



Topic of Research

ROLE OF LGBTQIA AND THEIR RIGHTS IN INDIA

Sweksha

ABSTRACT

This paper explores the evolution of LGBTQIA+ rights in India, focusing heavily on the intersection of legal advocacy, socio-cultural transformation, and the strategic deployment of Public Relations (PR) and communication frameworks. Historically marginalized under colonial-era laws, the queer community in India has witnessed a dramatic shift over the last two decades, culminating in the landmark *Navtej Singh Johar v. Union of India* verdict in 2018. However, legal de-criminalization has not automatically translated into absolute social acceptance or systemic equity.

This study examines how PR strategies—ranging from grassroots digital activism and corporate Diversity, Equity, and Inclusion (DEI) campaigns to mainstream media representation—have acted as catalysts for shifting public perception, influencing policy, and fostering workplace inclusivity. Through a critical analysis of ongoing challenges, including the rejection of marriage equality by the Supreme Court in 2023, this paper provides a strategic framework for how PR practitioners, human rights organizations, and corporate leaders can collaborate to build sustained, authentic acceptance for the LGBTQIA+ community in India.

KEYWORDS

Introduction

Race, gender, religion, sexuality, we are all people and that's it. We're all people. We're all equal.”- ConorFranta

Human rights are universal rights that belong equally to every individual irrespective of caste, religion, gender, nationality, or sexual orientation. Among these rights are the rights to equality, dignity, freedom, privacy, and non-discrimination. LGBTQ+ rights form an essential part of human rights because they protect individuals who identify with diverse sexual orientations and gender identities.

The term LGBTQ+ refers to:

L – Lesbian

G – Gay

B – Bisexual

T – Transgender

Q – Queer or Questioning

+ – Includes other identities such as intersex, asexual, pansexual, non-binary, and gender-fluid individuals.

The struggle for LGBTQ rights in India has been a journey marked by significant challenges and notable progress. They have faced social stigma, discrimination, and legal hurdles throughout history. However, in recent years, there has been a growing recognition of the need for inclusivity, equality, and the protection of fundamental human rights for all individuals, regardless of their sexual orientation or gender identity.

This research paper aims to provide a comprehensive analysis of the LGBTQ rights movement in India. Understanding the present state of LGBTQ rights in India requires an examination of

landmark court cases, legislative reforms. It also necessitates an exploration of the social and cultural factors that influence public perceptions, attitudes, and acceptance.

OBJECTIVE

- To study about the discrimination of LGBT individual in society.
- To analyze the section 377 of the Indian penal code and its impact on the lgbtq community.
- To know about the overview of the transgender persons (protection of rights) act, 2019.
- To compare of lgbtq rights in India with other countries.
- To promote inclusive education and raising awareness about LGBTQ

Historical Background of LGBTQ+ Rights in India

Ancient Indian Society

Contrary to the belief that LGBTQ+ identities are Western concepts, ancient Indian society recognized and represented gender and sexual diversity in many forms. Hindu mythology, literature, sculptures, and ancient texts contain references to same-sex relationships and non-binary identities.

Examples include:

The story of Shikhandi in the Mahabharata

The representation of Ardhanarishvara, a combined form of Lord Shiva and Goddess Parvati. References to same-sex relationships in the Kama Sutra. The existence of the Hijra community in

ancient royal courts. These examples indicate that pre-colonial India had spaces for diverse gender expressions and sexual identities.

Colonial Period and Section 377

The major setback to LGBTQ+ rights came during British colonial rule. In 1861, the British introduced Section 377 of the Indian Penal Code, which criminalized “carnal intercourse against the order of nature.” This provision was based on Victorian morality and was used to target homosexual relationships.

Section 377 stated:

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal.

This law has criminalized consensual same-sex relations, encouraged police harassment and abuse, reinforced social stigma and forced LGBTQ+ individuals into secrecy and fear. Even though prosecutions were relatively few, the existence of the law legitimized discrimination and violence.

Post-Independence Developments

After independence, India adopted a Constitution based on equality, liberty, and dignity. However, LGBTQ+ issues remained largely ignored for decades. Social stigma and lack of awareness prevented open discussions regarding sexuality and gender identity.

