

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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LGBTQ ACTIVISM & ADVOCACY OF THEIR LEGAL RIGHTS

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Abstract:

Lately, Lesbian, Gay, sexually open, Transsexual and Queer (LGBTQ) approaches

have changed in India. However, contrasted with non-individuals from the LGBTQ bunch, LGBTQ inhabitants keep on experiencing a few social and lawful difficulties. The court has a commitment to give a fair and sensible decision, the public authority has a commitment to see that the judgment arrives at general society, and the overall population has a commitment to acknowledge the court's choice energetically. The essential tenet of the concept of human rights is that all people are created equally. All people should be treated fairly since they all have worth. Anything that diminishes that dignity is wrong since it breaches the equality principle and makes room for discrimination. As one of the most contentious topics in the world, homosexuality raises concerns about human rights. Only on the grounds with who they love and also how they appear can individuals from all over the world becoming a target of violence and prejudice. Even if the laws have changed, the fact that the state apparatus continues to use violence and discrimination towards the LGBT community is proof of the low status that it truly accords to that community. Same-sex marriage remains a distant dream in India. Specifically, the paper refers to transsexual people and legal declarations as it analyzes the extensive clash of the LGBTQ People group for Essential Fundamental Freedoms and the Disparity they experience in all parts of life.

Keywords: LGBTQ, Human Rights, Section 377, Socio-legal, Homosexuality, Transgender

LGBTQ ACTIVISM & ADVOCACY OF THEIR LEGAL RIGHTS

1.1 INTRODUCTION:

Individual autonomy, equality, & freedom without discrimination, recognition of their existence & solitude, are the four main ideas that make up the four strong support of our Constitution.¹ Regardless of race, caste, sex, religion, community, or socioeconomic status, the inherent spirit of our country's rule is to offer every subject an equal chance to develop as a human being, whether he is the majority of the minority commune. The state must guarantee that no human being ought to be victimized. Granville Austin outlined three distinct strands of the Constitution of our country in his analysis of the first 50 years of its operation: (i) protecting the country's unity & integrity, (ii) establishing the institution & spirit of democracy, & (iii) promoting positive changes in the society. In what he brilliantly defines as "a seamless web," the quality on reciprocation and reliant open & intimately intertwined. Moreover, there cannot be positive changes in society until it is ensured that each country's citizens can utilize his/her capability to the utmost. Our Constitution was meant for people of our country as said in the beginning "We the People."

However, the sexual offenses & sexual exploitations done against the LGBTIQ+ commune owing to their distinct sexual inclination & gender is a radical withdrawal from the maxim equality of law. Gender identities & non-normative sexual inclinations have impacted the connection between the law & the public.

Given that an individual's sexual inclination & gender are distinct, one would wonder why sexual inclination & gender are discussed. Indeed, whether someone is trans or cisgender has nothing to do with lesbian, gay, bisexual, or straight. Despite their differences, sexual inclination & gender are inextricably intertwined in society & politics. Differentiation based on sexual inclination & gender identities is frequently perpetrated by the same individual or organization: the social policing of gender standards. Lesbians & trans women, for example, are both regarded as breaching socially created regulations about what it means called a lady in many parts of the world. Even though trans women break gender norms through their gender identity & lesbians break gender norms through their sexual inclination, both are seen as violating gender norms. Intersex issues & LGBT issues are frequently intertwined. Intersex people face hatred because of their bodies that do not fit social standards for it means to be a man or a woman, much as LGTB people face prejudices. After all, they defy cultural norms

¹Navtej S Johar v. UOI, (2018) 1 SCC 791.

about “manhood” & “womanhood. Intersex concerns are sometimes considered alongside LGBTB problems by human rights advocates. The acronyms LGBTI (with the “I” meaning for “intersex”) & SOGISC (with the “SC” starting for “sex characteristics”) are becoming incredibly common.

