

Exploring the Legal and Social Landscape of LGBTQ+ Rights in India Past, Present, and Future

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Abstract

LGBTQ+ rights in India have come a long way, but let's be honest—there's still a long road ahead. Previously, Section 377 of the Indian Penal Code (now replaced by Bharatiya Nyaya Sanhita, 2023) made same-sex relationships illegal. But, in *Navtej Singh Johar v. Union of India* (2018), the Supreme Court finally decriminalized it. Prior to that, in *NALSA v. Union of India* (2014), the court had already given 'transgenders' the right to be recognized as the 'third gender'. The Transgender Persons (Protection of Rights) Act, 2019, was also introduced, yet many argue it doesn't do enough.

Even with these legal wins, LGBTQ+ folks still deal with discrimination at work,

in healthcare, and even at home. There is still continued dilemma around same-sex marriage and judgmental stares and outdated mindset of society worsens their condition. But, there's hope! Activism is louder than ever, the media is helping change perceptions, and more people are standing up for equality.

Through this research paper, the researcher takes a closer look at the evolution of LGBTQ+ rights in India, breaking down the legal progress, the ongoing struggles, and what still needs to change. While the law has taken some good steps forward, true equality isn't just about legal victories—it's about changing hearts, minds, and policies for a future where everyone is treated with the respect they deserve.

Keywords

LGBTQ+, transgender, sec. 377, gender discrimination, homosexuality

INTRODUCTION

Responding to cultural and political changes on a national level, a new

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movement is taking shape as courts and federal, state, and local governments extend equality principles to gender identity and sexual orientation. A flourishing legal industry has emerged in recent years to defend the rights of sexual minorities, whose visibility has grown in recent years from the margins to the center of American society.

The term 'sexual minorities' refers to people who do not fit the stereotypical heterosexual mold in terms of their sexual orientation, gender identity, or other sexual traits. 'Gay' used to mean a single sexual minority, but now it can also mean Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, etc. (LGBTQ+).³

Rather than being the product of a singular legislative effort or judicial decision, the gradual improvement of legal protections for LGBTQ+ persons has been a collective reaction to changing societal views on sexual orientation and gender identity. More and more LGBTQ+

characters are portrayed positively in films and television shows, and there has been a general trend toward more acceptance of LGBTQ+ people across the country. Unfortunately, bigotry towards the LGBT community still exists in the United States, even if there have been some positive changes. Legal protections against discrimination in the workplace, housing, health insurance, the judicial system, etc. do not apply to a whole demographic because of loopholes in federal law.⁴ In a nutshell, LGBTQ+ Americans are still subject to legal discrimination. We are witnessing an increasing amount of focus on LGBTQ+ problems throughout the years.

Legally changing one's gender, engaging in sexual intimacy, marrying, and adopting children of the same sex are all examples of LGBTQ+ rights; economically, one should not be discriminated against at work; politically,

³ Youth, G.C., Glossary Of Terms: Defining A Common Queer Language. Teaching, Affirming, And Recognizing Trans And Gender Creative Youth, p.299.

⁴ Casey, L.S., Reisner, S.L., Findling, M.G., Blendon, R.J., Benson, J.M., Sayde, J.M. and Miller, C., 2019. Discrimination in the United States: Experiences of lesbian, gay, bisexual, transgender, and queer Americans. Health services research, 54, pp.1454-1466.

one should be able to publicly advocate for one's community and oneself; and finally, one should not be subjected to conversion therapies or executed because one is gay or transgender. By preserving these rights, LGBTQ+ people are able to live and thrive according to their own desires.

People who identify as LGBTI (lesbian, gay, bisexual, transgender, or intersex) face extreme marginalization, oppression, or even danger in many parts of the world. Having an intimate connection with another person of the same gender is against the law in around 75 countries.⁵ People who identify as LGBTQ+ still face threats of violence and discrimination in their daily lives and at work. Millions of people are at risk of extortion, prosecution, and imprisonment since more than a third of the world's nations outlaw consensual, loving same-sex relationships. This practice also perpetuates discrimination. Before becoming legally recognized for

their gender identity, transgender people are often required by many nations to undergo medical treatment, sterilization, or other stringent requirements. Many intersex children have unnecessary surgeries, which can have a devastating impact on their physical and mental health. The denial of healthcare, bullying in the workplace, and expulsion from school are just a few examples of the many forms of discrimination that lesbian, gay, bisexual, transgender, and intersex persons face as a result of a lack of legal protections and hostile public attitudes. All people are entitled to equality and non-discrimination under international human rights law, irrespective of their sex, sexual orientation, gender identity, or any other category. Every one of our human rights treaties explicitly forbids states from discriminating on the basis of sexual orientation or gender identity and does not contain any hidden exemption clauses that could permit such a practice.