The LGBTQ+ rights movement gained momentum in the 1990s with the efforts of activists, NGOs, human rights organizations, and public interest litigations. Gradually, courts began recognizing the rights of sexual and gender minorities.

ANALYSIS OF SECTION 377 OF THE INDIAN PENAL CODE AND ITS IMPACT ON THE LGBTQ COMMUNITY.

Section 377 of the Indian Penal Code (IPC) was an archaic colonial-era law that criminalized “unnatural offences,” including consensual same-sex sexual activities. Its impact on the LGBTQ community in India has been profound, leading to widespread discrimination, harassment, and violation of their fundamental rights. Section 377 effectively criminalized same-sex sexual

relationships, branding them as “against the order of Nature.” This led to the stigmatisation and marginalisation of LGBTQ individuals, forcing them to live in fear of prosecution, blackmail, and harassment. It perpetuated a climate of secrecy and repression, hindering the development of a supportive and inclusive society and Section 377 infringed upon the fundamental rights of LGBTQ individuals, including the rights to equality, privacy, dignity, and freedom of expression. It denied them the right to live freely and openly, engaging in consensual adult relationships without fear of legal consequences. This violation of fundamental rights undermined the principles of equality and non-discrimination enshrined in the Indian Constitution. The existence of Section 377 created barriers to accessing healthcare services for LGBTQ individuals. Due to fear of discrimination or legal repercussions, many LGBTQ individuals hesitated to seek medical assistance, including HIV/AIDS testing and treatment. This hindered efforts to address public health issues, perpetuating the spread of HIV/AIDS within the community and beyond. It reinforced societal prejudices and contributed to the social stigma and discrimination faced by the LGBTQ Community. It emboldened individuals and institutions to discriminate against LGBTQ individuals in various spheres of life, including employment, housing, education, and healthcare. This discrimination resulted in exclusion, limited opportunities, and psychological distress for LGBTQ individuals and Section 377 posed a significant challenge to LGBTQ activists and organizations advocating for equal rights. It restricted their ability to openly campaign, organize events, and raise awareness about LGBTQ issues. Activists faced the risk of legal consequences, which further hindered the progress of the LGBTQ rights movement. The existence of Section 377 contributed to the mental health challenges faced by LGBTQ individuals. The criminalization of their identities and relationships led to higher rates of depression, anxiety, and suicide among the community. The fear of societal rejection, discrimination, and legal consequences took a toll on the mental well-being of LGBTQ individuals. Despite the challenges posed by Section 377, it also galvanized the LGBTQ rights movement in India. Activists, organizations, and allies tirelessly fought to challenge the constitutionality of the law. Legal battles and advocacy efforts garnered public attention and support, leading to increased awareness and dialogue about LGBTQ rights in Indian society.

Overview of the TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT,2019

This legislation was passed in pursuance to the Supreme Court decision in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, wherein the Court directed the Central and State Governments to take various steps for the welfare of transgender community and to treat them as a third gender for the purpose of safeguarding their rights under Part III of the Constitution; the Government of India introduced the Transgender Persons (Protection of Rights) Bill, 2016, which was passed by the Lok Sabha and the Rajya Sabha.

However, the 2016 Bill lapsed on dissolution of the Sixteenth Lok Sabha. Hence, the Transgender Persons (Protection of Rights) Bill, 2019 was introduced, which after all the due legislative processes, became the Transgender Persons (Protection of Rights) Act, 2019.

