



HUMAN RIGHTS OF THE DEPRIVED SEXES: WOMEN AND MEMBERS OF THE LGBTQ COMMUNITY

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ABSTRACT

“ We declare that human rights are for all of us, all the time; whoever we are and wherever we are from; no matter our class, our opinions, our sexual orientation.” – Ban Ki-moon

The presence of human rights signifies the absence of fear. Fear of losing your life, losing a loved one, fear of justice being denied, fear of being discriminated on the bases of caste creed or sex. Human rights tell us humans that we don't deserve to live in this fear, that is what it aims for. Everyone has the right to freedom of expression and opinion, this is human rights. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Setting human rights for our diverse and varied population is a tough task.

Women and the members of LGBTQ community were compelled to live a life full of fear of reprisal and persecution. Justice Indu Malhotra shared her opinion on the atrocities faced by the LGBTQ committee saying in reference to Navtej Singh Johar v. Union of India that, “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.” But do they still get equal rights? Apparently

not. They still don't have the right to marry their partner and neither can they adopt a child. Women too face injustice in many ways. Did the stove really burst? Or was it dowry death?

This research will further study issues such as NRI men abandoning their wives, glass ceiling, abortion rights and transgender participation in the military. The researcher will also discuss about The Transgender Persons (Protection of Rights) Bill, 2019 and the unacceptance of the transgenders in Hindu Marriage Act, 1955.

If we promise ourselves to take a stand for justice and fight against injustice, we could make the world a so much better place to live in as Martin Luther King said, “Injustice anywhere is a threat to justice everywhere”.

Keywords: sexual discrimination, LGBTQ, glass ceiling, abortion rights, dowry death

INTRODUCTION

We are all humans

No sex is better, wiser, stronger, more intelligent, more creative, or more responsible than the other. Likewise, no sex is ever less. Equality is a given. We are all humans¹

1 Vera Nazarian

2 Chimamanda Adichie

3 World Bank

4 Thomas Reuters Survey 2018

India is a diverse country. It has people of different sexes, religions, castes who have different customs and beliefs. This is what makes setting up human rights really hard in our country. But culture does not make people. People make culture. If it is true that the full humanity of any particular sex is not



our culture, then we can and must make it our culture². People being discriminated on the basis of sex and sexual preferences is a very common scenario in recent times. This has also increased hate crimes against some sexes such as acid attacks on women and violent crimes or sexual exploitation of the members of LGBTQ community. It is high time for people to understand that there are more than two sexes and that gender inequality is not just a problem of women.

Between 1994 and 2012, 133 million Indians were bought out of poverty. This achievement was cherished not only by Indians but by the whole world, but this success could have been at a greater extent if more women could contribute to the work force. According to world bank, in 2012, only 27 percent of adult Indian women had a job, or were actively looking for one, compared to 79 percent of men. In fact, almost 20 million women had dropped out of the workforce between 2005 and 2012. This is equivalent to the entire population of Sri Lanka. India ranks 120 among 131 countries in female labour force participation rates and rates of gender-based violence remain unacceptably high³. India was also ranked the most unsafe country for women, ranking above countries like Afghanistan, Democratic republic of Congo, Pakistan and Somalia⁴. The people of the LGBTQ community (Lesbian, Gay, Bisexual, Transgender, Queer) face similar problems in our country. According to the world acceptance index of 155 countries, which Iceland has topped with a high score of 7.37, India has a very low score of 2.99 and lies below countries such as Thailand, Vietnam, Hungary, Israel and China. After analysis of the survey for a few years it was known that 80 countries which amount to around 57% show growth in acceptance of the people from LGBTQ community, 46

countries which constitutes to around 33% experienced a decline in the acceptance of people from LGBTQ community and 15 countries, which constituted to 11% of the total countries had no change in the acceptance of people from the LGBTQ community.

RIGHTS OF WOMEN AND THE MEMBERS OF THE LGBTQ COMMUNITY ACCORDING TO OUR CONSTITUTION.

