

TRANSFORMATION JOURNEY OF LGBTQ COMMUNITY GLOBALLY: A DETAIL ANALYSIS

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ABSTRACT

The rights of Lesbian, Gay, Bi-sexual, Transgender, & Queer (“LGBTQ+”) individuals in India have seen substantial progress in recent years. Nonetheless, members of the LGBTQ community continue to face societal and legal hurdles that non-LGBTQ people do not. Astonishing there are legislation on almost every community in this country however little do India has a precise laws on this community. It is the role of the judiciary to provide just and equitable judgements, the government to ensure that these verdicts are carried out, and society to enthusiastically accept the court’s conclusions. However, progress in LGBTQ+ rights has been gradual, notwithstanding the Indian Apex Court’s ruling in the Navtej Singh Johar case in 2018, which threw down the portion of Section 377 of the Indian Penal Code that criminalized homosexuality. Almost 30 months after this momentous decision, the situation for the LGBTQ community has not improved dramatically. Both the federal and state governments have failed to implement specific protections for LGBTQ individuals’ advancement, and societal acceptance remains elusive. This extensive analysis investigates the condition of LGBTQ rights in India, documenting their growth in recent years. In many of the developed nations there are numerous pro legislations on LGBTQ with respect to their health, education, employment etc, but India stands only at the verge of it. While tremendous progress has been accomplished, LGBTQ people continue to face social and legal hurdles that non-LGBTQ people do not. This papers main objective is to study the comparative analysis of the laws related to LGBTQ++ in developed and developing nation like India.

Keywords: LGBTQ, Homosexuality, Developed nations, Rights.

I. INTRODUCTION

Communities have rights and responsibilities to their members as well as to other communities. These linkages and their effects on the community as well as other communities are understood by an empowered community. These communities are endowed with rights like the right to self-determination, the right to use resources and expertise within the community as a whole, the right to provide support to other members of the community, the right to engage in the society as a whole the right to safeguard its members from anything that may negatively impact them, and so forth. People confront injustice, abuse, and sometimes even execution all across the globe because of their identity, looks, or the people they are in relationships with. Sexual orientation as well as gender identity are fundamental aspects of who individuals are, and they should not form the basis for abuse or discrimination. Historically, LGBTQ+ persons faced widespread discrimination, social stigma, and marginalization. Society often enforced silence, denying the existence of diverse sexual orientations and gender identities. Homosexuality was considered illegal in many countries, and LGBTQ+ individuals were subjected to harassment, violence, and persecution. Most historians believe that gay activities and same-sex love were present in every known society, whether they were tolerated or condemned.¹ Discrimination targeting LGBTQ+ individuals violate the human rights standards set by the Universal Declaration of Human Rights (UDHR). However, prejudice and assault against members of the LGBTQ+ community are much too widespread. In terms of human rights, LGBT individuals confront both prevalent and unique obstacles. They also suffer from institutional abuse in healthcare settings, which has long-term ramifications for their mental and physical well-being.

Protecting LGBTQ+ individuals from persecution and prejudice does not necessitate the formation of new human rights legislation or standards, and nations are legally obligated to protect the human rights of LGBTQ+ individuals. This is widely recognized in international human rights law, as outlined in the UDHR and numerous other accords. Furthermore, UN human rights treaty groups have recognized that sexual inclination and gender identities are among the forbidden

¹ A brief history of lesbian, gay, bisexual, and transgender social movements, available at: <https://www.apa.org/topics/lgbtq/history>, (last visited on June 15 2024).

