

# Constitutional Protections for LGBTQIA+ Rights: A Study of Legal and Judiciary Approaches

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ARTICLE INFO	ABSTRACT
	<p>This article examines the legal frameworks in India for LGBTQIA+ rights, focusing on the limitations and interpretations of these rights. The study aims to understand the larger repercussions of landmark judgements and identify ongoing social and legal obstacles that limit the overall balance. The study is crucial as it examines how LGBTQIA+ rights and established regulations interact, particularly in a culture where bias and dogmatism are prevalent. The research methodology involves examining regulations, established arrangements, and landmark cases that have shaped India's LGBTQIA+ freedoms system. The study also examines the historical context of LGBTQIA+ rights in India, examining the nuanced and lenient views on sexuality and orientation before the imposition of colonial/British legal system. Evidence of a culture that acknowledged two genders and same-sex organizations can be found in Hindu texts like the Kama Sutra and the Manusmriti, which recognize same-sex motivations as an intrinsic part of human sexuality.</p> <p><b>Keywords:</b> Indian Constitution, Transgender, Sexuality, LGBTQIA+, Section 377</p>

## INTRODUCTION

***“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope”.***

***Jennison v. Baker (1972) 1 All ER 99***

As indicated by transgender right activist Laxmi Narayan Tripathi, "the greatest sadness one can have is the pain of being disliked". The struggle for LGBTQIA+ rights is a global human rights issue, often highlighted by the community's fight for recognition, equality, and protection under the law. The understanding of protected rights relating to LGBTQIA+ people has been a subject of improvements in India, a country with a rich socio-social embroidery. Analysing the job of the court in deciphering these shields and noticing the cutoff points inside the current structure, this article looks to jump completely into the sacred securities accessible for LGBTQIA+ freedoms in India. The central research question guiding this study is: How have Indian courts interpreted constitutional provisions to protect LGBTQIA+ rights, and what are the limitations of these protections? To answer this, the paper explores various facets of legal and judicial approaches in India, questioning the extent to which the judiciary has recognized and protected LGBTQIA+ rights. It seeks to understand the broader implications of key legal decisions and identify the existing legal, social, and cultural barriers that continue to restrict full equality.

## SIGNIFICANCE OF THE STUDY

The significance of this research lies in its examination of the intersection between constitutional law and LGBTQIA+ rights. It is essential to assess the effectiveness of legal provisions in safeguarding the rights of marginalized communities, particularly in a society with deep-rooted biases and prejudices.

## RESEARCH METHODOLOGY

The methodology adopted in this research is comprehensive and multidimensional, utilizing the following analytical frameworks: This involves a critical examination of statutes, constitutional provisions, and

landmark judicial decisions that have shaped the legal landscape for LGBTQIA+ rights in India. And further compares India's legal framework with international human rights standards and the legal protections offered in other jurisdictions. Various statutes, Scholarly Articles and Reports and the Media Reports has been utilised.

### SCOPE AND LIMITATIONS

This research focuses on the legal and judicial dimensions of LGBTQIA+ rights within the Indian context, with particular attention to landmark cases, legislative reforms, and international influences. While the study offers a broad overview of social factors influencing legal developments, it does not delve deeply into the psychological or medical aspects of LGBTQIA+ issues. Additionally, the research is limited by the availability of case law and data, particularly regarding recent judgments and ongoing legislative changes.

### HISTORICAL CONTEXT

The evolution of LGBTQIA+ rights [1] in India cannot be understood without examining the historical backdrop that has shaped societal and legal attitudes toward non-heteronormative identities. Before the arrival of the British in India, various indigenous cultures had complex and often more accepting views of gender and sexuality [2]. Ancient texts, religious epics, and temple sculptures provide evidence of a society that recognized gender diversity and same-sex relationships [3].

Ancient Hindu Texts like the Kama Sutra and the Manusmriti reference a spectrum of sexual and gender expressions [4]. The Kama Sutra, an ancient Sanskrit text on love and sexuality, explicitly acknowledges same-sex desires, categorizing them as a natural part of human sexuality. It includes terms such as Tritiya-Prakriti [5] (third nature), which described individuals who did not fit into binary gender norms [6]. Similarly, the Hindu epics—the Mahabharata and the Ramayana—feature characters who exhibit gender fluidity [7]. For instance, the Mahabharata includes the story of Shikhandi [8], born as a woman but later transformed into a man [9], and the Ramayana portrays the devotion of a gender-fluid community to Lord Rama. The androgynous form of Lord Shiva and Parvati, known as Ardhanarishvara [10], symbolizes the fluidity of gender [11]. Likewise, deities such as Vishnu, who transforms into the female Mohini, reflect an acknowledgment of gender fluidity [12]. This cultural history suggests that pre-colonial India had a relatively tolerant, if not fully inclusive, view of diverse sexual identities [13].

