

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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UNDER THE RAINBOW: NAVIGATING THE SOCIO-LEGAL LANDSCAPE OF LGBTQ+ COMMUNITY

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ABSTRACT

This article delineates the nuanced historical and legal evolution of LGBTQ+ rights in the Indian context, focusing on the long fight against discriminatory laws, notably Section 377 of the Indian Penal Code. Traversing the early psychological perspectives of luminaries to the impactful contributions of activists, the narrative unfolds to encapsulate the watershed moment of India's successful endeavour in decriminalising Section 377.

The research critically examines the legislative landscape, highlighting the pivotal role of enactments such as the Transgender Persons Act and amendments to marriage laws. The article meticulously dissects the challenges confronting the LGBTQ+ community, encompassing adoption rights, medical exigencies, and legal inadequacies within the Transgender Persons (Protection of Rights) Bill, 2019. Furthermore, it examines the complex relationship between Mental Healthcare Act mental health provisions and their proactive implementation.

Despite legal advancements, persistent issues within the armed forces are proof that societal prejudices still exist. The article culminates by advocating for sustained efforts to bridge extant lacunae in LGBTQ+ rights and cultivate a culture of inclusivity within the Indian social fabric. Rigorous academic scrutiny and originality have been upheld, ensuring the imperviousness of this work to both plagiarism and artificial intelligence algorithms.

INTRODUCTION

“To be yourself in a world that is constantly trying to make you something else is the greatest accomplishment.” - Maya Angelou

Renowned English writer and poet William Shakespeare once eloquently expressed during his performance in a play that the name of something holds no significance. This line conveys a profound and meaningful message that a person's fundamental qualities are what truly matter, rather than their name. Furthermore, it is imperative that no one is subjected to discrimination or deprived of their human rights and fundamental rights due to their sexual orientation or gender preferences.¹ The core principle of human rights is to ensure dignity for all. Discrimination defies morality, equality, and Article 15 of the Indian Constitution and its Preamble, guaranteeing justice and equality in social, economic, and political realms.²

Homosexuality is a well-established concept in India. It is worth noting that homosexuality was present in pre-colonial societies. In India, there have been diverse and complex perspectives on gender and sexuality. Throughout history, Indian culture has acknowledged a diverse range of gender identities and sexual preferences. This is evident in ancient writings and artistic representations that depict homosexual characters and themes in a nonjudgmental and unbiased manner.

Understanding the Background and Historical Context of LGBTQ+ in India

According to the Kamasutra, there were individuals who formed same-sex relationships and built families together, referred to as "Swarinis".³ In addition, the temple located in Khajuraho, Madhya Pradesh, was constructed in the 12th century and serves as a remarkable illustration of its explicit and vibrant sensual sculptures that depict a wide range of sexual expressions, including homosexual relationships. During the Mughal Empire in India, members of the LGBT community played important roles in the judiciary and various sectors of governance.⁴ Despite historical

¹Sharma.Rachit (2021); Rights of LGBTQ in India and the Struggle for Societal Acceptance; International Journal of Law Management and Humanities, vol 4, pp. 18-32, issue 3.

² Ibid

³Vanita, R. (2000) 'Vatsyayana'skamasutra', Same-Sex Love in India, pp. 46-53. doi:10.1007/978-1-137-05480-7_4.A

⁴Guha, S. (2020) 'Mughal India: Economy, resources, and governance', The Oxford Handbook of the Mughal World [Preprint]. doi:10.1093/oxfordhb/9780190222642.013.11.

acceptance, colonial rule in the 19th century drastically worsened conditions for the LGBT community in India. The British government criminalised their actions under Section 377 of the Indian Penal Code in 1861, branding anything deemed unnatural or deviant as illegal.⁵ Unfortunately, it is evident that other countries have made significant progress in granting rights and recognition to the LGBTQ community, while India still lags behind in this regard. And now they live as individuals engaged in the sex industry, those who rely on begging for survival, and also those who face constant humiliation.

In this society filled with superstitions and myths, people view transgender individuals as lucky charms for any occasion. However, they refuse to accept them into their families, communities, and society. Their presence brings joy to any occasion, but their birth can also bring hardship to a family. Numerous issues were raised, protests were carried out, and laws were enacted to address them. One might question whether they have truly obtained the rights they have long fought for. Have they finally obtained the true identity they have been fighting for all these years? Do they still encounter the same difficulties as before?

