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Authored By: Ms. Amrita Singh, Shri Vaishnav Institute of Law, SVVV, Indore,
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**“Virtual International Conference on
Gender Barriers in Entrepreneurship:
Emerging Global Trends”**



Prof.(Dr) Priya Sepaha

Founder Director, Editor-In-Chief & Publisher

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ABSTRACT:

“Indian youths than ever ahead may accept homosexuality and queer individualities moment, but within the confines of family, home and academy, acceptance of their fornication and freedom to openly express their gender choices still remain a constant struggle for LGBT (Lesbian, Gay, Bisexual and transgender) people. The situation for homosexual males in civic India, where social media and commercial enterprises have increased mindfulness of LGBT rights, appears more promising than it does for transgender individuals or lesbian women. While the views of civic LGBT people are heard through a variety of online and offline outlets, they represent only a small portion of the numerous difficulties the communities face. The LGBT community is floundering for acceptance and equal rights. Chancing acceptance is particularly challenging for ambisexual persons. The LGBT community is constantly judged negatively. The frequency of prejudice against the LGBT community makes this a serious problem. People's prepossessions beget them to believe that LGBT individuals are strange and distinctively different. Transgender people, whose sexuality often has nothing to do with the discrimination they encounter, face further stigma still due to a widespread lack of understanding of the issue. Many choose to leave their workplace in order to undergo their transition”.

Keywords: Homosexuality, Transgenders, Sexuality, Enterprises etc.

“I am what I am, so take me as I am,” said German poet and philosopher Arthur Schopenhauer.

I. INTRODUCTION:

The Law is not static. Usually, the law reflects and encapsulates the social and moral values of a society. It is precisely for this reason that the law is an extremely important tool for social change. Law and society have a symbiotic relationship. The law is shaped by society and in turn shapes it. When a society is hidebound by tradition and social stasis, any reform must come through the agency of the law.

From Margins to the Mainstream:

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Transgender people have been present in India for centuries, as reflected in descriptions in the Kama Sutra, the well-known ancient Sanskrit text from over 1,500 years ago. A chapter in the Kama Sutra describes '*Tritiya Prakriti*' (3rd Nature), which may be interpreted to mean any gender outside the binary male/female gender framework and includes descriptions of 'males' who have long hair and wear dresses and who provide sexual services to men.¹ Descriptions of transgender men and women are also found in the major Sanskrit epics of India, in the oldest surviving epic poems on earth. Images of transgender people are depicted in many ancient Indian temple carvings as well. In the 16th and 17th centuries, when the Mughal Empire controlled most of the Indian subcontinent, transgender people attained a special status in the emperor's court as political advisors, administrators and generals, as well as serving as the guardians of women in the harems. Thus, the concept of a third gender- that some male-born and female-born persons desire to identify with a gender that is different from those assigned at birth and that transwomen may engage in sex work – was relatively well known in India for centuries. From this perspective, transgender people in India have a long-documented history than most nations on earth.

Recently, the term 'third gender' has been used in the mainstream media to denote transgender people, although some transgender activists oppose this term for a variety of reasons. First, not all transgender people wish to be recognized as the '*third gender*', as some may aspire to be recognized as a man or woman. Second, some gender-queer-identified people feel that this term merely reinforces the mutually exclusive categories of gender, going from binary gender to three genders. Third, it is only assumed that both trans men and women wish to be combined under the single category of the '*third gender*'. Fourth and relatedly, 'third gender' is equated with visible transwomen/hijras, not with transmen. Finally, there is a hierarchy and devaluation implicit in the term 'third gender': first gender being man second being woman and then the

¹ Butler, Judith. 'Performative Acts and Gender Constitution,' Theatre Journal, 40 (4), December 1988, pp. 519-531.

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last 'third gender'. In August 2019, the government of India introduced and passed the *Transgender Rights Bill 2019 in the Lok Sabha*. The bill was passed by the Rajya Sabha as well and was enacted into law by a Presidential notification in December 2019. It has now become an Act. This Act was based on a private's member's bill that had previously been passed unanimously in the Rajya Sabha. The Act is supposed to correct infirmities (*potential loopholes*) and improve upon the Rajya Sabha Bill. However, this act has received widespread criticism from transgender representatives, activists and legal scholars alike- the consensus suggesting that it was fully open to the exploitation of loopholes and misinterpretation, with several activists noting that the Rajya Sabha Bill passed earlier, though not ideal by itself, it was better and preferable to this one.