The advent of British colonial rule in the 18<sup>th</sup> century marked a stark shift in India's legal and cultural landscape regarding sexuality and gender. The British colonial administration, influenced by Victorian-era morality, imposed its rigid, heteronormative views on Indian society [14]. Section 377 [15] of the Indian Penal Code, 1860 drafted by Lord Macaulay, criminalized "carnal intercourse against the order of nature," ultimately targeting same-sex relationships. This provision was inspired from England's the Buggery Act, 1533 [16], which criminalized sodomy even amongst consensual major persons [17]. Consequently, the same used as a tool to impose their moral code, and this not only criminalized consensual same-sex acts but also stigmatized the entire LGBTQIA+ community, treating and posing them as deviants and criminals. With the passage of time the colonial legal framework significantly influenced Indian attitudes towards non-heteronormative identities. The British claimed to "civilize" the Indian populace through systematic ingrained legacy of discrimination [18].

After gaining independence in 1947, India inherited a legal system heavily influenced by colonial laws, including the Indian Penal Code [19]. The framers of the Indian Constitution, while focusing on fundamental rights, did not address the specific needs of the LGBTQIA+ community, largely because issues of sexuality were not considered part of the public discourse at the time. Although the Indian Constitution enshrines fundamental rights such as equality before the law (Article 14) [20], non-discrimination (Article 15) [21], and the right to life and personal liberty (Article 21) [22], it remained silent on issues of sexual orientation and gender identity. This silence allowed Section 377 to continue as a tool for the legal and social persecution of LGBTQIA+ individuals, reinforcing colonial attitudes and preventing the emergence of a progressive legal discourse on sexual rights. The Section 377 was actively enforced but it was also used as a basis for harassment, blackmail, and discrimination against LGBTQIA+ individuals by law enforcement agencies [23]. Social ostracism, discrimination in employment, housing, and healthcare, and exclusion from family structures became pervasive issues for LGBTQIA+ persons, compounded by the lack of legal recourse [24].

### CULTURAL AND SOCIAL FACTORS INFLUENCING LGBTQIA+ RIGHTS

India's socio-cultural fabric, characterized by a strong emphasis on family, caste, and religious norms, has significantly influenced attitudes towards LGBTQIA+ individuals [25]. The traditional Indian family system, deeply patriarchal and heteronormative, has been a primary source of pressure against accepting LGBTQIA+

identities [26]. LGBTQIA+ individuals are often viewed as threats to the continuation of family lineage and are subjected to practices such as forced heterosexual marriages [27]. This societal pressure is compounded by the concept of "honour," where deviation from traditional gender roles or sexual norms is seen as bringing shame to the family. Despite ancient texts that acknowledge diverse sexualities, modern interpretations of religious texts often promote a conservative stance on sexuality [28]. Leaders from major religious communities have generally opposed the decriminalization of same-sex relations, citing scriptural prohibitions against non-heteronormative behaviours [29]. This religious conservatism has fuelled social homophobia, contributing to the widespread stigmatization of LGBTQIA+ individuals.

The historical context of LGBTQIA+ rights in India, marked by a transition from pre-colonial tolerance to colonial criminalization and post-colonial neglect, sets the stage for understanding the modern struggle for legal recognition. The early 21st century witnessed a surge in LGBTQIA+ activism, challenging the colonial legacy and demanding the recognition of fundamental rights [30]. Activists leveraged historical evidence of pre-colonial acceptance to argue against the criminalization under Section 377, framing it as a remnant of colonial oppression [31]. The legal battle culminated in the landmark judgment of *Navtej Singh Johar v. Union of India* (2018) [32] and then in the case of *Supriyo @ Supriya Chakraborty v. Union of India* (2023) [33], where the Supreme Court of India decriminalized consensual same-sex relations, marking a significant departure from colonial-era legal norms [34]. Despite legal victories, the societal acceptance of non-heteronormative identities remains limited, with significant resistance from conservative sections of society, including religious and political groups.

### **SHIFT FROM CONSERVATIVE TO PROGRESSIVE JUDICIAL INTERPRETATION**

The progressive shift began with the liberalization of India's socio-political environment in the late 1990s and early 2000s [35]. With increasing awareness of human rights and the global LGBTQIA+ rights movement, the Indian judiciary started adopting a more inclusive interpretation of constitutional provisions [36]. This shift was characterized by a recognition of individual rights and dignity, moving beyond traditional heteronormative frameworks. Judicial activism refers to the judiciary's proactive role in interpreting the Constitution to expand individual rights, often filling gaps left by the legislature [37]. In cases like *Naz Foundation*, *NALSA*, and *Navtej Singh Johar*, the judiciary exhibited activism by advancing LGBTQIA+ rights, setting legal precedents that went beyond existing statutory interpretations. The concept of "constitutional morality," emphasized in these judgments, reflects the judiciary's willingness to interpret the Constitution in a manner that aligns with evolving human rights norms. This activism has been crucial in addressing historical injustices faced by LGBTQIA+ individuals, given the lack of legislative action on these issues. Conversely, judicial restraint emphasizes the need for the judiciary to defer to the legislature on matters of social policy, avoiding encroachment on the domain of elected representatives. The *Koushal* decision is a prime example of this approach, where the Supreme Court opted to uphold the existing legal framework, arguing that it was the legislature's responsibility to amend or repeal laws like Section 377 [38]. This decision highlighted the limitations of judicial intervention in a democratic setup, where changes in social policy are traditionally seen as the prerogative of the legislature. Issues such as legal recognition of same-sex marriages, adoption rights for LGBTQIA+ couples, and anti-discrimination protections in employment and housing require legislative action. The judiciary's recognition of LGBTQIA+ rights, although transformative, is limited in scope without corresponding legislative changes to enshrine these rights in statutory law.

