

Chapter-III

Unrecognized Identities and Legal Frameworks Rights of LGBTQ+, Disabled persons and Refugee Communities

by

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Abstract

In contemporary societies, certain communities continue to face persistent marginalization due to the insufficient recognition of their identities within mainstream legal and social frameworks. As evident from many ancient and mythological scriptures, the LGBTQ community has existed in our country for centuries. Members of this community frequently face challenges arising from their sexual or gender identity and refugee status, which limit their access to justice, dignity, fairness and equal participation. This chapter explains detailed analysis of constitutional provisions, statutory protections and judicial interventions and assesses both the strengths and limitations of current legal safeguards and also try to explore emerging jurisprudence and policy – initiatives that seek to enhance inclusivity, dignity and rights, by foregrounding the lived experiences of marginalized communities from the mainstream world in every step of their life which prevents them to pursue their dreams, aspirations and desires. Finally, this chapter is not only concerned about issues of refugees and identity crisis faced by them, but also aims to suggest pathways toward developing a more responsive legal system to address the complex identities that have traditionally been ignored. The objective is to uplift this community alongside other fellow citizens, overcome social stigma and prejudice, and to ensure that all people in the country feel their rights are protected - regardless of gender identity or sexual orientation.

Keywords: Unrecognized identities, LGBTQ+ rights, Disability rights, Refugee rights, Legal recognition

Recognition of identity is not a mere act of acknowledgment; it is the gateway to dignity, agency, and justice."

– Axel Honneth³¹

The question of identity and its recognition within legal frameworks has long occupied the discourse of human rights jurisprudence. "Identity" is more than label: it is about recognition, dignity, agency, and belonging. Yet many people – LGBTQ+ persons, persons with disabilities, refugees – remain under or unrecognised in legal and social systems³². Such unrecognised identities face exclusion from rights that others take for granted: from healthcare, schooling, employment, protection under the law, or safe refuge. The failure to recognise identities may be de jure (in statutes, policies) or de facto (in social practice, bureaucracy). Legal recognition is critical to ensure human rights, equality, non – discrimination, dignity, and agency. Their lived realities reflect a gap between the theoretical rights enshrined in constitutions, international instruments, and judicial pronouncements, and the practical accessibility of those rights in daily life.

Understanding Unrecognised Identities :

In the legal and social context, an unrecognised identity is a situation where people or communities are either completely excluded from the rights, resources, and protections afforded to other citizens, or are only partially acknowledged. A lack of recognition can be substantive, like when institutions and society fail to provide equal treatment, or formal, like when there are no laws that recognise a specific gender identity. Thus, recognition is a socio-political and legal necessity³³.

The LGBTQ+ communities face lack of proper recognition such as the criminalisation of same – sex behaviour, the stigmatisation of non – binary genders, and social exclusion from basic human rights, which means they can't get basic human rights like marriage, work, inheritance and healthcare³⁴. For disabled persons they face systemic discrimination, such as inaccessible infrastructure, exclusion from education and employment and inadequate healthcare facilities³⁵. Similarly, refugees are denied from civil rights, social

³¹ Axel Honneth, *The Struggle for Recognition* (Polity Press, 1996) 34.

³² Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press, 2006) 102.

³³ H. R. Anand, "Legal Recognition of Identity and Rights" (2019) 61 *ILI Rev* 45.

³⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

³⁵ Rights of Persons with Disabilities Act, 2016, India

benefits and protection from arbitrary detention or deportation especially, they are face lacking of formal refugee legislation³⁶.

Historical context of Marginalization:

The marginalisation of these communities has a long history. For centuries, LGBTQ+ people have been treated like criminals and pathologised in many societies. People with disabilities were frequently shunned by society and denied from legal personhood and social exclusion. Historically, Refugees communities, especially those escaping war, ethnic cleansing or political persecution, have been regarded as burdens rather than as individuals entitled to rights³⁷. It is crucial to comprehend this historical background because it helps us to understand the current fight for legal recognition and fair protection.

