

# The Perpetuating Culture of Us V. They: The Human Rights Challenge of Acceptance and Inclusion

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## ABSTRACT

People are inherently equipped with the idea of associating themselves with notions that are prevalent and widely acceptable in the society but see themselves at conflict when others refuse to be in agreement with their perceived notions of wider and popular acceptance and here we find them at conflict leading to what is referred to as 'Us vs They' culture. A number of factors can be attributed towards this phenomenon which is not limited to race, religion, caste, creed, region, sex or sexual orientation. The end results are always discrimination, polarization, prejudice and conflict among the groups which fuels animosity. The 'Us vs Them' culture allows people to emphasize their own groups' positive qualities and achievements while downplaying and demonizing the other group. It has far-fetched consequences. It potentially reinforces stereotypes, perpetuate biases and discourage empathy and understanding.

**KEYWORDS:** discrimination, caste, gender, religion, sexual orientation, human rights

## INTRODUCTION

Throughout history, various societies have exhibited racial and ethnic biases, leading to discrimination against minority groups. Examples include the Jim Crow laws in the United States, apartheid in South Africa, ethnic conflicts like the Hutu-Tutsi conflict in Rwanda and Kuki- Meitei in Manipur. Conflicts between Hindus and Muslims, is another example of this mentality, that have happened throughout India's history, with incidents of communal violence and discrimination. Likewise, the caste system in India has produced a significant Us vs. Them split. Historically, the caste system has created hierarchies among different groups, resulting in discrimination against lower-caste individuals by higher-caste groups. This division continues to have an impact on various facets of Indian culture. The vastness and diversity in India give rise to regional identities and regionalism. People from one state or region may regard themselves as separate and superior from those from other regions, which can lead to regional tensions and rivalries. The inferior treatment of people from Bihar and Uttar Pradesh in rest of India has been a constant topic of debate. The linguistic differences of the North- South divide are not be missed.

## CONSTITUTIONAL PROTECTION AGAINST DISCRIMINATION: GAPS AND CHALLENGES

The Constitution of India under Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth.<sup>1</sup> It states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The society has changed drastically since the adoption of the Constitution. However, with time there has been a rising demand that grounds of discrimination mentioned in Art. 15 should be extended to enlarge the scope of grounds of discrimination. For instance, Article 15 does not mention some of the other grounds of discrimination which was not foreseen at the time of drafting of the provision on fundamental rights of the Constitution of India. This includes discrimination on the ground of gender, sexual orientation and menstruation. Though neither the State nor any of the agencies/ organs of State are directly involved in creating or supporting any discriminatory practices but their failure to address the practices calls for accountability. Most of the international human rights documents' states that the duty of the

<sup>1</sup> The Constitution of India, 26 January 1950

State is three-fold: obligation to respect, protect and fulfil.<sup>2</sup>

The obligation to respect requires that the State should respect the rights of the people. This precisely means that the State should not do something which violates the rights of others.<sup>3</sup> The violation can be through the policies and even legislative acts of the State. The obligation to protect secures the rights of the people from third party violation. This responsibility to protect is upon the State. It must protect the rights of the vulnerable community from being violated by State or non-State entities. The obligation to protect is different from the obligation to respect. It is so because the former requires the use of resources to put the required machinery for protection of rights in place.<sup>4</sup> The latter obligation to respect is a more of a moral obligation on the State. On the other hand, the obligation to protect demands for concrete action on the part of the State. Apart from providing of adequate machinery for protection of rights, there is yet another obligation to fulfil. The obligation to fulfil is very resource extensive as it demands on the part of the State to come up with certain policies which can fulfil the necessities of the poor.<sup>5</sup>

Stated below are some of the chilling examples of us v. they mentality that perpetuates discrimination and poses a challenge of human rights violations

