



IDENTITY-BASED VIOLENCE AGAINST LGBTQIA+ COMMUNITY IN INDIA

THEME: Human rights, women & child protection

Shreya Ranjan (BB.A. LL.B. Semester 910)

1. ABSTRACT

Every person is a special creature of God, irrespective of their caste, creed, religion, belief, or sexuality. However, in the 21st century, it is still taboo to freely declare homosexuality and be a part of the LGBTQIA+ community in India. Moreover, homosexuality has a historical presence in Indian society, but still these communities are struggling for their social acceptance. The LGBTQIA+ people, who identify themselves as sexual minorities, are often victimized with identity-based violence, and subject to physical, mental, and sexual abuse. They are often persecuted by the police and neglected by the legal system; they are denied jobs, paid less, and treated unequally at the workplace, which forces them to hide their sexual orientation and identity. To make matters worse, the recently enforced criminal statute does not include any special provision for the protection of hate crimes against these communities. In addition to the national law, even the Rome statute blatantly disregards any gender other than a male or female. The paper proposes to analyze several aspects of hate crimes and victimization endured by the LGBTQIA+ people. The author delves into the existing legal and social framework for the sexual minorities along with elucidating the difficulties faced by such communities and attempts to find the solution for the same by addressing shifting societal norms and comparing Indian legislation with the laws of other nations. It also examines the implications involved in implementing such laws within India by studying different pronouncements and judgments. The study focuses on highlighting the need for special legislation or amendments in substantive criminal law pertaining to the LGBTQIA+ communities with the help of the latest occurrences and statistical findings.

Key Words – LGBTQIA+, Victimized, Sexual Minority, Hate, Identity – based violence

2. OBJECTIVE

The objective of this paper is to study the concept of discrimination and criminal violence victimizing the LGBTQIA+ communities in India, as well as the current laws, issues, theories, judgements, and causes related to the topic in detail. The paper aims to reflect the social, historical, political, and legal status of LGBTQIA+ communities subject to identity-based violence by critically looking at every facet of the subject in detail.

3. RESEARCH METHODOLOGY

The paper aims to research on the concept of identity-based violence victimizing the LGBTQIA+ communities in India, along with analyzing the current laws, issues, theories, judgements, and causes related to the topic in detail. The paper work towards reflecting the social, historical, political, and legal status of LGBTQIA+ communities subject to hatred and violence by critically looking on every facet of the subject in detail. This research is descriptive and analytical in nature. When essential, the author has gathered primary data from sources such as statistics, official survey reports, and observations. Secondary and electronic resources have been used extensively to gather data about the topic. Books and other reference are guided by the concerned faculty have been primarily helpful in structuring the research work. However, websites, dictionaries and articles have also been referred to examine the topic in detail. Footnotes have been provided wherever required to acknowledge the sources.

4. LITERATURE REVIEW

This study, "Hate Crimes Victimized the LGBTQIA+ Community in India," examines hate crimes against sexual minorities from a variety of perspectives, including social, historical, legal, and political aspects.

A detailed understanding of hate crimes and hate crimes against the LGBTQIA+ community is provided in Chapter 12 "Understanding hate crimes against the LGBT: A comparative study of India, the U.K., and the USA." of the book Research at DINE 2023, The comprehension of the frequent violence, hate crimes, assault, and discrimination against LGBTQIA+ people that are embedded in long-standing cultural and societal structures can be gained from the book Killing the Rainbow: History of Violence towards the LGBTQIA+ community(2016)

The Article titled Rights of the LGBT Community in India (2022) delves further into the particular rights of the LGBTQIA+ community in Bharat. In addition to highlighting their historical significance in India, it defines the terms lesbian, gay, bisexual, and transgender. This article A brief history of LGBTQ+ in India (2021). provides an explanation of India's rich cultural history for the LGBTQ+ community that was equitable and non-discriminatory. Moreover, it discusses the position of LGBTQ+ individuals during the ancient, medieval, and British period in detail. According to empirical research (Sharma & Patel, 2020; Roy, 2021), LGBTQIA+ people in India are subjected to a variety of criminal violence, such as sexual assault, honor killings, physical attacks, and corrective rapes.

5. INTRODUCTION

It is regrettable that in a country like Bharat, where traditionally homosexuality was widely accepted, as demonstrated on the walls of Khajuraho temple and in the writings of Kamasutra, people belonging to LGBTQIA+ communities are continuously victimized and tortured. Homosexuality is still considered a psychological issue and not accepted in society, hate crimes against people of the LGBTQIA+ community are especially severe since they are already humiliated and ostracized due to their sexual orientation. In spite of the celebrated ruling by the honorable Supreme Court on September 6, 2018,¹ which partially struck down Section 377 of the Indian Penal Code, 1860 by decriminalizing homosexual relationships among consenting adults and raised hopes for a progressive, accepting society that would support the civil rights of the LGBTQIA+ community, prejudice and discrimination against these groups still exists in India.

‘One such incident occurred in Kolkata, when 6-7 policemen picked up a 23-year-old individual called Sanjit Mondal and took him to the police station, where they physically and verbally abused him for belonging to

¹ Navtej Singh Johar & Ors. v. Union of India The. Secretary Ministry of Law and Justice, AIR 2018 SUPREME COURT 4321, AIR 2018 SC(CRI) 1169.

the gay community. His phone was taken up, and he was beaten and harassed. He was called by the term “**chakka**, and asked if he had a penis, and why he behaves like a girl. Somehow, his sister bailed him out with the help of an advocate, but he was only left after giving a warning that he should start behaving like a "man." The incident was extremely painful and upsetting because the boy was tortured without even knowing his fault, just for belonging to a particular community.’² Such hate crimes are rampant in India, which is indicative of the extreme intolerance and lack of acceptance of the LGBTQIA+ population in the country.

Hate crime or identity-based violence can be described as Acts of violence, cruelty, injuries, killings, and torture committed against some individuals on grounds of their distinct sexual orientation, race, religion, or physical characteristics. India is a democratic republic country governed by the provisions of the Indian constitution, which is based on the ideas of justice and equality. Further, no democracy could ever allow hatred, violence, and inhuman behavior based on caste, color, creed, residence, politics, gender identification, or sexual orientation. In addition to violating fundamental and basic human rights, hate crimes in India also undermine harmony and peace amongst various social groups.

The Indian legal system is not equipped enough to address the challenges faced by the LGBTQIA+ community, leaving them prone to hate crimes. The abuse and torture these people endure are frequently unreported and not sufficiently prosecuted; most of the time, they are silenced and denied justice because their own family members, along with society, do not reorganize and support their sexual identity. The study seeks to critically examine these hate crimes against sexual minorities that are prevalent in India and to identify strategies to prevent such criminal acts.

