



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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A STUDY OF LGBTQ AND COMMUNITY IN INDIA

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INTRODUCTION:

The term "lesbian, gay, bisexual, and transgender community" (or "LGBT community") encompasses a wide range of groups that exhibit diversity in terms of gender, sexual orientation, race/ethnicity, and socioeconomic status. This report specifically addresses the community encompassed by the acronym LGBT. However, it is crucial to acknowledge that the populations represented by the letters "L," "G," "B," "T," "I," and "Q" are separate groups, each having its unique health-related issues and requirements. The committee deems it crucial to highlight these distinctions at the beginning of this study because, in many modern scientific discussions and the mainstream media, these categories are commonly grouped as a unified population using umbrella terminology like LGBT. Simultaneously, as elaborated upon later, these groups have numerous shared experiences, with one of the most significant being the experience of stigmatization. Transgender individuals are those whose gender identity does not match the sex assigned to them at birth. This is a broad phrase that is used to describe some individuals. This group of people has a strong desire to live and be acknowledged as a gender that is distinct from the one that was assigned to them at birth. There is a possibility that they would want to have surgery to alter their primary or secondary sex characteristics to conform to their gender identification. The transgender community is a marginalized group in society and regularly faces obstacles to a variety of rights, including those about finances, culture, the law, and social situations. Inadequate medical facilities, limited educational opportunities, prejudice, homelessness, and concerns around health and marriage are the key difficulties¹. Other challenges include restricted educational opportunities.²

The topic of LGBTI (lesbian, gay, bisexual, transgender, and intersex) rights has been a hot topic in the development industry for the past few years. As opposed to providing HIV and AIDS care exclusively for the LGBT community, which is disproportionately afflicted by the

¹ S. Brown, J. Kucharska, & M. Marczak, "Mental Health Practitioners' Attitudes Towards Transgender People: A Systematic Review of the Literature" 19(1) International Journal of Transgenderism 4-24 (2018), doi: 10.1080/15532739.2017.1374227.

² A. Heng, C. Heal, J. Banks, & R. Preston, "Transgender Peoples' Experiences and Perspectives about General Healthcare: A Systematic Review" 19(4) International Journal of Transgenderism 359-378 (2018), doi: 10.1080/15532739.2018.1502711.

disease, the focus has shifted to the legalization of marriages between people of the same gender. The implementation of this reform has resulted in the promotion of an inclusive approach toward those who identify as LGBTI in all fields. The fact that this is the case is supported by a series of international and domestic human rights regulations that affirm the rights of every individual to be free from discrimination, to have the ability to express oneself, and to be free from violence. These advancements have taken place in certain circumstances as a consequence of shifts in cultural norms that now demonstrate a greater degree of tolerance and understanding toward those who identify as in the LGBTQI community. The changing of norms has mostly taken place as a result of the persistent and gradually more obvious and dynamic involvement of activists. These activists have utilized strategies such as media attention, peer interventions, the building of alliances, and the provision of institutional training. The purpose of this guide is to provide an overview of the research that has been conducted on the cultural developments that are increasing tolerance and decreasing prejudice towards those who identify as LGBTQI.

In the context of sexual conduct or sexual desire between people of the same sex, the term "homosexuality" is the phrase that is used to characterize the phenomenon. It is not uncommon for members of the homosexual community to encounter persistently unfavourable preconceptions, prejudices, and discrimination, all of which have lasted throughout history. As a society that is deeply established in cultural conservatism, India is not an exception to the widespread practice of homosexuality, which is prohibited even in the Old Testament. The term "homophobia," which describes prejudice and discrimination directed at members of the LGBT community, is pervasive across society, including in situations involving medical healthcare. Throughout history, homosexuality has been treated with disapproval in a variety of societies and nations. Despite this, there has been a change in opinions, and, in recent years, several nations have taken a posture that is more positive and accepting of the situation.

