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Dr. Parantap Kumar Das

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Understanding the Concept of LGBT Communities: A Comprehensive Analysis

Dr. Parantap Kumar Das

*Associate Professor,
School of Law and Constitutional Studies, Shobhit University, Meerut*

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ABSTRACT

In today's dynamic world, societal transformations driven by globalization, technology, and Western influence have reshaped traditional beliefs and cultural identities. While progress fosters inclusivity and modernization, deep-rooted issues such as discrimination and inequality persist. Among the most marginalized communities, individuals identifying as lesbian, gay, bisexual, and transgender (LGBT) continue to face social and legal challenges. Cultural and religious norms often impose rigid definitions of identity, leading to widespread discrimination, harassment, and socio-economic exclusion.

Across the world, attitudes toward the LGBT community vary significantly. While some nations have enacted anti-discrimination laws to protect LGBT rights, many others continue to criminalize same-sex relationships, enforcing severe punishments such as imprisonment, forced labor, and public humiliation. The lack of clear legal frameworks in many countries enables arbitrary persecution and institutionalized discrimination. Even in regions with progressive legislation, ineffective enforcement often leaves LGBT individuals vulnerable.

The article explores key concepts related to gender and sexual orientation, providing definitions of lesbian, gay, bisexual, transgender, and intersex identities. It highlights the intersectionality of discrimination, where sexual orientation compounds other societal prejudices related to caste, gender, and disability. Additionally, it examines homophobia and transphobia as significant barriers to equal rights, often fueled by religious and cultural biases. While the fight for LGBT rights has seen

progress in several countries, achieving global equality remains a challenge. Legal recognition and societal acceptance are essential to ensuring dignity, security, and full participation of LGBT individuals in society.

KEYWORDS

*LGBT Rights Discrimination Gender Identity
Homophobia Legal Frameworks.*

INTRODUCTION

In today's rapidly evolving world, significant transformations are underway due to factors such as increased mobility, instant connectivity, and the influence of Westernization. These changes have profound effects on individuals globally, challenging established norms and prompting adaptations to new ways of life. Simultaneously, age-old issues like discrimination, deprivation, and division persist amidst broader challenges of poverty, inequality, tradition, and cultural identity. As societies navigate this complex landscape, they grapple with reconciling traditional beliefs with contemporary interpretations and embracing new perspectives. This process involves both honoring heritage and embracing innovation, with the overarching goal of fostering greater inclusivity, peace, and harmony while dismantling barrier; Narrain (2004)¹. Achieving the ideal may appear utopian, yet efforts at the local, national, and international levels offer glimpses of hope. However, cultural, religious, and traditional mindsets require reevaluation in light of emerging ideas and perspectives to truly manifest this desired change; Weinrich and Gonsiorek (1991)².

In a world where rigid definitions and societal norms are imposed, many individuals find themselves confused or constrained. They are pressured to conform to identities and roles that do not align with their true selves, often influenced by the pervasive reach of religious and socio-cultural forces. In India, a country marked by diverse religious and cultural backgrounds, there is a shared perspective on gender and sexuality despite the myriad of other differences; Wippman (1997)³. Leaders across various religions commonly adopt a homophobic stance, causing significant harm

¹ Narrain, A. (2004). *Queer: Despised sexuality law and social change*, Books for change, Bangalore.

² Weinrich, J. & Gonsiorek, J.C. (1991). *Homosexual research implications for public policy*, Sage Publications, London

³ Wippman, D. (1997). *The Evolution and Implementation of Minority Rights*, *Fordham Law Review*.

and disruption to the lives of many individuals. Sexual orientation is recognized as a fundamental aspect of personal identity and a private matter. However, since the introduction of terms like homosexuality, bisexuality, and transgender identity, they have often been deemed unnatural and at odds with societal norms defined as "normal" by prevailing legal standards. Therefore, it is crucial to briefly analyze the evolution of laws governing populations and their repercussions on societal attitudes toward individuals identifying as homosexual, bisexual, or transgender. The LGBT has become a widely embraced term for marginalized groups defined by their sexual and gender orientations. Nearly all individuals within these subgroups face comparable prejudice stemming from societal beliefs and traditions surrounding sexuality and gender; Gregory & Kevin (1992)⁴. Consequently, members of the LGBT community face a spectrum of socio-economic and cultural inequities. Their lack of societal acceptance undermines their ability to fully exercise their rights. Compared to heterosexual individuals, they are disproportionately subjected to intolerance, the risk of abuse, discrimination, and harassment based on their sexual orientation. Discriminatory behaviors often intersect across various biological, social, political, and economic dimensions; Magoo (2006)⁵. Discrimination can encompass multiple facets of an individual's identity, such as caste status, gender, sexual minority status, and disability, leading to heightened forms of discrimination.

The LGBT community has made significant strides in securing basic human rights protections in countries like Australia, Western Europe, Latin America, North America, and South Africa. However, discrimination based on sexual orientation remains prevalent globally; Johnson (2013)⁶. In many nations, being LGBT is criminalized, with punishments including public humiliation, forced labor, imprisonment, torture, harassment, blackmail, and unfair trials without the right to appeal. Additionally, existing laws in various countries often lack specificity regarding prohibited conduct, allowing for broad interpretation and enforcement. As a result, current legal frameworks inadequately address and address the heightened forms of discrimination faced by the LGBT community.

