

## **Chapter 4**

### **Alternate Sexualities and the Imperative of Social and Political Possibilities**

#### **4.1 Inclusive Politics and Realm of Law**

Having discussed the nature of the political discourse and the broader paradigms that define our understanding of the values like - liberty, equality and democracy, I now turn my attention to the concerns of alternate sexualities as expressed and articulated in the legal-political domain. I have already discussed the fact that the alternate sexualities face injustice in the form of a systemic neglect from the state as well as the discourses. This neglect works at several dimensions to ensure that the concerns of the alternate sexualities are not brought to the fore. In this section, I shall attempt to discuss the present legal framework in India regarding the alternate sexualities and contrast it with the various deliberations at the national and international level. In doing so, I would try to argue that the institutional approach towards the alternate sexualities follows a reductionist strategy which refutes the diverse character of the alternate sexualities and tends to define them in narrower terms, thereby furthering the perpetuation of injustice. My broader purpose, in this section, is to outline the existing institutional and legal scheme of arrangements for the alternate sexualities.

I shall also try to bring to the fore the fact that the antagonistic attitude of the state towards the alternate sexualities is a modern phenomenon, as the Indian history shows several instances of the thriving presence of alternate sexualities.<sup>1</sup> Such discussion, though brief, would suffice to repudiate the claims that homosexuality and the presence of alternate sexualities is an 'unnatural' or 'pathogenic' trait of modern times. The Indian history, as found through various ancient texts and archaeological sites, present a diversified and multifarious perspective when it comes to the understanding of sexuality. Indian society serves well in terms of a deliberative space of competing interests and identities. India is already a home to multiple ethnic identities which practice diverse rituals and beliefs. The Indian society, in this sense, becomes a suitable site to experiment the idea of plurality of public spheres,<sup>2</sup>

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wherein different groups deliberate upon the common concerns and live in a cordial contradistinction. Affiliations to such groups are highly circumstantial and contextual and always subject to change as per individual needs and interests.

It is not difficult to find instances and evidences of presence of the alternate sexualities in ancient and medieval Indian history. Several historians, archaeologists and other social scientists have found evidence to support this view. The more important fact regarding these historical researches and observations is that the presence of the alternate sexualities does not limit to an episodic presence but manifests itself through a flowing culture. Joseph, for instance, has observed the presence of alternate sexualities in- several scriptures like *Kamasutra*, references to transgender characters in scriptures such as *Mahabharata and Ramayana*, and several instances during the Mughal rule.<sup>3</sup> Moreover, the description of the alternate sexualities in the ancient texts does not indicate the type of neglect and exclusion of the alternate sexualities that is seen today. In fact, such is the range of historical evidence of alternate sexualities in India that a deeper enquiry soon becomes a pursuit of archaeology and history. However, I shall desist from indulging in such task and only engage with my areas of concern.

Some scholars argue that the prejudice towards the alternate sexualities is a modern phenomenon. Joseph, for instance, argues that the change of perception towards the alternate sexualities was an outcome of the colonial rule and suggests that the intolerance and hatred towards the alternate sexualities was an outcome of the Judea-Christian values prevalent in Europe which considered non-procreative sexual acts as sinful and against nature. The beliefs and traditions of the medieval ages continued in the modern times to become stereotypes.<sup>4</sup>

The outlook of the Indian state, being inspired from the colonial structures, also bears the colonial mentality. As a result, with other structural features, the Indian state also inherited the scheme for policing the sexual conduct and 'perceived immoralities' of the Indian subjects. Thus, homosexuality was first

criminalized in 1861 through British anti-sodomy law, introduced as Section 377 of Indian Penal Code (IPC). In doing so, while the British hoped to bring a progressive reform to the Indian subjects, the opposite happened as the Indian society was put under darkness and unfounded superstition.<sup>5</sup>

### **Deliberations on the Rights of Alternate Sexualities**

Logically, the dissent against the injustices to the alternate sexualities starts with the first attempt of imposing the heteronormative ideals. However, since the alternate sexualities are a diversified and non-cohesive group, the dissent is easily suppressed. A major problem experienced by the alternate sexualities relates to the expression and realization of their identity itself. Since there is little contemplation upon the issues of alternate sexualities, confusion and misunderstanding prevail throughout the frontiers of queer groups. There is an urgent need to define the category of alternate sexualities and what defines its identity. A common understanding suggests that alternate sexualities include any individual who is not at peace with the heteronormative ideals of the society. Thus, it includes the homosexual, bisexual, transgender, intersex, asexual and any other groups which might see itself beyond the heteronormative understanding. The issues of the alternate sexualities do not pertain to any particular state or region. Rather, these concerns are felt globally and require a coordinated effort to address the lapses in our conventional understanding. Over the last few years, there have been several international initiatives and resolutions upon the issues concerning the alternate sexualities. I shall now take a halt and discuss briefly some of these resolutions, as they offer guidance and inspiration for a more inclusive policy-making.

### **The Yogyakarta Principles**

The early deliberation on the concerns of the alternate sexualities took place through the Yogyakarta Principles, which were adopted at the UN Human Rights Council in Geneva on March 26, 2007. The stated goal of the conference which formulated the first draft of the Yogyakarta principles was:

*'... a project to develop a set of international legal principles on the application of international law to human rights*

*violations based on sexual orientation and gender identity to bring greater clarity and coherence to States' human rights obligations.'*<sup>6</sup>

It is through this platform that the international community recognized the hegemony of heteronormativity at the global level. The Yogyakarta principles accepted the fact that a blanket imposition of heteronormativity steals from the alternate sexualities the basic freedom to express and explore oneself.<sup>7</sup> It also recognized the fact that atrocities and subordination of the alternate sexualities amounts to an infringement of the human rights. This became a major milestone as the concerns of the alternate sexualities were linked to the issues of human rights. The Yogyakarta framework was the first platform of deliberation over the concerns of alternate sexualities and became instrumental in forming the policy-framework on concerns of alternate sexualities across the world.<sup>8</sup> In 2017, the Yogyakarta principles were further broadened and rechristened to be known as Yogyakarta+10.<sup>9</sup>

The process of deliberation on issues of alternate sexualities in India has made several references to the Yogyakarta principles at several occasions.<sup>10</sup> Interestingly, the spirit and ideal behind these principles are already imbibed by the Indian Constitution. The following table provides a linkage between the principles enshrined in the Yogyakarta framework and the various rights and other provisions of the Indian Constitution. This linkage might not be exhaustive but serves the purpose of informing the features of Indian Constitution which come into play for the case of alternate sexualities.

Table 1: Indian Constitution and Yogyakarta framework<sup>11</sup>

Article No.	Description of Article	Corresponding Yogyakarta Principle
14	Equality before Law and Equal Protection of Law	<ul style="list-style-type: none"> <li>• Principle 1: The Right to the Universal enjoyment of Human rights</li> <li>• Principle 2: The Right to Equality and Non-Discrimination.</li> <li>• Principle 3: The Right to</li> </ul>
15	Prohibition of Discrimination on grounds of religion,	

	race, caste, sex or place of birth	recognition before the Law. <ul style="list-style-type: none"> <li>• Principle 7: The Right to Freedom from arbitrary deprivation of liberty</li> </ul>
16	Equality of Opportunity in matters of public employment	<ul style="list-style-type: none"> <li>• Principle 12: The Right to Work</li> <li>• Principle 25: The Right to Participate in Public Life</li> </ul>
17	Abolition of Untouchability	<ul style="list-style-type: none"> <li>• Principle 30: The Right to State Protection</li> <li>• Principle 31: The Right to Legal Recognition</li> <li>• Principle 37: The Right to Truth</li> </ul>
19	Protection of certain rights regarding freedom of speech etc.	<ul style="list-style-type: none"> <li>• Principle 4: The Right to Life</li> <li>• Principle 19: The Right to Freedom of Opinion and Expression</li> <li>• Principle 20: The Right to Freedom of Peaceful Assembly and Association</li> <li>• Principle 21: The Right to Freedom of Thought, Conscience and Religion</li> <li>• Principle 22: The Right to Freedom of Movement</li> <li>• Principle 36: The Right to enjoyment of human rights in relation to Information and Communication Technologies</li> <li>• Principle 37: The Right to Truth</li> </ul>
20	Protection in respect of conviction of offence	<ul style="list-style-type: none"> <li>• Principle 7: The Right to Freedom from arbitrary deprivation of liberty</li> <li>• Principle 8: The Right to a Fair Trial</li> <li>• Principle 9: The Right to Treatment with Humanity while in Detention</li> <li>• Principle 10: The Right to Freedom from Torture and Cruel, inhuman or degrading treatment or punishment.</li> <li>• Principle 23: The Right to seek Asylum</li> <li>• Principle 37: The Right to Truth</li> </ul>
21	Protection of life and personal liberty	<ul style="list-style-type: none"> <li>• Principle 4: The Right to Life.</li> <li>• Principle 5: The Right to the security of the person.</li> <li>• Principle 6: The Right to Privacy</li> </ul>

		<ul style="list-style-type: none"> <li>• Principle 8: The Right to a Fair Trial</li> <li>• Principle 27: The Right to Promote Human Rights</li> <li>• Principle 32 The Right to Bodily and Mental Integrity</li> <li>• Principle 33: The Right to Freedom from Criminalization and Sanction on the basis of Sexual Orientation, Gender Identity, Gender Expression, or Sex Characteristics</li> <li>• Principle 35: The Right to Sanitation</li> <li>• Principle 37: The Right to Truth</li> </ul>
21A	Right to Education	<ul style="list-style-type: none"> <li>• Principle 16: The Right to Education</li> <li>• Principle 36: The Right to enjoyment of human rights in relation to Information and Communication Technologies</li> </ul>
22	Protection against arrest and detention in certain cases	<ul style="list-style-type: none"> <li>• Principle 2: The Right to Equality and Non-Discrimination.</li> </ul>
23	Prohibition of traffic in human beings and forced labor	<ul style="list-style-type: none"> <li>• Principle 5: The Right to the security of the person.</li> <li>• Principle 11: The Right to protection from all forms of exploitation, sale and trafficking of human beings</li> </ul>
25	Freedom of conscience and free profession, practice and propagation of religion	<ul style="list-style-type: none"> <li>• Principle 4: The Right to Life</li> <li>• Principle 31: The Right to Legal Recognition</li> <li>• Principle 33: The Right to Freedom from Criminalization and Sanction on the basis of Sexual Orientation, Gender Identity, Gender Expression, or Sex Characteristics</li> <li>• Principle 38: The Right to practice, protect, preserve and revive cultural diversity</li> </ul>
29	Protection of interests of minorities	<ul style="list-style-type: none"> <li>• Principle 25: The Right to Participate in Public Life</li> <li>• Principle 33: The Right to Freedom from Criminalization and Sanction on the basis of Sexual Orientation, Gender Identity, Gender Expression, or Sex Characteristics</li> <li>• Principle 38: The Right to</li> </ul>

		practice, protect, preserve and revive cultural diversity
32	Remedies for enforcement of rights	<ul style="list-style-type: none"> <li>• Principle 8: The Right to a Fair Trial</li> <li>• Principle 28: The Right to Effective Remedies and Redress</li> <li>• Principle 29: Accountability</li> </ul>
38	State to secure a social order for the promotion of welfare of the people	<ul style="list-style-type: none"> <li>• Principle 14: The Right to an Adequate Standard of Living</li> <li>• Principle 15: The Right to Adequate Housing</li> <li>• Principle 17: The Right to the Highest Attainable Standard of Health</li> <li>• Principle 18: Protection from Medical abuses</li> <li>• Principle 24: The Right to found a Family</li> <li>• Principle 26: The Right to Participate in Cultural Life</li> <li>• Principle 32: The Right to Bodily and Mental Integrity</li> <li>• Principle 34: The Right to Protection from Poverty</li> <li>• Principle 38: The Right to practice, protect, preserve and revive cultural diversity</li> </ul>
42	Provision for just and humane conditions of work and maternity relief	<ul style="list-style-type: none"> <li>• Principle 4: The Right to Life</li> <li>• Principle 12: The Right to Work</li> <li>• Principle 13: The Right to Social Security and to other Social Protection Measures</li> <li>• Principle 14: The Right to an Adequate Standard of Living</li> <li>• Principle 24: The Right to found a Family</li> </ul>
46	Promotion of education and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections	<ul style="list-style-type: none"> <li>• Principle 13: The Right to Social Security and to other Social Protection Measures</li> <li>• Principle 25: The Right to Participate in Public Life</li> <li>• Principle 31: The Right to Legal Recognition</li> <li>• Principle 33: The Right to Freedom from Criminalization and Sanction on the basis of Sexual Orientation, Gender Identity, Gender Expression, or Sex Characteristics</li> <li>• Principle 38: The Right to</li> </ul>

		practice, protect, preserve and revive cultural diversity
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A reference to the above comparison makes it clear that the Indian Constitution already imbibes the spirit articulated by the Yogyakarta principles. This positive base of the Indian democracy has been recognized during several notable judicial pronouncements as well. The Yogyakarta principles act as a ready reference to awaken the state from its slumber towards the concerns of the alternate sexualities.

### **NALSA Judgement**

The deliberations taking place at the international platforms serve as a guiding light to the national policy makers. However, the judiciary has been playing an important role in articulating the issues of the alternate sexualities in India. One of the most important developments in the Indian state was the National Legal Service Authority (NALSA) Vs. Union of India case of 2014,<sup>12</sup> wherein the judiciary admitted the justifiability of the claims of the alternate sexualities, paving the way for a more organized movement and subsequent recognition of the special needs of such groups. NALSA judgement proved as a landmark in establishing a direct link between the concerns of the alternate sexualities and the cherished ideals of the Indian democracy.

