

“Human Rights, Homosexuality and the Quest for Equality: A Socio-Legal Analysis”

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ABSTRACT

The foundation of human rights lies in the belief that all individuals possess intrinsic dignity and are entitled to equality. Any practice or law that undermines this dignity is discriminatory and contrary to the principles of justice. Homosexuality has historically been marginalised and criminalised across cultures, leading to widespread violence, stigma and exclusion against the LGBT community. In India, the landmark judgment in *Navtej Singh Johar v. Union of India* (2018) decriminalised consensual same-sex relations by reading down Section 377 of the IPC, marking a momentous victory for constitutional morality. However, decriminalisation did not translate into full equality. Same-sex couples continue to be denied civil rights such as marriage, adoption, inheritance, tax benefits, and legal recognition of partnerships. The absence of marriage equality undermines the promise of Articles 14, 15 and 21 of the Constitution, which guarantee equality, non-discrimination and the right to live with dignity.

Globally, the understanding of homosexuality has shifted significantly, especially after WHO removed it from the list of mental disorders in 1992. International organisations like the United Nations and Human Rights Council have advocated protection for sexual minorities, despite resistance from several member states. India’s progress—although substantial—remains incomplete. This paper argues that true equality requires not only legal reforms but also societal transformation. It analyses the legal, historical and cultural dimensions of homosexuality, highlights global developments, and proposes reforms to ensure protection, dignity and full citizenship rights for the LGBT community in India.

INTRODUCTION

The discourse on LGBT rights in India has undergone a significant transformation over the past decade, moving from criminalisation and invisibility to constitutional recognition and judicial affirmation of dignity. Landmark judgments have acknowledged that sexual orientation and gender identity are intrinsic to individual autonomy and personal liberty. Yet, despite these progressive developments, the promise of substantive equality remains unfulfilled. Legal recognition has advanced in fragments, while social acceptance and institutional reform continue to lag behind.

Marriage occupies a central position within this unfinished journey towards equality. As a legal institution, marriage functions as a gateway to a range of civil, economic, and social rights.

Exclusion from this institution does not merely deny symbolic recognition; it creates tangible vulnerabilities in areas such as inheritance, healthcare decision-making, adoption, and social security. For same-sex couples, the absence of marital recognition reinforces a form of constitutional inequality that persists despite the decriminalisation of consensual relationships.

This article examines the question of same-sex marriage through a constitutional, comparative, and human rights lens. It analyses judicial developments within India, particularly the evolving interpretation of marriage laws, alongside international trends in LGBT rights recognition. The study also explores the continued discrimination faced by the LGBT community in India, highlighting the gap between formal legal protection and lived experience. By situating same-sex marriage within broader debates on equality, dignity, and social justice, the article argues that true constitutional morality demands not only decriminalisation but affirmative recognition and inclusive reform.

SECTION I: CONCEPTUAL FRAMEWORK OF HOMOSEXUALITY

Meaning and Understanding

Homosexuality refers to an enduring pattern of emotional, romantic, and/or sexual attraction towards individuals of the same sex. It is an intrinsic aspect of human identity rather than a lifestyle choice or behavioural deviation. Contemporary scholarship recognises sexual orientation as a deeply personal characteristic, shaped by a combination of biological, psychological, and environmental influences, and not subject to voluntary alteration.

It is essential to understand homosexuality beyond the narrow lens of sexual conduct. At its core, it encompasses emotional bonds, companionship, affection, and the desire for stable relationships—elements common to all human experiences of intimacy. Homosexual individuals participate in society in the same ways as others, contributing to social, cultural, academic, and economic life. Their sexual orientation does not diminish their capacity to fulfil social responsibilities or moral obligations.

From a constitutional and human rights perspective, recognition of homosexuality is closely linked with the principles of dignity, autonomy, and equality. The ability to express one's identity and form consensual relationships without fear of stigma or legal sanction is increasingly regarded as a fundamental aspect of individual liberty. Modern legal discourse thus situates homosexuality within the broader framework of personal freedom and respect for diversity in a pluralistic society.

