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# **BEYOND SECTION 377: CASTE, QUEERNESS, AND THE LIMITS OF CONSTITUTIONAL EQUALITY IN CONTEMPORARY INDIA**

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## **Abstract**

The Supreme Court's decriminalisation of consensual same-sex relations in *Navtej Singh Johar v. Union of India* (2018) and the subsequent erasure of Section 377 under the Bharatiya Nyaya Sanhita (BNS), 2023, mark two defining yet deeply ambivalent moments in India's queer legal history. While the 2018 judgment affirmed constitutional dignity for queer individuals, its celebration reflected predominantly savarna perspectives; the BNS, rather than consolidating those gains, repealed Section 377 entirely without introducing parallel protections against non-consensual sexual violence targeting men and transgender persons. Together, these legislative moments reveal a pattern of constitutional inadequacy that disproportionately burdens Dalit queer and transgender individuals. This paper argues that caste remains a constitutive axis of queer experience in contemporary India, shaping identity formation, social belonging, and political visibility in ways that both mainstream legal frameworks and LGBTQ+ activism consistently fail to recognise.

Drawing on Kimberlé Crenshaw's intersectionality, B. R. Ambedkar's critique of caste as a system of graded inequality, Judith Butler's gender performativity, and Nancy Fraser's distinction between cultural recognition and structural redistribution, the paper analyses how savarna dominance operates within queer spaces to marginalise Dalit queer subjectivities. The study grounds its analysis in explicitly queer Dalit sources, including testimonial writings and

manifestos of the Dalit Queer Project, public essays by Dhruvo Jyoti, and digital counter-discourses around Pride movements between 2018 and 2022, alongside legal discourse analysis of the *Navtej Singh Johar* (2018) and NALSA (2014) judgments and the Transgender Persons (Protection of Rights) Act, 2019. The paper contends that queer liberation in India is structurally incomplete without dismantling caste hierarchy, and contributes a caste-aware intersectional framework to queer legal and cultural scholarship in contemporary India.

**Keywords:** Queer caste studies, Dalit queer identity, LGBTQ+ exclusion, Caste and sexuality, Identity politics, subjectivity.

## 1. Introduction

The Supreme Court of India's judgment in *Navtej Singh Johar v. Union of India* (2018) decriminalising consensual same-sex relations under Section 377 of the Indian Penal Code was widely received as a constitutional turning point for queer rights in India. Invoking the guarantees of dignity, autonomy, and equality under Articles 14, 19, and 21, the Court affirmed that queer individuals are entitled to the full protection of the Indian Constitution. Yet the political moment that followed the celebrations in urban centres, the media narratives, the sudden visibility of queer identity in public discourse overwhelmingly reflected the experiences of upper-caste, English-speaking, metropolitan queer individuals. Dalit queer voices, if present at all, remained at the margins of a movement that claimed to speak for all.

Six years later, the Bharatiya Nyaya Sanhita (BNS), 2023, which came into force in July 2024, replacing the Indian Penal Code, repealed Section 377 entirely. Rather than consolidating the partial protections retained by *Navtej Singh Johar* for non-consensual acts, the BNS created a legislative vacuum, leaving men and transgender persons without specific statutory protection against sexual violence, a gap that falls most heavily on those already at the intersection of caste and gender-based vulnerability. The Parliamentary Standing Committee had explicitly recommended retaining Section 377 insofar as it addressed non-consensual acts against men and transgender persons; the recommendation was rejected. The state thus moved, in the span of six years, from criminalisation to constitutional recognition to legislative silence, each shift revealing the structural inadequacy of a legal framework that has never engaged seriously with the compounded marginalisation of Dalit queer individuals.

This asymmetry across both moments is not incidental. It reflects a deeper structural condition in which caste and sexuality, treated as separate axes in both legal discourse and mainstream LGBTQ+ activism, operate simultaneously and inseparably in the lives of Dalit queer individuals. For a Dalit queer person in contemporary India, discrimination does not arrive in discrete, separable forms; it is compounded, layered, and mutually reinforcing. Caste shapes access to queer spaces; queerness intensifies caste-based social exclusion; and constitutional frameworks designed to address each independently fail to account for the violence produced at their intersection. The decriminalisation of Section 377 did not dismantle the caste hierarchies governing belonging and visibility within LGBTQ+ communities; the BNS's erasure of Section 377 without substitution has only deepened that structural precarity.

This paper argues that caste remains a constitutive axis of queer experience in contemporary India, and that the limits of constitutional equality as currently interpreted reproduce rather than resolve the marginalisation of Dalit queer individuals. The paper further contends that queer liberation in India cannot be structurally achieved through rights-based frameworks alone, as long as those frameworks treat caste and sexuality as parallel rather than intersecting systems of oppression. A genuinely emancipatory queer politics must be caste-aware, not as an addendum to existing frameworks, but as a foundational condition of its legitimacy.

To develop this argument, the paper draws on four interlocking theoretical frameworks. Kimberlé Crenshaw's theory of intersectionality provides the analytical basis for understanding how multiple systems of oppression operate simultaneously rather than additively. B. R. Ambedkar's critique of caste as a self-reproducing system of graded inequality, one that regulates the body, social membership, and access to rights, grounds the paper's constitutional analysis in a specifically Indian theoretical tradition and speaks directly to the compounded exclusions produced by the BNS's legislative silence. Judith Butler's account of gender performativity, read alongside Ambedkar, illuminates how gender and sexuality are performed under conditions that are never caste-neutral in India. Nancy Fraser's distinction between cultural recognition and structural redistribution provides a precise analytical vocabulary for diagnosing why legal recognition, as partially achieved in *Navtej Singh Johar* and subsequently undermined by the BNS, remains insufficient without accompanying structural transformation. The paper proceeds as follows. Section 2 develops the theoretical framework in detail. Section 3 conducts a close legal discourse analysis of the *Navtej Singh Johar* (2018) and NALSA (2014) judgments, the Transgender Persons (Protection of Rights) Act, 2019, and the

implications of Section 377's repeal under the BNS, examining how each moment reproduces or deepens caste-blind assumptions within India's rights framework. Section 4 examines savarna dominance within mainstream queer activism and digital spaces, drawing on the interventions of the Dalit Queer Project and activist writing by Dhruvo Jyoti. Section 5 centres Dalit queer subjectivity through testimonial and cultural sources, analysing identity formation under conditions of compounded exclusion. Section 6 concludes by arguing for an intersectional jurisprudence rooted in Ambedkar's constitutional vision as the basis for a genuinely caste-aware queer politics.

