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THE JOURNEY OF LGBTQ+ RIGHTS IN INDIA

~Sneha Verma

ABSTRACT

The journey of LGBTQ+ rights in India represents one of the most significant developments in the country's constitutional and human rights landscape. Although diverse gender identities and forms of human relationships have existed in Indian society for centuries, legal recognition and protection of LGBTQ+ persons emerged only through a gradual process of social awareness, activism, and judicial intervention. For many years, members of the LGBTQ+ community faced legal restrictions, social exclusion, and unequal treatment, particularly under Section 377 of the Indian Penal Code, 1860. However, the Indian judiciary played a transformative role in shifting the discourse from criminalisation to constitutional protection by recognising the values of equality, dignity, liberty, privacy, and personal autonomy.

This paper examines the historical evolution of LGBTQ+ rights in India, the constitutional provisions that form the basis of their protection, and the landmark judicial decisions that have shaped the legal framework. It analyses significant cases which collectively expanded the scope of fundamental rights for LGBTQ+ individuals. The paper also discusses the Transgender Persons (Protection of Rights) Act, 2019, the debate surrounding marriage equality, and the Supreme Court's decision in **Supriyo v. Union of India*.

While considerable progress has been achieved, challenges relating to anti-discrimination protections, marriage rights, healthcare access, and social acceptance continue to exist. Ultimately, the study highlights that the movement for LGBTQ+ rights is a continuing effort to ensure that every individual can enjoy the constitutional promises of dignity, freedom, equality, and equal citizenship.



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INTRODUCTION

Imagine always worrying that showing love to someone you care about could lead to harassment, mockery, or even legal repercussions. For many years, many LGBTQ+ people in India had to deal with this reality. Many were compelled to hide their identities from their families, employers, and society because their gender identity and sexual orientation did not fit socially acceptable norms, not because they had done anything wrong.

Thus, the fight for LGBTQ+ rights in India is more than just a legal dispute; it is a profoundly human tale of tenacity, respect, and the pursuit of acceptance. Every court case and constitutional challenge is rooted in the real-life experiences of those who battled against discrimination, exclusion, and invisibility. The larger fight for equal citizenship and human rights in a democratic society is reflected in their trip.

The struggle for LGBTQ+ rights in India is among the most significant human rights campaigns in contemporary constitutional history. LGBTQ+ refers to all individuals whose gender identity or sexual orientation differs from heterosexual and cisgender norms, including lesbian, gay, bisexual, transgender, queer, and others.

For many years, LGBTQ+ persons experienced criminal consequences, assault, prejudice, and social stigma. Same-sex unions were prohibited by Section 377 of the Indian Penal Code, 1860. However, constitutional courts eventually realized that sexual orientation and gender identity are crucial elements of human dignity and personal autonomy. LGBTQ+ rights were shifted from criminal law to constitutional rights based on equality, liberty, privacy, and dignity by the Indian judiciary.

HISTORICAL BACKGROUND

The history of LGBTQ+ rights in India is one of acceptance, tenacity, and the steady growth of constitutional principles. Diverse gender identities and human relationships have existed in Indian society for centuries, despite the fact that conversations concerning LGBTQ+ rights have gained prominence in recent decades. Numerous allusions to the variety of human



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experiences can be found in ancient Indian literature, mythology, and cultural traditions. Concepts like Ardhanarishvara and stories from books like the Mahabharata show that Indian society had a more comprehensive knowledge of gender and identity in the past.

The introduction of new legal and social frameworks during the colonial era marked a significant turning point. Section 377 of the Indian Penal Code was passed in 1860. This clause, which persisted in Indian law for many years, affected how people whose relationships deviated from conventional norms were treated legally.

India enacted a constitution based on the values of justice, equality, liberty, and dignity after gaining independence. However, it took a number of years for these fundamental principles to be properly applied to matters concerning gender identity and sexual orientation. Many people and organizations campaigned to advance LGBTQ+ equality, acceptance, and awareness throughout this time.

