



## NORMALIZING THE RIGHTS, ENTITLEMENTS AND AN INCLUSIVE WORK SPACE FOR TRANSGENDER -COMMUNITY

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### Abstract

The trans-gender community of India has indubitably faced disreputable discrimination. Nevertheless, with the Supreme Court of India has attempted to rise above the conventional gender binary by acknowledging their distinct gender identity as the 'third sex'. The very fact that the sex is fixed at the birth and that the offspring are neatly categorized into male and female and providing an option for the intersex or the transgender individuals to alter their sexual identity through surgery and get themselves identified as a male or female binary is itself a social construct and discrimination. When the trans-genders are employed they face a lot of discrimination thereby affecting their emotional well being. This article highlights the importance of reservation for the transgender community, the problems they face during the reservation. We also intend to critically analyze the judicial process which was involved in making the trans-gender community also subjected to rights with this the landmark judgment of the *NALSA v. Union of India* comes into picture because

of which the trans-gender community gained legal recognition and hence declaring their fundamental rights, guarantees and entitlements under the Part III of the Constitution of India and the social and economic rights under the Part IV. With the judgment, the court points out the usage of International law as one of the mechanisms to harmonize with the Jurisprudence used in the Indian Constitution for recognizing the transgender and their rights and the binding nature of the international law in the domestic court. Furthermore we also analyze the transgender bill, recent developments, providing guidance for the employers and the potential implications that can be implied in the workspace in India.

Key Words: Third Gender, Intersex Individuals, Rights to Equality, Constitutional Law, Trans-gender Community.

### Introduction

India has been distinctive in socially accepting the hijra lifestyle.<sup>1</sup> The Hijras are treated with a combination of "fascination, revulsion and fear."<sup>2</sup> As a means of survival, hijras engage with themselves in begging and prostitution.<sup>3</sup> Sometimes they are also welcomed by the local families to bless auspicious births or wedding ceremonies.<sup>4</sup> Nevertheless, sex work is

<sup>1</sup> See Serena Nanda, Hijras: An alternative Sex and Gender Role in India, in *Third Sex, Third Gender* 373, 384-85 (Gilbert Herd ed., 1994)

<sup>2</sup> See Salman Rushdie, *The Half-Woman God*, in *AIDS SUTRA: UNTOLD STORIES FROM INDIA* 110, 110 (Negar Akhavi ed., 2008) (quoting a passage from John Irving's 1994 novel *A Son of*

the Circus, in which the hijra operation is described) at 109.

<sup>3</sup> *Id.* At 111

<sup>4</sup> See Serena Nanda, *supra* note 1 at 386, Sandeep Bakshi, *A Comparative Analysis of Hijras and Drag Queens: The Subversive Possibilities and Limits of Parading Effeminacy and Negotiating*



more profitable choice for the hijra<sup>5</sup> and this explains why the Hijras have been categorized as a traditionally marginalized social class and have also been subjected to the gender violence and other inn human violations.<sup>6</sup>

Almost 92% of transgender are deprived of their right to participate in any form of economic activity and they are refused jobs due to the social stigma. Among the transgender, 90% of individuals face discrimination within their jobs, positional teasing and this kind of discrimination can further affect the emotional state of transgender workers. There are a few instances where even if they get a job, they are paid very less compared to the pay of others, as a result of which they suffer a lot of poverty<sup>7</sup>. There is no proper clarity in the implementation of such reservations for transgender till date. Though census shows that 46% of transgender in India are literate, 94% are unemployed in the formal sector. In spite of this, there are many people like Jyoti Mandal, who was the first transgender judge and Pratrika Yadav, who was the first sun inspector in Tamil Nadu who stand unique among them.

Masculinity, 46 J. HOMOSEXUALITY 216. (2004), (discussing hijra performances at births and weddings).

<sup>5</sup> Rushdie, *supra* note 2, at 111; see also Richard D. Connerney, Outreach and Outrage: AIDS and the Rights of Sexual Minorities in Uttar Pradesh, INST. CURRENT WORLD Aio. LETTERS, May 2005, at 1, available at [http://susiebright.blogs.com/AIDSSexualMinoritiesUttar\\_Pradesh.pdf](http://susiebright.blogs.com/AIDSSexualMinoritiesUttar_Pradesh.pdf) (noting that hijras "usually earn their living from dancing, singing and prostitution"); NANDA, *supra* note 1, at 10 ("There is absolutely no question that at least some hijras-perhaps even the majority-are homosexual prostitutes.")

