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Beyond Labels: A Study of Social & Legal Rights of the LGBTQ Community

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ABSTRACT

This research paper explores the conditions and rights of the LGBTQ community across some significant countries including India and the evolution of the how slowly and gradually the acceptance of this community came to be in countries across the globe. It studies how various factors such as political situations, socio-cultural and religious perspectives and how these factors shape not how society views them but also the laws, policies and welfare schemes. By providing the evolution of homosexuality in the countries mentioned in the research, it helps us analyze the legal sanctions implied on the community across the globe and the implications of those sanctions. The landmark and significant cases are exclusively related to the rights of the community in India which has been discussed below in the paper in detail. These judgements reflect not only the legal perspective but also showcases the social perspective through the lens of the judges and how either by the judgments they can be shift towards either positive or negative light. These research paper exclusively focuses on Indian LGBTQ community, the difficulties faced by them in all walks of life along with how the landmark cases turned out to be major turning point towards hope for better life with dignity excluded of discrimination. The aim of this research paper is to focus is to show how far we have come as society and how much better we can do for each other as individuals. It is not just about acceptance and equal treatment or rights but also about a mere sexual orientation of a person changes the people's perspective, and how often we as society uses such degrading and derogatory words to either make fun of them or address them which can be changed if we as society takes equal

participation in understanding them as individuals, as a human and treat them with dignity and respect a right guaranteed to not only the heterosexual people but also the homosexual people as we are all part of the society and citizens of the country which guarantees such equal treatment to its all citizens irrespective of everything at large at least on paper whereas the ground reality seems to be far away even from the basic right of the individuals which is under article 21 of the Indian constitution. We need to change not only the laws which gives them equal treatment and rights but also a society we need to push for the change and accept them as part of this huge society.

KEYWORDS

Marriage, Equality, Discrimination, decriminalization of homosexuality, Transgender rights

INTRODUCTION

“To realize a world of equality and dignity for all, we will have to change laws and policies; we will also have to change hearts and minds.”

– Rick Parnell

This research paper focuses on the topic of conditions of the LGBTQIA+ community in the sphere of settling down in life and their rights to marry, adopt, have a family, and live life like a dignified individual, not to be discriminative solely on the basis of having different preferences and choices to live their own life. As we all know that the community has faced several challenges and hurdles over the years from criminalization of the same sex marriages to not being able to adopt, and transgender people not having work or education opportunities because of their identity and beliefs which the society has perceived leading to a lot of discrimination. Although over the years there has been an attempt to change not only the law but also society's viewpoint by decriminalizing section 377 [case: Navtej Singh Johar] to officially recognizing third gender on 15th April, 2014 [National Legal Service Authority vs Union of India]. These landmarks cases are very important to understand the present status of their rights in India along with a future possibility of changes in laws along with a silver lining that there will be changes in peoples thoughts leading more easy acceptance of their identity and rights in India. When it comes to marriage and family there are a lot of hurdles that they encounter. Marriage as an institution is considered a very sacred practice in India across cultures and religion. In India

the right to marriage which comes under Article 21 of the Indian constitution which permits an individual to select a spouse of their own. However same sex marriages are till date still considered to be illegal in india however attempts are ongoing to identify and decriminalize it. As decriminalization which not only help to safeguard their rights but give them a proper full-fledged legal recognition in society. This issue is of utmost importance and the relevance to recognize the rights of LGBTQ+ in all spheres of life equally goes beyond the realm of law to include broader social and cultural perspectives towards the community. A more frequent case which was heard in 2023 by the Hon'ble Supreme court where the questions raised were regarding marriage between the same sex couples, their rights to property and inheritance as well as adoption rights. This case was brought in front of the Supreme Court by 18 couples and the court heard the arguments from both the side for 10 days although the decision of the court is pending in this case as all the facts are being taken into due consideration and whether or not court can make a declaration to such an effect. All such cases are crucial parts of establishing something landmark and fundamental for the LGBTQ+ community's rights as all of them have a great potential to create more inclusive and just society. The court's ruling in many such cases will not only help shape the landscape surrounding the marriage and other rights for the community but it will also reflect the nation's commitment to inclusivity, dignity and non-discrimination on international platform.

OBJECTIVE

- A. To analyze the discrimination and problems faced by the LGBTQ+ community in society.
- B. To compare the rights of LGBTQ+ community with other countries
- C. To discuss important landmark judgements and its impact on the rights of the community.
- D. To have an overview about section 377 of the IPC and its impact on the LGBTQ+ community.
- E. To critically analyze the condition of education and work opportunities available to the LGBTQ community in the society.

