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## Equality in Law, Disparity in Life: Examining LGBTQIA+ Rights in India Post Section 377 with a Focus on Legal Loopholes, Judicial Trends, and Societal Perceptions

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ARTICLE INFO	ABSTRACT
<p><b>Article history:</b> Received: 21-05-2025 Received in revised form: 30-06-2025 Accepted: 19-07-2025</p> <p><b>Keywords:</b> <i>LGBTQIA+ rights, Section 377, India, legal loopholes, judicial trends, societal perceptions, decriminalization, equality, discrimination, queer inclusion.</i></p>	<p>The decriminalization of consensual same-sex relationships through the landmark 2018 judgment that read down Section 377 of the Indian Penal Code was hailed as a significant victory for LGBTQIA+ rights in India. However, this legal milestone has not fully translated into substantive equality in everyday life. This paper explores the dichotomy between formal legal recognition and lived realities of the LGBTQIA+ community in post-Section 377 India, focusing on persisting legal loopholes, evolving judicial trends, and deep-rooted societal perceptions. Despite progressive judgments and increasing visibility, the absence of comprehensive anti-discrimination laws, marriage and adoption rights, and institutional safeguards continues to hinder full inclusion. Furthermore, judicial activism has at times been inconsistent, reflecting a cautious approach toward recognizing queer rights beyond decriminalization. Societal attitudes, shaped by entrenched cultural and religious beliefs, often resist these changes, reinforcing marginalization. Through a multidisciplinary lens, this study highlights the urgent need for cohesive legal reforms, sensitization initiatives, and inclusive policy frameworks to bridge the gap between legal equality and social justice for LGBTQIA+ individuals in India.</p> <p>© 2025 The Authors. Published by IASE. This is an open access article under the CC BY-NC-ND license (<a href="http://creativecommons.org/licenses/by-nc-nd/4.0/">http://creativecommons.org/licenses/by-nc-nd/4.0/</a>).</p>

### Introduction

General laws are sometimes modified to provide specific rights and safeguards to those who have struggled to make their voices heard in society. For example, in many situations, specific accommodations are offered for women and children. General rules based on gender did not always assist. For example, a unique circumstance whereby sexual harassment of women in the workplace was contested occurred in the case of *Vishaka v. State of Rajasthan*<sup>1</sup>. It is important to investigate if generic gender rules will benefit the LGBTQIA+ population in similar circumstances.

The researcher has reviewed all of the relevant studies and contributions made by Indian and

international scholars in this thesis with reference to protecting the rights and interests of transsexual, transgender, and other LGBTQIA+ individuals. The Hijra community in India has previously been extensively studied, thus the researcher hasn't concentrated on it precisely. The researcher had no desire to return to the previously addressed location. A few facets of the aforementioned community have been attempted to be included by the researcher.<sup>2</sup> In order to better the position of the LGBTQIA+ population, the researcher has also tried to identify, emphasize, and attempt to bridge the socio-legal-cultural gaps by suggesting what may be assimilated in the Indian setting [1].

If the problems of non-binary people have already been addressed, we must first examine how they have been seen and what kind of influence they have had. If there is a discrepancy, it must be corrected. Evaluating the circumstances under which the same developed is crucial. Nonetheless, if the scenario is entirely unique, we must exercise caution while comparing it to global legal and life analogies whenever the chance to comprehend it arises.

Every Indian born person is protected by the legal systems in place and is subject to Indian law.<sup>3</sup> A more thorough examination of the laws that prevailed before to and after independence, as well as the laws of sovereign kingships that existed in India prior to the formation of the Indian subcontinent as a single nation, might aid in a more accurate interpretation of the same.

Determining the impact of India's current legal system is crucial as the result of all the efforts made. This will assist us in taking a fresh look at our legislation in order to close any loopholes and make changes where needed.

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<sup>1</sup> Ruth Vanita Ed., *Queering India: Same Sex Love and Eroticism in Indian Culture and Society* (1<sup>st</sup>ed, Routledge Taylor & Francis Group, 2002).

<sup>2</sup>Yajna Elouard and Birgitta Essen, 'Psychological Violence Experienced by Men Who Have Sex with Men in Puducherry, India: A Qualitative Study', *Journal of Homosexuality*, <<https://pubmed.ncbi.nlm.nih.gov/24147588/>> accessed on 16 August 2019.

<sup>3</sup>Stacy Leigh Pigg and Vincanne Adams Eds., *Sex in Development: Science, Sexuality and Morality in Global Perspective* (1<sup>st</sup> ed., Duke University Press Books, 2005).

