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# LGBTQ RIGHTS AND LEGISLATION IN INDIA: THE STATUS QUO

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## ABSTRACT

The essential principle of human rights is that all people are created equally. All people should be treated equally since they all have worth. Anything that diminishes dignity is wrong since it breaches the equality principle and makes room for discrimination. One of the most contentious topics in the world, homosexuality, raises concerns about human rights. Only based on whom they love and how they look do people all around the world become the target of violence and discrimination. For the LGBT community, who have fought for their rights for a long time, 2018 brought a glimmer of hope when the Navtej Singh Johar case resulted in the decriminalization of homosexuality. Even though the laws have changed, the fact that the state apparatus continues to use violence and discrimination against the LGBT community is proof of the low status that it genuinely accords to that community. Same-sex marriage is still a distant dream in India. For the actual goal of the Constitution—that all citizens are equal—we must look forward to the International Statute. It is necessary to transform society, to change the perception that it is not a taboo or a sign of some mental illness, and to instill in everyone the idea that human rights apply to all.

**Keywords:** LGBTQIA+, Homosexuality, Discrimination, Legislation

## I Introduction:

On September 6th, 2018, in the case of *Navtej Singh Johar v. Union of India*<sup>1</sup>, Section 377 of the Indian Penal Code, a colonial-era legislation that criminalised "carnal intercourse against the order of nature," was read down and homosexuality was decriminalized. No of their sexual orientation or gender identity, the Supreme Court has finally recognized that every person has the right to freedom. The stigma associated with homosexuality has thus been lifted, but the LGBT community continues to face difficulties as a result of how society reacts. Literally, "of the same sex" is what the word "homosexual" refers to. One who is identified as being of the same sex is said to be homosexual, which is a sexual orientation defined by romantic love or sexual desire. Homosexuality is referred to by many labels as time goes on.

It is currently referred to as LGBTQ. Lesbian, Gay, Bisexual, Transgender, and Queer is the acronym for this group.

**Lesbian:-** A woman who is sexually attracted to another woman is referred to as a lesbian.

**Gay:-** A gay is a man who is attracted to another man sexually.

**Bisexual:-** A bisexual person is someone who experiences sexual attraction to individuals of both sexes.

**Transgender:-** Those whose gender identity and gender expression diverge from those typically linked with their biological sex are referred to as transgender.

**Queer:-** The term "queer" is used to describe sexual orientations and gender identities that fall outside of the heterosexual and cisgender categories.

With its judgement in *National Legal Services Authority v. Union of India*<sup>2</sup>, wherein transgender people were referred to as the "third gender," the Supreme Court of India created history. The ruling gave individuals the freedom to self-identify as male, female, or third gender and confirmed that the fundamental liberties protected by the Indian Constitution apply to them equally.

The LGBTQ community in India still faces more social and legal challenges than non-LGBTQ people, although rights for the LGBTQ community have been quickly advancing since

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<sup>1</sup> AIR 2018 SC 4321.

<sup>2</sup> (2014) 5 SCC 438

this judgement. Laws that criminalised homosexuality during the Colonial era were repealed after India gained independence by adding Article 15 to the Indian Constitution.

## II Historical Analysis of Homosexuality:

The Hindu scriptures demonstrate that a third gender is acknowledged in Hinduism. Some characters in the epic "Maharashtra" allegedly altered their gender. Shikhandi, who is rumored to have been born a woman but later comes to identify as a man and marries a woman, is one such figure. Hijras honour the fertility goddess Bahuchara Mata as their patroness. The Naradasmti and the Sushruta Samhita, two important Sanskrit works on dharma and medicine, declare homosexuality to be immutable and forbid gay people from getting married to someone of the opposite sex<sup>3</sup>. However, the Manusmriti, another piece of Hindu literature, lists numerous punishments for homosexuality.

The Manusmriti determined that caste loss would result from a sexual union between two homosexual and heterosexual individuals in a bullock wagon in the case of gay men. When a person is attracted to others of the same gender to whom he or she belongs, this is referred to as being homosexual. It is not a novel idea; Hinduism has been using it for a very long time. Sexual practices between women are depicted in ancient texts and sculptures as revelations of a feminine universe where sexuality was based on pleasure and fertility, including the Rig Veda, which dates back to roughly 1500 BC. The description of homosexual practices in the Kamasutra, the harems of young boys held by Muslim Nawabs & Hindu Aristocrats, and male homosexuality in the Middle Ages of Muslim History like Malik Kafur are some historical examples of same-sex partnerships<sup>4</sup>.