Historical Perception

The historical understanding of homosexuality has been largely shaped by prevailing social norms, religious beliefs, and moral doctrines. In many societies, particularly during the medieval and early modern periods, same-sex relationships were condemned as immoral or unnatural. These moral judgments often translated into social exclusion and, in some cases, severe punishment, reinforcing the marginalisation of homosexual individuals.

In the Indian context, historical records suggest that pre-colonial society exhibited a more complex and less rigid approach to sexuality. References to same-sex relationships and diverse sexual identities can be found in ancient texts, temple sculptures, and cultural narratives. However, this pluralistic understanding was significantly disrupted during British colonial rule, which imposed Victorian moral values through legal mechanisms.

The enactment of Section 377 of the Indian Penal Code in 1860 marked a decisive shift towards criminalisation. By labelling consensual same-sex relations as “carnal intercourse against the order of nature,” the law institutionalised stigma and legitimised societal prejudice. Over time, this legal framework shaped public consciousness, portraying homosexuality as both immoral and illegal, thereby silencing queer voices and forcing many individuals to live in secrecy and fear.

Modern Scientific Acceptance

The latter half of the twentieth century witnessed a significant transformation in the scientific understanding of human sexuality. Advances in psychology, psychiatry, and medical research challenged earlier pathologising views of homosexuality. Empirical studies consistently demonstrated that homosexual orientation does not impair psychological functioning, social adjustment, or emotional well-being.

A decisive moment in this evolution was the World Health Organization’s decision in 1992 to remove homosexuality from the International Classification of Diseases. This acknowledgment affirmed that homosexuality is a natural variation of human sexuality rather than a disorder requiring treatment. The scientific consensus gradually weakened the moral and medical justifications for criminalisation and discrimination.

Scientific recognition has also influenced legal and constitutional developments across jurisdictions. Courts increasingly rely on medical and psychological research to reject stereotypes and uphold the rights of sexual minorities. In India, this shift played a crucial role in judicial reasoning that emphasised dignity, privacy, and equality, culminating in the decriminalisation of consensual same-sex relations. Modern science thus continues to serve as an important foundation for legal reform and social acceptance, reinforcing the need for laws grounded in reason, evidence, and respect for human diversity.

SECTION II: CULTURAL AND LEGAL DIMENSIONS IN INDIA

1. Colonial Legacy of Section 377

Section 377, enacted in 1860 during British colonial rule, criminalised consensual same-sex intimacy by categorising it as “unnatural offences.” This provision was not a product of indigenous Indian legal or cultural traditions, but rather a transplantation of Victorian moral codes into the Indian penal framework. Pre-colonial Indian society, as reflected in ancient texts, temple art, and folklore, exhibited a far more pluralistic understanding of sexuality and gender.

The imposition of Section 377 therefore represented a deliberate erasure of this cultural diversity in favour of colonial moral uniformity.

The criminalisation of homosexuality under Section 377 also served a broader colonial purpose: regulating bodies and behaviours to maintain social control. By marking certain forms of intimacy as criminal, the colonial state reinforced a binary and heteronormative conception of morality that was alien to many Indian social practices. Over time, this colonial moral framework became internalised within Indian society, giving rise to the misconception that same-sex relationships were “against Indian culture.”

Even after independence, the continued existence of Section 377 reflected the reluctance of the post-colonial state to interrogate inherited colonial laws. The persistence of this provision for over seven decades highlights how colonial legal residues can continue to shape social attitudes and state policies long after formal political independence. Section 377 thus became not merely a legal provision, but a powerful symbol of how colonial morality continued to influence notions of legality, morality, and social acceptance in independent India.

