



SECTION 377: A BATTLE OF LGBT COMMUNITY AGAINST THE STEREOTYPICAL SOCIETAL NORMS

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ABSTRACT

This article deals with origin of section 377 of Indian Penal Code, 1860, controversies regarding the same, issues raised against section 377 followed by discrimination and violations faced by LGBT community and an analysis of the LGBT rights in India. The word 'LGBT' stands for Lesbian, Gay, Bisexual and Transgender. In this article the researcher has tried to discuss briefly about Section 377 of Indian Penal Code, 1860 which is followed by the concept of the rights of LGBT and subsequently the violation and discrimination of human rights including fundamental rights against LGBT community in India. This study highlights mainly upon the legal interpretation section 377 of IPC as well as legal framework on the rights of the LGBT community. There is still a certain percentage of the population in the country where it is believed that homosexuality is abnormal and a mental-illness. The researcher after studying various aspects would like to suggest that Government should implement a stricter provision which would protect this minority community from such exploitation and discrimination. The study was concluded by taking into consideration of various articles, theories, case laws, etc.

Key words: *discrimination, human rights, homosexuality and exploitation*

ORIGIN OF SECTION 377

Section 377 of Indian Penal Code was introduced during the British rule in India in late 19th Century. One of the grounds of introduction of this section was homosexuality or acts against the order of nature are condemned by the bible.

It was based upon the ***Buggery Act of 1533***. This Buggery Act was passed by the parliament of England during the rule of King Henry VIII. Buggery literally refers to anal intercourse and also covers bestiality. This act was the first law in Britain that brought the offence of Sodomy¹ from the courts of church to the state.

It described buggery as a sin and an act against the will of God. According to this act, any person found guilty was given a capital punishment.

This law came to India through the recommendation of the first law commission of India under ***Thomas Macaulay***.

Sir Macaulay drafted the Buggery Act into the IPC of 1960 and embedded it in the act in the form of Sec. 377.

WHAT IS SECTION 377: A BRIEF FACTSHEET

The section 377 IPC reads as: “ ***Whoever voluntary has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to 10 years and also liable to fine.*** ”

¹ Anal Intercourse



Explanation: *Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section*².

If we look into the definition of Unnatural Offences, it is not specifically described as to what extent it covers. This section not only confined to the *LGBT Community*², rather it has a very vast ambit.

According to this section unnatural offence is any anal intercourse even between a male and female (i.e. Heterosexual couples) with their consent. The meaning of unnatural offence also extends to the insertion of penis in the mouth either of male or female or any male or female having intercourse with any animal is also an unnatural offence or even insertion of any object or any body part by any female in other female's vagina, anus, or mouth are also considered as unnatural offences. And all such acts will be considered as unnatural offences and shall be dealt under section 377 IPC.

This section does not specify any difference between the consensual or non-consensual intercourse. Instead any sort of penetration is enough to constitute unnatural offence.

Also, this section even includes the anal or oral sex in a heterosexual context; i.e. within the marriage as unnatural offence under the act as a punitive provision. It is considered as against the order of nature.

Meaning of Homosexuality

It is defined as same sex attraction meaning physical, emotional and psychological towards persons of the same sex.

Who are LGBT?

LGBT is a community, which is an acronym and stands for lesbian, gay, bisexual and transgender. Initially LGBT was intended to emphasize on diversity of sexuality and gender identity based cultures.

CHALLENGES PUT FORTH AGAINST THE VALIDITY OF SECTION 377 I.P.C.

There were many instances when the voice rose against the validity of section 377. On the one hand the I.P.C. punishes any offender who does an unnatural offence whether it is done with consent or without consent, it is immaterial and on the other hand, the acts of police towards the accused persons who are in the custody are never brought into the lights. There are many instances when police in the course of their investigation torture the accused by penetrating any object or even sometimes their hands into their anus or mouth. But this act has never been counted under the definition of unnatural offence.