The constitution to our country ensures and guides us to a society where there is no discrimination on the basis of sex and all sexes are thought to be equal. Article 14 of our constitution ensures equality among all sexes⁵. It says, "Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth". Many clauses of article 15 also talk about gender equality and women empowerment. Article 15 (1) says, "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Article 15(2) prevents people from stopping people of any particular sex from using wells, bathing ghats, roads, shops, public restaurants or resorts maintained partly or wholly by the government of our country. Article 15 (3) states that, " Nothing in this article shall prevent the State from making any special provision for women and children". Article 16 (2) of our constitution prevents denying employment or any office under the state to a particular sex. This prevents glass ceiling and also lead to opportunities to the deprived sex such as Joyita Mondal became the first transgender



judge in West Bengal Lok Adalat. Article 39 (a) says that the state shall direct its policy towards securing that men and women should have the right to an equal and adequate means of livelihood and article 39 (d) ensure equal pay for equal work done by any sex. Article 42 of our constitution talks about provisions for just and humane conditions such as maternity leave for women. Article 46 of our constitution promotes educational and economical development of weaker sections of our society. This also includes promoting the interests of the deprived sexes. Article 51 A (e) states that it is the fundamental duty of every citizen of our country to renounce practices derogatory to the dignity of women. Article 243 D (3), 243 D (4) and 243 T (3) suggests that atleast one-third of members of panchayat of different constituencies, chairpersons of panchayats and members of municipalities of different constituencies respectively should be women.

5 The word 'sexes' here include men, women, lesbian, gay, bisexual, transgender and queer.

RIGHTS AND PROTECTION OF WOMEN AND THE MEMBERS OF THE LGBTQ COMMUNITY ACCORDING TO THE INDIAN PENAL CODE (IPC)

There are various provisions for the protection of women in the Indian penal code(IPC). Section 375 of the Indian Penal Code deals with rape. The word 'rape' is derived from Latin tern rapio which means 'seize' as forcible seizure without consent is an essential characteristic of rape.

Section 354C of IC deals with the offence of voyeurism. It is a non compoundable offence and a person is liable for conviction if the woman's picture is taken in a private space or while the complainant is engaged in a private

activity which is not usually done in a public space or even if the woman consented for pictures to be clicked but not to show it to some third party. Under section 372 of Indian Penal Code states that if any person sells or disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment for a term which may extend to ten years, and shall be liable to fine. There are also many sections to protect women from cruelty after marriage as women have been subjected to it for centuries. Section 498A of IPC prevents the husband or his relatives from subjecting the woman to cruelty. The consequences of such act could lead to a punishment of imprisonment which could be extended to three years and fine. Section 304B of Indian Penal Code mentions the offence of dowry death. If the cause of death of the woman is burns, injuries or by any other unnatural reason within seven years of her marriage and the woman was treated with cruelty before the death, connects her husband and his relatives to dowry death.

After Navtej Singh Jauher v. Union on India case the part of the section 377 of IPC, that stated homosexuality as a crime was removed but the part that criminalizes bestiality is still enforceable. Earlier section 377 of IPC termed homosexuality as 'unnatural offences'. It stated that, "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.” The K.S Puttaswami v. Union of India case or the ‘right to privacy’ case acted as precedent of this case and ended the long struggle of the LGBT community for recognition. In the reading of the verdict of section 377 of IPC, Justice Indu Malhotra said that, “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.”

THE STRUGGLES OF WOMEN BECAUSE OF GENDER INEQUALITY

We Indians have idolized and put women on the pedestal since time immemorial. We have countless goddesses and even go so far as to call our homeland 'Bharat Mata'. We rhapsodize such moral platitudes and pride ourselves on our rich culture which tell us to respect and protect women. We are also the world's biggest democracy that enshrines women's rights in its Constitution. All this paints a pretty picture of what life of women must be in India but in reality, even though our constitution grants all men and women equal rights, gender disparities are still rampant. Gender inequality has been a social concern in India for many centuries. The most apparent portrayal of it can be seen in our ancient custom of Sati pratha, wherein when a man died, his widow had to sacrifice herself by burning herself alive in her deceased husband's funeral pyre, as it was thought that after the death of her husband, a woman's life serves no purpose. Although Sati pratha has become a thing of the past, some isolated incidents were recorded even in the 20th century which led the government to implement the Sati (Prevention) Act, 1987. And even though Sati pratha has been discontinued, we still follow the ancient