In 2009, the Delhi High Court declared unconstitutional Section 377 of the Indian Penal Code. Because of this clause, voluntary sexual encounters between adults of the same gender were prohibited. A breach of the fundamental rights of life, liberty, and equality as outlined in the Constitution was considered to have occurred by the court that heard the case. On the other hand, in December 2013, the Supreme Court of India overturned those decisions. In the year 2014, the Supreme Court acknowledged that sexual inclination is innate and beyond the control of an individual when it issued a landmark decision in which it declared that adult homosexual

activity that is consented to by the individual is not a criminal offense. The act of being homosexual is no longer regarded as a criminal offense as of the 6th of September, 2018. The decision of Chief Justice Dipak Mishra to criminalize carnal intercourse was deemed to be irrational, capricious, and obviously in violation of the Constitution. According to Justice Indu Malhotra, the past ought to extend an apology to the families of these victims from the past. Legal validation and acknowledgment of homosexuality have been granted.³ The International Classification of Diseases (ICD-10) and Diagnostic Statistical Manual 5 (DSM-5), which are widely recognized methods for classifying mental illnesses, have officially removed homosexuality from their list of disorders.⁴ Homosexuality has also been granted legal recognition.

ATTITUDE OF PEOPLE TOWARDS HOMOSEXUALITY AND TRANSGENDERS IN INDIA:

Even the few studies that have been undertaken on the LGBT population in India were carried out some years ago, before the Supreme Court decided to legalize homosexuality. There has been a dearth of research conducted in India on the LGBT community. A gain in knowledge is commonly associated with good attitudes, according to research on attitudes⁵. This is typically the case. Despite this, the findings of our study demonstrated that a better comprehension of SEKHQ ratings did not correspond to a positive shift in attitudes as persons progressed in age. In both the professional population and the student population with a medical background, this disparity remained consistent throughout the whole study. As a result, this provides additional evidence to support the author's premise that generation has a substantial influence on the shift of attitudes, with older generations displaying more homophobia despite better knowledge. In comparison to their male counterparts, females frequently demonstrated a higher level of comprehension and a more positive attitude toward homosexuality; however, this gap did not reach the level of statistical significance. Those individuals who are either single or in a committed relationship, as well as those who are students with a background in medicine,

³ Full Text of Supreme Court's Verdict on Section 377; September 6, 2018, available at: <https://www.thehindu.com/news/national/article24880700.ece/binary/Sec377judgment.pdf> (last visited on April 1, 2025).

⁴ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 5th ed. (American Psychiatric Association, Arlington, 2013).

⁵ G. Kalra, S. Gupta, et. al., "Sexual Variation in India: A View from the West," 52 *Indian J. Psychiatry* S264 (2010). 136 L. Lopes, J. Gato, et al., "Portuguese Medical Students' Knowledge and Attitudes Towards Homosexuality," 29 *Acta Med. Port.* 684 (2016).

experienced a significant increase, as stated by⁶. Attitudes that are welcoming and accepting of homosexuality. It is possible that the findings indicated above can be linked to the fact that the prevalence of homophobia among younger people has decreased. Before the historic ruling, the absence of civil rights led to significant discrimination and stigmatization, which in turn led to the abuse of sexual minorities and an increased risk of severe mental and physical health effects. This was all a direct result of the lack of civil rights⁷. Individuals have been known to conceal their sexual orientation in a variety of facets of their lives as a consequence of the lack of public approval⁸. It is possible that only delivering information will not result in significant changes in attitudes; therefore, other measures are required. Individuals are encouraged to explore their views and attitudes on homosexuality through clinical cases, lectures, personal interaction, and the incorporation of ethical ideals into the process of curriculum building. These are some of the ways that are utilized. The findings of this survey highlight the positive changes that have occurred in the perspective of homosexuality held by younger generations. On the other hand, additional efforts are necessary to improve the general public's understanding of homosexuality as well as their views toward it. The legalization of homosexuality was a vital first step toward the formation of a society that is more accepting of people of all backgrounds and offers them the opportunity to coexist peacefully.⁹

