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Critical Study of Prevalent Predicament at Workplace in Context with Transgender Workers

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ABSTRACT

The paper highlights the constitutional commitment to gender equality in India and the prevalence of workplace harassment despite legislative measures. It discusses the enactment of the Prevention of Workplace Sexual Harassment Act in 2013 and its limitations, emphasizing the lack of clear implementation guidelines. The #MeToo movement's impact on exposing harassment across genders is acknowledged, shedding light on the discrimination faced by the LGBT and minority communities.

The National Legal Services Authority vs. Union of India case is referenced for recognizing transgender individuals as the "third gender," signalling progress but revealing ongoing discrimination in education and employment. The paper calls attention to the future course of action needed to address the pervasive prejudice and ill-treatment faced by transgender individuals in India.

Specifically, the paper underscores the inadequacy of existing laws, such as the POSH Act, in protecting transgender individuals from workplace harassment due to the statute's gender-specific language. It advocates for the creation of an umbrella provision to safeguard transgender rights, citing constitutional articles as a foundation for such protection. The need for legislative amendments and inclusive policies to foster workplace equality and empower transgender individuals is emphasized, urging a comprehensive approach to address the diverse spectrum of gender identities and promote inclusivity, diversity, and equal opportunities.

Keywords: *Workplace, Transgender, Equality, Sexual Harassment.*

I. INTRODUCTION

(A) Understanding the Concept of Workplace Harassment

The fundamental principle of equality and eradication of violence based on gender has been one of the Constitutional edifices of India. The Constitution through its Preamble, Fundamental Rights and the Directive Principle of State Policies (DPSPs) promotes and protects the ideology

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of equality. Gone are the days when only men were supposed to be the breadwinner of the family. The rapid globalisation has pushed not only women but even people from other genders to take over the role of what was perceived to be male-dominated arenas. However, such large-scale influx and inclusivity do not come without their own set of predicaments. Workplace harassment is still a prevalent issue and in recent years also increased manifold. Sexual harassment is a breach of the basic fundamental right of an individual and impedes the person's professional growth and scars the woman for life. Apart from interfering with performance at work, such harassment has a detrimental impact on social and economic growth.

Workplace sexual harassment violates the Constitutional prerogatives of the Right to live with dignity and Equality enshrined under article 14², Article 15³, and Article 21⁴.

In the monumental case of *Vishaka v. State of Rajasthan*⁵, the Indian Apex Court elucidated some rules and directed the Union of India to enact an appropriate law to prevent workplace sexual harassment in 1997. Since there was no specific law in India this judgment referred to several guidelines requiring all employers to create a mechanism to resolve issues relating to workplace sexual harassment. Nonetheless what is paradoxical is that it took almost 2 decades after this judgment for the Ministry of Women and Child Development to enact the Prevention of Workplace Sexual Harassment Act, in the year 2013.

Following the notification of the POSH Act the Government has also notified the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“POSH Rules”).” The Criminal Law (Amendment) Act, 2013 (“Criminal Law Amendment Act”), which criminalizes some crimes including sexual harassment, stalking, and voyeurism, was also promulgated in 2013.

a. About the POSH Act, 2013

The objective of enacting the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013⁶ was to “*protect, prevent and safeguard women from any kind of Sexual Harassment at the workplace along with postulating efficient remedy for breach*”.

The act aspires to provide each and every working woman a respectful and dignified work environment in order to be able to grab an equal opportunity like men at the work front.

² Art. 14, The Constitution of India, 1950.

³ Art 15, Ibid.

⁴ Art 21, Ibid.

⁵ AIR 1997 SC 3011.

⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

However, the absence of appropriate implementation of the Act remains to be a major hurdle. Despite the fact that the act has been in effect for over a decade, fundamental elements of the legislation, such as what makes up sexual harassment, what are the obligations of the employer, a victim's remedies and safeguards, the investigation system, and so on, remain unclear. Many individuals are also completely oblivious of the legal repercussions of sexual harassment.

The Global Movement against sexual harassment and sexual abuse called the “#METOO” began as a social media phenomenon in the year 2017 and has gained popularity in recent years. It demonstrates the ground reality that harassment is pervasive in contexts as diverse as Hollywood and Westminster, and unveils the impediments that many females and males experience in reporting it.

But what is to be highlighted is the fact that this movement has brought to light the intolerable levels of workplace harassment faced by the LGBT and other minority communities. It has depicted that NO GENDER and NO WORKPLACE are immune to harassment and humiliation.

The judiciaries' active role in acknowledging that law of the land is considerably binary in nature and the earnest struggles by trans members of the society led to the passing of the landmark pronouncement which purported the need for amplification for the protection of trans prerogatives. In the case of *National Legal Services Authority vs. Union of India*⁷, the Hon'ble Apex Court proclaimed the transgender individuals to be "third gender," distinct from the binary classification of female and male under the Constitution of India and for the purposes of laws enacted by the parliament and State Legislatures.

The court bore in its mind the discrimination faced by the trans community in India. While their growth and development are hampered by a lack of inclusion in sectors such as education and employment. The lack of acceptance of the Third Gender within the legal framework of India has culminated in systematic denial of uniform safeguard under the law and extensive socioeconomic discrimination in Indian society and businesses.

b. Understanding the History of Trans Community

India has a history that is culturally, religiously, and traditionally most divergent in the entire world which is reflective in the customs and usages which are prevalent to this date. Our country today is home to 121 languages⁸ and numerous religions.

The Conception of Hijras and other Transgenders is not contemporary to India and has a deep-

⁷ *NALSA v UOI*, AIR 2014 SC 1863.

⁸ Office of the Registrar General & Census Commissioner, Census India Statement I: “ABSTRACT OF SPEAKERS' STRENGTH OF LANGUAGES AND MOTHER TONGUES” (2011).

rooted history behind it. The presence of communities such as “Hijras, eunuchs, Kothis, Aravanis, Jogappas, Shiv-Shakthis” etc has found its prevalence in the mythology and old Vedic, Puranic and Religious scriptures. In ancient India, the gender of the human was divided into 3 categories. These divisions were derived on the basis of physical character, psychological inkling, and social standing or behaviour. The male was known as Pums-Prakriti, the female was known as Stri-Prakriti and the Tritiya-Prakriti was the third gender leading to the conclusion that the Vedic era did recognise the genders apart from the heterogeneity laying the foundation for identification of such communities and their prerogatives.

The ancient Hindu classic Kama Shastra, in which they are referred to as 'tritiyapakriti' or third gender, has been an intrinsic element of Vedic and Puranic pieces of literature, categorising males who desire other men as having a 'third nature.' The term 'napunsaka' has long been used to describe a person's inability to reproduce. The Indian word hijra seems to be extracted from the Persian terminology “hiz”, which refers to “one who is effeminate, inefficient, or inept”. Kinnar is another regularly used word, but chhakka is a pejorative term. Though most eunuchs today are seen begging at traffic lights or at weddings, they were formerly a valued species in Medieval India under Mughal authority. The name "eunuch" comes from the Greek term "Euneukhos," which roughly translates as "bed chamber attendant." As a result of their emasculation, they were placed in command of harems.

Mention of Hijra Community can also be witnessed in the infamous Hindu mythologies of Ramayana and Mahabharata. If one wants to talk about the earliest mention of transgender combat, we find the indication of “Shikandi” who was a warrior in the Kurukshetra war in the epic of Mahabharata. She was born as female but changed gender later in life and lived as a man until his demise at the battle of Mahabharat. There is also a reference to Arjuna, one of the bold and fiercest warriors of his era, who spent a year of his life in intersexed condition.

The beginning of the practice of the “Badhai” in which the hijras perfume music, dance, and bestow blessings upon individuals can be traced back to the story in “Ramayana”. In the epic when Lord Rama was banished from the homeland for 14 years and was about to depart for the wilderness, turns around to his supporters and requests all the 'men and women' to return to the city. It was only the hijras followers who do not feel constrained by this direction and wanted to stay with him. Rama then grants them with the power to bestow blessings on people during auspicious events like births and marriage, as well as at inaugural functions.

To this day there is a time-honored tradition of inviting the “Kinnars” to the occasions of weddings and childbirth to advance their good wishes and blessings. In fact, they are bestowed

with hefty amounts of money, jewelry, food, and gifts because their stature is considered akin to the divine itself, and hence, their blessings are considered to be quite pure and effective. Various such references to the trans community can be found in the ancient scriptures.

Apart from just stories and tales, the physical evidence of the existence of the trans community can be perceived if one looks at various ancient temples and shrines. If one analysis the murals on the walls of the temples, it speaks of a thousand stories about the dignity of transgenders. Temples are both adobes of God and Goddesses worshiped by the hijra communities, One such example is Bahuchara Mata, a Hindu Goddess, who is a patron of the Hijra community in India. Aside from that people worship the supreme god Shiva in the “Ardhanarishvara” form, an androgynous amalgam of Shiva and his wife, Parvati.

Despite the fact that Hijras were recognised and valued in our old customs and practices, the situation has been deteriorating generation after generation⁹. During the British Era, the Kinnar and Hijra communities were ill-treated and deprived of basic civil rights. It was believed that these people were a separate tribe or caste who kidnapped and castrated children and dressed up as women. This resulted in their isolation from society, consequently subjecting them to daily humiliation and prejudice, even after the end of the British Raj in India.

Numerous studies have been conducted across the world focusing on issues of identity crisis, physical and mental health, and social stigmata and attempts have been made to provide them their prerogatives and freedom by trying to offer legal protection. The roles and behaviors of Transgenders to identify themselves as uniquely male and female may vary based on an individual's choices, but their identity remained a mystery until 2011 since the Indian census and Indian electoral commission classed them as "others." After a protracted battle, the Honorable SC, led by J. K.S. Radhakrishnan and A.K. Sikri, issued a decision in 2014 recognizing them as the “third gender”.

The term “LGBTQ” group is referred to as the “lesbian, gay, bisexual, transgender, and queer community” which is an umbrella notion for individuals with gender dysphoria and different sexual orientations. Even though in many parts of the world lesbian and gay people have been accepted and are enjoying rights, but people of the transgender community are still majorly treated inhumanly. The #METOO movement has brought to light the intolerable levels of workplace harassment faced by the LGBT and other minority communities. It has depicted that NO GENDER and NO WORKPLACE are immune to harassment and humiliation.

⁹ “A BRIEF HISTORY OF TRANSGENDERS IN INDIA” *Indian Institute of Legal Studies*, March 10, 2021.

(B) Statement of Problem

In India, transgender people face a wide range of prejudice and ill-treatment, from being ridiculed in school to being an embarrassment to their families to being harassed at home and in public places. Equal and respectful treatment is something the community has never experienced. Being a transgender person is not without its challenges. As a result, many transgenders are forced to fend for themselves in Indian culture because of taboo themes like sex, sexuality, and sexual orientation. Many people in the community are compelled to rely on begging and sex work to make ends meet due to a lack of family support, formal education, and financial assistance from outside sources. That's why transgender members of the society are one of the most marginalized groups in the country. If by some miracle, they are able to get a college degree while hiding their true identity, they will face a new set of difficulties once they enter the workforce. According to a survey by the National Human Rights Commission India (NHRC), almost all members of the transgender community endure social isolation and rejection on a regular basis. Still, the inclusion of transgender people in the workplace is a goal. For generations, the Census conducted by India never acknowledged transgender individuals when assembling the census data. However, the data on trans people were gathered in the Census of 2011, beneath the classification of "Others" under Gender along with information on their occupation, literacy, and caste. According to the census, the overall number of transgender people is roughly 4.88 lakh. The data has generally been connected to the males' division because they are typically considered as men, however, they may be counted as women upon appeal. Thus actually pinpointing the exact number of the transgender population is impossible, albeit the census has supplied an estimate. Census of 2011 brought to light that 55,000 children were classified by their parents as transgender.

The *NALSA judgment*¹⁰ paved the way for the Indian Parliament to enact the "Transgender Persons (Protection of Rights) Act, 2019"¹¹. Under this Act, individuals with socio-cultural identities such as "kinner, hijra, aravani, and jogta" are considered transgender if their gender does not conform or equate to the gender given to them at birth. This includes trans-man and trans-woman (whether or not they have undergone sex reassignment surgery ('SRS')).

Given the court precedents and constitutional safeguards, it is stated that Articles 14, 15, 16, 19, and 21 of the Constitution protect the rights of men and women in the workplace in terms of harassment prevention, prohibition, and reparation. Even as public awareness grows, India has

¹⁰ AIR 2014 SC 1863.

¹¹ Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

been largely unsuccessful in combating cases of harassment directed at people who identify as Transgenders, as opposed to heterosexuals, who continue to face disproportionate discrimination. Therefore, an eminent need for the creation of an umbrella provision for the protection of transgender from workplace harassment needs to be made.

(C) Objectives of Research

The study's primary objectives are:

1. To carry out a critical analysis of the POSH Act, 2013 and to comprehend how it came into existence.
2. To identify the loopholes in contemporary workplace harassment regulations concerning the transgender community.
3. To propose the introduction of a separate code/set of regulations to safeguard transgender people from workplace harassment and discrimination.

(D) Research Questions

1. How did the provisions of workplace harassment find their way into the Indian laws?
2. What are the present laws on workplace sexual harassment and what are the key provisions?
3. What are the loopholes of the present workplace harassment provisions?
4. What are the challenges that a Transgender individual experiences in the workplace or an organization?
5. How to tackle the issues of annoyance, abuse, and harassment that a transgender face at the workplace?
6. Whether or not a transgender employee can face sexual harassment at the workplace?
7. What is the way forward toward creating a more inclusive and safe working environment for Transgenders?

(E) Survey of Literature

a. Research Articles

1. ROUF AHMAD BHAT & DR. ANITA DESHPANDE¹²- "An Overview of Sexual Harassment of Women at Workplace in India: An Analytical Study"

¹² ROUF AHMAD BHAT & DR. ANITA DESHPANDE, "An Overview of Sexual Harassment of Women at Workplace in India: An Analytical Study", 6 (7) *IJIRSET* 14363-14368 (2017).

Rouf Ahmad Bhat and Prof. Dr. Anita Deshpande in their paper try to throw light on the problem of Sexual Harassment. The paper puts forward the reasons which lead to sexual harassment at work along with investigating and analysing the present trends of harassment through evidence-based data.

The paper opens by outlining the extensive past of sexual harassment of women in India, as well as the fundamental violations of the Constitution's prohibitions on equality, discrimination, and the right to live in dignity. According to the researchers of the paper, a male-dominated institutional setup is a major reason for the harassment of women in the work environment. The patriarchal societal mindset of showing women inferior to the men in terms of giving them a lesser salary for the same jobs, inferior employment positions, where women typically have less hierarchical power or requesting sexual favours from someone in a higher position in exchange for a job offer, all of these factors contribute to female sexual harassment. Thus, the major takeaway from this paper is that the humiliation that female faces need not be particularly to sexually harass them but, to portray the domination of men. Thus, the current paper recommends necessitating taking a closer look at the problem and enforcing deterrent measures that could better assess the situation.

2. *ILO Violence and Harassment Convention, 2019 (No. 190)¹³: “12 ways it can support the COVID-19 response and recovery”*

In order to understand the repercussions of the Covid-19 outbreak on the work environment in the year 2019, the International Labour Conference adopted the ILO Centenary Declaration for the Future of Work, for attaining the goal of removing harassment and violence from the workplace.

This document tries to analyse the digital harassment that individuals are facing in the work environment and has underlined the significance of ratifying Convention No. 190 and implementing Convention No. 190 and Recommendation No. 206 for a world free of violence and harassment at work.

3. *JOBY PHILIP & DEVI SOUMYAJA¹⁴. “Workplace diversity and inclusion: policies and best practices for organizations employing transgender people in India”*

Joby Philip and Devi Soumyaja in the research paper published in the International Journal of Public Policy, try to put forward the best practices and policies that need to be adopted and

¹³ ILO Brief, ILO Violence and Harassment Convention (No. 190): 12 ways it can support the COVID-19 response and recovery (May, 2020).

¹⁴ JOBY PHILIP & DEVI SOUMYAJA, “Workplace diversity and inclusion: policies and best practices for organizations employing transgender people in India”, 15 *IJPP* 299-314 (2019).

applied at the organization to protect the trans community in the work environment.

The paper highlights the pertinent need to make the work environment socially inclusive and embrace the differences in the employees working there. The main reason for trans people's exclusion and discrimination at the workplace is due to lack of awareness leading to marginalization and stigmatization of them. The paper undertook an empirical research methodology by interviewing 15 different individuals including trans employees, the HR Manager of the organizations, and other staff. The questions that were asked were specially curated with the mindset of understanding real issues that transgender's face as employees. The results helped in concluding that the hostility that transgender face is not only limited to social and legal ostracism but much more beyond that.

The few solutions offered by the researchers based on the study they conducted include amending policies for the creation of restrooms and toilets, policies for inclusive dress codes, financial aid and leaves for transformational surgery along with psychological support for the organization

4. *DR. SUBHRAJIT CHATTERJEE¹⁵ - "Problems Faced by Transgender Community in India: Some Recommendations"*

Dr. Subhrajit Chatterjee in his paper published in the International Journal of Creative Research Thoughts has tried to impart his knowledge on the concept of gender and sex of humans in society. The paper explains the issue that the transgender has to undergo not only at the workplace but generally in society. The research paper tries to put forward the difficulties an individual faces for being a transhuman and suggestions to help them out. The paper beautifully tries to explain the historical presence of the trans community and their transition into the present world. Furthermore, the paper discusses the provisions which are exclusively made to protect them and the gaps that still need to be addressed. The major issues highlighted in this paper by the researcher are marginalization and social exclusion of such individuals that in turn result in discrimination, unavailability of access to various services, lack of familial and social support, and difficulty in finding jobs.

The suggestions put forwarded by the researcher to help out the communities includes sensitizing the police forces, making health professional more open and responsive to the needs of these people, creating a safe working environment for them, and lastly creating awareness amongst the people and children about their communities' culture of dance, music, etc.

¹⁵ DR. SUBHRAJIT CHATTERJEE, "Problems Faced by Transgender Community in India: Some Recommendations", 6 *IJCRT* 665-679 (2018).

