



## Marginalisation of Sexual Minorities

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This article is based on “**On the margins with full equality still out of reach**” which was published in The Hindu on 28/06/2021. It talks about the associated issues with the LGBTQ+ community.

During 1970s homosexuality was treated as a mental disorder. But, after the 1970s, with the efforts of several activists like Dr. Frank Kameny, the global **LGBTQ+** community marched ahead for their rights and equal status.

However, in India, the queer community is still a stigmatised and invisible minority. Further, whatever gains that the queer community won have been granted by the judiciary; not by legislatures.

Despite judicial verdicts, India’s sexual minorities face discrimination in employment, health issues and personal rights. This makes it incompatible with the country’s living, liberal and inclusive Constitution.

### Role of Judiciary in Welfare of LGBTQ+

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In the tug of war between the demands of the traditional conception of society and the rights of individuals to their identity and dignity, the higher judiciary has come down firmly in favour of individuals. This can be depicted in following examples:

- **Naz Foundation vs Government of NCT of Delhi Case 2009:** The Delhi High Court’s verdict held that **Section 377 of Indian Penal Code (IPC)** offended the guarantee of equality enshrined in Article 14 of the Constitution, because it creates an unreasonable classification and targets homosexuals as a class.
- **National Legal Services Authority v. Union of India Case 2014:** In this case, the Supreme Court of India declared transgender people to be a ‘third gender’.

- **Navtej Singh Johar & Ors. vs Union of India Case 2018:** The Supreme Court of India's ruling in this case held that, the criminalization of consensual homosexual behaviour between adults (under Section 377 of the IPC), was "unconstitutional, irrational, indefensible and manifestly arbitrary".

This judgment has provided a launch pad for the LGBTQ+ jurisprudence and queer liberation movement in India.

## Discrimination Faced By LGBTQ+

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- **Full Equality is Still a Pie in the Sky:** Despite the various judgments of the higher judiciary, the queer community in India still faces discrimination in matters of employment, health and personal relationship.
- **Legal Sanction Opposed:** The Union of India has recently opposed any move to accord legal sanction to same-sex marriages in India.

The government stated that the decriminalisation of Section 377 of the Indian Penal Code does not automatically translate into a fundamental right for same sex couples to marry.
- **Heteronormativity:** Heteronormativity is the root cause of hetero-sexism and homophobia.
  - Heteronormativity is the belief that heterosexuality is the default, preferred, or normal mode of sexual orientation.
  - It assumes the gender binary (i.e., that there are only two distinct, opposite genders) and that sexual and marital relations are most fitting between people of opposite sex.
- **Issues With the Transgender Act:** The Parliament has passed the **Transgender Persons (Protection of Rights) Act, 2019**, which had been framed for the welfare of transgender persons.

However, the LGBTQ+ community protested against the act on account issues like one-size fits all approach, absence of reservation, etc.

## Way Forward

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- **Marriage, A Human Right:** Justice Anthony Kennedy of the U.S. Supreme Court, in *Obergefell vs Hodges* (2015) underscored the emotional and social value of the institution of marriage.
  - He asserted that the universal human right of marriage should not be denied to a same-sex couple.
  - As of 2021, same-sex marriage is legally performed and recognised in 29 countries.
  - Thus, Indian society and the state should synchronise themselves with changing trends.

- **Amending Article 15:** Article 15 is the cornerstone of the concept that equality is the antithesis of discrimination.
  - It secures the citizens from every sort of discrimination by the state, on the grounds of religion, race, caste, sex or place of birth or any of them.
  - In order to prevent discrimination against sexual minorities, the grounds of non-discrimination should be expanded by including gender and sexual orientation.
- **Inducing Behavioural Change:** Justice Rohinton F. Nariman had directed in Navtej Singh Johar case, the Government to sensitise the general public and officials, including police officials, to reduce and finally eliminate the stigma associated with LGBTQ+ community through the mass media and the official channel.
  - School and university students too should be sensitised about the diversity of sexuality to deconstruct the myth of heteronormativity.

## Conclusion

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The Constitution was conceived by India's founding fathers as a beacon of fundamental rights. However, LGBTQ+ is still one of the most marginalised segments of the citizenry.

Therefore, it is time for change; but the burden should not be left to the powers that be. The onus remains with the civil society, the citizenry concerned and the LGBTQ+ community itself.

### ***Drishti Mains Question***

Despite judicial verdicts, India's sexual minorities face discrimination in employment, health issues and personal rights. Discuss.