The LGBTQIA+ individuals encounter intolerance and a lack of treatment protocols in healthcare institutions. Several difficulties have been highlighted as a result of the evaluation. Some examples of these difficulties include low income, insufficient healthcare, gender-based violence, inadequate education, limited access to social assistance programs, and uninsured status. Many of these problems are corroborated by the results of our own research as well. Under Article 21.¹⁰ In the Indian Constitution, the right to health is recognized. This right is also recognized in the Universal Declaration of Human Rights.¹¹ (UDHR) of 1948 and the International Covenant on Economic, Social, and Cultural Rights¹² (ICESCR) of 1966, both of

⁶ L. Lopes, J. Gato, et al., "Portuguese Medical Students' Knowledge and Attitudes Towards Homosexuality," 29 *Acta Med. Port.* 684 (2016).

⁷ A. Hollenbach, K. Eckstrand, et al., *Implementing Curricular and Institutional Climate Changes to Improve Health Care for Individuals who are LGBT, Gender Nonconforming, or Born with DSD* (Association of American Medical Colleges, Washington, 2014).

⁸ D.M. Frost, K. Lehavot, et al., "Minority Stress and Physical Health Among Sexual Minority Individuals," 38 *J. Behav. Med.* 1 (2015).

⁹ T. Ilango, Siva, S. Karthikeyan, et al., "An online survey of education, knowledge and attitude toward homosexuality in adults" 36 *Indian J Soc Psychiatry* 344-50 (2020).

¹⁰ The Constitution of India, art. 21.

¹¹ Universal Declaration of Human Rights, art. (10 December 1948).

¹² International Covenant on Economic, Social, and Cultural Rights, art. (3 January 1976)

which India has ratified. It is generally agreed that the Yogyakarta Principles provide a clear declaration of global human rights principles that deal with sexual orientation, sex characteristics, and gender identity. In line with General Comment No. 14, India is obligated to make certain that marginalized people, including members of the LGBTQIA+ community, have access to goods and services that are readily available, easily accessible, reasonably priced, and of a high quality. There are considerable inequalities between public, private, and trust healthcare facilities, and the majority of hospitals have difficulty implementing policies that are inclusive of LGBTQIA+ individuals. As noted in the Findings section, the variations can be attributed to a variety of factors, including the nature of the organization, its location, the type of healthcare practitioners it employs, the cost of services, religious affiliation, and the conditions for membership in an accreditation program. A significant number of healthcare institutions have not yet implemented policies that are inclusive of the gender and sexual diversity that exists within their systems.¹³

CONFLICT BETWEEN SOCIAL NORMS AND LGBTQ COMMUNITY: DOMESTIC ISSUES FOR HOMOSEXUALS AND TRANSGENDERS:

Instead of being founded on an innate male or female (binary) gender identity, specialists in queer theory claim that gender is changeable, adaptable, and sensitive to alteration. They argue that gender is less of a binary identity. Furthermore, they claim that society structures and organizations actively promote, justify, approve, and grant preferential treatment to heterosexuality over alternative sexual orientations with the intention of promoting heterosexuality. According to Schilt and Westbrook.¹⁴The binary gender system is intrinsically heterosexist since it prioritizes masculinity and heterosexuality over femininity and queerness. These notions collectively illustrate that the system is biased toward heterosexuality and masculinity. The arguments that are developed from queer theory have been under scrutiny by academics in the field of development, and on occasion, they have been utilized in development initiatives. On the other hand, there is no substantial evidence to imply that these arguments have materially affected the attitude of any key actors in the development field.¹⁵According to

¹³ human rights perspective: an exploratory qualitative study” in *Sexual and Reproductive Health Matters* vol. 29,2 (2022): 2104678. doi:10.1080/26410397.2022.2104678.

