

## Evolution of the Labor Rights of Different Genders from the Twentieth Century - Literature Review

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### Abstract

Civil and labour rights of people belonging to the "trans" designation have been a reality each time more common in the global context, and more recently they have been established more powerfully in the corporate Brazilian universe. Therefore, the aim of this work is to accomplish a literature review to assess the transgender situation in the labour world, designating and explaining the gender variation and their insertion guided by the labour rights

**Keywords:** Gender; Labor Rights; Human Rights

### 1.0 Introduction

The difference between genders has been a relevant fact throughout the recorded period of human development. From the industrial revolution and its consequences in the social and labor spheres, establishing rights and duties, masculine and feminine were the only genders legally recognized, having their directives determined exclusively by the biological sex. Within this parameter, the advantages and rights of the masculine gender over the feminine have always been discrepant and essentially unfair when compared with the current context, simply ignoring the injustices committed against the feminine gender. The aim of this literature review was to analyze the rights and social evolution of the different genders from the 19th century to the present day, determining and describing their types and importance, as well as the evolution in the world and in Brazil.

### 2.0 The Different Kinds of Genders

Gender or gender identity refers to the feeling or perception that an individual has about himself. According *Miranda*<sup>1</sup>, as far as the middle of the fifteenth century, the word "gender" in the dictionaries referred only to a grammatical division, whose meaning brought about the idea of class, species and family. Expectable as it may seem due to human evolution in all aspects, in the context of the modern society lived from the sixteenth century until the present days, the word gender is now associated with the concepts of sex, sexuality and sexual differences.

According to *Neto & Araújo*<sup>2</sup>, the term "transgender" emerged in the mid-1980s, and was first used by the American transgender activist Virginia Prince in order to classify heterosexual male transvestites in their first self-help books (*The transvestite and His Wife*, and *How To Be a Woman Though Male*).

For *Jesus*<sup>3</sup>, the term gender can be divided into transgender and cisgenic. Although the term cisgenic characterizes persons who identify themselves or have affinity with the gender attributed to them at birth, non-gendered individuals, also known as transgender or simply "trans", are terminologies used to describe or classify persons who possess diversity or those who have no identity with the genres that have been attributed to them a priori. In short, gender is characterized by individuals who, in addition to being born, for example, with the male sexual organ, socially express themselves in the same way, in complete harmony with their genetic definition. The transgender, on the other hand, identifies with a different sex from the one that was attributed to it biologically. This difference of feeling or affinity makes these people more compatible with the opposite gender or undefined gender. It is realized that such identification is not a biological factor determined by the sex of the being, but rather a social, cultural and/or psychological identity issue.

In another twist, *Silva*<sup>4</sup> understands that the term transvestite differs spatially from the terms transgender and transsexual, since the translation of transvestite into English would be travestite, that is, it is the definition of men who like to get dress, possibly, as women. However, the most appropriate term in the English language would be "trangeder". It is frightening because it is opportune that people who live with their genitalia without any aversion or desire to modify it cannot be classified as transsexual, but transgender. Thus, it can be affirmed that the word gender incorporates all forms of social, cultural, behavioral and linguistic characterization responsible for differentiating women from men, including systems which separate, biologically speaking, sexuality and gender identity, including the psychic and psychological factors that may influence this compatibility or affinity.

## 2.1 Terminologies

In order to enhance the designations in the human sexuality, we append the most used and enlightening terms. The term "sex" refers to the classification of the person as male or female. At birth newborns fit into a combination of biological traits such as chromosomes (genetic criteria), hormones (endocrinological criteria) and reproductive organs (anatomical criteria). "Gender" is a term commonly used with sexual connotation, referring specifically to behavioral, cultural, psychological or social traits typically associated with a particular gender, going beyond the biological features. For Moura<sup>5</sup>, it is essential to discuss the learning of masculine and feminine roles and their interpersonal relationships and their complex networks of power. It also informs that the genre will examine the constructive processes of the biological distinctions, behavioral or psychic effects perceived between men and women (Public Policies as a tool for equity between (Trans) genres in the work world).

The term "gender identity", in turn, differs from the universal term of sexual orientation. It refers to the innate gendered sense, deeply rooted in a person's psyche, which may or may not correspond to the body designated at birth (the sex originally ascribed to the birth certificate). "Sexual orientation" refers to the feelings of a person in the physical, romantic, emotional and / or spiritual context towards another person. Gender identity and sexual orientation are not confused. According to Neto & Araújo<sup>2</sup>, transsexuality differs from sexual orientation, since it refers to gender, that is, the way an individual recognizes itself as a man or a woman, whereas sexual orientation refers to the sexual attraction that one person feels for another. Thus, it is erroneous to claim that a transsexual will always be considered homosexual, since it is possible for a man who dresses as a woman to be attracted to women, being heterosexual (right to gender identity and identity in Brazil and Argentina).

