



## LGBTQ+ RIGHTS AND LEGAL RECOGNITION IN INDIA: A JOURNEY SO FAR

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### ABSTRACT

*LGBTQ+ rights in India have undergone a transformative shift over the past decades, where it was being criminalised and were ignored by the law. It gradually gained recognition and protection through the Constitution and by the courts. The article highlights issues such as the lack of recognition for same-sex marriage, flaws in the Transgender Persons Act, and the ongoing societal discrimination that are being faced by the citizens. It also explains how the Constitution protects the community through rights to equality, dignity, and privacy. This article explores the legal, historical, and social evolution of LGBTQ+ rights in India, with a focus on key legal developments, constitutional protections, and the ongoing challenges which are being faced by the community till date. It argues that while India has taken crucial steps toward equality, there is an urgent need for legislative reform, awareness initiatives, and inclusive policy-making to achieve true social justice for the LGBTQ+ community. However, major challenges remain the same, such as same-sex marriages are still not legally recognised, the Transgender Persons Act is criticised for bureaucratic hurdles, and widespread social stigma continues to limit access to education, employment, and healthcare to date. By referring to the court rulings, laws, and data, the article shows the progress that's been made and points out what still needs to change in order to ensure equal rights, recognition and societal inclusion for all the LGBTQ+ community.*

**Keywords:** LGBTQ+ Rights, Constitutional Protections, Same-Sex Marriage, Transgender Persons.

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## INTRODUCTION

“Until 2018, LGBTQ+ in Indian lived under the shadow of a colonial law that criminalised their very existence”.<sup>1</sup>The struggle for LGBTQ+ rights in India are deeply rooted in the country’s legal and cultural history. From the imposition of Section 377 during British rule to the recent steps towards equality, this journey shows the ongoing battle between old laws and the growing hope for equal rights promised by India’s Constitution.<sup>2</sup> This article traces the key legal developments and social battles that have shaped the recognition of LGBTQ+ individuals in India. Equality, dignity, and freedom are not special rights, but fundamental human rights which are exercised by citizens. Yet, for decades, members of the LGBTQ+ community in India were denied from exercise of these basic legal recognitions. The constitutional guarantees of justice, equality, legal and social systems often failed to protect queer individuals. The judiciary has played a crucial role in upholding constitutional rights and protections for the LGBTQ+ community, but still, the key issues are unresolved- legal recognition of same-sex relationships, changes in laws and policies that would fully protect and include the LGBTQ+ community have not yet been achieved. While the judiciary has played a crucial role in advancing protections for the LGBTQ+ community, societal attitudes and discrimination still present significant challenges.

## REVIEW OF LITERATURE

The journey of LGBTQ+ rights and recognition is filled with both struggles and achievements. It all started in the colonial era, when Section 377 of the Indian Penal Code (IPC) was enacted. This law said that homosexuality is a crime and affected the lives of LGBTQ+ people for many years. The fight for their recognition and equal rights gained momentum, resulting in the historic ‘Navtej Singh Johar v. Union of India 2018’ ruling, where the Supreme Court decriminalised same-sex relations. The judgment also recognised that the dignity, privacy, and equality of LGBTQ+ individuals are to be entitled same as the other citizens in the country, but still the legal battles and societal challenges continue to influence the everyday lives of LGBTQ+ individuals in India. This literature review aims to examine the historical, legal, and social context of LGBTQ+ rights in India, based on the key judicial rulings, government

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<sup>1</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>2</sup> *Naz Foundation v. Govt. of NCT of Delhi*, 160 DLT 277 (Del. HC 2009).

policies, and scholarly contributions to understand the broader journey of LGBTQ+ legal recognition.

The evolution of LGBTQ+ rights has gained significant attention from various scholars, especially after the 2018 court ruling, which resulted in growing public discussions. Scholars such as Arvind Narrain (2004)<sup>3</sup> have highlighted the role of law in both marginalizing and empowering queer communities in India. His work critically assesses how colonial-era laws like Section 377 of the Indian Penal Code were historically used to criminalise non-normative sexuality, perpetuating social stigma and legal invisibility.

Following the 2009 Naz Foundation judgment,<sup>4</sup> which for the first time decriminalised same-sex relationships in India which resulted the scholars paid closer attention to how the issues of sexuality and identity relate to the rights which are guaranteed by the Constitution. Scholars such as “Gautam Bhan (2014)<sup>5</sup> argued that this judgment was a turning point to the queer citizenship, leading to more discussions about dignity, privacy, and equality of the citizen”. However, in the 2013 Koushal v. Naz Foundation ruling<sup>6</sup>, the Supreme Court’s decision in Koushal v. Naz Foundation brought back Section 377. By this judgment, they faced strong criticism from both legal experts and scholars. Saptarshi Mandal (2014)<sup>7</sup> pointed out that the judgment failed to uphold the rights of sexual minorities, and it marked a step backwards for LGBTQ+ justice. Which reintroduced Section 377, it faced strong criticism in both the legal and academic circles for its backwards approach. Saptarshi Mandal (2014) stated that the judiciary has failed to protect minority rights.

