



The Position of LGBTQIA+ And Third Gender in Personal Laws

Dr. Nidhi Sharma
 Associate Professor
 Faculty of Law, Agra College, Agra

Abstract

Despite of landmark verdict of Nalsas case (2014) and navtejs case (2018) which has given the trans-genders and LGBTQIA+ a living life, the position of LGBTQ+ and third gender persons in Indian personal law remains precarious. Landmark cases such as NALSA v. Union of India (2014) and Navtej Singh Johar v. Union of India (2018) recognized sexual and gender minori-ties, yet marriage, adoption, inheritance, and succession laws continue to operate on a binary and heteronormative model. Through the review of scholarly works and key case law, this study demarcates the critical gaps between constitutional recognition and family law inclusion. This paper actually shows the exclusion of queer community from the scope of personal laws without any regret. While decisions like Arun kumar v. Inspector General of Registration (2019) signal judicial openness, systemic reforms remain absent. Comparative lessons from Nepal, South Africa and Canada reveal the picture of progressiveness and adaptability according to the dynamism. The study suggests amending personal laws with gender-neutral language, extending joint adoption rights, recognizing third gender heirs, implementation of Uniform civil code and embedding constitutional morality as the guiding principle of reform. Without restructuring personal laws, decriminalization remains incomplete, and full equality for LGBTQ+ communi-ties in India cannot be realized.

Keywords: LGBTQIA+ rights in India, historical development, Third gender recognition, Personal law and constitutional reform.

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*Corresponding Author:

DR. NIDHI SHARMA

Email: nidhiamitkaushik@gmail.com

I. Introduction

India, recognized as the world's largest democracy, is founded on the constitutional values of equality and inclusivity, enshrined as fundamental rights. Yet, an essential question arises: do we genuinely uphold the principle of equality in both spirit and practice? The answer is often disheartening. Despite constitutional guarantees, social attitudes remain

deeply rooted in binary conceptions of gender, which results in the marginalization and exclusion of LGBTQIA+ individuals. The reluctance of many sections of society to acknowledge homosexuality reflects the persistence of heteronormative norms that deny full citizenship and dignity to sexual and gender Minorities.

The concept of gender, however, extends far beyond a simplistic binary framework. It encompasses a wide spectrum of social, cultural, and psychological dimensions, including but not limited to male, female, and third gender identities. Although gender is sometimes conflated with “sex,” the two terms differ significantly: while sex refers to biological attributes, gender is a socially constructed category shaped by norms, values, and cultural practices. Similarly, sex-uality denotes the ways in which individuals experience and express attraction and intimacy, encompassing biological, physical, emotional, and erotic dimensions. When individuals experience attraction toward persons of the same sex, they are identified as homosexuals; collectively, such identities fall within the broader spectrum of LGBTQIA+, which includes diverse sexual orientations and gender identities.

There is a widespread misconception that the idea of LGBTQIA+ identities is a recent development with no historical foundation. In reality, however, the presence of diverse sexual orientations and gender identities can be traced back through history, both within India and across the world. Far from being a modern construct, LGBTQIA+ communities have long existed, though often silenced or marginalized by dominant social and cultural narratives. Ancient Indian culture reflected a spirit of acceptance and celebration of diverse forms of love, including same-sex relationships. Evidence of this inclusivity can be found in classical texts and artistic traditions that recognize gender fluidity and non-heteronormative identities. The Rig Veda, one of the four foundational Vedas, contains the phrase “Vikriti evam Prakriti,” which conveys the idea that what appears unnatural is, in fact, a natural part of existence. Similarly, the Kamasutra makes reference to women termed Swarinis, describing female same-sex relationships and even noting instances where such women entered marital unions with one another. Further, the intricate sculptures at the Khajuraho temples in Madhya Pradesh visually depict sexual diversity and fluidity, offering

powerful evidence of the presence and acknowledgment of same-sex desire in India’s cultural and historical past.

