



INDIA'S MARRIAGE EQUALITY LOSS AND ITS IMPACT ON THE BUSINESS COMMUNITY:

Next Steps for Continued LGBTQI+ Progress

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Introduction

Following extensive hearings from petitioners, on October 17, 2023, in a 3-2 verdict, India's Supreme Court ruled against marriage equality, affirming that while citizens have the right to be in lesbian, gay, bisexual, transgender, Queer, and intersex (LGBTQI+) relationships without facing discrimination, India's Parliament should be tasked with legislating the matter.¹

Largely inspired by recent civil rights expansions for India's transgender and nonbinary community and the 2018 overturning of Section 377², marriage equality proponents had hoped to follow a decade-long trend toward greater LGBTQI+ advancement. This progress has been part of a global trend toward greater societal inclusion and legal advancement for the LGBTQI+ community.

Despite deep disappointment and material impact on the LGBTQI+ community in India and beyond, the High Court's verdict underscores the need for businesses to continue to expand their LGBTQI+ workplace inclusion efforts. These efforts start by assessing the current state of LGBTQI+ inclusion in your company, implementing and upholding LGBTQI+ inclusive policies and practices, and establishing short and long-term DEIB goals for your organization.

Aimed at businesses seeking an accessible, concise understanding of the framework of LGBTQI+ equality in India and opportunities for advancing LGBTQI+ diversity, equity, inclusion, and belonging (DEIB) efforts, this resource:

Contextualizes India's Supreme Court's marriage ruling within the broader legal landscape of LGBTQI+ equality in India.

Features examples of LGBTQI+ inclusion practices among leading employers.

Gives guidance on how companies can bolster innovation and their competitive edge by advancing LGBTQI+ inclusion and belonging in the wake of the 2023 Supreme Court decision.

Growing Support for DEIB in the APAC Region

Despite setbacks, the increasing legal and social inclusion of LGBTQI+ individuals in India aligns with a broader regional and global trend of increased public knowledge, LGBTQI+ representation, and in-group self-identification. A recent Ipsos global survey indicates that 17% of India's population identifies as homosexual* (including gay and lesbian), 9% as bisexual, and 3% as "other" LGBTQI+ identity. In addition, nearly 30% of LGBTQI+ Indians are open about their sexual orientation or gender identity.³

In response to this growing awareness and visibility and the strong business case in support of creating cultures of belonging through DEIB initiatives, companies across India and the Asia Pacific (APAC) region are accelerating efforts to create workplaces where LGBTQI+ employees can thrive. This includes offering inclusive policies and equal benefits to LGBTQI+ employees and their families, as well as cultivating inclusive workplace cultures. And, as noted in a recent Forbes article, in many instances, employers are providing greater equity at work than national governments afford its LGBTQI+ citizens.⁴

While there are inherent challenges faced by organizations determined to foster more inclusive workplaces amidst regressive legislative rulings, there is also an opportunity for companies to outperform and gain market leadership through advocating and enacting best industry practices.

According to research conducted by the Great Place To Work® Institute, implementing diversity and inclusion best practices drives innovation, increases productivity, and generates on average, 5.4 times higher employee retention.⁵ Embracing diversity and inclusion is essential for business success, as it leads to greater creativity, overall business growth, plus the development of a broad range of skill sets. Inclusion policies help attract, retain, and motivate LGBTQI+ employees, creating a lasting impact on the company and the diverse communities they serve.

“The live streaming of the case hearings made marriage equality a dinner table conversation and exposed more people to Queer couples and their lives. That cultural and social movement has to continue. It’s easy to oppose these issues when the debate is strictly intellectual but much harder to do when human faces and stories are involved. More stories from the community need to come out in order to continue building pressure on the Supreme Court to be on the right side of history.”



— Utkarsh Saxena (He/Him), Petitioner & Lawyer for the Indian Supreme Court Marriage Equality Case (2023)

*“Homosexual” is generally considered outdated and even offensive. The modern and preferred practice instead references specific identity and/or orientation, “lesbian” or “gay.”

Historical Context

The stigmatization of LGBTQI+ people—socially and under the law—in the APAC region is often attributed to the legacy of Western European colonial rule.

