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India's LGBTQ rights, Legal obstructions to society and cyberbullying

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Human rights are the fundamental rights that every human being has from the day he or she is born into the human race. It is present in all people, regardless of race, creed, religion, language, gender, or skin color. "The rights to life, liberty, equality, and dignity of the individual are guaranteed by the Constitution or represented in international accords and enforced by Indian courts." according to the Protection of Human Rights Act of 1993¹. Every person in India is granted fundamental human rights under the Indian Constitution. Finally, 2018 brought a ray of hope to the LGBT community, which has been fighting for their rights for a long time, as homosexuality was decriminalised in the Navej Singh Johar case. At the same time, many established laws, violence, discrimination, and cruelty against LGBTQ people remain. Same-sex marriages in India are still a question. Homosexuality is still a big, debatable question in India and the world. We know that human rights in India have existed since ancient times. They are also mentioned in holy books like the Gita and the Vedas. LGBTQ people suffered a lot in the times of COVID-19.

Keywords: LGBTQ, cyberbullying, society.

¹ Protection of Human Rights Act, 1993

INTRODUCTION

As we know, the word "LGBTQ" defines the five different individualists. The word "L" means "lesbian" and refers to a woman attracted to a woman. The word "G" means "gay" and refers to a man attracted to a man. The word "B" defines bisexuality and refers to someone who is attracted to both sexes (male and female). The word "T" stands for "Transgender" and refers to a person whose gender identity has been determined from birth. The word "Q" refers to "queer" and refers to both sexual and identity identities, neither cisgender nor heterosexual. In the case of *Navtej Singh Johar v Union of India*,² homosexuality was decriminalized in India on September 06th, 2018 which dealt with section 377³ of the IPC, "carnal intercourse against the order of nature." The supreme court of India's verdict stated that every human being has a right to live, irrespective of sex and gender identity. However, the LGBTQ community faces a problematic issue with society and people. Homosexuality means "the attraction of the same sex genders towards each other. Homosexuality happens because of both same-sex genders' sexual and romantic feelings. Over a year, the meaning of homosexuality has been used in different terms. LGBTQ stands for Lesbian, Gay, Bisexual, Transgender, and Queer. The people in the society should respect them and their gender – the real humanity rises when we see them as us. The main challenge is that we need to change our mindset towards them. From 2018, when judgment came out, the perspective towards the LGBTQ community has been changing. Many people from the LGBTQ community have come out of their families and workplaces⁴.

LITERATURE REVIEW

If we look back over the last few decades, we can see how the LGBTQ community's rights have grown more substantial and more defined. In India, everyone has the right to be treated equally before the law. The law commission's 172nd report members recommended that

² *Navtej Singh Johar v Union of India* AIR 2018 SC 4321

³ Indian Penal Code, 1860, s 377

⁴ Aprna Narrain, 'Section 377 judgment on same sex relations: One year later, has anything changed?' (*The Hindu*, 5 September 2019) <<https://www.thehindu.com/society/section-377-judgement-one-year-later/article29342570.ece>> accessed 15 February 2022

Section 377 of the Indian Penal Code be repealed, claiming that it is harmful to public health because it directly impacts a homosexual's life (Law Commission India 2000).⁵ LGBTQ youth without secure housing are particularly vulnerable, and their numbers are expanding. A better system of LGBTQ youth programmes would significantly reduce the number of homeless LGBTQ youth in this community. During the recent COVID 19, LGBTQ people suffered from no shelter. Moreover, one of the risky things is cyberbullying. Because of this, many people from this community were hated and disturbed in their daily lives⁶. As a consequence of cyberbullying, they are facing psychological and emotional distress. The impacts of cyberbullying on LGBTQ youth were studied in a comprehensive study. According to the findings, cyberbullying among LGBTQ youth ranged from 10.5 percent to 71.3 percent in various research⁷.from this analysis, we can know that the LGBTQ community is in trouble if we observe 10.5 to 71.3 percent, it means almost all people in the community are affected from cyberbullying's, increasing the rate of death. Suicidal attempts were increasing from day to day. The violations against the community were not stopped after section 377 of the Indian penal code was repealed. As we know, the judgment in "*Navtej Singh Johar v Union of India*" came out in September 2018. Soon after the judgment, the impact of COVID-19 raised severely affected their lives. This research study shows how their lives changed after repealing section 377 of the Indian penal code and their challenges during COVID-19 from social media, the youth from the colleges, some adults from the schools, and some from workplaces, especially students whom their classmates bully. Their problems are not with the Constitution's rules, amendments, and regulations. Changing rules and improvising amendments will not change their fates and lives. People's perspectives need to change, and this community's observations or insults should change.

