



PROTECTION OF LGBTQ RIGHTS: AN ANALYSIS OF LEGAL FRAMEWORK IN INDIA

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Abstract

This study examines the effectiveness of existing legal measures in India that are designed to protect the rights of the LGBTQ community, assessing their practical implications. This analysis delves deeper into the ramifications of recent legislative modifications on the preservation of LGBTQ rights within the nation, providing valuable perspectives on the progressive legal terrain. The article investigates the difficulties and deficiencies inherent in the current legal structure, illuminating domains that necessitate scrutiny and revision. The report concludes with an analysis of the crucial significance of judicial decisions in furthering LGBTQ rights in the Indian legal system. After conducting an extensive examination, the research concludes by underscoring the imperative for ongoing endeavours to fortify legal safeguards and guarantee parity for the LGBTQ community in India. This requires acknowledging the ever-changing environment while simultaneously confronting enduring obstacles.

Keywords: LGBTQ rights, Indian legal system, Judicial Decisions, Legal Measures for LGBTQ Protection etc.

1. INTRODUCTION

For LGBTQ people, sexuality has always been a contentious theme, from the dawn of human civilization to the period of modern liberal democracy. We run into trouble when we try to talk about sexual orientation neutrally in the context of individual liberties and equal chances. When compared to the normative members of society, some groups of individuals stand out due to their sexual behaviour and customs. The answers to a number of problems stemming from the simple reality of being unique are still elusive and unproven. Since they are a minority in comparison to the majority, LGBTQ people have always had to contend with concerns like these and the stigma that comes along with them. The LGBTQ community is growing all over the globe, in countries as diverse as India, the United States, Britain, China, Japan, and others. India immediately comes to mind as the country with the greatest religious and cultural diversity in the world, a place where ancient traditions have survived into contemporary times.

The presence of Hizars and other homosexuals is not a recent discovery in India; archaeologists have discovered evidence of their existence dating back to ancient times. The identities of the heterosexual, gay, and bisexual, including the transgender, are not fixed categories. All of these things have to do with people's various lifestyles, such as their interactions with others in public, their emotional and psychological makeup, and their working

practises. Homosexuality has been present in India for unknown amounts of time, but it wasn't until the first issue of Bombay Dost (a gay magazine) was released in 1980 that anyone spoke out about it. Sakhi, an organisation of lesbians, has spoken out against the ongoing abuse of their rights in this case. In today's society, transsexual people are given the same options as any other sexual orientation. Therefore, it is stated that regardless of one's gender identification, gender expression, or sexual orientation, everyone is deserving of respect and protection under international human rights law. After the independence, to regulate the sexual behavior between Indian citizens many legislations were enacted by the Indian Parliament like, "Hindu Marriage Act, 1955, Special Marriage Act, 1954, Indian Christian Marriage Act, 1872, Child Marriage Restraint Act, 1929," and the likes, which allow and disallow too, the satisfaction of one's sexual desire in lawful and prescribed manner and natural manner. The Indian Penal Code, 1860 control the extra marital sex and forced sex by punishing it under Sections 354, 355, 375 to 377, 493 to 498 of the code. However, despite these severe penalties, rape and sodomy crimes continue to rise. Teenage pregnancies have disturbed the country's social, philosophical, and religious thinkers because of the influence of Western culture and civilization, which has long dominated and continues to dominate our culture. People with a lustful and cruel nature abuse the rights to equality, freedom, and religion to have sexual encounters however, they like, regardless of the consequences to themselves, others, or the law.

1.1 Historical background of LGBT

The history of LGBT history to the essential recorded instances of people having similar sex affection and sex of old human advancement, including the verifiable setting of 'Lesbian', 'Gay' having pleasure and 'transgender' (LGBT) society and social orders far and wide. What gets by after various time of misuse—achieving disrespect, disguise, and riddle—has simply in later decades been looked for after Asia the Hijra are a station of third-sexual direction, or transgender social event that live a cultured occupation. Hijra may be brought into the world male sex, and some may have been brought into the world female.¹³In India Homosexuality is a topic of conversation since antiquated occasions to present day times. Hindu writings had taken positions with respect to the gay characters and topics. The antiquated Indian content Kamasutra composed by Vatsanya Devotes a total part on sexual gay conduct. Authentic scholarly proof shows that homosexuality has been pervasive over the Indian subcontinent from the beginning of time.