Numerous countries harshly enforce sodomy laws, often targeting homosexuals with increased severity. In contrast, nations that

⁴ Gregory, H. & Kevin, B. (1992). *Hate crimes: Confronting violence against lesbians and gay men*, Sage publication, London.

⁵ Magoo, I.K. (2006). *Law Relating to Sexual Offences and Homosexuality in India*, Capital Law House, Delhi.

⁶ Johnson, P. (2013). *Homosexuality and the European Court of Human Rights*, Routledge, London.

have implemented anti-discrimination legislation to protect LGBT communities tend to exhibit lower levels of discrimination. However, despite the existence of such laws, many governments neglect to enforce them effectively, leaving LGBT individuals to struggle to exercise their basic human rights. Discrimination pervades all aspects of life, from the home environment to the workplace⁷.

Definitions Related To LGBT

- **Gender:** Gender encompasses how an individual identifies themselves and encompasses the spectrum of societal beliefs, norms, customs, and behaviors associated with masculine and feminine traits⁸.
- **Sexual orientation:** It involves emotional, sexual, or romantic attraction to another individual and may or may not include sexual involvement, distinguishing it from mere sexual activity⁹.
- **Lesbian:** Lesbian typically denotes a woman who experiences romantic and/or sexual attraction towards other women. Additionally, some nonbinary individuals may also identify with this term.
- **Gay:** Gay is a term that describes individuals who are romantically, emotionally, and physically attracted to people of the same sex¹⁰.

In certain cultural contexts, it specifically refers to men who have romantic, erotic, or emotional feelings towards other men. However, it's important to note that not all men who engage in same-gender sexual activities identify as gay, so the term should be used carefully.

Homosexuality denotes either sexual attraction or romantic feelings shared among individuals of the same gender¹¹.

Bisexual individuals are those whose romantic and sexual interests extend to both genders. They can feel attraction both

⁷ Transforming the Deirelbate: Why We Need to Include, available at: <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1107&context=facschol>

⁸ <https://www.oprahmag.com/life/relationships-love/g27629860/glossary-of-lgbtq-terms>

⁹ https://www.consilium.europa.eu/media/30731/en_lgbt.pdf

¹⁰ <https://www.oprahmag.com/life/relationshipslove/g27629860/glossary-of-lgbtq-terms/?slide=27>.

¹¹

http://www.supremecourtcases.com/index2.php?option=com_content&itemid=5&do_pdf=1&id=243 27

physical and emotional toward both their own gender and the opposite gender¹².

Intersex is a broad term used to refer to individuals born with reproductive anatomy that doesn't fit strictly into traditional classifications of male or female.

Transgender individuals are those who were assigned a specific sex at birth, typically based on their genitalia, but they believe this classification doesn't fully or accurately represent who they are. The term "transgender" refers to a person's gender identity or how they personally identify themselves¹³.

The term transgender encompasses individuals whose gender identity doesn't align with the traditional gender norms associated with the sex they were assigned at birth. Gender and sex are interconnected concepts involving intricate biological, behavioral, social, and cultural aspects. Transgender people constitute one of the most marginalized groups in Indian society and encounter multiple obstacles. The term "transgender" signifies more than just linguistic changes; it underscores a growing trend of discrimination against a diverse community. The concept of transgenderism acknowledges discrimination against various groups typically seen as separate entities.

The term transgender encompasses a wide spectrum of identities, including pre-operative, post-operative, and non-operative transsexual individuals, who identify themselves as being fundamentally different from their biological sex. Traditionally, societal expectations dictate that a biological male should exhibit masculinity and be attracted to women. However, a transgender individual, who may be biologically male, might identify with a gender opposite to their assigned sex. In certain instances, transgender individuals may seek to undergo Sex Reassignment Surgery (SRS) to align their physical characteristics with their gender identity¹⁴.

Definition of Homophobia

Homophobia refers to negative sentiments and attitudes directed towards individuals who are identified as part of the LGBT community. It encompasses feelings of disdain, aversion, hatred, or prejudice, which can stem from irrational fears, ignorance, and

¹²http://www.ct.gov/shp/lib/shp/pdf/answers_to_your_questions_about_sexual_orientation_and_homosexuality.pdf

¹³ <https://www.oprahmag.com/life/relationships-love/g27629860/glossary-of-lgbtq-terms/>

¹⁴ <https://www.outinperth.com/celebs-tweet-doma-support/>

is frequently associated with religious beliefs¹⁵.

Transphobia refers to adverse attitudes and emotions directed towards transgender individuals, encompassing elements such as fear, violence, anger, aversion, hatred, or discomfort. It frequently overlaps with homophobic sentiments and is sometimes regarded as a component of homophobia.

Transition involves the process of changing one's birth-assigned sex, which is intricate and often spans a significant duration. It encompasses various aspects such as medical and legal procedures, as well as disclosing one's transition to family and friends. Additionally, it may involve adopting a new name and pronouns, adjusting dressing preferences, updating legal documents with the new name and/or sex designation, undergoing hormone therapy, and potentially undergoing surgical procedures. The specific steps of transition can vary from person to person¹⁶.

RELIGIOUS VIEWS ON HOMOSEXUALITY IN INDIA

- **Hinduism**

To comprehend Hinduism's perspective on Homosexuality, it's essential to examine the Hindu stance on Sex and Marriage, as outlined in the Dharma shastras. These Hindu legal texts disapprove of pre-marital sexual relations and vehemently condemn extramarital affairs. While the former might lead to marriage, thereby offering some degree of validation to the transgression, the latter is met with severe punishment; Irengbam (2011)¹⁷.

