

LGBTQ Fight for Equal Rights

Anand Singh¹, Amarjeet Singh Parihar^{2,*}

Abstract

The rights of LGBTQ individuals in India have evolved over the years. However, LGBTQ citizens still face a number of social and legal challenges in comparison to non-LGBTQ individuals. It is the court's responsibility to issue a fair and reasonable order, the government's responsibility to ensure that the verdict reaches the general public, and the public's responsibility to enthusiastically accept the court's decision. However, despite the fact that the Supreme Court of India in the Navtej Singh Johar vs Union of India judgment of 2018 stepped up and abolished a portion of Section 377 of the Indian Penal Code that criminalized acts of homosexuality, the situation regarding the LGBTQ+ community has not significantly improved even after nearly 30 months have passed since the landmark judgment was passed. The LGBTQ community failed to gain societal acceptance from the nation's citizens, and neither the federal nor state governments made any special provisions for their advancement.

Keywords: LGBTQ, verdict, Supreme Court of India, Section 377, criminalized acts of homosexuality

INTRODUCTION

I am what I am, so take me as I am

—Johann Wolfgang von Goethe [1]

In one of his plays, Shakespeare poses the question, "What's in a name?" through a character, suggesting that a rose would maintain its fragrance irrespective of the name assigned to it.

This phrase implies that the essential attributes and nature of something hold more significance than the labels or names ascribed to it, whether for an object or a person. In a similar vein, a person's sexual preferences should not be enough to discriminate against them or deny them their fundamental human rights. The fundamental tenet of human rights is that everyone is created equal.

Therefore, it is crucial to treat every individual with equal respect and dignity. Because it violates equality and opens the door to discrimination, anything that erodes that dignity is a violation.

This kind of discrimination also goes against the Indian Constitution's preamble, which says that everyone should be treated fairly and have the same status in all areas, whether they are social, economic, or political.

*Author for Correspondence

Amarjeet Singh 'Parihar'

E-mail: pariharsingh73@gmail.com

¹Assistant Professor, Department of Law, Innovative Institute of Law, Greater Noida, Uttar Pradesh, India

²Research Scholar, Department of Literature, Dr. B.R. Ambedkar University of Social Sciences, Mhow, Indore, Madhya Pradesh, India

Received Date: August 02, 2023

Accepted Date: August 17, 2023

Published Date: September 17, 2023

Citation: Anand Singh, Amarjeet Singh 'Parihar'. LGBTQ Fight for Equal Rights. Journal of Family & Adoption Law. 2023; 6(2): 26–38p.

The Gay Pride parades that took place on July 29, 2008 [2], in Delhi, Kolkata, and Bangalore, are a clear example of how LGBT and Queer identities may be accepted by more young Indians than ever before.

Yet, in the context of family, household, and educational institutions, individuals within the LGBTQ community continue to face challenges in attaining recognition for their sexual orientation and the liberty to openly manifest their chosen gender identities, particularly within a culturally diverse nation like India.

LGBTQ+

The following groups of people are referred to as LGBTQ+:

1. *Lesbian*: A lesbian refers to a woman who experiences sexual attraction towards other women.
2. *Gay*: A term used for a man who holds a sexual attraction to other men is “gay.”
3. *Bisexual*: An individual who feels a sexual attraction to individuals of both genders is known as bisexual.
4. *Transgender*: Individuals whose gender identity and expression deviate from what is traditionally associated with their assigned sex at birth are known as “transgender.”
5. *Queer*: “Queer” is used to describe the sexual and gender identities of individuals who do not identify as heterosexual and/or cisgender.
6. The usage of pronouns other than “he,” “she,” and so on is what makes the term “queer” itself a community.
7. The “+” in LGBTQ+ denotes that the preceding list does not include all subcategories, such as pansexual, asexual, intersex, and so on.

HOMOSEXUALITY

The term “homosexuality” describes sexual attraction or actions directed towards individuals of the same sex or gender. For example, a person is said to be “homosexual” if the term “homosexuality” pertains to the sexual attraction or conduct directed towards individuals of the same sex or gender. For instance, an individual is considered “homosexual” if their romantic interests lie with those of their own gender. This concept is not recent; it has existed in India for a considerable duration. Instances of sexual interactions between women are depicted in ancient texts such as the Rig Veda, authored around 1500 BC, and in sculptures that reveal a feminine realm where sexual relationships were founded on pleasure and procreation. Throughout history, there are instances of same-sex relationships, including depictions of such acts in the Kamasutra, the keeping of young male harems by Muslim Nawabs and Hindu nobles, and instances of male homosexuality in Medieval Muslim history like that of Malik Kafur.

In her book [3], Amara Das Wilhelm conducted thorough research on medieval and ancient Indian Sanskrit texts, revealing that individuals identifying as homosexuals and belonging to the “third gender” were present and broadly accepted in Indian society during that era. The term “Swarinis” is mentioned in the “Purushayita” chapter of the Kama Sutra, an ancient Hindu text from the second century. These women frequently had children with other women they had married.