The Supreme Court recognized the fact that the transgender and the other groups of alternate sexualities have been denied their fundamental rights. It clearly recognized the fact that discrimination on the basis of sexual orientation or gender identity accounts for an infringement of the Equality before Law (Article 14), Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15), the Right to freedom of speech and expression (Article 19(1)), and most importantly, the Right to Life and personal liberty (Article 21).<sup>13</sup>

The NALSA judgement is also an instance when the judiciary, for the first time, agreed to the distinction between gender and biological attributes. The Court also accepted that gender identity has more to it than just biological markers and that it includes 'one's self-image and deep psychological or



emotional sense of sexual identity and character.’<sup>14</sup> Thus, no restriction which is seen as unconstitutional could be imposed on any individual having distinct beliefs and perspective. The Court accepted the fact that right to express one’s identity is a part of freedom of expression under Article 19(1) of the Indian Constitution.

The NALSA judgement also holds primary importance for the alternate sexualities because it was the first occasion when the state showed an inclination towards accepting the alternate sexualities without attempting to superimpose the heteronormative ideals. The Court also admitted to the fact that the Right to Privacy under Article 21 includes the right of personal autonomy and the right of not to be subject to interference by others.<sup>15</sup> The NALSA judgement pressed upon the fact that right to dignity cannot be restored without safeguarding the right to self-expression. The arguments given in this regard are worth mentioning here:

*“Article 21 takes all those aspects of life which go to make a person’s life meaningful. Article 21 protects the dignity of human life, one’s personal autonomy, one’s right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being humans... Recognition of one’s gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one’s sense of being as well as an integral part of a person’s identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution.”<sup>16</sup>*

NALSA judgement is particularly hailed for highlighting the interests and concerns of the transgender groups in India. It highlighted the miserable condition of the transgender groups which “have been and treated untouchables.” The Court pointed out that “the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions...”<sup>17</sup> A dynamic interpretation of the term transgender was upheld by the Court which identified the term ‘transgender’ with a wide range of

identities and experiences. The judgement also pointed out that the suppression of the transgender groups was not natural but a historical exercise. The transgender groups were typically stereotyped during the colonial rule as a 'criminal tribe' which led to a general backwardness of the transgender community.<sup>18</sup>

The NALSA case remains a primary reference to the researchers on alternate sexualities as it highlighted the crimes perpetuated against the alternate sexualities in the name of tradition and morality. Refuting the popular perception about the alternate sexualities, the NALSA judgement recognized the presence of the alternate sexualities in the form of homosexuals, bisexuals, asexuals and others. Without showing a biased view, and taking hints from the Yogyakarta principles, it suggested an open understanding of sexual orientation and gender identity. This principle of gender identity as self-expression would later become the main agenda of the queer politics. The Court also suggested that forcing an individual to undergo Sex Reassignment Surgery (SRS), hormonal therapy or such other medical procedures is against natural justice.<sup>19</sup>

The NALSA case also became a platform for introspection as it exposed the parochial perspective of the Indian state towards the gender issues. It recognized the fact that the "Indian law only recognizes the paradigm of binary genders of male and females..."<sup>20</sup> In this sense, NALSA becomes an important milestone in deliberations on gender issues in India. The judgement, in itself, is based on good research which shows evidences from several other countries where transgender identity is legally recognized.<sup>21</sup>

It is unfortunate that the observations and messages of the NALSA judgement could not be implemented into policy decisions immediately. But the judgement played an important role in setting the tone to the queer movement in India which has been able to show its impact in the recent years. I also must here make mention of other examples.

## **UNDP and NACO report<sup>22</sup>**

Deliberations and activism have been shown with regard to the concerns of the alternate sexualities at various platforms and levels. A major area of discussion, in this regard, has been the issue of transgender population and their mistreatment by the society. A UNDP report informs that according to Census 2011, India is inhabited by about 4.90 lakhs transgender persons, with majority of population found in Uttar Pradesh, Andhra Pradesh, Maharashtra and Bihar.<sup>23</sup> The outlook towards the transgender population is dismal and suffocating. The report highlighted the severe stereotype and discrimination of transgender persons as:

*“Transgender community continue to face multiple layers of stigma and ostracism that play out simultaneously due to their non-conformity to the gender binary system... These include verbal, physical, sexual violence; harassment; refusal to provide services; false arrests; denial of share in ancestral property; denial of or delayed services at hospitals; denial of admission in educational institutions; victimisation by teachers and fellow students and several others... Doctors do not attend to TGs once they find out their gender identity...”<sup>24</sup>*

The UNDP report highlighted the fact that the only instances of the recognition of the third gender is found in the Indian Passport applications which allows individuals to enter their sex under the category ‘E’ to signify gender other than male/female.<sup>25</sup> This situation, however, is changing post-NALSA as the Government has now issued guidelines for incorporating the ‘other’ option in gender identity details.

The UNDP report also highlights several loopholes in the reform process. The welfare measures taken up by some of the state governments, like Tamil Nadu, Maharashtra, Odisha, West Bengal and Manipur, have several lop-sided aspects.<sup>26</sup> Some agencies issue welfare ID to the transgender only if they are castrated. Such biological qualifications fail to attend to the concerns of transgender groups.

A similar issue was raised in the report by National AIDS Control Organization (NACO), wherein the transgender population and homosexual men were categorized under the High-Risk Groups (HRGs) on account of their sexual conduct.<sup>27</sup> Though the intention of the program has been to ameliorate the conditions of the vulnerable groups in the society and to protect them from HIV/AIDS, the categorization itself backfired for the transgender groups and homosexual community, as it led to severe stereotype and neglect. The over-emphasis on the higher proportion of HIV/AIDS among transgender and homosexual men led to an unfounded view that such diseases have come from these groups which created problems for the transgender and homosexual persons.

## **ILGA Report**

The International Lesbian and Gay Association (ILGA) has been doing research on areas concerning the alternate sexualities. According a report by ILGA entitled “Curbing Deceptions: A World survey on legal regulations of so-called ‘conversion therapies’”, it was argued that legal recognition to the alternate sexualities can bring a positive change for the alternate sexualities. It recognized the 11<sup>th</sup> revision of the International Statistical Classification of Diseases and Related Health problems (ICD-11) introduced by the World Health Assembly in May 2018 as a welcome move in removing the stigma from the alternate sexualities. The ICD-11 removed the trans-related categories from the chapter on mental and behavioral disorders.<sup>28</sup>

In another report titled ‘Trans Legal Mapping Report 2019’, ILGA appraised the situation across the globe and contrasted the developments in terms of policy making and general outlook towards alternate sexualities. Within South Asia, the report mentioned that states like Pakistan and Bangladesh are showing positive signs of change.<sup>29</sup> However, the report had raised some apprehensions regarding the procedural requirements of gender identity change in India.<sup>30</sup>

## **Transgender Persons (Protection of Rights) Act 2019**

The Transgender Persons Act, 2019 was an outcome of years of struggle and debate. It represents a conscious move of the state towards the concerns of the transgenders. Whether these concerns are aptly responded, is a matter of debate itself. The formal deliberations over the concerns of the transgender community started with the constitution of an Expert Committee in 2013.<sup>31</sup> The committee was headed by Mr. Anoop Kumar Srivastava, and comprised of a diverse representation from various stakeholders. The official purpose of the committee was mentioned as:

*“The Committee shall make an in-depth study of the problems being faced by the Transgender community and suggest suitable measures that can be taken by the Government to ameliorate their problems.”<sup>32</sup>*

The mandate of the committee enabled it to carry a deeper study into the concerns of the transgender groups in India. This task included a responsibility of defining the very meaning of the transgender identity. The membership of the Srivastava committee comprised of several activists and representatives of the transgender community. The report highlighted several areas of Indian constitution and history which allows for an equal treatment of the transgender persons.<sup>33</sup> The report highlighted the fact that the alternate sexualities are suppressed and discriminated under the hegemony of the heteronormative discourse in society.

The committee also highlighted a point about the emotive aspect of transgender identity which could not find a place in the statutory framework. It suggested that one's sense of gender-identity is subject to transition from one gender to another, in different degrees and ways. This makes gender identity more fluid and difficult to be crystallized. The committee also suggested the use of the term 'gender-queer'<sup>34</sup> to take note of this floating conception of gender identity. The transition of the Expert committee report to its statutory form witnessed some changes and adaptations to match the requirements of the legal framework.

The stated purpose of the Act of 2019 was ‘to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.’<sup>35</sup> The Act attempts to offer a broad-based definition of the term transgender as:

*“"transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.”*<sup>36</sup>

However, this definition tends to define the transgender identity in terms of ‘gender’ characteristics which often becomes problematic in queer discourse.<sup>37</sup> This tendency of the Indian laws to link gender identity to biological-sex or sex-based characteristics has also been highlighted in an ILGA report which welcomes the law on transgender persons but views some hurdles in its positive impact.<sup>38</sup> The involvement of medical practitioners make the process of gender-change a technical process which becomes akin to ‘the conversion therapies’<sup>39</sup> advocated in the past. While the law allows for a change in the gender identity of a person, the process itself requires a crystallization of the gender identity through repeated affirmations and evidences which tends to further penetrate the stereotypes against alternate sexualities. The experiences of medical examinations and public declarations become nothing but acts of harassment and humiliation for the alternate sexualities.

Nevertheless, the Act tries to support and create an environment of ‘inclusive education’ and an environment of non-discrimination.<sup>40</sup> It further seek to create a safe and just environment where even the transgender persons could express themselves.<sup>41</sup> Needless to mention that these aspects of non-discrimination are derivatives of the fundamental rights given in the Indian Constitution.

In terms of institutional framework, the Act provides for a National Council for Transgender Persons with a multi-tier model and representation from different stakeholders from state and civil society. The National Council is mandated to oversee the policies and programs for the transgender population and assess its progress.<sup>42</sup> The Act also provides for several prohibitive and restrictive provisions and criminalizes certain acts to safeguard the interest of the transgender persons.<sup>43</sup>

The main contestation regarding the Act, however, remains with regard to its emphasis on the medical procedures to ascertain the claims of identity and references to the Sex Reassignment Surgery (SRS) as a measure of ‘counselling.’<sup>44</sup> The requirement of registered gender identity of the transgender groups points more towards an attempt to put them under public surveillance with different purposes and goals. The public reaction to the Act has been a mixed one. While some groups welcome it as a landmark step for the benefit of the transgender community, others view it as an attempt to further restrict the transgender groups under the pretext of freedom and welfare. A critical appraisal of the Act and other legal measures is offered in section 4.3.

### **Decriminalization of Section 377**

The deliberations for securing justice to the alternate sexualities reached a milestone, if not a success altogether, when the Supreme Court of India decriminalized homosexual conduct as provided under the Section 377 of the Indian Penal Code.<sup>45</sup> In a landmark judgement of 2018 in *Navtej Singh Johar Vs. Union of India*, the Court rebuffed the rationality of the Section 377 and found it violative of the provisions and ideals of the Indian Constitution. However, it was not the first occasion when the Constitutionality of Section 377 was questioned. Earlier in 2009, based on the Public Interest Litigation (PIL) of 2001 filed by Naz Foundation (India) Trust, the Delhi High Court had read down the Section 377. However, in 2013, the Supreme Court overruled the judgement of the Delhi High Court, in *Koushal V. Naz Foundation* case, and reinstated the Section and dismissed the claims of the alternate sexualities as a ‘miniscule’ minority.<sup>46</sup>

The noteworthy aspects of the Johar case judgement lie in the observations of the honorable judges in defense of the rights of the alternate sexualities. It was probably for the first time in the history of independent India that the state had expressed such an open and accommodative approach towards the alternate sexualities. The judgement represents an instance where the state attempted to peek into the hitherto 'out of bounds' domain of alternate sexualities to address the concerns of those who are categorically unseen by the hegemonic heteronormative discourse.<sup>47</sup> The observations of the Court show a just and accommodative stance which offers a support to the concerns of alternate sexualities at a philosophical as well as political level. The Court further made it clear that the primary task of the state institutions was not merely to prove the injustices faced by the alternate sexualities but to make a philosophical-political ground to establish their just rights. Thus, the Court asserted that it is its duty as the final arbiter of the Indian Constitution to safeguard the rights of 'those who have been the object of humiliation, discrimination, separation and violence by not only the State and the society at large but also at the hands of their very own family members.'<sup>48</sup>

The judgement is also unique because it represents a break from the assimilationist outlook of the state and recognizes the rights of the individuals to live their life on their own terms. Justice Dipak Mishra (CJI) particularly emphasized upon the aspect of individuality and the role it plays in giving meaning to one's life.<sup>49</sup> It was further recognized that the core values of the Indian Constitution are not premised upon the values cherished by the majority but based upon 'ideals of individual autonomy and liberty, equality for all sans discrimination of any kind, recognition of identity with dignity and privacy of human beings...'<sup>50</sup>

I shall now attempt to discuss the different aspects of the Johar case judgement for the Indian constitution as well as democracy. These aspects broadly touch upon the philosophical, political and legal aspects of Indian democracy and have important repercussions for the Indian legal as well as political system. Contrary to the conservatism maintained by the state



structure, the Supreme Court approached the issues and concerns of the alternate sexualities with prudence and empathy. Rather than being tied by the presumptions of the age-old legal provisions, the Court viewed the issue from a foundational point of view and thus pursued a corrective approach.

