

**SOCIAL INCLUSION OF THE LGBT COMMUNITY
AND THEIR LEGAL PROTECTION IN INDIA
WITH SPECIAL REFERENCE TO
THE STATE OF KERALA**

Thesis Submitted for the Award of the Degree of

DOCTOR OF PHILOSOPHY

in

Law

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2025

DECLARATION

I, **Seethal Kuttappan**, hereby declare that the presented work in the thesis entitled **“Social Inclusion of the LGBT Community and their Legal Protection in India with Special Reference to the State of Kerala”** in fulfilment of the degree of **Doctor of Philosophy (PhD)** is the outcome of research work carried out by me under the supervision of **Dr. Dalliandeep Kaur Tiwana**, working as Professor in the School of Law of Lovely Professional University, Punjab, India. In keeping with the general practice of reporting scientific observations, due acknowledgements have been made whenever the work described here has been based on the findings of other investigators. This work has not been submitted in part or in full to any other University or Institute for the award of any degree.

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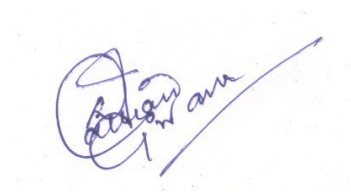
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CERTIFICATE

This is to certify that the work reported in the Ph. D. thesis entitled "**Social Inclusion of the LGBT Community and their Legal Protection in India with Special Reference to the State of Kerala**" submitted in fulfilment of the requirement for the award of the degree of **Doctor of Philosophy (PhD)** in the School of Law, Lovely Professional University, is a research work carried out by **Ms. Seethal Kuttappan** Registration Number: 12106430, is a bonafide record of her original work carried out under my supervision and that no part of the thesis has been submitted for any other degree, diploma or equivalent course.

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ABSTRACT

Over the last several decades, the queer community has evolved internationally. The LGBT (Queer) community's or transgender community's struggle began in 1959 when customers of Cooper Donuts in Los Angeles threw coffee cups and doughnuts at police officers in retaliation for their harassment. Denmark became the first nation to formally recognise same-sex partnerships in 1989, which also marked the beginning of the worldwide shift toward allowing same-sex unions. The Netherlands was the first country in the world to legalize same-sex marriage on April 1, 2001. As a result, LGBT people and their family rights are accepted worldwide in many nations, and as of 2025, same-sex partnerships were legal in over 40 nations, mostly in the United States and the European Union. Same-sex unions are permitted in three Asian countries. Taiwan was the first Asian nation to permit same-sex partnerships, later Nepal and Thailand followed suit.

Compared to other nations, India has more religions and a wider variety of castes coexisting. This alone demonstrates how diverse and united our nation is. Hence, it follows that people's vivid beliefs are unaffected by those of others. Notably, people's mindsets evolve with time in tandem with advancements, such as people's perceptions of the differences that occur in terms of sexual orientation and gender identity. However, although the protection of rights of the Queer or transgender population is being recognized, family rights like same-sex marriage legalization, adoption rights, surrogacy rights, inheritance rights, etc., are still not accepted in India. The first case for the protection of transgender community's rights happened in 2009 with the attempt of the NAZ foundation to decriminalize section 377, i.e., decriminalizing consensual homosexual sex between adults. But it was succeeded only in 2019 by the order of “Navtej Singh Johar's case”. *The Transgender Persons (Protection of Rights) Act 2019* was later passed to safeguard transgender people's rights and promote their well-being.

Even though marriage is permitted for Transgender people who have legally converted their gender identity, this legislation does not include provisions for family rights, such as same-sex marriage, same-sex adoption, surrogacy rights, etc. LGBT people's or the Queer community's human rights are violated by the family rights requirements included in personal laws, the *Special Marriage Act*, the CARA

guidelines for adoption, etc. This was the major averments made by the petitioners in the *Supriyo v. Union of India* case that was heard by the Supreme Court. However, the majority ruling in 2023, when the issue was determined by a five-judge panel that included the Chief Justice of India, denied the Queer community's rights to same-sex marriage and other related family rights. This is a clear violation of Article 14 (Right to equality before the law), Article 15 (Prohibits discrimination based on factors such as race, caste, religion, sex, or place of birth), Article 19(1)(a) (freedom of speech and expression), Article 21 (Guarantees the right to life and personal liberty, which includes the right to marry and choose a partner) for the LGBT community. Therefore, although the constitution ensures that all citizens are equal, it does not correspond with personal laws, as it constitutes gender-based discrimination against the LGBT community. Sexual orientation and gender identity are personal choices made by each individual. Judging someone based on this is definitely against their fundamental rights.

The primary objective of the current research is to comprehend the laws that have been developed in our nation for the LGBT Community and to determine the efficacy and efficiency of Legislative provisions, social integration, and legal complexities. A comparison with other major nations reveals the gaps in the laws about the LGBT community's rights. The comparative analysis of international agreements and legal frameworks about LGBT rights, including same-sex marriage rights and other family rights, was also included in the study. This research gave a global perspective, showing how different nations handle the problem and how national policies are influenced by international human rights standards. The research compared India's legislative policies with important international human rights treaties and concepts that highlight the significance of queer rights as a basic component of democratic participation. The necessity for legislation, the role of NGOs in supporting LGBT rights, and several relevant case laws are all being thoroughly examined to develop and provide proposals that would successfully ensure the rights of India's LGBT (Queer) minority.

According to a review of the literature, the LGBT community majorly faces issues such as social rejection, discrimination in workplaces and educational institutions, emotional and physical abuse, lack of availability for accommodations, avoiding and

being excluded from friends and family, etc. The LGBT community also faces several other challenges, each of which is unique to them. To find this, Empirical research was carried out in Kerala for the second part of the study, and questionnaires were given to a wide range of respondents, including members of the LGBT community, the general public, and legal experts. A wide variety of viewpoints about acceptance and opinions regarding the rights of the LGBT community were recorded by this inquiry. Although the efforts of our governments and legislators are commendable, much more has to be done to recognize these people's needs, such as same-sex marriage rights and other same-sex couple family rights, to greatly ease their lives. Legislators, legal professionals, and the general public may all benefit from this research. The problem sheds light on the illegal discrimination against the LGBT community and the need to improve communal life to guarantee equality. May the legislature see it essential to enact legislation that ensures people are treated equally and without any discrimination or prejudice? For the benefit of these individuals, the current research is open to further research in this field so they may live freely and independently like normal people.

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“മാതാ പിതാ ഗുരു ദൈവം”

“As we express our gratitude, we must never forget that the highest appreciation is not to utter words but to live by them” - *John Fitzgerald Kennedy*.

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Date:18/09/2025

SEETHAL KUTTAPPAN

Here I sign my name in ink,

Though I wished to have signed in Gold,

But ink is all a Pen can hold.

DEDICATION

*THIS RESEARCH HAS BEEN DEDICATED TO
THE LGBT COMMUNITY IN INDIA,
FOR THEIR RIGHTS AND BENEFITS*

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LIST OF ABBREVIATIONS

| Abbreviation | Full form |
|---------------------|--|
| a.k.a | Also known as |
| AFAB | Assigned Female at Birth |
| AIDS | Acquired Immunodeficiency Syndrome |
| AIR | All India Reporter |
| AMAB | Assigned Male at Birth |
| Anr | Another |
| ARC | Administrative Reforms Commission |
| BNS | Bharatiya Nyaya Sanhita |
| CAT | Central Administrative Tribunal |
| CCL | Child Care Leave |
| CDO | Chief Development Officer |
| CHE | Campaign for Homosexual Equality |
| CJI | Chief Justice of India |
| CPN | Communist Party of Nepal |
| CSS | Catholic Social Services |
| CWP | Civil Writ Petition |
| DCPCR | Delhi Commission for Protection of Child Rights |
| DLT | Delhi Law Times |
| DMK | Dravida Munnetra Kazhagam |
| DOMA | Defense of Marriage Act |
| DSSEPD | Department of Social Security and Empowerment of Persons with Disabilities |
| ECHR | European Convention on Human Rights |
| EEOC | Equal Employment Opportunity Commission |
| ERA | Equal Rights Amendment |

| | |
|----------|--|
| EU | European Union |
| FHA | Fair Housing Act |
| FIR | First Information Report |
| FTM | Female To Male |
| GAS | Gender Affirmation Surgery |
| GB | Gay Bombay |
| GLF | UK Gay Liberation Front |
| GOI | Government of India |
| GRC | Gender Recognition Certificate |
| HC | High Court |
| HIV | Human Immunodeficiency Virus |
| HMA | Hindu Marriage Act |
| HST | Human Rights Trust |
| IBM | International Business Machines Corporation |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic Social and Cultural Rights |
| ILGLAW | The International Lesbian, Gay, Bisexual, Trans, and Intersex Law Association |
| IPC | Indian Penal Code |
| KMRL | Kochi Metro Rail Limited |
| KSLMA | Kerala State Literacy Mission Authority |
| LCC | Local Complaints Committee |
| LGBTQIA+ | Lesbian, Gay, Bisexual, Transgender/Transexual, Queer, Intersex, Asexual, plus |
| MHA | Ministry of Home Affairs |
| MoSJE | Ministry of Social Justice and Empowerment |
| MSM | Men who have Sex with Men |
| MTF | Male To Female |
| NACO | National Aids Control Organization |

| | |
|--------|---|
| NALSA | National Legal Services Authority |
| NCT | National Capital Territory |
| NGO | Non-Government Organization |
| NHRC | National Human Rights Commission |
| OBC | Other Backward Classes |
| OHCHR | Office of High Commissioner of Human Rights |
| OLR | Orissa Law Review |
| Ors | Others |
| PGIMER | Post Graduate Institute of Medical Education and Research |
| PIL | Public Interest Litigation |
| Retd | Retired |
| RFRA | Religious Freedom Restoration Act |
| RGI | Registrar General of India |
| s. | Section |
| SC | Supreme Court |
| SCC | Supreme Court Cases |
| SCW | Supreme Court Weekly |
| SDG | Sustainable Development Goals |
| SEBC | Socially And Educationally Disadvantaged Groups of Citizens |
| SMA | Special Marriage Act |
| SOGI | Sexual Orientation or Gender Identity |
| SOOE | Salvation of Oppressed Eunuchs |
| SPSS | Statistical Package for Social Sciences |
| SRS | Sex Reassignment Surgery |
| SSM | Same-Sex Marriage |
| STD | Sexually Transmitted Disease |
| TGs | Transgenders |
| UDHR | United Declaration on Human Rights |

| | |
|--------|--|
| UDISE+ | Unified District Information System for Education Plus |
| UK | United Kingdom |
| UN | United Nation |
| UNDP | United Nations Development Program |
| UNHRC | United Nations Human Rights Commission |
| UOI | Union of India |
| USA | United States of America |
| UT | Union Territory |
| v. | versus |
| Vol | Volume |
| WMA | World Medical Association |
| WP (C) | Writ Petition Criminal |
| WPATH | World Professional Association for Transgender Health |

LIST OF CASES REFERRED

| Case Name | Citation | Page No: |
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| Adams v. School Board of St. Johns County | 318 F. Supp. 3d 1293 (M.D. Fla. 2018) | 110 |
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| Deepika Singh v. Central Administrative Tribunal and Others | AIR 2022 SC 4108 | 183 |
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CHAPTER 1

AN OVERVIEW OF THE RESEARCH

“Sex is what you are born with, gender is what you recognize and sexuality is what you discover.”

Anitha Chettiar¹

1.1. Introduction:

When a person's gender identification and sexual orientation do not correspond with their biological sex, they are considered a “transgender person”. They are also referred to as gender non-conforming people. The abbreviation LGBTQ is "a diverse collection of people who are different in terms of gender, sexual orientation, race/ethnicity, and socioeconomic level." By definition, this is what the term "LGBTQ" represents. A lesbian is a woman who has affection for another woman, while a gay man is a man who feels feelings for another man. Nonetheless, a bisexual individual is drawn to both genders and is not limited to single individuals. The word "queer" refers to people who identify as lesbian, gay, bisexual, or transgender and denotes sexual orientations and gender identities that differ from heterosexual or cisgender identities. The term "queer" is often used to refer to the idea that gender and sexuality may be complicated, change over time, and not readily fit into either/or identities like straight or gay. Thus, "queer" is used to describe anybody who does not identify as heterosexual or cisgender. People who identify as LGBT are persons who have sexually opposing sentiments based on their physical appearance or genitalia. A person whose gender identity does not match the sex they were assigned at birth is referred to by this term. Many people in India have a wide range of identities, cultures, or experiences relating to transgender issues. Those mentioned include Shiv-Shakthis, Kothis, Jogtas/Jogappas, Aravanis, Hijras, and Sakhiya.

¹ Indian sociologist.

Section 377 of *the Indian Penal Code, 1860*² defines "unnatural offences" as having sex with any person, regardless of gender or animal, without that person's permission. Such offenders may face life in prison or a maximum sentence of 10 years in jail as punishment. Furthermore, they could also have to pay a fine. Sexual interactions between people of the same sex are thus also prohibited under this provision. Additionally, it is prohibited under this clause for two adults of the same sex to have intercourse with one another.

*"Naz Foundation v. Government of the NCT of Delhi"*³ was the case in which the 'Delhi High Court' interpreted 'Section 377' to prohibit adult consenting sexual behaviour due to its outdated nature. As such, being homosexual was no longer seen as a criminal violation. The ruling is a notable accomplishment in civil rights litigation and can be seen as a significant step towards releasing sexual minorities in India from the oppression and manipulation imposed by the legal system, even though the decision's effects are limited and could be overturned by a law passed by the Indian Parliament. The Supreme Court of India issued a significant ruling in the case of *"Navtej Singh Johar v. Union of India"*⁴. Later in 2018. In India, for example, same-sex partnerships between consenting individuals are no longer illegal. In the *"Supriyo v. Union of India"*⁵ Case, however, petitioners said that the Act infringes upon the fundamental right to life of sexual and gender minority individuals, in addition to their rights to equality, dignity, freedom of expression, and personal autonomy.

1.2. Statement of Problem.

The primary obstacle faced by LGBT individuals in India regarding marriage and adoption is the absence of legal acknowledgement for same-sex partnerships. India currently lacks legislation about same-sex marriage or civil unions. Although ceremonies may be conducted, they do not possess any legal validity.

² The Indian Penal Code, 1860 (Act 45 of 1860).

³ 160 (2009) DLT 277.

⁴ AIR 2018 SC 4321.

⁵ AIR 2023 SC 5283.

Restricted privileges: Same-sex couples are denied some benefits when they are not legally married, including the right to jointly own assets, visit each other in hospitals, and inherit property.

Uncertainties in Adoption Laws: The adoption rules in India do not address the issue of same-sex couples. While there is no formal prohibition, there is a lack of a definitive procedure enabling them to jointly pursue adoption.

Adoption agencies or authorities may exhibit prejudice against LGBT persons as a result of prevailing social beliefs. In the case of an LGBT individual who is not in a relationship, they are only permitted to adopt as a single person and are not eligible to adopt as a couple seeking to jointly raise a child.

These constraints give rise to a scenario of inequity and marginalization for LGBT individuals seeking to establish families. In general, the situation is improving, but the LGBT population in India still has a significant distance to go to get complete parity in terms of marriage and adoption rights.

1.3. Review of Literature.

A brief summary of the research on LGBT marriage and adoption rights is provided below, with an emphasis on India's dearth of family law provisions pertaining to the LGBT population and a comparison of the laws and policies controlling LGBT family rights across the globe. The researcher has carefully investigated the many aspects of the connected problems. The majority of the material now in publication focuses on the difficulties with acceptance, laws and policies, the legal elements of LGBT family rights, and the lack of awareness in society and its repercussions. The literature listed below has been thoroughly and methodically examined:

- ❖ **“Legal Recognition Fortifies Social Acceptance: Orchestrating Sociological Aspects of Legalization of Same-Sex Marriage in India” Bennett Journal of Legal Studies (2024).**

Following a discussion of the events that have occurred in favour of the LGBTQIA+ group and the influence that these developments have had on society, this article then follows on to provide an analysis of these developments from a sociological point of view. The author explored the relationship between law and society and how legal

recognition promotes social acceptance by delving into sociological topics including social change, law and social change, and sociological jurisprudence. In addition, the author discussed how legal recognition increases social acceptance. From the perspective of a sociological theory of suicide, the author makes an effort to explain the rising suicide rate among members of the LGBTQIA+ community. A suggestion is made after the article, which suggests that the recognition of marriages between people of the same gender would be a kind of breaking of the norm, which would tend to improve the acceptability of the community in society.⁶

❖ **“India: Failure to Legalise Same-Sex Marriage A 'Setback' For Human Rights” Scientific Culture (2024).**

The article argues that recognizing same-sex marriage on an equal footing with conventional opposite-sex marriage, known as marriage equality, is the next logical progression. It asserts that all the necessary legal requirements have already been met. The article argues that restricting the definition of marriage to "one man, one woman" is arbitrary and contravenes the prohibition of sex discrimination outlined in Articles 14 and 15. The article recognizes that the claim that same-sex marriage undermines the sanctity of traditional heterosexual marriage can be disproved by highlighting the idea of constitutional morality, which takes precedence over social or popular morality when interpreting public morality as a limitation on fundamental rights. The argument is that the 'one man, one woman' norm infringes upon the rights to autonomy, privacy, and dignity guaranteed by Article 21. Additionally, it is claimed that this approach violates freedom of speech, particularly about gender identity and sexual orientation. Considering the outdated 'fundamental religious activities' analysis, the article argues that the idea of marital equality should not be seen as a violation of religious freedom since personal laws do not have religious roots or features. In the end, the paper makes the case that same-sex marriage may be permitted under the “*Hindu Marriage Act*” and “*the Special Marriage Act*”⁷.

⁶ Madhur Anand, “Legal Recognition Fortifies Social Acceptance: Orchestrating Sociological Aspects Of Legalization Of Same-Sex Marriage In India,” 5 *Bennett Journal of Legal Studies* 89–101 (2024).

⁷ Singh, Sushma & Divya,. (2024). India: Failure To Legalise Same-Sex Marriage A 'Setback' For Human Rights. 10. 30-39.

❖ **“Breaking Traditions: Same-Sex Marriage Rise in India” Research Gate (2024).**

This article focuses on the rights of those who identify as homosexual, bisexual, transgender, and queer. This has to do with the topics of sexual orientation and gender. Whereas transgender refers to a gender identification that deviates from the conventional male-female classification, gay, lesbian, and bisexual relate to sexual orientations. In several contexts, the word "queer" is used to refer to the idea of collective "queerness." The article focuses on the topic of sexuality, specifically discussing many aspects related to sexual activity. Additionally, it addresses other subjects such as Same-sex marriage, a contentious issue in both India and beyond. India has yet to acknowledge and support LGBTQ rights, combat prejudice against homosexuality, and legalize same-sex marriage. The acronym "LGBTQ" encompasses several individuals who deviate from the conventional conceptions of gender and heterosexuality. Due to the fragmentary nature of the phrases, abbreviations are often used with a "+" symbol to denote that the compilation is not fully comprehensive.⁸

❖ **“Cultural Threat, Outgroup Discrimination, and Attitudes toward Transgender Rights” Political Behaviour (2024).**

This article especially addresses the challenges related to the societal acceptability of the LGBT population. The results of a nationwide study that looks at the connection between respondents' views of discrimination against different groups, their views on transgender rights laws, and their perceptions of cultural danger from the LGBTQ community are discussed in the text. These regulations include things like medical transition care, school sports participation, and access to public bathrooms. Research consistently shows that support for laws that restrict the rights of transgender people is correlated with the feeling of cultural threat. However, there is often no substantial correlation between observed discrimination from outgroups and these beliefs.⁹

⁸ Hitha, Ms & Poojary, Hitha. (2024). Breaking Traditions: Same-Sex Marriage Rise in India *available at* <https://www.researchgate.net/publication/378926127> (last visited January 18, 2024).

⁹ Lewis, D.C., Flores, A.R., Haider-Markel, D.P. et al. Cultural Threat, Outgroup Discrimination, and Attitudes toward Transgender Rights. *Polit Behav* (2024). *available at* <https://doi.org/10.1007/s11109-024-09924-y> (last visited January 18, 2024).

❖ **“Subsidiarity v. Pan-Europeanism: LGBTQ and Transgender Rights in the EU and under the European Convention of Human Rights” Bulletin of the Transilvania University of Braşov. (2024).**

This article's goal is to provide an overview of the court cases defending the rights of LGBTQ people in general and transgender people in particular. It makes the case that the existing legal system, which still adheres to the subsidiarity concept, is incompatible with the overall objectives of non-discrimination, which are essential to the principles of the Council of Europe and the European Union.¹⁰

❖ **“Social Imagination and Same-Sex Marriages in India” International Journal of Creative Research Thoughts (2023).**

Examining and analyzing the societal stigma attached to the phrases "homosexuality" and "same-sex marriages" in India is the aim of this research work. It seeks to examine how this stigma violates the right to live with dignity as protected by Article 21 of the Indian Constitution and affects the basic rights to life and liberty. Although same-sex marriages are still illegal in India, efforts are ongoing to legalize and legitimize them. This topic is important because it relates to LGBTQ+ people's fundamental human rights and the recognition and protection of their partnerships. Legalizing same-sex marriage would not only provide legal recognition and safeguards for LGBTQ+ couples but also foster more societal inclusivity and diminish prejudice toward the group. The matter has great relevance for LGBTQ+ rights activists and supporters globally since its impact goes beyond legal matters and encompasses larger social and cultural views toward the LGBTQ+ community.¹¹

¹⁰ Schultz, David. (2024). Subsidiarity v. Pan-Europeanism: LGBTQ and Transgender Rights in the EU and under the European Convention of Human Rights. Bulletin of the Transilvania University of Braşov Series VII Social Sciences • Law. 63-72. available at <https://doi.org/10.31926/but.ssl.2023.16.65.3.8> (last visited January 18, 2024).

¹¹ Shreedeeep Satyanarayan Sharma, “Social Imagination and Same-Sex Marriages in India,” 11 *International Journal of Creative Research Thoughts* (2023) available at: <https://www.ijcrt.org/> (last visited January 18, 2024).

❖ **“Legalisation of Same-Sex Marriage in India” Indian Journal of Integrated Research in Law (2023).**

This article examines the urgent need to legalize homosexual weddings in India, a country characterized by its diversity and dynamism, as well as its vast array of cultures and customs. Despite great progress in the worldwide conversation around LGBTQ+ rights, India still faces the challenge of lacking official legal recognition for same-sex partnerships. In addition to offering strong reasons in favour of legalizing same-sex marriage, this essay offers a comprehensive analysis of the ethical, social, and legal issues surrounding the subject. The study begins by outlining the historical backdrop of LGBTQ+ rights in India, emphasizing the progressive but consistent transformation of societal perspectives and legal structures. Subsequently, the text explores the global viewpoint, highlighting the prevailing worldwide inclination to acknowledge the inherent human entitlement to marriage, regardless of gender. The article cites court rulings to demonstrate how the Indian Constitution's guarantees of equality, dignity, and freedom are violated when same-sex marriage is prohibited.¹²

❖ **“Prohibition Of Transgender Marriage According to Buya Hamka (In the Book of Tafsir Al-Azhar)” (2023).**

This Journal article examines Buya Hamka's discussion of the Al-Azhar commentary book's restriction on transsexual marriage. Transgender people are unhappy because they are dissatisfied with their genitals or because they feel that their physical form and genitals are not in harmony with their mental health. The research findings can be summarized as follows: Hamka's prohibition of transgender is based on an interpretation of specific verses from the Quran (an-Nisa verse 119, ar-Rum verse 30, and al-Baqarah: 216), as well as hadith, ijma', and fatwa. According to this perspective, transgender behaviour is seen as being deceived by Satan and succumbing to one's desires, including altering Allah SWT's creation. It is argued that transgenderism goes against the intended purpose of Allah's creation and is contrary

¹² Ishika Goel, “LEGALISATION OF SAME-SEX MARRIAGE IN INDIA,” IV *Indian Journal of Integrated Research in Law* 27–41 (2023), available at: <https://doi-ds.org/doi/10.24018/IJIRL/V4-I1/A4> (last visited January 18, 2024).

to the natural order. Transgender refers to the act of presenting oneself as the other sex. Islamic teachings state that those who act in this way are guilty of a prohibited act and are said to have been cursed by the Prophet Muhammad (peace be upon him)¹³.

❖ **“Understanding the Challenges of Socio-Legal Framework among Transgenders in Kerala”, *International Journal of Law Management and Humanities* (2022).**

This study examines the development of transgender people in Kerala, the many struggles they faced before and after 2015, and the efficacy of the government's current initiatives. The Kerala government recognized a chance to establish a "State Policy for Transgenders in Kerala, 2015" and become the first State to do so. This article examines the socio-legal impact on Transgender (TG) individuals in Kerala by examining them through the prism of the state's social justice system.¹⁴

❖ **“Through the Cracks of the Gendered World: A Critical Analysis of Kerala’s Transgender Policy”, *Journal of Polity & Society* (2022).**

The study conducts a critical analysis to see if the welfare measures the state selected and outlined in its policy have been realized. If not, it identifies the variables influencing the programs' effectiveness in being implemented or their accessibility. A study to evaluate the policy's effect on the intended population was done by the author. As a result, it claims that 70 years after India's independence, the “*Transgender Persons (Protection of Rights) Act*” was not passed until 2019. Following this, transgender welfare boards were established in several states with the goals of upholding transgender rights, putting a stop to violence and prejudice against them, and strengthening the trans community. Kerala became the first state to

¹³ Misra Netti et al., “Prohibition Of Transgender Marriage According To Buya Hamka (In The Book Of Tafsir Al-Azhar),” 23 *Innovatio: Journal for Religious Innovations Studies* 141–55 (2023) available at: <https://doi.org/10.30631/innovatio.v23i2.186> (last visited January 21, 2024).

¹⁴ “Understanding the Challenges of Socio-Legal Framework among Transgenders in Kerala,” *International Journal of Law Management & Humanities* available at: <https://ijlmh.com/paper/understanding-the-challenges-of-socio-legal-framework-among-transgenders-in-kerala/> (last visited February 26, 2024).

establish a transgender policy in 2015, which allowed the state's secret population to come to light. That being said, this adhoc policy framework was unable to adequately address the needs of a heterogeneous and varied community.¹⁵

❖ **“LGBTQ rights and the role of civil society in repealing of the laws in India: section 377”, *International Journal of Mechanical Engineering* (2022).**

This essay looks into the problems LGBTQ people face in society and the part that ordinary people can play in fighting for their rights. Since the 1990s, initialism and several of its more common variants have been used as a catch-all word for gender identity and sexuality. To make this more explicit, the letter Q and the term "LGBTQ" have been introduced for those who identify as homosexual or who are unsure of their sexual or gender identity. Even though our country has made many progress and changes, LGBTQ people are still being fired, bullied, and targeted at work. They are more likely to be discriminated against and left out of normal political, social, and economic life. As a result, several civil society organizations and groups are crucial in the struggle for the rights of LGBTQ individuals in society.¹⁶

❖ **“Affirming and negotiating gender in family and social spaces: Stigma, mental health and resilience among transmasculine people in India” 24 *Culture, Health & Sexuality* 951–67 (2022).**

The research examines transgender people's health in India as well as how they handle societal and familial gender confirmation. It also examines the impact these incidents have on their emotional well-being. To understand more about how gender policing and the pressure to conform to gender norms often began in adolescence and developed over time inside the family, they spoke with four focus groups of transmasculine persons in Chennai and Mumbai in 2019. Some people had to leave

¹⁵ Dr Poornima R, “Through the Cracks of the Gendered World: A Critical Analysis of Kerala’s Transgender Policy,” 14 *Journal of Polity and Society* (2022). available at <https://journalspoliticalscience.com/index.php/i/article/view/175/62> (last visited February 26, 2024).

¹⁶ Das Minakshi, “LGBTQ rights and the role of civil society in repealing of the laws in India: section 377,” 7 *International Journal of Mechanical Engineering*. available at https://kalaharijournals.com/resources/SP%20Jan_Feb_48.pdf (last visited February 26, 2024).

their homes because of violence. Participants talked about how gender-normative dress rules were enforced, how teachers didn't help, and how bullying made some of them quit school. Different people had different experiences at work based on whether they were trans or had identity papers that didn't match their gender identity. Everyday experiences of hostility in a variety of places added to the mental discomfort. Despite these problems, the people who took part in the study said they were able to deal with them by accepting themselves, making friends, strategically (non)disclosing information, and getting around gender-based rules about how to dress and act. Social, governmental, familial, and individual measures are required to enhance the mental health of transgender individuals in India and lessen the stigma and abuse they experience¹⁷.

❖ **“The Transgender Persons (Protection of Rights) Act 2018: A Shariah Appraisal of Self-Perceived Gender Identity and Right of Inheritance of The Transgender” (2022).**

The purpose of this essay is to investigate and evaluate the Shariah perspective on the idea of both the right to inherit and the right to self-perceived gender identity. To improve the welfare of the transgender community and provide rights to its members, the National Assembly of Pakistan approved the *Transgender Persons (Protection of Rights) Act 2018*. This law encompasses up to eleven rights, such as the right to inherit property and the right to self-perceived gender identity. Islam has established a norm for the way gender identity is seen, leaving little opportunity for the individual's self-perception. On the other hand, an individual's self-perceived gender identity is not taken into consideration while determining their share under Islamic law.¹⁸

¹⁷ Venkatesan Chakrapani et al., “Affirming and negotiating gender in family and social spaces: Stigma, mental health and resilience among transmasculine people in India,” 24 *Culture, Health & Sexuality* 951–67 (2022).

¹⁸ Rana, Afrasiab Ahmed, and Siddique, Hafiz Muhammad, *The Transgender Persons (Protection Of Rights) Act 2018: A Shariah Appraisal of Self-Perceived Gender Identity and Right of Inheritance of The Transgender* (June 19, 2022). *Competitive Educational Research Journal (CERJ)* 2, no. 4 (October-December 2021): 77-88., available at SSRN: <https://ssrn.com/abstract=4145921> or <http://dx.doi.org/10.2139/ssrn.4145921>. (last visited February 26, 2024).

❖ **Choosing my gender: Challenges faced by transgender persons in India (2022).**

This essay contributes to the conversation by bringing to light the considerable obstacles that transgender people must overcome, which further contribute to their incapacity to advance themselves within Indian society. The equality system is outlined in Articles 14, 15, 16, 19, and 21 of the Indian Constitution as the "enjoyment of life by all citizens and an equal opportunity to grow as human beings regardless of their race, caste, religion, community, social status, and gender." An essential tenet of the Indian Constitution is this equality system. Within the framework of the equality plan, the acceptance and respect of the freedom to choose and self-determination is considered to be one of the fundamental core principles. The legal system in India does not recognize transgender people, which has resulted in widespread socioeconomic discrimination in Indian industry and society at large, as well as the systematic denial of equal protection under the law.¹⁹.

❖ **Exploring the discrimination and stigma faced by transgender in Chennai city—A community-based qualitative study (2022).**

The purpose of this article was to investigate the many ways in which transgender people are subjected to stigma and discrimination, as well as to get an understanding of the settings and circumstances that put them at risk of being stigmatized and discriminated against. People who identify as transgender are subjected to widespread discrimination, violence, and other negative consequences associated with stigma and transphobia, which may be defined as a dislike or prejudice directed against transsexual or transgender individuals. There are many different settings in which transgender people are subjected to prejudice and stigma, including education, work, healthcare, and numerous public settings. Interventions on several levels are required for transgender people. These interventions should include the provision of legal safeguards and enhancement of a variety of contexts. Inclusive steps must be made to

¹⁹Mohapatra, Ankita; Mohapatra, Prasanta Kumar. Choosing my gender: Challenges faced by transgender persons in India. *Odisha Journal of Psychiatry* 18(1):p 21-24, Jan–Jun 2022. | DOI: 10.4103/OJP.OJP_7_22 (last visited February 26, 2024).

enhance their position, with a particular emphasis on the social shame, psychological suffering, and economic difficulties they face²⁰.

❖ **Mishandling the issue of gender dysphoria in India - an analysis of the transgender persons (Protection of Rights) Act, 2019 (2022).**

The writers of this article analyzed the good and bad features of the legislation and provided solutions for the existing loopholes. Article 14 of the Indian Constitution aimed to promote an equitable society by including an equality provision. However, achieving this goal of the Constitutional architects is challenging due to the backward social attitudes. Transgender individuals belong to a marginalized group that has endured prolonged discrimination and persecution. In 2019, the Government of India implemented the “Transgender Persons Act” in response to the Supreme Court's orders in “*NALSA v. Union of India*” and “*Navtej Singh Johar v. Union of India*”, aiming to address this issue. The Act is seen as a major step forward for the liberty of the transgender community. However, it has also faced criticism due to the allocation of arbitrary powers to government personnel.²¹.

❖ **Transgenders in Ancient Tamil Literature (2022).**

This article examines the development of transgender people and how they have changed throughout time. According to their findings, there isn't a single transgender voice or voice that supports transgender individuals in Tamil literature from antiquity.

The material that is provided as information in grammatical comments and literary works has to be gathered into comprehensive explanations of transgender issues. In Sangam's literary works, it is possible to find references to transgender persons who have lived in Tamil Nadu, dating back to ancient times. There have been records

²⁰ Kumar G, Suguna A, Suryawanshi DM, Surekha A, Rajaseharan D, Gunasekaran K. Exploring the discrimination and stigma faced by transgender in Chennai city-A community-based qualitative study. *J Family Med Prim Care*. 2022 Nov;11(11):7060-7063. Doi: 10.4103/jfmpe.jfmpe_1037_22. Epub 2022 Dec 16. PMID: 36993073; PMCID: PMC10041271 (last visited February 26, 2024).

²¹ Manini Syali and Vinayak Jhamb, “Mishandling the issue of gender dysphoria in India - an analysis of the transgender persons (Protection of Rights) Act, 2019,” 9 *International Journal of Human Rights and Constitutional Studies* 31 (2022) available at <https://10.1504/IJHRCS.2022.119450> (last visited February 26, 2024).

published in Tolkappiyam and Nigandus that pertain to transsexual individuals. Based on the stories found in Tamil epics, one may learn about the situation of transgender people who are adjusting to life in the palace. Devotional literature discusses the Lord's gendered position in the past, including what it was like to be transgender, female, or male. The focus of male chauvinism in Tamil Nadu is on transgender persons, and they are utterly neglected. The ancient literary works have, in general, documented values that pertain to transgender people²².

❖ Defenders of perversion': Professing Same-Sex Marriage Rights in the Local Press (2022).

A case study was what this was. This case study offers a significant socio-historical account of the debate over same-sex marriage in a small community in central Alberta from December 2004 to August 2005. Thus, this study focuses on two social groups within a particular social environment, each of which represents a particular frame: the teachers at the local university who wrote an opinion piece for the local newspaper and supported an equality frame, and the general public in Camrose and the surrounding rural area who supported a morality frame. This article advances our knowledge of democratic press function, scholarly engagement in the town-gown setting, and how concerned residents of a small conservative rural city that also houses a liberal arts and sciences university campus experienced and framed a very divisive social and political issue—same-sex marriage.²³

²² N Murugesapandian, "Transgenders in Ancient Tamil Literature," 6 *Shanlax International Journal of Tamil Research* 1–13 (2022) available at <https://doi.org/10.34293/tamil.v6i4.4818> (last visited February 26, 2024).

²³ Osborne, G., & Wilton, S. (2022). "Defenders of perversion": Professing Same-Sex Marriage Rights in the Local Press. *Engaged Scholar Journal: Community-Engaged Research, Teaching, and Learning*, 8(3), 32–51. Available at <https://doi.org/10.15402/esj.v8i3.70358> (last visited February 26, 2024).

❖ **“Understanding the Challenges of Socio-Legal Framework among Transgenders in Kerala” International Journal of Law Management and Humanities (2021).**

This research looked at Kerala's transgender population's progress, the struggles they faced both before and after 2015 and the efficacy of the government's current programs. In addition, this article discusses the socio-legal impact on TG individuals in the State by seeing them through the prism of Kerala's social justice system. The purpose of this research was to comprehend how the socio-legal system and transgender protection interact. Because society is so dynamic, regulations enforcing the protection of minorities are necessary. In this sense, the writer thinks that these laws must support them in claiming their identities and provide them some privileges in mainstream society.²⁴

❖ **“A Study on the roles of Kudumbashree and Kerala Social Justice Department in uplifting the transgenders”, Journal of Research in Humanities and Social Science (2021).**

This paper's main goal is to investigate the several revenue-generating and socially elevating initiatives that the Kerala Social Justice Department and Kudumbashree (the State Poverty Eradication Mission) have implemented. Furthermore, the study examines the many issues that the transgender group faces in society and provides solutions for these issues affecting the community as a whole. Kudumbashree has so far had a significant impact on millions of families in Kerala by eliminating absolute poverty, integrating women into society, and expanding their direct and consultative participation both within and outside of the state.²⁵

²⁴ “Understanding the Challenges of Socio-Legal Framework among Transgenders in Kerala,” *International Journal of Law Management & Humanities* available at: <https://ijlmh.com/paper/understanding-the-challenges-of-socio-legal-framework-among-transgenders-in-kerala/> (last visited March 04, 2024).

²⁵ Kumar Ajith & Vidya N. (2021). A Study on the roles of Kudumbashree and Kerala Social Justice Department in uplifting the transgenders, 21-27.

❖ **“The Gender & Marriage War” (2021).**

A great number of challenging themes and subjects about the gender and gay revolution that is taking place in our society are discussed in this book, which uses the Word of God as the ultimate criterion for morality. Strive to find solutions to the problems of marriage and gender! Numerous subjects are covered in the book, including but extending beyond homosexual "Marriage," What is Marriage and Where Does It Come From? Is Gender Based on Genetics or Feelings? The Religious Nature of the Homosexual (LGBTQ+) Movement, and a great deal more²⁶.

❖ **“A Comparative Study of Laws regarding LGBTQ in India and UK,”
International Journal of Legal Science and Innovation (2021).**

This article investigates and studies on understanding of the development of LGBT+ rights and regulations in the modern age from a historical perspective. Two nations are discussed in this article, and they are India and the United Kingdom. By following the timeline of laws and rights of groups that identify as LGBT+ in both of these countries, this article aims to provide readers with a better understanding of the history of legislation associated with the LGBT+ community in both of these nations.²⁷

❖ **“Transgender Health Care Status in Kerala”, Indian Journal of
Endocrinology and Metabolism (2020).**

This topic discusses the different issues that the transgender population faces in Kerala. According to the author, the transgender population faces unfairness at every step, including in their homes, schools, businesses, and even hospitals. When their gender identity is exposed, individuals are unable to live a decent life owing to societal prejudice and shame. In addition to encouraging educational institutions to have a transgender policy and guaranteeing legal action against parents who abandon or abuse gender-nonconforming children, the Kerala government's policy highlights

²⁶ Bodie Hodge, Ken Ham and Avery Foley, *The Gender & Marriage War* (Answers in Genesis, Hebron, KY, 2021).

²⁷ Rupali Mehta, *A Comparative Study of Laws regarding LGBTQ in India and UK*, 3 (3) *IJLSI* Page 235 - 239 (2021), DOI: <https://doi.org/10.1000/IJLSI.11723> (last visited March 04, 2024).

the rights of transgender people to identify as transgender, female, or male. It also prohibits doctors from engaging in "conversion therapy." The Social Justice Department of Kerala has established many rules that may be accessed by anybody holding an ID card issued by them. Even still, the transgender group confronts many challenges with societal acceptability, and the government's efforts are not reaching them.²⁸

❖ **“The role of the civil society in making and repealing of the laws: Section 377 and struggles ahead” Dhaara (2020).**

This article discusses the purposeful exclusion of marginalized people from the decision-making process, which has led to a problem around the Constitution. We need to prioritize the need for a better understanding of the many intersections involved in ordinary LGBTQ interactions. This discusses the need for state machinery organizations that are responsible for safeguarding the constitution but are frequently the ones that commit violations in the first place. This raises the enduring dilemma of whether the state is safeguarding us or whether we need protection from the state itself. An engaged and knowledgeable civil society is crucial to achieving more inclusive, pluralistic, and progressive changes. The establishment of a strong connection between civil society and the ruling government is essential to ensure the preservation of constitutional morals and achieve comprehensive reform. The transformation of the current social reality must include a broader recognition of rights and the embrace of LGBT communities and intersectional politics within the wider conversation.²⁹.

²⁸ Suja Sukumar, Vivek Ullatil and Arjun Asokan, “Transgender health care status in Kerala,” 24 *Indian Journal of Endocrinology and Metabolism* 286 (2020). DOI: https://doi.org/10.4103/ijem.IJEM_146_20 (last visited March 04, 2024).

²⁹ Editor, “The role of the civil society in making and repealing of the laws: Section 377 and struggles ahead” *Dhaara*, 2020 available at: <https://dhaaramagazine.in/2020/11/17/the-role-of-the-civil-society-in-making-and-repealing-of-the-laws-section-377-and-struggles-ahead/> (last visited March 04, 2024).

❖ **“A Need-To-Know LGBT Rights”, *Global Academic Journal of Humanities and Social Sciences* (2020).**

This article explores the lives of those who identify as LGBT and the challenges they encounter in their daily lives, as well as the level of societal awareness around this subject. LGBT individuals in India have both legal and social challenges that are not encountered by those who do not identify as LGBT. In India, it is against the law for two persons of the same sex to have sex together, and doing so might land you in prison.

India stands out as one of the few nations in the world to recognize the rights of a third gender as its constitution acknowledges Hijras as a separate gender from men and women.³⁰

1.4. Research Gap:

The researcher carried out a preliminary study of the available literature and found that there is a research gap that needs extensive research:

- The effectiveness of family rights for LGBT people in India has not formed the basis of major research work. The present work will emphasise on the same.
- Undoubtedly, numerous studies have been conducted on same-sex marriage. However, none of these research endeavours has established the connection between the Right to Marriage and Articles 14 and 15 of the Indian Constitution, which proves that is a fundamental right of an individual.
- There is a lack of comprehensive research on the changing societal attitudes towards same-sex marriage in various areas and demographic groups in India.
- No empirical research has yet been conducted to ensure the successful implementation of Kerala's government policy and LGBT support programs.

The above-mentioned points have been examined for the study. It was challenging to assess how crucial the need for distinct family rights is because every item that was

³⁰ K Sangeetha, “A Need to Know Lgbt Rights,” 2(1) *Global Academic Journal of Humanities and Social Sciences* 1–5 (2020) available at <http://gajrc.com/10.36348/gajhss2020v02i01.00> (last visited March 04, 2024).

looked at and evaluated for this study improved the general rights of LGBT people. Future research can examine how same-sex marriage laws are inescapable for LGBT people. A qualitative examination of LGBT community members' perspectives might reveal the causes of the patterns found in this study, and a broad public poll could reveal how the nation feels about the LGBT population. The researcher intends to find out the opinion of the general public, professionals, lawyers, legal experts, and members of the LGBT community on whether social acceptance along with Family and marriage laws are necessary for the “LGBT Community” to ensure the ‘Fundamental Right to Life’ in our democratic country. An empirical study of the above-mentioned gap has been carried out for this study regarding safeguarding the rights of the LGBT community.

1.5. Research Objectives for the study:

This suggested research work has its primary objectives:

- To evaluate the efficacy and efficiency of Legislative provisions, social integration, and legal complexities relating to the LGBT community in ensuring Constitutional and Fundamental Rights.
- To examine international law and the laws related to LGBT rights in other countries.
- To determine whether new legislation is required to enshrine the Right to family life and children in law, along with reviewing existing legislation that needs to be amended or rectified to ensure effective inclusion of LGBT individuals.
- To examine the impact of the Supreme Court's as well as the lower court's decisions on how society views LGBT communities. An emphasis on social issues, such as whether society does recognize the LGBT community after several judgments have been rendered and what role NGOs can play in meeting the needs of the LGBT community.

1.6. Significance of research problem.

This research is very significant since it focuses on the lack of legal provisions for marriage and adoption for the LGBT community. The main objective is to promote a more inclusive and equitable set of Family laws that provide equal rights for all persons, including the LGBT population. This research is in line with the developing understanding of gender, which has transitioned from focusing on gender identity to sexual orientation. It recognizes the need to safeguard the Family rights of the community, including their ability to live with dignity, form families, and exercise their freedom of expression. The statement emphasizes the need to recognize and uphold the basic rights of individuals within the LGBT community, even as they navigate their self-identity. As a result, the problem of denying people their basic right to life and the capacity to start families is quite important.

To do this, the research study focuses on determining the amendments that must be made to remove the significant restrictions on the family rights of the LGBT population:

- Advocating for inclusion of legislation that ensures equal treatment and rights for all individuals.
- Highlighting cases of human rights abuses on the right to procreate and the right to live.
- Examining global mechanisms and legal viewpoints on the recognition of homosexual nuptial union and the adoption rights of same-sex couples.

The goal of this research project is to thoroughly examine the basic human rights to a dignified existence and the ability to have a family with members of the LGBT community. It will focus on Kerala specifically, the legal and constitutional framework, the role of the judiciary, the historical context, the social repercussions, and international human rights norms. The State of Kerala was selected for this research because it was the first state to enact a policy about transgender issues in 2015. The importance of this study is to shed light on the significance of family laws for the LGBT community, the difficulties they encounter in the absence of such laws, and the possible consequences for their family life. The findings of this study

contribute to the existing literature on the lack of legislative protections for LGBT marriage and adoption. Additionally, it offers suggestions to policymakers within the social justice system.

1.7. Research question:

The central questions for Research will be:

1. What are the historical origins and evolution of the LGBT community in India and globally, and how have they influenced the current status of LGBT rights in India, particularly in Kerala?
2. To what extent do legislative provisions, social integration, and legal complexities concerning LGBT communities in India ensure Constitutional and Fundamental Rights, and what are the gaps in implementation?
3. How do the family rights of the LGBT community in India compare with international law, international conventions, foreign judgments, and the laws of other countries? What measures can be taken to enhance LGBT family rights in India?
4. What policies of International Law and international documents have influenced the development of LGBT rights in India, and how do they compare with major countries working for LGBT Rights?
5. What new legislation or laws should be recommended regarding Family Rights like, same-sex marriage, adoption rights, surrogacy rights, etc. And how can existing legislation be amended or rectified to avoid negatively affecting LGBT communities in India?
6. How has the Supreme Court's decision in “*Navtej Singh Johar v. Union of India*” impacted society's views of the ‘LGBT community in India’, and what implications does this have for the future of LGBT rights in Kerala?
7. What is the present status of LGBT rights' adaptability in the modern era, and how have court rulings and judicial interpretations of these rights changed in India?

8. How have NGOs defended the rights of the LGBT community in Kerala and India, and what changes are required to improve the welfare of LGBT communities?

1.8. Hypotheses:

H1: In India, statutory laws ensuring family rights and social inclusion of the LGBT population are significantly effective, as are those in other developed countries.

Ho1: In India, statutory laws ensuring family rights and social inclusion of the LGBT population are significantly ineffective, as are those in other developed countries.

H2: There is a considerable need for new legislation establishing the right to marriage and related laws to enable the effective inclusion of LGBT people when examining the current laws on the family rights of LGBT people.

Ho2: There is no considerable need for new legislation establishing the right to marriage and related laws to enable the effective inclusion of LGBT people when examining the current laws on the family rights of LGBT people.

H3: The “*Navtej Singh Johar v. Union of India*” case has a substantial significant impact on the societal acceptance of the LGBT community.

Ho3: There is no substantial significant impact of the “*Navtej Singh Johar v. Union of India*” case on the societal acceptance of the LGBT community.

H4: The policies and schemes established for the LGBT Community by the Government of Kerala ensure social support, Family Rights, and conjugality.

Ho4: The policies and schemes established for the LGBT Community by the Government of Kerala don’t ensure social support, Family Rights, and conjugality.

1.9. Research Methodology:

To accomplish the aforementioned objectives of the study both Doctrinal and Empirical research methodology was done along with a Comparative study with the laws of other Countries and ensuring Descriptive and Qualitative methods.

- For Doctrinal research, an in-depth analysis of existing laws on LGBT rights and their interpretation by the Judiciary involving analysis of case laws was followed. The Doctrinal part of the research included a review of law books, research papers, judgments, magazines, newspapers, governmental and non-governmental reports, statutes, policies, plans, conventions, etc.
- For Empirical objectives, primary data was collected. The research on the LGBT Community requires Qualitative and Quantitative Data, that were collected. The state of Kerala was the Universe. The population for generalization for this research is targeted to the NGO named “SAHAYATRIKA” from the state of Kerala and other residents of Kerala. The sampling unit comprised the general public, the legal fraternity, and members of the LGBT community, among 10 stakeholders, who were interviewed to understand different views and opinions on the LGBT community’s social inclusion issues.
- The Quantitative survey was planned to target 300 samples from different parts of the state of Kerala, by categorizing strata in the form of legal and non-legal backgrounds. All the stakeholders of the community were identified to check different variables affecting the social inclusion of the community.
- The questions included socio-cultural variables, awareness, acceptance, and enquiring about the need for more significant laws from the Legislation. The findings of this study can be used to enhance social acceptance, both human rights and the quality of laws.
- Comparativeness ensures the study with LGBT laws of the ‘United Kingdom’, the ‘United States of America’, and ‘Canada’ are primarily considered along with other countries and their NGOs. Compared to other nations that permit same-sex marriage, these three major nations have the largest populations of

Indian migrants, which is why they were selected for the comparative research.

1.10. Sources of data.

The current study methodology offers a comprehensive examination of the sampling procedures used in the research design, data gathering, and analysis. To stay up with technological advancements and use a quantitative data approach, Google Forms is used to run an online survey aimed at both the general public and members of the legal profession. The answers of persons from the LGBT Community were collected via comprehensive field research, which included conducting in-person case study interviews collaborating with the NGO Sahayatrika in Thrissur, Kerala. The interviews and case study concentrate on the Kerala districts of Thrissur and Ernakulam to offer an exceptionally beneficial viewpoint and capture the distinct dynamics and difficulties particular to the community. Because these neighbourhoods have more NGOs and shelter houses accessible to them, LGBT people decide to stay there. The LGBT community is unique in that its members relocate from their birth city or place of residence to an area where other members of their type coexist. LGBT individuals from all 14 districts of Kerala are concentrated in these two districts to a larger extent since these districts are home to several NGOs and state government-run shelter houses that support the LGBT population.

1.10.1. Primary Source:

I engaged with respondents who identified as Lesbian, Gay, Bisexual, and Transgender individuals from various regions of the State. I gathered pertinent information using questionnaires and performed a case study involving 10 participants, based on the information provided by Sahayatrika-NGO.

1.10.2. Data Collection:

Data collection for this research is carried out using the survey technique and field activities. The main data is obtained by administering a well-designed questionnaire to acquire the necessary information. The questionnaire is specifically crafted to guarantee that the data gathered is by the study goals. The questions were also

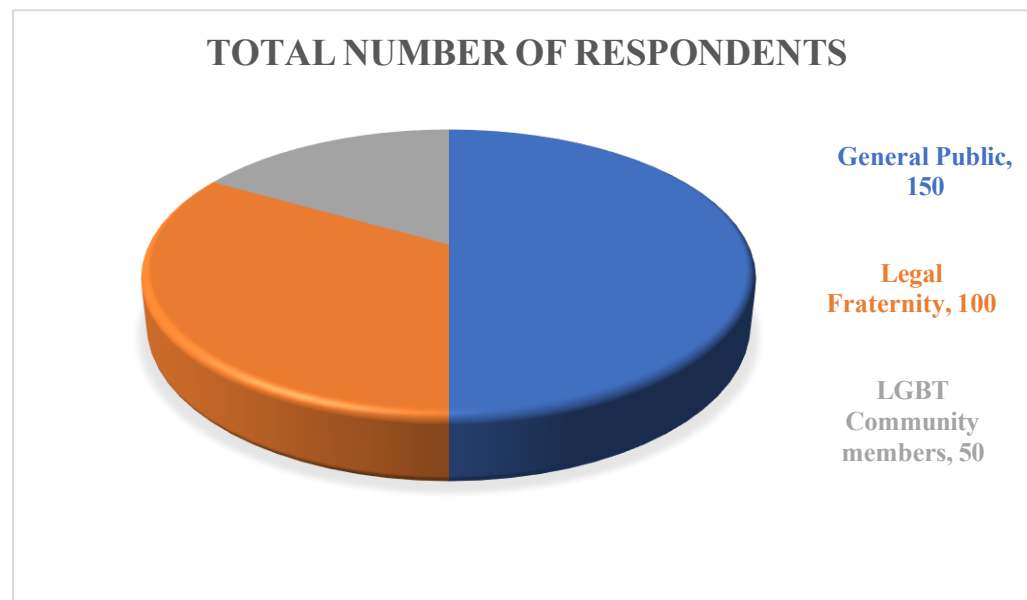
presented to the Institutional Ethics Committee, LPU, which granted permission. **(Annexure: I).**

1.10.3. Total number of respondents for questionnaire survey:

Three hundred participants from the state of Kerala make up the total number of respondents for the empirical study. There are 150 members of the general public, 100 members of the legal fraternity, and 50 members of the LGBT community. Of these, 150 responses will be obtained directly via field visits and 150 online using Google Forms.

A total of 150 members of the general public participated, including college students, working professionals such as teachers, assistant professors, court officials, government employees, housewives, and people between the ages of 18 and 80. This ensured that the participants came from a variety of age and literacy backgrounds. Lawyers, practising attorneys, law professors, law institute principals, four judicial officials, and law students were all members of the legal fraternity respondents.

Figure 1: Total Number of respondents for Questionnaire survey.



1.10.4. According to Several Polls, the overall count of transgender individuals in India.

The Registrar General of India (RGI) implemented three enumeration codes for the 2011 Census Enumeration: Male-1, Female-2, and Other-3. The respondent's judgment was used to make the choice. They instructed the enumerator to record the sex as 'other' and give it the code '3' if the respondent did not wish to choose either '1' or '2'. It is crucial to emphasize that the Census of India does not gather any data explicitly about those who identify as 'transgender'. Therefore, the 'other' category would include not just those who identify as 'transgender', but also anybody who wishes to indicate their gender as 'other'. Additionally, some transgender people can define themselves as either male or female according to their preferences. The population of the category labelled as 'other' according to the 2011 Census is 487,803. Furthermore, the 2011 Census data on the state's "other" population reports that 3902 persons in Kerala identify as belonging to the "Other" gender. According to the Unified District Information System for Education Plus (UDISE+) 2019–20 report, there were 61,214 transgender kids enrolled in schools overall, with 5813 and 4798 of them enrolled in Class 10 and Class 12, respectively³¹.

³¹ “Transgender students await inclusion of third gender category in forms; Maharashtra registers the highest number of applicants,” *The Indian Express*, 2023 available at: <https://indianexpress.com/article/education/class-10th-12th-board-exams-forms-transgender-students-await-inclusion-of-third-gender-category-maharashtra-registers-highest-ahead-of-cbse-8914625/> (last visited March 04, 2024).

Table 1: Transgender Population Distribution by State in India, according to the 2011 Census.

| S. No | State | Transgenders | Child (0-6) | SC | ST | Literacy |
|-------|-----------------------------|--------------|-------------|--------|--------|----------|
| | India | 487,803 | 54,854 | 78,811 | 33,293 | 56.07% |
| 1 | Uttar Pradesh | 137,465 | 18,734 | 26,404 | 639 | 55.80% |
| 2 | Andhra Pradesh | 43,769 | 4,082 | 6,226 | 3,225 | 53.33% |
| 3 | Maharashtra | 40,891 | 4,101 | 4,691 | 3,529 | 67.57% |
| 4 | Bihar | 40,827 | 5,971 | 6,295 | 506 | 44.35% |
| 5 | West Bengal | 30,349 | 2,376 | 6,474 | 1,474 | 58.83% |
| 6 | Madhya Pradesh | 29,597 | 3,409 | 4,361 | 5,260 | 53.01% |
| 7 | Tamil Nadu | 22,364 | 1,289 | 4,203 | 180 | 57.78% |
| 8 | Orissa | 20,332 | 2,125 | 3,236 | 4,553 | 54.35% |
| 9 | Karnataka | 20,266 | 1,771 | 3,275 | 1,324 | 58.82% |
| 10 | Rajasthan | 16,517 | 2,012 | 2,961 | 1,805 | 48.34% |
| 11 | Jharkhand | 13,463 | 1,593 | 1,499 | 3,735 | 47.58% |
| 12 | Gujarat | 11,544 | 1,028 | 664 | 1,238 | 62.82% |
| 13 | Assam | 11,374 | 1,348 | 774 | 1,223 | 53.69% |
| 14 | Punjab | 10,243 | 813 | 3,055 | 0 | 59.75% |
| 15 | Haryana | 8,422 | 1,107 | 1,456 | 0 | 62.11% |
| 16 | Chhattisgarh | 6,591 | 706 | 742 | 1,963 | 51.35% |
| 17 | Uttarakhand | 4,555 | 512 | 731 | 95 | 62.65% |
| 18 | Delhi | 4,213 | 311 | 490 | 0 | 62.99% |
| 19 | Jammu and Kashmir | 4,137 | 487 | 207 | 385 | 49.29% |
| 20 | Kerala | 3,902 | 295 | 337 | 51 | 84.61% |
| 21 | Himachal Pradesh | 2,051 | 154 | 433 | 118 | 62.10% |
| 22 | Manipur | 1,343 | 177 | 40 | 378 | 67.50% |
| 23 | Tripura | 833 | 66 | 172 | 181 | 71.19% |
| 24 | Meghalaya | 627 | 134 | 3 | 540 | 57.40% |
| 25 | Arunachal Pradesh | 495 | 64 | 0 | 311 | 52.20% |
| 26 | Goa | 398 | 34 | 9 | 33 | 73.90% |
| 27 | Nagaland | 398 | 63 | 0 | 335 | 70.75% |
| 28 | Puducherry | 252 | 16 | 40 | 0 | 60.59% |
| 29 | Mizoram | 166 | 26 | 1 | 146 | 87.14% |
| 30 | Chandigarh | 142 | 16 | 22 | 0 | 72.22% |
| 31 | Sikkim | 126 | 14 | 9 | 37 | 65.18% |
| 32 | Daman and Diu | 59 | 10 | 1 | 2 | 75.51% |
| 33 | Andaman and Nicobar Islands | 47 | 5 | 0 | 3 | 73.81% |
| 34 | Dadra and Nagar Haveli | 43 | 5 | 0 | 22 | 73.68% |
| 35 | Lakshadweep | 2 | 0 | 0 | 2 | 50.00% |

Source: This information was given by Minister of State for Social Justice and Empowerment Shri Rattan Lal Kataria in a written reply in Lok Sabha.

1.10.5. Sampling Particulars.

A. Sample Size: -

The sample size is 300 (within the State of Kerala.)

B. Research Area: -

1. State of Kerala.
2. Sahayatrika (NGO), Thrissur, Kerala.

C. Sampling Technique: -

- The survey performed used a non-random sampling approach. The "Interview Schedule" is administered using the "Case study" approach with a sample size of 10 LGBT individuals. The discussion revolved around the growth of their life path. An interview using quantitative methods was done with the same Questionnaire.
- Data is gathered from the general public, the legal community, and members of the LGBT community using the questionnaire method. There are "Closed-Ended Questions" in it.

D. Tools of Analysis: -

The IBM-SPSS Statistics Tool (Version 29) is used for the analysis, which entails performing cross-tabulation and descriptive statistics. Pie charts and other visual aids display the analyzed data.

E. Data Analyses: -

1. The acquired data is analyzed using the IBM-SPSS Statistics Tool (Version 29), which includes descriptive analyses as well.
2. Tables are used for the examination of the gathered data. The data is visually represented using statistical pie charts.
3. Percentages and averages are used to accurately and efficiently depict facts.

1.11. Expected research outcome:

- To analyze and recommend an Act with a possible remedy that can be made to eliminate the discriminatory, unlawful as well and unfavourable practices against the rights of the LGBT community by ensuring their Fundamental Rights.
- To make suitable amendments in the legislation which may create socio-legal dilemmas for the LGBT community.
- To guarantee the implementation of new laws that eliminate ambiguity and highlight the provisions on same-sex marriage, same-sex adoption, etc.
- And amending all other existing laws with the provision that 3rd genders are not wrongly affected by it such as reservation provisions, eligibility norms, etc.

1.12. Limitation of research:

This research specifically examines the individual autonomy, rights within the family, and overall well-being of the LGBT population. The study focuses on the social incorporation of the LGBT population, including their freedom to publicly express their Gender identity, sexual orientation, individual independence, and the safeguarding of their distinctiveness. Furthermore, it delves into the acknowledgement of matrimonial privileges, parental rights, and the capacity to lead a conventional familial existence. The focus of this research is only on the legal safeguards provided to the LGBT population in India, with specific attention given to the situation in the state of Kerala. The State of Kerala was selected for this research because it was the first state to enact a policy about transgender issues in 2015, allowing members of the state's hidden community to come out. Time and budgetary limitations limit the current study on the rights of LGBT people in the state of Kerala. Although the Government has implemented many policies regarding transgender persons, there have been numerous constraints impeding their effective implementation. The social validation among the general population also imposes a limitation on its individuals.

1.13. Research work Chapterisation:

Chapter 2: HISTORY: ORIGIN AND EVOLUTION OF THE LGBT COMMUNITY IN INDIA.

The inception, development, and historical context of the LGBT community in India and elsewhere are covered at the beginning of this chapter. By presenting a comprehensive summary of the thesis, this chapter includes a clear definition of the issue, the specific goals of the research, and the importance of studying LGBT people's rights in familial situations. The chapter provides an evaluation, emphasizing its importance and pertinence within the study's context. Furthermore, the dissertation gives a comprehensive analysis of the societal acceptability of Same-sex marriage laws. It includes research questions and a literature assessment that critically examines previous academic works. Additionally, the research examines the importance and applicability within its specific setting. Furthermore, it provides a rationale for the research, presents the research questions, and defines the comprehensive research methodology used throughout the study. Finally, the chapter provides a comprehensive explanation of the research technique that was used throughout the whole study.

Chapter 3: INTERNATIONAL SCENARIO OF LGBT RIGHTS.

Comparing Indian laws and social behaviour to those of large nations like the United States, Canada, and the United Kingdom is the main subject of this chapter. The policies of international documents that work for LGBT Rights like “The Yogyakarta principles”, “ILGA World- The International Lesbian, Gay, Bisexual, Trans, and Intersex Association” etc. explore the roots of the concept and its historical implementation in many nations. This chapter does international comparative research to investigate the legal rights of homosexual individuals within the context of family. From a perspective rooted in basic human rights, it underscores the significance of international treaties and human rights agreements that have long served as the foundation for promoting fair treatment of individuals who identify as third genders and advancing the process of humanizing society by preventing violations of their human rights. These treaties delineate the basic rights that are widely acknowledged, including the right to marriage for the LGBT Community. Therefore, the chapter

explores the need to maintain these rights to guarantee fair and impartial treatment of individuals. It also analyses the societal consequences of these rights. The chapter promotes the implementation of equitable and impartial family laws for the LGBT community, emphasizing that their family rights are a crucial component of their inherent human right to life.

Chapter 4: LEGISLATIVE FRAMEWORK OF LGBT RIGHTS: ANALYSING CONSTITUTIONAL PROVISIONS AND INDIAN LEGISLATION.

The laws that now govern the rights of the LGBT community, especially those pertaining to marriage rights and how they are affected by them, are briefly reviewed in this chapter. This will emphasize the functionality and practicality of the existing laws. The researcher examined the legal and constitutional frameworks governing the rights of third genders in India and other countries. This chapter analyzed the measures of marital rights, including adoption laws and regulations, and their current legislative position. The emphasis is placed on comprehending the consequences and ramifications of these regulations on the LGBT population and their effective integration into society. The research highlights the significance of upholding the familial rights of the LGBT population.

Chapter 5: JUDICIAL PERSPECTIVE TOWARDS ENSURING THE RIGHTS OF THE LGBT COMMUNITY IN INDIA.

In this chapter, various court decisions and judicial interpretations are included. It also considered the versatility of LGBT rights with the existing scenario. With an emphasis on their fundamental rights, it looks at the Indian Supreme Court's differing opinions on the subject of LGBT rights. To improve the circumstances of people who identify as third gender, the study carefully examines the court's directives and acts. By analyzing these court cases, the chapter aims to shed light on the protection and promotion of human rights for people of the third gender. It emphasizes the effects of these actions on the rights and well-being of the community, highlighting their importance not only in India but also on a worldwide scale. The chapter provides a thorough examination of the court's protection of LGBT rights and highlights the importance of these policies in ensuring that they are treated fairly and equally, including their right to life.

Chapter 6: ROLE OF NGOs IN THE PROTECTION OF LGBT RIGHTS.

The NGOs chosen to research this topic include Sahayatrika in Kerala, the National Centre for Lesbian Rights in the United States, the Kaleidoscope Trust in the United Kingdom, and the NAZ Foundation in Delhi. This chapter outlines the necessity of advancing the rights of the LGBT community and various reforms that aid in the upbringing of the welfare of the LGBT community.

Chapter 7: AN EMPIRICAL STUDY OF THE NEED FOR SOCIAL INCLUSION OF THE LGBT COMMUNITY AND THEIR MARRIAGE RIGHTS.

This chapter shall consist of various methods of data collection and methodology to calculate and analyze the data. This includes interviews with 10 respondents including NGOs like Sahayatrika and NAZ Foundation, which is working for the benefit and welfare LGBT community. Data Collection by Questionnaire from 300 respondents among them 50 respondents are LGBT members and 250 respondents as public general including, Legal professionals, students, and others.

Chapter 8: CONCLUSIONS, SUGGESTIONS AND RECOMMENDATIONS FOR LGBT RIGHTS.

Lastly, the chapter will focus on the findings of the research, a conclusion about the need for an enhancement in socio-legal provisions of the LGBT community as well as a recommendation for a new legislation which will be drawn based on the findings evaluated in the previous chapter.

Hence, this is how the research work chapters are organized.

CHAPTER 2

HISTORY: THE ORIGIN AND EVOLUTION OF THE LGBT COMMUNITY IN INDIA.

“A person’s sexual orientation is intrinsic to their being. A classification which discriminates between persons based on their innate nature would be violative of their fundamental rights.”

-Justice Indu Malhotra

2.1. Introduction.

By their bodily form or genitals, those who identify as LGBT are those who have sexually opposite feelings. It identifies a person whose given sex at birth does not correspond with their gender identification. This individual may identify as either male or female, or they may see that neither label accurately represents their gender identity. When determining a person's gender, factors such as biology, chromosomes, anatomy, and hormones are considered. It is not always the case that a person's biology corresponds with their gender identification, which is the internal sensation of being male, female, or both. Transgender individuals claim that they were given a gender identity that does not correspond to who they are. The acronym LGBTQ refers to "a diverse collection of people who are different in terms of gender, sexual orientation, race/ethnicity, and socioeconomic level." This is what the phrase "LGBTQ" stands for by definition. An individual who is gay is a male who has emotions for another male, while a lesbian is a female who has feelings for another female. Nonetheless, a bisexual person is drawn to both men and women, not only those of the same gender.

A transgender individual is someone whose gender identification and sexual orientation do not align with their biological sex. Also known as a gender non-conforming individual. The term "trans-sexual" refers to a transgender individual who has modified their physical traits to correspond to their gender identification. This may be accomplished by surgical procedures or hormone treatment. The word "queer"

refers to gender identities and sexual orientations that do not fit into the categories of heterosexual or cisgender identities³². Queer is a term used as a shorthand for those who identify as “lesbian, gay, bisexual, or transgender”. The word "queer" is often used to express the concept that gender and sexuality may be complex, evolve, and not cleanly fit into either/or identities, such as gay or straight, male or female. Therefore, the word "queer" is a catch-all phrase that refers to those who do not identify as heterosexual or cisgender³³.

Many people in India have a diverse spectrum of identities, cultures, and experiences relating to transgender issues. These people include Shiv-Shakthis, Kothis, Jogtas/Jogappas, Aravanis, Hijras, and Sakhiya. As long as civilization has been on the subcontinent, the hijra, also known as the transgender women's group, has been a part of India. The hijra community is a monument to the sexual variety that is essential to Indian culture at the same time as it has been forgotten. It has a history that has been chronicled for more than four thousand years and is described in ancient scriptures. The hijra community has been documented in ancient literary works, with the most renowned being the "Kama Sutra." They are seen as individuals who possess a "third nature" (tritiyaparkriti), which is a Hindu scripture on sexual conduct that was composed between 400 BCE and 200 CE. The character of Hijra plays an important part in both the Ramayana and the Mahabharat. Ardhnari is one of the various manifestations of Shiva, a fundamental Hindu deity. This form of Shiva entails his merging with his bride, Parvati, to become something else. From the 16th to the 19th centuries, they had important responsibilities and positions under the Mughal monarchy. Not only did they wield religious power, but they also travelled south in search of blessings, especially during church services.³⁴.

³² “What does queer mean?,”*available at:* <https://www.plannedparenthood.org/learn/teens/sexual-orientation/what-does-queer-mean> (last visited April 26, 2024).

³³ “Queer | Definition & Uses | Britannica,”*available at:* <https://www.britannica.com/topic/queer-sexual-politics> (last visited April 26, 2024).

³⁴ Sanjeev Kumar, “LGBT Community in India” *Lesbian FunWorld Books*, 2020*available at:* <https://lesbianfunworld.com/books/lgbt-community-in-india-by-sanjeev-kumar/> (last visited April 26, 2024).

In Patanjali's fundamental book, the Mahabhasya³⁵, transgender persons are categorized as one of the three "natural genders." The third sex is also explained in great depth in the Manu Smriti. Apsaras, Gandharvas, and Kinnars are the three categories of supernatural beings or devas that are mentioned in the Puranas. Apsaras are feminine figures, whereas Gandharvas are masculine figures, and kinnars are third-gender figures.³⁶

Nevertheless, when the British colonial authorities took control of the Indian subcontinent in the 19th century, their position and prestige in society began to decline. As a result, they criminalized the hijra population via a variety of laws. On the other hand, even though we have been independent for seven decades, our community continues to be a victim of hate and violence, not just physically but also psychologically. Despite being in our nation for a very long time, transgender people still have relatively limited rights in the twenty-first century. The transgender population in India is more susceptible and at great risk due to this particular circumstance.

The need to gain knowledge from one's prior experiences has always been highlighted by human nature, and this is truly rather crucial. Through the course of history, we have gained the knowledge that some things need to be consumed and carried forward, while other things ought to be disregarded. People who are considered to have "civilized" us have referred to the ancient past of India, which is included by the enormous "sanatana dharma," as mythology³⁷. This culture believes that every living thing contains an atman, also known as a soul, and worships brahman, which is the highest form of purity and the ultimate truth. Both Atman and Brahman are free of

³⁵ “महाभाष्यम्: Mahabhashya with Explanation in Hindi (Set of 10 Books) | Exotic India Art,” *available at*: <https://www.exoticindiaart.com/book/details/mahabhashya-with-explanation-in-hindi-set-of-10-books-nzf007/> (last visited April 26, 2024).

³⁶ Voruganti, S. V. and H. (n.d.). “A Hindu approach to LGBT rights. Swarajyamag” *available at*: <https://swarajyamag.com/culture/a-hindu-approach-to-lgbt-rights>. (last visited April 26, 2024).

³⁷ “All About Hinduism – The Divine Life Society,” *available at*: <https://www.dlshq.org/download/all-about-hinduism/> (last visited April 26, 2024).

any sexual or gender connotations or limitations³⁸. It is believed that Shiva, one of the most respected deities in India, is androgynous. This idea is derived from the premise that Shiva's profound affection and unwavering dedication towards his wife Parvathi resulted in their collaboration with “Ardhanariswar”. The Tertiya prakriti, also known as the tertiary nature, is a concept that is described in ancient Hindu scriptures. This concept encompasses a diverse range of characters, such as effeminate males, masculine females, bisexuals, homosexuals, and even asexual individuals. In certain respects, the “Tritiya Prakriti” was considered to be of a higher rank than the general populace, and it was even considered to be divine. When compared to current people, the cognitive processes of ancient Indians were so advanced that they were prepared to embrace the most fundamental concept, which is "live and let live." It was the invaders who were passionate about altering this worldview since they were unable to incorporate it into their own lives.

The inhabitants of this place never impose restrictions on how others perceive them. According to the Rig Veda, "Vikriti Evam Prakriti"—which translates to "what seems unnatural, is also natural." The way someone is portrayed shouldn't affect how other people see them. Additionally, the Sanatan writings consistently refer to marriage as the joining of two souls, not only two people who are of different genders. This supports the idea that a person's identity transcends their gender or sexual orientation. The outlanders came to our country not just with their overwhelming military might but also with a particular attitude. All they did was try to alter the foundation of our existence by modifying our minds to the point where we would lose the ability to exert our own volition. They considered us beneath them. More examples of the widespread acceptance of everyone can be found by digging deeper. Regardless of their disposition or train of thinking. However, the world still has the false belief that we are a subhuman species, which is both hypocritical and unfounded. We must come

³⁸ “Were every religion’s core concepts taken from Sanatana Dharma?,” *Quora available at:* <https://www.quora.com/Were-every-religions-core-concepts-taken-from-Sanatana-Dharma> (last visited April 26, 2024).

to terms with our genuine ideas and advance to the superior state we attained thousands of years ago.³⁹

2.2. Concept: What exactly is the LGBT?

The acronym LGBT is derived from the English term, wherein the initial letter "L" denotes "Lesbian," signifying a woman who experiences sexual attraction towards other women." The subsequent letter "G" signifies "Gay," indicating "a man who experiences sexual attraction towards other men." The third letter "B" signifies "Bisexual," signifying "an individual who possesses both male and female reproductive organs or exhibits sexual attraction towards both men and women." Finally, the fourth letter "T" stands for "Transgender," which designates a person whose gender identification differs from the gender given to them at birth. "QUEER" is a broad phrase that encompasses individuals whose "sexual orientations and gender identities" don't fit the definition of cisgender or heterosexual norms.⁴⁰

Nevertheless, a significant number of LGBT persons in India choose to maintain a clandestine existence out of apprehension over probable discrimination from their relatives, who may see homosexuality as dishonourable. In rural areas, discrimination continues to exist, particularly against LGBT persons who often face family rejection and are forced into marriages with individuals of the opposite gender. Individuals from the LGBT community are actively advocating for equitable rights and societal inclusivity. Transgender individuals, particularly, have significant challenges in attaining social acceptability. Individuals belonging to the LGBT community often encounter societal disapproval. The prevalence of prejudice against the LGBT population makes this matter of significant concern.⁴¹

³⁹ "Hinduism," *sukfco*, 2014 *available at*: <https://sukfco.wordpress.com/2014/12/16/hinduism/> (last visited April 26, 2024).

⁴⁰ "What does queer mean?," *available at*: <https://www.plannedparenthood.org/learn/teens/sexual-orientation/what-does-queer-mean> (last visited April 26, 2024).

⁴¹ Ira Trivedi, *The Indian in the Closet: New Delhi's Wrong Turn on Gay Rights*, Foreign Affairs, Vol. 93, No. 2 (Mar 2014).

2.3. Types in the QUEER community.

1. ABROSEXUAL: The term "bisexual" designates a certain kind of sexuality in the context of sexual flexibility. A bisexual person is someone who has frequent fluctuations in their sexual attraction. For example, they may identify with the label "gay," and then subsequently feel attracted to persons of all genders, and then discover that they have very little to no sexual interest at all.
2. AFAB: "Assigned Female at Birth".
3. AMAB: "Assigned Male at Birth". The words AFAB and AMAB are prevalent among a diverse group of persons, including transgender, non-binary, and intersex individuals.
4. AGENDER: The concept of genderlessness or the absence of a gender. People who identify as gender nonconforming may also identify as a mix of both genders. They are devoid of gender and are often referred to as gender-free or genderless⁴².
5. ALLY: Typically, someone who is heterosexual and/or non-transgender who advocates for the LGBTQ+ community. In the context of LGBTQIA+ advocacy, a straight ally refers to a person who is not affiliated with the LGBTQIA+ group but actively supports their pursuit of equality and rights. It is essentially a designation for those who embrace everybody as they are and demonstrate acceptance towards everyone. They exhibit benevolence and uphold the principle that every individual is entitled to forge a life they cherish.
6. ANDROGYNE: An androgynous person is someone who identifies with a gender that includes both masculine and feminine characteristics, or falls somewhere in between the two⁴³.
7. AROMANTIC: A person who has a relatively low or non-existent level of romantic attraction to other people.

⁴² GenderGP, "What is Agender? Finding Out I'm Agender" <i>GenderGP Transgender Services</i>, 2021<i>available at</i>: <https://www.gendergp.com/what-is-agender/> (last visited April 26, 2024).

⁴³ Billie Olsen, "What Does LGBTQIP2SAA Mean?" <i>LGBTQ and ALL</i>, 2023<i>available at</i>: <https://www.lgbtqandall.com/what-does-lgbtqip2saa-mean/> (last visited April 26, 2024).

8. ASEXUAL: This term, which is sometimes shortened to "ace," refers to a person who may feel romantic interest in another person but has little to no sexual desire.
9. BINARY GENDER: The sociological construct or "traditional" perspective of gender that is restricted to the terms "man" and "woman" and is characterized by a set of qualities that are culturally linked with male-ness (masculinity) or female-ness (femininity) respectively.
10. BISEXUAL: The potential for sexual attraction to people of more than one sex and/or gender, however not always for the same length of time, not always in the same way, and not always to the same extent.
11. CISGENDER: Cisgender people are those whose gender identity and expression match the sex they were assigned at birth and whose gender is accepted by the prevailing cultural norms in their community⁴⁴.
12. CIS-MAN: a person who is naturally male, identifies as a man, and expresses himself in a stereotypically masculine manner.
13. CIS-WOMAN A person who has feminine biological characteristics self-identifies as a woman and expresses herself in a manner that is feminine when appropriate.
14. CLOSETED: An individual who refrains from revealing their LGBTQ sexual preference or gender type to a substantial number of people, or anybody at all. Additionally, there are occasions when being in the closet indicates that one does not want to disclose their sexual identity to themselves.
15. DEMISEXUAL: The sexual orientation known as demisexuality is characterized by the fact that an individual only experiences sexual attraction to those individuals with whom they have an emotional connection. The majority of demisexuals experience sexual attraction very seldom in comparison to the overall population, and some of them have very little to no interest in engaging in sexual

⁴⁴ "LGBTQIA+ Basic Terms and Definitions," *South Dakota State University* *available at*: <https://www.sdstate.edu/office-multicultural-affairs-accessibility/lgbtqia-basic-terms-and-definitions/> (last visited April 26, 2024).

behaviour. Individuals who identify as demisexual are regarded to be on the asexual spectrum.

16. FLUID(ITY): Fluid(ity) is a phrase that, in most cases, is used in conjunction with another term, such as gender-fluid or fluid-sexuality, to denote an identity that is a shifting mix of the alternatives that are accessible⁴⁵.
17. FTM/MTF: This term refers to a person who has received medical procedures to alter their biological sex (either from woman to man or vice versa), often to match it with their gender identification.
18. GAY: a person who identifies as a part of the homosexual community or who has a substantial sexual preference for one among the very same gender or sex to the greatest extent possible. Generally seen as being linked with males.
19. GYNOSEXUALITY: The term "gynesexuality," sometimes spelt, refers to an individual who experiences attraction towards femininity. This phenomenon implies that individuals of any gender may experience attraction towards individuals who identify as female or exhibit feminine traits.
20. HETEROSEXUAL: An individual exhibiting an emotional, romantic, and/or sexual inclination towards those of the other gender.
21. HOMOSEXUAL: Primarily regarded as a medical word, it refers to an individual who has emotional attraction and/or sexual attraction towards someone of the same gender.
22. INTERSEX: A broad word used to describe a range of physical characteristics in which an individual with a combination of different biological parts or sexual/reproductive anatomy deviates from the conventional sex binary.
23. LESBIAN: A female individual who experiences a notable pull, mostly one from the same biological gender, or who expresses to belong in the same group.

⁴⁵ “Terms and Definitions - Spectrum - Loyola University Maryland,”*<i>available at</i>*: <https://www.loyola.edu/departments/lgbtq-services/resources/lgbtq-terms-definitions#:~:text=LGBTQQIP2SA%3A%20any%20combination%20of%20letters,Two%2DSpirited%2C%20and%20Asexual>(last visited April 26, 2024).

24. NON-BINARY: A broad word including those who may not only see themselves as male or female, or who may express to be both.
25. PANSEXUAL: An individual who feels drawn to others, irrespective of their gender identification. Individuals who identify as pansexual may articulate their attraction as centred on personality traits rather than gender categories.
26. POLYSEXUAL: Individuals who have a romantic, sexual, or affectionate longing for several genders.
27. QUEER: Repurposed pejorative terminology by those who reject gender and sexual categorizations. Additionally used as a political identity by several individuals seeking to destroy repressive societal institutions.
28. QUESTIONING: The phenomenon of self-exploration about an individual's sexual inclination and/or gender identification.
29. STRAIGHT: An individual's romantic and/or sexual orientation characterized by a sense of attraction towards others of a gender different from their own. Commonly used to denote a male individual who is drawn to women and vice versa.
30. TRANSGENDER: This phrase encompasses individuals whose gender expression or identity is not the same as that which they are been assigned during their birth, and/or whose gender is not acknowledged or accepted by the prevailing cultural norms. People whose biological sex does not match their gender are said to have a gender identity.
31. TRANSEXUAL: In the past, the term "transgender," which was more medical, was used to describe people who changed their gender to the "opposite" one assigned to them at birth⁴⁶.
32. TWO SPIRIT: An umbrella phrase that encompasses sexuality and gender in organizations that are indigenous to Native American tribes. People who have two spirits often play significant roles in the societies in which they live, such as being

⁴⁶ "Your guide to what all the LGBTQIA+ terms mean," *Cosmopolitan*, 2023 available at: <https://www.cosmopolitan.com/uk/love-sex/a20730324/lgbt-meaning/> (last visited April 26, 2024).

leaders and healers. Although the phrase may be used to allude to a person who embodies both masculinity and femininity, this is not the only meaning that the term may have. Many different interpretations and emotions might be associated with the word "two-spirit," and this concept does not connect with every person. Even though the phrase itself began to be used more often around the year 1990, there have been two kindred spirits for millennia⁴⁷.

33. THE "PLUS": There is an opportunity for developing new knowledge of many facets of the multiple gender preferences and sexual recognition, which is made possible by the plus sign⁴⁸. Many activists say that the inclusion of the "plus" is significant and should not be ignored, even though alternatives such as LGBT or LGBTQ are often used. A huge variety of people comprising transgender and appealing to others from the same or similar identity are represented by the acronym, which serves the aim of expressing this diversity. To more accurately portray that variety, the use of the + sign is a preferable option.

Individuals representing lesbian, gay, bisexual, or transgender are all included under the first abbreviation LGBT, which was originally used in the 1990s⁴⁹. The number of letters steadily increased to accommodate a greater variety of identities and experiences. The word "queer," which is an acronym for the letter Q, was added in an effort to accommodate a wider range of sexual orientations and gender identities. It is now referred to as LGBTQ+ to ensure that all groups have the opportunity to feel included. A few more acronyms that Canadians or organizations in Canada have used to refer to LGBTQ+ individuals are as follows:

⁴⁷ Site Factory admin, "LGBTQIA Resource Center Glossary" <i>LGBTQIA Resource Center</i>, 2015<i>available at</i>: <https://lgbtqia.ucdavis.edu/educated/glossary> (last visited April 26, 2024).

⁴⁸ LGBTQIA+ 101," Princeton Gender + Sexuality Resource Center" *available at*: <https://www.gsrc.princeton.edu/lgbtqia-101>(last visited April 26, 2024).

⁴⁹ "What is the full acronym for LGBTQIP2SAA? • What's On Queer Magazine," <i>What's On Queer BC • Magazine, Events and Resources for the LGBTQ+ Community</i>, 2023<i>available at</i>: <https://whatsonqueerbc.com/woq-bc-stories/what-does-the-acronym-mean>(last visited April 26, 2024).

- The term LGBT* is used by the Canadian Gay & Lesbian Chamber of Commerce. The symbol "*" has a resemblance to the plus sign, serving as a reference to other identities that may not be included under the more fundamental term. Examples of such identities include those who identify as two-spirited or intersex.
- A preference for the term LGBTQI2S is expressed by the “Egale Canada Human Rights Trust”.
- The “Egale Canada Human Rights Trust” explicitly expresses a preference for the name LGBTQI2S.
- Pride Toronto has adopted the LGTBTTIQ2SA framework, which includes a variety of identities such as intersex, queer, questioning, two-spirited, lesbian, gay, bisexual, transsexual, transgender, and allies. The phrase in question is often referred to as LGBTQQIP2SAA. Furthermore, sometimes, a "K" is appended, as shown by LGBTQIAPK or LGGBTQQIAAPPK.⁵⁰

More than a hundred communities have been discovered so far, and there are yet many more whose characteristics need to be mentioned. Therefore, everyone who is not straight will fall under this category called QUEER.

