



# Understanding the fallacy of “Sex-based Rights” frameworks

A Brief Analysis of Exclusionary Politics in Sex-based Rights Discourse



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# Prologue

Across the world, movements advancing gender justice and equality are confronting a surge of opposition framed around so-called “sex-based rights.” While these narratives often claim to protect women, they instead reinforce exclusionary, binary, and biologically essentialist understandings of sex and gender. Such frameworks erase the lived realities of trans, intersex, nonbinary, and gender-diverse people, while undermining the collective struggle against patriarchal systems that harm all women and structurally excluded genders.

To respond to the growing mobilisation of opposition against gender and rights, the Opposition Working Group of CMI! developed this and Countering Exclusionary Arguments: An Advocacy Resource for Inclusive Rights as practical and empowering tools for advocates. This resource unpacks sex-based rights frameworks and exposes their exclusionary politics, including underlying protectionism, gatekeeping and surveillance, racialized policing of gender, and alliance with conservative movements.

We created these resources out of a shared conviction: that feminist, human rights, and equality movements must remain inclusive, evidence-based, and rooted in solidarity. The rise of “sex-based rights” discourse reflects not only a backlash against gender and sexual diversity but also a deliberate effort to divide movements and weaken collective action. Our motivation is to ensure that advocates and allies are equipped with the knowledge, language, and confidence to challenge these exclusionary narratives — and to reaffirm a feminism that upholds the dignity, autonomy, and rights of everyone.





## ‘Sex-based rights’

**‘Sex-based rights’ frameworks fundamentally seek to advance gender essentialism<sup>1</sup> by pushing forward the recognition of rights and protections specifically grounded in a fixed and binary understanding of sex (female/male), rather than in gender, gender identity, sexual orientation, bodily autonomy<sup>2</sup> and broader intersectional understandings of how power operates. They pit the rights of trans and cisgender women against each other and erase the diversity of women’s identities and bodies.**

This poses a threat to well-established human rights protections for structurally excluded groups, and undermines efforts to understand and address the root causes of gender-based violence.

### ▶ **On the surface:**

These frameworks present themselves as “protecting women” to truly respond to the violence that women and girls experience, which is assumed to be rooted in a sex based identity.

### ▶ **In practice:**

- ▶ These frameworks lead to the exclusion of anyone whose gender identity<sup>3</sup> doesn’t align with their sex assigned at birth<sup>4</sup>—primarily trans women, but also trans men, nonbinary, and intersex people, as well as anyone who does not adhere strictly to the norms imposed by the binary of sex. Ultimately, it lowers the standards of bodily autonomy for all.

<sup>1</sup>**Gender essentialism** is the belief that men and women have fixed, inherent, and natural traits that determine their abilities, behaviors, and social roles. It assumes that gender differences are rooted in biology and are unchangeable, rather than shaped by culture, history, or social structures.

<sup>2</sup>**Bodily autonomy** is the fundamental human right to have control over one’s own body — to make free and informed decisions about one’s health, sexuality, and reproduction without coercion, violence, or external control. Bodily autonomy is a foundation of gender equality —including the right to health and the right to live free from violence.

<sup>3</sup>**Gender identity** refers to a person’s deeply felt, internal and individual experience of gender, which may or may not correspond with the sex assigned at birth.

<sup>4</sup>**Sex assigned at birth** means the male or female designation that doctors ascribe to infants based on genitalia and is marked on their birth records.

# Rights by Restriction, Not Expansion

**Sex-based rights frameworks build on restrictive rather than expansive frameworks and often lead to over-policing.**

- ▶ **Restrictive rights frameworks work to redefine eligibility. They reduce the pool of people benefiting from rights and often focus on oppressing and excluding marginalised individuals, framing this as protection.** This preserves the boundaries of a category at the expense of others, and neglects to address systemic inequality and the root causes of discrimination and violence.