6. UNDERSTANDING THE LGBTQIA + COMMUNITY

" Gender is who you are and sexuality is who you want," as C.N. Lester put it. The statement itself distinguishes between a person's gender and sexual behaviour. Unfortunately, though, a lot of people aren't even aware of what the LGBTQIA+ community—which is an umbrella term for various categories of sexuality, and gender identity to which an individual belongs. LGBTQIA+ is an initialism that stands for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and + denotes any other identities that do not fit into LGBTQIA categorization. Each group is distinct from the others based on their sexual identity. They are individuals who do not identify with the "ideals" of cisgender heterosexuality.³ For instance, a homosexual guy who is attracted to other men on a romantic, sexual, or emotional level is referred to as gay. Although the term can occasionally be used to refer to both gay men and women, gay men are the focus of this particular usage because homosexual women are typically referred to as lesbians. Further, bisexuals are those groups of people who identify as gender binary—that is, who find themselves sexually and emotionally drawn to both men and women—or, alternatively, who find themselves drawn to both people of the same and different genders; this characteristic is sometimes referred to as pansexuality.⁴ Furthermore A "transgender person is defined by the Transgender Persons (Protection of Rights) Act as someone who identifies as “(i) neither fully female nor fully male; (ii) a combination of female and male; or (iii) neither female nor male. In addition, the person’s sense of gender must not match with the gender assigned at birth.” The definition also includes trans men, trans women, Kinner, hijra, aravani, jogra, persons with intersex variations, and gender queers, (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy

² Jayatri Nag, '23 Years-old says Kolkata police beat him up' Mumbai Mirror (India, 27 July 2020)

³ Riya, 'LGBTQIA+ Community: A Detailed Discussion', (drishtias.com, 29th June, 2022), <<https://www.drishtias.com/blog/lgbtqia-a-detailed-discussion>> accessed 25 September, 2024.

⁴ Carroll JL (2015). Sexuality Now: Embracing Diversity. Cengage Learning. p. 322. ISBN 978-1305446038. Archived from the original on 7 November 2021. accessed 25 September, 2024.

or laser therapy or such other therapy),”⁵ While queer and intersex are included in the definition of transgender according to the Transgender Act, they are not identical because queer is an umbrella term that encompasses a wide range of sexual orientations, gender identities, and expressions that defy social norms of sexuality. This term, primarily used by those who do not consider themselves to be gay, lesbian, or bisexual, honors the multiplicity of identities within the LGBTQIA+ community.⁶ Withal, people classified as intersex are those whose reproductive organs or genital chromosomes do not fit to the male or female sex binary, or who may have traits of both.⁷ And the acronym A of LGBTQIA+, which expands as asexual or ‘aces,’ are those individuals who have little or no sexual attraction for any gender; it is often confused with ‘celibacy,’ but celibacy is a choice to abstain from engaging in sexual behavior, but being asexual is a sexual orientation.⁸ The LGBTQIA+ community is an inclusive community that uses a ‘+’ sign to represent all other identities that cannot be exclusively considered within the letters of LGBTQIA namely Agender, Two-spirit Demisexual, Genderfluid etc-

7. EXPLORING THE HISTORY OF LGBTQIA+ COMMUNITY IN INDIA

The first mention of homosexuality and transsexuality in India can be found in Hindu mythological texts. In a popular story, Lord Vishnu disguises the form of a female avatar called Mohini to distribute amrita (the elixir of immortality) to the devas during the Samudra Manthan. She is also worshipped among the transgenders. Moreover, there are also stories of Lord Shiva, another Hindu god, being captivated by her beauty and uniting with her, resulting in the birth of God Shasta.⁹ It is not the only story, even the acceptance of LGBTQIA+ people can be observed via several other images and cultural depictions, for instance, the Ardhnareshwar disguise of Lord Shiva, which means half man and half woman. The aforementioned tales demonstrate that in ancient India, all forms of love and gender identities were embraced and cherished. Many religious texts also depict the concept of same sex, such as the Rigveda, which features the phrase "Vikriti Evam Prakriti," which translates to "what seems unnatural is also natural." As mentioned in the writings of Kamasutra, the homosexuals were known as "Swarinis," and they often got married and raised children together. Another remarkable illustration may be found in the walls of the Khajuraho temple built in the 12th century in Madhya Pradesh. The temple is famous for its apparent erotic sculptures that depict the sexual fluidity of homosexuals.¹⁰ However, there was a steady change during the medieval era, along with some opposition to same-sex relationships and transsexuality. They were tolerated by the society, but no one was persecuted for having a different sexual orientation. ‘Likewise, there were incidents when noble class Mughals were involved in homosexuality such as Babar the first emperor of Mughal dynasty wrote about his love for a man called Baburi and his writings faced no animosity during the time and later on.’¹¹ But with the advent of British colonists in India, all homosexual activities ‘sexual activities against the order of nature’ were

⁵ The Transgender Persons (Protection of Rights) Act, 2019

⁶ Vanderbilt University, student affairs, ‘Definitions, Lesbian, Gay, Transgender, Queer, & Intersex Life’, <<https://www.vanderbilt.edu/lgbtqi/resources/definitions/>>, accessed 26th September 2024.

⁷ Cleveland Clinic, Intersex, <<https://my.clevelandclinic.org/health/articles/16324-intersex/>>, Archived from the original on 19th July 2022. accessed 26th September, 2024.

⁸ LGBT Center UNC-CHAPEL HILL, Asexuality, Attraction, And Romantic Orientation, <<https://lgbtq.unc.edu/resources/exploring-identities/asexuality-attraction-and-romantic-orientation/#:~:text=Asexual%20%E2%80%93%20A%20term%20used%20to,comment%20on%20one's%20sexual%20attractions>>, accessed 26 September, 2024.

⁹ Gauri Pandey, ‘LGBTQ+ representation in Hindu Mythology’ (Reflections. Live, 3rd June 2022) <<https://reflections.live/articles/1438/lgbtq-representation-in-hindu-mythology-an-article-by-gauri-pandey-5148-13y1cd91.html>>, accessed 29 September 2024.

¹⁰ Aditi Yadav, ‘A Brief History of LGBTQ+ in India – The CBS post’ (The CBS post, 18th November 2021) <<https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india/>>, accessed 28th September 2024

¹¹ Nivan, ‘Tales from the Baburnama: Babur’s homosexuality and ‘love’ for a young child.’ (opIndia 25 September 2020) <<https://www.opindia.com/2020/09/tales-from-the-baburnama-babur-and-his-love-for-a-young-boy-homosexuality-lgbt/>>, accessed 29 September 2024.

criminalized under Section 377 of the Indian penal code. The law was based on a Catholic church belief that any sexual activity that is not for giving birth to a child is evil. Even though in the new criminal law 'Bhartiya Nyaya Sanhita 2023', homosexual relationship between two consenting adults is no longer a crime, and from ancient times till today we had come a long way, but hate crimes against the LGBTQIA+ individuals still persist in the Indian society, and people belonging to the LGBTQIA+ community face hatred, non-acceptance, and discrimination even today. But we should keep in mind that laws alone cannot alter the situation until society as a whole change its perspective and people begin to understand that it is wrong to judge or despise someone based merely on their differences in choice. People ought to realize that each person is unique and that it is unfair to force your preferences and expectations on others.

