
UNIT 4 MAPPING MULTIPLE SEXUALITIES

Structure

- 4.1 Introduction
- 4.2 Learning Outcomes
- 4.3 What is Sexual Orientation?
- 4.4 Who are LGBTQI+ people?
- 4.5 Major Social Issues Faced by LGBTQI+ people
- 4.6 Major Legal Issues Faced by LGBTQI+ people
- 4.7 Positive Legal Developments
- 4.8 What is consent?
- 4.9 Intersex People and Gender Testing in Sports
- 4.10 Let Us Sum Up
- 4.11 Unit End Questions
- 4.12 References
- 4.13 Suggested Readings

4.1 INTRODUCTION

In the previous units of this block, we discussed the difference between gender and sexualities, how they are constructed and issues related to the sexualities of women. This unit will discuss the broad range of sexualities that exist in society, particularly, the different sexual orientations, how it affects those who are outside of the norm, why are they called “alternative”, what is LGBTIQ and some of the key legal and social challenges those with different sexual orientations face in Indian society. These issues are extremely relevant for building a society that is accepting of diversity among humans and it is crucial to keep an open mind and read more on these topics to further understanding.

4.2 LEARNING OUTCOMES

After competing this Unit, you should be able to:

- Know what is meant by LGBTIQ+ people.
- Critically engage with major social and legal issues of LGBTIQ+ people
- Engage with debates about furthering the rights of LGBTIQ+ sections of society

4.3 WHAT IS SEXUAL ORIENTATION?

Sexual orientation is an individual's sexual preference or who one is sexually attracted to. A person maybe attracted to members of the same and/or other

sex. The terms that refer to sexual orientation are lesbian, gay, bi-sexual, queer and heterosexual (straight).

WHAT IS THE NORM?

A norm is what is predominantly accepted in society, leading to pressures to follow a widely prevalent norm. Cisgender and heterosexual sexual orientations are the prevailing norm in society.

Cisgender is when people identify themselves as the same sex/gender as what they were identified as at birth. For example, a child born and raised as a female grows up to identify herself as a woman.

Heterosexual is sexual attraction to the gender that is “opposite” to theirs in the binary system of men and women. Women attracted to men and men attracted to women are heterosexual.

Those outside of this norm are categorised as LGBTIQ+ and they face a lot of social and legal issues in a world that does not accept their identities.

4.4 WHO ARE LGBTIQ+ PEOPLE?

LGBTIQ+ is an acronym that expands into lesbian, gay, bisexual, transgender, intersex and queer people. The + sign at the end provide space to expand the existing acronym and include more variations in sexual identities as they emerge.

Let us look at brief definitions to better understand these identities.

- Lesbians are women who are physically, romantically and emotionally attracted to, and have relationships with other women.
- Gay persons are men who are physically, romantically and emotionally attracted to, and have relationships with other men.
- Lesbians and gay men are also referred to as homosexuals. The word is derived from the Greek word “omo” which means “same.”
- Bisexual are individuals that are physically, romantically and emotionally attracted to men and women and have relationships with either or both these genders.
- Pansexual are persons who are physically, romantically and emotionally attracted to all genders. This identification, unlike the term bisexual, takes into account the fact that there are more than two genders in society.
- Transgender are individuals that are assigned a certain gender at birth but who identify strongly with a different gender. For example, a child who is identified as male at birth and raised as a boy but asserts their gender as female and self-identifies as a transgender woman. Similarly, a child who is identified as female at birth and raised as a girl may assert their gender as male and self-identify as a transgender man. Transgender persons may self-identify as heterosexual, lesbian/gay or queer depending on who they are attracted to. In India, the local terms to refer

to transgender people are hijras, kinnars, aravanis, mangalamukhis etc.

- Non binary persons are those who believe they don't fit into just one gender or that they have elements of both masculine and feminine gender traits within them. The binary refers to the two prominent genders in society - male and female. Many, though not all, non- binary persons identify as transgender.
- Intersex persons are those whose chromosomes(XX females or XY males), internal sex organs, external sex organs and hormones either singly or in a combination do not fall neatly into the male or female binary. Such mismatch shows up at either at birth or at puberty. Persons with intersex variations often live their entire lives not being aware of that fact. Intersex persons may self-identify as heterosexual, lesbian/gay or queer depending on who they are attracted to.
- Queer is self-identification term used by LGBTI+ who believe that they are outside the cisgender heterosexual norm. The word was historically used derogatively against those who were "different" in terms of sexuality but has since been reclaimed as a term of pride by some sections of the LGBTQI+ communities.

