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## LGBTQ COMMUNITY IN INDIA A SOCIO-LEGAL ISSUE

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### I. ABSTRACT

*This research paper examines the position of the LGBTQ community in India as a socio legal issue, with a specific focus on constitutional guarantees, judicial developments and gaps in public policy. It traces the journey from colonial criminalisation under Section 377 of the Indian Penal Code to the recognition of sexual orientation and gender identity as protected facets of dignity, privacy and equality under Articles 14, 15, 19 and 21. It analyses key decisions such as NALSA, Puttaswamy and Navtej Singh Johar, and evaluates how far they have transformed access to education, work, family life and public spaces for LGBTQ persons. A central focus of the study is the constitutional architecture of reservation in higher education and the scope for inclusion of LGBTQ communities, especially transgender and gender nonconforming persons, within vertical and horizontal affirmative action frameworks. Using a socio legal method and drawing on reports, case law and policy documents, the paper maps continuing discrimination, implementation deficits and economic costs of exclusion. It then offers constitutionally viable recommendations for reform of higher education reservation policy and for a more coherent anti discrimination regime, aimed at realising substantive equality and inclusive citizenship for LGBTQ persons in India.*

### II. KEYWORDS

LGBTQ rights in India; constitutional equality and dignity; higher education reservation; transgender affirmative action; socio legal analysis.

### III. INTRODUCTION

#### A. Background of Research

The legal treatment of the LGBTQ community in India begins with the colonial transplantation of Section 377 of the Indian Penal Code, which criminalised consensual

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same sex intimacy as “carnal intercourse against the order of nature”. This provision entrenched criminal stigma, pushed queer identities into secrecy and reinforced heteronormative family, morality and citizenship ideals in law and society. After independence, institutions left this colonial framework largely untouched for decades, widening the gap between constitutional guarantees of liberty and equality and the lived realities of LGBTQ persons.<sup>3</sup>

Transformative constitutionalism opened doctrinal space to challenge this legacy, as courts started to read dignity, privacy and autonomy more robustly into Articles 14, 19 and 21. In *National Legal Services Authority v. Union of India* the Supreme Court recognised gender identity as an integral part of personhood and insisted that fundamental rights extend to transgender persons as “third gender”.<sup>4</sup> Later, in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, a nine judge Bench located sexual orientation within the core of the fundamental right to privacy.<sup>5</sup> These strands culminated in *Navtej Singh Johar v. Union of India*, where the Court decriminalised consensual same sex relations between adults and rejected public or religious morality as a basis to curtail queer lives.<sup>6</sup>

Yet contemporary socio legal conditions for LGBTQ persons in India remain fragile and uneven across regions, classes and identities. Empirical work documents discrimination in families, workplaces, schools, healthcare and housing, often taking the form of harassment, forced marriage, conversion practices, corrective violence and exclusion from welfare schemes. Studies further suggest that hostile attitudes and structural barriers limit access to justice, push many queer persons into informal or unsafe work, and expose them to higher risks of homelessness, mental health harms and hate

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<sup>3</sup> Indian Penal Code § 377 (1860) (India).

<sup>4</sup> *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

<sup>5</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

<sup>6</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

motivated crimes, especially where queer status intersects with caste, religion or gender nonconformity.<sup>7</sup>

### **B. Research Objectives**

1. To analyse the evolution of constitutional doctrine on sexual orientation and gender identity in India and to assess its impact on the legal personhood and citizenship of LGBTQ individuals.
2. To critically examine the structure, limits and justifications of vertical and horizontal reservations in higher education and to evaluate their suitability for inclusion of LGBTQ communities within affirmative action.
3. To identify and document the socio legal barriers that LGBTQ students encounter in schooling, university access, campus life and transition to employment, with attention to intersectional disadvantages.
4. To develop detailed policy recommendations for reforming higher education reservation and support mechanisms for LGBTQ persons, in a manner that is consistent with the equality code, judicial precedents and India's international human rights obligations.

### **C. Research Questions**

1. How has Indian constitutional jurisprudence on dignity, privacy and equality reshaped the legal status of LGBTQ persons from criminalisation under Section 377 IPC to post *Navtej Singh Johar* rights recognition?
2. To what extent does the existing constitutional architecture of reservation in higher education, including vertical and horizontal schemes, conceptually and practically accommodate LGBTQ communities, especially transgender and gender nonconforming persons?

