

An Analytical Study on Shifting Norms: The Legal Landscape of Gender Identity in Employment

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ABSTRACT

The research paper delves into the legal, social, and even, Evidently, economic problems within the LGBTQ community in India that its members, especially transgender people, face as regards to labor. The Indian Constitution promises equality and non-discrimination through Articles 14, 15, and 21, but it erects systemic barriers for transgender entry into public employment and, more broadly, into other economic benefits. The Transgender Persons (Protection of Rights) Act of 2019 is legislation that gave legal recognition and protection to transgender persons, The implementation of anti-discrimination laws in India remains wanting. They are still harassed and discriminated against in places of work and even in recruitment processes.

This study analyzes the broader movement for LGBTQ rights in India, especially in light of the landmark 2018 Navtej Singh Johar judgment decriminalizing homosexuality. The legal gain did not change the prejudices against LGBTQs in India, as their full equality is obstructed by a heterogeneous attitude about same-sex marriages, adoption, and public services, among others. This paper illuminates the cyberbullying and other forms of social harassments that LGBTQ youth are subjected to. By analyzing critically these legal frameworks and social issues, this paper notes the disparity between rights granted legally and the real-life experience of the LGBTQ community in India. The study reveals a pressing need for a full-fledged anti-discrimination law, incentive enforcement, and transformational change in society itself if LGBTQ people are to enjoy inclusion and equality. This analysis ends with some policy prescriptions including affirmative actions in employment, better legal protections, and sustained efforts to alter the negative public perspectives of the LGBTQs, which would be essential for any hope of social justice for the LGBTQ community in India.

Keywords: LGBTQ, Gender Identity, Social Harassment, Anti- Discrimination, Discrimination at Workplace

1.INTRODUCTION

After years of deep change in awareness on LGBTQ+ rights, gender identity in employment continues to shift in the other direction entirely, further pressed by advocates of gender diversity. Traditionally, most legal systems operated under rigid, binary models of gender, excluding and marginalizing non-binary and transgender individuals. This often would leave the individuals unprotected by basic workplace safeguards and exposed to systemic discrimination, harassment, and advancement opportunities. In recent years, however, society has started embracing a deeper understanding of gender identity and has slowly drifted

towards policies that include workers based on all genders against forms of disparities in the workplace. The workplace in much of the world had, for generations, been regulated by laws reflective of broader societal standards that didn't recognize gender diversity. Policies and regulations were based on an assumption of people being male or female: two straight categories, leaving the transgender and non-binary individuals walking through often hostile environments.

However, the efforts of advocacy groups, grassroots organizations, and LGBTQ+ activists have successfully taken on these archaic norms. In exposing the lived experiences of marginalized individuals, they strengthened legal and cultural changes that affirm the rights & dignity of all employees across different gender identities. . Recently, there has been a significant increase in judicial and legislative actions against gender-based employment discrimination. Such precedent has been created by several courts through landmark decisions affirming transgender and non-binary people's right to self-identify, their access to gender-affirming healthcare, and their right to be treated fairly at work. Such rulings also create precedent by requiring employers to update their policies and practices.

There can also be legislative changes for effect. More recently, states have adopted anti-discrimination laws that expressly include gender identity and gender expression in their non-discrimination clauses. On a more granular basis, some states have enacted regulations mandating workplace accommodations, the provision of inclusive restrooms, coverage for gender-disaffirming healthcare treatments, and dress code flexibility. This reflects a larger societal recognition of the inherent dignity that belongs to every individual. Its compelling message is that no one should push others back or assert pressures to hide who they are.

This gives opportunities but burdens to business as the norms of legal sensitivity concerning gender identity evolve. Moreover, businesses will increasingly realize that, besides being alive on the legal front, developing inclusive workplaces is more pressing as a moral and strategic imperative. Research shows conclusively that diverse and inclusive work environments generate higher employee satisfaction and innovation, translating into better business performance. Companies now have another compelling reason to update policies and review current workplace environments in line with the constantly changing legal standards. This could be done by formulating stringently enforced anti-discrimination policies, conducting informal sensitivity training, and encouraging leaders at all levels of the organization to help facilitate a culture of inclusion. Employers should also counter unconscious biases and ensure practices employed in the workplace do not always discriminate on hiring, promotion, and evaluation.

Societal changes would also lead to more equality and equity. An employee is likely to flourish professionally and personally when valued and supported at work. In this way, ripples go outward, allowing greater acceptance and understanding of gender diversity within the community. This change in legal norms concerning gender identity in the workplace has shown that the increasing recognition of more rights and dignity for transgender and non-binary people is now on the books. In short, there is much more to real inclusion than just protection by law-it requires effort from all the stakeholders of businesses, employees, and society to build a place of work that everyone will value and respect. This paper analyzes changing legal standards on gender identity in employment, tracing landmark legislative and judicial decisions and their implications for business, employees, and society more broadly. It also considers how much still has to be done to make workplace policies and practices keep pace with these advances in the law and how organizations can create inclusive work environments that respect all employees' identities.

2. GENDER IDENTITY

Some states define gender identity as an individual's inner conviction that their gender is that of male or female, and it neednot be corresponding to the sex assigned at birth. Biological sex is determined by physical anatomy, whereas gender identity is identification with any gender irrespective of external appearance. Unlike biological sex, Gender is regarded as a spectrum, and one person could identify as male, female, between the two, or without gender altogether.

