

A Critical Analysis of the Evolution of LGBTQ Rights and Legal Status in India

¹Anjali Kumari, ²Bhavya Dewangan, ³Lisa Mahilange, ⁴Priyanshi Patel

^{1,3,4}Students of BALLB 10th Semester

²Student of BBALLB 10th Semester

^{1,2,3,4}Kalinga University, Naya Raipur (C.G)

¹anjalikumari20202002@gmail.com, ²bhavyadewangan271@gmail.com

³lisamahilange30@gmail.com, ⁴priyanship647@gmail.com

Abstract

LGBTQ rights & legal status have experienced a storied affair in the Indian subcontinent, which this essay will critically explore from pre-colonial acceptance of same-gender sexualities, through colonial era re-criminalization, and towards post-colonial legal landscape in India. It also examines how native traditions once embraced gender and sexual diversity, which was later suppressed under British rule, introduction of Section 377 of the Indian Penal Code. This article foregrounds the pivotal role of judicial activism in undermining this legacy, doing so through an examination of landmark judgments such as Naz Foundation v. NCT of Delhi (2009), Suresh Kumar Koushal v. Naz Foundation (2013), NALSA v. Union of India (2014), and Navtej Singh Johar v. Union of India (2018). Can the Transgender Persons (Protection of Rights) Act, 2019, and other Madhya Pradesh state-level measures really hold the answers? Beyond a discussion of legal progress, the paper considers social attitudes, media representation and the lived experiences of LGBTQ persons in Indian society, paying particular attention to the stigma, discrimination and mental health challenges faced by such individuals. It also addresses ongoing issues such as the lack of legitimization of same sex relationships and the requirement for intersectional inclusion. Some of them include: passing of anti-discrimination laws, legalization of same-sex unions, amendment of Transgender Act and gender and sexuality education. It argues that equality will require not just the right laws but a different culture as well. The analysis shows that fighting for LGBTQ rights through the courts is not merely a legal battle, but a broader fight for dignity, visibility, and justice.

Keywords: *Intersectionality, Judicial activism, LGBTQ rights, Section 377, Human rights*

Introduction

The process by which LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer) rights came to be identified and consolidated in India has been long and active. This Tara hashar route is a complex and knotty blend of cultural heritage, colonial legacy, entrenched customary practice, judicial adventurism, and emergent new progressive law. What makes this journey so involving is that it's not just a legal or political fight — it's an eternally human story of identity, dignity, resistance and survival.

Gender and sexual pluralism were not necessarily marginal in Indian civilization. Furthermore, there is plenty of evidence that Ancient India was a woman inclusive society. It is evident that non-heteronormative identities were embedded in the social structure, from the fluid expressions of gender in mythology, Lord Shiva's Ardhanarishvara avatar (half-male, half-female) to the worship of the Hijra community in religious and cultural practices. The Khajuraho temples' erotic friezes, the Shikhandi of Mahabharata, and the philosophical treatises of the Kama Sutra all testify to a culture that saw sexual paradigms and gender expressions as continuum.

But this inclusivity received a terrible blow with the advent of British colonialism. Further, Section 377 of the IPC mirrored Victorian morality; it made "carnal intercourse against the order of nature" a crime. This indiscriminate, brutish law — the word "sex" here is a euphemism, if there is one — reduced centuries of cultural tolerance to dust to turn LGBTQ people into criminals and moral outcasts. It expanded upon large, hyped-up juridical anxieties into a culture of humiliation, silence and timorousness out of which several generations sprang.

We had to negotiate our existence in hostile environments and for decades, we, the LGBTQ individuals in India were virtually invisible. They were tortured by the police, belittled in the media, deserted by family members, their rights and dignity subtracted. There was no law that served them — law was used against them instead.

But only in the late 20th and early 21st centuries, however, did that change start to be pursued. New civil society activism, public discourse and brave litigation would later challenge orthodoxy. What subsequent court contests did not just challenge the constitutionality of

colonial law, but also set the stage for the acceptance of LGBTQ persons as equal citizens of India.

