

Budget Brief:

Assessing Allocations for Transgender Persons

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History owes an apology to the members of the transgender community and their families for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries.

- Justice Indu Malhotra, 2018 (member, five-judge constitution bench that held Section 377 unconstitutional)



The public discourse on gender has evolved over time. Today there is increasing acceptance for understanding gender as a spectrum that includes multiple gender identities and sexual orientations, including Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and others (LGBTQIA+). For very long, gender was viewed in binary terms i.e., men and women. This binary framework formed the basis of societal morality and the hegemonic narratives that define socially accepted gender norms and roles. Such narratives dehumanise and discriminate against those who do not conform to the gender assigned to them at birth. This has also guided how the state has responded to gender. Until recently, the state did not have provisions for non-binary/gender non-conforming communities in terms of protective laws, policies and programmes, thus rendering them invisible in the policy and public finance discourse across India.

Across the LGBTQIA+ spectrum, transgender is an umbrella term for people whose gender does not match the gender assigned to them at birth, and includes transmen and transwomen, irrespective of whether the person has undergone sex reassignment surgery or hormone therapy. It also recognises all socio-cultural identities such as hijra, kinnar, aravani, joggapas, eunuchs, kothis, shiv-shaktis, khawaja sara, among others, as well as people with intersex variations. In recent years, the term has broadened to include both 'pre-operative', 'post-operative' and 'non-operative' trans persons who strongly identify with a different gender. It is important to note that the scope of the term 'transgender' in the Indian context is layered and its understanding must be informed by the lived experience of all those with trans identities.

For the first time in India, Census 2011 included the category of 'other', in addition to those of 'male' and 'female', to estimate the number of persons who did not identify with either of the two latter categories. It reported about 4.9 lakh persons in the 'other' category. However, this figure is widely considered to be a conservative estimate. The trans community fares low on socio-economic indicators; for instance, the 2011 census revealed that the literacy rate in the transgender community was low, at 46 percent, in comparison to the 74 percent literacy of the overall population. Deprived of economic opportunities, transgender persons are often forced to seek alms for a living or engage in sex work.

Criminalisation and societal prejudice against consensual same-sex sexual relations act as a barrier to people accessing and using HIV prevention and treatment services, increasing their risk of acquiring HIV. Therefore, HIV prevalence among

transgender persons is at 3.1% (2017), compared to 0.26% among all adults, according to a UNAIDS report.¹ Further, transgender persons face a variety of health threats, including infectious diseases such as tuberculosis, as well as violence, and risks to their mental health. They do not have adequate access to health services and are often vulnerable to medical debt.² Moreover, they may face stigma and discrimination while accessing healthcare. In addition, the lack of separate hospital wards and toilets can be a barrier in accessing in-patient care. Since the public health system does not serve their needs, they end up resorting to expensive private health services.

Transgender persons are denied the right to an adequate standard of living and adequate housing, as revealed by a study commissioned by the National Human Rights Commission (NHRC) in the states of Delhi and Uttar Pradesh.³ Only around 1% of transgender persons have a monthly income of more than Rs 25,000. Their access to formal financial institutions is also restricted, with 31% not having a savings bank account. They often do not have identity documents in their own names (documents may refer to birth names and birth families), which further restricts their access to public services. The study also found that 28% of transgender students faced harassment at the school level, and that verbal abuse is common. This makes it difficult for young trans persons to continue with their studies.

The National Education Policy (NEP) – 2020 includes transgender students under the category of ‘socio-economically disadvantaged groups,’ but does not have sufficient provisions to protect them from discrimination.⁴

Violence against transgender persons, particularly those belonging to marginalised castes and classes, is largely invisibilised, since the discourse on gender-based violence has been primarily women-centric. Even government policies and programmes meant to achieve gender equality or address violence cater to the ‘monolithic’ woman, overlooking a range of sexual minorities who identify themselves as female.