Check Your Progress 1

1. *What does LGBTQI expand into?*
2. *Write short definitions for each of these identity terms.*

4.5 MAJOR SOCIAL ISSUES FACED BY LGBTQI+ PEOPLE

HOMOPHOBIA AND TRANSPHOBIA

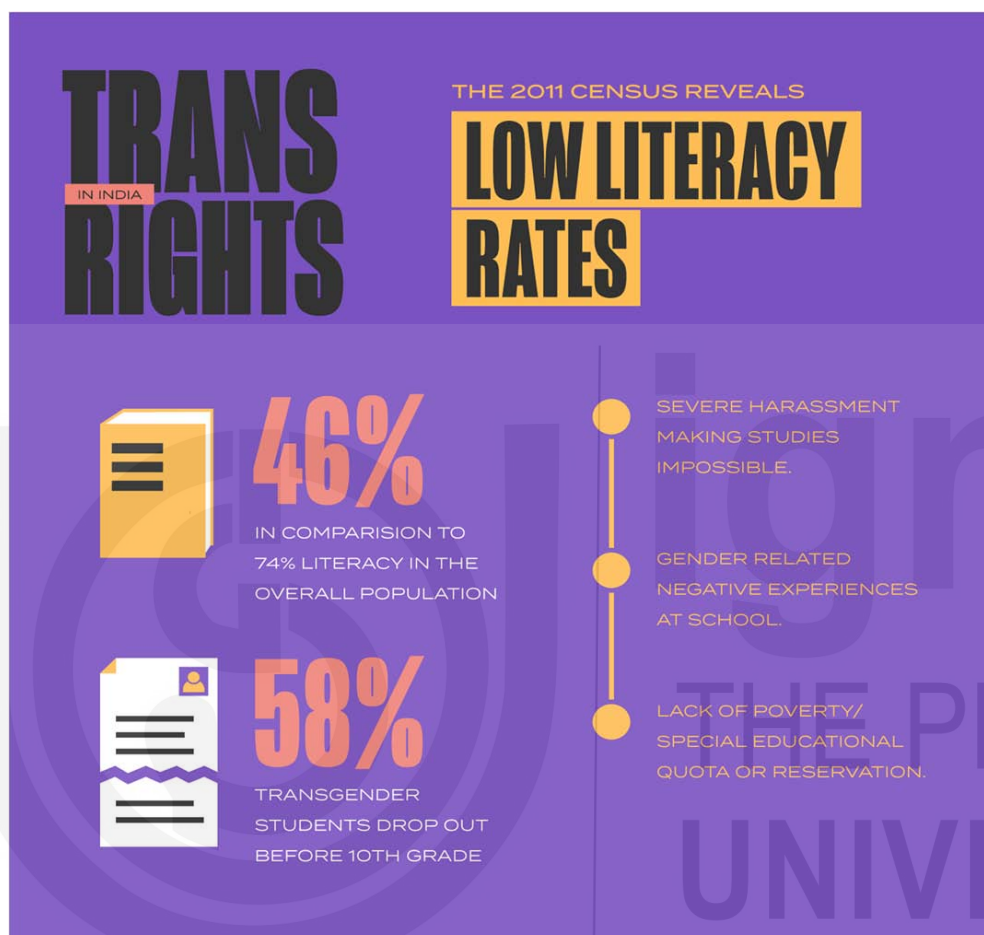
Homophobia is intolerance, fear, hatred or bias against those who are homosexual or queer.

Transphobia is intolerance, fear, hatred or bias against those who are transgender.

Homophobia and transphobia have a serious impact on the LGBTQI+ communities because it translates into socially discriminative behaviours and practices against those outside the cisgender heterosexual norm. Some of the social challenges LGBTQI+ communities face are:

1. The predominant social norm of heterosexual marriage and reproduction forces LGBTQI+ individuals in the closet. They hesitate to speak openly about their identities or sexual desires and lead a life that is not true to how they feel. Many are forced into heterosexual marriages and live unhappy lives as a result of it.
2. LGBTQI+ persons face discrimination in employment and education. As the sexuality of transgender and intersex persons becomes visible as they grow up, they are often bullied in schools and many of them drop out.

Lack of access to education affects their employment prospects forcing them to lead difficult lives. Those from poor, lowered caste backgrounds who don't have access to other support networks can often be seen begging at traffic signals. Even those who are from different class backgrounds and manage to get an education are hindered because of discrimination in the hiring practices of employers. They often face difficulty to change their names and gender in school certificates and degrees which makes it almost impossible to find formal employment.