2.4. “GENDER IDENTITY” and “SEXUAL ORIENTATION”: The Relationship between the two.

Gender identity and sexual orientation⁵¹ are two different ideas that may be distinguished from one another. In contrast to gender identity, sexual orientation refers to a person's persistent physical, romantic, and/or emotional preference for another individual. Contrarily, a person's internal perception of their gender as male, female, or another gender is known as gender identity. Transgender persons may identify as these sexual orientations, just as non-transgender people could identify as

⁵⁰ *Id at 41.*

⁵¹ “Gender Identity Vs. Sexual Orientation,” *Gender Blog by Darlene Tando, LCSW*, 2011 available at: <https://darlenetandogenderblog.com/2011/11/05/gender-identity-vs-sexual-orientation/> (last visited April 26, 2024).

heterosexual, lesbian, gay, bisexual, or asexual. Research that was conducted not too long ago showed that the process of transition might give birth to a shift or a new phase of exploration in the process of partner attraction.

Transgender individuals often maintain the same level of emotional connection with their loved ones during a transition, as they had before the change. Typically, individuals identify their sexual orientation by referencing their gender. For instance, someone who identifies as transgender or has a gender transition from male to female, and experiences attraction towards other women, would be classified as a lesbian or gay woman. Similarly, an individual who is designated female at birth has a gender transition to male and exhibits attraction towards other males, would be classified as a homosexual man.

2.5. India's Third Gender: History and Development.

The existence of Eunuchs dates back to the 9th century BC. The term originates from the Greek language and denotes the role of a "Keeper of the bed." Castrated individuals were highly sought after to protect the female quarters inside royal houses. The practice originated in China, namely during the Ming Dynasty when there were up to 70,000 eunuchs in the Great Palace. In the Mahabharata, the Pandavas bring in to play Shikhandi, a eunuch, to conquer Bhishma Pitamah at the Battle of Kurukshetra⁵².

The philosophical works of the three major spiritual traditions of India such as Hinduism, Jainism, and Buddhism- include references to the concept of third sex. It may be deduced that Vedic society acknowledged the existence of three genders. The Vedas, dating back to around 1500 BC to 500 BC, delineate persons into three distinct groups based on their inherent essence or prakrti. The "Kama Sutra", written about the 4th century AD, and other texts also discuss the notions of "pums-prakrti (male nature), stri-prakrti (female nature), and tritiya-prakrti (third nature)"⁵³. Multiple sources indicate that persons who identified as third sex were widely recognized in

⁵² M Michelraj, "Historical Evolution of Transgender Community in India," 4 *Asian Review of Social Sciences* 17-9 (2015).

⁵³ *Id.* at 39.

premodern India, including both males and females, as well as intersexual individuals. These individuals were often identified from an early age. In ancient Hindu languages, astrology, medicine, and law, the idea of a third sex is widely addressed. The “Manu Smriti”, a significant Hindu law literature, explains the biological foundation for the presence of the three genders. Based on the information provided, the conception of a male kid occurs when there is a greater abundance of male seeds, while the conception of a female child occurs when there is a greater abundance of female seeds. If it consists of an equal number of males and females, a third-sex kid or twins of both genders can be created. On the other hand, if either gender is feeble or lacking in number, it results in the inability to conceive. The Indian philosopher Patanjali claims that the three grammatical genders in Sanskrit derive from three inherent genders in his dissertation on Sanskrit grammar, known as the "Mahabhasya" (c. 200 BC)⁵⁴. The “Tolkappiyam”, which is the earliest Tamil grammar dating back to the 3rd century BC, not only mentions a group of males who are not masculine but also acknowledges hermaphrodites as a distinct "neutral" gender.

The nine planets are divided into one of three genders by "Vedic astrology" norms. The third gender, "Tritiya-Prakriti," is particularly linked to the planets Ketu, Saturn, and Mercury. The Puranas also describe three separate groups of deities involved with music and dancing: apsaras (female), Gandharvas (masculine), and kinnars (neutral). The “Ramayana and the Mahabharata”, two significant Sanskrit epic works, demonstrate that a third gender existed in early Indic civilization. Some versions of the Ramayana story portray a specific point when the main character, Rama, sets forth on a voyage of banishment into the wilderness. While on his trip, he becomes aware that a large portion of the inhabitants of his hometown, “Ayodhya”, are following closely after him. His instructions for men and women to disengage left individuals who did not identify as either male or female uncertain of what to do, so they chose to remain there. Upon Rama's return from exile, he found them still present and bestowed blessings upon them, predicting a future when they would ascend to the throne. The Buddhist Vinaya, which was formally established in the 2nd century BC and believed to have been transmitted through oral tradition from Buddha,

⁵⁴ *Supra* note 35 at 34.

encompasses four primary classifications of sex and gender: males, females, Ubhafobyanjanaka (individuals with both sexual orientations), and Pandaka (individuals have varied non-conventional sexual preferences, which may suggest a lack of male sexual ability). The term "pandaka" emerged within the Vinaya tradition to refer to a diverse group of persons who had physical and/or behavioural characteristics that were considered inconsistent with the typical features associated with males and females. This category included individuals who identified as both male and female.

One of the best examples of the community's past tolerance is the Khajuraho temples⁵⁵. These temples were built between 950 and 1050 A.D. by the Chandela dynasty. Same-sex couples are shown in the temple sculptures, including an open picture of nude men and women engaging in fluid sexuality. Comparable photos at Kornak's Sun Temple⁵⁶. Similar depictions of same-sex relationships between men and women may be seen in the Ellora caves, which depict the life of Buddhism's founder, Gautam Budha. These several instances demonstrate the presence of a liberal society that is free from prejudice and that freely portrays them in such prestigious settings as a temple.

Islamic literature's most famous textual example addressing same-sex desire is Baburnama.⁵⁷. These kinds of references have been employed by well-known Sufi poets such as Sarmand Kashani and Sufi Saint Bulleh Shah.⁵⁸.

⁵⁵ Pandey BV, "Why Legalising Gay Sex in India Is Not a Western Idea" (BBC News, December 31, 2018) *available at* <<https://www.bbc.com/news/world-asia-india-46620242>>(last visited April 26, 2024).

⁵⁶ Nair SS, "Life360" (Life360, November 28, 2019) *available at* <<https://jomec.co.uk/life360-2019/uncategorised/religion-has-always-been-the-biggest-tool-to-create-taboo-in-india>>(last visited April 26, 2024).

⁵⁷ Salam ZU, "An Emperor with Foibles" The Hindu (February 15, 2014) *available at* <https://www.thehindu.com/books/books-columns/an-emperor-with-foibles/article5692770.ece>> (last visited April 26, 2024).

⁵⁸ Khalid H, "From Bulleh Shah and Shah Hussain to Amir Khusro, Same-Sex References Abound in Islamic Poetry" Scroll.in (June 17, 2016) *available at* <<https://scroll.in/article/810007/from-bulleh-shah-and-shah-hussain-to-amir-khusro-same-sex-references-abound-in-islamic-sufi-poetry>>(last visited April 26, 2024).

The British Empire brought about a more anglicized perspective of society in India, which led to changes in legal and social norms. The Indian system was forced to adopt the concepts of Western philosophy, many of which were established by the Church. The framework of laws the *Indian Penal Code*, which Lord Macaulay, the crime of homosexuality was created. This legal need developed in tandem with the societal concept of morality—what is moral and what is not—and the idea that it is immoral. Morality combined with religious beliefs about life after death led to social questions about these behaviours and an obvious denial of civility and compassion. This perspective was deeply embedded in society, and the *Indian Penal Code* and its “Section 377” were kept in the legal system long after independence. The British, who had instituted this legal provision, removed it in their own country in 1967, but the fight persisted in India until 2018.

2.5.1. Evolution of LGBT in Historical India.

While the holy scriptures that form the basis of Hinduism, the predominant religion in India, do not directly discuss the ethical aspects of homosexuality, the faith has embraced many perspectives on this matter. These include the presence of gay characters and ideas in its literature, as well as maintaining a neutral or negative stance towards homosexuality. Vātsyāyana's *Kamasutra*, an ancient Indian classic, dedicates a whole chapter to the exploration of romantic gay behaviour.

Arthashastra.

The *Arthashastra*, an Indian text on statecraft from the second century BCE, lists several sexual offences that, regardless of the participant's gender, carried minor penalties. While gay intercourse was not explicitly forbidden, it was seen as a comparatively minor offence, in contrast to many types of heterosexual intercourse which were subject to more severe punishments.

Engaging in sexual activity with women who were not virgins was subject to a small monetary penalty, whereas gay activity between males may be absolved by punishment, which included consuming 5 cow products and observing a one-night fast, or taking a bath while wearing one's clothes. It is worth noting that the penance

substituted for the traditional notion of homosexual relations leading to a castration penalty.

2.5.2. The medieval era.

Al-Biruni observed that sexual acts with the same genders and pederasty were widely condemned throughout the Middle Ages. During the Muslim reign, the sultans of the Delhi Sultanate had relationships with males, against the restrictions of Sharia law, and this practice grew more common.⁵⁹.

2.5.3. Mughal Period.

Mughal nobility were also homosexuals, in addition to pederasty, which was seen as "pure love" and was prevalent among Central Asians. It was less common in India⁶⁰, however. He developed feelings for Abhai Chand, a Hindu boy, according to the chronicle of Sarmad Kashani penned by the guardians of his grave. Eventually, his father gave in and permitted their relationship. In late medieval Urdu poetry, the word "chapti" was used to denote sexual encounters between individuals of the same gender. The term "Amarad Parast" denoted those who experience a predilection for young guys. Johan Stavorinus, a Dutch adventurer, documented instances of male homosexuality among the Mughal community residing in Bengal. A uniform set of punishments for homosexuality was created by the Mughal Empire's Fatawa-e-Alamgiri, which included 50 lashes at most for a slave, 100 lashes for a free unbeliever, or stoning to death for a Muslim⁶¹.

⁵⁹ "The Age Of Wrath," Penguin Random House India *available at*: <https://www.penguin.co.in/book/the-age-of-wrath/> (last visited April 26, 2024).

⁶⁰ "Book Review: Ruth Vanita and Saleem Kidwai edited Same-Sex Love in India: A Literary History – Rupkatha Journal on Interdisciplinary Studies in Humanities," 2013 *available at*: <https://rupkatha.com/book-review-ruth-vanita-saleem-kidwai-edited-same-sex-love-india-literary-history/> (last visited April 26, 2024).

⁶¹ Haroon Khalid, "From Bulleh Shah and Shah Hussain to Amir Khusro, same-sex references abound in Islamic poetry" *Scroll.in*, 2016 *available at*: <http://scroll.in/article/810007/from-bulleh-shah-and-shah-hussain-to-amir-khusro-same-sex-references-abound-in-islamic-sufi-poetry> (last visited April 26, 2024).

2.5.4. The era of British colonization (1858–1947)

“Section 377 of the *Indian Penal Code*⁶²”, enacted in 1861, was used by the “British Raj” to outlaw sexual behaviours that were deemed "against the order of nature," including gay sexual activities. In Portuguese India, the Goa Inquisition undertook the prosecution of the death offence of sodomy. A 20th-century gouache picture depicts two ladies using carrots as dildos.

2.5.5. Republic of India (Mainly 1947- 2009)

Shakuntala Devi published the first studies about the concept of “homosexuality” in India in 1977. According to Human Rights Watch, even though Section 377 convictions are uncommon, no convictions for homosexual activity were noted in the years preceding 2009—the law was used to harass LGBT communities, sex workers, HIV/AIDS prevention advocates, and men who participate in same-sex relationships. The organization records the apprehension of four individuals in Lucknow in 2006 and an additional four in 2001⁶³.

Sexual relations were illegal in India from the time Section 377 of the *Indian Penal Code* has been in force since 1860 until the Delhi High Court's 2009 decision. Following the overturning of the Delhi court's 2013 ruling, gay relationships were once again prohibited until the Supreme Court of India's 2018 ruling in “*Navtej Singh Johar v. Union of India*⁶⁴”. It became illegal under this law for someone to have "sexual intercourse contrary to the natural order."

According to a community health organization based in Mumbai, the Hijra community in India is well-recognized and highly regarded as a prominent third-sex group in contemporary society. There are an estimated 5 to 6 million Hijras in India, according to the Humsafar Trust. These areas are often called Jagappa, Aravani, or Aruvani.

⁶² 160 (2009) DLT 277.

⁶³ Jeffrey S. Siker (ed.), *Homosexuality and Religion: An Encyclopedia* (Greenwood Press, Westport, Conn, 2007).

⁶⁴ AIR 2018 SC 4321.

2.5.6. Global Point of View.

Australia has made notable advancements in the recognition of transgender rights. The nation has recently implemented measures to facilitate the process of passport application to individuals who self-identify as a third gender, therefore excluding both males and females. Significantly, the government will no longer mandate that individuals provide evidence of gender reassignment surgery as a prerequisite for altering the gender shown on their passports. Since 2005, India has included a third gender category in its passport application. Nevertheless, the designation of "E" for eunuch has generated some controversy. In the current year, Bangladesh has introduced an additional category, denoted as "other."

In Nepal, despite the Supreme Court's directive in 2007 mandating the government to provide equal treatment of the third gender, people continue to be deprived of this fundamental entitlement. Before the Parliament voted on a new Prime Minister, Baburam Bhattarai committed to take appropriate action by sending a directive to all CDO offices, urging them to commence the issuance of citizenship ID cards for individuals of the third gender. Naturally, he pursued this action while soliciting backing from CPN (United), a political group that had 5 seats in the parliament, one of which was held by Sunil Babu Pant from the Blue Diamond Society. Bhattarai's commitment served as a source of encouragement for advocates and campaigners. It would start the process, remove one element in the bureaucratic hierarchy of responsibility, and exert influence on other government agencies to begin seeing third genders as equal.

The third gender, known as "zero lingis", has been a prominent group within the LGBTI rights movement in Nepal. Their unwavering support has resulted in significant progress, including their inclusion (although restricted) in the 2011 census⁶⁵. Measures such as the implementation of the census and the issuance of a limited number of citizenship ID cards to individuals identifying as third genders

⁶⁵ "How Did Nepal Become a Global LGBT Rights Beacon? | Human Rights Watch," 2017 *available at*: <https://www.hrw.org/news/2017/08/11/how-did-nepal-become-global-lgbt-rights-beacon> (last visited April 27, 2024).

throughout Nepal serve as evidence of the country's technological capability to acknowledge and acknowledge the existence of third genders. The “Sexual and gender minority rights movement” in Nepal, particularly the 2007 Supreme Court ruling, is widely regarded as a notable illustration of successful and advanced grassroots human rights advocacy on a global scale. The court's insistence on complete equality is hindered by bureaucratic obstacles, resulting in a significant number of persons facing difficulties in obtaining their fundamental rights. "Transgender and intersex individuals encounter various practical and everyday obstacles, such as job applications, bank account openings, and travel, due to the absence of official acknowledgement of their preferred gender," stated Navi Pillay, the “UN High Commissioner for Human Rights”, about the advancements made in Australia⁶⁶.

The United Nations' highest human rights organization has recognized the importance of the gender and documentation issue. The Nepali government started integrating the third gender into its infrastructure by establishing a budget line specifically for sexual and gender minorities in 2008, providing a limited number of third-gender ID cards in recent years, and including a third-gender category in the 2001 census⁶⁷. The issue at hand is not one of capability, but rather one of will. According to the “Ministry of Foreign Affairs”, it is essential for the Home Ministry to implement a third-gender requirement on citizenship ID cards before commencing passport issuance. Since 2007, all four home ministers have impeded the progress and attributed responsibility to officials inside their ministries.

Ministers can delegate responsibility to bureaucrats, who may then assert that they work within a complex system of bureaucratic procedures. However, the failure to uphold the human rights of Nepali residents is evident in the absence of concerted

⁶⁶ “Open Letter on Intersex to the UN High Commissioner for Human Rights – InterAction,” 2012 *available at*: <https://interaction.org.au/21442/open-letter-un-high-commissioner-human-rights/> (last visited April 27, 2024).

⁶⁷ Michael Bochenek and Kyle Knight, “Establishing a Third Gender Category in Nepal: Process and Prognosis,” 26 *Emory International Law Review* 11 (2012) *available at*: <https://scholarlycommons.law.emory.edu/eilr/vol26/iss1/3> (last visited April 27, 2024).

efforts by administrative ministries, bureaus, and agencies in Kathmandu to include the third gender in the fundamental forms that facilitate people's fit to government public services. Relating to New York City, Dr. Bhattarai responded to an inquiry I made regarding his commitment to granting third-gender identification cards through the social media platform Twitter. He said that a Supreme Court ruling on the subject shows that there is agreement that citizenship identification would be extended to third genders. The implementation of that is a commitment made by the government. The transgender community will get the same treatment as other genders, including full citizenship rights and access to all available facilities.

It is possible that upon his return, the prime minister will uphold his commitment. Third-gender residents continue to have difficulties in doing basic administrative duties daily, as they are now awaiting the realization of their rights. Pillay succinctly expressed that facilitating the acquisition of official documents that align with individuals' preferred gender would significantly enhance the lives of numerous individuals. This measure would effectively eliminate the existing obstacles that have hindered their ability to exercise their human rights on an equitable basis with their counterparts. The prime minister may accomplish his duties with a simple stroke of his pen. However, the bureaucracy needs to respond in a manner that demonstrates genuine concern for the basic rights of the population it serves.

A Roman reproduction of Greek sculpture from the 2nd century. The term "hermaphrodite" originates from the figure known as Hermaphrodite. Approximately 4th century BC, Plato penned the "Symposium", in which he recounts a formation myth credited to Aristophanes, which encompasses three distinct sexes: female, male, and androgynous⁶⁸. Zeus divides them into four distinct current sex/gender kinds, each yearning to reconnect with their lost counterpart. The modern heterosexual male and female are purported to have originated from the initial "androgynous sex", as per this narrative. The union of heterosexual partners who revert to their original

⁶⁸ Laura K. McClure (ed.), *Sexuality and Gender in the Classical World: Readings and Sources*, 1st ed. (Wiley, 2002).

androgynous sex is portrayed in the myth of Hermaphrodite⁶⁹. There is a shared belief in the existence of three initial sexes in many creation myths around the globe, including those originating from northern Thailand.

2.5.7. From 2009-2013 CE.

In the “*Naz Foundation v. Govt. of NCT of Delhi*” case⁷⁰ from 2009, Section 377 and other legislation that prohibited same-sex behaviour were overturned by the Delhi High Court. The court determined that these laws flagrantly infringed upon the constitutional protections of fundamental rights in India. Judicial review, which refers to the determinations rendered by a High Court regarding the constitutionality of legislation, transcends the territorial boundaries of the individual state where the High Court exercises its jurisdiction and is applicable across the entirety of India. However, since the ruling was issued, instances of harassment targeting LGBT communities have been minimal.

During a hearing on a number of appeals filed against the decriminalization of same-sex sexual activity on February 16, 2012, the Supreme Court noted that homosexuality needed to be viewed in the context of societal changes because some once-disapproved behaviors have gradually come to be accepted. The two-judge bench, Judges “Justices G. S. Singhvi and S. J. Mukhopadhaya” held the view that the analysis of homosexuality should take into account changing social norms, such as the incidence of cohabitation, single motherhood, and artificial fertilization. In addition, they highlighted that some actions that were deemed unethical two decades ago have now gained societal acceptance. The court ruled that homosexuality was not considered a crime before 1860 and made reference to the artworks and sculptures found at Khajuraho. Senior Advocate Amrendra Sharan argued against the Delhi High Court's decision to legalize gay sex on behalf of the “Delhi Commission for Protection of Child Rights”. Sharan said that social matters should not be determined only based on sculptures. However, the top court panel stressed that homosexuality should not be restricted to just sexual activity and pointed out that it reflects the social mores of the

⁶⁹ Tracy Hargreaves, *Androgyny in Modern Literature* (Palgrave Macmillan, Basingstoke, 2005).

⁷⁰ 160 (2009) DLT 277.

time. In the past, the Supreme Court bench asked the anti-gay rights groups who oppose legalizing homosexual intercourse to provide evidence of how their acts go against the natural order. The highest judicial body was presiding over petitions submitted by campaigners advocating for LGBT rights, as well as political, social, and religious entities that have expressed opposition to the Delhi High Court's decision to decriminalize homosexual conduct⁷¹.

Regarding a Supreme Court ruling, on February 23, 2012, the UPA administration's "Union Home Ministry" said that it opposed the legalization of same-sex relationships. The Supreme Court was notified by the Ministry of Home Affairs that this move was considered very unethical and against the established social order. It was believed that the moral and social values of India were unique in comparison to those of other countries, which implied that India ought to remain unaffected by such influences. On February 28, 2012, the Central Government changed its mind and categorically declared that the decision to legalize same-sex sexual behaviour was not a mistake. The Supreme Court consequently criticized the Centre for its frequent shifts in position on the subject. A high court judge advised the administration to abstain from making light hearted remarks about the system and to prevent the court from being wasted.

In 2012, IBM, Google, Goldman Sachs, and Community Business, a separate non-profit, collaborated to create a guide called "Creating Inclusive Workplaces for LGBT Employees in India"⁷². In July 2012, the inaugural Genderqueer Pride Parade in Asia was held in Madurai, led by Anjali Gopalan⁷³. In December 2013, the Indian Supreme Court affirmed the legality of the law that makes same-sex sexual relations unlawful. This ruling overturned a significant ruling made by the Delhi High Court in 2009 that

⁷¹ Pervez Iqbal Siddiqui "Crackdown on gay party in Saharanpur, 13 held," *The Times of India*, 28 December 2010.

⁷² "Creating Inclusive Workplaces for LGBT Employees in India - A Resource Guide for Employers," *Community Business*, 2017 available at: <https://communitybusiness.org/latest-news-publications/creating-inclusive-workplaces-lgbt-employees-india-resource-guide-employers> (last visited April 27, 2024).

⁷³ "Lesbian, Gay, Bisexual and Transgender community seeks to increase support base," *The Times of India*, 29 July 2012

had previously decriminalized homosexuality-related conduct. Regarding the subject, the court ruled that it has the authority to enact legislation.

Indians have historically construed Section 377, legislation from the colonial period that dates back 153 years, as denouncing same-sex relationships as an "unnatural offence" and deeming it subject to a 10-year imprisonment. The Supreme Court received petitions from political, social, and religious organizations seeking the reinstatement of the statute after the 2009 court verdict.

2.5.8. From the year 2013 to the Present.

The nationwide protests against the re-establishment of Section 377 transpired throughout India, instigating political mobilization among diverse political factions to voice their endorsement for the repeal of the legislation. In anticipation of the upcoming election, several prominent political parties, including the "Aam Aadmi Party, the Congress, and the Communist Party of India (Marxist)", in their electoral manifestos from April 2014, supported legalizing gay relationships.

In July 2014, during the sixth service exhibition hosted by the "Hindu Spiritual Service Foundation" in Chennai, Srishti Madurai, the state general secretary of the Bharatiya Janata Party (BJP), launched the first publication on LGBTQIA and Genderqueer in Tamil, respectively. Amour Queer Dating, a dating site catering to LGBTIQ individuals in search of enduring companions, was introduced in India in June 2016. More than 200 people actively participated in the first Bhopal Pride March, which was held in May 2017.

On September 6, 2018, the Supreme Court of India said that homosexuality was now lawful in India after overturning a section of Section 377 of the Indian Penal Code. By invalidating the colonial period legislation that imposed a maximum jail sentence of 10 years for engaging in same-sex sexual activity, a court expressed that this significant ruling would provide opportunities for a more promising future. During the years 2020-2022, there have been extensive deliberations around the legal acknowledgement of same-sex couples. Many couples have filed many petitions

seeking recognition of their weddings under the “*Special Marriage Act of 1954*⁷⁴”, “*the Hindu Marriage Act of 1955*⁷⁵”, and “*the Foreign Marriage Act of 1969*⁷⁶”.

In contrast to prevailing Western portrayals, it's crucial to remember that the third gender was mostly associated with engaging in sexual activities with males, particularly receptive oral and anal sex, rather than being their defining characteristic. Consequently, society in both ancient and modern India created a distinct division between people of the third gender having sex with a man and men having intercourse with other men. The latter may have been seen unfavourably, but he would be regarded mostly as a male rather than a third within the context of Mediterranean culture.

Homosexuality is not a pathological condition or psychological disorder that requires treatment or modification; rather, it is only another manifestation of human sexuality⁷⁷. Section 377 of *the Indian Penal Code*, which dates back to the colonial era, has prohibited "unnatural sexual acts" since it was passed in 1862. Homosexuality is included in these actions and may be subject to penal actions⁷⁸. Throughout the preceding century, legislative bodies and judicial systems worldwide have enacted legislation that criminalizes homosexuality and transsexual conduct, rationalizing these laws based on considerations of public decency and morality. In the contemporary age, there was a notable expansion of the movement against Section 377's coercive and repressive aspects. The campaign achieved its zenith in the case of “*Naz Foundation v. Government of NCT of Delhi*⁷⁹” when the Delhi High Court interpreted Section 377 to forbid consenting adult sexual activity, acknowledging its outdated nature. Consequently, the act of being gay was no longer considered a

⁷⁴ Special Marriage Act, 1954 (Act 43 Of 1954).

⁷⁵ The Hindu Marriage Act, 1955 (Act 25 Of 1955).

⁷⁶ The Foreign Marriage Act, 1969 (Act 33 Of 1969).

⁷⁷ 539 US 558 (2003).

⁷⁸ R. A. Nelson, *Indian Penal Code*, 3738 (S. K. Sarvaria, 9th Edn. 2003).

⁷⁹ 160 (2009) DLT 277.

criminal offence. Although the consequences of the decision are limited and could be nullified by a law enacted by the Indian Parliament, the ruling represents a noteworthy achievement in civil liberties litigation and can be viewed as a significant advancement in liberating sexual minorities in India from the oppression and manipulation imposed by the legal system.

However, before this ruling, Section 377 has been widely used by authorities in charge of law enforcement to engage in harassment and exploitation of those who identify as gay or transgender. Numerous similar occurrences have been brought to attention in recent history. Another possible evidence of this is how the judicial system treats individuals who identify as “gay, homosexual, bisexual, or transgender”. The case of “*Calvin Francis v. Orissa*”⁸⁰ established that oral sex is included under Section 377 of the Indian Penal Code (IPC) Regarding sexual perversity and aberrant sexual satisfaction, the references to the Corpus Juris Secundum were the guiding criteria that the Court used in its process of decision-making. In addition, the case of *Khanu v. Emperor*⁸¹ Established that those who engage in sexual intercourse that is against the natural order are subject to penalties under “section 377 of the *Indian Penal Code (IPC)*”. This is especially true when the human beings involved are involved. It is quite obvious that oral sex is in direct opposition to the natural order of things since this is the setting in which it occurs. In the case of coitus per os, this is not conceivable since the objective of sexual intercourse is to promote the potential conception of human beings, which is against the basic purpose of sexual intercourse. The courts decided in the case of “*R. v. Jacobs*”⁸² and *Govindarajula In Re*⁸³ that there is no violation of Section 377 of the Indian Penal Code when the penis is inserted into the mouth. This decision was made in the context of the proceedings. Since then, Section 377 of the Indian Penal Code has been construed to include not only oral but also anal intercourse and penetration of other openings.

⁸⁰ 1992 (2) Crimes 455.

⁸¹ AIR 1925 Sind 286.

⁸² (1817) Russ & Ry 331 C.C.R.

⁸³ (1886) 1 Weir 382

The criteria used to determine eligibility for punitive provisions have undergone a shift, transitioning from non-procreative offences to those involving imitative behaviour and sexual perversity. In the case of “*Jayalakshmi v. The State of Tamil Nadu*”⁸⁴ included a eunuch who tragically took his own life as a result of the harassment and abuse inflicted upon him by police personnel after his apprehension on charges of stealing. It was said that while he was in the custody of the police, a wooden rod was placed into his anus as a form of torture, and some police officers had him perform oral sex. There was evidence to support this claim. The individual in issue engaged in self-inflicted harm inside the confines of the police station on June 12, 2006, and subsequently died of burn injuries on June 29, 2006. The relatives of the victim were granted compensation amounting to Rs.5,00,000/-. As a result of the lawsuit known as “*Aids Bhedbhav Virodhi Andolan v. Union of India*”⁸⁵, it was decided that homosexuality should not be permitted by Indians for several different reasons. The first thing to note is that homosexuality is not tolerated within Indian society and culture. Secondly, the criminalization of homosexuality is essential to establishing a healthy environment by way of the prohibition of sexual acts that are not natural. Decriminalizing homosexuality may also result in a rise in criminal activity, which is another potential consequence. Lastly, due to the widespread intolerance among the majority of Indians, being homosexual should be considered a criminal offence, and the law of criminal justice should reflect the goals of the majority of people.

The 42nd Law Commission Report states that it is often accepted that one spouse's gay behaviour and preferences may negatively affect the other spouse's marriage and general well-being. Consequently, the inclusion of legal penalties for such acts can be justified from a societal standpoint. Furthermore, even if we assume that private activities performed with agreement do not inherently constitute grave wrongdoing, there is a potential danger associated with revoking a long-standing regulation.⁸⁶

⁸⁴ (2007) 4 MLJ 849.

⁸⁵ Civil Writ Petition No 1745 of 1994 (Delhi High Court).

⁸⁶ Law Commission of India, “42nd Report which did not recommend changing or repealing Section 377 of the Indian Penal Code, 1869” (June 1971).

2.6. Countries that have legally recognized Same-sex unions to date.

All over the world, nations are in various situations regarding homosexuality and same-sex marriages. Forty countries, mostly in the United States and the European Union, permitted same-sex weddings until 2024⁸⁷. Those countries in which Same-sex marriages are identified are:

1. Netherlands: 2001 – passed a bill in their Parliament in December 2000, making them the first nation in the world and in Europe to permit same-sex marriage.
2. Belgium: 2003- Belgium, the Netherlands' European neighbour, became the world's second country to permit same-sex partnerships.
3. Spain: 2005 – Following a very split decision in its Parliament, it became the third country in Europe to permit same-sex marriages.
4. Canada: 2005 – The first country from North America, by following parliamentary approval, a statute was implemented in all 13 Canadian provinces and territories which allowed same-sex marriages on an equal footing with those of other sexes.
5. South Africa: 2006 - The sole nation in the Sub-Saharan Africa continent is South Africa to legalize Same-sex marriage rather than criminalizing homosexuality, compared to other countries of the African continent⁸⁸.
6. Norway: 2009 –It's a part of Europe. The Act took the place of a 1993 law that allowed civil unions.
7. Sweden: 2009 – Another country from Europe in which, In Sweden, gay and lesbian couples have been eligible to apply for civil unions since 1995.
8. Iceland: 2010 – Following the law's implementation, Jóhanna Sigurðardóttir, the country's prime minister at the time, married Jónína Leósdóttir, making her

⁸⁷ “Marriage Equality Around the World,” *HRC available at: <https://www.hrc.org/resources/marriage-equality-around-the-world>* (last visited April 27, 2024).

⁸⁸ Fatima Osman and Mathabo Baase, “The recognition of same-sex customary marriages under South African customary law,” 38 *South African Journal on Human Rights* 1–23 (2022).

one of the first people to be married under the rules. Iceland belongs to Europe as well.

9. Portugal: 2010 – Is also a European country. Portugal's Constitutional Court upheld a measure that the legislature had adopted.
10. Argentina: 2010 - the first country in Latin America to allow lesbian and gay partnerships.
11. Denmark: 2012 – In 1989, Denmark became the first nation in the world to officially recognize same-sex unions as registered partnerships. A new same-sex marriage legislation took its place on June 7, 2012, and it became operative on June 15, 2012.
12. Uruguay: 2013 - This country is the second in Latin America to permit same-sex unions, after Argentina.
13. New Zealand: 2013 - Being the first country in the Asia-Pacific region to decriminalize homosexual partnerships, New Zealand made history.
14. France: 2013 – The act was signed by François Hollande, the French president at the time, after a court challenge was unsuccessful.
15. Brazil: 2013 – Country from Latin America-Caribbean; before a court decision making same-sex marriage lawful across the country, around half of Brazil's 27 jurisdictions permitted it.
16. England and Wales: 2014 – In 2020, six years after same-sex marriage became legal in England and Wales, it was also becoming legal in Northern Ireland⁸⁹.
17. Scotland: 2014 – Scotland, which is also in Europe, adopted its own rules in 2014.
18. Luxembourg: 2015 – Xavier Bettel, the country's openly gay prime leader, backed the legislation. Luxembourg is also part of Europe.

⁸⁹ Patrick Kelleher, “The defiant, gruelling and glorious history of same-sex marriage in the UK” *PinkNews* | *Latest lesbian, gay, bi and trans news* | *LGBTQ+ news*, 2021 available at: <https://www.thepinknews.com/2021/07/17/england-wales-same-sex-marriage-uk-legalised-civil-partnerships-david-cameron-history/> (last visited April 28, 2024).

19. Ireland: 2015 –With 62% of voters in favour of legalizing same-sex marriage, Ireland became the first country in Europe to do so in a public referendum.
20. United States: 2015 – Before the Supreme Court of the United States stated that the Constitution protects marriages between persons of the same gender nationwide, 36 states and the District of Columbia had previously approved same-sex marriage⁹⁰.
21. Greenland: 2016 – a region in Europe. Legislation permitting same-sex marriage was overwhelmingly adopted by the Inatsisartut on May 26, 2015.
22. Colombia: 2016 – From Latin America-Caribbean, the Colombian Constitutional Court affirmed same-sex unions by a majority vote of 6-3.
23. Finland: 2017 – The bill began as a "citizens' initiative," a public petition with close to 167,000 signatures that was eventually approved by Parliament in 2014. It became operative in 2017.
24. Germany: 2017 – Following then-Chancellor Angela Merkel's announcement, laws were passed that, despite the party's official opposition to same-sex marriage, members of her ruling Christian Democratic Union should vote according to their conscience.
25. Malta: 2017 – Malta is a European region, that by an almost unanimous vote, the Parliament approved a resolution permitting same-sex partnerships.
26. Australia: 2017 – In Asia-Pacific County, the majority of voters—61.6% to 38.4%—supported legalizing same-sex unions in a nonbinding nationwide referendum.
27. Austria: 2019 - Europe: That changed in 2017 as a result of a court judgment.

⁹⁰ German Lopez, "Same-sex marriage in the US, explained" *Vox*, 2015 available at: <https://www.vox.com/2015/6/26/18093652/same-sex-marriage> (last visited April 28, 2024).

28. Taiwan: 2019 - Asia-Pacific: Due to a court decision, the legislation was changed, making Taiwan the first Asian country to allow homosexuals and lesbians to be married⁹¹.
29. Ecuador: 2019 - Caribbean nation in Latin America. Ecuador became the sixth country in South America to allow lesbian and gay relationships after a court ruling.
30. Costa Rica: 2020 - the first Central American country to legalize same-sex partnerships.
31. Switzerland: 2022 – More than two-thirds of Swiss voters (64.1%) supported permitting same-sex unions in a 2021 ballot.
32. Mexico: 2022 - Same-sex marriage was ultimately made legal nationally in 2015 when the Supreme Court declared state limitations to be illegal.
33. Chile: 2022 – The sixth country in South America to permit same-sex unions is Chile, a Latin American-Caribbean country.
34. Slovenia: 2022 – the first country in formerly communist Eastern Europe to allow same-sex unions.
35. Cuba: 2022 - By a vote of 66.9% to 33.1%, a broader family law referendum that included the amendment allowing same-sex marriage was adopted.
36. Andorra: 2023 – The parliament of the little mountainous country that lies between France and Spain voted in favor of same-sex partnerships.
37. Nepal: 2023 - Since November 2023, Nepal has granted provisional recognition to same-sex marriage and Nepal is the second country in Asia to allow the registration of same-sex marriages.
38. Estonia: 2024 - In Estonia in Europe, same-sex marriage has been legal since January 1, 2024.

⁹¹ “Taiwan becomes first in Asia to legalize same-sex marriage,” *Amnesty International*, 2019 available at: <https://www.amnesty.org/en/latest/press-release/2019/05/taiwan-same-sex-marriage-law/> (last visited April 28, 2024).

39. Greece: 2024 -Same-sex marriage is now legal in Greece from February 16, 2024.

40. Thailand: 2025- The new legislation to legalize same-sex marriage was formally published in the Royal Gazette on September 24, 2024, and will go into force on January 22, 2025⁹².

Only three nations in Asia: Taiwan, Nepal and Thailand, permit it, whereas opinions and legislation in other countries vary⁹³.

2.7. Problems faced by LGBT: Physical as well as psychological.

They are part of a marginalized population in our society that encounters legal, cultural, and social challenges.⁹⁴

- Discrimination is a significant challenge for them. They face prejudice in areas like education, employment, and justice.
- Disrespect: These individuals are often referred to by many names such as Shikhandi, chakka, mammu, ombathu, and others. They are subjected to disdain in all aspects of life, except in a few instances when their blessings have significant value to society or newly married couples.
- Prostitution: It entails the coerced engagement of individuals in the occupation of prostitution. Because they do not have other employment opportunities. They are selling their bodies for 20-30 rupees just to buy bread and fill their stomach somehow.

⁹² “Thailand becomes third Asian country to legalise same-sex marriage – Know which other countries have legalised it,” *Financial express*, 2024available at: <https://www.financialexpress.com/world-news/thailand-becomes-third-asian-country-to-legalise-same-sex-marriage-know-which-other-countries-have-legalised-it/3438263/> (last visited February 22, 2025).

⁹³ Annette Choi Wilson Jhasua Razo, Rachel, “Where same-sex marriage is legal around the world” *CNN*, 2024available at: <https://www.cnn.com/world/same-sex-marriage-legal-countries-map-dg/index.html> (last visited February 22, 2025).

⁹⁴ AARF Publications Journals, “Problems Of Transgender In India: A Study From Social Exclusion To Social Inclusion.” available at https://www.academia.edu/33006703/PROBLEMS_OF_TRANSGENDER_IN_INDIA_A_STUDY_FROM_SOCIAL_EXCLUSION_TO_SOCIAL_INCLUSION (last visited April 28, 2024).

- Upon identification of their identities, individuals are compelled to leave their parent's residence.
- Unwelcome scrutiny: they receive unwelcome scrutiny in public. They attempt to establish the atmosphere by derogatorily, penalizing, and mistreating.
- The most prevalent issue encountered by transgender individuals is the occurrence of rape and physical verbal assault. They are susceptible to experiencing face rape, which is then followed by both physical and verbal assault.
- Insufficient educational infrastructure: Similar to the general population, they are unable to get entrance to schools and universities.
- HIV/AIDS: mostly they are in the profession of prostitution and their customers do not use condoms while having sex with them if they say they will not have sex with them without condoms then they are sexually abused and brutally beaten up⁹⁵.
- Due to their mostly low levels of education, individuals lack awareness of AIDS and the necessary measures to be observed while engaging in sexual activity with several partners.
- Human trafficking: this group is the most neglected, which makes them more susceptible to becoming victims of human trafficking.
- Exclusion from society: The primary issue throughout the whole process is the social exclusion of individuals from society. This includes limited access to economic, job, and livelihood options, as well as isolation from both society and family.
- Insufficient safeguards against violence.
- Restricted availability of education, healthcare, and personal care.
- Limited opportunities for collectivization.
- Excluded from the process of making decisions.

⁹⁵ *Id.* at 57.

- A deficiency in social security.

They do not even get decent accommodation, as people do not want to give their house on rent to transgender people, if they give their house on rent to the hijra people they take more charges from them as compared to others. As mostly hijras are into the profession of prostitution and begging⁹⁶.

2.7.1. Sexual life of Transgenders/ hijra community.

Their sexual life is not a bed of roses either they are forced to pursue prostitution or they are made a victim of Section 377⁹⁷. In prostitution their life is horrible. “Zindagi aisibi tiiki bhoog ki vastu ban gayi”- Laxhmi Narayan Tripathy⁹⁸. They are selling their bodies not for pleasure but for their survival, as they cannot do any other work.

“The Indian Penal Code contains Section 377 in which Unnatural offences refer to the act of engaging in sexual intercourse with any individual, regardless of gender or animal, without consent. Such individuals may be subject to punishment, which may include life imprisonment or imprisonment for a maximum period of 10 years. Additionally, they may also be obliged to pay a fine. Penetration is the amount of sexual intercourse required to commit the offences outlined in this section”. Sexual contact between individuals of the same sex is likewise regarded as a criminal offence under this clause. Additionally, it is prohibited under this clause for two adults of the same sex to have intercourse with each other. If consensual sexual contact between adults of the same sex should not be regarded as a criminal offence, this provision has to be revised.

The Indian story is long and has changed dramatically throughout the years. Numerous socioeconomic elements have influenced the rule of law, which has relied on leaders who upheld the pan-Indian concept and maintained consistent power. As a

⁹⁶ Elango Felix, “Transgenders and our society” *The Companion*, 2014 available at: <https://thecompanion.in/transgenders-and-our-society> (last visited April 29, 2024).

⁹⁷ Guest Post, “What are the Rights of Transgender in India” *iPleaders*, 2015 available at: <https://blog.ipleaders.in/legal-rights-of-transgender-india/> (last visited April 29, 2024).

⁹⁸ “- YouTube,” available at: <https://www.youtube.com/watch?v=GwJJvOpjth4> (last visited April 29, 2024).

result, consistent comprehensive legislation only emerged after the British era with the introduction of colonial laws. Additionally, significant progress was only made after the IPC was implemented in 1860, and as a result, Section 377 came into effect, changing the course of particular communities generally and leading to the different classification of different sexualities and the criminalization of their activities, which in turn made them criminals.⁹⁹

Because oral sex, sodomy, and sex with animals were criminalized, Section 377 not only restricted transgender practices but also took action against those who used them. As a result, new identities were created, and the term LGBTQ¹⁰⁰ emerged, which was characterized by a high degree of character and expression. Despite the fact that transgender people were legitimately accepted by society in the subcontinent, the Supreme Court's 2018 ruling that Section 377 was unconstitutional was only a first step in recognizing transgender rights; larger community recognition and further efforts to achieve their privileges are still pending. Indian courts to identify their rights despite having an open-minded and contemporary constitution that addressed self-determination, impartiality, and individual freedom.

2.7.2. Challenges encountered by the LGBT in contemporary society.

The LGBT population has several challenges within a societal context where heterosexuality is the only recognized orientation, while homosexuality is seen as deviating from the norm. The individuals in question experience abuse as a regular occurrence in their everyday lives. Individuals who identify as non-heterosexual are at a higher risk of encountering intolerance, prejudice, harassment, and the potential for violence compared to individuals who identify as heterosexual. Inequality and violence are prevalent in several global contexts. In several countries, couples of the same gender do not have the same legal protections as couples of the opposite gender.

⁹⁹ The Indian Penal Code 1860, (Act 45 of 1860).

¹⁰⁰ Socio-Legal Review, "Section 377 Read Down: The Way Forward" *SLR*, 2019 available at: <https://www.sociolegalreview.com/post/section-377-read-down-the-way-forward> (last visited April 29, 2024).

They are forbidden from exercising such rights¹⁰¹. Consequently, individuals encounter prejudice and are unable to access social welfare programs like healthcare and retirement benefits. Many LGBT individuals conceal their gender and refrain from revealing it out of concern for potential job loss. They experience a progressive decline in their self-esteem. Restricting their relationships with LGBT children, apparently due to consideration, the parents of straight children fail to see that this practice leads to the children being isolated from their peers. It is common for there to be conflict within the family when there is a lack of adequate communication between LGBT children and their parents. The majority of LGBT teenagers are placed in foster care, in juvenile detention facilities, or on the streets¹⁰². Adolescents who identify as LGBT have a significantly elevated susceptibility to physical and mental health issues upon reaching adulthood due to the rejection they experience from their parents and caregivers. There are instances in which individuals develop a dependency on drugs or alcohol as a means of alleviating stress. They engage in social isolation from all individuals. They are subjected to hate crimes. In several nations, homosexuality is seen as a criminal offence, often resulting in incarceration and monetary penalties. Furthermore, several personal laws classify it as a transgression and deem it illegal.

Prejudice and exclusion have a major impact on the lives of LGBT people. Consequently, the following outcomes have ensued-

- Early school dropout.
- Separation from home and family.
- Experiencing neglect within the community.
- Lacking family support.
- Attempt suicide.

¹⁰¹ "Same-Sex Marriage - an overview | ScienceDirect Topics," *available at*: <https://www.sciencedirect.com/topics/social-sciences/same-sex-marriage> (last visited April 30, 2024).

¹⁰² Natalia Ramos, Elizabeth Barnert and Eraka Bath, "Addressing the Mental Health Needs of LGBTQ Youth in the Juvenile Justice System," 61 *Journal of the American Academy of Child and Adolescent Psychiatry* 115–9 (2022).

2.8. Queer theory.

This field of inquiry examines the societal construction and regulation of heterosexuality, homosexuality, as well as gender and sexual identities. Additionally, it examines the characteristics of normativity about sexuality and gender. The objective of queer theory, a specialized branch of gender and sexuality studies, is to deconstruct societal norms and standards of acceptability¹⁰³. The use of queer theory may help clarify the ideas that form the basis of identification and identity politics. One of the most crucial ideas in queer theory is "heteronormativity." This concept includes the organizations, conceptual frameworks, and practical orientations that not only validate heterosexuality as a cohesive sexuality but also confer benefits upon it (Berlant). Heteronormativity is a social attitude that supports heterosexuality as the standard and preferred sexual orientation¹⁰⁴. This attitude is promoted by a variety of institutions, including marriage, taxes, employment, and adoption rights, among others. Heteronormativity employs institutional structures and widely acknowledged cultural norms to impose pressure on individuals who identify as both heterosexual and gay.¹⁰⁵

Heteronormativity is often seen as an abstract concept, although it has substantial implications for global development. Any sexual orientation other than heterosexuality is deemed "abnormal" or "incorrect" by those who hold the heteronormativity view. The aforementioned notion originated from the field of "Queer Theory." The idea is predicated on the idea that there are only two genders that exist inside a binary framework, namely men and women. The heteronormativity that influences institutions such as marriage gives rise to a collection of attitudes and ideals about the organization of sexuality. By examining heteronormativity, we may

¹⁰³ Nicholae cline, "Library Research Guides: Philosophy: Introduction to Queer Theory" *available at*: <https://guides.libraries.indiana.edu/c.php?g=995240&p=8361766> (last visited April 30, 2024).

¹⁰⁴ "Heteronormativity - an overview | ScienceDirect Topics," *available at*: <https://www.sciencedirect.com/topics/socialsciences/heteronormativity#:~:text=Heteronormativity%20refers%20to%20the%20belief,non%2Dnormative%20desires%20and%20behaviors> (last visited April 30, 2024).

¹⁰⁵ Literatures and Languages Library, "LibGuides: Queer Theory: Background" *available at*: <https://guides.library.illinois.edu/queertheory/background> (last visited April 30, 2024).

see how deeply certain ideas about gender and sexuality have been incorporated into the design of our institutions and daily lives, leading to strong, discriminatory, and excluding behaviours.

Because the range of gender, sexual orientation, and romantic desire is difficult to identify, the term "queer" itself purposefully has a vague definition. Similar to how it is challenging to accurately define queer theory, many academic fields have contributed different interpretations of the word. Fundamentally, queer theory is about queer people, their lived experiences, and how those experiences are seen politically or culturally. Relating specifically to the exclusion of LGBT people. Then, numerous disciplines of thought are affected by this thinking. The perspective often referred to as queer theory presents a critique of the notion that cisgender and heterosexual identities are universally accepted or conventional. The text explores unconventional topics such as literary analysis, philosophy, and politics. Queer theory, sometimes referred to as gay and lesbian studies in historical context, emerged as a subfield within post-structuralist critical theory during the early 1990s, emerging from the nexus of queer studies and women's studies. Although different people may have different ideas about what the phrase "queer theory" means, most people agree that it refers to the field of those studies and theoretically explores gender and sexual practices outside of heterosexuality¹⁰⁶. Because of these actions, it is no longer accepted that heterosexual desire is "normal." Queer theorists often engage in critical analysis of essentialist conceptions of sexuality and gender, drawing upon the advancements in social constructivism within the field of sociology. Instead, they analyze concepts like social and cultural processes, often by scrutinizing the classifications, dichotomies, and terminology used to depict them¹⁰⁷.

Transformational forces, such as queer theory and queer activism, are reshaping the conceptions of gender and sexuality in several academic domains and beyond.

¹⁰⁶ "2. Queer theory and gender norms," *Align Platform* available at: <https://www.alignplatform.org/2-queer-theory-and-gender-norms> (last visited April 30, 2024).

¹⁰⁷ Phillip L. Hammack, Leifa Mayers and Eric P. Windell, "Narrative, psychology and the politics of sexual identity in the United States: from 'sickness' to 'species' to 'subject,'" 4 *Psychology and Sexuality* 219–43 (2013).

Furthermore, the emergence of queer theory and activism has given rise to political frameworks that transcend conventional demands for the integration of LGBTQ+ individuals into established social establishments.¹⁰⁸

2.9. LGBT rights and Queer theory.

The activism around the LGBT community has consistently had a substantial impact in enhancing the global recognition and embrace of “LGBT rights”. Recognizing LGBT persons as a marginalized population in need of support and protection, there has been a movement towards promoting LGBT inclusion in both communities and the field of development. “Sexual orientation and gender identity”, which were formerly considered private issues, are now gaining prominence on the mainstream development agenda. The “Sustainable Development Goals” (SDGs), which aim to ensure inclusivity, have recently been included in development initiatives targeting individuals within the LGBT community. These efforts often give priority to rights and health, focusing on issues such as inclusion, parity, equality, anti-discrimination, and the Sustainable Development Goals (SDGs). However, this comprehension of LGBT issues is not founded on ideas developed from queer theory. Queer theorists have acknowledged many challenges in embracing a rights-oriented perspective¹⁰⁹. Individuals may experience the erasure, misinterpretation, or misunderstanding of their identities if they fail to define themselves within the framework of a gender binary or about the LGBT community. Hence, individuals who do not conform to the universally recognized classifications of homosexual, gay, bisexual, transgender, or intersex may be subject to invalidation. To attain social and political acceptance, individuals who identify with these categories often find themselves compelled to conform to prevailing stereotypes associated with the LGBT community. Individuals who do not align themselves with any of the LGBT classifications face the risk of further marginalization due to the acceptance of those classifications as valid

¹⁰⁸ Jennifer Miller, “Chapter 1: Thirty Years of Queer Theory *available at:* <https://milnepublishing.geneseo.edu/introlgbtqstudies/chapter/thirty-years-of-queer-theory/> (last visited April 30, 2024).

¹⁰⁹ “2. Queer theory and gender norms,” *Align Platform available at:* <https://www.alignplatform.org/2-queer-theory-and-gender-norms> (last visited April 30, 2024).

identities for citizens¹¹⁰. There is a possibility that the establishment of a “third gender category” in India might have resulted in an improvement in the social position of “hijras”, yet at the same time, it could have led to instances of discrimination against transgender women. In the opinion of transgender women, the establishment of the new category is in direct opposition to their own goals of achieving fair recognition as women rather than as a separate group. Their wish to avoid being classified as “other” in the same way that hijras are expressed is expressed.

To strike a balance between the queer rejection of identification labels and the demands of policymakers and development actors to deal with particular, easily identifiable groups of individuals may be challenging. The implementation of gender-neutral language throughout the development sector, the decolonization of the language of sexuality and gender work to incorporate more local terminologies, the collaboration with groupings of community members that identify themselves rather than seeking funding for “LGBT” groups, and the promotion of engagement of local leaders on “sexuality issues” rather than “LGBT issues” are all practical solutions to this problem¹¹¹. The first emphasis of queer theory was to challenge the commonly held belief that gender and sexuality are somehow related. The question “Which one of you is the man?” is a common instance of this. The ingrained notion is that sexual connections demand a binary gender distinction (masculine/feminine). And only then will it be considered normal¹¹².

Certain types of social importance are generated by social constructions, according to the tenets of queer theory. These social constructions include sexual behaviours, notions about sexual identities, and classifications of normal and disordered sexualities. The idea that sexuality is an essentialist category, which is defined by nature or judged based on unchangeable standards of morality and truth, is criticized

¹¹⁰ Jake Camp, Silia Vitoratou and Katharine A. Rimes, “LGBQ+ Self-Acceptance and Its Relationship with Minority Stressors and Mental Health: A Systematic Literature Review,” 49 *Archives of Sexual Behavior* 2353–73 (2020).

¹¹¹ *Id.* at 64.

¹¹² Katherine Johnson, “Queer Theory,” in T. Teo (ed.), *Encyclopedia of Critical Psychology* 1618–24 (Springer, New York, NY, 2014).

by queer theory, feminist theory, and gay and lesbian studies of sexuality. Theorists that identify as queer contend that sexuality is a complex web of cultural norms and influences, in addition to the power that comes from individuals and institutions. These elements combine to establish the criteria for defining what is deemed normal and abnormal at a certain moment, and they thereafter operate under the pretext of being "natural," "essential," "biological," or "God-give"¹¹³.

Humans have a sort of sexuality known as homosexuality. Individuals possess the entitlement to dignity and to receive fair treatment without fear of reprisal in the event of prejudice. Adults can participate in consenting sexual actions in the LGBT community. However, because their predecessors rejected acceptance and colonial-era legislation, the current social system refuses to accept LGBT people as 'normal'. As a result, when a person learns that his or her sexual tastes deviate from what is deemed "normal," he or she has difficulty stating this. Some people begin to question their sexuality, while others try to suppress it for fear of social rejection. The sad reality is that around 40% of them were rejected by even their family members after realizing their "gender identity or sexual orientation"¹¹⁴.

2.10. Understanding Biphobia, Transphobia, and Transmisia: The Prejudice Against LGBT Community.

Biphobia is a term used to characterize prejudice against LGBT individuals who are bisexual or are thought to be bisexual, as well as a fear of or dislike of bisexuality. It may also imply animosity, antagonism, disapproval, or prejudice toward LGBT individuals, sexual practices, or cultural practices. The idea that being a monosexual is preferable is known as biphobia or monosexism. Biphobia is a condition of hostility, prejudice, and oppression directed towards people who identify as pansexual, omnisexual, or bisexual. Single-gender sexual and romantic attraction is referred to as monosexuality.

¹¹³ Gina Bastone, "LibGuides: Comparative Literature: Queer Theory" *available at*: <https://guides.lib.utexas.edu/c.php?g=957649&p=6975813> (last visited April 30, 2024).

¹¹⁴ Janet Snell, "Ending bigotry faced by LGBT people with learning disabilities" *available at*: <https://journals.rcni.com/learning-disability-practice/ending-bigotry-faced-by-lgbt-people-with-learning-disabilities-ldp.21.1.8.s8> (last visited April 30, 2024).

Negative attitudes and actions that target individuals based on their gender identity or sexual orientation are known as homophobia and transphobia. Strong prejudice or distaste for transgender individuals is known as transphobia. It is the apprehension, animosity, or uneasiness toward those who are genderqueer, transgender or defy conventional gender norms. However, homophobia is a culturally generated fear or prejudice against homosexuals that may sometimes take the form of legislative limitations or, in more severe situations, violence or bullying directed at homosexuals (often referred to as "gay bashing")¹¹⁵. Similar types of beliefs include heteronormativity, heterosexism, homonegativity, sexual prejudice, and trans-prejudice. The notion that heterosexuality is the ideal and typical sexual orientation is known as heteronormativity. Additionally, it presumes that male-female relationships are the norm and that gender is binary. Prejudice or discrimination against LGBT people based on the belief that heterosexuality is the norm is known as heterosexism. Negative views or discriminatory actions against homosexual or lesbian individuals are referred to as homonegativity. People's internalized unfavourable sentiments regarding their sexual orientation may also be referred to by this term.

While "trans-prejudice" refers to discrimination or negative attitudes towards someone based on their gender identity, specifically transgender people whose gender is different from the sex they were assigned at birth, "sexual prejudice" refers to discrimination or negative attitudes towards someone based on their sexual orientation (such as gay, lesbian, or bisexual); in other words, trans-prejudice targets how someone identifies their gender, whereas sexual prejudice focuses on whom they are attracted to¹¹⁶.

The prejudice and discrimination against transgender, nonbinary, and gender nonconforming individuals are referred to as transmisia. It may also be used to describe negative laws or practices that stigmatize these communities. There are several types of transmisia. Any attitude, belief, action, or policy that stigmatizes or

¹¹⁵ Luca Rollè, Piera Brustia and Angela Caldarera, "Homophobia and Transphobia," in A. C. Michalos (ed.), *Encyclopedia of Quality of Life and Well-Being Research* 2905–10 (Springer Netherlands, Dordrecht, 2014).

¹¹⁶ *Id.* at 66.

damages trans, nonbinary, and gender nonconforming persons, rejects the legitimacy of their identities, views them as less human, or treats them with less respect and care is often referred to as Transmisia¹¹⁷.

Given that there are certain prejudices associated with bisexuality, it is not necessary to include or eliminate these types of homophobias. Both the LGBTQ+ community and the larger community suffer from these notions.

2.11. Conclusion:

This research aims to elucidate the exploitation experienced by individuals with alternative identities exposed to injustice, including both social and legal dimensions. Efforts have been undertaken to uncover, recognize, and portray the essentially hidden individuality of individuals who have been suppressed and homogenized. However, the author acknowledges that by asserting a distinct identity, we may counteract or confront a repressive gaze. At the same time, we are unable to escape it and substitute our suppressed or distorted identities with a genuine one. Moreover, the establishment of an independent identity inherently involves a preoccupation with the concept of the "interpellation other" or a "response to a request," whereby the act of being subordinate inherently entails a state of tyranny. In such a setting, the person-as-subject is determined by the other, and the individual acknowledges themselves as a representation or mirror of the other.

Regarding sexuality, the terminology and self-identification may exhibit significant variation across different cultures. This research employs the terms 'lesbian,' 'gay,' 'bisexual,' and 'transgender' (LGBT) on account of their pervasiveness in the global discourse surrounding human rights. Nevertheless, this statement emphasizes the need to acknowledge the variety of different terminology and identities, as well as recognize the cultural implications associated with these terms. To provide clarity and acknowledge the abundance of terminology, this study employs a range of forms, which are mostly interchangeable. For example, "lesbian and gay human rights"

¹¹⁷ "What's Transphobia and Transmisia?," *available at:* <https://www.plannedparenthood.org/learn/gender-identity/transgender/whats-transphobia>(last visited April 30, 2024).

should be interpreted as a phrase that describes the rights of those who identify as lesbian, gay, bisexual, or transgender.¹¹⁸

- Sexual orientation influences the personal and social identity of an individual through the manifestation of psychological, romantic, and sexual attraction patterns. Sexual orientation indicates the condition of having a strong attraction to either the opposing or the same sex. Homosexual orientation denotes the sexual and emotional allure that an individual feels towards those who share their gender, while heterosexual orientation concerns one's fascination with individuals of the opposite sex. Conversely, bisexual orientation refers to the experience of being attracted to people of both sexes.
- Gender identity pertains to an individual's perception of how they represent themselves concerning societal norms of masculinity or femininity (gender). An individual may possess either a masculine or female gender identity, exhibiting the physiological traits associated with the opposing sex.
- Sexual identity often includes a person's sexual orientation and/or gender identity.
- A person is referred to as "transgender" if their gender identification does not match the gender they were given at birth. Transgender people may choose to identify themselves as either male or female, or they may manifest a combination of both sexes. These individuals' internal emotions and categorizations may be classified as masculine, female, or transgender.

The phenomenon of legal prejudice against sexual minorities in India. Sexual minorities are subject to legal prejudice throughout both the criminal and civil law systems. The system of prejudice may be examined via the following categories.¹¹⁹ Indian Penal Code's provisions for the prevention of unnatural offences. Legal Discrimination against sexual minorities manifests in various ways, with Section 377

¹¹⁸ Sincy Wilson, Hashim M Kabeer, "Transgender Rights Protection In India- An Analysis, Arts & Education" *International Research Journal*: Volume 4 Issue 2 (2017).

¹¹⁹ "India's Supreme Court turns the clock back with gay sex ban," *Reuters*, 11 December 2013, section Lifestyle.

of the Indian Penal Code (IPC) being particularly well-known. This legislation, originally enacted during British colonial rule, criminalized homosexual conduct and remains in the Indian legal system despite its removal from the British legal framework. According to this clause, those who engage in consensual sexual intercourse with any individual, regardless of gender or animal, will be subject to imprisonment for a maximum duration of 10 years, in addition to potential fines. The offences classified under the Indian Penal Code (IPC) are sodomy or bestiality. Both the active and passive people implicated in this offence are subject to penalty as outlined in the aforementioned section¹²⁰. Hence, this portion unequivocally demonstrates the prohibition of sodomy in India.

¹²⁰ Mahapatra, Dhananjay; Choudhary, Amit Anand (7 September 2018). "SC decriminalises Section 377, calls 2013 ruling 'arbitrary and retrograde'". The Times of India.

CHAPTER 3

INTERNATIONAL SCENARIO OF LGBT RIGHTS.

3.1. Introduction.

Concerning protecting the rights of the LGBT community, human rights concepts have progressed over time. Throughout the majority of the previous century, “the international human rights system” has shown a high degree of comprehensiveness and has seen constant expansion. The “Charter of the United Nations 1945”, serves as the fundamental basis for the current veneration of Human Rights. This charter facilitated the establishment of the “Universal Declaration of Human Rights (UDHR)” as a universally accepted benchmark for all individuals and nations. During the Universal Declaration of Human Rights (UDHR) period, worldwide civil rights movements were taking place. As a result of the International Conventions that addressed a broad range of issues, including economic, sociological, civil, political, women's, children's, minority, and refugee rights, the years that followed the Universal Declaration of Human Rights (UDHR) saw a tremendous transition in the development and widespread implementation of human rights.¹²¹

There is a lack of uniformity in the worldwide culture, especially across States, when it comes to handling LGBT rights. States' diverse historical, cultural, and religious origins might be a major contributing element to the presence of passive attitudes on the defence and advancement of LGBT people's fundamental human rights. These variables establish a connection between morality and the ongoing controversies around homosexuality and transsexuality. The lack of acknowledgement of sexual minority rights is deeply ingrained throughout national legislation, which perpetuates bias and criminalization of individuals based on their sexual orientation and gender identities. Yet, it is crucial to acknowledge the commendable efforts of human rights advocates on a global scale in their pursuit of promoting equality and preventing

¹²¹United Nations, “Human Rights Day” *United Nations available at:*
<https://www.un.org/en/observances/human-rights-day> (last visited May 11, 2024).

violence against these persons. There exist three distinct approaches for comprehending the process of evolution: (i) the endeavours undertaken by the Committee constituted by the UN for Human Rights; (ii) the principles adopted in Yogyakarta in 2007, which, despite lacking binding force, provide a comprehensive examination of the rights and responsibilities of both the LGBT community and Nations; and (iii) an assessment of the resolution passed at the most recent session of the UN Human Rights Council¹²².

Comparing Indian laws and social behaviour to those of large nations like Canada, the United Kingdom and the United States, is the main subject of this chapter. Compared to other nations that permit same-sex marriage, these three major nations have the largest populations of Indian migrants, which is why they were selected for the comparative research.¹²³ Therefore, we may even speculate as to whether other cultures would influence how socially acceptable transgender people are in our society. When something is recognized as a natural occurrence in another country, it may also be readily accepted in India.

The policies of international documents that work for LGBT Rights like “*The Yogyakarta principles*”, “ILGA World- The International Lesbian, Gay, Bisexual, Trans, and Intersex Association” etc. explore the roots of the concept and its historical implementation in many nations. This chapter does international comparative research to investigate the legal rights of homosexual individuals within the context of family. From a perspective rooted in basic human rights, it underscores the significance of international treaties and human rights agreements that have long served as the foundation for promoting fair treatment of individuals who identify as third genders and advancing the process of humanizing society by preventing human rights violations. These treaties delineate the basic rights that are widely acknowledged, including the right to marriage for the LGBT Community. Therefore, the chapter

¹²² Aeyal Gross, “Post/Colonial Queer Globalisation and International Human Rights: Images of LGBT Rights” (Rochester, NY, 2013).

¹²³ “India: countries with the highest number of Indian migrants,” *Statista available at:* <https://www.statista.com/statistics/1459615/india-countries-with-highest-number-of-indian-migrants/> (last visited May 11, 2024).

explores the need to maintain these rights to guarantee fair and impartial treatment of individuals. It also analyses the societal consequences of these rights. The chapter promotes the implementation of equitable and impartial family laws for the LGBT community, emphasizing that their family rights are a crucial component of their inherent human right to life.

3.2. A Global Perspective on LGBT Rights at the United Nations.

In the year 2008, a collective of 66 nations presented a formal statement made to the General Assembly of the United Nations, expressing their support for the rights of the LGBT community. The statement used the Universal Declaration of Human Rights in denouncing violations of human rights motivated by sexual orientation and gender identity. Opponents to it included the Holy See, the Organization of the Islamic Conference, China, the United States during the Bush administration, and Russia. The 66 nations were allegedly trying to weaken the international human rights framework by legalizing paedophilia and other associated crimes, according to a statement released by the Organization of the Islamic Conference in particular.¹²⁴ During the year 2011, the Council of United Nations Human Rights study verified the instances of prejudice experienced by LGBT persons in both legal and societal contexts, building upon the 2008 declaration. The United Nations Human Rights Council released a second report in 2015 that addressed the problem of violence as well as various discrimination against LGBT people in light of their legal commitments under international law.

Notwithstanding the endeavours by UN bodies to promote LGBT Rights, nations that are against such change represent a formidable fraction capable of impeding or prolonging advancements. During his last year in office, former Secretary-General Ban Ki-Moon said that his advocacy for LGBT rights had resulted in disputes with powerful member states.¹²⁵ While he acknowledged the rights of LGBT to an

¹²⁴ Neil MacFarquhar, "In a First, Gay Rights Are Pressed at the U.N." *The New York Times*, 19 December 2008, section World.

¹²⁵ HKSSPR, "LGBT Rights on the International Stage: An Analysis of Diplomatic Practice" *HKS Student Policy Review*, 2019 available at: <https://studentreview.hks.harvard.edu/lgbt-rights-on-the-international-stage-an-analysis-of-diplomatic-practice/> (last visited May 11, 2024).

"institutional commitment," he believed that most of his efforts had been in vain. The United Nations' global development agenda, the Sustainable Development Goals, has not included any mention of LGBT rights in its final version. Opposition to the implementation of specific wording safeguarding the rights of LGBT individuals was encountered from a coalition of nations, including Russia, several nations in the Middle East, Asia, the Caribbean, Africa, and the Vatican, along with religious institutions.

On September 29, 2015, a coalition of 12 UN agencies published a proclamation affirming their commitment to end discrimination and violence against the LGBT community, within five days have passed since the Sustainable Development Goals were announced. According to the claim made in "Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People," maltreatment of LGBT individuals violates international human rights laws and impedes the achievement of the SDG. The recommendations put forth encompass the acknowledgement of LGBT status as a legitimate reason to seek refuge asylum, the revocation of legislation that criminalizes people according to their sexual orientation, gender identification, or gender expression, and the prohibition of any form of prejudice against LGBT adults, adolescents, and children across various domains such as in criminal justice, work, housing, healthcare, social protection, education, and in asylum and detention centres. Numerous United Nations member states possess the authority to exert influence over UN resolutions that oppose the incorporation of the rights of the LGBT. They haven't been able to thwart the efforts of the nation's seeking reform, however.

The LGBT Center Group, a loose collaboration of nations and non-governmental organizations dedicated to tackling LGBT rights outside the purview of formal UN bodies, represents LGBT rights at the UN¹²⁶. The 2008-founded Core Group supported the 2008 resolution of the General Assembly and the 2011 LGBT rights declaration from the Human Rights Council. It was unable, nonetheless, to include

¹²⁶ Emilie Kao and Grace Melton, "The U.S. Must Protect Human Rights of All Individuals Based on Human Dignity—Not on Membership in Identity Groups" *The Heritage Foundation* available at: <https://www.heritage.org/404> (last visited May 11, 2024).

clear protections inside the SDGs. Despite this challenge, the Core Group has promoted cooperation between the Global North and the Global South, attracting participation from Latin America and the West as well as Albania, which became the group's first observer state with a majority of Muslims.

Joining the Core Group in 2010 was the Office of the High Commissioner for Human Rights. Charles Radcliffe, a senior adviser to the High Commissioner, articulated the policy objective of the Core Group as follows:

The political environment inside the United Nations has seen significant transformations over the last decade regarding basic human rights, sexual preference, and self-identity. This transformation may be attributed, at least in part, to the efforts undertaken by the Core Group. This facilitates the establishment of the necessary political environment for advancing development, so enabling the Office of UN Human Rights and other United Nations entities to intensify their endeavours in advancing and safeguarding equivalent rights for individuals belonging to the LGBT community.

The United Nations' official institutions face challenges garnering broad support for LGBT rights due to resistance from certain member nations. The Group which works for LGBT, an unofficial group, endeavors to navigate these obstacles by facilitating regulation coordination between governments and NGOs dedicated to establishing LGBT rights as a fundamental human rights standard.

The United Nations Human Rights Council in 2016, created an autonomous authority to investigate worldwide acts of violence and prejudice faced by the members of the LGBT community.¹²⁷ The resolution had support from many Western and Latin American nations within the LGBT Rights Group, and it was accepted with a narrow margin of 23 to 18. The formalization of the LGBT Rights Group's activities inside authorized UN organizations was facilitated by the formation of an independent expert. The organization's responsibilities were evaluating, and increasing awareness

¹²⁷ “Harvard Kennedy School LGBTQ Policy Journal Vol. 9 by Harvard Kennedy School LGBTQ Policy Journal - Issuu,” 2020 *available at*: <https://issuu.com/hkslgbtq/docs/hkslgbtq2019> (last visited May 11, 2024).

of worldwide prejudice rooted in sexual preference or gender identification; collaborating with nations to introduce schemes or regulations against prejudice; and providing guidance to nations, non-governmental organizations, and United Nations agencies on matters about violence against the LGBT community.

Vitit Muntarbhorn, an international law professor, was finally chosen by the Human Rights Council for the position. An Egyptian representative speaking on behalf of Belarus, Russia, and the Organization of Islamic Cooperation—with the exception of Albania—stated the following after Munarbhorn's first report to the Human Rights Council:

“We cannot interact, cooperate, or communicate with the independent expert because we do not acknowledge their authority. We think that the authority-establishing resolution, which was approved by a narrow majority, is very divisive”.

Furthermore, the incorporation and enforcement of contentious concepts outside the established international legal framework for human rights are in direct opposition to the core principle of universality and have the potential to foster divisiveness.

3.3. Guidelines from a set of Principles adopted at Yogyakarta.

A series of rules centred on human rights relating to gender identity and sexual orientation are known as the Yogyakarta Principles. They were formulated during a global Human Rights Conference organizations conducted in Yogyakarta, Indonesia, in November 2006. In 2017, the principles underwent a supplementation and expansion process, including more grounds of gender expression and sex traits, as well as introducing many new concepts. Nevertheless, the United Nations (UN) has consistently declined to recognize the principles, and the endeavour to establish gender identity and sexual orientation as additional frameworks for non-discrimination has been consistently rejected by both the UN Human Rights Council and General Assembly, and other UN entities.¹²⁸. The principles and supplement include a collection of precepts designed to put international human rights laws into

¹²⁸ Morgan Carpenter, “Intersex human rights, sexual orientation, gender identity, sex characteristics and the Yogyakarta Principles plus 10,” 23 *Culture, Health & Sexuality* 516–32 (2021).

practice to address human rights violations involving people who identify as LGBTI (lesbian, gay, bisexual, transgender, and intersex).

A distinguished group of human rights experts with a range of backgrounds and experiences, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty organizations, non-governmental organizations, and others, developed and unanimously approved the principles. Professor Michael O'Flaherty, the process' rapporteur, has significantly influenced the creation and modification of the Yogyakarta Principles.

From November 6–9, 2006, Gadjah Mada University in Yogyakarta, Indonesia, hosted an international symposium including several legal experts, who had a crucial role in the formulation of these principles. Within the context of existing human rights treaties and laws, the seminar clarified the nature, scope, and implementation of States' human rights obligations concerning sexual orientation and gender identity. There are 29 principles in the Yogyakarta Principles, all of which emphasize how fundamental and universal human rights are, regardless of one's gender identity or sexual orientation. The way these principles are organized makes it clear what kind and degree of prejudice the LGBT community, which is well-established in society and protected by the law, faces. These ideas come from the philosophy of rights-based approaches, which places the onus of upholding the law on State Parties. These obligations include¹²⁹:

- (i) enacting all required laws, regulations, and other actions to eliminate practices that unfairly treat and infringe upon the essential human rights of people of different gender identities and sexual orientations;
- (ii) implementing protective provisions for individuals who identify self with the LGBT community's or group's rights;
- (iii) Guaranteeing that those who violate the LGBT community's fundamental human rights are held responsible and that they are compensated for their actions; and,

¹²⁹ *Id.* at 75.

(iv) fostering a culture of human rights via public awareness raising, instruction, and training.

Principle 1 elucidates the entitlement to the fulfilment of human rights, so imposing a duty upon State parties must amend laws, particularly those about criminal law, to ensure that universal human rights are fully realized. The Yogyakarta Principles support the removal of all criminal and legal prohibitions that forbid consenting sexual activity between those who identify as same-sex or transsexual/transgender, in recognition of the prejudice and mistreatment experienced by this group. Emphasizing the entitlement to legal acknowledgement, it has been explained that a person's self-identified gender identity and sexual orientation are essential to who they are as a person and are a necessary component of liberty, respect, and self-governance.

The Yogyakarta Principles encompass the efforts of advocates for the LGBT community to safeguard their essential rights, such as the freedom from abuse and torture, the right to life, the right to privacy, and the right to obtain justice, fair trial, humane treatment during detention, and release from unjustified imprisonment. These principles are addressed in Principles 4 to 11. Another crucial component elucidates safeguards against all manifestations of trafficking, sale, and the entitlement to be free from exploitation. This section acknowledges and takes into account how vulnerable people with different sexual orientations are to discrimination and injustice brought on by social marginalization, potentially rendering them susceptible to trafficking and exploitation¹³⁰.

The significance of equality and non-discrimination in ensuring the full enjoyment of economic, social, and cultural rights is outlined in Principles 12 through 18. These principles include a wide range of topics, including the right to work, social security, safety nets, adequate housing and living conditions, healthcare, education, and protections against medical exploitation. The fundamental element of the right to achieve the utmost level of health necessitates that States provide access to healthcare

¹³⁰ Matthew Waites, "Critique of 'sexual orientation' and 'gender identity' in human rights discourse: global queer politics beyond the Yogyakarta Principles," 15 *Contemporary Politics* 137–56 (2009).

facilities, commodities, and services, particularly to sexual and reproductive health, as well as to their medical data.¹³¹

The fundamental entitlement to freedom of speech and ideas as well as expression of thought includes the ability to articulate one's sexual identity or personality via many forms of communication, such as speech, attire, physical attributes, name selection, or any other available methods. The recognition of Drag queens and kings' habit of cross-dressing, who have the freedom to express their gay identity via various means, is equally acknowledged. The principles that cover the ages of 19 to 21 also prohibit employing ideas of public health, public safety, public morality, or public order in a manner that interferes with LGBT people's freedom to openly express their sexual orientation. Their rights of peaceful assembly and association, which includes the ability to stage nonviolent demonstrations, are thus included in this freedom of expression. The freedom of thought, conscience, and religion, as well as the freedom to move and reside within a state's boundaries; hence, states must not obstruct an individual's ability to enter, exit, or return to any state, even their own. People's rights to seek safety from persecution are emphasized in Principles 22 and 23. The aforementioned values are adhered to by individuals' entitlements to engage in familial, governmental, and communal spheres. Concepts 28 and 29 provide the essential concepts that require holding individuals responsible for violating these rights and providing suitable compensation for victims of all identities related to gender and sexuality.

The Yogyakarta Principles have garnered positive reception from several international entities, including the United Nations, the Council of Europe, national courts, government commissions, regional human rights bodies, and international human rights commissions are a few examples. These groups have publicly accepted these Principles and acknowledged their value as a crucial instrument for determining the duties of states to uphold, defend, and fulfill the human rights of LGBT people.¹³²

¹³¹ *Id.* at 83.

¹³² *Ibid.*

3.4. The Yogyakarta Principles and Their Preeminent Interpretation: A Critical Review.

While the Yogyakarta Principles have garnered support from many stakeholders, there have been instances of critical analysis from religious non-governmental organizations (NGOs) and a lack of response from some African and Asian nations (Sanders, 2008). The absence of accompanying notes and comments elucidating the legal foundations of each concept is evident in the Yogyakarta Principles. Furthermore, the absence of citations to any authoritative source implies that the Principles lack any kind of support, save the drafters' expertise as legal scholars and the content of the document, to enhance its correctness. While many provisions of these treaties may just repeat existing laws, the majority of them are exclusively applicable to certain nations. This is determined by the interpretive body inside the treaty regime to which the state belongs, as well as the promises made by the state within that system. States may alternatively choose to acknowledge these interpretations as legally binding and refrain from adhering substantially to the judgments made by these treaty bodies. Interpretations might sometimes be seen as solely advisory. Several claims, such as the entitlement to freedom from capricious infringement of personal freedom, clash with the legislation or customs of certain nations, and certain rights are safeguarded by international law only in governments that have ratified treaties providing such safeguards. Furthermore, the principles fail to incorporate the concept of progressive realization into their examination of rights related to culture, society, and economy. About the notion of the "right to family," the prevailing perspective among courts and tribunals is that the term "family" under international law generally pertains to a heterosexual spouse and their offspring.

LGBT, LGBTQ, and allied (NGOs) activists challenge the widely accepted definitions of "gender identity" and "sexual orientation" as stated in the Yogyakarta Principle. This is because these principles continue to favour a binary framework of gender, as well as sexual behaviours, identities, and desires that align with this framework. Sexuality and gender defy Western classifications, and the Western differentiation between gender and sexuality may be subject to scrutiny (Waite, 2009). The notion of attributing individuals' identities to their sexual orientation based on their chosen

gender is not universally observed in non-Western societies. Consequently, categorizing individuals as having a sexual orientation that is inherent to their humanity can be seen as a dissemination of the Western paradigm of sexual orientation. Queer theorists argue that the binary hierarchical classifications of gender and sexuality contribute to the issue by imposing the expectation that every individual must possess a certain gender or sexual orientation¹³³.

The Yogyakarta Principles seek to provide people the right to choose their gender identity and sexual orientation, but they do not grant freedom from these features. They fail to provide the foundation for an emancipatory endeavour to surpass this framework. Same-sex marriage is often seen as the epitome of sexual rights within human relationships and familial contexts, with less consideration given to the possibility of reevaluating kinship that is not based on biological ties or marital unions. The concepts in question lack a legal assurance, therefore safeguarding the interests of privileged individuals who use terms such as barbarism, perversion, and degeneracy to distinguish sexual minorities from those whom they see as being protected by human rights. The architects of the principles have also enhanced the capacity of non-governmental organizations (NGOs) and governments to collaborate to effectively implement this global framework and bring about localized transformations across several domains.¹³⁴

3.5. LGBT Rights in Canada

Gay, lesbian, bisexual, and transgender people have historically experienced segregation in a variety of social institutions worldwide. It is anticipated that the LGBT population in Canada will enjoy some of the most notable legal rights and protections worldwide. With the passage of the “*Criminal Law Correction Act*”, also known as Bill C-150, in June 1969, homosexuality became officially recognized. Before 1969, engaging in same-sex sexual activities with consenting adults in Canada was considered a crime that may result in imprisonment. An omnibus measure passed by the Canadian government in that year essentially decriminalized private sexual

¹³³ *Supra* note 130 at 83.

¹³⁴ *Ibid.*

relations between two adults over the age of 21. This legislation marked a significant advancement in ensuring equal treatment of gay men, lesbians, and bisexuals inside the legal framework. Canadian attitudes towards LGBT rights and sex problems are often recognized as being very tolerant and dynamic on a global scale. Canadian laws and regulations have consistently upheld standards of same-sex marriage, gender equality for women, and the recognition of non-binary sexes¹³⁵.

Significant developments have occurred in Canada since 1969 regarding the equality rights of lesbian, gay, bisexual, and transgender (LGBT) people. The modifications in the penal code have rendered "gross indecency" and "buggery" non-criminal, provided that they are carried out in a private setting between two consenting people who are at least 21 years old. In subsequent years, the Criminal Code underwent more amendments, which lowered the consent age to 14 for other forms of sexual activity and 18 for anal intercourse. Parliament removed the prohibition on lesbians, gay men, and bisexuals serving in the military in response to a court case in "*Douglas v. Canada*"¹³⁶.

The Criminal Code was modified by Parliament to impose stricter punishments for crimes driven by animosity based on certain criteria, such as sexual orientation. Parliament amended *the Canadian Human Rights Act* to expressly prohibit discrimination or bias on the basis of sexual orientation. The Supreme Court of Canada ruled in the case of *M v. H*¹³⁷ that it was unconstitutional to deny same-sex couples' equality. Subsequently, several governments across Canada have initiated comprehensive legislative reform initiatives. The rights of adoption, inheritance, and spousal support, which were formerly exclusive to heterosexual couples, are progressively being expanded to include same-sex couples.

The Supreme Court has upheld previous decisions made by lower courts, which have established Bias by Canada Customs against LGBT literature and resources.

¹³⁵ Ameer Idreis, "The Charter's Revolutionary Impact on Gay Rights in Canada," 6 *Gettysburg Social Sciences Review* (2022).

¹³⁶ (1992) 58 F.T.R. 147 (TD).

¹³⁷ [1999] 2 SCR 3.

According to the Court, the Crown, not the booksellers or other importers, is now responsible for proving obscenity, even if Customs still has the power to seize goods at the border. Additionally, the Immigration and Refugee Protection Act now recognizes "common-law partners," including same-sex couples, as belonging to the family class. As a result, an LGBT Canadian's same-sex partner is now eligible to apply for immigration to Canada¹³⁸.

3.5.1. Legal safeguard

The Canadian Human Rights Act was modified in 1996 to expressly prohibit discrimination based on sexual orientation. The right of gay, lesbian, and bisexual Canadians to "an equal opportunity with other individuals to shape their own lives according to their abilities and desires" is explicitly affirmed by Parliament via this inclusion.

Further information on human rights and sexual orientation may be found in the Canadian Human Rights Commission, an entity entrusted with the task of overseeing the implementation of the Act. Complaints, progress, and other activities are covered in the Commission's annual reports. No matter their religion, ethnicity, national or ethnic heritage, color, sex, age, or physical or mental ailments, everyone has the right to equitable treatment under Section 15 of the Canadian Charter of Rights and Freedoms.

Although "sexual orientation" is not specifically listed as a cause for discrimination under section 15(1) of the Charter, the Supreme Court of Canada upheld this ruling in the case of *Egan v. Canada*¹³⁹, it does possess an analogous basis upon which allegations of prejudice may be predicated. In the *Vriend v. Alberta*¹⁴⁰ case, the Court ruled that section 15(1) was violated by provincial human rights legislation that did not mention sexual orientation.

¹³⁸ "LGBTQ Human Rights In Canada - Free Essay Example," *Edubirdie* available at: <https://edubirdie.com/examples/lgbtq-human-rights-in-canada/> (last visited May 12, 2024).

¹³⁹ [1995] 2 S.C.R. 513

¹⁴⁰ [1998] 1 S.C.R. 493

In the year 2000, the legislative body known as Parliament enacted Bill C-23, which grants same-sex couples same social and fiscal advantages as heterosexual individuals in common-law partnerships. An important step toward sexual orientation equality was taken in 2005 with the passage of the *Civil Marriage Act*, which gave same-sex couples the legal right to marry in any Canadian province.

3.5.2. Constitutional structure and framework.

A mechanism for ensuring compliance.

The legal protections afforded to LGBT Canadians are now on par with those of other Canadians, mostly as a result of many court rulings made under the 1982 amendment to the Canadian Constitution contained Section 15 of the Charter of Rights and Freedoms. Section 15 was officially enacted in 1985. A portion of the lawsuits received financial support from the Court Challenges Program¹⁴¹, an initiative established by the federal government. In 1985, this program was extended to include test cases that aimed to question federal legislation about the equality rights protected as per the Charter. Although there has been funding to challenge provincial laws via several projects, each province has had a very different level of accessibility.

Rights of equality.

