

Socio-Legal Impacts of Section 377 (Indian Penal Code, 1860) on Indian Society: An Overview

Manju Singhal^{1*} Dr. Chetna Rao Rohilla²

¹ Research Scholar, Faculty of Law, Maharishi Arvind University, Jaipur

² Supervisor, Faculty of Law, Maharishi Arvind University, Jaipur

Abstract – Transgender, Intersex, Homosexual, Gay, Bisexual, Kinnar, Hijra, and Queer categories include LGBT. The current article aims to investigate the Socio-Legal Impacts of Section 377 (Indian Penal Code, 1860) on Indian Society:

An Overview – As purely non-doctrinal research on the above topic is not possible as a broad view of the subject will be required to justify the contentions in this regard so the doctrinal approach would be included in this study. The libraries of the Indian Law Institute and the University of Delhi, the Jodhpur National Law University and the University of Rajasthan provide adequate access to the related material to be used in this analysis by the researcher. The Review of Commission Reports, Supreme Court decisions, International Bodies, Websites, Primary Source – Legislative Materials, Government Records and Secondary Source Reports – Text Books, Periodicals, Indian Law Journals were reviewed and referred in the course of Research Work; therefore the research methodology adopted will be doctrinal. Homosexuals are not welcomed in family and society. They are not even regarded as normal human beings. If homosexual or gay people remain together, this is deemed against the law. This minority has faced social inequality in society. In 1862 the British parliament passed a law banning such actions for the good of society. The LGBT community began fighting this injustice done to them in 2014 and eventually, this so-called unnatural conduct was decriminalised under Section 377 on 6th September 2018. After the decriminalization of Section 377. The positives of this judgement are that it will provide social, economic and educational empowerment of transgenders. It prohibits discrimination against transgender person and awards right to residence in his /her household. There is provision of healthcare facilities, rehabilitation for them. They will be awarded Certificate of identity but this creates a room for negatives for above said Bill. The biggest drawback is the requisite of a screening Committee to certify their status. There is a surgery clause, which is unjust. LGBT are not given any reservations although they are a minority who have been illtreated both emotionally and financially, since time immemorial.

Key Words – Homosexual, Gay, Bisexual, Transgender, Intersex, Kinnar, Hijra, and Queer categories, Section 377 of Indian Penal Code 1860, The Transgender Individual Rights Protection Act, 2019, LGBT

-----X-----

INTRODUCTION

Section 377 of the Indian Penal Code, 1860 introduced in 1861 during the British rule of India. Modelled on the Buggery Act of 1533, it makes sexual activities "against the order of nature" illegal. On 6th September 2018, the Supreme Court of India ruled that the application of Section 377 to consensual homosexual sex between adults was unconstitutional, "irrational, indefensible and manifestly arbitrary", but that Section 377 remains in force relating to sex with minors, non-consensual sexual acts, and bestiality. Portions of the section were first struck down as unconstitutional with

respect to gay sex by the Delhi High Court in July 2009. That judgement was overturned by the Supreme Court of India (SC) on 11th December 2013 in Suresh Kumar Koushal vs. Naz Foundation. The Court held that amending or repealing section 377 should be a matter left to Parliament, not the judiciary. On 6th February 2016, a three-member bench of the Court reviewed curative petitions submitted by the Naz Foundation and others, and decided that they would be reviewed by a five-member constitutional bench. On 24 August 2017, the Supreme Court upheld the right to privacy as a fundamental right under the Constitution in the

landmark Puttaswamy judgement. The Court also called for equality and condemned discrimination, stated that the protection of sexual orientation lies at the core of the fundamental rights and that the rights of the LGBT population are real and founded on constitutional doctrine. This judgement was believed to imply the unconstitutionality of section 377. In January 2018, the Supreme Court agreed to hear a petition to revisit the 2013 Naz Foundation judgment. On 6 September 2018, the Court ruled unanimously in *Navtej Singh Johar v. Union of India* that Section 377 was unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex". The judgment was given by a five judges bench comprising the then Chief Justice of India Dipak Misra, Justices R. F. Nariman, D. Y. Chandrachud, A. M. Khanwilkar and Indu Malhotra.

