

# Victimization of transgender people in India

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## Abstract

Concerns over lesbian, homosexual, bisexual, and transgender (LGBT) rights in recent years have established a global standard for the defense of gender-nonconforming groups. India, one of the countries that is home to the “Hijra” community, is gaining up in terms of the rights of the transgender minority. Having once served as the queen’s aide, they now beg on the streets despite once being held in high regard by the general public and honored at ceremonial religious and spiritual gatherings. We have abused them after having used and rejected them. Who will reveal their real identity to them? Who will put an end to this prejudice? Who will assist in giving them a new life? Who will speak up and defend the rights of transgender people in India?

The transgender person protection of rights Act 2019 is the result of recent bills that the Indian legal system introduced that resulted in the repeal of Section 377 of the Indian Penal Code, a problematic colonial provision of the law. As we see new Bills, Acts, and other legislation focused on preserving and providing a livelihood for the community, we are witnessing a repetition of Indian history, which once served as a haven for the transgender population. However, compared to other countries, India has a larger transgender community and requires much more than just written legislation. For the transgender community to fully enjoy their rights and freedoms, legal gaps must be filled and processes are streamlined.

Transgender people are becoming more prevalent in India. With the exception of the transgender Act of 2019, they do not have adequate laws. This Act does not address many of the problems that the transgender population is dealing with in real life. Personal laws are required in this community concerning issues like marriage, adoption, job security, safety, etc.

**Keywords:** Transgender, Discrimination, India, Gender, Indian Penal Code

## Introduction and background

Lesbian, homosexual, bisexual, and transgender (LGBT) rights problems have emerged recently, providing a global standard for the defense of

gender-nonconforming groups. India, one of the countries that is home to the “Hijra” community, is catching up in terms of the rights of the transgender minority. Except for the transgender Act 2019, which

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was recently passed, India has the largest number of trans people. These glaring gaps in the legislation have caused some people to feel uneasy. Many of the challenges that the transgender population faces in real life and their everyday lives are not addressed by this Act. Personal laws are required in this community in relation to issues like marriage, adoption, job security, safety, etc.

In recent years, the Indian legal system has introduced bills that resulted in the repeal of Section 377 of the Indian Penal Code, a contentious colonial provision that eventually gave rise to "The transgender person protection of rights Act 2019." As we see new Bills, Acts, and other legislation focused toward preserving and providing a livelihood for the community, we are witnessing a repetition of Indian history, which once served as a haven for the transgender population. However, compared to other countries, India has a larger transgender community that requires much more than just written legislation. For the transgender community to fully enjoy their rights and freedoms, it is imperative that legal gaps be filled and processes are streamlined.

Among many other minority groups, the transgender community includes sub-groups of the Hijras, Eunuchs, Kothis, Aravanis, Jogappas, and Shiv-Shakthi. Given that it is mentioned in Hindu mythology and is mentioned in numerous holy texts, this society has a long history in India. The literature of the Vedas and the Puranas includes the idea of Tritiyaprakrti or Napunsaka. The literary works by Jain provide a thorough overview of the transgender community and refer to the idea of "psychological sex." In particular, in the Ottoman empires and Mughal rule in medieval India, the Hijra community was viewed as being vital in legal and leadership roles in the royal courts of the Islamic world. Transgender people have lived in India for more than 4,000 years. The population is estimated to be around a million, which is a sizeable fraction of the overall population. Compared to cisgender people, transgender people have an even greater likelihood of becoming the victim of violent crimes such as rape, sexual assault, and simple or aggravated assault. According to a survey done by Foreign 2005, when asked if gender was a factor in the abuse or assault, 29 percent indicated "no," 42 percent said "yes,"

21 percent were unsure or couldn't remember, and 8 percent provided alternate options. In this regard, it's crucial to emphasize that certain respondents have a propensity to think that sexual violence only happens to women or people who are believed to be women: Due to gender expression that deviates from standard male and female roles, both sexual minority and transgender youth may be outliers in their communities, leaving them more susceptible to bullying, a behavior frequently used against peers who are viewed as unusual.<sup>1</sup>

