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LGBTQ rights and Societal impact of decriminalising Homosexuality

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In the history of human rights, the LGBTQ community's rights have long been disregarded, marginalized, and mistreated by society and the government. All they sought was respect, acceptance, and the ability to exist, which is a fundamental human right that applies to all people regardless of gender, caste, or sexual orientation. Their rights, however, were overlooked and undervalued due to Section 377, which penalizes same-sex unions. How can they expect society to treat them with respect if the country's laws do not? After a 158-year struggle, the LGBTQ community in India received a breath of new air in 2018 when the Supreme Court of India decriminalized homosexuality under section 377 of the Indian Penal Code. The question is whether homosexuality's legalization has had any impact on society's ideology. We will examine the pain of the LGBTQ community as well as the influence on society following the historic judgement on homosexuality in this study. We'll look at what else needs to be done to help society think differently. The purpose of this article is to present the current reality of LGBTQ people in India and to educate society about the fact that they are not abnormal. The difficulties that LGBT people encounter as a result of a variety of societal realities and actions are discussed in this study.

Keywords: LGBTQ, gender rights, societal impact, section 377.

INTRODUCTION

“Let us move from darkness to light, from bigotry to tolerance, and from the winter of mere survival to the spring of life — as the herald of a New India — to a more inclusive society” Justice Dipak Misra and Justice A.M. Khanwilkar in *Navtej Singh Johar and Ors v Union of India*, 2018. Men, women, homosexuals, lesbians, and transgender people are all included in the term "Homo Sapiens." But why should Cisgender have exclusive human rights? Why it is that society believes LGBTQ rights are not human rights? Aren't they humans? True, they are clearly not considered humans, but rather animals, because they are treated as such and have no claim to their lives or wishes, just as animals do. Their voices have been ignored, and they have been treated in the same way that animals are treated. The Indian Penal Code of 1860 included a particular penal punishment for anyone who engaged in same-sex physical interactions. This penalty changed society's perception of LGBTQ individuals; they were labeled as mentally ill, abnormal, and persons who did not belong in this society. In a country like India, where people are regarded badly when they talk about sex or sex education in public, accepting and talking about sexual orientation and gender identity was a significant thing. Only straight people have the right to live here, according to society, and the society belongs to them alone, with no room for those of different sexual orientations. However, due to the decriminalisation of homosexuality and more understanding of different sexual orientations, the old orthodox India is slowly but steadily changing into the modern world.

The paper aims to present the following questions, which are required to consider the present status of LGBT people:

1. LGBTQ RIGHTS AND DECRIMINALISATION OF HOMOSEXUALITY?
2. WHAT ARE THE PROBLEMS FACED BY THE LGTBQ COMMUNITY IN INDIA?
3. IS THERE A SHIFT IN SOCIAL IDEOLOGY?
4. IS DECRIMINALISATION ENOUGH?

LGBTQ RIGHTS AND DECRIMINALISATION OF HOMOSEXUALITY

“There will not be a magic day when we wake up and it’s now okay to express ourselves publicly. We make that day by doing things publicly until it’s simply the way things are.”

- Tammy Baldwin

A nation's laws are influenced by its society, and vice versa. It's a two-way street, and both sides are influenced equally. If we look at medieval or ancient India, we will see a totally different picture of the country than we see in modern India, which I believe is far from modern. All forms of love were accepted and celebrated in ancient India. This can be observed in Indian religious writings, which included homosexual characters and motifs in texts that were otherwise anti-homosexual.¹ And, while homosexuality was frowned upon in medieval times, LGBT people were not shunned. They were accepted by society, and no one was discriminated against because of their sexual orientation. Following the arrival of the British in 1861, sexual practices that were "outside the order of nature," including all LGBT behaviours, were criminalised under Section 377² of the IPC. Since homosexuality was outlawed, society's intolerance of LGBTQ individuals has risen to the point where many of them prefer to live their entire lives behind a false identity.

