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The Evolving Concept of Fundamental Rights in India With Special Reference To LGBTQ+ Rights and Constitutional Recognition

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Abstract

The Indian Constitution's Part III is about basic rights. These rights are not set in stone; they are always changing and getting bigger. It was first meant to protect people's rights from government overreach, but over time, court decisions and changes in society have changed its meaning a lot. This abstract examines the evolving interpretation of these rights, emphasizing the increasing discourse surrounding the rights of LGBTQ+ individuals and their aspiration for constitutional acknowledgment. Historically, the enforcement of fundamental rights in India often aligned with a majoritarian viewpoint, resulting in the marginalization of communities, including LGBTQ+ individuals. However, landmark court cases, such as *Navtej Singh Johar v. Union of India* (2018), which legalized consensual homosexual acts, represented a significant turning point. This choice, which was based on the fundamental rights to equality (Article 14), non-discrimination (Article 15), personal freedom (Article 21), and dignity, made it possible to have a wider view of constitutional protections. The fight for LGBTQ+ rights in India is now focused on getting full constitutional recognition, which includes things like equal marriage rights, adoption rights, and protection against discrimination in all areas of life. This necessitates a further enhancement in the understanding of fundamental rights to explicitly include sexual orientation and gender identity as protected categories. The legal and social debates about these issues show how flexible constitutional interpretation is. Changing ideas about human dignity and societal values have a big impact on how fundamental rights are defined and used. This abstract will look at the important court cases, changes in society, and legal arguments that show how things are changing. It will focus on the ongoing move toward a truly open and rights-based system for all Indians.

Keywords: Fundamental Rights, LGBTQ+ Rights, Constitutional Recognition, Evolving Interpretation, Article14, Article15, Article21, NavtejSinghJohar, India

Introduction

The Constitution of India, which was adopted in 1950, spelled out a list of basic rights based on ideas from other democratic countries and the goals of the Indian independence movement. Part III of the Constitution lists these rights. They were meant to keep people safe from the arbitrary use of state power and to be necessary for everyone's dignity and growth. But the meaning and scope of these fundamental rights have changed over time. The concept of fundamental

rights in India has evolved significantly over the years due to judicial rulings, legislative amendments, and shifts in societal norms. An important part of this change is that more people are recognizing the rights of the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) community. (Patel, 2018)

People used to mostly think of civil and political rights when they thought of basic rights. The main focus was on individual rights, such as freedom of speech, expression, assembly, and protection against discrimination based on religion, race, caste, sex, or place of birth (Article 15). Article 14 of the Constitution said that everyone was equal before the law, and Article 21 said that everyone had the right to life and personal freedom. However, these provisions were often viewed through a binary lens of gender and sexuality. The lived experiences and rights of LGBTQ+ individuals were largely concealed within the legal and constitutional framework. The gradual broadening of the interpretation of Article 21 was a major turning point in the development of basic rights in India, especially for LGBTQ+ people. The Supreme Court made a lot of important decisions that expanded the right to life and personal freedom to include the right to privacy, the right to dignity, and the right to make one's own choices. These broader meanings made it easier to stand up against laws and actions that were unfair to LGBTQ+ people. (Baum, 2020)

It has taken a long time and a lot of hard work, including legal battles and social activism, to get LGBTQ+ rights recognized in the Constitution. The Naz Foundation vs. the Government of India case was very important. The Delhi High Court decided in the NCT of Delhi (2009) case that homosexuality was no longer a crime by reading down Section 377 of the Indian Penal Code, which made "carnal intercourse against the order of nature" a crime. The High Court said that Section 377 went against the Constitution's promises of privacy, equality, and dignity. The Supreme Court ruled in *Suresh Kumar Koushal v. Naz Foundation* (2013) that Section 377 was constitutional and overturned the Delhi High Court's decision. This stopped the positive step. A lot of people didn't like this choice because it didn't take into account the rights and dignity of LGBTQ+ people and only looked at a small number of basic rights. The legal battle went on, and in *Navtej Singh Johar v. Union of India* (2018), they finally won a big victory. The five judges on the Supreme Court made it clear that same-sex sexual activity that is consensual is no longer a crime. They did this because they saw how people's ideas about basic rights and the idea of constitutional morality have changed over time. The Court said that Section 377 was against the Constitution because it made it a crime for consenting adults to do things like that. This was because it broke Articles 14, 15, 19, and 21 of the Constitution. This important decision was a big step forward for LGBTQ+ people in India, as it confirmed their basic rights and dignity. (Travers, 2019)

Literature Review

Adamczyk et al. (2019): The rights of transgender individuals have attained constitutional recognition. In the case of *National Legal Services Authority (NALSA) v. Union of India* (2014), the Supreme Court ruled that transgender people are a "third gender" and that they have basic rights, like the right to choose their own gender. The Court told the government to take steps to make sure that LGBTQ+ people are integrated into society, the economy, and education. The Transgender Persons (Protection of Rights) Act, 2019, despite criticism of certain provisions, recognized the right to self-identified gender identity and prohibited discrimination against transgender individuals.