### **EVOLUTION OF CONSTITUTIONAL INTERPRETATION: KEY CASES AND LEGAL FRAMEWORK**

The legal battle for LGBTQIA+ rights in India is grounded in constitutional protections and influenced by evolving international human rights norms. The Indian Constitution, adopted in 1950, does not explicitly mention sexual orientation or gender identity [39]. However, its broad guarantees of fundamental rights have been interpreted to extend protections to LGBTQIA+ individuals. The judiciary has played a crucial role in this interpretative expansion, particularly through landmark cases [40].

Article 14 ensures equality before the law and equal protection of the law to all persons [41]. The Indian judiciary has gradually expanded the interpretation of this provision to encompass LGBTQIA+ rights. For instance, in the landmark case of *Naz Foundation v. Government of NCT of Delhi* (2009) [42], the Delhi High Court recognized that Article 14 applies to all individuals, regardless of their sexual orientation. It was a pioneering moment, as it marked the first time that an Indian court decriminalized consensual same-sex relations. The judgment was groundbreaking in its adoption of "constitutional morality" over "social morality," arguing that the judiciary must uphold the rights guaranteed by the Constitution, even if they contradict prevailing societal norms [43]. However, this decision was overturned by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (2013), where the Court reinstated Section 377, citing that the LGBTQIA+ population was a "minuscule minority" and thus not deserving of judicial intervention [44]. This

ruling was heavily criticized for its disregard of human rights principles and was a setback for LGBTQIA+ activists [45]. Supreme Court reinstated Section 377, arguing that the judiciary should not intervene in a matter involving "minuscule minorities" and that the power to repeal the law rested with the legislature. The ruling was widely criticized for its lack of empathy and disregard for constitutional principles [46].

Article 15 prohibits discrimination on various grounds, including religion, race, caste, sex, or place of birth. Although the term "sexual orientation" is not explicitly included, recent judicial interpretations have read it into the protection against gender-based discrimination [47]. In a historic judgment the Supreme Court, namely *Navtej Singh Johar v. Union of India* (2018), affirmed that discrimination based on sexual orientation constitutes discrimination based on sex, thus making it unconstitutional under Article 15. This judgment marked a significant step in recognizing the rights of LGBTQIA+ individuals within the broader anti-discrimination framework of the Constitution. It decriminalized consensual same-sex relations between adults, partly reading down Section 377 of the IPC [48]. The Court held that Section 377 was unconstitutional insofar as it criminalized consensual sexual conduct between adults of the same sex. The judgment relied heavily on the right to privacy established in the *Puttaswamy* case and highlighted the importance of dignity, autonomy, and the freedom to choose one's partner [49]. It also rejected the Koushal ruling's 'minuscule minority' argument, affirming that constitutional rights are not contingent on the size of a population group. The *Navtej Singh Johar* judgment was a scathing critique of the previous Koushal ruling and emphasized that constitutional rights cannot be denied based on the size of a population group. The Court ruled that sexual orientation is an intrinsic part of individual identity and that criminalizing consensual same-sex acts violates fundamental rights to equality (Article 14), non-discrimination (Article 15), and personal liberty (Article 21).

The right to freedom of speech and expression under Article 19 has been pivotal in recognizing the identity and dignity of LGBTQIA+ individuals [50]. The Supreme Court, in its verdict in *National Legal Services Authority (NALSA) v. Union of India* (2014), affirmed that gender identity is a part of an individual's self-expression [51]. The Supreme Court recognized the rights of transgender individuals, declaring them as the "third gender." The Court affirmed that transgender individuals have the right to self-identify their gender, whether male, female, or third gender, and that this right is protected under Articles 14, 15, 19, and 21. It was held that individuals have the right to express their gender identity without fear of discrimination and discouragement, thus broadening the scope of Article 19 to include protection for gender non-conforming individuals [52].

Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the judiciary to include the right to privacy, dignity, and autonomy [53]. The Supreme Court's decision in *K.S. Puttaswamy v. Union of India* (2017), which recognized the right to privacy as a fundamental right, was instrumental in advancing LGBTQIA+ rights. The Court held that privacy includes the right to make personal choices about intimate relationships, thereby providing a strong constitutional basis for decriminalizing consensual same-sex acts in *Navtej Singh Johar*. The *Puttaswamy* case underscored that the state's interference in private, consensual adult relationships is a violation of personal liberty and undignified to human beings. The Court further held the right to privacy extends to the protection of one's sexual orientation, thereby challenging the constitutional validity of Section 377. The *Puttaswamy* case laid a strong legal foundation for the subsequent decriminalization of same-sex relations, as it underscored the importance of individual autonomy and dignity.