Also, the validity of section 377 leads to exaggerate and misuse many other provisions of law to harass the LGBT community. Such as:

- Section 268 I.P.C.: Any person who is alleged accused U/s 377, he is also made as accused under this section for creating public nuisance or is guilty of an illegal omission which causes annoyance to the public or to the people in general. This section is ambiguous as the extent of nuisance among the public varies from person to person.

For ex: If a lesbian or a gay couple are in relationship and are living together, people residing in their building/ apartment/ society might find it as obscene (as people believe that this is against the morality and Indian

² Lesbian, gay, bisexual and transgender



culture) and violation of peace in the surrounding and can make them accused under section 268 I.P.C along with Section 377 I.P.C.

- Similarly, there are many such provisions which are being misused under the umbrella of Sec.377 such as:

Sec 294 I.P.C- Obscene Acts; Sec292/293 I.P.C- sale of obscene books, distribution of materials on safe sex practices for sexual minorities etc.

- The Bombay Police Act (BPA), also contains some acts of policemen while investigation to extort from gay men in 'cruising areas'. Examples: sec 110 BPA (Indecent behaviour in public); sec 111 BPA (annoying passengers in the street) sec 112 (Misbehaving)

ISSUES WITH RESPECT TO VALIDITY OF SECTION 377

1. *The section mentions even the voluntary acts as punishable U/s 377 I.P.C. Therefore the section doesnot make any difference between the*

- *Male adult seducers*
- *Male who commits rape on the other male and*

- *Two males having consensual sex. The declaration of all homosexual acts as criminal whether consensual or non consensual, is nothing but considering all homosexuals as sexual pervert, thus demeaning their dignity. It doesnot take into account the sexual preferences of the person.*

Arguments behind this issue:

- Critics who were against this law raised a question: "Should not the state allow consenting adults to make their own sexual choices. Everybody has the right to control their sexuality and their bodily integrity. If a person cannot enjoy his privacy then it

hampers his right to dignified life assured by our Constitution under article 21.

- Criminalising the consensual sex between homosexuals tantamount to reinforcing biblical beliefs in today's era. While English law, from which this section origin is, has moved on, enacting in 1967, the sexual offences act which decriminalised homosexual acts between the consenting adults. India continues its outdated form. Therefore now the time has come that we should learn from international experiences.

2. *The section 377 lacks precise definition; the term carnal intercourse against the order of nature is not defined in the I.P.C. The only criterion being 'penetration' against the order of nature. As a result it has been subjected to various judicial interpretations. Initially it covered only anal sex and still later it included any form of non vaginal penile penetration.*

For ex: between thighs and folded palms

Argument behind this issue:

The spirit of the section is to punish those individuals who have intercourse with the individual of same sex to that pervert action could be kept in check. But even many heterosexual couples involve in anal or oral sex, which comes under the definition of this section. So the heterosexual couples can also face the criminal proceeding. Therefore this section is not just centred and limited at homosexuals.

3. (A) *Article 14 ensures the right to equality as well as equal protection of law. But the section is not clearly defined as discussed above leading to the vagueness and uncertainty and the SC has held that a statute is void for ambiguity if its prohibition is not clearly defined.*



The rationale behind this is that: Such vagueness will lead to arbitrary application and the SC has clearly said in its various judgements that arbitrariness is always anti thesis of equality.

Argument behind this issue:

- Sec. 377 creates unreasonable division and distinction between persons who ‘indulge in carnal intercourse in the ordinary course of nature’. The basis of this classification is the procreative nature of the act. However this is arbitrary classification as in era of technology it is very important to note that even the gay couple can have procreation with the IVF technology. So the classification is unreasonable. Moreover the section does not distinguish between public and private acts, or between consensual and non consensual acts therefore does not take into account relevant factors such as age or consent, thus violative of article 14.

3. **(B) Article 15(1) of the Indian Constitution provides that: ‘The state shall not discriminate against any citizen on grounds only on religion, race, caste, sex, place of birth or any of them’.**

Argument behind this issue:

In the present scenario, the term ‘sex’ has wider meaning and apart from biological sex it includes sexual orientation as well. The effect of Sec. 377 is that it disproportionately impacts homosexuals on the basis of their sexual orientation, thus violative of Art. 15 of constitution of India.

