



HOMeward BOUND: EVALUATION OF RIGHT TO SHELTER OF TRANSGENDER COMMUNITY WITH SPECIAL REFERENCE TO 'GARIMA GREH'

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ABSTRACT

For transgender community in India, the attachment to one's "home" has often been effaced. Stigma, exclusion from families, and barriers in education and employment have forced many into cycles of homelessness and precarity. Although landmark steps, such as *NALSA v. Union of India* (2014) and the Transgender Persons (Protection of Rights) Act, 2019, have recognised their rights in law, the lived reality still reflects a constant struggle for safety, dignity, and belonging. Shelter, therefore, is not just about a roof—it is about affirming identity, offering security, and opening pathways to a dignified life. This study focuses on Garima Greh, the government's flagship scheme designed to provide safe housing and support for transgender individuals. While the initiative embodies a welcome shift in state responsibility, its promise is diluted by bureaucratic delays, limited capacity, the restrictive one-year stay rule, and reports of discrimination even within the very spaces meant to heal. The paper argues that for shelter to be meaningful, it must go beyond temporary arrangements and instead nurture long-term empowerment. Strengthened funding, transparent oversight, and policies sensitive to the intersectional realities of transgender lives are essential. Ultimately, the right to shelter must be realised not as charity or token recognition, but as a guarantee of dignity, security, and the chance to truly feel "at home."

I. Introduction

In 2014, *NALSA v. Union of India*,¹ marked a progressive departure from the regressive stand on the rights of transgender community in India. It acknowledged the need to extend legal recognition beyond the gender binaries. However, this departure is also reflective of the evolving gender politics across the globe spanning more than a century.

Initial understanding of the 'self' within empirical traditions in science often confines it to biological essentialism, or, in other words, human anatomy as the manifestation of the self,

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¹ AIR 2014 SC 1863.

and therefore, it is disjointed from consciousness. Simultaneously, certain schools of thought, such as transcendentalism, viewed selfhood as the union of mind and body, encompassing the concept of apperception. Subsequently, following the observations by Simmel and Herbert, sociology and social psychology have evolved to focus on the way selfhood and identity unfold in the multitude of social situations. This conceptualization has evolved within a wide semantic field, where different dimensions of the self are emphasized in diverse ways, linking it to ideas of modernity, meaning, and difference.² Thereby, the semantic space has also accommodated the fluid and dynamic expressions of sexuality and gender. Such discourses have, among a catena of things, helped in understanding how sexuality and gender get marginalised in the social order. Wherein "marginalisation is understood as a process which³ inhibits a person, a group, a section or a community from enjoying rights, privileges, opportunities and resources at par with the ordinary citizen. It may therefore be considered an incongruous equation between those who marginalise and those who are being marginalised. Accordingly, the term "marginalised" may be used synonymously with "oppressed," as articulated by Paulo Freire in his "Pedagogy of the Oppressed," with "proletariat" in Karl Marx's writings, "subaltern" in Gramsci's framework, or with "powerless" as elaborated by Michel Foucault. It may also correspond to terms such as exploited, vulnerable, discriminated, disadvantaged, subjugated, socially excluded, alienated, or downtrodden, as employed in various strands of existing literature.

Among many intersections, gender is a key site where marginalisation is reinforced. Cis-women and queer gender folks find themselves at the receiving end of it. There are multiple factors, such as environment or triggers, which could determine the gender marginalisation. For instance, the absence of penal provisions in relation to sexual offences against men in many legal systems is oppressive and tends to marginalise cis masculine gender. Similarly, discriminatory prohibition in many countries against the participation of trans persons in different employment, educational or political avenues denotes the aspects of marginalisation. For instance, the Census 2011 noted that transgender population in India stands at 4.88 lakh.⁴ A significant population, and yet transgender persons face widespread discrimination. As evident in the low economic participation rate of only 38 per cent, according to a study

² Peter Wagner, "Self: History of the Concept" International Encyclopedia of the Social & Behavioral Sciences 13833 (2001).

³ Shalu Nigam, "From the Margins: Revisiting the Concept of 'Marginalized Women'" SSRN Electronic Journal (2014).

⁴ Office of the Registrar General India, 'Census of India 2011 - Provisional Population Totals' *available at*: <https://censusindia.gov.in/nada/index.php/catalog/42648> (last visited on Aug 28, 2025).

conducted a year prior.⁵ In fact, the National Human Rights Commission, a decade later, found that a staggering 96% of transgender individuals face discrimination in employment.⁶ Many are pushed into low-paying and exploitative work, such as sex work and begging, with 92% being denied job opportunities.⁷

The last census had also revealed that only 46% of the Transgender population, as compared to 76% of the general population, were literate.⁸ This marginalisation stems from the lack of inclusivity in educational institutions for gender-nonconforming children. The "other" gender category shows alarmingly high dropout rates and low academic performance, too.⁹ Bullying and discrimination against the community in schools is also rampant. A study revealed that within educational institutions transgender persons face bullying and discrimination wherein 15% held professors and 52% held peers to be responsible.¹⁰ A poor employment rate, inadequate education, and limited visibility are indicative of the backwardness.

However, this does not take away the fact that the past decade has seen a tremendous rise in the potential to respect, protect and promote the human rights of transgender persons, as will be discussed shortly. But despite the recent developments, the transgender population has continued to live in a state of utter neglect and discrimination from society. Their marginalisation divests them of any interests in policies of growth and development.

