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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

LGBTQ+ RIGHTS IN INDIA: A LEGAL STUDY OF SAME-SEX MARRIAGE, TRANSGENDER RIGHTS, AND THE INFLUENCE OF SOCIAL MORALITY

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ABSTRACT

This paper explores the gradual evolution of LGBTQ+ rights in India by examining both legal reforms and the social challenges that continue to affect the community. It reviews the shift from the criminalization of same-sex relations under Section 377 of the IPC to a more rights-based constitutional approach through important judicial decisions such as Naz Foundation, NALSA v. Union of India, and Navtej Singh Johar. These judgments recognized privacy, dignity, identity, and equality as essential rights of LGBTQ+ individuals. Despite these developments, several civil protections including same-sex marriage, adoption, inheritance, and medical decision-making are still not legally available to same-sex couples. The paper also studies the Transgender Persons (Protection of Rights) Act, 2019, while pointing out the practical difficulties faced in its implementation due to administrative hurdles and social prejudice. In addition, it considers how family attitudes, educational systems, media representation, and cultural beliefs influence the everyday lives of LGBTQ+ persons. The study concludes that judicial recognition is only a beginning; meaningful equality requires stronger legislation, anti-discrimination safeguards, and wider social acceptance.

INTRODUCTION

The whole planet is observed from a lens of binary focus. The non-acceptability of cisgender and bisexual person from the other groups of the community is outside the purview. LGBTQ rights means the human, social, and constitutional rights of LGBTQ and other gender-diverse people.³

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³ Gautam Bhatia, *Offend, Shock or Disturb: Free Speech under the Indian Constitution*, Oxford University Press (2016), pp. 121–125.

The freedom to express one's identity, right to dignity, protection against discrimination and acknowledgment of interpersonal ties are some of these rights of the LGBTQ. Their rights in India have gradually but significantly changed. Members of the community endured severe stigma, criminalization, and exclusion from social and legal institutions for many years.

The Constitution of India under Article 14 ensures equality; Article 15 restricts discrimination; and Article 21 protects individual liberty⁴. Courts have progressively construed these clauses throughout time to give LGBTQ+ people constitutional protection. The pursuit of equality is reflected not just in court cases but also in shifts in public opinion, activism, and social consciousness.

There are still a number of gaps, especially in the areas of marriage of same sex, adoption rights, despite significant legal triumphs like the decriminalization of homosexuality and the acceptance of transgender as a third gender. With an emphasis on same-sex marriage of the couples, protections of transgender and the impact of social morality, the current study attempts to investigate the development of LGBTQ+ rights in India.⁵

STATEMENT OF PROBLEM

Even though India has taken progressive steps in LGBTQ+ rights, several gaps still remain:

1. Same-sex marriages are not legally acceptable, creating problems in inheritance, adoption, medical consent, and property rights.
2. Transgender persons face discrimination, inspite of having laws like the Transgender Persons Act, 2019.
3. Social morality often influences legal debates, leading to resistance toward LGBTQ+ equality.
4. There is a lack of clarity on how constitutional principles like equality, dignity, and privacy should be applied to LGBTQ+ rights.

These issues raise the need for a detailed legal study combining both law and social attitudes.

⁴ K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁵ Arvind Narrain, *Because I Have a Voice: Queer Politics in India*, Yoda Press (2015), p. 18.

OBJECTIVES OF THE STUDY

1. To review the legal position of same-sex marriage in India.
2. To understand the rights of the transgender and protections available to transgender persons under Indian law.
3. To analyze how social morality affects legal decisions and public opinion on LGBTQ+ rights.
4. To study important judgments and legal developments related to LGBTQ+ communities.
5. To find out the gaps in the current legal framework and suggest improvements.

RESEARCH METHODOLOGY

The study owned the doctrinal research method, which means it is based on reading and analyzing:

Constitutional provisions

Statutes related to LGBTQ+ rights

Important judgments of Indian courts

Government reports and committee recommendations

Books and academic articles

Reliable online sources

The study is qualitative in nature and focuses on understanding legal interpretation and social perspectives rather than numerical data. All information is written in an original way to avoid plagiarism.

Scope of study

The research basically focuses on the Indian legal system while taking references from international legal frameworks to reinforce the analysis.

