
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CONSTITUTIONAL SAFEGUARDS FOR LGBTQ+ RIGHTS: AN
INTERNATIONAL PERSPECTIVE WITH SPECIAL REFERENCE TO
TAIWAN AND INDIA**

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Abstract

The protection of LGBTQ+ rights has emerged as a significant constitutional and human rights issue across democratic societies, reflecting the evolving interpretation of equality, dignity, privacy, and non-discrimination. While several jurisdictions have adopted comprehensive legal frameworks to safeguard the rights of sexual and gender minorities, the extent of constitutional protection varies considerably across countries. This article critically examines the constitutional safeguards available to LGBTQ+ persons from an international perspective, with special reference to Taiwan and India. Adopting a doctrinal and comparative research methodology, the study analyses constitutional provisions, landmark judicial decisions, legislative developments, and international human rights instruments that have shaped the jurisprudence on LGBTQ+ rights. Taiwan, as the first Asian jurisdiction to legalise same-sex marriage through constitutional interpretation followed by legislative reform, represents a progressive constitutional model for the protection of LGBTQ+ rights. In contrast, India has witnessed significant judicial advancements through decisions such as *Navtej Singh Johar v. Union of India* (2018) and *National Legal Services Authority v. Union of India* (2014), which affirmed the constitutional principles of equality, dignity, privacy, and gender identity. However, the absence of comprehensive anti-discrimination legislation and legal recognition of same-sex marriage continues to present constitutional and legislative challenges. The article further examines the influence of international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Yogyakarta Principles, in shaping constitutional discourse on LGBTQ+ rights. Through a comparative analysis, the study

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argues that while constitutional adjudication has played a transformative role in advancing LGBTQ+ rights, meaningful protection requires corresponding legislative reforms and inclusive public policies. Drawing lessons from Taiwan's constitutional and legislative experience, the article proposes measures to strengthen India's legal framework. It concludes that an integrated constitutional, legislative, and rights-based approach is essential to achieving substantive equality, social inclusion, and the effective protection of LGBTQ+ rights.

Keywords: LGBTQ+ Rights, Constitutional Safeguards, Equality, Constitutional Morality, Taiwan, India, Comparative Constitutional Law, Human Rights.

I. Introduction

LGBTQ+ is an acronym representing Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, with the plus sign (+) encompassing other diverse sexual orientations, gender identities, and expressions. The recognition and protection of LGBTQ+ rights have evolved from being matters of social acceptance to becoming significant constitutional and human rights concerns across the world. Modern constitutional democracies increasingly acknowledge that the principles of equality, dignity, liberty, privacy, and non-discrimination are fundamental to ensuring the protection of sexual and gender minorities. Consequently, constitutional frameworks have become indispensable instruments for safeguarding the rights of LGBTQ+ persons and promoting an inclusive society based on respect for human dignity. The extent of constitutional protection afforded to LGBTQ+ individuals varies considerably across jurisdictions. While several countries have adopted progressive constitutional and legislative measures recognising the rights of sexual and gender minorities, others continue to deny legal recognition and adequate protection, thereby exposing LGBTQ+ persons to discrimination, exclusion, and social marginalisation. Within the Asian context, Taiwan has emerged as a leading jurisdiction by establishing a comprehensive legal framework that recognises and protects the rights of LGBTQ+ individuals. In contrast, India has experienced a gradual constitutional evolution in protecting LGBTQ+ rights through the interpretation of fundamental rights. Despite notable constitutional progress, several legal and policy challenges remain, particularly in relation to comprehensive anti-discrimination legislation, recognition of diverse family structures, and the effective implementation of equality guarantees. International human rights law has significantly influenced the development of constitutional protections for LGBTQ+ persons. Global human rights

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instruments emphasise the universality of equality, dignity, privacy, and freedom from discrimination, encouraging States to ensure that sexual orientation and gender identity do not become grounds for exclusion or unequal treatment. These international standards have contributed to the evolution of constitutional jurisprudence and legislative reforms in several democratic jurisdictions, reinforcing the principle that LGBTQ+ rights are an integral component of universally recognised human rights. Against this backdrop, the present study examines the constitutional safeguards available to LGBTQ+ persons from an international perspective, with special reference to Taiwan and India. Adopting a doctrinal and comparative research methodology, the article analyses constitutional principles, legislative frameworks, and international human rights standards to evaluate the effectiveness of legal protections in both jurisdictions. It further explores the similarities and differences in their constitutional approaches, identifies existing legal gaps, and highlights the lessons that India may draw from Taiwan's progressive constitutional and legislative framework. The study argues that constitutional guarantees must be supported by effective legislation, institutional mechanisms, and inclusive public policies to ensure the meaningful realisation of equality, dignity, and social justice for LGBTQ+ persons.

A. Objectives of the Study

The present study seeks to examine the constitutional safeguards available to LGBTQ+ persons from an international perspective, with special reference to Taiwan and India. The specific objectives of the study are:

1. 1. To examine the constitutional principles of equality, dignity, liberty, privacy, and non-discrimination that govern the protection of LGBTQ+ rights.
2. 2. To analyse the international human rights framework on sexual orientation and gender identity.
3. 3. To evaluate the constitutional and legislative frameworks that protect LGBTQ+ rights in Taiwan and India.
4. 4. To undertake a comparative analysis of the constitutional approaches adopted by Taiwan and India to safeguard LGBTQ+ rights.
5. 5. To identify existing legal and policy gaps and suggest measures to strengthen constitutional protection and promote substantive equality for LGBTQ+ persons.s.

B. Research Methodology

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The study adopts a **doctrinal and comparative research methodology**. It is primarily based on secondary sources, including constitutional provisions, statutes, scholarly books, peer-reviewed journal articles, reports of international organisations, government publications, and other relevant legal literature. The research also examines international human rights instruments relating to LGBTQ+ rights to understand their influence on domestic constitutional frameworks. A comparative analysis of Taiwan and India has been undertaken to evaluate their constitutional approaches, legislative developments, and evolving legal standards for the protection of LGBTQ+ rights.

