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## AUDITING THE LEGAL STRUGGLE OF THE LGBTQ+: WHAT IS NEXT FOR THE RAINBOW?

~ *Sneha Pal*

### Introduction

The moral strength of Part III of the Constitution is in its promise that India is a democratic republic where every citizen's dignity, freedom, and equality are safeguarded. The democratic ideals in the Preamble are not just for the majority; they apply to everyone. One important aspect of individuality is how people choose their partners and express intimacy. The gender binary and strict expectations of heterosexuality are not set in stone in Indian culture. Classical texts, art, and historical practices suggest a more complex social landscape. <sup>1</sup>Viewing reproduction as the only purpose of intimate relationships undermines companionship and dignity. Dismissing same-sex and non-conforming relationships as "**against the order of nature**" weakens constitutional morality and personal freedom. Judges like A. M. Khanwilkar and D. Y. Chandrachud has emphasized that dignity, privacy, and self-determination are essential constitutional values.

### From Section 377 to Judicial Rights Building : The Naz Foundation's petition

<sup>2</sup>The Naz Foundation's challenge to Section 377 of the IPC in the Delhi High Court (2009) argued that it violated Articles 14, 15, 19, and 21. The Delhi Court ruled that Section 377 did not apply to consensual acts between adults of the same sex. <sup>3</sup>The Ministry of Health & Family

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<sup>1</sup> Unconstitutionality of Section 377 of IPC : Overview of Naz Foundation v. Govt. of NCT of Delhi, iPleaders Blog (October 19, 2025, 10:30 PM), <https://blog.iplayers.in/unconstitutionality-section-377-ipc-overview-naz-foundation-v-government-nct-delhi/>

<sup>2</sup> Tanuj Modi, Analysis of Section 377 of Indian Penal Code, 1860, Legal Service India (October 19, 2025, 11:35 PM), <https://www.legalserviceindia.com/legal/article-679-analysis-of-section-377-of-indian-penal-code-1860.html>

<sup>3</sup> Unconstitutionality of Section 377 of IPC : Overview of Naz Foundation v. Govt. of NCT of Delhi, iPleaders Blog (October 19, 2025, 10:30 PM), <https://blog.iplayers.in/unconstitutionality-section-377-ipc-overview-naz-foundation-v-government-nct-delhi/>

Welfare argued that strategies for the prevention of contagious disease like HIV/AIDS among them first needed their recognition.

### **Privacy & Identity : Puttaswamy and NALSA**

These judgments were phenomenal to recognize the dignity & sexual orientation of individuals negating the gender binary. <sup>4</sup>NALSA (2014) recognized transgender persons as a distinct group, their rights to self-determine gender identity & freedom of expression through speech, clothing etc. <sup>5</sup>Puttaswamy (2017) established privacy, including sexual orientation, as a protected part of identity. These rulings serve as constitutional limits on any legal framework.

### **The decriminalization : Johar**

<sup>6</sup>The legal journey peaked with Navtej Singh Johar v. Union of India (2018), where a five-judge bench stated that consensual adult same-sex relationships could not be criminalized & 'right to health is indispensable' for LGBTQ+ individuals<sup>7</sup>. It laid the groundwork for later legislative and policy efforts by removing the criminal stigma that hindered access to healthcare, law enforcement, and civil rights.

### **Marriage Equality Litigation & Legislative Gap : Supriyo**

<sup>8</sup>In **Supriyo @ Supriya Chakraborty & Anr. v. Union of India (2023)**, the Supreme Court declined to recognize a fundamental "right to marry" for same-sex couples under current personal laws or the Special Marriage Act. The Court ruled that since expanding marriage

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<sup>4</sup> Dr. J N Pandey, Constitutional Law of India 234, 320 , Central Law Agency 2021

<sup>5</sup> Puttaswamy v. The Union of India (I), Global Freedom of Expression (October 19, 2025, 11:10 PM), <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/>

<sup>6</sup> Constitutionality of Section 377 IPC, Supreme Court Observer ( (October 19, 2025, 11:30 PM), <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background/>

<sup>7</sup> Sofia Weiss Goitiandia, Akhilesh Agarwal, Smita C. Banerjee, Nirmala Bhoo-Pathy Chandan Bose, Mahati Chittem, Roop Gursahani, L. Ramakrishnan, Smriti Rana, Naveen Salins, Malar Velli Segarmurthy, Aashiana Thiyam, and William E. Rosa, Beyond the Bench: LGBTQ+ health equity after India's "no same-sex marriage" verdict, 30 The LANCET Regional Health South Asia, 2 (2024) [https://www.thelancet.com/journals/lansea/article/PIIS2772-3682\(24\)00144-6/fulltext](https://www.thelancet.com/journals/lansea/article/PIIS2772-3682(24)00144-6/fulltext)

<sup>8</sup> Trisha Agarwal, RECOGNITION OF LGBTQIA+ RIGHTS: LEGISLATIVE FRAMEWORK & JUDICIAL MILESTONES, 2 IJLSSS, 178, 181 (2024) <https://ijlsss.com/recognition-of-lgbtqia-rights-legislative-framework-judicial-milestones/>

rights properly belongs to the legislature, judicial enactment would disrupt separation of power. Consequently, decriminalization and recognition of identity coexist with a legislative gap for relationship recognition, including marriage, inheritance, spousal support, and adoption benefits.