Both the “third gender” community and mainstream society readily accepted them. [4]. However, as Vedic Brahmanism and British Colonialism became more prevalent, these experiences began to lose significance. According to Giti Thadani, a researcher, an Aryan invasion that began in 1500 B.C. began to suppress homosexuality by establishing patriarchal dominance.

The Manusmriti outlines strict penalties, including hefty fines, loss of caste, and whippings, for homosexual and lesbian conduct, indicating its prevalence during that period. However, since 1974, homosexuality has been delisted from the category of mental disorders and is no longer viewed as abnormal behavior. This clearly demonstrates how homosexuality has evolved over time from a completely natural behavior to one that goes against nature's order and is unnatural.

Is Homosexuality Unnatural?

In 2018, Mr. Arun Kumar [5], referred to the landmark case *Navtej Singh Johar v. Union of India* [6] for Section 377 as “unnatural” in his remarks. He declared:

“We do not support gay marriage or relationships because they are not natural and do not fit with nature. In the past, Indian society has also rejected such relationships [7].”

The Indian Penal Code was established in 1860. As a result, homosexuality is made a crime under a Victorian law that is based on Judeo-Christian theology rather than science.

The legislation infringed upon their privacy, diminished their sense of worth, and marginalized certain individuals, solely based on their appearance or romantic preferences.

In an enlightened society, an individual's role should not be determined by their sexual orientation or gender identity, but section 377 of the Indian Penal Code of 1860 did impose such restrictions.

Under Section 377 of the Indian Penal Code, engaging in sexual activities with individuals of the same sex was deemed unnatural, encompassing both the homosexual and transgender communities. However, this is an absurd argument because numerous studies indicate that at least 1500 species of animals, particularly dolphins, exhibit homosexuality. Therefore, if it is found in such a large number of species, how can humans, a single species, claim that it is contrary to nature's order?

Is Homosexuality Religiously Prohibited?

Every religion has its own religious texts and writings that they blindly follow. However, these religious texts are outdated and flawed on multiple fronts from the outset. For example, Hindu scriptures condone the practice of untouchability. The act of untouchability and the segregation rooted in race and caste were rationalized in earlier times as a means to maintain orderly functioning, as per various religious and ancient scriptures. This was done until the Indian Constitution included a section that said that untouchability was illegal.

Unlike untouchability, a number of religious scholars assert that homosexuality goes against religious beliefs. However, this is not the case at all because there are verses in numerous ancient Indian texts that support the LGBT community. Characters like Shikhandi, Chitrangada (Arjuna's wife and Babruvahana's mother), and Brihannala from the Mahabharata represent diverse sexual orientations and gender identities within Hindu epics. The revered texts do not show prejudice against these characters due to their sexual orientation or gender identity. Instead, they are all treated with dignity, and their abilities are more important than their sexual orientation. The Arthashastra includes numerous references to LGBT people working in various professions without fear of persecution. Furthermore, tales like Ardhanareeshwara, portraying Shiva as both male and female, and Lord Ayyappa, who was born from Mohini, the female incarnation of Lord Vishnu, highlight Hinduism's nuanced stance on gender-related matters. Beyond texts, architectural monuments such as those in Khajuraho, Madhya Pradesh, have depicted homosexuality in earlier times, indicating societal acceptance rather than being perceived as contrary to religious beliefs.

PROBLEMS FACED BY THE LGBTQ COMMUNITY

Despite our claim to be an advanced and modern generation, it is disheartening to encounter members of the LGBTQ community in various settings and settings. Some of the problems they frequently encounter are as follows:

1. The 2018 UNESCO Report indicates that LGBTQ children are frequently bullied in schools, colleges, and other settings, and face discrimination as well. Their lives are permanently altered as a result of this bullying and discrimination, and it frequently takes years for them to recover. (2018 UNESCO Report) A bounty is typically set for the secret honor killings of anyone who declares or is found to belong to the LGBTQ community. Recently, numerous individuals have tragically lost their lives due to these honor killings.
2. Women within the LGBTQ community often face significant challenges, as many families, upon learning of a woman's lesbian or bisexual identity, may advocate for forced sexual encounters with men, commonly referred to as corrective rapes, to "cure" her homosexuality.
3. Not only do LGBTQ people face discrimination in schools and colleges, but this threat persists even after they graduate. They also face discrimination when applying for jobs because no employer wants to hire someone with a different sexual preference because the idea does not sit well with society and is frequently questioned by other workers. Consequently, they struggle to secure better-paying jobs, perpetuating their cycle of poverty.

4. In urban settings, families often neglect their duties towards their children and frequently expel them from their homes upon learning about their LGBTQ identity, all in a bid to safeguard their social standing. As a result, urban families place a high emphasis on maintaining their societal image. Consequently, the lack of acceptance for LGBTQ individuals is widespread, extending beyond just rural areas to urban households as well.
5. As part of corrective therapy for homosexuality, LGBTQ people are frequently sent to correctional facilities, where they are given psychoactive drugs. They become so dependent on these drugs that even after being released from the agony of prison, they continue to seek solace in drugs and other psychotropic substances, eventually developing an addiction to them.
6. LGBTQ individuals frequently experience isolation from everyone, which causes depression.