We may remember September 6, 2018, as a magical moment in LGBTQ history, but few will remember the years of struggle they endured before finally being accepted for who they are. In 1994, the AIDS Bhedbhav Virodhi Andolan (ABVA) opposed the legality of section 377 and launched a suit in the Delhi High Court to protect homosexuals' rights. It was in 2008 that the Delhi High Court in *Naz Foundation v Govt. of NCT of Delhi*³ held that “discriminating on the grounds of homosexuality and heterosexuality creates a baseless classification and it simply takes away the right to equality guaranteed to them under article 14⁴ and right to

¹ Aditi Yadav, 'A Brief History of LGBTQ+ in India' (*The CBS Post*, 18 November 2021) <<https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india/>> accessed 17 June 2022

² Indian Penal Code, 1860, s 377

³ *Naz Foundation v Govt. of NCT of Delhi* (2009) Writ Petition (Civil) No.7455/2001

⁴ Constitution of India, 1950, art.14

equality on the basis of sex guaranteed under article 15⁵ of the Indian Constitution.⁶The Delhi High Court's progressive judgement of 2008 was overturned in the case *Suresh Kumar Kaushal v Naz Foundation* in 2013, which stated that "Section 377 was within constitutional limitations, and there was no compelling basis to find it unlawful". In 2018, the Hon'ble Supreme Court in *Navtej Singh Johar & Ors. v Union of India*⁷ decriminalised that part of Section 377 that outlawed consenting homosexual behaviour after a 24-year battle and multiple judicial sessions.

Several Landmarks During the previous 10 years, numerous judgments in favour of LGBTQ rights have been handed down, making this decade essential in the history of the LGBTQ movement since they have finally begun to reap the benefits of their prolonged struggle. The Supreme Court of India held in *National Legal Service Authority v Union of India*⁸ that non-recognition of transgender community identity is a violation of Articles 14, 15, 16, and 21⁹ of the Indian Constitution, and also established the "Third Gender" status for Transgender, and in *K.S. Puttaswamy v Union of India*¹⁰ that the right to privacy includes the right to sexual orientation and gender identity. These landmark verdicts have provided the LGBTQ community with the right to live in dignity as well as the much-needed confidence to fully engage in society without fear. As a result of these choices, not only has tolerance for the LGBTQ population improved, but the voice for LGBTQ rights is now emerging from society's straight people.¹¹

⁵ Constitution of India, 1950, art.15

⁶ Sofia Bhambri, 'LGBTQ Community in India: Rights and Exploitation' (*S. Bhambri & Associates (Advocates)*, 13 March 2021) <<https://www.sbhambriadvocates.com/post/lgbtq-community-in-india-rights-and-exploitation>> accessed 17 June 2022

⁷ *Navtej Singh Johar & Ors. v Union of India* (2018) Writ Petition (Criminal) No. 76/2016

⁸ *National Legal Service Authority v Union of India* (2014) Writ Petition (Civil) No. 400/2012

⁹ Constitution of India, 1950, art.14, art.15, art.16, and art.21

¹⁰ *Justice K.S. Puttaswamy v Union of India* (2018) Writ Petition (Civil) No. 494/2012

¹¹ Poonam Kakoti Borah, 'Engaging with the Law: Decriminalisation of Homosexuality and the Johar Judgement, 2018' (2018) 6 (3) *Space and Culture, India*, <<https://www.readcube.com/articles/10.20896%2Fsaci.v6i3.400>> accessed 17 June 2022

WHAT ARE THE PROBLEMS FACED BY THE LGTBQ COMMUNITY IN INDIA?

The true battle will be won when society accepts and understands LGBTQ rights and identities. Passing laws is only one step toward a future in which homosexuals and heterosexuals can live together in harmony and all genders and sexual orientations are treated equally. Although the legislation has reduced the problems and discrimination encountered by this demographic, the challenges remain. As a result of their orientation, homosexuals face a variety of problems throughout their lives, including¹²:

Marginalization: Marginalization is one of the most common problems homosexual people face.¹³Not just them but their families are shunned as well. They are stigmatized, and society views them negatively. They want to go to school, work, and contribute to society, but society doesn't allow them to. They are subjected to social exclusion. LGBT persons face discrimination not only from society but also from their own families.

