

Understanding Legal Frameworks Concerning Transgender Healthcare in the Age of Dynamism

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Abstract

The topic of LGBTQ rights has sparked fierce debate both at national and global level for a long time. While the country has undoubtedly progressed toward greater inclusivity because of the expansion of certain legal protections for the LGBTQ community and rising societal acceptance of and engagement in LGBTQ-inclusive discourse, the LGBTQ community continues to face discrimination in the workplace, in education, and in healthcare. In recent years, discrimination against LGBTQ people has been more obvious in the hospital setting. Patients reported a variety of experiences with prejudice, including being-denied reproductive treatment, counselling, regular screening, and even paediatric care for their children. For transgender people, transgender health care involves the prevention, diagnosis, and treatment of physical and mental illnesses, as well as sex reassignment procedures. Gender variation, sex reassignment therapy, health hazards particularly in connection to violence and mental health and access to healthcare for Trans persons in various nations throughout the world are all topics covered in transgender health care. Many governmental health care programmes and commercial insurance plans continue to specifically to exclude transition-related health care. Even once these restrictions are gone, one must fight to ensure that Trans individuals have meaningful, complete access to transition-related care, free of costly and needless preconditions and limitations on the sorts of care that can be delivered. The Transgender Persons (Protection of Rights) Act, 2019 enacted to provide for protection of rights of transgender persons and their welfare and for matters.

Keywords: Transgender, Health and Well-Being, Violence, Discrimination, Legal Aspects

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1. Introduction and Background

In hospital settings, transgender and gender nonconforming persons are regularly excluded and discriminated against proper health facilities. However, they may need medical help for gender-affirming medicines and surgical procedures, as well as other physical or mental health issues. Although a growing body of research has documented barriers to reliable healthcare for this population and a lack of transgender competence among health and mental health providers in recent years, few studies have quantified the relationship between delaying healthcare due to fear of discrimination, non-inclusive healthcare, and mental or physical health in this population. The goal of this study is to fill in these research gaps. The individuals who define their gender as different from or incongruent with their assigned sex at birth are referred to as transgender. We occasionally use the terms transgender and gender nonconforming interchangeably, referring to persons who may or may not identify as transgender, but whose gender is non-binary and/or distinct from the dominant culture's man/woman or masculine/feminine gender binary. It define transgender non-inclusive healthcare as occurring when a healthcare provider demonstrates a lack of competence, attention, and/or initiative in adequately providing medical treatment to and affirming the identities of transgender patients according to the best available science, as this article focuses on non-inclusivity among healthcare providers. Furthermore, it defines postponing healthcare due to fear of discrimination as any occurrence in which transgender people postpone getting professional medical help when they need it because they are afraid of being mistreated by healthcare providers, medical personnel, or other patients.¹

According to the Vedas, the Kama Sutra, and other scriptures, third-sex persons were well-known in pre-modern India. The transgender people, are also mentioned in the epic Ramayana, where Lord Rama gives them the authority to bestow blessings on people on happy events such as births and marriages, when they are expected to sing, dance, and bestow blessings. They were denied civil rights during the British colonial government. The British believed the transgender population to be a separate caste or tribe in different regions of India and criminalised them. They not only collect alms on the streets, parks, and local trains, but they also collect money by singing and dancing at the home of a new-born infant. They are often harassed by the general public, both physically and emotionally, because to their unusual behavioural characteristics. There are some exceptions, such as transgender people who worked especially hard to become successful in their careers after 2013, such as attorneys,

academics, judges, and military leaders. In this context, this research makes a feeble attempt to emphasise the social and legal injustices perpetrated against the victims, because society has yet to embrace them and some legal rights have been denied to them.

People who have gender identities and manifestations that deviate from stereotypical gender standards are referred to as transgender. It's been commonly acknowledged that existing healthcare systems don't always work well for transgender people. Transgender people experience a number of health disparities that can have an impact on their general health, and the majority of transgender people have symptoms that are similar to severe depression. On a systemic level, there has been a lack of consistency in the rules and services provided to transgender people who choose to transition their bodies to better reflect their gender identification. Transgender people now have more access to healthcare because to recent developments that allow primary care physicians and nurse practitioners to assess and recommend people for transition-related financing. To be eligible for coverage, transgender people must meet a set of criteria, which includes, among other things, a diagnosis of Gender Dysphoria. Individuals may also require a "Continuous Gender Role Experience," in which they must live in a role that is consistent with their identity, depending on the therapy they choose, such as external genital surgery.ⁱⁱ