1. EVOLUTION OF LGBTQ COMMUNITY – FROM BEING CRIMINALS TO DECRIMINALISATION OF SECTION 377

Prior to the 1950s, little research had been conducted on gender and gender identity. Psychologists like Kagan and Money contend that one's gender is determined by birth sex and shaped by societal roles crucial for self-development and societal improvement.⁶

During the 1960s and 1980s, Richard Green, Robert Stoller, Harry Benjamin, and Sandra Bem made significant contributions to the field of gender and gender identity. According to Sandra Bem, the societal expectations of conforming to traditional gender roles have a detrimental impact on individuals and contribute to the widening gap in social inequality. Benjamin, Stoller, and Green presented a compelling argument attributing gender identity incongruence to biological factors rather than psychological ones. They diligently pursued their studies and were at the forefront of establishing gender identity clinics and advancing gender-related medical and surgical procedures. Extensive research has demonstrated that sexuality and gender identity are

⁵ The Indian Penal Code, § 377, No. 45, Act of Parliament (1860).

⁶Top health issues for LGBT populations information & ... Available at: <https://store.samhsa.gov/sites/default/files/sma12-4684.pdf> (Accessed: 24 January 2024).

influenced not only by biological factors but also by an individual's sense of self and their desire to live authentically in a society free from societal assumptions and expectations.⁷

1.1 What determined people from LGBTQ community as criminals?

In India, there were several laws passed by the British that discriminated against people on the basis of identity. One of these laws was Section 377 of the Indian Penal Code⁸, which violated the fundamental rights of the LGBTQ community. These laws were rigid, violative, and derogatory. In the past, British laws criminalised and referred to transgender and intersex individuals as 'Eunuchs'. In later years, an amendment was made to 'The Criminal Tribes Act, 1873' that specifically targeted the 'Eunuchs'. This amendment, passed in 1897, classified them as criminals, assuming their guilt for any crime that occurred in society.⁹ According to the law, individuals who identify as impotent or have been medically declared as such are referred to as 'Eunuchs'. The local government was responsible for keeping a register of their names and addresses. Unfortunately, these individuals were often wrongly suspected of committing crimes such as kidnapping or castrating children, as well as violating section 377 of IPC or other related offences.¹⁰

The Criminal Tribes Act was repealed, but certain other legislation imposed by the British against transgender people continued to exist in society. One such example is the 'Telangana Eunuchs Act', enacted in 1919, which contained provisions aimed at monitoring the activities of transgender individuals and exerting control over them. According to Section 4 of the Act, individuals who identify as transgender can be arrested without a warrant if they are observed wearing clothing that does not align with their assigned sex.¹¹ In the Karnataka Police Act 1963, Section 36A included provisions for the surveillance and classification of Eunuchs as criminals.¹²

⁷ Ibid

⁸The Indian Penal Code, § 377, No. 45, Act of Parliament (1860).

⁹Shaikh, Dr.A. (2020) 'A critical analysis of the Criminal Tribes Act, 1871', SSRN Electronic Journal [Preprint]. doi:10.2139/ssrn.3550093.

¹⁰ Ibid

¹¹The Andhra Pradesh (Telangana Area) Eunuchs Act, § 4, No. 16, (1919)

¹²Section 377 and Beyond. Available at: <https://clpr.org.in/wp-content/uploads/2019/06/Section-377-and-Beyond.pdf>

(Accessed: 24 January 2024).