METHODOLOGY

The resources used to write this research paper includes articles, other research papers, books and judgements.

BACKGROUND

The history of the community in India dates back to ancient times

which were stated in the epics such as two mentions in the epic Mahabharata where in once instance the Pandavas to achieve victory had to perform a sacrifice to Goddess Kali in which the person they sacrificed needed to have 32 qualities which is a symbolization of a perfect human being in that period they could only find 3 such people and they were Arjun, Krishna and Aravan (Iravan). Here Aravan (Arjun's son with the Naga princess Ulupi) who volunteered to sacrifice himself but he had three wishes which he needed to be fulfilled one of those of was marrying a woman but as no woman be marry him as she would become a widow by the next day and live a miserable life after his death, so in this scenario Krishna decided to take the Roop of Mohini an enchanting female and decided to marry Aravan (Iravan) and spend a night with him. The next day when Aravan was sacrificed Krishna who had taken Mohini form wept and mourned like a widow. The second instance was when Bhisma Pita Maha was defeated on the 10th at Kurushetra and the very reason for his defeat was that he took a vow to never attack on a woman but this was not it back in the days he kidnapped a woman named Amba from Swarnwar so that she be married to his brother as he himself took a vow to never marry and have kids but this brother denied marrying her and there as she insulted she took a vow that when you would die I would be the very reason for it. And thus came the fateful day where Bhisma Pita Maha was defeated as Shikhandi {the one who was Amba in past life took a form of Shikhandi in this one as Shikhandi was neither a male nor a female} was the very reason Bhisma Pita Maha didn't attack her because of the vow which he took and thus considered her as a woman. But Shikhandi by many is considered to be gender fluid or a transgender person and this was considered as a depiction was considered a representation of trans masculinity in Hindu mythology. Now moving forward from the epics to the period of colonial justice systems where the British through the introduction of Indian Penal Code in 1860 criminalized any form of sexual acts "against the order of the nature". This law was penalized in not only the Indian colony but the across various colonies of the British Empire to create fear and punish homosexuality and the consensual acts between the consenting adults with rigorous punishments like imprisonment for a period of 10 years which could be extended up to lifetime imprisonments. However, the term "sodomy" and its definitions were often used to target homosexual individuals and to punish them under the section 377. In recent years though we see a positive changes in the respect of the LGBTQ+ community's rights and their recognition such as official recognition given to the Third gender by the Hon'ble Supreme court by the judgement given in the case of National Legal Services Authority {NALSA v. Union of India} (2014). Justice K.S. Puttaswamy v. Union of India (2017)

recognized the right to privacy as fundamental right and held that sexual orientation is an essential attribute of privacy and dignity, thereby laying the constitutional foundation for the decriminalization of section 377 in 2018. The historic judgement in the case of *Navtej Singh Johar v. Union of India* (2018) which decriminalized section 377 of IPC 1860 which was and is still considered to be major win for the LGBTQ+ rights. The case of *Supriya Chakraborty v. Union of India* (2023) in which the Hon'ble Supreme court stated that right to marry is not qualified as the fundamental right under the Indian constitution also simultaneously declining the right of legally recognizing the same-sex marriages stating that matter is legislative rather than judicial. In the years 2024-2025, Indian courts expanded the scope of lgbtq rights in various other cases in which shall be discussed in later part of the research paper along with other landmark judgements.

DIFFCULTIES AND PROBLEMS FACED BY THE LGBTQIA+ COMMUNITY

Protection against Gender based discrimination which falls under article 15 of the Indian constitution which broadly includes protection on grounds not specifically mentioned in Indian constitution. Under Article 15(1) which covers the grounds only of sex, caste, race, religion, place of birth etc. Supreme Court in *NALSA*, clearly states that non- discrimination protection extends to both sexual orientation and gender identity.

The importance of transgender protection rights arises due to various issues faced by that particular community in almost every day life. There are a lot of drawbacks on the side of legal protection, other than that they are neglected and ignored by the society, refused to make them as a part which is affecting them in monetary terms. Being the citizen of India, they don't have necessary proofs or documents and are being harassed by their own society and stigma form a major problem faced by the community as a whole and it is necessary to protect the transgender community. As they are not accepted by the society, they are not able the grow, learn new things neither they have and scope to earn, small children of their community who are been abandon by their own families have no scope for studies and end up begging on the streets.