tradition of dowry exchange in India. Even though the dowry system is condemned by a lot of well informed people, it is still unfortunately very prevalent. The dowry system puts huge amounts of financial pressure on the bride's family to fulfill the groom's demands. In many cases when such demands are not fulfilled it leads to a wide range of crimes against the innocent bride and sometimes even her family. One of the most predominant forms of dowry crimes is fraud, where Indian men from foreign countries deceitfully marry Indian women to procure dowry and when they acquire it, they return to their countries, abandoning the woman. Women are often subjected to cruelty in the form of harassment in milder cases or in the form of domestic violence and abetment to suicide in more severe cases. Retrogressive and aggressive mentality in people also causes them to kill the bride when she is unable to pay the dowry. Such killings have become a widespread phenomenon and are usually done under the guise of 'stove bursts'. According to the Indian National Crime Record Bureau, India has the highest number of dowry deaths in the world with around 8000 dowry deaths every single year. Although anti-dowry laws have been in effect for decades, these statistics show that there is still room for improvement. The first dowry prevention act that was included in the Constitution of India was the Dowry Prohibition Act, 1961. According to this act, if anyone is caught engaged in the act of giving or receiving dowry, the punishment could be imprisonment for up to 5 years and a fine more than Rs.15000 or the value of the dowry received. Section 304B of the Indian Penal Code states "Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her



marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life." What's more, the disrespect and inequality against women start right from their conception where they are deemed an 'unwanted burden' and are subjected to heinous acts such as infanticide or foeticide. The Indian government enforced Pre- Conception and Pre- Natal Diagnostic Techniques Act in 1994 to outlaw and penalize pre-natal sex screenings leading to selective abortions. And yet as per the Population Research Institute, at least 12,771,043 sex-selective abortions have taken place in India between 2000 and 2014. This cultural preference towards male has also led India to have one of the worst sex ratios in the world, with only 940 females for every 1000 males. According to recent government surveys this ratio is still declining which is a worrisome point of contention. Gender inequality in the modern world is no longer just a social issue but also and economic according to the World Bank India has one of the lowest female labor forces in the world. Less than one-third of women are working at a job. The women who do work find it incredibly difficult to break the metaphorical 'glass ceiling'. The 'glass ceiling' is an analogy used to portray the invisible barrier that is faced by minority demographics, including women. This 'glass ceiling' hampers women and other minorities to rise above a certain level in the corporate hierarchy. They are rarely ever

given promotions that let them achieve a spot in the upper echelon of an organization. The Indian Constitution sanctioned the ideology of 'Equal

6 Census 2011

Pay for Equal Work' for both men and women, and 'Right to Work' through Article 39(d) and 41. These Articles are interjected as Directive Principles of State Policy. Henceforth, they will serve as guidelines to the Central and State governments of India, to be kept in mind while formulating laws and policies. Equal Remuneration Act, 1976 by means of Section 4 not only accentuates on equal pay in return of equal work but even prohibits the employer from reversing the pay scales so as to attain equilibrium. Despite these laws, in 2018, the median gross hourly salary for men was Rs.242.49 while that to women was Rs.196.3. The gender pay gap was still very high at 19% in 2018. The reason why India still lags in equality for women in the corporate sector is because Indians still comply to the traditional gender roles where the women is the primary caregiver of the house. Companies are not ready to give women proper health benefits or paid maternity leaves or even flexible working hours. Even though in 2017, the government passed the Maternity (Amendment) Bill that lengthened the right to paid maternity leave for working women from 12 weeks to 26 week, which is the third highest in the world, statistics show that this law only helps less than 1% of working women. About 10 million people enter India work sector each and every year and nearly half of these people are females, thus we need to make some major changes in regards to the payment and rights of women in the work sector so that more women feel encouraged



