

# Domestic Violence Against Transgender Individuals in India: Challenges and Legal Protections

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**Abstract:** This paper presents challenges and legal protections of domestic violence against transgender individuals in India.

**Keywords:** domestic violence, economic abuse, emotional abuse, inadequate support system, legal landscape, physical abuse, psychological abuse, transgenders, sexual abuse, social isolation.

## 1. Introduction

Every human being has certain inalienable rights. This is a doctrine that is firmly enshrined in our Constitution. Gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom. These freedoms lie at the heart of personal autonomy and freedom of individuals. A transgender's sense or experience of gender is integral to their core personality and sense of being.

## 2. Transgender Meaning

Transgender is an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice or body characteristics [1]. Transgender encompasses a wide variety of identities including, but not limited to, transsexual, bi gender, third gender, queer " [2].

Sex is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy. Gender refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for boys and men or girls and women. These influence the ways that people act, interact, and feel about themselves. While aspects of biological sex are similar across different cultures, aspects of gender may differ. Various conditions that lead to atypical development of physical sex characteristics are collectively referred to as intersex conditions.

## 3. What is Domestic Violence?

*Domestic violence* is violence or other abuse that occurs in a domestic setting, such as in a marriage or cohabitation. Domestic violence is often used as a synonym for intimate partner violence, which is committed by one of the people in an intimate relationship against the other person, and can take place in relationships or between former spouses or partners. In its broadest sense, domestic violence also involves violence against children, parents, or the elderly. This includes any behaviours that frighten, intimidate, terrorize, manipulate, hurt, humiliate, blame, injure, or wound someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels [3]. It can assume multiple forms, including physical, verbal, emotional, economic, religious, reproductive, financial abuse, or sexual abuse, or combinations of these. It can range from subtle, coercive forms to marital rape and other violent physical abuse, such as choking, beating, female genital mutilation, and acid throwing that may result in disfigurement or death, and includes the use of technology to harass, control, monitor, stalk or hack. Domestic violence often occurs when the abuser believes that they are entitled to it, or that it is acceptable, justified, or unlikely to be reported.

Domestic violence is a pervasive issue that affects individuals across all demographics, but for transgender people in India, it takes on a particularly insidious and often invisible form. Transgender individuals face a unique set of challenges within their homes, often subject to physical, emotional, and sexual violence perpetrated by family members or intimate partners. This violence is compounded by societal discrimination, a lack of legal recognition, and entrenched patriarchal norms. In this essay, we will explore the nature of domestic violence against transgender individuals in India, the legal landscape for their protection, and the gaps that remain in ensuring their safety and dignity.

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#### 4. Understanding Domestic Violence Against Transgender People

Domestic violence refers to any form of abuse—physical, emotional, sexual, or economic—perpetrated within the home or intimate relationships. While domestic violence against cisgender women is widely acknowledged and discussed, violence against transgender individuals remains largely overlooked, often because of the intersectional challenges they face. Transgender people are marginalized not only because of their gender identity but also because of the pervasive stigma attached to it in many parts of Indian society. This marginalization extends into the domestic sphere, where they may face abuse from their families, partners, or others in their household. Transgenders were once been treated with great respect and find notable mention in the ancient Hindu scriptures as well as the greatest epics of India, namely, the Ramayana and the Mahabharata. But now transgenders remain socially excluded, living on the fringes of society in ghettoised communities, harassed by the Police and abused by the public.

For transgender individuals in India, domestic violence manifests in various forms:

##### A. Physical and Sexual Abuse

Physical abuse is any intentional act causing injury or trauma to another person by way of bodily contact. It is intentionally causing bodily injury. Some examples include slapping, pinching, choking, kicking, shoving, or inappropriately using drugs or physical restraints. Signs of physical injuries are bruises, black eyes, welts, lacerations, and rope marks, broken bones, etc [4].

Sexual assault involves unwanted sexual activity, with perpetrators often using force, making threats, or taking advantage of victims not being able to give consent. Immediate reactions to sexual assault may include shock, fear, or disbelief. Long-term symptoms may include anxiety, fear, or posttraumatic stress disorder [5]. Transgender individuals may experience physical violence ranging from slapping and beating to sexual assault. Often, this abuse is exacerbated by the non-acceptance of the individual's gender identity. Transgender people may be forced to undergo corrective surgeries or medical procedures by family members or intimate partners, leading to further psychological and physical harm.

