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# The Impacts of Globalization on LGBTQ Rights in India

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## ABSTRACT

*Globalization has changed the whole realm of human life. It is not just making the world into a single market, but also helps the human race to share, to converge knowledge, technology and values to make this planet more beautiful to live in. The impact of globalization has also given sound to the unheard cries of LGBTQ people all around the globe. They were kept aside, silenced and tortured for thousands of years by our traditional value system. India, being a religious country, LGBTQ people were never allowed to express their freedom and never allowed to 'be' themselves. Globalization has helped people across the globe to know how the world is accepting LGBTQ rights and helping them to live their lives at the fullest.*

*As India has opened its gate to globalization, it has already welcomed the technology, capital, cultural practices and values of other nations too. And in short, globalization has had a significant impact on India as a whole. As LGBTQ people are given many rights around the world, India cannot stand alone. The LGBTQ community fought for their rights with vigor and hope. As a result, we have the landmark judgment of Delhi High Court on Naz foundation V. Govt. of NCT of Delhi, in 2009 which decriminalized homosexuality, the Supreme Court judgment in NALSA V. Union of India in 2013 which recognized transgender people as the third gender and affirmed all fundamental rights of them. Even if we have a glimpse of hope on one side, the traditional religious mind set of people is not ripe enough to accept LGBTQ as they are.*

*So this paper is an attempt to study the impact of globalization on LGBTQ rights in present India.*

**Keywords:** globalization, lgbtq, rights.

## I. INTRODUCTION

The term 'globalization' is a gift of 20<sup>th</sup> century but idea of globalization has a very long history of human race. Globalization simply made the whole planet into one home. So, every nation, every culture and each and every human being became interconnected.

Globalization has transformed our world in many ways. It just made openness and

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interconnectedness between nations and people from different corners of the world. It makes a person from Europe to feel the pain of his/her friends who is under fear of a tyrant dictator in Africa and vice versa. People were able to find out the common humanity beyond their borders and race. It was very obvious in Jasmine Revolution and how it influenced the Arab nations for their fight. LGBTQ people also started to fight for their rights all around the globe hearing the acknowledgment and acceptance were given for their brothers and sisters in different nations. There is increase in acceptance of same sex marriage and their rights in many countries mainly by last two decades.

Indian society is known for its religiosity and its progressive scientific temper in the other hand. In ancient times Indian society never considered homosexuality as a disorder or sin. Ancient scriptures never criminalized homosexuality. Later it became taboo and homosexuals were marginalized from the main stream society. Finally, with British law homosexuality was criminalized. And it is very sad to acknowledge that in India even the constitution guarantees all types of fundamental rights to its every citizen, LGBTQ people were never considered even to vote till 1994. Many of their problems like adoption, marriage, relationship status, reservation for education and employment etc. are untouched.

As we all know in the last decade of the 20th century India opened herself for globalization and welcomed not just the capitals but knowledge and values which really helped India having a very progressive outlook on all kind of human rights issues. Yet we are not done. There are many miles to go. In India LGBTQ were granted their right to vote, were recognized as third gender, we have decriminalized homosexuality. But these are not enough and this is not just the matter of some laws and reservation. We need to destroy all types of religious taboos and practices which keeps the LGBTQ people away from expressing their true selves and hiding away from the society for hundreds of years.

#### **(A) Statement of problem**

LGBTQ rights were never addressed by Indian society. They were marginalized. But when the whole world became one family through globalization India was also influenced by the movement around the globe for their rights. India also responded positively for their right to vote, recognizing the third gender, Transgender Persons Protection of Rights Act etc. But still, we have a long road ahead.

#### **(B) Research objectives**

- To address the problem of LGBTQ people around the world.

- To study the influence of globalization in LGBTQ movements.
- To determine the present scenario of LGBTQ rights in India and the role of globalization in these movements.
- To find out the possible suggestions and recommendation for the well-being of LGBTQ people in India.

