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The Third Space: Legal Recognition and Social Inclusion of LGBTQ+ Rights

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Abstract

The LGBTQ+ community in India has witnessed significant progress in recent years, especially through landmark judicial pronouncements. However, social discrimination and legal limitations continue to hinder full equality. This paper reviews the evolution of LGBTQ+ legal rights in India, analyzing judicial landmark cases, statutory developments, and social attitudes. It highlights remaining legislative gaps and sociocultural barriers, offering recommendations for legal reform and inclusive policy.

INTRODUCTION

The rights of LGBTQ+ individuals have long been marginalized in Indian society. **Modern psychology and psychiatry recognize homosexuality as a natural variation of human sexuality, not a disorder. Social norms evolve, and what is “normal” or “natural” changes with cultural context.** From criminalisation to decriminalisation, the legal journey of this community is intertwined with broader questions of liberty, equality, and dignity. This paper aims to critically assess the legal recognition and social realities of LGBTQ+ persons in India. A prevalent argument against the extension of equal rights to LGBTQ+ individuals is the belief that non-heteronormative sexual orientations and gender identities are "unnatural" or deviant from the traditional order of nature. This paper seeks to explore the legal and social dimensions of LGBTQ+ rights in India, critically analyzing the philosophical and constitutional tensions between tradition and modernity, prejudice and justice, and morality and legality.

Causes for Non-Acceptance of LGBTQ+ Individuals in Society

The persistent non-acceptance of LGBTQ+ individuals in society stems from a combination of historical, cultural, religious, and institutional factors. One of the primary causes is **deep-rooted social conditioning** shaped by centuries of **heteronormative values**, where heterosexual relationships are seen as the only "**natural**" form of intimacy. *Equating what is "natural" with what is "good" or "right" is a logical error. Just because something is common in nature doesn't mean it's morally justified and vice versa.* The definition of "natural" is often ambiguous and culturally biased. Human behavior includes a vast range of natural variations, and diversity should not be dismissed as unnatural. *"Natural is what is essential or intrinsic to a thing's identity or function".* For example, "It is natural for humans to speak" or "It is natural for birds to fly." Same-sex attraction would be considered natural if it arises from within, not imposed externally.

Religious orthodoxy across various faiths also plays a significant role, with many doctrines misinterpreted to condemn non-heterosexual orientations and gender non-conformity **as immoral or sinful as it is unnatural.** *"The unnatural man is the moral* "You cannot define what is morally good simply by describing what is natural." Anything" imposed upon you by society, religion, or morality which is not coming from your own being that is unnatural. Trying to behave in ways that go against your inner truth (due to fear, guilt, or conditioning) is what **unnatural.** *"To be natural is to be true to yourself not to imitate others, not to follow borrowed morals."*

Moreover, lack of awareness and education about gender and sexual diversity perpetuates ignorance, fear, and misinformation. Inadequate representation in school curricula, mainstream media, and public discourse means that many people grow up without exposure to diverse identities, resulting in stereotypes and prejudice. Family and societal pressure to conform to traditional roles—especially in collectivist cultures like India can lead to rejection, shame, and even violence against LGBTQ+ individuals.

The absence of legal protections and a comprehensive anti-discrimination framework further emboldens social exclusion, as LGBTQ+ persons face barriers in employment, healthcare, housing, and public life. Additionally, political hesitation and legislative inertia reflect and reinforce societal discomfort.

Social Realities & Discrimination

LGBTQ+ individuals in India continue to face harsh social realities marked by widespread stigma, family rejection, and systemic discrimination. Deep-rooted societal biases often result in ostracisation from families, leading to homelessness, workplace exclusion, physical and psychological violence, and profound mental health challenges due to internalised shame and lack of support. In a significant step forward, the Madras High Court in *S. Sushma v. Commissioner of Police* (2021) formally banned conversion therapy, recognising its abusive nature, and directed the sensitisation of police and medical personnel to better handle LGBTQ+ issues. Despite these challenges, civil society and grassroots organisations have played a crucial role in offering support. Groups like Rainbow Voices (Chennai) provide legal assistance, counselling, and community outreach, while activists such as Rudrani Rajkumari continue to champion emotional and legal empowerment for queer individuals facing discrimination and distress, helping to build safe spaces and foster inclusion.

