



Recognition of LGBTQIA+ Rights in India

For Prelims: [Supreme Court](#), [LGBTQIA+](#), [Section 377 Judgement](#), [Navtej Singh Johar v. Union of India](#), [Transgender Persons \(Protection of Rights\) Act 2019](#), [Legality of same-sex marriage in India](#)

For Mains: Major Challenges Faced by LGBTQIA+ in India, Recent Advancements and Ongoing Struggle Related to LGBTQIA+.

[Source: TH](#)

Why in News?

The [Supreme Court\(SC\)](#) recently warned judges against using **court-ordered counseling** to make [LGBTQ+ individuals](#) a way to turn them against their own identity and **sexual orientation**, especially when they are distressed or separated from partners by family members.

- SC noted that while understanding a person's desires is acceptable, trying to change their identity and sexual orientation through counseling is highly inappropriate.

What is the Status of LGBTQIA+ Rights and Recognition in India?

- **About:** LGBTQIA+ is an acronym that represents **lesbian, gay, bisexual, transgender, queer, intersex, and asexual**.
 - The "+" represents the many other identities that are still being explored and understood. The acronym is constantly evolving and may include other terms like **non-binary and pansexual**.
- **History of Recognition of LGBTQIA+ in India:**
 - **Colonial Era and Stigma (Pre-1990s):**
 - **1861:** [Section 377](#) of the Indian Penal Code, criminalizing "**carnal intercourse against the order of nature**," is introduced under British rule. This law becomes a major hurdle for LGBTQIA+ rights in India.
 - **Early Recognition and Activism (1990s):**
 - **1981:** The first **All-India Hijra Conference** took place in 1981.
 - **1991:** The **AIDS Bhedbhav Virodhi Andolan (ABVA)** publishes "Less Than Gay," the first public report on the status of LGBTQIA+ people in India, demanding legal changes.
 - **Landmark Cases and Setbacks (2000s):**
 - **2001:** The Naz Foundation files a Public Interest Litigation (PIL) challenging Section 377.
 - **2009:** A landmark Delhi High Court ruling in *Naz Foundation vs Govt of NCT of Delhi* **decriminalizes consensual homosexual acts**, seen as a major victory for LGBTQIA+ rights.
 - **2013:** The Supreme Court, in a setback, overturns the Delhi High Court decision, **upholding Section 377**.
 - **Recent Advancements and Ongoing Struggle (2010s-Present):**

- **2014:** The Supreme Court recognizes transgender people as a "third gender." (***National Legal Services Authority V/s Union of India* popularly known as *NALSA judgement***)
- **2018:** In a historic decision, the Supreme Court strikes down **Section 377**, decriminalizing same-sex relationships. ([Navtej Singh Johar v. Union of India](#))
- **2019:** The [Transgender Persons \(Protection of Rights\) Act, 2019](#) was passed, granting legal recognition and prohibiting discrimination against transgender individuals.
- **2020:** The Uttarakhand High Court acknowledges legal protection for live-in relationships of same-sex couples.
- **2021:** In the case of ***Anjali Guru Sanjana Jaan v. State of Maharashtra & Ors. (2021)***, the Bombay High Court observed that for the Village Panchayat elections, the petitioner identified herself as a female while she was a transgender and her application was rejected.
 - The court held that the petitioner had the **right to self-identify** her gender and accepted her application.
- **2022:** In August 2022, the Supreme Court of India expanded the definition of family to include **same-sex couples and queer relationships**.
- **2023:** In October 2023, A five-judge Constitution Bench of the Supreme court rejecting petitions to legalise **same-sex marriage in India**.
 - SC ruled that it does not have the authority to modify the [Special Marriage Act \(SMA\), 1954](#) by either removing or adding provisions to include same-sex individuals.
 - It stated that the responsibility lies with Parliament and state legislatures to enact laws regarding this matter.

What are the Major Challenges Faced by LGBTQIA+ in India?

- **Social Stigma:** Deep-rooted societal attitudes and stigma against LGBTQIA+ individuals persist in many parts of India.
 - This leads to **prejudice, harassment, bullying, and violence** in different social arenas like education and employment affecting the mental and emotional well-being of LGBTQIA+ individuals.
- **Family Rejection:** Many LGBTQIA+ individuals experience rejection and discrimination within their families, leading to strained relationships, **homelessness**, and a lack of support systems.
- **Healthcare Access:** They often encounter barriers to accessing healthcare services, including **discrimination from healthcare providers, lack of LGBTQIA+-friendly healthcare facilities**, and challenges in obtaining appropriate medical care related to sexual health.
- **Inadequate Legal Recognition:** While progress has been made in recognizing transgender rights, there is still a **lack of legal recognition and protections for non-binary and gender non-conforming individuals**.
 - Legal challenges related to marriage, adoption, inheritance, and other civil rights persist for them.
- **Intersectional Challenges:** LGBTQIA+ individuals who belong to marginalized communities, such as Dalits, tribal communities, religious minorities, or those with disabilities, **face compounded discrimination and marginalization based on their intersecting identities**.
- **Manipulative Counseling:** Manipulative counseling practices, such as **conversion therapy** and pathologizing LGBTQIA+ identities, exacerbate the challenges faced by this community.
 - These practices reinforce harmful stereotypes, deny authenticity, and contribute to internalized stigma and distress.

Way Forward

- **Push for Legal Reforms:** In 2023, the SC judgment on LGBTQIA+ marriages transferred the ball in the legislature's court to make relevant laws for the community.
 - Legislatures can pass a separate law altogether or make amendments in the existing laws to recognise their rights.
 - For example, Tamil Nadu has already amended the [Hindu Marriage Act](#) in 1968 to allow **self-respect or 'Suyamariyathai' marriages** which allowed marriages to be declared in

the presence of the couple's friends or family or any other persons.

- **Entrepreneurship and Economic Empowerment:** Encouraging entrepreneurship and economic empowerment within the LGBTQIA+ community by providing them access to **mentorship, funding, and resources** for starting LGBTQIA+-owned businesses and ventures.
 - Promote LGBTQIA+-friendly workplaces and businesses through **certification programs**.
- **Healthcare Access:** Ensuring access to LGBTQIA+-friendly healthcare services, including mental health support, gender-affirming care, [HIV/AIDS prevention and treatment](#), and **sexual and reproductive health services**.
 - Training healthcare providers to provide culturally competent and inclusive care to LGBTQIA+ patients.
- **Sports as a Game Changer:** Sports can be used as a platform for breaking stereotypes and fostering camaraderie.
 - Creating **sports leagues** specifically designed for LGBTQIA+ individuals to promote physical health, mental well-being, and community bonding can be done in this regard.

Drishti Mains Question:

1. Evaluate the progress made in acknowledging LGBTQIA+ rights in India, with a specific emphasis on recent developments concerning same-sex marriages
2. What are the key challenges in achieving full equality for the LGBTQIA+ community in India, and what steps can be taken to address them effectively?

UPSC Civil Services Examination, Previous Year Question (PYQ)

Q. Explain the constitutional perspectives of Gender Justice with the help of relevant Constitutional Provisions and case laws. (2023)

PDF Reference URL: <https://www.drishtias.com/printpdf/recognition-of-lgbtqia-rights-in-india>