



**"Understanding Challenges and Resilience: An Analysis of LGBTQ Community Issues in India"**

Dr. Rajeev Verma

Asst. Prof. Social Work Department, I.S.S

Dr. B.R. Ambedkar University, Agra

Email.ID: rajeevaimhigh@gmail.com

**"I am what I am, so take me as I am**

**(Johann Wolfgang von Goethe, German thinker)"**

**Introduction**

Homosexuals are colloquially called LGBT, whereas by adding some other categories, it has been given the name of Queer community. The LGBTQ community has been granted the same rights as other citizens by the Indian Constitution. The Transgender Persons Protection of Rights Act 2019 has been enacted to provide prohibition against discrimination in employment, education and health services for transgender persons and welfare measures to protect the rights of transgender persons have also been adopted by the government. According to a report published by the British newspaper The Guardian, in 2018, about 8 percent of India's total population belonged to the LGBT community. This figure comes to around 10 crore 40 lakh.

Incidents of violence and discrimination against the LGBTQ community come to light frequently in the society. Discussion about the LGBTQ community is still not considered normal in our society. As soon as issues are talked about, people start hesitant in our society. Even though the LGBTQ community has equal rights like other citizens, it is still difficult for lesbians, gays, bisexuals and transgenders to live in the society and establish their homes. Giving information about one's sexual identity can become a problem for someone. This problem starts from home and reaches school, college and office. In such a situation, not only is the mental health of the person adversely affected, but they also have to struggle for their rights. People belonging to the LGBTQ community can easily suffer from depression. The main reason for this is discrimination against LGBTQ people. Not only in the home environment, They are also seen as inferior in the outside of the home environment. Due to these reasons, depression is included in the challenges of the LGBTQ community. The LGBTQ community in India also includes Hijras, a special social group. They are culturally defined as either neither man nor woman, or men who behave like a woman. Currently, they are also called the third gender. Even today the Hijra/ Kinnar community has not been given the respect or status in the society, which is available to the common citizens living in the society. Their livelihood and means of living is dancing, singing songs and participating in the happiness of others. The present study aimed to analyse the policies, various provisions and initiatives to protect the rights and well-being of LGBTQ individuals in the country.



## **Definition**

### **“Sex**

The label you are assigned at birth based on your anatomical features, chromosomes and hormones.

### **Gender**

The societal constructions we assign people based on their sex characteristics. When you hear someone say "gender stereotypes," they're referring to the ways we expect people to act and behave based on their sex.

### **Queer**

Originally used as a pejorative slur, queer has now become an umbrella term to describe the myriad ways people reject binary categories of gender and sexual orientation to express who they are.

### **Gay**

A sexual orientation that describes a person who is emotionally, romantically or sexually attracted to people of the same sex; commonly used to describe men.

### **Lesbian**

A woman who is emotionally, romantically or sexually attracted to other women.

### **Bisexual**

A person who is emotionally or sexually attracted to more than one gender.

### **Pansexual**

A person who can be attracted to anyone, regardless of their gender identity.

### **Asexual**

A person who doesn't fit traditional standards and expectations around sexual desire. Many people in the LGBTQ community think of sexuality as a spectrum. Asexuality is just one end of spectrum with identities (gray areas) in between. Someone who is asexual may not be sexually active but still masturbate. Or they may be attracted to people but not desire sex.

People who identify as graysexual fall somewhere between asexual and sexual on the spectrum, and can include people who experience sexual attraction rarely.

### **Aromantic**

A person who experiences little or no romantic attraction to others.”



## **Rights of LGBTQ community under the Constitution**

Under the Indian Constitution, people of the LGBT community have been given all the rights like other citizens of the country. Which includes right to equality, right to freedom, right against exploitation, right to freedom of religion, right to culture and education and right to constitutional remedies.

The basis of equality is explained in Articles 14 to 18 of the Indian Constitution. These articles of the Constitution state that the State shall make uniform laws for all persons and shall enforce them equally. People will not be discriminated on the basis of religion, caste, race, sex or place of birth etc.

Articles 19 to 22 of the Indian Constitution explain the right to freedom. This right also applies equally to all citizens. People have been given the freedom to speak, to assemble, to move anywhere in the country and to do business. Apart from this, in addition to protection from conviction, life-body liberty, right to education, freedom from arrest and detention in certain circumstances has also been given.

Citizens have been given the right against exploitation in Articles 23 and 24 of the Constitution. Under this, no person, irrespective of gender or community, can be bought or sold, nor can he be forced to work. Along with this, children below 14 years of age cannot be made to do risky work if they wish.

Articles 25 to 28 of the Constitution talk about the right to religious freedom. According to these articles, any person is free to follow and propagate any religion. Apart from this, religious communities also have the right to establish institutions. The State cannot discriminate against a person on the basis of his religion or belief, nor can any person be prohibited from participating in any religious ritual.

