

THE TRANSGENDER VIOLENCE: AN INTERNATIONALIZED PHENOMENON

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Abstract—The transgender population across the world has been slapped with violence of various kinds. The members of the transgender community are considered to be beasts and evils who are nothing short of weeds in the society who must be met with a process of sanitization towards purification of the human race. It is indeed true that the transgender population is different from “us”, and it is believed that they deserve not to survive because they are unfit to exist. The governments world over either do not recognize them or criminalizes them or make efforts towards their eradication. But is this a choice-based decision, is it prompted to seek attention, is it a matter of fashion they imbibe? Certainly not. But most poignantly are they not fellow human beings and have they caused “us” any harm? What then lies at the core for the massive killings that are undertaken?

The author is of the opinion that such instances spanning across the nation are not mere human rights violations, but it extends beyond its realm to include an internationalized phenomenon of transgender crimes.

Keywords: Transgender, Violence, Internationalized Phenomenon, Stakeholders, Transgender Crimes

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I. INTRODUCTION

The year 2017 has witnessed unprecedented hostilities against the transgender people alone in United States of America. The official record of 28 murders is an increase of 7 on an average from the records of 2015¹ and 2016.² In 2018, there were 26 reported cases of murder of transgender persons due to fatal hostilities and the majority of the victims were Black in USA.³ Moreover, it is appalling at the starting of 2019, there is already one case of transgender people being shot dead without reasons. As per the largest LGBTQ organization in USA records, these victims are killed year after year by acquaintances, partners and strangers, some of whom have been arrested and charged, while others have yet to be identified. It is shocking to witness that the violence so committed is qualified as per color, intersections of racism, sexism, homophobia and transphobia to conspire to deprive them of employment, housing, healthcare and other necessities, barriers that make them vulnerable.⁴

The fight for social inclusion and recognition seems to never end for the community. The amendment by the World Health Organization (WHO) in the list of behavioral and psychological diseases⁵ brought greater challenges and more oppression than a sigh of relief. The Indian scenario, in respect of USA holds a similar outlook with cases of suicides and other forms of unnatural deaths of transgenders being recognized by the National Crime Records Bureau (NCRB),⁶ even though exceptions like Judge Swati Bidhan Barua or Judge Joyita Mondal are slowly coming to the limelight,⁷ yet the question of how far there is social acceptability to these remains unexplored.

Thus, we realize that there is great deal of human rights abuses that have been ensued in the past as well as is underway and the effort should now be

¹ Megan Sommerville, *The Ongoing Genocide of the Transgender Community*, ChicagoNow, (April 17, 2016), <<http://www.chicagonow.com/trans-girl-cross/2016/04/transgender-genocide/>> (Accessed on 25 January 2022).

² Human Rights Campaign, *Violence Against the Transgender Community in 2016*, HRC, (January 20, 2017), <<http://www.hrc.org/resources/violence-against-the-transgender-community-in-2016>>. (Accessed on 10 January 2022).

³ Human Rights Campaign, *Violence Against the Transgender Community in 2019*, HRC, (January 20, 2019), <<https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>>.

⁴ Human Rights Campaign, *Violence Against the Transgender Community in 2016*, HRC, (January 20, 2017), <<http://www.hrc.org/resources/violence-against-the-transgender-community-in-2016>>. (Accessed on 21 January 2022).

⁵ Susan D Cochran, et al., *Proposed Declassification of Disease Categories Related to Sexual Orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11)*, 92 World Health Organization 672, 672-679 (September 2014).

⁶ NCRB, Ministry of Home Affairs, *Accidental Deaths and Suicides in India*, 24, 31 (2015).

