

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Envisaging Inclusiveness through Transgender Person's Rights Law in India

DR. SHANNU NARAYAN¹

ABSTRACT

In 2019, India passed a new legislation on transgender person's rights pursuant to a judgment by its highest judiciary in 2014. The judgment and the subsequent legislation have legally recognised transgender community person or sexual minority individual as 'third gender'. The paper investigates how transgender persons who were criminalised since the passage of the law during British era have led to marginalising those individuals leading to exclusion for various welfare schemes and policies. The impact of the 2014 judgment passed by the Indian Supreme Court has accorded legal recognition to persons from diverse gender identity in India. The legislation passed in 2019 on the rights of transgender persons is a rights-based move in the right direction. There is lack of literature connecting the law passed during British era having an impact on social exclusion of the transgender persons. However, the plain interpretation of the law reveals the historical injustice meted out to transgender person community when they were categorised as criminal communities. After the passage of the 2019 legislation, it is evidentiary of how transgender community persons have occupied various areas of workspace, paving the way for restructuring gendered spaces. The legislation envisages transformation through education and employment or mainstreaming of the said persons. However, familial and other private rights, such as right to succession, etc. are the lacunas which exist in the legislation. The paper argues the need to have an anti-discrimination policy as a norm in workplace to be introduced, either as an amendment to the existing legislation or as a public policy guideline.

Keywords: *India, NALSA, transgender person's rights, new legislation, Yogyakarta principles.*

I. INTRODUCTION

The present society faces various challenges with regard to the protection and promotion of the human rights of individuals, especially in relation to those who are discriminated based on their

¹ Author is an Assistant Professor, Humanities and Liberal Arts in Management, Indian Institute of Management Kozhikode (IIMK), Kerala, India.

‘sexual orientation’² or diverse ‘gender identity.’³ For the past one and half decades, India witnessed various efforts by human rights activists and lawyers who have been advocating for combating all forms of discrimination and violence against sexual minorities. During an era when the gamut of international human rights law has become inclusive and mindful of the necessity to address the issues concerning individuals who identify their sexual orientation and gender identity within either same-sex, bisexual or transsexual relationships; India has been addressing this matter in terms of criminality. However, there are criticisms that even after the famous *Toonen* decision, which was a significant departure from earlier international jurisprudence that had found the prohibition of same-sex sexual relations as a breach of the right to privacy.⁴ In *Toonen* decision, the United Nations Human Rights Committee found a violation of the International Covenant on Civil and Political Rights, 1966, privacy provisions in conjunction with the prohibition of discrimination, innovatively interpreting the principle of non-discrimination on the grounds of “sex” as including “sexual orientation.”⁵

Post-Indian independence, individuals belonging to the lesbian, gay or bisexual and transgender (“LGBT”) social groups have experienced various human rights violations such as violence, harassment, discrimination, exclusion, stigmatisation and violation of privacy rights.⁶ Lawsuits filed by LGBT litigators for according their human rights are not meagre.⁷ Further, such violations also include killings, rape and physical attacks, torture, arbitrary detention, the denial of rights to assembly, denial of expression and information, and discrimination in employment, health, and education. Often, the anti-LGBT groups have challenged the sexual

² The Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity (hereinafter referred to as “Yogyakarta Principles”) defines sexual orientation as, “...each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.” The text of the Yogyakarta Principles is accessible at <https://www.refworld.org/pdfid/48244e602.pdf> accessed on 1 June 2021.

³ Ibid. Yogyakarta Principles defines of Gender Identity as “...each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.”

⁴ Three previous decisions by the European Court of Human Rights had found such laws to be in breach of the right to privacy under the European Convention on Human Rights. See *Dudgeon v. UK* 45 Eur. Ct. H.R. (ser. A), 1981; *Norris v. Ireland* 142 Eur. Ct. H.R. (ser. A), 1988; and *Modinos v. Cyprus* 259 Eur. Ct. H.R. (ser. A), 1993; I. Saiz, ‘Bracketing Sexuality: Human Rights and Sexual Orientation: A Decade of Development and Denial at the UN’ *Health and Human Rights*, (2004) 7(2) 48-80.

⁵ Human Rights Committee (1994). *Toonen v. Australia*. Communication No. 488/1992.

