



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

TRANSGENDER RIGHTS IN THE WORKPLACE: **LEGAL CHALLENGES AND INCLUSIVITY**

AUTHORED BY - KHUSHI SINGH

INTRODUCTION

The identity of an individual is often determined by the moral dictates and judgments of the society. Transgender persons are people whose identities are different from the stereotypical gender norms, which identify genders only as male or female.¹

Indian Mythology offers insights into the past treatment of transgender individuals, revealing their historical veneration. Hindu Mythology showcases deities with changing genders, such as Ardhanarishvara, symbolizing integration of Shiva and Parvati. Mahabharata and Ramayana highlight significant transgender figures like Shikhandi and Aravan, tracing lineage. Additionally, hijras, a transgender community, held esteemed positions in Mughal courts and religious institutions, their influence declining during British rule due to legislative changes. Though the society has failed to accept their gender identity due to which they have suffered from discrimination, social oppression and physical violence. However, the change in global outlook towards transgender persons has resulted in a corresponding shift in India as well. The Supreme Court's judgement in the case of *National Legal Services Authority v. Union of India*² was the first major illustration of this shift, as the Court declared transgender persons apart from binary genders and affirmed their identities as the third gender under our Constitution. This was followed by the Transgender Persons (Protection of Rights) Act, 2019³ that established the National Council for Transgender Persons and imposed penalties for offences committed against transgender persons.⁴

¹ Mishra, Akanksha. "Third Gender Rights: The Battle for Equality." 2016, <https://doi.org/10.12728/culj.9.2>.

² NALSA v. Union of India - AIR 2014 SC 1863.

³ The Transgender Persons (Protection of Rights) Act, 2019.

⁴ Transgender Persons and Labour Law: A Grey Area. <https://www.simpliance.in/blog/transgender-persons-andlabour-law/>

Legal Framework for Transgender Rights

The preamble of the Universal Declaration of Human Rights underscores the commitment to fundamental human rights, gender equality, and social progress.⁵ In 2014, a landmark ruling by the Indian Supreme Court in *National Legal Services Authority v. Union of India*⁶ granted legal recognition to the third gender, challenging the binary gender paradigm.

- ✦ Drawing from Articles 14, 15, and 16 of the Indian Constitution, the judgment extended equal rights and protections to transgender individuals, breaking away from the conventional gender norms. It interpreted "person" in Article 14 to encompass nonbinary identities, ensuring legal safeguards across all state activities.⁶ Furthermore, Articles 15⁷ and 16 were construed to include "gender identity," thus prohibiting discrimination based on sexual orientation.⁸
- ✦ The verdict not only affirmed gender expression rights but also highlighted the constitutional protection of dignity under Article 21.⁹ This decision aligned with international human rights principles, reflecting the Universal Declaration of Human Rights and Yogyakarta principles. It was a ground-breaking step in recognizing gender identities post-Sex Reassignment Surgery, asserting the right to legal recognition of reassigned sex. Following the ruling, the Ministry of Social Justice sought clarification on the judgment's implications, addressing the recommendations of an expert committee report.
- ✦ Transgender Persons (Protection of Rights) Act, 2019
 - "Transgender Persons (Protection of Rights) Bill, 2019" that was introduced in the Indian Parliament to address the rights and concerns of transgender individuals in the country.

The bill aimed to provide legal recognition to transgender persons and ensure protection of their rights. It covered various aspects including the definition of transgender persons, their right to self-perceived identity, anti-discrimination measures, provisions for health care and social welfare, and the establishment of a

⁵ Sigurdsson, Lakshmi, and Kirsten M. Andersen. "Human Rights Education and the Conscience of Mankind: Developing Didactics of Perplexity." 2022. ⁶ NALSA v. Union of India - AIR 2014 SC 1863.

⁶ The Constitution of India, 1950, Art. 14.

⁷ The Constitution of India, 1950, Art. 15.

⁸ The Constitution of India, 1950, Art. 16.

⁹ The Constitution of India, 1950, Art. 21.

