

# Problems Faced by Transgender Community in India: Some Recommendations

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**Abstract:** *We live in a society that is deeply structured by sex and gender. The categorization of people as 'male' or 'female' permeates our society on every level. But sexual orientation categories based on the gender binary system are disrupted by gender diversity. Gender diversity provides a challenge to the gender binary system in a number of ways—via intersex, third or other genders, gender fluidity, positions outside of gender, gender queer etc. People of the 'Transgender' category also challenge this normalization of gender binaries. In India there are a host of socio – cultural groups of transgender people like hijras/ kinnars, and other transgender identities like – shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi, etc. All members of these subgroups face severe discrimination and harassment in all respects in contemporary India and they are subjected to unfair treatments like verbal abuse, physical and sexual violence; false arrests; denial of share in their ancestral property, services, and admission to educational institutions; and victimization in multiple settings like family, educational institutions, workplace, health care settings, public spaces. Highlighting some major problems faced by Transgender Community in India and to make the society aware about the problems of transgender community and also to provide suggestions to improve their status is the theme of this article.*

**Key Words:** Sexual Orientation and Gender Diversity, Transgender, Social Exclusion and Discrimination, Transphobia.

## Introduction:

We live in a society that is deeply structured by sex and gender. The categorization of people as 'male' or 'female' permeates our society on every level. But sexual orientation categories based on the gender binary system are disrupted by gender diversity. Gender diversity provides a challenge to the gender binary system in a number of ways—via intersex, third or other genders, gender fluidity, positions outside of gender, gender queer etc. People of the 'Transgender' category also challenge this normalization of gender binaries. In India there are a host of socio – cultural groups of transgender people like hijras/ kinnars, and other transgender identities like – shiv-shaktis, jogtas, jogappas, Aradhis, Sakhi, etc. All members of these subgroups face severe discrimination and harassment in all respects in contemporary India and they are subjected to unfair treatments like verbal abuse, physical and sexual violence; false arrests; denial of share in their ancestral property, services, and admission to educational institutions; and victimization in multiple settings like family, educational institutions, workplace, health care settings, public spaces. Seldom, our society realizes or cares to realize the trauma, pain and agony which the members of Transgender community neither undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables.

So far, these communities perceive that they have been excluded from effectively participating in social and cultural life; economy; and politics and decision-making processes. A primary reason (and consequence) of the exclusion is perceived to be the lack of (or ambiguity in) recognition of the gender status of hijras and other

transgender people. It is a key barrier that often prevents them in exercising their civil rights in their desired gender.

### **Objective of the Study:**

1. Highlighting some major problems faced by Transgender Community in India
2. To make the society aware about the problems of transgender community
3. To provide suggestions to improve their status

### **Methodology:**

The study is organized with the help of secondary data collected from articles, publications and websites.

### **Sexual Orientation and Gender Diversity:**

When we refer to sexual orientation, two views come in to conflict. These are the Essentialist view and the Social Constructionist view<sup>1</sup>. The Essentialist view is that we are born with a sexual orientation. That means our sexual orientation is fixed in nature and inherent at birth. It represents our essential sexual being, what we really are. The categorization of people as 'male' or 'female' permeates our society on every level. On a social level, biological determinism, or the belief that we act in certain ways because of our physical make-up, is rife. Most people are brought up to think that being 'male' or 'female' is a crucial aspect of identity. The assertion is that there are only two genders, male and female. That means, the sexual orientation categories are based on the gender binary system. The sexual orientation categories that are used in the West—lesbian and gay, heterosexual and bisexual, are based on the gender binary system. Most sociologists reject this view in favor of the social constructionist view. In this view, represented especially by symbolic interactionists, we construct our sexual identity. According to this view, our sexual orientation is neither fixed in nature nor inherent at birth. Rather, based on our personal experiences we learn our sexual preferences, assume a matching role from those available within our culture, and create a sexual identity. According to Monro<sup>2</sup> second-wave feminisms, including liberal, radical, and Marxist feminism, provide important insights into some aspects of gender. However, these approaches, like the early forms of masculinity studies, tend to reinforce gender binaries via their reference to 'male' and 'female' as separate category. The later developments, including black feminisms, post-structuralism, and queer theory, provide means of conceptualizing gender and sexuality as constructed, diverse, and flexible.

So, it can be said that sexual orientation categories based on the gender binary system are disrupted by gender diversity. Gender diversity sometimes involves gender fluidity and non-male/female genders. Gender diversity provides a challenge to the gender binary system in a number of ways—via intersex, third or other genders, gender fluidity, positions outside of gender, gender queer etc. People of the 'Transgender' category also challenge this normalization of gender binaries. That means the term 'transgender' refers to signify individuals who go beyond rigid, binary gender constructions.

