

Legal Dynamics of LGBTQIA+ Rights in India

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Abstract— LGBTQIA+ is the key acronym for the sexual minority group all over the world. India has a history in this regard of the recognition and non-recognition of rights. The sexual minorities have given positive as well as negative dynamics in the society. The discrimination against the rights of LGBTQIA+ in the law can be seen in those who recognise themselves as lesbians, gays bisexuals and others.

Keywords — Transgender, LGBTQIA+ rights, LGBTQIA+ Human rights.

I. INTRODUCTION

Recently the verdict of the Supreme Court assured the group to protect and promote their interest. One of the dynamics is decriminalization of the same-sex relationships in India. Section 377 of the Indian Penal Code, 1860 which criminalizes consensual homosexuality was decriminalised by the Supreme Court. Subsequently, the protection and promotion of transgender rights were given more importance. The LGBTQIA which is an acronym for sexual minority continued to face harassment because of no umbrella legislation for this community. Recently in one of the significant verdicts of the Supreme Court, it was made clear that same-sex marriages still failed to get legal recognition in India. The impact of the verdict has affected the sexual minority group's rights in adoption, succession, healthcare, workplace etc. The group needs protection and policies which can lead to the promotion of their rights so that they can lead the life of normal human beings in an inclusive society. It is required to proceed with the advocacy of the rights of LGBTQIA+ so that they can have all the human rights ensured by the constitution of India.

II. MEANING

L-lesbian, G-gay, B-bisexual, T-transgender, Q-queer or questioning, I-intersexual, A- asexual or A gender. LGBTQIA is the umbrella term which includes all variants of the community. Other than these remarking letters we can see many other variants in the same community itself i.e., LGBTQ, LGBT, LGB, LGBTQBBQ so to remark the community is LGBTQ+ acronym can be used which indicate the other variants of the same community

III. HISTORY

It is difficult to collect information about LGBTQIA+ because of the sensitive issue.¹ India is a South Asian country

which has a long and remarkable history in this regard. In history, many people have visited our country to rule and stayed back here and the last ruler who stayed in India is British. they ruled our country for 200 + years. When they visited our country, they criminalised same-sex marriages under section 377 of the Indian Penal Code 1860. Accordingly, homosexual activities in India are considered as criminalised as they are against the order of nature. A law which was in practice till the ruling from the Supreme Court in the year 2018. The rule has existed in India for more than 150+ years. Finally, was struck down as violative of the fundamental right to equality, right to privacy is an integral part of the right to life.

The members of LGBTQIA community face discrimination in implementation of the policy in India and lack of laws in this regard.² But from 1860 many things in history have changed but not the rule in India. Some of the changed practices after 1860 were sati practice and locomotives. But some other things that remained from the period of 1860 are the caste system, oppression of women in child labour, and also section 377 i.e. unnatural offences. It is the British who moved from our country in the year 1947 but their laws existed still in our country.

Many people have the notion that homosexuality is a Western concept but note here it is not the Western concept but the proof of our history. But it is homophobia which is the stigma that is attached to the LGBTQ+ community is a Western concept which is deeply rooted in the country till now because of the introduction of 377 in the Indian Penal Code 1860. Unnatural offences means order of nature in sexual intercourse is not followed with any person.³

This rule was practised by the all-colonial countries under British rule all over the world. Many parts of the world have the same or similar laws in this respect the countries are Malaysia, Singapore Pakistan Bangladesh, Myanmar,

¹ Blackburn, H., & Farooq, O. (2019). LGBTQIA-R: Creating a Diverse and Inclusive Medical Collection at a Public Metropolitan University. *Collection Management*, 45(1), 3–18.

² Mara, L. C., Ginieis, M., & Brunet-Icart, I. (2021). Strategies for coping with LGBT discrimination at work: A systematic literature review. *Sexuality Research and Social Policy*, 18, 339-354.

³ Monika, K. (2021). Constitutionality of Unnatural Offences in India: Present Scenario. *Ilkogretim Online*, 20(1).

Maldives, Jamaica and also in Bhutan, islands called shri Lanka, Ghana, the Gambia, Botswana, Kenya, Nigeria, Tanzania, Zambia Uganda, Kenya.