reasons of bias under international law pertaining to human rights.²

II. DIFFERENT CONNOTATION OF LGBTQ COMMUNITY

LGBT is a abbreviation of the phrase in which the letter "L" refers to Lesbian means "a woman who is sexually attracted to other women", "G" refers to Gay means "a man who is sexually attracted to other man", letter "B" refers to Bisexual means "a person who has both male and female organs or is sexually attracted to both men and women", and the last letter "T" refers to Tran-gender means "a person whose gender identity is different from the gender they were thought to be at birth".³ The LGBTQAI+ acronym refers to individuals with orientation such as Lesbian, Gay, Bi-sexual, Trans-gender, Queer, Intersex, Asexual and others.⁴ These individuals are the ones who do not identify with the "ideals" of "cisgender heterosexuality". The LGBTQIA+ community in India comprises a unique social group known as the Hijras, traditionally described as being "neither males, nor women," or as males who conduct themselves like women and are known as the Third Gender.⁵ LGBTQ+ populations and age groups use different terminology to define themselves, even within the same nation. Individuals may also view their sexuality or gender as mostly immaterial, preferring to avoid labels. LGBTQ+ terminology has developed over a century, with new ideas being introduced as well as changing meanings for existing phrases.⁶ In general, these communities encourage pride, variety, individualism, and sexuality not confirmed in body.

III. TRANSFORMATION JOURNEY OF LGBTQ+

The transformation journey of the LGBTQ+ community has been marked by significant milestones, struggles, and triumphs. Over the years, the community has fought for recognition, acceptance, and equal rights, leading to remarkable progress in many parts of the world. While the journey is ongoing and varies across different regions, here is an outline of the important stages in the transformation of the LGBTQ+ community:

- 1)Emergence of LGBTQ+ Activism: The late 19th and early 20th centuries witnessed the emergence of LGBTQ+ activism. Activists and organizations started advocating for the rights and recognition of the community. The early movement focused on challenging societal norms, seeking legal reforms, and providing support for LGBTQ+ individuals.
- 2)Stonewall Riots and Gay Liberation: In LGBTQ+ history, the Stonewall Riots of 1969 were a watershed moment. The LGBTQ+ community retaliated against the police operation at the Stonewall Inn, a homosexual club in New York City, and this led to days of demonstrations and rallies. This event galvanized the gay liberation movement and led to increased activism, visibility, and demands for equal rights.⁷
- 3)Decriminalization and Legal Reforms: In subsequent years, there were significant legal reforms around the world. Many countries began decriminalizing homosexuality, recognizing it as a matter of personal freedom and human rights.⁸ The repeal of sodomy laws as well as the recognition of the same-sex relationships through civil unions and marriage equality have been pivotal achievements in the struggle for LGBTQ+ rights.

² International Human Rights Law and Sexual Orientation & Gender Identity, *available at:* https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-11-UN_Fact_Sheets_GenderIdentity_English.pdf, (last visited on June 15 2024).

³ LGBT Rights in India, <https://www.legalserviceindia.com/legal/article-7932-lgbt-rights-in-india.html>

⁴ From LGBT to LGBTQIA+: The Evolving Recognition of Identity, *available at:* <https://education.nationalgeographic.org/resource/from-lgbt-to-lgbtqia-the-evolving-recognition-of-identity/>, (last visited on June 09 2024).

⁵ LGBTQIA+ Community: A Detailed Discussion, *available at:* <https://www.drishtias.com/blog/lgbtqia-a-detailed-discussion>, (last visited on June 15 2024).

⁶ Mike Thelwalla, Tracey Jayne Devonport, *et. al.*, Academic LGBTQ+ terminology 1900-2021: Increasing variety, increasing inclusivity? 70 *Journal of Homosexuality* (2022)

⁷ THE HISTORY OF THE LGBTQ+ MOVEMENT, *available at:* <https://www.sfgmc.org/blog/history-of-lgbtq-movement>, (last visited on June 07 2024).

⁸ Snehil Soni and Sanjay Sarraf, "An International Exploration of LGBT Rights and Movements" 11 *International Journal of Creative Research Thoughts* 771-782 (2023).

