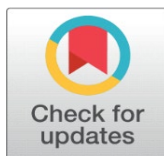
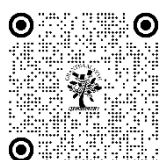


VIOLENCE AND DISCRIMINATION AGAINST TRANSGENDER COMMUNITY- A LEGAL REMEDIAL ANALYSIS

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ABSTRACT

Indian subcontinent is known for its varied cultures and diversities, with respect to transgender community. The stereotype and conservative mindset of society inculcates many discrimination and violence against the transgender community without being aware that their gender is not their choice, but it is a vis-major (Act of God). Gender based violence in India have been very well documented and analyzed in various perspectives. Our legal system is well trained as to set of laws governing the violence against transgender and discrimination in our society. The paper is about the heinous violence faced by the transgender communities by highlighting the stereotypic violence against them and the domestic violence faced by transgender, which is an un-addressed factor. The research paper analyses transgender bullying and it develops a holistical framework for the improvising legal frameworks for addressing transgender based issues in India.

Keywords: Discrimination, Violence, Harassment, Legislation, Transgender, LGBTQ

1. INTRODUCTION

Gender includes a number of values, notions and norms. It adversely signifies a person's role and status in the society.¹ Transgender community have been accorded a lower status in this hierarchy of social status and have been subjected to discrimination and violence of various kinds. In contemporary analysis of gender based crimes, it is theorized as a complex structural and multidimensional construct that portrays the meaning of being a man or a woman or a transgender and behaving accordingly in a given situation. Gender include within itself some interconnected elements including gendered traits, emotions, values, norms, roles, environment and expectations. These elements change and evolve within cultures over time.²

¹ Dolan C (2015) Letting go of the gender binary: Charting new pathways for humanitarian interventions on gender-based violence. *Int Rev Red Cross*, 96:485-501.

² Earnshaw VA, Menino DD, Sava LM, Perrotti J, Barnes TN, Humphrey DL et al. (2020) LGBTQ bullying: A qualitative investigation of student and school health professional perspectives. *J LGBT Youth*, 17:280-297.

2. STEREOTYPICAL VIOLENCE AGAINST TRANSGENDER COMMUNITY

“Transgenders” are defined as an adjective used for describing or relating to people whose sense of gender identity does not match their biological sex or does not easily fit in with the usual division between male and female. They are a part of our society since ancient times.³ Till the heroic Supreme Court's judgment of *NALSA vs. Union of India* in 2014, transgender community did not have any legal recognition. They are not compared with other two genders. The concept of *third gender* itself has become a negative word among many and indicates a hierarchy in gender structure in which queer community occupies lowest position. The Trans community is subjected to discrimination, abuse and violence in various forms by various groups in the society.⁴

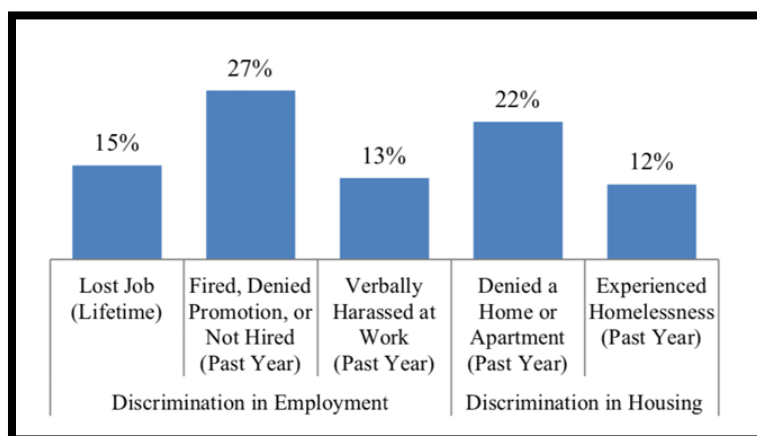


Table 1: Data of discrimination faced by transgenders⁵

3. GENDER-BASED VIOLENCE IN INDIA

Gender-based violence against transgender individuals in India is a deeply marginalized and often overlooked issue. Transgender people face widespread discrimination, social exclusion, and violence in both public and private spheres. This violence can be physical, emotional, sexual, and economic, and is frequently perpetrated by family members, peers, police, and even healthcare providers. Despite the landmark *Transgender Persons (Protection of Rights) Act, 2019*,⁶ which aims to ensure the rights and dignity of transgender persons, the law has faced criticism for lacking clarity and strong enforcement mechanisms.⁷

