
RAINBOW RIGHTS ACROSS BORDERS: COMPARATIVE LEGAL PROTECTION AGAINST DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY

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ABSTRACT

The unfair treatment due to sexual orientation and gender identity deprives persons within the lesbian, gay, bisexual, transgender and queer (LGBTQ) category the fundamental dignity that is provided by the human rights law. In this research paper, the authors discuss the ways in which legal structures in various jurisdictions discriminate or maintain discrimination against LGBTQ individuals. It provides a comparison of the constitutional principles, legislations and judicial verdicts in India, South Africa, Canada, the United Kingdom and the United States and in some parts of Europe and Latin America. The paper will trace the progress and gaps by reviewing decriminalization of same sex relations, anti-discrimination laws in employment and services, recognition of the gender identity, hate crime laws and access to marriage or civil unions. Specific focus is given to the manner in which courts perceive non-discrimination guarantees under the constitution and whether statutes explicitly specify sexual orientation, gender identity and gender expression. This analysis demonstrates that whereas certain countries have strong protections that are enshrined, other countries have punitive laws that promote violence and stigma. Transnational approach demonstrates that sometimes the progress is achieved through the court based constitutional interpretation and civil society promotion but not through legislature. The paper finds that the solution to equality must be to balance the human rights protection and the recognition of various gender identities.

Keywords: discrimination law; LGBTQ rights; sexual orientation and gender identity; comparative constitutional law; equality jurisprudence etc.

Introduction

Equality has become a fundamental principle in contemporary constitutional democracies but individuals whose sexual orientation or gender identity is not based on hetero normative expectations regularly experience discrimination. In the past, most jurisdictions criminalized intimacy between sexes and considered gender variation to be a mental illness. In the last several decades the LGBTQ rights movement in the world has been contesting these beliefs and judicial decisions have decriminalized consensual same sex and legislations have been enacted prohibiting discrimination in employment, education, housing and public services¹. However, the protection differs significantly depending on jurisdiction: the constitutions of some countries prevent any discrimination based on sexual orientation and gender identity, whereas the constitutions of others criminalize non-conforming sexualities or consider them unnatural. Anti-discrimination laws can clearly include sexual orientation and gender identity but will not cover gender expression and intersex traits. Furthermore, despite the official equality, prejudice and absence of enforcement in the society contribute to exclusion.

The paper brings a comparison between legal reaction to discrimination of LGBTQ persons in India and other jurisdictions. It starts by explaining the situation in the constitution and judicial history in India, which shifted the criminalization of sexual orientation and gender identity to the interpretation of constitutional rights to equality and non-discrimination². It then reviews some protection measures in some jurisdictions such as South Africa, Canada, the United Kingdom, the United States, Brazil and European Union member countries, how they protect against discrimination in employment, housing, education, health care and goods and services. Much focus is given to hate crime laws and gender recognition by using legal gender markers. The final part provides a summary of insights to policymakers and advocates who may want to address the rights of LGBTQ.

India: From Criminalization to Constitutional Recognition

Decriminalization of same-sex relations

The Indian Penal Code 1860 in section 377 made carnal intercourse against the order of

¹Edwin Cameron, *Justice: A Personal Account of the Struggle for Equality in South Africa* (Tafelberg, Cape Town, 2014).

²Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins, New Delhi, 2019).

nature a crime. In *Naz Foundation v. Government of NCT Delhi* (2009) decision of the Delhi High Court, the clause infringed upon the fundamental rights contained in Article 14, Article 15 and Article 21 of the Constitution. Later that judgment was overturned by the Supreme Court in a case called *Suresh Kumar Koushal v. Naz Foundation* (2013) which believed that the rights of a small (minuscule) minority group could not nullify the law. The provision was still challenged by the civil society, and in *Navtej Singh Johar v. Union of India* (2018) in its decision the Supreme Court unanimously found the section 377 unconstitutional to the degree that it criminalized consensual intimacy between same sexes³. The Court interpreted the law narrowly and believed that Article 15, which barred discrimination based on sex, was offended by discrimination based on sexual orientation. The judges argued that sexual orientation and gender identity database is part of the term sex. This ruling was a breakthrough to the LGBTQ rights movement in India, and it was a decriminalization of same sex relationships between adults.