- 4) HIV/AIDS Epidemic and Activism: The HIV/AIDS epidemic in the 1980s and 1990s brought devastating consequences to the LGBTQ+ community.⁹ However, it also sparked a wave of activism and solidarity. LGBTQ+ individuals and their allies rallied together to demand proper healthcare, access to treatment, and an end to discrimination. This period witnessed the emergence of organizations like ACT UP, which played a crucial role in shaping public health policies and raising awareness about LGBTQ+ rights.
- 5) Transgender Rights and Gender Identity Recognition: The movement for transgender rights has acquired traction in recent decades. Activists have advocated for legal acknowledgment of sexual orientation, access to medical services and safeguards against discrimination. Many countries have instituted laws and policies to support transgender individuals, including legal gender recognition, anti-discrimination measures, and healthcare reforms.
- 6) Cultural Shift and Greater Visibility: The LGBTQ+ community has achieved increased visibility and representation in various aspects of society, including media, arts, and entertainment. Positive portrayals of LGBTQ+ characters and stories have helped foster understanding, challenge stereotypes, and promote acceptance. Pride parades and LGBTQ+ festivals have become important platforms for celebrating diversity and advocating for equal rights.
- 7) Ongoing Challenges and Global Variations: Even while there has been progress, there are still challenges as LGBTQ+ people are still subject to violence, prejudice, and legal obstacles in many areas of the world.¹⁰ Different regions have varying levels of acceptance and legal protections. Activists and organizations continue to fight for comprehensive LGBTQ+ rights, including employment protections, healthcare access, and inclusive education.

The transformation journey of the LGBTQ+ community has been characterized by resilience, unity, and a commitment to creating a more inclusive and equal society. Through collective efforts, legal reforms, and changing societal attitudes, significant progress has been made towards recognizing the rights, dignity, and humanity of LGBTQ+ individuals. However, the journey is ongoing, and to guarantee complete equality and acceptance for every member of the LGBTQ+ community, more work has to be done.

IV. UNITED NATIONS AND LGBTQ RIGHTS

As per the international human rights legislation, each nation has an obligation to uphold and protect the rights of every person without any discrimination. However, laws prohibiting cross-dressing are frequently employed as a means of penalizing transgender individuals depending on their gender identification or appearance. Furthermore, discriminatory statutes render private, consensual same-sex relationships a criminal offense in more than 60 nations. LGBT people are thus at danger for stigma, discrimination, extortion, blackmail, assault, and death sentence in at least six nations. Since the mid-1990s, the UN's human rights mechanisms—that include Special Rapporteurs, other Independent specialists selected or hired by the Human Rights Council, as well as the treaty bodies created to oversee States' adherence to international human rights treaties—have voiced concerns about these infringements. Similar concerns have been voiced for several decades by a number of UN Secretaries-General, High Commissioners for Human Rights, and other top UN officials.¹¹

V. CORE LEGAL OBLIGATIONS OF STATES TO PROTECT LGBTI PEOPLE

In accordance with international human rights law, nations have an obligation to uphold the human rights of LGBTI individuals in compliance with UDHR in addition to other global human rights treaties. Therefore, new human rights legislation or rules are not required to protect LGBTI people from abuse and discrimination.¹² States have key legal responsibilities to safeguard the human rights of LGBTI individuals, including commitments to:

- a) Protect LGBTI individuals from assault.
- b) Prevent the abuse and mistreatment of LGBTI individuals.
- c) Repeal laws that criminalize consenting same-sex relationships and transgender persons.

⁹ 1980s AIDS Crisis: What Do We Know & How Have Things Changed?, *available at*: <https://www.sfgmc.org/blog/aids-crisis-1980s>, (last visited on June 07 2024).

¹⁰ The Changing Landscape of Global LGBTQ+ Rights, *available at*: <https://www.cfr.org/article/changing-landscape-global-lgbtq-rights>, (last visited on June 3, 2024).

¹¹ About LGBTI people and human rights: OHCHR and the human rights of LGBTI people, *available at*: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights>, (last visited on June 07 2024).

¹² *Ibid.*

- d) Prohibit discrimination against anyone on the basis of their sex characteristics, gender identity, or sexual preference.
- e) Protect the freedoms of speech, association, & peaceful gatherings for LGBTI individuals.