5. ANUSHKA UKRANI & HIMANSHU ANAND¹⁶- “Sexual Harassment: The POSH Act, Gender Neutrality and Need to Protect Transgender Rights”

Anushka Ukrani and Himanshu Anand in their article try to explore the issues of lack of gender inclusivity and neutrality in the present POSH Act, 2013. With changing societal trends, women have now acquired lead roles in professions that were earlier only restricted within man’s domain. Thus, as a result, the cases of harassment have also increased manifold. Sexual harassment is a violation of an individual’s basic fundamental right that obstructs professional advancement and leaves a woman scarred for life. In the light of the active role played by the legislative, executive, and judicial institutions in 2013 we were able to enact the then 2013, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

This act tries to protect and create a safe and secure work environment for women against any form of sexual harassment. Yet to date these provisions have not yielded the results as expected. The lack of proper enforcement of the act, lack of proper conduction of inquiries, and widespread unawareness are a few drawbacks that the researchers have brought forward. The paper also tries to analyse an important Apex Court case *Nisha Priya Bhatia v. Union of India & Anr*¹⁷ which entails enhancing the application of harassment provisions beyond the women community and making the laws more gender-neutral and extending this kind of protection to the Transgender community.

b. Books

6. JENNIE KERMODE- “Transgender Employees in the Workplace: A Guide for Employers”

Written by the author namely Jennie Kermode, this book tries to establish the understanding amongst the working professionals about the creation of an equal, safe, and healthy working atmosphere.

The author has curated this book with the mindset of helping both the employer and the employee concerning the trans individuals in the office by understanding about working efficiently and respectfully with such individuals, making sure that inappropriate or personal questions are not posed, along with further demarcating the legal obligations of the employers towards the trans employees. The author has also tried to provide practical solutions to issues of discrimination and bullying along with throwing light on health and safety as well as medical impediments such as surgeries and hormone treatment. This book is a step forward in helping

¹⁶ Anushka Ukrani & Himanshu Anand, “Sexual Harassment: The Posh Act, Gender Neutrality and Need to Protect Transgender Right’s”, 11 *Pen Acclaims* 1-9 (2020).

¹⁷ 2020 SCC OnLine SC 394.

the transgender to feel more socially and financially inclusive within the work community.

7. *JN PANDEY*¹⁸- “*Constitutional Law*”

Written by the author Jai Narain Pandey, the book titled *The Constitutional Law of India* is a classic which caters to the need for a deep understanding of our constitutional provisions. In his pioneer work, the author has tried to explain the origin and development of the constitutional provisions. This book can be referred to by professors, scholars, and anyone who want a deep understanding of the Constitution and the provisions of fundamental rights. I have used this book to understand the provisions of Article 14, Article 15, and Article 21. This book provides systematic information along with case laws to discuss the in-depth essentials of each and every provision.

8. *DEEPA RAFEEQUE*¹⁹- “*Prevention of Sexual Harassment of Women at Workplace: A Guide to The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013*”

With today’s world moving towards being a more inclusive society, the ratio of women to men is also increasing leading to a positive trend. The present book written by the author namely, Deepa Rafeeqe, tries to analyse the plights of sexual harassment of women at the workplace along with the instances of numerous cases going unreported.

A Guide to The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 simply acts as a handbook to aid the people who are not aware of their prerogatives and guide them to utilize the present laws to their benefit.

It provides information on all the basic legislation and provisions regarding how to file a complaint, the entire process of registering and monitoring the complaint as well as measures that are needed to be taken by the organizations to prevent and prohibit the sexual harassment of women. Thus, the book aims its audience to be the working women, the perpetrator as well as the management of the organization. This book is a useful tool for helping in making everyone aware of women’s rights and aiding them to lead an uplifted and respectful life.

9. *KYLA BENDER-BAIRD*- “*Transgender Employment Experiences: Gendered Perceptions and the Law*”

Author Kyla Bender-Baird, in the book Titled *Transgender Employment Experiences:*

¹⁸ Jennie Kermode, *Transgender Employees in the Workplace: A Guide for Employers*,5 (Jessica Kingsley Publishers, 1st Edition, 2017).

¹⁹ Deepa Rafeeqe, *Prevention of Sexual Harassment of Women at Workplace: A Guide to The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013*, (Notion Press; India, 1st edition, 2018).

Gendered Perceptions and the Law has used both doctrinal and empirical methods of study to be able to establish the plights of the trans employees.

She has used the personal interviews, the legal precedents, and the trans theories available in order to combine them and show how the rights of transgender employees are systematically undermined in our society. The dynamic and ever-changing state of policies for these communities literally requires them to become legal experts just to steer them in their everyday life. It alongside opens a scope for the legal fraternity to advocate and shape new laws and schemes built on the real lived episodes of these individuals.

The author not only has focused on the issues faced by trans members but has also mentioned the positive experiences of these individuals. She has tried to extract through these interviews and surveys, the best practices that should be systemically adopted at the workplace to prevent gender-based discrimination, harassment, and abuse. By striking the equilibrium between the personal stories and acting as a legal guide, this book is a vital resource for those in the field of policy formulation, scholars, and analysts of gender and employment.

10. S. MRINALINI²⁰ - “*Transgender in Society- Challenges and Solutions*”

The author S. Mrinalini, has conducted an empirical study amongst the transgenders in the southern state of Tamil Nadu in order to expose the issues that the transgender goes through in their day-to-day life. This book acts as a guide to research scholars, professors, as well as students in the fields of History, Gender, Development Studies, Women, and Transgender studies.

A section of this book particularly focused on the issues of welfare of trans members in any organization and lays down action points that need to be incorporated into policies for creating a more inclusive, safe, and secure society for the trans population.

(F) Hypotheses

For the furtherance of this research study the following hypotheses have been formulated:

1. Formulation of a Uniform Code for Prevention of Harassment of Transgender Employees in an organization.
2. Adopting policies for the creation of safe working spaces for transgender individuals.

(G) Research Methodology

The doctrinal method of research has been utilised for the present report. The author did not

²⁰ S. Mrinalini, *Transgender in Society- Challenges and Solutions* (MJP Publisher; India, 1st edition, 2021).

undertake any empirical or fieldwork as adequate data was available through secondary sources. In doctrinal research, a legal research scholar “takes one or more legal propositions as a starting point or a focus of his study. All relevant material on the topic is collected and then the matter is read and critically analysed, after analysing the material a conclusion is arrived upon. Doctrinal research is largely based upon legal principles, doctrines, or maxims. For completing this work, data were acquired from various secondary sources which include relevant statutes, journal articles, newspapers clippings, books, and landmark judicial pronouncements, and all of them were later analysed in a systematic manner

In addition to this, the comparative research approach has also been adopted. It aims to identify parallels and contrasts between two comparable or competing philosophical systems, across cultures, or within cross-cultural communities. A number of tools, such as surveys, personal observation, and national data analysis, are used in comparative research methods. A comparative study is beneficial for identifying common social occurrences, contextualizing cultural values, and examining cultural variances. Comparative Research in my case was drawn between the already existing provisions of Harassment prevention and the creation of uniform law against workplace harassment for the whole of India for transgender.

II. TRACING THE EMERGENCE OF THE POSH ACT 2013 AND ITS PRESENT STATUS

Sexual harassment is an ever-increasing global issue that affects both developed and developing nations. This has its clutches throughout society, regardless of religion, caste, class, or geographical boundaries. Every person has the right to a dignified and gender-equal existence, but sexual harassment makes it difficult to attain these goals. It is a problem involving the women’s views and conduct, along with the societal conventions that stem from the gender-specific degrading frames of mind, and is a complicated interlink of gender, strength, and sexuality. A woman is sexually harassed every twelve minutes in India.

The function of Indian women is fast developing due to industrialisation, globalisation, and progress in numerous fields²¹. Presently women are achieving heights in practically every field whether it be the economy, policymaking, research, media and journalism, space and culture, service industries, contributions to science and technology, and so on. Since the role of a woman has transformed from domestic and domiciliary labour to the commercial world so is the number of atrocities against them. Women are hesitant to report sexual harassment incidents because they are afraid of being stigmatized in society or losing their employment. To worsen the matter,

²¹ Ruchira Baruah, “A Critical Analysis of Law Available in India Against Sexual Harassment” *Legal Services India*, March 2020.

deep-rooted socio-cultural behavioural patterns embodying gender hierarchical mindset tend to blame the victim, leading to increasing inequity in the society and job place. Despite the fact that job place sexual harassment has attained epidemic proportions, a lot of the female counterparts do not report the episode to the concerned authorities due to the fright of vengeance from the harasser, loss of incentives, stigmatisation, or loss of professional status and personal reputation. Thus, despite rising rates of sexual harassment, women are still bound by the shackles of safeguarding their reputations and livelihoods as a result of social stigma.

As stated in the Preamble of the Indian Constitution, "equality of status and opportunity" must be ensured for all citizens, and Article 14 of the Constitution envisages the equality of every individual under the law. Article 14²², 15²³, and 21²⁴ of the Indian constitution lays down the provision of equality and liberty which ensures that women's legal prerogative to a secure a safe working environment exists. Such crime not only breaches woman's fundamental rights under Article 19 (1) (g)²⁵ of the Indian Constitution to "practice any profession or carry out any occupation, trade or business," but it also cripples equality and endangers workers' decency along with bodily and psychological well-being. The consequence of this is visible as reduced production as well as a detrimental influence on people's lives and livelihoods.

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁶, which was approved by India and was established by the United Nations General Assembly in 1979, caters to this. It is sometimes referred to as a worldwide Women's Bill of Rights since it advocates for gender equality in terms of human prerogatives and basic fundamental freedoms in the political, economic, social, cultural, and civil spaces. It declares that prejudices and assaults on women's dignity are major violations of the equality principle's prerogatives. Sexual harassment severe breach of a woman's right to parity and respect. It births from patriarchy and the assumption that female is inferior to males and that some sort of violence to keep them under control is acceptable. Sexual assaults at the workplace come under the ambit of such violence. It is commonly justified as "ordinary male conduct" or "innocuous flirtation" against women.

Indeed, in both the private and public realms, male privileges are still being exploited to justify violence against women. At core of it, sexual harassment is a mirror that reflects a man's control over the women and reinforces patriarchal connections. In a culture where patriarchal ideals

²² *Supra* Note 1.

²³ *Supra* Note 2.

²⁴ *Supra* Note 3.

²⁵ Art 19 (1)(g), The Constitution of India, 1950.

²⁶ Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

underpin brutality against females, both subtle and direct, women are encouraged to accommodate to traditional gender norms. The patriarchal values and attitudes of both women and men are the most significant obstacle to addressing and avoiding sexual harassment. Sexual harassment in the job place, like other types of brutality, is not innocuous. It entails significant health, human, economic, and social costs, which are echoed in a country's all-inclusive advancement indexes²⁷.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act of 2013²⁸ was introduced to ensure the creation of a safe working environment that is inclusive of equal and dignified opportunities. The Act's proper implementation would enable women to realize their rights to gender equality, life and liberty, and fair working conditions everywhere. This act would ensure an increased sense of security at work as a result women's participation in the workforce will expand, resulting in monetary upliftment and inclusive development²⁹. The real magnitude of the predicament is unknown due to the complicity in properly cataloguing the experiences of people who have been sexually harassed at work. Studies on sexual harassment in India, however, clearly portray that it is still prevalent today. Subsequently, the Act is a significant way ahead in the bigger context of women's prerogatives because it addresses this issue in order to defend the prerogatives of women employees across the nation. Whilst official statistics for female labour force involvement are low, much of the work done by women is not documented in official records. While official data stipulates that female job involvement rates are around 25.3 percent in rural spaces and 14.7 percent in urban spaces, estimations point out that women make up a large portion of the workforce, necessitating the requirement to protect their employment and entitlements. Provided, that 93 percent of female employees are deployed in the informal agency, they remain more susceptible to crimes. With no legal mechanisms to ensure their safety need for a proactive course of action is paramount. It is well settled that giving secure employment environments for women has a desirable effect on their involvement in the workforce and uplifts their productivity, which is fruitful for the country. Empowered women are important to the nation's overall advancement from an economic viewpoint, and this can only be accomplished if women's job paces in all departments and across the country are safe and secure places to work. It's also pivotal to make certain that the target is deterrence rather than punishment. This reinforces the creation of extensive awareness of the Act among corporates, its authorities as well as its employees. Women

²⁷ Anshul Arbaz "Sexual Harassment at Workplace" *Legal Services India*, Nov 2019.

²⁸ *Supra* Note 5.

²⁹ *Sumeysh Srivastava "Legal provisions related to sexual offences against Women"* Vikaspedia, May 5, 2017.

employees are time and again subjected to sexual harassment, but they may be unaware that it is a violation of their rights or that there is something they can do about it. They must understand that they can have an impact. Some may claim that it is a private matter which should be resolved through mediation between the persons involved. To change this situation, it is critical to take action to overcome people's perceptions and ideas by increasing awareness of what constitutes sexual harassment and the actions that may be taken to address it for collective gain.

(A) What Does Harassment mean?

The creation of secure working space is paramount for achieving strong and productive industrial relations. In order to achieve such an environment, it is crucial to ensure that the job space is free from all forms of threats and discrimination which includes harassment as well. Anyone working is prone to face numerous forms of harassment let it be sexual or mental. Harassment is a disadvantage to the entire organization and not only to the workers. For employees, it leads to poor performance, which consequently reduces work productivity and has a negative impact on the overall growth of the organisation, the employee, and his/her family. On the other hand, the organisation is also affected due to the reduced productivity rates having implications on the economic competitiveness of factories.³⁰

In order to curb the menace of harassment, it is important to understand what it means. Workplace harassment can be described as “workplace bullying” “workplace mistreatment” or “workplace aggregation” etc. Such harassment includes numerous categories of discrimination and acts of violation that are not constricted to one specific category of individuals. Thus the target groups are not only women but can also be men, transgenders, racial minorities, people with deformities, etc. Thus, workplace harassment cannot be described in a single clear and concrete way, it necessitates a diverse approach.

Recognizing the challenge of defining workplace harassment in a way that is universal, Ezer defines it as "irrational recurrent action toward an employee or group of employees that pose a health and security concern."³¹ Workplace harassment is defined as any “*act of discrimination or abuse that systematically disadvantages employees. Workplace harassment can lead to a substantial depreciation of physical as well as emotional well-being*”.

The notion of workplace harassment, according to Rosa Brook³², is founded on two foundations. For starters, everyone should have the prerogative to be “*free from belittling treatment in the*

³⁰ Kriti Sanghi, “Law on Prevention of Sexual Harassment at Workplace in India” *Samisti Legal*, Nov. 10, 2020.

³¹ Ezer, Marius; Ezer, Oana Florentina, "Workplace harassment, mobbing phenomenon" 1 *BLJ* 298 (2012).

³² Brooks, Rosa Ehrenreich, "Dignity and discrimination: toward a pluralistic understanding of workplace harassment", 88 (1), *Georgetown Law Journal* 14–20, (1999).

workplace," regardless of gender, ethnicity, sexuality, or any other identifying attribute. Now that freedom from abuse is a core human right, any discomfort or prejudice in the workplace is considered harassment. Second, the challenges that arise as a result of workplace harassment have a negative impact on the victims. Discrimination in the workplace makes it difficult for victims to grow in their jobs, limiting their talents.

A common misconception about workplace harassment is that it is merely sexual harassment in the context of a workplace. While sexual harassment is a common form of workplace harassment, the United States Department of Labor defines it as more.³³ That might include quid pro quo harassment, which occurs when an authority's decision or action is contingent on the acceptance or rejection of undesirable behaviour, most commonly sexual conduct. As a result, workplace harassment is defined as an abusive act aimed against one or more members of the protected class that is so serious or widespread that it produces a hostile or violent work environment or results in an unfavourable employment decision.

a. When Does the Harassment Turn Sexual?

The prevailing notions of patriarchal ideology which have been continuously reinforced through ancient practices and theories have a strong influence on today's society's perception of power. It has historically untold practice carried forwarded by men, suffered by women, condoned by management, and spoken by no one. It is a manifestation of power relations. Sexual harassment is a form of power dynamics in which the superior (in this context usually male) try to reinforce their authority over the inferiors (usually female). It is inclusive of both verbal and physical exploitation of sexual character. This type of harassment arises from patriarchy, which is characterized as a structure of male dominance within the family and society that is legitimized by superior rights, advantages, authority, and power. Because they lack power, are more sensitive and insecure, lack self-confidence, or have been socially conditioned to suffer in silence, women are far more likely to be victims of external harassment. The level of patriarchy differs from one society to the next. Subordination, on the other hand, is usually attained by undervaluing women's inputs while also drawing out a large contribution from them. The feminist theory or traditional theory in comprehending workplace violence is based on society's support of patriarchy.

Such harassment is exacerbated by the power dynamics at the workplace. It is not just a problem of empowerment but an issue that is related to human rights, human resources management, and the security and health of the individual working. Unless manifold emphasis and

³³ US Labour Department, What do I need to know about – workplace harassment, (March, 2015).

sensitization on the issues are laid along with constant changes in the legal framework to adapt to the changes in the society it is extremely difficult to deal with this problem. Workplaces must develop their own thorough rules for dealing with sexual harassment. Rather than putting together committees after the court becomes involved, a framework and a path to remedy should already be in place.

As a result of the increasing importance of the predicament, the criminal law of India underwent an amendment in 2013³⁴ to add section 354A³⁵ in the Indian Penal Code which constitutes the offense of sexual harassment. It lays down four major essentials in order for the crime to fall under this section. These four essentials are:

- physical exchanges and approaches which are unwelcomed or/and explicit sexual overtures;
or
- a call or invitation for sexual favours; or
- displaying/showing pornography to a woman against her consent; or
- making sexually coloured comments

Previously, there was no provision in the Indian Penal Code that could be evoked against sexual harassment. The three sections, i.e, Sec 94, 354, and 509 dealt with such offenses. However, these regulations are characterised as an offence that either amounts to public obscenity or behaviours that are perceived to offend women's modesty. While Section 294 of the Indian Penal Code applies to both men and women, the latter two are geared exclusively toward women.

(B) Workplace Sexual Harassment: The International Stance

1. Sexual harassment is forbidden at work, in educational organisations, institutions and elsewhere (Art. 2(b)), and the United Nations General Assembly Resolution 48/104³⁶ encourages the advancement of penal, civil, or other administrative sanctions, as well as deterrent measures to prohibit violence against women (Art. 4(d-f)).

2. States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³⁷ are required to take proper measures to eliminate and counter discrimination against women in all fields, including equality under the law, governance and politics, the workplace, education, healthcare, and other public and social life. (See Art 7–16.)

³⁴ Criminal Law (Amendment) Act, 2013(Act No. 13 of 2013).

³⁵ S. 354 A, Indian Penal Code, 1860, (Act No. 45 of 1860).

³⁶ Declaration on the Elimination of Violence against Women,1993.