### **(C) Research questions**

- Whether LGBTQ rights were adequately addressed by India?
- How did globalization influence the LGBTQ rights in the whole world especially in India?
- How far the land mark judgments of Indian judiciary helped the people of India to have broader view on LGBTQ rights?
- Whether the Transgender Persons Protection of Rights Act of 2019 sufficient enough to deal the issues? If not substantiate the reasons and suggestions.
- What all are the practical suggestions for the improving the standard of life of LGBTQ people in social, cultural and economic realm of life?

## **II. LGBTQ IN ANCIENT INDIA**

History tells in ancient Indian society there were the existence of homosexuals and trans genders, and they were not merely existed but were widely accepted. During the Vedic period they accepted eight of kinds marriages and one among them is ‘Gandarva marriage’ which includes man to man and woman to woman marriages. In ancient Indian scripture of Rig Veda gods Varuna and Mitra is depicted as same sex couple. And according to Bhagavat Purana they have children also. In ancient epic of Mahabharata and Ramayana we have a clear indication of same sex intimacy. In the history of the Mughal empire, there was a set of punishment for ‘Ziya’ (unnatural intercourse) but it was largely ignored in practice. But at the same time transgender persons held high positions in Mughal courts and homoeroticisms were largely practiced in royal life. In short, these popular references in Indian history and mythology, clearly states that ancient “Indian society” did indeed “recognize” homosexuality during that period, and even accepted it.<sup>2</sup>

## **III. LEGAL SCENARIO OF LGBTQ RIGHTS IN INDIA TILL GLOBALIZATION**

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<sup>2</sup> Ray, Sanjana.2008 *Indian Culture Does Recognize Homosexuality, Let Us Count the Ways* (6 April 2022) <https://www.thequint.com/voices/opinion/homosexuality>

Under IPC in 1861 anal sex and oral sex (for both heterosexuals and homosexuals) were criminalized by the British. Section 377, IPC reads as: “Unnatural offences. —Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.<sup>3</sup> So section 377 of IPC makes Homosexuality illegal with life imprisonment or with imprisonment for ten years with fine as per the Indian law. The oppressive law targeted not only homosexuals but also encompassed any other forms of non-traditional sexual activities, even within heterosexual relationships. As such, it represented an outdated remnant of Victorian morality, incompatible with the principles of a democratic nation like India.<sup>4</sup> Later in 1967 by The Sexual Offenders Act in England, the offences of homosexuality between consenting partners had been abolished. But in India the consent is quite immaterial for this offence the trans genders continued to suffer. The saddest part of history is that even after independence we were just following the British age old reasoning for years and years. And we had no sign of hope till the last decade of 20<sup>th</sup> century.

#### **IV. LGBTQ RIGHTS IN INDIA AFTER GLOBALIZATION**

Globalization has a very transforming impact in India. Globalization has its foot prints in every sphere of the life of the people of India. It has just transformed the life style, living standard, social and cultural values of people of India. In a very simple sense, our religious customs and traditions were loosened up the fresh air of western culture came in very rapidly. Whether globalization is a curse or blessing is altogether another part of discussion. But concerning LGBTQ rights it is very clear that globalization is the sole reason behind the upbringing of LGBTQ rights and movement in India, in the last decade of 20<sup>th</sup> century. As a result, Delhi had witnessed the first gay rights protest in August 1991. And it's very sad to admit that only in 1994 hijaras were given the right to vote considering them as trans genders. And at the same year there was the first petition challenging 377 by Aids Bhedhav Andolan. And it was dismissed with no surprise. But it was a clear sign that India is slowly freeing herself from the clutches of religious rigid customs and values.