2. The *Navtej Singh Johar* Judgment (2018)

In *Navtej Singh Johar v. Union of India* (2018), a five-judge Constitution Bench of the Supreme Court decisively decriminalised consensual same-sex relations between adults, marking a watershed moment in India’s constitutional history. The Court held that sexual orientation is an intrinsic and immutable aspect of individual identity, deserving of full constitutional protection. By grounding its reasoning in Articles 14, 15, 19, and 21, the Court reaffirmed that constitutional guarantees cannot be denied to a class of persons merely because they are a numerical minority.

A significant contribution of the judgment lies in its emphasis on constitutional morality over prevailing social morality. The Court acknowledged that societal attitudes are often shaped by prejudice, fear, and misinformation, and cannot be permitted to dictate the scope of fundamental rights. By doing so, the judgment challenged the long-standing tendency to justify discrimination under the guise of tradition or public sentiment. The Court’s language reflected a conscious effort to humanise the lived experiences of LGBTQ+ persons, recognising the harm, fear, and invisibility imposed by criminalisation.

Importantly, the judgment went beyond striking down a penal provision and articulated a broader vision of citizenship. It affirmed that members of the LGBTQ+ community are equal participants in the constitutional project, entitled not merely to tolerance but to dignity, autonomy, and self-expression. However, while *Navtej Singh Johar* dismantled the criminal stigma attached to same-sex intimacy, it left unresolved the question of positive state obligations towards ensuring substantive equality for sexual minorities.

3. Post-377 Reality

Despite the decriminalisation of consensual same-sex relations, the lived realities of LGBTQ+ individuals in India continue to be marked by legal invisibility and social exclusion. The absence of legal recognition for same-sex relationships means that LGBTQ+ couples remain excluded from the protective framework of family law. Rights relating to marriage, adoption, succession, maintenance, and medical decision-making continue to be structured around heteronormative assumptions, leaving same-sex partners without legal security.

This legal vacuum has tangible consequences. In situations involving hospitalisation, inheritance disputes, or separation, LGBTQ+ individuals often find themselves without recourse to law, despite sharing long-term, committed relationships. The lack of recognition also reinforces social marginalisation, as legal acknowledgment often plays a crucial role in shaping societal acceptance. Decriminalisation, while necessary, has therefore proven insufficient in addressing the structural inequalities faced by the community.

Moreover, social stigma remains deeply entrenched, particularly in non-urban and conservative settings. Many LGBTQ+ individuals continue to experience familial rejection, workplace discrimination, and mental health challenges arising from social isolation. The post-377 era thus presents a paradox: while the law no longer criminalises same-sex intimacy, it has yet to fully embrace the responsibility of affirmatively protecting LGBTQ+ rights. This gap between formal decriminalisation and substantive equality underscores the need for a comprehensive legal framework that moves beyond tolerance towards genuine inclusion.

SECTION III: SAME-SEX MARRIAGE — THE UNFULFILLED PROMISE OF EQUALITY

Marriage as a Legal and Constitutional Institution

Marriage in modern constitutional democracies operates far beyond its traditional religious or cultural roots. It is a legal status that unlocks a wide range of rights and protections, many of which are essential for a life of dignity. These include the ability to adopt and raise children, inherit property, receive pension and insurance benefits, make medical decisions for one's partner, and enjoy social legitimacy in both public and private spaces. When the State regulates marriage, it actively determines who is entitled to these benefits and who is excluded.

For same-sex couples, exclusion from marriage is not merely symbolic—it has tangible legal consequences. Relationships that are emotionally and socially equivalent to heterosexual marriages are denied legal security, leaving partners vulnerable in moments of crisis such as illness, death, or financial dependency. This selective recognition creates an unequal legal order where access to rights depends not on commitment or responsibility, but on conformity to heteronormative expectations.

Constitutional Inequality and Denial of Dignity

The denial of marriage rights to same-sex couples results in a form of constitutionally impermissible inequality. Article 14 of the Constitution guarantees equality before the law, yet the legal framework governing marriage continues to privilege heterosexual relationships. This exclusion also intersects with Article 21, which protects the right to life with dignity, autonomy, and personal choice. The freedom to choose a life partner has already been recognised as an intrinsic part of individual liberty; denying this freedom to a specific group undermines the universality of constitutional rights.