³⁷ Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

3. In addition, the Beijing Platform for Action³⁸ acknowledges sexual harassment as a form of crime against women and demands the unions, employers of organisations, and civil societies, to make sure that governments institute and impose anti-harassment laws, along with calling upon the recruiters to create anti-harassment policies and prevention mechanisms.

4. According to the ILO Committee of Experts on the Application of Conventions and Recommendations, sexual harassment is a type of sex discrimination covered under the Discrimination (Employment and Occupation) Convention (No. 111)³⁹ of 1958. The ILO's Indigenous and Tribal Peoples Convention also prohibits sexual harassment in the workplace (No. 169).

5. The International Covenant on Economic, Social, and Cultural Rights has a number of sections that are particularly relevant to women. Article 7⁴⁰ recognises the women's prerogative to reasonable working circumstances and states that no woman should be subjugated to sexual harassment at the place of work, which could degrade the working conditions.

(C) Introduction of Sexual Harassment Laws into Indian Jurisdiction

The Constitution of the country warrants every individual the prerogative of "practice any profession, or to carry on any occupation, trade or business" as sanctified under Article 19(1) (g).⁴¹ Every individual by the birth as a woman in India has the right to engage in public employment and this prerogative is eliminated in the progression of sexual harassment, which humiliates and forces women to keep away from the job or quit the same.

Sexual harassment of women in a workspace is also an infringement of Article 21⁴² of the Indian Constitution, which quotes that none "should be impoverished of his or her life or personal liberty". The entitlement to a decent existence is a paramount aspect of enjoying the right to life. Sexual harassment is an affront to one's right to a living. Every woman is entitled to the removal of impediments and discrimination based on gender under Article 21 of the Indian Constitution for the meaningful enjoyment of life. Since the 'Right to Work' is predicated on the accessibility of secure working space and the right to a dignified existence, sexual harassment must be eliminated for these rights to be meaningful.

The preamble⁴³ of India's Constitution states that it shall provide "equality of status and opportunity" to all citizens. This core objective of the constitution's founders is tainted by sexual

³⁸ UN Women, *Beijing Platform for Action 178* (UN Women Headquarters, 2015)

³⁹ Discrimination in Respect of Employment and Occupation, 1958.

⁴⁰ The International Covenant on Economic, Social and Cultural Rights, 1966, Sec. 7.

⁴¹ *Supra* Note 24.

⁴² Art. 21, The Constitution of India, 1950.

⁴³ The Constitution of India, 1950.

harassment. If a woman's prerogative to privacy is not recognized as a right to protection of life and liberty provided by Article 21 of the Indian Constitution, the notion of gender equality enshrined in our Constitution will be rendered ineffective. Because workplace sexual harassment damages women's sense of living with dignity, it is a clear and fundamental violation of basic human rights.

a. Aftermath of Vishaka Judgement

The Apex court of India laid the foundation for acknowledging workplace sexual harassment in the infamous judgment of *Vishaka v State of Rajasthan*⁴⁴. The Vishaka and other women-oriented organisations initiated a PIL against the UOI and the State of Rajasthan to implement the basic fundamental rights for the working female of the country. The Supreme Court put in place certain legally obligatory rules which have their basis in the right to equality and dignity guaranteed by the Indian Constitution and the United Nations Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). These rules include:

1. It is the responsibility of the authority at the workplace and other organizations to deter and stop the menace of sexual harassment and to cater and lay down processes for the dispute settlement or prosecution of deeds of sexual harassment by engaging in all the appropriate measures.
2. Sexual harassment is inclusive of both physical touchings, and verbal advent which can range from the insistence of sexual favors or sexually tainted remarks, as well to visual approaches to showing pornography.
3. The employer or the authority at the workplace has to take punitive steps to prohibit the advances of workplace sexual harassment by:
 - (a) A clear prohibition of sexual harassment in the workplace, as stated above, should be announced, publicized, and widely distributed.
 - (b) Government and public sector entities' conduct and discipline rules/regulations should include rules/regulations prohibiting sexual harassment and provide for appropriate punishments against offenders.
 - (c) In the case of private employers, steps should be taken to include the aforementioned prohibitions in the Industrial Employment (Standing Orders) Act, 1946's standing orders.

⁴⁴ AIR 1997 SC 3011.

(d) Reasonable work circumstances in terms of work, leisure, health, and cleanliness shall be given to make sure that workplaces are free of hostile environments toward women, and that no female employee has rational cause to feel she is being discriminated against in her job.

(e) Employer is required and bound to register a complaint with the competent authority according to the law of the land to prevent the victim to be further threatened or abused.

4. In case the action is illegal or in violation of the employer's service rules, a proper complaint procedure should be established in the company to address the victim's complaint. Further such a mechanism should yield time-bound decisions.
5. The need for the establishment of a women-led Complaints committee as mentioned above in the organization should be created. Such a complaints committee should also be capable of providing mental health counselors or any social support services if required.
6. This committee is required to compile and submit annual reports to the department of Government concerned and undertake requisite steps.
7. Open and suitable discussion forums wherein the employees are able to bring up issues of sexual abuse should be set up and handled by the human rights department of the organisation.
8. The urgent need to spread awareness regarding the female employee prerogatives should be conspicuously announced.
9. The Union and the State government are urged to implement and adopt appropriate steps including legislation, to guarantee that the guidelines established by the Commission are followed even in the private sector.

b. Post- Vishaka Judgment

The Central Civil Services (Conduct) Rules 1964⁴⁵ underwent amendments in the year 1998 to include r. 3C, which forbids sexual harassment of females at the workplace as a step confirming the *Vishaka Judgment*⁴⁶.

The case of *Apparel Export Promotion Council v. A.K Chopra*⁴⁷ was the prime case in this regard before the Supreme Court after the passage of *Vishaka Judgment*. The court affirmed

⁴⁵ Central Civil Services (Conduct) Rules 1964.

⁴⁶ *Supra* Note 4.

⁴⁷ AIR 1999 SC 625

the dismissing of a higher functionary of the Delhi-based Apparel Export Promotion Council who was proclaimed guilty of sexually harassing a junior-employed woman, using the law laid down in the *Vishaka Judgment*. In this Decision the Apex Court expanded the definition of sexual harassment, stating that physical contact was not a prerequisite for establishing the deed of sexual harassment.

The Supreme Court further in the matter of *Medha Kotwal Lele & Ors. V. Union of India & Ors.*⁴⁸, took note of the Vishaka Regulations and signaled the Government of the States to produce affidavits demarcating the actions they had undertaken to implement them. Not being pleased by the current state of affairs, the court ordered the States to arrange adequate measures to secure that the Vishaka Judgement protocols are executed effectively.

Ultimately, the Apex Court advocated that in the instance of disobedience or delinquency towards upholding the Regulations curated by the *Vishaka Judgment*, aggrieved parties may file a complaint with the appropriate High Court. The court further went on to order that the complaints committee established aftermath the *Vishaka judgment* be treated as an “inquiry authority” for the purposes of the Central Civil Rules, 1964⁴⁹ and that the complaints committee's findings be regarded as an “inquiry report”.

The Central Government (Department of Personnel and Training) revised Central Civil Services (Classification, Control, and Appeal) Rules, 1965⁵⁰, R. 14, sub-r. (2) to include the essential provision in response to this directive.

Consequently, the infamous case of the *Nirbhaya Gang-Rape*⁵¹ prompted the passage of the Criminal Law (Amendment) Act, 2013.⁵² Several provisions of the Indian Penal Code 1860⁵³, The Indian Evidence Act 1872⁵⁴, and Code of Criminal Procedure 1974⁵⁵ were changed by the Act. Several new offenses have been recognized and incorporated into the Indian Penal Code as a result of this amendment. Notably, a section specifically focussing on sexual harassment was introduced under Section 354A.⁵⁶ This section laid down the definition of sexual harassment as both physical touching, and verbal advent which can range from the insistence of sexual favours or sexually tainted remarks, as well as visual approaches of showing

⁴⁸ (2013) 1 SCC 297.

⁴⁹ Central Civil Services (Conduct) Rules 1964.

⁵⁰ Central Civil Services (Classification, Control, and Appeal) Rules, 1965.

⁵¹ *Mukesh & Anr v. State For NCT of Delhi*, (2017) 6 SCC 1.

⁵² Criminal Law (Amendment) Act, 2013(Act No. 13 of 2013).

⁵³ Indian Penal Code, 1860, (Act No. 45 of 1860).

⁵⁴ Indian Evidence Act, 1872 (Act No. 1 of 1872)

⁵⁵ Code of Criminal Procedure, 1974, (Act No. 2 of 1974).

⁵⁶ S. 354 A, Indian Penal Code, 1860, (Act No. 45 of 1860).

pornography and also provided the punishment of imprisonment which may lead to one year along with fine. The Act also strengthened the penalties for already-existing violations.

(C) Introducing POSH ACT 2013 and its Essential Provisions

In the monumental case of *Vishaka v. State of Rajasthan*⁵⁷, the Apex Court of India expounded some rules and gave directions to the Union of India to enact suitable legislation to prevent workplace sexual harassment in 1997. Since there was no specific law in India this judgment referred to several guidelines requiring all employers to provide a mechanism to resolve grievances pertaining to workplace sexual harassment. Nonetheless what is paradoxical is that it took almost 2 decades after this judgment for the Ministry of Women and Child Development to enact the Prevention of Workplace Sexual Harassment Act, in the year 2013.

At this point, it is pertinent to mention that this act only caters to the offenses of physical harassment against women in the workplace⁵⁸ and applies to the whole of India.

The objective of enacting the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013⁵⁹ was “to protect, prevent and safeguard women from any kind of Sexual Harassment at the workplace with postulating efficient remedy for breach.”

The act aspires to provide each and every working woman a respectful and dignified work environment in order to be able to grab an equal opportunity like men at the work front. In India, the POSH Act, 2013 includes the organized as well as the unorganised sectors. It covers government, private as well as public sector organisations, NGOs, profitable, occupational, educational, media, manufacturing, and fiscal institutions, medical and nursing homes, sports institutions, and stadiums that are used for personal training, as well as a dwelling place or a house.

The POSH Act, 2013 prescribes a wide meaning to the term ‘employee’ to be inclusive of “regular, interim, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied”.

⁵⁷ *Supra* Note 4.

⁵⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

⁵⁹ *Supra* Note 50.

Although the Vishaka framework was limited to the typical job setup, the POSH Act, 2013 has launched the conception of an "extended workplace," acknowledging that harassment is not always limited to the principal place of work. In accordance with the POSH Act, 2013 a workplace is defined as any “*location visited by an employee as a result of or in the course of employment, including transportation provided by the employer for the purpose of commuting to and from the workplace*”.

a. Committees for complaints⁶⁰:

The POSH Act, 2013 postulates the creation of a grievance rectification committee. The management of the organization is bound to create an “internal complaints committee” aka (ICC) separately for every office headquarters of a corporation appointing ten or additional employees, to aid and adjudicate cases of sexual harassment. The committee has four members who need to be led under a women's chairmanship along with two other members having competent experience in the social sector inclusive of a third-party member (NGO etc.) as well. Following a similar pattern, the State at the district level is necessitated to establish a ‘local complaints committee’ (LCC) to aid and adjudicate cases of sexual harassment. LLC will function in areas of unorganised sectors or organisations where ICC has not been established. LLC will be instituted by the District Officer. The LLC will comprise of five members. Two members of whom at least one shall be a female to be recommended from Non-Governmental Organisations devoted to the issue of women empowerment or an individual accustomed to the problems related to sexual harassment provided that at least one of the member-nominees should ideally have sound legal understanding. The chairman of the LCC is required to be a woman who has competent experience in the arena of social work.

b. The Process for filing of Complaints⁶¹:

The period within which the complaint can be registered under the POSH Act, 2013 is three months however this term is extendable to three more months maximum if the woman can portray that the dire situation prohibited her from executing it. The above-mentioned committees, i.e ICC and LCC can act as a mediator between the aggrieved female and the respondent and conciliate the matter at the will and wish of the women. The Act further furnishes that monetary settlement shall not be made a basis of conciliation. Consequently, if the respondent does not adhere to any conditions stipulated then the aggrieved woman can lead

⁶⁰ Chapter II, III, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

⁶¹ Chapter IV, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

the committee to launch a further inquiry. Such an inquiry needs to be undertaken within the term of 90 days and the report be forwarded to the authority of the organisation or the District Officer, which were the situation may be so that the measures can be directed on the basis of the report within 60 days.

In a situation where the grievance has been recognized, then the Committee can advocate a course of action in harmony with the terms of Service Rules applicable to the respondent or as per the rules which will be prescribed, where such service is not present. On the other hand, if the accusation against the respondent stands to be false then the Committee has to forward in writing that no steps are required to be undertaken in this respect.

c. Punishment Under The POSH⁶²

The Act postulates the subsequent punishments and sanctions against the individual who indulges in an act of sexual harassment:

- i. the reprimand given according to the Service Rules of the institution
- ii. if the Service Rules are not there in the institution then, reformatory action including an apology in writing, reprimanding, holding back the pay rise or future promotion, forbidding the respondent from business, receiving a counseling session or undertaking a community service; and
- iii. deducting the damages which is payable to the victim from the incentives of the respondents

The POSH Act, 2013 also contemplates⁶³ the payment of compensation to the aggrieved woman which will be in accordance with the mental agony and suffering and emotional anguish that the victim has borne. The damages can also be calculated in consonance with the deficit in job opportunity due to the episode of sexual harassment; or medicinal expenditure that the aggrieved women had to bear for attaining physical/ psychiatric treatment. Such payments can also be done in installments by the perpetrator, however, if the respondent is not able to pay the aforementioned amount, ICC may advance the order for recovery of the amounts as an arrear of land revenue to the respective District Officer.

d. Duties of the Employer and Their Obligations Towards Employees⁶⁴:

⁶² Section 13, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

⁶³ Section 15, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

⁶⁴ Section 19, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

Chapter VI of the POSH Act, 2013 deals with the additional compliances of the employer. These include:

1. Ensuring and securing a secure work environment
2. Exhibit conspicuously at the job space, the penal repercussions of getting involved in the deeds of what might comprise sexual harassment and the creation of an Internal Complaints Committee to look into such matters
3. Spread awareness by organizing workshops, orientation programs by the ICC, and campaigns for sensitizing and promoting amongst the employees the issues and ramifications of workplace sexual harassment
4. Processing sexual harassment as misbehavior within the Service Rules and commence an action against such crimes. The timely presentation of the report by the ICC needs to be supervised by the management.

If anyone contravenes the provisions of the POSH Act, 2013 or exploits such proviso can be penalized to pay up to INR Rs 50,000. A reiteration of a similar crime can lead to the punitive action to be doubled or/ and or de-registration of the entity or revocation of any statutory business licenses.

e. Preserving the Identity of Victims⁶⁵:

Exposure of the name, identity, or the place of living of the aggrieved victim, respondent as well as the witnesses to the crime is prevented by the Act. However, information in relation to the justice secured to any victim of sexual harassment under this Act without exposing the identity can be communicated.

f. Conclusion

In India, more women are entering the workforce and making tremendous progress toward Developmental goals. Acknowledging the prerogative of protection from sexual harassment is a crucial component of preserving the human rights of the female workforce. Workplace sexual harassment is a social menace that has to be dealt with. At this stage, it is paramount to aware the employer and the employee both of their rights and duties regarding the occurrence of various forms of sexual harassment at work, as well as preventive steps and the legal framework for preventing and treating sexual harassment. Dissemination and awareness-spreading programs should be held and checked constantly so as to improvise on the best available

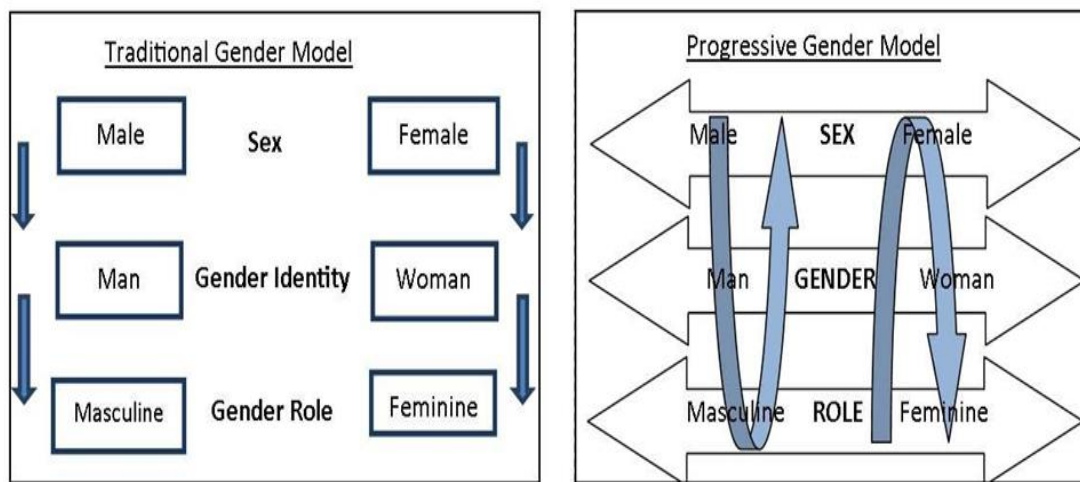
⁶⁵ Section 16, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

practices for dealing with sexual harassment in the workplace, as well as to forewarn and inform potential victims of sexual harassment so that they can avoid becoming victims. Intensifying sexual harassment training classes and giving documentation or a manual on workplace sexual harassment avoidance will aid in tackling the issue.

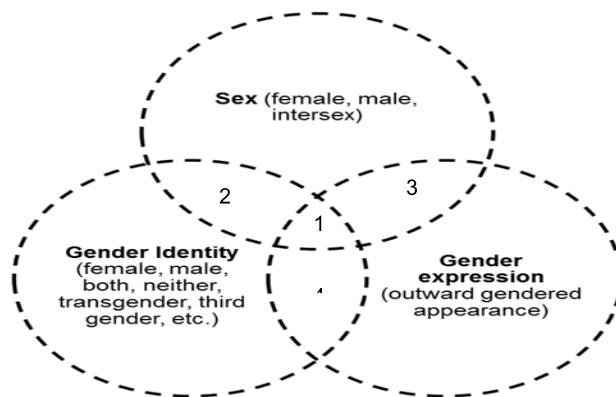
III. UNDERSTANDING THE TRANS EXCLUSION IN INDIA

(A) Who are transgender(s)?

In order to understand the entire idea of who transgenders are, it is necessary to refer to the two-gender models – traditional and progressive. In a traditional society, it is assumed that there are two genders-females and males. These two genders have been assigned certain roles which they have to fulfill.



