



LGBTQIA AND ITS DEVELOPMENT IN INDIA AND AROUND THE WORLD

PRIYANSH RAGHUWANSHI*

ABSTRACT

Human rights are based on the assumption that all people are created equal. As a result, all persons are endowed with dignity, and all persons should be regarded as equals. The violation of such dignity is anything that undermines the concept of equality and creates a climate conducive to discrimination. LGBTI people's human rights are coming into greater focus throughout the globe, thanks to significant advancements in a number of nations in recent years, such as the introduction of new legislative safeguards for the community as a whole. The preamble to the Indian Constitution guarantees justice for all people, including social, economic, and political equality of standing. After ruling in *NALSA vs Union of India* in April 2014 that the rights and freedoms of transgender people in India were protected under the Constitution, the Supreme Court of India decriminalised adult consensual same-sex relationships in the Section 377 judgement review, which was completed in September 2018. These decisions are regarded as landmarks, both in terms of their broad interpretation of constitutional rights and in terms of their empowerment of LGBT individuals. So, now that Section 377 has been repealed, what is the best course of action? In this article the author tries to analyse the developments regarding LGBTQ community in india and around the globe.

Keywords: LGBTQIA, Lesbian , Gay , Transgender, Section 377.

INTRODUCTION

LGBTQIA stands for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual or Ally.¹Sexual Orientation is something which is though considered to be very normal and not something which one develops over his or her life by choice but is rather a compulsion

* 1st year student at National Law University , Odisha

¹ Alia E. Dastagir, 'LGBTQ Definitions Every Good Ally Should Know' (Usatoday.com, 2017) <https://www.usatoday.com/story/news/2017/06/15/lgbtq-glossary-slang-ally-learn-language/101200092/> accessed 13 June 2021.

by birth, by almost all sane-minded doctors, scientists and researchers. The respective person does not choose to not straight but it's sort of something which you can't change nor choose, it's like a chance of destiny.

LESBIAN²:- It refers to particularly women, who are both sexually, and emotionally attracted to women of the same gender that is female.

GAY³:- The male people who are both sexually and emotionally attracted to people of the same gender.

BISEXUAL⁴:- The people (male or female) who are attracted to both the genders, that is men and women both, in this the degree or proportion of attraction varies towards both the genders, and it depends on person to person.

TRANSGENDER⁵:- It refers to those people whose internal sexual identification or behavioral aspects does not match with the societal heteronormative norms as per cultural expectations and societal traditions or who experience the other gender.

QUEER:- One definition of queer is abnormal or strange, earlier it was used as a slur by those dominant and insensitive heterosexual people who did not consider LGBTQIA people as normal and natural. But later it was used by the LGBTQIA community people itself to show that these things cannot deter their will and confidence. The people from this community can use this term for themselves but people from outside can't use it for themselves. It also means questioning for the people who are not sure about their orientation and don't conform to these labels, it means they are discovering.

INTERSEX:- It is a wide-ranging term used to describe people with a range of physical variations. It may include chromosomes complications, hormonal variations, and other physical deficiency which do not match with the conventional bodily attributes of male and female as per society. Many times these are visible at birth in infancy and surgeries are also done to bring them into heteronormy.

ASEXUAL/ALLY:- Asexuality is different from celibacy, an asexual person may experience physical attraction, emotional attraction, or romantic attraction at times. The person may also be sexually attracted rarely and can also call himself an asexual.

² 'Acronyms Explained' (OutRight Action International, 2021) <https://outrightinternational.org/content/acronyms-explained> accessed 13 June 2021.

³ Ibid.

⁴ 'LGBTQIA Resource Center Glossary' (LGBTQIA Resource Center, 2021) <https://lgbtqia.ucdavis.edu/educated/glossary> accessed 13 June 2021.

⁵ Ibid.

Ally is the people in general who are understanding and support the LGBTQIA community with open arms and show their support everywhere, without any hesitation and shame.

