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Prioritising the Right to Health of Transgender in India – Barriers and the Way Forward

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ABSTRACT

The Hon'ble Supreme Court of India has recognised transgender as 'third gender'. They have been granted various rights, including right to health. But our current healthcare system does not cater to the needs of transgender. Transgender face discrimination in healthcare system. Due to which, they visit unqualified medics which might result in severe health issues. The right to health cannot be exercised in oblivion. The barriers need to be addressed and policies framed to make discrimination free access to healthcare system. Aim is to highlight the barriers that transgender face while accessing healthcare system and what are the reasons behind those barriers. The article is based on appraised peer-reviewed published articles and studies using scoping review and grey literature from few sources. The study, thus reveals that transgender face barriers at multiple levels while accessing health system. Due to these barriers the right to access healthcare services remain elusive.

Keywords: Supreme Court, transgender, third gender, barriers, healthcare system.

I. INTRODUCTION

According to World Professional Association for Transgender Health, a good healthcare system is not the only requisite to promote good health and well-being. It also requires a “social and political climate that provides and ensures social tolerance, equality, and the full rights of citizenship.”³ The right to health cannot be exercised in oblivion. It requires few other parameters to be fulfilled to exercise this right in a complete sense. A transgender person, who was not provided with medical facilities following her accident, died because medical personnel cannot decide whether to admit her to a male ward or female ward.⁴ A young

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³ E. Coleman et al., “Standard of Care for the Health of Transexual, Transgender, Gender-Nonconforming People,” *International Journal of Transgenderism* 13, no. 4 (2012): 1, <https://www.tandonline.com/doi/full/10.1080/15532739.2011.700873> (accessed February 27, 2021).

⁴ Soumya, Elizabeth, “Indian Transgender Healthcare Challenges”, *Aljazeera*, June 18, 2014, <https://www.aljazeera.com/features/2014/6/18/indian-transgender-healthcare-challenges>. (accessed February 27,

transgender woman who was gang-raped was refused to be treated by doctors of a public hospital.⁵ The instances of travails and ordeal suffered by the trans community in the hands of the medical professional are abounding. Transgender come across various barriers in accessing the healthcare system. They face discrimination by doctors and medical staff, very few doctors are there to provide proper healthcare to transgender and most of the doctors refuse them to treat. The discrimination and harassment suffered by trans people by the Indian Healthcare system discourage the majority from accessing the clinical care system. The transphobia among the healthcare system against trans people is just a small reflection of what our society perceives about this community.

II. COMPLICATIONS RELATED TO THE HEALTH OF TRANSGENDER

The transgender community experiences various physical and mental health complications due to many reasons in their life. Some gender non-conforming individuals may experience ‘gender dysphoria’. Gender Dysphoria refers to discomfort or distress due to a discrepancy between a person’s gender identity and that person’s sex assigned at birth.⁶ It can be experienced by transgender or gender-nonconforming people at some point in their lives. Various effective treatment options are available, for example, feminization or masculinization of the body through hormone therapy or/and surgery.⁷ The number of transgender people opting for cross-sex hormone therapy and gender reassignment surgery is increasing. People taking hormones for feminization or masculinization of the body may be at increased risk of physical health issues like thromboembolic events and the development of type II diabetes.⁸ Many things need to be taken into account before undergoing these procedures, and it also requires long-term health monitoring. Male to Female (MTF) patients are at risk of developing prostate cancer, as of natal male.⁹ In Female to Male (FTM) patients, undergoing cervical screening is a must, if they have not gone for a hysterectomy. Both MTF and FTM need to undergo breast screening unless they have gone through chest reconstruction surgery.¹⁰ Patients on hormonal treatment

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⁵. Soumya, “Indian Transgender Healthcare Challenges,” June 18, 2014.

⁶. E. Coleman et al., “Standard of Care for the Health of Transexual, Transgender, Gender-Nonconforming People,” *International Journal of Transgenderism* 13, no. 4 (2012): 5, <https://www.tandonline.com/doi/full/10.1080/15532739.2011.700873>. (accessed February 27, 2021).

⁷. Coleman et al., “Standard of Care for the Health of Transexual, Transgender, Gender-Nonconforming People”, 5.

⁸. David Gerber, Scott Rae, *NHS Greater Glasgow and Clyde*, <https://www.nhsggc.org.uk/media/240309/physical-health-concerns-in-transgender-individuals-david-gerber-scott-rae-october-2016.pdf>. (accessed February 28, 2021).