⁶ In a historic decision delivered in 2017, a nine-judge bench of the Honourable Supreme Court in *Justice K. S. Puttaswamy v. Union of India* (2017) 10 SCC 1; recognised a fundamental right to privacy of every individual guaranteed by the Indian Constitution, within Article 21 in particular and Part III on the whole; See also A Narain and V Chandran (ed), *Nothing to fix: Medicalisation of Sexual orientation and gender identity* (India: SAGE Publications India Pvt Ltd, 2010).

⁷ D Jain and K. M. Rhoten, ‘Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism’ *Journal of Human Values*, (2020) 26(1) 30-49; See also C. A. Ball, *From the Closet to the Courtroom: Five LGBT Rights Lawsuits That Have Changed Our Nation* (Boston: Beacon Press, 2010).

orientation of the LGBT group, terming them as immoral, deviant behaviour, and indecent behaviour. Moreover, more than 80 countries have characterised homosexuality as a criminal offence in their penal laws. A comparative analysis of South Asian countries such as Nepal, Pakistan, India and Bangladesh reveals the pitfalls of human rights universalism while examining the nuances of caste and religion affecting within the trans movement in India. There are arguments that legal transplant of “Western” categories of gender and sexuality has led to diluting the indigenous identities affecting legal recognition and status.⁸ The national laws criminalising behaviours and mannerisms of sexual minority considers it either as sodomy, public scandals, immoral or indecent behaviour and thereby penalise individuals for looking, dressing, or behaving differently from imbedded social norms.

The paper will analyze the existing debates on the legislation and regulation of transgender persons in India. Based on doctrinal research with an analysis of the primary sources comprising Indian legislation relating to transgender persons. It involves analysis of case law, arranging, ordering, and systematizing legal propositions, and study of legal institutions, but it does more-it creates law and its major tool through legal reasoning and rational deduction. The Paper will review the recently passed law in the light of the intent of the judgment passed by the Honourable Supreme Court of India recognising transgender persons as ‘third gender’.

It is essential to understand the legal framework. The secondary sources include journal articles, research articles, books and other materials. It will decipher the following queries to be addressed legally as, what are the rights of the transgender persons, content and critical analysis of the legislation passed, how business entities could make way for inclusiveness and gender diversity in the workplace.

In 2019, India passed new legislation on transgender person’s rights called as “the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as “new legislation”) pursuant to a judgment by its highest judiciary in 2014. The judgment and the subsequent legislation have legally recognised transgender community person or sexual minority individual as a ‘third gender’. This paper is divided into five sections: (i) history of criminalising transgender persons in India, (ii) impact of the 2014 judgement, (iii) salient features of the new legislation, (iv) third gender’s inclusiveness in the workspace with some examples on how transgender community persons have occupied various areas of workspace paving the way for restructuring gendered spaces; and (v) conclusion.

⁸ D Jain and D DasGupta, ‘Law, gender identity, and the uses of human rights: The paradox of recognition in South Asia’ *Journal of Human Rights*, (2010) 20(1) 110-126.

II. HISTORY OF CRIMINALISING TRANSGENDER PERSONS IN INDIA

During the British colonial rule in India, the transgender community faced many difficulties, primarily, because the *Hijras* (as they are generally known as) were termed as an immoral community. After 1850, the community became the subject of hatred among British colonizers. This approach has been reiterated by scholars like Jessica Hinchy, who has explored the status of eunuchs in the subcontinent. The colonial courts criminalized and stereotyped the transgender community and viewed them as “eunuch problem” and portrayed them as prostitutes. Ironically, even the judges viewed their gender as morally offensive and described them as “pollution” ingrained in the society. From the political economy angle, it was ironical that otherwise legal subject was pushed outside the legal regime by categorizing them as a criminal tribe. It has been observed that before the British colonial rule, Hijra was entitled for rent-free land and other rewards in many small Maharaja/Nawab polities, i.e. precolonial Maratha’s rule in the Bombay region. However, under the East India Company, the colonial rule redrafted the agreement between the Hijra community and that rule, making it difficult for the Bombay presidency to sustain the rights, grants and other benefits provided to the said community.⁹

Hinchy also draws relevance to the then Hijra community’s discipleship system, which was regarded as a parallel political force that could emerge as a challenge to the then British colonial rule. Hence, to control the community, the East India Company’s official was appointed to compile a detailed report on whether anti-Hijra law could be beneficial towards reaching that goal.¹⁰ Following this, legislation was introduced to address the “eunuch problem” titled “Criminal Tribes Act, 1871” (CTA).¹¹ The CTA gives a significant example for examining sexuality and gender policing, specifically targeting the transgender community. Owing to this, even after the removal of the Anti-Hijra clauses in 1911, the hatred, derogatory language and spirit still persist against the transgender community in postcolonial legislation in the subcontinent and other countries that were once colonized under the Britishers.¹²

