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ISSN: 2582-6433

A COMPARATIVE LEGAL STUDY OF HOMOSEXUALITY RIGHTS: INTERNATIONAL TRENDS AND DOMESTIC RESISTANCE—WITH SPECIAL REFERENCE TO INDIA.

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Abstract

The constitutional invalidation of the criminalisation of consensual same-sex intimacy in India was a major achievement, but it did not complete the project of equality. This article examines the distance between the removal of criminal punishment and the effective enjoyment of equal citizenship. It traces the colonial codification of sexual offences, analyses the constitutional reasoning that culminated in Navtej Singh Johar v Union of India, considers the limits exposed by Supriyo v Union of India, and places the Indian experience alongside developments in the United Kingdom, the United States, South Africa and Australia. It also evaluates the contribution and limits of international human rights law, particularly the guarantees of privacy, equality, dignity and non-discrimination. The article argues that decriminalisation is a necessary constitutional threshold, not a complete model of legal protection. The continuing absence of a coherent statutory framework governing discrimination, relationship-related entitlements and institutional remedies leaves important questions unresolved. It further argues that domestic resistance should be understood in its legal and institutional forms rather than reduced to a single account of cultural opposition. The article proposes a staged reform programme centred on anti-discrimination protection, review of family-related statutes, accessible remedies, institutional accountability and evidence-based policy. The analysis is doctrinal and comparative; it does not claim to report original interviews or survey findings. Its central conclusion is that constitutional equality requires more than the absence of criminalisation: it requires legal institutions to treat sexual orientation as an irrelevant ground for denying equal civic status, subject to carefully justified and constitutionally valid distinctions.

Keywords*: sexual orientation; homosexuality; constitutional morality; decriminalisation; substantive equality; privacy; dignity; Navtej Singh Johar; Supriyo; India; comparative constitutional law.*

ISSN: 2582-6433

1. Introduction: the unfinished work of constitutional recognition

The legal history of same-sex intimacy in India is often narrated through a sequence of decisive judicial moments. Section 377 of the Indian Penal Code, 1860, was read down by the Delhi High Court in Naz Foundation v Government of NCT of Delhi; the Supreme Court reversed that decision in Suresh Kumar Koushal v Naz Foundation; and a Constitution Bench ultimately invalidated the provision insofar as it criminalised consensual sexual conduct between adults in private in Navtej Singh Johar v Union of India. This sequence is important, but a narrative confined to the fate of one penal provision risks overlooking the broader constitutional question. What does it mean to be equal before the law when the State no longer criminalises an intimate relationship, but the legal system does not necessarily recognise the relationship for the purposes of family status, benefits, protection or everyday administration?

The distinction between decriminalisation and substantive equality provides the organising idea of this article. Decriminalisation removes a specific form of State coercion. It protects adults from prosecution for consensual private intimacy and rejects the use of criminal law to enforce disapproval alone. Substantive equality asks a wider question: whether persons are able to participate in social, economic and civic life without disadvantage attributable to sexual orientation. The second question cannot be answered simply by pointing to the first reform. A person may be free from prosecution and yet face uncertainty when making medical decisions for a partner, seeking housing, accessing employment benefits, arranging inheritance, or obtaining protection against harassment.

This is not an argument that every difference in statutory treatment is necessarily unconstitutional, nor that courts can create an entire family-law code through interpretation. It is an argument for a more exact legal inquiry. Each exclusion must be identified, its statutory purpose examined, and its effect assessed against equality, liberty, dignity and the relevant institutional responsibilities. The State must distinguish between legitimate regulation and the continuation of inherited assumptions that treat heterosexual relationships as the only relationships worthy of legal attention.

The Indian constitutional setting makes this inquiry particularly significant. Articles 14, 15, 19 and 21 provide a connected framework of equality, non-discrimination, freedom and personal liberty. Their interpretation has developed beyond a narrow understanding of formal classification. Privacy is not merely secrecy; it protects decisional autonomy and the ability to shape intimate life. Dignity is not an abstract compliment; it requires that individuals be treated as persons of equal worth. Constitutional morality does not require every citizen to approve of every relationship. It requires public institutions to exercise power consistently with

ISSN: 2582-6433

constitutional commitments, including the protection of minorities from arbitrary disadvantage.

The argument proceeds in six stages. It first clarifies the historical and conceptual background of legal regulation. It then examines the international human rights framework and the Indian constitutional trajectory. The comparative section considers selected jurisdictions without treating foreign outcomes as ready-made solutions. The article next analyses domestic resistance and post-decriminalisation gaps, including the importance of distinguishing sexual orientation from gender identity. It concludes with a practical reform framework. Throughout, the article separates existing law from normative proposals and avoids claiming empirical findings that the underlying doctrinal research has not established.

2. Historical foundations: colonial codification without historical simplification

A careful account of the history of same-sex intimacy must avoid two opposing simplifications. The first presents homosexuality as wholly foreign to India and treats criminal prohibition as a natural expression of an unchanging social order. The second imagines a uniformly tolerant pre-colonial society in which colonialism alone introduced prejudice. Neither account is historically adequate. Earlier Indian texts, artistic representations, literary traditions, religious materials and social practices contain varied references to sexuality and gender. These sources may challenge claims that same-sex desire was unknown to the subcontinent, but isolated references do not establish universal acceptance, equal legal status or the existence of contemporary identity categories in earlier periods.

The more defensible historical proposition concerns codification. Colonial governance introduced and maintained a systematic penal framework in which particular sexual acts were classified as offences against the order of nature. Section 377 of the Indian Penal Code was part of that nineteenth-century codifying project. Its language was framed around conduct rather than modern identity categories. Nevertheless, the provision became associated in practice and public discourse with the policing of people whose relationships or sexual conduct did not conform to dominant expectations.

The distinction between a law's origin and its constitutional justification is important. Colonial provenance helps explain how a legal rule entered the Indian penal system and why it persisted after independence. It does not, by itself, settle the question of validity. A post-independence legislature and State continue to bear responsibility for laws retained within the domestic legal order. The appropriate question is whether a provision is compatible with the

ISSN: 2582-6433

Constitution, not simply whether it was enacted by a colonial authority.

Criminal law is a particularly powerful instrument because it does more than threaten punishment. It communicates the State's judgment about the conduct and people it regulates. Even where prosecutions are infrequent, the existence of a criminal prohibition can provide leverage for intimidation, extortion, exposure and unequal treatment. It may discourage individuals from seeking assistance from police or public institutions. These consequences require careful evidence in any empirical account, but the legal possibility of coercion is itself relevant to constitutional review.

