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LEGAL RIGHTS OF LGBTQ+ & CHALLENGES IN THE CONTEMPORARY ERA

Dr. Komal N. Khajone¹ & Dr. Sandeep C. Nagarale²

I. ABSTRACT

Recognition and enforcement of the rights of LGBTQIA+ individuals is setting up a landmark for current constitutional and human rights debates. People who identify with the LGBTQIA+ umbrella have traditionally been marginalized and criminalized by society, and denied legal recognition of their identity, dignity and equality, and have waged a protracted struggle for equality before the law. The right to self-identified gender was acknowledged in the case of National Legal Services Authority (NLSA) v. Union of India, while the right to sexual autonomy was upheld in the decriminalisation of consensual homosexuality between adults in Navtej Singh Johar v. Union of India. Beyond these, the Transgender Persons (Protection of Rights) Act, 2019 will prohibit discrimination and promote welfare programs for transgender people – but the process to certify the act has faced criticism, as well as the lack of reservations. The Indian Penal Code (IPC) was replaced by the Bharatiya Nyaya Sanhita, 2023 which removed Section 377 which provided no legal protection for male victims of non-consensual sexual acts. The IPC was replaced by Bharatiya Nyaya Sanhita, 2023, which was intended to remove Section 377, but had no gender-neutral sexual offence provision for non-consensual sexual acts. The doctrinal method adopted in this paper highlights the evolution of rights of the LGBTQIA+ community in India from a constitutional perspective of equality and non-discrimination, privacy and personal liberty and explores adoption rights and marriage rights as outlined in the Hindu Adoptions and Maintenance Act, 1956, the Juvenile Justice Act, 2015 and the Hindu Marriage Act, 1955. The paper concludes by emphasising the importance of effective enforcement, sensitisation programmes and intersectional legal protection to create tangible social inclusion and realise constitutional rights that are due to the LGBTQIA+ community in India.

¹ Assistant Professor, School of Law, G H Rasoni University, Amravati (India). Email: komalkhajone7@gmail.com

² Professor, Swatantrya Senani Jawahrlal Darda College of Law, Yavatmal (India). Email: dr.sandeepan20@gmail.com

II. KEYWORDS

LGBTQIA+ rights, gender identity, legal evolution, inclusivity, constitutional protection

III. INTRODUCTION

The rights of the LGBTQIA + has always been ignored and consequently the minority of the community has been subjected to widespread discrimination. But this has changed over the recent years as the issue of gender diversity has received substantial legal progress in a search to stop gender harassment on their basic rights. These reforms indicate a growing recognition of the inherent dignity and equality of individuals who identify with sexual and gender minority communities, a recognition increasingly reflected in constitutional principles and international human rights standards. There has been some substantial improvement in India. The *NALSA v. Union of India*³, the Supreme Court recognised the rights of transgender persons to equality, dignity, self-identification, and non-discrimination under Articles 14, 15, 16, 19(1)(a), and 21 of the Constitution of India. Further on, the passing of the Transgender Persons (Protection of Rights) Act, 2019, was directed towards formalizing with ban on possible discrimination and a promise of access to the primary services. The Act is expected to overcome the systematic injustices by education, healthcare, employment and social welfare mechanisms. Its provisions and implementation have however been criticised as ones that are not quite consistent with the aspirations and realities of life by the community.

A. Research Objectives

The present research paper seeks to achieve the following objectives:

1. To trace the constitutional and judicial evolution of LGBTQIA+ rights in India, particularly through landmark decisions recognising dignity, privacy, equality, and non-discrimination.

³ *National Legal Services Authority v Union of India* (2014) 5 SCC 438

2. To examine the legislative framework governing LGBTQIA+ persons, with specific reference to the Transgender Persons (Protection of Rights) Act, 2019 and its practical adequacy.
3. To analyse the implications of the transition from the Indian Penal Code, 1860 to the Bharatiya Nyaya Sanhita, 2023 for the protection of LGBTQIA+ persons against sexual violence and discrimination.
4. To assess continuing implementation gaps in healthcare, employment, education, housing, and family recognition affecting LGBTQIA+ persons in India.
5. To suggest legal and policy reforms for strengthening substantive equality, social inclusion, and access to justice for LGBTQIA+ communities.

B. Research Questions

The present research paper seeks to address the following research questions:

1. How has the constitutional jurisprudence of the Supreme Court of India shaped the recognition of dignity, equality, privacy, and non-discrimination for LGBTQIA+ persons?
2. Whether the Transgender Persons (Protection of Rights) Act, 2019 adequately secures substantive equality, identity recognition, and protection from discrimination for transgender persons in India?
3. Does the Bharatiya Nyaya Sanhita, 2023 adequately protect LGBTQIA+ persons from sexual violence in the absence of a provision equivalent to the former Section 377 of the Indian Penal Code, 1860?
4. To what extent has judicial recognition of gender identity and sexual orientation translated into effective legal protection in areas such as marriage, adoption, healthcare, employment, and family recognition?

C. Research Hypotheses

1. The absence of a dedicated, gender-neutral sexual offence provision in the Bharatiya Nyaya Sanhita, 2023 leaves male, transgender, and intersex victims of non-consensual sexual acts without statutory protection equivalent to that available to cisgender women.

