
BEYOND RIGHTS RECOGNITION: A SOCIOLOGICAL PERSPECTIVE ON INCLUSION IN THE NAVTEJ SINGH JOHAR V. UNION OF INDIA JUDGMENT

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ABSTRACT

The Supreme Court of India's judgment in *Navtej Singh Johar v. Union of India* (2018) case marked a critical turning point in the recognition of LGBTQ+ rights in India, by reading down Section 377 of the Indian Penal Code to decriminalize consensual same-sex relations between adults. This case shows not only a legal victory but also a broader social and constitutional transformation. Rooted in principles of dignity, privacy, equality, and liberty, the judgment reaffirmed that constitutional morality must prevail over majoritarian morality. The decision recognized sexual orientation as an intrinsic aspect of identity, acknowledged historical injustices faced by the LGBTQ+ community, and demonstrated the judiciary's counter-majoritarian role in safeguarding minority rights. At the same time, the case exposed the limitations of judicial reform, as decriminalization did not automatically extend to civil rights such as marriage, adoption, and inheritance, leaving substantive social justice incomplete. Beyond its immediate legal impact, the verdict catalyzed broader debates on inclusivity, equality, and the culture of positive criticality within Indian constitutionalism, highlighting the judiciary's role in reimagining social morality through constitutional values.

Keywords: Navtej Singh Johar v. Union of India; Section 377, LGBTQ+ Rights, Constitutional Morality, Transformative Constitutionalism, Socio-Legal Aspect, Positive Criticality, Social Justice, Inclusion.

Introduction:

The Supreme Court of India's Judgement in *Navtej Singh Johar v. Union of India* (2018) marked a pivotal moment in the recognition of LGBTQ+ rights in India it initiated a social change. The constitutionality of Section 377 of the Indian Penal Code (IPC), which criminalized "carnal intercourse against the order of nature", was challenged in this case. The five-judge Constitution Bench, in a unanimous decision, read down Section 377 of the Indian Penal Code (IPC) decriminalizing consensual same-sex relations between adults while retaining its application to non-consensual acts and bestiality. The Supreme Court reaffirmed the fundamental rights to dignity, privacy, and equality, marking a significant step towards LGBTQ+ rights in India. Giving importance to constitutional morality and by contradicting social beliefs, this case has established a huge change in society and helped to shape the thinking of the people.

Objective:

The objective of this study is to examine the landmark judgment of *Navtej Singh Johar v. Union of India* (2018) through a socio-legal lens, analyzing both its constitutional foundations and its social implications. It seeks to understand how Section 377 of the Indian Penal Code historically marginalized the LGBTQ+ community and how its decriminalization marked a significant step towards equality, dignity, privacy, and liberty. The study further aims to explore the principles of constitutional morality, transformative constitutionalism, and the judiciary's counter-majoritarian role in safeguarding minority rights against societal prejudice. At the same time, it critically assesses the limitations of the judgment, as the recognition of civil rights such as marriage, adoption, and inheritance remains absent. By highlighting the culture of positive criticality reflected in the Court's reasoning and its attempt to reconcile law with evolving social values, the study also evaluates the broader social impact of the verdict, including shifts in public attitudes, media representation, and community mobilization. Ultimately, the objective is to identify how far the judgment has advanced social justice and what further legal and social reforms are necessary to ensure full inclusion of LGBTQ+ individuals in India.

Analysis of the case:**Legal Aspects of *Navtej Singh Johar v. Union of India* (2018)**

The Navtej Singh Johar case represents a profound constitutional interpretation that fundamentally transformed India's legal landscape regarding LGBTQ+ rights. This encompasses constitutional provisions, judicial reasoning, interpretative doctrines, and the broader framework of transformative constitutionalism. The case was heard by a five-judge constitutional bench consisting of Chief Justice Dipak Misra, Justice A.M. Khanwilkar, Justice Rohinton Fali Nariman, Justice D.Y. Chandrachud, and Justice Indu Malhotra. Four separate judgments were delivered: one by Chief Justice Misra (supported by Justice Khanwilkar) and individual opinions by Justices Nariman, Chandrachud, and Malhotra. Despite different reasoning approaches, all judges reached the same unanimous conclusion regarding Section 377's unconstitutionality.