#### **V. GLOBAL TRENDS IN LGBTQ RIGHTS AFTER GLOBALIZATION**

The advent of globalization has brought about a swift transformation in the struggles for

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<sup>3</sup>The Indian Penal Code (45 of 1860) Bare Act, Section 377, Professional Book Publishers, 2021. (India)

<sup>4</sup> Gaur Latin. 2020. Evolution of LGBT Rights in India and taking the narrative forward: Living free and equal, *I pleaders, intelligent legal solutions* (8 April 2022). <https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>

LGBTQ rights. Significant advancements have been achieved concerning attitudes towards sexual equality, gender identity, same-sex marriage, and gender transition. There is a flow of values, culture and reasoning from one part of the world to the other part of the world. It really helped the LGBTQ communities in developing and underdeveloped countries of African and Asian continent. Globalization really inspired them closely watching the LGBTQ movements in European and American countries. Yogyakarta principle is an example for the same. Europe has become the center of LGBTQ movements. Because many of the European countries started to legalize homosexual marriage. European countries also understood the need of LGBTQ people and their rights which were kept in silence for thousands of years by the human history. Surprisingly even the Catholic Church which was always being questioned for its rigidity in its value system also accepted the change in the society. Church welcomed the LGBTQ people with the famous saying of its great leader Pope Francis “Who am I to judge them?” It was indeed a great lesson for all the religious fundamentals for hearing the age-old cries of LGBTQ people.<sup>5</sup>

There is also another side of the story. In many countries with the first decade of 21<sup>st</sup> century extreme right wing political parties were also strengthened. They became very rigid and stubborn for their political gains. And they need to satisfy the religious fundamentals of each country for their votes. It actually kept back word the LGBTQ movements and its growth. It is great risk for many European countries. Where as in Africa and Asia, many countries came into the control of extreme Islamic groups. And they started to follow their Sharia law laws. LGBTQ up bring was brutally uprooted from these countries. And they were inhumanly punished for expressing their true selves.

Yet, we hope the LGBTQ movements and their fight for rights will overcome all these fundamentals and extremist. And there will be all inclusive world in which no one is discriminated on the basis one’s sexual orientation.

## **VI. LANDMARK CASES ON LGBTQ RIGHTS IN INDIA**

### **1. Naz Foundation vs. Nct Of Delhi (2009)**

For the first time, the court in India decriminalized homosexuality. The Delhi High Court explicitly asserted that section 377 of the Indian Penal Code violates fundamental rights safeguarded under articles 14, 15, 19, and 21 of the Indian constitution. Consequently, the court held the opinion that the portion of section 377 criminalizing homosexuality must be deemed

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<sup>5</sup> *BBC News* (2013) Pope Francis: Who am I to judge gay people? 29 July 2013.(15 April 2022). <https://www.bbc.com/news/world-europety>.

unconstitutional.<sup>6</sup>

## **2. Suresh Kumar Kaushal vs. Naz Foundation (2013)**

In a surprising turn of events, the Supreme Court of India reversed the decriminalization of homosexuality despite the earlier judgment by the Delhi High Court. The Supreme Court expressed the opinion that LGBTQ individuals were considered a "lesser minority" and, therefore, did not warrant constitutional protection. The court took a step backward by stating that section 377 of the Indian Penal Code was not afflicted with any unconstitutionality.<sup>7</sup>

## **3. NLSA vs. Union Of India (2104)**

The supreme Court had the view that non recognition of trans gender's identity is the violation the fundamental rights in article 14,15,16 and 21 of Indian constitution. The Supreme Court asked the government to treat the LGBTQ community as a third gender and as an economically and socially backward class. And they should be placed under backward classes and equal opportunity in education and employment.<sup>8</sup>

## **4. K.S Puttaswamy vs. Union Of India (2017)**

This landmark ruling is often referred to as the "Right to Privacy Verdict." In this case, a nine-judge bench of the Supreme Court explicitly declared that sexual orientation is an integral aspect of privacy, safeguarded under articles 14, 19, and 21 of the Indian Constitution. The court emphasized that the relatively small LGBTQ population cannot be a justification for denying them their fundamental rights.<sup>9</sup>

