



## **Rights of LGBTQ+ Communities in India: An Overview**

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The LGBTQ+ community, encompassing lesbian, gay, bisexual, and transgender individuals, has been a subject of ongoing discussion. Governments have often stated their commitment to securing justice, equality, and unity for this community. While historically referred to as the "gay community," the term LGBT evolved to be more inclusive of diverse sexual orientations. Unfortunately, this community frequently faces discrimination, leading to social isolation, marginalization, and the denial of fundamental rights in India.

This paper examines the shortcomings in legal protections for the LGBTQ+ community, explores its diverse makeup, and highlights the challenges it currently encounters. Recent progress in recognizing their rights has been driven by judicial actions. Subsequent discussions and analyses have focused on the implications of the Supreme Court's landmark ruling that acknowledged the rights of transgender individuals.

LGBTQ+ is an acronym encompassing lesbian, gay, bisexual, and transgender individuals. Initially known as the "gay community," this term was limiting as "gay" primarily referred to men attracted to other men. Consequently, the more inclusive term LGBTQ+ emerged in the mid-1980s.

"Gay" commonly describes men exclusively attracted to men, while "lesbian" refers to women exclusively attracted to women. Bisexual individuals are attracted to both men and women. Transgender individuals possess a gender identity or expression differing from their birth-assigned sex; some may pursue medical transition.

A significant milestone for transgender rights in India was the Supreme Court's ruling in *National Legal Services Authority v. Union of India*, which recognized transgender people as the "third gender." This decision upheld their fundamental rights under the Indian Constitution, granting them the right to self-identify as male, female, or a third gender.

Despite this progressive ruling and subsequent advancements, the LGBTQ+ community in India continues to encounter substantial social and legal obstacles not faced by their non-LGBTQ+ counterparts. Historical colonial-era laws criminalizing homosexuality were eventually overturned post-independence, aligning with Article 15 of the Indian Constitution, which prohibits discrimination based on sexual orientation and gender identity.

### **Historical Background**

Hindu scriptures acknowledge the existence of a third gender, with figures like Shikhandi from the Mahabharata serving as examples of gender fluidity. The goddess Bahuchara Mata is revered as the patron deity of the Hijra community. While ancient Hindu texts like the Naradasmriti and Sushruta Samhita recognized homosexuality as inherent and discouraged same-sex marriage, the Manusmriti prescribed penalties for homosexual acts, even associating male same-sex relations with loss of caste.



During the Mughal era, the Fatwa Alamgiri codified punishments for "illegal intercourse," including homosexuality, with varying degrees of severity based on religious affiliation and social status.

The British colonial government introduced Section 377 of the Indian Penal Code in 1861, criminalizing "carnal intercourse against the order of nature," effectively outlawing homosexuality and bisexuality. Prior to this enactment, India lacked specific laws governing sexual conduct.

A 2021 Ipsos Global LGBT+ Pride survey indicated that a significant majority (59%) of Indian respondents support LGBTQ+ individuals openly expressing their sexual orientation and gender identity. However, fewer (39%) were comfortable with public displays of affection among LGBTQ+ people. There was strong support for the inclusion of lesbian, gay, and bisexual athletes on sports teams (56%) and for greater representation of LGBTQ+ characters in media (55%).

The same survey revealed that 17% of Indian respondents reported having a gay or lesbian relative, friend, or colleague, while 21% knew someone bisexual. Ten percent had transgender acquaintances, and 12% had non-binary or gender non-conforming relatives, friends, or colleagues.'

A 2017 ILGA poll showed that a majority (58%) of Indians supported equal rights for gay, lesbian, and bisexual individuals, while 30% did not. Furthermore, 59% agreed that this group should be shielded from workplace discrimination. Interestingly, 39% of Indian respondents believed that individuals in same-sex relationships should face criminal prosecution, but a larger percentage (44%) disagreed with this view. Among transgender respondents, a strong consensus emerged, with 66% advocating for equal rights, 62% desiring protection against workplace discrimination, and 60% wanting the ability to legally change their gender.

The 2021 Ipsos LGBT+ Pride Global Survey revealed that over half (53%) of Indian respondents favored laws banning discrimination against LGBTQ+ individuals in areas like employment, education, housing, and social services. A similar percentage (58%) expressed support for companies and brands that openly champion LGBTQ+ equality. Additionally, 53% of transgender individuals believed that transgender athletes should be allowed to compete according to their gender identity, not their birth-assigned sex.

## **Societal and Institutional Challenges**

- Social stigma, harassment, and violence remain significant issues.
- There is a lack of sensitization among police, judiciary, educational institutions, and healthcare providers.
- LGBTQ+ persons continue to face familial rejection, bullying, and economic marginalization.

## **Rights & Protection of LGBTQ+ Communities**

### **1) Decriminalization of Homosexuality**

As per Section 377 of the Indian Penal Code, On 6 September 2018, the Supreme Court of India decriminalized consensual same-sex relations between adults by striking down parts of Section 377. This historic ruling affirmed the constitutional rights to equality, dignity, and privacy for LGBTQ+ individuals.



## **2. Legal Recognition and Identity Rights**

According to Transgender Persons (Protection of Rights) Act, 2019:

- Recognizes the identity of transgender individuals.
- Prohibits discrimination in education, employment, healthcare, and access to public services.
- Establishes the right to self-perceived gender identity, though the law requires certification from a district magistrate, which has been criticized for being bureaucratic and intrusive.

## **3. NALSA Judgment (2014)**

- The Supreme Court recognized transgender people as the 'third gender.'
- Affirmed their fundamental rights under the Constitution and directed the government to ensure welfare measures and reservations in education and employment.