<sup>6</sup> James D. Wilets, Conceptualizing Private Violence Against Sexual Minorities as Gendered

### Trans-community along with the Indian Supreme Court and the International Law Obligations

In the month of April 2014, the Supreme Court of India held in the NALSA case that henceforth India admits, accepts and recognizes the third gender category (beyond the male-female binary) who are entitled to equal rights and under the Constitution of India.<sup>8</sup> With this judgment, the SC ruled over the restrictive analysis and the tapered the narrow constitutional reasoning in the widely publicized judgment recriminalizing the private consensual same-sex acts in Suresh Kumar Koushal v. Naz Foundation.<sup>9</sup> The judges of the NALSA case relied on three main arguments: International law obligations, increasing international recognition of transgender rights and the constitutional obligations.

NALSA and the International Law Agreements:

The NALSA judgment notes numerous international conventions and declarations, to which India is a signatory, recognize

Violence: An International and Comparative Law Perspective, 60 ALB. L. REV. 989, 1006 n.61 (1997) (noting that "individuals who engage in same-gender relations are arbitrarily arrested, beaten or killed when such sexual activities occurs in the context of their activities as sex workers, street persons or in other socially marginalized positions").

<sup>7</sup> Ajith Banerjee, Why India's Transgender People are protesting against a Bill that Claims to protect their rights, SCROLL.IN (Nov. 26, 2019, 6:30 AM), <https://amp.scroll.in/article/944882/>

<sup>8</sup> National Legal Ser. Auth v. Union of India, (2014) No.604 of 2013

<sup>9</sup> Koushal v. Naz Foundation, 1 S.C.C. 1.



that transgender and other gender – variant persons have the right to recognition, non – discrimination and equal treatment.<sup>10</sup> For evidentiary support<sup>11</sup> of the International Conventions the court cites the Universal Declaration of Human rights<sup>12</sup>, International Covenant on the Civil and Political Rights<sup>13</sup> and the principles of Yogyakarta.<sup>14</sup> We can see through the judgment that court depends majorly on its authority and power to enact a new law for India considering India’s obligations under the International convention provided that the new laws does not violate the existing statutory law.<sup>15</sup> The judgment goes on to say that India is supposed to be acknowledging the rights and the different types of gender according to its obligations that come directly followed by the above mentioned international conventions and the declarations. The court goes on to say that, “India has ratified the above mentioned covenants hence, and those covenants can be used by the municipal courts as an aid to the Interpretation of Statutes by applying the Doctrine of Harmonization. But, certainly, if the Indian law is not in conflict with the International covenants, particularly pertaining to human rights, to which India is a party, the domestic court can apply those principles in the Indian conditions.<sup>16</sup> Since there was

no contradicting statutory law, the court is of the opinion that the rights in issue should be guarded to validate India’s position in the International Obligations.

NALSA and the Increasing recognition of the Transgender rights :

The increase in the recognition of the transgender rights is one of the three aspects the court discusses in the NALSA case and continues to argue that the current international trends aid the recognition of transgender rights, specially the right to decide one’s gender identity, without the need of a gender reassignment surgery or a hormone therapy. Many European countries that epitomize the advancement made in order to recognize the transgender rights. It is also pointed out that there is progressive recognition of the right to mention one’s gender on the identity documents and also to be free from discrimination powered up as their own right.<sup>17</sup> Countries like Australia (court) notes that the gender does not only construed chromosomes but it has to also include the personal choice and to certain degree of psychological question , sociological perception , self perception and also how the individual is perceived in

<sup>10</sup> NALSA , 5 S.C.C at para 16-29.

<sup>11</sup> NALSA , 5 S.C.C. at para 18-19.

<sup>12</sup> *Ibid* at para 23 ; Universal Declaration of Human rights , General Assemble Resolution 217 (III) A , U.N. DOC , A/RES/3/217 A , ( December , 10 , 1948) , [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/UniversalDeclarationofHumanRights\(1948\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/UniversalDeclarationofHumanRights(1948).aspx).