In Lok Sabha, on July 2019, the latest on Section 377 "The Transgender Individual Rights Protection Act, 2019" was passed. It was also passed in Rajya Sabha. Yet the debate around this transgender Bill still remains. The aim of the Bill is to create a gender empowerment system for social, economic, and educational purposes. It has come with its pros and cons. Although the Indian court has tried to justify the LGBT community but it is difficult to step in their shoes to understand the cons of the above Bill. It explains two viewpoints on gender. Cisgender refers to people whose gender identity matches the gender assigned to them at the time of birth. Transgender individuals are those that depart from the gender they were meant to be at birth in terms of their gender identity.

This Bill describes a transgender person as one not matching the gender assigned at birth. In India, the LGBT community doesn't have official figures. Nevertheless, in 2012, the Indian government submitted estimates to the Supreme Court claiming that about 2.5 million gay people were registered in India. These statistics focus solely on those individuals who have reported themselves to the Ministry of Health. There could be even higher numbers for individuals who have hidden their identity, as many homosexual Indians hide their identity out of shame and fear of the society. The Colonial law criminalises homosexuality as it is against the Law of Nature. Before the Colonial-era law was abolished, several organisations expressed support for the decriminalisation of homosexuality in India. They pressed for tolerance and social equality for lesbian, gay, bisexual and transgender people. India is one of the countries with a third gender social dimension, but there is mental, physical, emotional, and economic abuse against India's LGBT community. Without family, culture, or police assistance, many gay rape victims do not report crimes. The Bill 'The Transgender Individual Rights Protection Act, 2019' Section 377 is a sign of relief for LGBT community. It has provisions which would help the transgender community to live and face the society with dignity. Although it has its negatives which the honourable court would soon look into as the fight for justice for LGBT communities continues.

COMMON SOCIAL AND LEGAL ISSUES ON LGBTI

In India, persons who are lesbian, gay, bisexual, transgender, and intersex (LGBTI) face legal and social obstacles which are not faced by non-LGBT people. For those of the same sex, sexual contact is immoral, and same-sex couples are unable to legally marry or receive a civil union. As of 2018, however, the Supreme Court is ready to reconsider, if the legalisation of same-sex sexual activity and a proposed Uniform Civil Code would legalise same-sex marriage in India, if approved in its present form.

Since 2014, the LGBT Community is fighting this injustice. On the 6th September, 2018 judgement was given which brought many changes in the life of LGBT's as the decriminalisation of Section 377 was done. But this Act, came with its positives and negatives.

The positives of the judgement were as given below:

1. There was prohibition against discrimination

It prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to:

- (i) Education
- (ii) Employment
- (iii) Healthcare
- (iv) Access to or enjoyment of goods, facilities, opportunities available to the public
- (v) Right to movement
- (vi) Right to reside, rent, or otherwise occupy property;
- (vii) Opportunity to hold public or private office
- (viii) Access to government or private establishment

2. Right of residence

Every transgender person shall have a right to reside and be included in the household. If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation centre, on the orders of the competent court.

3. Health Care

The government must take steps to provide health facilities to transgender persons including separate

HIV surveillance centres and sex reassignment surgeries.

4. Certificate of identity for a transgender person

A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as "transgender". A revised certificate may be obtained only if the individual undergoes surgery to change their gender either as male or female.

INCLUSION AND PARTICIPATION MEASURES BY THE GOVERNMENT

The Bill states that the relevant government will take measures to ensure the full participation and inclusion of transgender persons in society. It must take steps for their rescue and rehabilitation, vocational training and self-employment, create transgender sensitive schemes, and promote their participation in cultural activities.