In tracking this continuum of struggle and reform, this paper attempts to provide a critical perspective of the trajectory of evolution of LGBTQ rights and their legal status in India. This is after the greatest judicial landmarks, legislative interventions and grassroots movements that has shaped the debate. It also examines the social attitudes that continue to shape the pace and nature of change. Finally, it shares suggestions to create a society that's fair to everyone, where people are respected and treated equally, no matter who they are or who they love.

In so doing, this research aspires not just to document a legal history but to do justice to the lived lives of those who have fought — and continue to fight — for their right to be, love and thrive in a country that is finally beginning to make that right a living reality.” It is a story of loss and promise, of failures and triumphs, but, most of all, of human resilience in the face of structural injustice.

Historical Context and Colonial Legacy

Modern Indian law restricting LGBTQ persons originates directly from British colonial law. Among the most enduring and destructive legacies of this period was the enactment of Sec 377 of the IPC in 1860. This section prohibited what it termed “carnal intercourse against the order of nature,” an intentionally unclear term that was explain to encompass any nonprocreative sexual act, particularly acts between people of the same gender. Crucially, the criminalization occurred regardless of whether such behavior was consensual or private. The law thus cut deep into the personal lives of citizens, running a pen of institutionalization through their most intimate of experiences and classifying them as a crime.

Section 377 was not an Indian invention —legal or cultural — it was a straight import of British law, that is to say, of the Buggery Act of 1533 and of later legal reform in the Victorian administration. Victorian morality with its prudery and obsession with sexual control believed that homosexuality was a form of moral deviance, a threat to order within society, and an affront to religious doctrine. In their attempts to 'civilize' the natives, British colonial officials in India compelled these values through acts. Through the process they not just implemented a new law system, but altered the cultural sexual and gender identity of India.

This colonial imposition directly stood at odds with the indigenous understanding of gender and sexuality in pre-colonial India. For centuries, Indian society, often framed through the lens of caste, had made space for a far more fluid and complex system of sexual identity. And works like the Kama Sutra, instead of serving as ostentatiously indulgent erotic manuals, cataloged a variety of sexual acts, same-sex relations included. The Ramayana and the Mahabharata, classical epics, featured characters with different expressions of gender, such as Shikhandi and Brihannala. Portions of a temple sculpture at Khajuraho, Konark and others show not only heterosexual relations but homoerotic and gender non-conformist associations which perhaps is indicative of acceptance towards sexual feelings from society.

Moreover, the Hijra community, who were regarded as a third gender, held ceremonial and often sacred roles in Indian culture. They were asked to bless newborns and weddings, were dignified in some religious practices, and were acknowledged in royal courts. Their social status might have been sometimes marginalized, but they were never criminalized or erased as colonial law would soon attempt to.

Despite its foreign origins and overt violation of India's own cultural history, Section 377 continued to be enforced for more than 150 years. At the same time, it had become a simple instrument of state-sponsored discrimination. The law was used to permit police intimidation and public shaming, blackmail and extortion. LGBTQ people had to lead a double life — an outward-facing existence where they had to conform to heteronormative expectations, and a secret life, where they could be themselves, but at personal risk.

The challenges in the US would be exacerbated, but it took until the late 20th century and early 21st century for more organized resistance to Section 377 to be seen. Coordinated advocacy campaigns contesting the legality of the law began in the early 2000s. In the midst of this battle. The coalition was established along with Naz Foundation legal activists, queer rights organizations and civil society organizations. It approached a legal non-governmental organization — Lawyers Collective. Organizations like Voices Against 377 rallied a spectrum of actors — LGBTQ persons, mental health practitioners, feminists and academics — to construct a more encompassing narrative about the human cost of criminalization.