Medieval Indian history also reflects instances of same-sex relationships and the social acknowledgment of such identities. Historical accounts suggest that Mubarak Shah, son of Alauddin Khilji, was engaged in a close relationship with one of his noblemen, indicating the presence of homosexual bonds even within royal circles. Although the terminology we use to-day did not exist in that period, such examples reveal that diverse sexual orientations were neither absent nor entirely unrecognized in Indian society.

The modern term LGBTQIA+, however, did not originate in India but developed gradually within global movements for queer rights. A turning point in this history was the Stonewall Riots in New York City on June 28, 1969, an event now commemorated annually as Pride Day. These protests against police harassment of gay and transgender individuals marked the beginning of the organized gay rights movement in the United States and inspired activism world-wide. The acronym itself evolved over time: it initially began with “LGB” to denote lesbians, gays, and bisexuals, and was later expanded to include transgender, queer, intersex, asexual, and other identities, reflecting the increasing inclusivity of the movement.

What Acronym LGBTQIA+ stands for :

Before discussing sexual orientation and gender identification it is important to know what is the meaning of LGBTQIA+. It is basically an acronym which represents lesbian, gay, bisexual, transgender, queer, intersex, asexual. The sign + here signify those who are part of community but LGBTQ does not provide any term or identity accurately. LGBTQIA+ popularly known as rainbow community or queer community.

Lesbian means those women who identify as gay or who has romantic feelings for or sexual inclinations towards other women. The term "gay" is used to describe homosexuals or homosexuality. The term "gay" is commonly used to refer to male homosexuals, another term is Bisexuality which include sexual interest, or sexual behaviour towards both males and females or people of any sex or gender identity. A transgender person is one whose gender identity does not correspond with the gender they were assigned at birth. The abbreviation "trans" is commonly used to describe this phenomenon. Transsexual person are those who feel uncomfortable with their assigned gender or have a gender identity that is not shared by their culture. The term "queer" is used to describe people who identify as a sexual or gender minority but who are neither heterosexual nor cisgender. Intersex is a condition in which a person does not clearly exhibit male or female genital or chromosomal traits. And lastly, asexual means one who is not attracted sexually or not have sexual orientation towards anyone whether male or female.

People often get confused between sex, gender and sexuality or sexual orientation. All three terms are different in meaning, starting with sex it is basically the physical difference between male and female including primary and secondary(such as height) characteristics. Whereas gender means the social or cultural distinctions and roles concomitant with being male or female. Though the term sex and gender are two sides of same coin but sexuality or sexual orientation is totally a different concept from the two. It is defined as the sexual inclination or sexual feeling towards a particular person (female, male). It is categorised under four heads namely, heterosexuality (attraction towards opposite sex), homosexuality (attraction towards same sex) and bisexuality (attraction towards either sex) and lastly, asexual (no attraction towards either sex).

In India, heterosexual relationships, particularly those between men and women, have long been

socially and legally recognized, with marriage between them requiring no further validation. However, relationships between individuals of the same sex—commonly identified today as gay or lesbian—remained unacknowledged and lacked legal recognition until recent years. A significant shift occurred through the Supreme Court's decision in NALSA v. Union of India (2014), where transgender persons were formally recognized as the "third gender" and were affirmed the right to exercise and enjoy fundamental rights under the Constitution.

Continuing this progressive development, in 2018 the Supreme Court of India struck down the colonial provision of Section 377 of the Indian Penal Code, which had criminalized consensual sexual relations. The judgment decriminalized such acts to the extent that they occur between consenting adults in same-sex relationships, thereby affirming the constitutional rights of homosexual couples.