In recent times, social movements and activists have been advocating with the state for protection of the transgender community. They have been pushing for the recognition of transgender identities, and affirmation of the community’s social, political and economic rights. A landmark in this direction was the Supreme Court’s ruling in the *National Legal Services Authority (NALSA) vs Union of India, 2014*, case, which affirmed the fundamental rights of transgender persons, and recognised them as the “Third Gender”, entitled to the same rights and constitutional protection as other citizens. After several versions of the draft bill, the Transgender Persons (Protection of Rights) Act was passed in December, 2019. The Act was criticised by

¹ UNAIDS (2018), Press Statement, available at https://www.unaids.org/en/resources/presscentre/pressrelease-andstatementarchive/2018/september/20180906_India_section377

² Biraja (2022), ‘LGBTQ healthcare access must move beyond STDs, realignment surgeries’, available at <https://www.eastmojo.com/world/2022/06/25/lgbtq-healthcare-access-must-move-beyond-stds-realignment-surgeries/>

³ Kerala Development Society(2017), Study of Human Rights of Transgender as a Third Gender, submitted to National Human Rights Commission, New Delhi, available at https://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf

⁴ Bakshi (2022), ‘Making schools a safe space for LGBTQI students: Issues and challenges,’ The Leaflet, available at <https://theleaflet.in/making-schools-a-safe-space-for-lgbtqi-students-issues-and-challenges/>

activists and members of the trans community, as it went against the principle of self-determination of gender, which was recognised in the NALSA judgment. Further, it does not take cognisance of the Supreme Court directive in the judgment “to extend all kinds of reservations in cases of admission in educational institutions and for public appointments” by treating them as socially and educationally backward classes.

Another watershed judgement was announced in September 2018, when the Supreme Court unanimously ruled that Section 377 is unconstitutional as it infringed on the fundamental rights of autonomy, intimacy and identity, thus legalising

homosexuality in India. The Supreme Court regretted that LGBTQIA+ community members, who are sexual minorities, have suffered from unjustified and unwarranted hostile discrimination, and are equally entitled to the protection afforded by Articles 14 and 15 (equality and non-discrimination) of the Constitution.

In light of recent developments in the debate on transgender rights, this brief discusses government policies and budgets at the Union level and across four states: Karnataka, Kerala, Tamil Nadu and West Bengal. It attempts to analyse and assess the current situation of the transgender community through the lens of government budgets.





Assessing Budgetary Allocations

While the concerns of the trans-community are increasingly getting recognition within the legal framework, when it comes to accessing government schemes and programmes, there are huge gaps. Owing to centuries of ostracisation, exploitation and discrimination, the community has been deprived access to essential services in areas such as health, education, safety/protection, and employment, among others. The prejudice of the government set-up in general, and of its key functionaries in particular, does not enable easy access for the community. Often cases of violations and violence against community members go unreported or uninvestigated by law enforcement agencies, who may themselves be perpetrators of violence and abuse at times.

However, with increasing realisation about the rights of the community, several states have instituted administrative units within government departments to cater to the needs of the transgender community. The Transgender Persons (Protection of Rights) Rules, 2020, direct states to constitute welfare boards for transgender persons to enable the community to access existing government schemes, and protect their rights and interests. As of December 2021, 12 states/UTs had constituted such boards, including Tamil Nadu, West Bengal, Kerala and Karnataka.⁵ Karnataka, Tamil Nadu and Kerala were among the frontrunners in setting up a State Policy for Transgender Persons. Since then, other states have also done so, including Madhya Pradesh, Odisha and Assam. However, there are gaps in implementation.

The Departmentally Related Standing Committee Report of the Ministry of Social Justice and Empowerment (2016-17) on The Transgender Persons (Protection Of Rights) Bill, 2016 had noted that implementation of the various provisions of the Bill would require financial resources for their implementation. Some of these are listed in the Financial Memorandum of the Bill, and include “a range of interventions such as formulating welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory, welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment, coverage of medical expenses by a comprehensive insurance scheme for transgender persons, constitution of a National Council for Transgender Persons”, among others. In its 2019-20 report, the Standing Committee noted that no concrete steps were taken between 2016 and 2019 in terms of schemes and initiatives for the trans community, and that the allocated funds remained largely unutilised. Since then, more funds have been allocated towards the sub-scheme for welfare of transgender persons.