2.1 TYPES OF GENDER IDENTITY

- **Transgender** – someone whose gender identity does not align with the sex they were assigned at birth.
- **Cisgender** – someone who identifies with the gender they were assigned at birth.
- **Nonbinary** – someone who does not identify their gender with the male-female binary, also known as genderqueer. This can be an individual who identifies as having no gender or multiple genders. Someone who does not identify as any gender is also known as agender.
- **Gender fluid** – someone whose gender identity changes continuously, one day they may identify as male and the other they may have no gender.¹

3. BENEFITS OF A GENDER INCLUSIVE WORKPLACE

Building a workplace that welcomes all genders plays a key role in making sure workers of every gender identity feel appreciated, respected, and have the same chances to succeed. This inclusive method has an impact on the range of ideas resulting in more imaginative problem-solving approaches. Team members with diverse perspectives contribute to discussions and help make decisions. This diversity not only enhances creativity but also boosts employee satisfaction and retention, as individuals are more likely to remain with an organization that allows them to be their authentic selves². A supportive, inclusive atmosphere reduces stress and discrimination, fostering higher morale and lowering turnover rates. Additionally, businesses that put gender inclusivity first snatch up a great rep for being ahead of the curve and big on social duty. This draws in the best folks and makes customers stick around. Also, an inclusive work vibe boosts teamwork and getting stuff done by giving everyone a feeling of being part of the team and getting respect. It also helps organizations comply with anti-discrimination laws, reducing the risk of legal issues related to gender bias or harassment. By eliminating gender-based barriers, businesses can tap into a broader, more qualified talent pool, ultimately enhancing overall performance. In short, building a gender-inclusive workplace is not only ethically sound and socially sound but also vital for long-term business success and sustainability.³

In the case of *S. Sushma*⁴ *Sushma S. v. Commissioner Of Police, W.P. No. 7284 of 2021*.

Delivering another landmark judgment on June 7, 2021, the Madras High Court declared that a same-sex couple who had faced harassment both from their own families and police harassment were entitled to live together without interference. The Court affirmed that sexual orientation is an intrinsic part of individual identity and that same-sex couples also deserve constitutional protections like the rest of the society. The Court ordered sensitization training on LGBTQ+ issues for police officers, judiciary members, educational institutions, and healthcare professionals and protective measures against harassment and discrimination.

¹ Rights of transgender in India – Sex Reassignment Surgery India. <https://www.reassignmentsurgery.co.in/rights-of-transgender-in-india/2922/> accessed on September 21 2024

² Shivam Sharma, Overview of LGBTQ+ in India, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

³ Diversity And Inclusion In The Workplace: Creating An Equitable Environment | Jinn. <https://jinn.careers/blog/managers/diversity-and-inclusion/> accessed on September 21 2024

⁴ *S. Sushma v. Commissioner of Police, W.P. No. 7284 of 2021*.

It also called for curricular changes to include teachings about LGBTQ+ rights. This progressive judgment was a further step toward acknowledgment and protection of same-sex relationships in India, paving the way for broader social and institutional changes to protect the rights and dignity of the LGBTQ+ persons.

4. SOCIAL MEDIA BULLYING AND HARASSMENT ON THE LGBTQ COMMUNITY

The LGBTQ community remains marginalized in other parts of society; this is particularly alarming bullying on digital platforms, where the harassment appears louder with a strong amplitude that has severe effects concerning the psychological and welfare situation. Abuse is also within abusive comments, such as hateful content sent for targeting LGBTQ. The negative interactions eventually break the confidence of the vulnerable minority since LGBTQ individuals will withdraw into isolation far from communities that would protect them. In schools, bullying or harassment occurs because that is where the majority of young people face extreme psychological pressure, from very high levels of anxiety to depression and suicide attempts. Highly pressing is the need for systemic interventions: this will include governments, institutions of learning, and society at large.⁵

To start, governments have the first frontline role in putting up laws and policies that will ensure the protection of LGBTQ individuals and punish those perpetrators involved in acts of discrimination and harassment. Among the institutions of learning, schools, and colleges must take the initiative of planned programs to raise awareness among the public on various sexual orientations and gender identities. These campaigns should involve not only students but also parents and educators so there is a culture of respect, empathy, and inclusion. In countering bullying in schools, there must be designated anti-bullying committees constituted by key stakeholders such as the vice-principal, senior teachers, counselors, medical professionals, legal advisors, and school management representatives. These committees are supposed to deal with complaints of bullying and ragging effectively, impose punishments like writing warning letters or rustication in the case of culprits, and help victims.

Above and beyond this, schools should also make regular arrangements for workshops and sensitize the students toward the destructive influence of bullying as well as their value in respecting diversity among people. Bullying in all its forms, but especially in the LGBTQ category, is not novel to the given scenario. The occurrence of such harassment with sexual orientation, gender identity, and gender expression has been known to be present for decades concerning their occurrence among youngsters. This is a type of behavior that has evolved in more recent times along with new advances in technologies, where most change resides, and in turn creates an environment conducive to cyberbullying on a somewhat newer scale. It can provide a veneer of anonymity, leading to escalated cases of bullying in terms of severity. The burden of bullying, both online and offline, presents considerable mental health risk within LGBTQ youth requiring urgent attention and intervention. In fact, research has long shown that bullying—both in the traditional sense and online—is closely related to problems faced by LGBTQ individuals. Cyberbullying is uniquely linked to having represented a greater prevalence of psychological distress, self-harm, and suicidal ideation among LGBTQ youth.⁶ Adults working with children, like educators, counselors, and community leaders, need to be actively vigilant to do so. This can be achieved by creating an inclusive environment through digital literacy programs on responsible online behavior and having a comprehensive

⁵ Yatin Gaur, 'Evolution of LGBT Rights in India and taking the narrative forward: Living free and equal' (Ipleaders, 21 June 2021) <<https://blog.ipleaders.in/evolution-of-lgbt-in-india-and-taking-the-narrative-forward-living-free-and-equal> > accessed 9 september 2024

⁶ Nivas Gunda, India's LGBTQ Rights, Legal Obstructions to Society and Cyberbullying, 2 JUS CORPUS L.J. 164 (2022).

system of support in place for the victims. This is fundamentally an effort parents can make. Parents should be encouraged to learn about LGBTQ issues and create home environments where children are allowed to express their identities. Communication, coupled with an attitude of acceptance, can minimize the effects of bullying and allow LGBTQ youth to face societal challenges with resilience. In summary, bullying and cyberbullying of LGBTQ must cease. This can only be achieved through a multi-faceted approach. There must be strict laws from the governments to curb hate crimes. Online harassment needs to be checked through robust mechanisms on social media sites. This change must begin with educational institutions, and they should lead the way in creating inclusive attitudes towards sexual orientation and gender identity. Through joint work, we can build a society where people of all sexual orientations and gender identity can live harassment and discrimination free.

