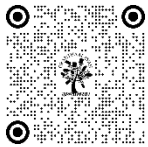


# LEGAL AND SOCIAL RIGHTS TO LGBTQIA+COMMUNITY IN INDIA

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## ABSTRACT

LGBTQ+ rights in India have seen significant progress in recent years, yet LGBTQ+ individuals still encounter various social and legal challenges compared to their non-LGBTQ+ counterparts. The judiciary, government, and public each have roles to play: the courts must issue fair and just rulings, the government must ensure these rulings are communicated effectively, and the public must embrace these decisions.

Despite the landmark 2018 Supreme Court ruling in *Navtej Singh Johar vs. Union of India*, which decriminalized homosexuality by striking down parts of Section 377 of the Indian Penal Code, the government and society have not fully capitalized on this progress. Nearly 30 months after the ruling, the situation for the LGBTQ+ community has not significantly improved. Both central and state governments have failed to implement special provisions for the upliftment of LGBTQ+ individuals, and societal acceptance remains limited.

This paper examines the prolonged struggle of the LGBTQ+ community for fundamental rights and the discrimination they face, with a particular focus on transgender individuals and judicial pronouncements. It also explores the necessary legal and social changes required for LGBTQ+ individuals to achieve full acceptance and equality in India's conservative society.

**Keywords:** LGBTQ+, Homosexuality, Unnatural, Societal Acceptance, Transgender and Cisgender

## 1. INTRODUCTION

I am what I am, so take me as I am' – Johann Wolfgang von Goethe

Shakespeare famously wrote, "What's in a name? That which we call a rose by any other name would smell as sweet." This phrase highlights that the essence and fundamental qualities of a person or thing matter more than the name by which they are called. Similarly, individuals should not be discriminated against or denied basic human rights based on their sexual preferences.

Human rights are founded on the principle that all humans are equal, possessing inherent dignity and deserving of equal treatment. Any action that undermines this dignity violates the principle of equality and fosters discrimination. Such discrimination also contradicts the core values of the Indian Constitution's preamble, which guarantees justice and equality in all social, economic, and political spheres.

The Gay Pride parades held in Delhi, Kolkata, and Bangalore on July 29, 2008, demonstrate that LGBTQ+ identities are gaining acceptance among Indian youth. However, within the confines of family, home, and school, LGBTQ+ individuals still face significant challenges in expressing their sexuality and gender choices openly. This struggle is particularly pronounced in a diverse country like India, where societal acceptance remains a constant battle.

## 2. WHAT IS LGBTQ+

The term 'LGBTQ+' encompasses various identities:

**Lesbian:** A woman who is sexually attracted to other women.

**Gay:** A man who is sexually attracted to other men.

**Bisexual:** An individual who is sexually attracted to both men and women.

**Transgender:** People whose gender identity and expression differ from the sex they were assigned at birth.

**Queer:** A broad term for sexual and gender identities that are not heterosexual or cisgender. Queer individuals often use pronouns beyond the traditional "he" or "she."

The '+' in 'LGBTQ+' signifies that this list is not exhaustive and includes other identities such as pansexual, asexual, and intersex.

## 3. HISTORY OF HOMOSEXUALITY IN INDIA

Homosexuality, defined as sexual desire or behavior directed toward people of one's own sex, is not a new concept in India. It has been present for centuries. Ancient texts like the Rig Veda, dating back to around 1500 BC, and various sculptures depict sexual acts between women, highlighting a world where sexuality was based on pleasure and fertility. The Kamasutra describes homosexual acts, and historical records show that Muslim Nawabs and Hindu aristocrats maintained harems of young boys. Male homosexuality is also documented in medieval Muslim history, such as the case of Malik Kafur.