## **2.1 Intersectionality Beyond the West: Crenshaw, Caste, and the Indian Context**

Kimberlé Crenshaw's foundational articulation of intersectionality, developed through her analysis of Black women's experiences of discrimination in the United States, proposed that systems of oppression, race, gender, class, do not operate independently but interact to produce qualitatively distinct forms of marginalisation that existing legal and political frameworks fail to capture (Crenshaw, 1989; 1991). The woman who experiences both racial and gender discrimination is not simply doubly burdened; she inhabits a structural position that neither anti-racism frameworks nor feminist frameworks, taken separately, can adequately address. This insight, that the intersection produces something categorically different from the sum of its parts, is the theoretical foundation upon which this paper builds its analysis of Dalit queer experience in India.

However, intersectionality as a concept requires careful critical translation when applied to the Indian context. Developed within an American legal and racial framework, Crenshaw's model does not map directly onto the specificities of caste as a system of social organisation. Caste is not race, though the two share structural features; it is a hierarchical system of graded inequality that regulates social membership, bodily practice, labour, and intimacy through a logic of ritual purity and pollution that has no precise equivalent in the racial formations Crenshaw theorised. A mechanical application of intersectionality to caste risks domesticating the radical specificity of caste oppression within a Western theoretical vocabulary, producing what Gopal Guru has described as the epistemic subordination of Dalit thought to metropolitan theory (Guru, 2002). This paper therefore does not simply apply Crenshaw to India but reads her intersectional framework in conjunction with Ambedkar's own theorisation of caste, treating the two as mutually illuminating rather than hierarchically related. Intersectionality provides the structural

logic; Ambedkar provides the historically and socially specific content.

What intersectionality does offer, crucially for this paper's legal argument, is a critique of what Crenshaw termed the single-axis framework, the tendency of legal systems to address discrimination along one axis at a time, producing categories of protected identity that fail those who inhabit multiple marginalised positions simultaneously. This critique applies with particular force to Indian constitutional jurisprudence, which has developed anti-discrimination doctrine around caste and sexuality as separate legal categories, leaving Dalit queer individuals without adequate legal recourse when their marginalisation is produced precisely at the intersection of both.

## **2.2 Ambedkar, Caste, and the Regulation of the Body**

B. R. Ambedkar's theorisation of caste moves decisively beyond sociological description to identify caste as a system that reproduces itself through the control of the body, specifically through the regulation of marriage, sexuality, and social intimacy. In *Annihilation of Caste* (1936), Ambedkar argued that caste could not be reduced to a division of labour but was fundamentally a division of labourers, a system that enforced its hierarchies through the control of endogamy, ensuring that caste boundaries were maintained through the policing of sexual and reproductive life. Caste, in this analysis, is always already a sexual and bodily regime. It does not merely accompany the regulation of sexuality; it operates through it.

This insight is directly productive for a queer analysis. If caste reproduces itself through the enforcement of normative sexual and reproductive arrangements, heterosexual, endogamous, and caste-bound, then queerness, understood as a departure from those arrangements, is not simply a matter of sexual identity but a structural challenge to the caste order itself. A Dalit queer individual does not merely transgress sexual norms; they simultaneously refuse the reproductive logic through which caste perpetuates itself. This double transgression, of caste normativity and sexual normativity, explains the compounded intensity of the social exclusion and violence experienced by Dalit queer individuals, who threaten the foundational mechanisms of caste reproduction from within an already stigmatised social position.

Ambedkar's constitutional vision, embodied in Articles 15, 17, and 21 of the Indian Constitution, sought to dismantle the legal architecture of caste discrimination by guaranteeing equality, abolishing untouchability, and protecting the right to life and personal liberty. Yet as this paper's legal analysis will demonstrate, the constitutional framework Ambedkar designed has been interpreted in ways that address caste and sexuality separately, failing to develop the

intersectional jurisprudence his broader critique of caste as a bodily and social regime demands. The gap between Ambedkar's radical constitutional vision and the caste-blind liberal individualism of judgments such as *Navtej Singh Johar* is not incidental, it reflects the ongoing resistance of Indian legal institutions to the full implications of Ambedkar's thought.

### **2.3 Butler, Gender Performativity, and Caste Surveillance**

Judith Butler's theory of gender performativity, most fully developed in *Gender Trouble* (1990) and *Bodies That Matter* (1993), argues that gender is not an expression of a prior inner identity but is produced through the repeated citation of regulatory norms, norms that are themselves enforced through social sanction, exclusion, and violence. Gender, on this account, is always a performance under constraint; the appearance of naturalness is an effect of the successful repetition of normative acts rather than an expression of biological or psychological essence. Crucially for Butler, the heterosexual matrix, the regulatory framework that links gender normativity to compulsory heterosexuality, operates by rendering non-normative genders and sexualities abject, placing them outside the boundary of socially intelligible subjectivity.

When Butler's framework is read alongside Ambedkar's analysis of caste, a productive theoretical convergence emerges. In India, the regulatory norms through which gender is performed are never caste-neutral. The bodily comportment, dress, spatial movement, labour, and sexual behaviour considered appropriate for women, men, and transgender persons are systematically differentiated by caste. Upper-caste femininity carries different normative expectations and is protected by different social and legal mechanisms than Dalit femininity, which has historically been constructed as available, violable, and outside the protection of respectability. Dalit queer individuals thus perform gender under conditions of compounded surveillance: they are subject both to the heterosexual matrix Butler describes and to the caste-specific bodily regimes Ambedkar theorises, producing a form of social abjection that is qualitatively more intense than either framework alone captures.

This convergence also illuminates the dynamics of savarna queer spaces. If gender performance is always evaluated against caste-coded norms of respectability, then the inclusion of Dalit queer individuals within mainstream LGBTQ+ spaces does not automatically suspend caste hierarchy; it reproduces it through the differential valuation of bodies, aesthetics, and modes of self-presentation that remain deeply inflected by caste. Visibility within queer spaces, in other words, is itself a caste-mediated phenomenon.

