



STATUS OF LGBTQ IN INDIA

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Abstract

One relief for LGBT people came in 2018: homosexual acts that are consensual are not inherently wrong. That, however, is insufficient for them to alter the stereotypical thinking that pervades our society. Both their family and society have done them a lot of harm. They have always received different treatment. For same-sex attracted individuals, a specific provision was made in the Indian Penal Code. However, the Hon'ble Supreme Court decriminalised a portion of Section 377 in the case of Navtej Singh Johar, meaning that a consensual same-sex sexual activity is no longer an offence. In recent years, LGBTQ (lesbian, gay, bisexual, transgender, and questioning) rights in India have changed. However, compared to non-members of the LGBTQ community, LGBTQ citizens continue to encounter some social and legal challenges. It is the responsibility of the court to make a fair decision, the government to see that the verdict reaches the public, and the general public to warmly accept the court's ruling. However, despite the Supreme Court of India's 2018 action in Navtej Singh Johar v. Union of India, which eliminated the portion of Section 377 of the Indian Penal Code that made homosexual acts illegal, the Government and the community still oppose this decision. Both the federal and state governments failed to take any special measures for the advancement of LGBTQ people, and the community also failed to win the support of the general populace. In particular, the paper makes reference to transgender people and judicial pronouncements as it examines the long struggle of the LGBTQ Community for basic Fundamental Rights and the Discrimination they face in various spheres of life. The final section of the paper examines the challenges the LGBT Community will face as well as the additional legal and social reforms required for LGBT people to achieve full equality and acceptance in the conservative Indian society. A non-consensual sexual act is still illegal

according to section 377. Therefore, neither decriminalisation nor our society as a whole will suffice for LGBT people. They continue to be denied obtaining either legal or societal status. This essay aims to present the current situation of LGBT people in India and to educate readers about the fact that they are not abnormal or different. In this essay, harms to LGBT people are discussed in relation to various social facts and behaviours.

Introduction

Shakespeare asks, "What's in a name?" through one of his characters in a play. A rose would smell the same if we called it by any other name. This adage implies that what matters most are a substance's fundamental properties and an entity's basic traits, not the name that 'it' or 'a person' is called by. People also cannot be treated differently, subjected to discrimination, or denied access to Basic Human Rights solely because of their sexual preferences. The fundamental tenet of human rights is that all people are created equally. It follows that all people should be 'treated equally and with dignity. Anything that lessens that dignity is wrong because it violates the equality principle and makes discrimination possible. The preamble of the Indian Constitution, which demands justice and equality of status for everyone in all spheres, whether they be social, economic, or political, is also broken by this discrimination. Gay Pride parades held in Delhi, Kolkata, and Bangalore on July 29, 2008, show that while more Indian youths than ever are accepting of LGBT and Queer identities, acceptance of their sexuality and the freedom to openly express their gender choices still remain a constant struggle for LGBTQ, especially in a country with such a diverse population as India.

WHAT IS LGBTQ+

The following groups of people are referred to as "LGBTQ+"

- A woman who is sexually attracted to another woman is referred to as a lesbian.
- Gay: A gay person is a man who is attracted to another man sexually.
- Bisexual: Someone who experiences sexual attraction to individuals of both sexes is said to be bisexual.
- Those whose gender identity and gender expression diverge from those typically associated with their birth sex are referred to as transgender.

- The term "queer" is used to describe individuals who identify as neither heterosexual nor cisgender (the opposite of transgender). The term "queer" itself refers to a group of people who prefer to use pronouns rather than only He, She, etc.'+' in 'LGBTQ+' denotes

HISTORY OF HOMOSEXUALITY IN INDIA

When a person is attracted to people of the same gender to which he or she belongs, that person is said to be homosexual, which is defined as having sexual desire or behaviour directed towards people of the same sex or gender. It is not a brand-new idea; India has been using it for a very long time. Sexual acts between women are depicted in ancient texts like the Rig Veda, which dates back to around 1500 BC, and sculptures as revelations of a feminine world where sexuality was based on pleasure and fertility. Historical examples of same-sex relationships include the description of homosexual acts in the Kamasutra, the harems of young boys kept by Muslim Nawabs and Hindu Aristocrats, and male homosexuality in mediaeval Muslim history, such as Malik Kafur.

In her book, Amara Das Wilhelm compiled years of in-depth research on Sanskrit texts from mediaeval and ancient India, demonstrating that homosexuals and the "third gender" were not only present but also widely accepted in Indian society at the time. Lesbians were referred to as "Swarinis" in the Kama Sutra, an ancient Hindu text from India written in the second century. This is stated in the chapter "Purushayita" of the book. These women frequently got hitched to other women and had kids together. Additionally, they were easily accepted by both the "third gender" community and mainstream society.

However, with the emergence of Vedic Brahmanism and later British Colonialism, these experiences began to lose their significance. According to researcher Giti Thadani, the suppression of homosexuality began with the Aryan invasion in 1500 B.C.