Amara Das Wilhelm's<sup>1</sup> extensive research into Sanskrit texts from medieval and ancient India reveals that homosexuals and the "third gender" were not only present but also widely accepted in society. The Kamasutra, a 2nd-century Hindu text, mentions lesbians, referred to as "Swarinis," who often married other women and raised children together, enjoying acceptance within both the third gender community and broader society.<sup>2</sup>

However, the significance of these experiences diminished with the rise of Vedic Brahmanism and later British colonialism. Researcher Giti Thadani suggests that the Aryan invasion around 1500 BC began to suppress homosexuality through the dominance of patriarchy. The Manusmriti references punishments like loss of caste, heavy fines, and whipping for homosexual behavior, indicating its practice at the time. Since 1974, homosexuality has no longer been classified as a mental disorder, reflecting a shift in perception.

This historical journey shows how homosexuality transitioned from being a natural act to being viewed as unnatural and against the order of nature.

## 4. IS HOMOSEXUALITY UNNATURAL?

In 2018, following the landmark Supreme Court judgment in *Navtej Singh Johar v. Union of India*, which decriminalized homosexuality, RSS leader Mr. Arun Kumar described gay marriage and relationships as "unnatural." He stated, "Gay marriage and relationships are not compatible with nature and are not natural, so we do not support this kind of relationship. Traditionally, India's society also does not recognize such relations."<sup>3</sup>

The Indian Penal Code, enacted in 1860, is a product of the Victorian era and criminalized homosexuality based on Judeo-Christian theology rather than scientific reasoning. This law relegated certain individuals to an inferior status based solely on their appearance or whom they loved, invading their privacy and degrading their dignity. Sexual orientation or gender identity should not determine an individual's role in a progressive society, yet Section 377 of the IPC did just that.

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<sup>1</sup> Amara Das Wilhelm, *Tritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions through Hinduism* 24 (Xilbris Corporation, 2013)

<sup>2</sup> The Quint, <https://www.thequint.com/voices/opinion/homosexuality-rss-ancient-indian-culture-section-377#read-more> (Last Visited March 19, 2021)

<sup>3</sup> *Supra* 3.

The argument that same-sex sexual activity is "against the order of nature" is flawed. Research shows that homosexuality exists in at least 1,500 animal species, including dolphins. If it is prevalent in so many species, how can humans, a single species, declare it unnatural?

## 5. IS HOMOSEXUALITY ANTI-RELIGIOUS?

Religious texts and writings, often followed blindly, have become outdated and were flawed from the start. For example, various Hindu religious books justified untouchability. This practice continued until the Indian Constitution prohibited it.

Contrary to the belief that homosexuality is anti-religious, many ancient Indian texts contain verses supporting the LGBTQ+ community. Hindu epics mention several characters with diverse sexual orientations and gender identities, such as Shikhandi, Chitrangada (wife of Arjuna and mother of Babruvahana), and Brihannala from the Mahabharata. These characters are respected and judged by their abilities rather than their sexuality. The Arthashastra mentions LGBTQ+ individuals in various professions without persecution. Stories of Ardhanareeshwara (Shiva as half-man, half-woman) and Lord Ayyappa (born to Shiva and Mohini, a female avatar of Vishnu) reflect Hinduism's nuanced approach to gender matters.

Additionally, monuments like those in Khajuraho, Madhya Pradesh, depict homosexuality, proving that it was accepted as part of society rather than being anti-religious.

## 6. PROBLEMS FACED BY LGBTQ+ INDIVIDUALS

Despite being part of an advanced and modern generation, it is disheartening to see the atrocities faced by LGBTQ+ individuals in various environments. Some common problems they encounter include:

**Bullying and Discrimination:** According to a 2018 UNESCO report, LGBTQ+ children face significant bullying and discrimination in schools and colleges. This leaves lasting scars and can take years to overcome.

**Honor Killings:** LGBTQ+ individuals often become targets of secret honor killings, with bounties placed on their lives.

**Corrective Rape:** Women in the LGBTQ+ community, particularly lesbians and bisexuals, suffer greatly. Families may subject them to sanctioned "corrective rapes" to "cure" their homosexuality.