2. Judicial recognition of self-identified gender in National Legal Services Authority v. Union of India and Navtej Singh Johar v. Union of India has outpaced corresponding legislative reform, such that adoption and marriage rights for transgender and same-sex couples remain dependent on judicial interpretation rather than a clear statutory framework.
3. The certification requirement under the Transgender Persons (Protection of Rights) Act, 2019 operates as a form of bureaucratic gatekeeping that is inconsistent with the right to self-identification recognised in NALSA.
4. The principal barrier to substantive equality for LGBTQIA+ persons in India lies not in the absence of constitutional or statutory recognition but in deficient implementation, enforcement, and administrative accountability.

D. Research Methodology

The present study adopts a doctrinal and analytical legal research methodology. It is based primarily on the examination of constitutional provisions, statutory materials, judicial precedents, and relevant international legal instruments concerning the rights and protection of LGBTQIA+ persons. The primary sources relied upon include the Constitution of India, landmark decisions of the Supreme Court of India on equality, dignity, privacy, gender identity, and sexual orientation, the Transgender Persons (Protection of Rights) Act, 2019, and the Bharatiya Nyaya Sanhita, 2023. The study also draws upon secondary sources such as books, journal articles, Law Commission materials, policy documents, reports of national and international institutions, and scholarly commentaries.

A limited comparative approach is used to understand broader international standards relating to non-discrimination, gender identity, sexual orientation, healthcare access, employment rights, family recognition, and protection from violence. The research does not involve empirical fieldwork; rather, it critically evaluates the existing legal framework and implementation gaps in India. The methodology is therefore designed to assess whether current constitutional, statutory, and policy measures provide effective and substantive protection to LGBTQIA+ persons.

IV. INTERNATIONAL FRAMEWORK

A. THE Universal Declaration of Human Rights (UDHR) 1948

The " UDHR, the "Declarations of Human rights as well as the Vienna Declaration and Programme of Action insist that all human beings have the human rights of having a sense of inherent dignity and freedom and that the human beings must learn to relate with other humans in the spirit of brotherhood. One of the provisions is the right to life, liberty and personal security that is assured to everyone. Equality before the law is a guiding ideology, which is promoting the fact that no individual will be discriminated against in any given territory.⁴

International human rights systems believe in fundamental freedoms of everybody regardless of their gender identity. These include the right to life, the right to privacy, right to family, the right to work against torture and inhumane treatment, right to speech, right to assemble and associate, and the right to against discrimination. As shown in the Vienna Declaration and Programme of Action, the state has the main responsibility of ensuring that it respects and secures these rights of every citizen.

Key international instruments including the '*United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights*' firmly enshrine the principle of 'non-discrimination.' The governments must ensure that such protections are shared by everyone living in their territories regardless of their ethnicity, skin colour, sex, language, religion, political beliefs, nationality, social background, state of birth or any other distinguishing factor. Furthermore, states are also legally obligated under various international treaties to provide these, and so are the guarantees under 'Article 3' of the UDHR, and under 'Article 6' of the ICCPR express guarantees of the fundamental rights to life, liberty and security.⁵

⁴ Universal Declaration of Human Rights, 1948, preamble, arts. 1, 3, 7; Vienna Declaration and Programme of Action, World Conference on Human Rights, U.N. Doc. A/CONF.157/23 (25 June 1993), preamble para. 1.

⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 9.

B. The International Covenant on Civil and Political Rights (ICCPR) 1966

Right to life is a natural right of every human being which is protected by legal regulations of all countries in the world. Actions against torture, inhumane and degrading treatment shall not be committed on any human being under any circumstances. The principle of equality before the law is one of the most important principles as it does not provide any individual arbitrariness and unlawfulness interference in the situations about the right to privacy in person, families, residence or communications. Each country and societies have the sovereign right to decide on the way they want to go and hence, they have a free hand to set their political identity and strive to enhance their economic, social and cultural life without being forced by an external power.

The signatories of the Covenant regard social welfare to include the right of social security benefits as basic right entitlements. In addition, the parties making the Covenant recognise the right to the adequate standard of living which is defined as the existence of the basic requirements like nutrition, clothes and shelter, as well as the ongoing improvement of the conditions of living. States must take the measures in order to actualize these rights not to ignore the fact that international cooperation is a form of voluntary consensus which is an essential part in achieving its success in the delivery of these rights.⁶

C. The European Convention on Human Rights, 1950

The ECHR was established in 1950 to safeguard human rights and basic freedoms on a regional scale. It was the first international convention to defend the rights outlined in the Universal Declaration of Human Rights. The ECHR has undergone changes, including the prohibition of transgenderism, which the European Court of Human Rights has deemed serious violations of the right to life. Laws criminalizing consensual same-sex activities between adults are also considered violations of the right to private life under Article 8. In 1981, the ECHR ruled that criminalizing consensual homosexual acts and subjecting consenting homosexuals to investigation

⁶ ICESCR (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 11(1).