Moreover, the absence of marital recognition reinforces social stigma. When the law refuses to acknowledge certain relationships, it legitimises societal prejudice and reinforces the perception that such relationships are less worthy of respect. Thus, the exclusion of same-sex couples from marriage is not a passive omission but an active endorsement of inequality.

Judicial Expansion Beyond Traditional Binaries

The decision of the Madras High Court in *Arunkumar & Sreeja v. Inspector General of Registration* (2019) represents an important judicial shift. By holding that the term “bride” under the Hindu Marriage Act includes transgender women, the Court departed from a rigid, biological understanding of gender. Instead, it adopted a purposive and rights-oriented interpretation that prioritised dignity and self-identification.

While the judgment did not directly address same-sex marriage, its significance lies in its broader constitutional reasoning. It demonstrates judicial willingness to reinterpret marriage laws in light of evolving social realities. This approach challenges the assumption that marriage statutes are frozen in time and suggests that constitutional values must guide their interpretation. In this sense, the judgment lays the groundwork for future expansion of marriage rights beyond traditional gender binaries.

SECTION IV: INTERNATIONAL PERSPECTIVE ON LGBT RIGHTS

Evolution of Global Human Rights Standards

The recognition of LGBT rights at the international level has been gradual and often contested. A significant turning point came in 1992, when the World Health Organization removed homosexuality from the International Classification of Diseases. This step marked a global rejection of the idea that same-sex orientation is pathological, shifting the discourse from moral judgment to scientific and human rights-based understanding.

Over time, international human rights institutions have increasingly acknowledged that violence and discrimination against LGBT persons constitute serious human rights violations. Reports released by the UN Human Rights Council in 2011 and 2015 documented patterns of abuse, including torture, arbitrary detention, and denial of basic services. These reports

reframed sexual orientation and gender identity as legitimate grounds for human rights protection rather than cultural exceptions.

United Nations Response to Violence Against LGBT Persons

The appointment of an Independent Expert in 2016 to investigate discrimination against LGBTQ persons worldwide signalled institutional recognition of the issue within the UN framework. This development reflected a growing understanding that systemic violence against sexual minorities cannot be addressed through isolated interventions but requires sustained international attention.

The UN Security Council's condemnation of the 2016 Orlando nightclub shooting further illustrates this shift. Notably, the condemnation received support even from states traditionally resistant to LGBT rights discourse. While such statements do not immediately translate into legal obligations, they indicate a gradual normalisation of LGBT rights within international diplomacy, challenging the narrative that these issues are purely “Western” concerns.

Uneven Global Legal Recognition

Despite these developments, the global legal landscape remains deeply divided. Over seventy countries continue to criminalise same-sex relations, and in some jurisdictions, such acts attract the death penalty. These laws often function as tools of social control, reinforcing fear and silence within LGBT communities.

At the same time, several countries—including India, South Africa, Canada, the Netherlands, and New Zealand—have taken steps toward legal recognition and equality. However, political resistance from powerful international blocs, including Russia, China, and certain Islamic states, has prevented the emergence of uniform global standards. This tension highlights the persistent conflict between universal human rights norms and claims of cultural or religious sovereignty.

SECTION V: DISCRIMINATION FACED BY THE LGBT COMMUNITY IN INDIA

Persistence of Social Exclusion After Decriminalisation

The decriminalisation of consensual same-sex relations in India was a landmark constitutional achievement, yet its impact on everyday life has been limited. Social attitudes shaped by decades of stigma do not disappear with a judicial pronouncement. Many LGBT individuals continue to face rejection from their families, social isolation, and hostility within their communities. For some, the fear of disclosure is so intense that it dictates choices related to education, employment, and personal relationships.

This social exclusion often operates subtly—through silence, avoidance, or denial of acceptance—making it difficult to challenge or document. The emotional toll of such exclusion

is profound, contributing to mental health concerns such as anxiety, depression, and low self-worth.