¹⁴ K. Schilt and L. Westbrook, “Doing gender, doing heteronormativity: ‘gender normals,’ transgender people, and the social maintenance of heterosexuality” 23 *Gender & Society* 440-464 (2009), <https://doi.org/10.1177/0891243209340034>.

¹⁵ C.L. Mason, “Introduction to Routledge handbook of queer development studies”, in C.L. Mason (ed.), *Routledge handbook of queer development studies* 1-17 (Routledge, London, 2018).

Weerawardhana¹⁶ the discourse on gender and development continues to place a focus on cisgender and heterosexual women, as well as the reinforcement of the gender binary. Interventions that are centred on LGBTI individuals generally rely on human rights notions, which might present difficulties when evaluated from the perspective of a queer individual. Individuals must prove their identity before they can assert their rights. The majority of people will have to come to terms with the fact that they are lesbian, gay, bisexual, transgender, or intersex in order to accomplish this. The marginalization of individuals who are either unable or unwilling to associate themselves with these groups can be made worse as a result of this.

It is demonstrated by queer theory that persons who identify as LGBTQI frequently challenge or breach the expectations that society has for male and female gender roles. Gay men may be deemed to be gender deviants if they are perceived to exhibit feminine characteristics or to participate in activities that are often associated with women. For example, they may assume a submissive position while they engage in sexual relations. There is a widespread perception that challenging established gender standards is risky and might lead to social repercussions.¹⁷ This perception is especially prevalent in the United States. It is possible to have substantial consequences because of transgressing norms, such as being subjected to assault, being homeless, being excluded from work possibilities, and being denied access to healthcare. Despite this, there are several subgroups within the LGBTQI community that subscribe to different interpretations of gender norms that do not comply with the traditional dichotomy between sexual orientation and gender identity. As an illustration, the hijras of India, who belonged to a distinct category of 'third gender' individuals, held a cultural status that is acknowledged and adhered to their own gender standards that have been formed.¹⁸ The use of queer theory sheds light on the multifaceted character of gender norms and draws attention to how individuals who identify as LGBTQI can simultaneously comply with and defy these standards.

As a result of queer sexual orientation and gender identities challenging normative gender norms, violence is frequently witnessed as a reaction, according to the research that has been

¹⁶ C. Weerawardhana, "Decolonising development work: a transfeminist perspective", in C.L. Mason (ed.), *Routledge Handbook of queer development studies* 119-130 (Routledge, London, 2018).

¹⁷ Schilt, K. and Westbrook, L. (2009) 'Doing gender, doing heteronormativity: "gender normals", transgender people, and the social maintenance of heterosexuality' *Gender & Society* 23(4): 440-464 (<https://doi.org/10.1177/0891243209340034>)

¹⁸ J. Puri, "Transgendering Development: Reframing Hijras and Development", in A. Lind (ed.), *Development, Sexual Rights and Global Governance* 39-53 (Routledge, London, 2010).

conducted. This violence can present itself in a variety of ways, such as verbal harassment, bullying, physical altercations, and even incidents of sexual assault and homicide. There is a widespread phenomenon of LGBTQIA children being rejected by their families and being cut off from society. This phenomenon is especially frequent in settings where homosexuality is considered a transgression or a violation of traditional values, such as in Jamaica. It is possible for people who identify as LGBTQIA to be marginalized in educational environments, to encounter obstacles in securing meaningful employment, and to be neglected by political institutions. There is a limited number of services that cater to the special needs and concerns of LGBTQI individuals, and there are also concerns about the possibility of discrimination from healthcare practitioners. However, those who identify as LGBTQI frequently face difficulties in gaining access to appropriate medical treatment. Young people who identify as LGBTQI, members of ethnic or religious minorities, and members of other marginalized communities are especially vulnerable to damage because they frequently lack the economic or social resources necessary to properly deal with issues.