It is due to circumstances such as these and others that people of marginalised communities live under constant struggle. It has a corrosive impact on the overall human rights like right to equality, freedom, nutrition etc. Interlinked with other rights, the right to shelter is also of primary concern. To begin with human dignity and fulfilment are dependent primarily upon it, and a denial of shelter or accommodation means grave consequences. A proper shelter or house is crucial for ensuring a good healthy life, along with security against trespass, exercising privacy etc. Whereas, the absence of which exposes one to vulnerabilities.

⁵ UNDP, *Hijras/Transgender Women in India: HIV, Human Rights and Social Exclusion* (United Nations Development Programme 2010).

⁶ National Human Rights Commission (India), "Annual Report 2018-2019" (2019).

⁷ Nikita Begum Talukdar, "Workplace Inclusivity of Transgenders: A Critical Analysis of the Employment Laws of India" 8 *Rostrum's Law Review* (2024).

⁸ *Supra* note 4.

⁹ Leaving No One Behind: Transgender Inclusion in India's Sustainable Development *available at*: <https://www.orfonline.org/expert-speak/leaving-no-one-behind> (last visited on Aug 26, 2025).

¹⁰ *Supra* note 6.

While there is no official record as to the extent of homelessness among transgender population, the UN Special Rapporteur on Adequate Housing has observed that the lack of physical property does not solely define homelessness, but also by its social dimensions. It can stem from the absence of a "secure place to establish a family or social relationships" or result from systemic discrimination and social exclusion."¹¹ UNAIDS reports that in India, more than 90% of transgender persons are either compelled to leave or forcibly displaced from their homes before reaching the age of 15.¹² Consequently, many are compelled to live on the streets without access to financial resources or education, often relying on sex work for survival.¹³ Owing to multiple factors, LGBTQ (throughout the text interchangeably LGBT or LGBTQIA+ has also been used) persons in India are particularly vulnerable to homelessness. As documented, they are always at the fear of expulsion from their family homes due to conflict, violence, or threats of violence^{14,15} Again, this creates a cycle of systematic degradation, where the absence of safe housing and improper livelihood, combined with a lack of support from home, prevails. The transgender community has been often seen to resort to begging and survival sex¹⁶, which again makes them vulnerable to pimps, police and the public. Another study documented the case of a trans woman who would often commit minor offences to get incarcerated, as she found imprisonment as a temporary means to access shelter and safety. A better alternative than plying on the streets.¹⁷ The inevitable consequences related to homelessness among transgender population are explained further in the next section.

Consequences of Failure to Secure Shelter

Transgender persons often become the subject of violence in both the private and public spheres. A study noted that owing to the fear of violence at the hands of family, property right

¹¹ Leilani Farha, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context*, UN Doc. A/HRC/34/51, (2017), paras. 17(a) and 17(b).

¹² UNAIDS Launches Unbox Me to Advocate for the Rights of Transgender Children, *available at*: https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2022/march/20220330_unbox-me (last visited on Aug 28, 2025).

¹³ UN News Global Perspective Human Stories, "Pride Month: UN's Transgender Rights Campaign goes Global" June 23, 2023 *available at*: <https://news.un.org/en/story/2023/06/1138277> (last visited on June 11, 2025).

¹⁴ Nikita Begum Talukdar, "Workplace Inclusivity of Transgenders: A Critical Analysis of the Employment Laws of India" 8 *Rostrum's Law Review* (2024).

¹⁵ International Commission of Jurists, "Living with Dignity Sexual Orientation and Gender Identity based Human Rights Violations in Housing, Work, and Public Spaces in India" (2019).

¹⁶ Shanna Kattari and Stephanie Begun, "Survival sex. On the Margins of Marginalized: Transgender Homelessness and Survival Sex" 32(1) *Journal of Women and Social Work* 92 (2017).

¹⁷ Revisioning Shelter Homes in Meghalaya *available at*: <https://northeastnetwork.org/wp-content/uploads/2021/07/Revisioning-Shelter-Homes-in-Meghalaya-2019.pdf> (last visited on Aug 28, 2025).

owners, or landlords, a barrier has been created to prevent the redressal of their rights.¹⁸ In a study, participants reported numerous and repeated experiences of physical and psychological violence, including so-called "corrective therapies,"¹⁹ and involuntary registration to mental health institutions²⁰. Securing a private and safe space limits the probability of violence being at the hands of a family member. In the Indian context, LGBTQ individuals frequently face threats of violence and harassment from landlords and property owners, which significantly undermines their ability to access and fully enjoy adequate housing.²¹

In the absence of provisions, the transgender community frequently faces widespread discrimination while seeking rented accommodation. Rent owners often refuse to let houses to LGBTQ individuals based on their actual or perceived sexual orientation or gender identity. Such discriminatory practices contribute to the segregation of LGBTQ persons in housing.²² As a result, LGBTQ individuals are denied fundamental elements of the right to adequate housing, including proximity to workplaces, healthcare, and essential services; safe and liveable housing conditions; and access to infrastructure and facilities necessary to ensure health, security and comfort.

Lastly, an equal impact is visible upon the mental health of transgender persons as well, and the effect of exclusion cannot be underestimated: nearly two-thirds of LGBT youth experiencing homelessness struggle with mental health challenges, and research indicates they are more likely to report depression, bipolar disorder, and suicidal ideation or attempts.²³ They also face reduced access to healthcare and heightened vulnerability to alcohol and drug abuse.²⁴

Therefore, an analysis of the vulnerabilities mentioned above resulting from the inability to secure housing for the transgender community highlights that the availability and accessibility of shelter homes are essential aspects of both the right to housing and the right to

¹⁸ *Supra* note 14.