Hindu marriage is to fulfill three functions:

1. **Prajaa:** Progeny for perpetuation of one's family.
2. **Dharma:** The husband and wife, or the couple, bear the primary responsibility for engaging in acts of charity, piety, and supporting religious practices, including providing assistance to monks and ascetics. During rituals, there are clearly defined and distinct actions assigned to both the husband and wife to perform.

¹⁵ <https://nicknamedb.com/homophobia>

¹⁶ <https://www.oprahmag.com/life/relationships-love/g27629860/glossary-of-lgbtq-terms/>

¹⁷ Irengbam, A. (2011). *Gender Studies- A Survey*, (1st Ed.). Maxford Books, Delhi.

3. **Rati.** i.e., pleasure of companionship, friendship, physical or children and so.

Apart from minor penalties imposed on individuals engaging in lesbian and homosexual activities, particularly if they are not married, Hindu texts largely remain silent on the status and appropriateness of homosexuality. However, the unspoken consensus is that such behaviors are generally not deemed acceptable. While the Kamasutra, though not a religious text per se, does mention homosexuality, it does so primarily for the sake of providing a comprehensive discussion on the subject matter. Otherwise, such practices are often criticized within Hindu cultural contexts.

This suggests that homosexuality was not widely practiced in India, and those who engaged in such activities did so discreetly. Moreover, such behavior was generally not accepted or approved by society at large, except by a minority of individuals.

Hinduism's stance against homosexuality stems from several reasons:

1. It cannot lead to progeny.
2. Homosexual relationships often prioritize physical pleasure, while Hindu marriage holds deeper significance, thus undermining the sanctity of marriage.
3. Homosexual individuals are typically excluded from participating in religious rituals.
4. Homosexual acts are equivalent to pre-marital sex, and so not desirable.

In contemporary society, ancient texts may not provide sufficient guidance on matters like homosexuality. A rational Hindu perspective might suggest that if two men are attracted to each other, they should commit to a monogamous relationship, discouraging promiscuity, Molla (2018)¹⁸. Moreover, there is no distinct "alternate lifestyle" based on homosexuality, similar to how there isn't a specific "heterosexual" lifestyle. To center one's lifestyle solely around sexual orientation emphasizes the significance of physical relationships, contradicting Hindu spirituality, which promotes transcending bodily pleasures. Additionally, Hinduism condemns homosexuality due to its perceived unnaturalness and the absence of procreation through

¹⁸ Molla, A.B. (2018). Emerging challenges to the rights of the transgender persons in India, *Applied Innovative Research*, 92, 137-145.

marriage, which is deemed crucial for the continuation of lineage and proper rituals after death by descendants Singh & Bhatt (2017)¹⁹.

The primary aim of reproduction in Hinduism is not only to propagate the race but also to continue the transmission of Dharma. Therefore, the education and enlightenment of children hold greater importance than mere reproduction. The Hindu purpose of reproduction is to raise children who are morally upright, creative, and beneficial to society and the world at large. An example of this is the Ramakrishna couple, who, despite not having their own biological children, enlightened numerous individuals, with Vivekananda being a notable contribution. While regulation is necessary for reproduction in every society to avoid chaos, Hindu society generally doesn't strongly oppose single parenthood.

Shakuntala bore Bharat, while Jabala gave birth to Satyakarma. In ancient Hindu society, the practice of Niyoga, which involved conceiving a child with a person other than one's husband, was acceptable under certain circumstances. This was deemed lawful if the husband was infertile and desired offspring from his wife. Examples include Vyasa fathering Dhritarashtra, Pandu, and Vidura through Niyoga with the widows and maidservant of Shantanu's sons. Similarly, Kunti and Madri also had children through the Niyoga method.

In Hinduism, the predominant belief has always been in the natural love, affection, and sacred bond between a husband and wife. Extra-marital relationships are universally condemned in Hindu scriptures, with severe punishments recommended for those engaged in such behavior. From a Hindu perspective, homosexuality is viewed as sinful, immoral, illegal, contrary to the natural order, and against the will of God. It has never been accorded legitimacy and has consistently been regarded as a wrongdoing.

- **Islam**

Islamic conservative religious groups vehemently oppose the acceptance and endorsement of homosexuality in society, considering it a violation of Allah's order. From their perspective, the prevailing culture of materialism has led to a

¹⁹ Singh, C. & Bhatt, D.K. (2017). A humanist exposition of rights of transgender and the Indian Law, *Indian Bar Review*, 44(4), 01-22.

decline in moral values and decency worldwide. They argue that in today's society, where freedom is prioritized above all else, every sin is glamorized and normalized, leading to the erosion of morality²⁰.

Homosexuality is considered haram, or forbidden, in Islam, deemed a grave and detestable offense in the eyes of Allah Ta'ala. Islamic teachings view homosexuality and lesbianism as a distortion and serious deviation from the innate nature of humanity, surpassing even the gravity of adultery. Across various religious beliefs, there is unanimous agreement that homosexuality is morally wrong and impure. Islam specifically prohibits such acts and adopts a stern stance against them, asserting that medical science has struggled to address or fully understand the diseases that may result from homosexuality²¹.

- ***Bible***

In societal discourse, various sexual practices are often deemed unconventional or deemed morally reprehensible, drawing parallels to biblical references labeling them as abominations. This encompasses a spectrum of behaviors such as homosexuality, alongside activities like pornography, prostitution, and bestiality.