In addition, numerous UN human rights treaties have acknowledged that

⁵ Saez, M., 2016. The Global Struggle for LGBTQ Rights: Legal, Political, and Social Dimensions. *Women's Rights Law Reporter*, 37(3-4).

discrimination based on sexual orientation or gender identity is illegal under international human rights law.⁶ Thus, it is just as unlawful to discriminate against someone because of their gender identification as it is against them because of their race, religion, national origin, or any other status. Several treaty bodies have consistently supported this approach through their decision-making and general guidelines. These include the UN Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social, and Cultural Rights, and the Committee on the Elimination of Discrimination Against Women. Efforts to educate the public and rally behind specific policies to end LGBTQ+ exclusion and discrimination have their roots in human rights principles, norms, and standards. Human rights organizations of the United Nations have recorded

multiple cases of victims' human rights being violated because of their gender or sexual orientation.

Essentially, no one should have to fear insults or violence simply because of their lifestyles. It seems like the goal is attention, preferential treatment, and a sort of intellectual fascism. Ironically, much of the progress that has been gained is at risk of being undone by making such demands and using more divisive terminology, techniques, and labeling.

SOCIETAL CHALLENGES to LGBTQ+

Despite progress in legal recognition and social acceptance, the LGBTQ+ community continues to face significant societal challenges across various spheres of life. These challenges are deeply rooted in historical prejudices, cultural norms, and systemic discrimination, affecting their rights, mental well-being, and social standing.

- ***Inequality and Violence***

People who identify as LGBTQ+ are

⁶ Landorf, H., Wadley, C. and Simon-Mengana, Y., A Global Perspective on LGBTQ Rights as Human Rights. In *The Routledge Handbook of LGBTQ Identity in Organizations and Society* (pp. 11-27). Routledge.

disproportionately subject to prejudice, bigotry, harassment, and even physical assault because of their sexual orientation.⁷ They confront animosity and are deprived of social support systems like healthcare and retirement benefits. The 'Hijras' of India are subject to constant brutality, especially at the hands of the police.

- **Lack of Societal Acceptance**

Discrimination against sexual minorities occurs even in households. Disownment and isolation are common experiences for these children. Juvenile incarceration is a common destination for them. Some communities 'cure' homosexual and lesbian youth by forcing them into marriage.⁸ Additionally, they are coerced into undergoing conversion

therapy in order to alter their sexual orientation.

- **Health Issues**

Households are not immune to discrimination against sexual minorities. These children often endure feelings of abandonment and seclusion. It is not uncommon for kids to end up in juvenile prison. Marriage is seen as a means by which certain cultures 'cure' their young members who identify as homosexual or lesbian. Plus, they are forced to undergo conversion therapy against their will so that they can change their sexual orientation.

- **Political Under-Representation**

Sexual minorities are not high on political parties' priority lists due to their small proportion. They have no political representation since social prejudice prevents them from ever running for office. This results in the absence of their perspective in legislation, such as the *Assisted*

⁷ Daum, C.W., 2019. Violence against and policing of LGBTQ communities: A historical perspective. In Oxford Research Encyclopedia of Politics.

⁸ Sharma, R., 2021. Rights of LGBTQ in India and the Struggle for Societal Acceptance. Issue 3 Int'l JL Mgmt. & Human., 4, p.18.

Reproductive Technology (Regulation) Act of 2021, which only enables heterosexual couples to use ARTs. Similarly, the *Maternity Benefits Act of 2017* does not address the rights of sexual minorities.