3. **(C) Article 21 states “Right to life is most fundamental to existence”. The SC has said that the word life does not mean mere animal existence but a life where an individual could exercise his liberty to live a dignified life. In Bandhua Mukhti Morcha**

Vs. UOI³ the honourable court held that: “ There are minimum human requirements which exist in order to enable a person to live with human dignity and no state has right to take away action which will deprive a person of the enjoyment of this basic essential”.

Arguments behind this issue:

- Privacy, health and a dignified life are basic essentials of a person’s life, obstructing an individual’s orientation in infringement of his right to privacy thereby affecting his right to dignified life. Further criminalisation of Sec. 377 has also hindered access to health services of LGBT community.

And above all, this section violates the basic features of the constitution i.e. Justice, Liberty and Equality.

Critics arguments who were in the favour of Sec.377

1. This section is not conducive to the overall health of the individuals.
2. Decriminalisation of this section leads to demean the sacred institution of marriage as homosexual marriage cannot maintain the moral and conducive atmosphere for the bringing of the children.
3. It will create mental disorder for the people who are going in the same sex relationship
4. And most importantly our Indian culture does not support this.

Critics arguments who were in the favour of decriminalization of Sec.377

Every argument was described above was countered with the following arguments:

1. No doubt marriage is regarded as a sacred institution and therefore it cannot be limited to opposite sex couples. It is more about love and togetherness which can also be shared by

³ (1997) 10 SCC 549



couples of same sex. In fact limiting this institution to sex and procreation will demean the concept of marriage.

2. Further the argument that it is mental disorder was disputed by various health organizations.
 - The American Psychiatrist Association removed homosexuality from its list of mental disorder back in 1973.
 - WHO followed this suit in 1990
3. With respect to the last argument about the Indian Culture: It was said that, in Indian arts of Khujarao Temples we can witness various postures depicting homosexuality. Therefore it cannot be surely said that Indian culture does not support homosexuality.

THE LONG LEGAL BATTLE

The battle against sec 377 IPC first came before SC in 1994 where an NGO AIDS Bhedbhav Virodhi Abhiyan (ABVA) filed a petition seeking scrapping of the law. The petition came up for hearing in 2001, but by that time ABVA had been disbanded. But the controversy about sec.377 caught fire when Kiran Bedi, Inspector General of the Tihar Jail, Delhi refused to provide condoms to inmates saying it would encourage homosexuality admitting that inmates indulged in it. As a response to it, ABVA filed the writ petition in Delhi HC demanding condoms to be provided free of cost and prayed to recognise Sec. 377 as unconstitutional.

1. The NAZ Foundation Case (NAZ Foundation Vs. Govt. of NCT Delhi)

Naz Foundation is an NGO which deals with the health issues such as HIV, AIDS etc. The issue raised in this case was that whether we shall repeal Sec.377 I.P.C.?

The court dealt this issue from two different angles:

- With respect to Art. 21: Court said that without dignity and privacy one person cannot enjoy the right to life.
- With respect to Art. 14 and 15: Court said that Sec. 377 is violative if Art 14 because it creates unreasonable discrimination. It discriminates homosexuals as a class and criminalises their consensual sex. And as per Art. 15; discrimination on the basis of sex is prohibited and at this instance sex does not only mean biological sex but also includes sexual orientation.
- And consequently, this argument was further used in many of the cases and it was said that psychological tests are to be given more weightage compared to biological tests.

In 2009, in NAZ Foundation case announcing a landmark judgement, the Delhi HC stated “The part of Sec. 377 which criminalises homosexual acts, shall be declared unconstitutional and the amendment procedure was left in the hands of the Parliament”.

