

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 4

2020

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LGBT Rights in India: The Status Quo

FIZA KHAN¹ AND DILSANA KHAN²

ABSTRACT

The idea of human rights rests on the centre of thinking that all humans are equal. All humans have dignity and thus should be treated equally. Anything that undermines that dignity is a violation, as it violates the principle of equality and gives way for discrimination. Homosexuality is one of the most debated issues in the world which raises the question on human rights. People around the world become the prey of violence and discrimination only on the basis of who they love and how they look. The year 2018 ushered a ray of hope for the LGBT community who has been fighting a prolonged battle for their rights, and finally, homosexuality is decriminalized in the judgement of the Navtej Singh Johar case. While the laws have changed but violence and discrimination against the LGBT community still persist at the hands of state machinery is evidence to the low status it actually grants to the LGBT community. In India same-sex marriage is still a far-fetched dream. We must look forward to the International statute for the attainment of the real objective of the Constitution i. e. All citizens are equal. There is a need to reform the society, to amend the underline thinking that it is no taboo or some mental condition and to make everyone believe that human rights stand for all.

Keywords: Homosexuality, LGBT, India, Section 377, Transgender, Human Rights, COVID-19.

I. INTRODUCTION

“This world would be a whole lot better if we just made an effort to be less horrible to one another.”- Ellen Page

On 6th Sep 2018, Sec 377 of IPC a colonial-era law that criminalized “carnal intercourse against the order of nature” was read down and homosexuality was decriminalized in the case of *Navtej Singh Johar v. Union of India*³. The Supreme Court has finally upheld that every human being has a right to be free, irrespective of sexual orientation or gender identity. So now, homosexuality is decriminalized but the reaction of society is still challenging and detrimental for the LGBT community. The term homosexual literally means as ‘of the same

¹ Author is a student at Faculty of Law, Aligarh Muslim University, India.

² Author is a student at Faculty of Law, Aligarh Muslim University, India.

³ AIR 2018 SC 4321.

sex'. Homosexuality is a sexual orientation specified by sexual attraction or romantic love only for people who are recognized as being of the same sex. As time goes by Homosexuality is used by different terms. Presently it is known as LGBTQ. LGBTQ stands for Lesbian, Gay, Bisexual, and Transgender and Queer.

Lesbian: -A lesbian means, a woman who is sexually attracted to a woman.

Gay: -A gay means, a man who is sexually attracted to the man.

Bisexual: - A bisexual person is someone who is sexually attracted to people of both sexes.

Transgender: - It is a term used to define people whose gender identity and gender expression, differs from that usually associated with their birth sex.

Queer: - Queer is a term used to refer to sexual and gender identities who are neither heterosexual nor cisgender.

At present when Section 377 is gone, are homosexuals finally equal citizens? And have we accomplished full equality for transgender or do we need to go beyond Sec 377? The researcher in its research is trying to focus on the history of legal battles of the LGBTQ, struggle against Sec 377 and the impact of societal atrocities on the lives of the LGBT community. This paper, thus, looks to discuss the difference between the text and practice, between legal imaginations of the existing case laws and the legal realities, the actual realities and the happenings in society

II. LITERATURE REVIEW

During the past few decades, the human rights of the LGBT community have come into sharper focus and several journals, articles, reports and books have surfaced which deal with the Rights and Issues of LGBT community. The principle of non-discrimination and the right to be equal before the law requires that the state should not only protect people discrimination from state agents but also from private entities and persons (Louis Arbour, 2019). People can be adversely affected by high levels of stress, and the link between experiencing stress and manifesting symptoms of psychological or physical illness is well established in human beings and other species (Cohen, Doyle, & Skoner, 1999; Dohrenwend, 2000); In 172nd report of law commission, the committee members recommended the deletion of Section 377 of IPC and pleaded that it is harmful to public health due to direct impact on the life of a homosexual (Law Commission of India, 2000). There is a need to establish equality in same-sex marriages with the support of the society so that LGBT's group may win the battle (Feldblum, 2005).