**Employment Discrimination:** LGBTQ+ individuals face discrimination in the job market. Employers often refuse to hire them due to societal prejudices, trapping them in a cycle of poverty.

**Family Rejection:** Non-acceptance of LGBTQ+ individuals is prevalent in both rural and urban areas. Urban families, concerned about social status, may disown their LGBTQ+ children.

**Correction Centers:** LGBTQ+ individuals are sometimes sent to correction centers where they are given psychotropic drugs as part of "corrective therapy." This can lead to addiction and further psychological harm.

**Isolation and Depression:** LGBTQ+ individuals often face isolation, leading to depression.

## 7. SECTION 377 OF THE INDIAN PENAL CODE, 1860

Section 377 of the Indian Penal Code, a colonial-era law, criminalized "unnatural" sexual acts since its enactment in 1862. Homosexuality fell under this category and could attract severe punitive measures.<sup>4</sup>

The now-redundant Section 377 IPC defined unnatural offenses and stated that anyone engaging in carnal intercourse against the order of nature with any man, woman, or animal would be punished with life imprisonment or rigorous imprisonment of up to 10 years. The term "carnal intercourse against the order of nature" was interpreted by Indian courts to include anal sex, oral sex, and other non-procreative sexual acts.<sup>5</sup>

<sup>4</sup> R.A. Nelson, Indian Penal Code 3738 (S.K. Sarvaria Ed., 9th ed.2003).

<sup>5</sup> Gupta A. Section 377 and the dignity of Indian homosexuals. Economic and Political Weekly.

This offense was non-bailable and cognizable, equating sodomy with homosexuality. Homosexual men were viewed solely as individuals engaging in anal intercourse, ignoring emotional attachments and other desires. De jure, it criminalized sodomy; de facto, it stigmatized homosexuality.

In the 1983 case of *Fazal Rab vs. State of Bihar*, the Supreme Court dealt with a consensual homosexual relationship between a man and a boy. The court reduced the sentence from three years to six months, implying that consensual homosexual acts were still punishable under Section 377 IPC, violating fundamental rights to dignity and freedom of expression.

Section 377 also applied to heterosexual couples engaging in anal intercourse. If a married couple engaged in anal intercourse, both could be guilty if the wife consented; if not, only the husband would be guilty. Marital rape, however, was not considered an offense if the wife was over 18.

In 1994, a controversy arose when a medical team visiting Tihar Jail in Delhi reported high incidences of sodomy and recommended providing condoms to prevent HIV transmission. The jail authorities refused, fearing it would imply approval of a crime. This led to a petition challenging the constitutionality of Section 377.<sup>6</sup>

These issues highlight the need for continued efforts to ensure equality and acceptance for LGBTQ+ individuals in India.

### 1) *Naz Foundation Govt. v. NCT of Delhi*, 2009<sup>7</sup>

In July 2001, Lucknow police raided a park and detained a few men on the suspicion of them being homosexuals and then were charged under section 377 IPC. The police also arrested nine more men associated with 'Bharosa Trust', an NGO which was working to create awareness amongst people about safe sexual practices and STDs by distributing pamphlets providing tips on safe sex to homosexuals.<sup>8</sup> These people were then accused of running a sex racket and were denied bail.

As Gupta<sup>9</sup> argues, 'the Lucknow incidents show that the mere existence of Section 377, even if it cannot and is not being enforced in prosecuting sexual acts in private, adds a certain criminality to the daily lives of homosexual men and puts them under the gaze of the law and a constant threat of moral terrorism'. After this, Naz Foundation (a non-governmental organization working on HIV/AIDS and sexual education and health since 1994) filed a petition in 2001 before the Delhi High Court challenging the constitutional validity of Section 377 of IPC.<sup>10</sup>

The petitioner argued that Section 377 of IPC violated their fundamental right to life and liberty, right to privacy and dignity, right to health, right to equality and freedom of expression. It was also submitted that Section 377 undermined the public health efforts which aimed at reducing the risk of transmission of sexually transmitted diseases like HIV/AIDS, as the fear of prosecution under this Section prevented people from talking openly about their sexuality and lifestyle.