## CURRENT LEGAL FRAMEWORK: ANTI-DISCRIMINATION LAWS AND POLICIES

In the absence of comprehensive anti-discrimination legislation, the legal landscape for LGBTQIA+ individuals in India remains fragmented. While significant strides have been made through landmark judgments, statutory protections are still lacking in critical areas such as employment, healthcare, and social security. The Supreme Court's decision in *Navtej Singh Johar* (2018) decriminalized consensual same-sex relations between adults, marking a significant milestone in LGBTQIA+ legal recognition. However, this judgment primarily addressed the criminalization aspect, without providing broader civil rights or protections against discrimination.

### **The Transgender Persons (Protection of Rights) Act, 2019**

The Transgender Persons (Protection of Rights) Act, 2019, was the first comprehensive legislative effort to address transgender rights in India. It aims to prohibit discrimination against transgender persons in areas like employment, education, and healthcare [54]. The Act mandates the establishment of a National Council for Transgender Persons to advise the government on policies and ensure effective implementation. However, the Act has faced criticism for its shortcomings. The requirement for a certificate of identity from a district magistrate, which involves physical examination, has been criticized as invasive and demeaning [55]. It undermines the principle of self-identification, which was a key aspect of the *NALSA* judgment. The penalties for offenses against transgender persons, such as physical and sexual abuse, are significantly lighter compared to similar offenses against cisgender individuals. This discrepancy reflects a lack of seriousness in addressing crimes against the transgender community [56]. India currently does not have a unified anti-



discrimination law protecting LGBTQIA+ individuals from prejudice in employment, housing, healthcare, and other areas [57]. The absence of such legislation leaves LGBTQIA+ individuals vulnerable to systemic discrimination, despite the constitutional guarantees of equality and non-discrimination under Articles 14, 15, 19 and 21 [58].

### INTERNATIONAL INFLUENCE ON DOMESTIC LEGAL REFORMS

The recognition of LGBTQIA+ rights in India has been influenced by international human rights norms and the jurisprudence of other countries. A comparative analysis reveals both the convergence and divergence of India's legal approach with global standards. Indian courts have increasingly looked at comparative jurisprudence from countries with progressive LGBTQIA+ rights frameworks. For example, the South African Constitutional Court's decision in *National Coalition for Gay and Lesbian Equality v. Minister of Justice* (1998) [59], which struck down laws criminalizing same-sex relations, has been cited by Indian judges as a persuasive precedent. Similarly, the landmark *Obergefell v. Hodges* (2015) [60] ruling by the US Supreme Court, which legalized same-sex marriage, has been referenced in arguments advocating for marriage equality in India.

The Universal Declaration of Human Rights (UDHR), 1948 [61], a foundational international document, enshrines the principles of equality and non-discrimination. Articles 1 [62] and 2 [63] assert that all human beings are born free and equal in dignity and rights, and should not face discrimination. While the UDHR does not explicitly mention sexual orientation or gender identity, its principles have been interpreted to apply universally, forming the basis for subsequent human rights treaties and conventions.

The Yogyakarta Principles (2006) are a set of international legal principles addressing the application of international human rights law to issues of sexual orientation and gender identity. These principles affirm that states must respect, protect, and fulfil the human rights of LGBTQIA+ individuals [64]. Indian courts, particularly in the *Navtej Singh Johar* judgment, referred to these principles to bolster their arguments for the decriminalization of consensual same-sex acts, aligning domestic jurisprudence with international human rights standards.

Jurisprudence from international courts, such as the European Court of Human Rights (ECHR) [65] and Inter-American Court of Human Rights (IACHR), has significantly influenced the global understanding of LGBTQIA+ rights [66]. For instance, the ECHR has ruled in favour of recognizing same-sex relationships under the right to privacy and family life, influencing similar arguments made in Indian courts regarding the constitutional right to privacy and autonomy.

As a signatory to various international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), India is bound by its obligations to protect the rights of all individuals, including those belonging to the LGBTQIA+ community [67]. Although these treaties are not directly enforceable in Indian courts, they have been used by the judiciary to interpret domestic laws in a manner consistent with international norms. The Supreme Court, in judgments like *Supriya Chakraborty*, has referenced international treaties to bolster its interpretation of constitutional provisions, emphasizing the need to align domestic laws with global human rights standards [68].

Despite these advancements, several limitations persist like absence of specific anti-discrimination legislation that protects LGBTQIA+ individuals from discrimination in employment, housing, healthcare, and education. The existing legal protections are largely interpretative and not codified into explicit statutes. While the decriminalization of same-sex relations was a significant step forward, the absence of legal recognition for same-sex marriages and civil unions remains a critical gap. LGBTQIA+ couples continue to face legal barriers in matters of inheritance, adoption, and spousal/matrimonial rights.

### POTENTIAL AREAS FOR IMPROVEMENT

India needs a robust anti-discrimination law that explicitly includes sexual orientation and gender identity as protected categories. Such legislation should cover discrimination in employment, education, housing, healthcare, and access to public services. It would provide legal recourse for LGBTQIA+ individuals facing discrimination, ensuring broader enforcement of their constitutional rights [69].

