

IS COVID-19 EXACERBATING TRANSPHOBIA IN INDIA? A FIGHT FOR TRANSGENDER VISIBILITY AMID THE PANDEMIC PROPELLED LOCKDOWN

Shouldn't we erase the overlap between the defined 'social and biological sets' of 'Gender Identity' and 'Biological Sex' to have a universal set of Homo-Sapiens? While the World is United in this pandemic, they are alone.

INTRODUCTION

26-year-old Zoya, 39-year old Vidya and 28 year-old-Tina are members of the transgender's community and residents of Mumbai. Before the lockdown resulting from the ongoing-pandemic, they made money through begging in trains, at signals, dancing at wedding functions or celebrations or on occasions of 'badhaai.' However, the lockdown has left them without any hope for making their bread and butter.¹

The novel coronavirus aka COVID-19 is a contagious virus and almost all countries around the world have now reported cases, resulting in a pandemic. It has resulted in an unprecedented and unforeseeable health crisis. The virus has shown that it does not discriminate and that we all are equally vulnerable to contracting the COVID-19 virus, yet some communities like the transgenders are more vulnerable as '*they are affected by this virus, without being infected by it,*' although there is no evidence that the virus impacts trans people disproportionately. The danger to transgenders is much more detrimental than other people. They have been oppressed and the pandemic adds salt to their injuries.

Fear is a natural human reaction to a pandemic, which sometimes leads to people from a community being blamed. While the term "transgender" and our modern definition of this term have been put to use in the late 20th Century, they remain a socially marginalized community in the modern era.² In popular culture and daily life, transgender people seldom face severe discrimination, stigma, and structural inequity even though the visibility and acceptability of transgender people are now growing. This has exacerbated during the pandemic. Throughout the world, there has been an increase in the occurrences of violence

¹ *How the pandemic has exacerbated troubles for the trans community* (2020). Available at: <https://indianexpress.com/article/lifestyle/life-style/how-the-pandemic-has-exacerbated-troubles-for-the-trans-community-6548957/> (Accessed: 25 November 2020).

² Little, W. (2020) *Chapter 12. Gender, Sex, and Sexuality*, Opentextbc.ca. Available at: <https://opentextbc.ca/introductiontosociology2ndedition/chapter/chapter-12-gender-sex-and-sexuality/> (Accessed: 25 November 2020).

against this socially marginalized community.³ There have been reports of violence against Trans people around the world with many of them been thrown out of their rented houses.⁴ Economic and health-care institutions in our country still marginalize the trans-community in a variety of ways.⁵

SOCIO-ECONOMIC IMPACT DURING THE GLOBAL PANDEMIC

In our country, transgender people and Hijra are most affected as they have no source of income or financial help through social distancing measures as they are largely dependent on begging, sex-work and are mostly employed in the private unorganized sector. Many have lost their jobs since our labour laws and the Trans Act, 2019 and the draft rule do not protect their jobs. Owing to their displacement, members of the group are at risk due to hunger and poverty. The sociological and economic role of a person determines the socioeconomic status in the society. The socio-economic status is defined based on income, jobs and health. There are social drawbacks in the transgender culture. However, its socioeconomic challenges have been compounded by the COVID-19 outbreak.⁶

Community-based organizations, such as the Humsafar Trust, have been working to support disadvantaged LGBTQ+ individuals since March 2020. They provide financial aid, food and other basic needs, medical support and the availability of HIV medicines, etc.⁷ The trans community somewhat lacks legal protection which gets translated into poverty, lack of identity documents which in turn resulted in harassment and stigma. Trans youth, who are students at university and young adults who have to return home may return to unwelcoming and unsafe surroundings.⁸

³ *Gender-based violence* (2020). Available at: <https://www.unfpa.org/gender-based-violence> (Accessed: 25 November 2020).

⁴ *Governments have failed to protect trans people from murder -and from COVID-19* (2020). Available at: <https://www.amnesty.org/en/latest/news/2020/11/governments-have-failed-to-protect-trans-people-from-murder-and-from-covid19/> (Accessed: 25 November 2020).

⁵ *Coronavirus isn't transphobic. But America's economic and health systems are.* (2020). Available at: <https://www.vox.com/identities/2020/4/3/21204305/coronavirus-transgender-economy-health-care> (Accessed: 25 November 2020).

