



Swami Vivekananda Advanced Journal for Research and Studies

Online Copy of Document Available on: www.svajrs.com

ISSN: 2584-105X

Pg. 1-8



Law and LGBTQ+ Rights in India: From Constitutional Recognition to Social Acceptance

Arvind Kumar

LL.M Student, College of Law, IIMT University Meerut, Uttar Pradesh

Dr. Abhishek Kumar Singh

Assistant Professor, College of Law, IIMT University Meerut, Uttar Pradesh

Dr. Shashi Shekhar Singh Chauhan

Assistant Professor, College of Law, IIMT University Meerut, Uttar Pradesh

Accepted: 22/08/2026

Published: 01/09/2026

DOI: <https://doi.org/10.5281/zenodo.22254501>

Abstract

The legal position of lesbian, gay, bisexual, transgender, queer and other gender and sexual minorities in India has undergone a remarkable transformation during the last two decades. From a legal regime that criminalised consensual same-sex intimacy under Section 377 of the Indian Penal Code, 1860, India has moved towards a constitutional framework grounded in equality, dignity, privacy, autonomy, identity and freedom of expression. Landmark decisions such as *Naz Foundation v Government of NCT of Delhi* (2009), *Suresh Kumar Koushal v Naz Foundation* (2013), *National Legal Services Authority v Union of India* (2014), *Justice KS Puttaswamy (Retd) v Union of India* (2017) and *Navtej Singh Johar v Union of India* (2018) have significantly reshaped Indian constitutional jurisprudence concerning sexual orientation and gender identity. The enactment of the Transgender Persons (Protection of Rights) Act, 2019 further established a statutory framework for the recognition and protection of transgender persons. However, constitutional recognition has not automatically produced social equality. The Supreme Court's decision in *Supriyo @ Supriya Chakraborty v Union of India* (2023), while affirming important constitutional protections for queer persons, declined to judicially recognise a fundamental right to marry or require gender-neutral interpretation of existing marriage legislation. The decision demonstrates the continuing gap between formal constitutional equality and substantive social acceptance. This paper critically examines the evolution of LGBTQ+ rights in India, the constitutional foundations of equality and dignity, landmark judicial developments, legislative measures, marriage and family rights, discrimination in employment and education, transgender rights, intersectionality, and the role of law in promoting social transformation. It argues that the next phase of LGBTQ+ rights discourse must move beyond decriminalisation and recognition towards comprehensive anti-discrimination legislation, family-law reform, effective implementation of transgender protections, institutional sensitisation and broader social acceptance.

Keywords: *LGBTQ+ Rights, Constitutional Recognition, Sexual Orientation, Gender Identity, Transgender Rights, Equality, Privacy, Dignity, Social Acceptance, Indian Judiciary.*

1. INTRODUCTION

The recognition of LGBTQ+ rights represents one of the most significant developments in contemporary Indian constitutional law. The transformation has not occurred through a single legislative reform but through a combination of judicial interpretation, constitutional litigation, statutory intervention, civil-society mobilisation and changing social attitudes. At the centre of this transformation lies an important constitutional question: whether equality, liberty, dignity and autonomy under the Constitution of India protect individuals irrespective of their sexual orientation and gender identity.

Historically, Indian law treated homosexuality primarily through the criminal-law framework. Section 377 of the Indian Penal Code, 1860 criminalised certain sexual acts described as being against the order of nature. Although the provision was not expressly limited to homosexual persons, its application had a particularly significant impact upon sexual minorities. The legal criminalisation of consensual same-sex intimacy contributed to stigma and reinforced the social perception that LGBTQ+ identities were immoral, unnatural or criminal.

The constitutional position began to change significantly with *Naz Foundation v Government of NCT of Delhi* in 2009, when the Delhi High Court held that the application of Section 377 to consensual sexual relations between adults violated constitutional guarantees. The judgment represented an important shift from morality-based criminalisation to a rights-based understanding of sexual autonomy.

The Supreme Court's reversal in *Suresh Kumar Koushal v Naz Foundation* in 2013 temporarily interrupted this development. However, the subsequent constitutional jurisprudence concerning transgender identity, privacy, dignity and sexual orientation eventually transformed the legal landscape. In *National Legal Services Authority v Union of India* (NALSA), the Supreme Court recognised transgender persons as a constitutionally protected category and affirmed the right to self-identify one's gender. The Court's privacy judgment in *Justice KS Puttaswamy* recognised privacy as a fundamental right closely connected with autonomy, identity and dignity.