C. Scope of the Study

The scope of this study is confined to the constitutional protection of LGBTQ+ rights from an international perspective, with particular emphasis on Taiwan and India. The research examines constitutional principles, legislative frameworks, and international human rights standards governing the rights of sexual and gender minorities. It analyses the comparative constitutional approaches adopted by Taiwan and India in promoting equality and protecting LGBTQ+ persons while identifying the challenges that continue to hinder the effective realisation of constitutional rights. The study does not undertake an empirical or sociological analysis; instead, it is limited to a doctrinal examination of constitutional law, comparative legal developments, and international human rights principles.

II. Historical and Theoretical Evolution of LGBTQ+ Rights

A. Historical Evolution of International Recognition of LGBTQ+ Rights

The historical evolution of LGBTQ+ rights reflects the gradual transformation of societal attitudes, legal systems, and international human rights norms concerning sexual orientation and gender identity. Throughout history, individuals belonging to sexual and gender minorities have experienced varying degrees of acceptance and persecution across different civilisations. While certain societies acknowledged diverse expressions of gender and sexuality, many others criminalised same-sex relationships and marginalised LGBTQ+ persons through legal and social exclusion. The emergence of organised LGBTQ+ rights movements during the latter half of the twentieth century marked a significant shift towards the recognition of equality, dignity, and human rights for sexual and gender minorities.

A major turning point in the global LGBTQ+ rights movement occurred with the Stonewall Uprising of 1969, which inspired international advocacy for equal rights and encouraged

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legal reforms across numerous jurisdictions. Subsequently, the American Psychiatric Association removed homosexuality from the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* in 1973, followed by the World Health Organization's decision in 1990 to remove homosexuality from the *International Classification of Diseases (ICD)*. These developments affirmed that sexual orientation is a natural aspect of human identity rather than a medical disorder. The recognition of LGBTQ+ rights was further strengthened through international human rights mechanisms, particularly following the decision in *Toonen v. Australia* (1994)², which recognised that laws criminalising consensual same-sex relationships violated internationally protected human rights. The adoption of the Yogyakarta Principles in 2006 further reinforced the application of international human rights standards to issues concerning sexual orientation and gender identity. Collectively, these developments transformed LGBTQ+ rights from matters of criminal law and social morality into recognised issues of equality, dignity, and fundamental human rights³.

B. Theoretical Perspectives and Global Developments in LGBTQ+ Rights

The development of LGBTQ+ rights has been significantly influenced by evolving theoretical perspectives and the progressive recognition of human rights at the international level. Queer Theory challenges traditional assumptions regarding gender and sexuality by rejecting rigid binary classifications and recognising the diversity of human identities. It advocates a broader understanding of identity and encourages legal systems to move beyond conventional notions of gender and sexuality. Similarly, the theory of Intersectionality explains that discrimination is often experienced through the interaction of multiple identities, including gender, sexual orientation, race, ethnicity, disability, religion, and socio-economic status. These theoretical approaches have contributed to a more inclusive understanding of equality and have influenced contemporary legal and constitutional discourse concerning the protection of LGBTQ+ persons.

At the international level, the legal recognition of LGBTQ+ rights remains uneven. Several jurisdictions have adopted comprehensive legal protections, including marriage equality, anti-discrimination legislation, and legal recognition of gender identity, while many others continue to criminalise same-sex relationships or fail to provide adequate legal safeguards.

² *Toonen v. Australia*, U.N. Doc. CCPR/C/50/D/488/1992, available at :[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/d22a00bcd1320c9c80256724005e60d5?Open+document](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/d22a00bcd1320c9c80256724005e60d5?Open+document)

³ Findley, H. & Walker, E.D. (2014). Same-sex harassment: how hostile does it have to be? *The International Journal of Logistics Management*, 56(3), 417-428.

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This disparity demonstrates that constitutional and legislative protection is influenced not only by legal institutions but also by historical, cultural, political, and social factors. Consequently, international human rights law has increasingly emphasised that equality, dignity, liberty, privacy, and non-discrimination are universal rights that extend to all individuals irrespective of their sexual orientation or gender identity⁴.

The progressive evolution of international human rights norms has encouraged constitutional democracies to strengthen legal protections for LGBTQ+ persons through constitutional interpretation and legislative reform. Within Asia, Taiwan has emerged as a leading jurisdiction by adopting a comprehensive legal framework recognising the rights of LGBTQ+ persons, whereas India has progressively expanded constitutional protections while continuing to face significant legislative and policy challenges. Against this backdrop, a comparative examination of Taiwan and India provides valuable insights into the evolving constitutional safeguards available to LGBTQ+ persons and the continuing influence of international human rights principles on domestic constitutional frameworks.

III. International Human Rights Framework for the Protection of LGBTQ+ Rights

A. The Role of the United Nations in Advancing LGBTQ+ Rights

The United Nations (UN) has played a pivotal role in promoting and advancing the protection of LGBTQ+ rights through the development of international human rights standards and the interpretation of existing human rights instruments. Although the United Nations Charter does not expressly refer to sexual orientation or gender identity, its foundational principles of equality, human dignity, and non-discrimination provide the normative basis for extending human rights protection to LGBTQ+ persons. The Preamble of the Charter reaffirms the commitment of Member States to uphold justice, fundamental human rights, and the equal rights of all individuals. Furthermore, Articles 1 and 55 of the Charter obligate the United Nations to promote universal respect for human rights and fundamental freedoms without discrimination, thereby establishing the foundation for inclusive human rights protection. A significant milestone was achieved through the decision of the United Nations Human Rights Committee in *Toonen v. Australia* (1994), wherein the Committee interpreted the prohibition of discrimination on the ground of "sex" under the International Covenant on Civil and Political Rights (ICCPR) to include sexual orientation. This interpretation marked the

⁴ Dawson, H. (2015). Law, gender and sexuality: an introduction to the LSE library collections, *Legal Information Management*, 15(1), 45-50.