Finally, in 2009, Delhi High Court held that Section 377 of IPC imposed an unreasonable restriction over the two consenting adults from engaging in sexual intercourse even in private. Thus, it was in direct violation of their basic fundamental rights enshrined under Articles 14, 15, 19 and 21 of the Constitution of India. The instant reaction to the judgment was of extreme elation from the sexual minorities across the nation while religious leaders condemned it with equal passion.<sup>11</sup>

## 8. CURIOUS CASE OF SAVITA AND BEENA

On 22 July 2011, two women, Savita and Beena shocked the world by becoming the first lesbian couple to be legally married in India.

<sup>6</sup> Siddharth Narrain, *The Queer Case of Section 377* ([http://www.sarai.net/publications/readers/05-bare-acts/06\\_siddharth.pdf](http://www.sarai.net/publications/readers/05-bare-acts/06_siddharth.pdf); last accessed on 27th March, 2021).

<sup>7</sup> WP(C) No.7455/2001, Delhi High Court; Decision on 2nd July, 2009.

<sup>8</sup> Arvind Narrain, *The Articulation of Rights Around Sexuality and Health: Subaltern Queer Cultures in India in the Era of Hindutva in health and human rights* 153 (2004)

<sup>9</sup> *Supra* 6

<sup>10</sup> *About Us* – Naz Foundation. (n.d.), from Nazindia.org website: <https://www.nazindia.org/aboutus/> (last accessed on 3rd April, 2021).

<sup>11</sup> Nirnimesh Kumar, *Delhi High Court Strikes Down Section 377 of the IPC*, THE HINDU, 2nd July 2009, New Delhi.

They both knew each other from their childhood. Savita had been forced into an arranged marriage in 2010 with a police constable from her village, but after five months of marriage, she ran away because of the repeated abuses by her husband and her in laws. The Local Panchayat dissolved the Marriage. Her Uncle again tried to marry her off later after which, Savita decided to kill herself but was saved by Beena. There was open declaration in the village to kill Savita. but, Beena took Savita to her house to keep her protected.

Later, they both filed affidavit in the Gurgaon court with evidences, that they are married as husband and wife. The additional sessions judge Vimal Kumar of Gurgaon Court in its order based on a 2009 ruling from the Punjab and Haryana High Court to “ensure help and give assistance to runaway couples and on the basis of Naz Foundation Case, on 25 July, stated that Veena and Savita had filed an affidavit that they were married, but did not comment on the validity of the marriage. Thereby, not explicitly accepting the union but also not rejecting it altogether.

### **1) Suresh Kumar Koushal v. Naz Foundation, 2013**

After eight years of a long battle, When the LGBTQ+ community was just letting out a sigh of relief, various Individuals and faithbased groups outrightly rejected the idea of decriminalizing homosexual relationships as held by Delhi High Court in Naz Foundation Govt. V. NCT Of Delhi, 2009, citing India’s rich history bathed in ethics and tradition. They filed an appeal before the Supreme Court of India to reconsider the constitutionality of Section 377.

The division bench of Justice GS Singhvi and Justice SJ Mukhopadhaya in Hon’ble Supreme Court on 11th December 2013, overturned the judgment of the Delhi High Court and recriminalized homosexuality. The bench held that LGBT+ persons constituted a ‘minuscule minority’ and therefore did not deserve constitutional protection and further observed that Section 377 of IPC did not suffer from the vice of unconstitutionality and thus, is totally constitutional. Supreme Court vehemently ignored basic fundamental rights under Article 14, 15, 19 and 21, just because LGBT constituted miniscule minority. Thereby, bypassing the essence of the Constitution of India.

But the silver lining of this judgment was that, instead of putting a halt on the LGBT movement, it rather rekindled a new wave of activism in India. The Supreme Court’s regressive judgement faced immense criticism from every nook and corner for erasing basic human rights of homosexuals. The result was that public conversation about LGBT rights witnessed an upsurge in India, which later turned into a massive movement.