Certain cases which set example that still the transgender community is not safe in their own culture, society and are not protected by the laws.

Jayalakshmi v. State of Tamil Nadu (2007)¹ a transgender was sexually abused in the police officials. He was alleged to have committed theft but the treatment given to him was not the kind given to other thieves.

The Amendment of 1986 which states the Immoral Traffic Prevention Act 1956, made both the men as well as transgender the subject of criminal acts in matter of trafficking of children and women. Transgender being a victim of such offense was completely ruled out.

A survey report made by **The National Transgender Discrimination Survey (NTDS)**², states that about 15% of the transgender community lives in extreme poverty. 33% of them do not have their identity documents because of the fear of rejection or embarrassment which they have to suffer on revealing their truth. There is also a lack of affirmative measures across the employment and education sectors.

Following are the problems faced by the transgender community:

(i) Housing and Homelessness – LGBTQ community people face typically serious issues in seeking their own bases fundamental rights which freedom is given to each and every person in the society, they are still struggling to fulfill those basic needs. In other words, we can say that they are struggling to get food, shelter, clothing and good house to stay. Because people do not want they to become the part of normal community, their own family members are the biggest reason for these conditions, they are forced to leave their parental home which leads to insecurity homes. Under Article 21 of the Indian constitution everyone has the right to stay with dignity. The UN special Rapporteur on adequate housing has also found state's minimum efforts by providing such people with safe housing, supply of minimum basic amenities like food, shelter, clothing, water etc.

(ii) Community Disintegration – People with any down syndrome or mental health or any person who differs from our local community we avoid them staying nearby or in our locality, the same thing is faced by the transgender community no one from our society is allowing them or rather giving them chance to live there space irrespective of their kind and generous nature towards the society, we force them to stay far away from our society where there is no culture, food shelter, safety, sanitation etc. They are often found in the remote locations or lays in the sub-standard locality. The separation is compounded by harassment and

¹ *Jayalakshmi v. State of Tamil Nadu*, W.P No. 20054 (2006).

² National LGBTQ Task Force, www.thetaskforce.org (12th March 2026).

violence that person of LGBTQ community face in their living space. In India no proper care is taken for the same this community is facing a lot of difficulties. In relation to state obligation under **Article 12** of ICESCR community reported, the right to closely related to and dependent upon the realizing of the other human rights to food, housing, non-discrimination etc.

(iii) Domestic Violence – It is often physical violence or its threat that leads to deprivation of these person's which force them to leave their parental homes. The fear of not being normal makes them an artificial person by nature. The pressure being betrayed from your own family, beaten, ignored, mentally and physically abused by once own family hits something different, which some people cannot take it. To seek redressal against the violation of rights including the right to life, freedom from torture, cruel or inhuman and physically abusive nature of society. UN convention against Torture and ICCPR, states that states have the right to punish their family members who commits torture or cause harm or misbehave with this community people, state will also give protection to marginalized people including LGBTQ community.

(iv) Sexual Violence – Sometimes, it is easy to face the outsiders rather than facing once's own family members because at times they are the one who don't understand the circumstances or the situation in which the person is. Transgender persons are not covered by specific laws relating to sexual offences, as the society as a whole has never protected their rights. According to the law only those transgender persons who have sought approval from government as a female are allowed to access to the criminal laws. Some gender-neutral laws are been formed by Justice J.S Verma and community and some NGO's to protects the rights of transgender community. These community should be given chance to seeks protection from domestic violence Act, 2005 which includes (i) right to reside in a shared household (ii) to seek protection order (iii) compensation for domestic violence.

(v) Confinement – The word confinement might not be common for us but the person who face the effects of it knows it well, discrimination, abuse, violence from the society forces them to undergo forcible confinement by their own family, friends and relatives. In the case of **Shivani Bhat v. State of NCT of Delhi 2015³**, a 19-year-old transgender student was

brought to India from US against his will because his parents wanted him to be fixed. The surfing and frisking authorities snatched away his phone and travel documents. These are the actual people who have face the sever problems just because they

³ *Shivani Bhat v. State of N.C.T of Delhi*, W.P (CRL) 2133/2015.

are not as normal as us.