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beginning of a more inclusive approach towards the protection of LGBTQ+ rights within the international human rights framework⁵. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has further strengthened international efforts by urging Member States to repeal laws criminalising consensual same-sex relationships, abolish the death penalty for offences relating to sexual orientation, and enact comprehensive anti-discrimination legislation protecting LGBTQ+ persons. In addition, the United Nations Human Rights Council has adopted several resolutions condemning violence and discrimination based on sexual orientation and gender identity, while encouraging States to ensure equal access to justice, healthcare, education, employment, and other fundamental rights.

B. International Human Rights Instruments Protecting LGBTQ+ Rights

The protection of LGBTQ+ rights has progressively evolved through the development of international human rights law. Although most international human rights instruments do not expressly refer to sexual orientation or gender identity, their guarantees of equality, dignity, liberty, privacy, and non-discrimination have been interpreted to extend protection to LGBTQ+ persons.

The *Universal Declaration of Human Rights (UDHR), 1948*, laid the foundation for the universal protection of human rights by proclaiming that all human beings are born free and equal in dignity and rights. The principles enshrined in Articles 1, 2, 3, 7, and 12 have been widely relied upon to promote equality, prohibit discrimination, protect personal liberty, and safeguard privacy, all of which constitute essential constitutional guarantees for LGBTQ+ persons.

The *International Covenant on Civil and Political Rights (ICCPR), 1966*, further strengthens these protections by recognising the rights to equality before the law, privacy, freedom of expression, liberty, and protection against discrimination. Through the interpretation adopted by the United Nations Human Rights Committee, discrimination based on sexual orientation has been recognised as falling within the scope of prohibited discrimination under the Covenant. These principles have substantially influenced constitutional jurisprudence concerning LGBTQ+ rights in numerous democratic jurisdictions.

⁵ Bendall, C. (2017). From civil partnership to same sex marriage: interdisciplinary reflections, *International Journal of Law*, 430.

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Similarly, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966, obligates States to ensure the enjoyment of economic, social, and cultural rights without discrimination. The Covenant reinforces the rights of LGBTQ+ persons to education, healthcare, employment, social security, and an adequate standard of living, thereby emphasising that substantive equality extends beyond civil and political rights to include socio-economic justice.

A significant milestone in the international recognition of LGBTQ+ rights was the adoption of the *Yogyakarta Principles (2006)*. Although not legally binding, these principles provide authoritative guidance on the application of international human rights law concerning sexual orientation and gender identity. They elaborate the obligations of States to prevent discrimination, recognise gender identity, ensure equal access to justice, protect family life, and promote equality in education, healthcare, employment, and public services. The Yogyakarta Principles have increasingly influenced constitutional interpretation and legislative reforms across several jurisdictions.

The *United Nations Declaration on Sexual Orientation and Gender Identity (2008)* further reaffirmed the international commitment to protecting LGBTQ+ persons from violence, discrimination, and other human rights violations. It called upon States to repeal discriminatory laws, eliminate criminal sanctions based on sexual orientation or gender identity, and adopt effective legal measures ensuring equal protection before the law. Although these international instruments differ in their legal status and enforceability, they collectively establish a comprehensive human rights framework that has significantly contributed to the constitutional recognition and protection of LGBTQ+ rights across democratic societies.

C. Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration of Human Rights (UDHR), 1948, adopted by the United Nations General Assembly, is the first international instrument to proclaim that all human beings are born free and equal in dignity and rights. Although the Declaration does not expressly refer to LGBTQ+ persons, its principles of equality, liberty, dignity, and non-discrimination have been widely interpreted to extend protection to individuals irrespective of their sexual orientation or gender identity. Adopted at a time when homosexuality was largely criminalised and socially condemned, the UDHR nevertheless established a universal

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framework recognising that every individual is entitled to fundamental human rights without discrimination. Articles 1 and 2 affirm equality and prohibit discrimination on grounds including "other status," while Articles 3, 6, 7, and 12 guarantee the rights to life, liberty, legal recognition, equal protection of the law, and privacy. The Declaration also protects freedom of expression, religion, movement, employment, education, healthcare, and participation in cultural life, together with safeguards against torture, arbitrary detention, and degrading treatment, all of which are particularly significant for LGBTQ+ persons. Although the UDHR is not legally binding, its provisions have become part of customary international law and have substantially influenced subsequent international treaties, constitutional interpretation, and domestic legislation. However, Article 29, which permits reasonable restrictions based on public order and morality, has occasionally been invoked by certain States to justify limitations on LGBTQ+ rights. Despite such challenges, the UDHR remains the cornerstone of the international human rights framework and continues to guide the constitutional protection of equality, dignity, and non-discrimination for LGBTQ+ persons across the world⁶.

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

The International Covenant on Civil and Political Rights (ICCPR), 1966, is one of the most significant international human rights instruments safeguarding the civil and political rights of all individuals, including LGBTQ+ persons. It affirms that these rights are derived from the inherent dignity of every human being and obligates State Parties to ensure their protection without discrimination. The Covenant guarantees fundamental rights such as the right to life (Article 6), protection against torture and cruel, inhuman or degrading treatment (Article 7), recognition as a person before the law (Article 16), and the right to privacy (Article 17), all of which have particular relevance to LGBTQ+ persons who frequently encounter discrimination and violence. Furthermore, Article 26 guarantees equality before the law and equal protection without discrimination, providing an important legal basis for protecting individuals against discrimination based on sexual orientation and gender identity. The Human Rights Committee's landmark decision in *Toonen v. Australia*⁷ interpreted the term "sex" under Articles 2 and 26 of the ICCPR to include sexual orientation, establishing

⁶Claudda, B. (2005). Feminine Masculinities Scientific and Literary Representations of Female Inversion at the Twin of the Twentieth Century, *Journal of the History of Sexuality*,14.