⁹. David Gerber, Scott Rae, *NHS Greater Glasgow and Clyde*, <https://www.nhsggc.prg.uk/media/24039/physical-health-concerns-in-transgender-individuals-david-gerber-scott-rae-october-2016.pdf> (accessed February 28, 2021)

¹⁰. David Gerber, Scott Rae, *NHS Greater Glasgow and Clyde*, <https://www.nhsggc.prg.uk/media/24039/physical->

require regular monitoring of blood pressure. Transgender persons are at high risk of contracting HIV and Sexually Transmitted Infections.¹¹ India's National AIDS Control Organisation has recognized Hijras and transgender people as a "core high-risk group" for whom intensified HIV prevention and care programs are implemented.¹²

As per the WHO, health includes both the state of mental as well as physical health.¹³ Myer's Minority Stress Theory describes how members of persecuted minority groups are subjected to chronic psychosocial stress in the context of pervasive prejudice, discrimination, and stigma within their social environment.¹⁴ It also explains that a major part of the stressor is induced by hostile, homophobic culture, which often results in a lifetime of harassment, ill-treatment, and discrimination.¹⁵ The homophobic culture prevalent in society is the major stressor which affects the mental health of the transgender. They have to face multifarious stressors which have deleterious repercussions on their mental as well as physical health.

III. BARRIERS IN ACCESSING THE HEALTHCARE SYSTEM BY THE TRANSGENDER

In accessing healthcare services, the major barriers faced by the transgender community are – stigma, discrimination and harassment.¹⁶

A transgender person has unique health requirements and needs. They have similar health issues to the general population. Transgender have few unique health requirements like – hormone therapy, genital reconstruction, breast or chest surgery, hysterectomy, or facial reconstruction,¹⁷ reproductive care, gynaecologic and urologic care, and mental health service.¹⁸

Unfortunately, many transgender people avoid visiting healthcare professionals or hospitals

health-concerns-in-transgender-individual-david_gerber-scott-rae-october-2016.pdf (accessed February 28, 2021).

¹¹ Brahman GN et al., "Sexual Practices, HIV and Sexually Transmitted Infections Among Self-Identified Men Who Have Sex With Men In Four High HIV Prevalence States Of India", *AIDS* 22, (2008): 45-57, https://journals.lww.com/aidsonline/fulltext/2008/12005/Sexual_practices,_HIV_and_sexually_transmitted.4.aspx (accessed February 27, 2021).

¹² World Health Organisation, Regional Office for South-East Asia, *HIV/AIDS among men who have sex with men and transgender populations in South-East Asia: the current situation and national responses*, 2010, 978-92-9022-381-8, New Delhi, World Health Organisation.

¹³ World Health Organisation Constitution, principle 1.

¹⁴ IH Meyer, "Minority Stress and Mental in Gay Men", *Journal of Health and Social Behavior* 36, (1995): 38-56.

¹⁵ Michael P. Dentato, "The Minority Stress Perspective," *American Psychological Association*, April, 2012, <https://www.apa.org/pi/aids/resources/exchange/2012/04/minority-stress#>

¹⁶ Vijay Shankar, "Growing recognition of transgender health," *Bulletin of the World Health Organization* 94, (2016): 790-791, <http://dx.doi.org/10.2471/BLT.16.021116> (accessed March 1, 2021).

¹⁷ Daphna Stroumsa, "The State of Transgender Health Care: Policy, law, and Medical Framework," *American Journal of Public Health* 104, no. 3 (2014): 31-38.

¹⁸ Coleman E et al., "Standard of Care for The Health of Transsexual, Transgender, and Gender-Nonconforming People," *International Journal of Transgenderism* 13, no. 4 (2012): 165-232.

due to which they visit quacks that makes them prone to severe health issues.

One such barrier is '**Individual-level barriers**'. The individual-level barrier affects an individual's ability to access healthcare, as well as their motivation to do so.¹⁹ This demotivation might be the result of mistrust feeling that develops against healthcare professionals due to some negative experience. A young transgender woman was gang-raped and was brought to the hospital, where she was denied medical benefits.²⁰ The doctors even used insensitive comments and slurs against transgender women.²¹ In one such case, a transgender met with a train accident and died because a health personal could not decide whether to admit her into the male ward or female ward.²² Instances like this demotivate transgender from visiting the healthcare system. They fear being ridiculed, harassed, and discriminated against on the basis of their gender. Transgender are not financially strong. They have a very unstable source of livelihood. So, in such cases, they tend to prioritize food and shelter over medical care.