The historical lesson is therefore more nuanced than a claim that colonialism created every form of social hostility. Colonial codification institutionalised a particular legal classification, while local moral traditions and social hierarchies continued to evolve in complex ways. The constitutional challenge was not an attempt to restore a supposedly uniform past. It was an assessment of whether the independent Republic could continue to use criminal punishment against consensual adult intimacy. The answer in Navtej was that it could not.

This approach also cautions against equating tolerance with equality. A society may tolerate conduct when it remains private or invisible while withholding equal legal recognition from the persons involved. Tolerance is conditional and revocable; equality is a claim about legal status. The movement from one to the other requires more than historical celebration. It requires a present-day examination of State power, statutory classification and access to remedies.

3. Conceptual framework: conduct, orientation, identity and equality

Legal analysis becomes confused when sexual conduct, sexual orientation and gender identity are treated as interchangeable. Sexual conduct describes acts. Sexual orientation concerns enduring patterns of emotional, romantic or sexual attraction, or the capacity for such attraction. Gender identity concerns a person's internal experience of gender. Gender expression concerns the outward presentation of gender, while sex characteristics refer to bodily traits. These concepts may intersect in individual lives, but they answer different questions and should not be collapsed into one legal category.

Section 377 was drafted as a conduct-based offence. Its text did not create a comprehensive legal category of gay or bisexual identity. Yet the enforcement and social meaning of the provision affected people understood to be homosexual, as well as others whose conduct was regarded as non-conforming. This illustrates how a formally conduct-based law may have identity-linked effects. Equality analysis must therefore consider both the text of a rule and the way it operates.

ISSN: 2582-6433

A second distinction is between formal and substantive equality. Formal equality asks whether like cases are treated alike and whether a classification has a rational basis. Substantive equality examines whether apparently neutral rules reproduce disadvantage, deny equal status or ignore relevant differences in social position. In the context of sexual orientation, a rule that is neutral in wording may still exclude same-sex couples from a benefit that is available to similarly situated different-sex couples. The legal question is not resolved by saying that the rule applies equally to everyone if its eligibility criteria are structured around a relationship form unavailable to one group.

Dignity, privacy and autonomy reinforce this analysis. Privacy protects a sphere of personal decision-making against unjustified interference. Autonomy recognises that individuals have a meaningful role in shaping intimate relationships and life plans. Dignity requires that the State not treat a person's identity or consensual relationship as a mark of inferiority. These principles do not immunise conduct involving coercion, exploitation, abuse or harm to others. The central distinction is between consensual adult intimacy and conduct that violates another person's rights.

The harm principle associated with John Stuart Mill is a useful philosophical starting point: coercive restrictions on liberty require justification by reference to preventing harm to others, rather than merely enforcing conventional opinion. It is not a substitute for constitutional doctrine, and modern constitutional review involves additional considerations such as proportionality, equality and legislative competence. Still, it helps expose the weakness of criminalising private conduct solely because a majority regards it as immoral.

The final conceptual distinction is between decriminalisation, recognition and protection. Decriminalisation removes penal prohibition. Recognition gives legal effect to a relationship or status. Protection supplies remedies against discrimination, violence or institutional exclusion. A legal system may achieve one without the others. These are related but analytically separate stages. The Indian experience after 2018 demonstrates why the distinction matters: the constitutional victory against criminalisation did not automatically settle the statutory treatment of marriage, adoption, succession, employment or family benefits.

4. International human rights law: principles, institutions and limits

International human rights law provides an important normative framework for assessing laws that regulate intimate life. The Universal Declaration of Human Rights affirms equal dignity and rights, equality before the law and protection against arbitrary interference with privacy. The International Covenant on Civil and Political Rights protects privacy, equality and

ISSN: 2582-6433

non-discrimination, while the International Covenant on Economic, Social and Cultural Rights addresses economic, social and cultural rights, including work, health and education. The treaties do not all name sexual orientation expressly in their original text. Their application to sexual-orientation discrimination has developed through interpretation by treaty bodies and other human rights institutions.

Toonen v Australia is a significant interpretative development. The United Nations Human Rights Committee considered criminal provisions in Tasmania that prohibited consensual same-sex conduct and concluded that they interfered with the applicant's right to privacy under Article 17 of the ICCPR. The communication helped establish that criminalisation of consensual same-sex intimacy engages Covenant protections. It also illustrates the importance of treaty-body interpretation in giving practical meaning to general rights language.

The Human Rights Council's 2011 report on discriminatory laws and practices and acts of violence based on sexual orientation and gender identity brought these concerns into a prominent United Nations forum. The Office of the High Commissioner for Human Rights has continued to explain how existing international standards apply to sexual orientation, gender identity and sex characteristics. Such materials are relevant to the interpretation and evaluation of State conduct, but their legal character must be stated accurately. A treaty obligation, a treaty-body view, a Human Rights Council resolution, an expert report and a set of non-binding principles do not have identical legal force.

The Yogyakarta Principles, adopted in 2006 by a group of experts, and the Yogyakarta Principles plus 10, provide an influential framework for articulating how existing human rights standards apply to sexual orientation and gender identity. They are not a treaty and do not independently create binding obligations. Their value lies in synthesis, interpretation and advocacy. Academic writing should avoid describing them as binding international law.

International protection is not limited to privacy. Equality and non-discrimination principles are relevant to employment, education, healthcare, housing and access to public services. States may have negative duties not to interfere arbitrarily, and positive duties to protect people from violence and to provide effective remedies. The precise scope of positive obligations depends on the treaty, the interpretative body and the domestic context.

Regional systems add further perspectives. The European Court of Human Rights in Dudgeon v United Kingdom held that the maintenance of criminal prohibitions on consensual homosexual conduct in Northern Ireland violated the right to respect for private life under Article 8 of the European Convention. Norris v Ireland and Modinos v Cyprus developed the regional jurisprudence. In the Inter-American system, decisions such as Atala Riffo and

ISSN: 2582-6433

Daughters v Chile addressed discrimination connected with sexual orientation in family-related decision-making. These cases demonstrate that sexual orientation can be relevant to privacy, family life and equality, not merely criminal law.

International law nevertheless has limits. Treaty enforcement is institutionally complex; recommendations may depend on domestic implementation; and political resistance may weaken compliance. International standards cannot replace domestic constitutional institutions. Their proper role is to inform interpretation, identify minimum obligations, support accountability and provide comparative reasoning. In India, international materials should be integrated with the Constitution and applicable domestic law rather than invoked as if they automatically dictate every outcome.

5. India's constitutional trajectory: from Naz Foundation to Navtej

The constitutional challenge to Section 377 developed through a series of decisions that reveal competing understandings of equality, judicial restraint and minority protection. In Naz Foundation v Government of NCT of Delhi, the Delhi High Court held that Section 377 violated constitutional guarantees insofar as it criminalised consensual sexual acts between adults in private. The judgment relied on equality, dignity, privacy and the constitutional protection of minorities. Its significance lay in recognising that a criminal provision may impose unequal burdens even when its language is not framed expressly in terms of sexual orientation.