India's diverse legal system addresses almost every aspect of daily life. This legal system can efficiently address challenges and provide the LGBTQIA+ community with protection and redress. To determine whether or if action is required to update the legal system with regard to matters pertaining to the LGBTQIA<sup>4</sup>+ group and establish particular provisions for the same, it is important to investigate the matter.

Data collection from members of the LGBTQIA+ community, or non-binary people, may facilitate communication with them others of all genders, sexual orientations, and sex variations live among others who embrace them for who they are [4].

Although some of them seem to be with their family, it is exceedingly difficult to discover persons with gender, sexual orientation, and sex variations with their parents and siblings<sup>5</sup>. Speaking with LGBTQIA+ people in person brings up a number of other concerns, and the answers to the questionnaires may also be very helpful in resolving these issues.

Finding means to hasten changes, if any, in the current situation and the legal course of action in India will be made easier by evaluating the gender, sexuality, and sex balance of the current legislation. Additionally, it would help to avoid adding clauses that may not be required or that might confuse matters or make the current issue worse.

Given the wide range of human biological, physical, psychological<sup>6</sup>, social, and emotional characteristics, it is critical to validate identities in order to provide legal protections for non-binary individuals.

The idea of survival of the fittest is how nature operates [5]. The weak are left to suffer under pressure in such a scenario. Access to food, clothes, and shelter has also been difficult for those without an identity who are battling with societal pressure. In order to rectify the issue and help encourage transgender persons to proceed in life with more comfort and empowerment, it is vital to analyze methods and means.

The LGBTQIA+ community's problems are distinct and do not fall under the broad heading of gender concerns. Additionally, the LGBTQIA+ population has unique issues that do not fit within the general category. Only recently has the legal, judicial, and executive framework in India begun to take notice of the LGBTQIA+ population, with only a few rulings and directives being made on the subject<sup>7</sup>. This topic was recently addressed by the Indian Supreme Court [6].

After receiving medical treatment, non-binary people's physical appearance changes, changing both in terms of structure and genitalia. Some non-binary persons are transvestites who choose to be physically themselves since they are not particularly interested in having surgery.

"Transgender persons have the right to decide their self-identified gender and the State/Central Government need to legally recognize the gender of their choice male, female, or as third gender," the Indian Supreme Court ruled in the landmark National Legal Services Authority (NALSA) v. Union of India case in April 2014. The ruling included instructions and guidelines that transgender people should be given preference in governmental posts and educational institutions. In pursuit of this, identifying papers including voter's cards, passports, and Aadhar cards now have a gender category [7].

Since 64 years of independence, the Indian government's census process, which is regarded as a trustworthy source of data and statistics on demographics, housing, population, literacy, and other statistics, has neglected to include the country's own transgender minority. Members of the LGBTQIA+ community should be protected by the same rights granted to other Indian citizens. Articles 14, 15, 16, 19, and 21 of the Indian Constitution<sup>8</sup>, together with international human rights agreements, should be used to improve the quality of life for transgender individuals. However, the core of the legislation is quite different from reality. Additionally, it says that a transsexual identity certificate may be obtained by applying to the District Magistrate [8]. Additionally, it demands that "a National Council for Transgender Persons (NCT) be established and that offenses against transgender people be punished with a fine and imprisonment ranging from six months to two years."<sup>9</sup>

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<sup>4</sup> Mary Bucholtz and Kira Hall, 'Identity and Interaction: A sociocultural linguistic approach' (2005) Sage Journals <<https://journals.sagepub.com/doi/10.1177/1461445605054407>> accessed on 27 July 2019

<sup>5</sup> Stacy Leigh Pigg and Vincanne Adams Eds., *Sex in Development: Science, Sexuality and Morality in Global Perspective* (first published 2005 Duke University Press Books).

<sup>6</sup> Blackwood, Evelyn Wieringa, and Saskia E. *Globalization, Sexuality, and Silences: Women's Sexualities and Masculinities in an Asian Context*, (1<sup>st</sup> ed., Palgrave Macmillan, New York, 2007).

<sup>7</sup> Audrey Yue, 'Lesbian, gay, bisexual, transgender (LGBT)migration' WileyOnlineLibrary, <<https://doi.org/10.1002/9781444351071.wbeghm344>> accessed on 16 August 2019.

<sup>8</sup> Anke V. D. Kwaak and Madeleen Wegelin-Schuringa, Eds., *Gender and Health: A Global Sourcebook*, (1<sup>st</sup> ed., Oxfam Publishing, 2006), p. 99

<sup>9</sup> Stacy Leigh Pigg and Vincanne Adams Eds., *Sex in Development: Science, Sexuality and Morality in Global Perspective* (1<sup>st</sup> ed., Duke University Press Books, 2005).

