



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Are Limitations uprising to limit the Inquisitive Spirit?

Nandini Ravishankar^a

^aMIT World Peace University, Pune, India

Received 10 February 2023; *Accepted* 01 March 2023; *Published* 04 March 2023

The long-standing battle that was fought by the transgenders, be it their establishment of the right to gender identity or fighting for equal rights in all aspects as provided in the constitution is known to us. However, what goes unnoticed is the subtle forms of injustice or unintentional infringement of rights perpetrated by institutions of remuneration on them. Practicing a profession of choice as mentioned in 19(1)(g)¹ which elaborates on the right to carry, on a trade, occupation, or profession of rights is applicable to everyone provided they are also subject to pre-requisites to be satisfied, as demanded by the occupation. Adam Harry is one such individual, who undergoes therapy, necessary to be taken, for the completion of the transition from the gender assigned at the time of birth to one which the individual feels and identifies himself/ herself as. Are places like the aviation sector, really conducive enough for such individuals or do they have their own set of challenges amidst the dreams that they have carved for themselves? This article focuses on the dispute which elucidates further, the opinions of the author.

Keywords: *limitations, spirit, dispute.*

INTRODUCTION

Every individual, within a blink of an eye, can analyze the interest of others, penchant for certain preferences of others more than self, and easily have a condescending outlook to other person's

¹ Constitution of India 1950, art 19(1)(g)

likes and dislikes, to put it as lucid as it can be, have been involvement in others way of living more than thyself. Agreeing with the fact that considering the majority this can be termed as a so-called natural tendency of the population which can be broadly divided into various strata depending on their self-analysis. This self-analysis is something to look up to, and understand the gravity of since getting to know personal inclination is a great impediment for many in making life-changing situations, often quoted as an epithet: 'understanding the world is an ounce of understanding a self as a part of it'. The greatest example of this, which amazes me includes those individuals having the capability to bell the cat for any great progress of the country the 'Transgender community or commonly known as the queer community'. Setting an apt example that the sky is the limit, and instilling in the minds of youth and persons driven by senility of old age that no doubt is greater as an obstacle than self-doubt and having an ingrained confidence in the potential of self, this community has been a heralding force to provide food to the thought of being unique yet different in their way. However, since the apex court gave due recognition to them regarding the rights they are entitled to, their prerogatives as citizens in the society that still takes it with a grain of salt to accept them, the pathway of reaching the pinnacle of progress has not been a green lush paradise. One of the most thought-provoking incidents has been worth referring to is that of Adam Harry, who has been left with Hobson's choice of being a Zomato delivery agent after being declared unfit by the Director general of civil aviation.

THE ISSUE

With a bag full of dreams, a person who thinks he deserves the best in return for all the efforts he puts in awaits a fate that completely shatters his dreams. Identity is an extremely personal aspect that is primordial in invoking confidence in one's abilities, in carrying oneself with reverence in society at times even a sense of symbol of pride which acts as an impetus to witness one's dreams materializing into reality. However, the tumultuous situation that it was, Adam Harry who dreamt of becoming a commercial pilot was not issued a pilot license because of being on hormone therapy.² Born as a female biologically, he recognized a few changes in his

² Anjana George, 'Trans man set to take DGCA to court over denying him a pilot's license' (*The News Minute*, 5 July 2022) <<https://www.thenewsminute.com/article/trans-man-set-take-dgca-court-over-denying-him-pilot-s-licence-165568>> accessed 30 January 2023

way of thinking about understanding self, ³at the age of 12 and thereafter discovered of being a trans. Circumstances that were an obstruction for him never seemed that humungous when he progressed to acquire a degree and private pilot license in Africa where the parochial mindset was obliterated and he could freely express himself and his identity. Nevertheless, in India on deserving a commercial pilot license he was denied the same because until the hormone therapy persists, he would be declared unfit for being granted the license. Also, gender dysphoria is a concept to be taken into consideration here. Gender dysphoria is a sense of perplexion that a person experiences on the ascertained biological gender and gender with which an individual identifies self differs. He was posed with uncomfortable questions to the extent of extreme statements capable of uprooting self-esteem inclusive of stating uncertainty about him getting married because of the gender binary.

THE AWAITED RESPONSE OF THE AUTHORITY

However, the director general of civil aviation responded to this by stating in words having a strong predisposition towards treating transgender persons as no different but being provided with opportunities at par with others. Despite the promising epithet of all trans persons being eligible for licenses subject to educational qualifications and catering to the demands of other prerequisites to be satisfied like age and saying that no trans person can be restricted from becoming a pilot including those who are on hormone therapy,⁴ all the formal communication via mail seems to be contrary to this. He was declared unfit to fly and could be eligible for being reviewed only when off medication. Also, the person being eligible to be reviewed for getting the license had to make sure that symptoms or adverse reactions of the medication are not discovered and that a particular dose for the therapy should not change to make sure the response gets stabilized. This is a big catastrophe since for a few, hormone therapy goes on till the end of their lifetime. One cannot affix a timeline to consider the trans individual as fit only

³ 'Song of the Day: Heardle hints and answer for 6th July 2022' (*The Economic Times*, 6 July 2022) <<https://economictimes.indiatimes.com/news/international/us/song-of-the-day-heardle-hints-and-answer-for-6th-july-2022/articleshow/92693636.cms?from=mdr>> accessed 30 January 2023

⁴ Geetika Mantri & Ragamalika Karthikeyan, 'Can trans man Adam Harry become a pilot in India? DGCA's multiple confusing stands' (*The NEWS Minute*, 14 July 2022) <<https://www.thenewsminute.com/article/can-trans-man-adam-harry-become-pilot-india-dgca-s-multiple-confusing-stands-165845>> accessed 30 January 2023

post the hormone therapy since it determines the transition phase for a person biologically born of a different gender and identifying otherwise. This therapy is extremely identity-centric since it deals with the very objective of achievement of acquiring the confidence of striding forward in society with a sense of the optimistic spirit of identifying oneself as a person belonging to a different gender. Taking the essence out of the statement quoted by Dr. BR Ambedkar, identity is more than a physical presence of an individual. The attitude with which a citizen perceives things around him and the phrase of personality that can never be erased from the mind of others about a person is the strength of an identity, a fundamental of dignity, the very spirit on the foundation of which the strength of the building called life is determined.