¹⁹ R. Jain, "Parents use 'corrective rape' to 'straight'en gays" *Times of India*, June 1, 2015, available at <https://timesofindia.indiatimes.com/life-style/relationships/parenting/Parents-use-corrective-rape-to-straighten-gays/articleshow/47489949.cms> (last visited on Aug 24, 2025).

²⁰ *Supra* note 14 at 38.

²¹ *Id* at 49.

²² *Id* at 8.

²³ Alex Abramovich, Nelson Pang, *et.al.*, "Investigating the Mental Health Outcomes among LGBTQ+ Youth Experiencing Homelessness in York Region, Ontario" 155 *Children and Youth Services Review* 107282 (2023).

²⁴ *Ibid.*

live with dignity. This is particularly crucial for LGBTQ individuals, who face a greater risk of violence and harassment in public spaces.²⁵

Another important factor to be kept in mind is that there are provisions for housing for transgender persons in the Pradhan Mantri Awas Yojana Urban,²⁶ a scheme or other similar regional mechanisms. However, the direct focus of such schemes is not rehabilitation, integration or empowerment. Thus, little is strived to streamline the issues related to homelessness of transgender populations.

Also, while there are specific state policies which are striving to work for the rights of transgender populations, they are limited to the specific region and do not have a uniform and universal application across the country. Furthermore, multiple private bodies and NGOs also shelter homes on an individual basis, but as they are not part of public policies, it isn't easy to monitor their efficiency.

Again, although regional policies are significant, the primary focus of this paper is on union policies, which are uniformly applicable and thus even the less willing states will have to implement them. To understand the nuances of obligations related to the State, the following section presents a brief overview of international laws and policymaking followed by domestic approach.

I. Regulatory Framework

International Obligations

To understand the institutional and organisational framework related to shelter homes, it is crucial to evaluate the right to shelter as it has evolved within the international human rights framework, as well as in domestic legal systems. The oldest mention of the right to shelter dates back to 1948, when the Universal Declaration of Human Rights, in art.25²⁷, mentioned the right to housing in connection with the right to an adequate standard of living. It also equated and intersected these rights with, among other things, health and community services, leaving open the scope for other 'lack of livelihood' issues that are beyond a person's control. Furthermore, in 1996, International Convention on Economic, Social and Cultural Rights²⁸ reaffirmed the right to housing by adding it alongside the State's obligation to ensure

²⁵ *Supra* note 14 at 60.

²⁶ Pradhan Mantri Awas Yojana Urban Housing for All Scheme Guidelines *available at*: <http://pmjandhanyojana.co.in/awas-yojana-housing-for-all-2022-scheme/> (last visited on Aug 21, 2025).

²⁷ Universal Declaration of Human Rights, 1948, art. 25.

²⁸ International Convention on Economic, Social and Cultural Rights, 1967.

the continuous improvement of living conditions, and in doing so, followed the principle of minimum core obligation and non-retrogression. Additionally, CRC²⁹ and ICERD³⁰ also provide for the right to housing. CEDAW, mentions right to housing in the non-discriminatory clauses.³¹ Although, International Convention on Civil and Political Rights does not directly mentions the right to housing or shelter but it makes noteworthy observation about the privacy of home and the that should not be intruded upon by unlawful attacks on one's honour and reputation.³² This acknowledges the essential component of right to shelter wherein in context of marginalised gender it can be interpreted to mean the obligation upon the state to safeguard the dignity of the person and space. Further, adequate housing has been read as the right to live with peace security and dignity.³³

It must be understood that the gender neutral terms that the mentioned provisions are clothed in imply that such rights are extended irrespective of any gender preferences. As it reflects clearly in the art.26³⁴ of the ICCPR which prohibits discrimination and extends equal protection to all. One of the grounds among which discrimination is forbidden is sex, which has been progressively interpreted as extending to transgender folx. Furthermore, art. 9³⁵ protects the right to liberty which includes LGBTQIA+ individuals. art. 12³⁶ of the International Convention on Economic, Social and Cultural Rights is also interpreted to recognise transgender people as a vulnerable group and thus requires extra measures to ensure the right to health.

Additionally, the Yogyakarta Principles of 2007 and 2017 have also helped in defining a series of rights and issues related to adequate housing. It becomes clear further from the fact that the UN Special Rapporteur on adequate housing explained the concerned right as: "The right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity."³⁷ The Istanbul Declaration and the Habitat

²⁹ Convention on the Rights of the Child, 1989, art. 27(3).

³⁰ International Convention on the Elimination of All Forms of Racial Discrimination, 1965, art. 5(e)(iii).

³¹ Convention on the Elimination of All Forms of Discrimination against Women, 1979, art. 14(2)(h).

³² International Covenant on Civil and Political Rights, 1966, arts. 12(1), 17(1).

³³ *Supra* note 14.

³⁴ *Supra* note 32, art. 26.

³⁵ *Supra* note 32, art. 9.

³⁶ *Supra* note 28, art. 12.

³⁷ UNHRC, Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this context by Leilani Farha', UN Doc. A/HRC/34/51/2017.

Agenda also emphasise that state governments must strive to ensure equal access to land for all, including women³⁸.