## **2.4 Nancy Fraser: Recognition, Redistribution, and the Limits of Legal Reform**

Nancy Fraser's distinction between cultural recognition and structural redistribution provides this paper with its sharpest analytical tool for diagnosing the insufficiency of India's queer legal reforms (Fraser, 1995; 2000). Fraser argues that injustice operates along two analytically distinct but practically intertwined dimensions: the cultural dimension of misrecognition, the denial of social status, dignity, and visibility and the economic dimension of maldistribution, the denial of material resources, opportunities, and structural equality. Effective justice, she contends, requires both; recognition without redistribution addresses the symbolic dimensions of oppression while leaving its structural foundations intact.

Applied to the trajectory of Indian queer legal reform, Fraser's framework is diagnostically precise. The *Navtej Singh Johar* judgment of 2018 was fundamentally a recognition claim; it restored the dignity and social intelligibility of queer identity by removing its criminalisation. It did not, however, address the structural dimensions of queer marginalisation: the absence of anti-discrimination protections in employment, housing, and education; the lack of legal recognition for same-sex partnerships; or the caste-specific barriers that prevent Dalit queer individuals from accessing even the limited gains the judgment produced. The subsequent erasure of Section 377 under the BNS without substitution compounds this failure, removing even the partial symbolic recognition of queer and transgender persons as bearers of legal protection against sexual violence, without any redistributive or structural remedy.

For Dalit queer individuals, this gap between recognition and redistribution is not merely theoretical. It describes the lived condition of belonging to a community that has achieved a measure of legal visibility while remaining structurally excluded from the material and institutional conditions that would make that visibility meaningful. Fraser's framework thus allows the paper to move beyond a critique of individual judgments to a systemic argument: that India's queer legal reforms have consistently prioritised recognition over redistribution, and have done so through frameworks that remain blind to caste as a constitutive dimension of both the injustice they seek to address and the communities they claim to protect.

## **3.1 Navtej Singh Johar v. Union of India (2018): Recognition Without Redistribution**

The Supreme Court's five-judge constitutional bench judgment in *Navtej Singh Johar v. Union of India* (2018) represents the most significant judicial intervention in Indian queer legal

history. Striking down Section 377 of the Indian Penal Code in so far as it criminalised consensual same-sex relations between adults, the Court grounded its reasoning in a expansive reading of constitutional morality over social morality, affirming that the dignity, autonomy, and identity of queer individuals are protected under Articles 14, 19, and 21 of the Constitution. Chief Justice Dipak Misra, writing for the majority, invoked the transformative character of the Indian Constitution, arguing that it must be read as a living document capable of expanding its protection to historically marginalised communities. Justice D. Y. Chandrachud's concurring opinion went further, locating the criminalisation of same-sex relations within a broader history of colonial violence, identifying Section 377 as a Victorian-era imposition that had no place in a constitutional democracy committed to equal citizenship.

The judgment's constitutional reasoning is, in many respects, genuinely progressive. Its affirmation of dignity as a foundational constitutional value, its recognition of sexual orientation as an intrinsic dimension of identity, and its critique of majoritarian morality as an insufficient basis for criminalisation represent a significant expansion of Indian constitutional jurisprudence. Yet when read through the intersectional framework developed in Section 2, the judgment reveals a structural limitation that its progressive rhetoric obscures: it is framed entirely within the liberal individualist tradition of rights discourse, addressing the queer individual as an abstract bearer of constitutional rights without engaging the social structures most significantly caste that determine who can meaningfully access and exercise those rights. The judgment's silences are as analytically significant as its holdings. *Navtej Singh Johar* says nothing about caste. It does not acknowledge that the criminalisation of same-sex relations fell disproportionately on those least able to negotiate with state institutions, the poor, the socially marginalised, those without access to legal representation, who are disproportionately Dalit and OBC. It does not address the fact that the police harassment, extortion, and violence enabled by Section 377 were experienced most intensely by Dalit and transgender individuals whose social vulnerability made them least able to resist. The judgment decriminalises queerness in the abstract while leaving untouched the material and social conditions that made criminalisation most devastating for those at the intersection of caste and sexuality. Applying Fraser's analytical distinction introduced in Section 2, *Navtej Singh Johar* is a recognition judgment — significant, necessary, but structurally insufficient. It restores dignity without redistributing power.

This insufficiency is not merely a matter of judicial omission. It reflects the deeper architecture of Indian constitutional jurisprudence, which has developed an anti-discrimination doctrine along single-axis lines. Article 15's prohibition of discrimination on grounds of religion, race,

caste, sex, or place of birth lists these as discrete categories rather than intersecting systems; judicial interpretation has largely followed this categorical logic, producing a rights framework that struggles to address discrimination produced at the intersection of multiple protected characteristics. A Dalit queer individual discriminated against within a queer organisation on grounds that combine caste prejudice with sexual normativity has no clear legal remedy within existing doctrine; they fall, as Crenshaw's original analysis predicted, between the categories that the law recognises.

### **3.2 National Legal Services Authority v. Union of India (NALSA, 2014):**

#### **Inclusion and Its Caste-Blind Limits**

Four years before *Navtej Singh Johar*, the Supreme Court's judgment in *National Legal Services Authority v. Union of India* (2014) recognised transgender persons as a third gender entitled to constitutional protection under Articles 14, 19, and 21, directing the state to develop welfare measures addressing the social and economic marginalisation of the transgender community. The NALSA judgment was a landmark moment in transgender rights jurisprudence, affirming self-identification as the basis of gender identity and rejecting the medicalised model that had previously governed state recognition of transgender persons.

Yet the NALSA judgment, like *Navtej Singh Johar*, operates within a framework that treats the transgender community as a homogeneous category, failing to account for the internal stratifications of caste, class, and region that produce vastly different experiences of transgender identity and marginalisation across India. The hijra communities, the Aravanis of Tamil Nadu, the Kothis, these are not uniform social formations; they are communities deeply marked by caste, in which access to community networks, ritual roles, and economic survival strategies is mediated by caste position. A Dalit transgender person navigates not only the gender-based marginalisation the NALSA judgment seeks to address but also the caste-based exclusion that operates within transgender communities themselves, as well as in the state institutions charged with implementing the judgment's directives.

The implementation record of NALSA bears this out. Studies of welfare scheme access following the judgment have consistently found that Dalit and OBC transgender individuals are disproportionately excluded from the benefits of state recognition, not because the judgment does not extend to them formally, but because the social capital, institutional literacy, and bureaucratic access required to claim those benefits are themselves caste-distributed. Constitutional recognition, in the absence of caste-aware implementation mechanisms,

reproduces rather than remedies the structural exclusions it nominally addresses. This is precisely the pattern Fraser's recognition-redistribution framework predicts: recognition without the structural redistribution of social capital and institutional access leaves the most marginalised within an already marginalised community without effective remedy.

