

# LGBTQ+ Rights and Protection in India: A Critical Analysis of Criminal Justice Responses and Institutional Barriers

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## Abstract

Due to progressive court judgments and development of constitutional interpretation, the status of LGBTQ+ rights has gradually been changing in India, with courts applying principles of equality, dignity and liberty to concepts of sexual orientation and sexual identity in their judgments. Despite these developments, the level of practical protections for LGBTQ+ persons remains low in most areas, particularly in the criminal justice system.

In this article, the criminal justice system in India regarding crimes against the LGBTQ+ community is discussed. It is claimed that despite legal and social recognition of rights of LGBTQ+ persons, discrimination, stigma and bias prevail in everyday life. Police forces are not sensitized. Police harassment, abuse of power and denial of lodging complaint are common when the complainant is an LGBTQ+ person. Many cases of violence and abuse go unreported as a result.

The report also identifies specific institutional barriers, including the absence of thorough anti-discrimination laws, ineffective policy implementation, lack of understanding by legal and administrative authorities, and social attitudes that influence institutional dynamics. It highlights the impact of these barriers on the access to justice for marginalized groups.

The law provides a useful framework, but in the absence of enforcement and institutional accountability, these gains are unlikely to be realized. Efforts will need to be made, jointly with legislative reforms, to ensure greater awareness and sensitization within the criminal justice system and ultimately greater acceptance within society of LGBTQ+ peoples.

We need to keep working to close the gap between legal rights and how they are actually put into practice. To protect the rights and dignity of LGBTQ+ people in India, it is important to make sure they are treated fairly, that institutions respond better and that society accepts them more.

**Key Words:** LGBTQ+ rights, constitutional interpretation, equality and dignity, criminal justice system, police sensitization, discrimination, institutional barriers, access to justice, anti discrimination laws, social stigma, legal enforcement, India, human rights, legal protection, and policy implementation.

## 1. Introduction

LGBTQ+ is a term used for people whose sexual orientation or gender identity is different from what society usually considers ‘normal’<sup>1</sup>. It includes lesbian, gay, bisexual, transgender, and queer individuals, along with many other who don’t fit into fixed labels. Everyone experiences identity in their own way. Some people are attracted to the same gender, some to more than one and some may not feel attraction at all. In the same way, not everyone identifies strictly at male or female – some people feel their gender is different from the when they are assigned at birth, or somewhere in between. For a long time, people in the LGBTQ+ community have face judgment, discrimination, exclusion<sup>2</sup>. Many had to hide who they really were just to feel safe. But things have slowly started to change. More people are speaking up, awareness is growing and losses in many countries are becoming supportive.

Even today, acceptance is not the same everywhere, and challenges still exist. But the idea behind the LGBTQ+ movement is simple: everyone deserves respect, equality and the freedom to be themselves without fear. The idea of freedom and respect is not just about what the law says, but also about how people are treated in real life. Its mean being accepted by family, feeling safe with friends, and not being judged in school, college, or at work. For many LGBTQ+ peoples, the hardest part is not always legal rights, but how society looks at them. In India, things have started to stop slowly. Some important decisions have helped in recognizing the rights and dignity of LGBTQ+ individual<sup>3</sup>. But even now, many people still don’t fully understand this identity. Because of these, there are still stereo types, confusion, and sometimes unfair treatment.

Change doesn’t happen all at one’s. It comes step by step, mostly through awareness and every conversation. When people try to understand instead of judge, it makes a big difference. Even small things like respecting someone identity or simply being kind can help create a more accepting environment.

In the end, but really matter is that everyone feels comfortable being who they are. No one should fell scared or forced to hide their identity. Society should be a placed where differences are normal, and everyone is treated with equal respect.

## 2. RESEARCH METHODOLOGY

2.1 RESEARCH DESIGN: This study follows a qualitative and analytical research design too understands the position of LGBTQ+ rights in India<sup>4</sup>. The research is both descriptive and critical in nature<sup>5</sup>. It explains the current legal framework and also examines how effectively the criminal justice

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<sup>1</sup> American psychological association, *sexual orientation and gender identity definitions* (2023), available at: [https://en.wikipedia.org/wiki/here\\_%282024\\_film%29](https://en.wikipedia.org/wiki/here_%282024_film%29) (last visited on April 22, 2026)

<sup>2</sup> Human rights watch, *this alien legacy: the origin of “sodomy” laws in British colonialism* (2008), available at: <https://www.hrw.org> (last visited on April 22, 2026).