In Suresh Kumar Koushal v Naz Foundation, the Supreme Court reversed the High Court. Its reasoning included the observation that the affected group constituted a minuscule fraction of the population and that Parliament was better placed to consider the matter. The decision generated sustained criticism because constitutional rights do not depend on the numerical size of the group asserting them. A central purpose of rights guarantees is to protect individuals and minorities from the possibility that majority preference will determine the limits of their liberty.

The constitutional landscape was substantially strengthened by Justice K.S. Puttaswamy (Retd.) v Union of India. The Supreme Court recognised privacy as a fundamental right and connected it with dignity, autonomy and personal choice. Puttaswamy was not exclusively a case about sexual orientation, but its reasoning supplied a constitutional foundation for protecting intimate decisions from unjustified State interference. Privacy in this sense is not limited to concealment. It includes the ability to develop relationships and make choices central to personal identity.

In Navtej Singh Johar v Union of India, a Constitution Bench held Section 377

ISSN: 2582-6433

unconstitutional to the extent that it criminalised consensual sexual conduct between adults in private. The opinions engaged with equality, non-discrimination, dignity, privacy, autonomy and constitutional morality. The judgment rejected the proposition that social disapproval alone could justify criminal punishment. It also corrected the earlier approach that had treated the small size of the affected population as relevant to the level of constitutional protection.

The scope of the holding must be described carefully. Navtej did not legalise sexual violence, acts involving minors or every form of conduct previously addressed by Section 377. It removed the provision's application to consensual sexual conduct between adults in private. Non-consensual conduct and offences involving children remained subject to the applicable criminal law. Nor did the judgment create a general statutory code for same-sex relationships.

The constitutional significance of Navtej lies in its method as much as its result. It treated fundamental rights as enforceable limits on the State, rather than privileges dependent on social approval. It also placed constitutional morality in opposition to the use of public morality as a sufficient justification for criminalisation. Constitutional morality does not mean that courts should disregard democratic institutions or social pluralism. It means that all institutions, including legislatures, must operate within constitutional boundaries.

The trajectory from Naz Foundation through Koushal, Puttaswamy and Navtej also shows that constitutional progress is neither automatic nor irreversible. Judicial reasoning matters. So does the institutional willingness to recognise that formally general laws may burden particular groups. The cases provide a foundation for subsequent claims, but each claim must still be analysed under the relevant constitutional and statutory provisions.

6. Supriyo and the boundary between liberty and legal recognition

The Supreme Court's decision in Supriyo @ Supriya Chakraborty v Union of India (2023) brought the distinction between decriminalisation and relationship recognition into sharp focus. The petitioners sought legal recognition of same-sex marriage under the existing statutory framework, including the Special Marriage Act. The Court declined to read the legislation in the manner requested and did not recognise a judicially enforceable general right to same-sex marriage under the statutory scheme before it. The opinions addressed constitutional rights, the nature of marriage, the role of the legislature and the limits of judicial interpretation.

The decision should not be reduced to the proposition that queer relationships have no constitutional significance. The judgment recognised the importance of dignity, autonomy and the interests of queer couples, while the majority concluded that the requested legal changes involved institutional and legislative questions that could not be resolved through the

ISSN: 2582-6433

interpretative route proposed. The opinions also differed in their treatment of the constitutional issues and the possible legal consequences of relationship recognition.

The distinction between a negative liberty claim and a positive institutional claim helps explain the doctrinal divide. A challenge to criminalisation asks the State to stop imposing punishment on consensual adult conduct. A claim to marriage recognition asks the State to extend or alter a statutory institution, together with a network of legal consequences. Both claims may engage equality and dignity, but the remedial questions are not identical. Courts must consider statutory text, legislative design, constitutional limits and the institutional consequences of the relief sought.

Review petitions challenging the 2023 decision were dismissed by the Supreme Court in January 2025. Accordingly, as at the research cut-off of 16 November 2026, Supriyo remains the central authority declining judicial recognition of same-sex marriage under the existing statutory framework. This does not prevent Parliament from legislating, nor does it resolve every question about the treatment of queer couples under laws that do not depend on marital status.

The decision leaves practical questions that cannot be answered by general statements about dignity alone. These include access to next-of-kin recognition, medical decision-making, succession, maintenance, pension and insurance benefits, joint property arrangements, adoption eligibility and parental recognition. Some matters may be addressed through existing contract, nomination or individual legal mechanisms, but such mechanisms do not necessarily provide the security or comprehensive consequences of marital status. Each area requires examination of the governing statute and the actual legal effect of the exclusion.

A rights-based response should therefore avoid two extremes. It should not assume that Supriyo has erased the constitutional relevance of queer relationships. Equally, it should not describe marriage equality as already established Indian law. The more accurate position is that the Court declined the requested judicial remedy, leaving significant questions to legislative and policy processes while constitutional guarantees remain relevant to particular exclusions and State actions.

This distinction also points towards a practical legislative agenda. Parliament may consider a relationship-recognition framework, civil partnership or targeted amendments to individual statutes. The choice among these models requires democratic deliberation, consultation and attention to the consequences for all parties. Whatever model is selected should avoid creating a second-class status in which a relationship is acknowledged symbolically but denied the legal incidents necessary for security and equal participation.

ISSN: 2582-6433

7. The post-2024 criminal law framework and protection against sexual violence

The replacement of the Indian Penal Code by the Bharatiya Nyaya Sanhita, 2023, which came into force on 1 July 2024, requires the post-Section 377 position to be assessed against the new criminal law framework. Section 377 was not carried forward as a general provision in the BNS. This has particular significance for the treatment of sexual violence against adult male victims and other conduct that was previously capable of being addressed under the former provision. The issue is distinct from the constitutional protection of consensual intimacy.

A rights-respecting legal system must maintain two commitments at once. It must not criminalise consensual adult relationships because of the sex or gender of the participants. It must also provide effective protection against non-consensual sexual conduct, exploitation and abuse. These commitments are complementary, not contradictory. The removal of a discriminatory offence should not produce a protection gap for victims who do not fall within the gender categories recognised by other offences.

The BNS contains offences addressing rape and other sexual misconduct, but the statutory definition of rape is gender-specific. The exact scope of other provisions and available remedies must be analysed on their terms; it would be inaccurate to assume that every form of non-consensual sexual conduct is wholly unregulated. Nevertheless, the absence of a comprehensive, gender-neutral offence covering non-consensual sexual penetration or comparable serious sexual violations against all adults raises a legitimate question for legislative review.