LANDMARK JUDGEMENTS

A. *Naz Foundation v. Govt of N.C.T of Delhi (2009)*

In the case of *Naz foundation v. Govt of N.C.T of Delhi*⁴, nine people were detained by the police from park on the charge of indulging in homosexual activities which was penalized under section 377 of the Indian penal code 1860, These nine people were said to be connected with an NGO named “Bharosa Trust” which worked to spread awareness about safe sexual practices and safeguards against chances of people getting sexually transmittable diseases (STD). They were accused to running a sex racket and providing hideouts for the couples interested in same sex intercourse. They were denied bail but a lawyer’s organization argued on their behalf. The charges which were brought against them were proved false and frivolous. After this the Bharosa trust along with naz foundation filed a petition in Delhi high court in 2001 to challenge the validity and constitutionality of the section 377 and how this infringed the basic fundamental rights given under article 14,15,16,19,21 and 32 of the Indian constitution. As it was claimed in the petition that section 377 was in fact in violation with the fundamental rights provided by the constitution of India. Also, it led to the possibility that the person having HIV/AIDS and who were previously engaged in same sex intercourse might not seek the help of medical professional due to not only the criminalization of it under section 377 but also the social stigma with the disease itself. So, on 2nd July 2009, the division bench of Delhi high court consisting Justice S Murlidhar and Justice AP Shah gave a judgement that yes section 377 violates the fundamental rights and it is unconstitutional in nature because it suppresses the freedom and rights of the adults to express themselves as its violation of the fundamental rights of the person under article 14,19 and 21 of the constitution.

B. *Suresh Koushal v. Naz Foundation (2014)*⁵

In this case the petitioner appealed in the supreme court for reviewing the judgement given in the case of *Naz foundation v. Govt of Delhi* by the Delhi high court which came the decision of decriminalizing the section 377. In this review case by the hon’ble supreme court it was stated on 11th December 2013 that as the community in India is a miniscule minority and prior to this section 377 did not harm any of the community’s

⁴ *Naz Foundation v. Govt of N.C.T of Delhi*, W.P (C) 7455/2001.

⁵ Roopesh Kumar, *LGBTQ Rights in India and Abroad Emerging Horizons* 284-285 (2024).

fundamental rights. It was stated that this section was an established procedure of law and it maintains public morality and order so it must be constitutionally implemented. The judgement of this case again criminalized section 377 after eight of years of hearing.

***C. National legal services Authority v. Union of India (2014)*⁶**

In this case the Hon'ble supreme court gave a landmark judgement recognizing the transgender people as the separate class of gender. Apart from the official recognition of the third gender in 2016 the supreme court also laid down some guidelines to ensure effective protection of their basic rights along with equal access to opportunities. The very first guideline was that the forcing them to identify in the either of the two gender and also non recognition of them as the third gender was violation of their fundamental rights under articles 14,15,16,19,21 and 32 of the constitution of India. The government of India was also directed to make certain welfare and protection policies for the transgender community and they maybe as well be considered as OBC by providing them with equal and protective benefits of reservation in education and employment. The final guideline was that rather than treating them medically or psychologically our focus should be on reducing the stigma attached to the community, treating intolerance and reconciling their gender identity with the existing laws and current socio-economic and political trends. The transgender persons (protection of rights) 2019 was introduced but these acts fell short on many occasions in addressing the plight of the community. The overview of the judgement is that the gender assigned at birth and the self-perceived gender are two different things and thus individuals may not always fit into a binary gender system.

***D. Justice K.S. Puttaswamy (Retd) and others v. Union of India and others (2017)*⁷**

In this case the right to privacy of the individual was questioned as regarding the biometric Aadhar scheme which required getting an individual's finger print, iris scans, and personal identity information. Justice K. S. Puttaswamy challenged this in the Hon'ble supreme court in 2012 as its infringed the fundamental rights of the individuals given in the article 21 (Right to Life and personal Liberty) of the Indian Constitution. It overruled the judgement given in Suresh

⁶ *NALSA v. Union of India*, AIR 2014 SC 1863.

⁷ *Justice K.S Puttaswamy (retd) v. Union of India*, (2017) 10 SCC 1.

Kaushal v. Naz Foundation stating that it was unconstitutional to overlook the basic rights of the minority community in India. The bench of 9 judges unanimously agreed that right to privacy is a fundamental right guaranteed by the constitution irrespective of an individual's sexual orientations and identity. The two main observations made by the court in this case: -

- Smaller number of prosecutions under section 377 of IPC 1860 does not symbolize that the law itself was harmless as it still criminalized consensual relationships and violated the fundamental rights of the LGBTQIA+ community.
- The impact of the law is not just about punishment or prosecutions but it also includes the fear, stigma, discrimination that the law creates in society.

