



FROM PAST TO PRESENT: TRACING THE STATUS OF THE LGBTQ COMMUNITY IN THE INDIAN SOCIETY

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Abstract

The vision behind writing this paper is to bust the superstitious beliefs and stigma that veils the status of the LGBTQ community in India. Today, the LGBTQ+ community all over the world is struggling for recognition and with the legal battle for same-sex marriage going on in India, it is important to realize the need for their rights and acceptance. The paper focuses on the Indian society and traces the status, acceptance, rights and conditions of the third gender community through ancient India till date. While we sift through history, a gradual downfall in the condition of the third genders is witnessed. Present-day India views the LGBTQ+ community as an abomination and there has not been any significant step towards their upliftment until homosexuality was decriminalized in 2017. There is still a long road ahead of complete upliftment of this community but the first step ahead is with destigmatizing.

Keywords: Homosexuality, Ancient India, LGBTQ+ Rights, Sexual Morality, Decriminalising Section 377, Destigmatizing Third Gender Community

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I Introduction

SUPERMARKETS THESE days are labyrinths among themselves, with categories within categories of even the same product. These varieties are then further labelled as 'good' or 'bad' products by the masses.

These cast-out 'bad' products can be imagined as the members of the LGBTQ+ community, who 'deviate' from the 'good' products, i.e., the socially accepted heterosexuals. This labelling of the 'products' has raised many questions and invited criticism over the few decades and leading to significant changes in the status of the LGBTQ+ community, though their complete acknowledgement, freedom, acceptance and recognition still has tougher battles to win against centuries of discrimination. One of the questions that arises in the mind upon analysing this metaphor between the homosexuals and supermarket products, is that by whom and when, did this labelling come into existence and created irrational divisions among the most intelligent species to exist on the planet. This labelling can be attributed to various factors such as religious beliefs, taboos and orthodox societies with a narrow mindset.

Amara Das Wilhelm in his book, "Tritiya- Prakriti: People of the Third Sex, Understanding Homosexuality, Transgender Identity, And Intersex Conditions Through Hinduism," explains the third gender through a beautiful simile by comparing them to grey colour, that can neither be called black nor white, despite being a combination of the two. Similarly, the third gender depicts a natural mixing of the male and female natures without belonging to any or each of them.¹ Today, in spite of various developments towards third-gender inclusivity and recognition in India,

¹ Amara Das Wilhelm, *Tritiya- Prakriti: People of the Third Sex, Understanding Homosexuality, Transgender Identity and Intersex Conditions Through Hinduism* 16 (Xlibris Corp, India, Abridged Version, 2010).

their condition remains far from good. But a thousand year ago, these circumstances were polar opposite of the present, when the third-gender community was not only accepted but also vocal and free about their unique identities. From mythological incidents to the past that has been carved on stone, each tale represents the beautiful celebration of inclusivity in the ancient Indian society.

With the passage of time, slight deterioration took place and medieval India witnessed a decline in the positions of the once-thriving people of the LGBTQ+ community. Despite the slight disapproval from the commoners, it was openly embraced in the royal courts. As India transitioned from Islamic rule to British colonialism, the Indian society also underwent a transition to a society where sex and sexuality became 'inappropriate' topics and homosexuality was socially condemned and legally criminalised. The British copy pasted their narrow understanding of sexuality and sexual morality on India, advocating that homosexuals are "unnatural" and against nature.

Post-Independence developments have been rather slow and negligible but the voice for LGBTQ+ community's rights and recognition garnered centre stage in the 21st century, with notable changes towards their upliftment.

II Ancient India

Ancient Indian civilisation is marked with endless incidents, stories and inscriptions that reflect the thriving presence of homosexuality. Homosexuality was not just embraced among the common people but was also depicted through various stories of gods and goddesses of the Hindu pantheon.

One of the most beautifully woven stories is of the *Ardhnareswara*- lord who is half female, half male; a depiction of Lord Shiva, a chief deity in

Hinduism and revered as the Destroyer of the Universe. Ardhnareswara symbolises the union of femininity and masculinity through the representation of Shiva with a half female body constituting Goddess Parvati, Shiva's consort. It reinforces the fact that both masculinity and femininity reside inside a human being. The crux lies in the union of the male and female in one body and the fluidity of gender and sexuality.