### **3.3 The Transgender Persons (Protection of Rights) Act, 2019: Bureaucratic Exclusion and Caste**

If the NALSA judgment represented a judicially driven expansion of transgender rights, the Transgender Persons (Protection of Rights) Act, 2019, passed by Parliament five years later, represented a significant legislative retreat. Widely criticised by transgender rights organisations and queer activists, the Act introduced a certification process requiring transgender individuals to apply to a District Magistrate for official recognition of their gender identity, submitting to a bureaucratic and potentially medicalised process of verification that directly contradicted the self-identification principle affirmed in NALSA.

The certification process is not merely a procedural inconvenience. It is a mechanism that systematically advantages those with social capital, the education, institutional familiarity, documentation, and access to legal assistance necessary to navigate bureaucratic processes while disadvantaging those without it. Social capital, in India, is profoundly caste-distributed. Dalit and OBC transgender individuals, who are disproportionately represented among the most economically and socially precarious sections of the transgender community, are also those least equipped to navigate the certification process that the Act demands. The Act thus reproduces caste hierarchy through the apparently neutral mechanism of bureaucratic procedure, a form of what might be termed structural caste-blindness, in which formally universal procedures produce substantively unequal outcomes along caste lines.

The Act's definition of discrimination, moreover, while prohibiting denial of service on grounds of transgender identity, does not engage with discrimination that combines transgender identity with caste, leaving Dalit transgender individuals without specific protection against the compounded discrimination they experience. The legislation follows the single-axis logic that Crenshaw's framework critiques: it recognises the transgender individual as a protected category while remaining silent on the caste-specific forms of violence and exclusion that shape transgender experience most severely for those at the bottom of both hierarchies.

### **3.4 The Bharatiya Nyaya Sanhita, 2023: From Legislative Silence to Structural Abandonment**

The Bharatiya Nyaya Sanhita, which came into force in July 2024, replacing the Indian Penal Code, completed the legislative trajectory this paper traces by repealing Section 377 entirely without introducing any parallel provision addressing non-consensual sexual violence against men and transgender persons. The Parliamentary Standing Committee on Home Affairs had explicitly recommended retaining Section 377 insofar as it criminalised non-consensual acts, noting that the existing definition of rape under the BNS is gendered and applies only to acts committed by a man against a woman. The recommendation was rejected. The result is a legislative vacuum in which male and transgender survivors of sexual violence have no specific statutory remedy a gap that falls most severely on Dalit and OBC transgender individuals, whose vulnerability to sexual violence is compounded by caste-based social precarity.

This erasure is analytically significant beyond its immediate legal consequences. The BNS's removal of Section 377 without substitution represents not a consolidation of the gains of *Navtej Singh Johar* but their partial reversal, moving from the partial recognition the 2018 judgment produced to a condition of legislative silence in which queer and transgender persons are neither criminalised nor protected. This is the third position in the trajectory this paper identifies: criminalisation under the IPC, partial recognition through *Navtej Singh Johar*, and now structural abandonment under the BNS. Each position has been experienced differently across caste lines, and in each case, the most severe consequences have been borne by those at the intersection of caste and gender-sexual marginalisation.

Ambedkar's constitutional vision, as discussed in Section 2, was premised on the understanding that formal legal equality is insufficient without the active dismantling of structural inequality. The BNS's legislative silence is a pointed illustration of this principle's continued relevance: the removal of a criminalising provision, in the absence of protective substitution, does not produce freedom but produces a new form of structural abandonment, one that is experienced most acutely by those whose social vulnerability is already most acute. The gap between Ambedkar's constitutional ambition and the reality produced by the BNS is not merely a legislative failure; it is a diagnostic of the ongoing refusal of Indian legal institutions to develop the intersectional jurisprudence that Dalit queer lives demand.

### **3.5 Toward an Intersectional Jurisprudence**

The cumulative pattern across the four legal moments this section analyses, *Navtej Singh Johar*, NALSA, the Transgender Persons Act, and the BNS, is consistent. Indian constitutional and legislative frameworks have addressed caste and sexuality as parallel rather than intersecting systems, producing rights frameworks that formally extend to Dalit queer and transgender individuals while structurally failing them. Recognition has been extended without redistribution; inclusion has been proclaimed without the dismantling of the caste-specific barriers that make inclusion meaningful.

What an intersectional jurisprudence would require, in contrast, is a mode of legal reasoning that takes seriously the compounded nature of Dalit queer marginalisation that reads Articles 15, 17, and 21 not as discrete protections against discrete forms of discrimination but as an integrated constitutional commitment to dismantling the overlapping systems of hierarchy that produce compounded exclusion. This would mean, at minimum, anti-discrimination provisions in employment, housing, and public life that explicitly address intersecting grounds; self-identification based gender recognition legislation free of bureaucratic certification; gender-neutral sexual violence protections that extend to men and transgender persons regardless of caste position; and judicial reasoning that, in cases involving queer and transgender individuals, considers the caste dimensions of the discrimination at issue rather than treating caste and sexuality as legally separable.

Such a jurisprudence would not be a departure from Ambedkar's constitutional vision, it would be its fulfilment. The Constitution Ambedkar designed was premised on the recognition that formal equality cannot produce substantive justice in a society structured by graded inequality. Extending that recognition to the intersection of caste and sexuality is not an addition to Ambedkar's project but its logical extension into a domain his historical moment did not fully foreground.

#### **4.1 The Caste-Blindness of Mainstream Indian Queer Activism**

The mainstream Indian LGBTQ+ movement that coalesced most visibly around the decade-long legal struggle over Section 377 was, in its dominant formations, a movement shaped by and for savarna Indians. This is not a peripheral observation but a structural diagnosis. The organisations, spokespersons, legal teams, and media narratives that defined the public face of Indian queer activism during the Section 377 litigation drew overwhelmingly from upper-caste, English-educated, urban professional communities, communities whose experience of queer

marginalisation, real and significant as it is, is qualitatively different from that of Dalit queer individuals navigating the simultaneous pressures of caste exclusion, economic precarity, and sexual stigma.

