

Human Rights and LGBT Rights – A Comparative Study between India and United States of America

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Abstract

This paper deals with human rights and LGBT rights of people in India and USA. The paper will study that to what extent the basic human rights are enjoyed by LGBT community. The sexual minorities are the people belonging to the LGBT community. The first step taken by the judiciary to fight for their freedom, equal citizenship and to grant the LGBT persons equal rights was when they overturned the judgment given in the case of the Naz foundation case. The present work is definitive, descriptive and the qualitative data was produced in part non-empirical and in part empirical. The research was concluded with primary and secondary data such as personal interviews, books, documents, hypotheses, case laws, etc. In this paper, the researcher tried to discuss the definition of LGBT rights and about the existence and oppression of LGBT people in the society on the basis of sexual orientation. It leads to abuse of their freedoms including civil rights and constitutional rights. This research paper analyzes the Indian history of homosexual marriages as an intangible problem which is effectively held under cover. The paper primarily attempts to explain different aspects of homosexuality including genetics, the causes, the mindset of society and reactions to such relationships, and how progressive laws should be implemented. Homosexuality will remain a secret as long as people are willing to sweep it under the carpet of oblivion and 10% of the Indian population is made up of LGBT people. Transgenders are the worst sufferers among them. It is required that the government passes marriage laws for LGBT people and the government must also take remedial measures for them, otherwise there will be no end to their sufferings.¹

Keywords: *Human rights, Homosexuality, population, government and exploitation*

¹Transgenders are the worst sufferers of exploitation, due to their degraded monetary reputation they indulge into prostitution and other immoral activities and are commonly seen as taboo by the society (Flatt et al. 2018). The aim at the back of this Article is to confer independence of person's identification by means of preventing exploitation.

Introduction

The LGBT group is the people belonging to sexual minorities, lesbian / gay / bisexual individuals whose sexual desire differs, and these persons are fighting for their rights and equal citizenship that often ends up in violation. Through the judgment of the **Naz Foundation v. NCT of Delhi and Others** including the then Chief Justice of the High Court, the Indian judiciary took its first step towards equal sexual citizenship and various rights under human rights law for LGBT community, given by A.P. Shah and Justice Muralidhar in 2009, and is considered a seminal decision on the LGBT community's rights (Byne 2015)². The judgment sheds light on the human rights challenges that the LGBT community is facing in the country and extends its views about basic constitutional human rights vested with Indian people which are not extended to LGBT community in true sense. At this time of uncertainty, the Supreme Court of India concluded the hearing of **Suresh Kumar Koushal and others v NAZ Foundation case**; judge bench-Justice G.S. Singhvi and Justice S.J. Mukopadhyay, they overturned the earlier judgment and pulled the LGBT community back into the specter of violence. As a result of this, the LGBT community's battle still continued and there were numerous crimes committed against the LGBT community (Gibson, Meem, and Alexander 2013). The paper starts by addressing the cases before the Supreme Court, and the arguments put forward in the way. The abuse of the human rights of the LGBT community has been deeply ingrained in the state of India. Violation of human rights laws by the Supreme Court took place in the case of the Naz foundation. There are various arguments that could be put forward based on our cultural and moral values, but the main issue is — What about the right to life of the sexual minority, which remains an unanswered question and an unknown area (Seay et al. 2018).³

This paper also sheds light on the area of human rights which are the basic necessities recognized by India as per the UN Convention on Human Rights (sathyanarayana rao,2016) often referred to as fundamental rights, civil rights, natural rights or intrinsic rights. These rights are available

²Byne, William. 2014a. —LGBT Health Disparities, Barriers to Care, Assisted Reproduction, Preexposure Prophylaxis, Electronic Health Records, and Much More. *LGBT Health* 1 (3): 147– 48.

³Seay, Julia, Darryl Mitteldorf, Alena Yankie, William F. Pirl, Erin Kobetz, and Matthew

from individual's birth and are crucial to human happiness and development (Hussen et al. 2017). They are important to uplift the human race physically and morally. This article assesses the development, growth and definition of human rights of LGBT community in India and USA. The State practices examined seem to reveal fundamental divisions on this subject, and the movement's future could be bleak if measures are not taken by India's government (Hunter 2012).⁴

Having reviewed the regional, provincial and international human rights jurisprudence on sexual discrimination, in view of the continuing resistance from a significant body of states, the article considers potential policy ways forward. More precisely, it explores the most appropriate legal and strategic reactions at national, regional and international level to oversee or connect the tensions between States on the subject, and this paper aims to break down Section 377 and its impact on the general public and to explore the mental well-being of LGBT people and to affect the LGBT's social consent inquiry to court.

The current work is partly doctrinal in nature, and partly empirical. It ended with primary and secondary data such as personal interviews and books, articles, theories, laws of cases, etc.