<sup>3</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1. And *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

<sup>4</sup> J.W. Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (Sage, Thousand Oaks, 5<sup>th</sup> edn. 2014).

<sup>5</sup> M.P. Singh (ed.), *V.N. Shukla’s Constitution of India* (Eastern Book Company, Lucknow, 13<sup>th</sup> edn. 2019).

system responds to the issues faced by LGBTQ+ individuals. The aim is not just to describe the law, but to evaluate how it works in real life situations.

2.2 RESEARCH APPROACH: The study uses a combination of doctrinal and socio-legal approaches<sup>6</sup>.

The doctrinal approach focuses on analyzing legal materials such as the constitution, statutes and judicial decisions. It helps in understanding how the law defines and protects rights related to equality, dignity and personal liberty<sup>7</sup>.

At the same time, the socio- legal approach looks how these laws are applied in practice. It considers real-life issues like discrimination, social stigma, lack of awareness and institutional bias with in the criminal justice system. Using both approaches together makes the research more balanced and realistic.

2.3 SOURCES OF DATA:

Primary sources: The primary sources used in this study include:

- The constitution of India<sup>8</sup>.
- Relevant laws such as Indian penal code and code of criminal procedure<sup>9</sup>.
- Important judicial decisions like Navtej Singh Johar v. Union of India and National Legal Services Authority v. Union Of India, which have played a key role in recognizing LGBTQ+ rights in India.

Secondary sources: A secondary source includes:

- Books, journal articles, and legal commentaries<sup>10</sup>.
- Reports by government bodies and international organizations<sup>11</sup>.
- Online legal databases and academics websites.<sup>12</sup>

2.4. Methods of data collection: This research is based on secondary data. Information has been collected through books, research articles, case laws and online legal sources. This method is suitable because it allows a detailed of existing laws and discussions related to LGBTQ+ rights without requiring fieldwork.

2.5. Method of analysis: The study mainly uses qualitative methods of analysis.

- Doctrinal analysis is used to study and interpret laws and court judgments.
- Thematic analysis helps in identifying common issues such as discrimination, access to justice and institutional barriers.

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<sup>6</sup> Terry Hutchinson, *Researching and Writing in Law* (Law book Co., Sydney, 3<sup>rd</sup> edn. 2010).

<sup>7</sup> The Constitution of India, arts. 14, 19, 21.

<sup>8</sup> Constitution of India.

<sup>9</sup> Indian Penal Code, 1860. And Code of Criminal Procedure.

<sup>10</sup> S.K. Verma and M. Afzal (edn.), *Legal Research and Methodology* (Indian Law Institute, New Delhi, 2<sup>nd</sup> edn. 2011).

<sup>11</sup> Ministry of Social Justice and Empowerment, *Reports on LGBTQ+ Issues* (Government of India, New Delhi, 2023), available at: <https://socialjustice.gov.in>(last visited on April 29, 2026).

<sup>12</sup> "SCC Online," available at: [www.scconline.com](http://www.scconline.com) (last visited on April 29, 2026) and "Manupatra," available at: [www.manupatra.com](http://www.manupatra.com) (last visited on April 29, 2026).

- Critical analysis is used to examine the gaps between what the law provides and what actually happens in practices.

### 3. RESEARCH QUESTIONS

1. What is the existing legal framework governing LGBTQ+ right in India, and how has it evolved through judicial interpretation?
2. How does the criminal justice system in India respond to issues and offences involving LGBTQ+ individuals?
3. What is the gap between legal recognition of LGBTQ+ rights and their actual enforcement in society?
4. To what extent have judgments such as *Navtej Singh Johar v. Union of India* and *National Legal Services Authority v. Union of India* influences practical implementation of LGBTQ+ rights?