### Historical Aspect

Early Indian literature reveal a lot about the group by identifying people who don't fit male or female gender standards. We can infer that the transgender group has long existed in Indian civilization based on the idea of Tritiya-Prakriti or Napumsaka, which is a crucial aspect of Hindu mythology, folklore, epics, and early Vedic and Puranic literature.."(1) a person with both male and female qualities by nature; (2) an intersex, transgender, or homosexual person; (3) sexually neutral people such as children, the elderly, the impotent, the celibate, and the third sex"<sup>2</sup>

Indian transgender is the most well-known and well-liked third category of sex nowadays. The third gender is shunned, mocked, and discriminated against in society up until the modern day. This has only been observed because of their intersex or transgender character. Joining the outcast and reviled Hijra community is the only way out. This signifies that you are residing in the guru-chela system and are once more required to submit to your new master, the Guru.<sup>3</sup>

Indian society still views transgender people as a godsend to bestow a blessing on any big event because they believe and trust them to be bearers of luck, prosperity, and fertility. However, discrimination from the same clients they are supposed to be serving has prevented this from being saved. They continue to belong to the very lowest social strata and are frequently derided and avoided. Transgender individuals were granted the right to vote in Supreme Court of India decisions between 1994 and 2014 that recognized them as members of society's third gender. As a result, individuals now have reservation rights under governmental restrictions, which has

produced several benefits.

### Key Findings

- Targeting of transgender people occurs four times more frequently than that of cisgender people. In comparison to cisgender people, who experienced 21.7 victimizations per 1,000 people, transgender people experienced 86.2 victimizations per 1,000 people in 2017–2018.
- There were 86.1 and 107.5 violent crimes against transgender women and males per 1,000 people, respectively, compared to cisgender women and men (23.7 and 19.8 per 1,000 people, respectively).
- Compared to one in ten cisgender women, one out of every four transgender victims thought the incident was a hate crime.
- Between 2017 and 2018, transgender households had higher rates of property victimization (214.1 per 1,000 residences) than cisgender households. (108 for every 1,000 homes).
- Only around 50% of violent victimizations were reported. Calling the police was a common occurrence for both cisgender and transgender people.

### Common Transgender Problems

The transgender community faces issues that are not unique to India. The global trend of victimization is mapped, but India appears to stand out because of the country's sizable transgender minority. Due to legislation passed under society's culture and norms, the LGBT population as a whole experiences prejudice. People have been stripped of their liberty, freedom, and safety, among other things, which are guaranteed under the constitution. Human Rights Campaign (HRC) statistics show that at least 44 transgender or gender nonconforming people were killed in the first few months of 2020, with trans women of color making up the majority of these deaths. On January 1st, Dustin Parker, 25, was gunned down in McAlester, Oklahoma; on February 24th, Neulisa Luciano Ruiz was assassinated in Toa Baja, Puerto Rico; and on March 18th, 34-year-old Black trans woman Monika Diamond was murdered in Charlotte, North Carolina. The HRC asserts that

since it started tracking these incidents in 2013, it has not witnessed such a high number of transgender victimizations. Since 2013, more than 130 transgender people have been killed in the US. (HRC, 2019). When it comes to uncovering the actual figures related to the criminal victimization of transgender people, identification and greater knowledge of the variety of challenges posed by those encounters are just as important as a better appreciation of the scope of the issue.

Any aspect of effective policy-making, including the implementation of policies (or programs) to lessen transgender victimization, relieve the impact of victimization on victims, and ensure a more victim-centered methodology in the investigation and conviction of these crimes, requires a thorough analysis of these fundamental issues.

