
LGBTQIA + PRIVILEGES IN INDIA: PROGRESS POST- SECTION 377

Harshita Kashyap, Tezpur Law College, Guwahati University, Tezpur-784001, India

ABSTRACT

With the historic 2018 High Court ruling in *Navtej Singh Johar v. Union of India*, homosexuality was decriminalized in India, marking a significant shift in LGBTQIA+ rights. However, complete uniformity remains subtle even though Article 377 of the Indian Penal Code (IPC) was understood down, permitting lawful acknowledgment of same-sex relationships. This study examines the legitimate, social, and strategic advancements in LGBTQIA+ privileges since Section 377. It also highlights the ongoing challenges, such as the lack of rights related to marriage, reception, and cultural separation.

Keywords: High court ruling, *Navtej Singh Johar v. Union of India*, LGBTQIA, Article 377, Indian Penal Code.

INTRODUCTION

In India, LGBTQIA+ individuals have typically faced legal rejection, social disgrace, and criminalization. The frontier time Area 377 was upset when the High Court decriminalized consensual same-sex relationships in 2018 (Navtej Singh Johar v. Union of India. AIR 2018 SC 4321). Although this administration represented a victory for LGBTQIA+ rights, more progress is anticipated to ensure full communication. This essay explores the advancements, ongoing struggles, and implications for LGBTQIA+ rights in India after 2018.¹

WHAT IS SEC 377?

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal shall be punished," according to Section 377 of the Indian Penal Code.

This law, which dates back to the colonial era, conflicted with contemporary ideas of justice and human equality. Private, consensual homosexual sex between adults was also made illegal by Section 377. According to this section, even some heterosexual behaviors that are deemed "against the order of nature" are crimes. In a 2018 ruling, the Supreme Court declared that the application of this Section to consenting adult homosexuality was illogical, capricious, and unjustified. Following the decision, only bestiality, sex with minors, and non-consensual sexual acts are covered by Section 377. These offenses remain criminal in nature.

LEGAL POLICIES DEVELOPMENT POST-SECTION 377

The Indian judiciary has greatly aided the advancement of LGBTQIA+ rights. The Transgender Persons (Protection of Rights) Bill, 2016 was introduced by the Government of India in response to the Supreme Court's ruling in (National Legal Service Authority v Union of India 5 SCC 438),² which instructed the Central and State Governments to take various actions for the welfare of the transgender community and to treat them as a third gender to protect their rights under Part III of the Constitution. The Bill was approved by both the Lok Sabha and the Rajya Sabha.

When combined with Sections 3 and 21(1)(a) of the 2017 Act, the Supreme Court ruled in

¹ (Navtej Singh Johar v. Union of India. AIR 2018 SC 4321)

² (National Legal Service Authority v Union of India 5 SCC 438)

Navtej Singh (above) that Section 2(1)(s) of the Mental Healthcare Act, 2017, which defines mental illness, "throws to the winds" all prior preconceived notions about same-sex couples. The Court ruled that the 2017 Act's definition of mental illness clearly states that homosexuality is not a mental illness and that by enacting this clause, Parliament has categorically eliminated the stigma associated with mental illness in same-sex relationships.³ The Transgender Persons (Protection of Rights) Bill, 2019, The Indian Parliament passed the Transgender Persons (Protection of Rights) Act, 2019 to protect transgender people's rights and ensure their well-being. Anyone whose gender does not correspond with the gender assigned at birth is considered transgender, according to the Act. This includes trans-men, trans-women, people with intersex variations, gender queers, and people with socio-cultural identities such as kinnars and hijras.

The Supreme Court of India has given its verdict on its 2018 ruling for the companies to adopt inclusive policies. Workplace inclusion is our main focus at Inclusive Employers. Diversity, equality, and many other facets of our professional lives are all part of the broader culture of inclusion. Establishing a safe environment for LGBTQIA+ workers in the workplace is known as LGBTQIA+ inclusion. This does not imply that every LGBTQIA+ worker will decide to disclose to the group their gender identity, gender expression, or sexual orientation. Nor should you anticipate that. In a nutshell, inclusion means not fostering an atmosphere that keeps team members out. This entails giving every team member equal opportunities, speaking inclusively, and enforcing a zero-tolerance policy regarding homophobic or Trans's phobic conduct. The needs of LGBTQIA+ employees should be "fully integrated throughout all key systems and processes of the organization internally, visibly represented externally, and when leaders transparently include all aspects of diversity," according to the International Institute for Management Development.

SOCIETAL PROGRESS AND CHALLENGES

In India, public perceptions of LGBTQIA+ people have been steadily changing since homosexuality was decriminalized in 2018. This evolution, however, varies unevenly among various socioeconomic backgrounds, generations, and geographical areas. Even though younger people and urban areas are generally more tolerant, conservative social norms and

³(Deepansh Agarwal 2022)

ingrained biases still exist, especially in rural areas.