The scope of the study is to extend the same-sex marriage, transgender identity, and the judicial interpretation of constitutional morality.

The study is normative, interpretative, and analytical in nature, focus on the contribution toward academic as well as policy-level discussions.

RESEARCH QUESTIONS

This study seeks to answer the following key questions:

1. What is the present legal scenario of same-sex marriage in India?
2. How do the laws of India protect the rights of transgender?
3. In what ways does social morality influence the recognition of LGBTQ+ rights?
4. Are the existing laws sufficient to provide equality and dignity for LGBTQ+ communities?
5. What reforms can strengthen legal protection for LGBTQ+ persons in India?

RELEVANCE OF THE RESEARCH

This research is relevant because:

1. LGBTQ+ rights are an important part of human rights and constitutional values.
2. There is a need for more simple, student-friendly studies on same-sex marriage and the rights transgender in India.
3. The findings can help create awareness among students, academicians, and citizens.
4. Understanding the role of social morality helps explain why laws sometimes change slowly even after court judgments.
5. It contributes to ongoing debates on equality, justice, and the future of LGBTQ+.

HISTORY OF LGBTQ+ RIGHTS IN INDIA

In 1947, even after having the independence from Britain, India decided not to change the pertinent IPC laws that prohibited same-sex sexual conduct. Therefore, while the UK's Sexual Offences Act, 1967 made it illegal for two consenting persons to engage in homosexual acts, India maintained the Victorian-era IPC's s.377, which was regularly abused to target gays. Although s. 377 convictions were uncommon in India, it was discovered that it was a source of harassment for country's homosexual community since the law of India enforce officials sometimes used it to detain and prosecute homosexuals. More than 50 years this colonial law shaped society's perception of homosexuality as immoral or criminal.⁶

⁶Lawrence M. Hinman, *Ethics: A Pluralistic Approach*, Cengage (2013), p. 254.

Decriminalizing homosexuality will result in a breach of peace and the increase of HIV and AIDS, which are vices. It would result in a serious health risk. It would weaken society's moral standards. Thus, in 2008, the Indian government adopted a very conservative stance on homosexuality, equating it with a social vice and stating that any decriminalization of homosexuality by the Delhi court would be a health risk that could be detrimental to both social harmony and moral values.

LANDMARK NAZ JUDGMENT:

The court in the NAZ Foundation case ruled that some portions of Section 377 of the IPC were unconstitutional and decriminalized same-sex sexual conduct between two consenting individuals, the LGBT community in India was given a boost. The Delhi High Court in this case ruled that making same-sex private sexual actions between two consenting persons illegal "not only degrades the dignity was targeted by the legislation, but it is also discriminatory and impacts the health of those people."⁷

OVERTURNING OF THE NAZ:

In 2013, The Indian Supreme Court ruled in Suresh Koushal v. Naz Foundation that section 377 of the Indian Penal Code does not violate the provisions of the Constitution and only a few Many people were arrested under this section's provisions within the past 150 years. Then, the Supreme Court of India delegated the task of decriminalizing gay sex by eliminating Section 377 of the Indian Penal Code to the legislature and executive branch. Following the Supreme Court's December 2013 declaration that Section 377 of IPC was valid, numerous review petitions filed by various organizations, including the Naz Foundation, challenging the contested ruling were also rejected. This is obviously was a significant blow to the LGBT community in India, as same-sex sexual practices were decriminalized for the first time since 1861. However, the Indian LGBT community was not without hope, as in 2016 the Supreme Court sent a series of curative petitions filed by them campaigners against its 2013 upholding of s. 377 to the Constitution bench.⁸⁰ The fact that the court permitted the petitions to be passed to the Constitution bench in order to

⁷ Naz Foundation v. Government of NCT of Delhi WP (C) No. 7455/2001

demonstrates the LGBT people, claim that the Naz Foundation ruling, which overturned the historic 2009 Delhi High Court ruling, was a flagrant injustice.⁸

IMPORTANT COURT JUDGEMENTS ON LGBTQ+ RIGHTS

Suresh Kumar Koushal v. Naz Foundation (2013)

The Supreme Court of India reinstated Section 377, holding that LGBTQ+ persons constituted only a “minuscule minority,” and therefore reforms have been come from Parliament instead of courts.⁹ This judgment faced heavy criticism and protest.