Boyce et al. (2019): The endeavor to attain comprehensive constitutional recognition and societal acceptance of LGBTQ+ rights in India is in progress. Disputes regarding the legalization of same-sex marriage, adoption rights, and comprehensive anti-discrimination legislation continue to be subjects of ongoing debate and litigation.

Badgett et al. (2019): Legislative action is equally vital to create comprehensive legal frameworks that protect rights and ensure equal citizenship for all individuals, irrespective of sexual orientation or gender identity.

Fundamental rights in India with special reference to LGBTQ+ rights and constitutional recognition

The Supreme Court's recent decision in *Supriyo @ Supriya Chakraborty v. Union of India* (2023) said that LGBTQ+ people have the right to choose a partner and live together. However, it did not make same-sex marriage legal. Instead, it gave Parliament the power to make the law.

The evolving concept of fundamental rights in India, increasingly embracing the LGBTQ+ community, illustrates the adaptability of constitutional interpretation. It stresses how important it is to have a Constitution that changes with the times and a deep understanding of human dignity and equality. The courts have played a big role in this change by using progressive interpretations to expand the definition of basic rights. In India, the fight for LGBTQ+ rights has been long and hard. There has been prejudice from society, legal battles, and a constant search for equality and respect. The Supreme Court's historic ruling in *Navtej Singh Johar v. Union of India* (2018) changed the course of this fight. This decision made same-sex relationships that were agreed upon legal again. Not only did it get rid of a law from the colonial era, but it also opened the door for more constitutional recognition of LGBTQ+ people and their basic rights. Before this decision, Section 377 of the Indian Penal Code (IPC), which was passed in 1860, made sex that was "against the order of nature" a crime. This vague and unfair law was often used to harass, intimidate, and prosecute LGBTQ+ people, taking away their basic human rights and forcing them to live in fear and secrecy. The law kept the stigma going, made it harder for them to get health care and social services, and made it hard for them to fit in with regular people. The people who filed the *Navtej Singh Johar* case, including dancer Navtej Singh Johar himself, said that Section 377 was against the Constitution of India because it violated a number of basic rights that the Constitution protects. Section 377 unfairly treated people based on their sexual orientation, treating them differently than straight people who were having sex with someone they wanted to.

Article 15 (Prohibition of Discrimination) law discriminated against people based on their sex because it was meant to stop same-sex relationships. The people who filed the petition said that sexual orientation is a natural part of a person's sex, so this article applies to it.

On September 6, 2018, a five-judge panel of the Supreme Court, led by then-Chief Justice Dipak Misra, made a historic and unanimous decision to read down Section 377 so that it no longer made consensual sexual activity between adults of the same sex in private a crime. The court said that sexual orientation is a natural and unchangeable part of who someone is. It also said that choosing a sexual partner is a part of individual freedom and self-determination. The decision was made because they thought that constitutional morality was more important than social morality. The court said that the Constitution's values of freedom, equality, and dignity should come before unfair social norms and prejudices. It talked about how LGBTQ+ people have been treated unfairly and discriminated against throughout history, and it stressed how important it is to protect their basic rights. The most important and immediate effect was that same-sex relationships were no longer illegal, which meant that LGBTQ+ people no longer had to worry about being arrested and harassed by the law. The ruling upheld the inherent dignity and autonomy of LGBTQ+ individuals, affirming their right to live with self-respect and to make personal decisions regarding their lives and relationships. The ruling made same-sex relationships legal, but it also opened the door for more legal battles and efforts to get LGBTQ+ people more