### A. Caste

The age old practice of caste discrimination owes its origin from the Vedas which initially mentions of an open door policy in which there was scope for the individual to shift its class on the basis of its qualification required for performing the acts associated with a particular varna.<sup>6</sup> Gradually, this liberty got restricted due to practice of endogamy and caste became a closed door affair which restricted mobility and the beginning all sorts of discrimination perpetuating the culture of us v. they. There was a sense of superiority and the people from the lower caste were considered inferior and non-meritorious. This tapestry of superiority and inferiority just not stopped at creating hierarchical differences but went too ahead towards heinous crimes robbing off the 'inferior classes' of their most basic rights. One of the manifestations of caste discrimination is in the form of *Honor killings*, which include the infliction of horrific violence upon persons who are believed to have brought shame upon their families or communities, are derived from deeply ingrained social and cultural traditions. Some particular states in India such as UP, MP, Punjab, Haryana and Gujarat are blemished with honor killing.<sup>7</sup> The couple is killed to revert the honor which has been shattered by marrying the person of their choice. In light of the killing of adults in the name of honor killing, the apex court rightly held that these institutions (*Khap Panchayats*)<sup>8</sup> who dictate the will of the adults and provoke the community to kill them needs to be stamped out from the root.<sup>9</sup>

However, after independence, efforts were made to end this long striving discrimination on the basis of caste.

<sup>2</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24; available at: <https://www.refworld.org/docid/5beaecba4.html>.

<sup>3</sup> Ibid p. 78.

<sup>4</sup> Ibid, p. 96.

<sup>5</sup> Ibid.

<sup>6</sup> Ambedkar B. R. (1916), "Caste in India Their Mechanism, Genesis and Development", in Valerian Rodrigues (eds.) *The Essential Writings of B. R. Ambedkar*, New Delhi: Oxford University Press. The hierarchical system of chaturvarna divides society in four varnas namely Brahmins (Priests), kshatriya (soldiers), vaishyas (traders) and shudras (menials).

<sup>7</sup> Annavarapu, Sneha. "Human Rights, Honour Killings and the Indian Law: Scope for a 'Right to Have Rights.'" *Economic and Political Weekly*, vol. 48, no. 50, 2013, pp. 129–32. <http://www.jstor.org/stable/24479054>.

<sup>8</sup> Khap panchayat is the union of a few villages, mainly in north India though it exists in similar forms in the rest of the country. Lately they have emerged as quasi-judicial bodies that pronounce harsh punishments based on age-old customs and traditions, often bordering on regressive measures to modern problems. For details see: What is khap panchayat?, October 11, 2012 12:47; <https://www.indiatoday.in/india/north/story/what-is-khap-panchayat-118365-2012-10-11#:~:text=12%3A47%20IST-,Khap%20panchayat%20is%20the%20union%20of%20a%20few%20villages%20C%20mainly,regressive%20measures%20to%20modern%20problems.>

<sup>9</sup> J. Venkatesan, "Stamp out khap panchayats: court", APRIL 20, 2011, *The Hindu*.

The discrimination on the basis of caste was outlawed by the Constitution and further manifested in the Protection of Civil Rights Act, 1955<sup>10</sup>. However, caste in some form or the other has found its way in the practice of perpetuating the culture of us v. they. Unfortunately, this discrimination of caste has not been confined to India alone. The mentality of disgrace and discrimination has been carried outside India through the India Diaspora wherever they have settled. At the international level, none of the international legal documents mentions caste as a form of discrimination. However, an initiative was taken by ICERD to interpret the term 'descent' in the definition of racial discrimination to refer to 'caste'. Ironically the term 'descent' was proposed by India in 1965.<sup>11</sup> However, no further participation as to the elaborate meaning of 'descent' on the part of India led the Committee to assume that descent included discrimination on the basis of caste. India opposed this interpretation of 'descent' in 1996 through its periodic report.