Offenses and Penalties

The Bill recognizes the following offences against transgender persons :

- (i) Forced or bonded labour (excluding compulsory government service for public purposes)
- (ii) Denial of use of public places
- (iii) Removal from household and village
- (iv) Physical, sexual, verbal, emotional or economic abuse

Penalties for these offences vary between six months and two years and a fine.

NATIONAL COUNCIL FOR TRANSGENDER PERSONS (NCT)

The NCT will consist of:

- (i) Union minister for social justice (chairperson)
- (ii) Minister of state for social justice (vice – chairperson)
- (iii) Secretary of the ministry for social justice;
- (iv) One representative for ministries including Health, Home Affairs and human resources development.
- (v) Representatives of Niti Aayog and the national human rights commission.
- (vi) State governments will also be represented

- (vii) 5 members from the transgender community
- (viii) 5 experts from non-governmental organisations.

The council will advise the central government and monitor the impact of policies, legislation, and projects with respect to transgender persons. It will also redress the grievances of transgender persons.

DRAWBACKS OF THE BILL OR THE NEGATIVES OF THE BILL

- (i) The biggest opposition is the requisite of a screening committee to certify a persons trans status.
- (ii) It violated the historic NALSA judgement by the supreme court in 2014 that recognized transgenders right to self determination among others.
- (iii) If they want to get a trans ID , they will have to approach a District Magistrate – humiliation and harassment of the community.
- (iv) Surgery Clause
- (v) Bills punishment clause, that enforces a maximum of 2 years imprisonment in a case of assault or gender based violence.
- (vi) Any punishment of less than three years is bailable at the police station.
- (vii) "Criminalisation of trans people for begging.
- (viii) Bill does not give them opportunities or reservation in education ,employment and healthcare.

The enforcement of minors right of residence compels any trans person below 18 to cohabit with their natal family, failing which the child will move to a rehabilitation home, a place to modify delinquent behavior.

REVIEW OF LITERATURE

In this research work of Article an attempt is made to pragmatically analyse the available literature. In India, not many LGBT laws and rights literature are available, some of the Supreme Court's significant judgments have been reviewed, and some of the fundamental views of world legal experts have been reviewed as given below:

In Delhi's Naz Foundation v. Government, where the Delhi High Court acknowledged and interpreted the anachronism associated with Section 377 of IPC, 1860 to preclude sexual activities between

consenting adults, thus decriminalising homosexuality. Although the consequences of the decision are limited and can be annulled by an Act of the Indian Parliament, the judgement is a milestone in the litigation of civil liberties and can be considered one of the stepping stones to the liberation of the sexual minorities in India from the law's tyranny and intimidation.

However, Section 377 of IPC, 1860 was used widely by law enforcers prior to this decision to threaten and abuse homosexuals and transgender people. In the recent past, several such events have come to light. This can also be confirmed by the court's stance towards the lesbian, gay, bisexual, and transgendered culture. It was held, in *Calvin Francis v. Orissa*, that oral sex falls within the scope of Section 377 of IPC, 1860. The references to the *Corpus Juris Secundum* on sexual perversity and irregular sexual pleasure were used by the Court as the guiding criteria.

It was held in *Khanu v. Emperor* that "Section 377 of IPC, 1860 punishes those people who have carnal intercourse with, inter alia, human beings against the order of nature. It is obviously against the order of nature [if the oral sex committed in this case is carnal intercourse], since the normal object of carnal intercourse is that there should be the probability of creation of human beings, which is unthinkable in the case of coitus per os."

Courts had previously been kept in *R. V. Jacobs and Govindarajula* that according to Section 377 IPC, 1860 injecting the penis into the mouth does not amount to a crime. Section 377 IPC, 1860 was later interpreted to include oral sex, anal sex and other orifice penetration.

In *Jayalakshmi vs. State of Tamil Nadu*, a eunuch committed suicide because of the police officers abuse and torture after being picked up on the suspicion of involvement in a robbery case. There was evidence showing that he was subjected to torture during police detention by putting a wooden stick into his anus and other police officers pressuring him to have oral sex. On 12.6.2006, the person in question immolated himself inside the police station and later on 29.6.2006 succumbed to burning injuries. A reward of Rs.5,00,000/- was given to the victim's family.