VI. United Nations initiatives for Protection of LGBTQ Human Rights

Here are the ways that the United Nations has stepped up to support LGBTQ persons¹³:

- a) The U.N. Human Rights Council expressed concern over persecution of LGBTQ individuals and ordered the first-ever study about LGBTQ problems in 2011, passing a comprehensive resolution on human rights, gender identity, and sexual orientation.
- b) In the year 2012, the United Nations General Assembly (UNGA) approved a resolution condemning executions without trial carried out due to someone's sexual orientation or gender identity. That was referenced in a resolution voted by the UNGA for the first time.
- c) The United Nations' Free & Equal campaign was started in July 2013 by the High Commissioner for Human Rights to increase awareness of the rights of LGBTQ individuals. Through conventional and social media, the campaign has reportedly touched two billion people. It has also produced a wealth of widely shared content, including impactful films.
- d) The U.N. Security Council convened for the first time ever in August 2015 to discuss LGBT people's human rights under ISIS. In addition to dozens of other nations, nine of the fifteen members of the Security Council attended the briefing, which was organized by the United States and Chile.
- e) The U.N. refugee agency has been of enormous support to LGBTQ people in their escape from oppression and violence and in settling down in states which are relatively more welcoming of their group. They have often upgraded their instructions on ways to efficaciously and compassionately serve LGBTQ refugees and asylum seekers.
- f) Following the U.N.'s 2015 announcement of the Sustainable Development Goals (SDGs), several nations pledged to interpret the goals' terminology to guarantee that LGBTQ persons are not "left behind."
- g) Vitit Muntarbhorn was nominated the U.N.'s first United Nations independent specialist on "sexual orientation & gender identity" in September 2016. In that capacity, he attempted to raise the status of LGBTQ individuals throughout all U.N. member nations and to lessen acts of violence and prejudice against them.
- h) In addition to guidelines and suggestions for governments across the globe, the United Nations has released many breakthrough studies covering "discrimination and abuse of persons determined by their sexual orientation & gender identity".
- i) The United Nations Human Rights office denounced the planned United States prohibition on transgender individuals working in the armed forces in July 2017.
- j) UN Secretary-General, Ban Ki-moon regularly and frequently utilized his position to promote equality during his term (2010–17).

VII. LGBTQ LEGISLATIONS

LGBTQ legislations vary significantly between developed and developing nations, reflecting differences in cultural, social, and political environment. Whereas the developed nations have shown considerable development in accepting and safeguarding LGBTQ rights¹⁴, many developing nations still face challenges in addressing discrimination and ensuring equal rights. Here is a comparative analysis of LGBTQ legislations in developed and developing nations:

VIII. DEVELOPED NATIONS:

- 1) Legal Recognition: Developed nations such as Canada, USA, UK, and several European countries have made significant strides in legal recognition of LGBTQ rights. They have enacted laws recognizing same-sex relationships, including marriage equality, civil unions, or registered partnerships. These nations often provide legal protection against discrimination connected to sexual orientation as well as gender identity in a variety of settings, including work, living arrangements, and government services.
- 2) Anti-Discrimination Laws: Developed nations have implemented comprehensive anti-discrimination legislations to safeguard LGBTQ individuals' rights in various areas of life, such as in hiring, providing education and healthcare, as

¹³ Ten Ways the United Nations has Protected LGBTQ Human Rights, *available at*: <https://www.hrc.org/news/ten-ways-the-united-nations-has-protected-lgbtq-human-rights>, (last visited on June 27 2024).

¹⁴ LGBT+ rights have become more protected in dozens of countries, but are not recognized across most of the world, *available at*: <https://ourworldindata.org/progress-lgbt-rights>, (last visited on June 8, 2024).

well as public accommodations.¹⁵ Such legislations seek to provide equal treatment and protect LGBTQ people against discrimination, harassment, as well as hate crimes.

