



Rights of Sexual Minorities in Modern India

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ABSTRACT

Sexual minorities—lesbian, gay, bisexual, transgender, queer, and other non-heteronormative (LGBTQ+ identities)—have been systematically excluded and socially erased from Indian society through the years. Rooted patriarchy, religious conservatism, and colonial morality have all played a role in perpetuating the traditional legal and social ostracism of these groups. Homosexuality remained outlawed for decades under Section 377 of the Indian Penal Code, a vestige of British colonialism, which not only took away the right of privacy and dignity for LGBTQ+ individuals but also sanctioned open discrimination and brutality. Substantial advancements have been made over the last few years, mostly by progressive judicial interventions. In *Navtej Singh Johar v. Union of India* (2018), landmark judgments have decriminalized consensual same-sex relationships, and *NALSA v. Union of India* (2014) established the right to self-identify one's gender. Both of these judgments established that sexual orientation and gender identity are part of individual dignity and constitutional freedoms under Articles 14, 15, and 21. Yet, even after these milestones, the legal edifice is unfinished. LGBTQ+ persons in India remain excluded from basic civil rights—most notably in the contexts of marriage, adoption, inheritance, access to healthcare, and protection from discrimination. The nonexistence of full-fledged anti-discrimination laws and the nonavailability of state-sponsored welfare provisions further leave sexual minorities open to systemic risks. This



article discusses the prevailing legal position of sexual minorities in India, comparing constitutional protections, judicial decisions, and policy evolution. It contends that there is an immediate necessity to develop a strong legal and policy framework that provides equality, dignity, and complete citizenship to LGBTQ+ individuals, concurring with the Indian Constitution's spirit.

1. Introduction

Sexual minorities in India have long existed in the state of legal invisibility and social exclusion. Sexual minorities are a term used to describe persons whose sexual orientation, gender identity, or relationships are outside the heterosexual, cisgender mainstream. Up to recently, definitions of sexual offenses in Indian law criminalized same-sex relations and did not consider non-binary gender identities. While various milestone judgments have enhanced the situation, sexual minorities in India do not have equal access to basic rights such as marriage, adoption, inheritance, and nondiscrimination.

This article is only concerned with the legal and constitutional rights of sexual minorities in India, critically examining the progress and gaps in modern law and policy.

2. Constitutional Framework

The Indian Constitution gives a general framework for the safeguard of personal rights. A number of articles are applicable to sexual minority rights directly:

- Article 14: Ensures equality before law and equal protection of the law.
- Article 15(1): Bars discrimination based on sex—which has been interpreted by the courts to also encompass sexual orientation and gender identity.
- Article 19(1)(a): Safeguards the freedom of expression including expression of sexuality and identity.
- Article 21: Ensures the right to life and personal freedom, including the right to privacy, dignity, and self-autonomy.

These rights in the Indian constitution constitute the foundation of legal remedies promoting the rights of LGBTQ+ individuals in India.

3. Judicial Recognition of Rights



a. Decriminalization of Homosexuality

In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalized Section 377 of the Indian Penal Code to the extent that it made punishable consensual homosexual acts between adults. The Court underscored that sexual orientation is an essential element of one's identity and is safeguarded under Articles 14, 15, and 21.

"Right to love and to a partner of one's choice is a dimension of Article 21." – Supreme Court of India, 2018

b. Recognition of Gender Identity

In *National Legal Services Authority (NALSA) v. Union of India* (2014), the Supreme Court acknowledged the right of individuals to self-identify their gender as male, female, or third gender. It instructed the government to recognize transgender persons as socially and educationally backward, who are entitled to reservations and welfare.

c. Right to Cohabitation and Chosen Families

Several High Courts have affirmed the right of same-sex couples to cohabit. The Madras High Court (2021) highlighted the validity of "chosen families" outside of formal marriage and disapproved conversion therapy.

4. Gaps in Law and Policy

Though judges have made significant strides, sexual minorities' rights are still poorly secured across most important aspects.

a. Rights of Marriage and Family

No such recognition of same-sex marriage exists under any civil or personal law in India.

- They are denied legal benefits associated with marriage like inheritance, adoption, insurance, pension, and next-of-kin.
- The 2023 Supreme Court ruling on marriage equality maintained the dignity of queer people to relationships but left legislative recognition of same-sex marriages to Parliament.

b. Adoption and Parenthood



- Same-sex couples are not legally allowed to adopt children jointly according to existing laws of adoption.
- Individual LGBTQ+ people can adopt, but without legal standing of the partner, the child is not legally protected in a two-parent household setting.

c. Anti-Discrimination Laws

- No blanket anti-discrimination law exists that safeguards people from being excluded from employment, residence, education, and health services on the grounds of sexual orientation or gender identity.
- The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination against transgender individuals but does not extend this protection to other sexual minorities.

d. Healthcare Rights

- Healthcare discrimination is common among LGBTQ+ individuals, particularly among trans people.
- Conversion therapy, though criticized by courts, continues to be performed informally and not statutorily prohibited.
- Mental health care and gender-confirming care are scarce and inaccessible.

