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CRITICAL ANALYSIS OF CRIMINAL JUSTICE ADMINISTRATION WITH REFERENCE TO THE LGBTQ+ COMMUNITY

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Abstract

India's criminal justice system stands at a crossroads where constitutional ideals meet deeply entrenched social biases – and nowhere is this tension more visible than in how the system treats members of the LGBTQ+ community. This paper critically examines the structural and institutional failures that continue to subject LGBTQ+ individuals, particularly transgender persons and hijras, to harassment, arbitrary detention, and systemic exclusion – even after landmark judicial reforms.

*Tracing the historical roots of discrimination from colonial-era penal codes to the present day, this study analyses the transformative impact of *Navtej Singh Johar v. Union of India (2018)*, the *Transgender Persons (Protection of Rights) Act, 2019*, and a series of evolving judicial pronouncements that have gradually expanded the constitutional protections available to LGBTQ+ individuals. The paper draws comparative insights from Canada's progressive rights framework, which offers instructive lessons in translating legal recognition into lived equality.*

Through an analysis of policing practices, judicial conduct, prison conditions, and state-level welfare policies, this paper demonstrates that formal legal gains have not yet translated into substantive justice. Widespread moral policing, the misuse of broadly worded statutory provisions, and the near-total absence of hate crime protections leave LGBTQ+ persons vulnerable to violence and institutional indifference. The paper argues that transforming the criminal justice system requires far more than decriminalisation – it demands mandatory sensitivity training for law enforcement, explicit anti-discrimination safeguards, gender-affirming prison protocols, and robust mechanisms to hold institutions accountable. Only through structural reform can India ensure that its constitutional promise of equality becomes a reality for every citizen, regardless of sexual orientation or gender identity.

Keywords: LGBTQ+, Criminal Justice Administration, Section 377, Transgender Rights, Navtej Singh Johar, Discrimination, Policing, Human Rights, India, Constitutional Law

1. Introduction

Long before colonizers set foot on Indian soil, ancient texts already acknowledged that human identity does not fit neatly into two

categories. Hijras – individuals who occupied a third gender space – were a recognized and visible part of Indian society, with roles in royal courts and religious ceremonies. This cultural

understanding was not confusion or tolerance; it was acceptance woven into everyday life.

Then came British colonial rule, and with it, Victorian morality imposed through law. The colonizers did not just govern India's land and trade – they reshaped its moral and legal landscape. Section 377 of the Indian Penal Code, introduced in 1860, criminalized what was called "unnatural" sexual conduct. Pre-colonial texts like the Kama Sutra had openly acknowledged diverse expressions of gender and sexuality. Now, those very expressions became punishable offences. After independence, the new Indian state largely retained this colonial framework, and the stigma it carried persisted for generations.

The consequences were not merely symbolic. Anti-trafficking laws were applied against sex workers, a disproportionate number of whom were trans women. Police raided gatherings of queer individuals under the guise of moral policing. The law did not just fail to protect LGBTQ+ people – it was actively used against them.

After decades of legal battles, advocacy, and courageous social movements, the Supreme Court of India delivered a watershed moment in 2018. In *Navtej Singh Johar v. Union of India*, a five-judge constitutional bench struck down the portion of Section 377 that criminalized consensual same-sex relations between adults. It was more than a legal ruling – it was an acknowledgment that LGBTQ+ individuals are full citizens deserving of dignity, privacy, and equality.

Yet the story did not end there. Decriminalization removed one weapon that authorities had used against LGBTQ+ people, but it did not dismantle the entire architecture of discrimination. Transphobia and homophobia remain deeply embedded within policing practices, court proceedings, and prison administration. Hijras and trans women, in particular, continue to be disproportionately pushed into cycles of arrest, stigma, and

marginalization – often by the very institutions meant to protect them.

This paper critically examines that gap – between what the law now promises and what LGBTQ+ individuals actually experience within India's criminal justice system. It traces the legal evolution from colonial penal codes to contemporary judicial reform, analyses structural failures in policing and incarceration, draws lessons from Canada's comparative experience, and explores how genuine reform might look going forward.

2. Legal Framework for LGBTQ+ Rights in India

Over the past decade, India's legal landscape has undergone significant transformation with respect to LGBTQ+ rights. Through a combination of judicial decisions and legislation, the state has taken several – if imperfect – steps toward recognizing the dignity and legal personhood of LGBTQ+ individuals. The following provisions represent the core of this evolving framework.

2.1 Decriminalization of Section 377

In 2018, the Supreme Court of India delivered what many consider the most consequential ruling in the history of LGBTQ+ rights in the country. In *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321, a Constitutional Bench headed by the then Chief Justice Dipak Mishra partially struck down Section 377 of the Indian Penal Code, 1860 – the provision that had long criminalized consensual sexual relations between adults of the same sex.