This case paved the way for the other similar cases relating to the community's rights and protection to come.

E. *Navtej Singh Johar v. Union of India (2018)*⁸

After the judgment given in the 2010 case there were renowned people who had already disclosed their identity to the public but after there reversal of the decision in the Suresh Kaushal case in 2013 the individuals were again treated as the criminals after the court in the case declared that the given in the earlier case would be overruled and section 377 to be declared as constitutional and valid. So, Navtej Singh Johar along with Rita Dalmia, Keshav Suri filed a petition in the supreme court for reviewing the decision given in the 2013 Kaushal's case and also challenging the validity and constitutionality of section 377. This case was filed on the basis that it affected an individual right to expression, equality, and dignity and it had a derogatory effect over the promise made of non-discrimination against the transgender community. All these and many other issues were clubbed by the Hon'ble Supreme court in a single petition to heard and the government of India also promised to not interfere in the proceedings of the court and let the court take its own decision. On 6th of December 2018 the court gave the judgement by the declaring that the section 377 of IPC is unconstitutional and invalid. The judgement can be summarized in the following points: -

First the court said that the section is itself is unconstitutional and invalid as it infringes the basic fundamental rights of the individuals given under the part 3 of the Indian constitution.

Secondly the court made an observation that the section itself

⁸ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

is vague as it does not make a clear distinction between the which is be considered a natural and unnatural sex and if it is considered unnatural sex then on what basis.

Thirdly the court stated that invalidating a person's identity and is a direct violation of their fundamental rights and also the fact that the transgender community comprising a minuscule part of the population does not justify the discrimination implied on them. It also overruled the judgement given in the 2013 koushal's case by stating that the very decision given in this case was irrational, arbitrary and unconstitutional in nature.

Lastly the court also directed the central government to create awareness about the LGBTQIA+ community and to reduce the stigma attached to the community and make policies in welfare and support of the community so that they can also enjoy the various rights provided to them by the constitution.

F. S. Sushma v. Commissioner of Police, Chennai (2021)⁹

In this case a lesbian couple fled their house in Madurai city and rented a flat in Chennai and stayed the together. Both their parents lodged an FIR in local police stations and the police were able to locate the girls in Chennai from their rented accommodation. Both of them were taken into custody with an aim to return them to their natural guardians. During the period of the custody the girls claimed that they were not only interrogated but also harassed. Both of them have claimed to be married to each other and that this is the way they choose to live their own life. A petition was file in the court for non-discrimination and have police protection and stop the harassment of the community. The were several guidelines given by the court to which the state and police had to follow. This landmark judgement was given on June 7th June and it prohibited corrective therapy and encouraged sensitization in police towards the community. It also stated that those who tried to claim that they can cure homosexuality medically like as if it is a disease needed to be cured, they would be penalized and their licenses would be revoked. It also insured that schools and colleges to ensure to treat all the person belonging this community as normal and not different or separate. The guidelines are as follows: -

Police to simply investigate into a missing person's report without harassment or discrimination irrespective if they

⁹ *S. Sushma v. Commissioner of Police*, W.P No. 7284 (2021).

belong to the community or not.

The ministry of social justice and empowerment to enlist such NGO'S which would take up matters related to the LGBTQIA+ community and this NGO'S to provide help in various ways such as safeguarding the rights of the individual, monetary help, counselling or any kind of legal assistance with the help and support of DLSL. This NGO'S list to be put up on the website of the abovementioned ministry. All the data related to the individual helped by the NGO's to be kept private and confidential.

Also suggested to the state to ensure policies which would help in the community in beneficial way and reducing or eliminating the stigma attached to the community and help them channel back into the mainstream India.

To make such arrangements relating to the shelter or education and employment of the transgender people as such to improve and help them to lead a life in a dignified way just like everyone individual has a right to under the fundamental rights provided by and guaranteed by the constitution of India.

G. *Supriya Chakroborty and Abhay Dangi v. Union of India (2023)*¹⁰

In this a bench of 5 judges took the decision in which too there were two groups one where the majority judges believed that the regulations given for marriage and adoptions under the marriage and adoption act are valid but the other two judges felt that though the marriage act and adoption act was about heterosexual couples and they cannot make changes into it as it the parliament right to make changes in it, but the minority judges did agree on a particular point with the petitioner that yes according to our fundamental rights people have a right to marry however in regards to queer or same sex couples this right to marry and adopt can only be included if the parliament makes certain changes in the laws itself. The court denied to declare section 4 (c) of special marriage act 1954 as invalid and other similar terms in the Hindu marriage act 1955 and foreign marriage act 1969 as unconstitutional as it the unanimous decision of the bench that they cannot issue guidelines to the government to make certain amendments in the traditional marriage system. So even though the hon'ble supreme court did deny for same sex marriages and joint adoption they made some remarks which may highlight a positive attitude towards

¹⁰ *Supriya Chakraborty & Abhay Dangi v. Union of India*, (2023) SCC Online SC 1348.

it in the future.