Legalizing same-sex marriages and civil unions is a critical step towards ensuring equality. Recognizing same-sex relationships in law would provide LGBTQIA+ couples access to a range of rights and benefits, addressing the legal vacuum that currently exists [70]. Policies aimed at improving healthcare access for LGBTQIA+ individuals should include comprehensive training for healthcare providers on LGBTQIA+ issues, establishment of gender-affirming healthcare services in public hospitals, and inclusion of LGBTQIA+-

specific health needs in national healthcare policies [71]. Public awareness campaigns and educational programs on LGBTQIA+ rights can help change societal attitudes and reduce discrimination. Sensitization programs in schools, workplaces, and healthcare settings are crucial for creating a more inclusive and accepting environment [72].

Legal reforms alone cannot guarantee social acceptance. Societal attitudes, deeply rooted in historical, cultural, and religious beliefs, often lag behind progressive legal changes [73]. The decriminalization of same-sex relationships and recognition of transgender rights have sparked public debate, with varied responses across different social strata.

Traditional views, influenced by religious doctrines and patriarchal norms, continue to dominate in many parts of India, particularly in rural areas. These perspectives often regard LGBTQIA+ identities as immoral or corrupt [74]. The impact of such beliefs is evident in family rejection, forced marriages, and attempts to "cure" LGBTQIA+ individuals through conversion therapy, which remains unregulated despite being condemned by the Indian Psychiatric Society.

LGBTQIA+ individuals often face significant barriers in accessing justice, including bias from law enforcement agencies. Despite progressive judgments, police harassment and arbitrary detention remain common, especially for transgender individuals and those engaging in same-sex relationships. The reluctance of victims to report crimes due to fear of stigma and retaliation further exacerbates the problem. Legal aid services are limited, and many LGBTQIA+ individuals are unaware of their rights or lack the resources to seek legal recourse. Even where policies exist, such as those outlined in the Transgender Persons (Protection of Rights) Act, 2019, implementation is inconsistent. The lack of enforcement mechanisms and the limited reach of awareness programs mean that many LGBTQIA+ individuals remain unaware of their rights or are unable to access them effectively [75]. The social stigma associated with LGBTQIA+ identities further complicate policy implementation. Educational institutions in India largely lack policies to protect LGBTQIA+ students from bullying and discrimination. The absence of inclusive sex education and awareness programs perpetuates ignorance and stigma [76]. The University Grants Commission (UGC) has made efforts to introduce sensitization programs in higher education institutions [77], but these initiatives have not been universally adopted.

## CONCLUSION

To bridge these gaps, a multi-faceted approach involving legal reforms, policy changes, and societal education is necessary. The ultimate goal of these recommendations is to build a society where LGBTQIA+ individuals can fully exercise their rights without fear of discrimination or violence. This vision requires not only legal and policy changes but also a fundamental shift in societal attitudes. Achieving true equality for LGBTQIA+ individuals require collaboration between government agencies, the judiciary, civil society, and the private sector. Inclusive policymaking, informed by the experiences and needs of the LGBTQIA+ community, is crucial for creating effective reforms. Ensuring that LGBTQIA+ individuals have a seat at the table in policymaking processes is vital. Empowering LGBTQIA+ leaders, activists, and organizations to participate in legal and social reforms will help ensure that policies are not only inclusive but also responsive to the needs of the community. While significant progress has been made in recognizing and protecting LGBTQIA+ rights in India, there is still much work to be done. Addressing the identified gaps through comprehensive legal reforms, effective policy implementation, and societal education can pave the way for a more inclusive and equitable society. A future where LGBTQIA+ individuals can live openly, without fear of discrimination or violence, is not just a legal aspiration but a moral imperative for a just and equal society.

## REFERENCES

1. LGBTQIA+: An acronym encompassing diverse sexual orientations and gender identities, including *Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual, and others*. The "+" signifies inclusivity of additional identities beyond those explicitly mentioned, reflecting the fluid and evolving nature of gender and sexuality.
2. Rohit K Dasgupta, "Queer Sexuality: A Cultural Narrative of India's Historical Archive" 3 *Rupkatha Journal on Interdisciplinary Studies in Humanities* 651-668 (2011).
3. Ruth Vanita, *I Queering India Same-Sex Love and Eroticism in Indian Culture and Society* (Routledge, 1st edn., 2001).
4. Sruthi Darbhhamulla, "Tracing the History of Pride and LGBTQ Rights in India", *The Hindu*, July 01, 2023, available at: <https://www.thehindu.com/news/international/tracing-the-history-of-pride-and-lgbtq-rights-in-india/article66989326.ece> (last visited on Feb. 10, 2024).
5. Remya ML, "Tritiya Prakriti: Transgender in Indian Culture" 3 *Literary Herald* 139-143 (2017).

