

Gender, Sexual Orientation, and the Indian Constitution: Evolving Legal Standards and Social Realities

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Abstract—The purpose of this paper is to examine the evolving relationship between gender, sexual orientation and constitutional rights in India. The Indian Constitution, a living document designed to protect the ideals of justice, liberty, equality and fraternity has continually evolved through judicial interpretation and socio-political participation. While landmark judgement such as *NALSA v. Union of India (2014)* and *Navtej Singh Johar v. Union of India (2018)* have affirmed the rights of transgender and LGBTQ+ community under Article 14, 15, 19 and 21 of the Constitution, significant legal and social challenges persist. The absence of comprehensive anti-discriminatory laws, marriage and adoption rights and affirmative protections highlights the gap between formal legal recognition and the realities. This paper critically evaluates the developments through a constitutional and intersectional lens, trying to bring into discourse that true equality requires not only in legal form but also through societal transformation. It advocates for a rights-based, inclusive framework that aligns with the transformative vision of the Indian Constitution.

Keywords— LGBTQ+, IPC, BNS, Sexual orientation, Gender, Constitution, Homosexuality, Rights, Equality, Justice.

I. INTRODUCTION

The Indian Constitution which is rooted with the principle of justice, equality, liberty and dignity has served as both legal framework and a moral compass for the evolving discourse on rights. However, for much of India's post-independence legal history, the lived realities of individuals with non-normative gender identities and sexual orientations remained largely excluded from constitutional protection and societal recognition. Though the word "sexual orientation" or "gender identity" are not explicitly mentioned, judicial interpretation has broadened the scope.

The colonial legacy of Section 377 of the Indian Penal Code, which criminalised consensual same-sex relationships, stood as a symbol of the state's denial of sexual autonomy and personal liberty. Recent constitutional jurisprudence has begun to challenge this legacy, with landmark judgements making a shift towards inclusion. Its partial invalidation by the Supreme Court in *Navtej Singh Johar v. Union of India (2018)*, marked a transformative moment in the Indian Constitutional jurisprudence. The judgement not only decriminalised consensual homosexual acts but also explicitly acknowledge LGBTQ+ persons rights to dignity, privacy and equality under

Article 14, 15, 19 and 21 of the Constitution. Similarly, the decision in *National Legal Service Authority (NALSA) v. Union of India (2014)* recognised transgender persons' right to self-identify their gender, affirming their constitutional entitlements and directing the state to ensure their inclusivity and protection.

Despite these landmark victories, the translation of constitutional ideals into substantive equality remains uneven and incomplete. The legal standards often clashed with the prevailing societal norms leaving marginalised communities exposed to legal, social and cultural exclusion. Moreover, the absence of legislation guaranteeing anti-discriminatory laws, marriage equality, adoption rights and access to healthcare and employment for LGBTQ+ individuals highlights the breach between legal reforms and institutional support. To analyse the evolution of constitutional standards in the addressing gender and sexual orientation while colligating the developments against social realities marked by discrimination, stigma and violence. Factors like caste, class, religion and regional identity compound the marginalisation of LGBTQ+ individuals and this exclusion limits access to basic rights and justice.

By drawing upon constitutional provisions, legislative developments and international human rights frameworks, the Indian legal system can urge for a transformative constitutionalism which not only recognises identities but actively dismantles structural inequalities.

Legal process needs to be accompanied by social awareness, policy reforms and institutional accountability to achieve inclusivity and equality in its true sense.

I. *Historical Overview*: The history of the Indian legal system regarding gender and sexual minorities is entrenched in the colonial law. The status of LGBTQ+ individuals and the recognition of transgender persons have historically been contentious subject. Section 377 of IPC which was introduced in 1860, criminalised "carnal intercourse against the order of nature", a provision which explicitly targeted consensual same-sex relations. During the British colonial era, this provision sought to imposed Victorian moral standards on the

Indian society. Even after independence, section 377 remained as an important tool for discrimination.

