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FROM DECRIMINALIZATION TO EQUALITY: A SOCIO-LEGAL STUDY OF LGBTQ+ RIGHTS IN INDIA AFTER NAVTEJ SINGH JOHAR

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Abstract

The struggle for recognition and protection of LGBTQ+ rights in India reflects a broader conflict between traditional social norms and evolving constitutional values. The journey from the enforcement of colonial Section 377 of the IPC to its decriminalization in the 2018 Navtej Singh Johar v. Union of India case illustrates a significant shift in India's legal framework. However, despite the Bharatiya Nyaya Sanhita, 2023 removing any explicit reference to same-sex relations, the LGBTQ+ community continues to face challenges in areas such as marriage, adoption, inheritance, employment, and healthcare. This paper critically examines the socio-legal aspects of LGBTQ+ rights in India by tracing their historical background, analyzing landmark judicial pronouncements, and highlighting the gaps in existing legal protections. It also evaluates the societal stigma that persists despite constitutional guarantees of equality, dignity, and privacy. Through a socio-legal perspective, the study emphasizes that true equality requires not only legal recognition but also social acceptance and structural reforms. The paper concludes with suggestions for strengthening rights through comprehensive anti-discrimination legislation, awareness campaigns, and recognition of same-sex unions.

Keywords: LGBTQ+, Section 377, Bharatiya Nyaya Sanhita, Human Rights, Socio-Legal, Equality

Introduction

The journey of LGBTQ+ rights in India cannot be understood without tracing the shadow of colonial law. Section 377 of the Indian Penal Code, enacted in 1860, criminalized what it termed "unnatural offences," and for decades it was used to stigmatize and punish consensual same-sex relationships. The first major breakthrough came in Naz Foundation v. Government of NCT Delhi (2009), where the Delhi High Court held that the law violated fundamental rights

to equality and dignity, thereby decriminalizing same-sex intimacy. However, in *Suresh Kumar Koushal v. Naz Foundation* (2013), the Supreme Court reversed this decision, remarking that LGBTQ persons constituted a “minuscule minority.” This setback triggered strong activism and public debate. Finally, in *Navtej Singh Johar v. Union of India* (2018), a Constitution Bench of the Supreme Court unanimously struck down Section 377 for consensual adult relations, affirming equality, liberty, and privacy for LGBTQ citizens.

Historical background

Colonial Era: Section 377 IPC (1860) criminalized “unnatural offences,” mainly targeting homosexuality.

***Naz Foundation v. Govt. of NCT Delhi* (2009):** Delhi HC decriminalized same-sex relations, holding it unconstitutional.

***Suresh Kumar Koushal v. Naz Foundation* (2013):** SC reversed Delhi HC ruling; said LGBTQ community is a “minuscule minority.”

***Navtej Singh Johar v. Union of India* (2018):** Constitution Bench decriminalized homosexuality, declaring Section 377 unconstitutional for consensual acts between adults.

Social Movements: Parallel activism, pride marches, NGOs (*Naz Foundation*, *Humsafar Trust*) strengthened the legal fight.

The legal history of LGBTQ+ rights in India is deeply tied to Section 377 of the Indian Penal Code, a colonial provision introduced in 1860. It criminalized consensual same-sex relations and legitimized discrimination for more than a century. In 2009, the Delhi High Court, through the *Naz Foundation* case, struck down Section 377 and thereby decriminalized homosexuality, affirming the principles of equality and dignity. Later, in 2013, the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* reversed this decision, describing the LGBTQ+ community as a “tiny fraction of the population.” This reversal sparked widespread protests and social movements, which eventually culminated in the historic 2018 *Navtej Singh Johar v. Union of India* ruling, where the Supreme Court unanimously invalidated Section 377. Parallel to these cases, social movements and NGOs played a critical role in shaping awareness and acceptance.

Landmark Judgments on LGBTQ+ Rights in India

1. Naz Foundation v. Govt. of NCT Delhi (2009)

The Delhi High Court struck down Section 377 IPC insofar as it criminalized consensual sexual relations between adults.

The Court held it violated Articles 14, 15, and 21 of the Constitution, affirming equality, dignity, and privacy.

This was the first major judicial recognition of LGBTQ rights in India.

2. Suresh Kumar Koushal v. Naz Foundation (2013)

In this case, the apex court nullified the Delhi HC decision and restored the application of Section 377.

The Court observed that LGBTQ persons constitute a “minuscule minority”, and it was up to Parliament, not the judiciary, to change the law.

This judgment was widely criticized as a regressive step.

3. National Legal Services Authority (NALSA) v. Union of India (2014)

In its judgment, the Court officially identified transgender persons under the category of “third gender.”

The Court emphasized that determining one’s own gender identity is protected as a fundamental right under Articles 19 and 21.

The Court instructed the government to extend reservations and welfare schemes in areas such as education, jobs, and healthcare.

4. Navtej Singh Johar v. Union of India (2018)

A 5-judge Constitution Bench unanimously read down Section 377 to decriminalize consensual same-sex relations between adults.

The Court observed that sexual orientation is inherently linked to an individual’s dignity, privacy, and personal liberty.

This judgment restored constitutional morality and became a milestone for LGBTQ equality.

Recent Cases

5. Transgender Persons (Protection of Rights) Act, 2019

Passed after NALSA case.

It ensures that transgender persons are not subjected to unfair treatment in education, employment, health facilities, and public sector services.

It was criticized because individuals are required to secure certification from authorities to have their gender recognized.

6. Same-Sex Marriage Cases (Supriyo @ Supriya Chakraborty v. Union of India, 2023)
A Constitution Bench of the Supreme Court heard petitions seeking legal recognition of same-sex marriage.
In October 2023, the Court refused to recognize same-sex marriage, stating it is for Parliament and State legislatures to decide.
The judgment emphasized that members of the LGBTQ+ community must be ensured equality, dignity, and freedom from discriminatory practices.

