

Workplace Exclusion of Sexual Minorities: Transgender Community

Rimjhim Vaishnavi

Assistant Professor (law), National University of Study and Research in Law

Abstract

Transgender are part of LGBTQ+ community who have been recognized since ancient times in India with different names. Transgender community denotes persons whose gender expression is different from what has been biological sex assigned to them. During 400 BC they were called 'tritya prakriti' and were mentioned in Mahabharata and Ramayan, then during Mughal empire they were assigned guarding work at Mughal household but in Modern India transgender were criminalized by Britishers under Criminal Tribes Act, 1871 thus to earn their living they started performing in ceremonies, begging and working as sex workers. In 1994 for the first time by the election commission, then in 2011 by census authority and in 2015 through judicial activism they were recognized. Even though transgender are being recognized as third gender they are being discriminated against in many social aspects, one of which is in the workplace. Due to stigmatization they suffer in their careers which begins from recruitment, selection and continues throughout. Another reason is lack of inclusive policies, infrastructural setup and training modules. They face structural and social exclusion because of which even after different governmental policies there are high rates of school and college dropouts and because of which they lack skills necessary to get a job. This paper will focus towards changes in workplace demography which would provide inclusiveness of transgender and sexual minorities and to what extent the 2019 Transgender Person Act is effective in promoting it.

Keywords: Transgender, workplace exclusion, stigmatization, sexual minorities

INTRODUCTION

Transgender persons are part of LGBTQIA+ community, who are defined as “persons whose gender differs from that assigned at birth and the umbrella includes trans-man, trans-woman, person with intersex variations, genderqueer and persons having socio-cultural identities as kinner, hijra, aravani and jogta”¹. By 2026 amendment transgender person has been altered to include within it those individuals having congenital variation in sex characteristics like external genitalia, gonadal development, chromosomal patterns or endogenous hormone production or response in comparison to male or female development and also to include an individual along with a child who has been induced or deceit or forced to assume, adopt or present themselves as transgender by mutilation, hormonal procedure, emasculation, surgery or castration or surgery². Transgender persons are not new to the world and they have a long history in India

¹ Sec.2(k) The Transgender Persons (Protection of Rights) Act, 2019.

² Sec. 2(k) The transgender Persons (Protection of Rights) Amendment Act, 2026

and in the world. As per 2011 census 0.6 million people of India's population are Transgender,³ but even prior to it they existed in Indian society and played a crucial role in Indian culture and were identified as "Tritiya Prakriti"⁴. In the mythology of Ramayana, they were the only ones who followed Lord Rama during vanvas and hence they received boon that the blessings they give to anyone would come true, apart from it a form of Shiva as Ardhanarishwar denotes transgender, Arjun as Brihanna, Vishnu as Mohini, Shikhandi in Mahabharata and Aravan who was son of Arjun one of the Pandava brothers all were transgender as per the Hindu mythology⁵. During the Mughal era Transgender accompanied the princess and protected them and also they were assigned integral responsibilities in the royal households, but their situation changed during British rule when Transgender individuals were categorized 'Hijras' and were declared as a *criminal tribe* within Criminal Tribes Act, 1871⁶, though this Act was later on repealed, since then their social status and profession changed and Transgenders were resorted to earn their livings through earning by performing at functions ceremonies (toli), beggary (dheengna) and working as sex workers (raarha)⁷. In India different names have been assigned to the person of Transgender community amongst which most prominent are⁸:

- Kothi-one who represents themselves as male.
- Shiv-Shaktis- denoting males who have feminine gender expression.
- Aravanis- women who are wrapped in male body.
- Hijras- denoting biological males who reject masculine identity.
- Jogappa- those who serve as servants of goddess Renuka Devi.

Since British rule till a few decades back transgender community has faced societal exclusion, discrimination and lack of legal recognition and gradually in the coming years the government started accepting them. It is only in 1994, Transgender were recognized as citizens of India when Election Commission of India accepted them as 'third gender' 'E' in the list, later then in 2011 Census they were included and it was found that out of India's population 0.6% are transgender, then 2005 Government of India updated passport application form and included the option of 'third gender'⁹. Even though the government started accepting them the transgender community lacked legal recognition, which was given in 2014 through the Supreme Court verdict of NALSA vs. Union¹⁰, when the government accepted them as third gender and ensured them the rights same as binary gender and in pursuance of which in 2019 The Transgender Persons (Protection of Rights) Act was passed and in 2020 Transgender Persons (Protection of Rights) Rules were made to protect the rights of transgender community.