The early layers of this Movement Yatra became the bedrock of what would eventually grow into one of the large scale legal and human rights struggles in the post-independence* era of

the Indian subcontinent. The fight against Section 377 was never simply about the decriminalization of homosexuality; it was about reclaiming dignity, demanding visibility, and a statement that the Indian Constitution belonged to everyone, even those whose starting point of love or identification had been to be queer.

This final chapter of Indian legal history is a dire warning about how the importation of foreign laws can rend a society from its human past. And it is, at the same time, a testament, if you like, to the resilience of popular resistance — and the judiciary's part in this is to restore justice when the machinery of legislation has come to a standstill for decades. The final death of Section 377 was still decades in the future, but its beginning lay in the relentless work of these pathfinders who had placed their lives on the frontline of a battle against centuries of intolerance, in a struggle for constitutional morality and human dignity.

Judicial Activism and Landmark Judgements

Naz Foundation vs. Sarkar NCT of Delhi

Judicial activism and site decision Naz Foundation vs Sarkar NCT of Delhi (2009) In a historic decision in the huge reservoirs for Constitution of India, Delhi High Court in the Naz Foundation in the Delhi High Court. Court emphasizes that dignity, privacy and the right to non-discrimination were an essential component of constitutional morality. This decision was a significant turn, stating that morality could not trump constitutional rights. Significantly, it empowered LGBTQ people and provoked public conversation about sexual minorities. It faced strong criticism from conservative outlets including religious groups, and the Supreme Court was asked to be ruling. [Naz Foundation vs. Sarkar. NCT of Delhi, 160 DLT 277 (Dale. HC 2009). Kaushal vs Naz Foundation (2013) In a backward step, the Supreme Court reversed the respective judgment (Suresh Kumar Kaushal vs Naz Foundation) to reversed the Delhi High Court's verdict and once again reversed the decision to resume gay acts. Lesbians, lesbians, bisexuals or transgenders formed "a small ratio of the country", only the court argued, and so they do not form a class worthy of constitutional protection. The decision was huge condemnation to not guarantee basic rights and was taken as a regression for the LGBTQ movement. It condemned worldwide with renewed activeness. The LGBTQ community

arranged for proud march, conducting public campaigns and opposed flexibility with political pressure¹.

NALSA v. Union of India (2014)

In a watershed judgment, the Supreme Court, in its judgment in National Legal Services Authority v. Union of India (NALSA) declared transgender persons as the “third gender” and guaranteed their constitutional rights under Articles 14, 15, 16, 19 and 21. The Court also directed the Government to match transgender persons with legal recognition, social welfare benefits and reservations.²

Navtej Singh Johar v. Union of India (2018)

The decision reinforced the importance of respecting people's dignity, protecting their privacy, and ensuring everyone is treated equally— and acknowledged the long history within the society of rising and falling as LGBTQ individuals have been marginalized. Justice D.Y. Chandrachud stressed that the Constitution is meant to protect minority rights, and emphasized that constitutional morality needs to prevail over social morality. The decision was watershed in Indian constitutional jurisprudence, paving the way for legal recognition of LGBTQ rights in the future. [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

Legislative Developments and Policy Initiatives

The Act includes prohibitions against discrimination across healthcare, public service, education and employment access. It requires them, set up welfare boards and provides a grievance redressal framework as well.

On the other hand, the Act has also faced criticism on account of its regressive provisions. The fact that a transgender person is filing an application for legal recognition in front of a district magistrate is considered violative of the self-identification principle. The Act further prescribes lesser penalties for offences against trans persons than for offences against persons of the cisgender, demonstrating an absence of parity in protections granted under the law.

¹ Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1.

² National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

([Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India)].)

State-Level Developments and Judicial Directions

Some of these same progressive state governments have already pursued LGBTQ inclusion and well-being, linking central legal transformations to local policy interventions. In this regard, two states which have led the way have been Tamil Nadu, Kerala and Maharashtra which have started issuing specific welfare schemes and institutional mechanisms to protect the LGBTQ population, especially, transgenders.