8. IDENTITY-BASED VIOLENCE PERPETRATED AGAINST THE LGBTQIA+ COMMUNITY

Martin Luther King once said, "Darkness cannot drive darkness; light can do that. Hate cannot drive out hate; love can do that." But what if choices about love are the reason for hatred of society towards some communities? The LGBTQIA+ populations face discrimination only for expressing their individuality in matters of love and sexual orientation. Moreover, they are often subject to physical, social, and mental abuse because they live their lives contrary to social norms and preferences. Crime can be defined as "a voluntary commission of any act usually deemed socially detrimental or dangerous and specifically defined, prohibited, and punishable under criminal statutes."¹² Therefore, it is apparent from the previous definition that there are two components that make up a crime: 'mens rea' and 'actus reus', and reorganizing the way that hate crimes vary from other types of crimes is important because hate crimes have a mental component to their nature. Certain communities experience hates crimes as a result of animosity directed against them. Hatred is an aggressive, intense sense of intolerance or revulsion against a group of individuals based on gender identity, religion, caste, race, disability or sexual orientation. It is not simply rage, anger, or general dislike. Hate crimes are more likely to be extremely cruel and vicious, which can result in sexual, psychological, and physical abuse (84% of hate crimes are likely to cause robbery, physical, and, sexual assault but only 23% of non-hate crimes are of such nature)¹³. These crimes are always a risk to the target communities because, driven by hatred and frustration, such offenses can be perpetrated against anyone, without any connection, and for no reasonable cause at all. 'In general law requires two elements to ascertain that a crime is a hate crime:

- it must be a criminal act and
- it must be committed against certain individuals or groups on the basis of discriminatory motives or prejudices, backed by hatred."¹⁴

The landmark decision *NALSA v. Union of India*¹⁵ and the Transgender Person (Protection of Rights) Act of 2019¹⁶ reorganized transgender people as the third gender and their right to self-identity; however, transgender people are still stigmatized in Indian society and are frequently the targets of physical, sexual, and other forms of abuse. One such instance happened in the Nizambad district of Telangana on February 13, 2024, where Raju, a 50-year-old transgender person, was brutally attacked by a mob following claims of

¹² Donald C. Clarke, Antony Nicolaas Allot, 'Crime' (Encyclopedia Britannica, Inc, 26th September, 2024), <<https://www.britannica.com/topic/crime-law>>, accessed 2, October, 2024.

¹³ Anushka Ukrani: 'Understanding Hate crimes against the LGBT: A comparative study of India, U.K and USA', in Prof (Dr.) Ravikant Swami, Prof (Dr.) Poorva Ranjan, Dr. Shalini Gautam (eds), Research at DME 2023,

¹⁴ International center for the prevention of crime, hate crimes based on sexual orientation and gender identity: An overview of global trends and prevention modalities, (Executive summary, Pg 2, 2019) Ch 1

¹⁵ National Legal Service Authority V union of India (2014) INSC 275

¹⁶ The transgender persons (protection of rights) act, 2019

child kidnapping cases. The villagers knew Raju well, and they frequently tried to force him to live as a beggar and cattle herder. Raju was taken to the hospital by state officials but he died shortly, affected by his injuries. Even though the authorities declared that he was not involved in any kidnapping and that those incidents were isolated occurrences unrelated to organized gangs. However, it was too late for Raju.¹⁷ Such brutal incidents are evident that even after 78 years of independence and the availability of legal protections, the LGBTQIA+ group is still fighting against such prejudice and asserting their equal standing in society.

i. Kinds of identity-based violence committed against the LGBTQIA+ community

The unfortunate reality of anti-LGBTQIA+ identity-based violence in India persists despite recent judgments rendered by the distinguished Supreme Court, including the decriminalization of sex-sex relationships in 2018.¹⁸ Sexual orientation and distinct gender identity is still a stigma in Indian society, Prejudice and discrimination against these individuals frequently lead to physical, mental, sexual, or other forms of abuse in a variety of contexts, including relationships, work, education, and healthcare. Underreporting and a lack of cooperation with law enforcement are common outcomes of the societal rejection of these individuals. These disadvantaged groups are frequently the target of anti-trans violence and gay bashing, which includes:

A. Physical Violence-

The LGBTQIA+ community frequently faces physical violence, including beatings in public, mob lynchings, serious injuries, and, in severe cases, death. Unfortunately, along with the general public, sometimes even the police participate in acts of violence against these jeopardized groups. Underreporting of such violence and cruel acts worsens the lives of victims concerning such hate crimes. Although in urban areas, digitization and increasing usage of social media have led to a greater hearing and attention for certain offenses; yet, in rural areas, lack of exposure, awareness, and connectivity has left LGBTQIA+ persons with no choice but to repress their feelings and remain silent in every situation.¹⁹ In addition, honor killings—in which a close relative or family member kills an LGBTQIA+ person for the sake of their alleged family honor and social standing—are becoming more common in India in present times.

B. Psychological and emotional torture

Many researchers have demonstrated that members of the LGBTQIA+ community experience a range of mental health issues. It has been found that 52% of these people struggle with mental health issues.²⁰ Isolation, anxiety, depression, and suicidal thoughts are typical in them. The stigmatization and discrimination in society is the reason for the emotional pain, low self-esteem, and self-hatred among these people.²¹ LGBTQIA+ people are often treated as abnormal, psycho, and sinful people. The words 'Hijra' and 'Chakka' are very common in India to verbally abuse and insult them. Moreover, many institutions like schools and workplaces do not even reorganize them; many times, they are teased, bullied, and harassed in public. Lack of proper healthcare due to the homophobic nature of society and conversion therapies are also some of the reasons causing them mental torture.

¹⁷'Remembering our dead' < https://tdor.translivesmatter.info/reports/2024/02/13/raju_nizamabad-telangana-india_e8a713ec>, (24th February 2024) accessed 6th October, 2024.

¹⁸ Supra note 1, Pg. 8.

¹⁹ LGBTQIA+ Rights and Acceptance in India, (drishtias.com, 16 June 2023), < <https://www.drishtias.com/daily-updates/daily-news-editorials/lgbtqia-rights-and-acceptance-in-india>>, accessed 6 October, 2024.

²⁰ Prajapati AC, Parikh S, Bala DV. A study of mental health status of men who have sex with men in Ahmedabad city. *Indian J Psychiatry*. 2014; 56:161-164.

²¹ Jagruti R. Wandrekar, Advaita S. Nigudkar, 'What do we know about LGBTQIA+ Mental Health in India? A Review of research from 2009 to 2019. (2020) vol 2, issue 1, < <https://doi.org/10.1177/2631831820918129>>, accessed 7 October 2024.