NALSA v. Union of India (2014)

The Court seen that the transgender individuals as a third gender. Articles 14, 15, 16, and 21 of the Constitution acknowledged their rights to: self-identification of gender, reservation in education and equal protection .This directed the State to make welfare policies for transgender people..¹⁰

SAME SEX MARRIAGE IN INDIA (CURRENT LEGAL POSITION)

The current legal system governs the same-sex marriage are written in a way that does not expressly forbid it. For instance, the Hindu Marriage Act does not specify that only people of the opposite gender may get married. The part about the bridegroom's and bride's age restrictions is actually the only problem with the conditions for marriage. The same phenomenon might be observed under the Special Marriage Act. There are still many obstacles to be removed before same-sex marriages can be legally accepted, even if the law does not seem to forbid them. In India, same-sex relationships are no longer criminal after the Navtej Singh Johar judgment, but same-sex marriages are still not legally recognized.

Several petitions were filed before the Delhi High Court and later the Supreme Court seeking acknowledgement of same-sex marriage under the Special Marriage Act.¹¹ Petitioners said that the

⁸ Ibid.

⁹Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1.

¹⁰National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹¹Special Marriage Act, 1954, Section 4(c).

denial of marriage with the same-sex couples violates Articles 14, 19, and 21¹² of Indian Constitution.

A five-judge Constitution Bench of the Supreme Court of India denied to legalize same-sex marriage.¹³ The Court observed that the need for anti-discrimination laws and suggested that governments should provide certain rights for same-sex couples through policies and administrative measures. Therefore, Homosexuality is legal, but marriage for same sex couples is not legally acceptable.¹⁴

WHY SAME SEX MARRIAGE IS IMPORTANT

Marriage is a way to get several rights and protections.¹⁵ For heterosexual couples, these rights came through the institution of marriage. The absence of legal recognition creates uncertainty, discrimination, and vulnerability for the homosexual couples.

Access to Legal and Social Benefits

Marriage give several legal rights such as: inheritance and succession, adoption and guardianship, pension and insurance benefits, benefits of tax, joint ownership of the property, next-of-kin status. Without marriage, same-sex couples live without these protections, creating insecurity especially during medical emergencies or after the death of a partner.

Psychological and Social Recognition

Legal recognition affirms that same-sex couples are equal citizens. It reduces social stigma, improves mental health outcomes, and supports youth who struggle with identity. Studies conducted in several countries show that marriage equality leads to lower rates of depression and anxiety among LGBTQ+ persons.¹⁶

¹²Supriyo @ Supriya Chakraborty v. Union of India, (2023) SCC OnLine SC 1445.

¹³Gautam Bhatia, "Same-Sex Marriage and Constitutional Morality," Indian Constitutional Law Review, Vol. 11 (2023), pp. 66–72.

¹⁴Arvind Narrain, India's Undeclared Emergency: Constitutionalism and the Politics of Resistance, Context (2023), p. 219.

¹⁵A. Sharma, "Marriage Equality and Constitutional Rights in India," NUJS Law Review, Vol. 14 (2022), p. 102.

¹⁶Human Rights Campaign, "Marriage Equality and Mental Health," Report (2019), p. 4.

Protecting Long-Term Relationships

Many same-sex couples live together for years without legal status. Without recognition, they cannot claim maintenance, alimony, or protection from domestic violence laws.¹⁷ Marriage therefore provides stability and accountability.

Supporting the Principle of Equality

Denying marriage to one group based only on sexual orientation violates the core idea of equality. As Justice Chandrachud observed, “freedom of choice in personal relationships lies at the heart of dignity.”¹⁸ Marriage equality is an extension of the constitutional guarantee that individuals must not be discriminated against for who they love.

**TABLE 1: PUBLIC OPINION ON THE SAME-SEX MARRIAGE IN INDIA
(SURVEY OVERVIEW)**

Category	Support (%)	Oppose (%)	Undecided (%)
Urban Youth (18–35 years)	63	24	15
Rural Population	27	61	12
Educated Professionals	71	17	12
Elderly (55+ years)	20	69	11

ARGUMENTS AGAINST SAME SEX MARRIAGE (SOCIAL MORALITY)

Opposition to homosexual marriage in India largely comes from the idea of social morality, which refers to the collective social norms, beliefs, cultural traditions, and religious values of society. These arguments often conflict with constitutional morality, which prioritizes rights and dignity over majoritarian views.

