

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **BREAKING BARRIERS AND AMPLIFYING VOICES: ENHANCING LGBTQ+ COMMUNITY ACCESS TO JUSTICE AND LEGAL INNOVATION**

AUTHORED BY: - SHAKIR MOHAMMEDRAFEEL RADHANPURWALA<sup>1</sup>

## **ABSTRACT**

In the country like India, where people still follow orthodox mindset up to some extent, it is difficult to ensure the rights and privileges of the people. In many regions of the India, people are still struggling for their rights. However, the supreme law of land, Constitution of India has guaranteed the fundamental rights to everyone. Although, normal people in their course of lives faces the transgression of their basic rights. In this kind of scenario, it becomes very difficult for the people of the LGBTQ+ Community to ensure their rights in the society. Article 14 and Article 15 of the Indian Constitution describes about the Right to Equality and Prohibition of Discrimination respectively, considering the same, the hon'ble Supreme Court of India has given landmark judgments on the same. I regret to inform you that we continue to hold outdated belief systems in this modern day. Allow me to ask you a question, even in this modern age, we are not able to accept the live-in relationship, how we will welcome the people of the LGBTQ+ Community? With our old and rigid mindset, we are never ever going to give the equal status unlike us. In the history, there were so many movements took place for the enlistment of the rights of the LGBTQ+ People. However, judiciary has taken the efficient measures for their benefits, but we are lacking in the execution of the judgments of the court. In my opinion, it is not just enough to provide the column of the third gender in the application form until we accept them with our open mind and heart. In this paper we will discuss the struggle of the people of the LGBTQ+ Community.

---

<sup>1</sup> Student, GLS Law College

## INTRODUCTION

To understand the problems of the marginalized community, it is very important to understand the definition of the marginalized community. The term 'Marginalized Community' means a group of individuals or communities who have socioeconomic or ideological disadvantages and are deliberately excluded or disadvantaged from society as a whole. Marginalization may take place because of a wide range of reasons such as ethnic background, sexual orientation, race, socioeconomic standing, impairment, religion, or language. Marginalized groups frequently confront impediments to assets, possibilities, and processes for making decisions. People of marginalized community may face prejudice, taboo, and disparities in treatment, which can result in discrepancies in training, employment, medical care, accommodation, and access to justice. Institutional or fundamental problems, such as biased statutes, regulations, or societal practices that support inequality and drawbacks may extend marginalization. Recognizing and meeting the needs of people who are marginalized are essential for developing equality, social equity, and inclusion. Acknowledging marginalized populations' distinctive circumstances, fighting for their rights, and trying to eliminate all possible societal obstacles that promote marginalization are all part of efforts to strengthen marginalized communities. This includes guaranteeing equitable access to opportunities, services, and resources, as well as encouraging marginalized populations' participation, inflammation, and voice throughout decision-making processes. Marginalized community covers the following groups:

- I.** Minorities of ethnicity and racial background
- II.** Socially and economically Unprivileged People
- III.** People of the LGBTQ+ Community
- IV.** Refugees and Immigrants
- V.** People with Impairments
- VI.** Women and Gender Minority Groups
- VII.** Religious and Linguistic Minority Groups
- VIII.** Indigenous Groups

In this context, we will discuss the people of the LGBTQ+ Community. Firstly, we have to understand the meaning of each and every alphabet of the LGBTQ. Here, 'L' stands for Lesbian, 'G' stands for Gay, 'B' stands for Bi-sexual, 'T' stands for Transgender and 'Q' stands for Queer. Moreover, there are so many definitions are also available in many authenticate sources. As per



gay and lesbian rights rally was organized in the capital of the nation, Delhi. The constitution of our country has been modified 74 times till 1992, and we still have not put these individuals inside the scope of Article 14 of the Indian Constitution. Following that, in the year 1999, with only fifteen individuals, the Calcutta Rainbow Pride took place with the intention of safeguarding the freedoms of the LGBTQ+ population<sup>7</sup>.