The respect shown to the idea of individuality gave strength to the claim of individual autonomy. The support for self-determinism and self-expression became an important aspect of the Right to Life. The Court recognized individuality as a foundational aspect which needs to be protected from the vagaries of the state and society. Fearing the possibility of destruction of identity, the Court held that ‘Destruction of individual identity would tantamount to crushing of intrinsic dignity that cumulatively encapsulates the values of privacy, choice, freedom of speech and other expressions.’<sup>51</sup>

Once the belief in individual autonomy was affirmed, it was not a difficult road towards the right to self-determination. The Court, acting as the harbinger of the fundamental rights, interpreted the Right to Life and Freedom of Expression to include the right of having a sexual orientation of one’s inclination. Thus, the Supreme Court upheld gender identity and expression as an inviolable aspect of an individual’s life.<sup>52</sup> The Johar case became an exemplary point where the state had put constitutional morality before the conventions and practices prevailing in society.

The appeal of the arguments presented in the Johar case lies in the fact that instead of simply upholding the rights of the alternate sexualities on legal grounds, the judiciary created a legitimizing platform which acts as a safety net for the possibility of any backlashes by the conservative sections of the society. The distinction between the Constitutional morality and social morality enabled the State to assume the role of the protector of the vulnerable sections, including the alternate sexualities.<sup>53</sup> By linking the concerns of the alternate sexualities to the foundational aspects of democracy and Indian Constitution, the Supreme Court has indeed played a pivotal role in the activism of the alternate sexualities in India.

The judgement, apart from being important for the rights of the alternate sexualities, also raised a number of questions against the heteronormative moral framework. The Court questioned the very logic of ‘order of nature’ and raised doubts over the procreation-centric understanding of social relations.<sup>54</sup> The case became a virtual contestation between the two paradigms. The arguments presented by the advocates of heteronormativity, however, could not convince the rationale of the constitutional morality which is based on the ideals of democracy. Thus, the Court decided to side with logic and prudence rather than tradition. The Court recognized that ‘in the garb of social morality, the members of the LGBT community must not be outlawed or given a step-motherly treatment of malefactor by the society.’<sup>55</sup> The history of deliberation on alternate sexualities would always mention the decriminalization of Section 377 as a milestone for India as it marks a break from a colonial legacy and also offers important insights into the nature of the Indian Constitution and the democratic framework. The judgement talks in detail about the concept of transformative constitutionalism which bestows a moral and political duty upon the state to further the progress of the society towards the ideals of justice, liberty, equality and fraternity.<sup>56</sup> This arms the judiciary with the capability to indulge in an active reinterpretation of our political ideals. As a result, the Indian Constitution stands true as an ‘organic’ entity.<sup>57</sup>

The Court also upheld the view that Constitutional morality is above the social and religious morality and in no sense the latter can be allowed to compromise with the former.<sup>58</sup> This image and position of the Indian state shows its position as a watchdog of the democratic framework where the state is entrusted with the task of defending the plural interests and identities. This understanding of the Constitutional morality adds a chapter to the understanding of the Indian state as a guardian to the foundational pillars of Indian democracy. Such state tries to create a protected public sphere where it attempts to keep the forces of domination and subjugation at bay, if not dissipated altogether. Thus, the Court held that to disallow the right to identity and self-expression to the alternate sexualities would go contrary to the basic principles of the Indian Constitution itself. An orthodox and static

view of the provisions of the Indian Constitution robs it of its true character. The purpose of the Indian Constitution is not to serve the interest of the majority but to create an atmosphere where every individual and group may prosper and realize one's true nature.<sup>59</sup>

The discussion on the implications and impact of the decriminalization of section 377 cannot be complete without discussing the legal implications of the decision. The Court had, at the outset, made it clear that the Section 377 was the product of the Victorian era<sup>60</sup> and thus alien to the native Indian society. The Court also asserted that while the outlook on alternate sexualities has since changed in United Kingdom, the old traditions continue to prevail in India. The Court, thus, referred to Section 377 as 'an anathema to the concept of fraternity as enshrined in the Preamble to our Constitution.'<sup>61</sup>

The Navtej Singh Johar case offers a detailed discussion on how Section 377 violates the basic principles of the Indian Constitution, including the fundamental rights. Some of the observations of the Supreme Court on how Section 377 violates the provisions of the Constitution are worth mentioning:

- Section 377 violates Article 15 of the Constitution since there is discrimination inherent in it based on the sex of a person's sexual partner as under Section 376(c) to (e), a person can be prosecuted for acts done with an opposite sex partner without her consent, whereas the same acts if done with a same-sex partner are criminalized even if the partner consents.<sup>62</sup> The Section also violates Article 15 as it makes discrimination on the basis of sex, where sex includes sexual orientation as well.
- the amendment to Section 375 IPC which has rendered sexual 'carnal intercourse against the order of nature' between man and woman as permissible. Section 377, on the other hand, has continued to render same sex carnal intercourse as an offence, even if it is consensual.<sup>63</sup>
- the High Court declared Section 377 IPC violative of Articles 14, 15 and 21 of the Constitution in so far as it criminalises consensual sexual acts of adults in private; whereas for non-consensual penile non-vaginal

sex and penile non-vaginal sex involving minors, the provisions of Section 377 IPC were valid.<sup>64</sup>

- A cursory reading of Section 375 IPC divulges that it is a gender specific provision for the protection of women as only a man can commit the offence of rape.<sup>65</sup>
- Under Section 377, Unnatural offences— ‘Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine...’ The phrase ‘against the order of nature’ has neither been defined in Section 377 IPC nor in any other provision of the IPC.<sup>66</sup>
- If any proclivity amongst the heterosexual population towards consensual carnal intercourse has been allowed due to the Criminal Law (Amendment) Act, 2013, such kind of proclivity amongst any two persons including LGBT community cannot be treated as untenable so long as it is consensual and it is confined within their most private and intimate spaces.<sup>67</sup>
- Section 377 IPC, in its present form, abridges both human dignity as well as the fundamental right to privacy and choice of the citizenry, howsoever small. As sexual orientation is an essential and innate facet of privacy, the right to privacy takes within its sweep the right of every individual including that of the LGBT to express their choices in terms of sexual inclination without the fear of persecution or criminal prosecution...<sup>68</sup>
- the non-consensual acts which have been criminalized by virtue of Section 377 IPC have already been designated as penal offences under Section 375 IPC and under the POCSO Act. Per contra, the presence of this Section in its present form has resulted in a distasteful and objectionable collateral effect whereby even ‘consensual acts,’ which are neither harmful to children nor women and are performed by a certain class of people (LGBTs) owing to some inherent characteristics defined by their identity and individuality, have been woefully targeted. This discrimination and unequal treatment meted out to the LGBT

community as a separate class of citizens is unconstitutional for being violative of Article 14 of the Constitution.<sup>69</sup>

- Section 377 IPC takes within its fold private acts of adults including the LGBT community which are not only consensual but are also innocent, as such acts neither cause disturbance to the public order nor are they injurious to public decency or morality. The law is *et domus sua cuique est tutissimum refugium* – A man's house is his castle... Section 377 IPC amounts to unreasonable restriction as it makes carnal intercourse between consenting adults within their castle a criminal offence which is manifestly not only overboard and vague but also has a chilling effect on an individuals' freedom of choice.<sup>70</sup>
- Section 377 IPC does not meet the criteria of proportionality and is violative of the fundamental right of freedom of expression including the right to choose a sexual partner. Section 377 IPC also assumes the characteristic of unreasonableness, for it becomes a weapon in the hands of the majority to seclude, exploit and harass the LGBT community. It shrouds the lives of the LGBT community in criminality and constant fear mars their joy of life.<sup>71</sup>

## **The Way Ahead**

The history of a movement only helps to ascertain its trajectory. The deliberations happening at the international and national level have been able to create a platform through which the concerns of the alternate sexualities can be channelized. This task was of prime importance as the concerns of the alternate sexualities were hitherto unknown. By putting these concerns before the state, a process of socio-political churning has been kicked-off.

The role of judiciary has been Janus faced in this respect. Firstly, the judiciary has been attempting to act as an impartial referee amidst the contestation of normative frameworks. The judiciary has been able to show how the alternate sexualities have been subjugated and oppressed over the decades. Secondly, the judiciary has acted as the guardian of Constitutional morality and played the role of the vanguard of Indian democracy. The last few decades have really proved the Indian state as an active site for articulation of the interests by different groups, including the alternate

sexualities. The strategy of 'top-down approach' of reform appears to be working well for the groups such as the alternate sexualities who, otherwise, suffer a total neglect and outcaste.

The world of social and political possibilities for the alternate sexualities appears to be opening through the proactive role of the state in pronouncing their spatiality amidst our democratic arrangement. This formal recognition of the concerns and claims of the alternate sexualities later leads to a smoother introduction of reforms in the civil society which I shall discuss in the forthcoming section.

## 4.2 Social Consciousness and Change- A Case study of Lakshya Trust

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While the legal-political processes are instrumental in giving shape to the formal political setup, the impact of social activism is equally relevant in defining the nature and outlook of a democratic society. I have discussed the broader political and legal arrangements which affect the alternate sexualities and also attempt to discuss how the changing political outlook is affecting the fate of these groups. In this section, I propose to undertake a study of the social activism carried in the civil society and assess the impact of such attempts.

Today, the network of Non-Governmental Organizations (NGOs) has emerged as the most vocal and active channel of social activism. As a result, very often, civil society is confused as the network of NGOs and interest groups. However, the social activism in the civil society takes place through a wider array of agents which includes the organized groups like NGOs and unorganized congregations which are loosely spread. Until a few years ago, the alternate sexualities were seen as such unorganized congregation of individuals which could not voice their concerns in an effective manner. However, the deliberations and contemplation over the concerns of the alternate sexualities have led to formation of organized groups and NGOs working for the welfare and protection of the alternate sexualities.

Given the wide stretch of the civil society organizations, it becomes a herculean task to study the whole array of civil society groups. Thus, I have attempted to understand the dynamics of the civil society groups through the case study of one such organization. My case study pertains to the activities of the 'Lakshya Trust,'<sup>72</sup> which is a Vadodara based NGO working for the interest of the alternate sexualities. It is one of the pioneer organizations working for the concerns of alternate sexualities in Gujarat. The story of the Lakshya Trust is exemplary of the struggle against the heteronormativity. For its activism and commitment, Lakshya Trust was awarded with the Civil

Society Award in 2006 for its contribution in preventing HIV/AIDS among homosexual men. It is also a member of the Indian Network for Sexual Minorities (INFOSEM) and a founding member of the Sexual Health Action Network (SHAN).<sup>73</sup>

My study of the Lakshya Trust is also based on a direct involvement in some of the projects managed by the Trust and a number of interviews with the Trustees as well as other field staff. The first-hand experience with the NGO helped me understand the social dynamics which guide the functioning of these organizations. The primary data gained through field experience has been supported by the reports and documentary information from Lakshya. The Trust also demonstrates activism in the public sphere through digital platforms which make its actions far-reaching and effective. I should also make clear at this juncture that the purpose of my involvement and participation with the Lakshya Trust is to understand how such groups and organizations are able to create an impact on the public sphere and the formal political institutions. Thus, instead of attempting a critical evaluation of the activities of the Lakshya Trust, I have attempted to observe its effort and social impact.

The role of the Lakshya Trust becomes important because of the instrumental role played by its Chairperson/Trustee Manvendra Singh Gohil, who has been popularly tagged as the ‘Gay Prince’. Prince Gohil is known as the first open member of a royal family.<sup>74</sup> Against all odds, Prince Manvendra Singh Gohil has been working for the cause of the LGBTQI+ community. He has been invited at several international platforms as guest, like- the Oprah Winfrey Show;<sup>75</sup> the Euro Pride Gay Festival in Stockholm, Sweden on July 25, 2008; BBC television series ‘Undercover Princes’;<sup>76</sup> and, the Sao Paulo gay pride parade in 2009.<sup>77</sup>

The case of the Lakshya Trust becomes interesting because of the royal connection of its chairperson. The queer identity of Prince Gohil initially came out as a severe shock to the royal family and the local masses. However, with time and effort, the attitude has begun to change, and today Prince Gohil is known as a LGBTQI activist and a philanthropist.<sup>78</sup> The reason for



mentioning these details regarding Prince Gohil is to establish a connection with the 'top-down' reform suggested in my framework of understanding. The case of alternate sexualities has witnessed a flow of reform from the state structures (top), which might be contrasted with the royal image of Prince Gohil, and flowing towards the society. This process, though carries some amount of resistance and protest, unfolds through the efforts of the governing structures, which in this case might be compared to the efforts of Prince Gohil.

### **Activism by Lakshya Trust**

The primary mission and objectives of the Lakshya Trust as given on its official website is:

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“Working to improve the lives of Gay, Bisexual, Transgender/Hijra and Koti minority groups and communities. With main focus on cultural, social, spiritual, physical and mental health of all sexual minority groups.”<sup>79</sup>

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These objectives are aimed to be achieved through dissemination of information about HIV/AIDS and other STIs, creating a better understanding of one's sexuality, empowering the members of the LGBTQI+ community to be independent and capable, and spreading awareness about the issues of sexuality and sexual health in the society. The trust functions through networking and manages itself through public funds and donations. Presently, the Trust is managing different projects under different names. I shall discuss a few of such projects to develop a better understanding of the dynamics of such groups.