### 4. HISTORICAL BACKGROUND

The journey of LGBTQ+ rights in India has been long and complicated, shaped by changes in law, society, and attitudes over time. In earlier periods, before British rule, Indian society was not strictly limited to the idea of only two genders, and people like Hijras were a visible part of cultural and social life. While they were not always treated equally, they were not seen as criminals simply for who they were. This changed during colonial rule when the British introduced Section 377 in 1860<sup>13</sup>, which made same-sex relationships illegal. This law was based on Victorian ideas of morality and had nothing to do with Indian traditions. It created fear and stigma, making LGBTQ+ people feel unsafe and forcing many to hide their identities. Even after India became independent in 1947, this law remained, and for many years society avoided talking about LGBTQ+ issues, treating them as taboo. As a result, people faced discrimination, violence, and isolation, often without any support from the legal system.

Slowly, things began to change as awareness grew and activists started speaking up for equal rights. Important court decisions in the 21st century played a big role in improving the situation. A major legal turning point came with the Delhi High Court judgment in *Naz Foundation v. Government of NCT of Delhi* (2009)<sup>14</sup>, which decriminalized consensual same-sex relations, but this was reversed by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (2013)<sup>15</sup>, bringing back criminalization. Significant progress followed through transformative judgments such as *National Legal Services Authority (NALSA) v. Union of India* (2014), where transgender persons were recognized as a third gender, and *Justice K.S. Puttaswamy v. Union of India* (2017)<sup>16</sup>, which affirmed the right to privacy and included sexual orientation as part of personal liberty. Finally, in *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalized consensual same-sex relationships, marking a historic step

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<sup>13</sup> The Indian Penal Code, 1860, s.377.

<sup>14</sup> *Naz Foundation v. Government of NCT of Delhi*, (2009) 160 DLT 277.

<sup>15</sup> *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

<sup>16</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

toward equality and dignity. Despite these developments, the effects of past discrimination continue to influence society, and full equality is still a work in progress. The recognition of transgender persons as a third gender, the acknowledgment of privacy as a fundamental right, and the decriminalization of consensual same-sex relationships in 2018 were major steps forward. These changes gave hope and dignity to many people. However, even today, equality is not fully achieved. Same-sex couples still cannot legally marry, and there are no strong laws to protect LGBTQ+ individuals from discrimination in everyday areas like jobs, education, and healthcare<sup>17</sup>. In real life, many people continue to face rejection from their families, unfair treatment by authorities, and difficulty in getting justice when they are harmed.

The criminal justice system, although improved on paper, does not always work fairly in practice. Some police officers still show bias, and victims may feel scared or uncomfortable reporting crimes. There are also practical challenges, such as problems with identity documents and limited access to government services, especially for transgender individuals. For those who are already disadvantaged due to poverty, caste, or where they live, these problems can become even more serious. Overall, while India has taken meaningful steps toward recognizing LGBTQ+ rights, there is still a gap between what the law promises and what people actually experience. Real change will only happen when legal progress is supported by greater awareness, acceptance, and fairness in everyday life.

## 5. MEANING OF LGBTQ+

LGBTQ+ is a term used to describe people whose sexual orientation or gender identity is different from what is traditionally expected in society. It includes lesbians, gay, bisexual, transgender and queer individuals, while the “+” stands for other identities that may not fit into this category.

## 6. LEGAL FRAMEWORK OF LGBTQ+ RIGHTS IN INDIA

The legal position of LGBTQ+ rights in India has gone through big change over the years. Earlier, people from the community were not properly recognized by law and often faced discrimination. But now, especially because of court decisions, there is growing focus on equality, dignity, and the freedom to live with one's own identity.

6.1 CONSTITUTIONAL BASIS<sup>18</sup>: Even though the constitution of India does not directly address LGBTQ+ rights, its fundamental rights apply to everyone and have been understood in a more inclusive way:

- Article 14 ensures equality before law for all individuals.
- Article 15 prohibits discrimination and it has been interpreted to include sexual orientation and identity.

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<sup>17</sup> The Transgender Persons (Protection of Rights) Act, 2019.

<sup>18</sup> The Constitution of India, art. 14, 15, 19(1) (a), 21.

- Article 19 gives the freedom to express oneself, which also includes one's identity.
- Article 21 protect the right to life and personal liberty including dignity , privacy and personal choices

6.2 ROLE OF JUDICIARY: The judiciary has played a very important role in improving the situation:

- In Navtej Singh Johar v. Union of India (2018), the Supreme Court removed the criminal status of same sex relationships between consenting adults.
- In National Legal Services Authority v. Union of India (2014), transgender person were recognized as a separate gender and given the right to self identify.
- In Justice K.S. Puttaswamy v. Union of India (2017), the court recognized privacy as a fundamental right, which also protects a person's sexual orientation.