(Source: TRANS RIGHTS IN INDIA POLICY BRIEF, YP foundation, 2017)

3. Many LGBTQI+ persons face discrimination in access to health care at hospitals and clinics. In case of transgender persons, since most hospitals have only male and female wards, it is difficult for them to get admitted in hospitals. The health care necessary for surgeries, hormones treatments etc. that is crucial for transgender people to live as their chosen gender is not widely available in India at affordable costs. Unethical practices like fixing the gender of intersex babies and performing “corrective surgeries” at birth are also common which lead to lifelong issues for the individual. Access to public toilets is a major issue for transgender communities as most public places have toilets only for male and female.
4. LGBTQI+ communities lack legal protections against bullying, sexual harassment, public violence, employment discrimination, etc. as most of the laws especially around sexual violence in our country are gender

specific and protect (at least on paper) only cisgender women.

CASE STUDY 1: Sachin's testimony

My name is Sachin and I am 23 years old. I am the fifth child in a family of four elder sisters. As a child I always enjoyed putting make-up like 'vibhuti' or 'kum-kum' and my parents always saw me as a girl. I am male but I have only female feelings. I used to help my mother in all the housework like cooking, washing, and cleaning. Over the years my sisters got married, my parents became old. I was around seventeen years. I started assuming more of the domestic responsibilities at home. The neighbors started teasing me. They would call out to me and say "Why don't you go out and work like a man?" or "Why are you staying at home like a girl?" But I liked being a girl. I felt shy about going out and working. Relatives would also mock and scold me on this score. Every day I would go out of the house to bring water. And as I walked back with the water I would always be teased. I felt very ashamed. I even felt suicidal. How could I live like that? But my parents never protested. They were helpless. Then one day my parents asked me to leave the village to avoid the shame. "Go work somewhere else", they said. I don't know how to read or write, I never went to school, how would I ever get a job? That night I cried a lot. (Human Rights Violations against Transgender community; PUCL report, 2003, 25)

4.6 MAJOR LEGAL ISSUES FACED BY LGBTQI+ PEOPLE

1. Difficulties in changing legal gender markers on identity cards and educational certificates. The process of legally changing gender markers is not standardised across government departments and state authorities. It leaves transpersons at the mercy of officers who may or may not be knowledgeable about trans issues.
2. There is no legal recognition for partnerships or marriage of LGBTQI+ persons. It leaves the community bereft of spousal benefits of opening joint bank accounts, naming nominees in assets and properties, adoption rights, right to be named as next of kin in case of medical emergencies etc. Many persons hide their relationships and feel shame and are generally unable to live fulfilled lives.
3. LGBTQI people face mental, physical and sexual violence from their families, partners, society and law enforcement officials. There are no protective laws and anti-discrimination policies in educational and workplace settings leaving the community without access to the constitutionally guaranteed fundamental rights. Additionally, law enforcement officials use laws to harass LGBTQI persons for causing 'public nuisance' and refuse to register cases when they are subject to violence.

CRIMINAL LAWS USED AGAINST LGTBQI+ PERSONS IN INDIA

1. Kidnapping - Cases of kidnapping are routinely made by the parents against queer or trans persons who run away from their homes with their partners/lovers after reaching the age of 18.
2. Extortion and anti-beggary laws - Charges of extortion are used against trans women, particularly who work the streets to beg under the anti-begging laws Bombay Prevention of Begging Act, 1959 that exists in 22 states and some union territories.
3. Many trans and queer people who don't have access to formal employment often engage in sex work and are routinely harassed under the Immoral Traffic (Prevention) Act, 1956. The acts punishable under this law that are used against queer/trans persons are brothel keeping, living on earnings of sex work, and prostitution in areas notified by Police & near public places.
4. Sec 320 on Grievous hurt in the criminal code is used against trans woman who voluntarily goes for a gender affirming procedure (gender re-assignment surgery) in any set up other than a hospital. The section states, "Whoever voluntarily causes emasculation, permanent privation of the sight of any of the eyes, permanent privation of the hearing of any of the ears, privation of any member or joint, destroying or permanently impairing the powers of any member or joint, permanently disfiguring the head or face, fracture or dislocation of a bone or tooth, and any hurt which either endangers life or which causes the victim to be in severe bodily pain during the space of twenty days, or unable to follow his ordinary pursuits."
5. Section 268 on Public Nuisance in The Indian Penal Code is used to harass trans persons because their very presence in public places, it is claimed, creates annoyance to public. The section states,

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.'