This are the several remarkable and landmark judgments which have and will continue in future to pave the way for better rights and more dignified life of the community in the India.

COMPARISON OF THE LGBTQ+ COMMUNITY RIGHTS BETWEEN INDIA AND ABROAD

India

India if we compare it with all the abovementioned countries there are obvious vast differences due to culture, religious beliefs or the people's upbringing of they think or perceive about the community. Though a lot has changed because of the various landmark in past decade in a judicial way but still as society their needs to be more easy acceptance and sensitization of people towards the community, efforts taken by the state in the way of various policies and measures needs the support of the public in order for it to work as whole. From criminalization of same sex intercourse under section 377 of IPC, 1860 during the British period till the year 2018 where it was decriminalized in the case of Navtej Singh Johar v. Union of India which gave an historic win for the community along with the official recognition of the third gender by the court. So yes, even though a lot needs to be changed and lot be needs to be considered there is always a hope for change in the laws regarding the community in India.

United Kingdom¹¹

Prior to 597 AD that is before the formal introduction of Christianity as religion in Britain homosexuality was as such not considered as a illegal or sinful act. But post 597 there started to clashes between them as most people were believers of the religion they started treating as sinful act and soon it was considered to not only indecent but also illegal as the Buggery act of 1533 criminalized homosexuality and same sex intercourse and even Henry VIII was seen condemning the act to be detestable and abominable and if a person committed such an act they were to punished by death. These policies had wide ranging effects that people had to conceal their identity to be able to survive socially and be accepted by the society. According to a data in 1950s around 1000 gay men were in prisoned in England and Wales. In 1952 it a number of high-profile arrests and trials including important people for the development of the society such as scientists, mathematician and war time decoder who were

¹¹ Regan Persaud, A history of LGBTQ+ rights in the UK: remembering the past to inform the future, young citizens (12th march 2026) www.youngcitizens.org .

convicted for the crime of gross indecency. These people were suppressed and not given a chance to shine just because of their sexuality. Though in 1967 homosexual acts were legalized first in England and Wales and later years in Scotland and Northern Ireland. The equality act of 2010 introduced a policy of non-discrimination against any individuals throughout UK and in 2005 the transgender people were granted a right of civil partnership which was an equal status as similar to marriage to heterosexual couples. There are various cases which occurred from 1980s to 2010s where in most of the cases the court gave decisions which were mostly in favor of the LGBTQ community stating that there are certain articles of the of European convention such as article 8 (Right to privacy) and article 14 (non-discrimination) which cannot be violated irrespective a person's sexual identity or orientation. There were also some cases in which the were questions on whether a man being homosexual can serve in military and their efficiency to perform and maintain discipline and their survey taken from those individuals on the matters of their sexual orientation which was challenged in the court by the those individuals and the court after hearing the aforementioned arguments of discipline and efficiency stated that their stark violation of the article 8 and 14 of the European convention and which would not be tolerated.¹² There were several positive changes which occurred such as the 1967 sexual offences act decriminalized consensual same sex intercourse in private for men who were over the age of 21. Even though it was supposed to reduce stigma pertaining the community it but there were no as such visible or positive in about the same in society. Though this was introduced in 1967 it did not make changes in Scotland and Northern Ireland till 1980 and 1982 respectively. In 1979 an association was founded to understand and treat gender dysphoria. Finally in 1992 the WHO declassified homosexuality as a mental illness. The age of consent for the homosexual couples was reduced to 1994 to 18 and to 16 in 2001. The same-sex marriage act 2013 permitted marriage between the homosexual couples and the very same sex marriage was registered on 29th March 2014. In 2017 sterilization of the individuals was being necessary violated the human rights and in 2019 it was declared that the WTO has officially declassified transgender health issues as mental illness. Though even after all those changes of positive nature for better life and reducing the stigma there has been an increase in the hate crimes over the past few years. According to statistics in England and Wales in the year 2018/19 alone there were 14,161 hate crimes committed the sole reason was a person's sexual orientation and hate crimes against transgender person in the way was 2,253 and by 2023/24 it had raised up to 48% which

¹² Lustig-Prean and Beckett v. United Kingdom (2000) 29 ECHR 548.

is 4,732. The increase in these hate crimes according to the police in England and Wales is due to social media users and politicians commenting in humiliating or derogatory way on the LGBTQ community which gives other common citizens to say the same, classic example in this scenario which has negative impact is the “Lead by the Example”.

