

SOCIO-TRANSFORMATIVE DIMENSION OF RIGHT TO WORK AS THE *SINE-QUA NON* OF THE FUNDAMENTAL RIGHTS OF THE THIRD-GENDERS: A CONSTITUTIONAL STUDY WITH REFERENCE TO INDIA

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ABSTRACT: The Constitution of India implicitly guarantees every citizen the inherent Right to Work as part of the broader framework of equality, dignity, and livelihood. However, governmental policies, legislative initiatives, and judicial interventions have largely focused on building an overarching framework for this right, without fully addressing the unique vulnerabilities of marginalized groups such as transgender persons. As a result, India still lacks a comprehensive anti-discrimination employment law specifically aimed at protecting the rights of the third gender in the workplace. This study critically examines the persistent patterns of discrimination faced by the transgender community in employment contexts through a discourse analysis of human rights principles, statutory frameworks, and judicial pronouncements. While landmark decisions of the Supreme Court of India, such as the recognition of the third gender and the extension of constitutional protections, have advanced the legal status of transgender persons, the progress remains largely symbolic without parallel socio-economic integration. Deep-rooted social exclusion, reinforced by prejudice and structural inequalities, cannot be eradicated solely through recognition or policy statements. True transformative change requires targeted, enforceable measures—such as inclusive hiring policies, workplace sensitization, and statutory safeguards—that align closely with the judiciary’s progressive interpretations of equality. The implementation of the Right to Work for transgender persons must therefore be embedded within a robust anti-discrimination employment framework to ensure not merely access to jobs but also dignity, security, and equality in the workplace. Recognition is only the beginning; inclusion demands sustained and systemic reform.

Keywords: Right to Work, Fundamental Rights, Third Gender, Discrimination, Transformative Policies, Work Environment, Social Inclusion, Anti-discrimination Law.

I. Introduction:

From the close perusal of the Article 14 it may be stated that the Transgenders have also equal right to impart in the social development. The people who consider themselves homosexual, transgender, or intersex etc are defined as sexual

minorities. The variety of terms and their changing uses to define sexual minorities¹. Due to the wide range of terms and their applications for identifying sexual minorities, as well as the fact that some of them, such as the term "queer," continue to be controversial despite evolving over time, it has proven difficult to apply the current provisions of international human rights law to the situation of sexual minorities. In India, about 92% of transgender people are denied the opportunity to engage in any kind of economic activity, while less than half of them have access to education, and those who do (62% approximately) are subjected to discrimination and abuse². Therefore, this data reflects that our ideology is needed to be changed by diminishing the narrow and domestic ideology. The transgenders are also the human beings and they also have the equal responsibility to transform the society

Considering the delicate nature of the subject and the imperatives to highlight the challenges faced by this vulnerable social group, which is frequently subjected to discrimination, persecution, and severe human rights violations, the ongoing discourse on human rights law has gravitated towards addressing two crucial issues concerning sexual minorities: "sexual orientation" and "gender identity." The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, a document that aims to reflect the current state of international human rights law concerning sexual orientation and gender identity, defines "sexual orientation" as each individual's capacity for deep emotional, affectionate,

and sexual attraction to, and intimate and sexual relations with, persons of a different gender, the same gender, or multiple genders.³ The Yogyakarta Principles have defined gender identity as an extremely personal and internal sense of gender, which may or may not be consistent with one's sex at birth. It encompasses a person's perception of their own body, which can include medical or surgical alterations if freely chosen, as well as gender expressions through attire, speech, and mannerisms.⁴ One of the prime tenets of human rights is ensuring equal opportunities and rights for all people, irrespective of gender identity or sexual orientation. India has progressed a lot in recognizing and facilitating transgenders inclusion at workplaces. The road to transgenders inclusion in India has been through court cases, personal experiences, and grassroots efforts.