In 2001, the *World Conference Against Racism, Racial discrimination, Xenophobia and Related Intolerance*<sup>12</sup> was convened in Durban in which the issue of caste discrimination was raised by Dalit NGOs.<sup>13</sup> The objective was to attract the attention of the international community for a need to have a separate legal document towards the prohibition of caste discrimination through international law. Even though the practice of caste discrimination was condemned on the forum, it failed to produce any substantive results. In 2002, the CERD issued a General Recommendation XXIX interpreting the term 'descent' in which it recommends that the States parties, as appropriate for their particular circumstances, adopt some or all of the following measures (Article 1, para 1):

*"Measures of a general nature (a) Steps to identify those descent-based communities under their jurisdiction who suffer from discrimination, especially on the basis of caste and analogous systems of inherited status, and whose existence may be recognized on the basis of various factors including some or all of the following: inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupations or degrading or hazardous work; subjection to debt bondage; subjection to dehumanizing discourses referring to pollution or untouchability; and generalized lack of respect for their human dignity and equality."*<sup>14</sup>

## B. Religion

The pervasive issue of systemic religious discrimination and the alarming increase in incidents of lynching in India highlights a deeply ingrained culture of "Us vs They." The pervasive character of religious discrimination is seen in institutional prejudices, societal norms, and discriminatory actions including structural prejudices like the contentious Citizenship Amendment Act (CAA). Simultaneously, the concerning surge in lynching occurrences<sup>15</sup>, frequently driven by religious or communal incentives, constitutes a serious infringement of

<sup>10</sup> An Act to prescribe punishment for the [preaching and practice of "Untouchability"] for the enforcement of any disability arising therefrom and for matters connected therewith. Available at: <https://lddaskboard.legislative.gov.in/actsofparliamentfromtheyear/protection-civil-rights-act-1955>

<sup>11</sup> Inserted by resolution 1904 (XVIII); For details see: UN General Assembly, *Elimination of all forms of racial discrimination*, 10 November 1975, A/RES/3379, available at: <https://www.refworld.org/docid/3b00f04368.html>

<sup>12</sup> UN General Assembly, Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August-8 September 2001, January 2002, A/CONF.189/12, available at: <https://www.refworld.org/docid/4a54bc330.html>

<sup>13</sup> WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE HUMAN RIGHTS WATCH BACKGROUNDER August 2001, [WCAR Press Backgrounder.PDF \(hrw.org\)](#)

<sup>14</sup> UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent), 1 November 2002, available at: <https://www.refworld.org/docid/4538830511.html>

<sup>15</sup> In recent years, India has witnessed a disconcerting increase in lynchings and systematic religious persecution, as evidenced by a number of instances. An instance of note is the lynching of Mohammad Akhlaq in Dadri, Uttar Pradesh, in 2015, based on accusations of possessing beef. This unfortunate event brought attention to the perilous outcomes of communal tensions and the susceptibility of religious minority to violence instigated by baseless allegations. The lynching of Pehlu Khan, a dairy farmer and cattle trader who was mob-attacked in 2017 on suspicion of cow smuggling, is an additional alarming instance that occurred in Alwar, Rajasthan. The Acta Sci., 25(4), 2024

human rights and a deviation from the values of a diverse and all-encompassing society.<sup>16</sup>

The Constitution endows on the people of India the right to equality as well as the right to freedom of religion. However, the wounds of partition are still seeping. The mentality states that people of a particular religion should go back to the country they belonged to. This discrimination has found its further manifestation in the Citizenship (Citizenship Amendment Act 2019, hereinafter also known as CAA) has stirred the whole nation. There has been widespread protest all around the country contending that the secular fabric of the constitution is tarnished because of the discrimination being made out to the Muslim community of the three countries. The Act intends to protect the non-Muslim community who are minorities in the Muslim countries from further persecution and discrimination. It gives them the security that wherever they are, they belong to their roots and their government is there to help them out. The Act though takes care of the concerns of the non-Muslim minorities in Muslim dominated country, it fails to consider certain vital issues such as non-consideration of conditions of Muslim minorities of the three specified countries. This is in violation of the principle of equality which India has long cherished.<sup>17</sup> Allowing only three countries under the umbrella of the act is also discriminatory. There is no reason given as to why these three countries were selected and others were left out who are equally in need of such facility to be provided by the Government of India. India, which is known for its diversified culture should not confine itself to providing relief to non-Muslim minorities alone. The communities of neighboring countries who fear persecution at the hands of majority needs to be dealt with utmost care and equality.