Even though the Constitution of India guarantees basic rights and protections, LGBTQ+ community were excluded from these protections for a long time. This era saw the invisibility of the said community in legal discourse, aggravated by social stigma and heteronormative legal framework that prevailed and reflects the moral and social biases of the time. The Indian judiciary began acknowledging the rights of gender and sexual minorities and recognition of LGBTQ+ rights within the Indian legal system in the 21st century prompted by judicial activism, civil society efforts and the changing social attitudes.

II. *The Constitutional Switch: Recognition of LGBTQ+ RIGHTS*

The Indian Constitution lays a strong foundation for equality and non-discrimination based on gender and plays a crucial role in addressing gender and sexual orientation issues. While the Constitution guarantees fundamental rights such as Article 14 (equality before the law), Article 15 (prohibits discrimination based on the ground of sex), Article 19 (freedom of speech and expression) and Article 21 (right to life and personal liberty), the interpretation and application of these provisions have evolved and shifted to enclose gender identity and sexual orientation with landmark cases like *Navtej Singh Johar v. Union of India*.

However, social realities gives a different and complicated picture, with many ongoing challenges in achieving true form of gender equality and inclusivity, mainly for LGBTQ+ community. The judiciary have played a vital role in interpreting and applying the constitutional provisions to give effect to evolving social realities.

The constitutional statue for LGBTQ rights in India has gained a dynamic shift in the journey of criminalisation inherited from the colonial period to the Constitutional validation of self-determination and gender identity. Such growth are achieves because of the gradual and consistent expansion of the judicial understanding of the Constitutional provisions.

III. *Judicial Transformations:* The legal reforms for LGBTQ+ community in India is largely deep seated by several judicial interventions. These judicial decisions have shaped the legal landscape for the said community, giving them better visibility, rights, protection and recognition and dignity. Following are the landmark cases –

- *Naz Foundation v. Government of NCT of Delhi (2009)*

In 2009, the Delhi High Court made an important ruling in this case which challenges the constitutionality of section 377 of IPC. The court based its decision on the premise that section 377 violated the fundamental rights to privacy, equality and liberty enshrined in Article 21 and 14 of the Constitution. This judgement was ground breaking as it acknowledged that the criminalisation of same-sex relations was a violation of the constitutional rights.

However, the Supreme Court in 2013 overturned the decision in *Suresh Kumar Koushal v. Naz Foundation*, reinstating the criminality of consensual same-sex acts. This

ruling of the Apex Court was widely criticised for its failure to recognise the fundamental rights of the LGBTQ+ community.

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

In this case, Supreme Court recognised the right of the transgender individuals to self-identify their gender.

The Court ruled that gender identity is an intrinsic part of one's personal autonomy and dignity which is constitutionally protected. The Court also directed the government to provide legal recognition of the transgender persons and ensure them access to education, employment, healthcare and social welfare programs.

Yet, the government's failure to fully implement proactive welfare measures left many transgender individuals vulnerable to discrimination and violence.

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

The legal battle of LGBTQ+ rights culminated in this case, where the Supreme Court in its ruling struck down parts of section 377 of IPC, regarding the consensual homosexual acts between adults. The Court's judgement was delivered in which constitutional morality is celebrated over popular morality having aligned with international human rights principles. The Court also affirmed that individuals have the constitutional right to love whomever they choose and sexual orientation is an inherent part of personal liberty which is enshrined under the Constitution. This ruling of the Apex Court not only decriminalised homosexuality but also created a constitutional foundation for future legal recognition of LGBTQ+ rights in India. The Court's emphasis on individual rights and equality before the law was a reaffirmation of the transformative potential of the Indian Constitution in advancing social justice.

IV. *Legislative Development And Its Practical Impact:*

Following the judicial guidance, the legislative authority step forward to institutionalised the rights of sexual and gender minorities. The Transgender Persons (Protection of Rights) Act, 2019, was an important outcome in response to the NALSA case decision. However, multiple flaws in the Act continue to hinder its effectiveness. Bureaucratic hurdles such as the Act requires transgender person to obtain a certificate from a district magistrate for legal recognition of their gender makes many argue that the process itself undermines the principle of self-identification. Also, while the Act includes provisions for health and education, it lacks a proper mechanism for addressing the social stigma and discrimination faced by the said community in daily life.