With the passage of time, the scope of the non-discriminatory provision has been expanded to include sexual and gender minorities as well. The progress is evident, starting from Human Rights Council Resolution 17/19 (2011), the UN has passed a series of resolutions. In 2023, the Office released a Technical Note aimed at States and relevant stakeholders, outlining UN recommendations concerning the rights of intersex individuals and highlighting effective implementation practices. Subsequently, in 2024, the Human Rights Council adopted a resolution focused on addressing discrimination, violence, and harmful practices targeting intersex people.³⁹ The resolution calls on the High Commissioner to submit a report and convene a panel discussion during the Council's sixtieth session. This discussion will explore discriminatory laws, policies, violent acts, and harmful practices affecting individuals with innate variations in sex characteristics across different regions. It will also examine underlying causes and highlight effective practices, particularly in promoting their right to the highest attainable standard of physical and mental health. From the discussion that has ensued so far about the indivisibility of human rights, it is easy to deduce that with wider acceptance of LGBTQIA+ rights, such as the right to protection against violence or the right to mental health, would naturally apply to, as was projected earlier, to the rights of housing or shelter as well.

Additionally, art.2(2)⁴⁰ read with art.11(1)⁴¹ of the International Covenant on Economic, Social and Cultural Rights, as interpreted by the Committee on Economic, Social and Cultural Rights in General Comment No. 20 (2009), para 14, underscores the obligation of States to prevent discrimination in the enjoyment of economic, social, and cultural rights. The Committee notes that discriminatory practices are commonly observed across various areas of social life, including within households, workplaces, and broader community structures. In particular, the private housing sector often becomes a site of exclusion, where private landlords, loan providers, and even public housing authorities may engage in practices—either overtly or subtly—that restrict access to housing or financial services based

³⁸ *Id* at 50.

³⁹ “Intersex People OHCHR and the Human Rights of LGBTI People” available at: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people#:~:text=And%20in%202023%2C%20the%20Office,harmful%20practices%20against%20intersex%20people.>

⁴⁰ *Supra* note 28, arts.2(2),11(1).

⁴¹ *Id.*, art.11.

on factors such as ethnicity, marital status, disability, or sexual orientation. Similarly, discrimination can manifest within families, for example, when girl children are denied educational opportunities. In light of such pervasive inequalities, States parties have a binding obligation to implement preventive and corrective measures, including enacting appropriate legislation, to ensure that both public and private actors uphold the principle of non-discrimination in all spheres of social and economic life.

Furthermore, the evolution and setting of Agenda 2030 also becomes relevant especially since it follows the principle of Leaving No One Behind and is ever inclusive in approach. So, Sustainable Development Goals in relation to eliminating multidimensional poverty (goal 1), making education inclusive and accessible (goal 4), gender equality (goal 5), inclusive economic growth (goal 8), reducing inequality and encouraging political participation (goal 10) or providing access to safe housing (goal 11) applies evenly to the trans persons when it takes an all-inclusive language.⁴²

Indian Regulatory Framework

Since the passing of the punitive Criminal Tribes Act of 1871⁴³, transgender community across different regions in the country faced protracted criminalisation and kept at the margin of development. The denotification of tribes post-Independence did little to ensure the upliftment or integration of community members into the mainstream. On the contrary, the continued enforcement of punitive laws such as Section 377⁴⁴ of the Indian Penal Code and the Beggary Acts contributed to the persistent violation of fundamental rights guaranteed by the Constitution, thereby exacerbating the marginalisation of transgender individuals. However, this was to change in the years to follow. To assess that it is pertinent that first constitutional provisions are examined.

Constitutional Provisions

While, initially constitution did not provide specific relief to transgender population in terms of shelter, its provisions can be and have been expanded to accord the rights due to the community. All the provisions in Part III and Part IV of the constitution related to fundamental rights and directive principles apply squarely on them. Furthermore, art. 21⁴⁵ of the Indian

⁴² United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res. 70/1, UN Doc. A/RES/70/1, (Sep. 25, 2015).

⁴³ Criminal Tribes Act of 1871 is Act No. 17 of 1871.

⁴⁴ The Indian Penal Code, 1860 Act No. 45 of 1860.

⁴⁵ The Constitution of India, art 21.

Constitution recognises the right to life, not very dissimilar from 'an adequate standard of living' mentioned earlier. This also encompasses the right to shelter, which again has to be read in conjunction with the right to freedom provisions given under art. 19⁴⁶, right to equality in art. 14⁴⁷, non-discrimination in art. 15.⁴⁸ These guarantees work as the foundation upon which policy, law and judicial decisions have emerged and been bolstered. In the forthcoming section, a dissection of law, judicial decisions and policies have been explained.

Legal Provisions

The first decades of evolution of rights of transgender population in India has been an amalgamation of judicial cases and statutes leading to foundational changes in the status of transgender individuals, when in 1994 voting rights were officially extended to the transgender community. During the same year, AIDS Bhedbhav Virodhi Andolan filed a petition questioning the constitutional validity of Section 377⁴⁹ of the Indian Penal Code, which criminalised and penalised homosexuality or associated gender expressions with it, but in vain. After the Suresh Kumar Koushal Case⁵⁰ reversed the Delhi High Court's ruling in the Naz Foundation Case⁵¹, an enduring ray of hope came for the transgender community with the passing of the NALSA v. Union of India⁵² in 2014, which recognised the rights of transgender persons and the subsequent Navtej Singh Johar v. Union of India⁵³ using right to privacy as the grounds to repeal Victorian baggage. This also led to the passage of the Transgender Act 2019⁵⁴ and the Rules 2020 which, among other things, also defined transgender persons as trans men, trans women, persons with intersex variations, gender-queer persons and persons with socio-cultural identities such as kinnar, hijra, aravani and jogta⁵⁵. In other words, transgender was held to be the gender which is different from cis-gender and is recognizable as the gender status. Furthermore, the judgments mentioned above, along with the act, led to a wave of reforms in the socio-legal and socio-political spheres, resulting in a series of decisions by different high courts and public policies aimed at inclusion and empowerment.