1. Greater Visibility and Awareness, Media Representation:

The way LGBTQIA+ characters are portrayed in popular movies, television shows, and ads has helped raise awareness of a range of gender identities and sexual orientations. In Indian pop culture, LGBTQIA+ relationships have become more accepted and stereotypes have been questioned by shows like *Made in Heaven* and movies like *ShubhMangalZyadaSaavdhan*.

- **Pride Movements and Social Media Activism:** As corporate sponsors and allies have become more involved, pride parades in cities like Bangalore, Mumbai, and Delhi have accelerated. Social media platforms have developed into effective advocacy tools that enable LGBTQIA+ people to confront discrimination and share their stories.

2. Shifting Social Acceptance and Family:

- **Parental Support Groups:** Sweekar-The Rainbow Parents is one of the new organizations that help families accept and support their LGBTQIA+ children. Still, a lot of people experience emotional or physical abuse, forced marriages, and rejection from their families⁴.
- **Intergenerational Differences:** LGBTQIA+ rights are generally more acceptable to younger generations, especially those who have been exposed to global cultural influences. On the other hand, older generations frequently find it difficult to accept non-heteronormative identities because they were raised with traditional beliefs and religious values.

3. Inclusion in the workplace and corporations:

- **Diversity and Inclusion Initiatives:** Several international and Indian businesses have implemented LGBTQIA+ inclusive practices, such as insurance benefits for same-sex partners, gender-neutral restrooms, and employee resource groups. Businesses like Accenture, Infosys, and Tata Steel have taken action to promote an inclusive workplace.
- Difficulties in Informal Sectors and Smaller Businesses: Despite advancements in

⁴ (chakraborty n.d.)

corporate India, LGBTQIA+ workers in smaller businesses and the unorganized sector still experience discrimination at work because there are no comprehensive anti-discrimination laws in place.

CHALLENGES IN FAMILY AND SOCIAL ACCEPTANCE FOR LGBTQIA+ INDIVIDUALS IN INDIA

LGBTQIA+ people in India still struggle greatly to be accepted in their families and society at large, despite growing awareness and changing public attitudes. Discrimination, emotional distress, and limited access to basic rights are frequently caused by the stigma attached to non-heteronormative identities.

1. Family rejection, forced marriages, and conversion practices:

- **Familial Rejection:** Many LGBTQIA+ people face disownment from their families after coming out.
 - Parents often view homosexuality or gender nonconformity as a "phase" or a "disease" that requires treatment, rather than as a valid identity.
 - In conservative homes, LGBTQIA+ children are confined, physically abused, and emotionally abused in an attempt to suppress their identity.
 - Homelessness and unstable finances result from some people being forced to leave their homes.
- **Forced Marriages:** Many LGBTQIA+ individuals, particularly those who were assigned female at birth, are compelled to enter heterosexual marriages to conform to societal norms.
 - Severe mental health conditions like suicidal thoughts, anxiety, and depression are commonly brought on by Honor-based violence, such as threats of harm or even murder, and are occasionally inflicted on those who try to resist.
- **Insufficient Awareness and Representation:** Stereotypes are frequently reinforced by the media's ongoing evolution in portraying LGBTQIA+ issues. Discussions about a

range of identities are hindered by the absence of sex education in schools. More family awareness and counseling initiatives are needed to inform parents, legal recognition of same-sex marriages, and stricter anti-discrimination legislation. More mental health support networks and workplaces that are welcoming to LGBTQIA+ individuals. Persistent advocacy and public awareness to normalize LGBTQIA+ identities in Indian culture are much needed. Even though there has been progress, a combination of social awareness, legal reforms, and cultural changes will be necessary for full acceptance.

- **Conversion Practices:** Some medical professionals, places of worship, and relatives continue to use conversion therapy, which makes exaggerated claims to "cure" LGBTQIA+ identities.
 - Techniques include hormone therapies, psychological counseling, and even physical abuse or exorcisms.
 - Conversion therapy was outlawed by the National Medical Commission in 2022, but enforcement is lax, and many survivors
- 2. Same-sex partnerships and marriages are not legally recognized.

2. Lack of Legal Recognition of Same-Sex Marriages and Partnerships:

Even though homosexuality was decriminalized by the Navtej Singh Johar ruling, same-sex unions and partnerships are still illegal, depriving LGBTQIA+ couples of fundamental rights.

- **Spousal Rights:** Because LGBTQIA+ couples are not allowed to legally marry, they are not entitled to the same rights as heterosexual couples, including financial benefits, hospital visitation, and medical decision-making authority.
- **Inheritance and Property Rights:** Partners do not automatically inherit property rights when there is no legal framework for same-sex unions. Even when a will is in place, it is frequently contested by family members who do not acknowledge the relationship; many LGBTQIA+ people are denied the right to live in their partner's home if their biological family does not acknowledge the relationship. Still endure suffering in silence.

➤ **Adoption and Parental Rights:**

- According to India's current adoption regulations, adoption is only permitted for heterosexual married couples or single people.
- Same-sex couples are not allowed to adopt children together, which prevents them from becoming parents.
- Discrimination against LGBTQIA+ parents occurs in assisted reproductive technologies and surrogacy as well.

