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# Social and Legal Aspects of LGBT Community in India

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## ABSTRACT

*It needs courage to stand against wrong but it needs more courage to prove that it is not wrong. The same we witness while proving that being gay, bisexual, lesbian is not an illness. It's not something extra ordinary to be the part of our society while being attracted towards similar sex or gender.*

*From paying transgender in traffic signals to making Sec 377 of IPC unconstitutional LGBT community are always seen fighting for their identity and rights in the society. In this superstitious and mythical society people believe transgender as lucky charm for any occasion, but they deny to accept them in their family, community and society. Their presence can only any occasion auspicious, but their birth at the same time become curse for a family.*

*After many problems questioned, protests done and laws were made for them. The present concern is, do they really got the rights they were fighting for since ages? Do they got their actual identity for which they had been protesting since many years? Are they facing the same challenges they used to face before?*

*This research paper will be focusing on the challenges and problems faced by the LGBT community in the present scenario. It will also focus on the social and legal aspects of LGBT community. It will give a brief analysis of the decriminalization of section 377 of IPC specifying certain important case laws. At-last, it will be focusing on the solutions to solve the problems faced by them.*

*Keywords: LGBT, IPC, Community, Lesbian, Gay, Bisexual, Transgender, etc.*

## I. INTRODUCTION

After birth a child is either called as a boy or a girl depending on his or her biological chromosomes. Traditionally, they termed as a male or a female. These become their gender identity. A child gets characterized in only two categories, male or female irrespective of his emotional or mental attraction towards somebody.

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A human being has both gender identity and sexual orientation at the same time. Where sexual orientation fully describes the emotional attraction, gender identity differs from it while dealing it with the concept of deep feeling and experiences of gender which may or may not be similar with the sex assigned at birth. With increasing age, a person realizes internal sense of their role according to their culture specifying traditional and behavioral differences between men and women. This is termed as 'Gender Identity'. On the other hand, 'Sexual Orientation' generally deals with the emotional and sexual attraction they feel for others that can be a gay, lesbian or a bisexual.

People getting attracted to the same sex was always been a debating topic in our society. Term LGBT was never as normal and common before in India. The acronym LGBT has been defined as Lesbian, gay, bisexual and transgender. Since 1990's this term has become a big burning topic in news. Moreover, the term 'Lesbian' is used to define a girl who is emotionally attracted towards another girl and has interest to carry out romantic and sexual intercourse with another girl. The term 'Gay' is used to define a boy who is sexually attracted towards a boy. 'Bisexual' can be a person who is sexually attracted towards more than one gender, it can both boy and girl at the same time. Lastly, 'Transgender' is a term used to describe a person who does not conform with the society and urge to change his/her sex through any surgery. H/she strongly disagrees with the sex assigned him after birth and tries to change himself by cross dressing or cross chromosomes surgery.

## **II. BRIEF HISTORY OF THE LGBT COMMUNITY**

In the past nineteenth century the, concept of having these kinds of sexual identity did not exist. LGBT identity in general sense came into picture around mid-twentieth Century. It created impact on both personal and political lives of people.

Havelock Ellis, the British Sexologist first coined this term as "sexual inverts", which he defined as the persons who have sexual attraction towards the same gender. Later, these people got identified as gay and lesbian. Karl Ulrichs, the German scholar brought up a new term, called "Urning". He described this term as a third gender. However, in 1869 Karloy Maria Benkert, a Hungarian doctor was the first person to coin the term "Homosexual".

"Gay" emerged as an underground term within the early-twentieth century and came into popular usage within the 1960s. The term was preferred by the Stonewall generation, who, contrary to their predecessors, were less likely to ascertain being gay as shameful or a mental defect. In the 1970s, activists Sylvia Rivera and Marsha P. Johnson often spoke of "gay rights" or "gay power" in regard to their liberation as street queens of color (who today we

might ask as transgender). The pair founded the organization STAR (Street Transvestite Action Revolutionaries) as how to arrange homeless trans street youth. “STAR was for the road gay people, the road homeless people, and anybody that needed help at that point,” Rivera said.