<sup>13</sup> *Id* , International Covenant on Civil and Political rights , 6 I.L.M. 368 , (December , 16 , 1966) , [https://treaties.un.org/Pages/ViewDetail.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetail.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en).

<sup>14</sup> *Id* at para 25 , International Commission of Jurists (ICJ), *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, March 2007, <https://www.refworld.org/docid/48244e602.html>.

<sup>15</sup> *Id* at 57 ; *see also* Indian Constitution Article 141.

<sup>16</sup> *Id* at 51.

<sup>17</sup> NALSA , 5 S.C.C at 39-44.



the society.<sup>18</sup> It was also held that there is no “formulaic solution” to determine the sex of an individual for the motive of the law of marriage, and it is important to hold up the individual’s consideration which also includes the person’s life incidents and self-perception.<sup>19</sup> The court of England held that sex and gender must mandatorily be fixed at birth and the operative intervention should be avoided and that the law should take on three tests: chromosomal, gonadal and the genital tests and if the results are congruent to each other only that should determine an individual’s sex for the purpose of marriage. The learned judge also expressed that once the sex is fixed it cannot be modified by natural development of organs of the opposite sex or by any other surgical means.<sup>20</sup>

This Corbett principle was however not favored by various countries including New Zealand, Australia etc. along with this the principle engaged a lot of criticism from the medical practitioners as well. It was sensed that the approach of the court might lead a considerable contrasting outcome in the cases of a post operative inter-sexual person and a post operative transsexual person.<sup>21</sup> Justice Ellis makes it clear that once a transsexual person has undergone SRS (sexual reassignment surgery), he or she is no longer able to go back to his/her original sex and a gender can only be changed when the individual has undergone surgery to change their sex.<sup>22</sup>

<sup>18</sup> NALSA ,5 S.C.C at 28 (citing A.B. v. Western Australia (2011) HCA 42)

<sup>19</sup> NALSA , 5 S.C.C at 26 (citing Re Kevin (validity of marriage of transsexual Fam CA 1074(Australia 2001))

<sup>20</sup> NALSA , 5 S.C.C at para 25 (citing Corbett v. Corbett 2 All ER 33 , 18 (United Kingdom 1970)).

Germany enforced its new law in the month of November 2013, and in case the child is born with an intersex variation, this law permits the parents to register the sex of the child as ‘not specified’, adding to this, the article has enacted to add a category of X , apart from the “M” and “F” which comes under the classification of the gender in the passports.<sup>23</sup>

Various judicial pronouncements have been mentioned in the drafting of this judgment hence relating to the International Law and the legislations and the fact that the recognition of gender or sex of persons should not qualify as a ground to discriminate the persons in workplaces or by depriving them of their fundamental rights, therefore by referring to the above mentioned legislations Justice Sikri and Radhkrishnan have applied most of the aspects to the Indian laws as well.

NALSA and Constitution of India:

Third aspect viewed in the NALSA judgment is the Indian scenario and the Constitutional Obligations which the states are required to recognize the individuality of the gender-variant individuals which also includes their right to determine the gender they want to be recognized in

, to be seen as an equal in law and to be unfettered from discrimination. Speaking of the recognition of the third gender, it is important to highlight the Articles 14 , 15 ,16

<sup>21</sup> NALSA , 5 S.C.C. at para 26.

<sup>22</sup> *Ibid* , See also Attorney – General v. Otahuhu Family court 1 NZLR 203 , (1995).

<sup>23</sup> Article 22 , Sec 3 , German Civil Statutes Act , (2013).



,19 and 21 of the Indian Constitution which upholds the fundamental rights of the individuals creates a major part of the decision of legal recognition of the transgender. The judgment highlights that the trans-community is also equally entitled to the rights and duties and above all this on grounds of humanity, the fundamental rights allows an individual to grow and be protected.

The equality rights mentioned under Article 14 of the Constitution holds a major grip on the development of an individual and the Government is required to ensure equal protection and to promote the equality of TGs because Constitution ensures “equal protection, equal rights, equal freedom” and hence making the state obligated to ensure equal protection under laws and by bringing about the required social and economic changes.