Many transgender individuals still face barriers in accessing education, employment, and healthcare, which further increases their vulnerability to exploitation and abuse. Social stigma, lack of legal awareness, and fear of police harassment often discourage transgender victims from reporting violence. While there has been some progress through court judgments, increased visibility, and activism by the transgender community and allies, significant efforts are still needed to ensure safety, legal protection, and societal acceptance for transgender individuals in India. Combating this form of gender-based violence requires inclusive laws, sensitization of law enforcement, public awareness, and the active involvement of the transgender community in policymaking.⁸

³ Goffman E (2009) *Stigma: Notes on The Management of Spoiled Identity*. New York, Simon and Schuster.

⁴ Henderson ER, Sang JM, Louth-Marquez W, Egan JE, Espelage D, Friedman M et al. (2022) "Words aren't supposed to hurt, but they do": Sexual and gender minority youth's bullying experiences. *J Interpers Violence*, 37:NP8747–NP8766.

⁵ The Impact Of Stigma And Discrimination Against Transgender Community

⁶ The Transgender Persons (Protection Of Rights) Act, 2019

⁷ Kattari SK, Bakko M, Hecht HK, Kattari L (2020) Correlations between healthcare provider interactions and mental health among transgender and nonbinary adults. *SSM Popul Health*, 10:100525.

⁸ Meyer IH (2003) Prejudice, social stress, and mental health in lesbian, gay, and bisexual populations: Conceptual issues and research evidence. *Psychol Bull*, 129:674-697.

4. DOMESTIC VIOLENCE AGAINST TRANSGENDERS

Domestic violence faced by transgender individuals is a critical yet largely unacknowledged issue. Unlike the conventional understanding of domestic violence that typically focuses on heterosexual relationships or transgender women, transgender individuals often experience abuse within their own families or intimate relationships. Many transgender people face emotional, physical, and psychological abuse from parents, siblings, or relatives who reject their gender identity. This can include forced confinement, verbal insults, physical assault, denial of education, medical neglect, or even being thrown out of their homes. In intimate partnerships, transgender people may be subjected to controlling behavior, sexual violence, and threats of outing their identity.⁹

One of the key challenges in addressing domestic violence against transgender persons is the lack of inclusive legal frameworks. Most domestic violence laws in India, like the *Protection of Women from Domestic Violence Act, 2005*, are gender-specific and do not explicitly recognize transgender individuals as victims. As a result, transgender survivors often have no legal recourse or access to protective services such as shelters or counseling. Social stigma, police apathy, and fear of discrimination further discourage them from seeking help.¹⁰ To effectively address domestic violence against transgender people, it is essential to adopt a more inclusive legal approach, sensitize law enforcement and social workers, and create safe, affirming spaces where transgender individuals can report abuse and seek support without fear.

5. TRANSGENDER BULLYING

Transgender bullying means harassment, intimidation, and mistreatment that transgender individuals face due to their gender identity or expression. This form of bullying is widespread and begins at an early age. Mostly in schools where transgender children are mocked, excluded, or physically abused by peers. The lack of understanding and awareness about gender diversity makes educational spaces particularly unsafe for transgender youth, leading to high dropout rates, mental health issues, and even suicidal tendencies.¹¹

Outside of school, bullying continues in workplaces, public spaces, and within families. Transgender people are frequently subjected to name-calling, ridicule, social exclusion, online abuse, and threats of violence. In many cases, bullying escalates into physical or sexual violence, especially when transgender individuals do not conform to socially accepted gender norms. This constant harassment often forces them into isolation, poverty, and vulnerability.

