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Equality Beyond Borders: A Comparative Study of 2SLGBTQI+ Rights in Europe and India

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ABSTRACT

This paper analyses the legal protection and social inclusion of the 2SLGBTQI+ community in Europe and India on the basis of the principle of equality. The study focuses on the different legal frameworks, constitutional provisions, and international norms developed by organisations such as the United Nations, the European Union, and the European Convention on Human Rights to protect the rights of the 2SLGBTQI+ community. Using comparative analysis and secondary research sources, the paper examines key issues of equality, rights, relationships, and social recognition. The findings reveal that Europe has comparatively more developed legal protections and anti-discrimination frameworks, although the lack of standardised laws among member states continues to create differences in implementation. In India, major progress has been achieved through the NALSA judgment and the reading down of Section 377, but limitations persist regarding same-sex marriage, adoption rights, and comprehensive anti-discrimination laws. The study concludes that both Europe and India require further legal and social reforms to ensure equal rights, proper legal protection, and greater social inclusion of the 2SLGBTQI+ community.

Keywords: Comparative law, Equality, Europe and India, 2SLGBTQI+ rights.

I. INTRODUCTION

The term 2SLGBTQI+ is an acronym for Two-Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex. This umbrella term also includes people of other sexual and gender diversities beyond those listed. The term was adopted in Canada following the launch of the country's first Federal 2SLGBTQI+ committee.¹ The significance of the term is that it seeks to secure the rights of all those included in the category and to afford them social justice irrespective of their diverse gender identities, gender expressions, and sexual orientations.²

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¹ WOMEN & GENDER EQUALITY CAN., *What Is 2SLGBTQI+?* (Feb. 14, 2024), <https://www.canada.ca/en/women-gender-equality/free-to-be-me/what-is-2slgbtqi-plus.html>.

² VANCOUVER ISLAND UNIV., *2SLGBTQI+ Terms* (2024), <https://employees.viu.ca/human-resources/equity-diversity-inclusion/learning/2slgbtqiia-terms>.

Many people belonging to the 2SLGBTQI+ community are also of the view that the introduction of this terminology has given them an identity and has helped society to learn tolerance and acceptance.³ Against this background, this study analyses the legal protection and social inclusion of the 2SLGBTQI+ community in Europe and India on the basis of the principle of equality.

II. KEY INTERNATIONAL DOCUMENTS IN THE HIERARCHY

Many international organisations work to ensure equal legal protection for the 2SLGBTQI+ community and their inclusion within mainstream society. One such organisation is the United Nations, which has developed specific norms to this end. The most important of these are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴ Similarly, the conventions of the Council of Europe include norms such as the European Convention on Human Rights (ECHR), which, although it does not explicitly mention the rights of the 2SLGBTQI+ community, is inclusive in addressing themes such as equality, non-discrimination, and respect for private and family life.⁵ The European Union also has its own set of norms for protecting the rights of the community. One directive of particular relevance is Directive 2000/78/EC, whose guiding principle is the social inclusion and legal protection of the 2SLGBTQI+ community; it provides that there should be no discrimination in employment on the basis of a candidate's sexual orientation.⁶

The norms specified by international institutions such as the European Union, the United Nations, and the Council of Europe indicate that each has its own approach to the problems of social inclusion and legal protection that this community faces. The United Nations, in particular, addresses the community explicitly and sets out a series of norms for the purpose. As with the variance in design among international organisations, there are also regional variations: while some regions are working toward laws that ensure social and legal protection for the 2SLGBTQI+ community, others lack an adequate legal framework to protect the community

³ M. Butterfield, *How the 2SLGBTQI+ Term Can Be Both Helpful and Harmful*, GLOBAL NEWS (2022), <https://globalnews.ca/news/8882410/inside-pride-canada-queer-acronym/>.

⁴ Universal Declaration of Human Rights, G.A. Res. 217A (III) (Dec. 10, 1948); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Nov. 4, 1950, 213 U.N.T.S. 221; COUNCIL OF EUROPE, *LGBTI* (2025), <https://www.coe.int/en/web/congress/lgbti-rights>.