The analysis must also distinguish adult victims from children. The Protection of Children from Sexual Offences Act, 2012, is framed to protect children against sexual offences without limiting protection to one sex. Child protection should not be confused with the separate question of adult criminal law. Similarly, bestiality and conduct involving coercion or incapacity raise distinct legal and policy questions that should not be conflated with consensual same-sex intimacy.

A carefully designed reform could define prohibited sexual conduct by reference to consent, coercion, incapacity, exploitation and the nature of the act, rather than relying exclusively on the sex of the victim or offender. Such a framework should be precise enough to protect bodily autonomy and fair-trial rights. It should not revive vague morality-based offences under another name. Clear definitions, proportionate penalties, procedural safeguards

ISSN: 2582-6433

and access to support services are essential.

The BNS transition demonstrates why legal reform must be coordinated. Decriminalisation of consensual conduct, gender-inclusive protection from sexual violence and child protection are separate objectives that should be pursued consistently. A legal system cannot claim to have completed equality reform if it removes one discriminatory criminal prohibition while leaving avoidable uncertainty about the protection of other victims.

8. Comparative perspectives: different routes, shared constitutional questions

Comparative law is useful when it identifies principles and institutional choices, not when it treats another jurisdiction's outcome as a ready-made solution. The United Kingdom, United States, South Africa and Australia demonstrate different pathways from criminalisation towards equality. Their constitutional texts, legal histories, political institutions and social contexts differ from India's. Comparison should therefore focus on the questions each system confronted: what justifies criminal regulation of intimacy, how equality is protected, what role courts should play, and how legal recognition is implemented.

The United Kingdom's reform process included the Wolfenden Report and the Sexual Offences Act 1967, which partially decriminalised consensual homosexual acts between men in England and Wales subject to specified conditions. Reform did not occur uniformly across all parts of the United Kingdom at the same time. The European Court of Human Rights' decision in Dudgeon v United Kingdom later established that maintaining criminal prohibitions on private consensual same-sex conduct in Northern Ireland violated Article 8. The British experience illustrates the interaction between legislative reform and human rights adjudication. Later developments in civil partnerships and marriage equality demonstrate that decriminalisation and relationship recognition are separate legislative stages.

The United States followed a strongly judicial path in the constitutional protection of intimate liberty. Bowers v Hardwick upheld criminal prohibitions in 1986, but Lawrence v Texas overruled that approach in 2003 and invalidated a law criminalising consensual same-sex intimacy. United States v Windsor (2013) and Obergefell v Hodges (2015) addressed federal recognition and marriage equality. These decisions demonstrate how liberty and equality reasoning may develop across successive cases. However, American doctrine is grounded in the Due Process and Equal Protection Clauses of the Fourteenth Amendment and should not be transplanted without considering the Indian constitutional text and institutional

ISSN: 2582-6433

structure.

South Africa offers a particularly important comparative example because its post-apartheid Constitution expressly prohibits discrimination on the ground of sexual orientation. In National Coalition for Gay and Lesbian Equality v Minister of Justice, the Constitutional Court invalidated criminal prohibitions on consensual same-sex conduct. The country later adopted marriage equality through legislation. Its experience demonstrates the significance of explicit constitutional equality guarantees and transformative constitutionalism. At the same time, formal legal equality has not eliminated every form of social violence or institutional disadvantage. The distinction between legal recognition and practical implementation remains relevant.

Australia's pathway involved state and territory decriminalisation, federal anti-discrimination measures and legislative marriage equality following a national postal survey. Its federal structure generated questions of consistency and jurisdictional competence. The Australian example highlights the importance of coordinated legislative design where powers are distributed across different levels of government.

The comparative lesson is not that India must reproduce the United States, South African or Australian model. It is that durable reform often requires a combination of constitutional principles, legislative detail and administrative implementation. Courts can invalidate unjustified criminal restrictions and clarify constitutional standards. Legislatures can amend interconnected statutes, define entitlements and create complaint mechanisms. Executive agencies can translate legal obligations into accessible procedures. Civil society and professional bodies can monitor implementation and identify gaps.

A further comparative caution concerns sequencing. Some jurisdictions moved from decriminalisation to relationship recognition relatively quickly; others experienced long periods of partial recognition. The order and pace of reform reflect political coalitions, constitutional structures and social circumstances. India's own path should be assessed through its constitutional commitments and institutional responsibilities, not through a ranking exercise that treats foreign legal outcomes as proof of domestic failure or success.

9. Domestic resistance: morality, family, religion and institutional authority

Domestic resistance to homosexuality rights is not a single phenomenon. It may appear in legislative debate, litigation, family expectations, religious argument, administrative practice, political mobilisation or the refusal of institutions to recognise relationships. These forms should be analysed separately. A constitutional court deciding whether a criminal prohibition

ISSN: 2582-6433

is valid faces a different question from a legislature deciding whether to create a civil partnership scheme, or a school developing an anti-bullying policy.

Arguments based on public morality often assert that the State may enforce conventional understandings of family and sexual conduct. In a constitutional democracy, moral disagreement is legitimate and citizens remain free to hold religious or ethical views. The legal question is whether those views can justify coercive State action that burdens fundamental rights. Constitutional morality is not a demand that society adopt one approved private morality. It is a requirement that public power remain consistent with constitutional guarantees, including equality and liberty.

Religious freedom and equality may sometimes appear to conflict, particularly where a religious institution seeks autonomy over its internal doctrine or ceremonial practices. The law should identify the precise activity and legal interest involved rather than assume that every accommodation of religious belief necessarily entails discrimination, or that every equality claim automatically overrides all religious autonomy. The appropriate balance depends on the constitutional provisions, the nature of the institution, the public or private character of the service and the applicable statutory framework.

Family resistance may have especially direct consequences. Adults may face pressure to enter different-sex marriages, conceal relationships or avoid disclosure. Economic dependence, housing insecurity and social isolation can make the exercise of autonomy difficult. These are important socio-legal concerns, but their prevalence and severity cannot be quantified through doctrinal analysis alone. The present article therefore treats them as issues requiring careful empirical investigation rather than as measured national findings.

Institutional resistance may be less visible than formal legal opposition. It can arise through insensitive police procedures, breaches of confidentiality, refusal to process complaints, discriminatory workplace practices or uncertainty about administrative forms. A constitutional judgment does not automatically train every official or revise every institutional practice. Implementation requires rules, supervision, complaint mechanisms and accountability.

Resistance also takes place through disputes about institutional competence. Some argue that courts should not create new civil statuses or redesign statutory schemes. This argument has force where the relief sought requires extensive legislative choices. Yet institutional restraint does not mean that courts should avoid reviewing existing legal exclusions for constitutional validity. The separation of powers is not a reason to leave fundamental rights without judicial protection; it is a framework for determining which institution should perform which task.