## **9. RIGHTS OF TRANSGENDER PEOPLE**

The main activists during the mass LGBT movement belonged to the Transgender Community as they have been the worst sufferer of exploitation amongst the whole LGBT+ community in India due to their degraded social, educational and economical status. These people have never been considered as a part of society and have always been subjected to exploitation, ostracization i.e., exclusion, humiliation and violence either in the hands of society or the authorities in power.

The constant rejection and not having access to resources, these people often resort to beggary or prostitution, making them more vulnerable to discrimination, STD’s and crimes such as human trafficking. But, the 2014 Judgement of the Supreme Court in NALSA V. Union of India, 2014 brought in a new ray of hope and euphoria for these transgender people as for the first time in the history, they were recognized as the third gender.

### **1) National Legal Services Authority v. Union of India, 2014**

The issue before the Hon’ble Supreme Court in this case was whether there was a need to recognize the hijra and transgender community as a third gender for the purposes of public health, education, employment, reservation and other welfare schemes?

The Supreme Court in this landmark judgement created the ‘third gender’ status for hijras or transgenders. As earlier, the transgender people were forced to describe themselves as either male or female, but after the judgement, they could proudly identify themselves as transgender or Third Gender. The Judgment also laid down the framework to guarantee the transgender community a bunch of basic human rights which can be summarized as follows:

- 1) The Supreme Court held that the non-recognition of their identities was in violation of Article 14,15,16 and 21 of the Constitution of India.
- 2) The Supreme Court further directed the Government of India to treat the members of “Third Gender” as an economically and socially backward class in terms of giving them reservation. It also stipulated that government should make proper policies for the transgender community in the light of Articles 15(2) and



16(4) to ensure equality of opportunity in education and employment as per the judgment, the third gender would be categorized as other backward classes [OBC] to confer them the benefit of reservation in relation to government jobs and educational institutions.

- 3) The court also took cognizance that a conflict between one's birth gender and identity is not essentially a pathological condition. So, rather than adopting a 'treatment of the abnormality', the focus should be on 'resolving distress over a mismatch'. In simple words, it means that the court recognized the difference between both the gender and biological components of sex. The court defined biological characteristics to include genital, secondary sexual features, chromosomes etc. but defined gender attributes as one's self-image i.e., an individual's deep emotional or psychological sense of sexual identity and character which is not restricted to the binary sense of male and female but can lie on a broad spectrum.

After this judgement, transgender people now can change their gender without undergoing a sex reassignment surgery. Additionally, they also have a constitutional right to identify and register themselves as the third gender. Apart from this, various state government took small steps to benefit the transgender population by making policies of health and housing. However, a major blow to this judgement came after the passing of Transgender Persons Bill, 2018

## 10. TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2019

Transgender Persons (Protection of Rights) Bill, 2019 was enacted with an objective to protect the rights of the Transgender Community by prohibiting discrimination against them with regards to employment, education, healthcare, access to government or private establishments.

But in the name of empowering the community, the bill further exposed them to institutional oppression and dehumanizes their body and identity. Some lacunas with the Bill are:

- 1) The bill takes away the right from transgender people to determine their sexual orientation. As per the bill, the change of gender identity in documents can only be done after proof of sex reassignment surgery which must be certified by the District Magistrate. This not only affects autonomy and privacy of transgender people, but also exposes them to harassment in the hands of authorities.
- 2) Punishment for Sexual abuse against Transgender is only two years imprisonment as per Transgender Persons (Protection of Rights) Bill of 2019 whereas, a similar kind of offence if, happened against women attracts a serious punishment under IPC extending up to 7 years imprisonment.
- 3) There are no provisions in relation to providing any scholarships, reservation or changing the school curriculum to make it LGBT+ inclusive or ensuring safe inclusive schools and workplaces for the trans community.