2. Suresh Kumar Kaushal Vs. NAZ Foundation, 2013

In this case mainly two arguments rose:

- Homosexuality is a criminal offence and only Parliament has the power to decriminalise it and court cannot interfere into this.
- And thus this conclusion was brought forward that: Right to privacy cannot get extended to that extent wherein one can commit an offence. And hence, Right to Privacy will not cover homosexual acts⁵.

This judgement was regarded as one significant step backward for India by various International Organisation. As a result to this the people who were disclosing

⁴ 160 Delhi Law Times 277

⁵ Civil Appeal No. 10972 OF 2013



their identities and were freely expressing their sexual orientation after the NAZ Foundation Judgement were seen as a criminal and were targeted.

Aligarh movie is a classic example wherein we can find the impact of this 2103 judgement of Suresh Kaushal vs. NAZ Foundation. This movie has brilliantly explained this travesty of justice.

3. NALSA vs. UOI and ORS. (2014)

This case unveiled the loophole in all the existing Indian Laws that all these laws are binary genders i.e. male or female oriented and thus the transgender community rights are not protected under any of the provisions. This is the reason why transgender community are being discriminated. Dealing with this loophole SC recognised multifacet rights for this community people:

SC said that under Art. 14, right of every person is protected whether it is women, men or transgender. Along with this SC said that Art. 15 and Art. 16 prohibit gender based discrimination. So if on the ground of sexual orientation, discrimination is done, then it is violative of Art.s 15 and 16.

Subsequently, the most important argument SC said was regarding Art. 19; wherein privacy, gender identity and integrity all are protected within the ambit of Art. 19(1)(a). Thus this argument indirectly included Sec. 377 I.P.C.

Further, SC proceeded with respect to Art. 21 and said that right to live with dignity includes right to choose gender identity. We are required of having such provisions which focuses on the present day needs.

Due to this case, self identity and gender identity got legal recognition⁶.

4. Puttaswamy Case (2017) (Justice K.S. Puttaswamy vs. UOI)

Here in this case SC affirmed that right to privacy is our fundamental right. A historic 9 Judge Bench was constituted to decide this case. The judgement of this case was authored by Justice Chandrachud and it was held that SC has the responsibility to rectify the mistake done in Suresh Kaushal's case and said that sexual orientation is an essential attribute of privacy and this attribute is protected within various rights under Part III of the Constitution of India such as Art. 14, Art. 15, Art. 21.

In this case, the idea of minuscule minority was rejected⁷.

5. Navtej Singh Johar vs. UOI

This was the most celebrated judgments in the history of justice and this was the case that partially declared Sec.377 I.P.C. as unconstitutional.

The five Judges Constitutional Bench sat in this case comprised of Ex CJI Dipak Mishra, Justice Indu Malhotra, Justice Rohinton Nariman, Justice A. M. Kanwilkar and Justice D.Y. Chandrachud.

In this case Justice DY Chandrachud applying the same logic as applied in Puttaswamy Case and supported Art. 14; SC said that criminalising two consenting adults sexual act only because they are homosexual, is neither a valid intelligible differentia nor has any rational nexus. Such traditional norms are wholly based on ambiguous and subjective test like morality.

⁶ WP (Civil) No 400 of 2012

⁷ WRIT PETITION (CIVIL) NO 494 OF 2012



In the contention of Art. 15, SC said that during NAZ Foundation, the approach of Delhi HC (i.e. sex includes biological and sexual orientation) was the correct approach and this approach reflects our improved understanding.

Supporting Art. 19, Justice Chandrachud said that we cannot narrowly define human sexuality. Discrimination against the LGBT community is unconstitutional. Art. 19 protect every person's right to express his own identity freely.

Finally, in support of Art. 21, SC held that right to life and liberty includes privacy, dignity and autonomy; however these rights can be curtailed by putting reasonable restrictions but by applying Sec. 377 I.P.C. one cannot be denied from enjoying these rights⁸.

