



Joanna Jamel: *Transphobic Hate Crime*

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1 Introduction

The enactment of the Transgender Persons (Protection of Rights) Act, 2019, has given fresh impetus to concerns about the impediments the transgender community continues to face in fully enjoying and exercising its constitutional rights, despite the Supreme Court's decision in *National Legal Services Authority (NALSA) vs. Union of India*,¹ which gave legal recognition to non-binary gender identities. The legal developments in India have not taken place in isolation; since the turn of the 21st century, the right to gender self-identification has become a contested issue across many jurisdictions.² However, legal advances have not necessarily translated into social acceptance for the transgender community. Dr Joanna Jamel's book, *Transphobic Hate Crime*, promises to be a primer that moves beyond the legal and focuses on the socio-historical status of non-binary people (p. xi). The book opens with a vital claim, that of being the first text dedicated 'solely' to the study of transphobic hate crime, with particular reference to the Anglo-American and European context (pp. xi–xv). To make her analysis comprehensive, the author examines the responses of not just lawmakers and law-enforcers to transphobic hate crimes but also the factors that give rise to the exclusion of, and violence against, gender

¹ (2014) 5 SCC 438.

² In 2007, Nepal's Supreme Court directed the government to recognise the 'third gender', based on the Yogyakarta Principles that were developed at a meeting of the International Commission of Jurists in 2006. The Supreme Court of Pakistan granted legal recognition to the 'third gender' in 2009. Argentina passed a law in 2012 empowering those over the age of 18 to choose their own gender. Many other countries followed suit in the next few years, with varying requirements for gender self-expression. See Neela Ghoshal and Kyle Knight, 'Rights in Transition: Making Legal Recognition for Transgender People a Global Priority' (*Human Rights Watch World Report 2016*, January 2016). <https://www.hrw.org/world-report/2016/rights-in-transition>. Accessed 18 March 2020.

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non-conforming people. Despite the forthright admission of her limited frame of reference, the author attempts to address carping criticism of the ‘whiteness’ of research on sexual orientation, gender identity and expression, and sexual characteristics (SOGIESC) (p. xi). To this end, she endeavours to deconstruct the fallacious belief of the homogeneity of the transgender community, emphasising the advantages of adopting an intersectional approach to scholarship on the various axes of identity (p. xv). In this review, I assess if the book manages to accomplish its ambitious goal of providing a ‘holistic perspective’ on the rights of trans individuals (p. xi).

2 Advancing the literature on hate crime

Transphobic Hate Crime is most effective in conveying its assertions in the Introduction. The author succinctly theorises the use of some key terms such as ‘transgender’, ‘cisgender’ and ‘queer’, drawing attention to the problem of arriving at fixed definitions for SOGIESC realities that are intrinsically fluid and uniquely subjective (pp. xii–xiii). She also introduces a basic understanding of the spectrum of acts and omissions of both state and non-state actors that constitute ‘transphobia’, highlighting invisible forms of violence that are explored in detail in later chapters (p. xiii). She cites the example of the controversy surrounding the use of public restrooms by the trans community in the United States (US) to illustrate more normalised forms of transphobia as compared to physical violence (pp. xiii–xiv). The grounding of concepts at the outset sets the tone for an expansive definition of violence, making meaningful headway in current literature.

Chapter 2 is similarly fruitful in positing the grounds behind the transgender community’s vulnerability, and enumerating the gamut of behaviour against gender non-conforming individuals that can be categorised as transphobia. Through the use of well-publicised cases in the US, the United Kingdom (UK) and the rest of Western Europe, the author examines theoretical perspectives on how the intensity of the ‘cognitive dissonance’ of offenders to the perceived ‘gender deviancy’ of the victims and survivors of transphobic hate crime determines the extremity of violence (pp. 29–31). The intensity of this ‘cognitive dissonance’ is often aggravated by intersectionality. For instance, the author explains that trans women were more likely to be the victims of hate crime than trans men because of the former’s higher likelihood of being perceived as ‘gender deceptive’ in sexual encounters with non-transgender men (p. 30). Although the author strives to remedy the ‘neglect of ethnic diversity’ in assessing the prevalence of transphobic crime in the West, she, unfortunately, does not either offer enough substantive evidence of gender non-conforming people of colour being the disproportionate targets of hate crime or clarify why there is a paucity of statistics on the intersectionality of victims, apart from a few publicised cases (p. 21). What is mentioned are only those inhibitors to reporting hate crime that apply to the transgender community in general (p. 26).

Chapter 4 makes further progress in delineating how transphobia is not constitutive of merely personal attacks against members of the trans community but is a concerted patriarchal mode of punishing those who fall foul of heteronormativity.

