

## **DISCRIMINATION AND DILEMMA OF TRANSGENDER PEOPLE**

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### **Abstract**

In spite of national and international protections, transsexuals have been a neglected community worldwide. Baring few countries, there is no recognition of their rights and are sometimes forced to lead animal survival life. Before Naz Foundation's case, humiliation, torture and cruelty with the sexual minorities were mostly unnoticed in Indian society. In the said case some legal protections were recognized by the higher judiciary in India. In this research paper, I have tried to point out discrimination against this community in various way

### ***Keywords:***

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## 1. Introduction

Transgender people bear the brunt of social and economic marginalization due to discrimination based on their gender identity or expression. Advocates confront this reality working with transgender people who have lost shelter, jobs, experienced mistreatment and violence, or been unable to access the health.

The policymakers, service providers, the media and society at large have dismissed or discounted the needs of transgender people, and a lack of hard data on the scope of anti-transgender discrimination has hampered the work to make substantive policy changes to address these needs.

The transgender society undergoes discrimination and abuse under the face of the law. There have been a lot of changes in law and also the general public perception of the transgender. This can also be attributed to the rapid growth of the internet and social media specifically.

There is a serious need for bridging the gap between already available human rights Laws and the beneficiaries on the ground. From the lawmakers, the law enforcers and the general public, there is a lot still pending or controversial that the intended need is not fulfilled.

### General Concept

Transgender/Trans/Hijra/Aaravani/Chhakka/Tritiyapanthi: “Used both as an umbrella term and as an identity. Broadly, it refers to those who do not identify with or are uncomfortable with their assigned gender and gender roles. As an identity, the term refers to anyone who transgresses traditional sex and gender boxes”<sup>\*</sup> Hijra, Aaravani, Chhakka, and Tritiyapanthi are another word for a male to female transgender in India.

### Discriminations

#### I. Sex Discrimination.

Action is taken against an individual because of stereotypical beliefs about the nature of men and women (about their appearance and behavior). The argument for a straightforward application of

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<sup>\*</sup>Common transgender definitions and terms, available at <https://www.yumpu.com/en/document/view/34086669/common-transgender-definitions-and-terms/3>, last seen on 25/05/2018

sex-based anti-discrimination law has been rejected in many cases. This fails to acknowledge that the transgender person has been singled out for adverse treatment based on a belief about his or her sex – namely, that he or she should not change his or her sex or express it in a different manner than cultural norms allow. Universal Declaration of Human Rights (UDHR) 1948 articulates in Article 25 that all persons have a right to a minimum standard of living, which includes access to health care.<sup>†</sup> The International Covenant on Civil and Political Rights (ICCPR) generally deals with political rights, including such basic rights as freedom from slavery, torture, persecution, and discrimination. It includes non-discrimination on the basis of sex as a basic right but did not originally directly address sexual orientation or gender identities. Having been developed in 2007, Yogyakarta Principles<sup>‡</sup> aims to implement human rights standards as it relates to sexual orientation and gender identity. Sec. 2 (d) The Human Rights Act 1993 prohibits discrimination on the grounds of sex.<sup>§</sup> Part II and III of the Constitution of India provides many provisions to protect the rights of people including transgender,<sup>\*\*</sup> Sec. 377 of the Indian penal code 1860,<sup>††</sup> Sec. 13A(1) Immoral Traffic Prevention Act 1956, also provides remedy relating to illegal trafficking in persons.<sup>‡‡</sup> Many articles, Books, and Research Papers are published on this issue.

## II. Disability Discrimination.

Because of misperceptions and misunderstandings about disability laws, some people have expressed discomfort in pursuing legal protections for transgender people based on disability. The term ‘disability’ in anti-discrimination laws, however, is not used in the popular or colloquial sense, and is not limited to individuals who are significantly debilitated or who appear outwardly ill.

## III. Sexual Orientation Discrimination

Transgender people are harassed because they are perceived to be gay. Assumptions about a person’s sexual orientation may often arise either because of clothing the person wears or because of their gender presentation, which may be subtler than a person’s attire.