II. Constitutional Perspectives of Right to Work:

In 2014, the Supreme Court of India granted the recognition of transgender people as a "third gender," establishing constitutional rights for them. The judgement was aimed at fostering tolerance and enhancing the access of transgender individuals to healthcare, jobs, and education.⁵ The Court had vividly recognized transgender individuals as a third gender, granting them the right to be legally identified as such. It affirmed the right to self-identify gender as male, female, or third gender, irrespective of medical procedures. The judgment emphasized that transgender persons are entitled to constitutional

¹ See International Labour Organization, 2022 (<https://en.wikipedia.org/wiki/LGBTQ>) (Accessed on 14/02/2025)

² See National Human Rights Commission Report, 2017 (<https://nhrc.nic.in/publications/annual-reports>) (Accessed on 14/02/2025)

³ See The Yogyakarta Principles, March 2007 ([https://yogyakartaprinciples.org/wp-](https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)

[content/uploads/2016/08/principles_en.pdf](https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf)) (Accessed on 14/02/2025)

⁴ Ibid. (Accessed on 14/02/2025)

⁵ See *National Legal Services Authority (NALSA) v. Union of India*, (2014) 5 SCC 438 cf. <https://indiankanoon.org/doc/193543132/> (Accessed on 16/02/2025)

rights under Articles 14, 15, 16, 19, and 21, covering equality before the law, prohibition of discrimination, freedom of speech and expression, and the right to life and dignity. The Court directed the government to consider transgender individuals as a socially and educationally backward class, providing reservations in education and employment. It also mandated the government to ensure medical care, separate public toilets, and other facilities for transgender individuals. Therefore, the right to work is a fundamental aspect of human dignity and economic independence. For transgender persons in India, this right has historically been denied due to deep-seated prejudices and systemic discrimination. However, constitutional guarantees and judicial pronouncements have played a crucial role in securing their right to work and ensuring non-discrimination in employment. Hence, the Constitutional perspectives of Right to Work towards uplifting the socio-economic status of the transgender community may be discussed in the following manner:

- **Article 14** ensures equality before the law and the equal protection of laws. The Supreme Court in *National Legal Services Authority v. Union of India* (NALSA judgment)⁶ affirmed that transgender persons are entitled to equal treatment under Article 14.
- **Article 15** prescribes the prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth. The NALSA judgment recognized that ‘sex’ in Article 15 includes gender identity, thus preventing discrimination against transgender persons in employment.
- **Article 16** mandates that there shall be no discrimination in the procedure of the state employment on grounds of sex, caste, or religion. The Supreme Court has

held that transgender persons should be included in the category of ‘socially and educationally backward classes’ (SEBC) for reservations in public employment.

- **Article 19(1)(g)** guarantees the right to practice any profession or carry on any occupation. This provision ensures that transgender persons cannot be arbitrarily denied employment opportunities.
- Through Article 21, the Supreme Court in the “*NALSA judgment*” held that the right to dignity includes the right to employment and protection against harassment in workplaces. Ensures safe working conditions and protection against forced labour.
- **Article 24** prohibits employment of children in hazardous work. This is significant in preventing economic exploitation of young transgender persons.
- **Article 39(a)** directs the state to secure those citizens, men and woman equally, have the right to an adequate means of livelihood.
- **Article 41** directs the state to secure the right to work, education, and public assistance in cases of unemployment and disability.
- **Article 46** promotes the educational and economic interests of weaker sections, including transgender persons.

III. Workplace Challenges Faced by Transgender Community:

Transgender people often face systemic discrimination in many areas of work, starting with the hiring process, where prejudices based on gender identity or sexual orientation can lead to unfair

⁶ Ibid

treatment. Due to discrimination, queer employees frequently face obstacles in advancing their careers after they are hired, including being passed over for leadership positions or promotions. Furthermore, the subtleties of microaggressions, which show up as discriminatory comments or exclusionary conduct, create a hostile work environment that negatively impacts transgender employees' productivity and mental health. These interrelated issues highlight how important it is for businesses to create welcoming workplaces free from prejudice and discrimination, guaranteeing equal opportunities for all workers regardless of their gender identity or sexual orientation.

