

“From Criminalisation to Constitutional Morality: Reassessing Section 377 IPC in India”

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ABSTRACT

References to gender fluidity and diverse expressions of sexuality can be found in ancient Indian literature and temple art, including characters such as Shikhandi and Brihannala in the Mahabharata and the sculptural depictions at the Khajuraho Temples, indicating that rigid colonial notions of sexuality³ were not historically rooted in Indian society. Yet, Section 377 of the Indian Penal Code institutionalized Victorian morality by criminalizing consensual same-sex relations for decades..

“History owes an apology to the members of the LGBTQ community and their families...” observed Justice Indu Malhotra in the landmark judgment of *Navtej Singh Johar v. Union of India Judgment*⁴. The statement symbolized not merely judicial recognition of constitutional rights, but also the repudiation of centuries of discrimination institutionalized through Section 377 of the Indian Penal Code.

The presence of Section 377 within the Indian Penal Code has long been a contentious issue, rooted in colonial-era legislation that fails to align with contemporary societal norms and values. Originating from the Victorian Buggery Act of 1533⁵, it was transplanted into the IPC in 1860, reflecting a punitive stance towards acts deemed to contravene the perceived natural order, including consensual homosexual relations. This antiquated provision, while ostensibly aimed at regulating sexual conduct, has instead perpetuated discrimination and marginalization against the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) community. Despite progressive legal developments, such as the landmark *Naz Foundation vs. Govt. of NCR Delhi* case in 2009, which decriminalized same-sex relations, systemic barriers persist. Article 14, 15, and 21 of the Indian Constitution, guaranteeing equality before the law, prohibition of discrimination, and protection of life and personal liberty, respectively, stand in stark contradiction to the continued enforcement of Section 377. Furthermore, the Supreme Court's

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³ See Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India: A Literary History* (Penguin India, 2001).

⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁵ Alok Gupta, *Section 377 and the Dignity of Indian Homosexuals* (2006).

ruling in 2018, recognizing the rights and dignity of LGBTQ individuals, underscored the imperative for legislative reform. However, substantive legal changes are essential to address broader issues facing the LGBTQ community, including marriage equality, adoption rights, and inheritance. Despite these challenges, there is growing momentum towards reform, driven by a recognition of the fundamental rights and freedoms that all citizens, regardless of sexual orientation or gender identity, are entitled to. Efforts to dismantle discriminatory laws and foster a more inclusive legal framework are not merely matters of legality, but also of human rights and social justice. Therefore, the imperative lies in fostering legislative and societal change that ensures equal treatment and opportunities for all members of society, irrespective of sexual orientation or gender identity⁶.

Keywords: Section 377, LGBTQ+ Rights, Constitutional Morality, Decriminalization, Right to Privacy, Equality, Dignity, Transformative Constitutionalism, Queer Rights, Fundamental Rights, Gender-Neutral Sexual Offences Laws.

INTRODUCTION

The constitutional validity of Section 377 became the subject of extensive judicial and public debate in India, particularly in light of Articles 14, 15, 19 and 21 of the Constitution, which guarantee equality, non-discrimination, freedom of expression and the right to life and personal liberty. Judicial developments in cases such as *Naz Foundation v. Government of NCT of Delhi*⁷ Judgment and *Navtej Singh Johar v. Union of India* Judgment significantly transformed constitutional discourse relating to sexuality, dignity and individual rights in India.

Section 377 – unnatural offences: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with life imprisonment 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^{8,9}

Questions concerning gender identity, sexuality and individual autonomy have increasingly become part of contemporary constitutional discourse. For decades, members of the LGBTQ+ community in India faced social exclusion, discrimination and legal marginalization due to rigid societal perceptions regarding gender and sexuality. In this background, the constitutional challenge to Section 377 emerged not merely as a legal issue, but also as a question concerning dignity, equality and the recognition of individual identity within a democratic society.

⁶ Gautam Bhatia, *Transformative Constitutionalism: A Radical Biography in Nine Acts* (HarperCollins India 2019).