The Constitution has given this freedom in Articles 29 and 30. Under this, any citizen of the country, irrespective of gender or community, can protect their cultural and educational rights.

## **Issues and Challenge**

The LGBTQ community has faced various challenges throughout history. Some of the main challenges include:

### **Discrimination**

LGBTQ individuals have often been discriminated against in various aspects of life, which can lead to limited opportunities and unequal treatment.

### **Stigma and Prejudice**

Many LGBTQ individuals have faced stigma and prejudice, leading to social exclusion, bullying, and harassment. This can cause mental health issues, lower self-esteem, and reduced overall well-being.



## **Legal Hurdles**

LGBTQ individuals face various legal hurdles in the society. Same-sex marriage are not recognized, and legal protections against discrimination based on sexual orientation and gender identity may be lacking. These barriers can result in ongoing inequality and unequal rights for LGBTQ individuals.

## **Violence and Hate Crimes**

LGBTQ individuals are often targets of hate crimes and violence. Transgender individuals, in particular, are more vulnerable to violence and often face higher rates of murder and assault compared to their cisgender counterparts.

## **Lack of LGBTQ**

Many educational institutions do not provide LGBTQ-inclusive curriculum or resources, leading to a lack of understanding and acceptance of LGBTQ individuals. This can perpetuate stereotypes and contribute to an unwelcoming environment for LGBTQ students.

It is important to note that progress has been made in addressing these challenges in many countries, and there are ongoing efforts to promote LGBTQ rights, equality, and social acceptance.

In India, LGBTQ rights have undergone significant changes in recent years. Here are some key legal provisions regarding LGBTQ rights in India:

### **Section 377**

Prior to September 2018, Section 377 of the Indian Penal Code criminalized sexual activities "against the order of nature," including consensual same-sex relationships. However, in a landmark judgement in *Navtej Singh Johar v. Union of India*, the Supreme Court of India decriminalized consensual homosexuality, effectively striking down Section 377.

### **Transgender Persons (Protection of Rights) Act, 2019**

This act was enacted to protect and empower transgender individuals in India. It recognizes the rights of transgender persons to self-identified gender, prohibits discrimination against transgender individuals in various domains, and establishes mechanisms for their welfare and social inclusion.

### **Anti-Discrimination Laws**

While India does not have comprehensive anti-discrimination laws specifically protecting LGBTQ individuals, some state governments, including Kerala and Tamil Nadu, have enacted their own anti-discrimination laws or policies that cover sexual orientation and gender identity.

The *Navtej Singh Johar v. Union of India* case focused on challenging the constitutionality of Section 377 of the Indian Penal Code, which criminalized consensual same-sex relationships. Some of the key arguments made in the case were:

---



### **Article 14 of the Constitution**

The petitioners argued that Section 377 violated the fundamental right to equality by arbitrarily classifying and criminalizing same-sex relationships. They contended that sexual orientation should not be a basis for discrimination and that all individuals, regardless of their sexual orientation, should have equal rights and protections under the law.

### **Violation of Article 15 (Prohibition of Discrimination)**

The petitioners asserted that Section 377 also violated Article 15, which prohibits discrimination on various grounds, including sex. They argued that sexual orientation based discrimination should be struck down as unconstitutional.

### **Violation of Privacy and Personal Autonomy**

The petitioners emphasized the rights to privacy and personal autonomy, arguing that criminalizing consensual same-sex relationships violated these fundamental rights. They asserted that the state should not interfere in the private lives and relationships of individuals.

### **Global Consensus and Changing Societal Attitudes**

The petitioners highlighted the evolving societal attitudes towards LGBTQ rights globally and argued that India should align itself with the global consensus toward decriminalizing same-sex relationships. They cited examples of countries that had already decriminalized homosexuality to support their argument.

These arguments, among others, ultimately led to the Supreme Court of India's historic judgement that decriminalized consensual homosexuality and struck down Section 377 in September 2018.

Apart from the Navtej Singh Johar v. Union of India case that decriminalized consensual same-sex relationships in India, there have been other landmark cases related to LGBTQ rights. Here are a few notable ones:

### **National Legal Services Authority (NALSA) Versus Union of India (2014)**

This landmark judgment recognized transgender individuals as a third gender and granted them legal recognition and protections. The court also affirmed transgender individuals' rights to self-identify their gender, access healthcare, and be free from discrimination.

### **Puttuswamy Versus Union of India (2018)**

While not exclusively an LGBTQ rights case, this decision by the Supreme Court of India recognized the right to privacy as a fundamental right under the Indian Constitution. This judgment played an important role in subsequent LGBTQ rights cases, including Navtej Singh Johar versus. Union of India.

### **Suresh Kumar Koushal Versus Naz Foundation (2013)**



This case, prior to being overturned, was significant in the legal battle against Section 377 of the Indian Penal Code. The court upheld the constitutionality of Section 377, which criminalized consensual same-sex activity. However, this judgment was later overturned by the Navtej Singh Johar case.