The Fatawa-e-Alamgiri consolidated a number of the pre-existing Delhi Sultanate laws and established a uniform set of sanctions for Zina (unlawful intercourse), including homosexuality, under the Mughal Empire. For example, a Muslim could be to death; a free infidel would receive 100 lashes, and a slave would receive 50 lashes. Section 377 of the Indian Penal code was implemented by the British administration during the colonial era. Homosexuality and bisexuality are illegal under Section 377 of the Indian Penal Code. References to penalties including caste loss, hefty fines, and whippings for homosexual and lesbian activity may be found in the Manusmriti. The imposition of these penalties shows

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<sup>3</sup> Singh, V. (2011). History of homosexuality in India. In G. D. P. (Ed.), Asian Homosexuality (pp. 17-29). Springer, Dordrecht.

<sup>4</sup> Dasgupta, S, (2013). Homosexuality in Ancient India: An Exploration of Indian Sources. Journal of LGBT History.

unequivocally that homosexuality was used at the time. Since 1974, homosexuality has no longer been classified as a mental disease and is no longer considered an aberrant conduct.

This demonstrates how homosexuality has evolved from being a wholly natural conduct to an unnatural act that goes against the natural order.

### **III Is homosexuality anti-religious?**

Every religion has its sacred writings and texts that adherents blindly accept. However, these writings are now out of date and were incorrect from the beginning on many levels, such as the justification of untouchability in numerous Hindu religious texts. Numerous theological and historical texts claim that the practice of untouchability and caste- and race-based discrimination was justified during the period to maintain effective operation. This practice persisted up until a clause was included in the Indian Constitution outlawing the practice of untouchability. Contrary to untouchability, homosexuality is not anti-religious as many religious experts believe it to be, as numerous ancient Indian writings contain verses that encourage the LGBT population. Shikhandi, Chitrangada (wife of Arjuna and mother of Babruvahana), and Brihannala from the Mahabharata are only a few examples of characters from Hindu epics who exhibit a variety of sexual orientations and gender identities. The sacred scripture does not discriminate against any of these characters based on their sexual preference or gender identity. Instead, they are all given respect and evaluated according to their skills rather than their sexual orientation<sup>5</sup>.

The Arthashastra makes multiple references to LGBT people working in a variety of fields without facing discrimination. And the tales of Ardhanareeshwara, Shiva's half-woman, half-man counterpart, and Lord Ayyappa, the son of Shiva and Mohini, Lord Vishnu's female avatar, show the complex stance that Hinduism takes on gender issues. Even the monuments, aside from the literature, have shown homosexuality. The fact that homosexuals were present in the past is shown in the texts and monuments in Khajuraho, Madhya Pradesh, demonstrating that they were not anti-religious but rather recognised as members of society.

### **IV Social Barriers Encountered by the LGBTQ Community:**

Even though we may pride ourselves on being an advanced and sophisticated generation, it is

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<sup>5</sup> Prasad, K. V., & Verma, S. (2016). Homosexuality and Religion: Exploring the Complex Intersection. In R. S. Suri & B. R. Suri (Eds.), *Sexuality and Human Rights: A Global Overview*. New Delhi: SAGE Publications India.

heartbreaking to witness the injustices suffered by members of the LGBTQ Community in various settings. Some of the prominent issues they engage with are:

- i. LGBTQ children experience significant bullying and discrimination in schools, colleges, and other settings, according to a 2018 UNESCO report. It frequently takes people years to recover from this act of bullying and prejudice since it leaves a lifelong scar on their lives. (*UNESCO Report 2019*)<sup>6</sup>
- ii. A bounty is typically placed for a person's secret honour killings if they identify as LGBTQ or are discovered to be a member of the community. Such honour killings have recently claimed the lives of countless people.
- iii. Women suffer the most for being members of the LGBTQ Community because when they come out as lesbians or bisexuals, their families usually advise them to undergo legalized corrective rapes, in which a woman has sex with a male against her will to address the "Disease of Homosexuality"<sup>7</sup>.
- iv. LGBTQ people endure discrimination not just in schools and universities, but this problem persists even after they graduate. No company wants to recruit someone with a different sexual preference because that thought does not sit well with society and is frequently questioned by other employees<sup>8</sup>.
- v. Non-acceptance of LGBTQ people is not just a problem in rural areas; it is also a problem in urban families. Because urban families are more concerned with maintaining their social standing than with their obligations to their children, they frequently ignore these obligations and evict LGBTQ children from their homes.

