

## Judicia Blueprint of LGBTQIA+ Community

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### Abstract

The Human Rights of all persons are universal and indivisible. Everyone should enjoy the same fundamental Human Rights, regardless of their sexual orientation and their gender identity and expression. All people including LGBTQIA+ individuals, are entitled to enjoy the protection provided by international Human Rights law, which is based on equality and non-discrimination under Article-2 of the Universal Declaration of Human Rights. The struggle of LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual) people for equal rights has moved to centre stage. LGBTQIA+ people are battling for their civil rights in courtrooms and in streets. Discrimination against this community is commonplace, leaving them socially isolated, marginalized and denied their basic rights as citizens of India. Although LGBTQIA+ people continue to face real discrimination in all areas of life. The researcher would analyse the insufficient provisions to protect their rights, followed by their composition and the difficulties they face today. And to suggest some measures to improve rights. Recently, the rights of this community have been realized and judicial interventions have been realized and judicial interventions have been made to protect them also followed by the Supreme Court's ruling declaring "Rights of the third sex."

**Key Words:** Human, Discrimination, Judicial, Supreme, Isolated, LGBTQIA, Universal Declaration

### I. Introduction:

The term LGBTQIA+ refers to Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and other gender and sexual identities that do not conform to conventional cisgender heterosexual norms. In India, the LGBTQIA+ community also includes the Hijra community, a culturally distinct social group traditionally recognised as neither exclusively male nor female. In contemporary discourse, Hijras are often referred to as the "Third Gender." Despite more than seven decades of India's independence, members of the LGBTQIA+ community continue to struggle for equal social acceptance, dignity, and the protection of their fundamental rights. A major milestone was achieved on 6 September 2018, when the Supreme Court of India decriminalised consensual same-sex relations by partially striking down Section 377 of the Indian Penal Code, which had previously categorised homosexual relations as "unnatural offences<sup>1</sup>." However, social discrimination, exclusion, and prejudice against LGBTQIA+ persons still remain widespread in Indian society.

### II. What Is LGBTQIA+

#### 1. Lesbian

A lesbian is a woman who is emotionally, romantically, or sexually attracted to another woman.

#### 2. Gay

The term "gay" generally refers to a man who is emotionally, romantically, or sexually attracted to another man, although it is also used broadly for homosexual individuals.

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<sup>1</sup>Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

3. Bisexual

A bisexual person is someone who experiences emotional, romantic, or sexual attraction towards more than one gender.

4. Transgender

“Transgender” is an umbrella term used for individuals whose gender identity or gender expression differs from the sex assigned to them at birth.

5. Queer

The term “queer” is used to describe people whose sexual orientation or gender identity does not fall within traditional heterosexual or cisgender categories. Many individuals within the queer community prefer gender-neutral pronouns rather than restrictive binary pronouns such as “he” or “she.”

The “+” symbol in LGBTQIA+ indicates that the list is not exhaustive and also includes identities such as pansexual, intersex, asexual, and several others. The history of homosexual and transgender individuals demonstrates that they have long existed as part of Indian culture and social life. The evolution of laws concerning LGBTQIA+ rights, along with changing societal attitudes, reveals both progress and continuing challenges. Issues relating to social acceptance, discrimination, representation in cinema, and access to equal rights continue to affect the community in India.

The LGBTQIA+ movement, which gained broader visibility during the mid-1980s, represents the struggles, resilience, and achievements of individuals and communities considered outside traditional social norms. LGBTQIA+ history reflects continuous efforts for equality, justice, dignity, and recognition. It is also a history marked by both triumphs and hardships faced by individuals seeking the right to live freely and authentically. In the modern era, questions relating to gender identity and sexual orientation have become important aspects of personal identity and social understanding. These experiences are often shaped by wider social factors such as race, ethnicity, class, gender, disability, and nationality.

Throughout history, institutions such as governments, courts, religious bodies, and the medical profession have played a significant role in defining what society considers “normal” or “deviant” in relation to sexuality and gender identity. Consequently, the study of LGBTQIA+ history is closely connected to broader cultural, social, and legal developments. It also highlights changing perceptions regarding who is recognised within the national narrative of a country. Initiatives such as the LGBTQIA+ Heritage Initiative of the United States National Park Service demonstrate the growing recognition of LGBTQIA+ contributions and experiences in society<sup>2</sup>.