⁷ *Naz Foundation v. Government of NCT of Delhi*, 160 DLT 277 (2009).

⁸ Arvind Narrain and Alok Gupta (eds.), *Law Like Love: Queer Perspectives on Law* (Yoda Press 2011).

⁹ Indian Penal Code, 1860, § 377.

The law about Section 377 in India was talked about a lot by judges and the public. This was because of some parts of the Constitution like Articles 14, 15, 19 and 21. These parts say that everyone should be treated equally and have the freedom to express themselves. They also say that people should be able to live their lives with dignity and make their choices.

There were some court cases, like *Naz Foundation v. Government of NCT of Delhi* and *Navtej Singh Johar v. Union of India* that changed the way people think about sexuality and rights in India. Another important case, *Justice K.S. Puttaswamy v. Union of India*¹⁰ said that people have a right to privacy. This meant that sexual minorities in India had protection under the law. It also meant that they had the right to make their decisions and live their lives with dignity, which is an important part of Article 21 of the Constitution. Section 377 and the rights of minorities are still important issues, in India today.

The present study examines the constitutional and judicial evolution of Section 377 with particular emphasis on constitutional morality, transformative constitutionalism and the protection of LGBTQ+ rights in India. It further analyses the continuing legal concerns relating to marriage equality, anti-discrimination protections and the unsettled position of gender-neutral sexual offences law under the *Bharatiya Nyaya Sanhita, 2023*.

The study also looks at what happens when same-sex relations are not a crime anymore. It thinks about things like if same-sex couples can get married, if they are protected from discrimination and if the laws about sex crimes are fair to everyone as stated in the *Bharatiya Nyaya Sanhita, 2023*.

The research tries to understand what people in India think about LGBTQ+ rights. If they think the constitution includes everyone. It also looks at how the criminal law can be changed to be fairer. The researchers used a questionnaire to ask people what they think. By looking at what the law says and what people think the study wants to find out what problems the LGBTQ+ community, in India still faces even though Section 377 is not a crime anymore.

RESEARCH METHODOLOGY

The present study adopts both doctrinal and empirical methods to examine the constitutional and legal evolution of Section 377 of the Indian Penal Code and its impact on contemporary Indian criminal jurisprudence. The doctrinal aspect of the research is based on the analysis of constitutional provisions, judicial decisions, statutory developments, scholarly articles, law commission reports and other secondary sources relating to LGBTQ+ rights, constitutional morality and sexual offences law in India.

In addition to doctrinal research, the study also includes an empirical survey conducted through a structured questionnaire to understand public opinion regarding the decriminalisation of Section 377, constitutional morality, LGBTQ+ rights, gender-neutral sexual offences laws and

¹⁰ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

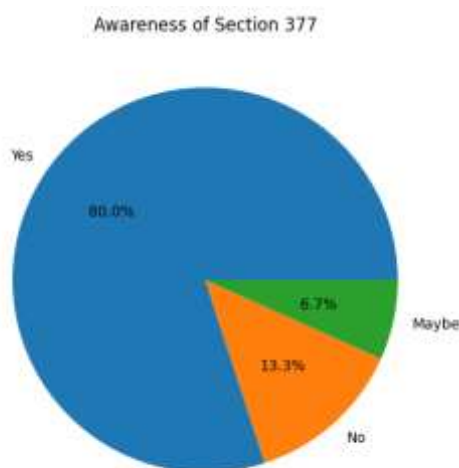
the adequacy of legal protections under the Bharatiya Nyaya Sanhita, 2023.

A total of 56 responses were collected from participants belonging to different age groups and educational backgrounds in order to gain a broader understanding of societal attitudes towards equality, sexual orientation and criminal law reform. The collected data has been presented through charts, tables and percentage-based analysis to identify important trends and public perspectives relating to the subject matter of the study.