C. Sexual violence

In Indian society, there is a high prevalence of rapes and sexual harassment of LGBTQIA+ individuals, these acts are driven by prejudice, hatred, and discrimination against gender identity and sexuality. Perpetrators sexually assault these groups to punish them for violations of social norms and structure. Forceful assault of homosexuals by people of the opposite gender in order to enforce heterosexuality on them is common in India. It is unfortunate that India's rape laws only identify women as victims and men as offenders. LGBTQIA+ people also have difficulty accessing justice for sexual violence, and many times these crimes go unreported as a result of the absence of comprehensive laws against discrimination and sexual harassment.²² In addition to the abuse and violence they fear from society at large, parents and relatives of lesbians and gay persons sometimes subject them to "corrective rape" or forcefully marry them in accordance with social expectations in an attempt to make them straight.

Hate crimes against LGBTQIA+ cannot be classified completely into categories because they are motivated by the feeling of hatred and prejudice; they can range from teasing and taunting to rape and murder. Sometimes people are not even aware that they are doing something wrong and inhuman because they are executing such offenses with the belief that they are correcting the society, and many times they think they are doing such acts for the benefit of victims. People may commit crimes without even realizing they are breaking the law. The problem is embedded in the thought process of society, which can only be corrected through acceptance, education, and awareness.

9. FACTORS CONTRIBUTING TO IDENTITY-BASED VIOLENCE AGAINST LGBTQIA+ PEOPLE

A learned individual once stated, 'Crime is common. Logic is rare. Therefore, it's upon the logic rather than upon the crime you should dwell. 'In order to eradicate hate crimes or identity-based violence against LGBTQIA+ people, it is crucial to determine the causes of these crimes after having a thorough understanding of them. Here are some common factors linked to these hate crimes:

i. Psychological and cultural factors

Hate crimes against sexual and gender minorities are rooted in what culture has taught individuals; stated another way, when people behave in a way that challenges social norms and customs, certain members of society find it difficult to accept this shift in conventional wisdom. Their dominating and authoritative psychology may be the reason for their hate behavior towards LGBTQIA+ individuals. For centuries, heterosexuality has prevailed in society, and homosexuality has also been condemned as sin and immoral act in various religious writings, including Christianity.²³ In order to eliminate and remove such ideas from society, they torture and neglect LGBTQIA+ individuals.

ii. Gender norms and patriarchal society

The disparities of power between males and other genders are the primary cause of gender-based violence. The way society operates is dictated by gender norms, namely the dominance of men in all decision-making. The main reason why transgender, intersex, and queer persons are subjected to violence and inhumane treatment is to establish supremacy and dominance over them. Gender and sexuality norms are the driving

²² Alisha Dutta, 'Bharatiya Nyaya Sanhita has no section dealing with rape of men, transgenders persons.' The Hindu (India, 23 June, 2024)

²³ Leviticus 18:22 "Do not practice homosexuality, having sex with another man as with a woman. It is a detestable sin." (NLT), Leviticus 20:13 "If a man practices homosexuality, having sex with another man as with a woman, both men have committed a detestable act. They must both be put to death, for they are guilty of a capital offense." (NLT)

forces behind prejudice against LGBTQIA+ individuals and the inciting of hate crimes against them, as these groups are perceived as challenges to social standards.²⁴

iii. Family and community rejection

LGBTQIA+ people experience guilt and depression when they are not accepted by their own family members, who are the closest people in their lives. Rejection incites hatred, intolerance, and isolation for them, which often leads to hate crimes against them. If children choose to identify as gay or adopt a different gender identity, parents feel ashamed. Due to such dismissal and ignorance, LGBTQIA+ people might lose their lives or can also result in several other psychological and emotional consequences, such as a diminished sense of self-worth. Parents might force their children to marry and have sexual relations with someone of the opposite sex, which can ruin their entire life. Transgender people are often been compelled to disguise their gender identity as they were assigned at birth in order to keep up what is considered social respect for their ancestry. Moreover, they are thrown out of their homes for fear of "what will people say," which ultimately drives them into the worst situations because there aren't enough financial resources and opportunities available for them.²⁵

iv. Political and Legal Factors

LGBTQIA+ communities are underrepresented in ministry, politics, and other spheres of authority, which limits the opportunities for policy discussions and actions pertaining to the welfare and progress of this community. In India, even after transgender people and their rights to welfare and other benefits have been reorganized,²⁶ same-sex relationships are decriminalized,²⁷ sexual and gender-based violence against them is not explicitly prohibited by law. Regrettably even till today, Marriage, divorce, and adoption-related civil rights for LGBTQIA+ people are still unrecognized, hate crimes cannot be eliminated unless equal rights are guaranteed to them and strict laws are enforced against any form of torture against them.²⁸

There was not a single LGBTQIA+ candidate in the most recent elections of 2024, nor was there any notable campaigning for their rights. But in the year 2015, history was created when 44-year-old 'Madhu Bai' became the first trans person to be elected as mayor of Raigarh, Chhattisgarh, in India. But after the completion of her term, she chose returning to dancing and singing at wedding functions with other trans people without any pension or government benefits. She has no intention to join politics again since there is no financial support for her to participate in these expensive elections. she also felt uneasy using the female restrooms, because there were no restrooms designated specifically for transgender people. Further, she was harassed and threatened by local politicians during her term by exploiting her previous dance videos. She was often disregarded and not ignored during meetings and discussions. Madhu herself stated, "People loved me and my work, but rivals hated my guts," she says. "Behind the ridicule and abuse, I know they were all thinking the same thing: 'How could a hijra be the mayor?'"²⁹

²⁴ The Council of Europe, what causes gender-based violence, < <https://www.coe.int/en/web/gender-matters/what-causes-gender-based-violence>>

²⁵ Meeti Vaidya, 'Dealing with the stress of family rejections in the LGBT+ community in India', (Aditya Birla Capital, 10, June 2024), <<https://www.adityabirlacapital.com/healthinsurance/active-together/2024/04/30/dealing-with-the-stress-of-family-rejections-in-the-lgbt-community-in-india/#:~:text=Several%20studies%20consistently%20show%20increased,diminished%20sense%20of%20self%2Dworth>> accessed 10 October 2024

²⁶ Supra note 15, Pg.13.

²⁷ Supra note 1, Pg. 8.

²⁸ Supra note 24, Pg.16.

²⁹ Zoya Mateen, 'Lok sabha elections: LGBTQ Indians are more accepted then ever- but politics haven't caught up' BBC News (New Delhi), 27 May 2024.

10. LEGAL FRAMEWORK FOR THE PROTECTION OF IDENTITY-BASED VIOLENCE AGAINST LGBTQIA+ COMMUNITY INDIA

The doctrine 'Nullum crimen sine lege' is a Latin phrase that means 'no crime without law'. It is a significant principle of the criminal justice system that means no one shall be penalized for any act or omission unless the conduct has been criminalized by law. Therefore, it is crucial to enact comprehensive and explicit legislation pertaining to identity-based criminal violence, particularly those targeting LGBTQIA people, in order to deter such crimes and prosecute individuals who commit them. Lamentably, there is no specific law in India that penalizes hate crimes against the LGBTQIA+ community. However, the Indian constitution and several other statutes contain numerous provisions that shield these minorities from prejudice and bigotry. Let's study each provision in detail and also consider their shortcomings and difficulties.

i. Constitutional provisions for the protection of the LGBTQIA+ community

The Indian constitution has certain provisions to prevent discrimination, violence, and upliftment of minorities, which guarantees general protection to gender and sexual minorities as well. However, there are no specific provisions for protecting LGBTQIA+ communities against hate crimes.