Following such endeavors by individuals of various groups, the Indian judiciary ruled in the case of *Naz Foundation v/s. Govt. of NCT Delhi*<sup>8</sup> in 2009. The court concluded that defining consent-based sexual relations as an offence is an infraction of basic rights granted by the Indian Constitution. This verdict was given by the High Court of Delhi and however, after 4 years of this verdict, the said case was challenged before the Hon'ble Supreme Court of India. The Supreme Court of India, however, in the case of *Suresh Kumar Koushal and Others v/s. Naz Foundation*<sup>9</sup>, and reinstate Section 377 of the Indian Penal Code and overruled the verdict of the Delhi High Court. In the meantime, one Member of Parliament also suggest the bill for the protection of the LGBTQ Community, that was also not accepted by the Parliament of India. There were so many protests was going on the many parts of the country and here and there it was argued and said that the people of the LGBTQ+ Community is in very less in the population and there should not be any separate legislation should be enacted for the same. Subsequently, in the case of *National Legal Services Authority v/s. Union of India*<sup>10</sup>, the Apex Court of India provided the "third genders" definition for people from the transgender community in a landmark ruling. Prior to this judgment, these persons had been compelled to describe themselves as male or female, but with this decision, they were able to firmly designate as a third gender. Furthermore, in its decision in the aforementioned case, the Supreme Court of India stated that it set a framework to grant the LGBTQ+ Community a wide range of significant basic rights.

However, after all of these efforts, there was not enough protection was available to this community and just providing the space in the application form is not enough for the people of this community. We are not obliging them by giving the tag of the third gender. Subsequently, to check the validity and constitutionality of the Aadhar Card, a Retired Justice K S Puttaswamy

---

<sup>7</sup> Riya, LGBTQIA+ Community: A Detailed Discussion, DRISHTI IAS BLOG, (Last Visited June. 1, 2023, 03:31PM), <https://www.drishtiiias.com/blog/lgbtqia-a-detailed-discussion>

<sup>8</sup> Naz Foundation v/s. Govt. of NCT Delhi, 2009 SCC Online Del 1762

<sup>9</sup> Suresh Kumar Koushal and Another v/s. Naz Foundation, CIVIL APPEAL NO.10972 OF 2013, (Arising out of SLP (C) No.15436 of 2009)

<sup>10</sup> National Legal Services Authority v Union of India, WRIT PETITION (CIVIL) NO.400 OF 2012

filed a writ petition. This case is also known as *Aadhar Case* across the country. In the case of *Justice K S Puttaswamy (Retd.) v/s. Union of India*<sup>11</sup>, the landmark decision was given by the Supreme Court of India and under the parameters of the Article 21, Right to Privacy was also added under the same. This verdict was very crucial for the people of the LGBTQ+ Community, and it also gave them a hope to sustain and protect their right in its true manner. Following the same, after an extended legal battle from the beginning of the twentieth century to 2018, the Supreme Court of India ultimately rules Section 377 of the Indian Penal Code constitutionally invalid in the case of *Navtej Singh Johar v/s. Union of India*<sup>12</sup>. On top of that, the Transgender Persons (Protection of Rights) Act, 2019 received approval for ensuring the security of this group and following shielding of their interests and rights. This legislation establishes a system for the administration of the Transgender Community's rights.

## CHALLENGES AND PROGRESS: NAVIGATING THE POSITION OF LGBTQ+ COMMUNITY IN CONTEMPORARY INDIA

In recent times, many people are still struggling for availing their rights and fighting the legal battle for their betterment. There are so many verdicts are passed by the various High Courts and Supreme Court of India regarding the fundamental rights and public welfare. In the public welfare cases, judicial activism and Public Interest Litigation has played vital role for the people who have faced lot of struggles to avail their basic rights. Following a lengthy legal fight, the Transgender Persons (Protection of Rights) Act, 2019<sup>13</sup> was approved in 2019. I would like to ask you a question: is it adequate for them to simply enact law and provide shielding on sheet of paper? We achieved the freedom from the British Colony in the year 1947 and even after so many years of independence, people of the country are having the same mindset as it was in the ancient times. We as a society are not ready to accept them as a part of among of us. When it comes to equal laws we always think first about male and female equality, we never focus on this community. Each and every time, we just eliminate individuals of the LGBTQ+ community. Even the most important law, the Indian Constitution, has granted Fundamental Rights to all citizens of the nation.

---

<sup>11</sup> Justice K S Puttaswamy (Retd.) v/s. Union of India, WRIT PETITION (CIVIL) NO. 494 OF 2012

<sup>12</sup> Navtej Singh Johar v/s. Union of India, AIR 2018 SC 4321; W. P. (CrI.) No. 76 of 2016 D. No. 14961/2016

<sup>13</sup> The Transgender Persons (Protection of Rights) Act, 2019, No. 49, Acts of Parliament, 2019 (India)

