

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 2

2026

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From Colonial Criminalization to Constitutional Morality: LGBTQ+ Rights and the Transformation of India's Criminal Law Framework

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ABSTRACT

The regulation of sexuality within Indian criminal law has undergone a significant transformation, evolving from a colonial framework rooted in moral policing to a constitutional paradigm grounded in dignity, autonomy, and equality. Historically, Section 377 of the Indian Penal Code, 1860 criminalized consensual same-sex relations, reflecting Victorian moral values that were incongruent with India's diverse cultural traditions. Its persistence created a contradiction between constitutional guarantees and lived realities, marginalizing individuals identifying as lesbian, gay, bisexual, transgender, and queer (LGBTQ+). This paper critically examines the evolution of LGBTQ+ rights in India through the interplay of judicial intervention, legislative reform, and socio-cultural dynamics. It analyses key judicial milestones, culminating in the landmark decision in Navtej Singh Johar v. Union of India, which decriminalized consensual same-sex relations and reaffirmed the primacy of constitutional morality over societal morality. The study further evaluates the impact of recent legislative reforms, particularly the enactment of the Bharatiya Nyaya Sanhita, 2023, Bharatiya Sakshya Adhinyam, 2023, and Bharatiya Nagarik Suraksha Sanhita, 2023, which collectively replace colonial-era criminal laws and adopt a harm-based approach to regulation. While these reforms mark a significant step toward legal recognition and inclusivity, the paper argues that decriminalization alone is insufficient to achieve substantive equality. Persistent social stigma, absence of comprehensive anti-discrimination legislation, and lack of legal recognition for same-sex relationships continue to impede the realization of LGBTQ+ rights. The paper highlights the gap between formal legal equality and social acceptance, emphasizing the need for a holistic framework that integrates legal reform with cultural transformation. Ultimately, the study concludes that the success of India's evolving legal framework depends on its ability to move beyond decriminalization toward affirmative protection and societal inclusion, ensuring that constitutional guarantees are fully realized in practice.

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Keywords: LGBTQ+ Rights, Constitutional Morality, Decriminalization, Criminal Law Reform, Substantive Equality

I. INTRODUCTION

The regulation of sexuality within legal systems has historically reflected prevailing moral, cultural, and political ideologies. In India, the criminal law framework inherited from colonial rule imposed rigid heteronormative standards that criminalized non-conforming sexual identities. Section 377 of the Indian Penal Code, 1860 (IPC), introduced during British rule, penalized “carnal intercourse against the order of nature,” thereby casting a wide net over consensual same-sex relations.¹ This provision did not merely function as a penal statute; it also served as a tool of social control, reinforcing stigma and legitimizing discrimination against individuals identifying as lesbian, gay, bisexual, transgender, and queer (LGBTQ+).

The persistence of Section 377 for over a century reflects the deep entrenchment of colonial morality within Indian criminal jurisprudence. Despite India’s constitutional commitment to equality, dignity, and personal liberty, the continued enforcement of this provision created a paradox wherein individuals were guaranteed fundamental rights on paper while simultaneously being subjected to criminal liability for exercising those very rights. This contradiction became the focal point of judicial scrutiny in the early twenty-first century, as courts were called upon to reconcile statutory law with constitutional principles.

The turning point in this trajectory came with the decision of the Delhi High Court in *Naz Foundation v. Government of NCT of Delhi*, wherein the Court read down Section 377 to exclude consensual sexual acts between adults in private.² The judgment marked a significant shift toward the recognition of sexual orientation as an intrinsic aspect of individual identity, protected under Articles 14, 15, and 21 of the Constitution. However, this progressive stance was short-lived, as the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* reversed the decision, reinstating the criminalization of same-sex relations.³ The Court’s reasoning, which emphasized the “minuscule fraction” of the population affected by the law, drew widespread criticism for its failure to adequately engage with constitutional values and human rights principles.

The jurisprudential inconsistency was ultimately resolved in *Navtej Singh Johar v. Union of India*, where a Constitution Bench of the Supreme Court unequivocally decriminalized consensual same-sex relations by striking down Section 377 to that extent.⁴ The Court recognized that sexual orientation is an essential attribute of privacy, dignity, and autonomy,

thereby affirming the centrality of constitutional morality over societal morality. This judgment not only invalidated a colonial-era provision but also signaled a broader transformation in Indian constitutional jurisprudence, emphasizing inclusivity and substantive equality.

