

LGBT Rights in India

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ABSTRACT:

In this the researcher has tried to discuss about concept, nature of LGBT people, discrimination on the ground of sex in the society it results in violation of their rights including fundamental rights and human rights. The researcher also tried to give focus on legal definition and its scope, lacunas, issues and challenges before LGBT minority people in India. The whole aura and entirety of the conditions and the trials faced by this community. The way it has evolved and treated. By the olden society it is controlled into the minds of those who still believe it to be some sort of mental illness or a crime. Bringing the notion that how India is working on it and how the citizens are dealing with the openness of this. People around the world face violence and inequality on the basis of how they look or who they love. This barriers and socially unwanted stigmas be removed and this place be made a safe haven for all types of people and also rights be equally distributed amongst all here. The constant pressure and eyes upon the activities and the idea of LGBT makes some small minded people to put up more force upon them and make their living a hell out on earth. What else one wants is to be understood and to live freely with head held high and to get the love they deserve. Human beings are human beings they should be treated the same and like.

"I do not consider myself just an ally to the LGBT community. I consider myself your family. And so I am doing what we should all do with our families: I am loving you. I support you, I completely accept who you are."

– Anne Hathaway

I. INTRODUCTION

"There is nothing wrong with you. There's a lot wrong with the world you live in" – Chris Colfer

The institution of marriage in society is generally regarded as extending only to male-female relationships, although most marriage statutes use gender-neutral language. Whereas, many examples of acceptance of homosexual marriages has only been recently forthcoming as society is gradually becoming more permissive. This change is reflected in the increasing number of jurisdictions, which have decriminalized such acts. However, many jurisdictions have retained their statutory prohibitions on homosexual marriages despite much criticism from groups and individuals who believe that the sodomy law is obsolete and should be repealed. Hence same-sex relationships, regardless of their duration, are not legally recognized in most countries and as a result, homosexual partners are denied many of the legal and economic privileges automatically bestowed by marital status. These include employment benefits, the ability to file joint tax returns and perhaps most importantly since the advent of AIDS -- health benefits and rights arising on the death of a partner, including interstate inheritance etc. In society at large many of these benefits are available to heterosexual de facto partners, but continue to be unavailable to homosexual partners.

II. DEFINITION

The word homosexuals literally means as 'of the same sex, being a hybrid of the Greek prefix homo meaning 'same' and Latin root meaning 'sex'. Homosexuality is a sexual orientation characterized by sexual attraction

or romantic love exclusively for people who are identified as being of the same sex. People who are homosexual, particularly males are known as 'gay', gay females are known as 'lesbians'. That is homosexual marriages, sometimes referred to as gay marriage, indicates a marriage between two persons of the same sex.

III. HISTORY

The earliest western document concerning homosexual relationship comes from Ancient Greece, where same sex relationship were the societal norm. Even homosexual marriages have occurred with relative frequency in the past, both within Christian and non-Christian communities. Researchs suggest that the Catholic Church, which has been extremely vociferous in its opposition to homosexuality in general, approved of same-sex marriages for over 1 500 years, only ceasing to perform them in the nineteenth century. In preindustrial societies also homosexuality was generally accepted by the lower classes while some members of upper classes considered it immoral. However with the rise of urbanization and the nuclear family, homosexuality became much less tolerated and even outlawed in some cases A relationship not based on blood or marriage is not entitled for Social Security benefits under Employee Provident Fund Act, Pension Act, Workmen Compensation Act, Insurance Act, Housing Act etc. Older words for homosexuality, such as homophilia and inversion have fallen into disuse. Less frequently used terms are queer, homo, fag or faggot and dyke. Homosexual marriages are also known as gender-neutral marriage, equal marriage, and gay marriage. The literature drawn from Hindu, Buddhist, Muslim, and modern fiction also testifies the presence of same-sex love in various forms. Ancient texts such as the Manu Smriti, Arthashastra, Kamasutra, Upanishads and Puranas refer to homosexuality. Also there are reports that same-sex activities are common among sannyasins, who cannot marry. Thus instances of homosexuality are available in historical and mythological texts world over and India is not an exception to this. The Cultural residues of homosexuality can be seen even today in a small village Angaar in Gujarat where amongst the Kutchi community a ritualistic transgender marriage is performed during the time of Holi festival. This wedding which is being celebrated every year, for the past 150 years is unusual because Ishaak, the bridegroom and Ishakali the bride are both men. Thus the history is filled with evidences proving the existence of homosexuality in past. Whereas in the past 10 years world over, for the lesbian and gay rights, we find that the legal initiatives have shifted from the right to be privately sexual, that is the right to have same-sex relationships at all, to the right to be individual civic subjects, protected from discrimination in the work place and in the provision of services, toward the right to have relationships given status by the law. This shift in rights-focus, from decriminalization, to civil protection, to civil recognition is, not entirely a linear one. Thus in recent years a number of jurisdictions had relaxed or eliminated laws curbing homosexual behavior. Therefore in different religion different punishments were provided to homosexual offences in India. Codification of laws started during British period first enactment took place for uniform