SOCIAL ACCEPTANCE AND EQUAL RIGHTS

Almost three years have passed after the Honourable Supreme Court decriminalized Section 377,⁶ the LGBTQIA people said that the hardest and biggest hurdle they face today is of securing social acceptance and equal rights. As per the survey done by various organizations, there is still a high proportion of disregard for the people of this community in the general minds of the public. The discrimination and ignorance are more in the north side of the country as compared to south India, the survey revealed, maybe the less amount of literacy leading to less awareness is the cause of this.

But the good news is that the people are accepting bit by bit and their perception about the people or LGBTQIA is changing, the pace is very slow. But still, there is a very large amount of work is there which has to be done. The main concerns of the people are still widespread hate and the social stigma and the violence, the housing and the employment discrimination and workplace discrimination present everywhere, no freedom to love and be what you are. There are still staring eyes and those smirky smiles or looks you find everywhere when people find a lesbian or gay couple being affectionate in public.

Nonetheless, most of the Lgbt people remain closeted and in most of their life, they are forced by the fear of lack of social acceptance. The sad reality is found in the rural areas where, where LGBT people face very huge rejection from family and other people who find it unnatural and some kind of diseases and where most of the bisexual, lesbian and gay people are forced to marry.⁷ They then live an unhappy life full of guilt and mental agony is very high, in many cases people commit suicides. The people and children who don't get support from anyone around them and who face torture by their parents if their parents get to know to end up committing suicides.

To objectively have a difference of opinion is not fine in the context of ignoring the existence of the LGBTQIA people. It is the lack of people or rather the proportion of people coming out and admitting to be living the way they want to has also led to this increase in this discrimination

⁶ The Indian Penal Code (Section 377)

⁷ Jean Carabine, 'New Horizons? New Insights?' (Academia.edu, 2021) https://www.academia.edu/1561039/New_horizons_New_insights accessed 13 June 2021.

as people see this for the first time around them and it leads more not to believe that sexual orientation of such does not exist.

The law has accepted the rightful rights or more clearly the legal rights of the individuals and said they also should live with dignity and respect. The decriminalization of section 377 was in itself a great struggle to be endured, but there is still a very long race to gaining equal rights that heterosexual couples and straight people have under the constitution and the law.⁸

There is comparatively more awareness in the urban towns and the most is in the metropolitan cities of the world. But this is completely or rather very rarely found in the rural areas where individuals are forced to all kinds of conversion therapies and physical assault and even rapes by the relatives when they come out to their family.

Whereas in other countries like America and many European and Nordic countries there are many or almost all the rights are given to the LGBTQIA community, which heterosexual couples have for them. This is due to increased literacy and educated representatives who are there and they care about issues of importance and human wellbeing.

But in the case of India, it is still a far-fetched dream to get all the rights and respect as the other people or straight couples have in a community. The good part is that people and especially the youth to some extent understand this and finds it normal and support the claim for equal rights by the community. So there are high hopes that in coming times there will be faster progress and more acceptance among people.

POLITICS ON LGBTQIA

Politicians irrespective of any party, biological gender, caste, and creed have ignored the issue of LGBTQIA and their rights as if they do not even exist in the first place. This is because also of the fact that our elected representatives or politicians are not that much aware of it in the first place. And one of the other or an important reason for this is that LGBTQIA people do not form a major part of the voting share and their proportion is very small. Even if the population is not that meager or can make some difference if it decides to unite as a vote share under an organization and tell to all the contesting political parties that they as a community will vote only for that political parties which will consider their demands and in their manifesto.

The bill for giving equal rights to the LGBTQIA community was introduced as a private member bill by the Indian National Congress party's member and parliamentarian Mr. Shashi

⁸ Jessica Clarke, 'Against Immutability' (Yalelawjournal.org, 2021) <https://www.yalelawjournal.org/article/against-immutability> accessed 13 June 2021.