The Bible may not explicitly outline every sinful act, but it unequivocally addresses many of them. Any sexual activity outside the bounds of marriage between a man and a woman is viewed as a transgression in God's eyes, labeled as unnatural and categorized as abominable. Homosexuality is specifically mentioned as a form of sin, often referred to as the sin of sodomy. The city of Sodom, notorious for its widespread homosexuality and neglect of the poor, serves as a historical reference for such behavior²².

- ***Romans***

These scriptures underscore the notion that same-sex attraction, whether it's men lusting after men (gay men) or women lusting after women (lesbians), is considered unnatural. According to this belief, God has designed men and women to be complementary to each other. While God detests

²⁰ <https://www.everymuslim.co.za/homosexuality-and-lesbianism/>

²¹ <https://opinion.premiumtimesng.com/2015/12/18/the-dangers-of-homosexuality-and-lesbianism-inislam-by-murtada-gusa>

²² <http://www.arviministries.com/index.php/mediacenter/works/warnings/homosexuality>

homosexuality, He still loves all individuals who identify as homosexual. It's believed that people aren't inherently born homosexual, just as they aren't born murderers. Rather, it's suggested that such tendencies or spirits can be acquired through exposure or engaging in unholy sexual behavior. Homosexuality is viewed as a result of practicing abnormal acts or succumbing to lust, often attributed to the influence of demonic spirits. Similarly, pornography is seen as a gateway for inviting evil or perverse influences. According to biblical teachings, all humans are born with a sinful nature, and yielding to sinful desires can lead to calamity. However, it's believed that through faith, individuals can overcome these temptations.

- **Judaism**

In traditional Judaism, homosexuality has long been viewed as an abomination and considered sinful. While the community accepts homosexual individuals as Jewish, they cannot endorse or condone the behavior they see as sinful. Moreover, they don't equate homosexuality with heterosexuality in terms of moral standing²³.

However, there have been shifts in some branches of Judaism regarding the inclusion and rights of LGBTQ+ individuals. For instance, the American Rabbis Central Conference in 1996 affirmed the right of gay and lesbian couples to fully participate in civil marriage. Additionally, in 1987, the Union of American Hebrew Congregations (UAHC) reaffirmed its commitment to welcoming gay and lesbian Jews into congregations and encouraging their engagement in all communal activities. They also advocated for legal recognition of their relationships, asserting equality under the law for gay and lesbian couples.

SOCIAL STATUS OF LGBT COMMUNITIES

In Indian society, the perception of the hijra lifestyle is multifaceted, characterized by a mix of fascination, revulsion, and fear. Transgender individuals often engage in begging and prostitution as means of survival. While some traditional families may occasionally welcome them into their homes for blessings during significant events like births or weddings, prostitution remains the most lucrative option for many transgender individuals. Consequently, they face social ostracism and are vulnerable to gender-based violence and other human rights abuses. Political representation advocating for their rights is

²³ http://religiousinstitute.org/denom_statements/homosexuality-urj/

limited, and only a few rights have been successfully recognized.

The majority of transgender individuals face marginalization and low social status, often subjected to derogatory treatment. Employment opportunities for them are extremely limited, leading many to rely on activities such as begging, performing at ceremonies, or engaging in sex work for income. Transgender occupations have historical precedents, even in pre-modern times. Violence against transgender individuals is pervasive, particularly targeting sex workers in public spaces, as well as in police stations, prisons, and even within their own homes. Worldwide, transgender individuals encounter significant discrimination due to the inability of society to categorize them strictly into male or female gender roles; Minter & Delay (2019)²⁴.

Following the Supreme Court of India's decision to re-criminalize homosexuality and bisexuality on December 13, 2013, there was a notable increase in physical, sexual, and psychological violence against the transgender community. Incidents of violence were perpetrated by the public and even by law enforcement, with reports indicating that police often refused to investigate cases of sexual assault reported by transgender individuals. However, on April 15, 2014, in the National Legal Services Authority v. Union of India (2014) 5 SCC 438²⁵, the Supreme Court ruled that transgender persons should be recognized as a third gender and should be treated as socially and economically backward, thereby entitled to reservation in education and employment. While this ruling was celebrated by activists and transgender individuals, it is acknowledged that achieving broad social acceptance will likely take much longer due to the stigma associated with transgender identity²⁶.

Transgender Persons and Politics

In recent years, transgender individuals have increasingly ventured into the political arena, gaining visibility and participation. Since acquiring the right to vote in 1994, a few transgender individuals have secured political positions in various Indian states, often receiving support from religiously affiliated majority parties as perceived "safe" candidates. This community in India has witnessed several success stories in politics. Conversely, in Pakistan, there is significant political activism emerging from the transgender community. Both the Indian government (1994) and the Pakistani government (2009);

²⁴ Minter, S. & Delay, C. (2019). *Trans Realities: A Legal Needs Assessment of San-Francisco Transgender Communities*.

²⁵ National Legal Services Authority v. Union of India (2014) 5 SCC 438.

²⁶ [http://self.gutenberg.org/articles/eng/Hijra_\(India\)](http://self.gutenberg.org/articles/eng/Hijra_(India))

Basim (2020)²⁷ have officially recognized transgender persons as the "third sex," thereby acknowledging their fundamental civil rights. In India, transgender individuals now have the option to identify as eunuchs on passports and other official government documents²⁸.