The term “lesbian” comes from the Greek island of Lesbos, related to the poet Sappho, whose surviving writing lyrically describes erotic love and attraction between women. The articulation of a definite lesbian identity was often necessitated by exclusions gay women faced in feminist and gay organizations. Friedan, the primary president of the National Organization for ladies (NOW), infamously mentioned lesbians as “the Lavender Menace,” suggesting their presence would hinder the goals of the organization by furthering the idea that each one feminist were man-hating lesbians. Lesbians, likewise, often experienced overt sexism in post-Stonewall gay organizations like the Gay Liberation Front (GLF) and therefore the Gay Activists Alliance (GAA).

The term “transgender” was forwarded and popularized by activists like Kate Bornstein, Holly Boswell, Leslie Feinberg, and Riki Wilchins, to make a coalition of persons who didn't fit neatly into gender binaries, or who defied gender norms and expectations, particularly following the 1993 assault and murder of trans man Brandon Teena in Humboldt, Nebraska. “Transgender” was also adopted by persons who didn't identify with the sooner label “transsexual,” thanks to its association with medical transition across the gender binary.

### **III. EMERGENCE OF LGBT COMMUNITY IN INDIA**

The issue of homosexuality in India is controversial. it's complex matter due to many sorts of spiritual life, living in India. This chapter reviews a number of the literature that deals with the historical facets of homosexuality then attempts to debate the contemporary situation of same-sex relation in India. The changes within the meanings related to same-sex sexuality are discussed somewhat sequentially, though not in strict chronological order, in reference to some major landmarks in both Indian history and therefore the contemporary period.

Till recently there was no equivalent ‘medical’ or ‘scientific’ term that was like the term’s ‘homosexuality’ or ‘homosexual’ in India. Classical Indian literature, homosexuality was discussed using poetic metaphors pertaining to earlier man or incidents famed for association with homosexuality. Early Indian terminology therefore didn't emphasize an innate sexual essence, but instead targeting actions, tendencies and preferences. In other words, rather than saying what someone ‘is’, many of the Indian works would usually ask whom he ‘resembles’ or what he ‘does’ or ‘enjoy’. as an example, within the late medieval Urdu poetry chapti,

which suggests clinging or sticking together was used for sex between women also as for ladies who practiced it.

Another popular way of describing homosexuality was in terms of social roles. Hence, early records mentioning men who had sexual relationships with the emperors call them 'favorites', an outline of their political status, not of an innate sexual essence. The Kama Sutra categorizes men interested in other men as having a 'third nature'. Ancient Indian medical texts described categories of individuals interested in their own sex and ancient and medieval Jain texts developed an elaborate taxonomy of such categories basing a number of them not on behavior, but on the character and intensity of same sex desire. Thus, abstract terminology differed within the past and therefore the present, and between India and therefore the West.

On a physical level, vernacular literature, earlier sex manuals, traditional sex jokes and erotic arts depict anal and oral intercourse because the preferred sort of homosexual intercourse; references to mutual masturbation, inter-femoral sex and other sorts of sexual practices were relatively rare.

Moving from the sexual act to the individual, men often manifested sexuality differently counting on their stage of life. There's a bent for boys and adolescents to require on the passive sexual role and for grown men to require on a lively role. Additionally, to changes in homosexual roles assumed at different stages of a men's life, many men have also experienced homosexual and heterosexual relationships during their lives. partially this blindness to gender is attributed to spiritual, social, and economic factors. Some men have undoubtedly had sexual activity with women just because they're expected so.

#### **IV. PROBLEMS FACED BY LGBT COMMUNITY**

The LGBT face innumerable difficulties within the society where the sole accepted orientation is heterosexuality and homosexuality are considered abnormal. Abuse is their daily routine and faced by them almost a day. They're more likely to experience intolerance, discrimination, harassment, and threat of violence thanks to their sexual orientation than people who identify themselves as heterosexual. They face inequality and violence at every place round the world. In many countries, the rights enjoyed by opposite-sex couples aren't enjoyed by the same-sex couples. they're prohibited from those rights. As a result, they face discrimination and can't enjoy social protection schemes like health care and pensions. The LGBT people even hide their gender and don't disclose it thanks to fear of losing their job. They gradually develop low self-esteem. the oldsters of normal children don't allow them to

combine with the LGBT children acting completely out of care and concern without realizing that this results in isolation for the opposite one. Lack of communication between LGBT child and therefore the parents often results in conflict within the family. Much LGBT youths are placed in care or find yourself in juvenile detention or on the streets. LGBT teens have a really high risk of health and mental problems once they become adults because they're rejected by their parents and caregivers. There are times where they get hooked in to drugs or alcohol to urge themselves relieved of stress. They isolate themselves from everyone. They become the victims of hate crime. In many countries, homosexuality is taken into account as crime and sometimes met by imprisonment and fines. Moreover, in a number of the private laws it's considered as a sin and is unlawful.