⁵ Ministry of Social Justice and Empowerment (2021), ‘Constitution of Transgender Welfare Boards/Commissions,’ available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1779350>

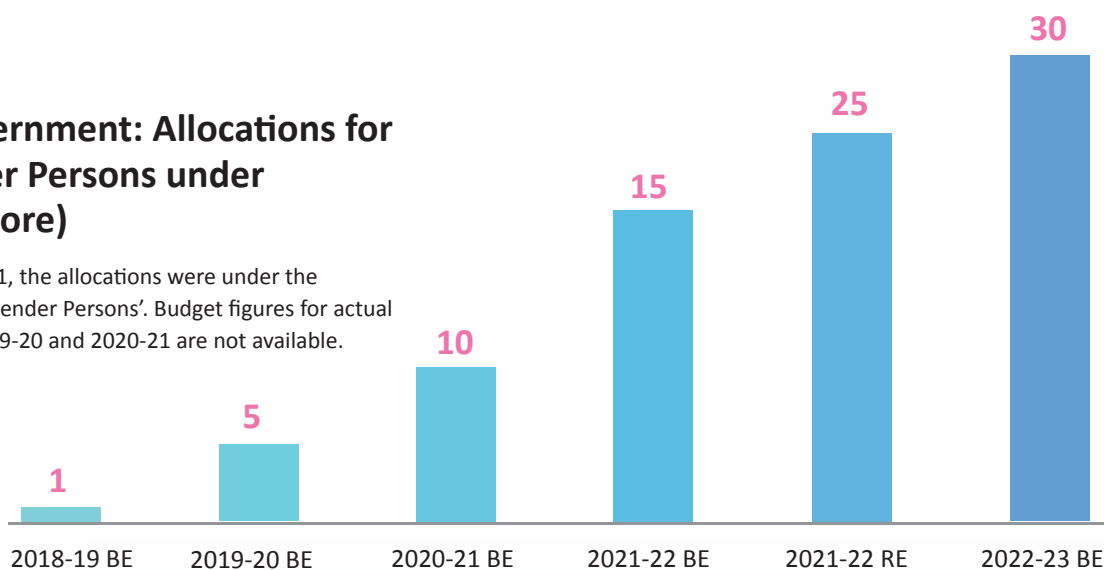
The Rules also direct states to create specific infrastructure facilities for the welfare of trans persons, such as rehabilitation centres, separate HIV sero-surveillance centres, and separate wards in hospitals and washrooms in the establishment. Further, the Rules mandate that states should carry out sensitisation programmes for teachers, healthcare professionals and others. These activities have financial implications that need to be incorporated into budget planning.

Scrutiny of the budgets for the Union Government and four states — Karnataka, Kerala, Tamil Nadu and West Bengal — reveal interventions for the welfare of the community remain extremely limited and minimally funded.

aid to out-of-work transgender persons. In 2021, this was turned into a sub-scheme called Comprehensive Rehabilitation for Welfare of Transgender Persons, under the umbrella scheme ‘SMILE — Support for Marginalised Individuals for Livelihoods and Enterprises’. This restructuring was accompanied by a jump in allocations between 2020-21 and 2021-22. However, actual expenditure in 2021-22 was very low, at just Rs 1.91 crore. This suggests there are gaps in planning and implementation. Despite this, allocations have continued increasing through 2022-23 and 2023-24, which is encouraging. The Outcome Budget in 2023-24 does not mention any targets or indicators under this scheme.

Union Government: Allocations for Transgender Persons under MSJE (Rs crore)

Note: Until 2020-21, the allocations were under the ‘Scheme for Transgender Persons’. Budget figures for actual expenditure in 2019-20 and 2020-21 are not available.



Source: Compiled from Union Budget documents of various years

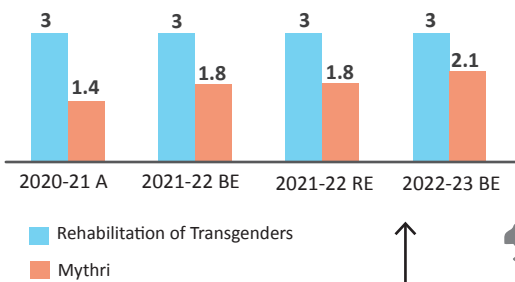
In 2017, the Union Government had started the Scheme for Transgender Persons as an umbrella programme under the Ministry of Social Justice and Empowerment (MSJE) to provide better education facilities to transgender children and provide financial

During the pandemic, the MSJE had announced a cash transfer of Rs 1,500 for transgender persons affected by the lockdown. However, reports suggest that this amount may not have reached the intended beneficiaries.⁶