⁴⁶ *Id.* art. 19.

⁴⁷ *Id.*, art. 16.

⁴⁸ *Id.*, art. 15.

⁴⁹ *Supra* note 43, s. 377.

⁵⁰ *Suresh Kumar Koushal & Anr v. Naz Foundation & Ors* AIR 2014 SC 563.

⁵¹ *Naz Foundation v. Government Of Nct Of Delhi And Others* 2010 CRI. L. J. 94.

⁵² *Supra* note 1.

⁵³ AIR 2018 SC (CRI) 1169.

⁵⁴ The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2000).

⁵⁵ *Id.* s. 2(k).

Judicial Overview

Although the right to shelter has always been an inalienable human right, the Bombay High Court, in the *Olga Tellis* case⁵⁶, for the first time expressly stated that the pavement dwellers have a right to dwell on the pavements or in slums and such a right is part and parcel of the right to life enshrined under art.21⁵⁷. In *Shantisar Builders v. Narayan Khimalal Totame*⁵⁸, it was held that food, clothing, and shelter are the most basic needs of a person. Furthermore, it was held that a suitable environment and clean accommodation must be met when considering the essentials mentioned above. Again, in *State of Karnataka v. Narasimhamurthy*⁵⁹, the Court recognised the right to shelter as a fundamental right and implicit in the art.19(1). Further, in *P. G. Gupta v. State of Gujarat*⁶⁰, the right to shelter was read in conjunction with art. 19(1)(e) and art. 21 of the Indian Constitution and the guaranteed right to residence and settlement.

Finally, in *PUCL v. Union of India and Others*⁶¹, it was emphasised that shelter homes for the homeless should remain operational regularly, and priority accommodation should be given to disadvantaged groups. However, the Court does not exhaustively describe what nexus is required to be included in the said group, instead leaving it to cater to the progressive and dynamic needs of society.

As it is clear from the abovementioned cases that although the Court has acknowledged the right to shelter of the marginalised group in general, there has not been an instance where a specific mention was made to the transgender persons. However, observations made in *NALSA v. Union of India*⁶² leave no room for doubt that, in terms of even policy and planning, transgender people can be said to have been affirmatively included under marginalised groups. Thus, it prompts that observations made by the judiciary in terms of right to shelter as an entitlement and priority of the marginalised groups extend fairly to transgender population as well.

Evolution of Policies for Shelter Homes

⁵⁶ *Olga Tellis & Ors v. Bombay Municipal Corporation & Ors. Etc* 1986 AIR 180.

⁵⁷ *Supra* note 44, art.21.

⁵⁸ AIR 1990 SC 630.

⁵⁹ *State Of Karnataka & Ors v. Narasimhamurthy & Ors* 1996 AIR 90.

⁶⁰ *Shri PG Gupta v. State of Gujrat* 1995 SCC, SUPL. (2) 182 JT 1995 (2).

⁶¹ AIR 1997 SC 568.

⁶² *Supra* note 1.

Shelter homes for adults, based on gender, were first used in India in the context of women, wherein they, were used as the centres of transient but emergency crisis. The aim was to provide rescue homes for women engaged in sex work primarily. The role of the State was paternalistic. However, with the advent of the feminist revolution in the 1980s, space was also created to shift from welfare to empowerment and development, focusing heavily on a rights-based, entitlement-focused approach within the developmental landscape.

The first such initiative came in 1969, as the short-stay homes was introduced by the Department of Social Welfare were intended to offer temporary shelter, care, and rehabilitative support to women and girls displaced by family breakdown, crime, violence, psychological distress, social exclusion, or coercion into prostitution. This was followed by another scheme in 2001: the Swadhar-A Scheme for Women in Difficult Circumstances, under the Ministry of Women and Child Development.. The objective of the scheme was to, among other things, provide counselling, legal aid, vocational training, and other support. The object shifted somewhat towards empowerment. In 2015, the Ministry of Women and Child Development ultimately underlaunched provisions for Swadhar Greh. The aim was to empower the women in unfortunate circumstances (such as fleeing from domestic violence) along with girls and women arising out of marital conflicts, rapid urbanisation and industrialisation, migration, etc, by extending institutional support which promotes rehabilitative measures. The scheme mandates that Swadhar Grehs should provide residential facilities in a dignified manner. It initiated models where civil organisations and NGOs, etc, are engaged to provide a nurturing environment.

In 2007, the Ujjwala scheme was introduced by the Ministry of Women and Child Development to comprehensively provide for the shelter homes for the rescue, rehabilitation and reinitiation of the sex trafficking survivor. Additionally, it also provides for vocational training for skill development and empowerment. Presently, both Swadhar Grehs and Ujjwala schemes have been integrated under Shakti Sadan, serving the same purpose. Another initiative launched in 2015, known as One Stop Centre, provides facilities such as a 4-5 day stay, medical assistance, counselling, and legal aid to provide all in one place support to women affected by violence.

Since the recognition of rights of transgender persons in 2014 by the apex court, in 2017, a report by the United Nations Development Programme in collaboration with India's National AIDS Control Organisation highlighted the centrality of housing security as a key concern for transgender individuals, identifying it as the top priority among study participants.

Despite this, at the time, there were very few targeted programs—either at the central or State levels—that addressed this urgent need. It was only three years later, in response to this persistent gap, that the Government of India introduced a dedicated scheme aimed at not only addressing the housing needs of transgender persons but also at fostering a sustainable and empowering environment to support their social, economic, and psychological well-being.