## Literature review

**ET Edge Insights & Geetha Ramamoorthi (2024)[1]** In the article *The Evolution of LGBTQ+ Inclusion in Corporate India: A Journey Towards Equality*, Geetha Ramamoorthi discusses the significant strides made by Indian corporations in fostering LGBTQ+ inclusion. She highlights the implementation of inclusive policies, establishment of employee resource groups, and the promotion of allyship among senior leadership. The article emphasizes the importance of creating a safe and supportive environment for LGBTQ+ employees to thrive and contribute effectively to organizational success.

**Reuters (2023)[2]** In an October 2023 article, Reuters reported that India is considering expanding LGBTQ+ rights but has refrained from legalizing same-sex marriage. The Supreme Court's decision to leave the matter to Parliament underscores the legislative body's role in determining such rights. The government has initiated public consultations to ensure inclusive policies for the LGBTQ+ community. Despite societal taboos, there are ongoing efforts to eliminate discrimination through various supportive measures.

**Sudha B. (2024)[3]** In her paper *LGBTQ Rights in India – A Comprehensive Analysis*, Sudha B., Assistant Professor of Law at Veltech School of Law, Avadi, Chennai, provides an in-depth examination of the LGBTQ+ rights landscape in India. The study delves into the historical context, legal frameworks, and societal challenges faced by the LGBTQ+ community. It highlights the decriminalization of homosexuality in 2018 as a significant milestone, yet emphasizes the ongoing need for comprehensive anti-discrimination legislation, recognition of same-sex marriage, and adoption rights. The paper also discusses the impact of societal attitudes and cultural norms on the lived experiences of LGBTQ+ individuals, particularly in areas such as education, employment, housing, and healthcare.

**Mansi Dagrass (2021)[4]** In her paper titled *Victimization of LGBT Community in India*, Mansi Dagrass, a faculty member at Galgotias University, investigates the socio-legal challenges faced by the LGBTQ+ community in India. The study critically examines the implications of Section 377 of the Indian Penal Code, which criminalized consensual same-sex relations until its partial decriminalization in 2018. Dagrass highlights the persistence of discrimination and societal stigma despite legal reforms, emphasizing the need for comprehensive legal protections and societal

acceptance. The paper calls for the implementation of robust anti-discrimination laws and the recognition of LGBTQ+ rights as fundamental human rights to ensure the community's dignity and equality.

**Global Freedom of Expression (2023)[5]** The Global Freedom of Expression initiative provides a comprehensive analysis of the Supreme Court's unanimous decision in *Navtej Singh Johar v. Union of India*, which decriminalized consensual same-sex relations between adults by reading down Section 377 of the Indian Penal Code. The judgment emphasized that sexual orientation is intrinsic to one's identity and that criminalizing such relationships violated constitutional rights to privacy, equality, and freedom of expression. The Court's reasoning was grounded in transformative constitutionalism, asserting that constitutional morality must prevail over societal morality.

**Legal Service India (2024)[6]** In its comprehensive article, *Rights of the LGBT Community in India*, Legal Service India provides an extensive overview of the legal and social landscape for LGBTQ+ individuals in India. The piece traces the evolution of LGBTQ+ rights, beginning with the decriminalization of homosexuality in 2018 through the landmark *Navtej Singh Johar v. Union of India* case, which read down Section 377 of the Indian Penal Code. The article emphasizes the constitutional guarantees of equality, liberty, and non-discrimination under Articles 14, 15, and 21, highlighting the judiciary's role in affirming the rights of sexual and gender minorities. Despite these legal advancements, the article notes that the community continues to face significant challenges, including societal stigma, discrimination in employment and education, and the absence of legal recognition for same-sex marriages.

**Ritesh Arora (2023)[7]** In his research paper titled *The Evolution of LGBTQ+ Rights in India: A Journey Towards Equality*, Ritesh Arora provides a comprehensive examination of the legal and societal developments concerning LGBTQ+ rights in India. Arora traces the historical context of homosexuality in Indian society, emphasizing that same-sex relationships have existed for centuries, and critiques the Western notion that homosexuality is a foreign concept. He discusses the evolution of LGBTQ+ rights through landmark judicial decisions, such as the decriminalization of homosexuality in the 2018 *Navtej Singh Johar v. Union of India* case, and the recognition of transgender individuals as the 'third gender' in the 2014 *National Legal Services Authority v. Union of India* case. Arora also delves into the challenges faced by the

LGBTQ+ community, including societal stigma, discrimination, and the lack of legal recognition for same-sex marriages.