ISSN: 2582-6433

The appropriate response is neither to dismiss all opposition as irrational nor to permit majority disapproval to settle constitutional questions. It is to distinguish protected belief from coercive State action, identify the legal interests at stake, and require public institutions to justify restrictions with constitutionally adequate reasons. In this way, pluralism can accommodate disagreement without converting disagreement into legal subordination.

10. The 2026 transgender law amendment and the need for conceptual precision

A development that must be treated separately from homosexuality rights is the Transgender Persons (Protection of Rights) Amendment Act, 2026. The amendment received presidential assent on 30 March 2026 and was brought into force on 25 May 2026. It modifies the statutory definition and procedures under the 2019 Act, including a more specific definition of who falls within the statutory category of a transgender person. The amended definition identifies certain socio-cultural identities, specified intersex variations and persons compelled to assume or present a transgender identity, while expressly excluding persons with different sexual orientations and self-perceived sexual identities.

The amendment matters to this article for two reasons. First, it reinforces the need to distinguish sexual orientation from gender identity. A gay, lesbian or bisexual person is not, by that fact alone, a transgender person. Conversely, transgender identity is not defined by sexual orientation. Legal protections must be designed with conceptual accuracy so that one statutory category is not used as a substitute for another.

Secondly, the amendment raises questions about the relationship between statutory classification, self-identification, medical assessment and constitutional guarantees. The 2014 decision in National Legal Services Authority v Union of India recognised the rights of transgender persons and emphasised dignity, equality and personal autonomy. The 2019 Act established a statutory framework for protection against discrimination. The 2026 amendment changes that framework and therefore requires separate constitutional and statutory analysis. It should not be assumed that a change to the transgender statute directly changes the legal status of same-sex relationships or the holding in Navtej.

The amendment has attracted international human rights scrutiny. In April 2026, United Nations Special Procedures transmitted communication IND 7/2026 concerning the amendments and related human rights issues. Such a communication is not a judicial determination of invalidity. It is an institutional mechanism for raising concerns and seeking a

ISSN: 2582-6433

State response. Academic analysis should describe it accurately and avoid treating allegations or questions in a communication as final findings.

The amendment also demonstrates a broader methodological point: LGBTQ+ rights scholarship must avoid treating the acronym as if it describes a single legal experience. Sexual orientation, gender identity, gender expression and sex characteristics may overlap, but each may be governed by different statutes, administrative processes and constitutional questions. A law designed for one category may leave another without a remedy. Conversely, narrowing one statutory definition should not be mistaken for a comprehensive answer to all equality claims.

For publication, the precise text of the 2026 amendment and commencement notification should be checked against the Gazette. The present article uses the enacted date and commencement date as stated in the Gazette materials and treats the amendment as current law as at 16 November 2026. Any subsequent litigation or administrative rules should be checked again immediately before journal submission.

11. The substantive equality agenda: family, work, education, health and housing

The most significant post-decriminalisation questions arise where legal status affects everyday access to institutions. Family law is an obvious example because marriage carries consequences across succession, maintenance, taxation, insurance, pensions, property, medical decision-making and parental status. The absence of general same-sex marriage recognition creates uncertainty or exclusion in areas where legal entitlements depend on being a spouse. Some couples may use nominations, contracts, wills or powers of attorney, but private instruments do not always replicate the security and public recognition attached to statutory family status.

Adoption and parenthood require careful, statute-specific treatment. The best interests of the child remain central. The legal analysis should identify whether the relevant law concerns individual eligibility, joint adoption, guardianship, parentage or recognition of a parent-child relationship. These are not interchangeable questions. Policy debate should rely on the governing legislation, child-welfare standards and reliable evidence rather than assumptions about the suitability of prospective parents based solely on sexual orientation.

Employment equality is another important field. A person may be legally free to maintain a same-sex relationship but still experience adverse treatment in recruitment, promotion,

ISSN: 2582-6433

workplace benefits or protection against harassment. The constitutional position is strongest where State action is involved; private employment requires attention to applicable labour statutes, service rules, contractual obligations and any sector-specific protections. A comprehensive statutory framework could clarify prohibited conduct, define employer duties and provide accessible remedies.

Educational institutions have responsibilities to maintain safe learning environments and respond to bullying, harassment and privacy violations. Policies should not require students or staff to disclose sensitive personal information unnecessarily. Training should explain the distinction between sexual orientation and gender identity, the limits of disciplinary authority and the importance of confidentiality. The objective is not to compel agreement with a particular moral position but to prevent unlawful exclusion and ensure that students can access education.

Healthcare requires both confidentiality and equal treatment. Providers should make decisions on clinical grounds and respect patient autonomy. A partner's legal status may affect access to information or decision-making in emergencies, depending on the applicable rules. The absence of recognised relationship status can therefore have practical consequences. Training and clear administrative procedures can reduce arbitrary treatment even before broader statutory reform is enacted.

Housing and public services present similar challenges. Landlords, resident associations and service providers may impose informal barriers on couples whose relationships are not socially recognised. The legal response depends on the nature of the actor, the governing statute and available remedies. A general anti-discrimination law would make the framework more coherent by identifying prohibited grounds and establishing procedures for complaints.

Substantive equality is therefore not a single entitlement. It is a network of legal rules and institutional practices. Reform should map where marital status, sex, gender or family definitions determine access to benefits, and then examine whether each distinction is justified. The task is not to assume that every law must use identical wording. It is to ensure that differences are supported by legitimate purposes and do not impose arbitrary disadvantage on the basis of sexual orientation.

12. Towards a coherent Indian reform framework

A durable reform programme should be staged, evidence-based and institutionally realistic. The first priority is a coherent anti-discrimination framework. Parliament should examine legislation that expressly addresses discrimination based on sexual orientation and gender

ISSN: 2582-6433

identity in defined areas such as employment, education, healthcare, housing and access to public services. The statute should identify covered actors, prohibited conduct, exceptions, complaint procedures, limitation periods, remedies and the relationship with existing sector-specific laws. A broad declaration without enforceable procedures would have limited practical value.

The second priority is a systematic review of family-related legislation. A legislative commission or expert group could identify provisions in which marriage or spousal status determines access to rights and benefits. The review should cover succession, maintenance, property, pensions, insurance, medical decision-making, guardianship and parental recognition. It should assess whether targeted amendments, a civil partnership model or a broader marriage-law reform would best address the identified gaps. The process should include consultation with affected communities, legal experts, child-welfare professionals and religious or community institutions where relevant.

Third, criminal law should be reviewed to ensure that protection against sexual violence is not dependent on the sex of the victim. The objective should be clear, consent-based offences that distinguish consensual adult conduct from coercion, exploitation and abuse. The reform must preserve procedural fairness and avoid vague morality offences. Child protection should remain robust and distinct from adult sexual autonomy.