From a global perspective, the recognition of LGBTQIA+ rights has been strongly supported by various international conventions, most notably the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 17 of the ICCPR guarantees the right to privacy, declaring that no individual shall be subjected to arbitrary interference in matters of family, home, or correspondence, and that protection must be ensured against unlawful intrusions or attacks on one's honour and reputation. In Nicholas Toonen v. Australia (1994), the United Nations Human Rights Committee held that criminalizing consensual same-sex relations constituted a violation of international human rights standards, affirming that sexual orientation is a protected category under the ICCPR. Similarly, the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly, reinforces these principles: Article 2 prohibits discrimination on the basis of sex or status, while Article 7 ensures equal protection under the law and prohibits discriminatory

treatment against groups with diverse identities and norms.

Principle 24 of the Yogyakarta Principles, though not legally binding, offers an authoritative interpretation of international human rights law in the context of sexual orientation and gender identity. This principle affirms that every individual has the right to establish a family, irrespective of their sexual orientation or gender identity. It further emphasizes that no form of discrimination should be permitted within family structures on the grounds of sexuality or gender.

Personal law in India

Personal law refers to the set of rules that govern family-related matters—such as marriage, divorce, adoption, inheritance, and maintenance—tailored to specific religious communities. These laws arise from religious scriptures, customs, and traditional practices rather than from a single, uniform legal system. Because each religion's personal law varies, the result is a fragmented legal framework that often clashes with principles of equality and gender justice. Unlike secular laws that apply uniformly to all citizens, personal laws apply based on one's religious affiliation, raising ongoing debates about the need for a Uniform Civil Code to ensure fairness and legal consistency across communities.

Hindu personal law

Hindu personal law is applicable to Hindu, Sikh, Buddhist and Jain as all these fall under the definition of Hindu. Hindu personal law is a codified law and hence consists of four major acts which are the pillars of Hindu law namely- Hindu marriage act 1955 which actually deals in the matter like marriage, divorce and restitution of conjugal rights between binary couple and recognised theory like irretrievable break down theory or consent theory (divorce by mutual consent). Another act is Hindu Succession act 1956 which lays down provision for

intestate succession and inheritance for both male and female. This act provides females an absolute ownership of property held by them. The landmark amendment of 2005 has abolished the discrimination between son and daughter by granting daughter a coparcenary rights equal to son. Hindu Minority and Guardianship Act, 1956 defines the term guardians, their power on minor and property. The power should be exercised for the welfare of the child. Lastly, Hindu Adoptions and Maintenance Act, 1956 which clearly states the provision regarding adoption of child (female or male), maintenance of parents, children, and widow wife.

Overall, these statutes together offer a cohesive and modernized legal structure for addressing marriage, succession, guardianship, adoption, and maintenance within Hindu-related personal law

Muslim personal law

This personal law as the name suggests deals with Muslim community. Most part of Muslim personal law is uncodified and developed on the sayings and preaches of Prophet Mohammad. This personal law is governed by Quran and sharia law. Though with the dynamism some part is codified namely- Muslim personal law (Shariat) Application act 1937 which governs marriage, divorce and inheritance among Muslims and Muslim women (protection of rights on divorce) 1986 which is the result of landmark Shahbano case (1985) narrowing applicability of secular law on Muslim women.

Christian Personal Law

Unlike Muslim law this law is codified containing provision of marriage, divorce, legal separation and inheritance and governed by law like Indian Christian Marriage Act, 1872, Indian Divorce Act, 1869, Indian Succession Act, 1925 respectively.

Parsi Personal Law

This law is applicable categorically to person of parsi community. Again it is codified law comprising Parsi Marriage and Divorce Act, 1936, Indian Succession Act, 1925. Both these act entail marriage, divorce and inheritance respectively .

Special Marriage Act 1954

Unlike above means personal laws which are based on their custom and scriptures, Special Marriage act is secular applicable irrespective of religion, race, caste and provide process of civil marriage and inheritance dodging personal laws .