At a time when LGBTQIA+ individuals are becoming increasingly visible and socially acknowledged, researchers and healthcare professionals still face limitations in understanding the overall health status and needs of this community. Although research concerning LGBTQIA+ health has expanded during the last two decades, there remain significant gaps that require further academic and medical attention. Important questions continue to arise regarding the present health conditions of LGBTQIA+ persons, the deficiencies in existing research, and the priorities that should guide future studies.

The term “LGBTQIA+ community” represents a broad coalition of diverse groups that differ in terms of gender identity, sexual orientation, race, ethnicity, socioeconomic background, age, and geographic location. While these groups are often collectively referred to under a single umbrella term, each group has distinct

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<sup>2</sup>National Park Service, “LGBTQ Heritage Initiative,” available at: <https://www.nps.gov/subjects/tellingamericansstories/lgbtqheritage.htm>.

experiences, concerns, and health-related needs. At the same time, many of these groups share common experiences of discrimination, stigma, exclusion, and social marginalisation<sup>3</sup>.

Lesbians, gay men, and bisexual individuals are generally defined according to their sexual orientation, which may involve emotional attraction, sexual behaviour, personal identity, or a combination of these factors. Although these groups share the experience of not being exclusively heterosexual, they differ significantly in terms of gender, identity, and lived experiences. Some individuals openly identify as lesbian, gay, or bisexual, while others may experience same-sex attraction or engage in same-sex relationships without adopting such labels. These distinctions are important because they influence social experiences and health outcomes differently.

Transgender individuals, on the other hand, are defined primarily by their gender identity and expression rather than by sexual orientation. This group includes people whose gender identity differs from the sex assigned to them at birth, as well as those who reject traditional binary understandings of gender. The transgender community itself is highly diverse with respect to identity, expression, and sexual orientation. Some transgender individuals choose to undergo medical procedures to align their physical characteristics with their gender identity, while others may not wish to do so. Transgender individuals may identify as heterosexual, homosexual, bisexual, or otherwise.

Male-to-female transgender individuals are commonly referred to as transgender women or transwomen, while female-to-male transgender individuals are known as transgender men or transmen. Some transgender persons do not identify within these binary categories at all. Understandably, the experiences and health concerns of transgender individuals differ not only from non-transgender people but also within the transgender community itself.

Although the term “LGBTQIA+” is useful in describing a collective group of sexual and gender minorities, it can sometimes overlook the diversity within these communities. Combining lesbians and gay men under a single category may conceal important gender-based differences in their experiences. Similarly, grouping bisexual men and women together may ignore their distinct social realities. Moreover, the term “LGB” does not adequately include individuals who experience same-sex attraction or relationships but do not identify with non-heterosexual labels. Likewise, the transgender population encompasses multiple identities and experiences that are different from those of lesbian, gay, and bisexual individuals. Therefore, while the umbrella term LGBTQIA+ promotes inclusivity and solidarity, it is equally important to recognise the diversity and unique concerns within each group.

### III. History Of The LGBTQIA+ Community In India:

The history of the LGBTQIA+ community in India can be traced back to ancient religious texts, cultural traditions, and historical practices. Hindu scriptures contain several references that recognise the existence of a third gender<sup>4</sup>. According to certain versions of the *Mahabharata*, some characters underwent changes in gender identity. One notable example is Shikhandi, who is believed to have been born female but later identified as male and married a woman<sup>5</sup>. Similarly, the fertility goddess Bahuchara Mata is worshipped as the patron deity of the Hijra community<sup>6</sup>.

Ancient Sanskrit texts also reflected different perspectives on homosexuality and gender diversity. The *Naradasmriti* and the *Sushruta Samhita*, important texts relating to dharma and medicine, described

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<sup>3</sup>Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (The National Academies Press, 2011).

<sup>4</sup>Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India: Readings from Literature and History* (Palgrave Macmillan, 2000).

<sup>5</sup>*Mahabharata*, relating to the character of Shikhandi.