3) Gender Identity Recognition: Many developed nations have enacted legislation allowing legal gender recognition for transgender individuals. These laws provide avenues for changing legal “gender markers on identification documents”, access to gender-affirming healthcare, and safeguard against discrimination based on gender identity.¹⁶

4) Adoption and Parental Rights: Developed nations have taken steps to accept and safeguard the rights of LGBTQ individuals and couples in adoption and parenting. Same-sex couples are often granted equal rights to adopt and raise children, with legal recognition of joint parenting and access to assisted reproductive technologies. Adopting and having parental rights on an equal footing with opposite-sex couples is permitted in several countries, including as Canada, Denmark, the Netherlands, Spain, and the UK.¹⁷

IX. DEVELOPING NATIONS:

1) Criminalization and Lack of Legal Protections: In many developing nations, same-sex sexual activity is still criminalized, often based on colonial-era laws. LGBTQ individuals face legal sanctions, including imprisonment and in few cases, the death penalty, in certain nations.¹⁸ Comprehensive legislative safeguards against discrimination based on sexual preference or gender identity are also lacking.

2) Limited Recognition of Same-Sex Relationships: Developing nations generally have limited or no legal recognition of same-sex relationships. Marriage equality or civil partnership laws are rare, leaving LGBTQ couples without legal protections or rights related to inheritance, healthcare decision-making, and spousal benefits.

3) Stigma, Discrimination, and Violence: LGBTQ individuals in developing nations often face widespread societal stigma, discrimination, and violence.¹⁹ Homophobic and transphobic attitudes, fuelled by cultural, religious, or traditional beliefs, contribute to marginalization and exclusion. Hate crimes and persecution against LGBTQ individuals are prevalent, with little legal recourse or protection.

4) Emerging Activism and Legal Reforms: Despite the challenges, there are pockets of progress in some developing nations. LGBTQ activists and organizations are working towards legal reforms, raising awareness, and advocating for LGBTQ rights. Some countries have seen positive shifts in public opinion and small steps towards decriminalization or recognition of LGBTQ rights.

These are general trends and there are variations within both developed and developing nations. Some developing nations have made significant strides in LGBTQ rights, while certain developed nations still face challenges in achieving full equality.

X. TIMELINE OF THE LGBTQIA+ MOVEMENT IN INDIA

The fight for LGBTQ rights in India has been fraught with both setbacks and successes. The LGBTQ community has always endured social shame, persecution, and legal challenges. Transgender people, in particular, suffer major impediments to healthcare, such as hormone treatment, gender-affirming operations, and mental health services. In India, LGBTQ+ people have faced hate crimes such as physical and verbal harassment, sexual assault, and sometimes murder. Perpetrators frequently target individuals depending upon their gender identity or sexual orientation. These acts generate a sense of anxiety and fear within members of the LGBTQ+ community. In recent years, there has been a rising acknowledgment of the need of inclusion, equality, and protecting fundamental human rights for every individual, irrespective of sexual orientation or their gender identity. India's varied religious, cultural, and social environment provides a unique backdrop for comprehending the intricacies of LGBTQ rights. The battle for LGBTQ rights in India is

¹⁵ House Passes The Equality Act: Here's What It Would Do, *available at*: <https://www.npr.org/2021/02/24/969591569/house-to-vote-on-equality-act-heres-what-the-law-would-do>, (last visited on May 22 2024).

¹⁶ L.L. Barsigian, P. L. Hammack, *et. al.*, “Narratives of Gender, Sexuality, and Community in Three Generations of Genderqueer Sexual Minorities” 7 *Psychology of sexual orientation and gender diversity* 276–292 (2020).

¹⁷ Sudha, B, “LGBTQ Rights in India- A Comprehensive Analysis” 12 *International Journal of Creative Research Thoughts* 485 (2024).

¹⁸ Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People, *available at*: https://cdn.who.int/media/docs/default-source/documents/gender/joint_lgbti_statement_eng.pdf?sfvrsn=fad54fc7_3, (last visited on June 02, 2024).

