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LGBT Rights: Yet a Struggle

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ABSTRACT

Lesbian, gay, bisexual, and transgender are increasingly open and visible part of society but however LGBT Rights are still a struggle, as it is still not accepted by a particular part of the society. The particular Research paper mentions about the rights, international recognition, Indian recognition, Obstacles faced by LGBT community, international and Indian decisions. The main focus of the research paper is to highlight the obstacles international and national faced by LGBT community and also their rights available to them. There are certain cases demonstrating that how still people don't know about LGBT Community rights and how difficult it is for them to make any decision because of the society. The research paper focuses on international as well as national case laws and Rights of LGBT in different countries.

Keywords – LGBT Rights, Human Rights, Rights, international laws, society.

"The beauty of standing up for your rights is others see you standing and stand up as well."

- Cassandra Duffy

I. INTRODUCTION

LGBT or GLBT is an initial for lesbian, gay, bisexual, and transgender also known as gay community, it's the term that describes distinct groups within the gay culture. The term "gay" has traditionally been used to represent a diverse group of people who are attracted to people of the same gender or are in a relationship with someone of the same gender. There is also diversity among the LGBT community and this contributed to different perceptions of the term "gay".

Moreover, Lesbian refers to women who are homosexual that is women who are attracted to women, whereas Bisexual or "bi" refers to people whose sexual and romantic feelings are for both genders and Transgender is an umbrella term that encompasses a diversity of gender expression including drag queens and kings, bi-genders, crossdressers, transgenderists, and transsexuals. These communities generally celebrate pride, diversity, individuality and

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sexuality.

LGBT activists and sociologists see LGBT community-building as a counterbalance to heterosexism, homophobia, biphobia, transphobia, sexualism and conformists' pressures that exist in the larger society. The term pride or sometimes gay pride is used to express the LGBT community's identity and collective strength; pride parades provide both a prime example of the use and a demonstration of the general meaning of the term. The LGBT community is diverse in political affiliation. Not all people who are lesbian, gay, bisexual, or transgender consider themselves part of the LGBT community.

LGBT communities may organize or support, movement for civil rights promoting LGBT rights in various places around the world but despite remarkable progress in various area of LGBT civil rights, LGBT individuals still lack formal equality and are denied many of the protections that are afforded by other historically disadvantaged groups. These legal disabilities represent an ongoing source of minority stress and can produce a correspondingly high degree of legal consciousness within the LGBT community.

II. LGBT RIGHTS

People around the world face violence, inequality and sometimes torture, even execution because of who they love, how they look, or who they are. Sexual orientation and gender identity are integral aspects of ourselves and should never lead to discrimination or abuse.

(A) International recognition of LGBT Rights

LGBT Rights vary greatly by country or jurisdiction, Notably, as of 2019, 28 countries recognize same-sex marriage. By contrast, 6 countries effectively impose the death penalty on consensual same-sex sexual acts, with three in Asia (Iran, Saudi Arabia and Yemen) and three in Africa (Nigeria, Sudan and Somalia). In addition, the death penalty is a possible punishment in 6 other countries: Afghanistan, Brunei, Mauritania, Pakistan, Qatar and the United Arab Emirates.²

Moreover In 2011, the United Nations Human Rights Council passed its first resolution recognizing LGBT rights, the Office of the UNHCR issued a report³ documenting violations of the rights of LGBT people, including hate crimes, criminalization of homosexual activity,

² Mendos, Lucas Ramón (2019). *State-Sponsored Homophobia 2019* (PDF). Geneva: ILGA. p. 15.

³ "UN issues first report on human rights of gay and lesbian people". United Nations. *15 December 2011*. Retrieved 20 September 2018.

and discrimination. Following the issuance of the report, the United Nations urged all countries which had not yet done so to enact laws protecting basic LGBT rights.⁴

The United Nation Human Rights passed a strange resolution on 26th June 2014 on “protection of family”. This Resolution called upon the High Commissioner for Human Rights for drafting a report on the status of the ‘family’ asking for a panel discussion on the issue of protecting the family. But the resolution does not define ‘family’, the implication to a singular family could be used as a criterion to oppose rights for homosexual couples, single parents and other types of families in future UN negotiations. The concept of the family should not be limited only to the heterosexual families. There are families of homosexuals, families of homosexuals and their adopted child/children and families of a single parent. Due to lack of clear-cut definition of ‘family’ in the resolution, there are high chances that it would be directly used to violate the rights of LGBT Community who are willing to have a family of their own. India, by becoming a signatory to this resolution, multiplied the plight of LGBT community that already existed. The hostile stand taken against the LGBT community by Indian Diplomats representing Government of India at UN Human Rights Council is stigmatic to its international image as world’s progressive constitutional democracy.⁵

What is the basis for LGBT equality?