The decisive development occurred in *Navtej Singh Johar v Union of India* (2018), where the Supreme Court invalidated the application of Section 377 to consensual sexual relations between adults. The judgment established that constitutional morality,

rather than prevailing social morality, must guide the protection of fundamental rights. It also recognised that sexual orientation forms an essential attribute of identity and that discrimination based on sexual orientation is constitutionally impermissible.

Despite these developments, legal recognition remains incomplete. LGBTQ+ persons continue to encounter difficulties relating to family acceptance, employment, housing, education, healthcare, adoption, inheritance, social security and access to justice. The Supreme Court's 2023 decision in *Supriyo* Case demonstrates the complexity of this transition. While the Court affirmed that queer persons possess constitutional rights to identity, sexual orientation, choice of partner, cohabitation and protection from violence and coercion, it declined to create a judicially enforceable right to same-sex marriage.

The central argument of this paper is that constitutional recognition is a necessary but insufficient condition for genuine equality. The ultimate objective must be social acceptance supported by effective law, inclusive institutions and protection against discrimination.

2. CONCEPTUALISING LGBTQ+ RIGHTS

The expression LGBTQ+ represents a broad range of sexual orientations, gender identities and gender expressions. Lesbian generally refers to women who experience romantic or sexual attraction towards women; gay commonly refers to persons attracted to persons of the same gender; bisexual refers to attraction towards more than one gender; transgender refers to persons whose gender identity differs from the sex assigned to them at birth; and queer is frequently used as an inclusive term for persons whose identities fall outside conventional heterosexual and cisgender categories.

It is important to distinguish sexual orientation from gender identity. Sexual orientation concerns a person's emotional, romantic or sexual attraction, whereas gender identity concerns a person's internal understanding of their gender. Consequently, LGBTQ+ law cannot be reduced exclusively to homosexuality. Transgender rights involve questions of identity, documentation, healthcare, employment, education, housing and dignity that may differ from questions concerning sexual orientation.

Indian constitutional jurisprudence increasingly recognises these distinctions. In NALSA, the Supreme Court recognised transgender persons as a distinct

constitutional category and affirmed the right to self-perceived gender identity. The Government's current statutory framework similarly recognises transgender persons and provides protections concerning discrimination, education, employment, residence, healthcare and welfare.

The concept of LGBTQ+ rights must also be understood within the broader framework of human rights. Equality does not merely mean identical treatment. Where historical discrimination produces structural disadvantage, substantive equality may require affirmative institutional measures.

3. HISTORICAL DEVELOPMENT OF LGBTQ+ RIGHTS IN INDIA

3.1 Colonial Criminalisation and Section 377

The modern constitutional development of LGBTQ+ rights in India is deeply rooted in the colonial criminal justice framework. Section 377 of the Indian Penal Code, 1860 criminalised "carnal intercourse against the order of nature." Although the provision was linguistically gender-neutral and not limited exclusively to same-sex relations, in practice it was disproportionately used to stigmatise LGBTQ+ individuals, enabling police harassment, social discrimination, and systemic marginalisation. Its continued existence after independence reflected a persistent tension between colonial moral frameworks and the constitutional values of equality, dignity, liberty, and privacy.

A significant milestone in this constitutional struggle came in *Naz Foundation v. Government of NCT of Delhi* (2009). The Delhi High Court held that criminalising consensual sexual relations between adults in private violated Articles 14, 15, and 21 of the Constitution. The Court recognised dignity, privacy, and personal autonomy as integral components of fundamental rights.

3.2 Suresh Kumar Koushal Case

In 2013, in *Suresh Kumar Koushal v. Naz Foundation*, the Supreme Court overturned the Delhi High Court's decision and upheld Section 377. The Court emphasised judicial restraint. The judgment faced widespread criticism, particularly for its reference to the relatively small size of the LGBTQ+ community, as fundamental rights cannot depend on numerical strength or majority acceptance.

Subsequent constitutional jurisprudence significantly altered this position. In particular, *NALSA v. Union of India* (2014) recognised the identity and

equality of transgender persons, while *Justice K.S. Puttaswamy v. Union of India* (2017) affirmed privacy and decisional autonomy as fundamental rights.

