

Gender Equality in Legal Framework: Analysis of the Rights of LGBT Community in India

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ABSTRACT

There is a wide range of sexual orientations and gender identities that are represented within the LGBT community, which is comprised of persons who identify as lesbian, gay, bisexual, and transgender. Through the course of history, this community has been subjected to stigma, discrimination, and marginalisation from society. Lesbians are women who are attracted to other women, whereas gay people are primarily males who are drawn to other men. However, the term "gay" can refer to people of any gender who are attracted to others of the same gender. Persons who identify as bisexual are attracted to both their gender and other genders, while transgender persons have a gender identification that is distinct from the sex they were assigned at birth. Ongoing obstacles are faced by the LGBT community about the stigma that is associated with society, legal safeguards, and equal rights. Continuous discrimination and a lack of acceptance continue to have a negative influence on many facets of life, including access to basic rights, work opportunities, and healthcare. Although there has been success in certain regions, there is still a requirement for ongoing activism and legislative reforms to guarantee complete inclusion and equality for LGBT people all over the world. The purpose of this study is to evaluate the efficacy of the legislative measures that are currently in place in India to safeguard the rights of the LGBT population and to analyse the practical ramifications of these policies. The purpose of this research is to provide important insights into the state of the progressive legal landscape by delving further into the implications of recent legislative changes on the protection of LGBT rights inside the nation. To shed light on areas that require analysis and amendment for improving the LGBT community, the author will investigate the challenges and shortcomings that are inherent in the existing legislative system.

Keywords: *LGBT rights, LGBT Protection, Human Rights, Discrimination*

1.INTRODUCTION

In recent years, the discourse surrounding gender equality has gained significant traction worldwide, challenging traditional norms and advocating for the recognition of diverse identities and rights. Within this context, the rights of the Lesbian, Gay, Bisexual, and Transgender (LGBT) community have emerged as a focal point of debate, activism, and legal reform. In India, a country known for its rich cultural diversity and complex legal landscape, the journey towards gender equality for the LGBT community has been marked by both progress and challenges.

India has a long history of diverse gender and sexual identities, with references found in ancient texts and historical records. However, despite this cultural plurality, societal attitudes and legal frameworks have often marginalized individuals who do not conform to heteronormative

standards. Discrimination, stigma, and violence against the LGBT community have been prevalent, perpetuated by social norms, religious beliefs, and colonial-era laws.

The legal landscape pertaining to LGBT rights in India has undergone significant transformations in recent years, driven by both judicial interventions and grassroots activism. One of the landmark moments in this journey was the historic verdict of the Supreme Court of India in the case of *Navtej Singh Johar v. Union of India* (2018)¹, which decriminalized consensual same-sex relations between adults, overturning the archaic Section 377² of the Indian Penal Code. This judgment marked a crucial step towards recognizing the rights and dignity of LGBT individuals and challenging the deep-seated stigma associated with non-heteronormative identities.

However, while the decriminalization of same-sex relations was a significant victory, it was merely one aspect of the broader struggle for equality and justice for the LGBT community. Beyond the realm of criminal law, various other legal domains continue to pose challenges and barriers to the full realization of LGBT rights in India. These include issues related to marriage and partnership rights, adoption and parenting, healthcare access, employment discrimination, and gender recognition.

Marriage equality remains a contentious issue, with same-sex couples denied legal recognition and protection under Indian law. The absence of legal recognition not only deprives couples of crucial rights and benefits but also perpetuates social stigma and discrimination. Similarly, adoption laws in India do not explicitly allow same-sex couples to adopt children, denying them the opportunity to form legally recognized families.

Access to healthcare is another area of concern for the LGBT community, with many individuals facing discrimination and prejudice when seeking medical treatment. Healthcare providers often lack sensitivity and understanding of LGBT-specific health needs, leading to inadequate care and reluctance among community members to access essential services.

Furthermore, employment discrimination based on sexual orientation and gender identity remains prevalent in various sectors, perpetuating economic inequalities and hindering the professional advancement of LGBT individuals. The lack of legal protections leaves employees vulnerable to discrimination, harassment, and unfair dismissal, limiting their opportunities for economic empowerment and social inclusion.