UNNATURAL SEXUAL ACTS

Unnatural sexual acts were made illegal “since its application as law in 1862” by section 377 of the Indian Penal Code, a colonial invention from 1860. The outdated Section 377 of the Indian Penal Code from 1860 (referred to as IPC) addressed “Unnatural offences,” specifying that anyone who engages in voluntary sexual intercourse with a man, woman, or animal contrary to the natural order could face life imprisonment or up to 10 years of rigorous imprisonment [8].

Homosexuality falls within these acts and may attract punitive measures.

Over time, Indian courts have interpreted “carnal intercourse against the order of nature” to encompass activities such as anal sex, oral sex, and occasionally other non-procreative acts like mutual masturbation [9]. This offense was classified as non-bailable and cognizable, equating sodomy with homosexuality. Although it was not explicitly defined, this offence was made nonbailable and cognizable. It was thought that a homosexual man is a “type of person” who only has sexual contact with his partner. However, the desires, fantasies, and emotional attachments were not given adequate consideration.

In India, marriage is generally viewed as the wife's implicit agreement to engage in “normal” sexual activities rather than anal intercourse. As a result, if a couple marries, it is assumed that both parties’ consent to sexual activity. Therefore, if the wife is over the age of 18 years, the husband who commits marital rape on her will not be guilty of rape if he has “normal sexual intercourse” with her forcefully and without her consent. This is a major blow to the Indian Penal Code because it punishes consenting adults of the same sex for heinous crimes like marital rape.

In 1994, when a medical team inspected Delhi's Tihar Jail and identified a significant incidence of sodomy in the male sections, it sparked controversy. The team advocated for the provision of condoms, citing potential HIV risks among inmates. In response, the AIDS Bhedbhav Virodhi Andolan filed a petition in the Delhi High Court, contesting the official stance and questioning the constitutionality of Section 377 [10]. Refusing to distribute condoms by jail authorities could be interpreted as endorsing and facilitating a crime under the IPC [11].

Naz Foundation v. NCT of Delhi, 2009 [12]

In July 2001, the Lucknow police conducted a raid in a park suspecting some men of being homosexuals and charged them under Section 377 of the Indian Penal Code. The petitioner contended that this provision infringed upon their fundamental rights to life, liberty, privacy, dignity, health, equality, and freedom of expression. The police also detained nine additional men who were associated with the non-governmental organization “Bharosa Trust.” It was also argued that because people were afraid of being prosecuted under Section 377, they were afraid to talk openly about their sexuality and lifestyle, which made public health efforts to reduce the risk of sexually transmitted diseases like HIV/AIDS less effective.

Last, in 2009, the Delhi High Court ruled that Section 377 of the Indian Penal Code prohibited two consenting adults from having sex even in private. As a result, it was a clear violation of the Indian Constitution's Articles 14, 15, 19, and 21 regarding their fundamental rights. Religious leaders condemned the verdict with equal fervor, but sexual minorities across the country immediately reacted with extreme joy [13]. The curious case of Savita and Beena shocked the world on July 22, 2011, when they became the first lesbian couple to get married in India.

Suresh Kumar Kaushal v. Naz Foundation, 2013 [14]

Following an eight-year legal struggle, several individuals and religious organizations strongly opposed the Delhi High Court's ruling in the Naz Foundation case, which decriminalized homosexual relationships. They sought a review from the Supreme Court of India regarding the constitutionality of Section 377. Court made homosexuality a crime again. The bench decided that LGBT+ people were a "minuscule minority" and did not merit constitutional protection. They also said that Section 377 of the Indian Penal Code did not violate the vice of unconstitutionality and is therefore completely constitutional. Because LGBT people were a small minority, the Supreme Court blatantly ignored Articles 14, 15, 19, and 21 of the Constitution, thereby ignoring the core of India's Constitution.

However, the positive aspect of this verdict was that, rather than halting the LGBT movement, it sparked a wave of activism in India. The regressive decision of the Supreme Court was widely criticized for removing homosexuals' fundamental human rights. Consequently, the decision spurred increased public discourse on LGBT rights in India, evolving into a significant movement. Fortunately, instead of quashing the LGBT movement, the ruling ignited a fresh surge of activism in the country. The regressive decision of the Supreme Court was widely criticized for denying homosexuals their fundamental human rights.

Consequently, the public discourse on LGBT rights in India intensified, leading to the emergence of a significant movement.

