



REALIZATION OF THE RIGHTS OF LGBTQ+ COMMUNITY

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INTRODUCTION

“History owes an apology to these people and their families. Homosexuality is part of human sexuality. They have the right of dignity and free of discrimination. Consensual sexual acts of adults are allowed for the LGBT Community” said Justice Indu Malhotra while passing the verdict of *Navtej Singh Johar v. Union of India*.¹ This marks how the Indian society is slowly changing their attitude towards the members of the LGBT community. The author wants to embed the thought that sexual identity is not a ground for bullying, discrimination and ill treatment. The ideology of “Love is Love” is what the author believes in. Homosexual relationships are formed purely on the basis of love, a love for themselves as well as for their partners. No person belonging to this community chose to follow this path rather they were born this way and to lead this life. Though history has mocked these people, the community will never stop fighting for their rights and their equal status in society. This essay aims at bringing out that impressive emotion and uplifting the LGBT Community by recognizing them as equals in the society.

INTERNATIONAL VIEWS ON THE LGBT COMMUNITY

The LGBT community has been predominantly fighting for their basic Right of Equality and Right to Life along with Personal Liberty, which are not just the Fundamental Rights of many countries but also the basic structure of any Written Constitution, standing as the cornerstone of the Constitutions of many countries including India. “All human beings are born free and equal in dignity and rights” are the words that are found in the opening statement of the Universal Declaration of Human Rights.²

The largest psychiatric organization, the American Psychiatric Association passed a resolution that homosexuality is no longer a mental illness or sickness in the year 1973.³ In June 2011, the United Nations Human Rights Council adopted a wide range resolution on Human Rights, Sexual Orientation and Gender Identity. They focused their attention towards containing and restricting violence against the LGBT Community just on the grounds of sexual identity. The United Nations General Assembly has urged the States to protect and promote the right to life of all persons under their territory and to prevent the citizens from resorting to violence over each other motivated by sexual orientation and gender identity.⁴ All of these resolutions, recognitions, laws and rules primarily aim at a single purpose i.e. protection of human life and recognition of the Homosexuals, Transgender, Asexual, Queer and the others

¹ *Navtej Singh Johar v. Union of India*, WP (C) 572/2016

² Universal Declaration of Human Rights, Article 1, available at www.un.org, accessed on 08/04/2020

³ Elliot Kozuch, *The APA removed homosexuality from list of mental illness*, available at <https://www.hrc.org>, accessed on 08/04/2020

⁴ *The UN General Assembly Resolution*, A/RES/67/168, available at www.uno.org, accessed on 08/04/2020



of the LGBTQ+ Community. Many countries of the world supported the LGBT Rights Declaration in the General Assembly of the UNO and the Human Rights Council in 2008 and 2011.⁵ A few countries strongly supported this declaration while the other sect of countries including India did not support the declaration. With the rapid augmentation, countries have started to realize there is nothing wrong in homosexual unions and the same has to be protected from discrimination and exploitation.

INDIAN VIEWS ON THE LGBT COMMUNITY

The readers of this essay need to understand a fact that any person you know be it your neighbor or your friend or anyone for that matter might be living in fear behind the closets because discrimination along with torture from their families. The Indian society considers the acts of homosexual as shameful and sinful. At present with no law penalizing homosexuality, still the same-sex couples cannot get legally married in our country. The Indian Judiciary and Legislature have been considerate towards the homosexuals and the Transgender. In 2016, the transgender community was given the constitutional right to register themselves as the Third Gender.⁶ They are called as *hijras* commonly and bear different names in different states of India. The Government protects them through different welfare schemes, right to employment, medical schemes like free surgeries in government