⁷ Mirror News.com, *Assam Gets its First Transgender Judge in Swati Bidhan Baruah*, Mirror Now Digital, (July 14, 2018), <https://www.timesnownews.com/mirror-now/society/article/assam-gets-its-first-transgender-judge-in-swati-bidhan-baruah/254507?utm_source=pushengage&utm_medium=pushnotification&utm_campaign=pushengage>. (Accessed on 12 January 2022).

towards lessening and mitigation of these abuses and any aberration of this should lead to criminal trials. However, what this work attempts to put forth is the idea that there is a systematic and patterned violence that is undertaken against this community, thus, it is not the human rights violations only that is the concern of the researcher, it is much graver and shocking that that. Until recently, laws were stereotypically made out for the binary gender identification, like in USA where the laws demanded people to wear at least three articles of clothing that were associated to their sex assigned at birth, which eventually was their gender too. Scholars of critical transgender studies have argued on this line extending it to the discriminatory prison administration that is based on the binary construction of gender.⁸ As a result of which mental harassment, ridicule and consequent disharmony amongst the inmates are not uncommon. There are elements of human rights violations in these examples, but the kind of human rights abuses meted out to this community is endowed with a specialized specific intention with this massive violation of human rights.

The aggressions, that is the protagonist of this research is one that has now spread all over the world and reports of sexual harassment, manhandling, oppression, denial of basic human rights, murders and suicides out of shame of members of the community have become common. The characteristics of this violence is different from the violence that is otherwise protracted in the society. The foundation on which it is perpetrated is in itself inhumane, derogatory and obnoxious. There is an element of special intent attached to such killings. The fact that the killings are protracted and widespread in itself portray an essence of some kind of planned attack on the gender minority.

II. RELATED WORK

Research on the internationalized phenomenon that are linked to some relatable common form of atrocity against the transgender community is scanty when it pertains to the legal jurisprudence. However, there are two remarkable articles that have inspired the present research article that have understood the internationalised phenomenon of the transgender atrocities that have also attached the genocidal element to the phenomenon which however is beyond the scope of the present research article.

Brian Kritz, The Global Transgender Population and the ICC (2014) is the primary source from where this research work emanates. He conceptualized the idea that the violence against the transgender that is rampant in the world today is no more limited to individualized cases of cruelties, but concerns the world community at large, not just of the transgender community, but humanity in general. His main proposition in this article was the probable and much

⁸ Sarah X. Pemberton, *Prison*, in *The Oxford Handbook of Feminist Theory*, 22, 15 (Oxford ed., 2016).

needed intervention of the ICC in taking cognizance of this situation. He takes recourse to a particular case of the ICTY where the possibility for definitional expansion to interpret kinds of violence that can be categorized as genocide was discussed. To him, the lacunae in the definition of genocide is the cause for perpetrators going unpunished. Moreover, the expansive interpretation of what and how groups are determined so as to constitute “groups” to be protected by law has also been discussed where he focuses on how the stringent interpretations taken by most courts was not the intention of the drafters and thus suggests how a revival of that could be made which would be beneficial for the trans community.

Jeremy D. Kidd, et. al., Transgender and Transsexual Identities: The Next Strange Fruit— Hate Crimes, Violence and Genocide Against the Global Trans- Communities (2010) is another significant contribution to this field, or rather, class of scholars by which the authors expresses the kind of transgender crimes that take place in USA on almost a regular basis, for which they cite several case studies and recognizes how the hate crime against this community is significantly different from the transgender violence that has off late taken the shape of a genocide. Even though, they recognize the genocidal element prevalent in these occurrences, they fail to justify with authority how that happens. But that there is a scope for understanding these instances as genocidal was very appropriately expressed in this article.

While these scholarly articles refer predominantly to the genocidal elements of the transgender violence, but the same stands outside the extent of the paper, but the reference has been brought in the present research article for purposes of elaboration of the internationalised phenomenon of the violence against the transgender persons.