While judicial intervention played a pivotal role in decriminalization, the legislative framework has also undergone significant transformation with the enactment of the Bharatiya Nyaya Sanhita, 2023, which replaces the IPC as the primary criminal statute. Notably, the BNS does not reproduce Section 377 in its earlier expansive form, thereby affirming the constitutional position established in *Navtej Johar*.⁵ This legislative omission represents a conscious departure from morality-based criminalization and reflects a shift toward a harm-based approach to criminal law, wherein only non-consensual acts and offences involving exploitation are penalized.

In addition to substantive criminal law reform, the enactment of the Bharatiya Sakshya Adhinyam, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023 has restructured the evidentiary and procedural dimensions of the criminal justice system. These reforms aim to enhance fairness, efficiency, and victim-centric adjudication. From the perspective of LGBTQ+ rights, the BSA is particularly significant as it reinforces evidentiary neutrality, ensuring that adjudication is based on objective evidence rather than moral judgments about an individual's sexual orientation. Similarly, the BNSS introduces procedural safeguards designed to streamline investigations and trials, thereby reducing delays and improving access to justice.

Despite these legal advancements, the decriminalization of homosexuality does not automatically translate into social acceptance or substantive equality. The gap between law and society remains a critical challenge. Deep-rooted cultural norms and societal prejudices continue to shape attitudes toward LGBTQ+ individuals, often manifesting in discrimination, harassment, and exclusion. This underscores the limitation of criminal law as a tool for social transformation. While it can remove formal barriers and provide legal recognition, it cannot, in isolation, dismantle entrenched social biases.

The concept of bisexuality, in particular, illustrates the complexities of this transition. Often marginalized even within LGBTQ+ discourse, bisexual individuals face unique challenges arising from both societal misunderstanding and intra-community bias. The legal framework, while now neutral with respect to sexual orientation, does not specifically address these nuanced experiences. This highlights the need for a more comprehensive approach that goes beyond decriminalization to encompass anti-discrimination measures, social awareness, and policy interventions.

Furthermore, the shift from colonial morality to constitutional morality raises important theoretical questions about the role of law in regulating personal conduct. Constitutional morality, as articulated by the Supreme Court, emphasizes the protection of individual rights and the promotion of equality, even in the face of societal opposition.⁶ This principle serves as a guiding framework for interpreting laws in a manner that aligns with constitutional values. However, its practical implementation requires consistent judicial interpretation and legislative support, particularly in areas where societal attitudes remain resistant to change.

In this context, the present study seeks to examine the evolution of LGBTQ+ rights in India through the interplay of judicial decisions, legislative reforms, and cultural influences. It aims to critically analyse whether the transition from the IPC to the BNS, along with the accompanying procedural and evidentiary reforms, has effectively addressed the historical injustices associated with the criminalization of non-heteronormative identities. At the same time, it interrogates the extent to which legal reform can influence societal attitudes and whether additional measures are required to achieve substantive equality.

In conclusion, the transformation of India's criminal law framework represents a significant step toward recognizing and protecting LGBTQ+ rights. The decriminalization of consensual same-sex relations and the adoption of a modernized legal framework signal a shift toward inclusivity and respect for individual autonomy. However, the realization of these ideals depends not only on legal reform but also on broader societal change. The challenge, therefore, lies in bridging the gap between constitutional guarantees and lived realities, ensuring that the promise of equality is not merely theoretical but fully realized in practice.

II. CRIMINAL LEGISLATIONS OF INDIA

The evolution of LGBTQ+ rights in India cannot be understood without a close examination of the legislative framework governing criminal law. Historically, the regulation of sexuality was embedded within the Indian Penal Code, 1860 (IPC), a colonial statute that reflected Victorian moral values rather than indigenous cultural realities. Section 377 of the IPC criminalized “carnal intercourse against the order of nature,” a phrase that was deliberately broad and undefined, enabling its application to consensual same-sex relations.¹ This provision effectively institutionalized discrimination by equating non-heteronormative sexual conduct with criminality.

The constitutional validity of Section 377 was first substantively challenged in *Naz Foundation v. Government of NCT of Delhi*, where the Delhi High Court adopted a rights-based approach and held that the provision, insofar as it criminalized consensual acts between adults in private,

violated Articles 14, 15, and 21 of the Constitution.² The Court emphasized that equality before law and the right to life include the right to dignity and privacy, thereby recognizing sexual orientation as an intrinsic component of personal identity. This decision marked a progressive departure from morality-based legislation and aligned Indian law with international human rights standards.

