

Gender Justice and the Indian Constitution: Legal Recognition and Rights of the LGBTQ+ Community

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Abstract: *The Indian Constitution provides equality before law and right to life with dignity. However, for a decades, the LGBTQ+ community in India has historically faced systematic marginalization and legal invisibility. Justice is the sole of Indian Constitution but for the LGBTQ+ community, this justice has been long delayed. This paper seeks to understand the legal trajectory of gender justice through the lens of queer rights. It explores how courts have interpreted fundamental rights expansively to affirm LGBTQ+ dignity and autonomy particularly post 2014. It traces the trajectory of judicial interpretation from criminalization under section 377 IPC to its eventual reading down and further explores how courts have read Article 14, 15, 19 and 21 expansively to affirm LGBTQ+ rights. It concludes that while the judiciary has played a crucial role in legal recognition, the path toward gender justice requires deeper engagement from the legislature, Civil society and educational institution.*

Key Words: *LGBTQ+, Section 377, Gender Justice, Constitution, Indian, Queer Rights.*

I. INTRODCUTION

Justice is the cornerstone of the Indian constitution and it's preamble woven into the guarantees of equality, liberty and dignity. LGBTQ+ community in India had lived on the margins of law and society for the decades. The story of LGBTQ+ community rights is subjected to criminalization, social stigma and legal invisibility. It shows the struggle between constitutional morality and societal morality. The framers of the constitution had a vision of creating a fair, equal and just society for all but in practical reality this goal has not been achieved fully for sexual and gender minorities.

This paper examines gender justice through the eyes of LGBTQ+ community in India. It studies constitutional guarantees legislative code and judicial interpretation. This paper argues that genuine gender justice require not only constitutional interpretation but also systematic reforms in law policy and public consciousness.

Understanding Gender Justice:

Gender Justice isn't just about equality between the men and women, it means fairness and dignity for all individuals irrespective of sex, gender, identity or sexual orientation. In India, justice is mentioned under the Article 14, 15, 19 and 21 of the constitution which collectively guarantees equality, non discrimination, freedom and the right to life with dignity. In the context of LGBTQ+ community gender justice is the simple term which means to recognise their identities, to remove the systematic barriers and to protect them from the discrimination. "It just means accepting who they are...". Years ago the Indian legal system reflected victorial morality rather than constitutional values as of section 377 of IPC which criminalized "carnal intercourse against the order of nature" but it's so not been continued today.

Constitutional framework for equality and dignity :

The Constitution of India provides the protection to every persons equality liberty and dignity. It protects the fundamental right of every individual. The honorable court in India have interpreted various provisions of the constitution in an expensive and progressive manner to include sexual orientation and gender identity within their scope.

- Article 14 - Equality before law and Equal protection of law :-

Article 14 of Constitution guarantees equality before law and equal protection of law to all the persons. Honorable supreme court of India had held that any law or action of a state that creates arbitrary or undressonable classification violets Article 14. As the section 377 of IPC directly challenges this principal, it single doubt same six relationship for punishment. In the case of Navtej Singh Johar VS Union of India, 2018 the court has clarified that equality cannot be denied on the basis of sexual orientation of "minuscule minority" and the constitutional protection applies to all irrespective of societal acceptance.

- Article 19 - Freedom of expression, association and moment :-

As every person has freedom of speech, expression, assembly, association and moment LGBTQ+ persons also has the right to express their sexual orientation openly so their identity and right are protected. So they have freedom to live with dignity without the state interference. The recognition of pride marches and advocacy groups falls within the protective ambit of Article 19. If we suppress same sex relationship and prevent the LGBTQ+ activism it would violate the rights of LGBTQ+ community.

- Article 21 - Right to Life and Personal Liberty :-

Article 21 is considered as the heart of Indian constitution. Indian judiciary has expanded article 21 to various extent. In Justice K. S Puttaswamy VS Union of India 2017 the court had stated that privacy include sexual orientation making it clear that consensual sexual relationship between adults are the part of fundamental right to life and liberty. The court further in the case of Navtej Singh Johar 2018 held at denying LGBTQ+ persons sexual identity amounts to denying them dignity.

• Judicial Trajectory of LGBTQ+ Rights in India :

One of the key concept of Indian constitutional jurisprudence is the concept of constitutional morality. The Indian judiciary has held at constitutional morality must prevail over societal morality and this principle ensures that LGBTQ+ rights are not dependent on popular opinion but protected by constitution itself. Indian judiciary has played an important role in advancing gender justice for LGBTQ+ persons through various interpretation.

- Naz Foundation VS Government of India, 2009. [2009 160 DLT 277 (Del HC)]

In this case High court of Delhi Decriminalised the consensual same sex relationship between adults stating that section 377 violated article 14, 15 and 21. This prevents the constitutional morality over the societal prejudice.