II. SMILE with a Pinch of Salt

The Fifteenth Five-Year Plan (2019–2024) emphasises inclusiveness as essential to socio-economic development, highlighting group equality as a path forward. It advocates for the empowerment of the transgender community through coordinated efforts by Ministries to improve their access to education, healthcare, skill development, employment, financial support and also—housing. Further, s.8 of the 2019 Act states that the State should adopt all measures to rescue, protect and rehabilitate the transgender community.⁶³ Recognising such obligations, the Ministry launched the SMILE scheme—Support for Marginalised Individuals for Livelihood and Enterprise. Under a sub-scheme Garima Greh, as part of its pilot phase, 12 shelter homes were established across nine states, including Delhi, West Bengal, Maharashtra, Gujarat, Chhattisgarh, Tamil Nadu, Odisha, Bihar, and Rajasthan.⁶⁴ Manipur was also included in this list, but owing to policy constraints following the pandemic, the state government had returned the funds.⁶⁵

Garima Greh is designed to provide transgender individuals with necessities, including shelter, food, medical care, and recreational services, while also supporting their personal and professional development through capacity-building initiatives. It seeks to ensure the availability of proper lodging, boarding, clothing, medical and counselling services, and recreational opportunities. The scheme also focuses on maintaining consistency across shelter homes in terms of infrastructure, personnel, and services. In addition, it aims to protect the rights of transgender persons and safeguard them against violence and discrimination by engaging legal aid as well. By adopting uniform rules and ensuring a welcoming environment, Garima Greh aims to create a safe and inclusive space for all residents. Empowerment through skill development and upskilling remains a central goal of the program.

⁶³ *Supra* note 53, s.8.

⁶⁴ Garima Greh for Transgenders, Press Information Bureau *available at*: <https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1776457> (last visited on Aug. 21, 2025)

⁶⁵ *Ibid.*

The Garima Grehs are a collaboration between the State and the central government to assist the transgender community in the empowerment measures and also ensure basic amenities are given to them for leading a dignified life with their accepted gender identity.

Since, its launch presently, Garima Grehs have been established across various states and Union Territories in India. Maharashtra has the highest number with three shelter homes, followed by West Bengal with 2. The remaining states and UTs—Delhi, Odisha, Tamil Nadu, Bihar, Chhattisgarh, Gujarat, Rajasthan, Andhra Pradesh, Assam, Karnataka, Punjab, Madhya Pradesh, and Uttar Pradesh—each have 1 Garima Greh.

To be admitted into a Garima Greh, an individual must first register on the National Portal for Transgenders and possess a valid Transgender Identity Card. The Primary Monitoring Committee oversees this registration process. Beyond these initial requirements, no additional formal legal documentation is needed, making the admission process relatively accessible. However, several significant challenges remain, which will be discussed later.

The official scheme guidelines outline a comprehensive budget and strategic framework designed not merely to provide shelter but to offer holistic support and care for transgender individuals in distress. The financial provisions include both one-time and recurring grants to ensure the effective functioning of each shelter. A one-time grant of ₹502,500 (approximately \$6,019) is allocated to each selected Non-Governmental Organisation (NGO) to procure essential items, including furniture, beds, and kitchenware, for a 25-bed facility. In addition, an annual recurring grant of ₹3,144,000 is provided to cover operational expenses, including rent, utilities, and staff salaries.

Funds are disbursed in phases: 40% initially, another 40% after six months, and the remaining 20% at the end of the financial year. The administration and monitoring of the shelters are entrusted to a five-member Project Management Committee, comprising two representatives from the implementing NGOs or Community-Based Organisations and three independent members, such as the District Magistrate of the area where the shelter is located.

Every year, NGOs working prominently for queer rights are invited, through an 'Expression of Interest', to apply to run Garima Greh-Shelter home for transgender persons under support for marginalised individuals and livelihood enterprise.

A study conducted at one of the Garima Greh shelter homes in Rajasthan highlighted the scheme's significant role in safeguarding and promoting the rights of transgender

individuals. All participants (100%)⁶⁶ reported feeling comfortable with the facilities provided. Currently, 40%⁶⁷ of respondents are earning a livelihood, while 80% expressed the intention to seek employment after completing their stay. Notably, 20% of the residents cited lack of shelter and necessities as the primary reason for residing in the shelter. Additionally, 95%⁶⁸ of the respondents found the skill development training offered at the home to be beneficial. However, the same study drew certain damaging revelations, which will be discussed in a later section. Further, in a recent judgment, the Madras High Court, while acknowledging the positive model of these Shelter Homes, directed the Union Government to extend the Garima Greh scheme to encompass the entire LGBTQIA+ community, rather than limiting it solely to transgender persons.⁶⁹ This indicates that transgender homes are still falling behind in the area of queer inclusivity. Such issues and others related to formulation and implementation will be examined in the subsequent section.

III. Dark Clouds over the Rainbow: A Critical Analysis of the Scheme

While the past decade witnessed a surge in policy and legal reforms, along with increased judicial oversight, the progress concerning the LGBTQIA+ community has been uneven—even within the community itself. Moreover, as Mendoza asserts, the rights of transgender individuals have been further eroded by the impacts of the recent pandemic.⁷⁰

A 2017 report by the United Nations Development Programme and India's National AIDS Control Organisation emphasised that housing security was identified as the top priority by transgender individuals who participated in the study. However, despite this clearly articulated need, there were very few programs at either the central or state levels at that time addressing this concern.⁷¹ This comes against the backdrop of findings that indicate sexual and

⁶⁶ Swati Sharda and Marisport Anaikkutti, 'Homelessness, Poverty and Transgender Persons: Qualitative Evidence from the Garima Greh of Rajasthan under the SMILE Scheme, India.' 16 *Krytka Prawa* 1080 (2023).