Simply, the Transgender Persons (Protection of Rights) Act, 2019 continues to dwell on unresolved issues:

- 1. A person still needs authorization from the State Government to choose their preferred gender.*
- 2. The Act does not recognize non-biological families – it does not accept the choices that transgender persons make from either guru-chela relationships or other family bonds.*
- 3. The Act reduces the criminal penalties for sexual assault on transgender persons (6 months to 2 years) compared to cis-gendered women.*
- 4. The Act remains silent on reservations for transgender persons, making this bill purely tokenistic.*

II. LAW RELATING TO LGBTQIA+ RIGHTS:

The following legislation has been passed by the Indian government in an effort to advance and normalize the LGBTQIA+ community:

II.I Removal of section 377 of the IPC, 1860:

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In the case of *Navtej Singh Johar vs. Union of India*², brought by the Constitutional Bench, led by the then-CJI Justice Dipak Mishra, the Supreme Court of India partially decriminalized Section 377 of the Indian Penal Code, 1860. Previously, Section 377 made it illegal for homosexuals to have sexual relations. The decision was a little step in the fight for the equality and normalization of LGBTQ community members. The Supreme Court has addressed the issues that the LGBTQ community is facing in this case while simultaneously defending their fundamental rights. The Apex Court ruled in the KS Puttaswamy case that Article 21 includes the right to privacy.

II.II The 2019 Transgender Persons (Protection of Rights) Act:

In Indian mythology, transgender persons are acknowledged; but, during the British era, they experienced violence and prejudice, which contributed to their backwardness. Various rulings and laws have been issued in an effort to restore the standing of the transgender community. The Apex Court recognized transgender as the third gender in the case of *National Legal Services Authority vs. Union of India*³. It was the most well-known ruling, and in response, the first-ever bill protecting the rights of the transgender community was proposed in 2014; however, it expired in 2016. ties to transsexual individuals.

II.III Reservations for transgender people are as follows:

The Supreme Court of India ruled in the case of *National Legal Services Authority vs. Union of India*⁴, that transgender people belong to the third gender. The transgender person is now eligible for reservations under India's quota policy as a result of this declaration. According to the Indian Constitution, transgender people are entitled to both economic and educational accommodations.

² AIR 2018 SC 4321

³ AIR 2014 SC 1863

⁴ Id.

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II.IV Global Scenario of Intersectionality and Accessing Capital in the LGBTQ+ Entrepreneurial Ecosystem⁵:

LGBTQ+ business owners also aren't single-faceted; their experiences occupy a wide spectrum of identities including race, gender, class, mental health, age, religion and physical mobility. Any one of these facets of experience, or multiple at once, may contribute to individual challenges when it comes to meeting the many requirements needed to start and maintain a business. Access to venture capital and legal investment funds as an LGBTQ+ business owner is particularly difficult, a survey conducted by Chicago Booth Review and Start Out reports that the gap of disadvantage only increases for those of marginalized gender and race.

II.V Gender:

StartOut's study also found that lesbian entrepreneurs were at a distinct disadvantage compared to gay, male business owners, with just 3% of lesbian-owned businesses reporting revenue over \$5 million compared to 12% for gay men. *“Gender trumps LGBT status in adding difficulty to the funding process,” StartOut's findings claimed. “In this sample, approximately 38% of both male and female entrepreneurs raised outside capital to help fund their business — but 70% of female LBT entrepreneurs raised less than \$750K while 47% of male GBT entrepreneurs raised more than \$2M, mirroring the gender funding gap seen in entrepreneurship in general.”*

II.VI Race:

LGBTQ+ businesses confront enough difficulties on their own, but those of colour are even more likely to encounter difficulties specific to racial marginalisation. According to a recent National Bureau of Economic Research analysis, Black-owned firms were the ones most severely impacted by the pandemic in 2020, losing 41% of their total business owners (440,000 Blacks), compared to 17% of White business owners. Only 0.27% of venture capital investment goes to Black women-owned businesses, despite the fact that the number of Black women-owned businesses has increased by 163% since 2007—six or seven times the national average.