The court did not merely interpret a statute – it engaged in a profound moral reckoning. Drawing on the earlier *KS Puttaswamy* judgment, which held that the right to privacy is a fundamental aspect of Article 21 of the Constitution, the bench ruled that Section 377, as applied to consensual adult same-sex conduct, violated the constitutional rights of LGBTQ+ individuals to privacy, dignity, and self-expression. The judgment was clear: sexual orientation is intrinsic to identity, and no person should have to live as what the court called an

"unapprehended felon" simply for being who they are.

The ruling was celebrated across the country and galvanized further advocacy. It opened the door for subsequent petitions seeking legal recognition of same-sex marriages, a battle that continues to unfold before the courts.

2.2 The Transgender Persons (Protection of Rights) Act, 2019

While Indian mythology had long recognized the existence and spiritual significance of transgender individuals, the British colonial period subjected them to systematic cruelty and legal marginalization. The path toward legal recognition began formally in 2014 with the landmark case of National Legal Services Authority v. Union of India, AIR 2014 SC 1863, in which the Supreme Court recognized transgender persons as a third gender and affirmed their right to self-identification.

Building on that foundation – and following an earlier Bill that lapsed in 2016 – Parliament enacted the Transgender Persons (Protection of Rights) Act in 2019. The Act prohibits discrimination in education, employment, healthcare, and access to public spaces. It invokes existing provisions of the Indian Penal Code to penalize abuse directed at transgender individuals. It also mandates the provision of medical facilities, shelter homes, and rehabilitation services.

However, the Act has attracted significant criticism. Many transgender rights activists and legal scholars have argued that it was drafted hastily, without sufficient consultation with the communities it was meant to protect. The requirement of official certification before legal recognition of gender identity was widely condemned as invasive, burdensome, and inconsistent with the self-identification principle affirmed by the Supreme Court. These tensions between formal legislative intent and ground-level implementation continue to define the Act's troubled legacy.

2.3 Reservation Rights for Transgender Persons

Following the NALSA judgment of 2014, which formally recognized transgender persons as a third gender, the Supreme Court also directed that transgender individuals should be entitled to the benefits of India's reservation policy as a socially and educationally backward class. This recognition opened up access to reserved seats in public educational institutions and government employment, providing a structural mechanism to address centuries of exclusion. In practice, however, implementation has been slow and uneven, with few states having meaningfully operationalized these entitlements.

2.4 Constitutional Rights: Articles 14, 15, and 21

At the foundation of India's legal protections for LGBTQ+ individuals lies the Constitution itself. Article 14 guarantees equality before the law and equal protection of the laws. Article 15 prohibits discrimination on grounds including sex – which courts have interpreted expansively to include gender identity and sexual orientation. Article 21 protects the right to life and personal liberty, encompassing the rights to privacy, dignity, and autonomous self-expression.

While these provisions provide a powerful constitutional anchor for LGBTQ+ rights, they have historically required judicial interpretation to make their protections real and enforceable. The legislative architecture remains incomplete – marriage equality, adoption rights, and comprehensive anti-discrimination laws remain unresolved – but the constitutional framework offers a foundation on which future reform can be built.

Bandhula Mukti Morcha v. Union of India, (1984) 3 SCC 161. Recognised custodial violence as a violation of the right to life; cited in LGBTQ+ prison litigation for analogous purposes.

3. State-Level Welfare Policies

Beyond central legislation, several Indian states have taken independent steps to support and integrate their transgender communities into mainstream social and economic life. While

these efforts are uneven in their ambition and effectiveness, they represent an important dimension of the broader policy response.

Tamil Nadu and Kerala

Tamil Nadu and Kerala were the first states in India to introduce dedicated transgender welfare policies. Under these frameworks, transgender individuals have access to free housing, official identity documentation, reserved university seats with full scholarships, and income-generating programs designed to create alternative livelihoods. Tamil Nadu holds the distinction of being the first state in which a transgender community member established a transgender welfare organization. Kerala went further in 2016 by introducing free gender-affirming surgeries in public hospitals – a meaningful step toward addressing the medical needs of trans individuals who have long lacked access to affordable healthcare.

West Bengal

West Bengal established the Transgender Welfare Commission in 2015 with a mandate to coordinate policy and development initiatives for the state's transgender population. Despite its formal structure – which required monthly meetings with representatives from multiple state departments – the Commission has met with considerable criticism. By mid-2017, it had convened only five times, leading many transgender activists to characterize it as a structural failure dressed up in official language.