Personal law vis-à-vis to Uniform civil code

Personal laws proposed tailored legal frameworks that govern marriage, inheritance, adoption, and other family matters specific to each religious community. Yet, they stand in tension with the notion of a Uniform Civil Code, which strives for equal and secular governance by applying the same legal standards to everyone, irrespective of religion. UCC or Uniform civil code means single law which governs marriage, adoption, inheritance and so on, irrespective of religion. The region is all these personal law are concentrated to binary gender or heterosexual neglecting and discriminating LGBTQIA+ which highlights the lacunae of gender inequality under personal laws. Whereas UCC promotes national integration and gender equality .

Challenges and exclusion of LGBTQIA+ from personal laws

Where on hand International conventions and Indian judiciary uphold LGBTQIA+ rights by stressing universal principles such as recognition, equality, dignity, non-discrimination, and protection from marginalization. However, at the domestic level, particularly within the realm of personal laws, these ideals are not fully realized. In India, personal laws—traditionally known for their adaptability and

diversity in regulating matters of marriage, family, and succession—continue to exclude same-sex couples and non-binary individuals. While these laws provide recognition and protection to heterosexual marriages and binary gender identities, they fail to extend similar rights of marriage, family formation, succession, and adoption to LGBTQIA+ communities. The major frameworks governing personal law in India include Hindu law, Muslim law, Christian and Parsi law, along with the Special Marriage Act. Each of these regulates marriage and family relations within its respective community, yet none acknowledges the marital or familial rights of non-binary persons or same-sex couples, exposing a critical gap in the Indian legal system which is as follows:

Marriage and Family Rights

In India marriage under Hindu personal law is depicted as a sacrament and a permanent union of two souls by god himself. Therefore the legislature also tried hard to keep the essence of sacrament intact while codifying Hindu personal law. But while keeping the essence intact, they create a gap of discrimination for homosexuals and third gender. Hindu marriage act elaborates about and provide condition for marriage between heterosexual. Article 14 of Constitution of India states the principle of equality and article 15 envisage no discrimination on the basis of race, religion, caste and sex. Current marriage laws in India, which mandate unions between “male” and “female,” are inherently discriminatory and violate fundamental equality principles. By excluding LGBTQIA+ individuals, these laws undermine their rights to privacy, personal autonomy, and dignity. The right to marry—embedded within Article 21 (Right to Life) and informed by Article 19 (Freedom of Expression)—necessarily includes the expression of one’s sexual orientation and gender identity .

In the case of Justice K.S. Puttaswamy v. Union of India the apex court of India held that discrimination

on the basis of sexual orientation is the violation of article 21 of the constitution. Restrictive language that defines marriage strictly in binary terms blatantly signals legislative intent to marginalize LGBTQIA+ and transgender individuals. Therefore, personal laws governing marriage must be reimagined in a secular, inclusive framework—one that enables those currently excluded under the Hindu Marriage Act to access marriage equality. In the case of *Supriyo vs union of India* it was contended that after decriminalising same sex relationship (*Navtej singh Johar v. Union of India*) it's time to legalise same sex marriage. The contention to legalise same sex marriage though dismissed but the honourable Supreme Court believed that denying legal recognition to LGBTQIA+ marriages is unjust under Articles 14, 15, 19, and 21—urging inclusive interpretation of statutes such as the Special Marriage Act .

Arun Kumar v. Inspector General of Registration case (Madras High Court, 2019) was the first case where court acted dynamically. The court interpreted that the word “bride” under section 5 of Hindu marriage act involves Trans-women also who self-identify as women. In the line of reiteration of principle of self-identification recognised by *NALSA v, Union of India, Ashok* case confirmed that self-identified gender overrides binary constraints .