In the late 20th and early 21st centuries, the LGBTQ+ rights movement gained traction. Civil society organizations, academics, and activists started pushing for more inclusion and acknowledgment. Important legal conversations on equality, privacy, and individual liberty resulted from their efforts.

In the landmark case of *Naz Foundation v. Government of NCT of Delhi* (2009), the Delhi High Court emphasized the value of equality and dignity for every person. In the years that followed, the legal path saw both advancements and difficulties, but the movement kept expanding.

Further progress was made in *National Legal Services Authority v. Union of India* (2014), where the Supreme Court upheld the value of self-identity and dignity while acknowledging the rights of transgender people. A broader interpretation of constitutional rights was made possible by this ruling.



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In Justice K.S. Puttaswamy v. Union of India (2017), the Supreme Court recognized privacy as a basic right and emphasized that personal identity is a crucial component of individual freedom and dignity. This was another historic breakthrough.

Navtej Singh Johar v. Union of India was the most pivotal case. The Supreme Court upheld everyone's right to equal respect, decency, and constitutional protection in this landmark decision, regardless of sexual orientation. The ruling made clear that the Constitution upholds the equality of all citizens and safeguards diversity.

The fight for LGBTQ+ rights in India is still ongoing today. Promoting inclusion, equality, and dignity has advanced significantly. However, conversations about equitable opportunities, societal acceptability, and wider legal recognition continue to be crucial components of the current struggle. The history of LGBTQ+ rights in India demonstrates the tenacity of constitutional principles and the ongoing endeavor to create a society in which each person can live with freedom, dignity, and respect.

CONSTITUTIONAL FRAMEWORK FOR LGBTQ+ RIGHTS

The Indian Constitution provides a strong foundation for protecting LGBTQ+ rights through various fundamental rights.

Article 14: Right to Equality

It guarantees equality before the law and equal protection of laws. Any legal provision that discriminates arbitrarily against a class of individuals violates this constitutional guarantee.

Article 15: Non-Discrimination

It prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Courts have progressively interpreted the term "sex" to include sexual orientation and gender identity.

Article 19: Freedom of Expression

All citizens shall have the right-(a)to freedom of speech and expression.



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Gender identity and sexual orientation are closely linked to self-expression. Restrictions on expressing one's identity may violate freedom of speech and expression.

Article 21: Life and Personal Liberty

It protects No person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court has repeatedly held that individual identity forms an essential component of the right to life and personal liberty.

Together, these constitutional provisions became the foundation for judicial recognition of LGBTQ+ rights.

JUDICIAL EVOLUTION OF LGBTQ+ RIGHTS

a. Naz Foundation v. Government of NCT of Delhi (2009)

The first major breakthrough occurred in Naz Foundation v. Government of NCT of Delhi. The Delhi High Court held that Section 377 violated Articles 14, 15, and 21 insofar as it criminalised consensual sexual relations between adults. The Court emphasised dignity, privacy, and inclusiveness.

This judgment marked the beginning of constitutional recognition for LGBTQ+ persons in India.

b. Suresh Kumar Koushal v. Naz Foundation (2013)

In 2013, the Supreme Court reversed the Delhi High Court's decision. The Court held that the LGBTQ+ population constituted only a "minuscule minority" and stated that the matter should be addressed by Parliament rather than the judiciary. This decision attracted widespread criticism from human rights organisations, legal scholars, and activists.

The judgment was viewed as a setback for LGBTQ+ rights and reinstated criminal liability under Section 377.

c. National Legal Services Authority (NALSA) v. Union of India (2014)



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A landmark shift occurred in *NALSA v. Union of India*. The Supreme Court recognised transgender persons as a "third gender" and affirmed their right to self-identification. The Court held that gender identity is an integral aspect of personal autonomy and dignity.