The use of both doctrinal and empirical methods provides a more comprehensive understanding of the evolving legal position of Section 377 and the continuing challenges relating to constitutional inclusivity and sexual offences law in India.

EMPIRICAL FINDINGS AND SURVEY ANALYSIS

The empirical component of the present study is based on responses collected from 56 participants belonging to different age groups, educational and professional backgrounds. The responses were analyzed through graphical and percentage-based interpretation in order to understand public perceptions regarding Section 377, LGBTQ+ rights and contemporary sexual offences law in India.



Awareness regarding Section 377 and its legal history among respondents.

Source: Empirical Survey Conducted by the Researcher, 2026

The survey findings indicate that a significant majority of respondents were aware of Section 377 and its legal history in India. Approximately 80% respondents stated that they were familiar with the provision and the constitutional debates surrounding it. The findings reflect increasing public awareness regarding LGBTQ+ rights and judicial developments relating to constitutional protections in India. The empirical findings of the study reflect increasing public awareness regarding LGBTQ+ rights, constitutional protections and the need for more inclusive criminal law reforms in India. At the same time, the responses also indicate continuing concerns relating to gender-neutral sexual offences legislation, marital rape and the

adequacy of legal protections available under the contemporary criminal justice framework.

CONSTITUTIONAL VALIDITY OF SECTION 377

Section 377 of the Indian Penal Code, 1860 criminalized consensual sexual acts between adults in private and, therefore, raised serious constitutional concerns in relation to the fundamental rights guaranteed under the Constitution of India. The provision was widely criticized for violating the principles of equality, dignity, privacy and personal liberty guaranteed under Articles 13, 14, 15, 19 and 21 of the Constitution.

Article 13 and Constitutional Invalidity –

Article 13(2) of the Constitution of India provides that the State shall not make any law which takes away or abridges the fundamental rights guaranteed under Part III of the Constitution, and any law inconsistent with such rights shall, to the extent of the inconsistency, be void¹¹. Section 377, by criminalizing consensual same-sex relations between adults, was considered inconsistent with constitutional guarantees relating to equality, liberty and dignity. Consequently, the constitutional validity of the provision was challenged before the judiciary on the ground that it violated fundamental rights guaranteed to LGBTQ+ individuals.

Article 14: Equality Before Law

Article 14 guarantees equality before the law and equal protection of laws¹² to every person within the territory of India. Article 14 of the constitution of India, there are two essential conditions must be fulfilled:-

- A. The classification must be based on an intelligible differentia, between the group of the members and,
- B. The differentia must be based on the rational criteria and the essential of the thing is there needs to be a definite nexus between the classification and the objective of the legal provision which introduced it.

The doctrine of reasonable classification under Article 14 requires that any classification must be based on an intelligible differentia and must have a rational nexus¹³ with the objective sought to be achieved. Critics of Section 377 argued that the provision arbitrarily targeted LGBTQ+ individuals and failed to satisfy the test of reasonable classification. The criminalisation of consensual same-sex relations lacked a rational constitutional basis and resulted in unequal treatment of individuals solely on the basis of sexual orientation. In *Navtej Singh Johar v. Union of India* Judgment, the Supreme Court held that Section 377 violated Article 14 as it was manifestly arbitrary and discriminatory in nature.

¹¹ INDIA CONST. art. 13(2).

¹² INDIA CONST. art. 14.

¹³ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

Article 15- Prohibition of Discrimination-

Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. ¹⁴Constitutional interpretation has gradually expanded the meaning of the term “sex” to include sexual orientation. The criminalisation of consensual same-sex relationships under Section 377 resulted in discrimination against individuals based on their sexual orientation, which forms an intrinsic part of personal identity.

The Supreme Court recognised that denying equal treatment to individuals on the basis of sexual orientation violates the constitutional principle of non-discrimination. The judgment in *Navtej Singh Johar v. Union of India* Judgment affirmed that LGBTQ+ persons are entitled to equal constitutional protection and dignity under the law.