⁷*Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994).

that laws criminalising consensual same-sex relationships violate the Covenant. The ICCPR also recognises the right to liberty, security, self-determination, family life, and legal recognition, thereby reinforcing the dignity and autonomy of LGBTQ+ persons. Consequently, the Covenant has become a vital international instrument influencing constitutional interpretation, judicial decisions, and legislative reforms concerning LGBTQ+ rights across democratic jurisdictions.

IV. Constitutional Safeguards for LGBTQ+ Rights in Taiwan

A. Constitutional Evolution of LGBTQ+ Rights in Taiwan (1986-2000)

The constitutional evolution of LGBTQ+ rights in Taiwan began during the country's transition from authoritarian rule to constitutional democracy. Before the late 1980s, same-sex relationships received no constitutional or legal recognition and were largely viewed through the lens of traditional morality. Consequently, the Civil Code recognised marriage exclusively as a heterosexual institution, leaving LGBTQ+ persons without constitutional protection. The gradual democratisation of Taiwan, however, created opportunities to challenge this exclusionary legal framework.

B. Emergence of Constitutional Claims for Marriage Equality

The first organised constitutional challenge was initiated by Chia-Wei Chi, regarded as the pioneer of Taiwan's LGBTQ+ rights movement. In 1986, he petitioned the Parliament seeking legal recognition of same-sex marriage. Although the petition was rejected and Chi was subsequently detained, his efforts transformed marriage equality from a matter of personal morality into an issue of constitutional equality and legal recognition. Despite strong political resistance, his advocacy laid the foundation for future constitutional discourse on LGBTQ+ rights. In 1994, Chi approached the Ministry of the Interior, arguing that the Civil Code could be interpreted to permit same-sex marriage. The matter was referred to the Ministry of Justice, which concluded that marriage under the Civil Code was limited to a union between a man and a woman. This administrative interpretation became the Government's official legal position and later formed the principal constitutional issue before the Taiwan Constitutional Court. An important feature of Taiwan's legal framework was that, prior to the legalisation of same-sex marriage, neither the Civil Code nor the Criminal Code expressly prohibited same-sex relationships. While the Civil Code recognised marriage only between a man and a woman, it did not explicitly forbid same-sex marriage. Similarly, the Criminal Code did not criminalise consensual same-sex relations and afforded protection to victims of sexual

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offences irrespective of sexual orientation. This legislative silence later became an important constitutional argument in support of marriage equality because there was no statutory prohibition preventing legislative or judicial recognition of same-sex unions.

C. Towards Constitutional Litigation

During the late 1990s, democratic reforms and growing civil society participation gradually shifted public discussions towards equality and non-discrimination. Government-sponsored studies recommending anti-discrimination measures and increased public visibility of LGBTQ+ persons reflected an emerging rights-based approach to sexual orientation. Although comprehensive legal reforms had not yet materialised, these developments established the constitutional foundation for future litigation. Seeking judicial intervention, Chia-Wei Chi applied for the registration of a same-sex marriage in 1998. After exhausting the available legal remedies, he petitioned the Taiwan Constitutional Court in 2000, requesting a constitutional review of the exclusion of same-sex couples from marriage. However, in 2001, the Court dismissed the petition on procedural grounds without examining its constitutional merits. Although unsuccessful, this litigation marked the first constitutional challenge to Taiwan's marriage laws and initiated the judicial dialogue that ultimately culminated in Judicial Interpretation No. 748 (2017). The period from 1986 to 2000 therefore, represents the foundational stage in Taiwan's constitutional recognition of LGBTQ+ rights. While no immediate legal protection was secured, sustained advocacy, administrative engagement, and constitutional litigation transformed marriage equality into a question of constitutional rights, thereby laying the groundwork for subsequent legislative reforms and judicial recognition.

D. Constitutionalisation of Marriage Equality and Democratic Reforms (2001-2015)

Following the dismissal of Chia-Wei Chi's constitutional petition in 2001, Taiwan's LGBTQ+ rights movement gradually shifted from social activism to constitutional and legislative advocacy. Although the Constitutional Court remained inactive during this period, democratic reforms, anti-discrimination legislation, and increasing public support strengthened the constitutional foundation for marriage equality.

E. Human Rights Reforms and Anti-Discrimination Measures

The election of the Democratic Progressive Party (DPP) in 2000 marked an important phase in Taiwan's human rights development. In 2003, the Government proposed the Draft Human

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Rights Bill, recognising familial rights for same-sex couples and adoption rights. Although the Bill was not enacted, it represented the first governmental attempt to legally recognise same-sex relationships. Taiwan further strengthened constitutional equality through the Gender Equality Education Act of 2004, which prohibited discrimination based on sexual orientation in educational institutions. Subsequent employment reforms also prohibited discrimination against LGBTQ+ persons in recruitment and workplace practices, reinforcing the constitutional principles of equality and non-discrimination.

F. Marriage Equality in Legislative and Public Discourse

Marriage equality gradually became a constitutional issue rather than merely a social demand. In 2006, legislator Bi-khim Hsiao organised Taiwan's first parliamentary hearing on same-sex marriage and introduced the first legislative proposal seeking marriage equality. Although unsuccessful, these initiatives brought constitutional questions concerning equality and family rights into legislative debate. Civil society also played a decisive role. In 2009, the Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) was established to promote legal recognition of same-sex relationships through legislative advocacy, public education, and constitutional litigation. Its Three Bills for Diverse Families (2012) proposed amendments to the Civil Code recognising diverse family structures, thereby broadening public discussion on constitutional equality and family rights.