Additionally, the issue of gender recognition poses significant challenges for transgender individuals in India. Despite the landmark Transgender Persons (Protection of Rights) Act passed in 2019³, implementation gaps and bureaucratic hurdles continue to hinder the legal recognition of gender identity. Many transgender individuals face barriers in accessing essential documents such as identity cards, passports, and educational certificates, impeding their ability to fully participate in society.

¹ Writ Petition (Criminal) No. 76 Of 2016

² Indian Penal Code Act 45 Of 1860

³ Transgender Persons (Protection of Rights) Act 40 of 2019

In light of these challenges, there is a pressing need for comprehensive legal reforms and policy measures to advance gender equality and protect the rights of the LGBT community in India. Beyond legislative changes, there is also a need for cultural transformation, with efforts to challenge societal norms, promote acceptance, and foster inclusive attitudes towards diverse gender and sexual identities.

This paper seeks to explore and analyze the rights of the LGBT community within the legal framework of India, examining the progress made, the challenges faced, and the way forward towards achieving genuine gender equality and social justice for all individuals, regardless of their sexual orientation or gender identity. By critically assessing existing laws and policies, identifying gaps and shortcomings, and proposing recommendations for reform, this study aims to contribute to the ongoing discourse and advocacy efforts aimed at creating a more inclusive and equitable society for LGBT individuals in India.

In the subsequent sections, the paper will delve deeper into specific legal domains, analyzing key issues, relevant case law, and legislative developments impacting the rights of the LGBT community. Through this comprehensive examination, we hope to shed light on the complexities of the legal landscape and stimulate dialogue and action towards meaningful change and progress.

2. CHALLENGES AND SHORTCOMINGS IN THE LEGAL FRAMEWORK

The legal framework concerning the rights of the LGBT community in India faces several challenges and shortcomings, which hinder the full realization of equality and justice for LGBT individuals. Despite the landmark judgment of the Supreme Court decriminalizing consensual same-sex relations in *Navtej Singh Johar v. Union of India* (2018)⁴, significant gaps persist in various legal domains. One of the primary challenges lies in the absence of comprehensive anti-discrimination legislation explicitly protecting individuals based on sexual orientation and gender identity. While certain constitutional provisions such as the right to equality and non-discrimination are theoretically applicable to all citizens, the lack of specific legal protections leaves LGBT individuals vulnerable to discrimination, harassment, and violence in various spheres of life, including employment, education, healthcare, and housing. Moreover, the patchwork of laws governing marriage and partnership rights further exacerbates the marginalization of LGBT individuals, with same-sex couples denied legal recognition and access to essential rights and benefits. Adoption laws also present significant barriers, with same-sex couples being ineligible to adopt children under existing legal provisions, depriving them of the opportunity to form legally recognized families. Additionally, the issue of gender recognition remains contentious, with transgender individuals facing bureaucratic hurdles and discrimination in accessing legal recognition of their gender identity. While the Transgender Persons (Protection of Rights) Act⁵ was a step towards recognizing and protecting the rights of transgender individuals, implementation gaps and ambiguities in the law continue to pose challenges, particularly concerning access to essential documents and healthcare services. Furthermore, societal attitudes and cultural norms perpetuate stigma and discrimination against

⁴ AIR 2018 SC 4321

⁵ Transgender Persons (Protection of Rights) Act 40 of 2019

the LGBT community, undermining the effectiveness of legal protections and hindering efforts towards social inclusion and acceptance. Addressing these challenges requires concerted efforts from both policymakers and civil society to enact comprehensive legal reforms, promote awareness and sensitivity towards LGBT rights, and foster a more inclusive and equitable society for all individuals, irrespective of their sexual orientation or gender identity. Following are the status of LGBT with respect to different legal framework:

i. Same-sex Marriages

The Indian Constitution does not explicitly mention the right to marry. However, in the pivotal case of *Lata Singh v. State of Uttar Pradesh*⁶, the Supreme Court interpreted this right to be implicit in Article 21⁷. The court, in the context of inter-caste marriage, affirmed individuals' autonomy in choosing their partners once they reach the age of majority. It emphasized that parents may disapprove but cannot resort to violence. However, the recent refusal by the Supreme Court to grant legal recognition to same-sex marriages is perceived as a setback for the LGBT community, highlighting ongoing challenges in achieving equality within the legal system.