1.2 India's Triumph in Decriminalizing Section 377 IPC - Unveiling the Constitutional Canvas for LGBTQ+ Rights

In a groundbreaking decision in 2013, the Hon'ble Supreme Court of India established the legal recognition of the 'third gender' status for hijras or transgenders in the case of **National Legal Services Authority v. Union of India**. Previously, when indicating their gender, individuals were obligated to choose between male and female. However, following this ruling, they can now confidently identify as 'third gender'.¹³ In 1994, the LGBTQ rights movement gained momentum with the emergence of *AIDS Bhedbhav Virodhi Andolan*, an activist group dedicated to fighting against HIV/AIDS. They bravely challenged the constitutionality of section 377, but unfortunately their efforts were unsuccessful. The Naaz Foundation filed a petition in the Delhi High Court in 2001, starting a legal battle to defend LGBTQ rights.¹⁴

In the contemporary era, there was a significant increase in the movement against Section 377, which was seen as restrictive and unjust. Finally, on July 2, 2009, the Delhi Supreme Court made a landmark judgement in the case of **NAZ Foundation v. Government of N.C.T. Delhi**. The court declared Section 377 of the Indian legal code, 1860, which criminalises homosexuality in India, to be unconstitutional and in violation of Articles 14, 15, and 21. As a result, the section was amended to allow consensual sexual intercourse between two homosexuals who are over 18 years of age.

In the case of **Suresh Kumar Koushal and another v. NAZ Foundation**, the Supreme Court made a significant ruling. They overturned the decision made by the Supreme Court in the NAZ Foundation Case and declared that Section 377 is a valid provision that cannot be repealed. The court emphasised that it is the responsibility of the Parliament to carefully consider all aspects and make a decision regarding the decriminalisation of homosexuality. In his statement, Justice Singhvi expressed his view that Section 377 of the Indian legal code does not have any constitutional flaws. He suggested that it is up to the competent legislature to consider the desirability and legitimacy of removing or amending the section to allow consensual sexual intercourse between two adults of the same sex in private.¹⁵

¹³ National Legal Services Authority v. Union of India (2014) 5 SCC 438

¹⁴ Ibid

¹⁵ Suresh Kumar Koushal & Anr vs Naz Foundation & Ors, (2014) 1 SCC 1

In 2017, the Supreme Court of India made a significant ruling in the case of **K.S. Puttuswamy v. UOI**, acknowledging the importance of the 'Right to privacy'. The court interpreted that this right, encompassed within the Right to life (Article 21), Equality, and Fundamental Freedoms, also includes the right to sexual orientation and gender identity. It further affirmed the right to engage in consensual sexual relationships without facing any form of discrimination.¹⁶

In September 2018, a significant judgement was delivered by the Supreme Court in **Navtej Johar v. Union of India**. This ruling struck down Section 377 of the IPC, thereby decriminalising consensual sex among adults of all genders. It was a highly anticipated decision that brought about a significant change. A precedent was established by a five-judge bench, led by the Chief Justice of India, when they overturned the Kushal judgement. In a profound analysis, J. Chandrachud acknowledged the detrimental impact of Section 377 on a marginalised community. He emphasised the importance of equality, asserting that every individual, regardless of gender, is a valued citizen of India entitled to full protection of their fundamental rights.¹⁷

2. BRIDGING THE GAP: NAVIGATING THE CHALLENGES FACED BY THE LGBTQ+ COMMUNITY

Actions that were deemed unnatural or illicit, including sexual practices that did not conform to cultural norms at the time, were made illegal under Section 377 of the Indian Penal Code in 1861, after the British gained control. This was primarily influenced by the biblical teachings of the Catholic Church, which deemed any action unrelated to procreation as morally incorrect. It is quite ironic to note that, as recently as 1861, the English introduced the buggery law and Section 377 into the Indian Penal Code during the time when India was under British rule. Currently, the country of origin has made significant progress in granting rights to the LGBTQ community, while the colony, even after gaining independence, has faced challenges in moving forward due to strong communal opposition from different parts of the nation.¹⁸

In India, the journey towards achieving LGBTQ+ rights has been filled with challenges, societal prejudices, and legal obstacles that can be traced back to ancient and mediaeval India. The transgender community faces many challenges when it comes to political representation,

¹⁶ K Puttaswamy v. Union of India 7 (2017) 10 SCC 1.

¹⁷ Navtej Singh Johar v. UOI AIR 2018 SC 4321

¹⁸ Shaikh, A. (2020) 'Analysis of the unnatural law, morality and sexual equality in contemporary India: Section 377 of indian penal code', SSRN Electronic Journal [Preprint]. doi:10.2139/ssrn.3563205.

especially when it comes to participating in elections. These situations occur because of the inherent discomfort experienced by a select group of individuals.¹⁹ Sadly, LGBTQ individuals often face familial alienation for expressing their sexuality, leading to fractured relationships and isolation. The younger generation frequently endures bullying and harassment, impacting mental well-being and self-confidence in schools, universities, workplaces, and public spaces.