hospitals etc. There are approximately 4.8 million transgender people throughout India.⁷ In 2009, the High Court of Delhi in *Naz Foundation v. Govt. of India* decided that Section 377 IPC was a direct violation of fundamental rights guaranteed by the Indian Constitution.⁸ In 2012, the Ministry of Home Affairs conveyed its strong opposition towards the decriminalization of homosexuality.⁹ Later the Central Government reversed its stand and stated the decriminalization of homosexuality was no legal error. In 2013, The Supreme Court set aside the 2009 Delhi High Court decision of decriminalizing consensual homosexual activity.¹⁰ On 18 December 2015, member of the Indian National Congress, Sashi Tharoor introduced a bill of repeal of Section 377 IPC. The Bill was rejected in the Lower House in a 71-24 vote.¹¹ Finally, on 6 September 2018, in the case of *Navtej Singh Johar v. Union of India* the Supreme Court issued a verdict stating Section 377 IPC as unconstitutional as it was a sheer violation of fundamental rights and thereby legalizing acts of homosexuality.¹² Many activists and experts have suggested the Government of India, to legislate laws for the recognition, marriages, settlement, adoption and civil rights of the same-sex couples.

RELIGIOUS VIEWS ON THE LGBT COMMUNITY

Marked by various instances, homosexuality and the others were recorded in Hindu Mythology. In Mahabharata, Shikhandi, born

⁵ *The LGBT Rights Declaration*, available at <https://www.ohchr.org>, accessed on 08/04/2020

⁶ *The Transgender Persons (Protection of Rights) Bill, 2016*

⁷ Abraham Rohan, "All you need to know about the Transgender Persons Bill, 2016", *The Hindu*. 30/11/2017

⁸ WP (C) No. 7455/2001

⁹ M Dhananjay. "Centre opposes decriminalization of homosexuality in SC", *Economic Times*, 23/02/12

¹⁰ M Dhananjay. "Supreme Court makes homosexuality a crime again", *The Times of India*, 12/12/13

¹¹ Rappler, "India parliament blocks MP's bill to decriminalize gay sex".

¹² WP (Cr) No. 76/ 2016



as female, identifies herself as a male and subsequently gets married to a woman. It also mentions about, Arjuna transforming himself into a woman named Brihandala, while he is in exile and later becoming the dance teacher for a princess. The Rig Veda states “*Vikruti evam Prakriti*”, which means diversity is what nature is all about or what seems unnatural is also natural. The Kama Sutra, a text on human sexual conduct, describes homosexual men as *tritiya-prakriti* and gives a detailed description about their anatomy along with their practices. It also talks about lesbians and calls them *svairini*. The transgender people worship the deity Ardhanarishvara, which is the androgynous incarnation of Lord Shiva and his wife Parvati. Aravan, a hero whom Lord Krishna married after transforming himself as a woman, Lord Ayyappa, who was born from the union of Lord Shiva and Lord Vishnu’s female incarnation Mohini, mark the existence of homosexuality and transgender in the Indian society. Marriages between heterosexuals and transgender Hindu women happen every year in South India and it is known as the Koovagam festival. In the village of Angaar in Gujarat, the Kutchi community has a ritualistic transgender marriage being performed during the time of Holi festival for the past century. Ishaak, the bridegroom and Ishakali the bride are both men, which is unusual. Thus, these residues show that Hinduism has always recognized homosexual unions.

When we look into the preaching of Christianity, there is clear restriction imposed on homosexual relationships. “You shall not lie with a male as with a woman; it is an abomination”. (Leviticus 18:22) and “If a man lies with a male as with a woman, both of them have committed an abomination;

they shall surely be put to death; their blood is upon them”. (Leviticus 20:13) are the two verses from the Bible, which evidently opposes homosexuality. Various verses of the book of Genesis, Romans 1, I Corinthians, I Timothy have expressed its discontent and contempt against homosexual unions. But the Clergy, at present, has been open to the individuals who identify themselves as a member of LGBT and has allowed priests, preachers who have identified themselves as homosexuals. The churches have now constantly solemnized the marriages of same-sex couples in the countries where homosexual marriages are legalized. This marks the acceptance of the homosexuals in the Christian world.

In Islam, the Quran is the paramount source of law. The Quran mentions about the destruction of the people of *Lot* by the wrath of God, as they entered into lustful carnal relations between two men. According to Muslim Jurisprudence, the acts of homosexuality are punished with death. But there are many incidents of homoeroticism in the Mughal Empire marking the acceptance of homosexuality in the Mughal Era.