Among all homeless youth 20% to 40% youth consist of LGBT's people and the reason behind that was a negative impact of society towards them, lack of understanding of their sexual

orientation (Ray, 2006). LGBT having voting rights cannot be treated separately than other people as one person can have only one vote as validly spoken by the Chairman of Constitutional drafting committee Dr B.R Ambedkar (Dr Madhurima Chowdhary, 2017). Stigma and exclusion of LGBT people are likely to generate economic costs, particularly from lost productivity as a result of workplace discrimination, and health disparities (M. V. Lee Badgett, 2014). The Government should pass legislation for the marriage of the LGBT people (V. Revathy and Dr S. Pandiaraj, 2018). The need of the hour is violence to be countered through a number of forms - legal, social, political, and via appropriate institutional interventions such as with police personnel (Johar, 2019). The Lesbian Gay Bisexual Transgender and Queer (henceforth LGBTQ) movements across the world have been engaged in this task of appealing and struggling for legal reform (Hall, 2019) (Pergadia, 2019). The time is not so far when the society will accept the LGBT community and their rights. True and complete freedom is yet to be achieved. (Pukhrabjir Kaur, 2019).

This study will further discuss the difficulties and challenges faced by the LGBT community in India even after repealing Section 377. This paper also deals with the impact of deadly virus COVID-19 on the entire LGBT community. In addition, we have discussed the perception of society about the LGBT community, the international legal position of LGBT rights, history of legal battles of LGBT and campaign against sec 377. Although there has been enough research work on the LGBT issues, research work on the position under special marriage act and personal laws have been very few and are found rarely, this study has dealt with the same. Furthermore, Social media platforms have been analyzed to gauge societal perception.

III. RESEARCH METHODOLOGY

A mix of primary and secondary research has been done in drafting this research paper. Various books, research papers, articles, journals have been analyzed and consulted while drafting this paper. The review and study of reports occurred only from the authentic and official websites. All the important case-laws and reports have been collected from e-data sources such as SCC online, Indian Kanoon and Manupatra e-database and so on. This study is also collaborated by the personal interview with some members of the LGBT community. Few social media platforms have also been accessed while this research. Only verified instances and records have been added to this study.

This study has targeted the analysis of the current condition of the LGBT people living in India. We have tried our best to put forward the principled and parsimonious record of the current phenomenon and perception of a layman towards the LGBT community. We have examined

multiple issues towards the LGBT community in legal, personal and social fields.

- A) A detailed study of difficulties and challenges faced by the LGBT community even after decriminalizing of homosexuality.
- B) A particularized study of the history of legal battles of LGBT and campaign against sec 377.
- C) An elaborate and thorough study of the Impacts of COVID-19 on the LGBT community.
- D) A brief analysis of the International position of Human rights of the LGBT community.
- E) Critical evaluation of The Transgender Persons' (Protection of Rights) Act, 2019.
- F) A brief study of different social media platforms to gauge the societal perception of the LGBT community.

IV. HISTORY OF LEGAL BATTLES OF LGBT COMMUNITY AND CAMPAIGN AGAINST SEC 377

In a culmination of decades of legal challenges to Section 377, the Naz Foundation in 2001 filed a writ petition in the Delhi High Court challenging the law's constitutional validity. Their petition was rejected by Delhi High Court in 2004 on the basis of locus standi. Subsequently, in 2006, they appealed against the order of Delhi High Court in the Supreme Court of India. The Decision was in their favour and their petition sustained.

In 2009, a landmark verdict was passed by Delhi High Court in the case of *Naz Foundation v, Govt. of NCT of New Delhi and Others*⁴, where Section 377 was read down and was held to be unconstitutional. The reading down of Section 377 by the Delhi High Court is a pivotal moment in Indian history. This judgment gave a ray of hope in the Dark Age to the LGBT community. But this remained not much longer when Supreme Court ruled over the judgement of the Delhi high court in 2013. In 2013, the Supreme Court overruled the Delhi High Court judgment in *Souresh Koushal v. Union of India*⁵. The Supreme Court held that Section 377 could not be read down and it was for Parliament to decide on decriminalization of homosexuality. Despite the Supreme Court judgment, the movement against the Sec 377 expanded on a large scale.