1. Central Legal Issue

The primary legal question involved determining the constitutional validity of Section 377 of the Indian Penal Code, 1860, specifically regarding its application to consensual sexual conduct between adults of the same sex in private. Section 377 criminalized "carnal intercourse against the order of nature" with punishment ranging from imprisonment for life to ten years, plus fines.

2. Constitutional Violations - Article 14 (Right to Equality)

Arbitrary Classification Test: The Court held that Section 377 violated Article 14 because it created an arbitrary classification without reasonable basis. The provision distinguished between heterosexuals and homosexuals based solely on sexual orientation, permitting consensual sexual acts between heterosexuals while completely prohibiting them between homosexuals. The Court found no intelligible differentia or reasonable classification between "natural" and "unnatural" consensual sex. The provision failed the twin test of constitutional validity: (1) the classification must have intelligible differentia distinguishing grouped individuals from others and (2) there must be a rational nexus between the differentia and the object sought to be achieved. The Court expanded the interpretation of "sex" in Article 15 to include sexual orientation and gender identity. Justice Nariman held that discrimination on the ground of sexual orientation was analogous to discrimination based on sex, which is explicitly prohibited under Article 15. The judgment referenced the NALSA case precedent where "sex" was interpreted to include gender identity and biological attributes. The Court recognized that Section 377 had a "chilling effect" on freedom of expression by denying individuals the right

to express their sexual identity through speech and choice of romantic/sexual partners. The provision violated the proportionality test under Article 19, as it was overly broad and captured protected forms of expression. The Court held that any display of affection among LGBT members in public cannot be restricted based on majority perception, provided it doesn't constitute indecency or disturb public order. Building on the Francis Coralie Mullin precedent, the Court held that Article 21 encompasses the right to carry on activities constituting self-expression. Section 377 was found to violate this provision by restricting the personal liberty of LGBT persons to engage in consensual sexual activities with partners of their choice.

Rather than striking down Section 377 entirely, the Court applied the doctrine of reading down to preserve constitutional validity. This interpretative technique allowed the Court to exclude consensual sexual conduct between adults from the provision's scope while retaining its application to non-consensual acts, acts involving minors, and bestiality. The Court determined that the unconstitutional portion (consensual adult same-sex conduct) could be severed from the constitutional portions without affecting the provision's core purpose of protecting vulnerable individuals. This approach avoided complete invalidation while addressing constitutional violations. The reading down approach demonstrated judicial restraint by preserving valid aspects of the legislation while eliminating only the constitutionally problematic portions.

3. Constitutional Morality vs. Majoritarian Morality

The Court emphatically rejected arguments based on popular or majoritarian morality, holding that constitutional rights cannot be subject to majoritarian whims. Chief Justice Misra stated that constitutional morality must prevail over social morality. The judges explicitly embraced the judiciary's counter-majoritarian function, emphasizing the duty to protect "discrete and insular minorities" from majority tyranny. Justice Nariman noted that fundamental rights exist precisely to place individual liberty and dignity beyond the reach of majoritarian governments. The Court grounded its decision in constitutional values of justice, liberty, equality, and fraternity, drawing from the Preamble and fundamental rights provisions. Constitutional morality was defined as morality derived from constitutional values rather than shifting social perceptions. Justice Nariman specifically held that pre-constitutional laws like the Indian Penal Code do not enjoy the presumption of constitutionality, as they were not enacted by democratic institutions. This reasoning distinguished colonial-era legislation from post-constitutional

statutory provisions.