RIGHTS OF TRANSGENDER PEOPLE

The transgender community played a central role in the larger LGBT movement due to being the most marginalized subgroup within the Indian LGBTQ+ spectrum in terms of social, educational, and economic standing. These individuals have historically been marginalized, disregarded, mistreated, and exposed to violence, either by societal forces or those in positions of power. Due to their lack of resources and constant rejection, these individuals frequently turn to prostitution or beggary, making them more susceptible to discrimination, sexually transmitted diseases, and crimes like human trafficking. However, their recognition as the third gender in the Supreme Court's 2014 decision in *NALSA v. Union of India* for the first time in history brought a new ray of hope and euphoria.

National Legal Services Authority v. Union of India, 2014 [15]

The Hon'ble Supreme Court was asked in this case whether it was necessary to recognize the hijra and transgender community as a third gender for welfare programs like public health, education, employment, and reservation.

In this significant ruling, the Supreme Court granted hijras, also known as transgender individuals, the recognition as the "third gender."

Previously, transgender people had to say that they were either male or female, but after the verdict, they could say with pride that they were transgender or Third Gender. The judgment also outlined several fundamental human rights for the transgender community, which can be summarized as follows:

1. The Supreme Court determined that failing to recognize their identities violated Articles 14, 15, 16, and 21 of the Indian Constitution.

2. According to the Transgender Persons (Protection of Rights) Bill of 2019, sexual abuse of Transgender people is only punishable by 2 years in prison, whereas similar offenses committed against women carry severe penalties under the IPC that can reach 7 years in prison.
3. There are no provisions for providing scholarships, reservation, modifying the school curriculum to include LGBT+ students, or ensuring that transgender students are safe in schools and workplaces.

THE GOVERNMENT'S PERSPECTIVE ON LGBT+ TRIBE

You don't have to be a cow to support animal rights! [16]

—Shashi Tharoor

On February 23, 2012, the Ministry of Home Affairs opposed the Delhi High Court's decision to decriminalize homosexual acts, citing them as immoral in India. However, by February 28, 2012, the Central Government changed its stance, affirming that decriminalizing homosexual acts was legally sound. Shashi Tharoor, representing the Indian National Congress party, introduced a bill to decriminalize Section 377 on December 18, 2015. Nonetheless, the bill faced defeat with a vote of 71-124 in the legislative assembly.

Following the introduction of Kerala's initial state policy on transgender individuals in 2016, the state suggested offering complimentary sex-reassignment surgeries at government hospitals. This was a good move by the state government, giving hope that from now on, everything done to help LGBT people will be good. However, on February 25, 2021, the Central Government side of a case stated in the Delhi High Court that marriage can only take place between a man and a woman who are biologically related as a result, opposing same-sex marriage validation strongly.

After hearing a Public Interest Litigation challenging a Health Ministry guideline that prohibits transgender and gay individuals from donating blood, the Hon'ble Supreme Court of India issued notices to the Centre and other parties on March 5, 2021. A petition was being heard by a bench of three judges, led by Chief Justice of India SA Bobde, challenging the constitutionality of Sections 12 and 51 of the Ministry of Health and Family Welfare's Guidelines on Blood Donor Selection and Blood Donor Referral, 2017. Given that members of the LGBT community and female sex workers face a significant risk of contracting HIV/AIDS, the rule outright prohibits them from donating blood. Therefore, the guidelines arbitrarily exclude members of the LGBT community from donating blood rather than checking the blood samples of those donating blood. The preceding instances make it abundantly clear that the positions taken by the federal government and the state government regarding their rights and other issues are distinct, but it is still unknown whether the government approves of the community as a whole.

The preceding examples make it abundantly clear that the rights of the LGBT community are a contentious issue for both the federal government and the state government, and it is still unclear whether the federal government supports the LGBT community as a whole.

K.S. Puttaswamy v. Union of India, 2017 [17]

In the *Suresh Kumar Koushal v. Naz Foundation* [18], the Naz Foundation's argument that Section 377 of the Indian Penal Code violated the right to privacy was not given much weight because the right to privacy was not a well-established legal principle. The 2017 Puttaswamy Judgment predominantly emphasized the right to privacy, recognizing it as a fundamental right as it is an integral aspect of the right to life under Article 21. Additionally, the case has relevance to LGBT rights, notably due to Justice Chandrachud's perspective in the Puttaswamy judgment, presented under the section titled "discordant notes." In it, he said that the court's rhetorical opinion in the *Suresh Kumar Koushal* Case was wrong and that sexual orientation is also covered by the right to privacy. In addition, partners who voluntarily engage in sodomy can be sued by a third party under Section 377, infringing on their constitutionally

guaranteed right to personal liberty and privacy. According to the Puttaswamy decision notes, the minuscule population of LGBT+ people cannot be the basis for depriving them of their basic fundamental rights, and such curtailment of the fundamental right cannot be held to be tolerable even when a small number of people are subjected to hostile treatment in comparison with a large number of people. The minimis hypothesis principle that was used in the Suresh Kumar Koushal judgment was also criticized.

In *Lawrence v. Texas* [19], the United States Supreme Court stated that "the choice of sexual orientation 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 [20]. In *National Coalition of Gay and Lesbian Equality v. Minister of Justice* [21], the Constitutional Court of South Africa stated that [22] if, in expressing one's sexuality, one acts consensually and without harming the other, invasion of that precinct will.