Also, the medical evaluation was not without flaws. An endocrinologist was assigned the task instead of a psychiatrist who would certainly have been more capable of evaluating the qualities within an individual, especially one undergoing sex hormone therapy. Referring to the judgment of *NALSA v UOI*⁵, where a legal recognition to transgender and other gender non-conforming persons has been endowed, extends the ambit, making a provision of providing them reservation in employment in public institutions. Albeit we have construed the existence of a trans individual in society a lot needs to be done. Estimating a person's capabilities by the identity one thinks one wishes to acquire or denying a person a license that is a gateway to a person's dream of his occupation is also infringing on the freedom to choose a profession and the right to life and liberty.⁶ When we quote the right to life and liberty, it signifies the prerogative of an individual to be sovereign to take decisions for self, including the sense of identity, way of living, and ways to progress. Making directions of the director general of civil aviation more trans individually conducive, and being more cognizant of the fact of how the therapy works are the apt way of approaching such a scenario.

⁵ *National Legal Services Authority v Union of India* WP (Civil) No 400/2012

⁶ *Ibid*

The therapy and its objective- should it pose a hindrance to a pilot when on duty to be denied a commercial pilot license?

This therapy is used to make changes in the hormone levels getting activated during puberty in accordance with the biological gender at birth to be at par with the identity associated with the recognition of a person's psychology. This therapy is a boon for reasons being:

- Reduction of distress or gender dysphoria (anxiety awakening due to identity association and biological identity being different);
- Promotes the right to life and liberty guaranteed under art 21 of the constitution of India by improving the quality of life of a trans individual by bestowing a liberty to choose to beget a therapy to come closer to characteristics of gender identified psychologically albeit that at the time of birth being otherwise.⁷
- Greater inclusion of the queer community in a society where heteronormativity has been the dogma of commonness. Since fundamental rights are granted to the citizens, the aforementioned queer community cannot be denied the same, since the constitution is tacit about gender being analogous to a heteronormative part of society. Giving a vociferous tone to the recognized NALSA judgment will reiterate the need for acceptance of the trans community in every corner of society with a greater sense of involvement.

CONCLUSION

Understanding the fact that the period of transition is extremely crucial for a gender binary individual. Most of them refrain from disclosing their identity since they fear the rejection, and ostracization of family and society because of no great acceptance of this difference in identity with which a person associates his existence with. How can one forget to mention a few constitutional provisions here? This case draws our attention to the absence of any intelligible differentia. What is uncertain is post the NALSA v UOI judgment, the notion that transgenders or queer communities do not widely exist or, if they do they largely go unnoticed thereby not

⁷ Constitution of India 1950, art 21

needing competitive legislation for themselves and their welfare, has changed. Art 14⁸ seems to be infringed since the therapy may probably go on for a lifetime of an individual since recognizing oneself in a way different from one ascertained by birth can be a subjective phenomenon psychologically. How will one justify this discrimination against Art 15⁹ when the theory of equals being treated equally and unequally treated differently itself is not satisfied? Moreover, there is an acute legislative lacuna in the aviation industry concerning the provisions constructed for people undergoing sex transition therapy which proved to be detrimental to their economic stability and reputation in society. Art 19(1)(g)¹⁰ mentions about freedom to freely practice any trade, profession, or occupation of one's choice, agreed, subject to limitations illustrated with terminology security. But security will be under threat where there is no nexus between skill and ambition at all. This is not the case here. For all reasons and purposes, the protagonist appears to be deserving of the license he feels he is deemed fit to obtain. Using respectful pronouns in initial prefixes while addressing them, or asking politely if no clarity is sought and things seem ambiguous should be resorted to. Moreover, stalwarts like Adam Harry deserve to be a great source of positivity in proactively foreseeing a promiscuous future for the queer community to never be limited by any artificial societal stigma but to decide for self, for betterment, consequently for the development of the nation in toto, not only economically, but an intellectually progressive nation with social open-mindedness for the collective well being of all irrespective of gender. The judgment of NALSA is yet to bring dumbstruck-ing changes in society. Many are ousted from the family for being different while knowing that trans persons are persons (*inspired by "you know gay, lesbian, bisexual and transgender people are people by Judith Light - an American actress and advocate)* getting acceptance and support for this is the ultimate kindling hope for the community. Reiterating the judgment, where the government has been directed to make welfare schemes more inclusive and opportunity-filled for them is not in terms of only reservation in employment or confining this provision to public institutions but by creating awareness that maturity in terms of making them feel at home and not at sea in the

⁸ Constitution of India 1950, art 14

⁹ Constitution of India 1950, art 15

¹⁰ Constitution of India 1950, art 19(1)(g)

society at large is the second step for a right way towards welfare programs. This nation now awakens to the actual achievement of peace, and progress in its entirety.