Despite the recognition of transgender rights by the Supreme Court of India in the *NALSA v. Union of India* judgment in 2014¹², which affirmed the right to self-identify one's gender, bullying and discrimination remain rampant due to deep-seated societal prejudices. Tackling transgender bullying requires urgent intervention through inclusive education, gender sensitization programs, strict anti-bullying policies, and mental health support systems. Only through sustained awareness and systemic change can transgender individuals be ensured dignity, safety, and equality in all spheres of life.¹³

6. TRANSGENDER RIGHTS IN INDIA

Transgender rights in India have seen significant progress over the past decade, marked by landmark legal recognitions and growing social awareness. The watershed moment came with the Supreme Court's *NALSA v. Union of*

⁹ Peitzmeier SM, Malik M, Kattari SK, Marrow E, Stephenson R, Agénor M et al. (2020) Intimate partner violence in transgender populations: Systematic review and meta-analysis of prevalence and correlates. *Am J Pub Health*, 110:e1-e14.

¹⁰ Robinson A (2016) Heteronormativity and homonormativity. In *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies* (Ed N Naples): doi: 10.1002/9781118663219.wbegss013. Hoboken, NJ, Wiley.

¹¹ Sánchez-Fuentes MDM, Araújo LF, Parra-Barrera SM, Fontes ÉRS., Santos JVO, Moyano N (2021) Transphobia and gender identity: social representations of trans women from Brazil and Colombia. *Cien Saude Colet*, 26:5793-5804.

¹² National Legal Services Authority v. Union of India, (2014) 5 SCC 438

¹³ White C, Goldberg J (2006) Expanding our understanding of gendered violence: Violence against trans people and their loved ones. *Can Woman Stud*, 25:124-127.

India judgment in 2014¹⁴, which legally recognized transgender people as a "third gender" and affirmed their fundamental rights under the Constitution. The judgment emphasized equality, non-discrimination, and the right to self-identify one's gender, laying the foundation for legal and policy reforms.

Following this, the *Transgender Persons (Protection of Rights) Act, 2019* was enacted to prohibit discrimination in education, employment, healthcare, housing, and public services. The Act mandates the establishment of welfare schemes, inclusive facilities, and grievance redressal mechanisms. It also provides for the issuance of a transgender identity certificate through a government authority, although the process has been criticized for being bureaucratic and infringing upon the right to self-identification.¹⁵

Despite these legal advancements, transgender individuals in India continue to face widespread stigma, discrimination, and violence. Many are denied access to quality healthcare, decent employment, and safe housing. Social exclusion often forces them into begging or sex work for survival. Additionally, the 2019 Act has faced criticism from activists for being inadequate it lacks strong enforcement provisions and fails to fully respect the autonomy of transgender persons.

For true equality, India must go beyond legal recognition and ensure social acceptance, inclusive policies, sensitization of institutions, and access to justice. Empowering the transgender community through education, healthcare, economic opportunities, and representation in governance is essential for realizing their rights and dignity.

7. PHYSIOLOGICAL AND PSYCHOLOGICAL ABUSES

Conservative society more often try to exclude the trans community by any means. They force their child to follow the gender expression which conforms to the 'norms' of their assigned sex which is achieved through physical abuse. They face psychological abuse in the form of name calling in supposed to be safe educational institutions like schools and in working place. Most of these children are disowned by their families or leave the house on their own at a young age. They have to indulge mainly in full time or part time in sex work due to lack of livelihood.¹⁶

8. DISCRIMINATION FACED BY TRANSGENDERS

They are discriminated against due to the stereotypical perception of nature and appearance of men and women. They are cancelled for expressing their gender and sex in a different manner against cultural norms and are not recognized in the society. It becomes extremely difficult for transgender community to access education either due to lack of finances or a safe inclusive environment and get a suitable work. According to 2011 Indian Census data, from the transgender population of 4.9 Lakh, only 49% is literate as against the national literacy rate of 74%. They are also subjected to discrimination at the hands of doctors while treatment of HIV sex reassignment surgeries, finally they are forced to use the restrooms meant for the gender they are do not belong with.

¹⁴ National Legal Services Authority v. Union of India, (2014) 5 SCC 438

¹⁵ Yerke AF, DeFeo J (2016) Redefining intimate partner violence beyond the binary to include transgender people. J Fam Violence, 31:975-979.

¹⁶ Altilio, Terry; Otis-Green, Shirley. (2011). Oxford Textbook of Palliative Social Work. Oxford University Press. p. 380.