Article 14 of the constitution articulates that, "The state shall not deny any person equality before the law or equal protection of law within the territory of India."³⁰ Which suggests that No individual, including LGBTQIA+ people, may be denied equal treatment and protection by the state. This would be a violation of their fundamental rights, and the aggrieved party would have the right to directly approach the supreme court under Article 32, 'Remedies for enforcement of rights conferred by part III'³¹ of the constitution for justice. Pursuant to Article 15³² of the constitution, a person is protected from discrimination on the basis of religion, race, caste, sex, or place of birth, subject to any limitations, conditions, liabilities, or disabilities with respect to access to any public place or other specified location that is maintained entirely or in part by the state funds. Additionally, the honorable Supreme Court in *NLSA v. Union of India*³³ reorganized transgenders as the third gender category and held that discrimination on the basis of sexual identity is constitutionally prohibited. Furthermore, in the *Navtej Singh Johar* case³⁴, the apex court ruled that "sex as it occurs in Article 15 is not merely restricted to the biological attributes of an individual but also includes their "sexual identity and character." And the Indian Constitution forbids discrimination on the grounds of sexual orientation by specifying "sex" in Article 15.

According to Article 16 of the constitution, which guarantees equal opportunities to all citizens in terms of public employment.³⁵ 'No person shall be discriminated against in relation to employment or office under the state on the grounds of religion, race, caste, sex, descent, residency, or place of birth.' As enunciated by this Article, every individual, including members of gender and sexual minorities, is protected from all forms of prejudice in public employment, which also gives them access to improved lifestyle and financial possibilities.

³⁰ The constitution of India, Art 14.

³¹ The constitution of India, Art 32.

³² The constitution of India, Art 15.

³³ Supra note 15, Pg. 13.

³⁴ Supra note 1, Pg. 8.

³⁵ The constitution of India, Art 15.

Article 19(1)(a) that guarantees every citizen the freedom of speech and expression³⁶ also includes the right to express sexual orientation freely.³⁷

The right to live with human dignity is encompassed in Article 21 of the constitution,³⁸ which states that no one shall be deprived of their life or personal liberty.³⁹ Moreover right to privacy is a fundamental component of Article 21, as the honorable bench upheld in the historic case of Justice KS Puttaswamy v. Union of India. It was further stated that a person's right to privacy and dignity, as well as the freedoms protected by Part III of the Constitution, extend to significant life decisions like marriage and choosing a life partner.⁴⁰ thereby, in *Shafin Jahan v. KM Ashokan*, the court determined that one of the substantial elements of Article 21 is the freedom to marry the person of your choice.⁴¹

ii. Other Statutes

A. Marriage, divorce, and, adoption laws

There are still no laws specifically pertaining to same-sex marriage, divorce, or adoptions in India, even after same-sex relationships were decriminalized and section 377 of the Indian penal code was abolished six years before in 2018. They are allowed to live together but have no legal right to get married and will not be considered as a family. “The five-judge bench upheld the validity of Special Marriage Act, 1954, and right to marry is no a fundamental right to queer individuals.”⁴² Same-sex couples find it challenging to adopt a child, because their status as a couple is not yet legally reorganized. However, there is no legal provision in India that prevents a single LGBTQIA+ person from adoption on the basis of their sexual orientation. Following the Transgender Persons (Protection of Rights) Act 2019 and the apex court's recognition of transgender people as a third gender, transgender people are now also entitled to adopt under the Juvenile Justice (Care and Protection of Children) Act 2015, Nevertheless, the legislation currently fails to acknowledge homosexual marriage of transgenders.

Until now no notable advancement in adoption rights was brought about in India; the honorable Supreme Court declined the right of adoption to queer couples with a 3:2 majority in the year 2023.⁴³ The bench did not strike down regulation 5(3) of the Central Adoption Resource Authority (CARA), which only permits couples with two years of stable marriage to adopt a child. Additionally, it is still widely believed in India that only married heterosexual couples are allowed to become parents, which is discriminatory towards the queer community. Nevertheless, courts have often permitted same-sex couples to adopt children. For instance, in the year 2016, the Bombay High Court allowed a male homosexual couple, Shivy and Aditya to adopt a child.⁴⁴ These progressive judgments offer a glimmer of optimism to LGBTQIA+ community individuals.

³⁶ The constitution of India, Art 19(1)(a),

³⁷ Supra note 1, Pg. 8.

³⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³⁹ The constitution of India, Art 21.

⁴⁰ *Justice K.S. Puttaswamy & Anr. vs. Union of India & Ors*, AIR 2018 SC (SUPP) 1841.

⁴¹ AIR ONLINE 2018 SC 1136

⁴² *Supriya @ Supriya Chakraborty & Anr. v Union of India*, W.P. (C) 1011/2022, 2023 INSC 920

⁴³ *Ibid.* at 42.

⁴⁴ *Shivy Sachdeva & Anr. v. The State of Maharashtra & Ors.*, Writ Petition No. 12144 of 2016 (Bombay High Court, 2019)

B. Bharatiya Nyaya Sanhita, 2023

The new criminal legislation contains no provision that criminalizes anyone involved in a same-sex relationship. Despite being a positive step towards accepting homosexual couples, the elimination of Section 377 of the IPC and the absence of any similar provision in Bharatiya Nyaya Sanhita have some repercussions. The BNS does not contain a single clause that holds a woman accountable for sexual harassment or rape or that shields a male from sodomy and sexual violence.

The National Crime Records Bureau has documented 987 cases under Section 377 since 2014, according to the recent report from 2022. Howbeit the lack of any section in Bharatiya Nyaya Sanhita that shields men from sexual assault makes it extremely difficult and challenging for transmen, cross-dressing men, and other expressions of masculinity to obtain justice⁴⁵

Even after the historic Navtej Singh Johar ruling, no laws have been passed to protect sexual violence against men, gay men, transmen, or situations in which a woman commits rape against any person. Chapter V of the Bharatiya Nyaya Sanhita only makes special provisions for the protection of crimes against women and children. It does not include any legal remedy for the LGBTQIA+ community. According to Section 63 of the Sanhita, rape is solely a male-perpetrated crime. However, what happens if a man or woman rapes another man, transman, or intersex person? Furthermore, Sections 75, 76, and 78, which address other sensitive offenses like sexual harassment, assault or use of criminal force with intent to disrobe, and stalking, also stipulate that these offenses are exclusively committed by men against the modesty of a woman and offer no recourse for male and transgender victims.