violates Article 8, stating that such restrictions cannot be justified on moral grounds or for protecting other rights. The ECHR has extensive jurisprudence on sexual orientation issues, with the European Commission on Human Rights contributing significantly to its development until its dissolution in 1998.⁷

In *Lustig-Prean and 'Beckett v. the United Kingdom'*⁸, Former British armed forces members claimed they were dismissed due to their homosexuality, arguing that this breach of their right to respect for private and family life was a grave infringement of their right to freedom. The Court unanimously concluded that Article 8 of the Convention had been breached, based on their additional submission. This case highlights the importance of respecting private and family life in military service. In another case, *Salgueiro da Silva Mouta v. Portugal*⁹ The court ruled that denying custody of a child solely based on a father's sexual orientation is an infringement on his right to family and private life, as per Article 8 ECHR. The court also noted that Article 14 of the Convention prohibits discrimination based on sexual orientation and gender identity. However, the court's decisions do not apply to private sadomasochistic acts, which may be banned based on public health and morality. The court has extensive case law on sexual orientation and transgender concerns.¹⁰

V. LAW RELATED TO RIGHTS OF LGBTQIA+ IN INDIA

LGBTQIA+ individuals are those who do not conform to traditional gender roles and are considered non-conforming. The term LGBTQIA+ originated in the mid-1990s and is now used to encompass a wide range of identities and experiences, including homosexuals, cis and trans men and women, opposite-sex individuals, and those who identify as neither male nor female. Those who do not identify as LGBTQIA+ but face societal pressures and physical abuse are also considered LGBTQIA+. The terms gender variety and gender non-conforming are often used interchangeably to describe LGBTQIA+ people. In India, there are several transgender communities, including

⁷ Henry J Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (2nd edn, Oxford University Press 2000).

⁸ *Lustig-Prean and Beckett v United Kingdom* (2000) 29 EHRR 548 (App nos 31417/96 and 32377/96).

⁹ *Salgueiro da Silva Mouta v Portugal* (1999) 31 EHRR 47 (App no 33290/96).

¹⁰ *Ibid*

shiv-Shaktis, jogats, jogappas, Arachis, and Sakhis.¹¹ non-groups may also exist that include transgender individuals who happen to be in these social and cultural groups.

A. Right To Equality

The right to equality and the protection of the law are both guaranteed under Article 14¹² of the Indian Constitution. Section III of the Constitution contains measures specifically addressing discrimination and its prevention, with the goal of promoting and protecting the right to equality. Moreover, Article 15 details some types of discrimination that are explicitly forbidden. There's a provision in there about how the government has to shield people from prejudice on the basis of their faith, ethnicity, nationality, or gender. All people have the right to be treated fairly and protected from discrimination, as guaranteed by Articles 14 and 15.

The ruling of the Naz foundation case¹³ even though the same was reversed by the Supreme Court of India, it still maintains relevance in the context of human rights protection in India. Petitioners in the current case claimed that the prohibition of same-sex activities and behaviours between consenting people constitutes sexual orientation discrimination. They also argued that sexual orientation should be considered one of the prohibited factors listed in Article 15 of the Constitution. The petitioners also argued that 'sex' should not be limited to 'gender' but should include 'sexual orientation' as a prohibited basis of discrimination.

As there was a legal dispute, the central issue was whether or whether Article 15 protects against discrimination based on sexual orientation. The judges used the Declaration of Principles of Equality, written by experts and released by the Equal Rights Fund, to make sense of the legal situation at hand¹⁴.

Modern international equality standards based on the Declaration of Human Rights. The right to be free from harassment, intimidation, and other types of discrimination

¹¹ National Legal Services Authority v. Union of India (2014) 5 SCC 438, para. 12 (identifying Hijras, eunuchs, Kothis, Aravanis, Jogappas and Shiv-Shakthis as constituent communities of the transgender population in India).

¹² Constitution of India 1950 art 14.

¹³ *Naz Foundation v Government of NCT of Delhi* (2009) 160 DLT 277 (Del HC).

¹⁴ "Equal Rights Trust, 'Declaration of Principles on Equality'

<http://www.equalrightstrust.org/content/declaration-principles-equality> accessed 3 March 2026.

is addressed in Section 2 of the Declaration. Discrimination on the basis of race, colour, ethnicity, nationality, religion, belief, political or other views, sex, sexual orientation, gender identity, age, disability, health concern, or any ground linked to these grounds is explicitly forbidden by the Declaration¹⁵.

The Court has ruled that 'sex', including sexual orientation and gender identity, is a prohibited grounds of discrimination under Article 15 of the Constitution. These right aims to prevent harmful treatment based on socially constructed ideas of normal or natural sexuality and gender roles. Legal scholars and observers argue that this bias violates the article, as it is analogous to other forms of discrimination. All grounds based on an individual's freedom are protected under the principle of non-discrimination. Nevertheless, the Supreme Court, in *Suresh Kumar Koushal's case*¹⁶ overturned the decision in the Naz Foundation case, but the Supreme Court upheld its position that Section 377 does not criminalise any particular group of people, sexuality, or transgenderism, but rather acknowledges the commission of acts that would constitute the offence as specified in the statute.

