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From Section 377 Repeal to Equality: Evolving Rights for India's LGBTQ+ Community and Challenges

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The journey of LGBTQ+ rights in India has shifted from a battle against colonial-era criminalisation to a modern pursuit of civil equality. The LGBTQ+ community has faced severe discrimination all over the nation, lacking their true identity and quality in society. India's journey towards LGBTQ+ rights has been marked by landmark judicial victories, legislative steps, and ongoing societal challenges. The partial discrimination of homosexuality in 2018 remains a pivotal milestone, but full equality, particularly in marriage, adoption and protection from discrimination, remains elusive. The Indian judiciary, through various landmark judgments, has recognised the rights of the LGBTQ+ community and ensured equality in society. The 2014 NALSA v Union of India¹ judgement recognised transgender persons as the "third person", affirming self-identity and directing reservation in education and jobs under Article 14 and Article 16. Later, the 2019 transgender persons (protection of rights) act prohibits discrimination in employment, education, and healthcare, mandates identity certificates via the district Magistrate and ensures welfare measures. The repeal of Section 377 marked a pivotal shift in India's landscape for LGBTQ+ rights, decriminalising consensual same-sex relations between adults. This evolution stems from key judicial interventions emphasising constitutional equality. The conversation has moved beyond the bedroom. Today, the focus is on "Equal Citizenship", which is the right to have your partner on your insurance policy, the right to sign a lease together, and the right to live without the fear of social exclusion. An individual's fundamental right is the supreme for him/her, which is safeguarded by the constitutional provisions and

¹ NALSA v Union of India & Ors (2014) INSC 275

subsequent laws. The concept of Fundamental rights in the Indian Constitution has been added through inspiration from the Universal Declaration of Human Rights (UDHR), which provides certain human rights to individual including the right to have a family and choose a partner, further followed by the International Covenant on Civil and Political Rights (ICCPR), strengthening the Right to have a family². Inspired by the UDHR and ICCPR, the Indian Constitution has adopted the Fundamental Rights, recognising and protecting individuals' identity, liberties and rights. Furthermore, the Indian judiciary, through various landmark judgments, has expanded the scope of the Right to Life and Personal Liberty, and as of now, the Right to choose a partner shall be considered a fundamental right under the Right to personal liberty under Article 21. This research paper delves into this evolution, framing it as a journey from decriminalisation to broader equality. It begins with the historical context of queer rights in India, tracing colonial legacies and pre-independence activism. Subsequent sections analyse post-2018 legal developments, including transgender rights and the 2023 Supreme Court ruling on same-sex marriage.

Keywords: *lgbtq+ community, fundamental rights, discrimination, education, employment, decriminalization.*

INTRODUCTION

In the heart of India's bustling democracy, where ancient traditions intertwine with modern aspirations, the story of the LGBTQIA+ community is one of resilience amid adversity. For over a century and a half, Section 377 of the Indian Penal Code, a relic of British colonial rule, cast a long shadow over queer lives, criminalising ‘carnal intercourse against the order of nature’³ and effectively outlawing same-sex relationships. This law not only fueled legal persecution but also entrenched social stigma, forcing millions into the shadows of fear and silence. Yet, on September 6, 2018, the Supreme Court of India, in the landmark case of *Navtej Singh Johar v Union of India*, struck down the provision's applicability to consensual adult same-sex acts, declaring it unconstitutional and affirming that ‘sexual orientation is an innate phenomenon.’

This decision was more than a legal victory; it was a beacon of hope for an estimated 2.5 million queer Indians, signalling a shift toward recognising their fundamental rights. Post-repeal, the landscape of LGBTQIA+ rights has evolved rapidly, encompassing transgender protections, debates on marriage equality, and efforts to combat discrimination. However, progress has been

² Universal Declaration of Human Rights 1948, art 16

³ Indian Penal Code 1860, S 377

uneven. While urban elites celebrate Pride parades and corporate inclusivity, rural and marginalised queer individuals grapple with violence, family rejection, and economic exclusion.

