

## THE VIOLATION OF HUMAN RIGHTS AGAINST LGBT COMMUNITY IN INDIA- A CRITICAL STUDY

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### Abstract

This paper deals about the violation of human rights against LGBT community in India. The sexual minorities are the persons belonging to LGBT community who fight for their freedom and for equal citizenship the first step taken by the Judiciary to give rights to the LGBT people made through the judgement in Naz foundation case which reversed its order so soon. The present research is conclusive, descriptive and partly non-empirical and partly empirical the qualitative data was generated. The study was concluded with primary and secondary data like personal Interview and books, Articles, Theories, case laws etc. In this article the researcher has tried to discuss about concept of LGBT right the nature of LGBT People and their discrimination on the ground of sex in the society it results in violation of their rights including fundamental rights and human rights. This research paper analysis the homosexual marriages in the Indian context as an invisible conflict which is successfully kept under cover. This paper mainly attempts to explain various aspects of Homosexuality including the evolution, the reasons, the societal attitude and reactions towards such relations. This study spreads the lights on legal framework on rights of LGBT community. The introduction of progressive laws will Homosexuality will remain a taboo as long as people are willing to shove it under the carpet of oblivion and 10% of Indian population consists of LGBT people in than transgender people are only the hormonal problem not the others and the suggestion is that government should pass a

legislation for marriage of LGBT people and the government has to take remedial actions for them otherwise those people will suffer a lot of exploitation from the people.

**Keywords:** Human rights, Homosexuality, population, government and exploitation

### **Introduction**

The LGBT community are the persons belonging to sexual minorities, lesbian/ gay/ bisexuals whose sexual desire varies and these people fight for their freedom and for equal citizenship which often end up in violation. Indian judiciary took its first step toward equal sexual citizenship and various rights vested within human rights law for LGBT community people through the judgement in the matter of Naz Foundation v. NCT of Delhi and Others comprising of then Chief Justice of the High Court Justice A.P. Shah and Justice Muralidhar in 2009 that is considered to be a landmark judgment on the rights of LGBT community (Byne 2015). The judgment puts the light on the human rights struggles in the country faced by the LGBT community and expands its view through reading on constitution basic human rights vested with citizens of India. A judgment was pronounced at a time of uncertainty the supreme court of India completed the hearing of case Suresh Kumar Koushal and another v NAZ Foundation, judge bench, Justice G.S. Singhvi and Justice S.J. Mukopadhyay reversed the earlier judgment yeah it dragged back the LGBT community in the specter of criminality. Again here starts the struggle of LBGT community and there involves various violations committed against the LGBT community (Gibson, Meem, and Alexander 2013). This paper start by talking about the cases before the Supreme Court and the arguments put forth in the manner it did. The violation of human rights of the LGBT people has been deep root in state of India the violations of human rights laws by the supreme court has been took place in Naz foundation case there are various arguments put forth on the basics of cultural and moral norms in the arguments and judgment dealt with but the main question “what about the right of sexual minority and about their life” Is an unanswered question and uncovered area (Seay et al. 2018).

This paper spreads light on the area of human Rights which are the basic necessities to human beings accepted by India in the United Nations convention (sathyanarayana rao, 2016). These rights are also referred to as basic rights, birth rights, fundamental rights, natural rights or inherent rights. Such rights originate with the birth of individual and are essential for human

happiness and progress (Hussen et al. 2017). They are necessary for the material and moral upliftment of the human race. This article assesses the growth, position and identification of a prohibition on sexual course discrimination as a matter of international human rights law. The State practice examined appears to reveal fundamental divisions on this issue and the future of the movement might lie and the actions should be taken by the government of India(Hunter 2012).

Having examined the national, provincial and international human rights jurisprudence on sexual discrimination, the article considers the possible ways forward in policy terms, given the continued opposition from a significant body of States. More particularly, it talks about the most proper legal and strategic reactions at national, regional and international levels to oversee or connect the divisions between States on the issue and this paper plans to break down Section 377 and its effect in the general public and to discover the emotional well-being of LGBT individuals and to influence an investigation on social consent for LGBT to commission.

#### **Hypothesis**

**Ho-** The Implementation of LGBT right will not affect any public.

**Ha-** The Implementation of LGBT right will affect public at large.

The present research is partly doctrinal and partly empirical in nature. It was concluded with primary and secondary data like personal Interview and books, Articles, Theories, case laws etc.