The second type of barrier is the '**Institutional Level barrier**'. Institutional Erasure is defined as the lack of policies that accommodate trans identities or trans bodies, including the lack of knowledge that such policies are even necessary.²³ Lack of knowledge regarding transgender-specific information like health issues, needs, etc., increases the inaccessibility of the healthcare system. The transphobic culture, lack of sensitivity regarding transgender health, lack of trans-specific training, lack of trans-specific care facilities in the healthcare institution excludes and ignores 'third gender'. The absence of trans-specific policies and protocols continues to erase the transgender's needs. Due to exclusion of transgender from healthcare policies, hospital staff often ridicule and harass transgender patients. These kinds of discriminatory practices deprive transgender of accessing healthcare services.

The third type of barrier is the '**Societal level Barrier**'. The contemporary perception about transgenders is the result of draconian laws that stand repeal. Transgenderism is considered an illness in our society. The stigma that society attaches to the transgender identity results in social exclusion of this community. Due to social exclusion, they are deprived of basic facilities like education, etc. Due to lack of education and skill, they are forced to make sex work,

¹⁹ JM Sevelius et al., "Barriers and Facilitators to Engagement and Retention in Care Among Transgender Women Living with Human Immunodeficiency Virus," *Annals of Behavioural Medicines* 47, no. 1 (2014), 5-16.

²⁰ Soumya, Elizabeth, "Indian Transgender Healthcare Challenges," *Aljazeera*, June 18, 2014, <http://www.aljazeera.com/features/2014/6/18/indian-transgender-healthcare-challenge> (accessed February 27, 2021).

²¹ Soumya, "Indian Transgender Healthcare Challenges," June 18, 2014.

²² Soumya, "Indian Transgender Healthcare Challenges," June 18, 2014.

²³ Greta R. Bauer et al., "I Don't Think This Is Theoretical; This Is Our Lives," *Journal Of The Association Of Nurses In AIDS Care* 20, no. 5 (2009) 354.

begging as their primary source of livelihood. Due to a lack of proper education and financial constraint, healthcare becomes inaccessible.

IV. REASONS BEHIND THE BARRIERS IN ACCESSING HEALTHCARE SYSTEM BY THE TRANSGENDER

The reasons for transgender destitution, homelessness, illiteracy, and deprivation of basic human rights are laws. With the onset of the British laws like Section 377²⁴ and Criminal Tribes Act, 1871 were introduced. Through these laws, the hijra community was restricted from wearing like women and was also prohibited from dancing or singing on roads. The Hijra community was always under suspicion of being involved in kidnapping, sodomy, and castration. Through these laws, hijras were arrested without any warrant. In one such *Queen Empress v Khairati*,²⁵ a hijra was arrested because he was suspected of dancing and singing with other women. The Court ended acquitting her but made disparaging remarks about her sexuality and stigmatizing Khairati. These laws socially excluded the hijras and criminalized their basic source of living.

The Britishers, through these laws, imposed their perception about 'eunuchs' on the colonized India. Though these laws do not exist in Independent India, the perception created by these laws still exists in our society.

The Census of 2011 first time included the column of 'other category' along with two other genders. The total population of 'other category' people was 4.88 Lakhs, and the literacy rate among them was 56.1%.²⁶ The poor rate of literacy is due to the stigma that society attaches to gender non-conformity and social exclusion. Due to a lack of proper education and skills, transgender have no proper source of income. They majorly rely on begging, sex work, or performing on auspicious occasions. Due to a lack of a proper source of income, they never prioritize their medical care. Our society still regards gender non-conformity as an illness. Due to which there is a lack of support from families, and they never reveal their real identity. This makes their mental health vulnerable to depression, suicidal tendencies, etc.

The survey done by NHRC, the first time in the country's history, reveals how society treats the transgender community. According to the survey, 99% have suffered social rejections, including families, 96% of transgender are denied jobs.²⁷ The survey reveals that 50% to 60 %

²⁴. Indian Penal Code, sec. 377.

²⁵. In *Queen Empress v. Khairati* (1884) the Court made disparaging remarks and stigmatized Khairati.

²⁶. Census Department, Government of India. Census India 2011. <https://censusindia.gov.in/2011-Common/CensusData2011.html> (accessed 28 February, 2021).