⁶ Sugyanta Priyadarshini and Sukanta Chandra Swain (2020) "Impact of COVID-19 on the Socioeconomic life and Psychology of Transgenders: Insights from India", *International Journal of Research in Pharmaceutical Sciences*, 11(SPL1), pp. 126-132. doi: 10.26452/ijrps.v11ispl1.2286.

⁷ *The impact of stigma on Indian transgender people during Covid-19 - APCOM* (2020). Available at: <https://www.apcom.org/the-impact-of-stigma-on-indian-transgender-people-during-covid-19/> (Accessed: 25 November 2020).

⁸ *Covid-19 Sent LGBTQ Students Back to Unsupportive Homes. That Raises the Risk They Won't Return.* (2020). Available at: <https://www.chronicle.com/article/covid-19-sent-lgbtq-students-back-to-unsupportive-homes-that-raises-the-risk-they-wont-return/> (Accessed: 25 November 2020).

The society has a room wherein they create a psycho-social view of the gender-binary heterosexual world—a vision stripped of shame or the discrimination this creates. Dignity and social unity are absent here. There was a substantial rate of economic insecurity and social inequality before the pandemic and, subsequently, a worsening of the situation during COVID-19 due to a lack of food, resources, insecurity, safety and mental health concerns. They are largely vulnerable to abandonment from their poor livelihood. Most of them are trapped in the limits of their “home,” where there are no fundamental necessities or income production flows.⁹

Secondly, access to medical services is limited. As the nation struggles with public health management, amid this global pandemic, only the wealthy are allowed access to medical facilities. These factors also worsen the reality that the transgender population is vulnerable to illness, weaker immune systems and lack of insurance.

Many transgender people don't even have basic documents such as an Aadhar Passport, Voter registration or birth certificate. They remain beyond the range of the usual social security programs of the government, such as pensions and rations. The COVID-19 structure of the government does not even discuss the needs of the transgender community. Many states have not even attempted to respond to their needs as fundamental human beings. Despite this, it has been stated that the transgender community has extended its relief to its neighbourhood members.¹⁰

They are under the loop of structural inequality, exclusion and aggression. Since the virus, stigma and trans-phobia have risen, they can be seen as possible carriers. The failure to meet the rights of Trans people is almost omnipresent in many parts of the world, which also affects the collection of data, distribution of resources and funding for civil society. They're not new to the “social distance.”¹¹ The steps taken are accountable as the majoritarian scheme, the minorities still lurk in the periphery. The pandemic is still not being combated on an equal footing.

HEALTHCARE AND PSYCHOLOGICAL IMPACT ON TRANSGENDER COMMUNITY

⁹ Banerji, A. (2020) *Coronavirus and stigma among priorities for India's new transgender council, U.S.*. Available at: <https://www.reuters.com/article/us-india-lgbt-council-idUSKBN25L1V1> (Accessed: 25 November 2020).

¹⁰ Rawat (2020) *COVID-19 and the Transgender Community in India, Jurist.org*. Available at: <https://www.jurist.org/commentary/2020/06/sonal-rawat-trans-rights-covid19/> (Accessed: 25 November 2020).

¹¹ *Problems mount for trans people during Covid-19 lockdown* (2020). Available at: <https://www.hindustantimes.com/india-news/problems-mount-for-trans-people-during-covid-19-lockdown/story-CcErVDMwKsjEVMpm0tNXxI.html> (Accessed: 25 November 2020).

India hosted the third-largest population of human beings living with HIV in the world and according to UNAIDS, 3.1% of all adults were transgender.¹² For several members of the transgender community, the lockdown has particular effects on livelihoods and access for people living with human-immune viruses (HIV)/ADS or PLHIVs to medicines such as Anti-Retroviral Therapy (ART) and those undergoing HRT for gender change. In fact, because of their immunocompromised status, the Trans HIV+ population is also more vulnerable to Covid-19.¹³ As the pandemic has been given priority in the health system, retroviral treatment faces delays and postponements, making them more fearful of depression.¹⁴ The ART community service was smooth and 'natural' before COVID-19 as people used to visit the ART centre to get their medications and undergo HIV testing. Public transport is not operational because of existing travel limitations and lockdown. Similarly, before the lockdown owing to the pandemic, the transgender participants attended weekly CBOs, seminars, therapy programs, and periodic HIV and STI/STD testing. There are also limits on public or community clinic access to health care facilities.¹⁵

For the same reason, the gender-affirming surgeries have now been postponed due to the pandemic as these are classified as 'elective procedures.' According to Amita Swadhin, the founding director of Mirror Memoirs, "the gender-affirming surgeries can be a matter of life and death for people living with gender dysphoria."¹⁶

Even in quarantine centres, there are no specific spaces for transgender patients.¹⁷ For eg, one cannot expect a transwoman to stay in a male quarantine centre since her documents state that she was born a male.