Data based on empirical evidence concerning the modification of social norms In the context of this discussion, the term "norm change" often refers to the movement in society toward more tolerance and acceptance of LGBTQI behaviours, practices, gender presentation, and identity. Even though norm change is often indicated in programs that focus on anti-discrimination or training for service providers, the majority of treatments that target LGBTQI individuals in developing countries do not clearly discuss their outcomes in terms of norm change. According to Muñoz Boudet et al.¹⁹, gender norms typically experience slight alterations over the course of time, which makes it difficult to identify the exact individuals or factors that have resulted in these tiny variations. According to the research that has been conducted, the most efficient method for bringing about change is to take a holistic strategy that takes into account a number of different features. In this approach, persons who identify as LGBTQI are provided with support for their immediate needs, such as counselling and healthcare, while simultaneously addressing the discriminatory attitudes of others and the societal institutions that continue to perpetuate prejudice.

Both the Yogyakarta Principles and the United Nations resolutions against discrimination are examples of international agreements that build a human rights framework to foster equality

¹⁹ A.M. Muñoz Boudet, P. Petesch, et.al., "On Norms and Agency: Conversations About Gender Equality with Women and Men" in 20 Countries" (World Bank, Washington DC, 2013), <https://openknowledge.worldbank.org>.

for those who identify as LGBTQI. These ideas have been deployed by activists in order to campaign for national legislative reform or to promote LGBTI rights through the judicial system. As an illustration, the decriminalization of homosexuality in India is an example of a legislative reform that often occurs after a protracted process of gradual public acceptance of a new norm.²⁰

According to the most recent findings from research conducted all over the world, legal reforms applied in isolation are not sufficient to bring about a shift in norms; rather, they are an essential component of more comprehensive initiatives. The problem of LGBTQ people's access to public restrooms in India, especially for transgender people, has attracted a lot of court attention lately. By adopting techniques such as framing, expanding awareness, delivering training, and creating coalitions, rights-based activists have been able to successfully bring about a shift in the norms that society adheres to. The presentation of concerns in terms that are applicable to the local community, whether they apply to rights or cultural practices, has proven to be an effective method for inspiring policymakers to address LGBTQI issues. It has been found that the act of enhancing the visibility of LGBTQI individuals and promoting contact between them and others has played a key role in changing the way that society perceives LGBTQI individuals²¹. It has been demonstrated that providing training to public service providers, such as the police, teachers, and health care professionals, is a successful method for improving service delivery and changing the attitudes of individuals, which may lead to broader changes in the norms of society. According to Wernick²², peer group mentoring has proven to be a successful method in schools located in the Northern regions of the world for the purpose of building heterosexual allies and champions for change who can intervene in situations of harassment.

It is interesting to note that in some countries located in the global South, the concept of LGBT rights is seen as a cultural imposition that originates from the Western world. Countries like Malawi and Uganda are really good examples of this phenomenon. In recent times, Nigeria,

²⁰ P. Singh, "Between Legal Recognition and Moral Policing: Mapping the Queer Subject in India", 63 *Journal of Homosexuality* 416-425 (2016), <https://doi.org/10.1080/00918369.2016.1124700>.

²¹ K. West & M. Hewstone, "Culture and Contact in the Promotion and Reduction of Anti-Gay Prejudice: Evidence from Jamaica and Britain", 59 *Journal of Homosexuality* 44-66 (2012), <https://doi.org/10.1080/00918369.2011.614907>.

²² L.J. Wernick, A.B. Dessel, et.al., "LGBTQQ Youth Creating Change: Developing Allies Against Bullying Through Performance and Dialogue", 35 *Children and Youth Services Review* 1576-1586 (2013), <https://doi.org/10.1016/j.childyouth.2013.06.005>.

Gambia, and Burkina Faso have implemented more stringent laws against homosexuality, all of which have justified their actions by emphasizing the perceived foreign nature of homosexuality. This comment ought to be considered within the context of post-colonialism, which is a framework in which the acceptance of LGBT rights is seen as being influenced by Western cultures and is regarded as an infringement on the autonomy of a nation.