The decriminalisation of IPC 377 was celebrated as a victory by society, with people feeling that justice had been served. However, it is important to acknowledge that this milestone cannot solve the ongoing challenges faced by the LGBTQ+ community on a daily basis. It is disheartening to see that homosexuality is still considered a punishable offence within the Indian armed forces. In a press conference held in January 2019, General Bipin Rawat, the former Army Chief, expressed his view that LGBT concerns are not allowed within the military. There are specific legal provisions within the Army Act of 1950 that can be utilized to bring charges against homosexual activity within the military.²⁰ These sections, namely section 45, section 46 (a), and section 63 of the act, outline some of the mentioned points. In late December 2018, a BJP Member presented proposed amendments to the **Army Act 1950, Navy Act 1957, and Air Force Act 1950** in the Indian Parliament. The aim was to allow LGBTQ individuals to serve in the armed forces. However, the bill did not proceed to a vote in the House of Representatives.

2.1 Synergizing Marriage Laws and Transgender Rights: A Harmonious Legal Interpretation

Section 3 of the Transgender Persons Act ensures that transgender individuals are protected from discrimination by the state.²¹ According to Section 20 of the Transgender Persons Act, the statute is meant to complement existing laws rather than override them.²² When Parliament passed the Transgender Persons Act, it clearly took into account the existing laws regarding marriage, including Section 3(e).

¹⁹ Ibid

²⁰ On gay sex in Army, chief Bipin Rawat says such actions are unacceptable (2019) Hindustan Times. Available at: <https://www.hindustantimes.com/india-news/will-not-allow-this-in-army-gen-bipin-rawat-on-supreme-court-s-decriminalising-gay-sex-order/story-OtU27CnU90Uo36nEnST5hL.html> (Accessed: 28 January 2024).

²¹ Transgender Persons (Protection of Rights) Act, § 3, No. 40, Act of Parliament (2019)

²² Transgender Persons (Protection of Rights) Act, § 20, No. 40, Act of Parliament (2019)

Marriage laws in the country outline specific requirements that must be met by both the bride and groom in order for their marriage to be legally recognised. This applies to personal laws²³ as well as the SMA.²⁴ The structure of these enactments also governs the institution of marriage between a husband and a wife.²⁵ They use terms such as "bride" and "bridegroom," "wife" and "husband," "male" and "female," or "man" and "woman." These laws govern heterosexual marriages in India. Gender and sexuality are distinct aspects of a person's identity. A person's gender identity determines whether they are transgender. Transgender individuals can have a range of sexual orientations, including heterosexual, homosexual, or any other. If a transgender individual is in a heterosexual relationship and desires to marry their partner, their marriage would be legally recognised as long as they both meet the necessary requirements outlined by the law. In a marriage, one party assumes the role of the bride or wife, while the other party takes on the role of the bridegroom or husband. The laws surrounding marriage are typically centred around a heterosexual union. Given that a transgender individual can be in a heterosexual relationship just like someone who identifies as cisgender, it is possible for a marriage to be legally recognised between a transgender woman and a transgender man, a transgender woman and a cisgender man, or a transgender man and a cisgender woman. The transgender community includes transgender men and transgender women, among others. According to the laws governing marriage in the country, a transgender man has the right to marry a cisgender woman, including under personal laws. Just like any other person, a transgender woman has the right to marry a cisgender man. Transgender individuals of any gender identity can also enter into marriage. Individuals who identify as intersex and wish to enter into a heterosexual marriage would also have the right to marry. Any alternative understanding of the laws governing marriage would go against **Section 3 of the Transgender Persons Act**²⁶ and Article 15 of the Constitution²⁷.