- **Harassment, abuse, and discrimination:** The transgender community experiences bullying and abuse at every turn. Due to legislation passed in accordance with society culture and norms, the LGBT population as a whole experiences prejudice. Though there is a vague notion of gender in the first place, this has pinned individuals down on issues like same-sex marriage. A same-sex marriage measure will go a long way toward fixing these problems and presenting the LGBT community with new prospects. Since transgender persons deal with the core question of identity, which even the law has taken a long time to solve and is currently dragging its feet on the bill, this will benefit them more than any other LGBT group. It is significant to remember that certain other nations, including the US, Canada, and the UK, went through a similar fight before deciding to legalize same-sex unions. The only obstacles to achieving this goal are our religion, social norms, and culture, which have brought a lot to the discussion table. One would think that transgender youngsters would be able to adapt and mature in the face of sexuality and gender challenges. This still needs to advance, just like same-sex marriage. Even when several factors are taken into account, such as internal stress and

involvement in bullying in the opposing role, transgender identification, particularly non-binary identity, is linked to both experiencing harassment and engaging in harassment. Thus, bullying in childhood might be a way to maintain hegemonic masculinity.

- **Forced begging:**The TG population frequently engages in forced begging due to the high rate of illiteracy and a lack of employment.
- **Forced prostitution:**Their community, friends, or family drove them into prostitution. Drug abuse: Abuse of drugs and other substances is a serious problem. Regardless of whether they are straight or LGBT, it is incorrect to characterize two consenting adults having a sexual relationship as prostitution. Sexual minorities do not include men or women who work in the sex industry or prostitution.
- **Rejection and Exclusion:**Exclusion from social, cultural, and economic activities as well as limited access to most public spaces.
- **Child Nabbing:**Newborns and children who identify as transgender are either willingly given up by their parents or picked up by the transgender community. This is due to the possibility that the parents would rather sell the kids for money than keep them. They may eventually be used as young beggars, in rituals, or for organ harvesting.
- **STI and STD:**Rape, unprotected sex, drug abuse, making people susceptible, sexually transmitted illnesses, and other similar issues.
- **Policies and procedures:** There aren't enough policies addressing gender recognition, sex reassignment surgery, child adoption, same-sex marriage, and family formation.
- **Human Trafficking:** The transgender population is more vulnerable to human trafficking, as well as sex, the sale of organs, and begging. The transgender community is the target of the most trafficking in India among women and children. Because society believes that transgender individuals can

never be raped, these community members are frequently unable to advocate for their rights. Regardless of a person's biological sex, rape and sexual assault are forms of coercion into non-consensual intercourse. Sexual assault and violence against transgender people are prevalent.

- **Drug abuse:**Because society and families do not accept transgender people, there are problems with drug and alcohol abuse.
- **Homelessness:** Parental rejection, domestic violence, and family abuse are a few causes of homelessness. Particularly while transitioning or coming out. This leaves out the cause of poverty.

### The Law amidst Discrimination and victimization

The lengthy and controversial international discussion over transgender rights concluded on April 15, 2014, when the Indian Supreme Court made a ruling. The law is supreme in India, and everyone is treated equally by the law. But whether it comes from their own family and friends or the broader community, the transgender population continuously battles marginalization, abuse, and prejudice. People who identify as transgender struggle every day since they are not accepted anywhere, are shunned by society and are frequently made fun of. However, a division bench of Justices K.S. Radhakrishnan and A.K. Sikri accepted the third gender alongside the male and female in the case *National Legal Services Authority v. Union of India &Ors'*

*"Recognition of Transgenders as a third gender is not a social or medical issue but a human rights issue," Justice K.S. Radhakrishnan*

The rights to equality before the law and equal protection under the law are guaranteed by Articles 14 and 21 of the Constitution. Living a decent existence, which is covered by Article 21, requires the freedom to choose one's gender identity. When determining a person's right to personal freedom and self-determination, the Court stated that "the gender to which a person belongs is to be determined by the individual concerned." The Indian people now have the right to express their gender identity, thanks to the court. Furthermore, Articles 14, 15,

16, and 21 specifically forbid discrimination based on gender. The Court also protects one's gender expression invoked by Article 19 (1) (a) and held that *"no restriction can be placed on one's appearance or choice of dressing subject to the restrictions contained in article 19(2) of the Constitution"*.