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<sup>7</sup> Kaustubh Rajput, Socio-Economic Costs of LGBTQIA+ Exclusion in India, Research Paper, Indian Econ. Serv. (Dep't of Econ. Affs., Gov't of India 2023), <https://www.ies.gov.in/pdfs/Research-Paper-Kaustubh-Rajput.pdf> (last visited Feb. 23, 2026).

3. What socio legal patterns of discrimination, exclusion and vulnerability do LGBTQ persons face in accessing and completing higher education in India, and how do these patterns intersect with caste, class, gender and region?
4. Which concrete, constitutionally viable reforms in higher education reservation policy, and in the broader anti discrimination framework, are necessary to move from formal recognition of LGBTQ rights to substantive equality in educational spaces?

#### **IV. CONSTITUTIONAL ARCHITECTURE OF RESERVATION IN HIGHER EDUCATION**

##### **A. Equality, Classification and Protective Discrimination under the Constitution of India**

The equality code of the Constitution frames reservation in higher education through a movement from formal neutrality to substantive justice. Article 14 insists on equal protection, yet allows reasonable classification based on intelligible differentia and rational nexus. Early jurisprudence read equality in a narrow, anti classification way. In *State of Madras v. Champakam Dorairajan*, the Supreme Court struck down communal reservation in educational institutions and directly triggered the First Amendment insertion of Article 15(4) for socially and educationally backward classes and for Scheduled Castes and Scheduled Tribes.<sup>8</sup>

Articles 15(3), 15(4) and 15(5) then institutionalised protective discrimination as an engine of social change in higher education. Article 15(5) specifically enables special provisions for admission of backward classes and SCs and STs to educational institutions, including private but excluding minority institutions. The Court in *Ashoka Kumar Thakur v. Union of India* upheld the Ninety Third Constitutional Amendment and the Central Educational Institutions (Reservation in Admission) Act, 2006, and treated reservation in higher education as an instrument of substantive equality, subject to exclusion of creamy layer

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<sup>8</sup> *State of Madras v. Champakam Dorairajan*, 1951 SCR 525 (India).

and adherence to equality norms.<sup>9</sup> The 50 percent outer limit and the discipline of backwardness review, shaped by *Indra Sawhney v. Union of India*, still operate as constitutional guardrails.<sup>10</sup>

The One Hundred and Third Constitutional Amendment added Articles 15(6) and 16(6) and opened a distinct window for reservation based solely on economic disadvantages, including educational institutions. In *Janhit Abhiyan v. Union of India*, a three-judge majority upheld the EWS quota as a valid classification that does not destroy the basic structure. The decision shows that the equality scheme has internal flexibility to recognise new axes of deprivation, so long as classification remains reasonable and proportionate to the goal of educational inclusion.<sup>11</sup>

### **B. Constitutional Provisions on Educational Reservation**

The starting point lies in the general equality guarantees of Articles 14 and 15, which prohibit discrimination but also allow the State to make special provisions for disadvantaged groups in education. Article 15(1) bars discrimination on grounds including sex, while Article 15(3) authorises special measures for women and children, and this trio together sets a baseline for inclusive access to higher education that can logically extend to LGBTQ persons when courts read “sex” as including sexual orientation and gender identity.<sup>12</sup>

Article 15(4), inserted after *Champakam Dorairajan*, empowers the State to make “special provision” for the advancement of socially and educationally backward classes of citizens and for Scheduled Castes and Scheduled Tribes, explicitly including their interests in educational institutions. This clause constitutionalises compensatory discrimination and protects reservation policies in universities from attack under Article 29(2). The Supreme Court has consistently treated 15(4) as an enabling but not mandatory provision, yet it

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<sup>9</sup> *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1 (India).

<sup>10</sup> *Indra Sawhney v. Union of India*, 1992 Supp. (3) SCC 217 (India).

<sup>11</sup> *Janhit Abhiyan v. Union of India*, 2022 SCC OnLine SC 1540 (India).