1.2 Legal provisions & constitutional protection of LGBTQ+ minorities in India:

In its historic decision National Legal Services Authority of India vs. UOI, the Apex Court of India² („NALSA“) recognized fundamental rights of trans persons arising out of Art 14, Art 15, Art 16, which says that everyone has the same chance at state jobs, Art 19, which says that everyone has the right to free speech, & Art 21, which says that everyone has the right to live with respect, are some of the most important rights granted by the Constitution of our country.³ The Court also agreed that trans people have basic rights under the Constitution of our country & international law. It said that, according to Art 15 of the Constitution, all civil & criminal laws that don't recognize the third gender are unfair. Art 15 of the Constitution says that any kind of discrimination based on "sex" is against the law. But in this case, there is a question about the rights of Lesbians, Gays, & Bisexuals & whether or not they are included in this ruling. This is because Trans“s in India are given special rights. Even so, Justice Radhakrishnan & A.K. Sikri included the definitions of "gender identity" & "sexual inclination" in their ruling at points 19 & 20. Gender identity is the term for how each person feels about their own gender, which may or may not be the same as the gender they were given at birth.

The other hand, Sexual Inclination is how a person feels about another person when they are physically, romantically, & emotionally interested to them. The Court said that "sex" includes a person's sexual preference & sense of gender. In light of the Yogyakarta principles, the ruling told the Central & State Governments to take action to make sure that basic rights, public health, & social welfare are not violated. This brought a sigh of reassurance to the LGTBQA commune, as their rights, despite their small numbers;⁴ however, the logical reality stayed same. This was followed by the Supreme Court“s ruling in Navtej Johar vs. UOI⁵ („Navtej Johar“) decriminalizing reciprocal sexual relationships

²NALSA at Writ Petition (Civil) No.400 of 2012

³Id.

⁴NALSA, supra note, 12 at para 123.

⁵Navtej Johar, WP (Crl.) No.76/2016.

between adults of the same gender by reading down Sec 377 of the IPC.⁶ Before British colonization, there were no laws against same-sex relations in India.

In fact, some Hindu societies honored homosexuality along with heterosexuality as measuring scale of human sexual inclinations & romantic desire. During the British rule of India, Sec 377 of the IPC in 1861 made it illegal to be gay. This was based on the Buggery Act of 1553, which made it illegal to be gay in England. Since then, the LGBTIQ+ group has been made fun of, denied basic rights, lost a sense of who they are as a person, & been mistreated by the government & society. Their presence was questioned over & over again because of morals, public decency, & profanity. At the cost of shame & humiliation, the group worked hard to find its way & live with other people. The fact that there was a rule against same-sex relationships, whether they were mutual or not, left the LGBTQA group open to being taken advantage of.⁷ With this decision, the Supreme Court has confirmed that the LGBTIQ+ group is legally recognized & expanded the rights of LGBTIQ+ people in India. Even though Navtej Johar is a fairly new ruling & more civil rights for LGBT+ people are still being worked out in the courts, NALSA has been in place for almost five years.

After NALSA, the most important thing that lawyers did was write a rule that said exactly how trans people could use their rights. In a conversation with trans activists, the MSJ set up an committee of socially educated individuals to make recommendations in line with the NALSA decision. The Bill had a broad meaning of it means to be transgender.

In 2016, a new bill for third gender people was introduced. It was called The Transgender Persons (Protection of Rights) Bill, 2016, & it approved the speaker. The trans community, attorneys or lawyers, non-governmental organizations (NGOs), students, & other activists were very critical of the second bill. It also failed to meet the requirements set by the NALSA ruling. The Bill fails in three ways. But all of them were turned down in a clear way. The Bill was kept in the same way it was at first. It was brought up again in the Lower House of Parliament on July 19, 2019. It was passed in the Lower House on August 5, 2019, & in the Upper House on November 26, 2019, which was Constitution Day. The Supreme Commander of India of India gave his approval on December 5, 2019. The Bill is now a law that will protect the rights of trans people, look out for their safety, & deal with other connected issues.

1.3 The incident that triggered the trans activism in India:

⁶IPC 1860 § 377.