National Council for Transgender Persons¹¹ to monitor and implement the provisions of the bill.¹⁰

- The 2019 Act defines transgender individuals and prohibits employment discrimination, including denial and termination of employment¹¹, as highlighted in Section 3(c).¹²
- Section 5 of the Act presents contentious provisions outlining the procedure for transgender individuals to obtain a certificate of identity.¹³
- Section 9 of the Act explicitly states that establishments cannot discriminate against transgender persons in employment matters, encompassing aspects such as recruitment and promotion.¹⁴
- Furthermore, Section 10 mandates establishments to ensure adherence to the Act's provisions and provide specified facilities.¹⁵
- Complementing this, Section 11 necessitates each establishment to designate a complaint officer responsible for addressing grievances related to Act violations.¹⁸
- ✦ Equal Remuneration Act, 1976
 - This act prohibits discrimination in terms of remuneration on the basis of gender. It aims to ensure equal pay for equal work and includes protection for transgender employees.¹⁹
- ✦ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
 - While the title specifies women, the act is applicable to all individuals, including transgender people, who face sexual harassment at the workplace.¹⁶
 - All transgender women can seek protection under all the sections of the Indian Penal Code protecting women from sexual abuse. This was mentioned by the High Court of Delhi in the case of Anamika v. Union of India (2020).¹⁷

¹⁰ Transgender Persons (Protection of Rights) Act, 2019.

¹¹ India : Transgender Persons (Protection of Rights) Act, 2019 provides for inclusive education & opportunities without discrimination. (2023, August 2). MENA Report.

¹² Transgender Persons (Protection of Rights) Act, 2019, Section 3(c).

¹³ Transgender Persons (Protection of Rights) Act, 2019, Section 5.

¹⁴ Transgender Persons (Protection of Rights) Act, 2019, Section 9.

¹⁵ Transgender Persons (Protection of Rights) Act, 2019, Section 10.

¹⁸ Transgender Persons (Protection of Rights) Act, 2019, Section 11.

¹⁹ Equal Remuneration Act, 1976.

¹⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹⁷ Anamika Vv. Union of India, W.P.(C) 4356/2020.

NALSA and other Landmark Judgements:

- In the landmark judgment *National Legal Services Authority v. Union of India and Ors* .¹⁸In 2014, the Supreme Court identified the rights of the transgender community as a “third gender”. This case paved way for transgender persons with the right to choose their gender identity and live their life with dignity.
- In the case of *G. Nagalakshmi v. Director General of Police (2014)*,¹⁹the Madras High Court observed that in the absence of any special law, any person has the liberty to choose their sexual or gender identity and upheld the petitioner’s right to choose their own gender.
- In *Puttuswamy v. Union of India (2017)*,²⁴the Supreme Court noted the constitutional right to privacy inherent in the right to life, equality and fundamental freedoms. This includes the right.

Challenges Faced by Transgender Employees

- ✦ Under the Equal Remuneration Act, 1976 it's an essential mandate for the employers to keep a record of employees, including information about their pay and personal details, which encompass gender. However, confusion arose due to Form 'D' which only allows for entries regarding the count of male and female employees. Consequently, employers were uncertain about the classification of transgender employees as Form 'D' didn't include a specific provision for such categorization.

Probable solution to the problem is fairly straightforward, Form-‘D’ can be modified by adding a column for transgender workers so that their details are accurately represented.²⁵

- ✦ A similar situation arose under the Maternity Benefit Act, 1961²⁰as there was confusion over whether transgender employees are entitled to maternity benefits. This is because the Act uses the word ‘woman’ throughout and defines it under Section-3(o) as a woman employed, whether directly or through any agency, for wages in any establishment. Transgender men, basically those persons who were assigned the female gender at birth are capable of giving birth under some circumstances.²¹Thus, this resulted in confusion from a compliance perspective as the employer in this situation was unsure as to provision of

¹⁸ NALSA v. Union of India - AIR 2014 SC 1863.

