainstream society are one of the most significant human rights challenges of this century.

In India, it was only in 2014, that the apex court in *National Legal Services Authority v. Union of India*⁴ (‘NALSA’) recognised the transgender as a third gender. In pursuance of this, the Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 (‘Transgender

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¹ The Universal Declaration of Human Rights, 1948, art. 1.

² Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* 38 (University of Pennsylvania, Philadelphia, 1999).

³ UN Human Rights Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, UN Doc A/HRC/29/23 (May 4, 2015). See UN Office of the High Commissioner for Human Rights, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (UN, New York and Geneva, 2019).

⁴ MANU/SC/0309/2014.

Act’). Despite being the law of the land, there are still certain inconsistencies and gaps in its implementation. For instance, this can be observed in *Hina Haneefa v. State of Kerala*⁵—the first case decided under the Transgender Act. The petitioner, a transwoman from the State of Kerala, expressed her desire to be in the National Cadet Corps (‘NCC’) Unit of Tiruvanathupuram University. She was denied an opportunity of being a part of the selection process on the ground that the National Cadet Corps Act, 1948 (‘NCC Act’) provides provision for enrolment of students of male and female gender only and not otherwise. Despite repeated representations and production of the certificates issued under sections 5 and 7(2) of the Transgender Act, the petitioner’s request was consistently rejected. The petitioner thus approached the High Court of Kerala, challenging the constitutional validity of section 6 of the NCC Act in marginalising, and thereby excluding, the transgender community from being a part of NCC.

The petitioner’s main argument was that the act of denial of enrolment, on the basis that the self-perceived gender does not match the gender assigned at birth, is violative of the rights guaranteed under articles 14, 19, and 21 of the Constitution of India. Further, the actions of the respondents were not in accordance with the objectives and obligations imposed by the Transgender Act. The apex court in *NALSA* touched upon how the Indian legislations are centred on confirming the binary notion of gender, based on sex assigned at birth, thereby excluding an entire community.⁶ In this context, section 6 of the NCC Act too is similar to the legislations that have incorporated the binary notion of gender. This setting of exclusion contributes to discrimination and leads to inequality of opportunity and access to resources otherwise available to other genders.

The respondents put forth the following two-fold arguments for denying the enrolment of the petitioner: (1) the NCC Act does not recognise the third gender, and (2) the absence of detailed guidelines for integrating the third gender in NCC (as NCC is gender-specific). These contentions of the respondents were turned down by the court, stating that they “*cannot be a justification for denying admission to the NCC unit.*”⁷ The single judge J. Anu Sivaraman, based on the certificate issued to the petitioner under the Transgender Act, went on to observe that “*I am of the opinion that the petitioner is entitled to enrolment in the NCC girls’ senior division*”⁸ Further, on the act of denying an opportunity for the enrolment for the petitioner,

⁵ MANU/KE/0691/2021.

⁶ *Supra* note 4 at para. 49.

⁷ *Supra* note 5 at para. 14.

⁸ *Id.*, at para 15.

the judge remarked it to be “*completely unsustainable*”⁹. The court further directed the respondents to amend the eligibility criteria for enrolment into the NCC in tune with the *NALSA* and Transgender Act. It is to be noted that NCC, which was once a male-only organisation, admitted girls after an amendment made in 1949. The court took a cue from this fact and ordered the NCC Act to be amended to include the transgender community and acknowledge the right to self-perceived gender identity. Further, it remarked that respondents “*cannot take recourse to the outdated provisions of a 1948 enactment to deal with the realities of life in the year 2021.*”¹⁰ The court ordered for the petitioner to be allowed to participate in the selection process and, if successful, to be enrolled in the University’s NCC unit.

The judgment is laudable for two reasons. First, it expresses the idea of NCC being open to all genders¹¹. NCC is the world’s largest youth organisation. It provides a platform for its members to mould their leadership qualities, personality, and overall outlook and also experience an array of recreational activities. It was primarily founded as an organisation to groom the cadets into prospective officers of armed service. But, over the years, in addition to its primary aim, it has committed itself to develop the comradeship, character, leadership qualities, and secular outlook of its cadets.¹² This has led to the creation of a pool of trained, organised, disciplined and motivated youth, committed to rendering selfless service to the nation when required.