- **Public Accommodation Discrimination**

When an individual's sexual orientation, gender identity, or expression is used as a basis to deny them equal access to goods, services, facilities, or public areas, it is considered discrimination against LGBTQ+ people. Many public places, such as restaurants, hotels, supermarkets, theaters, hospitals, and public transportation, might have this kind of bigotry.

- **Indifferent Attitude of Religions**

Religion has historically influenced sentiments towards the LGBTQ+ community. Many religious traditions contain teachings and practices that frequently clash with LGBTQ+ identities and relationships.

As a result, religious attitudes towards LGBTQ individuals can be complex and sometimes negative. Many spiritual traditions contain teachings and practices that frequently clash with LGBTQ+ identities and relationships. In certain cases, religious teachings expressly prohibit same-sex unions or gender nonconformity. For example, the Bible, Book of Leviticus teach that lying with another man is an abomination. Homosexuality is also regarded as 'haraam' in the Islamic faith, and in some nations, it is punishable severely. Despite rigorous establishment of gender roles, homosexuality is not explicitly mentioned in many Hindu texts, yet same-sex partnerships are frequently frowned upon by followers of Hindu religion.

Implications of Societal Discrimination

Societal discrimination against LGBTQ+ individuals has far-reaching consequences that impact their overall well-being. The prejudice and biases

embedded in social structures create multiple barriers that prevent LGBTQ+ individuals from living with dignity and equal rights.

- ***Mental and Emotional Health Issues***

Those who identify as LGBTQ+ and face prejudice are more likely to suffer from mental health disorders such as anxiety, depression, stress, and more. Their mental health could suffer as a result of the crippling fear of rejection or discrimination.

- ***Physical Health Disparities***

Physical health disparities among LGBTQ+ people can be exacerbated by discrimination, which can lead to delayed or inadequate access to healthcare. Because of bad experiences in the past, people may avoid medical treatment and preventative treatments.

- ***Social Isolation, Rejection and Violence***

As a result of facing rejection from loved ones, neighbors, and even

religious organizations, LGBTQ+ persons may find themselves socially isolated as a result of discrimination. Isolation can have a negative impact on their social networks and overall feeling of belonging. The likelihood of hate crimes and acts of violence perpetrated against LGBTQ+ individuals is heightened by the hostile and prejudiced environment that is created by discrimination. This could go a step further and make it harder for LGBTQ+ persons to take part in community events and public life, which could lead to less civic engagement and social isolation.

- ***Homelessness***

LGBTQ+ youth experience homelessness at a disproportionate rate due to family rejection and persecution. They may have difficulty getting secure and supportive housing, which leads to greater rates of homelessness.

- **Stigma and Internalized Homophobia/ Transphobia**

Internalized homophobia and transphobia are reactions to prejudice that cause LGBTQ+ individuals to have unfavorable views about their own gender identity and sexual orientation. It also increases the risk of suicide ideation and self-harm. Discrimination can increase feelings of hopelessness and despair.

EVOLUTION of LGBTQ+ RIGHTS

Historical development of LGBTQ+ rights is evidence of the transformational potential of social movements⁹ and legal developments. Societies have shown differing levels of tolerance and discrimination towards people with non-heteronormative gender identities and sexual orientations over the centuries. The history of LGBTQ+ rights has been studied by academicians like John D'Emilio and George Chauncey, who have documented the changing social

perceptions and legal developments that have opened the door for increased acceptance and acknowledgment.

A global view of LGBTQ+ rights illustrates the vast differences in legislative frameworks, legal systems, and public perceptions of perceptions of LGBTQ+ people and one finds the differential degrees of advancement and regression observed in various parts of the world.¹⁰ The *International Lesbian, Gay, Bisexual, Transgender, and Intersex Association* (ILGA) and scholars such as Scott Long¹¹ and Saskia Wieringa¹² in their research provides significant insights into the state of LGBT rights around the world. It emphasizes the dramatic contrasts between countries that have adopted complete legal protections and those where prejudice

⁹ Andersen, E.A., 2016. Transformative events in the LGBTQ rights movement. *Ind. JL & Soc. Equal.*, 5, p.441.

¹⁰ Saez, M., 2016. The Global Struggle for LGBTQ Rights: Legal, Political, and Social Dimensions. *Women's Rights Law Reporter*, 37(3-4).