4. Remedial Aspects:

The Court provided immediate relief by reading down Section 377, effectively decriminalizing consensual same-sex relationships. Justice Malhotra specifically stated that the judgment could be relied upon in all pending prosecutions under Section 377. The judgment explicitly overruled the Supreme Court's 2013 decision in *Suresh Kumar Koushal v. Naz Foundation*, which had upheld Section 377's constitutionality. The Court characterized *Koushal* as based on flawed reasoning rooted in majoritarian perception rather than constitutional principles. The decision significantly expanded the interpretation of fundamental rights, particularly privacy, dignity, equality, and liberty. This expansive approach has implications beyond LGBTQ+ rights for various civil liberties issues.

The *Navtej Singh Johar* judgment represents a landmark in Indian constitutional jurisprudence, demonstrating how transformative constitutional interpretation can effectuate social change while maintaining legal coherence through established doctrinal frameworks. The decision's comprehensive legal reasoning provides a robust foundation for continued expansion of civil rights and liberties in India.

Social Aspects of *Navtej Singh Johar v. Union of India* (2018)

The Supreme Court's 2018 ruling in *Navtej Singh Johar v. Union of India*, which decriminalized consensual same-sex acts under Section 377, was a turning point in the legal and social fabric of India. Prior to this decision, application of Section 377 was governed by coercive policing strategies rather than actual investigations: in many reported cases, police depended on confidential informants to detect meeting sites public parks, railway stations, dark alleys, and even NGO offices where gay men congregated. For instance, in July 2001, Lucknow police raided the office of Naz Foundation and Charbagh railway station, arresting four outreach workers and confiscating condoms, dildos, pamphlets, and video cassettes as "evidence" without any evidence of sexual activity. To counter the strong evidentiary burden of establishing penetrative intercourse, most arrests (at least 70 percent in reported cases) were based on staged entrapment operations. Police in January 2006 forced an accused, Nihal, to invite friends to a restaurant on false pretences; all of the guests were then arrested on suspicion of "unnatural offences," even though there was no witness or medical evidence.

After such arrests, victims often faced extortion officers requested money or sex in exchange for dismissing charges and public embarrassment. In a recorded incident in Mumbai, detainees were taken in police cars through crowded streets and had their names and addresses listed in local newspapers, perpetuating stigma and discouraging community cohesion. These instances show how Section 377 was more of a vehicle for harassment than a means towards justice, with the police using tactics of entrapment, false evidence, and coercion.

Navtej Singh Johar's decriminalization has had significant social consequences. LGBTQ+ individuals, once marginalized by law and policing, gained new confidence to mobilize pride marches, solidarity events, and legal campaign efforts across towns and cities. Media presentation of queer lives accelerated greatly, with mainstream movies, web series, and news channels depicting LGBTQ+ figures in sympathetic and realistic roles, in turn making the public more familiar and empathetic. In policy debate, decriminalization ushered in debates around anti-discrimination legislation, queer-inclusive healthcare, and the legalization of same-sex partnerships, marking a transition from contextual legal reform towards general civil-rights activism. In spite of all these developments, the legacy of police work under Section 377 entrapment, extortion, and public humiliation remains long and powerful, highlighting the importance of systemic changes in law enforcement training, mechanisms of accountability, and community policing practices to make the promise of equality inscribed in Navtej Singh Johar a reality in daily life.

Sociological Perspectives of the Case:

The Navtej Singh Johar v. Union of India judgment can be best understood through *Emile Durkheim's* typology of law also known as the Holistic School of Thought, distinguishes between repressive law and restitutive law. According to Durkheim repressive law dominates societies with mechanical solidarity, where conformity to tradition is strictly enforced through punishment, while restitutive law characterizes societies with organic solidarity, aiming at restoration and reconciliation in diverse, complex contexts. Section 377 of the Indian Penal Code a colonial import represented repressive law criminalized consensual same-sex relations and sought to enforce uniformity. The Navtej Johar verdict however, reflects restitutive law as it restored dignity, privacy and equality to LGBTQ persons aligning law with the principles of constitutional morality. Justice Indu Malhotra's acknowledgment that "history owes an apology" illustrates this restorative dimension.