##### B. Emotional and Psychological Abuse

Emotional abuse involves controlling another person by using emotions to criticize, embarrass, shame, blame, or otherwise manipulate them. While most common in dating and married relationships, mental or emotional abuse can occur in any relationship. Family members or partners often invalidate a transgender person's identity, calling them derogatory names or belittling their experience. Such emotional abuse erodes self-esteem and can lead to long-term mental health issues like depression and anxiety. Emotional abuse may also involve forced confinement, intimidation, or threats to disown the individual if they do not conform to societal norms.

##### C. Economic Abuse

Economic abuse can include exerting control over income, spending, bank accounts, bills and borrowing. It can also include controlling access to and use of things like transport and technology, which allow us to work and stay connected, as well as property and daily essentials like food and clothing. It can include destroying items and refusing to contribute to household costs. This type of abuse is a form of coercive and controlling behaviour. It can continue long after a leaving and can have lifelong effects. Economic violence is common in many domestic violence cases, but for transgender individuals, this form of abuse is especially prevalent. Transgender people often face discrimination in employment and financial independence, making them more dependent on their families or partners. They may be denied access to finances, forced to hand over their earnings, or made to work in exploitative conditions to survive.

##### D. Social Isolation

Many transgender individuals are forced into isolation by their families, which can worsen the effects of domestic violence. The lack of social support networks, coupled with social stigma, makes it difficult for transgender individuals to escape abusive situations.

#### 5. The Legal Landscape in India

In India, the legal framework to address domestic violence is governed primarily by the *Protection of Women from Domestic Violence Act (PWDVA), 2005*. While this law was a significant step forward in addressing domestic violence, it was initially limited to cisgender women, leaving transgender individuals outside its protective purview. However, the legal landscape has evolved over the past decade, and several landmark decisions and legislative actions have sought to provide transgender people with legal recognition and protections.

“*Domestic Violence*” is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that *domestic violence* was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination against Women in its general recommendations had also exhorted the member countries to take steps to protect women against *violence* of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498 A IPC now under Section 85 BNS.

The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of *violence* of any kind occurring in the family, enacted the Domestic Violence Act [6] This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) reinforced by Article 39. The brooding

presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance [7] The Hon'ble Supreme Court in *National Legal Services Authority v. Union of India and others* [8], the trauma, agony and pain, which members of the transgender community have to undergo continues unabated.

In *Navtej Singh Johar case*, the Honourable Supreme Court held that, the overarching ideals of individual autonomy and liberty, equality for all sans discrimination of any kind, recognition of identity with dignity and privacy of human beings constitute the cardinal four corners of our monumental Constitution forming the concrete substratum of our fundamental rights that has eluded certain sections of our society who are still living in the bondage of dogmatic social norms, prejudiced notions, rigid stereotypes, parochial mindset and bigoted perceptions. Social exclusion, identity seclusion and isolation from the social mainstream are still the stark realities faced by individuals today and it is only when each and every individual is liberated from the shackles of such bondage and is able to work towards full development of his/her personality that we can call ourselves a truly free society. The first step on the long path to acceptance of the diversity and variegated hues that nature has created has to be taken now by vanquishing the enemies of prejudice and injustice and undoing the wrongs done so as to make way for a progressive and inclusive realisation of social and economic rights embracing all and to begin a dialogue for ensuring equal rights and opportunities for the —less than equal sections of the society. We have to bid adieu to the perceptions, stereotypes and prejudices deeply ingrained in the societal mindset so as to usher in inclusivity in all spheres and empower all citizens alike without any kind of alienation and discrimination [9].

#### A. *The National Legal Services Authority v. Union of India (2014)*

A landmark judgment by the Supreme Court of India, often referred to as the *NALSA judgment*, recognized transgender people as a "third gender" and affirmed their right to self-identify. This judgment laid the foundation for further legal protections and was an important step toward granting transgender people legal recognition in society. The NALSA ruling made it clear that transgender people should have the same rights as other citizens in India, including protection against violence and discrimination.