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<sup>6</sup> UNESCO (2019). A Global Report on LGBTI Education: Educating for Diversity and Equality. Paris, France: United Nations Educational, Scientific and Cultural Organization. Retrieved from <https://en.unesco.org/lgbti-education/global-report>

<sup>7</sup> Ferrera, S. (2009). Social Barriers to Inclusive Education: The Case of LGBT Young People. In S. Ferrera (Ed.), *Inclusive Education: A Global Agenda*. New York: Routledge.

<sup>8</sup> Williams, J. S. (2009). Transgender People and Marriage: The Importance of Legal Planning and Public Education. *The Georgetown Journal of Gender and the Law*.

- vi. LGBTQ individuals are frequently sent to correctional facilities where they receive psychotic medications as part of "corrective therapy for homosexuality." They grow so dependent on these medications that even after leaving the brutal confines of prison, they turn to narcotics and other psychotropic substances for comfort, which leads to further addiction.
- vii. People who identify as LGBTQ are frequently excluded from society, which makes them depressed.

## V LGBTQ Community's Legal Battles Throughout History and the Campaign Against Section 377:

The Naz Foundation filed a writ case challenging Section 377's constitutional legality in the Delhi High Court in 2001, the culmination of decades of legal challenges to the ban. On the grounds of *locus standi*, Delhi High Court dismissed their suit in 2004. They then filed an appeal with the Supreme Court of India in 2006 against the Delhi High Court's decision. Their petition was upheld, and the decision was in their favour. Section 377 was read down and declared illegal in a landmark decision made by the Delhi High Court in the case of *Naz Foundation v. Govt. of NCT of New Delhi and Others*<sup>9</sup> in 2009. An important turning point in Indian history was the Delhi High Court's reading down of Section 377. The LGBT community saw a glimmer of optimism thanks to this verdict during a dark time. But this didn't last long because, in 2013, the Supreme Court overturned the Delhi High Court's decision.

According to the Supreme Court, Section 377 cannot be read down and Parliament must determine whether to decriminalize homosexuality. Despite the Supreme Court's ruling, the opposition to Sec. 377 grew significantly. In *National Legal Services Authority v. Union of India ("NALSA")*, a bench of two judges of the Supreme Court of India ruled in April 2014 that a person's gender identity and sexual orientation are protected under the rights to life, dignity, and autonomy and that they have the right to express the gender they have chosen. The NALSA decision revived hopes that the campaign against Section 377 would succeed.

After that, the Supreme Court issued a significant decision in the case of *K.S. Puttaswamy v. Union of India*<sup>10</sup> in 2017, holding that the right to privacy cannot be denied "even if a minute

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<sup>9</sup> 2009 SCC OnLine Del 568

<sup>10</sup> (2017) 10 SCC 1

percentage of the population is harmed." The Court ruled that the right to privacy encompasses the freedom to engage in personal relationships with people of one's choosing, as well as the freedom to express one's sexual orientation and gender identity. The LGBTQ community, which has fought a protracted war for its rights, received some hope with the arrival of the year 2018. A dancer named Navtej Singh Johar, who identified as a member of the LGBT community, petitioned the Supreme Court in 2016 to challenge the constitutionality of the **Suresh Kumar Koushal** case ruling. Because Section 377 was unclear and did not define "carnal intercourse against the order of nature," the petitioner claimed that it violated Article 14 of the Constitution. There was no discernible distinction or logical division between natural and illicit consenting sex. Additionally, the petitioner argued that:

- i. The Constitution's Article 15 was violated by Section 377, which states that sexual orientation is a sex-related basis for discrimination and that it is unlawful to discriminate based on sexual orientation.
- ii. Due to the denial of the right to express one's sexual identity and orientation, Section 377 has a "chilling impact" on Article 19.
- iii. Section 377 also infringed upon a person's fundamental right to privacy.

In the **Navtej Johar Singh Case**, the Supreme Court's five-judge panel, chaired by the Chief Justice, ruled unanimously on September 6 that Section 377 was unconstitutional insofar as it criminalizes any form of consensual interactions between adults.