Justice Radha Krishnan emphasized that transgender people should receive equal treatment under the law, allowing them access to employment, healthcare, and education, consistent with other minority groups. Despite their smaller numbers, transgender individuals have the same rights to enjoy their human rights. It was determined that transgender individuals should be recognized as the third gender to safeguard their rights under the Indian constitution and other laws enacted by both the central and state legislatures. Additionally, the right to self-identify their gender was upheld, with directives issued to both central and state governments to acknowledge their gender identity as female, male, or third gender²⁹.

Violence and Abuse of Transgender Persons

Concerning the protection of human rights, a significant issue regarding transgender individuals revolves around the pervasive societal violence inflicted upon them. This includes illustrating the common occurrence of everyday violence and categorizing the various forms of abuse they experience. Harassment and mistreatment vary across different settings, ranging from public areas such as parks and streets to institutional environments like jails and police stations. The classification of violence against transgender sex workers can be structured into distinct categories, distinguishing between state-sponsored violence and societal violence.

- a. Harassment by the police in public places: Transgender individuals, facing severe intolerance within their families, frequently resort to public spaces like parks or specific streets as social settings due to their inability to afford independent accommodations offering protection and privacy. However, this exposes them to heightened vulnerability, particularly to violence primarily perpetrated by law enforcement authorities³⁰.

²⁷ Basim, U. (2020). Pakistan to Register 3rd Sex Hijras, The Guardian Publishers, London, April 15.

²⁸ <https://www.legitquest.com/case/national-legal-services-authority-v-union-of-indiaothers/8572A>

²⁹ <https://www.flickr.com/photos/tags/castration/>

³⁰ Toonen v. Australia, U.N. Doc. CCPR/C/50/D/488/1992, available at

- b. Harassment at Home: While public spaces undoubtedly expose transgender individuals to significant violence, it's important to note that private spaces also often fail to ensure safety for them. Many transgender individuals face a challenging journey in breaking free from the constraints of their families and establishing their own households, often with limited resources. Despite their efforts to create a sense of personal security within their homes, they are subjected to constant surveillance by the police, perpetuating the harassment they endure in public spaces; Kapur (2009)³¹.
- c. Police Entrapment: The police employ an inhumane tactic of entrapment to control public morality by targeting transgender sex workers. In these instances, hijras and their clients are often released upon payment of a bribe, effectively turning this practice into a profitable commercial scheme involving the police.
- d. Abuse / Harassment in Police Stations: Police stations serve as custodial facilities where there is significant potential for both harassment and abuse. The police wield considerable power under various laws, with minimal oversight in public stations. Legal norms that govern police behavior are often ignored entirely within police stations.
- e. Rape in Jails: Prisons function as custodial environments where men exhibiting feminine behavior face an elevated risk of mistreatment from both authorities and fellow inmates. These facilities are enclosed institutions with strict gender segregation, ensuring highly masculine spaces within male wards and no heterosexual contact. The culture of masculinity promoted within prisons inherently targets individuals deemed insufficiently masculine. Consequently, transgender individuals incarcerated in prisons become vulnerable to experiencing the most severe forms of sexual violence.

UNDERSTANDING THE INSTITUTIONAL BASIS FOR VIOLENCE

Understanding the scale, nature, and prevalence of violence against transgender individuals is complex and multifaceted. The practices of violence against them are deeply entrenched within both civil society and state institutions. When it comes to

[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/d22a00bcd1320c9c80256724005e60d5?](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/d22a00bcd1320c9c80256724005e60d5?)

³¹ Kapur, R. (2009). Out of the colonial closet, but still thinking 'inside the box': regulating perversion and the role of tolerance in deradicalizing the rights claims of sexual subalterns, *National University of Juridical Sciences Law review*, 387.

attributing responsibility for this violence, the following analysis aims to demonstrate how various institutions including the family, the legal system, the medical establishment, and the media reinforce a discourse that is highly intolerant of gender non-conformity. By perpetuating this discourse, these institutions effectively contribute to the widespread violence experienced by transgender individuals.

- a. **The Family:** The family is typically perceived as a haven free from violence, often depicted in media as a place of fulfillment, love, and tranquility. This conventional understanding of the family is reinforced by international human rights law, with the Universal Declaration of Human Rights (UDHR) declaring the family as the basic unit of society entitled to protection by both society and the state (Article 16)³². Families are regarded as essential for safeguarding and upholding human rights, including the rights to liberty and dignity. However, for transgender communities, the reality of family life is starkly different and often fraught with fear and adversity.

A notable observation is that the family, as a social institution, actively regulates gender non-conformity in terms of attitudes, identity, and behavior, thereby reinforcing a heterosexist system. Rather than shielding their children from societal violence, families often reflect and even facilitate the intolerance prevalent in wider society. Individuals who deviate from established social norms regarding gender behavior face regular humiliation and are sometimes even expelled from their own families.

Amidst a backdrop of extreme violence and intolerance, the hijra community stands out as one of the few cultural and solidarity spaces available for transgender individuals in India. Many accounts of violence highlight the profound sense of isolation experienced by transgender individuals, particularly in tightly-knit village communities. Their only glimmer of hope often arises when they discover that there are others like them living in larger cities. Facing violence and rejection from their families and small communities, many transgender individuals are compelled to seek acceptance in larger cities. This migration contributes to the emergence of the transgender or hijra community as

³² <https://www.eupedia.com/forum/archive/index.php/t-10685.html>

primarily an urban phenomenon; Sen (2009)³³.