5. LAWS PROTECTING TRANSGENDER PERSONS IN INDIA

Despite the increasing recognition of the demands for inclusion and equality, India has passed several laws and legal provisions aimed at protecting the rights of transgender persons. Below are some important legal frameworks and protections for transgender persons in India.

5.1. TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

A bill was introduced on July 19, 2019, by Mr. Thaawarchand Gehlot, the Minister for Social Justice and Empowerment, in Lok Sabha for rights and welfare of transgender persons. The term 'transgender persons' has been used to refer to transmen, transwomen, and also those having intersex variations, that is, where the sex organs, chromosomes, or hormone levels differ from the normative male or female standards.⁷

5.1.1 Prohibition of discrimination

The bill categorically prohibits discrimination of transgender persons on various fields in life for equal opportunities and treatment. It further underlines protection in the following fields: 1. Education: The State shall ensure entry into educational and sports and other recreational facilities with no discrimination with regard to entry.

1. Healthcare Equal access to general health services with no discrimination.
2. Work: Transgender persons shall not be harassed and discriminated against in private or public spaces.
3. Freedom of Movement: No one shall restrain them from their liberty of movement.
4. Right to Inhabit, Rent or Occupy Property: They shall enjoy equal rights in relation to housing and dwelling.

The bill provides a procedure for issuance of a Certificate of Transgender Identity. It requires applications seeking the said certificate to be moved before the district magistrate to issue a declaration formally declaring a person as transgender. In addition, persons who have undergone sex reassignment surgery shall be eligible for a new certificate that reflects change in identity.

5.1.2 Crimes and Punishment

The Bill has also made severe punishment mandatory for crimes related to transgender rights:

- a, Forced Labor: Other than mandatory public service of the state, forcing a transperson to do labor is also prohibited.
- b, Restriction to Public Places: Restriction to the access of public place to the transgender people is

⁷ The transgender (protection rights) bill , 2019

punishable.

c, Exploitation: All forms of sexual exploitation, physical or mental exploitation of transgender persons are liable for six months to two years imprisonment, or fine or both.

5.1.3 Forming NCT- National Council for Transgender Persons

It has been constituted under the Ministry of Social Justice and Empowerment with members from both the governmental and non-governmental sectors. It has five members from the transgender community, and five experts from the non-governmental sector. Some of its primary responsibilities include advising the central government, monitoring policies, and recommending the necessary actions for protection of rights of transgender persons.⁸

However, despite these progressive measures, the Act has faced criticism, particularly from transgender rights activists. The punishment for abusing a transgender women in this country ranges from six months to two years under Indian law, the punishment for abusing for harassing a cisgender women is mostly life imprisonment and in some cases death penalty. The less punishment for transgender people create less value and is dispensable. A major point of contention is the requirement for transgender individuals to apply for a gender identity certificate, which some argue infringes on their right to self-identification. Activists claim that this process undermines the autonomy of transgender persons to determine their own gender identity freely, as it subjects them to bureaucratic oversight. While the Act is a step forward in recognizing and protecting the rights of transgender individuals, these limitations have sparked debates about the extent to which it truly empowers the community and whether additional reforms are needed to ensure full equality and self-determination.⁹

5.2. RECOGNITION OF TRANSGENDER AS "THIRD GENDER" (NALSA VS. UNION OF INDIA, 2014)¹⁰

In the landmark NALSA vs. Union of India case, the issue held was whether the term hijra would be officially recognised as a third gender, under the aegis of the Hon'ble Supreme Court of India, meant that there would be a third gender recognition for the community in public health, education, employment, reservations, and welfare schemes. Such was the landmark judgment of the Supreme Court which legally sanctified the status of "third gender" for hijras and transgender people, being the foremost important milestone toward equality and inclusion. In the old days, transgendered people were legally forced to assume either male or female status; however, because of this decision, they were able to publicly declare that they are transgendered or Third Gender, and get legal and social recognition.¹¹

The court's decision states that it goes against Articles 14, 15, 16, and 21 about equality stopping discrimination same chances, and having life and freedom in the Indian Constitution. To fix past wrongs, the judges told the Indian Government to see transgender folks as a group that's behind in money and society so they get to use special spots in school and work, which the Constitution says they can have. This includes their classification as Other Backward Classes (OBC) to ensure fair representation and opportunities in government jobs and educational institutions. Further, the court held that there is no inherent pathology in the congenital difference between the birth-assigned gender and the gender the person identifies as. The court opined to abate the consequent anguish instead of projecting it as a

⁸ Ibid 4

⁹ Nivas Gunda, India's LGBTQ Rights, Legal Obstructions to Society and Cyberbullying, 2 JUS CORPUS L.J. 164 (2022).

¹⁰ Nalsa v. Union of India, ,air 2014 sc 1863.