## 11. GOVERNMENT'S VIEW ON LGBTQ+

### 'You don't have to be a cow, to fight for animal rights!' Shashi Tharoor

On 23 February 2012, the Ministry of Home Affairs expressed its opposition to the decriminalization of homosexual activity by Delhi High Court, stating that in India, homosexuality is seen as being immoral. The Central Government reversed its stand on 28 February 2012, asserting that there was no legal error in decriminalizing homosexual activity. On December 18, 2015, Shashi Tharoor, a member of the Indian National Congress party, introduced the bill for the decriminalization of Section 377, but the bill was rejected by the house by a vote of 7124.

In 2016, Kerala mooted free sexreassignment surgeries in Government hospitals after it introduced the first State government policy on transgender people. This was a positive move by the state government, giving a hope that from this time onwards, all the steps taken in respect of people belonging to LGBT Community will be in the positive direction. But, recently, on 25 February 2021, the Central Government side in a case stated in Delhi High Court that marriage can only be between biological man and woman. Thereby, strongly opposing validation of same sex marital unions.

On 5th March 2021, The Hon'ble Supreme Court of India issued notices to the Centre and other parties after hearing a Public Interest Litigation (PIL) challenging Health Ministry guideline banning transgender and gay persons from donating blood. A three-judge bench, headed by Chief Justice of India (CJI) SA Bobde, was hearing a petition filed by one T Santa Singh challenging the constitutional validity of Section 12 and 51 of the Guidelines on Blood Donor Selection and

Blood Donor Referral, 2017, issued by the Ministry of Health and Family Welfare. The rule imposed a complete ban on members of the LGBT community and female sex workers from donating blood considering these groups to be in high-risk of contracting HIV/AIDS infection. So, instead of checking the blood sample of people who are donating blood, the guidelines are arbitrarily excluding LGBT Community from donating blood.

The above instances clearly states that the stance of central and state government on Rights of LGBT Community is going back and forth and it still is not determined whether the Government approve of the whole community or not.

### 1) K.S. Puttaswamy v. Union of India, 2017

In the Suresh Kumar Koushal V. Naz Foundation judgement when the Naz Foundation argued before the Supreme court that Section 377 of IPC violated the right to privacy, this argument was not given much importance as Right to privacy was not a settled law. Then in 2017, Puttaswamy Judgment basically focused only on right to privacy and declared it as an intrinsic part of right to life under article 21 and therefore declared it as a fundamental right.

But this case is also closely related to rights of LGBT because of Justice Chandrachud's opinion in the Puttaswamy judgment under the heading titled 'discordant notes' in which he rejected the rhetoric opinion of the court in Suresh Kumar Koushal Case and observed that sexual orientation also falls within the wide ambit of right to privacy. Moreover, under Section 377, a third party could sue the partners who voluntarily entered into sodomy thereby infringing on the right to personal liberty and privacy as enshrined in the Fundamental Rights of the Constitution. Puttaswamy decision notes also registered the criticism about minimis hypothesis principle used in the Suresh Kumar Koushal judgment and stated that the minuscule population of LGBT+ cannot be the ground to deprive them of the basic fundamental rights and such curtailment of the fundamental right cannot be held tolerable even when a few are subjected to hostile treatment, as opposed to a large number of people.

The USA Supreme Court observed in *Lawrence v. Texas*<sup>12</sup>, 'the choice of sexual orientation is part of the intimate and personal choices and falls under the zone of privacy because it is a choice central to personal dignity and autonomy as well as central to the liberty protected by the Fourteenth Amendment of the American constitution'.<sup>13</sup> Similarly, the Constitutional Court of South Africa observed in *National Coalition of Gay and Lesbian Equality v. Minister of Justice*<sup>14</sup>, 'If, in expressing one's sexuality, one acts consensually and without harming the other, invasion of that precinct will be a breach of privacy.'<sup>15</sup>

### 2) Navtej Singh Johar v. Union of India, 2018

After the Hon'ble Supreme Court in Suresh Kumar Koushal Case overruled Delhi High Court judgement of 2013, homosexuals were again considered criminals for doing consensual sexual acts. After which, India witnessed an increasing number of LGBT rights protests when some high-profile names including hotelier Keshav Suri, Ritu Dalmia, dancer Navtej Singh Johar among many others came forward and filed the petition before the Supreme court challenging the constitutional validity of Section 377 of IPC.