However, this progress was reversed by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation*, where the Court upheld the constitutional validity of Section 377.³ The judgment was widely criticized for its narrow interpretation of fundamental rights and its reliance on the argument that the LGBTQ+ community constituted only a “minuscule fraction” of the population. This reasoning reflected a majoritarian approach to rights, undermining the constitutional principle that fundamental rights are guaranteed to all individuals irrespective of their numerical strength.

The jurisprudential inconsistency was ultimately resolved in *Navtej Singh Johar v. Union of India*, where a Constitution Bench of the Supreme Court struck down Section 377 to the extent that it criminalized consensual same-sex relations between adults.⁴ The Court reaffirmed the principles of dignity, autonomy, and privacy, holding that constitutional morality must prevail over societal morality. This judgment not only decriminalized homosexuality but also laid the foundation for a broader re-evaluation of laws affecting LGBTQ+ individuals.

The legislative transformation of Indian criminal law with the enactment of the Bharatiya Nyaya Sanhita, 2023 represents a significant milestone in this trajectory. The BNS replaces the IPC and reflects a modernized approach to criminal jurisprudence. Crucially, the BNS does not re-enact Section 377 in its earlier expansive form, thereby affirming the constitutional position established in *Navtej Johar*.⁵ This omission signifies a decisive shift away from morality-based criminalization toward a framework that penalizes only conduct causing tangible harm.

Under the BNS, sexual offences are now more clearly categorized and defined, focusing on issues such as consent, coercion, and exploitation. The law criminalizes acts such as rape, sexual assault, and offences against minors, irrespective of the gender of the victim, thereby adopting a more inclusive and gender-neutral approach in certain contexts. However, it is important to note that while the BNS decriminalizes consensual same-sex relations, it does not explicitly provide comprehensive protection against discrimination based on sexual orientation. This indicates that while criminal law reform has removed punitive provisions, it has not fully addressed the broader spectrum of LGBTQ+ rights.

In addition to substantive criminal law, the evidentiary framework has undergone

transformation with the enactment of the Bharatiya Sakshya Adhiniyam, 2023, which replaces the Indian Evidence Act, 1872. The BSA introduces modern evidentiary principles aimed at enhancing fairness and reliability in adjudication. In the context of LGBTQ+ rights, the BSA is particularly significant as it reinforces the principle that legal determinations must be based on objective evidence rather than moral assumptions.⁶ This is crucial in cases involving sexual offences, where prejudicial attitudes toward sexual orientation have historically influenced judicial outcomes. By emphasizing relevance, admissibility, and credibility of evidence, the BSA contributes to a more neutral and rights-based adjudicatory process.

Procedural reforms under the Bharatiya Nagarik Suraksha Sanhita, 2023 further strengthen the criminal justice system by introducing measures aimed at efficiency and victim protection. The BNSS replaces the Code of Criminal Procedure, 1973, and incorporates provisions for time-bound investigations, digital processes, and enhanced victim rights.⁷ These reforms are particularly relevant for marginalized communities, including LGBTQ+ individuals, who often face barriers in accessing justice due to social stigma and institutional bias. By streamlining procedures and emphasizing victim-centric approaches, the BNSS has the potential to improve the accessibility and responsiveness of the criminal justice system.

Despite these legislative advancements, certain limitations remain. The absence of explicit anti-discrimination provisions within the criminal law framework means that LGBTQ+ individuals continue to rely on constitutional remedies and judicial interpretation for protection against discrimination. Moreover, the effectiveness of these reforms depends on their implementation, which is often influenced by societal attitudes and institutional practices. The persistence of stigma and prejudice may undermine the practical realization of legal rights, highlighting the need for complementary measures such as sensitization programs, policy reforms, and public awareness initiatives.

From a doctrinal perspective, the transition from the IPC to the BNS represents a shift from a morality-based model of criminal law to a harm-based model. This shift aligns with modern principles of criminal jurisprudence, which emphasize that the purpose of criminal law is to prevent harm rather than enforce moral norms. The decriminalization of consensual same-sex relations is a clear manifestation of this principle, as it recognizes that private, consensual conduct does not warrant state intervention.

At the same time, the legislative framework reflects an ongoing tension between formal legal equality and substantive equality. While the removal of Section 377 eliminates a significant source of legal discrimination, it does not automatically ensure equal treatment in practice.

