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## TRANSGENDERS AND THEIR RIGHTS IN INDIA

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### ABSTRACT

In the 21st century everyone deserves to live with dignity regardless of their religious, caste or gender freedom. The rights of transgender people in the country are protected by international and national apparatus. According to the studies, transgender people do not have any say in the policies and programmes that the government of the country develops. These people have struggled are not only in the present, but also in the past and throughout the country's socio economic culture. Despite the Indian constitution goal of equality for everybody at all levels these people have always being excluded from society for some fashion. Abuse, assault, sexual harassment and other forms of harassments are all fairly widespread.

### KEYWORDS

Transgender, Workplace, Struggles, Constitutions, Society, Education etc.

### INTRODUCTION

Every individual has distinct personality that distinguishes him or her from others. When we travel around the world we encounter people who chose their own way of life defying society's myths and rules. Gender resemblance or gender orientation is one thing, but transforming into a new gender entirely something that laypeople often get mixed up about. People who refuse to allow other allow others to determine their culture, heritage or way of life run their risk of becoming transsexual, which is no little matter. History has kept books, locked and prepared for any topic we discuss, whether it is current or upcoming developments in the country. Transgender was term coined by German sexologist named Hirschfield in the 1970s and it was initially used in berlin institutions when the first transgender procedure was performed. Many people desired to undergo gender transition in the past, but it was impossible due to a lack of medical knowledge in the countries. Poly gender is the term used to describe a person of either gender who exhibits the characteristics of multi-gender, which was once extremely unusual. Following of the experiment, transgender culture arose in a number of nations, including

India and others. This entire concept was part of global modernization and progress to welcome humanity in its new modern form. Although it was difficult for countries constitution to embrace the fact since enacting rights for a gender that is not widely accepted in the society is already a challenging decision. It was extremely difficult for transgender person to live a normal life due to illiteracy and a lack of understanding among society's citizen. As a result, they were subjected to a great deal of harassment and abuse by society, who viewed them as if they were Hijras from past. These people were not accepted at places of worship, educational institutions, hospitals and a variety of others places where fundamental human needs were met. Discrimination in the workplace was ramped up to the point that they were refused permission to work or even enter. Transgender individual frequently attempt suicide as a result of hurdles imposed by society. The judicial system has crumbled because it does not insert complete trust and faith in the transgender community and as an outcome, the community has crumbled.

### **EVOLUTION OF RIGHTS OF TRANSGENDERS IN WORK PLACE**

To demonstrate the concept of equality stated in Article 14,15,16,19(1)(g) and 21 the supreme court of India was required to state the same laws for the third gender i.e transgender in India. The understanding of self-determination to achieve something is the foundation right of equality. Recognizing that Indian law are largely binary in nature, recognizing only male and female genders the Hon'ble Supreme court of India in its order in case of *National Legal Services Authority vs. Union of India (The Nalsa Judgment)*<sup>1</sup>, declared transgender individuals distinct from binary genders as the "Third gender" under the Indian constitution and for the purposes of laws enacted by the parliament and state legislature. Non-recognition of the third gender in the Indian legal framework has resulted in systematic denial of equal legal protection and widespread socio-economic discrimination in society and Indian workplaces. Following the Nalsa decision the Indian parliament recently passed the transgender persons (protection of rights Act, 2019).

### **TRANSGENDER PERSONS (PROTECTION OF RIGHTS ACT, 2019)**

The silver line passing through the equality scheme<sup>1</sup> of the Indian constitution is "enjoyment of life by all citizens and an equal opportunity to grow as humans despite their race, caste, religion, community, social status and gender".

One of the basic precepts of the equality scheme lies in the recognition and acceptance of the "right of choice and self-determination". Determination of gender to which one belongs, relates to and chooses to identify with is fundamental to an individual's right of self-determination and his/her dignity.

Indian laws are largely binary in nature as they recognize only the male and female genders. However, in the landmark case of *National Legal Services Authority vs. Union of India*<sup>2</sup>, the Supreme Court of India via its order

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<sup>1</sup> AIR 2014 SC 1863.

<sup>2</sup>WP (Civil) No 400 of 2012

dated 15th April 2014 declared Transgenders as the “Third Gender” apart from the already recognized genders under our Constitution and for the purposes of laws authorized by the Parliament and State Legislatures.

Non-recognition in our legal framework of the Third Gender has resulted in systematic repudiation of equal protection of law and widespread socio-economic discrimination and prejudice in society at large as well as the Indian workplace. In response to the NALSA Judgment, the Indian parliament has recently enacted the “Transgender Persons (Protection of Rights) Act, 2019”. The Bill was introduced in Rajya Sabha on 12<sup>th</sup> December 2014 and was passed on 24<sup>th</sup> April, 2015 with cross-party support. This bill was introduced by Tiruchi Siva, a Member of Parliament from Tamil Nadu. 24<sup>th</sup> April is celebrated as “Transgender Day” following the passage of the Bill in the Rajya Sabha.

The Transgender Persons (Protection of Rights) Act, 2019 states that no government or even private companies can discriminate against Transgender people in employment matters, and that every entity should appoint a complaint officer to deal with the complaints relating to the Act.