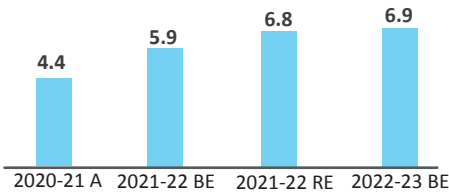
⁶ Kumar (2021), ‘The COVID-19 Pandemic Has Had a Debilitating Effect on Transgender People,’ The Wire, available at <https://thewire.in/lgbtqia/the-covid-19-pandemic-has-had-a-debilitating-effect-on-transgender-people>

State Governments: Allocations for Transgender Persons

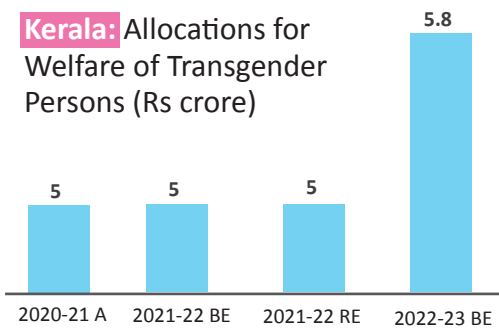
Karnataka: Allocations for welfare of transgender persons (Rs crore)



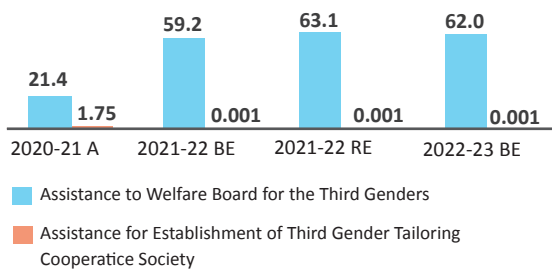
West Bengal: Establishment of West Bengal Transgender Board (Rs crore)



Kerala: Allocations for Welfare of Transgender Persons (Rs crore)



Tamil Nadu: Allocation for welfare of transgender person (Rs crore)



Source: Compiled from respective State Budget documents of various years⁷

Kerala has introduced many initiatives for the welfare of transgender persons in recent years. In 2022-23, the state made allocations for transgender persons separately in its Gender Budget Statement, setting aside Rs 5.8 crore. This figure shows an increase over the previous years.

Kerala: Allocations for welfare of transgender persons in 2022-23 (Rs crore)



Assistance to miscellaneous cooperatives

0.3 crore



Speciality Health Care Clinic for Transgenders (Homoeopathy)

0.1 crore



Mazhavillu — Scheme for Transgenders

5 crore



Kerala Sahithya Academy (scheme for transgenders)

0.1 crore



State Literacy Mission Authority

0.4 crore

⁷ The data points for Kerala differ from those for other states. This is because while Kerala's Gender Budget Statements provide earmarked allocations for transgender persons within general schemes, they only mention the BE figures. The Demands for Grants do not have this earmarking and therefore do not provide full information on what is being allocated. Consequently, only Budget Estimates have been presented for Kerala.

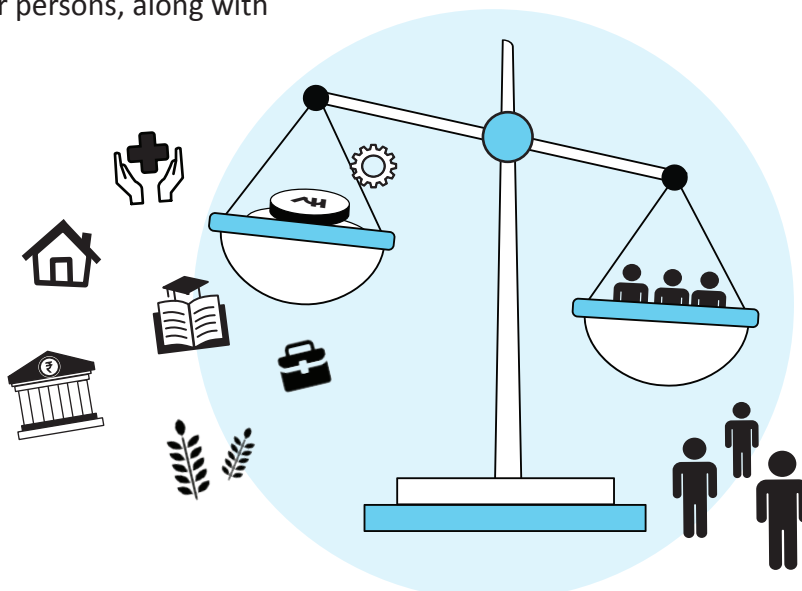
These allocations include five items, of which two are schemes targeted exclusively at transgender persons: 'Speciality Health Care Clinics for Transgenders', and 'Mazhavillu', which comprises multiple programmes for the welfare of transgender persons, such as financial assistance, provision of pensions and loans, and community level programmes. The allocation for Mazhavillu in 2022-23 was Rs 5 crore. Apart from these two schemes, partial allocations were earmarked for transgender persons under 'Assistance to miscellaneous cooperatives', 'Kerala Sahithya Academy' and 'State Literacy Mission Authority.'