Real-life experiences of transgender individuals also reveal that family attitudes sometimes shift towards a reluctant acceptance once the individual returns home after achieving financial independence. In some cases, the return is embraced, particularly if the individual can now provide financial support to the family. However, for others engaged in sex work, acceptance becomes much more challenging due to the stigma associated with alternative sexuality and sex work. The pervasive stigmatization surrounding deviations from conventional norms of sexuality and gender identity makes it exceedingly difficult for families to embrace their children. Moreover, there are limited cultural and social resources available for families to comprehend their children's sexual orientation, gender identity, and behavior. Nonetheless, as evidenced by these accounts, some family members are gradually moving towards a begrudging acceptance of their children's identities; Sharma (2011)³⁴.

- b. **The Law:** Transgender communities face constant policing by law enforcement due to the criminalization of their existence, with the police playing an omnipresent role in their lives. While numerous criminal laws grant unwarranted authority to the police to intrude into their lives, the civil aspect of the law has yet to demand citizenship and equality for them. Despite judicial efforts to liberalize or decriminalize homosexual activities, societal acceptance remains elusive.

- c. **The Medical Establishment:** The medical establishment has played a significant role in fostering a culture of intolerance towards transgender communities. It holds particular importance in the lives of transgender individuals, impacting their ability to access treatment without facing discrimination and shaping their self-identity. When transgender individuals seek to transition to another gender, the role of the medical profession in facilitating this process is crucial. This need for transition has been classified as Gender Identity Disorder (GID) by the medical community. However, the issue of accessing

³³ Sen, R. (2009). Breaking silences, celebrating new spaces: Mapping elite responses to the 'inclusive' judgment, *NUJS Law review*, 483.

³⁴ Sharma, S. (2011). Transgender in India: Human rights and social exclusion, *AIR Journal*, 6, 87- 96.

hygienic, professional, and affordable medical treatment is compounded by the legal stance on Sex Reassignment Surgery (SRS) and castration. In India, the law does not address the phenomenon of transsexuality.

- d. **The Media:** The media serves as a potent platform for shaping opinions, identities, and narratives. Its images and representations not only become ingrained in cultural memory but also influence how people think about various issues. In today's world, media depictions are influential and greatly impact public perceptions. The portrayal of homosexual and transgender sex workers in the media shapes the lens through which these marginalized communities are viewed and consequently treated. Local media often adheres to heterosexist ideologies, depicting transgender sex workers in a sensationalized and derogatory manner. The following is an analysis of recent news stories that illuminate the underlying attitudes of popular media towards transgender individuals.

HISTORICAL BACKGROUND OF LGBT COMMUNITIES IN INDIA

The ancient Indian treatise, the Arthashastra, acknowledges various homosexual practices, which were penalized with minimal fines. Homosexuality itself was not heavily punished; it was considered a minor offense compared to other forms of heterosexual intercourse, which incurred more severe penalties; Murdoch & Price (1992)³⁵. Similarly, the code of conduct followed by Hindus, the Manu Smriti, does mention homosexual practices, but it was viewed as something requiring regulation. Punishments were prescribed for homosexual behavior, alongside harsh penalties for various forms of heterosexual intercourse.

Ancient Attitudes of Homosexuality and Bisexuality

In contemporary cultures, there's a misconception, often perpetuated by homophobic religious groups, that homosexuality is a chosen orientation and a modern phenomenon indicative of moral decline. However, this notion contradicts the historical and biological roots of homosexuality; Weinrich & Gonsiorek (1991)³⁶. In ancient Greece and Rome, many men engaged in occasional

³⁵ Murdoch, J. & Price, D. (1992). *Courting Justice: Gay men and lesbians vs. Supreme Court*, Basic Books.

³⁶ Weinrich, J. & Gonsiorek, J.C. (1991). *Homosexual research implications for public policy*, Sage Publications, London.

homosexual encounters, and a significant number of marriages in both civilizations were between individuals of the same sex. Although not labeled as such, homosexuality was even celebrated in various forms of entertainment and cultural activities. Gender was not considered a determining factor in ancient attitudes towards love or marriage; instead, considerations were based solely on age and biological relationship.

Ancient perspectives viewed homosexual sex as harmless as long as both parties were consenting, and it could even symbolize love between the participants. Additionally, literature from "straight society" also indicates that homosexual relationships were widely acknowledged and not considered immoral or sinful, but rather a normal aspect of life. This viewpoint is consistent with observations of similar practices in "primitive" societies, such as those in Africa and the Pacific Islands; Johnson (2013)³⁷. In these societies, adolescent males often engaged in homosexual relationships and displayed affection for each other until they reached the age to become fathers or husbands. At that point, they would typically choose to pursue heterosexual relationships by finding a wife and leaving behind their same-sex partners.

Homosexuality among African countries

Early records, including those from the Inquisition in Brazil, document instances of slaves who were identified as performing female roles and refusing to wear men's clothing provided by their masters. In Angola and Congo, pagan individuals commonly wore loincloths with openings, a practice that was adopted by some individuals engaged in same-sex relations, who were referred to as passive partners in the act of sodomy; Ruth (2002)³⁸.