B. Right To Freedom of Speech and Expression

All people are guaranteed the right to free expression in accordance with Article 19 of the Constitution. All people, regardless of their sexual orientation or gender identity, have the right to freedom of speech and expression under Article 19(1)(a) of the Constitution.¹⁷ People have the right to seek, receive, and transmit any information or ideas, including those pertaining to human rights and sexual orientation and gender identity concerns, as well as the right to express themselves by their appearance, clothing, name, conduct, and behaviour.

C. To Protect the Right to Life, Liberty, And Privacy Of LGBTQIA+

Under Article 21 of the Indian Constitution, the people are guaranteed the protection of their lives and freedom from arbitrary government interference. To be treated with

¹⁵ Ibid.

¹⁶ (2014)1SCC1.

¹⁷ The Constitution of India, art. 19(1)(a); National Legal Services Authority v. Union of India (2014) 5 SCC 438, paras. 62, 66 (holding that the right to express one's self-identified gender through dress, words, action or behaviour is protected under art. 19(1)(a)).

respect is also part of this right. The right to life has been given a broad interpretation in light of Article 21, suggesting it encompasses more than the simple ability to continue living. Hence, the right to life encompasses all necessary for a person to have a dignified life and have a full and satisfying existence¹⁸. The sacrosanct right of dignity which grants substance and meaning to life is tight knit to the Right to life guaranteed to every Indian citizen under Article 21 of the Constitution.¹¹ Through the Navtej judgement the court contemplated provision of non-discrimination to the LGBTQIA+ community to be at par with the other heterosexual individuals and furthering a stable 'marriage-like' relationship. It forms the core of Indian jurisprudence on the subject as it clarified that LGBTQIA+ community includes L for Lesbians, G for Gays, B for bisexual, T for transgenders, Q for queer, I for intersex, A for asexual and the + denotes presences of several such other people.

The Navtej decision resulted in the enactment of the Transgender Persons Act, 2019, which defines a transgender person in Section 2(k) as '*every individual who does not conform to the gender identities assigned to them at birth, with sexual orientations that vary and are independent of their gender identity*',¹⁹ this largely addresses all the members of the LGBTQIA+ community by titling all of them as 'transgenders'. The statute stipulates that a certificate may be issued to an individual by the district magistrate; however, it lacks a procedure for addressing rejection of issuance. The legislation does not provide a deadline for the issuance of certification. This clause is a substantial infringement of the NALSA ruling of this court, since it undermines the objective of self-identification.²⁰ The proposal for screening committee was rejected while sanctioning the legislation.²¹ The widespread dissatisfaction among the community stems from the institutionalised discriminatory character of the act. Members of the LGBTQIA+ community face discrimination in the educational system, the economy, public employment, and other equal opportunity programs, but the act fails to

¹⁸ MP Jain, *Indian Constitutional Law* (6th edn, LexisNexis Butterworths Wadhwa 2010).

¹⁹ Transgender Persons (Protection of Rights) Act 2019, s 2(k).

²⁰ Transgender Persons (Protection of Rights) Act 2019, s 6.

²¹ Abhishek Goyal, 'Transgender Persons (Protection of Rights) Act, 2019: Enduring Struggle for Gender Rights Recognition' (SCC Online, 25 June 2020)

<https://www.sconline.com/blog/post/2020/06/25/transgender-persons-protection-of-rights-act-2019-enduring-struggle-for-gender-rights-recognition/> accessed 18 March 2025.

provide reservations to address these issues. The act perpetuates gatekeeping by guaranteeing access to resources, power, and opportunities for the heteronormative populace while obstructing the out-group.²²

'The Guardian' conducted research that revealed 70% of LGBTQIA+ persons encounter sexual harassment while on the job.²³ 'The Fiscal Implications of Homosexuality and the Discrimination of LGBTQIA+: A Case Study of India' is the title of another investigation that the World Bank has issued.²⁴ It was shown that a 1.7% loss in Gross Domestic Product is caused by discrimination and the exclusion of community members from the workforce. 56% of LGBTQIA+ persons who worked in mainstream jobs reported harassment.²⁵

VI. LEGAL STATUS OF LGBTQIA+ IN INDIA

Under the IPC, Section 377 criminalised "carnal intercourse against the order of nature with any man, woman or animal"²⁶ with imprisonment up to life, and it was historically used to harass LGBTQIA+ persons until it was read down in *Navtej Singh Johar v. Union of India* (2018) to decriminalise consensual same-sex relations between adults while retaining liability for non-consensual acts and acts with minors and animals.

The judgement given in the case of *Navtej Singh Johar v Union of India* is a paradigmatic shift in understanding the Indian Constitution. The Court unanimously interpreted Section 377 of the Indian Penal Code to render such consensual same sex

²² Abhimanini Sawhney and Sara Grover, 'The Transgender Persons (Protection of Rights) Bill 2019: Divergent Interpretations and Subsequent Policy Implications' (2019) 6(1) *Indian Journal of Law and Public Policy*.

²³ Frances Perraudin, 'Survey Finds 70 per cent of LGBT People Sexually Harassed at Work' *The Guardian* (London, 17 March 2019) <https://www.theguardian.com/uk-news/2019/mar/17/survey-finds-70-of-lgbt-people-sexually-harassed-at-work> accessed 17 March 2019.