Impact of Decriminalization & BNS, 2023

The 2018 judgment in *Navtej Singh Johar v. Union of India* that decriminalized homosexuality marked not only a judicial achievement but also a significant cultural shift for the country.. For the first time, the Supreme Court acknowledged that love and identity cannot be criminalized, affirming constitutional values of equality, privacy, and dignity. This judgment provided a sense of legitimacy to LGBTQ+ individuals who had long lived under fear of harassment. However, the recognition of dignity in 2018 did not automatically translate into comprehensive rights. A significant development came with the introduction of the *Bharatiya Nyaya Sanhita* (BNS), 2023, which replaced the Indian Penal Code. Notably, Section 377 found no place in the new criminal code, symbolizing India's departure from colonial morality. While this omission marks progress, it also highlights the unfinished journey, as LGBTQ+ persons still lack legal recognition in areas such as marriage, adoption, and inheritance.

Existing Legal Protections for LGBTQ+ Persons in India

After the decriminalization of same-sex relations, the legal framework in India has slowly expanded to provide partial protections to LGBTQ+ persons. One of the strongest safeguards comes from the Right to Privacy recognized in *Justice K.S. Puttaswamy v. Union of India* (2017), where the Supreme Court held that personal choices regarding sexuality and identity are an essential facet of privacy and dignity.

In addition, the *Transgender Persons (Protection of Rights) Act, 2019* prohibits discrimination in education, employment, healthcare, and public services. It also provides for legal recognition of gender identity, allowing individuals to self-identify as male, female, or transgender. Various High Courts have also taken progressive steps, such as granting protection to same-sex couples who face threats from their families. Beyond statutory law, constitutional guarantees under

Articles 14, 15, 19, and 21 are now interpreted to include sexual orientation and gender identity. Together, these developments represent a gradual, though incomplete, movement towards equality.

Challenges & Missing Rights for LGBTQ+ Persons in India

While the decriminalization of homosexuality and recognition of transgender rights marked significant progress, LGBTQ+ persons in India continue to face several legal and social challenges. The most pressing gap is the absence of marriage equality. In *Supriyo v. Union of India* (2023), the Supreme Court refused to legalize same-sex marriage, leaving it to Parliament to decide. This effectively denies same-sex couples rights relating to adoption, inheritance, maintenance, and spousal benefits.

Another major issue is the lack of anti-discrimination legislation specifically addressing sexual orientation. Though the Constitution prohibits discrimination, in practice LGBTQ+ individuals often face harassment in workplaces, educational institutions, and healthcare systems. Transgender persons, despite the 2019 Act, continue to report exclusion and violence due to weak enforcement.

Social stigma remains equally significant. Fear of family rejection, honor-based violence, and limited acceptance in rural areas restrict individuals from living openly. Pride marches and awareness campaigns have improved visibility, but acceptance at the community level is uneven.

In essence, the law has taken the first step by removing criminal liability, yet the absence of positive rights—such as marriage, adoption, and comprehensive equality—continues to hinder true inclusion of LGBTQ+ persons in India's socio-legal framework.

Socio-Legal Perspective on LGBTQ+ Rights in India

The struggle for LGBTQ+ rights in India highlights the deep interaction between law and society. Legal reforms, though crucial, cannot succeed in isolation unless accompanied by social change. The decriminalization of same-sex relations in *Navtej Johar* (2018) gave constitutional recognition to LGBTQ+ dignity, but societal acceptance continues to lag behind. Traditional family structures, cultural taboos, and heteronormative values often prevent open

discussions about sexuality and identity.

Judiciary has played a progressive role by expanding constitutional rights, but the legislature has been slower to respond. For instance, while the Supreme Court recognized transgender rights in *NALSA v. Union of India* (2014), the implementation of welfare measures under the 2019 Act remains weak. Similarly, in the marriage equality case, the judiciary acknowledged discrimination but deferred the matter to Parliament, reflecting the tension between constitutional morality and social morality.

Civil society and grassroots movements have been instrumental in bridging this gap. Pride marches, awareness campaigns, and NGOs have provided safe spaces for LGBTQ+ persons and increased visibility in public discourse. Thus, the socio-legal perspective reveals that meaningful equality requires not only legal recognition but also sustained social acceptance and institutional

Conclusion and Suggestions

The evolution of LGBTQ+ rights in India demonstrates a gradual but incomplete journey from criminalization to recognition. The repeal of Section 377 through *Navtej Singh Johar* (2018) and the absence of similar provisions in the *Bharatiya Nyaya Sanhita, 2023* mark a decisive break from colonial morality. At the same time, judicial pronouncements like *NALSA v. Union of India* (2014) and the enactment of the *Transgender Persons (Protection of Rights) Act, 2019* have advanced the principle of equality. Yet, the denial of marriage and adoption rights in *Supriyo v. Union of India* (2023) reflects the unfinished nature of this struggle.

For true inclusion, legal reforms must go hand in hand with social transformation. Parliament should enact a comprehensive anti-discrimination law explicitly covering sexual orientation and gender identity. Marriage equality and adoption rights must be recognized to ensure that LGBTQ+ persons enjoy the same family rights as other citizens. Implementation of the *Transgender Rights Act* also requires stronger monitoring and accountability.

Equally important is the role of education, media, and civil society in reducing stigma. Awareness campaigns, workplace diversity policies, and community-level sensitization can normalize acceptance. In conclusion, the promise of equality in the Constitution will remain incomplete unless LGBTQ+ persons are assured not only freedom from criminalization but

also full participation in society with dignity and rights.

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