III. DIGNITY OF THE DIFFERENT

One of the most important aspects human rights is dignity. The term emanates from the Latin word *dignus* that expresses the idea of glory, honor and respect (Ahuja, 2019, p. 212). However, imbuing the same in the constitutional value and constitutional right is a relatively new phenomenon. Nevertheless, it is only the legal recognition that is a new development, but it is as inalienable and natural as the idea of human rights. Thus, analyzing the dignified living of the transgender community in this parameter, we can surely construe the extent of breach of their glory, honor and respect. It is sad that despite human rights being universal and available throughout the world, many people continue to remain deprived of their inborn rights (Ahuja, 2019, p. 213) and such is the story of the transgender community across the world. The first ever case on the issue of dignity was the *Grisworld vs. Connecticut* (Grisworld vs. Connecticut, 1965) judgement that recognized the right to privacy as a constitutionally protected right. Another momentous case was *Lawrence vs.*

Texas(Lawrence vs. Texas, 2003) in which the Supreme Court nullified the law of sodomy in Texas and extended it to 13 other states.

This paper shall be a humble attempt to emphasis the atrocities against the much unfortunate transgender communities perpetrated by the State, agencies of the State and the people across the world, including those that are famed for preserving human rights.

IV. INCIDENTS OF VIOLENCE FROM ACROSS THE WORLD

A. Individuals and government in USA

Even though, the country is superpower, hegemonic power and the epitome of modernity and liberalism, it is noteworthy that the maximum number of ill-treatments against the transgender community occurs in this part of the world. USA has publicly accepted the third gender community and seems to be one of the causes for violence against the “deviants.” Probably, in societies people are silent about gender dysphoria do not witness atrocities, but where they openly accept it become susceptible to abuses.

Human Rights Campaign (HRC) working extensively for the transgender community has collated records of the instances of violence against this community over the past few years. These acts are isolated ones, committed not by a single individual or group or association, yet there is a kind of common intention at work.

In 2016, 23 transgender persons were victims of the transgender violence in USA which was the most fatal ever. But 2017 surpassed this record- 29 transgender persons were abused, killed and manhandled. In fact, most of the provinces have been found engulfed in these hostilities like Ohio, Mississippi, Texas, North Carolina, Virginia, South Hampton amongst others (Campaign, 2019). In USA, there is another peculiar characteristic attached to this which makes the crime more complicated, grave and uncouth. The vulnerability is greater if transgender people belong to a minority racial or ethnic community. Furthermore, poor transgender people of these minority communities face the most gruesome human rights violations possible (Pemberton, 2016). In a survey it was identified that in 2009, 12% of the crimes against sexual minorities was biased against the transgender community and most of them have been criminal victimization and others have been hate crimes (Smyth & Jenness, 2016). In another survey it was found that transgender violence in the prison was 14 times more for this community (Jenness, Valerie, & al, 2009).

Additionally, the new Trump administration has been termed as a perpetrator of the transgender violence with new policies and regulations introduced. There are two proposed developments that are being considered discriminatory; *firstly*, the retrenchment from the army in case of any army personnel declaring themselves as a transgender person and *secondly*, the attempt to define sex strictly as something that is unchangeable and determined only as male and female by the US Department of Health and Human Services (Manskar, 2018). This is an example of state-sponsored violence against the transgender community.

B. Police in Nepal

Nepal happens to be one of the few countries in the world to have given recognition to the third gender for citizenship quite directly. In a judgment of 2007, the Supreme Court of Nepal has given recognition to the community expanding the protection that the country has been conferring to sexual minorities and people with gender dysphoria. Nepal has legally established self-determination as a criterion for identification of one's gender. However, the problem for a long time persisted with regard to laws that were in violation of the 2007 judgement because Nepal did not have a constitution that those discriminatory laws could be read down as unconstitutional in nature. (Cantera, March) However, the practical situation is not this cosy.

This community is thrashed and abused by the people (Gurung, 2019) and also especially by the police (Watch, Nepal: Police Attack Transgender People, 2005). Blue Diamond Society, a human rights support group working in this field for the last couple of years have identified "repeated pattern of violence against Metis and all sexual minorities" (International, 2004) and have launched a protest movement in this regard through rallies and writing letters to the government authorities. The below mentioned excerpt is from the official website of the organisation that brings out the systematic violence against the community-

"Nepal has documented and reported incidents of police brutality and attacks by individuals against those whose sexual and gender identity and expression do not conform to social norms. On June 1, 2004, a particularly violent rape and assault of two Metis (a term used to refer to "cross-dressing" males) by two men resulted in the first formal filing of such an incident with the police."(International, 2004)

This is also an example of the state sponsored violence against the transgender community.