This savarna dominance is not simply a matter of demographic representation, though the absence of Dalit queer voices from leadership positions within major LGBTQ+ organisations is itself significant. It is, more fundamentally, a matter of epistemological framing, of what counts as a queer issue, whose experience defines the content of queer politics, and which forms of suffering are rendered visible within activist discourse. The dominant framing of Indian queer activism has consistently centred the privacy rights, dignity claims, and relationship recognition aspirations of individuals whose primary axis of marginalisation is sexuality, for whom caste is either not a lived burden or is experienced as separable from their queer identity. This framing has produced an activism that is genuinely progressive on the terrain of sexuality while reproducing the caste hierarchies it never names.

Dalit queer activists and scholars have documented this dynamic with considerable precision. The celebrations following the *Navtej Singh Johar* judgment in August 2018 were extensively critiqued in Dalit queer digital spaces as a savarna celebration, one that treated the decriminalisation of consensual same-sex relations as a definitive victory while remaining silent on the forms of violence and exclusion that Dalit queer individuals continue to experience within LGBTQ+ communities themselves. As Dhruvo Jyoti has written, the question for Dalit queer individuals is not only whether the state will criminalise their sexuality but whether the queer community itself will recognise their full humanity, a question that the *Navtej Singh Johar* judgment, celebrated as a liberation by savarna queer activists, left entirely unaddressed.

#### **4.2 Pride as a Savarna Space: Visibility, Aesthetics, and Caste**

The Indian Pride march, which expanded significantly in visibility and scale following the 2018 judgment, offers a productive site for analysing the reproduction of caste hierarchy within queer spaces. Pride, as a political and cultural form, originated in a tradition of public assertion of queer identity against state criminalisation and social stigma. In the Indian context, following decriminalisation, Pride has increasingly become a site of celebration and community building, but the community it builds, and the identities it makes most visible, remain predominantly savarna.

The aesthetics of Indian Pride, the visual culture, the modes of self-presentation, the forms of solidarity and belonging performed in these spaces, are inflected by caste in ways that are rarely

named. The cosmopolitan, English-medium, professionally mobile queer identity that dominates Pride visibility is itself a savarna formation, one that draws on the cultural capital, bodily ease, and institutional confidence that upper-caste social positioning produces. Dalit queer individuals who enter these spaces often report experiences of cultural alienation, social condescension, and the subtle but persistent marking of their difference, not on grounds of sexuality, which is ostensibly the shared basis of community, but on grounds of manner, language, economic position, and the accumulated social codes through which caste is read on the body.

Between 2018 and 2022, a series of organised Dalit queer interventions at and around Pride marches in Indian cities made these dynamics explicitly visible. Activists associated with the Dalit Queer Project and allied formations carried placards and issued public statements challenging the erasure of caste within Pride spaces, demanding that the movement reckon with the savarna dominance of its leadership, aesthetics, and political agenda. These interventions were not peripheral to Pride; they were directed at its centre, challenging the claim that a movement organised around shared sexuality could be genuinely inclusive while remaining silent on the caste hierarchies operating within it. The response from mainstream LGBTQ+ organisations was, in the main, either silence or the incorporation of Dalit queer demands as an addendum to existing agendas, the pattern of recognition without structural transformation that Fraser's framework identifies.

### **4.3 The Dalit Queer Project: Manifesto, Testimony, and Counter-Archive**

The Dalit Queer Project represents the most sustained and theoretically articulate institutional expression of Dalit queer politics in contemporary India. Founded as both an activist collective and an archival and knowledge-production project, it has produced testimonials, manifestos, and public interventions that simultaneously document the experience of Dalit queer individuals and advance a political argument about the structural inadequacy of caste-blind queer frameworks. Its significance for this paper is twofold: it is both a primary source a body of testimony and political writing that anchors the paper's empirical claims and a theoretical interlocutor, advancing arguments about the intersection of caste and queerness that this paper engages and builds upon.

The Dalit Queer Project's testimonial writings are analytically distinctive in their refusal to separate caste and queer experience into sequential or additive narratives. The testimonials do not describe a person who is first a Dalit and then also queer, or first queer and then also Dalit;

they describe identities in which caste and sexuality are constitutively intertwined, each shaping the texture and stakes of the other. This formal and political refusal of sequential identity narration is itself a theoretical claim; it insists, in the register of lived experience, on precisely the intersectional logic this paper advances in its theoretical framework. Caste and sexuality are not parallel burdens; they are co-constitutive dimensions of a single, compounded social position.

The Project's manifestos have consistently challenged the single-axis logic of both mainstream queer activism and mainstream Dalit politics, arguing that neither framework, taken alone, can adequately represent or politically address Dalit queer experience. This double critique is significant: it is not merely an argument for inclusion within existing frameworks but a challenge to the epistemological foundations of those frameworks. The Dalit Queer Project does not ask to be added to savarna queer politics; it insists that savarna queer politics, as currently constituted, is structurally incapable of representing Dalit queer experience without a fundamental reorientation of its premises.

#### **4.4 Dhrubo Jyoti and the Politics of Queer Dalit Public Writing**

Dhrubo Jyoti's public essays and activist interventions represent a significant body of explicitly queer Dalit intellectual and political writing addressed to mainstream public audiences. Writing in publications including *The Wire*, *Outlook*, and *Feminism in India*, Jyoti has consistently articulated the experience of navigating both savarna queer spaces and mainstream Dalit political formations as a queer Dalit person, documenting the forms of erasure, condescension, and structural exclusion encountered in each. This writing is significant not only as testimony but as a form of what might be termed public intersectional pedagogy, an attempt to make the logic of compounded marginalisation legible to audiences operating within single-axis frameworks.

Jyoti's essays are particularly analytically productive for this paper's argument about savarna dominance within queer spaces. They document, with sociological precision and political clarity, how caste operates not through explicit exclusion, Dalit queer individuals are rarely formally barred from LGBTQ+ organisations or Pride spaces, but through the subtler mechanisms of cultural dominance: whose experiences are treated as representative, whose political priorities are centred, whose aesthetic sensibilities define the community's self-presentation, and whose voices are amplified or marginalised within organisational and digital spaces. This distinction between formal inclusion and substantive belonging is central to the

paper's argument that legal recognition, the formal inclusion of queer individuals within constitutional protection, does not automatically produce the conditions of substantive equality.