Germany¹³

Germany has been said to long history about the LGBTQ+ rights and culture. In the decades of 1920s and 30s it is said that people generally tolerated the them in society. There were many clubs and bars specifically only for gay people. But the if we talk about legal acceptance and recognition, the same sex relationships were considered illegal according to the German constitution’s para 175 {this law was applied since the days of the German empire in 1871 and it became more stricter during the nazi government especially during WW2. Despite these people still defied these laws and were punished through prosecutions and decisions of death penalties. Though in 1950 these were repealed and it was decriminalized in east and west Germany in the year 1968 and 1969 respectively. There were was several changes in the ages if consent in both parts of Germany. The same sex marriage was legalized in Germany on 1st of October 2017 and adoption rights were officially introduced in some parts of the Germany in 2005 but it was officially extended to the rest of the country in 2013. The transgender people were allowed to change their gender legally since 1980 and they were to undergo this gender change by changing their gender through surgical procedures of their genitals then only they would be allowed to change their gender legally in the documents but in the later years the government declared this criterion as unconstitutional. Germany became the fifth nation in may 2020 to ban the conversion therapy and even the constitution of germany clearly states in article 10(2) of the constitution that there should be no discrimination based on sex, birth, race, language, national or social origin, faith. Religious or political opinion and sexual orientation. The trials of Frankfurt of 1950-51 marked an early climax in persecution of homosexuals in the federal republic of Germany. The convictions for homosexuality made during the nazi period were overturned by the German government in 2002. A draft law was made in 2016 to pardon about 50,000 people who were prosecuted because of their sexual orientations. The German government also took efforts to rehabilitate both gay and bisexual men in the year 2017. A compensation scheme was also passed by the German government in 2021 to provide some sort of monetary to the

¹³ Expatrio LGBTQ rights and history in Germany, www.expatrio.com, (12th March 2026).

hundreds and thousands of the LGBT victims who were penalized under the law which continued to apply in west Germany until 1969. Same sex got a legal recognition in the year 2001 and in the 2004 they were also allowed to adopt a child. 29th June 2006 German parliament passed and equal treatment act. In march 2021 transgender and intersex individuals were allowed to serve openly in the military and police services in Germany.

China, Japan & Russia

All these countries have rather a stricter restrictions and laws when it comes to homosexuality. If we talk of China, it is said that during the imperial China same sex relationships were not strictly condemned rather even if they existed, they were socially and politically suppressed not viewed illegal. Records shows that the literature during the Han and Tang Dynasties mentions about the same sex relationships between the elites. We can that rather than a moral crime it was viewed as private matter. After the Chinese communist revolution of 1949 homosexuality came to be viewed as a socially deviant act or behavior. In 1997 homosexuality was decriminalized and in 2001 it was officially removed from the Chinese classification of mental disorders. Yet till date China does not recognize same sex marriage and the LGBTQ activism is heavily regulated such as restrictions and censorship on public events and discussions on the LGBTQ. However, the urban centers like Shanghai and Beijing have seen a growth in LGBTQ community members.

If we talk about pre modern Japan {feudal Japan} then just like China there is a mention of the same sex relationships were documented especially the practice called shudo which involves a relationship between samurai and younger male companions showcasing mentorship, loyalty and sexual interaction. As slowly the Japan adopted the western ideas of homosexuality, it was penalized as sodomy but eventually this ban was slowly removed in the year 1880. Similar to China, Japan also has the restrictions and censorships, and it does not criminalize homosexuality but it was also did not legalize same sex marriage but some local governments provide partnership certificates recognizing the same sex couple's relationship. We consider Japan as socially tolerant and slowly becoming acceptance of the community but they are institutionally conservative.