For a person's personality to be able to express itself fully, the Court recognized the right to select one's private behavior, personhood, and freedom of thinking. The Court continued by stating that requiring someone to mature in a gender to which they do not belong or cannot relate will once more obstruct their development and keep them from achieving their dignity. The Supreme Court has specified guidelines for the protection of transgender people's rights by adding a third category to documents such as the voter registration card, passport, driver's license, and ration card, as well as for admission to hospitals and educational institutions, among other things. Every individual is entitled to some fundamental freedoms and rights just by virtue of being a human. These rights cannot be bestowed or revoked by governments. It includes the rights to life, freedom, equality, and honor in addition to the freedoms of expression and opinion.

The transgender community prayed that non-recognition of their gender identity is a breach of Articles 14 and 21 of the Indian Constitution. They requested a formal declaration of their gender identity rather than the identity of male or female that was assigned to them at birth. The Supreme Court became worried about their complaints and suffering as a result of this. *Union of India v. National Legal Service Authority* The honorable court determined that Article 14's protections apply to "any person," which includes transgender individuals, after interpreting the provision's intended use. As a result, just like any other citizen, all transgender people have a right to legal protection under the law in all spheres of state action. The court additionally found that Articles 15 and 16 are intended to apply to people who are neither biologically male nor female, as well as to people who identify as neither. Before reaching to the decision that transgender people's behavior and presentation can represent their transgender personalities and that this expression cannot be prohibited or restricted, the court additionally cited Articles 19(1)(a) and 19(2). The

court determined in reference to Article 21 "Hijras/ Eunuchs have to be considered as the third gender, over and above binary gender under our constitution and the laws".

Transgender people should be recognized as belonging to a "third gender," the Supreme Court ruled in its final decision, in order to safeguard their rights under Part III of the Indian Constitution and the laws passed by the Parliament and State legislatures. The state government was further ordered by the court to formally recognize their third gender identification. The government was also required by the honorable top court to eradicate societal stigma, support particular health initiatives, and ensure equal protection for transgender persons. Every citizen has a right to justice, including social, economical, and political equality of standing, as stated in the constitution's preamble. The third gender has been denied a number of rights as an Indian citizen, including the right to marry, the right to vote, the right to own property, the right to declare a formal identity through a passport, etc. However, the right to healthcare, work, education, etc. is more significant. Due to state policy, which previously only recognized males and females as the two genders, the third gender has been denied these rights. The fundamental rights protected by Articles 14, 15, 16, and 21 were denied to them. In the 2014 NALSA Judgment, the Indian Supreme Court placed a high focus on safeguarding and preserving the rights of a transgender person in accordance with the provisions of the Indian Constitution expressed in Articles 14, 15, 16, and 21.

**The 1986 amendment to the Immoral Traffic Prevention Act** is a gender-neutral law. Now, the Act applies to both male and female sex workers as well as individuals whose gender identification was uncertain. Since both male and hijra sex workers are now regarded as criminals as a result of the legislation, the police are now authorized to detain and intimidate transgender sex workers. According to Section 377 of the IPC, consenting people who engage in same-sex relationships are unlawful. The transgender community is vulnerable to abuse, extortion, and harassment from the police because of this law, which dates back to the colonial era. Pandian, a transgender person, was apprehended by the police

on suspicion of stealing in *Jayalakshmi v. State of Tamil Nadu*. He was sexually molested in the police station, which ultimately led him to set himself on fire. In the matter of *Nangaiv*, the Superintendent of Police, the petitioner in the present case had applied for the employment of a female police constable. The Tamil Nadu Uniformed Services Recruitment Board in Chennai conducted the application exams. After the petitioner's application was accepted, the Superintendent of Police in the Karur district issued an order of appointment. As part of her instruction at the Vellore Police Recruit School, she received a medical examination.