¹¹ ed. Rachit Sharma, Rights of LGBTQ in India and the Struggle for Societal Acceptance, 4 INT'L J.L. MGMT. & HUMAN. 18 (2021).

pathological phenomenon. The Supreme Court, in its judgment, held that the distinction was between biological characteristics like chromosomes, genitalia, and secondary sexual features and gender attributes, which were described as a deep psychological and emotional sense of identity an individual felt. It recognized the spectrum and the understanding that gender is not strictly binary.¹²

Perhaps most empowering was the recognition of the right of a transgender person to change gender without needing sex reassignment surgery. This means that they can declare and register themselves as Third Gender in accordance with a felt sense of identity and thus reassert their autonomy and dignity over their lives. It saw the situation as a compulsion for state governments to frame policies to redress deprivation from quality of life suffered in terms of health, living, and socialization by transgender persons. This has been a very landmark decision wherein the impact resulting from this grave challenge was offered when the Bill, Transgender Persons (Protection of Rights), 2019. Here, it was criticized since the progressive vision with which the Supreme Court judgment brought across is not entirely on board, and that, primarily regarding the aspects of autonomy as well as rights. It invoked massive concern all around activists to members of transgender community urging changes in the reform of legislatures in consonance with the laid-down principles given by the courts.

However, important judgment of Supreme Court for transgender in the recognition stage has brought new developments in the documentations of one's identity. The third column for the gender of the identification number, which includes Aadhaar, is also filled with male/female/third gender. For most people living in the world, however, access to all these remains poor. Till now, an estimated 19,000 transgender individuals across India are said to have received Aadhaar cards which declare them Third Gender in official terms. It is a great stride towards the recognition of identity. For social, economic, and political justice among the transgender population, the State governments are showing initiative. Such a State where pro-active governance has been evidenced is Karnataka that has shown energetic engagement with transgender community's affair.¹³

As of the 2011 Census, India's population of transgender is about 490,000. Yet only a minuscule fraction of these can earn for themselves through work, meaning their socio-economic deprivation is starkly pronounced. In recent times, much effort has been taken toward reducing this imbalance. Still, progress is extremely slow. For example, lately, a Chennai start-up attempted to assimilate the social lives of the transgender people with the society by generating employment opportunities for them. Within 14 months, it could place only 42 transgender people at work, which speaks for the depth of systemic change required.¹⁴

Better employment and more employment thus acquire importance in achieving social equality with transgender people. While employment ensures that there is complete freedom from economic strife, with it comes along self-respect and social standing also. With governments and private organizations joining together with the civil society, facilitating workplaces that have an easy fit, up-skilling exercises and enough opportunities to get there has to be implemented. Eradication of these above-mentioned kinds of barriers from India will even further bring it closer to social justice and equality envisioned for the

¹² Rachit Sharma, Rights of LGBTQ in India and the Struggle for Societal Acceptance, 4 INT'L J.L. MGMT. & HUMAN. 18 (2021).

¹³ Utkarsh Mishra, 'Transgender and the Right to Employment in India: Analysing the Trajectories of Discrimination' available at <https://jurnal.uns.ac.id/bestuur/article/view/51997/pdf>

¹⁴ *ibid*

transgender population living there.¹⁵

This judgment marked a transformative stance as it made recognition before the Indian State of rights and dignity to the transgender community. It set a basis for increasing social acceptance along with legal protection leading to redressal of system inequalities and an inclusive society. recognized transgender individuals as the "Third Gender" under the Indian Constitution. A key aspect of this ruling was affirming the right of transgender persons to self-identify their gender without the need for medical procedures. The Court made sure transgender people got all the basic rights, like being equal saying what they think, and having freedom. It means they're covered by the Constitution. Also, the Court told the government to think of transgender people as folks who are behind in social and school stuff, so they can get special spots in jobs and schools. This decision was a big move for better legal respect and safety for transgender folks in India.

5.3. RIGHT TO CONSTITUTIONAL EQUALITY (ARTICLE 14, 15, 19, AND 21)

The Constitution of India provides for the protection of basic human rights to all citizens, which have now been interpreted as extending it to include transgender persons. Article 14 guarantees equality before the law and provides equal protection to all, including transgender persons. Under Article 15, it prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, whereby sex means gender identity. Article 19 guarantees the right to free speech and expression, empowering transgender individuals with the freedom to express and announce their gender identity. Article 21 guarantees the right to life and liberty, ensuring the right for every person to lead a life of dignity and to make choices in their self-determined gender identity. The combined effect of these constitutional provisions works to reinforce legal rights of transgender persons and ensures that they are entitled to equality and, more so, to the respect which comes with their right to live dignified lives.

In the case of NAZ FOUNDATION V GOVT.NCT OF DELHI, 2009 (6) scc 712.¹⁶, The Naz Foundation, an NGO focused on HIV/AIDS prevention, filed a petition challenging Section 377 of the Indian Penal Code, arguing that the law obstructed HIV prevention efforts and violated the fundamental rights of LGBTQ+ individuals. Section 377 was frequently used to harass and discriminate against the LGBTQ+ community, infringing on their rights to dignity, privacy, and health. The core issue in the case was whether the criminalization of consensual homosexual acts between adults under Section 377 violated fundamental rights guaranteed by the Indian Constitution, including the right to equality under Article 14, protection against discrimination under Article 15, and the right to life and personal liberty, including privacy and dignity, under Article 21.

On July 2, 2009, the Delhi High Court delivered a historic judgment, ruling that Section 377 was unconstitutional to the extent that it criminalized consensual sexual acts between adults in private. The Court found that the law violated Articles 14, 15, and 21 of the Constitution, as it unjustly discriminated against a vulnerable section of society and deprived LGBTQ+ individuals of their fundamental rights. This judgment was a groundbreaking victory for LGBTQ+ rights in India, effectively decriminalizing homosexuality and affirming the community's constitutional protections.

In 2013, however, the Supreme Court also overturned the judgment of the Delhi High Court in the Suresh

¹⁵ Archana Kumari & Vandana Kumari, Transgender and the Right to Employment in India: Opening the Doors of Opportunities, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

¹⁶ Naz Foundation v. Govt. of Nct of Delhi, 2009 (6) scc 712.

Kumar Koushal case, which forced them to reinstate the criminalization of homosexuality under Section 377. It was this reversal that reignited legal and social activism culminating in the 2018 Supreme Court ruling in the Navtej Singh Johar case; its favorable decision finally decriminalized homosexuality in the country of India. Despite its reversal in 2013, the 2009 Delhi High Court judgment was pivotal in advancing the cause of LGBTQ+ rights in India, laying the groundwork for future legal progress and greater social acceptance.