DIFFICULTIES FACED BY LGBT COMMUNITY

The LGBT face end number of difficulties in their daily life. In 21st century where we believe that our country is developing and so the mindset of the people living there, still there are certain percentage of the society who still persist in believing homosexuality as abnormal. Lesbian, gay, bisexual transgender faces racism and discrimination at every step of their life. Abuse is something which is very normal to them as they face it in their daily life. They still have to fight for their rights to which they are not available to because they just belong to LGBT Community. There are more likely to experience intolerance, hatred, harassment and violence because of their identity. They face violence and harassment from people

who mock at them because of their identity and make them realize that they are different from the normal people living in the society.

Such harassment and violence are more likely to affect especially the children, the teenagers and so on. Such people generally hide their identity out of fear such that they are not abandoned by their family members or caregivers or rises any issues or fights in their family. They are likely to believe that they will be misunderstood if they reveal their identity and people would mock at them. The students in universities, colleges, and schools hide their identities just for the fact that they will be ill-treated, harassed in different ways and will face discrimination which lead to depression, school drop-outs and homelessness. People at workplace do not reveal their gender identity in the fear of losing their jobs. In this way they are abandoned from many social welfare schemes. The parents don't want their children to mingle or play with LGBT children to which the parents do not realize that these attitudes of them are leading to isolation and depression to the LGBT children. LGBT children face lack of communication which often ends up in fights or conflicts in the family. According to such situations and circumstances it is more likely that a teenager would develop mental problems or suffer from depression when they become adult as they are rejected by their family members or caregivers.

If the youth face such difficulties it does not relax the older people. They also face violations and racism too. They cannot avail the rights or the opportunities which a senior citizen has. Very less is understood about them due to widespread failure of

⁸ W. P. (CrL.) No. 76 of 2016; D. No. 14961/2016



governmental and academic researchers to incorporate questions on sexual orientation and identity in their studies of the aged. They had to hide their identity just for the fact that they do not become the victims of such violation, racism or harassment. Moreover lesbian, gay, bisexual suffers from poverty too. Such circumstances lead them to commit crimes or get addicted to drugs, alcohol, tobacco and etc. They face a lot of social and economic inequalities the reason for them being is their identity. They also try to attempt suicide and think it is better for them to finish their lives rather than to deal with such discrimination and rejection. There are countries where homosexuality is illegal and is often met with imprisonment or fine.

ANALYSIS ON THE RIGHTS OF LGBT COMMUNITY

On 6th September, 2018 the Supreme Court of India held Section 377 unconstitutional as it infringed on the fundamental rights of the autonomy, intimacy and identity, thereby legalizing homosexuality in India⁹. It outlawed same – sex relations giving hope of equality for the LGBT community. The current period is one amongst the rapid advances in LGBT right in many countries and of a wave of anti gay laws and policies in others and there's a burden of HIV Risks and face stigma and there's key programs success in challenging context. Legal rights of the LGBT people in India is strategizing for the long run and right to marriage same sex people now became a International legal scenario but still in India there are civil laws which affect the lads and girls and gay rights. Human rights are the basic rights of each person, irrespective of culture or

cultural standards and to convey access to well-being of the LGBT community.

Homosexuality was considered as an unnatural offense under section 377 of Indian Penal Code, 1860. Same – sex was stranded in the Indian society since 1970's. homosexuality was considered to be a disorder or psychological dysfunction or impairments. Later through various petitions it can be proved that homosexuality isn't a disorder. On 2nd July 2009, the High Court of Delhi stated that provisions of section 377 of IPC violates the country's Constitution and International Human Rights Convention¹⁰. However consensual sex among adults is legal which includes even gay sex. The Delhi High Court additionally stated that Section 377 of IPC is against human dignity.

The Preamble to the Constitution of India mandates social, economic, and political justice, equality of status. The Constitution provides everybody an equal status before the law and an equal protection of laws within the territory of India. The word 'any person' here means every individual, with none discrimination supported any of the category which incorporates, caste, creed, religion, sex, etc. A transgender in India is included within the words 'any person' and is given equal status thereto of each cis-gender in India. The transgender community cannot be discriminated on the bottom of non-application of any of the laws within the state by reason of their differences and dividing them supported any arbitrary class. The key word with relation to the protection of Transgender is that the word 'sex'. The interpretation of the word 'sex' includes

⁹ Navtej Singh Johar vs. Union of India (6th September, 2018)

¹⁰ http://www.law.hku.hk/hrportal/wp-content/uploads/file/2009-decriminalisation_homosexuality_india.pdf



these communities irrespective of them falling underneath the class of male or feminine.