C. Groups in UK

Although official records are not traceable for this crime, especially because such incidents are not reported, there is an estimate that the violence has increased by 80% in the nation (Necati, 2018). In fact, reporting of such crime is extremely poor and 79% of those who meet such violence never actually report it to the police for the fear of further abuse. A report by Stonewall and YouGov elaborates on the deplorable condition of the transgender people in UK that explains the vulnerability of this group:

“Two in five trans people (41 per cent) have experienced a hate crime or incident because of their gender identity in the last 12 months. Three in ten non-binary people (31 per cent) have experienced a hate crime or incident because of their gender identity. Younger trans adults are at greatest risk: 53 per cent of trans people aged 18 to 24 have experienced a hate crime or incident based on their gender identity in the last 12 months.” (Bachmann & Gooch, 2017)

UK is harbouring such perpetrators who are perennially tormenting a particular community. It is not enough to take cognisance of the matter as murder or rape or other such isolated crimes, because there is an element of special intention to kill people who identify themselves as transgender persons.

D. NSAs in Colombia

Colombia ratified the Rome Statute in November 2002. Based on that since June 2004, Non-State Actors like FARC, ELN and other paramilitary groups started creating havoc in the country and in that process have caused violation of not only national laws, but also international criminal laws. Accordingly, the court received 115 communications under Art. 15 of the Statute, and it undertook a preliminary investigation. The report quoted below gives an idea of the maltreatments that these communities face. This is not new but (as discussed below) the form and manner has changed. The intention has become more specific and aimed at their destruction.

*“Targeted victims of sexual violence include women and girls who have been forcibly recruited... men and women whose sexual orientation or **genderidentity** is questioned; alleged carriers of sexually transmissible diseases such as HIV/AIDS (para 79)...*

Some social groups appear particularly vulnerable to torture, such as women, children, youth, incarcerated persons, and

lesbian, gay, bisexual and transgender persons, in particular in Antioquia.” (ICC, 2012) (para 76).

Through this report we can appreciate that there is at least recognition of the transgender community as prone to sexual violence. In fact, the recent Covid19 pandemic that led to a nationwide lockdown in Colombia has reported instances of violence of all kinds against the transgender community that strengthens the argument that the hatred towards the community is of such gravity that even in tough times like this, they are still not treated well (Griffin & Antara, 2020).

E. ISIS in Syria

While reports of disaster in Syria is not uncommon, sexual violence also seems to be a common crime in the Syria-Iraq conflict. But what is relevant here is that the world’s deadliest terror groups had specifically targeted the minority and vulnerable groups in Syria, that included the transgender persons as well. The reports of the United Nations Security Council elaborate on the “deliberate targeting” of the transgender persons (Report, 2015) in their attempt to minimize them from their country.

F. Government in Brunei

Brunei- a tiny country with strictest penal laws and five decades of sultanate rule has come out open about the draconian laws on the transgender persons. These laws aimed at destruction or elimination of the group as such. It calls for stoning to death anyone found to be a transgender (Hindu, 2019). This is a classic example whereby indirect actions like adopting laws are as good as taking active step in torturing and may even be killing the transgender community.

G. Law enforcement authorities in India

Due to the Victorian era puritan value system had strong assumptions about sexuality. On this ground the infamous Section 377 was incorporated into the Indian Penal Code 1860. This had a direct repercussion on the transgender community as well because as per the understanding of unnatural sexual offences was concerned the sexual intercourse between a transgender person and a cis-gender person fell within such a notion. The law in force meant authorities had never considered them out of emotions or as natural being when it came to deal with such instances. The enforcement of this provision exposed the entire LGBT community to the other criminal aspects which are practiced by the lower-level police officers to blackmail, harass mentally, physically and sexually, abuse, intimidate and extort payments (UNDP India).

