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## SEXUAL ORIENTATION AND GENDER IDENTITY IN HUMAN RIGHTS

*~Kritika Rajput*

Human rights are the basic rights should be provided to everybody on this earth irrespective of race, religion, gender, caste, nationality or social status and other basis on which discrimination happens. The very heated issue which is going on about the recognition of sexual orientation and gender identity, LGBTQ community rights though it is recognised in some countries but still countries ignores and detreated these communities and refuse to recognize them and provide rights, many countries sees these people as a taboo or against the nature. This discrimination, violence, exclusion and denial of opportunities against these communities are continued from a very long time. This struggle of LGBTQ rights is now become a struggle for life, dignity and freedom.

Sexual orientation basically means a person's emotional, romantic or sexual attraction towards another person, while gender identity refers to person's sense of being male, female both or neither these two concepts are very different like gender identity is how people defines and feels themselves to be whereas sexual orientation is towards whom a person is attracted and have feelings for.<sup>1</sup>

## UNDERSTANDING SEXUAL ORIENTATION AND GENDER IDENTITY

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<sup>1</sup> Aarti, Poonam Malik, Sudiksha & Deeksha, Understanding Complexities of Gender Identities and Sexual Orientation, 11 *J. Emerging Techs. & Innovative Rsch.* h211 (2024).

Sexual orientation refers to who you are attracted to, includes the identities such as heterosexual, homosexual, bisexual, pansexual and asexual. Sexual orientation exists on a continuum and cannot always be categorized into rigid groups.<sup>2</sup>

Gender identity refers to an individual's self-identification regarding the gender. Some people identify as cisgender means the gender they were assigned at birth matches to their gender identity while others may identify as transgender, non-binary, gender fluid or third gender. Gender identity is an individual's internal sense of self and gender expression is the way people communicate their gender through behaviour, clothing and appearance.<sup>3</sup>

These concepts provide a wide understanding of genders and their identity which is not aligned with the traditional binary understanding of gender and which was considered the how human's nature and biological things works. Though both are related parts of a person but still end up making person unprivileged of their rights.<sup>4</sup>

## **HUMAN RIGHTS AND LGBTQ COMMUNITY**

As we know that human rights are the principles which are based on equality, no discrimination and providing basic rights to all people. LGBTQ community is facing discrimination from a very long time denied these rights because of social prejudice and cultural stereotypes. This situation was common because societies considered heterosexuality as the nature and binary gender identities as the norm of the society and how things work therefore this thinking leads to exclusion and stigmatization to those who do not follow these.

LGBTQ individuals often faced bullying, harassment, violence, denial of healthcare discrimination and rejection from their own family many movies and web series shows the way people treat these individuals. These types of discrimination not only affects their social life but also affects their mental and physical health and being of themselves.<sup>5</sup>

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<sup>2</sup> [Human Rights Campaign](#), *Sexual Orientation and Gender Identity Terminology and Definitions* (last visited May 22, 2026)

<sup>3</sup> Aarti, Poonam Malik, Sudiksha & Deeksha, *Understanding Complexities of Gender Identities and Sexual Orientation*, 11 *J. Emerging Techs. & Innovative Rsch.* h211 (2024).

<sup>4</sup> *Sexual Orientation and Gender Identity: Review of Concepts, Controversies and Their Relation to Psychopathology Classification Systems*, 6 *Frontiers Psych.* 1511 (2015), <https://pmc.ncbi.nlm.nih.gov/articles/PMC4589638/>

<sup>5</sup> Regina Gerbier, *Sexual Orientation and Gender Identity* (2019).

United nations repeatedly prioritised the inclusion of people and providing them the human rights which they deserved and should be treated equally regardless of sexual orientation and gender identity they have. International principles like the Yogyakarta principles recognise the rights of LGBTQ persons and mention about equality, privacy, education, choice, healthcare, freedom of expression and protection from violence. These principles aim to ensure dignity to individual without any fear of discrimination or exclusion.<sup>6</sup>

## **RECOGNITION IN INDIA**

Historically India did not recognise these communities and considered such people as taboo or as if they have committed some kind of sin and excludes them from society even many stories about such individual shows rejection from their own families. Also homosexual activities were considered to be criminal offence under sex- 377 of IPC<sup>7</sup> earlier which was abolished.

The most important turning point in Indian history came with the Navtej Singh Johar v. Union of India case where supreme court of five bench decriminalized the same sex relationships by striking the 377 section of IPC particularly the part which criminalized homosexual activities and considered against the order of nature.<sup>8</sup> Along with this court also recognized that sexual orientation is a part of human dignity, identity, privacy and liberty which is protected under article 21 of constitution of India.<sup>9</sup>

Another landmark judgement of NALSA v. Union of India where supreme court recognised transgender as the third gender, upheld the principle of self identification and resulted inclusion of this category in every documents therefore this judgement affirmed that transgender individuals are entitled to equality, freedom of expression and protection against discrimination.<sup>10</sup>

These decisions were marked as the turning point for acknowledging the rights of LGBTQ people and providing them the fundamental rights.

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<sup>6</sup> *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), <https://yogyakartaprinciples.org/>

<sup>7</sup> Indian Penal Code, 1860, § 377 (India)

<sup>8</sup> Kalpana Kannabiran, 'What Use is Poetry?' *Excavating Tongues of Justice around Navtej Singh Johar v. Union of India*, 31 *Nat'l L. Sch. India Rev.* 1 (2019).

<sup>9</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

<sup>10</sup> *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India)

## ISSUES FACED BY LGBTQ COMMUNITY

Though there are laws like transgender protection of right act which provides right and protection of people from discrimination at healthcare, work, employment<sup>11</sup> but still these laws and regulations takes a lot of time for their actual practice and therefore communities still faces major issues such as<sup>12</sup>:

1. Lack of inclusion in society
2. Improper Law enforcement
3. violence and harassment towards community people<sup>13</sup>
4. continued discrimination in different sectors
5. social stigma and causing mental health problems to individuals<sup>14</sup>

## CONCLUSION

Sexual orientation and gender identity are important parts of who we are as individuals. The recognition of LGBTQ+ rights is actually about human rights, like equality, respect, freedom and fairness for all. Though India have made some legal progress, court decisions like Navtej Singh Johar v. Union of India and NALSA v. Union of India. Even today many people still do not accept LGBTQ+ individuals. A country can only be truly democratic and fair when everyone, no matter their sexual orientation or gender identity is treated with respect and dignity. LGBTQ+ people should have the rights and freedoms as anyone else. To make this happen we need to spread awareness protect LGBTQ+ individuals legally and include them in society. This way LGBTQ+ persons can live freely. Be themselves, without fear. LGBTQ+ community deserves the rights and protection like any other people have.

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<sup>11</sup> Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, India Code (2019) (India)

<sup>12</sup> *Psychiatry Investigation*, Sexual Orientation and Gender Identity in India: Historical Background and Current Status, PMC, <https://pmc.ncbi.nlm.nih.gov/articles/PMC10104455/> (last visited May 22, 2026).

<sup>13</sup> Regina Gerbier, *Sexual Orientation and Gender Identity* (2019).

<sup>14</sup> Regina Gerbier, *Sexual Orientation and Gender Identity* (2019).