In another tale, Shiva is seen expressing his ardent desire to dance along with Shri Krishna, the eighth avatar of Lord Vishnu, in his *Raas-Leela*. To fulfil this wish, Shiva bathed in the river Yamuna and upon emerging, transformed into a woman, *Gopeshwar*, the milk-maid.

During the *Samudra Manthan*, Lord Vishnu took the female avatar of Mohini to prevent the asuras from taking the *Amrit*. Lord Shiva is said to have fallen in love with Mohini and Lord Ayyappa was born from this holy union. Lord Ayyappa is the god of truth, righteousness, devotion and spiritual growth. His worship is prevalent in South India and is closely linked to Lord Murugan.

Included amongst the most sacred books in Hinduism, Ramayana, traces the life of Lord Rama, the prince of Ayodhya and the seventh avatar of Vishnu, and depicts a heartwarming incident revolving around transgenders. Upon leaving for exile, the entire *praja* of Ayodhya followed Lord Ram to the jungle. The prince prayed to his people, requesting all the men and women to return to the city and continued forward. On his return after 14 years, he finds out that the *kinnaras* had not left that place because Rama's instructions were only to men and women, not to the people who were neither men nor women. This devotion of the *kinnaras* earned them a boon from Lord Rama that a *kinnaras* blessing would be the most magical and fruitful to anyone who receives them.

The Krittivasa Ramayana, the Bengali rendition of the original Valmiki Ramayana, describes the story of the birth of King Bhagiratha, the renowned king upon whose request the river Ganga had descended down from heaven to Earth. It is said that Bhagiratha was born from the union of his two mothers, widows of his father, King Dilip. Lord Shiva had appeared in the dreams of Dilip's widowed wives and instructed them to engage in love-making, resulting in Bhagiratha's birth.

Homosexual representation is also found in the ancient text- Jaya Samhita, popularly known as the Mahabharata. Shikhandi, the daughter of King Drupada of Panchal is the foremost example that comes to mind when thinking of a transgender. She was the reincarnation of Amba, who had vowed to kill Bheeshma. Shikhandi was born a woman but raised as a man becoming one of the fiercest warriors of her time.

Pandavas and their wife, Draupadi were exiled for 12 years after they lost a game of *chausar* to the Kauravas. They had to spend a 13th year of exile in incognito. For this incognito period, the six of them ventured into the Virata kingdom under disguise. For his masquerade, Arjuna, the mighty archer, disguised himself as a eunuch- Brihannala, who taught Uttara, the princess of Virata, the art of music and dance.

Arjuna was also married to Ulupi, a Naga princess and produced a son, Iravan. Iravan was a mighty warrior like his father and played a pivotal role in the Mahabharata war. Before the war, a sacrificial *yajna* had to be performed to ensure the victory of the Pandavas, which required a human sacrifice and Iravan volunteered. Before the sacrifice, he expressed his wish to die as a married man but no one agreed to marry him, knowing that he will die soon. To fulfil his wish, Lord Krishna assumed the form of Mohini and married Iravan.

Iravan is also the chief deity worshipped by the transgenders in an 18-day long festival i.e., the Koovagam Festival or the Koothandavar-Aravan

Mela, an annual celebration at the Koothandavar Temple situated in the Koovagam village of Tamil Nadu. The first 16 days of the festival are characterised by vibrant cultural performances and celebrations. On the 17th day, all the transgenders dress up and adorn themselves as brides (as *Mohinis*) and 'marry' Irawan. The priests of the temple bless each of them by tying a Mangal sutra around their necks. On the 18th and last day, all the 'brides' wear white sarees, a colour symbolising death, break their bangles and mourn for the death of their husband, Irawan.

The transgender community largely worships Bahuchara Mata, whose temple is situated in Becharaji town in the Mehsana district of Gujarat. While travelling with her sister, Bahuchara and her sister were attacked by a thief named Bapiya. Bahuchara self-immolated both her breasts and shed away her femininity. After her breasts were severed, she cursed Bapiya with impotency. The only cure to the curse was that Bapiya starts dressing and acting as a woman and worshipped the goddess. Another tale follows her instructions to an impotent prince to dress up and behave as a woman in order to seek her blessings to cure his impotency. These myth revolve around the concept of changing of gender, thus, Bahuchara Mata is worshipped as the patron of the transgender community.