In contrast, *Max Weber's* typology focused on the shift from traditional authority to rational-legal authority helps explain the judgment's reliance on constitutional principles rather than societal norms, but it offers little insight into the moral and reconciliatory aspects of the case. *Eugen Ehrlich's* idea of the "living law" which grounds legality in social practices, proves even less applicable if courts had followed prevailing social morality in India, Section 377 might have remained intact, perpetuating stigma. Thus, while *Weber and Ehrlich* offer partial insights, *Durkheim's* framework is most illuminating, showing how the law moved from punitive control to restorative justice and how law is a pre-condition for social living. The synthesis of these perspectives underscores that the Navtej Johar ruling not only dismantled a repressive colonial law but also demonstrated law's potential to challenge and transform social morality.

The Culture of Positive Criticality and Judicial Reform: Insights from the case

Navtej Singh Johar v Union of India is a landmark Supreme Court judgement which holds to be one of the most remarkable examples of the Indian Judiciary encapsulating a culture of positive criticality. The culture of law- a culture of positive criticality according to J.S. Gandhi is the refers to the ability of courts to critically examine existing laws and social traditions while constructively guiding society toward values of justice, dignity, and equality. In other words, it refers to the legal procedure and attitude of judiciary towards the constitution and the cases. The law is highly influenced by the needs and priorities of the people. The social values, beliefs and morals of the society are reflected in its laws. The law in fact is a codified version of morality. Instead of negating social morality entirely, the Court used constitutional principles to reframe morality in inclusive and rights-based terms. This culture insists that law and its interpreters engage in critical and constructive examination of traditional norms aiming not for mere novelty but for delivering justice and advancing the society.

The *Johar* verdict demonstrates positive criticality in action. The Supreme Court consciously refused to uphold Section 377 simply because it reflected majoritarian sentiment, opting instead for a rigorous constitutional review focused on dignity, equality, and autonomy. Right to privacy, transformative constitutionalism and constitutional morality formed the three fundamentals on which the judgement was constructed. This criticality was reflected in the opiated statements made by the Chief Justice and the Judges.

The court recognized that Section 377 of the IPC was a colonial imposition reflecting this

model's morality and not the Indian culture spirit. Chief Justice Dipak Misra asserted that *"Social morality cannot be used to violate the fundamental rights of even a single individual. Constitutional morality cannot be martyred at the altar of social morality."* When one uses the term constitutional morality, one refers to the meaning that, they shall bow down to the principles of the constitution and not act in any manner which would become violative of the rule of law of action in an arbitrary manner. Consti. Morality is a yardstick to ensure that the views of the majority do not affect the rights of the minority. Justice Fali Nariman echoed this spirit of positive criticality when he observed that *"persons who are homosexual have a fundamental right to live a dignified life and are entitled to be treated as a part of the society without any social stigma."* By linking this entitlement to the Preamble of India as a guiding torch, Nariman was not only critiquing the social stigma that marginalized LGBTQ community but also offering a constructive, constitutional framework for their inclusion. His statement illustrates how positive criticality operates: it challenges prejudice while affirming that dignity and equality must be realized through constitutional morality, ensuring that law does more than invalidate injustice, it actively reshapes society on inclusive terms. Justice in her concurring opinion made a powerful statement. *"History owes an apology to the members of the LGBT community and their families for the ignominy and ostracism that they have suffered through the centuries."* This embodies positive criticality because it does not only strike down an unjust law but also affirms and yields accountability to those causing harm to the victims. It transforms legal reasoning into a tool of healing and reconciliation. Lastly, Justice D.Y. Chandrachud highlighted how the Constitution plays a role in balancing individual rights with Social Transformation. *"The Constitution is a living document. The values which animate the Constitution cannot be frozen. They are to be applied to present conditions."* Here, the Court did not dismiss societal concerns outright but recognized that society must evolve. This cautious yet progressive stance is an example of constructive criticality affirming LGBTQ rights while leaving space for gradual social acceptance.