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Sebin James, "Transgenders Only a Fraction of LGBTQIA+": Madras HC Directs Extension of Shelter Home Scheme to All, Requests Media to Follow Draft Glossary for the Community" *Live Law*, Dec. 27, 2021 available at: <https://www.livelaw.in/top-stories/madras-high-court-garima-greh-scheme-for-entire-lgbtqia-transgenders-media-press-draft-glossary-for-addressing-community-188446> (last visited on Aug 23, 2025).

⁷⁰ Clarence Mendoza, "Evicted from Homes, Transgender Community Fights for Survival amid Coronavirus Lockdown" *CNBC TV 18*, April 20, 2020 available at: <https://www.cnbctv18.com/healthcare/evicted-from-homes-transgender-community-fight-for-survival-amid-coronavirus-lockdown-5723661.htm> (last visited on Aug. 29, 2025)

⁷¹ UNDP, *Uptake of Social Protection by Transgenders*, (UNDP India, 13 February 2017). Jutta Brunnee, "Enforcement Mechanisms in International Law and International Environmental Law", in Ulrich Beyerlin, Peter-Tobias Stoll, et.al. (eds.), *Ensuring Compliance with Multilateral Environmental Agreements: A dialogue between practitioners and academia 1-24* (Martinus Nijhoff Publishers, 2006).

gender minorities are two to four times more susceptible to violence due to exclusion from housing access, economic marginalisation, and heightened physical and behavioural health vulnerabilities.⁷²

Additionally, other visible intersections within the transgender community face heightened risks of exploitation. For instance, transgender persons with disabilities—and among them, acid attack survivors—encounter even greater challenges in securing safe and adequate accommodation.

The Garima Greh subscheme was initiated to offer a ray of hope to the transgender community, with the government committing Rs 365 crore for a period of five years. However, the allocated funds, intended to be released in a 40-40-20 split, have not been fully distributed, as the final 20% instalment remains unpaid.⁷³ To complicate things further, the Garima Greh guidelines contain significant gaps, including the absence of provisions for essential amenities such as electricity. It is further worsened by the fact that there is a one-year cap on the stay of residents, which seems awfully short, actually, to empower them sustainably.

Though limited in number, Garima Greh has, since its inception, provided an alternative and affirming space for transgender individuals to live, grow, and thrive with dignity. However, there remains a significant lack of transparency regarding its accessibility, implementation, and the lived experiences of its residents. Information about the scheme seldom enters the public domain except through independent research and media reports. This opacity raises critical concerns about the efficacy and accountability of measures undertaken through public funding.

Representatives from the 12 Garima Greh shelters informed CNN that they are barely operational due to significant delays in receiving the funds promised by the government, amounting to millions of rupees (tens of thousands of dollars). As of the 2021–2022 financial year, these shelters had received less than 20% of their initial funding allocation. Although the government denied, in a parliamentary response, that any Garima Greh shelters had ceased operations, reports suggest that, due to the non-disbursement of funds, the NGO Gokhale Road Bandhan was allegedly forced to shut down its shelter in Kolkata.⁷⁴

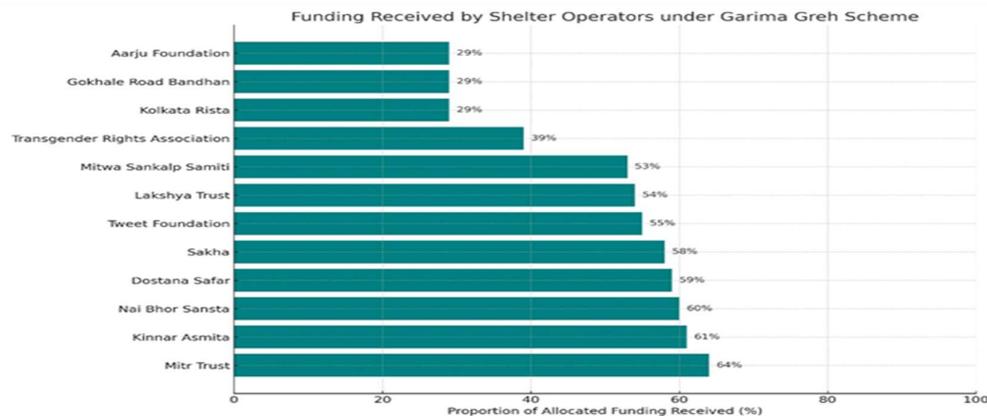
⁷² M.V.L. Badgett, S.K. Choi, *et.al.*, “LGBT Poverty in the United States” in J.A. Reich (ed.), *The State of Families 385–387* (Routledge Books, 2021).

⁷³ Riddhi Dastidar, “Backed by Modi’s government, NGOs Set Up Shelters for Trans People in India. Then, the NGOs say, the Government Left Them Hanging for Funds” *CNN available at*: <https://edition.cnn.com/interactive/asequals/trans-shelters-india-government-funding-as-equals-intl-cmd/#:~:text=Inside%20a%20trans%20shelter%20in,to%20send%20but%20> (last visited on Aug 28, 2025)

⁷⁴ *Ibid.*

Furthermore, the current research indicates that shelter home facilities are experiencing significant delays in the disbursement of funds, to the point that some of the Garima Grehs are reducing the number of occupants as much as 20%.⁷⁵

The graph below represents the amount of funding received by each NGO⁷⁶ so far.



As is visible, there have been serious lapses in the disbursement of funds to the point that the Aarju Foundation has received only 29% of the funding so far. Further, despite its initial irregularity in the disbursement of funds, the government has been releasing 'expression of interest' demanding applications for the shelter homes. This prompts a research inquiry into the status of Garima Grehs.