⁵ <https://www.clearadmit.com/2016/07/new-study-shines-spotlight-challenges-facing-lgbt-entrepreneurs/> visited on 7th April 2023.

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Instead, venture capital is still given to predominantly white, male-owned enterprises. According to a Project Diane study, Black and Latina women only made up 0.64% of respondents. Such reports, just a few of many, demonstrate the diversity of the LGBTQ+ entrepreneurial experience and the need for an intersectional approach to better understand and address the challenges faced by gay business owners.

III. RESOURCES TO HELP LGBTQ+ ENTREPRENEURS AND ALLIES:

For as many obstacles as LGBTQ+ business owners may encounter, there is a growing number of resources and practices designed to offer aid in supporting LGBTQ+ businesses — whether you're an LGBTQ+ entrepreneur yourself or an ally looking to build a more inclusive economic ecosystem.

III.I BELOW ARE SOME SUGGESTED RESOURCES AND PRACTICES FOR LGBTQ+ ENTREPRENEURS AND SUPPORTING ORGANIZATIONS:

III.I.I Help business owners get their LGBTBE certification:

The National LGBT Chamber of Commerce's LGBTBE certification attests to a company's majority (at least 51%) ownership by individuals who identify as LGBTQ+. LGBTBE accreditation gives tools, built-in customers, and scaling prospects while connecting LGBTQ+ business leaders with other LGBTQ+ businesses both locally and nationally.

III.I.II Integrate LGBTQ+ resources into your network:

A regional resource for LGBTQ+ businesses and allies, the Mid-America LGBT Chamber of Commerce specialises in assisting Midwestern LGBTQ+ enterprises with certification. The Mid-America LGBT Chamber also organises networking events to bring members together, takes part in non-profit work with an LGBT focus, and links local company owners to a wider network of enterprises.

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III.I.III Collect demographic information in your community:

It's possible to have a better knowledge of the diverse composition of your ecosystem by staying up to current on demographic data within your network of business partners and resource partners. The best course of action is to examine the most recent best practises for data collection if you decide to go that path. The examples mentioned can make the people in your community feel like they are a part of your organisation and are represented. You might be able to gain a better grasp of your entrepreneurial support network's strengths and weaknesses through anonymous questionnaires. A good starting point for establishing a more inclusive and welcoming workplace is giving resource partners and business owners a safe location to express their concerns.

III.I.IV Build trust in the business ecosystem:

Engaging in open, deliberate communication with others in your network about diversity, equity, and inclusion is one of the most crucial steps in creating an inclusive environment. Creating places that prioritise diversity or moving beyond an initial conversation are challenges for many communities. Committing to specific initiatives like internal diversity seminars, working with minority, female, and LGBTQ-owned businesses, and unconscious bias training are all encouraging first steps towards building a more diverse and inclusive entrepreneurial ecosystem.

IV. GENDER ENTREPRENEURSHIP IN INDIA OF LGBTQIA+:

CHALLENGES AND ISSUES:

Whether it's accessing capital and funding, obtaining licenses, pursuing prospects and sales, hiring employees, or receiving federal aid and protection, LGBTQ+ entrepreneurs are statistically more likely to encounter disadvantages, whether due to social bias or lack of federal and state support. So much of entrepreneurial success depends on building a business network, especially the ability to locate mentors and role models. According to StartOut — a nonprofit

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organization committed to increasing the number, diversity and impact of LGBTQ+ entrepreneurs through economic empowerment, funding, research and programming — the visibility of LGBTQ+ business role models and mentors, as well as other resources for finding them, are few and far between for aspiring LGBTQ+ entrepreneurs. StartOut's 2016 study, "*The State of LGBT Entrepreneurship in the U.S.*," also reports that almost 40% of LGBTQ+ entrepreneurs said they chose not to self-identify as members of the LGBTQ+ community, either because it wasn't deemed relevant or they were concerned doing so might hurt their chances of receiving capital. Consequentially, many LGBTQ+ entrepreneurs have migrated from areas where they may face discrimination and intolerance, leaving an immeasurable gap in the business communities of those cities. Statistics like these illustrate the factors that may lower LGBTQ+ entrepreneurial visibility for aspiring business owners in the community and overall contribute to a cycle of disadvantage.

