

May 2020

# Transgender Persons (Protection of Rights) Act, 2019

WHAT | WHY | WHERE | WHO | HOW



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un

# HOW SHOULD WORKPLACES BE DESIGNED TO CREATE THIS INCLUSIVE ENVIRONMENT?

## CONTACT US

For the past six years, Ungender and the team behind it, has built its expertise in the laws that impact workplaces and the genders engaging with them.

Our insights are produced in the form of simplified handbooks like the one you are accessing right now where we simplify the complicated laws and their mandates for the stakeholders.

Our additional insights come out in the form of industry reports where we combine laws, data, and gender together to provide the nuanced reality of specific sectors.

To have access to the reports, write to us on [contact@ungender.in](mailto:contact@ungender.in)

**To seek our advisory on workplace gender laws matters, write to us on [contact@ungender.in](mailto:contact@ungender.in)**

**Bangalore | Delhi & NCR |  
Mumbai**



As a transgender woman with a wide work experience coupled with some entrepreneurial experience in India, I can pointedly say that discrimination against transgender women exists pervasively, which is a direct importation from Indian social code of at least a hundred years into corporate work environments.

This is definitely a byproduct of caste-patriarchy of India's society. India's capitalism is a replica of India's caste-based feudalism. However, this must be challenged and is being etched away at by a rainbow of feminist and rainbow activists from across India with allies from non-lgbt populations, which is a great development over the years. This rampant systemic stigmatization of transgender people is an attack on the Constitution long been unchallenged. However, the NALSA judgment opened the doors for possibility of dismantling this systemic India's corporate transphobia.

This handbook guide is thoroughly researched and created by Ungender and presents a great framework of reference on including transgender people in the corporate workforce. I have thoroughly read the guidebook and made a few recommendations for its improvement. This will serve as a very good reference text for all legal issues and concerns when it relates to the transgender employee of a company in India.



## About Ungender

Ungender Legal Advisory is a diversity and inclusion laws advisory firm – working on bridging the gender and inclusion divide at workplaces.

We believe that workplaces have a long way to go before they become “inclusive” for all the existing and prospective genders interacting as their internal and external stakeholders.

However, this is a journey that has begun for a lot of companies and some are just beginning to walk the path. We partner with the companies and their leaders to help them reach inclusion.

Our dedicated efforts towards this have resulted in niche advisory on compliance and implementation of the Maternity Benefits Act, 1961, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and other diversity based laws such as the Rights of Persons with Disabilities Act, 2016 and the Transgender Persons (Protection of Rights) Act, 2019.

We believe that solutions, like their problems, exist in the form of an ecosystem, and we need to address it together as much as possible. While majority of our work in the six years has been in private sector and workplaces, we have accumulated advisory expertise on different on ground, mass level implementation with State and District level of government. Our collective intelligence is an output of working with over 300 companies directly, educating over 10,000 companies leaders, 250+ case investigations, and sensitizing over a lakh individuals on diversity and inclusive laws.

In addition to the above, we believe in extracting data-based insights on the on-ground activities/realities of workplaces to in turn, shape the future activities within a workplace, in the industry as benchmarks, or in the legal ecosystem. As a part of our learning and development efforts, we are happy to share our knowledge in the public domain for the benefit of all stakeholders. For this, we have a dedicated section on our website on blogs, legal updates and handbooks on diversity and inclusion laws.

Additionally, we will also bring various industry insights, through the gender lens, for you, as a stakeholder, decision maker, and an advocate of inclusion and equity to build inclusive workplaces of future.



## About The Handbook

This Handbook is written solely for the purpose of facilitating organizations and their leaders to understand and implement the guidelines under the law. This handbook is not endorsing the law and its elements, nor is it providing any critique on the law.

We hope that the handbook will serve its purpose and allow leaders to decode the basic principles of the law towards the initial steps towards inclusion.

## Disclaimer

This Handbook is a copyright of Ungender Legal advisory. The Handbook has been designed to provide basic information about the Transgender Persons (Protection of Rights) Act, 2019 and is in no manner construed to be professional advice. The Handbook is subject to review and modification upon the notification of rules (central and/or state) under the act and any schemes formulated for implementation of the said act. The authors and the firm expressly disclaim all and any liability to any person who has read this Handbook, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this Handbook.

## Contact

For any help or assistance, please email us on [contact@ungender.in](mailto:contact@ungender.in) or visit us at [www.ungender.in](http://www.ungender.in)

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IN EVERY OUTPUT CURATED BY UNGENDER, WE ACKNOWLEDGE ALL THE LEGAL PROFESSIONALS, GENDER RIGHTS ADVOCATES, ACTIVISTS, RESEARCHERS, SOCIAL WORKERS, JUSTICE AUTHORITIES, ALL THE WOMEN, MEN, AND OTHER GENDERS, WHO MADE EACH LAW POSSIBLE AND ACCESSIBLE. EVERYTHING THAT THE LEGAL SYSTEM AND THE SOCIETY ENJOYS TODAY IS A PRODUCT OF HUNDREDS OF YEARS OF THIS JOURNEY.