This historical legacy led to the enshrinement of sodomy statutes in many Asian countries, such as in Malaysia and Indonesia, where they remain in effect. Prior to British rule and the imposition of colonial-era law, India had numerous texts inclusive of same-gendered love and relationships, a largely accepted component of India’s diverse cultural legacy.⁶

Over the past decade, advocacy efforts and renewed social visibility for the LGBTQI+ community have led to significant progress in the legal landscape, resulting in a more hopeful climate for LGBTQI+ Indians.

India’s LGBTQI+ Legal Landscape

2014

National Legal Services Authority (NALSA) vs. Union of India

2017

India’s Supreme Court Upholds Right to Privacy

2018

Supreme Court Repeals Section 377

2019

The Transgender Persons (Protection of Rights) Act; Codified

2022

Supreme Court Expands the Definition of Family

2023

India’s Supreme Court Denies Marriage Equality

Historical Context

2014

The landmark **2014 National Legal Services Authority (NALSA) vs. Union of India Case**⁷ established and affirmed the rights of transgender individuals in the following areas:

Recognition Of Gender Identity:

The judgment recognized the right of transgender individuals to self-identify their gender, irrespective of medical or surgical interventions.

Recognition Of Third Gender:

The ruling declared that hijras* and eunuchs could legally identify as “third gender.” The Court also decreed that gender identity does not refer to biological characteristics but instead refers to it as “an innate perception of one’s gender.”⁸

Safeguarded The Rights Of The Transgender Community:

The Court directed the government to ensure equal rights and protections for transgender individuals, including access to education, employment, healthcare, and social welfare schemes.

2017

India’s Unanimous 2017 Supreme Court Privacy Ruling declared that the right to privacy is “intrinsic to life and personal liberty” and is inherently protected and guaranteed under the country’s constitution.

The landmark ruling affirmed the right to personal autonomy and protection from government intrusion into one’s private life.⁹

2018

In 2018, India’s Supreme Court Unanimously Repealed Section 377 Of India’s Penal Code.

Introduced in 1861 and overturned nearly two centuries later, the repeal of Section 377 effectively decriminalized consensual same-sex relations.¹⁰

*In the Indian subcontinent, hijra also known as eunuchs, are intersex people, or transgender people who live in communities that follow a kinship system known as the guru-chela system.

Historical Context

2019

Codified in 2019, India's Transgender Persons (Protection of Rights) Act marks a significant legislative development in India concerning transgender rights and acts as an extension to India's 2014 NALSA case ruling.

Legal Recognition:

The Act defines transgender persons as those whose gender does not match the one assigned at birth, including individuals who identify as male, female, or a third gender, and upholds the constitutional rights of nonbinary individuals, acknowledging their gender identity.

Anti-discrimination Measures:

The Act prohibits discrimination against transgender individuals in education, employment, and healthcare. The Act insists that quotas be met for transgender people in both educational institutions and public sector jobs.

Attention to Medical Needs:

The government was instructed to review its medical curriculum and to provide comprehensive medical insurance schemes for the transgender community. The Act also instructs the government to provide health facilities to transgender individuals, including separate HIV surveillance centers and sex reassignment surgeries.¹¹

2022

In 2022, India's Supreme Court expanded the definition of family.

The new definition insists that legal family benefits should be expanded to encompass blended families, same-sex couples, and other households deemed "atypical."¹²

2023

Headed by Chief Justice of India (CJI) DY Chandrachud on October 17, 2023, India's Supreme Court ruled against marriage equality.

The Supreme Court deferred this matter to the Parliament, emphasizing the need for appropriate legislation.

In November 2023, several advocates filed a petition challenging the Supreme Court's denial of legal recognition for marriage equality.¹³

India's Road to LGBTQI+ Equality

- ✓ **2018:** Decriminalized Same-Sex Relations
- ✓ **2019:** Protection Against Employment For Transgender People
- ✓ **2020:** Constitutional Protection Against Discrimination: GI, SC (Gender Identity, Sex Characteristics)



- **Hate Crime Law**
- **Marriage Equality**
- **Civil Unions**
- **Same-Sex Adoption**

While the decision against marriage equality in India was disappointing, some rays of hope within the ruling, as noted in a recent New York Times article include¹⁴:

- The expanded definition of discrimination to certain fundamental protections for LGBTQI+ citizens, including the right to access goods and services without prejudice;
- Approval of the establishment of an expert committee that is focused on protecting the rights of India's LGBTQI+ community; and
- The legalization of marriage between transgender couples, with the caveat that one partner identifies as male and the other as female.