The struggle for legal equality for LGBT people rests on several fundamental constitutional principles like-

1. Equal protection of the law guaranteed to ensure legal equality and prohibition of any discrimination on the basis of gender, religion and disability and also the Equal Protection Clause prohibits discrimination based on sexual orientation as well.
2. The right to privacy, or "the right to be left alone," is guaranteed underscore the principle that decisions about intimate relationships are personal and should be left up to the individual.
3. Freedom of speech and association are protected end discrimination, to recognize lesbian and gay relationships, and to adopt laws prohibiting discrimination in the private sector. It also includes the rights to form social and political organizations, to socialize in bars and restaurants, to march or protest peacefully, to produce art with gay themes and to speak out publicly about LGBT issues.

⁴ Jill Dougherty (17 June 2011). "U.N. council passes gay rights resolution". CNN. Retrieved 20 September 2018.

⁵ Human Rights Council resolution - Human rights, sexual orientation and gender identity (adopted 26 September 2014) - A/HRC/RES/27/32

(B) Indian recognition of LGBT rights

Lesbian, gay, bisexual and transgender (LGBT) people in India may face legal and social difficulties not experienced by non-LGBT persons. The country has repealed its colonial-era laws that directly discriminated against gay sex and transgender identification, but many legal protections have not been provided for including anti-discrimination laws and same sex marriage.⁶

In 2018, the Supreme Court of India decriminalised homosexuality by declaring Section 377 of the Indian Penal Code unconstitutional in respect of consensual homosexual sex between adults.⁷ Homosexuality was never illegal or a criminal offence in ancient Indian and traditional codes but was criminalised by the British during their rule in India.

Despite recent political movements in favour of LGBT rights, there remains a significant amount of homophobia present among the Indians, with around half of Indians objecting to same-sex relationships according to a 2019 opinion poll. However, under Article 15 of the Constitution of India states that⁸ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth that's was used in the case of Navtej Singh Johar v. Union of India, the Supreme Court ruled that the Indian Constitution bans discrimination based on sexual orientation via the category of "sex".⁹

Further On 24 April 2015, the Rajya Sabha unanimously passed the Rights of Transgender Persons Bill, 2014 guaranteeing rights and entitlements, reservations in education and jobs, legal aid, pensions, unemployment allowances and skill development for transgender people. It also contains provisions to prohibit discrimination in employment as well as prevent abuse, violence and exploitation of transgender people. The bill also provides for the establishment of welfare boards at the centre and state level as well as for transgender rights courts. Later the Transgender Persons (Protection of Rights) Bill, 2016, was initially introduced to Parliament in August 2016 and was re-introduced in late 2017.¹⁰ Some transgender activists have opposed the bill because it does not address issues such as marriage, adoption and divorce for transgender people. The bill passed the Lok Sabha on 17 December 2018 with 27 amendments, and also including a controversial clause prohibiting transgender people from

⁶ "In a first, Gurgaon Court recognizes lesbian marriage- Times of India". The Times of India. Retrieved 31 January 2017.

⁷ Mahapatra, Dhananjay; Choudhary, Amit Anand (7 September 2018). "SC decriminalises Section 377, calls 2013 ruling 'arbitrary and retrograde'". The Times of India.

⁸ "Article 15 in The Constitution Of India 1949". indiankanoon.org

⁹ "Judgment" (PDF). Archived from the original (PDF) on 27 May 2014. Retrieved 19 April 2020

¹⁰ Abraham, Rohan (30 November 2017). "All you need to know about the Transgender Persons Bill, 2016". The Hindu.

begging.¹¹ Later the bill was sent to parliament committee, but lapsed with the dissolution of the 16th Lok Sabha.¹²

However, the Transgender Persons Bill, 2019 was reintroduced to Parliament after the 2019 general elections.¹³ The bill was approved on 10 July by the Cabinet of India¹⁴

1. The bill defines transgender persons as those "whose gender does not match the gender assigned to that person at birth and includes trans-men or trans-women, persons with intersex variations, gender-queers, and persons having socio-cultural identities such as kinnar, hijras, aravani and jogta".
2. According to the bill, a person would have the right to choose to be identified as a man, woman or transgender, irrespective of sex reassignment surgery and hormonal therapy.
3. It also bans discrimination against transgender people in areas such as private employment, education and healthcare.