⁵ Law Commission of India, *Review of Rape Laws* (Law Com. No. 172 2000)

<https://lawcommissionofindia.nic.in/old_reports/rpt172.pdf> accessed 16 February 2022

⁶ Alexandra Chalker, 'Homelessness of LGBTQ Youth' (2019) 81 *Petersheim Academic Exposition*

⁷ Roberto L. Abreu & Maureen C. Kenny, 'Cyberbullying and LGBTQ Youth: A Systematic Literature Review and Recommendations for Prevention and Intervention' (2018) 11 *Journal of Child & Adolescent Trauma*, 91-97

THE LGBTQ AND LEGAL HINDRANCES ENCOUNTERED BY THEM UNDER SECTION SEC377

The Naz foundation filed a writ case in the Delhi court in 2001 to address the LGBTQ community's particular legal challenges under Section 377, under articles 14, 15, 19, and 21⁸. Nevertheless, after a gap of three years, in 2004, the Delhi high court rejected the writ petition of Naz Foundation based on locus standi (which means the capacity or right to bring an action before a court of law). The Delhi high court verdict on the two-judge bench that no sex between two homosexuals opposes our fundamental rights. In 2013, the case of *Suresh Kumar Koushal and another v NAZ Foundation and others*⁹. The Delhi high court verdicts decriminalise consensual sex. However, the Supreme Court held that the power to change the decriminalisation of consensual sex is up to the parliament to pass this bill. It also held that criminalising certain acts and not only a specific class of people. Because it restricted the right to express one's sexual identity and orientation, Section 377 had a "chilling effect" on Article 19. It also violates the fundamental right to privacy and infringes article 15, and sexual alignment is a ground related to sex, and discrimination of sexual alignment is not permitted under article 15. In the case of the "*Navtej Johar Singh Case*," The supreme court formed a five-judge bench of chief justice Dipak Mishra and four other judges. On July 10th, 2018, they started hearing. On September 06th, 2018, the five bench judges consistently held that section 377 was unconstitutional because it criminalised consensual relations between adults. In *Puttaswamy v Union of India*¹⁰, in this landmark judgment, the Supreme Court held that the right to privacy is a fundamental right under articles 14, 19, and 21 by nine bench judges. Every adult has the wish or choice to choose their partner and sexual orientation.

IS THE MARRIAGE OF THE LGBTQ COMMUNITY IS STILL A DREAM?

In *Arunkumar and Sreeja v Inspector General of Registration and Others* (2019), the Madras High Court expanded civil rights protections to Trans people, including those related to marriage. The term 'transgender' refers to anyone who deviates from traditional gender