The history of LGBTQIA+ rights in India is a narrative of reclaiming ‘self’ from the ‘statute.’ Section 377 was introduced in 1860, not as a reflection of Indian values, but as an imposition of Victorian morality. Ancient Indian texts and temple architecture (such as Khajuraho) suggest a much more fluid understanding of gender and sexuality than the colonial laws allowed.

The modern struggle began in the early 1990s with the AIDS Bhedbhav Virodhi Andolan (ABVA) and gained momentum with the Naz Foundation’s 2001 petition. The legal battle has been a ‘see-saw’ of judicial philosophy:

- The Naz Foundation (2009)⁴: The Delhi High Court prioritised ‘Dignity.’
- Koushal (2013)⁵: The Supreme Court retreated, calling the community a ‘Minuscule Minority.’
- Johar (2018)⁶: The Supreme Court apologised for the delay in justice, establishing that ‘Constitutional Morality’ must trump ‘Public Morality.’

HISTORICAL CONTEXT

Pre-colonial Acceptance and Cultural Fluidity: India’s ancient and medieval history reveals a nuanced acceptance of gender and sexual diversity, contrasting sharply with later colonial imposition. Texts like the Kama Sutra openly discussed same-sex desires and non-binary identities, while mythological figures such as Ardhanarishvara, a deity embodying both male and female forms, symbolise gender fluidity. The Hijra community, often transgender or intersex individuals, held revered roles in society, performing blessings at birth and weddings.

Hinduism and other traditions did not rigidly condemn homosexuality; sources portray it as a part of human variation rather than a sin. Pre-colonial India exhibited cultural tolerance towards sexual fluidity, with communities like Hijras integrated into social structures. This fluidity extended to erotic temple carvings at sites like Khajuraho, depicting same-sex acts without

⁴ *Naz Foundation v Government of NCT of Delhi & Ors* (2009) SCC OnLine Del 1762

⁵ *Suresh Kumar Koushal & Anr v Naz Foundation & Ors* (2014) 1 SCC 1

⁶ *Navtej Singh Johar & Ors v Union of India Thr. Secretary Ministry of Law and Justice* (2018) 10 SCC 1

stigma. However, this acceptance was not uniform, but overall, queer expressions faced no widespread criminalisation until British intervention.

Colonial Legacy: Criminalisation and Marginalisation: The arrival of British colonial rule dramatically altered this landscape, imposing Victorian moral codes that viewed non-procreative sexuality as deviant. In 1861, Section 377 of the Indian Penal Code criminalised “carnal intercourse against the order of nature”, targeting anal and oral sex, effectively outlawing homosexuality. Modelled on the 1533 Buggery Act, it reflected colonial anxieties over controlling indigenous bodies and sexualities.

The impact on Hijras was particularly severe. Once respected, they were recast as “criminal tribes” under the 1871 Criminal Tribes Act, subjected to registration, surveillance, and efforts to eradicate their community through bans on castration, performance, and child adoption. Colonial officials viewed Hijras as a threat to imperial authority, associating them with immorality and potential rebellion. This “legal panopticon” stigmatised Hijras, forcing many into begging or sex work, eroding their traditional livelihood.

Section 377 enabled police harassment, blackmail, and violence against queer individuals, entrenching stigma that persisted post-independence. The law’s vague wording allowed broad application, fostering a culture of silence and fear.

Post-Independence Stagnation and Early Activism: After 1947, section 377 remained in force, despite India’s Constitution guaranteeing equality (Article 14), non-discrimination (Article 15), and life and dignity (Article 21). Queer lives stayed hidden, marked by societal ostracism, forced marriages and mental health crises.

Activism emerged in the 1990s, spurred by the HIV/AIDS crisis. Groups like AIDS Bhedbhav Virodhi Andolan (ABVA) published “Less than Gay” in 1991, documenting discrimination and calling for repeal. In 1994, ABVA filed the first public interest litigation (PIL) challenging Section 377.

The Naz Foundation focused on HIV prevention, petitioned the Delhi High Court in 2001, arguing that the new law hindered health outreach to men who have sex with men. Early pride events, like Kolkata’s 1999 walk, marked growing visibility, though small and fraught with risks.