## **5. Navtej Singh Johar vs. Union Of India (2018)**

This judgment delivered by the Supreme Court of India is the result of a number of PIL that have been filed by many LGBTQ groups. The court struck down section 377 and decriminalized homosexuality. Court also stated that every individual has the right to live with dignity irrespective of gender identity and sexual orientation. Then court also apologized to the members of LGBTQ community and their families for the delay in providing redress for the dishonor that they have been suffered through centuries.<sup>10</sup>

## **6. S. Sushma vs. Commissioner of Police (2021)**

This was a ground breaking on the rights of the LGBTQ community. The court provided

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<sup>6</sup> Naz Foundation v. Govt. of NCT of Delhi, 160 Delhi Law Times 277 (Delhi High Court 2009)

<sup>7</sup> Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1, 65 (India).

<sup>8</sup> NALSA vs. Union of India. (2014) 5 SCC 438 (India).

<sup>9</sup> K.S. Puttaswamy v. Union of India (2017) 10 SCC 1 (India).

<sup>10</sup> Chakrabarty Priyanka. 2020. 5 Judgements that Paved the Way for LGBT Rights in India. (15 April 2022). <https://www.shethepeople.tv>

comprehensive guidelines aimed at establishing a secure environment for LGBTQ individuals. It specifically addressed the issue of police harassment during investigations into missing complaints lodged by their parents. Additionally, the court ordered a complete ban on so-called conversion therapy. Furthermore, the court directed the union ministry to publish a list of NGOs, along with their contact details, that LGBTQ individuals can approach for assistance in asserting their rights.<sup>11</sup>

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## **VII. CRITICAL EVALUATION OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL 2019**

On July 19, 2019, the Transgender Persons (Protection of Rights) Bill 2019 was presented in the Lok Sabha by the Minister of Social Justice and Empowerment, Mr. Thaawarchand Gehlot. The bill successfully passed on August 05, 2019. Notably, the bill expands the definition of transgender to encompass individuals whose gender identity does not align with the one assigned to them at birth. This inclusive definition includes trans men, trans women, intersex persons, genderqueers, and individuals with identities of socio-cultural significance.<sup>13</sup>

The bill as expected prohibits all kinds of differentiation and discrimination of trans genders in the fields of studies, business, medical services, merchandise, property, etc. The Transgender Persons (Protection of Rights) Bill also grants every transgender individual the right to a home. This means they have the choice to live with and be accepted by their family. If, for any reason, the family is unwilling to provide support, the bill ensures the availability of shelter homes as an alternative. Moreover, the bill proposes several welfare measures to be implemented by the government. It emphasizes the need for comprehensive support and consideration for transgender people, urging the administration to take proactive steps in ensuring their well-

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<sup>11</sup> S. SUSHMA AND ANR. V. COMMISSIONER OF POLICE, CHENNAI AND OTHERS WP NO. 7284/2021(INDIA).

<sup>12</sup>IBID..

<sup>13</sup> Singh Riya Analysis of Transgender Persons (Protection of Rights) Bill, 2019. *Legal Service in India E-Journal*. (18April2022). <https://www.legalserviceindia.com/legal/article-3199-analysis-of-transgender-persons-protection-of-rights-bill-2019.html>



being and protection.

The main drawback we could find is that of “certificate for identification”. The bill asks for a certification of identity for the character of transgender individual. Here a transgender individual is asked to make an application to the district magistrate for a certificate of identity. At the same time bill speaks for “self-perceived gender identity”.<sup>14</sup> There is also no clarity regarding the step to be followed when a transgender person is denied the said certificate.

Another drawback of the bill is the reduction in punishments. While the Indian penal code stipulates a maximum penalty of 7 years or more for offenses like rape, assault, or using force to disrobe, the bill proposes a significantly shorter punishment of up to two years for the same offenses committed against transgender individuals. Another concern is the lack of clarity in the implementation and distribution of funds for the welfare schemes mentioned in the bill. It fails to

address the fundamental and essential issues faced by the transgender community, making the act appear hastily drafted and insufficient in addressing their needs.<sup>15</sup>

### **VIII. CURRENT INDIAN TABOOS ON LGBTQ RIGHTS**

Honestly speaking, homosexuality and queer identities might find more acceptance among Indian youth than ever before, especially within the realm of social media. However, this progressiveness often remains limited to virtual spaces. Unfortunately, the dream of a genuinely inclusive society for the Indian LGBTQ community remains distant and unfulfilled.