#### B. *The Transgender Persons (Protection of Rights) Act, 2019*

In 2019, the Indian Parliament passed the *Transgender Persons (Protection of Rights) Act*, which aimed to protect transgender people from discrimination and violence. The law criminalizes discrimination against transgender individuals in education, employment, healthcare, and social services. While the Act is an important step forward, it has faced criticism for its limitations, including the requirement for a transgender person to obtain a "certificate of identity" from a government authority, which many see as an infringement on personal dignity and autonomy. The Transgender Persons (Protection of Rights) Act, 2019 is a landmark piece of legislation in India that

seeks to protect the rights of transgender individuals and improve their social, economic, and political standing. Passed by the Indian Parliament in December 2019, the Act aims to safeguard the dignity and equality of transgender persons while addressing the social stigma and discrimination they face.

The Act defines a transgender person as one whose gender does not align with the sex assigned at birth. It recognizes various gender identities, acknowledging that the transgender community encompasses a wide spectrum, including hijras, aravanis, khawajasiras, and other non-binary gender identities. The legislation prohibits discrimination against transgender individuals in areas such as education, employment, healthcare, and access to public services.

One of the most significant provisions of the Act is the establishment of a national and state-level transgender welfare board, which is tasked with promoting the welfare and protection of transgender persons. The law also allows transgender persons to self-identify their gender, ensuring that their gender identity is recognized on official documents, such as identity cards and passports. This provision is crucial as it empowers individuals to live in accordance with their true identity, reducing the legal challenges many transgender people face.

However, the Transgender Protection Act has faced criticism for certain gaps. The process of obtaining a legal recognition of gender identity still involves a cumbersome certification process from a District Magistrate, which some activists argue could lead to unnecessary hurdles for transgender individuals. Furthermore, the Act does not adequately address issues related to transgender people's access to healthcare, particularly gender-affirming treatments, and many believe that more comprehensive measures are needed to ensure full social inclusion.

#### C. *The Protection of Women from Domestic Violence Act (PWDVA), 2005*

While the PWDVA was originally designed to protect only cisgender women, the evolving legal landscape in India has led to greater recognition of transgender individuals within this framework. The Act offers a wide range of protections, including access to legal remedies such as protection orders, residence orders, and monetary relief. In practice, however, transgender individuals face significant challenges in accessing the provisions of the law. There have been few reported cases where transgender individuals have successfully used the PWDVA to secure justice. In recent years, the conversation around transgender rights in India has gained significant momentum, particularly with the passage of the Transgender Persons (Protection of Rights) Act, 2019. Despite legal recognition, transgender individuals continue to face systemic discrimination, social exclusion, and violence. One area where transgender people, especially transgender women, face severe hardship is in situations of domestic violence. However, the current Protection of Women from Domestic Violence Act (PWDVA), 2005, does not explicitly address the needs of transgender individuals, leaving them vulnerable in abusive relationships. Extending the protections of the PWDVA to

transgender persons is a crucial step toward ensuring their safety, dignity, and rights.

The Protection of Women from Domestic Violence Act, 2005, was enacted with the aim of providing relief and protection to women who experience domestic abuse. The law acknowledges a broad spectrum of abuse, including physical, emotional, economic, and sexual violence. While the law was a progressive step for protecting women's rights, its applicability is restricted to cisgender women, leaving transgender people, particularly transgender women and non-binary individuals, outside its scope.

Transgender persons, especially those who undergo gender-affirming surgeries or are visibly gender non-conforming, are often at heightened risk of domestic violence, abuse, and harassment within their own homes. They are frequently subjected to violence by family members, intimate partners, and society at large, often due to societal prejudice and ignorance. Many transgender individuals face rejection from their families, leaving them vulnerable to emotional and financial abuse, and are often forced to live in conditions of isolation or fear.

Including transgender people under the PWDVA would create a legal framework that explicitly recognizes their experience of domestic violence and allows them to access legal remedies, including protection orders, residence orders, and monetary relief. This inclusion would not only provide immediate relief for transgender victims but also send a strong social message about the recognition of their dignity and rights. Furthermore, it would allow transgender people to seek justice without fear of discrimination or marginalization in legal proceedings.

A major challenge in this effort is the reluctance to recognize transgender people as a distinct group with unique needs in legal frameworks. However, India's legal system has already demonstrated an evolving understanding of transgender rights, as seen in the landmark *NALSA v. Union of India* [10] ruling, which recognized transgender persons as a third gender and affirmed their right to equality. Building on this progress, including transgender persons under the PWDVA is both a legal and moral imperative to ensure that no person, regardless of gender identity, suffers abuse in silence.