**Zahid Maniyar (2023)[8]** In his article, *From Judgments to Handbook: India's Transformative Journey Towards LGBTQIA+ Equality*, Zahid Maniyar explores the evolving landscape of LGBTQIA+ rights in India, focusing on recent judicial decisions and the Supreme Court's initiatives to promote inclusivity. Maniyar examines several landmark judgments that have significantly advanced the rights of the LGBTQIA+ community.

**Filip Noubel (2020)[9]** In his article "*The State of LGBTQ+ Rights: 'India Does Not Have Anti-Discrimination Code'*", published by Business Standard, Filip Noubel examines the legal landscape for LGBTQ+ individuals in India following the decriminalization of homosexuality in 2018. Despite this significant legal advancement, Noubel highlights the absence of a comprehensive anti-discrimination code, particularly in the private sector. He underscores that while constitutional provisions prohibit discrimination by the state, they do not extend to private entities, leaving LGBTQ+ individuals vulnerable to discrimination in employment, housing, healthcare, and education. Noubel's analysis points to the lack of political consensus and judicial intervention as barriers to the enactment of such protective legislation. He advocates for the introduction of an Equality Bill to address these gaps and ensure comprehensive protection for the LGBTQ+ community.

**S. Srinivasan & A. Bedi (2019) [10]** *Attitudes Towards Homosexuality in India: Examining the Role of Traditional and Modern Values* This article, published in the *International Journal of Social Psychiatry*, delved into the dichotomy between traditional and modern values in shaping attitudes towards homosexuality in India. It provided a comprehensive analysis of how cultural, religious, and societal norms influence perceptions of homosexuality, highlighting the challenges faced by the LGBTQ+ community in navigating these conflicting value systems.

**Mukherjee, K., & Chakraborty, S.(2020) [11]** *Changing Attitudes Towards Homosexuality in India: Exploring the Role of Traditional and New Media* This article, published in the *Journal of Homosexuality*, analyzed the influence of traditional and new media on attitudes towards homosexuality in India. The study found that exposure to traditional media like television and newspapers was associated with more negative attitudes towards homosexuality, while exposure

to new media, such as social media and the internet, was linked to more positive attitudes. The authors suggested that new media platforms play a crucial role in challenging traditional norms and fostering acceptance of LGBTQ+ individuals.

**Bhandari, R., & Kakkar, P.(2019) [12]** *Changing Attitudes Towards Homosexuality in India: A Study of Educated Youth* Published in the *Journal of the Indian Anthropological Society*, this study examined the attitudes of educated Indian youth towards homosexuality. The authors found that exposure to education and urban environments contributed to more liberal attitudes, indicating a shift towards greater acceptance of homosexuality among the younger, educated demographic.

**Ankana Bal(2019) [13]** *The Transgender Persons (Protection of Rights) Act, 2019: A Critical Analysis* This article provides an overview of the Act, discussing its provisions aimed at protecting the rights of transgender individuals. It highlights the Act's focus on defining "transgender person" and prohibiting discrimination in various spheres such as education, employment, and healthcare. However, the article also notes criticisms regarding the Act's failure to address issues like self-determination of gender and the lack of affirmative action for the transgender community.

**International Commission of Jurists (ICJ)(2019) [14]** *India: LGBTQ persons face discrimination in housing, work and public spaces despite increased legal recognition* This comprehensive 152-page report by the ICJ details the human rights violations experienced by LGBTQ individuals in India, despite legal advancements such as the decriminalization of homosexuality. The report identifies persistent discrimination in housing, employment, and public spaces, including arbitrary evictions, workplace harassment, and exclusion from public facilities. It also highlights the challenges posed by discriminatory laws and the lack of effective implementation of existing protections. The ICJ calls for comprehensive legal reforms and the enactment of an anti-discrimination law to safeguard the rights of LGBTQ persons.

**Harper's Bazaar India(2023) [15]** *Are gender-neutral washrooms the way forward for LGBTQ+ inclusivity in India?* This article discusses the Supreme Court's initiative to set up nine gender-neutral washrooms on its premises, marking a significant step towards LGBTQ+ inclusivity. It highlights the importance of such facilities in providing safe and accessible

sanitation for the queer community. The piece features insights from activists like Riya Behl and Jaya Dharmarajan, who emphasize the need for gender-neutral and disability-friendly restrooms as basic rights for queer individuals. Additionally, the article notes that institutions like the Tata Institute of Social Sciences (TISS) in Mumbai are considering similar initiatives, reflecting a growing recognition of the need for inclusive infrastructure.