The Hindu Marriage Act of 1955, the Muslim Marriage Dissolution Act of 1939, and the Indian Christian Marriage Act of 1872 are the marriage and adoption Acts in India, and they continue to this day to forbid the union of transgender people. The Hindu Adoption and Maintenance Act, of 1956 also prohibits transgender persons from adopting children because this institution is only open to heterosexuals.

The examination determined that she was "transgender" based on her genitalia and chromosomal make-up. The results of the medical examiner were in disagreement with her birth certificate, medical records, and academic credentials. Later, the Superintendent had her fired from her job as a female constable. To be able to uphold the petitioner's legal rights as a transgender person, the Hon'ble High Court upheld her freedom to choose a different gender identity as a third gender in the future based on the medical declaration and reversed the Superintendent of Police's contested order terminating the petitioner's employment. Transgender persons have long experienced prejudice in the housing, health, education, and work sectors.

Due to their societal stigma and lack of access to support that was provided to transgender persons, they encounter discrimination. To defend and safeguard the rights of transgender persons, it is essential that legislation like the Transgender Person (Protection of Rights) Act, 2019, which forbids discrimination in significant spheres like work, education, and health care.

## Conclusion

Formerly the queen's helper, they now beg on the streets rather than being adored by society and honored during religious and spiritual rites. We have abused them after having used and rejected them. Who could provide them with their true identity? Who can stop this discrimination? Who might be able to help them start over? In India, who will step up and fight for transgender rights? In recent years, there have been many discussions on the transgender community that has taken place behind closed doors. India has not been excluded, just like the United States, Canada, and the United Kingdom, to name a few. Transgender issues are in the news and are receiving attention. Many cases have shown up in the recent past, and bills and Acts have also been implemented. It is important to remember that this community has hope at the end of the tunnel. The mechanism imposed for legal gender recognition the process by which trans individuals can update their documents to reflect their identity is likely the new law's most fundamental problem and is not yet worthy of complete praise.<sup>4</sup>

It is obvious that raising awareness of transgender issues will help find a cooperative solution. Arranging for regional and worldwide workshops to address difficulties that the transgender community is facing. Both the general public and the community may be subjected to this. As the subject gains attention, some workshops and seminars are being held all over the world. As a supporter of trans rights, the author plans to go to facilitate and arrange as much as she can. These lectures and workshops will go a long way toward keeping transgender people informed about their rights to a higher quality of life. Despite the fact that the law has protections for fundamental rights, as demonstrated by the empirical investigation, the majority are unaware of their rights. They will be inspired to speak out and defend their rights, especially in situations where they are being harassed or discriminated against. The researcher plans to collaborate on projects in the same field with other research groups and NGOs that are interested parties. With the outcomes of this study in hand, it will be fantastic to collaborate with research organizations

to improve the research as there are still unturned stones. Laws that are based on societal norms and culture discriminate against the LGBT population as a whole. Since there is no clear definition of what gender is in the first place, this has pinned them down on matters like same-sex marriage. A bill on same-sex marriage will go a long way toward resolving such situations and providing the LGBT community with a new path. The transgender community will benefit more from this than any other LGBT group since they experience the fundamental identity issue that the law of the nation has been slow to address and is currently doing so with the proposed measure. It is important to remember that other nations, including the USA, Canada, and the UK, have gone through the same struggle and decided to legalize same-sex unions. Our religion, social customs, and culture, all of which have much to contribute to the conversation, would be the only obstacle to this purpose.

**Ethical clearance-** The study does not require the approval of Institutional Ethics Committee. As the study is the combination of socio-medico-legal issue. No field study is done for this research.

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**Conflict of Interest -** NIL

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