### **Garima Greh**

The model of *Garima Greh*<sup>80</sup> aims for a safe and dignified shelter for the transgender persons. While one might argue that there are several initiatives and arrangements for providing such shelter homes for the transgender persons, the case of Garima Greh is unique due to the state-sponsorship and support which renders it a formal recognition and protection. The first official

Garima Greh was inaugurated, along with a National Portal for Transgender Persons, by the Union Minister for Social Justice and Empowerment Shri Thaawarchand Gehlot on November 25<sup>th</sup>, 2020 in Vadodara.<sup>81</sup> The Garima Greh is managed and run by the Lakshya Trust, in association with the Ministry of Social Justice and Empowerment, Government of India.<sup>82</sup>

The Garima Greh is a community-based organization, being entirely run by the Transgender persons. The mandate of the Greh as per the Press Information Bureau (PIB) report is:

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“The purpose of the Shelter Home is to provide shelter to Transgender persons, with basic amenities like shelter, food, medical care and recreational facilities. Besides, it will provide support for the capacity-building/skill development of persons in the Community, which will enable them to lead a life of dignity and respect.”<sup>83</sup>

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Further, the broader objectives of the Garima Greh as per the official guidelines are:

- *“To provide shelter with basic amenities such as food, clothing, recreation, medical facilities and counseling;*
- *To safeguard the rights of the transgender persons;*
- *To confirm the prevalence of congenial atmosphere in the Garima Greh by adopting uniform rules and regulations suitable to be followed by all TG persons;*
- *To empower a TG person through skill-development and skill up-gradation programmes to lead a decent and dignified life, and protect them from atrocities and social stigma.”<sup>84</sup>*

The project guidelines also provide for other details relating to the structure and functioning of the Garima Greh.<sup>85</sup> However, it is not my primary purpose to reproduce the technical description of the Garima Greh. It would, thus, suffice to note that the operational framework of the Garima Greh attempts to build a safe atmosphere for the transgender persons. So far, the Lakshya Trust has been doing a commendable job in managing the Garima Greh. During

the COVID19 pandemic, it distributed the necessary medical and sanitation items among the residents, and also ensured that the shelter home maintains its doors open not only for those having a recognized identity of a transgender, but for those as well who struggle with their gender identity. In this manner, such sites become important centers for dissemination of information and awareness in the society. The protected environment allows the residents to not only develop a sense of self-respect but also find avenues of integration to the formal economy. The framework of Garima Greh also ensures that the stereotype of sex-work and beggary are also addressed and thus, the eligibility criterion of the Garima greh debar its facilities to anyone who indulges in sex work and/or beggary.<sup>86</sup>

The government has already executed the plan for extension of the transgender shelter homes to another 11 cities.<sup>87</sup> The role of Lakshya Trust, in this context, remains instrumental. The early success of the pilot project holds key to the creation of similar shelter homes for the transgender community. The pilot run of the Garima Greh project has laid the foundations for similar experiments in other parts of the country as well. The dossier issued by the National Institute of Social Defense (NISD) provides the institutional framework for such care-homes and formalizes the idea into a concrete policy.<sup>88</sup> The pilot run of the project appears to be a success, if evaluated in terms of the smooth execution of the project.

The protection of the vulnerable transgender groups has always remained a high priority among the major thrust areas of the Lakshya Trust. Over the last few years, the Trust has launched and executed several projects for the protection and promotion of the transgender community. Some of these projects are Targeted Intervention (2008), Project Wajood (2016), Project Prayash (2017), Vihaan TG CSC Project (2018).<sup>89</sup> The main thrust of these projects was the protection and empowerment of the transgender groups. However, a major limitation in the implementation of such projects was the limited support and awareness in the society. But, with the enactment of the Act on Transgender Persons and the formal inauguration of the care-home facility, the activities of the Trust have received a formal recognition and

wider outreach. As a result, the project for protection and empowerment of the transgender groups is now able to reach wider population and fewer challenges than before.

The model of the Garima Greh serves as a necessary intervention in a society dominated by heteronormative assumptions and becomes a safeguard for the transgender groups. By providing a safe environment, it gives a fair opportunity to the transgender persons who are otherwise pushed beyond the territory of acceptance. This necessary intervention also ensures the basic human necessities to the transgender groups who are otherwise denied the access to such indispensable safeguards such as ‘shelter, food, clothing, recreational facilities, skill development opportunities, yoga, meditation/prayers, physical fitness, library facilities, legal support, technical advice for gender transition and surgeries, capacity building of trans-friendly organizations, employment and skill-building support, etc.’<sup>90</sup>

While the creation of such care home might appear to challenge the deeply established heteronormative traditions, it holds a significance for the transgender groups and the state as well. While such establishment might not have an immediate effect upon the normative structures of our democratic polity, it does have an impact on the public memory and the broader political culture.<sup>91</sup> The sponsorship of the state and a legal protection ensures stability and preservation of different groups and identities. In other words, the purpose of establishing the Garima Greh appears to be to break the slumber of the transgender groups and facilitate their existence within the public sphere so as to inculcate a culture of co-habitation which eventually would lead towards ‘plural public sphere.’<sup>92</sup> Such attempt towards a plural public sphere might not be possible through coercive legislations or radical reforms because it would then pose a direct threat to the existing paradigm of understanding, which is essentially heteronormative. Thus, a change in the political culture could be introduced through a continuum of reform and through mobilization of the channels of civil society. In this manner, the systemic stability is maintained while kick-starting a process of democratic deliberation.

The trajectory of the change would naturally move towards a broader understanding which would eventually lead towards inclusion of the other groups of the LGBTQI community. Lately, there are also developments that point towards this broadening of understanding and a greater acceptance by the state. Interestingly, the Indian Judiciary has voiced in favor of expanding the benefits of the Garima Greh to the wider membership of the LGBTQI+ community. It has also recognized the fact that the transgender groups represent only a part of the wider spectrum of the LGBTQI+ population and that an environment of non-discrimination and inclusive development could only be ascertained when the claims of the diverse groups representing the LGBTQI+ groups are taken into consideration.<sup>93</sup> Such trajectory, if followed, might help in transforming the model of the Garima Greh into a model of inclusive co-habitation for all and become instructive to several other democratic regimes.

### **Queer A+ Community Campus- Hanumanteshwar**

A resource center does not raise much curiosity when studied as a channel of socio-political activism. In fact, every group or NGO manages some form of resource center, formal or informal, where the like-minded individuals gather to share ideas and information. The case of the Lakshya Trust, however, stands apart. Hanumanteshwar LGBTQA community center is a dedicated center for addressing the various issues of the alternate sexualities. What makes the center an interesting case study is the royal history attached to it. The royal property was originally constructed by Maharaja Vijaysinh in Rajpipla town. It is also known to have hosted a number of political dignitaries and other celebrities.<sup>94</sup>

The Hanumanteshwar Queer Community Center is established at the royal property of Prince Manvendra Singh Gohil, who has dedicated the site for the cause of queer community. The center has been designated as ‘Queer A+ Community Campus Rajpipla’ and projected as the state-of-art resource center for addressing and advocating the concerns of the alternate sexualities. The campus is equipped with facilities like: weekly support meetings, well-  
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equipped library, computer resource center with facility for job training and skill development, a therapeutic music room, conference center, community kitchen medicinal clinic and housing. It also hosts a number of LGBTQA-related events. It is open to all and profess no toleration to any sort of discrimination.<sup>95</sup> The stated goal of the Campus is:

“We aim to build hope and understanding; promote equality, cohesion, and visibility in the community; and elicit action and spread the truth through education. Our mission is to be a catalyst for these things through which all people regardless of their sexual orientation, identity, expression or preference may enjoy the same rights, stability, and serenity enjoyed by most today. We are here to support the endeavors of the LGBTQA community.”<sup>96</sup>

While the idea of Garima Greh is limited to the transgender persons, the Hanumanteshwar resource center has been organized as an open space for like-minded persons who share equal respect for all regardless of one’s gender, race, caste or class. Also, the campus is probably the first such example of a royal property being devoted for the cause of the LGBTQIA+. The association with the royal heritage of Prince Gohil brings more attention to the center and often becomes a subject of discussion.

An interesting picture emerges when the Garima Greh and Hanumanteshwar Center are contrasted. While the Garima Greh becomes the site of state-backed inclusive reform, the Hanumanteshwar center stands as a voice of the civil society queer groups. The relation between the two sites is not contradistinctive but complementary. While the Garima Greh marks a politico-legal reform in facilitating inclusion of the transgender persons, the Hanumanteshwar center works as an independent site for dissemination of information and ideas. It acts as a site for deliberation on reforms which often become an uneasy subject of discussion in an otherwise heteronormative society. The inter-relationship between the Garima Greh and hanumanteshwar center also becomes clear when read in terms of its inter-complementarity. The Hanumanteshwar center remains constantly indulged in the on-going

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process of articulating the conscience of the society as well as the state through information sharing and deliberation on the concerns of the queer groups.

The role of the Hanumanteshwar center could also be compared to sites such as Khajurao which disseminate information about the rich diversity of human sexuality. But such role of the Hanumanteshwar center could take a more important role as it directly indulges into a deliberation over the queer issues. In this manner, instead of being a mere instrument of information, the Hanumanteshwar center becomes a site of engagement in the civil society. The scope and possibilities emerging from the Hanumanteshwar Center are vast and presently understated. However, given the trajectory of the activities of the Lakshya Trust and the activism of Prince Gohil, the Hanumanteshwar Center is bound to play a vital role in the quest to create awareness about the queer rights in India and abroad.

### **No Straight Mondays: social media Project**

The Lakshya Trust manages its affairs through different projects which seek to reach out to the widest audience through different means. Thus, apart from the conventional ways of spreading their message,<sup>97</sup> the Lakshya Trust has also adopted several innovative and effective ways to reach to the wider audience. As a part of this outreach program, the Lakshya Trust has been managing digital campaigns on social media to get the attention and interest of the youth. While the other projects managed by the Lakshya Trust get involved with the queer community in a direct manner, the ‘No Straight Mondays’<sup>98</sup> project is a novel idea that takes the concerns of the alternate sexualities to the social media platforms. The project is managed by a group of volunteers who create content- in the form of creative writing, artistic creations and informative slides on matters concerning the LGBTQI- and publish it on social media platforms like Instagram.

The digital campaign allows the Lakshya Trust to portray its message to a wider audience and in a more effective manner. The flexibility of the digital means ascribes greater outreach to the content which adds to the ‘virality’ of the campaign. The reach of the published material is directly proportional to

the sharing of the content by the audience. Having participated personally in the project during the course of my research, I have tried to understand the dynamics behind this digital campaign. It is not surprising to observe that the reach and influence of the social media campaigns surpass that of the conventional ones. Several of the published posts witness indulging conversations and exchange of ideas which further add to the reach and impact of the online posts. The impact of such projects is also evident from a gradual change in the 'public memory' which manifests itself through a sympathetic attitude towards the queer community. The digital deliberations appear to mimic the trajectory of the conventional social movements but in a rapid manner.

The 'viral' spread of the digital campaigns is further enhanced by the processes of 'targeted search and projections' of the online content.<sup>99</sup> These processes ensure that the ideas and messages of such campaigns reach its targeted audience irrespective of their physical location or social circumstances. The digital campaigns, in this sense, helps to break the barriers of time and space and even allows the isolated individuals to seek support and guidance.

The astute utilization of the digital channels has allowed the Trust to garner volunteers from across the country. The project team comprised of volunteers from different states and cities like- Punjab, Madhya Pradesh, Rajasthan, New Delhi, Mumbai and various cities of Gujarat. The breaking of the physical barriers by the digitalization of the social movement has undoubtedly added to the outreach of the movement. The dispersed team met through digital means (Google Meet) and ensured that the content of the campaign remained equally relevant and meaningful for the audience across different regions and contexts. These digital campaigns help in creating a flourishing online community based on terms of mutual respect and democratic ideals.

An important aspect of the project is to highlight the underlying injustice and irrational conceptions which tend to stereotype the alternate sexualities. A significant part of the content attempted to expose how certain stereotypes



and beliefs harm the alternate sexualities. The project group undertook a micro-study to research the existing information on queer issues and publish it online so that better understanding could be developed on issues concerning the alternate sexualities. This approach of highlighting the reasons for injustice to the alternate sexualities has been effective in furthering the trajectory of a foundational critique of the heteronormative practices in society. The strategies and activities employed by the Lakshya Trust have positively matched my position and arguments and supplement my attempt to offer a foundational critique of the heteronormative paradigm.

### **Change and Impact**

The role of the Non-Government Organizations and other civil society groups does not include marking of the formal political change. Rather, the civil society is an active channel which engages in a dialogue with the state and society and facilitates the gradual democratic unfolding. There is no doubt that the activities of the NGOs such as the Lakshya Trust have led to several changes in the way the alternate sexualities are seen and understood. Such NGOs articulate the interests and issues of the alternate sexualities before the state and also within the society in such a manner that the multifarious aspects of the concerns of alternate sexualities come to the fore. This two-way dialogue maintains the vigor of a democracy and ensures that no group or individual suffers from a foundational injustice. These civil society organizations play an important role in disseminating the institutional reforms introduced by the state to the society and informing the state about the changing perceptions in the society.

The case study of the Lakshya Trust has proved to be the testing grounds of my research. My involvement with the Trust has led me to believe that the trajectory taken by such organizations follows a democratic line and aspire to adhere to the democratic ideals of liberty and equality. The Lakshya Trust has remained one of the pioneer organizations working for the concerns of the alternate sexualities in Gujarat. Through its various projects and activities, Lakshya Trust has ensured that it remains ever-engaged in a dialogue with the state structures as well as the society. The activities of the Trust often expose the persistent domination and subjugation faced by the alternate sexualities in India. The attempts to bring these concerns of the

alternate sexualities under the gaze of democracy often results in public deliberations on these issues. The policy initiatives such as the Garima Greh and Transgender Persons Act are the results of such deliberations only.

The experience and initiatives of the Lakshya Trust suggests that an unbiased and respectful treatment of the alternate sexualities not only addresses it's 'out of bound' status but also opens up a culture of deliberative democracy. The change in the way a group is seen always begins as a targeted portrayal but soon becomes a part of the public memory. Such a process of change leads towards the plurality of public cultures within the broader public sphere of our polities. The case of the alternate sexualities holds a unique spatiality of democratic deliberation. The engagement with the foundational issues of democracy found in the struggle of alternate sexualities is unmatched by any ethnic movement.