Legal Recognition and its Significant:

Recognition is required by law and is not just a symbolic act; it gives guarantees to that individuals can exercise their rights under constitutional and statutory rights. For example, access work, healthcare, and education is directly impacted when consensual same – sex relationships are decriminalised or when non – binary gender identities are acknowledged. In a similar way, disability rights in legal frameworks ensure protection from discrimination³⁸, reasonable accommodations and accessibility. Legal recognition for refugees sets up a system for asylum, protection from refoulement and access to social services.

Intersectionality and Compounding Vulnerabilities :

It is essential to recognise the intersectional aspects of marginalisation. Many people hold several unacknowledged identities at the same time; for example, a disabled, LGBTQ+, refugee may experience extra discrimination because of overlapping social and legal invisibilities. Intersectionality emphasises that protecting rights cannot be done in a vacuum; it must consider the intricate realities of intersecting vulnerabilities³⁹.

³⁶ 1951 Convention Relating to the Status of Refugees, UNHCR.

³⁷ David L. Eng, *The Feeling of Kinship: Queer Liberalism and the Racialization of Intimacy* (Duke University Press, 2010) 56.

³⁸ UN Committee on the Rights of Persons with Disabilities, General Comment No. 6, 2018.

³⁹ Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color" (1991) 43 *Stanford L. Rev* 1241.

Scope of this Chapter :

This chapter seeks to examine how legal recognition and policy frameworks interact with social realities. It evaluates the constitutional, statutory, and judicial responses to the rights of LGBTQ+ persons, refugees, and individuals with disabilities, while also exploring emerging jurisprudence and international commitments. By foregrounding lived experiences, it argues for a transformative approach that bridges the gap between rights on paper and rights in practice. The chapter seeks to increase knowledge of how legal systems can change to uphold the rights and dignity of unrecognised identities by offering a thorough analysis. Essentially, the foundation of justice is recognition. Without it, social inclusion and legal protections remain idealistic. In – depth discussion of historical developments, international obligations, national frameworks and practical recommendations for securing these communities’ substantive recognition and protection will be covered in this chapter. As Amartya Sen reminds us, “Development is freedom”⁴⁰, and freedom can only be realized when marginalized identities are not just legally recognized, but socially affirmed and protected.

Historical Background of Unrecognized Identities

“Justice delayed is injustice. Recognition of identities delayed is oppression perpetuated.”

-- Justice Ruma Pal⁴¹

The historical marginalization of unrecognised identities, including LGBTQ+ individuals, persons with disabilities and refugees, has deeply entrenched in societal, legal and political origins. Colonialism, patriarchy, ableism, and nationalism have all worked together to create hierarchies of belonging and exclusion within socio – legal systems. This chapter traces the evolution of societal and legal recognition of these communities, highlighting all the systemic marginalization and the emergence of movements advocating for inclusion.

LGBTQ+ Communities : Historical Marginalization

In the Indian context, before colonial rule⁴², a variety of gender and sexual expressions were historically visible and frequently socially acceptable. Regional folklore and ancient Indian

⁴⁰ Amartya Sen, *Development as Freedom* (Oxford University Press, 1999).

⁴¹ Justice Ruma Pal, *Judicial Perspectives on Human Rights* (Oxford University Press, 2003) 12.

⁴² Ruth Vanita, *Same-Sex Love in India: Readings from Literature and History* (Macmillan, 2000) 45.

texts like the Kama Sutra accepted third – gender identities and same – sex relationships without imposing moral condemnation⁴³. The fluidity of gender and sexuality in Indic thought is exemplified by mythological characters like Mohini, the female incarnation of Lord Vishnu, and Shikhandi in the Mahabharata⁴⁴. However, Victorian moral codes that pathologised and criminalised non – heteronormative behaviour were brought about by the establishment of British colonial governance. This prejudice became legally codified with the passage of section 377 of the Indian Penal Code, 1860, which was modelled after Britain’s “Buggery Act” of 1533 and classified homosexual acts as “unnatural offences”⁴⁵. In addition to criminalising queer identities, this colonial imposition erased centuries of indigenous acceptance and diversity in gender roles⁴⁶.