This gave them self perceived gender identity and tried best to stimulate their identity as similar to male and female gender. It basically provide a legal framework for them to change their official documents, including their birth certificates, passports, and educational certificates. This act main concern was to end the discrimination faced by this community and develop inclusivity in the society. It outlines the welfare measures provided to them like healthcare facilities, access to HIV prevention and counselling services, vocational training, and rehabilitation Programs. It encourages the government to take steps to provide safe and inclusive spaces for transgender persons, such as separate public toilets and changing rooms which also the establishes the National Council for Transgender Persons (NCTP), a statutory body aimed at formulating policies, monitoring implementation, and addressing grievances related to transgender issues. The NCTP consists of representatives from various

Government departments, transgender community members, and experts. The Act criminalizes offenses against transgender persons, including forced eviction, physical and sexual abuse, and denial of rights. It provides for penalties, including imprisonment and fines, for offences committed against transgender individuals. The Transgender Persons (Protection of Rights) Act, 2019 has faced criticism and concerns from activists and the

Transgender community for several reasons. Some argue that the Act does not provide sufficient protection against discrimination and violence faced by transgender individuals. They contend that the provisions fall short in addressing the full range of challenges and systemic discrimination

experienced by the community. The Transgender Persons (Protection of Rights) Act, 2019 was enacted to protect the rights and welfare of transgender individuals in India. While it recognizes gender identity, prohibits discrimination, and establishes a framework for welfare measures, concerns have been raised regarding its definition, level of protection, and the consultation process. Ongoing dialogue and engagement with the transgender community are important to address these concerns.

Some of its key sections are:-

Section 2(k) of the Act defines ‘Transgender Person’ as a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

Chapters II to VI of the legislation contains provisions vis-à-vis Prohibition against Discrimination; Recognition of the Identity of Transgender Persons; Welfare Measures by Government; Obligations of other persons and establishments towards transgender persons and provisions regarding social security, education and health of transgender persons.

Chapter VII contains provisions regarding constitution of National Council for Transgender Persons and Chapter VIII contains enumerates the offences against transgender persons and penalties for the same.

Important Judgements of Supreme Courts and High Courts

- To seek Gender Identity alternate to one assigned

The Division Bench of the Supreme Court comprising of KSP Radhakrishnan and A.K. Sikri, JJ., in National Legal Services Authority v. Union of India, (2014) 5 SCC 438, held the following-

Hijras, eunuchs, apart from binary genders, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

The Court directed the Centre and the State Governments to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for Sex Reassignment Surgery for declaring one's gender is immoral and illegal.

Centre and State Governments should take steps to create public awareness so that Transgenders will feel that they are also part and parcel of the social life and be not treated as untouchables.

- Privacy concerns

In a historic decision rendered by the 9-Judge Constitution Bench of the Supreme Court in K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1, addressed the issue of rights of the LGBTQ+ community and stated that the guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion:

“Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.

- Unmarried persons cannot be denied rights based on narrow patriarchal principles on “permissible sex”

This verdict rendered in X v. Health & Family Welfare Department, 2022 SCC OnLine SC 1321 assumes a great significance because the Supreme Court while holding that a woman cannot be denied the right to a safe abortion only on the ground of her being unmarried, it used the term

woman in this judgment as including persons other than cis-gender women who may require access to safe medical termination of their pregnancies

- Supreme Court verdict of Same-Sex Marriage

The 5-judge Constitution Bench of Dr DY Chandrachud, CJI and Sanjay KishanKaul, S. Ravindra Bhat, HimaKohli, PS Narasimha, JJ., in *Supriyo v. Union of India*, 2023 SCC OnLine SC 1348, held that there is no fundamental right to marry and that the Supreme Court could not enter judicial legislation to read words into the Special Marriage Act and make it a gender-neutral legislation. The Court left it to Parliament to undertake this process.

The Court further held that Transgender persons in heterosexual relationships as well as Intersex persons who identify as either male or female have the right to marry under existing law including personal laws which regulate marriage.

However, in his dissenting opinion, the then Chief Justice of India, Dr D.Y. Chandrachud opined that restriction on the right to enter into a union based on sexual orientation would violate Article 15 of the Constitution. Also in the minority, Sanjay KishanKaul, J., observed that the legal recognition of non-heterosexual unions can challenge culturally ordained gender roles even in heterosexual relationships as in such a union, both partners are not limited by extant gender norms to shape their relationship, including the division of labour. Further, the legal recognition will aid social acceptance, which in turn increases queer participation in public spaces.