Religious harmony can be achieved only through awareness and education. Cultural assimilation should not be misconstrued as domination of the majority or appeasement of the minority. Rather there should be mutual respect along with special protection to religious, linguistic and culture minorities. Discrimination on the basis of religion has been hard on the minorities. That is why there is special consideration for minorities both at the national and international level. However, there is difference of approach in the way we perceive minorities. For example, Sikhs have no different country where they can allege to be associated with unlike the Muslims and Christians who are often associated with countries where they are in numbers. Additionally, the Hindu Marriage Act<sup>18</sup> associates Sikhs as Hindus so with respect to them, this culture of us v. them has not perpetuated so deep. But that is not the case with Muslims. The frequent use of ‘slogans’ such as ‘go to Pakistan’ clearly expresses the deep and hidden feeling of ‘they’. The whole idea of citizen is suddenly deeply rooted in religion which sees *Hindu's* as the only and true citizens of the nation.<sup>19</sup> This is brewing a systematic hatred towards the non-Hindus, categorizing people into ‘Us v Them’ on the basis of religion and race, *Muslims* being the prime target.<sup>20</sup> It is not too early to predict that it could well sprint into a situation of *genocide* if preventive steps are not taken.

“*Genocide* means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;

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death of Pehlu Khan highlighted the convergence of religious bias with the contentious matter of cow protection, resulting in tragic outcomes for persons believed to be infringing upon these feelings. For more details see: Lauren Frayer, “*This Is It. I’m Going To Die*”: *India’s Minorities Are Targeted In Lynchings*, NPR, Aug. 21, 2019, <https://www.npr.org/2019/08/21/751541321/this-is-it-im-going-to-die-indias-minorities-are-targeted-in-lynchings> (last visited Dec 6, 2023).

<sup>16</sup> Gupta, Ritika, “Lynching as a Manifestation of Communal Violence”, December 2, 2020, available at SSRN: <https://ssrn.com/abstract=3741217>

<sup>17</sup> Garg, Lovish, “If India Wants to Remain Secular, the New Citizenship Bill Isn’t the Way to Go”, *The Wire*, 21 September 2016. Available at: <https://thewire.in/67272/citizenship-amendment-bill-2016/>, Accessed on 15 May 2017.

<sup>18</sup> Explanation to Sec 2 of the Hindu Marriage Act inter alia states that : The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be. See: The Hindu Marriage Act, 1955

<sup>19</sup> Tazamal, Mobashra Tazamal, *Is a Genocide of Muslims Underway in India?* Bridge: A Georgetown University Initiative; <https://bridge.georgetown.edu/research/is-a-genocide-of-muslims-underway-in-india/>

<sup>20</sup> 10 Stages of Genocide, <http://genocidewatch.net/genocide-2/8-stages-of-genocide/> (last visited Jan 7, 2024).

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- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.”<sup>21</sup>

It is also argued that lynching people for their choice of food is cultural genocide (not included in genocide convention) but there is physical killing of people. The question is will that qualify as physical genocide as per Genocide Convention? Technically, it will not as it mandates targeting a particular group deliberately and not targeting the individual members of a particular group. But this does not imply that it's acceptable for a 'superior' group who is the control of major affairs deprive the 'other' group of their humanity, their choices. Article 2 of the *UN Declaration On The Elimination Of All Forms Of Intolerance And Discrimination Based On Religion Or Belief*, 1981<sup>22</sup> and Article 27 of the *International Covenant on Civil and Political Right (ICCPR)*, 1966<sup>23</sup> prohibits discrimination on any ground including religion and deprivation of the cultural, religious and linguistic minorities of their culture, religion and language respectively.