¹⁹ G Nagalakshmi v. Director General of Police ((2014) 7 MLJ 452).²⁴

Puttaswamy v. Union of India – (2017) 10 SCC 1.

²⁰ Maternity Benefit Act, 1961.

²¹ Maternity Benefit Act, 1961, Section 3(o).

benefits as well as procedural norms such as the various Forms under the Act that only refer to women.

The solution to this is slightly more complex as it involves a determination of whether the transgender individual in question is capable of giving birth. However, most State rules under the Maternity Benefit Act, 1961 require submission of a Form that is signed by a medical practitioner affirming the existence of a pregnancy. Therefore, the existing system has the requisite mechanism to ensure transgender pregnancies can be accounted for.

- ✦ Another major problem several employers face is that of a lack of gender-neutral washrooms and locker facilities/changing rooms. Often resulting in humiliation for A transgender persons as they are forced to use male washrooms. This can be easily resolved by providing gender neutral washrooms in addition to male and female washrooms in workplaces. Similar steps can be taken with regards to changing rooms and locker facilities to ensure that transgender employees are comfortable. ²⁸
- ✦ Transgender individuals often experience discriminatory treatment in the workplace, such as being denied job opportunities, being assigned menial tasks, or facing exclusion from important meetings or projects due to their gender identity.
- ✦ Despite their qualifications and skills, transgender employees might be overlooked for promotions and leadership roles based on stereotypes or biases, hindering their career progression.
- ✦ Wage disparities are common, where transgender workers are paid less than their cisgender counterparts for the same job roles, reflecting the pervasive gender pay gap. Verbal, emotional, and even physical harassment can be directed at transgender employees, contributing to a toxic atmosphere that impacts their mental and emotional well-being.

: A Grey Area. <https://www.simpliance.in/blog/transgenderpersons-and-labour-law/>

Role of Labour Unions

Labour unions in India play a significant role in advancing transgender rights in the workplace. They act as advocates, raising awareness about discrimination, harassment, and unequal treatment faced by transgender employees. Through collective bargaining, unions negotiate for inclusive

workplace policies that protect gender identity and expression, ensure fair pay, prevent discrimination, and provide access to gender-affirming benefits.

Unions provide a platform for transgender employees to voice concerns and offer support to navigate workplace challenges. They organize workshops and training sessions to educate both employees and employers about transgender issues, fostering understanding and inclusivity. Additionally, unions work towards legal reforms that strengthen transgender rights by advocating for comprehensive legislation and policies.

Collaboration with LGBTQ+ organizations and advocacy groups amplifies unions' efforts, creating a united front for advocating transgender rights. Overall, labour unions in India play a pivotal role in shaping more inclusive, respectful, and equitable workplaces for transgender individuals.

Directions and Recommendations for Advancing Transgender Rights in the Workplace

(a) Identifying Areas for Improvement in Current Legal Frameworks:

- Efforts should be directed towards identifying gaps and uncertainties within the existing legal structures concerning transgender rights. Thorough evaluations are essential to determine where the safeguards are inadequate or ineffective.

(b) Proposed Legislative Enhancements to Bolster Transgender Rights:

- **Comprehensive Anti-Discrimination Laws:** There is a pressing need to enact stringent antidiscrimination legislation that explicitly encompasses gender identity and expression. Clearly defined directives and significant penalties for violations are crucial components.
- **Inclusive Language:** Legislative texts should adopt language that is inclusive, avoiding gender-specific terms that might inadvertently exclude transgender individuals.
- **Inclusive Health Coverage:** It's imperative to mandate insurance policies to encompass gender-affirming procedures, surgeries, and mental health support.
- **Incorporating Gender Identity in Data Collection:** Including gender identity in data collection initiatives is vital for effectively monitoring workforce representation and disparities.