Exclusion and discrimination have more impact on the lives of LGBT persons. This has resulted within the following-

- Dropping out of faculty earlier
- Leaving home and family
- Being ignored within the community
- Lacking family support
- Attempt suicide

## **V. SOCIAL ASPECTS OF LGBT COMMUNITY**

Today, homosexuality and queer identities could also be acceptable to more Indian youths than ever before, but within the boundaries of family, home and faculty, acceptance of their sexuality and freedom to openly express their gender choices still remain a continuing struggle for LGBT (lesbian, gay, bisexual, transgender) people.

In urban India, where social media and company initiatives have created increasing awareness of LGBT rights, the scenario looks more upbeat for gay men than for transgender people or lesbian women. While urban LGBT voices that are heard through several online and real-world platforms form a crucial a part of LGBT activism, these expose only a little a part of the various challenges faced by the community.

Far away from gay pride parades, meet-ups and heated discussions on Twitter, families in rural India have their own ways of handling LGBT individuals. In some parts, secret honor killings are planned in order that the sole way for a young shirt lifter to survive is to run away within the cover of the night to some city, with no money or social support.

In other parts, lesbian women are subjected to family-sanctioned corrective rapes, which are often perpetrated by their circle of relative's members. Vyjayanti Vasanta Mogli, a transwoman LGBT activist and public policy scholar at Tata Institute of Social Sciences, Hyderabad, who has openly spoken about her abuse at college, says that lesbian women and transmen in rural areas find yourself at rock bottom of the hierarchy when it involves basic human rights within the unit of family and village.

She invokes B.R. Ambedkar when talking of the agricultural socioeconomic environment. "Ambedkar thought of the village as a unit of violence which is most true for LGBT issues," she says. "Village medics are often prescribed rape to cure lesbians of homosexuality. Refusal to marry brings more physical abuse. Stories of family acceptance that you simply see on TV and other media are more of an urban phenomenon."

Even in educated urban India, suicides by lesbian women make headlines per annum. It comes as no surprise then that a tribunal recently ruled that the sole danger to lesbians in India is from their own families.

### **The consequences of accepting the identity:**

A recent study found that one among the main factors that leads to the stigmatization of LGBT people is parental reaction towards homosexuality. The study goes on to conclude that the majority LGBT people are acceptable to family as long as they comply with behave like heterosexuals.

Prince Manvendra Singh Gohil, whose story of beginning has been well-documented within the media over the past several years, now heads several initiatives to assist LGBT people, including the Lakshya Trust that works for HIV/Aids prevention within the LGBT community. He says LGBT people must not get over excited by what they see within the media.

"It was for no small reason that a used to be within the closet for 41 years," he says. "I know of somebody who got a sudden rush of inspiration from a TV programme and decided to return bent his family. It didn't work. He lost his home, his job, everything. I always tell people to be fully conscious of their own reality. Be financially prepared. Detach a touch from your family both emotionally and financially before you propose to require this step."

Anwesh Sahoo, Mr Gay India 2016, who came bent his family at the age of 16, features a different perspective: "I wouldn't recommend expecting the right time. Staying within the closet may be a huge psychological burden. If you and your family have access to information, I suggest you are doing it whenever you are feeling strongly about your

identity."

Sakshi Juneja, founding father of Gaysi, a web space for LGBT people, says one can never plan enough. "You don't owe it to anyone to return out. So, I might say take your own time and are available bent only those you're comfortable with. Financial and emotional stability are must-haves before you communicate together with your family. At the top of the day, relations want nothing quite a secure and secure future for you, so it helps if you don't begin during a state of emotional or financial breakdown."