Issues such as workplace discrimination, social exclusion, and lack of legal recognition for same-sex relationships remain unaddressed within the criminal law domain.

In conclusion, the legislative evolution from the IPC to the BNS, along with the enactment of the BSA and BNSS, marks a transformative phase in Indian criminal law. These reforms have successfully decriminalized consensual same-sex relations and introduced a more rational and rights-oriented framework. However, the journey toward full equality requires a more comprehensive approach that extends beyond decriminalization to include affirmative protections and societal change. The legislative framework provides a foundation, but its true impact will depend on how it is interpreted, implemented, and supplemented by future legal and policy developments.

III. SOCIOLOGICAL CULTURE OF INDIA

The discourse on LGBTQ+ rights in India cannot be confined solely to legal developments; it must be situated within the broader cultural and historical context that shapes societal attitudes toward sexuality. Indian society presents a paradox in this regard. On one hand, ancient texts, religious traditions, and artistic expressions reflect a degree of openness toward diverse sexual identities. On the other hand, contemporary social norms often exhibit resistance and stigma toward non-heteronormative orientations, including homosexuality and bisexuality. This duality underscores the tension between historical plurality and modern conservatism.

Pre-colonial Indian culture offers substantial evidence of the recognition and, in some instances, acceptance of diverse sexual identities. Temple architecture in regions such as Khajuraho, Konark, and various South Indian temple complexes depicts erotic sculptures that include representations of same-sex intimacy and fluid gender identities. These artistic expressions suggest that sexuality was not rigidly confined within binary frameworks but was understood as part of a broader spectrum of human experience. Similarly, mythological narratives and epics such as the *Mahabharata* include characters like Shikhandi, whose transformation from female to male challenges conventional notions of gender identity.¹ These cultural references indicate that the presence of diverse sexual identities is not a modern or Western import but has deep historical roots in Indian society.

However, the advent of colonial rule marked a significant shift in the regulation of sexuality. The introduction of the Indian Penal Code, 1860, particularly Section 377, imposed Victorian moral standards that were alien to the indigenous cultural landscape.² This legal imposition not only criminalized certain forms of sexual expression but also reshaped societal perceptions by associating non-heteronormative identities with deviance and illegality. Over time, these

colonial constructs became internalized within Indian society, leading to the marginalization of LGBTQ+ individuals.

The persistence of stigma in contemporary India can be attributed to a complex interplay of cultural, religious, and social factors. Despite the decriminalization of consensual same-sex relations in *Navtej Singh Johar v. Union of India*, societal attitudes often continue to reflect conservative values that prioritize heteronormativity.³ Family structures, which play a central role in Indian society, frequently reinforce traditional expectations regarding marriage and procreation. Individuals who deviate from these norms may face rejection, discrimination, and psychological distress.

Bisexuality, in particular, occupies a precarious position within this cultural framework. Unlike homosexuality, which has gained some degree of visibility and recognition, bisexuality is often misunderstood or dismissed as a transient phase. Individuals identifying as bisexual frequently encounter skepticism both within the LGBTQ+ community and in mainstream society. This phenomenon, sometimes referred to as “double marginalization,” highlights the limitations of current social discourse in accommodating the complexity of sexual identities.

From a legal perspective, the transformation of criminal law through the enactment of the Bharatiya Nyaya Sanhita, 2023 reflects a shift toward constitutional morality. The removal of Section 377 signifies that the state no longer endorses the criminalization of consensual same-sex relations. However, the law’s neutrality does not automatically translate into social acceptance. Cultural norms continue to influence how legal rights are perceived and exercised in practice.

The role of the Bharatiya Sakshya Adhinyam, 2023 is particularly relevant in this context. By emphasizing evidentiary objectivity and limiting reliance on character-based judgments, the BSA seeks to ensure that legal proceedings are not influenced by societal prejudice.⁴ This is crucial in cases involving LGBTQ+ individuals, where stereotypes and biases have historically affected judicial outcomes. Similarly, procedural reforms under the Bharatiya Nagarik Suraksha Sanhita, 2023 aim to enhance access to justice, particularly for marginalized groups who may face barriers in engaging with the legal system.

Despite these advancements, the cultural dimension of LGBTQ+ rights remains a significant challenge. Law can prohibit discrimination and provide remedies, but it cannot, by itself, transform deeply ingrained social attitudes. The persistence of homophobia and biphobia in everyday interactions—from educational institutions to workplaces—demonstrates the limitations of legal reform in achieving substantive equality.