Tharoor but was not passed in parliament.⁹ There have very few politicians who talked or supported the idea of giving all kinds of rights to the community. So we must choose leaders who are open-minded and educated and aware enough to understand our issues and problems. The lack of education and people being scared to have made the government insensitive to the issues of the community.

As the LGBTQIA community is scattered and most of the time government tends to ignore them and their issues. They are also divided by ideologies and political affiliations and many more reasons. The Nationalist Congress Party's last year formed an LGBT cell, which is the first of a kind by any political party in this country. This is an appreciable step but there is much more to be done. The focus is most of the time on transgender people in the LGBTQIA sphere, as India as a country is more comfortable in accepting them, than other people of this community. There have been instances where transgender people have participated in the elections and have won too. As in 1998, a transgender named, Shabnam Bano, got elected as an MLA in Madhya Pradesh, contesting independently¹⁰. Also, a "kinnar", named Kamla became Mayor of Sagar district of Madhya Pradesh in 2009. In the 2019 elections, only 5 transgender people contested parliamentary elections all over the country from specific political parties. Society though is acceptable to their existence but is not empathetic to them.

It is comfortable in giving them money when they beg or come at specific festivals or occasions but gets uncomfortable if they are given equal rights like free education. This may be the reason why our politicians are not giving them an opportunity for their upliftment like reservation in education, job, and other social benefits, as the politicians also come from the same society. Though transgender empowerment is more important in this country as they are not accepted by parents and left when they get to know, at birth or later part of life. Whereas other people like gay, lesbian, bisexual, and queer can stay in the closet until they are financially independent. And they can remain in the closet at the workplace and for society too for most of their life, coming out only to the closed ones. This is a privilege that is not available to transgender people, hijra, or kinnar. They are left at birth by their parents when they get to know or later at adolescence, and

⁹ 'Shashi Tharoor's Bill On Homosexuality Voted Out By Lok Sabha' (The Economic Times, 2021) <https://economictimes.indiatimes.com/news/politics-and-nation/shashi-tharoors-bill-on-homosexuality-voted-out-by-lok-sabha/articleshow/50238648.cms?from=mdr> accessed 13 June 2021.

¹⁰ Education Today, GK Affairs and Listicles: Microfacts, 'This International Transgender Day Of Remembrance, Here Are 6 Indian Transgenders Who Made A Difference' (India Today, 2021) <https://www.indiatoday.in/education-today/gk-current-affairs/story/6-indian-transgenders-who-dared-to-make-a-difference-311154-2016-03-31> accessed 13 June 2021.

this continuous cycle does not allow them to live a life of dignity and self-respect, instead, they need to beg for their living and sometimes enter into prostitution, unwillingly.

But it is high time now that people realize that politicians do not give this meager representation to the LGBTQIA community and increase awareness about that community and people in the society as a whole.¹¹ Because if people will be comfortable and support their rights then the government will take the necessary steps and the political parties will also increase their representation.

HISTORY OF SECTION 377 AND LEGAL BATTLE

This law was brought by Britishers during their rule in the 1860s, this criminalized consensual penile, non-vaginal sexual acts.¹² This law and the conservative cultural mindset made the LGBTQIA community face a lot of violence and harassment and police atrocities at the hands of religious groups and other populist orthodox groups and their families too. They were not able to come in public, and report incidences of harassment and violence, and testing for HIV/AIDS, and thus was not good for them.

The LGBTQIA movement primarily for legal reform and abolishment or decriminalization of Section 377 started in the starting of the 1990s and asked for equal rights. This law was challenged as violative to the very basic rights or the basic structure of the constitution, on the grounds of being violative of Article 14(Right to equality), Right against discrimination (Article 15), Freedom of Speech and Expression (Article 19), and most importantly against Right to Life (Article 21).