Another such festival is the Chamayavilakku Festival celebrated at the Kottangkulangara Devi Temple, in the Kollam district of Kerala. In this festival, all the male devotees dress up as women and "*don the feminine.*"² These men (dressed up as women) carry out a procession to the temples while carrying the divine lamps, Chamayavilakku. According to an article published in the Times of India related to the festival, it was stated, "*...this festival has also turned out to be the largest congregation of*

² Kottangkulangara-Chamayavilakku Festival, available at: <https://www.keralatourism.org/event/kottangkulangara-chamayavilakku/13#0> (last visited on March 3, 2024).

*the transgender community in Kerala as it offers them a space to celebrate their identity.”*³

According to various stories, Shree Radha and Lord Krishna used to dress up as each other in such a manner that their identities were indiscernible. This is an example of the modern-day ‘cross-dressing.’

The gods Mitra and Varuna, representing two halves of the moon, are amongst the most prominent gods mentioned in the Rig Veda. Varuna is the waxing half of the moon, while the waning half is represented by Mitra. Mitra and Varuna are implied to have engaged in same-sex relations in verse 2.4.4.19 of the *Satapatha Brahmana*, which goes, “*In that same night Mitra implants seed in Varuna, and when it (the moon) wanes, then it is produced from that seed.*”⁴

Vatsayayana’s *Kama Sutra* not only provides recognition to the homosexuals but also describes the different *prakritis* of homosexuals and their sexual activities, for instance, the oral sexual acts that a homosexual engages in are known as *Auparishtaka*, as mentioned in Chapter 9.⁵ The *Kama Sutra* also mentions lesbians or *Swarinis*.

III Medieval India

The ancient Indians were outspoken and impenitent about their sexual preferences and desires, although some conservatism and unacceptance

³ Chamayavilakku Festival, *available at*: https://timesofindia.indiatimes.com/travel/destinations/chamayavilakku-festival-a-unique-festival-celebrated-in-kerala-where-men-dress-up-as-women/amp_articleshow/99117448.cms (last visited on March 3, 2024).

⁴ Julius Eggeling, *The Satapatha-Brahmana, according to the text of the Madhyandina school* 380 (The Clarendon Press, Oxford, 1st edn., 1900).

⁵ Vatsyayana, *The Kama Sutra of Vatsyayana: Translated from the Sanscrit in Seven Parts with Preface, Introduction and Concluding Remarks* 152 (CreateSpace Independent Publishing Platform, 1st edn., 2011).

crept up in the society, medieval India has numerous exemplars of LGBTQ+ presence.

The sculptures adorning the world-famous Khajuraho Temples, built by the Chandela dynasty in the 10th and 11th century and dedicated to both Jainism and Hinduism, display unabashed themes of erotic art. The motifs contain depictions of homosexuals engaging in various sexual activities.

King Narasimhadeva I built the Sun Temple at Konark as a tribute to Surya Dev. Similar to Khajuraho, the sculptures at the Black Pagoda, as it is popularly known, shows graphic imagery of homosexual acts.

Who knew it would be love and not war, to bring down the feared Ghaznavid conqueror who brought mighty kings to their knees, Mahmud of Ghazni. Ghazni is well-known for his love affairs with his slave, Ayaz. Their love story was so impactful that the famous poet Allama Iqbal immortalised it in his famous couplet,

*"Ek hi saf mein khade ho gaye Mahmood-o-Ayaz
Na koi banda raha aur na koi banda-nawaz".*

The translation goes,

*"Sultan and slave in single file stood side by side.
Then no servant was nor master, nothing did them divide".*

Alauddin Khilji, the 14th century Delhi Sultan and one of the most powerful rulers of the Sultanate, was also allegedly bisexual. There are tales revolving around Khilji's affair with his most faithful and trusted slave, Malik Kafur. Malik Kafur was the one entrusted with the siege of Devagiri and Dwarasamudra, the Yadava and Hoysala capitals and is remembered as the driving force behind Alauddin's reckless pursuit of Rani Padmavati of Chittor. There is a great deal of speculation regarding the kind of relation Alauddin and Kafur had, where a majority opinion inclines towards their gay relation.

The most famous for his self-declaration as a bisexual is Babur, founder of the Mughal empire in India. In his autobiography, *Babur Nama*, Babur expresses his love and attraction for a boy named Baburi, whom he met in Kabul's Urdu Bazaar. He writes "*I maddened and afflicted myself for a boy in the camp-bazar, his very name, Baburi, fitting in. Up till then I had had no inclination for any-one, indeed of love and desire, either by hear-say or experience, I had not heard, I had not talked.*"⁶ The Emperor writes of such deep love and how he came alive on seeing the boy that he very dearly loved. It is an exquisite love declaration that shines the spotlight on Babur's bisexuality.