Judicial Milestones: Hope and Setback (2009–2013): The 2009 Delhi High Court ruling in *Naz Foundation v Govt. of NCT of Delhi*⁷ was a breakthrough. The court "read down" Section 377, decriminalising consensual adult same-sex acts, finding it violated rights to privacy, dignity, and equality. It emphasised sexual orientation as innate, invoking constitutional morality over majoritarian views.

This brief period (2009–2013) saw increased visibility, Pride marches grew, media representation improved, and community organising flourished.

However, in 2013, the Supreme Court in **Suresh Kumar Koushal v Naz Foundation**⁸ overturned the decision, upholding Section 377. Dismissing LGBTQ+ persons as a "minuscule fraction," it deferred to Parliament, ignoring global human rights norms. The ruling devastated the community, reinstating fear of prosecution and validating discrimination.

Transgender Breakthrough: The 2014 NALSA Judgment: Amid setbacks for sexual orientation, transgender rights advanced with the 2014 Supreme Court ruling in **National Legal Services Authority (NALSA) v Union of India**⁹. Recognising transgender persons as a "third gender," it affirmed self-identification without medical intervention, granting equal fundamental rights.

The court directed reservations in education and jobs, treating trans persons as socially and educationally backward. It mandated welfare schemes, healthcare sensitivity, and public awareness to combat stigma. NALSA highlighted intersectionality, noting compounded discrimination for Hijras and others.

This judgment preceded the 2019 Transgender Persons Act but exposed gaps in implementation, with many trans individuals still facing violence and exclusion.

Legal Developments Post-2018: The years following the Section 377 repeal have seen a flurry of legal and policy initiatives aimed at expanding LGBTQIA+ rights, though with mixed outcomes. In 2019, the Transgender Persons (Protection of Rights) Act was enacted, prohibiting discrimination in education, employment, and healthcare, and mandating welfare measures like

⁷ *Naz Foundation v Government of NCT of Delhi & Ors* (2009) SCC OnLine Del 1762

⁸ *Suresh Kumar Koushal & Anr v Naz Foundation & Ors* (2014) 1 SCC 1

⁹ *NALSA v Union of India & Ors* (2014) INSC 275

reservations in jobs and scholarships. However, critics argue it falls short by requiring medical certification for gender change and lacking robust enforcement mechanisms. By 2022, the government launched schemes providing financial aid and skill development for transgender individuals, though implementation varies across states.

A major focus has been on marriage equality. In 2023, the Supreme Court heard petitions in **Supriyo v Union of India**¹⁰, where queer couples sought recognition under the Special Marriage Act. The five-judge bench unanimously rejected legalising same-sex marriage, deeming it a legislative domain, but affirmed protections against discrimination and urged the government to ensure queer couples' rights to cohabitation, inheritance, and adoption. Chief Justice D.Y. Chandrachud emphasised that "queer persons have the right to union," but stopped short of equating it to marriage. Review petitions were dismissed in January 2025, solidifying the setback.

Other advancements include the 2024 government advisory allowing queer couples to open joint bank accounts and access ration cards, addressing practical barriers. In healthcare, the Supreme Court's 2024 directives on LGBTQ+ health equity post-marriage ruling called for anti-discrimination training for medical professionals. Transgender rights saw further bolstering in 2025, with judgments advancing inclusion in education and employment, amid global anti-trans backlash. By November 2025, only 11 states had established Transgender Protection Cells, highlighting uneven progress.

These developments reflect a judiciary increasingly attuned to queer rights, interpreting "sex" in anti-discrimination laws to include gender identity and orientation. Yet, the absence of comprehensive anti-discrimination legislation leaves gaps, particularly in adoption and surrogacy, where queer couples face hurdles. Overall, post-2018 legal evolution underscores a trajectory toward equality, tempered by judicial restraint and legislative inertia.

THE REPEAL OF SECTION 377

Section 377 of the Indian Penal Code, 1860 states that, *"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished*

¹⁰ *Supriyo @ Supriya Chakraborty & Anr v Union of India* (2023) INSC 920

with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The section, earlier, criminalised the sexual intercourse between two people of the same sex and treated it as an unnatural offence. Later, after the case of *Navtej Singh Johar v Union of India*, the Supreme Court interpreted the section and partly struck it down, upholding the privacy of same-sex couples engaging in consensual sexual acts. Though the court has partly struck down Section 377, some part of it remains a criminal offence, including non-consensual acts, acts involving minors, and bestiality.