Historical & Constitutional Legal Framework

The legal trajectory of LGBTQ+ rights in India has been profoundly shaped by the colonial-era Section 377 of the Indian Penal Code, enacted in 1861 under British rule. This provision criminalised "carnal intercourse against the order of nature," effectively targeting and suppressing consensual same-sex relationships and identities for over a century. A turning point came with the *Naz Foundation v. Government of NCT of Delhi* (2009), where the Delhi High Court decriminalised consensual same-sex acts between adults, holding that Section 377 violated fundamental rights under Articles 14, 15, 19, and 21 of the Constitution. The Court reasoned that the provision infringed upon the dignity, equality, and privacy of individuals, and that moral disapproval could not be a legitimate basis for curbing fundamental rights. However, this progressive ruling was overturned in *Suresh Kumar Koushal v. Naz Foundation* (2013) by the Supreme Court, which reinstated criminalisation. The Court argued that the LGBTQ+ population constituted a "minuscule minority" and that the judiciary could not act as a substitute for legislative will an interpretation that drew sharp criticism for undermining minority rights. Finally, in the landmark judgment of *Navtej Singh Johar v. Union of India* (2018), the Supreme Court unanimously read down Section 377, decriminalising consensual same-sex relations among adults. The Court held that the criminalisation of such conduct violated the constitutional guarantees of equality (Article 14), non-discrimination (Article 15), freedom of expression (Article 19), and the right to life and personal liberty (Article 21). The judgment affirmed that constitutional morality must prevail over social morality, and emphasised

individual dignity, autonomy, and the inherent worth of all human beings, irrespective of their sexual orientation.

Transgender Legal and Societal Recognition

Sexuality is not a moral issue but a natural phenomenon deeply personal and diverse, like the fingerprints of existence. love, in all its forms, is sacred if it arises from awareness and truth. societal constructs that limit the expression of love and identity, affirming that every individual has the right to be who they are, without guilt or shame. In this context, LGBTQ+ identities are not deviations but expressions of the vast diversity of human consciousness.

Attempts to shift the narrative from legality and social morality to authenticity, awareness, and inner freedom offering a spiritual and philosophical grounding for inclusivity and acceptance. Advocate for a world where love is not legislated but lived freely, naturally, and fearlessly.

The recognition of transgender rights in India has evolved through significant judicial and legislative milestones. In *National Legal Services Authority v. Union of India* (2014), the Supreme Court recognised transgender persons as the “third gender,” affirming their right to self-identification and guaranteeing access to constitutional rights under Articles 14, 15, 16, 19, and 21. The Court underscored the principles of equality, dignity, and non-discrimination, and directed the government to ensure reservations and equal opportunities for the transgender community. Building on this, the Transgender Persons (Protection of Rights) Act, 2019 was enacted to provide statutory protection against discrimination in areas such as employment, education, healthcare, and public services. However, the Act has been criticised for lacking clarity on self-identification and failing to provide strong affirmative action mechanisms. Further progressive developments came from High Courts. In *Arun Kumar v. Inspector General of Registration* (2019), the Madras High Court interpreted the term “bride” under the Hindu Marriage Act to include a trans woman, thus legally validating transgender marriages, and also prohibited non-consensual surgeries on intersex children, affirming bodily autonomy. Similarly, in *Chinmayee Jena v. State of Odisha* (2020), the Orissa High Court upheld a trans man’s right to cohabit with his partner, regardless of gender identity, reinforcing the fundamental right to personal autonomy and intimate association. Together, these legal advancements signify a growing judicial commitment to protecting and affirming the rights and dignity of transgender individuals in India.

Cohabitation, Family & Chosen Family Rights

Legal recognition of cohabitation and non-traditional family structures has gained momentum in India, particularly in the context of LGBTQ+ rights. **Relationships are a matter of personal resonance, not of social obligation or religious ritual and the creation of “chosen families” based on emotional connection, respect, and shared consciousness rather than lineage or legality.** Several High Court including those in Gujarat, Kerala, Uttarakhand, and Odisha have held that live-in relationships between same sex partners are entitled to the same legal protection as those involving heterosexual couples, reinforcing the right to equality and dignity. The Supreme Court in *Deepika Singh v. Central Administrative Tribunal* (2022) further broadened the understanding of family by recognising that atypical family structures, including unmarried and queer couples, are entitled to social security benefits and state protection. In a progressive step, the Madras High Court in June 2025 recognised queer partners as a “chosen family” under Article 21, affirming the fundamental right to autonomy, dignity, and the freedom to live with a partner of one’s choice. The Court criticised the police for failing to protect queer individuals and called for comprehensive reforms in family law to align with the lived realities of queer citizens.