In African cultures, such as among the Hausa people, there are specific terms in their language used to describe homosexuals. Common terms include "yan dauda," which is often translated as "homosexual" or "transvestite," and "dan dauda," which refers to a homosexual "wife." In the Hausa region, individuals engaging in homosexual behavior are frequently involved in the sex trade, serving as male prostitutes or acting as intermediaries for female prostitutes. Among other African tribes, homosexual activities among unmarried adolescents were common and were not considered true sexual relations since they did not involve procreation. For instance, in Cameroon, homosexual acts among individuals as old as 17 are viewed as innocent and not

³⁷ Johnson, P. (2013). *Homosexuality and the European Court of Human Rights*, Routledge, London.

³⁸ Ruth, V. (2002). *Queering India; same-sex love and eroticism in Indian culture and society*, Routledge.

categorized as "true" sexual relations. Among the Pangwe of Cameroon, incidents are reported of men who exhibit a dislike for women and prefer the company of men, even when offered a substantial bride price, or men who engage in courtship with other men.

Homosexuality among Americans

In the cultures of Native Americans, there were notable instances of men dressing as women among various tribes. These individuals were regarded as spiritually gifted by the divine and were revered as men possessing unique insights into spiritual matters. Encountered across numerous tribes, a French term, "berdache," meaning homosexuality, was adopted to describe them collectively. These individuals, known as Two-Spirits, held a revered status within their communities. They served as guardians of ancient traditional stories related to healing, creation, and growth. Additionally, they were revered as keepers of spiritual traditions, recognized for their unique gift of existing "between genders." Supporters of homosexuality argue that the two-spirit tradition is rooted in concepts beyond mere homosexuality, and that terms like "gay" are associated more with sexual acts rather than the spiritual traditions embodied by the Two-Spirits themselves.

Homosexuality in Ancient Greece and Rome

In Greek society, pederasty was often discussed, but it was prevalent among various occupations, particularly in the military. Similarly, forms of homosexuality akin to those observed among Americans were commonplace among the Greeks and Romans. The concept of gender was fluid in ancient Greek and Roman societies, with the notion of being "male" or "female" not strictly tied to biological sex. It was not uncommon for homosexuals to form family units, and same-sex marriages were widely accepted and considered unremarkable because gender was not strictly correlated with biological sex, as it is in modern European and American societies. Therefore, the sight of two men displaying affection or passion for each other in public did not evoke significant interest or controversy among the ancients.

In Augustan Rome, male prostitution was not only permitted but also taxed. The Roman historian Martial not only mentioned numerous prominent citizens and their male lovers by name but also openly acknowledged his own involvement in such activities, without any sense of shame. During the Roman Republic, when governance was relatively honest under the Senate, there was

greater tolerance of homosexual acts, leading to their general omission from official documents and potentially contributing to the belief by some historians that such behavior became more prevalent. Throughout the Middle Ages in Europe, homosexuality continued to be practiced openly and with minimal restraint until the 11th century. It thrived within the cultural norms of the time, with many priests and abbots having male lovers whom they openly celebrated.

ANCIENT HISTORY OF TRANSGENDER PERSONS

The transgender or hijra community in India boasts a recorded history spanning over 4000 years. Throughout history, transgender communities in various cultures worldwide have sought to integrate rituals, folklore, and legends as a means of affirming their identity and finding validation within traditional social frameworks.

- ***Transgender Persons in the Ramayana***

In certain versions of the Ramayana, when Rama embarks on his 14-year exile from Ayodhya, a group of his devoted subjects follows him into the forest. Upon noticing this, Rama gathers them and instructs all the men and women of his kingdom to return to Ayodhya. Rama then continues his adventures for the next 14 years; Molla (2018)³⁹. Upon his return to Ayodhya, Rama discovers that the hijras or transgender individuals have remained at the place where he delivered his speech. Impressed by their unwavering devotion, Rama grants them the privilege to bestow blessings on people during significant occasions such as weddings, inaugurations, and childbirth. This tradition, known as badhai, involves hijras or transgender individuals singing, dancing, and offering blessings.

- ***Transgender Persons in the Mahabharata***

The Mahabharata features an episode where Arjuna, a hero of the epic, is sent into exile and adopts the identity of a eunuch-transvestite. In this role, he performs rituals during weddings and childbirth, activities that are now commonly performed by transgender individuals. Before the Kurukshetra war, Ahiravan offers his lifeblood to Goddess Kali, who agrees to grant him absolute power on the eve of battle. Aravan, knowing he will die in battle, expresses a desire to marry. However, no woman is willing to marry him knowing his fate. In response,

³⁹ Molla, A.B. (2018). Emerging challenges to the rights of the transgender persons in India, *AIR Journal*, 9(2), 137-145.

Lord Krishna takes on the form of Mohini and marries Aravan. In South India, transgender individuals consider Aravan as their progenitor and refer to themselves as "aravanis." In another legend from Gujarat, a king becomes enamored with a beautiful goddess riding a peacock named Bahucharimatha. The king wished to marry the goddess, but she desired to remain a virgin. Despite his persistent pleas, she agreed to marry him under the condition that he first bathe in a pond. Upon emerging from the pond, the king found himself emasculated and unable to consummate his union with the goddess. However, the goddess assured him that he would encounter a community of people who would willingly castrate themselves in his honor.

Language

Due to their unique position in subcontinental society, which involved both marginalization and royal privileges, the transgender community developed a secret language known as Hijra Farsi. This language comprised sentences loosely based on Urdu and encompassed a unique vocabulary of at least a thousand words. Even beyond the Urdu-Hindi speaking regions of the subcontinent, this vocabulary is still utilized by the transgender community within their respective native languages.