Harassment and Suffering: The LGBTQ community faces the worst harassment and agony at school, a place where we are supposed to develop lifelong memories. It is uncommon to discover a homosexual kid who has not been tormented or tortured at school by peers. The harassment is not limited to schools; LGBT people face challenges in a variety of settings, including school, college, and the streets.

The Centres for Disease Control and Prevention (CDC), in National Intimate Partner and Sexual Violence Survey, found that:

- In comparison to 35 percent of straight women, 44 percent of lesbians and 61 percent of bisexual women have experienced rape, physical assault, or stalking by an intimate relationship.

¹² Bhaskar Choudhury & Karun Sanjaya, 'The Status of LGBT People in India: A Socio-Legal Examination' (2022) 3(2) Indian Journal of Law and Legal Research 1686, <https://www.researchgate.net/publication/357687243_The_Status_of_LGBT_People_in_India_A_Socio-Legal_Examination> accessed 17 June 2022

¹³ Sofia Bhambri (n 6)

- In comparison to 29 percent of straight men, 26 percent of homosexual men and 37 percent of bisexual men had experienced rape, physical assault, or stalking by an intimate partner.
- Sexual violence other than rape has been experienced by 40% of homosexual men and 47% of bisexual men, compared to 21% of straight men.

Homelessness: One of the most important concerns that gay and lesbian people face is homelessness. In India, just 2% of transsexual people live with their parents, while the rest rely on menial labour to make ends meet. They are simply kicked out of their homes. As a result of their homelessness, these people become drug addicts or sex workers. The types of restrictions they face are not limited to those listed above. They suffer far more difficulties, such as emotional anguish, rejection, and other forms of societal discrimination.

IS THERE A SHIFT IN SOCIETY IDEOLOGY?

Society is readily swayed. Humans build societies, and humans are easily persuaded; the difference is whether they are influenced incorrectly or correctly. By criminalizing homosexuality, Britishers affected them in the wrong direction, and now, following the 2018 judgement, the culture is being influenced in the right direction. And that influence had a good impact on LGBTQ people's lives. There's an adage that says if you believe in yourself and your beliefs, no one can shake you, and eventually, people will understand you. Before the verdict, the LGBTQ community was not confident in their identity and were afraid to come out; many were living a false identity; however, once they began fighting for themselves and standing up for their friends and fellow community, society is forced to reconsider its values and viewpoints. Following the landmark decisions, the investigations yielded four notable conclusions within the stakeholder group, demonstrating how society is influenced.¹⁴

¹⁴ Dipika Jain, 'Impact of the Decriminalization of Homosexuality in Delhi: An Empirical Study' (*UA Little Rock*, 13 January 2013) <<https://ualr.edu/socialchange/2013/01/13/impact-of-the-decriminalization-of-homosexuality-in-delhi-an-empirical-study/>> accessed 17 June 2022

- **Increased Self-Acceptance and Confidence** - The stakeholder group is more self-aware, confident, and emotionally secure as a result of the decisions. People have gained additional strength as a result of the verdict, empowering them to defend themselves and fight for their rights even in the face of police and government authorities. Because they now have legal backing and their actions are no longer considered criminal.

According to one of the respondents,

“There is a difference. There is a lot of change. Now we feel braver and can speak up for our rights, even against the police. We are not scared of them like before.”

- **Reduction in Police Harassment**-Prior to the decriminalisation of homosexuality, gays faced harsh police persecution. The police were frequently harsh toward people, questioning them verbally and physically without justification, but today, police brutality is decreasing, and officers are accepting their roles in society.

