

Protective and Regulatory Framework for the LGBTQI+ Community in India: A Contemporary Legal and Social Analysis

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Received: 08 November 2025, Accepted: 20 November 2025, Published online: 30 November 2025

Abstract

The vision of *Viksit Bharat 2047* positions India's developmental trajectory within a framework of constitutional morality, inclusive growth, and rights-based governance. This research examines why comprehensive knowledge of the protective and regulatory architecture governing LGBTQI+ persons is indispensable to that national agenda. The paper argues that no nation can attain full social or economic development while marginalising any segment of its population, particularly gender and sexual minorities who continue to experience systemic barriers in employment, housing, education, and healthcare. Understanding landmark constitutional jurisprudence—including *NALSA v. Union of India*, *Navtej Singh Johar v. Union of India*, and *Puttaswamy*—alongside the Transgender Persons (Protection of Rights) Act, 2019, becomes critical for ensuring administrative accountability, legal compliance, and uniform rights enforcement across institutions. Further, drawing on Amartya Sen's capability approach, the study explains how recognition of LGBTQI+ rights expands human potential, fosters creativity, and enhances democratic participation, all of which are central to the demographic and economic ambitions of *Viksit Bharat*.

The analysis also situates India within a comparative global landscape, noting that long-term competitiveness requires alignment with international human-rights norms. Finally, the paper emphasises that social cohesion, fraternity, and constitutional values—essential pillars for a stable and developed India—depend on informed citizenship and widespread awareness of LGBTQI+ rights. The study concludes that LGBTQI+ legal literacy is not peripheral but foundational to achieving a progressive, just, and inclusive *Viksit Bharat 2047*.

Keywords:- LGBTQI+ Rights; *Viksit Bharat 2047*; Constitutional Morality; Transgender Act 2019; Capability Approach; Inclusive Growth; Human Rights Governance

Introduction

Achieving the vision of ***Viksit Bharat 2047*** requires a transformative, inclusive, and rights-based nation-building agenda that recognises every citizen as an agent of growth. Within this framework, a comprehensive understanding of India's **protective and regulatory architecture for LGBTQI+ persons** becomes indispensable. A developed India cannot emerge without ensuring that constitutional guarantees—dignity, liberty, equality, non-discrimination, and privacy—are meaningfully and uniformly extended to all communities, including gender and sexual minorities. Knowledge of the existing jurisprudence, statutory regime, and welfare measures is therefore not merely academic; it is a structural prerequisite for democratic maturity, social progress, and sustainable development.

Since, **inclusive growth is central to *Viksit Bharat***, and it cannot be realised if any segment of society remains marginalised or excluded from economic and social opportunities. LGBTQI+ persons face systemic discrimination in employment, education, housing, and healthcare. Understanding the rights recognised in *NALSA v. Union of India*, *Navtej Singh Johar v. Union of India*, *Puttaswamy*, and subsequent High Court judgments enables institutions, policymakers, and private-sector stakeholders to create affirmative systems that prevent exclusion. When discrimination is addressed at structural levels, LGBTQI+ persons become contributors to the economy, innovation, and workforce diversity—essential components of India's future economic landscape.

Furthermore, knowledge of the Transgender Persons (Protection of Rights) Act, 2019, the 2020 Rules, and sectoral guidelines promotes administrative compliance and institutional accountability. For Viksit Bharat 2047, governance must be efficient, rights-oriented, and transparent. A society unaware of its legal obligations cannot implement equitable welfare schemes or protect vulnerable citizens. This awareness ensures uniform application of the law, reduces human-rights violations, and strengthens India's governance systems in line with global democratic standards.

Additionally, India's demographic dividend must be complemented by expanding human capabilities, aligning with Amartya Sen's capability approach. Recognising LGBTQI+ rights advances personal freedoms, self-worth, and public participation—expanding the nation's pool of talent, leadership, and creativity. Marginalisation restricts capabilities; inclusion unlocks them. Knowledge of these frameworks helps shape policies in healthcare, education, employment, and social welfare that expand capabilities for all.

Moreover, global competitiveness for Viksit Bharat requires harmonisation with international human-rights norms. Nations like South Africa, the United States, Canada, and the United Kingdom have integrated LGBTQI+ protections into their democratic and developmental models. India's aspiration to be a global leader by 2047 demands legal literacy that aligns domestic practices with international standards, enabling smoother diplomatic, economic, and strategic engagements.

Finally, **social cohesion and constitutional morality**—critical pillars for a stable and prosperous India—depend on informed citizenship. Understanding the jurisprudence of dignity, autonomy, and privacy fosters a culture of respect and fraternity, reducing social conflict and promoting peaceful coexistence. As Viksit Bharat 2047 is envisioned as a society grounded in constitutional values, widespread knowledge of LGBTQI+ protections nurtures a culture aligned with justice, equality, and human dignity.

In essence, knowledge of India's LGBTQI+ legal framework is a cornerstone for building a **progressive, inclusive, and constitutionally faithful Viksit Bharat**, where development is not merely economic but humane, just, and comprehensive.