Constitutional protection and the scope of Article 15

The Indian Constitution provides equality before the law and equal protection of the laws in Article 14, the state should not discriminate against religion, race, caste, sex or place of birth in Article 15, and life and personal liberty in Article 21. In the case *National Legal Services Authority (NALSA) v Union of India* (2014), the Supreme Court acknowledged the existence of a third gender and ordered governments to treat transgender individuals as socially and educationally disadvantaged classes to enable them to get affirmative action⁴. The Court decided that gender identity is part of dignity and liberty under Article 21 and that in Articles 15 and 16, the word sex encompasses the term gender identity. These decisions broadened the constitutional protections of equality of LGBTQ individuals even though there are no explicit protections on sexual orientation or gender identity mentioned in the constitution.

Statutory protections and remaining gaps

After the NALSA ruling, the Parliament passed the Transgender Persons (Protection of Rights) Act 2019 that outlaws discrimination against transgender participants in the educational arena, occupation, health care, housing and service accessibility. The legislation

³Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (Yoda Press, New Delhi, 2004).

⁴Douglas Sanders, *Human Rights and Sexual Orientation in International Law* (International Commission of Jurists, Geneva, 1996).

mandates both the government and non-government organizations to deliver services to the populace without any kind of discrimination and provides the right to identify oneself with a specific gender. The Act was however criticised by civil society groups who said it compelled transgender persons to apply to a district magistrate to receive a certificate of identity and did not acknowledge non binary identities in their entirety⁵.

India does not have a general anti-discrimination law that deals with sexual orientation in all the spheres. Anti-Discrimination and Equality Bill 2016 and other private members' bills such as the Equality Act 2021 attempted to outlaw discrimination based on such aspects as sexual orientation, gender identity and sex characteristics but all failed to pass into law. According to the ILGA World database, the provision of goods and services based on sexual orientation does not have any provisions regarding discrimination; the Anti-Discrimination and Equality Bill were put in place in 2017, which outlawed discrimination based on sexual orientation but was never enacted database.ilga.org. In the absence of legislations, LGBTQ should seek protection in the interpretations of the constitution and sector specific policies⁶.

Recognition of same-sex relationships and family rights

Same sex marriage or civil unions currently are not recognized in Indian law. In *Supriyo v. Union of India* (2023) the Supreme Court overturned same sex marriage petitions for the same sex marriage to be recognized under the Special Marriage Act of 1954, sending the issue to Parliament. In the meantime, individual autonomy and dignity have been used to give police protection to same sex couples in the face of harassment by some High Courts. The law on adoption and surrogacy limits access to opposite sex married partners and single women; same sex couples are not able to adopt jointly⁷. Thus, the same sex couples are not recognized by the family law, even after decriminalization.

South Africa: Constitutional Enshrinement of Sexual Orientation

South Africa has one of the most significant constitutional rights in the LGBTQ. In section 9(3), the Constitution of the Republic of South Africa, 1996 expressly outlaws'

⁵Sonia Katyal and Eduardo M. Peñalver, *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership* (Yale University Press, New Haven, 2010).

⁶Ruthann Robson, *Sappho Goes to Law School: Fragments in Lesbian Legal Theory* (Columbia University Press, New York, 1998).

⁷Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights through International Law* (Oxford University Press, Oxford, 2013).

discriminations on the basis of sexual orientation. In the case of *National Coalition for Gay and Lesbian Equality v Minister of Justice* (1998), the Minister of Justice struck down the common law crime of sodomy as it was found to be against the equality clause. The Court focused on the fact that the Constitution mandates that the law recognize and grant gay men and lesbians the respect they deserve, and foster equality in practice⁸.

Section 9 is affected in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA), which outlaws' discrimination in relation to sexual orientation, gender and sex, whether in the public or the private sphere⁹. It sets up equality courts and dictates that the state should favour action to eliminate the systemic drawbacks. The Employment Equity Act 1998 equally forbids unfair discrimination by employment.

The first African nation to legalise same sex marriage was South Africa by the Civil Union Act 2006 following the ruling of the *Minister of Home Affairs v Fourie* (2005) case by the Constitutional Court which said that marriage should be restricted to opposite sex couples was unconstitutional¹⁰. The laws of adoption were also changed to enable same sex couples to adopt. Transgender persons are similarly allowed by the country to change their gender markers on identity documents through the Alteration of Sex Description and Sex Status Act 2003¹¹. The legislation on hate crimes is still insufficient, but there is a new bill, Prevention and Combating of Hate Crimes and Hate Speech Bill, which was proposed in order to cover the violence caused by sexual orientation and gender identity.