In response to a legislative query, it was revealed that a total of 654 transgender individuals have benefited from the Garima Greh projects.⁷⁷ The government also stated its intention to establish additional Garima Grehs following the guidelines, emphasising that this will be an ongoing effort. Therefore, with the expected proliferation, it is more pertinent than ever that information regarding their efficacy should be accessible for organisational and academic research purposes.

Garima Greh with all the scope for empowerment offers only a limited stay of one year which does not seem reasonable enough as upskilling or reintegration can take time. In a study,

⁷⁵ *Supra* note 66.

⁷⁶ Bhaswati Sengupta, "Garima Grehs Crippling: Government Stops Funding for Trans Shelter Homes" *The Probe* July 28, 2023 available at: <https://theprobe.in/stories/garima-grehs-crippling-government-stops-funding-for-trans-shelter-homes/> (last visited on Aug 12, 2025)

⁷⁷ Garima Greh Scheme For Benefit Of Transgender Persons available at: <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1896997#:~:text=Department%20has%20setup%2012%20Garima,Garima%20Grehs%20as%20per%20guidelines.>

it has also been noted that the scheme lacks regular government oversight. In addition to inconsistencies in funding, there is a lack of systematic reviews or stock-taking measures. This negligence puts the lives of Garima Greh residents at risk, particularly those undergoing hormonal therapy, who are more vulnerable to medical neglect.⁷⁸

Additionally, it has been found in a report that, even inside Garima Greh, there have been instances of sexual violence, police brutality or discrimination. In some cases, the parents of transgender persons have been allowed to enter the premises and forcibly take their child away.⁷⁹

Upon their visit, the National Human Rights Commission has also observed that many Garima Greh shelters lack adequate resources to facilitate the effective rehabilitation of transgender persons.⁸⁰ There have been persistent delays in the disbursement of funds, and even when released, the amounts are often insufficient—particularly for shelters operating in large metropolitan cities. In the absence of timely and adequate financial support, community-based organisations are usually left to manage expenses independently.

Lastly, for stock-taking measures earlier, a WhatsApp group was also formed, however, currently there has been a lack of responsiveness in the designated WhatsApp group created for coordination, as well as there has been an abrupt discontinuation of routine Zoom meetings previously held between state authorities and the NGOs involved in implementing the scheme.⁸¹

IV. Conclusion: Challenges and Responses

In its 31st session, the United Nations Human Rights Council emphasised that "discrimination is both a cause and a consequence of homelessness."⁸² The report identified gender as a key axis along which rights are reinforced or denied, further noting that homelessness compounds other forms of vulnerability and discrimination. Transgender individuals are disproportionately represented among the homeless population and face heightened risks of violence. In the Indian context, transgender persons are often rejected from

⁷⁸ *Supra* note 76.

⁷⁹ Prarthana Chaudhary, "One Step Forward, Two Steps Back: Temporary Housing For Trans People and the Garima Greh Crisis" *Gaysi* Jun 4, 2024 available at: <https://gaysifamily.com/lifestyle/one-step-forward-two-steps-back-temporary-housing-for-trans-people-and-the-garima-greh-crisis/> (last visited on Aug. 26, 2025).

⁸⁰ *Supra* note 6.

⁸¹ *Supra* note 76.

⁸² UN Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*. A/HRC/21/54 (Dec. 30, 2015).

admission into gender-neutral shelter homes, which diminishes their scope of survival. In response, the Special Rapporteur on Adequate Housing recommended collecting gender-disaggregated data and promoting allied research to understand better and address these issues. As a member of the Human Rights Council, India bears a heightened responsibility to implement the observations and recommendations made by the Special Rapporteur on the situation of human rights in the country. The National Human Rights Commission has also reminded the government of its obligation to ensure the timely disbursement of funds to initiatives like Garima Greh.⁸³

Further, there has been a call for input by the OHCHR, prompting research interventions related to the situation of the LGBTQIA+ community when it comes to protection against violence and discrimination based on sexual orientation and gender identity in relation to forced displacement⁸⁴. As is clear by now, reports on discrimination against community members would encompass discrimination related to shelter, as well as the issues of violence and discrimination connected with such shelters. However, there has been a lack of enthusiasm, if not absence, in the organisational and academic research in this sphere.

Nonetheless, the progress towards securing a nurturing environment which reinforces the right to shelter of the transgender community in India has been steady, even if slow. Garima Greh, despite the multiple challenges, has been a 'safe and secure' option for shelter for many, as evident from the satisfactory remarks of 100% of the respondents.⁸⁵ It has also been shown above that the same study and others have pointed out glaring shortcomings that have the potential to undermine what these homes represent and protect. Therefore, a structure of resilience and sensitivity needs to be established and sustained, which ensures regular funding allocation, stock-taking, revised policy planning, and a determination that translates into action.

⁸³ "NHRC issues an Advisory to ensure welfare of Transgender Persons", *Press Release National Human Rights Commission*, Sep. 26, 2023 available at: <https://nhrc.nic.in/media/press-release/nhrc-issues-advisory-ensure-welfare-transgender-persons> (last visited on Aug 12, 2025).

⁸⁴ UN Human Rights Council, Call for Input: Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity in relation to Forced Displacement by Independent Expert on Sexual Orientation and Gender Identity UN General Assembly, Report of the Economic and Social Council for 2005, UN GAOR, UN Doc A/60/3/Rev.1 (July 2, 2005).

⁸⁵ *Supra* note 65.