⁷Geetanjali Misra, Decriminalizing Homosexuality in India, TAYLOR & FRANCIS GROUP (Last accessed on June 3, 2021)

The Bhedbha v. Virodhi Andolan came out with a report in 1991⁸ revealed the violence faced trans people like sexual exploitation, assault, & extortion under the garb of Sec 377 and wanted the said law should be done away with. As a result, in 1994, the medical staff at Tihar jail came to the conclusion that 90% of the prisoners were engaging in voluntary gay behavior. They suggested that condoms be made available to avoid STDs. But Kiran Beedi, the inspector general of Tihar Jail, said no because it would encourage homosexuality & acceptable sexual behavior among gay people, which is against the law under Sec 377 IPC. ABVA filed a writ case asking that Sec 377 be ruled illegal based on Arts 14, 15, 19, & 21 of the Constitution. They also asked the courts to get rid of that part of the law. On the other hand, it was argued that Sec 377 should stay because it legal moralism in place & supports the majority. Its statement it was argued that deleting the said section will be against public morality, order, & decency.

1.4 Law: gender & sexuality

The bonding with the law with non-standard sexual identity, sexual inclination is to be discussed with utmost importance in the present scenario. In essence, the LGBTIQ+ community of the society has denied the fundamental rights & higher position to a Sec owing to the pre-stated wheels and regulation in the community. This vision would like to put focus on the structured chaos and issues relating to laws and their trial for balancing sexual biasness.

1.4.1 The transgender identity & the law:

Transgenderism was common all over the world in the past & the present, including in Native American, Indian, & Greco-Roman cultures. Also, many gods had a mix of female & male traits or could change from one gender to the other. Every society is thought to be diverse, with only males & females, & the third gender is often not recognized. This makes it easier for the minority group to feel like they don't know who they are. They have to choose between the two genders because society tells them to or because the law says so. They don't feel connected to their gender. They don't know who they are & often feel stuck in their bodies in a world where men & women are seen as unfavorable. This is a big change from how equality law has always worked. Usually, discrimination isn't allowed based on traits

⁸AIDS Bhedbha v. Virodhi&olan, Less Than Gay: A Citizens'' Report on The Status of Homosexuality in India, ABVA,

that are fixed and can't be changed. However, the language of rights, including the right to equality, assumes that the subject of rights has certain traits that can't be changed.⁹ It is wrong to treat people differently because of things they were born with &, by extension, can't change. Scholars say that trans identity is a broad term for people who don't associate with the sex (&, by extension, gender) they were given at birth.¹⁰ In India, the word "trans" has also been used to describe people who have more than one cultural identity that doesn't fit the strict definitions of male or female. People with gender differences, whose organs don't fit neatly into either male or female categories, also question the sex-based roots of society.¹¹ In a society where clear, duality gender divides are important & are based on "objective" biological characteristics of genitalia, bodies that threaten these divisions threaten the whole system on which duality gender is built. But, even though biological, behavioral, & psychological identities are different, the law still separates people by sex & gender. This is because the law is based on a body of knowledge that is strongly rooted in the duality gender/sex model. As a result, the law makes people & bodies that don't fit into the tight categories of strictly male or strictly female obscure & gives more power to those who do.¹²

In India, this fight for lack is also caused by the fact that the government only recognizes two sexes when it comes to the right to vote, marry, claim l&, & have an official identity through a passport or other government IDs. Their misery is made worse by the fact that they can't get support for food, health care, jobs, or education. This forces them to do sex work or beg, which puts them in danger of violence & makes them vulnerable to law enforcement. It's important to remember that a person can't change his or her sexual preference or personality to fit in with society's norms. Shakespeare once said, "What's in a name?" In the present tense, this means that a name may be a good way to associate someone. But the core of a person's personality is not their name, but what they are like. In 2014, the Supreme Court said that people of the third gender had the right to exist, which improved their basic & civil rights.¹³ At the Consultation, it was said that despite the NALSA decision, gender is still treated as a law category & not a constitutional category. But this isn't the case with sex, which has always been & still is a constitutional term. So, while male & female are looked at through the lens of sex, trans is the only group that is looked at through the lens of

⁹Jessica A Clarke, *Against Immutability*, *The Yale Law J* 125 (2015).

¹⁰Paisley Currah, *Gender Pluralism under the Transgender Umbrella*, *Transgender Rights* (University of Minnesota Press, 2006) NALSA, Para 11.

¹¹Id.