The first states in India to set up a Transgender Welfare Board was Tamil Nadu— and the board was launched in 2008 under the Social Welfare Department. The board members are from the transgender community and does not prepare policies on the development of their community. For transgender persons, it has issued free of cost identity cards, free sexual reassignment surgeries in hospitals run by the government, reservation of quota in educational institutes, vocational training and financial aid to persons to facilitate self-employment.

In 2015, Kerala brought out its own State policy, of Transgenders in Kerala, which was documented as a landmark policy on the basis of it being inclusive and comprehensive. Both policies acknowledge that people have the freedom to determine and express their own gender identity, and break down barriers to equal access to education, health care, & job on the basis of gender identity. Apart from the housing schemes for transgenders, the state also launched a skill development programmed and gender diversity sensitization of police and public servants.

Maharashtra has also made an impressive gain by constituting a Transgender Welfare Board, addressing housing rights, health insurance coverage and promoting engagement of transgender persons in public and cultural life. It has made some progress on the issue of safety in public places and eliminating employment discrimination in metropolitan cities like Mumbai and Pune.

In a pathbreaking judicial intervention, the Madras High Court, in the 2021 case of Sushma v. Commissioner of Police, laid down a series of revolutionary guidelines. It was a case of a lesbian couple who sought relief from their families, and when the court granted them even

protection from their families, the court of course went ahead and sought systemic changes. The court administered the Tamil Nadu government to organize training sessions for police, the judiciary, healthcare workers, and schools and colleges to counter the ingrained prejudices against LGBTQ persons. It stressed on awareness and compassion to make society truly inclusive and also suggested adding LGBTQ-related subjects in school and college courses.

These state-level efforts demonstrate how subnational governments can play a pivotal role in implementing the rights established at the national level. But the effects of these efforts remain unequal, varying by state, because of differences in political will, administrative strength, and social acceptance. But they are helpful models for other states to emulate and reveal the need for decentralized, community-based approaches to LGBTQ inclusion. Those steps are an incremental advancement, but still fall short in both scope and enforcement. What this country does need is national legislation that promotes uniformity and efficacy.³

Societal Attitudes and Media Representation

Although progress in legislation has been made, levels of acceptance have markedly differed among society. Religious conservatism, patriarchal citadel, and illiteracy rampant stigma, discrimination, and violence. LGBTQ people are disowned by family members, ostracized in schools and denied jobs. The duality of media portrayal, for decades, mainstream media depicted LGBTQ characters as either punch lines or stereotypes.

In contrast, newer cinema and streaming series like Aligarh, Shubh Mangal Zyada Saavdhan, Made in Heaven and Badhaai Do have provided more nuanced representation, working to normalize queer identities and create empathy. Social media sites have emerged as key terrains for LGBTQ activism, community formation, and identity. Social media campaigns like 377Verdict and #LoveIsLove have mobilized public opinion and created solidarity networks.

In India, pride parades and queer groups in cosmopolitan cities (Delhi, Mumbai, Bengaluru, and Chennai to name a few) have become annual color-fests to celebrate diversity and the claim

³ Sushma v. Commissioner of Police, W.P. No. 7284 of 2021 (Mad. HC)

to visibility and dignity. But these movements are urban-based, and LGBTQ people in rural and semi-urban environments continue to face repressive crackdowns.

Difficulty and Current Affairs

Recognition of Same-Sex Relations by the Law

While India did decriminalize homosexuality in the landmark case *Navtej Singh Johar v. Union of India* (2018), same-sex marriages and civil unions continue to remain illegal in India. This was reiterated in the 2023 Supreme Court case *Supriyo v. Union of India* where the petitioners sought judicial recognition of same-sex marriages under existing statutes such as the Special Marriage Act, the Hindu Marriage Act and the Foreign Marriage Act. In a Constitution Bench verdict, the Supreme Court refused to legalize same-sex marriage, ruling that the power to make or amend laws on marriage lay with the legislature and not with the judiciary. Collectively, it was the separation of powers doctrine that deterred the Court from interpreting statutory provisions that define the formal ceremonies or traditional practices of marriage defined as the bond between a man and a woman.