⁸ Constitution of India, 1950, art. 14, 15, 19, and 21

⁹*Suresh Kumar Koushal and Anr. v NAZ Foundation and Ors.* (2013) SC 1088

¹⁰*Puttaswamy v Union of India* (2017) 10 SCC 1

standards regarding behaviour and appearance. The meaning of "bride" in Section 5 of the Hindu Marriage Act, 1955¹¹ is a woman and transsexual. Transsexuals, transvestites (cross-dressers), intersex people, and genderqueers are all included. In the context of India, it comprises social individualities such as hijras and some other social identities. The court cites the 2014 case *NALSA v Union of India*, which found that transgender people had the freedom to choose their "self-identified gender." Last year, a Supreme Court constitutional panel ruled that Section 377 of the IPC was unconstitutional in the *Navtej Singh Johar vs Union of India* case. The 2016 Transgender Persons (Protection of Rights) Bill recognises transgender people and prevents discrimination in education, employment, and healthcare. It also establishes a National Council for Transgender People, led by the Union Ministry of Social Justice and Empowerment. The Kerala State Government introduced the "State Policy for Transgenders in Kerala 2015" to ensure transgender people's "right to live with dignity." In all 27 nations, 54 percent of respondents favour the right of LGBT people to marry legally, while 16 percent prefer some other type of official status. According to 61% of respondents, same-sex couples should have the same right to adopt children as heterosexual couples. Equal adoption rights and opinions are unusually identical to those on whether same-sex couples are just as likely as other parents to raise children effectively. Nevertheless, homosexuality is decriminalised in India, but the LGBTQ people cannot get married according to their choice and choosing their partner. The transgender bill of 2019 did not do any good to this community.¹²

THE TRANSGENDER (PROTECTION RIGHT) BILL, 2019

Mr. Thaawarchand Gehlot, Minister for Social Justice and Empowerment, introduced the bill in Lok Sabha on July 19th, 2019.

Definition of a Transgender: This bill included transgender people who were born with gender differences. These may be transmen or transwomen who are experiencing intersex

¹¹ Hindu Marriage Act, 1955, s 5

¹² Fiza Khan & Dilsana Khan, 'LGBT Rights in India: The Status Quo' (2020) 3 (4) International Journal of Law Management and Humanities < <https://www.ijlmh.com/lgbt-rights-in-india-the-status-quo/> > accessed 18 February 2022

variations such as sex organs, chromosomes, or hormones from the normative standard of a male or female body.

Prohibition against Discrimination: The bill prohibits discrimination against transgender people in terms of service denial and unjust treatment.

- i) Education;
- ii) Health Care;
- iii) Employment;
- iv) Mobility; and
- v) The Right to Reside, Rent, or Occupy Property

Education: The government needs to provide education with sports and other recreational facilities without discrimination.

Health Care: The government should arrange the basic facilities. Then no gender discrimination while treating them.

Employment: There should be no gender discrimination against transgender people and no harassment in the private and government sectors

Certificate of Transgender Identity: For this certificate, they need to make an application to the district magistrate as "Transgender." If any person undergoes surgery, they can make a revised application.

Offences and Penalties:

- i) Forced labour (except government public services).
- ii) Denial in the usage of public places
- iii) Sexual, physical, or mental abuse is punishable by six months to two years in prison or a fine.

National Council for Transgender Persons (NCT): The National Council for Transgender People was formed by the Social Justice Union Ministry, the Ministry of State Social Justice, and other candidates from the rest of the other departments. This committee included five transgender community members and five experts from non-governmental departments. In addition, the Council will provide advice to the central government, monitor policies, and make recommendations¹³.

However, many members of the LGBTQ community have protested against the bill. Because the punishment for abusing a transgender person in this country ranges from six months to up to two years, under Indian law, the punishment for abusing or harassing a cisgender person is life imprisonment and, in some cases, the death penalty. The lesser punishment of transgender people creates less value and is dispensable. Some lawmakers and members of the upper house of parliament object that "the certificate for gender identity is a humiliation. "Justice delayed is justice denied," said Anil Agrawal, a lawmaker who backed the bill's speedy passage through parliament last week. "The transgender community will not forgive us if we keep denying them their rights. "The bill did not give full advantage to the LGBTQ community. However, when compared to the past, there is some relief.¹⁴

INTERNATIONAL STANDARDS FOR LGBTQ RIGHTS AND POSITION

The International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA) was founded in 1978 in Coventry, United Kingdom, by representatives from Australia (Gay Liberation Sydney/Victorian Homosexual Law Reform Coalition), Denmark (LBL F-48), France (CIDH), Northern Ireland (NIGRA), the Republic of Ireland (National Gay Federation), Italy (FOURI!), and the Netherlands. Peter Ashman (CHE) and Robert Pistor were the meeting's co-chairs (CHO).