Constitutional rights of LGBT people

The Preamble to the Constitution of India mandates Justice - social, economic, and political, equality of status. The Constitution provides every person an equal status before the law and an equal protection of laws within the territory of India. The word „any person“ here means every individual, without any discrimination based on any of the category which includes, caste, creed, religion, sex, etc.¹⁵

A transgender in India is included within the words „any person“ and is given equal status to that of every cis-gender in India.¹⁶ The transgender community cannot be discriminated on the ground of non-application of any of the laws within the nation by reason of their differences and dividing them based on any arbitrary class. The Apex Court of India in a landmark case¹⁷ observed that both gender and biological attributes constitute distinct components of sex. The discrimination on the ground of “sex” under Articles 15 and 16 of the Indian Constitution includes discrimination on the ground of gender identity. The expression “sex” is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.

¹¹ "Lok Sabha passes transgender rights Bill" India Today. 17 December 2018

¹² Transgender rights bill might be reintroduced this Parliament session, say MPs". Hindustan Times. New Delhi. 22 June 2019

¹³ Glauert, Rik (6 June 2019). "Controversial Bill to be reintroduced in Parliament" Gay Star News.

¹⁴ Cabinet approves transgender bill". Indian Express. New Delhi. 11 July 2019.

¹⁵ The Constitution of India - Preamble

¹⁶ National Legal Service Authority v. Union of India, AIR 2014 SC 1863 at 1890 para 54

¹⁷ Id

Articles 15(2) and 16(4) has also been interpreted to provide social equality to these communities such as equality in public employment, it provides that the states shall have the power to make any special provision for the enhancement of these vulnerable minority who are now included within the category of socially and educationally backward classes.¹⁸ These Articles read with the Directive Principles of State Policy and various international instruments to which India is a party. The right to choose one's own identity is one of the most essential right under this article to life with dignity that is Article 21¹⁹, and this aspect is covered and protected by this Article as it symbolizes the most important right that is a right to live, which the State is required to protect from violation. The transgender communities have a right to dignified life which is one of the most important aspects of Article 21 of the Constitution of India. Recognition of gender identity provides the recognition of their right to dignity and non-recognition violates the same, they have full right to express and live their life without fear.²⁰

Transgender in our society have not been seen with respect, they are often humiliated and beaten up by the authorities in power their reputation in the society has degraded and their significance in the society has been deteriorated. Various inhuman acts such as human trafficking and beggary are declared as an offence and punishable according to law. The scope of Article 23 of the Constitution of India is very wide as it includes within any form of discrimination which are forbidden. Immoral activities such as prostitution are usually seen down in the society. Everyone has a right to personal development, and this could be secured only when there exist a right against exploitation which creates a free environment for an individual. Transgenders are the worst victims of exploitation, due to their degraded economic status they indulge into prostitution and other immoral activities and are usually seen as taboo by the society.

III. OBSTACLES FACED BY LGBT COMMUNITY

The LGBT face innumerable difficulties in the society where the only accepted orientation is heterosexuality and homosexuality is regarded as abnormal. Abuse is their daily routine and faced by them almost every day. They are more likely to experience intolerance, discrimination, harassment, and threat of violence due to their sexual orientation than those that identify themselves as heterosexual. It is mainly due to homophobia. They face inequality and violence at every place around the world. They face torture from people who mock at them and make them realize that they are different from others. It's just because of who they are and how they

¹⁸ Poonam Verma, Sorrows of Transgenders, Judiciary and our Society – A Study, 52(3) IBR 147 (2015).

¹⁹ The Constitution of India – Article 21

²⁰ State of Maharashtra v. Public Concern for Governance Trust, A.I.R. 2003 S.C. 223. The Court held that a good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty and property

look.