A the first ever document in India by People Union for Civil Liberties (PUCL), Karnataka (2003) ((PUCL), 2003)codified the atrocities faced by the transgender community giving a detailed account of the various kinds of violence faced by them. At various stages with multitude of stakeholders who occupy the front line in perpetrating of such abhorrent offences, this compilation provides the narratives from transgender persons who have fallen prey to such violence. These accounts reveal the brute realities which are alive even today (India).At the same time, the condition of the transgenders in India can also be understood from the first ever study conducted by National Human Rights Commission on Human Rights of Transgender in India (Commission, 2018).

Each of these incidents paint a sense of common hatred towards the transgender community spanning across the world. It is striking that only a few cases close to a few hundred(or as a report by Trans Murder Monitoring Project in Europe portrays 2,016 (Project, 2016)) is reported throughout the world till today, but, the actual numbers are predicted to be quite high since reporting is a major issue for such crimes (Necati, 2018). Even though, the numbers may seem insignificant, the same cannot be ignored, for even if there is one person killed (Prosecutor v Furundzija, 1995), due to their characteristics that are non-conforming and disliked by the “normal” society, the same is liable for inhumane acts of violence.

V. DIFFERENTIATING ANTI-TRANSGENDER VIOLENCE FROM ANY OTHER KINDS OF VIOLENCE

In differentiating between the transgender violence from any other kinds of violence, there are primarily two motives behind the modern day violence against the transgender community that differs from the erstwhile lynching. The first is the motive of the perpetrators is to kill the individuals who identify as transgender persons and second is on a broader arena, i.e. to cause destruction of this transgender community as a whole in the world.

Jeremy Kidd and Tarynn Witten have identified an interesting turn into these instances of violence that can be considered as the catalyst in fuelling these incidents of hostilities. To them, this element can in fact inspire and aggravate the situation through replication elsewhere. This is in pursuance to the first motive mentioned above:

“the perpetrator’s feelings of betrayal and disgust upon discovering that his female-identified companion was biologically male” (Kidd & Witten, 2010).

This is a major reason for aversion and disloyalty stemming primarily from visceral disgust (Witten & Eyler, 1997)(Kidd & Witten, 2007) that leads to commission of atrocities. This can be considered as contributing to the formulation of the intention and subsequent atrocities being committed. This approach is almost always justifiable, especially in most societies where the norm and normalcy is set up by the bigendered understanding of gender.

This, to some scholars, is an evolving kind of hate crime where “hate” is no more the traditional conceptualization of targeted violence against a community, but is an aimed attack against individuals for being a part of the larger whole. This aimed attack is by the virtue of certain “thoughts” and “beliefs” of the perpetrator(s) that are a result of societal construct triggering such aberrations (Rosebury, 2003).

Associating transgender violence with hate crimes gives impetus to the understanding of the main idea behind its commission which is to assert the majority identity over the identity of the minority through affirming power of the former (Kidd & Witten, 2010)- a feature which is common to all hate crimes. But, the difference lies in the layered steps of committing the crime which can be summarized as individualization of each such instance that eventually forms part of the larger whole, whether knowingly or unknowingly.

This is complicated to understand because even though it is the group that is targeted at large, the commission of it does not necessarily require (from the point of the perpetrator) to be aimed at contributing to the ongoing spread out violence in segregated patches in the world. It is sufficient if such individual acts are itself coloured by “thoughts” and “beliefs” of defeating their right to exist. This mental or subjective element must and necessary be present which is the commonality in all these segregated acts of violence. Similarly, it is extremely sensitive, for it deals with mental construction of the individuals formed over a period of time as a result of societal association which is difficult to do away with. But, recognizing and modifying such difficulties and stereotypical “thoughts” and “beliefs” are extremely essential towards ushering in a new era of humanism towards this community of people.