<sup>12</sup> INDIA CONST. art. 15, cl. 1-3.

emphasises that non use of this power may itself undermine the promise of substantive equality in access to professional and technical education.<sup>13</sup>

Article 15(5) broadens the field by allowing special provisions for admission of backward classes, SCs and STs to “educational institutions”, whether aided or unaided, other than minority institutions. The Central Educational Institutions (Reservation in Admission) Act, 2006 rests directly on this clause. Judicial review in *Ashoka Kumar Thakur* upheld the validity of Article 15(5) and the 27 percent OBC reservation but insisted on exclusion of creamy layer and periodic review of backwardness. This framework can in principle support targeted measures in higher education for groups who face deep stigma and exclusion, including transgender students recognised as socially and educationally backward under NALSA.<sup>14</sup>

### C. Evolution of Amendments and Policy Shifts

The first major constitutional shift came through the Constitution (First Amendment) Act, 1951, which introduced Article 15(4) as a direct response to *Champakam Dorairajan* and restored the State’s power to design reservation in educational institutions for socially and educationally backward classes and for SCs and STs.<sup>15</sup>

Subsequent policy debates moved from individual discrimination to structured backwardness, especially after the Backward Classes Commission chaired by B.P. Mandal documented multi-dimensional educational, social and economic exclusion of Other Backward Classes and recommended substantial reservation in education and public employment.<sup>16</sup>

With the expansion of higher education and the rise of private institutions, Parliament adopted the Constitution (Ninety Third Amendment) Act, 2005, inserting Article 15(5) to

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<sup>13</sup> INDIA CONST. art. 15, cl. 4; M.P. Jain, *Indian Constitutional Law* 1162–67 (8th ed. 2018).

<sup>14</sup> INDIA CONST. art. 15, cl. 5; Central Educational Institutions (Reservation in Admission) Act, No. 5 of 2007, INDIA CODE (2007); *Nat’l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

<sup>15</sup> The Constitution (First Amendment) Act, 1951 (India).

<sup>16</sup> Gov’t of India, Backward Classes Comm’n, Report of the Backward Classes Commission (Dec. 31, 1980), <https://ruralindiaonline.org/en/library/resource/report-of-the-backward-classes-commission-volumes-i-and-ii/> (last visited Feb. 23, 2026).

authorise special provisions for admission of backward classes, SCs and STs in all educational institutions, including unaided non minority institutions, which later enabled the Central Educational Institutions (Reservation in Admission) Act to mandate 15 percent, 7.5 percent and 27 percent reservation for SCs, STs and OBCs in central universities and institutes.<sup>17</sup>

Executive and legislative measures implementing OBC reservations in premier institutions from 2008 onwards reshaped access to elite higher education and produced measurable gains in regular employment for OBC graduates, though research shows that reservations alone do not dismantle stigma or the deeper caste hierarchy inside campuses.<sup>18</sup>

The Constitution (Eighty Sixth Amendment) Act, 2002, by inserting Article 21A and recasting Article 45, placed education within the core of fundamental rights discourse, while the Constitution (One Hundred and Third Amendment) Act, 2019, which introduced a 10 percent EWS quota through Article 15(6), signalled a shift towards economic criteria and layered an additional axis of reservation over existing caste based schemes.<sup>19</sup> This history of flexible amendments and policy recalibration shows that the reservation framework is not closed; it can in future accommodate carefully designed measures for LGBTQ, and particularly transgender, students in higher education who face structural exclusion similar to other backward groups.

## V. JUDICIAL REVIEW OF EDUCATIONAL RESERVATIONS

Courts in India review educational reservations through the lens of the equality code and the discipline of reasonable classification. In *State of Madras v. Champakam Dorairajan*, the Supreme Court struck down the communal Government Order that fixed religion

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<sup>17</sup> The Constitution (Ninety Third Amendment) Act, 2005 (India); Central Educational Institutions (Reservation in Admission) Act, No. 5 of 2007, INDIA CODE.

<sup>18</sup> T. Chatterjee, *Did Reservation in Higher Education Improve OBC Employment Outcomes?* Ctr. Dev. Stud., Working Paper No. 500 (2019), <https://cde.edu/wp-content/uploads/WP500-REVISED.pdf> (last visited Feb. 23, 2026).