The author substantiates this argument by analysing the relationship between the victim and the offender in transphobic hate crime. Based on a literature review of existing research, she brings to the fore the parallels between transphobic hate crime and violence against women, establishing that a majority of the perpetrators in both cases are acquaintances and the most common locations of these attacks are private residences (p. 60).

Chapters 3 and 5 detail institutional responses to transphobic hate crime. The former considers the strength of legislation in protecting trans people as well as enforcing the rights of victims of transphobic hate crimes in the US, the UK and the European Union (EU). The author begins her discussion by stating that the gendered nature of all legislation, which invariably reinforces heteronormative patriarchy, was a product of religious resistance to recognising multiple sexual orientations and gender identities, stemming from every organised religion's fixation on ensuring procreation for the survival of the human race. This was an excellent opportunity for her to offer a systematic analysis on the confluence of 'racism, colonialism, current religious and political dialogues' that led to 'an aversion to accept multiple gender identities globally' (p. 42). However, she chose to side-step some of the difficult questions that have been answered by postcolonial queer theorists. I will be elaborating on this criticism in the next section of my review.

Nevertheless, the scrutiny of existing laws in Chapter 3 does highlight important legislative reforms since the early 2000s in the abovementioned legal systems that address the sexual victimisation of the transgender community. Despite their progressive underpinnings, a number of these laws, like the Gender Recognition Act of 2004 in England, continue to be discriminatory as they do not allow gender flexibility and compel gender non-conforming individuals to live in their 'acquired' gender until death (p. 46). This critique rings true in the Indian context as well, since the newly ratified law to 'protect' the rights of trans people ends up institutionalising the 'medicalisation of transgenderism', coercing people into sex reassignment surgeries, thereby defeating the very purpose it is meant to serve (p. 24).³

In Chapter 5, the author examines the responses of governmental and non-governmental institutions towards establishing a set of best practices in dealing with transphobic hate crime in the UK, the US and Europe (p. 70). The principal advantage of her comprehensive enumeration of the agencies (both national and international) is the dissemination of information about organisation support for the transgender community, ranging from education on 'gender dysphoria'⁴ to counselling, advocacy and third-party reporting on hate crime. In the later part of the chapter, the author has reviewed the counter-measures taken by law-enforcement agencies to ameliorate the risk of the 'secondary victimisation' of the Lesbian Gay

³ Kyle Knight, 'India's Transgender Rights Law Isn't Worth Celebrating' (*The Advocate*, 5 December 2019). <https://www.advocate.com/commentary/2019/12/05/indias-transgender-rights-law-isnt-worth-celebrating>. Accessed 18 March 2020.

⁴ Gender dysphoria is the psychological phenomenon where a person's expressed gender is incongruent with the sex assigned to them at birth. See Cristina L. Magalhães and Ellen S. Magalhães, 'Gender Dysphoria' in Kevin L. Nadal (ed), *The SAGE Encyclopedia of Psychology and Gender* (SAGE 2017) 651.

Bisexual Transgender (LGBT) community, including specialist policing models that encourage the training of officers chiefly dedicated to working on cases of transphobic hate crime (p. 90).

The Conclusion in Chapter 6 ends with a slew of recommendations, most of which are geared towards strengthening institutional responses by lawmakers and law-enforcers. To improve social attitudes, the author suggests making the curricula in schools and universities more inclusive of ideas and opinions that aim to undo ‘the socially constructed rigid gender dyad’ that is prejudiced against not just trans people but any individual who does not subscribe to patriarchal norms (p. 107). Barring the last recommendation, which focuses on re-orienting education, most of the author’s proposals are essentially procedural in nature, driven mainly towards preventing and punishing transphobic hate crime. However, without granting the transgender community accompanying substantive socio-economic rights (including access to healthcare, education, and employment) through affirmative action, as suggested by the Supreme Court of India in the *NALSA* judgment,⁵ historical injustices against gender non-conforming individuals cannot be undone.

3 A token critique of ‘white’ transgender research and politics

While outlining and encapsulating her core arguments in the Introduction and Conclusion, the author has painstakingly expressed her desire to move beyond the understanding of non-binary gender identities in Western societies. Therefore, Chapter 1 of the book seeks to go into the ‘the differential acceptance of trans people’ in indigenous cultures by looking at the *xaniths* of Oman, the *hijras* of India, the *fa’afāfine* of Samoa, the *fakaleiti* of Tonga, the *māhū* of Tahiti, the *sistergirls* of Aboriginal Australia, and the *alyha*, *hwame*, *winkte* and *lhamana* of the ‘First Nation’ Native Americans (p. 1). Through this examination, the author underscores certain common characteristics amongst non-binary groups across non-Western cultures, that is a ‘shared mystical or spiritual element’ and the ‘relative fluidity of gender identity’ (p. 15).