Workplace homophobia and LGBT exclusion have a GDP loss of 0.1-1.7%. A large percentage of LGBT face discrimination, 56% in white-collar employment, and 70% are sexually harassed. The transgender population is the most vulnerable, with high instances of physical and psychological abuse.⁷ The World Bank 2014 report indicated the economic losses of LGBT exclusion in India. The 2016 Indian LGBT Workplace Climate Survey found that 87% of LGBT individuals have no access to formal employee resource groups, and more than half risk losing their jobs for being LGBT. The survey also indicated that 40% of those surveyed were harassed and many traumatized by homophobic comments.⁸ According to an NHRC study, 18% of transgender individuals suffer physical abuse, 92% are deprived of economic opportunities, and even qualified

candidates face rejection from jobs. Many transgender individuals hide their identities at the workplace fearing discrimination. Workers avoid filing complaints or sharing their sexual orientation because they are in weak positions in organisations.⁹ With reference to the 2019 The Guardian poll, 70% of LGBT (lesbian, gay, bisexual, and transgender) people are sexually harassed in the workplace. The World Bank published the report "The Economic Cost of Homophobia and the Exclusion of LGBT People: A Case Study of India" in 2014.¹⁰

IV. Significance of The Transgender (Protection of Rights) Act, 2019:

Legislative recognition is crucial for transgender individuals to navigate society with dignity and respect, as it validates their gender identity and helps reduce societal stigma. Because this right ensures that transgender people are legally recognized as their identified gender, providing them with access to various legal and social benefits, such as the ability to change their name and gender on official documents, access to appropriate healthcare, and protection from discrimination. Therefore, the Transgender (Protection of Rights) Act, 2019 meaningfully opined the followings:

- **Section 3** Protects transgender persons from unfair treatment in education, employment, healthcare, movement, property rights, public services, and political participation. This Section further elaborates that:

⁷ See Research in the Sociology of Health Care, (2008) Vol. 25, pp. 229-252. Cf. <https://www.ijnrd.org/papers/IJNRD2408056.pdf> (Accessed on 16/02/2025)

⁸ MINGLE, The Indian LGBT Workplace Climate Survey 2016, (2016). Cf. <https://vartagensex.org/wp-content/uploads/2019/10/1559396942000-mingle-lgbt-wrkplc-climt-srvy-2016.pdf> (Accessed on 16/02/2025)

⁹ MINGLE, The Indian LGBT Workplace Climate Survey 2016, (2016). Can be accessed on

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¹⁰ Frances Perraudin, "Survey Finds 70 per cent of LGBT People Sexual Harassed at Work", The Guardian (2019). Cf. <https://www.theguardian.com/uk-news/2019/may/17/survey-finds-70-of-lgbt-people-sexually-harassed-at-work>. (Accessed on 16/02/2025)

- i. No transgender individual shall be excluded from admission, expelled from schools, colleges, universities, or other educational facilities, or subjected to discriminatory treatment in schools, colleges, universities, or other educational services.
 - ii. Discrimination in employment, such as in the workplace, discrimination, harassment, or limitations on career prospects, is not allowed.
 - iii. No employer shall deny employment opportunities or fire a transgender employee simply because of their gender identity.
 - iv. Transgender people should never be denied or discriminated against in hospitals, clinics, or any medical treatment, including access to gender-affirming care.
 - v. No transgender person should be deprived of access to goods, accommodation, services, benefits, privileges, or opportunities intended for public use.
 - vi. Restriction on the free movement of transgender persons, including institutional or social barriers, is not allowed.
 - vii. Transgender individuals cannot be excluded from the provision of housing, rental units, or occupancy of any property on the grounds of their gender identity.
 - viii. Exclusion of transgender individuals from standing for elections or serving in the government or private institutions is not permitted.
 - ix. No transgender person can be denied admission, expelled from, or discriminated against in the government or private institutions where they might be receiving care or custody.¹¹
- **Section 4** expressively grants legal recognition of gender identity without forced medical procedures as well as allows transgender persons to self-identify of their gender without external validation. From the careful analysis of this section signifies following two aspects:
- a. Right to be recognized as transgender. That means the right to be recognized as transgender is a fundamental human right

¹¹ See “Section 3. Prohibition against discrimination. No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:
(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;
(b) the unfair treatment in, or in relation to, employment or occupation;
(c) the denial of, or termination from, employment or occupation;
(d) the denial or discontinuation of, or unfair treatment in, healthcare services;
(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity

dedicated to the use of the general public or customarily available to the public;
(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;
(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;
(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and
(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.” cf.
<https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf> (Accessed on 16/02/2025)

that acknowledges the existence and identity of transgender individuals. This recognition also facilitates their access to education, employment, housing, and other essential services, contributing to their overall well-being and social inclusion.