The Supreme court agreed to refer the issue to a larger bench and heard several petitions in relation to it. The Government further stated that it will not interfere in the matter and will leave it to be decided by the Supreme Court in accordance with its own wisdom. Petitioners argued that section 377 violated their constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination.

The 5-judge bench finally gave its verdict on 6th September 2018 and unanimously held that:

- Section 377(1) is unconstitutional up to the extent of consensual intercourse between adults as it infringes the fundamental rights of intimacy, autonomy and identity. Thereby, decriminalized act of homosexuality.
- Section 377 is vague and does not create intelligible differentia between what is "natural" and what is "unnatural".
- It also curbs freedom of expressing one's sexual identity, ie. right to freedom of expression as enshrined under Article 19 of the Indian constitution.
- The sexual orientation is an inherent part of self-identity and invalidating the same is denying the right to life.

<sup>12</sup> 559 US 538 (2003)

<sup>13</sup> Rachel Sweeney, *Homosexuals and the Right to Privacy*, 34 CUMB L REV 171

<sup>14</sup> (CCT11/98) [1998] ZACC 15:1999 (1) SA 6

<sup>15</sup> Ibid

- Not giving them basic rights just because they constitute a minuscule section of the population cannot be a valid justification to deny them this right.
- The court also heavily criticized the Koushal judgement and called it irrational, arbitrary and manifestly unconstitutional.
- It was also emphasized that discrimination on the basis of sexual orientation is unconstitutional because sexual orientation is a natural phenomenon as proven by scientific and biological facts.
- The Supreme court also directed the government to create public awareness regarding LGBT rights and to eliminate the stigma surrounding the LGBT people. The judges further elaborated upon the issues surrounding mental health, dignity, privacy, right to self-determination and transgenders.

### **3) Arun Kumar v. Inspector General of Registration, 2018**

It is a case from the Madras High Court which reads into the category of brides Under Hindu Marriage Act, 1955 to also include transwomen. As per Hindu Marriage Act, 1955 the definition of marriage only includes men and women. This judgment expanded the category of women to include transgender people to identify as women to be brides as well. It takes the clause of self-identification as has been mentioned in the NALSA judgment, where a person can identify as any gender identity without needing a State or external body to verify their identity.

Evolving this clause, The Court said that if an individual wishes to identify as a transwoman, then they have the constitutional right. This, among many other cases, lays the foundation for marriages within the LGBTQ+ community broadening the right to marry.

However, this does not mean that LGBTQ+ have right to marry in India in every case. There is no Supreme Court Judgment as of now to allow it.

## **12. CONCLUSION**

There is no doubt that the judgments related to LGBTQ+ rights will shape the future of the LGBTQ+ rights movement in India. The significance of the NALSA judgment and the Navtej Singh Johar judgment extends beyond recognizing third gender identity and decriminalizing homosexuality. These judgments are progressive because they lay the groundwork for granting other civil rights to the LGBTQ+ community, rights that are typically enjoyed by heterosexual and cisgender individuals. These civil rights include the right to marriage, adoption, surrogacy, protection against discrimination, and freedom from sexual assault.

Despite these legal advancements, LGBTQ+ individuals still struggle for societal acceptance. A Supreme Court judgment can pass a resolution, but it is up to society to ensure that LGBTQ+ individuals are not discriminated against and are made to feel included. Allowing same-sex sexual acts alone will not achieve equality. The future of same-sex marriage, legal recognition of adoption by same-sex couples, and protection against oppression remain uncertain, and the community continues to fight for these rights. The battle is far from over, and there is a long road ahead to make India truly inclusive.