6. Amara Das Wilhelm, *I Tiritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions Through Hinduism* (Xlibris, India, 1st edn., 2004). Also see Tasha Mathur, "Tiritiya Prakriti: The Hidden Third Gender in Hinduism", *The Pink News*, Mar. 06, 2018, available at: <https://www.thepinknews.com/2018/03/06/tiritiya-prakriti-hinduism-hijras/> (last visited on Jan. 19, 2024).
7. Rashmi Luthra, "Clearing Sacred Ground: Women-Centered Interpretations of the Indian Epics." *Feminist Formations*, vol. 26, no. 2, 2014, pp. 135–61. *JSTOR*, <http://www.jstor.org/stable/43860745>. last visited on 1 Feb. 2024.
8. Devdutt Pattanaik, *I Shikhandi and Other Tales, They Don't Tell You* (Zubaan, 1st edn., 2014).
9. Akhila Valsen, "Third Gender in Mahabharata; Through the Lens of Queer Theory" 8 *IJRAR* 456-498 (2021).
10. Britannica, The Editors of Encyclopaedia. "Ardhanarishvara". *Encyclopedia Britannica*, 9 Apr. 2015, <https://www.britannica.com/topic/Ardhanarishvara>. Accessed 1 Feb. 2024.
11. Raveesh, B. N., "Ardhanareeshwara Concept Brain and Psychiatry" 55 *Indian Journal of Psychiatry* 256-267 (2013).
12. Samhita Arni, "Salvation Through Seduction", *The Hindu*, Sept. 28, 2017, available at: <https://www.thehindu.com/society/history-and-culture/seduction-as-her-weapon/article19768633.ece> (last visited on March. 4, 2024).
13. Savita Boral and Divyabha Vashisth, "Delineation of Third Gender Identity in the Indian Epics and Other Ancient Indian Texts" 12 *IIS Univ.J.A.* 234-247 (2023).
14. Vishnu Gopinath, "How We Got Here: A Brief History of LGBT Rights and Laws in India", *The Quint*, Sept. 06, 2022, available at: <https://www.thequint.com/explainers/lgbt-queer-rights-india-section-377-homosexuality-history> (last visited on Feb. 7, 2024). See also Aditi Yadav, "A Brief History of LGBTQ+ in India", *The CBS Post*, Sept. 18, 2021, available at: <https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india/> (last visited on Feb. 8, 2024).
15. "Section 377. Unnatural offences. — Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. — Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section".
16. 1533: 25 Henry 8 c.6: The Buggery Act available at: <https://statutes.org.uk/site/the-statutes/sixteenth-century/1533-25-henry-8-c-6-the-buggery-act/> (last visited on April 11, 2024).
17. PTI, "Section 377 Based on Law Passed by Henry VIII in 1533: Supreme Court", *The Indian Express*, Sept. 08, 2018, available at: <https://indianexpress.com/article/india/section-377-based-on-law-passed-by-henry-viii-in-1533-sc-5346197/> (last visited on Feb. 9, 2024).
18. Jeremiah A. Ho, "Colonizing Queerness" 95 *University of Colorado Law Review* 889-993 (2024).
19. Ananta Kumar Giri, "Rule of Law and Indian Society Colonial Encounters, Post-Colonial Experiments and Beyond", *Jura Gentium*, available at: <https://www.juragentium.org/topics/rol/en/giri.htm#4> (last visited on Feb 11, 2024).
20. "14. Equality before law. — The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".
21. "15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. — (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to- (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30. (6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the