In many countries, the rights enjoyed by opposite-sex couples are not enjoyed by the same-sex couples. They are prohibited from those rights. They even hide their gender and do not disclose it due to fear of losing their job. The young LGBT people face ragging and harassment in schools, colleges, and university which in many cases lead to depression, school drop-out and homelessness. They gradually develop low self-esteem and low self-confidence and become isolated from friends and family. The parents of normal children don't allow them to mix with the LGBT children acting completely out of care and concern without realizing that this leads to isolation for the other one. Lack of communication between LGBT child and the parents often leads to conflict in the family. They also have a very high risk of health and mental problems when they become adults because they are rejected by their parents.²¹

However, over the past decade, lesbian, gay, bisexual, and transgender (LGBT) people have made significant legal and political gains. Despite this progress, the law does not expressly prohibit discrimination based on sexual orientation and gender identity in fields like employment, housing, and access to services. They face poverty and racism daily. They suffer from social and economic inequalities due to continuous discrimination in the workplace. These people mostly get addicted to drugs, alcohol, and tobacco to get themselves relieved of stress and rejection and discrimination.

Moreover, in some countries, homosexuality is still regarded as a crime. It is illegal and is often met by imprisonment and fines. For example, in Muslim law, homosexuality is regarded as a sin and is unlawful.²²

'The exclusion and discrimination have more impact on the lives of LGBT persons. This has resulted in the following-

1. Dropping out of school earlier
2. Leaving home and family
3. Being ignored in the community
4. Lacking family support
5. Attempt suicide'

²¹ Mayock, P., Bryan, A., Carr, N., Kitching, K. (2009), Supporting LGBT lives : A study of the mental health and well-being of lesbian, gay, bisexual and transgender people, Gay and Lesbian Equality Network (GLEN) and BeLonG To youth service, Dublin.

²² HIJAB: UNVEILING QUEER MUSLIM LIVES (Pepe Hendricks ed., 2009) (a collection of testimonials by young LGBT Muslims in South Africa).

(A) Battles that LGBT People Face All Over the World

1. Violence

There has been an epidemic of violent crime against transgender individuals, particularly trans women of color, in recent years. Trans women of color are among the most vulnerable minorities in the country, fighting against racism, sexism, transphobia, and, frequently, poverty, putting them at higher risk for violence.²³

2. Parenting

Only a handful of Countries have enshrined in law the right of gay couples to parent together.

3. Gay Conversion Therapy

In many countries, kids are still sent to so-called “gay conversion therapy,” a harmful practice that the American Psychological Association has condemned but still it is carried out in many countries.²⁴

4. Employment Discrimination

In most states, gay and trans individuals can be fired from their job on the basis of their sexual orientation or gender identity. That means regardless of job performance or ability, a person can lose their job if their boss finds out about and disagrees with their identity.²⁵

5. Unequal Healthcare

The LGBT community continues to fight for better access to healthcare, and for equal treatment by doctors and health insurance companies that can block individuals access to care that they need. LGBT youth are more likely to have health issues because of substance abuse and mental health issues, and trans individuals can face discrimination from health insurers simply for identifying as trans.²⁶

6. Criminal Justice

Queer individuals face high rates of discrimination in prison, where trans inmates have a particularly gruelling history of abuse, including being put in solitary confinement allegedly for their own protection.²⁷

²³ Human Right Campaign: “Violence against Transgender Community”.(2016, 2017, 2019)

²⁴ Human Right Campaign: “The Lies and Dangers of efforts to Change Sexual Orientation or Gender identity” (health & aging)

²⁵ Interactive Quiz: Gay and Transgender (In)equality in the Workplace by Crosby Burns

²⁶ Gay and Lesbian Medical Association (GLMA). Healthy People 2010: A companion document for LGBT health [Internet]. San Francisco: GLMA; 2001 Apr.

²⁷ Center for American Progress & Movement Advancement Project. (2016). Unjust: How the Broken Criminal Justice System Fails LGBT People of Color. Washington, DC & Denver,

7. Acceptance

There are some battles that can't be won in the courtroom, though they can certainly be helped along by judicial decisions and laws crafted and passed to ensure equality. But outside LGBT community still face discrimination, fear, and hate, that results in physical, mental, and emotional harm.²⁸

IV. JUDICIAL REVIEW

The enactment of different laws by the legislature is the outcome of constitutional provisions which provides legal sanctity by way of establishing the right in favour of this class. The relevant case laws that are some of the examples of LGBT community are mentioned below.

(A) International Decisions

In **Toonen v. Australia**²⁹ case the UNHRC discussed LGBT rights for the first time which dictated that the International Covenant on Civil and Political Rights states that laws against homosexuality are a violation of human rights. After that, in September 1995, sexual orientation became a topic of debate in the negotiations on the Draft of the 1995 Beijing Platform for Action³⁰ at the 4th World Conference on Women.