²⁴ World Bank, *The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India* (World Bank 2014).

²⁵ Dr Manika Kamthan, 'Need for Inclusion of LGBTQIA+ under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' (SCC Online, 8 July 2022) <https://www.sconline.com/blog/post/2022/07/08/need-for-inclusion-of-lgbtqia-under-the-sexual-harassment-of-women-at-workplace-prevention-prohibition-and-redressal-act-2013/> accessed 3 March 2026.

²⁶ The Indian Penal Code, 1860 (Act 45 of 1860), s. 377 (since repealed by the Bharatiya Nyaya Sanhita, 2023).

relations between adults decriminalised and affirmed that sexual orientation was an intrinsic and unchangeable aspect of identity under Articles 14, 15, 19 and 21. The judgement had explicitly overruled *Suresh Kumar Koushal vs Naz Foundation*, and rejected the reasoning behind since the members of the community of the LGB identifying persons are a "minuscule minority." The Court made clear that it does not take numerical strength but inherent dignity to obtain constitutional rights. The bench relied on a doctrine known as transformative constitutionalism that stresses our Constitution is a living document and is there to break down social hierarchies and bring about substantive equality. The judgment also brought fore the principle of constitutional morality which was first articulated by Dr B R Ambedkar to hold that the courts will need to protect minority rights even if the popular morality is against the social change. Further, relying on the case of *Justice K.S. Puttaswamy Vs Union of India*, the Court recognised privacy and autonomy as important aspects of dignity and thus strengthened the constitutional basis for the rights over sexual orientation.

With the coming into force of the *Bharatiya Nyaya Sanhita, 2023*, the IPC has been repealed and there is no provision corresponding to Section 377; BNS does not criminalise consensual homosexual acts and also omits a specific "unnatural offences" clause, raising concerns about protection of male and transgender victims outside the gender-specific rape framework. While constitutional guarantees under Articles 14, 15 and 21, as interpreted in *Navtej* and later marriage-equality decisions, affirm equality, dignity and non-discrimination on grounds of sexual orientation and gender identity, the penal code under BNS remains largely cis-female-centric in its definition of rape, leaving LGBTQIA+ persons to seek protection through general offences and special statutes like the *Transgender Persons (Protection of Rights) Act, 2019* rather than a dedicated sexual-offence provision. Notably, the Parliamentary Standing Committee on Home Affairs, in its report of November 2023 on the criminal law bills, had recommended retaining a gender-neutral, non-consensual "unnatural offences" provision akin to the erstwhile Section 377 to protect male and transgender victims; this recommendation was not adopted in the final text of the BNS, leaving the protection gap identified above unaddressed.

A. The Transgender Persons (Protection of the Rights) Act, 2019

Transgender persons in India have long been victims of structural exclusion down the levels of social exclusion and legal invisibility. One of the most important constitutional developments is in the case of *National Legal Services Authority Vs Union of India* (2014) 5 SCC 438, where the Supreme Court recognised transgender persons as a "third gender" and held that Articles 14, 15, 16, 19 and 21 protect gender identity and self-identification. The Court ordered the governments to recognize the transgender persons as socially and educationally backward classes for the purposes of reservation and to formulate welfare and healthcare schemes. Section 3 expressly prohibits discrimination in the fields of education, employment, healthcare, access to goods, accommodation, public office and public services. Section 4-7 recognise the right to self-perceived gender identity though Section 6 requires issuance of certificate of identity by the District Magistrate and Section 7 requires proof of surgery for change of gender to male or female. Commands under Sections 8 require governments to take welfare measures whereas Section 9 to 13 place duties upon the establishments including appointment of grievance officers. Section 15-16 covers healthcare facilities and medical insurance. The Act also provides for the establishment of the National Council for Transgender Persons under Sections 16 -18 and prescribes the punishment for the various offences/ crimes e.g. abuse, forced labour and denial of access to public places amongst others thus providing a legislature for protection and accountability.²⁷

B. Adoption Rights and Family Recognition of LGBTQIA+ Persons in India

Adoption is considered a fundamental aspect of family rights in India, with Hinduism allowing only Hindus to adopt children. However, the Juvenile Justice (Care and Protection of Child) Act, a secular legislation, allows adoption for people of any religious denomination. Research on the legal standing of LGBTQIA+ people should consider both the Hindu Act and secular legislation when examining the adoption process.

²⁷ The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019), ss. 3-18.