Thus, the other aims of NCC transcend the foundational basis¹³ and focus on the overall development of an individual. By being able to apply for the NCC, the transgender community will have an opportunity to be a part of the NCC, and subsequently be able to experience all the mentioned benefits of being in the NCC, save the one option of aspiring to be a part of the Indian Armed Forces—as the Indian Armed Forces do not yet provide an entry to the

⁹ *Ibid.*

¹⁰ *Id.*, at para. 13.

¹¹ *Id.*, at para. 17.

¹² Aim of NCC, *available at*: <https://indiancc.nic.in/aim-of-ncc/> (last visited on June 9, 2021).

¹³ The Indo-Pak war of 1947 brought to the limelight the lacunae in University Officers Training Corps (UOTC) and the need for suitable candidates for armed forces. The primary concern was regarding the applicants lacking the officers-like qualities. The committee chaired by Shri H N Kunzru recommended the establishment of a national cadet organisation of school and college students. The committee proposed that through that organisation the training could be imparted at a young age, the age at which the cadets are highly impressionable. Despite this being the driving force behind abolishing UOTC and replacing with NCC, the aims “to create a human resource of organized, trained and motivated youth, to provide leadership in all walks of life and be always available for the service of nation” and “to develop character, comradeship, discipline, leadership, secular outlook, spirit of adventure and ideals of selfless service amongst the youth of the country” endeavours to instill values amongst the youth that surpasses the narrow requirement of just producing prospective officers.

transgender community¹⁴. This will lead to its individuals being moulded into valuable assets to the country.

Second, the judgment aids in the deconstruction of the gender binary and realise inclusive and equitable education for all. India's new National Education Policy, 2020 ('NEP') strives to ensure "equitable access to highest quality education regardless of social or economic background"¹⁵ by 2040. The NEP has scrapped the classification of curricular, co-curricular, and extra-curricular activities that were in practice.¹⁶ This has been done to allow the students to choose activities according to their interests, as a part of their academic pursuit and strive for excellence in the same. In furtherance of this policy, the University Grants Commission has moved a proposal to the Universities across India to consider NCC to be made as an elective subject under the choice-based credit system ('CBCS'). Around 91 Universities have adopted NCC as General Elective Credit under the CBCS.¹⁷ NCC as a credit course transforms NCC training into a curricular activity for which the students earn academic credits along with other benefits of the organisation.

In the first phase, the implementation is open to colleges or institutions which have an operational NCC unit. The NCC credit course offers institutional training with 24 credits spread over six semesters. The training schedule facilitates the active development of cadets with more emphasis on practical training at the institutional level (which will be further honed during the camps). With NCC now being included in the curricula, the Transgender community must also be allowed to enrol in NCC for a complete realisation of NEP's vision (NEP categorises the transgender community as a Socio-Economically Disadvantaged Group¹⁸). Further, NEP widens its scope beyond the cognitive capabilities by aiming at building the character of the learners. Sensitising the learners to normative concerns as a part of the education will aid in

¹⁴ Ministry of Home Affairs has in 2020 sought opinion and suggestions from the Central Armed Police Forces on enlisting the members of the transgender community to end the discrimination against them. This can be viewed as a sign of progressive development in eventually achieving transgender representation within the armed forces. "Transgender people in paramilitary forces: MHA seeks suggestions of authorities," *The Week*, July 2, 2020, available at: <https://www.theweek.in/news/india/2020/07/02/transgender-people-in-paramilitary-forces-mha-seeks-suggestions-of-authorities.html> (last visited on June 9, 2021). Jeethu Elza Cherian, "Transgender Officers in Armed Forces: The First Step is to remove fear of Stigmatization", *Outlook*, July 14, 2020.

¹⁵ Government of India, "National Education Policy 2020" (Ministry of Human Resource Development, 2020), Introduction.

