

# LGBTQ+ Rights Comparative Perspectives And Indian Legal Evolution

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**Abstract:** *The LGBTQ+ community has long been a part of ancient India. In many different parts of India, before the British Raj (British Empire), even in socially conservative societies, same-sex intimacy was seen as natural and was simply part of life. According to research by the Gay and Lesbian Vaishnava Association (GALVA), it was around 3102 B.C. (before the Vedic Age) that homosexuality or non-normative sexual identity was recognized as "Tritiya prakriti" or third nature. Back in the 3rd century B.C., the Koovagam Festival was born. It celebrated the story of Krishna taking the form of a woman to marry Aravan before the battle of Mahabharata. The festival continues even today and is the largest annual gathering of trans people in India.*

*In the British age, one particular man thought this law would help "modernize" India. Lord Thomas Macaulay, section 377, which stated that "whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal" would be punished with imprisonment or fines. This law, section had a huge impact which is lasting for many years not only in India but other Asian countries, which were prominently dominated by the British Rule. In 2018, India after many landmark judgements and cases, finally, decriminalised section 377 of IPC, which had no place in a democratic country.*

*Now in the 21st century India, still has not legalise same-sex marriage, even after decriminalizing section 377, there are still many prejudice, discrimination, violence against the LGBTQ+ community. There are law protecting Transgender Rights, as these are not enough. The despotic mentality of people against the LGBTQ+ community is very prominent and can be dangerous if more strict and proper laws are not introduced. This paper focuses on a comparative study of LGBTQ+ rights in India and other countries and what can be done to improve things on the legal perspective for the people of the community.*

**Keywords:** LGBTQ+, LGBTQ+ community, LGBTQ+ laws in India, History of India, Discrimination of LGBTQ+

## I. INTRODUCTION

LGBTQ+ community consists of Lesbians, Gays, Bisexuals, Transgender and Queer individuals. It often expands to LGBTQIA+ to include intersex, asexual and other identities. LGBTQ+ rights in India have expanded in the 21<sup>st</sup> century, although much of rights have come from judiciary and not the legislature. LGBTQ+ people face social and legal challenges even after laws and protection acts from the government. The Transgender Persons (Protection of Rights) recognizes the right of self-identity and new identification documents confirming the change can be issued by the government, once a certificate is provided by a proper medical official. Transgender citizens have a constitutional right to register themselves under a third gender.

The Secretary of United States of America, Hillary Clinton, in her speech to the United Nations on Human Rights in Geneva, Switzerland, on 6<sup>th</sup> December 2011, said that one of the current global human rights problems is preserving the equality and dignity of the LGBTQ+ community members. She claimed that since invisible minority human rights are under everywhere in globe, they required additional protection. Human Rights and LGBTQ+ Rights are related and



should be treated with same importance as both compromise of individuals. In India human rights and LGBTQ+ rights are not seen on an equal importance. The discrimination, violence, harassment, bullying, stigma, and rejection faced by the community is often ignored as many people of the community are afraid of the society, as there is no guarantee of people or how society will react.

Indian law regarding the LGBTQ+ has not seen any improvement since the decriminalization of section 377. Before 2018, some victories can be seen such as, in 2017, Mental Healthcare Act, the Court held that present definition of mental illness as per the 2017 Act makes it clear that homosexuality is not a mental illness and with this provision, the Parliament has unequivocally removed the stigma of mental illness attached to same-sex couples.

## **II. METHODOLOGY**

The research methodology that will be employed in the present study is secondary research methodology. Secondary research methodology is based on the collection and analysis of the already available data. The data for the present study has been collected from various reliable secondary sources such as Wikipedia, articles, journals, books, research papers, and online data. The secondary research methodology will allow the researcher to have an in-depth knowledge of the historical development of the rights of the LGBTQ+ community and the discrimination faced by the community in Indian society.