➤ **Social Exclusion and Housing Discrimination:**

- One of the biggest issues facing LGBTQIA+ people is still finding safe and stable housing, particularly for those who have experienced family disownment.
- Discrimination in Housing and Rental: Many landlords deny LGBTQIA+ people, especially same-sex couples and transgender people, rental properties.
- Queer people are frequently denied residency in housing societies and gated communities due to "moral concerns" or pressure from conservative neighbors.
- LGBTQIA+ individuals may experience harassment even if they can find housing.

➤ **Lack of Shelters and Homelessness:**

Many LGBTQIA+ people who escape forced marriages or are disowned by their families wind up homeless. There is no government-backed nationwide support system for LGBTQIA+ homelessness, even though a few NGOs offer shelter homes for queer people. Transgender people, in particular, face significant challenges because many government-run shelters do not acknowledge their gender identity and force them into spaces that may not correspond with their lived gender.

➤ **Discrimination in Assisted Living Facilities:**

Many elderly LGBTQIA+ people who have lost their partners feel alone because they lack legal protections for cohabitation rights, and LGBTQIA+ elders have a hard time finding

inclusive retirement communities or assisted living facilities.

PRINCIPAL DISCRIMINATION AREAS

A. Hostile or inhospitable setting

LGBTQIA+ residents may feel uncomfortable or excluded because many assisted living facilities serve a primarily heterosexual and gender population. Additionally, staff or other residents may exhibit prejudice, which makes LGBTQIA+ people feel unsafe or alone.

B. Unfair Treatment or Refusal to Admit

Some institutions deny admission to same-sex couples or LGBTQIA+ people. Care that corresponds with a transgender person's gender identity may be denied to them.

C. Insufficient Cultural Competence in Healthcare

Many caregivers are not trained in LGBTQIA+ health needs which results in care that is insufficient or insensitive. People with HIV may experience stigma or be misinformed about their medical requirements.

D. Forced Re-Closing

Despite years of open living, many seniors who identify as LGBTQIA+ feel compelled to conceal their identities to prevent abuse. They frequently refrain from talking about their relationships or prior experiences out of fear of discrimination.

E. Restricted Legal Defenses

LGBTQIA+ people in elder care settings are not expressly protected by anti-discrimination laws in many nations. Because of their institutional or personal beliefs, facilities with religious affiliations may decline care.

THE LEGAL POSITION OF INDIA

Since the Juvenile Justice (JJ) Act of 2015 does not discriminate based on sexual orientation, single LGBTQIA+ people are permitted to adopt.

Adoption as a couple is prohibited for same-sex couples and unmarried partners. Guidelines issued by the Central Adoption Resource Authority (CARA). According to India's current adoption regulations, adoption is only permitted for heterosexual married couples or single people. Same-sex couples are not allowed to adopt children together, which prevents them from becoming parents. Discrimination against LGBTQIA+ parents occurs in assisted reproductive technologies and surrogacy as well.

Legal recognition of a "third gender" has existed in India since 2014, and the Parliament has passed a number of laws shielding intersex, transgender, Hijra, and gender non-conforming individuals from prejudice. However, because transgender people must register with the government, they are at risk of discrimination, stigma, and violence. The fact that trans experiences vary widely in India should not be overlooked. In India, for instance, the Hijra community, despite their marginalization, does have some visibility and support systems, but transgender women and men do not have the same degree of political visibility and mobilization. Additionally, even though a "third gender" is recognized by law, non-binary identity is not widely known in India outside of specific LGTBQIA+ communities and activist spaces. An easily translated equivalent of the non-binary is not available in Hindi. (FULBRIGHT India USIEF n.d.)⁵

- **Legal Reforms:** Permitting joint adoption rights and acknowledging same-sex unions.
- **Policy Changes:** LGBTQIA+ families must be covered by the policies of workplaces, hospitals, and schools
- **Advocacy and Awareness:** More people are aware of discriminatory laws and are challenging them in court
- **Support Systems:** Community programs and counseling for LGBTQIA+ parents and their kids.

AN INTERNATIONAL VIEWPOINT

The United States, Canada, the United Kingdom, Germany, and South Africa are among the many nations that permit same-sex couples or LGBTQIA+ people to adopt children. Some

⁵(FULBRIGHT India USIEF n.d.)

countries still forbid same-sex couples from adopting or only permit adoption by LGBTQIA+ single people. Compared to people in Eastern Europe, Russia, Ukraine, the Middle East, and sub-Saharan Africa, people in Western Europe and the Americas are generally more tolerant of homosexuality. Additionally, the public in the Asia-Pacific area is generally divided. This depends on a country's political and religious views in addition to its economic progress.⁶

CONCLUSION

The lack of social and familial recognition remains a major barrier to equity for LGBTQIA+ individuals in India, despite advancements in deceptibility and legal recognition. Legal reforms, mindfulness campaigns, and the establishment of strong, emotionally supportive networks are necessary to address these issues and ensure that individuals with eccentricities can live in safety and respect.

⁶(jacob poushter and Nicholas kent n.d.)