Adoption and guardianship

Adoption and guardianship find recognition under most personal laws in India, with the exception of Muslim law, which does not formally provide for adoption. Although the Supreme Court in *NALSA v. Union of India* (2014) acknowledged the status and rights of the transgender community as the “third gender,” this recognition has not translated into corresponding rights in the sphere of adoption and guardianship. The prevailing statutory framework—namely, the Hindu Adoptions and Maintenance Act, 1956 (HAMA), the Guardians and Wards Act, 1890

(GWA), and the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)—continues to operate within a rigidly binary understanding of gender. For instance, HAMA expressly employs the terms “male” and “female,” thereby excluding transgender persons from its ambit. Such exclusion effectively denies transgender individuals the opportunity to adopt or be appointed as guardians, raising serious constitutional concerns. It contravenes the guarantees of equality under Article 14 and the right to life and dignity under Article 21 of the Constitution. Importantly, the capacity to provide a nurturing home is determined by love, care, and financial security, rather than the gender identity of the adoptive parent or guardian. Even Transgender Persons (Protection of Rights) Act, 2019 which was made for the security and recognition of trans-gender rights failed to acknowledge the issues including marriage, adoption, family rights and inheritance .

In the context of adoption, the guiding standard should be the “best interest of the child” rather than assumptions rooted in the gender or sexual orientation of prospective parents. This requires a shift toward gender-neutral drafting of statutes, replacing rigid binaries with inclusive language .

Succession and Inheritance

Succession rights in India are governed by distinct personal laws depending on an individual’s religion. Under Hindu law, these rights are provided through the Hindu Succession Act, 1956, which expressly refers to heirs in terms of “male” and “female.” This binary classification excludes individuals who identify as homosexual or transgender. Similarly, Muslim succession is based on Sharī‘a principles, which allocate shares only to male and female heirs, with hijra and other non-binary persons historically left outside its scope. For Christians and Parsi’s, succession is regulated by the Indian Succession Act, 1925, which continues to use terms such as “husband,” “wife,” “son,” and “daughter,” thereby

failing to acknowledge non-binary identities. The Special Marriage Act, 1954 links succession to the Indian Succession Act but does not expressly recognize queer or transgender marriages, leaving their inheritance rights uncertain and legally fragile.

The framework of succession and inheritance in India continues to rely on traditional family lineage, thereby excluding same-sex partners and transgender individuals from legal recognition in matters of property and succession. Comprehensive reform is therefore essential to align family laws with constitutional guarantees of equality and dignity.

Maintenance

The concept of maintenance is mentioned both under personal law and criminal law (section 125 criminal procedure code). The only difference between the two is the nature of implementation. Criminal law is secular whereas personal law being religious in nature applicable to particular individual of that religion. Again the right to maintenance does not extend to queer community and Transgender. Maintenance under personal and criminal law extend to legally wedded wife or husband. Since the marriage between homosexual is not legalised resulted in disentitlement of right to maintenance. If LGBTQIA+ marriages were legally recognized, the rights to maintenance and alimony would provide financial security to the economically dependent partner. The secular criminal law failed to include LGBTQIA+ and transgender in its purview which shows a gap of legal system.

Personal laws restrict the grant of maintenance to individuals within the binary gender framework. Use of term like male and female or she and he clearly showcase the intention. As a result, despite the legal recognition of same-sex couples in certain contexts, they continue to face limited recognition and lack the formal legal status necessary to claim maintenance rights.

Comparative jurisprudence

Despite the landmark decision in *NALSA v. Union of India*, where the Supreme Court affirmed the right of transgender individuals to self-identify and upheld their entitlement to equality and dignity, Indian personal laws have yet to evolve to reflect this recognition. These laws continue to exclude transgender persons and same-sex couples from critical legal provisions, leading to ongoing social stigma, legal uncertainty, and systemic discrimination. In contrast, many countries around the world have taken progressive steps to include same-sex couples and gender-diverse individuals in key legal areas such as adoption, succession, and inheritance, setting examples of inclusive legal reform.

When a comparative analysis with the countries that have enacted progressive legislation is done, the deficiencies of Indian personal laws become more evident. For instance in the case of *M. v. H.*(1999) the Canadian Supreme court stated that exclusion of same sex couple from spousal support violates right to equality under Canada's charter of right and freedom.