C. Under the Hindu Adoptions and Maintenance Act, 1956 (HAMA)

The Hindu Adoptions and Maintenance Act, 1956 gives the power to adopt in the case of a male Hindu in Section 7 and a female Hindu in Section 8 - there is not a single mention of any other gender or third gender. Hence, the Adapting under the Act of a transgender individual depends completely on his / her fit in one of the two binary categories – the Act has no equivalent out for individuals with gender identity beyond the two categories defined by the Act. Should the transgender individual experience a sex reassignment, and be recognised as male or female, then an adoption may be possible; but, if the trans person is viewed as outside of this gender dichotomy, or cannot be identified as a gender in various records, then the reality of incapacities in Sections 7 and 8 is present. Traditional adoption practices among Hijra communities for example, guru-chela (reet) do not receive any recognition as per the Act with Section 4 overruling custom and usage as contained in the code.²⁸

D. Under the Juvenile Justice (Care and Protection of Children) Act, 2015 Act

The Juvenile Justice Act, a non-religious law, permits adoptions for any person under Section 41(6). This allows male and female transsexuals, members of religious organizations, and individuals of any gender to adopt a child. The Hijra community, the most prominent third-gender community, operates through adoptions. To identify as a Hijra, individuals undergo a ceremonial christening ceremony, with a guru as the mother figure and disciples as the offspring. Research on third-gender adoptions is crucial, as it allows third-gender couples to raise a child if recognized as a couple.

E. Rights of Lgbtqia+ Marriage

In the case of Arunkumar and Sreeja, a self-identified transgender, the fundamental right of same-sex persons to remarry has been upheld by the Madras High Court. The Court noted that the word 'bride' in Section 5 of the Hindu Marriage Act, 1955 does not require the female to be a cisgender woman and the gender change in relation to 'bride' does not impinge upon the right to get married. The court took into account factors unrelated to the specifics of the case, such as freedom of expression and

²⁸ Hindu Adoptions and Maintenance Act 1956, ss 4, 7, 8; see also National Legal Services Authority v Union of India (2014) 5 SCC 438.

decision-making. It also recognized the right of all transgender and cisgender adults to marry and announced that discrimination against sexual orientation or gender identity could be a violation of Article 14 of the Indian Constitution. The ruling is important not just in terms of law, but also social law; it doesn't declare same-sex 'marriage' legal, nor does it provide Article 21 rights to transgender people.

F. Right to Public Employment of LGBTQIA+ Persons

In *K. Annapoornam v The Secretary to Government and Others*²⁹, a transgender woman had applied for the post of police Sub-Inspector. The selection process was at the physical efficiency test stage when she was unable to complete the sprint within the prescribed time. She then approached this Court saying that the principle available in the case of a transgender woman named Prithika Yashini – who had previously approached this Court to be appointed as a Sub-Inspector – should be available to her as well. The Court concurred and asked the appointing authority to take account of the precedent established in the Prithika Yashini case. In *K. Annapoornam*, the Madras High Court followed the trend of transgender rights gaining acceptance in related government jobs after Prithika Yashini Judgment. It is a sign of the ongoing efforts by courts to respond to the real-world recruitment challenges experienced by transgender people in otherwise gender appropriate processes.

Despite the complexities, India's transgender issues are complex and research reveals the added complexity faced by the transgender community. The definition of 'transgender' itself is open to interpretation and political and economic systems do not often respond to the needs of transgender people. Persons who are transgender remain at risk for discrimination, harassment and stigma around their trans identity, having a significant impact on mental and emotional health, and the judiciary and administration should continue to show sensitivity in regards to public employment matters.

²⁹ *K. Annapoornam v The Secretary to Government and Others*, WA(MD) No. 792 of 2016 (Madras HC).

VII. JUDICIAL APPROACH

India has long faced inadequate protection for women's rights, particularly the LGBTQIA+ community. They have been denied rights and subjected to physical and emotional assault due to their non-conforming nature. The National Legal Services Authority v Union of India in 2014 claimed that non-recognition of the transgender community's identities violated Articles 14, 15, 16, and 21 of the Indian Constitution. The Supreme Court has ordered the federal government and individual states to protect the rights of those who do not conform to the binary of male and female. The ruling acknowledges that Section 377 has been used as a weapon of physical assault against these groups and argues that LGBTQIA+ people deserve equal protection under the law.

In *Shakti Vahini v Union of India and others*³⁰ and *Shafin Jahan v Asokan K.M.*³¹ wherein it has been clearly recognized that an individual's exercise of choice in choosing a partner is a feature of dignity and, therefore, it is protected under Articles 19 and 21 of the Constitution.

In *Indra Sarma v V.K.V Sarma*³², is recognized even by the —Protection of Women from Domestic Violence Act, 2005³³ for various kinds of live-in relationships. The same protection, as per the petitioners, must be accorded to same sex relationships.

In *S. Khushboo v Kanniammal and another*³³ where it has been decided that the law shouldn't be applied in a way that stifles free speech and expression. It has also been emphasised that one's freedom to express his or her self-identified gender via speech, action, behaviour, or any other means is protected under Article 19(1)(a). This is based on the perspective articulated in the NALSA case.

In *Umesh Kumar v State of Andhra Pradesh and another*³⁴ to the effect that one's good name is an important part of one's safety, which is why it is guaranteed constitutional protection alongside other fundamental liberties. The petitioners argue that LGBT

³⁰ *Shakti Vahini v Union of India* (2018) 7 SCC 192; AIR 2018 SC 1601.

³¹ *Shafin Jahan v Asokan KM* (2018) 16 SCC 368; AIR 2018 SC 1933.

³² (2013) 15 SCC 755.

³³ (2010) 5 SCC 600.