Also, in **Nadler Vs. Superior court**³¹ the court of appeal held that, in the case of a parent who is known to be homosexual, a custody decision cannot be made solely on the basis of that fact. The court must weigh all the evidence pertaining to the child's situation before making a custody of determination.

Moreover, in **Gay law student assoc. vs. Pacific Telephone and telegraph Co.**³² the California Supreme court held that arbitrary discrimination against an individual by a state government entity due to homosexuality is impermissible and is a violation of the equal protection clause of the California Constitution.

Further in **Gartner v. Iowa Department of Public Health**³³ in May 2013, the Iowa Supreme Court ruled that the Iowa Department of Public Health must list the non-birthing mother as the second parent on the birth certificate of the Child of a Lesbian Couple.

The US Supreme Court in **Obergefell v. Hodges**³⁴, s a landmark civil rights case in which

²⁸ Global Citizen: Battles faced by LGBT community. By Colleen Curry., 2017

²⁹ Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)

³⁰ Shelagh Day (1996) "Women's Sexual Autonomy: Universality, Sexual Rights and Sexual Orientation at the Beijing Conference". Canadian Women's Studies / Les Cahiers de la Femme, Vol. 16, Number 3

³¹ 63 Cal. Rptr. 352 (1967)

³² 24 Cal. 3d 458, 136 Cal. Rptr. 14, 595 P. 2d 592 (1979)

³³ 830 N.W. 2d 335 (Iowa 2013)

³⁴ 135 S Ct 2584 (2015), 576 U.S. 644 (2015)

the Supreme Court of the United States ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

(B) Indian Decisions

In the case of **Naz Foundation Vs. Government of NCT Delhi**³⁵ it was instituted by a non-governmental organization based in Delhi, Naz Foundation, which is devoted to the working of the issues of HIV/AIDS. They filed a writ petition arguing that Section 377 of Indian Penal Code was unconstitutional. Section 377 states Unnatural Offences that is 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 a term which may extend to ten years, and shall also be liable to fine.

Moreover, the Naz Foundation submitted that Section 377 violated the fundamental rights guaranteed under Articles 14, 15, 19 and 21 of the Constitution of India. It brought the action in the public interest claiming its work on combating the spread of HIV/AIDS was being hampered by discrimination experienced by the gay community because of Section 377. This discrimination, the petitioners submitted, resulted in the denial of fundamental human rights, abuse, harassment and assault by public authorities, thus driving the gay community underground and subjecting them to greater vulnerability in violation of their fundamental rights.

Judgment

The Landmark judgment given by Delhi High Court in 2009 stated that Section 377 violates Article 14, 15, and 21. The Court analyzed Article 14 that distinction or classification should be on an intelligible differentia which has a rational relation to the objective sought. It concluded that “Section 377 does not distinguish between public and private acts, or between consensual and non-consensual acts, therefore does not consider relevant factors such as age, consent, and nature of the act or absence of harm. Thus, such criminalization in the absence of evidence of harm seemed arbitrary and unreasonable”. Discrimination on the ground of sexual orientation is impermissible even on the horizontal application of the right enshrined under Article 15.

The judgment was restricted to adults. Section 377 applied to minors. Section 377 had permitted the harassment of LGBT people. With de-criminalization of homosexuality, the discrimination

³⁵ 2010 Cri LJ 94, 160 Delhi Law Times 277 (Delhi High Court 2009)

would not go away immediately. But this would violate the law. “It will take time for the judgment to bed-in”.

Further in **Suresh Kumar Koushal V. Naz Foundation**³⁶The decision given by Delhi High Court about decriminalization of homosexuality attracted many appeals in the Supreme Court challenging the judgment of High Court in the Naz Foundation case.

Judgment

The panel of two Supreme Court judges overturned the judgment of Delhi High Court on 11 December 2013, allowing the appeal and declaring the decision as “legally unsustainable”. They held that Section 377 of Indian Penal Code is constitutional and is not violative of Constitution. The Supreme Court and High Court have the power to declare the validity of the laws, but the Parliament is deemed to act for the people and hence would not make any law which would go against the Constitution. Unless a clear constitutional violation was proved, the court was not empowered to invalidate the law. Also, ‘Section 377 does not criminalize a particular people or identity or orientation. It merely identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation’. The High Court could not find sufficient details regarding discrimination against gays and lesbians. Also, judicial intervention was not required on this issue. Section 377 does not violate Article 14,15 and 21 of the Constitution. The Legislature was free to consider Section 377 and can declare it unconstitutional if necessary. The Court held Section 377 of IPC constitutional and re-criminalized homosexuality, i.e., sexual intercourse against the order of nature.