¹⁹ Tonia C Poteat, Carmen H Logie *et. al.*, “Advancing LGBTQI health research” 397 *The Lancet* 2031-2033 (2021).

intricately linked to the country's colonial history, cultural norms, and legal structures. Efforts to challenge unfair laws and encourage social acceptance have gained traction via grassroots activity, judicial struggles, and shifts in society perspectives.²⁰ A brief account of LGBTQ movement in India is given below-

- i. In 1860, when Britain ruled India, gay relations were deemed unnatural and were made a crime under IPC section 377. The statute remained in place long after India attained independence in 1947, and it acted as an instrument of discrimination against the LGBTQ population in the late twentieth century. Section 377 violated LGBTQ persons' fundamental rights, such as equality, confidentiality, respect, and freedom of speech. It denied them the freedom to live freely and openly, to form consenting adult relationships without being concerned about legal repercussions. It made it more difficult for LGBTQ people to get healthcare treatments. Many LGBTQ people have been hesitant to seek medical help, including HIV/AIDS diagnosis and therapy, for fear of prejudice or legal ramifications.²¹
- ii. The Criminal Tribes Act of 1871, which was abolished in August 1949, declared the whole transgender community to be fundamentally criminal, and "Eunuchs" were defined as "all people of the male sex who on medical inspection manifestly appear to be impotent." As a result, this legislation applied to infertile males as well.²²
- iii. Following independence, the fundamental right to Equality was recognized under Article 14, however, homosexuality continued to be regarded as a criminal offense.
- iv. The first reported homosexual rights rally took place decades later, on August 11, 1992.
- v. In 1999, Kolkata held India's maiden "Gay Pride Parade". The procession, which had just 15 participants, received the title Calcutta Rainbow Pride.
- vi. In the 172nd report of the Law Commission in year 2000, members of the committee advocated the repeal of Section 377 of the IPC, arguing that it is detrimental to public health given that it has a direct influence on the lives of homosexuals..
- vii. Gay "pride parades" which took place in 2008 in Bengaluru, Delhi, Indore, Kolkata, and Pondicherry, got widespread support by the public, media, celebrities, etc.²³
- viii. In 2009, the nation's electoral officials announced that the transgender population will be granted an independent identity on voter lists. Members of this category were required to identify as male or female on the electoral register prior to this announcement. However, following this statement, they now have the option to check "O," which stands for "other."²⁴
- ix. 2009 saw the historic ruling in the *Naz Foundation*²⁵ case by the High Court of Delhi, which ruled that criminalizing consensual homosexual consummation between adults violates the fundamental rights provided by the Indian Constitution.
- x. In the *Suresh Kumar Koushal*²⁶ case in 2013, the Supreme Court overturned the ruling rendered by the Delhi High Court in *Naz Foundation* case and reinstated Section 377 of the Indian Penal Code.
- xi. The Apex Court in *National Legal Services Authority v. UoI*²⁷ recognized them as the "Third Gender". In his groundbreaking decision, Justice K.S Radhakrishnan stated that "recognition of transgenders as a third gender is not a social or medical issue, but a human rights issue."
- xii. A bill aimed to decriminalise homosexuality was brought forward by MP Shashi Tharoor at the end of 2015, however the Lok Sabha did not approve it.
- xiii. LGBT campaigners saw fresh hope after the Apex Court affirmed the "right to privacy as a basic constitutional right" in the historic *Puttuswamy*²⁸ ruling in August 2017.

²⁰ Sudha, B, "LGBTQ Rights in India- A Comprehensive Analysis" 12 *International Journal of Creative Research Thoughts* 485 (2024).

²¹ Sudha, B, "LGBTQ Rights in India- A Comprehensive Analysis" 12 *International Journal of Creative Research Thoughts* 485 (2024).

²² Sagnika Das, "LGBT Movement in India: The Journey towards an Inclusive Society" 12 *Indian Journal of Law and Justice* 289-299 (2020).

²³ Kunal Debnath, "LGBT Movement as a New Social Movement: Indian Perspective" 7 *Journal for Social Development* 45 – 50 (2015).