¹²Dorian Needham, *A Categorical Imperative: Questioning the Need for Sexual Classification in Quebec*, 52 *Les Cahiers de Droit* 71-106 (2011).

¹³NALSA, *supra* note 12, at para 12.

gender. So, “trans” is the first gender, not the third. Male & female, on the other h&, are still considered groups of sex.

Given the wide range of gender identities & expressions that fall under the term “trans”, countries around the world that recognize the rights of trans people, instead of treating “trans” as a protected category, recognize the right to “gender identity” & “gender expression.”¹⁴ This keeps the law from not being broad enough. It also protects gender-based behavior, which may or may not have anything to do with a person's gender identification. But in India, the rights of trans people have been dealt with in a different way. The 2016 Act clarified what it means to be "trans" and granted certain privileges to members of this group. While the 2016 Bill conflated Trans identification with intersex variations,¹⁵ causing outrage among trans individuals, the 2018 Bill amended the definition and broadly defined trans individuals as those whose gender does not correspond with the gender assigned to them at birth.¹⁶ Again, this Bill was brought up in Lok Sabha in 2019 & passed by Rajya Sabha. On December 5, 2019, the President of India signed it into law. “The Trans Persons (Protection of Rights) Bill” is now an Act. Its goal is to protect the rights of Trans people, but the trans community still has a lot to say about it.

1.4.2 Provisions of transgender persons (protection of rights) act, 2019:

This is India's first law that spells out the rights of trans people. The Act also talks about unfair treatment or discrimination in education, work, health, the right to move & live where you want, or in government or private organizations about the job. The Act confirmed a trans person's identity based on a request & a proof of identity from the District Magistrate. If the person is under 18, his or her parents must fill out the form. The document is given to him by DM as proof of his name. This gives a trans person the right to prove that they are trans. By issuing this certificate, if a trans person wants surgery to change his gender, either to become a man or a woman, he must again file an application with the certificate issued by the CMO, & the DM will give him a new certificate. Provided that a person's rights under the Act will not be affected by a change in gender or a new certificate.

This Act also sets up a system of nondiscrimination in the workplace. Every business must give trans people all the basic tools they need. If a right is broken, the business has to

¹⁴ PAISLEY CURRAH, GENDER PLURALISM UNDER THE TRANSGENDER UMBERLLA, 3-31 (University of Minnesota Press 2006).

¹⁵ Transgender persons (Protection of Rights) Bill Clause 2(i).

¹⁶ The Transgender Persons (Protection of Rights Bill) 2018.

name a complaint officer who will listen to the report. No trans child will be taken away from his or her family without a court order, & every trans person has the right to live freely as he chooses. The right government will also pay for trans people's schooling, social protection, & health care. This Act says that trans people should be able to go to schools that the government pays for & play sports without being treated differently. Most importantly, the right government should pay for the person's surgery to change their gender, as well as counseling before & after the surgery & medical costs. The government will set up different human immunodeficiency centers so that they can follow the rules put out by the right organization, which is the National AIDS control organization.

Also, a "National Council for Transgender People" will be set up. The National Council will have different jobs to help trans people with their problems or questions, make policies & programmers, & review & keep an eye on the policies that are meant to make the trans community fair. In Chapter VIII of the Act, it says that a person who doesn't let a trans person into a public place or forces a trans person to leave his or her home or living place, hurts or damages the life of a trans person, abuses them, etc., is guilty of an offence & can be jailed for at least six months & up to two years. They can also be fined.

In a nutshell, it doesn't recognize the third gender, their self-identity, or their right to decide for themselves in the law. The Act also doesn't make any provisions for the LGBTQA community to be treated as a socially & educationally backward class for education & employment. This is to make sure that the marginalized community is properly represented. The Act also doesn't say anything about health care, legal awareness, or welfare programmers for the community. This keeps the status quo. This law is mostly about trans people & not about lesbian, gay, or bisexual people. This Act doesn't say what the sentence is for them asking or for raping a trans person, like the IPC's Sec 375 & 376 say. This Act says nothing about Trans people's rights to marriage, l&, inheritance, or adoption. If someone breaks the law, they will get less of a sentence because of the Act.