But the ruling did not ignore concerns from the LGBTQ community. Still unwilling to recognize marriages, the Court was quite eager to protect and promote queer relationships under the Constitution so that it would protect their dignity and their equal citizenship. Towards this, it stated the Union Government to create a committee to explore administrative and legal routes to accord gay couples rights mostly related to marriage. Such rights include the ability to have shared banking accounts, be covered by health insurance, appoint each other as next of kin, to make medical decisions for each other, adoption and guardianship rights, succession and inheritance rights as well as access to pensions and gratuity schemes. The Court also administered the govt. look into inclusive schemes about housing, education, & employment, so that there would be more extensive social protection and recognition for queer couples.]

While the ruling stopped well short of granting full marriage equality, however, it represented a step toward marriage equality by allowing more gradual policy and executive action to build up toward a full realization of marriage rights. It's a doing of judicial balancing of constitutional morality with institutional constraints and accountable legislature and executive to deliver real

equality to LGBTQs. The ruling was seen as a missed opportunity to provide equal rights to same-sex(homosexual) couples in areas like inheritance, adoption, taxation and next-of-kin rights.⁴

Discrimination in the Workplace and in Education

Despite constitutional protections, LGBTQ people still face discrimination in the workplace and in schools. There are no statutory anti-discrimination laws that protect them against harassment and firing. Many LGBTQ students drop out of school due to bullying, and applicants are often at the receiving end of more subtle discrimination.

Corporate efforts at inclusion remain patchy and largely confined to multinational firms. Inclusive workplaces are lacking in the public sector and small businesses. To bridge these gaps, affirmative action measures and sensitization is needed.”

A Guide to Mental Health and Conversion Therapy

The majority of LGBTQ people deal with mental health issues due to societal rejection and internalized homophobia. LGBTQ-affirmative mental health care doesn't come easily. Although the Madras High Court banned conversion therapy, there is no nationwide legislation against it, and it is still practiced in medical and religious institutions. Mental health professionals need to be trained in gender and sexuality-affirming practices. The inclusion of LGBTQ issues in medical education is critical to addressing the systemic stigma.⁵

Intersectional Discrimination

LGBTQ persons who also belong to castes of disadvantage, religious minorities or economic underclasses are weighed down by layers of overlapping and intersecting discriminations that combine to mutually reinforce their worst effects. If queer identities themselves are an object of social stigma, these compound identities leave people in worse marginalization even. A Dalit

⁴ Supriyo v. Union of India, (2023) SCC OnLine SC 1404.

⁵ Sushma v. Commissioner of Police, W.P. No. 7284 of 2021 (Mad. HC).

transwoman, for example, faces both caste exclusion and gender-based violence, as well as transphobia, so her experienced reality is much worse than that of one who is the victim of just one form of discrimination.

Unfortunately, prevailing queer narratives tend to center the lives of more privileged LGBTQ people — people who have the luxury of university, city life, or financial security— and overlook the realities, and adversities, of those at the crossroads of multiple oppressed identities. This neglect creates policy frameworks and social movements that are not genuinely inclusive or reflective of LGBTQ diversity.

To address these injustices, it is important policies be formulated from an intersectional standpoint and recognize how interlocking oppressions affect individuals uniquely. Intersectionality demands that we do not engage with identities like caste, religion, class and gender in isolation, but as intersecting identities that shape lived experience. Social welfare programs, legislative protections, health initiatives and education reforms must consider these overlapping realities so that no one is left behind.

LGBTQ persons, particularly those from historically marginalized and underrepresented communities, must be an active participant in the entire process of policymaking, leading up to inclusive policy development. Such a comprehensive and equitable method to policymaking is only the pathway toward true social justice for the LGBTQ population writ large.

