



## LGBTQ Rights and Gender Equality: A Legal Analysis

Prof. (Dr.) Pradip Kumar Das, School of Law and Governance, Central University of South Bihar, Bihar

### Article information

Received: 6<sup>th</sup> April 2024

Received in revised form: 18<sup>th</sup> May 2024

Accepted: 14<sup>th</sup> June 2024

Available online: 21<sup>st</sup> August 2024

Volume: 1

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.13986389>

### Abstract

LGBTQ Rights have changed in India its nature and expansion only during recent years. Compared to others who do not belong to the LGBTQ group, they has to face many societal and legal challenges to live ahead in the community. Society is very committed to accepting the judicial trends and opinions for protecting LGBTQ Rights in India. Ancient artifacts and beautifully written accounts of the LGBT group's accomplishments in Indian history may be found in books like the Kamasutra. Ancient Indian sociological perspectives on LGBT individuals were flexible and reasoned, in contrast to the modern world. Scholars contended that pre-colonial Indian culture did not see same-sex unions as sinful or bad, nor was it prohibited. The authors contend that the law's paternalistic approach, which denies the autonomy of self-government or self-direction, is its weakness. The concept of autonomy must be reinterpreted as a relative one in which a fair and caring society supports its citizens and fosters social circumstances that support individual choices and enable them to reach their greatest potential. After reviewing the extensively recorded history of LGBT persons in ancient Indian texts spanning all major faiths practiced in ancient, medieval, and contemporary India, the study analyses the roots of s. 377 in the colonial history of that country.

**Keywords:** - (LGBTQ), social and legal, Indian history, s. 377, gender, ancient Indian sociologic, Indian society, human rights.

*“Like being a woman, like being a racial, religious, tribal, or ethnic minority, being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights.”*

— Hillary Clinton.

## I. INTRODUCTION

Humans are in need of recognition and a sense of belonging in society, which they get by abiding by social rules and expectations. The gender norms and expectations that are instilled in people via cultural norms and social values are subject to change throughout time. Gender roles are altered by systems of social difference such as political standing, class, ethnicity, age, and more.

*“Gender is important because, when used in social analysis, it shows how societal constructions of men's dominance and women's subordination are produced”.*

It's important to recognize the distinction between the terms "sex" and "gender" while discussing gender”.

*“The biological traits that categorize people as male or female are referred to as "sex." Although both sets of biological traits are not exclusive of one another—some people have both—they tend to distinguish between male and female humans”.*

As a result, categorizing newborns as boy or girl based on genitalia differences characterizes their sex. As opposed to,

*“The sociocultural definition of the men and women, or how civilizations categorize and assign social duties to them, is referred to as gender”.*

Gender norms are reinforced and passed down to children when parents dress their daughters in pink and their boys in blue, educate their girls not to speak or laugh aloud, and teach their males not to weep.

Gender norms have an impact on every facet of human existence, including the socioeconomic, psychological, educational, health, and environmental domains. Numerous studies have shown the fact that socialization and social norms are how gender norms are maintained and passed down through generations.

- **Hinduism:** Hinduism being the oldest existed religion in the world, and the majority of Hindus—more than 95%—live in India. Unlike other religions around the world, Hinduism are not following and continuous practices, worship any one, God, adhere to any one philosophical idea, practice any one set of faith-related rites or achievements, or to see the strict conventional requirements for any religion or creed. Put simply, it is just a simple rule of life.
- **Kama Sutra:** The ancient Kama Sutra, written by the philosopher Vatsyana sometime in the fourth century, is a treatise on "Kama" (desire). In various locations, it describes a range of gender and gay acts. It explains the fellatio practices that male and female of the third gender (Tritiya-Prakriti) use. Two categories of males are identified as masculine and feminine forms of homosexuals in the ninth portion of the Kamasutra; in earlier Victorian British translators, they were only referred to as "hijra."

### 1.1 The LGBTQ Community and Other Punitive Provisions Under Section 377:

Homosexuality is included in Section 377 of the IPC, which handles abnormal offenses. India acquired its anti-homosexuality rule from the British Penal Code of the 19th century.

Judges' interpretations - Although the term "female inter-course against the logical sequence of nature" is not well defined, Indian courts have understood it to include oral sex, anal intercourse, and sometimes other non-procreative sexual actions, such as mutual masturbation. The legal system has traditionally penalized gay intercourse, even if heterosexual couples also engage in similar patterns. Regardless of whether permission is given, such interactions are illegal according to the law's "voluntary" provision. In the 1980s, the "European Court of Human Rights" ruled that making same-sex sexual conduct illegal which is in derogation with people's right to privacy. In 1967, homosexuality was declared a non-violent felony in Britain, which concurrently established the IPC and s. 377 during the colonial period. In India, court judgments have not often used the statute against "sexual contact beyond the order of nature" since it is difficult to prove in private. For a conviction to be successful, two persons must be seen performing a sexual act, something is usually done in secret. The primary notified criminal case who had a sexual bond with another person of the same gender with that person's consent dates back to 1930. The Wolfe den Committee's recommendations paved way to the establishment of The Sexual Offences Act of 1967 in Britain, which decriminalized homosexuality and sexual abuse of those adults who give consent and willingness (those over 21). The Parliamentary Advisory Committee recommended in 1957 that laws prohibiting gay activity be repealed.