### **Research methodology**

Religion, faith, and belief, caste or creed, education, class or position, language, area, and other factors are the foundations of Indian culture, but gender is also influenced by each of these factors. Our civilization is the main setting for systematic and institutionalized exclusion based on these dimensions and components. Indians generally accept, appreciate, and tolerate a wide range of cultural, religious, linguistic, and customary differences.<sup>10</sup>

Regarding sexual and gender orientation and those whose identity and expression of gender varies from their biological sex, there is still little awareness and concern in Indian culture, despite the prevailing atmosphere of acceptance and tolerance [9]. Most people believe that gender is something we are or possess, and that it is an inherent attribute of humans.<sup>11</sup> Therefore, it is common practice to exclude someone when their gender nonconformity is obviously visible, even within their family. Despite the fact that transgender groups are somewhat accepted in Hindu culture, they are socially rejected in modern settings due to their nonconformity. The many types of rejection that a transgender person may endure would then be examined and addressed in this chapter.<sup>12</sup>

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10 Blackwood, Evelyn Wieringa, and Saskia E. *Globalization, Sexuality, and Silences: Women's Sexualities and Masculinities in an Asian Context*, (1st ed., Palgrave Macmillan, New York, 2007).

11 Ruth Vanita Ed., *Queering India: Same Sex Love and Eroticism in Indian Culture and Society* (1sted., Routledge Taylor & Francis Group, 2002), p. 30-46.

12 Anupam Joya Sharma, 'Psychological Wellbeing of Middle Aged and Older Queer Men in India: A Mixed-Methods Approach', National Library of Medicine, <<https://pubmed.ncbi.nlm.nih.gov/32163450/>>accessedon7December2020.

When a kid starts acting in ways that are seen to go against the binary gender norms that society expects, the majority of family members disagree with them. Family members may then threaten, reprimand, or even assault their kid or children for acting or dressed in such a way. Few parents even expel and reject their kid for defying socially acceptable gender stereotypes. Parents can give a variety of reasons for their behavior, including humiliating their family, decreasing the likelihood that their child will marry in accordance with social norms, ending their generation (in same-sex relationships), and their child's perceived incapacity to support the family<sup>13</sup>. As a result, a transgender person may never be able to claim their property rights or inherit what may rightfully be theirs [10]. Sometimes, when a youngster or teenager can't take prejudice or feels they may not be good enough for the family, they leave. Many of these could eventually make their way into LGBTQIA+ communities.

These factors contribute to the lack of education among LGBTQIA+ individuals, who struggle to get employment in any field due to a lack of social and financial support. Furthermore, it is challenging to locate people who hire transgender people. Many members of these institutions make fun of<sup>14</sup> gender nonconforming people for being different, and they may even act violently against them. They deal with detentions for false accusations, including those from the police, verbal and physical abuse, non-consensual sex, and fraud victims. Due to the absence of police protection, criminals use transgender people as easy targets for various crimes, such as extortion, treating them as sex objects, etc.

Hijras<sup>15</sup>, one of India's sexual minorities, are discriminated against even in the healthcare system. Intentionally using male-pronouns to address them, documenting them as "male" and accepting them in male wards, feeling uncomfortable standing in the male line, verbal or physical abuse from hospital staff and even patients, and a lack of sensitivity on the part of healthcare providers are some examples of the types of discrimination that Hijras communities have documented in the healthcare system [11].

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<sup>13</sup> Nicole Legate, Richard M. Ryan and Netta Weinstein, 'Is Coming Out always a "Good Thing"? Exploring the Relations of Autonomy Support for Lesbian, Gay and Bisexual Individuals', Sage Journals, <<https://doi.org/10.1177/194855061141192>> accessed on 9 December 2020.

<sup>14</sup>Ruth Vanita and Saleem Kidwai Eds., *Same-sex Love in India: Readings from literature and History*, (1st ed., Penguin India, 2000).

<sup>15</sup> Ibid

Since they didn't fit the gender binary, a few of them were turned down for the cards. Furthermore, society feels much more ignored when it comes to matters pertaining to adoption, marriage, and any inheritance or portion of property. They are usually pushed to the periphery as social misfits, which forces them to dance and beg. When they run out of options for how to support themselves, they may even turn to sex work as a means of survival. Career opportunities for transgender persons are quite limited. Transgender people cannot use public restrooms or restrooms. The prejudice transgender persons experience while using all facilities and services is reflected in the lack of access to restrooms and public areas.