VI. INTERNATIONALIZATION OF THE TRANSGENDER CRIMES

Agnostic approach towards the issues concerning this community can be elaborated through a couple of instances like the recent heated and sustained debates on the term “**gender**” whilst adopting the International Criminal Court statute in Rome in 1998 (Steains, 1999). Some states believed that the term could bring lesbians, gay men and transgender people within the protection of the Court’s statute. It can also be witnessed from the suspension of the

International Lesbian and Gay Association (Ahuja, 2019, p. 216) from the consultative status within the Economic and Social Council by the United Nations. Furthermore, the UN Minorities Declaration of 1992 (Ahuja, 2019, p. 215) consciously eliminated the gender minorities and restricted the Declaration to the traditional, ethno-cultural, religious mystic identities. These reveal that sexual and gender minorities have still not been given the recognition by the world community despite success of international agreements. However, the situation with regard to acknowledgement of the deplorable state of affairs of the transgender community has been portrayed in series of resolutions passed by the UN General Assembly.

In recognition of these and rampant increase in these kinds of incidents, the UN steered by UN Human Rights Commissioner met on 26th September 2013 for its first ever inter-ministerial meeting on the rights of the gender and sexual minorities. This led to the adoption of a resolution in the first ever international recognition of the violence faced by transgender community amongst others. Prior to this, the only international document that was available was the Yogyakarta principles which were only persuasive in nature with feeble acceptability and effectuation.

The UNGA has taken manifold initiatives in this regard by adopting series of resolutions calling upon states to ensure protection of right to life and liberty of all persons and to initiate investigations promptly and thoroughly on all reported cases of killings including those motivated due to the sexual orientation and gender dysphoria of the victim as such (Assembly, 2013). At the same time, in 2011, an inter-governmental meeting was held to discuss about these incidents in detail and finally led to the formation of a commission to undertake a study on this. The report so prepared was released in December 2011. It pointed to a pattern of violence and discrimination directed at individuals because of their sexual orientation and gender identity (UN Human Rights Office of the High Commissioner, 2019). This report formed the basis of the March 2012 inter-governmental meeting on this issue. Thus, there is a recognition of the intentional, systematic and planned attack against the community internationally.

VII. CONCLUSION

The kinds of violence the humankind is witnessing now is different from the erstwhile violence which was marred in political motives, ideological war and a sense of superiority to be established over some other nation or community. But, the violence in the present era may at times, for specific reasons be identified to be individualized or more specifically a micro level target which may be linked to some greater or larger motive that lies dormant unless there is research into it. The transgender population across the world has been slapped with violence of various kinds that has become internationalized in

nature in the present times. Stakeholders, almost common to most nations are breeding such violence and atrocities like police, vigilante groups and common citizens. A pattern has been noticed in this kind of violence that until lately was partaken even by the United Nations.

This international recognition of the mass atrocities committed against the members of the transgender population but, what the world community has been missing out is that these incidents are not mere human rights violations. These instances might be separated, unrelated and segregated in its occurrences, yet are connected to each other with this special intention to destroy the community in all countries at large. Some of these instances are also state-sponsored- almost like an extension to the individual cases of barbarism. Over and above the incidents of Colombia, an appropriate example to exemplify this can be the “sexual cleansing” of transgender Metis taking place in Nepal in 2006 (Watch, Nepal: ‘Sexual cleansing’ drive continues– new arrests of transgender people/HIV workers, 2017). The TLAR survey in USA points at the acts of anti-transgender violence are not isolated acts of violence randomly conducted, but indeed share a common impetus of the perpetrators’ desire of eradication of the group of people who violate the widely held and popularly reinforced norms of binary gender with a connection to heteronormative sexuality (Kidd & Witten, 2010).

It is encouraging that international bodies are now taking cognizance of such abhorrent crimes against the transgender community, only for their being as such. The attempt in this article has been to bring to light this phenomenon that is often left in the dark and not paid much heed to. However, if we do not take it seriously now, there is grave danger to the humanity at large and hence the effort to eradicate such irrational hatred against the community.