

LGBTI Rights in Vietnam: Public Perception and the Legal Framework

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This paper shows the status of Lesbian, gay, bisexual, transgender, and intersex (LGBTI) people in Vietnam who face discrimination in their families, schools, local communities, and wider society. There are some factors that explain this discrimination. Some of those factors are the lack of appropriate information and education on sexual diversity; and the lack of a legal framework from local authorities that protects LGBTI communities from violence and discrimination.

The history of the Vietnam legal system has shown many signs of progress on LGBTI rights, reflected in civil law, law on marriage and family, and also in decrees on penalties for administrative violations. Perhaps the legal amendments with the biggest impact are in the revision of the Law on Marriage and Family 2014, and the Civil Law 2015. In 2014, the National Assembly of Vietnam removed same-sex marriage from the list of forbidden marriages. However, this amendment has not led to the legal recognition of same-sex relationships yet. In 2015, the National Assembly of Vietnam amended the Civil Law to remove a provision prohibiting transgender people from changing their sex on legal papers, but the revised content of the law has not yet provided a transparent and favorable process for changing gender in legal papers. While the above-mentioned statements and changes are indicative of a very promising future for LGBT people in Vietnam, there are still significant challenges for the Vietnam government that is both in a position and responsible for solving these issues.

In this paper, the current Vietnamese legal framework on LGBTI rights has been analyzed in two groups: (i) Common rights group of LGBTI people, include equal rights, non – discrimination rights in political, civil, economic, cultural, social; the right to access the law and to get legal aid; rights in the marriage and family, administrative and criminal justice fields; and (ii) the specific rights groups of LGBTI people include the rights of transgender people and the rights to determine the gender of intersex people.

From *Gopalan* to *Navtej Johar*: The Constitutional Histrionics of Equality Rights in India

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When the Constitution of India was enacted, it proffered a charter for social revolution. The same is visible from the incorporation of the Fundamental Rights and the Directive Principles of State Policy, which conjointly acted as a vehicle to minimize various disparities arising from political, economic, and social inequalities. However, the incorporation of these constitutional schemes itself did not change the state of affairs. It was a proactive approach of the Constitutional Courts, especially the Supreme of India, which not only defended and protected the ideals of the Constitution from political majoritarianism but also acted as a harbinger of the change in society.

However, in relation to the Fundamental Rights, the period 1950-2019 witnessed a sea change in the Court's approach to interpret it. For instance, during this period, the Court afforded prominence to the doctrine of equality by transcending it from being an isolated and mutually exclusive provision (*Gopalan* 1950) to the integration of liberty in equality provision (*Navtej Johar* 2018). As a result of this shift in the Court's approach, it recognized the rights of sexual minorities and afforded protection to 'personal autonomy,' which further gave rise to the 'right to privacy' in an otherwise deeply orthodox society.

In reference to the equality provision, the present article seeks to examine the different approaches adopted by the Court in different periods of constitutional history. Secondly, what motivated the Courts to recognize the 'rights,' which cultural and social landscape was not prepared for. Thirdly, in the context of the rights of LGBT and transgenders, what social change the Court has induced to establish egalitarian social order.

Following the Rainbow
The Legacy and Impact of Section 377 in India, Pakistan and Bangladesh

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The Penal Codes of India, Pakistan and Bangladesh are a legacy of their colonial past.

While some additions and amendments have happened over the years, they have remained much the same, and in particular, they have a definition of “unnatural offences” that include both bestiality and non-procreative sexual acts in the same breath under Section 377. What this has led to is a much larger burden of illegality on the sexual acts of gender and sexual minorities. In particular, it has led to the harassment of the indigenous transgender community, who are the most visible (and socially marginalized) among all the gender and sexual minorities on the subcontinent.

While there is a concerted civil society movement in all three countries around LGBT rights, the higher vulnerability of transgender people is yet to become a thing of the past. India has decriminalized same-sex sexual behavior in the last decade by reading down Section 377, the only country in the subcontinent to do so, and all three countries’ governments and lawmakers have, over the past two decades or so, brought in measures and legislations to create protection mechanisms particularly for indigenous transgender people. However, access is abysmal. Moreover, the measures are not always well-informed.

Thus, this paper examines the evolution of Section 377 in the penal codes of India, Pakistan and Bangladesh (and other related laws). While doing so, it interrogates the effect it has on gender and sexuality minorities who live there, particularly transgender people. It also examines the various legislative/legal measures undertaken by the governments in question and their efficacy. In turn, it aims to address the shortfalls of the current scenario and look for a more cohesive region-based solution towards empowering LGBT people.

Decolonisation of the Indian Penal Code: Securing Rights of Homosexuals

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India was not the only British colony where formerly acceptable sexual behaviors and identities became criminalized with the advent of the British Empire. The *Buggery Act 1533* which came into effect in 1860, defined ‘buggery’ as an unnatural sexual act against the will of God and became the charter for the subsequent criminalisation of sodomy in the British colonies, colonial attempt to set standards of behaviour, both to reform the colonized and to protect the colonizers against moral lapses. Thus, this criminalised anal penetration, bestiality in a broader sense homosexuality. Later in the 1828, the Act was repealed and replaced by the Offences against the Person Act 1828 in all the British Colonies. This Act broadened the definition of unnatural sexual acts, and allowed for easier prosecution of homosexuals and providing the legal structure to Section 377 of the *Indian Penal Code*.

Over the years Section 377 has sparked numerous controversies. By stigmatising homosexuality and threatening gay men with prison, the law is also likely to have impeded the battle against HIV. The voices against section 377 brought together sexuality and lesbian, gay, bisexual and transgender to strive for their intrinsic value of basic human rights especially from legal perspective.

In 2001, *Naz Foundation Trust* challenged Section 377 in the Delhi High Court to allow homosexual relations between consenting adults. However, in 2003, said High Court dismissed the case, *Naz Foundation* appealed this dismissal to the Supreme Court where on 6th September 2018 the Supreme Court of India in *Navtej Singh Johar vs Union of India* judgement decriminalized homosexuality. The Court has laid the path for an individualistic approach which shall stand as one of the cornerstone judgments in the history of individual rights and constitutional governance in India.

This landmark judgement becomes social space which looks at the perception of homosexuality in civil society. It will examine the impediments of communication that homosexuals encounter in the heteronormative world and ensuing misunderstanding regarding homosexuality. The judgement has transcended the homosexuality with the implication of protection for all minorities and introduced for the first time in South Asia the idea of sexual citizenship.