ii. Adoption, Guardianship and Surrogacy

Although the decriminalization of Section 377⁸ of the Indian Penal Code was a significant step towards LGBT rights, it's evident that the community still faces legal barriers, particularly concerning adoption. Regulation 5(3) of the Adoption Regulation Act, 2017⁹, mandates a stable relationship of two years for adoption eligibility, implicitly excluding same-sex couples by referencing "husband" and "wife." This exclusion underscores the unequal treatment of homosexual couples before the law. Additionally, adoption rules differ based on gender, leading to ambiguity for transgender couples. The *NALSA*¹⁰ judgment affirming the right to choose gender further complicates matters, as legal implications of gender transitions post-adoption remain unclear. While adoption is complex for all couples, including heterosexual ones grappling with anti-trafficking laws, the stark reality remains: same-sex couples are outright barred from adopting. With same-sex marriages illegal in India, this prohibition further denies homosexual couples the opportunity to adopt jointly, compounding the inequality they face.

iii. Guardianship

In 2010, parliament amended the law to grant equal guardianship rights to both parents. Subsequently, in the 2015 case of *ABC v. NCT of Delhi*¹¹, the court issued a progressive judgment, recognizing unwed mothers' guardianship rights without mandating disclosure of the father's name. However, despite the gender-neutral language of the law, it operates within the framework of the gender binary, posing challenges for LGBT and transgender parents

⁶ AIR 2006 SC 2522

⁷ The Constitution of India

⁸ Indian Penal Code Act 45 Of 1860

⁹ Adoption Regulation Act, 2017

¹⁰ AIR 2014 SC 1863

¹¹ 2015 SCC OnLine SC 609

whose identities may not fit conventional norms. To address this, it's crucial to redefine terms and concepts within the law to accommodate diverse family structures.

The principle of the "best interest of the child" guides custody and guardianship decisions, prioritizing the caregiver who can provide a nurturing environment. This principle, adaptable to various circumstances, underscores the need for flexibility in guardianship laws.

To create inclusive guardianship laws aligned with NALSA¹² and Navtej Singh Johar judgments¹³, legal language must transcend binary notions of gender and relationship structures. It's imperative that such laws allow individuals from the LGBT community, regardless of gender or sexual orientation, to become guardians. However, the interpretation of "best interest of the child" by the courts will ultimately determine the extent of inclusivity and protection afforded to LGBT parents within the legal framework.

iv. Protection against discrimination at the workplace

The situation becomes particularly dire for transgender individuals who often face barriers such as low literacy levels, limited access to education and vocational training, and heightened workplace discrimination. As a result, many transgender people are forced into begging or sex work, leaving them vulnerable to disproportionate targeting by law enforcement agencies under laws such as the Immoral Trafficking Act (1956) and anti-beggary laws¹⁴.

Instances of workplace discrimination against transgender individuals are prevalent across the country. One notable case is that of Manish Kumar Giri, also known as Sabi Giri¹⁵, who underwent gender transition and was subsequently dismissed from the navy due to the military's interpretation of existing rules barring continued employment for individuals with altered gender status.

Existing laws, such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013¹⁶, focus solely on women as victims of sexual harassment, failing to recognize harassment regardless of the victim's gender identity. Therefore, there is a pressing need for gender-neutral harassment laws in the workplace. However, it's crucial to acknowledge the unique challenges faced by the LGBT community, including the potential for different interpretations of "sexually colored remarks" or "unwelcome behavior" due to widespread transphobia and homophobia. Thus, alongside gender-neutral harassment laws, robust anti-discrimination policies are essential to prevent the misuse of such laws against LGBT individuals. While amendments to employment and labor laws are necessary to ensure inclusivity for the LGBT community, substantial change requires proactive efforts from both private and public organizations. Organizations can play a pivotal role in fostering LGBT inclusive workplaces by implementing policies such as equal benefits for LGBT couples,