The concept of constitutional morality, as articulated by the Supreme Court, provides a framework for addressing this challenge. Constitutional morality requires that laws and their interpretation be guided by principles of justice, equality, and dignity, even when they conflict with prevailing social norms.⁵ This principle serves as a counterbalance to societal morality, which may be influenced by tradition and prejudice. However, the effectiveness of constitutional morality depends on its internalization not only by institutions but also by society at large.

Cultural transformation, therefore, is an essential complement to legal reform. Public discourse, education, and representation play a critical role in shaping societal attitudes toward LGBTQ+ individuals. The increasing visibility of LGBTQ+ narratives in media, literature, and public life has contributed to a gradual shift in perceptions, although progress remains uneven. Support from public figures and advocacy groups has also played a significant role in normalizing discussions around sexual orientation and identity.

In conclusion, the cultural context of India presents both challenges and opportunities for the realization of LGBTQ+ rights. While historical traditions suggest a more inclusive understanding of sexuality, contemporary societal norms often reflect resistance and exclusion. The transformation of criminal law through the BNS, BSA, and BNSS marks an important step toward aligning legal frameworks with constitutional values. However, the true test of this transformation lies in its ability to influence societal attitudes and create an environment where individuals can express their identities without fear or prejudice. Bridging the gap between legal recognition and social acceptance remains the central challenge in the ongoing struggle for LGBTQ+ equality in India.

IV. IMPACT OF NEW CRIMINAL LAWS ON LGBTQ+ RIGHTS IN INDIA

The enactment of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Sakshya Adhinyam, 2023, and the Bharatiya Nagarik Suraksha Sanhita, 2023 marks a transformative phase in India's criminal justice system. These statutes collectively replace the colonial-era Indian Penal Code, Evidence Act, and Code of Criminal Procedure, respectively. From the perspective of LGBTQ+ rights, this legislative overhaul presents both significant advancements and continuing limitations. While the new framework consolidates the gains achieved through judicial intervention, particularly the decriminalization of consensual same-sex relations, it also reveals gaps in addressing broader issues of discrimination and equality.

A. Decriminalization and Substantive Legal Recognition

One of the most significant impacts of the BNS is the absence of a provision equivalent to

Section 377 IPC, thereby affirming the constitutional position established in *Navtej Singh Johar v. Union of India*.¹ This omission reflects a clear legislative intent to move away from morality-based criminalization toward a harm-based framework. Consensual same-sex relations between adults are no longer subject to criminal sanction, thereby eliminating a major source of legal discrimination.

This development represents a shift from negative rights (freedom from criminalization) to the possibility of positive rights (recognition and protection). However, it is important to note that the BNS primarily achieves decriminalization rather than affirmative protection. While it removes punitive provisions, it does not explicitly prohibit discrimination on the basis of sexual orientation. As a result, LGBTQ+ individuals continue to rely on constitutional remedies and judicial interpretation for protection against discriminatory practices.

B. Reorientation of Criminal Law: From Morality to Harm

The transition from the IPC to the BNS signifies a broader doctrinal shift in criminal jurisprudence. Under the IPC, Section 377 functioned as a tool of moral regulation, penalizing conduct deemed “unnatural” without regard to consent or harm. In contrast, the BNS adopts a harm-centric approach, criminalizing only those acts that involve coercion, lack of consent, or exploitation.

This shift aligns with modern principles of criminal law, which emphasize that the state should intervene only where there is demonstrable harm. By excluding consensual same-sex relations from its ambit, the BNS recognizes that private conduct between consenting adults does not warrant criminal sanction. This approach not only enhances individual autonomy but also reinforces the constitutional values of dignity and privacy.

C. Evidentiary Neutrality under the Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) plays a crucial role in shaping how LGBTQ+ individuals are treated within the criminal justice system. Historically, evidentiary practices often reflected societal biases, with courts sometimes relying on moral judgments about an individual’s character or sexual orientation. The BSA seeks to address this issue by emphasizing relevance, admissibility, and objectivity of evidence.²

In cases involving sexual offences, this shift is particularly significant. The focus is now on consent and factual evidence, rather than on the moral character or sexual history of the individuals involved. This reduces the risk of prejudice against LGBTQ+ persons in judicial proceedings. For instance, an individual’s sexual orientation cannot be used to infer consent or credibility, thereby ensuring a more equitable adjudicatory process.