#### **The United Nation declaration of human rights and LGBT issues**

The Universal Declaration of Human Rights includes right to life, right to privacy, right to health and equality before the law, as well as the right to freedom of expression and freedom from discrimination and violence, including torture but the Lesbian, gay, bisexual and transgender (LGBT) persons are constantly at risk of prosecution and gross violations of their fundamental human rights in a number of countries. Many LGBT persons fear of imprisonment, torture, and abuse and even murder, solely because they live in a context that does not tolerate their sexual orientation, gender identity or gender expression. In Indian scenario this is too high the society, the family and the domestic laws are completely against those people(Hunt 2012).

**Discrimination**

Discrimination and violation of the human rights of LGBT people have antagonistic ramifications on their capacity to add to improvement and to profit by it. Stigma and discrimination often leave LGBT persons in a situation of poverty and render them vulnerable to violence and HIV/Aids. Living openly, or even just being perceived as, or associated with, an LGBT person, many times mean risk of losing one's employment, housing, education, and access to health care(Ball 2010). LGBT persons must be recognized as rights-bearers and agents that have an indisputable right to participate in processes and decisions that affect their lives and society at large. The discrimination arises in various fields in employment and in young age they are eliminated from the education opportunity they also lack from family support(Ball 2010; Rosa, Fullerton, and Keller 2015). These people often suffered from harassment because of their sexuality and gender expression.

**Human Rights violation**

The current period is one of rapid advances in LGBT right in many countries and of a wave of anti gay laws and policies in others and there is a burden of HIV Risks and face stigma and there is key programs success in challenging context. Legal rights of the LGBT people in India is strategizing for the future and right to marriage same sex people now became a International legal scenario but still in India there are civil laws which affect the men and women and gay rights. Human rights are the fundamental rights of every human being, regardless of culture or societal norms and to give access to health service of the LGBT people many of them working for their recognition and many people working to get principles codified into policies and laws in both International and municipal law.(Bazzi et al. 2018)

Homosexuality in India was considered as a Unnatural sexual offence under section 377 of the Indian penal code,1860. Same-sex orientation and behaviour has been abandoned in India since 1970's by modern medicine and psychiatry but the truth is that Homosexuals does not have any objective psychological dysfunction or Impairments and the reason is too complex in nature therefore we can clearly state that homosexual was not a disorder. Many petitions were filed before the honourable Supreme court to declare Section 377 of the Indian penal code as Unconstitutional. One of the famous case for this LGBT issue is Naz foundation case. On 2nd July, 2009, the high court of delhi ruled that the provision in Section 377 of Indian penal code that criminalises private consensual sex between same-sex adults violates the country's

constitution and International human rights conventions(Smith et al. 2018). “Consensual sex amongst adults is legal,” which includes even gay sex. Delhi high court further states that it is against the constitutional values and notion of human dignity. Most unanimous medical and psychiatric says that Homosexuality is not a disease or disorder(Smith et al. 2018).

After the decriminalization of homosexuality, LGBT individuals finally became free from criminalisation under the law and free from the threat of arrest and the ruling gave confidence and dignity to LGBT people in the eyes of law(Smith et al. 2018). They were no longer criminals and could proudly look at themselves in the mirror. But it has been ended when supreme court ruled over the judgement of the Delhi high court in 2013 and it has said that Section 377 of Indian penal code no where unconstitutional when we look into the history of the provision and one of the contention by the petitioner was LGBT rights is against Indian culture but when we read about same-sex love in India from literature and history we can easily identify that ancient people in India involved in same-sex love for that temple sculptures at Khajuraho and konark are the best examples which clearly explains that ancient people involved in same sex love and In the book of “ Loving women and In sahayatrika” it has been clearly stated about Lesbian women committing suicide this shows that there is a practise of homo sexualitism in ancient period(Sánchez et al. 2014). The Supreme Court’s decision can either further crystallize or instead discard some of the remarkable principles of jurisprudence that high court developed and there is Court’s remarkable discussion of constitutional morality and Using constitutional morality to test the bounds of a compelling state interest would imply a moral code that is based on the liberal democratic ideals that underlie the Indian constitution.