³⁴ (2013) 10 SCC 591.

people are being denied this right by Section 377 IPC, which makes them fearful of coming out as gay and leaves them open to extortion, blackmail, and the denial of access to State machinery for the purposes of protection or the enjoyment of other rights and amenities.

The Court in *State of Kerala and another v N.M. Thomas and others*³⁵ pointed out that the Indian Constitution is a great social document, almost revolutionary in its aim of transforming a mediaeval, hierarchical society into a modern, egalitarian democracy, and that its provisions can be understood only by a spacious, social-science approach, not by pedantic, traditional legalism. The purpose of having a constitution is to help lead the country towards a bright future. Consequently, according to proponents of transformative constitutionalism, a constitution's primary function is to bring about positive change in society.

In *Government of NCT of Delhi v Union of India and others*³⁶, one of us (Dipak Misra, CJI) observed: - '*Constitutional morality, appositely understood, means the morality that has inherent elements in the constitutional norms and the conscience of the Constitution. Any act to garner justification must possess the potentiality to be in harmony with the constitutional impulse. We may give an example. When one is expressing an idea of generosity, he may not be meeting the standard of justness. There may be an element of condescension. But when one shows justness in action, there is no feeling of any grant or generosity. That will come within the normative value. That is the test of constitutional justness which falls within the sweep of constitutional morality. It advocates the principle of constitutional justness without subjective exposition of generosity.*'

Justice K.S. Puttaswamy (Retd.) and Anr. v Union of India and Ors. ('Puttaswamy'), (2017) 10 SCC 1, This Court's nine-judge panel has ruled that everyone has an inherent right to be left alone, and that the government has no business interfering with a person's basic lifestyle decisions unless there is a compelling need to do so or a direct and imminent threat to the lives of other people.

³⁵ AIR 1976 SC 490.

³⁶*Government of NCT of Delhi v Union of India* (2018) 8 SCC 501; 2018 (8) SCALE 72, para 61

In *Naz Foundation v NCT Delhi* ³⁷ The High Court of Delhi ruled Article 377 of the Indian Penal Code unconstitutional, as it criminalizes private, consenting sexual acts between adults. The court argued that Article 14 requires objectively meaningful distinctions, and Section 377 does not consider significant variables like age, consent, act nature, or lack of damage. This makes the prosecution of such behavior seem arbitrary and unjustified due to the lack of proof of damage.

This judgment of Delhi High Court could not sustain and this was overruled by the Supreme Court in *Suresh Kumar Koushal v Naaz Foundation* ³⁸. The Indian Supreme Court has ruled that Section 377 of the Indian Penal Code does not violate Articles 14, 15, and 21 of the Indian Penal Code. The court stated that Section 377 only lists illegal behavior, not discriminating against any group based on sexual orientation. This ruling violates the Constitution, as it highlights the ongoing discrimination and harassment against individuals based on their sexual orientation.

VIII. SUGGESTIONS AND RECOMMENDATIONS

On the basis of the foregoing analysis, the paper proposes the following suggestions and recommendations:

1. **Adoption of gender-neutral protection against sexual violence:** The Bharatiya Nyaya Sanhita, 2023 should be suitably amended to address non-consensual sexual acts against male, transgender, intersex, and non-binary persons. The absence of a provision equivalent to the former Section 377 IPC creates a serious protective gap for LGBTQIA+ survivors of sexual violence.
2. **Strengthening the implementation of the Transgender Persons Act, 2019:** The procedure for issuance of gender-identity certificates should be made time-bound, accessible, transparent, and consistent with the principle of self-identification. District-level authorities should be trained to process applications without unnecessary medicalisation, delay, or harassment.
3. **Sensitisation of law-enforcement and healthcare institutions:** Police officers, prosecutors, judicial officers, medical professionals, and prison authorities

³⁷ (2009) 160 DLT 277 (Del HC).

³⁸ (2014) 1 SCC 1.

should receive mandatory sensitisation training on LGBTQIA+ rights, gender identity, sexual orientation, and survivor-sensitive procedures.

4. **Recognition of family, adoption, and relationship rights:** Legislative and policy reforms should progressively recognise the rights of LGBTQIA+ persons in matters of marriage, adoption, guardianship, inheritance, housing, and family life.
5. **Creation of effective grievance-redressal mechanisms:** Dedicated complaint mechanisms should be established in educational institutions, workplaces, healthcare facilities, and public offices to address discrimination, harassment, denial of services, and violence against LGBTQIA+ persons.
6. **Intersectional policy protection:** Special attention should be given to LGBTQIA+ persons facing multiple vulnerabilities on the basis of caste, class, disability, religion, region, age, or economic status, so that legal recognition is translated into substantive equality.

IX. CONCLUSION

Indian society is still organised around the assumptions of heteronormativity, in which heterosexual identities are given privilege and the margins are occupied by the communities of the (L)GBTQIA+. Deep-rooted social norms, which are strengthened through media, educational institutions, religious discourse and sometimes State, contribute to the exclusion and stereotyping of queer communities. While the legal rights of dignity, equality, privacy and autonomy have been recognised increasingly by constitutional jurisprudence, social acceptance of such rights has not kept up with the pace. The tension between popular morality and constitutional morality is at the heart of the fight for substantive equality.