- State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category. Explanation. —For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage".
22. "21. Protection of life and personal liberty. — No person shall be deprived of his life or personal liberty except according to procedure established by law".
  23. Lovepreet Kaur, "Exploring LGBTQ+ Equality in India: A Comprehensive Examination from Anthropological and Legal Perspectives", *Wiley Online Library*, Apr. 23, 2023, available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1002/sgp2.12092> (last visited on Feb. 8, 2024).
  24. E.D.B Riggle, "Ostracism as a framework for understanding LGBT well-being and risk" (Working Paper, January 7, 2017). Lexington, KY: University of Kentucky, PrismResearch.org. Also see Chatterjee Subhrajit, "Problems Faced by LGBT People in the Mainstream Society: Some Recommendations" 1 *International Journal of Interdisciplinary and Multidisciplinary Studies* 317-331 (2014).
  25. Pushpesh Kumar, "Queering Indian Sociology a Critical Engagement" 7 *CAS WORKING PAPER SERIES Centre for the Study of Social Systems Jawaharlal Nehru University, New Delhi* 1-30 (2014).
  26. Jagruti R. Wandrekar, Advaita S. Nigudkar, et.al., "What Do We Know About LGBTQIA+ Mental Health in India? a Review of Research from 2009 to 2019" 2 *Journal of Psychosexual Health* (2020).
  27. Dean Burnett, "How Same-Sex Marriage Could Ruin Civilisation", *The Guradian*, June 29, 2015, available at: <https://www.theguardian.com/science/brain-flapping/2015/jun/29/same-sex-marriage-ruin-civilisation-science> (last visited on Feb. 12, 2024). See also Earnshaw, V.A., Logie, C., Wickersham, J.A., Kamarulzaman, A. (2024). LGBTQ Stigma. In: Hwahng, S.J., Kaufman, M.R. (eds) *Global LGBTQ Health*. Global LGBTQ Health. Springer, Cham. [https://doi.org/10.1007/978-3-031-36204-0\\_2](https://doi.org/10.1007/978-3-031-36204-0_2)
  28. HRC Foundation, "Stances of Faiths on LGBTQ+ Issues: Hinduism", *HRC Foundation*, June 29, 2015, available at: <https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-hinduism> (last visited on March 24, 2024).
  29. Van Der Toorn, J., Jost, J. T., Packer, D. J., Noorbaloochi, S., & Van Bavel, J. J. (2017). In Defense of Tradition: Religiosity, Conservatism, and Opposition to Same-Sex Marriage in North America. *Personality & Social Psychology Bulletin*, 43(10), 1455–1468. <https://doi.org/10.1177/0146167217718523>
  30. Upendra Baxi, *I The Future of Human Rights* (OUP India, India, 2nd edn., 2007).
  31. Durba Mitra, "History's Apology: Sexuality and the 377 Supreme Court Decision in India", *Epicenter Harvard University Blog*, Sept. 27, 2018, available at: <https://epicenter.wcfia.harvard.edu/blog/history%E2%80%99s-apology-sexuality-and-377-supreme-court-decision-india> (last visited on March 17, 2024).
  32. 2018 SC 4321, (2018) 10 SCC
  33. 2023 INSC 920,
  34. Johnson, Preston G., "Lessons for Legalizing Love: A Case Study of the Naz Foundation's Campaign to Decriminalize Homosexuality in India" (2017). Capstone Collection. 3063. <https://digitalcollections.sit.edu/capstones/3063>
  35. Arvind Panagariya, International Monetary Fund, "IMF Working Paper-India in the 1980s and 1990s: A Triumph of Reforms" (2004). See also Anil Trigunayat, "75 Years of Progressive India", *Euractiv*, Aug. 31, 2022, available at: <https://www.euractiv.com/section/eu-india/opinion/75-years-of-progressive-india/> (last visited on March 10, 2024).
  36. Sucheta, "The Legal Struggles of the LGBTQIA+ Community in India", *SSC Online*, June 28, 2023, available at: <https://www.sconline.com/blog/post/2023/06/18/mapping-the-progression-of-lgbtq-rights-in-india-important-laws-and-judicial-pronouncements/> (last visited on Feb. 14, 2024).
  37. *Naz Foundation v. Government of NCT of Delhi and Ors.*, 2009; *Navtej Singh Johar v. Union of India*, 2018 AIR 2018 SC 4321; *K.S. Puttaswamy v. Union of India*, 2017 (2017) 10 SCC 1; *NALSA v. Union of India*, 2014 (2014) 5 SCC 438; *Indian Young Lawyers Association v. State of Kerala (Sabarimala Case)*, 2018 (2018) 10 SCC 1; *Joseph Shine v. Union of India*, 2018 AIR 2019 SC 177; *Air India v. Nergesh Meerza*, 1981 AIR 1981 SC 1829; *Vishaka v. State of Rajasthan*, 1997 AIR 1997 SC 3011; *CB Muthamma v. Union of India*, 1979 AIR 1979 SC 1868; *Shayara Bano v. Union of India*, 2017 AIR 2017 SC 4609; *Laxmi v. Union of India*, 2014 AIR 2014 SC 1866; *Anuj Garg v. Hotel Association of India*, 2008 AIR 2008 SC 663; *Secretary, Ministry of Defence v. Babita Puniya*, 2020 AIR 2020 SC 1000. In these cases, emphasized the protection of individual dignity, equality, and non-discrimination as fundamental constitutional principles. The judiciary expanded the scope of fundamental rights to address social injustices, gender-based discrimination, and exclusionary practices. It highlighted the importance of inclusivity, equal treatment, and the rejection of traditional stereotypes that undermine equality.
  38. *Suresh Kumar Koushal & Anr. v. NAZ Foundation & Ors.*, AIR 2014 SC 563.