Each of these features is a binary in the conventional gender concept, with one being either male or female, and each being reliant on the other. In the progressive gender paradigm, on the other hand, there are no binaries, just continuums, and they are unrelated to one another.



It is through this progressive model that the idea of transgenders is to be understood. They are persons who do not fit into the standard gender paradigm because they do not fall into, or rather do not identify with, the gender ascribed to them at birth. The link between sex, gender identity,

and gender expression as independent and related notions is shown in this "Venn Diagram." The dashed lines enable movement in and out of the circles, attempting to remove any restrictions on the displayed concepts.⁶⁶

a. Numbered Arenas:

1. Gender identity, gender expression, and sex assigned at birth all complement each other in a manner that society has generally deemed "acceptable."

2. People's sex and gender identities may complement each other in a manner that society deems "acceptable," but they may not display their gender in the way society expects.

3. While an individual's sex and gender expression may complement each other in a manner that society deems "acceptable," their internal sense of gender (gender identity) may not do so in the way that society expects.

4. Individuals' gender identity and gender expression may complement each other in a manner that society deems "acceptable," but their sex may not do so in the way that society expects.

The Transgender Act, 2019 defines transgender(s) as "people whose gender identity is different from the gender they were thought to be at birth."⁶⁷

(B) Historical Evolution of the term "Transgenderers"

The third gender is marginalized in a variety of social and cultural practices. Assimilation of the third gender in Indian culture is not a recent occurrence; it has existed since the ancient era. Individuals identifying with the third gender have historically been excluded from our society's dominant binary framework of masculine and feminine gender identification and sexual orientation. A person's gender identity refers to how he or she sees themselves as male or female, regardless of the anatomy assigned at birth. It's a person's inner self, whether they identify as male or female or somewhere in between. The phrases "sex" and "gender" are not interchangeable, yet they are commonly used in the same sentence. Since at least the fourteenth century, "gender" has been used in this "generic" meaning in English. The current English term "gender" refers to the distinction between men and women in sexual orientation. The biological characteristics of a man or woman are defined by his or her sex. When we talk about gender, we're referring to the psychological and cultural connotations that are attached to the biological sex. It is a social creation based on an individual's own hopes and aspirations. It is not a trait that a person is born with, but rather a way he or she perceives themselves. Gender emerged as

⁶⁶ Thekla Morgenroth et al, "Gender Trouble in Social Psychology: How Can Butler's Work Inform Experimental Social Psychologists' Conceptualization of Gender?", *Personality and Social Psychology*, 27 July 2018.

⁶⁷ S 2(k), Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

a popular notion in the early 1970s. The “Second Sex” by Simone de Beauvoir makes the difference between sex and gender obvious in gender studies. Gender, according to Beauvoir, “is the cultural interpretation of sex, whereas sex itself is a biological category”. Different body types are socially organised into distinct groups by the term "gender," according to this definition. According to Judith Butler, sexuality is both neutral and prior. Gender is seen as an afterthought, something added on top of the already-existing inherent divide between men and women.⁶⁸

From the aforesaid discussion, it seems like there must be large-scale awareness regarding third gender or transgender as they are more popularly known as, however the same is not the case. Many of us do not understand the very idea of who is transgender. Hence, we shall now be discussing the same. The word transgender was first created by psychologist “John F. Oliven of Columbia University” in “Sexual Hygiene and Pathology” (1965), where he mentioned that the word “transsexualism”, is “deceptive; truly, 'transgenderism' is intended since sexuality is not a prominent role in primary transvestism.” Several people including the founder of Transvestia magazine, Virginia Prince, introduced the word transgender in the December 1969 edition of the aforesaid magazine, which was dedicated to cross-dressers.⁶⁹ Those who desired to live as transgenders without undergoing sex reassignment surgery began using the phrases "transgenderist" and "transgenderal" in the mid-'70s. Around the same time, the word "transgenderist" was abbreviated to "TG" in educational materials.

By 1984, the phrase "transgender community" had emerged as an umbrella word for those who identify as transgender. “Transsexuals, transgenderists, crossdressers, and anybody transitioning” were all included in the “International Conference on Transgender Law and Employment Policy's definition of transgender” by 1992. During the same year, Leslie Feinberg published a booklet "Transgender Liberation: A Movement Whose Time Has Come," which defined the word "transgender" as a phrase that included all types of gender non-conformity. Susan Stryker in 1994 mentioned that “all identities or practices that cross over, cut across or otherwise queer socially constructed sex/gender boundaries, including but not limited to transsexuality, heterosexual transvestism, gay drag, butch lesbianism, and such non-European identities as the Native American berdache or the Indian Hijra” must be referred to as transgenders.⁷⁰

Those who went from being female to male were referred to as "female to male" throughout the

⁶⁸ *Supra* Note 65.

⁶⁹ Virginia Prince, *Understanding Cross-Dressing*, 145 (Sandy Thomas Advertising, 1976)

⁷⁰ Katrina Roen, “Transgender Theory and Embodiment: the risk of racial marginalisation”, 10 JGS (2001).

mid-1990s and early 2000s, while women who went from being male to female were called "male to female". There is a growing acceptance of persons who choose not to undergo "medical reassignment" as a member of the community, and a trend away from terminologies emphasizing biological statuses is now being witnessed. Now the terms transfeminine and transmasculine are more popular. Transfeminine people were born male but have a predominantly feminine gender identity or presentation, whilst transmasculine people are the reverse. Older literature often uses the word "transgendered," although the transgender community today considers it an adjective rather than a verb. Some groups, including GLAAD and The Guardian, say that the term "transgender" should never be used as a noun; however, the term may also be used to refer to the larger issue of transgenderism, i.e. the experience and identity of people who identify as transgender.⁷¹

(C) Can the terms Transgender and Transsexuals be used interchangeably?

David Oliver Cauldwell brought the word "transsexual" to the English language in 1949, drawing on Magnus Hirschfeld's 1923 phrase "seelischer Transsexualismus". Harry Benjamin popularised this terminology in 1966, which was around the same time that the term "transgender" was being developed and simultaneously becoming widely known. There are many transgender people who use the word "transsexual" to denote those who undergo medical therapy in order to permanently transition to the gender they identify with.

The way individuals define gender and sexual orientation lead to differences in meaning between the labels "transgender" and "transsexual." As an alternative to transsexuality, transgender is concerned with one's psychological gender preference or tendency, in addition to the cultural expectations that may be related to a certain gender role. The word "transsexual" has a negative connotation for many transgender persons. She said in a 1979 interview that "gender has nothing to do with bedmates; it has everything to do with identity," disputing transsexuality. Some individuals are offended by the term "transsexual" not because of their sexuality, but because of their gender identity. As a group, they dislike being grouped with transsexuals. Many persons who do not identify as transgender should not be included in the transgender spectrum, according to anthropologist and author "David Valentine" in "Imagining Transgender: An Ethnography of a Category."⁷² According to Leslie Feinberg, the term "transgender" was coined by others to help those who identify as non-binary or non-cisgender understand those who do not. There are no universally agreed definitions of transgender health,

⁷¹ Ibid.

⁷² Katrina Roen, "Transgender Theory and Embodiment: the risk of racial marginalisation", 10 JGS (2001).

according to THP at Fenway Hospital in Boston, and there is a lot of uncertainty since the language that was commonly used at the turn of the century may suddenly be considered pejorative. The THP urges practitioners to discuss with their patients about their chosen nomenclature unless they are comfortable with the term "transsexual." On Harry Benjamin's Sex Orientation Scale (SOS), transsexuals and transvestites were divided into six groups based on their reasons for cross-dressing and the necessity for sex reassignment surgery.⁷³ Progress in gender identification and categorization has been made since Harry Benjamin's time. Gender-variant behavior and expression are no longer determined by a person's sexual orientation or other characteristics. Heterosexual trans women's identities are not reflected on Benjamin's scale.

(D) Transgenders and their place in Indian society

As a result, the term "transgender" describes people who have a different sense of gender identification than they do biologically. A transgender person is someone who has been assigned the wrong gender at birth, as well as someone who is intersex or gender nonconforming. For those born either male or female but who express their identity, conduct, or expression in ways that are distinct from their biological sex, this is the category for you. Individuals who identify as transgender or gender nonconforming reject the notion of gender as a binary that divides people into two categories based on their pronouns. They strive to live as authentically as possible as a person of the gender they identify as. The "Hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv Sakthis" are only a few of the many transgender identities in India. People used to treat them respectfully because of the unfortunate fall in regard and tolerance for them. Hindu culture has long embraced non-binary gender expression, but Western societies have just recently begun exploring genders other than male and female.⁷⁴

Ancient Hindu books like "Ramayana and the Mahabharata", in which the Hindu warrior "Arjuna" turns into a transgender, provide evidence of their existence. For centuries, the Mughal Empire's Muslim monarchs coveted Indian women of the third sex. Hijras were also a part of Mughal kingdom sepoys. In 2014, an estimated three million transgender people lived in India alone. In South Asia, the hijras are by far the most common group of people who identify as transgender. When it comes to appearance and dress, hijras tend to be more feminine than their male counterparts. Male genitalia removal as a sacrifice to the Hindu goddess Bahuchara Mata is preferred by many, but not all, males. Another kind of transgender is of intersex hijra.

⁷³ Ibid.

⁷⁴ Public and Religious Life Dept, "The Third Gender and Hijras", *Harvard Divinity School*, 2018.

Outsiders refer to most hijras as transgender, even though they consider themselves as third-gender persons who are neither male nor female, there is no way that they might be of the same gender. Hijra identification is difficult, and some hijras have recently come out as transgender and sought surgery for gender transition.

Hijras, for the most part, leave their families to join the hijra community, a religious sect that teaches its doctrines in secrecy and isolates itself from the rest of society. It starts with a person being introduced to a guru or tutor who will teach them the hijra ways of life. The hijras live in a communal environment with other hijras to have a better understanding of their roles in Hindu families' ceremonial functions. As part of a Hindu ceremony, Hijras are expected to perform traditional dances and songs as well as offer prayers. In Hinduism, it is believed that a hijra's blessings would ensure the child's future fertility, riches, and long life. One to two days after a wedding, a hijra is held in order to provide the newlyweds with the gift of childbearing. Hindus believe that hijras are powerful because of their third-sex nature, which entails sacrificing their reproductive powers to the deity. Indeed, hijras may curse a family for disobeying or failing to pay for the benefits. According to Hijras and other Hindus, a lot of people believe that they only curse in the most extreme of circumstances. In addition to being solicited, hijras will turn up at births and marriages without warning, claiming that it is their solemn religious duty to do so. In Hindu families, even when they are not invited, hijras are accepted and compensated for their services. When a Hindu household refuses to allow them in or refuses to pay, it may be necessary to call the cops. The Hijra has such cultural influence that the police seldom interfere. In spite of this, the Hijras are revered and feared in equal measure.⁷⁵

Hijras are a kind of Hindu cabaret act that performs only for other Hindus. However, not all of them are Hindus. With a few Christians tossed in for good measure, the population is mostly Muslim. While some hijras practice both Hindu and Islamic faiths, this is not always the case. Certain hijras revere the Hindu goddess "Bahuchara Mata", yet they maintain a "Muslim identity" and observe Islamic holidays like Ramadan. Non-binary gender concepts and religious traditions aren't the only things limiting certain hijra. Many of the reverence for the hijras that had been held for thousands of years was lost when Hinduism came into touch with colonialism. People who identified as non-binary or gender-nonconforming were shocking to British colonists in South Asia in the nineteenth and twentieth century. They were designated criminals by the British in 1871 and commanded to be arrested at every chance. There was little to no disruption in Hijras' religious responsibilities toward Hindus. While British shame has lasted

⁷⁵ Ibid.

for more than two centuries, it has had an impact. They are still seen as undesirable, despite the fact that the 1871 ordinance was overturned immediately after independence and that hijras maintain their customary roles at births and marriages. When they are not in ceremonial circumstances, they are almost never permitted to work or attend school. Beggars and prostitutes often find themselves in this situation because of a lack of money and other resources. On top of that, they are often subjected to abuse by government personnel and denied medical attention.⁷⁶

Rights and liberties previously denied to transgenders have recently been restored. Third-gender people were given equal rights as citizens in India, Nepal, and Bangladesh by 2014. According to India's SC, identifying this group of people is not a concern of social or medical interest; it is instead one of the human rights. They issued an executive order for the government to ensure that all third-gender people have equal access to education and employment. Raigarh in 2015 elected India's first transgender mayor, while Kochi in 2017 hired 23 of India's first transgender to work on its public transportation system, despite slow progress. In spite of Hindu families continuing to be rewarded with wealth, their progress has been gradual, the majority of third-gender Indians are still impoverished.

(E) History of trans exclusion in India

The term "transgender" encompasses such a section of the society with a wide range of issues like identity crises and being struck between the societal expectations from a male and female respectively. Trans-genders have their origin in India dating back to the 13th and 14th centuries. They had a powerful position and were regarded as prominent figures in society before and during the Mughal era, but once the British arrived in India, their status changed and they were seen as "a violation of public morality."⁷⁷

After the British reign in India came to an end, they were segregated from society and exposed to daily insults and discrimination. In an attempt to ensure their rights and independence via legal protection, several studies have been conducted across the world focusing on issues such as identity, health, and social stigmata. It is possible that transgenders who identify as either exclusively male or exclusively female may play a variety of roles and behave in various ways, but their status was unknown until 2011, when the census and EC categorised them as "others." It took the SC of India (SC), under the leadership of Justices Jagan Mohan Reddy and A.K.

⁷⁶ Public and Religious Life Dept, "The Third Gender and Hijras", *Harvard Divinity School*, 2018.

⁷⁷ Michael G. Peletz, "Transgenderism and Gender Pluralism in Southeast Asia since Early Modern Times" 47 *Current Anthropology*, 309-340 (2006).

Sikri, a long legal battle to recognize them as the "third gender" in 2014⁷⁸.

a. Identity Formation of the community

Transgenders may be traced back to the existence of persons who don't fit into either the male or female categories, according to ancient books on gender ambiguity such as "Satapatha Brahman". The discovery of historical allusions to the transgenders in ancient and holy scriptures has added to the historicity of the event. Hijra's/Transgender's comparison to Satapatha Brahman's literary style is true, notwithstanding its vagueness. According to folklore, a Transgender's identity may be determined by where they are concentrated. Aravani, who married Vishnu as the maiden Mohini, is notably important because of the yearly celebration in Koovagam, Tamil Nadu. Tirunanka marries Aravanis during the festivities, and the two widows lament his death the next day. As a result, the myth is still playing an important role in the present stage of Transgender identity development.

A wide range of beliefs surrounds the Transgender identity in Gujarat and MP. The narrative of Amba/sikhandin upon his return from exile as the 'eunuch' Bahuchara. These tales concentrate on two legendary beings who are unsure about their gender. Arjuna, a Pandava warrior from the Mahabharata, is said to have spent a year in King Virata's court disguised as a "eunuch," according to legend. His disguise and masculinity are evident, but it's not clear whether the hero undergoes a physiological metamorphosis or just cross-dressing in order to seem like a man. However, the myth never verifies his gender in this disguise, instead of focusing on his metamorphosis into a 'eunuch,' which enables Hijras to connect with Arjuna and project their own identities onto one of Sanskrit epic poetry's greatest warriors and noblemen. This legendary story may be utilized by transgenders to build a mythological narrative of their own. Religious literature like this is used by transgender people with ambiguous gender status to illustrate how common gender diversity was in ancient times. Their long-held self-identity is reaffirmed as well. Transgenders might make use of this legendary narrative to determine their own identity and how they wish to be remembered as historical characters and notable individuals in ancient texts.⁷⁹

b. Socio-economic conditions of Transgenders

Transgenders are typically considered one of the most underprivileged communities in the nation. Transgenders, who trace their ancestry back to ancient Hindu mythology and the mother goddess, regarded themselves as an ambiguous representation of Lord Shiva, demonstrating

⁷⁸ *NALSA v UOI*, AIR 2014 SC 1863.

⁷⁹ *Supra* Note 76.

their singularity. The history of Transgenders on the Indian subcontinent extends back to antiquity, according to the Kama Sutra period. Gender-based, spiritual, and survival-oriented, it has a long and varied history in subcontinental societies. Once a well-known Indian ethnic group, the Transgenders have all but disappeared. Ancient Hindu literature, such as the Vedas, has eunuchs and other characters with a combination of male and female features.

They were revered as a symbol of fertility and good fortune. Mughal court administration relied heavily on the Eunuchs, who served as imperial guards. They've been doing badhai, or blessings, for millennia at weddings and births. Sec 377⁸⁰ of the IPC, 1860 degraded the British Empire's image throughout the colonial period. A return to their dignity has enabled them to campaign for their rights and freedoms anew, thanks in part to decriminalization.

Additional legislation enacted by the Elections Commission recognized them as third gender. Transgenders face prejudice and abuse from all sectors due to their tiny population and gender disparities, resulting in social and economic challenges including poor literacy, low income, and social stigmata that affect their everyday lives. As a result of a poor literacy rate, many people turn to prostitution as a means of life, which puts them at risk for illnesses such as Aids and HIV. Collecting newborn baby money and requesting charity gifts on the street are two more options. Gender inequality makes it more difficult for individuals to express their thoughts and abilities.⁸¹

Physiological and behavioral problems in children may be the result of abuse, both verbal and physical. It's also possible that they'll be refused assistance altogether. They have no choice but to work as sex workers or beg on the streets since they have no other options. The government has also set as a goal the April 2014 legal recognition of the third sex gender, which would provide these persons greater access to educational and health care possibilities. The ability to vote, which symbolizes the freedom of expression and speech in society, was one of the most crucial victories. True to form, Radhakrishna said that "transgender individuals should be treated equally to other minorities under the law," enabling them to "access employment, health care, and education." Laws enacted by the Indian parliament protect transgender persons from abuse and ensure that they are enrolled in schools and government jobs.

c. Social Exclusion of Transgender Community

It's becoming more common to use the Social Exclusion Framework to show how groups that are disadvantaged or disenfranchised have problems and issues that need to be addressed. It

⁸⁰ S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

⁸¹ *Supra* Note 76.

looks at both the causes and effects of social disadvantage in a way that is both multidimensional and dynamic. In terms of the Millennium Development Goals, the Social Exclusion Framework is thought to be very important. This is especially true when it comes to social relations and institutions that aren't inclusive. A transgender person's "social exclusion" is the process by which she is excluded from mainstream society, including economics, politics, and decision-making. Hijras and TG communities are subjected to several forms of discrimination, which are detailed in this section. It goes like this:⁸²

1. Social and Cultural Exclusion

A lack of understanding about homosexuals and persons whose gender identity and expression vary from their biological sex appears to exist among the general population. Sexual minorities, notably transgender people, have been subjected to human rights breaches in India. Families struggle to accept when a male youngster begins to act in ways that are regarded unsuitable for his gender identity. If a son or brother is acting inappropriately or dressed as a girl, family members may threaten, condemn, or even physically assault him. Some parents may evict and disown their children if they don't meet society's gender stereotypes and don't carry out the responsibilities expected of a male kid. There are several possible reasons for this, including embarrassment and humiliation for the family; a reduced probability of their kid marrying a woman in the future, thereby terminating their generation; and a perceived inadequacy on the side of their child to care for the family. Therefore, it is possible that future transgender women could have difficulties in obtaining their rightful part of an inheritance or enjoying the benefits that are due to them. When a youngster or adolescent is no longer able to bear prejudice or does not want to embarrass their family, they may opt to leave. Some of these may end up in Hijras villages in the future. As a result, many Transgenders are illiterate or have little education, making it difficult for them to obtain work. Pushing them further into the clutches of sex work or begging.