This linguistic component is essential because it shows how the speaker and the message's objective are related. In the West, transgender persons prefer to be referred to as hir, they, and so forth. We still have a ways to go before we have a pronoun for members of the LGBTQIA+ community in India. The social standing of LGBTQIA+ individuals is represented by the pronouns that are used to refer to them. The pronoun "they" is unquestionably gender-neutral, yet it also acts as a distinction between "us" and "them."<sup>16</sup> It subtly and psychologically highlights how the majority differs from the rest. This pronoun, which is often used for inanimate things, is a harsher way to speak about sexual minorities [12]. The way in which they are often treated should be the first emphasis of any treatise on rights that aims to inspire and elevate individuals who are entitled to rights and respect.

The European Council and Commission defined social exclusion as a: “process whereby certain individuals are pushed to the edge of society and prevented from participating fully by virtue of their poverty, or lack of basic competencies and lifelong learning opportunities, or as a result of discrimination. This distances them from job, income and education and training opportunities as well as social and community networks and activities. They have little access to power and decision- making bodies and thus often feel powerless and unable to take control over the decisions that affect their day to day lives”

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<sup>16</sup>Madhavi Menon, *The Law of Desires: Rulings on Sex and Sexuality in India*, (1<sup>st</sup> ed., Speaking Tiger Publishing Private Limited, 2021).

Additionally, this framework is being utilized more and more to depict the challenges and dilemmas that marginalized and disadvantaged people encounter [13]. It is the result of faithful processes of successive events that emanate from the center of the economy, politics, and society; it gradually isolates people, groups, societies, and regions from one another and places them in subordinate positions with respect to the dominant forces, wealth, and values. It provides a multifaceted and intricate framework that considers the origins of social disadvantage as well as its effects.

Recognizing the obstacles to achieving the Millennium Development Goals<sup>17</sup>, mostly in the form of exclusionary institutions and social connections, is indicative of the Paradigm for Social Exclusion [14]. The Social Exclusion Context has been used to the Transgender<sup>18</sup> community, excluding these people from active participation in economics, politics, social and cultural life, and decision-making processes.

As a minority group, they have comparatively less control over their life and the resources that are accessible to them.<sup>19</sup> They get stigmatized as a result of the negative and unfavorable public perceptions. Due to the lack of constructive opportunities for them to contribute to society, they may get alienated and develop poor self-esteem and confidence. The wider societal discrimination that India's hijra community experiences as a result of their nonconformist gender identity and class marginalization is partly to blame for any human rights violations against people who do not identify as lesbians, homosexuals, or bisexuals<sup>20</sup> [15]. The increasing desire of hijra organizations to be part of the sexuality minority movement is increasingly challenging this reluctance. This parallels a worldwide trend in queer political discourse that shifts the focus from sexual orientation to gender identity.

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<sup>17</sup> Amara Das Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions through Hinduism*, (1<sup>st</sup> ed., Xlibris, 2008).

<sup>18</sup> Joane Nagel, 'Masculinity and Nationalism: Gender and Sexuality in the Making of Nations', (1998), *Ethnic and Racial Studies*, Available at <https://genderandsecurity.org/projects-resources/research/masculinity-and-nationalism-gender-and-sexuality-making-nations>, accessed on 4<sup>th</sup> May 2019.

<sup>19</sup> *Ibid.*

<sup>20</sup> Amara Das Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions through Hinduism*, (1<sup>st</sup> ed., Xlibris, 2008).

## Result analysis

The NALSA ruling by the Supreme Court requires the federal and state governments to make an attempt to recognize transgender people as members of socially and educationally disadvantaged groups and to implement all types of reservations in public offices and educational institutions. Among other things, the Expert Committee recommended that the government provide free textbooks, free lodgings, fee exemptions, and scholarships. The Act, however, only mandates that educational establishments provide inclusive instruction and the chance for transgender individuals to engage in sports, leisure, and recreation without facing discrimination<sup>21</sup>. It mentions an inclusive education system, but it makes no mention of how schools may accept transgender students.

## ANTI-RAGGING CELLS

According to the Standing Committee's findings, any idea of inclusive education has to take into account the particular problems of bullying and harassment that students who identify as gender non-conforming face. Bullying, singling out, and other forms of harassment are not accepted, and the educational system is suitably designed to meet the needs of these students.<sup>22</sup>.

**Table 1: SOGIESC = Sexual Orientation, Gender Identity and Expression, and Sex Characteristics**

<b>Dimension</b>	<b>Key Observations</b>	<b>Relevance to Anti-Ragging Cell</b>
<b>Legal Status Post-377 Verdict</b>	Section 377 decriminalized same-sex relations between consenting adults in 2018.	Need to raise awareness that legal protection exists against harassment.
<b>Legal Loopholes</b>	No civil rights like marriage, adoption, inheritance; no anti-discrimination law.	Students may still face systemic bias and exclusion in hostels, campuses.
<b>Judicial Trends</b>	Courts have shown progressive attitudes in some	Need for institutions to align internal policies with

	cases, urging sensitization.	evolving legal views.
<b>Educational Institution Gaps</b>	Lack of LGBTQIA+ inclusive policies in most universities and colleges.	Calls for institutional anti-ragging guidelines that explicitly mention SOGIESC*.