"The choice of sexual orientation is part of the intimate and personal choices and falls under the zone of privacy because it is a choice central to personal dignity and autonomy as well as central to the liberty protected by the Fourteenth Amendment of the American constitution,"<sup>11</sup> the US Supreme Court stated in *Lawrence v. Texas*<sup>12</sup>. In a similar vein, the Constitutional Court of South Africa stated in *National Coalition of Gay and Lesbian Equality v. Minister of Justice*<sup>13</sup> that "invasion of that precinct will constitute a breach of privacy" if one expresses their sexuality consensually and without harming the other.

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<sup>11</sup> Rachel Sweeney, *Homosexuals and the Right to Privacy*, 34 CUMB L REV 171

<sup>12</sup> 559 US 538 (2003)

<sup>13</sup> (CCT11/98) [1998] ZACC 15:1999 (1) SA 6

## VI THE VIEW OF THE GOVERNMENT ON LGBTQ+:

The Ministry of Home Affairs stated on February 23, 2012, that India views homosexuality as sinful and that it is against Indian law for the Delhi High Court to decriminalize gay behaviour. On February 28, 2012, the Central Government changed its position, claiming that decriminalising homosexual behaviour was legal and not unlawful. The bill to decriminalise Section 377 was introduced on December 18, 2015, by Indian National Congress party member Shashi Tharoor. However, the parliament rejected the bill by a vote of 71–24. After establishing the first State government policy on transgender individuals, Kerala proposed free sex-reassignment procedures in public hospitals in 2016. The state government's action was a start in the right direction, raising hopes that moving forward, all actions taken in support of members of the LGBT Community will be good<sup>14</sup>. However, on February 25, 2021, the House of Representatives decided by a vote of 71–24 that the Delhi High Court should rule that only marriages between biological men and women are permitted.

After hearing a Public Interest Litigation (PIL) challenging a Health Ministry directive banning transgender and LGBT people from donating blood, the Hon'ble Supreme Court of India issued a summons to the Center and other parties on March 5, 2021<sup>15</sup>. A petition filed by one T. Santa Singh challenging the constitutionality of Sections 12 and 51 of the Guidelines on Blood Donor Selection and Blood Donor Referral, 2017, issued by the Ministry of Health and Family Welfare, was being heard by a three-judge bench led by Chief Justice of India (CJI) SA Bobde. Members of the LGBT community and female sex workers were completely prohibited from donating blood under the law since these groups were thought to be at a greater risk of getting HIV/AIDS. As a result, the standards arbitrarily prohibit members of the LGBT Community from donating blood, rather than testing the blood sample of donors.

The aforementioned examples demonstrate that the federal and state governments' positions on the rights of the LGBT community are in flux, and it is still unclear whether they support the entire group or not.

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<sup>14</sup> Parvathi, N. (2016). Kerala Government Starts Free Gender Reassignment Procedures in Public Hospitals. The News Minute. <https://www.thenewsminute.com/article/kerala-government-starts-free-gender-reassignment-procedures-public-hospitals-42099>

<sup>15</sup> Bose, A. (2021). Supreme Court Summons Centre Over Ban on LGBT Blood Donation. The Quint. <https://www.thequint.com/news/india/supreme-court-summons-centre-over-ban-on-lgbt-blood-donation>



## VII TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2019:

*The Transgender Persons (Protection of Rights) Bill, 2019*<sup>16</sup>, was passed to defend the rights of the transgender community by outlawing discrimination against them in the workplace, in healthcare, in education, and in access to public and private institutions. However, the bill further exposes people to institutional tyranny and dehumanises their bodies and identity in the name of strengthening the community. The Depressions with the bill:

- i. The bill denies transgender people the freedom to choose their sexual orientation. The bill states that the District Magistrate's certification of the sex reassignment operation is required before the gender identity on documents can be changed. Transgender people's autonomy and privacy are impacted by this, and they are also at risk of harassment from the government.
- ii. According to the Transgender Persons (Protection of Rights) Bill of 2019, the sentence for sexual assault against a transgender person is only two years in jail; however, if the same offence were committed against a woman, the IPC would impose a stiffer punishment of up to seven years in prison.
- iii. There are no rules relating to offering any scholarships, making any accommodations, modifying the school curriculum to make it LGBT+ inclusive, or making sure that the trans population has safe inclusive schools and workplaces.