They are frequently compelled to beg or enter prostitution as a result of their biological differences, and they are frequently mistreated by our "so-called" civilised society. They are frequently refused access to health and welfare programmes, resulting in high HIV rates among transgender people. Despite the fact that progressive thinkers are now adopting them as part of society's mainstream, a substantial number of individuals are still opposed to them. The Transgender Persons (Protection of Rights) Act, 2019, was rushed through and should be changed to address the Act's shortcomings and concerns. The goal of this research is to see if people are willing to accept them as members of their society and if the Transgender Persons (Protection of Rights) Act, 2019 has done enough to protect their legal and social rights.

2. Statement of Purpose/ Objective

There are several challenges to transgender persons receiving quality healthcare, which often contribute to postponing or avoiding necessary medical treatment. However, few research have looked at whether transgender persons' health is harmed by non-inclusive healthcare and postponing essential medical care due to fear of prejudice. The goal of this research is to fill in

these information gaps. Without exception, all human beings should be granted equal rights. However, transgender people's rights are frequently rejected. Hatred, torment, brutality, physical damage, and abuse are frequently perpetrated against them. They are forced into risky jobs and exploited because to a lack of social, economic, and educational rights. Too far, very little study has been done to improve transgender people's social and legal rights. As a result, the goal of this study is to determine societal acceptance of transgender people, if laws are appropriate in protecting their rights, and to raise public understanding about how to embrace them as members of society by adopting a friendly approach toward them.

3. Methodology

The process by which researchers perform their research is known as research methodology. It enables the reader to assess the overall validity and dependability of a study. The study is doctrinal in nature where the healthcare from a primary care physician (PCP) and postponement of necessary medical treatment due to fear of prejudice. The dependent variables measured physical and mental wellness.

4. Significance of Study

Despite the fact that transgender people are becoming more visible in the media, the transgender community remains one of the most neglected in the country. Unemployment, clinical depression, anxiety disorders, interpersonal violence, familial rejection, job discrimination, physical abuse, mental abuse, suicide risk, drug misuse, and major diseases like HIV are among the greatest of any population. The phenotypic appearance of the external genitalia at birth, which is mostly dictated by the chromosomal type, is most typically used to classify a person as male or female. Gender identity, on the other hand, is a person's sense of gender, which may or may not be the same as the sex given at birth. Gender identity encompasses gradations of masculinity to femininity and maleness to femaleness, as well as the identification of certain people as nonbinary gender, which indicates they are primarily neither male nor female, or a mix of both. Gender nonconformity refers to deviations from cultural and societal standards in gender expression (e.g., dress, mannerisms, accessories, and haircuts). The physical and emotional attraction of an individual to same-sex individuals (lesbian or gay; homosexual), same-sex and opposite-sex people (bisexual), or opposite-sex people (heterosexual) is characterised as sexual orientation (heterosexual). All persons whose gender identity or expression does not coincide with their assigned birth sex and/or those whose

gender identification is outside of the binary male/female classification are considered transgender. Cisgender refers to those whose gender identification or expression corresponds to their natal sex. Those who identify as transgender and employ medical and/or surgical measures to physically change are referred to as transsexuals. Many in the community consider the word transsexual to be unduly pathologizing, and it has mostly been replaced with the term transgender. There are three primary groups of transgender persons. Trans women are born with the masculine gender and embrace their femininity. At birth, trans men are given the feminine gender and must establish their masculine identity. Nonbinary is an all-inclusive word that incorporates particular genders such as gender queer, agender, bigender, and gender fluid for those who do not identify with the binary male or female gender. Transgender persons frequently wish to be addressed by a name other than their legal or given name. They may also use pronouns that represent their gender identification or expression. Legal identification documents for transgender persons, such as passports, driver's licences, and insurance cards, are frequently based on their assigned sex at birth, which is incompatible with their acknowledged gender. Individuals seeking therapy for gender dysphoria have a number of therapeutic choices thanks to evidence-based medicine. However, the quantity and type of interventions used, as well as the sequence in which they are carried out, may vary from person to person. As part of a medical transition, transgender persons with gender dysphoria may be treated with cross-sex hormones and/or gender-affirming surgery. To the greatest degree feasible, transgender people can be treated with a mix of medicinal and surgical procedures to address gender dysphoria. Exclusionary insurance policies, on the other hand, make many surgical therapies financially unaffordable for many transgender peoples. To validate the diagnosis of gender dysphoria and the individual's competence to give informed consent, a psychosocial examination by a certified mental health expert is advised. Although coexisting mental health illnesses are not a bar to treatment, they must be diagnosed and addressed if they exist. Therapy should be continued, although it is not essential. After the necessary mental health examination, trans men can begin using cross-sex hormones and have top surgery as bilateral mastectomy with male chest reconstruction.