1.4.3 Art 14 & transgender:

Art 14 of the Constitution of our country says that the state cannot treat "any individual" in Indian Territory differently when it comes to the law or how the law treats them. Equality means that all rights & freedoms can be used freely & in the same way by everyone. The right to equality has been called a fundamental part of the Constitution. This means that treating equals as unequals or unequal as equals is against the basic structure of the Constitution. Art 14 of the Constitution also protects equal protection of the law. This means

that the state has a duty to make the necessary social & economic changes to achieve equal protection of the law. Everyone, including TGs, has the same rights under the law, & no one is denied them. Art 14 doesn't say that a "person" can only be a man or a woman. People who are neither male nor female are called hijras or trans people. Because they are people, the law protects them in all areas of state activity, such as employment, healthcare, & education. They also have the same civil & citizenship rights as every other citizen of this country.

1.4.4 Arts 15 & 16 & transgender:

Arts 15 & 16 say that no person can be treated unfairly because of certain things, like race, gender, or national background. In fact, both Arts ban all kinds of racism & discrimination against people based on their gender. Arts 15 & 16 were meant to make it illegal to treat people differently because of their sexual inclination. They did this because sex discrimination has happened in the past & needs to be dealt with. It seems that the people who wrote the Constitution put a lot of emphasis on the basic right against sex discrimination so that people wouldn't be treated differently because they didn't fit into fixed gender norms. Sex is made up of two different parts: gender & bodily traits. There are biological parts like genitalia, genes, & secondary sexual characteristics. There are also non-biological parts like self-image, a strong emotional or psychological sense of sexual identity, & character. So, Arts 15 & 16 says that discrimination based on sex includes gender-based discrimination based on sex. In Arts 15 & 16, it doesn't just mean sexual activity between men & girls. But it is meant to include people who don't see themselves as either male or female.

TGs have also been denied their rights under Art 16(2) & have been treated unfairly based on their sex at work or in public office. Art 16(4) of the Constitution says that TGs have the right to appointment preferences. The state has to take active action to make sure that they are fairly represented in public services.

Arts 15(2) to (4) & 16(4), along with the Directive Principles of State Policy & other international agreements that India has signed, call for social equality. The TGs can only reach this goal if they are given the facilities & opportunities they need to live with dignity & on an equal footing with the other genders.

1.4.5 Art 19(1) (a) & transgender:

Art 19(1) of the Constitution gives people a lot of basic rights, but the government can limit how those rights are used. Art 19 doesn't give anyone who isn't an Indian native any rights.

Art 19(1) makes sure that these basic rights are recognized & protected as rights that come with being a member of a free country. Art 19 (1)(a) of the Constitution says that all people have the right to freedom of speech & expression, which includes the right to show how they associate as a gender. Gender identification can be shown in many ways, such as through clothes, speech, actions, or behavior. As long as Art 19(2) of the Constitution is followed, there can be no restrictions on how someone looks or what they wear.

1.4.6 Art 21 & the transgender:

Art 21 of the Constitution of our country is the heart & spirit of the document since it speaks of the rights to life & personal liberty. The right to life is a fundamental right, & no one, not even the state, can violate or revoke it. Art 21 encompasses all facets of life that contribute to a person's purpose. Art 21 safeguards the dignity of human life, individual autonomy, & the right to privacy, among other things. The right to dignity has been recognized as a necessary component of the right to life & is guaranteed to all humans. At the heart of one's fundamental right to dignity is that one's gender identification is recognized. A person's sense of self & identity are fundamentally shaped by their gender, as previously stated. As a result, the legal recognition of gender identification is a component of the right to dignity & freedom provided by our Constitution & laws. As discussed previously, Arts 14, 15, 16, 19, & 21 do not expressly exclude Hijras/Trans people from their scope. However, Indian law, on the whole, recognizes the paradigm of duality genders of male & female, based on one's biological sex. As previously stated, we cannot accept the Corbett principle of the "Biological Test," preferring instead to follow the individual's psychology when associating sex & gender, & hence choose the "Psychological Test" to the "Biological Test." The duality notion of gender is reflected in the IPC, for example, Sec 8, 10, etc. The laws related to marriage, adoption, divorce, inheritance, succession, & other welfare legislation like NAREGA 2005. Non-recognition of the identity of Hijras/Transgender people in the various legislations denies them equal protection of the law, & they face widespread discrimination.