Article 15 and 16 is examined as a convergence in the judgment; together they make a strong prohibition on discrimination in the matters of public employment. Considering the dialect of the articles, Articles 15 and 16 prohibit the discrimination on the basis of ‘gender’ and the fact that the article only declares discrimination on the basis of sex, the court also mentions that the ‘gender identity’ converges with the term ‘sex’ and therefore the usage of the expression ‘sex’ in the Articles 15 and 16 is not only confined to the biological sex of the male or female but also is intended to include the people who observe themselves to be neither male or female.<sup>24</sup>

Article 19 and 21 is the next evaluated articles. Expanding the Article 19, it gives the right of freedom of speech and expression to citizens of India. All the citizens shall have the right to express one’s gender identification and expression within the ambit of Article 19. The court then turned to Article 21 as the soul of the Constitution which represents the rights to life and personal liberty. With consistent amendments over the time, the scope of this article has grown to incorporate the right to dignity, personal autonomy and privacy, and all these rights are an essential part of the right to life and is enforceable on all persons on a reckoning of being a part of the human kind. In the case of Francis Caroline Mullin v. Administrator, Union of Delhi<sup>25</sup> the court held up the right to dignity forms an integral part of the Constitution of India as well as it upholds to ensure full growth, development and evolution of persons which includes the voicing at diverse forms, freely moving about and mixing and comingling with the society.<sup>26</sup>

A transgender woman was terminated from her job and with this she petitioned at the Madras High Court to allow her to continue employment as a female police constable, her employment was terminated after a medical examination which revealed that she was not biologically female.<sup>27</sup> Furthermore, Justice S Nagamuthu was in the opinion that the transgender community are not compelled to undergo medical examination to observe and identify their sex and said that such a requirement would result in violating the given fundamental

<sup>24</sup> NALSA, 5 S.C.C. at 59.

<sup>25</sup> See para 7 and 8 of the judgment, 1 SCC 608, (1981).

<sup>26</sup> *Ibid.*

<sup>27</sup> Jackuline Mary v. The Superintendent of Police, Karur & Ors W.P No. 587 (India 2014).



rights and would also violate the right to privacy<sup>28</sup> and noted that if the petitioner desired to identify as a trans gender , she could so once the SC's judgment in NALSA was implemented.<sup>29</sup>

### Transgender bill, 2016

This bill prohibits discrimination against a transgender person, including unfair treatment or denial of service in employment, health care, education, access to government or private establishments, right to movements and etc. The main features of the bill includes,

1. This bill prohibits unfair treatment of a transgender person about his employment or occupation<sup>30</sup>,
2. This bill prohibits the denial of employment and discriminatory termination for the transgender people<sup>31</sup>,
3. The bill bars establishment from discrimination agent against a transgender person is related to employment such as recruitment, promotion and other issues<sup>32</sup>.
4. This bill creates an obligation of every establishment consisting of one more than hundred people to appoint a compliance officer who would deal with complaints regarding violations of the act<sup>33</sup>.
5. This also creates a duty on appropriate government to formulate welfare schemes and programs to facilitate and support livelihood for transgender persons, including vocational training and self-employment<sup>34</sup>,
6. The bill provides for formation of National

Council By Central Government with a representations from Labor and Employment Department and Department of Legal Affairs amongst others<sup>35</sup>,

7. The bill also provides for penalties and punishments in the event, any person harms, injures / endangers the life, safety, health or well being of a transgender person or tends to do any act which causes abuse of nature, whether physical / emotional /economic abuse. The implementation of these bills is a great challenge to the government<sup>36</sup>.

### Drawbacks of the transgender bill:

The bill has been passed in the name of protection to these transgender people, but the draft was passed without approaching anyone from that community, and no one even asked about their need and requirements. This was the major drawback of the bill and from this, it is evident that assumptions are made based on stereotypes. This bill has led people to confusion as to who is a transgender person and who is an intersex person. It is very important to note that not every intersex person identifies as a transgender person and vice versa. So, putting both transgender and intersex person in the same box shall erase the identities of both of them synchronously.