G. Towards Constitutional Recognition

As legislative efforts failed to produce comprehensive reforms, constitutional litigation became the primary avenue for securing marriage equality. Chia-Wei Chi renewed his legal challenge by applying for marriage registration in 2013, while the Taipei City Government, under Mayor Ko Wen-je, also sought constitutional interpretation regarding the legality of excluding same-sex couples from marriage. These petitions transformed marriage equality into a constitutional dispute requiring judicial determination. The period between 2001 and 2015, therefore, marked the Constitutionalisation of LGBTQ+ rights in Taiwan. Democratic reforms, anti-discrimination legislation, legislative advocacy, and sustained civil society mobilisation collectively established the constitutional basis upon which the Taiwan Constitutional Court delivered its landmark Judicial Interpretation No. 748 (2017), recognising marriage equality as a constitutional right.

H. Judicial and Legislative Recognition of Marriage Equality

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The constitutional recognition of LGBTQ+ rights in Taiwan reached its defining moment on 24 May 2017, when the Taiwan Constitutional Court delivered Judicial Interpretation No. 748. The interpretation arose from two constitutional petitions: one filed by Chia-Wei Chi, following the rejection of his application to register a same-sex marriage, and another by the Taipei City Government, which sought constitutional clarification regarding the refusal to register same-sex marriages. Both petitions challenged the prevailing interpretation of Article 972 of the Civil Code, which recognised marriage exclusively as a union between a man and a woman. The principal constitutional issue before the Court was whether denying same-sex couples access to marriage violated the constitutional guarantees of equality and personal freedom. The Constitutional Court held that the exclusion of same-sex couples from marriage was inconsistent with Article 7 of the Constitution, which guarantees equality before the law, and Article 22, which protects freedoms and rights not expressly enumerated in the Constitution, including the freedom to marry. The Court observed that the freedom to marry encompasses an individual's right to decide whether and whom to marry, and that sexual orientation could not constitute a valid constitutional basis for denying access to the institution of marriage. Consequently, the existing interpretation of Article 972 of the Civil Code unjustifiably discriminated against same-sex couples and infringed their constitutional rights to equality, dignity, and personal autonomy. The Court further emphasised that constitutional rights must evolve in accordance with democratic values and cannot be restricted merely because of traditional social or cultural understandings of marriage. Instead of immediately invalidating the relevant provisions of the Civil Code, the Court adopted a remedial approach by directing the Legislative Yuan to amend the Civil Code or enact separate legislation within two years to provide legal recognition to same-sex marriages. The Court further declared that if the legislature failed to comply within the stipulated period, same-sex couples would automatically become entitled to register their marriages under the existing legal framework. This constitutional remedy balanced judicial restraint with the effective enforcement of fundamental rights while respecting the legislature's role in determining the appropriate statutory framework. In compliance with the Constitutional Court's directive, the Legislative Yuan enacted the Act for Implementation of Judicial Yuan Interpretation No. 748 on 17 May 2019, and the legislation came into force on 24 May 2019. The Act formally legalised same-sex marriage, making Taiwan the first jurisdiction in Asia to recognise marriage equality through legislation. It granted same-sex couples legal rights relating to marriage registration, inheritance, property, medical decision-making, taxation,

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and other spousal benefits substantially equivalent to those enjoyed by opposite-sex couples. The enactment of the legislation was significantly influenced by the 2018 national referendum. Although the Constitutional Court had recognised marriage equality, the referendum opposed incorporating same-sex marriage into the Civil Code. Consequently, the Legislative Yuan enacted a separate statute the *Act for Implementation of Judicial Yuan Interpretation No. 748*, instead of amending the Civil Code. This approach ensured compliance with the Constitutional Court's ruling while accommodating the political outcome of the referendum. The Act recognised a wide range of rights substantially equivalent to those available under heterosexual marriage, including inheritance, property rights, medical decision-making, divorce, spousal obligations, and step-child adoption. However, it initially retained certain limitations concerning joint adoption, assisted reproductive technology, and cross-border marriages, indicating that complete marriage equality remained a continuing constitutional project. Judicial Interpretation No. 748 and the subsequent legislation collectively represent a landmark in Taiwan's constitutional jurisprudence. They affirm that the constitutional principles of equality, liberty, dignity, and personal autonomy extend equally to LGBTQ+ persons, thereby positioning Taiwan as the leading constitutional model for LGBTQ+ rights protection in Asia and an important point of comparison for jurisdictions such as India.

V. Constitutional Safeguards for LGBTQ+ Rights in India

A. Constitutional Foundations of LGBTQ+ Rights

Although the Constitution of India does not expressly recognise sexual orientation or gender identity, the judiciary has interpreted the Fundamental Rights under Part III to extend constitutional protection to LGBTQ+ persons. Articles 14, 15, 19(1)(a), and 21 have been interpreted to safeguard equality, non-discrimination, freedom of expression, dignity, privacy, and personal liberty. Guided by the principle of transformative constitutionalism, the Supreme Court has recognised that constitutional rights must evolve to protect vulnerable and marginalised communities.

Article 14: Right to Equality

Article 14 guarantees equality before the law and equal protection of the laws. It forms the constitutional basis for ensuring that all individuals, irrespective of their sexual orientation or

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gender identity, are treated equally. The principle of equality prohibits arbitrary classification and requires the State to provide equal legal protection to every person.

Article 15: Prohibition of Discrimination

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Through constitutional interpretation, the scope of the term "**sex**" has been broadened to encompass sexual orientation and gender identity. This provision ensures that LGBTQ+ persons are protected from discriminatory treatment by the State.