5.3.1 NAVTEJ SINGH JOHAR V. UNION OF INDIA , AIR 2018 SUPREME COURT 4321¹⁷

The respected Supreme Court of India rescinded the judgement passed by the Delhi High Court in 2013 in the case of Suresh Kumar Koushal. Such a judgment allowed Section 377 of the IPC, which again makes consensual same-sex relationships unlawful. This brought many protests from all over the country for LGBTQ+ rights. Many famous people have filed pleas that questioned whether Section 377 is constitutional. These include hotel owner Keshav Suri, chef Ritu Dalmia, and dancer Navtej Singh Johar, among many others. The Supreme Court decided to refer the matter to a larger bench by stating that it required consideration from judges. During this time, the government stayed neutral and left it up to the Court. The petitioners submitted that Section 377 infringed upon their fundamental constitutional rights of privacy, freedom of expression, equality, dignity, and protection from discrimination.

On September 6, 2018, the Supreme Court rendered a landmark unanimous verdict on an issue involving a five-member constitutional bench. The Court held that Section 377 was unconstitutional in as much as it criminalized consensual sexual relations among adults. In the process, homosexuality is no longer a crime. The judgment also demonstrated how the law affected some important rights regarding love, independence, and identity. The Court held that Section 377 is vague, does not distinguish between natural and unnatural acts, and arbitrarily restricts the constitutional right to free speech under Article 19 of the Constitution. Sexual orientation is held as an integral part of the self. It would mean not accepting the basic rights of any citizen if the right to life is not allowed under Article 21. Another very relevant argument that was presented, then dismissed is that the group of LGBTQ + is a mere minority; so this minority shouldn't have the rights.¹⁸ The Court, therefore, did not uphold Koushal's ruling, describing it as unjust, unconstitutional, and ludicrous. It ruled that discrimination on account of sexual orientation is unconstitutional for sexual orientation is not only a natural occurrence but is scientifically and biologically based. It directed the government to mobilize the efforts to educate people on LGBTQ+ rights so that awareness and understanding in mental health, dignity, privacy, self-affirmation, and transgender rights can be raised. It was a momentous judgment that marked the beginning of the journey of India toward fairness and justice for the LGBTQ+ community. It was an important decision that reflected the beginning of India's journey towards fairness and justice for the LGBTQ+ community. This also paved the way for future progress in human rights and inclusion.

5.4. EQUAL REMUNERATION ACT, 1976

It has enacted the Equal Remuneration Act of 1976 in order to prohibit discrimination in remuneration with respect to employees, men, or women, performing work of similar character or value. Therefore, it is also based on gender equality as its goal is to eliminate wage gaps on the grounds of sex or gender. It

¹⁷ Navtej singh johar v. union of india AIR 2018 SUPREME COURT 4321

¹⁸ Rachit Sharma, Rights of LGBTQ in India and the Struggle for Societal Acceptance, 4 INT'L J.L. MGMT. & HUMAN. 18 (2021).

forces the employers to pay at equal scale for the equal work, so it allows the people in whatever gender so that they get an equal pay on an equal post. Equal Remuneration Act, 1976 provisions are focused mainly on promoting the equality in remuneration between men and women. It provides that no employer should pay men and women differently for the same work or work of equal value. The Act defines "equal work" to mean work which requires equivalent skills, effort, responsibility, and working conditions. Two employees are considered to do work of equal value if, in any instances, two persons, regardless of gender, can be employed for work of equal value.¹⁹

Section 4²⁰ of the Equal Remuneration Act holds an important provision, that is no employer shall pay lesser wages to women as compared to men for the same work. Section 5 of the Act does not allow employers to discriminate between genders while posting jobs or recruitment. The same terms and conditions while publishing a job must be included, so the prospects from both genders are treated equally. The provisions of the Act apply to all establishments, public and private, with more than 10 employees. Any employer who violates the provisions of the Act faces penalties, including fines or imprisonment, for non-compliance. The Act also provides for the appointment of labor officers to investigate and address complaints of wage discrimination.

In case of transgenders, the Equal Remuneration Act can be held applicable to the transgender community, although the Act never mentions any transgender in it. The transgender community has been recognized as a "third gender" under Indian law. Rights are guaranteed under the Constitution and specific laws, such as the Transgender Persons (Protection of Rights) Act, 2019. The recognition of transgender persons as a legally protected group under Indian law means that the principles of the Equal Remuneration Act must also extend to transgender individuals so that they can be paid equally for the same work or work of equal value. Although discriminatory wages and wage gaps have always been an historic hurdle to transgender persons for employment, the Equal Remuneration Act can act as an important vehicle for redressing this issue. For instance, if transgender workers are not paid less than their cisgender counterparts for doing identical work, then it would not be hard at all to frame an inclusive workplace, which comes under India's general legal initiatives to fight against the discrimination and earn equal rights to transgender people.²¹

Generally, transgender people tend to be discriminated against once they join the mainstream workforce; and when they are able to find a job, they end up with low-paid employment or informal sectors. Such has led to extreme economic inequalities for the transgender people. In this regard, implementing the Equal Remuneration Act can be one of the means to correct gender identity-based wage disparities. That way, economic status would be elevated among the transgender community. In an inclusive workplace, the Act would ensure fair and equitable treatment for workers who happen to be transgender, opportunities for advancement, and especially to receive fair wages and social dignity. With the emphasis on social inclusion, the government, as well as other institutions, are slowly adapting policies that advocate for transgender workers in the workplace. The Equal Remuneration Act, which seeks to eliminate gender-based wage discrimination, can be considered a powerful tool in the enactment of equal pay for transgender persons, advancing social justice, and diminishing economic gaps among this disenfranchised group. If the provisions of the Equal Remuneration Act were applied to all workers, irrespective of gender identity, India would make a good stride toward greater gender equity in the workplace and help break down the social and economic barriers that transgender people face.