The Manusmriti makes mention of penalties like caste loss, hefty fines, and whippings for homosexual and lesbian behaviour. The imposition of these penalties shows unequivocally that homosexuality was used at the time. Since 1974, homosexuality has no longer been classified as a mental disorder and is no longer considered an abnormal behaviour. This demonstrates how homosexuality evolved over time from being a wholly natural act to an unnatural act that goes against the natural order.

PROBLEMS FACED BY LGBTQ

Even though we might call ourselves advance and modern generation but it is disheartening to see the atrocities faced by people belonging to LGBTQ Community at different places and environment. Some of the common problems which they face are: According to UNESCO Report of 2018, LGBTQ Children face a lot of bullying in schools, colleges etc. and are also discriminated. This act of bullying and discrimination leaves a permanent scar in their life and it often takes them years to get out of that. (UNESCO Report, 2018) If a person declare himself or is found to be belonging to LGBTQ Community then generally a bounty is set for their Secret Honour Killings. Recently, many people have become victim of such honour killings. Women suffer the most for belonging to LGBTQ Community as when a woman declare herself as a lesbian or a bisexual, then the family generally suggests them to go for sanctioned corrective rapes in which a woman has sexual intercourse with a man without her will to treat the 'Disease of Homosexuality'. LGBTQ People not only face discrimination in schools and colleges but this menace does not end even after the completion of their education, they are also Discriminated while getting jobs as no employer wants to hire a person with a different sexual preference as that idea does not go well with the society and is often questioned by other employees. Thus, they are unable to get better pay jobs and are stuck in in the vicious circle of poverty. Non-acceptability of LGBTQ is not only prevalent in rural areas but also in urban families as the families in urban areas are more concerned about their status in the society that they tend to forget their duties towards their children and often throw them out of the houses in order to prevent their social status when they find out that their child belong to LGBTQ Community. LGBTQ people are often thrown to correction centers where they are administered psychotic drugs as part of 'corrective therapy for Homosexuality'. They get so addicted to these drugs that even after getting out from the torture of correction centers, they find solace in drugs and other psychotropic substances and thereby, become addicted to it. People belonging to LGBTQ Community are often Isolated from everyone, which leads them into depression.

RIGHTS OF TRANSGENDER PEOPLE

Due to their degraded social, educational, and economic status, transgender people in India have been the LGBT+ community's worst victims of exploitation. These people were the main activists during the mass LGBT movement. These people have never been treated as members of society

and have always been the targets of violence, exploitation, and exclusion by both society and its own members. These people frequently turn to begging or prostitution due to constant rejection and a lack of resources, which makes them more susceptible to discrimination, STDs, and crimes like human trafficking. However, the Supreme Court's decision in *NALSA v. Union of India* in 2014 gave these transgender people new hope and joy because they were acknowledged as the third gender for the first time in history.

(A) *National Legal Services Authority v. Union of India*, 2014

Whether it was necessary to recognise the hijra and transgender community as a third gender for the purposes of public health, education, employment, reservations, and other welfare programmes was the question before the Hon'ble Supreme Court in this case. In this historic decision, the Supreme Court granted hijras, or transgender people, the status of "third gender." Before the judgement, transgender people were compelled to identify as either male or female, but now they can proudly say they are transgender or Third Gender. Additionally, the judgement established the framework for ensuring the transgender community a number of fundamental human rights, which can be summed up as follows:

- The non-recognition of their identities, according to the Supreme Court, violated Articles 14, 15, 16, and 21 of the Indian Constitution.
- The Supreme Court further ordered the Indian government to treat those who identify as "Third Gender" as a class that is economically and socially disadvantaged when it comes to reservations. According to the judgement, the third gender would be classified as a "other backward class" (OBC) to give them the benefit of reservation in relation to government jobs and educational institutions. It also stipulated that the government should make appropriate policies for the transgender community in light of Articles 15(2) and 16(4) to ensure equality of opportunity in education and employment.
- The court also acknowledged that a conflict between a person's gender at birth and their current gender identity is not necessarily a pathological condition. So, the emphasis should be on "resolving distress over a mismatch" rather than "treating the abnormality." Simply put, it indicates that the court understood the distinction between the biological and gender aspects of sex. The court defined gender attributes as one's self-image, or a person's deep emotional or psychological sense of sexual identity and character, which is not restricted to

the binary sense of male and female but can lie on a broad spectrum. The court defined biological characteristics to include genital, secondary sexual features, chromosomes, etc.

Transgender people can now change their gender without undergoing sex reassignment surgery as a result of this ruling. They also have a constitutional right to self-identify as a third gender and to register that identity. In addition to this, various state governments made small changes to housing and health policies to help the transgender community. However, the passage of the Transgender Persons Bill, 2018 dealt this decision a serious blow.