Section 15 of the Charter expressly forbids the main types of discrimination that LGBT Canadians may experience, while the Constitution of Canada neither explicitly grants nor denies any rights to persons who identify as LGBT. Every individual is regarded as equal in the eyes of the law and is entitled to the same protections and advantages under it, as stated in Section 15(1). This includes not being subjected to discrimination based on race, national or ethnic origin, colour, religion, sex, age, or physical or mental disability. In a broad sense, Section 15 was created to protect against many types of discrimination. The listed reasons for unlawful discrimination, like sex and race, are examples rather than a comprehensive list. The ‘Supreme Court

¹⁴¹ “Court Challenges Program – Questions and answers,” 2023 *available at*: <https://www.canada.ca/en/canadian-heritage/corporate/transparency/open-government/standing-committee/petitpas-taylor-official-languages-dec2022/questions-answers.html> (last visited May 12, 2024).

of Canada' acknowledged in a landmark ruling in the 1995 case of *Egan v. Canada*¹⁴² that sexual orientation was implicitly covered within section 15 as an "analogous ground," making it a prohibited basis for discriminatory actions. Transsexuality and HIV/AIDS have been seen as included under the categories of "sex" and "physical disability"¹⁴³. Section 15 of the Charter applies to all laws and law enforcement inside Canada, including government programs that are specified by legislation. However, it does not provide rights against the private sector. As an example, the initiation of a discrimination lawsuit against a restaurant necessitates the use of human rights legislation, rather than the Charter.

Exclusions

Section 1 of the Charter includes a comprehensive exemption that permits the imposition of "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The Oakes Test describes how the Supreme Court of Canada views this exemption. Conflicting Charter rights may be taken into consideration in this research. One illustration of this is the potential for the right to equality based on sexual orientation, as outlined in section 15, to be hampered by the freedom of religion, as defined in section 2, and vice versa. Additionally, it may be restricted by section 93 of the constitution, which protects the right to denominational (religious) schools.

Furthermore, it should be noted that section 15 and many other portions of the Charter are susceptible to the "notwithstanding clause" of the Charter. This article gives governments the authority to proclaim legislation as exempt from the Charter for a maximum duration of five years. It is important to highlight that this exemption may be extended several times. In 2000, Alberta changed its "*Marriage Act*" to explicitly define marriage as a partnership between a man and a woman. The legislation included a notwithstanding provision; nonetheless, the amendment remained void since the authority to enter into marriage falls within the exclusive purview of the

¹⁴² [1995] 2 SCR 513.

¹⁴³ Walter S. Tarnopolsky, William F. Pentney & John D. Gardner (eds.), *Discrimination and the Law*, (Thomson, Scarborough, Ontario, 2004)

federal government, as stipulated by the Constitution¹⁴⁴. The notwithstanding clause cannot be used to change the federal distribution of powers; it can only be used to provide exceptions to the Charter. However, the five-year exemption period expired in 2005.

The use of the notwithstanding provisions by the federal government has not been seen, mostly due to the perception that such an action would entail a politically burdensome acknowledgement of the law's infringement of human rights. Before his party's new cabinet was formed, Prime Minister Stephen Harper said on December 15, 2005, that his government would bring up the issue of same-sex marriage in Parliament again without using the notwithstanding clause. His first Minister of Justice, Vic Toews, did, however, openly state that he was in favour of the notwithstanding clause in certain circumstances. Despite Stephen Harper's assertions, his administration has refrained from making any efforts to reopen the matter of same-sex marriage.

3.5.3. The idea of fair treatment in the public sector, the workplace, and housing.

The mechanism for ensuring compliance.

Every province, territory, and the federal government of Canada has human rights laws that specifically prohibit discrimination and abuse based on race, gender, or religion. Employment, housing, public services, and publicity are all covered by this protection, which applies to both the public and private sectors. Additionally, several laws apply to supplemental activities.¹⁴⁵ As quasi-constitutional legislation, human rights acts have the authority to supersede other laws, regulations, contracts, and collective bargaining agreements. To enforce these rights, human rights commissions and tribunals often use a complaint investigation, conciliation, and arbitration procedure that is known for being sluggish but free. This process also includes safeguards against any kind of retaliatory actions. Legal representation is unnecessary.

Justifications for the prohibition of discrimination.

¹⁴⁴ Reference re Same-Sex Marriage, [2004] 3 S.C.R. 698, 2004 SCC 79 (Can L II).

¹⁴⁵ Winnipeg School Division No. 1 v. Craton [1985] 2 S.C.R. 150 (S.C.C.).

A comprehensive constitution that blends human rights legislation with a charter of rights, the Quebec Charter of Rights and Freedoms, was revised in 1977 to expressly prohibit prejudice or discrimination based on sexual orientation. Consequently, the province of Quebec achieved the distinction of being the first authority outside the confines of a city or county to enact legislation that explicitly forbids sexual orientation-based bias throughout both the private and public domains. Currently, the human rights acts in all Canadian jurisdictions explicitly include "sexual orientation" as a prohibited basis for discrimination. However, in Alberta, the Act must be interpreted and applied as if "sexual orientation" were explicitly mentioned, following the Vriend case.

The "Yukon Human Rights Act" defines "sexual orientation" to include heterosexual, homosexual, and bisexual people and particularly refers to those who are consenting adults acting legally¹⁴⁶. Although no other human rights law defines sexual orientation explicitly, it is often considered to include heterosexuality, homosexuality, and bisexuality. Transgender and transsexual people are not included. Sexual orientation is a well-defined legal concept that relates largely to a person's gender preference during sexual relations, according to the Federal Court of Canada. It is not characterized by ambiguity or an overly broad definition¹⁴⁷. According to the Ontario Human Rights Commission, sexual orientation is defined as more than just a person's "status." It is a persistent personal characteristic that is essential to a person's core identity. From those who identify as gay and lesbian to people who identify as bisexual and straight, sexual orientation encompasses the range of human sexuality.

Discrimination based on disability, including AIDS, ARC, HIV positivity, and participation in a high-risk group for HIV infection, is prohibited under all human rights legislation in Canada.

Most likely, discrimination against transgender individuals before, during, and after surgery is prohibited by all Canadian human rights legislation. It is crucial to

¹⁴⁶ "RSY 2002, c 116 | Human Rights Act," available at: <https://www.canlii.org/en/yk/laws/stat/rsy-2002-c-116/latest/rsy-2002-c-116.html?resultIndex=1> (last visited May 12, 2024).

¹⁴⁷ *McAleer v. Canada (Human Rights Commission)* (1996), 132 D.L.R. (4th) 672.

remember that this protection is only offered in the Northwest Territories, where "gender identity" is a protected ground under the human rights legislation. Based on the defined categories of "sex" or "gender-determined characteristics," or as an undefined category of "gender identity" as defined by section 9(1)(a) of the Code, transsexual people in Manitoba are probably protected by the Human Rights Code. Human rights commissioners also recognize that sex discrimination includes prejudices based on transsexuality at the federal and Quebec levels, as well as biases based on transgenderism in British Columbia and Ontario. The concept of "gender identity" lacks a specific definition under any human rights legislation. However, this phrase has been defined by the Ontario Human Rights Commission.

An individual's innate self-perception, namely their identification as male or female, is linked to their gender identity. An individual's gender identification may or may not align with the sex given to them at birth. Gender identity encompasses personal attributes such as self-perception, physical and biological attributes, expression, behavior, and action, all of which are linked to one's gender. Although it seems likely that Canada prohibits discrimination based on transsexuality, it is uncertain if the law also prohibits discrimination against other transgender individuals. As of February 2006, there is no legal precedent indicating that it constitutes sex discrimination. However, there is legal precedent suggesting that it does not qualify as "sexual orientation" discrimination. The human rights commissioners for British Columbia and Ontario have said that prejudice against transgender people falls within the larger category of sex discrimination.

In the year 2005, Bill Siksay, a Legislative proposal proposed by a New Democratic Party (NDP) member in the House of Commons with the aim of expressly including gender identity and expression as impermissible bases for prejudice inside the Canadian Human Rights Act. He reintroduced the measure in 2006. With additional provisions to include gender identity and expression within the Criminal Code's hate crimes sections, the aforementioned person reintroduced the proposal in May 2009.

3.5.4. Activities that ensure that each person is treated equally.

Thus, it is illegal to discriminate, including harassing, people based on their actual or suspected sexual orientation or HIV/AIDS (and certainly transsexuality and possibly

transgenderism) in the workplace, housing market, public services, and media across Canada. Both the public and private sectors are included in this. All facets of work are covered, as are benefits for spouses and long-term partners. Services now offered to the broader public include credit, insurance, government programs, hotels, and schools. Schools that are open to the public may have staff members or students who intimidate or use derogatory names against homosexual people.¹⁴⁸ After the Douglas case was resolved in 1992, it became legal for lesbian, gay, bisexual, and transgender Canadians to serve in the armed forces.

In addition to when someone is harassed or treated less favourably based on a prohibited ground, prohibited discrimination also happens when a uniform policy or practice has an unintended, disproportionately negative effect depending on the ground. We refer to this phenomenon as "adverse effect discrimination". For example, requiring parental consent for student participation in all school groups in public schools might be seen as discriminatory. This is predicated on the idea that kids are less likely to ask for or get permission to join clubs affiliated with the Gay-Straight Alliance.

Exclusions.

Except for Saskatchewan, where owners of a duplex may engage in sex and sexual orientation-based discrimination against tenants of the other unit, human rights acts do not contain any explicit provisions addressing sexual orientation or gender identity. The Yukon's protection against discrimination based on sexual orientation is restricted to "consenting adults acting within the law." Because the Yukon wording contradicts the Vriend ruling and the Charter's section 15 on age discrimination, which declares that minors are not shielded from anti-gay discrimination, its legitimacy is called into doubt. Nevertheless, human rights legislation often includes provisions for "bona fide requirements" or qualifiers that apply to the majority of reasons, such as sex, sexual orientation, and disability.

However, these exceptions are only granted when the rigorous criteria of the Meiorin Test are satisfied. Due to the quasi-constitutional nature of human rights statutes, it is

¹⁴⁸ School District No. 44 (North Vancouver) v. Jubran, 2005 BCCA 201 (B.C. C.A.).

impermissible for job candidates or unions, among other entities, to renounce their entitlement to equal rights. However, it is possible for other laws to clearly state that they are applicable regardless of the presence of human rights legislation.¹⁴⁹

The findings:

Since the enactment of Section 15 of the Charter in 1985, individuals who identify as homosexual or lesbian have seen significant advancements in their rights as determined by the judiciary across several policy domains. These include immigration, housing, work, health benefits, adoption, pensions, money, hate crimes, and, more recently, marriage. Some argue that the Canadian LGBT community employed legal tactics to promote their rights, relying on the Charter and the belief in the unchangeable nature of homosexuality. The goal of this strategy was to provide equal access to existing institutions and norms, which would change the emphasis of gay liberation from celebrating variety and dismantling sexuality laws to a more normalized reconstruction and emphasis on similarity.

There are no clear legal restrictions on the rights of LGBT pupils, save for the “*Yukon Human Rights Act*”, which defines sexual orientation in a way that denies protection to minors. The constitutional validity of this language is hence questionable.

3.5.5. Recognizing Same-sex Marriage in Canada.

According to court decisions rendered in several provinces and one territory between 2002 and 2005, restricting marriage to individuals of the opposite sex is an instance of discrimination that is forbidden under Section 15 of the Charter of Rights and Freedoms. Additionally, they declared the federal definition to be invalid, requiring those governments to formally document same-sex marriages. While the first verdict mandated that the federal government write legislation recognizing same-sex marriage, subsequent decisions quickly embraced the new definition in the relevant jurisdictions. Canada, following the Netherlands, Belgium and Spain, is now the fourth nation in the world to allow same-sex marriage.

¹⁴⁹ Ameer Idreis, “The Charter’s Revolutionary Impact on Gay Rights in Canada,” 6 *Gettysburg Social Sciences Review* (2022).

All Canadian provinces and territories, except for Alberta, Prince Edward Island, the Northwest Territories, and Nunavut, were granted legal recognition of same-sex weddings in July 2005. This expansion included a significant majority, around 85%, of Canada's population, which is estimated to be over 31 million people.

In the summer of 2003, the federal government declared its intention to not pursue appeals and instead proposed legislation to permit same-sex weddings nationwide. To ensure the measure's validity in the face of a Charter challenge from individuals opposed to same-sex marriage, it was brought before the Supreme Court of Canada. In October 2004, the Supreme Court heard arguments on the proposed legislation. Following the effective passage of the bill by the legislative body in July 2005, Canada became the fourth country to legalize same-sex marriage countrywide and the first to do so without needing residence¹⁵⁰.

Background:

When the Supreme Court ruled in *Bostock*, most states had already enacted laws that forbade employment bias against LGBTQ individuals. Additionally, there were several municipalities. However, twenty-one states lacked particular laws. Congress has already tried to enact laws that would include sexual orientation under Title VII. Legislative changes to Title VII were approved by the House of Representatives in 2007 and the Senate in 2013. The most recent endeavor took place in the year 2019. However, in all instances, a branch of Congress dominated by the Democratic party was unable to successfully enact legislation via the opposing branch controlled by the Republican party.

The contentions in the case of “*Bostock v. Clayton County*”¹⁵¹.

The Supreme Court affirmed in a 6-3 decision written by Justice Neal Gorsuch that Title VII protects transgender and gay workers from discrimination in the workplace. The court relied on a literal interpretation of the Act, which is a legal approach called textualism. In addition to Justice Gorsuch, there was one other justice, John Roberts,

¹⁵⁰ Sébastien Lafrance, “Legalization of Same-Sex Marriage in Canada: A Success Story” *Melbourne Law School*.

¹⁵¹ 590 U.S. (2020).

who was selected by the Republican party, as well as four justices appointed by the Democratic party.

The dissension of Justices Alito, Thomas, and Kavanaugh was observed: The majority opinion rendered by Justice Gorsuch started his analysis by scrutinizing the meanings of the terms included within the relevant Act. Section 703(a) states that it is unlawful for an employer to act in a way that prevents or refuses to hire or fire a person, or to treat a person unfairly in terms of pay, terms, conditions, or employment privileges because of their race, color, religion, sex, or national origin. The word in question in this instance is "sex," which Justice Gorsuch defined as the biological gender that a person is given at birth.

However, notwithstanding this definition, Justice Gorsuch's interpretation of the Act, which is based on textualist principles, led him to the conclusion that Title VII explicitly forbade any kind of prejudice against homosexuality and transgender status. There were three factors contributing to this: Before assessing an individual's sexual orientation, it is essential to first take into account their biological sex. Sex should only be taken into account as a "but for" reason for firing someone. Since it need not be the only or most important element, Title VII seeks to protect individuals from discrimination rather than groups.

Justice Gorsuch provided an example of an employer that had a policy of terminating the employment of individuals who identify as gay. Two identical workers arrive accompanied by their husband, who is called Karen. The termination of each individual is contingent only upon their gender.

Regarding the second aspect, Justice Gorsuch posited that while employers may contend that sex is not the primary determinant in the act of prejudice against LGBTQ employees, such prejudice doesn't need to fall under the purview of Title VII. According to the legislation, an employee is only need to demonstrate that they would not have been terminated if it were not for their gender. Any individual who is terminated based on their gender, regardless of any other factors, has nevertheless been terminated in contravention of Title VII.

Clayton County and other businesses said that they upheld gender equality by failing to terminate LGBTQ workers based on their sexual preferences and orientation. Likewise, transgender workers would be terminated irrespective of the gender they underwent throughout their transition. Nevertheless, Justice Gorsuch observed that Title VII protects individuals against prejudice, rather than collectives. Indeed, a policy of LGBTQ discrimination would often result in gender equality between men and women. For individual workers, however, it doesn't matter. They continue to be terminated, partially because of their gender. The prohibition outlined in the statutory wording of Title VII is as follows¹⁵².

3.6. LGBT Rights in the United Kingdom: A Historical Overview.

The earliest instance of male homosexuality being particularly targeted for censure in UK law was the *Buggery Act of 1533*, passed by Parliament under Henry VIII¹⁵³. The British law that outlawed sodomy in its entirety, and therefore the whole British Empire, resulted in convictions that carried the penalty of death.

3.6.1. Buggery Act 1533.

The *Buggery Act of 1533* imposed capital punishment for convictions. *The Offences Against the Person Act*, which was passed in 1861, ended the death sentence for sodomy¹⁵⁴. The penalty was instead lowered to a minimum of ten years in jail. The *Criminal Law Amendment Act of 1885*, on the other hand, extended its scope by criminalizing any act of homosexuality perpetrated by males, regardless of the presence of a witness. This implies that even activities carried out in secret may be subject to prosecution. Frequently, a letter articulating the conditions of attachment between two individuals sufficed to initiate legal proceedings. The legislation's

¹⁵² Joseph Fawbush (2022), <https://supreme.findlaw.com/supreme-court-insights/bostock-v--clayton-county-case-summary-.html>

¹⁵³ "Law and Oppression | Historic England," *available at*: <https://historicengland.org.uk/research/inclusive-heritage/lgbtq-heritage-project/law-and-oppression/> (last visited May 12, 2024).

¹⁵⁴ "A History of LGBT Criminalisation," *Human Dignity Trust available at*: <https://www.humandignitytrust.org./lgbt-the-law/a-history-of-criminalisation/> (last visited May 12, 2024).

wording was sufficiently unclear to earn it the moniker of the 'Blackmailer's Charter', resulting in Oscar Wilde's unfortunate victimization in 1895. According to the *Buggery Act*, individuals who engaged in sexual relationships with other males were subject to the potential penalty of capital punishment. Prosecutions were often initiated in situations where men exhibited any kind of love towards one another, irrespective of the absence of any substantiated sexual interactions. Wales saw the extension of the legislation in 1543, while Ireland was granted it in 1634¹⁵⁵.

The increase in legal actions related to 'buggery' occurred concurrently with the emergence of a burgeoning subculture of gay males, notably in urban areas and more specifically in London. 'Molly Houses' served as clandestine establishments providing a gathering place for gay males, sometimes functioning as brothels where men could engage in the exchange of sexual services with other men. The contemporary narratives surrounding Molly Houses and their activities often depended on the frequently cited cliché that gay men do not possess authentic masculinity. The language used in these tales would now be seen as exhibiting both homophobia and misogyny.¹⁵⁶

3.6.2. The Criminal Law Amendment Act, 1885.

Legislation has not specifically targeted female homosexuality. *The Criminal Law Amendment Bill 1921* was first discussed in Parliament in 1921, and aimed to enact legislation that would target and penalize homosexuality. However, this proposal ultimately failed as it was rejected by the House of Commons and the House of Lords, expressing worries that a rule of this kind would draw notice and maybe inspire women to research homosexuality. Moreover, it was hypothesized that lesbianism was common among a certain subset of women.

In the year 1885, the prohibition of homosexuality was limited to the act of buggery, which carried a penalty of lifelong imprisonment. The situation transformed when

¹⁵⁵ "BBC Wales - History - Themes - The 1543 Act of Union," *available at*: https://www.bbc.co.uk/wales/history/sites/themes/periods/tudors_05.shtml (last visited May 12, 2024).

¹⁵⁶ "Gay in the UK," *SEEN*, 2023 *available at*: <https://seen-network.uk/posts/2023-02-14-gay-in-the-uk/> (last visited May 12, 2024).

Henry Labouchere, a Liberal Member of Parliament from Northampton and a staunch critic of homosexuality, *The Criminal Law Amendment Act of 1885* Proposed Section 11¹⁵⁷. This amendment rendered all acts of 'gross indecency' including homosexuality unlawful. The main focus of the law was on safeguarding women's and girls' rights via the augmentation of the age of consent. However, it is noteworthy that this particular provision within the Act had a crucial role in shaping legislation about homosexuality. Surprisingly, this part was approved during a nocturnal deliberation in the House of Commons with a limited number of Members of Parliament in attendance. Oscar Wilde and Alan Turing, along with several others, were found guilty and penalized for engaging in homosexual activities under this legislation.¹⁵⁸

3.6.3. Wolfenden Report, 1957.

According to the Wolfenden Report, it was suggested that the criminalization of consensual adult sexual activity in private should be abolished. It took the government ten years to implement the Wolfenden Report's recommendations on the *Sexual Offences Act of 1967*. The Church of England and the House of Lords supported the *Sexual Offences Act*, which partially legalized same-sex relationships in the UK. These acts were limited to private engagements between males aged 21 and above. Scotland and Northern Ireland subsequently adopted similar measures more than ten years later, specifically in 1980 and 1981, respectively. Although the *Sexual Offences Act* was a significant step in the right direction, there was still a long way to go before equality was achieved.

Following the Stonewall Riots in New York in June 1969, which were a reaction to the police's maltreatment of the LGBT community, the UK Gay Liberation Front (GLF) was founded in 1970¹⁵⁹. The GLF actively advocated for the rights of

¹⁵⁷ William Fize, "The Homosexual Exception? The Case of the Labouchère Amendment" *Cahiers victoriens et édouardiens* (2020).

¹⁵⁸ Michaella Maddalena, "Labouchere Amendment of 1885," 2020 *available at*: <https://editions.covecollective.org/chronologies/labouchere-amendment-1885> (last visited May 12, 2024).

¹⁵⁹ Meg Metcalf, "Research Guides: LGBTQIA+ Studies: A Resource Guide: 1969: The Stonewall Uprising" *available at*: <https://guides.loc.gov/lgbtq-studies/stonewall-era> (last visited May 13, 2024).

individuals within the LGBT community, encouraging them to critically examine the prevailing structures in UK society that perpetuated their subjugation. The GLF led the inaugural Pride march in 1972, which has since become an annual event, as a show of solidarity with other oppressed populations.

3.6.4. Manifesto of the Gay Liberation Front.

The Gay Liberation Front's 1971 Manifesto said that those who identify as homosexual, who have endured physical brutality as well as intellectual and psychological assaults throughout several spheres of social engagement, are now experiencing a sense of anger.

Following the GLF's disintegration in late 1973, the Manchester-based Campaign for Homosexual Equality (CHE) took centre stage in promoting equality via legal reform. In 2001, the age of consent equality was introduced in England, Scotland, and Wales¹⁶⁰. In 2009, it was also implemented in Northern Ireland.

Still, there was a continuing battle for sexual equality. By Section 28 of the *Local Government Act 1988*, which was put into effect by Margaret Thatcher's Conservative Government, local authorities were not allowed to participate in any activities that were seen to encourage homosexuality or mimic family connections. Additionally, councils were prohibited from providing financial support for initiatives and instructional materials that were thought to encourage homosexuality. The law effectively prohibited the deliberation of LGBT matters and impeded students from accessing the necessary assistance. In 2003, Section 28 was abolished, and in 2009, Prime Minister David Cameron expressed remorse for the act¹⁶¹. *The Civil Partnership Act of 2004* granted legal recognition to same-sex couples, enabling them to establish legally enforceable unions akin to nuptial unions. "*The Marriage (Same-Sex Couples) Act of 2013*" subsequently extended its provisions to let same-gender couples enter into marriage in England and Wales. Similarly, Scotland enacted the

¹⁶⁰ Lucy Robinson, "Gay men and the Left in post-war Britain: How the personal got political" *Gay men and the Left in post-war Britain* (Manchester University Press, 2013).

¹⁶¹ Nicholas Watt, "David Cameron apologises to gay people for section 28" *The Guardian*, 2 July 2009, section Politics.

Marriage and Civil Partnership (Scotland) Act of 2014, reflecting a similar development¹⁶². “*The Northern Ireland (Executive Formation etc) Act 2019*” was implemented in Northern Ireland, therefore legalizing same-sex weddings on January 13, 2020.

The Gender Recognition Act of 2004, enacted on April 4, 2005, granted transgender individuals complete legal acknowledgement of their sexual identity, enabling them to get an updated certificate of birth details¹⁶³. Nonetheless, it's crucial to remember that gender possibilities are restricted to the categories of 'male' or 'female'. During the period from July to October 2018, the UK Government sought input from the public about the amendment of the Act. As of September 1, 2020, there has been no publication of any report from the consultation.

The Equality Act of 2010 provided safeguards for LGBT workers, ensuring their protection from workplace bias, harassment, and victimization. The enactment amalgamated preexisting regulations and included safeguards for transgender employees, therefore consolidating the rights bestowed by the Gender Recognition Act. The LGBT community persists in advocating for equal rights and societal inclusivity.¹⁶⁴.

3.6.5. The 2010 Equality Act, the 2004 Gender Recognition Act, and the rights of transgender individuals in the United Kingdom.

The Equality Act 2010 (the 2010 Act) in the UK safeguards LGBT individuals against explicit bias, implicit bias, harassment, and victimization in the workplace. According to the 2010 Act, gender reassignment is classified as a "protected characteristic." According to the legislation, an individual is considered to possess the safeguarded

¹⁶² “Same-Sex Marriage in Scotland: A Legal Evolution,” *Home of Dissertations* available at: <https://www.dissertationhomework.com/samples/assignment-essay-samples/legal/legal-evolution-of-same-sex-marriage-in-scotland> (last visited May 13, 2024).

¹⁶³ “The Gender Recognition Act 2004 | Department of Health,” 2015 available at: <https://www.health-ni.gov.uk/articles/gender-recognition-act-2004> (last visited May 13, 2024).

¹⁶⁴ Parvathy V., “Safeguarding identity with change: An analysis of the LGBT community,” 4 *International Journal of Advance Research and Development* available at: https://www.ijarnd.com/?utm_source=pdf&utm_medium=edition&utm_campaign=OmAkSols&utm_term=V4I5-1147 (last visited May 13, 2024).

attribute of gender reassignment if they are contemplating, are now undertaking, or have previously had a procedure (or a portion thereof) to alter their biological or other sex-related characteristics. The legal framework followed by the UK encompasses the *Gender Recognition Act 2004*, sometimes referred to as the 2004 Act, which confers rights to transgender individuals. According to the provisions outlined in the 2004 Act, transgender persons have the opportunity to get a Gender Recognition Certificate (GRC), which serves as a legal acknowledgement of their gender identity and facilitates the modification of their certificate of birth to align considering their gender identity. Acquiring a GRC may be a cumbersome, costly, and time-intensive procedure.¹⁶⁵

Theresa May, the then PM in 2017, who was in office at the time, introduced suggested modifications to the 2004 Act. With these modifications, transgender people would be able to alter their birth certificates without needing a gender dysphoria diagnosis. This would empower them to assert their own identity. According to a leaked document that the Sunday Times revealed earlier this month, the administration has cancelled the plans above. This implies that the process of modifying a birth certificate necessitates obtaining medical authorization. The government has also declared its commitment to safeguarding female-exclusive areas, with gender being decided based on anatomical factors. Moreover, it has declared its intention to implement nationwide regulations to address the purported increase in gender-neutral restroom facilities.

The leaked document is purportedly part of the government's lengthy response to the public consultation conducted in 2018 over the 2004 Act. No official statement has been made by the government on the leak or its veracity. Nonetheless, it is expected that the government will respond to the consultation by the end of July 2020. The choice to abandon the changes has garnered significant criticism from human rights advocates and LGBT+ organizations spanning many political ideologies. These groups have expressed concerns that such a course of action may lead to a further

¹⁶⁵ *Id.* at 95.

decline in the United Kingdom's position in European rankings about LGBT equality¹⁶⁶.

3.7. Legal Framework in the United States.

A complicated and dynamic path toward obtaining LGBTQ rights has been seen in the US, characterized by turning points in popular acceptance, court rulings, and continuing difficulties. Initially, laws that criminalized same-sex partnerships and policies that purposefully excluded or marginalized LGBTQ persons resulted in severe discrimination against LGBTQ people¹⁶⁷. The Stonewall Riots of 1969 marked a significant turning point in the 20th century, as the LGBTQ movement progressively grew in strength. This incident served as a spark for the current LGBTQ rights movement, encouraging community organizing and advocacy. The Supreme Court's 2015 decision in “*Obergefell v. Hodges*”¹⁶⁸, which legalized same-sex marriage nationally, and the repeal of "Don't Ask, Don't Tell" in 2011, which permitted LGBTQ people to serve openly in the military, are examples of historic triumphs. Furthermore, in its 2020 decision in “*Bostock v. Clayton County*”¹⁶⁹, the Supreme Court decided that discrimination against LGBTQ individuals in the workplace is illegal under Title VII of the Civil Rights Act.

3.7.1. The Equality Act.

The Equality Act aims to provide uniform and unambiguous safeguards against prejudice for those identifying as LGBTQ+ in several crucial domains, including work, federally funded programs, housing, credit, education, public spaces and services, and jury duty. *The Equality Act* aims to modify current civil rights

¹⁶⁶ Sophie Perry, “Tory government blamed for UK becoming more hostile to LGBTQ+ people” *Pink News* | Latest lesbian, gay, bi and trans news | LGBTQ+ news, 2023 available at: <https://www.thepinknews.com/2023/05/11/uk-lgbtq-rights-ilga-europe-rankings-rainbow-map-tories/> (last visited May 13, 2024).

¹⁶⁷ “Milestones in the American Gay Rights Movement | American Experience | PBS,” available at: <https://www.pbs.org/wgbh/americanexperience/features/stonewall-milestones-american-gay-rights-movement/> (last visited May 14, 2024).

¹⁶⁸ (2015) 576 U.S. 644.

¹⁶⁹ *Supra* note 151 at 96.

legislation, such as the *Jury Selection and Services Act*, the *Equal Credit Opportunity Act*, the *Fair Housing Act*, the *Civil Rights Act of 1964*, and other federal employment legislation, by explicitly incorporating the identification of gender and sexual orientation as protected attributes. The measure further modifies the “*Civil Rights Act of 1964*” by prohibiting gender-based bias in public areas, services, and federally financed programs.

Furthermore, the *Equality Act* aims to broaden the scope of public places and services included by existing legislation by including retail establishments, legal services, financial organizations like banks, and transportation services. These significant modifications would enhance the current safeguards for all individuals. The extensive historical record of civil rights demonstrates the efficacy of civil rights legislation in mitigating instances of prejudice since it offers robust federal remedies that are specifically tailored to address the needs of marginalized populations. By expressly including sexual orientation and gender identity in these foundational legislations, those who identify as LGBTQ+ will ultimately be granted the same rights as other traits included by federal law¹⁷⁰.

Job (Employment)

The United States Supreme Court issued a ruling in the *Bostock v. Clayton County*.¹⁷¹ Case affirming the act of refraining from hiring, terminating, or engaging in any kind of prejudice against anyone based on their “Sexual Orientation or Gender Identity” (SOGI) is deemed unlawful by Title VII of the 1964 Civil Rights Act. By clarifying that existing protections against sex bias prohibit discrimination based on sexual orientation, gender identity, or orientation, the *Equality Act* would ensure that this view is explicitly included in the country's civil rights laws.

Residence

The *Equality Act* modifies the *Fair Housing Act (FHA)* to specifically include safeguards for sexual orientation and gender identity (SOGI), thereby outlawing any

¹⁷⁰ “The Equality Act,” *HRC available at*: <https://www.hrc.org/resources/equality> (last visited May 14, 2024).

¹⁷¹ *Supra* note 151 at 96.

kind of housing bias against LGBTQ individuals.¹⁰ The legislation would explicitly forbid the practice of discriminatory treatment in several aspects of housing, including but not limited to rental, sales, pricing, eviction, service delivery, shelter access, mortgage financing, homeowners insurance, and other associated activities. Additionally, it would outlaw any kind of harassment, coercion, or retribution in the fulfilment of people's rights to fair housing.

Giving credit

The proposed legislation, known as the *Equality Act*, aims to formalize the interpretation rule of the Consumer Finance Protection Bureau by expressly incorporating the protected qualities of SOGI into the “*Equal Credit Opportunity Act*”. Therefore, the bill would clearly say that people who identify as LGBTQ cannot be denied credit cards, auto loans, house loans, education loans, or small business loans because of who they are. Furthermore, it would outlaw any kind of unfair treatment in credit transactions. The provision of credit is crucial in fostering enhanced economic security and financial stability among marginalized populations, including those who identify as LGBTQ.

Programs that get funding from the federal government.

Shelters, schools, community health centres, adoption agencies, law enforcement, and correctional facilities are just a few of the many programs that get funding from the federal government. By adding sex and sexual orientation and gender identity (SOGI) to Title VI of *the Civil Rights Act of 1964*, *the Equality Act* ensures that women and LGBTQ people are protected from discrimination, abuse, and rejection in these programs.¹⁶ Considering the challenges encountered by same-sex individuals contemplating adoption¹⁷ and the significant risks that LGBTQ persons, particularly transgender people, encounter while in confinement, these safeguards are necessary and long overdue. By amending Title VI, federal protections against bullying and harassment for LGBTQ children attending federally funded schools will be strengthened. Additionally, it would ensure that students have the right to use facilities that are divided based on sex and participate in activities that are segregated based on gender. Additionally, *the Equality Act* would protect transgender and nonbinary children from the pervasive misgendering and harassment that many people

experience, which would be a life-saving measure.¹⁹ *The Equality Act* does not change Title IX of the Education Amendments of 1972.²⁰ The continuance of sex-segregated programs in schools and the maintenance of protections for women and girls would be maintained¹⁷².

3.7.2. Religious liberty is safeguarded and advanced under the Equality Act.

The implementation of *the Equality Act* would provide advantages for several individuals who hold religious beliefs, without compromising the current religious exemptions outlined in the revised civil rights legislation, notwithstanding the objections raised by opponents of LGBTQ equality.²⁴ Individuals who hold religious beliefs would indeed be granted additional safeguards against prejudice, such as safeguards against prejudice based on religion in a wider range of public establishments, like the prohibition of "No Muslims allowed" signage in retail outlets. According to Title VII²⁵ and the FHA:²⁶ among other civil rights laws, religious organizations would continue to be excluded. They'd keep the ability to show preference towards those of the same religious affiliation, provided that they refrain from making distinctions based on other legally safeguarded attributes. *The Religious Freedom Restoration Act (RFRA)* cannot be used as a legal defence against claims of discrimination, according to the Equality Act. This measure guarantees that religion cannot be used as a means to justify prejudice, including targeting individuals based on their religious convictions, in alignment with the legislative purpose of *the Religious Freedom Restoration Act (RFRA)*.

3.7.3. Status of same-sex sexual relationships in terms of the law.

In the case of *Lawrence v. Texas*¹⁷³, the Supreme Court issued a ruling on June 26, 2003, affirming that intimate consensual sexual behaviour is included within the scope of liberty safeguarded by substantive due process as outlined in the Fourteenth

¹⁷²Rachel Eric Johnson, Discrimination Because of Sexual Orientation and Gender Identity: The Necessity of the Equality Act in the Wake of *Bostock v. Clayton County*, 47 *BYU L. Rev.* 685 (2022) available at <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3352&context=lawreview> (last visited May 14, 2024).

¹⁷³ 539 U.S. 558 (2003)

Amendment. Justice Anthony Kennedy's majority judgment specifically overturned *Bowers v. Hardwick*.¹⁷⁴, a 1986 ruling that deemed sodomy restrictions lawful. Despite this ruling, laws outlawing sodomy have remained in place in several states, and local law enforcement officers have used these laws to harass or arrest LGBT people. In 2014, when "Don't Ask Don't Tell" was repealed in 2011, the U.S. Congress eliminated sodomy rules in the U.S. military.

Before the Supreme Court's historic ruling in *Lawrence v. Texas* in 2003, same-sex relationships were illegal in 14 US states, Puerto Rico, and the US military. At that point, legislative action had resulted in the abolition of sodomy restrictions in five territories, the District of Columbia, and twenty-nine states. The unconstitutionality of sodomy statutes in twelve states has been determined by state Supreme Courts or state Appeals courts. The courts have invalidated the state sodomy statutes in Georgia, Louisiana, and Massachusetts, but the legislators have not revoked those laws. On April 18, 2013, Montana's governor signed legislation repealing the state's sodomy laws, which the Montana Supreme Court had earlier declared unconstitutional. The bill eliminating the sodomy ban in Virginia was signed by the governor on April 23, 2014. In 2019, Utah and Alabama enacted the repeal of their respective sodomy laws, while Idaho did so in 2022. Maryland's sodomy legislation was repealed on October 1, 2020, without the signature of the governor. Similarly, in May 2023, a measure removing the "unnatural sex practices" law was also repealed without the governor's signature. In 2023, Minnesota likewise repealed its sodomy statute.

Since the *Lawrence v. Texas*¹⁷⁵ Ruling, twelve states have either not formally repealed the laws that forbid sexual conduct among consenting adults or have not amended them to fully reflect its scope. Frequently, the legislation about sodomy was written to include further manifestations of sexual behaviour, including bestiality, and later efforts to disentangle them have been unsuccessful. The legislation of nine states, namely North Carolina, South Carolina, Georgia, Louisiana, Massachusetts,

¹⁷⁴ 478 U.S. 186 (1986)

¹⁷⁵ 539 U.S. 558 (2003)

Michigan, Mississippi, and Florida are said to prohibit all manifestations of sodomy, including oral contact, irrespective of the genders of the individuals involved. Three states, including Kansas, Kentucky, and Texas, have enacted legislation that solely addresses same-sex relations exclusively.

The age of consent exhibits variation across different jurisdictions, with the majority of jurisdictions aligning it with the legal age of consent for sexual behaviour between heterosexuals. One notable example is the state of Texas, where the statute books continue to include an antiquated Romeo and Juliet legislation that establishes a difference in the consenting age between gay and lesbian adolescents and their heterosexual counterparts.

Prior research has shown that the incidence of arrests for prostitution, disorderly conduct, and other sexual crimes has decreased when sodomy laws were repealed. The number of arrests linked to drug and alcohol use has also decreased. These results support the theory that the abolition of prohibitions against sodomy has a positive impact on mental well-being and a reduction in stress experienced by minority populations.¹⁷⁶

3.7.4. Advocating for a Positive Outlook on LGBTQ Rights in the United States.

Republicans who hold anti-LGBTQ views are exhibiting a lack of adult oversight in their governance. Currently, the courts are not accepting such conduct. Over the last year, there has been a surge in state legislation specifically aimed at transgender athletes, with some even prohibiting transgender individuals from accessing gender-affirming medical treatment. Furthermore, these regulations are a component of a more extensive legal campaign against LGBTQ Americans, including assaults on drag performers, efforts to eliminate queer-themed literature from libraries, and an incredible assortment of anti-LGBTQ statutes alone in the state of Florida.

In the recent past, legal professionals advocating for LGBTQ rights may have reasonably anticipated that the Supreme Court would subject these statutes to rigorous

¹⁷⁶ Riccardo Ciacchi and Dario Sansone, “The impact of sodomy law repeals on crime,” 36 *Journal of Population Economics* 2519–48 (2023).

examination. Before the appointment of one-third of the Court by then-President Donald Trump, a coalition consisting of Justice Anthony Kennedy and four liberal justices invalidated a series of statutes motivated by anti-LGBTQ sentiment. In *Romer v. Evans*¹⁷⁷, Kennedy said that legislation driven by a mere intention to do injury to a politically undesirable group is not by the Constitution.

However, with Kennedy's 2018 retirement, especially after Justice Ruth Bader Ginsburg passed away in 2020, which resulted in Republican appointees securing a 6-3 majority on the Supreme Court, the prospects for LGBTQ rights were bleak. Several proponents of the current moral panic against LGBT individuals have publicly expressed their opinion that the Court would no longer adhere to precedents that tilt towards the left in any form. Florida's Republican Governor Ron DeSantis expressed his belief that the Supreme Court, in its present form, would not maintain one of the Court's many 5-4 rulings in which Kennedy aligned with the liberals in the majority.

However, the situation that has arisen since Kennedy allowed Trump to choose his successor is more intricate than what many observers of the court, including me, anticipated. This is evident when we saw Trump appointing Federalist Society stalwarts to the courts. The conservative justices John Roberts and Neil Gorsuch, in the case of *Bostock v. Clayton County*, unexpectedly aligned themselves with the liberal minority of the Court and issued a ruling that federal civil rights legislation explicitly forbids workplace anti-LGBTQ discrimination. Conversely, lower court judges, including several Republicans, have comprehensively interpreted *Bostock*, therefore prohibiting many recent assaults on LGBTQ individuals.¹⁷⁸

In the case of *Adams v. School Board of St. Johns County*¹⁷⁹, the 11th Circuit Court of Appeals exhibited a partisan divide, as all seven Republican judges serving on the court upheld a public-school policy that restricted transgender male students from

¹⁷⁷ 517 U.S. 620 (1996).

¹⁷⁸ Ian Millhiser, "The case for optimism about LGBTQ rights in the United States" *Vox*, 2023 available at: <https://www.vox.com/politics/2023/6/26/23752360/supreme-court-lgbtq-transgender-bathrooms-sports-gender-affirming-care-bostock> (last visited May 14, 2024).

¹⁷⁹ 318 F. Supp. 3d 1293.

using the men's toilet. However, even that ruling determined that regulations specifically aimed at transgender individuals must undergo "intermediate scrutiny," which implies that such laws are inherently illegal and are often invalidated. Litigants in the 11th Circuit now have a potent legal tool at their disposal to challenge anti-trans statutes.

It is essential to have a lucid perspective about the prospective trajectory of LGBTQ plaintiffs. Five of the present justices are unlikely to concur with *Romer's* assertion that measures driven entirely by anti-LGBTQ animosity are unlawful. In some instances, like public restrooms and sports teams, where gender segregation has traditionally been permitted, several lower courts have shown hesitancy in safeguarding transgender rights.

3.7.5. The present condition of LGBTQ rights as established by the Supreme Court's legal precedents.

The Court rendered four important decisions under Justice Kennedy's leadership that protected Americans who identify as homosexual and bisexual from discrimination by the government: *Romer*, the ruling that invalidated Texas's "sodomy" law in *Lawrence v. Texas*.¹⁸⁰, and the decisions regarding marriage equality in *United States v. Windsor*¹⁸¹ and *Obergefell v. Hodges*¹⁸². Significantly, all four of these judgments were to instances of anti-gay prejudice, rather than matters concerning transgender rights. Upon examining the judges' written judgments, it becomes apparent that they have just lately become aware of the existence of transgender individuals. The first instance in which the term "transgender" was used in a Supreme Court ruling was in 2012, although briefly.

However, despite their restricted extent, it seemed that all four of Kennedy's rulings on homosexual rights were at significant risk upon his retirement. The *Romer* and *Lawrence* cases were decided by a majority of 6-3, with Kennedy, Ginsburg, and

¹⁸⁰ *Supra* note 174 at 108.

¹⁸¹ 570 U.S. 744 (2013).

¹⁸² (2015) 576 U.S. 644.

Justice Sandra Day O'Connor, who has since retired, being the majority. Both the Windsor and Obergefell cases were decided by a majority of 5-4, with Kennedy and Ginsburg contributing to the overall majority.

After a span of five years, it seems that the rights that LGBT people obtained during the Kennedy period are still intact, as long as none of the existing justices are succeeded by a Republican. In *Pavan v. Smith*¹⁸³, Conservative John Roberts, Chief Justice, agreed Court's ruling, which upheld Obergefell's assertion that "the Constitution grants same-sex couples the right to civil marriage under the same terms and conditions as couples of different sexes." In "*Dobbs v. Jackson Women's Health Organization*¹⁸⁴", Justice Brett Kavanaugh concurred with the Court's judgment that abolished the constitutional right to abortion. However, he also filed a separate concurring opinion, highlighting that his conclusion does not pose a danger or raise uncertainty over Obergefell.

The prospects for acknowledging the right to sexual autonomy in Lawrence however remain rather questionable. However, it is important to highlight that Kavanaugh, in his concurrence with Dobbs, cited *Bowers v. Hardwick*.¹⁸⁵, the anti-gay ruling that was subsequently overturned by Lawrence, as an illustrative case that illustrates the limitations of the Court's adherence to precedent. The aforementioned list also includes other highly criticized rulings, such as "*Plessy v. Ferguson*."¹⁸⁶ and *Lochner v. New York*¹⁸⁷", which are often included in legal curricula as exemplars of judicial conduct that should be avoided.

Undoubtedly, the Supreme Court has broadened LGBTQ rights after Kennedy's retirement. Bostock was a significant ruling that established that federal law forbids employers from engaging in prejudice based on gender identity or sexual orientation.

¹⁸³ 137 S.Ct. 2075 (2017)

¹⁸⁴ 597 U.S. 215 (2022).

¹⁸⁵ 478 U.S. 186 (1986).

¹⁸⁶ 163 U.S. 537 (1896).

¹⁸⁷ 198 U.S. 45 (1905).

Additionally, it introduced a new framework that, if implemented in all cases involving LGBTQ bias, could have a much greater impact than the more cautious approach that Kennedy frequently adopted in his rulings regarding gay rights.

Undoubtedly, Bostock is expected to be influenced by the Court's rulings on religious liberty, which often provide religiously conservative company owners the ability to disregard civil rights legislation that prohibits anti-LGBTQ bias. It is important to note, nevertheless, that lower courts have given the Bostock decision a wide interpretation, extending its scope to encompass the prohibition of state government bias. It is important to highlight that, unlike private business owners, the government is not permitted to assert religious liberty claims due to the explicit prohibition in the Constitution against the establishment of an official state religion.

3.8. The impact of the Equal Rights Amendment on LGBTQ rights, particularly about marriage equality.

In the study that follows, we investigate how the Equal Rights Amendment (ERA) might strengthen protections for LGBTQ rights, particularly marriage equality. A resolution currently being considered by the US Senate seeks to eradicate any timeline set by Congress for the ultimate approval of the ERA. The removal of the aforementioned deadline would effectively eliminate the last legal barrier to the inclusion of the Equal Rights Amendment (ERA) in the Constitution. Consequently, this would result in the constitutionalization of the rights now enjoyed by LGBTQ individuals, which are susceptible to possible overturning by the Supreme Court in a subsequent case¹⁸⁸.

The ERA would include clear protections for sex equality into the U.S. Constitution if it were to become the 28th amendment, stating that "The United States or any state shall not deprive or diminish the rights of individuals based on their sex." The prevailing approach among the present Supreme Court is characterized by an interpretative technique that assigns significant significance to certain textual sources

¹⁸⁸ Center for Gender and Sexuality Law, "The Equal Rights Amendment and LGBTQ Rights, Including Marriage Equality" *Center for Gender & Sexuality Law* (2022) available at https://scholarship.law.columbia.edu/gender_sexuality_law/5/ (last visited May 15, 2024).

about constitutional rights. The existing Constitution does not include the terms "sex" or "sex equality" in its language. Incorporating explicit safeguards for sex equality into the Constitution would serve to elucidate and reinforce current constitutional proscriptions against sex bias, while also encompassing safeguards against prejudice according to gender identity and sexual orientation. The Supreme Court held in the case of "*Bostock v. Clayton County*" that federal statutes that prohibit sex bias in the workplace inherently encompass discrimination based on sexual orientation and gender identity.

Therefore, any kind of discrimination based on sexual orientation and gender identity should be expressly forbidden by the ERA.

The *Dobbs v. Jackson Women's Health Organization*¹⁸⁹ decision from the Supreme Court has raised concerns over the constitutional basis upon which LGBTQ rights have historically been established. The Court's ruling in *Dobbs* led to the overturning of *Roe v. Wade*¹⁹⁰ and *Planned Parenthood v. Casey*¹⁹¹ because it found that the right to an abortion is not constitutionally supported by the US Constitution in general or by the substantive due process and equal protection principles in particular. The recognition of constitutional protections for LGBTQ populations by the Supreme Court is contingent upon the Court's interpretation of substantive due process. The possible erosion, if not complete eradication, of the Constitution's guarantees of abortion rights, may overrule earlier Supreme Court decisions that held that states could not criminalize same-sex sexual activity or deny same-sex couples the opportunity to be married. Justice Clarence Thomas made it apparent in his *Dobbs* case judgment that the Court should reconsider

these issues, notably emphasizing the need to reevaluate all of the Court's significant due process precedents in subsequent decisions, such as *Griswold*, *Lawrence*, and *Obergefell*. 'Demonstrably erroneous' is the term used to describe substantive due process rulings.

¹⁸⁹ *Supra* note 185 at 112.

¹⁹⁰ 410 U.S. 113 (1973).

¹⁹¹ 505 U.S. 833 (1992).

3.8.1. The Constitutionalisation of Obergefell v. Hodges: An Examination of the ERA and Marriage Equality Rights.

The Dobbs ruling sparked questions about the vulnerability of marriage equality rights, which the Supreme Court affirmed in the 2015 *Obergefell v. Hodges*¹⁹² Decision. 35 states

now have statutes in place that restrict marriage to a heterosexual couple, and these laws would revert to their original status immediately if the Court were to overturn Obergefell.

The House of Representatives passed the “*Respect for Marriage Act*” on July 19, 2022. The purpose of this law is to repeal the “*Defense of Marriage Act (DOMA)*”, 28 U.S.C. Sec. 1738C, and to forbid states from refusing to recognize lawfully consummated unions in another state on the grounds of the married parties' sex, color, ethnicity, or national origin. The Act also requires that marriages that are lawfully consummated in any state be recognized by the federal government. In 2021–2022, the 117th Congress introduced H.R. 8404. In 2013, the Supreme Court rendered DOMA illegal in the case of *U.S. v. Windsor*¹⁹³; nonetheless, it was not abolished by Congress. While DOMA is repealed by the *Respect for Marriage Act*, the Supreme Court's Obergefell decision, which forbids states from denying same-sex couples the right to marry, completely codifies Obergefell.

The ERA would specifically prohibit states from discriminating in marriage licenses based on sex, sexual orientation, or gender identity if it is completely adopted. In addition to strengthening the rights recognized in Obergefell, this would create a new constitutional right that ensures equality and prevents the Supreme Court from overturning marital equality laws.

¹⁹² (2015) 576 U.S. 644.

¹⁹³ 570 U.S. 744 (2013).

3.8.2. The Constitutionalisation of *Lawrence v. Texas*: The Equal Rights Amendment's Effect on the Criminalization of Sexual Behaviour.

Likewise, the Equal Rights Amendment (ERA), in its capacity as the 28th amendment, would impose restrictions on states that would prevent them from criminalizing same-sex sexual conduct, provided that identical sexual behavior between individuals of different sexes is not criminalized. Sandra Day O'Connor, Justice expressed her stance in her concurrence in “*Lawrence v. Texas*¹⁹⁴”, asserting that the statute of Texas creates legal inequality for homosexuals by subjecting specific behavior to criminal penalties. She argued that a law that categorizes a particular group of individuals regardless of the standard of evaluation used, classifying that group as criminal based alone on the State's moral disapproval of it and the conduct connected with it is incompatible with the values embodied in the Constitution and the Equal Protection Clause¹⁹⁵.

More than twelve states continue to have legislation in place that criminalizes the act of "sodomy". The enforceability of these statutes is contingent upon *Lawrence*'s adherence to good law. However, several state officials have lately expressed their intention to resume the enforcement of such statutes if the Court were to overturn *Lawrence*.

Justice O'Connor's views on laws that prohibit sexual conduct, including Texas's statute that expressly makes same-sex sexual activity illegal, would be incorporated into the Constitution under the ERA. As a result, the ERA would serve as a constitutional buffer between the right outlined in *Lawrence* and a majority of the Supreme Court that sought to reverse that decision, following *Dobbs*' precedent.

The rights of LGBT people and religious freedom.

The intersection of religious freedom and United States LGBT rights has regained attention in recent times, as seen by a recent verdict by the Supreme Court and the current deliberations on legislative measures within Congress. The Court rendered a

¹⁹⁴ *Supra* note 174 at 108.

¹⁹⁵ *Ibid.*

9-0 decision in *Fulton v. City of Philadelphia*¹⁹⁶ in June 2021. The case's primary concern was a 2018 City of Philadelphia resolution that forbade Catholic Social Services (CSS) from placing children in foster homes as same-sex couples lacked the necessary licenses to act as foster parents. CSS filed a lawsuit against the city to restore the contract, claiming that its constitutional freedom of speech and freedom of religion gave it the authority to refuse eligible same-sex couples. Several justices on the Court, who sided with the Catholic agency, are seen as raising doubts about the future of Employment *Division v. Smith*¹⁹⁷, a significant ruling that altered the extent of the free exercise concept.

The proposed Equality Act in Congress is now a subject of controversy, with similar concerns about religious freedom and LGBT rights. The proposed law aims to amend *the Civil Rights Act of 1964* to prohibit bias or discrimination based on sex, sexual orientation, and gender identity in several areas. There is a division among U.S. religious leaders about *the Equality Act* and LGBT rights in general. The historical and contemporary connection between religion and LGBT rights is far more complex, despite the fact that media coverage often highlights the religious opposition to LGBT rights. Furthermore, several academics have advocated for the establishment of a connection between sexual and religious freedom, or for the implementation of legal measures to prevent any clash between the freedom of religion and the rights of the LGBT people. In light of the Supreme Court's decision and upcoming legislation, the Berkley Forum invites professionals to consider the broader relationship between LGBT rights and religious freedom in the United States¹⁹⁸.

¹⁹⁶ 593 U.S. (2021).

¹⁹⁷ 494 U.S. 872 (1990).

¹⁹⁸ Berkley Center for Religion Affairs Peace and World, "U.S. Religious Freedom and LGBTQ Rights" *available at*: <https://berkeleycenter.georgetown.edu/posts/u-s-religious-freedom-and-lgbtq-rights> (last visited May 15, 2024).

3.8.3. Critical analysis of “Bostock v. Clayton County” on LGBT Rights.

The case's factual details:

In 2003, Gerald Bostock, an individual who identifies as homosexual, started his employment in Clayton County, Georgia, in the capacity of a child welfare services coordinator. Throughout his decade-long tenure at Clayton County, Bostock was the recipient of favourable performance reviews and a multitude of honours. Bostock started playing softball in a gay leisure league in 2013. Later, Bostock faced criticism for his involvement in the league, as well as for his identity and sexual orientation in general. At a meeting that Bostock's supervisor attended, one person publicly made derogatory comments about Bostock's sexual orientation and his involvement in the gay softball league. Simultaneously, Clayton County notified Bostock of its intention to carry out an internal audit of the program monies under his management.

Shortly thereafter, Clayton County dismissed Bostock, purportedly due to "unprofessional behaviour exhibited by its employees".

Shortly after his dismissal, Bostock initiated legal proceedings by submitting a complaint of prejudice to the Equal Employment Opportunity Commission (EEOC). The individual accused the county of violating Title VII of the Civil Rights Act of 1964 by discriminating against them based on their sexual orientation in a pro se case they filed three years later, in 2016. Because there was no claim, the district court dismissed the plaintiff's action. In contrast to a 1979 ruling that concluded differently, the court found that Bostock's claim was founded on an interpretation of Title VII that forbade discrimination based on sexual orientation. This decision was subsequently upheld in the case of *Evans v. Georgia Regional Hospital*¹⁹⁹. The US Court of Appeals for the Eleventh Circuit upheld the lower court's decision when Bostock filed an appeal. Furthermore, the Eleventh Circuit panel highlighted procedural shortcomings in Bostock's appeal and emphasized that it lacks the authority to

¹⁹⁹ 850 F.3d 1248 (11th Cir. 2017).

overturn a previous court's judgment unless the Supreme Court or Eleventh Circuit has rendered an en banc decision²⁰⁰.

3.9. Conclusion.

Following the Netherlands (2000), Belgium (2003) and Spain (2005), Canada became the fourth nation to legalize same-sex unions. Since that time, same-sex weddings have been legal in every Canadian province. In Canada, the Act of Marriage itself comes under federal authority. The solemnization of marriage, however, is governed by provincial laws (the official ceremony that is either civil or religious). Marriage licenses are also issued by them²⁰¹. Following the passage of three distinct pieces of legislation in 2013—one in England and Wales, one in Scotland, and one in Northern Ireland—same-sex marriage became legal in the United Kingdom. This figure includes both Scotland and Northern Ireland as separate entities as well as England and Wales combined. Today, the great majority of Western Europe allows same-sex marriages²⁰².

In the USA, in 2004, just one state allowed same-sex unions. However, marriage equality was pushed through state legislatures, ballot initiatives, and court rulings over the next 11 years, reaching 50 states and Washington, DC. Greece is the 21st European state to support gay and lesbian marriage, having legalized same-sex unions more than 23 years after the Netherlands did.

Given the growing acceptance of LGBTQ+ persons in popular culture and the media worldwide, exposure to foreign discussions and legislative successes encouraged LGBTQ+ people in India to advocate for comparable rights. The advancements made

²⁰⁰ Jon W. Davidson, “How the Impact of *Bostock v. Clayton County* on LGBTQ Rights Continues to Expand | ACLU” *American Civil Liberties Union*, 2022 available at: <https://www.aclu.org/news/civil-liberties/how-the-impact-of-bostock-v-clayton-county-on-lgbtq-rights-continues-to-expand> (last visited May 15, 2024).

²⁰¹ “Same-Sex Marriage in Canada,” available at: <https://www.thecanadianencyclopedia.ca/en/article/same-sex-marriage-in-canada> (last visited May 15, 2024).

²⁰² Michael Lipka and David Masci, “Where Europe stands on gay marriage and civil unions” *Pew Research Center*, 2019 available at: <https://www.pewresearch.org/short-reads/2019/10/28/where-europe-stands-on-gay-marriage-and-civil-unions/> (last visited May 15, 2024).

by these nations served as an inspiration for Indian activists and organizations. Using these instances, they said that other countries with comparable cultural and historical contexts had achieved marriage equality and that India could also progress on LGBTQ+ rights.

The Indian courts often cite foreign cases in the Comparative Study with Other Countries, and the Indian government's petition opposing same-sex weddings has many similarities to arguments made in other international jurisdictions. Furthermore, the judicial system has been a crucial element in all three countries under study - Canada, the United Kingdom, and the United States, to facilitate the recognition of marriages between individuals of the same gender. Every country in the globe has a different scenario regarding homosexuality and same-sex unions. The legalization of same-sex marriage in other countries highlighted the discrepancy between India's expanding legal discourse on human rights and the continued prosecution of same-sex relationships. More than forty nations, mostly in the United States and the European Union, allowed same-sex partnerships until 2025.

CHAPTER 4

LEGISLATIVE FRAMEWORK OF LGBT RIGHTS: ANALYSING CONSTITUTIONAL PROVISIONS AND INDIAN LEGISLATION.

4.1. Introduction:

India is classified as a democratic nation, whereby its populace is endowed with certain rights as stipulated by the Indian Constitution. "Regardless of one's religion, colour, caste, gender, or place of birth, the Indian Constitution's Articles 14, 15, 19(1)(a), and 21" provide equal rights, freedom from discrimination based on freedom of speech and expression, individual freedom, and the protection of life. The Constitution of India ensures that all individuals are granted equal legal status and equal legal protection within the country's jurisdiction. The term "any person" in this context refers to every individual, irrespective of any categorization such as caste, creed, religion, sex, and so on. Discrimination based on "sex" as defined per Indian Constitutional Articles 15 and 16 includes instances of gender identity-based prejudice as well. Giving these groups social equality, including equality in public employment, has also been interpreted in light of these articles. According to this, governments have the power to implement certain policies meant to improve the lives of these marginalized minority groups, who are now categorized as socially and educationally disadvantaged. In addition to those who are naturally male or female, the term "sex" also refers to people who identify as neither. Acknowledgement of gender identification grants individuals the acknowledgement of their entitlement to dignity, whereas non-acknowledgement infringes upon this entitlement. They possess the complete freedom to freely express themselves and lead their lives without apprehension. The right to self-determination is one of the fundamental rights protected by the article on living with dignity. This particular feature is safeguarded

and upheld by the aforementioned article, since it represents the paramount human right to life, which the State is obligated to safeguard from infringement.²⁰³.

This chapter provides a short overview of the laws now in effect that pertain to the rights of the LGBT population, particularly those related to marriage rights and how they are impacted by them. This will emphasize the functionality and practicality of the existing laws. The researcher examined the legal and constitutional frameworks governing the rights of third genders in India and other countries. This chapter analyzed the measures of marital rights, including adoption laws and regulations, and their current legislative position. The emphasis is placed on comprehending the consequences and ramifications of these regulations on the LGBT population and their effective integration into society. The research highlights the significance of upholding the familial rights of the LGBT population.

4.2. Regulating Transgender Law: Section 377.

The pursuit of uniqueness as a basic human archetype has captivated the minds of all individuals across several domains, including achievement recognition, economic domination, political claims, celebrity status, and social control. The examination of an individual's gender personality in conjunction with the legal idea of "identity with dignity," together with its cultural ramifications and legal acceptability, has emerged as a significant topic in recent decades. Inquiries also arise over whether the constitutional notion included just sexual orientation or has a broader scope to encompass sexual choice. A Writ Petition has been filed to assert that the freedom to select a sexual partner and the right to sexuality are part of the right to life, which is protected by Article 21 of the Indian Constitution, in light of the previously described circumstances. Additionally, the appeal seeks to deem Section 377 of the Indian Penal Code illegal.²⁰⁴.

²⁰³ Revathy V, "The Violation of Human Rights against the LGBT Community in India: A critical study.," 120 *International Journal of Pure and Applied Mathematics* 4875–84.

²⁰⁴ Jismin Jose, "Navtej Singh Johar & Ors. vs. Union of India thr. Secretary Ministry of Law & Justice" *Law Times Journal*, 2019 available at: <https://lawtimesjournal.in/navtej-singh-johar-ors-vs-union-of-india-thr-secretary-ministry-of-law-justice/> (last visited May 20, 2024).

The way in front for the transgenders now lies in the rigidness of this societal ethics which has altered sufficiently to continue silent on the HC's decision in public fields in a probable terror of being booked for contempt of court if they talk but mutely in their private fields, the hate is far from over, more so at present when majoritarian perspectives and attitudes are methodically violating and intrude the private space of the minority customs and their existence.²⁰⁵

Hence, will Homosexual couples and communities from the LGBT group be recognized in the larger communal background and not seen as outcasts is a query that still comes out large on the heads of the LGBT group. The same-sex couple would identify the issues they would confront when they depart to look for rented housing, they recognize that even though the ruling they will either continue in the closet to evade the hatred they will be showered upon or be set to manage the multiple issues and challenges which would come to their mode after they expose their sexual orientations.

As a result, Section 377 was put into effect, which primarily aimed to legalize oral sex on the second and sodomy and bestiality on the first. This legislation had a significant effect on the transgender population, which is still evident in modern-day India. Hence, it is vital to look at the genes of s. 377 via its source from the British rule. Therefore, it is crucial to examine s. 377's genes through the lens of British control. In addition to restricting transgender practices, s.377 of the I.P.C. also caused problems for those who labelled them as straight because it penalized oral sex and bestiality. As a result, the term LGBT evolved and new personalities, nuance, and fluidities came together.²⁰⁶ In doing so, the court saw these wrongdoings in a new light, and s.377 created new restrictions that have taken away the lives and desires of countless people who needed to continue living a free and loved life with people of the same sex, even though the Constitution grants them fundamental rights in the form of equality, freedom of choice, and personal freedom. Accordingly, this was beyond the point at which the Supreme Court of India in 2018 declared Section 377 to be illegal, but what

²⁰⁵ Rahul Kapoor, Sec.377 Decriminalized: The road ahead for L.G.B.T.Q community, September 7, 2018.

²⁰⁶ Gaur, KD, Chapter 8, 'Criminal Law, cases and materials', 7th edition, Lexis Nexis, 2013.

can be said about those who committed suicide as a result of this violation of their freedom and decisions before declaring s.377 unlawful? This segment has been utilized as an apparatus by the organization for unjust control of individuals for coercing cash and for individual advantages, and it has likewise been a justification for the speed increase of spread of transferable illnesses chiefly Sexually Transmitted Diseases because of Oral and anal intercourse are prevalent among LGBT individuals.²⁰⁷

To appreciate the substance of the legislation, which was put into effect by the British in 1860 after the *British Buggery Act of 1565*, it is necessary to analyze the law and comprehend s.377 and its ramifications for society and the law, and vice versa. In breach of the natural order, having intercourse with a man, woman, or animal is considered an unnatural crime under Section 377. Life in jail or up to 10 years in prison, together with a fine, are the penalties for this crime²⁰⁸. Definition: "Penetration is the act of engaging in sexual intercourse that is required for the offence outlined in this section." Despite not being stated explicitly, the provision has been interpreted to include unnatural offences including oral sex, anal intercourse, mutual masturbation, and other non-procreative sexual practices.²⁰⁹

At first, s.377 didn't respond well to Indian culture or its value; in fact, the majority of the British pioneer government imposed it on India with great disregard for Indians' wishes. It only represented the British Judeo-Christian advantages of the time because it excluded the possibility of comprehending Indian culture in general. After all, they didn't provide a thorough understanding of Indian law and culture, which had elements of transgender in itself and were evident in the Mahabharata and Ramayana²¹⁰.

To support the pioneer restrictions, the colonial enactments and legal advisers also proposed similar laws without any debate or social consultation. They just

²⁰⁷ *Id.* at 115.

²⁰⁸ Geetanjali Misra, "Decriminalising Homosexuality in India" (*Rochester, NY*, 2009) vol.17, no 34, criminal (November 2009), pp.20-28.

²⁰⁹ Gaur, KD, Chapter 8, 'Criminal Law, cases and materials', 7th edition, Lexis Nexis, 2013.

²¹⁰ "Human rights watch, 'This alien legacy: the origin of 'sodomy' laws in British colonialism', school of Advanced Study, University of London, Institute of Commonwealth Studies. (2013).

acknowledged that their legislation may introduce European morality into Indian society. Since s.377 was and is still model law in a different way, the idea was that enactment would reject transsexuals because they believed that "local" culture did not sufficiently reject "unreasonable" sex. It was only an early attempt by pilgrims to establish rules of behaviour to alter Indian culture and protect the colonists from moral lapses. Thus, based on the 'Ethical sanctity' basis and derived from the European understanding of religion rather than the Indian cultural understanding of sexuality and unique recognitions that have existed from ancient times.

From the beginning of their expeditions and the growth of their commercial activity, the British Empire underwent substantial development. They therefore established their control over different portions of Asia and the globe. As a result, they were successful in creating social and legal systems based on the lands they had just conquered, which had a rich historical background²¹¹. The first documented mention of 'Sodomy' under English legislation may be traced back to two medieval statutes known as Fleta and Button. These laws postulated the connection between structures of sexual activity and the consumption of anxiety in Christian Europe²¹². Hence, the historical roots of Sodomy legislation in India may be traced back to its establishment and subsequent evolution within the framework of British legal systems.

Two treaties, the Fleta and Britton treaties, are the source of Buggery law. Fleta, in particular, mandated the drawing and burning of anyone deemed to be apostate Christians or similar individuals. Individuals who possess affiliations with Jews and Jewesses, or are found guilty of engaging in acts of bestiality or sodomy, should be buried alive in the earth, on the condition that they are apprehended during the commission of the deed and duly convicted by legal and transparent evidence.²¹³. Meanwhile, Britain issued a decree for the public conviction of sorcerers, sorceresses,

²¹¹ Russle on crime, vol 1, Indian reprint, 2001, pp.735, Kenny's outline of criminal law, 19th edition pp. 205.

²¹² Fleta, seu Commentarius Juris Anglicani, was a Latin survey of English law produced in Edward 1's court in 1290 (allegedly written while the out-of-favour author served time in fleet prison, accounting for its name: Richardson and Slayes 1955).

²¹³ *Ibid.*

renegades, sodomists, and heretics. In both treatises, sodomy is seen as a transgression against the divine. It has been categorized among other transgressions against rites and societal integrity, including acts of contamination committed by Jews or apostates.²¹⁴

As a result, British law, which originated and influenced European ideas and understanding, developed in Indian culture but in a layman's language. Later, it became known as bestiality and transgender law in the broad translation of s.377, which finds its inspiration in Buggery law, which can be a close reflection of it. Furthermore, a large portion of the nation's custom-based law was corrected through the 1533 resolution of Buggery Law, which criminalized transgender people as a state law rather than a matter for the chapel. This was created during the time of Lord Henry VIII, who broke with Catholic church tradition and tried to test the congregation in the sixteenth century²¹⁵.

Death rejected Buggery's submission with either humanity or a monster on the pretext of his heinous and abhorrent bad habit.²¹⁶ The law remained in effect until 1861. Macaulay, who headed the primary law commission of India, made the decision to include s.377 on transgender law because he was afraid that the "local" climate would contaminate it. He also made a sincere effort to include a prohibition on transgender arrangements in the frontier code because he was afraid that fighters and pioneer organizations, particularly those without spouses nearby, would turn to transgender people in these sweltering, wanton situations.

To get into the details of s.377 get which area gives out in little words like 'transgender' and 'Brutality' which themselves don't discover their place in the segment, yet by implication derive the same. Generally speaking, the term "transgender" refers to sexual relations between a man and another man, a woman, or

²¹⁴ The word buggery was derived by the way of the French 'bourge' from the medieval Bogomil heresy, which flourished in Bulgaria. Again, sexual and religious (and racial) 'deviance' were intimately associated (Bailey 1995, pp. 147-149; Hyde 1970).

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

a creature. Sodomy may thus be considered either heterosexual or transsexual. When same-sex groups are present, they will be referred to as transsexual, and when people of other genders are present, they will be referred to as heterosexual. One other significant thought that likewise needs consideration in this s.377, is that 'assent' doesn't give security as assent dissimilar to assault isn't protection to the change. The word "bestiality," which refers to sexual contact with a monster in any way by a man or a woman, is another crucial concept to understand²¹⁷. The segment is sufficiently wide to incorporate women for submitting unnatural offences. Notwithstanding, the segment isn't drawn in if the demonstration is done either by a lady with a close item. Evidence of the preceding conditions is required in order to approve the person's punishment under s.377. The individual must also accept responsibility for the offenses viz.

1. The charged should have carnal intercourse with men, women, or animals;
2. The Act was against the natural request.
3. The law was done wilfully by the charged.
4. There was a proof of infiltration."

In this manner, in the wake of fulling of such necessity unders.377, the area conveys as serious a discipline as that of an assault. The discipline might stretch out to life detainment or detainment as long as 10 years and a fine. The Macaulay goal was to protect "the man from sexual attack, as there was no different corrective code arrangement which tended to assault on man (S.375) which was simply limited to a man's assault of women."²¹⁸. "There is no specific criminal offence for a man's sexual assault on another man. Instead, it is considered a consensual offence under s.377. Additionally, Section 377 does not include a distinct provision to prohibit an adult male from engaging in sexual relations with male youngsters²¹⁹". That offence, which

²¹⁷ *Supra* note 214 at 126.

²¹⁸ Human Rights Watch, 'this alien legacy: the origin of 'sodomy' laws in British colonialism', school of advanced study, University of London, Institute of Commonwealth Studies. (2013).

²¹⁹ *Ibid.*

was too contained in s.377 without dysfunction, thus Macaulay was not looking at it from one direction, but from many, as he involved it as a tool of protecting women, men, and animals at the same time from any form of sexual intercourse”²²⁰.

In Britain, laws pertaining to the protection of women and girls and the concealment of brothels and prostitution were changed in 1885. Parliamentarian Henry Labouchere suggested a change to the way women and young women are protected. It is worth noting that this correction was widely regarded as unjust, as it stated that "any male individual who openly or privately submits to, is involved in, acquires, or attempts to secure the commission of any act of gross un with another male individual." "Gross foulness" refers to a broad variety of non-penetrative sexual acts between two men.

This law recognized that two men could rehearse numerous other sexual demonstrations other than 'transgender'. This manner demonstrates that the Indian correctional code was banned on its trial in England, and hence didn't zero in on the training, customs, and law present in India, as the Labouchere's arrangement was of late consolidated into the IPC itself. In any case, ensuing frontier codes fused amendments of it and to enter one might say that IPC turned into the model for the British Colonies' overall sets of laws all through the majority of Asia and Africa. Yet, the law was not stale, as every British level assumed control over the fresher form, as a legitimate student of history journalists say that improved and new models with refreshed renditions were acquired which brought about the most recent model of an order²²¹.

Along these lines the British development of s.377, in a Nutshell, occurred in the British central area and was evidently applied in the Indian subcontinent, fundamentally from a higher place, inadequate in terms of Indian interaction and failing to take into account several social factors that had to have been taken into account for the creation of such a rule that would have affected the subcontinent's

²²⁰ *Id at 127.*

²²¹ Moore, R.I, 'The Formation of a Persecuting Society' (London: Blackwell),(1987) *available at:* <https://academic.oup.com/ahr/article-abstract/94/4/1071/50245?redirectedFrom=fulltext&login=false> (last visited May 20, 2024).

heterogeneity. In this sense, the subcontinent remained the test site for British law, which was also created and implemented in another British region outside of India. Scholar Dan Kahan writes that transgender laws, when left unenforced, show contempt for the particular resident classes, much like Africa, Singapore, and Australia do when they disregard the resident classes residing on their territory under British guidelines. It wasn't merely representations of this hate.

Ryan Goodman likewise directed a thorough exploration work which depended on *Conversations with Gay and Lesbian People in South Africa* under the steady gaze of there the transgender laws were revoked, sound that "the hand of the sculpture numerous 'miniature level' impacts which was made by the British law. Such laws had the effect of preventing incidents in the areas where they were put into place. To the country where the law enforcement presence on the broke continues to report fairly, increase without authority, and encourage second-class sculpture in partnership of life, even in the absence of urgent permission. To add Goodman says that "the state connection between the lesbian and gay people under any system of transgender laws built a removal construction of perception and observation. People in general are very delicate to the deceivability of lesbians and gays as friendly and legitimate developed requests." The report further proposes that the transgender law in British time eventually became culpable for specific demonstrations, however more extensive occasion of social control. They began it as an intruder's burden an outsider system to stifle subject populaces and have transformed extra time into supposed minors as far as anyone knows beginning any ethical sense.²²².

Similar to how British rule in India, which barely drew from Indian culture and religious law, influenced the creation of the transgender law s.377, British law in England, which had a tremendous impact from the strict law of England, was the extraordinary interloper in this. At the same time, the law came into its full structure, but it was only one factor. The social element and the courts' interpretation of the law, as demonstrated by the sacred ethical quality in public space, were also in complete

²²² Human rights watch, 'this alien legacy: the origin of 'sodomy' laws in British colonialism', school of advance study, University of London, Institute of Commonwealth Studies. (2013).

agreement. This is because the law is not created in a vacuum; social, economic, and political factors all play a major role in its advancement across the nation²²³.

4.3. Examining how various Legislation conflicts with Articles 14, 15, 19, and 21 of the Constitution of India.

In addition to the rights to equality, dignity, freedom of speech, and personal autonomy, several Indian laws violate the basic right to life of sexual and gender minority people²²⁴.

According to the petitioners, the Indian Constitution's Articles 14 (equality before the law), 15 (prohibition of discrimination), 21 (right to life and personal liberty), and the right to privacy are all directly violated when they are denied the ability to marry. acknowledgement of the "right to marry" as a basic freedom that ought to be extended to non-heterosexual couples. They contend that depriving LGBT couples of their basic right to marriage violates their right to privacy and dignity²²⁵. They argue that the Special Marriage Act's (SMA) Section 4(c), which limits marriage to heterosexual couples, is discriminatory and unconstitutional, violating same-sex couples' fundamental rights to equality, non-discrimination, privacy, and dignity. These laws violate multiple fundamental rights²²⁶.

²²³ *Id at 129.*

²²⁴ "Rights of LGBTQ in India and the Struggle for Societal Acceptance," *International Journal of Law Management & Humanities* available at: <https://ijlmh.com/paper/rights-of-lgbtq-in-india-and-the-struggle-for-societal-acceptance/> (last visited May 20, 2024).

²²⁵ "Supriyo @ Supriya Chakraborty & Anr. vs. Union of India," available at: <https://privacylibrary.ccgmlud.org/case/supriyo-supriya-chakraborty-anr-vs-union-of-india> (last visited May 20, 2024).

²²⁶ "Plea for Marriage Equality," *Supreme Court Observer* available at: <https://www.scobserver.in/cases/plea-for-marriage-equality/> (last visited May 20, 2024).

A few examples of constitutional violations that target the LGBT community are:

1. Absence of Legal Recognition: Indian law forbids same-sex unions, which goes against both the right to equality (Article 14) and the right to individual freedom (Article 21).
2. Transgender Persons (Protection of Rights) Act, 2019: This legislation acknowledges the rights of transgender people, but it contains contentious clauses that violate their privacy and dignity by requiring a government-issued certificate for gender recognition (Article 21).
3. The Army, Navy, and Air Force Acts violate equality under Article 14 by excluding LGBTQ+ people from serving openly.
4. Sexual orientation and gender identity are not included in Article 15 of the Constitution, which prohibits discrimination based on sex.
5. Only married heterosexual couples are permitted to use surrogacy under the Surrogacy (Regulation) Act, 2021; LGBTQ+ persons and single people are not.
6. Refusing LGBTQ+ individuals equal rights in marriage, adoption, and employment under Article 14 (Right to Equality).
7. Failure to expressly prohibit discrimination under Article 15 (Non-Discrimination) on the basis of sexual orientation and gender identity.
8. Article 19 (Freedom of Expression): Limiting LGBTQ+ identify self-identification and public expression.
9. Article 21 (Right to Life and Dignity): Refusing LGBTQ+ people their right to personal freedom and dignity.

Even while India has made considerable legislative moves to acknowledge the rights of LGBTQ+ people, complete equality is still not achieved. LGBTQ+ people's basic constitutional rights are still being violated by the lack of marriage rights, adoption rights, anti-discrimination legislation, and comprehensive safeguards. To close this gap, legislative improvements are required.

4.4. Anti-Discrimination Bill, 2016.

Dr. Shashi Tharoor proposed this bill in the Lok Sabha intending to guarantee equality for all citizens of the country by offering safeguards against any kind of prejudice²²⁷.

Section 3 of the legislation explicitly outlaws any kind of bias or prejudice. However, the author aims to shed attention to the matter of sexual orientation-based discrimination. Sexual orientation-based prejudice against transgender and hijra individuals is likewise forbidden under this category. Section 5 (iv) talks about hijra people and puts them in a disadvantaged group. Section 7 talks about indirect discrimination and prohibits the same. Section 8 talks about harassment and prohibits the same.

There are further sections in the same bill that prohibit segregation, boycott, and discriminatory violence. Section 17 talks about the constitution of the Central Equality Commission, and section 19 talks about the terms of the members of the commission. Section 20 talks about the Resignation and removal of Chief Equality Commissioners and Equality Commissioners. Section 18 Central Government to provide requisite funds. Then there are provisions for the functions and powers of the commission. Section 25 talks about the State Equality Commission. And further section talks about the functions and powers of the commission.

4.5. The Transgender Persons (Protection of Rights) Act, 2019; a serious violation of human rights.

Hijras represent a highly marginalized community within the context of India. They experience a variety of abuses, including sexual and physical assault, and often find themselves without any means of earning a living, compelled to resort to begging, engaging in sex work, or soliciting funds from families at wedding ceremonies or baby celebrations²²⁸. In present-day India, the legal justice system of the nation

²²⁷ LiveLaw Research Team, "Congress MP Shashi Tharoor Introduces Anti-Discrimination And Equality Bill In Lok Sabha [Read The Bill]," 2017 *available at*: <https://www.livelaw.in/congress-mp-shashi-tharoor-introduces-anti-discrimination-equality-bill-lok-sabha/> (last visited May 21, 2024).

²²⁸ Sibsankar Mal, "The hijras of India: A marginal community with paradox sexual identity," 34 *Indian Journal of Social Psychiatry* 79 (2018).

exhibits deficiencies in effectively addressing the concerns of individuals who identify as queer. India's responsibilities under the International Human Rights Law, which is founded on the principles of equality, universality, and non-discrimination, are clearly at contrast with the laws now in effect with respect to these individuals. States must act proactively to eliminate practices that encourage prejudice to continue. For all people to have de facto access to justice, de jure access to the legal system is insufficient.

The framework of laws has the potential to bring about significant changes in ensuring fairness and impartiality. Their fates are mostly influenced by their physical appearance. In Article 14, the term "person" is used, whereas Articles 15 and 16 utilize the terms "citizen" and "sex" respectively. Article 19, the word "citizen" is also used. In Article 21, the word "person" has been used. All of these idioms are explicitly "gender-neutral," specifically referring to individuals of the human species. Therefore, they include Hijras/Transgender individuals and are not limited to either the gender of men or women. The concept of 'gender neutrality' must be understood and embraced in our daily behaviour. The community's heightened social marginalization has resulted in heightened susceptibility to HIV, mental health disorders, declining educational attainment and employment rates, as well as hindered social and economic progress²²⁹. Regrettably, this violence persists without facing appropriate consequences.

Current situation.

Based on the 2011 Indian Census, the entire transgender community members in India are said to be 4,87,803, with just 30,000 individuals officially registered with the Election Commission²³⁰. Since bullying or disparaging remarks cause a large proportion of transgender children to drop out of school, the low literacy rate is not shocking. Until now, the Indian Census has not acknowledged transgender individuals

²²⁹ Robin Lin Miller, Jaleah Rutledge and George Ayala, "Breaking Down Barriers to HIV Care for Gay and Bisexual Men and Transgender Women: The Advocacy and Other Community Tactics (ACT) Project," 25 *AIDS and Behavior* 2551–67 (2021).

²³⁰ "Welfare of Transgenders," *available at*: <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1575534> (last visited May 21, 2024).

throughout the process of gathering census data for an extended period. A greater proportion of individuals have not been included within this figure due to a majority of parents refusing to designate the third gender as their children's. 2011 census by the non-governmental organization Salvation of Oppressed Eunuchs estimates that there are 19 lakh transgender people in the world.

These individuals, being human beings, contribute to the tax system. It is thus inexplicable why they are denied legal and constitutional rights. There exists a persistent rejection of their entitlement to be acknowledged as individuals. The rights of transgender people are seriously violated, according to a groundbreaking study conducted in 2018 by the Kerala Development Society on behalf of the National Human Rights Commission (NHRC)²³¹. The investigation elucidated the following aspects:

- A significant proportion of transgender individuals, approximately 99%, encounter various forms of social rejection.
- Transgender individuals exhibit a higher rate of school dropout, with 52% experiencing harassment from their peers and 15% from teachers.
- Approximately 96% of transgender people are forced to work in low-paying or uninteresting jobs, which leads them to resort to begging and sex work as additional means of revenue.
- A considerable portion of the transgender community, approximately 57%, express a desire for sex reassignment surgery but face financial constraints.

India has not effectively implemented the directions set out by the Supreme Court in the NALSA judgment. No state has taken action to improve the well-being of its citizens except Tamil Nadu.

The number of transgender individuals who are registered voters according to the Election Commission Report just 40,000, which accounts for around 10% of the

²³¹ “Study on Human Rights as a Third Gender – CFNHRI,” *available at*: <https://cfnhri.org/updates/study-on-human-rights-as-a-third-gender/> (last visited May 21, 2024).

overall population²³². This is due to the protracted process required to register them in the electoral poll. To prove their credentials, people need to get a legal document from the oath commissioner. Subsequently, they must disseminate this document in a minimum of two local newspapers to validate their transgender status. Furthermore, they must get their parents' or legal guardians' signatures on the aforementioned legal papers.

The historic ruling in “*National Legal Services Authority v. Union of India*”²³³, 2014, served as the foundation for the Act. The petitioners have claimed that their lack of proper recognition causes them to be denied access to key benefits and privileges that are uniformly available to all of the country's residents. Numerous international treaties and UN bodies have recognized the rights of the transgender population. Furthermore, the case has established Yogyakarta's human rights concepts and their applicability to issues about gender identity and sexual orientation. Numerous international organizations, including the Council of Europe, government commissions, human rights groups, and the United Nations, have endorsed these ideas. The legal systems in other countries were also mentioned. Unfortunately, no legislation in the government addresses the rights of the transsexual minority.

Any sexual activity that goes against the natural order is prohibited under Section 377 of the Indian Penal Code, 1860. The decision of “*Naz Foundation v. Govt. of NCT Delhi*”²³⁴ was reversed in the case of “*Suresh Kumar Koushal and Others v. Naz Foundation and Others*”²³⁵, which ruled that Section 377 was unconstitutional. In 2018, the earlier ruling was reversed in the “*Navtej Singh Johar v. UOI*”²³⁶ case.

²³² “Why transgenders have been always ignored during elections,” *The Indian Express*, 2019 available at: <https://indianexpress.com/elections/transgenders-lok-sabha-elections-apsara-reddy-bishesh-huirem-sex-worker-5653379/> (last visited May 21, 2024).

²³³ AIR 2014 SC 1863.

²³⁴ 160 (2009) DLT 277.

²³⁵ AIR 2014 SC 563.

²³⁶ AIR 2018 SC 4321.

4.6. The need for India to adhere to international values.

The Parliament may pass laws that apply to the whole country or to a particular area to carry out any treaty, agreement, or convention, as stated in Article 253 of the Indian Constitution.

International human rights legislation is based on two formal fundamental treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

The Universal Declaration of Human Rights, which forms the basis of the values the treaties seek to protect, is where they first appeared. India has officially approved these Covenants, allowing Parliament to enact legislation that aligns with the decisions of municipal courts to enforce them via the application of the Doctrine of Harmonisation²³⁷.