## **VI. REDEFINING THE FAMILY AND ITS ROLE**

In a society bound by a rigid set of social and cultural norms that dictate the terms and conditions of education, career and marriage, the shortage of family support can convince be an enormous blow to the mental and physical health of LGBT people. Isolation and pressure to evolve often cause depression, thoughts of suicide and psychosomatic diseases. Many of them like better to move to a different city to remain far away from the immense pressure to marry and begin a family.

Families that accept their identities put many restrictions within the way they prefer to dress and interact with their partners. within the absence of family support, online groups and social media have offered accessible alternatives to make a community outside of family. Platforms like Gaysi and Gaylaxy, and publishers like Queer Ink have helped carve out spaces for LGBT people to interact, share and collaborate.

Dhrubo Jyoti, journalist and LGBT activist, says social media offered him a semblance of belonging right from this teenage day. Through a fake Facebook profile, he met and interacted with other queer people and located an avenue to precise his fears and desires.

Though the shortage of parental support can potentially be debilitating, it doesn't mean the sky has fallen, says Shahani. "I know many LGBT citizens who have formed alternative support groups, or family-like units, when their own families are less supportive. Fortunately, in urban India, at least, we've strong LGBT associations and communities in most big cities, so people are never alone," he says.

It is, consistent with Shahani, the elemental responsibility of any parent to simply accept their children's identity. "You aren't doing all of your child a favor by accepting her or him. you're just fulfilling your responsibility. By accepting your child you're also helping create a far better society that values diversity and accepts the individuality of individuals as there," he says.



Popular TV shows like *Satyamev Jayate* and therefore the *Tara Sharma Show* have helped raise awareness among parents about LGBT issues. Jyoti says a number of his friends simply asked their parents to observe the episode of *Satyamev Jayate* that focused on alternate sexualities rather than trying to elucidate everything on their own.

Jyoti recollects being inspired by appearances of filmmaker Rituparno Ghosh on TV. "On a specific episode of an interview show, he held an extended conversation with an individual who had repeatedly mocked him about his mannerisms. Through the conversation, he made the person understand that though he could take all the mockery, there have been people with similar identities who might be deeply suffering from such behavior. That episode made an enduring impression on me. So yes, additionally to being some extent of connection and inspiration, TV has the potential to affect attitudes across generations."

Considering TV and films are accessible to even rural populations where social media has not yet penetrated, these could convince be the foremost effective tools in redefining the roles and attitudes of families through programmes and stories that not only educate and enlighten but also relay LGBT experiences in authentic and varied voices.

## **VII. WORKING WITH GEN NEXT**

It is an encouraging sign that schools and colleges have begun to require up institutionally approved LGBT activism. Rohit Revi, one among the founders of *Orenda*, the gender and sexuality club at IIT Gandhinagar, says without LGBT activism in educational institutions, LGBT issues largely remain "untalkaboutable".

"Our broad agenda is to form LGBT students and their struggles visible. Invisibility is that the first and largest challenge that we'd like to require up," he says.

Though, theoretically, most educated citizens support alternative sexualities and gender identities, when it involves day-to-day behavior, there's an urgent got to change the bottom reality. "Bridging the gap between academic knowledge and everyday experience means we'd like people to question stereotypes. Say, for instance, the rampant telling of homophobic jokes. we'd like people to pause and ask what's so funny about such an oppressive take. we'd like our allies to means that such behavior costs us our freedom and dignity. Creating a critical mass of such an aware group is a crucial a part of on-campus activism," says Revi.

However, Mogli is vocal about going deeper into investigating how schools can play a more robust role in supporting LGBT issues. "Currently, our academic model is predicated on obedience to authority and unquestioned following of rules and regulations. This must

change. we've to encourage our youngsters to question and learn from debate. Children must be taught about their basic human rights and therefore the tools available to guard those rights," she says.

"Secondly, they need to realize legal frameworks and options to challenge these frameworks. I'm not talking of heavy legalese but simple legal concepts," she says.

She adds that asking children to require individual responsibility without talking of systemic change is futile. "You can't say you're liable for your life so you ought to work positively towards your own freedom of expression. we'd like to speak about Section 377. we'd like to speak about the new transgender bill, which the overwhelming majority of transgender people find unacceptable. Families and individuals cannot change very much like long because the system supports oppression of LGBT rights."