EFFECT OF DECRIMINALISATION OF SECTION 377 ON FUNDAMENTAL RIGHTS OF THE PEOPLE

In the case of *Navtej Singh Johar*, the Supreme Court upheld the rights of the people mentioned under Article 14, Article 15, Article 19(1)(a), and Article 21 of the Indian Constitution. It recognised privacy, dignity, equality, and personal freedom as fundamental rights of the LGBTQ+ Community.

Article 14 states that *“The State shall not deny to any person equality before law and equal protection of law within the territory of India¹¹”*. Through this case, the court emphasised that every individual is equal in the eyes of the law and the law will treat them equally, and, hence, the decriminalisation of consensual intercourse between same-sex couples provides equal status to them with that of different-sex couples.

Article 15 provides *a prohibition of discrimination based on sex, religion, race, colour, or place of birth*. The need is to accept the principle that the ‘sexual orientation’ of a person is an inherent part of his sexual identity. Thus, any discrimination based on the sexual preference of a person is bound to be a violation of Article 15, which is about “Right against discrimination” of the people.

Article 19(1)(a) provides *freedom of speech and expression*. The term “expression” also includes the sexual identity of an individual that how a person wants to identify themselves.

¹¹ The Constitution of India 1950, art 14

Article 21 deals with the *right to life and personal liberty of an individual*. By Section 377 of the IPC, the right to dignity guaranteed in Article 21 is also violated. Personal liberty also gives them the right to choose their partner. Although not recognised through any cases or judicial interpretation, it shall be the right of a person to choose their partner irrespective of their sex.

IMPACT OF DECRIMINALISATION OF SECTION 377

Decriminalisation of Section 377 has contributed to major reforms in Indian society related to same-sex couples. The reforms have significantly contributed to the recognition of the rights of the LGBTQ+ Community, given them equality, and protected their dignity in society.

Affirming Rights and Human Dignity: The Supreme Court unanimously struck down Section 377, saying it trampled on core constitutional rights under Articles 14 (equality before the law), 15 (no discrimination), 19 (free speech and expression), and 21 (right to life, privacy, and personal liberty). They made it clear: sexual orientation is just who you are, innate and unchangeable. This ruling celebrated the dignity, autonomy, and privacy of LGBTQ+ folks, showing how our Constitution isn't stuck in the past; it's a living force that builds a more inclusive, just, and brotherly society.

Cutting Down on Police Harassment and Extortion: Before 2018, cops weaponised Section 377 for blackmail, random arrests, and outright bullying, even when everything was consensual and private between adults. After decriminalisation, that nightmare faded big time. No more fear of jail just for loving who you love, so people could report real crimes without worrying they'd get pinned for their own identity.

Unlocking Better Health Access, Especially for HIV Prevention: Section 377 was a roadblock for HIV programs, and LGBTQ+ people steered clear of clinics and NGOs out of fear and shame. Once it was gone, outreach exploded. Government health reports had long flagged the law as a barrier, and now we've seen real progress in prevention efforts and safer access to care.

Sparking Visibility and a Wave of Acceptance: The verdict kicked off nationwide conversations about LGBTQ+ lives, especially in cities. Pride marches got bigger, Bollywood and media started showing real representation, and companies jumped on inclusivity to stay

competitive. Polls show younger folks leading the charge, tolerance is up, and sexual orientation is finally seen as a protected right, not a taboo.

Boosting Mental Health and True Self-Acceptance: Studies after the 2009 Delhi High Court win and the full 2018 ruling paint a hopeful picture: LGBTQ+ people report higher self-esteem, less anxiety and depression, and more confidence. No longer branded as "criminals," they've shed the weight of hiding. Stigma lingers, sure, but this legal win has built stronger communities and a real sense of self-worth.

Laying Groundwork for Bigger Wins Ahead: This wasn't a one-off; it built on the 2014 NALSA transgender rights case and opened doors for more. We've seen bans on discrimination, pushes for marriage equality, adoption rights, and anti-bias laws. Even businesses shifted, making workplaces more welcoming to attract top talent.

