CHAPTER 5
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AND OTHER NATIONS
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5.1 Emerging Responses in India

In India, although there is hardly any initiative taken by the government that seeks to address violence and discrimination against individuals on the grounds of sexual orientation and gender identity. On hearing a curative petition filed by the original petitioners of Naz foundation case, recently the Apex Court gave credence to the arguments that the criminalization of consensual same-sex acts between adults under Section 377 violates the right to privacy and dignity. The Apex Court referred the same to the Constitutional Bench as it was found that the questions of law arising out of the petition have a Constitutional dimension.

In a landmark judgment, the Supreme Court on Apr. 14, 2014 recognized the “third gender” status for hijras or transgenders.309 Previously, they were forced to write male or female against their gender as the gender system was binary. The Supreme Court also directed the Centre to treat transgendered individuals as socially and economically backward. The Apex Court further held that the transgenders will be allowed admission in educational institutions and given employment on the basis of their third gender category.310

The Supreme Court also observed that the absence of law recognizing the legal status of transgendered individuals or hijras as belonging to the third gender could not be sustained as a ground to discriminate the minority in availing equal opportunities in education and employment. For the first time, in this case, transgendered individuals or hijras have been formally recognized. The third gender people will be considered as ‘Other Backward Classes’ (OBCs), the Supreme Court said. The Supreme Court said that they will be given educational and employment reservation as OBCs.311

309 National Legal Services Authority v. Union of India and others W.P (C) No. 604 2013 (unreported).
311 Id.
The Apex Court directed the States and the Centre to formulate social welfare schemes for third gender community and also to initiate a public awareness campaign to erase social stigma. The Supreme Court also directed the State authorities to construct special public toilets and departments to look into their unique health issues. The Court also pointed out that in the cases related to sex reassignment surgery, the transgendered individuals are entitled to the legal recognition of their changed sex and cannot be discriminated. 312

In the given case, the Apex Court also expressed concern over the transphobic attitude and the discrimination based on gender identity and also issued many directions to the State and Centre for the social welfare of the transgenders. The Court pointed out that previously transgendered individuals were respected and were also in a better position in the society but at the present time, they are subjected to violence and discriminatory acts. It was further observed by the Court that the economic and social status of the minority is dissatisfactory and Section 377 of Indian Penal Code is being used against the transgendered individuals by the authorities to harass such individuals 313. The Court also maintained that the given verdict is only applicable on the ‘eunuchs’ or hijra community and homosexual and bisexual individuals are excluded intentionally from the purview of the judgment. The Court concluded that the transgendered individuals are a part of the society and the government should adopt necessary steps to protect their rights and also to bring them in accordance with the mainstream. The Court passed the order on a Public Interest Litigation filed by National Legal Services Authority (NALSA) for the legal recognition of the transgendered individuals by giving them a separate identity as a ‘third-gender’ 314.

In another case, Shivani Bhat v. State of NCT of Delhi 315 where an NRI transgender adult was illegally confined and also her identity documents were withheld by the family, it was directed by the Court that appropriate steps should be adopted by the authorities to prevent her from any other harassment and also be allowed to visit the US for completing her higher studies.

312 Id.
313 Id.
314 Id.
315 W.P Crl 2133/15
There are also many cases of successful sex-change surgery and after such surgeries, people do lead a normal life. Recently a transgender girl named Khwaish underwent a sex-change operation and at present, she is under the training of air hostess in Mumbai. She says that since childhood she had a deep feeling of being a girl trapped in a male body.  

5.1.1 Social Acceptance

Social acceptance of the sexual minorities in India is still a big question. However subsequent to the Nalsa judgment, there were certain the recent judgment, some positive developments towards the social acceptance of sexual minorities in India. In May 2015, India’s first transgendered Principal, Manabi Bandopadhyay was appointed as a Principal of women’s college in Nadia district of West Bengal. In an interview for a newspaper, she said that it was not an easy journey for her. Despite being a first transgender who completed her Ph.D. she was subjected to verbal abuse and also threatened by her colleagues. She also published India’s first transgender magazine, ob-manab. However, being a symbol of transgender empowerment, she resigned from the post in Dec 2016 due to alleged non-cooperation of the staff members and the students.  

Recently, a transgender was also appointed as a police officer. Born as a male, Yashini is the first transgender to become a police sub-inspector in Dharmapuri, Tamil Nadu. Her job application was challenged on the ground of her being a transwoman.  