Matrimonial, Adoption & Medical Decision-Making Rights

Traditional Definition of Marriage: Marriage is often legally and socially defined as a **union between a man and a woman** primarily oriented toward procreation and family stability. In social norms sexual activity is natural only if it leads to reproduction. Since same-sex relationships cannot naturally result in biological offspring, they are considered “unnatural” but this theory is being **Criticized as humans** engage in many non-reproductive sexual behaviors (e.g., contraception, celibacy, masturbation) which are not considered unnatural. The purpose of sex is also intimacy, pleasure, bonding, and emotional connection all natural human needs and many heterosexual couples cannot or choose not to reproduce, yet their relationships are not labeled unnatural

And as far as child is being concerned there is no rule that only the combination of male and female is necessary for parenthood, a loving, conscious environment was more important than biological or legal structures thus supporting the idea that anyone capable of providing love and care, regardless of gender or orientation, should be free to raise children

The legal framework in India continues to deny LGBTQ+ individuals full access to matrimonial and familial rights. In *Supriyo v. Union of India* (2023), the Supreme Court declined to legalise same-sex marriage, holding that it lacked the authority to alter personal laws or read marriage equality into existing statutes such as the Special Marriage Act. The Court deferred the matter to Parliament, despite acknowledging the dignity and equal rights of queer individuals. Meanwhile, several same-sex couples, including Saxena-Kotia and Arora-Khanna, have filed fresh constitutional challenges seeking recognition of their unions, which remain pending before the Supreme Court. Similarly, adoption rights remain limited under statutes like the Hindu Adoption and Maintenance Act, 1956 (HAMA) and the Juvenile Justice Act, 2015, both of which require a legally married couple a standard that excludes same-sex couples from eligibility. Surrogacy regulations impose similar restrictions by limiting access to legally married heterosexual couples, thereby effectively denying LGBTQ+ individuals the right to form families through assisted reproductive techniques. Furthermore, in a significant development on July 17, 2025, the Delhi High Court issued notice to the Centre regarding the exclusion of same-sex partners from healthcare decision-making and next-of-kin rights, highlighting the absence of legal recognition in matters of medical consent, especially during emergencies. These legal gaps continue to marginalise the LGBTQ+ community from essential personal and relational rights.

Ongoing Challenges & Policy Gaps

Despite significant judicial advancements, LGBTQ+ individuals in India continue to face substantial legal and social challenges due to persistent policy gaps. The absence of marriage equality deprives same-sex couples of crucial spousal rights such as inheritance, joint property ownership, tax benefits, and insurance coverage. Furthermore, the lack of adoption and surrogacy rights renders LGBTQ+ families legally unprotected, undermining their ability to raise children with equal dignity and security. There is no comprehensive anti-discrimination legislation at the national level to safeguard LGBTQ+ persons from prejudice in housing, healthcare, employment, or education, leaving them vulnerable to systemic exclusion. Social illiteracy continues to perpetuate stigma, with LGBTQ+ awareness and inclusion in school curricula remaining inconsistent, though progressive efforts have been observed in states like Kerala. Lastly, legislative inertia following the Supreme Court's referral of the marriage equality issue to Parliament has stalled progress. In the absence of proactive legislative reforms, judicial pronouncements alone remain insufficient to fully realise LGBTQ+ rights and inclusion.

Recommendations & Way Forward

To ensure genuine equality and dignity for LGBTQ+ individuals in India, a multi-pronged legal and policy approach is essential. First, marriage equality legislation must be enacted either by amending the Special Marriage Act or introducing a dedicated law to uphold the constitutional rights to liberty and non-discrimination. Parallel reforms are needed in adoption and surrogacy laws to include unmarried and queer couples, thereby acknowledging diverse family structures. A comprehensive national anti-discrimination law should be passed to explicitly protect individuals from bias based on sexual orientation and gender identity in areas such as employment, housing, healthcare, and education. The effective implementation of the Transgender Persons (Protection of Rights) Act, 2019, along with court-directed sensitisation and awareness programs, must be prioritised to address ground-level stigma and institutional barriers. Additionally, chosen families as recognised in recent High Court rulings should be granted legal status in family law, particularly in matters of inheritance, pensions, and healthcare decision-making. Finally, expanding LGBTQ+ inclusive education, promoting corporate diversity initiatives, and enhancing positive media representation will be critical to fostering a more inclusive and aware society.

Conclusion

Sexuality is a part of human nature, and suppressing it leads to misery and repression. Indian jurisprudence has progressed significantly: decriminalisation (2018), transgender recognition (2014), live-in and chosen-family rights (2025), and conversion therapy bans signal constitutional shifts. However, significant legal and social gaps remain especially absence of marriage equality, adoption rights, comprehensive anti-discrimination protections, and fight against stigma. *Existence accepts you as you are. The moment you accept yourself, you become natural.* A comprehensive, rights-based legal framework supported by social awareness is essential to ensure justice and inclusion for all.

References

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