Article 19: Freedom of Expression

Article 19 of the Constitution guarantees various freedoms, including freedom of speech and expression, association and movement. ¹⁵Section 377 imposed restrictions upon the ability of LGBTQ+ individuals to express their identity and engage in consensual relationships without fear of criminal prosecution. The provision created an atmosphere of stigma and social exclusion, thereby affecting the freedom of expression and personal identity of sexual minorities. The Supreme Court observed that the expression of one’s sexual identity is an essential aspect of individual freedom and autonomy protected under Article 19 of the Constitution. The criminalization of consensual same-sex relationships also created a chilling effect on the ability of LGBTQ+ individuals to openly express their identity and participate freely in society.

Article 21: Right to Life, Privacy and Dignity–

Article 21 guarantees the right to life and personal liberty¹⁶, which includes the rights to dignity, privacy and autonomy. The constitutional understanding of Article 21 was significantly expanded in *Justice K.S. Puttaswamy v. Union of India* Judgment, where the Supreme Court recognised the right to privacy as a fundamental right under the Constitution. The Court further observed that sexual orientation forms an essential attribute of privacy and individual dignity.

Section 377 was criticized for interfering with the private and consensual choices of adults and for denying LGBTQ+ individuals the right to live with dignity and autonomy. In *Navtej Singh Johar v. Union of India* Judgment, the Supreme Court held that criminalising consensual same-sex relations violated the constitutional values of dignity, liberty and privacy guaranteed under Article 21. Thus, Section 377 of the Indian Penal Code was widely regarded as being inconsistent with the fundamental rights guaranteed under the Constitution of India. The

¹⁴ INDIA CONST. art. 15.

¹⁵ INDIA CONST. art. 19(1)(a).

¹⁶ INDIA CONST. art. 21.

decriminalisation of consensual same-sex relations marked an important step towards constitutional inclusivity, equality and the protection of individual dignity.

JUDICIAL EVOLUTION OF SECTION 377 AND EMERGING CHALLENGES UNDER THE BNS

The movement challenging Section 377 gained significant momentum after a Public Interest Litigation (PIL) was filed by the Naz Foundation before the Delhi High Court in 2001 questioning the constitutional validity of the provision in relation to consensual sexual acts between adults in private. A major constitutional development came with the decision in *Naz Foundation v. Government of NCT of Delhi* Judgment delivered on 2 July 2009, where the Delhi High Court partially read down Section 377 and decriminalised consensual same-sex relations between adults. The Court held that the provision violated Articles 14, 15 and 21 of the Constitution and emphasised the principles of equality, dignity and personal liberty. The judgment was widely welcomed by civil society groups and members of the LGBTQ+ community, as it marked an important step towards constitutional recognition of queer rights in India. The Court also observed that discrimination on the basis of sexual orientation is closely connected to discrimination on the ground of sex under Article 15 of the Constitution.

However, the judgment faced considerable opposition, and several appeals were filed before the Supreme Court of India. In *Suresh Kumar Koushal v. Naz Foundation* Judgment, decided on 11 December 2013,¹⁷ the Supreme Court reversed the Delhi High Court judgment and reinstated the criminalisation of consensual same-sex relations under Section 377. The Court observed that the LGBTQ+ community constituted only a “minuscule minority” and held that any amendment or repeal of the provision was a matter for the legislature. The decision attracted widespread criticism from constitutional scholars, activists and human rights organisations for failing to adequately protect the rights and dignity of sexual minorities. Critics argued that the judgment reinforced social stigma and ignored evolving constitutional values relating to equality, privacy and individual autonomy.

Following the decision in *Suresh Kumar Koushal*, public discourse surrounding LGBTQ+ rights and constitutional protections increased significantly. A major constitutional shift occurred in *Justice K.S. Puttaswamy v. Union of India* Judgment, where the Supreme Court recognised the Right to Privacy as a fundamental right under Article 21 of the Constitution. The Court further observed that sexual orientation forms an essential attribute of privacy, dignity and personal autonomy, thereby laying the constitutional foundation for reconsidering the validity of Section 377.