¹⁶ *Ibid.*

¹⁷ "91 Universities adopt 'extra-curricular' NCC as elective course," *Hindustan Times*, June 6, 2021, available at: <https://www.hindustantimes.com/india-news/91-universities-adopt-extra-curricular-ncc-as-elective-course-101622966490033.html> (last visited on June 6, 2021).

¹⁸ *Supra* note 15 at chapter 6 para 6.2.

achieving an “equitable, inclusive, and plural society.”¹⁹ In those lines, the NCC syllabus provides opportunities for character building, leadership, team building, critical thinking, and problem-solving. In addition to exposing them to limited military training, the activities strengthen the cadet’s mind and body. Through the qualities and values imbibed over the course of the training, coupled with the academic knowledge, the cadets become both efficient professionals and responsible citizen-cum-leader. It is pertinent to note here that the NEP 2020 under Chapter 6 para 6.17 encourages the State Governments to raise NCC at school levels for “harnessing the natural talent” and “for honing the unique potential of Students.” This is a testament to how the NCC can act as a medium 1) in ensuring the availability of quality education for all and 2) in reducing the existing disparities in the society. Hence, section 6 of the NCC Act needs to be amended to reflect, in spirit, the changes made by *NALSA* and the Transgender Act. In this regard, the judgement can be viewed as an action towards the realisation of the vision of the NEP.

Even though the judgement is welcomed, the legal narrative surrounding the decision needs a closer analysis in its relation to the Supreme Court directions in *NALSA*. The court’s finding that the petitioner is entitled to be identified as a female gender by opining that “...petitioner has undergone sex reassignment surgery for aiding her self-perception as a member of the said gender would definitely be entitled to enrolment in the NCC unit...further as a member of the self-perceived gender, that is, the female gender,”²⁰ materially deviates from the *NALSA* directions. For an individual’s self-perceived gender identity to be legally recognised, the judgement, to that extent, mandates medical intervention. This is deemed as “immoral and illegal”²¹ as per the *NALSA* direction, which proscribed the insistence of the same.

The judgement could have been worded by saying that (1) the petitioner claims gender identity different from that of the gender assigned at birth, (2) in terms with *NALSA*, the petitioner accordingly has the right to self-identify as a man, female or third gender, (3) though the petitioner has undergone the sex reassignment surgery (‘SRS’), the same is not essential for the petitioner to realise her right of self-determination of gender, and (4) petitioner be identified as a member of the gender she declares. Also, the government cannot take advantage of their failure to make the necessary changes to accommodate the transgender community into the NCC, which is in violation of the *NALSA* directions.

¹⁹ *Id.*, Principles of the Policy.

²⁰ *Supra* note 5 at para 14.

²¹ *Supra* note 4 at para 129, directive no. 5.

As stated above, this decision is the first case where the judiciary encountered an opportunity to interpret the provisions of the Transgender Act. An interpretation of sections 5, 6 and 7 of the Transgender Act does reflect this dual right process, *i.e.* right to identify as a transgender person, and the right to self-perceived gender identity. Section 4 recognises an individual's right to be recognised as a transgender person, and upon such recognition, a further right to self-perceived gender identity. In pursuance of the same, the provisions of the act provide for a two-step process for realising legally the recognition of the self-perceived gender identity. Section 5, read with section 6, enables an individual to apply and get a certificate as proof of the gender as transgender.

This requirement of getting a transgender identity is the first step of the two-step process and is procedurally mandatory to proceed to the second step. The second step pertains to availing the self-perceived gender identity, *i.e.*, male or female, upon the fulfilment of certain conditions. These conditions mandate an individual to undergo reassignment surgery and produce a certificate issued by the medical superintendent or chief medical officer. Section 7 infringes an individual's personal autonomy by restricting the exercise of the right to self-determination. Thus, the provision violates the right to dignified life guaranteed under article 21, as gender identity is an essential facet of personal autonomy and self-determination. The apex court has previously spoken about the importance of personal autonomy and how self-expression forms an integral aspect of the same, which was reiterated in *NALSA*.