Similar patterns appeared in the west. Gender diversity and same – sex relationships were illegal under sodomy laws and moralistic legal frameworks. This legal marginalisation frequently legitimised social discrimination and exclusion from public life. Even in cases where laws were liberalised in later centuries due to social stigma⁴⁷. The LGBTQ+ rights movement started in the 20th century and fought against both legal and social exclusion. The landmark global events, The Stonewall Riots (1969) sparked activism and support for the decriminalisation and recognition of gender diversity⁴⁸.

Persons with Disabilities: Historical Perspectives

Persons with disabilities have been subjected to ignored, left out and in some cases, forced to institutionalization or sterilization. In early societies, disabilities are frequently viewed as the result of moral failings or superstition⁴⁹. In Medieval Europe, for example, individuals with visible disabilities were relegated to begging or marginalized within guild systems⁵⁰.

Colonial policies in India and other places often institutionalized this exclusion. Legal frameworks did not recognize disability as a ground requiring affirmative protection and

⁴³ Vātsyāyana, Kama Sutra of Vatsyayana, translated by Sir Richard Burton (Indo-European Publishing, 2009).

⁴⁴ Devdutt Pattanaik, Shikhandi and Other Tales They Don’t Tell You (Zubaan Books, 2014).

⁴⁵ Indian Penal Code, 1860, s. 377 (repealed in part by Navtej Singh Johar v. Union of India, (2018) 10 SCC 1).

⁴⁶ Arvind Narrain, Queer: Despised Sexuality, Law and Social Change (Yoda Press, 2004).

⁴⁷ Michel Foucault, The History of Sexuality (Vintage, 1990) 72.

⁴⁸ George Chauncey, Gay New York: Gender, Urban Culture, and the Making of the Gay Male World (Basic Books, 1994) 213.

⁴⁹ Lennard J. Davis, Enforcing Normalcy: Disability, Deafness, and the Body (Verso, 1995) 18.

⁵⁰ Susan Burch, Bodies in Protest: Disability and Social Change (University of Michigan Press, 2001) 35.

educational and employment opportunities were broadly inaccessible⁵¹. In the latter half of the 20th century that the global disability rights movement, this promoted equality, accessibility and the social model of disability, which prioritises societal barriers over personal deficiencies⁵². International instruments such as, The United Nations Declaration on the Rights of Disabled Persons (1975), laid the basis for contemporary recognition and protection, culminating in the UN Convention on the Rights of persons with Disabilities (CRPD, 2006)⁵³.

Refugees: Historical Displacement and Legal Non – Recognition

Refugees are people who have been compelled to leave their countries because of human rights violations, persecution or war. Colonial legacies, xenophobia and national security concerns have influenced how refugees communities has historically been treated. In the outgrowth millions of people were displaced due to international conflicts, which sparked concern for stateless and persecuted people on global phenomenon. During the 20th century, the precarious legal and social status of displaced persons was brought to light by significant refugee crisis, including the displacement that followed World war I, the Armenian genocide and the post - World war II movements that highlighted precarious legal and social status of displaced persons⁵⁴.

In the Indian context, waves of refugees, especially those from 1947's partition and later from neighbouring countries, often experienced legal uncertainty and social marginalization⁵⁵. Refugees were more susceptible to exploitation because of unlike citizens, lacked to access property rights, employment, and education and basis social services. India's non – signatory status highlights persistent gaps in legal recognition, despite international efforts to codify protections through the 1951 Refugee convention⁵⁶ and its 1967 protocol, which define the legal status of refugees and establishing the principle of non – refoulement⁵⁷. Despite having world largest refugees populations including Tibetans, Sri Lankan, Tamils, Rohingyas, and Afgans, India have not yet passed a comprehensive

⁵¹ S. K. Sharma, "Colonial Policies and Disability in India" (2010) 52 ILI Rev 78.