The most interesting observation about the activism of the alternate sexualities is the trajectory of reform undertaken by such groups. Instead of resorting to challenge the heteronormative establishments in combative mode, the queer groups tap upon the foundational logic of our democratic polities which eventually become suggestive of queer inclusion. Thus, instead of a contestation, the struggle of the alternate sexualities become that of accommodation and acceptance. The case of the civil society groups becomes illustrative of this trajectory.

## 4.3 Assessing the Impact of Legal-Social Possibilities

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The impact of the legal, political and social dynamics on the existential issues of the alternate sexualities needs to be seen as a continuum which unfolds gradually rather than all of a sudden. The very reason of choosing the alternate sexualities as the subject of enquiry is the distinct spatiality they hold within the democratic framework. The out of bound position of the alternate sexualities puts them in a space where the possibility of change is enormous but un-explored. Altman have also highlighted this ‘under-researched and theorized’ domain of sexuality.<sup>100</sup> The 21<sup>st</sup> century has witnessed a rise in democratic deliberation on the concerns of the alternate sexualities. As a result, the issues of the alternate sexualities have become a site of discourse which has primarily emerged from the broadening democratic consciousness. An important aspect of this broadening of democratic consciousness is the role played by the state, through its proactive intervention for securing democratic rights of the alternate sexualities. This trajectory, I have attempted to understand in terms of ‘the top-down change’ and discussed in Section 1.3.

The framework of my understanding of the issues concerning the alternate sexualities have two broad levels- one, the metaphysical spatiality of the alternate sexualities which I have attempted to understand through the idea of coerced invisibility and trichotomous understanding of the public-private-personal spheres of individuality. My response to the nature of the social science discourse is based on a foundational critique of the heteronormative discourse and tries to expose the neglect of the concerns of alternate sexualities. The second level of understanding relates to the socio-political reality and the area which are possible to change through democratic deliberation. Through this section, I attempt to explore the possibility and effectiveness of the socio-political dynamics in effecting a change in the spatiality of alternate sexualities.

Such re-understanding and adaptation of the concepts and structures is necessary in order to maintain the relevance of our understanding of

democracy and uphold the value of its founding ideals of liberty and equality. Democratic cultures often deviate from such ideals due to an unexamined adherence to normative traditions and practices. Such unexamined normative practices and beliefs shape our public institutions in such a manner that the democratic ideals are often misinterpreted and misplaced. My attempt at understanding the democratic discourse is merely an aspect of the ongoing process of understanding the underlying democratic ideals. It is important to remember that such exercise should not be seen as an attempt towards deconstruction of existing structures. I also believe that a deconstructive strategy might not be prudent as it would entail a dismantling of the socio-political heritage which is far too big a compromise to be made. The social context plays an important role in defining our political culture and its values, and thus, it is important that democratic deliberations take place within a context of such plural socio-political cultures. This plurality of sub-cultures, which is referred to as 'plural counterpublics' by Fraser,<sup>101</sup> is what defines the nature of the contemporary democratic societies.

The purpose of revisiting the democratic ideals is not to impose upon the society a particular understanding. Rather, the broader purpose of revisiting the democratic ideals is to arrive at an accommodative and inclusive terrain which nurtures the different groups and identities. This ideal becomes more plausible when understood through the top-down approach of reform, discussed in the earlier sections, wherein the state becomes an important element in facilitating a level playing field for different stakeholders. The process of revision often commences from the state and flows towards different aspects of the society, including the structures like family, kinship and gender roles. Such reform takes place in the form of a continuum to ensure stability of the system.

The evaluation of the process of adaptation and reform can be attempted through an assessment of the lego-political reforms and the dynamics of the civil society. Since it is not possible to measure such reform through quantitative parameters, it is prudent to draw inferences on the basis of changes taking place at different check-posts of democracy. But an enquiry

into the issues concerning the alternate sexualities makes this task complicated on several accounts. In what follows, I have attempted to draw a discussion on the impact of policy initiatives and the possible shortcomings of the existing arrangements in India.

### **Changing Social Milieu for alternate sexualities**

A lot seem to have changed over the last few decades for the alternate sexualities in India. While it is still difficult to argue that the alternate sexualities are now treated at par with the other groups of the society, the spatiality of the alternate sexualities has certainly been brought closer towards the territory of the mainstream discourse. While it is true that the alternate sexualities continue to remain ghettoized, they have, however, begun to transcend their positionality of 'out of bounds' to become the 'shunned other' of the mainstream discourse.<sup>102</sup> This positionality of the 'other', though does not qualify as an achievement in terms of social status, does ensure that the concerns of the alternate sexualities are considered during the deliberative processes. This change in spatiality has given the alternate sexualities a ground to assert for their rights and entitlements from the state and society.

Activism of the Indian state in recognizing the transgender identity has become an early milestone in the quest for securing justice to the transgender community. Similarly, the decriminalizing of the consensual homosexual act seems to have paved the way for a public discourse on alternate sexualities.<sup>103</sup> The challenges, however, to the state and the society, are still formidable. The presumption of heteronormativity flows through every structure and aspect of our society. As a result, the legal-political framework of the Indian state still demonstrates a neglect and resistance to the presence of the alternate sexualities. While some areas of Indian democracy showcase an inconsiderate attitude towards the concerns of the alternate sexualities, others show an utter lack of understanding of such concerns. The prevailing heteronormativity of society makes it normal to expect a systemic resistance and social backlash against the demands for reform and inclusion.

The trajectory of the reform spearheaded by the state and complemented by the dynamism of the civil society holds key to effective change. This reform-whether initiated by the state or civil society- in the public sphere would play an important role in the way the democratic culture of the state is maintained. Through a guided trajectory of inclusion and respect, the concerns of the alternate sexualities would move towards accommodation. The institutionalization of such reform becomes an important aspect of change and ensures that the ideal of democracy becomes enshrined in our democratic procedures and practices. In this context, it is important to remember that the journey for democratic inclusion of the alternate sexualities would remain unique to each polity. Since the democratic culture and experience of each polity is unique, it is important that each polity devises its own trajectory of inclusion. While there might be some degree of overlap in the experiences of different polities, the trajectory of each democracy becomes unique owing to the distinctiveness of its democratic culture and practices. Jagose has captured this variation in the queer movement across the world and described it as based upon the specific ‘structures of lesbian and gay oppression’ and the strategies to overcome such oppression.<sup>104</sup>

The assessment of the changes in the democratic order with regard to the concerns of the alternate sexualities is a multifarious task. However, I have attempted to assess it around the major themes of my study, that is- spatiality of alternate sexualities, democratic equality, concerns of individuality and Indian democratic culture. Through these areas, I hope to be able to track the impact of the decisions of the state on the one hand and the influence of the civil society on the other. It is interesting to note that while the state hints towards addressing the concerns of the alternate sexualities, the same state shows resistance to the process of change.

### **Impact on place of alternate sexualities**

I have earlier discussed that the spatiality of the alternate sexualities in our democratic framework can be understood through the idea of coerced invisibility. It is the underlying assumption of heteronormativity which projects the heteronormative ideals as a taken-for-granted affair. As a result

of this assumption, the public memory remains captivated by the heteronormative ideal. This implies that any sight of the alternate sexualities is seen as a sign of pathology and deviance which needs to be suppressed or rectified.<sup>105</sup> Such state of affairs, however, is susceptible to change through a coordinated effort of the state and the civil society. The emerging queer activism in India gives an interesting instance of such reform.

The democratic conscience of the Indian state has inspired it to recognize the concerns of the alternate sexualities and initiate a process of state-sponsored reform.<sup>106</sup> I have attempted to discuss this state-sponsored change in terms of a 'top-down' approach of change. The spatiality of the alternate sexualities appears to have changed through a piecemeal but continuous reform in the public memory. Through institutional recognition and acceptance, the Indian state has been accommodating the alternate sexualities in such a manner that their out of bounds position is changed forever. The institutional gaze pulls back the alternate sexualities from the fringes of the democratic terrain and grants such groups a stake in the democratic culture of the state.

The experience of the Indian state portrays an interesting case of the changing fate of the alternate sexualities. It is certainly a positive sign that the state has recognized the subordination and oppression of the alternate sexualities. The deliberations done through the Expert groups and judicial exercises have, indeed, touched upon areas that were hitherto considered as remote spaces of jurisprudence and administration. Initiatives to institute the dedicated National Portal for Transgender Persons as well as the Garima Greh are instrumental in ensuring a better visibility of the transgender groups in the society.<sup>107</sup> The structure of imposed heteronormativity is further challenged/loosened through legislations which allows for a change in the gender identity and ratification of the same through public institutions.<sup>108</sup>

The case of the formal recognition of the transgender persons, in India, is a good example of this. Prior to the enactment of the Transgender Persons Act of 2019, most of the references to the transgender groups took place in the context of High-Risk Groups (HRGs) and such other deviant groups.<sup>109</sup> The

legal recognition to the transgender identity helps to ameliorate the stereotypes to some extent and ensures that the transgender identity is not identified through deviant indicators. The Act has given an institutional recognition to the transgender identity and opens the gates for further deliberation over the concerns of the queer. It is also fascinating to note how a legislative act of the state gave existence to a new section/gender within the state which was hitherto non-existent. For this incredible feat, a report published by the ILGA has lauded Transgender Persons Act and seen it as a major milestone in the history of the LGBTQI rights in India.<sup>110</sup> Similar efforts are being made by several civil society organizations, like Lakshya Trust, through their efforts to impart vocational training and empowerment to such groups. This empowerment and capacity building helps the alternate sexualities in bursting the stereotypes.

The changing spatiality of the alternate sexualities could also be tracked through a study of the ways the alternate sexualities are depicted by the channels of infotainment. The depiction of the alternate sexualities in movies, other feature films, online shows and print media is reflective of the popular culture and shows the changing perception of the society. It is interesting to note that the popular depiction of the alternate sexualities has started to make a gradual but positive move.<sup>111</sup> Although such portrayals still carry an element of stereotype and over-emphasis on certain non-heteronormative aspects of the queer identity, this is a sign of the underlying tussle between the heteronormative and the queer paradigm. This tussle between the two modes of understanding is also reflective of the budding plural public culture which Fraser envisions.<sup>112</sup>

An assessment of the changing conditions and context in which the alternate sexualities find themselves suggests that there is a slight change in the heteronormative order. With the further unfolding of the democratic culture in our society and along with a developing democratic conscience of the state institutions, there is indeed a broadening up of the understanding. The contemporary understanding of the democratic spaces is, according to Gutman and Thompson, based upon a culture of reciprocity which imbibes the public



sphere with ‘principles as publicity, accountability, basic liberty, basic opportunity, and fair opportunity, which are necessary for the mutual justification of laws.’<sup>113</sup> The envisioning of a plural and inclusive democratic society, in the 21<sup>st</sup> century, requires that the out of bounds status of stereotyped groups is addressed positively. The trajectory of reform, in India, certainly shows a move towards such state of affairs. Joseph has understood the implication of democratic inclusion and acceptance of alternate sexualities in much broader terms and observed the movement of alternate sexualities as ‘an attempt to decolonize the general notion [of heteronormativity] and establish the existence of various expressions of sexualities surrounding scriptures, arts, life histories etc.’<sup>114</sup> Thus, the repercussions of the socio-political activism of the alternate sexualities transcend the realm of political to reach the other aspects of life.

### **Impact on Claims of democratic equality and Individuality**

The Constitution of India does not make ‘sex’ as the criteria for citizenship (Art. 5) or discrimination (Art. 15).<sup>115</sup> However, the underlying understanding of the term ‘sex’ is heteronormative in nature. The meaning and extent of the understanding of sex/gender is restricted to the binary view of man/woman. As a result, the Indian state has hitherto remained ignorant about the existence and diversity of alternate sexualities.<sup>116</sup> Another aspect of this narrow understanding emerges from the presumptive notion of citizenship which does not consider the diversity of gender identities. The lack of discourse on gender and sexuality allows for the hegemony of the heteronormative order which portrays the idea of citizenship as a genderless category in such a manner that it becomes prohibitive of any alternate sexuality. As a result, all claims emerging from the diverse aspects of sexuality or gender becomes hollow and ineligible to be considered as defining factors of one’s identity. It is amidst this context that the claims of democratic equality for alternate sexualities needs to be assessed.

When the expression of individuality is disallowed to the alternate sexualities, the democratic framework itself becomes an instrument of injustice. Such context becomes a framework of conditional citizenship

wherein the political equality is granted only on conditions of adherence to the heteronormative ideals. This maligns the ideal of democratic equality and also disrupts the ‘conditions of equality’<sup>117</sup> which is quintessential for any democracy. To view the idea of equality in terms of crystallized goals is a folly. The ideals of democracy could be pursued only through a strategy of renegotiation of such ideals with the changing need of time and ‘people’. The democratic order becomes problematic when it starts to crystallize identity as interest rather than interest as identity. This is where the conventional heteronormative order fails.