Part II of the CTA criminalized the transgender persons in the colonial period and were brought

⁹ J Hinchy, *Governing gender and sexuality in colonial India: The Hijra*. (Cambridge: Cambridge University Press, 2019) p.32; G Reddy, *With respect to sex: Negotiating Hijra identity in South India*. (London: University of Chicago Press, 2005).

¹⁰ Ibid, Hinchy at p. 34.

¹¹ The text of this legislation can be accessed from the following website <https://www.casemine.com/act/in/5a979daf4a93263ca60b7266>.

¹² M A Fazi and M Bibi, ‘Discrepancies in transgender persons (protection of rights) act, 2018: a comparative study of transgender’s rights in Pakistan and India’ *International Journal of Law and Management* (2020) 63(3), p.347-356.

under the term “criminal tribes”. Evidentiary is the Preamble of the CTA, which requires registration of criminal tribes and eunuchs¹³ with powers over them to be under surveillance and control. Section 24 and 25 of the CTA had immense implications on the transgender community because social and moral policing became normal. This eventually turned into hatred and social exclusion of the said community in the society. Under this Act, a government register was to be maintained with the names of ‘eunuchs’ who were reasonably suspected of kidnapping or castrating children or committing offences under Section 377 of the Indian Penal Code, 1860. It also forbade them from playing music, bequeathing property, participating in any public or private show or adopting sons (Mittal and Garg, 2015). Another significant discrimination was clubbing the idea of binaries of gender¹⁴ into masculinity only by defining ‘eunuch’ as “to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent (Section 24, CTA).” The CTA was repealed in 1952 only to be renamed “Habitual Offenders Act (hereinafter referred as “HOA”), 1952”. Though ‘eunuchs’ as the immoral community was not mentioned, being the successor of CTA, this legislation also continued to target and prosecute transgender community persons (not community but individuals) as offenders. There were many other legislations that were enforced systematically to curb the rights of transgender persons. Trans movements in the West (especially the United States) focussed on attaining the legal rights of the community along with health issues. Whereas, in India, the main emphasis was to address health, legal and human rights issues, alongside the daunting question of identity.¹⁵

III. IMPACT OF NALSA JUDGMENT

Law is a social tool for transformation and vice-versa. The social transformation has paved the way for adoption of a law relating to the protection of transgender persons in India.¹⁶ The exploitation and social exclusion faced by transgender persons in mainstream society is a well-researched area.¹⁷ There have been various scholarly articles on transgender rights soon after

¹³ Ibid Section 24 and 25. Village headman was required to report of any entry of eunuch in the village/its vicinity, failing which he would be charged under Section 176 of the Indian Penal Code, 1860.

¹⁴ Foucault described the emergence of homosexual identity in the late nineteenth century as thus, “the sodomite had been a temporary aberration; the homosexual was now a species, see M Foucault, *The History of Sexuality: Volume 1*, p. 43, (translated from the French by Robert Hurley) (New York: Pantheon Books, 1978).

¹⁵ M Kurian and G Manoj, ‘Transgenders in the Mainstream: Welfare Schemes in Kerala—Kochi Metro Rail Project, Education Programme, Health Clinics, and Old-Age Pension’ *Indian Journal of Gender Studies*, (2021) 28(2) 167-187, at p. 169.

¹⁶ S K Babbar, ‘The Socio-Legal Exploitation of the Third Gender in India’ *IOSR Journal of Humanities And Social Science* (2016) 21(5)12-18.