The landmark Navtej Singh Johar v Union of India 2018 case, which made same-sex relationships legal again, led researchers and scholars to discuss LGBTQ+ rights. Since then, many scholars have turned their attention towards the constitutional values such as dignity, personal freedom, and the right to be treated equally.

Recent writers and legal experts have taken a deep look towards the Transgender Persons (Protection of Rights) Act, 2019, where they have pointed out many flaws. For instance, “Arasu

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<sup>3</sup> Arvind Narrain, *Queer: Despised Sexuality, Law and Social Change* (Books for Change, 2004).

<sup>4</sup> *Naz Foundation v. Govt. of NCT of Delhi*, 160 DLT 277 (Del. HC 2009).

<sup>5</sup> Gautam Bhan, *Notes on a Scandal: Section 377 and the Dignity of Indian Homosexuals*, 44(33) EPW 72 (2009).

<sup>6</sup> *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

<sup>7</sup> Saptarshi Mandal, *Section 377 and the ‘Order of Nature’*, 49(1) JILI 100 (2007).

(2020)<sup>8</sup> raised concerns about whether the Act truly respects the Supreme Court's 2014 NALSA judgment, which had clearly said that every person has the right to choose and express their own gender identity." Even though LGBTQ+ rights in India have come a long way, many writers point out that just having laws is not enough. Real change needs proper action, support from society, and breaking down deep-rooted discrimination.

## METHODOLOGY

This article adopts a doctrinal and analytical research methodology. It aims to examine the evolution and present condition of LGBTQ+ rights and their recognition in India. It focuses on the constitutional provisions, landmark judicial pronouncements, legislative measures, and relevant scholarly writings. It also referred to the Supreme Court judgments, *Navtej Singh Johar v. Union of India*, "*NALSA v. Union of India*"<sup>9</sup>, *Koushal v. Naz Foundation* have been closely examined to trace the legal transformation regarding LGBTQ+ rights".

In addition, sources including academic literature, expert commentary, and NGO reports have been studied to evaluate the social and policy-based challenges that persist despite legal progress. This legal research also includes a critical review of the Transgender Persons (Protection of Rights) Act, 2019, and highlights the issue that same-sex marriage is still not legally recognised in India.

The article also looks at the history behind LGBTQ+ rights in India, starting from the time when same-sex relationships were criminalised under Section 377 during British rule, to today's growing demand for equal rights and acceptance. It also uses a rights-based approach to understand how the Indian Constitution supports dignity, equality, privacy, and protection from discrimination for LGBTQ+ people. The main goal is to look at how far the law has come, and it also highlights what still needs to be done to achieve real justice and full acceptance in society.

## RESULTS

A review of legal progress, court decisions, and scholarly writings shows a major transformation in how India addresses LGBTQ+ rights and their recognition.

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<sup>8</sup> Arasu, *Gender, Caste and the Politics of Identity*, PUCL-K (2020).

<sup>9</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

**1. Decriminalisation of Same-Sex Relations:** The 2018 Navtej Singh Johar v. Union of India decision struck down Section 377 of the Indian Penal Code. This judgment has legally decriminalised same-sex relations, helping them to regain their dignity and privacy rights to LGBTQ+ individuals. However, there is still an absence of legal recognition for same-sex marriages. The 2018 Navtej Singh Johar v. Union of India ruling was a turning point, as it decriminalised same-sex relationships by striking down Section 377 of the Indian Penal Code. Despite all these efforts, there is still a gap where same-sex marriages are still not legally recognised, leaving the LGBTQ+ couples without legal protections, family rights and equality.

**2. Judicial Expansion of Fundamental Rights:** In NALSA v. Union of India (2014) and Navtej Singh Johar cases, it was recognised that LGBTQ+ individuals have equal rights as part of the fundamental rights which are guaranteed by the Constitution. This ruling states that LGBTQ+ individuals are entitled to equality, freedom from discrimination, the right to express themselves, and personal liberty.

**3. Criticism of the Transgender Persons (Protection of Rights) Act, 2019:** The Transgender Persons (Protection of Rights) Act, 2019<sup>10</sup>, was meant to protect transgender individuals, but the act has faced criticism for creating bureaucratic barriers to gender recognition. Many believe that it doesn't fully support the self-identification principles that are established by the NALSA judgment. Scholars and activists also argue that the Act fails to properly address important issues like healthcare, education, and legal protections against discrimination.