⁵² Michael Oliver, *The Politics of Disablement* (Palgrave, 1990) 57.

⁵³ UN Convention on the Rights of Persons with Disabilities, 2006.

⁵⁴ Alexander Betts, *Forced Migration and Global Politics* (Wiley, 2009) 12.

⁵⁵ Ranabir Samaddar, *Refugees and the State: Practices of Asylum and Care in India* (Sage, 2003) 89.

⁵⁶ 1951 Convention Relating to the Status of Refugees, UNHCR.

⁵⁷ United Nations, *Convention Relating to the Status of Refugees, 1951; Protocol Relating to the Status of Refugees, 1967.*

refugee law or accede to these international instruments⁵⁸. In India, refugees communities continue depend on the executive discretion, which leads to inconsistent and often precarious recognition of their rights⁵⁹.

Intersection of Marginalization:

The intersectional character of historical marginalisation is an important aspect. Many individuals hold overlapping unrecognised identities. These communities often experiences compounded vulnerabilities both socially and legally. Historical exclusion, as demonstrated by intersectionality and it is rarely isolated and often reinforces one other, creating systemic barrier that persists for generations⁶⁰.

Early Movements for Legal Recognition:

In the middle of the 20th century witnessed early activism for legal recognition and rights protection. Intercession for LGBTQ+ communities focused on anti – discrimination and decriminalisation. For persons with disabilities, movements emphasized affirmative action, accessibility and acknowledgement of disability rights as human rights. International organisations and civil society concentrated to codify protections for refugees against statelessness and refoulement⁶¹. Although, these movements have different areas of emphasis, they all seek to be recognised as individuals with proper rights. Historical struggle demonstrate that recognition is both a moral and legal imperative, and that the absence of recognition has significant social, economic, and psychological repercussions⁶².

Conceptual Understanding of unrecognised Identities

The concept of unrecognised identities refers to groups whose social existence and legal recognition are either denied or inadequately protected within legal and policy frameworks. These communities often experience systemic exclusion from fundamental rights, resulting in marginalisation within society. The three primary groups discussed under this category— LGBTQ+, persons with disabilities, and refugees—reflect the intersection of identity, law, and human rights.

⁵⁸ B.S. Chimni, *International Refugee Law: A Reader* (SAGE Publications, 2000).

⁵⁹ Sujata Ramachandran, "Reconsidering the Indian Refugee Regime," *Economic and Political Weekly*, Vol. 45, No. 37 (2010), pp. 56–64.

⁶⁰ Kimberlé Crenshaw, "Mapping the Margins" (1991) 43 *Stanford L. Rev* 1241.

⁶¹ UNHCR, *Global Trends: Forced Displacement in 1950s–1970s* (UNHCR Report, 1975).

⁶² H. R. Anand, "Historical Marginalization and Legal Recognition" (2018) 60 *ILI Rev* 33.

- **LGBTQ+ Community:** The term LGBTQ+ stands for Lesbian, Gay, Transgender, Bisexual, queer and other non- heteronormative identities. It includes people whose sexual orientation or gender identities deviates from the conventional heterosexual and cisnormative norms. The recognition of LGBTQ+ individuals has a rights to evolved gradually through judicial interpretation in country. In India, the landmark Judgement in National Legal Service Authority v. Union of India, marked a significant milestone in India's legal recognition of Transgender as the "Third Gender" and affirmed that the right to self – identity which is protected by Articles 14,15,16,19(1)(a), and The Supreme Court upheld the fundamental right to personal autonomy guaranteed by Article 21 of the constitution of India⁶³. In the case of Navtej Singh Johar v. Union of India ⁶⁴the court stressed that "constitutional morality supersedes societal morality" to protect individual liberty, decriminalising same – sex relationships by invalidating by section 377 of the Indian Penal Code (IPC) to the extent that it criminalised private acts between consenting adults.