⁶ Council Directive 2000/78/EC, 2000 O.J. (L 303) 16.

against discrimination and violence.⁷ This study therefore undertakes a region-wise critical comparison of the regulations governing the legal protection and social inclusion of the 2SLGBTQI+ community, to understand how Europe and India address the issue.

III. RESEARCH PROBLEM

Several research problems arose in the course of the study. First, there was a dearth of resources comparing and presenting the shortcomings of the national laws of Europe and India regarding the social inclusion and legal protection of the 2SLGBTQI+ community in relation to the provisions set out by international organisations such as the European Union and the United Nations. The study therefore had to be framed on the basis of the limited resources available. Second, the existing literature has not adequately discussed the disadvantages of the current social-inclusion and legal-protection provisions for the 2SLGBTQI+ community in Europe and India.

IV. DISCUSSION

The status of the 2SLGBTQI+ community remains a major subject of debate in many countries. In Europe, there are concrete frameworks for the legal protection and social inclusion of the community, and the European Union plays a vital role in establishing robust norms in this context. The European Union recognises that there should, in principle, be social tolerance toward the 2SLGBTQI+ community throughout Europe and that there should be no discrimination against them. Nevertheless, instances of verbal abuse and physical violence against the community occur frequently in different regions of Europe.⁸ The European Union has also found, through its surveys, that members of the community are often denied the full enjoyment of their fundamental rights. It has therefore addressed the social and legal injustice faced by the community in key legal documents such as the Treaty of Amsterdam, the Charter of Fundamental Rights (2000), and various anti-discrimination directives. In addition, the European Union provides financial assistance to members of the community through programmes such as the Citizens, Equality, Rights and Values Programme (CERV).⁹

⁷ GOV'T OF CAN., *Federal 2SLGBTQI+ Action Plan 2022* (2025), <https://www.canada.ca/en/women-gender-equality/free-to-be-me/federal-2slgbtqi-plus-action-plan/federal-2slgbtqi-plus-action-plan-2022.html>; A. Dickson et al., *LGBT+ Rights and Issues in the Middle East*, HOUSE OF COMMONS LIBR. (2025), <https://commonslibrary.parliament.uk/research-briefings/cbp-9457/>.

⁸ D. de Groot, *The Rights of LGBTI People in the European Union*, EUR. PARLIAMENTARY RSCH. SERV. (2022), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729426/EPRS_BRI\(2022\)729426_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729426/EPRS_BRI(2022)729426_EN.pdf).

⁹ S. McCutcheon, *LGBTIQ Rights in Europe*, EUR. YOUTH PORTAL (2024), https://youth.europa.eu/get-involved/your-rights-and-inclusion/lgbtiq-rights-europe_en.

Article 13, inserted into the EC Treaty by the Treaty of Amsterdam, empowered the European Union to adopt measures to combat discrimination based on sexual orientation. Among the most important of these are the Race Equality Directive and the Employment Equality Directive, which guarantee equal treatment and equal employment opportunity irrespective of sexual orientation.¹⁰ Moreover, Article 19 of the Universal Declaration of Human Rights protects the fundamental right to freedom of opinion and expression. Under this provision, members of the 2SLGBTQI+ community may freely express their opinions, disclose their identities, and share their experiences without fear or coercion.¹¹ A shortcoming of the European framework, however, is that the competence of the European Union is limited and does not extend to social protection, health care, education, or access to goods and services for the community; it addresses only the legal architecture necessary to ensure formal legal equality. The European Union also makes no provision for standardised norms governing the marital or family status of the community across Europe, which creates variations in national regulation on issues such as same-sex marriage, the right to adopt children, and access to assisted reproduction.¹²

By comparison, India's social and legal framework for the protection of the 2SLGBTQI+ community is still developing. Some of the milestones now applicable to the community arise from decisions such as the 2014 judgment of the National Legal Services Authority (NALSA), which recognised the community as a third gender and guaranteed their standing in Indian society alongside men and women.¹³ Section 377 of the Indian Penal Code, which criminalised consensual sexual relations between men, was read down by the Supreme Court in 2018 as an encroachment on the community's rights to equality and privacy.¹⁴ The Supreme Court further extended comprehensive welfare services to 2SLGBTQI+ people in 2021.¹⁵ UN Women, which works on gender equality and women's economic development, also addresses the needs of the community in India: it has collaborated with India's Ministry of Women and Child Development to develop a gender-inclusive communication guide aimed at promoting social inclusiveness.¹⁶ The Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Development Programme (UNDP) have also established offices in India to assist the

¹⁰ Treaty of Amsterdam art. 13, Oct. 2, 1997, 1997 O.J. (C 340) 1; de Groot, *supra* note 8.