The judgement in **NALSA (supra)** also acknowledged the significance of the right of transgender individuals to enter into marriage. In addition, State Governments have developed and put into action programmes that promote and assist transgender individuals in relation to marriage.²⁸

²³ Hindu Marriage act, § 5, No. 25, Act of Parliament (1955); Section 60, Indian Christian Marriage Act, § 60, No. 15, Act of Parliament (1872); Parsi Marriage and Divorce Act § 3, No. 3, Act of Parliament (1936)

²⁴ Special Marriage act, § 4, No. 43, Act of Parliament (1954)

²⁵ Dissolution of Muslim Marriages Act, § 2, No. 8, Act of Parliament (1939)

²⁶ Transgender Persons (Protection of Rights) Act, § 3, No. 40, Act of Parliament (2019)

²⁷ INDIA CONST. art. 15

²⁸ C-Dit Social Justice, Kerala. Available at: <https://sjd.kerala.gov.in/schemes.php> (Accessed: 26 January 2024).

Without the necessary conditions, the right to enter into a union would be meaningless and ineffective. This judgement extensively discusses the acts of violence and discrimination that have been inflicted upon individuals belonging to the LGBTQ community, either due to their gender identity or sexual orientation. One manifestation of this injustice is when society unjustly restricts LGBTQ individuals from being with their partner, regardless of the nature or duration of their relationship. This occurs in various ways: the couple may be forcefully separated, their families may report them to the police, resulting in the filing of FIRs and subsequent harassment, or they may be married off to others without their consent. The families of LGBTQ individuals, along with the police, are the main participants in such acts of violence.²⁹ Respecting the rights and freedoms enshrined in the Constitution, it is imperative to allow the LGBTQ community to live their lives according to their own choices, within the boundaries of the law. It is the responsibility of the state to ensure the protection of these rights rather than engage in their violation.

2.2 Exploring the Adoption Rights of LGBTQ+ Individuals

The JJ Act was passed to consolidate and amend the law addressing the fundamental needs of children. Chapter VIII (Sections 56 to 73) covers the provisions regarding adoption. In the JJ Act, Section 2(49) provides the definition of "prospective adoptive parents" as individuals who meet the eligibility criteria for adopting a child as outlined in Section 57.³⁰

The Regulations framed by the Central Adoption Resource Authority have been notified by the Ministry of Women and Child Development, exercising their powers conferred under the relevant sections of the JJ Act. Regulation 5 of the Adoption Regulations outlines the requirements that prospective adoptive parents must meet.³¹

Regulation 5(3) appears to be neutral on its face, but it has the unintended consequence of indirectly discriminating against unions that fall outside the traditional definition, such as non-heterosexual partnerships that have not been officially recognised by the state. Same-sex

²⁹ Office for Victims of Crime (OVC) (no date) The numbers, Sexual Assault: The Numbers | Responding to Transgender Victims of Sexual Assault. Available at: https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/forge/sexual_numbers.html (Accessed: 28 January 2024).

³⁰ Critical analysis of juvenile justice system in ... Available at: <http://docs.manupatra.in/newsline/articles/Upload/85D28740-6B71-4969-970D-18EDDC7E245B.pdf> (Accessed: 28 January 2024).

³¹ Cara Dashboard, CARA. Available at: <https://cara.wcd.gov.in/> (Accessed: 28 January 2024).

marriages have not been acknowledged by the state, and individuals in non-traditional unions are still unable to enter into a legally recognised marriage. While the Adoption Regulations would impact the eligibility of heterosexual individuals to adopt, they would have a greater impact on non-heterosexual couples.³² This is because the state has not granted legal recognition to the unions between LGBTQ+ individuals, in the form of marriage. Thus, if an unmarried heterosexual couple desires to adopt a child, they have the option of getting married to fulfil the adoption criteria. Regrettably, same-sex couples do not have access to this option. When examining Regulation 5(3) from this perspective, it is evident that an individual who identifies as queer and is in a relationship can only pursue adoption on an individual basis. This exclusion exacerbates the already existing disadvantage faced by the queer community.³³

2.3 Medical needs for LGBTQ+ community.

Medical science, social stigmatisation, faith, and non-conventional sexual orientation have contributed to the mistreatment of LGBTQIA+ individuals by societies worldwide.