Canada: Comprehensive Human Rights and Charter Protection

The example of Canada is a legislative strategy that specifically safeguards sexual orientation and gender identity. The Canadian charter of rights and freedoms section 15 ensures that people are entitled to equality before and under the law and that they have the right to equal protection and benefits of law without discrimination¹². In *Egan v. In Canada* (1995), the Supreme Court accepted sexual orientation as an equivalent ground in section 15 and cases that

⁸Yuvraj Joshi, *Human Rights and the Politics of Solidarity* (Cambridge University Press, Cambridge, 2024).

⁹Brenda Cossman, *Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging* (Stanford University Press, Stanford, 2007).

¹⁰Dianne Otto (ed.), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (Routledge, London, 2017).

¹¹Shreya Atrey, *Intersectional Discrimination* (Oxford University Press, Oxford, 2019).

¹²Susan Stryker and Stephen Whittle (eds.), *The Transgender Studies Reader* (Routledge, New York, 2006).

followed afterwards established that no discrimination based on sexual orientation is allowed.

The Canadian Human Rights Act (CHRA) forbids federal jurisdiction against any discrimination based on numerous grounds. In 1996 Parliament was amended with sexual orientation being a prohibited ground of the CHRA; Bill C 16 of 2017 introduced gender identity or expression. These amendments safeguard gay individuals and transgender people against discrimination within the federally regulated areas including the banking, telecommunication, and federal employment¹³. The human rights laws of each province and territory have prohibited the discrimination in employment, housing and services based on the sexual orientation and gender identity. Indicatively, the Human Rights Code of Ontario clearly enumerates sexual orientation and gender identity/expression as a ground of protection¹⁴.

The legalization of same sex marriage in Canada came into effect in the Civil Marriage Act 2005 that is currently in force in the country, and made Canada the fourth country in the world to legalize same sex marriage. Same sex spouses were then granted adoption rights and spousal benefits and immigration sponsorship. The ability to vary between different provinces in the requirements to change gender markers on identity documents depends on being transgender, and non-binary or X markers are allowed in some provinces.

United Kingdom: The Equality Act and Gender Recognition

Discrimination based on sexual orientation and gender reassignment is a criminal offense in the United Kingdom, which has been managed by a set of statutory and common law measures. The Equality Act 2010, that brings together the previous anti-discrimination laws, provides the list of the characteristics that are protected and includes sex orientation and gender reassignment. It prohibits both indirect and direct discrimination as well as harassment and victimisation at work, in education, in housing and services. Service providers and employers have to make reasonable accommodations in order to prevent discrimination. The Act applies to England, Wales and Scotland; the Sex Discrimination (Northern Ireland) Order applied in Northern Ireland in 1976 and in 2003 under the Employment Equality (Sexual Orientation) Regulations¹⁵.

¹³Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Post-Socialist" Condition* (Routledge, New York, 1997).

¹⁴Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (Yale University Press, New Haven, 2012).

¹⁵Martha C. Nussbaum, *Sex and Social Justice* (Oxford University Press, New York, 1999).

Gender Recognition Act 2004 gives transgender individuals the opportunity to acquire gender recognition certificate upon meeting the requirements of medical and social standards and alter their legal sex. The UK government has suggested reforms that will ease the process but have been contentious and taken longer. In England and Wales, same sex marriages are legalized under the Marriage (Same Sex Couples) Act of 2013; in Scotland under the Marriage and Civil Partnership (Scotland) Act of 2014 and in Northern Ireland since 2020¹⁶.

UK has hated crime laws which have identified crimes driven by hostility via sexual orientation or transgender identity under the Crime and Disorder Act 1998 and the Criminal Justice Act 2003. Nevertheless, the gender identity separate category of hate crimes exists in all jurisdictions. In education, education acts of 1996 and further instructions in education outlaw bullying and discrimination on sexual orientation or gender reassignment¹⁷.

United States: Patchwork Protections and Judicial Expansion

The United States federal statute does not provide any extensive law against sexual orientation or gender identity discrimination in all aspects. However, the jurisprudence and interpretation of the federal agencies by the Supreme Court have greatly broadened the protections. In the case of *Bostock v Clayton County* (2020), the Supreme Court determined that discrimination based on sexual orientation or gender identity is discrimination based on the basis of sex, in violation of Title VII of the Civil Rights Act 1964. This historic ruling implies that employers cannot dismiss or turn down people and hire them due to them being gay or transgender¹⁸. The guidance by federal agencies, such as the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development, using similar reasoning applying Title IX (education) and the Fair Housing Act, has interpreted sexual orientation and gender identity as sex.