### **Conceptualizing Transgender:**

Transgender people have existed in every culture, race, and class since the story of human life has been recorded. In its broadest sense, transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms. Transgender is not a term limited to persons whose genitals are intermixed but it is a blanket term of people whose gender expression, identity or behavior differs from the

norms expected from their birth sex. That means Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviors differ from stereotypes about how men and women are “supposed” to be. Various transgender identities fall under this category including transgender male, transgender female, male to female (MTF) and female to male (FTM). It also includes cross dressers (those who wear clothes of the other), gender queer people (they feel they belonged to either both genders or neither gender) and transsexuals.

Sudeshna Mukherjee<sup>3</sup> mentioned that Transgender (for short ‘TG’) is an umbrella term that describes “individuals whose gender identity doesn’t match the gender identity commonly experienced by those of the individuals’ natal sex”. Transgender does not imply any specific form of sexual orientation, they may identify as heterosexual, homosexual, bisexual, pansexual or asexual. The precise definition for transgender remains in flux, but include, of relating to or designating a person whose identity does not conform unambiguously to conventional notions of male or female gender, but combines or moves between these. She also mentioned that, the term transgender was popularized in the 1970’s describing people who wanted to live cross-gender without sex reassignment surgery. In the 1980’s the term was expanded to an umbrella term and became popular as a means of uniting all those whose gender identity did not mesh with their gender assigned at birth. In the 1990’s the term took on a political dimension as an alliance covering all those who have at some point not conformed to gender norms, and the term became used to question the validity of those norms or pursue equal rights and antidiscrimination legislation, leading to its widespread usage in the media, academic world and law.

### **Transgender in India:**

Gender variance in India has ancient, even prehistoric, roots. TG Community comprises of Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc. The Hijra communities in India have a record history of more than 4000 years. Hijras belonged to the ‘Eunuch’ culture that was common across the Middle East and India, where Eunuchs worked as guards, advisers, and entertainers<sup>4</sup>. Hijras trace their origin to the myths in the ancient Hindu Scriptures of the Ramayana and Mahabharata. The Concept of tritiya prakriti or napunsaka has also been an integral part of vedic and puranic literatures. The word ‘napunsaka’ has been used to denote absence of procreative capability. Lord Rama, in the epic Ramayana, was leaving for the forest upon being banished from the kingdom for 14 years, turns around to his followers and asks all the ‘men and women’ to return to the city. Among his followers, the hijras alone do not feel bound by this direction and decide to stay with him. Impressed with their devotion, Rama sanctions them the power to confer blessings on people on auspicious occasions like childbirth and marriage, and also at inaugural functions which, it is believed set the stage for the custom of badhai in which hijras sing, dance and confer blessings. Jain Texts also make a detailed reference to TG which mentions the concept of ‘psychological sex’. Hijras also played a prominent role in the royal courts of the Islamic world, especially in the Ottoman empires and the Mughal rule in the Medieval India. A detailed analysis of the historical background of the same finds a place in the book of Gayatri Reddy, “With Respect to Sex: Negotiating Hijra Identity in South India” – Yoda Press (2006). We notice that even though historically, Hijras/transgender persons had played a prominent role, with the onset of colonial rule from the 18th century onwards, the situation had changed drastically. During the British rule, legislation was enacted to supervise the deeds of Hijras/TG community, called the Criminal Tribes Act, 1871, which deemed the entire community of Hijras persons as innately ‘criminal’ and ‘addicted to the systematic commission of non-bailable offences’. The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place, as well as those who danced or played music in a public place. Such persons also could be arrested without warrant and sentenced to imprisonment up to two years or fine or both. Under the Act, the local government had to register the names and residence of all eunuchs residing in that area as well as of their

properties, who were reasonably suspected of kidnapping or castrating children, or of committing offences under Section 377 of the IPC, or of abetting the commission of any of the said offences<sup>5</sup>.

After Independence, the law was repealed in 1949, but mistrust of the transgender community has continued. This has pushed the transgender to the margin without any serious effort to mainstream. In a landmark judgement in 2014, the Supreme Court observed that “The transgender community, generally known as “Hijras” in this country, are a section of Indian citizens who are treated by the society as “unnatural and generally as objects of ridicule and even fear on account of superstition”. In its judgement, the Supreme Court passed the ruling that “In view of the constitutional guarantee, the transgender community is entitled to basic rights i.e. Right to Personal Liberty, dignity, Freedom of expression, Right to Education and Empowerment, Right against violence, Discrimination and exploitation and Right to work. Moreover, every person must have the right to decide his/her gender expression and identity, including transsexuals, transgenders, hijras and should have right to freely express their gender identity and be considered as a third sex.” Thus, today the transgender people in India are considered to be the Third Gender<sup>6</sup>. Hijras exist all over India. Indian Census has never recognized third gender i.e. Transgender while collecting census data for years. But in 2011, data of Transgender's were collected with details related to their employment, Literacy and Caste. In India, total population of transgender is around 4.88 Lakh as per 2011 census<sup>7</sup>. Uttar Pradesh tops the list among 35 Indian states and Union Territories with 12,916 members, Bihar comes in second with 9,987 transgenders and rural Bengal ranks third with 9,868 members of the third gender<sup>8</sup>. In India over 66% of the population identified as third gender lived in rural areas, very close to the 69% of the overall population that lives in villages. The census's gender analysis reports rural India has 74,286 transgenders. The census data also revealed the low literacy level in the community, just 46%, compared to 74% literacy in the general population (Times of India May 30, 2014). Hijras are unique because they have an active social organization that is both traditional and ritualistic. Hijras earn a living by prostitution or by performing a traditional ceremony which occurs whenever a new baby is born in the community. This is a christening ceremony composed of music, singing, and dancing performed at the home of the new infant. Hijras and the new parents negotiate a payment and performance time before the event. Local people participate in the ceremony, which is an established part of Indian culture. It should be noted, however, that this ceremony is not wholly accepted by everyone. It is sometimes viewed with contempt, wherewith hijras are paid money for a timely exit. When hijras earn a living by prostitution, they work in houses composed of entirely hijras prostitutes in red light districts; others may work for a pimp. Customers know they are transgendered and specifically seek them out. As in all societies, negative views of transgenderism exist, and this compounded by the ramifications of prostitution, cause many hijras to live in ghettos. But despite this, a third gender is still an incorporated part of Indian society which has religious meaning and social support<sup>9</sup>.