3.3 Navtej Singh Johar and the BNS, 2023

Building on these evolving constitutional principles, the Supreme Court in *Navtej Singh Johar v. Union of India* (2018) decriminalised consensual same-sex relations between adults by reading down Section 377 to that extent. The Court grounded LGBTQ+ rights in dignity, equality, privacy, autonomy, and constitutional morality.

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the IPC with effect from 1 July 2024. The BNS does not contain a provision equivalent to Section 377 of the IPC. However, its provisions on sexual offences are primarily focused on protecting women and children. Therefore, in the context of LGBTQ+ persons, the BNS must be assessed not merely in terms of decriminalisation but in light of the broader constitutional principles of equality, dignity, liberty, privacy, and non-discrimination under Articles 14, 15, 19, and 21. Thus, the evolution of LGBTQ+ rights in India reflects a significant transition from colonial criminalisation to a constitutional framework grounded in dignity and personal autonomy.

4. CONSTITUTIONAL FOUNDATIONS OF LGBTQ+ RIGHTS

Although the Indian Constitution does not expressly mention "LGBTQ+" or "sexual orientation," its guarantees of equality, liberty, dignity and privacy provide a strong constitutional foundation for LGBTQ+ rights.

4.1 Article 14: Equality Before Law

Article 14 guarantees equality before law and equal protection of laws. Its interpretation has evolved beyond formal classification to address arbitrariness, exclusion and discriminatory treatment. For LGBTQ+ persons, it prevents laws and administrative practices based on stereotypes concerning sexuality or gender. After *Navtej Singh Johar*, sexual orientation cannot constitute a legitimate basis for criminalising consensual intimacy between adults.

4.2 Article 15: Non-Discrimination

Article 15 prohibits discrimination on specified grounds, including sex. Judicial interpretation has broadened the understanding of sex to encompass gender identity and related forms of discrimination. *NALSA v. Union of India* and *Navtej Singh Johar*

demonstrate the constitutional commitment to substantive equality and dignity.

4.3 Article 19: Freedom of Expression

Article 19 protects freedom of speech and expression, which may include the expression of sexual and gender identity through appearance, relationships, artistic activities, association and advocacy. Restrictions targeting LGBTQ+ expression must therefore satisfy constitutional standards of reasonableness.

4.4 Article 21: Life, Liberty and Dignity

Article 21 has emerged as a central source of LGBTQ+ rights. In *Justice K.S. Puttaswamy v. Union of India*, the Supreme Court recognised privacy as encompassing dignity, bodily integrity, personal identity and decisional autonomy. Sexual orientation and intimate choices fall within this protected sphere.

4.5 NALSA and Gender Identity

In *NALSA v. Union of India (2014)*, the Supreme Court recognised transgender persons and affirmed the right to self-determined gender identity. The judgment connected gender identity with dignity, autonomy, equality and constitutional liberty, moving beyond a rigid male-female legal framework.

4.6 Puttaswamy and Privacy

The 2017 *Puttaswamy* judgment strengthened LGBTQ+ constitutional protection by recognising privacy as a fundamental right. It established that intimate choices and identity deserve protection irrespective of social or majoritarian approval.

4.7 Navtej Singh Johar and Constitutional Morality

In *Navtej Singh Johar v. Union of India (2018)*, the Supreme Court unanimously decriminalised consensual same-sex relations between adults by reading down Section 377. The judgment replaced majoritarian morality with constitutional morality, affirming dignity, autonomy, equality and individual freedom as foundational constitutional values. It marked a decisive shift from criminalisation and social stigma towards substantive constitutional protection of LGBTQ+ persons.

5. CONSTITUTIONAL MORALITY AND LGBTQ+ RIGHTS

The development of LGBTQ+ rights in India reflects a gradual transition from criminalisation to constitutional recognition and, ultimately, substantive equality. A central principle in this transformation is

constitutional morality, which requires the State and public institutions to uphold equality, liberty, dignity and fraternity even when prevailing social attitudes remain discriminatory. In *Navtej Singh Johar*, the Supreme Court recognised that fundamental rights cannot depend upon majority approval. Criminalisation itself may stigmatise individuals; therefore, removing criminal sanctions under Section 377 represented not merely legal reform but recognition of LGBTQ+ persons as equal constitutional citizens. The Court also affirmed that sexual orientation is an essential attribute of individual identity.

