

CHANGING SCENRIO IN THE RIGHTS OF LGBTQ COMMUNITY

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Abstract: Rights of LGBTQ is one of the major evil in the society it consist of same importance as other relevant issues like rights of other minor community. As in my view LGBT is the community which faces huge discrimination harassment and other social difficulties. Over the last decade LGBTQ people have gained more and more tolerance in India, especially in large cities not even this LGBTQ people often face rejection from their own families and forced opposite sex marriages. In my article I am going to talk from its history to present scenario in other words it is necessary for us to go in its root and understand what does LGBTQ stands for from where does it come, their existence in Vedic and modern period, forms and contexts of sexual offences such as physical, mental emotional after that we will discuss legal provision with respect to IPC, CONSTITUTION, INDIAN EVIDENCE ACT. it is also necessary to consider the statically data all over the world with India and further the challenges faced by them in India with this it is also necessary to know the Indian judicial prospective and its major landmark cases and gray areas which contains causes of various offences against LGBTQ, its impact further it is of greater view to consider international conventions at global level and in last we will consider relevant suggestions and conclude it

Index Terms- LGBTQ, challenges, Rights, Discrimination, Present Scenario

I. INTRODUCTION

I AM WHAT I AM ,SO TAKE ME AS I AM

- By Johann wolfgang (German Scholar)

We all know that the constitution of India under article 14 imparts equal rights to everyone as does not make any discrimination among any religion, caste, sex. *(The discrimination on the ground of "sex" under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression "sex" used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male nor female).*

The majoritarian views and popular morality cannot dictate constitutional rights.

Even the god who made this entire world has not discriminated among human being then how a group of people having majority can discriminate only on the basis of gender. The gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person. A person's sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology. The learned Judge in case Navtej Singh Johar v. Union of India observed that at times, genital anatomy problems may arise in certain persons in the sense that their innate perception of themselves is not in conformity with the sex assigned to them at birth and may include pre-and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation. Elaborating further, he said:-

"Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category."

II. HISTORY

Vedas , are considered as the most significant religious books on basis of which a human live his life as it is mentioned in Vedas Hinduism celebrates nature (prakriti) and all that it offers: nara (male), napunsak (queer), nari (women), plants and animals. In nature, all kinds of sexuality exist.

As far as Hinduism goes, Devdutt Patnaik says, to find out about the existence of same sex relationships, LGBTQ, Queers one has to look up these sources such as images on temple walls, sacred narratives and ancient law book.

If we talk about holly book Mahabharata, the king Drupada raises his daughter Shikhandi as a man and even she got married to girl but when her wife got to know all the truth. She returned back to her father's home and tells him the entire story after which he threatens to destroy the kingdom of Drupada. The timely intervention of a Yaksha saves the day. He lets Shikhandi use his manhood for a night and perform his husbandly duties.

The other story came into our notice is about the hero Arjun of holly book Mahabharata was cursed to stay in agyatwas for 1 year which means that he had to hide his real identity from real world so he transformed into brihannala a music and dance teacher in the court of the King Virata spend his one year as a eunuch.

As the nun Sulabha tells Janaka in the Mahabharata, 'The resident of the body (dehi) has no gender. The body (dehi) has many genders and desires.' The hermit rejects the body and wealth and seeks dehi. The householder finds the wisdom to celebrate the diverse manifestation of deha as an expression of dehi. Deha is an outcome of karma over which we have no control. Dehi is a witness observing how, in ignorance (avidya), we get agitated and seek control over diversity and establish hierarchy.

Furthermore, the third gender was recognised during the Lord Rama era. According to hijra folklore when Lord Rama went to exile, he appealed to all man and women who followed them to return Ayodhya. Since he said nothing to those who were neither male nor female, these people waited outside until Lord Rama returned. Touched by their gesture Lord Rama give boon and declared non-man would be king in the Kali Yuga.

Some of the temples such as khajraho temple in Madhya Pradesh (10th century), Bhramdeo Temple in Chhattisgarh (10th century) Markandeshwar temple in Maharashtra (12th century) the sun temple of konark (13th century), has sexual imagery on walls, the architectural marvel which represent sexual act between men women which might be difficult for many people to even imagine.