#### **4.5 Digital Spaces as Sites of Dalit Queer Counter-Visibility**

The period between 2018 and 2022 saw a significant expansion of Dalit queer visibility in Indian digital spaces, on Twitter, Instagram, and independent publishing platforms such as *Roundtable India* and *Feminism in India*, that constituted, in aggregate, a counter-archive to the savarna-dominated mainstream of LGBTQ+ digital culture. This counter-visibility was not merely representational; it was argumentative, advancing sustained critiques of caste-blind queer politics and producing alternative frameworks for understanding queer experience in India that centred caste as a constitutive rather than incidental dimension.

This digital counter-discourse is analytically significant for several reasons. First, it demonstrates that the critique of savarna dominance within queer spaces is not an external imposition on queer politics but emerges from within queer communities themselves, from individuals whose queer identity is unambiguous and whose critique is directed at the political and epistemological frameworks of the movement they belong to. Second, it constitutes a form of knowledge production that operates outside the institutional structures, the universities, NGOs, and legal organisations, through which mainstream queer politics reproduces itself, and therefore outside the caste-mediated gatekeeping mechanisms that shape access to those structures. Third, and most significantly for this paper's argument, it represents a form of political practice that enacts the intersectional logic the paper theorises, refusing the separation of caste and queer identity and insisting on their co-constitutive relationship as the starting point rather than the conclusion of political analysis.

The limitations of digital counter-visibility must also be acknowledged. Digital spaces are not caste-neutral: access to platforms, the cultural capital required for legible self-presentation in English-medium digital environments, and the differential amplification of voices by platform algorithms all reproduce social hierarchies in ways that are not always visible. The Dalit queer digital counter-archive is a significant and politically important formation, but it operates within structural constraints that limit its reach and its ability to translate digital visibility into organisational power or policy influence. This limitation underscores the paper's central argument: visibility and recognition, whether legal or cultural, are insufficient without the structural redistribution of resources, institutional access, and political power that would make that visibility substantively transformative.

## **5.1 Subjectivity as a Site of Theoretical Intervention**

Before turning to the specific testimonial and cultural sources this section analyses, it is necessary to establish why Dalit queer subjectivity is not merely an empirical supplement to the theoretical and legal arguments of the preceding sections but is itself a site of theoretical intervention. The inclusion of testimony and personal narrative in academic scholarship on marginalised communities is sometimes framed as a gesture of inclusion, an acknowledgement that lived experience matters alongside abstract theory. This paper takes a stronger position: Dalit queer testimonial writing does not merely illustrate the intersectional logic theorised by Crenshaw, Ambedkar, Butler, and Fraser; it produces theoretical knowledge that those frameworks, developed in different historical and social contexts, cannot fully generate on their own.

This position draws on a significant tradition within Dalit studies and feminist epistemology that insists on the epistemic authority of marginalised experience, not as raw data awaiting theoretical interpretation but as a form of knowledge production in its own right. Gopal Guru and Sundar Sarukkai's work on the relationship between experience and theory in Dalit thought is directly relevant here: they argue that Dalit experience is not pre-theoretical but is itself a mode of theorising social reality from a position that reveals dimensions of that reality invisible from positions of privilege (Guru and Sarukkai, 2012). Applied to Dalit queer subjectivity, this means that the testimonial writings and public interventions analysed in this section are not evidence for claims made elsewhere; they are arguments, and they must be read as such.

This framing also has methodological implications. This paper does not read Dalit queer testimony as transparent access to authentic experience; experience is always mediated, narrated, and shaped by the discursive contexts in which it is expressed. Rather, it reads these testimonial and cultural sources as texts that perform a specific argumentative function: they enact, in the register of lived experience, the intersectional logic the paper theorises, and in doing so, they reveal dimensions of that logic that purely abstract analysis cannot access.

## **5.2 Navigating Double Exclusion: Identity Formation Under Compounded Marginality**

The testimonial writings produced by the Dalit Queer Project and allied formations consistently describe a condition of double exclusion from caste society on grounds of sexuality, and from queer community on grounds of caste that produces a specific and distinctive form of social subjectivity. This double exclusion is not experienced as two separate exclusions occurring in

sequence or in parallel; it is experienced as a single, compounded condition in which each exclusion intensifies and is intensified by the other.

Within caste society, queerness is experienced as a transgression that compounds existing caste stigma. For Dalit individuals already positioned at the bottom of the social hierarchy, already marked as polluted, disposable, and outside the domain of social respectability, queer identity adds a further dimension of social abjection that intensifies family rejection, community ostracism, and vulnerability to violence. The compounding is not merely additive: queerness, as this paper argued in Section 2, drawing on Ambedkar, challenges the reproductive logic through which caste perpetuates itself, the endogamous, heterosexual family unit through which caste boundaries are maintained. A Dalit queer person thus threatens not only the sexual norms of their community but its mechanisms of social and biological reproduction, producing a level of social hostility that exceeds what either queer identity or Dalit identity alone would generate.

Within queer community, conversely, caste operates as a marker of difference that disrupts the assumption of shared identity on which queer solidarity is premised. Dalit queer testimonials document experiences of caste-coded condescension, aesthetic judgement, and social exclusion within LGBTQ+ spaces, the subtle but persistent marking of difference through language, manner, economic position, and bodily comportment that Section 4 analysed in the context of Pride spaces and digital environments. These experiences produce a specific form of alienation: the experience of belonging to a community based on one dimension of identity while being excluded from it based on another, of being recognised as queer but not fully legible as a subject within the cultural and social norms that govern queer community life.

This condition of double exclusion produces what this paper terms a position of radical marginality, a social location at the intersection of multiple systems of exclusion from which the inadequacy of single-axis frameworks is not a theoretical proposition but an immediate lived reality. From this position, the limits of both mainstream queer politics, which centres sexuality while eliding caste, and mainstream Dalit politics, which centres caste while marginalising or silencing sexuality, are not abstract but concrete. Dalit queer individuals do not have the option of choosing which dimension of their identity to foreground in different political contexts; their marginalisation is produced precisely by the intersection, and it can only be addressed at the intersection.

### **5.3 The Dalit Queer Project's Testimonial Writings: Enacting Intersectional Subjectivity**

The testimonial writings archived and published by the Dalit Queer Project are analytically distinctive in the way they construct the narrating subject. Unlike the autobiographical tradition of Dalit life writing in which the narrative of individual experience is typically organised around the central axis of caste oppression and resistance, Dalit queer testimonials construct subjects for whom caste and sexuality are simultaneously operative, neither reducible to the other and neither fully legible without the other. This formal characteristic is not incidental; it is the testimonials' central political claim, enacted through narrative structure rather than explicit argumentation.