Internationally, the LGBTQ+ rights protected under Article 1 and 2 of The Universal Declaration of Human Rights 1948 (UDHR), and the Yogyakarta Principles, which can maintain the application of human rights to sexual orientation and gender identities⁶⁵.

- **Persons with Disabilities:** Any individuals with disabilities has a long -term physical, mental, intellectual or sensory deprivation that combined with obstacles, prevents them from fully and effectively participation in society on equal basis with others is considered to have a disability. In India, The Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995 was superseded by the Rights of persons with Disabilities Act, 2016 in India⁶⁶. The UN Convention on the Rights of persons with Disabilities (UNCRPD) 2006⁶⁷, ratified by India in 2007. The Supreme Court affirmed the rights and dignity of disable persons. In the case of , Jeeja Ghosh v. Union of India⁶⁸, by compensating a passenger with cerebral palsy who had been kicked off an aeroplane. The court held that discrimination against disabled peoples is incompatible with principle of

⁶³ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

⁶⁴ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

⁶⁵ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007.

⁶⁶ Rights of Persons with Disabilities Act, 2016, s. 2(r).

⁶⁷ UN Convention on the Rights of Persons with Disabilities, 2006.

⁶⁸ Jeeja Ghosh v. Union of India, (2016) 7 SCC 761.

reasonable accommodation and Article 21 of the Constitution. However, the condition of disabilities is not a medical condition but a social construct arising from the interaction between societal barriers and impairments.

- **Refugee Communities:** According to Article 1A(2) of the 1951 ⁶⁹convention relating to the status of Refugees, as amended by the 1967 protocol, a person is considered as a refugee who is outside of the country and is unable or unwilling to avail himself of the protection of that country due to a well -founded fear of being persecuted for reasons of race, sex, religion, nationality, membership of a particular social group or political opinion. Indian Constitution provided protection to refugees by interpreting Article 21 (Right to life and personal liberty) of the constitution. The Supreme court of India addressed In National Human Rights Commission v. State of Arunachal Pradesh⁷⁰, that Article 21 applies to all people, citizens and non – citizens alike and that state have a duty to protect the life and liberty of refugees (in this case, chakma refugees). Moreover, International Human Rights instruments such as the Universal Declaration of Human Rights (Article 14) and the International Covenant on Civil and Political Rights (ICCPR, 1966), that recognise the right to seek asylum and protection from persecution.

International legal framework for the LGBTQ community -

Several global instruments are dedicated to LGBTQ rights. There is no single international treaty to protect and promote such rights.

- Universal Declaration of Human Rights (UDHR), 1948

Article 1 & 2 promotes that All human beings are born free and equal in dignity and rights without distinction of any kind including sexual orientation and gender identity.⁷¹

- International Covenant on Civil and Political Rights (ICCPR), 1966

Articles 2 & 26 Guarantee equality before the law and prohibit discrimination.

⁶⁹ Convention Relating to the Status of Refugees, 1951, art. 1A(2); Protocol Relating to the Status of Refugees, 1967.

⁷⁰ National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742.

⁷¹ Universal Declaration of Human Rights- the United Nations, available at: <https://www.un.org> (last visited on Oct 7, 2025 at 10:09 a.m.).

Article 17 guarantees everyone's right to privacy, protecting against arbitrary interference with their home, family, correspondence, and reputation.⁷²

- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

It ensures equality in access to health, education, work, and food, clothing, housing without discrimination.⁷³

- Yogyakarta Principles (2006)

It is a non-binding declaration of human rights principles that applies international human rights law to sexual orientation and gender identity. These principles affirm that all people have rights to equality, non-discrimination, privacy, freedom of expression, and recognition before the law.⁷⁴

National Legal Framework for the Protection of the LGBTQ+ Community (India)

National framework for LGBTQ community is deeply rooted in constitutional guarantees, landmark judicial activism and progressive legislation.