Laws that criminalize or target trans-persons due to their gender identity harm transgender people because, out of fear of prosecution or violence, they may not access health care services. This discrimination will increase the risk of COVID-19 for trans persons. This can make them susceptible to violence and anxiety.

¹² *HIV and AIDS in India* (2015). Available at: <https://www.avert.org/professionals/hiv-around-world/asia-pacific/india> (Accessed: 25 November 2020).

¹³ *Supra at 11*.

¹⁴ *Supra at 11*.

¹⁵ Wallen, B. et al. (2020) *Broke, sick and stigmatised: India's 'third gender' hijra in fight for survival during pandemic*, *The Telegraph*. Available at: <https://www.telegraph.co.uk/global-health/science-and-disease/broke-sick-stigmatised-indias-third-gender-hijra-fight-survival/> (Accessed: 25 November 2020).

¹⁶ *Gender-Affirming Health Care Is Life or Death for Trans People* (2020). Available at: <https://elemental.medium.com/gender-affirming-health-care-is-life-or-death-for-trans-people-d55ca278b69b> (Accessed: 25 November 2020).

¹⁷ *Supra at 10*.

Research published in the American Journal of Psychiatry, released last year, showed that people with gender incongruousness are six times more likely to be susceptible to mood swings and depression than the general population.¹⁸

TRANSGENDER AND UNEMPLOYMENT DURING COVID-19

The collective Hijra is a culturally unique group with distinct gender identities. The other name is the trans-community. The main issue, in this case, is that transgenders have no specific and permanent job. Usually, they are those who “bless a new-born/new-born couple” and make a special appearance in religious celebrations. Other options include begging, dancing and illicit prostitution.¹⁹ The transgender community typically has some incongruity regarding their birth name and gender in its official documents due to the change. This is why the records do not comply, and the government programs cannot be availed. For precisely these reasons, despite their qualifications, they often find it difficult to find employment. Thus, even though there are guarantees for employees (organised and unorganised) under the MHA order,²⁰ it is not extended to the transgenders.

According to a survey, trans people were three times more susceptible to unemployment than their cisgender peers.²¹ Most of the people who identify themselves as trans, work in the informal sector and lack access to paid sick leave, insurance cover for unemployment.²² Thus, in this period of economic hardship trans-community is susceptible to discrimination and may also be susceptible to anxiety.

LEGAL FRAMEWORK AND STATUTORY- PANACEA TO IMPROVE THE PLAGUE CAUSED BY THE GLOBAL PANDEMIC

The government released the assessment known as the Draft Rules on the Trans Act, 2019 ("the Act"), at a time when the community was fighting for bread and butter. These guidelines are an attempt to resolve the significant critiques that were made for the Act. Despite the protests, the fundamental fault remains quite unchanged. The rules do not

¹⁸ *Transgender individuals at greater risk of mental health problems* (2020). Available at: <https://medicine.yale.edu/news-article/26859/> (Accessed: 25 November 2020).

¹⁹ *COVID-19 and the plight of the transgender community* (2020). Available at: <https://frontline.thehindu.com/dispatches/article31463945.ece> (Accessed: 25 November 2020).

²⁰ *Supreme Court Order on Payment of Wages During the Lockdown Period - Employment and HR - India* (2020). Available at: <https://www.mondaq.com/india/employee-benefits-compensation/959246/supreme-court-order-on-payment-of-wages-during-the-lockdown-period-> (Accessed: 25 November 2020).

²¹ *LGBTQ people face higher unemployment amid pandemic, survey finds* (2020). Available at: <https://www.nbcnews.com/feature/nbc-out/lgbtq-people-face-higher-unemployment-amid-coronavirus-pandemic-survey-finds-n1205296> (Accessed: 25 November 2020).