Moreover, in the case of **Jayalakshmi v. State of Tamil Nadu**³⁷, a transgender, was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station. Similarly, policemen arrested Narayana, a transgender, in Bangalore on suspicion of theft without informing him of the grounds of arrest or extending any opportunity to him to defend himself. His diary was confiscated by the police and he was threatened with dire consequences if he did not assist in identifying other transgenders he was acquainted with. Homosexuals have also been at the aggrieved end of financial extortion by the police in exchange for not revealing their identities to society.

However, the Landmark Judgement that Changed the whole perspective about LGBT was

³⁶ Civil Appeal No. 10972 OF 2013

³⁷ (2007) 2 SCC 1, (2007) 4 MLJ 849

Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice³⁸

a landmark decision of the Supreme Court of India in 2018 that decriminalised all consensual sex among adults, including homosexual sex.

The court was asked to determine the constitutionality of Section 377 of the Indian Penal Code, a colonial-era, law which, among other things, criminalised homosexual acts as an "unnatural offence". On 6 September 2018, the court unanimously declared the law unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex". The verdict was hailed as a landmark decision for LGBT rights in India, with campaigners waiting outside the court cheering after the verdict was pronounced.

Also in the case of **National Legal Services Authority v. Union of India**³⁹, the Supreme Court ruled that discrimination on the basis of gender identity is constitutionally prohibited. The interpretation of the word person was widened and was held that Article 14 of the Indian Constitution does not restrict the word „person“ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression “person” and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.

V. EXISTING POSITION OF LGBT

Homosexuality is not a mental disease. It is as natural as heterosexual. The human mind has no control of it. Even after the pronouncement of Laws in various countries, the LGBT community struggles with different battles all around. The most perennial one is “Acceptance” even today across the globe the LGBT people are not accepted with open arms and mindset, the convictions of society, the admonishments, the repudiations and the wretched behaviour towards the LGBT community is something that still prevails. People are incredulous about the fact that homosexuality is natural and one must not malign the community. Even today the LGBT community are mocked, battered⁴⁰ and are treated unequally in many parts of the world. They are denied their rights and are lopsided.

Moreover, the basic fundamental rights, the basic human rights are also repudiated to them and staggeringly even today in some parts of the world the LGBT community are denied the basic fundamental rights and they are considered to be against the nature or “Unnatural” and is

³⁸ W. P. (CrI.) No. 76 of 2016 D. No. 14961/2016

³⁹ AIR 2014 SC 1863 at 1890 para 54, WP (Civil) No 400 of 2012

⁴⁰ Independent: “Women becomes 12th transgender person violently killed in US this year” staff and agencies, July 2019.

considered as a crime. This not only, let downs us as humans but also blatantly vandalizes the mental health of the LGBT people, it damages their tranquil and is also against the mankind.

VI. CONCLUSION AND SUGGESTIONS

After analyzing the discrimination, it is revealed that the transgenders along with other person have been conferred to the following rights, that is, right to equality, equality of opportunity, fundamental freedoms, right to life which includes right to live with human dignity and right against exploitation. These rights include the basic and inalienable right. India is also walking towards a better future with a positive mindset as gradually it has started recognizing the rights of them with the landmark judgement of Navtej Singh Johar Vs Union of India in 2018 and have passed through golden doors of judicial activism.

But still the struggle of acceptance and equality prevails, not only in India but in many parts of the world. They are subjected to harassment, violence, and mockery. European countries have protected the sexual rights of the members of the LGBT community. The resolution passed by UN have created a positive impact all over the world but still Homosexuality is seen as a mental disease in many parts of the world.

The introduction of progressive laws in many countries have helped a lot in bringing activism and also helped people to perceive that it is as natural as heterosexual. The human mind has no control of it. We must as individually contribute towards eliminating all the inequality and the obstacles faced by the LGBT community by standing with them and accepting them and treating them equally. The government must also work towards stricter and solid laws and set up awareness camps to make the LGBT people aware about their rights.

We should indeed keep calm in the face of difference, and live our lives in a state of inclusion and wonder at the diversity of humanity."

— George Takei