Art 14 uses the term "person," & Art 15 uses the terms "citizen" & "sex," as does Art 16. Art 19 also uses the term "citizen." The term "person" was used in Art 21. All these expressions, which are "gender-neutral," evidently refer to human beings. Hence, they take Hijras/Trans people within their sweep & are not limited to the male or female gender. As previously said, gender identification is at the core of oneself, based on self-identification rather than surgical

or medical treatments. Gender identification, in our opinion, is an inherent element of sex, & no person, including those who associate as the third gender, can be discriminated against based on gender identification.

1.5 Persons with intersex variations & the law:

Another significant flaw of the law is that it conflates persons with intersex variations and trans individuals, resulting in the invisibility of persons with intersex variations.¹⁷ The first time this happened was in the NALSA decision, and then again in the 2019 Transgender Persons Act. While the main goal of both the intersex rights movement and the trans rights movement is to get rid of hurtful practices based on sex and gender stereotypes, the main problems that each group faces are different.¹⁸ First of all, people who are intersex may not think of themselves as queer. Instead, one of the biggest worries of the intersex community is how their bodies are being turned into stories and how that affects their rights. This kind of anthologizing starts when people are young and have surgery to fix their intersex issues.¹⁹ Their bodies can be forced to be either male or female, which are the only two sexes that are recognized. Most of the time, these treatments are not medically required, and they may end up ruining a person's ability to reproduce, their sexual functions and pleasure, as well as their ability to show their gender and sexual identity.²⁰ When done without informed agreement, these treatments are a form of discrimination because they don't live up to the standards of what male and female organs should look like.²¹ There is no rule in India that stops these kinds of treatments from being done at birth. Also, it can be argued that "sex" in Articles 14 and 15 also includes "intersex." However, there is no direct judicial ruling that says "intersex" is a type of "sex," and courts continue to often mix up "intersex" people with "trans" people, which make the law very complicated and hard to understand. The government and the courts must keep the above issues in mind when making laws and making decisions about trans and intersex rights.

1.6 Sexual orientation & the law:

¹⁷Id.

¹⁸Greenberg, Julie A., *Intersexuality & the Law: Why Sex Matters* New York University Press (February 1, 2021, 9:29 PM), <https://ssrn.com/abstract=1996227>.

¹⁹I Want to Be Like Nature Made Me, (Last accessed on July 12, 2021).

https://www.hrw.org/sites/default/files/report_pdf/lgbtintersex0717_web_0.pdf.

²⁰NALSA, *supra* note 12, at para 107 & Graham Mayeda, *Reimagining Feminist Legal Theory: Transgender Identity, Feminism & the Law*, 17 *CJWL* 423 (2005).

²¹Id.

“The state cannot demean their existence or control their destiny by making their private sexual conduct a crime”.²² “In academic writing, sexual inclination has been defined as the exclusive attraction to the alternative or similar sex, i.e., whether the object(s) of one’s desire is of the same or different sex than oneself.”²³ So, sexual inclination is always thought of in terms of relationships. This means that the sexes of both the person in question and the person who attracts them must be taken into account. Therefore, while gender, sex,²⁴ & sexual inclination may often be conflated, they are distinct conceptual categories. So, as was already said, gender identification and sexual preference are two different ideas. But this confusion happens both in society and in the courts, where inclination is seen as a sexual act of gender in places where gender is based on sex. In other words, both the state and community often think that sex determines gender. So, a person with what some people call "male genitalia" is supposed to act like a man. At the next level, gender and sexual preference are also mixed up with each other. So, a person who acts more like a man should be drawn to a person who acts more like a woman, even if they are the opposite sex. In the past, the relationship between the law and sexual preference has been linked to punishment through anti-buggery rules.²⁵ In India, Section 377 of the Indian Penal Code (IPC) made "carnal intercourse against the order of nature" a crime. This made all sex between adults that didn't lead to a baby a crime. Even though the rule was rarely used to bring charges, it was often used as a way to hurt people.