<sup>6</sup>Serena Nanda, *Neither Man nor Woman: The Hijras of India* (Wadsworth Publishing, 1999).

homosexuality as an inherent trait and discouraged homosexual individuals from marrying persons of the opposite sex<sup>7</sup>. However, another Hindu scripture, the *Manusmriti*, prescribed various penalties for homosexual acts. In some interpretations, it associated same-sex relations with social punishments such as the loss of caste status<sup>8</sup>.

During the Mughal period, Islamic legal principles influenced the regulation of sexual conduct. The *Fatawa-e-Alamgiri*, compiled during the reign of Emperor Aurangzeb, laid down punishments for unlawful sexual acts, including homosexuality<sup>9</sup>. The punishments varied depending on the religion and social status of the individual and included severe penalties such as flogging or death by stoning in certain cases.

A significant legal change occurred during British colonial rule when Section 377 of the Indian Penal Code was introduced in 1861<sup>10</sup>. This provision criminalised homosexuality and bisexuality by declaring “carnal intercourse against the order of nature” as a punishable offence. Under Section 377, sexual relations involving a man, woman, or animal that were considered against the “order of nature” were prohibited and punishable by law<sup>11</sup>. Prior to the enactment of this colonial legislation, India did not have a uniform law specifically regulating consensual same-sex relations<sup>12</sup>.

#### IV. Difficulties Faced By The LGBTQIA+ Community in Contemporary Society:

In many societies where heterosexuality is treated as the accepted social norm and homosexuality is viewed as abnormal, LGBTQIA+ individuals continue to face numerous social and personal challenges.<sup>13</sup> Discrimination, verbal abuse, harassment, and social exclusion have become part of the everyday experiences of many members of the community. Compared to heterosexual individuals, LGBTQIA+ persons are more likely to encounter intolerance, unequal treatment, threats, and various forms of violence because of their sexual orientation or gender identity<sup>14</sup>.

In several countries, same-sex couples are denied many of the legal rights and benefits available to heterosexual couples<sup>15</sup>. As a result, LGBTQIA+ individuals often face discrimination in accessing healthcare, pensions, insurance benefits, inheritance rights, and other forms of social protection. Fear of losing employment or facing workplace discrimination also forces many LGBTQIA+ persons to conceal their identity or gender expression<sup>16</sup>. Constant fear and suppression of identity may gradually lead to low self-esteem, stress, anxiety, and emotional insecurity.

Family rejection is another major issue faced by LGBTQIA+ individuals. Due to social stigma and lack of awareness, many parents discourage their children from interacting with LGBTQIA+ persons, often believing they are acting in the best interests of their children<sup>17</sup>. The absence of proper communication and understanding

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<sup>7</sup>*Naradasmriti* and *Sushruta Samhita*.

<sup>8</sup>*Manusmriti*, provisions relating to same-sex relations.

<sup>9</sup>*Fatawa-e-Alamgiri*, compiled during the reign of Mughal Emperor Aurangzeb.

<sup>10</sup>The Indian Penal Code, 1860, § 377.

<sup>11</sup>*Ibid.*

<sup>12</sup>Alok Gupta, “Section 377 and the Dignity of Indian Homosexuals,” *Economic and Political Weekly*, Vol. 41, No. 46 (2006).

<sup>13</sup> United Nations Human Rights Office, “Discrimination and Violence against Individuals based on Sexual Orientation and Gender Identity.”

<sup>14</sup>Human Rights Watch, *These Everyday Humiliations: Violence Against LGBT People*

<sup>15</sup>International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *State-Sponsored Homophobia Report*.

<sup>16</sup>International Labour Organization (ILO), *Discrimination at Work on the Basis of Sexual Orientation and Gender Identity*.

<sup>17</sup>UNICEF, “Eliminating Discrimination Against LGBTQI+ Children and Parents.”

between LGBTQIA+ children and their families frequently results in emotional conflict and strained relationships. In some situations, LGBTQIA+ youth are abandoned, placed in foster care, sent to juvenile detention centres, or forced to live on the streets<sup>18</sup>.

Teenagers belonging to the LGBTQIA+ community are at a greater risk of developing physical and mental health problems because of rejection by parents, caregivers, and society<sup>19</sup>. Feelings of loneliness, social isolation, and emotional trauma may push some individuals toward substance abuse, including alcohol and drugs, as a coping mechanism for stress and discrimination. Many also become victims of hate crimes and violence motivated by prejudice<sup>20</sup>.