- Suresh Kumar Koushal VS Naz Foundation, 2013. [AIR 2014 SC]

The Honorable Supreme court in this case overturned the decision, reinstating criminalisation under section 377. The court minimized the LGBTQ+ population as a "minuscule fraction" sparking widespread criticism.

- National Legal Services Authority VS Union of India, 2014. [AIR 2014 SC 1863]

The Honorable Supreme court in this case recognised the rights of transgender person. It upheld their right to self identify Gender and had given direction to government to provide reservation and social welfare measures to them.

- Justice K. S. Puttaswamy VS Union of India, 2017. [AIR 2017 SC 4161]

The judgement of this case on the right of privacy affirmed that sexual orientation is the part of privacy and dignity protected under article 21.

- Navtej Singh Johar VS union of India, 2018. [AIR 2018 SC 4321]

The Honorable court struck down section 377. The court emphasized constitutional morality, dignity and autonomy affirming LGBTQ+ equality under Article 14, 15, 19 & 21.

- Supriyo VS Union of India, 2023. [AIR Online 2023 SC]

In this Case Honorable Supreme court declined to recognise the same sex marriage stating that it is under the legislative power. The honorable court has recognised the right to dignity association and non discrimination to LGBTQ+ persons urging the government to create supportive framework.

• Legislative and Policy Developments:

Even though the courts have accepted LGBTQ+ rights, there hasn't been a huge amount of progress in lawmaking in India.

The Transgender Persons (Protection of Rights) Act, 2019 is meant to give a structure for transgender rights by prohibiting discrimination in education, jobs, and hospitals. But, it criticized for medical proof of gender identity and that it's not enforced well enough.

No Marriage or Adoption Rights: Same-sex couples can't get married or adopt children legally, and they also don't have inheritance rights.

Policy Steps: Some state governments have started welfare programs for transgender people, but they're not doing a very good job of putting them into action.

• Challenges in Legal Recognition and Social Justice:

Even though the courts have recognized LGBTQ+ rights, these people still deal with problems.

1. Social Stigma and Discrimination: Old cultural biases still push LGBTQ+ people to the side in their families, at work, and in their communities.
2. Institutional Barriers : Law enforcement, judges, and healthcare workers aren't always sensitive to LGBTQ+ issues, which means people get their rights denied.
3. Gaps in Legislative Protection: There's no single law that stops discrimination against LGBTQ+ people in all parts of life.
4. Implementation Failure: Often, programs to help LGBTQ+ people and legal protections don't get to the people who need them.

• Comparative Perspectives:

Globally, various countries had taken steps to protect the right of LGBTQ+ Community and had taken steps to accept this rights. Different countries around the world have taken different paths :

- South Africa: Constitution of South Africa clearly provide provisions regarding discrimination based on sexual orientation, and same-sex marriage has been legal recognised since 2006.

- United States: The Supreme Court in the case *Obergefell v. Hodges* (2015) made same-sex marriage legal across the country.

- United Kingdom: UK had made progress by legally recognizing civil partnerships (2004) and same-sex marriage (2014).

Compared to these countries, India is behind on legal recognition of the LGBTQ+ Community rights.

• Way Forward :

1. Comprehensive Anti-Bias Law: Pass a law that clearly stops bias based on who someone is attracted to and their gender identity. This should coverd in the place of jobs, schools, homes, and healthcare.
2. Recognition to Marriage and Family Rights: Legally recognize same-sex marriages, civil unions, and the right to adoption to them so that everyone is equal in society.
3. Reform to Transgender Act: Change the 2019 Act so transgender people can self-identify without facing a lot of red tape.
4. Awareness and Education: Include gender and sexuality studies in curriculum to break down bias and prejudice.

5. Get Civil Society Involved : NGOs and community groups should keep pushing for change, offering support, and running awareness programs.
6. Role Institutions: Judges, police, and healthcare workers should get training on being inclusive and respecting rights.

II. CONCLUSION

The story of LGBTQ+ rights in India shows how constitutional interpretation can make big changes. The courts have set the stage for gender justice, moving from criminalizing LGBTQ+ people under Section 377 to recognizing their dignity and privacy. Still, equality isn't fully here yet because there aren't enough laws and there's still a lot of social stigma.

The Constitution promises social, economic, and political justice, but this promise is not complete if the rights of sexual and gender minorities are not addressed. To make true gender justice happen, everyone needs to work together. The courts need to keep making progress, the government needs to pass inclusive laws, society needs to create awareness, and schools need to promote equality. Only then can the Indian Constitution truly create a fair society where everyone, no matter who they are, can live with dignity and freedom.

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