After that, a number of well-known people, including hotelier Keshav Suri [23], actress Ritu Dalmia [24], and dancer Navtej Singh Johar [25], filed a petition with the Supreme Court challenging the constitutionality of Section 377 of the Indian Penal Code.

Consequently, the number of protests advocating for LGBT rights in India grew.

After considering numerous petitions, the Supreme Court decided to forward the case to a broader panel of judges. In addition, the government said that it would not get involved and would let the Supreme Court make the decision based on its own judgment. The petitioners contended that Section 377 infringed upon their constitutional rights to privacy, freedom of expression, equality, human dignity, and protection against discrimination.

On September 6, 2018, the 5-judge bench rendered its final decision, concluding unanimously that:

1. Section 377(1) is deemed unconstitutional as it infringes upon fundamental rights related to intimacy, autonomy, and identity, particularly when consenting adults are involved in sexual activities. Consequently, homosexuality ceased to be criminalized.
2. Section 377 lacks clarity and doesn't differentiate between actions deemed "natural" versus "unnatural."
3. Furthermore, it curtails individuals' freedom to express their sexual identities, conflicting with Article 19 of the Indian constitution.
4. Denying someone's sexual orientation infringes upon their right to life, given that it's an integral aspect of their self-identity. A minority status within the population cannot justify withholding their fundamental rights.
5. Denying essential rights based solely on a minority status within the population is not a valid rationale.
6. The court heavily criticized the Koushal verdict, deeming it irrational, arbitrary, and unconstitutional.
7. It was underscored that discriminating based on sexual orientation is unconstitutional, considering that sexual orientation is rooted in biological and scientific realities.
8. Additionally, the Supreme Court instructed the government to eradicate LGBT-related stigma and raise public awareness of LGBT rights. The judges went over the issues of mental health, dignity, privacy, the right to self-determination, and transgender people in more detail.

Arun Kumar v. Inspector General of Registration, 2018 [26]

This is a Madras High Court case that includes transwomen in the Hindu Marriage Act, 1955 category of brides. According to the Hindu Marriage Act of 1955, marriage is only between men and women. This decision made transgender people, who identify as women and identify as brides, part of the category of women. Based on the NALSA ruling, it adopts the principle of self-identification, affirming that an individual can recognize themselves as any gender identity without the need for validation from a governmental or external authority. The Court interpreted this clause to mean that a person has the

constitutional right to identify as a transwoman. The LGBTQ+ community's marriages laid the groundwork for expanding the right to marry in many other cases.

However, this does not mean that LGBTQ+ people in India always have the right to marry.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

Parliament has approved the 2019 Transgender Persons (Protection of Rights) Bill. The Transgender Persons (Protection of Rights) Act, 2019 (the "Transgender Persons Act") was passed by the Rajya Sabha on November 26, 2019, and the 17th Lok Sabha approved it on August 5, 2019. The Transgender Persons (Protection of Rights) Act, 2019 (the "Transgender Persons Act") aims to recognize the identity of transgender people and to prohibit discrimination in, among other things, the areas of education, employment, and so on.

Background of the Act

In the NALSA case, the Supreme Court of India delineated "transgender" as the "third gender" and instituted several measures aimed at safeguarding the rights of transgender individuals and preventing discrimination against them. The decision argued that transgender people should be given preference in jobs and schools, and that transgender people should be able to say what they think about their gender identity without having surgery.

During that year, a private member introduced a bill in the Indian Parliament, which was subsequently approved by the upper house. This is unusual because not many private members' bills have made it this far. However, in 2016, while the private member's bill was still pending, the Indian government drafted and presented its own version of the bill to Parliament. This version was then referred to a Standing Committee of Parliament for additional suggestions.

In 2018, a revised version of the bill was presented based on the Committee's suggestions; yet, it was reintroduced in 2019 due to the establishment of the new central government and the dissolution of the parliament in 2018.

Understanding the Transgender Persons Act's key provisions, successes and failures, and effects on employers, particularly those in the private sector, is essential as it only recently came into force.

The Key Aspects of the Law's

Definitions: Men and women are included in the definitions of transgender people and people with intersex variation, even if the person has not had a sex reassignment procedure or hormone therapy.

Nondiscrimination: The law strictly prohibits transgender people from being treated differently at educational or professional institutions, health care facilities, and other public facilities. It also supports their right to move, own property, and hold offices.

Identity Certificate: It grants the right to self-perceived gender identity and entrusts the district magistrate with the responsibility of issuing a "certificate of identity as a TG person, without undergoing a medical assessment." It also stipulates that anyone claiming a gender change may also change their gender to male or female.

Equal Opportunities: In addition, it oversees equal opportunities in transgender-specific policy matters. The creation of specific policy measures that include transgender individuals is required by law.

Complaint Officer: Each establishment is required by law to designate a complaint officer.