Others make fun of those who identify as gender nonconforming, calling them "strange," while others are downright cruel. Fake arrests, extortion of money and goods, and forced sex are just a few of the techniques the government may utilize to mistreat its citizens. TGs are vulnerable to extortion and sexual assault because they lack police protection. A 2007 survey conducted by MSM and Hijras found that 46% of respondents had been subjected to forced sex in the preceding year, 44% had been physically abused, 56% had been verbally abused, 31% had been extorted for money, and 24% had been threatened with death. Even in the medical field,

⁸² Divan et al, "Transgender social inclusion and equality: a pivotal path to development", 19 *JIAS* (2016).

Transgenders are subject to prejudice. It's very uncommon for healthcare providers to be unfamiliar with the health issues that individuals who identify as sexual minorities confront because of a lack of training or exposure to the sector. Because of this, transgender persons encounter particular challenges from health care professionals. HIV testing, antiretroviral treatment, and other sexual health services have been tough to come by for a long time now in the developing world. Health care facilities that discriminate against Hijras and transgender people include calling them "males," referring to them with masculine pronouns, admitting them into wards that are only for men, humiliating them while they wait in a male-only line, verbally harassing them by hospital staff, denying them medical services, all of which are based on their gender identity. Discrimination may arise as a result of one or more of the following transgender identity, sex work status, HIV status, or any combination thereof.⁸³

2. Political Exclusion

It was in 1871 when the British criminalized "addicted to the systematic commission of non-bailable crimes," which included several tribes and civilizations. Since their inception, these families and groups have been seen as a source of criminal activity that is passed down the generations. This law was changed in 1897, and it stated that anybody who admitted that they were impotent, or who could be shown to be so by medical examination, was regarded a "eunuch" under the Criminal Tribes Act of 1871⁸⁴. By law, the names and addresses of any workers who have been "reasonably suspected" of kidnapping, castrating, or engaging in criminal activity under Section 377 IPC⁸⁵ must be kept on file. Additionally, it was against the law for eunuchs to dress as females. Hijras' customary sources of income were threatened by this law, which declared that anybody who dances, plays music, or engages in any public performance on the street may be held without obtaining writ.

When the Delhi High Court determined in 2009⁸⁶ that criminalizing consensual adult same-sex relationships was unconstitutional, Section 377 was overturned. Following concerns, the Indian Supreme Court reinstated Section 377. In contrast, a constitutional court found in 2018⁸⁷ that this was outside the scope of the law. A broad variety of legal challenges are faced by transgender individuals, including those who are gender diverse. Gender identity, same-sex marriage, child adoption, inheritance, will writing, and job discrimination are only a few of the legal concerns that need to be addressed in the area of gender equality. Getting legal recognition

⁸³ Ibid.

⁸⁴ Criminal Tribes Act, 1871, (Act No. XXVII of 1871).

⁸⁵ S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

⁸⁶ *Naz Foundation v. Govt. of NCT of Delhi*, (2009) 111 DRJ 1.

⁸⁷ *Navtej Singh Johar v UOI*, AIR 2018 SC 4321.

of one's gender identity may be difficult for transgender people.

It was impossible to get government rations (food subsidies), a shop card, a passport, or even a bank account before the NALSA decision. Even though it is now legal, a lack of information and acceptability has made the legislation practically worthless. According to a recent mapping project, only 103 organizations and networks (including institutions that provide aid to MSM) are working with transgender people in India. Despite this, just half of these organizations (46/103) are community-owned.⁸⁸ Given the government's emphasis on community-based organisations (CBOs) directing HIV responses, Hijras/TG persons should have no trouble founding or maintaining their own groups.

Many from the community have had difficulty mobilising their communities and officially establishing their groups. All members of an organization must present proof of residency and identity before the group may be officially registered under any legislation. As a result, the majority of Hijras/TG have no means of proving their gender other than documents that only reflect their male gender. Similarly, obtaining a joint bank account to oversee the financial affairs of their firm is challenging. Government employees have a lack of empathy. Legal standards have been met by a few transgender CBOs in India notwithstanding the difficulties. On the other side, transgenders have allegedly had concerns with government personnel in charge of registering paperwork, claiming that they were asked needless and redundant questions and that the procedure dragged on for an excessively long period.⁸⁹

3. Exclusion from Economic opportunities

Numerous problems with social security are faced by both Hijras and TG members of society. Having fled or been expelled from their biological families, they don't anticipate long-term support from them. Those who are unable to work (or who have a decreased earning capability) because of health problems, a scarcity of employment prospects, or senior age encounter a number of difficulties as a consequence. Hijras/TG communities suffer a number of significant issues related to social security. Most firms will not employ transgender persons, even if they are qualified and skilled. Success stories of Hijras who own restaurants or organize cultural events have been chronicled in a number of locations. They are, however, an anomaly. One of the primary reasons so many transgender persons choose or continue to participate in sex work, which is related with HIV and other health concerns, is a lack of other employment opportunities. [...] Life Insurance Corporation of India salespeople are among the conventional

⁸⁸ Chakrapani, Venkatesan, "Hijras/transgender women in India: HIV, human rights and social exclusion", *UNDP India* (2010).

⁸⁹ *Ibid.*

occupations that have lately been offered to qualified transgender women. Additionally, there are several hurdles to accessing and benefiting from the social assistance programs that do exist. People who are socially or economically disadvantaged may benefit from a wide range of social assistance programs provided by social welfare departments. Only a few unusual examples in Tamil Nadu give land for Aravanis; there are no particular plans for Hijras at the moment. As a minority community, "transgenders" have been designated by Andhra Pradesh's state government to be eligible for social programs. Even deserving people are unable to participate in many programs due to the lengthy and time-consuming processes that need proof of residency, identification, and an income certificate. The various social assistance programs available to Hijra/TGs are likewise unknown to them. To address the social welfare problems of Aravanis/Hijras, Tamil Nadu's Department of Social Welfare formed the 'Aravanis/Transgender Women's Welfare Board.' As far as we know, no other country has adopted this stance. The majority of transgenders do not have life or health insurance due to a lack of knowledge, inability to pay premiums, or issues enrolling in the schemes. Despite the widespread belief that government hospitals are ineffectual, the vast majority of the population is reliant on them.⁹⁰

(F) Transgenders(s) at the workplace in India: A general review

Throughout history, trans individuals have existed in all socioeconomic groups, nations, and castes. However, they have always had to pay a price for their success, resulting in an additional uphill battle. In terms of social equality, rights, education, employment opportunities, and other opportunities, the transgender community has been a victim of society's contradictory attitude toward them, in which they are both ostracized and adored at the same time. In the past, transgender persons have experienced greater challenges in the job than the general population. Because to Covid's stagnating economy, India's young have been jobless for a long time. To make matters worse, transgender persons have been particularly hard hit. While bogus job promises have been made for India's young since the dawn of time, the promise of work for transgender people has received less attention. Are there any/many alternatives? In the workplace, transgender persons are often refused employment and other possibilities. Those who do succeed, on the other hand, earn far less than their counterparts. The reason for this is self-evident: stigma and prejudice within the community. Discrimination against transgender persons is prohibited in the employment, education, healthcare, public goods and services, and other settings. However, this is only small part of the major issue.

⁹⁰ *Supra* Note 87.

According to the 2011 census, there were 4.88 lakh transgender people in India.⁹¹ Many of them are unemployed, but just a few are able to find work. It was found that 96 percent of transgenders were refused employment and forced to engage in low-paying or sex-related occupations as badhais, begging, and prostitutes, according to the National Human Rights Commission in 2018.⁹² More than two-thirds of transgenders in the United States are denied the opportunity to engage in any type of economic activity, even if they are highly qualified. 91% of transgender people who took the survey claimed there are no jobs for them, even if they are qualified. More than half of those surveyed did not go to school, and those who did were subjected to significant prejudice, according to the research. According to the National Human Rights Commission, 52 percent of transgender students were harassed by their peers and 15 percent by instructors, resulting in them dropping out of school.⁹³ Most transgenders at the time made between Rs.10,000 and Rs.15,000 a month; just 6% of transgenders worked in the commercial sector or for non-governmental organizations, and only 1% of transgenders earned more than Rs.25,000 a month.⁹⁴ According to a recent survey, transgender persons are 49 times more likely to get HIV than the normal population because they are forced to participate in dangerous sex work.⁹⁵ Political leaders have several times made sporadic promises about job possibilities for transgender people in the past. The Aam Admi Party (AAP) formed an LGBTQ cell ahead of the Pune corporation elections in October 2021 in order to follow the party's 'principle of inclusiveness and equality'. Some of the topics that the party indicated they wished to concentrate on were night shelters, employment, education, and knowledge of trans rights. There is, however, little to no information on the results of the same. Transgender people's concerns about employment and equal rights were on Congress's agenda ahead of the 2019 Lok Sabha Elections. "Congress recognizes the sexual variety among individuals and offers equality and equal protection of the laws to those with diverse sexual identities," it had declared. Additional promises included withdrawing the proposed Transgender Bill and instituting gender awareness training in all government agencies. However, the 'promises' never eventuated after the BJP's win in 2019. The topic of whether the transgender population may expect additional work prospects in the next years remains open, given the number of trans candidates being filed

⁹¹ Office of the Registrar General & Census Commissioner, Census India: "TRANSGENDERS / OTHERS" (2011).

⁹² *Ibid.*

⁹³ Dr Ponam Agarwal et al., *Inclusion of Transgender Children in School Education: Concerns and Roadmap* (NCERT, India, 2021).

⁹⁴ *Ibid.*

⁹⁵ Dr Ponam Agarwal et al., *Inclusion of Transgender Children in School Education: Concerns and Roadmap* (NCERT, India, 2021).

in the upcoming 2022 Assembly elections in various states.

Although numerous private companies have developed queer-friendly workplace policies with 'inclusion' as a top priority, there have been less statements from leaders to ease trans people's job activities. In 2017, the Kochi Metro Rail Limited in Kerala engaged 23 transgender people, but eight of them departed within a month owing to landlords' unwillingness to provide them with housing.⁹⁶ According to some stories, the job was of little assistance since they were forced to leave their lodging because their employer had no legal commitment to intervene and assist them in their battle against discrimination. In 2019, a transgender person from Gorakhpur was qualified for a position as a train driver/technician, alongside 2,941 women and 83,810 men, in a historic step. However, no more information on whether they were recruited was available.⁹⁷ In 2020, the Noida Metro Rail Corporation (NMRC) renamed one of its stations Pride Station in honor of the trans community.⁹⁸ The NMRC used contractors to recruit six members of the transgender community for services. Karnataka became the first Indian state to provide a 1% quota for transgender people in public sector positions in 2021. Given the current state of unemployment and youth, however, the trans community's work challenges get little to no attention. Hence, the focus has not yet reached upon making the workplace safe from them when it comes to sexual harassment.

(G)Need for Trans Inclusivity in Workplace

People who identify as transgender may have difficulty finding and retaining employment in India. College graduates and professionals with established careers have the freedom to be who they really are. Transgender employees may soon be the norm in many Indian companies. If they are transgender, they may have been hired via the normal channels, making them still live and express themselves as the gender they were born with. So they have no choice but to collaborate and pretend to be of the same gender. People who are transgender may refuse to acknowledge that their birth gender is wrong. Some organizations in India are known for their openness to transgender personnel and their acceptance or encouragement of gender affirmation in the workplace.

Orinam holds the believe that “Organizations committed to diversity and inclusion need to create a safe, welcoming and inclusive environment for transgender employees, both existing employees and new recruits, to be recognized in their gender, and create channels for requesting

⁹⁶ Ibid.

⁹⁷ Dr Ponam Agarwal et al., *Inclusion of Transgender Children in School Education: Concerns and Roadmap* (NCERT, India, 2021).

⁹⁸ Dr Ponam Agarwal et al., *Inclusion of Transgender Children in School Education: Concerns and Roadmap* (NCERT, India, 2021).

support if and when required.”⁹⁹

“Gender affirmation of transgender workers, with regard to inclusive policies and benefits, is a critical component in creating an inclusive workplace. In an effort to inspire HR professionals or company leaders to apply the resource guide and promote inclusive practices towards the transgender population, Orinam and Diversity Dialogues have created a resource guide.” said Diversity Dialogues.¹⁰⁰

“Whether it's at an interview or not, those who identify as transgender+ face a lot of scrutiny. In certain cases, people believe that they have the right to inquire about our genitalia and sex life, as well as our transition surgery. Instead than focusing on our names and pronouns, they treat us as if we were normal people. The handbook outlines the foundations of an organization's transgender positive culture and conduct.”, says Aditya Batavia, an Indian transgender who works at retail conglomerate.

“As a transgender person and IT professional, I have had to refrain from potential job opportunities, faced micro-aggression, and been denied client-facing moments because of my identity/expression. The anxieties and fear of discrimination, difficulties in finding another job, and risk of losing livelihood prevent many of us transgender+ people from revealing our true gender and force us to live dual lives. Post- the NALSA and 377 verdicts it's the right time for business community to pitch in and address discrimination faced by transgender+ community in their organizations as they now have moral and legal obligations to ensure a safe, inclusive and healthy workplace”, says Kanaga, a transwoman working at large Indian IT services provider

“Understanding issues related to transgender identity at work place (just as other issues related to diversity and inclusion) is a layered matter which will have to be revisited and updated from time to time and experience to experience. An open and embracing attitude and kindness is the key. I feel this document clearly shows the sincerity and hard work put into recognizing core issues related to transgender persons' inclusion at workplaces and is very beautifully put together” says Shyam Balasubramanian, a transmasculine DFT engineer.

Instead of discriminating against people who identify as LGBTQ, several firms have rules that allow them to do business. People who identify as LGBTQ+, especially those who identify as transgender, are receiving an increasing amount of attention. LGBTQ+ resource groups and

⁹⁹ Diversity Dialogues and Orinam “Transgender-Affirming Guidelines for Indian Workplaces”, [Orinam](#), 3 Nov, 2018.

¹⁰⁰ Ibid.

nondiscrimination rules were implemented by Infosys and IBM in India in 2011.¹⁰¹

Medical benefits for same-sex couples are provided by both Godrej and Royal Bank of Scotland, with the former offering gender-neutral restrooms and insurance coverage for transgender workers undergoing sexual reassignment surgery (SRS). In addition to being the right thing to do ethically, these companies also profit financially from abiding by these standards. Godrej estimates India's LGBTQ+ community has a combined spending potential of \$200 billion (14 lakh crore), while a World Bank study from 2016 estimates that homophobia and transphobia cost the country up to \$32 billion annually. Businesses can't afford to lose that much money. Some other benefits include the opportunity to acquire younger employees, as well as access to a bigger pool of talent. It's important for a company's image in the digital world and its bottom line to be inclusive, says Shahani. Keshav Suri, the executive director of the Lalit Suri Hospitality Group, is of the same opinion as well. On the subject of diversity and inclusion in the workplace, Suri has worked hard to get the Kitty Su HR department to adopt a policy that covers all employees, regardless of sexual orientation or gender identity or expression.

“At the end of the day, to have a discrimination free company only makes good business sense,” says Suri, who has also launched the Keshav Suri Foundation. “If you have team members that are not able to be fully themselves, then they will not integrate with the company. But if you accept people for who they are, they’ll give you a 100%.” Anubhuti Banerjee was always aware that she was transgender, but it wasn't until she started working at Tata Steel that she felt ready to transition. There were actual efforts being made by the firm at the time to improve diversity and inclusion. That's why the company's top diversity officer provided Banerjee full support and encouragement when she informed him she wanted to become transgender.¹⁰²

“The top management were also extremely supportive,” says Banerjee, who now leads the company's employee resource group for LGBTQ+ employees. “I got the opportunity to make changes to the current policy so that they are more inclusive to people on the LGBTQ spectrum. That was a kind of empowerment that I never expected.” There were a lot of nasty questions and comments from her colleagues at first, but Banerjee reports that things have improved substantially after a series of awareness lectures. Now that the company has established large operations in Jamshedpur and Kalinganagar, Tata Steel not only covers SRS as part of its medical insurance and offers gender-neutral toilets, but it also engages in community outreach to raise awareness of gender issues. Recently, a student from campus reached out to Banerjee

¹⁰¹ Diversity Dialogues and Orinam “Transgender-Affirming Guidelines for Indian Workplaces”, [Orinam](#), 3 Nov, 2018

¹⁰² Ibid.

and inquired if there was an employee resource group and positive policies for trans people, Banerjee says, adding that, "It was one of the main reasons they joined the firm," which "gives us the motivation to keep going because it shows that people are paying attention to what you're doing and that it will have an effect."

IV. LAWS ON TRANSGENDERS IN INDIA WITH SPECIAL REFERENCE TO TRANSGENDER(S) ACT, 2019

Transgender persons in India endure a broad spectrum of discrimination and ill-treatment, ranging from being teased in school to being an embarrassment to being harassed at home and in public areas. The community has never before received equal and polite treatment. Being transgender comes with its own set of difficulties. As a consequence of taboo topics like sex, sexuality, and sexual orientation, many transgender people are forced to fend for themselves in Indian society. Due to a lack of family support, formal education, and financial aid from outside sources, many members of the community are forced to depend on begging and sex work to make ends meet. As a result, transgender persons are one of the country's most stigmatized populations. If they manage to get a college diploma while concealing their actual identity, they will encounter further challenges once they join the profession. According to a poll conducted by the National Human Rights Commission of India (NHRC)¹⁰³, practically all transgender people face societal rejection on a daily basis. Nonetheless, it is an aim to include transgender persons in the workplace.