The Union Cabinet approved the Transgender Persons (Protection of Rights) Bill 2016 for introduction in Parliament, and this Bill is expected to bring social, educational and economic empowerment to the transgender community. To a community that has been ostracized and discriminated against for so long, this Bill could mean a chance to live a life of dignity and equality.

Here are a few points to help get a better understanding of the provisions in the Bill<sup>10</sup>:

- 1) The Bill makes it illegal to force a transgender person to leave residence or village, remove their clothes and parade them naked, force them into begging or any kind of bonded labour. These acts will be punishable with up to two years of imprisonment, along with a fine and also asks for amendments in the law to cover cases of sexual assault on transgender persons.
- 2) The Bill also criminalizes denying a transgender person access to any public place and causing them any physical or mental harm within and outside the home.
- 3) It guarantees OBC status to all transgender not born as SC or ST, and entitles them to reservation under the respective categories.

- 4) The Bill identifies 'Transgender' as the third gender and gives a transgender person the freedom to identify as 'man', 'woman' or 'transgender', independent of surgery/hormones. They cannot be referred to as the 'other' gender or as 'others', but only as Transgenders. A certificate of identity as a transgender needs to be issued by a state level authority and this certificate should be acceptable as gender identity for any official document like passport, aadhar card, etc.
- 5) It also ensures that transgender persons or transgender children enjoy the right to equality, all human rights, right to life and dignity and personal liberty as guaranteed by the Constitution of India. All government institution shall provide inclusive education and shall not discriminate against any transgender student and also provide transgender students with scholarship / entitlements, free waiver, textbooks, hostel accommodations, other facilities and subsidized rates. Additionally, all educational institutions need to have an anti-discrimination cell to monitor discrimination against transgender students. The government shall also set up rehabilitation and welfare programmes, information centres, sensitization programmes, etc. for transgender persons and provide necessary orientations to sensitize people in educational institutions and elsewhere.
- 6) The Bill instructs law the police to provide assistance under the law to an aggrieved transgender person, and also to put the person in touch with the nearest organisation for rehabilitation of aggrieved transgender persons.
- 7) The Bill instructs the government to support and facilitate employment of transgender persons, especially for vocational training and self-employment, provide loans, and to ensure that there is no discrimination against transgender person at workplaces.
- 8) Under the provisions in this Bill, transgender persons shall also have equal rights and access to a cultural life, leisure and recreational activities.
- 9) The Transgender Persons (Protection of Rights) Bill aims at ensuring that transgender persons enjoys a life of dignity and equality as an Indian citizen, and guarantees a basic human right that had been denied to them for so long - right to identify as a member of our community and as equals.
- 10) The Bill also instructs state mechanisms to include all possible provisions to ensure that no transgender person faces discrimination in India because of their gender identity.

Despite this supposedly sanctioned place in Indian culture, transgender face severe discrimination and harassment in all respects in contemporary India and they are subjected to unfair treatments like verbal abuse, physical and sexual violence; false arrests; denial of share in their ancestral property, services, and admission to educational institutions; and victimization in multiple settings like family, educational institutions, workplace, health care settings, public spaces. The perpetrators of violence and discrimination against transgender include their own parents and siblings, friends, neighbours, their community members, school and college authorities, employers, house owners, health service providers, police, clients and many others because of their effeminate behaviour, physical appearance, trans status, real or perceived association with sex work, real or perceived HIV status, dress code, and so on.