In April 2014 a bench of two judges of the Supreme Court of India passed a verdict in *National*

⁴ (2009) 111 DRJ 1.

⁵ (2014) 1 SCC 1.

Legal Services Authority v. Union of India (“NALSA”)⁶ and held that the rights to life, dignity and autonomy would include the right to one’s gender identity and sexual orientation and they have a right to express their chosen gender identity. The NALSA verdict gave a new hope to rekindle the battle against sec 377.

Subsequently, in 2017, a landmark verdict was given by the Supreme Court in the case of **Puttaswamy v. Union of India**⁷, the Supreme Court held that the right to privacy cannot be refused “even if a minute fraction of the population is affected”. The Court declared that the right to privacy distinctively incorporates the right to have intimate relations of one’s choice and includes the right to sexual orientation and gender identity.

The year 2018 ushered in a ray of hope for the LGBTQ community who has been fighting a prolonged battle for their rights. Navtej Singh Johar, a dancer who identified as part of the LGBT community, filed a Curative Petition in the Supreme Court in 2016 and challenged the Constitutional validity of the decision of **Suresh Kumar Koushal** case. The Petitioner contended that Section 377 was violative of Article 14 of the Constitution because it was ambiguous in the sense that it did not define “carnal intercourse against the order of nature”. There was no intelligible differentia or reasonable classification between natural and unnatural consensual sex. The Petitioner further contended that:

- (i) Section 377 infringed Article 15 of the Constitution, sexual orientation is a ground related to sex, and that discrimination on sexual orientation is not permitted under Article 15.
- (ii) Section 377 had a “chilling effect” on Article 19 since it denied the right to express one’s sexual identity and orientation.
- (iii) Section 377 also violated the fundamental Right to privacy.

On 6th September 2018, 5 judge bench of the Supreme Court led by the Chief Justice unanimously held in **Navtej Johar Singh Case** that Section 377 was unconstitutional to the extent that it criminalizes consensual relationships of any kind between adults.

V. LEGAL RECOGNITION OF MARRIAGE- STILL A DREAM!

Section 377 was repealed in the year 2018 which decriminalized homosexuality. Indeed it was a historic win for the entire LGBT community. But the same-sex marriage is still not legalized and ultimately the community continues to suffer discrimination. There is a legal aspect of

⁶ (2014) 5 SCC 438.

⁷ (2017) 10 SCC 1.

marriage that bestows rights and responsibilities on two people such as adoption, inheritance, tax planning, life insurance policies and other such rights. Unfortunately, the law of our land doesn't provide the same set of rights to the LGBT couples that it does to heterosexual married couples. Marriage equality is one of the most basic rights for a person but the LGBT community is still devoid of it. Though scrapping down of Section 377 was historic and the most important decision, marriage is still a far-fetched dream. In India, there is still no legal provision to get married for the LGBT community neither there is any law on adoption. Only providing the option of civil unions and excluding marriages for same-sex couples is itself discriminatory, since it provides a class of people only an option that possesses an inherently lower status than marriage.⁸ What would be the point of decriminalizing homosexuality in a country like India which puts such huge importance to marriage and still be unable to get married to the partner of your choice.

LGBT couples often prefer to migrate to the countries which recognize LGBT marriages, so that their marriage can get legal status and enjoy all the rights a heterosexual couple do. India is, however, heading towards a change and Madras High Court Verdict is one such example. The path-breaking verdict of Madras High Court is a ray of hope for sure. In **Arunkumar and Sreeja v. The Inspector-General of Registration & Ors**⁹, the Court held that “the term ‘**bride**’ as per the Hindu Marriage Act would also mean a transsexual and not just refer to someone born as a woman”.

“I think marriage as an institution is loaded with baggage and our community needs to ensure several other civil rights first. I believe a person should have the rights to get married. Our society has to accept us first. Even after the verdict, a large number of LGBTQIA+ members are still not accepted by the society,” - said Malabika of Sappho, who identifies herself as a queer feminist activist.