¹¹ Scott Long, Anti-gay gangs terrorise Iraq (12 Jan, 2025, 10:04 AM)

<https://www.theguardian.com/commentisfree/2009/aug/19/iraq-anti-gay-gangs-killing-campaign>.

¹² Wieringa, S.E., 2019. Criminalisation of homosexuality in Indonesia: The role of the constitution and civil society. *Austl. J. Asian L.*, 20, p.227.

and persecution continue. LGBTQ+ rights are improving in many regions of the world, but the progress is unequal.

- **Progressive Nations**

Countries such as Canada, the Netherlands, and Spain are pioneers in LGBTQ+ rights, legalising same-sex marriage, enabling gender self-identification, and enforcing strong anti-discrimination laws. Nordic countries, such as Sweden and Norway, include LGBTQ+ rights in public policies, providing healthcare access and equality in employment rights.

- **Nations with Emerging Equality**

Argentina and Brazil have made great progress in Latin America by legalizing same-sex marriage and passing gender identity legislation. South Africa remains an African leader¹³, as the continent's only

country with constitutional protections for LGBTQ+ rights.

- **Nations with Restrictive and Hostile Environments**

Many Middle Eastern and African countries continue to criminalize LGBTQIA+ identities. Same-sex partnerships are illegal in Iran and Saudi Arabia, and they can result in jail or execution. Russia implements anti-LGBTQ+ propaganda laws, which limit gay visibility and action.

LGBTQ+ RIGHTS FRAMEWORK in INDIA

India has seen significant legal advancements in recognizing and protecting the rights of LGBTQ+ individuals. While historical laws marginalized the community, recent judicial and legislative interventions have brought about positive changes.

Legal Framework

- Discrimination against transgender persons in employment, recruitment, promotion, and other

¹³ Louw, R., 2014. Advancing human rights through constitutional protection for gays and lesbians in South Africa. In *Sexuality and Human Rights* (pp. 141-162). Routledge.

areas is prohibited by the Transgender Persons (Protection of Rights) Act, 2019. A person can change their gender on official documents with the use of the Act's gender identity verification process.¹⁴ The Citizenship Act of 1955 specifies the requirements for becoming an Indian citizen and how that status is determined in relation to political rights. It does not stipulate, either directly or indirectly, that a person must identify with a particular gender in order to become a citizen. An Indian citizen is required to cast a ballot. Therefore, transgender people will also be able to register to vote following the passage of the Transgender Persons (Protection of Rights) Act, 2019. Notably absent from the Registration of Births and Deaths Act, 1969 is any reference to an individual's "sex" or "gender" in connection with the act of recording their birth or death. Thus, the Act

does not discriminate based on gender.

- To combat the exploitation of children and women as prostitutes, the principal instrument is the Immoral Traffic Prevention Act (ITPA), 1956 (as revised in 1986). The 1986 modification broadened the Act's scope and ambit to encompass sex workers of both sexes, as well as persons whose gender identification was uncertain.
- The UGC Anti-Ragging Regulations (2009) require both public and private universities to investigate reports of discrimination on the basis of gender. Furthermore, in 2016, the UGC recognized 'gender identity' and 'sexual orientation' as grounds for ragging and discrimination.

Judicial Response

- The High Court of Delhi, in *Naz Foundation Govt. vs NCT of Delhi*¹⁵,

¹⁴ Krishna, R.A., 2023. LGBTQ Rights and Legislation in India: The Status Quo. *Indian J. Integrated Rsch. L.*, 3, p.1.

¹⁵ 160 (2009) DLT 277

ruled that the arbitrary restriction on two adults engaging in consensual intercourse in secret, imposed by Section 377 of the IPC (carnal intercourse against the order of nature), was upheld. Consequently, there was a blatant disregard for their basic rights, which are guaranteed by Articles 14, 15, 19, and 21 of the Indian Constitution.