to take up jobs and contribute to our GDP. Another reason that hinders the rise of women in the work sector is the disparities in the achievement of education. Only 65% of women in India are literate, whereas, the literacy rate among men is 80%. Thus we need to educate our women and give them the resources they need to make it in the corporate sector. Also we need to spread awareness in our society as a whole. Democratization of the message of women's equality is the only way of dismantling the patriarchal foundation of our society. We need to make people more educated so that they stop seeing women empowerment as vandalism of our culture, only than will our country change for the better.

STRUGGLES OF THE MEMBERS OF THE LGBTQ COMMUNITY

The LGBT community have been facing many hardships just for recognition. I has been a year since homosexuality was decriminalized but the people of the LGBTQ community is still deprived of many rights. They still don't have the right to get married and are not recognised in acts such as Hindu Marriage Act, 1955. "Marriage equality is one of the most basic rights for a citizen and the LGBTQ+ community is still devoid of it. Though reading down of section 377 was historic, we have just scratched the surface yet, marriage is still a far-fetched dream. There have been cases where lower courts of India have given protection to some same sex couples. We have to work towards building an egalitarian society. I was lucky that my husband is French and we could marry in France, where it is legal. But there are millions who cannot. Whilst organizations are talking of support, it is time for affirmative action from one and all. It is time

to give the community equal rights – marriage equality, work opportunities for us to be able to live a life of dignity. My foundation is working towards skilling and mainstreaming people from the community. We are also getting equipped to fight for marriage equality⁷". They can't adopt a child as an LGBT couple but a single person from LGBT community can. There is no representation of the LGBT

7 Keshav Suri

community in the army and there is also no bill pending which allows them to serve openly. They also face problems during succession planning as no succession act is amended to include the rights of the LGBT community.

AFFECT OF THE SOCIAL STIGMA ON THE HEALTH OF THE LGBT

According to the minority stress model, developed by psychologist Ilan Meyer, we can say that the stigma and prejudice experienced by sexual and gender minorities, specially the members of LGBT community, produces stress and anxiety that is different than the types of stress faced by most people in their everyday life⁸. In response to events of prejudice in their life, sexual and gender minorities frequently develop a fear and expectation that such events will happen again. This expectation leads to hypervigilance in one's surroundings, relationships, and interactions with others, even when stigma and prejudice may not be in operation⁹. The individual begins to develop additional coping mechanisms, such as identity concealment or other strategies to mitigate the negative consequences of stigma and prejudice. These processes can lead to internalization of social stigma, in the form of



internalized homophobia or transphobia, where individuals begin to devalue themselves in a manner consistent with the prejudice being directed at them by others. The impact of minority stress on LGBT people is reflected in poor health outcomes. A systematic review of 199 studies in the Global North and South showed that sexual minorities were at increased risk for depression, anxiety, suicide attempts, or suicides¹⁰. However, such global reviews are rare. Though the connection between stigma and health outcomes is well established, there is still a great need to understand how stigma impacts specific populations at the national level. Establishing the GAI will enhance the ability of researchers to examine the stigma/health connection on a country-by-country basis, as well as across countries.

8 David M. Frost and Meyer, I.H., "Internationalized Homophobia and Relationship Quality Among Lesbians, Gay Men, and Bisexuals," *Journal of Counselling Psychology*

9 Jennifer Crocker. "Social Stigma and Self-Esteem: Situational Construction of Self-Worth." *Journal of Experimental Social Psychology*

10 The study included 199 studies which had a heterosexual comparison group. 26 studies had nationally representative studies using clinical interviews. Martin Ploderl and Pierre Tremblay, "Mental Health of Sexual Minorities. A Systematic Review," *International Review of Psychiatry*

11 Liliana il Graziosco Merlo Turan, a law student from Bengaluru.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

"This Bill exists to erase us. By having complete control over us from the way we identify to what socioeconomic opportunities

we should get and condoning violence against us, it places us in a vulnerable position¹¹".