The legislature, recognizing the requirement of implementing social welfare schemes and actions that require a long-term approach which will result in the changed perception of the general public has placed positive obligations on all the stakeholders holding an interest<sup>3</sup> in the form of guarantees (from Chapter II to Chapter VIII) such as :

- i. Prevention of discrimination against Transgender persons<sup>4</sup>;
- ii. Recognition of identity and self-identification and conferring the right and entitlement to obtain a certificate of identity as proof of recognition from the concerned state authorities.
- iii. Origination and enactment of welfare measures, schemes, programmes towards education, social security, healthcare, effective participation in the society and facilitating access to such schemes and welfares measures by the appropriate State Governments.
- iv. Rescue and rehabilitation measures, including right of residence by appropriate state governments;
- v. Obligations of Establishment<sup>5</sup>- Chapter V obligates Establishments to ensure compliance with the Act and provide facilities as maybe prescribed by the Act from time to time. In matters relating to employment including but not limited to recruitment, promotion and other related issues, no Establishment shall

<sup>3</sup>Stakeholders include the Union Government, State Governments and Establishments (as defined under the Companies Act, 2013).

<sup>4</sup>From denial or discontinuation of, or unfair treatment in (a) educational establishments;(b) in relation to employment; (c) healthcare services; (d) access to or enjoyment of any goods, accommodation, service, facility meant for public use; (e) right of movement; (f) right to purchase reside, purchase, rent or otherwise occupy property; (g) opportunity to stand for or hold public office and (h) government or private establishment in whose care or custody a transgender person is in.

<sup>5</sup>Establishments – mean any body or authority corporate established by or under a central or state act or any body owned/controlled/aided by the government or any company or body corporate or association or body of individuals, firm, cooperative, other society, trust, agency or institution.

discriminate against a Transgender person and shall provide for adequate grievance redressal mechanism to deal with complaints relating to violations under the Act and at workplace;

- vi. Constitution and establishment of the National Council for Transgender Persons to perform the functions assigned to it under the Act, including but not limited to advising the concerned Stakeholders on formulation of policies, programmes, legislations and welfare measures, to monitor and evaluate the impact of policies and programmes designed for ensuring participation of Transgenders, ensuring redressal of grievances of Transgender Persons and so on;
- vii. Penalties for offences committed against Transgender persons: whoever, (i) compels or entices forced or bonded labour (excluding compulsory government service for public purposes), (ii) denies the right of public passage or use of public places, (iii) forcefully removes from household, village or other place of residence, (iv) commits an acts or intends to do an act causing physical, sexual, verbal, emotional or economic harm and/or abuse, shall be punished with imprisonment which may vary between six months to two years, along with a fine.

The “Transgender Persons (Protection of Rights) Act, 2019” cannot be considered as a completely inclusionary piece of legislation and is only the preliminary step on the legislature’s part. The extent to which the concerned Stakeholders will take assenting steps to necessitate inclusion and prevent non-exclusion and attempts to make Transgender Persons productive members of the society, will be a gradual and taxing process. However, the Act does not lay down consequences of the newly acquired gender status on their rights and entitlements in various spheres and facets of life and is largely non-vocal on the consequences of non-compliance and accountability on part of the Stakeholders at interest.

## RECENT DEVELOPMENTS

The law outlawed forcing Hijras to beg or leave their homes and deemed other forms of prejudice and discrimination against them to be illegal. The establishment of a committee with the goal of assisting the hijras community in pursuing education by providing access to scholarships and textbooks among other necessities, is another advantage. Additionally, the measure has made it possible for Hijras to be acknowledged as being socially and economically disadvantaged, making them eligible for the Affirmative Action programme in India.

Along with legal victories, the Hijra community has made progress in public acceptance and integration. India has made a lot of development, as seen by its accomplishments. Here are a few examples:

- Joyita Mondal became India’s first third gender judge.
- Tamil Nadu Police Services appointed India’s first Hijra police officer.
- Natasha Biswas became India’s first third gender beauty pageant winner.
- Kochi Metro Rail Ltd. became India’s first public company to provide mass employment to Hijras.

- Kerala, in 2015 was the first Indian state to formulate a transgender policy to protect the community from discrimination and prejudice<sup>6</sup>.
- In 2018, VLCC trained nearly two dozen trans people to be beauty therapists. They will be trained for jobs in VLCC and other beauty and healthcare firms in Hyderabad<sup>7</sup>. A gender sensitisation workshop was held for VLCC staff at the SR Nagar branch in Hyderabad. Noted trans rights activists such as M Rachana, Chandramukhi and Vyjayanti Vasantha Mogli spoke about trans identity<sup>8</sup>.

Such success stories in the Hijra community are a symbol of societal change on a national scale. There is optimism that the Hijra community will be freed from the societal stigmas that have afflicted it. It is evident that Hijras continue to have numerous difficulties today. For generations, prejudice and generalized societal stigmas towards this community were encouraged. It is quite challenging to deny and entirely eradicate this public perception of prejudice.

