

LGBTQ EQUALITY IN INDIA

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INTRODUCTION

LGBTQ stands for Lesbian, Gay, Bisexual, Transgender and Queer or Questioning. They are a community in themselves, they celebrate sexuality, pride, individuality and diversity in the country. The LGBTQ community in India has faced a lot of difficulty in attaining their rights and to be honest, even at present they tend to face difficulties in our country just because of the Indian parents or elders saying, “this is not right according to their religion or so which their family follows”. I mean there has always been a negative sense of thought towards the LGBTQ community in India because of the various factors like religion, caste, sex, etc., which have adversely affected the rights and living of these people. India is a vast country with around 1.38 billion people who have different people, a different religion, different societies, different communities and due to this the Indian constitution have created rights for people in the country. The idea of creating rights for every different community is to have peace in society and that all humans are equal. Every human being should have the right to move freely anywhere, they should be treated equally and there should not be any kind of hate for communities under the law. The rights should revolve around the belief that all human beings have respect. And anything that violates the respect of human beings¹ or different communities shall be a violation of the law. The human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people are gaining increasing attention worldwide. In recent years, there have been significant advances in many countries, including the introduction of new legal protections for such communities. But the main problem for such communities to find their freedom or rights, is vintage India, their traditions, cultures and most importantly, rarely talking about sexuality with anyone.

RIGHT TO EQUALITY

The constitution of India has laid down the right to equality in Article 14 and Article 21 for the protection of human rights and anyone who violates these rights will have to face consequences

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or punishment under the law made by the Indian constitution. It is the fundamental right for the well-being, safety, freedom, peace and mankind in the society we live in. As rightly mentioned by our Honorable Supreme Court, “the Fundamental rights are there to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties, who by their majority, may come to form the government at the Centre or in the State”. Protecting the rights of the citizens of India is very essential as the population of the country is in huge numbers with a democratic system. The right to equality is one of the essential rights which the citizens want. The right to equality, Article 14 in the Indian constitution, guarantees the citizens of the country equality before law and protection of them within the territory of India. It does not matter which religion anyone follows or caste, race, sex, gender or place of birth does not matter under the law i.e., comes under Article 15 of the Indian constitution. And anyone who violates Article 14 shall be punishable under law. One of the important purposes of this right is to prevent discrimination based on caste, race, religion, place of birth and sex, as highlighted in Articles 14-18 of the Constitution of India.

VIOLATION OF THE RIGHT TO EQUALITY FOR THE LGBTQ COMMUNITY

The LGBTQ community has been legally recognized, but still has many platforms or stages, but still must fight for their presence. The most important and most important place is a family of homosexuals. The first struggle and discrimination of the right of rights occur from the family of people. These are families that cannot accept the qualities of unusual children to them. This is for two reasons. First, because of their orthodox beliefs, and second, because of social pressure. LGBTQ community enjoys equal rights to any citizen in the county but LGBTQ communities fight for their security, equal citizenship and freedom in the country which often end up in violation. The LGBTQ community has been marginalized and vulnerable for a very long time. ²Earlier they were denied gender identity in society and their existence was not recognized. People often tend to disgrace or ill-treat the LGBTQ community because of their sexual orientation as India is a cultural country for ages. In a nutshell, these communities face problems like entry restrictions in various places such as restaurants, hotels, education institutions, certain jobs, violation of the right to speech and expression etc. These violations have led to lower employment rates, less educated people, inequality among people, health care insurance and many other things which are not benefitted by LGBTQ communities

² [LGBTQ and Right to Equality – Juris Centre](#)

but other citizens. So, for this purpose, there has to be a strict adherence towards the right to equality in India and to lower the violations. There have been many cases due to the violation of these communities.