The Constitution of India under Article 25 to 28 incorporates the right to freedom of religion.<sup>24</sup> At the international level, UDHR is the prime document along with ICCPR. Article 18 of the *Universal Declaration of Human Rights*<sup>25</sup> echoes similar thoughts on the global stage. It places an emphasis on the right to freedom of mind, conscience, and religion, giving particular attention to the freedom to change one's religious or

<sup>21</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec 9, 1948.

<sup>22</sup> Article 2 of the *UN Declaration On The Elimination Of All Forms Of Intolerance And Discrimination Based On Religion Or Belief*, states: 1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis. For more details see: UN General Assembly, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981, A/RES/36/55, available at: <https://www.refworld.org/docid/3b00f02e40.html>

<sup>23</sup> Article 27 of the *International Covenant on Civil and Political Right*, 1966 states: In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. For details see: UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>

<sup>24</sup> The provisions are as follows: Article 25: Right to Freedom of Religion (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law— (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. Article 26: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right— (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. Article 27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. Article 28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

<sup>25</sup> Article 18 of the *Universal Declaration of Human Rights* states: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance See: UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>

philosophical beliefs. Both legal systems emphasize how important it is to safeguard an individual's right to choose, practice, and alter their religious beliefs and practices during their lifetime. While Article 18 of the Universal Declaration of Human Rights (UDHR) provides a more global viewpoint, highlighting the universality of the right to religious freedom, the Indian Constitution contextualizes this right within the distinctive sociocultural and historical background of the nation. All of these clauses, when taken together, highlight the commitment to protecting the independence and variety of individual religious beliefs on both the national and international levels. Furthermore, Article 18<sup>26</sup> of *ICCPR* reinforces the right to freedom of religion. This international treaty, to which India is a party, articulates the right to manifest one's religion or belief either individually or in community with others, with only such limitations as are prescribed by law and necessary to protect public safety, order, health, or morals.

### C. Gender

The Constitution unfortunately does not mention gender as a ground of discrimination.<sup>27</sup> Sex is a biological fact whereas gender is a social construction which confines the sexes in gender stereotypical behavior and roles. It was due to this construction that one sex was considered inferior to the other which has given rise to Gender Based Violence. Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination of one over the other. This had also led to discrimination against women and has prevented the full advancement of women in social, economic and cultural domain. There is no doubt that Gender Based Violence (GBV) hereinafter also used as Violence against Women is powered by patriarchy.<sup>28</sup> German anthropologist Maria Mies in explaining the concept of patriarchy and male violence states that “all men appear as monsters, their culpability in direct inverse proportion to their location in the global hierarchy; all women appear as their victims.”<sup>29</sup>

Violence against women is not confined to physical atrocities alone and has taken many forms which include psychological, sexual, economic and social assault (controlling behavior). Women are treated as second class citizen.<sup>30</sup> It is a largely ignored fact that violence against women not only entails physical injury but also leaves grave mental scars on the psychic of women. It ensues a major health problem.<sup>31</sup> Closely associated another ground of discrimination is menstruation which was evident in the case of *Sabarimala*<sup>32</sup> and is often displayed at the entrance of some temples that menstruating women need not enter the premises. It is also a common discriminatory practice in common household culture. Another evident disparity is across the Islam which completely bans the entry of the women inside the mosques.<sup>33</sup>

The most authentic definition of violence against women comes from the *UN Declaration on the Elimination*

<sup>26</sup> Article 18 of the International Covenant on Civil and Political Rights states: 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

<sup>27</sup> Article 15 of the Constitution of India inter alia states: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

<sup>28</sup> Asian Pacific Institute on gender Based violence, Patriarchy and Power; <https://www.api-gbv.org/about-gbv/our-analysis/patriarchy-power/>

<sup>29</sup> Mies, Maria and Vandana Shiva, *Ecofeminism*, Zed Book, 1993.