Karnataka

In October 2017, the Government of Karnataka issued a state-wide transgender welfare policy aimed at raising awareness in educational institutions about the discrimination, violence, and social exclusion faced by transgender individuals. The policy also established an oversight committee to investigate complaints of discrimination – an institutional mechanism that, while modest, signals a willingness to hold institutions accountable.

Maharashtra and Gujarat

Maharashtra established a Transgender Welfare Board in February 2019, with a focus on health programs, formal education, and employment opportunities. The Board provides housing support and skills development programs designed to improve economic independence for trans individuals. Around the same time, Gujarat established its own State Commission for transgender welfare, working to connect the community with government benefits while running social awareness campaigns for the general public.

4. Comparative Perspective: LGBTQ+ Rights in Canada

A comparative look at Canada's experience offers a useful lens through which to evaluate India's progress and identify the structural gaps that remain. Canada's journey, too, began with criminalization. Before 1969, same-sex sexual activities between consenting adults were punishable by imprisonment. That year, Parliament passed an omnibus bill decriminalizing private sexual acts between two adults over the age of 21 – a pivotal moment that began Canada's long march toward equality.

Canada moved with comparative speed from decriminalization to broader recognition. In 1977, Quebec became the first jurisdiction to amend its provincial human rights charter to include sexual orientation as a prohibited ground for discrimination. By 1996, the Canadian Human Rights Act was amended nationally to include the same protection. The Supreme Court of Canada, in *Egan v. Canada* and *Vriend v. Alberta*, affirmed that sexual orientation is a protected ground under the Charter even where it is not explicitly listed.

The enactment of the Civil Marriage Act in 2005 extended marriage equality nationwide – a step that India has not yet taken, despite ongoing litigation. In 2000, Bill C-23 extended the same social and tax benefits to same-sex

couples in common-law relationships as to heterosexual couples.

What Canada's experience demonstrates most clearly is the importance of institutional support structures – organizations like Egale Canada, PFLAG Canada, the Lambda Scholarship Foundation, and the Welcome Friend Association – that work to translate legal rights into social and cultural change. India's legal reforms remain relatively unaccompanied by this kind of sustained institutional infrastructure, which helps explain why legal gains have not yet been matched by equivalent gains in lived experience.

5. Key Judicial Decisions on LGBTQ+ Rights

5.1 Navtej Singh Johar v. Union of India (2018)

The Navtej Singh Johar judgment remains the cornerstone of LGBTQ+ jurisprudence in India. The Supreme Court held that sexual orientation is a natural and protected attribute of human identity, and that the state cannot discriminate on that basis. In affirming that LGBTQ+ individuals possess the same rights to dignity, privacy, and love as any other citizen, the court dismantled – at least formally – the legal infrastructure of shame that Section 377 had maintained for over 150 years. Its reasoning, grounded in Articles 14, 15, 19, and 21, continues to anchor subsequent cases in this domain.

5.2 Same-Sex Marriage Reference (2023)

In 2023, the Supreme Court considered a batch of petitions seeking legal recognition of same-sex marriage under the Special Marriage Act and other personal laws. While the court declined to grant statutory marriage rights – leaving that question to Parliament – a majority of the bench reaffirmed that sexual orientation is protected under Articles 14, 15, 19, and 21, and that LGBTQ+ individuals must not face discrimination in employment, housing, healthcare, or education. The ruling is significant not for what it granted, but for what it reconfirmed: that discrimination against LGBTQ+ persons is unconstitutional, regardless

of whether marriage equality has been legislated.

5.3 Madras High Court Ruling on LGBTQ+ Discrimination (2024)

In 2024, the Madras High Court delivered one of the most operationally concrete judicial orders on LGBTQ+ rights to date. Hearing a case involving an LGBTQ+ couple subjected to sustained harassment and homophobia, the court ruled that ignorance cannot justify discrimination. It ordered mandatory LGBTQ+-inclusive sensitivity training for law enforcement, demanded regular progress reports from state and central governments on implementation measures, and declared conversion therapy – the discredited practice of attempting to change a person's sexual orientation or gender identity – to be inhumane. Doctors who conduct it face potential deregistration. This ruling stands out for moving beyond abstract rights declarations toward enforceable institutional accountability.

5.4 Transgender Rights Litigation (Ongoing)

Courts have continued to scrutinize the implementation of the Transgender Persons (Protection of Rights) Act, 2019. Judicial bodies have criticized the government's weak enforcement of the legislation and affirmed that transgender individuals must be treated as a socially and educationally backward class for purposes of reservation. Courts have also ruled that conditioning legal gender recognition on sex reassignment surgery is immoral and unconstitutional – upholding the principle of self-identification first articulated in the NALSA judgment.

5.5 Emerging Judicial Trends

Taken together, recent Indian judgments reflect a clear and consistent trajectory. The courts have established that:

- Criminalizing private, consensual, same-sex conduct between adults is unconstitutional.