- b. Right to self-perceived gender identity. That means the right to self-perceived gender identity is the principle that individuals have the autonomy to define and express their own gender identity without being subjected to medical, legal, or societal constraints. This right is fundamental to the dignity, autonomy, and human rights of transgender and gender-diverse individuals.¹²

- **Section 9** provides that every establishment must provide equal opportunities and inclusive policies for transgender employees and any form of bias or unfair treatment based on gender identity is strictly prohibited. That means no organization or workplace is allowed to discriminate against transgender individuals in any employment-related matter. Therefore, employers must ensure equal opportunities and fair treatment for transgender people in all employment activities.¹³
- **Section 14** provides that the government must design and execute welfare schemes and programs for the livelihood of transgender individuals. This entails

vocational training to improve their skills and self-employment opportunities to ensure economic independence and financial stability.¹⁴

APPROACHES TOWARDS CREATING TRANSGENDER FRIENDLY WORKPLACE:

- ✓ Enhancing diversity in the hiring process can be greatly aided by blind recruitment practices. Employers should reduce unconscious biases and guarantee that candidates are assessed only on the basis of their qualifications and skills by implementing blind recruitment practices. Employers can choose the best candidates for open positions through anonymous recruitment, irrespective of their gender identity or sexual orientation.
- ✓ Promoting inclusivity through organizational policies and practices is crucial in addition to blind recruitment. Establishing well-documented equal opportunity policies that specifically forbid discrimination on the basis of sexual orientation or gender identity is one way for businesses to show their dedication to the inclusion of transgenders. Support for the transgenders community can be further demonstrated by using Pride colours on the company's website and other materials. Additionally, allowing candidates to select from a variety of gender categories and offering optional gender identity disclosure options during the application process promotes inclusivity and fosters a more

¹² See “Section 4. Recognition of identity of transgender person. — (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act. (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.”

“cf. <https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf> (Accessed on 16/02/2025)

¹³ See “Section 9. Non-discrimination in employment. — No establishment shall discriminate against any transgender person in any matter relating

to employment including, but not limited to, recruitment, promotion and other related issues.”

cf.

<https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf> (Accessed on 16/02/2025)

¹⁴ See “Section 14. Vocational training and self-employment. - The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.”

cf. <https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf> (Accessed on 16/02/2025)

accepting atmosphere for transgender people. Another crucial step in promoting inclusivity is the implementation of a flexible dress code policy that takes into account a range of gender expressions.

- ✓ Developing sensitivity in workers is just as crucial to establishing a transgender-friendly workplace. Employers can educate staff members about transgender issues, such as the transition process and the value of inclusive language and conduct, by holding workshops and roundtable discussions with senior leaders. Programs for pre-placement sensitization can guarantee that transgender staff members feel appreciated and supported as soon as they start working for the company. Businesses can emphasize the value of polite and inclusive behaviour in the workplace by tying bullying and harassment policies to performance reviews. Furthermore, improving the physical infrastructure—for example, by installing gender-neutral restrooms helps make the workplace more welcoming to transgender staff members.
- ✓ A transgender-friendly workplace can also be achieved by establishing networks of support within the company. The creation of transgender-specific Employee Resource Groups (ERGs) gives workers a forum for support and involvement, enabling them to interact with like-minded people and gain access to resources and support systems. The organization can foster understanding and allyship by implementing a reverse mentoring program in which junior transgender employees teach senior professionals about transgender issues. Additionally, promoting the company's pro-transgender position both internally and externally through advocacy initiatives and transgender event sponsorship shows a dedication to transgender diversity and inclusion.

V. Conclusion:

The recognition of the Right to Work as a fundamental right for transgender

individuals is a major step towards social justice and equality. Constitutional provisions, judicial rulings, and legislative enactments have all contributed to affirming the imperative of equal employment opportunities and non-discrimination. The actual challenge remains in the effective enforcement of these rights in the workplace, schools, and society as a whole. A transformative strategy needs to have rigorous implementation of anti-discrimination policies, sensitization programs, and affirmative employment policies in the public and private sectors. Vocational training and self-employment schemes also need to be intensified so that transgender individuals have sustainable livelihood opportunities. True inclusion is possible only when society transcends legal recognition to acceptance, making sure that transgender individuals are able to seek dignified and meaningful work without fear of bias or exclusion. Hence, it may be stated that, the Right to Work of third-genders is not merely a legal right as it is a fundamental step toward equality, empowerment, and transformation.

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