²⁴ *Ibid*

²⁵ *Naz Foundation v. Govt. of NCT of Delhi* 2009 (6) SCC 712

²⁶ *Suresh Kumar Koushal and another v. NAZ Foundation and others* Civil Appeal No. 10972 of 2013

²⁷ *National Legal Services Authority v. Union of India* WRIT PETITION (CIVIL) NO.400 OF 2012

- xiv. The Supreme Court declared in a majority decision on 6th September 2018, that Section 377 of the IPC was unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex" and determined that LGBTQ+ individuals in India have all constitutional rights, including the freedom to choose who they want to associate with and the opportunity to find joy in sexual intimacy.²⁹
- xv. Transgender Persons Rights Act³⁰: The Act is a huge step forward in preserving the rights of transgender people in the country. The Act legally recognizes transgender people as a third gender and outlaws' discrimination against them in education, work, healthcare, and public places. The Act establishes welfare boards to facilitate access to social assistance programs for transgender individuals.

XI. CONSTITUTIONAL PROVISIONS FOR GENDER EQUALITY IN INDIA

Constitutions, as the ultimate law of the nation, are frequently the most effective legal tools for safeguarding and advancing gender equality. They have the ability to cement gender equality by establishing clear principles and expectations, acting as a foundation for legal claims that promote rights and safeguards, and driving decision-makers and campaigners toward more gender-responsive legislation. Sections in Indian Constitution which promotes gender equality are described below-

- 1) Article 14 of India's Constitution guarantees "equality before the law and equal protection of the law". Equality entails the complete and equal enjoyment of all rights and freedoms. The right to equality is a cornerstone of the Constitution, and treating everyone equally under unequal conditions itself constitutes a breach of the Fundamental Right to Equality.
- 2) Article 15 of the Indian Constitution forbids gender discrimination. Unfortunately, before to *NLSA v/s UoI*³¹, the term "sex" was considered to imply just "male sex" and "female sex," and while not specifically excluded, the third gender was omitted from the scope of Article 15 of the Constitution.
- 3) Article 16 of the Constitution ensures equal opportunity in public employment, regardless of religion, ethnicity, caste, gender, and so on. The term "sex" does not specifically exclude the third gender under this Article, but it remains beyond its scope.
- 4) The Constitution's Article 19 (1) (a) provides that everyone has the "right to free speech and expression", which includes the freedom to express one's gender identity by one's words, actions, or behaviour. There are no restrictions on one's choice of attire or personal appearance, with the exception of those listed in Article 19(2) of the Constitution.
- 5) Article 21 of the Indian Constitution declares that no individual shall be "deprived of his or her life or personal liberty unless in accordance with the procedures prescribed by law". Thus, everyone, including LGBT persons, has the right to life.³²
- 6) The Court determined in the *Francis Coralie Mullin*³³ case that the right to dignity is an essential aspect of the constitutional culture that aims to guarantee complete growth. It demonstrates how all members of society are included, regardless of their sexual orientation.

Recent decisions by several High Courts in India have been critical in challenging cultural norms and furthering the rights of the LGBT and transgender communities. Some recent judgements are discussed below

- a) The Patna High Court decision in *Reshma Prasad v. State of Bihar*³⁴ posed a one-of-a-kind legal challenge regarding the inclusion of transgender people in the Bihar State Government's 2022 Caste Survey. As gender and caste are separate identities, Reshma Prasad, the petitioner, claimed that enumerating transgender people on the caste list infringed their fundamental rights provided by Articles 14 to 16 & 21 of the Indian Constitution. The court accepted the caste survey's goal to empower underrepresented communities while also protecting transgender people's right to self-determination. While acknowledging that the inclusion of transgender people on the caste list may have been a mistake, the court argued for a more nuanced approach. It advised categorizing the transgender population individually, which would allow for a more targeted study of their socioeconomic as well as educational condition.

²⁸ AIR 2018 SC (SUPP) 1841

²⁹ *Navtej Singh Johar v. Union of India* W.P. (Crl.) No. 76 of 2016.