¹⁷ U Baxi, *Inhuman Wrongs and Human Rights* (Delhi: Har Anant Publication, 1994); P Verma, ‘Sorrows of Transgenders, Judiciary and our Society – A Study’ *Indian Bar Review* (2015) 52(3) 137-159; A Chettiar, ‘Problems Faced by Hijras (Male to Female Transgenders) in Mumbai with Reference to Their Health and Harassment by the Police’ *International Journal of Social Science and Humanity* (2015) 5 752.

the 2014 judgment came into effect. However, there is seldom any research to check whether transgender rights perceived by the Indian judiciary have been truly incorporated in letter and spirit into the law. A manifesto has been worked on for trans-inclusion in the Indian workplace.¹⁸ Protection of the human rights of the individuals belonging to the transgender community is still in the nascent stage of evolution in India. The initial attempt by LGBT supporters and human rights activists was to argue for social inclusion through expanding the definition of diverse sexual orientation and gender identity. This is manifestly evident from the decided case laws of the Apex Court of India, where on the one hand, persons belonging to the transgender community were given the status of 'third gender' (2014) and criminal law criminalizing homosexuality was declared void in 2018.¹⁹

The importance of identity has been succinctly stated in *National Legal Services Authority v Union Of India & Ors*²⁰, popularly known as NALSA judgment, wherein the Court was dwelling upon the status of identity of the transgender person. Radhakrishnan, J., after referring to a catena of judgments and certain International Covenants, opined that:

“gender identity is one of the most fundamental aspects of life which refers to a person’s intrinsic sense of being a male, female or transgender or transsexual person. A person’s sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology.”²¹

The NALSA judgment has paved way for undoing the historic injustice towards transgender community by recognizing them as third gender and according status as a 'person'.²² On the issue of rights of the transgender community in relation to their gender identity, the Supreme Court of India in the NALSA case upheld their concerns. The court declared the individuals from the transgender community, apart from binary genders, be considered as the third gender for safeguarding their rights guaranteed under Part III of the Indian Constitution²³. The three

¹⁸ N Nambiar and P Shahani, 'A Manifesto for Trans Inclusion in the Indian Workplace' (2018) retrieved from <https://indiaculturelab.org/assets/Uploads/Godrej-India-Culture-Lab-Trans-Inclusion-Manifesto-Paper.pdf>.

¹⁹ In *Suresh Kumar Koushal and another v. NAZ Foundation and others*, the Supreme Court of India overruled the Delhi High Court case *Naz Foundation v. Govt. of NCT of Delhi* and reinstated Section 377 of the Indian Penal Code and re-criminalised the same-sex relationships. The Supreme Court of India decided to revisit this judgement after several curative petitions were filed against it, in 2017. In 2018, *Navtej Singh Johar v. Union of India*, a 5 judge bench of the Supreme Court overturned the 2013 judgement and decriminalized homosexuality; T Khaitan, 'Koushal v Naz: Judges Vote to Recriminalise Homosexuality' *Modern Law Review*, (2015) 78(4) 672–680.

²⁰ (2014) 5 SCC 438.

²¹ *Ibid* para 19.

²² See Kurian and Manoj n 14, at p. 168.

²³ Ministry of Social Justice and Empowerment, Government of India, *Report of the Expert Committee on the Issues relating to Transgender Persons*, released on 27 January 2014 retrieved from

important decisions dealing with the issue of decriminalizing homosexuality and transsexuality had references to the Yogyakarta Principles.²⁴ These references suggest that basic human rights of the individuals belonging to diverse sexual orientation and gender identities are reiterated.

IV. SALIENCE OF NEW LEGISLATION

(A) Backdrop

The passage of the legislation was a requirement under the NALSA judgment. There are various measures that an employer could initiate to employ them in the workplace and grant them their fundamental human rights. The judgment said that “the Constitution is a dynamic document, having the primary objective of establishing a dynamic and inclusive society”. While the judiciary has taken a significant step to remove the stigma attached to the third gender, it is society’s turn to recognize the true implication of this judgment and prioritize its enforcement. Inclusiveness and diversity must be the pillars of a country like India, which has a history of unity in diversity. In December 2019, India officially, through its gazette, adopted the “Transgender Persons (Protection of Rights) Act, 2019”. This legislation was the need of the hour despite being subject to various criticisms by the activists in the field.

NALSA judgment ruled that the transgender community should have equal rights and should be entitled to be recognized as the third gender and ordered that right to self-determination of gender should be recognized by State and Federal authorities. With this, the judiciary expressed that any attempt of sex reassignment surgery for declaring gender is illegal and immoral. However, the new legislation subjects the right of self-perceived gender to medical examination, which has been subject to criticism by human rights activists and lawyers who are defenders of transgender community person’s rights. The new legislation defines transgender as:

“...a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.” (Section 2 (k) of the Act).

For the first time since 1871, eunuchs were accepted as legal persons and decriminalized

<http://socialjustice.nic.in/transgenderpersons.php>.