39. The Constitution of India, 1950
40. See note 37
41. See note 20
42. 2010 CRI. L. J. 94; 160 Delhi Law Times 277
43. Para 79 of *Naz Foundation v. Government of NCT of Delhi*, 2010 CRI. L. J. 94
44. Dhanya Airen, "Understanding the Social Factors Contributing in the Crime Against the LGBTQ+" (2022); Asaxena, "'Miniscule' but Powerful!", *Alliance India Blog Post*, Aug. 25, 2015, available at: <https://allianceindia.org/miniscule-powerful/> (last visited on Feb 12, 2024).
45. R.A.Aswin Krishna, D.Amirthavarshini, et.al., "LGBTQ Rights and Legislation in India: The Status Quo" 3 *Indian Journal of Integrated Research in Law* 1-15.
46. Oindrilla Mukherjee, "Suresh Kumar Kaushal Vs. Naz Foundation: A Critical Analysis", *Lawctopus*, July 21, 2014, available at: <https://www.lawctopus.com/academike/suresh-kumar-koushal-vs-naz-foundation-critical-analysis/> (last visited on Feb. 20, 2024).
47. See note 21
48. Alternative Law Forum, Bangalore, India, "Right to Love Navtej Singh Johar V. Union of India: A Transformative Constitution and The Rights of LGBT Persons" (2018)
49. *Justice K.S.Puttaswamy (Retd) v. Union of India*, 2019 (1) SCC 1
50. International Commission of Jurists, "Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India" 90, 114 (2019)
51. ibid
52. Jayna Kothari, "Trans Equality in India: Affirmation of the Right to Self-determination of Gender" 13 *NUJS Law Review* 550-563 (2020).
53. See note 22
54. Vidhi Centre for Legal Policy and Akshat Agarwal, "Queering the Law: Making Indian Laws LGBT+ Inclusive" 6 (2020)
55. Kushagra Kundan and Nidhi Prakriti, "The Third Gender: Protection or Discrimination? a Critique of Transgender Rights Act, 2019", *The Society for Constitutional Law Discussion*, Aug. 21, 2020.
56. Alexandra Oancea, "The Shortcomings of India's New Transgender People's Act", *Human Rights Pulse*, Nov. 29, 2021, available at: <https://tinyurl.com/bdecbhjc> (last visited on March 19, 2024).
57. Dominik Koehler, "LGBTI people are (likely) over represented in the bottom 40%," The World Bank, 2015, <https://blogs.worldbank.org/governance/lgbti-people-are-likely-over-representedbottom-40> (last visited on Feb. 20, 2024).
58. See note 23
59. *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*, [1998] ZACC 15, 1999 (1) SA 6 (CC), 1998 (12) BCLR 1517 (CC); also see Ryan Goodman "Beyond the enforcement principle: sodomy laws, social norms, and social panoptics" *California Law Review*, 89 643-740 (2001); Gregory R. Kilpatrick, "The National Coalition for Gay and Lesbian Equality v. the the National Coalition for Gay and Lesbian Equality v. the Minister of Justice: A New Era in South African Sexual Orientation Protection" 24 *North Carolina Journal of North Carolina Journal of International Law* 699-726 (1999).
60. 576 U.S. 644 (2015) available at: [https://www.supremecourt.gov/DocketPDF/21/21-476/227884/20220614132338901\\_42501%20pdf%20Goldstein.pdf](https://www.supremecourt.gov/DocketPDF/21/21-476/227884/20220614132338901_42501%20pdf%20Goldstein.pdf) (last visited on Feb. 11, 2024).
61. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on March 16, 2024).
62. Article 1- "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."
63. Article 2- "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."
64. Yogyakarta Principles. Principle 15- Principle 15 states "Everyone has the right to adequate housing, including protection from eviction, without discrimination and that States shall: a) take all necessary legislative, administrative and other measures to ensure security of tenure and access to affordable, habitable, accessible, culturally appropriate and safe housing, not including shelters and other emergency accommodation, without discrimination on the basis of sexual orientation, gender identity or material or family status; b) take all necessary legislative, administrative and other measures to prohibit the execution of evictions that are not in conformity with their international human rights obligations, and ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that a right to protection against forced evictions has been violated or is under threat of violation, including the right to resettlement, which includes the right to alternative land of better or equal quality and to adequate housing, without discrimination."

65. Article 14 of the EU Charter of Fundamental Rights that explicitly prohibits discrimination on grounds of sexual orientation.
66. Inter-American Commission on Human Rights, "Compendium on Equality and Non-Discrimination: Inter-American Standards" (February 19, 2019).
67. OHCHR. "Ratification Status for India". [https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN) (last visited on March 17, 2024).; also see International Commission of Jurists, "Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India" 9, 19, 27 (2019).
68. *Supriyo @ Supriya Chakraborty v. Union of India*, Para 234, 280; 2023 INSC 920
69. International Commission of Jurists, "Living with Dignity - Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work, and Public Spaces in India" 69, 74, 89, 108 (2019).
70. Diederik Boertien<sup>1</sup> and Daniele Vignoli<sup>2</sup>, "Legalizing Same-Sex Marriage Matters for the Subjective Well-Being of Individuals in Same-Sex Unions" *Springer Nature* 2110-2121 (2019).
71. Ana Macedo, Maria Aurindo & Cláudia Febra, "Effectiveness of undergraduate medical students training on LGBTQIA + people health: A systematic review and meta-analysis". *BMC Med Educ* 24, 63 (2024). <https://doi.org/10.1186/s12909-024-05041-w>
72. Sawansukha, Pinal, and Bhawna Tushir. "Role of Media in Breaking Stereotypes Related to the LGBTQIA+ Community." *IAPS Journal of Practice in Mental Health* 1, no. 1 (2023): 34-41.
73. *ibid*
74. Von Humboldt, Sofia. "Still Out or Coming in? Shame and Double Stigmatization Among Old LGBTQIA+ Adults." In *Shame and Ageing in a Transforming World*, pp. 97-113. Cham: Springer Nature Switzerland, 2024.
75. Anushka Ojha, "Sexual Minorities and the Right to Family: Constitutional and Legal Rights." (2024).
76. SREERAM, ANJALI. "Impact Analysis of a School-based LGBTQIA." PhD diss., Gandhi Institute of Technology and Management, 2023.
77. Debdatta Chowdhury, "Making higher education institutions gender-sensitive: Visions and voices from the Indian education system." In *Leading change in gender and diversity in higher education from margins to mainstream*, pp. 239-258. Routledge, 2022.