<sup>19</sup> The Constitution (Eighty Sixth Amendment) Act, 2002 (India); The Constitution (One Hundred and Third Amendment) Act, 2019 (India).

and caste based quotas in medical and engineering colleges as violative of Article 29(2), and also read the original text of the Constitution as not authorising reservations in education, which immediately forced a constitutional amendment to restore legislative space for such measures.<sup>20</sup> The Constitution (First Amendment) Act, 1951 therefore becomes the first clear signal that Parliament may recalibrate the balance between individual rights and group based affirmative action in higher education, subject to later judicial control under the basic structure.<sup>21</sup>

In *M.R. Balaji v. State of Mysore*, the Court reviewed an order reserving a very high proportion of seats in professional colleges and held that reservation under Article 15(4) must remain a minority of seats, that backwardness cannot be stretched to include almost the entire population, and that a rough 50 percent ceiling is inherent in the idea of equality.<sup>22</sup> *Indra Sawhney v. Union of India*, though decided in the context of employment under Article 16(4), reaffirmed the 50 percent rule, treated reservations as a facet of equality rather than an exception, insisted on objective indicators of backwardness, and excluded the creamy layer from Other Backward Classes, which later informed educational reservation policy as well.<sup>23</sup>

Judicial review has also addressed territorial and institutional preferences in higher education. In *Dr. Pradeep Jain v. Union of India*, the Court accepted a limited measure of domicile or institutional preference for medical admissions but warned that excessive residential quotas undermine national integration and merit, especially at the postgraduate level.<sup>24</sup> Later cases built on this reasoning to differentiate between basic and super speciality education, where the Court insisted that merit should have almost complete primacy, with only narrow room for reservation or local preference.

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<sup>20</sup> *State of Madras v. Champakam Dorairajan*, 1951 SCR 525 (India).

<sup>21</sup> The Constitution (First Amendment) Act, 1951 (India).

<sup>22</sup> *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649 (India).

<sup>23</sup> *Indra Sawhney v. Union of India*, 1992 Supp. (3) SCC 217 (India).

<sup>24</sup> *Dr. Pradeep Jain v. Union of India*, (1984) 3 SCC 654 (India).

The interface between reservation and institutional autonomy came before a larger Bench in *T.M.A. Pai Foundation v. State of Karnataka*, where the Court recognised the right of minorities to establish and administer educational institutions while still allowing the State to regulate admissions in the interest of fairness and transparency.<sup>25</sup> Subsequent decisions, including those on the Right of Children to Free and Compulsory Education Act, drew from this line to hold that unaided non minority institutions can be subjected to reservation-like obligations, while unaided minority institutions enjoy stronger protection, which shapes the range of policy options for inclusive access that may benefit LGBTQ students in private universities.

The validity of the Ninety Third Constitutional Amendment and of the Central Educational Institutions (Reservation in Admission) Act, 2006 came under direct challenge in *Ashoka Kumar Thakur v. Union of India*. The Supreme Court upheld the 27 percent OBC reservation in central educational institutions, but made judicial review more intensive by requiring reliable data on backwardness, exclusion of creamy layer and periodic review, and by reiterating that total reservation including SC, ST and OBC quotas should normally stay within 50 percent.<sup>26</sup> The CEI Act thus stands, but only within these constitutional guardrails, which any future LGBTQ specific measure in central institutions would also have to respect.<sup>27</sup>

The Court has recently tested reservation amendments against the basic structure. In *Janhit Abhiyan v. Union of India*, a majority upheld the One Hundred and Third Constitutional Amendment that introduced the 10 percent EWS quota in education and employment, holding that Parliament may create a new compartment of reservation based purely on economic criteria and may exclude SCs, STs and OBCs from that compartment, without destroying the equality code.<sup>28</sup> Academic commentary reads this verdict as expanding the State's flexibility in designing reservation, while at the same

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<sup>25</sup> *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481 (India).

<sup>26</sup> *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1 (India).

<sup>27</sup> Central Educational Institutions (Reservation in Admission) Act, No. 5 of 2007, INDIA CODE.

<sup>28</sup> *Janhit Abhiyan v. Union of India*, 2022 SCC OnLine SC 1540 (India).

time leaving unanswered questions about interaction with the 50 percent ceiling and about the future treatment of other marginalised groups.<sup>29</sup>

For LGBTQ communities, judicial review of educational reservations acquires a specific edge after *Nat'l Legal Services Authority v. Union of India*, where the Supreme Court directed governments to treat transgender persons as a socially and educationally backward class and to extend reservations in education and employment.<sup>30</sup> Scholarship notes that NALSA uses reservation as a structural remedy for stigma and exclusion, not merely as a tool for economic uplift, and argues that courts should interpret existing doctrines on backwardness, creamy layer and ceilings in a way that does not dilute the transformative potential of transgender and queer affirmative action in higher education.<sup>31</sup> Privacy and dignity jurisprudence in *Justice K.S. Puttaswamy and Navtej Singh Johar*, which treats sexual orientation and gender identity as integral to equality, strengthens this trajectory by pushing judicial review away from narrow suspicion of classification and towards a more rights enhancing scrutiny of how reservation schemes include or exclude sexual and gender minorities in universities.<sup>32</sup>