The Court's explicit rejection of prejudice, its embrace of constitutional morality, and the demand for apology to marginalized communities, together form a judicial practice deeply informed by positive criticality. In line with Gandhi's advocacy, judges acted not as passive transmitters of inherited norms but as active agents for justice critically interrogating law, recognizing systemic failure, and reconfiguring doctrines for greater social inclusion and equality. The Navtej Singh Johar judgment thus stands as a model for progressive legal change, emphasizing permanent openness to reflection and the pursuit of justice for all.

Victims and their protection:

Law, in its most fundamental sense, is not only a mechanism for resolving disputes but also a vehicle for advancing social justice. At its best, it protects the vulnerable, corrects historical wrongs, and ensures that equality is not just a theoretical promise but a lived reality. The Indian Constitution with its emphasis on dignity, equality and liberty, embodies this vision by placing the individual at the heart of governance. Yet, the effectiveness of law in delivering social justice depends on how courts interpret constitutional values against entrenched social prejudices. In the present case in hand, the decision of the Supreme Court reflects this transformative role of law. For decades, Section 377 of the Indian Penal Code criminalized consensual same-sex relations, reducing LGBTQ+ persons to perpetual victims of stigma, harassment, and legal invisibility. The judgement changed the narrative by recognizing that sexual orientation is an intrinsic part of identity and that to criminalize it was to strip individuals of dignity, autonomy, and equality. In this sense, the law, through judicial interpretation, finally stepped into protecting those long denied recognition. The verdict was rooted in constitutional morality rather than majoritarian opinion, signaling that fundamental rights cannot be contingent on social prejudice. Justice Indu Malhotra's statement that "history owes an apology" to the LGBTQ+ community was more than rhetoric; it was rare.

acknowledgement of systemic injustice. By striking down section 377, the court restored dignity to a marginalized group, showing how law can serve as an instrument of emancipation rather than repression. However, the judgement also highlights the limits of legal intervention as while it removed the threat of criminalization, it did not extend to civil rights such as marriage, adoption, or inheritance. Victim protection was achieved in the narrow sense of shielding individuals from prosecution, but substantive social justice remains incomplete. Members of the LGBTQ+ community continue to face rejection within families, bullying in educational spaces, and discrimination in workplaces. The law decriminalized their existence but has yet to fully integrate them into the social and legal fabric. As a result, Navtej Singh Johar stands both as a milestone and a mirror. It is a milestone because it dismantled an oppressive colonial law and affirmed LGBTQ+ persons as equal citizens entitled to dignity and autonomy and it is a mirror because it reflects how much more remains to be done through legislation, social reform, and attitudinal change to ensure that social justice requires more than judicial declarations; it demands sustained efforts to transform structures, institutions, and minds.

Conclusion:

The Navtej Singh Johar judgment stands as a milestone in India's constitutional journey, symbolizing the triumph of dignity, equality, and liberty over colonial-era repression and entrenched prejudice. By decriminalizing consensual same-sex relations, the Court dismantled an oppressive legal framework and restored recognition to a marginalized community long denied protection under the law. Importantly, the verdict reflected the judiciary's embrace of transformative constitutionalism, constitutional morality, and positive criticality, ensuring that fundamental rights are insulated from the vagaries of majority opinion. Yet, the judgment is also a mirror of unfinished struggles—it removed criminal stigma but did not confer full civil rights, leaving LGBTQ+ persons to confront discrimination in families, workplaces, and institutions. As such, Navtej Singh Johar is not an endpoint but a beginning: a call for continuous legal reform, legislative intervention, and societal attitudinal change. Its legacy lies in affirming that constitutional values are not static but living principles, guiding India toward a more inclusive and just democracy where equality is not aspirational but experiential.

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