The term "gender expression" deals with the external characteristics of a person and the behaviors presented by them, such as the way of dressing, grimaces, speech and social interactions, which are socially associated with a particular gender. Cultural norms may vary widely, and a particular trait associated with a particular sex in the context of one culture may not be recognized in the same way by another. A person's gender expression may be referred to as his or her gender presentation. The word "transgender", sometimes referred to as trans, encompasses people who express their gender differently from cultural or conventional expectations, or also in terms of expressing a gender that does not correspond to the sex listed on the birth certificate. The term includes transsexuals or other gender variants, but not all people who consider themselves or can be considered by others as transgenders will undergo gender transition. At another angle, transofobia means fear, hatred, or even discomfort directed at people with gender identity or gender expression that do not fit the cultural norms of gender in question.

Finally, it has become common knowledge that transsexuals are people who have changed, or are in the process of changing, their sex to suit their sense of gender identity. This term may also include people undergoing medical treatment

to spend all their time as a member of a gender other than that designated at the time of their birth.

## 3.0 Evolution of the Prohibition of Labor Contracts Based on Discrimination by Gender Identities in the United States of America.

The basis of human rights rests on the idea that all human beings are born free and equal in dignity and rights regardless of color, race, financial condition, nationality or health condition. The United States of America are a nation made up of 50 states, and has stood out in the vanguard of minority labor rights. Therefore, people categorized as transgender or simply "trans" obviously enjoy the same basic civil and labor rights as anyone else<sup>4</sup>. Unfortunately, when analyzed separately with other human rights, the rights of these people still need to be better realized in the dogmatic context and not just jurisprudentially, with legislative support so that they can be recognized by the common citizen.

With regard to the labor inclusion of transgender people, there is, to a greater or lesser extent in the world context, a strong prejudice and ignorance about how to treat them, how to approach them and, above all, the simple issues of corporatist day-to-day activities, such as the simple act of going to a restroom. Specifically in developing countries, which traditionally are more resistant to new concepts and changes, such rights are, for the most part, simply ignored or just despised. Many business owners do not know how to respond, for example, in what restroom a transsexual person has the civil right to use. Many office staff members do not feel comfortable calling them by their adopted name, and most of them are not familiar with what kind of doctors they should list: an urologist or gynecologist. In the United States, since 2006, a catalog of protection based on gender identity has been developed for these individuals seeking work; based on the Southern Comfort Conference in Atlanta, with the objective of publicizing the rights of sexual minorities in civil, labor and the general public<sup>6</sup>, and thus encourage entrepreneurs at many different levels of the American productive chain to recognize and not fear such a situation of law<sup>7</sup>.

The recruitment of minorities, their retention in the company, and their productivity have been a part of American business activity in its early days<sup>8</sup>. Still in 2008 America, 58% of the 519 registered employers ban discrimination based on gender identity, compared to only 46% of previous year's employers<sup>9</sup>. Up to the time of the construction of this work, 90 employers devised transitional information guidelines with more than 65 items from those established in the previous year. Seventy-eight percent of business contracts promoted insurance covering needs for at least one of the five general categories of treatment of transgender employees.

From the overall employees who matched such criteria, 74% were entitled to a short-term license for surgical procedures; 73% had mental health benefits for professionals in the psychological area, 35% had benefits of pharmaceutical drugs for hormone therapy; 32% had coverage of medical visits and laboratory procedures related to hormonal therapy; 27% had health benefits related to surgical procedures<sup>10</sup>.

The American march toward transgender rights continued, with the Organization of American States (OAS) affirmation of the rights of "trans persons" through four OAS General Assembly Resolutions Concerning Sexual Orientation and Gender Identity<sup>11</sup>. In June 2013, the OAS adopted the Inter-American Convention against All Forms of Discrimination and Intolerance, which explicitly lists gender identity while prohibiting discrimination. In April 2010, the Consul of the European Parliamentary Assembly adopted a resolution on discrimination based on sexual orientation and gender identity, broadening the American resolution and reaching an international context<sup>12</sup>.