### **Problems Faced by Transgender Community:**

Transgender people in India face a variety of issues. This discrimination not only denies TG people equal access to key social goods, such as employment, health care, education and housing, but it also marginalizes them in society and makes them one of the vulnerable groups who are at risk of becoming socially excluded. Here I am highlighting some major problems faced by TG people in India:

#### **1. Marginalization and Social Exclusion:**

Marginalization is at the core of exclusion from fulfilling and full social lives at individual, interpersonal and societal levels. People who are marginalized have relatively little control over their lives and the resources available to them; they may become stigmatized and are often at the receiving end of negative public attitudes. Their opportunities to make social contributions may be limited and they may develop low self-confidence and self esteem and may become isolated. Social policies and practices may mean they have relatively limited access to valued social resources such as education and health services, housing, income, leisure activities and work. The impacts of marginalization, in terms of social exclusion, are similar, whatever the origins and

processes of marginalization, irrespective of whether these are to be located in social attitudes (such as towards impairment, sexuality, ethnicity and so on) or social circumstance (such as closure of workplaces, absence of affordable housing and so on).

TG individuals may experience multiple forms of marginalization—such as racism, sexism, poverty or other factors – alongside homophobia or transphobia that negatively impact on mental health. The stigma attached to sexual orientation and gender identity or expression that fall outside the expected heterosexual, non-transgender norm relegates many Transgender people to the margins of society. This marginalization often excludes Transgender people from many support structures, often including their own families, leaving them with little access to services many others take for granted, such as medical care, justice and legal services, and education. Marginalization and bias around sexual orientation and gender identity and expression regularly prevent Transgender people from accessing fundamental public services such as health care and housing and contributes to significant health disparities. Marginalization of Transgender people often starts with the family into which they were born. The familial marginalization of Transgender people hinders initial prevention and education efforts, encourages risk-taking behavior that can lead to HIV infection, and places obstacles in the way of receiving proper medical treatment and psychosocial support for Transgender youth already living with HIV/AIDS. Moreover, lacking other means of support, many Transgender youth are forced to turn to criminalized activities such as sex work to survive, which drives them further onto the margins of society and can expose them to greatly elevated risk for HIV.

Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc. Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for Hijras/transgender persons; they have to use male toilets where they are prone to sexual assault and harassment.

### **Impact of Exclusion and Discrimination:**

The exclusion and discrimination have major impacts on the lives of transgender persons. This has resulted in the following:

- \* Dropping out of school earlier
- \* Leaving Home and Family
- \* Unable to find regular jobs, have less options than others.
- \* Being ignored in the community and isolated
- \* Unable to access various services and Unaware of what they are entitled to
- \* Mobility, Move to other areas, (such as the city and urban areas)
- \* Lack of family and social support
- \* Migrate to other countries for seeking safer livelihood and acceptance
- \* Rejected from Religion (Esp. Muslim and some Christian Fundamentalist sects)
- \* Attempt suicide
- \* Decide to follow their parents to marry opposite sex and then divorce.

### **2. Impact of Family Reactions on Transgender People: Conflict and Rejection**

Transgender people face a number of difficulties within the family. Most families do not accept gender-nonconforming behavior in their children, which may manifest as early as three to five years of age. A study by a team from the National Institute of Epidemiology among 60,000 transgender people across 17 states, including Tamil Nadu, found that a large proportion of them receive no support from their biological family<sup>11</sup>. For many parents, the news that their child is transgender or gender non-conforming can bring an array of emotions along with it: some feel sad, fearful and disappointed while others feel shocked, angry and upset. Very few are willing to support their loved ones without trying to make them change<sup>12</sup>. Parents may threaten, scold or even assault their male child for behaving in ways considered girlish or feminine, and their female

child for behaving like a boy. They may have several reasons for doing so: fear that a gender-nonconforming child will bring disgrace and shame to the family, apprehension that their child will not marry, perpetuate the family line and/or discharge family responsibilities. Anxious parents attribute gender-nonconformity in children to a variety of causes including mental illness, sexual abuse, confusion, rebellion or poor socialization. Believing that the best way to help their children thrive as adults is to help them try to fit in with their gender normative peers; seek to make their children conform to their gender assigned at birth through abuse, bullying, threats and medical “treatment”. These reactions undermine the self-esteem and sense of self-worth of gender-nonconforming and transgender children.

**3. Harassment of Transgender People in Educational System:** The transgender community is a highly marginalized and vulnerable one and is seriously lagging behind on human development index mainly in the area of education. Majority of this community is illiterate or less educated due to which they are not able to participate fully in social, cultural, political and economic activities. Actually educational Institutions are very much gendered place. Stigmatization of gender-nonconforming and transgender children and youth is amplified in the educational system, which mirrors the rest of society in reinforcing strictly binary and patriarchal gender norms. A study done with 50 queer identified PAGFBs in Mumbai reveals that school uniform, certain kinds of sports and a few school subjects, choice of which is gendered, for instance bakery or cooking for girls and carpentry for boys; are sources of immense stress for several Trans-PAGFBs<sup>13</sup>. According to Indian Census 2011, there are around 4.9 lakh transgender in the country. Census data also reveals that this community has low literacy levels, just 46 per cent transgenders are literate, compared to 74 per cent literacy in the general population. This community comes under the category “disadvantage group” defined by the Right to Education Act (Indian Express 2014). It means these kids will be eligible for 25 per cent reservation under the economically weaker section (EWS) and disadvantaged student’s category for admission<sup>14</sup>. The survey, conducted by the Swati Health Resource Centre, analyzed the education and living standards of transgender people living in Maharashtra, Tamil Nadu and Karnataka. It found that 30% of this surveyed had not received an education and 30% were living alone, primarily due to rejection from their families<sup>15</sup>. There are many factors responsible for the low level of education of this community but main reasons are exclusion from family/society, poverty, social stigma and discrimination, insensitive attitude of teachers/staff, violence and sexual abuse.