The constitutional challenge was finally resolved in *Navtej Singh Johar v. Union of India* Judgment, where a five-judge Constitution Bench of the Supreme Court unanimously decriminalised consensual same-sex relations between adults. The Court held that Section 377,

¹⁷ *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

insofar as it criminalised consensual acts between adults in private, violated Articles 14, 15, 19 and 21 of the Constitution. The judgment strongly emphasised constitutional morality over social morality and reaffirmed the role of the Constitution as a transformative document intended to protect dignity, equality and minority rights. The decision therefore marked a significant shift in Indian constitutional jurisprudence towards greater recognition of inclusivity, privacy and individual freedom within a democratic society.

While the decriminalisation of Section 377 marked a constitutional victory for LGBTQ+ rights, it also gave rise to new legal concerns regarding the future of sexual offences law in India. With the enactment of the Bharatiya Nyaya Sanhita, 2023,¹⁸ debates have emerged regarding the absence of comprehensive gender-neutral sexual offence provisions and the continuing legal ambiguities surrounding protection available to male and transgender victims of sexual violence. Concerns have also been raised regarding the issue of marital rape and the extent to which existing criminal law adequately recognises non-consensual acts within marriage. These developments indicate that although consensual same-sex relations are no longer criminalised, important questions relating to bodily autonomy, consent, equality and inclusive criminal justice continue to remain unsettled within the contemporary legal framework.

RIGHT TO “PRIVACY” AND DECRIMINALIZATION OF SECTION 377

An important constitutional development in the recognition of LGBTQ+ rights in India came with the decision of the Supreme Court in Justice K.S. Puttaswamy v. Union of India Judgment, where the Court recognised the Right to Privacy as a fundamental part of the Right to Life and Personal Liberty under Article 21 of the Constitution. The nine-judge Constitution Bench observed that fundamental rights cannot be denied even to a minuscule minority of the population. The Court further recognised that sexual orientation is an essential aspect of privacy, dignity and personal identity. The judgment therefore marked a significant expansion of constitutional protection relating to personal liberty and individual autonomy.

The principles laid down in *Puttaswamy* later became important in the decriminalisation of Section 377 in *Navej Singh Johar v. Union of India Judgment*. The Supreme Court held that consensual same-sex relationships between adults fall within the sphere of personal choice and privacy protected under the Constitution. It observed that criminalising such private relationships violated the constitutional values of dignity, liberty, equality and privacy guaranteed under Articles 14, 19 and 21.

The recognition of privacy as a constitutional right therefore changed the legal understanding of Section 377 from merely a criminal law issue to a broader constitutional question concerning identity, autonomy and the protection of minority rights in a democratic society.

IMPACT OF JUDGEMENTS ON SOCIETY

¹⁸ Bharatiya Nyaya Sanhita, No. 45 of 2023.

While the decriminalization of Section 377 of the Indian Penal Code marks a significant milestone in the recognition of LGBTQ rights, its impact on society extends beyond mere legal changes. Although a welcome first step, it is clear that the journey toward full equality is far from over. The LGBTQ community continues to face societal stigmatization and political opposition, with some leaders questioning the compatibility of such judgments with Indian cultural values. International developments recognizing same-sex relationships and LGBTQ+ rights have contributed to broader global discussions concerning equality, dignity and constitutional protection. The Supreme Court's decision contributes to this momentum, amplifying the voices advocating for equality and challenging discriminatory norms. While legal victories are significant, they must be accompanied by cultural shifts and ongoing advocacy efforts to truly address the systemic challenges faced by the LGBTQ community and foster a society that embraces diversity and inclusivity. The judgment therefore represents not only a legal victory but also a broader constitutional and social development. While the decriminalization of Section 377 was a major step towards equality, meaningful inclusion requires continued legal reforms, public awareness and societal acceptance to ensure that LGBTQ+ individuals can live with dignity, freedom and equal protection under the law.