Occupation Associated to Transgender Persons.

Transgender individuals are different from the binary gender and they are different in the societal identity of how men and women are supposed to work, hence the stereotypical gender roles assigned to the male

³ F.Sharaf, "Inclusion of Transgender-In the Inclusive Society", Transgender Identity and Rights in South Asia, Research Cell Delhi Metropolitan Education, Bloomsbury Publication, 2023

⁴ P.Sharma, "Sexual Orientation and The Transgender: Search For Equal Dignity", IJSSER, Vol-04, Issue-12, December, 2019

⁵ Dr. V.More, "Problems of Transgender Community in India: A Sociological Study", Vivek Research Journal, special issue, 2023.

⁶ Dr.K.R.Hotchandani, "Problems of Transgender in India: A Study from Social Exclusion to Social Inclusion", IRJHRSS, Vol-4, Issue-4, 2017.

⁷ Ibid 3

⁸ Ibid 4.

⁹ J.Philip and D.Soumyaja, "Workplace Diversity and Inclusion: Policies and best Practices for Organisations employing Transgender people in India", INT.J.Public Policy, Vol-15, Issue-3, 2017

¹⁰ AIR 2014 SC 1863

and female are not applicable upon them and this is one of the reasons due to which they face discrimination in the working arena¹¹. In society status of a person is determined through the occupation they are associated with and since last many decades Transgenders have been living either by begging, as sex workers or by performing in different functions, because of which society is reluctant in accepting them¹².

Issues transgender community face in Employment.

Even when they add up to 0.6 million population of India until 2019 there was no law to provide them proper education, accommodation and jobs. Transgenders are subjected to cultural deprivation with limited access to facilities provided to cis-genders¹³. Institutions mostly reject them for being under qualified as the number of dropouts from schools are higher due to the societal stigma attached to them and because of which they lack skills and are found unsuitable for jobs¹⁴. The other aspect is structural exclusion, most of the institutions lack infrastructure to provide an inclusive workplace to Transgender and also they are reluctant to make changes in infrastructure and hence are not accepting candidates from Transgender community due to which they face barriers to their careers since recruitment and which continues throughout. Unlike other members of LGBTQIA+ community, it is difficult for Transgender to hide their identities thus they are subjected to workplace discrimination. Till date the literature over transgender has focused upon the struggle for identity, health issues, social issues and legal sanction but it is important to acknowledge the need for a gender inclusive and diversified workplace¹⁵.

Workplace Diversity and Inclusion of Transgender.

Workplace diversity denotes acknowledging, understanding, accepting, valuing and celebrating differences among people which may be of age, gender, class, race, ethnicity, sexual orientation and of physical and mental ability¹⁶. Since last decade, the government of India is working towards making the workplace both in private as well as government sector inclusive for LGBTQIA+ community. In 2011 UNHRC made a resolution and asked the member nations to end discrimination based on sexual orientation and gender identity and also WHO removed homosexuality from the list of mental illness. Many States in India following the Supreme Court verdict of NALSA vs. UOI¹⁷ and Navtej Singh Johar vs. UOI¹⁸ have taken initiatives in recruiting Transgender in government sectors, Karnataka being the first State to provide 1% reservation to Transgender persons in government jobs and also in Kushinagar District of UP first University for Transgender has been set up to provide education from class 1 to post graduation. In 2014 University Grants Commission issued a circular to all universities to include 'third gender' in admission form¹⁹.

¹¹ Ibid 8

¹² P.Kaur, "Governance and Empowerment of Weaker Sections: A case study on Transgender Community in India", Contemporary Social Science, Vol-26, issue-1, 2017.

¹³ S.U.Pandey & R.Singhal, "Inheritance Rights of Transgender under Personal Law: A critique", IJLLR, Vol-III, Issue-III, 2021-2022, ISSN-2582-8878

¹⁴ Ibid 12

¹⁵ S.Malhotra & S. Saxena, "Property rights of Transgender in India: How they have been actualised", SSRN-31/10/2023.

¹⁶ Ibid 15

¹⁷ AIR 2014 SC 1863

¹⁸ AIR 2018 SC 4321

¹⁹ Ibid 6.