- Constitutional Provisions :-

The Constitution of India establishes a foundation for LGBTQ+ rights through Articles 14, 15, 19, and 21, which guarantee equality before the law, prohibit discrimination based on sex (now interpreted to include sexual orientation and gender identity), protect freedom of speech and expression (including expressing sexual identity), and ensure the right to life, personal liberty, privacy, dignity, and identity.⁷⁵

- Statutory Protection:-

➤ Transgender Persons (Protection of Rights) Act, 2019

⁷² The International Covenant on Civil and Political Rights (ICCPR), available at :<https://ccprcentre.org> (last visited on Oct 7, 2025 at 10:00 a.m.).

⁷³ THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), available at: <https://papers.ssrn.com> (last visited on Oct 7, 2025 at 10:14 a.m.).

⁷⁴ THE YOGYAKARTA PRINCIPLES – 2006, available at: <https://translaw.clpr.org.in> (last visited on Oct 7, 2025 at 10:28 a.m.).

⁷⁵ Transgender Equality: Court Decision on Transgender Rights in India, available at :https://clpr.org.in/wp-content/uploads/2024/12/Accessible_Transgender-Rights_Resource_Book_3.pdf (last visited on Oct 7, 2025 at 11:02 a.m.).

It prohibits discrimination against transgender individuals in various sectors, including education, employment, and healthcare, and recognizes their right to self-perceived gender identity.⁷⁶

➤ Mental Healthcare Act, 2017

It explicitly recognizes that homosexuality is not a mental disorder and prohibits discrimination based on sexual orientation.⁷⁷

International Legal Framework for Refugees & Disabled Persons

- The 1951 Refugee Convention

The Convention relating to the Status of Refugees (1951) is the cornerstone of international refugee law.

Art 33 deals with the Principle of Non-Refoulement according to which refugees can not be sent to countries where they face persecution.

Article 3 ensures protection against discrimination.

Essential services and opportunities like access to courts, right to education, right to work and freedom of movement should be granted to Refugees⁷⁸

- 1967 Protocol Relating to the Status of Refugees

It makes refugee protection universal by virtue of which a common legal framework was applied for all countries to protect refugees.⁷⁹

- UNHCR (United Nations High Commissioner for Refugees)

⁷⁶ Transgender Persons(Protection of Rights) Bill 2019 Passed by Parliament, *available at:* <https://www.pib.gov.in> (last visited on Oct 7,2025 at 11:10 a.m.).

⁷⁷ Section 377 verdict: Homosexuality no more seen as ‘mental illness’, *available at :*<https://www.thehindu.com> (last visited on Oct 7,2025 at 11:16 a.m.).

⁷⁸ UNHCR- The UN Refugee Agency, *available at:* <https://www.unhcr.org/about-unhcr/who-we-protect/refugees> (last visited at Oct 7,2025 at 5:25 p.m.).

⁷⁹ The 1951 Convention and its 1967 Protocol – UNHCR, *available at:*<https://www.unhcr.org> (last visited on Oct 7,2025 at 5:35 p.m.).