1.2 Exploring Sexual Orientation and Identity

In it is important to define some key concepts before discussing sexual orientation and gender identification. Frequently people use the term LGBTQ that means "lesbian", "gay", "bisexual" "transgendered", "transsexual" in describing one's sexual orientation. LGBTQ Community also known as Sexual Minority. LGBTQ persons are also sometimes referred to as the "Queer Community" or the "Rainbow Community". Here are the definitions of the terms.

- **Lesbian:** Lesbians are women who identify as gay: a woman who has romantic feelings for or sexual inclinations towards other women.
- **Gay:** The term "gay" is most often used to describe homosexuals or homosexuality. The term "gay" is commonly used to refer to male homosexuals, but it is also sometimes applied to lesbians.

- **Bisexual:** Bisexuality include feelings of romantic interest, sexual interest, or sexual behaviour towards both males and females, as well as feelings of romantic interest in or sexual behaviour with people of any sex or gender identity.
- **Transgender:** A transgender person is one whose gender identity does not correspond with the gender they were assigned at birth. The abbreviation “trans” is commonly used to describe this phenomenon.
- **Transsexual:** Feel uncomfortable with their assigned gender or have a gender identity that is not shared by their culture.
- **Intersex:** Intersex is a condition in which a person does not clearly exhibit male or female genital or chromosomal traits.
- **Queer:** The term “queer” is used to describe people who identify as a sexual orgender minority but who are neither heterosexual nor cisgender. The term “queer” was once a derogatory term for persons who desired the same sex as themselves, but since the late 1980s, queer scholars and activists have been reclaiming the term.

1.3 Constitutional, Legal Measure and Governmental Policies Related To LGBT Community

✚ Article 14 of the Indian Constitution

Article 14 of the constitution of India stated that —“The State will not deny to any individual balance under the steady gaze of the law or the equivalent assurance of the laws inside the domain of India.”¹⁴ Article 14 of Indian Constitution Explained-one of the most important guarantees from our constitution is to be treated equally, or the right to equality in the country. It might seem pretty simple and basic but believe me, without this right, we would have a whole different society. There will be a chance of a state of chaos and possibly anarchy in every little aspect of life. Here, state refers to the country which includes all the states and union territories in it. A simple meaning of the above statement can be that all are equal in the eyes of the law or everyone will be treated equally. However, the phrases ‘equality before the law’ and ‘equal protection of the law’ refers to two different aspects. At first glance, I think it might be clear that the second phrase, that is, "equal protection of the law" seems positive. I mean, it provides a sense of security and rightly so. It means equality of protection by the law under similar or equal circumstances. This means that treatment for a particular activity can be different for individuals placed in different groups which means preference can be given to one and not to other taking account of their conditions.

✚ Article 15 of Indian Constitution Explained

The main point of this article is that ‘the state shall not discriminate against any citizen on grounds only of religion, race, caste sex, places of birth or any of them’¹⁶ The statement is pretty much self-explanatory but it also means that the state can however discriminate on some other bases such as making special provisions for backward classes or scheduled castes and tribes as seen fit by the state. The state is also free to make any special provisions for women and children which might help and benefit towards their overall best interests. The article also states that no one will be denied access to any public service or place such as shops, public entertainment places, public hotels etc.

✚ Article 19

Is a British human rights organization with a specific mandate and focus on the promotion of freedom of expression and freedom of information worldwide founded in 1987. The organization takes its name from Article 19 of the Universal Declaration of Human Rights, which States, “Everybody has the privilege to opportunity of assessment and articulation; the privilege incorporates opportunity to hold sentiments without obstruction and to look for, get and confer data and thoughts through any media paying little heed to boondocks”

✚ Activities

Article 19 monitors threats to free expression around the globe; lobbies governments to adopt laws that conform to international standards of freedom of expression; and drafts legal standards that strengthen media, public broadcasting, free expression, and access to government-held information. The Law Programme also produces legal analysis and critiques of national laws, including media laws. In addition, Article 19 intervenes in cases of individuals or groups whose rights have been violated; and provides capacitybuilding support to non-governmental organizations, judges and lawyers, journalists, media owners, media lawyers, public officials and parliamentarians.