Fourth, public institutions require implementation guidance. Police, prison authorities, educational institutions, healthcare providers, local administrations and public employers should receive practical training on confidentiality, equal treatment, complaint handling and the distinction between consensual conduct and abuse. Training should be accompanied by accountability. Institutions should record and review complaints in a way that protects privacy and avoids unnecessary collection of sensitive identity data.

Fifth, access to legal assistance should be improved. Confidential legal advice, referral pathways, accessible complaint mechanisms and appropriate legal-aid support can help individuals understand and pursue available remedies. The design should respect personal autonomy: a complainant should not be pressured to disclose identity or pursue a remedy against their wishes.

Sixth, government should support ethical and methodologically sound research. The absence of reliable disaggregated data can make it difficult to evaluate policy, but data collection concerning sexual orientation and gender identity carries privacy risks. Any survey or administrative data system should be voluntary where appropriate, purpose-limited, secure, transparent and subject to independent ethical review. Small samples and local studies should

ISSN: 2582-6433

not be presented as nationally representative.

Finally, reform should be periodically evaluated. Indicators might include the accessibility of complaint mechanisms, time taken to resolve cases, institutional compliance, the clarity of family-related procedures and the availability of legal aid. Evaluation should measure outcomes without turning sensitive identity data into a surveillance tool. A staged programme allows Parliament and public authorities to learn from implementation while remaining accountable to constitutional standards.

13. Methodology, scope and limitations

This article adopts a doctrinal and comparative legal methodology. It examines constitutional provisions, legislation, judicial decisions, international human rights instruments and selected institutional materials. The principal Indian constitutional provisions are Articles 14, 15, 19 and 21. The main judicial authorities include Naz Foundation, Suresh Kumar Koushal, National Legal Services Authority, Puttaswamy, Navtej Singh Johar and Supriyo. The statutory analysis includes the former Section 377 of the Indian Penal Code, the Bharatiya Nyaya Sanhita, the Special Marriage Act, the Transgender Persons (Protection of Rights) Act and its 2026 amendment, alongside other relevant legislation.

The comparative method examines the United Kingdom, United States, South Africa and Australia. These jurisdictions were selected because they illustrate different combinations of legislative reform, constitutional adjudication, human rights review and relationship recognition. The comparison is functional rather than encyclopaedic. It asks how each jurisdiction addressed criminalisation, equality, relationship status and implementation. It does not assume that the legal solution adopted elsewhere is necessarily suitable for India.

International materials are assessed according to their legal character. Binding treaty provisions are distinguished from treaty-body interpretations, reports, resolutions and expert principles. This distinction is essential to avoid overstating the legal authority of non-binding materials. The analysis also distinguishes holdings from observations and recommendations in judicial opinions.

The article does not report original interviews, surveys or fieldwork. It therefore makes no claim to quantify the prevalence of discrimination, family pressure, workplace exclusion or institutional mistreatment. These are identified as issues that require empirical investigation. Where the article discusses social or institutional barriers, it does so as a legal and policy concern rather than as a measured finding about all LGBTQ+ persons in India.

The legal position is stated as at 16 November 2026, subject to the need for final verification

ISSN: 2582-6433

of subsequent judgments, notifications and statutory amendments before publication. The 2026 transgender law amendment is included because it is part of the contemporary legal landscape, but its implications are treated separately from sexual-orientation jurisprudence. The article's principal focus remains the rights of persons with diverse sexual orientations and the legal status of consensual same-sex relationships.

These limitations do not diminish the value of doctrinal analysis. They define what it can responsibly establish. Legal research can identify the content of rights, the structure of statutory exclusions and the institutional routes available for reform. It cannot, without empirical evidence, establish how frequently a practice occurs or how effective a policy will be in changing lived experience. A publication-ready version should preserve this distinction and should not imply that interviews or quantitative research have been undertaken when they have not.

14. Findings and critical discussion

The analysis supports five principal findings. First, colonial criminal codification played a significant role in institutionalising the criminal regulation of certain sexual conduct, but the history of Indian attitudes towards sexuality cannot be reduced to a binary contrast between pre-colonial tolerance and colonial intolerance. The legal significance of Section 377 arose from its continued operation within an independent constitutional order, not merely from its colonial origin.

Second, constitutional interpretation was decisive in ending the criminalisation of consensual same-sex intimacy. The movement from Naz Foundation through Koushal and Puttaswamy to Navtej demonstrates the importance of equality, privacy, dignity and autonomy. It also demonstrates that minority rights cannot be made contingent on population size or prevailing social approval.

Third, decriminalisation is necessary but insufficient for substantive equality. Supriyo confirms that the constitutional invalidation of a criminal prohibition does not automatically produce legal recognition of marriage under existing statutes. The same analytical distinction applies to adoption, succession, maintenance, parental status, employment benefits and other legal consequences. Each requires examination under the relevant law.

Fourth, international human rights standards provide significant interpretative and normative resources, but their domestic effect depends on legal status, constitutional structure and implementation. Toonen, Dudgeon and other comparative decisions support the proposition that consensual same-sex intimacy engages privacy and equality guarantees. They

ISSN: 2582-6433

do not eliminate the need for careful domestic analysis.

Fifth, domestic resistance operates through formal legal debate and informal institutional practices. It may arise from morality-based arguments, family expectations, religious claims, political priorities or uncertainty about institutional competence. The legal response should protect pluralism while ensuring that social disagreement does not become a sufficient justification for arbitrary State disadvantage.

A critical qualification is necessary. The claim that domestic resistance limits the practical enjoyment of rights is plausible and supported by the structure of the legal issues identified, but the scale of its effect cannot be established through doctrinal research alone. Empirical studies are required to measure experiences across regions, classes, caste locations, genders, ages and institutional settings. Similarly, recommendations for anti-discrimination legislation or relationship recognition are normative proposals, not descriptions of current law.

The most important institutional insight is that no single branch of government can complete the work alone. Courts can enforce constitutional limits and remedy unlawful State action. Legislatures can revise statutory frameworks and create clear entitlements. Executive authorities can ensure that public administration complies with legal standards. Professional bodies, universities and civil society can develop guidance, legal literacy and independent monitoring. Coordinated action is not merely administratively convenient; it is necessary because the legal consequences of relationship status are distributed across many statutes and institutions.

15. Conclusion

India's constitutional journey from the criminalisation of consensual same-sex intimacy to the decision in Navtej Singh Johar represents a profound change in the relationship between individual liberty and State power. The judgment affirmed that the Constitution protects persons whose intimate lives do not conform to dominant social expectations. It rejected the use of criminal law to impose punishment on consenting adults merely because their conduct attracts moral disapproval. That achievement should neither be understated nor treated as the completion of equality.