Congress has introduced several bills including the Equality Act expressly outlawing such discrimination on the grounds in any public accommodation, education, federal funding and jury service, but, as of October 2025, the Act is yet to become law. Without federal law, state law controls a number of sectors. Twenty-two states and the District of Columbia bar

¹⁶Sylvia Tamale (ed.), *African Sexualities: A Reader* (Pambazuka Press, Cape Town, 2011).

¹⁷Ian Curry-Sumner, *All's Well that Ends Registered? The Substantive and Private International Law Aspects of Non-Marital Registered Relationships in Europe* (Intersentia, Antwerp, 2005).

¹⁸Jill Marshall, *Personal Freedom through Human Rights Law? Autonomy, Identity and Integrity under the European Convention on Human Rights* (Martinus Nijhoff Publishers, Leiden, 2009).

discrimination in the areas of employment, housing and public accommodation, on the basis of sexual orientation and gender identity, and other eight states offer partial security. On the other hand, there have been laws passed by other states banning transgender people to join school sporting activities or receive care that affirms their gender, and this would clearly demonstrate a radical difference between states¹⁹.

In *Obergefell v Hodges* (2015) the United States approved same sex marriage throughout the whole country when the Supreme Court ruled that same sex couples undergo an inalienable right to marry under the Due Process and Equal Protection clauses of the Fourteenth Amendment. Nevertheless, the adoption rights, transgender military service and access to health care are still disputable.

European Union and Selected Member States

EU directives and non-discrimination law

The rights system of the European Union forbids the discrimination based on the sexual orientation but not on gender identity. Article 21 of Charter of Fundamental Rights of the European Union forbids any discrimination on the basis of, among others, sexual orientation. An employment equality requirement known as the Directive 2000/78/EC of the Employment Equality lays a ban on discrimination in employment and vocational training due to sexual orientation, though not on goods and services or education, and it does not reference gender identity or expression²⁰. The idea of implementing horizontal directive on goods and services has been pending in the Council several years.

United Kingdom and Northern Europe

As mentioned above, the UK offers a wide coverage under the Equality Act 2010. Similar laws have been passed in several EU member states. The Discrimination Act 2008 of Sweden that was amended in 2018 also forbids discrimination on the basis of sexual orientation, gender identity or expression and offers redress through the Equality Ombudsman²¹. Norway (non-EU

¹⁹Ziba Mir-Hosseini, Kari Vogt, Lena Larsen and Christian Moe (eds.), *Gender and Equality in Muslim Family Law* (I.B. Tauris, London, 2013).

²⁰William N. Eskridge Jr., *Gaylaw: Challenging the Apartheid of the Closet* (Harvard University Press, Cambridge, 1999).

²¹William N. Eskridge Jr. and Nan D. Hunter, *Sexuality, Gender, and the Law* (Foundation Press, New York, 2018).

member, but in the European Economic Area) does not allow discrimination based on sexual orientation, gender identity and gender expression, enforced by the Equality and Anti-Discrimination Act 2017; the law extends to labour, education, health services, housing and other public accommodations and is the responsibility of the employer and other service providers to avoid harassment²².

In 2006, Germany made minor modifications to its General Act on equal treatment (AGG) to outlaw discrimination in employment and civil law transactions regarding sexual orientation, but gender identity is treated indirectly by referring to judicial interpretation. In 2023 the government suggested the addition of gender identity in the reforms²³. In France, no one is to be discriminated against due to sexual orientation and gender identity in line with the Labour Code and the Penal Code; laws against hate speech also defend LGBTQ people.

Eastern Europe

The protection of the law is different in Eastern Europe. Other nations, including Poland and Hungary, which banned discrimination based on sexual orientation on the basis of employment under the EU directives have passed legislation against the expression of the LGBTQ community and curricular teaching in schools about gender and sexuality. Russia (non-EU state) makes it a crime to propagate non-traditional sexual relations and has extended the prohibition to adults, which in effect curtails any further discussion and advocacy²⁴.

The Netherlands and Marriage Equality

In 2001, the Netherlands was the first country to legalise same sex marriage, which has all anti-discrimination protection. The Equal Treatment Act 1994 forbids the discrimination to be made based on religion or belief, political opinion, race, sex, nationality, homosexual or heterosexual orientation, and disability. Gender identity and expression was introduced as safeguarded. It is also illegal in the country to conduct conversion therapy and allows transgender people to change their legal gender without surgery²⁵.