The Constitutional Reimagining of LGBTQI+ Rights in Contemporary India

The legal, social, and regulatory landscape concerning the LGBTQI+ community in India has undergone profound transformation over the last decade, driven principally by the judiciary's progressive interpretation of constitutional guarantees and an emerging rights-based discourse. The shift from criminalisation to recognition, from invisibility to tentative institutional accommodation, reflects a broader engagement with constitutional morality, human dignity, and the evolving global human-rights framework. The present chapter examines this transformation as a structured narrative, contextualising the jurisprudential shift within theoretical frameworks offered by Judith Butler's performativity theory, Michel Foucault's analysis of power and sexuality, and Amartya Sen's capability approach. This interdisciplinary lens situates LGBTQI+ rights not merely as legal claims but as essential elements of individual agency, social justice, and democratic citizenship.

The analysis that follows disaggregates India's LGBTQI+ regulatory apparatus through statutory enactments, constitutional adjudication, executive guidelines, and emerging welfare mechanisms. In doing so, this chapter highlights the tension between progressive jurisprudence and the absence of a comprehensive civil-rights framework that explicitly protects sexual and gender minorities.

Theoretical Framework

1. Judith Butler: Gender Performativity and Recognition

Judith Butler's theory of gender performativity asserts that gender is not an innate, stable identity but a series of socially regulated performances reinforced by norms. In the Indian context, Butler's framework helps explain the historical marginalisation of queer and transgender identities, which have often been disciplined through coercive state apparatuses such as the criminal law, police regulation, familial control, and social ostracisation. The recognition of transgender identity in *National Legal Services Authority (NALSA) v. Union*

of India reflects a judicial break from the heteronormative presumption of gender binaries, acknowledging gender identity as a subjective, self-asserted reality consistent with Butler's conceptualisation.

2. Michel Foucault: Power, Sexuality, and Regulation

Michel Foucault's analysis emphasizes that sexuality is regulated through power structures—legal, medical, and religious institutions—which classify, normalise, and discipline bodies. Section 377 of the Indian Penal Code (IPC), historically used to criminalise homosexuality, epitomised what Foucault terms “juridical-discursive power,” whereby the law constructs categories of deviance. The Supreme Court's decision in *Navtej Singh Johar v. Union of India* (2018) not only decriminalised homosexuality but also deconstructed the regulatory power of the colonial penal code, thereby undermining a long-standing regime of sexual policing.

3. Amartya Sen: Capability Approach and Human Development

Amartya Sen's capability approach provides a normative framework for evaluating LGBTQI+ rights beyond procedural equality, emphasising individual freedoms, opportunities, and substantive agency. Applying Sen to Indian jurisprudence underscores that recognition of identity (as achieved in *NALSA*) and decriminalisation (as achieved in *Navtej*) must translate into access to healthcare, education, employment, housing, and social protection—domains where LGBTQI+ persons continue to face significant exclusion. The Transgender Persons (Protection of Rights) Act, 2019, though flawed, signals the State's acknowledgment of the need to expand these capabilities.

Evolution of Indian Constitutional Jurisprudence

1. The Colonial Legacy of Section 377

Section 377 IPC, introduced in 1860, criminalised “carnal intercourse against the order of nature,” functioning as a tool of moral and sexual regulation. Its enforcement perpetuated stigma, extortion, and police harassment against LGBTQI+ persons. The Delhi High Court's partial reading down of §377 in *Naz Foundation v. NCT of Delhi* (2009) marked the first substantive constitutional challenge, grounded in Articles 14, 15, and 21. However, *Suresh Kumar Koushal v. Naz Foundation* (2013) reversed this progress, infamously dismissing LGBTQI+ persons as a “minuscule minority.”

2. *Navtej Singh Johar* (2018): A Constitutional Watershed

The Supreme Court's five-judge bench in *Navtej Singh Johar v. Union of India* (2018) restored the rights recognised in *Naz Foundation*, holding that criminalisation of consensual same-sex relations violated Articles 14, 15, 19, and 21 of the Constitution.

Justice Chandrachud emphasised *constitutional morality* over *social morality*, observing:

“The Constitution is a living document, and its interpretation must evolve with the needs of the times.”

Justice Indu Malhotra's historic remark—“History owes an apology to the members of the LGBTQ community”—captured the moral reckoning inherent in the judgment.

3. *NALSA v. Union of India* (2014): Legal Recognition of Gender Identity

In *National Legal Services Authority v. Union of India* (2014), the Supreme Court recognised the right to self-identified gender, declaring transgender persons as a socially and educationally backward class requiring affirmative action measures. The Court anchored its reasoning in Articles 14, 15, 16, 19, and 21, recognising dignity and autonomy as essential attributes of citizenship. This decision paved the way for statutory intervention through the Transgender Persons (Protection of Rights) Act, 2019.

4. Privacy as a Constitutional Right: *Puttaswamy* (2017)

The nine-judge bench in *K.S. Puttaswamy v. Union of India* (2017) reaffirmed sexual orientation as a facet of privacy under Article 21. This judgment provided doctrinal support for *Navtej*, underlining that individual identity and intimacy fall within the core of constitutional protection.