**4. Poor Economic Conditions and Discrimination in the Workplace:** The interrupted education and social exclusion further limits the employment and livelihood opportunities for transgender community. There are several factors responsible for their economic deprivations which are as under:

- Exclusion from Family and Society
- Stigma and Discrimination at work place
- Lack of knowledge and training in vocational skill development
- Lack of opportunities
- Lack of confidence in engaging them by employers

Stigma, discrimination and violence against gender-nonconforming and transgender children in families and school systems, are further compounded by economic marginalization. Those transgender individuals who manage to survive the hostility they encounter as children and youth, find their employment opportunities as to be curtailed, both by the limited formal education many have had, and by stigma and discrimination in recruitment practices of many employers, as well as hostility in most workplaces, absence of gender-appropriate rest rooms, etc.. This leaves many MtF transgender people, especially those from working

class backgrounds, with no alternative but begging and sex work. Both MtF and FtM transgender individuals also have to contend with sexual harassment in the workplace, across both formal and informal sectors<sup>16</sup>.

**5. Problems of Homelessness:** The myriad problems facing Transgender people who are homeless include a lack of housing and services that meet their specific needs. They are living on city's streets because they were thrown out of their homes for being queer, or ran away to escape an abusive situation. Family housing in the shelter system across the country is not available for homeless same-sex couples. Transgender people are not allowed to choose with which gender they are more comfortable living in the shelter system. Abuse and harassment of Transgender homeless people is rampant in the shelter system. Most domestic violence shelters do not accept gay men or transgender people. There has been also a lack of any comprehensive plan for long-term housing for people with AIDS. Homeless Transgender youth are without economic support, often engage in drug use and risky sexual behaviors, and often develop mental health disorders. Homeless Transgender youth miss out on education and social support during critical formative years—more than half of homeless Transgender youth report experiencing discrimination from peers.

**6. Problems of Transphobia:** Transgender people are more likely to experience intolerance, discrimination, harassment, and the threat of violence due to their sexual orientation, than those that identify themselves as heterosexual. This is due to transphobia. Some of the factors that may reinforce transphobia on a larger scale are moral, religious, and political beliefs of a dominant group. Living in a transphobic environment forces many TG people to conceal their sexuality, for fear of the negative reactions and consequences of coming out. Negative feelings or attitudes towards non-heterosexual behaviour, identity, relationships and community, can lead to transphobic behavior and this is the root of the discrimination experienced by many TG people. Transphobia manifests itself in different forms, for example physical attacks, discrimination in the workplace and negative media representation. Transphobia can cause extreme harm and disruption to people's lives. For example, many TG people have become homeless as a result of being rejected by their families after revealing their sexual orientation. Transphobic individuals play an effective role in inferring with the lives of TG individuals. They cannot suppress their feelings of hatred and the fact that they cannot accept TG individuals. Thus, they harass TG individuals verbally or physically and expose them to violence. Such attitudes direct TG individuals to stress, dissatisfaction of the place they live in, exposure to physical disturbance, loneliness and ostracism.

**7. Psychological Distress:** TG people face considerable levels of stigmatization, discrimination and harassment in their daily lives. The majorities of Transgender people learn to cope with this, particularly when they have the support of family and friends, and participate with Transgender organizations and social networks. However, a significant number of Transgender people, most particularly younger Transgender people, had to cope with stigmatization, discrimination and harassment without support. Many also faced additional stress from experiences such as very high levels of homophobic bullying in schools and physical and verbal attacks. This had a negative impact on their mental health, leading to significant levels of psychological distress, self-harm and suicidality. TG teenagers can be particularly isolated, given that many will be exploring their sexual orientation or gender identity without any support. At this time of negotiating their journey to adulthood, a critical period of social and emotional development, they can be particularly vulnerable. It is often more difficult for TG people to be out in rural areas. Cities are more conducive to allowing TG people select which areas of their life they wish to be out in and to whom they are out to e.g. work, with friends, to family, neighbours, with medical services and associative activities. This is more difficult in rural areas where being out in one domain e.g. at work means it is more likely that one's community, one's family and one's friends are

aware that one is TG. Rural TG people may be more likely to leave the place of their birth/youth than the general population. These emotions might include intense sadness, anxiety, loneliness, discomfort in social situations, and feeling overwhelmed. It's not because of their gender identity alone! It's because in a patriarchal society, being gender variant causes a lot of distress. So much distress, in fact, that it can be described by the diagnosis of a mental disorder. A number of factors may contribute to this, from living in an often homophobic society to facing family rejection to being closeted in some or all aspects of life. Mental disorders are not symptoms of sexual orientation, but rather they are symptoms of discrimination and fear of discrimination. Most likely due to violence, social rejection, and isolation, the TG community experiences higher rates of anxiety, mood and substance use disorders, and suicidal thoughts among people ages 15-54. A recent study that followed gender-nonconforming children through a period of 11 years showed that gender nonconformity strongly predicted depressive symptoms beginning in adolescence, and that physical and emotional bullying and abuse, both inside and outside the home, accounted for much of this increased risk<sup>17</sup>.