It provides international protection to people forced to flee and assist in their voluntary repatriation, local integration, or resettlement.⁸⁰

- United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), 2006

The UNCRPD (2006) is the cornerstone of the international legal framework for persons with disabilities. It transforms the approach from charity and welfare to rights, equality, and empowerment, ensuring full participation of disabled persons in all aspects of life by getting same opportunities as of others in the society.⁸¹

Judicial battle regarding LGBTQ rights in India:-

India has seen significant changes in the mindset of the people which is possible by the battle that has been fought by the LGBTQ community for their gender identity, adoption & custody rights and having a family. This reflected that how far they have come for their recognition. The real battle starts in the year 2001 when Naz Foundation challenged the constitutional validity of section 377 of IPC. In *Naz Foundation v. Government of NCT*⁸², the Delhi High Court declared Section 377 unconstitutional in so far as it criminalizes consensual same sex sexual acts among adults. But it has not marked as milestone because the Supreme Court in *Suresh Koushal v. Union of India*⁸³ has overturned the Delhi High Court's judgement stating that Section 377 IPC does not suffer from constitutional infirmity merely because it criminalizes certain sexual acts even if those acts are between consenting adults in private. This was a major setback which made the LGBTQ+ individuals vulnerable to violence, harassment, discrimination and marginalization. This highlighted the need for the legislative reform and broader social change. The year 2014 was the turning point when the Supreme Court in *National Legal Services Authority v. Union of India (NALSA)*⁸⁴ recognized transgender persons as a "third gender" distinct from male and female. It held that every person has the right to self-identify their gender whether of male,

⁸⁰United nations High Commissioner for Refugees, available at: <https://en.wikipedia.org> (last visited on Oct 7, 2025 at 5:45 p.m.).

⁸¹UN Convention on the Rights of Persons with Disabilities, available at: <https://www.equalityni.org> (last visited on Oct 7, 2025 at 5:55 p.m.).

⁸² 2009 (4) AIR BOM R 58.

⁸³ (2014) 1 SCC 1.

⁸⁴ 1 (2014) 5 SCC 438.

female or third gender and no one should be compelled to undergo medical or sexual reassignment surgery as a precondition to legal recognition. This verdict of the Supreme Court not only affirmed their fundamental right to a dignified life but also paved the way for inclusivity and diversity.⁸⁵

In *K.S. Puttaswamy v. Union of India*⁸⁶, the Supreme Court unanimously held that the right to privacy is a fundamental right under Article 21. Privacy includes the freedom to make personal choices related to one's body, gender identity and sexual orientation. Later the verdict in *Navtej Singh Johar v. Union of India*⁸⁷ made a history where the Supreme Court unanimously struck down Section 377 of IPC (criminalized homo sexuality) as unconstitutional. By virtue of this judgement, Supreme Court legalized consensual same sex relations among adults and held that discrimination based on gender identity and sexual orientation falls under the purview of Article 15. This judgement leads to the enhancement of protection of dignity and equality of LGBTQ individuals.⁸⁸

In spite of the law undergoing a change, the mindset of people never changed in India. LGBTQ people still facing discrimination, harassment, violence from public, police, goons and even from the members of their own family. The situation worsened after the verdict of *Supriya Chakraborty & Anr. v. Union of India*⁸⁹. The hope of LGBTQ people had vanished after same sex marriage was not legalized leaving them with no other options but to commit suicide or fleeing from India. Despite these difficulties LGBTQ community continues to fight for their rights, identity, dignity and for broader social acceptance.⁹⁰

Recommendations and Conclusion

To bridge the gap between recognition and realisation of rights for LGBTQ+ Persons, refugees, and persons with disabilities, the following measures are recommended:

1) Domestic status must align with International human rights norms. A comprehensive LGBTQ, disability, refugee law should guarantee status, rights, non – refoulement, and fair

⁸⁵Kanishka Singh and Dr. Ashish Kumar Singhal, “LGBTQ+ Rights and Legal Recognition in India: Challenges, Progress and the Way Ahead”, 7 *IJMR* 5 (2025).

⁸⁶ 22 (2017) 10 SCC 1.

⁸⁷ AIR 2018 SC (CRI) 1169.

⁸⁸Kanishka Singh and Dr. Ashish Kumar Singhal, “LGBTQ+ Rights and Legal Recognition in India: Challenges, Progress and the Way Ahead”, 7 *IJMR* 6 (2025).