¹³ The Transgender (Protection Rights) Bill, 2019

¹⁴ Susmitha Pathak, 'India Just Passed A Trans Rights Bill. Why Are Trans Activists Protesting It?' (NPR, 4 December 2019) <<https://www.npr.org/sections/goatsandsoda/2019/12/04/784398783/india-just-passed-a-trans-rights-bill-why-are-trans-activists-protesting-it.dec>> accessed 18 February 2022

LGBTQ rights, respect, and societal roles were extremely rare in the nineteenth century. However, from the initial phases of the twentieth century, the role of the LGBTQ community came into pure recognition and existence. Slowly, people in our society have started to accept homosexuality and different genders. The U.N. (United Nations) was founded in 1945. Since its inclusion, there has been no topic on LGBTQ rights, gender identity, or sexual orientation. In 1994, in *Toonen v Australia*, the UNHRC stated that laws against homosexuality are violations of human rights.¹⁵ In Uganda, 19 homeless homosexual, bisexual, and transgender people were imprisoned for two months on false charges of breaking the COVID-19 curfew instructions. After being evicted from their families' houses, they had nowhere to go, but authorities concluded that residing in a shelter constituted a crime.

THE EFFECTS OF COVID-19 ON THE LGBTQ

The COVID-19 pandemic and the following lockdown have significantly impacted society's economic growth, public health, and social dynamics. With the effect of COVID-19, the LGBTQ community faced many challenges. They lost their livelihood. They could not pay rent due to lack of employment, they could not buy their daily requirements, and many came to the roads. With this effect, some people returned to their homes. Many people could not have the vaccine because they did not have gender-specific registration. Mehak, a 24-year-old customer support employee, identifies as a transgender woman. She resides in Kandivali and claims that dealing with her conservative family members is becoming increasingly challenging during the curfew. My family is against my gender identification, and my father has declared that I am dead to him. Living under the same roof as someone presumed deceased is a horrific and heart-breaking experience.¹⁶ We know that COVID 19 is a respiratory disease. The possibility of getting affected by COVID-19 is high because LGBTQ people usually smoke more than ordinary people. The possibility of risk is high, so they need to be arranged with isolation beds in every hospital. Meanwhile, the LGBTQ community is lonely. They stay separate from society. The meeting of people is infrequent.

¹⁵ *Toonen v Australia* (1994)

¹⁶ Vinay Arote, 'IDAHOTB 2020: Coronavirus Lockdown brings in a wave of Hostility' (*Mumbai Mirror*, 17 May 2020) <<https://mumbaimirror.indiatimes.com/others/health-lifestyle/idahotb-2020-coronavirus-lockdown-brings-in-a-wave-of-hostility-for-the-lgbtqia-community/articleshow/75784985.cms>> accessed 18 February 2022

According to the 2011 census, there are 4.88 lakh people classified as "others," with less than 5% of them having had vaccinations. The absence of information and limited access to digital infrastructure are the key reasons for this. Furthermore, a 2017 decision categorises transgender people, lesbians, and female sex workers as high-risk donors, preventing them from donating blood after COVID recovery. Many people lost their jobs, which depended on a source of income. Let us consider LGBTQ seniors in this scenario. They cannot afford to go out due to COVID and subsequent lockdown restrictions, and their isolation has had a significant impact on them. Mental stress also has a chance of increasing when there is no contact with people.

SOCIAL MEDIA BULLYING AND HARASSMENT ON THE LGBTQ COMMUNITY

The LGBTQ community faces a significant challenge from social media bullying in the real world. The negativity from social media lowers their confidence from the different approaches, like inappropriate means and abusing comments. Bullying and harassment from classmates are examples we use with students. Some people face psychological problems, mental distress, and suicide attempts. Governments, schools, or college management must promote a friendly environment among all the students and genders by implementing awareness campaigns and programs. We need to change the perspective of students and parents regarding the LGBTQ community, and we should respect their emotions and feelings. Every school management establishes a committee to deal with ragging and bullying and punish bullies with written warnings or even rustication. It also instructs schools to organize committees comprised of the vice-principal, a senior teacher, a counsellor, a doctor, a legal representative, a representative from school management.¹⁷ For decades, bullying has been a problem that explicitly targets teenagers and young people based on their sexual orientation or gender identity and expression. Bullying habits have moved online as a result of the increased use of technology among children (and, well, just about everyone). As a result, cyberbullying of lesbian, gay, bisexual, transgender, and queer (LGBTQ) teenagers have become more