CRITICAL ANALYSIS

Despite the Supreme Court having recognised the rights of the LGBTQ+ Community, provided them equal status with that of normal people, and contributed to major reforms, it still lacks the proper implementation of the reforms. Even today, the reforms are unsuccessful in providing equal status to the LGBTQ+ community, and society also sees and treats them differently.

The decision faced opposition, primarily from conservative and religious quarters, who viewed it as a threat to traditional values. These critiques highlight tension between modernity and cultural norms. Several religious groups, particularly Christian organisations, opposed the judgment in court, arguing that homosexuality contravenes “natural order” and divine laws. Interveners in the cases contended that the right to privacy is not absolute and that such acts undermine ‘constitutional morality.’ Critics argued it promotes ‘unnatural’ behaviour, potentially harming societal ethics.

Some argue that ruling imports western values, ignoring India’s historical and cultural context, where homosexuality, though present in ancient texts, was not openly endorsed in modern society. Opponents claim it could lead to moral decay, increased health risk, such as HIV transmission, or confusion in gender norms. Additionally, critiques of the judgment itself point to ambiguities in section 377’s remaining scope, potentially allowing misuse against non-consensual acts without clear definitions.

From a progressive standpoint, the ruling is criticised for not going far enough. It decriminalizes acts but does not grant affirmative rights like marriage, adoption, or anti-discrimination laws, leaving the community vulnerable. A 2023 study notes that while lives have improved, systemic changes are lacking.

Increased LGBTQ+ visibility has led to more inclusive policies in some workplaces and educational institutions, reducing isolation and suicide rates. A 2022 analysis highlights legal transformations, such as better access to justice and reduced arbitrary detentions. By 2023, marking five years, it was celebrated for empowering the community against fines and imprisonment.

Socio-legal obstacles remain, including workplace discrimination, family rejection, and violence. Transgender rights, while advanced in related cases, still lag, with inadequate legal frameworks. The 2023 Supreme Court refusal to legalise same-sex marriage underscores unfinished business. Rural areas see slower change due to cultural conservatism.

The ruling has influenced criminal justice by emphasising consent and privacy, potentially aiding cases beyond sexuality. However, it exposes divides: urban elites benefit more than marginalised groups, and enforcement varies by state.

LIMITATION

The decriminalisation of consensual same-sex acts under section 377 of the Indian Penal Code came through the Landmark judgment of *Navtej Singh Johar v Union of India* (2018). Though the court had decriminalised section 377 and made significant reforms in relation to the LGBTQ+ Community, it still has some limitations that need to be worked upon.

The Key Limitations are as follows:

Only the Status of Decriminalisation, not fully Legalised: The Supreme Court has only decriminalised section 377, removing criminal punishment for consensual sex between same-sex couples, but didn't accept or legalise the LGBTQ+ relationship.

No Legal Recognition of Same-Sex Marriages: Despite all the rights being given to same-sex couples, they are still not guaranteed certain rights like marriage, adoption, inheritance, succession, or spouse benefits under personal laws.

Persistent Social Stigma and Discrimination: A court judgment doesn't fix family attitudes overnight. A lot of LGBTQ+ people still face rejection at home, get forced into "conversion therapy," or hide who they are. Bullying, violence (especially against trans people and lesbians), and mental health struggles are still way too common. In many places, holding hands in public can still get you stared at, harassed, or worse.

No Comprehensive Anti-discrimination Laws: There's no nationwide law that says you can't be fired, denied housing, or treated badly just because of your sexual orientation or gender identity. Some companies and colleges are progressive, but many aren't, and you have very little legal backup if things go wrong. The judgment condemned discrimination but did not mandate broad protections. There is no national law explicitly prohibiting discrimination based on sexual orientation or gender identity in areas like employment, housing, education, or public services. Some progress exists, but gaps remain.

Limited Impact on Broader Criminal Justice and Societal Change: While it reduced police harassment under Section 377, societal acceptance lags. Activists note that decriminalisation was a "first step," but issues like conversion therapy, public displays of affection, and cultural biases persist without legislative follow-up.