“We were quite shattered by the verdict. We had a strong case and believed this was the right time for the Supreme Court to take the next step toward marriage equality after decriminalizing homosexuality in 2018. Typically, the Court has been ahead of social change on Queer rights, but with this missed opportunity and the massive social and cultural change underway in society, the Court will soon trail society on Queer rights.”



— Utkarsh Saxena (He/Him), Petitioner & Lawyer
for the Indian Supreme Court Marriage Equality Case (2023)

Deconstructing the Verdict: How the Defeat Directly Impacts India's Transgender Community

One year after marriage equality was first proposed and five years since the High Court overturned Section 377, India's 2023 Supreme Court ruling declared that there is no inherent right to marriage and that unions between same-sex individuals cannot be incorporated into the Special Marriage Act of 1954.

In a bittersweet victory for India's transgender population, each judge concurred that transgender individuals engaged in heterosexual relationships maintain the right to marry within the current legal framework. However, the Bench asserted that non-heterosexual couples lack the right to enter into civil unions and are not permitted to adopt. The court cited that while the discriminatory consequences of the absence of legal rights for Queer individuals are acknowledged, it was unable to create a separate legal framework with specific rights and responsibilities, as this was a legislative function of the government.

Marriage equality is a cornerstone for the unequivocal legal recognition of relationships involving trans and nonbinary individuals. This institution grants access to various legal rights and protections,

encompassing inheritance privileges, entitlement to healthcare benefits, and formal recognition in essential legal documentation. Beyond social significance, the advancement of marriage equality extends vital healthcare benefits to trans and nonbinary individuals. This inclusion is of paramount importance in ensuring access to gender-affirming healthcare, mental health services, and other indispensable medical necessities for married couples like healthcare insurance coverage for the dependent spouse.

Formal recognition of marriage equality fosters a profound sense of validation and societal acceptance, which constitutes a cornerstone for improved mental health outcomes. Marriage equality also carries consequential economic benefits for trans and nonbinary individuals. These advantages span tax incentives, access to shared financial resources, and eligibility for spousal employment benefits, fostering a more equitable economic landscape. As societies globally embrace and validate diverse relationships, this transformation challenges prevailing stereotypes, social stigma, and discrimination faced by trans and nonbinary individuals.

A Global Perspective: How Big Business Became One of the LGBTQI+ Community's Greatest Allies

The historic overturning of Section 377 granted millions of LGBTQI+ people across India the freedom to live authentically. This landmark ruling reassured corporations throughout the region that being vocal allies of the community's newly instated civil rights was both an act of solidarity and an affirmation of core company values. Creating LGBTQI+ Employee Resource Groups (ERGs), sharing pronouns, offering gender-neutral washrooms, gender affirmation surgery, and same-gender coverage programs are just some of the workplace inclusion measures taken by IBM, Amazon India, Intuit, and other companies in the wake of the 2018 ruling.¹⁶

Even before the 2018 repeal of section 337, leading local and international corporations had begun advocating for the welfare of this increasingly visible community. IBM sponsored LGBTQI+ leadership forums in both Bangalore, India and elsewhere across APAC including, Hanoi, Vietnam, in 2016.¹⁷ That same year, Accenture became the first company to introduce medical coverage

for gender-affirming surgeries. Godrej Group also changed its policies to offer gender transition support and gender-neutral language, including "other" as an option for gender and replacing "spouse" with the word "partner."¹⁸

To combat the challenge of housing discrimination, in 2023, the Indian multinational corporation Godrej pioneered a new policy to support housing for its transgender employees. Through this program, the MNC actively recruited homeowners willing to sign No Objection Certificates (NOCs) for their homes to be rented to Godrej's trans employees. That same year, to help the LGBTQI+ community realize their homeownership dreams, Godrej began offering home loans to same-sex partners.¹⁹ Prior to Section 377's repeal, NatWest, formerly known as The Royal Bank of Scotland, extended medical hospitalization benefits to same-sex partners and announced that the organization would move to offer benefits such as relocation and adoption support to LGBTQI+ workers.²⁰

“CJI Chandrachud held that a transgender person in a heterosexual relationship is entitled to marry after a “harmonious interpretation” of existing marriage laws and the Transgender Persons Act, 2019. He reasoned that marriage laws in India permit marriages arising out of heterosexual relationships.