²⁷. National Human Rights Commission, Kerala Development Society, *Study on Rights of Transgender as a third*

of transgender never attended schools. The survey also reveals that 57% of want to have sex-alignment surgery, but they lack money for it.²⁸

Due to the presence of transphobic feelings, discrimination, and harassment in the society against transgender, accessing basic facilities the health is a big challenge. Our healthcare system represents our society when it comes to dealing with transgender. Though the case laws have restored the rights of transgender, access is still a challenge. And this is because of the presence of transphobic feelings in our society. Thus, due to lack of support, illiteracy, social exclusion, lack of financial resources, and discriminatory healthcare systems act as major barriers in accessing healthcare services.

V. THE WAY FORWARD

Article 12(1) of ICESCR states that “every person has the right to the enjoyment of the highest attainable standard of physical and mental health”²⁹ but the transgender community faces barriers to access the healthcare system without discrimination which prevents them even from attaining the decent health status.

One of the reasons why the healthcare system still a mirage for transgender people is the lack of trans-friendly policies and guidelines in the healthcare system. In 2014, the Supreme Court of India recognized transgender as ‘third gender’.³⁰ The Hon’ble Court directed the State Government to address the health issues faced by transgender and take proper medical care facilities to transgender in hospitals. The Court also said that the state must make departments to look into the specific medical issues and requirements of the transgender.

The Central Government brought the Transgender Person (Protection of Rights) Act in 2019. The Section 15 of the Act lay down the basic medical benefits for transgender.³¹ The government should establish at least one government hospital offering gender reassignment surgery, state medical insurance will cover expenses of health issues and healthcare facilities should ensure separate transgender ward.³² All these legislations just superficially touch upon actions but do not define any definite plan and concrete steps to implement such measures.

Medical authorities should frame trans-friendly guidelines and policies for the healthcare system. The healthcare professional should be trained and sensitized about the specific needs

gender, 2018.

²⁸. National Human Rights Commission, Kerala Development Society, *Study on Rights of Transgender as a third gender*, 2018.

²⁹. International Covenant on Economic, Social and Cultural Rights, art. 12, sec. 1.

³⁰. In *National Legal Services Authority v. Union of India* (2014) the Supreme Court recognized ‘third gender’.

³¹. Transgender Persons (Protection of Rights) Act, sec 15.

³². Transgender Persons (Protection of Rights) Rules 2020.

of transgender people through orientation and workshops. New doctors should be taught about health issues related to transgender in their medical syllabus. The Government should frame strict laws against any discriminatory practices against transgender in the healthcare system.

The government agencies should take steps to stop the discrimination faced by transgender in accessing the healthcare system and run awareness programs on a broad level so that people start developing more sense of acceptability for transgender. The awareness campaign will also help in reducing discrimination and stigma against transgender.

The Government should open a psychological institute in respect to dealing with mental health issues of transgender. The transgender community faces stigmatization, discrimination, and rejection in society at different levels which ultimately leads to anxiety and depression.

The government should also focus on mainstreaming the third gender in all the spheres. Education of transgender should be one of the primary focus of policies. A good education will not only help in making transgender financially sound but will also help in enhancing health literacy. Involvement of the transgender community in decision-making and policies related to health, education, and other issues related to them will be a good step to address their issues in a better way.

Many state governments have started working on empowering transgender, but Tamil Nadu is a front running state in providing welfare support to transgender people.³³ The Central Government should issue directions to all the State, for making trans-friendly policies, which should be strictly followed.

VI. CONCLUSION

India is committed to the Sustainable Development Goals, which is based on the principle 'Leaving no one behind'.³⁴ The Sustainable Development Goals provide measures that should be followed by everyone – policymaker, civil society, business, etc. The transgender community is the most persecuted sexual minority in India. Based on the Court's directions, the Central and State government are making policies regarding transgender. The special laws and focus of the government are needed to facilitate transgender to access services freely without any discrimination and barriers. Transgender have been granted 'right to health' but accessing healthcare system is still a challenge for them because of widespread transphobic feeling against transgender in the healthcare system. They have to face multi-layered

³³. National Human Rights Commission, Kerala Development Society, *Study on Rights of Transgender as a third gender*, 2018.

³⁴. NITI Aayog, SDG India Index, <https://niti.gov.in/sdg-india-index> (accessed 26 February, 2021).

discrimination at hands of hospital staff. There is a need of overhauling our social structure in a trans-friendly manner, where they can enjoy every facility and service without discrimination and harassment. Laws can bring change in society, change might be gradual but it will surely help in shaping a better future for transgender.

The government should come up with policies related to education, employment, and health for transgender because for broadening the contours of the right to health of transgender other important determinants of health should be focused upon. The contours of right to health of transgender can be broadened by making efforts to remove environmental, legal, and social barriers and this is important for upgrading standard of the health of transgender community.
