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LGBTIQA+ Community: An Analysis of Recent Situation

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ABSTRACT

Though the Supreme Court has decriminalized the homosexual activities in the year 2018, the struggle of the LGBTIQA+ community continues. We on a global level claim to be a democratic and progressive country, but in reality, are we that progressive? A community called LGBTIQA+, half of us are not even aware about their uncanny existence and survival let alone their struggles. This article explores the recent situation of LGBTIQA+ community from a general perspective. What psyche is hidden behind the gender identity and Sexual orientation? How LGBTIQA Community is still living in dilemma?

Our very own Constitution which gives several rights to its citizen, the Preamble of Constitution which states things like equity, opportunity, fraternity etc. Do we as a community doing justice with them? Do the legislations which are made for protecting their rights are in practical enforceable? We as a society need to think that why we are so resistant towards such things. This article contributes towards the understanding of the agony of LGBTIQA+ community.

Keywords: *LGBTQA, Discrimination, Human Rights, Equality.*

I. INTRODUCTION

“Maybe we can stop trying so hard to understand the gorgeous mystery of sexuality. Instead, we can just listen to ourselves and each other with curiosity and love, and without fear. We can just let people be who they are and we can believe that the freer each person is, the better we all are.” – Glennon Doyle

Sexuality in general is a very personal aspect of one’s personality. It is closely related with “Gender Identity”. Gender identity is defined as a personal conception of oneself as male, female, both, or neither.² There are several factors included in gender identity such as hormones, genes, sexual differentiation of brain and behaviour. There is complicated psyche behind Gender Identity, Sexual Orientation. Although Gender Identity was coined in the middle 1960’s³, but it is still evolving according to the modern era and yet to find its static meaning as new dimensions are being added

¹ Author is an Advocate at Rajasthan High Court, India.

² Nicholas Chadi (2022) ; Gender Identity, <https://emedicine.medscape.com/article/917990-overview>

³ Carla Moleiro and Nuno Pinto (1st October, 2015); Sexual orientation and gender identity: review of concepts, controversies and their relation to psychopathology classification systems, <https://www.frontiersin.org/articles/10.3389/fpsyg.2015.01511/full>

through people and their developing senses.

In a universal sense we perceive gender as “Male” and “Female” but there are new identities described in an umbrella term as LGBTIQA+ (Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning, and Asexual). The roots and existence of homosexuality can be found even in religious books most specifically in Sanskrit religious sources such as *Manusmriti* and *Shikhandi* or even a chapter of the Kamasutra of Vatsyayana⁴. Even though the recognition can be found in these ancient scripts the acceptance to these communities is very crucial. Earlier the Sec 377⁵ of the Indian Penal Code termed it as Unnatural Offences.

It has been a long struggle for the LGBTIQA+ community to survive in society. The people belonging to developed countries also had to fight for their right. Cases of Sexual Harassment discrimination, murder, rape, and theft were very prominent in the earlier stages and even today. People are having hard time to accept their phenomena of gender identity and Sexual Orientation. Disgrace and hatred were the two dominant feelings towards this community. The agony of the community can be understood, when **Justice Indu Malhotra** while delivering the judgement in which Section 377 was decriminalized, she quoted “*History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries*”⁶.

In a recent incident a letter was quoted to the Supreme Court Judge and Chairperson of the Gender Sensitisation committee, **Justice Hima Kohli**, by a Queer Non-Binary lawyer Rohin Bhatt concerning over the representation on **Gender Sensitisation Committee and Infrastructural Inclusivity**. Even in the Supreme Court they are having issues regarding the very basic thing that is gender-neutral restrooms. Their prefixes have been changed from ‘Mx.’ To ‘Ms.’ or their appearance has not been recorded in high courts. From this very example we can understand the dilemma in which this community is still living in. Mere decriminalisation of Section 377 will not solve anything until and unless there is implementation of the very basic things. Every problem should be solved from the grass root level.

In yet another global example where Uganda Parliament passed the “Anti-homosexuality Bill, 2023”. This bill includes death for “**aggravated homosexuality**” and life in prison for same-sex relations. The bill not only spreads fear among the LGBTIQA+ community but also shows

⁴ Camille-Maya Jayanthi Lemesle (10th December, 2020); the evolution of the perception and acceptance of the LGBTQ+ community in India, <https://www.voicesofyouth.org/blog/evolution-perception-and-acceptance-lgbtq-community-india>

⁵ Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[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. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

⁶ Navtej Singh Johar v. Union Of India, WRIT PETITION (CRIMINAL) NO. 76 OF 2016

a very regressive approach at international level.

LGBT workplace survey of 2016 showed that more than 40% of LGBT people in India have faced harassment at their workplace because of their gender/ sexual identity.⁷ The Transgender Person (Protection of rights) Bill, 2019 was passed with the intent to protect the interest of LGBTIQA+ community by prohibiting discrimination against them with regards to employment, education, and healthcare, access to government or private establishments. In reality this bill snatched away the very basic right which was Right to Privacy. Moreover, this bill also disintitiled them from leaving their family and joining any trans-community. Punishment prescribed in the bill is also discriminatory in nature. This bill is nothing but a fancy instrument which has no practicality. In reality, it is merely to show that we are a progressive nation. People still hesitate to come out because they fear about the consequences. The scariest and most saddening reality is that even the family members don't support them.

In the case of **Jacqueline Mary v. Supritendent of police**⁸, petitioners identified themselves as female but they were removed on the ground that upon medical examination it was found that they had intersex variations, so they were ineligible for holding the post. Similarly, in the case of **Manish Kumar Giri Alias Sabi Giri v. Union of india**⁹, in this particular instance Sabi Giri who was earlier a boy, suffered from Gender dymorphia and underwent a sex change surgery was dismissed from the navy because of his altered gender status. There have been several instances where people belonging to these community were discirminated on the basis of their identities.

If we see the postive side several Judicial Pronouncement are there for protection of LGBTIQA+ community such as **National Legal Services Authority v. Union of India**¹⁰, **Navtej singh Johar v. Union of India**¹¹, **Justice K.S Puttuswamy v. Union of India**¹², these landmark judgements laid the basic roots for granting of basic human rights to the community. But merely giving recognition and rights won't be sufficient for their survival until and unless society accepts them as their part and not neglect them. Legislations like Equal Remuneration Act, 1956, Workmen's Compensations Act, 1923, Payment of Gratuity Act, 1972, Factories Act, 1968, Maternity Benefit Act of 1961, Sexual harassment of women at workplace (Prevention,

⁷ Yatin gaur (june 21 2020); Evolution of LGBT Rights in India and taking the narrative forward: Living free and equal, <https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>

⁸ W.P No. 587 of 2014 and M.P Nos. 1 and 2 of 2014

⁹ WP(C) No. 7 of 2020

¹⁰ Writ Petition (civil) No. 604 of 20

¹¹ AIR 2018 SC 4321

¹² (2017) 10 SCC 1

Prohibition & Redressal) act, 2013 needs to be reformed and add LGBTIQ+ Community under their ambit.

Taking into the consideration all the factors it can be said that we have come a long way in the journey but the tussle, fear, acceptance are still there. The struggle of 70 years and almost 2 decades finally added some colours to the black and white life of several people. "Pride Month" is the one such example. The saying by **Dale Carneige** "Most of the important things in the world have been accomplished by people who have kept on trying when there seemed to be no hope at all." indeed has been made true.