5. Obstacles for Transgender People for Effective Healthcare

Transgender people, who were born with male sex but have a feminine gender presentation or identity, face a variety of types of oppression for defying gender norms, including stigma, discrimination, isolation, and financial difficulty. This marginalisation, which stems from

family, societal, and institutional trans phobia, raises the risk of mental illness, drug abuse, and sexually transmitted diseases. These issues, taken together, encourage and prolong a negative cycle of marginalisation and poor health outcomes among this community. Within the health-care system, Transgender also confront socio-structural inequities. Denial of care, harassment, and a lack of competent and compassionate physicians with enough awareness of their special requirements are all issues that transgender persons face when seeking regular and transition-related medical care, according to studies. Many transgender postpone or forgo urgent and medical care as a result of these restrictions.

As a result, the negative health outcomes reported in this population, such as an increased incidence of HIV infection, drug abuse, and suicide attempts, may be explained. Despite the high prevalence of HIV infection in this community, studies demonstrate low HIV testing rates and poor results at every stage of the HIV care continuum. Furthermore, because to a lack of access to transition-related medical care, Transgender groups commonly utilise non-prescribed hormones or inject industrial silicone in non-sterile locations, creating extra health concerns. Because of their transgender identification, transgender in our sample reported avoiding healthcare. Despite the limitations, this study adds to our understanding of the contextual factors that influence transgender access to healthcare. The result that, in addition to the stigma and prejudice faced in the hospital context, police violence was also independently related with healthcare avoidance is very concerning. Given the high illness burden and high rates of discrimination and violence faced by Trans genders, it is critical to adapt and create socio-structural interventions that enhance healthcare access for this vulnerable group.ⁱⁱⁱ

There are a number of barriers to providing appropriate healthcare to transgender people. Reduced access to proper healthcare has come from societal intolerance and stigmatisation, as well as discriminatory actions in healthcare settings. Although greater media attention has raised public awareness of transgender problems, many transgender people continue to face difficulties in their daily lives. Transgender problems, such as the requirement to ask about preferred names and pronouns, may be overlooked by healthcare personnel. Transgender patients are frequently misgendering because electronic medical records and laboratory information systems do not allow for gender designations beyond assigned sex. Patients who have officially altered their sex designation to reflect their acknowledged gender face additional challenges. Many EMRs, for example, organise treatment orders according to the

patient's documented sex, making it impossible to arrange a prostate scan on a trans woman or schedule a prenatal visit for a trans man.^{iv}

6. Synergies in Transgender and Healthcare: Factors associated with Healthcare Avoidance and Discrimination

Transgender persons face interpersonal and structural challenges to healthcare access, which contribute to their delaying or avoiding treatment, which can result in poor physical and mental health outcomes. It was discovered that gender identity/expression and health insurance had a significant relationship; having health insurance attenuated the association between gender identity/expression and healthcare avoidance. To increase service accessibility for transgender populations, providers should address gender disparities, socio-demographic characteristics, and transgender-specific issues. To build secure, trans-affirmative settings in health systems, a multi-level and multi-faceted strategy should be adopted. The capacity and convenience with which a consumer may seek and acquire essential services from providers or institutions, as well as the cost of healthcare, is described as the "timely utilisation of personal health services to achieve the greatest personal results." However, transgender people's access to healthcare is hampered by interpersonal and institutional impediments. Labelling, stereotyping, and marginalisation as a form of social control can have a negative influence on transgender people's well-being. Stigma affects transgender people on a structural, interpersonal, and individual level, and is a major contributor to poor health outcomes. It can work both directly (by triggering stress reactions, making people more prone to physical and mental health issues) and indirectly (by making people more vulnerable to physical and mental health problems) (by restricting access to resources). Structural stigma can take the form of a provider's lack of understanding of transgender people's health requirements or organisational rules that aren't supportive of transgender people's identities. Transgender persons may face harassment, abuse, and prejudice from healthcare practitioners, which is known as interpersonal stigma. There are also racist disparities in transgender people's access to healthcare. When it comes to receiving health care, transgender persons of colour face much more trans phobic prejudice than their White counterparts. This emphasises the need of thinking about how gender identity/expression intersects with other minority identities. Individuals who identify with numerous minority identities may be at a higher risk of discrimination and health disparities. Being uninsured can result in negative health repercussions and a worse

quality of life; having health insurance allows timely access to health treatments; being uninsured can result in negative health consequences and a lower quality of life.^v