²⁴ M O’Flaherty and J Fisher, ‘Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles’ *Human Rights Law Review* (2008) 8(2) 207-248 at p.211.

through recognizing them as a transgender persons belonging to the third gender attaining a legal status eligible of all formal economic, political, social, and legal transactions as any other Indian citizen. Also, this new legislation necessitates government to take appropriate welfare measures for the social inclusiveness²⁵ of transgender persons in every sphere of life and public spaces, including education, health, employment opportunities, etc.,. It is realized that the new legislation while acknowledges the right of self-perceived gender, it also imposes certain checks to avert misuse of this law for the person who is not a transgender. For instance, it requires a transgender person to prove one's identity through submitting an application in the office of district magistrate along with a "certificate of identity" as proof, through which the applicant can undergo sex-reassignment surgery in the prescribed manner. Further, the need to prove one's identity by medico-legal channel has created discontent among human rights activists stating that such channels/checks may be discriminatory, humiliating and re-questions their gender identity before various forums.

By virtue of enacting the new legislation, India has complied with the international standards on human rights protection, as envisaged by the United Nations Office of the High Commissioner for Human Rights in 2015. It was recommended that States begin, '...issuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce'.²⁶ Alongside this issuance of statement, the World Health Organization Report of 2015 recommended that governments '...take all necessary legislative, administrative, and other measures to fully recognize each person's self-defined gender identity, with no medical requirements or discrimination on any grounds'.

Criticisms have been raised against the process through which this new legislation has been passed. Deliberative democracy, which stems out of consultative process involving all stakeholders is the core of a truly democratic political process. Various recommendations and suggestions which was put forth by the relevant stakeholders, if not accepted, in deliberative democracy, there exists a duty to carefully consider the recommendations made by stakeholders during the consultation process. Adequate reasons must be provided to make this process transparent. This round of consultative or deliberative democracy process was not was not

²⁵ Section 8 (1) of the new legislation necessitates that, "The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society."

²⁶ Human Rights Council, United Nations General Assembly (2015), Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity, *Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23)*, dated May 04, 2015. Retrieved from <https://undocs.org/A/HRC/29/23>.

followed during the pre-legislative process while passing this new legislation in India.²⁷

(B) Salient Features of the new legislation

Some of the key features of the law relating to transgender persons include:

- (i) An inclusive definition of ‘transgender person’ provides for ‘inclusive education’ to prevent discrimination, neglect, harassment and intimidation of transgender persons at schools; and ‘institution’ for the protection and care of transgender persons.
- (ii) Non-discrimination principles at educational establishments, in employment or occupational opportunities, healthcare services, and access to public facilities and benefits. Caste is one of the concerns while debating vertical and horizontal reservations for transgender communities. While horizontal reservation can be based on multiple identities, vertical reservation can be based only on one identity. The NALSA judgement has categorized transgender individuals as a ‘socially and educationally backward class’, and propagated for vertical reservation with a transgender person waiving his/her benefits that relate to caste identity.²⁸
- (iii) Right to self-perceived gender identity, and if any individual wishes to identify themselves as a transgender person, they can apply and receive from the district magistrate (a designated government official) a ‘certificate of identity’ as a transgender person, without the requirement of any medical or physical examination. As mentioned above, the NALSA judgement advocated for the central and state governments to provide reservations to the transgender community in the spheres of education and employment. Drifting from this standpoint, the new legislation underlines the need to produce an identity certificate from the District Magistrate, which would require the applicant to undergo surgery. This goes against the NALSA judgement of self-identification. It further provides that a person undergoing surgery for change of gender to either male or female may make an application for issuance of a revised certificate indicating gender change.
- (iv) The government is mandated to provide medical care facilities to set up separate HIV sero-surveillance centers to conduct sero-surveillance for transgender persons; provide for medical care facilities including sex reassignment surgery and

²⁷ T Khaitan, ‘Reforming the Pre-Legislative Process’ *Economic and Political Weekly* (2011) 26(45) 27–30; T Khaitan, *A Theory of Discrimination Law* (Oxford: Oxford University Press, 2015); D Jain, ‘Law-Making by and for the People: A Case for Pre-Legislative Processes in India’, *Statute Law Review*, (2020) 41 (2) 189–206.

²⁸ See Kurian and Manoj, n 14 at p. 184.