Same-sex marriages under the Special Marriage Act, 1954

The Special Marriage Act is secular legislation that facilitates marriages between people of different religions or those who do not wish to be bound by their personal laws. Instead of a religious ceremony, a Marriage Officer registers the marriage. The only option which might not raise religious hackles is to make an amendment in the Special Marriage Act, 1954¹⁰ so

⁸ Nicola Barker, Not the Marrying Kind – A Feminist Critique of Same-Sex Marriage 48 (2012).

⁹ (2019) SCC Online Mad 8779.

¹⁰ The Special Marriage Act, No. 43, Acts of Parliament, 1954 (India).

that same-sex marriages can be permitted. In its present form, the SMA applies to heterosexual couples only, since it provides that male should have attained the age of twenty-one years and the female the age of eighteen years. But it is not that difficult as it seems to accommodate homosexual marriages within the sphere of SMA. The only thing that needs to be done is to amend Section 4 (C) so that it reads that a party, if male, should have attained the age of twenty-one years and if female, should have attained the age of eighteen years or it can add a specific provision that same-sex marriages are permitted. In our opinion, an amendment is the easiest and the best legislative option.

VI. THE TRANSGENDER PERSONS' (PROTECTION OF RIGHTS) ACT, 2019 OR THE MURDER OF GENDER JUSTICE

The Transgender Persons' (Protection of Rights) Bill¹¹ was passed by the Lok Sabha without much dissent on 5th August 2019 – the same day Centre scrapped the special status of Jammu and Kashmir. The Act provides power and equality to everybody but the transgender community. The bill was passed after many efforts still it serves no good to the community and has several lacunae.

Almost all the definitions in the act are either redundant or profuse regarding the community issues. The chapter which prohibits discrimination lacks enforcing authority, remedial measures and punitive measures. The Complaint officer, as stipulated in the bill is very unclear and as of now, it is completely non-existent. The restriction on the separation from parents and allowing them to separate only with an order of a competent court is totally unreasonable. There isn't a single organized protocol in the act that guides the medical community on the healthcare of transgender person. The *National Council for Transgender Persons* has no independence to carry out functions and has a mere representation of 5 persons from the transgender community. Any kind of violence including sexual abuse against trans-person is punished by a term of a maximum of 2 years only. "The message is, rape a woman; yes, very bad; rape a child, worse; but, the transgenders, these people are on streets, they are begging, they are under high risk, and what is this Bill that we are passing?" asked Trinamool Congress MP Derek O'Brien.

Checking their gender and giving them certificates is totally inhuman. This is not a bill for them but a bill against them. The act has no provision to apprehend those who discriminate, bully or harass them. This act deprives the community of some of the most basic and fundamental rights a person should have. The bill that was supposed to protect their rights was drafted and passed without having a single transgender person and nobody from the community

¹¹ The Transgender Person' (Protection of Rights) Act, No. 40, Acts of Parliament, 2019 (India).

was asked about their problems and requirements.

VII. INTERNATIONAL LEGAL POSITION OF LGBT RIGHTS

Till the twentieth century, Homosexuality was never accepted by the state as well as religions and was considered to be a crime and sin. Only in the late 20th century, there was a shift in the understanding of homosexuality from sin to a normal variant of a human being. In 1992, WHO accepted it as a normal variant and since then the negativity towards the homosexuality has been eroding as states are recognizing homosexuality as normal human behaviour and guaranteeing rights and privileges. Also, LGBT rights have made a great impact within international diplomacy over the last decade but debate regarding the subject remained intact among all the nations. International organizations such as UN and Human Rights Watch have passed several measures but lacks official statements due to opposition by several member states.