## VIII LGBTQ+ RIGHTS' STATUS IN THE INTERNATIONAL ARENA:

The state and religious institutions never recognised homosexuality; it was viewed as a sin and a criminal until the twentieth century. The notion of homosexuality changed from being a sin to being a typical variation of a human being only in the late 20th century. The WHO recognised homosexuality as a normal variant in 1992, and since then, as more and more states have done, recognising homosexuality as a normal variation of human behaviour and granted rights and privileges, the stigma associated with it has been fading. Additionally, LGBT rights have had a significant impact on world diplomacy over the past ten years, but there is still widespread dispute about the issue among all countries. The shooting at Orlando's Pulse

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<sup>16</sup> Government of India (2019). The Transgender Persons (Protection of Rights) Bill, 2019. Ministry of Social Justice and Empowerment. [https://socialjustice.nic.in/sites/default/files/The Transgender Persons Protection of Rights Bill 2019](https://socialjustice.nic.in/sites/default/files/The%20Transgender%20Persons%20Protection%20of%20Rights%20Bill%202019.pdf).

nightclub in 2016 attracted attention for the first time<sup>17</sup>. The statement denouncing the assault and addressing sexual orientation-related concerns was issued by the United Nations Security Council. Even notoriously anti-LGBT nations like Egypt and Russia denounced this act of savagery. Several UN authorities have officially recognised LGBT rights as human rights as of right now, despite attempts by some UN blocs to stop this from happening. According to Vitit Munabhorn, a UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity, more than 70 countries still punish same-sex partnerships with the death penalty. Before the UN General Assembly in 2008, a statement supporting LGBT rights was released by about 66 countries. Unfortunately, during the Bush Administration, Russia, China, and the US were hostile to these nations<sup>18</sup>. It was revised in 2015 when the UN Human Rights Council published a report on violence against the community related to obligations made under international law<sup>19</sup>. The same statement was followed in 2011 by Human Rights Council which outlined the issues encountered by the LGBT community. Despite all of these efforts, a sizable number of countries are opposed to these reforms. Former UN Secretary-General Ban Ki-moon said that his support for LGBT rights has put him at odds with strong member states. In a statement released on September 29, 2015, several UN organizations—including the ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, and WHO—stated that they wanted to put a stop to violence and discriminatory acts against the LGBT community<sup>20</sup>. There is no denying that during the past ten years, the political scene has undergone significant upheaval. However, because of the non-compliance of some member states, the UN's formal institutions confront many challenges and barriers in fostering widespread acceptance. The LGBT Core Group, which functions as an informal assembly, seeks to overcome these obstacles so that national policy must be harmonised.

The UN Human Rights Council appointed an expert in 2016 to investigate the widespread discrimination and violence against the LGBT community. China, Russia, and all other Islamic

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<sup>17</sup> **The Pulse nightclub incident**, also known as the **Orlando shooting of 2016**, was a mass shooting that occurred in Orlando, Florida, in the early morning hours of June 12, 2016, leaving 49 people dead and more than 50 injured. Up until that point, it had been the deadliest mass shooting in American history.

<sup>18</sup> Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly (doc. no. A/63/64, 63rd session, United Nations General Assembly, 22 December 2008).

<sup>19</sup> Discrimination and violence against individuals based on their sexual orientation and gender identity (doc. no. A/HRC/29/23, 29th session, United Nations General Assembly, 4 May 2015).

<sup>20</sup> Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People (Joint UN Statement, 29 September 2015).

nations who are members of the Security Council, however, abstained from voting in favour of the resolution or opposed it.

The acceptance of LGBTQ rights has been seen in individual countries' acts, despite the contradictions in many of them. The fight to change the laws that forbid homosexual partnerships is best illustrated in nations like India, Kenya, Botswana, and Trinidad & Tobago. Same-sex marriage has been deemed a legitimate option by Taiwan's Constitutional Court as of 2018. The International LGBTQ Association's executive director, André du Plessis, says: "We've seen a lot of positive changes... Slow but steady progress has been made. Africa, Asia, and the Middle East have all experienced reforms, increased awareness, and decriminalisation, which represent the worldwide LGBTQ rights movement's gradual transformation and undoubtedly reinforce the idea that history will eventually bend toward improvement.

### **IX THE INTRIGUING CASE OF SAVITA AND BENA:**

On 22 July 2011, two women, Savita and Beena shocked the world by becoming the first lesbian couple to be legally married in India. They both knew each other from their childhood. Savita had been forced into an arranged marriage in 2010 with a police constable from her village, but after five months of marriage, she ran away because of the repeated abuses by her husband and her in-laws. The Local Panchayat dissolved the Marriage. Her Uncle again tried to marry her off later after which, Savita decided to kill herself but was saved by Beena. There was an open declaration in the village to kill Savita. but, Beena took Savita to her house to keep her protected. Veena and Savita had declared their marriage in an affidavit but did not address the legitimacy of the union. As a result, neither officially recognised the union nor completely rejected it<sup>21</sup>.