Not only this, Mughals are known to have eunuchs, who were collectively termed as *khwajasaras*, in their royal harems. The eunuchs were appointed to special posts in the political and administrative arenas, besides the charges of handling and maintaining the harems as protectors. They were granted important positions in the royal courts.

*"It can be safely assumed that khwajasaras were the link between the harem and the outside world, a passageway connecting the 'male' world and the 'female' world, dwelling between the protectors and the protected; they were on the margins of the social hierarchical order and were disadvantaged at numerous levels, yet they had the unique authority to move freely across the veil dividing the genders."*⁷

Itibar Khan, a *khwajasara*, was handed over the responsibility by Babur, to oversee the safe passage of the royal ladies travelling from Iran to India. He was appointed as a governor under Akbar's reign, and was later on awarded the title of Mumtaz Khan by Jahangir. Itibar Khan lives on till this day through the tomb constructed in his memory in Agra.

⁶ Zahiru'd-din Muhammad Babur, *The Babur-nama in English: Memoirs of Babur* 120 (Luzac & Co., London, Vol. I, 1922).

⁷ Importance of Khwajasaras in Mughal History, available at: <https://thewire.in/history/storied-of-khwajasaras-should-be-an-important-part-of-the-study-of-mughal-history> (last visited on March 10, 2024).

Eunuchs in Akbar's reign were also promoted to the ranks of *Mansabdars* under the *Mansabdari* system, an administrative system introduced by Akbar himself.

Khwajasaras were the most loyal and faithful of all servants, earning them high positions with their rulers. Aurangzeb appointed a eunuch, Aitbar Khan, to oversee Shah Jahan's imprisonment. When Aurangzeb fell sick in 1662, the information about his condition was passed on only through the eunuchs trusted by his sister, Roshanara Begum. A eunuchs' loyalty can be inferred from the incident when Shahbaz, Prince Murad Baksh's eunuch, sacrificed his own life to protect his master.

However, upon taking a look at the other side of the coin, we find the incident where Didar Khan, a principal eunuch of the royal harem, had an illicit relationship with a woman of his neighbourhood. But suspicions arose and were reported by the neighbours to the woman's brother, who upon stumbling upon the couple one night, stabbed Didar Khan and murdered his own sister in cold blood.⁸ Another *khwajasara*, Etimad Khan, was brutally murdered by a soldier for allegedly treating him 'harshly'. It is noteworthy that Etimad had risen high in his ranks, and is the one Etmadpur was named after.

Saleem Kidwai, in his book aptly states, "*Homoerotically inclined men are continuously visible in Muslim medieval histories and are generally described without pejorative comment.*"⁹

Mentions of queers are also found in the Jain scriptures and Buddhist *Pitakas*. Both Jainism and Buddhism are monastic religions who strictly enforce celibacy and view sexual desires as a hindrance to the attainment of salvation. Their literary sources recognise the third gender

⁸ Francois Bernier, *Travels in the Mogul Empire, A.D. 1656-1668* 131 (University Press, Oxford, 1916).

⁹ Ruth Vanita and Saleem Kidwai (eds.), *Same-Sex Love in India: Readings from Literature and History* 107 (Palgrave Macmillan, 1st edn., 2016).

as ‘*napunsaks*’ and ‘*pandakas*’ respectively. Buddhism did not allow for the *pandakas* to become monks. “*So, there was discrimination in Buddhism. But no one talks about this as we prefer to imagine Buddha as secular and inclusive, which is not quite true. He rejected the sexual, especially the feminine and the queer.*”¹⁰

Two of the most enchanting Bhakti-kaal poets, Surdas and Tulsidas wrote and sung about their love, devotion, desire and prayer for other males of divine origin i.e., Lord Krishna and Rama respectively.

*“Homoerotic poetry and artwork appear to have flourished in the Mughal period; even prescriptive Sanskrit sexual literature was translated into Persian for the subcontinent’s new rulers’ erudition and enjoyment.”*¹¹

Many Sufi saints penned down their heart like the Bhakti poets and expressed the emotions that ran through them for individuals of the same sex. Bulleh Shah wrote about his ‘murshid’ Shah Inayat; Sarmad Kashani was so madly in love with a Hindu boy, Abhai Chand, that he renounced the world and lived his remaining life as a naked fakir; Shah Hussain poured his heart out for a Hindu boy named Madho Lal, so much so that both of them were buried together.