If we are discussing India transgender entrepreneurs, this scenario is worst. After the verdict of *Navtej Singh Johar vs. Union of India*, the Supreme Court asked for respect for the LGBTQ+ community and highlighted the freedom of choice. If basic civil liberties are granted to the LGBTQ community, then the next logical step is economic freedom. LGBTQ+ people need equal opportunities in jobs and should not be rejected based on their sexual orientation.

IV.I PROBLEMS ENCOUNTERED BY LGBTQIA+ YOUTH IN **INDIA:**

The Supreme Court called for respect for the LGBTQ+ community after the *Navtej Singh Johar vs. Union of India*, ruling and emphasised the right to freedom of choice. Economic freedom is the next natural step if the LGBTQ community is afforded fundamental civil liberty. LGBTQ+ individuals should be given equal employment chances and not be turned down because of their sexual orientation. We must form the *Diversity and Inclusion (D&I)* Task Force in collaboration with FICCI to make sure inclusion enters the corporate sector. For the

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first time ever, Radhika and Keshav, two openly queer persons who serve as chairs, have access to FICCI's facilities. The D&I Task Force is certain to make a difference in the corporate sector thanks to its three-pronged agenda, which includes gender diversity, the inclusion of individuals with disabilities, and noteworthy representation from the LGBTQIA+ community. To aid in the employment of more and more LGBTQIA+ youth, *LaLit (a family-run business in Delhi)* has been sponsoring job fairs like RISE and Q-rious. The Workplace Equality Index has also been introduced to India through a partnership between the Keshav Suri Foundation (*based in Delhi*) and Stonewall UK and Pride Circle. Neelam Jain, the founder and chief executive officer of PeriFerry, a business that seeks to economically empower transgender people, says she encounters with situations in which trans professionals, particularly those in mid- to senior-level positions, continue to be afraid of the repercussions of coming out. When they sought to alter their gender, several of them encountered hostility at work. They also have limited job descriptions and functions.

“PeriFerry has created jobs for over 170 transgender individuals, including Hayathi, who have been placed across more than 75 corporates. The bootstrapped startup is currently working with 1,200 active trans job seekers, and Jain has noticed a serious gap where trans people often do not meet all the skill requirements listed by companies. Hence, she helps upskill job-seekers as well. Jain says most trans employees are tenacious and hardworking, so “companies need to take a call about whether they would like to invest in skill training”. Harsha Hayathi went up on stage at an inclusion seminar organized by her financial services company ANZ in Bengaluru, and mustering all the courage she could, said, “I am Hayathi. Though I was not assigned female at birth, I identify as a woman. Some women have short hair, I am that woman. Some women have husky voices, I am that woman. Some women have xy chromosomes, I am that woman. Some women cannot give birth, I am that woman. Even if you accept me or not, I am a woman.” For the first time in her professional career, Hayathi had brought her full self to work. Prior to that, the 31-year-old transwoman had to switch

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employment seven times in seven years as a result of fear, prejudice, poor health, and gender dysphoria (*a conflict between a person's physical gender and the gender with which they identify*). Hayathi, a technical analyst at her present business, finally experienced acceptance thanks to accepting co-workers and a strong policy framework, but she thinks LGBT inclusion in India Inc. is still only partially written. The history of lesbian, gay, bisexual, transgender, queer+ (LGBTQ+) individuals in India, beyond court cases and legal battles, is peppered with personal stories, mobilized community efforts, the building of literary, media and archival resources, and social gatherings. The need to find employment avenues, financial security, career mentorship, nurture aspirations and stand up on their own feet has always been central to these efforts.