The judgment directed governments to provide reservations, healthcare facilities, educational opportunities, and social welfare measures for transgender persons. This decision established that constitutional rights extend equally to gender minorities.

d. *Justice K.S. Puttaswamy v. Union of India* (2017)

The right to privacy judgment became a turning point in LGBTQ+ rights jurisprudence. A nine-judge bench unanimously recognised privacy as a fundamental right under Article 21. The Court explicitly stated that sexual orientation is an essential attribute of privacy and personal identity.

The judgment effectively weakened the constitutional foundation of *Suresh Kumar Koushal* and paved the way for reconsideration of Section 377.

e. *Navtej Singh Johar v. Union of India* (2018)

The most significant milestone in LGBTQ+ rights history came in *Navtej Singh Johar v. Union of India*. The Supreme Court unanimously decriminalised consensual same-sex relations between adults by reading down Section 377. The Court held that criminalisation violated:

Article 14 (Equality), Article 15 (Non-discrimination), Article 19 (Freedom of expression), Article 21 (Dignity, liberty, and privacy)

Justice Indu Malhotra famously observed that "history owes an apology" to the LGBTQ+ community for the injustices suffered due to legal discrimination.

The judgment established constitutional morality as superior to social morality and affirmed that LGBTQ+ individuals possess equal citizenship rights.



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THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

The recognition of transgender rights in India reached an important milestone with the enactment of the Transgender Persons (Protection of Rights) Act, 2019. For many years, transgender persons faced numerous social and institutional challenges, including difficulties in accessing education, employment, healthcare, and other basic opportunities available to the rest of society. Although awareness regarding transgender rights had gradually increased, there remained a need for a legal framework that could protect their rights and promote their inclusion.

The foundation for this legislation was laid by the Supreme Court in *National Legal Services Authority v. Union of India* (2014), where the Court recognised transgender persons as a distinct gender and affirmed that they are entitled to equality, dignity, and freedom under the Constitution. The judgment highlighted that every individual has the right to determine and express their own identity without fear of exclusion or unequal treatment.

In response to this constitutional vision, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019. The Act seeks to ensure that transgender persons are treated with fairness and respect in different areas of life. It prohibits discrimination in education, employment, healthcare, housing, access to public places, and government services. The legislation also places an obligation on the government to take measures for the welfare, rehabilitation, and social inclusion of transgender persons.

An important aspect of the Act is its emphasis on creating opportunities rather than merely providing legal recognition. It encourages the development of educational programmes, skill-development initiatives, healthcare facilities, and welfare schemes aimed at improving the quality of life of transgender persons. The Act also requires establishments to provide a safe environment and establish mechanisms for addressing grievances.

The significance of the Act lies not only in its legal provisions but also in the message it conveys. It reflects a growing understanding that every individual deserves to live with dignity,



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respect, and equal opportunities, regardless of gender identity. While discussions regarding the effectiveness and implementation of certain provisions continue, the legislation remains an important step in India's broader journey towards equality and inclusion.

Viewed in the larger context of LGBTQ+ rights, the Transgender Persons (Protection of Rights) Act, 2019 represents an effort to translate constitutional values into practical safeguards. It demonstrates the continuing evolution of Indian law towards recognising diversity and ensuring that the promise of equality extends to every member of society.

MARRIAGE EQUALITY AND THE SUPRIYO CASE

After decriminalisation, LGBTQ+ activists sought recognition of same-sex marriages. Several petitions challenged provisions of the:

Special Marriage Act, 1954 and Hindu Marriage Act, 1955. Petitioners argued that denying marriage rights violated equality, dignity, liberty, and privacy.

In *Supriyo v. Union of India* (2023), the Supreme Court acknowledged discrimination faced by LGBTQ+ persons but declined to legalise same-sex marriage, holding that such recognition falls within the legislative domain. The Court, however, recognised the legitimacy of queer relationships and urged the State to address issues affecting same-sex couples. The decision demonstrated both progress and limitations in the judicial approach towards LGBTQ+ equality.