The deliberations over the concerns of the alternate sexualities have also revealed the fact that the alternate sexualities do not form a cohesive group like caste or class. Thus, the political treatment of alternate sexualities needs to be done differently. Instead of crystallized parameters of identification, the alternate sexualities need a space for individuality where they might find the truest expression of their individual self. This need for recognition of the uniqueness of gender identity was also captured by the NALSA judgement when it acknowledged that ‘the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions...’<sup>118</sup> The expression of democratic equality, for the alternate sexualities, does not fall under the conventional understanding of equality but finds itself in the hitherto unexplored areas which needs to be renegotiated on an ongoing basis. This continuing process of renegotiation is a characteristic feature of a democratic society which, Beitz suggests, ‘brings together diverse and abstract concerns whose application to problems of institutional design inevitably requires a good deal of interpretation and adaptation to political and historical circumstance.’<sup>119</sup>

When the issues of individuality are considered from a gender perspective, the NALSA judgement proves to be a monumental one in India. It defined the Right to freedom of speech and expression in a broad context and linked the right to expression with the right to a self-identified gender which could be expressed through ‘dress, words, action or behavior or any other form.’<sup>120</sup> Similarly, the Right to Life under Article 21 of the Indian Constitution was

read as incorporating ‘all those aspects of life which go to make a person’s life meaningful.’ It incorporates individual dignity, privacy and autonomy.<sup>121</sup> Thus, the issues of individuality emerged as the central theme in the deliberation over gender issues. These concerns of individuality were further reinforced in the Navtej Singh Johar case where the case judgement underlined individuality as ‘the salt of his/her life’ and as pivotal to one’s being.<sup>122</sup> The Johar case judgement also recognized, what I have been discussing as, the out of bounds spatiality of the alternate sexualities and asserted that:

*“The overarching ideals of individual autonomy and liberty, equality for all sans discrimination of any kind, recognition of identity with dignity and privacy of human beings constitutes the cardinal four corners of our monumental Constitution forming the concrete substratum of our fundamental rights that has eluded certain sections of our society who are still living in the bondage of dogmatic social norms, prejudiced notions, rigid stereotypes, parochial mindset and bigoted perceptions.”<sup>123</sup>*

Furthermore, it is interesting to note that the translation of the observations and assertions of the Indian judiciary into political reality is a challenge task. The out of bounds spatiality of the alternate sexualities makes them invisible to the eye of the discourse as well as the state. Thus, pursuing the concerns of the alternate sexualities would first require a change in the spatiality of the alternate sexualities so that they may become bonafide subjects to the social discourse as well as the state. The invisible status of the alternate sexualities becomes easily evident whenever the state or public institutions are questioned about the spatiality of the alternate sexualities. For instance, as many as 9 public institutions and departments, chosen on a random basis, claimed to have no information or record pertaining to the rights or other matters related to the alternate sexualities.<sup>124</sup> It is not an unexpected reply, given the invisible status of the alternate sexualities. The slightest of reference available in the public records comes in the language of deviant

groups such as High-Risk Groups for critical diseases like AIDS and other sexually transmitted diseases.<sup>125</sup>

The state of affairs has begun to change since the enactment of the Transgender Persons Act and progressive judgements such as NALSA and Navtej Singh Johar case. Due to the legal recognition of the alternate sexualities such as transgender groups, it has become obligatory for the administrative machinery to take cognition of the alternate sexualities. As a result of this cognition, the alternate sexualities have come into existence for the state as well as the civil society. This explains the greater number of emerging groups for alternate sexualities in India.

I also believe that the change at the legal-political level could take place because of the deliberations over the concerns of the alternate sexualities at a foundational level. This widening of the understanding of the ideals of democracy is also on account of the gradual but continuous unfolding of democratic consciousness in the state as well as the civil society. Interestingly, the stance of the Indian state has transcended the questions of distributive justice and started to deliberate over the otherwise latent aspects of identity and rights. This has not only ushered a new era of politics of recognition<sup>126</sup> in India but also opened new arenas of political activism in the Indian democracy. Such strategy, instead of simply continuing with the underlying issues of injustice, addresses the issues which are responsible for the injustice to the alternate sexualities.

Gutman and Thompson understand the culture of reciprocity and equal access as the defining feature of deliberative democracy.<sup>127</sup> Different groups within a democracy are equal when they are able to participate and understand the language of politics. The concerns of the alternate sexualities, unless incorporated in the common agenda of democratic state, would remain alien to the language of politics. Thus, a true culture of deliberative democracy would remain incomplete without incorporation of the subordinated and stereotyped groups. This process of incorporation and deliberation, Gutman and Thompson would argue, is an ongoing process and demonstrates

democracy's provisionality<sup>128</sup> which, again, ensures that any hitherto invisible group has an equal opportunity to emerge and deliberate on an equal basis.

### **Impact on Indian democratic culture**

The activism of the LGBTQI community in India is not very old. While the struggle for attaining the appropriate recognition and respect has been taking place in the civil society for a few decades, the involvement and recognition by the state has given the issue of alternate sexualities a new zeal. The state, in the 21<sup>st</sup> century, has reserved for itself the proactive role of the savior of the people. Thus, the state has come to the forefront to establish the true spirit of democracy. This role of the state is further magnified in the third world states where the nature of the state is more evolved due to the history of colonial rule. The nature of the state, particularly in the third world, has evolved a democratic consciousness of its own which is largely a result of the democratic revolutions and ideals shaping its historical development. The implication of such consciousness is that the state becomes bound to attend to the claims of the different groups of the society. Thus, the state emerges as the early audience and jury to the concerns of the alternate sexualities. This opportunity, or a new found positionality within the heteronormative discourse, has given the alternate sexualities a vantage point from where the further course of action could be planned.

The democratic consciousness of the state also encourages it to initiate several reforms. This makes the trajectory of reform for the alternate sexualities as state-sponsored. The state-sponsored process of change is an instance of the top-down reform, as it percolates down to the social structure of the society. Having taken a firm decision, the state kick-starts a process of change in the public memory,<sup>129</sup> and brings the hitherto neglected identities closer to the mainstream. The social structures which are safely encapsulated by the legal provisions of the state, sooner or later, embrace the change. As a result, the public sphere becomes subject to the vision of the state and also proves correct the notion of the political societies as 'imagined communities.'<sup>130</sup> In such a state-protected democratic order, the legal system becomes the guarantor of rights and liberties. Mahajan has understood these

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dynamics between the public and private through her argument that, in modern democratic context, the family and private sphere becomes a place of private persons who enjoy the freedom to make choices within the periphery of freedom decided by the public sphere. The public sphere, on the other hand, is guided by the foundational aspects of democracy in setting limits to the liberty of individuals so that no one is able to violate the rights of the other. The meaning of the public and private remains in a flux but never exclusive of each other.<sup>131</sup> This conceptualization of the private sphere as a realm of liberty is problematized by Altman who views the sphere of sexuality as always under constant surveillance and control.<sup>132</sup> This control often implies that the understanding of various aspects of sexuality is defined by the dominant normative framework. It is amidst such context that the role of the proactive state, guided by the consciousness of foundational ideals of democracy, becomes pivotal.

The state-assured recognition to the transgender and the decriminalization of consensual homosexual conduct has long-term and far-reaching impact on the nature of Indian democracy. Once the state decides upon the legal recognition of the transgender identity and allows the freedom to express one's sexuality, there starts a process of introspection of the normative aspects of society. The resultant image of democracy starts to unfold into a responsive and accommodative order which could be compared to Fraser's 'plural public sphere'.<sup>133</sup>

The legal recognition of the transgender community also bestowed upon the state the responsibility to safeguard and protect the interest and well-being of the transgender community itself. It is now impossible for the public institutions and the government to deny the existence of transgender groups. The deplorable conditions of such groups become a failure of the state. As a result, the state has to ensure the welfare of such groups. A correspondence received from a Government body under the provisions of Right to Information Act (RTI) highlighted some of the steps taken for the protection of the interest of transgender community:

*'1. Shelter homes; 2. Pre and Post matric scholarship; 3. Health camps; 4. Skill development training; 5. Sensitization programs; 6. Financial support to parents of transgender children; 7. financial assistance to transgender between age 40-60; 8. welfare measure fund of 1.5 cr (NBCFDC) and 3 cr (NISD); 9. subsistence allowance during COVID; 10. National helpline for transgender.'*<sup>134</sup>

It is interesting to note that in spite of their historically neglected and subjugated status, the transgender groups could get legal recognition and state patronage only after their legal recognition. It is arguably possible that if the state was to withdraw the legal recognition of the transgender groups, such framework of protection would automatically erode. Thus, the package of welfare and recognition flowing towards the transgender groups is a result of the state-sponsored reform which goes in line with my argument of 'top-down reform'. A similar recognition is yet to be extended to the other groups of the alternate sexualities. However, it appears that such reform would first require a clear recognition of the other queer groups by the state.

An interesting instance of reform in the Indian society could be captured through the process of economic inclusion. The Reserve Bank of India (RBI) directed on April 23, 2015, pursuant to the NALSA judgement, that all banks and financial institutions are required to include the category of 'third gender' in all forms and documents requiring gender classification.<sup>135</sup> With this, the whole class of the transgender persons suddenly became visible to the formal economy. The magnitude of change could be assessed from the data- on the number of bank accounts opened by transgender persons- received from 5 Public Sector Banks in India. It is interesting to note that while only 47312 accounts were opened in the name of transgender persons by 4 PSBs during 2015-16, the number increased by 2.38 times in 2019-20 to reach 112892 accounts of transgender persons in 5 PSBs.<sup>136</sup>

I have chosen the years 2015-16 and 2019-20 for comparing the data on financial inclusion of the transgender persons because of two important developments. Firstly, the NALSA judgement came in 2014 and had a far-

reaching impact on the way the concerns of the transgender are seen. Secondly, the Transgender Persons Act of 2019 gave legal recognition and protection to the transgender community, and specifically laid down measures protecting their interests. This started a process of change which led to a revision in the understanding of gender identity in India. As soon as this revised and broadened understanding of gender identity was given a formal recognition through legislation, those hidden from the democratic terrain were brought back into the democratic space.

The unfolding of the democratic rights of the alternate sexualities can be seen as the contemporary wave of democratic reforms. Not only it adds a new vantage point to the history of democratic struggle in our country but also adds a new perspective of viewing interest as identity rather than identity as interest. When seen from a global perspective, the democratic inclusion of the alternate sexualities is becoming the symbol of a matured and broad-minded democratic order which is deemed as a desirable condition.<sup>137</sup>

### **The impediments**

A major challenge with the subject of gender and sexuality lies in the way these categories are understood. The problem related to gender identity and sexuality arises primarily due to the tendency to perceive the dominant set of ideas and practices as the only truth. This, however, leads to a practice of crystallizing an identity as interest instead of taking one's interest as identity. Such tendency leads to the neglect of the multifarious aspects of individuality. A continued adherence to such tradition gives rise to injustice. Gender and gender identity are essentially fluid in nature. This fluidity is difficult to be contained in a restrictive framework and thus the conventional discourse and legal frameworks neglect the fluid aspects of gender identity and assume the heteronormative ideals as the only truth.

The alternate sexualities are a difficult category to be crystallized in terms of gendered identity. Given the fluid nature of gender, it is difficult to set boundary to the LGBTQI groups. This, not only poses a challenge to the researcher but, also poses a challenge to the state and other stakeholders. However, any attempt to crystallize the identity of the alternate sexualities



could prove to be a lopsided and self-defeating exercise as it would lead towards stereotyping on the basis of gender identity.

The response of the Indian state to the issues concerning the alternate sexualities appears to be riddled with challenges emanating from an *ab initio* error of treating the alternate sexualities as a cohesive group.<sup>138</sup> The terms of reference to understand the concerns of the alternate sexualities are derived from the heteronormative discourse which fails to capture the diversity and uniqueness of individual sexuality.<sup>139</sup> Due to this fundamental lapse of understanding, the resultant statutes and verdicts prove to be lopsided and tend to crystallize the identities. There is a need to recognize the fluid aspect of gender identity which cannot be done through medical certifications. It needs to be recognized that the concerns of the alternate sexualities cannot be addressed from within the framework of heteronormativity. The attitude towards the concerns of the LGBTQI should not be shaped by concerns for absolute equality. Rather, it is the primacy of equity which should be the guiding framework to deal with the peculiar spatiality of the alternate sexualities. This also implies that the deliberation over the concerns of alternate sexualities should not take identity as interest but interest as identity. The concerns of alternate sexualities entail significant issues relating to individuality and personal space. These concerns are not limited to the issues of alternate sexualities but extend to the whole of humanity. The task of the public discourse on alternate sexualities is not to project a discourse on queer politics in contradistinction to the heteronormative discourse but to arrive at a framework which could facilitate greater freedom to practice one's self-defined goals.<sup>140</sup>

The problem of accommodating the alternate sexualities in our democratic society arise because we confuse democratic inclusion with an adherence to normative ideals. As a result, the agenda of democratic inclusion is often misinterpreted as a project of *transformation* of the alternate sexualities into heteronormative citizens. A more pragmatic solution to the problem lies in encouraging the growth of plurality of public spheres within the overall ambit of our democratic framework.<sup>141</sup> Such space for plural public spheres would

facilitate a healthier growth of each group and identity while also fostering a more participative and inclusive democracy. This would also ensure that the alternate sexualities are recognized and seen as per values and ideals believed by themselves rather than imposed from above. But again, the demarcation of such identity shall not be eternally fixed as it is subject to change with time and space.