However, decriminalisation is only the first step. LGBTQ+ persons may continue to experience discrimination in employment, education, housing, healthcare and family life, besides violence, social exclusion and difficulties relating to inheritance and partnership rights. Consequently, the constitutional agenda must move from formal decriminalisation towards substantive equality.

5.1 Transgender Persons and Statutory Protection

The Transgender Persons (Protection of Rights) Act, 2019, effective from 10 January 2020, constitutes India's principal statutory framework for transgender rights. It addresses discrimination, gender identity, employment, education, healthcare, residence, welfare and grievance redressal. It also provides for a National Council for Transgender Persons. The framework seeks to recognise self-perceived gender identity and promote welfare measures that are sensitive and non-stigmatising.

Nevertheless, effective implementation remains a challenge. Concerns have been raised regarding identity-certification procedures, enforcement, institutional capacity and the adequacy of affirmative measures. Thus, legislation must be supported by trained officials, accessible grievance mechanisms, healthcare facilities, education and employment opportunities.

5.2 Right to Choose a Partner

The constitutional protection of personal liberty includes the freedom to choose one's partner and live according to one's identity. For LGBTQ+ persons, this protection is particularly significant because family or community pressure may interfere with intimate relationships. The *Supriyo* judgment reaffirmed that queer persons possess rights relating to identity, partner choice, cohabitation and intimacy and are entitled to protection from threats and coercion.

5.3 Same-Sex Marriage and Supriyo

In *Supriyo v. Union of India (2023)*, the Supreme Court declined to judicially recognise a general right to same-sex marriage or substantially rewrite existing marriage statutes. The Court considered such institutional reform primarily a matter for the legislature. Nevertheless, it preserved important protections for queer persons, including the right to identity, intimacy, cohabitation and protection from violence and coercion.

The absence of marriage recognition, however, may affect inheritance, taxation, insurance, medical decision-making, adoption, maintenance, succession and social-security benefits. The distinction between decriminalisation, constitutional recognition and institutional recognition is therefore crucial.

5.4 Family, Education, Employment and Healthcare

LGBTQ+ equality extends beyond intimate relationships to family life, parenthood, education, employment and healthcare. Family law requires greater clarity regarding adoption, guardianship, succession and parental rights. Educational institutions should adopt anti-discrimination policies, confidential grievance mechanisms, sensitisation programmes and inclusive accommodation.

Similarly, workplace equality requires protection against discriminatory recruitment, promotion, termination, harassment and denial of benefits. Healthcare must respect informed consent, confidentiality, bodily autonomy and the specific needs of transgender persons.

5.5 Contemporary Challenges and Way Forward

Despite judicial and legislative progress, significant gaps remain, including the absence of comprehensive anti-discrimination legislation, limited family-law recognition, implementation difficulties under the 2019 Act, inadequate healthcare, police sensitisation and educational inclusion.

India therefore requires a rights-based approach based on equality, autonomy, dignity and participation. Comprehensive anti-discrimination legislation, stronger transgender welfare measures, inclusive family-law reforms, institutional sensitisation, accessible healthcare, privacy protection and effective legal aid are essential.

5.6 Family, Adoption and Parenthood

Family law represents one of the most significant areas in which constitutional recognition of LGBTQ+ rights has not yet translated into complete substantive equality. Marriage and parenthood are closely interconnected with legal recognition, and the absence of recognition of same-sex marriages raises important questions concerning joint adoption, guardianship, succession, maintenance and parental status.

The Supriyo judgment considered issues relating to adoption and other family consequences but did not create a judicially enforceable framework conferring all marriage-related rights upon queer couples. Nevertheless, the broader constitutional principles of dignity, autonomy and family life remain applicable to LGBTQ+ persons. Any future legislative framework should ensure that decisions concerning parenthood are determined primarily by the best interests and welfare of the child, rather than stereotypes relating to the sexual orientation or gender identity of prospective parents.

The legal framework should consequently focus on the stability of family relationships, the welfare and protection of children, protection from abuse, financial responsibility, emotional support and equality of parental rights. Sexual orientation, by itself, should not be treated as a determining factor in assessing whether an individual is capable of providing a safe, stable and loving family environment.