Although a few incidences point towards the general disapproval of the third gender that arose in the medieval Indian society, the LGBTQ+ community was respected, accepted and even coveted for.

IV British India

¹⁰ Interview with Devdutt Patnaik, The LGBTQ Movement in India, *available at*: https://www.india-seminar.com/2019/713/713_devdutt_pattanaik.htm (last visited on March 5, 2024).

¹¹ Katherine O'Donnell and Michael O'Rourke (eds.), *Queer Masculinities, 1550-1800: Siting Same-Sex Desire in the Early Modern World* 144 (Palgrave Macmillan, UK, 5th edn., 2005).

Hailing from the land on which the sun never sets, it was surely a sunset in the horizon that gave birth to the darkest of all nights for the third gender community in the Indian subcontinent, with the advent of Britishers in India.

The British docked in India in early 1600s and by the time 1757 rolled in, the British transitioned from traders to rulers after emerging victorious in the Battle of Plassey (1757).

The Britishers carried an orthodox and narrow mindset with them, limiting their understanding and acceptance of the ‘carnal intercourse,’ as the Englishmen labelled the consensual homosexual acts. They viewed homosexuality as ‘unnatural’ because it did not lead to the procreation of children. Their Victorian mindset did not allow their minds to wrap around the openness and ‘sexually corrupt’ nature of the Indian society. Moreover, their conservative thinking also reflected the Christian mindset.

To put a full stop to these “corrupt practices,” the Britishers introduced sodomy laws and sought to restrict the LGBTQ+ community in such a manner, that it broke their backbone. According to a Human Rights Watch report, *“More than half those countries have these laws (sodomy laws) because they once were British colonies.”*¹² This clearly displays the extent to which the British underwent to suppress the third gender community, in not only India but other colonies as well.

The sodomy laws were the brainchild of the Britishers and not of native origin. Section 377 of the Indian Penal Code, 1860¹³ criminalised any *“carnal intercourse against the order of nature.”*¹⁴ Interpretation of this statute, it can be concluded that the provision sought to criminalise homosexuality.

¹² *Supra* note 10.

¹³ Indian Penal Code, 1860 (Act 45 of 1860).

¹⁴ Indian Penal Code, 1860 (Act 45 of 1860) s. 377

After Section 377 came the enforcement of the cruel Criminal Tribes Act, 1871.¹⁵ The Britishers officially aimed to control and administer the tribes that were proving a threat to the integrity and order of the British India through looting and ransacking, but these colonizers also specifically included the eunuchs under Part II of the Act. The eunuchs are said to have proved a tough challenge to the English invaders. Eunuchs were faithful and loyal to the core towards the native rulers and did not divulge any piece of information, even after undergoing extreme degrees of torture. To crush this community and to push British roots deeper within the subcontinent, the Englishmen broke the spirit, position and respect of the third gender entirely, through Criminal Tribes Act, 1871.¹⁶ Section 26 of the Act describes punishment of imprisonment and/or fines without any warrant, of eunuchs who dress up and appear as females at any public place or private homes or even indulge in the finer enjoyments of music, dancing.

The Act categorised certain tribes and assumed them as hereditary criminals. In case any crime occurred, the members of these tribes were automatically assumed culprits, even without any evidence. Thus, from a gender-based class they were categorised as a criminal class, barring them from enjoying fundamental freedoms and reduced their status in the absence of any legal recognition or capacity.

Although the British decriminalised homosexuality in their homeland in 1967, sodomy laws were carry forwarded to the newly independent India and continued to haunt the Indian LGBTQ+ community for decades.

V Independent India

¹⁵ Criminal Tribes Act, 1871 (Act 27 of 1871).

¹⁶ *Supra* note 15.

“... Nehru claimed that homosexual behaviour was an aberration introduced into India in the British colonial period.”¹⁷

Almost three decades passed with the Indian Constitution in force but LGBTQ+ rights were nowhere in sight. With the British Section 377 still in the picture, the Indian third gender community had to constantly face criminal charges. Even though the Criminal Tribes Act was repealed, the community's struggle was far from over.