The right to development encompasses every human being and every person "in order to participate, contribute, and appreciate fully realized political, economic, social and cultural developments." Such an affirmation reiterates the ideal of the Inter-American Convention, but for transgenders this view is not yet a reality in all regions of the world<sup>11</sup>. What we have between fact and reality is that in most of the

world, such a condition is seen as an aberration of nature mainly in the religious sphere so surrounded by fundamentalism and inflexible dogmas, inevitably influencing the labor and civil spheres. In the face of such a situation, international human rights standards recognize and attest to the diversity of the human species not only by the biological criterion, but by taking the mental and spiritual range of human beings in their complexity not fully understood, if there is a limit for such amplitude in the course of time and the freedom to exist, human beings being not only another component of the animal kingdom but mainly a creature moved by desires and achievements for its fullness.

As of April 3<sup>rd</sup>, 2008, 98 cities and counties in the United States have adhered to the discrimination of labor activities based on gender identity in their jurisdictions in the public and private spheres. Table 1 details the progress of recognition, which is not new and has been improving over the decades since the 1970s.

**Table 1.** Cities and Counties that Prohibited Discrimination Based on Gender Identity in Public and Private Employment (Effective Year).

<b>Arizona</b>	<b>year</b>	<b>Illinois</b>	<b>year</b>
Tucson, City of	1999	Bloomington, City of	2005
		Carbondale, City of	2005
<b>California</b>		Champaign	1977
Los Angeles, City of	1979	Chicago, city of	2002
Oakland, City of	2005	Cook, City of	2002
San Diego, City of	2003	Ofcatur, City of	2000
San Francisco, City of	1994	Ofkalb, City of	2000
San Jose, City of	2002	Evanston, City of	1997
Santa Cruz, City of	1992	Peoria, City of	2003
Santa Cruz, County of	1998	Springfield	2003
West Hollywood, City of	1998	Urbana, City of	1979
<b>Colorado</b>		<b>Indiana</b>	
Boulofr, City of	2000	Bloomington, City of	2006
Ofnver, City of	2001	Indianápolis, City of	2005
		Marion, County	2005
<b>Ofstrito of Columbia</b>		<b>Iowa</b>	
Washington, City of	2006	Iowa City, City of	1995
<b>Flórida</b>			
Broward, County of	2008	<b>Kentuchy</b>	
Gainesville, City of	2008	Covington, City of	2003
Key West, City of	2003	Jefferson, County of	1999
Miami Beach, City of	2004	LexingtonFayette, County of	1999
Monroe, County of	2003	Louisville, City of	1999
Oakland Park, City of	2007		
West Palm Beach, City of	2007	<b>Louisiana</b>	
		New Orleans, City of	1998
<b>Geórgia</b>			
Atlanta, City of	2000	<b>Massachusetts</b>	

Ofcatur, City of	2002	Boston, City of	2002
		Cambridge, City of	1997
		Northampton, City of	2005
		<b>Maryland</b>	
		Baltimore, City of	2002
		Montgomery, County of	2007
<b>Michigan</b>		<b>Pennsylvania</b>	
Ann Arbor, City of	1999	Allentown, City of	2002
Oftroit, City of	2008	Easton, City of	2005
East Lansing, City of	2005	Erie, County of	2002
Grand Rapids, City of	1994	Harrisburg, City of	1983
Huntington Woods, City of	2002	Lansdowne, Neighbourhood of	2006
SaugatuckTownship	2007	New Hope, Neighbourhood of	2006
Saugatuck City of	2007	Philaoflphia, City of	2002
Ypsilanti, City of	1997	Pittsburgh, City of	1997
		Scranton, City of	2005
<b>Minnesota</b>		Swarthmore, City of	2006
Minneapolis	1975	York, City of	1998
St. Paul, City of	1990		
<b>Nova York</b>		<b>Texas</b>	
Albany, City of	2004	Austin, City of	2004
Buffalo, City of	2002	Dallas, City of	2002
Ithaca, City of	2003	El Paso, City of	2003
Nova York, City of	2002		
Rochester, City of	2001	<b>Washington</b>	
Suffolk, County of	2001	Burien, City of	2005
Tompkins, County of	2005	King, County of	2006
		Olympia, City of	2005
<b>Ohio</b>		Seattle, City of	1986
Cincinnati, City of	2006	Tacoma, City of	2002
Toledo, City of	1998		
		<b>Wisconsin</b>	
<b>Oregon</b>		Dane, City of	2001
Beaverton, City of	2004	Madison, City of	2000
Bend, City of	2004	Milwakee, City of	2007
Benton, County of	1998		
Hilsboro, City of	2006	<b>West Virginia</b>	
Lake Oswego, City of	2005	Charleston, City of	2007
City of Lincoln	2005		
Multnomah, County of	2001		
Portland, City of	2000		
Salem, City of	2002		