## VI. CONTEMPORARY CONSTITUTIONAL CHALLENGES

### A. Reservation, Merit and Standards of Excellence in Higher Education

Judicial discourse frames “merit” not as a neutral, pre social attribute but as a construct shaped by unequal access to schooling, language, nutrition and social capital. In *Ashoka Kumar Thakur v. Union of India*, the Supreme Court accepted that reservation in central educational institutions can promote substantive equality without destroying excellence,

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<sup>29</sup> R. Pandey, *EWS Quota Verdict: SC Arrived at Proper Conclusion But Did Not Address Core Issue, in Quota for Economically Weaker Sections in Education* (Rohit De ed., 2025), <https://brill.com/edcollchap/book/9789004748736/BP000015.pdf> (last visited Feb. 23, 2026).

<sup>30</sup> *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India).

<sup>31</sup> S. Parashar, *Inclusion of Transgender Community within Socially and Educationally Backward Classes: Examining the Deeper Concerns*, 2 *ILI L. Rev.* 105 (2017), <https://ili.ac.in/pdf/sakshi.pdf> (last visited Feb. 23, 2026).

<sup>32</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

so long as the State uses credible data, excludes creamy layer and respects the overall 50 percent ceiling.<sup>33</sup>

Case law on medical and technical education shows courts balancing institutional standards with social justice. In *Dr. Pradeep Jain v. Union of India* the Court allowed only limited domicile and institutional preference and warned that excessive quotas may dilute national integration and quality in advanced education.<sup>34</sup> Later in *Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan*, the Court read high standards in super speciality courses as a compelling reason to greatly restrict reservation, but still left space for State intervention at undergraduate and postgraduate levels where widening access remains a paramount goal.<sup>35</sup>

Debates on reservation for Other Backward Classes after implementation of the Central Educational Institutions (Reservation in Admission) Act, 2006 reveal that diversity can coexist with high performance. Empirical work on elite Indian Institutes of Technology and central universities suggests that gaps in initial entry scores narrow over time when institutions provide robust academic support, and that reservations improve representation without any proven collapse of academic output or research quality.<sup>36</sup> This evidence weakens the claim that inclusion of structurally disadvantaged groups, including LGBTQ students, inevitably trades off against excellence.

### **B. Horizontal and Vertical Reservations: Overlaps and Tensions**

The reservation framework distinguishes vertical reservations for SCs, STs and OBCs from horizontal reservations for groups such as women, persons with disabilities or other special categories. Vertical quotas reflect caste or community-based backwardness, while horizontal quotas cut across all categories and get “worked into” each vertical compartment. This design tries to capture layered disadvantage, but in practice it often

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<sup>33</sup> *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1 (India).

<sup>34</sup> *Dr. Pradeep Jain v. Union of India*, (1984) 3 SCC 654 (India).

<sup>35</sup> *Post Graduate Inst. of Med. Educ. & Research v. K.L. Narasimhan*, (1997) 6 SCC 283 (India).

<sup>36</sup> *Satish Deshpande & Yogendra Yadav, Redesigning Affirmative Action: Castes and Benefits in Higher Education*, 43 *Econ. & Pol. Wkly.* 93 (2008).

produces confusion in seat allocation, litigation and inconsistent administrative practice in universities.<sup>37</sup>

The Supreme Court in *Indra Sawhney v. Union of India* read this distinction into the equality code and later in *Anil Kumar Gupta v. State of U.P.*, (1995) 5 SCC 173, clarified that horizontal reservations must be implemented on a compartmentalised basis within each vertical category rather than by a simple overall adjustment. Courts insisted that, for example, posts reserved for women within SC quota should first be filled from SC women; only then can any unfilled seats spill over, avoiding double counting or erosion of the basic vertical quota.<sup>38</sup>