- Later in *Suresh Kumar Koushal vs Naz Foundation*¹⁶, after the Delhi High Court had already decriminalized homosexuality, the Supreme Court's division bench reversed the order and reinstated the crime. Because they were such a small minority, the bench decided that LGBTQ+ people did not deserve basic protections.
- The decision of the Apex court *National Legal Services Authority vs Union of India*¹⁷, acknowledged non-binary gender identities and referred to transgender people as the

'third gender'. The ruling confirmed that transgenders will be entitled to the same protections under the Indian Constitution, including Articles 14, 15, 16, 19(1)(a) and 21. The choice to identify as male, female, or third gender is granted to individuals. The court also cited major international human rights treaties and the Yogyakarta Principles to accept transgender people's human rights. The court also instructed central and state governments to take proactive steps to protect transgender people's rights.

- The Supreme Court's decision in *K.S. Puttaswamy vs Union of India*¹⁸ regarding the right to privacy as an unalienable fundamental right under Article 21 also addressed the rights of sexual minorities. The Supreme Court ruled that sexual orientation is an important aspect of privacy and that discrimination based on orientation is fundamentally an

¹⁶ (2014) 1 SCC 1

¹⁷ (2014) 5 SCC 438

¹⁸ (2017) 10 SCC 1

insult to an individual's dignity and self-worth. Protecting sexual orientation lies at the foundation of the fundamental rights provided by Articles 14, 15, and 21.

- In *Navtej Singh Johar vs Union of India*¹⁹, the court determined that sexual orientation was natural, innate, and immutable. The tribunal determined that the “choice of an LGBT person to enter into intimate sexual relations with persons of the same sex is an exercise of their personal choice and an expression of their autonomy and self-determination”. Although the LGBTQ+ community constituted a sexual minority, they were said to be equally protected under Part III of the Constitution.
- The Madras High Court in *Arun Kumar vs Inspector General of Registration*²⁰ recognized a marriage between a male and a trans woman

as legal. The Court said that transgender people had the right to choose their gender, as established by the Supreme Court in *NALSA v. Union of India*.

As marriage is only permitted between men and women, according to the Hindu Marriage Act of 1955, this decision broadened the definition of ‘womanhood’ to encompass transgender people who identify as women and wish to marry.

- In *Supriyo Chakraborty v. Union of India*²¹, the Supreme Court declined to grant legal recognition to same-sex marriages, but stated that legislative action is needed in this domain.

Role of Advocacy & Activism

Social movements have been at the forefront of advocating for LGBTQ+ rights, pushing for both legislative and social reform. Key milestones, such as the Stonewall riots, highlight the ability of

¹⁹ (2018) 10 SCC 1

²⁰ (2019) 4 MAD LJ 503

²¹ (2023) 16 SCR 1209

collective action to accelerate progress.

²²They also foster a sense of community and belonging among LGBTQ+ people, offering support and solidarity. There are a few Indian organizations that actively promote community welfare, raise awareness, and educate people about homophobia, biphobia, and transphobia.

- *Humsafar Trust*

The Humsafar Trust, established in April 1994 by Ashok Row Kavi, asserts that “*your identity is a reason for pride, not a reason to hide.*” It started by encouraging homosexual men and lesbian women to attend its classes at its drop-in facility, making it the first openly LGBT community-based organization to be given space in a Mumbai municipal building. The Mumbai District AIDS Control Society (MDACS) and the National AIDS Control Organization (NACO) support The Humsafar Trust’s HIV initiatives by offering health services through its in-house

clinics and public healthcare delivery systems.²³ Along with running support groups like YAARIYAN for young LGBTQ people, UMANG for LGBT people, and SANJEEVANI for HIV-positive people, they also offer their communities crisis management, mental health, and nutrition advice in addition to legal assistance.

- *Indian Aces*

A self-/non-funded collective of, for, and by ace (asexual) and aspect (asexual spectrum) people from/in India, Indian Aces was founded in 2014 by Dr. Pragati Singh.²⁴ They currently cover a wide range of topics, including gender, sexuality, diversity, and LGBTQIA+, and have gone beyond asexuality to include challenging research, activism, workshops, and events. In addition to raising awareness and participating in different LGBTQIA+ events, they

²² Andersen, E.A., 2016. Transformative events in the LGBTQ rights movement. *Ind. JL & Soc. Equal.*, 5, p.441.

²³ (Feb. 03, 2025, 9:45 PM)
<https://humsafar.org/about-us/>

²⁴ (Feb. 05, 2025, 8:05 AM),
<https://asexualityindia.com/about/>

function as an online community platform.