If efforts are made to prejudice in both the legal and social spheres, India could be the nation that ends centuries of oppression of the third gender and builds an inclusive society for people from all backgrounds, sexual orientations, and gender identities.

Some Indian companies have already included many LGBTQ inclusive policies and advantages such as<sup>9</sup>:

1. Same – sex partnership benefits: Same sex partners are recognized and benefits which are at par and equal to married spouses are given.
2. Equal opportunity policy: This policy covers sexual orientation and gender identity without any discrimination.
3. Gender Neutral adoption leave: A leave of three months will be given to the primary care giver.

## SUGGESTIONS

The societal change in India in this area has been growing, but at a very slow rate, preparing the workplace to be more trans-inclusive will be a Herculean task.

In order to address workplace discrimination and violence against the transgender community, the Department of Social Justice and Empowerment issued the following recommendations:

- The private sector must educate companies and employees about transgender concerns.

<sup>6</sup>PTI, 'Kerala becomes first state to unveil transgender policy' *The Economic Times* (Thiruvananthapuram, 12 November 2015)

<sup>7</sup>Sagar Malviya & Sreeradha D Basu, 'VLCC Breaks the Transgender Ceiling' *The Economic Times* (Mumbai, 7 May 2018)

<sup>8</sup>Dailyhunt, 'Think NHRC Report on Transgenders is Horrifying, Here's What You Can Do to Help' (14 August 2020)

<sup>9</sup> Nayanika Nambiar, Parmesh Shahani "A Manifesto for Trans Inclusion in the Indian Workplace" [2018] 'Godrej India Culture Lab'

- Anti-discrimination rules must be implemented and meaningfully applied to the hiring, retention, promotion, and employee benefits processes.
- Workplace sexual harassment policies should be made more accepting of transgender people.

Transgender community upliftment must be a collaboration effect, and strengthening this community at work will go a long way towards removing social stigmas as well as economically uplifting them. The following are some actions that organisations can take to build a more trans inclusive environment:

- **Sensitization and Education:** Before introducing any change within the system, it would be imperative for organizations to educate its workforce towards gender inclusiveness, and greater acceptance for Transgenders in the corporate environment. The method of documentation, hiring and recruitment procedures should be evaluated for discriminatory treatment of transgender people. Employees should know about the bullying and harassment policies also what constitutes such behaviours, and how to report it if they witness or experience it. The Leaders in the organisations should also be evaluated based on their inclusion efforts<sup>10</sup>.
- **Privacy Protection:** The privacy of the individual applying should be of importance. The candidate must decide whether to disclose one's trans status and history or not. There should be protection from non-consenting disclosure of trans history, because for a few individuals, their history is a part of their past and it's upon their discretion to disclose it or not<sup>11</sup>. Disclosure or non-disclosure shouldn't be a ground for termination under any circumstance.<sup>12</sup>
- **Active Trans hiring Efforts through HR:** Active efforts towards hiring trans people in their organization should be made. A corporation must advertise that it is inclusive and doesn't discriminate. One way to do that is to avoid gendered language and use of gendered pronouns. The company's non-discrimination and inclusive policies should be on the company website and in job announcements in newspapers<sup>13</sup>. The initial job application filled out by the applicant could contain the following gender categories: Male; Female; Trans; 'I prefer to self-identify as'. The job applicant could specify one's gender identity on an optional basis. Companies such as Infosys and Goldman Sachs have gender as a non-mandatory category<sup>14</sup>.
- **Policy Review:** Companies must assess and update their existing rules and procedures. It would only be useful to include comments from the transgender community to ensure that the policies reflect how an organisation would address the Third Gender. Gender- neutral workplace harassment measures should be

<sup>10</sup>Humsafar Trust (2018). *Humsafar Trust Manual for Corporates*.

<sup>11</sup>Stonewall. (2016). *Trans Inclusive Policies and Benefits*.

<sup>12</sup>UN GLOBE. (2018). *Recommendations for an inclusive workplace for trans and gender nonconforming staff members, dependents, and other stakeholders of the UN System*.

<sup>13</sup>Human Rights Campaign Foundation (2016). *Transgender Inclusion in the Workplace: A Toolkit for Employers*.

<sup>14</sup>Community Business. (2012). *Creating Inclusive Workplaces for LGBT Employees in India*.

implemented. Gender neutral adoption leave and perks for same sex partner should also be made available. Benefits should not be denied based on gender identity or expression. Any infraction must be thoroughly examined and appropriate action must be taken.

- **Anti - Harassment Policies:** Organizations must implement effective grievance redressal systems to deal with harassment allegations, similar to the standards of the POSH Act.
- **Gender Neutral Washrooms:** Employees should be able to use restrooms that correspond to their identification. Transgender people are frequently humiliated and harassed as they are forced to use non-preferred restrooms.
- **Recruitment:** Organizations must remember that transgender people have faced years of prejudice, resulting in social, economic, and skill backwardness, and hence recruiting standards must be updated accordingly. Organizations must also aim to provide training programmes to help employees improve their knowledge and abilities.