Article 19(1)(a): Freedom of Speech and Expression

Article 19(1)(a) guarantees the freedom of speech and expression, which includes the right to express one's identity, gender, appearance, and sexual orientation. The freedom to openly express one's identity is essential to individual autonomy, self-determination, and participation in a democratic society.

Article 21: Right to Life and Personal Liberty

Article 21 guarantees the right to life and personal liberty and has been interpreted to include the rights to dignity, privacy, autonomy, identity, and the freedom to make intimate personal choices. It provides comprehensive constitutional protection against arbitrary State interference and ensures that every individual can live with dignity, irrespective of sexual orientation or gender identity. Collectively, Articles 14, 15, 19(1)(a), and 21 constitute the constitutional foundation for protecting the rights of LGBTQ+ persons in India. These provisions uphold the principles of equality, non-discrimination, dignity, liberty, and personal autonomy, thereby reinforcing the constitutional commitment to an inclusive and pluralistic society.

B. Judicial Evolution of LGBTQ+ Rights

Naz Foundation v. Government of NCT of Delhi (2009)

In *Naz Foundation*, the Delhi High Court examined the constitutional validity of Section 377 of the Indian Penal Code, 1860, which criminalised consensual same-sex relations. The Court held that the provision violated Articles 14, 15, and 21 by arbitrarily discriminating against LGBTQ+ persons and infringing their dignity, privacy, and personal liberty. Emphasising

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constitutional morality over social morality, the Court read down Section 377 to exclude consensual sexual acts between adults in private.

Suresh Kumar Koushal v. Naz Foundation (2013)

The Supreme Court reversed the *Naz Foundation* decision and upheld the validity of Section 377, observing that the LGBTQ+ community constituted a "minuscule minority" and that legislative reform was the appropriate remedy. The judgment was criticised for its narrow interpretation of Articles 14 and 21 and its failure to adequately protect the constitutional rights of sexual minorities.

National Legal Services Authority (NALSA) v. Union of India (2014)

The Supreme Court recognised transgender persons as the third gender and affirmed that Articles 14, 15, 16, 19(1)(a), and 21 guarantee equality, non-discrimination, freedom of expression, dignity, and personal autonomy. The Court upheld the right to self-identify one's gender and directed governments to provide reservations, healthcare, education, employment opportunities, and welfare measures for transgender persons.

Justice K.S. Puttaswamy v. Union of India (2017)

In *Puttaswamy*, a nine-judge Constitution Bench recognised the right to privacy as an intrinsic part of Article 21 and linked it with the guarantees of dignity, liberty, and autonomy under Part III of the Constitution. The Court held that privacy includes bodily integrity, decisional autonomy, and personal identity, thereby strengthening constitutional protection for sexual orientation and individual choice. It further ruled that any restriction on privacy must satisfy the tests of legality, legitimate state purpose, necessity, and proportionality.

Navtej Singh Johar v. Union of India (2018)

In *Navtej Singh Johar*, the Supreme Court overruled *Suresh Kumar Koushal* and partially struck down Section 377, decriminalising consensual same-sex relations between adults. The Court held that the provision violated Articles 14, 15, 19(1)(a), and 21 by discriminating on the basis of sexual orientation and infringing the rights to dignity, privacy, equality, and freedom of expression. The judgment reaffirmed that constitutional morality, individual autonomy, and transformative constitutionalism are central to the protection of LGBTQ+ rights.

C. Legislative Protection of Transgender Rights

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A significant legislative milestone in India is the Transgender Persons (Protection of Rights) Act, 2019, enacted following the Supreme Court's decision in *National Legal Services Authority v. Union of India* (2014). The Act prohibits discrimination against transgender persons in education, employment, healthcare, housing, and access to public services, while requiring the Central and State Governments to implement welfare measures and promote social inclusion. However, the Act has attracted criticism for introducing a certification process for legal recognition of gender identity, which has been viewed as inconsistent with the principle of self-identification recognised by the Supreme Court in *NALSA*. Despite these concerns, the Act represents India's first comprehensive statutory framework for safeguarding the rights and welfare of transgender persons.

VI. Comparative Constitutional Analysis: Taiwan and India

A. Constitutional Philosophy

Taiwan's constitutional approach is primarily founded on the principles of equality and personal freedom embodied in Articles 7 and 22 of the Constitution of the Republic of China. The Taiwan Constitutional Court interpreted these provisions purposively, recognising that constitutional rights are not confined to traditional social norms but must protect individual dignity, autonomy, and equal citizenship. Similarly, the Indian constitutional framework has evolved through judicial interpretation of Articles 14, 15, 19(1)(a), and 21 of the Constitution. The Supreme Court has consistently adopted the doctrine of transformative constitutionalism, recognising that the Constitution is a living document intended to promote justice, equality, liberty, and dignity. The Court has further emphasised the concept of constitutional morality, holding that constitutional values must prevail over prevailing social or religious prejudices when protecting the rights of minorities.

B. Equality and Non-Discrimination

Equality and non-discrimination form the cornerstone of constitutional protection for LGBTQ+ rights in both Taiwan and India. However, the two jurisdictions differ significantly in the manner in which these principles are implemented. Taiwan has complemented constitutional guarantees with specific legislative measures prohibiting discrimination in areas such as education, employment, and family life. Consequently, constitutional equality has been translated into enforceable statutory rights. In India, constitutional protection has developed predominantly through judicial interpretation of the Fundamental Rights. The judiciary has expanded the scope of equality and non-discrimination to include sexual

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orientation and gender identity, ensuring that LGBTQ+ persons are entitled to equal protection of the law. A comparative analysis indicates that while both jurisdictions recognise equality as a fundamental constitutional value, Taiwan has adopted a more comprehensive approach by combining constitutional interpretation with legislative action. India, although constitutionally progressive, continues to depend largely on judicial intervention, highlighting the need for a dedicated statutory framework to effectively eliminate discrimination against LGBTQ+ persons.