In several parts of the world, homosexuality continues to be criminalised and is punishable by imprisonment, fines, or other legal penalties<sup>21</sup>. In addition, some personal and religious laws consider homosexuality sinful or morally unacceptable, which further contributes to the social exclusion and marginalisation of LGBTQIA+ individuals<sup>22</sup>.

## V. Anti-Discrimination

Public attitudes towards the LGBTQIA+ community in India have gradually become more supportive in recent years. According to a 2017 survey conducted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 58% of Indians believed that gay, lesbian, and bisexual individuals should enjoy the same rights as heterosexual persons, while 59% supported protection against workplace discrimination<sup>23</sup>. The survey also revealed that although 39% of respondents believed same-sex relationships should be treated as criminal offences, a larger section disagreed with such views.

The survey further showed increasing support for transgender rights. Around 66% of respondents believed transgender persons should have equal rights, while 62% supported protection against workplace discrimination. Many respondents also supported the right of transgender individuals to legally change their gender identity.

Similarly, the Ipsos LGBT+ Pride 2021 Global Survey found that 53% of Indians supported laws prohibiting discrimination against LGBTQIA+ persons in employment, education, housing, and access to public services<sup>24</sup>. The survey also highlighted growing public support for companies promoting LGBTQIA+ equality and for transgender athletes participating in sports according to their gender identity rather than their sex assigned at birth.

## VI. Discrimination Protection:

The Constitution of India, along with its subsequent amendments and judicial interpretations, provides protection to the LGBTQIA+ community against various forms of discrimination<sup>25</sup>. One of the most important constitutional safeguards is contained in Article 15 of the Constitution, which prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth<sup>26</sup>.

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<sup>18</sup>Human Rights Campaign Foundation, *Supporting and Caring for LGBTQ Youth*.

<sup>19</sup>World Health Organization (WHO), *Mental Health and LGBT Communities*.

<sup>20</sup>Federal Bureau of Investigation (FBI), *Hate Crime Statistics Report*.

<sup>21</sup>International Commission of Jurists, *Sexual Orientation, Gender Identity and International Human Rights Law*.

<sup>22</sup>Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

<sup>23</sup>International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *Global Attitudes Survey, 2017*.

<sup>24</sup>Ipsos, LGBT+ Pride 2021 Global Survey.

<sup>25</sup>Constitution of India, arts. 14, 15, 19 and 21.

<sup>26</sup>Constitution of India, art. 15.

Article 15 further states that the State cannot discriminate against any citizen solely on these grounds or on a combination of them. It also guarantees equal access to public spaces and facilities such as shops, restaurants, hotels, places of public entertainment, roads, wells, tanks, bathing ghats, and other places maintained wholly or partly through State funds or intended for public use.

Through progressive judicial interpretation, the term “sex” under Article 15 has been expanded to include sexual orientation and gender identity, thereby extending constitutional protection to LGBTQIA+ persons against discrimination and unequal treatment<sup>27</sup>. This constitutional framework plays a significant role in promoting equality, dignity, and inclusion for members of the LGBTQIA+ community in India.

### **VII. Adoption Rights:**

Public opinion in India has shown increasing support for equal adoption rights for same-sex couples. According to the Ipsos LGBT+ Pride 2021 Global Survey, nearly 66% of Indians believed that same-sex couples should enjoy the same adoption rights as heterosexual couples, while 21% disagreed and 13% remained uncertain<sup>28</sup>. The survey also found that 59% of respondents believed same-sex couples are equally capable of being successful parents compared to heterosexual couples, whereas 26% disagreed and 16% were unsure.

### **VIII. Discrimination And Bullying In Higher Education:**

To ensure a safer educational environment, the University Grants Commission (UGC) introduced the 2016 Third Amendment to the UGC Regulations on Curbing the Menace of Ragging in Higher Educational Institutions<sup>29</sup>. These regulations prohibit bullying, ragging, harassment, and discrimination against students on the basis of their sexual orientation or gender identity. The amendment was an important step toward promoting equality, dignity, and inclusiveness within educational institutions.