However, while the BSA promotes evidentiary neutrality, its effectiveness depends on judicial interpretation and implementation. Deep-seated biases within the legal system may still influence outcomes, highlighting the need for continuous sensitization of judicial and law enforcement authorities.

D. Procedural Safeguards under the Bharatiya Nagarik Suraksha Sanhita, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) introduces procedural reforms aimed at enhancing efficiency, transparency, and victim protection.³ These reforms include time-bound investigations, digitalization of processes, and improved mechanisms for victim participation.

For LGBTQ+ individuals, these procedural safeguards are particularly important, as they often face barriers in accessing justice due to stigma and discrimination. The BNSS's emphasis on victim-centric procedures can help mitigate these challenges by ensuring that complaints are addressed promptly and fairly. Additionally, the use of technology in legal processes may reduce opportunities for discriminatory treatment during in-person interactions.

Nevertheless, procedural reforms alone cannot fully address the challenges faced by LGBTQ+ individuals. Issues such as underreporting of offences, fear of social backlash, and lack of awareness about legal rights continue to hinder access to justice. These challenges highlight the need for complementary measures, including legal aid, awareness campaigns, and institutional accountability.

E. Limitations of Criminal Law in Addressing LGBTQ+ Rights

While the new criminal law framework represents a significant step forward, it also underscores the limitations of criminal law as a tool for achieving substantive equality. The decriminalization of consensual same-sex relations removes a major legal barrier, but it does not address broader issues such as:

- Discrimination in employment, housing, and education
- Lack of legal recognition for same-sex relationships
- Social stigma and exclusion

Criminal law is inherently reactive, focusing on punishing wrongful conduct rather than promoting affirmative rights. As a result, it is ill-suited to address systemic inequalities that require proactive policy interventions. The absence of comprehensive anti-discrimination legislation means that LGBTQ+ individuals continue to face challenges that fall outside the scope of criminal law.

F. The Gap Between Legal Reform and Social Reality

A critical issue highlighted by the new legal framework is the gap between formal legal equality and substantive social equality. While the BNS, BSA, and BNSS collectively establish a more inclusive legal environment, societal attitudes often lag behind legal developments. Cultural norms, religious beliefs, and social structures continue to influence perceptions of LGBTQ+ identities, leading to persistent discrimination and marginalization.

This gap underscores the importance of constitutional morality as a guiding principle. As emphasized in *Navtej Singh Johar*, constitutional morality requires that laws protect individual rights even in the face of societal opposition.⁴ However, the realization of this principle depends on its acceptance not only by courts but also by society at large.

G. Toward a Holistic Framework for LGBTQ+ Rights

The impact of the new criminal laws must therefore be understood as part of a broader process of legal and social transformation. While the BNS, BSA, and BNSS provide a foundation for protecting LGBTQ+ rights, they must be complemented by additional measures, including:

- Enactment of comprehensive anti-discrimination legislation
- Recognition of same-sex relationships and partnerships
- Sensitization of law enforcement and judicial authorities
- Promotion of public awareness and education

Such measures are essential to ensure that the gains achieved through decriminalization are translated into meaningful and lasting change. The new criminal law framework in India represents a significant step toward aligning legal norms with constitutional values of equality, dignity, and autonomy. The decriminalization of consensual same-sex relations under the BNS, coupled with evidentiary and procedural reforms under the BSA and BNSS, marks a progressive shift in Indian criminal jurisprudence. However, the journey toward full equality is far from complete. The limitations of criminal law in addressing systemic discrimination highlight the need for a more comprehensive and holistic approach to LGBTQ+ rights. Ultimately, the success of these reforms will depend not only on their legal implementation but also on their ability to influence societal attitudes and foster an inclusive environment for all individuals.

V. CONCLUSION AND SUGGESTIONS

The trajectory of LGBTQ+ rights in India reflects a profound transformation from criminalization to constitutional recognition. The historical existence of Section 377 of the

Indian Penal Code, 1860 symbolized not only a legal prohibition but also a broader societal endorsement of heteronormative morality. Its eventual decriminalization in *Navtej Singh Johar v. Union of India* marked a watershed moment, affirming that sexual orientation is an intrinsic aspect of dignity, autonomy, and personal liberty.¹ This judicial shift laid the foundation for a more inclusive legal framework, which has been further consolidated through the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Sakshya Adhinyam, 2023 (BSA), and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

At a structural level, the omission of a provision equivalent to Section 377 in the BNS signifies a decisive move away from morality-based criminalization toward a harm-based approach. The criminal law now recognizes that consensual relationships between adults fall within the domain of personal autonomy and do not warrant state interference. Similarly, the BSA and BNSS introduce evidentiary and procedural reforms that enhance fairness, objectivity, and access to justice, thereby strengthening the institutional framework within which LGBTQ+ individuals can seek legal redress.