Despite constitutional recognition and judicial protection, many LGBTQ+ individuals continue to face discrimination in areas such as employment, healthcare, housing and family acceptance. This indicates that legal reform alone cannot completely eliminate deep-rooted social stigma unless accompanied by broader awareness, education and societal acceptance.

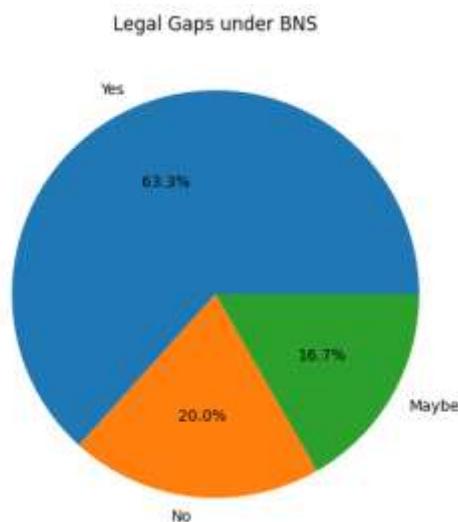


Figure 2: Respondents’ opinion regarding possible legal gaps after the restructuring of Section 377 under the Bharatiya Nyaya Sanhita, 2023

Source: Empirical Survey Conducted by the Researcher, 2026.

A majority of respondents expressed concern regarding the possible legal gaps arising after the restructuring and partial omission of Section 377 under the Bharatiya Nyaya Sanhita, 2023. Approximately 63.3% respondents believed that the removal of Section 377 may create

difficulties in addressing certain categories of sexual offences, particularly in cases involving male and transgender victims.

CONSTITUTIONAL MORALITY & TRANSFORMATIVE CONSTITUTIONALISM

One of the most important contributions of *Navtej Singh Johar* was the emphasis on constitutional morality. Constitutional morality refers to adherence to the values and principles embodied in the Constitution rather than prevailing social or majoritarian morality.

The Supreme Court distinguished constitutional morality from public morality. It held that constitutional rights cannot be denied merely because certain sections of society disapprove of a particular identity or practice. Justice D.Y. Chandrachud observed that constitutional morality requires the state to protect the dignity and freedoms of minorities against oppressive social norms.¹⁹

Constitutional scholar Granville Austin described the Indian Constitution as a transformative document aimed at bringing about social revolution through constitutional governance and protection of fundamental rights.²⁰

The doctrine has roots in the writings of Dr. B.R. Ambedkar, who viewed constitutional morality as essential for the successful functioning of democracy and emphasized that constitutional values must prevail over social prejudices and majoritarian impulses.²¹ His understanding of constitutional morality highlighted the need to protect individual liberty, equality and dignity within a constitutional framework. He also argued that constitutional democracy depends not only on institutional structures but also on commitment to constitutional values. In the context of Section 377, constitutional morality functioned as a counter-majoritarian principle safeguarding individual liberty.

Constitutional morality acts as an important safeguard against majoritarian prejudice by ensuring that constitutional rights are protected even where social acceptance remains limited. In the context of Section 377, the doctrine played a significant role in protecting the dignity, privacy and autonomy of sexual minorities against discriminatory social attitudes and moral prejudices.

The Court's reliance on constitutional morality also reflects the broader idea of transformative constitutionalism. The Constitution is not merely a legal document but an instrument of social transformation intended to dismantle structures of discrimination and exclusion.

¹⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, per Chandrachud J.

²⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966).

²¹ B.R. Ambedkar, *Constituent Assembly Debates*, Vol. VII.