Despite her seemingly assured claim of a ‘more inclusive discussion’ of transphobia across different cultures, the author pays only lip service to her pledge (p. xi). Her analysis appears descriptive and perfunctory. Although she has written about the ‘superficiality’ of the acceptance of trans people in indigenous communities, she has failed to engage with its imperialist roots (p. 1). It is now trite to say that Western colonial domination systematically dismantled local traditions’ respect for gender fluidity by the imposition of a ‘strict cis-heteronormative lifestyle’.⁶ Ilan Kapoor has crisply explained how colonial opposition to ‘deviant’ sexual orientations and gender identities was a construct of the nineteenth century, prior to which these so-called ‘perversions’ had a ‘certain degree of social acceptance, with even a few instances of flourishing in urban subcultures’.⁷ Although the author has briefly

⁵ *NALSA vs. Union of India* (n 1) [60].

⁶ Chamindra Weeravardhana, ‘Decolonising Development Work: A transfeminist perspective’ in Corinne L. Mason (ed), *Routledge Handbook of Queer Development Studies* (Routledge 2018) 121.

⁷ Ilan Kapoor, ‘The queer Third World’ (2015) 36(9) *Third World Quarterly* 1611, 1613.

averted to this historical shift in Chapter 3, she has steered clear of any meticulous inquiry on the subject.

Although the author has prominently declared on numerous occasions in the book that she has focused on transphobic hate crime from a ‘principally Anglo-American perspective which is contrasted with European examples where appropriate’, the deliberate omission of postcolonial perspectives on the impact of ‘orientalist exoticism’⁸ on gender fluidity in local cultures belies her claim of adopting a ‘holistic approach’ that challenges the ‘whiteness’ of transgender research (p. xv). Her incomplete understanding of the impact of intersectionality on transphobic hate crime is further illustrated in the Conclusion where she writes that the ‘fear of difference’, which inheres in all types of hate crime, appears to be worse with regard to SOGIESC-related hate crimes because of the threat alternative sexual orientations and gender identities pose to the heteronormative social matrix; this reductivist statement overlooks how trans people of colour or those belonging to religious and ethnic minorities are the most vulnerable because transphobic hate crime does not affect all gender non-conforming individuals in uniform ways (p. 104).⁹

4 Conclusion

The author’s interdisciplinary approach to comprehending transphobic hate crime by combining the legal with the sociological, psychological, and the criminological makes the book a credible introductory text on an under-researched subject. The emphasis on the multifaceted nature of transphobic hate crime serves to amend the common-sense understanding of violence, which is under-inclusive. By also taking into account the manner in which so-called protective legal measures can end up exacerbating the ‘secondary victimisation’ of gender non-conforming individuals, the author has moved beyond a singular focus on sexual and physical violence that dominates existing scholarship.

Despite several significant strengths, the content of the book is somewhat at odds with the author’s assertion of her work’s expansive breadth. The rise of postcolonial studies has ensured that cogent scholarly work can no longer afford to ignore non-Western research, especially when third world countries are taking the lead in challenging the status quo, as in the case of Nepal and Argentina, in the context of the rights of transgender persons. The author’s failure to engage with legal developments beyond the US, the UK and the EU take away from her effort to adopt a ‘holistic perspective’ on an ‘international scale’.

⁸ *ibid* 1615.

⁹ See Doug Meyer, ‘An Intersectional Analysis of LGBT People’s Evaluations of Anti-Queer Violence’ (2012) 26(6) *Gender and Society* 849. Also see Christine M. Klapeer, ‘Dangerous Liaisons? (Homo) developmentalism, sexual modernization and LGBTIQ rights in Europe’ in Corinne L. Mason (ed), *Routledge Handbook of Queer Development Studies* (Routledge 2018) 107.

Another aspect in which the book is wanting is tighter editing. The text is replete with errors of punctuation, grammar and syntax. Moreover, the book could have been structured differently for a better reading experience; for instance, the paragraph on ‘secondary victimisation’ in Chapter 3 has very little content on what the concept means and implies and is explored in depth only in Chapters 4 and 5 (p. 46). In fact, the concept was introduced in Chapter 1 without a concomitant definition or explanation. Similarly, ‘hate crimes’ and ‘transphobic hate crimes’ have been definitively defined in Chapter 4; ideally, these definitions should have formed a part of the Introduction, where the rest of the key concepts have been explained so as to give a ‘comprehensive overview’ (pp. 57–58, 103). All these flaws disrupt the narrative flow.

Notwithstanding the shortcomings mentioned above, the author does a commendable job of bridging the gap between academic discussion and grassroots practices. Because it eschews complex technical jargon, *Transphobic Hate Crime* succeeds in being a lucid read that lays the groundwork for placing violence against the transgender community on par with ethnicity, caste and religion-based hate crime, both legally and socially.