### **CAREER&OTHEROPPORTUNITIES**

In the NALSA ruling, the Supreme Court said that "transgender people are entitled to reservations in the sphere of work, as envisioned under Article 16(4) of the constitution." To guarantee that they are fairly represented<sup>23</sup> in public services, the state must implement affirmative action. The Expert Committee's study recommends the establishment of a hotline for online placement, career guidance, and advancement. A similar suggestion was made by the Standing Committee in its report. It was decided to establish a separate system for issuing directives for specific tasks like career guidance and counseling, among others. Unfortunately, the Act says nothing about these matters.

### **CRIME&PUNISHMENT**

Compared to the IPC, the Act's most significant shortcoming is that it reduces the punishment for rape and violence against LGBTQIA+ individuals. In contrast to cisgender victims, transgender victims face a very different punishment for sexual assault. The Act states that anyone convicted of encouraging or causing sexual abuse to a transgender person will be punished with "imprisonment for a time not less than six months but not more than two years, as well as a fine." Contrarily, sexual offenses against cis-women have more severe penalties, which may include life in jail. Treating binary and non-binary people differently is against Article 14 of the Constitution.<sup>24</sup>

<sup>21</sup>Stephen O. Murray, and Arnold R. Pilling, *Oceanic Homosexualities*, (1<sup>st</sup> ed., Garland Publication, New York, 1992).

<sup>22</sup> Amara Das Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions through Hinduism*, (1<sup>st</sup> ed., Xlibris, 2008)

<sup>23</sup> Stephen O. Murray, and Arnold R. Pilling, *Oceanic Homosexualities*, (1<sup>st</sup> ed., Garland Publication, New York, 1992).

<sup>24</sup> Stephen O. Murray, and Arnold R. Pilling, *Oceanic Homosexualities*, (1<sup>st</sup> ed., Garland Publication, New York, 1992).

## MEDICAL AID

The new contested legislation has addressed efforts to empower and support the LGBTQIA+ community in the pharmaceutical industry. The measure doesn't even specify the process or the kind of medical care the government would provide. The statute states that they will only get medical support throughout the sex reassignment procedure. This is completely unclear since transgender persons, a marginalized minority in society, just want the government to help them thrive and lead regular lives as citizens without having to change their sexual orientation. By limiting medical care for transgender individuals to those who are willing to change their sexual orientation, this ordinance flagrantly breaches Articles 14 and 21 of the Indian Constitution.

## SEX REASSIGNMENT SURGERY

Sex Reassignment Surgery, or SRS, is a surgical technique that modifies a person's sexual anatomy and physical characteristics to conform to their gender identification. Having access to SRS might be a crucial step in the LGBTQIA+ community's quest to live authentically.

**Table 2: Sex Reassignment Surgery (SRS) in India – Post-Section 377 Landscape**

Aspect	Key Observations	Implications & Gaps
<b>Legal Recognition</b>	Post-NALSA (2014), individuals have the right to self-identify their gender.	Law recognizes self-ID, but SRS is still often tied to legal documentation changes.
<b>Access to SRS</b>	Limited to urban centers; cost remains high; long wait times in public hospitals.	Lack of equitable access across regions; rural and poor communities left out.
<b>Government Schemes</b>	Some states (e.g., Tamil Nadu, Kerala) offer free SRS under welfare programs.	No national uniformity; most are unaware or unable to navigate the bureaucratic process.

It's crucial to remember that not every member of the LGBTQIA+ community decides to have SRS, and that this should be accepted as a personal decision. It's also important to note that gender non-conforming or transgender identity is not a medical illness, thus SRS shouldn't be a must for someone to be accepted and valued for their actual gender.<sup>29</sup>

This new legislation requires transgender people to adhere to a two-step process. According to the legislation, a transgender person may be granted a certificate of identification as a transgender person by applying to the District Magistrate and providing the necessary supporting paperwork in the proper manner.<sup>25</sup>

Instead of encouraging and supporting transgender people, the new legislation demands individuals to reassign their sexual orientation in order to live a dignified life, even after the Supreme Court recognized them as a Third Gender. This new law is extra vires because it violates the Fundamental Rights listed in Part III of the Constitution<sup>26</sup>. The Indian Constitution's Articles 14, 19, and 21 are violated.