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2019

The Transgender Persons (Protection of Rights) Bill, 2019, was passed with the aim of defending the rights of the transgender community by outlawing discrimination against them in the workplace, in healthcare, in education, and in access to public and private institutions. However, the bill further exposes them to institutional oppression and dehumanises their body and identity in the name of empowering the community. The following gaps exist in the Bill:

- The bill denies transgender people the freedom to choose their sexual orientation. The bill states that the District Magistrate's certification of the sex reassignment surgery is required before the gender identity on documents can be changed. Transgender people's autonomy and privacy are impacted by this, and they are also at risk of harassment from the government.
- According to the Transgender Persons (Protection of Rights) Bill of 2019, the sentence for sexual assault against a transgender person is only two years in prison; however, if the same offence were committed against a woman, the IPC would impose a harsher sentence of up to seven years in prison.
- There are no provisions relating to offering any scholarships, making any accommodations, changing the school curriculum to make it LGBT+ inclusive, or making sure that the trans community has safe inclusive schools and workplaces.

GOVERNMENT'S VIEW ON LGBT+

Since homosexuality is viewed as immoral in India, the Ministry of Home Affairs stated on February 23, 2012, that it was opposed to the Delhi High Court's decision to decriminalise

homosexual activity. On February 28, 2012, the Central Government changed its position and argued that decriminalising homosexual activity was legal. Shashi Tharoor, an Indian National Congress party member, introduced a bill on December 18, 2015, to decriminalise Section 377. After introducing the first State government policy on transgender people in 2016, Kerala proposed offering free sex-reassignment surgeries in government hospitals. The state government made a wise decision with this action, raising hopes that all future actions taken in regard to LGBT people will go in the right direction. However, the Central Government's position in a case recently asserted before the Delhi High Court that marriage can only occur between biological men and women on February 25, 2021. Thereby vehemently rejecting the legalisation of same-sex unions in marriage.

After hearing a Public Interest Litigation (PIL) challenging a Health Ministry directive banning transgender people, the Hon. Supreme Court of India issued notices to the Centre and other parties on March 5, 2021. Section 377, but the house defeated it by a vote of 71–24.

A petition filed by one T. Santa Singh challenging the constitutionality of Sections 12 and 51 of the Guidelines on Blood Donor Selection and Blood Donor Referral, 2017, issued by the Ministry of Health and Family Welfare, was being heard by a three-judge bench led by Chief Justice of India (CJI) SA Bobde. Members of the LGBT community and female sex workers were completely prohibited from donating blood under the rule because these groups were thought to be at a high risk of getting HIV/AIDS. As a result, the guidelines arbitrarily prohibit members of the LGBT Community from donating blood, rather than testing the blood sample of donors.

The aforementioned examples demonstrate that the central and state governments' positions on the rights of the LGBT community are in flux, and it is still unclear whether they support the entire community or not. The Ministry of Home Affairs expressed its concerns on February 3, 2012.

On September 6, 2018, the five-judge panel issued its decision, which was unanimously held to be:

- Because it violates the fundamental rights to intimacy, autonomy, and identity, Section 377(1) is unconstitutional as far as consenting adult sexual activity is concerned. As a result, homosexual activity is no longer illegal.

- Section 377 is ambiguous and fails to distinguish between "natural" and "unnatural" things in an understandable way.
- Additionally, it restricts the right to freedom of expression protected by Article 19 of the Indian Constitution, which guarantees the right to express one's sexual orientation.
- The right to life is violated when one's sexual orientation is disregarded because it is an essential component of one's self-identity.
- The mere fact that they make up a tiny portion of the population cannot be used as a justification to deny them basic rights.
- The Koushal judgement was also harshly criticised by the court and was labelled as being irrational, arbitrarily, and obviously unconstitutional.
- It was also emphasised that discrimination based on sexual orientation is against the law because, as evidenced by scientific and biological facts, sexual orientation is a natural phenomenon.
- The government was also tasked by the Supreme Court with raising public awareness of LGBT rights and dispelling prejudice against them. The judges went into more detail about the issues relating to transgender people, mental health, dignity, privacy, and the right to self-determination.

conclusion:

There is no shadow of a doubt that the future of the LGBT rights movement in India will be shaped by all the judgements related to LGBT People. The importance of the NALSA ruling and the Navtej Singh Johar ruling goes beyond just the decriminalisation of homosexuality and the acceptance of third gender identities. These decisions, however, are also progressive because they have laid the foundation for a number of other civil rights that were previously not available to the LGBT community but are typically enjoyed by heterosexual people and cisgender people, in addition to ruling on the specific issue at hand. These civil rights include the freedom from discrimination, the right to marriage, the right to adoption, the right to surrogacy, and the freedom from etc., sexual assault.

However, despite all the advancements, LGBT people continue to face discrimination in society. A Supreme Court decision can only issue a resolution; however, it is the responsibility of society to ensure that LGBT people are not subjected to discrimination and are treated with respect. Simply allowing sexual activity between same-sex partners won't put them in danger on a par with other citizens because the future of same-sex marriage, the legality of same-sex adoption,

the right against oppression, and other issues are still up in the air, and the community is still fighting for them. Therefore, it is clear that the battle has not yet been won, and India still has a long way to go before becoming truly inclusive.

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