- **Laws relating to Sexual Offences**

Except for Section 377¹⁰⁴, all sexual offenses under the IPC, 1860 are gender-specific; that is, a woman is always considered the victim and a male is considered the perpetrator. The IPC does not define sexual offenses. There are a wide variety of sexual offenses that may be described as a violation of an individual's sex purity and/or physical integrity. Criminal laws in India are largely impacted by societal attitudes. By virtue of their gender, men are always the guilty party in every scenario because of the deep-seated patriarchy that has been ingrained in their thinking for generations. Gender-specific rape legislation, as well as other laws dealing with sexual offenses, such as the POSH Act, 2013¹⁰⁵, have resulted as a result of this.

India's rape law was exceedingly rigid, regressive, and anti-women until the landmark Mathura rape case. Following the rape case in Mathura, the burden of proof was shifted from the victim

¹⁰³ NHRC, Study on Human Rights of Transgenders as Third Genders, (Feb 2017).

¹⁰⁴ S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁰⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

to the offender. Rape trials should be conducted behind closed doors, with the victim's name kept unknown. As a consequence, the rape law was altered to accommodate the activists' needs and suggestions. Since the 1980s, changing India's rape laws has been at the forefront of the women's movement. The concept of rape has long been a source of contention among women's groups. After a revision in 2013, India's rape statute became more comprehensive of all forms of non-consensual sexual behavior. While there is still no gender equality, the law only recognizes female rape victims, unless the offender is motivated by ethnic hate. In addition, the 2013 amendment¹⁰⁶ designated acid assault as a hate crime, and the statutes controlling it were made gender-neutral. However, transgender persons were exempt from the limitations. However, there were legal safeguards in existence for victims of sexual assaults that did not fall within the definition of "rape" as defined by u/s 375. These offences might be prosecuted under Section 377, which deals with "unnatural sexual offenses."

Sec 377¹⁰⁷: "Unnatural offenses. — Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Although this rule provided legal protection, it was also transphobic in that it labeled certain consensual activities as "unnatural" simply because they did not fit into the normatively accepted definition of "natural." After Section 377 was decriminalized, it is weird and regrettable that the same provision is still in place for sexual offenses today. The regressive aspect of this legislation may be seen in this paragraph, which equates rape between a man and a female to sexual intercourse between two consenting homosexuals.¹⁰⁸

- **Position of Transgender(s) under law**

Long before the 2018 verdict, the AIDS Bhedbhav Virodhi Andolan (ABVA)¹⁰⁹ published a paper in 1991 documenting the horrors done against the transgender population under the cover of Section 377 IPC and calling for its repeal. A writ petition was filed on this grounds, asking the court to declare Section 377 unconstitutional. The writ petition was rejected due to legal morality, majoritarian morality, and a decision that the writ petition was extra vires the Constitution. Despite the petition's technical denial, it inspired the trans community to fight for their rights and seek legal safeguards against sexual assaults. The first case in which the notion

¹⁰⁶ Criminal Law (Amendment) Act, 2013(Act No. 13 of 2013).

¹⁰⁷ S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁰⁸ Chatterjee, S., "Problems Faced by LGBT People in the Mainstream Society: Some Recommendations" 1 *IJIMS* 317-331 (2014).

¹⁰⁹ AIDS Bhedbhav Virodhi Andolan, *Less than Gay*, (1991).

of gender neutrality was studied was *Sudesh Jhaku v. K.C.J*¹¹⁰.

a. *Sudesh Jhaku v. K.C. Jhaku*¹¹¹

In 1996, the Delhi High Court asked that the government establish a gender-neutral criminal code in the *Sudesh Jhaku* case. The SC specified problems for the Law Commission of India to investigate as a result of this decision. The 172nd Law Commission Report came as a result of this.

b. *172nd Law Commission Report*¹¹²

The 172nd Law Commission Report, released in 2000, provided various reform proposals as part of a thorough assessment of the criminal justice system's reaction to sexual assault and other gender-based crimes. Section 377¹¹³, on the other hand, received just a cursory mention in the Report, despite the fact that sections 375¹¹⁴ and 376¹¹⁵ received lengthy explanations. This section should indeed be deleted, however, because of the following reason: "In the light of the change effected by us in Section 375, we are of the opinion that Section 377 deserved to be deleted. After the changes effected by us in the preceding provision (Sections 375 to 376-E), the only content left in Section 377 is having voluntary carnal intercourse with any animal, we may leave such person to their just deserts."

While Section 377 was suggested to be deleted, nothing was stated regarding gender neutrality or legal protections for transgender people. Trans people were able to see a change in legislators' thinking, but it didn't take form until 2012 when *Naz Foundation v. Govt. of NCT of Delhi* was handed down, setting the stage for another precedent-setting verdict for the trans community.

c. *Naz Foundation v. Govt. of NCT of Delhi*¹¹⁶

For the transgender community, the case of *Naz Foundation v. Government of NCT of Delhi* was a game-changer. Since 1994, the Naz Foundation has worked on HIV/AIDS, sexual health education, and other related issues as a non-governmental organization (NGO). The Delhi High Court heard the Foundation's challenge to Section 377's constitutionality in a writ action. In view of the growing acceptance of homosexuality and transgenderism, the Delhi High Court decriminalized Section 377 of the Indian Penal Code. The LGBT community responded positively right away, but religious leaders reacted with equal fervor. As the SC considered an

¹¹⁰ 1996 (38) DRJ 22.

¹¹¹ Ibid.

¹¹² Law Commission of India, 172ND Report on Review of Rape Laws (March 2000).

¹¹³ S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹¹⁴ S. 375, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹¹⁵ S. 376, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹¹⁶ (2009) 111 DRJ 1.

appeal against the Naz Foundation, a ray of hope evaporated. Prior to this appeal, a committee was formed in 2012 to assess the country's rape laws in the wake of the horrific Nirbhaya rape case.

*d. The Verma Committee*¹¹⁷

For the first time, the Verma Committee heard the screams of the LGBTQA community about the need for rules dealing with sexual offenses that are inclusive of all genders. In the case of incidents involving sexual assault, the public was given a platform to voice its dissatisfaction with the lack of inclusion and legal protections. Instead of using "woman" to define a rape victim, the Committee suggested using the word "person" to describe the victim and the term "man" to describe the offender, thereby including the transgender population in the definition of rape and sexual assault. Though the trans community celebrated this as a major success, it was short-lived, since the Criminal Law (Amendment) Act, 2013¹¹⁸, only enacted the suggestions made to make the rape laws harsher by broadening the definition of "rape." This was a major setback for the trans community. Gender neutrality was not taken into account, and the gender-specific definitions of these sexual offenses were kept. After all this, *Suresh Kumar Koushal v. Naz Foundation* was the last nail in the coffin.

*e. Suresh Kumar Kaushal v Naz Foundation*¹¹⁹

It is unfortunate that the SC reversed the lower court's decision and restored Section 377 in *Naz Foundation v. Govt. of NCT of Delhi*. The SC ruled that Section 377 of the Civil Rights Act is valid and does not violate the rights of the LGBTQA community. Rather than relying on foreign court rulings, the Court argued that the community is a small and insignificant element of the population, and hence cannot be used to declare legislation extra vires. That country's majority public morality and anti-homosexuality sentiments were represented in criminal legislation, according to the SC. Public health and safety as well as morality were considered by the Court as justifications for allowing government interference. Privacy concerns were also dismissed. The transgender community benefited greatly from the court's decision. It was not ruled out by the Court that Section 377 may be amended in the future. A change to Section 377 IPC, as recommended by the Attorney General, should be allowed to proceed "notwithstanding this ruling," the court said. There was outrage and India was chastised for violating the International Covenant on Civil and Political Rights by making this judgment (ICCPR)¹²⁰. A judgment on

¹¹⁷Verma Committee, Report of the Committee on Amendments to Criminal Law, (Jan, 2013).

¹¹⁸ Criminal Law (Amendment) Act, 2013(Act No. 13 of 2013).

¹¹⁹ (2014) 1 SCC 1.

¹²⁰ International Covenant on Civil and Political Rights,1966.

transgender people's social and legal status had to be made at this time. As a consequence of this, the case of *NALSA v UOI* was filed.

f. *NALSA v UOI*¹²¹

In *NALSA v. UOI*, the court recognized the existence of a "third gender" for the transgender population in 2014. The Court ruled that Article 14's definition of "person"¹²² includes those who are neither male nor female, including hijras and transgender people. The ruling further emphasized the absence of societal and legal protections by declaring that: "non-recognition of the identity of hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities."

The central and state governments were instructed to take effective action in line with the Yogyakarta Principles to ensure that fundamental rights, public health, and community well-being were not harmed. Even though the LGBTQA community is tiny, it was comforting to know that their human rights were preserved, despite their underrepresentation. *Navtej Singh Johar v. UOI* was determined in 2018, although despite the recognition, the actual situation remained unchanged.

g. *Navtej Singh Johar v UOI*¹²³

The SC finally decriminalized Sec 377 of the IPC in this judgment. Although Section 377 encompasses both heterosexual and gay behavior, the burden of proof has tended to fall on the latter. Based on J.S. Mill's views, the Wolfenden Committee concluded in its 1957 report that criminal law serves to protect public decency and morals, and that private space should be free of government encroachment. As a matter of personal space and moral appropriateness, criminalizing homosexual activity between two consenting, morally sound persons in their own private space does not fall within the theoretical or practical area of criminal law. When it comes to one's sexual orientation, it is an important element of who they are. Slapping someone's dignity and self-worth in the face because of their sexual orientation is an insult. The state cannot limit their existence or influence their destiny by criminalizing their private affairs. But even though Section 377 IPC, which criminalizes consenting sexual conduct between two adults

¹²¹ AIR 2014 SC 1863.

¹²² Art. 14, The Constitution of India, 1950

¹²³ AIR 2018 SC 4321

in private between homosexuals, heterosexuals, of the same sex or transgender people was declared unconstitutional by the SC Constitution bench, it continues to apply to non-consensual acts of sexual violence against adults, minors and bestiality. Consensual behavior is perfectly acceptable and does not disrupt the natural balance of things. Because of the NALSA ruling and other transgender-related legal developments, it was only logical to pursue legislation that recognizes and protects transgender people's rights. This resulted in the enactment of the Transgender Persons (Protection of Rights) Act, 2019.¹²⁴

- **Transgenders and Labor Laws: An unfortunate development**

The SC proclaimed transgender persons to be a separate "third gender" for the first time¹²⁵ and encouraged the federal government and individual states to provide them with equal access to education and employment. The Bill Ministry, on the other hand, has expressed reservations about the change, which was included in the Labour Ministry's proposed legislation to codify pay and protect transgender workers from discrimination. "We advocated including language in all four labor laws to recognize the rights of transgender employees. The Law Ministry, on the other hand, protested, citing the General Clauses Act of 1897, which states that "transgenders" are included in the definition of "person." "It was therefore concluded that a separate section for them wasn't necessary," a senior Labour and Employment Ministry official told *The Hindu*. An attempt to condense the country's 44 labor laws into four codes, each dealing with a distinct issue of wages, labor relations, social security, and health and working conditions. "As a result of the Law Ministry's complaints, we will no longer use the word 'transgender' when mentioning gender-related rights in any of the labor legislation," the official stated. The Labor Ministry developed a draft Labour Code on Wages Bill in 2015, which includes provisions prohibiting salary on discrimination against transgender persons.¹²⁶

"The Law Ministry's argument is totally illogical. Dropping the separate clauses protecting transgender persons is a hypocritical move by the Union government, as it is well known that we face discrimination at the workplace. The dignity of our body needs to be protected at the workplace as well, with basic facilities such as restrooms and equal wages," transgender rights activist Laxmi Narayan Tripathi said.¹²⁷

In 2015, the government recommended modifications to the Factories Act of 1948 that included special protections for transgender workers. In a factory, "any transgender worker must have

¹²⁴ Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹²⁵ *NALSA v UOI*, AIR 2014 SC 1863.

¹²⁶ Editorial "Law Ministry Derecognises Transgenders As The 'Third Gender', Denies Labour Rights", *The Logical Indian*, Sept. 4, 2017.

¹²⁷ *Ibid*.

equal access to employment." As stated in the proposal, "the state government may create laws to guarantee that the rights of transgender employees are protected to promote respect for intrinsic dignity and non-discrimination, as well as full and effective involvement and engagement in society."

A representative for the Labour Ministry, on the other hand, acknowledged that the Factories Act's transgender component had been eliminated as part of the current revisions. There were 48 percent of transgender persons employed or searching for work in 2015-16 according to the Labor Bureau's Fifth Annual Employment-Unemployment Survey.

- **The Transgender Protection Act, 2019**

Parliament has passed the Transgender Persons (Protection of Rights) Bill 2019.¹²⁸ The Rajya Sabha approved it on November 26th, and the 17th Lok Sabha approved it on August 5th, both in 2019. The Transgender Persons (Protection of Rights) Act of 2019 safeguards transgender people in areas such as education, employment, and healthcare, as well as property ownership and sale, holding public or private office, and accessing and using government services and benefits. The SC of India recognized "transgender" as the "third gender" in *National Legal Services Authority v. UOI*, setting the groundwork for Indian transgender rights by prohibiting discrimination against transgender individuals and guaranteeing their constitutional rights. The verdict sided with transgender people, mandating that they be given preferential treatment at work and education and that they be allowed to disclose their gender identification without having to undergo sex reassignment surgery.

In the same year, India's upper house approved a private member's bill, an unusual feat for private member's legislation since few have made it this far. The Indian government, however, wrote and submitted its own version of the law to the Parliament's Standing Committee for comments in 2016, while the private member's bill was still waiting. A new version of the bill was presented in 2018 in accordance to the Committee's recommendations. The measure was reintroduced and eventually became law in 2019, when parliament was dissolved and a new central government was created, after the committee suggested a revised version in 2018. Now that the new Transgender Persons Act, 2019 has taken effect, it is critical to have a complete grasp of the law's successes as well as its shortcomings.

a. Essential features of the law

¹²⁸ Transgender Persons (Protection of Rights) Bill 2019.

Definition:¹²⁹

Trans-Male and Trans-female persons are included in the requirements for transgender people and people with intersex variance, even if they have not taken any treatment, such as hormone therapy, a sex change procedure, or any other, to alter their gender.

Non-discrimination:¹³⁰

Law bans transgender people from being discriminated against in educational or professional institutions, healthcare facilities, and public places, and strengthens their rights to freedom of movement, property, and holding public office. '

Certificate of Individuality:¹³¹

The district magistrate is responsible for issuing a 'certificate of identification as a TG person, without having a medical evaluation,' according to the legislation. In addition, if a person claims a change in gender, the law permits for a second change of gender.

Equal Access:¹³²

It also ensures that transgender people have equal access to policymaking opportunities. In order to be compliant with the legislation, certain policy measures have been established for transgender people.

Respondent to Complaint:¹³³

Every business must designate a complaint officer in accordance with the law.

Medical Services and Facilities:¹³⁴

The legislation also mandates the creation of dedicated HIV monitoring centers for transgender persons, which must offer healthcare for hormone therapy, sex reassignment surgeries, and other procedures, as well as medical expenditures paid by a transgender-specific insurance plan.

Transgender People's National Council:¹³⁵

The bill also establishes the National Consultative Tribunal (NCT), which will help and advise government officials in the auditing of present policies, the development of new ones, and the resolution of grievances.

¹²⁹ S.2, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³⁰ S. 3, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³¹ S. 5 & S. 6, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³² Chap VI, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³³ Chap V, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³⁴ S. 15, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³⁵ Chap VII, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

Penalties and Offenses:¹³⁶

The statute now covers and punishes crimes such as forcing transgender persons to work or denying them access to public facilities, as well as mental, emotional, physical, and sexual abuse or assault.

Employers' Compliances:

The Act also establishes a new set of laws that must be followed by all professional institutions and private enterprises. As a result of these mandates, firms must revise their HR policies and work to educate and teach their workforce on how to accept transgender individuals.¹³⁷

- Ensuring a workplace free of harassment and discrimination by prohibiting all forms of it.
- Transgender persons should be given the same chances as everyone else.
- Infrastructural amenities and facilities, such as unisex bathrooms, sanitary facilities and more.
- Transportation and many more services.
- Every business must have a designated person in charge of handling complaints.

b. Analysis of the Statute

There has been a growing need to raise awareness among various communities and institutions so that they are actively responsible for the recognition of the rights of transgender people and the treatment of them with basic human dignity and equality with other genders, whether in educational institutions or at work. institutions and communities. Equal or guaranteed access to public services and facilities, including health care. Transgender people in India may now take a giant step ahead in the fight for their rights and identities. The Transgender Act, 2019 demonstrates India's shift toward a more open and progressive culture where people's prospects are not limited by their gender. As a result, international labor rules should be followed.

According to the UN High Commissioner for Human Rights, states "[...] give legal identity documents that match your chosen gender upon request." India has adopted this recommendation. Forced treatment, sterilization, and divorce should be outlawed if they are abused. "Take all necessary legal, administrative, and other processes for fully recognising each person's self-defined gender identity without medical prerequisites or discrimination on any

¹³⁶ S. 18, S. 15, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹³⁷ Christian N. Thorough good, Katina B. Sawyer, and Jennica R. Webster, "Creating a Trans-Inclusive Workplace", *Harvard Business Review*, March-April 2020.

grounds," was the recommendation in a WHO study from 2015. After widespread protests and pan-Indian marches, a more severe and sensitive issue including criminal penalty for transgender people begging was deleted from the earlier draft law. Because beggars are still an issue, the government has taken steps to reduce the number of people who must do so by not declaring beggars unlawful under the Transgender Law. Prior to the new Trans Act, you had to undergo a medical examination and evaluation in order to get an identification certificate. This will help alleviate the anguish and harassment transgender people face on a daily basis.¹³⁸

c. The employment related provisions are discussed below:

- a) Section 3(b)¹³⁹ forbids employers from treating employees who identify as non-binary or transgender unfairly.
- b) Section 3(c)¹⁴⁰ prohibits discrimination in the workplace against transgender employees and prohibits the wrongful termination of employment or occupation.
- c) Section 9¹⁴¹ prohibits an establishment's employer from discriminating against a trans person in areas relating to employment, including things relating to promotions and recruiting.
- d) Employees are obligated under Section 10¹⁴² to comply with the Act's requirements and to make the appropriate preparations for trans people's needs.
- e) By mandating employers to designate complaint officers, Section 11¹⁴³ establishes a grievance system for employees who believe their rights have been violated by their employer.
- f) As a result of Section 14¹⁴⁴, the federal government is obligated to develop welfare plans and programs that assist transgender people in obtaining vocational and self-employment training and employment.
- g) There is a provision in Section 18(d)¹⁴⁵ that allows for sanctions and punishments in the event that a transgender person's life, safety, or health is in jeopardy, including their mental and physical health. It also makes it a crime to abuse someone sexually or physically, verbally, economically, or emotionally.