4.7 POSITIVE LEGAL DEVELOPMENTS

- NALSA judgement- The Supreme Court judgement delivered by Justice KS Radhakrishnan Panicker and Justice AK Sikri on April 15, 2014 following a Public Interest Litigation filed by the National Legal Services Authority was widely celebrated as a landmark judgement.

Key portions of the judgement-

- Upheld the right of trans people to self identify their gender as male, female or third gender irrespective of gender affirming surgeries or hormonal therapy.
- Socially and educationally declared trans people as backward classes and

reservations to be extended in employment and education.

- Centre and State Governments were directed to operate separate HIV Sero-surveillance centres since Hijras/ Transgender person face several sexual health issues.
- Centre and State Governments asked to take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- Directions for Social welfare schemes to integrate them
- Directions for public awareness programmes to dispel prejudices against trans people was made.
- NAVTEJ SINGH JOHAR & ORS. Petitioner(s) VERSUS UNION OF INDIA SUPREME COURT JUDGEMENT, 2018

Section 377 of IPC introduced by the British in 1861 states- “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. Explanation—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

LGBTQI people were routinely harassed and criminalized under this section for many decades. After a series of legal challenges to sec 377 on the basis of on constitutional equality principle, in 2018 the Supreme court of India decriminalized all consensual sex among adults, including alternative sexualities that were the target of this section of the IPC.

Check Your Progress 2

- 1) *What are some of the key legal challenges faced by LGBTQI people in India?*
- 2) *Give a brief summary of positive developments in the legal arena vis a vis LGBTQI people in India*

4.8 WHAT IS CONSENT?

Consent is the explicit communication of willingness to engage in sexual and/or romantic relationships. It is important because anything that is outside of consensual sexual or romantic relationships is violence and an offence under different sections of the IPC. Moreover, the importance of consensual romantic and sexual relationships cannot be stressed enough to convey respect to the dignity and bodily autonomy of others besides being a crucial foundation for healthy relationships.

Under Section 90 in The Indian Penal Code, what is not considered as consent is defined

90. Consent known to be given under fear or misconception.—A consent is

not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Explanation 2 attached to section 375 of the Indian Penal Code defines consent as “*an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act*”.

Although sec 375 (rape laws) in the IPC are gender specific and define consent of a woman, it can be expanded to understand that all adults irrespective of gender, must comply with standards of consent in relationships.

4.9 INTERSEX PEOPLE AND GENDER TESTING IN SPORTS

Intersex persons and the challenges they face are highlighted in the experience of some athletes and sportspersons. Since the 1936 Olympics, many athletes who competed in the female category, have been questioned about being “male imposters” and subjected to physical examinations. In fact, anxieties about the “real gender” of athletes in sports reached such a peak during the Cold War period that by the mid-1940s, “femininity certificates” were sought to verify the sex of athletes competing in female categories. By the 1960s, it was decided that individual nations could not be trusted to certify their own athletes and a mandatory genital check was introduced by international sporting authorities. This was replaced by a chromosomal test in the late 60s. Throughout the decades, sporting authorities have attempted to fix a foolproof test for gender and failed. This failure supports the fact that there are too many people who lie outside the narrow biologically defined norms of male- female. Most people who are outside these chromosomal or hormonal norms etc. are often not aware of the fact unless it comes up in special circumstances like gender testing in sports. There is no conclusive evidence that a higher level of natural testosterone (which is different from synthetic testosterone used in doping in sports) without receptors can provide any advantage in sports over those who don’t have the same.

An athlete from Tamil Nadu, Santhi Soundarajan faced humiliating gender tests and disqualification after finishing second in the 800 metres at the 2006 Asian Games in Doha. Despite being raised in a poor dalit family with hardly any access to nutrition, equipment and training for sports, Shanthi continued to win many medals in the national and international arena. However, she faced a series of violent setbacks after being disqualified and barred from participating in sports following the diagnosis of Androgen insensitivity

Syndrome. Shanthi, who was not allowed to compete as a woman, was paid lower wages at the brick kiln she later worked at (due to women being paid less than men). She fought many legal and political campaigns to be appointed as a coach including a Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) case against her colleagues at the Sports Development Authority of Tamil Nadu.

Intersectionality is a term coined by scholar Kimberley Crenshaw to highlight the compounded discrimination people face along multiple axis of oppression i.e caste, class, race, gender, religion, sexual orientations etc. She introduced the idea because the law only recognized discrimination on single grounds and not compounded ones. For example, in *De Graffenreid V General Motors* case in 1976, five Black women challenged the seniority policy of the company. According to the policy all those who were hired after 1970 lost their jobs in a seniority based lay off. However, black women were not hired by the company before 1964, hence the policy targeted them for not having seniority in a company that didn't hire them. The legal system however, refused to recognize their discrimination as a compounded one i.e., of race and gender. Instead, the court argued that since (white) women were hired by the company before 1964, the black women suing the company could not claim gender discrimination and had to argue solely on the basis of race discrimination.