<sup>30</sup> Borde, Constance, and Sheila Malovany-Chevallier. “Translating ‘The Second Sex’”, *Tulsa Studies in Women’s Literature*, vol. 29, no. 2, 2010, pp. 437–45. <http://www.jstor.org/stable/41337288>.

<sup>31</sup> Bohra, Neena et al., *Violence against women*, *Indian journal of psychiatry*: 57 (2), 2015, pp S333-8.

<sup>32</sup> *Indian Young Lawyers Association vs The State Of Kerala* on 28 September, 2018 SC 243.

<sup>33</sup> Zafar Aafaq, *For Muslim Women in India, Mosques Remain Largely out of Bound – Even without Entry Bans*, *SCROLL.IN* (2022), <https://scroll.in/article/1039610/for-women-jama-masjids-temporary-entry-ban-is-a-reminder-of-their-exclusion-from-mosques-in-india> (last visited Jan 9, 2024).

of Violence against Women which defines it as:

*“...any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.*<sup>34</sup>

Equally, it is hard to determine the stage at which women are prone to violence. It can be right from the birth or even before that thus; when still in womb as seen in increases on cases of female feticide in India. For example, even though the identification of the sex of fetus is prohibited by law in India, this illegal act is been carried out every day in India with more girls being aborted before birth.<sup>35</sup> However, for the perpetrators of this criminal act and holders of such anti-women belief this is still not enough. The fortunate ones who survive see the worst as the crimes against women manifests in various ways such as rape, molestation, stalking, voyeurism, marital rape, sexual harassment at work places in India. All these series of events make the life of a woman adverse to live and survive. Moreover, the issue of economic discrimination where they are not paid at par with their male counter parts is another issue to be dealt with. This discrimination is witnessed not only at the work place but also in household properties where they are not even considered.<sup>36</sup> This is a serious problem despite the existence of law relating to equal share in family property and wages for work on paper. Raising a voice against the injustice puts them in an ostracized condition, where they are mistreated and alienated for their genuine demand. The Government of India promotes “women’s rights” through legislation<sup>37</sup> and discourse, yet has not succeeded in breaking the patriarchal structures that constrain these rights, and which are reinforced through kinship and social structures.<sup>38</sup>

#### D. Sexual orientation

The Constitution again does not mention sexual orientation as a ground of discrimination.<sup>39</sup> Worse was when transgender, their sexual orientation and choices earlier were punishable under Section 377 of Indian Penal Code (IPC), 1860. It was categorized as an “unnatural offence”. However, in 2018 Section 377 was partly decriminalized by a Judgment passed by the Constitutional bench of the Supreme Court of India. The Judgment stimulated a new dimension which related to the grounds of discrimination and dignity of the being. It provided relief to the Lesbian, Gay, Bisexual, Transgender, Queer (hereinafter LGBTQ) community by widening the ambit of discrimination through judicial interpretation and not judicial legislation.

*“.....If there is one constitutional element that can be defined as the core idea that was driving the creation of the Indian Constitution, then it would have to be that of "inclusiveness." Indian Constitution is a representation of this ideal, which has been fostered over a period of many years and is firmly established within Indian society. It is possible to observe the legacy of inclusivity that has always been there in Indian society, which can literally be seen in every part of life, in the fact that everyone is given a place in society. This can be seen virtually everywhere you look. The members of the group that the majority considers to be*

<sup>34</sup> UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, available at: <https://www.refworld.org/docid/3b00f25d2c.html>

<sup>35</sup> Choudhary, Chetna (2017), Rich couples flying abroad for gender test & abortion, fear health officials, The Times of India, May 13, 2017.