Another problem arises due to the tendency of the state structures to understand sexuality through biological markers. Such view disregards the diverse nature of sexuality and gender identity. As a result, the state's perspective becomes erroneous and biased. Foucault has studied the process through which the social discourse tries to control and suppress the individual sexuality through stereotype and domination. He also believed that such stereotype often rips the LGBTQI groups off their moral integrity as equal citizens of the state, and thus degrade their dignity as an individual.<sup>142</sup> A rational understanding of gender identity should recognize its fluid nature. Since gender identity and sexuality are more a function of choice, these cannot be marked through biological markers. Butler has offered a critique of the conventional understanding of gender identity in terms of a performative exercise which is carried out within a normative framework.<sup>143</sup> Given the multiplicity of social roles performed by any individual, the contextual normative references keep changing, and so does the performative role of any gender. Thus, by crystallizing the sexuality of the persons, the state might again be fixating a certain identity which may not be desired by such person. It needs to be recognized that the self-expression of one's sexuality should be allowed without any crystallization of identity. This tendency to crystallize the gender identity and link it with harsh stereotypes is probably the reason why several individuals are hesitant to reveal their sexuality and gender identity.<sup>144</sup>

A major issue which problematizes the conception of the alternate sexualities in India is the tendency of the state to reduce different groups of the alternate sexualities to the transgender or homosexual community. This practice not only misinterprets the identity of different individuals but also attaches

unwarranted stereotypes with different sexualities. However, given the need to formulate formal statutes, the state appears to be inexorably engulfed by the need to crystallize certain identities. The Transgender Persons Act of 2019 follows, to some extent, the logic of biological markers for identification of the transgender status. Such understanding, when linked with the conditionality of undergoing Sex Reassignment Surgeries (SRS) creates further stereotype. By following a blanket approach of viewing the alternate sexualities under the umbrella term of ‘transgender’, the state organizations often add to the stereotype of the alternate sexualities.<sup>145</sup> The intention of the state, in such context, should be to ensure that no one is forced to express one’s sexuality without one’s choice. For doing this, it might not be necessary to formulate specific population registers or identity cards. Just like a heterosexual person is not asked to reaffirm one’s heterosexual status, a person having a queer identity should not be forced to reify one’s identity through stereotyped behaviors and demonstrative acts.

An ILGA report, based on a comparative study of the legal framework in different countries regarding the status of gender identity and provisions regarding the change of gender identity, came out with the observation that though India recognizes the transgender identity and provides for a legal procedure for change in one’s gender, there are certain hurdles in the process which result in harassment and delays.<sup>146</sup> Another report by ILGA took note of the impact and implications of the so-called ‘conversion therapies’ for LGBTQI groups and argued that most of the medical frameworks are based on certain stereotyping and heteronormative understanding of the alternate sexualities which tend to view the LGBTQI groups as suffering from some anomaly.<sup>147</sup> This maligns the very premise of a benevolent concern towards the alternate sexualities. While a change in this perception is already under way at the international forums, the same is yet to be adhered in national laws and outlook in India.

The path of restitution of the concerns of the alternate sexualities is complex and involve multifarious issues for the state. Every decision of the state has far-reaching political-social-economic implications. When the status of the

LGBTQI is affirmed by the state, it creates a space of deliberation over the consequential set of rights for the alternate sexualities. These rights become crucial for the democratic inclusion of the alternate sexualities and play an important role in addressing their 'invisible' status.<sup>148</sup> The existing provisions shows an utter disregard of the specific interests of the alternate sexualities. Due to the presumption of the heteronormative ideal, the lego-political framework neglects the interests of the 'other'. For instance, there is no insurance cover to indemnify the specific risks faced by the alternate sexualities. A RTI information shared by the insurance regulator in India revealed the fact that there are presently no special provisions or measures to protect the specific interests of transgender persons or other alternate sexualities. In most cases, the queer persons are required to adhere to the heteronormative interpretation of laws and practices in order to get a coverage of different services. As a result, several queer persons are seen defining themselves in terms of heteronormative ideals to prove their eligibility before the insurance and spouse family-pension authorities.<sup>149</sup> Such conditional acceptance violates the democratic rights of the alternate sexualities and acts as a suppressant to the queer sexuality.

Another challenge to the state arises from the unfolding of the democratic reform itself. Presently, due to the invisible status of the alternate sexualities, no deliberation is done over the social and political issues concerning the LGBTQI groups. However, with the decriminalization of the consensual homosexual acts, there is greater possibility of same-sex couples and single-parent families. These issues have not been deliberated upon in India. The acceptance of the alternate sexualities, however, creates an urgent need to deliberate upon the matters of family and other personal rights of such groups. Another instance of serious lapse in the legal provisions could be found in the provisions which recognize only the heteronormative family as the ideal.<sup>150</sup> Thus, as per the rules of pension, only a heterosexual couple is entitled to claim the family pension in case of the death of the spouse. A same-sex couple cannot nominate one partner to be the family pensioner of a deceased partner.<sup>151</sup> This translates to clear discrimination and injustice. The recent rulings and laws relating to the definition of family, does not explore

the territory beyond the heteronormative family and only interprets the existing order. A wholesome change in the understanding of gender identity, however, is bound to have a spill-over effect on the understanding of concepts like family and parenthood.<sup>152</sup> Interestingly, the Indian judiciary has been playing a proactive role in deliberating upon such concerns of the alternate sexualities. The Supreme Court of India appears to have taken a stand towards the rights of the queer individuals to have queer families with the same rights and entitlements as are given to the conventional families in India.<sup>153</sup>

A major challenge in the attempt to address the concerns of the alternate sexualities relate to the organization of the activism or the strategy to be adopted by the LGBTQIA groups. The case of the alternate sexualities is unique owing to its dispersed presence throughout the social fabric. The minority status of the LGBTQI cannot be seen at par with the status of the oppressed castes or classes. The spatiality of concerns that distinguish the alternate sexualities as a group is based in ‘yardsticks of discrimination, social acceptance and constitutional guarantee to freedom and liberty.’<sup>154</sup> Thus, the concerns of the alternate sexualities might not be adequately addressed through strategies of redistributive justice, as done in the case of caste and class issues. Instead, what is needed is a recognition of the differences and an accommodative stance of the state, being the facilitator of inclusion. There is an urgent need to move beyond a restrictive understanding of identity. Such broader understanding would not only allow the state to approach the issues in a more inclusive manner, but also make the invisible instances of injustice and subordination of the multifarious alternate sexualities come to fore. However, such change might not be possible with the help of legal system alone. It would require a coordinated and multi-sited effort to facilitate a change in the normative understanding.

It is important to remember that while choosing the trajectory of activism, an excess reliance on redistributive strategy might prove to be counter-productive to the cause of the alternate sexualities. As Fraser would warn, a neglect of the issues of identity and recognition might leave several major issues unattended which might lead to the failure of the entire effort of

addressing the concerns of justice for the alternate sexualities.<sup>155</sup> While the concerns of justice are almost always intertwined between the aspects of recognition and redistribution, it is important to recognize the foundational issues of justice to be able to address the linked issues. Thus, Fraser gave more emphasis on the identity politics as a strategy for inclusion of neglected identities.

The trajectory to achieve the inclusion of the alternate sexualities in India appears to be unfolding under the auspices of the state which appears to have undertaken the goals of upholding the democratic ideals of the society. Since the foundations of the Indian state are laid in democratic ideals, it is obvious for the Indian state to move towards a more democratic space. The decriminalization of the Section 377 is only the inaugural step in the ambitious, and indispensable, pursuit of justice to the alternate sexualities. Joseph has argued that ‘discrimination, tolerance, acceptance and equality can be seen as a continuum’<sup>156</sup>. Using this continuum as a yardstick to measure how far the Indian state has travelled in its pursuit to deliver justice to the alternate sexualities, it would not be incorrect to argue that the Indian state seems to be facing the riddles amidst toleration and acceptance. While there is a long way to go before the alternate sexualities in India could find an unrestricted atmosphere to express their individuality, the trajectory taken by the queer movement as well as the Indian state appears to be moving in a democratic direction.

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<sup>1</sup> See AIDS Bhedbhav Virodhi Andolan, “Less than Gay- A Citizens’ Report on the Status of Homosexuality in India”; NALSA judgement; Bubb, “Blustering Sahibs and Section 377.”

<sup>2</sup> Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*.

<sup>3</sup> Joseph, “Gay and Lesbian Movement in India.”

<sup>4</sup> Ibid

<sup>5</sup> Joseph, “Gay and Lesbian Movement in India”; Agarwal, “Civil and Political Rights of Transgenders Indian Constitutional Perspective.”

<sup>6</sup> International Commission of Jurists (ICJ), “The Yogyakarta Principles- Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,” 7.

<sup>7</sup> Ibid, p. 6.

<sup>8</sup> The Yogyakarta framework gave a comprehensive outlook of the concerns of the alternate sexualities. It defined sexual orientation and gender identity as: ‘Sexual Orientation is each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender’; and Gender identity as- ‘each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense

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of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.’ Ibid, p. 6.

<sup>9</sup> International Commission of Jurists (ICJ), “The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles.”

<sup>10</sup> NALSA judgement, NALSA Judgement; Navtej Singh Johar case, Navtej Singh Johar Vs Union of India; Ministry of Social Justice and Empowerment, “Report of the Expert Committee on the Issues Relating to Transgender Persons.”

<sup>11</sup> Govt of India, The Constitution of India; International Commission of Jurists (ICJ), “The Yogyakarta Principles-Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity”; International Commission of Jurists (ICJ), “The Yogyakarta Principles Plus 10 - Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles.”

<sup>12</sup> NALSA judgement.

<sup>13</sup> NALSA judgement, 70–76; Govt of India, The Constitution of India.

<sup>14</sup> Ibid, 74.

<sup>15</sup> Ibid, 80–81. Cited along with a reference to Anuj Garg v. Hotel Association of India (2008) 3 SCC 1 (paragraphs 34-35);

<sup>16</sup> Ibid, 79–80.

<sup>17</sup> Ibid, 2.

<sup>18</sup> Ibid, 11–14.

<sup>19</sup> Ibid, 18–19.

<sup>20</sup> Ibid, 63.

<sup>21</sup> Ibid, 46.

<sup>22</sup> UNDP, “Uptake of Social Protection Schemes by Transgender Population in India”; NACO, “NACO Annual Report 2018-19.”

<sup>23</sup> UNDP, “Uptake of Social Protection Schemes by Transgender Population in India,” 10.

<sup>24</sup> Ibid, 30–31.

<sup>25</sup> Ibid, 19.

<sup>26</sup> Ibid 35.

<sup>27</sup> NACO, “NACO Annual Report 2018-19.”

<sup>28</sup> ILGA, “Curbing Deception: A World Survey on Legal Regulation of so-Called ‘Conversion Therapies,’” 9.

<sup>29</sup> ILGA, “Trans Legal Mapping Report 2019: Recognition before the Law,” 69.

<sup>30</sup> Ibid

<sup>31</sup> Committee was constituted vide order NO. 17-08/2013-DP-II on 22.10.2013. Ministry of Social Justice and Empowerment, Report of the Expert Committee on the Issues Relating to Transgender Persons (New Delhi, 2014). (Srivastava Committee)

<sup>32</sup> Ibid

<sup>33</sup> The committee recognized the fact that the term ‘transgender’ is used, in India, to describe the various groups of alternate sexualities, like- ‘transsexual people, male and female cross-dressers, transvestites, drag queens, intersexed individuals...’ see Ibid, 1-2 and 5-12

<sup>34</sup> Ibid, 7.

<sup>35</sup> Govt of India, Transgender Persons (Protection of Rights) Act 2019, 1.

<sup>36</sup> Ibid, Chapter 1(2)(k)

<sup>37</sup> See Butler, *Bodies That Matter: On the Discursive Limits of “Sex”*; Butler, *Gender Trouble- Feminism and the Subversion of Identity*; Foucault, *The History of Sexuality Volume 1: An Introduction*.

<sup>38</sup> ILGA, “Trans Legal Mapping Report 2019: Recognition before the Law.”

<sup>39</sup> ILGA, “Curbing Deception: A World Survey on Legal Regulation of so-Called ‘Conversion Therapies.’”

<sup>40</sup> The Act defines inclusive education as ‘a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students.’ Transgender Persons Act 2019. See Chapter 1(2)(d).

<sup>41</sup> See Ibid. Chapter 2(3)

<sup>42</sup> The Act defines the purpose of the National Council as ‘[a] formulation of policies, programmes, legislation and projects with respect to transgender persons; [b] monitor and evaluate the impact of policies and programmes; [c] review and coordinate the activities of all the departments of Government and NGOs; [d] redress the grievances of transgender persons.’ Ibid. Chapter 7(16)(1) and 7(17)

<sup>43</sup> Provisions relating to such offences are ‘ [a] compels or entices a transgender person to indulge in the act of forced or bonded labour; [b] denies a transgender person the right of passage to a public place or obstructs such person from

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using or having access to a public place; [c] forces or causes a transgender person to leave household, village; [d] harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.’ Ibid. Chapter 8(18)

<sup>44</sup> Ibid. Chapter 5(15)(a)

<sup>45</sup> Supreme Court of India, Navtej Singh Johar Vs Union of India, Writ Peition (Criminal) No. 76 of 2016, 2018, p. 495 <[https://main.sci.gov.in/supremecourt/2016/14961/14961\\_2016\\_Judgement\\_06-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf)> [accessed 29 March 2021].

<sup>46</sup> The Humsafar Trust, Mission Azadi Document (MAD)- An Advocacy Reference Manual for LGBTQH Rights in India (The Humsafar Trust, 14 February 2015), p. 8-9 <<https://humsafar.org/wp-content/uploads/2018/08/Mission-Azaadi-Documents-2015.pdf>> [accessed 28 March 2021].

<sup>47</sup> Gupta, “Out of Bounds: The Idea of Coerced Invisibility and Alternate Sexualities.”

<sup>48</sup> Navtej Singh Johar case, pp 61-62.

<sup>49</sup> “The emphasis on the unique being of an individual is the salt of his/her life. Denial of self-expression is inviting death. Irreplaceability of individuality and identity is grant of respect to self. This realization is one’s signature and self-determined design... the identity is pivotal to one’s being. Life bestows honour on it and freedom of living, as a facet of life, expresses genuine desire to have it.” Ibid, pp. 3–4.