Further, in *NALSA*, the apex court ventured into the international human rights law to bring the Indian practice in consonance with the existing international standards. In pursuance, the apex court referred to the Yogyakarta Principles²², which are deemed to be the authoritative text for States with respect to their obligation to promote and protect the rights of persons with diverse sexual orientations and gender identities. Principle 3 of the Yogyakarta Principles prohibits forced medical procedures, including SRS, sterilisation and hormonal therapy, as a prerequisite for recognition of gender identity.²³ This principle has influenced and found its way into the Indian legal system through the *NALSA* directives. Though materially clear, the Transgender Act forces medical intervention for legal recognition of self-perceived gender. The

²² Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, 2007.

²³ See also Principle 32 of the Yogyakarta Principles Plus 10 – Additional principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, 2017. The principle furthers the right to autonomy and self-determination by stressing that no person shall be subjected to invasive or irreversible medical procedures without their free, prior and informed consent.

Transgender Act, being the law of the land, was instrumental in passing the judgment in the instant case. It raises questions on the constitutionality of the concerned provision.

Further, the contentions of the respondents mirror the deeply rooted traditional view of gender binary (there are only males and females and nothing beyond the same). This is largely reflected in the military history and rules around the world. The military's strict hierarchy and gender binary are replicated in NCC, as it has its allegiance to the Indian Armed Forces. The NCC Act provides for the following divisions: Senior Division ('SD')/Senior Wing ('SW') and Junior Division ('JD')/Junior Wing ('JW').²⁴ The enrolment to SD and JD are open to the students of male gender admitted to any University and school. Whereas the enrolment to SW and JW are open to the students of female gender admitted to any University and school.²⁵

Against this backdrop, the inclusion of the transgender community requires certain measures to be adopted to accommodate them safely alongside the cisgender. Section 2(k) of the Transgender Act provides a broader definition of the term 'transgender'. The term includes within it persons whose gender does not align with the gender assigned at birth, trans woman, trans man, intersex persons, genderqueer, *kinner*, *hijra*, *aravani* and *jogta*. Therefore, in the process of creating a safe space, the first step will be the understanding and usage of appropriate terminology. Also, general awareness of their varied experiences will help in demystifying the myth that they are a homogeneous category. Secondly, the use of pronouns in communication is very important. Amongst the stakeholders, the Associate NCC Officers (ANOs)/ Care Taking Officers (CTOs) are in constant and direct contact with the cadets. Sensitisation of ANOs/CTOs is of primacy to achieve the desired goal of integrating the transgender community and for ensuring a safe environment. They can, in turn, sensitise and ensure that other cadets, Officers from the NCC Battalion or Airforce or Naval units and PI Staffs honour the use of pronouns. Thirdly, the institutions which have raised NCC and the campsites should be proactive regarding the restrooms and dormitories for the transgender community. Creating gender-neutral facilities is essential for a positive environment. Fourthly, educating and spreading awareness about the transgender community to other cadets, their families, officers, and school/institution personnel is essential for realising their basic human rights. Training must also be provided on handling and responding to the negative behaviours or comments against transgender persons. Lastly, the NCC curriculum needs to be modified to reflect inclusivity. This will enhance the self-esteem of the transgender community and will facilitate

²⁴ The National Cadet Corps Act, 1948 (Act 31 of 1948), s. 5.

²⁵ *Id.*, s. 6.

the transformation of societal perceptions.²⁶ A new lesson titled 'Gender Issues and Sensitisation' could be inserted under the NCC common subjects' Social Awareness and Community Development module.

In continuation to the above discussion, in enlisting the students into the NCC, the chief concern that could be foreseen is with respect to the inclusion of transsexual persons²⁷, in particular, as it might undermine fairness that exists in the organisational setup. NCC training primarily comprises of institutional and camp training covering basic military training, sports and adventure training, and undertaking community development activities. Generally, in the institutional and camp training, the JW/SW and JD/SD are trained separately in small arms and drill. The cadets' performance is judged against their counterparts within his/her division/wing for selection to the national camps. Even in the enrollment to the NCC, a male candidate competes against other male candidates, and a female candidate competes against other female candidates.