The Orlando Pulse nightclub shooting¹² incident in 2016 drew the attention for the first time. United Nations Security Council released the statement condemning the attack and addressed issues related to sexual orientation.¹³ Even notorious anti-LGBT countries like Russia and Egypt condemned such act of barbarism. As of now, LGBT rights are given recognition as human rights by several UN bodies, but blocs within the United Nations have left no chance to halt the formal recognition of such rights. “More than 70 nations still criminalize same-sex relationships and death penalty may be applied in certain African and Asian countries” – said Vitit Munabhorn, the UN independent expert on protection against violence and discrimination based on Sexual-orientation and gender identity.¹⁴

Around 66 nations extended their support by issuing a statement for LGBT rights in 2008 before the UN General Assembly.¹⁵ Unfortunately, Russia, China and the US opposed these countries during the Bush Administration. The same statement was followed in 2011 by Human Rights Council which documented the problems faced by LGBT community and it was further updated in 2015 when UN Human Rights Council released a report concerning violence against

¹² **Orlando shooting of 2016**, also called **Pulse nightclub shooting**, mass shooting that took place at the Pulse nightclub in Orlando, Florida, in the early morning hours of June 12, 2016, and left 49 people dead and more than 50 wounded. It was the deadliest mass shooting in U.S. history up to that time.

¹³ Tanya Mohn, The Shifting Global Terrain of L.G.B.T.Q. Rights, *The New York Times*, June 21, 2018, <https://www.nytimes.com/2018/06/21/world/lgbtq-global-rights.html>.

¹⁴ *Protection against violence and discrimination based on sexual orientation and gender identity (doc. no. A/72/172, 72nd session, United Nations General Assembly, 19 July 2017).*

¹⁵ *Letter Dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly (doc. no. A/63/64, 63rd session, United Nations General Assembly, 22 December 2008).*

the community related to commitments made under International Law.¹⁶ Despite these many efforts, there is a huge faction of nations which oppose such reforms. Ban Ki-moon, Former Secretary-General of UN stated that- “Advocacy for LGBT rights often put him at odds with powerful member states”.¹⁷ On 29 September 2015, Several UN agencies (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP, and WHO) made a statement putting forward their intention to end violence and discriminatory practices against the LGBT community.¹⁸ The fact cannot be denied that the political landscape has changed remarkably over the last decade. But due to non-compliance from certain member states, the UN’s formal institutions face many hurdles and obstacles in promoting widespread support but the LGBT Core Group works as an informal assembly; tackle such barriers so that policy among countries must be coordinated.

In 2016, the UN Human Rights Council established an expert so that the global violence and discriminatory behaviour towards the LGBT community can be examined. But Security Council members China, Russia and all other Islamic countries didn’t support the measure and voted either No or Abstaining.¹⁹

Despite the contradiction in many countries, the recognition for LGBT rights has been witnessed in the actions of individual countries. In countries like India, Kenya, Botswana and Trinidad and Tobago, efforts to lift down the laws barring homosexual relationships are exemplified. In 2018, the Constitutional Court of Taiwan declared that same-sex marriage is a legal right. André du Plessis, the Executive director of the International LGBTI Association says - “We’ve seen a lot of exciting changes. . . . Progress has been slow but steady.” Reforms, awareness and Decriminalization have been seen in Africa, Asia, Middle East, reflecting the gradual change in the global LGBT rights movement and it surely inspires belief in an arc of history towards progress. States must value or honour their human rights commitment within themselves while advocating for change on the international level.

¹⁶ *Discrimination and violence against individuals based on their sexual orientation and gender identity* (doc. no. A/HRC/29/23, 29th session, United Nations General Assembly, 4 May 2015).

¹⁷ Stephano Gennarini, UN Bureaucracy to Push ‘LGBT Rights’ Despite Tensions, *C-Fam* (blog), October 2015, https://c-fam.org/friday_fax/un-bureaucracy-to-push-lgbt-rights-despite-tensions/.

¹⁸ *Ending Violence and Discrimination Against Lesbian, Gay, Bisexual, Transgender and Intersex People* (Joint UN Statement, 29 September 2015) .

¹⁹ Mark Leon Goldberg, For the first time, LGBT rights will be formally institutionalized into the human rights mechanisms of the United Nations, *UN Dispatch* (blog), July 1 2016, <https://www.undispatch.com/first-time-lgbt-rights-will-formally-institutionalized-human-rights-mechanisms-united-nations>.