Therefore, the Yogyakarta principles and the notions of human rights as stated in international conventions must be recognized and incorporated into the country's internal laws. In addition to the 2008 Convention against Torture and additional Cruel, Inhuman or Degrading Treatment or Punishment, India can consider examining additional resources such as the National Aids Control Organization (NACO) and the National AIDS Control Programme IV (NACP IV).

4.7. An Evolution of The Transgender Persons (Protection of Rights) Act, 2019.

The Salvation of Oppressed Eunuchs (SOOE) filed a Public Interest Litigation (PIL) at the Bombay High Court in 2012 against the Union of India²³⁸. In July 2012, the Cabinet Secretariat decided to assign the responsibility of handling Public Interest Litigation (PIL) and its associated concerns to the Ministry of Social Justice and Empowerment, in collaboration with other ministries. Following this, the

²³⁷ "United Nations Universal Declaration, International Covenant," *United for Human Rights* available at: <https://www.unitedforhumanrights.in/what-are-human-rights/international-human-rights-law/international-human-rights-law-continued.html> (last visited May 22, 2024).

²³⁸ "Eunuchs can't be part of the law dealing with SC/ST abuse?," *The Indian Express*, 2012 available at: <https://indianexpress.com/article/cities/mumbai/eunuchs-can-t-be-part-of-law-dealing-with-s/> (last visited May 22, 2024).

responsibility for addressing matters about transgender individuals has been assigned to the Ministry.

4.7.1. Report from the Expert Committee.

The report on the rights and challenges experienced by transgender individuals was submitted by an Expert Committee on January 27, 2014. Several significant proposals put forward by the Committee include²³⁹:

1. To acknowledge those who identify as 'transgender' as 'third gender' and to refrain from using terms such as 'other' or 'others'. The recognition of a 'transgender' individual's entitlement to be identified as either 'man', 'woman', or 'transgender'.
2. Following the proposal of a District-level Screening Committee headed by the Collector/DM, a State-level authority should offer transgender people certification of gender identity. This committee should include two representatives of the transgender community, a social worker, a psychologist, a psychiatrist, a District Social Welfare Officer, and any other authorities specified by the government.
3. The alteration of gender on a birth certificate, whether it is 'male', 'female', or 'transgender', should be permitted for individuals aged 18 years or older. This certificate will be considered legitimate for all official papers.
4. The formulation of an umbrella scheme aimed at empowering the community.
5. Proposed remedies include the creation of a Helpline for Career Guidance and Online Placement Support, the implementation of anti-discrimination cells in educational institutions, the creation of workplace sexual harassment policies, the establishment of crisis counselling services in conjunction with rape and crisis intervention centres, and more.

²³⁹ "Welfare of Transgenders," *available at*:

<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1519272#:~:text=The%20Committee%20submitted%20its%20report,area%20of%20education%20and%20employment> (last visited May 22, 2024).

6. It is imperative to implement appropriate and stringent disciplinary measures against law enforcement agents who infringe upon the rights of transgender individuals.
7. The Indian Penal Code (IPC) has implemented stringent measures to address cases of sexual assault. Additionally, Section 153A has been amended to include derogatory comments related to gender identity.
8. Scholarships, tuition waivers, free textbooks, libraries, resource centres, and audiovisual materials will all be provided by the government.
9. The national Councils for Senior Citizens will create the National Council for Transgender.

4.7.2. The seminal ruling in the case of “NALSA v. U.O.I” in 2014.

According to the petitioners, the failure to acknowledge their sexual orientation is in contravention of the provisions outlined in the Constitution's Articles 14 and 21. The term "transgender" has been used to describe a broad spectrum of individuals who strongly identify with the gender opposite to their biological sex. Also, Hindu mythology and other religious texts have shown them to be historically close²⁴⁰. However, things began to become worse in the 18th century when the British enacted the “*Criminal Tribes Act of 1871*”. The whole transgender community was labelled as "criminal" and "inclined towards the systematic perpetration of non-bailable offences" under this law²⁴¹. They were also denied their civil rights under the Act, which made it impossible for them to adopt a son, make gifts or wills, or take on the position of guardians.

²⁴⁰ “Transgender Rights in India: The Road Ahead,” *Chenoy Ceil Lawyer*, 2014 available at: <https://advocatechenoyceil.wordpress.com/2014/08/18/transgender-rights-in-india-the-road-ahead/> (last visited May 22, 2024).

²⁴¹ Diva Rai, “Criminalization of transgender people in colonial India : Criminal Tribes Act” *iPleaders*, 2021 available at: <https://blog.iplayers.in/criminalization-of-transgender-people-in-colonial-india-criminal-tribes-act/> (last visited May 22, 2024).

4.7.3. Instructions from the Supreme Court in the April 15, 2014, NALSA ruling.

1. The 'third gender' will be used to safeguard the rights of Hijras, Eunuchs, and transgender people.
2. The Supreme Court affirmed individuals' freedom to select their self-identified gender and directed the federal and state governments to provide legal acknowledgment of their gender identity.
3. The proposal suggests that both the central and state governments should consider implementing reservation policies for the transgender population in acknowledging them as socially and economically marginalized groups in public employment and educational institutions.
4. To address the health concerns of the transgender population and ensure the provision of specific public restrooms and other amenities, the plan asks for the establishment of distinctive HIV Sero-surveillance Centres. It was requested that the Expert Committee Report be reviewed based on its evaluation and that the recommendation be implemented within six months.

4.7.4. Private Member Bill: The Rights of Transgender Persons Bill, 2014

On December 12, 2014, Dravida Munnetra Kazhagam (DMK) politician Tiruchi Siva presented the Bill introduced as a private member in the Rajya Sabha²⁴². Later, on April 24, 2015, the Rajya Sabha unanimously passed the bill by voice note, "Today, a group of 40 individuals from the transgender community were in attendance at the visitor's gallery, expressing their desire for the acknowledgement of their rights". On February 26, 2016, the Bill was presented in the Lok Sabha²⁴³. However, the deliberation on the Bill was postponed. The Bill includes the following provisions:

²⁴² Upasana Mahanta and Surabhi Shukla, "Rights of Transgender Persons Bill, 2014," 1 *Law and Policy Brief* 1–4 (2015).

²⁴³ "The Transgender Persons (Protection of Rights) Bill, 2016," *PRS Legislative Research* available at: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016> (last visited May 22, 2024).

1. If the child's immediate family is unable to provide for them, the Court will arrange for them to live with their extended family or in a community that fosters a family-like environment.
2. The right to fair access to educational establishments, low-interest loans, and the execution of self-employment and vocational training programs for these persons.
3. Provisions for adequate housing or means of subsistence, potable water, sanitary amenities, retirement plans, and unemployment benefits.
4. The implementation of sponsorship programs for transgender music and dance festivals, as well as the construction of a transgender history museum that showcases the historical experiences of transgender individuals.
5. The government sets aside 2% for students in elementary, secondary, and post-secondary education who need assistance, ensuring equal opportunities for all students to compete for available seats. The Bill also included a provision for setting aside 2% of the available positions in government institutions. Employees who comply with the reservation within 5 years of the Act's start were also eligible for incentives.
6. The incorporation of a Transgender Employment Exchange Special.
7. The National and State Commission for Transgender Persons has the authority to independently investigate or address complaints about abuses of transgender rights. It may collaborate with other authorities and hear cases with all the power of a civil court under the 1908 Civil Procedure Code.
8. The Special Transgender Rights Court to expedite the resolution of issues about transgender individuals.

4.7.5. Draft Bill by the Ministry of Social Justice and Empowerment (MoSJE), 2015.

To get public feedback, the Ministry of Social Justice and Equity (MoSJE) posted the draft bill on its official website on December 3, 2015. On August 2, 2016, the Transgender Persons (Protection of Rights) Bill was presented to the Lok Sabha²⁴⁴. The 2016 Bill includes the following provisions:

1. The term "transgender" can be defined as an individual who does not fully identify as either female or male, or who identifies as a combination of both genders. This includes individuals who do not identify with the gender assigned to them at birth, as well as those who identify as transgender men, transgender women, individuals with intersex variations, and individuals who identify as gender-queer.
2. Transgender people are entitled to how they see their gender identity.
3. A recommendation from the District Screening Committee, which reports to the Chief Medical Officer, is required before a certificate may be issued.
4. On their birth certificate, the transgender person is entitled to change their gender, and this change will be considered legitimate for any subsequent official papers.
5. The right to reside with our family and intimate relatives.
6. The establishment of a National Council dedicated to safeguarding the rights of transgender individuals.

4.7.6. Standing Committee Report, 2017.

On September 8, 2016, the Bill was sent to the 31-member Standing Committee on Social Justice and Empowerment, which is led by BJP MP Ramesh Bais²⁴⁵. The

²⁴⁴ "The Transgender Persons (Protection of Rights) Bill, 2016," *PRS Legislative Research* available at: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016> (last visited May 22, 2024).

²⁴⁵ Ramesh Bais, "Presentation of the 43rd Report of the Standing Committee on Social Justice and Empowerment (2016-2017) on "The Transgender Persons (Protection of Rights Bill, 2016)." (2017).

Report was delivered to the Rajya Sabha on July 21, 2017, after five sittings of the Committee during the investigation of the Bill. The Lawyer's Collective, which represented the transgender community and addressed its issues and concerns, as well as the opinions of several non-governmental organizations (NGOs) were considered by the Committee throughout this process. The suggestions put forward by the Committee are as follows:

1. The Committee determined that the Bill fails to adequately address the concerns and rights of intersex individuals, a distinct group from transgender individuals. Consequently, the Committee proposed a renaming of the Bill as "The Transgender and Intersex Persons (Protection of Rights) Bill, 2016." According to the Ministry's response, the word 'transgender' is a comprehensive concept that encompasses those who identify as 'intersex'. The Committee concurred with the administration based on the convincing response.
2. The Committee proposed the following definition of 'transgender': The term 'transgender person' describes a person whose gender does not correspond with the gender that was assigned to them. Regardless of whether they have had hormone treatment, laser therapy, or sex reassignment surgery, transgender men and women are included in this description. Along with other sociocultural identities like kinnars, hijras, aravanis, jogtas, and others, it also encompasses gender-queer people.
3. The inclusion of the concept of 'discrimination' in Bill's 1st Chapter, which encompasses the many breaches experienced by transgender individuals by the Yogyakarta Principles, was suggested by the Committee. Additionally, it has been determined that the Bill lacks a grievance redressal process that allows for the submission of complaints on the infringement of transgender rights in any place or by an individual. The Committee determined that the involvement of a medical officer in the Screening Committee and the certification process violated Articles 14, 19, and 21 of the Constitution. Additionally, the Committee expressed opposition to the parameters for self-perceived identity as outlined in the SC's NALSA judgment. Additionally, it was determined that there are no specified requirements for Committee members, and the absence of a designated function

for the District Social Welfare Officer within the Committee was also observed. It is recommended that, if the inclusion of the DSW Officer is deemed necessary, they should possess a minimum of five years of expertise in dealing with transgender individuals and possess a comprehensive understanding of their special needs and requirements. If a suitable individual cannot be located, a distinguished individual from the same domain might be selected²⁴⁶.

4. The Committee also recommended that the Amendment include the "Right to appeal against the decision of the Screening Committee."
5. The Committee recommended including a clear delineation of the responsibilities of the central and state governments in the draft to ensure the well-being of transgender individuals and prevent needless delays.
6. The Bill recommended explicitly stating that all businesses, regardless of their size, should appoint a Complaints Officer to handle complaints from transgender individuals. The Bill also outlined the specific duties and responsibilities of this officer.
7. The Committee proposed the replacement of Clause 13(1) of the draft Bill with the following modification: "A transgender child cannot be separated from their parents or immediate family solely based on their transgender identity, unless a competent court issues an order to do so, in the best interest of the child." According to clause 13(3), the court with the authority must try its best, if necessary, to place a transgender child with their extended family, in a family setting, or a rehabilitation centre in the community if a parent or close family member is unable to care for them or if the child refuses to live with them. The Committee also requested the establishment of dedicated rehabilitation facilities for transgender individuals, distinct from those for males, females, and children, to address their special needs. Furthermore, it was observed that there was no reference to the inheritance rights of transgender individuals, specifically on their inability to inherit based on their gender identity.

²⁴⁶ *Id.* at 132.

8. To align with *the Right to Education Act of 2009*, a provision requiring private educational institutions to provide career guidance, counseling, and vocational and technical training is recommended.
9. The Committee proposed the establishment of State Councils for Transgender Persons, along with a detailed delineation of the Council's responsibilities and the delegation of enforcement authority to the Council, rather than only confining it to an advisory entity.
10. Because of the Supreme Court's NALSA ruling, the Committee firmly advocated for the inclusion of transgender people in the socially and educationally disadvantaged groups in the reservation system.
11. The inclusion of laws about marriage, divorce, adoption, and other related matters.
12. Measures for the creation of public restrooms, and distinct inspection areas in airports, institutions, and other locations.
13. The Bill should have a definition of 'person with intersex variants' towards the conclusion of Chapter I.
14. Provisions about punitive measures against the termination of intersex pregnancies and the coerced sex assignment of intersex babies.
15. An additional task should be included in the census process to ascertain the location of the community²⁴⁷.

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

Opposition members expressed significant criticism for their decision to abstain from voting, even though the Bill was approved in its initial state on August 5, 2019, in the Lok Sabha, and November 26, 2019, in the Rajya Sabha, without integrating the suggestions put up by the Standing Committee. On December 5, 2019, the Bill was formally published in the Indian Gazette after the President's assent²⁴⁸. As a result, a

²⁴⁷ *Supra* note 245 at 141.

²⁴⁸ *The Transgender Persons (Protection of Rights) Act, 2019* (Act No. 40 of 2019).

notification issued in the Gazette on January 10, 2020, put the Act into effect. Nevertheless, these two Bills have generated a great deal of interest.

Rule 67 of the Rules of Procedure and Conduct of Business in the Lok Sabha states that, unless the Speaker directs otherwise, any notice of a bill that is presently being considered in the House will not be included in the list of pending notices, regardless of whether it was received before or after the introduction of the pending Bill.

According to Rule 112(2), an almost identical bill will also be deleted from the Register of Bills Pending in the House if it is passed by the House or withdrawn under Rule 110.

The government presented its own Bill for consideration, even though Tiruchi Siva's Bill and the previously stated rules were still waiting. As previously explained, the government's measure has priority over any private member's bill on the same topic when it is presented. As a result, the latter is asked to take their Bill back. Since the government's bill is created by professionals and experts rather than amateurs, it is given priority over private member legislation since it is more complete. The legislation was passed, nonetheless, since Tiruchi Siva did not revoke the bill.

- The length of time that the Tiruchi Siva's Bill has been in the Lok Sabha has also raised concerns. Since the previous Bill had provisions for giving reservations to the transgender population, subject to the restrictions specified by the Supreme Court, it was alleged that the delay was intentional since it placed an undue burden on the government.
- There are unidentified assertions that the government's legislation undermines every element of Tiruchi Siva's Bill.²⁴⁹. Additionally, there have been claims that this law is a complete infringement on the rights of the transgender community, potentially reversing the gains they have won over a long period of adversity.

Typically, in instances when a family does not provide a warm reception to a transgender kid, they seek refuge within their community. In contrast to the

²⁴⁹ "Rajya Sabha Debates on the Transgender Persons (Protection of Rights) Bill 2019," *Centre for Law & Policy Research* available at: <https://clpr.org.in/blog/rajya-sabha-debates-on-the-transgender-persons-protection-of-rights-bill-2019-day-1/> (last visited May 22, 2024).

heterosexual population, they do not get compassionate treatment from their relatives. According to the stipulations outlined in the aforementioned legislation, if a family refuses to accept a transgender kid into their household, the court will proceed to determine the child's place of residence and thereafter relocate them to a rehabilitation facility. Rehabilitation facilities primarily aim to restore an individual's life to a state of normality, particularly when they have experienced abnormalities as a result of various factors such as illness, accidents, or circumstances. The present inquiry pertains to the abnormality of transgender individuals. The counterargument says that when individuals are classified as aberrant species, they are then placed inside the category of abnormal human beings, so subjecting them to societal prejudice. They respire in a manner consistent with that of typical humans; their fundamental physiological processes resemble those of the linear community. They consume food, respire, and live their existence. The law is demonstrating that they are atypical entities, hence generating distinctions among individuals.

The legislation stipulates that individuals who identify as transgender must undergo a screening procedure to ascertain their sexual orientation. The certification will be provided by a District Screening Committee. The certificate will recognize their non-binary gender identity. However, transgender people who want to establish their gender identification as either male or female will need to have sex reassignment surgery (SRS), often known as gender affirmation surgery. The aforementioned clause of the Act violates the Supreme Court's decision in the “*National Legal Services Authority v. Union of India*”²⁵⁰ Case, which stated that verbal testimony is the sole need for identifying a person. The Act seems to have been formulated with consideration for the universal desire or capacity of transgender individuals to undergo surgical interventions. Is this strategy economically viable for them? Does the Act not implicitly encourage individuals to choose surgical procedures? The legal concept of equality may be hampered by the use of a screening process and the need for a medical certificate, which helps determine sexual orientation.

²⁵⁰ AIR 2014 SC 1863.

According to the 2020 Rules²⁵¹, individuals are exempt from undergoing a medical examination but are required to provide an affidavit confirming their sexual orientation. Subsequently, an identification card will be provided to ascertain their sexual orientation. Their right to gender self-determination, which is given to both men and women, would be terminated as a result. Is it necessary for both men and girls in contemporary culture to undergo a screening process? Do men and females own distinct identification cards? The categorization used lacks rationality and has the potential to foster social estrangement among transgender individuals inside society. This will result in an escalation of bureaucratic processes, compelling members of the transgender community to undergo more red tape.

Furthermore, transgender individuals are subject to a reduced jail sentence of two years for cases of sexual abuse. According to the Penal Code of 1860, the prescribed penalty for the offence of rape against women is seven years²⁵². This action is a blatant infringement of their equitable treatment and societal standing, potentially undermining their principles of equality and dignity.

The provision of reservations in government positions and educational institutions, known as affirmative action, serves the purpose of upliftment for marginalized segments of society. Individuals who have experienced maltreatment, and lack of privilege, and have encountered or are now experiencing social and economic disadvantage are often afforded this chance to align themselves with the more privileged segments of society. The Act does not provide any provision for the reservation of the transgender population.

The civil rights of transgender individuals are impeded by the dominant power dynamics in society. Generally speaking, both men and women are entitled to be married, end a marriage, and have children. However, access to these rights is

²⁵¹ “Draft Transgender Persons (Protection of Rights) Rules, 2020,” *PRS Legislative Research* available at: <https://prsindia.org/billtrack/draft-transgender-persons-protection-of-rights-rules-2020> (last visited May 24, 2024).

²⁵² “The Indian Penal Code| Legislative Department | Ministry of Law and Justice | GoI,” available at: <https://iddashboard.legislative.gov.in/actsofparliamentfromtheyear/indian-penal-code> (last visited May 24, 2024).

restricted for transgender people. The lives and dignity of transgender persons are still in danger, even in the face of continuous court decisions. The essential principles of individual liberty and the right to a dignified existence are established in the ***K.S. Puttaswamy v. Union of India case***²⁵³. The Court cited a Canadian precedent in the ***Navtej Singh Johar v. UOI***.²⁵⁴ Case, which said that treating someone unjustly based on personal traits or circumstances unrelated to their needs, talents, or merits constitutes a breach of human dignity. The court determined that the LGBT community had equivalent individual needs to those of the heterosexual community. Similar to other citizens, they also require the same human, basic, and constitutional rights. The provision of step-motherly treatment to the community should not be justified based on the premise of social morality. Individual dignity is compromised when LGBT couples are denied adoption rights. The determination is predicated upon an individual's sexual orientation, which is not contingent upon their ability or qualifications as a potential parent.

The National Council for Transgender Community, which represents the transgender community, is essentially a symbolic entity. Initially, it is noteworthy that among the total of thirty individuals, a mere five people would belong to the transgender group. Once again, the Council will disproportionately represent the dominant class of society, resulting in the transgender population being disregarded. Consequently, the heterosexual group will exert dominance over the transsexual community. If the majority of transgender individuals are controlled by a strong and dominant social class, their voices may be stifled. The proportion of members of the Council may result in an imbalance. The Council has a deficiency of autonomy while executing its tasks.

The Act of 2019 has decriminalized the laws about begging, resulting in the removal of the term 'begging' from Section 19 under Chapter VIII (Offences and Penalties) of the Bill of 2016 (Section 18 of the 2019 Act). *The Bombay Prevention of Begging Act, 1959* was ruled illegal by the Delhi High Court in the ***Harsh Mander v. Union of***

²⁵³ AIR 2017 SC 4161.

²⁵⁴ AIR 2018 SC 4321.

India.²⁵⁵ Case because it violated provisions 14 and 21 of the Indian Constitution. According to the Court, there is a part of society that depends on charity because they have no other means of support. The criminalization of begging is a blatant infringement against the fundamental rights that are essential for the well-being of society. Individuals under adverse economic circumstances also want sustenance to satisfy their hunger. Necessities for any human or species include hunger, shelter, and clothing. Individuals living at the periphery of economic value are compelled to turn to begging as a last recourse. They are left with no other options. The ruling upholds the fundamental right to life of impoverished individuals who support and navigate their livelihoods via the act of begging. The Court judgment addresses the issue of middle-class animosity against those who are considered "illegitimate denizens." However, it might be argued that the aforementioned rationale put forward by the Court and the Act of 2019 does not effectively address the issue of unemployment among the transgender population. To address the severe circumstances of abject poverty and deprivation, it is imperative to develop work opportunities for transgender individuals, while also decriminalizing beggary. The Act has implemented praiseworthy measures by decriminalizing the act of begging.

However, it is essential to create businesses and provide work opportunities exclusively for transgender people in order to better their economic situation. It is crucial to recognize that the Act and subsequent court decisions are forcing these people to turn to begging instead of looking for work and assistance. These individuals should be provided with a sufficient means of sustenance rather than resorting to begging. This will enhance their inherent worth and societal standing. Transgender individuals should be granted these rights to ensure their appropriate and honourable existence.

Considering the previously given points, it is evident that transgender populations are subjected to unfair treatment. They endure persistent prejudice from society, established norms, and even law. They are deprived of fundamental human rights. To enhance their agency, it is imperative to address fundamental constitutional rights.

²⁵⁵ AIR 2018 DEL 188.

This would dismantle the hierarchical structure and enable marginalized transgender individuals to lead their lives with dignity. Furthermore, it is essential to implement transformative measures. It is essential to ensure the appropriate implementation of all requirements outlined in the *Transgender Act*, while also considering the potential introduction of required revisions²⁵⁶. This will contribute to the promotion of freedom, fairness, and brotherhood. Transgender individuals should not be subjected to segregation; they should be included in our community. It is essential to ensure that legislations are designed to be inclusive, therefore affording fundamental rights to marginalized and disadvantaged segments of society. Hence, it is imperative to ensure that transgender individuals are afforded their fundamental human, civil, and constitutional rights. This will initiate a transformation in the prevailing patriarchal social normative views among individuals. Furthermore, transgender people will have the opportunity to live their lives with respect and autonomy.

4.8.1. The bill's multiple flaws have a detrimental impact on the rights of persons.

This legislation fails to adequately safeguard transgender individuals who endure persistent abuse with few consequences.

In the case of “*National Legal Services Authority v. Union of India*”²⁵⁷, the Supreme Court acknowledged the existence of a self-defined gender identity, which is not legally acknowledged by the Bill. The bill delineates an ambiguous bureaucratic protocol to be adhered to to get legal gender recognition, violating the right of transgender people to experience acceptance of their gender identity. The Bill recognizes many categories of crimes committed against transgender people, each of which carries a maximum two-year prison penalty. The Bill fails to adequately acknowledge the extent of violence they encounter and does not include provisions for penalties that are proportionate to their seriousness.

²⁵⁶ Vivek Divan et al., “Transgender social inclusion and equality: a pivotal path to development,” 19 *Journal of the International AIDS Society* 20803 (2016).

²⁵⁷ AIR 2014 SC 1863.

In addition, the Bill fails to explicitly acknowledge and provide suitable sanctions for the violence experienced by transgender individuals in educational and healthcare facilities, police stations, correctional facilities, shelters, remand homes, or other detention centres.

It does not adequately tackle the absence of a robust system to ensure compliance with the legislative ban on gender-based prejudice.

A certificate of identification would be issued by a District Screening Committee to acknowledge individuals who identify as transgender. Furthermore, this action is a breach of the Fundamental Right to Privacy. The measure does not address the issue of whether individuals who identify as transgender and possess a male or female gender certificate would be eligible for government support schemes and programs specifically designed for transgender individuals. The Bill does not explicitly address the penalties for rape or sexual assault against transgender individuals. This omission is following the Indian Penal Code's Sections 375 and 376, which describe rape as when a man enters a woman forcibly²⁵⁸.

4.8.2. Criticism of the law that was passed.

Test of identity: The bill included a definition of "transgender" that was both demeaning and erroneous. According to the bill, a "transgender person" is someone from this group including transgender men and transgender women, as well as people with intersex variations and gender-queer people. (A) neither fully female nor fully male; (B) a mix of female or male; or (C) one of the following: both male and female; and whose gender identity does not align with the gender assigned at birth.

The term stands in stark contrast to the idea put out by the Supreme Court in its NALSA²⁵⁹ decision, as well as the definition put forth by an expert committee of the Union Government and Tiruchi Siva's Bill²⁶⁰. The word that appears below was part of the 2015 draft legislation.

²⁵⁸ Sonia Shali, "Social Inclusion, Equality and Respect of Transgenders: Rise of New Socio-Legal Perspective."

²⁵⁹ AIR 2014 SC 1863.

²⁶⁰ *Supra* note 251 at 147.

The phrase "transgender person" describes a person whose gender does not match the gender associated with them at birth. This group includes gender-queer people, transgender men and women (whether or not they have had hormone therapy, laser therapy, sex reassignment surgery, or any other type of medication), and people with a range of socio-cultural identities, such as kinnars, hijras, aravanis, jogtas, and others. A person who identifies as transgender should be able to select between the terms "man," "woman," or "transgender," and they should also have the ability to pick any of these alternatives regardless of whether or not they have surgery or take hormones.

Even though the current Act of 2019 has the aforementioned definition, the last sentence that granted transgender individuals the ability to establish their own gender identity has been removed. A District Screening Committee has been established as a result of the law to "certify" transgender individuals. The District Magistrate must provide a certificate of identity to transgender people, and this will be done based on the Committee's recommendations. According to this article, the person has to get the certificate. Not only does this violate their right to gender choice, but it also violates the rights of all people to equality under Article 14, freedom of expression under Article 19, and life under Article 21. This contradicts, once again, the Supreme Court's ruling that identification was in mind. The aforementioned process of providing a certificate to recognize their identification occurs in a manner that is both unjust and arbitrary.

It has not been indicated that a certain method should be followed to get legal gender recognition, nor has it been stated that the Screening Committee should follow any particular basis. There is a significant violation of the rights of transgender individuals when medical experts are present because it raises the possibility that certain medical or biological tests for gender identification may be performed inappropriately. The aforementioned rules are at odds with accepted international norms, including those promoted by the World Professional Association for Transgender Health (WPATH)²⁶¹, the World Medical Association (WMA), and United Nations organizations. These

²⁶¹ E. Coleman et al., "Standards of Care for the Health of Transgender and Gender Diverse People, Version 8," 23 *International Journal of Transgender Health* S1–259 (2022).

guidelines stress how crucial it is to keep legal and medical processes for gender transformation distinct. This includes declining to be evaluated by physicians, psychologists, or other medical specialists. The Asia-Pacific Transgender Network and the World Health Organization published research in 2015 calling on the government to take administrative, legislative, and other measures to recognize people's self-identified gender without requiring medical testing.

Additionally, the stakeholders recommended that there be no more than three members on the Screening Committee: one representative from the Social Welfare Ministry, one representative from the Female to Male (FTM) transgender community, and one representative from the Male to Female (MTF) transgender community. The Ministry's justification for the possible misuse of certificates as a consequence of the shortage of medical officers is unclear. In addition, the Act mandates the issuance of a certificate to those who identify as 'transgender', which blatantly violates their freedom to recognize themselves as they are.

Despite the notable difference between transgender people and those with intersex variations, the Act has covered people with "intersex variations" within its definition. There is a distinction between sex and gender. There is no relationship between them. To identify male, female, and intersex people, the term "sex" is a biological construct. Conversely, "gender" describes a person's strong sense of self as a gendered entity, which may not necessarily correspond exactly with their biological sex. For example, even if they are backed by every physical, physiological, and chromosomal evidence of being female, a person given the sex "female" throughout the birthing process could not identify as "gender female," and vice versa. Conversely, intersex diversity refers to how an individual's biological sex differs from the conventional understanding of sex as either male or female, affecting their external reproductive organs. Not all individuals who identify as intersex may identify as transgender. Furthermore, transgender people don't need to identify as intersex.

Individuals with intersex variants need access to clinical care upon their decision to seek it, as well as equitable and unbiased treatment. These are the areas where policies regarding transgender individuals and those with intersex variations intersect.

The measure should expand the range of rights afforded to intersex individuals and include distinct provisions that address the specific requirements of this population. For example, before performing clinical or medical treatments to ascertain the gender of intersex babies and infants, specific permission from a specialist or emergency clinic is necessary. Moreover, it is essential to ensure that birth certificates of intersex newborn infants do not include any sex or sexual orientation indicators. Individuals should be provided with legal documentation that accurately represents their desired gender.

However, the current draft has failed to consider these reasons for distinctions and has also grouped transgender and intersex individuals. This has the potential to give rise to future problems, including an over-focus on the medicalization of personalities and expressions. Members of the community asked that the bill be renamed the "Rights of Transgender and Intersex Persons measure."

The majority of legal systems have neglected to adequately acknowledge the gender identity of a transgender individual who has chosen it. Likewise, this is precisely the point where the Act falls short since it delegates this authority to the Screening Committee. The Act has also neglected to acknowledge the existence of several forms of gender identity. Following contemporary advancements in international law and the Yogyakarta Principles, the group recommended referring to sexual orientation and gender identity using the phrases "gender identity" and "gender expression."

1. Those who have had a medical intervention to change their gender and those who subtly express their gender via voice, dress, and behaviour are included in the notions.
2. Because community leaders are concerned about the openness of a body made up only of bureaucrats with no enforcement power, the National Body for Transgender Persons' creation falls short of their expectations.
3. The current law has disregarded the inclusion of reservations for transgender individuals in education and work, as originally proposed in the Supreme Court's NALSA judgment and a private member's Bill.

4. Prohibiting transgender offenses: The law prohibits the act of begging for those who identify as transgender. The advocate for transgender rights has expressed opposition to this clause on two grounds. One perspective is that community members lack viable alternatives, leading them to resort to begging or involvement in the sex industry. It is important to acknowledge that the phenomenon of begging arises as a result of systemic disparities that have contributed to a dearth of educational and job prospects.

Therefore, if the law has made begging illegal, it should have also offered alternative work opportunities or opportunities for skill enhancement. This measure not only infringes upon human rights but also grants authorities such as the police the authority to punish transgender individuals who engage in street begging under duress. Furthermore, begging is fundamentally a customary ritual of their society, which they are empowered to safeguard. The Standing Committee said that "prohibiting transgender individuals from voluntarily begging" may have been a better way to word the section.

"The Committee further requested the implementation of "penal provisions about the termination of intersex fetuses and the coerced surgical determination of the gender of intersex infants." The existing legislative measures have offered little safeguards against a range of hate crimes, tragedies, and offences.

The Act further neglects to develop a mechanism for addressing the needs of transgender individuals employed in any place or organization. The Ministry's position that the National Council would handle the matter and that the Indian court is sufficient is entirely ambiguous and biased. In contrast to *the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*, the unorganized sector requires the creation of a Local Complaints Committee (LCC) to give transgender people working for fewer than ten people a forum to air grievances²⁶².

²⁶² "Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013," available at: <https://www.indianbarassociation.org/sexual-harassment-of-women-at-workplace-prevention-prohibition-redressal-act-2013/> (last visited May 24, 2024).

5. Resolving familial conflicts: The Standing Committee acknowledges the prevalence of abuse experienced by transgender individuals within their familial and social circles. The majority of transgender youngsters experience homelessness and face persistent vulnerability to instances of sexual and physical abuse. Principle 30A of the Yogyakarta Principles stipulates that the State is obligated to make diligent efforts to prevent, punish, and address instances of discrimination. In the study, the Committee has defined 'family' as "a collective of individuals connected through biological ties, marital unions, or the adoption of a transgender individual." The law has utterly disregarded the acknowledgement of these family forms.

4.8.3. The last draft law of the MSJE in 2015 stipulated that:

The competent court must make every attempt to relocate a transgender child to their extended family or to a community setting with families when the child's immediate family is unable to care for them²⁶³.

By Section 12(3) of the current legislation, it is stipulated that in cases where a parent or a close relative is incapable of providing care for a transgender person, the appropriate court is empowered to issue an order mandating the placement of such individual in a rehabilitation facility.

As a result, the rehabilitation centre does not fully define the recognition of adoptive families under the word "family." The Hijra family's right to live with a family of their choosing has been violated.

6. Ignorance of Reservation Provisions: Because of their gender identity, transgender people face discrimination in the workplace and school, which makes reservation policies necessary to properly address the injustices and challenges they face. The Supreme Court (SC) asked for transgender people to be included in the Other Backward Classes (OBC) category in its NALSA ruling. Additionally, the SC/ST category would provide reservation rights to the

²⁶³ "Environment Laws Amendment Bill 2015 a Sisyphean challenge," *available at*: <https://lakshmisri.com/insights/articles/environment-laws-amendment-bill-2015-a-sisyphean-challenge/> (last visited May 24, 2024).

community if these individuals are classified as both OBC and transgender. Regrettably, the Act does not include any provisions for reservations based on the Scheduled Castes (OBC) or caste.

7. The topics of segregated public restrooms, instances of police brutality, the right to marriage, inheritance, and adoption within the framework of personal and secular legislation have not been adequately addressed. The law stipulates that those who commit crimes against transgender people face prison sentences of six months to two years, which is a much lesser punishment than that meted out to other marginalized groups of women in society.
8. Lack of Knowledge of the Consultative Process: The Act was passed without taking into account the suggestions and ideas made by other interested parties and Parliamentarians. The following changes were suggested by Shashi Tharoor, a member of parliament from Thiruvananthapuram²⁶⁴: -
 - To teach teachers about transgender people and include the subject in the curricula of schools and universities.
 - The objective is to enforce compulsory measures to ensure transgender children get education at all levels via scholarships, while also offering incentives to the corporate sector to hire transgender individuals.
 - Those who identify as transgender should be included under the Indian Penal Code's (IPC) bans on rape, sexual harassment, and stalking, which are now only applicable to women.
 - The prohibition of conducting physical examinations on transgender individuals as a means of establishing their identification. He requested that self-identification be the only criterion for identifying as transgender.

Therefore, it is clear that *the Transgender Persons (Protection of Rights) Act* is not doing enough to help the transgender community, which has led to the

²⁶⁴ “Shashi Tharoor explains why Transgender Persons Bill is ‘flawed,’” *The Indian Express*, 2018 available at: <https://indianexpress.com/article/india/shashi-tharoor-explains-why-transgender-bill-is-flawed-5498498/> (last visited May 24, 2024).

disenfranchisement of many people in this country and the silence of their voices. The main cause of this is the denial of a large number of community consultations and ideas, which are then included in the Committee reports. Due attention must be given to the Standing Committee's process, which facilitates democratic engagement. While there may not be a shame for persons who identify as gay, lesbian, bisexual, transgender, intersex, or even heterosexual, the Standing Committee report made the sobering comment that homophobia, transphobia, and prejudice are unquestionably dishonourable and humiliating. The legislation in issue is generally known as the Transgender Persons (Decimation and Violation of Rights) Bill, 2016, and the community and intersex groups have dubbed the day it was enacted by the Lok Sabha "Black Day" or "gender justice murder day." However, other individuals characterized it as 'Draconian and prejudiced'.

4.9. Measures implemented by several Indian states.

1. Kerala was the first state to enact a transgender policy in 2015, under the SC NALSA ruling²⁶⁵. Additionally, the government hired transgender people for jobs in urban areas and set up residential schools within the Kochi community. The state creates justice boards to handle instances of discrimination and violence against community members and to provide legal aid. It also organized a gender-neutral football league, the first State-level sporting event and transportation services run and managed by transgender people alone. The State increased the number of seats reserved for transgender students in undergraduate and graduate courses by two per class in July 2018²⁶⁶. This policy was implemented as a component of the Kerala State Literacy Mission

²⁶⁵ "STATE POLICY FOR TRANSGENDERS IN KERALA, 2015," *South Asian Translaw Database* available at: <https://translaw.clpr.org.in/reports-and-policies/state-policy-for-transgenders-in-kerala-2015-2/> (last visited May 24, 2024).

²⁶⁶ "Kerala announces reservation for transgender students in colleges," *Hindustan Times*, 2018 available at: <https://www.hindustantimes.com/education/kerala-announces-reservation-for-transgender-students-in-colleges/story-qHixW6XIPTExXkCrrv45K.html> (last visited May 24, 2024).

Authority's (KSLMA) transgender education program, Samanwaya²⁶⁷. A big step forward was made in 2019 when the phrase "other/third gender" was dropped in favour of "transgender," giving members of the transgender community the same status as men and women²⁶⁸.

2. In 2008, The Tamil Nadu state suggested the establishment of a dedicated database just for transgender individuals, to provide them with ration cards²⁶⁹. The nation's first transgender police sub-inspector was appointed by the State.
3. As the first state to create a cultural institution specifically for transgender people, Maharashtra was also the second to create a welfare board for transgender people. In 2013, the United Nations Development Program (UNDP) and the Government of Maharashtra's Department of Women and Child Development²⁷⁰ Worked together to collect data on women engaged in sex work, leading to the aforementioned result.
4. To address challenges related to the transgender community, the state of Orissa created the Department of Social Security and Empowerment of Persons with Disabilities (SSEPD) in 2015²⁷¹. Additionally, it promised to provide the community social benefits comparable to those given to individuals living below the poverty line via other projects and extended the benefits of the *National Food Security Act, of 2013* to the community. The benefits of five sub-schemes under the Government of India's (GoI) main plan were also increased. Pre-matric and post-matric scholarships, financial aid for parents of transgender

²⁶⁷ "To make full use of 'Samanwaya' scheme: Minister urges to transgenders," available at: <https://literacymissionkerala.org/en/to-make-full-use-of-samanwaya-scheme-minister-urges-to-transgenders/> (last visited May 24, 2024).

²⁶⁸ "The Reality of India's Transgender Welfare Boards: What an RTI Investigation Reveals," available at: <https://thewire.in/government/the-reality-of-indias-transgender-welfare-boards-what-an-rti-investigation-reveals> (last visited May 24, 2024).

²⁶⁹ "Tamil Nadu to create a transgender database," *The Times of India*, 22 April 2008.

²⁷⁰ "LGBT Rights in Maharashtra, India," *Equaldex* available at: <https://www.equaldex.com/region/maharashtra> (last visited May 26, 2024).

²⁷¹ Available at <https://translaw.clpr.org.in/wp-content/uploads/2019/02/Odisha-Scheme-for-TG-Final.pdf>

children, skill development funding, and pension plans are some of these sub-schemes.

5. To stop incidents of eve-teasing and sexual exploitation of schoolchildren on buses, the Punjab and Haryana High Court has decided to allow transgender people to work as school bus attendants²⁷².
6. Transgender people will be joining the police service, according to the state of Chhattisgarh's decision. It has also been setting up training sessions for the same objective²⁷³.

4.9.1 Benefits.

The Transgender Persons (Protection of Rights) Act, 2019 is a modest but positive advancement. As to this legislation, a transgender person is defined as "an individual whose gender does not align with the gender assigned to them at birth, encompassing both transgender men and transgender women," regardless of whether they have undertaken any surgical procedures or hormone-related treatments. Additionally, it encompasses those who identify as intersex, and genderqueer and possess socio-cultural identities such as Kinner, Hijra, Aravani, and Jogta. Several transgender rights have been recognized by this law, such as the right to a good quality of life and the freedom from discrimination. Though these rights are already granted under Articles 15 and 21 of the Indian Constitution, it seems that a new law must be created for transgender people to have access to them as well.

This legislation under Chapter II prohibits discrimination against transgenders in employment and work opportunities. It also prevents the restriction of their movement and enjoyment in public places. Unfair treatment in holding public offices has also been strictly prohibited. Not only does this Act look at prevention as a method of

²⁷² "Transgenders to guard school buses in Punjab, Haryana," *India Today*, 2015 available at: <https://www.indiatoday.in/india/story/transgenders-to-guard-school-buses-in-punjab-haryana-264630-2015-09-24> (last visited May 26, 2024).

²⁷³ Shan Karias academy, "Transgenders in khaki - Chhattisgarh Police Recruitment | Current Affairs" available at: <https://www.shankariasparliament.com/current-affairs/transgenders-in-khaki-chhattisgarh-police-recruitment> (last visited May 26, 2024).

betterment but also introduces several positive changes in society. Social welfare schemes have been set up under Chapter IV of this Act which ensures the rescue, protection, and rehabilitation of transgenders in society. A separate national council has also been introduced which will make decisions.

Keeping the needs and interests of the transgenders in mind. Therefore, this Act seems to have catered to all aspects i.e. the economic, social, and educational aspects of a transgender's life.²⁷⁴

4.9.2. Limitations.

While this Act is a start, we still have a long way to go before transgenders are truly considered equal to others in society. This Act itself has many drawbacks that limit their rights. Firstly, whereas the Act talks of active participation, it is ironic that the bill did not incorporate and rather, ignored many of the suggestions of activists and transgenders which were formally submitted to the committee before it passed into an act.

Another irony is that the very reason for the formation of this Act i.e. the right to self-identification as a transgender has been defeated by this Act itself. Chapter III mandates that a district magistrate is required to issue a certificate before the person can be officially recognized as transgender. In case any gender corrective surgery has been performed, then a separate certificate is required which is given only when the magistrate is “satisfied with the correctness” of the medical certificate. Therefore, two varieties of transgender certificates will be issued. A ‘revised’ one is given if the person undergoes a medical procedure. The difference in entitlements between the two certificates, if any is not clear. Additionally, the NALSA ruling that specifies that "state and federal authorities should recognize transgender persons' right to decide their self-identified gender" is violated by issuing the "revised" (post-medical procedure) certificate. "Any insistence for [sex reassignment surgery] for declaring one's gender is immoral and illegal," the court said unequivocally.

²⁷⁴ Divesh Sawhney and Aastha Khanna, “Legislative Review of ‘The Transgender Persons (Protection of Rights) Act, 2019,’” 24 *Human Rights Brief* (2021).

This not only lays the identification of gender in third parties' hands but also subjects the process to unnecessary delays, inefficiency, and possible harassment while trying to prove gender identity. There is also no mechanism for review or re-application, in the event of a certificate being denied on any grounds.

Apart from this main drawback, there are several other instances where this bill seems to have failed the trans-community. Firstly, there is the fact that the wording of the entire Act is very vague and ambiguous. While discrimination has been prohibited, there is no mention of exactly how this will be curbed or how social welfare schemes will be set up.

Secondly, the Act seems to include intersex persons under the definition of transgenders which is inappropriate as not all intersex people identify as transgenders. This not only dilutes the rights of intersex persons but also alludes to the fact that there is still some confusion as to who exactly constitutes a transgender. Even the definition of family under Chapter I seems to have been given little thought. The present Act assumes that the transgender will grow up having a "normal" biological family. However, as we know, the stigma surrounding the trans community is such that they are often disowned and end up living in shelter homes or with more tolerant people. Therefore, the idea of a "chosen family" needs to be included within the ambit of the family.²⁷⁵

Thirdly, this Act is very one-sided in the sense that it is only prohibitive. It does not include any positive discrimination or suggested amendments to articles (such as Article 15) be it in the form of reservations or quotas in employment or education or be it in the form of compensation such as housing facilities for members of the trans-community²⁷⁶.

Fourth, although some of the fundamental rights of transgender individuals are covered under the Act, it ignores civil rights that are important to them, such

²⁷⁵ Akanksha Mishra, "Third Gender Rights: The Battle for Equality," 5 *Christ University Law Journal* 9–21 (2016).

²⁷⁶ Srinithya, Critical Analysis of the Transgender Persons (Protection of Rights) Act, 2019, *IJLRA*, (Oct 23, 2020).

as marriage, inheritance, adoption, social security, and pensions. Therefore, this Act is not comprehensive and does not look at the bigger picture or have a holistic view.

Lastly, while a legal recourse is present in the form of a two-year maximum imprisonment for anyone who violates the provisions of this Act, this is grossly inadequate. Under the general provision that stipulates a prison sentence of six months to two years, Clause 18 covers a wide range of offences, from civil to criminal. However, the question that arises here is that if for the rape of a woman, the maximum punishment is life imprisonment, then why must there be a difference when it is the rape of a transgender? Article 14 guarantees equal access to the legal system, and Article 21 guarantees everyone the same rights to life and liberty, hence this is illegal. This Act, therefore, has been vehemently opposed and the day of its enforcement was even dubbed the ‘Gender Justice Murder Day’.

4.10. Comparing Section 377 of the Indian Penal Code to The Bharatiya Nyaya Sanhita, 2023.

India's official penal code is the Bharatiya Nyaya Sanhita. After the parliament ratified it in December 2023, it replaced the Indian Penal Code and went into force on July 1, 2024. A modified version of the Indian Penal Code (IPC) called the Bharatiya Nyaya Sanhita (BNS) attempts to meet the demands of modern society. The BNS is seen to be superior to the IPC due to its greater modernity, inclusivity, and fairness²⁷⁷.

The Bharatiya Nyaya Sanhita (BNS) no longer contains Section 377 of the Indian Penal Code (IPC). There is no clause in the BNS that makes sexual assaults against males, transgender individuals, or animals illegal. The BNS does not contain any provision criminalizing sexual offences against men, trans persons, and animals.²⁷⁸

²⁷⁷ Sukanya Shaji Sigamany Vidya, “New criminal law Bill omits Section 377: How this impacts men and trans persons” *The News Minute*, 2023 available at: <https://www.thenewsminute.com/news/new-criminal-law-bill-omits-section-377-how-this-impacts-men-and-trans-persons> (last visited February 18, 2025)

²⁷⁸ Anand Grover, “The thoughtless Section 377 IPC oversight in the BNS” *The Leaflet*, 2024 available at: <https://theleaflet.in/criminal-justice/the-thoughtless-section-377-ipc-oversight-in-the-bns> (last visited February 18, 2025).

A public interest petition was submitted to the Supreme Court of India, requesting an order for the Centre to establish a provision in the Bharatiya Nyaya Sanhita (BNS) to penalize non-consensual unnatural sex, an offence formerly addressed under Section 377 of the now-repealed IPC. The Chief Justice said that the matter did not fit under the Supreme Court's writ jurisdiction nor could it be handled using the Court's omnibus authority under Article 142 of the Constitution²⁷⁹.

4.11. Conclusion.

According to the Supreme Court of the Union of India, discrimination based on gender identity is prohibited under the constitution. A person's "sexual identity and character" are considered in addition to their biological traits, as stated in Article 15. Articles 14, 15, and 21 of the Constitution guarantees everyone's enjoyment of the basic human rights of equality and life. Article 14 prohibits discrimination based on religion, race, caste, sex, or place of birth, while Article 21 guarantees everyone's right to life and personal liberty. However, the rights granted by the Indian Constitution were insufficient, thus further laws were needed to make these provisions more effective. The LGBT community has endured tragedies for a very long time. Even while the aforementioned laws may not be enough to solve the problem, they are a step in the right direction toward normalizing at least the conversation. The younger generation in India is aware of the challenges and issues facing the LGBT community. Numerous seminars, a pride march, the painting of a pride wall, and active debate on public forums have all been held to address these issues.

Protecting and advancing the welfare of transgender people in India is the aim of the *Transgender Persons (Protection of Rights) Act, 2019* (henceforth referred to as "the law"). The largest struggle to modify marriage, adoption, and all other relevant laws is yet to come, therefore the legislations protecting the rights of the LGBT population are baby steps at this point.

²⁷⁹ "Can't ask Parliament to create BNS equivalent of Sec 377: Supreme Court," *The Times of India*, 15 October 2024.

CHAPTER 5

JUDICIAL PERSPECTIVE TOWARDS ENSURING THE RIGHTS OF THE LGBT COMMUNITY IN INDIA.

5.1. Introduction:

Through the expansion of its interpretation within the parameters of Part III of the Indian Constitution, the Indian judiciary has played a crucial role in the jurisprudence of basic human rights²⁸⁰. The court has expanded the definition of basic rights by its decisions and interpretations, guaranteeing its applicability to a greater range of individual rights and their defence. Numerous rights, such as the rights to equality, dignity; freedom of speech and expression; and life and personal liberty have been recognized and protected as a result of this growth²⁸¹. Public Interest Litigation (PIL), which allows groups of people to petition the courts on behalf of people whose rights have been infringed or who are unable to pursue legal action on their own, is one of the judiciary's major contributions. PIL is an active procedure that gives disadvantaged and marginalized groups in society access to justice and gives them the ability to seek remedies for human rights abuses. It has made it easier for the court to address structural problems and advance social justice²⁸². The Indian Supreme Court acknowledged its unique position and obligation to broaden the application of Part III, which covers fundamental rights and the core tenets of human rights legislation²⁸³.

²⁸⁰ Soli J Sorabjee, "Expansion and Protection of Fundamental Rights by Judicial Interpretation and Intervention," 7 *NUJS LAW REVIEW* (2014).

²⁸¹ Subodh Asthana, "Article 21 of the Indian Constitution" *iPleaders*, 2024 available at: <https://blog.ipleaders.in/article-21/> (last visited June 30, 2024).

²⁸² Zachary Holladay, "Public Interest Litigation in India as a Paradigm for Developing Nations," 19 *Indiana Journal of Global Legal Studies* 555 (2012).

²⁸³ *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487.

The Court underlined its duty to uphold and advance human rights in its interpretation and application of the Constitution²⁸⁴.

In this chapter, various court decisions and judicial interpretations are included. It also considers the versatility of LGBT rights in the existing scenario. With an emphasis on their fundamental rights, it looks at the Indian Supreme Court's differing opinions on LGBT rights. The study carefully examines the court's directives and measures to improve the circumstances of those who identify as "third gender". The chapter seeks to illuminate the safeguarding and advancement of human rights for individuals of the third gender by examining these legal actions. It emphasises the effects of these actions on the rights and well-being of the community, highlighting their importance in India and worldwide. The chapter provides a thorough examination of the court's protection of LGBT rights and highlights the importance of these policies in ensuring that they are treated fairly and equally, including their right to life.

5.2. Observation of the Judiciary Regarding the Rights of LGBT People.

In the context of India, several humanitarian groups have made efforts over time to emancipate and empower the transgender community. However, these endeavours often prove unsuccessful in achieving the intended results. The rights of the LGBT community in India have been highlighted in several historical instances about several issues. Here is a brief of some landmark cases in India that have emphasized the rights of the LGBT Community concerning various rights:

- i. In 2009, India saw the first-ever lawsuit involving the struggle for the rights of the transgender or third-gender population, in *Naz Foundation v. Government of NCT of Delhi & Others*²⁸⁵. A "Public Interest Litigation," the writ petition was brought by an NGO named Naz Foundation, challenging Section 377 of the Indian Penal Code, which deals with consensual sexual actions between adults that take place in a private environment, is said to infringe on the basic rights

²⁸⁴ "Judicial Expansion of rights – Philosophical Foundations of Human Rights; Duties and Responsibilities," *available at*: <https://ebooks.inflibnet.ac.in/hrdp01/chapter/319/> (last visited June 30, 2024).

²⁸⁵ 160 (2009) DLT 277.

guaranteed by Articles 14, 15, 19, and 21 of the Indian Constitution. It has been argued that Section 377 IPC's restrictions on certain private, consenting sexual relations, particularly those involving LGBT people, unreasonably limit people's right to privacy and dignity, which are safeguarded by Article 21 and preserve freedom and life. They contend that Article 14 of the Indian Constitution is violated by this clause. The petitioner asserts that gender and sexual orientation are both included in the definition of "sex" in Article 15, implying that the previously stated basic right against discrimination protects equality based on sexual orientation. The petitioner contends that the Indian Penal Code's Section 377 prohibition on "homosexuality" violates the fundamental rights guaranteed by Article 19 (1) (a) (b) (c) & (d) because it restricts a person's ability to openly express their sexual inclinations, their right to form groups or gatherings, and their freedom to act in a gay manner.

While deciding the case, the Supreme Court said that Section 377 IPC, which makes private, consenting sexual activity between adults illegal, is against "Articles 21, 14, and 15 of the Constitution". Section 377 IPC will continue to regulate non-consensual penile non-vaginal sex and penile non-vaginal sex with minors. Until Parliament decides to amend the Act to include the suggestions made by the 'Commission of India in its 172nd Report', this explanation will continue to be valid. Hon'ble Chief Justice Mr. Ajit Prakash Shah and Hon'ble Dr. Justice S. Muralidhar were the Bench that decided this case. In this case, the court underlined that the right to life is inextricably linked to individual liberty and dignity. LGBTQ+ people were disproportionately affected by Section 377, which violated their privacy. The Honorable Court found that the statute discriminated against people based on their sexual orientation and was arbitrary. Section 377's categorization was irrational and had no logical connection to a valid governmental purpose. LGBTQ+ rights in India have gained international attention as a result of this lawsuit.

- ii. Later in the case of ***Suresh Kumar Koushal & Another v. Naz Foundation & Others***,²⁸⁶ Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhyaya were the Judges who decided this case in which the Delhi High Court's decision in the Naz Foundation case was reversed by the Supreme Court, which also restored Section 377, making consenting same-sex relationships illegal once again.

The respondents referred to the case of ***Lawrence v. Texas***²⁸⁷, where the American Psychological Association and the American Psychiatry Association submitted an amicus brief describing the ridiculousness and detrimental consequences of the prohibition on same-sex relationships.

They also requested to consider the use of international law, the basic rights protected by our Constitution, need to be expanded and put into practice. India has ratified all three of these international human rights agreements: the UDHR, ICCPR, and ICESCR.

The court held that Section 377 is constitutional and that the rights of LGBTQ+ people are not violated, the court believed that Parliament, not the courts, had the authority to change or remove Section 377. The Delhi High Court's assessment of the legality of Section 377 IPC was expressly upheld by the Supreme Court in its decision to dismiss the suit, concluding that it is devoid of any constitutional deficiencies. The Court felt that there was no strong justification to repeal a long-standing statute since LGBTQ+ people made up a "minuscule fraction" of the whole population. As a result, the writ petition was denied, the contested order was declared unconstitutional, and the appellate court overturned the ruling in the case of "***Naz Foundation V. Government of NCT of Delhi & Others***"²⁸⁸. The ruling drew harsh criticism for disregarding the lived reality of LGBTQ+ people and for not upholding basic rights.

²⁸⁶ AIR 2014 SC 563.

²⁸⁷ 539 U.S. 558 (2003).

²⁸⁸ 160 (2009) DLT 277.

- iii. In 2014, the case of *NALSA v. Union of India*²⁸⁹, the Supreme Court issued a significant ruling. The Apex Court in India has issued a directive stipulating that individuals identifying as third gender would be granted equal essential Fundamental rights guaranteed by the Indian Constitution, irrespective of their gender identity. On April 15, 2014, "**Third Genders**" were officially acknowledged as a distinct gender, other than male and female gender, marking a significant milestone in India's history. The SCI, in a momentous decision, acknowledged hijras and transgender individuals as members of the "third gender". The Court determined that the constitutional concept of "dignity" in Article 21—which permits individuals to live with dignity—includes the freedom to express oneself in several ways. Gender identity is included under Article 21's Fundamental Right to Dignity.

It was emphasized that everyone is entitled to equality (Article 14 of the Constitution) and freedom of speech (Article 19(1)(a)) since they are gender-neutral. Third-gender individuals would therefore be entitled to the same freedoms of speech and equality²⁹⁰. It was evident that transgender persons faced "severe prejudice in every facet of society," which infringed upon their equality rights. The idea of freedom of expression encompasses the ability to express one's gender via speech, attire, behaviour, and actions. The Court concluded that transgender individuals were entitled to protection under Articles 14, 15, 16, 19(1)(a), and 21 of the Constitution. Citing the Yogyakarta Principles and other important international human rights accords, the Court recognized the human rights of transgender individuals.

²⁸⁹ AIR 2014 SC 1863.

²⁹⁰ "National Legal Services Authority (Nalsa) Vs. Union Of India - South Asian Translaw Database - THIRD GENDER," *South Asian Translaw Database available at: <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>* (last visited June 30, 2024).

- iv. The Delhi High Court tackled important issues about the rights and protection of transgender people in India in the seminal case of ***Shivani 'Shivy' Bhat v. State of NCT of Delhi and Ors***²⁹¹. Shivy, a transgender person living in the United States, was abused at home by his family in California when he was 19. His family essentially restricted his travel when they seized his passport and green card when he was in Agra, India. His parents filed a missing person's report, harassing the activists who were helping him, even though he had left a letter stating that his departure was voluntary. Shivy and his allies then turned to the Delhi High Court for legal protection. Justice Siddharth Mridul emphasized the structural exclusion and marginalization that transgender people experience, pointing out that they are more susceptible to harassment from the public and the police. The ruling stressed that the community still faces severe trauma and prejudice despite the Supreme Court's ruling in ***National Legal Services Authority v. Union of India***²⁹², which acknowledged the rights of transgender people. The significance of protecting transgender people's basic rights from institutional and social prejudice is highlighted by this case, which sets a landmark precedent for transgender rights in India.
- v. In the case of ***Justice K.S. Puttaswamy (retd.), & Another v. Union of India & Others***²⁹³ a former Karnataka High Court judge Justice K.S. Puttaswamy (Retd.) brought the lawsuit, arguing that the Aadhaar program was unconstitutional and citing privacy issues. The government used earlier Supreme Court decisions (***M.P. Sharma v. Satish Chandra***²⁹⁴ and ***Kharak Singh v. State of UP***²⁹⁵) to support its claim that privacy was not a basic right under the Constitution. In a unanimous decision, the Supreme Court declared

²⁹¹ 223 (2015) DLT 391.

²⁹² AIR 2014 SC 1863.

²⁹³ AIR 2017 SC 4161.

²⁹⁴ AIR 1954 SC 300.

²⁹⁵ AIR 1963 SC 1295.

that the Indian Constitution guarantees everyone the right to privacy. By acknowledging that privacy encompasses gender identity, the ruling reinforced India's legal framework for transgender rights. The Court ruled that, under Article 21, privacy is essential to life and individual freedom. Any privacy breach must pass the proportionality, need, and legality tests. The Court also highlighted that sexual orientation and gender identity are fundamental aspects of individual privacy. It underlined that each person is entitled to choose their gender independently of the government. The decision forbade the state from requiring people to reveal their gender identification unless there was a good basis to do so. This strengthened legal grounds against discrimination against transgender people in public places, healthcare, and employment. Thus, the ruling laid the groundwork for future developments in LGBTQ+ rights in India and strengthened legal safeguards for transgender people against discrimination by the state and society.

- vi. The Himachal Pradesh High Court examined the Guru-Chela tradition and property succession among the transgender community in the matter of ***Sweety (Eunuch) v. General Public***²⁹⁶. Sweety, a transgender person and a Guru, filed a lawsuit claiming that she was the only heir to her late Chela Rajia aka Ratni Nani's moveable and immovable possessions. Rajia died on October 29, 2009, intestate (without a testament). Sweety appealed the ruling to the High Court after the lower courts first used the *Hindu Succession Act, of 1956*, to decide the succession. Justice Tarlok Singh Chauhan looked at how personal succession rules could apply to transsexual people, particularly in cases where their declared religion is unclear. The Guru-Chela system, in which a Guru takes on the role of mentor and caregiver for their Chela, was acknowledged by the court as a common practice among the transgender community. The court cited the Supreme Court's historic ruling in ***National Legal Services Authority v. Union of India***²⁹⁷ which upheld transgender

²⁹⁶ AIR 2016 HP 148.

²⁹⁷ AIR 2014 SC 1863.

people's identity and rights and confirmed their claim to constitutional and legal protection. The court also referenced the ruling in *Ilyas v. Badshah alias Kamla*²⁹⁸, which upheld the Guru as the legitimate successor and acknowledged the customary rule of succession among transgender people.

The High Court came to the conclusion that the traditional Guru-Chela system should control the inheritance of property for transgender people in the absence of a definite religious connection. As a result, Rajia's property was deemed to belong to Sweety, who was the Guru. This ruling is significant because it recognizes and supports the transgender community's traditional property succession customs, regardless of the individual's declared religion. It guarantees the protection of property rights within the transgender community and strengthens the legal status of the Guru-Chela relationship.

To prevent a narrow and technical interpretation of the law from being perpetuated to undermine the rights of transgender people, courts have been able to interpret the provisions under personal laws in a broad manner as a result of instances of marriage, property, and family rights.

- vii. The case of **K. Prithika Yashini (transgender) v. The Chairman, Tamil Nadu Uniformed Services Recruitment Board**²⁹⁹ occurred when a transgender woman K. Prithika Yashini applied to be a Sub-Inspector (SI) in the Tamil Nadu police department. Her application was denied, however, since transgender applicants were not given their category throughout the hiring process. By claiming that the refusal infringed upon her basic rights under Articles 14 (Right to Equality), 19 (Freedom of Expression), and 21 (Right to Life and Dignity) of the Constitution, she appealed the rejection in the Madras High Court. According to the Court, Article 14 guarantees transgender people equal treatment in the workplace. Employment discrimination against transgender people shouldn't be justified by the lack of a distinct category for them. The Court cited the 2014 ruling in *NALSA v.*

²⁹⁸ AIR 1990 MP 334.

²⁹⁹ 2016 (1) SCT 815 (MADRAS).

*Union of India*³⁰⁰, which maintained transgender people's freedom to self-identification and acknowledged them as a third gender. It underlined the need for the government to develop inclusive policies for public servants who identify as transgender. It highlighted the need for equitable opportunities for transgender people in all fields, including law enforcement. This landmark court ruling established a standard for the employment of transgender people in government positions. strengthened the application of the NALSA ruling by guaranteeing transgender people's job rights and promoted policy modifications to increase the inclusivity of hiring procedures for transgender candidates. In India, this judgment marked a turning point for transgender rights by guaranteeing more representation in public service and law enforcement.

- viii. Another case on the rights of the LGBT community is that of *Shakti Vahini v. Union of India*³⁰¹ in 2010, the Supreme Court heard a Public Interest Litigation (PIL) brought by the non-governmental organization (NGO) Shakti Vahini, which sought orders to stop honour killings and crimes perpetrated in the name of "honour," especially by Khap Panchayats (self-styled village councils). To address such events, the petitioner requested punitive, rehabilitative, and preventative actions. The Court reiterated that, following Article 21 (Right to Life and Personal Liberty) of the Indian Constitution, the freedom to marry anyone one chooses is a basic right and it is unconstitutional for Khap Panchayats or family members to infringe upon this privilege. The Court decided that Khap Panchayats must refrain from enforcing the law themselves and have no power to denounce weddings. It is unlawful for them to meddle in private affairs, including marriage decisions and in debates of LGBTQ+ rights, its more general tenets of individual autonomy, dignity, and the freedom to choose a mate have been mentioned. This idea is important for LGBTQ+ people who are fighting for their freedom

³⁰⁰ AIR 2014 SC 1863.

³⁰¹ AIR 2018 SC 1601.

to marry and have same-sex partnerships. The court ruled that consenting people's personal decisions cannot be influenced by neighbours, family members, or religious organizations. Arguments against the social and family pressures LGBTQ+ people in India encounter are strengthened by this. In LGBTQ+ communities, the ruling supports the case for same-sex marriage and defence against honor-based violence.

- ix. The *Shafin Jahan v. Asokan K.M. & Ors*³⁰². case, also known as the Hadiya case, centred on concerns of personal liberty, autonomy, and the freedom to select one's spouse in the context of marriage. While the case concerned religious conversion and interfaith marriage, its larger principles have important implications for LGBTQ+ rights. The Supreme Court declared that an adult has the basic right to make their own marriage choices, strengthening Article 21 of the Indian Constitution, which guarantees marital autonomy and personal liberty. This idea is critical for LGBTQ+ people who advocate for legal recognition of same-sex relationships and weddings. The court rejected parental and societal intrusion in an individual's personal life, holding that personal choices must be accepted if they are taken freely. This reinforces the case against coercive conversion treatment, parental compulsion, and cultural rejection to same-sex unions. While the decision dealt particularly with heterosexual marriage, the rationale supports LGBTQ+ people's battle for marital equality and protection from forced separation by family or government. The concepts set out in this decision have been used in applications for same-sex marriage rights in India.
- x. The 'Chief Justice of the Supreme Court of India', Justice Deepak Misra along with Hon'ble Mr. Justice Rohinton Fali Nariman, Hon'ble Mr. Justice A.M. Khanwilkar, Hon'ble Dr. Justice D.Y. Chandrachud and Hon'ble Ms. Justice Indu Malhotra made a major ruling in the historic case of "*Navtej Singh Johar v. U.O. I*"³⁰³, abolishing Section 377 of the *Indian Penal Code*,

³⁰² AIR 2018 SC 1933.

³⁰³ AIR 2018 SC 4321.

1860. The five-judge bench of SCI unanimously repealed sec.377 which criminalized "carnal intercourse against the order of nature," and was found unconstitutional because it criminalized consensual sexual conduct between adults of the same sex, overruling the Koushal's case decision. Consequently, same-sex partnerships between individuals who have given their permission have been legally recognized. This applies universally, encompassing those beyond the LGBTQ community. The impact of this verdict holds a significant persuasive influence on nations that continue to perceive homosexuality as a criminal offense. The court supported the Indian LGBTQ community's quest for equal citizenship. Consequently, it saw s.377³⁰⁴ as prohibiting adult consenting sexual relationships, regardless of whether they involve partners of a similar sex or not. Section 377 will address juvenile sexual activity, non-consensual adult sexual behaviour, and the concept of bestiality." Gender identity" is the phrase used to describe an individual's profound internal and subjective perception of gender, which may or may not match the sex given to them at birth³⁰⁵. This particular experience encompasses the individual's subjective perception of their physical body, which may include a purposeful alteration of physiological traits or functions by medication, surgery, or other methods. Additionally, it encompasses many manifestations of gender, such as attire, speech patterns, and behavioural patterns. Therefore, a person's self-identification as male, female, transgender, or a member of any other designated category is referred to as their gender identity. Therefore, the LGBT community has obtained extensive legal recognition from the judiciary through these significant decisions made by the court of final appeal, shedding light on the path towards achieving equal and unrestricted enjoyment of life for individuals of all genders inside the country. Due to the Supreme Court of India's decision, the community would typically feel just as

³⁰⁴ "NAVTEJ SINGH JOHAR VS. UNION OF INDIA - South Asian Translaw Database - SECTION 377," *South Asian Translaw Database available at:* <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/> (last visited June 30, 2024).

³⁰⁵ *Id.* at 163.

relaxed and at ease as those of other genders. The LGBT community received a sincere apology from Justice Indu Malhotra in her ruling, “History owes an apology to these people and their families. Homosexuality is a part of sexuality. They have the right of dignity and freedom from discrimination. Consensual sexual acts of adults are allowed for the LGBT community.”

Nevertheless, a fundamental inquiry posed by proponents of the LGBT community pertained to the efficacy of the verdict and subsequent legislation³⁰⁶ aimed at safeguarding the rights of LGBT individuals. The extent to which it yielded the desired outcomes as envisioned by the rulers of our nation. The proposed remedy may not align with the original intentions of the legislators. Even if a distinct Act was created to safeguard the rights of third genders, several laws nevertheless show that it is ineffectual. The community continues to promote topics such as same-sex marriage, same-sex adoption, the right to be free from discrimination, and others. Therefore, merely permitting sexual behaviour between same-sex partners will not subject them to the same level of risk as other members of society. In 2018, the ‘Supreme Court of India’ ruled that an adult had an inherent entitlement to enter into matrimony with the individual of their choosing³⁰⁷. Since dignity cannot be considered without autonomy, the court argued that maintaining an individual's autonomy is a key component of their dignity. In fact, the aforementioned issue is subject to restrictions under the constitutional limitation principle. However, in the absence of such limitations, no one must be allowed to impede the execution of the asserted judgment. The government has enacted the repeal of legislation from the colonial era that exhibited clear bias against anyone identifying as homosexual or transgender. Additionally, the government has interpreted Article 15 of the Indian Constitution in a way that specifically prohibits prejudice and discrimination of any kind based on sexual orientation and gender identity.

³⁰⁶ *The Transgender Persons (Protection of Rights) Act, 2019* (Act No. 40 of 2019).

³⁰⁷ AIR 2018 SC 1601.

Three versions of the “*Transgender Persons (Protection of Rights)*” Bills were drafted in 2014³⁰⁸, 2016³⁰⁹, and 2018³¹⁰. However, none of these versions were ultimately approved due to the inclusion of regressive sections that might potentially harm the community instead of benefiting it. The creation of a screening committee to determine whether a candidate met the requirements for transgender categorization was one of these out-of-date provisions. “*The Transgender Persons (Protection of Rights) Act*”³¹¹, enacted in 2019, faced significant criticism due to its infringement upon individuals' rights to privacy and physical autonomy, as a result of the mandatory medical examination. To bring the 2019 Act into compliance with the Supreme Court's 2014 decisions, the Union Ministry of Social Justice and Empowerment released the “*Transgender Persons (Protection of Rights) Rules*”, in 2020.

Recognizing and defending the constitutional rights of the third gender is crucial in a developing country like India. Ensuring gender inclusivity is imperative for the future of our nation. There are, however, very few notable examples of judicial or legislative actions that acknowledge the rights of third-gender individuals. The ensuing rulings have had the most impact on discussions on LGBT rights in India.

³⁰⁸ “The Transgender Persons (Protection of Rights) Act,” *Drishti IAS* available at: <https://www.drishtiias.com/to-the-points/Paper2/the-transgender-persons-protection-of-rights-act> (last visited June 30, 2024).

³⁰⁹ “The Transgender Persons (Protection of Rights) Bill, 2016,” *PRS Legislative Research* available at: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016> (last visited June 30, 2024).

³¹⁰ “The Transgender Persons (Protection of Rights) Bill, 2019,” *PRS Legislative Research* available at: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019> (last visited June 30, 2024).

³¹¹ *The Transgender Persons (Protection of Rights) Act, 2019* (Act No. 40 of 2019).

- xi. The rights of transgender people in marriages were discussed by the Madras High Court in the matter of *Mansur Rahman v. The Superintendent of Police & Anr*³¹². On July 25, 2018, Mansur Rahman, the petitioner, wed Janifer, a transgender woman. Because of Janifer's transsexual status, they were harassed and threatened by Mansur Rahman's parents and political party members after they were married. The couple went to the Madras High Court to seek protection. The main legal inquiry was whether transsexual couples, like those across castes or religions, are entitled to police protection. The Court cited the Supreme Court's ruling in *Lata Singh v. State of Uttar Pradesh*³¹³, which highlighted the need for state authorities to encourage and adequately safeguard marriages between people of different castes and religions. The Madras High Court extended this idea and concluded that transgender weddings should likewise be protected by the police. The petitioner was instructed by the court to provide the Superintendent of Police with a statement outlining their need for protection. Following receipt of this submission, the Superintendent was directed to carry out an investigation and guarantee that the couple is given the proper protection to preserve their rights and welfare. This ruling is important because it upholds transgender people's rights to be married and live their lives without fear of retaliation, requiring the state to protect them from harassment in the home and society.
- xii. In the case, *S. Sreeja v. The Commissioner of Police, Thiruvananthapuram & Others*³¹⁴, which was heard by Hon. Mr. Justice C.K. Abdul Rehim and Hon. Mr. Justice R. Narayana Pisharadi at the Kerala High Court in 2018. The ruling, which is regarded as a landmark decision, supported an adult woman's right to live with her same-sex partner. The case brings to light the violence LGBT individuals experience from the police, their communities, and their families, among other sources. The case shows how LGBT couples may use the writ of habeas corpus as a potent legal instrument. The case demonstrates

³¹² 2018 SCC Online Mad 3250.

³¹³ 2006 AIR SCW 3499.

³¹⁴ 2018 (5) KHC 134.

how a legal method is often used to operationalize the illegality and alleged criminality of LGBT relationships.

After hearing the case, the High Court determined that Aruna, as an adult, had the freedom to select her partner and residence. The court highlighted that separating people in consensual relationships violates their fundamental rights regardless of gender. Citing the Supreme Court's ruling in “*Navtej Singh Johar v. Union of India*”³¹⁵, which decriminalized consensual same-sex partnerships, the court reiterated that such relationships are neither criminal nor unlawful. This decision is notable because it was among the first to implement the Navtej Singh Johar verdict, which recognizes same-sex couples' rights to live together without interference. The court's recognition of a same-sex live-in relationship was a significant step in upholding LGBTQ+ persons' constitutional rights in India. The case upheld the notion that people can select their partners and live together without illegal intervention, ultimately maintaining individuals' constitutional rights in same-sex partnerships.

- xiii. This is another significant case that addresses the legal validity of transgender weddings under the “*Hindu Marriage Act of 1955*” (HMA) in *Arunkumar & Other v. The Inspector General of Registration & Others*³¹⁶. Arunkumar, a cisgender male, and Sreeja, a transgender woman, married on October 31, 2018, following Hindu ceremonies at the Arulmighu Sankara Rameswara temple in Tuticorin, Tamil Nadu. When they attempted to register their marriage under the *Hindu Marriage Act*, the Joint Registrar denied it, arguing that Sreeja, as a transgender woman, did not meet the definition of "bride" under Section 5 of the Act. The couple challenged this ruling by filing a writ case in the Madras High Court.

Justice G.R. Swaminathan ruled over the case and rendered a progressive decision. The court determined that the word "bride" in Section 5 of the HMA

³¹⁵ AIR 2018 SC 4321.

³¹⁶ AIR 2019 Madras 265.

cannot be limited to its conventional connotation. It must be read in light of the changing legal and social situation, including transgender people who identify as women. The court stressed that refusing such recognition would breach basic rights protected by the Indian Constitution's Articles 14 (Right to Equality), 19(1)(a) (Freedom of Speech and Expression), 21 (Right to Life and Personal Liberty), and 25 (Freedom of Conscience and Religion). The ruling was based on the Supreme Court's decision in *NALSA* case³¹⁷, which acknowledged transgender people's rights, including the ability to self-identify their gender. The court recognized Sreeja as a "bride" under the HMA by confirming her self-identification as a woman, therefore approving the marriage.

This decision is significant in Indian law since it is the first to confirm transgender people's right to marry under Article 21 of the Constitution. By defining the phrase "bride" to encompass transgender women, the court broadened the scope of the HMA and established a precedent for future transgender rights claims. As a result, the case emphasizes the judiciary's responsibility in protecting transgender people's rights, guaranteeing their inclusion under personal laws, and recognizing their basic right to marry.

- xiv. The Orissa High Court addressed important concerns about the rights of same-sex couples and transgender people in India in the August 24, 2020, decision of *Chinmayee Jena @ Sonu Krishna Jena v. State of Odisha & Others*³¹⁸. Despite being born a girl, the petitioner identified as a man and took the name Sonu Krishna Jena. He and his girlfriend, Rashmi, have been living together voluntarily since 2017. Rashmi's mother and uncle forcefully removed her from their shared Bhubaneswar home on April 9, 2020. No action was taken even after complaints were filed with the local police stations. The petitioner filed a writ of habeas corpus to seek Rashmi's freedom and protection because they were afraid that her relatives might marry her off

³¹⁷ AIR 2014 SC 1863.

³¹⁸ 2020 (II) OLR 709.

against her will. Throughout the ruling, the Orissa High Court used male pronouns to refer to the petitioner, acknowledging his right to self-identify as a man. The Court underlined that gender self-determination, which is guaranteed by Article 21 of the Indian Constitution, is an essential component of individual liberty and self-expression. The Court upheld transgender people's freedom to choose their gender identification, citing the Supreme Court's ruling in the *NALSA* judgement³¹⁹.

Members of the LGBTQIA+ group are entitled to all fundamental rights, including the ability to choose their partner, the Court said by citing the Supreme Court's decision in *Navtej Singh Johar v. Union of India*³²⁰, which decriminalized agreement-based same-sex relationships. In its ruling, the Court maintained the couple's right to live together as consenting adults, holding that they had the freedom to choose their sexual preferences. The Court ordered the State of Odisha to provide the couple the protection they need to guarantee their safety and well-being, and it ordered Rashmi's mother to refrain from interfering with their cohabitation. The rights of transgender people to live together with partners of their choosing, regardless of gender, are specifically acknowledged in this historic ruling. It establishes a precedent for defending LGBTQIA+ people's rights to cohabitation and partnerships in India and upholds the values put out in earlier Supreme Court decisions.

- xv. In the case of *S. Sushma, D/O. Mr. v. Senthil Kumar and Another V. Commissioner of Police, Chennai, and Others*³²¹, the applicants, a lesbian couple aged 22 and 20, were opposed by their families because of their relationship. Fearing for their safety, they fled Madurai and sought asylum in Chennai with the help of a non-governmental organization and members of the LGBTQ community. In response, their parents filed missing person reports, prompting police involvement and harassment. The couple moved to

³¹⁹ AIR 2014 SC 1863.

³²⁰ AIR 2018 SC 4321.

³²¹ (2021) 5 MLJ 9.

the Madras High Court, seeking safety and an end to police harassment. On June 7, 2021, Justice N. Anand Venkatesh gave a progressive verdict, offering extensive rules to defend the rights of LGBTQIA+ individuals:

1. **Prohibition of Conversion Therapy:** The court ruled that any efforts by medical experts to "cure" or modify an individual's sexual orientation were unscientific and harmful.
2. **Police Conduct:** When law enforcement discovers that the persons involved are consenting adults in same-sex relationships, they are ordered to close missing person cases. The court highlighted that police should not harass LGBTQIA+ people or activists who support them.
3. **Sensitization Measures:** To remove biases against the LGBTQ population, the court ordered awareness workshops for judicial personnel, police, and prison authorities. It also proposed adjustments to school and university curricular to provide a greater awareness of LGBTQIA+ concerns.
4. **Support for LGBTQIA+ persons:** The Ministry of Social Justice and Empowerment was directed to identify and promote non-governmental organizations (NGOs) that can support LGBTQIA+ persons. Additionally, existing short-term housing facilities were ordered to give refuge to people in need.

Hence this judicial decision is a milestone in Indian LGBTQIA+ rights litigation. It addresses not just urgent concerns about harassment and discrimination, but also establishes a framework for structural reforms aimed at increasing the inclusion and acceptance of LGBTQIA+ people in society. The case highlights the judiciary's proactive role in defending LGBTQIA+ people's rights and dignity, as well as protecting them from social and institutional prejudice.

- xvi. The Kerala High Court addressed concerns about discriminatory material in medical textbooks against the LGBTQIA+ community in the matter of *Queerhythm & Anr. v. National Medical Commission & Others*³²². Certain medical textbooks used for medical courses in India, according to the petitioners, Queerhythm, a non-profit organization that supports LGBTQIA+ rights, and another person, included offensive and inhumane comments that depicted LGBTQIA+ identities as mental illnesses or perversions. They said that such material violates the rights protected by Articles 14 and 21 of the Indian Constitution and reinforces harmful stereotypes. The petitioners' submission about the complaints regarding queer-phobic material in medical textbooks was instructed by the court to be taken into consideration by the Under-Graduate Medical Education Board (UGMEB), located in New Delhi. Within eight weeks of the decision date, the UGMEB was directed to get feedback on the representation from the Kerala University of Health Sciences, Thrissur, and to take the necessary steps. The objective of this order was to address and correct the claimed constitutional rights breaches brought about by the discriminatory content in medical education materials.
- To eradicate systematic prejudices in medical education and guarantee that medical curricula respect and protect the rights and dignity of the LGBTQIA+ community, this ruling is a constructive step.
- xvii. Another instance in which the inclusion of the LGBT community was declared by the Supreme Court of India was in *Deepika Singh v. Central Administrative Tribunal and Others*³²³. The Supreme Court of India broadened the legal definition of 'family' to include non-traditional configurations, including those that go beyond the typical heterosexual framework. Deepika Singh, a nurse at the Post Graduate Institute of Medical Education and Research (PGIMER) in Chandigarh, requested maternity leave for her first biological kid. Previously, she had taken childcare leave for her

³²² MANU/KE/2037/2021.

³²³ AIR 2022 SC 4108.

husband's two children from his previous marriage. PGIMER declined her maternity leave application, interpreting the guidelines to suggest that her biological kid was her third, surpassing the 'two surviving children' restriction set by the *Central Civil Services (Leave) guidelines, 1972*. The Central Administrative Tribunal and the Punjab and Haryana High Court affirmed the refusal.

The Supreme Court, headed by Justice D.Y. Chandrachud, overruled prior decisions, stressing that the appellant's first biological kid could not be deemed her third child simply because she had assumed care for her spouse's children. The Court emphasized that the term 'family' should be defined in a way that reflects the many realities of contemporary society, acknowledging that familial connections may go beyond conventional conceptions. This inclusive view recognizes a variety of family forms, including those created by same-sex couples, single parents, and other non-traditional families.

While the judgment did not specifically address LGBTQ+ concerns, the Supreme Court's recognition of 'atypical' family arrangements has important ramifications for the LGBTQ+ community. The ruling paves the way for further legal protection and recognition of same-sex couples and their families by recognizing that families may exist outside of the traditional heterosexual paradigm. This progressive position adds to the current discussion in India about marriage equality and LGBTQ+ rights. Thus, the decision is a significant step toward inclusion, defying traditional conventions and pushing for equitable treatment of varied family arrangements under Indian law.

- xviii. In *Kantaro Kondagari @ Kajol v. State of Odisha & Others*³²⁴, the Orissa High Court addressed transgender people's rights for family pensions. The transgender petitioner, Kantaro Kondagari, is the daughter of the late Balaji Kondagari, who worked in Rayagada, Odisha, in the Executive Engineer RW Division's Rural Development Department. The family pension was awarded to Balaji's widow, Smt. Binjama Kondagari, after his death. Following Rule

³²⁴ 2022 (II) OLR 138.

56 of the Odisha Civil Services (Pension) Rules, 1992, which offers pension benefits to unmarried, widowed, or divorced daughters, the petitioner requested the continuance of the family pension after Smt. Binjama's passing on July 11, 2020. Pension disbursement was delayed because the Principal Accountant General (A&E), Odisha, did not follow through on a June 29, 2021, recommendation from the Executive Engineer RW Division, Rayagada, confirming the petitioner's eligibility for the family pension. The petitioner said that this delay infringed her rights under the Transgender Persons (Protection of Rights) Act, 2019 and was discriminatory, particularly considering that she is a transgender woman.

The Orissa High Court ruled that the petitioner, a transgender woman, had the right to choose her gender identification, citing the Supreme Court's ruling in *NALSA* which acknowledged transgender people's rights to self-identify their gender. The petitioner's claim must be processed and the family pension disbursed by the Principal Accountant General (A&E), Odisha, within six weeks of the court's judgment.

This ruling is important because it guarantees transgender people's participation in social assistance programs and upholds their rights to benefits without discrimination.

- xix. The Supreme Court of India tackled important questions about the autonomy and rights of people in same-sex partnerships in the case of *Devu G. Nair v. State of Kerala*³²⁵. Devu G. Nair, the petitioner, and U. Sreerenjini had a consensual same-sex relationship. Sreerenjini was allegedly taken without her will by her parents to keep her away from the petitioner. Nair responded by requesting Sreerenjini's release in a petition of habeas corpus filed with the Kerala High Court. In its interim decisions, the Kerala High Court ordered the District Legal Services Authority to record Sreerenjini's statement at her parents' home and required her to attend psychological treatment sessions. The petitioner argued that Sreerenjini could have been subjected to pressure

³²⁵ 2024 (2) KLT 572.

since these directives were made without guaranteeing an impartial setting in which she could communicate her actual desires.

The petitioner went to the Supreme Court to contest these interim rulings. The Kerala High Court's interim decisions were halted by the Supreme Court and Sreerenjini was ordered to appear before the Kollam Family Court, Kerala. To determine Sreerenjini's true wants without outside pressure, the Principal Judge of the Family Court was directed to arrange an interview between her and a senior judicial official. The Supreme Court took notice of the concerns that counselling may be used to subvert an individual's sexual orientation will. When it comes to habeas corpus petitions, the Court adopted the following guidelines:

1. A partner, acquaintance, or biological family member may submit a habeas corpus petition or a petition for protection; the court is not allowed to inquire about the nature of the connection between the appellant and the individual in question.
2. Before establishing the threshold condition of being in danger of violence and abuse, the Court shall issue an ad-interim measure when dealing with police protection for partners, whether they are same-sex, transgender, interfaith, or intercaste.
3. The court's role is restricted to determining an individual's will; it should not order counseling or parental care in an attempt to persuade the appellant or the person in custody to alter their decision.
4. To discover the person's will, courts must create an atmosphere that is favourable to free and noncoercive communication. They must also take a sympathetic stance to guarantee that the person in custody may freely express their desires.
5. When there is unlawful imprisonment by the biological family, being a juvenile shouldn't be the criterion for denying habeas corpus petitions.
6. A detained individual must be freed if they indicate that they do not want to return to the alleged detainer.