The decision in Supriyo exposes the limits of assuming that one constitutional victory resolves every related legal question. Decriminalisation and marriage recognition are distinct legal issues. The dismissal of review petitions in January 2025 left the central statutory question unresolved in favour of judicial recognition, while preserving the possibility of legislative consideration and further legal debate. As a result, many consequences attached to family status

ISSN: 2582-6433

continue to require statutory analysis and reform.

The international and comparative materials demonstrate that privacy, dignity, equality and non-discrimination are recurring principles in the protection of sexual minorities. They also show that jurisdictions have followed different institutional routes. India should draw from these experiences without copying foreign legal models mechanically. Its reforms must be grounded in its own constitutional text, statutory structure and democratic institutions.

The 2026 amendment to the transgender law further demonstrates why conceptual precision is indispensable. Sexual orientation and gender identity are distinct grounds of legal analysis. A change to the statutory definition of transgender persons does not resolve the legal position of same-sex couples, nor should the rights of one group be treated as a substitute for those of another. Each category requires accurate legal recognition and appropriate protection.

The way forward is practical as well as constitutional. India should consider a coherent anti-discrimination statute, review family-related legislation, clarify protection against sexual violence for all victims, strengthen institutional safeguards and improve access to legal assistance. These measures should be supported by ethical research and periodic evaluation. They should also be developed through consultation and careful attention to institutional competence.

The central proposition is straightforward: a constitutional democracy does not fulfil equality merely by withdrawing a criminal sanction. It must also examine the laws and practices that determine whether individuals can participate in public and private life on equal terms. The legacy of Navtej Singh Johar will ultimately be measured not only by the provision it invalidated, but by whether the constitutional values it affirmed become ordinary standards of legal administration, legislative design and public service. Decriminalisation opened the constitutional door. Substantive equality requires institutions to walk through it.

4A. Constitutional review: equality, proportionality and the burden of justification

The constitutional analysis of laws affecting sexual orientation should be structured around the actual nature of the State action and the right said to be burdened. A court should begin by identifying the legal classification or restriction with precision. Is the law criminalising consensual conduct? Is it excluding a couple from a statutory benefit? Is an administrative authority refusing to recognise a document or relationship? Is a public institution failing to protect a person from harassment? Different forms of State action require different remedial approaches, even where they arise from the same underlying prejudice.

Article 14 is central because it prohibits arbitrary State action and guarantees equality

ISSN: 2582-6433

before the law and equal protection of the laws. A classification may be formally neutral yet operate in a manner that disadvantages a group. The traditional test of intelligible differentia and rational nexus remains relevant, but equality jurisprudence has developed beyond a mechanical formula. Arbitrariness, hostile discrimination and the real effect of a classification may all be relevant. In cases concerning sexual orientation, the court should examine whether the distinction rests on a constitutionally legitimate purpose or simply reproduces an assumption that heterosexual relationships are inherently more worthy of recognition.

Article 15 requires equally careful treatment. Its text prohibits discrimination on specified grounds, including sex. The constitutional question is whether discrimination connected with sexual orientation can fall within the protection against sex-based discrimination, including where a rule depends upon the sex of the partner or enforces stereotyped expectations about gender and relationships. Navtej treated discrimination based on sexual orientation as constitutionally impermissible and recognised the connection between sexual orientation and the guarantee of equality. The analysis should not be reduced to an abstract debate about labels. It should ask whether the challenged rule penalises a person for a characteristic closely connected with sex, identity and personal autonomy.

Article 19 may be engaged where restrictions affect expression, association or peaceful assembly. Public expression of identity, participation in advocacy and the ability to form associations are important to democratic participation. Restrictions must satisfy the constitutional grounds and standards applicable to the particular freedom. A State cannot simply characterise advocacy for equality as an affront to public morality and thereby avoid constitutional scrutiny. At the same time, the exact scope of Article 19 protection must be assessed in light of its text and permissible restrictions.

Article 21 protects life and personal liberty and has been interpreted to include dignity, privacy and autonomy. Puttaswamy and Navtej demonstrate that intimate decisions occupy a constitutionally significant sphere. The State must provide a constitutionally sufficient justification for interference. The proportionality framework, where applicable, requires attention to the legitimacy of the objective, the rational connection between means and ends, the necessity of the measure and the balance between the public purpose and the rights burden. A bare assertion that a practice is unpopular or contrary to tradition is not a substitute for evidence of a legitimate constitutional objective.

This framework also clarifies the difference between a challenge to criminalisation and a claim for a new statutory institution. Invalidating a criminal offence may require the court to remove an unconstitutional application of existing law. Creating a marriage or partnership

ISSN: 2582-6433

regime may require detailed choices about eligibility, registration, dissolution, property, maintenance, succession and parental status. Courts may review exclusions and enforce constitutional limits, but the remedy must be responsive to the nature of the legal defect. Legislative competence is relevant to remedy design; it is not a licence for the State to maintain arbitrary discrimination.

A disciplined constitutional method therefore avoids both overreach and abdication. It does not assume that every requested policy change follows automatically from dignity. Nor does it permit the State to avoid scrutiny by describing every rights claim as a matter exclusively for Parliament. The court's task is to identify the right, examine the justification, apply the appropriate standard and craft relief consistent with constitutional structure.

8A. Comparative constitutionalism and the problem of legal transplantation

Comparative constitutional analysis is strongest when it identifies a legal problem shared across jurisdictions and then explains how differences in constitutional text and institutional design affect the solution. It is weakest when it selects a foreign judgment because the outcome appears attractive and treats it as authority for a domestic proposition without examining the reasoning. The protection of same-sex relationships illustrates this danger. The United States, South Africa, the United Kingdom and Australia have all moved away from criminalisation, but they did so through different constitutional and legislative arrangements.

The United States cases are often discussed as a progression from Bowers to Lawrence and then to Windsor and Obergefell. The sequence demonstrates how constitutional liberty and equality arguments can develop over time. Yet the American Constitution contains specific due process and equal protection guarantees, and the federal system allocates authority differently from India. A judgment construing the Fourteenth Amendment may be persuasive in its reasoning about liberty or stigma, but it is not a substitute for analysis under Articles 14, 15, 19 and 21.

South Africa offers a different lesson. The express inclusion of sexual orientation in the equality clause of the post-apartheid Constitution gave the Constitutional Court a textual basis that is not identical to India's. National Coalition for Gay and Lesbian Equality invalidated criminal prohibitions and treated the exclusion of gay men from equal protection as incompatible with the constitutional order. The subsequent legislative recognition of same-sex marriage demonstrates the capacity of a constitutional settlement to be followed by statutory reform. However, South Africa's experience also shows that formal legal change does not automatically eliminate violence or social exclusion. A comparative study must therefore

ISSN: 2582-6433

examine implementation, not merely the text of the Constitution or the result of a landmark case.