### 1.2 Misconduct Regarding Gender

India has had gender disparity from its inception because of social, economic, and religious customs that created a significant divide in the status of male and female in the community. How can we forget that both of the sex are like the two wheels of a cart, and both must participate equally for the country to progress? We cannot envision the growth of another without the formation of the first. The men and women, need equal assistance and collaboration; without one being present, the other cannot achieve greatness. Women experience prejudice from an early age. Every field discriminates against them. The important way parents discriminate against their female offspring in all areas. This immorality is often practiced by uneducated individuals. The most dominant tools for eliminating gender inequality in society is education.

### 1.3 Law About Women

There are many laws, regulations, policies, and institutional changes in our country to establish and analyse the gender plan of action for women's development. To address the uneven economic and social standing in India, legislation is a crucial tool. Few laws were enacted in pre-independence India in regarding societal demands or with humanitarian considerations in mind. These include the Hindu Widow Remarriage Act of 1856, the Hindu Women's Right to Property Act of 1937, the Shariat Act of 1937, the dissolution of Muslim Marriages Act of 1939, and the Bengal Sati Regulation Act of 1829, together with comparable Anti-Sati legislation in Madras and Bombay.<sup>5</sup> Women's participation in politics and socioeconomic development has increased since independence thanks to significant changes in legislation and court cases. However, this increase hints that there is a chance to occur at lower levels of decision-making than at the highest levels.

### 1.4 Social media's role in helping LGBTQ++ people establish their identities in India

The dynamic interaction that currently exists between society and technology is driving significant changes in how they interact. The way that technology is used for communication is being profoundly impacted by this progress. An extensive online single platform has been started as estimated by a 2017 World Bank study, with over 3.5 billion people, or 45.7% of the world's population, having access to the internet. People who identify as sexual as well as gender minorities in the community often demand social media platforms to satiate their need for inclusivity and to experience the joy that comes with creating a sense of community.

Three main benefits of our social media are connections that are formed, identity affirmation, and a feeling of community. The user's well-being may be impacted by all of these factors. LGBTQ+ adolescents have the power to create their identity

and communication via social media since it gives them the chance to carefully cultivate their online persona in a area where they can control and observe their level of anonymity and feel somewhat protected.

## II. LITERATURE REVIEW

(Jain, D. 2017) Gender Minority rights in India will be looked at in this article along with the growing worldwide acknowledgment and definition of such rights. Transgender individuals are beginning to get legal protection, according to recent Indian jurisprudence. Though the judicial development has been accepted legally its practical extent and application have still to be determined. It's crucial to see the legal background of gender-nonconforming individuals in India to comprehend the advancements that the legal system has achieved.

(Jhanwar, S., 2020) Indian society is becoming more and more vocal about the need for change, but the process of change takes time. But by upholding justice and preservation of rights of the disadvantaged, the Indian judiciary has endured throughout time. One such occasion in Indian society's history is the 2018 Navtej Singh Johar ruling, which honors the victory of humanity and harmonious relationships over antiquated beliefs that are discriminating and out of date. This study examines the degree of social and legal acceptance of the LGBTQ+ Community in Indian society.

(Sharma, S. 2021) The difficulties faced by sexual minorities are often highlighted and neglected in society. However, we must alter that if we are to successfully utilize gender mainstreaming as the strong pillar for our policy work. This article examines the difficulties that the LGBTQ community faces comparatively. This essay attempts to analyze the difficulties encountered by developed Australia and developing India, giving proper weight to the global viewpoint. Simply put, the study's goal is to determine where we are in terms of LGBTQ liberalization relative to industrialized nations and, if any, what historical variables have affected our development.

(Sankhyan, A., 2022) LGBTQ Rights (lesbian, gay, bisexual, transgender, and queer) people have changed a lot in India in recent years. compared to other genders, LGBTQ people are facing many social and legal issues and challenges. The public has a responsibility to embrace the court's ruling with open arms, the government must guarantee that the courts judgements reach the general public, and the court must issue fair and reasonable orders.

(Siji, A. L. 2022) The LGBTQ community, which still does not enjoy the same level of public acceptance and equality as the heterosexual community, is home to a sizeable population in India. This area's development is happening much too slowly and sometimes at a standstill. The most recent instance of this type of instance is likely the famous case study of Adila v. Kerala Police Commissioner. Despite being a notable ruling, it has not accomplished anything novel. This essay analyzed the need to grant adoption rights to members of LGBTQ communities by consulting several studies and publications that addressed the subject. It was noted that no significant changes had been accomplished in this scenario of law notwithstanding the highly acclaimed in Navtej Singh Johar V. Union of India.