Experiences that could negatively impact mental health:

- \*Hostility from or rejection by loved ones or religious groups
- \*Bullying at school, harassment by neighbors, danger of violence in public places
- \*Casual homophobic and transphobic comments on everyday basis
- \*Prejudice/embarrassed response from professionals
- \*No protection against discrimination at work, housing, pensions, etc.
- \*Childhood sexual abuse
- \*Verbal harassment, greater fear of physical violence and discrimination.

## 8. Victims of hate Crimes, Violence and Legal Injustice:

Transgender people are regularly targeted as victims of hate crimes and violence. They experience stigma and discrimination across their life spans, and are targets of sexual and physical assault, harassment and hate crimes. As per census 2011, there are around 4.9 lakh third genders in the country who faces social discrimination and harassment<sup>18</sup>. TG communities have also an important stake in legal injustice issues. Specific groups within the TG community are disproportionately affected by violence and discrimination, sometimes at the hands of law enforcement officials. In recent years, there have been many documented instances of police brutality directed towards TG people in the India. Many police departments continue to be accused of insensitivity, including not appropriately responding to violence directed at TG people. A study shows that Majority of hijras in Mumbai faced several health problems and also problems related to harassment, unlawful penalties, sexual abuse, violence and deprivation of human rights. They chiefly named the police including the traffic and railway police, as perpetrators of violence and abuse. A great majority of the hijras (87.5per cent) in Mumbai stated that they have experienced problems caused by the police whether policemen from respective police stations (50.87per cent), railway police (26.31per cent), or traffic policemen (8.77per cent)<sup>19</sup>. Another survey, comp Problems Faced by Hijras (Male to Female Transgenders) in Mumbai with Reference to Their Health and Harassment by the Police led by the Swati Health Resource Centre, asked 2,169 transgender people across three different states and found the shocking statistics. Respondents reported that sexual violence could start as early as five years old, but people aged 11 to 15 were most vulnerable. 44% of respondents reported 2,811 separate occasions of violence – bring the average to three incidents per person. Emotional violence was most common with 1,228 reporting an incident, followed closely by 802 reports of physical abuse and 781 reports of sexual violence<sup>20</sup>. A study by a team from the National Institute of Epidemiology among 60,000 transgender people across 17 states, including Tamil Nadu, found that the biggest

perpetrators of violence against transgender people were police and law-enforcing authorities. "Many community members said that they had faced discrimination, physical and sexual abuse from law-enforcing authorities in majority of the states where the study was conducted," said Thilakavathi Subramanian, corresponding author in the study, which was recently published in the International Journal of Health Sciences and Research. Citing an earlier study, she said approximately 60% of the transgenders experienced some form of harassment or violence<sup>21</sup>.

That means, oppression by the police turned out to be one of the major concerns of the transgender people. The police often threaten them and extort money from them. No FIRs are recorded. 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. The police often abuse the men using filthy language, beat them up and even subject them to sexual abuse.

### Conclusion and Necessary Recommendations:

It can be concluded that despite a pre-colonial heritage that recognized and celebrated gender diversity in temple sculptures, mythology and religious treatises, transgender people in India, today, face intolerance, stigma, discrimination and violence. Human rights violations against transgender people pervade families, educational institutions, workplaces, institutions such as law-enforcement, healthcare, media, and society at large. Affirmative actions are needed to wipe out stigma and discrimination associated with the community. The following actions may help in improving the access:

1. Awareness of gender diversity and the need to safeguard transgender youth from hostile school environments is a dire need. Schools and teacher education programmes are crucial sites where TG issues and concerns need to be addressed. To help promote health and safety among TG youth, schools can implement the following policies and practices:

- i) Special school should be established for Transgender and provision of free education from 1 to 12 standards. Scholarship schemes for Higher Education should be effective for Transgender with the help of Central and State Govt.
- ii) Encourage respect for all students and prohibit bullying, harassment, and violence against all students.
- iii) Identify "safe spaces," such as counselors' offices, designated classrooms, or student organizations, where TG youth can receive support from administrators, teachers, or other school staff.
- iv) Encourage student-led and student-organized school clubs that promote a safe, welcoming, and accepting school environment (e.g., gay-straight alliances, which are school clubs open to youth of all sexual orientations).
- v) Ensure that health curricula or educational materials include HIV, other STD prevention information that is relevant to TG youth; such as, ensuring that curricula or materials use inclusive language or terminology.
- vi) Encourage school district and school staff to develop and publicize trainings on how to create safe and supportive school environments for all students, regardless of sexual orientation or gender identity and encourage staff to attend these trainings.
- vii) A chapter on TG can be included in the adolescent education curriculum in the school to sensitize the larger society on Transgender. This can be an effective step to address stigma/discrimination at school level<sup>22</sup>.