But section 196 of the Bharatiya Nyaya Sanhita protects the LGBTQIA+ community from enmity and hate-related crimes, as it makes any person punishable with imprisonment up to five years and fine for encouraging animosity, hatred, or ill will through words, writings, signs, visual representations, electronic communication, or any other means, or for engaging in any action that jeopardizes the maintenance of harmony, or for planning any other activity or drill that trains participants to use criminal force and violence and is likely to instill fear, alarm, or a sense of unease among members of racial, religious, language, regional group, or caste, or community on the basis of religion, race, place of birth, residence, language, caste, community, or any other ground.⁴⁶ Similarly, section 353(2) of the BNS stipulates that anyone disseminating or publishing any false information or rumour with the intention of creating conflict, ill will, or hatred between groups on any given or other grounds, shall be punished with imprisonment up to three years, or fine, or both. Although the terms "gender identity" and "sex" are not mentioned in the above section expressly as a cause or basis of hatred, Nevertheless the words 'any other reason' and 'community' can be interpreted as a scope of inclusion for the LGBTQIA+ community.

A significant threat brought on by hatred for the LGBTQIA+ community is mob lynching, which is punishable under section 103(2) of the BNS, "when five or more people work together to commit murder on the basis of race, caste or community, sex, place of birth, language, personal belief, or any other comparable ground." Along with Section 117(4) of the BNS which states that "if five or more people work together to cause someone grievous hurt because of that person's race, caste or community, sex, place of birth, language,

⁴⁵ Kartikeya Bahadur & Sumati Thusoo, 'India's New criminal Law offers Little protection against Sexual Assault to Men and Trans Men' (Article 14, Saamarasya Media LLP, 2 September 2024) <<https://article-14.com/post/india-s-new-criminal-law-offers-little-protection-against-sexual-assault-to-men-trans-men--66d525fcde7a1>>, accessed 13, October, 2024.

⁴⁶ Bharatiya Nyaya Sanhita, 2023, s 196.

personal beliefs, or any other similar reason, then each member of that group is guilty of the crime of causing grievous hurt and will be punished.” These two provisions safeguard the sexual minorities against hate crimes by mob as it identifies sex as a ground for mob lynching.⁴⁷

In addition to the aforementioned provisions, the Bharatiya Nyaya Sanhita includes general provisions that safeguard all Indian citizens, including members of the LGBTQIA+ community, from physical, mental, and emotional abuse namely assault, hurt, grievous hurt, rape, murder, defamation, kidnapping, abduction, robbery, and many other crimes.

iii. Sexual Harassment of women at workplace (prevention, prohibition, and Redressal) Act 2013

It is disappointing that the recently enacted sexual harassment law in India solely covers sexual harassment against women. This is acceptable considering the high prevalence of sexual abuse that women experience in the workplace, but laws should be amended to provide protection for males as well.

iv. Transgender persons (Protection of Rights) Act 2019

In a country like India, where transgenders and their blessings have been valued since ages, they faced discrimination and cruelty throughout the colonial rule. However, they were reorganized as a third gender in the *NLSA v. Union of India* case of 2014,⁴⁸ following many years of struggle. The Transgender Persons (Protection of Rights) Act was subsequently passed in 2019 in order to give them legal recognition via the issuance of unique identity cards and to outlaw all forms of discrimination as well as physical, psychological, and sexual abuse. It also offers protection to them from abusive families and articulates numerous provisions for their welfare.⁴⁹

Transgender people can be considered gender minorities in India and are therefore qualified for reservation policies after being recognized as third gender. They are entitled to economic and educational reservations under Articles 15 and 16 of the Constitution. Although the government hasn't established a specific reservation policy for transgender people as of yet, they are nonetheless entitled to claim the benefits of existing caste-based reservations.

The Transgender Persons (Protection of Rights) Act has been criticized for failing to address the civil rights of transgender people and for restricting their right to privacy, integrity, and bodily autonomy by requiring them to undergo surgery in order to change their gender identity, even though they may choose to self-identify as transgender instead of male or female. Besides this, transgender people suffer with a plethora of additional procedural challenges, including unapproved verification procedures, insensitive administrative staff, lack of access to digital platforms, and bureaucratic delays in the issuance of trans ID cards. Furthermore, it is argued that section 18 of the act, which establishes penalties for discrimination, physical, mental, verbal, sexual, or economic abuse to transgenders is also said to be unfair because the punishment given for such offences are not strict and very less severe.

⁴⁷ Drishti Judiciary, 'Mob Lynching under Bharatiya Nyaya Sanhita, 2023' (12 July 2024) <https://www.drishtijudiciary.com/to-the-point/bharatiya-nyaya-sanhita-&-indian-penal-code/mob-lynching-under-bharatiya-nyaya-sanhita-2023> accessed 18 February 2025.

⁴⁸ Supra note 15, Pg. 13.

⁴⁹ Chanchala Khopkar, 'Laws Related to LGBTQ+ Community in India', (Aashayin Law Education Center ALEC, 2021), <<https://www.alec.co.ins/>>, accessed on 14 October 2024.

According to a global initiative known as Trans Murder Monitoring, which keeps records on killings of transgender and gender nonconforming individuals, between 2008 and 2021, 102 murders were reported in India; the NCRB report from 2021 states that 238 trans people were victims of all crimes in India. However, these low statistics do not indicate a decline in crimes against the LGBTQIA+ community in India; rather, they are the result of severe underreporting of crimes and inadequate documentation of trans people's lives.⁵⁰ Therefore, India has to effectively enact and implement stricter regulations for LGBTQIA+ individuals in order to address this concern.

v. Mental Healthcare Act, 2017

The highest Court ruled in the celebrated case of Navtej Singh Johar v. Union of India that all previous myths, misconceptions, and misbeliefs about same-sex couples are abolished by Section 2(1)(s) of the Mental Healthcare Act, 2017, which defines mental illness when read with Sections 3 and 21(1)(a) of the Act. The Court ruled that “the 2017 Act's definition of mental illness clearly states that homosexuality is not a mental disorder, and that by including this clause, the Parliament has clearly eliminated the stigma associated with mental illness that was previously applied to same-sex relationships.”⁵¹

iv. Occupational Safety, Health and Working conditions code, 2020

The employer is required under section 23(2)(viii) of chapter V of the code, which deals with health, safety, and working conditions, to provide separate and adequate hygienic urinal accommodation, and toilets for male, female, and transgender employees. Additionally, the employer is required by Section 24(1)(ii) of the law to provide separate bathing space and locker rooms for employees who identify as male, female, or transgender.

iii. The Hate crimes speech (combat prevention and punishment) Bill, 2022

On December 9, 2022, the Bill was introduced in the Rajya Sabha. It gives the government the authority to take action against hate speech and hate crimes directed towards individuals based on their sexual orientation, gender identity, religion, race, caste, community, place of birth, residence, disability, tribe, sex, or any other aspect of their identity. However, a number of objections prevented it from being passed, including the contention that it curtails freedom of speech, lacks an accurate description of what constitutes hate, and in some instances violates international conventions. Moreover, no greater effort has been put into modifying the bill or implementing it, by expressing the reason that hate crimes are already covered by the criminal laws in India.