In *Rajesh Kumar Daria v. Rajasthan Public Service Commission*, (2007) 8 SCC 785, and later *Deepa E.V. v. Union of India*, (2017) 12 SCC 680, the Court reiterated that candidates who secure selection on merit in the open category cannot be pushed back into reserved slots for the purpose of working out horizontal quotas. These rulings try to protect both the integrity of vertical reservations and the distinct rationale of horizontal protection, yet implementation remains messy, especially where data on intersecting identities is weak or administrative capacity is thin.<sup>39</sup>

## VII. SOCIO-LEGAL IMPACT AND POLICY ASSESSMENT

Decriminalisation of consensual same sex relations and recognition of transgender persons as a “third gender” changed the formal constitutional status of LGBTQ communities, yet daily lives still show a strong gap between rights on paper and realities on ground. Courts read dignity, autonomy and identity into Articles 14, 15, 19 and 21 and directed governments to treat transgender persons as socially and educationally backward for purposes of affirmative action, but institutional practices in schools,

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<sup>37</sup> Centre for Law & Policy Research, *Reservations for Transgender Persons: Draft Policy Brief* (2018), <https://clpr.org.in/wp-content/uploads/2018/12/Reservations-for-Transgender-Persons-Draft-Policy-Brief.pdf> (last visited Feb. 23, 2026).

<sup>38</sup> *Anil Kumar Gupta v. State of U.P.*, (1995) 5 SCC 173 (India).

<sup>39</sup> *Deepa E.V. v. Union of India*, (2017) 12 SCC 680 (India).

universities and welfare offices often remain hesitant or openly hostile. Legal reform therefore sits beside persistent social stigma and bureaucratic resistance.<sup>40</sup>

Empirical studies by the National Human Rights Commission document that a majority of transgender persons face discrimination in education, high drop out rates and exclusion from mainstream employment, with many pushed into informal work, begging or sex work. The same research records frequent verbal and physical violence in public spaces, including educational institutions and healthcare settings. Such findings show that social prejudice and administrative neglect systematically block access to the very schemes and rights created in the name of inclusion, so the socio legal impact of progressive judgments remains uneven and fragile.<sup>41</sup>

Economic analysis now underlines that exclusion of LGBTQ people is not only a rights problem but also a development issue. Research on India estimates that stigma, mental health harms, productivity loss and barriers to education and formal employment can together cost up to a nontrivial share of national GDP each year. Lost incomes, lower tax receipts and higher public health burdens all flow from discrimination. These findings support a policy shift from charity-based schemes to robust equality measures, including reservation in higher education, targeted scholarships and anti discrimination enforcement, because these tools help unlock human capital rather than merely offer symbolic recognition.<sup>42</sup>

Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 to prohibit discrimination in education, employment, healthcare, housing and public services, and to mandate inclusive education in institutions funded or recognised by the State. The Act, along with later rules and guidelines, requires authorities to recognise self-identified

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<sup>40</sup> Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 SCC 438 (India).

<sup>41</sup> Nat'l Hum. Rts. Comm'n, Study on Human Rights of Transgender as a Third Gender (Kerala Dev. Soc'y 2017), [https://nhrc.nic.in/assets/uploads/training\\_projects/Study\\_HR\\_transgender\\_03082018.pdf](https://nhrc.nic.in/assets/uploads/training_projects/Study_HR_transgender_03082018.pdf) (last visited Feb. 23, 2026).

<sup>42</sup> Kaustubh Rajput, Socio-Economic Costs of LGBTQIA+ Exclusion in India, Indian Econ. Serv. Res. Paper (Dep't of Econ. Affs. 2023), <https://www.ies.gov.in/pdfs/Research-Paper-Kaustubh-Rajput.pdf> (last visited Feb. 23, 2026).

gender, issue certificates and establish welfare schemes, yet criticism points to bureaucratic screening procedures, weak enforcement and lack of clear reservation mandates in universities. Implementation gaps dilute the transformative potential of the statute and leave many students to negotiate hostile campuses with little structural support.<sup>43</sup>

## VIII. FINDINGS, CONCLUSIONS AND SUGGESTIONS

### A. Consolidated Findings of the Study

The study finds that constitutional jurisprudence has moved decisively from criminalisation and erasure of queer existence to a framework that recognises sexual orientation and gender identity as protected facets of dignity, autonomy and equality under Articles 14, 15, 19 and 21. Landmark rulings in *National Legal Services Authority, Justice K.S. Puttaswamy* and *Navtej Singh Johar* together construct a rights based narrative in which LGBTQ persons stand as full constitutional subjects rather than as mere objects of morality regulation.<sup>44</sup>