- ***Suresh Kumar Koushal v. Naz Foundation, 2013:***

When the LGBTQ+ community was about to breathe a sigh of relief after an eight-year battle, several individuals and faith-based organisations flatly rejected the idea of decriminalising homosexual relationships, as held by the Delhi High Court in Naz Foundation Govt. V. NCT Of Delhi, 2009, citing India's rich history steeped in ethics and tradition. To have Section 377's constitutionality reviewed, they appealed to the Supreme Court of India.

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<sup>21</sup> Krishna, A. (2020). India's Abortion Laws: A History and Analysis. The Indian Lawyer. <https://indialawyer.in/indias-abortion-laws-a-history-and-analysis>

On December 11th, 2013, the Delhi High Court's ruling was overturned and homosexuality was once again made a crime by the division bench of Justices GS Singhvi and SJ Mukhopadhyaya in the Honorable Supreme Court. The bench ruled that because LGBTQ+ people are a "minuscule minority," they are not entitled to constitutional protection. It further noted that Section 377 of the IPC is entirely lawful because it does not suffer from the vice of unconstitutionality. Because LGBTQ people make up a tiny minority, the Supreme Court vehemently ignored basic fundamental rights under Articles 14, 15, and 21, circumventing the Indian Constitution's core in the process.

The good news about this decision was that it reignited a fresh wave of activism in India rather than putting an end to the LGBT movement. The Supreme Court's retrograde decision was roundly criticised for denying homosexuals fundamental human rights. As a result, there was an increase in public discussion regarding LGBT rights in India, which ultimately grew into a significant movement.

#### **X COMMUNITY OUTRAGE AFTER DECRIMINALISATION: MAINSTREAM REACTION TOWARDS THE LGBT COMMUNITY**

Despite having a constitutional right to equality as citizens, the fight for civic, social, and political equality in India is far from ending if people's attitudes toward LGBT people don't change. Even if the rules have changed, the state apparatus continues to treat transgender women unfairly and violently, which is proof of the repressive low status that the LGBT community is given. Since Article 370 was repealed, the government has continued to act negligently, endangering the lives of many members of sexual and gender minority groups, particularly in Kashmir where internet access is restricted, non-discrimination laws are absent from welfare programmes, and transgender people are most negatively impacted.

**The following are the main issues LGBTQ individuals still encounter despite the legalising of homosexuality:**

- **Positive discrimination and social exclusion:**

Currently, LGBTQ people must deal with the unpleasant reality of social exclusion, loneliness, and identity seclusion. They experience marginalisation as a result of the LGBT community's lack of acceptance. Due to their status as LGBTQ people, they are socially stigmatised and not accepted for who they are.

Dutee is the first athlete from India to publicly acknowledge her relationship with a same-sex partner. She has been shunned by her parents since making her declaration, and the people in her village who once took pride in her have referred to her as an embarrassment. People have a negative, sinful perception of transgender people, and this perception has a significant impact on them. They may also grow isolated as they gradually have low self-esteem and confidence. They have restricted access to important social resources including education, job, health care, etc. as a result of marginalisation and social exclusion.

- **Social media Bullying:**

The attitudes of society are reflected in and influenced by social media. People who might feel weak, alone, or alone can benefit from social media by developing a sense of community. Because of this, social media can serve as a haven for the numerous LGBT individuals who endure harassment and prejudice daily. As a tool for people on their journeys and hardships to start reaching and accessing allies and like-minded people, social media lessens the isolation of LGBT people.

However, given that social media platforms themselves have the power to restrict LGBT views, the negative effects of social media cannot be disregarded. It's not as good as it seems in this world. LGBT individuals experience bullying, harassment, and mockery. Words that are homophobic and transphobic are frequently used carelessly under the guise of "humour" or "friendly bullying." A recent "TikTok vs. YouTube: The End" video released by YouTuber Carryminati<sup>22</sup> was removed due to its content. The LGBT community was outraged by one of his video's statements: "Mithai ki dukaan pe 200 rupaye me bik jaayga." Mithai is a derogatory epithet that is used to describe LGBT individuals. This statement demonstrated how some people find it offensive to refer to someone as gay; not only is it embarrassing, but it also diminishes the worth of a queer person's existence. These videos provide a visual representation of homophobic harassment and bullying.