2. Transgender community has unique culture of dance, folk songs and arts etc. It gives great strength and a sense of identity to the community. These expressions of culture and arts are inseparable parts of the community and should be integrated with livelihood activities to ensure a greater community involvement. The efforts with adequate fund support should be made to serve as a link to employment opportunities<sup>23</sup>.

3. Transgender Community should be covered under any pension scheme so that they can get any benefit.

4. Sensitizing Police regarding the issues and problems faced by the Transgender community. Law should be accommodated in the matter of dishonor comments and molestation if any.

5. Sensitizing the masses of their problems. An Awareness drive is must. Local authorities, policy makers, schools and family need more education on accepting gender-variant children, and in treating people of different sexuality and gender identity equally, and in applying policies and programs in a “friendly” manner, rather than being hostile.
6. Transgender human rights issues must be highlighted in the media and other public forums so as to improve public awareness, and increase transgender people’s ability to realize those rights. Stigmatizing coverage in the media must be curbed.
7. Doctors and health care providers must be responsive to the specific needs of all Transgender persons. Sensitization campaigns for counselors, psychiatrists and other mental health professional should be developed to prevent psycho-social harassment & discrimination. The Indian Medical Council (IMC) and Indian Council for Medical Research (ICMR) need to respond to the issue of transgenderism and transsexualism. Necessary codes and guidelines need to be formulated regarding Sex Reassignment Surgery (SRS) and other procedures that hijras usually seek, namely mammoplasty (breast implants), facial hair removal, scalp hair growth, hormonal supplements and changing of voice. Similarly IMC needs to issue guidelines to ensure that discrimination in medical treatment of hijras, which would include refusal to treat a person on the basis of their gender identity, is treated as professional misconduct. Further, necessitate reform in medical curricula in medical colleges that moves beyond seeing transgenderism as a disease and a deviance.
8. Awareness and information are needed for parents to support their gender nonconforming or transgender children, setting aside their discomfort and deeply held normative attitudes. Parents and siblings should be alert to the risk of the children facing bullying and other violence outside the home – in the extended family, at schools, on the playground, and support them accordingly. They also need to take cognizance of the escalation in stress faced by a gender nonconforming or transgender child as he/she grows into adolescence and experiences dysphoria when he/she develops secondary sexual characteristics at odds with his/her sense of gendered self.
9. In consultation with community groups and human resource professionals experienced in the area of Diversity and Inclusion, workplaces in public and private sector need to sensitize employers and employees on issues of transgender persons. Antidiscrimination policies must be instituted and meaningfully applied to the processes of hiring, retention, promotion, and employee benefits. Workplace sexual harassment policies should be made transgender-inclusive.
10. Policy and institutional reforms that enable access to social protection schemes, targeting the poor and other at-risk groups, must be made transgender inclusive.

At the end it can be said that, protecting TG people from violence and discrimination does not require the creation of a new set of TG -specific rights, nor does it require the establishment of new international human rights standards. The legal obligations of States to safeguard the human rights of TG people are well established in international human rights law on the basis of the Universal Declaration of Human Rights and subsequently agreed international human rights treaties. All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

### **Terminology:**

**Aravani** -- Regional variation of Hijra used in Tamil Nadu. Some Aravani activists want the public and media to use the term 'Thirunangi' to refer to Aravanis.

**Biological Sex**--The physical structure of one's reproductive organs that is used to assign sex at birth. Biological sex is determined by chromosomes (XX for females; XY for males); hormones (estrogen/progesterone for females, testosterone for males); and internal and external genitalia (vulva, clitoris, vagina for assigned females, penis and testicles for assigned males). Given the potential variation in all of these, biological sex must be seen as a spectrum or range of possibilities rather than a binary set of two options.

**Cisgender**-- Refers to people whose sex assignment at birth corresponds to their gender identity and expression.

**Discrimination**-- An action that treats people unfairly because of their membership in a particular social group.

**Eunuch**- - a person who is born male but is castrated or emasculated. The term Eunuch is commonly used interchangeably with the term Hijra in India, however many transgender persons consider the term 'eunuch' to be derogatory. This was confirmed by the group in Bhubaneswar, who did not care for this term.

**Female to Male Trans person (F to M / FtM)**--A person who is PAGFB(person who is assigned gender female at birth), but identifies with the male gender.

**Gender binary**-- The gender binary, also referred to as gender binarism (sometimes shortened to just binarism) is the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine. The term gender binary describes the system in which a society splits its members into one of two sets of gender roles, gender identities and attributes based on reproductive organs.