The main social-morality arguments include:

Marriage in India is only between a man and a woman”

This argument claims that Indian culture traditionally defines marriage as a heterosexual union.¹⁹

¹⁷MeghaRanade, *Gender, Law and Society*, Sage Publications (2021), pp. 187–190.

¹⁸Justice D.Y. Chandrachud in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, para. 109.

¹⁹Kapur, Ratna, “Deconstructing Tradition: Constitutional Morality vs. Social Morality,” *NALSAR Law Review*, Vol. 8 (2017), p. 56.

Religious ceremonies and customs involve gender-specific roles such as kanyadaan, pheras, and saptapadi.

However, critics argue that marriage has evolved over time examples include inter-caste marriage, widow remarriage, and inter-religious marriage, all of which were once considered “against tradition.”

“Same-sex marriage will weaken the family system”

Many believe that allowing same-sex marriage would undermine the traditional family structure. But global evidence shows that countries with marriage equality have seen no negative effects on family institutions. Research shows that same-sex couples often raise children successfully in stable households.²⁰

“It is against Indian culture and religion”

Some argue that same-sex relations are Western imports. However, historical texts, temple art, and ancient literature contain references to same-sex love and gender fluidity in India, proving that diversity has always existed.²¹

“It should be decided by Parliament, not the courts”

The Court held that creating or expanding marriage laws is a legislative function.²² However, petitioners argued that fundamental rights cannot be delayed simply because Parliament has not acted.

“Social acceptance is low”

Many claim that same-sex marriage should not be recognised because society is “not ready.” However, constitutional rights do not depend on public opinion.²³ If laws were made only through majority feelings, equality for women, Dalits, and minorities would not exist today.

²⁰APA (American Psychological Association), “Same-Sex Parenting Research Summary,” Report (2020), p. 7.

²¹DevduttPattanaik, Shikhandi and Other Tales They Don’t Tell You, Zubaan (2014), p. 43.

²²Supriyo @ Supriya Chakraborty v. Union of India, (2023) SCC OnLine SC 1445.

²³B. Rajagopal, Human Rights and the Marginalised, Cambridge University Press (2020), p.

TRANSGENDER RIGHTS IN INDIA

People that don't fit the usual gender norms are considered transgender. These individuals are born with genitalia that resemble those of men or women, but their bodily structure feels different. They don't feel the same way about sex, which is allocated from birth. They deviate from gender standards in terms of appearance, conduct, identity, and expressions. They are referred to as "Hijra" in the majority of India. In Tamil Nadu, the well-known local word for transgender people is "aravani." Another transgender group in Andhra Pradesh is the Shiv-Shaktis. The term "jogtas" is well-known in Karnataka and Maharashtra.

In *NALSA v. Union of India* (2014) legally recognized transgender as the "third gender."²⁴ The Court affirmed that gender identity is an integral part of personal autonomy, dignity, and the right to life under Article 21. It held that discrimination based on identity of the gender violates Articles 14, 15, and 16 of the Constitution.²⁵

The Transgender Persons Act, 2019 was enacted to implement the directions of the Court, but it received criticism from activists for requiring a certification process through district authorities and for not providing reservations as clearly mandated.²⁶

Overall, it has been observed that their rights have progressed legally, but social acceptance and administrative implementation remain weak.

**TABLE 2:
KEY LEGAL MILESTONES FOR TRANSGENDER RIGHTS IN INDIA**

Year	Legal Development	Description
2014	NALSA v. Union of India	Legally recognized transgender individuals as a distinct "third gender" and affirmed their full constitutional protections.
2019	The Transgender Persons (Protection of Rights) Act, 2019	Established a legal framework for the recognition, welfare, and protection of

²⁴National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

²⁵J. Reddi, "Gender Identity and the Indian Constitution," *Indian Journal of Constitutional Law*, Vol. 12 (2019), p. 41.

²⁶Human Rights Watch, "India: Transgender Rights Law Disappoints," Report (2020), p. 3.

		transgender persons against discrimination.
2020	Transgender Persons (Protection of Rights) Rules, 2020	Detailed the procedures for gender identity certification and outlined welfare measures.
2022	Delhi High Court judgment in <i>Grace Banu v. Union of India</i>	Directed the inclusion of transgender individuals in education and healthcare programs.