We see a lot of stupidity in Indian system dealing with LGBTQ movements. There is a wide spread practice of corrective therapy: for the LGBTQ persons. Because common people yet believe that homosexuality is a disorder and can be treated and healed. So, the family members are forcing them for this corrective therapy. And these LGBTQ people are compelled to undergo those so called senseless and many times torture corrective therapy. Many times, they were forced to stay in a psychiatric ward for several months and were administered by psychiatric drugs which may causes depression and confusion many times the so-called clients had to undergo torturous psychological experiments conducted by the doctors. But they had no way out. They have to surrender into all these merciless practice for the sake of their own family. It is very sad to acknowledge that in many parts of our country many lesbian women are subjected

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<sup>14</sup> *ibid*

<sup>15</sup> Tripathi Neha and Raj Singh Soumya. Critical Analysis of Transgender Persons (Protection of Rights) Act, 2019. Legit Eye. (20 April 2022) <https://legiteye.com/critical-analysis-of-transgender-persons-protection-of-rights-act-2019-by-neha-tripathi-and-soumya-rajsingh/>

to family sanctioned corrective rape which are often perpetrated by their own family members<sup>16</sup> In many other parts even secret honor killings are planned, so they have no other way than running away from the village without any support and money.

In short, we see reality is far away from the discussions on twitter, reels on Instagram, gay parades and meets up etc. Indian so called 'culture' has its own way to deal with the LGBTQ rights. That's why it's said again and again that for LGBTQ community in India social inclusiveness is yet a mirage.

## **IX. LATEST LGBTQ RELATED CASES IN THE WORLD**

The LGBTQ rights are coming into sharper focus around the world, with very important case laws in many countries in recent years. Let's have a glance through some cases.

### **1. X. V. Poland (NO.20741/10) 2021**

The European Court of Human Rights recently issued a ruling stating that child custody decisions cannot be based on a parent's sexual orientation. The Court found that Poland had violated Article 14, which addresses the prohibition of discrimination, and Article 8, which deals with the right to respect for private and family life, under the European Convention on Human Rights. It took approximately 12 years for the court to reach this decision. Despite the lengthy process, the court's findings in this case convey a significant and crucial message in the present context.<sup>17</sup>

### **2. V.M.A. V Stolichna Obsthina, Rayon Pancharevo (C-490/20)**

The Court of Justice of the European Union made a groundbreaking decision on December 14, 2021, providing clarity to all European nations. According to the ruling, if one country acknowledges a parental relationship with a child, every member state must also do the same to ensure the child's rights to free movement. This decision marks a highly positive advancement in the recognition of same-sex partners and their children as a family across Europe.<sup>18</sup>

### **3. Fedotova And Others V. Russia (NO.2064/10)**

Six Russian nationals submitted a case to the European Court of Human Rights. In a unanimous decision, the court ruled that Russia's refusal to grant any legal recognition to same-sex couples violated the applicants' human rights under Article 8 of the European Convention on Human

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<sup>16</sup> Patel Reshmi (2016) Being LGBT in India: Some Home Truths, *live mint*. (20 April 2022) <https://www.livemint.com/Sundayapp/Being-LGBT-in-India-Some-home-truths.html>.

<sup>17</sup> "European Court rules in favour of the best interest of the child in same-sex custody case | ILGA-Europe". (21 April 2022). [www.ilga-europe.org](http://www.ilga-europe.org).