<sup>36</sup> Dang, Kinshu, Despite Law, Daughters Unable to Inherit Paternal Property, NDTV, 2016.

<sup>37</sup> The legislation includes amendment in the Hindu Succession Act which equally acknowledges the right of daughters in ancestral property. Sec 6, Hindu Succession (Amendment) Act, 2005 inter alia states: Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, - (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

<sup>38</sup> Halder D, Jaishankar K. Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India. Journal of Law and Religion. 2008;24(2):663-687. doi:10.1017/S0748081400001740

<sup>39</sup> The grounds of discrimination are dealt in detail in Article 15 of the Constitution of India which lists religion, race, caste, sex, place of birth as the specific grounds of discrimination. For details refer M.P. Jain, Indian Constitutional Law: With Constitutional Documents 1(LexisNexis Butterworths Wadhwa Nagpur, 2010).

*"deviants" or "different" are not excluded from the community or ostracized solely on the basis of this perception held by the majority."*<sup>40</sup>

Gaining insight into the dichotomy between "Us" and "They" is essential when analysing the viewpoint of the LGBT community. The Us vs. They attitude pertains to the segregation of persons based on perceived disparities or collective affiliations. This mentality can be witnessed in diverse circumstances, encompassing the LGBT rights struggle. Ghaziani examines the development of this mindset inside the movement, emphasising the contrast between proponents of LGBT rights and their adversaries.<sup>41</sup> Ashmore, Deaux, and McLaughlin-Volpe argue that collective identity extends beyond social movements. It can also be utilised for the procedures of group membership in a broad sense. The LGBT community develops a strong collective identity as a result of being categorised as "other" or deviating from the conventional norm. The formation of this collective identity is rooted in the common encounters of prejudice, exclusion, and social disapproval endured by those who identify as LGBT.<sup>42</sup> Walter and other participants provide clear evidence that LGBTQ+ culture is characterized as a "culture of advocacy." This culture arises from the collective experiences of belonging to a marginalised minority, which cultivates a feeling of inclusivity, equity, and a strong inclination to defend the rights of others. Sexual and gender identity function as means of resistance and societal reform within this particular framework. These processes can lead to different degrees of social influence and chances for individual or collective voices to be expressed.

LGBT individuals frequently have the difficulty of harmonizing their sexual or gender orientation with their ethnic or racial background. For ethnic-minority LGBT individuals, it can be especially difficult to navigate the dilemma of reconciling their LGBT identity with their ethnic or racial background. This conviction is strengthened by individuals belonging to the same ethnic or racial group who perceive an LGBT identity as a renunciation of their "ethnic culture" and integration into "social culture." The challenge of navigating between these two identities can result in an intricate decision between seeking assistance from the ethnic group or the LGBT community. Individuals may find this decision emotionally burdensome and it emphasizes the importance of considering multiple views when trying to comprehend the experiences of ethnic-minority LGBT individuals. Recognizing the intersectionality of identities is essential for understanding the distinct issues encountered by ethnic-minority LGBT individuals.

When ethnic minority LGBT individuals navigate their identity, they frequently encounter many types of prejudice and oppression. This encompasses various forms of discrimination such as racism, sexism, heterocentrism, and internalized racism originating from both the dominant culture and one's own ethnic group. It is crucial to acknowledge that these obstacles are not encountered in a solitary manner, but rather as a "double" or "triple" minority status, where individuals must navigate their membership in several identity groups.

The conflict arising from both identities can lead to a feeling of estrangement and a need to conceal or repress one's LGBT identity to evade social shame or exclusion from their ethnic community. In addition, ethnic-minority LGBT individuals may encounter racism within the LGBT community, intensifying their feeling of being marginalized and hindering their ability to fully embrace their intersecting identities. The dichotomous mindset of "us vs. them," in which individuals are compelled to decide between aligning with their racial or ethnic group and the LGBT community, presents a difficult and emotionally exhausting predicament for ethnic-minority LGBT individuals. The constant tussle of this othering mentality can be constantly cited when it comes to the assimilation of these segregated 'them' people into the 'us' populace.