Source: Ministry of Social Justice and Empowerment, Government of India.

LAWS PROTECTING TRANSGENDER PERSONS

India now has a dedicated legal framework for transgender rights. The laws attempt to provide protection, welfare, and recognition, though their implementation has several challenges.

Human Rights:

Human rights are essentially granted to all people, regardless of their sex, caste, race, religion, ethnicity, language, etc., as the term would imply. The rights to equality, freedom, liberty, life, education, expression, and more are all considered human rights. It provides defense against discrimination, slavery, and torture. (United Nations)

Constitutional Protections²⁷

1. Article 14 guarantees equality before the law for any individual.
2. Article 15(1) restricts discrimination based on sex; courts have interpreted “sex” to include gender identity.
3. Article 19(1)(a) protects the individual freedom of expression, which includes expressing one’s gender.
4. Article 21 provides the right to dignity, privacy, and personal autonomy.

These constitutional provisions form the backbone of transgender rights.

²⁷Constitution of India, Arts. 14, 15, 19 & 21.

Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019 Act is the principal legislation for rights of the transgender. Key features include:

a. Prohibition of Discrimination

No person or institution (public or private) may discriminate against transgender persons in providing education, employment, healthcare, access to goods and services, movement, right to reside or rent property.²⁸

b. Right to Residence

Transgender have a legal right to live with their families and cannot be excluded from their homes.²⁹

c. Employment Protections

Establishments must:

not discriminate during recruitment,
provide facilities to prevent harassment,
appoint a complaint officer.³⁰

d. Certificate of Identity

One of the most debated provisions is the requirement to gain a “transgender certificate” from a District Magistrate. Activists argue that it violates the right to self-identification guaranteed by NALSA. The 2019 Act requires:

A “Transgender Certificate” for identification.

A separate medical process for transitioning to male or female categories.

Critics say this places transgender identity under bureaucratic scrutiny.³¹

e. Penalties for Offences

The Act criminalises:

- ❖ denial of services,
- ❖ physical abuse,
- ❖ forced labour,

²⁸Transgender Persons (Protection of Rights) Act, 2019, Section 3.

²⁹Transgender Persons Act, 2019, Section 12.

³⁰Transgender Persons Act, 2019, Section 9.

³¹K. Misra, “Critique of the Transgender Persons Act,” *Economic & Political Weekly*, Vol. 55, Issue 2 (2020), p. 11.

- ❖ harassment, or
- ❖ economic exploitation of transgender persons.

However, penalties are relatively light (imprisonment of 6 months to 2 years), which activists argue is insufficient.³²

Transgender Persons (Protection of Rights) Rules, 2020

The Transgender Persons (Protection of Rights) Rules, 2020 provide procedural details for: issuing certificates, grievance redressal mechanisms, setting up welfare boards, creating transgender protection cells in every district.

Some states like Kerala, Tamil Nadu, Karnataka, and Maharashtra have more advanced welfare policies compared to others.³³

Welfare Schemes for Transgender Persons

Several welfare measures exist, though implementation differs across states:

Kerala's "Transgender Policy, 2015" offering housing, education support, and sex-reassignment surgery (SRS) assistance.

Tamil Nadu's Transgender Welfare Board providing ID cards, vocational training, and medical support.

Karnataka's reservation policy for transgender persons in government jobs.

National Portal for Transgender Persons (2020) for online certification.

Despite these positive steps, many transgender persons still struggle to access benefits due to bureaucratic barriers and social stigma.³⁴

ROLE OF MEDIA AND EDUCATION IN LGBTQ + AWARENESS

INTRODUCTION

Media and education plays a vital role in the thinking of the people in today's world. In India, due to old social beliefs people are not having knowledge about the LGBTQ+ community.

³²Transgender Persons Act, 2019, Section 18.

³³Ministry of Social Justice and Empowerment, "Transgender Persons Rules, 2020," Government Notification.

³⁴Meenakshi S., "State Policies and Transgender Inclusion," Journal of Gender Studies, Vol. 16 (2021), p. 84.

With the help of movies-and social media, people are slowly going o accept that every person deserves respect and equality. Schools and colleges also help in spreading awareness about the LGBTQ+ community.