Vis-a-vis right of unmarried couples (including queer couples) to jointly adopt a child; while the majority left it for the Legislature to determine the issue, whereas the dissenting Judges read down CARRA Regulations to exclude 'marital' and allowed unmarried couples (including queer couples) to jointly adopt a child.

- Persons belonging toLGBTQ+ community is vulnerable

In *X4 v. State of Maharashtra*, the Court adopted a rights-based and humanitarian approach while considering the bail application. Although it found that the allegations prima facie attracted the offence under Section 370 of the IPC, it also recognized the applicant's unique vulnerability as a member of the LGBTQ+ community and an HIV-positive individual. The Court emphasized that such persons may face ridicule, harassment, and heightened risks within the prison environment.

Balancing the seriousness of the allegations with the need to protect the applicant's dignity, safety, and constitutional rights, the Court granted bail. The decision reflects the judiciary's growing sensitivity toward the rights and protection of marginalized communities, reinforcing the principles of equality, dignity, and non-discrimination in the criminal justice system.

- S 377 insofar it criminalises sexual acts of adults in private ,is violative of Article 14,15,and 21 of Constitution

The journey from *Naz Foundation v. Government of NCT of Delhi* to *Navtej Singh Johar v. Union of India* marks a transformative chapter in the recognition of LGBTQ+ rights in India. While the Delhi High Court's progressive interpretation of Section 377 initially advanced the principles of dignity, privacy, equality, and non-discrimination, the decision was temporarily set aside in *Suresh Kumar Koushal v. Naz Foundation*. The Constitution Bench in *Navtej Singh Johar* ultimately restored and strengthened these constitutional values by decriminalising consensual same-sex relations between adults. The judgment reaffirmed that constitutional morality must prevail over social prejudice and that every individual, regardless of sexual orientation, is entitled to equal protection, dignity, autonomy, and the full enjoyment of fundamental rights. This landmark decision stands as a significant milestone in advancing inclusivity and human rights in India.

- Delhi HC directs Union to decide on plea for restoring legal protection against non-consensual sexual acts in Bharatiya Nyaya Sanhita, 2023

In *Gantavya Gulati v. Union of India*, 2024 SCC OnLine Del 5990, which was a Public Interest Litigation ('PIL') filed to seek issuance of directions to the Union of India (respondent) to restore legal protection against non-consensual sexual acts as was provided under the now-repealed Section 377 of the Penal Code, 1860 ('IPC') to ensure the safety and dignity of individuals, especially those from the LGBTQIA+ community, a Division Bench of Manmohan, ACJ. and Tushar Rao Gedela, J. directed the Union of India to treat the present petition as a representation and to decide the same as expeditiously as possible.

- Concept of "chosen family" well-settled & acknowledged in LGBTQIA+ jurisprudence; Same-sex couples have right to form family: Madras HC

In a habeas corpus petition titled, M.A. v. Superintendent of Police, Chennai-18, alleging illegal detention of the detenu by her family, the Division Bench of G. R. Swaminathan and V. Lakshminarayanan, JJ., opined that even though same-sex couples cannot marry but they still have the right to form families. The Court thus allowed the petition and set the detenture at liberty.

- Self-identification of one's gender lies at the heart of Right to Life and Personal Liberty and State authorities obligated to give legal recognition to the same: Karnataka HC

John Michael Cunha J., in Christina Lobo v. State of Karnataka, 2020 SCC OnLineKar 1634, while allowing the present writ petition moved by a transgender against the declaration of her self-identified gender in official documents, reiterated the observations made in NALSA (supra) and clarified upon the applicability of Rules 6 and 7, Transgender Persons (Protection of Rights) Rules, 2020. "Transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Transgender Persons Act shall not be required to submit an application for certificate of identity under these rules: Provided that such persons shall enjoy all rights and entitlements conferred on transgender persons under the Act".