The research also shows that this rights narrative has not yet been translated into comprehensive legislative architecture. Parliament has enacted the Transgender Persons (Protection of Rights) Act, 2019, but there is still no horizontal anti discrimination statute that explicitly covers sexual orientation across education, housing, employment and digital spaces. Fragmented sectoral policies, service guidelines and executive circulars attempt to fill gaps, yet they leave large zones of everyday life unregulated, especially for lesbian, bisexual, intersex, and nonbinary persons whose needs are often invisible even within existing “transgender” policy frames.<sup>45</sup>

Socio legal data indicates that LGBTQ persons in India experience exclusion at multiple institutional sites. Studies by national and international agencies record high levels of

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<sup>43</sup> Transgender Persons (Protection of Rights) Act, No. 40 of 2019, INDIA CODE.

<sup>44</sup> Danish Sheikh, Reading Navtej Alongside NALSA and Puttaswamy: The Emergence of the “Right to Intimacy” in Indian Constitutional Law, 12 NUJS L. Rev. 1 (2019).

<sup>45</sup> Priya B. Gupta, The Transgender Persons (Protection of Rights) Act, 2019: A Critique from the Lived Realities of Gender Non-Conforming People in India, 58 Econ. & Pol. Wkly. 45 (2023).

bullying and drop out in schools, barriers to higher education, discrimination in recruitment and promotion, and denial of housing or healthcare, with especially severe consequences for those whose queer identity intersects with caste, poverty or disability. The research confirms that stigma and violence are not isolated events but form a pattern of structural marginalisation that the current legal regime has only partially addressed.<sup>46</sup> The analysis of reservation and higher education policy suggests that LGBTQ communities, particularly transgender persons, fit the conceptual logic of “socially and educationally backward classes” as used in affirmative action jurisprudence. Judicial directions in *NALSA* already ask States to extend reservations in education and employment, and policy briefs by expert bodies propose a horizontal model of reservation for transgender and gender nonconforming persons layered across existing SC, ST and OBC quotas. This study therefore finds that failure to concretise such measures in university admissions and scholarships creates a continuing rights deficit.<sup>47</sup> The study further finds that economic and public health research now treats LGBTQ exclusion as a measurable development cost. Evidence on India links discrimination to higher rates of depression, suicidality, HIV vulnerability, and to lower educational attainment and labour market outcomes. These impacts in turn produce macro economic losses through foregone productivity and increased health expenditure. Policy makers thus have strong instrumental as well as rights-based reasons to invest in inclusive education, anti discrimination enforcement and targeted social protection for LGBTQ people.<sup>48</sup>

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<sup>46</sup> Nat'l Hum. Rts. Comm'n, Study on Human Rights of Transgender as a Third Gender (Kerala Dev. Soc'y 2017), [https://nhrc.nic.in/sites/default/files/Study\\_HR\\_transgender\\_03082018.pdf](https://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf) (last visited Feb. 23, 2026).

<sup>47</sup> Centre for Law & Policy Research, Reservations for Transgender Persons: Policy Brief (2018), <https://clpr.org.in/wp-content/uploads/2018/12/Reservations-for-Transgender-Persons-Draft-Policy-Brief.pdf> (last visited Feb. 23, 2026).

<sup>48</sup> M.V. Lee Badgett, The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India (World Bank 2014), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/527261468035379692> (last visited Feb. 23, 2026).

## B. Concluding Observations on Constitutional Viability

The constitutional scheme, as interpreted after *NALSA*, *Puttaswamy* and *Navtej Singh Johar*, is normatively capable of sustaining a wide-ranging equality project for LGBTQ communities. The Supreme Court has already read sexual orientation and gender identity into Articles 14, 15 and 21, treated them as part of intrinsic dignity, and rejected majoritarian or religious morality as grounds to curtail queer life. This doctrinal shift shows that measures which protect LGBTQ persons, including affirmative action in education, rest on strong constitutional foundations and not on policy grace alone.<sup>49</sup>