The Supreme Court, especially in decisions like *Navtej Singh Johar*, has held that fundamental rights cannot be compromised by the opinions of the majority. Constitutional morality demands fidelity to equality, liberty and human dignity, despite the social resistance. However, judicial recognition is not enough if there are no legislative reform and effective implementation. Persistent heteronormative biases

in statutory frameworks and institutional practices perpetuate the limitations on lived realities of the lives of the communities of those who are not cis and straight.

In a constitutional democracy, Articles 14, 15, 19 and 21 ensure, as a part, the protection against discrimination on account of gender identity and sexual orientation. These guarantees are to be interpreted in a harmonious and purposeful manner and in ensuring meaningful inclusion. The advancement of rights of the LGBTQIA+ will therefore not only depend of judicial intervention but also of legislative responsiveness, administrative accountability and a sustained sensitisation of society. Achieving true equality requires bringing law, policy, and social consciousness into alignment with the constitutional vision of social change embodied in the Constitution: justice and dignity, and equal citizenship for all.

X. REFERENCES

A. Statutes

1. Constitution of India 1950.
2. Indian Penal Code 1860.
3. Bharatiya Nyaya Sanhita 2023.
4. Transgender Persons (Protection of Rights) Act 2019.
5. Hindu Adoptions and Maintenance Act 1956.
6. Hindu Marriage Act 1955.
7. Juvenile Justice (Care and Protection of Children) Act 2015.
8. Protection of Women from Domestic Violence Act 2005.
9. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).
10. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
11. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
12. European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.

B. Cases

1. *Arunkumar v Inspector General of Registration*, WP(MD) No 4125 of 2019 (Madras HC, 22 April 2019): AIR 2019 Mad 265.
2. *Government of NCT of Delhi v Union of India* (2018) 8 SCC 501.
3. *Indra Sarma v VKV Sarma* (2013) 15 SCC 755.
4. *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.
5. *K Annapoornam v The Secretary to Government and Others*, WA(MD) No 792 of 2016 (Madras HC).
6. *K Prithika Yashini v The Chairman, Tamil Nadu Uniformed Services Recruitment Board*, WP No 15046 of 2015 (Madras HC, 3 November 2015).
7. *Lustig-Prean and Beckett v United Kingdom* (2000) 29 EHRR 548.
8. *National Legal Services Authority v Union of India* (2014) 5 SCC 438: AIR 2014 SC 1863.
9. *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
10. *Naz Foundation v Government of NCT of Delhi* (2009) 160 DLT 277 (Del HC).
11. *S Khushboo v Kanniammal* (2010) 5 SCC 600.
12. *Salgueiro da Silva Mouta v Portugal* (1999) 31 EHRR 47.
13. *Shafin Jahan v Asokan KM* (2018) 16 SCC 368: AIR 2018 SC 1933.
14. *Shakti Vahini v Union of India* (2018) 7 SCC 192: AIR 2018 SC 1601.
15. *State of Kerala v N M Thomas* AIR 1976 SC 490.
16. *Suresh Kumar Koushal v Naz Foundation* (2014) 1 SCC 1.
17. *Umesh Kumar v State of Andhra Pradesh* (2013) 10 SCC 591.

C. Books and Articles

1. Henry J Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (2nd edn, Oxford University Press 2000).
2. M P Jain, *Indian Constitutional Law* (6th edn, LexisNexis Butterworths Wadhwa 2010).
3. Abhimanini Sawhney and Sara Grover, 'The Transgender Persons (Protection of Rights) Bill 2019: Divergent Interpretations and Subsequent Policy Implications' (2019) 6(1) Indian Journal of Law and Public Policy.

D. Reports

1. World Bank, The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India (World Bank 2014).
2. Parliamentary Standing Committee on Home Affairs, One Hundred Forty-Sixth Report on the Bharatiya Nyaya Sanhita, 2023 (Rajya Sabha, 10 November 2023).

E. Online Sources

1. Abhishek Goyal, 'Transgender Persons (Protection of Rights) Act, 2019: Enduring Struggle for Gender Rights Recognition' (SCC Online Blog, 25 June 2020)
<https://www.scconline.com/blog/post/2020/06/25/transgender-persons-protection-of-rights-act-2019-enduring-struggle-for-gender-rights-recognition/> accessed 18 March 2025.
2. Dr Manika Kamthan, 'Need for Inclusion of LGBTQIA+ under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' (SCC Online Blog, 8 July 2022)
<https://www.scconline.com/blog/post/2022/07/08/need-for-inclusion-of-lgbtqia-under-the-sexual-harassment-of-women-at-workplace-prevention-prohibition-and-redressal-act-2013/> accessed 3 March 2026.
3. Equal Rights Trust, 'Declaration of Principles on Equality'
<http://www.equalrightstrust.org/content/declaration-principles-equality> accessed 3 March 2026.
4. Frances Perraudin, 'Survey Finds 70 per cent of LGBT People Sexually Harassed at Work' The Guardian (London, 17 March 2019)
<https://www.theguardian.com/uk-news/2019/mar/17/survey-finds-70-of-lgbt-people-sexually-harassed-at-work> accessed 17 March 2019.