Gohil sums up the hope of the LGBT community when he says that when educational institutions become their allies throughout the country, future generations will have a far better chance of living up to the ideals of equality. "What better way than to organize the longer-term leaders of our country to believe LGBT rights. whenever a faculty or college decides to participate in LGBT activism, we come closer to bridging the gap between reality and a very inclusive society," he says.

### **VIII. LEGAL ASPECTS AND PROVISIONS OF LGBT COMMUNITY**

The enactment of the varied laws by the legislature is that the outcome of the constitutional provisions. The relevant acts which establish the identity of this class though not specifically but they're discussed below.

The Citizenship Act, 1955 which provides for the acquisition and determination of Indian Citizenship also doesn't, expressly or impliedly require a determinate sex or identity as a pre-condition for acquiring citizenship. for somebody to be a voter (elector), he/she must be a citizen of India. The committee of India has taken special measures to enroll the transgender persons as electors. The definition of "person" under the general Clauses Act, 1897 is couched in even wider terms. The Act defines someone to incorporate any company or association or body

of individuals, whether incorporated or not'. Though Section 13 of the Act stipulates that words importing the masculine gender shall be taken to include females, this stipulation is itself conditioned by the statutory direction that this will be so unless there's anything repugnant within the topic or context.

Interestingly, the Registration of Births and Deaths Act, 1969 doesn't mention anything about “sex”/ “gender” of an individual to be registered just in case of birth or death. The Act is gender neutral. The need of indicating the sex/gender of an individual just in case of a birth or death within the Birth or Death certificate, because the case could also be, doesn't seem to be due the provisions of the Act itself. Such a requirement may be put within the formats of such certificates prescribed within the Rules under the Act, which are made by the States.

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcoholic abuse, problems associated with marriage and adoption.

“Access to justice may be a Fundamental Right guaranteed by the Constitution to the citizens.” said Justice Dipak Misra. India despite being world’s largest constitutional democracy, are still grappling within the heteronormative caves of undermining alternative sexualities.

In the case of, *Jayalaxhmi V. Tamil Nadu*<sup>2</sup> Pandian, a transgender, was arrested by the police on charges of theft. He was sexually abused within the police headquarters which ultimately led him to immolate himself within the premises of the police headquarters. 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 didn't assist in indentifying other transgenders he was familiar with. Homosexuals have also been at the aggrieved end of monetary extortion by the police in exchange for not revealing their identities to society.

In today's date, the laws that cause an excellent harm to the present transgender community is Section 377 of the Indian legal code, 1860 and therefore the Immoral Traffic Prevention Act, 1986.

Immoral Traffic Prevention Act (ITPA), 1956 (amended in 1986) is that the principal instrument which prevents the trafficking of girls and youngsters into prostitution. With the Amendment of 1986, the scope and ambit of the Act now became applicable to both male and feminine sex workers and also to those whose identity was indeterminable. Thus, both male and hijra sex workers became criminal subjects of the ITPA and it provided the legal basis for arrest of the transgender sex workers population. Section 377 of the Indian legal code , 1860

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<sup>2</sup> (2007) 2 SCC 1

was drafted by Macaulay . This provision provides the punishment for the prosecution of certain sorts of sexual acts deemed to be unnatural. The natural presumption just in case of a homosexual or a hijra is drawn that they're engaging in acts against the order of nature. it's clear that this Section has been frequently wont to harass and exploit homosexuals and transgender persons. Surprisingly, the Indian Council for Medical Research (ICMR) and Indian Medical Association (IMA) haven't yet framed any guidelines for Sex Reassignment Surgery (SRS).

### **Role of Judiciary in promoting LGBT community (Decriminalization of section 377, IPC)**

15TH April 2014 wasn't a typical day. Something exceptional happened on the summer of 15TH of April that 'blown life within the "constitutionality" dead members of the sexual minority of India'. It had been that day which brought light and euphoria to the lifetime of 'Hijras'. For the first time within the history of India, 'Third Genders' was given recognition and was officially recognized as another gender as male and female. The Hon'ble Supreme Court of India within the case of National Legal Services Authority v. Union of India<sup>3</sup> in its landmark judgment in 2013 created the 'third gender' status for hijras or transgenders. Earlier, while writing their gender, they were forced to place in writing male and female, but now after this judgment, they'll proudly describe themselves as 'third gender'.