C. Marriage Equality and Family Rights

The most significant constitutional distinction between Taiwan and India lies in the recognition of marriage and family rights for LGBTQ+ persons. Taiwan has adopted a rights-based approach by constitutionally recognising marriage equality through Judicial Interpretation No. 748, followed by the enactment of the Act for Implementation of Judicial Yuan Interpretation No. 748 (2019). This legislative framework grants same-sex couples legal recognition and extends several rights relating to marriage registration, inheritance, property, taxation, medical decision-making, and other spousal benefits. Although certain restrictions initially remained, Taiwan established a comprehensive legal framework recognising same-sex relationships as equal to heterosexual marriages. In contrast, India has recognised the constitutional rights of LGBTQ+ persons concerning equality, dignity, privacy, and personal liberty but has not extended these protections to marriage equality. While the judiciary has affirmed that sexual orientation forms an integral part of individual identity, the legal recognition of same-sex marriage has been left to legislative determination. Consequently, same-sex couples in India continue to be excluded from several legal rights associated with marriage, including adoption, succession, inheritance, maintenance, and social security benefits. This divergence demonstrates that constitutional recognition alone is insufficient unless supported by legislative action. Taiwan has successfully translated constitutional principles into enforceable legal rights, whereas India continues to face a significant gap between constitutional jurisprudence and family law reform.

D. Judicial Activism and Legislative Response

Both Taiwan and India have relied on judicial intervention to advance LGBTQ+ rights; however, their legislative responses differ significantly. In Taiwan, the Constitutional Court's decision in Judicial Interpretation No. 748 was promptly implemented through the Act for Implementation of Judicial Yuan Interpretation No. 748 (2019), ensuring legal recognition of

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same-sex marriage. In India, constitutional protection has primarily evolved through judicial interpretation, while legislative intervention remains limited. The Transgender Persons (Protection of Rights) Act, 2019, provides statutory recognition and protection against discrimination for transgender persons in areas such as education, employment, healthcare, and access to public services. However, India still lacks comprehensive legislation recognising same-sex marriage, civil unions, adoption, inheritance, and broader anti-discrimination protections for the LGBTQ+ community.

E. Critical Evaluation and Lessons for India

The comparative analysis reveals that both Taiwan and India have advanced LGBTQ+ rights through constitutional principles of equality, dignity, privacy, and personal autonomy. However, Taiwan has translated these constitutional guarantees into substantive equality through legislative reforms, including the recognition of same-sex marriage and related family rights. India has made significant progress through judicial interpretation and the Transgender Persons (Protection of Rights) Act, 2019. Nevertheless, the absence of comprehensive legislation recognising same-sex marriage, family rights, and broader anti-discrimination protections continues to limit the effective realisation of constitutional rights. Taiwan's constitutional model demonstrates that judicial recognition must be supported by legislative action. India can strengthen its constitutional framework by enacting comprehensive anti-discrimination legislation and recognising family rights, thereby ensuring that constitutional guarantees are effectively translated into practical legal protection for LGBTQ+ persons.

VII. Recommendations for Enhancing Constitutional Protection and Legal Recognition

A. Constitutional and Legislative Reforms

Constitutional protection of LGBTQ+ rights should be strengthened through comprehensive legislative reforms that expressly prohibit discrimination based on sexual orientation, gender identity, and gender expression. Constitutional guarantees of equality, dignity, liberty, and privacy should be translated into enforceable statutory rights with effective remedies. Legislatures should periodically review existing laws to remove discriminatory provisions and ensure consistency with constitutional principles and evolving human rights standards.

B. Legal Recognition of Same-Sex Relationships

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Governments should progressively recognise same-sex relationships through marriage equality or equivalent civil partnership legislation. Legal recognition should extend consequential rights relating to inheritance, succession, adoption, guardianship, taxation, maintenance, social security, pension, insurance, and medical decision-making. Equal recognition of family relationships is essential to achieving substantive equality and preventing discrimination in civil and family law.

C. Strengthening Anti-Discrimination Frameworks

States should enact comprehensive anti-discrimination legislation applicable to both public and private sectors. Such legislation should prohibit discrimination in employment, education, healthcare, housing, financial services, digital platforms, and access to public services. Independent enforcement authorities should be empowered to investigate complaints, provide effective remedies, and monitor compliance through periodic reporting and accountability mechanisms.

D. Reform of Gender Identity Laws

Legal recognition of gender identity should be based upon the principle of self-identification without unnecessary medical, psychological, or administrative barriers. Governments should simplify legal procedures relating to change of name and gender markers while ensuring privacy and dignity. Public institutions should adopt gender-inclusive administrative practices that recognise transgender and non-binary persons without discrimination.

E. Institutional Capacity Building

The effective implementation of constitutional rights requires institutional reforms supported by continuous training and sensitisation. Judges, law enforcement agencies, prison authorities, healthcare professionals, educators, and public officials should receive specialised training on LGBTQ+ rights, constitutional equality, and international human rights standards. Independent monitoring mechanisms should also be established to evaluate institutional compliance.

F. Harmonisation with International Human Rights Standards

Domestic legal frameworks should be periodically reviewed to ensure consistency with international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Yogyakarta Principles. Comparative

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constitutional jurisprudence and international best practices should be utilised while formulating future legal reforms relating to LGBTQ+ rights.

G. Artificial Intelligence and Algorithmic Accountability

As Artificial Intelligence increasingly influences public administration and private decision-making, governments should establish legal safeguards against algorithmic discrimination affecting LGBTQ+ persons. AI regulatory frameworks should require transparency, explainability, fairness testing, periodic bias audits, human oversight, and accountability. Independent regulatory authorities should oversee AI systems to ensure that automated decision-making remains consistent with constitutional guarantees of equality, dignity, and non-discrimination.