The Transgender Persons (Protection of Rights) Act, 2019 was meant to help and protect the transgenders but it only outraged them and snatched away more rights from them. The bill was drafted and passed without approaching anyone from the community. The assumptions were made only on basis of stereotypes as no one from the community was asked about their needs and requirements. According to the act a transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed and in the case of a minor child, such application shall be made by a parent or guardian of such child¹². The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender¹³. This certificate will confer rights and be a proof of he person's identity as a transgender person. After the issue of a certificate, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed¹⁴. The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical



Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed¹⁵. These sections of the Transgender Persons (Protection of Rights) Act, 2019 imply that for a transgender person to be considered as male or female they have to go through sex change to be considered as male or female. Not all transgenders want to go through sex reassignment process and neither something that all of them can afford as it is a very expensive process. This is also violation of the right to privacy of the transgenders. This also contradicts the 2014 judgement of NALSA (National Legal Services Authority of India) by the Supreme Court, which gave transgenders, right to self-identify and did not mandate surgery to attain that right. According to the bill "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta¹⁶. The fact that the Bill conflates transgender people with intersex people proves that it was not thought through, and has been made with inadequate knowledge. Not every intersex person identifies as transgender, and not every transgender person is intersex. The Transgender Persons (Protection of Rights) Act, 2019 does not punish people who bully or harass transgender people at educational institutes or workplaces, and neither did it introduce provisions related to adoption rights, transfer of property and marriage rights of the transgenders. According to the

act a transgender person can be placed in a rehabilitation centre, with orders from the court if the person's family is unable to take care if them. This denies the right of a person to join other transgender communities. The act does not even provide reservation to the transgenders which would ensure their survival and also give them opportunities to progress. The act made sexual offence against transgenders a crime but in a gender biased way. If a cisgender woman is raped, the punishment for the rapist is imprisonment for seven years which can also extend to death penalty where as in the case of rape of a transwoman, the punishment is only for six months and

12 Section 5, Chapter III of Transgender Persons (Protection of Rights) Act, 2019

13 Section 6(1), Chapter III of Transgender Persons (Protection of Rights) Act, 2019

14 Section 7(1), Chapter III of Transgender Persons (Protection of Rights) Act, 2019

15 Section 7(2), Chapter III of Transgender Persons (Protection of Rights) Act, 2019

16 Section 2(k), Chapter II of Transgender Persons (Protection of Rights) Act, 2019

can extend to a maximum of two years. This showed the shallow mindedness of the government and showed that the government does not think the impact of sexual abuse on a transgender woman is as impactful as on a cisgender woman. This made not only transgenders but people of all sexes furious. Many people took the street and fill the internet with the hashtag '#RapeIsRape'.

CONCLUSION

I will conclude my paper in reference to the butterfly effect. The butterfly effect is based on the analogy that if a butterfly flaps its wings in Chicago, a tornado occurs in Tokyo.



In simpler words, small actions can have great consequences. We should start taking baby steps by doing the best in our individual ability so that women and the members of the LGBTQ community can have the human rights that they deserve. With constant efforts biasness on the bases of gender and sexual preferences will be gone forever. We live in a country where we worship women in the form of goddesses such as Laxmi, Durga and Saraswati. We live in a country which had accepted lesbians, gays, bisexuals and transgenders way before many other countries and our ancient texts, architecture and statues and Khajuraho statues are a proof of that. According to Nāradasmr̥ti there are 14 types of panda or men who are impotent with women. A few of these are the mukhebhaga or the men who have oral sex with other men, the sevyaka or the men who are sexually enjoyed by other men, and the irshyaka or the voyeur who watches other men engaging in sex. The Kama Sutra uses the term tritiya-prakriti to define men with homosexual desires, lesbians as svairini, bisexuals as kami or paksha, and also talks about transgender and intersex people. Lets not move backwards and make Bharat a country where all genders are treated equal.