An analysis of budgets for schemes for transgender persons shows that West Bengal has allocated funds for the functioning of a Welfare Board for the transgender community. Allocations for the board do show an upward trend; however, they may need to be hiked to carry out the stated objectives of these boards and to improve the status of the trans community, which lags behind the general population on human development indices, especially education and employment.

West Bengal also allocated budgets for the provision of one-time assistance to transgender persons, along with

short-stature persons and women in distress, during the pandemic years (2020 onward). Disaggregated allocations for transgender persons are not available. Tamil Nadu has made significantly higher allocations towards its welfare board, and until 2020-21, had also allocated budgets for the Third Gender Cooperative Society. In Tamil Nadu, the welfare board facilitates measures such as access to land pattas, and access to existing government institution-delivered programmes, such as insurance, education, employment, and provision of ration / food cards to transgenders, among others.

Karnataka has a scheme for the rehabilitation of transgender persons. However, its budget allocations have stagnated at Rs 3 crore for the last two years, marking a decline from previous years, when they were at Rs 4 crore. Moreover, as reported in the state's Gender Budget Statement, the utilisation of funds in 2021-22 (until December 2021) was very low, at only Rs 10.76 lakh, with 450 transgender beneficiaries. The state also has a scheme called Mythri, under which financial assistance is provided to transgender beneficiaries in the form of a monthly pension of Rs 600. Utilisation levels for this scheme were reported to be better.