On 15th April, 2014 it brought a ray of hope in Dark Age of an era. The discrimination on the ground of 'sex' under Article 14 and 15 of the Indian Constitution incorporates discrimination on the basis of gender identity. However the expression 'sex' is not limited to biological sex of a particular male and female rather it includes people who consider themselves neither to be male or female. For the first time, in the history of India 'Third Genders' were given official recognition as another gender like other males and females in the society. Articles 15(2) and 16(4) has also been interpreted to supply social equality to those communities like equality publically employment, it provides that the states shall have the power to create any special provision for the enhancement of those vulnerable minority who are now included within the category of socially and educationally backward classes.

The Supreme Court declared transgenders as socially and economically backward class who have the entitlement in the reservation for education, jobs and also directed the union and the state to frame welfare schemes for them. The Supreme Court additionally opined that non-appearance of law perceiving hijras as the third gender could not be proceeded as a ground to discriminate them in availing equal opportunities in

education and education and employment. The Hon'ble Supreme Court of India in the case of National Legal Services Authority v. Union of India in its landmark judgment in 2013 created the 'third gender' status for hijras or transgenders. Earlier they were forced to write male or female when they have fill up any form or something but, after this judgment they can proudly describe themselves as 'third gender'. The Court ruled that transgender people have a fundamental constitutional right to vary their gender with none kind of surgery, and called on the Union Government to make sure equal treatment for transgender people. This way the Supreme Court expanded the prohibited grounds of discrimination under Article 15 to include sexual orientation and thus Section 377 was held discriminatory under Article 15¹¹.

In 2014, a protest was made by the transgender and gender activists in Madurai collectorate seeking permission and requesting the Government to implement necessary steps because the change in their names create confusion which disqualifies them from any jobs or examinations¹². They also demanded that alternate genders to seem for examinations conducted by TNPSC, UPSC, SSC examinations and bank exams. However, S. Swapna is a transgender who cleared Group IV exams of Tamil Nadu Public Service Commission(TNPSC) in 2014¹³.

¹¹ http://www.law.hku.hk/hrportal/wp-content/uploads/file/2009-decriminalisation_homosexuality_india.pdf

¹² <http://timesofindia.indiatimes.com/city/madurai/Transgenders-protest-demanding-name-change-in-certificates/articleshow/34351467.cms>

¹³ http://www.newindianexpress.com/states/tamil_nadu/Transgender-Clears-TNPSC-Group-IV-Exam/2014/02/09/article2046310.ece#.Uvc-CPmSycw



The Rights of Transgender person bill was passed unanimously by the Rajya Sabha on 2015, guaranteeing the rights and entitlements, reservation in jobs and education, pensions, allowances for the development of the community. It also contained provision to prohibit discrimination on the basis of gender identity in employment as well as prevent of abuse, violations and exploitation of transgender people. However it did not gained clarity and contain lot of loopholes as to how to implement such provisions.

The transgender persons (protection of rights) bill 2016, was introduced within the parliament in 2016 and was re-introduced within the Parliament in late 2017. Some transgender activists opposed this bill because it did not contained provisions regarding problems of adoption, marriage and divorce of transgender people. The bill passed the Lok Sabha in 2018, with 27 amendment which included a controversial provision – prohibiting transgender from begging. The bill was sent to parliamentary committee but, was lapsed with dissolution of 16th Lok Sabha¹⁴.

The right to settle on one's own identity is one amongst the foremost essential right under this text to live life with dignity, and this aspect is enfold and guarded by this text because it symbolizes the most important right being a human, a right to live, which the State is required to safeguard from violation. The transgender communities have a right to dignified life which is one amongst the foremost important aspects of Article 21 of the Constitution of India. Recognition of gender identity provides the

identification of their right to dignity and non-recognition violates the same, they need full right to manifest and live their life without concern.