From 1860 to 2018

- The status of the third gender has remained the same as it existed in 1860. Though the British left India in the 1947
- In 1977 Shakuntala Devi, a mathematician published the first study on homosexuality and named the study as the world of homosexuals. In her work, she explained the decriminalisation of homosexuality and the world of complete acceptance in India and not tolerance and sympathy. Such ideas were not given much importance in those days and her work also unnoticed by society.
- In 1981 the first all-India Hijra Conference was called in Agra wherein 50000 Hijras from the LGBTQ+ community participated from all over the country.
- In 1994 the Hijras were given first voting rights as third sex.
- The first petition in India by the LGBTQ+ community was filed by aids bhedbhav virodhi Andolan. This went unnoticed because this petition was arguing about the decriminalisation of se 377 of the Indian Penal Code 1860.
- In the year 1999, Kolkata was the first state to host the pride march in the entire south Asia
- In the year 2001, the Naz Foundation V Government of NCT of Delhi⁴ case Naz Foundation filed a pil to challenge se 377 of IPC 1860 in the Delhi high court in the year 2009 in its decision the Delhi court held that concerning se 377 it is private, adult, consensual and non-commercial sex relationships are considered as not violative of Art 21⁵ which speaks about right to life and right to life talks about right to privacy its preview. To this our IPC 1860 revolves around the man or woman only. All laws were applicable for binary genders but what if offences were committed against the other gender or third gender were not clear.⁶
- According to the verdict of the Delhi High Court⁷, it was decriminalised and not legalised which was considered a landmark judgement in the history of judiciary but soon was set aside by the Supreme Court in the year 2013. And asked the parliament to make the law in this respect.
- In the year 2014, the Supreme Court dismissed the review petition filed by the central government on the decision of the Supreme Court and held that it is not to be decriminalised and the original rule of the 377 was

restored. The court has explained that only a minuscule fraction of the country constitutes LGBT people

- In the same year, the India Psychiatric Society released a press note saying that homosexuality is not a disease
- In 2014 the NALSA V UOI⁸ case the Supreme Court held that the transgender community should be treated as third gender
- In the meantime in 2015 the parliament also introduced the bill named Decriminalisation of Section 377⁹, but was rejected by the majority vote on the floor of the house.
- The UK has passed the law on same-sex marriage in their country since 1967. They were the first to introduce this provision but made provision in UK for same sex marriage in the year 1967.
- In 2016 the Supreme Court decided to review the criminalisation of homosexual activity.
- In 2016 Namma Pride allowed persons with disability to march in India
- In the year 2017¹⁰ Navtej Singh Johar and Ors. vs. Union of India the Supreme Court gave the landmark judgement that the LGBT community can freely express their sexual orientation in India decriminalised nonsexual same-sex marriage and held that expression of homosexuality is implicit in the right to privacy under the Indian constitution

IV. CONFLICT IN THE LAW

One of the most controversial issues in law is the legal recognition of LGBTQIA. The issue is not only in India but all over the world legal verdicts have been passed. One of the dynamics of the human rights of sexual minorities is harassment in the employment sector. Many will not offer them the job because of their sexual identity and some others reject it because of their sexual orientation. There are so many people because of the pressure of society wants to change their sexual identity. There is a lot of agitation in this regard to banning all these kinds of surgeries which affect human rights under Article 12 of the Indian Constitution. There are some other legal barriers which are faced by the LGBTQIA community. Some of them are,

- LGBTQIA+ can express their sexual orientation freely and thoroughly in India but homosexual act is still criminalised in India
- The LGBTQ march is been a bit slow in India but it says that no going back to Se 377
- The march is recognized as pride which means the positive feeling for decriminalisation and agitation for the LGBTQIA community
- The dignity of individuals has been affected very badly in India

⁴ Naz Foundation v. Govt. of NCT of Delhi, 160 Delhi Law Times 277 (Delhi High Court 2009)

⁵ Indian Constitution.

⁶ Jain, S. (2022). An Analysis on Rape with LGBT Community/Men. Part 2 Indian J. Integrated Rsch. L., 2, 1.

⁷ Supra note. 4

⁸ 2014 INSC 275

⁹ Indian Penal Code, 1860

¹⁰ AIR 2018 SC 4321.

- Equality march has been undertaken by the sexual minority group.
- The march undertaken has helped them in Community Building
- Diversity in the community as a social group can be seen
- The march has taken place in India in various states they are Kolkata, Karnataka, Mumbai, Bhubaneswar, Ahmadabad, Delhi, Surat, Cochin, Baroda and in what places not.

V. CONCLUSION

In the summary, it can be concluded that same-sex sexual activity is considered as legal – but not provided legislation in this regard. In the case of equal age of consent, the decision of the court is pending. Anti-discrimination laws in employment provisions are not clear. An anti-discrimination law in other sectors than employment is not clear, especially concerning hate speech and indirect discrimination. Same sex marriages no law is provided for that. Whether Indians recognise a same-sex couple is not clear. Adoption by LGBTQ couples not allowed nor single adoption or joint adoption is also allowed. No military inclusion in society for Tran's community.

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