CONSTITUTIONAL JURISPRUDENCE AND JUDICIAL INTERPRETATION OF SECTION 377

Scholarship surrounding Section 377 evolved alongside the constitutional interpretation developed by Indian courts over the years. Earlier writings mainly focused on the colonial origins of the provision, its impact on public health initiatives and the discrimination faced by LGBTQ+ individuals under criminal law. In *Same-Sex Love in India: A Literary History*, scholars Ruth Vanita and Saleem Kidwai²² challenged the idea that homosexuality was foreign to Indian culture and highlighted the historical presence of diverse sexual identities within Indian society. In later years, legal scholars such as Arvind Narrain examined Section 377²³ through the lens of constitutional morality, dignity and the evolving right to privacy. Following the judgment in *Navtej Singh Johar v. Union of India* Judgment, academic discussions gradually shifted towards broader concerns relating to marriage equality, anti-discrimination protections, queer partnerships and the implications of the *Bharatiya Nyaya Sanhita, 2023* on gender-neutral sexual offences law.

Naz Foundation v. Government of NCT of Delhi (2009)

The Delhi High Court's decision in *Naz Foundation* marked the first major judicial recognition of LGBTQ+ rights in India. The Court held that criminalisation of consensual same-sex conduct violated Articles 14, 15 and 21. It adopted a rights-based interpretation emphasising dignity, inclusiveness and public health concerns.

The judgment drew upon comparative constitutional jurisprudence from South Africa, the United States and the European Court of Human Rights. It also highlighted how Section 377 impeded HIV/AIDS prevention efforts by driving vulnerable communities underground.

Suresh Kumar Koushal v. Naz Foundation (2013)

The Supreme Court reversed the Delhi High Court judgment in *Koushal*. The Court held that the LGBTQ+ population constituted only a "minuscule minority" and that legislative reform, rather than judicial intervention, was the appropriate mechanism for change.

The judgment attracted extensive criticism for failing to engage meaningfully with constitutional rights and equality principles. Scholars argued that the Court adopted a formalistic approach that ignored the lived experiences of discrimination faced by LGBTQ+ individuals.

²² Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India: A Literary History* (Penguin India, 2001).

²³ Arvind Narrain, *Law Like Love: Queer Perspectives on Law* (Yoda Press, 2011).

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

The recognition of privacy as a fundamental right in *Puttaswamy* transformed the constitutional landscape. Several judges expressly criticised the reasoning in *Koushal* and affirmed that sexual orientation is an essential attribute of privacy and dignity.

Navtej Singh Johar v. Union of India (2018)

In *Navtej Singh Johar*, a five-judge Constitution Bench unanimously decriminalised consensual same-sex relations between adults. The Court emphasised dignity, autonomy, equality and constitutional morality.

Justice Indu Malhotra famously observed that “history owes an apology” to LGBTQ+ individuals for the injustice and discrimination they suffered. The judgment marked a decisive shift towards a rights-oriented and inclusive constitutional framework.

IMPACT OF DECRIMINALISATION

The decriminalisation of consensual same-sex relations represented a symbolic and legal victory for LGBTQ+ rights in India. It affirmed the constitutional recognition of sexual minorities and challenged entrenched social prejudices. However, decriminalisation alone does not guarantee substantive equality. LGBTQ+ individuals continue to face discrimination in employment, housing, healthcare and education. Social stigma, violence and exclusion remain pervasive.

The judgment also exposed gaps within India’s legal framework concerning queer rights. Issues such as same-sex marriage, adoption rights, inheritance, anti-discrimination protections and recognition of queer families remain contested. Furthermore, the decriminalisation of Section 377 did not entirely eliminate the provision. It continues to apply to non-consensual acts, acts involving minors and bestiality. This partial retention creates interpretive ambiguities within the broader framework of sexual offences law.

SECTION 377 AND THE UNSETTLED TERRAIN OF SEXUAL OFFENCES LAW

The partial invalidation of Section 377 raises important doctrinal questions regarding sexual offences legislation in India.

Gender Neutrality and Sexual Assault Laws

Indian rape law under Section 375 IPC historically defined rape in gender-specific terms, recognising only women as victims and men as perpetrators. While reforms after the Criminal Law (Amendment) Act, 2013 expanded the definition of sexual assault, the law remains largely gender-specific.