With the arrival of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and it had been finally on July 2, 2009 that the Delhi supreme court passed a judgment in favor of the LGBT's within the landmark judgment of NAZ Foundation v. Government of N.C.T Delhi<sup>4</sup> (hereinafter mentioned because the NAZ Foundation case), declaring Section 377 of the Indian legal code, 1860 which criminalizes homosexuality in India to be unconstitutional and violative of Articles 14, 15 and 21 and skim down the section, allowing consensual sexual intercourse between two homosexuals above 18 years aged .

The matter visited appeal to the Supreme Court in Suresh Kumar Koushal and another v. NAZ Foundation<sup>5</sup> et al. where the Supreme Court struck down the choice by the supreme court within the NAZ Foundation Case.

Justice Singhvi said that Section 377 of the Indian legal code doesn't suffer from any constitutional infirmity and left the interest the competent legislature to think about the

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<sup>3</sup> AIR 2014 SC 1863.

<sup>4</sup> 160 Delhi Law Times 277

<sup>5</sup> Civil Appeal No. 10972 OF 2013

desirability and legitimacy of deleting the Section from the written record or altering an equivalent to permit consensual sexual intercourse between two adults of an equivalent sex privately.

The Court mentioned Indian and foreign judgments, the Yogyakarta Principles 27 identifying with sexuality as a structure of personality and therefore the worldwide patterns within the assurance of security and nobility privileges of gay people and held:

The Yogyakarta Principles consists of 29 principles, giving paramount importance to universality and inalienability of human rights barren of sexual orientation and gender identities. The order of those principles explains the character and extent of discrimination faced by the LGBT group which is embedded in society that's enforced through its system. These principles are supported the idea of rights-based approaches, which entrusts the State Parties with duty to implement the legal obligations, such as:

- taking all necessary legislative, administrative and other measures to eradicate impugned practices which discriminate and violate the essential human rights of the individuals with diverse sexual orientation and gender identities;
- undertaking protection measures for the persons identifying themselves with the LGBT community or group; ensuring accountability of perpetrators violating the essential humanright of the LGBT community and also seeking redress for the victims; and,
- promotion of a person's rights culture by means of education, training and public awareness-raising.

Yogyakarta Principles are well received by the UN bodies, Regional Human Rights Bodies, National Courts, Government Commissions and therefore the Commissions for Human Rights, Council of Europe then on. These bodies have endorsed these Principles and recognized them as important tool for identifying the obligations of States to respect, protect and fulfill the human rights of the people belonging to the LGBT community.

“The sphere of privacy allows person to develop human relations without interference from the surface community or from the State. The exercise of autonomy enables a private to achieve fulfillment, grow in self-esteem, build relationships of his or her own choice, and fulfill all legitimate goals that he/she may set. within the Indian Constitution, the proper to measure with dignity and therefore the right of privacy are recognized as dimensions of Article 21.”

In April 2014, the Supreme Court of India declared transgender to be the 'third gender' in Indian law. Justice KS Radhakrishnan noted in his decision that,

“Seldom, our society realizes or cares to understand the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of these whose mind and body disown their biological sex.”

By recognizing the transgender as a 3rd gender, this Court isn't only upheld the rule but also advanced justice to the category, thus far bereft of their legitimate natural and constitutional rights. It is, therefore, the sole just solution which ensures justice not only to the transgenders but also justice to the society also. Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them susceptible to violence and sexual abuse, publicly spaces or in jail by the police. Further, non-recognition of identity of Hijras/transgender person leads to facing extreme discrimination altogether spheres of society, especially within the field of employment, education, healthcare etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc.

The applicability of the judgment during this case was restricted by the Hon'ble Supreme Court only to transgender and explicitly excluded the Lesbians, Gays and Bisexual, thereby not getting into the controversial question of validity of Section 377 of Indian legal code. The Court on the idea of Human Rights highlighted the importance of gender for applicability of varied human rights.