The testimonials consistently refuse the sequential logic of identity narration, the form in which a subject first establishes their Dalit identity and then adds their queer identity, or vice versa. This refusal is significant because the sequential form would imply that caste and sexuality are separate dimensions of experience that happen to coexist in the same person, which is precisely the single-axis logic the testimonials contest. By constructing subjects in whom caste and sexuality are simultaneously operative and co-constitutive, the testimonials enact, in the register of lived experience, the intersectional ontology that Crenshaw theorises in the register of legal analysis and that Ambedkar's critique of caste as a bodily regime implies in the register of social theory.

This enactment has specific implications for the paper's legal argument. The legal frameworks analysed in Section 3, *Navtej Singh Johar*, NALSA, the Transgender Persons Act, and the BNS, all operate within a single-axis logic that constructs the queer or transgender individual as a bearer of a single protected identity. The Dalit Queer Project's testimonials reveal, from the inside of lived experience, why this single-axis construction is inadequate: it does not describe the subject who actually inhabits the intersection of caste and sexuality. The legal subject constructed by *Navtej Singh Johar*, the dignified individual whose autonomy and identity deserve constitutional protection, does not map onto the Dalit queer subject described in these testimonials, whose dignity is violated not only by state criminalisation but by the caste hierarchies operating within the very community that celebrated the judgment as liberation.

### **5.4 Dhruvo Jyoti and the Intellectual Labour of Intersectional Visibility**

Dhruvo Jyoti's public essays perform a specific intellectual and political function that extends the testimonial tradition of the Dalit Queer Project into the domain of mainstream public

discourse. Writing for audiences that include both savarna queer readers and non-queer Dalit readers, Jyoti's essays navigate the double address of Dalit queer public writing they must simultaneously make the experience of caste exclusion legible to readers who do not experience it and make the experience of queer marginalisation legible to readers who regard sexuality as a secondary or illegitimate political concern.

This double address is itself theoretically significant. It reveals that Dalit queer public writing operates under a distinctive form of discursive constraint it cannot assume the shared experiential basis that both savarna queer writing and non-queer Dalit writing can take for granted. Savarna queer writing addresses a community for whom queer experience is the assumed common ground; non-queer Dalit writing addresses a community for whom caste experience is the assumed common ground. Dalit queer writing has no such common ground to assume it must construct its audience while simultaneously making its argument, performing the intersectional subjectivity it theorises in the very act of addressing multiple publics simultaneously.

Jyoti's essays also document, with notable analytical precision, the forms of intellectual labour demanded of Dalit queer individuals within both savarna queer and mainstream Dalit spaces the labour of constantly explaining, justifying, and legitimating the intersection of identities that single-axis frameworks render incoherent. This labour is not merely personal but structural: it is the labour of occupying a social position that existing frameworks cannot adequately name, and of doing the theoretical and political work of making that position legible to communities whose own frameworks are part of the problem. This structural demand for explanatory labour is itself a form of inequality, a cost imposed on those at the intersection that those within single-axis frameworks do not bear.

### **5.5 Recognition, Redistribution, and the Conditions of Substantive Belonging**

The testimonial and cultural sources analysed in this section collectively reveal a gap between formal recognition and substantive belonging that Fraser's analytical framework names but cannot fully describe from the outside. Legal recognition the formal inclusion of queer and transgender individuals within constitutional protection does not automatically produce the conditions of substantive belonging within either civic society or queer community. Substantive belonging requires not only that a subject be formally recognised as a rights-bearer but that the social, cultural, and material conditions exist within which that recognition can be

meaningfully exercised.

For Dalit queer individuals, those conditions are systematically absent. The cultural capital required for legible participation in savarna queer spaces, the institutional access required to benefit from constitutional protections, the economic security required to act on legal rights all are distributed along caste lines in ways that formal recognition does not disturb. The redistribution Fraser identifies as the necessary complement to recognition would require, in this context, not only legal reform but a structural transformation of the conditions of access to queer community life, institutional resources, and political representation.

This argument returns the paper, at the close of its most experiential section, to its central theoretical claim: that the intersection of caste and sexuality produces a form of marginalisation that cannot be addressed through recognition alone whether the recognition takes the form of a Supreme Court judgment, a legislative provision, or the nominal inclusion of Dalit queer voices within mainstream LGBTQ+ organisations. Substantive justice for Dalit queer individuals requires a redistribution of the social, cultural, and material resources that make recognition meaningful and that redistribution requires, as its foundation, a political and legal framework that takes the intersection of caste and sexuality seriously as a constitutive rather than incidental dimension of both.

### **6.1 The Argument Restated**

This paper has traced a consistent pattern across the legal, activist, and experiential dimensions of Dalit queer life in contemporary India. Constitutional and legislative frameworks from the partial recognition of *Navtej Singh Johar* (2018) to the structural abandonment of the BNS (2023) have addressed caste and sexuality as parallel rather than intersecting systems, producing rights frameworks that formally extend to Dalit queer individuals while structurally failing them. Mainstream LGBTQ+ activism, shaped by savarna epistemological frameworks, has reproduced this pattern in the cultural and political domain, centring upper-caste queer experience as representative while marginalising the compounded marginalisation of Dalit queer individuals within the very spaces that claim to include them. And the testimonial and intellectual production of Dalit queer individuals and collectives, most significantly the Dalit Queer Project and the public writing of Dhruvo Jyoti, has revealed, from within lived experience, the inadequacy of every framework that attempts to address caste and sexuality sequentially or separately.

The central argument this paper has advanced is not simply that Dalit queer individuals are

doubly marginalised, though they are. It is that the intersection of caste and sexuality produces a qualitatively distinct form of marginalisation that existing legal, political, and theoretical frameworks cannot adequately capture or address because those frameworks are structurally committed to single-axis analysis. The inadequacy is not accidental or remediable through minor adjustments; it is constitutive of how those frameworks are organised. Addressing it requires not the inclusion of Dalit queer individuals within existing frameworks but the transformation of those frameworks from their foundations.