¹¹ Universal Declaration of Human Rights, *supra* note 4, art. 19; de Groot, *supra* note 8.

¹² de Groot, *supra* note 8.

¹³ National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India).

¹⁴ Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

¹⁵ UN NEWS, *India's LGBTQIA+ Community Notches Legal Wins but Still Faces Societal Hurdles to Acceptance, Equal Rights* (May 18, 2024), <https://news.un.org/en/story/2024/05/1149956>.

¹⁶ UN WOMEN, *Advancing Gender Equality and Empowering Women Across India* (2025), <https://asiapacific.unwomen.org/en/countries/india>.

community through awareness and empowerment campaigns directed at better health services and social protection.¹⁷

V. COMPARISON OF THE SCENARIOS IN INDIA AND EUROPE

The Indian context indicates that most of the efforts made so far aim to increase the social inclusiveness and empowerment of the 2SLGBTQI+ community, with the United Nations working primarily on the rights of the community in India. Nonetheless, efforts to extend legal protection and to secure equal legal rights remain at a nascent stage. One illustration of this is that same-sex marriage is still not legalised in India. Compared with Europe, attempts to alter the legal framework in favour of the community in India are relatively few. The first recommendation, accordingly, is that international organisations and the Government of India should ensure that the community's equal right to legal protection is appropriately met.

In Europe, by contrast, there is a lack of standardised law ensuring uniform social status and legal protection for the community across the region. This contrasts with India, where the frameworks laid down by national and international bodies such as the Supreme Court and the United Nations apply throughout the country. The second recommendation, therefore, is that European states should take steps to ensure that the norms and provisions developed for the community are standardised and applied uniformly across the region, so as to avoid inconsistency.

An analysis of the comparative legal frameworks governing 2SLGBTQI+ rights in India and the European Union reveals both similarities and differences. The legal framework of India contains provisions that support the community: Articles 14 and 15 of the Indian Constitution guarantee the fundamental right to equality and prohibit discrimination on grounds including sex,¹⁸ which the Supreme Court has interpreted to extend protection irrespective of gender identity and sexual orientation. A similar picture emerges internationally: the protection of human rights is central to the European Convention on Human Rights, and, like the Indian Constitution, Article 14 of the ECHR establishes a guarantee of equality and prohibits discrimination, including on grounds of sexual orientation.¹⁹ Both the Indian Constitution and the ECHR also reflect the decriminalisation of homosexuality. In India, the Supreme Court decriminalised consensual same-sex relations in 2018,²⁰ and by 2018 all Council of Europe member states had decriminalised same-sex relations. The Indian Constitution also protects the

¹⁷ UN News, *supra* note 15.

¹⁸ India Const. arts. 14, 15.

¹⁹ European Convention on Human Rights, *supra* note 5, art. 14.

²⁰ Navtej Singh Johar, *supra* note 14.

right to privacy, which was recognised in the Puttaswamy judgment of 2017,²¹ while the right to private and family life is guaranteed by Article 8 of the ECHR.²²

Despite these similarities, there are notable differences. India does not yet legally recognise same-sex marriage, whereas many EU member states permit same-sex marriage or civil unions; the ECHR does not itself require states to permit same-sex marriage, but supports the legal recognition of same-sex relationships. India also lacks a general anti-discrimination statute protecting the community in areas such as education, housing, and employment, whereas many European states have robust anti-discrimination laws. The position on adoption likewise differs: same-sex couples have not been granted adoption rights in India, while many EU member states allow adoption and parenting rights for same-sex couples.

²¹ K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

²² European Convention on Human Rights, *supra* note 5, art. 8.