**Gender Expression**-- Refers to the ways in which people externally communicate their gender identity to others through behavior, clothing, haircut, voice, and other forms of presentation. Gender expression also works the other way as people assign gender to others based on their appearance, mannerisms, and other gendered characteristics. Sometimes, transgender people seek to match their physical expression with their gender identity, rather than their birth-assigned sex. Gender expression should not be viewed as an indication of sexual orientation.

**Gender Fluidity**-- Gender fluidity conveys a wider, more flexible range of gender expression, with interests and behaviors that may even change from day to day. Gender fluid children do not feel confined by restrictive boundaries of stereotypical expectations of girls or boys. In other words, a child may feel they are a girl some days and a boy on others, or possibly feel that neither term describes them accurately.

**Gender Identity**--One's innermost concept of self as male or female or both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different than the sex assigned at birth. Individuals are conscious of this between the ages 18 months and 3 years. Most people develop a gender identity that matches their biological sex. For some, however, their gender identity is different from their biological or assigned sex. Some of these individuals choose to socially, hormonally and/or surgically change their sex to more fully match their gender identity.

**Gender Role**-- This is the set of roles, activities, expectations and behaviors assigned to females and males by society. Our culture recognizes two basic gender roles: Masculine (having the qualities attributed to males) and feminine (having the qualities attributed to females). People who step out of their socially assigned gender roles are sometimes referred to as transgender. Other cultures have three or more gender roles.

**Hijra** --biological male who rejects their 'masculine' identity to identify either as woman, or "not-man", or "in-between man and woman", or "neither man nor woman". They have a long standing tradition/culture in Indian society and have strong social ties formalized through a ritual called "reet" (becoming a member of Hijra

community). There are regional variations in the use of terms referred to Hijras. For example, Kinnars (Delhi) and Aravanis (Tamil Nadu).

**Jogtas/Jogappas**-- Jogtas or Jopgappas are those persons who are dedicated to and serve as a servant of Goddess Renukha Devi (Yellamma) whose temples are present in Maharashtra and Karnataka. 'Jogti Hijras' is used to describe male-to-female transgender persons who are devotees/servants of Goddess Renukha Devi. This differs from 'Jogtas' who are usually heterosexuals and who may or may not dress in woman's attire when they worship the Goddess.

**Kinnar**-- regional variation of Hijra used in in Delhi/ the North and other parts of India such as Maharashtra.

**Kothi**--A local language term used in South East Asia to refer to PAGMB, who identify with characteristics, roles and behaviors conventionally associated with the feminine. Kothis have also been defined as effeminate PAGMBs, who like to cross dress and see themselves as women and use the female pronoun to describe themselves. They may take on this identity only while among their peers, but may continue to dress and act like men otherwise.

**Male to Female Trans person (M to F / MtF)**--A person who is PAGMB (person who is assigned gender male at birth), but identifies with the female gender.

**Marginalization**- The process whereby something or someone is pushed to the edge of a group and accorded lesser importance. This is predominantly a social phenomenon by which a minority or sub-group is excluded, and their needs or desires ignored. Marginalization can be defined as the process in which groups of people are excluded (marginalized) by the wider society. Marginalization is often used in an economic or political sense to refer to the rendering of an individual, an ethnic or national group, or a nation-state powerless by a more powerful individual.

**Sexual orientation** -- Sexual orientation refers to an individual's enduring physical, romantic and/or emotional attraction to another person. Our sexual orientation and our gender identity are separate, distinct parts of our overall identity. Although a child may not yet be aware of their sexual orientation, they usually have a strong sense of their gender identity.

**Shiv-Shakthi** -- males who are possessed by or particularly close to a goddess and who have feminine gender expression, typically located in Andhra Pradesh.

**Social Exclusion**- The European Commission and European Council defined social exclusion as a: “process whereby certain individuals are pushed to the edge of society and prevented from participating fully by virtue of their poverty, or lack of basic competencies and lifelong learning opportunities, or as a result of discrimination. This distances them from job, income and education and training opportunities as well as social and community networks and activities. They have little access to power and decision-making bodies and thus often feel powerless and unable to take control over the decisions that affect their day to day lives”. (European Council 2004) [European Council (2004). Joint Report on Social Inclusion. 7101/04 (March 2004)]

**Trans** -- This is a term used in the discipline of gender studies to refer to all persons whose own sense of gender does not match with the gender assigned to them at birth. Trans is an umbrella term used to refer to all non-cisgender identities and expressions. This includes transgender, transsexual, male to female (MtF), female to male (FtM), gender queer, third gender, other and so on.

**Transphobia**--Transphobia is a range of negative attitudes and feelings toward transgender people. Transphobia can be emotional disgust, fear, anger or discomfort felt or expressed towards people who do not conform to society's gender expectations. It is often expressed alongside homophobic views and hence is often an aspect of homophobia. Transphobia is a type of prejudice and discrimination similar to racism and sexism, and transgender people are often subjected to all three forms of discrimination at once<sup>24</sup>.

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