- *Sappho for Equality*

The only registered organization in Eastern India dedicated to promoting the rights and social justice of sexually marginalized women and trans men is Sappho for Equality, a Kolkata-based organization founded in October 2003.²⁵ They envision a world where sexual minorities' rights are protected and there is no discrimination based on sexual orientation. Sappho for Equality employs a three-pronged approach: community empowerment, broad civil society outreach and networking with other groups/organization's, and advocacy/lobbying with the government.

Role of media

- ***Increased Visibility and Representation***

Television, movies, and online media

have all contributed significantly to raising the visibility of LGBTQ+ people and their experiences. This image contributes to humanizing the community and challenging misunderstandings. Positive depictions of LGBTQ+ characters and stories help to raise public awareness and acceptance.

- ***Shaping Public Opinion***

The media has had a considerable impact on public opinion around LGBTQ+ topics such as marriage equality and anti-discrimination laws. News media, in particular, can define disputes and impact public conversation.

- ***Social Media's Impact***

Social media platforms have become critical tools for LGBTQ+ individuals and activists to communicate, organize, and share their experiences. These platforms make it easy to create online groups, communicate with people, and share

²⁵ (Feb. 05, 2025, 8:40 AM)
<https://www.sapphokolkata.in/about-us>

information swiftly.²⁶ Social media have also played a significant role in boosting LGBTQ+ voices and movements worldwide.

CONCLUSION & WAY AHEAD

Despite some encouraging advancements in recent years, the LGBTQ+ population in India still faces many obstacles. Nevertheless, the LGBTQ+ group still has a ways to go before they can achieve complete equality, inclusivity, and protection. Healthcare, employment, housing, and education are just a few areas where marginalization, social stigma, and discrimination persist. Personal challenges and a lack of acceptance and support are caused by the persistence of family rejection and social pressure to adhere to traditional gender and sexual norms.

The researcher suggests following to improve the plight of LGBTQ+ community in India :

- ***Legal Recognition of Same-Sex Relationships***

Government should work towards legal recognition of same-sex partnerships, either through marriage equality or civil partnerships, ensuring equal rights and benefits for all couples, regardless of their sexual orientation or gender identity.

- ***Comprehensive Anti-Discrimination Laws***

Enactment and enforcement of comprehensive anti-discrimination laws at both the national and local levels, is the need of the hour, covering areas such as employment, housing, education, and public services. These laws should explicitly include protections for LGBT individuals.

- ***Inclusive Healthcare Services***

Healthcare systems should be sensitive to the needs of LGBTQ+ individuals, providing gender-affirming care, mental health

²⁶ Tropiano, S., 2014. 'A safe and supportive environment': LGBTQ youth and social media. Queer youth and media cultures, pp.46-62.

support, and HIV/ AIDS prevention and treatment. Medical professionals should receive training on LGBT-specific health issues.

- ***LGBTQ+ Inclusive Education***

Incorporation of LGBT-inclusive curriculum and anti-bullying programs in schools to promote acceptance and understanding from an early age is needed. States need to ensure that educational institutions provide a safe environment for LGBTQ+ students.

- ***Workplace Diversity and Inclusion***

Private and public sector organizations need to be encouraged to adopt inclusive policies, promote diversity, and create safe and supportive workplaces for LGBTQ+ employees and measures to prevent their discrimination and harassment.

of homosexuality. To defend LGBTQ+ people's rights and give them equal chances and protections in all spheres of life, comprehensive anti-discrimination laws are required. Equality and family rights would be greatly strengthened if same-sex marriage and adoption rights were recognized. However, it takes time for cultural norms and societal attitudes to shift. As a result, fostering a welcoming and inclusive culture requires persistent efforts to raise awareness and educate the public. A mix of enabling policies, public education initiatives, and legal changes might bring India one step closer to a more tolerant society that respects and protects the rights of LGBTQ+ persons. By celebrating variety, fighting prejudice, and fostering an accepting culture, India can create a better future for all of its citizens, regardless of their gender identity or sexual orientation.

In India, LGBTQ+ people have few legal safeguards beyond the decriminalization