The United Nation declaration of human rights and LGBT issues

The Universal Declaration of Human Rights protects the right to life, the right to privacy, the right to health and equality before the law, as well as the right to freedom of expression and freedom from discrimination and violence, including torture, but individuals who are lesbian, gay, bisexual and transgender (LGBT) are constantly at risk of persecution and gross violations of the basic human rights in a number of countries. Most LGBT people are afraid of incarceration, violence, harassment and even murder, just because they live in a culture that does not support their sexual orientation, gender identity or gender expression. Society, family and domestic laws are completely opposed to this in the Indian scenario.

⁴ Hunter, Ski. 2012. *Coming Out and Disclosures: LGBT Persons across the Life Span*. Routledge.

Discrimination

Discrimination and denial of LGBT people's human rights have antagonistic repercussions regarding their ability to add to and benefit from change. Stigma and discrimination regularly go along with LGBT people coupled with poverty and render them susceptible to violence. Living overtly, or even just being perceived as, or related with, an LGBT individual, many instances suggest chance of losing one's employment, housing, education, and right of entry to fitness care(Ball 2010)⁵. LGBT humans need to be recognized as rights-bearers and retailers which have an in deniable right to participate in programs and decisions that have an effect on their lives and society at large. The discrimination arises in various fields of employment and starts at a young age. They additionally lack aid from their family.(Ball 2010; Rosa, Fullerton, and Keller 2015). These people often suffer from harassment because of their sexuality and gender expression.

Human Rights violation

The current period is certainly one with fast advancements in LGBT community status in many countries and of a wave of anti-gay legal guidelines and regulations in others and there is a burden of HIV Risks on them along with stigma. Legal rights of the LGBT human beings in India is about strategizing for the future and proper laws for marriage. In India there are civil legal guidelines which have an effect on the homosexual rights. Human rights are the essential rights of each human being, regardless of way of life or societal norms and to get right of entry to health service of the LGBT people. Many of them operating for their popularity and many human beings running to get standards codified into rules and legal guidelines in both International and municipal regulation.(Bazzi et al. 2018)⁶

Homosexuality in India was considered as a Unnatural sexual offence under section 377 of the Indian penal code,1860. Same-sex orientation and behavior has been deserted in India due

⁵ Ball, Carlos A. 2010. From the Closet to the Courtroom: Five LGBT Rights Lawsuits That Have Changed Our Nation. Beacon Press.

⁶ Bazzi, Angela R., Melissa A. Clark, Michael R. Winter, Al Ozonoff, and Ulrike Boehmer. 2018. —Resilience Among Breast Cancer Survivors of Different Sexual Orientations. LGBT Health, June. <https://doi.org/10.1089/lgbt.2018.0019>.

to the fact that they were psychologically ill, but the reality is that Homosexuals does not have any psychological dysfunction or Impairments and the motive is just too complex in nature. Many petitions were filed earlier in Supreme Court to declare Section 377 of the Indian penal code as Unconstitutional. One of the well-known cases for this LGBT difficulty is Naz foundation case. On 2nd July, 2009, the high court bench of Delhi gave its judgement that the provision in Section 377 of Indian penal code that criminalises private consensual sex between identical-intercourse adults violates the section 21 of the Indian constitution and International human rights conventions(Smith et al. 2018). Delhi high court further states that it is in opposition to the constitutional values and perception of human dignity. Most scientific and psychiatric experts say that Homosexuality isn't always a disorder. (Smith et al. 2018).

After the decriminalization of homosexuality, LGBT individuals eventually became free from criminalisation under the regulations and it unfastened the hazard of arrest and the ruling gave self-assurance and dignity to LGBT humans in the eyes of law.(Smith et al. 2018). They were no longer criminals and could proudly examine themselves within the mirror. But it did not last long and supreme court ruled over the judgement of the Delhi high court in 2013 and said that Section 377 of Indian penal code will not be unconstitutional while we check out the records of the provision and one of the rivalry came when a petition was filed that LGBT rights is in opposition to Indian subculture but while we study approximately same-sex love in India from literature and records, we can easily pick out that historic human beings in India involved in equal-sex love and for that temple sculptures at Khajuraho and konark are the quality examples which truly explains that ancient people involved in identical sex love and In the e book of — Loving women and In sahayatrikal it has been clearly said about Lesbian girls committing suicide. This suggests that there is a instruction of homo sexualism in ancient duration(Sánchez et al. 2014). The Supreme Court's choice can either similarly crystallize or instead discard some of the amazing principles of jurisprudence that high court docket developed and there's Court's extremely good dialogue of constitutional morality and Using constitutional morality to test the limits of a compelling kingdom hobby would mean an ethical code that is based totally on the liberal democratic ideals that underlie the Indian constitution.