III. CHALLENGES FACED BY LGBTQ

"To deny people their human right is to challenge their very humanity"

-by Nelson Mandela

Today India is entering into diversified global fields, doing development but in contradiction the scenario look more challenging for some of the community. after the 72 years of independence still there are some community which are fighting .fighting from their family from their friend close relative even from whole society for their identities, for their basic rights .country like India is developing with rapid pace but the mentality of the people is still has not changed if we talk in literal language in mentality People of India are still backward. Now days the youth f India is accepting the changes but that too is limited to the extent of online world and real world the basic rights of these people got blur.

Acceptance; in urban India, a new trend is recorded that social media is a great source of expressing your views and people happily tweet, comment with hash tag talk happily accept the modern change but when a challenge of accepting the member of their own family they got mentally disabled. They don't think of their own child they think of society or we say bidadri .that society who don't even know that with how many difficulties the parents had raised the child and other problems of the LGBTQ family. After confessing about their identity the first questions that ever come to family's mind what the society think?

I would like to ask the same society do these people don't have basic rights to live with dignity? Do they don't have right of equality? Do they don't have right to choose? Do they don't have right to work? Do they don't have right to stand in society?

We know that society has its own norms, rules, regulation which shall be followed by every human being as these are made for our well being and if broke by anyone then he shall be subject to penalize but the people who don't even has any fault why they are subject to discrimination, non acceptance, humility. What they are is not chosen by them then why society doesn't accept them. In the urban cities where people are more literate, aware about this concept and still resist themselves from accepting then what can you expect from rural society.

In recent studies it is found that most LGBT people are acceptable to family if they agree to behave like heterosexual.

Price Manvendra Singh gohil, had openly accepted and come out with his identity, whose story has been covered by media over the past several years .He said in a interview that when he confessed to his family about his identity they also revolted but latterly they accepted him, no heads several initiatives such as Lakshya Trust were taken by them to help Lgbt community.

Anwesh Sahoo, Mr Gay India 2016, who came out to his family at the age of 16, has a different perspective: "I would not recommend waiting for the perfect time. Staying in the closet is a huge psychological burden. If you and your family have access to information, I suggest you do it whenever you feel strongly about your identity. "

In many cases the Lgbt people after confessing were taken to the psychiatrist. Family members forced the people to undergo "corrective" therapy. As the parents of the child think that being a LGBT is a sort of disease so the child shall be taken to doctor.

Another major issue is unemployment as the people being a gay ,lesbian or a transgender is like criminal , they don't look up to your talent they consider you as a alien .these guys are denied for job opportunities or made to leave from office with abusive language.

Physical violence and blackmail; one of the adverse problem faced by this group. According to the centres for disease control and prevention (CDC) , lesbian ,gay, and bisexual people experience sexual violence at similar or higher rates then heterosexuals .the national intimate partner and sexual violence survey found for LGBTQ people;

- 44% of lesbians and 61% of bisexual women experience rape, physical violence ,or stalking by an intimate partner , compared to 35% of heterosexual women
- 26% of gay men and 37% of bisexual men experience rape, physical violence, or stalking by an intimate partner, compared to 29% of heterosexual men.
- 40% of gay man and 47 % of bisexual men have been experienced sexual violence other than rape, compared to 21% of heterosexual women.

The other major problem is harassment at work place, at first instance these people doesn't get employment but in any case if they get job ultimately they were the subject of nasty jokes, humiliation. In year 2016 the survey of 100 LBGT employees was conducted by INDIAN GAY AND LESBIAN EMPOWERMENT (MINGLE), an advocacy group and found that 40 percent of the Lgbt group had been sexually and mentally are harassed at work place and most of them are not covered by LGBT workplace protection policies .

HOMELESSNESS, POVERTY, LACK OF HEALTH CARE etc

The first battle of these people is against their own family as when they accept their true identity family usually pressurise the person to accept the conditions but if he denies to change his identity or hide it the first thing which family do is to disown the person. They are thrown out of the house.

Health care, for these people there are no specific schemes of policies, no health care facilities are provided. Due to the most ignorant community of the society the government has also not made any special provision for them.

Poverty, no proper education, always has fear from getting humiliated from their near and dear ones, feel insecure. The fear of honour killing is also present in their mind from the family itself.