criminal laws in India in 1860. Under the Indian Penal Code uniform prescription of homosexual behavior in the form of unnatural offences its nature and punishment has been prescribed. Although sexuality minorities have always existed in India sometimes in various forms like culturally sanctioned (such as the hijra) and at other times in invisibility and silence, their issues have never seriously been articulated. Before 19th century these issues were only limited to the society but in 19th century the rights of LGBT minorities raised their issues relating to violation of their human rights. These serious issues come forward through by various civil society organizations in India. In India the first gay magazine Bombay Dost in the late 1980's and the starting of a lesbian collective in Delhi called Sakhi, lesbian, gay and bisexual issues were first articulated in a public forum. Since this Magazine LGBT minority movement has been increased in India. It is only in the final decade of the 20th century that the gay/ lesbian/ bisexual/ transgender movement brought to the fore the rights of those discriminated against because of their sexuality. In the mid 1990's, the Human Rights Committee held that the anti sodomy law of Tasmania violated the right to privacy and the right to non discrimination guaranteed to all persons under the International Covenant on Civil and Political Rights.¹ In Scandinavia, the provision of equal rights for sexuality minorities, including marriage rights, was an important. The other major development has been the South African Constitution, which for the first time expressly prohibited discrimination on grounds of sexual orientation. But while the scope of human rights has been extended to include hitherto marginalized communities at the global level, a similar movement is yet to take place in India. In fact, most human rights organizations in India the People's Union of Civil Liberties – PUCL have not begun to address the question of rights of gays, lesbians, bisexuals and transgender others who are oppressed due to their sexuality. But this ignores the fact that sexuality is integrally linked to ideologies and structures of social oppression such as patriarchy, capitalism, the caste system and religious fundamentalism. Hence, the struggle for sexuality rights cannot be separated from the broader human rights struggle for economic, political and social liberation. Methodology: Researcher has adopted Doctrinal method therefore collected data from various Books, Journals, articles and News papers etc.

IV. OBJECTIVES

- To explain the concept of LGBT.
- To analyse Legal provisions.
- To discuss Constitutional protection to LGBT Minority people in India.
- To highlight their issues and challenges in the society.
- To find out consequences of discrimination in the society.
- To provide recommendations.

¹<http://www.allresearchjournal.com/archives>

V. CONCEPT OF LGBT

In matters of sexuality, the terms people use and identify with can vary widely from culture to culture. In this report 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. However, this is in no way intended to ignore the diversity of other terms and identities, nor to deny the cultural connotations attached to these terms. In the interests of readability and in order to respect the wealth of terms, a variety of forms are used in this report, largely interchangeably. So, for example, the term "lesbian and gay human rights" should be read as shorthand for the human rights of lesbian, gay, bisexual and transgender people.

- Sexual orientation: this term used to describe patterns of emotional, romantic, and sexual attraction and sense of personal and social identity based on those attractions. Sexual orientation exists with exclusive attraction to the opposite or the same sex. When a person's sexual and emotional attraction to people of the same gender is called homosexual orientation if attraction towards opposite sex called heterosexual orientation and if the attraction towards both gender is called bisexual orientation people.
- Gender identity: refers to a person's experience of self-expression in relation to social constructions of masculinity or femininity (gender). A person may have a male or female gender identity, with the physiological characteristics of the opposite sex.
- Sexual identity is used in this report to refer to sexual orientation and/or gender identity.
- Transgender: It means someone whose gender differs from the one when they were born. Transgender people may identify as male or female or neither the label fits to them. These people's internal feelings and labels may be male, female or transgender.