While this ruling is a major victory that will benefit many families and transgender people (in heterosexual relationships), we presume there are going to be many challenges in the implementation of this judgment on the ground. How personal law institutions like the church, Islamic institutions, and the various Hindu institutes welcome and perform these marriages—will be a struggle.”



— Zainab Patel (She/Her), Petitioner for the Indian Supreme Court Marriage Equality Case (2023) and the Indian Supreme Court NALSA Case on Transgender Rights and for the Indian Supreme Court Marriage Equality Case (2014)

Additional Business Milestones: Equality Through Internal Policy and Public Engagement

IMPACTFUL POLICY

- **Merck India** launched a paid mentorship program designed to empower LGBTQI+ entrepreneurs through hands-on experience and exclusive guidance from industry experts in the areas of digital marketing, e-commerce, finance, IT, and more. (2023)
- **Accenture** launched an inclusive internship program specifically designed to help establish a skilled and employable transgender talent pool. (2022)
- **Godrej Properties Limited** established an internship program for emerging LGBTQI+ professionals to carve out their distinctive path in real estate.
- **Godrej Capital** launched BeYou, an internship program for members of the LGBTQI+ community. (2023)
- **Marsh McLennan** established “Culture Ambassadors”—a group of 40 senior leaders trained to identify and address claims of discriminatory behaviors and harassment. (2023)
- Engineers at **General Electric’s JFWT Centre** (Bengaluru) developed the JD Decoder, an in-house tool that helps hiring managers write more inclusive job descriptions. (2023)

MASS APPEAL

- **Times of India** and **FCB India** partnered with **Pride Circle** to launch #FixTheGlitch, a campaign designed to throw light on the discrimination faced by LGBTQI+ talent. This was part of the “Out & Proud @Work” program to make workplaces more LGBTQI+ inclusive. (2023)
- **Bombay Times**, in partnership with **Pride Circle** and **FCB India**, launched the “Out & Proud @Work” campaign to make workplaces more LGBTQI+ inclusive. (2023)
- **Axis Bank’s** “ComeAsYouAre” implemented a collection of policies and practices designed to support LGBTQI+ employees and customers. (2021)
- **Uber** celebrated Section 377’s overruling by using a rainbow to track every route. (2018)

A Look Ahead: What Companies Should Know About Gen Z's DEIB Perspective

Across the APAC region, societal views toward LGBTQI+ inclusion have become increasingly positive. When Indian respondents were asked in a recent LGBTQI+ Ipsos Global Survey if their views on same-sex marriage had evolved over the past five years, 56% said they had. In that same survey, a plurality of 44% agreed same-sex couples should be allowed to legally marry, with 66% agreeing that same-sex couples should have the same rights to adopt as heterosexual couples.²¹

Gen Z and millennials are increasingly vocal in their support of the LGBTQI+ community and are more likely to be out than older generations. Companies should pay attention to these evolving

demographic trends. One in five (20%) of the world's Gen Zers live in India. And by 2030, 50% of India's population is projected to be Gen Z or millennial. Studies show that when selecting future employers, these younger age cohorts overwhelmingly embrace companies that align with their personal values. In addition to these demographic stats, according to a [2022 joint study by Nasscom & Indeed](#), India's Gen Z and millennials rank company culture, financial gain, brand value, as well as learning and growth opportunities among their top criteria when selecting future employers. The facts are indisputable—inclusive workplaces are better at talent retention, are more productive, and, in turn, are more profitable.