Till Shakuntala Devi, an Indian writer and mental calculator, who is known worldwide for deriving the 23rd root of a 201-digit number, published the first study revolving around homosexuality in India in 1977, in a book titled ‘The World of Homosexuals.’¹⁸ This, perhaps, opened the door for open discussions about the LGBTQ+ community in the country. Shakuntala Devi “Human Calculator” conducted this study after her marriage fell apart because of her husband's homosexuality being revealed.

Badnam Basti, a Prem Kapoor film that posed a question against the traditional gender norms, was released in 1971. The film gained popularity after it resurfaced in 2019, when it was declared as the first gay film of India.

1981 bore witness to the first All-India Hijra Conference in Agra, with a participation of 50,000 members from across the country.

A pleasant August day at the Connaught Place in 1992, saw the arrest of several men on the suspicion of being gay. This was maybe the breaking point of the community, suffering from more than two centuries, that led to protests by the AIDS Bhedbhav Virodhi Andolan (ABVA), outside the

¹⁷ Ruth Vanita, *Gandhi's Tiger and Sita's Smile: Essays on Gender, Sexuality, and Culture* 269 (Yoda Press, New Delhi, 2005).

¹⁸ Shakuntala Devi, *The World of Homosexuals* 105 (Vikas Publishing House, New Delhi, 10th edn., 1977).

Delhi Police headquarters, demanding equal rights. This became the first public protest for gay rights in India.

In 1994, patience and hardships bore fruit when hijras were granted the voting rights under a separate identity of 'third gender.' In the same year, ABVA filed a petition in the Delhi High Court, challenging the constitutional validity of S.377, demanding decriminalisation of homosexuality. Even though the petition was rejected in 2001, the ABVA successfully broke the silence that cloaked the Indian third gender community by publishing the 'Pink Book.' The 'Pink Book' was a pink-cover pamphlet titled 'Less Than Gay: A citizen's Report on the Status of Homosexuality in India.'¹⁹

Kolkata boasts the organisation of the first-ever Pride Parade in south Asia when the Kolkata Rainbow Pride Walk, popularly known as 'The Friendship Walk' was organised on 2nd July, 1999, with 15 participants who proudly stood up for their identity.

Naz Foundations' 2001 petition, a follow-up against the several arrests of suspected homosexuals in Lucknow, for the legalisation of consensual homosexual intercourse among adults was dismissed by the Delhi High Court.

2009 was the golden year when the Delhi High Court passed its verdict in the landmark judgement of *Naz Foundation v. Government of NCT of Delhi*²⁰ decriminalised homosexual acts among consenting adults. Although it was not legal yet, homosexuality was no longer a crime. However, this happiness was short lived, when the apex court overturned the judgement in *Suresh Kumar Koushal v. Naz Foundation*²¹

¹⁹ AIDS Bhedbhav Virodhi Andolan, *Less Than Gay: A citizen's Report on the Status of Homosexuality in India* 119 (AIDS Bhedbhav Virodhi Andolan, New Delhi, 5th edn., 1991).

²⁰ *Naz Foundation v. Government of NCT of Delhi*, Writ Petition (Civil) No. 7455/ 2001.

²¹ *Suresh Kumar Koushal v. Naz Foundation*, AIR 2014 SC 563.

and reinstated Section 377, upholding its constitutional validity. This judgement saw international uproar with the United Nations Human Rights Commissioner, Navi Pillay, strongly condemning the verdict.

2014 brought along its own challenges when the Supreme Court dismissed the petition filed by the Central Government, Naz Foundation and others, against the verdict of 2013, stating that the community constituted only a “miniscule fraction” of our society. A month later, the Indian Psychiatric Society, India’s largest psychiatric body, declassified homosexuality from the class of mental illnesses or diseases. In April 2014, a landmark judgement was delivered by the SC in *National Legal Services Authority v. Union of India*,²² granting full legal recognition to transgenders like any other Indian citizen. It was a ray of sunshine in the bleak world of the third gender community.

A short time later, DMK MP Tiruchi Siva introduced a Private Member Bill, the Rights of Transgenders Persons Bill,²³ which was passed by the Rajya Sabha in 2015. Another bill was introduced by Shashi Tharoor in the Lower House in 2015, to repeal Section 377, sadly it didn’t witness the light of the day.

*Justice K.S. Puttaswamy Case*²⁴ is the historic judgement in which the Right to Privacy was recognised as an implied Fundamental Right in India. The 9-judge bench of the Supreme Court identified right to choose one’s sexual identity, which is linked with freedom and self-determination, as an integral right of a human being. The Hon’ble SC recognised that sexual orientation and sexual preferences are intrinsic to the Right to Privacy under Article 21 of the Indian Constitution.²⁵ However, homosexuality continued to be a crime.