¹³⁸Ibid.

¹³⁹ S. 3(b), Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹⁴⁰ S.3(c), Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹⁴¹ S. 9, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹⁴² S. 10, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹⁴³ S. 11, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹⁴⁴ S. 14, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

¹⁴⁵ S. 18(d), Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

d. Loopholes

- a) The transgender community's recommendations were ignored when the Act was drafted and passed. Instead of protecting the rights of transgender people, this law was drafted on the basis of stereotypes. The community's needs and requirements were not taken into consideration.
- b) Disturbingly, although allowing for a person's own self-perceived gender identity, the Act does not express the same feelings as the NALSA decision. A transgender person must receive a certificate from the district magistrate in order to identify as such. Under the Act, there are also unnecessary steps to just identify as transgender.
- c) Transgender people who have been abandoned by their biological family or who choose to leave their biological family are to be committed to a rehabilitation facility by a court on the recommendation of the SC. The transgender community's freedom to select their family cannot be denied. Those who have lived with the transgender community report a sense of security and belonging. In addition, the people in their neighborhood rally around them in support of their endeavors.
- d) Discrimination against transgender people is explicitly prohibited under the law. The penalty is more severe if the victim is a female since the minimum punishment is 7 years and the maximum punishment is life in prison for crimes such as sexual assault and abuse, which are punishable by 6 months to 2 years in jail.
- e) According to a 2011¹⁴⁶ census study, the employment rate for transgender people is around 38 percent, while the education rate is approximately 46 percent. Cater to these and implementation of the policies must be propelled faster.

The position of transgenders in India has been degrading since the advent of British rule and the same continued unfortunately even after our independence. The issue is well known among the masses and there are certain laws as discussed which tend to protect them, at least on paper. However, practically speaking, the situation is far from ideal and even the laws have been futile in doing some good. When it comes to workplace harassment, transgenders have been ignored under laws simply because there were hardly any of them working in traditional jobs or socially acceptable fields. Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act, 2013¹⁴⁷ makes it clear that the law applies to women. Section 2(a) of the Act only

¹⁴⁶ Office of the Registrar General & Census Commissioner, Census India: "TRANSGENDERS / OTHERS" (2011).

¹⁴⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

recognizes the complainant as a "aggrieved woman," excluding transgender people and eliminating the possibility of LGBTQ people being subjected to workplace sexual harassment. As a result, neither men nor transsexual people are covered under the POSH statute. Only If a trans person identifies themselves as a woman, she will be protected under the POSH Act, 2013 since she will come inside the definition of "aggrieved woman" as established by the Act. However, in the present era, due to increasing number of transgenders working just like their male and female counterparts, there is a need of laws which protect them workplace sexual harassment given their vulnerability in this respect.

V. SUGGESTION AND CONCLUSION

When women are subjected to unwanted sexual approaches in the office, it is known as sexual harassment. Because it lowers women's employment rates, it's a roadblock to the country's stated objective of "inclusive development." A woman's legal right is to work in an environment free of harassment and discrimination. All people are guaranteed "equality of status and equal protection" in the preamble of our constitution. Life and personal liberty are safeguarded by Articles 14¹⁴⁸, 15¹⁴⁹, and 21¹⁵⁰ because they provide equal protection of the law, immunity from all kinds of discrimination, and equal protection of the law. The patriarchal belief that women are not meant to go out and work and if they do, they must be subjugated, is at the basis of sexual harassment. It is an affront to the dignity and right to equality of women when this occurs. With its signing on July 30, 1980, and its ratification on July 9, 1993, India joined the CEDAW¹⁵¹ Convention on the Elimination of Discrimination against Women. State obligations to protect women's human rights are laid forth in an international convention. To maintain equality between men and women and eliminate gender-based discrimination against women, India is required under the treaty. The Beijing statement imposed similar responsibilities on the state. It was conducted in Manila, Philippines, at the International Labor Organization (ILO) conference. In 1993, the SC ruled that sexual harassment in the workplace constitutes gender discrimination and an insult to a woman's dignity. As a result, international accords and agreements highlight the need of preventing workplace sexual harassment.

(A) Judicial Interpretation

1. In *Vishaka v State of Rajasthan*¹⁵², Based on the CEDAW convention, the SC for the

¹⁴⁸ Art. 14, The Constitution of India, 1950.

¹⁴⁹ Art 15, Ibid.

¹⁵⁰ Art 21, Ibid.

¹⁵¹ Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

¹⁵² AIR 1997 SC 3011.

first time gave legal credibility to the concept of workplace sexual harassment. It established certain guidelines to be observed until a legislation was enacted in this regard. These restrictions were eventually included into the POSH Act, albeit their implementation has been mostly ineffective.

2. In *Apparel Export Promotion Council v A.K. Chopra*¹⁵³, the secretary's boss mistreated her. This decision established that any unwelcome sexual act or approach, a request for sexual favors, or any verbal or non-verbal conduct with sexual overtones may constitute sexual harassment if the woman's acceptance or rejection of these overtures had an effect on her employment. The court also acknowledged that sexual harassment has a detrimental influence on a woman's performance at work since it creates an intimidating environment. It is without a doubt a violation of the woman's right to gender equality and her right to life and freedom. The court also emphasized the need of international treaties and agreements in addressing this issue.
3. The court's decision in *Medha kotwal lele v UOI*¹⁵⁴ had a huge impact on workplace sexual harassment since it ordered all states/UTs to alter their civil service code regulations to include sexual harassment. It went on to order all state entities, both private and public, to ensure that the Vishaka guideline is fully implemented and that the victim is not forced to work with or under the accused if the accused is found guilty. In the event that witnesses or complainants are intimidated, the court will take appropriate disciplinary action against the perpetrators. The court said that vishaka rules should be followed not just in form but also in substance and spirit.
4. Recently in *Punjab and Sind Bank and Others v Mrs Durgesh Kuwar* (2020), The victim was recently transferred¹⁵⁵ after she exposed corruption and irregularities at her branch and filed a sexual harassment allegation against another employee. While quashing her transfer order, the court stated that sexual harassment is an affront to a woman's fundamental rights to equality under Article 14, 15, and to life and personal liberty under Article 21, as well as her freedom to engage in any trade, activity, or enterprise. "This is suggestive of a carrot and stick approach intended to suborn the dignity of a lady who is offended by unjust treatment at her employment," the court correctly said while discussing her move. SC rulings on sexual harassment in the workplace have repeatedly emphasized the need of putting the right systems in place, but things haven't changed

¹⁵³ AIR 1999 SC 625.

¹⁵⁴ (2013) 1 SCC 297.

¹⁵⁵ Civil Appeal No 1809 of 2020.

much. There is a significant absence of a legislative framework.

(B) Analysis of the POSH Act

The Vishaka decision had been handed down 16 years prior to the POSH Act's passage. It took effect on December 9th, 2013. The goal of enacting this law was to safeguard women in the workplace from sexual harassment and to provide a process for handling accusations of sexual harassment. Section 2(n)¹⁵⁶ of the Act defines sexual harassment as any conduct that is both unwanted and sexual in character. Examples of the same are:

“(i) physical contact and advances; or

(ii) demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”

Any promise or preferential treatment, or threat of detrimental treatment, or threat regarding current or future employment status, or interference with her work, or creating an intimidating or hostile work environment, or any humiliating treatment, according to Section 3(2)¹⁵⁷ of the Act, may constitute circumstances under which an act may constitute sexual harassment. These threats or guarantees don't have to be mentioned; they might be implied. The Act also requires all firms with more than 10 employees to create an internal complaints committee (ICC) to examine and resolve workplace sexual harassment allegations. The district officer is required to form a local committee in districts with less than ten employees (LCC). The complainant has three months to file a complaint after the incident; but, depending on the circumstances, a delay of up to three months may be acceptable. The complainant has the option of starting criminal proceedings without going via the ICC or the LCC. The ICC or LCC may seek to negotiate a settlement between the complainant and respondent via conciliation before launching an inquiry into the complaint. If such a conclusion cannot be reached, more inquiry is necessary, and the committee has the same jurisdiction in this respect as a civil court. Within ninety days, the inquiry must be completed. Within 10 days following the completion of the inquiry, the ICC/LCC must issue a report to the employer/district officer. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013 mandate that the

¹⁵⁶ S. 2 (n), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

¹⁵⁷ S. 3(2), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

employer/district officer take action against the accused employee for misbehavior in line with the service rules, or if no such rules exist, in accordance with the law. Within sixty days of receiving the complaints, this must be completed. The amount of compensation is determined by the amount of mental stress, pain, and suffering experienced by the complainant, as well as the respondent's lost career possibilities, medical expenses, and financial circumstances. Appeals against committee recommendations are allowed under Section 18 of the Act. Within 90 days after the date of the recommendation, a court or tribunal may consider an appeal. The Act's Section 16¹⁵⁸ protects the identity of those involved by prohibiting the publication of their names or the content of the complaint, inquiry, or recommendation. The Act also mandates that businesses educate employees on sexual harassment in the workplace. Section 14 deals with situations where a complaint makes false or malicious accusations or when a witness gives misleading evidence. In such instances, the service may take action in accordance with its policies. Noncompliance with the act's standards might result in a fine of up to Rs. 50,000 or the termination of the employer's license, according to Section 26¹⁵⁹.

(C) Transgenders Act: 2019 and POSH Act, 2013 : A Comparative Analysis

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act) was approved by the Indian Parliament after decades of debate. It applies to all public and private employers and workers. The legislation is ground-breaking and unusual in that it decentralizes the dispute resolution procedure for survivors of sexual harassment, in addition to properly defining sexual harassment. Instead of filing a criminal complaint (which was previously the sole legal alternative), the legislation requires the establishment of localized committees (either by the employer or by local government authorities) to receive complaints, conduct investigations, and propose action against violators (typically ranging from a written apology to termination of employment). Survivors of sexual harassment can still pursue criminal charges against their attackers under the Indian Penal Code, 1872¹⁶⁰, but the presence of these specialized committees provides immediate and effective relief (including prohibiting the perpetrator from contacting or supervising the survivor), as opposed to a lengthy criminal case.

One important component of the POSH Act, 2013 however, is that it is not designed to be gender-neutral. It establishes a redressal structure just for "aggrieved women," as the term

¹⁵⁸ S. 16, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

¹⁵⁹ S. 25, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

¹⁶⁰ Indian Penal Code, 1860, (Act No. 45 of 1860).

indicates. Only female workers are eligible for relief unless the firm adopts a gender-neutral policy. This is due in part to India's adherence to the principles outlined in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which addresses women's rights concerns. Furthermore, since the legislation was inspired by the sexual attack of a female worker, the prevailing thinking has been to create a framework that allows women to work without fear of their safety being jeopardized.

During the legislative process, the prospect of a gender-neutral statute was raised. This debate, however, was restricted to different men's rights organizations wanting equal treatment, and it was framed as a "male versus female" debate. In 2011, the Parliamentary Standing Committee on Women advised that the provision remain gender-specific since "women have historically been discriminated against, assaulted, and harassed." The Committee based its recommendation on the belief that women are disproportionately disadvantaged in the workplace owing to widespread sexual harassment. The ultimate goal was to boost female labor participation while also ensuring that women's employment rights are protected.

However, India's legal and social landscapes have changed dramatically, raising the issue of whether the strategy should be revised. The SC of India recognized and supported the basic rights of transgender people within a few months after the POSH Act, 2013 was approved, in May 2014. The court, among other things, identified many instances of transgender people being harassed, including sexual harassment. The decision was progressive and inclusive, and it marked a long-awaited first step toward legal recognition of trans people's identities and rights.

The transgender community is well-known in India. People who identified as transgender, on the other hand, were often ostracized, humiliated, degraded, and tormented in public and private. They were denied fundamental human rights by both governmental (e.g., the police) and non-governmental groups, which harmed their ability to work. Some laws, like the Telangana Eunuchs Act of 1919¹⁶¹, explicitly criminalized transgender people's existence. This legislation has been challenged in court as being unconstitutional.

Transgender people have gradually occupied jobs in public and private organizations after the 2014 verdict. Transwomen have been appointed as a judge in West Bengal, a clerk in the Karnataka government office, and a member of the Chennai police force, according to reports. Some private businesses are also pursuing diversity programs, with an emphasis on LGBTQ+ employment.

¹⁶¹ Telegana Eunuchs Act, 1329 F (Act No. 16 of 1329 F).

Despite these efforts and advancements, trans people continue to face discrimination, prejudice, and harassment while looking for official employment. This is shown by the scarcity of trans people in traditional workplaces. Despite the fact that there is a lot of talk about diversity and inclusion in the workplace, it seldom includes debates about how to provide job possibilities for people of all genders and sexual orientations.

First-person stories and narratives of the harassment that trans people encounter not just like workers in formal workplaces, but also while applying for or seeking for employment in the organized sector, are conspicuously absent. One potential reason is that, since there is no debate about inclusion beyond the "male versus female" dimension, there is no room for trans people to speak out or to find a role in the formal economy.

Furthermore, our rules (as they now stand) attempt to transfer social capital and equalize the standing of men and women, an issue that has gotten a lot of attention in recent years. Laws, on the other hand, have the ability to be visionary, to propose a solution to a problem that no one is talking about - and it is this capacity that may lead to societal transformation. For example, the POSH Act, 2013 was enacted in India years before the #MeToo movement became popular on social media. By not including transgender and not acknowledging their plights of sexual harassment the policymaker somewhere did lack the said visionary.

(D) What needs to be Done?

As a result of these legal and social changes, India's constitutional and human rights laws must take active and visible actions to safeguard minority populations. Trans people should be officially included in the country's human rights agenda, and they should be granted the same protection as everyone else. The Transgender Persons (Protection of Rights) Bill was introduced in Parliament in 2016¹⁶², and one House of Parliament approved it. This proposed legislation would make it illegal to discriminate against trans people and provide protection from many sorts of abuse, including sexual assault. However, if we are to fully embrace the notion of a harassment-free workplace where people are free to work and make a living, comparable revisions to the POSH Act, 2013 must be presented as well. Only until a community is given equal procedural and substantive protection will it be able to actively participate in public life. The right to livelihood is incorporated as a fundamental right in India's constitutional framework, and the state and society must work to eliminate any detrimental behavior that obstructs any individual's essential human right - regardless of gender.

¹⁶² Transgender Persons (Protection of Rights) Bill 2019.

The idea of extending protection to trans people that have historically been reserved for women is gaining popularity. In December 2018¹⁶³, the Delhi High Court declared that transgender people may file complaints under the criminal rules on sexual harassment (which are normally used for male-on-female abuse). This move toward equitable treatment under Indian criminal law should also be transferred into civil law. When trans people work in the official sector, they encounter a slew of procedural problems that make it difficult for them to fully participate in India's public discourse. These issues vary from encountering hurdles in official documents that need their gender to be declared to not having access to safe toilets. They frequently have to deal with prejudice from their peers and superiors in addition to these infrastructure issues. The psychological and social impact of these obstacles on a person cannot be overstated. It is the government's and society's responsibility to work together to prevent and address prejudice.

The SC issued another landmark decision in September 2018¹⁶⁴, decriminalizing consensual sexual conduct between adults, including gay intercourse. The decision was welcomed as a win for LGBT people from all walks of life, as well as a step toward ensuring the right to equality. The court emphasized the serious and harmful prejudice that members of this minority endure, and it urged for a shift in attitudes toward individuals whose identities are endangered by the majority. However, there is still a long way to go on the ground. While the court has opened the road for equality, it is critical that this be translated into law and, ultimately, cultural transformation. The right to work and make a living is essential to an individual's and society's survival, therefore it is wrong if this right is taken away from them because of unfair or harassing treatment.

(E) Inclusive Sexual Harassment Provisions for Trans Community

The present Sexual harassment law in India only gives aid and protection to the women workforce/ gender. The law turns a blind eye to include and rather acknowledge the situations of harassment faced by the LGBTQ + Community and to such individuals who do not conform to the societal standard of male and female

The Apex court in the interesting case of *Hiral P. Harsora v. Kusum Narottamdas Harsora*¹⁶⁵, jotted down that the main goal of creating the POSH Act, 2013 was to accord safeguard to females in various spheres of life and for this reason solely the notion "*Respondent*" mentioned under S 2(m)¹⁶⁶ of the Act has been extended to all genders, meaningly that the accused under

¹⁶³ *Anamika v. Union of India and Ors*, W.P.(C) 4356/2020.

¹⁶⁴ *Navtej Singh Johar v UOI*, AIR 2018 SC 4321.

¹⁶⁵ (2016) 10 SCC 2016.

¹⁶⁶ S. 2(m), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

this Act can be a man or a woman. Thus the POSH Act, 2013 provides umbrella protection to female against the cases of sexual harassment also by a woman against woman and to that level, it may be said to redress the problem of sexual harassment of the persons who identify as lesbians.

When Section 377 was partially struck down by the Supreme Court as being violative of the Fundamental Right of Equality under the Constitution, the Court clearly recognized the rights of lesbians, gays, bisexuals, transgenders, queer, intersex, asexuals, and related persons who are not heterosexuals. Whilst stating that such individuals have the right to participate in such consenting sexual behavior, it also pointed out that such prerogatives are derived from the Constitution, and that Section 377¹⁶⁷ of the IPC should not be utilised to harass them:

“250. We must realize that different hues and colours together make the painting of humanity beautiful and this beauty is the essence of humanity. We need to respect the strength of our diversity so as to sustain our unity as a cohesive unit of free citizens by fostering tolerance and respect for each other's rights thereby progressing towards harmonious and peaceful co-existence in the supreme bond of humanity. Attitudes and mentality have to change to accept the distinct identity of individuals and respect them for who they are rather than compelling them to 'become' who they are not. All human beings possess the equal right to be themselves instead of transitioning or conditioning themselves as per the perceived dogmatic notions of a group of people. To change the societal bias and root out the weed, it is the foremost duty of each one of us to "stand up and speak up" against the slightest form of discrimination against transgenders that we come across. Let us move from darkness to light, from bigotry to tolerance and from the winter of mere survival to the spring of life -- as the herald of a New India -- to a more inclusive society.

251 ... It is their momentous "walk to freedom" and journey to a constitutional ethos of dignity, equality and liberty and this freedom can only be fulfilled in its truest sense when each of us realize that the LGBT community possess equal rights as any other citizen in the country under the magnificent charter of rights - our Constitution.