¹² AIR 2014 SC 1863

¹³ AIR 2018 SC 4321

¹⁴ Immoral Trafficking Act (1956) and anti-beggary laws

¹⁵ Indian Navy sailor sacked after sex change: Here is how other countries tackle gender reassignment
Written by Kanishka Singh New Delhi | Updated: October 11, 2017 11:01 IST

¹⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013

adopting comprehensive anti-discrimination measures, supporting LGBT employee resource groups, providing leave for gender-affirming processes, and organizing awareness and sensitization programs.

v. LGBT community

In addition to facing regular discrimination and harassment at the workplace, there are several reasons why current employment laws lack inclusivity for the LGBT community. While delving into every aspect of employment law is beyond this article's scope, specific points highlight these shortcomings:

1. Lack of Recognition of LGBT Families:

i) Workmen's Compensation Act, 1923¹⁷: Although Section 2 of this act defines dependents, the terms are solely defined in the context of heterosexual families. Redefining "dependents" to include same-sex unions and LGBT families is crucial to ensure equal incentives in employment.

ii) Payment of Gratuity Act, 1972¹⁸: The act's definition of "family" for gratuity benefits only includes spouse, children, dependent parents, and adopted children, thus excluding LGBT families.

iii) Factories Act, 1948¹⁹: Structured around a protectionist approach, this act's regulations often overlook individuals not conforming to traditional gender binary notions. Such limitations confined to the gender binary are not exclusive to these laws but extend across various other employment and labor laws.

2. Maternity Benefits:

The Maternity Benefit Act of 1961²⁰ provides maternity leaves and benefits solely to cis-gendered women who give birth, adopt, or rely on surrogacy, perpetuating outdated notions of parental roles and excluding LGBT families. Ensuring gender-neutral language in this law would not only grant parental benefits to LGBT families but also contribute to eliminating sexual biases reinforced by maternity benefit legislation.

These examples underscore the need for comprehensive reforms in employment laws to recognize and protect the rights of LGBT individuals and families. It is essential to update legal frameworks to reflect the diverse realities of modern families and ensure equal opportunities and protections for all employees, irrespective of their sexual orientation or gender identity.

vi Protection against bullying in Educational Institutions

¹⁷ Workmen's Compensation Act, 1923/ Employee's Compensation Act, 1923(8 OF 1923)

¹⁸ Payment of Gratuity Act, 1972(30 OF 1972)

¹⁹ Factories Act, 1948(63 OF 1948)

²⁰ Maternity Benefit Act of 1961(53 OF 1961)

Incidents of violence against LGBT communities within college campuses are distressingly common, with reports of bullying, hazing, sexual harassment, and abuse targeting queer students. This pervasive discrimination and harassment often erode the self-esteem and mental well-being of LGBT students, prompting some to abandon their studies altogether.

However, it's worth acknowledging the proactive stance taken by the University Grants Commission (UGC) in addressing such grievances and implementing measures to curb homophobic and transphobic bullying. The UGC Anti-Ragging Regulations (2009) obligate both public and private universities to investigate complaints of homosexual assaults, demonstrating a commitment to ensuring the safety of LGBT students. Furthermore, in 2016²¹, the UGC recognized gender identity and sexual orientation as valid grounds for addressing ragging and discrimination. Despite these commendable guidelines and policies, many universities across the country have fallen short in effectively addressing harassment against LGBT students. There is a glaring lack of implementation and enforcement of anti-ragging measures, leaving queer students vulnerable to ongoing mistreatment.

It is imperative that all universities incorporate comprehensive anti-ragging policies in their prospectuses, explicitly prohibiting discrimination based on sexual orientation or gender identity. These policies should not only outline mechanisms for reporting and addressing incidents of harassment but also emphasize the importance of fostering inclusive and supportive campus environments for all students, regardless of their sexual orientation or gender identity. By prioritizing the safety and well-being of LGBT students, universities can create truly inclusive spaces that promote diversity, acceptance, and equality.