VIII. MAINSTREAM REACTION TOWARDS THE LGBT COMMUNITY - POST DECRIMINALISATION

Indeed, without an attitudinal change of people towards the members of the LGBT community in India, the fight for civic, social, and political equality is far from over, irrespective of a constitutional status as equal citizens. While the laws have changed, but violence and discrimination against transgender women still exist at the hands of the state machinery is evidence to the oppressive low status it actually grants to the LGBT. This continued negligent behaviour of government put several lives at risk of people belonging to sexual and gender minority groups, especially in Kashmir, where there is restricted access to the internet, the lack of non-discrimination laws of welfare schemes and restrictions on mobility and ability to earn since the abrogation of Article 370 has hit transgender persons the hardest.

Following are the major problems faced by LGBTQ people even after decriminalization of homosexuality:

1. Marginalization and Social Exclusion

Social exclusion, isolation and identity seclusion are the bitter realities faced by LGBTQ people nowadays. They become marginalized because of lack of recognition of LGBT people as a member of the community. They are not recognised for who they are and socially persecuted because of their identity as an LGBTQ person.

Dutee is the first Indian athlete who publically declared about her relationship with a same-sex partner. After her declaration, she has been shunned by her parents and her villagers called her an embarrassment who once took pride in her. People think that being a transgender person is something bad and sin and this mentality hit them hard. They eventually develop low self-confidence and self-esteem and may become isolated. Marginalization and social exclusion lead them to have limited access to valuable social resources such as education, employment, health services etc.

2. Social Media Bullying

Social media reflect and affect the opinions of the society. Social media can help individuals who may feel vulnerable, alone, or isolated to have a sense of community. This allows social media to be a safe haven for the many LGBT people around the world who face discrimination and harassment in their daily lives. Social media diminishes the isolation of LGBT people, being a tool for people on their personal journeys and struggles to start reaching and accessing allies and like-minded people.

But the negative impacts of social media cannot be neglected because social media platforms themselves are capable enough to silence the LGBT voices. This world is not as good as it seems. LGBT people are bullied, harassed and being laughed at. Homophobic and transphobic words are often used loosely under the umbrella of 'humour' or 'friendly bullying'. Recently a YouTuber Carry Minati²⁰ had uploaded a video called "TikTok vs YouTube: The End" taken down for content. One statement from his video had infuriated LGBT community- "Mithai ki dukaan pe 200 rupaye me bik jaayga". This term "mithai" is used derogatorily to refer to gay people. This Statement showed how people find it insulting to call someone gay, it is not only humiliating but degrading the value of a queer person's life. These videos are a symbol of harassment and bullying against the queer people.

Social Media: Supportive or Sceptic?

Different social media platforms have been analyzed to gauge the societal perception about the LGBT community whether the social media users are supportive or a sceptic about sexual minorities.

According to a Research conducted by *Aparup Khatua*,²¹- Most of the tweets are in support of LGBT people and revolve around equality, justice and human rights of the LGBT community. Immediately after the scrapping of sec 377, Twitter flooded with the multiple hashtags such as #Section377, #377verdict, #LoveIsLove, #LoveWins, #LGBT, #IndiaRejects377, #377Scrapped, #IndiaForGayRights and so on. Since then, tweets haven't stopped and have been surfacing all over India. The twitter deliberation in India is mostly encouraging and supportive of LGBT rights. However, the small number of tweets that oppose the verdict perceives it as a threat to Indian Culture, Rites, Traditions and the Family System. People are getting more usual to the concept of it and especially the younger generation who are the voices of the Future. The Bollywood movie "Shubh Mangal Zyada Savdhaan" is one such step by India Cinema that has aggravated the LGBT Rights movement in India. People are now opening up and are talking about issues and rights.

3. Impact of Family Reactions on LGBTQ Person: Conflict and Rejection

Many LGBT adults hesitate from openly sharing their lives because of fear of rejection and serious negative reactions. Lack of communication and understanding of their gender identity

²⁰ Zijah Sherwani, Youtuber Carryminati's roast video of TikTok was reported & YouTube took it down for using homophobic slurs, The Quint, (July 20, 2020), <https://www.thequint.com/neon/gender/carryminati-tik-tok-vs-youtube-roast-video-removed-homophobia>.