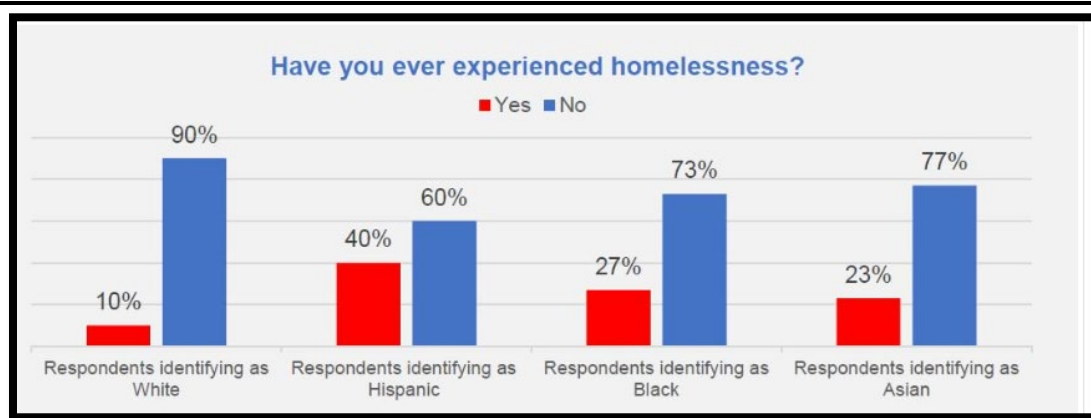


Table 2: Survey of LGBTQ¹⁷

All these violence and discrimination have led to tendencies of self-harming and suicidal thought among the members of these community. In India, thirty-one percent of transgender people end their lives by suicide and fifty percent of them have attempted suicide before the age of 20.¹⁸

9. REMEDIES FOR CHALLENGES FACED BY TRANSGENDERS

Legal Remedies: To enact and strengthen laws that explicitly prohibit discrimination against transgender people in employment, education, healthcare, and public services and to ensure strict enforcement and swift legal recourse for victims.¹⁹

Awareness and Sensitization Programs: To conduct widespread gender-sensitivity training for law enforcement, teachers, healthcare providers, employers, and the general public to dismantle stereotypes and promote respect.

Inclusive Education: To integrate gender diversity topics into school and university curricula to foster understanding from an early age. Create safe and supportive environments for transgender students, including gender-neutral facilities.

Access to Healthcare: To provide accessible, affordable, and non-discriminatory healthcare services, including gender-affirming treatments, mental health support, and HIV/AIDS prevention and care tailored to transgender needs.

Economic Empowerment: To implement reservation policies, skill development programs, and entrepreneurship support to improve employment opportunities and financial independence for transgender individuals.

Representation and Participation: To encourage transgender participation in political, social, and cultural decision-making processes to ensure their voices shape policies affecting them.

Anti-Discrimination Policies in Workplaces: To promote workplace inclusion through anti-discrimination policies, diversity training, and grievance mechanisms protecting transgender employees.²⁰

Community Support and Counseling: To establish support groups, counseling centers, and help lines to assist transgender persons dealing with discrimination, violence, and mental health challenges.

Media and Public Campaigns: To use media platforms to portray positive and accurate images of transgender individuals, breaking myths and fostering social acceptance.

¹⁷ Results of a Survey of LGBTQ New Yorkers, June 20, 2017

¹⁸ Bilodeau, Brent. (2005). "Beyond the Gender Binary: A Case Study of Two Transgender Students at a Midwestern Research University". *Journal of Gay & Lesbian Issues in Education*. 3 (1): 29-44.

¹⁹ Chakrapani, V, Babu, P, Ebenezer, T. "Hijras in sex work face discrimination in the Indian health-care system. *Research for Sex Work*". (2004), pp. 12-14.

²⁰ Elkins, Richard & King, Dave. (2006). *The Transgender Phenomenon*. New Delhi, Sage Publications, pp. 13-14.

Monitoring and Accountability: To Set up government bodies or commissions to monitor discrimination cases, collect data, and ensure accountability for violations.

10. CONCLUSION

In the context of facts and circumstances analysed above, it is evident that socio-legal transformation is the need of the hour to end such discrimination against transgenders. Globally, the existing laws to combat Gender-based Violence and discrimination against gender minorities stand insufficient and outdated and need serious and several reforms, following with, the individual states too must initiate such legislations as soon as possible.

CONFLICT OF INTERESTS

None.

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