Further, this bill puts more pressure on them, because a provision in this bill states that, a transgender person should go approach a district court magistrate and obtain a certificate stating that they are

<sup>28</sup> *Ibid*

<sup>29</sup> *Id.*

<sup>30</sup> Section 3(b) of Transgender bill, 2016

<sup>31</sup> Section 3(c) of Transgender bill, 2016

<sup>32</sup> Section 10 of Transgender bill, 2016

<sup>33</sup> Section 11 of Transgender bill, 2016

<sup>34</sup> Section 15 of Transgender bill, 2016

<sup>35</sup> Section 15 of Transgender bill, 2016

<sup>36</sup> Section 17 of the Transgender bill, 2106



transgender<sup>37</sup>. Only upon getting this certificate, they will be allowed to change their gender, in the identification cards given by the government. The process to obtain this certificate is to show evidence that these transgender people have undergone sex rearrangement surgery. This is not the way all transgender people want to be treated, and the surgery specified above is something very expensive which everyone can't afford. The bill doesn't state the manner in which a transgender person shall be examined by a District Magistrate, so here the magistrate himself creates an instance where he interferes in the privacy of such transgender people. So, the entire concept of surgery has violated their right to self-identity and there is violation of human rights too as proving oneself through surgery makes no sense<sup>38</sup>.

The bill makes sexual abuse against a transgender person a punishable offence but doesn't clearly state what the sexual abuse is about. In case a male/female is raped, the rapist is sentenced to seven years imprisonment with fine. But when a transgender person is raped, the rapist is sentenced to six months imprisonment with fine. Here is where the problem of discrimination begins.

Recent amendments made in the bill:

There were certain amendments were made in the bill and introduced in the Lok Sabha. The major amendments include,

- The National Council of Transgender will be empowered to redress the grievances of the transgender persons.
- Every establishment shall appoint a complaint officer even if the total number of people are less than 100, and so no establishment can discriminate against a transgender person.
- The government will be held responsible for the medical expenses of a transgender person by an insurance policy for sex reassignment surgery, hormonal therapy, laser therapy and other health issues.
- After undergoing the sex rearrangement surgery, a transgender can make an application along with the certificate issued by medical officer and the district manager will directly go for change of gender in the identity card, so here the screening test is avoided from now.

Appropriate or the potential form of reservation:

There are two kinds of reservation, horizontal and vertical reservation. The reservations that are done in favor of scheduled castes and tribes and other backward classes are called as "vertical reservations."<sup>39</sup>The reservations in favor of physically handicapped people are called as "horizontal reservation"<sup>40</sup>.<sup>41</sup>The horizontal reservations cut across quotas for vertical reservation, as they are called as "inter locking reservation". Further, horizontal reservation is of two types, compartmentalized and overall reservation.

<sup>37</sup>Shivani Bhat v State Of NCT Of Delhi & Ors on 5 October, 2015

<sup>38</sup> HC notice to TN govt over reservation policy for transgender, OUTLOOK (Mar, 06, 2019, 8:08 PM),<https://www.outlookindia.com/newscroll/1491222>.

<sup>39</sup> Article 16(4) of the Indian constitution

<sup>40</sup>Dr .Ravindra Pandey v State of UP(2013

<sup>41</sup> Article 16(1) of the Indian Constitution



The former says that if a transgender candidate on basis of reservation belongs to scheduled caste, they will be adjusted against a seat reserved for scheduled caste. The latter says that the overall quota for special category is met irrespective of its attribution across the social reservation categories. It is better to go for horizontal reservation as they can address the intersectional character of discrimination faced by Dalit / advasi transgender persons.

The primary advantage of such reservation in jobs would help them in becoming independent and they also can lead a respectable life, which will directly increase their social status<sup>42</sup>. They will get a chance to prove to the world and to themselves. The most important among this is that, they get a chance to work in the society with equal rights like others, and they can take part in the economic development of the country. If they get a chance to work in the society, the cultural confront of the society shall also raise. So, they are minorities less than 10% of total Indian population. So, to bring minorities to light is one basic reason for awarding reservation to them as they deserve it.

#### Recent developments:

A bill was recently passed in 2014, which said that 2% total seats in government and government aided institutions of primary, secondary and higher education and 2% of vacancies in government jobs shall be for transgender persons. In the year 2016, a governmental order was passed in Madras High Court that transgender are entitled to

reservation in education and jobs as per the community to which they belong to. In 2018, Kerala was the first state to implement an ad hoc system of reservation for transgender persons and announced two additional seats for transgender persons in all courses in ministries and affiliated arts and science colleges, subject to the fulfillments of the qualifications prescribed. For all this, there should be detailed and nation- wide empirical assessment of size of transgender population in India. Then, later the government shall ensure that they shouldn't exceed 50percent limit in reservation.