²¹ Aparup Khatua et al., Tweeting in Support of LGBT? A Deep Learning Approach, CODS-COMAD'19, (January, 2019).

leads to fighting and family disruptions, that can result in an LGBT adolescent being removed from or forced out of the home. Much LGBT youth end up in juvenile detention, are placed in Foster care, or on the footpaths because of family conflict. All these factors undermine their self-worth and increase the risk of HIV and the use of health deteriorating substance such as drugs, alcohol etc. They also become a victim of many heinous crimes and many of them indulge in committing crimes.

4. School Bullying and Harassment

Recently, a 19-year-old boy committed suicide after he was bullied and mocked for being homosexual²². The effects of bullying lead to depression, anxiety attacks, homelessness, school drop-out, Suicide attempt etc. Harassment and ragging of LGBT youth marginalize them in society and make them vulnerable to social exclusion. Queer person hesitates to disclose their identity as they know that after disclosure they are likely to experience homophobia and heterosexism from friends, family and society. The majority of young LGBT people think that coming out would endanger their physical and emotional well-being and therefore they choose to hide their identities, a practice which can result in suicide ideation, depression, alcohol and drug use.

6. Conversion Therapy

Conversion therapy is a risky and discredited practice that falsely claims to change a person's gender identity or sexual orientation or expression. Due to discrimination and bias behaviour against LGBTQ people, people continue to put their children at conversion therapy, despite its rejection by mental health organization. Recently, a 21-years-old LGBTQ activist, Anjana Harish from Kerala's Kannur district committed suicide on 12th of May in North Goa, under the enigmatic circumstance. She was forced into conversion therapy by her parents²³. Conversion therapy enhances the stigma on homosexuality and it is also against the principle of justice. Even after decriminalization of homosexuality, instances like these are continuing, highlighting that just the decriminalization of homosexuality is not sufficient, there is a need for criminalizing conversion therapy and other such practices.

²² Not my fault I was born gay: 19-year-old commits suicide over homophobia, India Today Web Desk, July 19,2019, <https://www.indiatoday.in/india/story/gay-man-suicide-homophobia-lgbt-helplines-1565041-2019-07-09>.

²³ Rianna Price, LGBTQ+ conversion therapy in India: how it began and why it persists today, The Conversation, July 20, 2020, <https://theconversation.com/lgbtq-conversion-therapy-in-india-how-it-began-and-why-it-persists-today-140316>.

IX. IMPACTS OF COVID-19 ON LGBT COMMUNITY

As we already know that the condition of LGBT community is vulnerable during normal times, we cannot even imagine what they are going through these tough times during the global pandemic COVID-19. Apart from the absence of healthcare, employment, housing and other such domains, Bias and limited anti-discrimination protection laws have amplified the situation making it worst.

1. Older people from the LGBT community mostly live alone and rely on their chosen family for care and support. Like any other old person, they experience physical health problems, which ultimately make them vulnerable to the severe complications from deadly COVID-19. They experience discrimination by healthcare providers, caregivers and every other layman in the society which eventually put them at great risk. Generally, these people live in congregate care facilities such as nursing homes or senior living communities, despite the increased risk of meeting persons having COVID-19, they also are exposed to poverty and economic insecurity.

2. As we all know that countrywide lockdown has made everybody stay at home, due to which LGBT youth are being forced to stay at home with their oppressor and perpetrators of physical and mental violence. A 24-year-old customer service executive, Mehak identifies herself as a transgender woman. She lives in Kandivali, she says it is getting difficult for her to deal with her Conservative family members during this stringent lockdown. My family does not approve of my gender identity, my father uttered that I am dead for him. Living under the same roof where you are being considered as dead is something horrible and heart-wrenching.²⁴

3. Transition-related medical care, which is life-preserving care for transgender people, may be regarded as non-urgent and postponed or cancelled due to the outbreak of COVID 19. However, the two components of this transition-related medical care must not be deemed non-urgent: continuation of ongoing hormonal therapy and surgical aftercare for previously-conducted surgeries. Delays or cancellations of care can lead to infection, surgical scarring and re-injury sometimes requiring additional surgical correction, chronic pain, hormone imbalances, Osteoporosis and migraines. Physical consequences may lead to psychological consequences also.