In the year 2019, a government bill was reintroduced in the Parliament the Transgender Persons (Protection of Rights) bill, 2019 which was approved by the cabinet of India¹⁵. The bill defines transgender persons as those "whose gender does not match the gender assigned to that person at birth and includes trans-men or trans-women, persons with intersex variations, gender-queers, and persons having socio-cultural identities such as kinnar, hijras, aravani and jogta"¹⁶. A person would have the right to choose to be identified as male, female or "transgender". The bill prohibits discrimination in fields like education, employment and in welfare schemes. The transgender activists opined that the bill was silent on a true remedy or mechanism which merge transgender people into public spaces and improve their standard of life, or on how state intend to enforce this if, such discrimination occurs. The bill was also subjected to criticism as it did not consider the suggestion made by the activists. The bill aims to line up 'National Council for Transgender' that will comprise a bunch of state and community representatives, and is supposed to advise the Union Government on formulation of policies with reference to transgender persons, monitor and evaluate the impact of said policies, coordinate the activities of all departments addressing these matters and redress the grievances of transgender persons. A controversial

¹⁴<https://www.hindustantimes.com/delhi-news/transgender-rights-bill-might-be-reintroduced-this-parliament-session-say-mps/story-xeDqVuWnQ4Q8sAQYYGrqJJ.html>

¹⁵<https://indianexpress.com/article/india/cabinet-approves-transgender-bill-5824338/>

¹⁶<https://www.insightsonindia.com/2019/12/02/transgender-rights-bill-5/>



clause that would have criminalized begging by transgender people was taken off from the bill. Another controversial clause that will have made transgender people subject themselves to certification by a region screening committee to be acknowledged as transgender has also been struck out. The legislation received further criticism concerning the difficulty of sexual assault; it provides for optimum two years' imprisonment for sexually assaulting a transgender person, whereas the minimum penalty for raping a cis gender woman is 10 years. The bill was passed the Lok Sabha on 5 August 2019 by a voice vote¹⁷ and by the Rajya Sabha on 25 November 2019¹⁸. It had been signed into law by President Ram Nath Kovind on 5 December, becoming the Transgender Persons (Protection of Rights) Act, 2019¹⁹.

Transgenders in our society have not been respected and often were subjected to humiliation. They were often beaten up by authorities in power and their significance in the society has been degraded. They are the worst victims of exploitation because of their degraded status in the society. The scope of development for them is very less due to lack of opportunities. These articles intend to protect them from such exploitation and provide them for a better standard of living, to live a life a life with dignity.

CONCLUSION AND SUGGESTIONS

Homosexuality is not a mental disease or disorder. This paradox of our society is extremely sorrowful. They are not sick or aliens came from different people. They have

no human mind control. They have to face discrimination, humiliation and what not from people of our Indian society who make them believe that they are different from ordinary people. Today's youth of our Country can still understand that it is as natural as heterosexuals but, the old generation people does not understand the same. The status of LGBT community is worst in Indian society. India is a developing country and it can boost the growth with by availing right opportunities to them for their development. The major setback for such status of the transgender people is that people don't want to discuss about homosexuality freely. LGBT rights are human rights. The Government of India should take off its conservative ideas and can enforce stricter provisions for the protection of this community. There shall be implementation of stricter remedial action otherwise they will be subjected to more exploitation and harassment. The stereotypical view of the society must be addressed and eradicated; only then the so called postulated aspects of equality will be implemented on the ground level.

¹⁷ <https://www.moneycontrol.com/news/india/lok-sabha-passes-transgender-persons-protection-of-rights-bill-4291561.html>

¹⁸ <https://qz.com/india/1756897/indias-transgender-rights-bill-disappoints-the-lgbtq-community/>

¹⁹ <https://www.indiatoday.in/india/story/transgender-beggary-bill-1568764-2019-07-14>