In the year 2019, Rajya Sabha held that transgender must be given reservation under OBC. Further, a memorandum was issued by Ministry of Personal, Public Grievances and Pensions, saying that "inclusion of third category", as based on provision of Transgender Persons Act, as notified in Constitution on 5december, 2019. Based on that memorandum, transgender were also given a chance to write the civil service examinations, and this was notified on 5<sup>th</sup> February, 2020.

The Transgender Persons Act ensures non-discrimination against a transgender person, in educational institutions, employment and health care. The **National Council for Transgender Persons(NCTP)** was also established to advise and evaluate measures for protection of these rights<sup>43</sup>.

Transgender community to get equal opportunity in jobs, a draft was published in the month of April 2020 where the centre published certain rules for the Transgender Persons Act and the Government has

<sup>42</sup>Shivani Bhat vs State Of Nct Of Delhi & Ors on 5 October, 2015

<sup>43</sup> Atri Kar v The Union Of India & Ors on 16 March, 2017



advanced the move by saying that equal opportunities will be given in terms of employment for the transgender community. Subsequently, in the month of July 2020 a new draft which came about from the part of gazette notification has updated the draft and expects that every 'establishment' should implement all the rules just to make sure that there is no discrimination against any transgender in the matters relating to employment, recruitment, promotion and the other connected issues.

The draft rules mandate every establishment to publish an equal opportunity policy for transgender persons, who will be displayed on their website or at a visible place within its premises. The policy will contain details of infrastructural facilities (such as unisex toilets), measures put in for safety and security (transportation and guards) and amenities (such as hygiene products). This should be provided to the transgender persons enabling them to successfully carry out their duties. It will also have applicability of all rules and regulations of the company regarding the service conditions of employees and details of the complaint officers. It will also talk about adequate steps to be taken by the government to prohibit discrimination against transgender in any organization or establishment (government or private), including in the areas of education, employment, healthcare, public transportation, participation in public life,

sports, leisure and recreation and opportunity to hold public or private office.<sup>44</sup>

### Workspace for transgender employees in India

It is a special string of rights which run between the equal rights stratagem of the Indian Constitution (Articles 14, 15, 16, 19, 21) which explicitly states that all citizens must enjoy the equal rights and must have the equal opportunity which allows them to grow as human beings while not considering their race, caste, religion, community, social status and gender.

They say that changes which has to be bought up in the world has to start from home and with the introduction of the Transgender Persons (Protection of Rights Act) 2019 paved way and instituted the right to reside with their family members and they even have the right to not be excluded from such household on the grounds that they are born as trans-genders.<sup>45</sup> Keeping this in mind it is extremely important to prohibit discrimination at the workplace as well.

With the NALSA Judgment<sup>46</sup> declared the transgender individuals as distinctive from the binary genders and was considered as the "third gender" under the Indian Constitution. To give the statue an effect of the judgment, the Parliament of India of late passed an enactment of the Transgender

<sup>44</sup> Shishir Sinha, Transgender community to get equal opportunity in jobs, (THE HINDU) BUSINESS LINE, (July, 14, 2020), <https://www.thehindubusinessline.com/news/transgender-community-to-get-equal-opportunity-in-jobs/article32082348.ece>.

<sup>45</sup> The Transgender Persons (Protection of Rights Act) 2019, No 40 of 2019, Acts of Parliament, 2019 (India)

<sup>46</sup> AIR 2014 SC 1863



Persons Act. A ray of hope is instilled in the humanity that the transgender community will get a welcome in the mainstream work areas particularly in India and the society in a larger perspective.

It is extremely important to up hold the rights of equality in all the ways possible. Considering the fact that the transgender community were historically so deprived of right to live with dignity and even worse that they were stripped off their fundamental rights as a human being. Now more so than ever the legal rights and the social rights of the transgender have become more progressive to set in civil advocacy in the human kind.