Presently, after the Supreme Court decided that it would review its 2013 ruling, there came hope once more. This is an additional possibility for Prime Minister Narendra Modi to signify authority. The Supreme Court asked the authorities looking for its view on section-377. The past administration, driven by Prime Minister Manmohan Singh, had supported the Delhi High Court ruling on phase 377. The Modi government likewise again supported excessive court ruling, in this way ensuring the privileges of every person in India, yet setting standards for governments somewhere else that mishandle comparative legal guidelines to discriminate LGBT community. After the younger fellow on the Mumbai meeting stated his dread of losing his pastime, Nisaba Godrej, the enterprise's authentic government, talked about her very own involvement of gaining knowledge of and comprehension about the difficulty via an companion, and later on main the % to end separation in Indian business(Wolf-Gould, Riley, and Carswell 2018).⁷

India's political pioneers also can determine out how to triumph over the lack of information of the those who discriminate and mortify, and to deliver authority in assorted range and attention. For India, it is actual time to quit criminalizing love. (Lutwak 2014).

Constitutional rights of LGBT people

The Preamble to the Constitution of India mandates Justice - social, financial, and political, equality of opportunity. The Constitution accords each man or woman an equal status in the eyes of law and an equal safety of laws within the territory of India. The word 'any man or woman' right here means each person, with none discrimination based on any of the category which includes, caste, creed, faith, intercourse, and many others. A transgender in India is blanketed inside the phrases 'any person' and is given equal popularity to that of each cis-gender in India. The transgender network can't be discriminated at the floor of non-utility of any of the legal guidelines within the country with the aid of motive in their differences and dividing them primarily based on any arbitrary class.

⁷Wolf-Gould, Carolyn S., Moira R. Riley, and Jeremi M. Carswell. 2018. —Complex Medical

The key phrase in regards to the safety of Transgender is the phrase 'sex'. The interpretation of the phrase 'sex' consists of these groups irrespective of them falling under the category of male or woman.

The Apex Court of India in a landmark case discovered that both gender and organic attributes represent awesome additives of intercourse. Biological traits include genitals, chromosomes and secondary sexual functions, however gender attributes consist of one's self-picture, the deep mental or emotional experience of sexual identity and man or woman. The discrimination on the ground of 'sex' under Articles 15 and 16 of the Indian Constitution consists of discrimination on the ground of gender identification. The expression 'intercourse' is no longer simply restrained to organic sex of male or lady, but intended to include human beings who recollect themselves to be neither male or girl. Articles 15(2) and 16(4) has additionally been interpreted to provide social equality to those communities such as equality in public employment, it gives that the states shall have the power to make any unique provision for the enhancement of those inclined minority who at the moment are blanketed in the category of socially and educationally backward instructions(Byne 2014a).

These Articles read with the Directive Principles of State Policy and numerous global devices to which India is a party, call for social equality, which the transgender ought to realise, if facilities and opportunities are extended to them so that they can additionally live with dignity and identical status with other genders(Byne 2014b).

The proper to select one's own identification is one of the most crucial proper below this article to existence with dignity, and this component is covered and included with the aid of this Article as it symbolizes the maximum critical proper being a human, a proper to stay, which the State is required to protect from violation. The transgender communities have a right to dignified lifestyles which is one of the maximum vital factors of Article 21 of the Constitution of India(Daulaire 2014)⁸. Recognition of gender identification provides the recognition in their proper to dignity and non-popularity violates the equal, they've complete right to explicit and stay their existence with out fear. Also, the proper to popularity extends

⁸Seay, Julia, Darryl Mitteldorf, Alena Yankie, William F. Pirl, Erin Kobetz, and Matthew Schlumbrecht. 2018. —Survivorship Care Needs among LGBT Cancer Survivors. *Journal of Psychosocial Oncology*, May, 1–13.

to their protection(Warren, Bryant Smalley, and Nikki Barefoot 2016). Transgender in our society have no longer been visible with respect, they may be often humiliated and crushed up with the aid of the government in strength their reputation in the society has degraded and their importance in the society has been deteriorated. Various inhuman acts together with human trafficking and beggary are declared as an offence and punishable in step with regulation (Sang et al. 2018). The scope of Article 23 of the Constitution of India is very extensive as it consists of inside any shape of discrimination which are forbidden. Immoral sports such as prostitution are typically visible down inside the society. Everyone has a right to private improvement, and this ought to be secured handiest when there exist a proper towards exploitation which creates a free environment for an individual(Durso 2018).

Transgenders are the worst sufferers of exploitation, due to their degraded monetary reputation they indulge into prostitution and other immoral activities and are commonly seen as taboo by way of the society (Flatt et al. 2018). The aim at the back of this Article is to comfy independence of an person identification by means of preventing exploitation of guys by way of men.

Conclusion and Suggestions

Indians are not ignorant to homosexuals but they don't sense loose to discuss about reservation of homosexuality and the attitude of Indian human beings nonetheless stays. Young humans recognize the emotions of LGBT humans but now not the antique era human beings. Most of the instances homosexuals and their behavior are termed as deviant. Just because homosexuality is now not widely practiced in India does no longer mean it is not normal. Just because it is unusual does no longer mean it should be condemned. India is a growing country and what will enhance the growth and improvement of the country is the advent of innovative legal guidelines. Homosexuality will remain a taboo as long as people are willing to shove it beneath the carpet of oblivion and as they form a whopping 10 per cent of our population, it becomes indispensable for the state to grant them equal human and other rights.

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