**Source:** Transgender Inclusion in The Workplace. 2nd Edition. A human rights campaign foundation report, p. 16

Table 1 shows the time lag in several American cities and counties. The continental dimension of the United States of America contributes to the temporal disparity in the fight against hiring for gender identity discrimination, since each state has the freedom of autonomy to have its own

legislation in all spheres of law, and consequently each suffers cultural influences, offering greater or less resistance to innovations. Thus, in the late 1970s (1977) the recognition of the importance of labor law for transgender workers began in Illinois, in the city of Champaign. Still in

this context, the disparity is observed in states like California, on the west coast, more specifically in the city of Los Angeles, where the intense sexual diversity favored transgender rights on the brink of the eighties, already in 1979, opposing to the immense New York on the coast which was recognized as one of the largest cities in the world but which only began to integrate such rights in the city of Rochester and Suffolk County, late in 2001. The spread of such rights was favored by the advent of the internet, increasing the dissemination and improvement of life quality of this transgender people population, spreading the idea and inspiring people to fight for their rights, so that until 2007, the citizenship rights of the transgendered, and in this way the world had a glimpse of such possibility.

#### 4.0 Transgender Workers' Rights in Brazil

It is common knowledge worldwide that labor activity is essential for human life, not only because of the socioeconomic context, but also for the full development of the individuals in a society as a whole, since work is part of the individual identification. Due to the great importance attached to this activity, labor, in the course of a long struggle for recognition as a basic right, was secured at the national level as a fundamental right, according to the 1988 Constitution. Despite all the legal apparatus, since the Consolidation of Labor Laws, Federal Constitution of 1988 and several other infra-constitutional Laws aimed at protecting and safeguarding labor rights, it is possible to identify several cases of discrimination within the labor market, related to color, age, religion or other forms of discrimination related to sexual orientation and genders.

According to *Moura's* words, there is already an old gender segregation in the labor market, where men and women are hired for different positions and activities, with the criterion of separation being the ability to perform jobs whose efforts are predominantly physical (in which men hold the hiring priority), while positions that require the power of seduction are given preferentially to women. In addition to this gender segregation, there is another type of segregation, even if it is veiled when dealing with transgenders, due to the difficulty of inserting the LGBTTT segment into the formal work field, given that this group is historically marked by social exclusion (Public Policies as a tool of equity between (Trans) genres in the world of work). In the same vein, *Bennet (2010)*<sup>12</sup> affirms that the social protection of homosexuals and transgenders in the labor market is still more theoretical than practical, since once transsexuality came to be considered as a psychiatric disease, there have been reports of psychological aggression and even physical violence against homosexuals and transgenders. However, he points out that, despite all the way forward, there has been a slow progress in society as a whole to try to create a comfortable work environment for all sources of discrimination, whether racial, religious or gender, among others, for the fact that this specific area is quite reluctant to changes.

In the work of *Neto & Araújo*<sup>2</sup>, they concluded that it was common, due to social and labor exclusion as the main reason, that transvestites and the transgenders to resort to prostitution as a means to meet their financial needs. It was also pointed out that many transvestites and transgenders opted for prostitution because they could not or were afraid

to occupy positions that needed to be shown physically. Thus, it is hyaline that there is still delays and reluctance regarding the recognition of transgender rights as any other worker, even with the general assurances made by the Major Charter and other laws, often because of prejudice, homophobia and transofobia, prejudices which, as a consequence, tend to segregate, exclude and even marginalize those belonging to the LGBTTT segment. Concerning incentive programs or specific laws for the insertion of transgender people in the labor market is a reality that seems to be distant, since transsexuality is to be considered by the World Health Organization as a psychiatric illness known as "Sexual Identity Disorder" ( ICD 10 F 64). Nonetheless, there is a Bill that has not yet been approved, called the João W Nery Law or the Gender Identity Law, which provides, among other rights, for the modification of the name and sex in the Birth Certificate, as well as treatment for of transgenital surgery.

#### 5.0 Conclusion

Although there have been constitutional rights to transgender workers since 1975 under US law, transgenders still do not have widely guaranteed labor rights in the United States or Brazil, and the latter have much more theoretical rather than practical rights. Legislation aimed at the areas of civil and labor law is necessary for the guarantee of fundamental rights, as well as the strengthening and clarification of the situation of these citizens, who, as contributors, call for opportunities and respect equally given to the traditional sectors of modern society.

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