¹⁷ Yatin Gaur, 'Evolution of LGBT Rights in India and taking the narrative forward: Living free and equal' (*Ipleaders*, 21 June 2021) <<https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal>> accessed 19 February 2022

prevalent. It is evident that there is more than can be done to prevent online hate crimes. This overview examines what science has to say regarding the relationship between bullying and cyberbullying and sexual orientation and identity and techniques that youth-serving adults can use.

ANALYSIS

The real victory and freedom for the LGBTQ community started with the judgment of *Navjet Singh Johar vs the Union of India* in 2018. The Supreme Court decriminalised the intercourse of consensual homosexual intercourse under section 377 of the IPC. Through this, they excelled in many fields. They are receiving respect from society. The transgender (protection) act of 2019 gave opportunities and advantages to the LGBTQ community. The bill includes an identity certification requirement as well as a prohibition on discrimination in education, health care, employment, and other developmental programs. This bill gave them some rights they could fight for, like the right to have health facilities and chances in employment fields. Gender identity is an integral part of sex. No citizen, including the LGBTQ community, should face discrimination based on gender identity. Our Indian Constitution provides equality before the law on behalf of any religion, caste, creed, and gender. In some states in India, like Maharashtra, Gujarat, Bihar, Madhya Pradesh, and Assam, the social welfare department of Assam drafted a "transgender policy." They included numerous opportunities to access education, shelter, sanitation, and identification cards. The Maharashtra government set up a "transgender welfare board." Moreover, providing the basic facilities In Bihar, the government provides financial assistance of Rs. 1,50,000 for sex reassignment surgery. It was a grand gesture and a significant step towards the LGBTQ community in these states.

CONCLUSION

Our India is the world's largest democratic country. In our country, everyone has equal rights apart from gender and sex. India is a mix of many cultures and traditions, but there is gender discrimination deep inside. People have different thinking processes, and ways of seeing those genders are different. Many countries have recognized, legalized, and amended their

constitutions to reflect this. In India, social ills such as LGBTQ are not new. Decades ago, India faced and faced the dowry system, child marriages, and infanticide. The legislation is making laws, but the problem is coming out from the corners. Now it is time for the government to implement the schemes and programs. Furthermore, there is a need to make appropriate laws to protect and secure the LGBTQ community. So they also feel the nation cares for them and builds strength and unity in all people in the country. It is imperative to educate the public, youth, and students about LGBTQ rights, their communities, and the challenges they face. Educating people can know that homosexuals are ordinary people and not aliens. As recently recognized, LGBTQ has a community and still struggles to sustain society. The resolution passed by the U.N. had a positive impact globally, but India was disappointed because it was still stigmatizing and needed to bring awareness among the people.¹⁸ LGBTQ rights should be included in the definition of human rights. Non-recognition of same-sex marriages, refusal to allow adoption, guardianship, surrogacy, or IVF and lack of access to LGBTQ-inclusive schools, colleges, and workplaces are all violations of Articles 14, 15, 19, 21, and 29¹⁹. Furthermore, discrimination based purely on sexual orientation is prohibited under Articles 14, 15, and 21 of the Army, Navy, and Air Force Acts. Lastly, I conclude that the government needs to improvise the laws and promote equality for the LGBTQ community. To achieve equivalence of status and equal respect in the country.

¹⁸ Tanzim Surani & Mili Vakil, 'Civil And Political Rights Of LGBT: The Perspective Of Indian Constitution' (*The Law Brigade Publishers*, 17 September 2020) <https://thelawbrigade.com/constitutional-law/civil-and-political-rights-of-lgbt-the-perspective-of-indian-constitution/#_edn47> accessed 19 February 2022

¹⁹ Constitution of India, 1950, art. 14, 15, 19, 21, and 29