The author again cites these historical instances, the present situations of the world and the changing attitudes of the religion, to make the readers aware that being a member of the LGBT community is morally and religiously justifiable. The author again asks the readers this question, “Why shouldn’t the LGBTQ+ Community receive their equal status and equal rights, just like other citizens and be protected from any kinds of discrimination and torture?”



THE INDIAN CONSTITUTION AND THE RIGHTS OF THE LGBT COMMUNITY

Looking at this concept from the perspective of Article 14 of Indian Constitution which encompasses the Rule of Equality before law and Equal protection of the Law, we can evidently see that all this torture, non recognition, withhold of rights, unequal treatment against the LGBT Community on the poor grounds of Sexual Orientation and Gender Identity, is sheer injustice to the people of those community.

Considering the concept from the viewpoint of Article 15 of the Indian Constitution, which speaks about non-tolerance of discrimination without any reasonable classification, we can again witness, the violation of this right and the injustice done to the members by not recognizing their rights and discrimination.

When we look upon this matter from the view of Article 21 of the Indian Constitution dealing with Right to life with Dignity, we can see sheer violation of this Article as the present situation in the country is making the lives of these people much harder, by not recognizing any of their rights.

The readers may ask the author a question “What rights are not recognised and what is the discrimination or ill treatment was exerted on these people?” The answer lies when we look the list of recognized rights of the LGBT community in India.

1. With the passing of the verdict by the Supreme Court in *Navtej Singh Johar v. Union of India*, there is no longer any criminal punishment, for adult consensual homosexual practices.

2. With the passing of The Transgender Persons (Protection of Rights) Bill, 2016, the transgender people are recognised by the government as ‘Third Gender’.
3. A Transgender is considered as a person of the Other Backward Class (OBC) and be provided with reservations in Government run institutions and establishments.
4. As per the recent judgment of the Madras High Court in the case of *Arun Kumar & Anr. v. The Inspector General of Registration and Ors.*, a transwoman shall also be considered as ‘bride’ under Section 5 of the Hindu Marriage Act, 1955.¹³
5. A single gay or lesbian parent, who’s below the age of 30, can adopt a child.

The list ends here. These are the only expressed and recognised rights of the people of the LGBT Community. There are various personal and social rights that are barred by the Indian Laws even today. Such as Anti discriminatory laws in favour of the LGBT Community, Legalization of Same- Sex marriages, Child Adoption Rights of the Same Sex partners, the issuing of Family Cards under the Indian Law, Laws for the protection of homosexuals from rapists, Anti Defamatory laws in favour of Homosexuals and the list does not stop here. It is sad to know, that a person can’t even marry a person whom he loves just because the marriage is not legally solemnized. All these and whatever our minds can comprehend, are the injustice or discrimination or ill treatment exerted on the LGBT Community. In essence, every aspect of Right to Life and Personal Liberty along with Right to Equality is being violated and is being curtailed making these people starve day in and day out for these rights.

¹³ WP (MD) No. 4125 of 2019



Despite International Laws, Conventions and Resolutions are being made in relation to the protection of the rights of this community; the Indian Government is still a tad slow in catching up with the changing trends of the society.

CONCLUSION

The author is not here to criticize the Indian Government and Administration, but rather as a voice for the poor souls undergoing all the trauma and torture. The author does not want to compare India with any country, stating that this country has legalized same-sex marriages, gave the LGBT community their rights et., but rather praise the country that is unique in all its features such as having diversified cultures and varied norms made with precise knowledge and intelligence. The author wants the Indian Government to preserve and promote the rights as mentioned in the Indian Constitution and never let any form of violation of the same to happen, just like how it is happening in the matter of the LGBT Community. The author has put forth the International views over this topic, so that we catch up with the pace of global development and not be left behind. The author brings in religion into this aspect as all of our Laws and Rules are made in accordance with our holy customs and values which we have been following for centuries. The author indeed wants to destroy the gender stereotypes in our country and make a country that is moving forward along with its entire people without any discontent but only pride. The author also wants the readers to know that this topic carries huge personal connection for the author is also gay and proud.