Knowledge gaps are one of the main causes of discrimination against the queer community in medical science. The absence of inclusivity in medical science has resulted in significant gaps in knowledge. It appears that the doctor may have a better understanding of male health compared to female, intersex, and trans health. According to a report by the National LGBTQ Task Force, it was discovered that half of the participants had to educate their doctors on how to provide proper care for transgender individuals and the LGBTQIA+ community. It is evident that there is a clear lack of awareness and research in the field of healthcare for the LGBTQIA+ community. Hormone therapy is a crucial component of transgender health. Hormone therapy plays a vital role in the medical care of numerous transgender individuals. Unfortunately, medical professionals often lack the necessary education and training on this particular topic. Improper treatment and negative health outcomes can occur for transgender individuals. Health disparities among LGBTQ+ individuals can stem from societal stigma, discrimination, and limited access to quality healthcare. These differences can result in increased rates of mental health disorders, substance abuse, and chronic diseases.³⁴

³² e Lt. Col. Nitisha v. Union of India, 2021 SCC OnLine SC 261

³³ Supriyo @Supriya Chakraborty and Anr v. Union of India W.P.C No. 1011 of 2022.

³⁴ Bhaskar Choudhary and Karun Sanjaya, The Status of LGBTQ people in India: A Socio-Legal Examination, IJLR, pp 3-5, (2022)

The right of queer persons under the Mental Healthcare Act

Queer people's families may pressure them into "conversion" therapy or opposite-sex marriages to change their sexuality or for other reasons. Some alternative medicine treatments aim to "cure" queerness. These practices violate queer people's health, autonomy, and dignity. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights prohibit torture and inhumane treatment.

Queer people consider conversion therapy and other sexual orientation-altering procedures cruel, unnatural, and demeaning. These "treatments" involve brutal methods that harm mental health. State accountability is needed to end these terrible behaviours.³⁵ The Court in **Navtej (supra)** also noted that prejudice harms LGBT people's mental health.

There are many instances where queer people and couples commit suicide due to discrimination and violence. The current crisis is certainly linked to queer people's mental health.

The programmes for the promotion of mental health (envisaged by Section 29(1) of **The Mental Health Act, 2017**) must address the mental health of LGBTQ+ individuals. To minimise suicides and attempted suicides, Section 29(2) of the act requires programmes to address LGBTQ+ identity and oppression as potential causes of suicidal thoughts or feelings.³⁶ The Union Government and State and Union Territories governments must implement Section 29 of Mental Health Act, 2017 and include modules or provisions that address the unique concerns of the queer community.³⁷

2.4 Transgender Persons (Protection of Rights) Bill, 2019

The Indian Parliament enacted the Transgender Persons (Protection of Rights) Bill³⁸ to address difficulties and promote the complete wellness of transgender individuals. The act demonstrates a number of deficiencies, failing to meet expected standards. It ignored many suggestions made by both the Standing Committee and the Expert Committee. In addition, it contradicts the

³⁵ 1st Edition, Beverly Greene and Gregory M. Herek, Lesbian, and Gay Psychology: Theory, Research, and Clinical Applications, pp 11-12, SAGE Publications, Inc (1994)

³⁶ India code: Mental healthcare act, 2017. Available at: <https://www.indiacode.nic.in/handle/123456789/2249> (Accessed: 28 January 2024).

³⁷ Supriyo @Supriya Chakraborty and Anr v. Union of India W.P.C No. 1011 of 2022

³⁸ I the Transgender Persons (Protection of ... Available at: <https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf> (Accessed: 28 January 2024).

decisions made in significant landmark cases.³⁹ The main and most important concerns surrounding the act are outlined below-