THE CHALLENGES FACED BY THE LGBTQIA+ PEOPLE:

People who identify as belonging to the LGBT community are frequently confronted with tremendous resistance from society, and it is highly improbable that they will be completely accepted. In most cases, individuals are subjected to discrimination based on their sexual orientation. As a consequence of this, they are required to deal with a wide variety of problems, including the following:

- 1) **Marginalization:** Individuals who identify as homosexual frequently face the huge challenge of being marginalized. The term "marginalization" refers to the process of thinking of a person as being on the margins or on the edge of society. There are times when individuals are rejected by society, which makes it difficult for them to live alone. In addition, they are subjected to social stigmatization and are confronted with unfavourable attitudes displayed by society. The fact that they are disadvantaged prevents them from participating equitably, despite the fact that they have the desire to make contributions to every aspect of society. The marginalization of individuals who identify as homosexuals is one way to characterize the phenomenon that describes the phenomenon. In many cases, the marginalization of LGBT people may be traced back to the circumstances of their birth within their families. After conducting research, it has been shown that more than eight percent of transgender adults living in the United States of America have experienced homelessness during the past year. In the population of African American sexual minorities, the percentage of housing instability was found to be 6%. Seventy-one percent of people who identify as sexual minorities have experienced homelessness for the first time after reaching adulthood. On the other hand, twenty percent of sexual minorities had experienced homelessness before the age of eighteen.²³

²³ B.D.M. Wilson, S.K. Choi, et. al., "Homelessness Among LGBT Adults in the U.S"., available at: <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/> (last visited Apr. 1, 2024).

- 2) Harassment and Torture: When it comes to adolescents, it is extremely uncommon to come across one who identifies as homosexual and has not been subjected to harassment or torture at the hands of their classmates. Not only does harassment against members of the LGBT community occur in educational institutions, but it also occurs in other contexts, such as schools, universities, and public spaces. Additionally, it is not limited to just educational institutions. The incidence of sexual violence against lesbians, gays, transgender individuals, and bisexual individuals is significantly greater than the incidence of sexual violence against heterosexual individuals. During the course of their National Intimate Partner and Sexual Violence Survey, the Centers for Disease Control and Prevention (CDC) came to the following conclusions:
- According to statistics, 44% of lesbians and 61% of bisexual women encounter instances of rape, physical assault, or stalking from an intimate partner, in comparison to 35% of heterosexual women.
 - Among men, 26% of gay individuals and 37% of bisexual individuals encounter rape, physical violence, or stalking from an intimate relationship, in contrast to 29% of heterosexual men.
 - Among men, the prevalence of sexual violence, excluding rape, is higher among gay men (40%) and bisexual men (47%) compared to straight men (21%).²⁴
- 3) Rejection: People who identify as LGBT frequently face two types of rejection: rejection from society as a whole and rejection from inside their own family. In every instance in which an individual discloses their sexual orientation as homosexual or lesbian, society abandons them. Any child who is classified as gay or lesbian is treated by the family with full indifference or marginalization, regardless of how much the family is aware of the issues surrounding homosexuality and lesbianism.
- 4) Homelessness: Individuals who identify as queer face a big obstacle in the form of homelessness. Approximately forty percent of the LGBT population in New York City is currently living on the streets and experiencing homelessness. They have been evicted from their homes against their will because of the sexual orientation they identify with. The shelters that are specifically designed to protect victims of domestic abuse are likewise refusing to provide shelter to the individuals in question. A person's experience of homelessness might lead to the development of a dependency on drugs

²⁴ Human Rights Campaign, Sexual Assault and the LGBT Community, HRC.ORG, available at: <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community> (last visited Apr. 12, 2024).

or to participation in sexual labour activity. Additionally, they are required to deal with issues in terms of their finances.