6.3 LEGISLATIVE MEASURES: One important law is the Transgender Persons (Protection of Rights) Act, 2019, which aims to protect transgender people from discrimination in areas like education job and healthcare:

However, many people feel that this law is not strong enough because:

- It is not properly implemented.
- It does not fully solve the problems faced by the community.

## 7. GAPS IN LEGAL FRAMEWORK OF LGBTQ+ RIGHTS IN INDIA

Even though India has taken important steps to recognize LGBTQ+ rights, there are still many gaps in the legal system. Because of these gaps, people from this community often do not get full protection in real life.

1. No proper anti- discrimination law:

There is no single clear law n India that protects LGBTQ+ individuals from discrimination in all areas like jobs, education, housing and healthcare. As a result, many people's still face unfair treatment without strong legal support.

2. No recognition of same sex relationships:

Same sex relationships are no longer illegal, but they are still not officially recognized. This means LGBTQ+ couples do not get rights related to marriage, adoption or family benefits.

3. Weak implementation of laws:

Even when laws exist, they are not always properly followed. Many times, officials are not fully aware or trained which leads to poor implementation.

#### 4. No specific laws for hate crimes:

There are no special laws that deal with crimes against LGBTQ+ peoples. Cases of violence or harassment are treated as general offences, without considering the specific discrimination involved.

#### 5. Limited protection in existing laws:

Some laws mainly focused on transgender persons and do not cover the entire LGBTQ+ community. Because of this, many individuals are left without proper protection.

#### 6. Lack of awareness and sensitivity:

Another major issue is that many people in institution do not fully understand LGBTQ+ issues. This lack of awareness affects how laws are applied in real situations.

### **8. STATUTORY FRAMEWORK FOR LGBTQ+ RIGHTS IN INDIA**

In India, there are only a few laws that directly deal with LGBTQ+ rights. Most of the protection of this community has come from court decisions, while laws made by parliament are still quite limited.

#### 8.1. Transgender persons (protection of rights) act, 2019<sup>19</sup> :

This is the main law that focuses on transgender peoples in India.

- It says that transgender persons should not be treated unfairly in areas like education, jobs, healthcare and public services.
- It also accepts their right to identify themselves according their own gender.
- The government is expected to take steps for their welfare and support.

#### 8.2. Indian penal code (IPC), 1860<sup>20</sup>:

- The IPC does not directly mention LGBTQ+ individuals, but it still protects everyone from crimes such as violence, harassment and abuse.
- Earlier, section 377 made same sex relationships a crime. But now, this has been changed, and such relationships are no longer illegal.

#### 8.3. Other laws:

Some general laws can also help LGBTQ+ individuals:

- Laws against domestic violence<sup>21</sup>.

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<sup>19</sup> The Transgender Persons (Protection of Rights) Act, 2019.

<sup>20</sup> The Indian Penal Code, 1860.

- Laws that protect human rights and equality.
- Certain workplace laws in cases of discrimination.

## 9. CRIMINAL JUSTICE SYSTEM AND LGBTQ+ PEOPLES

The criminal justice system is meant to provide protection and ensure justice for everyone. However, for LGBTQ+ individuals in India, this system does not always work in a fair or supportive way. Even though their rights are now recognized by law, many still face difficulties because of social attitudes, lack of awareness and insensitive behavior within institution.

### 9.1. Police system:

For most peoples, the police are the first place to go when something goes wrong. But for LGBTQ+ individuals, approaching the police is often not easy.

- Complaints are sometimes not taken seriously.
- There may be insensitive or biased behavior.
- Many people feel uncomfortable or afraid to report incident.

Because of this many case are never reported, and victims do not get justice<sup>22</sup>.

### 9.2. Judiciary:

The courts in India have played an important role in improving LGBTQ+ rights. Through important decisions, they have recognized the importance of dignity, identity and privacy.

However, in practice:

- Not all courts show the same level of understanding.
- Legal procedures can be slow and stressful.