In conclusion, bringing transgender persons under the umbrella of the *Protection of Women from Domestic Violence Act* is a necessary and overdue step toward securing justice and protection for a marginalized community. This expansion of the law would provide much-needed legal safeguards and ensure that transgender individuals, especially transgender women, are not excluded from the protection afforded to others facing domestic violence in India. Ultimately, such a move would reflect India's commitment to upholding the human rights and dignity of all its citizens, irrespective of their gender identity.

#### D. *The Role of Courts and Civil Society*

Courts in India have started to recognize the unique vulnerabilities of transgender individuals in domestic violence cases. For instance, the *Kerala High Court*, in 2018, extended the provisions of the PWDVA to a transgender woman, marking a positive shift toward greater inclusivity in the

application of the law. Civil society organizations, too, have played a vital role in advocating for transgender rights, providing legal support to victims of domestic violence, and pushing for the reform of laws to ensure greater protection for transgender people. Civil society plays a crucial role in advocating for and protecting the rights of transgender individuals, who often face significant challenges related to discrimination, social exclusion, and violence. As marginalized members of society, transgender persons rely heavily on the support of civil society organizations (CSOs), activists, and community groups to create awareness, provide services, and push for legal reforms that ensure their dignity and rights.

One of the primary roles of civil society is advocacy. Non-governmental organizations (NGOs) and activist groups work tirelessly to raise awareness about the unique challenges faced by transgender people, such as barriers to healthcare, employment discrimination, and lack of legal recognition. By organizing campaigns, workshops, and awareness programs, they help shift public perceptions and fight against harmful stereotypes. This advocacy is essential in challenging societal prejudices and encouraging inclusivity in schools, workplaces, and public spaces.

Civil society also plays an important role in legal support. Transgender individuals often face difficulties navigating the legal system, whether it be for changing their gender identity on official documents or seeking justice in cases of discrimination or violence. CSOs offer legal aid, help transgender individuals understand their rights, and support them in pursuing legal recourse. Organizations like the *Kriti* and *Sahodaran* have been instrumental in providing legal support and lobbying for more inclusive policies, such as the Transgender Persons (Protection of Rights) Act, 2019.

In addition, civil society plays a pivotal role in providing essential services, such as healthcare, education, and employment support, to transgender individuals. Many CSOs run shelters for transgender people facing violence or family rejection, offer medical and psychological services, and create safe spaces for social integration.

## 6. Challenges in Implementation and Gaps in Protection

Despite these legal advances, there remain significant gaps in the protection of transgender individuals from domestic violence in India. These gaps can be categorized into several key areas:

### A. *Lack of Awareness and Sensitivity*

One of the biggest challenges in addressing domestic violence against transgender people is the lack of awareness and sensitivity among law enforcement officers, judicial authorities, and even healthcare professionals. Many are not trained to handle cases involving transgender individuals, and as a result, transgender people may face bias or mistreatment when they seek help. Additionally, there is a lack of understanding of what constitutes domestic violence in the context of transgender identities.

### *B. Barriers to Accessing Legal Remedies*

Transgender people face significant barriers in accessing legal remedies for domestic violence. These include a lack of proper documentation, fear of discrimination, and a distrust of the legal system. Many transgender individuals are reluctant to approach authorities due to past experiences of stigma or abuse by law enforcement.

### *C. Cultural and Social Barriers*

In Indian society, there is widespread stigma against transgender individuals. In many cases, family members and intimate partners may justify the violence as a way to "correct" the transgender person's identity. These deeply ingrained cultural attitudes often make it difficult for transgender individuals to seek help or support.

### *D. Inadequate Support Systems*

While there are some NGOs and support groups that provide resources for transgender individuals, there is a significant shortage of shelters, counseling services, and legal aid specifically for transgender victims of domestic violence. Without proper support systems, it is difficult for transgender people to escape abusive environments.

## **7. Conclusion**

Domestic violence against transgender individuals in India is

a deeply rooted issue that requires a multi-pronged approach to address. While legal protections have been gradually expanding, significant gaps remain in terms of implementation and awareness. To create a safer environment for transgender people, it is essential to focus on education, raise awareness about transgender rights, and ensure that law enforcement and judicial systems are equipped to handle cases of domestic violence involving transgender victims. Only through such concerted efforts can we hope to reduce the prevalence of domestic violence and empower transgender individuals to live with dignity and safety in their homes and communities.

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