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50%

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Next Steps for Businesses

LGBTQI+ inclusive policies and benefits, particularly healthcare benefits, are essential for every employee and critical for ensuring all workers, especially those in the LGBTQI+ community, feel safe bringing their authentic selves to work. While implementing robust inclusion strategies takes time, especially in the face of legislative setbacks, the benefits to businesses and society are well documented. Following the India Supreme Court's ruling, companies have redoubled efforts to create and maintain inclusive workplaces. A recent Bloomberg article describes the momentum behind LGBTQI+ inclusion, citing a Starbucks Corporation commercial that features an Indian father embracing his transgender daughter and Netflix shows that spotlight LGBTQI+ youth.²²

Some essential guidelines for companies looking to expand their LGBTQI+ workplace inclusion efforts are as follows:

Implement and uphold inclusive policies and practices.

- **Establish short and long-term DEIB goals** by using Out & Equal's [Global Toolkit for Change](#), a self-evaluation guide for assessing LGBTQI+ inclusion in your workplace
- Utilize a **benchmarking index**, such as the India Workplace Equality Index ([IWELI](#)), to understand best practices and areas for growth,
- [Ensure all staff are properly trained](#) on non-discrimination policies and other LGBTQI+ inclusion initiatives.
- **Extend equal health benefit** plans to all employees.
- **Leverage your company's LGBTQI+ ERG.** If your company does not have a local chapter in your area, [try starting one](#).

Next Steps for Businesses

Ensure inclusion throughout the entire employee lifecycle.

- **Display signage at job fairs** signaling that LGBTQI+ employees are welcomed and supported at your company. Seek out LGBTQI+-specific job fairs and listservs.
- **Develop an employee gender transition** policy and establish best practices to support and protect transgender employees throughout their transition.
- **Incorporate pronoun sharing** in meetings and on email signatures.
- **Establish and promote mentorship programs** for LGBTQI+ employees.

Establish authentic relationships with external partners.

- **Enlist and leverage professional DEIB advisors** to better understand and market to the community's needs. Be sure to create short and long-term goals for these partnerships to measure success.
- **Attend LGBTQI+-focused events** to share knowledge, network, and build relationships, such as through Out & Equal's APAC Forum or Pride Circle's RISE Conference.

Be an intentional, visible LGBTQI+ ally.

- **Speak out publicly on LGBTQI+ issues.** For instance, in 2022, 118 corporations and NGOs that together employ more than 510,000 people in Brazil, signed an open letter of commitment to diversity, respect, and inclusion for LGBTQI+ people in the workplace.
- **Ensure that your internal and external marketing is LGBTQI+ inclusive year-round**, not just during Pride month.

The Legacy of Tomorrow

While the last decade has seen significant LGBTQI+ legal battles fought and often won in India and throughout the APAC region, the work for inclusion, recognition, and non-discrimination has only just begun.

The fight for dignity and equality goes beyond legal rulings and expanded definitions. Businesses intent on creating truly inclusive workplaces already understand the link between diversity and better business outcomes.

From Randstad India's 2022 study that concluded 60% of MNC leaders have LGBTQI+ inclusion goals²³ to groundbreaking policies like Uber India and South Asia's Bhavishya Initiative, a program designed to onboard more women and gender-diverse partners²⁴—everyday big businesses are taking small but essential steps towards equality.

For companies intent on making real change in the world, doubling down on their commitment to workplaces where everyone belongs is a phenomenal first step.





About Out & Equal

Out & Equal is the premier nonprofit organization working exclusively to advance LGBTQI+ representation, equity, inclusion, and belonging in the workplace and beyond. As the largest convener, thought leader, and workplace champion for LGBTQI+ employees and their organizations, our global programs, Fortune 500 partnerships, and transformative events support organizations in creating workplaces of equity and belonging where LGBTQI+ professionals can contribute to their fullest potential and thrive.



About Pride Circle

Pride Circle is India's Premier Diversity & Inclusion Advisory Consultancy with a mission of Social Equity by affirmative action for LGBTQI+ community in India. Pride Circle partners with 350 companies across India to provide Executive Leadership Development, comprehensive diversity and inclusion training, sensitization, consultation, industry roundtables, research and publications, job placements and professional networking opportunities that build safe, inclusive, and welcoming work environments. With experience and growing roster of national and international partner companies, government and non-profit organizations, Pride Circle is leading the LGBTQI+ inclusion revolution in India.

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