**4. Social Discrimination Remains a Barrier:** Legal reforms are evident, but societal discrimination continues. LGBTQ+ individuals often face exclusion in employment, housing, education, and healthcare. This gap between legal rights and lived realities reflects the need for greater public awareness, sensitisation programs, and inclusive policies.

**5. Limited Policy Implementation:** Government initiatives and welfare schemes specifically for LGBTQ+ individuals remain insufficient and unevenly implemented. The absence of a national law to prevent discrimination or strong civil rights protections makes it difficult to fulfil the promises made by the Constitution.

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<sup>10</sup> Arasu, *Gender, Caste and the Politics of Identity*, PUCL-K (2020).

## DISCUSSION

LGBTQ+ rights in India have made significant progress, especially with the 2018 Navtej Singh Johar v. Union of India decision, which decriminalised consensual same-sex relationships. Despite these legal advancements, many issues remain the same, which prevent LGBTQ+ individuals from being fully included and treated equally in society.

LGBTQ+ rights in India have improved a lot after the 2018 Navtej Singh Johar v. Union of India ruling, which made consensual same-sex relationships legal. However, there are still many challenges that stop LGBTQ+ people from being fully accepted and treated equally in society, where they still face discrimination in fields such as education, healthcare and employment.

The Transgender Persons (Protection of Rights) Act, 2019<sup>11</sup> was seen as a positive development. Although the law aims to protect the rights of transgender people. The law has been criticised for not addressing the issues that are being faced by them, such as social exclusion, discrimination, economic struggles and many more. Legal changes need to do more than just recognise their rights on paper, but they have to tackle the real barriers that stop transgender people from fully participating in society. The law also has bureaucratic challenges, like the need for gender identity certification, and lacks strong enforcement, making it less effective in giving transgender people the dignity and freedom they deserve.

The Indian Constitution, with its strong guarantees of equality, dignity, and privacy, has played a key role in advancing LGBTQ+ rights. The courts have used these constitutional principles to strike down discriminatory laws, which were seen in the Navtej Singh Johar case. However, just having these protections in the Constitution isn't enough for them to live a peaceful life in society without any discrimination. The legal action that allows LGBTQ+ individuals to fully access their rights and protections needs to be in a clear and structured manner. These should include legalising same-sex marriage, improving the Transgender Persons Act, and creating strong anti-discrimination laws that protect LGBTQ+ people in all areas of life.

Moreover, the societal challenges faced by LGBTQ+ individuals continue to be significant even after these legal advancements. Social stigma, workplace discrimination, and violence against LGBTQ+ individuals continue to be widespread. The courts' efforts to protect

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<sup>11</sup> Arasu, *Gender, Caste and the Politics of Identity*, PUCL-K (2020).

LGBTQ+ rights should be supported by broader societal changes, like challenging Discriminatory attitudes and encouraging the inclusion of LGBTQ+ individuals. Public awareness campaigns, LGBTQ+ education, and more representation in media and politics are important for tackling the deep-seated biases that continue to marginalise the community.

Legal protections are important, but making sure these laws are carried out is just as crucial. The legal system should not just protect rights on paper but should also ensure that people can use those rights in real life. There is also a need for specialised support systems for LGBTQ+ individuals who experience violence or discrimination, ensuring they have access to justice and resources.

In conclusion, India has made progress in advancing LGBTQ+ rights, but there is still much which needs to be done. Legal recognition of same-sex marriages, changes to the Transgender Persons Act, and efforts to fight against social discrimination are all important steps toward true equality. Full inclusion requires not just legal reforms, but also changes in societal attitudes, thinking perspectives and policies that tackle the challenges faced by the LGBTQ+ community. As India moves forward, it is crucial to look into how legal, social, and political systems work together to create an inclusive society where LGBTQ+ individuals can live with dignity, equality, and freedom in the society.

## CONCLUSION

To sum up, the journey of LGBTQ+ rights in India has faced both achievements and struggles by the community. India has made significant progress in recognising and protecting LGBTQ+ rights, but there is still a long way to go. Issues such as legalising same-sex marriage, improving the Transgender Persons Act, and addressing ongoing social discrimination require urgent attention and changes by the government. True equality for LGBTQ+ individuals will only come when legal reforms taken by the government provide them full protection, where they can exercise their rights and when they can live in society without discrimination. As India moves forward, it's crucial that all aspects of society that is legal, social, and political systems, work together to create an environment where LGBTQ+ people can live with dignity, equality, and freedom, same like other citizens lead their lives.