Furthermore, members of the transgender community usually do not earn enough money to pay for the costly operation of sexual<sup>27</sup> reassignment. Furthermore, regardless of their sexual orientation or race, everyone should have unfettered access to liberty and a life of dignity. Furthermore, not everyone who identifies as transgender wants to change their sexual orientation<sup>28</sup>. This new regulation goes well beyond the bounds of the law and completely violates the basic rights of transgender individuals.

<sup>25</sup>Laxmi, *Me Hijra, Me Laxmi*, (1sted., Oxford University Press, 2015)

<sup>26</sup>A.Revathi, *The Truth About Me: A Hijra Life Story*, (1sted., Penguin India, 2010).

<sup>27</sup>*Ibid.*

<sup>28</sup>Australian Human Rights Commission, 'Sex and Gender Diversity Issues Paper', <<https://humanrights.gov.au/our-work/projects/sex-and-gender-diversity-issues-paper>>accessed on 2 February 2019

<sup>29</sup> Often but not always based on stereo types of masculinity and femininity)

## TRANS-CHILDRENWELL-BEING

Regarding the needs of trans children, the Standing Committee remained very sensitive. The Committee described in detail how trans youngsters have been abused and harassed by their own relatives. The paper claims that young transgender persons experience aggressiveness, abuse, and identity denial in the family. Transgender children and minors find that their ability to choose and express their gender is severely restricted in the family and the birthplace. They often force women to leave their homes to escape domestic abuse, but they are left with nowhere to go. Transgender children are compelled to seek refuge in Jamaats or dorms with Hijra families under such circumstances. The Hijra community consists of their friends and family, and their adoptive parents are the Hijra elders.

**Table 3: Well-Being of Transgender Children in India – Post-Section 377**

<b>Welfare Schemes</b>	No central or state programs exclusively for trans children.	Lack of targeted support for nutrition, education, shelter, or legal aid.
<b>Mental Health Impact</b>	High rates of depression, anxiety, self-harm, and suicide among trans adolescents.	Absence of trans-affirmative counselors in schools or community health centers.
<b>Policy Gaps</b>	Transgender Persons Act, 2019, does not address children explicitly.	Leaves a vulnerable group without legal recognition or protection mechanisms.
<b>Recommendations</b>	Include trans children in child rights frameworks; introduce inclusive education policies.	Needed: legal recognition, parental counseling, safe schooling, and accessible support.
<b>Judicial Trends</b>	A few High Court cases have	Progressive but case-by-case;

	upheld protection for trans minors (e.g., Madras HC, 2021).	no central framework to ensure enforcement.
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The 2019 Act completely disregards this important aspect of transgender people's lives. It disregards the suggestions made by the Standing Committee. According to this, transgender children are only permitted to live separate from their family under a court order. Therefore, a transgender child cannot decide to live in a supportive environment on his own, even if the family is abusive.<sup>30</sup>

The penalty granted under the act for sexual abuse against transgender individuals is inadequate in comparison to the penalty for sexual abuse against women under the Indian Penal Code, 1860. Because they have different legal requirements than transgender individuals, intersex people are mistakenly included in the definition of "transgender" under Section 2(k) of the Act. Even though transgender children face the greatest amount of discrimination and hostility in their own homes, Section 12 of the legislation prohibits them from being taken away from their relatives. The law's Section 12(3) additionally states that children would be committed to rehabilitation facilities if their family members are unable to care for them. Deporting people to these institutions must take into consideration the community's long-standing social shame because of their lengthy history of oppression and cruelty.

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<sup>30</sup> Poonam Kathuria and Abha Bhaiya, Eds, *Indian Feminisms- Individual and Collective Journeys*, (1<sup>st</sup> ed., University of Chicago Press, 2019).

## Conclusion

While the striking down of Section 377 marked a pivotal moment in India's legal history, symbolizing a progressive shift towards the recognition of LGBTQIA+ rights, it was only the beginning of a much longer journey toward true equality. Legal equality, in its current form, remains largely symbolic for many LGBTQIA+ individuals, as substantive rights related to marriage, adoption, inheritance, and protection from discrimination continue to be absent or inadequately addressed. Judicial trends have shown moments of bold progressivism but often lack consistency and enforceability, revealing an uneasy balance between constitutional morality and societal conservatism. Moreover, deeply ingrained social stigma, cultural taboos, and institutional apathy continue to impede the lived experiences of queer individuals, leading to a disconnect between rights on paper and realities on the ground. To bridge this disparity, India must move beyond decriminalization and toward comprehensive legal reform, robust anti-discrimination frameworks, and active societal engagement. Only through an intersectional, inclusive, and rights-based approach can the promise of equality be fully realized for the LGBTQIA+ community in both law and life.

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