3.ANALYSIS OF INDIAN CASE LAWS AND JUDGMENTS PASSED IN THE HISTORY OF THE LGBTQ COMMUNITY

Various laws and legal judgments have played significant roles in shaping the legal landscape for the LGBT community in India. In the case of *Naz Foundation vs. Government of NCT Delhi*²², the Delhi High Court ruled that Section 377 of the Indian Penal Code, which criminalized consensual homosexual acts, was unconstitutional as it violated fundamental rights under Articles 14, 15, 19, and 21 of the Indian Constitution. However, this decision was later overturned by the Supreme Court in *Suresh Kumar Koushal & Anr vs. Naz Foundation & Ors*²³, leading to a period of uncertainty and discrimination for LGBT individuals. The darkness was lifted with the landmark *NALSA* judgment, where the Supreme Court recognized transgender individuals as citizens and laid down guidelines for their legal protection. Subsequently, in the case of *Justice K.S. Puttaswamy (Retd) vs. The Union of India*, the apex court affirmed the right to privacy as an integral part of Article 21, extending this right to members of the LGBT community.

²¹ UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions (Third Amendment), 2016.

²² 2010 CRI. L. J. 94, 2009 (6) SCC 712

²³ CIVIL APPEAL NO.10972 OF 2013

The watershed moment came with the Navtej Singh Johar vs. The Union of India Ministry of Law and Justice case, where the Supreme Court decriminalized consensual homosexual acts and declared Section 377 unconstitutional. This judgment was a significant victory for LGBT rights, upholding the dignity and autonomy of individuals. Additionally, the case of Shafin Jahan vs. Asokan K.M.²⁴ affirmed the fundamental right of individuals to choose their partners, extending this right to same-sex relationships. Internationally, the United Nations has recognized the rights of LGBT individuals and has urged countries to enact laws protecting their rights. However, challenges persist, with some countries imposing severe penalties, including the death penalty, for homosexuality. Despite obstacles, there has been progress globally, with initiatives aimed at ending discrimination and violence against LGBT individuals gaining momentum.

In summary, legal advancements at both national and international levels have been instrumental in advancing LGBT rights, although challenges remain in achieving full equality and protection worldwide.

4.ISSUES AND CHALLENGES FACED BY LGBT COMMUNITY IN INDIA²⁵

Homophobia and Discrimination: The prevalent societal view of homosexuality as abnormal fosters intolerance, discrimination, and harassment against the LGBT community, leading to daily threats of violence and abuse.

Lack of Legal Protections: LGBT individuals often face unequal treatment under the law, being denied the same rights and privileges enjoyed by heterosexual couples, such as exclusion from social safety programs like pensions and health insurance.

Fear of Job Loss and Concealment of Identity: Many LGBT individuals fear losing their jobs if their sexual orientation is revealed, leading them to conceal their identity, which affects their ability to fully participate in the workforce.

Bullying and Harassment in Educational Settings: LGBT youth frequently experience bullying and harassment in schools, colleges, and universities, resulting in depression, school dropout, and homelessness, further impacting their self-esteem and confidence.

Family Conflict and Rejection: Poor communication between parents and their LGBT children often leads to familial conflicts, with many facing rejection and being forced out of their homes, resulting in involvement in juvenile detention facilities, foster care, or homelessness.

Increased Risk of Health Issues: LGBT individuals, especially youth, are at a higher risk of developing health and mental health issues due to rejection and discrimination, exacerbating their vulnerability to various health-related challenges.

²⁴ (2018) 16 SCC 368, AIR 2018 SC 1933

²⁵ Problems Faced by LGBT People in the Mainstream Society: Some Recommendations Chatterjee Subhrajit International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol 1, No.5, 317-331. 317 Available online at <http://www.ijims.com> ISSN: 2348 – 0343