Suggestions and Recommendations

This will take an intersectional and multi-faceted reform aim to build, fair & just environment for LGBTQ persons in India. The most urgent step is the enactment of a wide-ranging antidiscrimination law Explicitly addressing and eliminating unfair treatment or bias against individuals due to their sexual orientation and gender identity is illegal. The law must cross every phase of life — housing, job, education and health — and have strong mechanisms of enforcement and redress. Without explicit legal protection, LGBTQ individuals remain vulnerable to systemic exclusion and violence. No less important is legal recognition of (homosexual) same-sex partnerships. Same-sex marriages at least, or civil unions that provide the same rights and responsibilities need to be recognized by amending Indian family laws legislations. These encompass equal rights in areas of adoption, inheritance, tax benefits and

medical decision-making. Denying these rights to same-sex couples perpetuates structural inequality and deprives them of the full rights of citizens.

While the Transgender Persons (Protection of Rights) Act, 2019 is a landmark for visibility, it requires drastic revision to meet the needs of the trans community. In other words, the Act must be rewritten to allow for the self-identification of gender without invasive and bureaucratic certification processes. And punitive provisions also need to be enshrined stronger to deter violence and discrimination against transgender people. It should also provide clear of affirmative action in employment and education for equal opportunity. Sexual education on gender and sexuality needs to be implemented into school curricula at a young to ensure there is an understanding of these issues. Additionally, sensitization workshops should regularly be conducted for police personnel, judges, healthcare workers and government officials. Such trainings should include how to remove prejudice from the process and empathy-building, thus improving institutional responses to LGBTQ issues.

Mental health is also a major [5] issue that we must address for the LGBTQ community. Two: Create low-cost, LGBTQ-affirmative psychological health care. We must ban widely debunked and condemned practices like conversion therapy nationwide. Also, professional licensing bodies should have the power to monitor the practices of mental health professionals and ensure they treat LGBTQ clients ethically. Policy enforcement must not be symbolic. This means that in order to enforce effective policies, we need to have continuous oversight, accountability, and community participation mechanisms. Indian federalism permits both the state and central governments to partner with one another to develop a national approach to ensure LGBTQ rights across India. Implementation must be undergirded by budgetary allocation, monitoring and transparency.

It is through political engagement that social change is effectively triggered. It requires nudging to ensure that political parties include LGBTQ people in their leadership and manifestos and for our voices to be reflected in governance. LGBTQ policymaking platforms will translate into more equitable, better-informed policies and laws. Finally, every single reform must have intersectionality as part of their agenda. Persons from marginalized castes, tribes, religions or socio-economic classes, who may identify as LGBTQ, face what is known as a double jeopardy. This diversity in the queer population needs to be kept in mind while

framing policies and initiatives, so that advocacy and representation is effectively inclusive. Or else progress toward equality will be patchy and erratic in the absence of an awareness of intersectionality. Taken together, these recommendations can serve as a guidepost to develop a comprehensive road map for the realization of legal equality, social justice and human dignity for the LGBTQ Community in India.

Conclusion

What are civil rights but something always fought for and negotiated, and indeed the journey of LGBTQ rights in India has been one where judicial activism, legislative intervention and finally people's movement have worked in an interactive dance. Groundbreaking judgments such as Navtej Johar and NALSA are the constitutional moorings for equality and dignity today. But the road for full inclusion is far long. Legal transformation has to be accompanied by social transformation that is respectful of diversity and defends rights regardless of discriminated status. Our quest for justice, equality and dignity in society should not be reduced to a legal debate, it needs to be a human and moral question if a democracy like India is to emerge; LGBTQ rights in India can only advance through consistent dedication, advocacy, and compassion from everyone—be it the government, judiciary, society, or individuals. This collective effort is essential to fulfil India's constitutional vision of freedom, equality, and unity for all its people.