⁸⁹ 2023 INSC 920.

⁹⁰ Navigating Exile: The Struggles of LGBTQ Refugees, available at :<https://articles.manupatra.com> (last visited on Oct 7, 2025 at 2:40 p.m.).

procedures. Transgender laws must respect self – identification and eliminate medical or bureaucratic barriers. Disability law requires strong enforcement, financial backing, and accessible infrastructures. Framing of anti-discrimination laws and supportive policies for the protection of these communities is the need of the hour.

2) Identity documents must permit non – binary markers with transparent, simple change procedures. Refugees should be issued portable, officially recognised documentation. Disability certification processes must be equitable, accessible, non – stigmatizing.

3) A large number of people hold conservative views, discriminatory perceptions towards LGBTQ community. They often affected by bullying, violence and harassment for their sexual orientation. So, societal attitudes towards LGBTQ youth should be changed which will pave the way of brother societal acceptance and safeguard against discrimination in public and private Spheres. Court should exercise supervisory jurisdiction to ensure compliance with directives. Public Interest Litigations and constitutional petitions must remain accessible, supported by awareness and legal Aid.

4) Discrimination in workplace, educational sector and limited access to health care leads to economic hardship and severe health issues. Mental health of these communities often overlooked. Community education, training for police, judiciary, health care providers, and school teachers are very much needed.

5) Affirmative measures such as reservations/quotas in education and employment for transgender persons, disabled persons, and refugees (where appropriate) are essentials. And welfare schemes must address healthcare, mental health, transport accessibility, and refugee resettlement is required to raise them equally in heteronormative world.

6) While some progress has been made(e.g. recognition of third gender, decriminalisation of same sex relationships in India) there is still a substantial lack of specific legal provisions that protect the rights, dignity, status of LGBTQ community particularly in marriage, adoption, custody, inheritance and property rights. Enactment of comprehensive legislation and strong mechanisms for its enforcement is highly required.

7) Independent bodies like the ombudsman and the human rights commission should be there to monitor the progress of inclusion of these communities in the mainstream of the society and adequate budgetary allocations are necessary to ensure affordable and accessible justice.

India being abode for a variety of communities with distinct cultures and diversities should welcome, recognition of diverse identities is both a legal necessity and moral imperative. While International treaties, progressive judicial decisions, and some legislative reforms have advanced the position of LGBTQ+ persons, persons with disabilities, and refugees, many remain un/under recognised in law or practice. Framing of adequate and proper legislation is required to safeguard and protect their rights, interests and well-being and to avoid discrimination and violence. LGBTQ community deserves to lead their life freely without any pressure of sex reassignment surgeries or hiding of their gender identity. To boost up their finance, countries should come forward with basic educational and employment opportunities to enable them to survive in their home countries without fleeing and seeking asylum in another country. India is still at its flourishing when it comes to safeguarding the rights of LGBTQ communities. Lack of understanding and intolerance is prevailing towards eligibility to the community. There is nothing to be ashamed of for being homosexual, transgender or having a queer identity. Heterosexual is just as normal as the rest of us. They should be treated equally. The promise of constitutional values – equality, dignity, autonomy, non – discrimination is yet to be fully realised. The legal system must not only establish rights but also guarantee their application. Nonetheless, the Supreme Court's landmark ruling recognising transgender persons as third gender and another historical judgement demonstrating Section 377 as irrational, indefensible and arbitrary- all has been made possible because of hard work and discrepancy between lived reality and legal recognition emphasizes the necessity of extensive reforms, public awareness campaigns, and efficient enforcement.

In spite of all the revolutions, the LGBTQ+ persons, persons with disabilities and refugee's community still face humiliation, helplessness and identity crisis. The legal system must not only establish rights but also guarantee their application. By extensive reforms, efficient legislation, constitutional morality, India can ensure that marginalised communities enjoy dignity, equality and freedom, fulfilling the vision of an inclusive society.

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