Institutional and Structural Discrimination

Beyond social prejudice, structural discrimination remains a significant concern. Same-sex couples lack legal recognition of their relationships, which affects access to housing, healthcare, insurance, and inheritance. In hospitals, partners are frequently denied the right to make medical decisions or even receive information, solely because their relationship lacks legal status.

Employment discrimination and housing denial further marginalise the community. In the absence of comprehensive anti-discrimination legislation, legal remedies are limited and inconsistent. The State's failure to provide clear protections effectively shifts the burden onto individuals, forcing them to navigate hostile systems without institutional support.

Limitations of Legal Recognition Without Social Change

While constitutional courts have played a crucial role in affirming the dignity of LGBT persons, judicial protection alone cannot dismantle deeply embedded social hierarchies. Law can initiate change, but it cannot by itself transform attitudes shaped by culture, religion, and tradition. Without sustained engagement at the societal level, legal victories risk remaining abstract principles rather than lived realities.

SECTION VI: NEED FOR REFORMS AND POLICY RECOMMENDATIONS

Legal Recognition and Equality-Oriented Reforms

Legal reform remains essential to achieving substantive equality. Recognising same-sex marriage under the Special Marriage Act would provide a secular and inclusive framework without interfering with religious personal laws. Such recognition would ensure access to adoption, inheritance, succession, and property rights, thereby addressing the material vulnerabilities faced by same-sex couples.

Additionally, the enactment of comprehensive anti-discrimination legislation is necessary to protect sexual minorities in employment, housing, education, and public services. Equality cannot be achieved through judicial interpretation alone; it requires clear legislative commitment.

Strengthening Transgender Rights and Welfare

The Transgender Persons (Protection of Rights) Act, while well-intentioned, has been criticised for prioritising procedural compliance over substantive empowerment. Amendments are needed to ensure consent-based recognition of identity, meaningful reservations in education and employment, and effective welfare schemes. Without economic security and social inclusion, legal recognition remains incomplete.

Role of Education, Awareness, and Institutional Accountability

Long-term transformation depends on social and educational reforms. Introducing gender and sexuality studies in school curricula can foster empathy and understanding from an early age. Sensitisation programs for police, government officials, and healthcare workers are equally important to ensure that rights are respected in practice.

Institutional accountability mechanisms—such as grievance redressal systems and inclusive workplace policies—can provide immediate relief to individuals facing discrimination. Mental health support tailored to the unique challenges faced by LGBT persons must also be prioritised. Ultimately, equality is not achieved merely through tolerance but through the creation of social environments where diversity is recognised as a constitutional strength rather than a deviation.

CONCLUSION

The journey towards equality for the LGBT community in India reflects both remarkable constitutional progress and persistent structural resistance. Judicial interventions have played a transformative role in affirming dignity, autonomy, and the right to self-expression. However, the continued exclusion of same-sex couples from the institution of marriage underscores the limits of incremental reform. Decriminalisation, while essential, addresses only the legality of identity; it does not secure the full spectrum of rights necessary for a life of dignity.

Marriage equality is not a demand for special treatment but a claim for equal access to an existing legal framework. The denial of marital recognition perpetuates social stigma, legal insecurity, and economic vulnerability, reinforcing the very hierarchies that constitutional guarantees seek to dismantle. As demonstrated by both domestic judicial reasoning and international human rights developments, equality cannot remain conditional on conformity to traditional norms.

For meaningful transformation, legal reform must be accompanied by institutional accountability, social sensitisation, and educational initiatives. The recognition of same-sex marriage under a secular legal framework, coupled with robust anti-discrimination laws and strengthened transgender protections, would mark a decisive step towards substantive equality. Ultimately, the Constitution envisions a society where rights are not mediated by identity but grounded in dignity. Fulfilling this vision requires the State to move beyond tolerance and towards full recognition, ensuring that equality is not merely promised, but realised.

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