²² *Ibid.*

derive the right, as confirmed in the NALSA judgment by the Supreme Court,²³ to self-identification/self-determination. Besides, the laws violate freedom of movement for trans people, do not comply with the criminalization of provisions surrounding sex work and do not resolve the systemic obstacles to healthcare.²⁴

There is no binding legal framework at the international level which specifically refers to the principle of non-discrimination on the grounds of sex, or gender. Under international law, however, the obligations of States to protect LGBT rights are clear.²⁵ Further, UN human rights bodies have consistently agreed that sexual orientation and gender identity are one of the forbidden grounds for discrimination under international human rights law.²⁶

The Principles of Yogyakarta are a collection of guidelines for international law on sexual identity and gender identities. The States party to the principles have to comply with applicable international law requirements. The principles aim at building an entirely different future for all people who were born free and equal in dignity and rights.²⁷

They effectively define the responsibilities that a State should comply with to allow people from the LGBTQIA+ to enjoy the human rights of everyone in society.²⁸ They made recommendations to non-State actors, such as the UN framework for the protection of human rights, national human rights organisations, media, NGOs and founders promoting and upholding human rights. The principles address a broad range of issues of human rights, including the universality of human rights, non-discrimination, legal equality, the right to life and protection, right to privacy, equal and equitable treatment by police and courts.

The Yogyakarta Principles discuss discrimination-based on gender fluidity or sexual orientation²⁹ and discrimination in medical needs.³⁰

PANACEA AND WAY FORWARD FOR THE TRANS-COMMUNITY POST COVID-19

²³ National Legal Services Authority v. Union of India AIR 2014 SC 1863.

²⁴ *CLPR | Trans Law Quarterly | Issue II - Centre for Law & Policy Research* (2020). Available at: <https://clpr.org.in/blog/clpr-trans-law-quarterly-issue-ii/> (Accessed: 25 November 2020).

²⁵ *Are LGBT rights human rights? Recent developments at the United Nations* (2020). Available at: <https://www.apa.org/international/pi/2012/06/un-matters> (Accessed: 25 November 2020).

²⁶ *Ibid.*

²⁷ *Introduction to the Yogyakarta Principles – Yogyakartaprinciples.org* (2020). Available at: <https://yogyakartapinciples.org/introduction/> (Accessed: 25 November 2020).

²⁸ *Ibid.*

²⁹ Preamble, Yogyakarta Principles.

³⁰ Principle 8, Yogyakarta Principles.

On the eve of IDAHOBIT, the United Nations Community and international human rights experts called upon States and other stakeholders to urgently tackle the effects of COVID-19 on the members of transgender persons (LGBT) as part of developing, implementing and reviewing steps to combat homophobia, transphobia and biphobia (IDAHOBIT).³¹

We have to meet the needs of the community to ensure that assistance is provided to vulnerable local populations that are at increased risk of virus transmission. Effort should be made not to discriminate against or fear retaliation for pursuing treatment for trans people. Trans-population health programmes should not be discriminatorily deprioritized. Measures to resolve, implement and combat the pandemic's social implications should consider trans individuals' interests, including the elderly and disabled, migrants and refugees and ensure maximum coverage of trans people. Political leaders and those who are powerful must condemn hate speech in the sense of the pandemic against trans people. States should not use emergency legislation to scale back current protections and guarantees to the trans individuals. Movement control policies should protect people who don't conform to gender. Law enforcement officers should be advised to ensure that this group is not discriminated against. Effort should be made to ensure that no-one is left behind.³²

The community members are more vulnerable to poor mental health problems due to a lack of strong social support. They must be approached and supported.

We have to advocate the health and human rights of the trans communities spread the message of equality. With COVID-19 unexpectedly taking precedent, we have to concentrate more on the situation today and resolve community needs throughout the crisis. With initiatives like #humsafarfightscovid19, 'Identify, The World for Transgender' -around 10,000+ trans people in India are currently supported.

The need for more equitable spaces in the health care system is now inevitable because they have to be free of all types of discrimination, bias and systemic partiality and patriarchy. To fulfil the duty of the state to its citizens, we cannot always depend on active individuals, humanitarian organisations and human rights organizations. To accomplish its fundamental mission of protecting the citizens, the state must urgently step up with policies for the Trans.

³¹ *International Day Against Homophobia, Biphobia and Transphobia* | UNDP (2020). Available at: <https://www.undp.org/content/undp/en/home/news-centre/speeches/2020/international-day-against-homophobia--biphobia-and-transphobia.html> (Accessed: 25 November 2020).

³² Inspired by Agenda 2030 Pledge.

We must concentrate on virtual environments in future years and reconsider the group support systems and events. Mental health care and a secondary awareness program are the two key places where resilience must be built.