While companies do not make it mandatory to disclose gender identity or sexual orientation, many queer individuals advocate coming out to leverage corporate policies in a better manner. Ketty Avashia, director at a multinational investment banking and financial services firm, who identifies as transgender lesbian, says he wants community members to grow based on their skills, without worrying about their identity or orientation. *“There will always be quotas or targets for hiring squads put around by companies to get LGBTQ+ members and meet ground needs of diversity numbers. But in the absence of identifiable queer individuals, no real opportunities would be created for people to learn, adapt and practice inclusion,”* he says. *“So, if we want to be indifferent to differences, it has to be a two-way street.”* Experts suggest that companies have to do a lot more than policy provisions. Lawyer Aravind Narrain, a founding member of the Alternative Law Forum and an expert on LGBTQ+ rights, points out that the 2018 judgment had non-discrimination at the core. This involved, he says, working against stereotypes like queer people being problematic individuals, among other things. *“In a corporate setting, these stereotypes are often reinforced in places that are most difficult to reach, like cigarette breaks, around the water cooler etc when you make fun of people based on these stereotypes, even if it is casual. Dealing with it will require a deeper level of work by*

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companies.” Christopher agrees, saying people at the workplace might have wrong impressions about the community, perpetuated by society and stereotypes from popular culture like Hindi cinema. “People are usually awkward and do not know what to say. For example, they do not talk or inquire about our partners as normally as they would do with a straight colleague,” he says. Even seemingly casual, mild or innocent homophobia and transphobia have to be taken seriously, says Sophia David, who works with the leadership development team of a global consultancy firm in Hyderabad and identifies as a transwoman. “Ignored instances of casual homophobia could soon turn into an acceptable work culture,” she says, explaining that normalizing the conversation is as important as having policies that also spell out corrective measures against repeated offences.

Normalization includes paying attention to the simplest of things, like addressing people with their preferred pronouns, drawing from the lived experiences of queer employees while framing policy, being careful not to ask insensitive or intrusive questions and even using gender-neutral language. “For example, instead of starting a meeting with ‘Ladies and gentlemen’ or ‘Hello guys’, say ‘Hello folks’ or ‘Hello distinguished guests’,” says Sophia, who advocates a top-down approach to the implementation of LGBTQ+-friendly measures. When leaders go out of their way to invest in the welfare of queer employees, it sets the tone for the company culture, says Swati Rustagi, director of HR at Amazon India Operations. Since 2017, the e-commerce company has had an affinity group comprising members of the community and other allies. About two months ago, it launched a hiring program specifically for transgender individuals. “An inclusive culture fundamentally fosters innovation. Without reflections and perspectives from various communities that make up society, you will tend to create programs or products that are not relevant for your consumers,” she says. Sophia also calls for policies to be flexible enough to evaluate on a case-by-case basis. Being a cancer survivor, she has to get her gender transition surgery in Thailand where she says doctors have the required expertise. But the insurance policy at her organization would not cover the costs in this case, which is why her

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friends have helped her set up a crowdfunding campaign on Milaap to meet expenses. “I know that many treatments, including those for HIV, come at a cost. But they are necessary for LGBTQ+ folks,” she says. Some companies do consider the flexibility aspect. E-commerce platform Flipkart, for instance, has introduced a FlexBen program, which, according to Chief People Officer Krishna Raghavan, offers “greater flexibility and freedom of choice in selecting and funding employee benefits, allowing them to customize their benefits package based on their individual needs”. The company’s insurance plan covers gender affirmation surgery and surrogacy procedure for LGBTQ+ employees.

V. CONCLUSION AND SUGGESTIONS:

In a nation where strict social and cultural standards regulate the circumstances of school, work, and marriage, lack of family support may be a significant blow to the mental and physical health of LGBTQA+ people. Isolation and the urge to fit in are frequent causes of depression, suicidal thoughts, and psychosomatic disorders. Many of them would prefer to move to a different place to escape the overwhelming pressure to get married and have kids. Families who accept their identities impose many restrictions on how they can dress and behave around their partners. In the absence of family support, social media and online communities have offered accessible options for building a community beyond the family. If you have expertise helping entrepreneurs in your community and have encountered any of these difficulties, remember that there are numerous tools available to you. You may educate yourself and aid your entrepreneurs in realising they're not alone by taking the initial step of identifying LGBTQ+ company owners and establishing a platform for discussing their experiences, insights, and issues.

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