**‘Gender-critical feminists’<sup>5</sup> frequently lobby for laws that prohibit trans women from using women’s toilets, locker rooms, or changing areas.** These campaigns often invoke “safety” or “privacy” but translate into legislative proposals that exclude trans people from equal participation in public life. The United Kingdom Supreme Court ruling: *For Women Scotland Ltd v The Scottish Ministers* (2025), whereby the UK Supreme Court ruled unanimously that under the Equality Act 2010, the terms “man,” “woman,” and “sex” are to be taken as referring to biological sex rather than gender identity, illustrates this.<sup>6</sup>

**Another common move is promoting laws to restrict or outright ban medical care for trans people, especially trans youth.** This includes supporting legislation that prohibits puberty pausing medication, hormone therapy, or surgeries—even when supported by doctors, parents, and the individual themselves. In the United States, for example, 25 States have enacted blanket bans on gender-affirming care for transgender youth as of March 2025.<sup>7</sup> ‘Gender-critical feminists’ push for state enforcement of their views by denying access to healthcare and making it illegal for others to provide it.

**By positioning gender-based exclusion as a form of safeguarding sex-based rights, frameworks borrow the same protectionist logic that has historically limited women’s equality,** such as bans on women’s mobility that confine women to their homes for their supposed safety or laws that seek to promote women’s safety, while criminalising access to abortion.



<sup>5</sup>**Gender-critical feminists** maintain that biological sex is a fundamental and immutable characteristic that differs from gender identity and consider the concepts of gender identity and gender self-identification to be inherently oppressive constructs tied to gender roles.

<sup>6</sup>For more see: [An interim update on the practical implications of the UK Supreme Court judgment | EHRC](#)

<sup>7</sup>For more see: [“They’re Ruining People’s Lives”: Bans on Gender-Affirming Care for Transgender Youth in the US | HRW](#)

# The Politics of Protectionism

**Protectionist frameworks—laws and policies that claim to safeguard women and other “vulnerable groups”—are routinely introduced in the name of justice, safety, or morality.** Yet these frameworks systematically expand the reach of state systems of policing and punishment, including law enforcement, prisons, and surveillance, so that protection increasingly takes the form of control. Feminist legal scholars have demonstrated how campaigns against domestic violence, trafficking, and sexual exploitation have too often aligned with political strategies that emphasize more policing and harsher punishments—what is commonly called “law-and-order politics.”<sup>8</sup> This alignment, described by Elizabeth Bernstein as “carceral feminism,” reflects the inherent risks of relying on punitive state institutions whose foundational logics are grounded in control rather than care.<sup>9,10</sup> They rely on policing, prosecution, and imprisonment as the primary solutions to gender-based violence and inequality.



**Protectionist frameworks operate through exclusionary assumptions about which subjects are “worthy” of protection.** They tend to center an imagined “ideal victim”—often white, middle-class, cisgender, and a citizen—whose experiences align with dominant social norms. Women outside this narrow frame, including migrants, sex workers, racialized women, and queer, intersex, and trans people, often find themselves not only unprotected but actively targeted by the very laws designed to help them. The criminalization of sex work under anti-trafficking laws provides a stark illustration: while framed as rescuing victims, such laws frequently result in police raids, intensified surveillance, deportations, and heightened vulnerability for sex workers themselves.<sup>11,12</sup> Protection thus becomes a mechanism for policing women’s labor, sexuality, and survival strategies.

**Most fundamentally, protectionist frameworks fail to address the structural drivers of harm.** Gender-based violence is rooted in systemic oppressive structures that are multiple and simultaneous rather than emerging from isolated individual acts. Protectionist approaches reinforce the moral regulation of women’s behavior—casting some as “innocent victims” and others as “deviant” or “undeserving”—while leaving entirely intact the structural conditions that generate violence in the first place.

<sup>8</sup>Gruber, Aya. *The Feminist War on Crime: The Unexpected Role of Women’s Liberation in Mass Incarceration*. Berkeley: University of California Press, 2020.