Gay and transgender rights organisations lambasted "Harry Potter" author J.K. Rowling on Thursday after she defended a British researcher whose opinions on transgender persons were deemed "not worthy of respect in a democratic society" by a court. Rowling took issue with the fact that the story did not use the word women when she tweeted on June 6, 2020, in

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<sup>22</sup> Zijah Sherwani, Youtuber Carryminati's roast video of TikTok was reported & YouTube took it down for using homophobic slurs, *The Quint*, (July 20, 2020), <https://www.thequint.com/neon/gender/carryminati-tik-tok-vs-youtube-roast-video-removed-homophobia>.

response to an opinion piece that described "those who menstruate." "Menstruating women.' There must have once been a term for those individuals. Please assist me. Wumben? Wimpund? Woomud? "<sup>23</sup>, she penned.

- **Conflict and rejection caused by families' responses to LGBTQ people:**

Many LGBTQ adults are hesitant to share their lives in public out of concern for rejection and severe negative responses. Fighting and family disturbances caused by a lack of communication and understanding of their gender identity can lead to the removal or forcible eviction of LGBTQ youth from their home. Due to family tension, a large number of LGBTQ adolescents wind up in juvenile jails, in foster care, or on the streets. All of these things diminish their sense of self-worth and raise the chance of contracting HIV and abusing substances that harm one's health, such as drugs and alcohol. They frequently commit crimes themselves and are victims of several horrible acts.

- **Educational Crisis: School Bullying**

A 19-year-old guy recently committed suicide after experiencing bullying and mockery for being homosexual. Bullying's negative impacts include depression, panic attacks, homelessness, school drop-out, suicide attempt, etc. Youth who identify as LGBT are marginalised by bullying and ragging and are more susceptible to social exclusion. Because they are aware that after coming out, they would likely face homophobia and heterosexism from friends, family, and society, queer people are hesitant to come out. The majority of young LGBT persons prefer to conceal their identities because they believe that coming out would damage their physical and emotional health. This decision can lead to suicidal thoughts, depression, alcoholism, and drug use.

## **XI Conclusion:**

India is a developing nation, and to encourage that growth and development, the country needs progressive laws that treat all residents equally and provide them with the same opportunities to contribute significantly to the nation's future. One of the harshest laws from the Victorian era has finally been repealed in India. However, same-sex unions are still illegal. Marriage confers rights and obligations on two people, including those related to adoption, inheritance,

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<sup>23</sup> J.K. Rowling Criticized After Tweeting Support for Anti-Transgender Researcher , The New York Times, (May 26, 2020), <https://www.nytimes.com/2019/12/19/world/europe/jk-rowling-maya-forstater-transgender.html>

tax planning, life insurance plans, and other similar privileges. In a nation like India where marriage is given such high value, marriage is a fundamental right for every person, but the LGBT community currently lacks this privilege. Decriminalizing homosexuality in a nation like India where LGBTQ people are still unable to wed the partner of their choice would seem to serve no purpose. Even though the Transgender Persons (Protection of Rights) Bill was approved by the Lok Sabha on August 5th, 2019, it still has many shortcomings and does little to benefit the LGBT population. Researchers aim to make the case that the transgender bill needs to be strengthened and modified in a way that benefits the LGBT community. Legalizing same-sex unions is urgently needed to remove this dark chapter from Indian history. As long as people are ready to sweep homosexuality under the rug of amnesia, it will continue to be stigmatised. The government ought to make an effort to inform the populace and increase public understanding of sexual minorities.

For the LGBT population in India to live with dignity, sexual autonomy, and individuality, the three pillars of the State and society must work together to ensure that the morality and values derived from the Constitution are upheld. However, despite all the advancements, LGBT people continue to face discrimination in society. A Supreme Court decision can only issue a resolution; nonetheless, it is the responsibility of society to ensure that LGBT people are not subjected to discrimination and are treated with respect. Simply allowing sexual activity between same-sex partners won't put them in danger on par with other citizens because the future of same-sex marriage, the legality of same-sex adoption, the right against oppression, and other issues are still up in the air, and the community is still fighting for them. Therefore, it is evident that the struggle has not yet been won, and India still has a long way to go before being truly inclusive.