7. Courts must acknowledge the societal stigma LGBT couples experience and, in cases where it is requested, provide prompt police protection.

After recognizing the negative consequences of conversion therapy, the Supreme Court took aggressive steps to ensure that courts take a gender-affirming and queer-affirmative attitude when handling habeas corpus petitions and cases requiring police protection. Crucially, it also cleared the path for the recognition that family is not exclusively heteronormative and that members of one's chosen family may petition the court to guarantee that one's right to privacy, safety, and dignity be respected. This case emphasizes how the courts protect the rights and personal freedoms of people in same-sex partnerships by making sure that their decisions are accepted and unaffected by social or family pressure.

“Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+ community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative.”- Chief Justice D. Y. Chandrachud in *Devu G. Nair v. State of Kerala*.

- xx. In the landmark case of *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*³²⁶ the Supreme Court of India addressed the issue of legal recognition for same-sex marriages. Petitioners for marriage equality for LGBTQIA+ individuals were unanimously denied by the five-judge bench, which included Justices S.K. Kaul, Hima Kohli, P.S. Narasimha, and Hon. Chief Justice of India D.Y. Chandrachud. It was decided that marriage is not a basic right protected by the Constitution and non-heterosexual couples are exempt from the “*Foreign Marriage Act*” and the “*Special Marriage Act*”. Nine petitions were recommended to be referred to the Supreme Court for consideration together with the petitioners who first filed them, including eight from the Delhi High Court and one from the Kerala High Court, in which the

³²⁶ AIR 2023 SC 5283.

petitioners sought legal recognition for same-sex weddings under the 1954 *Special Marriage Act* (SMA), claiming that refusal infringed their basic rights under the Indian Constitution.

The court unanimously decided that Parliament, not the courts, should decide whether to allow same-sex marriages and that there is no fundamental constitutional right to marry. In a 3-2 decision, the majority refused to recognize same-sex weddings or civil unions under the SMA. They highlighted that any changes to the definition of marriage must be authorized by Parliament. The Court recognized that transgender people have the right to marry within the present legal framework, as long as one partner identifies as male and the other as female. The Court granted the government's request to establish a powerful committee, led by the Cabinet Secretary, to investigate discrimination against LGBTQIA+ individuals and explore granting same-sex couples some legal rights and privileges. These might include rights to visit the imprisoned, succession, medical decision-making, access to joint bank accounts, and identification as next-of-kin. While the decision did not legalize same-sex weddings, it did take a big step forward by recognizing the LGBTQIA+ community's concerns and launching a government assessment of prospective legal rights and safeguards. As a result, the case highlights India's continuing debate over marriage equality, emphasizing the judiciary's respect for legislative action while acknowledging the need to address prejudice against LGBTQIA+ people. Following the ruling, on November 1, 2023, one of the petitioners filed a review petition, claiming that the decision was self-contradictory and unfair. The Supreme Court agreed to hear the review petition, but eventually denied it on January 9, 2025, affirming its previous ruling.

Even though same-sex marriage is not yet officially recognized in India, judicial judgments have significantly shaped same-sex family rights in that country. The case that LGBTQ+ people should be allowed to start families has been reinforced by some cases. Nonetheless, court decisions and debates are promoting inclusive laws, and courts have upheld the right of same-sex couples to cohabitate peacefully. Despite the

lack of full-fledged family rights (marriage, adoption), judicial cases have progressively increased the legal acceptance of same-sex partnerships in India. The government has been pushed to enact legislation that guarantees LGBTQ+ families equal rights by the court, which has been a progressive force.

5.3. Comparative analysis of International Law and foreign judgement's influence on Indian judgements.

Human rights development for members of the LGBT community is still in its infancy. Promoting social inclusion by expanding the range of sexual orientations and gender identities was the main goal of LGBT rights and human rights activists. According to Articles 2 and 26 of “the International Covenant on Civil and Political Rights”, “the United Nations Human Rights Committee”, which is recognized as a preeminent body in defending universal and inalienable human rights, has addressed these issues. These endeavours constitute an integral component of the global legal framework about this matter. The Toonen case represented a significant advancement in this particular domain, as the Committee was able to deem the criminal legislation that imposed penalties on this particular social group as infringing against the fundamental human rights of the LGBT population. Sexual minorities' basic rights were gradually extended by the Committee on Economic, Social, and Cultural Rights General Comments, which placed them under the heading of "other status." The UN Human Rights Committee and Council have been instrumental in examining and blocking national laws that penalize and disenfranchise members of this specific socioeconomic category.

The Yogyakarta Principles, albeit lacking legal enforceability, may be considered comprehensive in their inclusion of fundamental human rights of sexual minorities. With a major emphasis on promoting violence and protecting privacy, these principles have attempted to address a variety of issues faced by this specific socioeconomic group. India's legal position has deviated from the progressive path by ignoring the legalisation of homosexuality. In the context of India, there exists a distinction between homosexuality, which refers to same-sex partnerships, and transsexuality. The established case laws of the Indian Supreme Court unequivocally demonstrate the

legitimacy of criminal laws that criminalise homosexuality and recognise members of the transgender community as "third gender."³²⁷

Although full acceptance of LGBT rights in the US and the UK is still a long way off, it is clear that public attitudes are shifting. The growing recognition of Pride Month motivates companies to prioritize setting a positive example to advocate for equality and urge policymakers and decision-makers to uphold the rights of LGBT individuals. On both sides of the Atlantic, Hausfeld's Diversity and Inclusion Committees actively promote training initiatives and events that increase workplace awareness of diversity and inclusion.

In the case of "*Naz Foundation v. Government of NCT of Delhi*"³²⁸, the Delhi High Court backed the legalisation of homosexuality, or private, consensual sexual activity by adults. In the Naz Foundation case, the constitutionality of Section 377 of the Indian Penal Code (IPC), which punishes criminals for "unnatural offences," was contested. Later in December 2013, the Supreme Court of India reversed this decision in the "*Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors*"³²⁹ Case, upholding the validity of Section 377 of the Indian Penal Code.

The Supreme Court of India in 2018, upheld the rights of the transgender community concerning gender identification in the case of the "*National Legal Services Authority v. Union of India & Ors*"³³⁰. To safeguard their rights as stipulated by Part III of the Indian Constitution, the court ruled that members of the transgender community should be acknowledged as third genders in addition to binary genders. The decriminalization of homosexuality and transsexuality has been influenced by three significant judgments that have drawn upon the Yogyakarta Principles. These

³²⁷ IJLMH, "The Yogyakarta Principles: A Legal Discourse on Rights of the LGBTI Community" *International Journal of Law Management & Humanities*, 2020 available at: <https://ijlmh.com/the-yogyakarta-principles-a-legal-discourse-on-rights-of-the-lgbti-community/> (last visited July 06, 2024).

³²⁸ 160 (2009) DLT 277.

³²⁹ AIR 2014 SC 563.

³³⁰ AIR 2014 SC 1863.

decisions aim to reaffirm the fundamental human rights of persons who identify with varied sexual orientations and gender identities.

Citing international legal advancements on LGBTQ+ rights, the Supreme Court of India decriminalized Section 377 of the Indian Penal Code in the “*Navtej Singh Johar v. U.O.I*”³³¹ case. Despite referencing international jurisprudence, Indian courts have maintained a distinction between decriminalization and marriage rights, emphasizing that marriage is a legislative matter. Consequently, the Indian Supreme Court decided against legalizing same-sex unions in “*Supriyo @ Supriya Chakraborty & Anr. v. Union of India*”³³² but acknowledged the rights of same-sex couples and called for legislative action. In cases of LGBTQ+ rights, Indian courts have been greatly impacted by international law and foreign rulings; nonetheless, the judiciary has refrained from legalizing same-sex marriage. Despite acknowledging international legal trends, the Indian legal system nevertheless views marriage recognition as being within the purview of legislation. Indian legislative change and changing public sentiment may have a significant impact on future legal developments.

Specific protections for sex equality would be added to the US Constitution as the 28th amendment if Senate Joint Resolution 1, which would completely ratify the Equal Rights Amendment (ERA), were passed. This resolution would also remove any time limit on ratification. The proposed amendment would possess extensive scope in its prohibition of sex-based prejudice, including instances of sexual orientation and gender identity bias. Because it creates a new constitutional basis for the Supreme Court's decisions on LGBTQ equality, the 28th Amendment is significant from a legal standpoint. Moreover, it safeguards the rights established in landmark cases like “*Lawrence v. Texas*”³³³, *U.S. v. Windsor*³³⁴, and *Obergefell v. Hodges*.³³⁵”, preventing their overturning by the Supreme Court.

³³¹ AIR 2018 SC 4321.

³³² AIR 2023 SC 5283.

³³³ 539 U.S. 558 (2003).

³³⁴ 570 U.S. 744 (2013).

Even though Obergefell is not fully covered by the *Respect for Marriage Act*, it is important to recognize that the law broadens its scope and prohibits government action that is outside of Obergefell's jurisdiction. According to the law, states are not allowed to reject weddings from other states on the grounds of the married parties' sex, race, ethnicity, or country of origin. Accordingly, it would ban states from enforcing the Supreme Court's ruling in *Loving v. Virginia*.³³⁶, which forbade interracial marriages. It would also prohibit discrimination based on national origin when issuing marriage licenses.

5.4. Conclusion

India's judicial perspective on LGBT rights has changed over time, mostly due to important legislative changes and historic court decisions. Beginning in the 2010s, courts in a number of states, including Uttar Pradesh, Gujarat, Himachal Pradesh, Kerala, Odisha, Punjab, and Uttarakhand, have issued individualized rulings declaring that cohabitation, or "live-in relationships," between same-sex partners is acceptable and eligible for protection under the law. The Supreme Court of India has decided against allowing same-sex marriage in a 3:2 ruling. The legislature should be responsible for drafting legislation about same-sex weddings, according to the court, which declined to invalidate portions of the *Special Marriage Act*³³⁷ that would have allowed for such unions. An individual has the right to maintain the integrity of their physical identity, including their privacy. A person is entitled to self-determination, freedom of thought, the ability to pick their mate, and the right to believe in what is good. A person's dignity depends on their ability to procreate, have a family, get married, and choose their sexual orientation—all of which are things that no one else may criticize or remark on.

³³⁵ (2015) 576 U.S. 644.

³³⁶ 388 U.S. 1 (1967)

³³⁷ Special Marriage Act, 1954 (Act 43 Of 1954).

CHAPTER 6

ROLE OF NGOs IN THE PROTECTION OF LGBT RIGHTS

6.1. Introduction:

Non-governmental organizations (NGOs) play a crucial role in offering assistance to individuals within the LGBT community who have experienced violence or prejudice. Additionally, they contribute to raising awareness about violence and impunity by employing shadow reports to foreign entities. NGOs have important roles in helping the government carry out more research related to LGBT issues and promoting the rights of homosexuals to eradicate discrimination. They also unite, educate, and empower the LGBT population.³³⁸.

Embracing a profound desire, despite the overwhelming opposition from the entire world, is not a simple task for everyone. Homosexual individuals frequently encounter instances of humiliation and societal bullying, leading to instances of suicide. Certain individuals who identify as gay may choose not to acknowledge their sexual orientation owing to societal pressures and concerns about parental disapproval. Through our analysis, we have examined many organizations and programs within the worldwide LGBT rights movement that employ diverse methods and techniques to promote their aims and objectives. For instance, certain individuals are employing litigation tactics in an attempt to revoke sodomy legislation in particular nations. Some individuals are cultivating stronger connections with previous adversary nations, whom they are encountering and acquainting themselves with during regional conferences or gatherings. The United Nations and its member states are under increasing pressure to include LGBT rights as a fundamental component of broader human rights. This involves promoting the extension of current

³³⁸ Matthew Farmer, *Transnational LGBT Activism and UK-Based NGOs: Colonialism and Power* (Springer International Publishing, Cham, 2020).

human rights laws and protections to cover gender identity, sexual orientation, and expression. Some individuals endeavour to enlighten the broad populace about the requirements and encounters of the LGBT community, occasionally anchoring their endeavours inside the customs and culture of specific nations or regions. To put it briefly, these collectives demonstrate a common commitment to advancing and defending LGBT rights, albeit they do so using different strategies³³⁹.

Although the guarantee of basic human rights to all persons is emphasized in international human rights treaties, there are substantial obstacles to its actual execution. However, the LGBT NGOs in India are making efforts to ensure that individuals of the third gender are granted the same fundamental rights as heterosexual individuals. Several LGBT NGOs have garnered significant attention and have had a transformative impact on society. In 2001, the Naz Foundation filed a Public Interest Litigation³⁴⁰ (PIL) to decriminalize section 377 of the Indian Penal Code (IPC). The Supreme Court of India subsequently struck down the prosecution of voluntary adult sexual behaviour, including homosexual intercourse, in the case of “*Navtej Singh Johar v. Union of India*”³⁴¹. Similar to this, Laxmi Narayan Tripathi, who is connected to several LGBT non-governmental groups, was one of the advocates for the recognition of the third gender in India and was the first transgender rights champion to represent the Asia Pacific area at the UN in 2008. Additionally, she is advocating for many LGBT rights, such as ensuring equitable job opportunities for this demographic³⁴².

NGO has to cooperate with health care providers to provide health care facilities, especially for mental health care because they are susceptible to having mental illness. The NGO has to work as a facilitator to foster good relations between the health

³³⁹ “Movement Advancement Project | International LGBT Advocacy Organizations and Programs,” available at: <https://www.lgbtmap.org/lgbt-movement-overviews/international-lgbt-advocacy-organizations-and-programs> (last visited June 15, 2024).

³⁴⁰ 160 (2009) DLT 277

³⁴¹ AIR 2018 SC 4321.

³⁴² Hena Khatun, “LGBT Movement in India” *Journal of the Department of Sociology of North Bengal University*, Vol. 5, 31 March (2018).

provider and LGBTs, to give health care without discriminating against them. In the prevention of discrimination, NGOs should introduce anti-bullying education in educational institutions, because it is the most strategic plan to prevent bullying among students as young as possible. The coming out process of LGBT usually happens at the school age. To mitigate the risk of violence and prejudice, adolescents often conceal their sexual orientation from their peers. This coping mechanism renders them inconspicuous to other sexual minorities within the school environment. Consequently, it would be more efficacious for non-governmental organizations (NGOs) to engage in efforts that implicate the educational institution³⁴³.

LGBT that already received discrimination will be mentally stressed; Therefore, NGO has an important role in alleviating that problem by increasing social support. Non-governmental organizations (NGOs) should prioritize the implementation of intervention and preventative programs to effectively address the significant influence of these contributing risk and protective variables within educational, familial, and communal settings. Non-governmental organizations (NGOs) have the potential to collaborate with doctors, instructors, and school counsellors to offer assistance through individual therapy or support groups to sexual minorities who have challenges assimilating into society and may experience marginalization from their peers. The promotion of a calm and tolerant atmosphere is likely to provide a greater number of comprehensive activities aimed at enhancing the adaptation of sexual minorities.³⁴⁴.

LGBT groups may promote the integration of LGBT individuals into the economy and society by putting the well-being of people before financial gain and economic interests. The International Labour Organization (ILO) argues in a 2021 document that the transgender community benefits from cooperation by increasing income levels and employment prospects, as well as by easing the shift from an informal to a formal community. Numerous services, such as housing, care, and banking, are made

³⁴³ Aditya Rifqi Fauzi and Meylani Hafizhah Ulfah Setyaningrum, "Study Implementation on The Impact of NGO for LGBT Mental Health Improvement in Yogyakarta" (2016).

³⁴⁴ Gregory M. Walton and Geoffrey L. Cohen, "A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students," 331 *Science* 1447–51 (2011).

easier by this program. It also increases negotiating power and produces resources. Additionally, it supports economic democracy and promotes training and education. Finally, it promotes inclusivity and workers' rights.³⁴⁵

This chapter defines the need to uplift the rights of the LGBT community and various reforms that help in the upbringing of the welfare of the LGBT community through the views of Sahayatrika- Kerala, NAZ foundation-Delhi, Kaleidoscope Trust- U. K, National Centre for Lesbian Rights- U.S.A, etc. are the NGOs selected for doing the research based on this topic.

6.2. Non-governmental organizations (NGOs) in India that are actively engaged in supporting the transgender population.

6.2.1. Sahayatrika.

The Sahayatrika group is dedicated to serving individuals of Kerala descent who identify as lesbian/bisexual women and transgender individuals.³⁴⁶ The term "Women fellow-travelers" is derived from the Malayalam language. The organization's primary focus is on providing counselling services, organizing community initiatives, and promoting the survival of women belonging to gender and sexual minorities. The initiative was initiated by Malayali Deepa Vasudevan, a Canadian immigrant. The group also engages in collaborative efforts aimed at enhancing public understanding of LGBT issues.

The formation of Sahayatrika occurred against the backdrop of increasing instances of lesbian suicide in Kerala at a specific period. The first deliberations on Sahayatrika took place in 2001. The inaugural initiative, in collaboration with FIRM, a mental health organization, commenced in the year 2002. Sahayatrika achieved independence and became a recognized organization in 2008³⁴⁷.

³⁴⁵ Vincenza Priola and Saoirse C. O'Shea, "LGBT* inclusion" *Encyclopedia of the Social and Solidarity Economy* 138–146 (Edward Elgar Publishing, 2023).

³⁴⁶ "Sahayatrika Human Rights - Academia.edu," *available at*: <https://independent.academia.edu/SahayatrikaHumanRights> (last visited June 15, 2024).

³⁴⁷ The Hindu Bureau, "Government, society have responsibility to bring queer community to mainstream, says Kerala Minister R. Bindu" *The Hindu*, 19 November 2022, section Kerala.

The 20th anniversary of the organization was commemorated in 2022 with the staging of a significant event known as Idam. Notable people and activists, including actress Shakeela, attended this event, which was formally launched by R. Bindu, Minister of Higher Education and Social Justice.

They are an activist forum defending the rights of transgender, bisexual, and lesbian women. It provides information for scholars looking into LGBT issues as well as assistance for sexual minorities. They organize outreach initiatives for sexual minorities, encourage individuals to visit, monitor incidents of LGBT violence within and in the vicinity of the city, and offer legal assistance. The organization offers a variety of services, such as seminars, social clubs, group meetings, self-help classes, counselling, health intervention, crisis intervention, and film festivals. The organization helps the LGBTQI community in every way it can from organizing visibility programs to lending a helping hand to individual members by providing employment support.

6.2.2. Sahodari foundation.

The Sahodari Foundation is a pioneering organization in India that has been advocating for the transgender and non-binary population of India from the year 2007³⁴⁸. Kalki Subramaniam, an artist, transgender rights activist, and writer, is the force behind the establishment of the association, which functions as a family, a movement, and a network of young transsexual people. Although it was established in 2008, this foundation does not adhere to the conventional association structure. Instead, they function according to the requirements. As they have concluded their twelve-year tenure, they have been active in providing assistance and education to individuals in India regarding transgender rights. Since 2012, they have focused their emphasis on gaining legal recognition, and they have campaigned in a variety of locations across India. They have been working toward the goal of empowering transgender people in every way available since 2017.

³⁴⁸ “About,” *Sahodari Foundation | Centre for Transgender Empowerment* available at: <https://sahodari.org/about/> (last visited June 15, 2024).

The primary goals of the Sahodari Foundation are:

- to advocate for the civil and legal rights of those who identify as intersex or transgender, as well as to promote social, political, and monetary equality.
- Working to establish a gender non-affirming, intersex, and transsexual community that is welcoming, economically equitable, and environmentally sustainable for all persons.
- It's also critical to eradicate discrimination and restrictions based on several factors, including age, sexual orientation, gender, ethnicity, nationality, socioeconomic status, and religious affiliation.
- To guarantee the protection of the whole spectrum of transgender and intersex individuals and to eradicate discrimination based on gender identification.

Several accolades and awards have been bestowed on the aforementioned association in recognition of the significant contributions it has made to society. As part of their project activities, Sahodari extends an invitation to potential investors. Little donations from friends and those who wish them well are now being used to support their efforts.

6.2.3. Udaan trust.

Udaan Trust is a non-governmental organization in the Indian subcontinent that operates within the state of Maharashtra. Established by LGBT persons who are currently living with HIV/AIDS, it is the first HIV/AIDS association of its kind. The challenges of sexual well-being within homosexual and transsexual networks are at the core of Udaan, particularly about the fight against HIV/AIDS. To accomplish this goal, Udaan provides several forms of support to groups that are at risk, including the distribution of condoms, sexuality education, guidance, and therapeutic benefits. Similarly, Udaan seeks to increase awareness of issues that affect both the LGBT community and those living with HIV/AIDS. The association is not only designed to provide these individuals with various forms of help but it is also intended to reflect the preferences of these individuals. To add insult to injury, this is mostly because Udaan employs persons who are transgender, males who engage in sexual encounters with other men, and people living with HIV/AIDS, respectively. All six members of

the Board of Directors are HIV-positive persons, and every one of them is a member of the organization.³⁴⁹.

Udaan is also responsible for the care of an organization that serves around one thousand five hundred people who are living with HIV. This organization is sponsored by contributions. Pune, Mumbai, Thane Locale, Jalgaon, Raigad Area, Ahmednagar, and Nashik are some of the locations where it has working locations. Udaan functions under the parameters set out by Avert Society, a joint venture between the Indian and American governments. In June 2011, the National AIDS Control Organization (NACO) of India declared it to be ineffectual, citing it as one of numerous such groups.³⁵⁰.

6.2.4. Gay Bombay.

The Gay Bombay (abbreviated as GB) is a lesbian, gay, bisexual, transgender, and queer social organization that was founded in Mumbai, India, in 1998³⁵¹. The organization aims to increase awareness of LGBT rights via a variety of events, including parties, film screenings, and workshops. The group's mission is to provide a safe space for LGBTQ people.

Furthermore, it is one of the LGBT support networks in Mumbai that has been around the longest, and it has been the facilitator of events in a variety of clubs since the year 2000. Dance parties, picnics, film celebrations, movie screenings, guardians' meetings, hiking, cooking, speed dating, early lunches, counselling sessions, get-togethers, social events, and discussions about HIV/AIDS and relationships are just a few of the LGBT events that Gay Bombay is in charge of organizing.

Gay Bombay arranged a gathering in July 2009 to show their gratitude for the Delhi High Court's decision to de-condemn homosexuality in India. The Queer Media Collective Awards were initiated by Gay Bombay in the year 2008 to acknowledge

³⁴⁹ "About Us," *Udaan Social Empowerment Trust* available at: <https://udaan-trust.org/about-us/> (last visited June 16, 2024).

³⁵⁰ "Udaan Social Empowerment Trust," *Udaan Social Empowerment Trust* available at: <https://udaan-trust.org/> (last visited June 16, 2024).

³⁵¹ "Gay Bombay," *Gay Bombay*, 2024 available at: <https://gaybombay.in/> (last visited June 16, 2024).

and appreciate the assistance that the media has provided to LGBTQIA+ movements in India. Also, it organizes a talent event called the Gay Bombay Talent event every year to provide LGBT artists and entertainers with a stage to perform on. Gay Bombay presented Dominic D'Souza with an accolade in May 2017. He is the one and only AIDS campaigner in India. D'Souza's non-governmental organization, Positive People, was the subject of a short video that was shown.³⁵²

6.2.5. Sappho For Equality.

Sappho for Equality is the only enrolled association in Eastern India fighting for the rights and social justice of transmen (female to male transpersons) and socially underprivileged women³⁵³. It was established in October 2003 and has been working toward this goal ever since. Through its extraordinary efforts, it seeks to transform the society of cisgender individuals into a supporter of the LGBTQIA+ community. Sappho's essential components for achieving equality are as follows: A society that is free from sexuality-based segregation and in which the advantages of sexual minorities are secured. This is a visionary society. The mission of this organization is to address the challenges that are related to sexually disadvantaged women and transgender people who are female to male in society. To challenge the prevalent notion of a sexual "mainstream" as opposed to a "margin" is an example of ideology. When it comes to politics, the goal is to go beyond identity-based politics and into a politics of opinion. Furthermore, those who oppose the concerted efforts of heterosexism, homophobia, and both hetero and homo-normative are given a platform to express their opinions, irrespective of their gender or sexual orientation.

³⁵² "LGBTQ Support Groups To Bookmark This Pride Month | LBB," *LBB, Mumbai* available at: <https://lbb.in/mumbai/lgbt-support-groups-mumbai/> (last visited June 16, 2024).

³⁵³ "Our Mission," available at: <https://www.sapphokolkata.in/lesson/details/our-mission> (last visited June 17, 2024).

Actions to take:

Sappho for Equality has a three-pronged approach to its work:

- i) Giving the community more powers.
- ii) Communicating with various groups and associations to address issues about broad common society and system organization.
- iii) lobbying or advocating with the state, or being bound by the state.

6.2.6. The Humsafar Trust.

The Humsafar Trust (HST) was established in April 1994 by renowned writer Ashok Column Kavi to assist LGBTQ communities in the Mumbai Metro and its surrounding regions.³⁵⁴ It was established as a consequence of intensive lobbying and networking with the Mumbai Municipal Corporation, and it was the first openly LGBT community-based organization in Mumbai to be given space in a public building. Lesbian women and gay men were invited to attend the Trust's Friday lectures at its drop-in focus as part of its initial operation. This marked the start of the Trust's operations. The drop-in centre hosted a variety of programs that included topics such as HIV/AIDS and the basic freedoms of LGBTQ individuals. As time went on, it became abundantly clear that the trust needed to have a strong focus on the fundamental liberties and well-being of the local community. In the most recent twenty years, the endeavour program has made contact with more than 110,000 individuals who identify as gay, individuals who engage in sexual encounters with other men, and transsexual individuals. More than 700,000 condoms were confiscated regularly at more than 129 real locations in Mumbai³⁵⁵.

Additionally, about 40,000 HIV tests and 70,000 sexually transmitted infections were checked for, and medications were distributed. Additionally, through its web-based media and online outreach programs, this group can communicate with over 10,000 homosexual men and men who have intercourse with males and transsexual networks on an annual basis.

³⁵⁴ *available at:* <https://humsafar.org/about-us/> (last visited June 17, 2024).

³⁵⁵ *Id.* at 188.

In Mumbai, general health care delivery systems such as LTMG, Nair, KEM, and JJ Clinics are among the organizations with which higher specialist training workflow offers collaboration. Within the premises, centres are open for business five days a week, and they are staffed by three competent specialists and two lab experts who provide customer service. In addition, a clinical psychologist is working throughout the day alongside a group of four local area guides, two well-being facilitators, and a nutritionist to provide wholesome counselling assistance to participants in the program. To educate groups such as medical care professionals, law enforcement offices, legal executives, politicians, legislators, political parties, government bodies, media, and student communities about concerns about gay, lesbian, bisexual, transgender, and transgender people, HST organizes advocacy seminars.

Furthermore, it has continued to support the care groups SANJEEVANI for HIV-affected individuals, UMANG for lesbian, gay, bisexual, and transgender people, and YAARIYAN for young LGBTQ people. Additionally, HST provides its communities with legal assistance, emergency assistance, mental well-being, and nutrition counselling services.

6.2.6.1. The Humsafar Trust has seen human rights violations throughout its operations that have been directly caused by Section 377 of the Indian Penal Code.

The Supreme Court of the United States decriminalized sexual conduct between consenting adults on September 6, 2018, as part of its landmark judgment addressing Section 377. "A person's sexual orientation is intrinsic to their being," the Supreme Court said in its decision, and society cannot dictate how sexuality is expressed among individuals who have already consented³⁵⁶. The decision is a victory for LGBTQ organizations in India, and the extraordinary finding may be used to further the civil rights and equality that the Indian constitution guarantees to all Indian citizens. The ruling not only closes the door on a tragic chapter in Indian history, but it

³⁵⁶ Aakanksha Ahire, "A Helping Hand for the LGBTQ Community: Interview with Pearl Daruwalla" *Youth Incorporated Magazine*, 2019 available at: <https://youthincmag.com/interview-with-pearl-daruwalla-of-humsafar> (last visited June 20, 2024).

also opens the door to a variety of new prospects. Although the decision is seen as a tremendous victory, the LGBTQ community's civil rights struggle must continue more responsibly. It is crucial to provide safe spaces for LGBTQ individuals and to strive for greater group cohesion³⁵⁷.

During the period from September 6 to October 8, the Humsafar Trust (HST) organized five community gatherings. These consultations were intended to gauge community reaction and collect ideas for LGBTQ rights beyond Section 377 recommendations. Thirty-three lesbian, homosexual, bisexual, and transgender people participated in a one-day consultation session led by Umang, during which they discussed their thoughts on the advocacy needs that have emerged since Section 377. As a result of the verdict, they proposed several different courses of action to fight for equal rights. In addition to reforming adoption and marriage laws, they outlined their community goals, which included establishing anti-discrimination legislation, increasing education and sensitization efforts, expanding community outreach, improving healthcare access for members of the LGBTI community, and increasing media coverage of LGBTI individuals.³⁵⁸

6.2.6.2. Information on the petition that the Humsafar Trust filed with the Supreme Court:

Ashok Row Kavi, the founder and chairman of The Humsafar Trust, Vivek Anand, the CEO of the organization, Suhail Abbasi, the trustee, and two employees, Yashwinder Singh and Gautam Yadav, were the petitioners before the Supreme Court. A variety of LGBTQ community problems have been covered by the Trust, including coming out to oneself and one's family, managing relationships, addressing legal concerns for homosexual men, and dealing with crises affecting families, cheaters, extortion, blackmail, and violence against the LGBTQ community. The Trust has taken this

³⁵⁷ D. C. Correspondent, "Humsafar Trust moves Supreme Court against Sec 377," 2018 *available at*: <https://www.deccanchronicle.com/lifestyle/sex-and-relationship/020518/humsafar-trust-moves-supreme-court-against-sec-377.html> (last visited June 20, 2024).

³⁵⁸ *Available at*: <https://humsafar.org/about-us/> (last visited June 20, 2024).

action due to concerns about Section 377 of the Indian Penal Code, which makes it illegal for two adults to have consensual intercourse in a private setting.

The petition claimed that Section 377 of the Indian Penal Code directly violated Articles 14, 15, 19, and 21 of the Indian Constitution by depriving LGBTQ people of their rights to equality before the law, freedom of expression, personal autonomy, and dignity. Blackmail, extortion, and harassment were the initial uses of Section 377 of the Indian Penal Code. In the appeal, the highest court was asked to stop the government from enforcing section 377, which deals with consenting, private, adult-to-adult sexual behaviour. Between 2016 and 2018, the HST's crisis response team responded to 83 distinct crisis occurrences in Mumbai. Six of these 83 incidents included police blackmailing an adult homosexual male out of concern that they would be breaking Section 377 of the Indian Penal Code. In a total of twelve instances, adult gay males were subjected to extortion by regular people, sometimes amounting to one hundred thousand rupees, and were threatened with filing a fake report under Indian Penal Code Section 377.

In an online survey administered by HST to gay men and transgender individuals, roughly 57% of respondents said they had at least once in their lives been afraid of and misused the law under Section 377 of the Indian Penal Code, with the degree of fear and misuse varying from person to person. In addition, 37% of those surveyed reported being victimized in the year before the poll. According to crisis data reports compiled by HST, there have been 52 separate incidents in which LGBTQ individuals have been subjected to harassment and discrimination in the workplace and hospital settings due to their identification. However, none of these individuals have sought or may have been able to pursue legal remedies.

An investigation with the title "Understanding the Impact of the Supreme Court Judgment on Section 377 on LGBTQ Communities" was carried out by HST over the year 2016. The results showed that, after the Supreme Court's decision to decriminalize homosexuality, two out of every five LGBTQ people had either been the victim of extortion or knew someone who had been blackmailed.

According to a 2017 study conducted by the Human Rights Trust (HST) with transgender people in three cities (Bangladesh, Delhi, and Mumbai), 59% of

transwomen had experienced assault. Lesbian women, bisexual women, and transgender individuals (transmen specifically) were also affected by Section 377. It is intended to harass lesbian couples and to obstruct the formation of lesbian relationships. Section 377 has been the subject of several complaints of harassment and attempts to deter lesbian couples from being together during their relationship. Lesbian couples who wanted to be in a relationship with someone of the same gender were harassed by police and their families in four cases between 2017 and 2018, according to the Humsafar Trust's LGBT support group Umang³⁵⁹.

6.2.7. Kaleidoscope Trust.

The Kaleidoscope Trust advocates for the human rights of LGBTI+ individuals across the Commonwealth and beyond. In more than 25 countries, it collaborates with activists, organizations, and networks that defend the rights of LGBTI+ individuals to make sure they have the resources, know-how, and training necessary to influence people's opinions.³⁶⁰ The Kaleidoscope Trust is a non-governmental organization (NGO) that promotes LGBT+ people's human rights globally as of 2017. Its main objective is to help build a society where people who identify as LGBT+ are free, safe, and treated equally everywhere. It works both in the UK and overseas to ensure that global LGBTI+ issues are given priority in foreign policy decisions, legislation, and financing. The Trust is now led by Simon Millson, who serves as the Chair of the Trust Board. The President of the Trust is the Right Honourable of the Lord Fowler³⁶¹.

The organization partners with other groups that are already promoting LGBT+ rights in other nations via the use of international lobbying. This is done to make it easier for these organizations to achieve their objectives. It is well situated to promote LGBT rights throughout all Commonwealth countries since its headquarters are in the United

³⁵⁹ Nikita Doval, "The third gender seeks inclusion" *mint*, 2015 *available at*: <https://www.livemint.com/news/business-of-life/the-third-gender-seeks-inclusion-1540990754564.html> (last visited June 20, 2024).

³⁶⁰ "Our Work," *Kaleidoscope Trust* *available at*: <https://kaleidoscopetrust.com/our-work/> (last visited June 20, 2024).

³⁶¹ *available at* <https://www.consortium.lgbt/about-us/> (last visited June 20, 2024).

Kingdom. Out of the Commonwealth's 54 states, 32 have criminalized gay activity as of 2023.

In March of the same year, it was announced that Kaleidoscope Trust would be the official charity partner for World Pride 2012. The Kaleidoscope Trust was instrumental in persuading Theresa May, the British prime minister at the time, to express her "deep regret" for the colonial-era legislation that criminalized LGBT+ people in 2018³⁶².

Obligation

- magnify the voices of LGBT people so that they may be heard in locations that they might not otherwise be able to reach;
- Pay attention to the opinions of LGBT individuals in countries where discrimination, prejudice, and/or laws threaten their rights,
- communicate with them to convince the public and political opinion of the cause for an end to prejudice; this should be done in conjunction with them.

One of the things that Kaleidoscope Trust does is listen to the testimonies of people who are living in their home countries and experiencing prejudice and discrimination.³⁶³ Kaleidoscope Trust uses its connections to the British government, the UK parliament, and the Commonwealth and EU institutions to increase their calls for LGBT rights to be recognized as human rights. To transform the requests of civil society organizations, employers, religious organizations, and other groups into effective change, they collaborate with these groupings.

To encourage a more informed public and political conversation around LGBT human rights, Kaleidoscope Trust is always searching for innovative ways to share the testimonies they have collected over the years. When asked to collaborate with local

³⁶² Jessica Geen, "Speaker launches gay rights group Kaleidoscope" *PinkNews* | *Latest lesbian, gay, bi and trans news* | *LGBTQ+ news*, 2011 available at: <https://www.thepinknews.com/2011/09/14/speaker-launches-gay-rights-group-kaleidoscope/> (last visited June 20, 2024).

³⁶³ Matthew Waites, "LGBTI organizations navigating imperial contexts: the Kaleidoscope Trust, the Commonwealth and the need for a decolonizing, intersectional politics," 65 *The Sociological Review* 644–62 (2017).

organizations, they support them in changing national perceptions and ending discriminatory practices, laws, and policies to allow LGBT people to live free and independent lives. The support we get from our contributors is essential to their capacity to carry on defending the rights of LGBT people worldwide.³⁶⁴ Amicus Curiae or co-petitioner and respondents are individuals who serve in the capacity of providing the judicial system with contextual knowledge on their particular communities. Organizing LGBT support groups or forums is a strategy for norm dissemination that aims to connect the LGBT community and/or religious groups in the United Kingdom with their goal of addressing LGBT feelings. This is accomplished by organizing group training, conferences, and other gatherings to discuss LGBT interests.

By litigating cases of LGBT discrimination, a norm diffusion strategy may be utilized to establish anti-discrimination precedents inside the realm of jurisprudence. This strategy aims to defend LGBT plaintiffs based on sustaining nation- or state-identified values, such as confidentiality, diversity, and dignity. A further benefit of the lawsuit strategy is that it improves legal literacy by increasing knowledge of human rights accords. In addition, litigation raises awareness about rights concerns and leads to increased mobilization. Writing policy papers to officials in international organizations or preparing drafts of international resolutions are examples of activities that fall under the category of lobbying. Lobbying can be focused on either the national or international level. A tight working relationship with political elites was achieved through the utilization of political pressure during situations that sparked public attention. As part of their efforts to legitimate their value frameworks with political actors, non-governmental organizations (NGOs) engaged inside constitutional advisory bodies and received support from the President³⁶⁵.

³⁶⁴ “Kaleidoscope Trust | LinkedIn,” *available at*: <https://uk.linkedin.com/company/kaleidoscope-trust> (last visited June 20, 2024).

³⁶⁵ Vincenza Priola and Saoirse C. O’Shea, “LGBT* inclusion” *Encyclopedia of the Social and Solidarity Economy* 138–146 (Edward Elgar Publishing, 2023).

6.2.8. International Lesbian, Gay, Bi, Trans, And Intersex Law Association (ILGLAW)³⁶⁶.

The rights and advantages of people who identify as LGBT are governed by a great deal of legislation worldwide. Lesbian, homosexual, bisexual, and transgender people should be informed that, even though many countries have started to enact legislation recognizing LGBT people as equals, there is still a chance that they might be in danger. The mission of the International Law Group Law (ILGLaw) is to bring together individuals from all over the globe who are committed to equality under the law. Advocates can contribute to the creation of legislation and regulations that are beneficial to the LGBT community rather than harmful to it. Members of the LGBT community may be impacted by several legal areas. Laws that ban gay activity specifically target the LGBT population. Other rules, on the other hand, are only marginally tied to LGBT rights policies. It is essential to comprehend the degree to which LGBT lives are governed in different parts of the world. Only then can attempts be made to (a) support legislation that acknowledges and protects LGBT individuals and (b) abolish legislation that criminalizes or condemns LGBT behaviour.

Government laws shouldn't have the power to determine whether a person's sexual orientation is acceptable. There are 122 United Nations (UN) member nations as of 2018 that do not have laws that punish someone for willingly having intercourse with someone of the same sex to foster sexual closeness. Several of these countries, like Vietnam and Poland, have never discriminated against anybody based on their sexual orientation. Other states have recently changed their laws to remove discriminatory provisions against LGBT persons, including Belize and Seychelles.

Unfortunately, there are strict laws governing sexual orientation and conduct amongst individuals of the same gender in several countries worldwide. Currently, laws in 72 countries specifically prohibit having intercourse with someone of the same gender. Approximately one-third of these laws only apply to men alone. Sexual conduct

³⁶⁶ "International Lesbian & Gay Law Association," *International Lesbian & Gay Law Association* available at: <https://ilglaw.org/> (last visited June 21, 2024).

between people of the same gender is punishable by death in eight of these nations. At least three of these nations are reported to have the death sentence in place for crimes committed by people of the same gender. Other laws that are currently in place may not shield LGBT individuals from discrimination, even if some countries may not expressly prohibit or punish behaviours that include people of the same gender. Legislation that prohibits discrimination helps to ensure that people who identify as LGBT do not have to endure prejudice that is both unwarranted and debilitating in areas such as housing, work, civil rights, and education.

Sexual orientation is formally included as a protected category among the many groups of persons in the constitutions of nine different countries, including Kosovo and Nepal. There is no other degree of security that can be guaranteed higher than this one. Several other nations, notably South Africa, have recognized LGBT freedoms via the implementation of other legislation or decisions made by the courts. People who identify as LGBT face higher rates of discrimination, persecution, and social isolation in states without anti-discrimination legislation³⁶⁷.

6.2.9. Naz Foundation and the Legal conflict.

Since its founding in 1994, the Naz Foundation (India) Trust has garnered a great deal of recognition for its groundbreaking contributions to the area of HIV/AIDS prevention working within the LGBTQ+ community. Individuals who identify as queer are offered support, counselling, and healthcare services by this organization. The “*Naz Foundation v. Government of the National Capital Territory of Delhi*”³⁶⁸ The case, which took place in 2009, is credited as being the catalyst for the organization's revolutionary work in the legalization of homosexuality.

The NAZ Foundation (India) Trust (NI), a New Delhi-based non-governmental organization (NGO), was established in 1994 and has since focused on HIV/AIDS and sexual health concerns. In particular, they filed a writ suit with the Delhi High

³⁶⁷ “International Lesbian, Gay, Bi, Trans, and Intersex Law Association (ILGLaw),” *Career Center | University of Southern California*, 2021 available at: <https://careers.usc.edu/organizations/international-lesbian-gay-bi-trans-and-intersex-law-association-ilglaw/> (last visited June 21, 2024).

³⁶⁸ AIR 2014 SC 1863.

Court contesting the legality of Section 377 of the Indian Penal Code. They argued that Section 377 infringed upon the fundamental rights guaranteed by Articles 14, 15, 19, and 21 of the Indian Constitution. It brought the complaint in the public interest, arguing that it was being hindered to the point that it was preventing its attempts to stop the spread of HIV/AIDS. The Ministry of Health and Family Welfare and the Ministry of Home Affairs (MHA) both offered their legal opinions in response to the writ petition.

While the Ministry of Health was in favour of the Naz Foundation, the Ministry of Health was opposed to this development. The Delhi High Court provided a thorough examination of the constitutionally given rights in its ruling in the matter of “*Naz Foundation v. Government of the National Capital Territory of Delhi*”³⁶⁹. The decision marked a significant step forward for the cause of social justice and equality. The Delhi High Court concluded that "Indian Penal Code Section 377 insofar as it criminalizes sexual acts of adults that are performed in private with their consent, violates Articles 21, 14, and 15 of the Constitution."

It was determined that the Delhi High Court had erred in both its conclusions and its interpretation of the clause permitting two people of the same sex to engage in consensual gay activity. In the matter of “*Suresh Kumar Koushal and others v. NAZ Foundation*”³⁷⁰, the Supreme Court of India heard an appeal against this ruling. The Delhi High Court's conclusions were deemed to be inaccurate. Justice Singhvi stated that Article 377 is pre-constitutional legislation and that the Parliament would have recognized the violation and removed the provision long ago if it had violated any of the rights guaranteed by Part III. The court concluded that Section 377 does not violate Articles 14, 15, and 21 and that carnal intercourse, which the petitioners meant to represent unnatural desire, should be penalized. The provision was deemed constitutionally lawful by him based on this line of reasoning. In addition, he stated that the presumption of constitutionality is the source of the habit of reading down a particular portion as well as the severability theory. Additionally, he said that the

³⁶⁹ AIR 2014 SC 1863.

³⁷⁰ AIR 2014 SC 563.

Delhi High Court erred in its judgment to read down the relevant provision since no portion of it could be removed without impacting the section as a whole. Therefore, the Supreme Court of India decided that there are no constitutional problems with Section 377 of the Indian Penal Code. Whether it would be desirable and legal to remove the clause from the statute book or to change it to permit private, sex-related activities between two adults of the same sex was left up to the competent legislature after this verdict.

In 2006, Naz India was responsible for putting into action the Goal Programme, which was a project of Standard Chartered Bank Community Investment. On and off the court, it does this by transforming the lives of young girls from disadvantaged backgrounds in India via the use of netball and instruction in life skills. Building self-confidence and providing a better life for teenage females is the goal of this campaign, which is a joint effort involving several stakeholders.³⁷¹.

The Hero's AIDS Project was a nationwide HIV/AIDS effort that was created in 2004 to work with media organizations and society leaders in India. Naz was a participant as part of this project. Through activism and communication, it seeks to accomplish its goals of addressing the problems associated with HIV/AIDS and reducing prejudice. When Naz was working with The Condom Project (TCP), she was responsible for educating the general public about condoms and how they may help prevent the spread of HIV. TCP uses non-traditional methods such as art, performance, and educational programs to lessen the social stigma associated with condom usage and to convey the message that condoms are effective in saving lives.

6.2.9.1. Background of the case.

In a landmark case, the Naz Foundation, a non-governmental organization (NGO) that supports and works with individuals living with HIV/AIDS, filed a writ petition against the Delhi government, claiming that Section 377 of the Indian Penal Code was

³⁷¹ *available at:*

https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001812/M027798/ET/1521117356SAUMYAUMAMODULE4QUAD1.pdf (last visited June 21, 2024).

unconstitutional. “*Naz Foundation v. Government of Delhi*”³⁷² Was the name of this lawsuit. Section 377, "Of Unnatural Offences," has been a part of the legal books since 1861. It has effectively turned into a divisive topic as many believe that it oppresses and denies the freedom and choices of a certain minority and group. Section 377, according to the Naz Foundation, was found to be a violation of the basic rights protected by Articles 14, 15, 19, and 21 of the Indian Constitution. It maintained its view that it was in the public interest to do so, arguing that the discrimination the LGBT community was facing as a result of Section 377 was impeding its attempts to stop the spread of HIV/AIDS. The petitioners claimed that as a result of this discrimination, public officials engaged in abuse, harassment, and assault, as well as violations of other fundamental and fundamental human rights. The LGBTQ+ community was thus forced to hide out and become a shell of who they were. According to the legislative archives, the earliest documented instances of sodomy in England were classified as common law offenses. The Fleta reported this crime in 1293, and Britton followed in 1300. Lord Macaulay was the one who conceived the Indian criminal code, which was officially implemented in the conquered India in the year 1861. Those who had complete and perfect control over Indians' thoughts created this legislation, and the fact that it is still in effect now attests to their ability to influence our laws as well. This is the primary debate and the most significant talking point in this situation. Many people believe that this legislation is still out of date and that it should be revised so that it also takes into account the demands of minority groups³⁷³.

It was decided by the High Court of Delhi that "Section 377 of the *Indian Penal Code*, insofar as it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14, and 15 of the Constitution." This ruling has been praised for its comprehensive legal rationale as well as for being a historic win for social justice and equality. Two factors make the High Court's articulation of the right to equality

³⁷² 160 (2009) DLT 277.

³⁷³ “Supreme Court Judgment against Section 377 | Economic and Political Weekly,” 2018 *available at*: <https://www.epw.in/journal/2018/39/commentary/supreme-court-judgment-against-section.html> (last visited June24, 2024).

(Articles 14 and 15 of the Indian Constitution) particularly noteworthy. The declaration of the right to equality is especially remarkable, even though many other parts of the verdict would have a big influence on LGBT rights in India. The first thing that should be commended about the judgment is the cohesiveness that it has on a holistic basis. The Indian High Court has made it difficult, if not impossible, to overturn the decision based on misinterpretation or the law's promiscuous connotation. This is due to the High Court's thorough and comprehensive assessment of Indian legislation regarding discrimination based on sexual orientation.

Second, by citing and applying the highest international equality norms to the Indian context, the High Court established a constructive and uplifting precedent that ought to inspire and encourage judges in countries that now ban same-sex behavior. This is a result of the India High Court citing and upholding the strictest international equality norms. The High Court said at the outset of its analysis of Article 14 that every classification or difference must be based on a reasonable differentiation that makes sense about the goal being pursued and cannot be unreasonable or unfair³⁷⁴.

The Court's decision states that Section 377 does not distinguish between private and public actions or between acts that are not consenting and those that are. Therefore, crucial factors like age, permission, the kind of conduct, or the absence of injury are not taken into account. In light of this, the criminalization of such behavior in the absence of proof of injury seemed to be both antiquated and irrational. The United States Supreme Court considered the Equal Rights Trust's Declaration of Principles on Equality, which was issued by the legal principles set out in Article 14 of the Constitution. This declaration is considered to be "the current international understanding of Principles on Equality." Sexual orientation must be included as one of the protected reasons for discrimination and state indirect discrimination and harassment, according to the High Court, in any analysis of the right to equality. It accomplished this by fully referencing the Declaration's Principles 1 (right to equality), 2 (equal treatment), and 5 (definition of discrimination), in addition to important case law from US, Canadian, and South African courts.

³⁷⁴ *Id.* at 199.

In response to the claim that Section 377 was neutral, the High Court ruled that, even though the provision appeared to be neutral and targeted acts rather than people, it unfairly targeted a specific community, making all gay men criminals. This, in turn, violated Article 14 of the Constitution. The claim that Section 377 was neutral was refuted by this statement. Furthermore, the High Court cited the Human Rights Committee's ruling in *Toonen v. Australia*.³⁷⁵, which concluded that criminalizing sexual acts between men violated Article 2 of the International Covenant on Civil and Political Rights. The Naz Foundation was able to ascertain whether the term "sex" in Article 15 of the Constitution should be interpreted as encompassing sexual orientation because discrimination against the latter is predicated on sex-based stereotypes³⁷⁶.

As a result of the High Court's examination of human rights precedents from both India and other countries, it was determined that Section 377 violated the Constitution because Article 15 was violated: We contend that discrimination based on sexual orientation is prohibited under Article 15 since it is a ground that is analogous to sex. For more information, the concept of horizontal application of rights is included in Article 15(2). Said another way, it prohibits discrimination against another citizen when it comes to access to public spaces. Sexual orientation discrimination is prohibited, even when it comes to the horizontal application of the right guaranteed by Article 15. In a summary of its decision, the High Court of India emphasized the significance of preserving the values of inclusiveness, tolerance, and equality in Indian culture.

The court said, "If there is one constitutional tenet that can be said to be the underlying theme of *the Indian Constitution*, it is that of 'inclusiveness'. *The Constitution of India*, in the opinion of this Court, represents this ethos that has been deeply embedded in Indian culture and has been cultivated throughout numerous generations. Recognizing that everyone has a place in society is a manifestation of the

³⁷⁵ CCPR/C/50/D/488/1992 (1994).

³⁷⁶ Chandrika, Suresh Kumar Koushal v NAZ Foundation and Others Case Comment, International Journal of Law Management and Humanities (2018) available at <https://www.ijlmh.com/wp-content/uploads/2019/03/Suresh-Kumar-Koushal-another-V.-Naz-Foundation.pdf>

inclusion that Indian culture has always demonstrated, which can be seen literally in every facet of life. Individuals who are seen to be "deviants" or "different" by the majority are not left out of consideration on this count. The Delhi High Court's decision has, at least temporarily, declared the country's laws prohibiting adults from engaging in consensual same-sex relationships illegal. As a result of the fact that the writ petition concerned a constitutional issue, the verdict would have implications throughout the whole of India. On the other hand, the verdict is only applicable to adults. Therefore, "Section 377 will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors," as expressed in the previous sentence. It would seem that the Central government has chosen to opt out of challenging the ruling.³⁷⁷

Meanwhile, according to author Ratna Kapur, "at least nine other petitions have been filed in the Supreme Court." Baba Ramdev, the brand ambassador for Pranayama Yoga and Ayurveda, filed the petition that is regarded as the most well-known. There are many reasons for the concerns, ranging from claims that homosexuality is an illness that has a cure to statements of concern about the cultural identity crisis that the decision would bring about. The majority of the challenges assert that homosexuality is linked to the widespread promiscuity that is prevalent in the Western world, which is characterized by hedonism and pleasure for reasons that do not seem to be a part of our genetic cultural inheritance.

Even though it is widely believed that there will be a considerable amount of time before the Supreme Court issues a definitive verdict, it is crucial to note that there were very few criminal prosecutions during the period when Section 377 was in force. The acceptance and propagation of harassment, victimization, and persecution of LGBT individuals by law enforcement and other officials under Section 377 has resulted in severe human rights violations and the inability of LGBT people to live their lives with the same dignity and equality as other members of Indian society. This is the most significant challenge that Section 377 has faced. The occurrence of

³⁷⁷ Think Change India, "Meet the 5 petitioners who challenged Section 377" *available at*: <https://yourstory.com/2018/09/five-petitioners-section-377-supreme-court> (last visited June 25, 2024).

harassment and discrimination of this kind will not occur automatically. People who identify as LGBT will continue to be subjected to harassment and discrimination by members of law enforcement and from a larger segment of society, even though all of these behaviors would be plainly in violation of the law from this point forward.

To make matters worse, it will take some time for the judgment to "bed in," or become deeply embedded in the public's consciousness. Advocates have already asserted that certain law enforcement agencies have not been informed that homosexuality is no longer a crime. Simultaneously, there is a pressing need to raise awareness among LGBT people and law enforcement, as well as to educate the LGBT community about their recently obtained legal rights and reinforce the significance of the ruling.³⁷⁸

The Court concluded that Section 377 "does not suffer from the vice of unconstitutionality" without doing any more investigation beforehand. It therefore overturned the decision that had been made by the Delhi High Court.

6.3. Factors That Contribute to The Array of Challenges That the LGBT Community in India is Confronted with.

- The lack of a well-defined and appropriate sex education program:

The concept of sexuality is still considered to be quite taboo in our culture; nonetheless, sexuality education is an essential component of the maturation process that we go through. On the other hand, we have gone a long way, and there has been a significant rise in the levels of knowledge about the birds and bees among the adolescents who are a part of modern society. When it comes to LGBT individuals who are growing up in Indian culture, however, the situation is quite depressing. When it comes to becoming filthy, the majority of us have no clue how to go about it unless we do some "research" in the real world.

³⁷⁸ "Queer Persons' Right to Marry: Court in Review," *Supreme Court Observer* available at: <https://www.scobserver.in/journal/court-in-review-queer-persons-right-to-marry/> (last visited June 25, 2024).

- Health concerns are always disregarded and ignored.

If you were raised in a heterosexual household, the risks connected with sexual activity were limited to the possibility of becoming pregnant by accident and contracting sexually transmitted illnesses. Nonetheless, there are a number of health problems linked to homosexuality that are seldom brought up in public conversations. We end up neglecting health problems that might pose a danger to us since there is a high number of sexually transmitted diseases (STDs) in the world, and there is a shortage of information that is readily accessible.

- The vile labelling and homophobic slurs have no end in sight:

Members of the LGBT community must deal with verbal abuse every day in addition to the fact that they are far too often the targets of violent attacks. The majority of the time, the terms "gay" and "faggot" are used in a casual way that conveys a negative sense, which is unacceptable. An expletive is not someone who is gay.

- Becoming gay is still often disregarded as a mental illness in today's society:

Even though we live in an era of knowledge, the frightening lack of understanding that persists is a problem. Furthermore, this is not just the case among the older generation which is unable to accept the reality of other sexualities; it is also the case among the millennial age. It is quite depressing to come across young people who seem to have a high level of education but who are giving forth ideas that are not informed.

- The act of coming out is a challenge that they are required to face each and every time they come into contact with a new person.

When a person comes out to their loved ones about their sexual orientation, it is one of the most difficult and gut-wrenching events that they could ever imagine going through in their lifetime. The notion of them talking about their sexuality and discussing it with every individual they come into contact with is not very appealing, even though they have survived that trauma without suffering any injuries. There is a danger of being shunned and abused for just being who they are, in addition to the regular passing of judgments that are not always reasonable.

- When it comes to LGBT people, sexual assault is a reality.

Same-sex sexual assault victims are invisible to specialists who are used to dealing with male-on-female rape, and they are shunned by a society that will accuse victims of destroying their beautiful vision by considering them to be an inconvenience. There are still a lot of individuals who have a hard time accepting the idea that it is even conceivable for a woman to rape another person. Clarifying the truth of the situation draws parallels to a lesbian who is wicked and predatory, but denying it is not doing much to combat the pandemic of gay people being raped.

- Constantly being confronted with questions that are impolite and uncomfortable.³⁷⁹

The desire to dive into the specifics of one's private sexual life is a point of outright rudeness, even though they are more than welcome to ask questions and explain any misconceptions they may have about their comprehension of other sexualities.

- The community is present with permanent problems in and of itself.

On this particular occasion, there was a flagrant exhibition of a very evident classist attitude at Jantar Mantar, which is where members of the community and allies came to protest the re-criminalization of Section 377. The struggle for LGBT rights in the nation is intrinsically an elite one, even though this "minuscule minority" includes members of the working class as well as members of the lower middle class. For me, it has been a really disturbing experience to listen to folks on stage talk about their experiences of being booed because of their bad language by people who seem to be educated allies. To be regarded seriously in society and while seeking a mate, there is constant pressure to fit in with the stereotype of the gay man as a well-defined slab of muscle cake.

- The medical concerns.

According to the data that are currently available, the LGBTQ Community is more likely to have health difficulties than the overall population. Members of the LGBTQ

³⁷⁹ Mansi Dagrass, "Victimization of LGBT Community in India" (Rochester, NY, 2021).

community are more likely than the general population to have mental health problems. There is a two to three times greater prevalence of depression, anxiety, and suicidal thoughts compared to the general population. Significant rates of eating disorders and self-harm have been noted, along with obesity and domestic violence that are equivalent to those in the general population. While drug use is higher and alcohol consumption is equivalent to the overall population, smoking and a lack of physical exercise seem to be more significant. Regarding the health issues and access to healthcare that people who identify as gay, bisexual, transgender, or homosexual face. The United States Gay and Lesbian Medical Association (GLMA) lists several other problems that are linked to HIV/AIDS. These include mental health, drug addiction, tobacco use, depression, hepatitis, breast and cervical cancer, problems with marriage and family recognition, conversion therapy, mental health, mental health, and mental health. Even those who are considered to be specialists in the field of medicine are taking steps to improve and educate the health of the community. Lesbian, gay, bisexual, transgender, and queer (LGBTQ) people face a lot of difficulties growing up in a society that accepts heterosexuality more than homosexuality. In every aspect of life, they are subjected to discrimination and marginalization despite their best efforts. People who identify as LGBTQ are often the targets of homophobic violence and abuse. Same-sex couples face discrimination and disadvantage in areas of social security systems, such as health care and pensions, since they lack the same rights and protections as opposite-sex couples in the majority of EU Member States³⁸⁰.

6.4. Concerns related to legal aspects.

Even from a legal standpoint, persons who identify as LGBTQ are still not permitted to occupy public spaces together, they are not permitted to marry each other, and they are not even permitted to adopt a child (except transgender people). The Indian Penal Code's Section 377 now permits homosexuality to be accepted, allowing the community to promote equality. The Transgender Persons (Protection of Rights) Bill

³⁸⁰ “LGBTQ Community: Legal Rights & Social Discourse | ProBono India,” *available at*: <https://probono-india.in/blog-detail.php?id=55> (last visited June 26, 2024).

has finally been approved by the national government. On the other side, on July 8, 2017, a woman named Joyita Mondal, who was 29 years old at the time, became the first transgender judge to participate in the Lok Adalat in the state of West Bengal in India. Therefore, we can conclude that people are becoming more open and improving their way of thinking. Although a smaller percentage of the whole population has welcomed the LGBTQ community, our nation still has a long way to go before it can be considered successful in making development and putting it into practice.

6.5. Actions that might be taken.

NGOs express their admiration for those individuals who possess the bravery to accept themselves in front of everyone. Every citizen should better the lives of LGBTQ people in every aspect of life by improving our way of thinking, fostering open dialogue, talking to them, and doing a lot of other essential steps. Additionally, measures should be implemented to encourage them to open out. In a similar manner to how the moon needs the assistance of stars, LGBTQ individuals require the support of a family³⁸¹.

6.6. Suggestions and possible changes NGOs are hoping that LGBT rights will be protected.

- 1) In the long run, the LGBT Community wants to get adoption and marriage rights³⁸²: The long-term objective is to address civil rights, which include, among other rights, the right to marriage, adoption, surrogacy, and in vitro fertilization (IVF), among other rights which have been highlighted by many members of the community. In and of itself, the legalizing of homosexuality represents a significant stride forward in Indian culture; nonetheless, the community has not yet been embraced. It is going to take the community a longer period to bring up problems concerning such rights and anticipate receiving returns.

Despite this, as was noted before, a petition was submitted to the Kerala High

³⁸¹ *Id at 219.*

³⁸² Ayush Verma, "LGBTQ+ community: legal rights and social discourse" *iPleaders*, 2020 available at: <https://blog.ipleaders.in/lgbtq-community-legal-rights-social-discourse/> (last visited June 25, 2024).

Court in January 2020, requesting that the marriage of an LGBT couple be registered. The Honorable Court has even consented to investigate the matter. Consequently, there is unquestionably the expectation that these fundamental civil rights will be granted to society in a more expedient manner than in the future. To make it legal for community members to be married, it was proposed that either new laws be passed or that a clause be inserted *into the Special Marriage Act of 1954*. Although the Act does not specifically prohibit the union of members of the same community, the wording used in the petition that is now being considered by the Kerala High Court implies that a marriage may only take place between men and females. This is even though the Act does not explicitly prohibit such a union. It would be beneficial to make these laws gender-neutral by amending them.

- 2) Abusive behaviour in the workplace³⁸³: Harassment in the workplace is a problem that many marginalized communities, including those for women, people of different economic backgrounds, and people of other ethnicities, have experienced. There is no exception made for the LGBT community. The fact that a person's sexual orientation and sexual preference may have an impact on their professional and work life is a fact that, even though it may seem to be preposterous, is exactly the case. Although it has not been explicitly stated, there have been situations in which a person's sexual orientation may prevent them from being employed if it is known about them, for example, on their social media platforms. Companies and workplaces have come to welcome these individuals into their offices in recent years, even if the conduct of colleagues may continue to be unfriendly. This is due to changes in the beliefs of society and regulations that have occurred in recent times. Because the general public does not have a complete understanding of what the community is all about, people often characterize it as being unnatural. As a consequence of this, they quickly avoid the consideration of having to engage in conversation with members of the community and may even harbour animosity against such individuals. Because of this, harassment occurs in the workplace, and it causes a

³⁸³ *Id.* at 220.

person to experience a variety of problems, particularly on an emotional and mental level. In light of this, specific norms or standards must be put into place to guarantee that members of the community are not subjected to harassment in their places of employment. Education on the reasons why people are different from them is another method that may be used to ensure that individuals have a greater sensitivity to others who are different from them. This may assist a lot of people realize how ignorant they are, which will ultimately lead to a larger acceptance of the group in society. Nevertheless, the primary emphasis should be on reducing the types of harassment that community members may experience throughout the process of finding work and after they have found employment³⁸⁴.

- 3) Sexual harassment: When LGBT people are sexually harassed, some people assume that by asserting their power over another person, they might also persuade them to change their perspective. Sadly, even in this day and age, a significant number of individuals continue to hold the belief that belonging to a community constitutes a mental illness. According to them, once a person is given the natural route, they may realize that their way of thinking was incorrect before. This is something that often occurs in situations in which families coerce their kid, who is a member of the community, into marrying a heterosexual or straight person to prevent the youngster from bringing disgrace upon the family. The following are only some of the circumstances that might potentially result in members of the LGBT community being subjected to sexual harassment. The reality is horrible, and there is a lot of work that needs to be done to alter this³⁸⁵.

One of the most significant ways to bring about such a shift is to make certain that laws about sexual offences are not biased against certain genders and are not just centred on the protection of women. Not only is this noteworthy for the community as a whole, but it is also significant for males who may have been

³⁸⁴ *Supra* note 382 at 220.

³⁸⁵ Lakshya Arora, P. M. Bhujang and Muthusamy Sivakami, "Understanding discrimination against LGBTQIA+ patients in Indian hospitals using a human rights perspective: an exploratory qualitative study," 29 *Sexual and Reproductive Health Matters* 2104678 (2022).

victims of sexual assault but are unable to disclose the incident. It is for this reason that gender neutrality in sexual crime legislation will be of assistance in bringing such incidents to light and prosecuting those who are accountable for them. Additionally, it will assist transgender and non-binary individuals in coming forward, who may not be able to do so due to the system of law that is now in place. Developing distinct laws that are expressly geared toward the protection of sexual offences is yet another method of safeguarding the community from sexual offences. A law that was passed in 2019 *called the Transgender (Protection of Rights) Act* is an example of such an endeavour. On the other hand, people in the community need to be actively engaged in the decision-making process to guarantee that the laws can accomplish their intended goal³⁸⁶.

- 4) Improving both awareness and acceptance of the situation: In the past, sodomy was criminalized under Section 377 by using the words "carnal intercourse against the order of nature," There are still many people in this day and age who think that homosexuality and LGBT people are abnormal. Either these individuals are not aware of the community or they have made the conscious decision to disregard the explanations that are presented to them. The latter is not something that can be addressed in a significant way. Over time, their perspectives may shift. Individuals who are not aware of the community, on the other hand, may be educated about it. While they are being educated, there are a few questions that need to be the primary focus of attention. This problem has its roots in our educational system, which has long disregarded the existence of transgender individuals and other parts of society. The fact that these ideas were regarded as social taboo meant that they were simply not brought up in conversation. However, the globe has seen significant transformations. Consequently, it is of utmost significance to impart knowledge to kids on the existence of the community and to tell them the truth. Students will have a greater understanding of the community if they are first exposed to the tales of

³⁸⁶ *Id* at 222.

symbols that are associated with the community, or if they are allowed to study the history of the community in addition to its existence. Students are sometimes referred to be the nation's future, and it is without a doubt the time for them to be educated about this kind of social problem and taught to be sensitive to the feelings of others.

6.7. Conclusion.

A significant number of non-governmental organizations (NGOs) on a global scale are registered in nations where homosexuality is not only legal but also socially acceptable. Non-governmental organizations (NGOs) are organizations that have the responsibility of fighting for social justice, equality, protection, and human rights on a worldwide scale. The rights of LGBT people who work for non-governmental organizations (NGOs) continue to be ignored, bent, or eliminated. There are very few non-governmental organizations that have established rules regarding same-sex couples. To adapt their treatment depending on the circumstances, the safety and reputation of the non-governmental organization (NGO), or the individual who is interpreting them, they seem to prefer sheltering behind vague rules of non-discrimination. Unfortunately, a large number of non-governmental organizations (NGOs) not only permit sexual orientation discrimination to occur in the nations where they do business, but they often utilize cultural and religious excuses to justify discriminatory practices. This is in addition to the fact that there is no legislative entity in that specific country that is supportive of such discrimination. Because they are afraid of being discriminated against or having their career opportunities hindered, many LGBT non-governmental organization workers want to stay invisible. If you come out during an interview (for example, if you are applying for accompanied status and you would want your partner to come with you), you will be asked an excessive number of questions regarding homosexuality in the nation where you intend to travel and how you would deal with the situation. The answers to these questions often indicate misunderstandings, anxieties, and a lack of study and knowledge on the part of the non-governmental organization (NGO). There is a limited amount of support available for LGBT persons and their families when they are serving in the military overseas. There are just a few websites and employee

support groups that are now available. Because the majority of them choose to stay quiet about their sexual orientation while they are "in the field," it may be difficult to get support from their peers. This is the reason why they just launched a blog called "The GAY Worker". The site's purpose is to provide a forum for assistance workers to express their experiences of discrimination and self-censorship, as well as provide a space for solidarity and support. Furthermore, the blog aims to increase awareness of LGBT rights³⁸⁷.

To maintain coherence with their ideals and purpose, non-governmental organizations (NGOs) need to serve as a haven for the principles that they advocate for, independent of the location of their field offices. Throughout the past few years, an increasing number of non-governmental organizations (NGOs) have made the promotion of gender equality among their teams a priority. These organizations are also holding trainings and unconventional events to encourage their local and international staff to become advocates of gender equality, regardless of the sector in which they may be working. To launch a dispassionate discourse on the rights of LGBT staff members working for non-governmental organizations (NGOs), and independent of the legal and social context in which they operate, an analogous procedure should be implemented.

In the meanwhile, all non-governmental organizations (NGOs) should develop policies that are inclusive and appropriately handle LGBT problems. These policies should include marriage and partnership between people of the same gender. Several nongovernmental organizations (NGOs) have made attempts to make bold choices; however, these decisions were quickly overturned because they were not well received by their followers and funders. This resulted in the departure of one of the board members of the organization. To cultivate cultures of mutual respect and tolerance, non-governmental organizations (NGOs) should also provide their staff members, both national and foreign, with training on equality and diversity. Instead of being justified on the pretext of freedom of thought while also undermining the right

³⁸⁷ Raquel Moreno, "I'm an aid worker... and I'm gay" *The Guardian*, 12 March 2015, section Working in development.

of another person to be treated equally and without discrimination, homophobic behaviours should be denounced and punished.

People who identify as homosexual often have difficulty accepting their sexuality because they are afraid of the brutal treatment they will get from society. The transgender community needs to be included in the conversation about equality, even if we primarily speak about equality with men and women respectively. To a certain degree, non-governmental organizations (NGOs) have been effective in their efforts to bring about a change in the laws that are now in place. Not only are those who speak out having a significant influence on society, but they are also having a significant impact on the lives of homosexuals who are afraid of society. The fact that there are a lot of instructive films and real-life tales of LGBT individuals who are admired for their bravery in battling against the odds is something that we see on social media platforms such as YouTube. This is also a step forward in the direction of change in society. Ultimately, a person's sexual orientation shouldn't be the primary attribute that defines them. We ask ourselves why we are compelled to inquire about homosexuality, just as we accept heterosexuality without doubt or blame. It all comes down to personal preference, and every decision ought to be honoured so long as it does not cause damage to another individual.

CHAPTER 7

**AN EMPIRICAL STUDY OF THE NEED FOR SOCIAL
INCLUSION OF THE LGBT COMMUNITY AND THEIR
MARRIAGE RIGHTS.**

7.1. Introduction

This empirical chapter consists of various data collection methods and methodologies to calculate and analyze the data to learn about the level of societal acceptance of the LGBT community among Keralites. This peace exists in society between the two groups, and the treatment of the LGBT community by the state government. Ten respondents from the LGBT community were interviewed for this, including Sahayatrika, an NGO that promotes the welfare and well-being of the LGBT community. Data was gathered via questionnaires from 300 respondents, of whom 250 were members of the general public, including lawyers, housewives, college students, and others, and 50 were members of the LGBT community. The study concentrates on the Kerala districts of Thrissur and Ernakulam to offer an exceptionally beneficial viewpoint and capture the distinct dynamics and difficulties particular to the community. Members of the LGBT community choose to remain in these districts because there are more NGOs and shelter homes available to them. The LGBT community is unique in that its members relocate from their birth city or place of residence to an area where other members of their type coexist. LGBT individuals from all 14 districts of Kerala are concentrated in these two districts to a larger extent since these districts are home to several NGOs and state government-run shelter houses that support the LGBT population.

7.2. Sources of data.

The current study comprehensively examines the sampling procedures used in the research design, data gathering, and analysis. To keep pace with the progress and innovations in technology to use a quantitative data approach, an online questionnaire is administered using Google Forms, targeting respondents from the legal profession

and the general public. The answers of persons from the LGBT Community were collected via comprehensive field research, which included conducting in-person case study interviews collaborating with the NGO Sahayatrika in Thrissur, Kerala. The interviews and case study concentrate on the Kerala districts of Thrissur and Ernakulam to offer an exceptionally beneficial viewpoint and capture the distinct dynamics and difficulties particular to the community. Members of the LGBT community choose to remain in these districts because there are more NGOs and shelter homes available to them. The LGBT community is unique in that its members relocate from their birth city or place of residence to an area where other members of their type coexist. LGBT individuals from all 14 districts of Kerala are concentrated in these two districts to a larger extent since these districts are home to several NGOs and state government-run shelter houses that support the LGBT population.

7.2.1 : Primary Source:

The researcher engaged with respondents who identified as Lesbian, Gay, Bisexual, and Transgender individuals from various regions of the State, gathered pertinent information using questionnaires and performed a case study involving 10 participants, based on the information provided by Sahayatrika-NGO. Separate questionnaires were used for the case study (**Appendix: V**).

7.2.2 : Data Collection:

Data collection for this research uses the survey technique and field activities. The main data is obtained by administering a well-designed questionnaire to acquire the necessary information. The questionnaire is specifically crafted to guarantee that the data gathered is by the study goals. The findings of this research were obtained using the questionnaire approach. The general public's and the LGBT population's literacy levels were taken into consideration while creating the English and Malayalam versions of the questionnaire. In contrast to the legal fraternity, the general public and LGBT individuals were very engaged and eager to learn about the goals, inspirations, applicability, and significance of the research.

7.2.3: Sample Size:

The sample size is 300 (within the State of Kerala.)

Table 2: Total number of Respondents for the Empirical survey.

| Serial No. | Category | Total number of Respondents |
|-------------------|------------------------|------------------------------------|
| 1. | General Public | 150 |
| 2. | Legal Fraternity | 100 |
| 3. | LGBT Community members | 50 |
| | TOTAL: | 300 |

Table 3: The number of respondents in the online questionnaire.

| Serial No. | Category | Number of Respondents |
|-------------------|------------------|------------------------------|
| 1. | General Public | 100 |
| 2. | Legal fraternity | 50 |

Table 4: The total number of respondents through a field survey questionnaire.

| Serial No. | Category | Number of Respondents |
|-------------------|------------------------|------------------------------|
| 1. | LGBT Community members | 50 |
| 2. | General Public | 50 |
| 3. | Legal Fraternity | 50 |

7.2.4: Sampling Technique:

- The survey performed used a non-random sampling approach. The "Interview Schedule" is administered using the "Case study" approach with a sample size of 10 LGBT individuals. The discussion revolved around the growth of their life path. An interview using quantitative methods was done with the same questionnaire along with some open-ended questions (**Appendix: V**), to discover how they have developed and progressed in life.

- The Questionnaire Method is used to gather data from members of the LGBT Community, the general public, and the legal fraternity. It consists of "Closed-Ended Questions."

7.2.5 : Tools of Analysis:

Pie charts and other visual aids are used to display data. IBM-SPSS Statistics Tool (Version 29) is used for the analysis, which entails performing cross-tabulation and descriptive statistics.

7.2.6 : Research Area:

1. State of Kerala.
2. Sahayatrika (NGO),
3. Districts in Kerala: Thrissur and Ernakulam.

Special authorization from the Sahayatrika NGO's Administrative Office was needed for this research. Permission to visit and survey the population was granted once the Lovely Professional University, Punjab, supplemented the researcher's identity, and the study's relevance was issued with a letter of authority verifying the researcher's identity. Additionally, a questionnaire survey of the legal community was conducted majorly among members of the Haripad Bar Association, which is affiliated with the Munsiff-Magistrate court in Haripad.

7.2.7 : Data Analyses.

1. The acquired data is analyzed using the IBM-SPSS Statistics Tool (Version 29), which includes descriptive analyses as well.
2. Tables are used for the examination of the gathered data. The data is visually represented using statistical tools such as graphs and pie charts.
3. Percentages and averages are used to accurately and efficiently depict facts.

Since the question sets varied for each of the three groups, it is not possible to compare the responses using standard statistical procedures like the Chi-square test and the ANOVA test. Consequently, the outcomes that were categorized into each target are shown in the SPSS analysis of the data. The questions were split up into

distinct objectives for each set by the researcher, who then used SPSS to do a descriptive analysis and provide results in graphical outputs in pie charts and Tables.

7.3: The reason for choosing the State of Kerala, districts like Thrissur and Ernakulam.

The first state to create a transgender policy was Kerala in 2015, which opened the door for members of its hidden population to come out. Even the government hasn't done a proper census on the number of LGBT people in Kerala, according to the researcher's inquiry via the RTI portal to the Social Justice and Health Departments regarding the number of LGBT people in Kerala and the number of Transgenders who have had GAS surgery in Kerala. A count of 1692 was obtained at the Centre for the Management Department for Socio-Economic survey when the Right to Information Portal answer was questioned (**Annexure: II**). Although there are only 3902 transgender persons in Kerala according to the census, over 25,000 were identified in a 2015 study. Male-to-female transgender individuals made up 99% of the respondents in a transgender survey done in Kerala in 2014–2015. Compared to the other category, female-to-male transgender people are far less visible. An Amicus Curiae was appointed by the Kerala High Court in November 2021 to research the transgender problem and the application of the policy's goals. The Kerala government provides transgender people with several welfare initiatives and assistance programs, including:

1. **Varnam:** which helps transgender students who want to pursue online learning programs leading to degrees, certificates, or postgraduate courses financially. The program offers up to ₹24,000 annually.
2. **Saphalam:** This scheme offers transgender students taking professional courses financial aid. The program enables students to pursue their education without financial limitations, which may result in increased job prospects.
3. **Yathnam:** helps transgender individuals get ready for competitive exams.
4. **Sakalyam:** The Department of Social Justice has developed this program for transgender people to get vocational training to mainstream and elevate the transgender population. This is a vocational training program, with a budget of Rs. 25.2 lakh and includes a stipend for buying study materials.

5. **Karuthal:** The scheme's primary goal is to provide aid to these indigent transgender people who need it most in times of crisis or need. In a 2018 government decree, Rs. 3 lakh was set aside to provide transgender persons with financial support for working for themselves.
6. **Snehakkoodu**” and **“Thanal**” shelter homes across the State of Kerala.
7. **Scholarship for Transgender Students:** Offers financial help to transgender students enrolled in state-run, government-aided, or independently funded schools starting in the seventh grade.
8. **Financial Assistance for Transgender individuals planning their Sex Reassignment Surgery:** Up to a maximum of Rs. 2 lakhs in financial aid are given to transgender patients seeking sex reassignment surgery.
9. **Punarjani:** free support by the civil supplies department.
10. **Self-employment program:** Transgender people may start any kind of self-employment program with a loan of up to Rs. 3 lakhs from Kerala State Women Development Corporation (KSWDC), enabling them to earn a living and establish financial stability.
11. **"Samanwaya"** a program for ongoing education: The department created the "Samanwaya" continuing education program in collaboration with the Kerala State Literacy Mission (KSLM), and it offers certificates that are equal to those from related courses.
12. **Aid with marriage for transgender couples:** The Department has launched a new program that offers aid with marriage to lawfully wed transgender couples who have had sex reassignment surgery (SRS). The marriage aid amount has been set at Rs. 30,000.
13. **Financial assistance and hostel facilities:** The main issue facing the LGBT population is that they are not allowed to live in shared housing, hostels, or rental properties. The Social Justice Department offers up to Rs. 4,000 in aid for housing costs or dorm stays.
14. **Skill development training for transgender people:** The Social Justice Department has an all-inclusive welfare program offering skill development training. Each of Kerala's districts has been given a sum of Rs. 5 lakhs to satisfy

the costs associated with supplying a chosen list of transgender people with food, housing, and skill development training participants. A few transgender persons have received sewing machines as part of a financial assistance program called "Self-employment Scheme for Transgenders."

15. **Transgender Cell:** Supporting and assisting the district and state transgender justice committees is the goal of the transgender cell. Transgender individuals occupy every position in the cell.
16. **24x7 helpline** for the community: 'The Social Justice Department of the Government of Kerala' has introduced a transgender helpline (1800-425-2147) that is open 24 hours a day. The aim is to provide transgender individuals in need with essential support, educate them about their fundamental rights, and offer guidance and legal aid.
17. **Sahaj International School:** Giving transgender people security, redemption, and sustainability is the goal of Transgender School. With the aid of the new learning facility, they will be able to finish their studies and sit for the Class X and XII exams. In partnership with the National Institute of Open Schooling (NIOS), this alternative learning centre operates³⁸⁸.
18. **2 seat reservations** in every college.
19. Job opportunities at **Kochi Metro Rail Ltd.** In the area of gender equality, the Kochi Metro Rail Limited (KMRL) made history by hiring 23 transgender people for its operations, which began in June 2017.
20. **"G-Taxi"** Driving Training program for better self-employment opportunities for LGBT.

These are only a handful of the programs and initiatives that the Kerala State government has implemented. Numerous more initiatives have been proposed for the welfare of Kerala's transgender population. In Kerala, a large number of NGOs also

³⁸⁸ Ajith K Kumar, "A Study on the roles of Kudumbashree and Kerala Social Justice Department in uplifting the transgenders," 9 *Quest Journals* 78–83 (2021).

support and aid the LGBT population. Among them are Queerela, Queerythm, Sahayatrika, and so on.

7.4: Reason for choosing NGO- Sahayatrika: An overview about the NGO- “Sahayatrika”.

It was a political endeavour made feasible by foreign finance; at their busiest time, they ran on a ten-month grant from a global organization that addressed problems particular to sexual minorities. It was organized by a non-resident Indian, Deepa Vasudevan, whose primary life experiences and political encounters were with gay and lesbian groups in the West. This is a very different situation from Kerala's unique cultural aspects of "queer" existence and India's growing advocacy for sexual minorities. Currently, Sahayatrika is a reputable non-governmental organization dedicated to promoting the welfare and assistance of the LGBTQ+ population, which has challenges in shedding its identity and leading a fulfilling existence. The program coordinator, advocacy coordinator, administrator, assistant administrator, primary helpline assistants, and crisis management team make up the Sahayatrika administrative panel, which consists of a total of 24 officers. This NGO has guaranteed the membership of over 150 LGBTQ individuals. In addition to counselling, those in need might get psychological therapy, legal aids, and treatment aids from them. They made sure that more than 1,500 members of the third gender have been able to live their lives as they choose for the last five years.

In 2001, the first talks on Sahayatrika took place. In 2002, the first initiative was launched in collaboration with the mental health group FIRM. Sahayatrika became a separate, legally recognized entity in 2008. Thrissur and Ernakulam in Kerala are the focus of the case study and interviews. LGBT people decide to stay in these neighbourhoods since some more NGOs and shelters can accommodate them. The LGBT community is distinct in that its members move to a location where other people of their kind cohabit, usually from their birth city or place of residency. Many NGOs and state government-run shelter shelters for the LGBT community are located in these two districts, which account for a higher portion of the 14 districts in Kerala's LGBT population. Therefore, LGBT people from all 14 districts temporarily reside mostly in these 2 districts.

The researcher's acquaintance with the chosen areas also had a role in selecting them. Knowing the locations may make it simpler for the LGBT community, the general public, and legal professionals to obtain the information for data collection. It makes it possible for researchers to interact with the community, make relationships, and traverse the local environment more skilfully. This familiarity facilitated a more comprehensive comprehension of the local environment and made the data-collecting process go more smoothly.

7.5: Examination of the Collected Data.

Respondents to the study include members of the general public, the legal community, and the LGBT community. There are 300 people in the study's sample overall, of whom 50 are LGBT members, 100 are lawyers, and 150 are members of the general public. The questions framed for the survey were standardized. The panel examined the questions for an inter-rater reliability test, and the results were obtained as per those results, many questions were changed and modified. Due to the questions' relevance to various fields of study, five members of the different sectors—including professors and associate professors of law, psychology, and sociology provided feedback on the inter-rater reliability test. The questions were also presented to the Institutional Ethics Committee, LPU, which granted permission. **(Annexure: I)**

Three different questionnaires were made to each respondent group according to their degree of involvement concerning the study's objectives. By providing Informed consent and Participant information sheets to the respondents, permission was obtained separately from each member for the interview, as well as for capturing images and filming footage. **(Appendix: I)**

There are 70 questions in total, among which some questions are common in all the 3 sets. The first few questions in each set of questionnaires are demographic inquiries that don't need any analysis, because the answers to these questions may not necessarily support the study's goals, objectives, and hypotheses. However, these questions are included since they are an inevitable part of doing surveys in general. When circulated, the questionnaire was provided in a mix of both Malayalam and English questions, considering the General public of Kerala. Using the same questionnaire, a few open-ended questions were added for the case study. It was

decided not to analyze the case study since its main goal was to learn about the participants' life evolution.

7.6: Analysis Results:

Since the question sets varied for each of the three groups, it is not possible to compare the responses using standard statistical procedures like the Chi-square test and the ANOVA test. Consequently, the outcomes that were categorized into each target are shown in the SPSS analysis of the data. The questions were split up into distinct objectives for each set by the researcher, who then used SPSS to do a descriptive analysis and provide results in graphical outputs such as pie charts.

Thus, the objective-wise analyzed results are as follows:

Objective 1: To evaluate the efficacy and efficiency of Legislative provisions, social integration, and legal complexities relating to the LGBT community in ensuring Constitutional and Fundamental Rights.

Set 1: Perception of the General Public.