<sup>9</sup>Bernstein, E. (2007). The sexual politics of the “new abolitionism”. *Differences*, 18(3), 128–151. <https://doi.org/10.1215/10407391-2007-013>

<sup>10</sup>Bernstein, Elizabeth. “Carceral Politics as Gender Justice? The ‘Traffic in Women’ and Neoliberal Circuits of Crime, Sex, and Rights.” *Theory and Society* 41, no. 3 (May 2012): 233–259.

<sup>11</sup>Bernstein, E. (2007). The sexual politics of the “new abolitionism”. *Differences*, 18(3), 128–151. <https://doi.org/10.1215/10407391-2007-013>

<sup>12</sup>Oparah, J. C. (Ed.). (2001). *Global lockdown: Race, gender, and the prison-industrial complex*. Routledge.

# Constructing Women as an Inherently & Permanent Vulnerable Class

At the heart of sex-based rights frameworks is a harmful, biological essentialist understanding of women, defined strictly by birth-assigned sex, as vulnerable, fragile and perpetually vulnerable.

This framing:

- ▶ **Situates safety as something that can only be guaranteed through strict separation from men and anyone perceived as “male.” It creates homogeneous categories of both women and men, simplifying them to victims and perpetrators, respectively.**
- ▶ **Leaves little space for women’s autonomy, strength, or agency.**

By casting women as a perpetually vulnerable and fragile class, this discourse rests on a logic of othering where:

- ▶ **A ‘dangerous outsider’ (a trans person, a migrant, a racialised man) who must be excluded is constructed.**
- ▶ **Unequal treatment is justified in the name of safeguarding or fairness.**
- ▶ **Hierarchy is reinforced, i.e, cis women over trans women, white women over men of colour, white men over white women, etc.**

This not only expands surveillance, it reinforces patriarchal policing of women’s bodies.



# Gatekeeping and Surveillance

**Sex-based rights frameworks inevitably require policing the borders of “womanhood”.** If access to shelters, sports, or restrooms is contingent on “real” sex, then:

- ▶ **IDs, birth certificates, or medical histories become checkpoints.**
- ▶ **People who don’t conform to gender norms<sup>13</sup> (butch lesbians, trans women, gender non-conforming people, etc.) become suspects, often harassed or excluded.**

This not only expands surveillance, it reinforces patriarchal policing of women’s bodies.

## Racialized Policing of Gender

**Patriarchy is not only about “sexed bodies”—it’s about controlling gender roles, sexuality, and bodily autonomy. Trans, intersex, and nonbinary people experience these controls intensely.** Sex-based rights frameworks disproportionately harm women of color and gender-nonconforming people:

- ▶ **Rigid ideas of what “womanhood” looks like are shaped by white, Eurocentric beauty standards. Black and brown women are frequently stereotyped as more masculine, aggressive, or hypersexual.<sup>14 15 16</sup>**
- ▶ **Black and brown women, particularly those with more masculine presentations or expresiones, are more likely to be misgendered, harassed, or policed in bathrooms and public spaces, including in sports.**
- ▶ **Anti-trans policies amplify existing racial profiling, because gender policing is never separate from racial policing. For example, Black trans women face compounded risks — targeted as “male threats” while also criminalized by racism.**

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<sup>13</sup>Gender norms are the social and cultural rules that define the expected behaviors, appearances, and roles of individuals based on their perceived gender

<sup>14</sup>Bond, K. T., Leblanc, N. M., Williams, P., Gabriel, C. A., & Amutah-Onukagha, N. N. (2021). Race-Based Sexual Stereotypes, Gendered Racism, and Sexual Decision Making Among Young Black Cisgender Women. *Journal of Community Health*, 46(4), 724–733.

<sup>15</sup>Donovan, R. A. (2011). Tough or tender: (Dis)similarities in White college students’ perceptions of Black and White women. *Psychology of Women Quarterly*, 35(3), 458–468

<sup>16</sup>Clonan-Roy, K. (2018). Inappropriately Aggressive and Dangerously Submissive: Latina Girls Navigating and Resisting Racialized Sexualization in the New Latino Diaspora. In *Girls, Aggression, and Intersectionality*, Routledge.