✚ Article 19¹⁷

everyone shall have the right to hold opinions without interference. Everybody will reserve the option to opportunity of articulation; this privilege will incorporate opportunity to look for, get and confer data and thoughts of numerous types, paying little mind to outskirts, either orally, recorded as a hard copy or in print, as craftsmanship, or through some other media of his decision. The activity of the rights accommodated in passage of this article conveys with it uncommon obligations and duties. It might in this manner be dependent upon specific limitations, however these will just be, for example, are given by law and are essential (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals.

1.4 Objective of the study

1. To evaluate the effectiveness of existing legal provisions in India for safeguarding LGBTQ rights.
2. To examine the impact of recent legislative changes on the protection of LGBTQ rights in India.
3. To investigate the challenges and gaps within the legal framework concerning LGBTQ rights in India.

2. LITERATURE REVIEW

Bharat Mehraa et.al (2016) shows cases the meaningful role of the library and information science professions in potentially shaping community-wide progressive changes to address the information needs and expectations of underserved populations who are marginalized owing to conservative laws, policies, practices, and politics. It also adopted an innovative strategy in library circles and human rights research of examining online news articles to explore the relevance of the information found in the news covered related to the adoption of an archaic law denying equal rights for sexual minorities in India.

Dr. Pankaj Choudhury et.al (2021) investigate India is a democratic country, and its citizens have certain rights guaranteed by the Indian Constitution. Equal rights, non-discrimination based on religion, race, caste, gender, or place of birth, freedom of speech and expression, and protection of life and individual freedom are guaranteed by “Articles 14, 15, 19(1)(a), and 21” of the Constitution. Nonetheless, despite the fact that the Supreme Court of India decriminalised the behaviour in the case of Navtej Singh Johar v. Union of India in 2018, section 377 of the Indian Penal Code 1860 criminalises consensus homosexuality.

Anthony J. Langlois et.al (2020) discusses discuss how the use of LGBTQ rights claims highlight the need for critical theoretical approaches to human rights. It considers the politicized and sometimes antithetical use to which the newly accepted discourses of LGBTQ rights are put in the foreign policies of states and the behaviour of other international actors. It examines how the practice of gay rights by states and other agents can be caught up in a politics which undermines their emancipatory impetus.

Purnima Khanna (2022) showed that the Indian Constitution essentially provides a fundamental right to equality under Article 14, whereas Articles 15 and 16 outline that no one shall be discriminated on the ground of sex. Also, the Indian judiciary had decriminalized Section 377 of the Indian Penal Code, considered as part of landmark judgments that recognize transgender people as a third gender. India also enacted the Transgender Protection Act 2019 to ensure the rights of transgenders.

Kevin L. Nadal (2019) Though the Supreme Court of the U.S. legalized same-sex marriage in 2015, heterosexism and transphobia has continued to manifest through many systems in the US — from lack of federal protection in employment non-discrimination laws to polices that prohibit transgender people from using bathroom and public facilities that match their gender identities. Heterosexist and transphobic discrimination have also persisted through interpersonal interactions — ranging from more overt forms (e.g., hate crimes, bullying) to more subtle forms of discrimination, otherwise known as microaggressions.

Akhil Sankhyan et.al (2022) looks at the long struggle of LGBTQ Community for basic Fundamental Rights and the Discrimination they face in different spheres of life with special reference to Transgender people and Judicial Pronouncements. The paper finally analyses the road ahead for the LGBT Community and what further legal and social changes are needed for LGBT individuals to gain full acceptance and equality within the conservative Indian society.

Nausica Palazzo (2022) investigate According to the OSCE, contemporary threats to security are more likely to arise from causes other than armed conflicts. The OSCE considers the list of potential security threats open and able to intersect the military, economic, and “human sphere.” Yet, how open is this list and how open should it be? This paper tackles this question by examining the issue of whether discrimination and intolerance against LGBTQ populations can be considered a security threat that pertains to the human dimension of security. The current conflict in Ukraine illustrates the dangers of an expansive approach to framing security.