Recently, there was an article published in the Bar and Bench<sup>14</sup> in which it was contended that, even after the 8 years of the landmark judgment of the Supreme Court in the case of **National Legal Services Authority v/s. Union of India**<sup>15</sup>, the Government of Maharashtra still didn't make any arrangements for the reservation policy for the LGBTQ+ Community, and it was remarked by the Bombay High Court. On the 25th of March in 2023, an advocate at the Apex Court of India wrote a letter to Supreme Court Justice asking for bathrooms that are gender-neutral and the addition of the LGBTQ community a member on the court's Gender Sensitization Committee for the people of the LGBTQ+ Community<sup>16</sup>. In the southern side of the India, two males recently married and for the registration of the marriage they filed a writ petition in the High Court and same was accepted by the Single Judge Bench<sup>17</sup>. In yet another instance, a homosexual man named Saurabh Kirpal was refused to serve as a judge in the Delhi High Court. Saurabh Kirpal is an eminent counsel at the Delhi High Court and a lawyer for the rights of LGBTQ people. The central government contested to his appointment as a judge at the Delhi High Court solely due to he is homosexual and in an intimate relationship with an outside citizen. This has been a point of debate since 2017, and after a four-year period, a collegium of the Supreme Court granted the order of appointment on the eleventh of November 2021. The Supreme Court collegium stated that Saurabh Kirpal's gender identification was not sufficient to preclude him from holding the office of the High Court Judge<sup>18</sup>.

One of the most recent issues which is prevailing in India is the case which was filed before the hon'ble Supreme Court of India for the recognition of the Same-Sex Marriage. The said petition was filed in the name of **Supriyo @ Supriya Chakraborty v/s. Union of India**<sup>19</sup>. By looking the seriousness of the matter and substantial question of law, the said matter was kept for the hearing in the Constitutional Bench of the Supreme Court of India. This matter was heard by the hon'ble Chief Justice D. Y. Chandrachud, Sanjay Kishan Kaul, S. Ravindra Bhat, Hima Kohli and Pamidighantam Sri Narasimha. The five judges bench heard the case of the recognition for the same-sex marriage. For this landmark case for the upcoming future, to represent the petitioners,

---

<sup>14</sup> Neha Joshi, Maharashtra in deep slumber, no reservation for transgender persons 8 years after Supreme Court's NALSA Verdict: Bombay High Court, (2022) (Last visited June. 02, 2023, 02:31PM)

<sup>15</sup> National Legal Services Authority v/s. Union of India, WRIT PETITION (CIVIL) NO.400 OF 2012

<sup>16</sup> Ratna Singh, Lawyer writes to Supreme Court for gender-neutral bathrooms, LGBTQIA+ representation on Gender Sensitisation Committee, (2023) (Last visited June. 02, 2023, 02:39PM)

<sup>17</sup> LiveLaw News Network, Gay Couple Moves Kerala HC for Recognition of Homosexual Marriages Under Special Marriage Act, (2020) (Last Visited Apr. 20, 2023, 02:29AM)

<sup>18</sup> LiveLaw News Network, Saurabh Kirpal's Openness About Sexual Orientation Doesn't Make Him Unsuitable for Judgeship: Supreme Court Collegium Reiterates Proposal, (2023) (Last Visited June, 02, 2023, 02:48AM)

<sup>19</sup> Supriyo @ Supriya Chakraborty v/s. Union of India , Writ Petition (Civil) 1011 of 2022

the great minds of the nations were engaged in this case. For the petitioner side, Senior Advocate Mukul Rohatgi, Dr. Menaka Guruswami, Senior Advocate Saurabh Kirpal, Senior Advocate Raju Ramchandran, Senior Advocate K V Vishwanathan, Senior Advocate Geeta Luthra, Senior Advocate Dr. Abhishek Manusinghvi and many other lawyers were appeared. In this case, to represent the Union of India, Solicitor General of India, Attorney General of India, Senior Advocate Kapil Sibal and many other lawyers of the Supreme Court were appeared.

The background of this case was, on the 12<sup>th</sup> of November 2022, two couples who were engaged in the same-sex relationship, filed a writ petition before the Supreme Court of India for demanding the legal acknowledgement of the Same-Sex weddings in the country. The petitions emphasized on the legality of the Special Marriage Act, 1954. The contentions of the petitioners were on the Section 4(c) of the said act. Section 4(c) of the Special Marriage Act, 1954 only allows the marriages between only 'men' and 'women.' By refusing them to marry is the discrimination in the eyes of the law. As per the contentions of the petitioners, by denying marrying is the transgression of the fundamental rights of LGBTQ+ Community, and they also cited the landmark judgments of the National Legal Services Authority v/s. Union of India<sup>20</sup> and Navtej Singh Johar v/s. Union of India<sup>21</sup> in which Supreme Court of India itself in which Supreme Court itself had recognized the equal rights of the Transgender Community. Moreover, since no legislation governs gay marriages, couples who are LGBT are not allowed to have the actual advantages of getting married, such as inheritance rights, insurance, and adoption rights<sup>22</sup>.