The Court directed that the recommendations by the report of Ministry of Social Justice and Empowerment Expert Committee must be examined supported the legal declarations made during this judgment and implemented within six months. This broadened the ambit of rights which will be granted to the transgender. However, though the judgment recognizes the harm done by Section 377 of IPC to the transgenders, it didn't pass any orders or make any recommendations.

The Hon'ble Supreme Court of India declared that:

Hijras, eunuchs, aside from binary gender, be treated as “third gender” for the aim of safeguarding their rights under Part – III of our Constitution and therefore the refore the laws made by the Parliament and the State Legislature.

Transgender persons' right to make a decision their self-identified gender is additionally upheld and therefore the Centre and State governments are directed to grant legal recognition

of their identity like male, female or as third gender.

The Court direct the Centre and therefore the State governments to require steps to treat them as socially and educationally backward classes of citizens and extend all types of reservation in cases of admission in educational institutions and for public appointments.

The Centre and State Governments are directed to work separate HIV sero-surveillance Centre since Hijras/Transgenders face several sexual health issues.

The Centre and State Governments should seriously address the issues being faced by hijras/transgenders like fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for Sex Reassignment Surgery (SRS) for declaring one's gender is immoral and illegal.

The Centre and State Governments should take proper measures to supply medical aid to the transgenders within the hospitals and also provide them with separate public toilets and other facilities.

The Centre and State Governments should also take steps for framing various welfare schemes for his or her betterment.

The Centre and State Governments should take steps to make public awareness in order that the transgenders will feel that they're also part and parcel of the social life and be not treated as untouchables.

The Centre and State Governments should also take measures to regain their respect and place within the society which once they enjoyed in our cultural and social life.

Therefore, it is often observed that the role of judiciary has been very significant within the protection of the rights of the Transgenders in India. The status of "third gender" has given recognition to their identity within the society and has spread awareness about their existence. A Bench comprising Justice K.S. Radhakrishnan and Justice A.K. Sikri directed the govt to treat them as "socially and educationally backward classes of citizens.

In the admission portals the Department of Education of Tamil Nadu issued a government order by creating third gender category. Later, Javadhpur University in Kolkata inserted a column of third gender within the admission portal. Transgenders can now mention themselves as "third gender" while seeking information on governance related matters through online RTI application through the web site. All transgenders can avail the advantages under the opposite Backward Class (OBC) list, regardless of their community background. the info of the committee stated that 23,019 people have registered themselves

under the “Others” category.

The Government of India has been directed by the Supreme Court for treating the members of ‘Third Gender’ as socially and economically backward. The Supreme Court further opined that absence of law recognizing hijras because the third gender couldn't be continued as a ground to discriminate them in availing equal opportunities in education and education and employment. The third gender would be categorized as Other Backward Classes [OBC] which can help them to avail the opportunities of reservations in educational institutions and government jobs. The ideals enshrined within the constitution of India by our founding fathers are defended by the Supreme Court’s judgment. the decision though pertains to only eunuchs or transgender people; it's indeed a ray of wisdom that eventually penetrated into the dark chambers of the mystery of human sexuality to illuminate the dark age reason. On 2 February 2016, criminalization of homosexual activity was reviewed by the Supreme Court. In August 2017, the Supreme Court unanimously ruled that the proper to Privacy is an inherent and fundamental right under Article 21 within the Indian Constitution, providing hopes to LGBT activists that the Court would soon strike down Section 377. The Court also ruled that a person’s sexual orientation may be a matter of privacy issue.

In a landmark verdict of *Navtej Singh Johar & Ors. v. Union of India*<sup>6</sup>, the Supreme Court today scrapped the controversial Section 377- a 158-year-old colonial law on consensual gay sex. The Supreme Court reversed its own decision and said Section 377 is irrational and arbitrary. “LGBT Community has same rights as of any ordinary citizen. Respect for individual choice is that the essence of liberty; LGBT community possesses equal rights under the constitution. Criminalizing gay sex is irrational and indefensible,” said judge Dipak Misra, who headed the five-judge bench hearing the case. The judgment was delivered by a Bench of judge of India Dipak Misra and Justices Rohinton Nariman, AM Khanwilkar, DY Chandrachud and Indu Malhotra. CJI Misra and Justices Nariman, Chandrachud and Malhotra delivered separate, concurring judgments. And Section 377 which had an excellent history decriminalized.