Suresh Kumar Kaushal VS NAZ Foundation was a case that has a sense of negative impact on such communities, the case was dated on 11 December 2013. It was a case consisting of two judges of the Supreme Court. Both the bench judge overruled the judgement given in NAZ foundation VS Government of NCT of Delhi and reinstated Section 377 of the IPC. The judgment given by the judges were not in favor of the LGBTQ communities as they held that Section 377 of the Indian Penal Code does not violate the constitution of India, it does not violate Article 14, 15 and 21 and sexual intercourse means unnatural lust ought to be punished.

LEGAL BATTLES/ LANDMARK JUDGEMENT

Many legal battles have involved LGBTQ communities and other parties such as organizations, people, states, etc. And there have been many judgements which are in favor of such a community. Now, we will be discussing landmark judgements and some of the famous cases. It all started with the case of AIDS Bhedभाव Virodhik Mandal, 1988 when they raised their voice against Section 377 and they had filed the petition for the same in Delhi high court.³ According to Section 377, it was said that the sexual relationship between homosexuals was regarded as a crime which was itself a violation of the right to equality, prohibition of discrimination on grounds of race, sex, religion, caste or place of birth and protection of the life of the Indian constitution. Naz Foundation vs Government of NCT of Delhi was another legal battle that was concerned with Section 377. This case was a landmark case in the legal history of our country. NAZ foundation was an NGO that was working for HIV/AIDS sufferers, then in 2008, they held that Section 377 of the IPC (Indian Penal Code) was unconstitutional. Naz Foundation also stated that Section 377 violates Articles 14, 15, 19 and 21 of the Indian constitution and that their work for HIV/AIDS was getting affected by the discrimination faced by the LGBTQ community. In this case, the court had held that Section 377 of the Indian constitution violates the substances of Article 21, Article 15 and Article 19.

Navtej Singh Johar VS Union of India was another famous case in the legal history of India with consideration to NAZ foundation VS Government of NCT of Delhi. Navtej Singh Johar

³ [LGBTQ Community in India: Rights and Exploitation \(sbhambriadvocates.com\)](http://www.sbhambriadvocates.com)

was a dancer with a journalist named Sunil Mehra, a chef named Ritu Dalmia, hotelier Keshav Aman Nath and a businesswoman named Ayesha Kapur. They all filed a petition in the Supreme Court seeking a declaration of the right to equality, right to sexuality, right to choose any preference, and Article 21 of the Indian constitution, which says the right to choose a sexual partner⁴. They were also forced to declare Section 377 to be unconstitutional as it was hurting the rights of the LGBTQ community in the country. In 2018, this case resulted in the decriminalization of Section 377. After decriminalization of Section 377, the Indian constitution allowed the consensual sexual act between homosexuals (same-sex) when in private but non-consensual sexual activities among adults as well as minors still stay criminalized and even gave them the identity of the third gender in our country. It was a landmark judgement on behalf of the LGBTQ community, it gave them the freedom to such communities and they were very happy about it.

National Legal Service Authority VS Union of India on 15th April 2014 was a landmark case for the transgender community in India. It was passed by a bench of five supreme court judges. In this case, the transgender community asked the court to seek redressal for the identity of transgenders in the society, they demanded equal rights, recognition and freedom within the country. They said that their non-recognition in the country is a violation of the right to equality (Article 14), Article 15(4) which says that nothing shall prevent the state from making any special provision for the growth of any socially or educationally backward classes of citizens⁵ in the country, freedom of speech (Article 19(d)) and (a) protection of life and personal liberty written in the Indian constitution. Traditionally, transgender is those people are not liked by Indian society because their sexual identity, speech, expression and behavior are not liked by the people in India. But as time passed, their identity came to be known to the people and now we understand that we all are the same. The National Legal Service Authority did a lot of social work for the people and fought many times for the rights of the people like in 2012, they filed social interest litigation to provide free legal services to the weaker section of the country.⁶ MS Lakshmi Narayan Tripathi who was an activist of the transgender community urged the court through lawyers for the self-identity as male/ female/ transgender. The supreme court held that as the transgender are also the people of India, they have all the rights under the Indian constitution and should enjoy all the rights relating to Article 14 which gives rights to every