In *Aids Bhedbhav Virodhi Andolan v. Union of India*, it was argued that homosexuality should not be tolerated by Indians because- (1) Homosexuality is not tolerated by Indian culture and society, (2) Criminalization of homosexuality is important in order to provide a safe atmosphere by criminalising unnatural sexual activity and opening the floodgates of delinquent behaviour, (3) Criminal law should represent the wishes of the majority of the population and homosexuality should be a crime as a majority of Indians are intolerant towards it.

The 42nd Law Commission Report stated that

First, it can not be denied that homosexual acts and behaviour on the part of one partner may have an effect on the marital life and happiness of the other partner, and from this point of view, it has a social basis for making this act illegal under the law. Secondly, even given that acts committed with consent in private do not constitute a serious act.

The *Naz Foundation* case is, in a way, a cause of great rejoicing for the hitherto persecuted sexual minorities. It is a source of deliverance on two different planes: it decriminalises intimate relationships between homosexuals and, at the same time, serves as a source of protection by law enforcers against abuse and vilification. It also ensures that the sexual minorities are protected from different medical afflictions by bringing their condition into the authorities consciousness. Based on people's right to privacy and a life of dignity, the Court correctly held that those rights could only be subordinated to any overriding public interest. The Court also examined the constitutional validity of the challenged law, challenging its observance of the special provisions of the Indian Constitution. Having held that sexual preferences fall within the right of the person to dignity and privacy, the Court held that Section 377 IPC, 1860 constituted a direct infringement of the aforementioned right and thus infringed the substance of Article 21 of the Constitution of India. The Court applied the tests set out by the Supreme Court in response to the question of the violation of Article 14.

State of West Bengal v. Anwar Ali Sarkar's case the Court observed that the challenged law created an arbitrary distinction, and that there was no reasonable link between preventing child sexual abuse or enhancing public health and criminalising consensual adult sexual relations. In Article 15, the Court then went on to describe the word 'sex' not only in order to denote gender but also in order to have a wider periphery, including 'sexual orientation.' Based on that interpretation, the Court held that Section 377 was prima facie discriminatory against sexual minorities and therefore in violation of Article 15. With the impugned law in violation of Articles 21 and 14, the Court felt that it was superfluous to deal with the matter of an infringement of Article 19. The Court extended the doctrine of severability in a final gesture only to the extent of decriminalising consensual sex between adults in order to read down the disputed law.

On 11 December 2013, *Suresh Kumar Koushal & Anr vs Naz Foundation & Ors* Civil Appeal No.10972 of 2013: In this case, the Hon'ble Supreme Court held that the vice of unconstitutionality does not affect Section 377 IPC, 1860 and that the argument made by the High Court's Division Bench is constitutionally unsustainable. Accordingly, appeals are permitted,

the order under appeal is set aside and Respondent No.1 dismisses the written petition lodged. While departing from the case, we would like to make it clear that this Court merely ruled on the correctness of the view taken by the Delhi High Court on the constitutionality of Section 377 of the I.P.C,1860 and found that that provision did not constitute a constitutional infirmity. Notwithstanding this verdict, the competent legislature shall be free, as suggested by the Attorney General, to take into account the desirability and propriety of repealing or amending Section 377 IPC,1860 from the Statute book. In *Indian Union Vs. And Ors.* On 24 August 2017, a nine-judge bench of the Indian Supreme Court made its decision in the significant constitutional case of *Puttaswamy v Union of India*. In a breathtaking and wide-ranging 547-page opinion, the Court unanimously ruled that in India, privacy is a constitutionally protected right. This is a groundbreaking case for a wide range of Indian laws that will certainly lead to constitutional challenges.