Shamayeta Bhattacharya (2022) Studied the amendments to the Transgender Persons (Protection of Rights) Act of India in 2019 address non-binary persons’ constitutional rights, recognition of their gender identity, and non-discrimination laws across institutional spaces (for example, family, workplace, education, and healthcare). The

Act discusses legal rights in isolation of praxis, structural support and, more importantly, lacks guidelines needed to substantively access rights. Such a disconnection relegates human rights to merely legal changes with limited practice. In this article, we discuss the achievements and failures of the act from the perspective of a transgender community in India, and the impact it has had on their lives from its formulation in 2014.

Erin A.Cech et.al (2018) found that LGBTQ students face greater marginalization, devaluation, and health and wellness issues relative to their peers, and that these health and wellness inequalities are explained in part by LGBTQ students' experiences of marginalization and devaluation in their engineering programs. Furthermore, there is little variation in the climate for LGBTQ students across the eight schools, suggesting that anti-LGBTQ bias may be widespread in engineering education.

Mr. Shankar Banerjee et.al (2022) examine the year 2014 is memorable for the members of Lesbian, Gay, Bisexual, Transgender, Queer and Intersex community as the Apex Court delivered a landmark judgement in the case of National Legal Services Authority of India (NLSA) Vs Union of India (2014). By virtue of this judgement, the Central Legislature was compelled to draft a comprehensive legislation namely The Transgender Persons (Protection of Rights) Act, 2019.

Lauren B. McInroy et.al (2019) investigates: (1) messages about sexual orientation and/or gender identity LGBTQ emerging adults receive from LGBTQ representations in traditional media; (2) potential differences in the experiences of LGBTQ emerging adults with traditional media compared to new media; and (3) how consumption of these media messages impact LGBTQ emerging adults. Results indicate that while traditional media (particularly television) creates a common dialogue and validates identity, it continues to represent LGBTQ people as one-dimensional and stereotypical, ignores many LGBTQ sub-groups, limits LGBTQ young people's perceptions of their future trajectories, and offers no opportunities for critique. In contrast, emerging new media offers new, important, and valued spaces for discussion and creativity.

Francis Kuriakose et.al (2020) determine the question of LGBT rights was first examined as part of gender and sexuality studies in the 1980s, predominantly in the United States. This was a result of the LGBT movement that had articulated the demand for equal rights and freedom of sexual and gender minorities a decade before. Since then, the examination of LGBT rights has traversed multiple theoretical and methodological approaches and breached many disciplinary frontiers.

John A. Gould et.al (2015) examines Serbian ethno-nationalists have long used homophobia to marginalize political dissent and legitimize their claim to power. Effectively accepting this traditional narrative, the 1990s prodemocracy movement pursued a broad social coalition to challenge authoritarian president Slobodan Milošević. Only international actors supported LGBTQ issues, but this backing had the contrary effect of associating the nascent LGBTQ movement with "foreign interests." Nonetheless, activists slowly built organizational capacity, and capitalized on the pro-EU political shift in the late 2000s.

Cai Wilkinson et.al (2017) explores the debates and trajectories of LGBT rights in Southeast Asia from four different perspectives in order to assess not only the overall state of LGBT rights in the region, but also to consider how further progress towards meaningful protection of LGBT rights can be achieved.

Ananya Singh (2023) analyses the legislative advances and judicial judgments that have affected the nation's path toward LGBTQ++ equality, with an emphasis on the historic judgment that overturned Section 377 of the Indian Penal Code. Furthermore, it assesses the present lawful structure with the comprehensive examination and review of LGBTQ++ rights and discrimination in India, assessing the progress achieved the ongoing problems that obstruct complete protection under the law and social inclusion, and the route forward for the community to achieve real equality and inclusiveness. The research explores media portrayal and its impact on popular opinions regarding LGBTQ++ rights, highlighting the media's role in shaping societal perspectives.