If you were to apply the analytical frame of intersectionality to Shanti Soundarajan's experience, the discrimination she faced was compounded by her caste, class, and gender.

4.10 LET US SUM UP

In this Unit sexual orientation and the main identities that come under the LGBT umbrella are discussed. Also addressed here are the norms in society and the pressures this generates on all those whose desires and lives fall outside the norm. The major social and legal issues faced by LGBT people and the issue of consent in legal and social terms have also been addressed. The unit concludes with a focused discussion on a much-neglected section of the LGBTQI umbrella- people with intersex variations and the issues of gender testing in sports from a historical and current perspective.

4.11 UNIT END QUESTIONS

1. What are alternative sexualities and genders? What are some of the major socio-legal issues faced by them?
2. Why is consent important? What are some of the legal aspects of consent under the IPC?

4.13 REFERENCES

- Crenshaw, K. (1991). "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color", *Stanford Law Review*, 43(6), 1241.

- *Human_Rights_Violations_against_the_Transgender_Community.pdf*. (n.d.). Retrieved January 4, 2021, from http://pucl.org/sites/default/files/reports/Human_Rights_Violations_against_the_Transgender_Community.pdf
- Johnson, E. P., & Henderson, M. G. (2005). (Eds.). *Black Queer Studies: A Critical Anthology*. Duke University Press.
- Kanga, F. (2008). *Trying to grow*. Penguin India
- Living Smile Vidya. (2013). *I am Vidya: A transgender's journey*. Rupa Publications India.
- Lorde, A. (2007), *Sister outsider: Essays and speeches*. Crossing Press.
- Padawer, R. (2016). June 28. "The Humiliating Practice of Sex-Testing Female Athletes", *The New York Times*. The New York Times Magazine.
<https://www.nytimes.com/2016/07/03/magazine/the-humiliating-practice-of-sex-testing-female-athletes.html>
- Revathi A (2010). *The truth about me: A hijra life story*. Penguin Books.
- Revathi A (2016). *A life in trans activism*. Zubaan.
- Roughgarden, J. (2013). *Evolution's rainbow : Diversity, gender, and sexuality in nature and people* (Tenth anniversary edition). University of California Press.
- Semmalar, G. (n.d.). A POLICY BRIEF ON TRANS RIGHTS IN INDIA. *YP FOUNDATION*. Retrieved January 4, 2021, from https://www.academia.edu/43619772/A_POLICY_BRIEF_ON_TRANS_RIGHTS_IN_INDIA
- Semmalar, G. (2019, May 4). *Caster Semenya vs IAAF: Believing that testosterone is a superhuman hormone is a masculinist myth—Sports News, Firstpost*. <https://www.firstpost.com/sports/caster-semenya-vs-iaaf-believing-that-testosterone-is-a-superhuman-hormone-is-a-masculinist-myth-6570481.html>
- Semmalar, G. I. (2020). *RE-CAST(E)ING NAVTEJ SINGH V. UNION OF INDIA*. 13 NUJS L. Rev. 3
- Shekhar, H. S. (2019). *My father's garden*. Speaking Tiger.
- Tellis, Ashley. (2012). "Disrupting the Dinner Table: Re-thinking the 'Queer Movement' in Contemporary India", *Jindal Global Law Review* 4(1).

4.14 SUGGESTED READINGS

- Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, 43(6), 1241.
- Johnson, E. P., & Henderson, M. G. (Eds.). (2005). *Black Queer Studies: A Critical Anthology*. Duke University Press.
- Vidya, Living Smile. (2013). *I am Vidya: A transgender's Journey*. Rupa

Publications India.

- Lorde, A. (2007), *Sister outsider: Essays and speeches*. Crossing Press;
- Ponniah, U., & Tamalapakula, S. (2020). “Caste-ing Queer Identities”.13 *NUJS Law Review*. 3
- Revathi A (2010). *The truth about me: A hijra life story*. Penguin Books.
- Revathi A (2016). *A life in trans activism*. Zubaan.
- Shekhar, H. S. (2019). *My father’s garden*. Speaking Tiger.
- Tellis, Ashley. (2012). “Disrupting the Dinner Table: Re-thinking the ‘Queer Movement’ in Contemporary India”, *Jindal Global Law Review* 4(1).



ignou
THE PEOPLE'S
UNIVERSITY