- hormonal therapy; and provide for coverage of medical expenses by a comprehensive insurance scheme for sex reassignment surgery and other therapies.
- (v) Constitution of National Council for Transgender Persons ('NCT') to advise the government for the formulation and monitoring of policies and redress the grievances of transgender persons.
 - (vi) Offences like indulging transgender persons in forced or bonded labour or denial of access to public places; physical, emotional, or sexual abuse; or other offences committed under the provisions of the new legislation, are punishable with imprisonment for a term of at least six months to two years along with imposition of fine.²⁹

V. THIRD GENDER PERSONS IN INCLUSIVE WORKSPACE

The new legislation enumerates certain obligations for all establishments including, private employers. Those include, prohibition of discrimination by ensuring a safe working environment at employment through equal opportunity policy, including infrastructure adjustments, recruitment, employment benefits, promotion, and other related issues. Draft policies like infrastructural facilities (such as unisex toilets), measures for safety and security (transportation and guards), and amenities (such as hygiene products), etc.,. Designating and appointing complaint officer to enquire into complaints filed by transgender employees and submit reports of the enquiry within the timelines. Also, it will be beneficial to revamp and amend their existing human resource policies and make efforts towards training and sensitising their employees.

In the government sector, post-2014 judgment, various job openings and legal documentation paved the way for third gender persons (such as gender column in application form for Indian passports for Indian citizen). There are many hurdles towards inclusiveness³⁰ in the corporate world. However, there are various corporate entities³¹ who have made sexual orientation and gender diversity a new normal through their policies.³² Inclusive policies and benefits that some Indian companies already have include: (i) Equal opportunity policy: which covers sexual

²⁹ Ibid.

³⁰ R Mitra and V Doctor, 'Passing in Corporate India: Problematizing Disclosure of Homosexuality at the Workplace', In T Kollen (Ed.), *Sexual Orientation and Transgender Issues in Organizations: Global Perspectives on LGBT Workforce Diversity*, (Switzerland: Springer International Publications, 2016) (pp. 307-321).

³¹ Such as Kochi Metro, VLCC Hyderabad, Tata Steel, Lalit Hotels, Thoughtworks, Third Eye Café, etc., who have adopted gender neutral policies.

³² Human Rights Campaign Foundation, *Transgender Inclusion in the Workplace: A Toolkit for Employers* (2018), retrieved from https://assets2.hrc.org/files/assets/resources/Transgender_Inclusion_in_the_Workplace_A_Toolkit_for_Employers_Version_10_14_2016.pdf.

orientation and gender identity without any discrimination, (ii) Same-sex partnership benefits: the company recognizes same-sex partners and gives them equal benefits at par with married spouses; and (iii) Gender-neutral adoption leave: Leave of 3 months be given to the primary care-giving. Many trans-persons are famous personalities who are transforming the gendered workspaces and reclaiming their spaces in the mainstream.³³

VI. CONCLUSION

By way of conclusion, it would be ideal to consider this new legislation as a skeletal legislation which needs further regulations in place for elaborating certain human rights of transgender person. Suggestions for either inclusion in the amendment to new legislation/further regulations are: (i) reconsider penalties for offences against transgender persons when heinous crimes like rape, sexual abuse, criminal assault etc., occur. Presently, the penalties are maximum two years of imprisonment with certain fine, which may be inadequate when the above mentioned crimes and violations are conducted. (ii) Human rights such as marriage rights, adoption rights, maternity rights etc., needs to be addressed for adhering to inclusiveness in social and public spheres. Responsibility must be vested with employer, not only appropriate government, to make workspace more inclusive and diverse by according basic rights in terms of infrastructure and facilities; and revamping gender budgeting to include transgender community's concerns. There is a need to have an anti-discrimination policy as a norm in workplace to be introduced, either as an amendment to the existing legislation or as a public policy guideline. An anti-discrimination policy as a norm in workplace warranting inclusion of transgender persons in workspace, must be introduced.

³³ For example, Padmini Prakash became India's first transgender television anchor; Kamla Jaan became the world's first third gender mayor but was asked by the High Court to step down, as the post was reserved for a female candidate. She was the mayor of Katni district for two and a half years since January, 2000; Shabnam 'Mausi' Bano was the first transgender Indian to be an elected member of the Madhya Pradesh State Legislative Assembly from 1998 to 2003; Kalki Subramaniam is India's first trans entrepreneur. There are many more and still counting.