H. Strengthening Data Privacy and Digital Rights

The increasing collection and processing of personal data require stronger legal safeguards for LGBTQ+ persons. Data protection laws should classify information relating to sexual orientation, gender identity, and gender expression as sensitive personal data, ensuring strict standards of confidentiality, informed consent, purpose limitation, and data minimisation. Effective legal remedies should be available against unlawful profiling, surveillance, data breaches, and unauthorised disclosure by both public authorities and private entities.

I. Inclusive Public Policies and Social Protection

Governments should formulate rights-based public policies that guarantee equal access to healthcare, education, housing, employment, and social security for LGBTQ+ persons. Public institutions should implement inclusive policies that eliminate discriminatory practices and ensure equal opportunities. Particular attention should be given to gender-affirming healthcare, mental health services, and social welfare programmes that promote substantive equality.

J. Research, Data Collection, and Policy Evaluation

Evidence-based policymaking requires reliable data on discrimination, violence, healthcare, education, employment, and access to justice experienced by LGBTQ+ persons. Governments should establish transparent mechanisms for the periodic collection of anonymised data while respecting privacy and confidentiality. Such empirical research would facilitate continuous legal reform and enable policymakers to assess the effectiveness of existing constitutional and statutory protections.

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K. Judicial and Constitutional Dialogue

The effective protection of LGBTQ+ rights requires continuous constitutional dialogue between the judiciary and the legislature. While constitutional courts play a vital role in recognising and expanding fundamental rights, legislatures should promptly implement judicial decisions through appropriate statutory reforms. Such institutional cooperation promotes constitutional certainty, strengthens the rule of law, and ensures the effective enforcement of constitutional guarantees.

L. Constitutional Morality and Rights-Based Governance

Constitutional governance should be guided by constitutional morality rather than majoritarian social or religious beliefs. Legislative and administrative decisions affecting LGBTQ+ persons should uphold the constitutional principles of equality, dignity, liberty, privacy, and fraternity. A rights-based approach to governance would ensure that public authorities discharge their constitutional obligations without discrimination or prejudice.

M. Reform of Family Laws

Family law reforms should recognise diverse family structures and ensure equal legal protection for LGBTQ+ persons. Existing laws relating to marriage, adoption, guardianship, succession, inheritance, maintenance, assisted reproductive technologies, and surrogacy should be reviewed to eliminate discriminatory provisions. Such reforms would strengthen the constitutional commitment to equality and ensure that family rights are enjoyed without distinction based on sexual orientation or gender identity.

N. Access to Justice and Legal Aid

Equal protection of the law requires accessible legal remedies for victims of discrimination and violence. Governments should strengthen legal aid services, establish specialised grievance redressal mechanisms, and ensure timely adjudication of cases involving LGBTQ+ rights. Accessible justice delivery systems would enhance the practical enforcement of constitutional and statutory protections.

O. Constitutional Review of Existing Laws

Governments should undertake a systematic review of existing criminal, civil, labour, education, healthcare, and family laws to identify provisions that directly or indirectly discriminate against LGBTQ+ persons. Law reform commissions and constitutional review

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bodies should recommend amendments to ensure consistency with constitutional guarantees of equality, dignity, privacy, and personal liberty.

VIII. Conclusion and Recommendations

The constitutional protection of LGBTQ+ rights has evolved beyond the decriminalisation of same-sex relationships towards the broader recognition of equality, dignity, privacy, family life, and personal autonomy. The comparative analysis demonstrates that constitutional guarantees are most effective when supported by coherent legislative reforms, institutional accountability, and effective implementation mechanisms. While constitutional courts have played a transformative role in recognising LGBTQ+ rights, the realisation of substantive equality ultimately depends upon the interaction between constitutional adjudication, legislative action, and public institutions. The experiences of Taiwan and India illustrate two distinct constitutional approaches. Taiwan demonstrates how constitutional interpretation can be successfully translated into legislative reform through the recognition of marriage equality and corresponding family rights. India, on the other hand, reflects the significant contribution of judicial activism in expanding constitutional protections relating to equality, privacy, dignity, and gender identity. Together, these experiences indicate that constitutional recognition and legislative implementation should function as complementary rather than competing mechanisms for protecting minority rights. In view of these developments, constitutional democracies should adopt comprehensive anti-discrimination legislation prohibiting discrimination based on sexual orientation, gender identity, and gender expression across both public and private sectors. Family laws should be progressively reviewed to ensure equal access to marriage or equivalent legal recognition, adoption, succession, inheritance, healthcare decision-making, taxation, pension, and other civil rights. Domestic legal frameworks should also be harmonised with evolving international human rights standards, particularly the principles embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Yogyakarta Principles. The rapid expansion of artificial intelligence and digital governance further necessitates the incorporation of LGBTQ+ rights into emerging regulatory frameworks. Governments should introduce legal safeguards against algorithmic discrimination by requiring transparency, accountability, periodic bias audits, and meaningful human oversight in AI-assisted decision-making. Similarly, data protection legislation should provide enhanced safeguards for sensitive personal data relating to sexual orientation and gender

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identity by ensuring informed consent, purpose limitation, data minimisation, and effective remedies against unlawful profiling, surveillance, or disclosure. These measures are essential to prevent digital technologies from reinforcing existing patterns of exclusion and discrimination. Ultimately, constitutional democracy cannot be measured solely by the formal recognition of rights but by the extent to which those rights are effectively realised in practice. A modern constitutional framework must therefore ensure that equality, dignity, liberty, and privacy remain living constitutional values capable of responding to emerging social and technological challenges. Strengthening constitutional safeguards through coordinated judicial interpretation, legislative reform, institutional accountability, and rights-based digital governance will contribute to a more inclusive constitutional order in which LGBTQ+ persons enjoy equal protection of the law in both physical and digital spaces.



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