Transgender individuals undergoing physical changes also adhere to a structured household system. Within communal hijra households, members fervently uphold the hijra code and maintain a traditional family hierarchy. Elder hijras oversee the household's basic needs, while "chelas" or apprentices contribute a portion of their earnings for household expenses. Additionally, hijras pay a fee to the Jammāt, or Congregation, of hijra house leaders recognized within the broader community. Numerous such households are established in various locations. When transgender individuals face rejection from Indian society and culture, they often find it necessary to distance themselves from mainstream culture. These communal houses provide them with a sense of community and serve to protect and preserve their security and safety. However, despite these protective measures, transgender individuals remain a marginalized group in a country that continues to ostracize them. The Indian community's perception of the transgender lifestyle is complex, often characterized by a combination of fascination, revulsion, and fear. To survive, transgender individuals predominantly engage in begging and prostitution for a small fee, and they may also perform at ceremonies.

SUMMARY

The decision to entrust the legal system with the primary role of addressing domestic violence rests on assumption that it can effectively address needs of abuse victims. However, the legal system has often fallen short, even for those it was originally intended to assist. For marginalized populations, such as LGBT individuals, the existing system is even less responsive. Many LGBT people view the prospect of seeking help through the legal system as highly daunting, with very few considering it a viable option. Those who do seek assistance through the system often encounter mixed results.

The legal system's failure to adequately address the needs of LGBT individuals is not surprising, considering the limited understanding of their experiences and those of other marginalized communities at the time the system was established. Essentially, the development of an entire system of law and policy occurred without a comprehensive understanding of how entire populations, including LGBT individuals, experience abuse and what laws and policies might best address their needs. While it is possible for LGBT individuals to find justice within the legal system, it is equally plausible that better solutions may exist outside the realm of state intervention. The experiences of transgender individuals and other marginalized communities with the legal system suggest that those concerned with meeting needs of all individuals should reconsider the decision to prioritize the legal system as the primary societal response to abuse.

As the world grapples with rapid societal transformations and persistent discrimination, the journey towards inclusivity and acceptance for the LGBT community remains ongoing. Although strides have been made in advancing basic human rights in some areas, significant global disparities remain. Many individuals continue to encounter legal, social, and economic challenges because of their sexual orientation or gender identity. Addressing discriminatory attitudes and implementing inclusive legal frameworks are vital steps toward creating a world where everyone can live authentically and free from prejudice or persecution.

The perception and treatment of transgender individuals in Indian society reflect a complex interplay of fascination, revulsion, and fear. While some traditional acceptance exists, many transgender individuals face severe social ostracism, limited economic opportunities, and rampant discrimination, exacerbated by the lack of robust political representation. Despite landmark legal recognitions such as the Supreme Court's acknowledgment of transgender persons as a third gender and the granting of certain

rights, achieving broader social acceptance remains a formidable challenge. The journey toward equality and inclusion for transgender individuals in India necessitates concerted efforts to address societal attitudes, enhance economic opportunities, and ensure robust legal protections. Moreover, sustained advocacy and political engagement are crucial to effecting systemic change and upholding the human rights and dignity of all individuals, regardless of gender identity.

Transgender individuals in India endure pervasive violence and abuse across various settings, including public spaces, homes, and institutional environments like police stations and prisons. State-sponsored violence, particularly by law enforcement authorities, exacerbates their vulnerability. Despite legal recognitions and occasional strides in protection, systemic issues persist, perpetuating the cycle of harassment and mistreatment. Efforts to address societal attitudes, enhance legal protections, and ensure robust enforcement mechanisms are crucial for safeguarding the human rights and dignity of transgender individuals in India.

The institutional basis for violence against transgender individuals in India is deeply ingrained within societal structures, including the family, the legal system, the medical establishment, and the media. These institutions contribute to the perpetuation of intolerance towards gender non-conformity, thereby exacerbating the prevalence of violence experienced by transgender communities. Families, often considered havens, frequently reinforce societal norms, leading to rejection and violence against transgender individuals. Additionally, the legal system's criminalization of their existence and the medical establishment's pathologization further marginalize transgender individuals, hindering their access to rights and healthcare. Meanwhile, the media, with its influential portrayal, perpetuates stereotypes and discrimination against transgender individuals, shaping public attitudes and behaviors. Addressing the root causes of violence against transgender individuals requires comprehensive societal and institutional changes to foster acceptance, equality, and dignity for all gender identities.

The historical background of LGBT communities in India and around the world reveals a rich tapestry of diverse attitudes and practices towards gender and sexuality. Ancient Indian texts and cultures acknowledged various forms of homosexuality and transgender identities, albeit with varying degrees of acceptance and regulation. Similarly, cultures in Africa, the Americas, and ancient Greece and Rome also exhibited diverse perspectives on

homosexuality and transgender individuals, with instances of acceptance, reverence, and even celebration. These historical insights challenge contemporary misconceptions about the modernity or morality of non-heteronormative identities and behaviors. Understanding the historical context of LGBT communities underscores the complexity and fluidity of gender and sexuality across different cultures and time periods, highlighting the need for inclusivity and respect for diverse identities in today's society.

The transgender or hijra community in India has a rich and longstanding history, dating back over 4000 years. Legends and epics such as the Ramayana and Mahabharata feature transgender individuals, affirming their cultural significance and contributions. Despite societal marginalization, hijras have developed their own language and communal household systems, providing a sense of belonging and support within their community. Yet, they continue to face challenges and stigma in Indian society, often resorting to begging and prostitution for survival.