The United Kingdom illustrates the role of incremental legislation within a regional human rights system. The Wolfenden Report helped frame a distinction between private morality and the proper reach of criminal law. The Sexual Offences Act 1967 partially decriminalised conduct under specified conditions, while later legislation and European human rights jurisprudence contributed to a more comprehensive shift. This gradual path is relevant to India because it shows how statutory reform and judicial review can reinforce one another. It also cautions against describing decriminalisation as a single event: reforms may be partial, territorially uneven and followed by later changes in age limits, equality law and relationship recognition.

Australia demonstrates the challenges of federal coordination. Criminal law reform occurred across states and territories, while federal law later addressed discrimination and marriage. This suggests that national equality objectives may require attention to multiple layers of government and administrative practice. India's federal structure similarly makes it important to consider the allocation of legislative and executive powers when designing reforms in education, health, policing and public services.

A further comparative issue is the difference between marriage and alternative relationship recognition. Some legal systems have used civil partnerships or registered relationships as intermediate or distinct forms of recognition. Such models may provide some legal incidents of marriage, but they can also create a hierarchy if they are deliberately designed to mark same-sex couples as separate. The relevant questions include whether the alternative status is voluntary, whether it carries equivalent legal consequences, whether it is accessible, and whether it is understood as a transitional measure or a permanent second-tier institution.

Comparative law should thus operate through functional questions. Does the legal system protect private consensual intimacy? Does it prohibit discrimination in public and private settings? Does it recognise relationships and provide predictable family consequences? Are remedies accessible? How are religious freedom and institutional autonomy accommodated? What mechanisms monitor implementation? Answering these questions makes comparison useful without implying that the Indian Constitution must replicate another country's legal architecture.

The best comparative lesson is methodological: legal change is durable when constitutional principles, statutory detail and institutional practice are aligned. India can draw from foreign experience while preserving its own constitutional language and democratic processes. A

ISSN: 2582-6433

foreign model should be adopted only after identifying the problem it solves, the costs it creates and the legal adjustments required for domestic compatibility.

11A. Remedies, enforcement and institutional design

A right without an accessible remedy may remain largely formal. The practical value of constitutional protection depends on whether a person can identify the responsible institution, make a complaint without unreasonable risk, obtain a timely decision and secure an effective remedy. This is especially important where the person fears involuntary disclosure of sexual orientation or retaliation by family members, employers, landlords or public officials.

The first requirement is clarity about institutional responsibility. A public employer, police station, university, hospital, local authority and private housing provider may be governed by different statutes and complaint mechanisms. Individuals should not be expected to navigate an uncertain network of overlapping authorities. A coherent anti-discrimination framework could identify the institutions covered, the conduct prohibited and the body responsible for receiving complaints. It could also provide for internal resolution where appropriate while preserving access to independent review.

The second requirement is confidentiality. Complaints involving sexual orientation may contain highly sensitive personal information. Institutions should collect only what is necessary, restrict access to case records, adopt secure retention practices and avoid unnecessary disclosure to family members or third parties. Confidentiality cannot be absolute in every proceeding; fair process may require disclosure of relevant material to the respondent. The law should therefore specify how privacy is balanced with procedural fairness, rather than leaving the matter to informal discretion.

The third requirement is protection against retaliation. A person who complains about harassment or discrimination should not face dismissal, expulsion, denial of services or threats because a complaint was made. Anti-retaliation provisions are particularly important where the complainant is economically dependent on the institution or the person complained against. Interim measures may be necessary to preserve safety and access while the complaint is investigated.

The fourth requirement is reasoned decision-making. Institutions should provide written reasons, identify the applicable rule and explain the evidence relied upon. This makes decisions reviewable and reduces the risk that personal prejudice will be disguised as administrative discretion. Complaint bodies should also have authority to recommend or order proportionate remedies, subject to the governing statute. Remedies may include cessation of discriminatory

ISSN: 2582-6433

conduct, restoration of access, correction of records, compensation where authorised, policy revision or disciplinary action.

The fifth requirement is training linked to accountability. A one-time awareness session is unlikely to change institutional conduct unless accompanied by clear procedures, supervisory review and consequences for non-compliance. Training should be role-specific. Police personnel need guidance on lawful arrest, privacy and complaint handling. Healthcare workers need guidance on confidentiality and non-discriminatory treatment. Educational administrators need procedures for responding to bullying and protecting students from exposure. Public-service officials need clarity about documentation and eligibility rules.

Legal aid and civil society support can make enforcement more accessible. Legal services authorities, bar associations, university legal aid clinics and recognised support organisations may assist individuals in understanding their options. Such support should not presume that every person wishes to litigate or publicly identify as LGBTQ+. The objective is to expand informed choice, not to pressure individuals into disclosure.

Finally, institutions should evaluate their own performance. Aggregate information about complaint volumes, processing times and outcomes may help identify systemic problems, provided that reporting protects identities and avoids drawing conclusions from small or unrepresentative samples. Independent audits and periodic review can identify whether policies are effective. The ultimate measure of reform is not the number of guidelines issued but whether people can access services, seek protection and pursue remedies without being treated as legally or socially inferior.

12A. A research and policy agenda for the next phase

The next phase of scholarship should connect doctrinal analysis with carefully designed empirical work. Researchers could examine how the post-Navtej legal position is understood by police personnel, public employers, healthcare providers, educational institutions and local administrators. Such work should not presume that every institution behaves in the same way. It should identify the relevant jurisdiction, institutional setting, recruitment method, sample size and limitations. Interviews with affected persons must be voluntary, confidential and designed to avoid outing or other foreseeable harm.

A second research priority is statutory mapping. Researchers should identify every major central and state law in which marital status, sex or family definition determines access to an entitlement. The purpose would be to distinguish provisions that expressly exclude same-sex couples from provisions that are ambiguous, administratively difficult or capable of inclusive

ISSN: 2582-6433

interpretation. A public, periodically updated database of statutory consequences could assist lawyers, policymakers and affected individuals. It should distinguish binding law from administrative practice and proposed reform.

A third priority concerns the evaluation of remedies. It is not enough to count the number of policies adopted by institutions. Research should ask whether complaint systems are known, accessible, confidential and trusted; whether decisions are reasoned; whether retaliation is prevented; and whether remedies are implemented. Comparative research can help develop indicators, but those indicators must be adapted to Indian federal, linguistic and institutional diversity.

Finally, legal reform should be accompanied by public legal education. Information should explain the current legal position in plain language, identify available remedies and clarify that consensual adult intimacy is distinct from sexual violence or child abuse. Public education should not be framed as an attempt to compel uniform personal belief. Its purpose is to ensure that disagreement does not produce misinformation about the law or prevent individuals from accessing lawful services. This research and policy agenda would help move the debate beyond symbolic recognition towards measurable institutional responsibility.

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