(c) Guidelines for Employers, Policymakers, and Advocates:

- Sensitization Programs: Employers should arrange training sessions to sensitize their workforce about transgender issues, nurturing an inclusive organizational culture.
- Inclusive Workplace Policies: The development and implementation of comprehensive policies that cover gender-neutral facilities, dress codes, and restroom access is essential.
- Establishment of Support Networks: Creating employee resource groups or support networks for transgender individuals fosters a sense of inclusion and belonging.
- Transgender-Inclusive Healthcare: Employers should offer health insurance packages that encompass gender-affirming treatments and mental health support.
- Transparent Recruitment and Advancement Processes: The adoption of transparent and impartial recruitment and promotion practices is pivotal in ensuring equitable opportunities.
- Collaboration with Advocacy Organizations: Policymakers should collaborate with LGBTQ+ advocacy groups to formulate and execute effective legislation and policies.
- Raising Awareness through Campaigns: Advocates can orchestrate campaigns to heighten awareness about transgender challenges, dispelling misconceptions and nurturing empathy.
- Provision of Legal Aid: Establishing programs to offer legal assistance to transgender employees facing workplace discrimination provides essential support.

By actively addressing these areas, stakeholders can contribute substantively to cultivating a work environment in India that is not only more just and inclusive but also guarantees the protection, preservation, and reverence of the rights of transgender individuals.

CONCLUSION

In conclusion, our examination of transgender rights within India's labour law framework underscores both progress and persistent challenges. It's evident that while legal strides have been made, refinements are essential to ensure comprehensive protection for transgender individuals. Addressing gaps and ambiguities in existing laws is imperative to provide robust safeguards against discrimination and inequality.

Labour unions play a crucial role in this journey. Their advocacy, negotiation for inclusive policies, and education efforts hold immense potential to drive meaningful change. Collaborating with policymakers, employers, and advocacy groups will amplify their impact and contribute to comprehensive legal reforms.

Looking ahead, the momentum toward greater transgender rights within Indian labour laws must be sustained. A collective call to action is vital—a commitment from all stakeholders to eliminate discrimination, foster inclusivity, and offer equitable opportunities for transgender employees. Through legal enhancements, inclusive policies, and awareness initiatives, we can forge a path toward workplaces that honour the rights and contributions of all, regardless of gender identity.

The path forward necessitates unwavering dedication, ongoing advocacy, and collaborative perseverance to reshape workplaces into environments where transgender individuals can thrive. Only through sustained efforts can we realize a future where transgender rights are fully embraced and upheld within India's labour law.

REFERENCES

- TRANSGENDER PERSONS BILL, 2014 . (n.d.). Retrieved from THE RIGHTS OF
- TRANSGENDER PERSONS BILL, 2014
- johari, A. (2014). fcroll.in. Retrieved from Hijra, kothi, aravani: a quick guide to transgender terminology: <https://scroll.in/article/662023/hijra-kothi-aravani-a-quickguide-to-transgender-terminology>
- THE FIGHT TO DECRIMINALIZE HOMOSEXUALITY SINCE THE REPEAL OF SECTION 377. (n.d.).
- TRANSGENDER PERSONS BILL, 2015. (n.d.). Retrieved from THE RIGHTS OF TRANSGENDER PERSONS BILL, 2015.
- Gee Imaan Semmalar, Gender Outlawed: The Supreme Court judgment on third gender and its implications, April 19, 2014, http://roundtableindia.co.in/index.php?option=com_content&view=article&id=7377:because-we-have-a-voice-too-the-supreme-court-judgmenton-third-enderand-its-implications&catid=120:gender&Itemid=133.
- Manoj K. Jha, Transgender Rights in India, <http://iasscore.in/nationaldetails-74.html>.
- Corbett v. Corbett, (1970) All ER 33. 7R v. Tan & Greaves, (1983) 2 All ER 12.
- INDRANI SEN GUPTA, HUMAN RIGHTS AND SEXUAL MINORITIES: TRANSGENDER HUMAN RIGHTS (Gyan Publishing House, 2005).
- M. Michel Raj, Historical Evolution of Transgender Community in India, 4 ASIAN REVIEW OF SOCIAL SCIENCES 18, 17-19 (2015).