¹⁹ Sadhana Sai Bhaskar, *The LGBTQ+ Community in the Workplace*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022-2023)

²⁰ Equal remuneration act 1976

²¹ Ibid 18

5.5. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013

The POSH Act, short for Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, is the law enacted to provide a safe workplace environment for women by addressing and preventing sexual harassment at workplaces. Under the Act, all workplaces having more than 10 employees must have an Internal Complaints Committee (ICC) to deal with any complaints of sexual harassment. The Act primarily aims at preventing sexual harassment, providing redressal to the victims, and ensuring that the workplace is free from discrimination and harassment based on gender²². The POSH Act was primarily designed to protect women from sexual harassment. However, it does not mention transgender persons explicitly. However, its provisions can be interpreted to extend protection to transgender individuals, who, like women, are vulnerable to gender-based harassment. Transgenders are stigmatized in society and are rejected and discriminated against. They are harassed and excluded from workplaces, which may be termed as verbal abuse, physical harassment, and other discriminatory conducts. Considering the vulnerabilities of transgender persons, it is essential that they be brought under the umbrella of protections provided by the POSH Act. Section 2(n) of the Act defines sexual assault. In the 2021 case of *Union of India v. Mudrika Singh* Civil Appeal No. 6859 of 2021 a 2 judge bench of the Supreme Court found that protection against sexual assault in the workplace is a fundamental right under Article 21 of the Constitution.²³

The POSH Act defines sexual harassment very broadly, and this inclusive definition can be extended to include transgender persons. Section 2(n) of the POSH Act defines sexual harassment as any unwelcome physical contact, advances, or any behavior that creates a hostile, intimidating, or offensive work environment. This clause can be stretched to transgender employees as well wherein their harassment would involve misgendering, verbal abuse, or discriminatory treatment at work place based on gender identity or expression. Furthermore, Section 3 of the Act enumerates sexual harassment and includes the following:

- Unwelcome physical contact and advances
- Demand or request for sexual favors
- Making sexually colored remarks
- Showing pornography
- Any other unwelcome behavior of a sexual nature

These acts, in case done against transgender persons, would fall under sexual harassment under the provisions of the Act.²⁴

All workplaces that have more than 10 employees are required to constitute an Internal Complaints Committee (ICC). The ICC is supposed to investigate complaints of sexual harassment, offer a confidential and safe environment for the victim to report incidents of harassment, and take appropriate action against the accused. Though the Act speaks regarding protection to women, it would interpret that even transgender persons will be included within its coverage for claims of harassment as well as redressal in regard to this matter. All the members within the committee are expected to get sensitized by proper training into the handling of sexual harassment cases and the relevant sensitivity in such issues regarding the transgenders.

²² The sexual harassment of women at workplace act , 2013

²³ *Union of India v. Mudrika Singh* Civil Appeal No. 6859 of 2021

²⁴ Sadhana Sai Bhaskar, *The LGBTQ+ Community in the Workplace*, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022-2023).

For example, the ICC would be sensitized about gender identity and expression as well as the particular aspects of harassment that are likely to be targeted toward transgender individuals. At the same time, the transgender people will be relieved to express harassments at the workplace knowing they are protected and secured. In addition, grievance redressal measures must be guaranteed to the transgender and other employees who are not discriminatory based on gender identity and expression. Section 4 of the POSH Act also directs every employer to ensure that no instance of sexual harassment occurs by making workshops and other awareness programs compulsory for all employees.

These awareness programs should make it clear how employees' gender identities are to be respected. All transgender employees should be given full opportunities in these educational exercises. Programs of gender sensitization should therefore be directed at issues such as misgendering, correct pronouns, and creating a space where people are treated with dignity and respect regardless of gender identity. Further, Section 19 of the POSH Act mandates that an employer must take action against a worker who has been proven to have committed sexual harassment. This could include disciplinary action, warnings, and termination, based on the seriousness of the harassment. Transgenders, just like any other employee, must be accorded equal protection as well as have equal opportunities for reporting harassment with no fear of retaliation or discrimination.

There are also other external bodies such as the National Commission for Women (NCW) and the State Women's Commissions through which the complainant may seek further help if she feels she is not being treated fairly. These may take up the issues of transgender persons and work towards treating them fairly and protecting them from harassment in the workplace.²⁵

The Transgender Persons (Protection of Rights) Act, 2019, however, strengthens the inclusion of transgender persons under the POSH Act by providing special protection against sexual harassment as well as discrimination at both public and private workplaces. The act guarantees transgender persons freedom from any form of discrimination based on their gender identity and provides an avenue to seek legal remedies for harassment or mistreatment.

5.6. REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 KNOWN AS RERA²⁶

The Real Estate (Regulation and Development) Act, 2016, is a significant piece of legislation in the evolution of India's real estate sector. It marked a much-needed initiative taken by the Government of India to redress long-standing issues like project delays, lack of transparency, and financial mismanagement. The Act came into force from May 1, 2016. RERA is aimed at safeguarding the interests of homebuyers, preventing fraud and lack of transparency in real estate dealings, and penalizing the developers. A significant feature of RERA is to set up Real Estate Regulatory Authorities at each state and union territory with powers to oversee the sector while ensuring a robust redressal mechanism for grievances. This ensures buyers, developers, and agents have a platform to resolve disputes effectively.