rights, like the right to marry, adopt, inherit property, and not be discriminated against in any area of life. The decision sparked more conversations about LGBTQ+ issues in Indian society, which helped people become more aware, accepting, and included, especially in cities. It made activists and people in the community feel more sure about speaking up for their rights. People all over the world praised the decision as a step forward in recognizing LGBTQ+ rights, and it inspired similar legal challenges in other countries with colonial-era laws against homosexuality. The Transgender Persons (Protection of Rights) Act of 2019 says that a transgender person is someone whose gender is different from the one they were given at birth. This includes transgender men, transgender women, people with intersex differences, genderqueers, and people with socio-cultural identities like kinnar and hijra. It is very important that the Act recognizes the right to self-perceived gender identity. According to this rule, people can say they are male, female, or transgender. This is in line with the Supreme Court's earlier decision in the NALSA v. Union of India case (2014), which recognized a third gender. The Act also makes it illegal to treat transgender people unfairly in many areas, including education, work, health care, and getting to public goods and services. It says that schools must provide sports and recreation activities and education that is open to everyone, without discrimination. When hiring or promoting people, both the government and private businesses can't be unfair. Additionally, companies need to hire people to handle complaints about the Act. The government must also build separate HIV surveillance centers and sex reassignment surgeries, and it must look over medical curricula to make sure they meet the specific health needs of transgender people. The Act lets transgender people ask the District Magistrate for a certificate of identity that says their gender is "transgender." This is a way for them to make their identity legal. They can get a new certificate if they have surgery to change their gender to male or female. The Act also says what the government should do to help people, such as providing vocational training, programs for self-employment, and encouraging people to participate in cultural activities. People who commit crimes against transgender people can go to jail for different amounts of time and pay different amounts of money. These include forced labor, being kicked out of public places, being taken out of the home, and different kinds of abuse. The Transgender Persons (Protection of Rights) Act, 2019, has been criticized a lot, even though it has some parts that seem to be progressive. Getting a certificate of identity is one of the biggest worries. The Act acknowledges the right to self-identified gender identity; however, it necessitates an application to the District Magistrate. This could make things harder for people and take away their right to choose how they want to be recognized. Many people didn't like the first drafts of the bill because they thought the district-level screening committee was too intrusive and unfair. This committee was removed from the final Act, but many people in the community who want full self-determination without government interference still don't think a certificate is necessary. The Act doesn't say anything about affirmative action or making sure that transgender people can get jobs and go to school, which is another big problem with it. This is even though the Supreme Court said in the NALSA case that they should be treated as socially and educationally backward classes who are entitled to reservations. People think that not having these kinds of rules is a big mistake that keeps the community from getting stronger in terms of money and social status. The Act also makes begging illegal, which is a common way for some transgender groups, like the Hijras, to get by. Some people say that making something illegal without giving people enough other ways to make a living can make them even poorer and push them to the edges of society. The Act also says that the Indian Penal Code should punish crimes against transgender people much less harshly than crimes against cisgender women. People are worried about how serious the state is about making sure everyone is treated equally by the law. People have also said bad things about the Act because it has a narrow definition of family and how it deals with the right to live somewhere. It says that transgender people can live in their own homes, but if their

family can't take care of them, the court can send them to a rehab center. This clause makes people nervous because it could be used to force transgender people to leave the families and support systems they have chosen in the community. The Act also doesn't cover important family rights for transgender people, such as marriage, divorce, and adoption. This puts them in a legal gray area when it comes to personal laws. The Transgender Persons (Protection of Rights) Act, 2019, is a law in India that aims to protect the rights and health of transgender people. Some parts of it are progressive, like making it illegal to discriminate in important areas and recognizing people's own gender identity. There are, however, many problems and limitations with the Act. For example, the process for recognizing identity is too complicated, there is no affirmative action, traditional ways of making a living are illegal, and family rights and equal protection under the law are not well protected. It is a step forward in recognizing the rights of transgender people, but there is still a lot of debate and calls for more changes about how well it works to make everyone feel included and empowered. Legal recognition is not enough for the LGBTQ+ community in India to be fully equal. They also need a big change in how people see them and a promise to help transgender people with the problems they deal with every day.

Conclusion

The idea of basic rights in India has changed a lot since it was first introduced. It used to only cover traditional civil and political rights. Now, it also protects the rights and dignity of groups that are often left out, like the LGBTQ+ community. The decriminalization of homosexuality and the recognition of transgender rights represent significant milestones in this advancement. But the battle for LGBTQ+ people to be fully recognized by the Constitution and treated equally in society continues. Legal and social efforts must continue to make sure that all Indians really get the basic rights that the Constitution promises.

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