It is important to draw a plan of action for immediate policy implications, introduction of the social welfare schemes, plans and actions which needs a long term approach which again includes the changing of negative perceptions of the general public and taking the help of the

“Stakeholders” which includes the Central Government, State Government and the other establishments (as it is defines under the Companies Act, 2013)<sup>47</sup>

Impact and creating an inclusivity in the on the workplaces in India:

The above mentioned act strictly prohibits from drawing a distinction against any transgender person in the matters of employment which also includes recruitment, promotions and other employment – related chores. Considering that most of the employers consequently fall within the bracket definition of an “establishment”, when analyzed it is widely known to include any company, corporate body, firm, trust, agency or an institution and the word “discrimination” includes denial or to terminate the access to employment, unjust treatment in the course of employment. It is significant to note that this act commits to a constructive positive obligation and refers “establishment” to:

- To provide a space to the transgender persons and the necessary facilities will be jotted down as per the regulation.
- To appoint a complaint officer in the establishment who should deal with the issues rose if there is any violations of the act.<sup>48</sup>

While recruiting a transgender , an employer should look at the following aspects and get their employees , staff and personal prepared for a broader approach

<sup>47</sup> Alok Tiwari , Shivika Upadhyay , Vishal Singh , Transforming the workplace in India , LUS LABORIS , (March , 12 , 2020) , <https://theword.iuslaboris.com/hrlaw/viewContent.action?key=Ec8teaJ9VaoNX7CcbmA8s8xgHJMKLFEppVpbbVX%2B3OXcP3PYxlq7sZUjdbSm5FletvAtgf1eVU8%3D&nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQ0qFfoEM4UR4>

%3D&emailtofriendview=true&freeviewlink=true&utm\_source=Mondaq&utm\_medium=syndication&utm\_campaign=LinkedIn-integration.

<sup>48</sup> Herbert Smith Freehills LLP, India: transgender employees in the workplace, LEXOLOGY (April, 15, 2020), <https://www.lexology.com/library/detail.aspx?g=f3297484-110c-436b-93cf-d2a4789194ec>.



and to also generate an inclusive perspective and towards the transgender employees at the workplace. Key takeaways are the following:

- To indulge in training of the employees and inculcate values and the individual differences in the workforce and to make the trans – community feel welcomed and accepted as a part of their own clan. Employee assistant programs to be conducted to promote inclusivity in diversity.
  - CSR can also take special initiative to conduct programs in the company regularly to indulge all the employees and to educate people so that they build their morality right.
  - Set in a mechanism through which the transgender employees get to re address grievance of their harassment complaints (if any) and even provide counseling sessions for free through EAP’s.
  - Providing facilities to gain access to restrooms which are suitable for the transgender employees’ specification.
- Potential Implications for a progressive inclusive society<sup>49</sup>
- Prohibition of discrimination against the transgender community , the discrimination comprises of the denial or termination of access or any sort of unjust treatment in :
    - Educational institutions
    - Employment work space
    - Any discrimination in the services which are meant for public use
    - Healthcare facilities
    - Curtailing the rights to inhabit , invest , or just live in a property
    - Unfair dominance of the employers hiring them for jobs

- Adequate welfare measures should be taken which includes the enactment of the welfare measures , schemes , scheduling programs for better educational facilities , offering better social security and most importantly the appropriate state governments must facilitate the above mentioned welfare schemes.

- If any transgender has faced a bad situation in their life or something which has caused them trauma, they should be rescued and must be rehabilitated appropriately and must also be given the included rights of residence.

- The “establishments” must ensure that they comply with the Act and create a space for the essential facilities mentioned in the act and the Establishment must not discriminate against transgender individuals and must provide for an adequate grievance remedy mechanism to deal with complaints relating to violations of the Act and in the workplace.<sup>50</sup>

- How Indian Corporate workspace have worked for a progressive society

Gradually the transgender community is progressing to find a place in the mainstream employment. There are many companies which have bought up new policies along with hiring plans to mitigate the transformation of the marginalized community into a conventional workplace. Several companies such as KPMG , PeriFerry (Also conducting LGBTQ + Sensitization programs , community enlargement programs , they also provide job training skills and also conduct various other extracurricular activities like a theatre night , dance shows , talk and panel discussions) , Accenture , Sodexo. The

<sup>49</sup> *Ibid.*

<sup>50</sup> *Supra note 24* See at Obligations on Establishments



Metropolitan trains companies have employed transgender persons to work in their counters, The Vidhana Sabha's (i.e., the State Government and the UT's legislative body) have also employed a number of transgender thus setting a good example for the private sectors too. It is remarkable to say that few corporate have been fulfilling the purpose of the above mentioned act and have been providing internship program which aims to build a skilled talented pool of transgender candidates for the company. KPMG , is slowly raising to victory in this matter because they recently hired a senior resource to help in capacity building and work with LGBTQ community in hiring requirements like resume writing and preparing candidates for an interview.<sup>51</sup>