IV. JUDICIAL PERSPECTIVE

Judiciary is considered to be as a third pillar of the society. The decision laid down by the judiciary is of major importance as it ensures that there shall be no violation of someone's right some of the major decision give by the judiciary are as follows.

1. In the case of Suresh Kumar Kaushal and ors. Vs Naz Foundation and Ors decided in 2013. the hon'ble SC overruled the decision of Naz Foundation Vs Government of NCT and Ors ,2009 , and observed that
These appeals are directed against order dated 2.7.2009 by which the Division Bench of the Delhi High Court allowed the writ petition filed by NAZ Foundation - Respondent No. 1 herein, by way of Public Interest Litigation (PIL) challenging the constitutional validity of Section 377 of the Indian Penal Code, 1860 (Indian Penal Code) in the following terms:
"We declare that Section 377 Indian Penal Code, insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. The provisions of Section 377 Indian Penal Code will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. By 'adult' we mean everyone who is 18 years of age and above. A person below 18 would be presumed not to be able to consent to a sexual act. This clarification will hold till, of course, Parliament chooses to amend the law to effectuate the recommendation of the Law Commission of India in its 172nd Report which we believe removes a great deal of confusion. Secondly, we clarify that our judgment will not result in the re-opening of criminal cases involving Section 377 Indian Penal Code that have already attained finality".
Further the observation made in this case was that the LGBT is minority community. The mere fact that the percentage of population whose fundamental right to privacy is being abridged by the existence of Section 377 in its present form is low does not impose a limitation upon this Court from protecting the fundamental rights of those who are so affected by the present Section 377 Indian Penal Code.
2. In the land mark judgement of Navtej Singh Johar and ors. Vs. Union of India and Ors., the hon'ble SC also gave the reference of the nine-Judge bench decision in Puttaswamy (supra), the challenge to the vires of Section 377 Indian Penal Code has been stronger than ever. It needs to be underscored that in the said decision, the nine-Judge Bench has held that sexual orientation is also a facet of a person's privacy and that the right to privacy is a fundamental right under the Constitution of India and further declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution.

3. It is, however, clarified that such consent must be free consent, which is completely voluntary in nature, and devoid of any duress or coercion.
 - ii. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the reopening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or provisional stages.
 - iii. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.
 - iv. The judgment in *Suresh K. Koushal and Anr. v. Naz Foundation and Ors.* is hereby overruled for the reasons that The Petitioners have referred to the decision of this Court in *NALSA* case wherein transgender have been recognized as a third gender apart from male and female and have been given certain rights. Yet, in view of the existence of Section 377 in the Indian Penal Code, The consensual activities amongst transgender would continue to constitute an offence. Drawing inspiration from the *NALSA* case, the Petitioners submit that the rights of the LGBT group are not fully realized and they remain incomplete citizens because their expression as regards sexuality is not allowed to be pronounced owing to the criminality attached to the sexual acts between these persons which deserves to be given a burial and, therefore, the rights of the LGBT community also need equal, if not more, constitutional protection. Accordingly, the Petitioners are of the view that Section 377 of the Indian Penal Code be read down qua the LGBT community so as to confine it only to the offence of bestiality and non-consensual acts in view of the fact that with the coming into force of the Criminal Law (Amendment) Act, 2013 and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the scope of sexual assault has been widened to include non peno-vaginal sexual assault and also criminalize non-consensual sexual acts between children thereby plugging important gaps in the law governing sexual violence in India.

V. CHALLENGING POSITION IN THE RIGHTS OF LGBTQ

After decriminalisation of homosexuality a huge victory has been achieved by LGBTQ activist. The supreme court of India finally gave equal rights to this community in other words the judgement shows equal dignity in the eyes of laws. Perhaps they had received recognition but in several situations this community is lacking behind in today's era.