## **IX. CONCLUSION**

Homosexuality isn't a mental illness. It's as natural as heterosexual. The human mind has no control of it. Things of LGBT community is worst in India. they're subjected to harassment, violence, and mockery. The resolution gone by UN have created a positive impact everywhere the planet . Stand of India at UN regarding LGBT issues has been thus far very

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<sup>6</sup> (2018) 10 SCC 1



disappointing as India are stigmatizing its own image as a democratic republic by persistently opposing LGBT rights at international level. It's vital to form people conscious of the presence of LGBT community. Human rights are natural rights which are indestructible and inalienable that are conferred upon man since birth. Homosexuals aren't aliens, they're not sick, their sexual behavior is perfectly in tune with the dictate of nature. The govt of India should wipe off its conservative nature and take concrete steps for the welfare of sexual minority.[xlvi] The supreme court's verdict on Decriminalization of section 377 was a big milestone for the LGBTQ community because it gave them the right to reveal their emotions and live a dignified life but at the identical time it'll affect various other laws especially personal laws like section 32(d) of the Parsi Marriage and divorce act 1936; section 27(1-A) of the special marriage act, 1954 etc. Therefore, to cater to the present problem several amendments within the family laws shall be conducted.

The marriages of the LGBTQ community should happen under the special marriage act, 1954 despite personal laws because they are more clear and unambiguous as compared to the private laws, moreover, in Shariat law homosexual marriages don't seem to be allowed therefore Muslims cannot do homosexual marriages if they're going with their personal laws.[xlix] Therefore all the marriages of LGBTQ shall be done under the Special Marriage Act to urge obviate the paradox and to forestall the chaos or the legislators should draft a fresh act which, specifically will cater to the marriages of LGBTQ community.

In the end, I'd like better to say that though, the judgment by the Hon'ble Supreme Court was given within the favor of the LGBTQ community but the social implications of it'd be an enormous task to be dealt by the community members. The judgment should work effectively both on paper and in practicality.

## **X. SUGGESTIONS**

There is no short cut solution which will address the issues facing many LGBT people in across the world. Therefore, within the light of the above-mentioned discussion, following recommendation are often developed in recognizing the role that individuals also as institution can take effectively.

- Support the foremost marginalized of the LGBT community—people of color, low-income, young, elderly and transgender people.
- Establish collaborations on cross-issue work that has LGBT issues affecting low-income and people of color populations.

- Engage foundation staff publicly education around issues affecting LGBT low-income people and LGBT people of color, especially as they relate to transgender issues.
- Schools and teacher education programmes are crucial sites where LGBT issues and concerns got to be addressed. to assist promote health and safety among LGBT youth, schools can implement the subsequent policies and practices:
  - i) Encourage respect for all students and prohibit bullying, harassment, and violence against all students.
  - ii) Identify —safe spaces, ‖ like counselors ‘offices, designated classrooms, or student organizations, where LGBTQ youth can receive support from administrators, teachers, or other school staff.
  - iii) Encourage student-led and student-organized school clubs that promote a secure, welcoming, and accepting school environment (e.g., gay-straight alliances, which are school clubs’ hospitable youth of all sexual orientations).
  - iv) make sure that health curricula or educational materials include HIV, other STD, or pregnancy prevention information that's relevant to LGBTQ youth; like, ensuring that curricula or materials use inclusive language or terminology.
  - v) Encourage administrative district and faculty staff to develop and publicize trainings on the way to create safe and supportive school environments for all students, no matter sexual orientation or identity and encourage staff to attend these trainings.
  - vi) Facilitate access to community-based providers who have experience providing health services, including HIV/STD testing and counseling, to LGBTQ youth. Facilitate access to community-based providers who have experience in providing social and psychological services to LGBTQ youth.
- Consider LGBT issues as a central theme altogether economic and racial justice work.
- Advocate with philanthropic peers to support LGBT racial and economic justice work.
- Legal funds got to be created which will combat Public Interest Litigation on LGBT issues.

- Training must be conducted for health professionals to extend their understanding of LGBT identity as potential risk factor for self-harm suicidal behavior and depression. Respective authorities should make sure that health, psychological state and social care services are provided during a way that's accessible and appropriate to LGBT people.

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