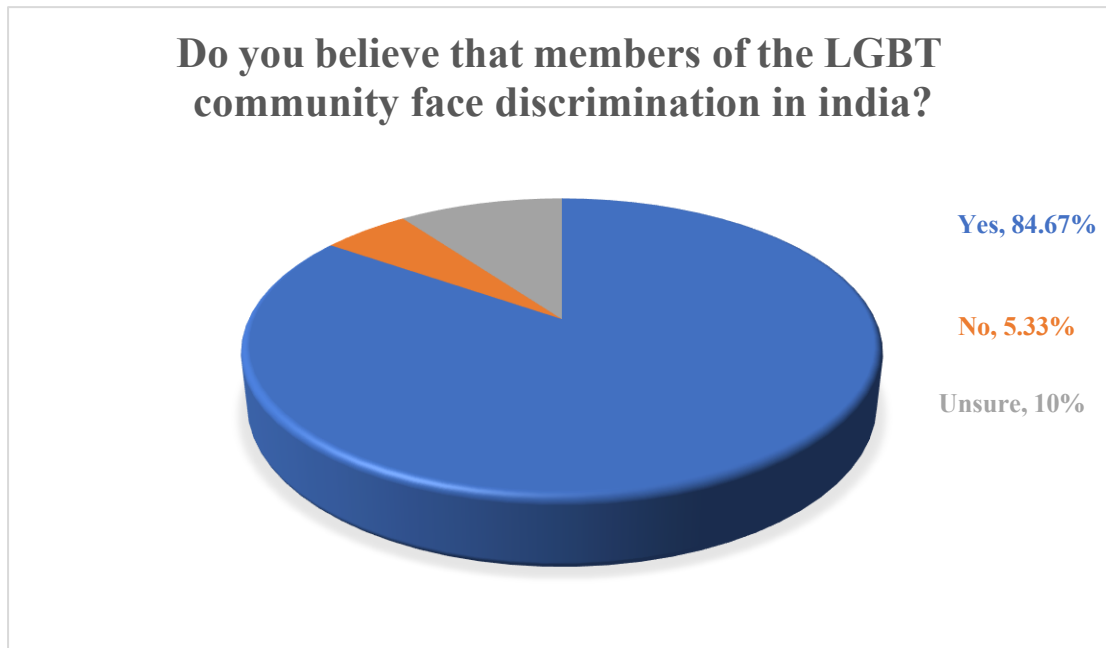
Table 5: Frequencies of objective 1 results from the first group of respondents, or the general public.

| Statistics | | | | | | |
|------------|---------|---|--|--|---|--|
| | | Do you believe that members of the LGBT community face discrimination in India? | What forms of discrimination have you observed or heard about? | What do you think are the main reasons for discrimination against LGBT individuals in India? | Do you believe that LGBT individuals should be protected from discrimination in employment, education, and housing? | Do you believe that LGBT individuals should have equal rights as Cisgender/Heterosexual individuals? |
| N | Valid | 150 | 150 | 150 | 150 | 150 |
| | Missing | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

All the respondents have answered these questions without fail. So, there isn't any missing factor in the result.

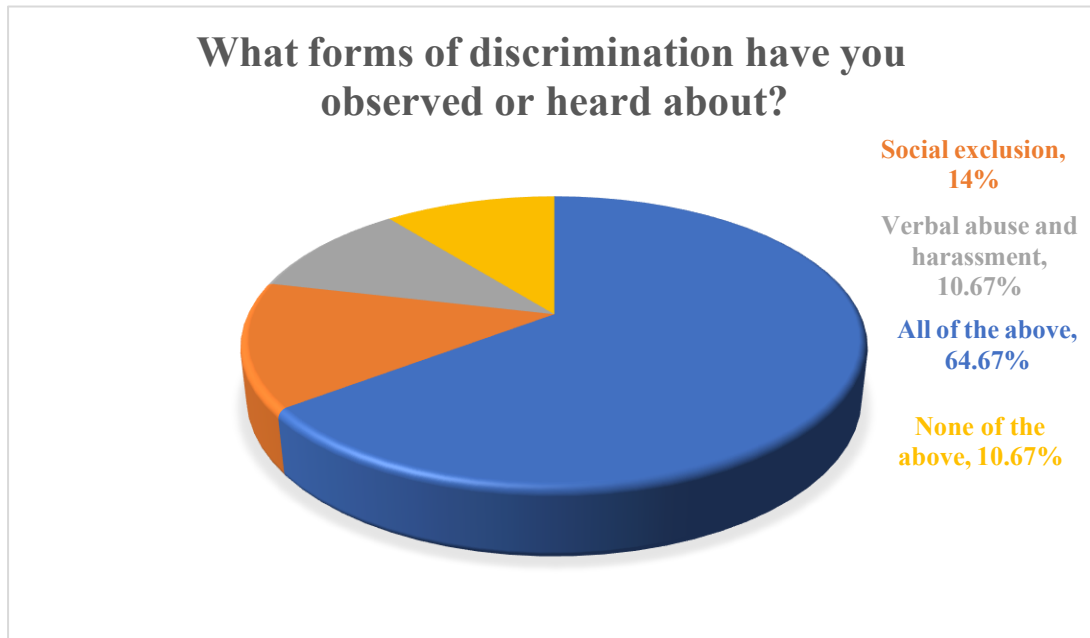
Figure 2: Question to the General public on the existence of discrimination against the LGBT community.



Source: From questionnaire survey.

Findings: The LGBT community is discriminated against in our nation, according to 84.6% of the general population. 10% are undecided, and 5.3% claim that there is no prejudice against them.

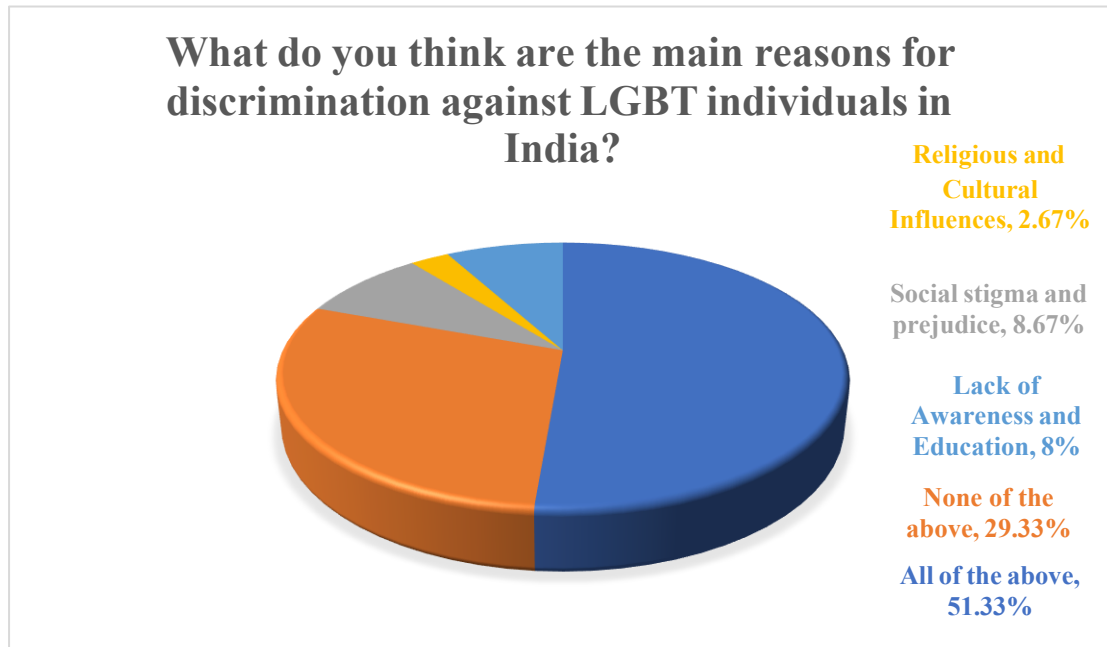
Figure 3: Question to the General public on forms of Discrimination.



Source: From questionnaire survey.

Findings: Although 14% of the general population believes that discrimination only occurs in the form of social exclusion, 64% of the public believes that prejudice occurs for all the reasons listed above. And 10% report verbal abuse and physical harassment as forms of discrimination, while 10% claim they are not the target of discrimination.

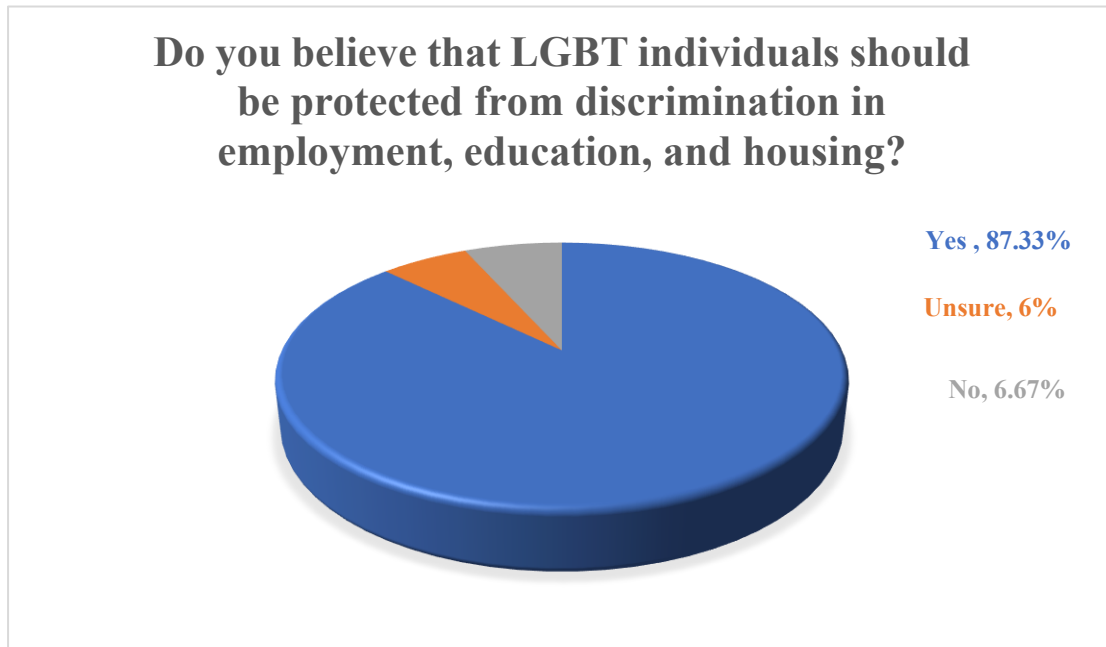
Figure 4: General public's Reason for discrimination.



Source: From questionnaire survey.

Findings: According to the survey, prejudice against the LGBT population in India is mostly caused by a lack of knowledge and education (29 %). 2% said it was because of religious and cultural factors, and eight percent thought it was because of societal stigma and discrimination. And 51% responded that it's a mix of these factors. Only 2% of respondents believe that there is no cause for any discrimination.

Figure 5: Opinion from the General public about the protection from discrimination.



Source: From questionnaire survey.

Findings: 87.3% of the general population thinks that LGBT people should be shielded from discrimination in a variety of contexts, including the workplace, housing market, and education. Only 6% disagree, and 6.6% think no protection is necessary.

Figure 6: Question on Equality of Rights to the General Public.



Source: From questionnaire survey.

Findings: Regarding the equal protection of the LGBT population's rights to those of Cisgender, 84% of respondents are in favor of it, 8% are unclear, and 8% are against it.

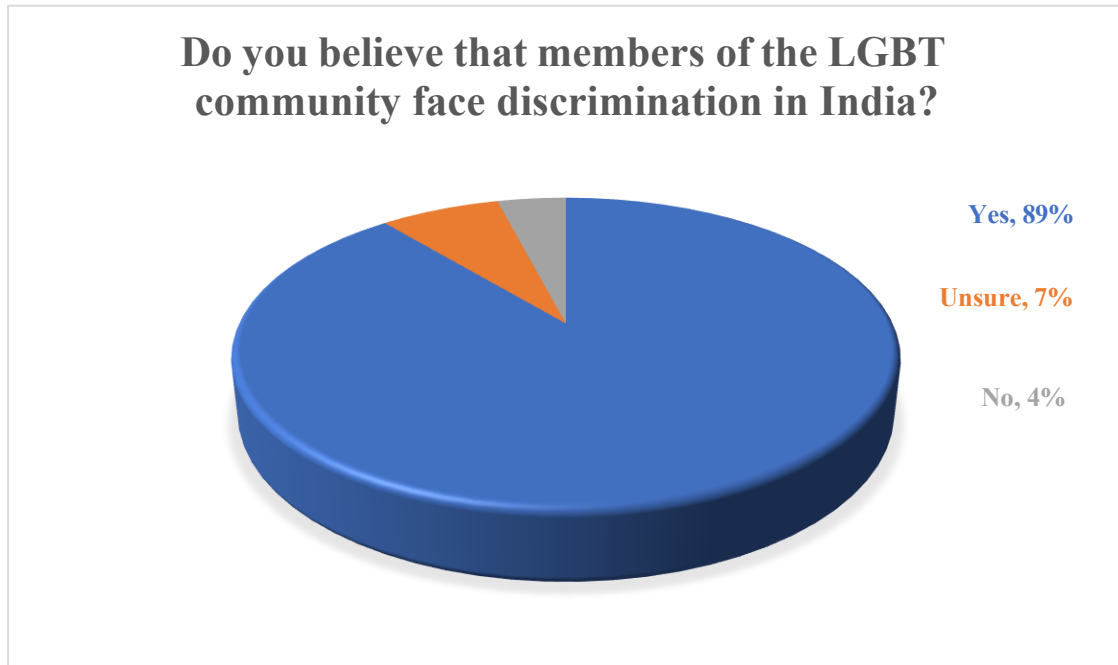
Set 2: Perception of the Legal Fraternity.

Table 6: Frequencies of objective 1 results from the second group of respondents, or the Legal Fraternity.

| Statistics | | | | | | |
|------------|---------|---|--|--|--|---|
| | | Do you believe that members of the LGBT community face discrimination in India? | What forms of discrimination have you observed or heard about? | Do you believe that LGBT individuals should have the same rights as Cisgender/ Heterosexual individuals? | Do you believe that the existing legal framework provides adequate protection for LGBT individuals in India? | Do you believe that the Navtej Singh Johar decision (Decriminalisation of Sec.377, IPC) has had a positive impact on the lives of LGBT people in India? |
| N | Valid | 100 | 100 | 100 | 100 | 100 |
| | Missing | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

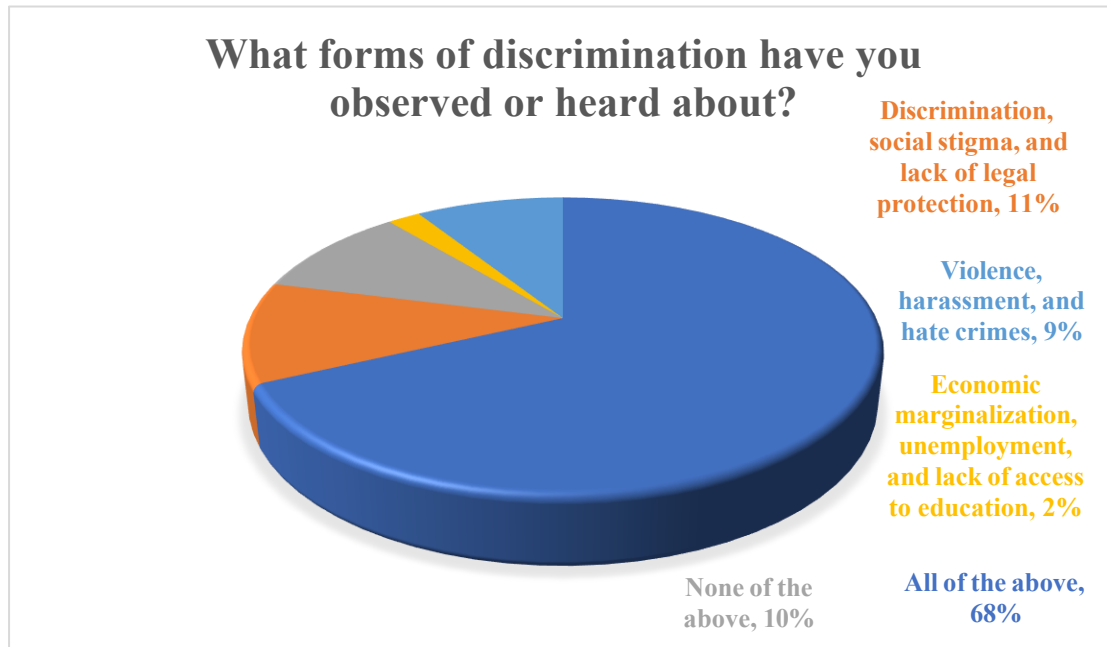
Figure 7: Question to Legal Fraternity on the existence of discrimination against the LGBT community.



Source: From questionnaire survey.

Findings: 89% of the Legal Fraternity believes that there is discrimination towards the LGBT Community in our country. 7% are undecided, and 4% claim that there is no prejudice against them.

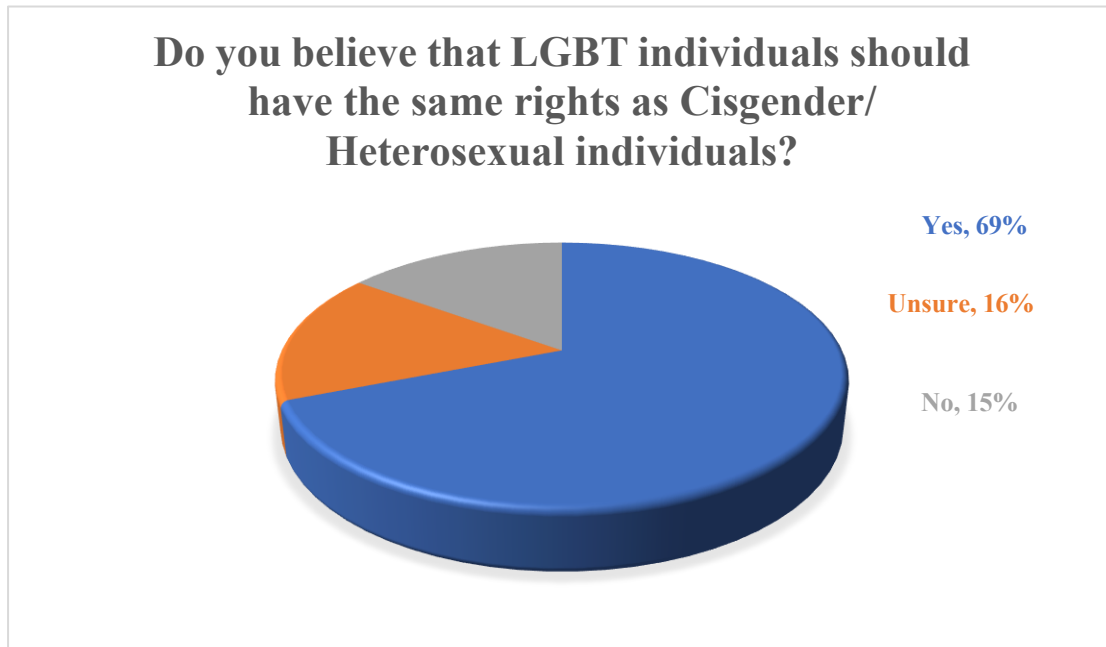
Figure 8: Question to the Legal Fraternity on forms of Discrimination.



Source: From questionnaire survey.

Findings: Although 11% of the Lawyer community believes that discrimination only occurs in the form of social stigma and lack of legal protection, 68% of the public believes that prejudice occurs for all the reasons listed above. 9% report violence, harassment, and hate crimes as forms of discrimination, and 2% believe it to be in the form of Economic marginalization, unemployment, and lack of access to education. But 10% claim they are not the target of discrimination.

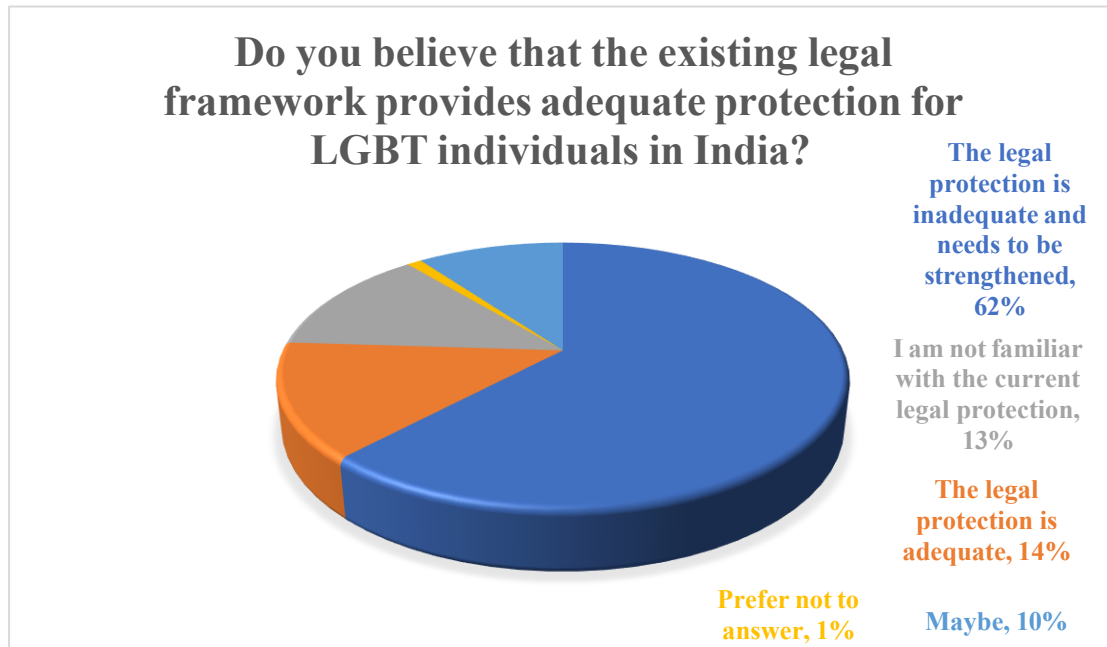
Figure 9: Question on Equality of Rights to the Legal Fraternity.



Source: From questionnaire survey.

Findings: Regarding the equal protection of the LGBT population's rights to those of Cisgender, 69% of Legal Fraternity respondents are in favor of it, 16% are unclear, and 15% are against it.

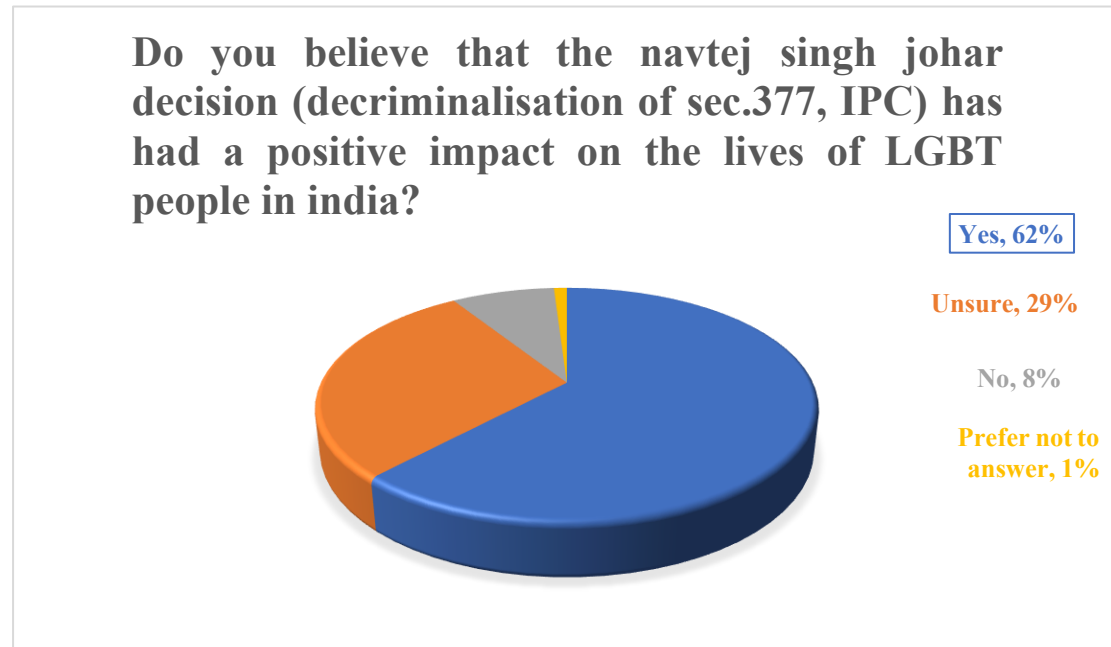
Figure 10: Question to Legal Fraternity on existing law's efficacy.



Source: From questionnaire survey.

Findings: Regarding the question of the sufficiency of the existing legal framework for the protection of LGBT individuals in India, 62% of Legal Fraternity respondents think that it is inadequate, 14% say it is adequate, and 13% are unfamiliar with the current legal protection. 10% think of possibly and 1% prefer not to respond to this question.

Figure 11: Opinion by Legal Fraternity on the impact of Navtej Singh Johar case.



Source: *From questionnaire survey.*

Findings: Regarding the positive impact on the lives of LGBT people in India after Navtej Singh Johar's decision 62% of respondents think that the lawsuit has improved the quality of life of LGBT. But 29% were unsure about it. 8% said there is no such positive impact while 1% preferred not to answer this question.

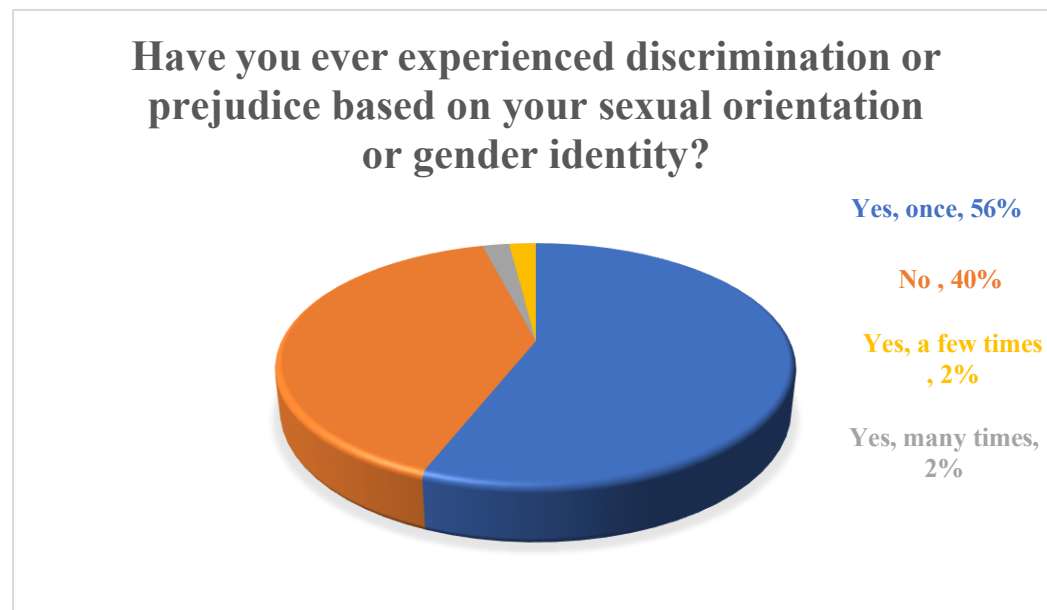
Set 3: Perception of the LGBT Members.

Table 7: Frequencies of objective 1 results from the third group of respondents, or the LGBT community.

| Statistics | | | | |
|------------|---------|--|--|--|
| | | Have you ever experienced discrimination or prejudice based on your sexual orientation or gender identity? | Are you aware of the Supreme Court of India's 2018 decision to decriminalize homosexuality ? | Do you believe that LGBT individuals should have equal rights as Cisgender/ Hetero-sexual individuals? |
| N | Valid | 50 | 50 | 50 |
| | Missing | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

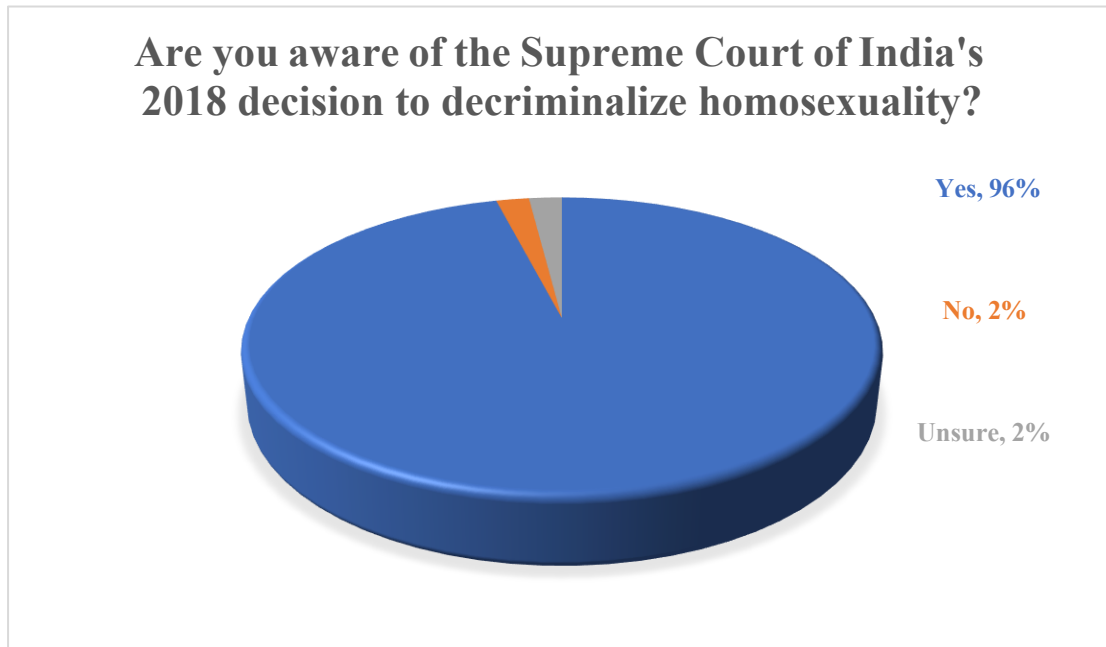
Figure 12: Opinion on the discrimination against the LGBT community.



Source: From questionnaire survey.

Findings: 60 % of the LGBT respondents said that they have experienced discrimination whereas 40% said they haven't.

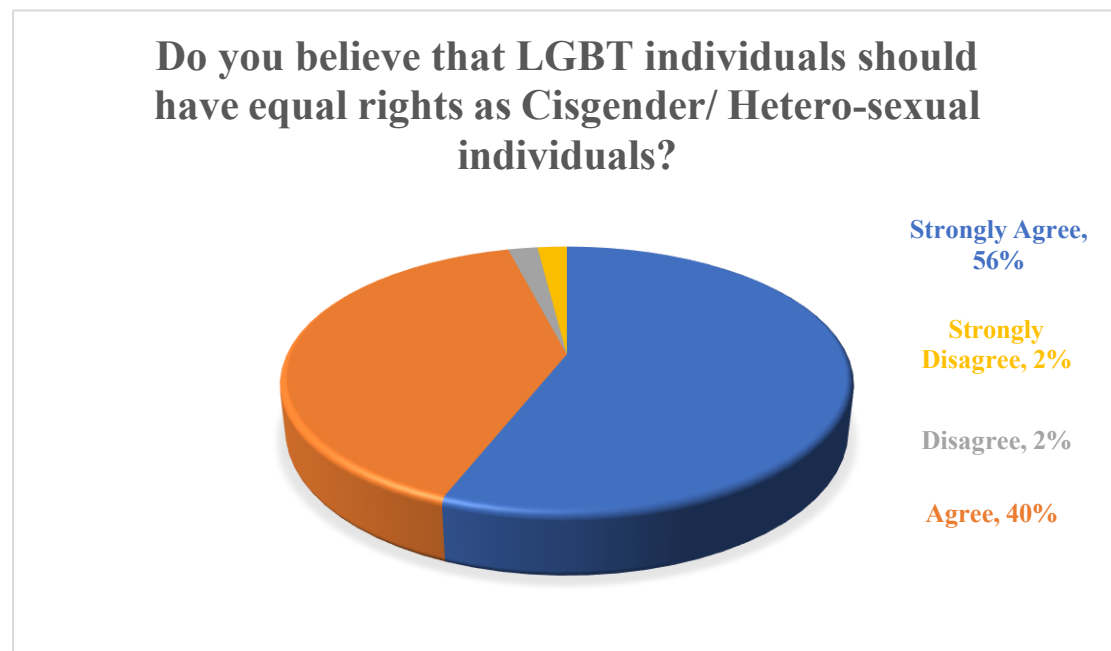
Figure 13: Awareness about the Supreme Court's 2018 judgement.



Source: From questionnaire survey.

Findings: About the Supreme Court's landmark Judgement, 96% are well aware of it while 2% are not clear and 2% are unaware.

Figure 14: Question on Equality of Rights to the LGBT respondents.



Source: From questionnaire survey.

Findings: Regarding the equal protection of the LGBT population's rights to those of Cisgender, 56% of LGBT respondents strongly agree, and 40% agree, thus making a total of 96% positive response. On the other hand, 2% each disagrees and strongly disagrees.

Objective 2: To examine international law and the laws related to LGBT rights in other countries.

The quantitative technique is inapplicable for demonstrating this research objective since it concerns a comparative analysis of the legislation of other nations.

Objective 3: To determine whether new legislation is required to enshrine the Right to family life and children in law, along with reviewing existing legislation that needs to be amended or rectified to ensure effective inclusion of LGBT individuals.

Set 1: Perception of the General Public.

Table 8: Frequencies of objective 3 results from the first group of respondents, or the general public.

| Statistics | | | |
|------------|---------|---|---|
| | | Are you aware that LGBT partners have no right to marry and adopt in India? | Do you support the legalization of same-sex marriage and adoption by same-sex couples in India? |
| N | Valid | 150 | 150 |
| | Missing | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

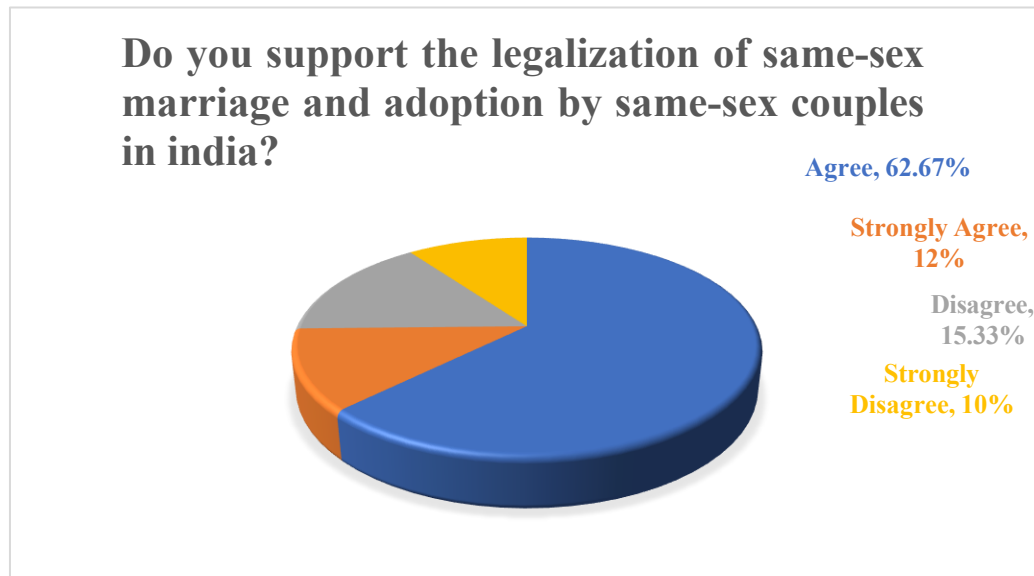
Figure 15: Awareness of the General Public on the Same-sex Marriage Rights in India.



Source: From questionnaire survey.

Findings: When asked if the general population is aware that LGBT couples are not permitted to marry or adopt children in India, 48% of respondents indicated they are, while 52% of respondents said they are not.

Figure 16: Opinion of the general public respondents on the legalisation of Same-sex marriage and adoption.



Source: From questionnaire survey.

Findings: 62.2% of the General Public supports same-sex marriage and adoption by same-sex couples, 12% strongly support, 15.3% disagree and 10% strongly disagree.

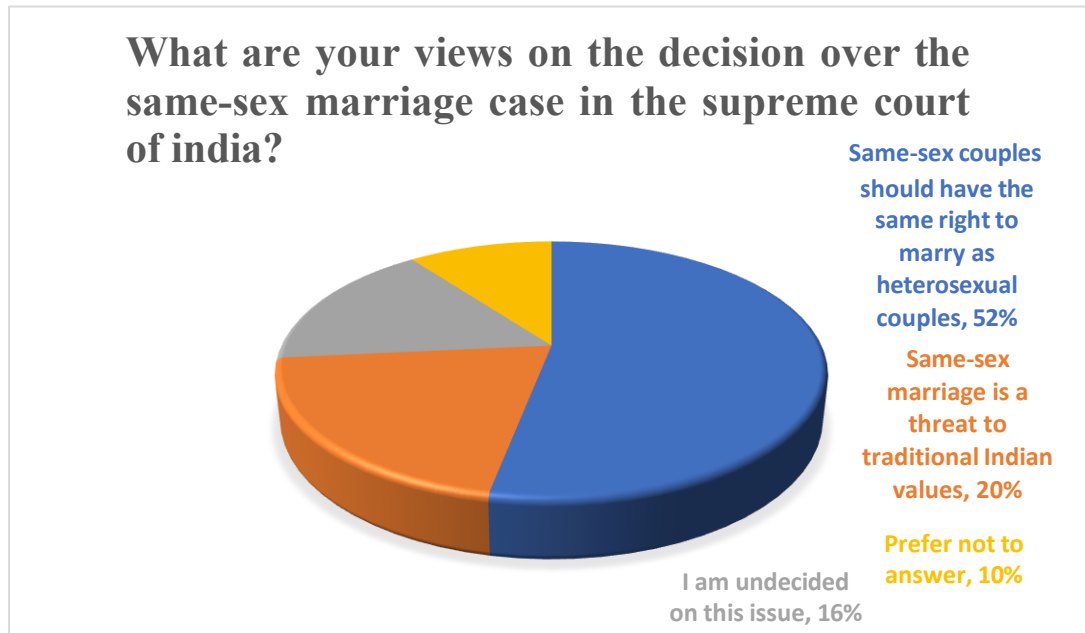
Set 2: Perception of the Legal Fraternity.

Table 9: Frequencies of objective 3 results from the second group of respondents, or the Legal Fraternity.

| Statistics | | | | | | | | |
|------------|--|---|--|---|---|---|---|--|
| | What are your views on the Decision over the same-sex marriage case in the Supreme Court of India? | Is the Supreme Court of India's decision to forbid LGBTQ individuals from marrying someone of the same sex a mistake that the contemporary, International world will ever forget? | Do you believe that restricting the rights to marriage and adoption is a violation of the fundamental right to life? | With the understanding that it has nothing to do with the social, moral, cultural, or religious facets of our country, do you believe that same-sex marriages and adoption by Same-sex couples are acceptable in society? | Do you think the rights of the Cis/ Hetero-sexual individuals will be impacted by permitting same-sex marriage? | The Supreme Court ruled in the Shefin Jahan (Hadiya) case that "society has no role to play in determining our choice of partners and that the right to marry a person of one's choice is integral to Article 21 of the Constitution." Why then don't LGBTQ peo | What changes would you like to see made to the law better to protect the rights of LGBT individuals in India? | What are some of the laws and policies that need to be strengthened or enacted to ensure better legal protection for LGBTQ+ individuals in Kerala? |
| N | Valid | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| | Missing | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

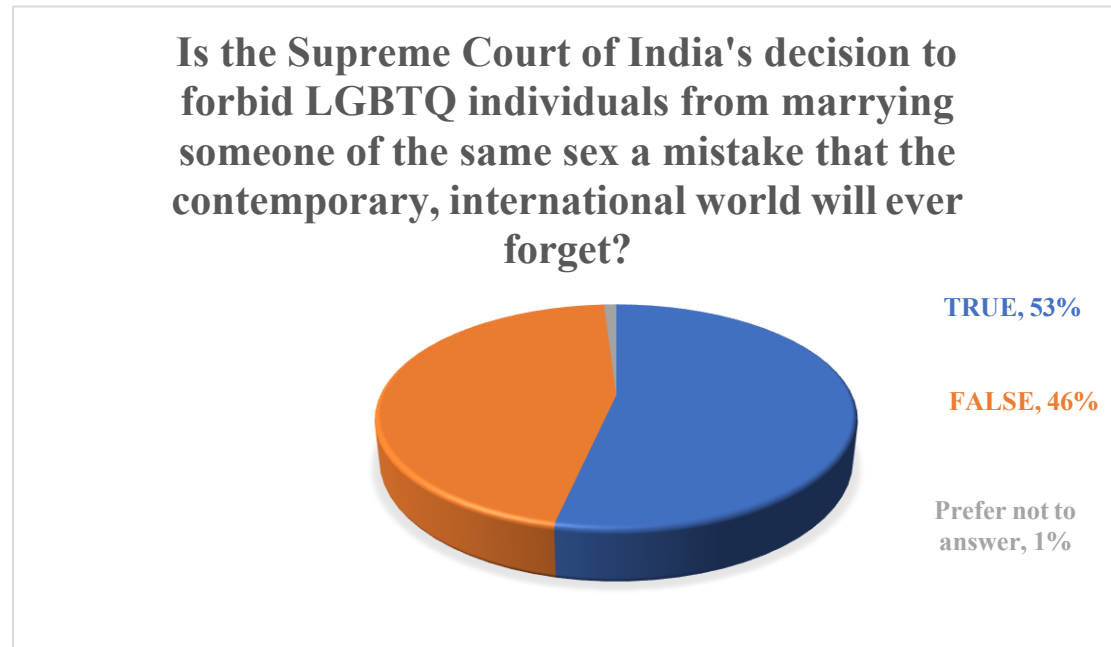
Figure 17: Legal fraternity's views on Same-sex marriage case.



Source: From questionnaire survey.

Findings: Of those who answered the question about the legal fraternity's opinions on the Supreme Court of India's ruling on same-sex marriage, 52% said they thought heterosexual and same-sex couples should have the equal legal right to marry. 16% are unsure, while 20% believe same-sex marriage poses a danger to traditional Indian values and 10 percent prefer not to answer.

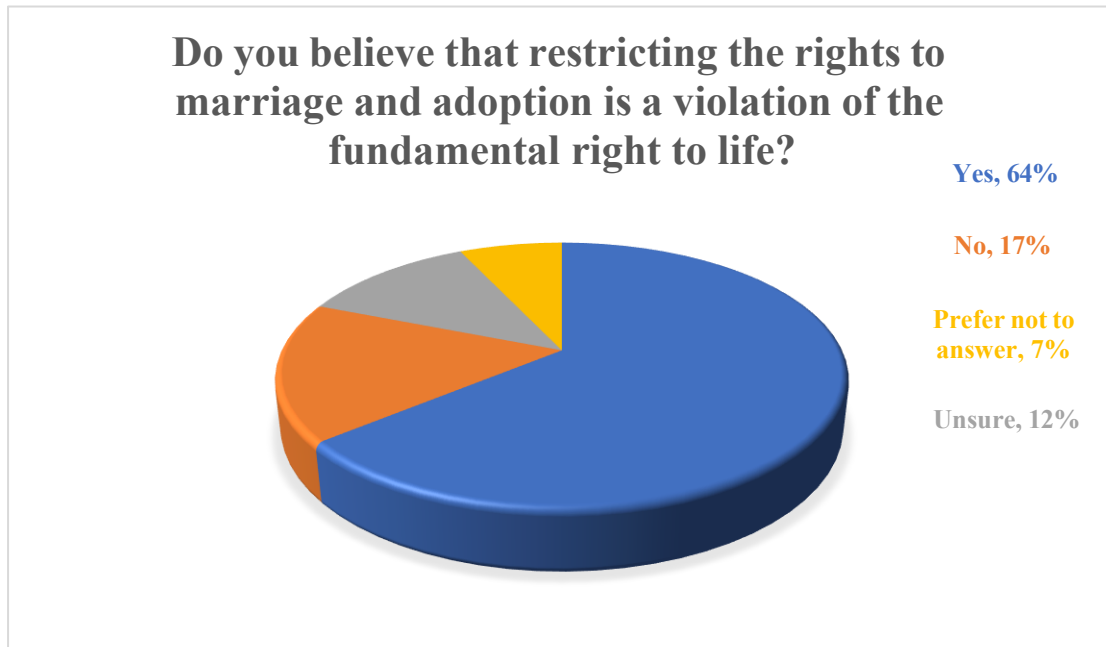
Figure 18: Legal fraternity's opinion on Same-sex marriage case decision.



Source: From questionnaire survey.

Findings: When asked the legal fraternity's opinion. "Is the ruling by the Indian Supreme Court prohibiting LGBT people from getting married to members of same-sex a blunder that the modern, global community will never forget? 1 percent chose not to respond, while 53% said the answer was correct and 45% indicated it was untrue.

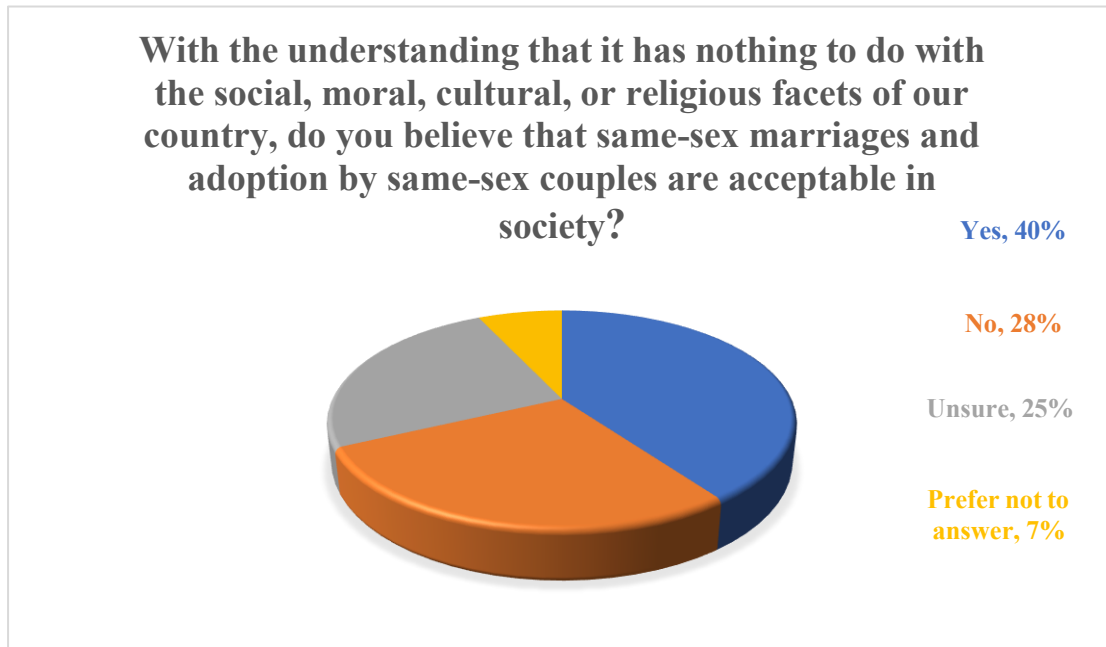
Figure 19: Legal fraternity's Opinion on Fundamental Rights violation.



Source: From questionnaire survey.

Findings: According to 64% of respondents from the legal fraternity, denying the LGBT population the ability to marry or adopt a child would be a violation of their basic right to life. However, 17% disagree with this. Twelve percent of respondents were unclear about the question, and seven percent preferred not to respond.

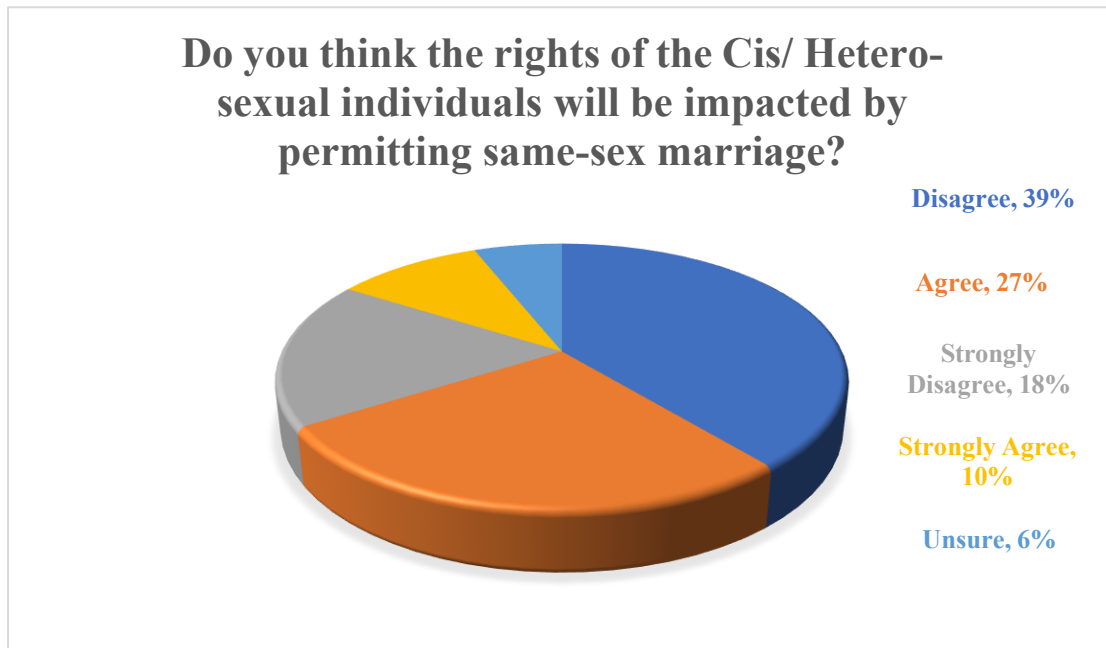
Figure 20: Legal fraternity's Opinion on social acceptance of same-sex marriage.



Source: From questionnaire survey.

Findings: When asked, "With the understanding that it has nothing to do with the social, moral, cultural, or religious facets of our country, do you believe that same-sex marriages and adoption by Same-sex couples are acceptable in society?" 40% said they agreed, 28% said they didn't, 25% said they weren't sure, and 7% said they would rather not respond.

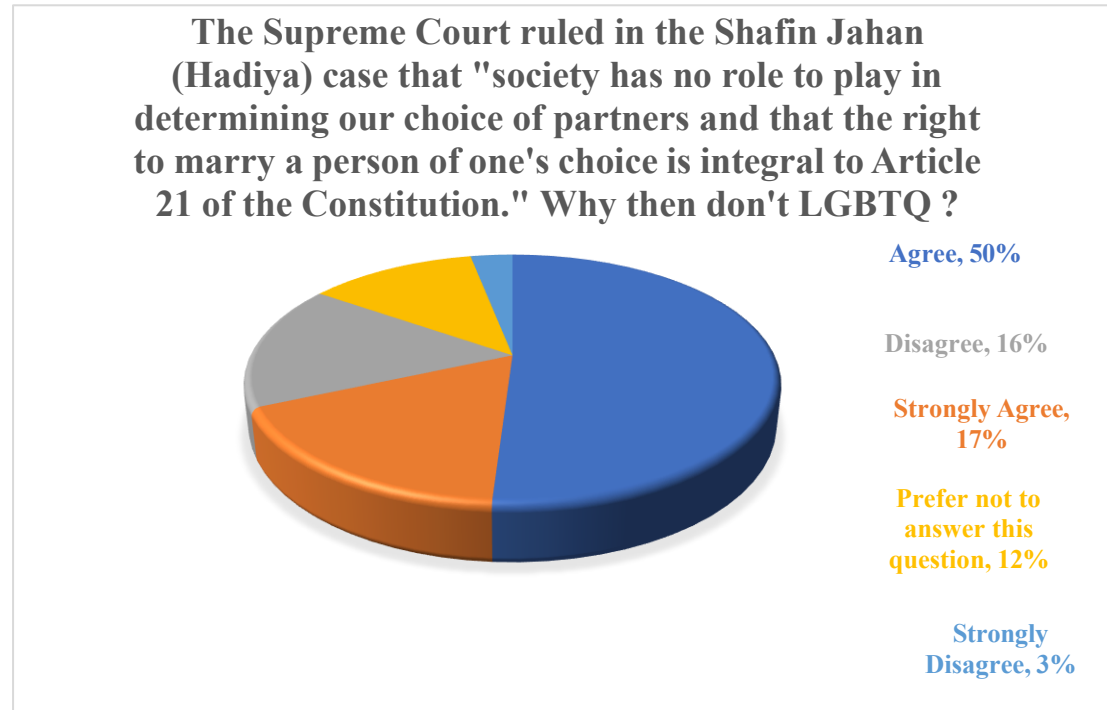
Figure 21: Opinion on same-sex marriage impact by legal fraternity.



Source: From questionnaire survey.

Findings: When the question to the legal community asked how they felt allowing same-sex marriage would affect heterosexual and cisgender people's rights, 39% disagreed, 18% strongly disagreed, 27% agreed, 10% strongly agreed, and 6% were undecided.

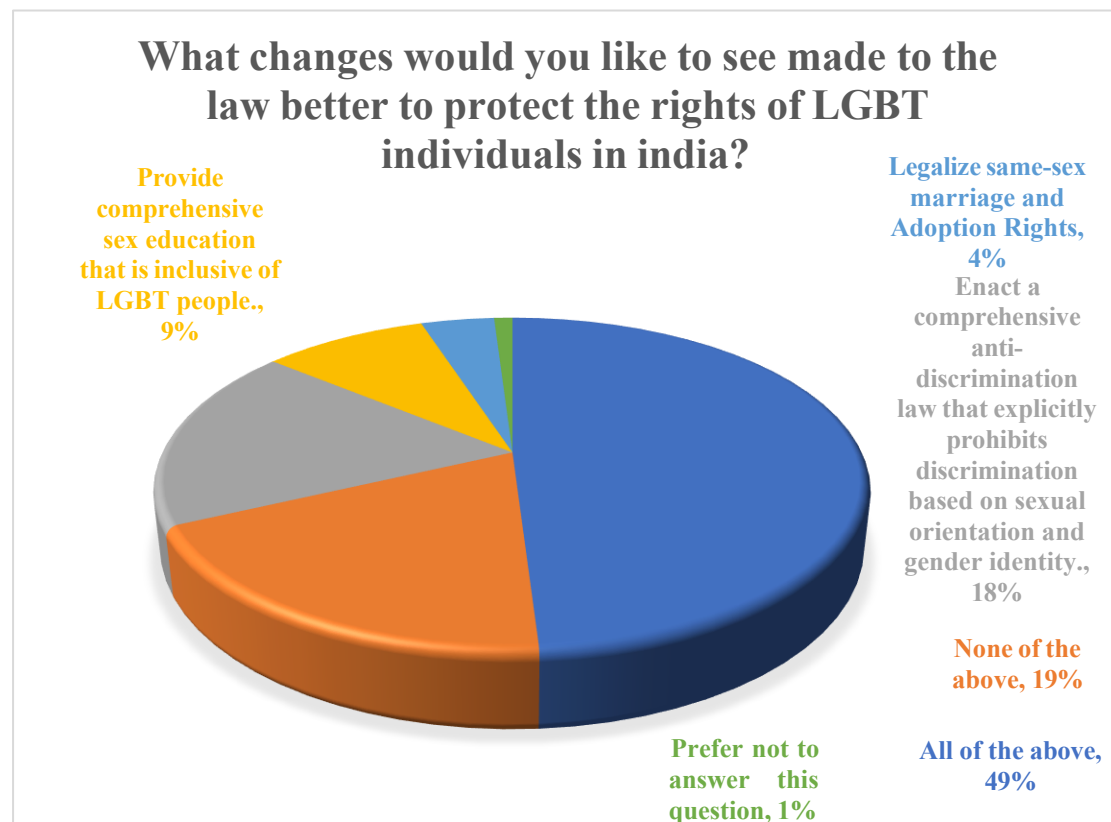
Figure 22: Legal fraternity's view on the Hadiya case decision and its comparison with the same-sex marriage case.



Source: From questionnaire survey.

Findings: The legal community was questioned on their thoughts on the Supreme Court's decision in the Shafin Jahan (Hadiya) case, which declared that "the freedom to marry whoever one chooses is fundamental to Article 21 of the Constitution and that society has no role to play in determining our choice of partners." So why are LGBTQ individuals not granted the same rights? Do you concur with this? 12% preferred not to respond, 50% agreed, 17% strongly agreed, 16% disagreed, and 3% strongly disagreed.

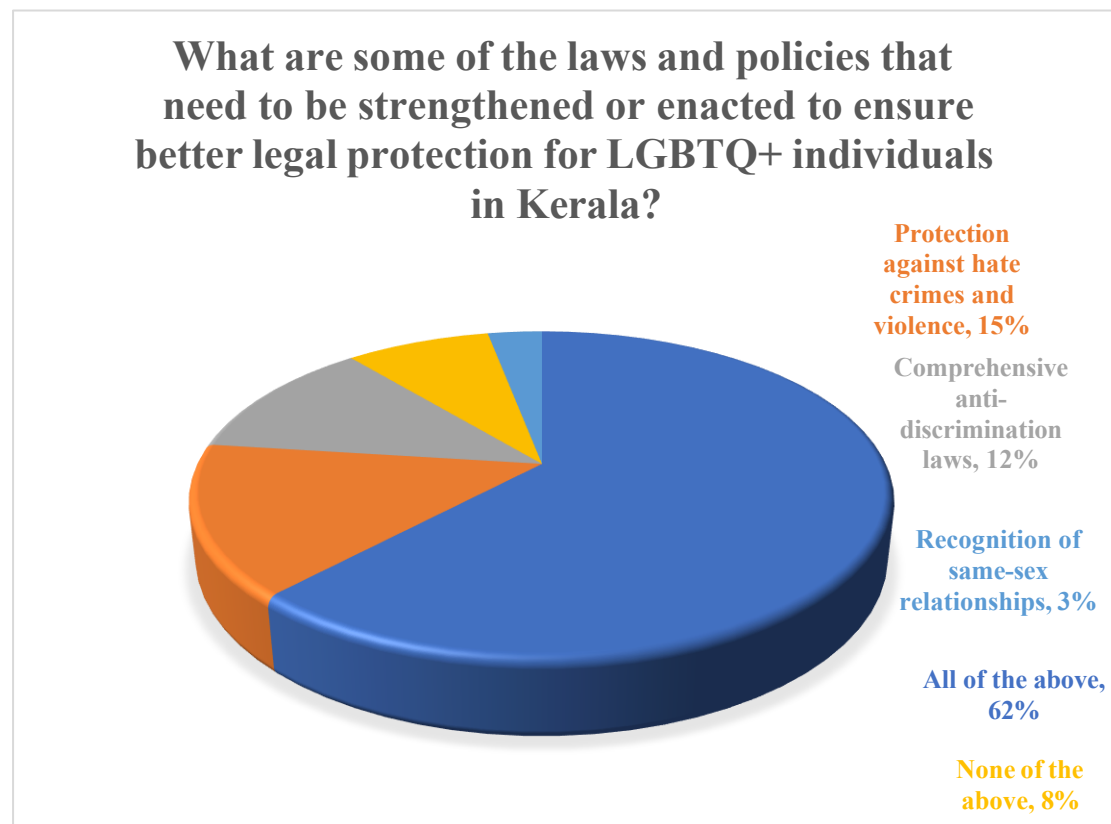
Figure 23: Suggestions from the legal fraternity for better legal protection.



Source: From questionnaire survey.

Findings: Members of the legal community gave the following answers when asked what legal amendments they would want to see enacted to better safeguard the rights of LGBT individuals in India: 9% of respondents believed that comprehensive sex education that is inclusive of LGBT people should be offered, 4% believed that same-sex marriage and adoption rights should be legalized, and 18% believed that comprehensive anti-discrimination laws that specifically prohibit discrimination based on sexual orientation and gender identity should be passed. 49% are of the view of All of the aforementioned alternatives. Just 19% opt for none of the options.

Figure 24: Proposed policies by the Legal fraternity.



Source: From questionnaire survey.

Findings: Out of the legal fraternity respondents, 12% suggested enacting comprehensive anti-discrimination legislation as one of the laws and policies that should be enhanced or implemented to provide stronger legal protection for LGBTQ+ people in Kerala. 3 percent said accepting same-sex partnerships. 15% want protection against acts of violence and hate crimes. 8% replied none of the above, while 62% said all of the above.

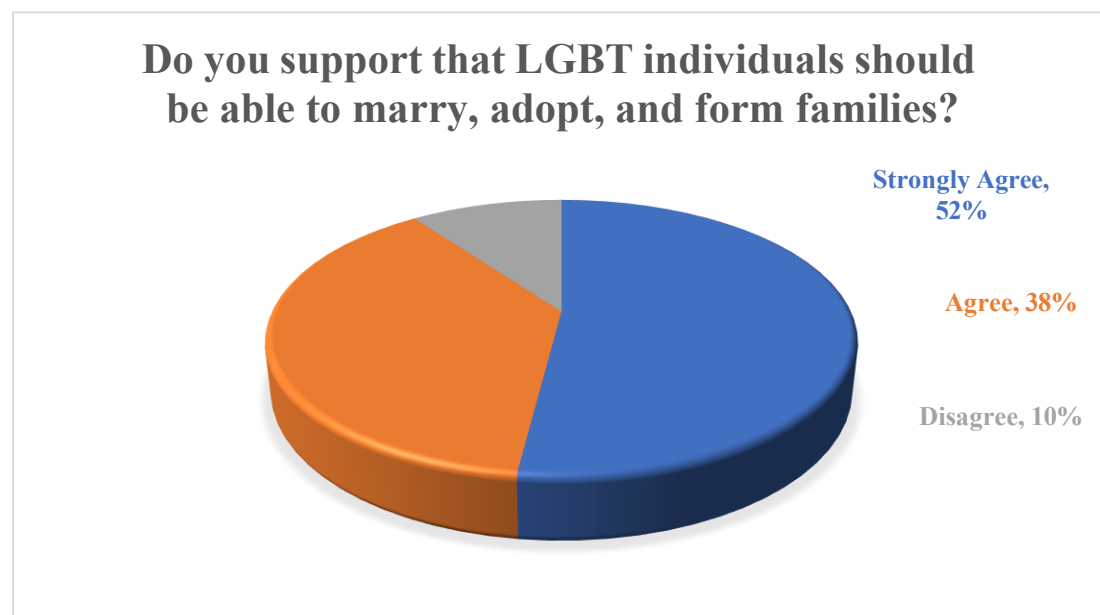
Set 3: Perception of the LGBT Members.

Table 10: Frequencies of objective 3 results from the third group of respondents, or the LGBT community.

| Statistics | | | | | | |
|------------|---------|---|--|--|---|---|
| | | Do you support that LGBT individuals should be able to marry, adopt, and form families? | Do you believe that restricting the rights to marriage and adoption is a violation of the fundamental right to life? | Do you think the rights of the Cis/ Hetero- sexual individuals will be impacted by permitting same-sex marriage? | Do you believe that LGBT individuals should be able to live openly and without fear of discrimination ? | What changes would you like to see made to the law better to protect the rights of LGBT individuals in India? |
| N | Valid | 50 | 50 | 50 | 50 | 50 |
| | Missing | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

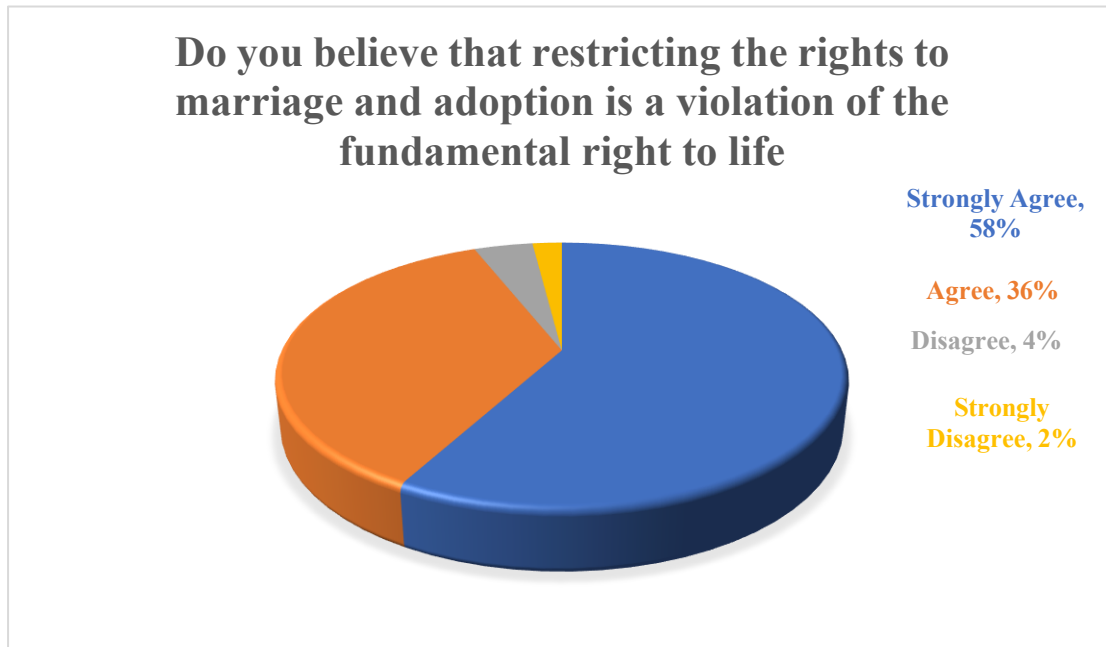
Figure 25: Opinion of LGBT respondents on same-sex marriage and adoption rights.



Source: From questionnaire survey.

Findings: When asked whether they supported LGBT people being allowed to get married, adopt children, and start families, 52% of LGBT respondents said they strongly agreed, 38% said they agreed, and 10% disagreed.

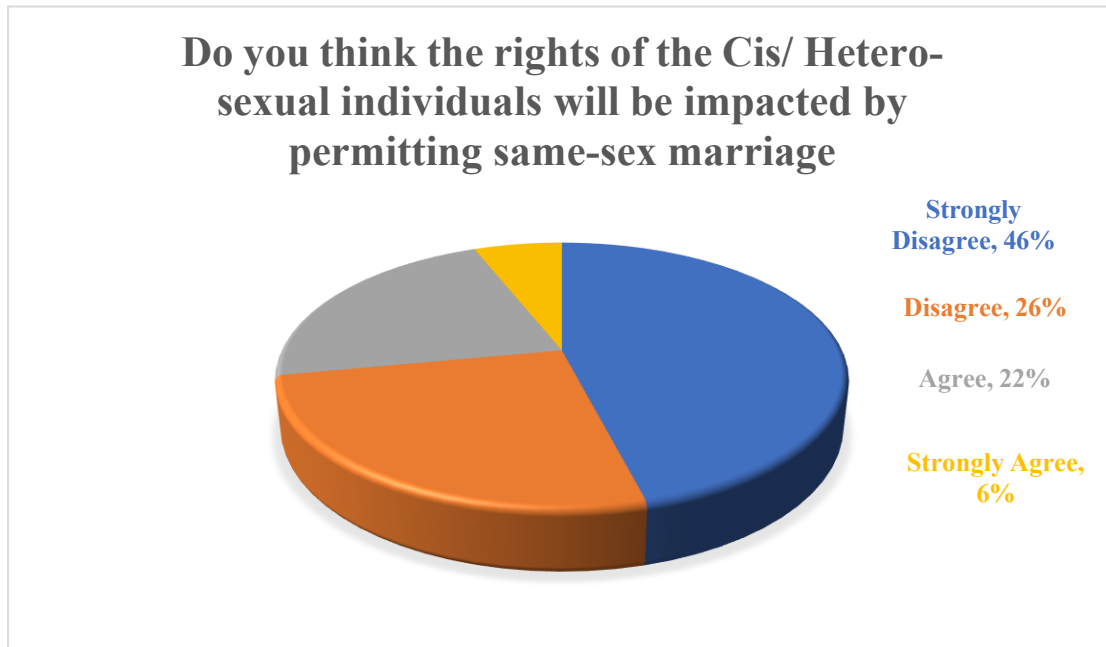
Figure 26: Opinion on violation of fundamental rights by LGBT Respondents.



Source: From questionnaire survey.

Findings: When asked whether they thought that limiting the freedoms of marriage and adoption violated the basic right to life, LGBT respondents gave their opinion. 16% disagree, 4% strongly disagree, 36% agree, and 2% strongly disagree.

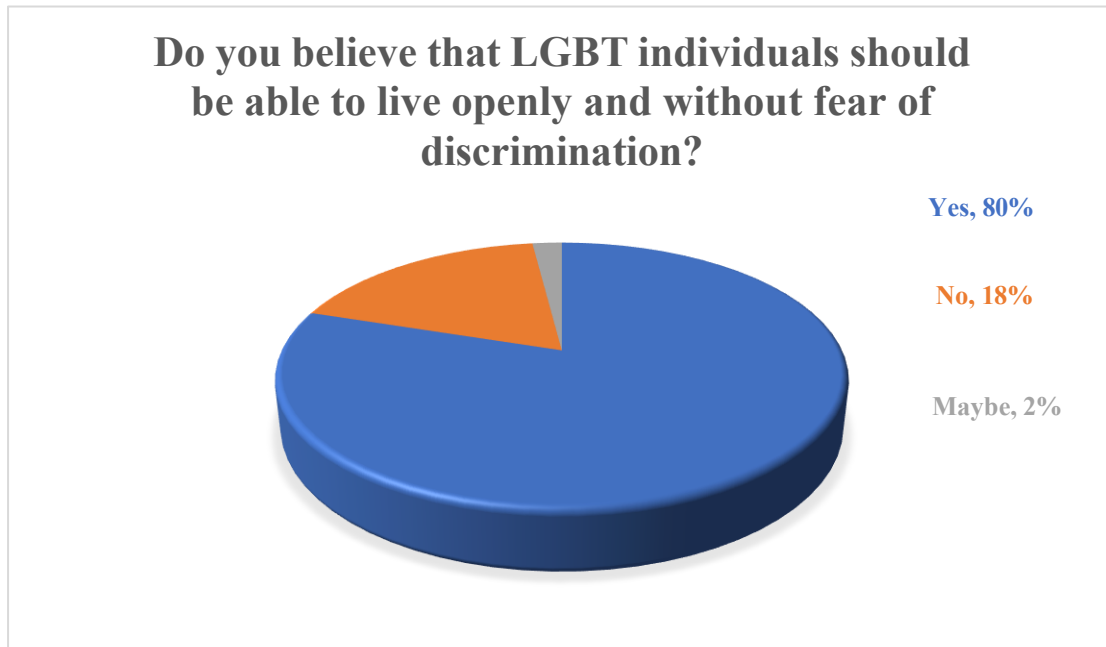
Figure 27: Impact of same-sex marriage on the rights of Cisgender.



Source: From questionnaire survey.

Findings: When asked whether they believed that allowing same-sex marriage would affect the rights of heterosexual and cisgender people, the LGBT community said yes. 26% disagreed, 46% strongly disagreed, 22% agreed, and 6% extremely agreed.

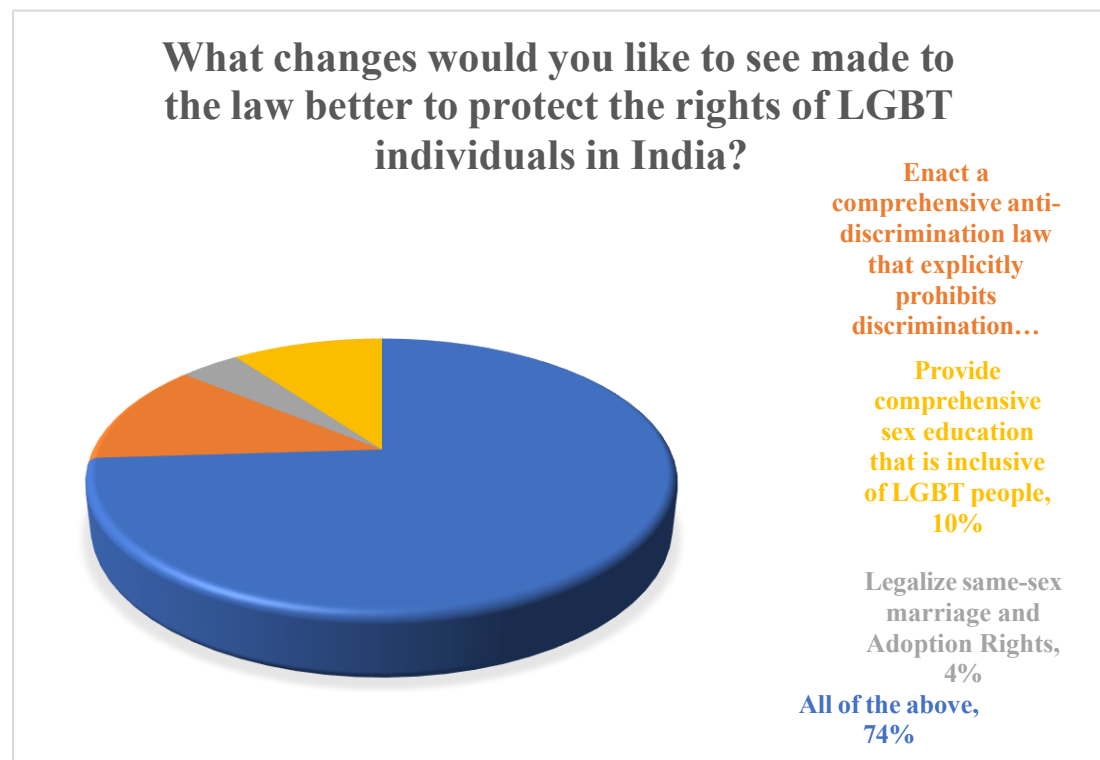
Figure 28: LGBT response to discrimination-free society.



Source: From questionnaire survey.

Findings: When questioned, respondents who identify as LGBT ‘do they think that members of the LGBT community ought to be allowed to live freely and without fear of discrimination?’ 82% agreed, 18% disagreed, and 2% felt it may be.

Figure 29: Suggestions to ensure the rights of LGBT in India.



Source: From questionnaire survey.

Findings: "What changes would you like to see made to the law better to protect the rights of LGBT individuals in India?" was the question posed to LGBT respondents. According to 12% of respondents, comprehensive anti-discrimination legislation that specifically forbids discrimination based on sexual orientation and gender identity should be enacted. Four percent supported legalizing adoption rights and same-sex unions. Ten percent advocated for comprehensive sex education that includes LGBT individuals. 74% chose all the options shown above.

Objective 4: To examine the impact of the Supreme Court's and the lower court's decisions on how society views LGBT communities. An emphasis on social issues, such as whether society does recognize the LGBT community after several judgments have been rendered and what role NGOs can play in meeting the needs of the LGBT community.

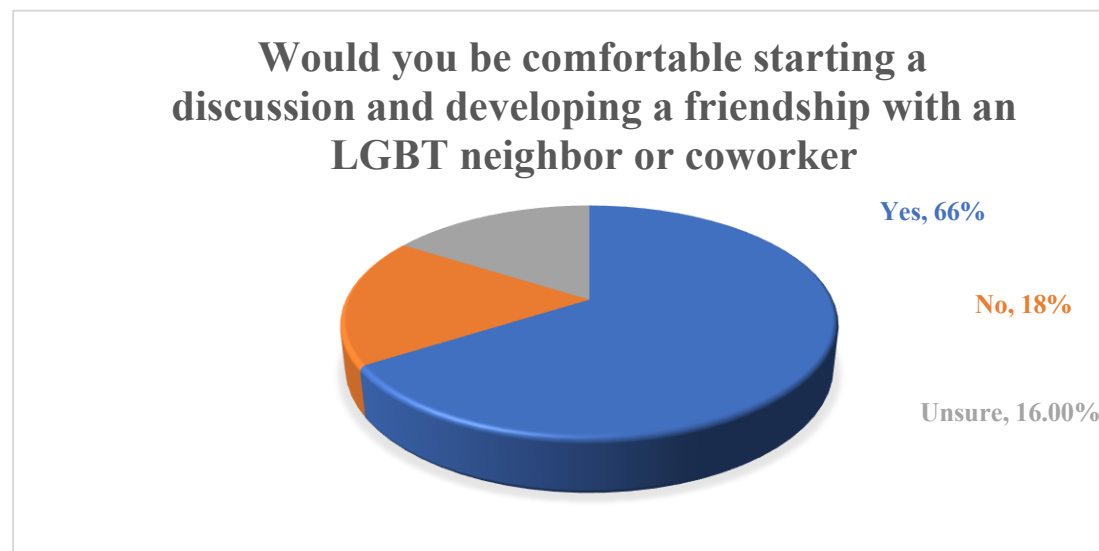
Set 1: Perception of the General Public.

Table 11: Frequencies of objective 4 results from the first group of respondents, or the general public.

| Statistics | | | | | | |
|------------|---------|---|--|---|--|--|
| | | Would you be comfortable starting a discussion and developing a friendship with an LGBT neighbor or coworker? | Do you accept if any person from your family is willing to live with an LGBT person? | Do you believe that the Navtej Singh Johar decision has had a positive impact on the lives of LGBT people in India? | What actions do you believe the LGBT community in India can take to increase their social inclusion? | What role can individuals, communities, and institutions play in creating a more inclusive society for LGBT individuals? |
| N | Valid | 150 | 150 | 150 | 150 | 150 |
| | Missing | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

Figure 30: Opinion on the social acceptability of the LGBT Community by the general public.



Source: From questionnaire survey.

Findings: when a question is posed to the public Would you feel at ease striking up a conversation and becoming friends with an LGBT neighbor or employee? 18% replied no, 16% stated undecided, and 66% said yes.

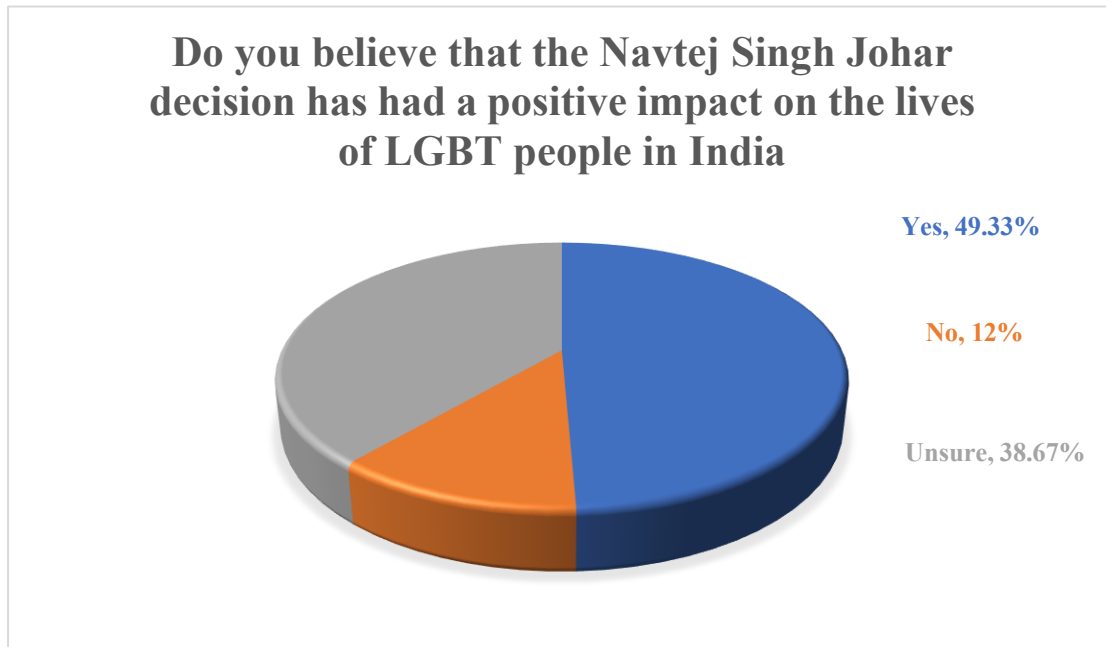
Figure 31: Opinion on the kinship acceptability of the LGBT Community by the general public.



Source: *From questionnaire survey.*

Findings: For the question “Do you accept that someone in your family would be open to cohabitating with an LGBT person?” 27% of respondents from the general population answered no, 53% said yes, and 19% stated they would rather not comment.

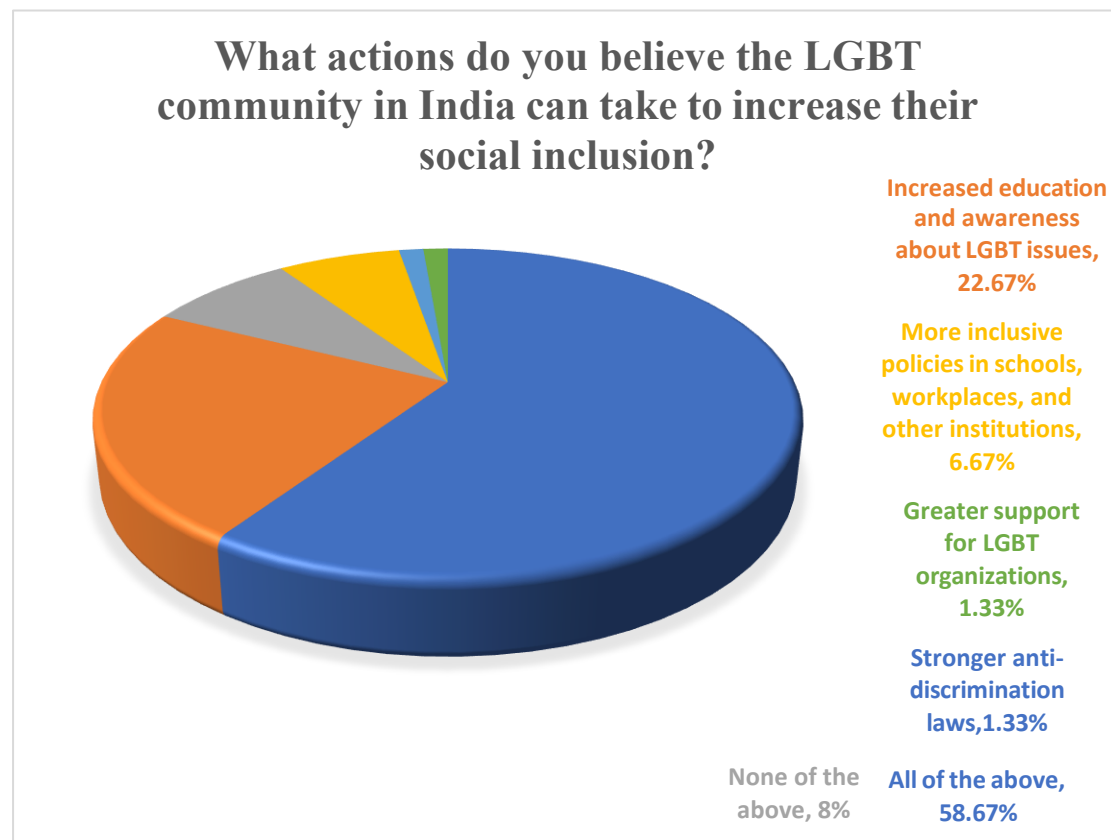
Figure 32: Impact of Navtej Singh Johar's case on LGBT lives.



Source: From questionnaire survey.

Findings: When asked whether they thought the Navtej Singh Johar ruling had improved the lives of LGBT individuals in India, 49% of the general population responded in the affirmative, 12% in the negative, and 38% were unsure.