Facilities for Healthcare and Medical Treatment: Additionally, the law permits the establishment of distinct HIV surveillance centers for TG individuals; The facilities must include health care for hormone

therapy, sex reassignment, and other procedures, as well as pay for transgender people's medical bills through an insurance plan designed specifically for their needs.

National Council for Transgender People (the "NCT"): The law also requires the creation of the NCT to help government officials audit current policies, create new ones, and address complaints.

Penalties and Infractions: Infractions such as forcing transgender individuals to work; or denying one's use of public facilities; physical, sexual, mental, and emotional violence; and other offenses that are related to it are now covered by the act and can be published by law.

Latest Compliances for Employers:

1. The Act also establishes a brand-new set of compliances for all private employers as well as professional institutions.
2. In response to these mandates, employers will need to revise their HR policies and take steps to sensitize and educate their workforce, ensuring the inclusion and support of transgender individuals.
3. Discrimination is not allowed to foster a work environment that encourages both growth and safety.
4. Create a policy that ensures transgender people have equal access to opportunities.
5. Establishment of infrastructure-based amenities and services like gender-neutral restrooms, sanitary facilities, privacy, and transportation, among other things.
6. Requirement for each establishment to have a complaint officer designated.

Why is the Transgender Community Opposing It?

1. The transgender community has vehemently opposed the Trans Act 2019 citing a number of provisions that violate their fundamental rights.
The Act asserts that transgender people will be entitled to their own self- perceived gender identity.

Activist's views: Modifying gender identity on official records necessitates a certificate of identity issued by the district magistrate, attainable only upon presenting proof of undergoing sex reassignment surgery. The Act establishes the right to residence and mandates that any TG person younger than the age of 18 years live with their natal family.

Activist's views: Because of their gender identity, transgender people frequently face horrific forms of discrimination and brutality within their own families.

2. Begging by transgender people is now illegal under the law.
Activist's views: Despite the fact that reservations for TG individuals in employment and education have not been made,
3. The Act primarily recognizes transwomen and Hijras.
Activist's views: The gender queer, transgender, and even intersex communities are largely ignored.

The Transgender Persons Act of 2019 vs. the NALSA Judgment of 2014

Judgment states that transgender individuals will be regarded as a "third gender," and the Constitution guarantees their rights. It acknowledges that individuals can be empowered by simply identifying their gender. The Supreme Court determined that discrimination based on "gender" encompasses an individual's inherent understanding of their gender, reflecting the gender with which transgender individuals identify. The court recognized gender identity as a crucial aspect for leading a dignified life and shaping one's character. While this case stands as a significant milestone in the transgender community's quest for equal rights, it doesn't automatically ensure their equal treatment or a life of dignity.

Following the 2014 verdict, Parliament introduced several bills addressing the rights of transgender individuals. The most recent legislation, the Transgender (Protection of Rights Act 2019), was enacted

in July 2019. Because it contradicts the NALSA judgment and invalidates it, the TG community has responded negatively to the act. They assert that the new law will not only be ineffective but will also reverse the progress that has been made in protecting transgender people's rights.

The only legal requirement for gender identification is the NALSA ruling, which recognizes the principle of "self-declaration" without the need for medical or psychological proof. In addition, the verdict determined that insisting on reconstructive surgery is unethical and illegal. International best practices and standards are met by the ruling. For instance, the United Nations mandates that medical and legal procedures for transgender people's gender reassignment be separated, excluding evaluations by psychologists, physicians, or other specialists.

The 2019 Transgender Act mandates individuals to obtain a "transgender certificate," certifying their transgender identity, to gain legal acknowledgment of their gender status. However, in order to obtain "proof of identity," the individual must submit a psychiatrist's report under the new rules. Additionally, a "revision certificate" issued by the district judge is required if the individual undergoes gender reassignment surgery. Even if he presents proof of gender affirmation surgery, the district magistrate holds the power to assess the application's accuracy. Gender redistribution and identification are made more difficult and intrusive by the proposed rules. The guidelines for determining accuracy are murky. In addition, administrators are not required to receive training on the topic. Not only do these regulations include psychologists, board-certified physicians, and district administrators, but they also violate the NALSA-recognized right to "self-declaration" by including them.

In addition, the bill stipulates that transgender abuse is a criminal offense that carries a maximum penalty of 6 months to 2 years in prison. In some cases, a similar offense committed against a cisgender person could result in life in prison or even the death penalty. The transgender community's unequal status is strengthened by milder punishments. Also unclear is how transgender people can get benefits and civil rights under the bill.

The NALSA verdict required the implementation of affirmative action strategies to enhance the representation of transgender individuals in educational institutions and government positions. However, the recent regulations do not expressly outline affirmative action in domains such as education, health care, employment, and civil rights linked to marriage, adoption, and property.

The 2019 Transgender People (Protection of Rights) Act, in its diluted form, contradicted the essential principles outlined in the NALSA ruling by neglecting the fundamental rights, physical autonomy, and dignity of the transgender community.