While the 2018 judgment was transformative in ending criminalisation of consensual adult same-sex intimacy, it was narrowly focused on privacy and dignity rights. Broader equality requires legislative action, such as a comprehensive LGBTQ+ rights bill or marriage equality reforms (currently under consideration in ongoing cases). Social change continues to evolve slowly amid conservative attitudes in parts of society.

SUGGESTIONS

Mere passing judgments, providing rights, and making laws and reforms don't eradicate discrimination or provide equal status to the LGBTQ+ Community. The main question is whether the law and the court are successful in implementing those laws and reforms. Even

today, the LGBTQ+ community lacks equality in social status and in other fields, including education and employment.

The following are the suggestions to address the limitations of Section 377 discrimination and push for fuller LGBTQ+ equality in India:

Stronger Legal Protection against Discrimination is Essential: Even after decriminalisation, LGBTQ+ people often face unfair treatment at work, in schools, hospitals, and housing. A clear and comprehensive anti-discrimination law would help ensure that people are judged by their abilities and character, not by their sexual orientation or gender identity.

Same-Sex Relationships need Legal Recognition: Decriminalisation only ensures that consensual relationships are not punished; it does not give couples legal security. Recognising same-sex partnerships through marriage or civil unions would allow individuals to share responsibilities, inherit property, make medical decisions for their partners, and live with dignity and stability.

Police and Public Officials must be sensitised: Many LGBTQ+ individuals continue to fear harassment due to a lack of awareness among law enforcement authorities. Regular training programs can help officials understand the law correctly and treat all citizens with respect, reducing misuse of power and discrimination.

Social Attitudes must change alongside Laws: Legal reform alone cannot erase years of prejudice. Schools, colleges, and the media play an important role in shaping attitudes. Inclusive education, responsible media representation, and public awareness campaigns can help build empathy and acceptance in society.

Mental Health Support should be Expanded: Discrimination, social isolation, and family pressure often take a toll on mental well-being. Accessible counselling services, safe community spaces, and support systems especially for young people can help individuals feel supported and valued.

Existing Laws should be Reviewed for Inclusivity: Many legal frameworks still assume only heterosexual relationships. Laws related to adoption, inheritance, and domestic violence need to be revisited to ensure equal protection and clarity for same-sex couples.

The Voices of the LGBTQ+ Community must be Heard: Policies are most effective when they include those they affect. Involving community organisations and individuals in decision-making can lead to more practical, sensitive, and inclusive solutions.

CONCLUSION

The journey of LGBTQ+ rights in India reflects a slow but meaningful shift from silence and criminalisation towards dignity and constitutional recognition. The repeal of Section 377 was not merely about removing a colonial law; it was about restoring humanity to millions who had long been told that their existence was illegal. By affirming privacy, dignity, equality, and personal liberty, the Supreme Court took an essential step in aligning the law with constitutional values and human rights principles. However, decriminalisation alone cannot guarantee equality. While the judgment ended state-sanctioned punishment for consensual same-sex relationships, it did not address the everyday realities of discrimination, exclusion, and vulnerability faced by the LGBTQ+ community. The absence of legal recognition for same-sex relationships, the lack of comprehensive anti-discrimination laws, and persistent social stigma continue to limit the impact of this historic ruling. For many, especially those in rural areas or marginalised communities, equality remains more symbolic than real.

The Indian judiciary has played a progressive role in expanding the scope of fundamental rights, particularly under Article 21, by recognising identity, choice, and autonomy. Yet, courts alone cannot complete this journey. Legislative action, effective policy implementation, and social reform are equally necessary. Without clear legal protections in education, employment, healthcare, and family life, constitutional promises risk remaining confined to courtrooms rather than shaping lived experiences. True equality requires moving beyond tolerance toward genuine inclusion. This means creating laws that protect against discrimination, recognising diverse family structures, sensitising institutions, and ensuring that LGBTQ+ voices are part of decision-making processes. Most importantly, it requires society to unlearn prejudice and embrace empathy.

In essence, the repeal of Section 377 marked the beginning of a larger constitutional conversation, one that asks not whether LGBTQ+ individuals deserve rights, but whether India is willing to ensure equal citizenship for all. The answer to that question will define the future of democracy, dignity, and justice in the country.