In nutshell, NCC exposes the cadets to the regimental life as it exists in Indian Armed Forces. That said, at the same time, it is worth noting that section 2(k) of the Transgender Act also recognises the right to physical integrity by including transsexual persons, irrespective of whether they have undergone SRS and hormone therapy. This signifies that the term includes (1) man or woman, biologically fully-developed with the potency of sexual activity, who identify themselves as a transsexual, based on their gender identity, without undergoing the medical procedure, and (2) man or woman who undergoes a medical procedure to align their physiology with that of their gender affinity. With this in mind, it can be seen that the inclusion of transsexual persons into the NCC will lead to the creation of unacceptable and unfair circumstances. For instance, the inclusion of transsexual individuals who have not undergone SRS into their self-perceived gender may be viewed as unacceptable, unfair and will lead to

²⁶ The Department of Gender Studies, National Council of Educational Research and Training (NCERT) has published a training material for sensitising teachers and teacher educators by focusing on gender non-conforming and transgender children. It mandates creating a conducive learning environment and integrating them to avail the same equally. The training material suggests a modification to the curriculum as it can help in shaping the social perception of gender diversity. Further, the training material suggests emphasising the success stories of transgender persons, which shall motivate the transgender children and facilitate learners' active participation. Though NCERT has removed the training material from its website due to objections, the same can be looked into for its valuable strategies in creating a sensitive learning environment. *See* NCERT, "Training Material on Inclusion of Transgender Children in School Education: Concerns and Roadmap" (2020-21), p. no. 58-78.

²⁷ Transsexual persons refers to people whose gender identity is opposite to the assigned birth gender. In other words, transsexual is a term which includes people who are assigned male at birth or female at birth and feels that their sex organs does not reflect their gender.

undesirable consequences.²⁸ On the other hand, the inclusion of transexual individuals who have undergone SRS into their self-perceived gender may raise the question of equality and fairness. For instance, a trans woman might have a physical advantage in the female category due to her high testosterone level and former male physiology. On the other hand, a trans man would be at a disadvantage in the male category from a physical standpoint. Hence, the inclusion of the members of the transexual individuals into the NCC is not a straightforward task, and novel solutions are required to resolve these challenges.

Along similar lines, elite sports is one such field that practises gender classification (binary gender) to promote universalism and fairness. To draw inspiration, we can look at the way in which inclusivity has been addressed over the years in elite sports. The International Olympic Committee ('IOC') in 2003²⁹, framed guidelines and allowed the individuals who have undergone sex reassignment surgery to participate in the Olympics.³⁰ In 2015, the IOC further modified these guidelines to promote fairness in the female category to ensure that no transwoman derived any biological advantage (like bone or muscle density) due to their former male physiology.³¹ The new IOC Framework 2021³², further affirms the self-perceived gender by doing away with testosterone-based restrictions. In other words, the IOC has moved away from "the forced medical intervention", including invasive medical examination.³³ The 2021 framework is primarily based upon the fundamental human right to free choice. But at the same

²⁸ It is to note that under the Transgender Act a transexual who has not undergone SRS or hormone therapy is not legally recognized to belong to their self-perceived gender. In that case the transexual individuals are recognized as Transgender only.

²⁹ International Olympic Committee, "Statement of the Stockholm consensus on sex reassignment in sports" (October, 2003).

³⁰ *Ibid.* The Stockholm consensus 2003 allowed the individuals who have undergone sex reassignment to compete in male or female competitions subject to the following conditions: (1) Completed the surgical anatomical changes (including the external changes), (2) Undergone hormonal therapy for a sufficient time period to the extent of minimising the gender related advantages, and (3) Legal recognition of their self-determined gender by the appropriate authorities. The committee was of the consensus that an individual shall be eligible to compete not before two years after gonadectomy.