The right to gender self-determination was abolished by psychological, medical, and public authorities censoring them.

However, positive indications that the state values the recognition of various relationships and families can be found in rulings like the Supreme Court's decision to repeal Section 377. The law should ensure equitable social, economic, and civil rights to protect the interests of the community and prevent mistreatment and bias. Prior to finalizing regulations, it's also crucial to engage in consultations with the transgender community. The public consultation procedure ought to be more inclusive and afford sufficient time for rule discussion. The state ought to think about extending the consultation process until people are able to gather safely and effectively express their concerns. It is essential to empower transgender communities, lessen social stigma, and raise their socioeconomic status by granting them the same constitutional rights.

CONCLUSION

Undoubtedly, the trajectory of the LGBT rights movement in India will be profoundly influenced by all rulings concerning the rights of LGBT individuals. The acknowledgment of third-gender identity

and the legalization of homosexuality underscore the importance and impact of the NALSA and Navtej Singh Johar rulings. Yet, these verdicts are also forward-looking, as they not only address the immediate issues but also establish the foundation for a range of other civil rights that were previously inaccessible to the LGBT community but are typically enjoyed by heterosexual and cisgender individuals. Rights such as marriage, adoption, surrogacy, freedom from discrimination, and more are all instances of civil rights that are now within reach.

However, LGBT individuals continue to struggle for societal acceptance despite numerous advancements. A Supreme Court decision can merely pass a resolution, but society is obligated to avoid discrimination against LGBT people and to foster an inclusive environment for them. Prospects for the legality of same-sex marriage, the permissibility of adoption by same-sex couples, and the entitlement to liberation from oppression, and so forth, will not be put in jeopardy by merely permitting sexual acts between couples of the same sex, and the community continues to fight for them. Therefore, India faces a clear and lengthy battle to become truly inclusive.

A WAY FORWARD

- It is essential to be aware of gender diversity and the need to shield transgender adolescents from hostile educational settings.
- Matters and considerations related to transgender (TG) can solely be tackled through school initiatives and teacher training programs. Schools can employ the subsequent policies and procedures to enhance the health and safety of TG students.
- Free kindergarten through 12th grade education should be established in addition to a special school for transgender students.
- In addition to instituting stringent measures against violence, bullying, and harassment, students should be taught to respect one another.
- Find “safe areas” where TG students can get help from teachers, administrators, or other school personnel, such as counselors’ offices, designated classrooms, or student groups.
- Promote school groups initiated and organized by students that aim to establish a classroom environment that is inclusive, secure, and embracing.
- Folk music, art, and dance are unique to the community’s culture. The community gains a strong sense of self-assurance and strength from it. In order to increase community participation, these artistic and cultural expressions must be integrated with people’s livelihood activities. To establish a connection with employment prospects, endeavors should be undertaken to offer adequate financial assistance.
- To reap the benefits of pension programs, the community must be included.
- Educate the police about the difficulties encountered by the transgender community. The law will be applied in the event of dishonorable remarks and harassment.
- Inform the populace of their issues. Conscience’s impulse is crucial.
- To foster the inclusion of children with diverse gender identities, ensure equitable treatment of individuals across genders, and execute policies effectively, additional education is necessary for local governing bodies, policymakers, educational institutions, and families.
- In an effort to enhance transgender individuals’ rights and enhance societal awareness, it is imperative to emphasize transgender human rights matters through media outlets and other public platforms. It’s time to eliminate the stigma linked to media portrayal..
- Every transgender person’s unique requirements must be met by doctors and other healthcare professionals. To prevent psychological and social mistreatment and bias, advocacy initiatives should be organized for counselors, psychiatrists, and other experts in mental health.
- Although parents might encounter personal discomfort and firmly held conventional beliefs, it is essential for them to be educated and enlightened to provide backing for their gender nonconforming or transgender children. Parents should be conscious of the potential for their children to face violence beyond the home, such as at school, within the extended family, on playgrounds, or in other settings, and extend the requisite support. Additionally, they should

acknowledge the heightened stress experienced by a transgender or gender non-conforming child during puberty, leading to dysphoria when physical sexual characteristics conflict with their inherent sense of gender identity.

- Employers and employees in both the public and private sectors ought to be more sensitive to transgender issues after consulting with community groups and experts in diversity and inclusion in human resources. The processes of employee benefits, retention, promotion, and recruitment should all incorporate anti-discrimination policies. Transgender people should be included in workplace policies about sexual harassment.
- Policy and institutional changes that facilitate the access of marginalized groups, including the economically disadvantaged, to social security systems should incorporate transgender inclusion.