### **State of Kerala**

Kerala introduced policy for transgender, providing rights and protections to transgender individuals. It also established the state's first transgender justice board.

### **State of Tamil Nadu**

Tamil Nadu has made efforts to support the LGBTQ community, including the creation of a transgender welfare board and issuing identity cards for transgender individuals.

### **State of West Bengal**

West Bengal has taken steps to recognize transgender people, offering various benefits and support services.

### **Conclusion**

LGBTQ rights and legal provisions in India are undergoing significant changes. The Hon'ble Supreme Court of India decriminalized homosexuality by partially striking down Section 377 of the Indian Penal Code on September 2018, which had criminalized consensual same-sex relations. This was a landmark moment for LGBTQ rights in the country. Several states had taken steps to recognize transgender rights and establish welfare boards for their welfare. Promoting the betterment of the LGBTQ community in India requires a multi-faceted approach involving legal, social, and educational aspects. Here are some suggestions.

### **Suggestions**

- Incorporate LGBTQ awareness and acceptance in the school curriculum to reduce prejudice and discrimination from an early age.
- Train teachers, administrators, and school staff to create LGBTQ friendly environments.
- Develop accessible mental health services and support groups for LGBTQ individuals, as they often face mental health challenges due to societal pressure.
- Promote positive and accurate LGBTQ+ representation in the media to combat stereotypes and raise awareness.
- Establish LGBTQ community centers and safe spaces where individuals can seek support, socialize, and access resources.
- Encourage companies to adopt LGBTQ inclusive policies and create safe, accepting work environments.
- Ensure that LGBTQ individuals have access to healthcare without discrimination, especially concerning gender-affirming care.



- Encourage Dialogue and acceptance within families and peer groups, as strong support networks are crucial.
- Promote research on LGBTQ issues to understand and address specific challenges faced by the community.
- Advocate for the right to legal gender recognition for transgender individuals, allowing them to change their gender identity on official documents.
- Promote awareness of Pre-Exposure Prophylaxis (PrEP) for HIV prevention and ensure its accessibility.

### **Bibliography**

- Balaram, R. (2008). Queering the South Asian Community: Intersections of Race, Gender, and Sexuality. *NWSA Journal*, 20(2), 192-206
  - Jain M.P, (2018) Indian Constitutional Law, Lexi Nexis, 8th Edition
  - Narrain, A. (2003). Homosexual Rights as Human Rights Issues and Challenges in the Modern World. *Human Rights Quarterly*, 25(2), 483-511.
  - Parikh, S. (2018). The Struggle for Queer Rights in India: A Journey from Decriminalization to Acceptance. *Indian Journal of Human Rights and the Law*, 2(2), 159-175.
  - "Queering the South Asian Community: Intersections of Race, Gender, and Sexuality" by Rakhee Balaram
  - Revathi, A. (2011). *The Truth About Me: A Hijra Life Story*. Penguin Books India.
  - Sengupta, D. (2017). *Out of Line: A Literary and Political Biography of Nayantara Sahgal*. Oxford University Press.
  - Shahani, P. (2020). *Queeristan: LGBTQ Inclusion in Corporate India*. Simon & Schuster India.
  - Transgender Persons (Protection of Rights) Act, 2019  
This act was enacted to protect and empower transgender individuals in India. It recognizes the rights of transgender persons to self-identified gender, prohibits discrimination against transgender individuals in various domains, and establishes mechanisms for their welfare and social inclusion.
  - Vanita, R. (Ed.). (2002). *Queering India: Same-Sex Love and Eroticism in Indian Culture and Society*. Routledge.
  - <https://glaad.org/gay-producer-richie-jackson-releases-powerful-new-book-and-letter-his-gay-son/>
  - [https://www.thetrevorproject.org/trvr\\_support\\_topic/bisexual/](https://www.thetrevorproject.org/trvr_support_topic/bisexual/)
  - <https://glaad.org/reference/transgender>
  - <https://itgetsbetter.org/blog/what-does-queer-mean/>
  - <https://pflag.org/glossary-terms>
  - <https://privacylibrary.ccnlud.org/case/justice-ks-puttaswamy-ors-vs-union-of-india-ors#:~:text=Case%20Brief&text=The%20nine%20Judge%20Bench%20in,of%20dignity%2C%20autonomy%20and%20liberty.>
  - <https://indiankanoon.org/doc/58730926/>
  - <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>
-





**Footnote**

.....

1. LGBTQ Definitions retrieved from [https://www.usatoday.com/story/news/nation/2022/06/02/lgbtq-glossary-ally-learn-language/7469059001/\\*](https://www.usatoday.com/story/news/nation/2022/06/02/lgbtq-glossary-ally-learn-language/7469059001/*)