# Alliances With Conservative Movements

Exclusionary 'sex-based rights' politics often are on par with other conservative and anti-feminist views. Sex-based rights arguments like excluding trans women from women's spaces often overlap directly with conservative pushes for bathroom bans, sports bans, and anti-trans healthcare laws. This creates strange-bedfellow alliances: where 'feminists' or groups that identify with women's rights and oppose trans inclusion find themselves campaigning alongside groups that also oppose abortion, contraception, or equal pay laws. "Gender ideology"<sup>17</sup> narratives, for example, are used by sex-based rights advocates and diverse conservative actors to question and attack the rights of trans people. These narratives construct an artificial binary between trans and cisgender women's rights while obscuring the multiplicity of women's identities and bodily experiences. The result is a coalition that undermines not only trans rights, but also reproductive justice, queer liberation, and women's equality overall.

- ▶ **In the UK, 'gender-critical feminists' have appeared alongside conservative politicians and media outlets opposing reforms to the Gender Recognition Act (GRA). Groups like "Fair Play for Women" opposed the GRA<sup>18</sup> using almost identical arguments as conservative MPs.**
- ▶ **In the United States, some 'gender-critical feminist' groups have joined conservative-led lawsuits to limit trans access to sports or healthcare, even as those same conservatives work to restrict abortion rights.<sup>19</sup> The group Women's Liberation Front (WoLF) has filed several amicus curiae briefs to the Supreme Court in opposition to transgender rights.<sup>20</sup>**
- ▶ **In Europe<sup>21</sup> and Latin America<sup>22</sup>, conservative catholic and evangelical groups have adopted rhetoric similar to 'gender-critical feminists' to oppose "gender ideology," blurring distinctions between these groups.<sup>23</sup>**

Patriarchal and conservative movements have long used division within feminist spaces to weaken collective power. Sex-based rights politics replicate this pattern by drawing a boundary between cis women and trans women, and weakening solidarity and splitting coalitions that otherwise fight for reproductive justice, bodily autonomy, LGBTQI+ rights, and gender equality.

<sup>17</sup>Association for Women's Rights in Development (AWID). (2022, July). "Gender ideology" narratives: A threat to human rights [Policy brief]. AWID. <https://www.awid.org/sites/default/files/2022-08/Final%20EN%20Web%20-%20Gender%20Ideology%20Brief%20-%20July%202022.pdf>

<sup>18</sup>Fair Play for Women. (2020). Written evidence submitted by Fair Play for Women (GRA16877). UK Parliament Women and Equalities Committee. <https://committees.parliament.uk/writtenevidence/16877/html/>

<sup>19</sup>Schmidt, S. (2020, February 7). Conservatives find unlikely ally in fighting transgender rights: Radical feminists. *The Washington Post*. <https://www.washingtonpost.com/dc-md-va/2020/02/07/radical-feminists-conservatives-transgender-rights/>

<sup>20</sup>Trans Data Library. (n.d.). Women's Liberation Front. Trans Data Library. <https://transdatalibrary.org/organization/womens-liberation-front/>

<sup>21</sup>Kuhar, R., & Paternotte, D. (Eds.). (2017). *Anti-gender campaigns in Europe: Mobilizing against equality*. Rowman & Littlefield International.

<sup>22</sup>Morán Faúndes, J. M., & Sgró Ruata, M. C. (2022). Anti-abortion mobilization in Latin America: Signs of a field in transformation. *Revista Direito GV*, 18(3).

<sup>23</sup>Murray, L. (2022). 'Missing the point': A conversation with Sonia Corrêa about the emergence and complexities of anti-gender politics at the intersections of human rights and health. *Global Public Health*, 17(12), 3398-3408. <https://doi.org/10.1080/17441692.2022.2135751>