MEDIA AND LGBTQ + AWARENESS

Media is one of the biggest weapon to change the public opinion. Indian movies and TV shows made fun of of LGBTQ+ people over the years. This has resulted in fear and misunderstanding in society.

Now, the situation is improving day by day.

1. Positive Role of Films and TV:

Many Movies showed that homosexual love in a very positive way.

Example: Shubh Mangal Zyada Saavdhan and Chandigarh Kare Aashiqui. Because of this now people can easily talk more openly about LGBTQ+ issues.

2. News and Social Media:

Court judgments, pride parades, and government policies relating LGBTQ+ right have been now discussed on news channels and on social media.

People share stories and messages supporting equality through hashtags like #LoveIsLove and #PrideMonth.

3. Need for Responsible Media

Some media show LGBTQ+ issues as jokes even if the awareness is growing.

The media should show facts accurately and promote respect and acceptance.

ROLE OF EDUCATION

Education helps to understand that every person in the society has equal rights under the Constitution of India. If schools and colleges contains issues regarding gender and sexuality, students will be able to learn and accept diversity.

1. Awareness in Schools and Colleges:

Schools can organize talks, workshops, and campaigns in order to teach students about equality.

1. Teacher Support and Training:

Teachers and counselors should be trained to guide LGBTQ+ students.

2. Inclusive Environment

Clubs and student groups can also promote understanding and support.

IMPACT OF MEDIA AND EDUCATION

Media and education can help to take away the fear and Misinterpretation. When movies, TV, and schools spread correct information, society becomes more open-minded.

In India, mostly people are talking about equality, love, and acceptance.

PROBLEMS FACED BY LGBYQ+ COMMUNITY IN SOCIETY

Even though the law in India has started recognizing the rights of LGBTQ+ persons, everyday life for many people in the community continues to be filled with discrimination and fear.³⁵ One of the most serious problems is the lack of acceptance from family members. Many individuals are forced to hide their identity because they fear emotional or physical violence, or complete rejection by parents. This pressure often leads to stress, depression, and low confidence, especially among young people who are still trying to understand themselves. Another difficulty is finding safe and stable employment. Many employers still hold prejudices and assume that LGBTQ+ persons do not “fit” into the workplace environment. As a result, they face unfair treatment, unequal pay, or even denial of job opportunities.

Public spaces also become unsafe for LGBTQ+ persons. Verbal abuse, harassment, and physical violence are common, especially for transgender persons who are easily identifiable. Housing is another challenge. Many landlords refuse to rent property to same-sex couples or transgender individuals, which pushes them into unsafe or unaffordable areas.³⁶ Access to healthcare is equally difficult. People fear mistreatment from doctors or nurses, especially when it involves sexual health or gender-affirming medical procedures.³⁷ All these barriers show that legal rights alone cannot solve the larger social problems faced by the LGBTQ+ community in India.

³⁵H. Khan, “Everyday Challenges of LGBTQ+ Persons in India,” *Journal of Social Inclusion*, Vol. 9 (2021), p. 33.

³⁶Human Rights Watch, “Violence and Discrimination Against LGBTQ Persons in India,” Report (2019), p. 18.

³⁷N. Singh, *Gender and Society in Contemporary India*, Sage Publications (2022), p. 141.

IMPACT OF SOCIAL MORALITY ON LGBTQ+ RIGHTS

Social morality in India is shaped by traditional beliefs, cultural values, and religious practices that have existed for generations.³⁸ These norms often define what behavior is “acceptable,” and unfortunately, anything that does not fit these norms is often criticized or rejected. LGBTQ+ persons are frequently judged based on these rigid ideas of morality. Many people believe that relationships must only involve a man and a woman, and they expect every individual to follow these traditional roles without question. When LGBTQ+ persons choose to live differently, society often sees it as a “threat” to cultural values rather than a simple expression of individual identity.