Legal discrimination against sexual minorities in India Legal discrimination against sexuality minorities operates through the criminal and civil law systems. The regime of discrimination can be analyzed under the following heads: 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 behavior, 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 People². The right to life and personal liberty includes right to privacy. 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.

VI. 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. Discrimination on the ground of sex The fundamental right under the Constitution of India prohibits discrimination on the ground of sex Discrimination at workplace Discrimination of LGBT persons at workplace is a significant factor in the differences in socioeconomic 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. ~ 410 ~ International Journal of Applied Research Drug Addict Due to loneliness LGBT people becomes drug addict and turn toward alcohol, tobacco and other drugs than the general population. 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. 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.

VII. LEGAL STATUS OF HOMOSEXUALS IN INDIA

Section 377 30 of the Indian Penal Code (1860) relates to Unnatural Offences and includes homosexuality within its domain. In India this Law relating to homosexuality was adopted from the British penal code dating to 19th century. Section 377 states: "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

²Bryony Lloyd, *A Comparison of LGBT rights globally and in India*, CENTER FOR PUBLIC POLICY RESEARCH (March 23, 2019, 13:24) http://www.academia.edu/5383065/A_comparison_LGBT_rights_globally_and_in_India

description for a term which may extend to ten years and shall also be liable to fine.”³ Similarly section 292 of IPC refers to obscenity and there is ample scope to include homosexuality under this section. Also section 294 of Indian Penal Code, which penalizes any kind of "obscene behaviour in public", is also used against gay men. It is important to note here that in England the offence of homosexuality between consenting partners has been abolished by the Sexual Offenders Act 1967 (that is in the country of origin of this law) whereas in India, the consent is quiet immaterial for constituting an offence as defined under this section. Thus in India it is primarily section 377 which explains and defines unnatural offences. 32 It is this section which makes Homosexuality illegal with life imprisonment or with imprisonment for ten years with fine.

VIII. FOLLOWING ARE RECOMMENDATIONS:

- Protection of the fundamental rights without any discrimination.
- Special law should be enacted.
- Providing opportunities in social and economic activities.
- Need to protect human rights.
- Need to take preventive measures in family, public and domestic violence.
- Government should take initiatives to support employers in making workplace and workplace culture more supportive and inclusive of LGBT people.
- Change social attitude toward LGBT Minority people.
- Free health facilities should be provided by the states to them, including health.
- To organize workshops and seminars about their rights. Conclusion and Recommendations.

IX. CONCLUSION:

The progress of LGBT rights is often directly tied to – sometimes through indirect routes – multiple fights for human dignity and freedom.”- Michael Bronski.

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. In the present Indian societal matrix and the emerging conflict in the institution of marriage – the demand for legalizing homosexual marriage is somehow overlooked and ignored. But in near future the stereotype attitude of society for marriage as heterosexual institution associated with procreation and rearing of children may also include homosexual marriages where love between the partners will be given importance rather than the gender. Then the failure to acknowledge the changing nature

³Melissa Cyril, *Section 377:LGBT rights and HR policy in the Indian workplace*, INDIA BRIEFING (March 23, 2019, 13:28) <https://www.india-briefing.com/news/section-377-india-lgbt-rights-hr-policy-indian-workplace-17804.html/>

of society and the family will result in more harm than good. Although it is long to go for this to happen. But in any case the demand for legalising homosexual marriages is giving birth to a new conflict in the institution of marriage, family and Law which cannot be denied. But at the same time giving social and legal recognition is not that easy in this traditional society as it has been in the western societies but in any case to ignore this emerging conflict in the institution of family and marriage will be short sighted and can have fatal results if not handled sensitively. So, it is high time for the Legislature, Executive, Judiciary and Society at large that they cannot demean the existence of people with same sex desires. They also need to acknowledge that by legalising homosexual relations they will not permit a mere sexual activity but will also decriminalize the lives of citizens who are connected to such sexual act. Finally it can be said that if laws are supposed to represent socially acceptable dos and don'ts, then a new mindset is the need of the hour. Otherwise, normal human beings will continue to suffer inhuman exploitation just because nature has nourished them with the need to be different. 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.

“And a major phenomenon that is still underreported is taking place before our very eyes: the globalization of LGBT right”

– Friedrich Martel