Moreover, other essential legal reforms, such as marriage equality, adoption rights for same-sex couples and anti-discriminatory laws and protections in many fields remain unaddressed and a challenges till today. Such insufficient laws make people question on- whether a mere legal recognition and decriminalisation is enough to ensure equality in its true form ?

V. *Social Realities:*

The gap between legal rights and social realities is perhaps most evident in the struggles of LGBTQ+ community in India. Somehow, the legal system has made few significant strides,

the social stigma surrounding sexual and gender minorities remains ingrained.

- People of the LGBTQ+ community continue to face serious forms of discrimination such as sexual violence, exclusion from family and social life, denial of basic services, etc. Many live in fear of physical and emotional harm. Such state of vulnerability continues because of the lack of comprehensive legal protection and social acceptance.
- The social stigma attached to the LGBTQ+ community has also effect on mental health and well-being of the said community. They are likely to suffer from depression, anxiety and suicide due to constant fear of rejection, harassment and abuse.
- Many individuals from LGBTQ+ community are disowned by their families, which often leads to state of isolation and precarious livelihood. Also lack of societal support and acceptance further contributes to several insecurities.

VI. Way Forward: Legal, Social and Cultural Reshaping

The path ahead for LGBTQ+ community in India lies in transformative constitutionalism – an approach that not only envisions legal reforms but also emphasises cultural and social change.

For this, legal reforms needs to include:

- Comprehensive anti-discrimination laws that protect LGBTQ+ individuals across various aspects of life such as education, employment, healthcare etc.
- Marriage right equality- There is no such provision for same-sex marriage in India. The next obligation on the LGBTQ+ rights fights is to encourage and demand legal validation from the legislation permitting the said community to marry, adopt and inherit their spouse's property.
- Breaking the stereotypes through proper awareness and education that normalises sexual identities and orientation rather than treating them as oddity.
- Empowering families through counseling, support networks and community outreach can reduce social stigma.
- Getting legal and civil rights to social acceptance.

Legal, social and cultural reshaping is a continuous process. Just a policy change is not enough, but a shift in mindset where one embraces diversity is needed. Societal acceptance must be cultivated through awareness programs and media representation that challenge stereotypes and promote inclusive narratives. The way forward must be embedded in compassion, dialogue, representation and systemic support. Then only there can be an inclusive society where every individuals can live with safety, pride and dignity regardless of gender and identity.

II. CONCLUSION

Homosexuality did not just happened or developed recently, it has its historical roots. It took more than two decades of long battle to crashed down the old age law which acted as a tool for punishing people who are not in conformity with the traditional notion of sexuality and gender. In today's

era, there is somehow a growing acceptance or acknowledgement of the reality that sexual orientation is a natural diversity of human. India's legal framework for gender and sexual minorities has undergone significant evolution in recent years, with important judicial intervention assuring the constitutional rights of the LGBTQ+ individuals. From being a criminal act to decriminalising and getting legal recognition, the LGBTQ fights have come a long way. Despite such initiatives, the laws in India still remain unfriendly and detrimental towards the said community in various fields and are subject to violence and discrimination. Having said that, now, same-sex couples have the right to cohabit and carry on their relationships without fear of victimization but are still denied equal treatment in many aspects and the fight for equality still continues. Not having legal validation of same-sex marriages, adoption, guardianship, rights to surrogacy, etc and lack of comprehensive laws are the main challenges that the LGBTQ individuals are fighting for today. A mere recognition of identity is not enough to come at par with the heterosexual community in securing basic human rights. It is essential for the lawmakers to formulate new laws or amend the existing laws without conservative beliefs and thoughts to bring the inclusiveness in a fair and unbiased manner.

And also, legal reforms without social transformation remains incomplete. Bridging the gap between legal mandates and reality requires a concrete effort across the judiciary, legislature, executive and civil society. Only through a holistic approach, India can realise the constitutional promise of equality, dignity and justice for all the citizens. The struggle for gender and sexual orientation rights in India is far from over, but the way ahead is one of hope.

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