¹⁶⁷ S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

*252. Thus analysed, Section 377 Indian Penal Code, so far as it penalizes any consensual sexual activity between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) and lesbians (woman and a woman), cannot be regarded as constitutional”.*¹⁶⁸

It was argued that, in the light of the Supreme Court's affirmation of the Constitution's adequate defenses and safeguards for individuals who identify themselves as Gay, Bisexual, Queer, Asexual, and other allied people, sexual harassment legislation should cater to and provide a suitable mechanism for redressing sexual harassment amongst such individuals.

It is through the Constitutional provisions of Equality (article 14)¹⁶⁹, Prohibition against Discrimination (article 15)¹⁷⁰, Right to Privacy (Article 19)¹⁷¹, and Right to life and Liberty (Article 21)¹⁷² that the rights of men, women as well as individuals who do not conform to binary standards are derived. These provisions have laid a stepping stone for the formulation of both the POSH Act, 2013 and the Transgender Persons Act, 2019.

Day by Day there is an increasing awareness amongst the public about transgender and LGBTQ + Community members and the disproportionate level of discrimination faced by them. However, India still has not been able to take any solid steps toward combating the issue of workplace sexual harassment amongst these individuals.

(F) Way forwards: Suggestions for Inclusivity in the workplace

Equipping the job place with a comprehensive and inclusive approach toward transgender people would be an arduous challenge, as a social transformation of this magnitude in India will take a lot of time. Betterment of the transgender's socio-economic condition needs a joint effort, and empowering this populace in the job place would go a long way toward achieving inclusivity and abolishing societal stigmas, and developing their financial condition.

Irrespective of the fact that the Transgender Act¹⁷³ simply places reliance on the Stakeholders and doesn't impose legal obligations it is paramount that in the light of changing dynamic, major initiatives have to be taken by establishments and organizations to create a more equitable and inclusive condition are outlined below.

¹⁶⁸ *Navtej Singh Johar v UOI*, AIR 2018 SC 4321.

¹⁶⁹ Art. 14, The Constitution of India, 1950.

¹⁷⁰ Art. 15, Ibid.

¹⁷¹ Art. 19, Ibid.

¹⁷² Art 21, Ibid.

¹⁷³ Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

a. Creation of an umbrella provision/ Act for Transgender against Sexual Harassment at workplace

As already seen above that the POSH Act, 2013 is not inclusive of any gender apart from women, therefore there is an eminent need to create a comprehensive workplace sexual harassment Code for the transgender Individual.

The passage of the UGC Sexual Harassment Regulations is a step forward in the development of gender-neutral sexual harassment legislation. Taking into consideration the spirit and purpose of the UGC Sexual Harassment Regulations, which acknowledge the fact that employees and students of all sexes, including male students and students of the third gender, are susceptible to sexual harassment, humiliation, and exploitation¹⁷⁴, it is stated that there is a grave necessity to suitably amend the POSH Act, 2013 or alternately, enact/ create appropriate new legislations be which would cater towards preventing, prohibiting, and redressing sexual harassment, humiliation, and exploitation against the transgenders.

b. Creation of Gender-neutral washrooms and Restrooms

Secure access to and use of bathrooms and washrooms is a necessary prerogative for everyone who wishes to engage in civic life, work, or any other public setting. Every day, transgender people are subjected to the humiliation of being unable to use washrooms that correspond to their gender identity. This condition not only has a negative influence on the trans community's physical and physiological health, but it also violates the basic human and constitutional right to a dignified life.

As a society, we must consider the finest methods that have been implemented and spread them to other parts of the country. The following are a few instances of gender-neutral washrooms and spaces:

- a) NALSAR in Hyderabad has introduced gender-neutral spaces in its university with the objective of promoting inclusivity¹⁷⁵.

¹⁷⁴ Ashok KM, "UGC Notifies India's First Gender Neutral Regulations on Sexual Harassment" *LiveLaw*, June 7, 2016.

¹⁷⁵ Editorial, "NALSAR University of Law become the first gender-neutral Institute" *India Today*, March 27, 2022.



- b) ISDM is an Institution that is run privately and situated in Noida has created a Gender-Neutral washroom after a transgender ISDM student raised their voice about not being able to access the washroom in line with their gender identity.¹⁷⁶



Companies need to be conscious of the transforming socio-economic demographics and create policies that are inclusive for the present and future employment scenarios which would be hiring more transgender and non-binary employees. An office with gender-neutral bathrooms encourages a cordial atmosphere and showcases that the organization cherishes diversity. Along with illustrating that it not only tolerates but actually affirms its employees' diversity. The authority of an organization must decide its ethics and the culture it wishes to foster, and then develop means to convey and reflect those decisions in how they treat employees and visitors.

¹⁷⁶ Editorial, "Noida Based Institute Sets up Gender-Neutral Toilet on Students' Request", *India Today*, March 17, 2018.

Recently the Delhi Government has necessitated all its organizations, offices, and corporations along with the police stations to create and establish separate washrooms for trans persons. Yet to date we hardly see many such washrooms or restrooms be constructed. The lack of gender-neutral toilets not only breaches the fundamental right to privacy upheld in the *Puttaswamy Case*¹⁷⁷ but also goes against the Apex Court's judgment in the National Legal Services Authority versus Union of India case from 2014 of categorizing the transgender as “Third gender”.

c. Major Policy reviews at Organisations

An organisation must constantly keep a check at its policy and renew and amend it according to the changing societal needs. Such regular revisits will prevent the rules and regulations from becoming redundant and promote inclusivity. These policy changes must be updated to the HRs and also reflected in the recruitment and employee benefit policies and guides. It would be beneficial to solicit and incorporate comments from a member of the transgender community, to ensure that the policies reflect appropriate ways for an organisation to approach the Third Gender. To state a few policy changes:

- a) The uniform/dress code standards must be such that encourage the transgenders to decide the dress code in accordance with their gender identity expression which is also in line with work decorum.
- b) Chapter V of Transgender Persons Act 2019, Section 11¹⁷⁸ provides for the creation of a Grievance Redressal Mechanism. In line with the same, there should be grievance redressal cells created in the workplace, where the transgender and non-binary person can put up their complaints.
- c) Regular Educational Conferences/ Meets or Awareness Campaigns must be held in office spaces. These meetings should discuss and aware employees of transgender rights, the Transgender Act, 2019 provisions, punishment for discrimination, etc. which would make gender transition easy.

d. To make laws in India to protect transgenders from other forms of sexual harassment

In India, there is a lack of provision for protecting the transgender communities from other

¹⁷⁷ (2017) 10 SCC 1.

¹⁷⁸ S. 11, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

forms of sexual assaults like voyeurism (354c IPC)¹⁷⁹, assault (354b IPC)¹⁸⁰, and stalking (354d IPC)¹⁸¹ which are exclusively provided to women only. The Extent of Decriminalising section 377¹⁸² of the Indian Penal Code was only up to the consensual sexual acts of amongst homosexual adults and refrained criminalisation of other non-consensual acts under the ambit of the section. As a result, other forms of sexual assault, such as voyeurism, stalking, etc. against transgenders are outside the ambit of this provision, and since most of these acts are not unnatural therefore these don't come under the preview of section 377.

Delhi high court recently allowed a transgender woman to file a case under section 354A¹⁸³ (sexual harassment) of IPC due to the lack of IPC provisions specifically for them. (*ANAMIKA V UOI*)¹⁸⁴ Therefore there is an urgent need to create provisions for protection against all forms of sexual abuse which are in line with other genders for trans community as well.

e. Provision for leave for sex reassignment surgery

In India people working in the Central Government sector have elaborate provisions of 'maternity leave' and 'child care leave' provided by the government which is in line with human rights and dignity. After the enactment of the POSH Act 2013¹⁸⁵, the Government of India has now provided the women workforce with another cause to rejoice. With this addition, maternity leave to be offered by private employers in India has been brought tantamount to that of government employees in India. On the same lines if leave for Sex Reassignment surgery is given to transgenders it would further the goal of creation of an inclusive work environment.

Section 15¹⁸⁶ of the Transgender Person's Act 2020 provides for giving assistance for sex reassignment surgery. However, there is a lack of provision for applying for leave for the same. Such inclusion of leave for sex reassignment surgery would not only help the transgenders to recoup with such major surgery but will also instill confidence in them about their social acceptance in the workplace. Organisations must put in its terms and policies that give transition support, not only in regard to paid leave but also in sensitizing the remaining workforce about an employee's transition, providing them with rehabilitation support and counseling.

Sex realignment surgery is a time-consuming and lengthy procedure that necessitates many

¹⁷⁹ S. 354 C, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁸⁰ S. 354 B, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁸¹ S. 354 D, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁸² S. 377, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁸³ S. 354 A, Indian Penal Code, 1860, (Act No. 45 of 1860).

¹⁸⁴ *Anamika v. Union of India and Ors*, W.P.(C) 4356/2020.

¹⁸⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).

¹⁸⁶ S. 15, Transgender Persons (Protection of Rights) Act 2019, (Act No. 40 of 2019).

surgeries, hormonal therapies, mental counseling, and the use of sedatives at various phases of surgery and recuperation.

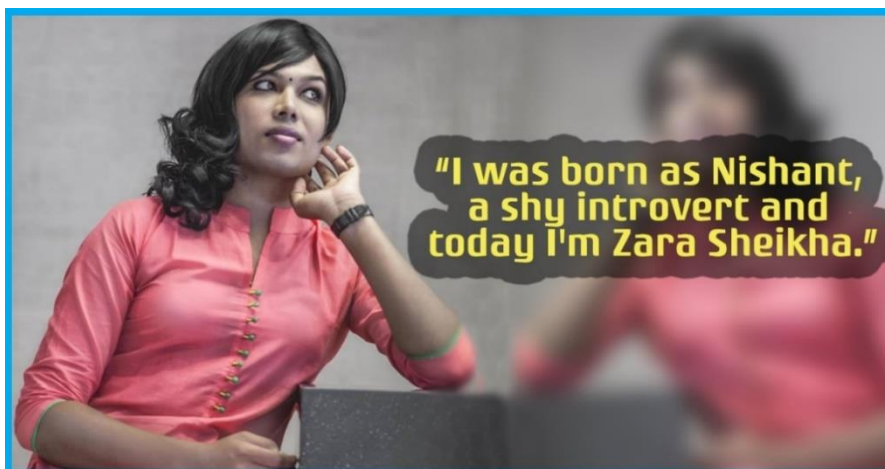
Recently a Bangalore based e-commerce company called Meesho¹⁸⁷, laid out a 'gender confirmation' leave policy, in which organization's employees seeking to transition their gender can obtain fully paid leave which can be extended to one month for gender reassignment surgery and other medical procedures

f. The hiring of trans persons through human Resource

Companies must promote employing individuals belonging to the transgender and non-binary community. It must portray its support to the community by advertising about vacancies and new policies for upliftment and creation of an equal playing field for all irrespective of their gender identity.

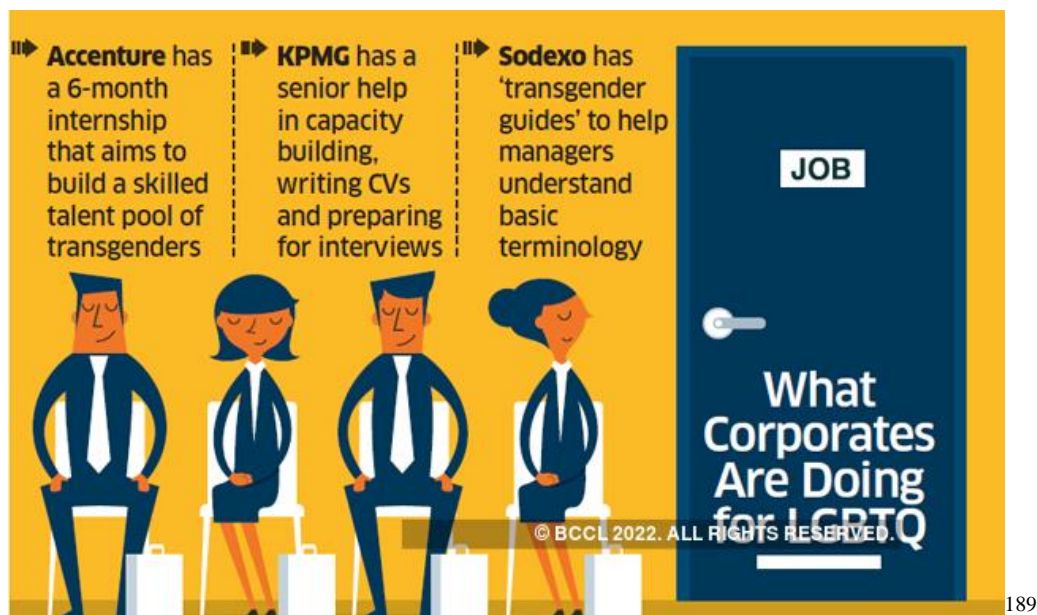
One method for businesses to demonstrate their support is to stop using the pronouns "he/she" in employment adverts and job postings. Because the usage of gendered pronouns reveals a hidden bias. Job applications must not be gender-biased; applicants can choose to state their gender identification, which incorporates the third gender, or the forms must, if possible, ask for the applicant's gender. The organization's human resource department should be well-coached and tutored in how to be sympathetic and communicate with people who identify as transgender so that they do not unintentionally make the aspirant feel uncomfortable or degraded.

These little improvements and amendments will have thriving impact in protecting and promoting the transgender rights.



¹⁸⁷ Editorial, "Meesho Rolls Out 'Gender Confirmation' Leave Policy" *The Economic Times*, Jan. 18, 2022.

¹⁸⁸ Editorial, "MY STORY My Story: I'm The First Transgender HR Executive To Be Employed By A Popular MNC" *The Logical Indian*, June 8, 2017.



g. Sensitization and Awareness

It is critical for an organisation to ensure that its current personnel are aware of any changes that are occurring. It's critical that existing staff are welcoming to newcomers. Organizing conferences and workshops can help employees become more aware of their surroundings. Talks and conversations about trans role models, as well as personal success stories of trans people working in other workplaces, are also helpful in sensitising colleagues. Sessions with local trans people that are interactive. Conducting educational workshops to enlighten staff about the transition process, dispel misconceptions, and educate them on what can be perceived as inappropriate or transphobic behaviour.

¹⁸⁹ Editorial, "India Inc opens doors to transgender employees", *The Economic Times*, Jan 14 2022.

VI. BIBLIOGRAPHY

(A) Books

1. JENNIE KERMODE, *Transgender Employees in the Workplace: A Guide for Employers*
2. JN PANDEY, *Constitutional Law*
3. DEEPA RAFEEQUE, *Prevention of Sexual Harassment of Women at Workplace: A Guide to The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013*
4. KYLA BENDER-BAIRD, *Transgender Employment Experiences: Gendered Perceptions and the Law*
5. S. MRINALINI, *Transgender in Society- Challenges and Solutions*
6. GOI, *Handbook on Sexual Harassment of Women at Workplace*
7. NISHITH DESAI ASSOCIATES, *Prevention of Sexual Harassment at the Workplace (POSH)*
8. EQUALITY AND HUMAN RIGHTS COMMISSION, *Sexual harassment and harassment at work*
9. ILO, *Preventing and Responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)*

(B) Articles

1. ROUF AHMAD BHAT & DR. ANITA DESHPANDE, *An Overview of Sexual Harassment of Women at Workplace in India: An Analytical Study*, International Journal of Innovative Research in Science, Engineering and Technology
2. ILO Violence and Harassment Convention, 2019 (No. 190): 12 ways it can support the COVID-19 response and recovery
3. JOBY PHILIP & DEVI SOUMYAJA, *Workplace diversity and inclusion: policies and best practices for organizations employing transgender people in India*, International Journal of Public Policy
4. DR. SUBHRAJIT CHATTERJEE, *Problems Faced by Transgender Community in India: Some Recommendations*, International Journal of Creative Research Thoughts
5. ANUSHKA UKRANI & HIMANSHU ANAND, *Sexual Harassment: The Posh Act, Gender Neutrality and Need to Protect Transgender Rights*, Pen Acclaims

6. VIBHUTI PATEL, *A brief history of the battle against sexual harassment at the workplace*, InfoChange News & Features
7. ASTHA POONIA, *Sexual Harassment at Workplace*, Amity International Journal of Juridical Sciences.
8. JANE AEBERHARD-HODGES, *Sexual harassment in employment: Recent judicial and arbitral trends*, International Labour Review

(C) Newspaper and Online Publications

1. SCOTT RAYNOR, *Transgender Issues in the Workplace: Bathroom access, workplace abuse, hiring discrimination available at <https://everfi.com/blog/workplace-training/transgender-issues-workplace-abuse-hiring-discrimination/>*
2. CROSBY BURNS AND JEFF KREHELY, *Gay and Transgender People Face High Rates of Workplace Discrimination and Harassment available at https://cdn.americanprogress.org/wp-content/uploads/issues/2011/06/pdf/workplace_discrimination.pdf*
3. *In the Know: Transgender Workplace Discrimination Issues available at <https://www.eliinc.com/transgender-workplace-discrimination/>*
4. ALOK TEWARI, SHIVIKA UPADHYAY AND VISHAL SINGH, *INDIA: Transgender Rights, The 'Third Gender' And Transforming The Workplace In India available at <https://www.mondaq.com/india/discrimination-disability-sexual-harassment/905918/transgender-rights-the-third-gender39-and-transforming-the-workplace-in-india>*
5. FAAKIRAH JUNAID, *The Transgender Persons Act in the Indian workplace available at <https://www.serein.in/legal-insights/2020/9/23/the-transgender-persons-act-in-the-indian-workplace>*
6. HERBERT SMITH, *India: transgender employees in the workplace, available at <https://www.lexology.com/library/detail.aspx?g=f3297484-110c-436b-93cf-d2a4789194ec>*
7. M.S. BUSHRA TUNGEKAR, *Rights of the transgender community in a corporate environment available at <https://blog.ipleaders.in/rights-transgender-community-corporate-environment/>*

8. JESSAMINE MATHEW, 'Trans'-itioning to Inclusion: Expanding the ambit of workplace sexual harassment law *available at* <https://www.theleaflet.in/trans-itioning-to-inclusion-expanding-the-ambit-of-workplace-sexual-harassment-law/>

(D) Bare Acts

1. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013)
2. The Transgender Persons (Protection of Rights) Act, 2019 (Act No. 40 of 2019)
3. The Constitution of India.
4. The Indian Penal Code, 1860 (Act No. 45 of 1860)