On the 12<sup>th</sup> day of March 2023, the Centre filed a counter affidavit in reply by rejecting the idea of the same-sex marriage in the cultural country like India and moreover it was contended that, *"The concept of wedding essentially, inevitably and unavoidably entails a relationship among two individuals of opposing sex."* Next day, the hon'ble Chief Justice of India assigned this matter to the constitution bench by stating there is an involvement of the substantial question of law as well as Constitution<sup>23</sup>.

This hearing was continued for 10 days and many Senior Advocates includes Attorney General and Solicitor General had argued the matter in the favour and against the notion of the same-sex

---

<sup>20</sup> National Legal Services Authority v/s. Union of India, Writ Petition (Civil) No.400 of 2012

<sup>21</sup> Navtej Singh Johar v/s. Union of India ,WP (CrL.) 76/2016; WP (C) 572/2016

<sup>22</sup> R. Sai Spandana and Joyston D'Souza, Plea for Marriage Equality: Constitution Bench Day #1, Supreme Court Observer, (Last Visited: June 02, 2023, 07:19PM)

<sup>23</sup> Ibid

marriage. Prima facie it has appeared that, the Union was strongly against the notion of this petition and moreover, Bar Council of India also opined that, this issue of the same-sex marriage should be left on the legislature. Many other religious groups and organizations had protested against this petition and more than 12 states which was joined as a party in this case by the central government were against the notion of the same-sex marriage. After the completion of the full argument in this case, Supreme Court of India on the 11<sup>th</sup> day of May 2023, ordered for the completion of the argument and the Judgment was reserved by the Court.

This is how this matter was argued and both Petitioners and Respondents had pointed out their submissions. In my opinion, this kind of matters should be dealt with very sensitively and with utmost care because today or tomorrow it is going to affect our future generations. However, I am not saying that, Supreme Court is not looking properly behind this case. And this kind of matter should also consider the opinion of the public at large because ultimately the people of the LGBTQ+ Community is the part of our society only, and they are residing with us only. In this case many lawyers have argued that, still there are no any laws for the LGBTQ+ Community and for their enough protection. My contention is that, even after having these landmark verdicts in favour of the LGBTQ+ Community, why this community is still struggling so long for single-single thing? In the developing country like India, there are lack of resources we accept that fact, but we are fast-growing economy so that, we can provide enough protection to each individual of our society. As per the Supreme Law of Land, Constitution of India, no individual should suffer unnecessarily. Therefore, the spirit of the Constitution should not be compromised.

## **CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS**

Ultimately, this research paperwork on the title “*Breaking Barriers and Amplifying Voices: Enhancing LGBTQ+ Community Access to Justice and Legal Innovation*” concentrated specifically on the significance of elimination of impediments and mobilizing the LGBTQ+ community inside the legal framework. Throughout the paper, we talked about various challenges which individuals of the LGBTQ+ community confront in obtaining justice, as well as the need of creative legal techniques in safeguarding their fundamental freedoms and wellness. We have come to understand the significance of taking proactive action towards eliminating discriminatory obstacles in order to create an additional equitable legal environment. This involves raising legal knowledge, advancing the rights of LGBTQ+ people, and establishing that promotes

laws focusing on their special legal demands. Additionally, we stressed the importance of legal inventiveness in responding to the changing environment of LGBTQ+ rights, acknowledging the importance of for dynamic and forward-thinking measures to ensure justice and equality.

We have witnessed the influence of activism and engagement with the community via the process of amplifying voices and establishing venues for LGBTQ+ persons to express their lived experiences, issues, and ambitions. We can develop a more equitable discussion, fight against prejudice, and develop a legal framework which acknowledges and upholds the civil liberties of all persons, irrespective of sexual orientation or gender identity, by elevating many different opinions and perspectives.

However, it is critical to acknowledge that there is still a lot to be done. To keep continuous Collaboration between legal practitioners, policymakers, LGBTQ+ groups, and those in the community will be vital in tearing down obstacles and making sure equitable access to justice for everyone. The findings given in this paper is a call to action, pushing stakeholders to carry on working for positive change, improving legislative safeguards, while creating a space in which the LGBTQ+ community's opinions are considered, acknowledged, and valued.

Pursuing equality and legal innovations is a shared duty. We can establish a society where the rights of the LGBTQ+ people are fully realized by knocking down barriers and elevating voices, promoting an equitable and inclusive tomorrow for all of us.

IJLRA