It has been a very long and tedious journey of almost 3 decades for decriminalizing Section 377 and making it unconstitutional. In the year 2009, the respected Delhi High Court made this law unconstitutional, but some of the conservative and religious groups challenged this verdict of the Delhi High Court in the Supreme Court. They said this will threaten their culture and the institution of marriage and may lead to the promotion of homosexual activities and increasing the spread of HIV/AIDS. In 2013 the Supreme Court recriminalized this law, overturning the decision of the Delhi High Court. But this could not deter the people from this community to ask for their rights and living, so they filed for the review of this decision. On September 6 of 2018, the Honourable Supreme Court in a very historic judgment decriminalized this law, one of

¹¹ Anuradha Rajiven, "Power, Voice and Rights A Turning Point for Gender Equality in Asia and the Pacific" (First published, February 2010).

¹²(*Downloads.cs.stanford.edu*,2021) http://downloads.cs.stanford.edu/nlp/data/jiwei/data/vocab_wiki.txt accessed 13 June 2021.

the Judges of the bench Justice Indu Malhotra, apologized to the community for not able to make this decision before¹³. It has been an achievement but still, considerable steps have to be taken by the government and courts to give equal rights to the people. Many rights are very basic but are not available to people of this community the, legal recognition of marriage, adoption, and other rights.

There has been though much increase in awareness after this decision of the Supreme Court, more people have got to know about the community and various sexual orientation which it covers. There have been many cases or petitions filed in various high courts where people have got protection by the court in case of same-sex relationship and cases are there asking for more equal rights in different courts. So there is more need for reforms in law and civil society to increase the acceptance by the society and more people will come out of the closet and live the life they want with dignity and respect.

CONCLUSION AND WAY FORWARD

This is just the beginning, there are many more things, rights, and reforms to be achieved in this country for the community. After the decriminalization of homosexuality, the people are asking for other rights, which form the basic rights for heterosexual individuals like, adoption rights, marriage, and guardianship, and other civil liberties.¹⁴ To be able to live life the way you want is a major motivation of the person which improves his productivity and well being as overall. There needs to be a change in the mindset of the people of this country, and the society as a whole, as it is high time that people understand that it is not a choice but a compulsion for, they are like this from birth. There needs to be an increase in awareness of the people, there are many instances of well-educated people harassing children if they come out as homosexual, and doing all kinds of conversion therapies and all. So there is a need for people to come out and accept their children openly, as this will promote other people to also do the same.

Courts can give protection, guide, or order the government to make equal laws, but ultimately it is the government, the parliamentarians which will do the work, so it is important for them to understand and that will only happen when people from the community, their parents and allies

¹³ *Navej Singh Johar v. Union of India*, (2018) 10 SCC 1.

¹⁴ Emerson Lopes and others, 'Protecting The Human Rights Of SEXUAL MINORITIES In Contemporary Africa, Sylvie Namwase & Adrian Jjuuko (Eds)' (Academia.edu, 2021) https://www.academia.edu/34913974/Protecting_the_human_rights_of_SEXUAL_MINORITIES_in_contemporary_Africa_Sylvie_Namwase_and_Adrian_Jjuuko_ed accessed 13 June 2021.

come forward to demand their rights.¹⁵ The government is still very narrow in its stand that giving people of this community equal rights will destroy their culture and peace in society, but this is not an excuse as if we take this analogy then sati and child marriage practice was also a culture that time, but were wrong and were made illegal as a result of it. Many countries around the world, have changed their law and have made separate laws for giving equal rights and protections to the LGBTQIA community, especially the European countries. India being the land of diversity should also take necessary steps for giving equal rights to the LGBTQIA community. If the argument is that it is not in our culture, then the reality is that its presence can be traced from many religious scriptures from a very long time in Hinduism. So the government, judiciary, and especially the people belonging to the community have to come forward to ask for all the equal rights and protection for living a life with dignity and without fear. But seeing the current pace of development, there is still very much to achieve and the pace should also be increased.

¹⁵ 'Human Rights And Democracy Report 2014' (GOV.UK, 2021) <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2014/human-rights-and-democracy-report-2014> accessed 13 June 2021.