



## A study on LGBT rights

Prashant

LL.M Student, Directorate of Distance education, Kurukshetra University, Kurukshetra, Haryana, India

### Abstract

LGBT stands for lesbian, gay, bisexual and transgender and along with heterosexual they describe people's gender identity. Hindus regard all beings as manifestations of one universal *Atman (Spirit)*, Atman has no gender. LGBT people in India face legal and social difficulties not experienced by non-LGBT persons. Sexual activity between two persons of the same sex is criminalized under section 370 of IPC. India does, however, legally recognize *Hijras* as a gender separate from men or women, making the country one of the few in the world to legally recognize a third gender. LGBT community has some demands and grievances against the state, albeit the state has given some rights to LGBT community, especially to the transgender or Hijra section. 'Right to vote' has been given to the transgender community in 1994. The rights of LGBT have not gained recognition in several countries. Countries like India and others, are still hesitating to provide legal recognition to the rights of Gay, Lesbian and third gender to live with dignity. The Indian Panel Code Act 377 violates and is obstacle in providing the rights and reorganization to the marriages of the LGBT communities. Large sections of liberal people in Indian society are in support for the recognition of LGBT rights, unprogressive section of Indian society- conservative, religious, traditional and still consider LGBT relations are unnatural, unethical and oppose the legalization of LGBT rights. Justice is the first principle of social institution. So LGBT rights are considered human rights and civil rights. The Constitution of India protects and promotes diversity and ensures an egalitarian society that rights of homosexuality are Constitutional morality.

**Keywords:** constitution, LGBT rights, transgender community, justice, human rights

### 1. Introduction

In matters of sexuality, the terms people use and identify with can vary widely from culture to culture. the terms 'lesbian', 'gay', 'bisexual' and 'transgender' (LGBT) are used because they are the English terms most commonly used in the international human rights discourse. Prevention of unnatural offences under Indian Penal Code Legal Discrimination against the sexuality minorities takes many forms, the most notorious being Section 377 of the Indian Penal Code (IPC), a British colonial legislation criminalizing homosexual behaviour, that continues to be in the Indian statute book although it has long since been removed from the British statute book. This section says that, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to 10 years and also be liable to fine." The unnatural offences under IPC are sodomy or bestiality. The parties involved in this offence active and passive both are liable for punishment as per the above section. Therefore e this section clearly shows that sodomy is prohibited in India. Right to privacy of LGBT minority People The right to life and personal liberty includes right to privacy <sup>[1]</sup>.

The Constitution of India does not directly provide the right to privacy as a part of the fundamental right but it has been emphasised time to time by the Supreme Court in in some cases therefore it is considered as a part of fundamentals rights. Hence right to privacy should not be violated by the state under any circumstances. Issues of LGBT minority

Communities in India Scope of the Section 377 of IPC is Ambiguous Under section 377 of IPC scope of unnatural offences is an ambiguous because there is no clear distinction between consenting and coercive sex, against the order of nature etc. <sup>[2]</sup>.

### 2. Legal Aspect of LGBT Rights In India

#### i) Section 377 of IPC and Rights of LGBT community

One of the major lacuna or contentious legal provision in our laws is Section 377 of the Indian Penal Code, 1860. **Section 377** of the IPC says Unnatural offences: "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine". Thus the section makes any sexual activity against the order of the nature as criminal offence. Even voluntary act of such kind is punishable. Thus consent between two persons of same gender for such activity is immaterial. Therefore, section 377 criminalizes homosexual activity and makes it punishable with as high punishment as life imprisonment. This provision of IPC has become a major controversial point and topic of debate in recent times. People of LGBT community are trying from quite sometimes to convince and pressurize our law makers to decriminalize Section 377. In other words, LGBT social action groups are demanding that if two consenting adults of same sex are involved in homosexual activities, it should not be a criminal offence. But when their plea was not responded by our legislatures, they went to the Court for

appropriate and just solution to their grievances through a Public Interest Litigation (PIL). The said PIL was filed by a NGO namely Naz Foundation in Delhi High Court. In the case Naz Foundation v Govt. of NCT of Delhi (2009 Delhi H C) passing a landmark judgment on 2nd July 2009, Delhi High Court declared Section 377 as illegal as far as it criminalizes same sex sexual activity between two consenting adults done in private. Thus, in effect Delhi High Court, in its historic decision upheld and secured the LGBT people's right to sexuality [3].

### ii) The Supreme court and LGBT Rights

The decision of Delhi High Court in Naz Foundation Case was further challenged in appeal at the Supreme Court of India. The SC in a far reaching judgment quashed the decision of the Delhi High Court and reverted back to the earlier position i. e. once again made homosexual relationship as criminal offence. The decision came as a shock to the LGBT community and also to the liberal members of the society. The reasoning of the SC was that the Indian society is not yet fully mature to accept same sex relationships and if necessary changes are needed to decriminalize Section 377 of the IPC, it must be done by the Parliament and not by the SC. Several legal and constitutional experts have criticized the decision as regressive and disappointing. Experts are of the view that the SC could have upheld the decision of Delhi High Court or could have advised the Parliament to make necessary changes in the IPC; but unfortunately the SC fell short of in fulfilling such expectations and securing basic human rights of sexual minorities. Therefore as per the present scenario, LGBT community people are again feeling themselves insecure and discriminated against. If the SC had given an authoritative judgment on the issue, the matter would have been settled for all times. And it was also expected of the highest Court of the country that it would recognize the rights of LGBT people and would decriminalize the same sex relationship. But as many experts are pointing out, the SC has missed a historic opportunity to provide equal constitutional and human rights to LGBT people. Now again the ball is in the hands of our law makers to amend the law and decriminalize the same sex relationship among consenting adults done in private sphere. Because now the only hope for LGBT people is country's Parliament [4].