CONTEMPORARY CHALLENGES

Despite legal progress, several challenges remain-

- a. Absence of Anti-Discrimination Legislation.
- b. India lacks comprehensive anti-discrimination laws protecting LGBTQ+ individuals in private employment, housing, education, and healthcare.
- c. Marriage and Family Rights
- d. Same-sex couples continue to face barriers regarding:
- e. Marriage, Adoption, Surrogacy, Inheritance, Tax benefits, medical decision-making



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- f. Social Stigma
 - g. Many LGBTQ+ individuals experience family rejection, bullying, workplace discrimination, and violence.
 - h. Healthcare Barriers
 - i. Access to gender-affirming healthcare and mental health services remains inadequate, especially in rural areas.
 - j. Conversion Practices

Although increasingly criticised, attempts to alter sexual orientation or gender identity continue in some parts of India. These challenges indicate that legal recognition alone cannot guarantee substantive equality.

THE WAY FORWARD

To achieve genuine equality, India must adopt a comprehensive rights-based approach. Key reforms should include:

- a. Enactment of anti-discrimination legislation.
- b. Legal recognition of same-sex unions and marriages.
- c. Equal adoption and parenting rights.
- d. Improved healthcare access for LGBTQ+ persons.
- e. Educational reforms promoting inclusivity.
- f. Workplace diversity and inclusion policies.
- g. Greater awareness and sensitisation programmes.
- h. Strong legal remedies against hate crimes and discrimination.
- i. The future of LGBTQ+ rights depends not only on judicial intervention but also on legislative action and societal transformation.

CONCLUSION

The journey of LGBTQ+ rights in India reflects a remarkable constitutional transformation. From the colonial criminalisation embodied in Section 377 to the recognition of dignity,



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privacy, autonomy, and equality, India has witnessed significant progress. Judicial decisions such as NALSA, Puttaswamy, and Navtej Singh Johar have fundamentally reshaped the legal landscape and affirmed that LGBTQ+ individuals are entitled to the full protection of constitutional rights.

Nevertheless, decriminalisation does not automatically result in equality. The absence of marriage rights, anti-discrimination protections, and comprehensive social inclusion measures continues to hinder full citizenship for LGBTQ+ persons. The next phase of the journey requires legislative reforms, institutional commitment, and societal acceptance.

Ultimately, the struggle for LGBTQ+ rights is not merely about legal recognition; it is about ensuring that every individual, regardless of sexual orientation or gender identity, can live with dignity, freedom, and equal respect under the Constitution of India.

REFERENCES

Cases

Naz Foundation v Government of NCT of Delhi (2009) 160 DLT 277.

Suresh Kumar Koushal v Naz Foundation (2014) 1 SCC 1.

National Legal Services Authority v Union of India (2014) 5 SCC 438.

Justice K S Puttaswamy (Retd) v Union of India (2017) 10 SCC 1.

Navtej Singh Johar v Union of India (2018) 10 SCC 1.

Supriyo @ Supriya Chakraborty v Union of India 2023 SCC OnLine SC 1348.

Statutes and Constitutional Provisions

The Constitution of India.



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The Special Marriage Act 1954.

The Hindu Marriage Act 1955.

Transgender Persons (Protection of Rights) Act 2019.

Books

Basu DD, Introduction to the Constitution of India (23rd edn, LexisNexis 2021).

Jain MP, Indian Constitutional Law (9th edn, LexisNexis 2023).

Shukla VN, Constitution of India (14th edn, Eastern Book Company 2023).

Narrain Arvind and Bhan Gautam (eds), Because I Have a Voice: Queer Politics in India (Yoda Press 2005).

Journal Articles

Narrain Arvind, 'Crystallising Queer Politics: The Naz Foundation Case and Its Implications' (2010) 2 NUJS Law Review 455.

Bhatia Gautam, 'The Transformative Constitution and LGBTQ Rights in India' (2019) 12 Indian Journal of Constitutional Law 1.

Narrain Siddharth, 'The Journey from Section 377 to Navtej Singh Johar' (2019) 54 Economic and Political Weekly 23.

Gupta Alok, 'Section 377 and the Struggle for Equality in India' (2018) 53 Economic and Political Weekly 12.