²²M. V. Lee Badgett, *The Economic Case for LGBT Equality: Why Fair and Equal Treatment Benefits Us All* (Beacon Press, Boston, 2020).

²³Laurence R. Helfer and Erik Voeten, *International Courts and the Performance of International Agreements* (Cambridge University Press, Cambridge, 2014).

²⁴Carl F. Stychin, *Law's Desire: Sexuality and the Limits of Justice* (Routledge, London, 1995).

²⁵Rosalind Dixon and Tom Ginsburg, *Comparative Constitutional Law in Asia* (Edward Elgar, Cheltenham, 2014).

Ireland: Constitutional Amendment

The constitution of Ireland was changed in 2015 after a referendum was carried out by people of Ireland to directly permit the marriage between two individuals irrespective of the sex. The Equal Status Acts 2000/2018 and Employment Equality Acts 1998-2015 ban any discrimination based on sexual orientation and gender. The Gender Recognition Act 2015 offers the process of self-declaration of gender identity to persons above 18 years.

Latin America

Brazil

Brazil has achieved a lot in terms of legislation, yet it has remained affected by violence against LGBTQ. In 2011, the Brazilian Federal Supreme Court recognized stable unions among same sex couples and applied all the legal consequences of marriage to such unions. In 2019, the Court ruled that the discrimination based on sexual orientation and gender identity is to be punished according to the Racism Law (Law 7.716/1989) until a certain law is passed by Congress. This ruling technically makes discriminating behaviour akin to racism illegal. The Brazilian state health apparatus offers gender affirming surgeries and hormone treatment, and the trans people are able to alter their legal gender non-surgically. Nonetheless, there is no comprehensive anti-discrimination/gender identity law that has been passed by Congress and violence is a very serious issue²⁶.

Argentina

Argentina is a pioneer of gender identity. The Gender Identity Law 2012 gives a person the right to self-declare his or her gender markers on identity document without medical assistance. Same sex marriage was legalised in the country by the Marriage Equality Law 2010. The anti-discrimination provisions are scattered between federal and provincial legislation; no national anti-discrimination act exists, but the Buenos Aires Anti-discrimination Law is addressing the sexual orientation and gender identity in both employment and services²⁷.

²⁶Anne Hellum and Henriette Sinding Aasen (eds.), *Women's Human Rights: CEDAW in International, Regional and National Law* (Cambridge University Press, Cambridge, 2013).

²⁷Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (International Commission of Jurists, Geneva, 2007).

Mexico

The Supreme Court of Mexico has ruled the laws against same sex marriage as unconstitutional making marriage equality a national law in Mexico. Nevertheless, state anti-discrimination laws differ. The Federal Law to Prevent and Eliminate Discrimination enumerates sexual orientation and not gender identity; in some states gender identity and expression are enlisted. Hate crimes and corrective rape are still common issues, which is why there is a discrepancy between the formal and social lives²⁸.

Comparative Analysis

One of the most important differences between jurisdictions lies in the fact that protection is created by the constitutional provisions or by statutes. The fact that South Africa formally incorporates the idea of sexual orientation into its Constitution gives the country a solid basis of law and court rulings. The Charter jurisprudence in Canada also gave equal protection to sexual orientation (and subsequently gender identity), giving preferential treatment to discriminatory legislation. India, in its turn, uses judicial interpretation to infer sexual orientation and gender identity on the term sex in the Constitution. Without clearly defined constitutional rights, rights are susceptible to changes in politics; no anti-discrimination laws have been put in place to guarantee a comprehensive law²⁹.

Laws (including the Equality Act 2010 in the UK and the Equality and Anti-Discrimination Act 2017 in Norway) ensure specific prohibitions in various spheres and have mechanisms of enforcement. Nevertheless, laws are subject to change or alteration by simple majority, which is currently observable, in the US where laws protecting transgender people are in reverse. The protection of the constitution and stringent legislation work together in providing a better defense against discrimination like in South Africa and Canada.

The nature of the things that jurisdictions safeguard differs. Most laws protect the sexual orientation but exclude gender identity, gender expression and sex characteristics which expose transgender, non-binary, and intersex people to discrimination. The Transgender Act in India covers exclusively transgender persons, but expansive bills are unsuccessful. The Title VII of

²⁸Mary Lyndon Shanley, *Just Marriage* (Oxford University Press, New York, 2004).