Although there are nearly 10 million transgender persons in India , only 5-7% of them earn the gainful employment. It is important to understand that there is enough talent in the pool and all that is lacking is the proper training of the persons. Although a number of corporate sectors have taken up the responsibility to improvise their skills, to make them understand the basic terminologies, it has been effective to those who have showed up to get those employment seats but considering the population of this country there a lot of loop holes which are hindering the progression and the companies and the other organizations must put forth more effort to provide employment opportunities and do an effective human resource management.

<sup>51</sup> <sup>51</sup> Anjali Venugopalan , Prachi Verma , India Inc open doors to transgender employees , THE ECONOMIC TIMES ,(Jan ,14<sup>th</sup> , 2020 , 07:21 AM IST) , <https://economictimes.indiatimes.com/news/com>

Of course , it does come along with its side effects because the integration of the community can be a major challenge even after their employment since the position one would have faced and the situations they would have been conditioned to. Sodexo has however begun the transgender guides which help the managers to perceive the basic terminologies and even create a cognizance instead of just an assumption.<sup>52</sup> Infosys which has signed an agreement with the UN Standard for they are working against discrimination of the LGBTQI community and has also mentioned that gender is not a compulsory category to fill while applying to the company.

#### Conclusion

The preceding study portrays how the society rested riddled with the inconsistency concerning the power relations within different genders for a long period of time. The article begins with shortly introducing the oppression the transgender community went through for a long period of time. (No doubt some amount of the oppression still holds on to this day) Calling them by foul words is a big loop hole. Do we call each other anything else but our names and even if we are called foul names the next place they take that person is a police station and just book a complaint for verbal abuse. Why is it so difficult for the humanity to accept the trans-community as just one amongst us?

Thank the universe that a formal approach

[www.supremoamicus.org/industry/corporate-trends/india-inc-opens-doors-to-transgender-employees/articleshow/73237262.cms](http://www.supremoamicus.org/industry/corporate-trends/india-inc-opens-doors-to-transgender-employees/articleshow/73237262.cms).

<sup>52</sup> *Ibid.*



was brought up along with the principle of equality and liberty and it is surely a triumph that India has taken baby steps towards recognizing the transgender rights. However, this identification must be taken to a bigger platform. We have analyzed the transition of the transgender Act and the bills with the recent developments in the same field.

This article also discusses how NALSA Case offered recognition to the historically oppressed gender minority although a lot of questions are still unanswered. Even though the community is recognized and the rights for them have been strongly argued the ground reality is completely different. The complication is that the problem of transgender is deeply rooted with affairs of the social exclusion and unless the Supreme Court doesn't implement the necessary actions and the guidelines the procedure for a socially inclusive environment cannot be processed. In the judgment Justice Sikri while highlighting the UNDP Report of India Issue : December 2010) pointed out the fundamental problem of the TG Community kept recapitulating that, the decision emerged along with the basis of the paradigm shift in the thinking with regards to a right based approach.<sup>53</sup> The usage of the word "sexual reassignment surgery"(or SRS which is used by the court) is a narrower term when compared to "gender affirming surgery" to point out that surgery is not compulsory procedure to go through to "switch genders" but it is instead a tool to declare an individual's identity.<sup>54</sup> We have also discussed the application of

International law to Indian Municipal law.

In light of all this, we propose a model for the better workspace environment for the transgender community and also normalize their rights and entitlements like the other two genders. It is extremely important to propose better drafts for uplifting the community because that adds to the growth of an inclusive society which is what we should aim in a democratic setup or otherwise. The mercantile community is slowly beginning to work with the transgender employees and with all the hope we write that it continues and just gets better and bigger.

<sup>53</sup> NALSA , 5 S.C.C. at 49.

<sup>54</sup> Loren S Schechter , 'Gender Confirmation Surgery': What's in a Name? , HUFF POST , (April , 20 , 2016) ,

[https://www.huffpost.com/entry/gender-confirmation-surgery\\_b\\_1442262](https://www.huffpost.com/entry/gender-confirmation-surgery_b_1442262).