7. The Transgender Persons (Protection of Rights) Act, 2019: Legislative Aspects

The Transgender Persons (Protection of Rights) Act of 2019 has nine chapters in total. In India, this Act is in effect. This Act prohibits discrimination against transgender people, as well as the acceptance of gender identity through a certificate issued by the District Magistrate and the option to change gender, either as a male or female, through surgery, if the District Magistrate is satisfied after receiving an application. A certificate from the Medical Superintendent or Chief Medical Officer, adequate government steps for their protection, equal rights in educational institutions and health facilities, the National Council for Transgender Persons for the enforcement of their rights, and penalties for sexually abusing or exploiting them.

Now the question is how successful this Act is in protecting transgender people's rights in practise, given the numerous objections it has already received. In this context, we may like to emphasise a few things in order to critically assess this Act. To begin with, only a small percentage of the population is aware of the Act and also discovered that the majority of the general public is unaware of the Act. How many people are aware of this Act and how ready is society to embrace transgender individuals as members of society or to accept the legal and social rights afforded by this Act is a million dollar issue. However, there is significant controversy around this Act, as it requires a transgender person to be certified as a transgender person, and their gender will be examined throughout the certification process. As a result, individuals may feel uncomfortable if the District Magistrate examines them physically to determine their gender. It may jeopardise their dignity in certain ways. It appears that this Bill does not recognise gender as a continuum. In this Act, the punishment for sexual offences against transgender individuals' ranges from six months to years, but the punishment for sexual offences against females is from seven years to life imprisonment, therefore it appears that sexual offences against transgender people are punished too lightly. This Act makes no provision for transgender people in educational institutions or government jobs, which is a flagrant breach of the NALSA decision. People giving them strange looks in public offices and public places is also a typical occurrence. They frequently suffer difficulties in obtaining school and job, as well as abuse from their peers. According to this viewpoint, individuals should be granted reservations in many sectors of society, while others argue that reservations will never

allow them to integrate into society's mainstream. They will constantly be pushed backward by it.

8. Conclusion

Transgender persons are frequently forced to negotiate a healthcare system that is often unknowledgeable, resistive, and hostile to their needs. Transgender people, understandably, avoid seeking medical help for fear of prejudice. This study adds to the body of knowledge by examining the effects of a lack of transgender inclusion among healthcare professionals and postponing care due to fear of discrimination on health outcomes in this community.^{vi} The following are some steps that may be taken to improve the situation of the most disadvantaged and overlooked communities so that they might overcome their problems: Unbiased attitude of the general public; they should be encouraged to create companies such as selling clothing, books, toys, and working in pharmacies, among other things, in order to earn a living and avoid having to beg on the streets. Workplace awareness to take the required precautions to avoid sexual harassment against them, as well as a complaint process for the victim's redress. For them, equal rights in schools and universities, standards against harassment, torture, and abuse, accommodations for transgender students, gender neutral washrooms to protect their privacy, and participation and membership in co-curricular activities are all important. Gender-neutral urinals should be installed in all public areas to protect people from harassment, abuse, and torture. Family, siblings, and friends can provide moral support. Intensification of jail sentences for sexual assault perpetrated against them, laws that are gender-neutral in terms of marriage, inheritance, adoption, and rape through the media, people throughout the world are becoming more aware of their rights.

The study's main goal was to determine how willing society is to accept transgender people as members of society and gender as a continuum. Based on the foregoing debate and interviews with various sorts of individuals, it can be determined that society is still not ready to fully embrace them. Individuals of the current age are more accepting of transgender people as members of society, but a larger survey indicated that society is not ready to embrace them completely. Even some individuals were cautious and uninterested. There is also a lack of understanding of the Transgender Persons (Protection of Rights) Act, 2019, which has several serious flaws and contentious clauses that need to be addressed.

The transgender population is dealing with several major issues that require rapid government intervention and supplementation of vital measures for their health, education, employment, and basic necessities, among other things. People's mentalities must also be improved in order to bring transgender people into the mainstream of society formed to express their views on transgender persons just because they dislike them.

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