RERA requires developers to register all residential and commercial projects exceeding 500 square meters or eight apartments before launching or advertising them. This registration process calls for detailed disclosure about the project, including land status, construction timeline, financial arrangements, and requisite approvals. These details are made available on the RERA website, thus furthering transparency and trust. This has helped in the prevention of financial mismanagement since, under RERA, 70% of the

²⁵ Ibid 23

²⁶ Lydia Manohar, LGBTQ Rights in India Its Challenges, Criticisms and Recommendations, 4 INT'L J.L. MGMT. & HUMAN. 3826 (2021).

money collected from the buyers needs to be kept in an escrow account and this money is usable only for acquiring land and costs of construction. The Real Estate (Regulation and Development) Act, 2016, simply known as RERA, has nothing specific in it to the rights of a transgender. Rather, it extends the overall broad provisions that state transparency, equity, and consumers' rights by indirectly promoting a transgender community regarding real estate purchase, rental, or leasing issues. According to RERA, no person, and that includes transgenders too, is harassed in terms of buying, letting, or any other related actions. It compels developers as well as real estate agents to work based on standardized and transparent procedures, which will not so readily lead to exclusion or biased treatment against transgenders. RERA further establishes contracts of housing in an unbiased and just way without any form of exploitation and force. Thus, the transparency and registration of real estate projects help safeguard transgender persons from fraudulent scams because the developer will have to declare all information related to the project. In addition, RERA provides a grievance redressal mechanism for transgender persons in case of any kind of discrimination or problems in dealing with real estate. The Act doesn't focus particularly on transgender rights but provides a more extensive framework of regulation, which can give rise to a more inclusive, more accountable environment, where transgender people aren't discriminated against in the real-estate sector and hence enjoy equal say.²⁷

5.7. RIGHT TO EDUCATION ACT, 2009

The RTE Act, 2009 is enacted to guarantee free and compulsory education to the children of ages 6-14 years. Though there is no reference of transgender children in the said Act, yet it has given a mandate inclusive of all; so its interpretation and the framework might safeguard and protect their rights as far as their educational rights are concerned. For instance, the transgender had not been allowed to go about in school for education for centuries. So, their specific issues need to be addressed through the RTE Act to empower and include them.

The RTE Act ensures free and compulsory education to children of all backgrounds, irrespective of caste, gender, or economic status. Hence, transgender children are also entitled to the same rights as other children under this act. Systemic and financial hurdles in access to education need to be overcome; otherwise, such students may face quality schooling. Under Section 3 of the Act, discrimination at the admission level is strictly not allowed. This is to say that transgender children must not be disallowed from school entry based on their gender. Schools are also expected to have an environment of equal treatment toward every child such that transgender students should be able to pursue their education without fear of bias or exclusion. The RTE Act also makes provisions for 25% of seats in private unaided and special-category schools for children belonging to the economically weaker section and disadvantaged groups. Children of transgender families are one of the most marginalized groups. This reservation has allowed them entry into educational institutions that otherwise may be denied access to them, given the financial and social constraints.

The other significant concern on which the Act has its base is removing school-level discrimination and harassment. Under Sections 8²⁸ and 9 of the Act, it becomes binding on both state and local bodies that no child should face either corporal or mental harassment in school. A transgender child undergoes immense mockery or bullying from kids, hence they must develop an atmosphere within their school to accommodate so that dignity or individuality does not violate children.

²⁷ Real estate(development and regulation)act 2016

²⁸ Right to education act, 2009.

In Section 29 of the RTE Act, provisions relating to an inclusive curriculum and pedagogy are also present. This provision includes child-centered learning that respects diversity, including gender diversity. Children can be accepted by their peers and educators toward transgender individuals through the inclusion of gender-sensitive content in school curricula. Thus, an increasingly inclusive educational environment is cultivated. The infrastructural requirements under section 19²⁹ that incorporated division of toilets, being boys and girls made the discussions over gender-neutral toilets inevitable in schools concerning Transgender and Non Binary children. The same requirements addressed by considering the need to ensure safety, inclusivity, and being a part of this education to the transgender kids. Even though some of these provisions make the education system all-inclusive, many transgender children still face all forms of challenges like bullying, stigma, and a high dropout rate. Most schools are clueless about how to properly meet the needs of transgendered students. NEP 2020 overcomes this by making mainstream education accommodate transgender students. It requires that gender-sensitive schools make any efforts that allow transgender children to be part of education without any discrimination.

The Transgender Persons (Protection of Rights) Act, 2019³⁰ further strengthens the educational rights of the transgender persons. Section 13 of the Act requires educational institutions to provide equal and inclusive education so that the transgender students may study in a respectful environment, respecting their identity and dignity. State governments and educational institutions have also taken initial steps for promoting the educational inclusion of transgender children. For example, Kerala has designed an all-inclusive transgender policy that provides free education and scholarships to the transgender students. Tamil Nadu and Karnataka have designed programmes with reservations and vocational training for transgender persons. Many universities have started special quotas for transgender students to ensure their adequate representation in higher education; for example, Delhi University and Tata Institute of Social Sciences.

The bedrock of an inclusive education system would be structured by the preservation of the RTE Act along with supportive legislation and proactive initiatives. However, constant efforts toward breaking barriers, challenging prejudices, and providing an equitable learning environment to help the advancement of transgender children in education is needed.

6. CHALLENGES IN TRANSGENDER PERSONS ACT, 2019

While Section 3 of the Transgender Persons (Protection of Rights) Act, 2019 seeks to prevent discrimination against transgender individuals in employment, several criticisms and potential drawbacks have been identified. One major issue is the lack of specificity, as the section broadly prohibits discrimination without providing clear guidelines or enforcement mechanisms, making it difficult to effectively resolve individual cases. There are also concerns about the limited scope of enforcement, with the Act failing to define the roles of agencies responsible for monitoring and enforcing its provisions. Additionally, the burden of proof often falls on the complainant, which can be particularly challenging for transgender individuals, especially in cases of subtle or systemic discrimination. The Act's broad definition of discrimination may not fully encompass indirect discrimination or bias based on gender expression. Implementation is another challenge, as success largely depends on how consistently the law is applied across different states, potentially leading to uneven protection. Moreover, the Act lacks detailed

²⁹ Ibid 28

³⁰ Transgender persons protection act ,2019

provisions for support systems like counseling, legal aid, or compensation for those facing discrimination, which are crucial for its effectiveness. Corporate and institutional readiness is also a concern, as the Act does not require employers to implement anti-discrimination training or awareness programs, leaving many workplaces unprepared to make necessary changes. Lastly, the Act primarily addresses formal employment, potentially overlooking informal or contractual work arrangements where discrimination might also occur.