There are several essential rights for which they are still waiting such as;

1. Right to surrogacy; according to THE SURROGACY (REGULATION) BILL, 2018 the intended couple (male and female) married for at least five years and are Indian citizen are eligible for surrogacy.
This bill prohibits LGBT couples from commissioning surrogates. The law is made with respect to Heterosexual couples only. This bill also says that the surrogate mothers are mandate to be only close relative. However the bill has certain loopholes. The scope of the bill is limited to the extent heterosexual people. As no provision is there with subject to providing any right of surrogacy and adoption to LGBTQ people which ultimately means violation of their legal rights.
Harish Iyer, queer "If surrogacy is out of bounds for queer persons, has the government strengthened its policy for adoption by queer persons? The answer is a loud "no". There are enough studies in the west that prove that queer persons make good parents, not as good as but better than heterosexual persons"
2. Right of protection at workplace ; it is been found by the survey done by MINGLE, an advocacy group that 40 percent of LGBTQ people had been harassed at work places and majority of the working places do not provide friendly environment for LGBTQ and no specific protection policies with respect to discrimination and other special policies.
Many organisation working for LGBTQ has observed that the many employers don't employee LGBTQ because they believe that being LGBT is crime not just a sexual identity. LGBTQ are friendly approach to sexual harassment so the government shall make rules and direct the other organisation for making policies in favour of LGBTQ at workplace.
3. Rights of reservation for employment; one of the special rights that shall be provide to LGBTQ is right to reservation for employment in different sector. For rising up the status of the LGBTQ in the society it is essential that the equal opportunities shall be provided to them as we talk about women and children for whom special rules are made for maintaining their rights and status. In similar way the right of employment shall be given to them by reserving quotas, seats in assembly and other governmental and non- governmental organisation.
4. Right of protection against discrimination in public accommodation; although the mindset of the people can't be change by setting laws. Every individual has their own opinion with respect to social issues, but doing abusive comments, humiliate, discrimination is against law.
According to section 15 (1) states that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
We had many time observed that there are separate toilets for people living with disabilities at public places but the LGBTQ don't have any choice either they have to go in male washroom or female due to which they refuse to use service of public washroom. Which ultimately leads to discrimination in public places?
5. Safety in school; the basic foundation of humanity lay down in school only. Education is the only source through which every social evil could be removed but do you know the foundation of discrimination is leant in schools only. Yes, this is a bitter truth. Many of the LGBTQ children run away from the schools due to harsh comments from their

class mate as these people can't hide their identities. LGBTQ children are visibly different from other children so not only children but the staff of the school abuse and comment on them like see! How he walk? Look at the movement of his hand. Which creates a sense of insecurity in the mind of LGBTQ and even in some cases they come under depression and anyhow want to run from the school or society.

"When I was younger, I wanted to be a teacher sometimes, sometimes a nurse, sometimes a tailor but I run away from an abusive home and school" - kummi (Transgender)

These people who never went to school or run away from the school ,home don't have much choices .they don't have skills to do much so often they beg, sell their bodies for sex, or extract money from celebrating the birth of child or marriage by threatening to curse them with infertility or bad luck .

Making separate schools for LGBTQ would not be a solution instead of this the education of giving respects to LGBTQ people and strict norms shall be there for school staff in case found guilty then shall be punished with strict punishment.

VI. CONCLUSION / SUGGESTION

As per my views decriminalising the section 377 is a big victory achieved after a long struggle but still the LGBTQ are deprived of their basic rights.

In the Puranas, God changes gender constantly: Every god has a female Shakti: thus Vinayaka has Vinayaki, Varaha has Varahi. Shiva becomes Ardhanarishwara, or half a woman, to make the Goddess happy. He becomes Gopeshwar – milkmaid or cow-girl form of Shiva – to join Krishna in the raas-leela. When Kali decides to become Krishna, Shiva takes the form of Radha, as per Baul traditions. Vishnu becomes the damsel Mohini to enchant demons and sages. In Tulsidas' Ram-charit-manas, God says that he loves all creatures: plants, animals, males, females and queers (napunsaka), who give up malice and surrender to his grace.

Lord Ayappa, who is worshipped in the south part of India. It is believed that he was born out of the union between Lord Shiva and Mohini (Vishnu).

Not even in Ancient era but in modern period the LGBTQ were recognised.

What they are is not by their choice then why not we treat them equal?

As per my suggestion an amendment shall be done by under article 15(3) of constitution; it states that the state is entitle to make any special provision with respect to women or child. In addition to this with word "child" and "women" the word "LGBTQ" shall be added. As we talk about every person is equal in the eyes of laws under article 14 of the constitution but doing that equality we have to uplift the status of LGBTQ equals to the other community of society. The doctrine of reasonable classification states that equality among equal for that it is necessary for every state and at central level to formulate specific laws.

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