- "Social ethos, outlook & philosophy appears to be evolving amongst gay couples so as to openly come out of closets": Punjab and Haryana HC

ArunMonga, J., in Paramjit Kaur v. State of Punjab, 2020 SCC OnLine P&H 994, addressed a matter wherein, two girls were in a live-in relationship and were constantly receiving serious threats from their families, due to which they prayed for protection. Petitioners sought directions to the official respondents to protect their life and liberty as they apprehended threat at the hands of private respondents 4 to 10. Both the petitioners are girls and they are both major having mutual liking for each other. They both have been in live-in relationship for the past 6 months. Court added that, What is perhaps coming in the way of petitioners is the social unacceptability of their relationship by their parents/family members, owing to which they are

living under constant fear for the reasons stated in the petition which are not being repeated for the sake of privacy and brevity. The Court held that the petitioners are entitled to protection of their lives as envisaged under Article 21 of the Constitution, regardless of the relationship between them.

Suggestions

1. Legal Protection: Advocate for comprehensive anti-discrimination laws that explicitly protect LGBTQ+ Individuals from discrimination in various spheres of life, including employment, education, housing, healthcare, and public services. Push for legislation that recognizes same-sex relationships and grants marriage equality
2. Awareness and Education: Promote inclusive education that incorporates LGBTQ+ issues, histories, and perspectives. Raise awareness among the general public about the rights and challenges faced by LGBTQ+ Individuals, dispel stereotypes and prejudices, and foster a more accepting and supportive society.
3. Access to Healthcare: Work towards improving access to LGBTQ+-affirming healthcare services, including gender-affirming care, mental health support, and HIV/AIDS prevention and treatment. Encourage healthcare providers to undergo LGBTQ+ cultural competency training.
4. Supportive Mental Health Services: Establish and promote mental health services specifically tailored to address the unique challenges and needs of LGBTQ+ individuals, including counselling, therapy, and support groups.

5. **Community Support and Safe Spaces:** Foster the creation of safe spaces, community centres, and support networks for LGBTQ+ individuals to seek support, share experiences, and build resilience. Support LGBTQ+ organizations and community-led initiatives.
6. **Visibility and Representation:** Promote positive representation of LGBTQ+ people in media, literature, and the arts. Encourage LGBTQ+ individuals to share their stories and experiences, which can help challenge stereotypes and increase acceptance.
7. **Empowerment and Capacity Building:** Provide training, resources, and opportunities for leadership development and capacity building for LGBTQ+ individuals and organizations.

Conclusion

The journey of LGBTQ+ rights in India reflects the gradual evolution of constitutional democracy toward inclusivity and equality. From the oppressive legacy of Section 377 to the progressive recognition of dignity, privacy, and identity, India has witnessed transformative legal developments.

The judiciary has played a historic role in safeguarding LGBTQ+ rights through landmark judgments that emphasized constitutional morality, equality, and human dignity. The recognition of transgender rights and the decriminalization of homosexuality marked major milestones in the protection of fundamental rights.

However, legal recognition alone cannot eliminate centuries of social prejudice and discrimination. LGBTQ+ persons continue to face stigma, violence, exclusion, and denial of opportunities.

Following the 2023 marriage equality verdict, the movement stands at a critical crossroads. The future relies entirely on moving beyond high-profile, urban-centric legal battles toward

decentralized, vernacular campaigns that engage directly with lawmakers, traditional communities, and rural populations. By building an inclusive communication framework that honors India's complex intersectional realities, PR practitioners and human rights advocates can help transition the nation from a state of mere legal tolerance to an environment of genuine, systemic social acceptance.

References

Books

1. Basu, D.D., Introduction to the Constitution of India.
2. Jain, M.P., Indian Constitutional Law.
3. Baxi, Upendra, Human Rights in a Posthuman World.
4. Agnes, Flavia, Law and Gender Inequality.

Articles and Journals

1. Articles on LGBTQ+ rights published in legal journals.
2. Human rights reports regarding sexual minorities.
3. Research papers on gender identity and constitutional law.

Cases

1. Naz Foundation v. Government of NCT of Delhi, (2009).
2. Suresh Kumar Koushal v. Naz Foundation, (2013).
3. NALSA v. Union of India, (2014).
4. Justice K.S. Puttaswamy v. Union of India, (2017).
5. Navtej Singh Johar v. Union of India, (2018).

6. Supriyo v. Union of India, (2023).