7. CONCLUSION AND SUGGESTIONS

In conclusion, the evolving legal landscape for gender identity in employment marks a significant step toward ensuring equality and inclusion for transgender and non-binary individuals. The breakthrough cases like the landmark case Navtej Singh Johar case (2018) that established homosexuality and the NALSA v. Union of India case (2014) which declared transgender people as the "Third Gender" demonstrated the beginning points including the rights of the LGBTQ+ people in India. These judgments also not only emphasized the right to adaptation, but also imbued the aspects of nobility and equal treatment under the Indian Constitution.

Despite these progressive developments, the **Transgender Persons (Protection of Rights) Act, 2019**, while groundbreaking, has significant drawbacks. It requires transgender individuals to apply for a certificate of gender identity, which undermines the right to self-identification recognized by the NALSA judgment. Additionally, the Act's vague provisions regarding employment protections, the absence of clear guidelines for workplace discrimination, and inadequate penalties for offenses against transgender persons diminish its effectiveness. Furthermore, economic benefits like Employment Provident Fund Scheme 1952, and Workmen's Compensation Act, 1923 are given only to those related by blood or marriage and are denied to the LGBTQ+ community people.

To address these challenges, several remedies are essential. First, the process of obtaining a gender identity certificate should be simplified or made optional to respect individual autonomy. Second, the Act should be amended to include stronger enforcement mechanisms, clear anti-discrimination guidelines for employers, and affirmative action provisions to support the inclusion of transgender individuals in the workforce. Finally, there is a need for widespread awareness campaigns, both at the institutional and societal levels, to change perceptions and create truly inclusive work environments. Only through these reforms can India fully realize the promise of equality for all genders in employment.

The legal landscape surrounding gender identity in employment has witnessed a profound transformation over recent years, driven by heightened awareness of LGBTQ+ rights and growing advocacy for gender diversity. Historically, many legal systems operated within rigid, binary frameworks of gender, which excluded and marginalized non-binary and transgender individuals. This exclusion often left such individuals without access to fundamental workplace protections, exposing them to systemic discrimination, harassment, and limited opportunities for advancement. However, as societies have begun to embrace a more nuanced understanding of gender identity, there has been a progressive shift toward inclusive policies that aim to protect individuals of all gender identities from inequities in employment. For decades, the legal frameworks governing workplaces in many parts of the world mirrored broader societal norms that failed to acknowledge gender diversity. Policies, regulations, and workplace practices were often designed with the assumption that all individuals conformed to the binary constructs of male or female. This left transgender and non-binary individuals in a precarious position, often having to navigate environments where their identities were invalidated or misunderstood.

Even though the POSH Act does not have any direct mention of transgender persons, they, to their credit, construe the provisions in an expansive reading, and by doing that they guarantee that the transgender employees do not get harassed in the work environment. It would therefore make the best contribution to the LGBTQ community if transgender persons were to be included in the POSH Act because the LGBTQ community would then have their rights protected. Only then it will be possible to speak about an environment that is inclusive and respectful to their dignity across all professional spheres without any hesitation.

However, these were just some of the concerted efforts by advocacy groups, grassroots organizations and LGBTQ+ activists that have made a difference in this respect. By employing the narratives of the underprivileged, they are, on the other hand, making the legal system and culture more friendly to every female worker to be able to enjoy the same rights and respect no matter their gender. A massive increase in the implementation of laws and court judgments to fight against gender-based discrimination in the workplace has appeared lately in the country. The courts have for the most part issued groundbreaking decisions that recognize the transgender group's right to self-identify, access gender-affirming healthcare, and be treated equally at work.. These rulings have set significant precedents that compel employers to adapt their policies and practices.

And for the same courts, they seem to make the: the courts reflect how the other participants-the political systems, the executives, and, indeed, the voters-are signaling a more general acknowledgment of the dignity inherent in each person. Though at least they convey a glaring signal: There is no need for anyone to hide their racial, religious, or sexual identities to feel they are among those professional who need trouble-free and safe conditions for their work. The legal system, which is rapidly undergoing radical changes, has forced companies to make new obligations and opportunities. Entities are beginning to see that creating an inclusive workspace is no longer just a legal obligation, but is also a moral and a strategic necessity. Research has repetitively proved that diverse and inclusive climates lead to a boost in employee satisfaction, greater creativity, and overall performance

For companies, this implies readjustment and evolution of the existing workplace policies so that they can be up to date with the ever-changing legal landscape.

This may be actualized through, for example, the development of an anti-discrimination policy, staff sensitivity training, and the commitment of the management to the establishment of a culture of inclusion. Employers must also be active in addressing unconscious biases and eliminating workplace practices-from hiring to promotions and performance evaluations-that might lead to discrimination. These changes contribute to increased equality and equity in society. The more respect and support people operate with in their workplaces, the more they will thrive professionally and personally, thereby creating a rippling effect that encourages broader love and acceptance of gender diversity within communities. The organized insertion of legal norms within employment laws regarding gender identity is a key testimony toward the recognition of the rights and dignity among transgender and non-binary individuals. Inclusion cannot be solely legislatively driven; rather, it requires a concerted effort from employers, employees, and society to create workplaces where every individual is treated with dignity, respect, and can thrive. . This paper explores the evolving legal norms around gender identity in employment, examining key legislative and judicial developments, and their implications for businesses, employees, and society at large. It also considers the challenges that remain in ensuring that workplace policies and practices align with these legal advances, and how organizations can foster inclusive environments that respect the diverse identities of all employees.