Need for Gender-Neutral Sexual Offences Law

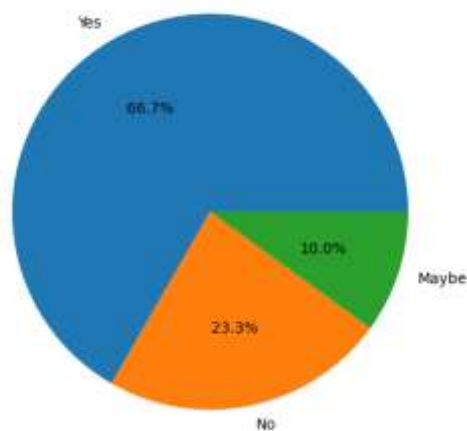


Figure 3: Public opinion regarding the need for gender-neutral sexual offences legislation

Source: Empirical Survey Conducted by the Researcher, 2026.

The empirical findings further reveal considerable support for gender-neutral sexual offences legislation in India. Around 66.7% respondents supported the introduction of separate legal provisions applicable to all genders. The findings indicate a growing recognition of the need for inclusive criminal laws capable of addressing sexual violence beyond traditional gender binaries.

Recognition of Marital Rape

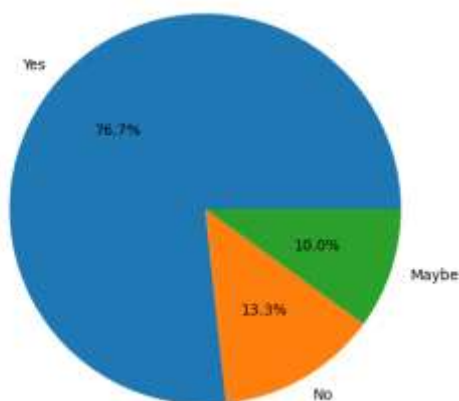


Figure 4: Respondents' views regarding criminalisation of marital rape in India

Source: Empirical Survey Conducted by the Researcher, 2026.

The survey findings also demonstrate substantial support for recognising marital rape as a criminal offence in India. Approximately 76.7% respondents supported explicit criminalisation of marital rape, reflecting increasing public concern regarding bodily autonomy, consent and the protection of individuals within marital relationships.

Section 377 previously functioned as a mechanism to prosecute certain forms of male sexual assault. Following decriminalisation, concerns emerged regarding legal gaps in addressing sexual violence against men and transgender persons. This has generated debates regarding the need for gender-neutral sexual offences legislation. Advocates argue that all individuals, regardless of gender identity, should receive equal legal protection against sexual violence.

CONCLUSION

In the wake of the landmark Navtej Singh Johar judgment of 2018, which heralded the decriminalization of Section 377 of the Indian Penal Code, India's legal landscape experienced a transformative moment for LGBTQ rights. This ruling not only invalidated an archaic law but also symbolized a significant stride towards equality and justice for sexual minorities. While the judgment was a victory on paper, its true impact lies in its potential to reshape societal attitudes and behaviors towards the LGBTQ community. Despite legal advancements, societal acceptance remains an ongoing challenge, with entrenched discrimination persisting in various facets of Indian society. The imperative now is not only to uphold the legal principles of equality and non-discrimination but also to foster widespread societal education and acceptance. Recognizing sexual orientation as a natural aspect of human diversity is fundamental to this endeavor. The affirmation of the Right to Life by the court empowers LGBTQ individuals to live authentically, free from fear of persecution or discrimination, and with equal protection under the law. However, true progress requires a concerted effort to cultivate a culture of inclusivity and understanding, wherein all individuals, regardless of sexual orientation, can fully realize their rights and dignity as equal members of society.

The journey from criminalization to constitutional recognition reflects the evolving commitment of Indian constitutional jurisprudence towards dignity, equality and inclusivity. However, meaningful change ultimately depends not only upon judicial recognition but also upon effective legislative reforms, social awareness and the acceptance of diversity within society.

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