## **4. Anti-Discrimination Protections**

- While there is no comprehensive anti-discrimination law specifically for LGBTQ+ individuals, certain constitutional provisions (like Articles 14, 15, 19, and 21) provide the basis for protection against discrimination.
- Some private and state institutions have implemented policies supporting LGBTQ+ rights (e.g., workplace inclusion, healthcare access).

## **5. Marriage and Family Rights**

- As of 2025, same-sex marriage is not legally recognized in India.
- The Supreme Court in October 2023 declined to legalize same-sex marriage, stating that it is a matter for the legislature.
- However, the Court emphasized the rights of LGBTQ+ individuals to live with dignity and urged the government to consider creating a legal framework for civil unions.

## **6. Adoption and Parenthood**

- Same-sex couples cannot legally adopt children jointly under current laws.
- Individual LGBTQ+ persons are allowed to adopt, but there is ambiguity and inconsistency in implementation.

The 2021 Ipsos LGBT+ Pride Global Survey indicated strong support in India for adoption rights for same-sex couples. A significant majority (66%) of Indian respondents felt that same-sex couples should have the same adoption rights as heterosexual couples, while 21% disagreed and 13% were uncertain. Furthermore, 59% of Indians believed that same-sex couples are equally capable of successful parenting as heterosexual couples, with 26% disagreeing and 16% unsure.

## **7. Health and HIV Protections**

- The HIV and AIDS (Prevention and Control) Act, 2017 protects the rights of people living with HIV, including many from LGBTQ+ communities.
- There are increasing efforts to ensure inclusive healthcare and mental health services, but challenges remain due to stigma and lack of awareness among healthcare providers.'

The Navtej Singh Johar v. Union of India case was a pivotal moment in the fight for LGBTQ+ rights in India. Several prominent individuals, including Keshav Suri, Ritu Dalmia, and Navtej



Singh Johar, filed a petition with the Supreme Court challenging the legality of Section 377 of the Indian Penal Code.

The petitioners argued that Section 377 violated fundamental constitutional rights, including the rights to privacy, freedom of expression, equality, human dignity, and protection from discrimination.

In a landmark unanimous decision, the Supreme Court declared Section 377 unconstitutional, recognizing that it infringed upon the fundamental rights to intimacy, autonomy, and identity. The court decriminalized homosexuality by reinterpreting Section 377 to exclude consensual sexual relations between adults of the same sex or gender.

The court further asserted that sexual orientation is an intrinsic aspect of self-identity, and denying it equates to denying the right to life.<sup>1</sup> The court also stated that the minority status of the LGBTQ+ community was not a legitimate reason to deny them this fundamental right.

The Supreme Court strongly criticized its previous Koushal judgment, deeming it irrational, arbitrary, and clearly unconstitutional. The court emphasized that discrimination based on sexual orientation is unconstitutional, supported by scientific and biological evidence that establishes it as a natural phenomenon.

Several Indian states have initiated policies and welfare boards to support their transgender populations.

**Karnataka** introduced its Transgender Policy in October 2017, focusing on awareness in educational institutions, addressing abuse and discrimination, and establishing an oversight committee for complaints.

**Maharashtra** followed in February 2019 with the Transgender Welfare Board, which implements health programs, provides educational and employment opportunities, offers free housing for scholarship recipients, and runs skills development programs.

Neighboring **Gujarat** established a similar commission in the same month to facilitate access to government programs and provide social support for employment and education, alongside a public awareness campaign.

**Tamil Nadu** and **Kerala** were pioneers in this area, offering free housing, citizenship documents, full scholarships for higher education, and income-generating programs for transgender individuals. Tamil Nadu also saw the first transgender-led welfare organization, and Kerala began providing free gender affirmation surgeries in public hospitals in 2016.

**West Bengal** created the Transgender Welfare Commission in 2015 to coordinate policies and development efforts. However, it has faced criticism for infrequent meetings and perceived ineffectiveness.

**Bihar** announced its Transgender Welfare Commission in July 2019. This body will investigate challenges faced by transgender people, offer financial aid for gender affirmation surgery (up to ₹150,000), and impose penalties, including imprisonment, for denying housing or medical access to transgender individuals.

## Conclusion

While India has made considerable progress in recognizing and protecting the rights of LGBTQ+ individuals, especially with the decriminalization of homosexuality and recognition of transgender rights, significant legal and social gaps remain. Marriage equality,



comprehensive anti-discrimination laws, adoption rights, and greater societal acceptance are key areas still requiring attention and reform.

Raising awareness about LGBTQ+ rights is crucial, as human rights are inherent to everyone from birth. It's important for people to understand that being gay is not a medical condition, something foreign, or unnatural; rather, diverse sexual orientations are a natural part of human existence.

Human rights frameworks should explicitly recognize LGBTQ+ rights. Currently, Articles 14, 15, 19, 21, and 29 of the Indian Constitution are seen to be violated by the denial of rights such as same-sex partnership recognition, adoption, guardianship, surrogacy, in vitro fertilization, safe access to work, and more, for LGBTQ+ individuals. Furthermore, discrimination solely based on sexual orientation infringes upon Articles 14, 15, and 21 in the context of Army and Navy law.

Marriages within the LGBTQ+ community should be legally recognized under the Special Marriage Act of 1954, overriding personal laws. This act offers greater clarity and avoids ambiguities present in private laws. Additionally, Shariat law does not appear to permit homosexual marriages, which would prevent Muslim individuals from entering same-sex unions if adhering strictly to their personal laws.

## Reference

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- 5) "No One Else: A Personal History of Outlawed Love and Sex" by Siddharth Dube (2015)