³¹ International Olympic Committee, "IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism" (November, 2015). The IOC realised that the legal recognition of the assigned gender by the appropriate authorities cannot be imposed as a condition for eligibility in light of the existence of certain jurisdictions which has not recognised the right to gender identity. Further, by acknowledging the overriding objective of ensuring fairness in sports and the growing understanding of human rights, the IOC committee removed the pre-condition of surgical anatomical changes. The 2015 guidelines allowed the individuals in transition from female to male to compete without any restrictions. Whereas, for individuals in transition from male to female, the guidelines had imposed the following conditions: (1) Declaration of gender identity as female (declaration cannot be changed for a minimum of four years), (2) Testosterone level in serum must have been 10nmol/L for a minimum of twelve months prior to the competition (this period can be extended in certain cases after evaluation for minimising the advantages in female category), and (3) To maintain the testosterone level below 10 nmol/L throughout the period to compete.

³² International Olympic Committee, "IOC Framework on Fairness, Inclusion and Non-Discrimination on the basis of Gender Identity and Sex Variations" (November, 2021).

³³ *Id.*, Principle 7.

time, it must be noted that the new framework has bestowed the responsibility to the individual International Sports Federation or organisation to determine the eligibility criteria for competing in male and female categories. The framework guides the sports federations that such eligibility criteria must promote inclusivity, practice non-discrimination and aim at avoiding “unfair and disproportionate competitive advantage”³⁴ within a category. Any eligibility criteria that are restrictive in nature are to be backed by existing scientific studies.³⁵ Though the framework is widely welcomed, there exist objections in terms that sports might lose its integrity and universal support.³⁶

The 2021 IOC Framework, requiring the sports federation to lay eligibility criteria, acknowledges the fact there cannot be one size that fits all standards. That being said, in NCC, there can be common but differentiated standards that could be practised in assessing the students/cadets. For example, during the selection process, faring well in the physical test is one of the important components for a student to get enrolled in NCC. If the female students are required to do 20 push-ups, for a transwoman, it can be 30 push-ups. Accordingly, on a case-to-case basis, depending on their potential, they could be enrolled in NCC. This approach shall aid in averting baseline disproportionate advantage to candidates belonging to the same category. It will also thrive towards balancing inclusivity, fairness, and integrity without forceful medical procedures or examinations.

Moving ahead, the Government of India should make appropriate changes to the Transgender Act that affirms the legal recognition of self-perceived gender without the requirement of a mandatory medical intervention as a prerequisite. Also, section 6 of the NCC Act should be amended to include the third gender by devising a detailed guideline to accommodate the transgender community into the NCC. Such guidelines must also attend to the aspects relating to the creation of a safe environment for inclusion.

NCC, with its unique blend of military hierarchy, operating in a civilian environment, can act as a forerunner in developing an inclusive society. The youth will be moulded to respect the plurality, diversity and practice togetherness in every walk of their life. As a result of this, the cadets, in future, would certainly be instrumental in creating safe places and in promoting an

³⁴ *Id.*, Principle 4.

³⁵ *Id.*, Principle 6.

³⁶ See Fabio Pigozzi, Xavier Bigard, et al.” Joint Position Statement of the International Federation of Sports Medicine (FIMS) and European Federation of Sports Medicine Associations (EFSMA) on the IOC Framework on Fairness, Inclusion and Non-discrimination based on Gender Identity and Sex Variations” 8 *BMJ Open Sport & Exercise Medicine* (2022).

inclusive environment for transgender individuals. The inclusion of transgender into the NCC can bring about a paradigm shift in Indian Armed Forces by disintegrating the gender binary and promoting social acceptance.

In short, *Hina Hanefaa v. State of Kerala* is an eye-opener for the policymakers to the unheard challenges in the principle of inclusion. Inclusion does not mean including the people in what already exists or creating a new space to include everyone who does not fit into what already exists. It is about creating a multifaceted space, covering everyone by respecting their differences and meeting their needs. This judgement is a move towards a progressive response in securing the unity of all.