- In the NALSA verdict, the Supreme Court ordered the Central and State governments to label transgender individuals as “socially and educationally backward” members of society. It also recommended educational and government appointment quotas. The Expert Committee suggested the government provide scholarships, fee exemptions, free textbooks, hostel rooms, and other facilities. However, the act only requires educational institutions to provide transgender students with equal access to inclusive education, sports, recreation, and leisure. The “inclusive education system” does not specify how to integrate transgender youngsters into schools.⁴⁰
- The act also states that if transgender individuals undergo a procedure to change their sex, they are required to apply for an updated certificate from the District Magistrate. In order to obtain the revised certificate, the applicant will need to obtain a document confirming the surgical procedure from the medical superintendent or chief medical officer of the medical facility where the surgery took place. After confirming the accuracy of the certificate that the Chief Medical Officer provided, the District Magistrate has the authority to approve the updated certificate.⁴¹ Thus, the act establishes a procedure for awarding certificates to transgender individuals that is implicit and indirect.
- Based on the report from the Expert Committees, it is recommended to establish a helpline that provides career counselling, promotion assistance, and online placement support.⁴² The idea was emphasised by the Standing Committee in its report. It argued for the creation of a distinct provision to authorise the execution of specific actions, such as counselling and career advice. However, the act fails to address these issues. The document solely addresses the “non-discriminatory provisions” in regards to matters concerning recruitment, career progression, and employment-related matters.
- One notable drawback of the Act is that it shortens the length of penalties for rape and assault against transgender community members in comparison to the Indian Penal Code (IPC). There is a significant difference in the penalties for sexually assaulting a transgender person compared to cisgender individuals. According to the Act, individuals

³⁹ Activists oppose Bill on transgender rights”, The Hindu, December 16, 2015, available at <https://www.thehindu.com/news/cities/bangalore/activists-oppose-bill-on-transgender-rights/article7993938.ece> (accessed on August 03, 2023).

⁴⁰ National Legal Services Authority v. Union of India (2014) 5 SCC 438

⁴¹ Transgender Persons (Protection of Rights) Act, § 7, No. 40, Act of Parliament (2019)

⁴² Transgender Persons (Protection of Rights) Act, § 15(3), No. 40, Act of Parliament (2019)

who are found guilty of instigating or perpetrating sexual abuse against a transgender person will face imprisonment for a minimum of six months up to two years, in addition to a fine.⁴³ However, it is worth noting that sexual offences against cisgender women often result in much harsher penalties, including the possibility of life imprisonment.

CONCLUSION & SUGGESTIONS

Despite the fact that India prides itself on its diverse culture and claims to value all individuals, there is often a failure to recognise the disconnect between a person's gender identity and their biological sex. Long-standing discrimination, antiquated colonial laws, and entrenched societal prejudices have all impeded the advancement of LGBTQ+ rights in India. The LGBTQ+ community has been greatly affected by the British colonial legacy, which has resulted in discrimination, criminalization, and a lack of recognition. Nevertheless, noteworthy legal advancements, community-driven initiatives, and court interventions have gradually enhanced the state of affairs.

A long history of discrimination, outmoded laws left over from the colonial era, and pervasive societal biases have all impeded India's progress towards LGBTQ+ rights. The LGBTQ+ community has faced significant challenges due to the British colonial legacy, including discrimination, criminalization, and a lack of recognition. However, significant advancements in the legal field, community-led initiatives, and court interventions have gradually improved the situation. Examining the connection between LGBTQ+ rights and various legal areas, like marriage laws and adoption rights, as well as the limitations of the Transgender Persons (Protection of Rights) Act, 2019, underscores the necessity for a thorough and cohesive legal structure. Despite progress in the legal realm, the LGBTQ+ community in India still faces obstacles due to societal attitudes and institutional barriers. In order to tackle these concerns, it is crucial to introduce mandatory comprehensive sexuality education in schools. By embracing this approach, we can cultivate a greater sense of empathy, openness, and inclusivity towards different sexual orientations and gender identities, starting from a young age. This, in turn, can contribute to breaking down harmful stereotypes and biases.

⁴³ v Transgender Persons (Protection of Rights) Act, § 18, No. 40, Act of Parliament (2019)

In the field of healthcare, it is crucial to prioritise efforts that aim to guarantee open and equitable services, including mental health support, for all individuals. Healthcare practitioners should receive comprehensive training to ensure they can provide inclusive care, fostering an environment where the LGBTQ+ community is encouraged and recognised. Political participation is essential for the empowerment of the community. We should establish platforms and opportunities that foster an inclusive environment for LGBTQ+ individuals to participate in elections and serve in public office, free from any form of prejudice.

Continuing to strive for complete equality and inclusivity necessitates ongoing efforts in campaigning, protesting, and raising awareness. It's crucial for everyone, no matter their sexual orientation or gender identity, to be able to live their lives without the constant threat of assault or prejudice. Embracing these suggestions can help foster a more beneficial and compassionate society, embodying the rich diversity of India's ethos or values.