³⁰ Transgender Persons (Protection of Rights) Act, 2019 (Act. 40 of 2019).

³¹ *National Legal Service Authority v/s Union of India* Writ Petition (Civil) No. 400 of 2012

³² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³³ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608

³⁴ Civil Writ Jurisdiction Case No. 6505 of 2023

b) The Allahabad High Court in the case of *Neha Singh*³⁵ reiterated the Apex Court's 2014 decision, reaffirming individuals' right to identify themselves as male, female, or third gender, determining it as a vital aspect of the right to life.

c) In a case related to the Nainarkuppam village panchayat's disagreement to land assignment to transgender people in their village, the Madras High Court instructed the Tamil Nadu government to undertake steps to integrate transgender people into mainstream society by giving them reservations in local body elections. Citing the Transgender Persons Rights Act, the Court emphasized the need to include transgender voices in debates regarding their rights and needs, particularly in legislative institutions. It highlighted that transgender people should have access to these forums in order to participate meaningfully and contribute to societal progress.³⁶

d) Legal rulings have a significant impact on creating cultural norms and guaranteeing justice for vulnerable people. The courts' decisions have the potential to establish significant precedents that can allow greater legal changes and revolutionary societal change. By interpreting laws in light of changing gender identities and sexual orientations, these courts have opened the path for a more egalitarian society that appreciates diversity and individual liberty.³⁷

Despite the achievement gained by the Apex Court's 2018 decision, the LGBT community in India continues to encounter hurdles. Discrimination, stigma, and violence continue to exist, and there are other barriers to true equality. Although homosexuality is no longer a criminal offense, legal recognition of same-sex relationships, such as marriage or civil partnerships, remains pending.³⁸ Widespread public acceptance and knowledge of LGBT problems are ongoing, with many areas of society still retaining biases and misunderstandings.³⁹

XII. CONCLUSION

While developed nations have made substantial progress in recognising and defending LGBTQ rights, several developing countries still have a long way to go in tackling prejudice, decriminalising same-sex partnerships, and providing equal rights for LGBTQ people. Continued efforts are required to promote inclusion, build understanding, and push for global LGBTQ laws and safeguards.

The LGBTQ+ community's story in India is a patchwork of acceptance, discrimination, legal fights, and social development. From prehistoric acceptance to colonial criminality and, eventually, recent steps toward equality, each stage represents a chapter in the continuous battle for recognition and equality. As India progresses toward inclusion, legislators must wrestle with the complexity of gender expressions in order to develop legislative frameworks that safeguard and support all individuals, regardless of where they fall on the LGBTQ+ rainbow. The fight for comprehensive LGBTQ+ legislation signifies a cultural shift toward acceptance, diversity, and justice, mirroring the lively and diversified history of this unique group.

³⁵ *Neha Singh v. State of Uttar Pradesh* WRIT – A No. 7796 of 2023

³⁶ Madras High Court Removes 'Transphobic' Village Head; Orders Transgender Reservation In Local Bodies, *available at*: <https://restthecase.com/knowledge-bank/news/madras-high-court-removes-transphobic-village-head-orders-transgender-reservation-in-local-bodies>, (last visited on June 25, 2024).

³⁷ From Judgments to Handbook: India's Transformative Journey towards LGBTQIA+ Equality, *available at*: <https://cjp.org.in/from-judgments-to-handbook-indias-transformative-journey-towards-lgbtqia-equality/>, (last visited on June 09 2024).

³⁸ Same-Sex Marriage in India: A Review of Recent Supreme Court Judgments, *available at*: <https://www.freelaw.in/legalarticles/Same-Sex-Marriage-in-India-A-Review-of-Recent-Supreme-Court-Judgments>, (last visited on Oct 22 2022).

³⁹ Snehil Soni and Sanjay Sarraf, "An International Exploration of LGBT Rights and Movements" 11 *International Journal of Creative Research Thoughts* 771-782 (2023).