Views of Historians on Rights of Gay in United States

George Chauncey has chronicled a thriving gay male culture in major urban areas such as New York as early as Electoral Support for Anti-Gay Marriage and Environmental Ballot Initiatives the 1890s. By the 1920s, gay men had created neighborhood enclaves in Greenwich Village, Harlem, and Times Square. Even though some gay men approached these neighborhoods and the gay scene at the time only fleetingly, it played a central role in the lives of others. Many people used their gay social circle to find jobs, apartments, romance, and their closest friendships. The strength of the gay male subculture of the early Twentieth century was so strong it provided the strength for many to reject the dominant culture's definition of homosexuality as "sick, criminal and unworthy". Even though some homosexuals developed long-term relationships similar to those of married couples, the dominant culture's rejection of same-sex relationships as a socially recognized lifestyle kept discussion of anything resembling marriage of same-sex partners outside the public arena through most of the 20th Century).

In some communities, such as San Francisco in the post World War II period, the development of the gay liberation and women's liberation movements allowed greater freedom from social convention.

According to historian John D'Emilio, the women's movement in particular allowed females to openly acknowledge same-sex feelings and relationships "unencumbered by primary and social attachments to men. As opponents of feminism were quick to realize, the women's movement was, in fact, a "breeding ground" for lesbians. By the last decade of the 20th Century, the political battle over recognition had extended to a fight for legal rights for same-sex couples in committed relationships. In 1993, the Hawaii

Supreme Court ruled that limitation of marriage to opposite-sex couples was discrimination on the basis of sex that violated the state's constitution.

At the National Level, in 1996, U. S. Congress passed the Defence of Marriage Act (DOMA) which barred federal recognition of same-sex marriages and permitted states to make their own decisions on whether to do the same. The next major legal decision occurred in 1999 when Vermont's Supreme Court ruled that limiting marriage to opposite-sex couples violated the State Constitution's "common benefits clause." However, instead of retreating from same-sex marriage rights, as had occurred in Hawaii, Vermont's Legislature in 2000 passed a civil unions law with more than three hundred relationship rights and obligations given to same-sex couples who wanted a civil union.

Magnus Hirschfeld (2000) has brought forward the issues of discrimination against homosexuals in society over one hundred years ago). Hirschfeld, considered the father of the Gay rights movement abroad, established The Scientific Humanitarian Committee in 1897, whose main purpose was advocating for the rights of LGBT individuals. The organization successfully supported and campaigned for the rights of LGBT persons for over three decades until it was forced to end its advocacy activities as a result of Nazi Germany's policies against homosexuals and those who supported them. Harry Hay is recognized as the father of the contemporary Gay rights movement in the United States. At the beginning of the 1950s, Hay and his fellow advocates began a discussion about homosexuality and the need for a community that LGBT individuals could claim as their own. Hay and friends subsequently founded the Mattachine Society in 1951. The Mattachine's mission statement illustrated the need for community as well as the desire to educate the greater society about the needs of homosexuals.

The GLSEN 2001 National School Climate Survey:

The survey showed that almost two-thirds of LGBT youth reported having been sexually harassed during the past school year. The frequency of sexual harassment was higher for female and transgender youth in the sample. Transgender youth were also significantly more likely to report feeling unsafe in school because of their gender expression. Factors that affect the experiences of transgender youth were explored by Grossman and D'Augelli (2006) using three focus groups. Three themes emerged from an analysis of the groups' conversations. The themes centred on gender identity and gender presentation, sexuality and sexual orientation and vulnerability and health issues. Most of them reported feeling they were transgender at puberty and experienced confusion and negative reactions to their gender atypical behaviours. The four

problems they noted related to their vulnerability in health areas were: the lack of safe environments, poor access to physical health services, inadequate resources to address their mental health concerns, and a lack of continuity of caregiving by their families and communities. Grossman and D'Augelli (2007) studied the risk factor of suicide among transgender youth. Nearly half of the sample reported having seriously thought about taking their lives and one quarter reported suicide attempts. Factors significantly related to having made a suicide attempt included suicidal ideation related to transgender identity; experiences of past parental verbal and physical abuse; and lower body esteem, especially weight satisfaction and thoughts of how others evaluate the youths bodies.