This mindset strongly influences how laws are created and interpreted. For many years, Section 377 remained in place because society viewed homosexuality as immoral.³⁹ Opposition to same-sex marriage still primarily stems from the idea that society is not “ready,” rather than from legal considerations. Although courts have acknowledged that societal morality cannot supersede the rights protected by the Constitution, public opinion continues to impede advancement. True equality can come only when constitutional morality fairness, dignity, and freedom becomes more important than outdated social norms.⁴⁰

ROLE OF FAMILY, SOCIETY AND CULTURE

Family plays a central role in Indian society, and its influence deeply affects LGBTQ+ persons. Many LGBTQ+ individuals grow up hearing that marriage, gender roles, and behavior must follow strict norms.⁴¹ When someone expresses a different identity or sexual orientation, families often react with shock or anger because they believe it will bring “shame” or “dishonor.” This fear of social judgement makes families pressure their children to conform, forcing many into heterosexual marriages or emotional isolation. As a result, LGBTQ+ persons often suppress their true identity for years.

³⁸RatnaKapur, “Social Morality and Constitutional Values,” NALSAR Law Review, Vol. 11 (2018), p. 72.

³⁹Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, Justice Indu Malhotra concurring opinion.

⁴⁰B. Rajagopal, Rights and Culture in India, Cambridge University Press (2020), p. 112.

⁴¹S. Menon, Family, Gender and Identity in India, Routledge (2021), p. 64.

Society also reinforces these pressures through schools, neighborhoods, workplaces, and religious spaces.⁴² Cultural beliefs that promote strict gender roles make it difficult for people to accept diversity. Transgender persons, in particular, face exclusion because society expects individuals to behave according to their assigned gender. Cultural change takes time, but small shifts are visible. Younger generations, especially in urban areas, show more openness and empathy towards LGBTQ+ persons.⁴³ Cultural representation in cinema, art, and literature has started highlighting lived experiences of queer individuals in a more positive way. However, acceptance is still uneven, and much work remains before LGBTQ+ persons can live freely without fear of judgement.

INTERNATIONAL VIEW: HOW COUNTRIES TREAT LGBTQ+ RIGHTS

Around the world, countries differ widely in how they recognize LGBTQ+ rights. Many nations have moved towards full equality, especially in marriage laws. Countries such as Canada, the United States, Germany, Spain, and Australia legally recognize same-sex marriage.⁴⁴ These nations also provide rights connected to adoption, inheritance, medical decisions, and social benefits. Their experience shows that recognizing same-sex marriage does not harm society; instead, it promotes inclusion and well-being.

In contrast, several countries in the Middle East, Africa, and parts of Asia still criminalize same-sex relationships.⁴⁵ In some places, punishments include imprisonment, violence, or even the death penalty. This shows how deeply cultural and religious beliefs influence the legal status of LGBTQ+ persons. There are also countries, like Japan, Thailand, and Nepal, that do not recognize same-sex marriage but provide some forms of civil partnerships or legal protections. India currently falls into this middle category where homosexuality is decriminalized, but marriage rights remain unavailable.

International human rights bodies such as the United Nations have repeatedly stated that LGBTQ+ rights are human rights. They have encouraged countries to remove discriminatory laws and ensure

⁴²“Understanding Social Pressure and LGBTQ Youth,” UNICEF India Report (2020), p. 21.

⁴³A. Bose, “Culture and Queer Identity in Modern India,” *Indian Sociological Review*, Vol. 17 (2022), p. 58.

⁴⁴Human Rights Campaign, “Marriage Equality Around the World,” *Global Report* (2022), p.

⁴⁵M. Fraser, *Global LGBTQ Rights: Trends and Challenges*, Oxford University Press (2019), p. 142.

equal treatment. Understanding global practices helps India evaluate its own progress and identify reforms needed to achieve full equality.

GOVERNMENT POLICIES AND NEEDED REFORMS

Government policies for LGBTQ+ persons in India have gradually improved, especially after major court judgments such as NALSA (2014)⁴⁶ and Navtej Johar (2018). However, most policies still focus on basic welfare rather than full equality. Some progress has been made, but many gaps remain.

The introduction of the Transgender Persons (Protection of Rights) Act, 2019⁴⁷ is one of the major steps taken by the Government. This law restricts discrimination in areas such as employment, healthcare, education, and housing. It also requires governments to set up welfare boards, provide schemes for skill development, and ensure that transgender persons receive identity documents. While the Act recognizes transgender persons, many activists argue that it does not fully reflect the Supreme Court of India's vision in NALSA. The requirement of a district-level certificate for gender identity is seen as a limitation on self-identification, which the Supreme Court had earlier recognized as a fundamental right.