Figure 8 Manabi Bandopadhyay

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transgender and there were only two columns with the option of binary gender system i.e., male or female. Nonetheless, she filled the form as transgender and also it was observed by the Chennai’s High Court that such an appointment is a huge step towards mainstreaming of transgenders and the social impact of the same cannot be ignored.\(^{318}\)

*Figure 9 Prithika Yashini appointed as the first Transgender sub-inspector*

Another significant step towards social acceptance and mainstreaming of transgenders was taken by Kochi Metro Rail Limited, which recently employed 23 transgendered individuals. However, the transgendered employees claim that the only job is not sufficient to meet their ends and there are other issues which need to be dealt with such as accommodation. And more so, in the given homophobic and transphobic environment, they are still abused and ridiculed at public places.\(^{319}\)

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\(^{318}\) K. Prithika Yashini v. The Chairman, W.P. NO. 15046/2015 decided on 03.11.2015 by the Hon’ble Madras High Court.

Recently, Indira Gandhi National Open University (IGNOU) announced free education for the transgendered individuals, which is another landmark achievement towards uplifting the social status of the transgendered individuals. Another instance breaking stereotypes toward transgender community is the marriage of Akkai Padmashali, who is a transgender rights activist. She married her friend of eight years. Nonetheless, she also reports various instances of discriminatory behaviour based on her gender identity. She also admitted having attempted suicide due to non-acceptance in her young age.


In 2016, Kozhikode district administration had set up the country’s first grievance redressal mechanism against harassment based on sexual orientation and gender identity. This grievance redressal is one of the major steps of the authorities towards mainstreaming and removing the stigma attached to the sexual minorities. Other positive steps towards the social acceptance and mainstreaming of sexual minorities include India’s first LGBT community-powered radio cab and first state-level transgender athletics meet.

Although, there are some positive responses towards the social acceptance of transgendered individuals but still the mainstreaming of homosexuals and transgendered individuals in the Indian society seems to be an uphill task. However, it is noteworthy to see that all such developments are restricted to the transgender community and the concerns of homosexuals have largely remained unaddressed.


5.2 Other Developments

It has been found that many nations have taken necessary steps to prevent stigmatization and discrimination or violence on the basis of sexual orientation and gender identity. In fact, homosexual marriage has been legalized in many parts of the world such as United States, United Kingdom, New Zealand, Ireland, Columbia, Belgium, Spain, Canada, South-Africa, Norway, Sweden, Portugal, Iceland, Argentina, Luxembourg, Denmark, Mexico, Columbia, Uruguay, Brazil and France etc. In 2015, the Supreme Court of the US legalized homosexual marriages in all the states of the Country.\textsuperscript{325} Recently, Ireland became the first country to legalize same-sex marriages by popular vote\textsuperscript{326}. In fact, in the present year, the country also elected its first openly Gay Prime Minister, Leo Valadkar\textsuperscript{327}. This year, the German Parliament also approved same-sex marriage\textsuperscript{328}.

![Figure 12 Ireland's First openly Gay Prime Minister- Leo Valadkar](image)

There are some positive responses towards the mainstreaming of the sexual minorities on the part of the conservative and developing nations as well. Recently, Pakistan, one

\textsuperscript{326} Henry McDonald, Ireland becomes first country to legalise gay marriage by popular vote, May 23, 2015, https://www.theguardian.com/world/2015/may/23/gay-marriage-ireland-yes-vote, (Last accessed on 24/08/17).
of the most conservative Asian country, issued a passport to a prominent transgender activist and granted legal recognition to her with X as a symbol in the passport denoting third gender other than male and female.\(^{329}\)

![First Pakistani passport recognizing third gender](image)

**Figure 13 First Pakistani passport recognizing third gender**

As a matter of fact, Nepal remains one of the most open countries for the rights of homosexual and transgendered individuals. It is the only country in Asian Continent providing Constitutional guarantees to the sexual minorities.\(^{330}\) In recent past, a transgender woman also secured registration and a marriage certificate from the state authorities of Nepal.\(^{331}\)


\(^{330}\) Nepal ratifies new Constitution that includes LGBT protections, Human Right Campaign, Sep. 17, 2017, (Last accessed on 19/09/17).

Despite, the positive developments towards preserving and protecting the rights of the sexual minorities, mainstreaming of the homosexual and transgendered individuals still remains a question. There are many parts of the world where the members of the sexual minorities find it hard to survive in the given homophobic and transphobic environment. Mainstreaming of the homosexual and transgender population not only depends on the law reform but also on the social-acceptance.