- 5) **Mental Weakness:** Individuals who identify as LGBT frequently experience mental fragility as a prevalent effect within their thinking. They are generally faced with rejection from their family, society, and even their friends when they want companionship or support. This is the case in most cases. Individuals who experience this type of rejection may develop mental health issues such as depression as a consequence of the experience. On occasion, people will participate in actions that are harmful to themselves or even attempt to take their own lives. Individuals who identify as LGBT are more likely to have thoughts of hurting themselves.²⁵
- 6) **Sexual Assault:** Within the LGBTQ community, bisexual women and transgender individuals have the greatest incidence of sexual assault. Early sexual assault is common in both of these groups, often during infancy. LGBTQ survivors of sexual assault are supposed to get assistance from the police, hospitals, shelters, and rape crisis centers, but they frequently refuse to use these resources due to their identity and the way they are handled. Compared to males who live with their parents, who frequently do not come out, homosexual men who have support from their peers are far safer. To reduce the high rate of sexual assaults within the LGBTQ community, we must all act together. Remember to trust someone who tells you they were sexually assaulted, remind them it wasn't their mistake, don't question them for more details than they want to offer, and keep their tale secret until necessary.²⁶
- 7) **Honour killing:** Some courageous individuals opted to embrace their sexuality during this period of societal change, but they regrettably encountered criticism from both the general public and their own families. Indeed, a few days after the historic ruling in 2019, a lesbian couple from Kolkata was evicted from their house after being threatened with honor killing by their neighbors and family.²⁷ The Rohtak youth's murder of his family after being refused funding for genderreassignment surgery serves as a stark reminder of the pervasive stigma and resistance from family members that transgender

²⁵ Bhaskar Choudhury and Karun Sanjaya, *The Status of LGBT People in India: A Socio-Legal Examination* 1686- 1695 (3rd edn., 2022).

²⁶ Priyam Singh, "Sexual Assault on LGBTQ Community" *V(II) Indian Journal of Law & Legal Research* (Amity Law School, Noida) (ISSN: 2582-8878).

²⁷ Kamalendu Bhadra, "Parents Threaten to Kill Gay Couple, Drive Them Out" *Times of India*, Nov. 21, 2019, 6:53 AM, available at: <https://timesofindia.indiatimes.com> (last visited on 27 August 2023).

people in India must contend with. This episode emphasizes how urgently social and legal measures are needed.

- 8) Lack of Access to healthcare and social services: The shortage of culturally sensitive healthcare professionals and anxiety about being judged or having a bad experience can all make it difficult LGBTQ+ individuals face barriers in accessing healthcare. Due to prejudice and a lack of understanding among service providers, LGBTQ+ people may have limited access to social services, including housing, social assistance, and support systems.

DECRIMINALIZATION OF HOMOSEXUALITY: IMPACT OF LGBTQ RIGHTS AND LAWS ON INDIAN GAY, LESBIAN, AND TRANSGENDER LIVES:

In the year 1961, the British government implemented Section 377.²⁸ In India. It is possible that the influence of colonialism was responsible for the widespread rejection of homosexuality in India during the entirety of the 19th century. The acceptance of homosexuality in ancient India is demonstrated by several different examples, including references in scriptures and folklore, as well as ancient temple sculptures at places such as Konark and Ajanta-Ellora, amongst others.

The case that was filed in 2001 between the “**NAZ Foundation**”²⁹ and the Government of the National Capital Territory of Delhi was the first step in the process of decriminalizing homosexuality. This case has brought up the question of whether or not homosexuality should be legalized. One of the fundamental rights that is safeguarded by Article 21 is the freedom to live one's life with dignity and privacy, as was confirmed by the verdict in 2009. A further conclusion reached by the court was that the criminalization of homosexuality is a violation of Articles 14³⁰ and 15³¹, as it leads to "unreasonable discrimination." Under Article 15, any form of discrimination based on sex is expressly prohibited. This includes discrimination based on sexual orientation as well as biological sex. With the litigation that took place in 2013 between “**Suresh Kumar Koushal and the NAZ Foundation**”,³² this path encountered a big

²⁸ The Indian Penal Code, 1860, s. 377.