THE UNION CABINET APPROVED THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL 2016

This Bill is expected to bring social, educational and economic empowerment to the transgender community. To a community that has been ostracised and discriminated against for so long, this Bill could mean a chance to live a life of dignity and equality. The Bill makes it illegal to force a transgender person to leave residence or village, remove their clothes and parade them naked, force them into begging or any kind of bonded labour. These acts will be punishable with up to two years of imprisonment, along with a fine and also asks for amendments in the law to cover cases of sexual assault on transgender persons.

It also ensures that transgender persons or transgender children enjoy the right to equality, all human rights, right to life and dignity and personal liberty as guaranteed by the Constitution of India.

National Legal Services Authority v. Union of India, WP (Civil) No 604 of 2013

The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third-gender:

- 1. Legal Recognition for Third Gender:** In recognizing the third gender category, the Court recognizes that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc. is discriminatory to the third gender.
- 2. Legal Recognition for Persons transitioning within male/female binary:** As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the "Psychological Test" as opposed to the "Biological Test". They also declare that

insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

- 3. Public Health and Sanitation:** Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/Sero-surveillance measures for transgender people.
- 4. Socio-Economic Rights: Centre and State Governments have been asked to provide** the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.
- 5. Stigma and Public Awareness:** These are the broadest directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies and social stigma.

The Court notes that these declarations are to be read in light of the Ministry of Social Justice and Empowerment Expert Committee Report on issues relating to transgender people.

CONCLUSION

Section 377 criminalises consensual sexual intercourse between people of the same sex in private, according of the Indian Penal Code, 1860. This minority has undergone racism and abuse throughout their lives. Endless fear faces them. On 6th September 2018, part of Section 377 of the Indian Penal Code, 1860 was invalidated by a Five judge Constitutional bench of the Supreme Court of India, making homosexuality legal in India. The impact of repealing of Section 377 is mixed that means the Act has its goods and bads impacts. The positives are that discrimination against transgender persons is prohibited, including denial of service or unequal treatment in relation to education, recruitment, healthcare treatment, access to or enjoyment of goods, services, publicly accessible opportunities, freedom to movement, right to live, rent, or otherwise occupy land; possibility to hold public or private positions and access to public or private premises. Right of residence has been granted. Any transgender shall

be allowed to live and be included in the household. If the immediate family does not care for the transgender person, the person will be put in a rehabilitation facility on the orders of the competent court. Going to rehabilitation centre means trying to change their behaviour so, it is questioned why they can't reside at any place with a free will. The government needs to take action to provide transgender people with health services including separate HIV monitoring centres and sex reassignment surgeries. Why do they have to undergo reassignment surgeries? A transgender person can apply to the District Magistrate for an identity certificate that defines the gender as "transgender". A revised certificate can only be obtained if the person undergoes surgery to alter his or her sex as a male or female. But why they have to obtain identity certificates on the whims and fancies of bureaucrats? Ultimately it will be based on appearance, which is the worst form of discrimination. The Bill states that steps should be taken by government to ensure full involvement and inclusion of transgender people in society. Actions must be taken to rescue and rehabilitate them, provide vocational training and self-employment, establish transgender-sensitive programmes, and facilitate their inclusion in cultural activities. The Bill recognises the following offences against transgender people:

Forced or bonded labour (excluding obligatory public service), denial of use of public places, removal from household or village, violation of physical, sexual, verbal, emotional or economic abuse. The Penalties range from six months and two years for these crimes and a fine. In case of sexual abuse it is 2 years fine for transgenders whereas for heterosexuals it is seven years. Why are they being discriminated over this. Don't they have the right to live with dignity? At the police station, any sentence of less than three years is bailable. Criminalization of begging by trans people. All these facts do not support transgenders. The Bill would not provide them with educational, job and health care reservations. It is painful for them to suffer financially and emotionally. The regulation of the right of residence of minors allows any trans individual below the age of 18 to cohabit with their native family, failing which the child would go to a home of recovery, a place to improve the delinquent's conduct. This is questionable, why can't trans-sexuals be treated as humans?