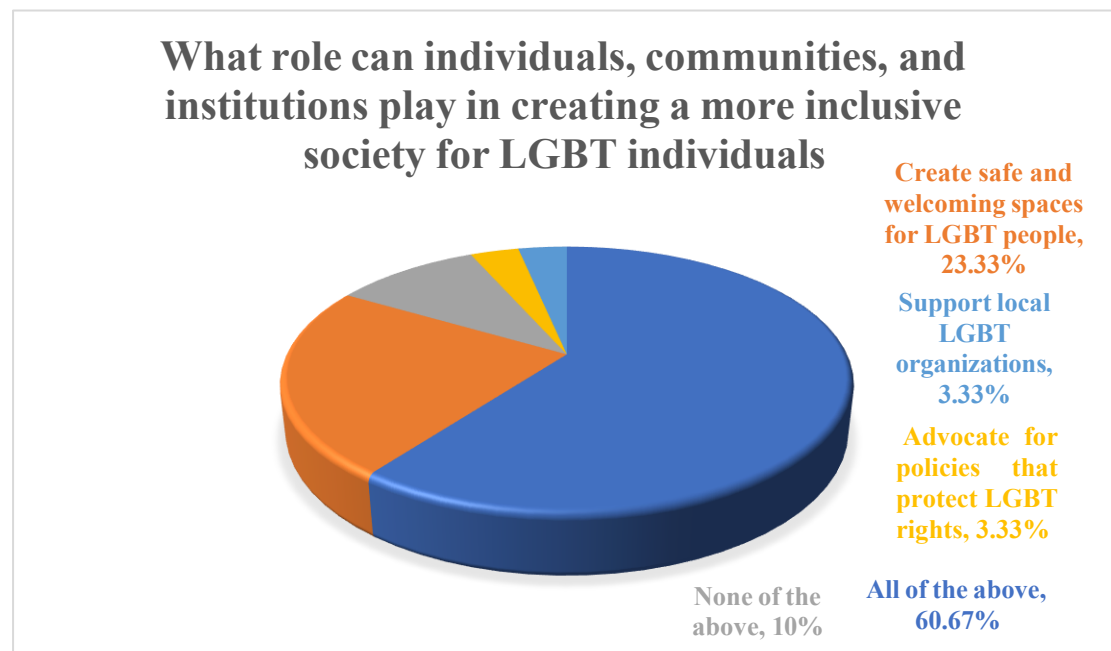
Figure 33: Suggestion on social inclusion of LGBT in India.



Source: From questionnaire survey.

Findings: General public respondents were asked for their thoughts on what steps they thought the LGBT community in India might take to improve their social inclusion. An increase in knowledge and understanding of LGBT problems was mentioned by 22.67%. Stronger anti-discrimination legislation is stated by 1.33%. More support for LGBT groups is indicated by 1.33%. 6.67% More inclusive policies in businesses, educational institutions, and other settings. 58.67% Every option up top. 8% Not one of the aforementioned.

Figure 34: Suggestions on LGBT-inclusive policies.



Source: From questionnaire survey.

Findings: "What role can individuals, communities, and institutions play in creating a more inclusive society for LGBT individuals?" was the question posed to respondents from the general population. 23.33% said that Provide accepting and safe environments for LGBT individuals 3.33% said support LGBT organizations. Again 3.33% Support laws that defend the rights of LGBT people. All of the above was said by 60%. 10% None of the above options.

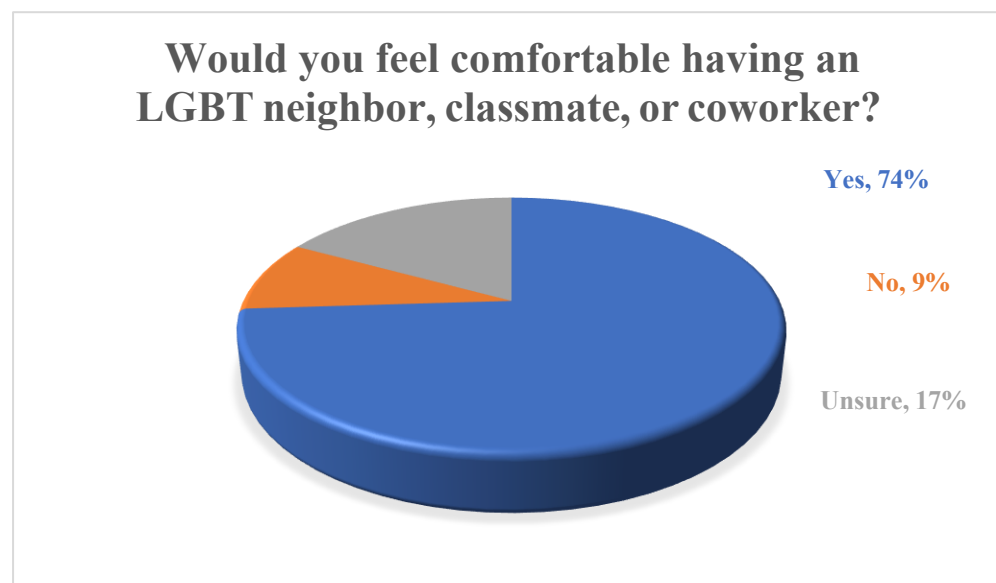
Set 2: Perception of the Legal Fraternity.

Table 12: Frequencies of objective 4 results from the second group of respondents, or the Legal Fraternity.

| | | Statistics | | | | |
|---|---------|---|---|---|--|--|
| | | Would you feel comfortable having an LGBT neighbor, classmate, or coworker? | Do you believe that the Navtej Singh Johar decision (Decriminalisation of Sec.377, IPC) has had a positive impact on the lives of LGBT people in India? | Are you aware of any organizations or groups (NGOs) that work to promote LGBT rights in Kerala? | Are you aware of any resources available to LGBT individuals in Kerala, such as shelters, counseling services, etc.? | What role can individuals, communities, and institutions play in creating a more inclusive society for LGBT individuals? |
| N | Valid | 100 | 100 | 100 | 100 | 100 |
| | Missing | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

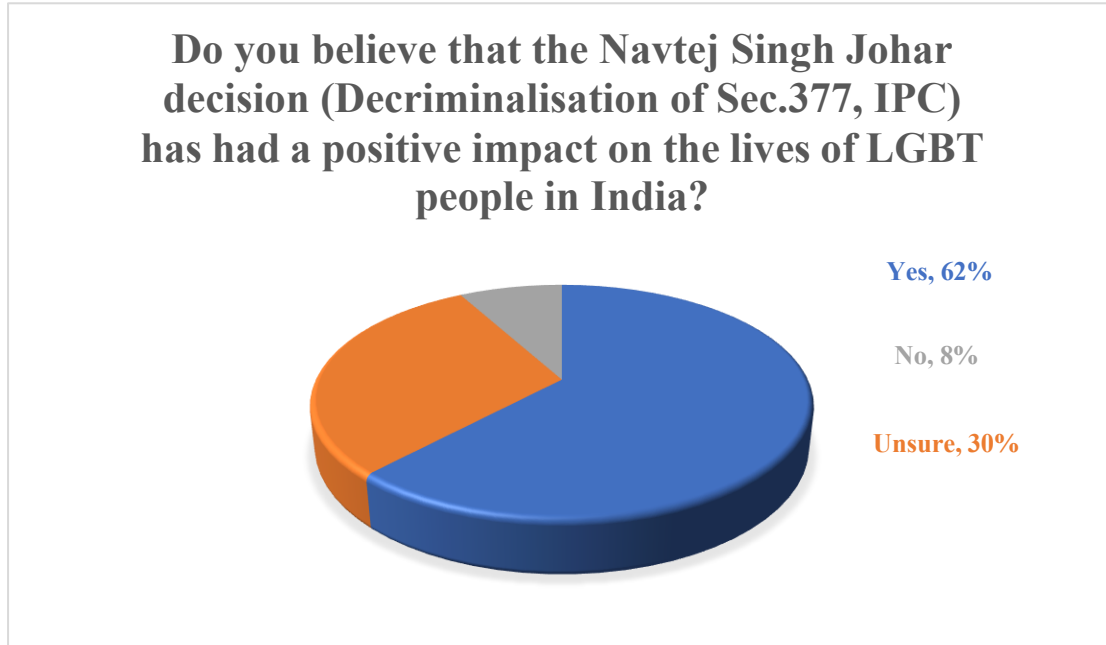
Figure 35: Opinion on the social acceptability of LGBT.



Source: From questionnaire survey.

Findings: The question, "Would you feel comfortable having an LGBT neighbour, classmate, or coworker?" was posed to respondents in the legal fraternity. 9% replied no, 17% said they were unsure, and 74% stated they were well and comfortable.

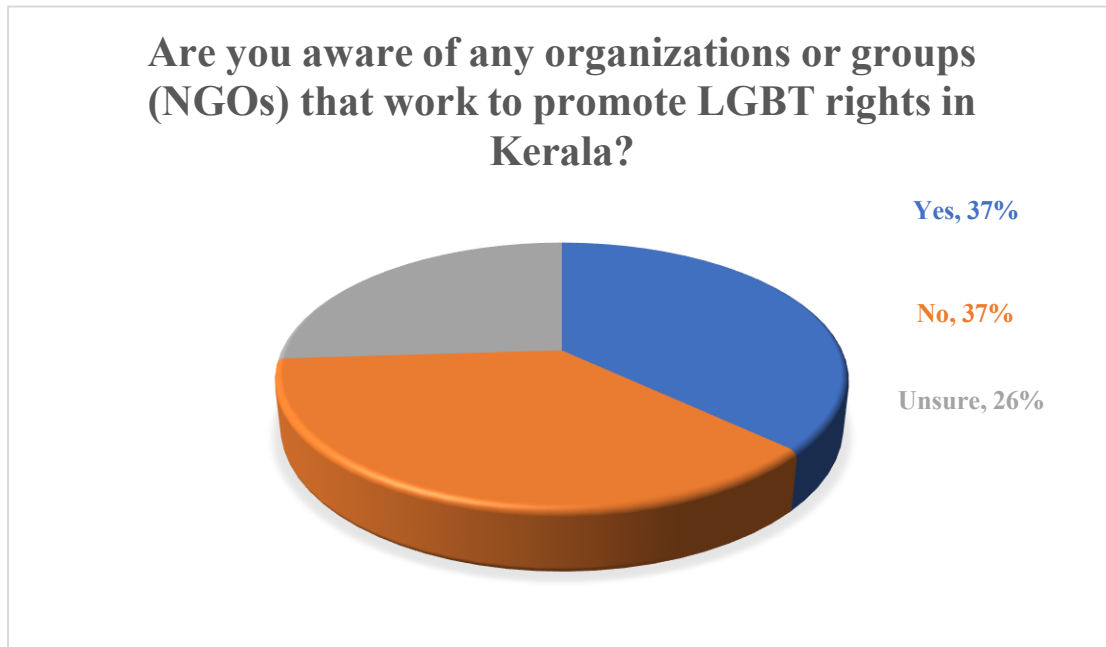
Figure 36: Opinion of Legal fraternity on the impact of Navtej Singh's case on LGBT lives.



Source: From questionnaire survey.

Findings: The question "Do you believe that the Navtej Singh Johar decision (Decriminalization of Sec. 377, IPC) has had a positive impact on the lives of LGBT people in India?" was the question posed to respondents in the legal community. Thirty percent were undecided, 8% responded no, and 62% said yes.

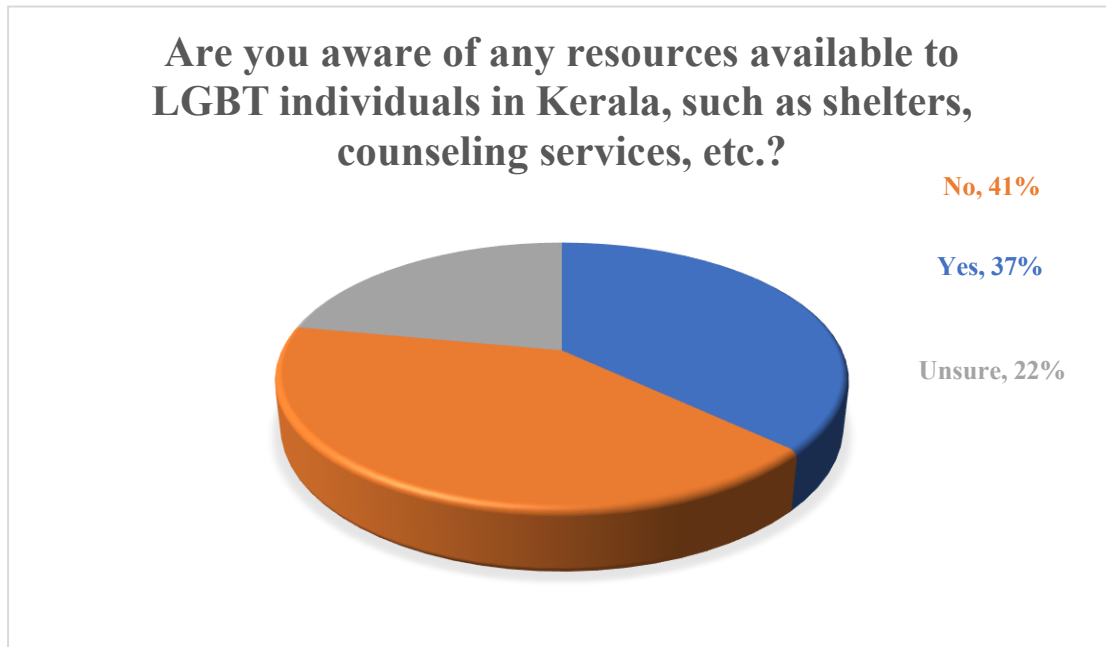
Figure 37: Awareness of the legal fraternity about LGBT-supportive NGOs.



Source: From questionnaire survey.

Findings: Upon inquiring of the legal fraternity respondents, Do you know of any non-governmental organizations (NGOs) in Kerala that support the rights of LGBT people? 26% of people are unsure about it, 37% are aware, and 37% are not aware.

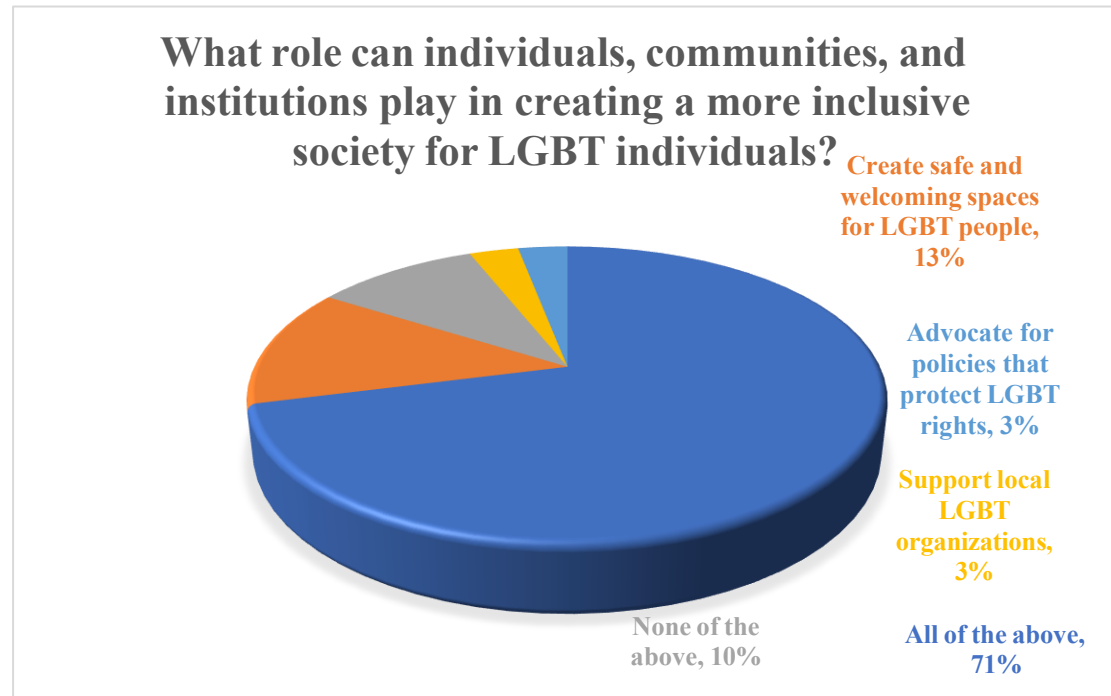
Figure 38: Awareness of the legal fraternity about LGBT-supportive Govt policies.



Source: From questionnaire survey.

Findings: When questioned, "Are you aware of any resources available to LGBT individuals in Kerala, such as shelters, counselling services, etc." the legal fraternity responders were asked. 41% are oblivious, 37% have some knowledge, and 22% are completely unsure.

Figure 39: Suggestion of legal fraternity on social inclusion of LGBT in India.



Source: From questionnaire survey.

Findings: When asked, "What role can individuals, communities, and institutions play in creating a more inclusive society for LGBT individuals?" the legal fraternity respondents gave their answers. 13% advocate creating friendly and secure venues for LGBT individuals. 3% recommends helping with local LGBT groups. 3% Support laws that defend the rights of LGBT people. 71% agree with every option above. 10% are in favour of none of the above.

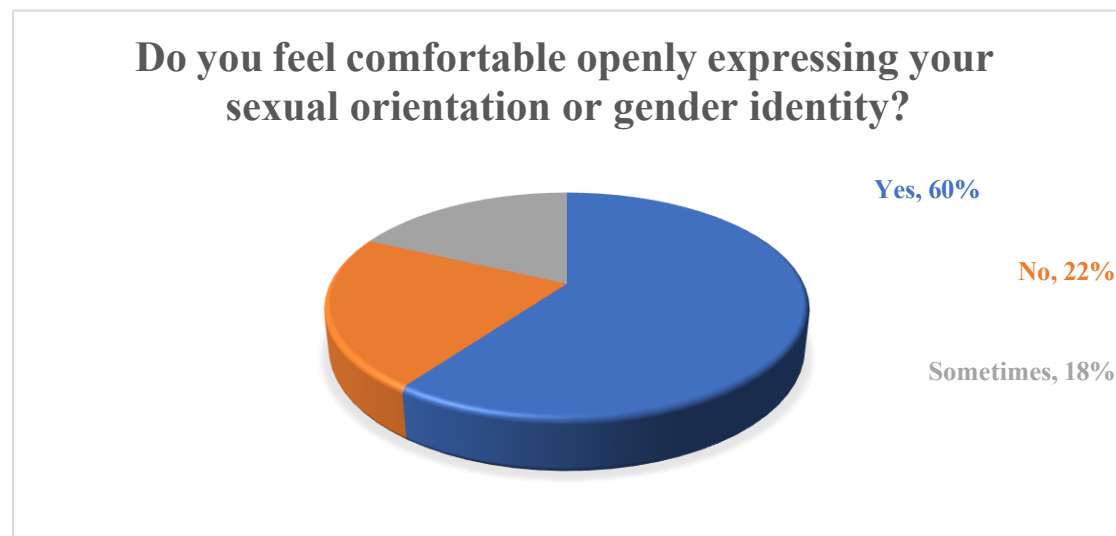
Set 3: Perception of the LGBT Members.

Table 13: Frequencies of objective 4 results from the third group of respondents, or the LGBT community.

| Statistics | | | | | | | | | |
|------------|---------|---|--|---|--|---|---|--|--|
| | | Do you feel comfortable openly expressing your sexual orientation or gender identity? | Was your gender identification or sexual orientation accepted by your family at that time? | Are you accepted by your family at present? | Have you ever witnessed discrimination or prejudice against another LGBT person? | What are the biggest challenges you face as an LGBT person in Kerala? | Are you aware of any organizations or groups (NGOs) that work to promote LGBT rights in Kerala? | Are you aware of any resources available to LGBT individuals in Kerala, such as shelters or counseling services, etc.? | Do you believe that our government or society doesn't make enough efforts to preserve human rights and promote the family and social welfare of LGBTQ people as needed to meet the demands of the times? |
| N | Valid | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 |
| | Missing | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

Source: Data from field surveys examined with IBM-SPSS Statistics Tool (Version 29)

Figure 40: Opinion of LGBT respondents in expressing their Gender identity.



Source: From questionnaire survey.

Findings of figure 40: "Do you feel comfortable openly expressing your sexual orientation or gender identity?" was the question posed to respondents in the LGBT community. 22% replied no, 18% said sometimes, and 60% said yes.

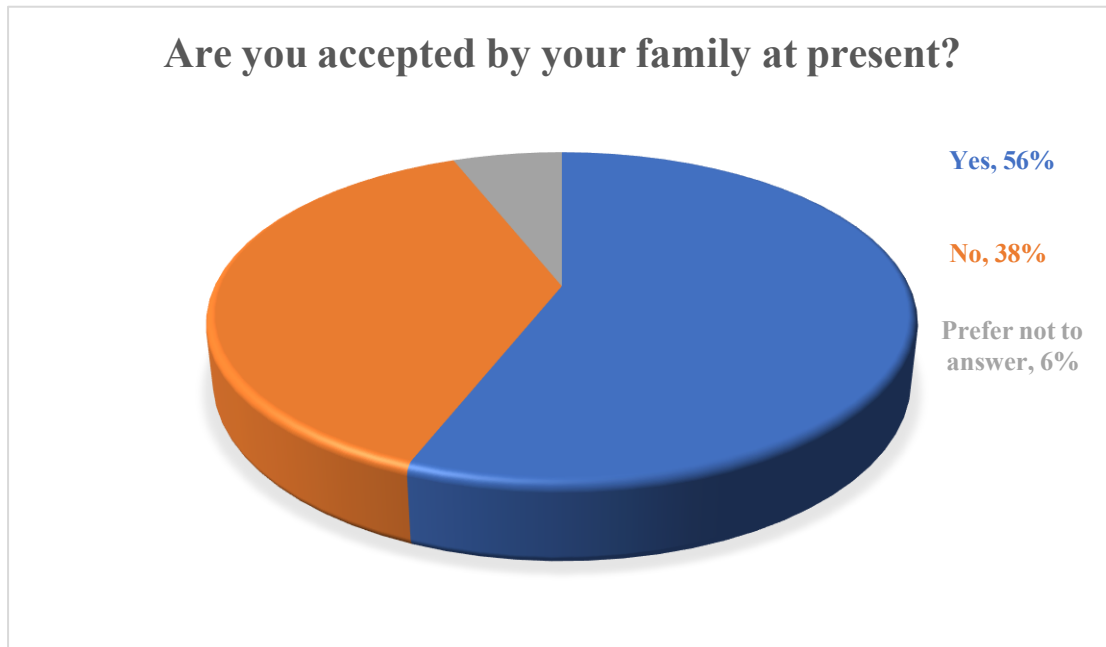
Figure 41: Question on Family acceptance of LGBT Respondents.



Source: From questionnaire survey.

Findings: "Did your family accept your gender identification or sexual orientation at that time?" was the question posed to respondents from the LGBT community. 18% replied yes, and 82% said no.

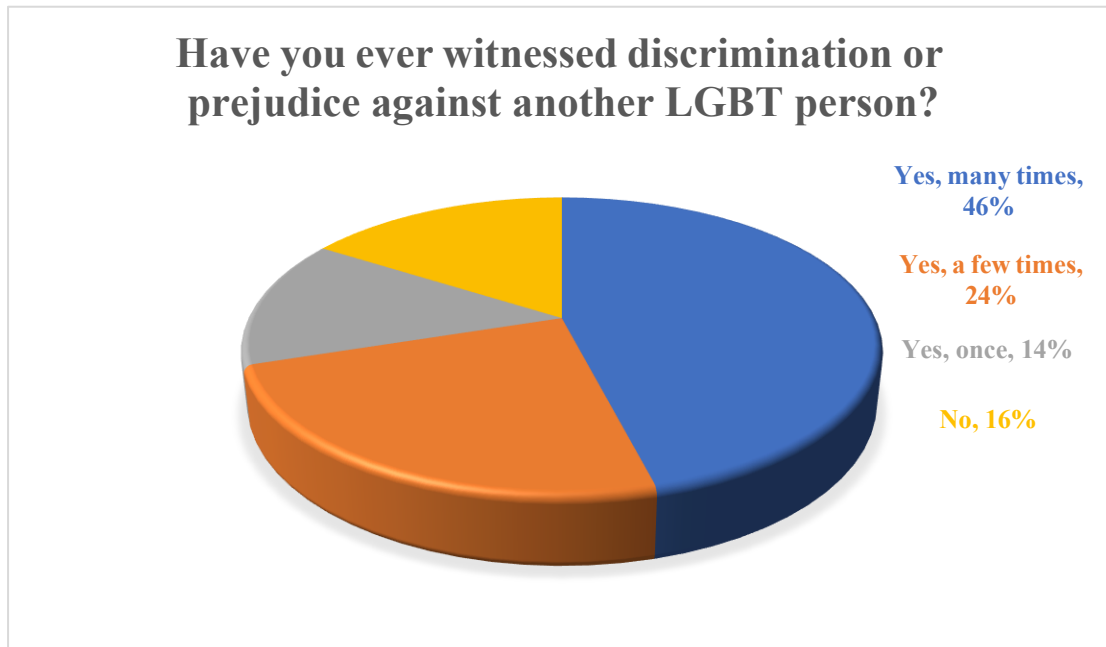
Figure 42: Present situation of family acceptance of the LGBT Community.



Source: *From questionnaire survey.*

Findings: When asked the LGBT community participants, "Are you currently accepted by your family?" 38% replied no, 56% said yes, and 6% indicated they would rather not respond.

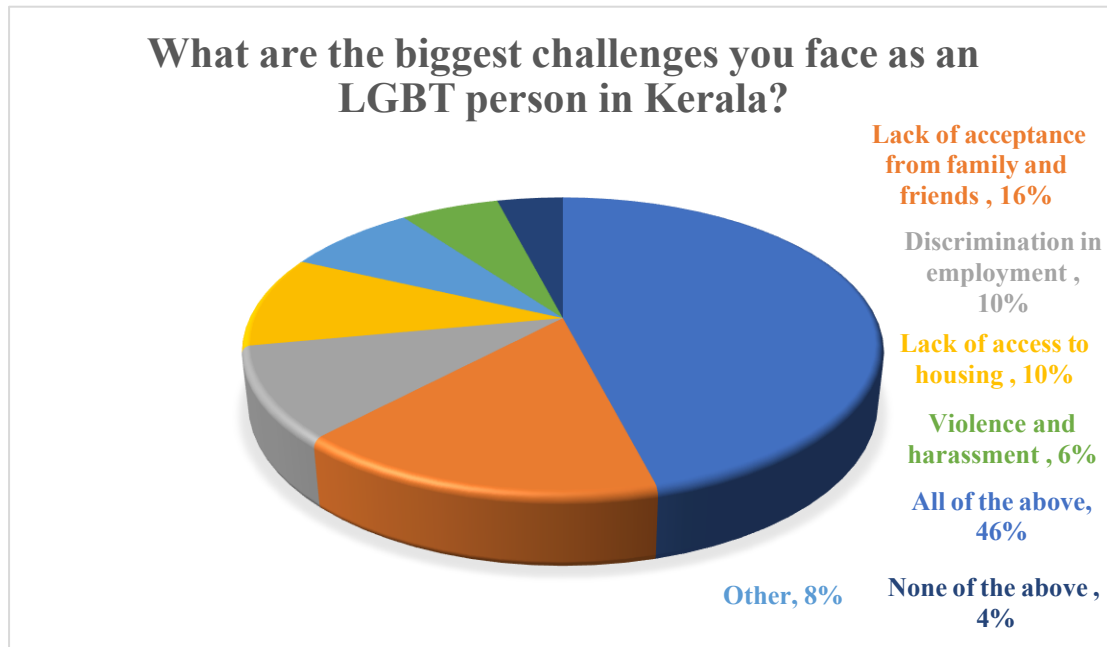
Figure 43: Question on Discrimination the LGBT Community witnessed.



Source: From questionnaire survey.

Findings: Asked the LGBT community Have you ever seen prejudice or discrimination directed against an LGBT person by others? Of those surveyed, 16% said "no," 14% said once, 24% several times, and 46% many times.

Figure 44: Challenges faced in Kerala by LGBT.



Source: From questionnaire survey.

Findings: When questioned by the LGBT community What are the main obstacles you encounter in Kerala as an LGBT person? 10% of respondents mentioned work discrimination, 10% said lack of access to housing, 6% mentioned violence and harassment, and 16% discussed not feeling accepted by family and friends. Of the aforementioned, 46% favour all of the alternatives. Of the aforementioned, 4% choose none. 8% experience additional issues.

Figure 45: Awareness about NGOs supporting LGBT in Kerala.



Source: *From questionnaire survey.*

Findings: When questioned by the LGBT community Do you know of any NGOs or organizations that support LGBT rights in Kerala? Just 8% are completely clueless, whereas 92% are well aware.

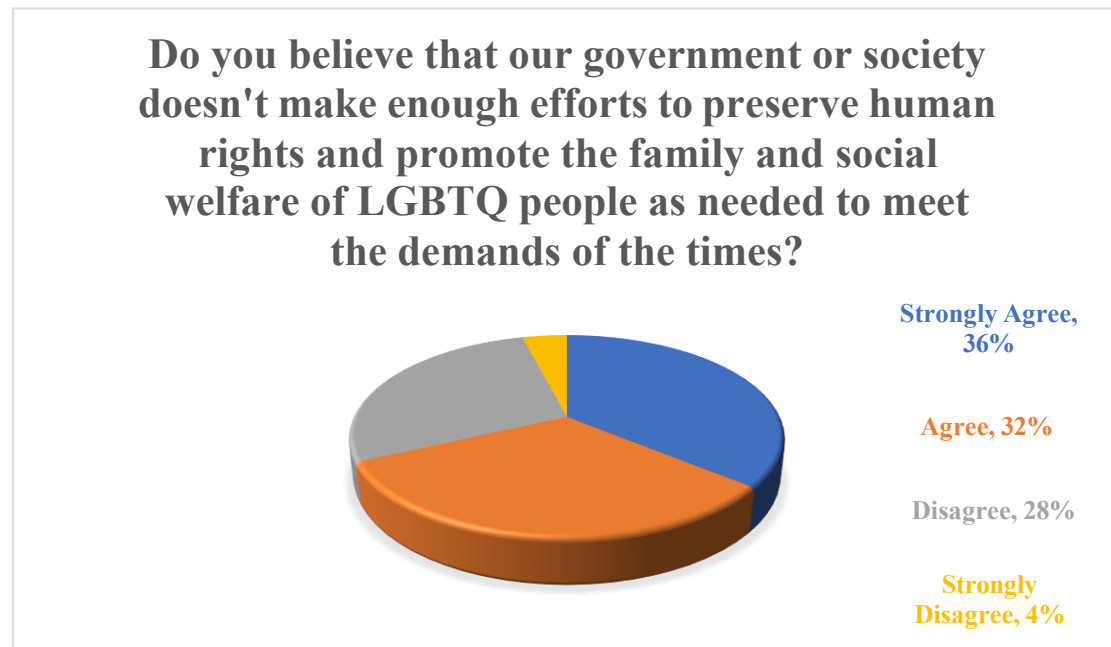
Figure 46: Awareness of resources available for the protection of LGBT.



Source: *From questionnaire survey.*

Findings: When questioned by the LGBT community Do you know of any shelters, counselling services, or other resources that Kerala's LGBT community may utilize? 18% replied no, and 82% said yes.

Figure 47: Opinion on the efforts of the Government to protect LGBT.



Source: From questionnaire survey.

Findings: When questioned, responders from the LGBT community Do you think that our society and government don't work hard enough to uphold human rights and advance the social and familial welfare of LGBTQ persons as necessary to fulfill contemporary demands? 32% of respondents agree, 36% strongly agree, 28% disagree, and 4% disagree strongly.

7.7: Complete Findings and Conclusion of the Result.

The empirical study's conclusions revealed an extremely unexpected outcome from Kerala. The majority of people are aware of the discrimination and biases encountered by the LGBT community throughout the country. Surprisingly, nonetheless, about 60% of Kerala's population is in a position to accept the evolving pattern in addition to the antiquated traditional beliefs. The primary aim of this study was to assess the effectiveness and efficiency of legislative measures, social integration strategies, and legal issues about the LGBT population in safeguarding fundamental and constitutional rights. There is prejudice against LGBT people in India, according to 84% of respondents from the general population and 89% from the legal fraternity. Sixty percent of respondents from the LGBT community also reported experiencing personal prejudices in India. The second objective was to assess current laws that needed to be changed or corrected to enable the effective inclusion of LGBT people, as well as to decide if new legislation was needed to establish the right to family life and children in law. Granting adoption rights and same-sex marriage rights to the LGBT Community is supported by 69% of legal fraternity respondents and 84% of general public respondents. And in this case, 96% of respondents in the LGBT community are in favour of same-sex unions and adoption rights which they argued, are desperately needed to protect their basic Fundamental rights and constitutional requirements. They said that all citizens of the nation should be subject to the same laws, regardless of what their gender is.

The final objective was to investigate how society sees LGBT populations as a result of rulings made by the Supreme Court and subordinate courts. An emphasis on social issues, such as whether society does recognize the LGBT community after several judgments have been rendered and what role NGOs can play in meeting the needs of the LGBT community. Fifty percent of respondents from the general public think that the Navtej Singh Johar case has improved the lives of the LGBT community. The legal fraternity respondents said that they support legislation that upholds the rights of LGBT persons by establishing welcoming and safe spaces for LGBT people as well as by assisting local LGBT supporting organizations. LGBT respondents cited ending discrimination at work and advised taking precautions to prevent housing insecurity.

Some spoke about ending harassment and violence, while others discovered that the largest obstacle is not feeling accepted by friends and family. Hence there is a range of answers overall. When it comes to discrimination and a lack of social acceptability, the general public speaks out, but the legal community focuses more on offering legal solutions. LGBT respondents on the other hand mirrored the real-life tale of how they go through. Thus, this empirical research has produced a true image of how the LGBT population is seen in our nation. This emphasizes once again how important it is to have laws and policies in place to protect the basic rights of the LGBT community in India. The state of Kerala displays the problems and difficulties there, but it also behaves as if there is a risk that problems may arise wherever in India. Because the goals have been taken into account and all research question responses have been obtained, more effective legislation is now required to protect the LGBT community's right to a family.

Human evolution happened via the process in which human beings emerged on Earth from now-extinct primates. Thus, evolution is a natural process that began millions of years ago. Thus, the formation of a gender identity is a normal process that happens similarly to evolution. It, according to queer philosophy, is normal. Thus, according to nature's theory, modifications in the long-standing conventional conceptions occur throughout time.

CHAPTER 8

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS.

8.1: Introduction:

This chapter provides a summary of the whole study on "Social Inclusion of the LGBT community and their legal protection in India with special reference to the state of Kerala." The issues of LGBT individuals are identified after an analysis of the existing national and international literature. There are Eight chapters in the current research:

The first Chapter is an overview of the current research. It includes the Statement of problem, Review of literature, Research gap, Research objectives for the study, Significance of the research problem, Research question, Hypotheses, Research Methodology, Sampling particulars, Expected research outcome, Limitation of research, Research work Chapterisation etc. The second chapter was the introduction to the Origins and Evolution of the LGBT Community. This chapter explains the meaning and definitions and then focuses on the historical background and evolution of the LGBT Community in India and at the international level. It also covered the mass revolution which took place in India for the growth of the same.

The third Chapter relates to the International Perspectives on LGBT Rights. This gives a comparative analysis of Indian laws and social behaviour with major countries such as the United Kingdom, Canada, and the United States of America. And the policies of international documents that work for LGBT Rights like "The Yogyakarta principles", "ILGA World- The International Lesbian, Gay, Bisexual, Trans and Intersex Association" etc. In the fourth chapter, the LGBT Rights in Indian Legislation was covered. This briefly defined the prevailing legislations and laws concerned with the Rights of the LGBT community, especially matrimonial rights and the way they are affected by it. This chapter also emphasizes the functionality and practicality of the existing laws.

Chapter 5 highlights the Judicial Views on LGBT Rights in India. In this chapter, various court decisions and judicial interpretations were included. It also considers the versatility of LGBT rights in the existing scenario. The sixth chapter defines the role of NGOs and LGBT Community Welfare and the need to uplift the rights of the LGBT community and various reforms that help in the upbringing of the welfare of the LGBT community through the views of Sahayatrika- Kerala, NAZ foundation- Delhi, Kaleidoscope Trust- U. K, National Centre for Lesbian Rights- U.S.A, etc. were the NGOs selected for doing the research based on this topic.

The seventh chapter is the empirical analysis of responses. Various data collection methods and methodologies to calculate and analyze the data are discussed in this chapter. This includes interviews with 10 respondents including NGOs like Sahayatrika and NAZ Foundation, which is working for the benefit and welfare LGBT community. Data Collection by Questionnaire from 300 respondents among them 50 respondents are LGBT members and 250 respondents as public general including, Legal professionals, students, and others.

The Eighth chapter of this research concludes with suggestions and reforms for improving the legal position and social acceptance level of LGBT people in India.

It is evident from the statistics at hand and from the review of the literature that the state of the LGBT community in India has not changed. They have experienced prejudice and ignorance from antiquity and continue to do so now. To illustrate the situation of the LGBT population in Kerala, the researcher used the state as a sample for the current study. NGOs and district-wide statistics, namely from Ernakulam and Thrissur have been selected for this. According to this survey, those who identify as LGBT face a lot of discrimination, bias, and violence in a variety of contexts. Due to rejection from their own family and close relatives, many of them do not even wish to remain in their homes, and many of those who relocated to cities also have difficulties and issues with social acceptance. However, they claim that Kerala's acceptance rate is steadily rising gradually.

For this research, three sets of questionnaires have been created and distributed. The LGBT population, the legal fraternity, and the general public were the respondents who have contributed answers.

The first questionnaire (Appendix: II) is designed for the general public from the state of Kerala, which comprises individuals from all demographic groups, including literate, graduated, employed, homemakers, college students, and government workers. There were 20 questions in total, including demographic questions. To find out about general acceptability, the public was asked about the importance of social acceptance of the LGBT community, various issues and problems, the need to support the community, the role of the state, and whether any new laws are needed to protect the LGBT community's family rights.

When data on the true or real status of societal acceptance of LGBT individuals in Kerala was being gathered, it was discovered that the majority of people held the opinion that LGBT people faced prejudice and discrimination in our society. Most people also believe that these individuals should be treated equally and that appropriate changes should be made to the laws and rights. 84% of them are in favour of same-sex unions and adoption rights and 16 percent are against it. It is also evident from the questionnaire replies that the majority of LGBT people experience prejudice at the workplace, school dropouts, and unemployment. However, based on their feedback, the Kerala government is attempting to improve the quality of life of the LGBT population via various schemes, policies, and assistance programs.

The second questionnaire (Appendix: III) is intended for Kerala's legal fraternity, which includes members of the state's judicial officers, lawyers and advocates in practice at various courts, law students from the state's various law institutions, and other individuals falling under this category. There was a total of 25 questions, including demographic ones, that asked about the significance of the current legal provisions for the LGBT community, different court rulings, their interpretation, and whether any new legislation was necessary to defend the population's family rights.

Concerning the issue of discrimination and violence faced by LGBT people, 89% of respondents from Legal Fraternity claim to experience it, while 7% are unclear. Only 4% of respondents claim that the LGBT community does not experience prejudice in India. 31% of the legal fraternity respondents are against same-sex marriage and adoption rights, while 69% favour them. However, the Legal Fraternity respondents find the policies, schemes, different support initiatives, and other programs that the

Kerala state offers for the protection and welfare of the LGBT population of the state adequate.

The third set of questionnaires (Appendix: IV) was created specifically for Kerala's LGBT community. It has 25 questions, some of which are demographic questions. Before the survey was conducted, at first the participant information form and informed consent were given. Only individuals who volunteered to participate had their data recorded. Since the LGBT community is considered a vulnerable group of respondents, all survey procedures were carried out with the assurance that the ethical committee upheld the criteria. Initially, those who were willing to join were sought out without any issues.

The important issues, such as their development, acceptance by family and society, encounters with prejudice, discrimination, and violence, the main difficulties they face in Kerala, etc., were covered. A few inquiries were then made about the recent Judicial pronouncements, legal advancements, and government assistance to the LGBT community. The necessity to protect LGBT people's family rights in India as well as any potential advancements was also questioned.

The main problems they have are not being accepted by friends and family, discrimination at work, unable to get housing, discrimination, abuse, and violence. But, remarkably, just 60% of Kerala's LGBT community respondents have experienced violence or discrimination, with 40% not having experienced any prejudice at all. Of these, 58% believe that cisgender and LGBT people's rights need to be equally safeguarded. 96% of respondents in the LGBT community support Same-sex marriage & Adoption Rights for the LGBT Population, while 4% oppose it. Sixty-eight percent of respondents feel that the Kerala government and society are doing enough to protect human rights and advance the social and familial welfare of LGBTQ individuals by providing necessary support initiatives and policies. 82–92% of people are aware of the policies and resources provided by the Kerala government, as well as the assistance that the NGO provides.

All three groups of respondents agree that there is prejudice and discrimination against LGBT people in India. Additionally, social marginalization and unacceptability are too great. The majority of these groups support granting equal

rights and eliminating discrimination. Most legal scholars argue that the current framework for protecting LGBT families' rights is insufficient. Furthermore, there is no real link between the LGBT community's personal life and our country's social, cultural, or religious aspects, an opinion given by the majority of the Legal fraternity. All three classes of respondents guarantee that the Kerala Government offers noteworthy and satisfying policies and programs; nonetheless, further policies to support the LGBT community's family rights might be implemented.

A significant majority of the LGBT community, namely 94% of them, believe that limitations and restriction on marriage and adoption rights violate their fundamental right to life. It will need stronger legislation and the fullest use of relevant measures to close all these gaps. Their proposals include that they need more guidance and support from the government and society to exercise their rights on an equal footing with other cisgender individuals. Their suggestion also includes:

- a) A thorough anti-discrimination legislation that specifically forbids discrimination based on gender identity and sexual orientation has to be passed.
- b) Same-sex marriage and Adoption Rights must be legalized in India.
- c) Need to Provide comprehensive sex education that is inclusive of LGBT people.

Ten case studies were also collected to learn about the individuals' life journeys, family acceptance, and life progression. There were several open-ended questions on the questionnaire, which were gathered only to improve understanding and learn about the situation. Since they were excluded from the approach, they were not analyzed. However, knowing the specifics of the interview enabled me to provide the appropriate response and recommendation as they wished.

8.2: Hypotheses Test Result:

Checking the validity of the objectives established for the present research is the rationale behind this testing. To find out how the current research objectives are progressing, the following hypotheses were put forth:

H1: In India, statutory laws ensuring family rights and social inclusion of the LGBT population are significantly effective, as are those in other developed countries.

H01: In India, statutory laws ensuring family rights and social inclusion of the LGBT population are significantly ineffective, as are those in other developed countries.

After the analysis of results, it is proved that the statutory laws ensuring family rights and social inclusion of the LGBT population are significantly ineffective in India as compared to those in other developed countries. Thus, H01 is proved.

H2: There is a considerable need for new legislation establishing the right to marriage and related laws to enable the effective inclusion of LGBT people when examining the current laws on the family rights of LGBT people.

H02: There is no considerable need for new legislation establishing the right to marriage and related laws to enable the effective inclusion of LGBT people when examining the current laws on the family rights of LGBT people.

The results of the survey from all the 3 sets of respondents agree that there is a considerable need for new legislation establishing the right to marriage and related laws to enable the effective inclusion of LGBT people when examining the current laws on the family rights of LGBT people. Thus, H2 is proved.

H3: The 'Navtej Singh Johar v. Union of India' case has a substantial significant impact on the societal acceptance of the LGBT community.

H03: There is no substantial significant impact of the 'Navtej Singh Johar v. Union of India' case on the societal acceptance of the LGBT community.

The 'Navtej Singh Johar v. Union of India' case has a substantial significant impact on the societal acceptance of the LGBT community, agreed by all the 3 types of respondents. Hence H3 is proved.

H4: The policies and schemes established for the LGBT Community by the Government of Kerala ensure social support, Family Rights, and conjugality.

H04: The policies and schemes established for the LGBT Community by the Government of Kerala don't ensure social support, Family Rights, and conjugality.

According to the respondents from the State of Kerala they think that even though the state offers different schemes and policies to support the LGBT Community, those policies and schemes established for the LGBT Community by the Government of Kerala don't ensure Family Rights and conjugality. Hence H04 is proved.

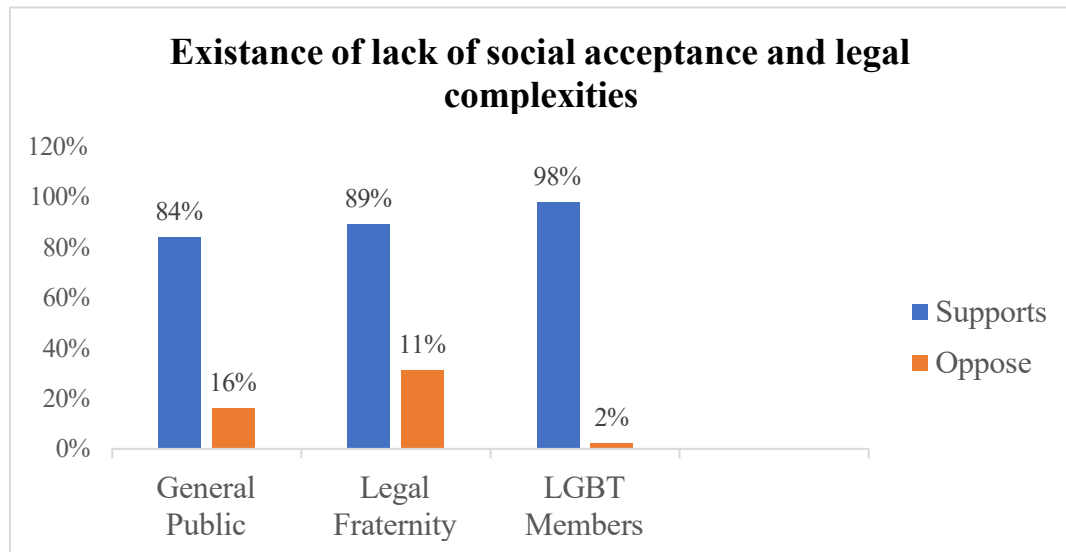
8.3: The Research question and its findings, together with the research objectives.

The Research Objectives for the Research Questions are listed below:

1. **The first research objective** was: to evaluate the efficacy and efficiency of Legislative provisions, social integration, and legal complexities relating to the LGBT community in ensuring Constitutional and Fundamental Rights. This objective relates to the Research questions:
 - a) What are the historical origins and evolution of the LGBT community in India and globally, and how have they influenced the current status of LGBT rights in India, particularly in Kerala?
 - b) To what extent do legislative provisions, social integration, and legal complexities concerning LGBT communities in India ensure Constitutional and Fundamental Rights, and what are the gaps in implementation?

The questionnaire result analysis shows that Legislative provisions, social integration, and legal complexities relating to the LGBT community in India fail to uphold their Constitutional and Fundamental Rights. This can be resolved by changing the Special Marriage Act's current provision to remove any gender-specific eligibility requirements, making it applicable to the LGBT community as well.

Figure 48: Opinion about existing societal unacceptance and legal complexities towards the LGBT Community in India.



Source: From the results of the questionnaire survey analysis.

The second research objective was: To examine international law and the laws related to LGBT rights in other countries. This objective relates to the Research questions:

- a) How do the family rights of the LGBT community in India compare with international law, international conventions, foreign judgments, and the laws of other countries? What measures can be taken to enhance LGBT family rights in India?
- b) What policies of International Law and international documents have influenced the development of LGBT rights in India, and how do they compare with major countries working for LGBT Rights?

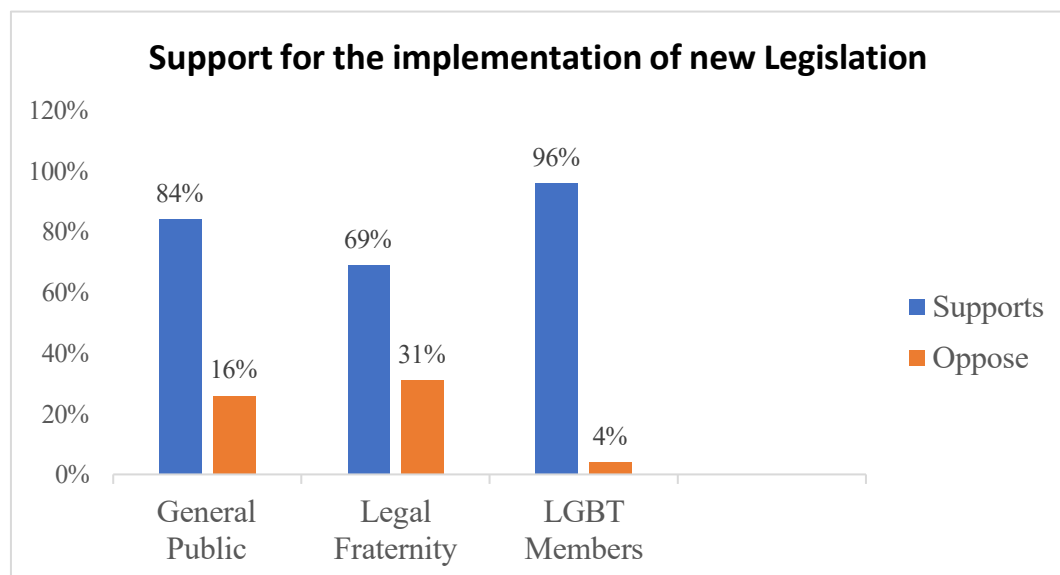
From the comparative study, it is clear that Adoption laws and same-sex marriage are becoming more and more recognized worldwide. Beginning in the Netherlands in 2001, there are now around 38 nations worldwide that have legalized same-sex unions. Therefore, a comparison analysis demonstrates that, by universal human rights standards, recognition of LGBT family rights is vital. The agreements, treaties, and policies of international law, the Universal Declaration of Human Rights, the United Nations Human Rights Council, and the Yogyakarta Principles all reinforce the protection of LGBT rights.

2. **The third research objective** was: “to determine whether new legislation is required to enshrine the Right to family life and children in law, along with reviewing existing legislation that needs to be amended or rectified to ensure effective inclusion of LGBT individuals” which relates to the Research questions:

- a) What new legislation or laws should be recommended regarding Family Rights like, same-sex marriage, adoption rights, surrogacy rights, etc. And how can existing legislation be amended or rectified to avoid negatively affecting LGBT communities in India?

According to the questionnaire survey analysis result, in response to a question about whether new legislation is needed to enshrine the right to family life and children in law, as well as whether any existing legislation needs to be reviewed, amended, or corrected to ensure that LGBT people are included effectively, the response was "yes." Notably, 96% of respondents who identify as LGBT 69% of respondents from the legal fraternity and 84% of General Public respondents support the implementation of new legislation that protects the right to family for LGBT people.

Figure 49: Same-sex marriage and adoption Rights acceptance rate in Kerala.



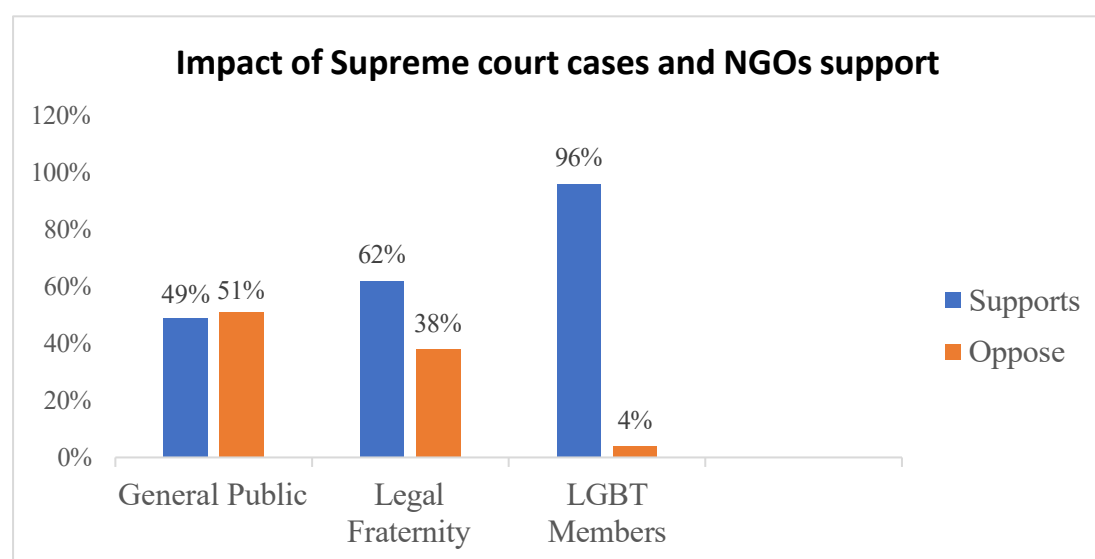
Source: From the results of the questionnaire survey analysis.

3. **The fourth research objective** was “to examine the impact of the Supreme Court's and the lower court's decisions on how society views LGBT communities. An emphasis on social issues, such as whether society does recognize the LGBT community after several judgments have been rendered and what role NGOs can play in meeting the needs of the LGBT community”, this objective relates to the Research questions:

- How has the Supreme Court's decision in ‘Navtej Singh Johar v. Union of India’ impacted society's views of the LGBT community in India, and what implications does this have for the future of LGBT rights in Kerala?
- What is the present status of LGBT rights' adaptability in the modern era, and how have court rulings and judicial interpretations of these rights changed in India?
- How have NGOs defended the rights of the LGBT community in Kerala and India, and what changes are required to improve the welfare of LGBT communities?

The respondents replied favourably to the question on the influence of various Supreme Court rulings and the work of NGOs in supporting the LGBT community, 49% of General Public respondents, 62% of the legal fraternity respondents, and 96% of the LGBT community respondents.

Figure 50: Role of NGOs and Supreme Court in uplifting the rights of LGBT in India.



Source: From the results of the questionnaire survey analysis.

As a result, the majority of the objectives have been met, two of the research's alternative hypotheses have been proven correct, and the study has rejected its null hypothesis. Additionally, it demonstrates the need for these laws to be properly implemented and the many gaps and inadequacies in their actual execution.

8.4: Suggestions:

This empirical study conducted in Kerala emphasizes the need to improve India's legal framework protecting LGBT individual liberties. The researcher has made the following recommendations for the LGBT community's benefit in terms of basic fundamental rights ensuring family rights based on the findings of the current study. Selecting a life partner is a crucial aspect of determining one's path in life. For some people, this might be the most significant choice they have ever made. According to Article 21, this right is fundamental to the right to life and liberty. It is recommended that the right to marriage and adoption be provided to the whole LGBT population in India, taking into account the socioeconomic implications, the value of family rights in the Indian context, and the illegality of same-sex marriage. The existing prohibition on same-sex marriage has to be changed since it violates the laws protecting everyone's human rights. In light of these results, it is advised that the LGBT community be allowed to marry and adopt children to support their decision to have a family on a personal level by promoting social responsibility and engagement, which may assist in their effective sociolegal acceptance in society.

i. Considering Foreign Practices:

Implementing foreign practices if the circumstances are comparable and relevant legislation is lacking. Two unrelated people may form a civil partnership, which is a kind of legal connection. Both opposite-sex and same-sex couples can enter into a civil partnership³⁸⁹. Instead of 'same-sex marriage legislation', several nations have civil partnership privileges. The rights to a civil partnership must be permitted at the very least if these amendments are not attainable or impossible to achieve. There are

³⁸⁹ "Living together and civil partnership - legal differences," *Citizens Advice* available at: <https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-civil-partnership-legal-differences/> (last visited September 24, 2024).

differences between same-sex marriages and civil partnerships. A written contract establishes a civil partnership, but an oral contract forms a marriage. Marriages cannot be changed from civil partnerships to marriages; however same-sex civil partnerships may be changed to marriages by filing a declaration before the superintendent registrar. Marriages need a ceremony, whereas civil partnerships do not. A civil partnership dissolves, but a married couple may legally split with a divorce. In the event of their death, civil partners enjoy the same rights as a spouse. Similar to a marriage, a civil partnership may only be dissolved on the grounds of irretrievable breakdown, by death, or by formal dissolution or annulment³⁹⁰.

In addition to Legislative amendments, a few additional basic adjustments are needed to end discrimination and rejection of the LGBT community in India. They include:

ii. The importance of societal acceptance of the LGBT Community in India.

In India, the LGBT community needs to be acknowledged and accepted by society. as it is evident from the report itself that third-genderism is not a novel idea in our nation. Its existence three centuries before is confirmed by historical literature and the Vedas themselves. Consequently, this is a situational shift that occurs naturally rather than a choice. As the famous saying, "Charity begins at home," so too does acceptance have to start there. Eighty percent of the LGBT population respondents in the questionnaire survey do not even have acceptance from their own families. Therefore, something has to change, and societal acceptance should begin at home. Eventually, society will begin to accept it.

Suggestions given by Respondents of Empirical Survey.

1. Greater knowledge and understanding of the LGBT community and the problems it faces in India.
2. Establish accepting and secure social environments for LGBT individuals.
3. Implementation of stronger anti-discrimination laws.

³⁹⁰ "Civil Partnerships And Same-Sex Marriage Explained," *Tanners Solicitors*, 2024 available at: https://www.tanners.co.uk/site/library/family/civil_partnerships_what_they_mean_for_you.html#:~:text=Civil%20partners%20have%20the%20equivalent,marriage%2C%20invalidates%20an%20earlier%20will. (last visited September 24, 2024).

4. Offer greater support for LGBT organizations and NGOs working to support of LGBT community.
 5. Execute more inclusive policies in schools, workplaces, and other institutions to support the LGBT population.
 6. Advocate policies that protect LGBT rights.
- iii. Recognizing the fact that this identity shift is solely biological and not psychological**

The LGBT community in India continues to experience significant discrimination and prejudice, and there is still a strong stigma against them. Some people classify it as a mental illness even if it isn't a psychological shift. The Madras High Court called on authorities to make the required adjustments to promote inclusion and understanding, stressing the need to dispel myths. "This Court has been urging right from the beginning that there is no psychological disorder involved in a person belonging to the LGBTQIA+ community and such a mistaken understanding must be corrected by making appropriate changes in the curriculum," stated the Court³⁹¹. Therefore, the gap that the LGBT transition is psychological persists, and corrective therapy is used with these people, which will do more harm than good.

iv. Focusing on gender-specific studies, starting in school from an early age.

Gender-specific research should be prioritized beginning in school to help the next generation embrace the truth and steer clear of misconceptions and false beliefs. Students will cease discriminating against such mates and any other LGBT individual after receiving various gender awareness lessons. This will support the LGBT community in creating an acceptable society in the future. Another advantage is that LGBT people won't be dropping out of school as a result of prejudice and discrimination. The government must provide support services like counselling,

³⁹¹ Sukriti Mishra, "Madras HC Stresses Need for Curriculum Overhaul, Says LGBTQIA+ Identities Are Not Psychological Disorders," 2024 *available at*: <https://www.verdictum.in/court-updates/high-courts/ssushma-anr-v-director-general-of-police-ors-wpno7284-of-2021-madras-high-court-1552323> (last visited September 24, 2024).

reservations, and other things to guarantee that LGBT kids get at least a basic education to ensure that the number of dropouts stops.

v. Gender-neutral work environments in the employment sector.

Gender-friendly workplaces must be created in the job sector to eradicate prejudice. It is required to provide various counselling services and raise awareness programs in the job sector to educate workers about gender variances and put an end to prejudice by fostering empathy and responsibility to accept such an individual as a normal human being.

vi. Proper implementation of relaxation policies for LGBT people in the fields of education and employment.

To guarantee the safety of the LGBT community, the government should take the initiative to implement reservation rules as well as other measures like free education, financial aid, scholarships, self-employment programs, skill development training, and other essential support.

vii. Healthcare facilities and medical amenities to be ensured by the Government.

The LGBT community's access to healthcare and medical facilities should be a top priority for the government. Because many individuals encounter prejudice while seeking medical assistance. Additionally, the facilities for gender-assignment surgery must be completed with extreme caution since they may potentially result in deadly diseases.

8.5: Recommendations For Proposed Legislative Amendments.

According to the researcher, the following legal provisions must be amended to ensure Articles 14, 15, 19 and 21 of the LGBT Community in India.

1. *Special Marriage Act 1954, Section 4.*

Due to its failure to recognize non-heteronormative marriages, the *Special Marriage Act of 1954* violated the right to equality. This is prejudice toward LGBT people. Because Section 4 of the Act discriminates against LGBT people, it violates Article 14. Legislation should classify various groups according to the two-pronged test for

deciding whether it violates the right to equality of any individual. However, this legislation or its provision violates Article 14 if this relationship cannot be proved. Changing or adding wording in Section 4, of the *Special Marriage Act*, of 1954, may be able to protect the rights of the LGBT community as well.

Existing Provision of *Special Marriage Act*, 1954:

“Section 4. Conditions relating to solemnization of special marriages”.

“Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage, the following conditions are fulfilled, namely:

- (a) neither party has a spouse living;
- (b) [neither party *[Substituted by Act 68 of 1976, Section 21 (w.e.f. 27.5.1976).]*
 - (i) is incapable of giving valid consent to it in consequence of unsoundness of mind; or
 - (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the protection of children; or
 - (iii) has been subject to recurrent attacks of insanity [* * *];
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;
- (d) [the parties are not within the degrees of prohibited relationship: *[Substituted by Act 32 of 1963, Section 2 (w.e.f. 22.9.1963).]*

Provided that where a custom governing at least one of the parties permits a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

- (e) [where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.]

[Explanation. In this section, custom, about a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify on this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued about the members of any tribe, community, group or family unless the State Government is satisfied

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule, if applicable only to a family, has not been discontinued by the family.]”

Proposed Amendment:

“Section 4. Conditions relating to solemnization of special marriages”.

“Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons (*including 3rd gender*) may be solemnized under this Act, if at the time of the marriage, the following conditions are fulfilled, namely:

- (a) neither party has a spouse living;
- (b) [neither party [*Substituted by Act 68 of 1976, Section 21 (w.e.f. 27.5.1976).*]
 - (i) is incapable of giving valid consent to it in consequence of unsoundness of mind; or
 - (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the protection of children; or
 - (iii) has been subject to recurrent attacks of insanity [* * *];

(c) the male has completed the age of twenty-one years and the female the age of eighteen years; ***if 3rd gender, then both parties might have completed at least twenty-one years.***

(d) [the parties are not within the degrees of prohibited relationship: *[Substituted by Act 32 of 1963, Section 2 (w.e.f. 22.9.1963).]*

Provided that where a custom governing at least one of the parties permits a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

(e)[where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.]

[Explanation. In this section, custom, about a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify on this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued about the members of any tribe, community, group or family unless the State Government is satisfied

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule, if applicable only to a family, has not been discontinued by the family.]”

2. “Central Adoption Resource Authority Guidelines, Regulation 5(3) of 2020”.

The Central Adoption Resource Authority Guidelines' Regulation 5(3) of 2020, which limits adoption to single people and married couples who have been together for two years is also violative of Articles 14 and 15 of the Constitution of India for the LGBT Population. Moreover, both spouses' approval was required for adoption under Section 57(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ

Act) as it discriminates against LGBT couples and other unmarried couples. Therefore, these clauses are unlawful and should be changed to apply to all citizens rather than only legally wedded spouses. Hence, the researcher proposes that this part be amended as necessary by CARA, a government organization that oversees the Union Ministry of Women and Child Development and establishes the guidelines for adopting children in India.

Existing provision of Central Adoption Resource Authority:

“Regulation 5: Eligibility criteria for prospective adoptive parents”:

“Regulation 5 (2). Any prospective adoptive parents, irrespective of their marital status and whether or not they have a biological son or daughter, can adopt a child subject to the following, namely: -

- a. The consent of both spouses for the adoption shall be required, in the case of a married couple;
- b. A single female can adopt a child of any gender;
- c. A single male shall not be eligible to adopt a girl child.”

Proposed Amendment:

“Regulation 5: Eligibility criteria for prospective adoptive parents”.

“Regulation 5 (2). Any prospective adoptive parents, irrespective of their marital status and whether or not they have a biological son or daughter, can adopt a child subject to the following, namely: -

- a. The consent of both spouses for the adoption shall be required, in the case of a married couple;
- b. A single female can adopt a child of any gender;
- c. A single male shall not be eligible to adopt a girl child”;
- d. ***Third Gender couples can also adopt a child of any gender.***

3. “*Juvenile Justice (Care and Protection of Children) Act, 2015: Section 57*”.

According to this provision of the Act, it prescribes the eligibility criteria for adopting a child. The JJ Act only permits adoption, being married is now necessary to be protected from laws about succession, divorce, custody, guardianship, maintenance, and other issues. Hence it breaches the *Indian Constitution's* Articles 14 and 15 because it discriminates against single couples.

The existing provision of the *Juvenile Justice (Care and Protection of Children) Act, 2015:*

“Section 57: Eligibility of Prospective Parents”.

- “(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert, and highly motivated to adopt a child to provide a good upbringing to him.
- (2) In the case of a couple, the consent of both spouses for the adoption shall be required.
- (3) A single or divorced person can also adopt, subject to fulfilment of the criteria and by the provisions of adoption regulations framed by the Authority.
- (4) A single male is not eligible to adopt a girl child.
- (5) Any other criteria that may be specified in the adoption regulations framed by the Authority”.

Proposed Amendment:

“Section 57: Eligibility of Prospective Parents”.

- “(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert, and highly motivated to adopt a child to provide a good upbringing to him.
- (2) In the case of a couple, the consent of both spouses for the adoption shall be required.

- (3) *A single or divorced person or a Third-gender person can also adopt, subject to fulfilment of the criteria and under the provisions of adoption regulations framed by the Authority.*
- (4) A single male is not eligible to adopt a girl child.
- (5) Any other criteria that may be specified in the adoption regulations framed by the Authority”.

4. “The Transgender Persons (Protection of Rights) Act, 2019”

This Act protects the rights of Transgender people and provides for their welfare and includes provisions like protection from discrimination, identity recognition, welfare programs, rescue, protection, rehabilitation, etc. However, there are no legislative provisions protecting the family rights of Transgender persons such as the right to marriage, right for adoption, right for surrogacy, right for artificial insemination, or any other related rights, nor are there any laws addressing their application. Thus, the researcher suggests that this Act must be amended to include transgender people's family rights in India.

Proposed addition to the Act:

1. “Conditions relating to the solemnization of Same-sex marriages under *The Transgender Persons (Protection of Rights) Act, 2019*”.

“A marriage may be solemnized between any two non-heteronormative couples, if the following conditions are fulfilled, namely: -

- (i) It is necessary that both parties be able to marry and have given free consent to the marriage, free from any kind of coercion.
- (ii) Neither party has a spouse living at the time of the marriage
- (iii) At the time of marriage, neither party-
 - a. is incapable of giving valid consent to it in consequence of unsoundness of mind; or

- b. though capable of giving valid consent, has been suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage; or
- c. has been subject to recurrent attacks of insanity.
- (iv) Both the person must have completed the age of twenty-one years.
- (v) Both the parties are not within the degrees of prohibited relationship”.

2. “Conditions relating to the adoption by Same-sex couples under *Transgender Persons (Protection of Rights) Act, 2019*”.

- (i) “The prospective adoptive parents shall be at least 26 years of age. The age of prospective adoptive parents, as of the date of registration, shall be counted for deciding the eligibility of prospective adoptive parents for children of different age groups.
- (ii) The prospective adoptive parents shall be physically, mentally, emotionally and financially capable, and must undergo health screenings and home safety inspections.
- (iii) They shall not have any life-threatening medical condition and they should not have been convicted of criminal acts of any nature or accused in any case of child rights violation.
- (iv) Any prospective adoptive parents, irrespective of their marital status and whether or not they have a biological son or daughter, can adopt a child subject to the following, namely: -
 - (a) The consent of both spouses for the adoption shall be required, in the case of a married couple;
 - (b) No child shall be given in adoption to a couple unless they have at least five years of stable marital relationship except in the cases of relative or step-parent adoption”.

3. “Conditions relating to Surrogacy and Artificial Insemination by Same-sex couples under *Transgender Persons (Protection of Rights) Act, 2019*”.

- (i) “Requirements for eligibility: Married couples with a certificate of essentiality and appropriate age must be met to continue with surrogacy or artificial insemination.
- (ii) Proof of marriage, age certifications, a medical indication certificate, an eligibility certificate, and insurance or certificates attesting to the surrogate's physical and mental health are among the required documentation”.

Thus, these are the fundamental suggestions for additions or amendments that the researcher believes are necessary to protect the family rights of the LGBT community in India.

8.6: Potential Areas of Future Research:

- (i) There is a scope for future comparative study to see whether LGBT support policies and assistance programs are successfully implemented by different state governments in India.
- (ii) In the lack of a legal identity for marriage, the comparative investigation of the concerns and difficulties encountered by adopted children of same-sex couples will be the main focus of future research.

To bring society and government's attention to the protection of these rights, the current research project focuses on the family rights and social acceptance concerns facing the LGBT population. According to empirical data collected from the state of Kerala, it has been observed that the societal acceptability of the LGBT community is still below what is necessary. In addition, although the Kerala government has put in place several laws specifically aimed at the protection, welfare, and enhancement of the lives of the LGBT community, these policies have not been carried out in the way that they should. They are equally entitled to a dignified life in society. To protect the LGBT community's fundamental rights, the legislature must act quickly to amend existing legislation to include these rights for the group. The government must implement effective steps to secure equal rights and opportunities for them by concentrating on the recommendations made under the current research. This would allow them to live in society with the same status as everyone else.

BIBLIOGRAPHY

ACTS

1. The Alberta's Marriage Act, 2000.
2. The Bombay Prevention of Begging Act, 1959.
3. The British Buggery Act, 1533.
4. The Canadian Human Rights Act, 1977.
5. The Central Adoption Resource Authority Guidelines, 1990.
6. The Citizenship Act, 1955.
7. The Civil Partnership Act, 2004
8. The Civil Rights Act, 1964
9. The Criminal Law (Amendment) Act, 2013.
10. The Criminal Law Amendment Act, 1885.
11. The Criminal Tribes Act, 1871.
12. The Defence of Marriage Act (Doma), 1996.
13. The Equal Credit Opportunity Act, 1974
14. The Equal Rights Amendment Act, 1923.
15. The Equality Act, 2010.
16. The Fair Housing Act, 1968.
17. The Foreign Marriage Act, 1969.
18. The Gender Recognition Act, 2004.
19. The Hindu Marriage Act, 1955.
20. The Human Rights Act, 1993.
21. The Jury Selection and Services Act, 1968.
22. The Juvenile Justice (Care and Protection of Children) Act, 2015.
23. The Kerala Police Act, 2011.

24. The Local Government Act, 1988.
25. The Marriage (Same-Sex Couples) (United Kingdom) Act, 2013.
26. The Marriage and Civil Partnership (Scotland) Act, 2014,
27. The Motor Vehicle Act, 1988.
28. The National Food Security Act, 2013.
29. The Northern Ireland (Executive Formation Etc) Act, 2019.
30. The Offences Against the Person Act, 1861.
31. The Protection of Women from Domestic Violence Act, 2005.
32. The Protection of Children from Sexual Offences Act, 2012.
33. The Religious Freedom Restoration Act (RFRA), 1993.
34. The Respect for Marriage Act, 2022.
35. The Right to Education Act, 2009.
36. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, And Redressal) Act, 2013.
37. The Sexual Offences Act, 2003.
38. The Special Marriage Act, 1954.
39. The Tamil Registration of Marriages Act, 2009.
40. The Transplantation of Human Organs and Tissues Act, 1994.
41. The Yukon Human Rights Act, 1987.

ARTICLES

1. “Can’t ask Parliament to create BNS equivalent of Sec 377: Supreme Court,” *The Times of India*, 15 October 2024.
2. Aakanksha Ahire, “A Helping Hand for the LGBTQ Community: Interview with Pearl Daruwalla” *Youth Incorporated Magazine*, 2019.
3. Arora Lakshya, Bhujang P. M et al, “Understanding discrimination against LGBTQIA+ patients in Indian hospitals using a human rights perspective: an

- exploratory qualitative study,” 29 *Sexual and Reproductive Health Matters* 2104678 (2022).
4. Bais Ramesh, “Presentation of the 43rd Report of the Standing Committee on Social Justice and Empowerment (2016-2017) on "The Transgender Persons (Protection of Rights Bill, 2016).” (2017).
 5. Bochenek Michael and Knight Kyle, “Establishing a Third Gender Category in Nepal: Process and Prognosis,” 26 *Emory International Law Review* 11 (2012).
 6. Brown David, “Making Room for Sexual Orientation and Gender Identity in International Human Rights Law: An Introduction to the Yogyakarta Principles,” 31 *Michigan Journal of International Law* 821–79 (2010).
 7. Camp Jake, Vitoratou Silia and Rimes Katharine A. , “LGBQ+ Self-Acceptance and Its Relationship with Minority Stressors and Mental Health: A Systematic Literature Review,” 49 *Archives of Sexual Behavior* 2353–73 (2020).
 8. Carpenter Morgan, “Intersex human rights, sexual orientation, gender identity, sex characteristics and the Yogyakarta Principles plus 10,” 23 *Culture, Health & Sexuality* 516–32 (2021).
 9. Chakrapani Venkatesan et al., “Affirming and negotiating gender in family and social spaces: Stigma, mental health and resilience among transmasculine people in India,” 24 *Culture, Health & Sexuality* 951–67 (2022).
 10. Chandrika, Suresh Kumar Koushal v. NAZ Foundation and Others Case Comment, *International Journal of Law Management and Humanities* (2018).
 11. Ciacchi Riccardo and Sansone Dario, “The impact of sodomy law repeals on crime,” 36 *Journal of Population Economics* 2519–48 (2023).
 12. Das Minakshi, “LGBTQ rights and the role of civil society in repealing of the laws in India: section 377,” 7 *International Journal of Mechanical Engineering*.
 13. Divan Vivek et al., “Transgender social inclusion and equality: a pivotal path to development,” 19 *Journal of the International AIDS Society* 20803 (2016).
 14. Doval Nikita, “The third gender seeks inclusion” *mint*, 2015.

15. Dr R Poornima, "Through the Cracks of the Gendered World: A Critical Analysis of Kerala's Transgender Policy," 14 *Journal of Polity and Society* (2022).
16. E. Coleman et al., "Standards of Care for the Health of Transgender and Gender Diverse People, Version 8," 23 *International Journal of Transgender Health* S1–259 (2022).
17. Fize William, "The Homosexual Exception? The Case of the Labouchère Amendment" *Cahiers victoriens et édouardiens* (2020).
18. Geen Jessica, "Speaker launches gay rights group Kaleidoscope" *PinkNews | Latest lesbian, gay, bi and trans news | LGBTQ+ news*, 2011.
19. Goel Ishika, "Legalisation of Same-Sex Marriage In India," IV *Indian Journal of Integrated Research in Law* 27–41 (2023).
20. Hall Jamie Bryan, "The Research on Same-Sex Parenting: 'No Differences' No More" *The Heritage Foundation*.
21. Hammack Phillip L., Mayers Leifa, et al, "Narrative, psychology and the politics of sexual identity in the United States: from 'sickness' to 'species' to 'subject,'" 4 *Psychology and Sexuality* 219–43 (2013).
22. Hargreaves Tracy, *Androgyny in Modern Literature* (Palgrave Macmillan, Basingstoke, 2005).
23. Hitha, Ms & Poojary, Hitha. (2024). Breaking Traditions: Same-Sex Marriage Rise in India *available at* <https://www.researchgate.net/publication/378926127> (last visited September 25, 2024).
24. Holladay Zachary, "Public Interest Litigation in India as a Paradigm for Developing Nations," 19 *Indiana Journal of Global Legal Studies* 555 (2012).
25. Human rights watch, 'this alien legacy: the origin of 'Sodomy' laws in British colonialism', school of advanced study, University of London, Institute of Commonwealth Studies. (2013).

26. Idreis Ameer, "The Charter's Revolutionary Impact on Gay Rights in Canada," *6 Gettysburg Social Sciences Review* (2022).
27. Johnson Katherine, "Queer Theory," in T. Teo (ed.), *Encyclopedia of Critical Psychology* 1618–24 (Springer, New York, NY, 2014).
28. Johnson Rachel Eric, Discrimination Because of Sexual Orientation and Gender Identity: The Necessity of the Equality Act in the Wake of *Bostock v. Clayton County*, 47 *BYU L. Rev.* 685 (2022).
29. Jon W. Davidson, "How the Impact of *Bostock v. Clayton County* on LGBTQ Rights Continues to Expand | ACLU" *American Civil Liberties Union*, 2022.
30. Jose Jismin, "Navtej Singh Johar & Ors. vs. Union of India thr. Secretary Ministry of Law & Justice" *Law Times Journal*, 2019.
31. K. Kumar Ajith, "A Study on the roles of Kudumbashree and Kerala Social Justice Department in uplifting the transgenders," 9 *Quest Journals* 78–83 (2021).
32. K. Sangeetha, "A Need-to-Know Lgbt Rights," 2(1) *Global Academic Journal of Humanities and Social Sciences* 1–5 (2020).
33. K. McClure Laura (ed.), *Sexuality and Gender in the Classical World: Readings and Sources*, 1st ed. (Wiley, 2002).
34. Kao Emilie and Melton Grace, "The U.S. Must Protect Human Rights of All Individuals Based on Human Dignity—Not on Membership in Identity Groups" *The Heritage Foundation*.
35. Khalid H, "From Bulleh Shah and Shah Hussain to Amir Khusro, Same-Sex References Abound in Islamic Poetry" *Scroll.in* (June 17, 2016).
36. Khatun Hena, "LGBT Movement in India" *Journal of the Department of Sociology of North Bengal University*, Vol. 5, 31 March (2018).
37. Kumar G, Suguna et al, "Exploring the discrimination and stigma faced by transgender in Chennai city-A community-based qualitative study". *J Family Med Prim Care*. 2022 Nov;11(11):7060-7063.

38. Kumar Sanjeev, "LGBT Community in India" *Lesbian FunWorld Books*, 2020.
39. Kumar Ajith & Vidya N. (2021). A Study on the roles of Kudumbashree and Kerala Social Justice Department in uplifting the transgenders. 2321-9467.
40. Lafrance Sébastien, "Legalization of Same-Sex Marriage in Canada: A Success Story" *Melbourne Law School*.
41. Leeworthy Daryl, "The United Kingdom's LGBT Movement and Interest Groups" *Oxford Research Encyclopedia of Politics*, 2020.
42. Lewis, D.C., Flores et al. Cultural Threat, Outgroup Discrimination, and Attitudes toward Transgender Rights. *Polit Behav* (2024).
43. Lipka Michael and David Masci, "Where Europe stands on gay marriage and civil unions" *Pew Research Center*, 2019.
44. M Michelraj, "Historical Evolution of Transgender Community in India," 4 *Asian Review of Social Sciences* 17–9 (2015).
45. MacFarquhar Neil, "In a First, Gay Rights Are Pressed at the U.N." *The New York Times*, 19 December 2008, section World.
46. Maddalena Michaela, "Labouchere Amendment of 1885," 2020.
47. Madhur Anand, "Legal Recognition Fortifies Social Acceptance: Orchestrating Sociological Aspects of Legalization Of Same-Sex Marriage In India," 5 *Bennett Journal of Legal Studies* 89–101 (2024).
48. Mahanta Upasana and Shukla Surabhi, "Rights of Transgender Persons Bill, 2014," 1 *Law and Policy Brief* 1–4 (2015).
49. Mal Sibsankar, "The hijras of India: A marginal community with paradox sexual identity," 34 *Indian Journal of Social Psychiatry* 79 (2018).
50. Mazrekaj Deni and Jin Yuxuan, "Mental health of children with gender and sexual minority parents: a review and future directions," 10 *Humanities and Social Sciences Communications* 1–6 (2023).
51. Mehta Rupali, A Comparative Study of Laws regarding LGBTQ in India and UK, 3 (3) *IJLSI* Page 235 - 239 (2021).

52. Miller Jennifer, “Chapter 1: Thirty Years of Queer Theory.
53. Miller Robin Lin, Rutledge Jaleah and Ayala George, “Breaking Down Barriers to HIV Care for Gay and Bisexual Men and Transgender Women: The Advocacy and Other Community Tactics (ACT) Project,” 25 *AIDS and Behavior* 2551–67 (2021).
54. Mishra Akanksha, “Third Gender Rights: The Battle for Equality,” 5 *Christ University Law Journal* 9–21 (2016).
55. Mohapatra, Ankita; et al,” Choosing my gender: Challenges faced by transgender persons in India” *Odisha Journal of Psychiatry* 18(1): p 21-24, Jan–Jun 2022.
56. Moore, R.I, ‘The Formation of a Persecuting Society’ (London: Blackwell), (1987).
57. Moreno Raquel, “I’m an aid worker... and I’m gay” *The Guardian*, 12 March 2015, section Working in development.
58. N Murugesapandian, “Transgenders in Ancient Tamil Literature,” 6 *Shanlax International Journal of Tamil Research* 1–13 (2022).
59. Netti Misraet al., “Prohibition of Transgender Marriage According To Buya Hamka (In The Book Of Tafsir Al-Azhar),” 23 *Innovation: Journal for Religious Innovations Studies* 141–55 (2023).
60. Osborne, G., & Wilton, S. (2022). “Defenders of perversion”: Professing Same-Sex Marriage Rights in the Local Press. *Engaged Scholar Journal: Community-Engaged Research, Teaching, and Learning*, 8(3), 32–51.
61. Osman Fatima and Baase Mathabo, “The recognition of same-sex customary marriages under South African customary law,” 38 *South African Journal on Human Rights* 1–23 (2022).
62. Pandey BV, “Why Legalising Gay Sex in India Is Not a Western Idea” (BBC News, December 31, 2018).

63. R Beitmen Logan, “Neuroscience and Hindu Aesthetics: A Critical Analysis of V.S. Ramachandran’s ‘*Science of Art*’” (unpublished Master of Arts Religious Studies, Florida International University, 2014).
64. Ramos Natalia, Barnert Elizabeth and Bath Eraka, “Addressing the Mental Health Needs of LGBTQ Youth in the Juvenile Justice System,” 61 *Journal of the American Academy of Child and Adolescent Psychiatry* 115–9 (2022).
65. Rana, Afrasiab Ahmed, et al, The Transgender Persons (Protection Of Rights) Act 2018: A Shariah Appraisal of Self-Perceived Gender Identity and Right of Inheritance of The Transgender (June 19, 2022). *Competitive Educational Research Journal (CERJ)* 2, no. 4 (October-December 2021): 77-88.
66. Rifqi Fauzi Aditya and Setyaningrum Meylani Hafizhah Ulfah, “Study Implementation on The Impact of NGO for LGBT Mental Health Improvement in Yogyakarta” (2016).
67. Rollè Luca, Brustia Piera and Caldarera Angela, “Homophobia and Transphobia,” in A. C. Michalos (ed.), *Encyclopedia of Quality of Life and Well-Being Research* 2905–10 (Springer Netherlands, Dordrecht, 2014).
68. Satyanarayan Sharma Shreedeeep, “Social Imagination and Same-Sex Marriages in India,” 11 *International Journal of Creative Research Thoughts* (2023).
69. Sawhney Divesh and Khanna Aastha, “Legislative Review of ‘The Transgender Persons (Protection of Rights) Act, 2019,’” 24 *Human Rights Brief* (2021).
70. Schultz, David. (2024). “Subsidiarity v. Pan-Europeanism: LGBTQ and Transgender Rights in the EU and under the European Convention of Human Rights”. *Bulletin of the Transilvania University of Braşov Series VII Social Sciences Law*. 63-72.
71. Shaji Sukanya and Vidya Sigamany, “New criminal law Bill omits Section 377: How this impacts men and trans persons” *The News Minute*, (2023)
72. Shali Sonia, “Social Inclusion, Equality and Respect of Transgenders: Rise of New Socio-Legal Perspective.”
73. Snell Janet, “Ending bigotry faced by LGBT people with learning disabilities”.

74. Sorabjee Soli J, "Expansion and Protection of Fundamental Rights by Judicial Interpretation and Intervention," 7 *Manupatra* (2014).
75. Srinithya, Critical Analysis of the Transgender Persons (Protection of Rights) Act, 2019, *IJLRA*, (Oct 23, 2020).
76. Sukumar Suja, Ullatil Vivek et al, "Transgender health care status in Kerala," 24 *Indian Journal of Endocrinology and Metabolism* 286 (2020).
77. Sunil Pillai Geetha, "Nikesh & Sonu - The first gay couple to challenge the Special Marriage Act is hopeful of justice" *The Mooknayak English - Voice of The Voiceless*, 2023.
78. Syali Manini and Jhamb Vinayak, "Mishandling the issue of gender dysphoria in India - an analysis of the transgender persons (Protection of Rights) Act, 2019," 9 *International Journal of Human Rights and Constitutional Studies* 31 (2022).
79. V. Revathy, "The Violation of Human Rights against the LGBT Community in India: A critical study.," 120 *International Journal of Pure and Applied Mathematics* 4875–84.
80. V. Parvathy, "Safeguarding identity with change: An analysis of the LGBT community," *International Journal of Advance Research and Development* 4.
81. Walton Gregory M. and Cohen Geoffrey L., "A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students," 331 *Science* 1447–51 (2011).
82. Watt Nicholas, "David Cameron apologises to gay people for section 28" *The Guardian*, 2 July 2009, section Politics.
83. Wilson Sincy, M Kabeer Hashim, "Transgender Rights Protection In India- An Analysis, Arts & Education" *International Research Journal: Volume 4 Issue 2* (2017)
84. ZU Salam, "An Emperor with Foibles" *The Hindu* (February 15, 2014).