The 's current legal framework in India makes it quite evident that, despite a number of shortcomings and difficulties in the current legislation, significant progress has been made in the Indian judicial system regarding the recognition and rights of LGBTQIA+ community people. The actual problem in Indian society is not a lack of laws, but rather the rejection of these individuals within their own families, the pervasive hatred towards them prevailing in this nation leads to various forms of hate crimes that have been previously

⁵⁰ Kartikeya Bahadur & Sumati Thusoo, 'India's New criminal Law offers Little protection against Sexual Assault to Men and Trans Men' (Article 14, Saamarasya Media LLP, 2 September 2024) <<https://article-14.com/post/india-s-new-criminal-law-offers-little-protection-against-sexual-assault-to-men-trans-men--66d525fcde7a1>>, accessed 13, October, 2024.

⁵¹ Supra note 1, Pg. 8.

mentioned. Therefore, the government should launch campaigns and awareness programs aimed at the education, employment, rehabilitation, and social acceptance of queer individuals.

11. LANDMARK RULINGS IMPACTING THE LGBTQIA+ RIGHTS IN INDIA

Sir Andrew Jackson once stated that "All the rights secured to the citizens under the constitution are worth nothing and a mere bubble, except guaranteed to them by an independent and virtuous judiciary." Likewise, the LGBTQIA+ community's rights have been established and interpreted in large part by the progressive judgments of Indian courts. In order to have an understanding of the evolution of laws concerning the LGBTQIA+ population in India, it is necessary to examine some landmark judicial precedents.

i. Naz Foundation vs Government of NCT of Delhi (2009).⁵²

This was the first case in which Section 377 of the IPC was ruled to be unconstitutional. A non-government organization called Naz Foundation alleged Section 377 to be in contradiction with Articles 14, 15, 19, and 21 of the Indian Constitution. The Delhi High Court initially rejected this petition, ruling that the petitioner lacked standing to appear before the court. Nevertheless, after listening to the Naz Foundation, the honourable Supreme Court decided that the petitioner is entitled to the right to file public interest litigation (PIL) before the high court. The Delhi High Court determined that penalizing two consenting adults for homosexuality is unjust and that Section 377 of the IPC infringes their right to privacy, which is an indispensable part of Article 21 of the constitution. In addition, the court held that categorizing people based on their sexual orientation violates Article 14, which guarantees the right to equality, as it is discriminatory and prejudicial.

Although in the case of Suresh Kumar Koushal & Anr vs. Naz Foundation & Ors,⁵³ the Supreme Court upheld the legality of section 377 of the IPC, overturning the Delhi High Court's ruling.

ii. National Legal Services Authority vs Union of India, (2014).⁵⁴

This case is significant regarding the protection of transgender people's rights in India. The honorable apex court in this case ruled that-

Transgender people must be treated as the third gender in order to protect their fundamental rights and those guaranteed by central and state legislation.

Transgender people's right to choose their self-identified gender is equally protected, and the Centre and State Governments are instructed to provide legal recognition of their gender identity as male, female, or third gender.

The state was instructed to recognize transgender persons as socially and economically backward citizens, requiring the government to implement various reservation policies for their admissions to educational institutions and public employment.

The government should make significant efforts to address the issues that transgender people face, such as threat, anxiety, humiliation, gender dysphoria, social pressure, depression, suicidal behaviors, social stigma,

⁵² 2010 CRI. L. J. 94, 2009 (6) SCC 712, 2009 (4) AIR BOM R 58.

⁵³ AIR 2014 SUPREME COURT 563, 2014 AIR SCW 78, 2014 (1) ADR 817.

⁵⁴ Supra note 15, Pg. 13.

and so on, and any insistence on sex reassignment surgery to change one's gender is unethical and illegal. Further steps should be taken to raise public awareness so that transgender people feel included in society and are not considered as outcasts.

iii. Justice K.S. Puttaswamy (Retd) vs Union of India, (2017)⁵⁵

In this celebrated decision also called as the AADHAAR case, the nine-judge bench considered right to privacy to be an important component protected under Part III of the Indian Constitution. The court referred to Section 377 as an "inconsistent element which directly impacts upon the evolution of the constitutional law on the right to privacy" and stated that the right to sexual orientation is an essential attribute of right to privacy and it cannot be rejected even if the fraction of population affected is very less.

Moreover, the ruling addressed the issue of LGBTQ+ community rights and pointed out that the protection of constitutional rights does not depend on their exercise being favored by majority opinion: "Discrimination against an individual based on sexual orientation is extremely disrespectful to their dignity and self-worth. Equality necessitates that each person's sexual orientation is an exercise of their personal choice and should be protected on an equal basis. The right to privacy including the protection of sexual orientation is essential to the fundamental rights guaranteed by Articles 14, 15, and 21 of the Constitution."

iv. Navtej Singh Johar vs Union of India, (2018)⁵⁶

One of the more progressive decisions came from a five-judge court that regarded Section 377 of the Indian penal code as unconstitutional to the extent it criminalizes same-sex relationships between consenting adults. The case overruled the verdict of the two-judge bench in Suresh Kumar Kaushal v. NAZ Foundation, which validated the legality of Section 377 in the year 2014.

The court determined that if a same-sex relationship between two consenting adults does not constitute rape, it cannot be regarded as an unnatural criminal offense under Section 377 of the Indian Penal Code, 1860. Also, the bench jointly concluded that criminalizing consensual homosexuality infringes Articles 14, 15, 19, and 21 of the Constitution. The apex Court ruled that Section 377 is unreasonable, arbitrary, and violates Article 14 by criminalizing consensual sex in the private space of a person, and it also imposes discrimination against the LGBT population. Furthermore, The Bench applied the maxim "et domus sua cuique est tutissimum refugium," which means "a man's house is his castle," to decide that Section 377 is disproportionate and irrational because it restricts LGBT people's right to free expression and choice because the restrictions failed to safeguard public order, decency, or ethical behavior.

v. Supriya @ Supriya Chakraborty & Anr. vs Union of India, (2023)⁵⁷

Even after five years of decriminalizing same-sex relationships in 2018, the Supreme Court determined in this recent case that legalizing same-sex marriage is a legislative decision, not a judicial one. Additionally, three out of five judges ruled against permitting same-sex couples to adopt. Nevertheless, the bench all together accepted the government's proposal to set up a high-powered committee led by the Cabinet Secretary for investigating LGBT discrimination and study about allowing limited legal rights and privileges to

⁵⁵ AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1, (2018) 12 SCALE 1,

⁵⁶ Supra note 1, Pg. 8.

⁵⁷ W.P. (C) 1011/2022, 2023 INSC 920.

⁵⁷ Sneha Gubbala, Jacob Poushter, and, Christine Huang, 'How people around the world view same-sex marriage', (Pew research center, November 27, 2023) < <https://www.pewresearch.org/short-reads/2023/11/27/how-people-around-the-world-view-same-sex-marriage/>>, accessed 20, October, 2024.

homosexual couples, such as “access to joint bank accounts, recognition as next-of-kin, medical decisions for a hospitalized partner, prison visits, and succession rights. “The honorable bench concluded that the "court cannot grant [LGBT] people the right to marry as that is a function of the parliament, but transgender individuals can marry." A transgender man and a transgender woman can marry, or if a transgender person desires to marry a heterosexual person, such marriage will be recognized.