The Nepal Supreme Court has adopted a progressive approach in the case of *Rukshana kapila v. Government of Nepal* where it has given a significant ruling by granting full recognition to transgender women conferring her right to access legal protection and to self-identity. This decision of recognizing transgender rights is a remarkable step for Nepal .

In the case of *Minister of Home Affairs v. Fourie* (2005) constitutional court of South Africa declared the exclusion of same sex couple from the common law definition of marriage as inconsistent and ordered parliament to amend the marriage act to permit same sex marriages. Therefore Civil Union Act 2006 was enacted to legalized same sex marriage in South Africa .

Suggestion and conclusion

After thorough analysis of personal law it is very much clear that the queer community and LGBTQIA+ does not fall within the ambit of definition given of binary gender under the personal law. Therefore these personal law are subject to legal reforms and amendment. With the aim to eliminate the discrimination, inequality of transgender and LGBTQIA+ and ensure recognition, social and legal inclusion, self- identification and dignity some of the measures can be taken namely:

- The amendment of Personal laws is the primary concern (e.g., Hindu Marriage Act, Special Marriage Act) to allow marriage between any two consenting adults, irrespective of gender identity or sexual orientation.
- By following the case of Arun Kumar Codification of self-identification is another means for explicitly including transgender persons within definitions like “bride” or “spouse,” and reinforcing equality under Articles 14, 15, 21 .
- The Incorporation of the principle of chosen families adopted by Madras HC judgment in 2025 into legislation will prove beneficial as it will acknowledge emotional bonds beyond traditional legal families .
- Up gradation of HAMA and CARA to remove gender specific language such as mother, father, he, she and allowing gender inclusive terminology irrespective of gender and sexual orientation. Jurisprudence like Shabnam Hashmi v. Union of India (2014), which declared adoption a secular right, should be extended to LGBTQ+ families. A “best interest of the child” standard should override discriminatory practices
- Revision of CARA guidelines comprehensively under juvenile justice Act to make them LGBTQIA+ and transgender friendly so that

that can also become adoptive parents. Re-forms should be made with the aim that interest of the child is the paramount consideration and not gender orientation.

- Align HAMA with the JJ Act by introducing a single, consistent adoption law applicable across all religious communities
- Inclusive amendments should be made in Muslim and Christian succession laws, where possible with the help of precedents and recommendations such as inclusion in Indian Succession Act.
- Reformation of provisions such as maintenance, divorce in personal law and the expansion of laws like domestic law and live in relationship allowing to cover not only binary individuals but also trans-genders, LGBTQIA+ and ensure recognition and protection. The extension of maintenance and alimony rights in cases of breakdown in non-heterosexual partnerships. The word spouse include not only husband or wife under personal law or Cr.PC but also homosexual's individuals .
- Introduction of Uniform civil code will firmly resolve the issue of discrimination as it will implemented uniformly to every individual irrespective of religion, gender orientation, Sexual minorities.
- Amendment in Transgender person protection act 2019 with the aim to include the provision of inclusion of LGBTQIA+ and third gender in personal law and make personal law gender neutral instead of binary.
- Lastly, the principle of constitutional morality which is the strongest tool for reform. Both Navtej Johar (2018) and Shayara Bano v. Union of India (2017) emphasized that personal laws cannot

override constitutional guarantees of equality, dignity, and non-discrimination.

Conclusion:

After the doctrinal research it can be concluded that elimination of decriminalization without reform in personal laws results in incomplete justice. The recognition of third gender persons in NALSA (2014) and the affirmation of queer autonomy in Navtej Johar (2018) marked note-worthy constitutional milestones. However, the absence of reforms in marriage, adoption, and inheritance continues to marginalize LGBTQIA+ communities in the most intimate spheres of life.

For true equality, dignity, personal laws must be restructured through a constitutional lens. The adoption of gender-neutral terminology, recognition of queer families, inclusion of third gender heirs, and extension of adoption rights are immediate re-forms required. A broader, inclusive UCC could serve as the long-term structural solution.

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