<sup>18</sup> "Same sex couple takes baby citizenship fight to top EU Court". France 24. 9 February 2021. (21 April 2022)

Rights. Russia's argument was based on the disapproval of same-sex marriage among the majority of its citizens. However, the court firmly rejected this argument, asserting that access to rights for minorities cannot be contingent on the acceptance of the majority.<sup>19</sup>

## **X. RECOMMENDATIONS TO REFORM LGBTQ RIGHTS IN INDIA**

In India still we don't consider LGBTQ people as equal and they don't enjoy the rights of guaranteed for every citizen. We need to have some strong attention and its solid corrections on certain areas very necessary.

### **1. Awareness Programs of LGBTQ rights:**

This is very much needed in India particularly. Still in India there are people who consider homosexuality is a sick and it has to be treated upon.

Example: need to organize workshop and seminar

### **2. Strict rules and implementation:**

Indian judicial system usually tries to close her eyes on the offenses committed against transgender comparing to that of women. There is a need of particular legislations and need to implement it without any exceptions.

Example: provisions in Transgender Rights Protection Act

### **3. Avoid all the discriminations:**

LGBTQ people in India still face discriminations at various level. These discriminations are to be uprooted, because it is against the fundamental rights guaranteed by the constitution mainly under article 14, 15, and 21. All the rules and legislations which discriminate LGBTQ people from the following need to be abolished.

Marriage, Adoption, Surrogacy, IVF, Guardianship, Jobs in Military and Navy

### **4. Complete destruction of conversion therapy and correction rape.**

All the people need to be protected from conversion therapy and correction rape.

### **5. Strike out the anti-transgender policies in the Transgender Persons Protection of Rights Act, 2019**

Example: Certification Process

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<sup>19</sup> AP News. (2021). European Court urges Russia to acknowledge same sex union (21 April 2022). <https://apnews.com/article/europe-lifestyle-government-and-politics-russia>.

## XI. CONCLUSION

Globalization has just transformed the whole world. So, in today's world every nation is inter connected not just for trades alone, but for the transmission of values and cultures. It is very clear from the study that globalization really helped Indian LGBTQ community to fight for their rights. As an effect of globalization, we had the first positive sign of LGBTQ rights soon after India is opened to the whole world through globalization.

Actually, the judgment of the Delhi High Court in 2008 was the first step for decriminalizing homo sexuality. But again, we saw a lot of confusions when Supreme Court over ruled the judgment. Truly speaking India was put into shame by the acts of both parliament and judiciary. In 2014, the NLSA judgment marked a significant milestone as it recognized transgender individuals as the third gender. Then, in 2018, the Supreme Court of India took a historic step by decriminalizing section 377 of the Indian Penal Code, which had previously criminalized same-sex relationships. Since 2014, transgender people in India have been granted the right to change their gender without undergoing sex reassignment surgery. Additionally, they were provided with the constitutional right to officially identify themselves under the third gender category. It was really consoling judgment for every transgender people. But till today many of the problems of transgender community is not addressed. They are not given the right to marry. They cannot adopt, they cannot adopt a child, not even be a guardian for one. In such a way they face so many discriminations. Still, we don't count LGBTQ people as first-class citizens. Even after so many land mark judgments and legislation. Still LGBTQ people in India cannot enjoy their freedom which guaranteed by the constitution. Because problem still lies in the mind. Even today many in India thinks like homosexuality is a sickness and it has to be treated. That is why we hear the cases of correction rape and conversion therapy from many parts of India.

But we cannot simply sit idle. We need to be the voice of the voiceless LGBTQ people. Because our nation is belonging to LGBTQ people also. So each and every citizen has a duty, a duty towards every transgender. Let the words of the honorable Madras High Court justice Mr. N. AnandVenkatesh quoted in his heart touching judgment on S. Sushma Vs. Commissioner of police (2021), be our guideline,

***'Ignorance is no justification for normalizing any form of discrimination'.***

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**XII. REFERENCES****(A) Articles**

- Indian Culture Does Recognize Homosexuality, Let Us Count the Ways by Sanjana Ray.
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