### 3. Constitution and LGBT Rights

The fundamental right under the Constitution of India prohibits discrimination on the ground of sex. Therefore it is violation of fundamental rights of LGBT Minority people as under [5].

- Lack of educational facilities.
- Right to life and personal liberty.
- Right to live with family
- Right to livelihood
- Right to speech and expression.
- Right to profession and business.
- Equal pay for equal work.
- Freedom of Religion
- Right to live with human dignity
- Right to equality.

### i) Family issues

Lack of communication and misunderstanding between parents and their LGBT children increases family conflict. These problems with communication and lack of understanding about sexual orientation and gender identity can lead to fighting and family disruption that can result in an LGBT adolescent being removed from or forced out of the home [6].

### ii) Discrimination at workplace

Discrimination of LGBT persons at workplace is a significant factor in the differences in socio-economic status for LGBT persons. Gay and transgender individuals suffer from socioeconomic inequalities in large part due to discrimination in the workplace. Discrimination directly causes on their job, stability and it result in unemployment and poverty [7].

### iii) Drug Addict

Due to loneliness LGBT people becomes drug addict and turn toward alcohol, tobacco and other drugs than the general population.

### iv) Victims of crime

These LGBT minority people become victims of violence and crime. However, LGBT individuals 'experiences of violence and discrimination differ depending on a number of factors including race, gender, income, immigration, status and language barriers. LGBT immigrants are more likely to face violence based on race and ethnicity and/or sexual identity and/or gender identity. In Muslim Countries, homosexuality is heinous crime and for it fine, imprisonment and capital punishment has been imposed on LGBT minority people [8].

### v) Injustice on LGBT minority

Human rights and fundamental rights are applicable to all persons but state is failed to create special legislation which protects rights of LGBT minority community and to provide real justice to them. They are also human being and such treatment should be provided by the state to these people. In many instances LGBT individuals are not legally protected from abusive and discriminatory actions [9].

### 4. Recommendations to Protection of LGBT Rights

State has to protect their fundamental rights without any discrimination.

- For this purpose Special law should be enacted.
- Provide opportunities to LGBT persons to participate in social and economic activities which help to boost up their confidence in society.
- Need to protect human rights of LGBT persons.
- Government should take initiatives to support employers in making workplace and workplace culture more supportive and inclusive of LGBT people.
- There is need to change social attitude toward LGBT Minority people.
- Free health facilities should be provided by the states to LGBT Minority.
- Need to organize workshops and seminars about their rights.

The good effects that decriminalization of homosexuality, constitutional recognition to LGBT and amendment/removal of the contentious parts of section 377 Of IPC will have *positive effects* as The Fundamental Right to Equality will be implemented in its true spirit (Article 14). The interpretation of Article 19 and 21 (Right to Freedom and Right to Life and Personal Liberty) in favour of the LGBT rights will assert India's commitment to inclusion of diversity and recognition of the same. Consequently, India will be seen to uphold human rights and civil rights as recognised by the international community. LGBTs will have the right and the freedom to proclaim themselves as such, and not have to live closeted in the orthodox society in India. Employment, financial status and safety of such persons will be ensured. Legislation towards decriminalising LGBT will also serve as education to the masses (which could be taken up by the government by means of an awareness spreading mission, in recognition of the lack of respect for differently oriented people). It must (and definitely will) recommend amendments to section 377 of IPC keeping in mind the positives of decriminalising homosexuality and the need to provide constitutional recognition to the LGBT community, so that they're treated as equals, as they should be <sup>[10]</sup>.

## 5. Conclusion

On the basis of above discussion it comes to the conclusion that, LGBT minority people who basically have different sexual orientation which results in face discrimination in the family and society. But prima facie they are the human being and therefore they are entitled to all human rights as well as fundamental rights in India. Lesbian, gay, bisexual and transgender people have long been involved in efforts for racial and economic justice. Today, LGBT organizers and groups are increasingly drawing attentions between the movements for LGBT their rights and the movement for economic, social, political and racial justice. Therefore today there is needed to protect their rights as a human being in the society. India, in 21st century is trying to become a super power and the world leader; in fact it has all the potential to become one. But this potential would not be realized until and unless we as a society will not be able to freely accept and discuss so-called taboo issues such as homosexuality.

And for that to happen above all mentality of the people will have to be changed. The first step is sex education in schools and at homes. A child must feel comfortable to discuss his/her problems or issues related to sexual matters and even their sexual choices with their parents or teachers. And it is important that parents/teachers fully appreciate their wards' situation and guide them accordingly. Therefore, not only children but grown-ups or adults need more education and sensitization as far as matters related to sex are concerned. Law enforcement agencies such as police also need sensitization so that they will be able to appreciate the genuine concerns of LGBT people. Similarly, our media and film fraternity are required to be more considerate while depicting such people in their shows and films respectively. In fact they can play a very important role in imparting knowledge and disseminating true information about LGBT people and their sexual choices so that society could get a real picture of their situation and conditions. Apart from all these, the most

important single step in eliminating the stigma over LGBT people is to decriminalize section 377 of the IPC so that they could have a normal regular life like others and avail their basic human rights without harassment or discrimination. Hopefully our law makers would soon listen to their rightful plea and make necessary changes in the law.

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