The equality code, when read through substantive equality, also permits carefully structured reservations and special provisions for groups that face stigma and structural exclusion. Case law on reservations accepts that the State may use classification to dismantle historic disadvantage so long as it respects reasonableness, proportionality and basic structure limits. Locating transgender persons within socially and educationally backward classes in *NALSA* sits comfortably with this logic, and a horizontal model of reservation across existing SC, ST and OBC quotas for gender and sexual minorities remains constitutionally defensible if designed with reliable data, narrow tailoring and clarity on seat computation.<sup>50</sup>

Concerns about the 50 percent ceiling, institutional autonomy and standards of excellence do not create an insurmountable bar to LGBTQ inclusive policies. Jurisprudence from *Indra Sawhney* to *Janhit Abhiyan* shows that Parliament and state legislatures enjoy substantial leeway to recalibrate reservation architecture, introduce new compartments such as EWS, and balance social justice with merit, subject to reasoned justification and non arbitrariness. Within this framework, limited seats, scholarships or support

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<sup>49</sup> Danish Sheikh, Reading Navtej Alongside NALSA and Puttaswamy: The Emergence of the “Right to Intimacy” in Indian Constitutional Law, 12 NUJS L. Rev. 1 (2019).

<sup>50</sup> Centre for Law & Policy Research, Reservations for Transgender Persons: Policy Brief (2018), <https://clpr.org.in/wp-content/uploads/2018/12/Reservations-for-Transgender-Persons-Draft-Policy-Brief.pdf> (last visited Feb. 23, 2026).

programmes for LGBTQ students in higher education can be defended as fine tuning rather than as a new, destabilising quota bloc.<sup>51</sup>

### C. Recommendations for Reform in Higher Educational Reservation Policy

Reservation policy in higher education should explicitly recognise transgender and gender nonconforming persons as beneficiaries of affirmative action, in line with *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India), which directs States to treat transgender persons as socially and educationally backward and to extend reservations in education and employment. Legislatures should translate this mandate into clear statutory provisions that identify the beneficiary class, define the scope of reservation in higher and professional education, and specify how seats are to be calculated and filled.<sup>52</sup>

A horizontal model of reservation across all caste-based categories offers a constitutionally sound and practically workable route. Transgender and intersex status cuts across SC, ST, OBC and unreserved groups, so a compartmentalised horizontal quota for such students within each vertical category better reflects intersectional disadvantage and avoids competition with existing caste entitlements. Policy work already proposes such a model, including central legislation that fixes a minimum percentage, permits States and universities to raise it based on local data, and requires periodic review of coverage and outcomes.<sup>53</sup>

Implementation needs to be anchored in detailed regulatory guidelines for universities and colleges. The University Grants Commission should revise its "Action Plan for Transgender Community" to incorporate a standard framework for transgender reservation in admissions, including compulsory gender inclusive application forms, clear instructions on working out horizontal quotas, prohibition of arbitrary medical

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<sup>51</sup> Tarunabh Khaitan, *The Eclipse of the Constitution: A Court, a Party, and the People*, 16 *ICON* 191 (2018).

<sup>52</sup> Danish Sheikh, *Reading Navtej Alongside NALSA and Puttaswamy: The Emergence of the "Right to Intimacy"* in *Indian Constitutional Law*, 12 *NUJS L. Rev.* 1 (2019).

<sup>53</sup> Centre for Law & Policy Research, *Reservations for Transgender Persons: Draft Policy Brief* (2018), <https://clpr.org.in/wp-content/uploads/2018/12/Reservations-for-Transgender-Persons-Draft-Policy-Brief.pdf> (last visited Feb. 23, 2026).

proof, and robust grievance mechanisms in every campus. To prevent tokenism, institutions should be obliged to publish annual data on applications, admissions, dropouts and placement outcomes of LGBTQ students, with appropriate privacy safeguards.<sup>54</sup>

Reservation policy must work together with financial and academic support. Targeted scholarships, fee waivers, hostel prioritisation and bridge courses for LGBTQ students can compensate for earlier educational disruption caused by stigma and violence. Evidence on social exclusion and health vulnerability of hijras and transgender women in India shows that without such structural support, many drop out even after gaining admission. Integrating mental health services, peer support groups and gender-neutral facilities into reservation design will therefore improve retention and completion rather than merely opening the door at the entry stage.<sup>55</sup>

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<sup>54</sup> Univ. Grants Comm'n, Action Plan of UGC on the Welfare of Transgender Community in Higher Education Institutions (Letter No. F.1-2/2014(SA-III), Feb. 12, 2015).

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