Violet Lhant et.al (2019) examine the role of LGBTQ diplomacy among individual states. Case studies of Brazil, the United Kingdom and the United States demonstrate that LGBTQ rights often remain at the whims of domestic politics and can be endangered even following positive gains. This analysis explores the variability of support for LGBTQ rights internationally as well as the vulnerability of support even where LGBTQ rights have previously been established.

Jennifer Ung Loh (2018) examines how transgender rights are being granted in the context of the neoliberal, Hindutva state and considers which forms of transgender identity are currently being conceptualised as legitimate and authentic in such discourses, which can serve to bolster larger rightwing visions and ideologies of the nation and its citizens. It contemplates the ways in which gender 'justices', framed in relation to both transnational LGBT rights discourses and right-wing agendas, are conceptualised and played out on the bodies of sexual and gender minorities.

Diana Margarit et.al (2019) presents seeks to understand the dynamics between the LGBTQ groups, the conservative responses and the articulation of each other's strategies and tactics based on the opportunities created by both contenders. By analysing the history of their opposition, the international context dominated by a populist and nationalist narrative and the domestic synergies within society, it demonstrates that the intense debate on the referendum should be understood as a critical turn in the evolution of the LGBTQ rights.

Barbaros Sansal et.al (2021) provides the experiences of LGBTQ individuals who have been subjected to discrimination, physical abuse, and death in Turkey within the context of Turkey's attitudes towards LGBTQ members. This chapter narrates the story of Ahmet Yıldız, who is believed to have been killed by his father because he was gay; Hande Buse Seker, a sex worker, shot by a police officer who was a client of hers; and Hande Kader, a gay activist who was subjected to police violence and burned to death during the march of honor in 2015.

Laura keeley (2018) considers the idea that potential religious liberty claims could be made by faith-based communities to provide sanctuary. It pays particular attention to potential unintended consequences those claims could have for reproductive and LGBTQ rights. This note proposes that any religious liberty claims made in the name of sanctuary should 1) be evaluated in the domain of antidiscrimination law and not analogized to much broader "conscience clauses"; 2) advocate for a narrower construction of religious liberty jurisprudence and religious liberty-protecting statutes; and 3) push courts to evaluate the sincerity of sincerely held religious belief

2.1 RESEARCH GAP

The study explored the legal framework concerning LGBTQ rights in India; there is an urgent requirement for comprehensive inquiries into the actual enforcement and implementation of these legislations in practise. The experiences of LGBTQ individuals in navigating legal protection and their encounters with societal biases and discrimination have received scant attention. An area that has received insufficient attention is the comparative examination of LGBTQ rights across various Indian states, taking into account the divergent approaches to policy enforcement and societal reception. In order to rectify these gaps, forthcoming investigations ought to prioritise empirical studies that scrutinise the efficacy of legal protections and their tangible consequences for the LGBTQ community. Such studies should take into account regional discrepancies within the nation, thus furnishing a more holistic comprehension of the obstacles and prospects pertaining to LGBTQ rights in India.

CONCLUSION

In summary, our examination of the legal structure in India concerning the safeguarding of LGBTQ rights has unveiled advancements as well as enduring obstacles. By means of an exhaustive evaluation, we aimed to accomplish a number of goals: ascertain the efficacy of current legal provisions, scrutinise the consequences of recent legislative modifications, explore the obstacles and deficiencies within the legal structure, and scrutinise the influence of judicial rulings in furthering the protection of LGBTQ rights. The results of our study indicate that although India has made notable progress in acknowledging and protecting the rights of the LGBTQ community, there are still substantial deficiencies that impede the complete fulfilment of these rights. Undoubtedly, significant progress has been made with regard to legislation, most notably the decriminalisation of homosexuality. Despite this, the LGBTQ community continues to encounter prejudice and social disapproval. Adoption rights, healthcare access, and discrimination are just a few of the issues that require a more comprehensive legal framework, despite the fact that judicial decisions have been instrumental in advancing LGBTQ rights. Hence, our analysis emphasises the criticality of ongoing endeavours to bolster legal safeguards and societal approval for the LGBTQ community in India, thereby guaranteeing the preservation and esteem of their inherent dignity and fundamental rights.

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