²⁹ Naz Foundation v. Government of NCT of Delhi, 160 DLT 277 (Del. High Ct. 2001).

³⁰ The Constitution of India, art. 14.

³¹ The Constitution of India, art. 15.

³² Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors., SLP No. 10972 of 2013 (SC).

impediment. In the verdict, it was said that the protection of privacy should not be stretched to the extent that persons can participate in criminal actions within their own personal domain. Now, let's talk about the case that took place in 2017 of “Justice **K.S. Puttaswamy v. UOI**”³³.

It was determined by this verdict that "sexual orientation is an inherent characteristic of personal privacy" and that it ought to be protected across all platforms. As a result of the case “**Navtej Singh Johar v. UOI**,”³⁴ which took place in 2018, the act of homosexuality was officially removed from the list of criminal offenses in India. At the same time that it upheld the decision that had been made by the Delhi High Court in 2009, the court also decided that section 377 violates the fundamental right to life because it prevents persons from expressing their sexual identity.

CONCLUSION:

The adoption laws in India that discriminate contradict the rights guaranteed under Article 14, Article 15, and Article 21 of the Indian Constitution. LGBTQ couples and people who are citizens of India are entitled to equal rights in the social, economic, and political spheres. The recent judicial tendencies of the Supreme Court indicate a shift towards a more rights-based approach in interpreting statutes. Therefore, it might be argued that now is an opportune moment to recognize the right to adopt as a fundamental right.

Nevertheless, lesbian, gay, bisexual, transgender, and queer (LGBTQ) people in India do not have equal status and are denied the same rights that can be enjoyed by heterosexual people. In addition to this, they continue to be subjected to acts of violence and discrimination in every facet of their life. The dissemination of information and awareness on LGBT rights is of the utmost importance. The concept of human rights refers to inalienable rights, meaning they cannot be taken away or destroyed. These rights are established at birth and are guaranteed to every single person. In order for people to understand that homosexuals are not suffering from any kind of illness, that they are not extraterrestrial beings, and that their sexual orientation is in perfect harmony with the natural laws, they need to acknowledge these facts.

The incorporation of rights for LGBTQ individuals into the framework of human rights is of the utmost importance. The lack of recognition for marriages between people of the same

³³ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

³⁴ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

gender, the ban on adoption, guardianship, surrogacy, and in vitro fertilization, and the absence of access to safe and inclusive schools, colleges, and workplaces for individuals who identify as LGBT+ are all violations of the requirements of Articles 14, 15, 19, 21, and 29. In addition, the act of discriminating solely on the basis of a person's sexual orientation is a direct violation of Articles 14, 15, and 21 of the Army, Navy, and Air Force Act. The universal principle of human rights says that societal norms, conventions, culture, or traditions can never serve as a valid reason for restricting an individual's assertion of their fundamental and constitutional rights. This is because human rights are universally recognized at the international level. There is no way that our nation would have been able to implement progressive legislation and eliminate social problems like child marriage, Sati, dowry, and infanticide if it had not taken into account cultural beliefs, societal values, and public policy.

To eliminate the stigma, prejudice, and abuse that members of the LGBTQIA+ community are subjected to, it is important that the government abandon its conservative stance and take concrete steps into action. For the purpose of ensuring the educational, social security, and healthcare rights of LGBT+ individuals, the government should promptly establish new legislation or modify existing legislation on marriage, adoption, guardianship, inheritance, educational institutions, employment, and healthcare services. When doing so, the government should pay special attention to the requirements of transgender individuals. The promotion of greater inclusivity and the facilitation of the integration of LGBTQIA+ individuals into the mainstream of society will make a substantial contribution to the transformation of our nation into a knowledge society that is both fair and dynamic over the long term. At the end of the day, it is possible to draw the conclusion that the LGBT+ community in India will continue to fight for societal acceptance until the government offers them equal rights and status.