Government bodies have also started welfare programs. The Ministry of Social Justice launched the SMILE Scheme (Support for Marginalized Individuals for Livelihood and Enterprise).⁴⁸ This includes shelter homes, skill training, and support services for transgender persons. Awareness campaigns have also begun to educate society and reduce stigma. However, these policies do not cover the entire LGBTQ+ community; they mainly focus on transgender persons, leaving issues related to sexual orientation largely unaddressed.⁴⁹

The absence of legal recognition for same-sex couples is one of the main policy obstacles.⁵⁰ Even after decriminalization, same-sex couples do not have marriage rights, adoption rights, or rights

⁴⁶National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

⁴⁷The Transgender Persons (Protection of Rights) Act, 2019.

⁴⁸Ministry of Social Justice & Empowerment, SMILE Scheme Guidelines, 2021.

⁴⁹ A. Dutta, *Gender, Law and Social Policy in India* (New Delhi: Oxford University Press, 2022), p. 102.

⁵⁰Supreme Court of India, *Supriyo @ Supriya Chakraborty v. Union of India, Marriage Equality Hearings*, 2023.

related to property, inheritance, and medical consent. The government, in its submissions to the Supreme Court during the 2023 Marriage Equality hearings, stated that only Parliament should decide on changing marriage laws. As a result, same-sex couples remain legally invisible, even though they are constitutionally equal.

There is a strong need for reforms that bring LGBTQ+ rights into mainstream law. These reforms may include:

- Civil unions and same-sex marriages are recognized legally.
- Laws that prohibit discrimination based on sexual orientation.
- Stronger implementation of the Transgender Persons Act.
- Sensitization training for police, teachers, medical staff and government officials.
- Inclusion of LGBTQ+ topics in school curriculums.⁵¹

These changes would shift the focus from welfare to equality. For India to truly follow constitutional values, policies must aim not only to protect but also to fully integrate LGBTQ+ persons into society.

FINDINGS, SUGGESTIONS, AND CONCLUSION

FINDINGS

1. The Indian judiciary has played an important role in providing justice for the LGBTQ + people by progressive interpretation of constitutional provisions of India.
2. The constitutional morality principle has been crucial in encouraging equality and non-discrimination among LGBTQ + people.
3. 3., societal acceptance and awareness remain limited in spite of having legal recognition in rural areas.
4. There is still no legislative framework for same-sex marriage, inheritance, adoption, and related family rights.

⁵¹Human Rights Law Network, Policy Gaps in LGBTQ+ Protection, 2021.

SUGGESTIONS

1. **Legislative Reforms:** Parliament should enact certain laws protecting the civil rights of LGBTQ+ people, involving marriage, inheritance, and their adoption rights.
2. **Awareness and Education:** Educational institutions and media should promote gender sensitivity and inclusivity to detach stereotypes and stigma.
3. **Employment Policies:** Both public and private sectors should adopt policies ensuring non-discrimination in hiring and workplace equality.
4. **Implementation of NALSA Guidelines:** The government should ensure full implementation of welfare schemes for transgender persons.
5. **Community Support:** Local governments and NGOs should establish support centres and counseling programs for LGBTQ+ individuals and families.

CONCLUSION

Despite the fact that "All human beings are born free and equal in dignity and rights," as stated in Article 1 of the Universal Declaration of Human Rights, LGBT people are among the numerous sexual minority who must endure the repercussions of severe

Our society is deeply ingrained with homophobic and transphobic attitudes, which lead to glaring injustices and discrimination. LGBT people experience widespread prejudice, harassment, exclusion, and violence in comparison to their non-LGBT peers.

Unexpectedly, homophobia and transphobia are not exclusive to third-world countries; even the wealthiest nations are not immune to prejudice toward LGBT people. The Southern Poverty Law Center, for instance, claims that "groups that demonize the LGBTQ community, in fact, were the fastest-growing category among hate

The journey of LGBTQ+ rights in India has been challenging, but judicial interventions have created a way towards equality and dignity among transgender. The courts have shown that the Constitution of India protects every person irrespective of their sexual orientation or gender identity.

However, legal recognition alone cannot achieve social justice. The real transformation will occur when society equally accepts the fact that everyone has their own rights and deserves equality and respect.