Thus, despite years of struggle, a same-sex couple can live together but cannot be rebuilt as a family in India. Unfortunately, 43% of Indian citizens continue to oppose same-sex marriages, and many are not even unaware about LGBTQIA+ persons and their rights.⁵⁸

12. COMPARING IDENTITY-BASED VIOLENCE AGAINST LGBTQIA+ PEOPLE IN INDIA AND AROUND THE WORLD

It is important to compare identity-based violence also known as hate crimes among the LGBTQIA+ community both domestically and internationally in order to acquire a better understanding of the struggles and advancements faced by the LGBTQIA+ community in India and other nations with varying levels of acceptance and legal reforms implemented over time. Unfortunately, there is no framework in place in India to keep track of hate crime incidents. Even the National Crime Report Bureau (NCRB), which has been gathering and reporting crime data since 1953, does not include hate crime data. However, a recent NCRB report from 2021 states that 238 transgender people were the victims of various crimes in India. Additionally, 102 transgender murders were reported in India between 2008 and 2021, according to Trans Murder Monitoring. Despite this low number, which does not suggest positive improvement, it is likely the result of underreporting, a lack of awareness among the public, and a lack of authorities for data collection, because there are several instances explaining the severity of identity-based crimes prevailing in India against the LGBTQIA+ community. Furthermore, there is no information about crimes have been committed against homosexuals and other sexual minorities. On the contrary, the UK has one of the most thorough reports on hate crimes produced by the Crime Survey in England and Wales. It states that between March 2023 and March 2024, 4,780 crimes against transgender people and 22,839 crimes based on sexual orientation were committed. Similarly, the US Federal Bureau of Investigation reported that in 2023, 11,862 hate crimes were reported, of which 4.1% were based on gender identity and 18.4% were based on sexual orientation.

The countries with the largest percentage of adults who identify as LGBT+ are the Philippines, the US, and Israel (11% each). Thailand and Canada tied for second place with 10% of adults, while Sweden, Brazil, and Australia had 9% population as Queer individuals.⁵⁹ We cannot completely rely on the reported statistical data because according to LGBT+ Prime 2021 global survey about 11% of the LGBTQIA+ population either refuse to say or don't know their gender identity or sexual orientation. While same-sex relationships are permitted and transgender people are recognized as a third gender in India, homosexual marriages are still not legally recognized here. In contrast, around 36 other nations, including Australia, France, and Norway, have already granted legal recognition to homosexual marriages. This undoubtedly demonstrates the anti-homosexual sentiment that permeates India and eventually gives rise to hate crimes.

Governments of different nations can still take steps to reduce domestic crimes, but there is no way to address international crimes against transgender people and other gender identities because Article 7(3) of the Rome

⁵⁹ Anna Fleck, ‘Where it's most & least common to be LGBT+, (statista, May 16, 2024), <<https://www.statista.com/chart/30142/respondents-who-identify-as-lgbt--in-selected-countries/#:~:text=The%20Philippines%2C%20the%20United%20States,Australia%2C%20each%20with%209%20percent>>, accessed on 21 October, 2024.

Statute defines gender as "the two sexes as male and female within the context of society." Thus, it is evident that in order to provide the LGBTQIA+ population with equal rights and a sense of security, more acceptance, advancement, understanding, and enforcement of legislation specifically tailored to their needs are required globally.

13. AUTHOR SUGGESTIONS

Prejudice and criminal activity against sexual minorities are largely caused by hatred for the LGBTQIA+ community. Throughout the study, we attempted to analyze the reasons and contributing aspects of hate crimes, as well as the efforts of the Bharat's legal systems to prevent such crimes, and also attempted to compare India's condition to that of other countries. The author would like to propose a few steps for eliminating animosity against the LGBTQIA+ community, in order to address hate crimes against these groups.

1. Adopt and implement strict anti-discrimination and anti-hate crime legislation, particularly to safeguard sexual minorities, such as the LGBTQIA+ population.
2. Same-sex marriage should be accepted, and homosexual couples should be able to enjoy the same legal status as a family and receive the same benefits as married couples. Moreover, adoption should also be permitted for these couples.
3. The Indian government must keep accurate statistics on hate crimes and discrimination, especially surveys to keep track of offences against the LGBTQIA+ population.
4. In order to combat stereotypes and misconceptions, include history, rights, and achievements of these communities in the school curriculum as well as organize educational and awareness campaigns in workplaces and institutions.
5. Judges and police officers shall be trained to help them become more sensitive and understanding when it comes to hate crimes against the LGBTQIA+ community.
6. Keep a track of hate speeches on social media and sanction and other public places and ensure that they are positively portrayed in the media.
7. Implement programs for the mental health and rehabilitation of victims of hate crimes and offer counseling to those who hold prejudice toward the LGBTQIA+ community. Additionally, to guarantee inclusivity, make sure that recruiting practices at businesses and workplaces are nondiscriminatory.

Undoubtedly, the process requires a lot of efforts and cannot be achieved in a day, but every little step counts.

14. CONCLUSION

The existence of LGBTQIA+ individuals in India is not new, despite changes in their status and identity over time. Following the British invasion, section 377 was introduced, making same-sex relationships illegal and creating a social stigma for those who identify as LGBTQIA+. Over time, anti-LGBTQIA+ sentiment grew in Indian society. People began labeling them insane, treating them like untouchables, and committing identity-based violence against them, including murder, severe physical and sexual abuse, rape, and mental illness, in an effort to drive them from society.

However, a lot of progress has been made in the past decade toward the social acceptance of LGBTQIA+ community, including the decriminalization of same-sex relationships and the recognition of transgender people as a third gender. India still faces several difficulties, nevertheless. For instance, there is no appropriate authority to investigate and report crimes against LGBTQIA+ individuals or hate crimes in general; hate crimes go unreported because of security concerns and ignorance; there is no legislation that specifically addresses hate crimes; and, most importantly, same-sex marriages are not recognized legally.

After conducting extensive research and analysis, and comparing the position of India with other countries the author concludes that in order to completely eradicate hate crimes and identity-based violence against the LGBTQIA+ community in India, significant steps must be taken to educate the public about the community, laws pertaining to LGBTQIA+ rights and hate crimes must be put into effect, and those who violate those laws and discriminate against LGBTQIA+ people shall face severe consequences. Additionally, in order to provide LGBTQIA+ people with a sense of security and belongingness, laws governing marriage, divorce, and adoption must be specifically designed to reflect their unique circumstances and identify their civil rights. Further, we must offer more educational and employment opportunities to strengthen the community's social and economic standing. Because prejudice and identity-based crimes against the LGBTQIA+ community can only be abolished by social acceptance and upliftment of the LGBTQIA+ people.

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