5. FOR THE VARIOUS PROBLEMS FACED BY THE LGBTQ COMMUNITY IN INDIA:²⁶

1. Lack of Proper Sex Education: The taboo surrounding sex in Indian society limits access to proper sex education, particularly for LGBT individuals, leading to a lack of awareness and understanding about sexual health.
2. Ignored Health Issues: LGBT individuals often ignore health issues due to a lack of information and awareness about the specific health risks associated with their sexual orientation.
3. Homophobic Slurs and Labeling: Verbal assaults and derogatory terms contribute to the discrimination and violence faced by LGBT individuals on a daily basis.
4. Dismissal of Homosexuality as a Mental Illness: Despite progress, there remains a lack of awareness about alternate sexualities, with homosexuality often dismissed as a mental illness.
5. Ordeal of Coming Out: Coming out to others about their sexuality is a challenging experience for LGBT individuals, with the risk of judgment, ostracization, and assault.
6. Reality of Sexual Assault: Victims of same-sex sexual assault often face invisibility and stigma within both professional and community settings, hindering their ability to seek support and justice.
7. Exposure to Invasive Questions: LGBT individuals often face invasive and uncomfortable questions about their sexual orientation, further contributing to their marginalization and discomfort.
8. Inherent Problems Within the Community: Despite unity in fighting for LGBT rights, there are classist attitudes and pressures within the community, perpetuating stereotypes and exclusion.

These factors contribute to the systemic discrimination and challenges faced by the LGBT community in India, highlighting the urgent need for societal acceptance, legal protections, and support services.

6.SUGGESTIONS & CONCLUSION ²⁷

LGBT individuals, with their differing sexual orientations, often encounter discrimination and exclusion from society, leading to obstacles in fulfilling their needs. This exclusion and ostracism can range from personal relationships to broader societal ignorance, posing challenges that can even violate their right to life. Lesbian, gay, bisexual, and transgender people have actively participated in efforts for racial and economic justice. There is no quick-fix solution to the problems faced by many LGBT people globally. Therefore, considering the

²⁶ Problems and Challenges of LGBT: Social Work Perspectives Author- Hareem Fatima Nomani © 2022 IJCRT | Volume 10, Issue 2 February 2022 | ISSN: 2320-2882

²⁷ Problems and Challenges of LGBT: Social Work Perspectives Author- Hareem Fatima Nomani © 2022 IJCRT | Volume 10, Issue 2 February 2022 | ISSN: 2320-2882

above discussion, the following recommendations can be developed to recognize the roles individuals and institutions can effectively take:

1. Support the most marginalized within the LGBT community, including people of color, low-income individuals, youth, the elderly, and transgender individuals.
2. Foster collaborations on cross-issue work that addresses LGBT issues affecting low-income and people of color populations.
3. Engage foundation staff in public education on issues affecting LGBT low-income people and people of color, especially transgender issues.
4. Schools and teacher education programs should address LGBT issues and concerns to create safe environments for LGBT youth.
5. Implement policies and practices in schools to promote health and safety among LGBT youth, including prohibiting bullying and harassment, identifying safe spaces, and including inclusive curricula.
6. Incorporate LGBT issues as a central theme in all economic and racial justice work and advocate for philanthropic support for LGBT racial and economic justice efforts.
7. Encourage responsible media reporting on LGBT issues to promote a culture of tolerance and freedom for minorities.
8. Establish legal funds to support Public Interest Litigation on LGBT issues.
9. Conduct training for health professionals to increase their understanding of LGBT identity and provide accessible and appropriate services for LGBT individuals.
10. Develop initiatives at the national and state levels to support employers in creating inclusive workplace cultures for LGBT people.
11. Expand domestic violence laws to include non-spousal and parental violence.
12. Sensitize police forces at all levels on LGBT issues and fundamental human rights principles.
13. Avoid stigmatizing or pathologizing language regarding gay men, lesbians, and bisexual persons.
14. Provide education to local authorities, policymakers, schools, and families on accepting gender-variant children and treating people of different sexualities and gender identities equally.
15. Address leadership transition within the LGBT movement to ensure continuity and progress.
16. Uphold core legal obligations concerning protecting the human rights of LGBT people, including preventing violence, repealing criminalizing laws, prohibiting discrimination, and safeguarding freedom of expression and association.

In conclusion, while India has made progress in recognizing LGBT rights, challenges persist. Legislative advancements have been significant, such as the decriminalization of homosexuality, but issues like adoption rights, healthcare access, and discrimination remain. Judicial decisions have played a crucial role, but ongoing efforts are needed to strengthen legal protections and societal acceptance. This is vital for upholding the dignity and fundamental rights of the LGBT community in India and globally. Despite legal advancements, inequality, racism, violence, harassment, and discrimination persist, highlighting the continued need for advocacy and action.

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