Homosexual acts were criminalized under the Russian empire but later after the 1917 Bolshevik revolution, these penalizations which were instituted by the earlier soviet law were removed. But again in 1934 the soviet government recriminalized homosexuality and continued its suppression during the entire soviet era. Eventually in 1993 homosexuality was decriminalized

and in 1999 it was removed from the list of the mental illness. Even though in the recent year's homosexuality is not criminalized, but it has a lot of restrictive laws affecting the LGBTQ expression such as "propaganda of non-traditional sexual relations" to minors to limit the advocacy for the LGBTQ rights, organization of pride events and public visibility or discussions. We can say even though it is not criminalized they have no rights similar to the ones which are given to the heterosexual couples.

United States of America

Even in USA the sodomy laws criminalized same sex relationships and the individuals often faced discrimination, arrests and social stigma. In 1969 Stonewall uprising sparked the LGBTQ rights movement which was a major turning point. There were several cases which has led to great reforms in the rights for the LGBTQ community such as *Lawrence v. Texas* (2003)¹⁴ case which decriminalized same sex relations, *Obergefell v. Hodges* (2015)¹⁵ which legalized same sex marriage nationwide, *Dobbs v. Jackson Women's health organization* another case which might is about abortion and might not to be related to topic but it definitely sparked a debate about the privacy based rights of individuals. Even though USA has given broad legal recognition to LGBTQ community including marriage, equality and anti-discrimination policies and laws there are still ongoing debates about issues like transgender rights, healthcare and education policies to them.

CONCLUSION

There will not be a magic day when we wake up and it's now okay to express ourselves publicly. We make that day by doing things publicly until it's simply the way things are."

- Tammy Baldwin

After throwing light on the drawbacks of the Transgender Laws because of which people of their community face harsh consequences of life and its effect to the society as a whole, the ration of inequality, brotherhood, insanity and humanity starts declining. It seems that present laws have slipped its agenda. Though the Constitution of India safeguards the individual's right of equality irrespective of their religion and sex but not followed it in real life to some point. India needs to adopt progressive methods are make neutral laws which protects the rights of these community. When we say equal protection of Law under Article 21 of the Indian Constitution it has to be followed by each and every person of the society. Country's development not only

¹⁴ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹⁵ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

depends upon the literacy rate or on its per capita income it also depends upon how easily we adopt new changes in our society and start bringing a new culture. The primary moto of the legislative is to amend the laws related to this community.

Sex education is also a part of our day-to-day learning; we can bring it in our day-to-day curriculum. Transgender community are protected by Protection of Rights Act 2019 which fails to uphold the values in true sense; thus, it is very important to modify laws on urgent bases. It should be modified in such a manner that it fits to the value of places in our Indian Constitution. Their constant struggle against binary gender hegemony and socio-religious dogmas cannot be permitted to linger further between popular morals and individual's autonomy. There are many cases which show case that they are not safe at work place, at home, they are been neglected by the society at a large, no place to leave, no proper sanitation, housing etc, they are denied from taking education from our local schools, and other university. State's neglect can be seen by the fact that no special provision to identify actual strength of the community was inserted with the Act.

The Journey towards LGBTQ rights in India is far from over, but significant progress has been made. From the decriminalization of same-sex relations to the introduction of the Transgender Persons (Protection of Rights) Bill, the LGBTQ community has achieved important milestones in their fight for equality and recognition. However, the road ahead is filled with challenges, and continued efforts are needed to ensure broader societal acceptance and legal safeguards. The context of writing this research paper is to make the readers aware of these laws and make it equal for all individuals of the nation. Any kind of discrimination prevailing on the grounds of race, religion, cast, sex etc should not be entertained by the society.

The Transgender amendment Bill 2026 which was introduced in Lok Sabha on 13th March 2026 which is supposed to overrule the judgement given in the 2014 giving the right to self-identify were as the recent 2026 amendment states that the there would be medical board headed by chief medical officer which would decide and assess individuals and then they would recommend certification for legal recognition and these can only be official only after the district magistrate would scrutinize before handing over certification for legal recognition. According to the government these changes were made to ensure a better tracking of the welfare benefits but most of the community considers it to be violating the 2014 NALSA judgement and reduces autonomy of the individuals.

Society needs to accept transgender people in order to ensure the

proper implementation of law and order. The lacunas of the laws exist because of the tendency of the society to not follow the rules and regulations which go against their personal interest. Article 15 of the Indian constitution of India will be rightly upheld, prohibiting any form of discrimination. After a brief study on transgender community and the laws that implement on their protection have certain loopholes and are required to amend certain provision and also add a few more with regards to marriage, adoption, property and inheritance. The penal provision should also be increased to ensure and curb the menace of sex discrimination faced by the transgender community.