Article 21 of Indian Constitution provides right to work and Article 16 prohibits discrimination on basis of sex in employment or appointment to any office under State, Article 41 imposes duty upon State government to ensure people have adequate work and could exercise their right to work. The Transgender Protection of Rights Act, 2019 has ensured the constitutional right to work of Transgender community and has stepped towards making workplace diversified and inclusive, where in Sec.9 provides for non-discrimination of transgender in matters relating to employment including recruitment, promotion and other related matters and Sec.10 imposes duty upon different institutions and establish to provide facilities to transgender along with it to have a grievance redressal mechanism to outlook the complaints. To make these provisions stringent, a penalty has been imposed for non fulfilment of these grounds under Sec.18 which can extend up to 2 years along with fine. Transgender Persons (Protection of Rights) Rules, 2020 has also safeguarded the interest of Transgender in employment by including the general category transgender persons in Other backward class, so that they could avail the vertical reservation provided to them not affecting the reservation which the transgender person would avail under horizontal reservation²⁰. The 2019 Act has also duty bound the government to formulate policies and welfare schemes to provide vocational training and self-employment to Transgender persons²¹.

In addition to the guidelines provided in 2019 Act and 2020 Rules, institutions can make workplace transgender inclusive²²

- by providing proper counselling to the employees,
- constructing gender neutral toilets,
- providing gender neutral dress code,
- promoting use of gender-neutral pronoun at workplace,
- trans specific diversity training,
- framing policies and adapting practices that incorporate gender identity specific non-discrimination.
- employing transgenders for jobs that do not require a high level of skill.

Initiatives taken by Government for economic upliftment of transgender persons

Ministry of Social Justice and Empowerment and Department of Social Justice and Empowerment has established Equal Opportunity Policy for Transgender Persons, which aims to provide a workplace free from discrimination, harassment and to provide an efficient grievance redressal mechanism. To promote a fair workplace atmosphere certain guideline have been provided for the employers²³:

1. Confidentiality- Gender identity information provided by transgender employee to be kept confidential and the employer as well as colleagues should refrain from disclosing the information.
2. Infrastructure developments- institutions have to build transgender inclusive infrastructure, including separate restrooms.
3. Policies- Institutes have to implement policies which are transgender inclusive and provides them protection and which are gender natural.
4. Grievance Redressal- Establishing a grievance redressal mechanism and committee.

Support for Marginalized Individuals for Livelihood and Enterprise (SMILE) an initiative of Ministry of Social Justice and Empowerment, Government of India to provide a national portal for transgender

²⁰ Rule 7 of Transgender Persons (Protection of Rights) Rules, 2020

²¹ Sec.14 The Transgender Persons (Protection of Rights) Act, 2019

²² Dr.B.Gupta, "Law of Transgender Rights In India: A Practical Guide", Ukiyoto Publication, 2023

²³ <https://socialjustice.gov.in/writereaddata/UploadFile/67311708075108.pdf>

certificate and ID card, skill training programs, medical facilities and registration for Garima Greh that is shelter homes and other welfare measures²⁴.

Indian government for upliftment of transgender community and for making an inclusive workplace for transgender can inculcate the practices and policies of other nations like in Argentina in 2021, 1% seats have been reserved for transgender's in bureaucrat jobs²⁵.

Conclusion

Transgender community has faced social exclusion and stigmatization since the past few decades which has resulted in discrimination and limited access to basic resources, which has affected their mental, psychological and social development. Many verdicts and legislations have been framed to compensate for the discrimination faced by the community by providing adequate healthcare, education, job opportunity and ensuring other social and legal rights, the result of which is that there are transgender persons in politics, legal fraternity, education sector, police administration and in public enterprises. Since legal recognition of Transgender many people of the community have achieved major positions in the work field. Some of them are police officer, judge, college principal, MLA, soldier, medical assistant and lawyer. Different courts through its judgements have secured the right to work of Transgender persons and held that while applying for jobs in Indian Government the transgender is at par with the binary gender and has upheld their right to profession and directed the employers to frame policies for protecting transgender against workplace discrimination and prejudice. Still there is a need to provide transgender inclusive environment not only in the workplace but in all social places which can be done only by reducing the stereotyping and stigmatization attached to transgender community through counselling and policy framework. Till date the literature over transgender has focused upon the struggle for identity, health issues, social issues and legal sanction but it is important to acknowledge the need of gender inclusive and diversified workplace as just recognizing the rights on paper is not enough until it is implemented and the stigma is not removed relating to Transgender Community.

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²⁴ <https://pib.gov.in/PressReleasePage.aspx?PRID=2042571>

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