5.7 LGBTQ+ Rights in Education

Educational institutions play a crucial role in promoting equality and facilitating broader social transformation. LGBTQ+ students may face bullying, exclusion, verbal abuse, non-consensual disclosure of their identity, harassment, discrimination, psychological distress and pressure to conform to conventional gender stereotypes. Transgender students may additionally encounter difficulties relating to official documentation, uniforms, washrooms, hostel accommodation and participation in institutional activities.

The Transgender Persons (Protection of Rights) Act, 2019 recognises the importance of inclusive education. However, statutory protection alone is insufficient unless supported by effective institutional mechanisms. Schools and universities should therefore establish comprehensive anti-discrimination policies, gender-sensitive and accessible grievance procedures, sensitisation programmes, confidential counselling services, inclusive hostel and restroom arrangements,

effective mechanisms against bullying, and policies respecting students' chosen names and pronouns. Teachers, administrators and other institutional personnel should also receive appropriate sensitisation and training.

Education can thus become an important instrument of social transformation because it has the capacity to challenge prejudice and stereotypes at an early stage, before discriminatory attitudes become deeply embedded within society.

5.8 Employment and Workplace Equality

Employment equality constitutes another important dimension of LGBTQ+ rights. LGBTQ+ persons may experience discrimination during recruitment, promotion, remuneration, workplace interactions, access to employment benefits, termination, leave, insurance and other aspects of professional life. Such discrimination can adversely affect both economic security and individual dignity.

The Transgender Persons (Protection of Rights) Act, 2019 specifically addresses non-discrimination in employment and places obligations upon establishments. However, the existing legal framework does not provide a comprehensive central anti-discrimination statute covering sexual orientation and gender identity across both public and private spheres.

A comprehensive equality law could prohibit discrimination on these grounds in areas such as employment, education, housing, healthcare, public accommodation, financial services, insurance and access to government services. Such legislation would help transform constitutional equality from a principle primarily enforced through constitutional litigation into an everyday statutory entitlement available to individuals in their ordinary social, economic and institutional interactions.

5.9 Healthcare and LGBTQ+ Rights

Healthcare is closely connected with dignity, autonomy and bodily integrity. Transgender persons may encounter significant barriers in accessing gender-affirming healthcare, mental-health support, hormone therapy, surgical procedures and insurance coverage. They may also experience discrimination or insensitive treatment from healthcare providers.

The Transgender Persons (Protection of Rights) Act, 2019 contains provisions concerning healthcare facilities and requires measures addressing the healthcare needs of transgender persons. However, effective implementation requires healthcare services

to be accessible, affordable, confidential and sensitive to the particular needs of LGBTQ+ persons.

Healthcare decisions should be founded upon informed consent, medical ethics and professional standards, rather than social stereotypes. The Supreme Court's observations in *Supriyo* concerning protection against involuntary medical or surgical treatment reinforce the constitutional importance of bodily autonomy. Healthcare professionals should therefore receive specialised training concerning LGBTQ+ healthcare, confidentiality, respectful communication and gender-affirming treatment.

5.10 Violence, Police Protection and Access to Justice

Legal recognition has limited practical significance if LGBTQ+ persons are unable to access the criminal-justice system safely and effectively. Queer persons may hesitate to report offences because of fear of disclosure, family pressure, police insensitivity, ridicule, secondary victimisation, lack of institutional confidence and fear of retaliation. Transgender persons may face additional vulnerabilities, including physical violence, homelessness, exploitation and institutional discrimination.

The State has an affirmative obligation to protect individuals from violence and coercion. In *Supriyo*, the Supreme Court reiterated the need to protect queer couples who choose to cohabit from threats, violence and coercion. Effective implementation therefore requires sensitisation and training of police personnel, prosecutors, judicial officers and other authorities. The Ministry of Home Affairs has also issued advisories concerning implementation of the transgender-rights framework and protective mechanisms.

An effective justice system must consequently recognise LGBTQ+ persons as rights-bearing constitutional citizens, rather than treating them as objects of suspicion or social disapproval. Protection from violence must be accompanied by accessible complaint mechanisms, institutional sensitivity and effective remedies.