Presently, after the Supreme Court chose it would review its 2013 ruling, there is cause for hope once more. This is additionally an opportunity for Prime Minister Narendra Modi to indicate authority. The Supreme Court has sent a notice to the government looking for its view. The past administration, drove by Prime Minister Manmohan Singh, had not opposed the Delhi High Court ruling on segment 377. The Modi government ought to likewise back the high court ruling, in this manner not just ensuring the privileges of everybody in India, yet setting measures for governments somewhere else that mishandle comparative laws to discriminate against their kin. After the young fellow at the Mumbai meeting said his dread of losing his activity, Nisaba Godrej, the organization's official executive, talked about her own involvement of learning and

comprehension about the issue through an associate, and afterward leading the pack to end separation in Indian business(Wolf-Gould, Riley, and Carswell 2018).

India's political pioneers also can figure out how to conquer the ignorance of the individuals who discriminate and mortify, and to give authority in assorted variety and consideration. For India, it is unquestionably time to quit criminalizing love(Lutwak 2014).

### **Constitutional rights of LGBT people**

The Preamble to the Constitution of India mandates Justice - social, economic, and political, equality of status. The Constitution provides every person an equal status before the law and an equal protection of laws within the territory of India. The word „any person“ here means every individual, without any discrimination based on any of the category which includes, caste, creed, religion, sex, etc. A transgender in India is included within the words „any person“ and is given equal status to that of every cis-gender in India. The transgender community cannot be discriminated on the ground of non-application of any of the laws within the nation by reason of their differences and dividing them based on any arbitrary class.

The key word with regard to the protection of Transgender is the word „sex“ . The interpretation of the word „sex“ includes these communities irrespective of them falling under the category of male or female.

The Apex Court of India in a landmark case observed that both gender and biological attributes constitute distinct components of sex. Biological characteristics include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of „sex“ under Articles 15 and 16 of the Indian Constitution includes discrimination on the ground of gender identity. The expression „sex“ is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female. Articles 15(2) and 16(4) has also been interpreted to provide social equality to these communities such as equality in public employment, it provides that the states shall have the power to make any special provision for the enhancement of these vulnerable minority who are now included within the category of socially and educationally backward classes(Byne 2014a). These Articles read with the Directive Principles of State Policy and various international instruments to which India is a party, call for social equality, which the transgender could realize,

only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders(Byne 2014b).

The right to choose one's own identity is one of the most essential right under this article to life with dignity, and this aspect is covered and protected by this Article as it symbolizes the most important right being a human, a right to live, which the State is required to protect from violation. The transgender communities have a right to dignified life which is one of the most important aspects of Article 21 of the Constitution of India(Daulaire 2014). Recognition of gender identity provides the recognition of their right to dignity and non-recognition violates the same, they have full right to express and live their life without fear. Also, the right to reputation extends to their protection(Warren, Bryant Smalley, and Nikki Barefoot 2016). Transgender in our society have not been seen with respect, they are often humiliated and beaten up by the authorities in power their reputation in the society has degraded and their significance in the society has been deteriorated. Various inhuman acts such as human trafficking and beggary are declared as an offence and punishable according to law(Sang et al. 2018). The scope of Article 23 of the Constitution of India is very wide as it includes within any form of discrimination which are forbidden. Immoral activities such as prostitution are usually seen down in the society. Everyone has a right to personal development, and this could be secured only when there exist a right against exploitation which creates a free environment for an individual(Durso 2018).

Transgenders are the worst victims of exploitation, due to their degraded economic status they indulge into prostitution and other immoral activities and are usually seen as taboo by the society(Flatt et al. 2018). The intention behind this Article is to secure independence of an individual identity by preventing exploitation of men by men.

### **Conclusion and Suggestions**

Indians are not ignorant to homosexuals but they don't feel free to discuss about reservation of homosexuality and the mindset of Indian people still remains. Young people understand the feelings of LGBT people but not the old generation people. Most of the times homosexuals and their behaviour are termed as deviant. Just because homosexuality is not widely practised in India does not mean it is not normal. Just because it is not common does not mean it should be condemned. India is a developing country and what will boost the growth and development in the country. The introduction of progressive laws will. Homosexuality will

remain a taboo as long as people are willing to shove it under the carpet of oblivion and 10% of Indian population consists of LGBT people in than transgender people are only the hormonal problem not the others and the suggestion is that government should pass a legislation for marriage of LGBT people and the government has to take remedial actions for them otherwise those people will suffer a lot of exploitation from the people.

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