<sup>50</sup> Ibid, p. 5.

<sup>51</sup> Ibid, p. 6.

<sup>52</sup> The Court held that ‘under the autonomy principle, the individual has sovereignty over his/her body. He/she can surrender his/her autonomy willfully to another individual and their intimacy in privacy is a matter of their choice’ Ibid, pp. 96–97.

<sup>53</sup> Ibid, pp. 10–11.

<sup>54</sup> Ibid, p. 136.

<sup>55</sup> Ibid, p. 80.

<sup>56</sup> Ibid, p. 66

<sup>57</sup> Ibid; p 57.

<sup>58</sup> Ibid; p. 74.

<sup>59</sup> Ibid, pp. 108–11.

<sup>60</sup> Ibid; p. 239

<sup>61</sup> Ibid, p. 25.

<sup>62</sup> Ibid, p. 26.

<sup>63</sup> Ibid, p. 29.

<sup>64</sup> Ibid, p. 46.

<sup>65</sup> Ibid, pp. 130–31.

<sup>66</sup> Ibid, pp. 134–35.

<sup>67</sup> Ibid, pp. 138–39.

<sup>68</sup> Ibid, pp. 142–43.

<sup>69</sup> Ibid, pp. 146–47.

<sup>70</sup> Ibid, pp. 151–52.

<sup>71</sup> Ibid, p. 152.

<sup>72</sup> Lakshya Trust is a public charitable trust, registered in Gujarat with registration number E/639/Narmada and officially working since 14.02.2006. See The Lakshya Trust, <http://www.lakshya-trust.org/>

<sup>73</sup> Lakshya Trust, See <http://www.lakshya-trust.org/who-we-are/about-manvendra-singh-gohil>

<sup>74</sup> The New York Times, “In India, a Gay Prince’s Coming Out Earns Accolades, and Enemies.”

<sup>75</sup> *The First Openly Gay Prince Fights for Equal Rights | Where Are They Now | Oprah Winfrey Network.*

<sup>76</sup> *The Princes Who Found Love In Brighton | Undercover Princes | Real Royalty.*

<sup>77</sup> Lakshya Trust, <http://www.lakshya-trust.org/who-we-are/about-manvendra-singh-gohil>

<sup>78</sup> The New York Times, “In India, a Gay Prince’s Coming Out Earns Accolades, and Enemies.”

<sup>79</sup> See Lakshya Trust, <https://www.lakshyatrust.com/who-we-are/vision-and-mission>

<sup>80</sup> Garima Greh (hindi) translates to ‘House of Dignity’

<sup>81</sup> PIB Delhi, “Shri Thaawarchand Gehlot E-Launches ‘National Portal for Transgender Persons’ and E-Inaugurates Garima Greh: A Shelter Home for Transgender Persons in Gujarat.”

<sup>82</sup> The Lakshya Trust was accorded the right to manage and operate the Garima Greh against the Expression of Interest-cum-Proposal issued by the National Institute of Social Defence vide F.No. 33/71/2019-Trg.(SD); See <http://www.nisd.gov.in/WriteReadData/LatestUpdates/20200107121500.PDF>



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- <sup>83</sup> PIB Delhi, “Shri Thaawarchand Gehlot E-Launches ‘National Portal for Transgender Persons’ and E-Inaugurates Garima Greh: A Shelter Home for Transgender Persons in Gujarat.”
- <sup>84</sup> National Institute of Social Defence, “Guidelines for Garima Greh: Shelter Home for Transgender Persons,” 3.
- <sup>85</sup> For detailed guidelines and structural description of the Garima Greh, See National Institute of Social Defence, “Guidelines for Garima Greh: Shelter Home for Transgender Persons.”
- <sup>86</sup> National Institute of Social Defence, 3.
- <sup>87</sup> National Portal for Transgender Persons and Department of Social Justice and Empowerment, “National Portal for Transgender Persons.” <https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm5>
- <sup>88</sup> National Institute of Social Defence, “Guidelines for Garima Greh: Shelter Home for Transgender Persons.”
- <sup>89</sup> The Lakshya Trust, “The Lakshya Trust.”
- <sup>90</sup> PIB Delhi, “Shri Thaawarchand Gehlot E-Launches ‘National Portal for Transgender Persons’ and E-Inaugurates Garima Greh: A Shelter Home for Transgender Persons in Gujarat.”
- <sup>91</sup> Anderson discusses how the creation of institutions and monuments could have a lasting effect on the public memory and the way our political culture is understood. See Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism*.
- <sup>92</sup> Such culture of co-habitation need not be based on adherence to the norms of the majority, or any other group. The culture of co-habitation, based upon ‘plural public spheres’ allows a peaceful co-existence of different identities and groups without intervening onto the norms or understandings of the others. Fraser has elaborated the idea of ‘plural public sphere’. See Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*.
- <sup>93</sup> The Hindu, “Extend Garima Greh Scheme to Entire LGBTQIA+ Community: HC.”
- <sup>94</sup> The Times of India, “First LGBTQ Resource Centre to Come up near Rajpipla.”
- <sup>95</sup> Lakshya Trust, See <http://www.lakshya-trust.org/what-we-do/queer-a-community-campus-rajpipla>
- <sup>96</sup> Ibid
- <sup>97</sup> These conventional ways include organizing health camps and care-homes, conducting seminars and informative sessions for targeted groups, and organizing parades or walks to spread the word.
- <sup>98</sup> Lakshya Trust, See <https://www.instagram.com/lakshya.trust/>
- <sup>99</sup> Vaidhyanathan discusses how the social media uses the data and information from each profile to share personalized posts and messages. Thus, the social media sites are able to understand the personal preferences and inclinations on the basis of our online conduct and expose us with the information which could be relevant to us. In this way, the internet transcends the physical barriers to share and distribute the ideas across the digital world. See Vaidhyanathan, *Anti Social Media: How Facebook Disconnects Us and Undermines Democracy*.
- <sup>100</sup> Altman, *Global Sex*, 37.
- <sup>101</sup> Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*.
- <sup>102</sup> Gupta, “Out of Bounds: The Idea of Coerced Invisibility and Alternate Sexualities.”
- <sup>103</sup> Navtej Singh Johar case.
- <sup>104</sup> Jagose, *Queer Theory- An Introduction*, 36.
- <sup>105</sup> Foucault, *The History of Sexuality Volume 1: An Introduction*; Butler, *Bodies That Matter: On the Discursive Limits of “Sex.”*
- <sup>106</sup> This proactive role of the state in bringing reforms in a society can also be observed in Habermas’ discussion of the ‘technocratic state’. Although the observations and cautions given by Habermas are different, it does suggest the important role of the state in bringing reforms to the society. For more, see Held, “Part 2: Critical Theory Habermas.”
- <sup>107</sup> PIB Delhi, “Shri Thaawarchand Gehlot E-Launches ‘National Portal for Transgender Persons’ and E-Inaugurates Garima Greh: A Shelter Home for Transgender Persons in Gujarat”; National Institute of Social Defence, “Guidelines for Garima Greh: Shelter Home for Transgender Persons.”
- <sup>108</sup> Govt of India, Transgender Persons (Protection of Rights) Act 2019.
- <sup>109</sup> Several reports by NACO and UNDP portray the transgender groups as High-Risk groups. Several RTI communications also confirmed the special focus of such organizations on transgender groups. However, since the enactment of the Transgender Persons Act, positive steps have been taken up for empowering the transgender groups through self-employment training and vocational education. RTI communication ref No. MOSJE/R/T/20/00506; DOADC/R/T/20/00036; DOADC/R/T/20/00036; MOSJE/R/T/20/00506 and I-11012/06/2020.
- <sup>110</sup> ILGA, “Trans Legal Mapping Report 2019: Recognition before the Law.”
- <sup>111</sup> See <https://frontierindia.com/7-indian-web-series-that-maturely-depict-lgbt-relationships/> and <https://www.gaytimes.co.uk/culture/the-best-lgbtq-shows-you-can-watch-right-now-on-amazon-prime/>
- <sup>112</sup> Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*.
- <sup>113</sup> Gutmann and Thomson, *Why Deliberative Democracy?*, 100.

- <sup>114</sup> Joseph, “Gay and Lesbian Movement in India,” 2229.
- <sup>115</sup> Govt of India, *The Constitution of India*, 24–25.
- <sup>116</sup> NALSA judgement, NALSA Judgement, 63.
- <sup>117</sup> Tocqueville, *Democracy in America*.
- <sup>118</sup> NALSA judgement, NALSA Judgement, 2.
- <sup>119</sup> Beitz, *Political Equality An Essay in Democratic Theory*, 225–26.
- <sup>120</sup> NALSA judgement, NALSA Judgement, 76.
- <sup>121</sup> NALSA judgement, 79.
- <sup>122</sup> Navtej Singh Johar case, Navtej Singh Johar Vs Union of India, 3–4.
- <sup>123</sup> Navtej Singh Johar case, 5.
- <sup>124</sup> RTI reply received from various departments vide letter no. IIFCL/RTI/2020-21/31/10898; F.No.25/25/181/2020-IF-II of DoFS; IFCI/RTI/2020/861-200918003; EXIM/RTI/2020/673; National Skill Development Corporation letter dated 15.09.2020; No. 7-28/2020-JSS(MSDE); No. SD-22/9/2019-IC (MSDE); No.18016/1/2020-Estt. (L) (DoPT); IRDAI/R/E/20/00067/1;
- <sup>125</sup> See NACO Annual Report; MOSJE/R/T/20/00506; DOADC/R/T/20/00036 and DOADC/R/T/20/00036
- <sup>126</sup> Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*.
- <sup>127</sup> Gutmann and Thomson, *Why Deliberative Democracy?*, 4.
- <sup>128</sup> Gutmann and Thomson, 19–20.
- <sup>129</sup> Anderson has discussed how the state plays an important role in influencing the public memory and public opinion. See Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism*.
- <sup>130</sup> Anderson.
- <sup>131</sup> Mahajan and Reifeld, *The Public and Private: Issues of Democratic Citizenship*, 14–15.
- <sup>132</sup> Altman, *Global Sex*, 2–3.
- <sup>133</sup> Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*.
- <sup>134</sup> Reply received to RTI application filed before Ministry of Social Justice and Empowerment. RTI reply Reference ID: MOSJE/R/T/20/00506
- <sup>135</sup> Reserve Bank of India, Rights of transgender persons – Changes in bank forms/applications etc.
- <sup>136</sup> Data based on different RTI reply received from Public Sector Banks vide letter Ref ID: OCPIO/CO/535/969/2020; PBBU/OPS/RTI/55; CANBK/R/T/20/00136; AX1/CPIO/RTI/2020-21/20348; HO/LEGAL/112/RTI/337/312;
- <sup>137</sup> Stella et al., *Sexuality, Citizenship and Belonging: Trans-National and Intersectional Perspectives*, 3.
- <sup>138</sup> Gupta, “A Riddled Restitution: The Indian Journey from the Recognition of the Transgender towards the Queer.”
- <sup>139</sup> The ILGA report has compared the legal frameworks for recognition of alternate sexualities across the world and observed that a majority of the nations still practice identification of gender identities on the basis of biological markers and heteronormative protocols. See ILGA, “Trans Legal Mapping Report 2019: Recognition before the Law.”
- <sup>140</sup> Mule, “HUMAN RIGHTS QUESTIONED: A Queer Perspective,” 140–41.
- <sup>141</sup> Fraser, *Justice Interruptus- Critical Reflections on the PostSocialist Conditions*, 181.
- <sup>142</sup> Foucault, *The History of Sexuality Volume 1: An Introduction*.
- <sup>143</sup> Butler, *Gender Trouble- Feminism and the Subversion of Identity*; Butler, *Bodies That Matter: On the Discursive Limits of “Sex”*; Butler, *Undoing Gender*.
- <sup>144</sup> AIDS Bhedbhav Virodhi Andolan, “Less than Gay- A Citizens’ Report on the Status of Homosexuality in India”; UNDP, “Uptake of Social Protection Schemes by Transgender Population in India.”
- <sup>145</sup> UNDP, “Uptake of Social Protection Schemes by Transgender Population in India”; NALSA judgement, NALSA Judgement.
- <sup>146</sup> ILGA, “Trans Legal Mapping Report 2019: Recognition before the Law.”
- <sup>147</sup> ILGA, “Curbing Deception: A World Survey on Legal Regulation of so-Called ‘Conversion Therapies.’”
- <sup>148</sup> Gupta, “Out of Bounds: The Idea of Coerced Invisibility and Alternate Sexualities.”
- <sup>149</sup> RTI reply from IRDA vide letter NO. IRDAI/R/E/20/00067/1 and MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, Central Civil Services (Payment of Gratuity under National Pension System) Rules, 2021; Hindu Succession Act.
- <sup>150</sup> The Hindu Succession Act.
- <sup>151</sup> While the Pension Rules does not clearly state that a same-sex couple cannot be the family pensioner to each other, the application of the rules make it clear that the provisions of the pension rules are applicable for a heteronormative family; See Department of Pension and Pensioners’ Welfare, *A Handbook on Family Pension under CCS (Pension) Rules, 1972: Synopsis and Case Studies*.
- <sup>152</sup> It is to be noted that ‘Family’ has been defined by the Transgender Person Act, 2019 as a group of people related by blood or marriage or by adoption made in accordance with law. (Chapter 1(2)(c)). While the Act has defined the meaning of the term family, it does not comment anything about the possibility of same-sex family.
- <sup>153</sup> Wion, “Indian SC Says Unmarried Partnerships, Queer Relationships Can Also Be Considered as Family.”
- <sup>154</sup> Joseph, “Gay and Lesbian Movement in India,” 2229.
- <sup>155</sup> Fraser.