REFERENCES

1. Wikipedia. (n.d.). Johann Wolfgang von Goethe [Online] Available at [https://en.wikipedia.org/wiki/Johann_Wolfgang_von_Goethe#:~:text=Johann%20Wolfgang%20von%20Goethe%20\(28,botany%2C%20anatomy%2C%20and%20color.](https://en.wikipedia.org/wiki/Johann_Wolfgang_von_Goethe#:~:text=Johann%20Wolfgang%20von%20Goethe%20(28,botany%2C%20anatomy%2C%20and%20color.) [Accessed on September 2023]
2. Krishnan M. (2008). "Queer Pride" Parades in India. Available at DW <https://www.dw.com/en/queer-pride-parades-in-india/a-5212309>
3. Wilhelm AD. Titiya-Prakriti: people of the third sex: understanding homosexuality, transgender identity and intersex conditions through Hinduism. Bloomington, Indiana, USA: Xilbris; 2008.
4. The Quint. [Online] Available at <https://www.thequint.com/voices/opinion/homosexuality-rss-ancient-indian-culture-section-377#read-more>
5. Shrivastava R. (2021). Arun Kumar, gen-next RSS man for liaison between Sangh and BJP. India Today. [Online] Available from: <https://www.indiatoday.in/india/story/arun-kumar-gen-next-rss-liaison-sangh-bjp-1827538-2021-07-13>.
6. Case Summary: Navtej Singh Johar v/s Union Of India. AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016 D. No. 14961/2016. [Online] Available at <https://www.legalserviceindia.com/legal/article-6402-case-summary-navtej-singh-johar-v-s-union-of-india.html> [Accessed on September 2023]
7. Supra 3n.
8. Sarvaria SK. R.A. Nelson, Indian Penal Code 3738. New York, NY: LexisNexis.
9. Gupta A. Section 377 and the dignity of Indian homosexuals. Economic and Political Weekly. [Online] Available at <https://www.epw.in/journal/2006/46/special-articles/section-377-and-dignity-indian-homosexuals.html> [Accessed on September 2023]
10. Vanita R. Queering India: same-sex love and eroticism in Indian culture and society. New York, NY: Routledge; 2002.
11. Narrain S. The Queer Case of Section 377. [Online] Available at <http://www.sarai.net/publications/readers/05-bare-th acts/06 siddharth.pdf> [Accessed on September 2023]
12. Naz Foundation v. Government of NCT of New Delhi and Others, WP(C) No. 7455/2001. [Online] Available at <https://www.escri-net.org/caselaw/2009/naz-foundation-v-government-nct-new-delhi-and-others-wpc-no-74552001> [Accessed on September 2023]
13. Narrain A. The articulation of rights around sexuality and health: Subaltern Queer cultures in India in the Era of Hindutva in health and human rights. Sex Hum Rights Health. 2004; 7 (2): 142–164.
14. Civil Appeal No. 10972 OF 2013. [Online] Available at https://en.m.wikipedia.org/wiki/File:Section_377_-_CIVIL_APPEAL_NO.10972_OF_2013_Judgement.pdf [Accessed on September 2023]
15. National Legal Services Authority v. Union of India. Writ Petition (civil) No. 604 of 2013
16. Shashi Tharoor. (2018). Shashi Tharoor: It seems safer in many places to be a cow than a Muslim. The Print [Online]. Available from: <https://theprint.in/opinion/shashi-tharoor-it-seems-safer-in-many-places-to-be-a-cow-than-a-muslim/86621/>.
17. K.S. Puttaswamy v. Union of India, 2017. (2017) 10 SCC 1
18. Supra 14n.
19. Lawrence v. Texas, 539 U.S. 558. (2003). [Online] Available at <https://supreme.justia.com/cases/federal/us/539/558/> [Accessed on September 2023]

20. Sweeney R. Homosexuals and the right to privacy. CUMB L REV. 2018; 34: 171.
21. National Coalition of Gay and Lesbian Equality v. Minister of Justice. (CCT11/98) [1998] ZACC 15: 1999 (1) SA 6.
22. Ibid
23. Ratnam D. (2018). LGBTQ are the segment of society that has no rights: Keshav Suri. Hindustan Times. [Online] Available from: <https://www.hindustantimes.com/india-news/lgbtq-are-the-segment-of-society-that-has-no-rights-keshav-suri/story-NnJgrvziOp8t6k8dq7xrrO.html>
24. Krishna Priya Pallavi. (2018). Petitioner Ritu Dalmia on Section 377 verdict: I was trolled. Today I'm proud. India Today. [Online] Available from: <https://www.indiatoday.in/lifestyle/people/story/petitioner-ritu-dalmia-on-section-377-verdict-i-was-trolled-but-today-i-m-proud-1333741-2018-09-06>.
25. Times of India Blog. (2022). Navtej Singh Johar and others v Union of India: Supreme Court's moment of atonement. [Online] Available from: <https://timesofindia.indiatimes.com/readersblog/my-tryst-with-law/navtej-singh-johan-and-others-v-union-of-india-supreme-courts-moment-of-atonement-46075/>.
26. Arunkumar vs The Inspector General Of . . . on 22 April, 2019 WP(MD)No.4125 of 2019 and WMP(MD)No.3220 of 2019. [Online] Available at <https://indiankanoon.org/doc/188806075/> [Accessed on September 2023]