²⁹Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, Manchester, 2000).

the US Supreme Court interpretation of the term sex as a covering of sexual orientation and gender identity offers safety in the employment sector but not in the housing and the accommodations.

Inclusive language has been transferred to some countries. The act of Norway covers sex, gender identity, gender expression and intersex traits. The Gender Identity Law in Argentina is based on self-perception as opposed to medical diagnosis. These holistic strategies acknowledge that gender is yet a continuum and discrimination may happen as a result of expression as well as identity³⁰.

Laws can only have legal protection when there are enforcement systems. The Equality Act in the UK creates Equality and Human Rights Commission and also permits individuals to make claims before the employment tribunals or courts. The equality courts in PEPUDA in South Africa offer a dedicated discrimination courtroom. The federal and provincial human rights commissions and tribunals of Canada consider and settle complaints. The victims can initiate writ petitions in High Courts in India or Supreme Court; litigation is expensive and time consuming; there is no special equality agency. Awareness and cultural acceptance is also needed to enforce³¹. In Brazil, there is a racism legislation that criminalizes discrimination, although betraying and prosecuting it is hard.

Legalization of same sexes is essential in the claim of spousal benefits, inheritance and parenthood rights. Marriage equality is availed in Canada, the UK, the Netherlands, South Africa and Argentina whereas India and most African and Asian states do not. In civil unions or domestic partnerships (e.g. Germany prior to 2017), they can grant a fewer number of rights and strengthen separate but equal paradigms. There is also a disparity in the adoption rights: South Africa and Canada allow joint adoption by same sex couples; in India and most of Eastern Europe this is not an option.

Violence among LGBTQ people is disproportionate. The bias motivated offence statutes that are supported by hate crime statutes allow the increased penalties and collection of data. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act 2009 of the US enables prosecution of crimes in the case of a victim who is seized or killed based on his/her actual or

³⁰Thomas Hammarberg, Human Rights in Europe: No Grounds for Complacency (Council of Europe Publishing, Strasbourg, 2011).

³¹Devdutt Pattanaik, Shikhandi and Other Tales They Don't Tell You (Zubaan, New Delhi, 2014).

perceived sexual orientation or gender identity. A number of the EU countries incorporate the offences in their criminal statutes. The Supreme Court was trying to apply the racism law as a homophobic and transphobic offence in Brazil. There is no particular hate crime law in India; brutal beatings of LGBTQ individuals are frequently documented by general clauses and hide the involvement of prejudice³².

The LGBTQ persons can be inter-discriminated by race, caste, religion, disability or socioeconomic status. In India, the Dalit queer people face caste-based exclusion and sexual orientation-based stigma. Brazil and Mexico have a disproportion of transgender women being targeted by violence. Intersectionality is often not specifically covered by legal frameworks; equality bodies must put more grounds into consideration and be intersectional.

Conclusion

The comparative survey indicates considerable progress in legal safeguarding of LGBTQ individuals on the global level but also illustrates the unequal development and gaps in the progress. The efficacy of express constitutional and statutory protection and the availability of effective enforcement mechanisms are observed in South Africa and Canada. The experience of the United Kingdom and a number of European and Latin American nations demonstrates that effective anti-discrimination laws can offer solid protections, yet these laws have to incorporate gender identity, expression and sex characteristics in order to be inclusive. The United States is an example of judicial interpretation adding rights where the legislature has not reached a consensus, but the patchwork of state law exposes a large number to the lack of protection.

The transformation of criminalisation to recognition of sexual orientation and gender identity as being a part of the equality guarantee in the Constitution is an astounding change in India. However, lack of a full anti-discrimination law implies that protection is still left in bits and can be subjected to judicial implementation. The proposed Equality Act can help close this gap, making discrimination illegal in all of its spheres, and offering a way out. The social acceptance and administrative reforms including gender neutral facilities, inclusive curriculums as well as the sensitisation of law enforcement agencies are also essential.

Finally, even the legislative discrimination against LGBTQ persons has its basis not only

³²Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar, Cheltenham, 2018).

in legislative acts but also in the social mindset. Dignity can be recognized by legal means and it drives change, but it should be followed by education and advocacy. States should stop at decriminalisation to positively advance discrimination eradication, legitimise various types of family, guarantee gender confirmatory health care and guard against hate crime. It is only through a holistic and intersectional approach that the societies can attain true equality among all people without considering sexual orientation or gender identity.