However, despite these advancements, the analysis across the preceding chapters reveals that decriminalization is only the first step toward achieving substantive equality. The absence of criminal penalties does not automatically translate into social acceptance, nor does it address systemic discrimination in areas such as employment, housing, healthcare, and education. The persistence of stigma and prejudice underscores the limitations of criminal law as a tool for social transformation. While it can remove legal barriers, it cannot, in isolation, dismantle deeply entrenched societal attitudes.

A significant gap also exists in the absence of explicit anti-discrimination protections within the current legal framework. LGBTQ+ individuals continue to rely on constitutional remedies and judicial interpretation, which, although robust, may not provide consistent or accessible protection in everyday contexts. Furthermore, the lack of legal recognition for same-sex relationships limits the ability of individuals to exercise rights related to marriage, inheritance, adoption, and social security.

The interplay between law and culture remains a critical factor in determining the effectiveness of legal reform. As discussed in earlier chapters, Indian culture historically exhibited a degree of plurality in its understanding of sexuality. However, colonial influences and subsequent societal developments have contributed to the marginalization of non-heteronormative identities. Bridging this gap between historical inclusivity and contemporary conservatism requires not only legal reform but also sustained efforts to reshape public discourse and societal

attitudes.

In light of these observations, the following suggestions are proposed to strengthen the protection and realization of LGBTQ+ rights in India:

1. Enactment of Comprehensive Anti-Discrimination Legislation

There is an urgent need for a dedicated statutory framework that explicitly prohibits discrimination on the basis of sexual orientation and gender identity. Such legislation should cover key areas including employment, education, housing, and access to public services. This would move beyond decriminalization to ensure affirmative protection of rights.

2. Legal Recognition of Same-Sex Relationships

The absence of legal recognition for same-sex relationships remains a significant barrier to equality. Legislative reforms should provide for the recognition of same-sex partnerships, enabling individuals to access rights related to marriage, inheritance, adoption, and social security. This would align the legal framework with the constitutional principles of dignity and equality.

3. Sensitization of Law Enforcement and Judiciary

Effective implementation of legal reforms requires that law enforcement agencies and judicial officers are adequately sensitized to LGBTQ+ issues. Training programs should be institutionalized to address biases and ensure that legal processes are conducted in a fair and non-discriminatory manner.

4. Strengthening Access to Justice

Mechanisms such as legal aid, helplines, and support services should be enhanced to ensure that LGBTQ+ individuals can effectively access the criminal justice system. Special attention must be given to addressing underreporting of offences due to fear of stigma and retaliation.

5. Public Awareness and Educational Initiatives

Legal reform must be complemented by efforts to transform societal attitudes. Educational curricula, media representation, and public campaigns should promote awareness and acceptance of diverse sexual identities. This is essential to bridge the gap between formal legal equality and lived social reality.

6. Policy Integration Across Sectors

LGBTQ+ rights should be integrated into broader policy frameworks, including healthcare, education, and social welfare. This would ensure a holistic approach that addresses both legal

and socio-economic dimensions of inequality.

7. Retrospective Justice and Rehabilitation

Consideration should be given to mechanisms for addressing historical injustices faced by individuals who were previously prosecuted under Section 377. This may include compensation, expungement of criminal records, and rehabilitation measures.

The transformation of India's criminal law framework represents a significant milestone in the recognition of LGBTQ+ rights. The shift from colonial morality to constitutional morality underscores the evolving nature of Indian jurisprudence and its commitment to inclusivity and equality. However, the realization of these ideals requires a sustained and multifaceted approach that extends beyond the confines of criminal law.

Ultimately, the question is not merely whether the law permits individuals to live freely, but whether society enables them to do so with dignity and without fear. The answer lies in the continued engagement of legal institutions, policymakers, and society at large in fostering an environment where diversity is not only tolerated but celebrated. The journey toward equality is ongoing, and while significant progress has been made, much remains to be achieved.

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