²² *NALSA v. Union of India*, Writ Petition (Civil) No. 400 of 2012.

²³ The Rights of Transgender Persons Bill, 2014 (Bill XLIX-C of 2014).

²⁴ *Justice K.S. Puttaswamy (Retd) vs Union of India*, AIR 2018 SC 1841.

²⁵ The Constitution of India, Art. 21.

In *Shakti Vahini v. Union of India*²⁶ the Hon'ble SC recognised the individual's right to choose their life partner as part of their Fundamental Rights. It could only be hoped that this Fundamental Right would soon be granted to homosexuals as well.

History was written in the year 2018, when the Supreme Court, in *Navtej Singh Johar v. Union of India*²⁷ struck down a part of the discriminatory provision of Section 377. The Court recognised the rights of the LGBTQ+ community under Article 14, 19 and 21 of the Indian Constitution. The SC reaffirmed their equal status as any other Indian citizen and did away with this gender and sex-based discrimination.

Finally, in 2019, on the directions of the apex courts' NALSA judgement the Parliament passed the Transgenders Persons (Protection of Rights) Act,²⁸ which aimed at empowerment of the transgenders and significantly contributed towards improving their rights and welfare. The Act also provided for the formation of the National Council for Transgender Persons. Even though the Act comes loaded with drawbacks, it can be considered as progress.

India got independence in 1947 but it took almost 70 years for the LGBTQ+ community in India to gain freedom from the invisible shackles imprisoning them. There is, although, a long road ahead but the journey might be relatively smoother now.

VI Way Forward

The community now looks forward to major steps towards empowerment. Their fight for legalisation of same-sex marriage is unfolding with full vigour. But simultaneously, India needs to focus on other arenas as well. The first step begins from the home itself, where

²⁶ *Shakti Vahini v. Union of India*, AIR 2018 SC 1601.

²⁷ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

²⁸ The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019).

emerging acceptance will transform individual lives and lead to diverse, friendly, unorthodox, society. Acceptance in households will provide a safe space for expression of their unique sexual identities.

Two-gender (male-female) based public facilities such as public restrooms, security counters, dress codes, and even day-to-day forms and surveys, make it difficult for LGBTQ+ representation, resulting in gender biasness. Lack of appropriate documentation is another rising issue, besides non-existence of common adoption, succession, maintenance, etc., laws. Education and employment of the third gender community is still in bleak prospects because of stigmas and lack of awareness about the community. Non-acceptance leads to substance abuse, harassment and delinquency.

Gender-neutral policies and laws are the need of the hour. Media activism along with sex education in schools, which shall produce open-minded individuals who will form a LGBTQ+ community friendly society, will play a crucial role to secure LGBTQ+ rights in India.

VII Conclusion

Today, a wave has engulfed the entire world, in support of the third gender community. Present-day India has much to learn from its deep-rooted culture which holds the community as an integral, respectable, inseparable part of society. Inclusivity of all, regardless of their sexual orientation should be our goal, the first step towards which is education and awareness. This shall produce the result of destigmatizing LGBTQ+ community and lead to their overall empowerment.

The Mahabharata narrates another beautiful story; Brihaspati, the Chief Priest of Indra and representative of the planet Jupiter, was married to Tara. Tara once gazed upwards at the sky and fell in love with Chandra (moon) when she glanced at him. They fell in love and ran away, but

Tara had to return as per her marital obligations and her duties as a wife. Upon learning that Tara was pregnant with Chandra's child, Brihaspati cursed the unborn foetus to be born genderless. After his birth, the child was named Budha, meaning- the planet Mercury. As Budha was neither man nor woman, he was of the third gender. Confused about his identity and how to live with it, his mother consoled him by saying, *"Existence has space for all these billions and billions of stars, all the other kinds of things, and a variety of creatures who are neither men nor women nor gods nor devils. When existence has space for all that, don't you worry – for you too, there is space. For you too, there will be a life. You simply be. Life will come your way."*²⁹

Following her words, when existence has space for all beings and creations, why can't humans have space for other humans?

²⁹ Sadhguru on Budha's birth, available at: <https://isha.sadhguru.org/en/wisdom/article/brihaspatis-curse-taras-child> (last visited on March 13, 2024).