The research methodology that has been utilized in the study is based on the doctrinal and descriptive study of legal provisions, including constitutional provisions, legislation, and landmark judicial decisions. Important cases, including Navtej Singh Johar v. Union of India (2018), in which LGBTQ+ relationships have been decriminalized, have been studied in detail in order to assess the development in LGBTQ+ rights in India.

Further, academic research and research papers have been studied in detail in order to assess the nature and extent of discrimination faced by LGBTQ+ members in areas including employment, healthcare, education, and social acceptance. This has helped in understanding the nature and extent of discrimination faced by LGBTQ+ members.

The information gathered has been studied, compared, and interpreted in detail in order to arrive at a clear and comprehensive understanding of LGBTQ+ rights in India. This research methodology has helped in undertaking an in-depth and analytical study on the topic without undertaking any primary research.

## **III. DISCUSSION**

### **LGBTQ+ laws in other countries:**

A comparative study between India and other developing countries and developed countries regarding laws and protection acts can be discussed further. The Netherlands became the first country in the world in 2001 to allow same-sex marriages. This was historically significant adoption that aimed to raise the realisation of the importance of human rights in Europe and globally. Same-sex couples may also legally be recognised civil partnership and children maybe be adopted by homosexual partners. Prejudice and bias is forbidden as per the General Equal Treatment Act (GETA).

Taiwan, became the first country in 2019, from Asia-Pacific, to allow homosexuals and lesbians to be married. The same-sex marriage legislation was modified in 2023 to allow same-sex couples to adopt children.

Thailand, began performing and recognizing same-sex marriages on 23 January 2025. Thai opinion polls have consistently favoured legal recognition of same-sex marriages. Along with granting same-sex couples the same rights as heterosexual couples in other areas, including marriage, healthcare consent, inheritance, and marital tax savings, the bill will also let same-sex couples adopt children.

### **Discrimination faced by the LGBTQ+ community in India:**

In India, a rich history we are so proud to embrace and showcase to the world, people need to understand that LGBTQ+ individuals are not a foreign concept “threatening to ruin our values and morals”. According to a UNESCO report of 2018, LGBTQ+ children face bullying in schools, colleges, etc. this act of bullying and discrimination leaves a permanent scar in their life. There is still Secret Honour Killings, Rapes, etc happening to individuals from the



community, in order to “fix” them. People from the community are unable to get jobs, and thus are stuck in a vicious cycle of poverty.

In India, assault on women who recognise as LGBTQ+ is a serious but frequently unreported problem. Because of ingrained social stigma, patriarchy, and a lack of acceptance of various sexual orientations and gender identities, women who identify as lesbian, bisexual, transgender, or queer often face violence. When their sexual orientation is revealed, many LGBTQ+ women experience physical abuse, emotional harassment, forced marriages, and imprisonment. Families frequently try to “correct” or repress their identities, which causes social isolation and psychological trauma.

LGBTQ+ women may experience physical and sexual abuse from partners, friends, or strangers in addition to pressure from their families. Lesbian and bisexual women are occasionally the victims of “corrective rape,” in which the perpetrators try to coerce them into acting in a heterosexual manner. Due to prejudice against their gender identity, transgender women are frequently experiencing harassment, assault, and discrimination in public places, the workplace, and housing.

#### **IV. CONCLUSION**

India is a diverse country which holds so many cultures and emotions of people. India needs more robust and inclusive laws that specifically forbid discrimination on the basis of gender identity and sexual orientation in order to improve the situation. Equal treatment under the law would also be ensured by legal recognition of same-sex partnerships, marriage equality, and adoption rights. Policies must also prioritize safeguarding LGBTQ+ people from violence and harassment by improving enforcement strategies and providing clearer legal recourse.

Enhancing the application of current laws through police training, judicial sensitivity, and awareness campaigns that encourage respect for diversity is another crucial step. Education and awareness campaigns must go hand in hand with legal reform because social attitudes frequently affect how laws are implemented.

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