<sup>†</sup> Art. 25 Universal declaration of human right (UDHR) 1948

<sup>‡</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), online: Yogyakarta Principles Available at [www.yogyakartaprinciples.org/principles\\_en.htm](http://www.yogyakartaprinciples.org/principles_en.htm) , Last seen on 02/08/2017

<sup>§</sup> Sec. 2(d) of The Human Rights Act 1993

<sup>\*\*</sup> Part II and III of the Constitution of India 1950

<sup>††</sup> Sec. 377 of the Indian Penal Code 1860

<sup>‡‡</sup> Sec. 13A (1) Immoral Traffic Prevention Act 1956

#### IV. Discrimination by the State

##### a. The Law

##### ✓ **Sec 377 of the Indian Penal Code**

It does not distinguish between consensual and coercive sex. Thus cases of abuse and voluntary sex between two consenting adults can be prosecuted under this provision. This would violate the constitutionally protected right to privacy under the expanded definition of right to life (Art 21) (“Kharak Singh vs. Union of India”)<sup>§§</sup>. The definition of “unnatural offences” is obsolete. It invites questions such as what is “the order of nature”? As conceived by whom. This section does not prohibit homosexuality, but only prohibits certain sexual acts, which both homosexuals and heterosexuals, married and unmarried people, might engage in. However this section is almost always used to target sexuality minority populations as they are erroneously seen as the only ones to perform ‘carnal intercourse against the order of nature’.

##### b. **Other forms of legal discrimination**

Section 46 of the Army Act notes that “Any person subject to this act who (a) is guilty of disgraceful conduct of a cruel, indecent or unnatural kind can be remove from service”. There are similar provisions in the Navy Act that subjects all employees of the Indian Navy to the disciplinary requirements under a similar enactment. Police Acts can also be used to target same sex behaviors and identities. Homosexual relationships are not recognized when it comes to defining the

Family for the purposes of insurance claims, compensation under the workman’s

Compensation act, gratuity benefits and for the purposes of nomination

### **Human Rights Violation**

#### **The Police**

Oppression by the police turned out to be one of the major concerns of the gay, bisexual and transgender people.

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<sup>§§</sup>Kharak Singh v. The State Of U. P. & Others on 18 December, 1962

- **Extortion:** The police often stop gay/bisexual men in the cruising areas, threaten them saying we know what you are doing, take their names and addresses and extort money from them. No FIRs are recorded.
- **Illegal detention:** The police in this case take people in for questioning and detain them in the lock up for periods of time varying from overnight to a few days. They do not file (FIR) and keep no documentary evidence of the person's detention.
- **Abuse:** The police often abuse the men using filthy language, beat them up and even subject them to sexual abuse.
- **Others:** Outing, Filing of wrong cases against them in case they don't comply.

#### V. **Discrimination by the Medical Establishment**

Most during treatment for STD's/HIV/AIDS and when they go in for sex reassignment surgery. In some Western countries, there are stringent regulations governing such surgery, with the surgery being permitted only after extensive psychological counseling, but in India there is no legal framework governing such surgery.

#### VI. **Discrimination in Employment/Education**

Hijras find it extremely difficult to get suitable employment of their choice. Due to social discrimination in employment most of them are forced into sex work. Apart from the fact of social discrimination, the low levels of literacy in the community also ensure the social, economic and political powerlessness of the community.

#### VII. **Discrimination in the Family.**

Some families, once they realize that their children are a transgender, they rather disown and send him/her away rather than encourage and be there for them.

This is what makes them turn to other immoral activities knowing well that there is no longer family for them.

#### ❖ **Impact of Discrimination on the Self**

The combined operation of the various societal institutions and mechanisms which beard own upon the affected person constructs a mindset wherein the person begins to think of himself as dirty, worthless, unclean and vulgar. The invisibility and silence which surrounds the existence of sexuality minority lives and worlds produces its own order of oppression, creating in many the

impression that they are the only ones ‘cursed’ with such desires in the world. There is an enormous erosion of self-esteem, which is perpetuated by the way dominant society operates, what it believes in and what it says. It is a process of self-abuse wherein the person believes that what society says about sexuality minorities is true for her. This process of self-abuse in some people leads to cycles of depression and self-rejection.

## CONCLUSION

These new laws alone won’t change the discrimination that many transgender people (often called hijra in India) face: many are excluded from mainstream employment and society – to the extent that some hospitals have reportedly refused to treat them – and are regularly harassed by police. It is however an important step in the right direction, because legal recognition can underpin greater social acceptance and community integration. The Supreme Court is also introducing quotas to increase the representation of transgender people in employment and education. Thus we need to change our mentality towards this community and give them respect and space.

## REFERENCE

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