1.7 Sec 377 & its decriminalization:

Sec 377 of the IPC says that anyone who has sexual contact with a man, a woman, or an animal in a way that goes against nature is guilty of an abnormal offence. But the words "carnal intercourse against the order of nature" are not clear & can be interpreted in different ways by the courts. It takes into account things like touching someone out of lust & having a sexual relationship with them. The burden of proof has frequently fallen on homosexuals alone despite the fact that Sec. 377 of the legislation is gender-neutral and covers both heterosexual and gay sexual behavior.

²²Justice Kennedy, *Lawrence v. Texas*, 539 US 558, 18 (2003).

²³Mary Ann Case, *Disaggregating Gender from Sex & Sexual Inclination: The Effeminate Man in the Law & Feminist Jurisprudence*, 105 *Yale L.J.* 1 (1995).

²⁴JUDIT BUTLER, *GENDER TROUBLE: FEMINISM & THE SUBVERSION OF IDENTITY*, 22 (Routledge 1999).

²⁵Such criminalization has been associated with the application of a Judeo-Christian conception of morality, generally see, *Navtej Singh Johar v. UOI*.

The Wolfenden Committee's 1957 report, which supported Mill's position that the government shouldn't intrude in people's private lives, came to the conclusion that the goal of criminal law is to uphold public morals and decency. To put it another way, criminalizing reciprocal homosexuality between two adults in a private setting does not fall within the theoretical or practical purview of criminal law and should thus be decriminalized as a question of private morality..²⁶ After the dispute over the Naz Foundation judgment and its overturning in the Suresh Koushal decision, the first concern regarding homosexuality under Sec 377 IPC was whether it was founded on Lord Devlin and James Fitz James Stephen's theory of legal moralism or on Prof. HLA Hart and John Mill's "harm principle." The fifth and fourteenth law commissions, as well as Suresh Koushal's ruling, were all inspired by the Devlin approach and agreed that immorality is sufficient justification for the government to intervene, but they did not favor decriminalizing homosexuality.



Conclusi on:

Constitutions aren't just rules for how to run a country; they're also moral papers that set out what people in a community promise to each other and to themselves about how they want to live. So, the type of government we choose for our countries can't be separated from how we run our own lives and how we deal with each other.

Sec. 377 IPC still has a rule that reflects Victorian ideas, which makes it hard for the group to exist in public. The group has been hiding for decades, but they and their families have still

²⁶Wolfenden Committee, *supra* note at 57, Sec 61.

been sexually assaulted, violated, and exploited in ways that can't be fixed. The lawmakers and the president have not done what they were supposed to do to protect this community from the police agencies' official beliefs and from the public's view of their evil lives. Compared to straight people, the LGBTQA group has been a marginalized and vulnerable part of society for a long time. This has something to do with homophobia, which is the frighter hate of homosexuality. Human rights have come a long way in many countries, but LGBT rights are still fighting for everyone to recognize them. Some people have trouble with LGBTQ rights because sexual inclination was left out of the 1948 UDHR.

Through its cases in NALSA and Navtej Singh Johar, the Supreme Court has tried to help people's basic and human rights become clearer over time. The court has recognized them as a third gender and made it legal for adults to have sexual relations in private without getting in trouble. Legal recognition and acceptance of their sexual behavior won't help until laws and policies are put in place to encourage the community to come out of the closet with the promise to protect the sexual citizenship, sexual rights, and dignity of each individual member of the community. Now, the criminal law treats victims of sexual crimes differently based on their gender. For example, sexual crimes against women are punished, but sexual crimes against LGBTQA people aren't even mentioned in the law book.

Also, the community's hopes have been lowered because the court hasn't recognized non-reciprocal carnal contact between two people that goes against nature as sexual assault. Instead, these kinds of acts are still covered by Sec. 377 of the Indian Penal Code. This way of looking at the law is wrong and clearly unfair according to Article 15 of the Constitution. It also goes against the idea of equality set out in Article 14 of the Constitution. It's a problem that sexual offences against LGBTQA people don't have their own category, while offences against women do. The state can't treat people differently just because of their gender identification or sexual preference if they have been victims of similar sexual crimes.