## 6.2 The Three-Position Trajectory and Its Implications

One of this paper's specific analytical contributions is the identification of a three-position legal trajectory in the treatment of queer and transgender persons under Indian law: criminalisation under the IPC, partial recognition through *Navtej Singh Johar*, and structural abandonment under the BNS. This trajectory is significant not only as a historical description but as a diagnostic of the structural limits of rights-based reform when pursued without intersectional foundations.

The movement from criminalisation to recognition was celebrated as progress and in important respects it was. The removal of criminal sanction for consensual same-sex relations was a necessary condition for any meaningful queer politics in India. But *Navtej Singh Johar's* recognition was partial in two senses: it was partial in scope, retaining Section 377 for non-consensual acts without developing adequate protections for those most vulnerable to such acts; and it was partial in its social reach, producing benefits that were distributed along caste lines. The movement from recognition to structural abandonment under the BNS reversed even this partial gain, creating a legislative vacuum whose consequences fall most severely on those whose social vulnerability was already greatest.

This trajectory illuminates a structural dynamic that extends beyond the specific legal provisions at issue. Rights-based reform, when pursued within single-axis frameworks, tends to produce recognition for the most socially privileged members of marginalised groups those whose marginalisation is least compounded by other systems of exclusion while leaving those at the intersection of multiple systems of oppression either unaddressed or actively disadvantaged by reforms designed without them in mind. This is not a failure of individual judgments or legislators; it is a structural consequence of the single-axis logic that organises Indian constitutional jurisprudence. Addressing it requires a different kind of legal reasoning one that this paper has argued must be rooted in Ambedkar's constitutional vision.

### **6.3 Ambedkar's Unfinished Project**

B. R. Ambedkar designed the Indian Constitution as an instrument of structural transformation a legal framework capable of dismantling the graded inequality of caste by guaranteeing substantive rather than merely formal equality to all citizens. His insistence on constitutional morality over social morality, his critique of caste as a system that reproduces itself through the regulation of the body, and his understanding that formal legal equality is insufficient in a society structured by deep social hierarchy together constitute a jurisprudential vision that is, in its foundational commitments, already intersectional. Ambedkar understood that the Constitution could not fulfil its emancipatory promise by addressing forms of oppression one at a time, in isolation from each other, because the social reality it sought to transform was structured by the simultaneous operation of multiple overlapping hierarchies.

The application of this vision to the intersection of caste and sexuality is not a departure from Ambedkar's project but its extension. Ambedkar did not theorise queer experience the historical and political context in which he wrote did not foreground it. But the logic of his constitutional vision that substantive equality requires the active dismantling of the structural conditions that produce inequality, not merely the formal prohibition of discriminatory acts applies with full force to the compounded marginalisation of Dalit queer individuals. A jurisprudence faithful to Ambedkar's constitutional vision would not treat *Navtej Singh Johar* as a sufficient achievement; it would recognise it as a necessary but radically incomplete step toward the constitutional equality Ambedkar envisioned.

The BNS's structural abandonment of queer and transgender persons is, in this light, not merely a legislative failure but a constitutional betrayal a retreat from the transformative commitments Ambedkar's Constitution embodies. Restoring those commitments in the context of Dalit queer marginalisation requires the development of what this paper has termed an intersectional jurisprudence a mode of constitutional reasoning that reads Articles 15, 17, and 21 as an integrated commitment to dismantling overlapping systems of hierarchy rather than as discrete protections against discrete forms of discrimination.

### **6.4 Toward a Caste-Aware Queer Constitutionalism**

What would a caste-aware queer constitutionalism look like in practice? This paper suggests four foundational requirements. First, anti-discrimination legislation that explicitly addresses intersecting grounds that recognises discrimination on the basis of caste and sexuality operating simultaneously as a legally cognisable harm distinct from discrimination on either ground

alone. Second, gender recognition legislation grounded in self-identification, free from the bureaucratic certification processes that reproduce caste-based exclusion by demanding social capital that Dalit transgender individuals disproportionately lack. Third, gender-neutral sexual violence protections that extend to men and transgender persons regardless of social position addressing the legislative vacuum created by the BNS's repeal of Section 377. Fourth, judicial reasoning in cases involving queer and transgender individuals that considers the caste dimensions of the discrimination at issue, developing constitutional doctrine capable of addressing compounded rather than single-axis marginalisation.

These are not peripheral demands they are the minimum constitutional requirements of a legal framework genuinely committed to the substantive equality Ambedkar's Constitution promises. They are also, notably, demands that emerge from within the constitutional tradition rather than against it they ask Indian law to fulfil its own foundational commitments rather than to adopt external frameworks. The resources for an intersectional jurisprudence are already present in the Constitution Ambedkar designed; what is required is the political and judicial will to develop them.

Beyond the legal domain, a caste-aware queer constitutionalism requires a corresponding transformation of queer political culture a recognition within LGBTQ+ movements and organisations that the savarna epistemological frameworks that have shaped mainstream Indian queer activism are not neutral but are themselves a form of political exclusion. The Dalit Queer Project, Dhruvo Jyoti, and the broader formation of Dalit queer intellectual and activist production have already begun this work producing the theoretical and political frameworks that a genuinely intersectional queer politics requires. The task for mainstream queer activism is not to incorporate these frameworks as an addendum but to recognise them as a foundational challenge to its existing premises.

### **6.5 Closing: The Constitutional and the Personal**

Ambedkar famously concluded *Annihilation of Caste* with the argument that the annihilation of caste required not merely legal reform but a revolution in the moral and social order a transformation of the values, practices, and relationships through which caste reproduces itself in everyday life. The struggle for Dalit queer justice stands in a similar relationship to legal reform: legal change is necessary but not sufficient. The constitutional recognition of Dalit queer individuals as full bearers of equal citizenship as persons whose dignity, autonomy, and belonging are protected not in spite of but including the intersection of their caste and queer

identities requires both the legal transformation this paper has argued for and the cultural and political transformation that Dalit queer activists and intellectuals are already advancing.

The title of this paper *Beyond Section 377* is now, with the BNS's erasure of that provision, literally accurate in a way it was not when first conceived. Indian queer legal history has moved beyond Section 377 but it has done so without arriving at justice. The task that remains is to build the constitutional, legal, and political frameworks capable of making that journey's destination something other than silence. Dalit queer lives, in their compounded specificity and their insistence on being seen whole, are both the measure of how far that journey has yet to go and the most compelling argument for why it must be made.

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