(Singh, A. 2023) About 8 percent of Indians identify as LGBTQ+, yet a large percentage of them do not know the full meaning and importance of this abbreviation. With many challenges and successes along the way, the global movement to support LGBTQ people has been underway. The path to LGBTQ++ rights in India has been paved with challenges, social biases, and historical legal barriers that date back to the country's famous past in medieval and ancient periods.

### 2.1 Objectives of the study

- Examine how other facets of identity, such as race, ethnicity, socioeconomic class, and disability, connect with LGBTQ rights and gender equality.
- Offer a thorough legal analysis based on multidisciplinary viewpoints and actual data to advance the academic conversation on LGBTQ rights and gender equality.

### 2.2 Scope of the study

- Gender rights and Equality of LGBTQ: Describe gender equality and LGBTQ rights. Give the background information and the development of the legislative frameworks about gender equality and LGBTQ rights.
- International Legal Framework: The evaluation and observation of the main international agreements, declarations, and treaties about gender equality and LGBTQ rights. Examination of the many global and national enforcement and implementation methods.
- International Legal Framework: The observation of the main international agreements, declarations, and treaties about gender equality and LGBTQ rights. Examination of the many enforcement methods and implementation methods.

A summary of the main conclusions and ideas from the legal study. Considering the obstacles yet to be overcome to acquire and protect the rights of LGBTQ people and gender equality.

## III. METHODOLOGY

The court determined that articles 14, 15, and 21 of the Constitution are violated by section 377, which forbids private consensual actions between adults (those who are older than 18 and capable of consenting). It is evident that consent of this kind had to be freely granted and provided without fear of retaliation or other types of coercion. It was also ruled that while the primary use of section 377 would not lead to the reopening of any closed prosecutions, it may be relied upon in all current cases.

- Transgender Rights Protection Act: The legislature slipped the famous Act, Transgender Persons (Protection of Rights) Act, 2019, and the governor ratified it on December 5, 2019, in a very respectful manner in response to the Supreme Court's historic ruling in *NALSA v. UOI* in 2014, which upheld the important rights and duties of Transgender societies.
- Identification Recognition: If a TG individual wants to apply for an identification certificate, they may do so. This certificate may also be modified if the third gender person subsequently chooses to shift into a female or a male. Although the legislation explicitly states that transgender persons have the important right to self-perceive their gender identity, more clarification about the procedure would be ideal. It might be argued that the procedure and way to apply for a certificate and follow a bunch of rules contradicts the essence of the ruling, which states that privacy, gender self-determination, and individual autonomy are crucial rights for transgender persons.
- Protection from Discrimination: It is now unlawful to discriminate against transgender individuals. Nevertheless, there are no sanctions in place for someone who is discriminated against by a TG person, and there is nothing of assurance that a TG person who is discriminated against would get financial compensation.
- Penalties: Forcing TG individuals to work in bonds, denying them passage rights, evicting the people from their homes or communities, harming them, or abusing them physically or sexually are a few of the officially recognized offenses against them.
- National Transgender Council: The Act mandates the creation of a body called the National Council for Transgender Persons, with a minimum of thirty members. Out of thirty, their community is represented by only five persons. Furthermore, the people's autonomy would be severely restricted since the central authority would choose them. Our Central Government will choose each member who is not employed by the our Central Government.

This particular Bill makes no mention of this. The Act was created in tune with to the *NALSA* verdict, which required the corresponding states to defend the constitutional rights of transgender individuals, including the freedom to self-identify as gender and the classification of transgender individuals as the financially and socially backward class for reservations. This Act differs greatly from the Supreme Court's ruling.

#### IV. CONCLUSION

In summary, even though landmarking has been achieved both nationally and internationally to acknowledge and defend the rights of LGBTQ people, there is still a long way to go until complete equality and inclusion are visualized. The scenario of LGBTQ rights has changed throughout time, moving from advocacy work to significant legislative developments, and from legal reforms to cultural views. The trip has been characterized by obstacles, disappointments, and victories, all of which have shaped the current environment. Enforcing laws and passing legislation alone is not sufficient; societal awareness and a shift in the general public's mindset are also required if gender discrimination is to stop and women are to be granted equal rights.

Because of this, it is assured and evident that the LGBT community has been around for a long. It is a part of almost all religions. The Indian Transgender Persons Bill of 2019 repeals the Criminal Tribes Act of 1871, which considered the whole transgender population to be inherently criminal activity and "accepted to the systemic performance of non-bailable offenses." The Transgender (Protecting the Rights) Act 2019 has eliminated criminal sanctions for consenting to sexual actions between twin adults of the same gender in both India and the country's legal system. There is still more research and updates should be welcomed to reform on the rights of LGBTQ people has advanced significantly.

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