BIBLIOGRAPHY AND REFERENCES

Primary Sources:

Constitution of India, 1950.

Indian Penal Code, 1860.

Protection of Human Rights Act, 1993.

Universal Declaration on Human Rights, 1948.

Secondary Sources:

ARC International, the International Bar Association and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Sexual Orientation, Gender Identity and Expression, and Sex Characteristics at the Universal Periodic Review, Geneva, November 2016.

Amnesty International Europe, The state decides who I am: lack of legal recognition for transgender people in Europe (February 2014). Verfügbarunter: www.amnesty.org/en/library/info/EUR01/001/2014/en

Amnesty International. Making Love a Crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa. 2013. Verfügbarunter: www.amnesty.org/en/library/info/AFR01/001/2013/en

Bedi, Sonu: Beyond race, sex, and sexual orientation. - Cambridge : Cambridge Univ. Press, 2013

B. P. Dwivedi, The changing dimension of personal liberty in India, 1998, Wadaha and Company, Allahabad.

Clinical profile, comorbidities and quality of life in HIV positive transgender subjects by Sharma Gaurav; Delhi : University of Delhi; 2012; 88p.(Thesis)

Charles Barrera Moore, Embracing Ambiguity and Adopting Propriety: Using Comparative Law To Explore Avenues for Protecting the LGBT Population Under Article 7 of the Rome Statute of the International Criminal Court, Minnesota law review, volume 101, 2017, 1287 -1331.

Commissioner for Human Rights (Council of Europe), Discrimination on Grounds of Sexual Orientation and Gender Identity in Europe (Background Document), Strasbourg, October 2011.

Durgadas Basu, Commentary on the Constitution of India (A comparative treatise on the universal principles of Justice and Constitutional Government with special reference to the organic instrument of India), 8th Edition, 2008, Lexis Nexis, Butterworths Wadhwa.

Dr. J. N. Pandey, The Constitutional Law of India, 47th Edition, 2010, Central Law Agency, Allahabad: 4. Dr. Subhash Kashyap,