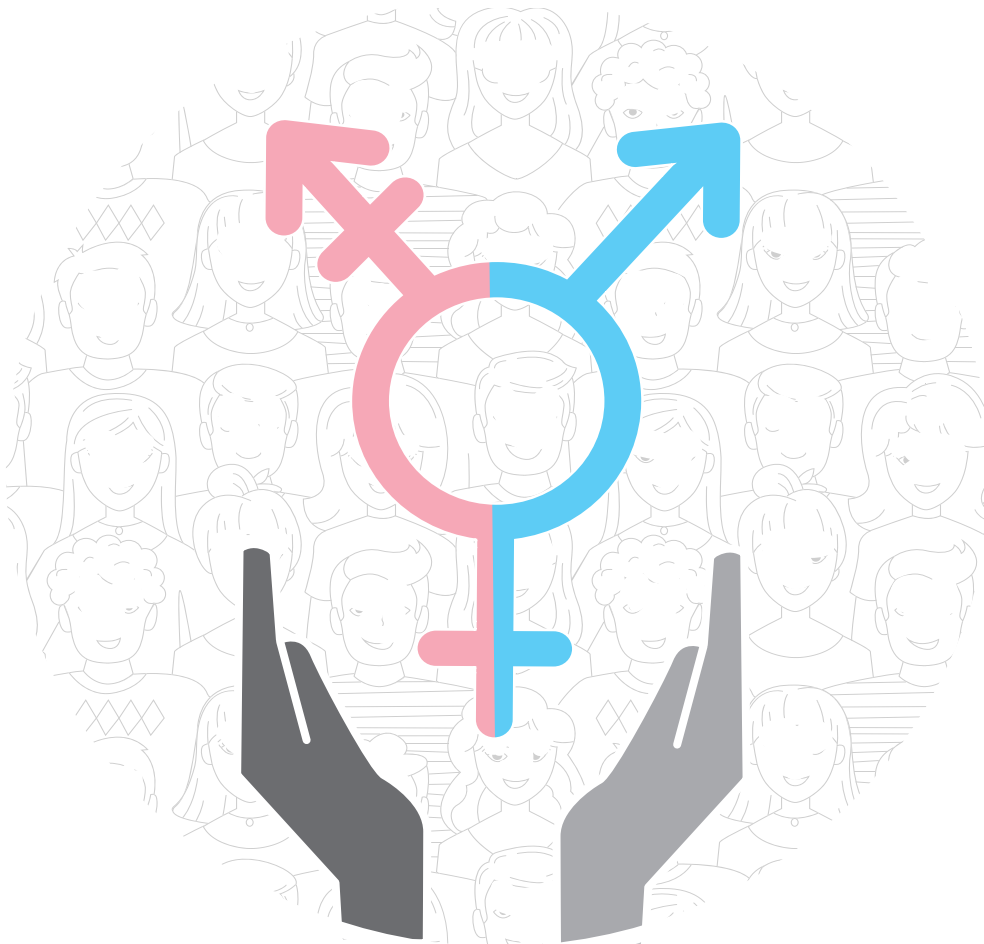
Conclusion

While the transgender community faces challenges in access to basic public provisioning across sectors, the response of the Union as well as State Governments remains limited in its approach and strategy. Some progress can be observed after the passing of the legislation in 2019; a greater number of states/UTs now have Transgender Welfare Boards and policies in place for trans persons. However, the budgets allocated for these need further scrutiny to determine how effectively they are meeting their stated objectives. Of the four states observed here, Kerala and Tamil Nadu have shown substantial increases in allocations for transgender persons from previous years. Moreover, many states introduced welfare measures for transgender persons to address the social and economic crisis precipitated by the COVID-19 pandemic. Budget planning at both the Union and state level needs to be done in a way that incorporates resources to fulfil various guarantees under the Transgender Persons (Protection of Rights) Rules, 2020, including infrastructure facilities.

Overall, the range of schemes and programmes being implemented by the Union Government and the states remain very limited in their scope, focusing largely on areas such as pensions or educational development. Even within education, there is a need for a gender-sensitive curriculum, training for educators, counselling facilities, and concrete anti-bullying/ragging guidelines. The gamut of issues that the trans community faces is barely addressed in the design of government schemes and programmes. While the nodal ministry/ departments themselves have a limited mandate, other sectors and departments have not initiated any measures to address the concerns of the trans community in their respective sectors. The Garima Greh scheme was initiated in 2020, following a directive by the Madras High Court, to provide shelter homes to transgender persons. However, its eligibility conditions have been perceived to be restrictive. It is important that the scheme is taken up nationally, and made more inclusive and need-based.

In order to be truly responsive and effective vis-à-vis historically marginalised communities such as the Dalit, Adivasi, Persons with Disabilities, Trans communities, it is imperative for the state to adopt the 'Intersectionality Approach' to designing, planning, budgeting and implementing programmes. The mandate of the approach will push the state to move beyond a restrictive framework to unravelling the compounded implications of intersecting identities and marginalisations. Focusing on the lived and layered realities of the trans community will help cater to their needs, allowing policies and budgets to recognise and integrate inter-linkages and the impact of their historical oppression, current social location, caste, religion, disability, economic status, and geographies, among others. In the absence of the intersectionality approach, government programmes will be limited and tokenistic, and the trans community will remain homogeneous and inadequately represented in the mainstream policy and public finance discourse.

An intersectional and multi-pronged approach to ensure the socio-cultural-economic and political advancement of the transgender community is critical. Affirmative action in all spheres of life, mass awareness campaigns, gender sensitisation programmes, avenues for education and dignified employment are a few non-negotiables in this approach. Further, ensuring need-based planning across public sectors and enterprises, taking into account the voices of the community through participatory budgeting at all levels, will be hugely beneficial. The existing frameworks and tools of gender-responsive budgeting must be broadened to integrate planning, budgeting and implementation of schemes for transgender persons. Adoption of the intersectional approach and need-based planning while formulating policies and schemes would certainly address structural gaps and pave the path to achieving substantive equality and redistributive justice for the trans community.



About CBGA

Centre for Budget and Governance Accountability (CBGA), an independent not-for-profit based in Delhi, analyses public policies and budgets in India and advocates greater transparency, accountability and scope for participation in budgets. For further information about CBGA's work, please visit www.cbgaindia.org or write to us at: info@cbgaindia.org.

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