### **IX. Military Service:**

At present, the Indian Armed Forces do not openly permit LGBTQIA+ individuals to serve without restrictions. In December 2018, BJP Member of Parliament Jagdambika Pal introduced Bills seeking amendments to the Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950, with the aim of allowing LGBTQIA+ persons to serve in the armed forces<sup>30</sup>. However, the proposed amendments were not passed by Parliament.

### **X. Marriage Equality:**

Public opinion in India regarding marriage equality has gradually become more supportive over the years. According to the Ipsos LGBT+ Pride 2021 Global Survey, 44% of Indians supported the legalisation of same-sex marriage, while 14% supported legal recognition of same-sex couples through other forms of partnership. In contrast, 18% opposed such recognition, and 25% did not express any opinion on the issue.

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<sup>27</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

<sup>28</sup>Ipsos, LGBT+ Pride 2021 Global Survey.

<sup>29</sup>University Grants Commission, UGC Regulations on Curbing the Menace of Ragging in Higher Educational Institutions (Third Amendment), 2016.

<sup>30</sup>Bills introduced in Parliament by Jagdambika Pal in December 2018 seeking amendments to the Armed Forces Acts.

The survey also indicated changing social attitudes, with 56% of respondents stating that their views on same-sex marriage had changed compared to five years earlier. This reflects a growing awareness and acceptance of LGBTQIA+ rights within Indian society.

Similarly, a 2016 survey conducted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) found that 35% of Indians supported the legalisation of same-sex marriage, while an equal percentage opposed it. Another survey conducted by the Varkey Foundation during September–October 2016 revealed stronger support among younger individuals, particularly those between the ages of 18 and 21, where support for same-sex marriage reached 53%<sup>31</sup>.

### XI. Conclusion:

The LGBTQIA+ community in India continues to face significant social challenges, including discrimination, harassment, violence, and social ridicule. Although important progress has been made through judicial decisions and international human rights movements, the condition of many LGBTQIA+ individuals remains difficult in practice. Resolutions and initiatives adopted by the United Nations in support of LGBTQIA+ rights have positively influenced global attitudes toward equality and inclusion. However, India's position on certain LGBTQIA+ issues at international forums has often been criticised as inconsistent with its identity as a democratic republic committed to equality and human dignity.

Creating awareness about the existence, rights, and dignity of the LGBTQIA+ community is extremely important. Human rights are natural, inalienable, and universal rights that belong to every individual by birth. Members of the LGBTQIA+ community are not abnormal, unnatural, or diseased; their sexual orientation and gender identity are natural aspects of human diversity. Therefore, society must move beyond prejudice and develop a more inclusive and compassionate understanding of sexual minorities. The Government of India should adopt a progressive approach and take effective measures to ensure the welfare, protection, and equal treatment of LGBTQIA+ persons.

Education and awareness regarding LGBTQIA+ rights are essential for building an inclusive society. Constitutional guarantees under Articles 14, 15, 19, 21, and 29 of the Constitution of India provide protection against discrimination and support the principles of equality, dignity, freedom, and personal liberty. Restrictions on same-sex partnerships, adoption, guardianship, surrogacy, in vitro fertilisation, and equal access to employment may amount to violations of these constitutional rights. Discrimination solely on the basis of sexual orientation or gender identity is contrary to the spirit of constitutional morality and equality.

With regard to marriage equality, it is argued that marriages involving LGBTQIA+ individuals should be recognised under the Special Marriage Act, 1954, as it provides a secular and comparatively unambiguous legal framework. Certain personal laws, particularly under traditional interpretations of religious law, may not recognise same-sex marriages, creating legal uncertainty and inequality. Therefore, either the Special Marriage Act should be interpreted or amended to include LGBTQIA+ marriages, or a separate comprehensive legislation should be enacted specifically addressing the rights and legal recognition of LGBTQIA+ unions. Such reforms would help eliminate confusion, ensure legal protection, and promote equality before the law.

In conclusion, although the judgments delivered by the Hon'ble Supreme Court of India have significantly advanced the rights of the LGBTQIA+ community, the social acceptance of these rights remains a major challenge. Legal recognition alone is not sufficient unless it is accompanied by genuine social acceptance and practical implementation. Equality and dignity for the LGBTQIA+ community must exist not only in constitutional principles and judicial decisions, but also in everyday social reality.

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<sup>31</sup> Varkey Foundation, *Global Youth Survey*, 2016.