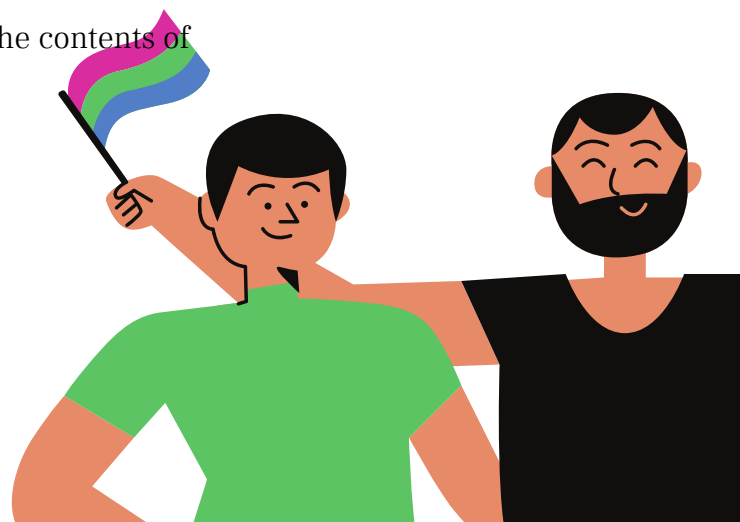
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# TABLE OF CONTENTS

<b>INTRODUCTION</b>	<b>5</b>
<b>SEXUAL ORIENTATION AND GENDER</b>	<b>8</b>
<b>LEGAL HISTORY OF THE FORMAL RECOGNITION OF TRANSGENDER COMMUNITY IN INDIA</b>	<b>9</b>
<b>NALSA Judgement</b>	
<b>How the Apex Court defined the “Third Gender Fundamental Rights under the NALSA Judgement Directions to Government</b>	
<b>Fundamental Rights under the NALSA Judgement</b>	
<b>Directions to Government</b>	
<b>The Right to Privacy Judgment</b>	
<b>The SC ends Section 377</b>	
<b>THE ENACTMENT OF TPPR ACT</b>	<b>14</b>
<b>Inception and conceptualization of the Act</b>	
<b>Points of Divergence: NALSA Judgement vis-à-vis the TPPR Act</b>	
<b>KEY FEATURES OF THE LAW</b>	<b>16</b>
<b>Non-discrimination of transgenders in terms of employment</b>	
<b>Non-discrimination of transgenders in terms of access to education, healthcare and services for public</b>	
<b>Scope of ‘establishment’</b>	
<b>Definition of Transgender persons under the TPPR Act</b>	
<b>POSITIVE DUTIES AND OBLIGATIONS CREATED BY LAW FOR EMPLOYERS</b>	<b>18</b>
<b>PENALTIES UNDER LAW</b>	<b>18</b>
<b>COMPLIANCE UNDER LAW</b>	<b>19</b>
<b>A Review your policies and practices for hiring and career progression</b>	
<b>Review your Anti-harassment policies</b>	
<b>Sensitization of your employee</b>	
<b>Review your office infrastructure</b>	
<b>Appoint a Complaints Officer</b>	
<b>Adoption of gender-neutral language in the workplace</b>	
<b>OTHER POSITIVE CHANGES</b>	<b>25</b>

## INTRODUCTION

Historically, members of the Transgender community have faced oppression and stigmatization in India. Post the colonial rule, an amendment to the Criminal Tribes Act, 1871 made the link between criminality and sexual non-conformity more explicit. This amendment was titled, 'An Act for the Registration of Criminal Tribes and Eunuchs'. This provision essentially made being a eunuch a criminal act.

The circumstances of the transgender community even in modern India, are mired with experiences of oppression, harassment, and exclusion. A recent report published by the National Human Rights Commission (NHRC)[1] revealed the extent of discrimination the community faces. It notes how this abuse starts early in their childhood as parents are ashamed of accepting their child's identity due to the stigma attached. They suffer verbal and corporal abuses at the hands of their parents, siblings and to other relatives and are prohibited from revealing their identity.

As per the NHRC Report, only 2% of trans individuals stay with their parents. With regards to their education, the NHRC notes that 52% of individuals stated that they were harassed by their classmates and about 15% by their teachers.

This leads many to discontinue pursuing an education. The transgender community is also excluded from all form of economic activity. The report notes that 92% of individuals claimed that despite being educated, they were refused jobs due to their gender identity.

It records that 96% of the individuals from the community are forced to take low paying work. These circumstances compelled them to either beg or engage in sex work. Further, it must also be noted that over 57% transgender persons have expressed the desire to undergo a sex-realignment surgery but have been unable to the economic constraints. These numbers reveal how the transgender community is invisible within their own homes, and other important spheres of life.

A landmark moment for the transgender community was the judgement of the Apex Court in National Legal Services Authority vs. Union of India [2]. This case was filed by the National Legal Services Authority of India (NALSA) to legally recognize persons who fall outside the male/female gender binary, including persons who identify as "third gender".

[1] Study on Human Rights of Transgender as a Third Gender, National Human Rights Commission, [https://nhrc.nic.in/sites/default/files/Study\\_HR\\_transgender\\_03082018.pdf](https://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf) last accessed on: 07/05/2020.

[2] AIR 2014 SC 1863