- Discrimination based on sexual orientation or gender identity in public life and services violates fundamental rights.
- Police forces, educational institutions, and government departments must actively reform their cultures to ensure LGBTQ+ individuals are treated with dignity and not subjected to harassment or exclusion.

6. Conclusion

A critical analysis of criminal justice administration with reference to the LGBTQ+ community reveals a troubling and persistent gap between constitutional promise and lived reality. The Supreme Court has affirmed, in clear and unambiguous terms, that sexual orientation and gender identity fall within the domain of fundamental rights. Yet police stations, courtrooms, and prison facilities continue – with alarming frequency – to fall short of treating LGBTQ+ individuals with the dignity or safety to which they are entitled by law.

The criminal justice system is widely experienced by LGBTQ+ persons not as a source of protection but as an instrument of further stigmatization. Bias-motivated violence goes unaddressed. Reporting crimes remains deeply fraught, shadowed by the fear of humiliation, blackmail, or re-traumatization at the hands of the very authorities who should help. And yet the demand for reform is clear and growing – the calls for mandatory sensitivity training, explicit hate crime provisions, and gender-affirming procedures within correctional facilities are not aspirational luxuries but practical necessities.

India now stands at a critical juncture. The legal groundwork has been laid. The judicial declarations have been made. What remains is the harder, slower work of structural transformation – reforming institutions, changing cultures, and ensuring that the promise of equality is not merely written in law reports but felt in the daily lives of every LGBTQ+

person who encounters the state. That is the true test of any criminal justice system: not whether it acknowledges rights in the abstract, but whether it upholds them in practice, without fear, shame, or invisibility.

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Bombay Prevention of Begging Act, 1959 – criticised for misapplication to hijra and transgender communities engaging in traditional practices.

Information Technology Act, 2000, Section 66A (struck down in *Shreya Singhal v. Union of India*, AIR 2015 SC 1523).

III. Statutes and Legal Provisions – Canada

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Canadian Human Rights Act, RSC 1985, c H-6 (as amended 1996 to include sexual orientation; 2017 to include gender identity and expression).

Criminal Law Amendment Act, 1969, SC 1968-69, c 38 – decriminalised private consensual same-sex acts between adults.

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Bill C-23: Modernisation of Benefits and Obligations Act, SC 2000, c 12 – extended social and tax benefits to same-sex common-law couples.

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V. Web Resources

[Supreme Court of India – Official Judgments Database](#)

[National Legal Services Authority of India \(NALSA\)](#)

[Ministry of Social Justice and Empowerment – Transgender Welfare](#)

[Human Rights Watch – LGBTQ+ India Reports](#)

[Naz Foundation India Trust](#)

[Lawyers Collective – HIV/AIDS Unit & LGBTQ+ Litigation](#)

[Orinam – LGBTQ+ Resource and Documentation Centre](#)

[PFLAG Canada – Resources on Sexual Orientation and Gender Identity](#)

[Egale Canada – LGBTQ2+ Human Rights Organisation](#)

[Canadian Human Rights Commission – Sexual Orientation and Gender Identity](#)

[Yogyakarta Principles on the Application of International Human Rights Law](#)

[UNAIDS – Key Populations: Men Who Have Sex with Men](#)

[India's National Crime Records Bureau \(NCRB\) – Annual Crime Statistics](#)

[PRS Legislative Research – Transgender Persons \(Protection of Rights\) Act, 2019](#)

[SCObserver – Supreme Court of India Case Tracking](#)

ENDNOTES

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2. Transgender Persons (Protection of Rights) Act, 2019 (Act No. 40 of 2019). Though celebrated as a legislative milestone, it has been criticised for requiring surgery-linked certification of gender identity.
3. Arif Jafar v. State of U.P., Allahabad High Court (2004). An early bail judgment that noted the disproportionate police targeting of gay men under Section 377.
4. Naz Foundation v. Government of NCT of Delhi, (2009) 160 DLT 277. This landmark Delhi High Court ruling first read down Section 377, igniting two decades of constitutional litigation.
5. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. The nine-judge bench unanimously declared privacy a fundamental right under Article 21, forming the constitutional scaffold for Navtej Johar.
6. Egan v. Canada, [1995] 2 SCR 513. The Supreme Court of Canada held that sexual orientation is an analogous ground under Section 15 of the Canadian Charter of Rights and Freedoms.
7. Vriend v. Alberta, [1998] 1 SCR 493. The Court found that omitting sexual orientation from provincial human rights legislation itself constituted discrimination.
8. Section 354, 354A, 354B, 376, 498A, 499 of the Indian Penal Code, 1860 – provisions invoked under the 2019 Transgender Act to punish abuse and violence directed at transgender persons.



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