Statutory Framework

1. Transgender Persons (Protection of Rights) Act, 2019

The 2019 Act constitutes the principal legislative instrument governing transgender rights. It prohibits discrimination in employment, education, healthcare, housing, and access to public goods. However, its requirement of certification through a District Screening Committee, criticised as paternalistic, conflicts with the self-identification principle recognised in *NALSA*.

Key features include:

- Prohibition of discrimination in public and private sectors.
- Provision for welfare schemes, skill development, and rehabilitation.
- Establishment of National Council for Transgender Persons.

2. Transgender Persons (Protection of Rights) Rules, 2020

The 2020 Rules operationalise certificate issuance, grievance redressal, and institutional compliance. They require every establishment to designate a complaint officer and prohibit denial of services on grounds of gender identity.

3. Executive Guidelines and Sectoral Frameworks

Various ministries have issued directives to incorporate LGBTQI+ protections:

- UGC guidelines on inclusivity and gender-neutral infrastructure.
- Ministry of Social Justice and Empowerment's SMILE scheme.
- Police sensitisation programs mandated by High Courts (notably Madras and Kerala).

Judicial Expansion of Rights Post-Navtej

High Courts have played a crucial role in enforcing LGBTQI+ protections through habeas corpus petitions, police-protection cases, and challenges to administrative bias.

1. Right to Cohabitation and Protection

High Courts in Kerala (*Sreeja S.*), Punjab & Haryana (*Sultana Mirza*), Uttarakhand (*Asha v. State*), and Madras have extended protection to same-sex couples facing familial threats, interpreting Article 21 as inclusive of "the right to choose one's partner."

2. Marriage Equality Litigation: *Supriyo v. Union of India* (2023)

In *Supriyo @ Supriya Chakraborty v. Union of India* (2023), a five-judge Constitution Bench declined to recognise same-sex marriage under existing statutory frameworks (such as the Special Marriage Act, 1954). However, the Court unanimously affirmed that LGBTQI+ persons are entitled to dignity, non-discrimination, and protection from coercion. The Court directed the State to establish a committee to examine civil union or domestic partnership rights.

International Comparative Framework

1. United States

The U.S. Supreme Court in *Obergefell v. Hodges* (2015) recognised same-sex marriage as a constitutional right under the Fourteenth Amendment. Anti-discrimination laws in states such as California and New York offer employment, housing, and healthcare protections far more robust than India's current framework.

2. United Kingdom

The UK's Equality Act 2010 includes sexual orientation and gender reassignment as protected characteristics. The Gender Recognition Act 2004 permits legal sex change, though activists argue for self-identification reforms similar to *NALSA*.

3. South Africa

South Africa stands out for constitutional protection against discrimination based on sexual orientation (Section 9). The Civil Union Act, 2006 legalised same-sex marriage, illustrating a rights-affirming model that India's constitutional jurisprudence increasingly resembles, though without corresponding civil-union recognition.

4. Nepal

Nepal's 2015 Constitution recognises gender and sexual minorities and permits third-gender identification on official documents. Nepal's Supreme Court has recommended legal recognition of same-sex marriage, positioning it as a regional leader.

By comparing these jurisdictions, it becomes evident that India's rights framework remains jurisprudence-heavy and statute-light, lacking a comprehensive anti-discrimination regime.

Persistent Gaps and Structural Challenges

Despite significant constitutional progress, the LGBTQI+ community continues to face structural discrimination.

Persistent challenges include:

- Absence of marriage, adoption, and inheritance rights.
- Limited implementation of the Transgender Act's welfare provisions.
- Ongoing police harassment and societal stigma.
- Barriers in housing, employment, and access to healthcare.
- Lack of gender-affirming healthcare standards.

Public institutions often fail to comply with guidelines, reflecting deep-rooted social conservatism that legislative and judicial interventions alone cannot dismantle.

Conclusion

India's protective and regulatory framework for LGBTQI+ persons represents a significant but incomplete transition from criminalisation to constitutional recognition. Through jurisprudential milestones such as *NALSA*, *Puttaswamy*, and *Navtej*, the judiciary has constructed a powerful narrative of dignity, autonomy, and equality. Yet, the absence of a comprehensive civil-rights statute, coupled with bureaucratic and social resistance, continues to impede substantive realisation of these rights.

The theoretical frameworks of Butler, Foucault, and Sen elucidate how identity, power, and capabilities intersect within this evolving landscape. While the Transgender Persons Act and executive guidelines constitute early steps toward institutional inclusion, they require substantial reform to align with self-identification principles and human-rights standards.

Comparatively, nations such as South Africa, the United States, and the United Kingdom reveal pathways toward full legal equality, including marriage and anti-discrimination protection. For India to advance toward genuine equality, legislative reform, institutional sensitisation, and social transformation must proceed in tandem.

The future of LGBTQI+ rights in India rests on a robust legal architecture grounded in constitutional morality, supported by social acceptance and sustained by democratic accountability. The trajectory is positive, but the distance yet to be travelled remains significant.

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