- Constitutional Law of India, 2008, Universal Law Publishing Co. Delhi.
- Helfer, Laurence R / Voeten, Erik, International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe, International Organization, 2014, Vol. 68(1), 77-110.
- Human rights of minority and women's by Gupta, Indrani Sen; Delhi : Isha Books; 2005; ix,299p.
- International Commission of Jurists (ICJ), Sexual Orientation, Gender Identity, and Justice: A Comparative Law Casebook, Geneva 2011, available online.
- Kritz, Brian, The Global Transgender Population and the International Criminal Court, Yale Human Rights & Development Law Journal, vol. 17 (2014)
- Lesbian and gay studies : An introductory, interdisciplinary approach by Sandfort Theo, London : Sage Publications; 2000; xi, 236p.
- M. Joel Voss, Contesting Sexual Orientation and Gender Identity at the UN Human Rights Council, Human Rights Review (Vol. 19, no. 1, March 2018).
- Paul Johnson, The Choice of Wording must be Regarded as Deliberate": Same-sex Marriage and Article 12 of the European Convention on Human Rights, European Law Review (2015) no. 2.
- Sathe S. P., Judicial Activism in India – Transgressing Borders and Enforcing and Limits, 2002, Oxford Univ. Press, Second Impression, 2004, New Delhi.
- Theilen, Jens T, Depathologisation of Transgenderism and International Human Rights Law, Human Rights Law Review, 2014, Vol. 14(2), 327-342.
- United Nations High Commissioner for Human Rights, Born free and equal (New York and Geneva : United Nations, 2012).
- UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October, 2012, HCR/GIP/12/01, available. : <http://www.refworld.org/docid/50348afc2.html>
- Ashok Row Kavi. "Expose the Hindu Taliban!". Rediff.com. Retrieved 4 January 2014.
- Stephen Hunt; Andrew K. T. Yip (1 December 2012). The Ashgate Research Companion to Contemporary Religion and Sexuality. Ashgate Publishing, Ltd. p. 368. ISBN978-1-4094-7225-4. Retrieved 4 January 2014.
- Ruth Vanita; Saleem Kidwai (18 October 2008). "Indian Traditions of Love". Tehelka. Archived from the original on 7 April 2014. Retrieved 4 April 2014.
- Jump up to:abRautray, Samanwaya (6 September 2018). "Section 377: SC rewrites history, homosexual behaviour no longer a crime". The Economic Times. Retrieved 6 September 2018.
- "India's Supreme Court strikes down law that punished gay sex". ABC News. Retrieved 6 September 2018.
- "SC decriminalises gay sex, but J&K LGBTs will have to wait longer".
- "Section 377 verdict: Legally safe, socially targetted, Kashmir's LGBTQ face a huge challenge of acceptance".
- "India has 2.5m gays, government tells supreme court". BBC News. Retrieved 15 May 2016.
- Bedi, Rahul (5 July 2011). "Homophobia persists in India despite court reforms". The Telegraph (UK). London. Retrieved 3 April 2014.
- Jump up to:ab" Fear and loathing in gay India". BBC News. 17 May 2005. Retrieved 3 April 2014.
- "Why should homosexuality be a crime?". The Times of India. 18 April 2003. Retrieved 3 April 2014.
- Gopinath, Gayatri (2000). "Queering Bollywood: Alternative sexualities in popular Indian cinema". Journal of Homosexuality. 39 (3–4): 283–297. doi:10.1300/J082v39n03_13. PMID11133137.
- "Violence against LGBT groups still prevails in India". DNA India. 24 November 2013. Retrieved 4 April 2014.
- Priya M Menon (16 February 2013). "Lacking support, male rape victims stay silent". The Times of India. Retrieved 4 April 2014. I did not know how the police would treat a gay man.
- Miller, Jane Eldridge, ed. (2002), "Vanita, Ruth", Who's who in Contemporary Women's Writing, The Routledge who's who series,

Psychology Press, p. 333,
ISBN9780415159814

Global Feminisms Project (23 April 2004), Interview
with Ruth Vanita, hdl:2027.42/55715

"Ruth Vanita". University of Montana. Retrieved 27
July 2019.

Relevant Cases

Calvin Francis vs. State Of Orissa , I OLR 316

LakhiSahu (Kanu) vs. Emperor ,AIR 1932 Cal 487

R. vs. Jacobs [1988] 2 S.C.R. 1047 (Supreme Court of
Canada)

Govindarajuln re. (1886) 1 Weir 382

Jayalakshmi vs. The State Of Tamil Nadu (W.A.No.
1130 of 2006)

Naz Foundation vs. Government OfNct Of Delhi And
Ors., WP(C) No.7455/2001)

Justice K.S.Puttaswamy(Retd). Vs. Union Of India And
Ors. (Writ Petition (Civil) No 494 of 2012)

Suresh Kumar Koushal&Anr vs. Naz Foundation &Ors,
(Civil Appeal No.10972 Of 2013)

Navtej Singh Johar vs. Union Of India Ministry Of Law
And Ors, (Writ Petition(s)(Criminal)
No(s).76/2016

Gandhi vs. Union of India , AIR 1978 SC 597, 621.

Kharak Singh vs. State of U.P., AIR 1963 SC 1295.

Gobind vs. State of M.P. (1975) 2 SCC 148.

R. Rajgopal vs. State of Tamil Nadu AIR 1995 SC 264.

Corresponding Author

Manju Singhal*

Research Scholar, Faculty of Law, Maharishi Arvind
University, Jaipur