5.11 Social Acceptance and the Limits of Judicial Recognition

One of the most difficult questions concerning LGBTQ+ rights is whether legal recognition can itself produce social acceptance. Law can prohibit discrimination, decriminalise conduct, recognise identity, provide remedies, protect relationships, establish welfare measures and punish violence.

However, legal reform alone cannot immediately transform personal attitudes and social beliefs.

Social acceptance develops through the interaction of law, education, media, families, workplaces and civil society. Legal developments may influence public attitudes, but social change can also precede legal reform. The judgment in *Navtej Singh Johar* demonstrates how constitutional litigation can challenge entrenched stereotypes, while the continuing difficulties experienced by LGBTQ+ persons demonstrate that judicial recognition alone cannot eliminate prejudice.

The principle of constitutional morality is therefore particularly significant. It does not require every individual to personally approve of every identity, relationship or way of life. Rather, it requires public institutions to respect the constitutional rights, dignity and equality of every person. In this sense, social acceptance in a constitutional democracy should fundamentally mean equal citizenship despite differences in sexual orientation or gender identity. The objective is not to impose uniform personal beliefs but to ensure that personal disagreement does not result in discrimination, violence, exclusion or denial of equal rights.

6. CRITICAL GAPS IN THE EXISTING LEGAL FRAMEWORK

Despite substantial constitutional and judicial progress, significant gaps continue to exist within the existing legal framework. One major gap is the absence of comprehensive anti-discrimination legislation covering sexual orientation and gender identity across public and private spheres. The absence of statutory recognition of same-sex marriage also creates difficulties concerning family, economic and related rights.

Further uncertainty exists regarding joint adoption, guardianship and parental recognition for queer families. Unmarried queer partners may also face difficulties concerning inheritance and succession because certain legal rights are automatically associated with formally recognised marital relationships. Healthcare remains another important concern, particularly with respect to accessible and affordable LGBTQ+-sensitive and gender-affirming services.

The effective implementation of the Transgender Persons (Protection of Rights) Act, 2019 also remains essential. The existence of legislation does not automatically ensure practical accessibility or effective

enforcement. Similarly, police personnel require regular sensitisation regarding LGBTQ+ rights and constitutional obligations, while educational institutions need effective mechanisms to prevent bullying, harassment and discrimination.

7. CONCLUSION

The evolution of LGBTQ+ rights in India represents a significant transformation in constitutional law, reflecting a gradual movement from criminalisation and social stigma towards equality, dignity, autonomy and individual freedom. Landmark decisions such as *Naz Foundation*, *NALSA*, *Puttaswamy* and *Navtej Singh Johar* have fundamentally altered the constitutional understanding of sexual orientation and gender identity. These judgments have established that LGBTQ+ persons are equal constitutional citizens whose dignity, privacy, identity and personal choices deserve legal protection. The enactment of the Transgender Persons (Protection of Rights) Act, 2019 further demonstrates the transition from judicial recognition towards statutory protection.

However, legal recognition alone cannot guarantee substantive equality. The continuing challenges faced by LGBTQ+ persons in family life, marriage, adoption, inheritance, education, employment, healthcare and access to justice demonstrate the gap between constitutional principles and lived realities. The *Supriyo* judgment further illustrates this complexity by preserving important constitutional protections while leaving questions of marriage recognition and broader institutional reform to the legislative domain.

The future of LGBTQ+ rights in India must therefore move beyond decriminalisation towards a comprehensive rights-based framework. This requires effective anti-discrimination legislation, inclusive family-law reforms, stronger implementation of transgender protections, accessible and sensitive healthcare, institutional sensitisation, educational inclusion, workplace equality and effective legal aid. Protection from violence and unnecessary disclosure of personal identity must also form an essential part of this framework.

Ultimately, the transformation of LGBTQ+ rights cannot be achieved through courts or legislation alone. Law must operate alongside education, social awareness, institutional reform, media representation and civil-society participation. The principle of constitutional morality requires public institutions to

protect individual dignity and equality even where social attitudes remain discriminatory. The true measure of constitutional progress, therefore, lies not merely in recognising LGBTQ+ persons as rights-holders, but in ensuring their meaningful participation in social, economic and political life. India's constitutional journey must consequently advance from recognition to substantive equality and, ultimately, towards a society in which diversity of sexual orientation and gender identity is consistent with equal citizenship, dignity and social acceptance.

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