So, even though the law supports LGBTQ+ rights, the experience of getting justice can still be difficult.

### 9.3. Prison system:

LGBTQ+ individuals often face serious challenges in prisons.

- They may be at risk of harassment or violence.
- There are no proper systems to ensure their safety.
- Lack of clear rules or separate arrangements.

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<sup>21</sup> The Protection of Women from Domestic Violence Act, 2005.

<sup>22</sup> National Human Rights Commission, *Report on Human Rights of Transgender Persons in India* (2018).

This makes the prison environment unsafe for them<sup>23</sup>.

#### 9.4. Crime faced by LGBTQ+ peoples:

Peoples from the LGBTQ+ community may experience:

- Physical violence.
- Sexual abuse.
- Harassment and threat.
- Pressure or abuse from family members.

Many of these cases are not reported because people fear being or mistreated.

### **10. IMPORTANT JUDGEMENT OF LGBTQ+ IN INDIA**

The judiciary in India played a very important role in shaping LGBTQ+ rights. Over the year, courts have helped in recognizing the dignity, identity and equality of the people from this community. Some important judgments have brought major changing in the legal position.

#### 1. Naz Foundation v. Government of NCT of Delhi (2009):

In this case, the Delhi high court said that consensual same sex relationship between adults should not be treated as crime. The court believes that such criminalisation goes against basic rights like equality and dignity. This was one of the major steps towards accepting the LGBTQ+ rights in India.

#### 2. Suresh Kumar Koushal v. Naz Foundation (2013):

In this judgment, Supreme Court reversed the earlier decision and again made same sex relationship a criminal offense under section 377. This decision was seen a set back and was widely criticized.

#### 3. National Legal Services Authority v. Union of India (2014):

In this case Supreme Court recognized transgender person as separate gender.

- It gave them the right to identify their own gender.
- It directed the government to take steps for their welfare.

This judgment was an important move towards respected gender identity.

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<sup>23</sup> Ministry of Home Affairs, *Model Prison Manual* (2016).

4. Justice K.S. Puttaswamy v. Union of India (2017):

The Supreme Court recognized the right to privacy as a fundamental right. It also made it clear that a person's sexual orientation is a part of their private life and should be protected.

5. Navtej Singh Johar v. Union of India (2018):

This is one of the most important judgments.

- The Supreme Court removed the criminal status of consensual same sex relationships.
- It emphasized dignity, equality and freedom.

In this decision marked a major turning point for LGBTQ+ rights in India.

## **11. CONCLUSION AND SUGGESTIONS**

**CONCLUSION:** Looking at the overall discussion, it is clear that India has come a long way in recognizing the rights of LGBTQ+ individuals. Important court decisions have helped in bringing attention to values like equality, dignity and personal freedom. These changes have improved the legal position of the community to a large extent.

However, the reality on the ground is still very different. Many LGBTQ+ individuals continue to face discrimination, violence and difficulty in getting justice. Even though the law now supports their rights, the criminal justice system does not always respond in a fair or sensitive manner. Social attitudes, lack of awareness and weak implementation of laws make the situation more challenging.

This clearly shows that there is still a gap between what the law promises and what people actually experience in their daily lives. Simply having legal recognition is not enough unless it is supported by proper action and acceptance in society.

**SUGGESTIONS:** To improve the condition and ensure real protection of LGBTQ+ rights, some practical steps can be taken:

1. Need for a clear anti-discrimination law:

There should be a strong and specific law that protects LGBTQ+ individuals from discrimination in everyday areas like education, jobs, healthcare and housing.

2. Recognition of same sex relationships:

Providing legal recognition to same sex relationships can help ensure equal rights in matters such as marriage, adoption and family benefits.

### 3. Better implementation of law:

Existing laws should not just remain on paper. They need to be properly enforced and strict action should be taken in cases of discrimination or violence.

### 4. Sensitization of officials:

Police officers, judges and other authorities should be trained to better understand LGBTQ+ issues so that they can handle cases in a more respectful and fair manner.

### 5. Promoting awareness in society:

There is a need to create more awareness among people to reduce stigma and encourage acceptance of diversity.

### 6. Strong measures against hate crimes:

Special legal provisions should be introduced to deal with crime specifically targeting LGBTQ+ individuals.

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