4. A Transgender person specifically those belonging to the Hijra/ Kinnar communities have

²⁴ Vinay Arote, IDAHOTB 2020: Coronavirus Lockdown brings in a wave of Hostility, May 17, 2020, <https://mumbaimirror.indiatimes.com/others/health-lifestyle/idahotb-2020-coronavirus-lockdown-brings-in-a-wave-of-hostility-for-the-lgbtqia-community>.

no access to daily income as their traditional livelihoods are affected due to stringent lockdown and social distancing. Recently, The Delhi High Court refused to entertain a PIL seeking directions to take steps to protect and provide welfare measures such as food, accommodation and medicines, to sex workers and the LGBT community member in Delhi to ensure their survival during the lockdown.²⁵

5. Due to a lack of proper identification documents like Aadhar card, Ration card and PAN card etc. , these people are not able to get access to social security schemes and government relief care packages because of the requirement of a government identification document or linking Aadhar, the biometric ID, to bank accounts as a prerequisite to receiving financial aid.

6. LGBTI people have previously been blamed for disasters, both manmade and natural, and there are scattered reports of this happening in the context of the COVID-19 pandemic. In some countries, reports suggest an increase in homophobic and transphobic rhetoric. There are also reports of police using COVID-19 directives to attack and target LGBTI organizations. In at least one country, the State of Emergency has been used to propose a decree that would prevent transgender people from legally changing their gender in identity documents. A few countries have put in place restriction of movement based on sex, with women and men allowed to leave their homes on alternate days, which have put non-binary and trans people at risk of heightened discrimination, as they may get stopped and questioned.

Are LGBT people more at risk from COVID-19?

Due to fear of encountering LGBTphobia and as a result of social stigma and discrimination, they are forced into poverty and homelessness without having any support system. They are more reluctant to get healthcare facilities and this may lead them to avoid symptoms of COVID 19 and taking proper advise from doctors, finally end up with tested coronavirus positive. A Transgender person is disproportionately affected by HIV, which may have weakened the immune system that can make them more vulnerable to coronavirus. Additionally, those who earn their livelihood through sex work might continue to indulge in sex work even during the pandemic, end up with putting themselves and others at risk of contracting the virus.

X. CONCLUSION AND RECOMMENDATIONS

India is a developing country and to boost the growth and development of the country there is a need of progressive law in which all citizens are equal and have equal opportunity to do some

²⁵ Delhi HC declines to entertain PIL on protection of sex workers, LGBT members during lockdown, The Indian Express, May 11, 2020, <https://www.newindianexpress.com/cities/delhi/2020/may/11/delhi-hc-declines-to-entertain-pil-on-protection-of-sex-workers-lgbt-members-during-lockdown-2141984.html>.

substantial efforts for the future of the Nation. India has finally managed to cast off one of the most prejudicial pieces of Victorian-era legislations. But same-sex marriage is still not legalized. It is the marriage that bestows rights and responsibilities on two people such as Adoption, inheritance, tax planning life insurance policies and other such rights. Marriage is a basic right for every citizen in a country like India where so much importance is attached to the marriage, but the LGBT community is still devoid of it. What would be the point of decriminalizing homosexuality in a county like India where LGBTQ people are still unable to get married to the partner of their choice? The Transgender Persons' (Protection of Rights) Bill was passed by the Lok Sabha on 5th August 2019 after so many efforts still it serves no good to the LGBT community and has several lacunae.

Researchers want to suggest that there is a need to strengthen the transgender bill and make some amendments favourable to the LGBT community. It is a need of the hour to legalise same-sex marriage and relieve Indian history from this dark spot. Homosexuality will remain a stigma as long as people are willing to shove under the carpet of oblivion. The Government should make efforts to educate the public and raise public awareness about sexual minorities. The three organs of the State and the society must ensure that the morality and values emanated from the Constitution prevail and guide us towards a better tomorrow with dignity, sexual autonomy and individuality for the LGBT community in India.

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