Online Articles

1. ‘Yogyakarta Principles’ a Milestone for Lesbian, Gay, Bisexual, and Transgender Rights | Human Rights Watch,” 2007*available at:* <https://www.hrw.org/news/2007/03/26/yogyakarta-principles-milestone-lesbian-gay-bisexual-and-transgender-rights>.
2. “A Brief History of Same Sex Marriage,” *British Guild of Tourist Guides available at:* <https://britainsbestguides.org/blogs/a-brief-history-of-same-sex-marriage/>.
3. “A History of LGBT Criminalisation,” *Human Dignity Trust available at:* <https://www.humandignitytrust.org./lgbt-the-law/a-history-of-criminalisation/>.
4. “About Us,” *Udaan Social Empowerment Trust is available at:* <https://udaan-trust.org/about-us/>.
5. “About,” *Sahodari Foundation | Centre for Transgender Empowerment available at:* <https://sahodari.org/about/>.
6. “All About Hinduism – The Divine Life Society,” *available at:* <https://www.dlshq.org/download/all-about-hinduism/>.
7. “BBC Wales - History - Themes - The 1543 Act of Union,” *available at:* https://www.bbc.co.uk/wales/history/sites/themes/periods/tudors_05.shtml.
8. “Book Review: Ruth Vanita and Saleem Kidwai edited Same-Sex Love in India: A Literary History – Rupkatha Journal on Interdisciplinary Studies in Humanities,” 2013*available at:* <https://rupkatha.com/book-review-ruth-vanita-saleem-kidwai-edited-same-sex-love-india-literary-history/>.
9. “CARA,” *“available at:* https://cara.wcd.gov.in/parents/eg_ri.html.
10. “Civil Partnerships and Same-Sex Marriage Explained,” *Tanners Solicitors, 2024available at:* https://www.tanners.co.uk/site/library/family/civil_partnerships_what_they_mean_for_you.html#:~:text=Civil%20partners%20have%20the%20equivalent,marriage%2C%20invalidates%20an%20earlier%20will.

Bibliography

11. “Constitutionality of Section 377 IPC,” *Supreme Court Observer* available at: <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>.
12. “Court Challenges Program – Questions and answers,” 2023 available at: <https://www.canada.ca/en/canadian-heritage/corporate/transparency/open-government/standing-committee/petitpas-taylor-official-languages-dec2022/questions-answers.html>.
13. “Creating Inclusive Workplaces for LGBT Employees in India - A Resource Guide for Employers,” *Community Business*, 2017 available at: <https://communitybusiness.org/latest-news-publications/creating-inclusive-workplaces-lgbt-employees-india-resource-guide-employers>.
14. “Drishti IAS Coaching in Delhi, Online IAS Test Series & Study Material,” available at: <https://www.drishtias.com/printpdf/the-transgender-persons-protection-of-rights-bill-1>.
15. “Eunuchs can’t be part of law dealing with SC/ST abuse,” *The Indian Express*, 2012 available at: <https://indianexpress.com/article/cities/mumbai/eunuchs-can-t-be-part-of-law-dealing-with-s/>.
16. “Gay Bombay,” *Gay Bombay*, 2024 available at: <https://gaybombay.in/>.
17. “Gay in the UK,” *SEEN*, 2023 available at: <https://seen-network.uk/posts/2023-02-14-gay-in-the-uk/>.
18. “Gender Identity Vs. Sexual Orientation,” *Gender Blog by Darlene Tando, LCSW*, 2011 available at: <https://darlenetandogenderblog.com/2011/11/05/gender-identity-vs-sexual-orientation/>.
19. “Harvard Kennedy School LGBTQ Policy Journal Vol. 9 by Harvard Kennedy School LGBTQ Policy Journal - Issuu,” 2020 available at: <https://issuu.com/hkslgbtq/docs/hkslgbtq2019> (last visited May 11, 2024).

20. “Heteronormativity - an overview | ScienceDirect Topics, *available at*: <https://www.sciencedirect.com/topics/social-sciences/heteronormativity#:~:text=Heteronormativity%20refers%20to%20the%20belief,non%2Dnormative%20desires%20and%20behaviors.>
21. “Hinduism,” *sukfco*, 2014 *available at*: <https://sukfco.wordpress.com/2014/12/16/hinduism/>.
22. “How Did Nepal Become a Global LGBT Rights Beacon? | Human Rights Watch,” 2017 *available at*: <https://www.hrw.org/news/2017/08/11/how-did-nepal-become-global-lgbt-rights-beacon.>
23. “Human rights watch, ‘This alien legacy: the origin of ‘sodomy’ laws in British colonialism’, school of Advanced Study, University of London, Institute of Commonwealth Studies (2013) *available at* <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism.>
24. “India: countries with the highest number of Indian migrants,” *Statista* *available at*: <https://www.statista.com/statistics/1459615/india-countries-with-highest-number-of-indian-migrants/>.
25. “India’s Supreme Court turns the clock back with gay sex ban,” *Reuters*, 11 December 2013, section Lifestyle.
26. “International Lesbian & Gay Law Association,” *International Lesbian & Gay Law Association* *available at*: <https://ilglaw.org/>.
27. “International Lesbian, Gay, Bi, Trans, and Intersex Law Association (ILGLaw),” *Career Center | University of Southern California*, 2021 *available at*: <https://careers.usc.edu/organizations/international-lesbian-gay-bi-trans-and-intersex-law-association-ilglaw/>.
28. “Judicial Expansion of rights – Philosophical Foundations of Human Rights; Duties and Responsibilities,” *available at*: <https://ebooks.inflibnet.ac.in/hrdp01/chapter/319/>.

29. “Kaleidoscope Trust | LinkedIn,” *available at*:
<https://uk.linkedin.com/company/kaleidoscope-trust>.
30. “Kerala announces reservation for transgender students in colleges,” *Hindustan Times*, 2018*available at*:
<https://www.hindustantimes.com/education/kerala-announces-reservation-for-transgender-students-in-colleges/story-qHixW6XIPTExuXkCrrv45K.html>.
31. “Law and Oppression | Historic England,” *available at*:
<https://historicengland.org.uk/research/inclusive-heritage/lgbtq-heritage-project/law-and-oppression/>.
32. “Legitquest,” *available at*:
<https://login.legitquest.com/?redirectUrl=https%3A%2F%2Fwww.legitquest.com%2Fcase%2Fsupriyo--supriya-chakraborty--anr-v-union-of-india%2F7891e1&baseurl=https://www.legitquest.com/> (last visited June 06, 2024).
33. “Lesbian, Gay, Bisexual and Transgender community seeks to increase support base,” *The Times of India*, 29 July 2012.
34. “LGBT Rights in Maharashtra, India,” *Equaldex available at*:
<https://www.equaldex.com/region/maharashtra>.
35. “LGBTQ Community: Legal Rights & Social Discourse | ProBono India,” *available at*: <https://probono-india.in/blog-detail.php?id=55>.
36. “LGBTQ Human Rights In Canada - Free Essay Example,” *Edubirdie available at*: <https://edubirdie.com/examples/lgbtq-human-rights-in-canada/>.
37. “LGBTQ Support Groups To Bookmark This Pride Month | LBB,” *LBB, Mumbai available at*: <https://lbb.in/mumbai/lgbt-support-groups-mumbai/>.
38. “LGBTQIA+ Basic Terms and Definitions,” *South Dakota State University**available at*: <https://www.sdstate.edu/office-multicultural-affairs-accessibility/lgbtqia-basic-terms-and-definitions/>.

39. “Living together and civil partnership - legal differences,” *Citizens Advice available at:* <https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-civil-partnership-legal-differences/>.
40. “Marriage Equality Around the World,” *HRC available at:* <https://www.hrc.org/resources/marriage-equality-around-the-world>.
41. “Movement Advancement Project | International LGBT Advocacy Organizations and Programs,” *available at:* <https://www.lgbtmap.org/lgbt-movement-overviews/international-lgbt-advocacy-organizations-and-programs>.
42. “NATIONAL LEGAL SERVICES AUTHORITY (NALSA) VS. UNION OF INDIA - South Asian Translaw Database - THIRD GENDER,” *South Asian Translaw Database available at:* <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>.
43. “NAVTEJ SINGH JOHAR VS. UNION OF INDIA - South Asian Translaw Database - SECTION 377,” *South Asian Translaw Database available at:* <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>.
44. “Open Letter on Intersex to the UN High Commissioner for Human Rights – InterAction,” 2012 *available at:* <https://interaction.org.au/21442/open-letter-un-high-commissioner-human-rights/>.
45. “Open Letter on Intersex to the UN High Commissioner for Human Rights – InterAction,” 2012 *available at:* <https://interaction.org.au/21442/open-letter-un-high-commissioner-human-rights/>.
46. “Our Mission,” *available at:* <https://www.sapphokolkata.in/lesson/details/our-mission>.
47. “Our Work,” *Kaleidoscope Trust available at:* <https://kaleidoscopetrust.com/our-work/>.

Bibliography

48. “Plea for Marriage Equality,” *Supreme Court Observer* available at: <https://www.scobserver.in/cases/plea-for-marriage-equality/>.
49. “Proposing change: How same-sex marriage became a government success story,” *Institute for Government*, 2023 available at: <https://www.instituteforgovernment.org.uk/publication/same-sex-marriage>.
50. “Queer | Definition & Uses | Britannica,” available at: <https://www.britannica.com/topic/queer-sexual-politics>.
51. “Queer Persons’ Right to Marry: Court in Review,” *Supreme Court Observer* available at: <https://www.scobserver.in/journal/court-in-review-queer-persons-right-to-marry/>.
52. “Queer theory and gender norms,” *Align Platform* available at: <https://www.alignplatform.org/2-queer-theory-and-gender-norms>.
53. “Rajya Sabha Debates on the Transgender Persons (Protection of Rights) Bill 2019,” *Centre for Law & Policy Research* available at: <https://clpr.org.in/blog/rajya-sabha-debates-on-the-transgender-persons-protection-of-rights-bill-2019-day-1/>.
54. “Rights of LGBTQ in India and the Struggle for Societal Acceptance,” *International Journal of Law Management & Humanities* available at: <https://ijlmh.com/paper/rights-of-lgbtq-in-india-and-the-struggle-for-societal-acceptance/>.
55. “RSY 2002, c 116 | Human Rights Act,” available at: <https://www.canlii.org/en/yk/laws/stat/rsy-2002-c-116/latest/rsy-2002-c-116.html?resultIndex=1>.
56. “S Sushma v Commissioner of Police - In the High Court of Judicature at Madras dated : 07. CORAM THE - Studocu,” available at: <https://www.studocu.com/in/document/dr-hari-singh-gour-university/corporate-law/s-sushma-v-commissioner-of-police/45393917>.

57. "Sahayatrika Human Rights - Academia.edu," *available at*:
<https://independent.academia.edu/SahayatrikaHumanRights>.
58. "Same-Sex Marriage - an overview | ScienceDirect Topics," *available at*:
<https://www.sciencedirect.com/topics/social-sciences/same-sex-marriage>.
59. "Same-Sex Marriage in Canada," *available at*:
<https://www.thecanadianencyclopedia.ca/en/article/same-sex-marriage-in-canada>.
60. "Same-Sex Marriage in Scotland: A Legal Evolution," *Home of Dissertations available at*: <https://www.dissertationhomework.com/samples/assignment-essay-samples/legal/legal-evolution-of-same-sex-marriage-in-scotland>.
61. "Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013," *available at*:
<https://www.indianbarassociation.org/sexual-harassment-of-women-at-workplace-prevention-prohibition-redressal-act-2013/>.
62. "Shashi Tharoor explains why Transgender Persons Bill is 'flawed,'" *The Indian Express*, 2018 *available at*:
<https://indianexpress.com/article/india/shashi-tharoor-explains-why-transgender-bill-is-flawed-5498498/>.
63. "Study on Human Rights as a Third Gender – CFNHRI," *available at*:
<https://cfnhri.org/updates/study-on-human-rights-as-a-third-gender/>.
64. "Supreme Court Judgment against Section 377 | Economic and Political Weekly," 2018 *available at*:
<https://www.epw.in/journal/2018/39/commentary/supreme-court-judgment-against-section.html>.
65. "Supreme Court reserves judgment on same-sex marriage," *India Today*, 2023 *available at*: <https://www.indiatoday.in/law/story/same-sex-marriage-hearing-live-updates-supreme-court-bench-petition-centre-chief-justice-dy-chandrachud-2377625-2023-05-11>.

Bibliography

66. “Supriyo @ Supriya Chakraborty & Anr. vs. Union of India,” *available at*: <https://privacylibrary.ccgnlud.org/case/supriyo-supriya-chakraborty-anr-vs-union-of-india>.
67. “Taiwan becomes first in Asia to legalize same-sex marriage,” *Amnesty International*, 2019 *available at*: <https://www.amnesty.org/en/latest/press-release/2019/05/taiwan-same-sex-marriage-law/>.
68. “Tamil Nadu to create a transgender database,” *The Times of India*, 22 April 2008.
69. “Terms and Definitions-Spectrum - Loyola University Maryland,” *available at* <https://www.loyola.edu/departments/lgbtq-services/resources/lgbtq-terms-definitions#:~:text=LGBTQQIP2SA%3A%20any%20combination%20of%20letters,Two%2DSpirited%2C%20and%20Asexual>.
70. “Thailand becomes third Asian country to legalise same-sex marriage – Know which other countries have legalised it,” *Financial express*, 2024 *available at*: <https://www.financialexpress.com/world-news/thailand-becomes-third-asian-country-to-legalise-same-sex-marriage-know-which-other-countries-have-legalised-it/3438263/>.
71. “The Age Of Wrath,” Penguin Random House India *available at*: <https://www.penguin.co.in/book/the-age-of-wrath/>.
72. “The Gender Recognition Act 2004 | Department of Health,” 2015 *available at*: <https://www.health-ni.gov.uk/articles/gender-recognition-act-2004>.
73. “The Reality of India’s Transgender Welfare Boards: What an RTI Investigation Reveals,” *available at*: <https://thewire.in/government/the-reality-of-indias-transgender-welfare-boards-what-an-rti-investigation-reveals>.
74. “The Transgender Persons (Protection of Rights) Act,” *Drishti IAS available at*: <https://www.drishtiiias.com/to-the-points/Paper2/the-transgender-persons-protection-of-rights-act>.

76. “The Transgender Persons (Protection of Rights) Bill, 2016,” *PRS Legislative Research* available at: <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016>.
77. “To make full use of ‘Samanwaya’ scheme: Minister urges to transgenders,” available at: <https://literacymissionkerala.org/en/to-make-full-use-of-samanwaya-scheme-minister-urges-to-transgenders/>.
78. “Transgender Rights in India: The Road Ahead,” *Chenoy Ceil Lawyer*, 2014 available at:
<https://advocatechenoyceil.wordpress.com/2014/08/18/transgender-rights-in-india-the-road-ahead/>.
79. “Transgender students await inclusion of third gender category in forms; Maharashtra registers the highest number of applicants,” *The Indian Express*, 2023 available at: <https://indianexpress.com/article/education/class-10th-12th-board-exams-forms-transgender-students-await-inclusion-of-third-gender-category-maharashtra-registers-highest-ahead-of-cbse-8914625/>.
80. “Transgenders to guard school buses in Punjab, Haryana,” *India Today*, 2015 available at: <https://www.indiatoday.in/india/story/transgenders-to-guard-school-buses-in-punjab-haryana-264630-2015-09-24>.
81. “Welfare of Transgenders,” available at:
<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1575534>.
82. “Were every religion’s core concepts taken from Sanatana Dharma?,” *Quora* available at: <https://www.quora.com/Were-every-religions-core-concepts-taken-from-Sanatana-Dharma>.
83. “What does queer mean?,” *available at*:
<https://www.plannedparenthood.org/learn/teens/sexual-orientation/what-does-queer-mean>.
84. “What is social context adjudication approach and when the courts should apply it while deciding cases?,” *available at*:
<https://www.lawweb.in/2023/09/what-is-social-context-adjudication.html>.

85. “What is the full acronym for LGBTQIP2SAA? • What’s On Queer Magazine,” <i>What’s On Queer BC • Magazine, Events and Resources for the LGBTQ+ Community</i>, 2023<i>available at</i>:

<https://whatsonqueerbc.com/woq-bc-stories/what-does-the-acronym-mean>.
86. “What’s Transphobia and Transmisia?” *available at*:

<https://www.plannedparenthood.org/learn/gender-identity/transgender/whats-transphobia>.
87. “Why transgenders have been always ignored during elections,” *The Indian Express*, 2019*available at*: <https://indianexpress.com/elections/transgenders-lok-sabha-elections-apsara-reddy-bishesh-huirem-sex-worker-5653379/>.
88. “Your guide to what all the LGBTQIA+ terms mean,” *Cosmopolitan*, 2023*available at*:

<https://www.cosmopolitan.com/uk/love-sex/a20730324/lgbt-meaning/>.
89. “महाभाष्यम्: Mahabhashya With Explanation In Hindi (Set of 10 Books) | Exotic India Art,” *available at*:

<https://www.exoticindiaart.com/book/details/mahabhashya-with-explanation-in-hindi-set-of-10-books-nzf007/>.
90. AARF Publications Journals, “Problems of Transgender in India: a study from social exclusion to social inclusion.” *available at*

https://www.academia.edu/33006703/PROBLEMS_OF_TRANSGENER_I_N_INDIA_A_STUDY_FROM_SOCIAL_EXCLUSION_TO_SOCIAL_INCLUSION.
91. Anand Grover, “The thoughtless Section 377 IPC oversight in the BNS” *The Leaflet*, 2024*available at*: <https://theleaflet.in/criminal-justice/the-thoughtless-section-377-ipc-oversight-in-the-bns>.
92. Annette Choi Wilson Jhasua Razo, Rachel, “Where same-sex marriage is legal around the world” *CNN*, 2024*available at*: <https://www.cnn.com/world/same-sex-marriage-legal-countries-map-dg/index.html>.

93. Ayush Verma, “LGBTQ+ community : legal rights and social discourse” *iPleaders*, 2020 *available at*: <https://blog.ipleaders.in/lgbtq-community-legal-rights-social-discourse/>.
94. Berkley Center for Religion Affairs Peace and World, “U.S. Religious Freedom and LGBTQ Rights” *available at*:
<https://berkeleycenter.georgetown.edu/posts/u-s-religious-freedom-and-lgbtq-rights>.
95. Billie Olsen, “What Does LGBTQIP2SAA Mean?” *LGBTQ and ALL*, 2023 *available at*: <https://www.lgbtqandall.com/what-does-lgbtqip2saa-mean/>.
96. Center for Gender and Sexuality Law, “The Equal Rights Amendment and LGBTQ Rights, Including Marriage Equality” *Center for Gender & Sexuality Law* (2022). Available at
https://scholarship.law.columbia.edu/gender_sexuality_law/5/.
97. D. C. Correspondent, “Humsafar Trust moves Supreme Court against Sec 377,” 2018 *available at*: <https://www.deccanchronicle.com/lifestyle/sex-and-relationship/020518/humsafar-trust-moves-supreme-court-against-sec-377.html>.
98. Diva Rai, “Criminalization of transgender people in colonial India : Criminal Tribes Act” *iPleaders*, 2021 *available at*:
<https://blog.ipleaders.in/criminalization-of-transgender-people-in-colonial-india-criminal-tribes-act/>.
99. Editor, “The role of the civil society in making and repealing of the laws: Section 377 and struggles ahead” *Dhaara*, 2020 *available at*:
<https://dhaaramagazine.in/2020/11/17/the-role-of-the-civil-society-in-making-and-repealing-of-the-laws-section-377-and-struggles-ahead/>.
100. Elango Felix, “Transgenders and our society” *The Companion*, 2014 *available at*: <https://thecompanion.in/transgenders-and-our-society>.

101. GenderGP, “What is Agender? Finding Out I’m Agender” <i>GenderGP Transgender Services</i>, 2021<i>available at</i>:
<https://www.gendergp.com/what-is-agender/>.
102. German Lopez, “Same-sex marriage in the US, explained” *Vox*, 2015<i>available at: <https://www.vox.com/2015/6/26/18093652/same-sex-marriage>.
103. Gina Bastone, “LibGuides: Comparative Literature: Queer Theory”<i>available at</i>:
<https://guides.lib.utexas.edu/c.php?g=957649&p=6975813>.
104. Guest Post, “What are the Rights of Transgender in India” *iPleaders*, 2015<i>available at: <https://blog.ipleaders.in/legal-rights-of-transgender-india/>.
105. Haroon Khalid, “From Bulleh Shah and Shah Hussain to Amir Khusro, same-sex references abound in Islamic poetry” *Scroll. In*, 2016<i>available at: <http://scroll.in/article/810007/from-bulleh-shah-and-shah-hussain-to-amir-khusro-same-sex-references-abound-in-islamic-sufi-poetry>.
106. HKSSPR, “LGBT Rights on the International Stage: An Analysis of Diplomatic Practice” *HKS Student Policy Review*, 2019<i>available at: <https://studentreview.hks.harvard.edu/lgbt-rights-on-the-international-stage-an-analysis-of-diplomatic-practice/>.
107. How Did Nepal Become a Global LGBT Rights Beacon? | Human Rights Watch,” 2017<i>available at: <https://www.hrw.org/news/2017/08/11/how-did-nepal-become-global-lgbt-rights-beacon>.
108. Ian Millhiser, “The case for optimism about LGBTQ rights in the United States” *Vox*, 2023<i>available at: <https://www.vox.com/politics/2023/6/26/23752360/supreme-court-lgbtq-transgender-bathrooms-sports-gender-affirming-care-bostock>.
109. IJLMH, “The Yogyakarta Principles: A Legal Discourse on Rights of the LGBTI Community” *International Journal of Law Management & Humanities*, 2020<i>available at: <https://ijlmh.com/the-yogyakarta-principles-a-legal-discourse-on-rights-of-the-lgbti-community/>.

Bibliography

110. Katie White, "Children of same-sex parents are emotionally healthy," 2017*available at:* <https://www.sdsu.edu/news/2017/11/children-same-sex-parents-are-emotionally-healthy.aspx>.
111. LGBTQIA+ 101," Princeton Gender + Sexuality Resource Center" *available at:* <https://www.gsrc.princeton.edu/lgbtqia-101>.
112. Literatures and Languages Library, "LibGuides: Queer Theory: Background" *available at:* <https://guides.library.illinois.edu/queertheory/background>.
113. Live Law Research Team, "Congress MP Shashi Tharoor Introduces Anti-Discrimination And Equality Bill In Lok Sabha [Read The Bill]," 2017 *available at:* <https://www.livelaw.in/congress-mp-shashi-tharoor-introduces-anti-discrimination-equality-bill-lok-sabha/>.
114. Meg Metcalf, "Research Guides: LGBTQIA+ Studies: A Resource Guide: 1969: The Stonewall Uprising" *available at:* <https://guides.loc.gov/lgbtq-studies/stonewall-era>.
115. Nicholae cline, "Library Research Guides: Philosophy: Introduction to Queer Theory" *available at:* <https://guides.libraries.indiana.edu/c.php?g=995240&p=8361766>.
116. Patrick Kelleher, "The defiant, gruelling and glorious history of same-sex marriage in the UK" *PinkNews | Latest lesbian, gay, bi and trans news | LGBTQ+ news*, 2021*available at:* <https://www.thepinknews.com/2021/07/17/england-wales-same-sex-marriage-uk-legalised-civil-partnerships-david-cameron-history/>.
117. Pew Research Center: Journalism & Media staff, "Cable" *Pew Research Center*, 2005*available at:* <https://www.pewresearch.org/journalism/2005/05/23/cable/>.

118. Sam Frizell, “First Couples Wed as Gay Marriage Becomes Legal in UK” *TIME*, 2014available at: <https://time.com/42537/gay-marriage-united-kingdom/>.
119. Satish Kiran and Kataria Gaurav, “Understanding the Challenges of Socio-Legal Framework among Transgenders in Kerala,” *International Journal of Law Management & Humanities* available at: <https://ijlmh.com/paper/understanding-the-challenges-of-socio-legal-framework-among-transgenders-in-kerala/>.
120. Socio-Legal Review, “Section 377 Read Down: The Way Forward” *SLR*, 2019available at: <https://www.sociolegalreview.com/post/section-377-read-down-the-way-forward>.
121. Sophie Perry, “Tory government blamed for UK becoming more hostile to LGBTQ+ people” *PinkNews | Latest lesbian, gay, bi and trans news | LGBTQ+ news*, 2023available at: <https://www.thepinknews.com/2023/05/11/uk-lgbtq-rights-ilga-europe-rankings-rainbow-map-tories/>.
122. Subodh Asthana, “Article 21 of the Indian Constitution” *iPleaders*, 2024available at: <https://blog.ipleaders.in/article-21/>.
123. The Hindu Bureau, “Government, society have a responsibility to bring queer community to mainstream, says Kerala Minister R. Bindu” *The Hindu*, 19 November 2022, section Kerala.
124. Think Change India, “Meet the 5 petitioners who challenged Section 377” available at: <https://yourstory.com/2018/09/five-petitioners-section-377-supreme-court>.
125. Voruganti, S. V. and H. (n.d.). “A Hindu approach to LGBT rights. Swarajyamag” available at: <https://swarajyamag.com/culture/a-hindu-approach-to-lgbt-rights>.

BOOKS

1. Aeyal Gross, “Post/Colonial Queer Globalisation and International Human Rights: Images of LGBT Rights” (Rochester, NY, 2013).
2. Bodie Hodge, Ken Ham and Avery Foley, *The Gender & Marriage War* (Answers in Genesis, Hebron, KY, 2021).
3. D. Paul Sullins, “Invisible Victims: Delayed Onset Depression among Adults with Same-Sex Parents,” 2016 *Depression Research and Treatment* 2410392 (2016).
4. Donald Sullins, “Emotional Problems among Children with Same-Sex Parents: Difference by Definition” (Rochester, NY, 2015).
5. Gaur, KD, Chapter 8, ‘Criminal Law, cases and materials’, (7th edition, Lexis Nexis, 2013).
6. Geetanjali Misra, “Decriminalising Homosexuality in India” (*Rochester, NY*, 2009) vol.17, no 34, criminal (November 2009), pp.20-28.
7. Ira Trivedi, *The Indian in the Closet: New Delhi's Wrong Turn on Gay Rights*, Foreign Affairs, Vol. 93, No. 2 (Mar 2014).
8. Jeffrey S. Siker (ed.), *Homosexuality and Religion: An Encyclopedia* (Greenwood Press, Westport, Conn, 2007).
9. Laura K. McClure (ed.), *Sexuality and Gender in the Classical World: Readings and Sources*, 1st ed. (Wiley, 2002).
10. Luca Rollè, Piera Brustia and Angela Caldarera, “Homophobia and Transphobia,” in A. C. Michalos (ed.), *Encyclopedia of Quality of Life and Well-Being Research* 2905–10 (Springer Netherlands, Dordrecht, 2014).
11. Mansi Dagrass, “Victimization of LGBT Community in India” (Rochester, NY, 2021).
12. Matthew Farmer, *Transnational LGBT Activism and UK-Based NGOs: Colonialism and Power* (Springer International Publishing, Cham, 2020).

13. Matthew Waites, "Critique of 'sexual orientation' and 'gender identity' in human rights discourse: global queer politics beyond the Yogyakarta Principles," 15 *Contemporary Politics* 137–56 (2009).
14. Matthew Waites, "LGBTI organizations navigating imperial contexts: the Kaleidoscope Trust, the Commonwealth and the need for a decolonizing, intersectional politics," 65 *The Sociological Review* 644–62 (2017).
15. Russle on crime, vol 1, Indian reprint, 2001, pp.735, Kennys outline of criminal law, 19th edition pp. 205.
16. Singh, Sushma & Divya, India: Failure To Legalise Same-Sex Marriage A 'Setback' For Human Rights. 10th edn, (2024 pp. 30-39).
17. The word buggery was derived by the way of the French 'bourge' from the medieval Bogomil heresy, which flourished in Bulgaria. Again, sexual and religious (and racial) 'deviance' were intimately associated (Bailey 1995, pp. 147-149: Hyde 1970).
18. Tracy Hargreaves, *Androgyny in Modern Literature* (Palgrave Macmillan, Basingstoke, 2005).
19. Vincenza Priola and Saoirse C. O'Shea, "LGBT* inclusion" *Encyclopedia of the Social and Solidarity Economy* 138–146 (Edward Elgar Publishing, 2023).
20. Walter S. Tarnopolsky, William F. Pentney & John D. Gardner (eds.), *Discrimination and the Law*, (Thomson, Scarborough, Ontario, 2004).

INTERNATIONAL CONVENTIONS

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.
2. The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1952.
3. The European Convention on Human Rights, 1950.

4. The International Bill of Human Rights, 1948.
5. The International Covenant on Civil and Political Rights, 1966.
6. The International Covenant on Economic, Social and Cultural Rights, 1966.
7. The National Aids Control Organization, 1992.
8. The United Nations General Assembly Human Rights Committee Report, 2002.
9. The United Nations Human Rights Committee, 1995, 1996, 2001, 2006.
10. The Universal Declaration of Human Rights, 1948.

JOURNALS

1. AARF Publications Journals.
2. Bennett Journal of Legal Studies.
3. Bulletin of the Transilvania University of Braşov.
4. Christ University Law Journal.
5. Cochin University Law Review.
6. Competitive Educational Research Journal (CERJ).
7. Culture, Health & Sexuality.
8. Economic and Political Weekly.
9. Gettysburg Social Sciences Review.
10. GIBS Law Journal.
11. GNLU Journal of Law & Economics.
12. Harvard Kennedy School LGBTQ Policy Journal.
13. Indian Constitutional Law Review.
14. Indian Journal of Integrated Research in Law.
15. Indian Journal of Law and Legal Research.

16. Institute of Commonwealth Studies.
17. International Journal for Legal Research and Analysis (IJLRA).
18. International Journal of Advance Research and Development.
19. International Journal of Creative Research Thoughts.
20. International Journal of Human Rights and Constitutional Studies.
21. International Journal of Law Management & Humanities.
22. International Journal of Legal Developments and Allied issues.
23. International Journal of Legal Science and Innovation (IJLSI).
24. International Journal of Mechanical Engineering.
25. International Journal of Pure and Applied Mathematics.
26. International Journal of Research of Publications and Review.
27. International Journal of Tamil Research.
28. International Journal of Transgender Health.
29. International Research Journal.
30. Journal for Religious Innovations Studies.
31. Journal of Emerging Technologies and Innovative Research.
32. Journal of Human Rights Law and Practice
33. Journal of Polity and Society.
34. Journal of the Department of Sociology of North Bengal University.
35. Melbourne Law School.
36. Michigan Journal of International Law.
37. NUJS Law Review.
38. Odisha Journal of Psychiatry.
39. Psychology and Sexuality.
40. Quest Journals.

41. RGNUL Student Research Review.
42. Rupkatha Journal on Interdisciplinary Studies in Humanities.
43. Sexual and Reproductive Health Matters.
44. Student Policy Review.
45. Supreme Court Observer.
46. The Heritage Foundation.
47. Youth Incorporated Magazine.

REPORTS

1. 43rd Report of the Standing Committee on Social Justice and Empowerment, 2017.
2. Election Commission Report, 2019.
3. First Report to the Human Rights Council, 2006.
4. Government of Kerala, Department of Social Justice, 2022.
5. Indian Census Report, 2011.
6. International Lesbian, Gay, Bisexual, Trans and Intersex Association, 2022.
7. Kerala State Planning Board - Inclusive development: Policies for transgender welfare in Kerala, 2023.
8. The 42nd Law Commission Report of India in 1971.
9. The 78th Law Commission Report of India in 1979.
10. National Crime Records Bureau, 2021.
11. National Human Rights Commission of India, 2020.
12. NITI Aayog, Government of India, 2021.
13. Standing Committee Report, 2017.
14. State Policy for Transgenders in Kerala, 2015.

15. The 42nd Law Commission Report
16. Transgender Rights Expert Committee Report, 2014.
17. UN General Assembly Report of the Human Rights Committee, 2021.
18. Unified District Information System for Education Plus (UDISE+) Report, 2019–20.
19. United Nations Human Rights Council second report, 2015.
20. Wolfenden Report, 1957.

NEWSPAPER

1. Deccan Chronicle.
2. Kerala Kaumudi.
3. Malayala Manorama.
4. Mathrubhumi
5. The Economic Times.
6. The Hindu.
7. The Indian Express.
8. The New Indian Express (Kerala Edition).
9. The Times of India.
10. The Tribune.

THESES

1. Balu, R. (2020). The impact of educational policies on transgender individuals in India [Master's thesis, University of Delhi]. DU Digital Repository.
2. Menon, R. (2021). Transgender rights and social interventions: A study of Kerala's community initiatives [Doctoral dissertation, Jawaharlal Nehru University]. JNU Digital Repository.
3. Nair, S. (2020). Gendered spaces and the role of NGOs in supporting transgender individuals in Kerala [Master's thesis, Tata Institute of Social Sciences]. TISS Repository.
4. Rajkumar, A. (2016). Transgender youth and educational exclusion: A study on the challenges faced in Indian schools [Master's thesis, Jamia Millia Islamia]. JMI Repository.
5. Sharma, P. (2022). Social stigma and its impact on the educational attainment of transgender individuals in India [Master's thesis, Aligarh Muslim University]. AMU Repository.
6. Varma, L. (2023). Social interventions for transgender empowerment: An analysis of Kerala's community-based organizations [Master's thesis, Mahatma Gandhi University]. MGU Repository.

WEBSITES

1. <http://gajrc.com/10.36348/gajhss2020v02i01.00>
2. <http://scroll.in/article/810007/from-bulleh-shah-and-shah-hussain-to-amir-khusro-same-sex-references-abound-in-islamic-sufi-poetry>
3. <https://10.1504/IJHRCS.2022.119450>
4. <https://academic.oup.com/ahr/article-abstract/94/4/1071/50245?redirectedFrom=fulltext&login=false>

5. <https://academic.oup.com/ahr/article-abstract/94/4/1071/50245?redirectedFrom=fulltext&login=false>
6. <https://berkleycenter.georgetown.edu/posts/u-s-religious-freedom-and-lgbtq-rights>
7. <https://blog.ipleaders.in/legal-rights-of-transgender-india/>
8. <https://blog.ipleaders.in/lgbtq-community-legal-rights-social-discourse/>
9. https://cara.wcd.gov.in/parents/eg_ri.html
10. <https://careers.usc.edu/organizations/international-lesbian-gay-bi-trans-and-intersex-law-association-ilglaw/>
11. <https://clpr.org.in/blog/rajya-sabha-debates-on-the-transgender-persons-protection-of-rights-bill-2019-day-1/>
12. <https://darlenetandogenderblog.com/2011/11/05/gender-identity-vs-sexual-orientation/>
13. <https://dhaaramagazine.in/2020/11/17/the-role-of-the-civil-society-in-making-and-repealing-of-the-laws-section-377-and-struggles-ahead/>
14. https://digitalcommons.fiu.edu/etd/?utm_source=digitalcommons.fiu.edu%2Fetd%2F1198&utm_medium=PDF&utm_campaign=PDFCoverPages
15. <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3352&context=lawreview>
16. <https://doi.org/10.1007/s11109-024-09924-y>
17. <https://doi.org/10.15402/esj.v8i3.70358>
18. <https://doi.org/10.30631/innovatio.v23i2.186>
19. <https://doi.org/10.31926/but.ssl.2023.16.65.3.8>
20. <https://doi.org/10.34293/tamil.v6i4.4818>
21. <https://doi-ds.org/doilink/03.2024-41375168/IJIRL/V4-I1/A4>
22. <https://doij.org/10.10000/IJLSI.11723>
23. https://doij.org/10.4103/ijem.IJEM_146_20

24. <https://editions.covecollective.org/chronologies/labouchere-amendment-1885>
25. <https://edubirdie.com/examples/lgbtq-human-rights-in-canada/>
26. <https://en.themooknayak.com/lgbtq-news/nikesh-sonu-the-first-gay-couple-to-challenge-the-special-marriage-act-is-hopeful-of-justice>
27. https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001812/M027798/ET/1521117356SAUMYAUMAMODULE4QUAD1.pdf
28. <https://gaybombay.in/>
29. <https://guides.lib.utexas.edu/c.php?g=957649&p=6975813>
30. <https://guides.library.illinois.edu/queertheory/background>
31. <https://humsafar.org/about-us/>
32. <https://ijlmh.com/paper/understanding-the-challenges-of-socio-legal-framework-among-transgenders-in-kerala/>
33. <https://ijlmh.com/the-yogyakarta-principles-a-legal-discourse-on-rights-of-the-lgbti-community/>
34. <https://ilglaw.org/>
35. <https://independent.academia.edu/SahayatrikaHumanRights>
36. <https://indianexpress.com/article/education/class-10th-12th-board-exams-forms-transgender-students-await-inclusion-of-third-gender-category-maharashtra-registers-highest-ahead-of-cbse-8914625/>
37. <https://indianexpress.com/article/india/shashi-tharoor-explains-why-transgender-bill-is-flawed-5498498/>
38. <https://indianexpress.com/elections/transgenders-lok-sabha-elections-apsara-reddy-bishesh-huirem-sex-worker-5653379/>
39. <https://issuu.com/hkslgbtq/docs/hkslgbtq2019>
40. <https://journals.rcni.com/learning-disability-practice/ending-bigotry-faced-by-lgbt-people-with-learning-disabilities-ldp.21.1.8.s8>

41. <https://journalspoliticalscience.com/index.php/i/article/view/175/62>
42. https://kalaharijournals.com/resources/SP%20Jan_Feb_48.pdf
43. <https://kaleidoscopetrust.com/our-work/>
44. <https://lawandsexuality.com/2019/07/10/arunkumar-and-sreeja-v-the-state-wpmd-no-4125-of-2019/>
45. <https://lawtimesjournal.in/navtej-singh-johar-ors-vs-union-of-india-thr-secretary-ministry-of-law-justice/>
46. <https://lbb.in/mumbai/lgbt-support-groups-mumbai/>
47. <https://liddashboard.legislative.gov.in/actsofparliamentfromtheyear/indian-penal-code>
48. <https://www.legitquest.com/>
49. <https://lesbianfunworld.com/books/lgbt-community-in-india-by-sanjeev-kumar/>
50. <https://lgbtqia.ucdavis.edu/educated/glossary>
51. <https://milnepublishing.geneseo.edu/introlgbtqstudies/chapter/thirty-years-of-queer-theory/>
52. <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1575534>
53. <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1519272#:~:text=The%20Committee%20submitted%20its%20report,area%20of%20education%20a nd%20employment.> (last visited May 20, 2024).
54. <https://probono-india.in/blog-detail.php?id=55>
55. <https://prsindia.org/billtrack/draft-transgender-persons-protection-of-rights-rules-2020>
56. <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2016>
57. <https://rupkatha.com/book-review-ruth-vanita-saleem-kidwai-edited-same-sex-love-india-literary-history/>

58. <https://sahodari.org/about/>
59. https://scholarship.law.columbia.edu/gender_sexuality_law/5/
60. <https://scroll.in/article/810007/from-bulleh-shah-and-shah-hussain-to-amir-khusro-same-sex-references-abound-in-islamic-sufi-poetry>
61. <https://seen-network.uk/posts/2023-02-14-gay-in-the-uk/>
62. <https://ssrn.com/abstract=4145921> or <http://dx.doi.org/10.2139/ssrn.4145921>
63. <https://studentreview.hks.harvard.edu/lgbt-rights-on-the-international-stage-an-analysis-of-diplomatic-practice/>
64. <https://sukfco.wordpress.com/2014/12/16/hinduism/>
65. <https://supreme.findlaw.com/supreme-court-insights/bostock-v--clayton-county-case-summary-.html>
66. <https://swarajyamag.com/culture/a-hindu-approach-to-lgbt-rights>
67. <https://thecompanion.in/transgenders-and-our-society>
68. <https://thewire.in/government/the-reality-of-indias-transgender-welfare-boards-what-an-rti-investigation-reveals>
69. <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>
70. <https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>
71. <https://translaw.clpr.org.in/legislation/transgender-persons-protection-of-rights-act-2019/>
72. <https://translaw.clpr.org.in/reports-and-policies/state-policy-for-transgenders-in-kerala-2015-2/>
73. <https://translaw.clpr.org.in/wp-content/uploads/2019/02/Odisha-Scheme-for-TG-Final.pdf>
74. <https://udaan-trust.org/about-us/>
75. <https://whatsonqueerbc.com/woq-bc-stories/what-does-the-acronym-mean>

76. https://www.academia.edu/33006703/PROBLEMS_OF_TRANSGENER_IN_INDIA_A_STUDY_FROM_SOCIAL_EXCLUSION_TO_SOCIAL_INCLUSION
77. <https://www.aclu.org/news/civil-liberties/how-the-impact-of-bostock-v-clayton-county-on-lgbtq-rights-continues-to-expand>
78. [https://www.advocatekhoj.com/library/lawreports/theindianpenalcode/26.php?Title=The%20Indian%20Penal%20Code&STitle=Earlier%20Report%20\(42nd\)%20of%20the%20Law%20Commission](https://www.advocatekhoj.com/library/lawreports/theindianpenalcode/26.php?Title=The%20Indian%20Penal%20Code&STitle=Earlier%20Report%20(42nd)%20of%20the%20Law%20Commission)
79. <https://www.alignplatform.org/2-queer-theory-and-gender-norm>
80. <https://www.bbc.com/news/world-asia-india-46620242>
81. <https://www.britannica.com/topic/queer-sexual-politics> (last visited April 26,
82. <https://www.canada.ca/en/canadian-heritage/corporate/transparency/open-government/standing-committee/petitpas-taylor-official-languages-dec2022/questions-answers.html>
83. <https://www.canlii.org/en/yk/laws/stat/rsy-2002-c-116/latest/rsy-2002-c-116.html?resultIndex=1>
84. <https://www.cnn.com/2015/06/19/us/lgbt-rights-milestones-fast-facts/index.html>
85. <https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/living-together-and-civil-partnership-legal-differences/>
86. <https://www.consortium.lgbt/about-us/>
87. <https://www.cosmopolitan.com/uk/love-sex/a20730324/lgbt-meaning/>
88. <https://www.deccanchronicle.com/lifestyle/sex-and-relationship/020518/humsafar-trust-moves-supreme-court-against-sec-377.html>
89. <https://www.dlshq.org/download/all-about-hinduism/>

90. <https://www.drishtiiias.com/to-the-points/Paper2/the-transgender-persons-protection-of-rights-act>
91. <https://www.epw.in/journal/2018/39/commentary/supreme-court-judgment-against-section.html>
92. <https://www.exoticindiaart.com/book/details/mahabhashya-with-explanation-in-hindi-set-of-10-books-nzf007/>
93. <https://www.gendergp.com/what-is-agender/>
94. <https://www.gsrb.princeton.edu/lgbtqia-101>
95. <https://www.heritage.org/404>
96. <https://www.heritage.org/marriage-and-family/report/the-research-same-sex-parenting-no-differences-no-more>
97. <https://www.hrc.org/resources/equality>
98. <https://www.hrw.org/news/2007/03/26/yogyakarta-principles-milestone-lesbian-gay-bisexual-and-transgender-rights>
99. <https://www.ijcrt.org/>
100. <https://www.ijlmh.com/wp-content/uploads/2019/03/Suresh-Kumar-Koushal-another-V.-Naz-Foundation.pdf>
101. <https://www.india.gov.in/criminal-law-amendment-act-2013>
102. <https://www.indiatoday.in/india/story/transgenders-to-guard-school-buses-in-punjab-haryana-264630-2015-09-24>
103. <https://www.indiatoday.in/law/story/same-sex-marriage-hearing-live-updates-supreme-court-bench-petition-centre-chief-justice-dy-chandrachud-2377625-2023-05-11>
104. <https://www.lawweb.in/2023/09/what-is-social-context-adjudication.html>
105. <https://www.legitquest.com/home>
106. <https://www.lgbtmap.org/lgbt-movement-overviews/international-lgbt-advocacy-organizations-and-programs>

107. <https://www.lgbtqandall.com/what-does-lgbtqqip2saa-mean/>
108. <https://www.livelaw.in/congress-mp-shashi-tharoor-introduces-anti-discrimination-equality-bill-lok-sabha/>
109. <https://www.livemint.com/news/business-of-life/the-third-gender-seeks-inclusion-1540990754564.html>
110. <https://www.loyola.edu/departments/lgbtq-services/resources/lgbtq-terms-definitions#:~:text=LGBTQQIP2SA%3A%20any%20combination%20of%20letters,Two%2DSpirited%2C%20and%20Asexual>
111. <https://www.pbs.org/wgbh/americanexperience/features/stonewall-milestones-american-gay-rights-movement/>
112. <https://www.pewresearch.org/short-reads/2019/10/28/where-europe-stands-on-gay-marriage-and-civil-unions/>
113. <https://www.pewresearch.org/short-reads/2019/10/28/where-europe-stands-on-gay-marriage-and-civil-unions/>
114. <https://www.plannedparenthood.org/learn/teens/sexual-orientation/what-does-queer-mean>
115. <https://www.quora.com/Were-every-religions-core-concepts-taken-from-Sanatana-Dharma>
116. <https://www.researchgate.net/publication/378926127>
<https://www.sapphokolkata.in/lesson/details/our-mission>
117. <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>
118. <https://www.scobserver.in/journal/court-in-review-queer-persons-right-to-marry/>
119. <https://www.sdstate.edu/office-multicultural-affairs-accessibility/lgbtqia-basic-terms-and-definitions>
120. <https://www.shankariasparliament.com/current-affairs/transgenders-in-khaki-chhattisgarh-police-recruitment>

121. <https://www.statista.com/statistics/1459615/india-countries-with-highest-number-of-indian-migrants/>
122. <https://www.studocu.com/in/document/dr-hari-singh-gour-university/corporate-law/s-sushma-v-commissioner-of-police/45393917>
123. <https://www.thecanadianencyclopedia.ca/en/article/same-sex-marriage-in-canada>
124. <https://www.thehindu.com/books/books-columns/an-emperor-with-foibles/article5692770.ece>
125. <https://www.thepinknews.com/2011/09/14/speaker-launches-gay-rights-group-kaleidoscope/>
126. <https://www.un.org/en/observances/human-rights-day>
127. <https://www.unitedforhumanrights.in/what-are-human-rights/international-human-rights-law/international-human-rights-law-continued.html>
128. <https://www.verdictum.in/court-updates/high-courts/ssushma-anr-v-director-general-of-police-ors-wpno7284-of-2021-madras-high-court-1552323>
129. <https://www.vox.com/politics/2023/6/26/23752360/supreme-court-lgbtq-transgender-bathrooms-sports-gender-affirming-care-bostock>
130. <https://www.youtube.com/watch?v=GwJJvOpjth4>
131. <https://yourstory.com/2018/09/five-petitioners-section-377-supreme-court>
132. <https://youthincmag.com/interview-with-pearl-daruwalla-of-humsafar>

LIST OF RESEARCH PUBLICATIONS

1. Seethal Kuttappan and Dalliandeep Kaur Tiwana “**The future of same-sex marriage in India – an analysis with other countries**”, *Social Sciences & Humanities Open*. 11, 101237 (2025).
DOI: <https://doi.org/10.1016/j.ssaho.2024.101237>
2. Seethal Kuttappan, Dalliandeep Kaur Tiwana, and Deepika Thakur, “**Understanding the need for change in LGBTQIA+ and unmarried couple’s rights in India by observing their legal limitations and rights: a comparative study**,” 10 *International Journal of Membrane Science and Technology*. 1093–110 (2023).
DOI: <https://doi.org/10.15379/ijmst.v10i4.2220>.
3. Seethal Kuttappan and Dalliandeep Kaur Tiwana, “**Observing the Statutory Rights of Queer and Unmarried Couples in India**,” 5 *International Journal for Multidisciplinary Research*. 4843 (2023).
DOI: <https://doi.org/10.36948/ijfmr.2023.v05i04.4843>.

LIST OF ATTENDED CONFERENCES

International Conference.

1. Presented a paper titled “**Gender Identity and Policy Challenges: Exploring the Social Inclusion of LGBT Community and their Legal Challenges in India**” at the *International Conference on Global Legal Challenges in Transforming Society*, organized by the School of Law, Dayananda Sagar University, Bengaluru, held on 23rd November 2024.
2. Presented a paper titled “**Gender Justice and Constitutional Reforms: Special Reference to the Social Acceptance and Legal Protection of the LGBT Community in India**” at the *3rd International Conference On ‘Women’s Rights, Social Equity, And Legal Transformation’* organized by, Jus Corpus in collaboration with Symbiosis Law School Nagpur, Faculty of Shariah & Law, Villa College Maldives and TS Mishra Law School, Lucknow on October 19, 2024
3. Presented a paper titled “**Social Inclusion of LGBT Community and their Legal Protection in India: Progress and Challenges in the 21st Century**” at the *4th International Conference on Human Rights & Constitutional Law* Hosted by the Centre for Legal Research & Studies at Vidhi Aagaz On 9th June 2024.

National Conference.

1. Presented a paper titled “**Securing Social Justice and Social Inclusion for the LGBT Population**” at the *National Conference on Transgender Rights*, organized by the Centre for Constitutional Law, Dharmashastra National Law University, Jabalpur, held on September 1-2, 2024.

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Title of the thesis: **“Social Inclusion of LGBT Community and their Legal Protection in India with special reference to the State of Kerala”.**

Name of PhD scholar: **Seethal Kuttappan** Reg. No: **12106430**

Name of PhD supervisor: **Dr Dalliandeep Kaur Tiwana** **UID: 25656**

Department/Discipline: **LAW (Full Time), School of Law.**

I certify that the above-entitled thesis was scanned for similarity detection using Turnitin software with (a) excluding sources less than 14 words (b) excluding quotes (c) excluding bibliography.

The process and outcome are given below:

- I have reviewed the plagiarism report, and the total similarity index is **Five** percent (5%).
- The **Five** percent similarity index is based on the research scholar's own published work, which has been cited in the thesis (References).
- The list of excluded sources (self-plagiarism) has been mentioned in the Annexure submitted.

Signature of Supervisor:

UID: 25656

Date: 18/09/2025

APPENDICES

APPENDIX I: PARTICIPANT INFORMATION SHEETS AND INFORMED CONSENT TO THE RESPONDENTS.

PARTICIPANT INFORMATION SHEET

Title of the study:

“SOCIAL INCLUSION OF LGBT COMMUNITY AND THEIR LEGAL PROTECTION IN INDIA WITH SPECIAL REFERENCE TO THE STATE OF KERALA”

Background:

You are being invited to take part in this study that aims to evaluate the necessity of Family Rights for the LGBT Community especially for Same-sex marriage and other matrimonial Rights in India.

Purpose of the study:

This study aims to assess how well the existing Legislative provisions will help the LGBT Community with social integration and acceptability ensuring their basic Human rights.

Procedure:

If you decide to participate in this study, you will receive detailed information about it and have to complete a screening questionnaire. After obtaining informed written consent, you will undergo a Questionnaire survey.

Benefits:

Participating in this study will not receive any monetary benefit.

Risks:

Participants in the study will not face any Risks now or in the future.

Confidentiality:

Your privacy and confidentiality will be strictly maintained throughout the study. Your personal information will be kept secure and only accessible to authorized personnel involved in the study.

Appendices

Voluntary participation:

Participation in this study is voluntary, and you have the right to withdraw at any time without penalty or affecting your privacy.

Whom to contact in case of any query:

If you have any questions or concerns about the study, you may contact the Principal Investigator:

SEETHAL KUTTAPPAN

Research Scholar,

School of Law, LPU, Punjab.

Ph: +919745078161

CERTIFICATE OF INFORMED CONSENT

Study Number:

I understand that my participation in the study is voluntary and that I am free to withdraw at any time, without giving any reason and I agree to participate in the above research. However, I understand that my identity will not be revealed in any information released to third parties or published.

Name of participant:

Signature of participant:

Date: (day/month/year)

If illiterate

Name of Legally Authorized Representative (LAR)/ Witness:

Signature of LAR:

Thumbprint of participant:



Date: (day/month/year)

Appendices

Statement by the researcher/person taking consent.

I have accurately read the information sheet to the potential participant and ensure their understanding of the study. I confirm that the participant was allowed to ask questions, and all questions have been answered correctly. The consent given by the participant is voluntary. A copy of this Informed Consent Form has been provided to the participant as well.

Name of researcher/person taking the consent:

Signature of researcher /person taking the consent:

Date: (day/month/year)

APPENDIX II: QUESTIONNAIRE FOR THE GENERAL PUBLIC

1. Age:
 - a) Under 18
 - b) 18-35
 - c) 35-50
 - d) 50-65
 - e) 65 or older
2. Gender:
 - a) Male
 - b) Female
 - c) Prefer not to say
3. Education Level:
 - a) High School/Higher Secondary
 - b) Bachelor's Degree
 - c) Master's Degree
 - d) Doctorate
4. Employment status:
 - a) Employed
 - b) Unemployed
 - c) Student
 - d) Retired
5. Religion:
 - a) Hindu
 - b) Muslim
 - c) Christian
 - d) Other
 - e) Prefer not to say
6. Have you heard of the term "LGBT"?
 - a) YES
 - b) NO

Appendices

7. What is your understanding of the term "LGBT"?
 - a) Lesbian, Gay, Bisexual, and Transgender.
 - b) Lesbian, Gay, Bisexual, and Two-Spirit.
 - c) Lesbian, Gay, Bisexual, Transgender, and Queer.
 - d) NOT EXACTLY SURE
8. Have you ever met or interacted with an LGBT person?
 - a) YES
 - b) NO
9. Would you be comfortable starting a discussion and developing a friendship with an LGBT neighbor or coworker?
 - a) YES
 - b) NO
 - c) UNSURE
10. Do you accept if any person from your family is willing to live with an LGBT person?
 - a) YES
 - b) NO
 - c) Prefer not to say.
11. Do you believe that members of the LGBT community face discrimination in India?
 - a) YES
 - b) NO
 - c) UNSURE
12. If you answered "YES" to question 11, what forms of discrimination have you observed or heard about?
 - a) Verbal abuse and harassment.
 - b) Physical violence.
 - c) Social exclusion.
 - d) Employment discrimination.
 - e) All of the above.
 - f) None of the above.

Appendices

13. What do you think are the main reasons for discrimination against LGBT individuals in India?
- a) Social stigma and prejudice.
 - b) Religious and Cultural Influences.
 - c) Lack of Awareness and Education.
 - d) All of the above.
 - e) None of the above.
14. Do you believe that LGBT individuals should be protected from discrimination in employment, education, and housing?
- a) YES.
 - b) NO.
 - c) UNSURE.
15. Do you believe that the Navtej Singh Johar decision has had a positive impact on the lives of LGBT people in India?
- a) YES
 - b) NO
 - c) UNSURE
16. Do you believe that LGBT individuals should have equal rights as Cisgender/ Heterosexual individuals?
- a) YES.
 - b) NO.
 - c) UNSURE.
17. Are you aware that LGBT partners have no right to marry and adopt in India?
- a) YES.
 - b) NO.
18. Do you support the legalization of same-sex marriage and adoption by same-sex couples in India?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree.

Appendices

19. What actions do you believe the LGBT community in India can take to increase their social inclusion?
- a) Increased education and awareness about LGBT issues.
 - b) Stronger anti-discrimination laws.
 - c) Greater support for LGBT organizations.
 - d) More inclusive policies in schools, workplaces, and other institutions.
 - e) All of the above.
 - f) None of the above.
20. What role can individuals, communities, and institutions play in creating a more inclusive society for LGBT individuals?
- a) Create safe and welcoming spaces for LGBT people.
 - b) Support local LGBT organizations.
 - c) Advocate for policies that protect LGBT rights.
 - d) All of the above.
 - e) None of the above.

APPENDIX III: QUESTIONNAIRE FOR THE LEGAL FRATERNITY

1. Age:
 - a) Under 18
 - b) 18-35
 - c) 35-50
 - d) 50-65
 - e) 65 or older
2. Gender:
 - a) Male
 - b) Female
 - c) Prefer not to say
3. Education Level:
 - a) Law Student.
 - b) Bachelor's Degree.
 - c) Master's Degree.
 - d) Doctorate.
4. Employment status:
 - a) Judicial Officer.
 - b) Advocate.
 - c) Teaching Faculty of Law.
 - d) Lawyer
 - e) Other
 - f) Prefer not to say
5. Religion:
 - a) Hindu
 - b) Muslim
 - c) Christian
 - d) Other
 - e) Prefer not to say
6. Have you heard of the term "LGBT"?
 - a) YES
 - b) NO

Appendices

7. What is your understanding of the term "LGBT"?
 - a) Lesbian, Gay, Bisexual, and Transgender.
 - b) Lesbian, Gay, Bisexual, and Two-Spirit.
 - c) Lesbian, Gay, Bisexual, Transgender, and Queer.
 - d) Lesbian, Gay, Bisexual, Transgender, and Intersex.
 - e) Not exactly sure.
8. Have you ever met or interacted with an LGBT person?
 - a) YES
 - b) NO
9. Would you feel comfortable having an LGBT neighbor, classmate, or coworker?
 - a) YES
 - b) NO
 - c) Unsure
10. Do you believe that members of the LGBT community face discrimination in India?
 - a) YES
 - b) NO
 - c) UNSURE
11. If you answered "YES" to question 10, what forms of discrimination have you observed or heard about?
 - a) Discrimination, social stigma, and lack of legal protection.
 - b) Economic marginalization, unemployment, and lack of access to education.
 - c) Violence, harassment, and hate crimes.
 - d) All of the above.
 - e) None of the above.
12. Do you believe that LGBT individuals should have the same rights as Cisgender/ Heterosexual individuals?
 - a) YES.
 - b) NO.
 - c) UNSURE.

Appendices

13. Do you believe that the existing legal framework provides adequate protection for LGBT individuals in India?
- a) The legal protection is adequate.
 - b) The legal protection is inadequate and needs to be strengthened.
 - c) I am not familiar with the current legal protection.
 - d) Maybe.
 - e) Prefer not to answer.
14. Do you believe that the Navtej Singh Johar decision (Decriminalisation of Sec.377, IPC) has had a positive impact on the lives of LGBT people in India?
- a) YES
 - b) NO
 - c) UNSURE
 - d) Prefer not to answer.
15. What are your views on the Decision over the same-sex marriage case in the Supreme Court of India?
- a) Same-sex couples should have the same right to marry as heterosexual couples.
 - b) Same-sex marriage is a threat to traditional Indian values.
 - c) I am undecided on this issue.
 - d) Prefer not to answer.
 - e) Unsure
16. Is the Supreme Court of India's decision to forbid LGBTQ individuals from marrying someone of the same sex a mistake that the contemporary, international world will ever forget?
- a) TRUE
 - b) FALSE
 - c) Unsure
 - d) Prefer not to answer.
17. Do you believe that restricting the rights to marriage and adoption is a violation of the fundamental right to life?
- a) YES
 - b) NO

Appendices

- c) UNSURE
 - d) Prefer not to answer.
18. With the understanding that it has nothing to do with the social, moral, cultural, or religious facets of our country, do you believe that same-sex marriages and adoption by Same-sex couples are acceptable in society?
- a) YES
 - b) NO
 - c) UNSURE
 - d) Prefer not to answer.
19. Do you think the rights of the Cis/ Hetero-sexual individuals will be impacted by permitting same-sex marriage?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree.
 - e) Unsure
 - f) Prefer not to say.
20. The Supreme Court ruled in the Shafin Jahan (Hadiya) case that "society has no role to play in determining our choice of partners and that the right to marry a person of one's choice is integral to Article 21 of the Constitution." Why then don't LGBTQ people have the same rights? Do you agree with this?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
 - e) Unsure
 - f) Prefer not to say.
21. What changes would you like to see made to the law better to protect the rights of LGBT individuals in India?
- a) Enact a comprehensive anti-discrimination law that explicitly prohibits discrimination based on sexual orientation and gender identity.
 - b) Legalize same-sex marriage and Adoption Rights.

Appendices

- c) Provide comprehensive sex education that is inclusive of LGBT people.
 - d) All of the above.
 - e) None of the above.
22. Are you aware of any organisations or groups (NGOs) that work to promote LGBT rights in Kerala?
- a) YES
 - b) NO
 - c) UNSURE
23. Are you aware of any resources available to LGBT individuals in Kerala, such as shelters, counseling services, etc.?
- a) YES
 - b) NO
 - c) UNSURE
24. What are some of the laws and policies that need to be strengthened or enacted to ensure better legal protection for LGBTQ+ individuals in Kerala?
- a) Comprehensive anti-discrimination laws.
 - b) Recognition of same-sex relationships.
 - c) Protection against hate crimes and violence.
 - d) All of the above
 - e) None of the above
25. What role can individuals, communities, and institutions play in creating a more inclusive society for LGBT individuals?
- a) Create safe and welcoming spaces for LGBT people.
 - b) Support local LGBT organizations.
 - c) Advocate for policies that protect LGBT rights.
 - d) All of the above.
 - e) None of the above

APPENDIX IV: QUESTIONNAIRE FOR THE LGBT COMMUNITY

1. Age:
 - a) Under 18
 - b) 18-35
 - c) 35-50
 - d) 50-65
 - e) 65 or older
2. Sex Assigned at Birth:
 - a) Male
 - b) Female
 - c) Prefer not to say
3. Sexual Orientation.
 - a) Lesbian
 - b) Gay
 - c) Bisexual
 - d) Transgender/Transexual Person
 - e) Other
 - f) Prefer not to say
4. Education Level:
 - a) High School/Higher Secondary
 - b) Bachelor's Degree
 - c) Master's Degree
 - d) Doctorate
5. Employment status:
 - a) Employed
 - b) Unemployed
 - c) Student
 - d) Retired
6. Religion:
 - a) Hindu
 - b) Muslim
 - c) Christian

Appendices

- d) Other
 - e) Prefer not to say.
7. Marital Status:
- a) Live-in relationship with a Queer partner.
 - b) Live-in relationship with a Cis-gender person.
 - c) Married a Cis-gender person.
 - d) Unmarried
 - e) Separated.
 - f) Prefer not to say.
8. Do you feel comfortable openly expressing your sexual orientation or gender identity?
- a) No
 - b) Sometimes
 - c) Yes
9. Do you think that changes in one's gender identity are natural or psychological (that they may be treated)?
- a) Natural.
 - b) Psychological.
 - c) None of the above.
10. At which age have you identified your Sexuality/ Gender identity?
- a) Below 18
 - b) 18 -25
 - c) 25-40
 - d) 40-55
11. Was your gender identification or sexual orientation accepted by your family at that time?
- a) Yes
 - b) No
 - c) Prefer not to say
12. Are you accepted by your family at present?
- a) Yes
 - b) No

Appendices

- c) Prefer not to say
13. Have you ever experienced discrimination or prejudice based on your sexual orientation or gender identity?
- a) No
 - b) Yes, once
 - c) Yes, a few times
 - d) Yes, many times.
14. Have you ever witnessed discrimination or prejudice against another LGBT person?
- a) No
 - b) Yes, once
 - c) Yes, a few times
 - d) Yes, many times.
15. What are the biggest challenges you face as an LGBT person in Kerala?
- a) Lack of acceptance from family and friends
 - b) Discrimination in employment
 - c) Lack of access to housing
 - d) Violence and harassment
 - e) All of the above
 - f) None of the above
 - g) Other
16. Are you aware of the Supreme Court of India's 2018 decision to decriminalize homosexuality?
- a) Yes
 - b) No
 - c) Unsure
17. Do you believe that LGBT individuals should have equal rights as Cisgender/ Hetero-sexual individuals?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree

Appendices

18. Do you support that LGBT individuals should be able to marry, adopt, and form families?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
19. Do you believe that restricting the rights to marriage and adoption is a violation of the fundamental right to life?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
20. Do you think the rights of the Cis/ Hetero-sexual individuals will be impacted by permitting same-sex marriage?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
21. Do you believe that LGBT individuals should be able to live openly and without fear of discrimination?
- a) Yes
 - b) No
 - c) Maybe.
22. Are you aware of any organizations or groups (NGOs) that work to promote LGBT rights in Kerala?
- a) Yes
 - b) No
23. Are you aware of any resources available to LGBT individuals in Kerala, such as shelters or counseling services, etc.?
- a) Yes
 - b) No

Appendices

24. Do you believe that our government or society doesn't make enough efforts to preserve human rights and promote the family and social welfare of LGBTQ people as needed to meet the demands of the times?
- a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
25. What changes would you like to see made to the law better to protect the rights of LGBT individuals in India?
- a) Enact a comprehensive anti-discrimination law that explicitly prohibits discrimination based on sexual orientation and gender identity.
 - b) Legalize same-sex marriage and Adoption Rights.
 - c) Provide comprehensive sex education that is inclusive of LGBT people.
 - d) All of the above.
 - e) None of the above.
 - f) Other.

**APPENDIX V: INTERVIEW SCHEDULE WITH THE
LGBT COMMUNITY CASE STUDY**

Section A: Demographic Details.

1. Name:
2. Place:
3. Age:
4. Gender Identity:
5. Sex Assigned at Birth (Tick the relevant answer):
 - a) Male
 - b) Female
 - c) Prefer not to answer.
6. Sexual Orientation.
 - a) Lesbian
 - b) Gay
 - c) Bisexual
 - d) Transgender/Transexual Person
 - e) Other
 - f) Prefer not to answer.
7. Education Level:
 - a) High School/Higher Secondary
 - b) Bachelor's Degree
 - c) Master's Degree
 - d) Doctorate
8. Employment status:
 - a) Employed
 - b) Unemployed
 - c) Student
 - d) Retired
9. Religion:
 - a) Hindu
 - b) Muslim
 - c) Christian
 - d) Other

Appendices

- e) Prefer not to answer.

10. Marital Status:

- a) Live-in relationship with a Queer partner.
- b) Live-in relationship with a Cis-gender person.
- c) Married a Cis-gender person.
- d) Unmarried
- e) Separated.
- f) Prefer not to answer.

Section B: Main Part.

11. At which age have you identified your Sexuality/ Gender identity?

- a) Below 18
- b) 18 -25
- c) 25-40
- d) 40-55

12. Was your gender identification or sexual orientation accepted by your family at that time?

- a) Yes
- b) No
- c) Prefer not to answer.

13. Are you accepted by your family at present?

- a) Yes
- b) No
- c) Prefer not to answer.

14. Do you feel comfortable openly expressing your sexual orientation or gender identity?

- a) No
- b) Sometimes
- c) Yes

15. Do you think that changes in one's gender identity are natural or psychological (that they may be treated)?

- a) Natural.
- b) Psychological.
- c) None of the above.

Appendices

16. Have you ever experienced discrimination or prejudice based on your sexual orientation or gender identity?
 - a) No
 - b) Yes, once
 - c) Yes, a few times
 - d) Yes, many times.
17. Have you ever witnessed discrimination or prejudice against another LGBT person?
 - e) No
 - f) Yes, once
 - g) Yes, a few times
 - h) Yes, many times.
18. What are the biggest challenges you face as an LGBT person in Kerala?
 - a) Lack of acceptance from family and friends
 - b) Discrimination in employment
 - c) Lack of access to housing
 - d) Violence and harassment
 - e) All of the above
 - f) None of the above
 - g) Other
19. Are you aware of the Supreme Court of India's 2018 decision to decriminalize homosexuality?
 - a) Yes
 - b) No
 - c) Unsure
20. Do you believe that LGBT individuals should have equal rights as Cisgender/ Hetero-sexual individuals?
 - a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
21. Do you support that LGBT individuals should be able to marry, adopt, and form families?
 - a) Agree
 - b) Strongly Agree
 - c) Disagree

Appendices

- d) Strongly Disagree
- 22. Do you believe that restricting the rights to marriage and adoption is a violation of the fundamental right to life?
 - a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
- 23. Do you think the rights of the Cis/ Hetero-sexual individuals will be impacted by permitting same-sex marriage?
 - a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree
- 24. Do you believe that LGBT individuals should be able to live openly and without fear of discrimination?
 - a) Yes
 - b) No
 - c) Maybe.
- 25. Are you aware of any organizations or groups (NGOs) that work to promote LGBT rights in Kerala?
 - a) Yes
 - b) No
- 26. Are you aware of any resources available to LGBT individuals in Kerala, such as shelters or counselling services, etc.?
 - a) Yes
 - b) No
- 27. Do you believe that our government or society doesn't make enough efforts to preserve human rights and promote the family and social welfare of LGBTQ people as needed to meet the demands of the times?
 - a) Agree
 - b) Strongly Agree
 - c) Disagree
 - d) Strongly Disagree

Appendices

28. What changes would you like to see made to the law better to protect the rights of LGBT individuals in India?

- a) Enact a comprehensive anti-discrimination law that explicitly prohibits discrimination based on sexual orientation and gender identity.
- b) Legalize same-sex marriage and Adoption Rights.
- c) Provide comprehensive sex education that is inclusive of LGBT people.
- d) All of the above.
- e) None of the above.
- f) Other.

29. What was your experience of life from childhood to the present?

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30. Any suggestions?


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ANNEXURES

ANNEXURE I: Ethical Clearance Certificate from Institutional Ethics Committee

| | |
|---|---|
|  LOVELY PROFESSIONAL UNIVERSITY <i>Transforming Education Transforming India</i> | INSTITUTIONAL ETHICS COMMITTEE (IEC) (Registration No: EC/NEW/INST/2022/3110) |
|---|---|

Ref: LPU/IEC-LPU/2024/3/9
Date: 12.09.24

Dear Seethal Kuttappan

The Institutional Ethics Committee, Lovely Professional University (IEC-LPU) reviewed and discussed your application to conduct the study entitled **"Social inclusion of LGBT community and their legal protection in India with special reference to the state of Kerala"**.

The following documents were reviewed:

- (a) Application form
- (b) Research Protocol
- (c) Patient information sheet and informed consent form in English or vernacular language.
- (d) Principal investigator's current Curriculum Vitae.


The following members of the ethics committee were present at the meeting held on 23.08.24.

| Sr. No. | Name | Designation as per IEC |
|---------|------------------------|--|
| 1 | Dr. Shivani Tandon | Chairperson |
| 2 | Dr. Navneet Khurana | Member Secretary |
| 3 | Dr. Kanav Khera | Alternate Member Secretary |
| 4 | Dr. Varun Gupta | Basic Medical Scientist |
| 5 | Dr. Anil Malhotra | Clinician-I |
| 6 | Dr. Naresh Kundra | Clinician-II |
| 7 | Dr. Meenu Chopra | Legal expert |
| 8 | Mr. Sumesh Mathew | Social Scientist/Philosopher/Ethicist/Theologian |
| 9 | Dr. Rajan Kumar Sharma | Layperson |

The Ethics committee **approved** the study to be conducted in its presented form subject to the condition of


- The principal investigator and all members of the project shall ensure compliance with current regulatory provisions (as per New Drug Clinical Trial Rules 2019 and ICH-GCP), Ethical Guidelines for Biomedical Research on Human Participants by ICMR, and the standard operating procedure of IEC including timely submission of Interim Annual Report and Final Closure Report.
- Participant Information Sheet and a copy of signed Informed Consent shall be given to every research participant.
- Inform IEC in case of any proposed amendments (change in protocol/procedure, site/investigator, etc).
- Inform IEC immediately in case of any Adverse Events and Serious Adverse Events.
- Members of the IEC have the right to monitor any project with prior intimation.

Yours sincerely,


Chairperson/Member secretary/Alternate member secretary, IEC-LPU

12.09.24
dd/mm/yyyy

Member Secretary
Institutional Ethics Committee
Lovely Professional University
Phagwara-Punjab-144411



Jalandhar-Delhi G.T. Road, Phagwara, Punjab (India) - 144411
Ph : +91-1824-444039 E-mail : ms_ieclpu@lpu.co.in website : www.lpu.in

ANNEXURE II: Reply received from RTI Portal about the count of the LGBT population in Kerala.

SJD-A3/154/2024-SJD

I/6322087/2024

മരണഭാഷ- മാതൃഭാഷ



കേരള സർക്കാർ

സാമൂഹ്യനീതി (എ) വകുപ്പ്

നമ്പർ. എ.3/154/2024/സാ.നീ.വ

23-08-2024, തിരുവനന്തപുരം

സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & അണ്ടർ സെക്രട്ടറി

ശീതൾ കുട്ടപ്പൻ
കെ എസ് വിഹാർ,
തൃക്കുന്നപ്പുഴ, പല്ലന. പീ. ഒ.,
ആലപ്പുഴ - 690515
സർ,

വിഷയം:- സാ.നീ.വ - വിവരാവകാശ നിയമം 2005 പ്രകാരം സമർപ്പിച്ച അപേക്ഷയിന്മേൽ
മറുപടി നൽകുന്നത് സംബന്ധിച്ച്

സൂചന:- ആർ.റ്റി.ഐ പോർട്ടലിൽ ആർ.റ്റി.ഐ/9933/2024 ആർ.റ്റി.ഐ/10018/2024
എന്നീ രജിസ്ട്രേഷൻ നമ്പറുകളായി താങ്കൾ സമർപ്പിച്ച അപേക്ഷകൾ.

സൂചനയിലേക്ക് താങ്കളുടെ ശ്രദ്ധ ക്ഷണിക്കുന്നു. സൂചനയിലെ താങ്കളുടെ അപേക്ഷയിൽ
ആവശ്യപ്പെട്ടിരിക്കുന്ന വിവരങ്ങൾ ഈ വകുപ്പിൽ ലഭ്യമല്ല. ആയതിനാൽ പ്രസ്തുത വിവരങ്ങൾ
സാമൂഹ്യനീതി വകുപ്പ് ഡയറക്ടറേറ്റിൽ ലഭ്യമാണെങ്കിൽ ആയത് താങ്കൾക്ക് നേരിട്ട്
ലഭ്യമാക്കുവാൻ അപേക്ഷയുടെ പകർപ്പ് പ്രസ്തുത കാര്യാലയത്തിന്റെ സ്റ്റേറ്റ് പബ്ലിക്
ഇൻഫർമേഷൻ ഓഫീസർക്ക് നൽകിയിട്ടുണ്ടെന്ന വിവരം അറിയിക്കുന്നു.

അപ്പീൽ അധികാരിയുടെ മേൽവിലാസം

ജോയിന്റ് സെക്രട്ടറി & അപ്പീൽ അധികാരി
സാമൂഹ്യനീതി (എ) വകുപ്പ്, ഗവൺമെന്റ് സെക്രട്ടേറിയറ്റ്,
തിരുവനന്തപുരം. ഫോൺ നമ്പർ: 0471 - 2518262

വിശ്വസ്തയോടെ,

Signed by

Bindumol Thomas
ബിന്ദുമോൾ തോമസ്
Date: 23-08-2024 13:54:01

സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & അണ്ടർ സെക്രട്ടറി
സാമൂഹ്യനീതി വകുപ്പ്, ഗവൺമെന്റ് സെക്രട്ടേറിയറ്റ്, തിരുവനന്തപുരം.
ഫോൺ നമ്പർ: 0471 2517277

SJD/5531/2024-C3

“ഭരണഭാഷ - മാതൃഭാഷ”**വിവരാവകാശം/മറുപടി**

സാമൂഹ്യനീതി ഡയറക്ടറേറ്റ്,
 വികാസ് ഭവൻ, തിരുവനന്തപുരം
 തീയതി :04-09-2024
 Email - swdkerala@gmail.com
 Phone - 0471 - 2306040

സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ &
 അസിസ്റ്റന്റ് ഡയറക്ടർ
 സാമൂഹ്യ നീതി ഡയറക്ടറേറ്റ്,
 തിരുവനന്തപുരം.

ശ്രീതൾ കുട്ടപ്പൻ
 കെ.എസ് വിഹാർ
 തൃക്കുന്നപ്പുഴ, പല്ലന പി.ഒ
 ആലപ്പുഴ -690515

സർ,

വിഷയം:- സാമൂഹ്യ നീതി വകുപ്പ് - വിവരാവകാശ നിയമം 2005 പ്രകാരം മറുപടി നൽകുന്നത് - സംബന്ധിച്ച്.

സൂചന :- സാമൂഹ്യ നീതി വകുപ്പ് സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ & അണ്ടർ സെക്രട്ടറിയുടെ 23.08.2024 തീയതിയിലെ എ3/154/സാ.നീ.വ നമ്പർ കത്ത് പ്രകാരം ലഭ്യമായ ,RTI പോർട്ടലിൽ RTI/9933/2024, RTI/10018/2024 എന്നീ രജിസ്ട്രേഷൻ നമ്പറുകളിലായി താങ്കൾ സമർപ്പിച്ച അപേക്ഷകൾ.

സൂചനയിലേയ്ക്ക് ശ്രദ്ധ ക്ഷണിക്കുന്നു. ആയതിന്റെ മറുപടി ചുവടെ ചേർക്കുന്നു.

താങ്കൾ ആവശ്യപ്പെട്ടിരിക്കുന്ന LGBT വ്യക്തികളുടെ ആകെ എണ്ണം സംബന്ധിച്ച വിവരങ്ങൾ ഈ വകുപ്പിൽ ലഭ്യമല്ല. Centre for Management Development മുഖേന നടത്തിയ ട്രാൻസ്ജെൻഡർ വ്യക്തികളുടെ സാമൂഹ്യ-സാമ്പത്തിക സർവ്വേ പ്രകാരം 1629 ട്രാൻസ്ജെൻഡർ വ്യക്തികളെ കണ്ടെത്തിയിട്ടുണ്ട്.

മേൽ മറുപടിയിൽ താങ്കൾ തൃപ്തപ്പെടാതെ താങ്കൾക്ക് സാമൂഹ്യനീതി ഡയറക്ടറേറ്റ് അപ്പീൽ അധികാരിയ്ക്ക് 30 ദിവസത്തിനകം ചുവടെ ചേർത്തിട്ടുള്ള വിലാസത്തിൽ അപ്പീൽ അപേക്ഷ സമർപ്പിക്കാവുന്നതാണ്

അഡീഷണൽ ഡയറക്ടർ & അപ്പീൽ അധികാരി,
സാമൂഹ്യനീതി ഡയറക്ടറേറ്റ്,
വികാസ് ഭവൻ 5th Floor,
തിരുവനന്തപുരം.

വിശ്വസ്തതയോടെ,

Signed by Asharaf K T

Date: 04-09-2024 12:43:31

ASHARAF K T

സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ &

അസിസ്റ്റന്റ് ഡയറക്ടർ

സാമൂഹ്യ നീതി ഡയറക്ടറേറ്റ്

തിരുവനന്തപുരം.

ANNEXURE III: Published Article's Preview

1. Social Science and Humanities Open



Regular Article

The future of Same-sex marriage in India – An analysis with other countries

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ARTICLE INFO

Keywords:

Same-sex marriage
LGBTQ community
Queer rights
Family rights

ABSTRACT

A marriage is considered to be holy, whether sacrament or contract. Same-sex marriage is the practice of marriage among two men or two women. There has been both strong support and conflict on communal, political, and religious grounds for same-sex marriages. Some jurisdictions through laws either allow same-sex marriages or recognize same-sex civil unions whereas others prescribe punishments for homosexual relationships. Given the lack of globally uniform approaches, there are strong possibilities for conflict and legal contradictions. This study explores the legal status of weddings between people of the same gender in India with the primary aim of examining the judicial decisions and the contribution of the Supreme Court in landmark cases related to same-sex marriages.

The *Supriyo Chakraborty v. Union of India* connected cases (2023) are a collection of significant cases that the Supreme Court of India heard. These cases were brought up to consider the extension of marriage and family rights to individuals belonging to sexual and gender minority groups in India, where same-sex weddings or civil unions are considered illegal. The Supreme Court's rejection to recognize same-sex marriages in this case severely affected the rights of the LGBTQ community in India.

This study shall also dwell on the recent developments, particularly regarding the question of marital rights vis-a-vis the case before the judiciary and what could probably be the future course of action in India. In this study, the researcher chooses a hermeneutic research method focusing on the interpretation of statutes and analyzing same-sex marriage rights of different countries with that of India.

1. Introduction

Marriage is a significant aspect of an individual's identity in a politico-legal, social and economic sense. It is an establishment that legally codifies under various personal laws for recognizing the association between two parties. It is of great public significance as it gathers much importance regarding rights and duties such as property, legacy, and other associated privileges that stem from a marriage. As to Article 16 of the Universal Declaration of Human Rights, the family formed by a legal marriage is the inherent and fundamental social unit that is entitled to safeguard from both the state and society (UDHR, 1948). A legal marriage is a contract between two individuals that must adhere to certain legal conditions that are recognized by law. Married couples hold certain legal entitlements and obligations towards each other, such as the capacity to inherit property, the privilege of owning property, and the entitlement to accept financial assistance from their spouse. Marriages are often regarded to be more socially acceptable, particularly in more traditional nations, conventionally seen as a commitment that lasts

a lifetime. The legitimacy of children born to married couples is presumed to be established automatically. In India, the right to marriage is identified as a right prescribed under the constitution, which permits the freedom of a person to select a spouse of their choice. Marriage practices in India reflect the extensive religious landscape, traditions, customs, and beliefs of the diverse population in the country.

Here is a glance into the many perspectives that other faiths have toward marriage:

The institution of marriage is seen as a holy sacrament (Samskara) and a partnership that lasts a lifetime in Hinduism. "Kanyadan", which translates to "gift of the daughter," is an important Vedic rite and tradition. Roles and obligations of spouses are governed by the notion of "Dharma", which translates to "duty". The idea held by the Islamic community is that marriage, also known as "Nikah", is a social contract that emphasizes consent and the Mehr/Dower that is supplied by the groom. Within the context of marriage, Islamic teachings provide direction for family life and duties. Meanwhile, within the Christian religion, marriage is seen as a holy union that is blessed by God with the act

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2. International Journal of Membrane Science and Technology

Understanding the Need for Change in LGBTQIA+ and Unmarried Couple's Rights in India by Observing their Legal Limitations and Rights: A Comparative Study

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DOI: <https://doi.org/10.15379/ijmst.v10i4.2220>

Keywords: LGBT, Queer, Same-Sex Rights, Third Gender, Unmarried Couple

ABSTRACT

This article compares the legal protections and rights now in place for LGBTQ(QUEER) and unmarried couples to those of the straight couples. They are prevented from taking use of several legal benefits like compensatory rights, educational and insurance welfare programs, etc. for the offspring due to the misidentification of Queer couples and the unmarried pair within the definition of a legally married couple. This illegal prejudice is shown in order to reconsider and provide them equal legal protections under the protection of the right to life guaranteed by Article 21 of the Indian Constitution. The researcher conducted a comparative analysis of the laws of several nations. The article also emphasizes the necessity of enhancing the current legal and legislative framework in

3. International Journal for Multidisciplinary Research



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Observing the Statutory Rights of Queer and Unmarried Couples in India

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Abstract:

This Article explores the existing Rights and legal benefits available to the LGBTQ(QUEER) and unmarried couples with that of normal gender couples. The misidentification of Queer couples, as well as the unmarried couple within the preview of a legally married couple, abstains them from enjoying certain available legal benefits like compensation rights, educational and insurance welfare schemes, etc for the descendants. This unlawful discrimination is demonstrated here to rethink and provide them with equal statutory benefits within the ambit of the Right to Life ensured under Article 21 of The Indian Constitution. The comparative investigation has been done by the Researcher with other Countries Legislations. The Article also highlights the existing legal and statutory framework and the need of strengthening it in our Country. The Researcher opted Qualitative and Doctrinal research methods by analysing various cases and to find out the Gaps, the Researcher reviewed existing literatures.

Keywords: Third Gender, LGBT, Queer, Unmarried Couple, Same Sex Rights

1.Introduction:

One of Hinduism's four canonical sacred texts, the Rigveda, declares that "what appears unnatural is also natural," or *Vikriti Evam Prakriti* (Sanskrit:), which some scholars believe acknowledges the homosexual/transgender dimensions of human life as well as all other types of universal diversities¹.

1.1. Concept of LGBT(QUEER) and The Unmarried Couples in India:

What is LGBTQ and who are the people coming under them?

The term LGBT (Lesbian, Gay, Bisexual, and Transgender) refers to "a diverse collection of people who are different in terms of gender, sexual orientation, race/ethnicity, and socioeconomic level"². They are identified as the Third gender category. Among them a lesbian is a woman who is sexually attracted to another woman, while a gay is a male who is sexually attracted to another man. But a Bisexual person is sexually attracted not exclusively to people of one particular gender, but attracted to both men and women. A transgender person, on the other hand, is someone whose sense of personal identity and gender differs from their biological sex. A transsexual is a term used to describe or refer to a transgender

¹ Vikriti Evam Prakriti: What seems Unnatural, is Natural. (2021, October 5). HoniSoit. Retrieved November 10, 2022, from <https://honisoit.com/2021/10/vikriti-evam-prakriti-what-seems-unnatural-is-natural/>.

² General definitions. (n.d.). LGBT Resource Center. Retrieved November 11, 2022, from <https://lgbt.ucsf.edu/glossary-terms>.

ANNEXURE IV: Certificates of Attended Conferences