### **Statutory Overhaul : IPC/CrPC/Evidence Replaced by BNS / BNSS / BSA**

<sup>9</sup>For LGBTQ+ individuals, even though Section 377 is completely omitted in the Bharatiya Nyaya Sanhita (BNS), the substantive protection established by the Supreme Court in Johar and Puttaswamy remains binding constitutional law. However, the new BNS redefines sexual offenses. Notably, Section 63 BNS defines rape in gender-specific terms, which raises concerns for gender-diverse and male victims since this narrow wording may exclude certain non-consensual acts from being recognized as rape. Since BNS does not specifically address the concerns of the LGBTQ+ community, **civil remedies & rights, such as inheritance, social security, and medical decision-making**, still depend on legislative changes or gradual administrative recognition. This decision has drawn critical responses and legal challenges seeking clarification and corrective actions.

### **Legislative & Regulatory Developments; Policy Measures**

Important statutory and regulatory milestones include

- <sup>10</sup>The **Transgender Persons (Protection of Rights) Act, 2019**, which acknowledges self-perceived identity but faces criticism over procedural aspects.
- <sup>11</sup>The Madras High Court judgment in the case of **S. Sushma v. Commissioner of Police, Greater Chennai Police** banned the questionable practice of ‘conversion therapy’ that claims to ‘cure’ or change the sexual orientation of queer people, as there is no scientific evidence to support the fact.

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<sup>9</sup> Deccan Herald, <https://www.deccanherald.com/opinion/the-bns-a-missed-opportunity-for-gender-inclusivity-and-lgbtq-rights-2694568> (last visited October 20, 2025)

<sup>10</sup> PRSIndia <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019> (last visited October 20, 2025)

<sup>11</sup> Trisha Agarwal, RECOGNITION OF LGBTQIA+ RIGHTS: LEGISLATIVE FRAMEWORK & JUDICIAL MILESTONES, 2 IJLSSS, 178, 185 (2024) <https://ijlsss.com/recognition-of-lgbtqia-rights-legislative-framework-judicial-milestones/>

- <sup>12</sup>**SMILE (Support for Marginalized Individuals for Livelihood and Enterprise) Scheme (Department of Social Justice and Empowerment, 2022)** aimed at providing support for livelihoods and rehabilitation.
- <sup>13</sup>There have also been medical education initiatives, including a 2021 Madras High Court directive to remove queerphobic content from textbooks.
- Following the BNS/BNSS reforms, both governments and courts have started training and awareness efforts, such as police training modules aligned with BNS and healthcare initiatives for transgender people.

Recent judicial actions, such as courts overseeing implementation and forming panels to boost transgender access to jobs and healthcare, indicate ongoing remedial progress.

### **Remaining Gaps, Societal Backlash & Ongoing Advocacy**

Despite significant progress in legal rights, many gaps still exist —

- <sup>14</sup>The existing laws governing the armed forces, namely the **Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950**, do not provide provisions for or inclusion of the LGBT community in any manner, hindering their access to serve in the armed forces.
- <sup>15</sup>The definition of ‘aggrieved person’ as per Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 excludes men, transgender persons, or same-sex relationships. There is a clear absence of legal provision of these sections from intimate partner violence even in the new legislation.
- Along with social backlashes, numerous queer couples continue to struggle with issues related to inheritance, access to the job market, banking, adoption, medical decision-making, and the recognition of family status.

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<sup>12</sup> Press Information Bureau, Government of India  
<https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1806161> (last visited October 20, 2025)

<sup>13</sup> Sofia Weiss Goitandia, Akhilesh Agarwal, Smita C. Banerjee, Nirmala Bhoo-Pathy Chandan Bose, Mahati Chittem, Roop Gursahani, L. Ramakrishnan, Smriti Rana, Naveen Salins, Malar Velli Segarmurthy, Aashiana Thiyam, and William E. Rosa, Beyond the Bench: LGBTQ+ health equity after India’s “no same-sex marriage” verdict, 30 *The LANCET Regional Health South Asia*, 2 (2024)  
[https://www.thelancet.com/journals/lansea/article/PIIS2772-3682\(24\)00144-6/fulltext](https://www.thelancet.com/journals/lansea/article/PIIS2772-3682(24)00144-6/fulltext)

<sup>14</sup> Trisha Agarwal, RECOGNITION OF LGBTQIA+ RIGHTS: LEGISLATIVE FRAMEWORK & JUDICIAL MILESTONES, 2 *IJLSS*, 178, 184 (2024)  
<https://ijlss.com/recognition-of-lgbtqia-rights-legislative-framework-judicial-milestones/>

<sup>15</sup> Ibid

- <sup>16</sup>The implementation of the NALSA judgment is still incomplete. For instance, a Delhi court in 2025 noted that despite the NALSA ruling and the Transgender Act, the government still lacked proper policies for including transgender individuals in jobs and public employment.

Some regulatory frameworks and medical education programs still do not adequately address LGBTQ+ health needs. Continuing activism, academic research, pride movements, awareness campaigns, and public education are key to closing the gap between legal recognition and daily equality.

### **Conclusion**

The legal fight for LGBTQ+ rights in India highlights that the values in Part III of the Constitution—equality, freedom, dignity, and justice—are not empty promises. They require ongoing growth and enforcement. The Preamble’s vision of democracy for "every individual" resonates when we recognize that love, companionship, gender identity, and sexual orientation are central to human experiences. From the initial challenge against Section 377 to recognizing gender identity in NALSA, the right to privacy in Puttaswamy, and the decriminalization in Johar, each step shows that “constitutional morality would prevail over social morality”. However, the path is not yet complete. Achieving full socio-legal equity and inclusion — requires robust social reforms and legislative deliberations. Ongoing legal & legislative efforts and social change are necessary to fulfil democracy's promise for everyone.

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<sup>16</sup> Bar and Bench <https://www.barandbench.com/news/delhi-high-court-questions-centre-delhi-governments-over-delay-in-transgender-reservation-in-jobs> (last visited October 20, 2025)