5. Implementation Challenges

Even where there are laws, there is weak implementation because:

- Lack of awareness among officials, police, healthcare providers, and the judiciary.
- Lack of administrative facilities for issuing identity documents based on gender identity.
- Minimal government engagement with LGBTQ populations in the areas of welfare, education, and employment programs.

6. International and Comparative Context

India has improved considerably in relation to South Asian neighbors but falls behind several democracies.

Country	Same-Sex Marriage	Anti-Discrimination Laws	Adoption Rights
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India	<input type="checkbox"/> No	<input type="checkbox"/> No comprehensive law	<input type="checkbox"/> No joint adoption
Nepal	<input checked="" type="checkbox"/> Yes (2023 ruling)	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Pending
South Africa	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes
USA	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Yes

India's international human rights obligations and constitutional values require further legal reforms.

7. The Way Ahead: Legal and Policy Proposals

In order to provide complete and equal rights to sexual minorities in India, the following is proposed:

- A. Marriage Equality Law:** Pass legislation to legalize same-sex marriage or civil unions, with equal rights and obligations.
- B. Comprehensive Anti-Discrimination Law:** Pass legislation that clearly prohibits discrimination based on sexual orientation and gender identity in all areas.
- C. Reform Adoption Laws:** Provide equal rights to parenting by LGBTQ+ couples.
- D. Ban on Conversion Therapy:** Statutorily penalize coercive efforts to alter sexual orientation or gender identity.
- E. Welfare Schemes:** Introduce specific schemes for the education, employment, and healthcare of LGBTQ+ individuals, particularly trans and intersex persons.
- F. Awareness and Sensitization:** Provide training for public officials, police, teachers, and medical professionals in respecting and empowering sexual minorities.

8. Conclusion

India has come a long way towards accepting the rights of sexual minorities, notably by way of seminal judicial interventions. Yet, there is much more to go. Short of legislative changes and strong implementation, LGBTQ+ rights are still a theory for most. Acknowledging their right to love, to family, to dignity, and to live without discrimination is not merely a matter of law—it is one of human rights, social justice, and constitutional morality.

As India evolves, the integration of sexual minorities into the legal and moral framework of the country will be the ultimate test of its democracy.



References

1. Centre for Law and Policy Research. (2022). *LGBTQIA+ Rights in India: Developments, Challenges and the Way Forward*. Retrieved from <https://clpr.org.in/publications/>
2. Human Rights Watch. (2023). *World Report 2023: Events of 2022*. Retrieved from <https://www.hrw.org/world-report/2023>
3. ILGA World. (2023). *State-Sponsored Homophobia Report*. Retrieved from <https://ilga.org/state-sponsored-homophobia-report-2023>
4. International Commission of Jurists (ICJ). (2019). *Unnatural Offences: Obstacles to Justice in India Based on Sexual Orientation and Gender Identity*. Retrieved from <https://www.icj.org/wp-content/uploads/2019/09/India-Unnatural-Offences-Publications-Reports-Thematic-reports-2019-ENG.pdf>
5. Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2015 (India).
6. Narrain, A. (2016). *Queer: Despised Sexuality, Law and Social Change*. New Delhi: Oxford University Press.
7. National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (India).
8. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
9. Rao, R. (2020). Outsourcing Homophobia: The culture of Section 377. *Journal of Indian Law and Society*, 11(1), 35–61.
10. Sharma, K. (2021). Legal Rights of LGBTQ+ Community in India: A Critical Analysis. *Indian Journal of Legal Studies*, 9(2), 22–35.
11. Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).
12. S. Sushma v. Commissioner of Police, W.P. No. 7284 of 2021, Madras High Court (India).
13. Supreme Court of India. (2023, October 17). *Supriyo v. Union of India* (Marriage Equality Judgment). Retrieved from <https://www.indiatoday.in/law/story/supreme-court-rules-against-same-sex-marriage-asks-centre-to-ensure-rights-of-queer-community-2450019-2023-10-17>
14. Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).
15. United Nations Human Rights Council. (2015). *Discrimination and violence against individuals based on their sexual orientation and gender identity*. Retrieved from <https://www.ohchr.org/en/documents/thematic-reports/ahrc293-sogi-violence-discrimination>