



## 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)

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