Moreover, the development of an *Us v. They* mindset is shaped by cultural circumstances and the dynamics of

<sup>40</sup> Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 6 September, 2018

<sup>41</sup> Ghaziani, Amin Ghaziani, Verta Taylor & Amy Stone, *Cycles of Sameness and Difference in LGBT Social Movements*, 42 ANNUAL REVIEW OF SOCIOLOGY 165 (2016).

<sup>42</sup> Richard D. Ashmore, Kay Deaux & Tracy McLaughlin-Volpe, *An Organizing Framework for Collective Identity: Articulation and Significance of Multidimensionality*, 130 PSYCHOLOGICAL BULLETIN 80 (2004).

social power. However, it is not only restricted to the issue of cultural ethos but take a toll on an individual's abilities and competency as well. One such incident that speaks of it, is the recommendation of the Collegium for the elevation of Saurabh Kripal, Senior Advocate, Delhi High Court as a Judge of the Delhi High Court that was adamantly opposed by the Centre on the grounds namely “....(i) *the partner of Shri Saurabh Kirpal is a Swiss National, and (ii) he is in an intimate relationship and is open about his sexual orientation.*”<sup>43</sup> In one of the chilling news which manifested this culture of an *Us v. They* when Akal Takht banned a priest who solemnized same sex marriage at gurdwara.<sup>44</sup>

If we look at the legal attempts towards the creation of provisions aimed at protecting the rights of the LGBT Community, *The Transgender Persons (Protection of Rights) Act, 2019* is a leading example. In order to fully protect the rights and dignity of transgender individuals in India, it is necessary for the legal framework to conform to international norms, such as the Yogyakarta Principles.

## SUGGESTIONS AND CONCLUSIONS

Society and cultural norms play a very significant role in shaping a perception regarding a certain notion. It is very impossible to imagine the acceptance of a law without the approval of the society in which we live. The laws and rights seem futile when there is no social acceptance. And this social segregation can be reduced with gender sensitization programmes, educational inclusive curriculum, awareness campaigns, media etc. The very basic requirement that should come to the forefront is the action on the part of the State to lay down a robust legal framework that puts an end to the practice of ‘othering’ and advocates for an inclusive ‘we’. The primary consideration would be either introduction of a complete new set of laws or through subsequent amendments to the existing laws. Government can indulge in promotion of awareness of the issues pertaining to LGBT community in the same manner they have been promoting ‘*Beti Bachao, Beti Padhao*’, family planning and menstrual hygiene through advertisements and graffiti arts on the walls. The social and cultural narrative of the majoritarian view that draws up the line between the *Us* vs. *Them* can still diminished to a certain extent by numerous measures, of course over prolonged span of time when it comes to the line that is being drawn up on the basis of gender identities and sexual orientations. But when people who are in the position of power and have a great capacity to influence the society at large, themselves take up the duty to draw this line bolder and stronger, poses a great question over the inclusivity of the ‘*them*’ populace. It certainly drives our minds to ponder over whether it is justifiable for the ‘*us*’ to decide for the fate of ‘*them*’?

<sup>43</sup> Collegium Resolutions | SUPREME COURT OF INDIA, <https://main.sci.gov.in/collegium-resolutions> (last visited Nov 3, 2023).

<sup>44</sup> Brar, Kamaldeep Singh, Same-sex marriage at Bathinda gurdwara: Akal Takht blacklists priest, others for five years, October 17, 2023, <https://indianexpress.com/article/cities/chandigarh/akal-takht-bans-priests-who-solemnised-same-sex-marriage-at-gurdwara-8986418/>