⁴ [Navtej Singh Johar V/s Union of India | LawFoyer](#)

⁵ [Article 15\(4\) in The Constitution Of India 1949 \(indiankanoon.org\)](#)

⁶ [NATIONAL LEGAL SERVICES AUTHORITY \(NALSA\) v/s UNION OF INDIA | LawFoyer](#)

individual residing in the country. They have the right to work, health care, education and citizenship. Gender discrimination based on orientation and gender identity constitutes inequality before the law and unequal protection of the law and violates Article 14. The court also mentioned that even though they have all the rights to enjoy Article 14 but they cannot enjoy the provisions of Article 15 (4) which aims at the betterment of socially and educationally backward people like Social tribes and Social Castes. The court found that an individual's right to express or express his/her sexual identity through his words, clothing, actions or actions is governed by section 19 (Right to Freedom of Expression). Privacy, self-identification, autonomy and personal integrity are fundamental rights protected by Article 19. The court also found that the transgender community has full rights to Article 21 and deserves a decent and peaceful life. The judgements, in this case, was probably a progressive one for the community. The courts have ratified the third gender category and stated that they should give them basic rights on an equal footing with men and women. In addition, both the Criminal and Civil Acts regarding non-recognition of a third gender, such as marriage, adoption, and divorce, must discriminate against transgender people.

The important thing here is that no judgment or legal approval will protect the rights of this community. It is equally important that society as a whole will accept this resolution and work to protect its rights. In one of the empirical studies conducted by Indians interviewing people belonging to this community, the time empowered the community and provided privacy rights on the paper, but the acceptance of the social inclusion board's progressive judgment was not. Even after two years of judgment, it was still unclear as these communities were still be ill-treated by the people. But some of these community people said that they have been benefitted from such judgements in their workplace, society, among their friends, family relations and educational institutions. In addition, current penal code provisions are sexist. For example, while sexual offences against women are properly recognized and 4,444 people are punished, crimes against members of the LGBT community are not properly recognized under the law. This is Article 14 discrimination against the anvil and the state must ensure that sexual violence against this community is punished with the same impact, aggravation, and penalties as a crime against women. LGBT protesters are encouraging people who have experienced discrimination based on sexual orientation or gender identity in the private or another non-state sphere to take

legal action to test the jurisprudence. They are also protesting for an obvious anti-discrimination law that would outspread to a private perception⁷.

CONCLUSION

We have talked about the LGBTQ community, their difficulties, their eagerness for self-identification, their hope towards the laws in India, the judgements against them, the judgements in favor of these communities and the present situation of these communities in the country. Living in the 21st century, LGBT people are still fighting for their basic rights to equality and recognition. In India, where 'gay sex' is still taboo, discrimination against the LGBTQ community is widespread, which is a serious problem. Although homosexuality and queer identities are being embraced by today's Indian youth, acceptance within the family and home is still a constant struggle for people in the community. Homosexual (same-sex) relationships or sexual activities are now legal in the county with the landmark decision in 2018, which mostly decriminalized Section 377, and the 2014 NALSA decision were indeed significant milestones in their attempt to ensure the basic rights of members of the LGBTQ community and provide ample opportunity to be treated equally in society. But the transgender community failed to enjoy the rights of socially and economically backward people under Article 15(4) of the Indian Constitution. We covered the disappointing judgement for the LGBTQ community in Suresh Kumar Koushal VS NAZ Foundation, which reinstated Section 377 in 2013. Society has sometimes underestimated the LGBTQ community and perceived them as a small minority. They have a voice, strong enough to be heard better in today's society. They are in fact holders of human rights that cannot be compromised by the limited beliefs of a particular religion, community or society. Traditions have changed without losing their essence, and we have welcomed these changes in a changing era. We must all support the community in the fight to restore their rights and ultimately end discriminatory standards between straight and gay people.

⁷ [LGBTQ Rights in India and Acknowledgment - Law Insider India](#)