One of the respondents said -

There is also a lot of positive change in police behaviour. Generally, there is a lot more awareness about who we are, which is the reason harassment has reduced and acceptance is gradually increasing.”

Societal Acceptance - Since the ruling, there has undoubtedly been a significant shift in society's perspective and awareness. Many respondents claimed that societal acceptability has increased and that people are now treating them with respect.

One of the respondents said:

“I am much braver after the judgment and have been able to speak up and explain to people who I am. And most people have understood and accepted me. So there has been a change in people’s thinking also.”

- **Family Acceptance** - Family acceptance is more important to people than social acceptance. We don't want to harm or disappoint our loved ones. Because they are afraid of society's perception, the family takes time to adjust and react. They are

terrified of their social standing deteriorating. As a result, they frequently struggle to accept their child.

One of the respondents said-

“People’s behaviour has changed a lot...But I am still scared to come out to my family as I am afraid of how they will react.”

One of the reasons for this noticeable shift in social thinking is that many people are gaining confidence and coming out with their identities and sharing their struggles as a result of their peers' confidence and fearlessness. Society is noticing, understanding, and accepting these issues. While awareness and acceptance are strong in large metropolitan areas and among today's youth, intolerance is prevalent in rural villages and among our society's elderly.

IS DECRIMINALISATION ENOUGH?

Decriminalizing homosexuality was undoubtedly a ray of sunshine for the LGBTQ community, and they have begun to earn the long-awaited recognition in society, but it is still insufficient to make the LGBTQ community as normal in society as the other communities.¹⁵

Some steps that we should take are as follows:

- **Gay Marriage** - India has yet to pass a marriage law. India is a religious and culturally diverse country with strict moral and ethical norms. A live-in couple does not have the same level of respect and acceptance as a married couple. Despite the fact that there is no law barring same-sex marriage, certain orthodox parts of society refuse to accept LGBTQ persons until they are also granted the freedom to marry. The government has

¹⁵ Aastha & Aryaman, 'Is Decriminalisation of homosexuality enough?' (SCC Blog, 20 October 2020) <<https://www.scconline.com/blog/post/2020/10/31/is-decriminalisation-of-homosexuality-enough/>> accessed 16 June 2022

no right to prevent someone from marrying the person they love. Several countries, including the Netherlands, Australia, and Canada, have made gay marriage legal.¹⁶

- **Education** - Understanding, and awareness are required for normalcy. Most teens have no idea what the difference between a transwoman and a lesbian is since we are never educated about them. How can we just accept something that is unfamiliar to us? It is vital to enhance awareness of these identities, which is why, just as we must educate ourselves against caste bias, we must also educate ourselves about these identities. Their identities should be taught, in my opinion. Youth awareness is crucial because they are the ones who will break the stereotypes by teaching their children about it.
- **Media** - How the media portrays society has an impact on society. Most transgender characters in films are shown as villains or weird characters who were regularly derided or depicted as sex workers. As a result, society embraces the viewpoints depicted in films and discriminates against them. Films like "Dostana" and "ShudhMangalZyadaSavdhan" should be made to create awareness.

CONCLUSION

After discussing the nature of homosexuality, and the consequences that homosexual people experience, it can be concluded that the Hon'ble Courts have played a critical part in bringing LGBT people's standing up to par with heterosexuals. However, simply declaring any restriction unlawful or enabling same-sex couples to remain together does not provide them with an ultimate remedy. The societal stigma associated with homosexuality must be eliminated. The battle will be won if society accepts LGBT people as equals to heterosexuals. As a result of society's final rejection, gays experience a variety of mental disorders. 'Homosexuality is not an illness nor a choice; it is just a sexual inclination,' society must embrace. As a result, we must accept someone who is attracted to the same sex as we would someone who is drawn to the other sex. Nothing is incorrect. We need to break free from our stereotypes.

¹⁶ Antim Amlan, 'Is Gay Marriage Legal in India?' (*My ADVO*, 9 September 2019) <www.myadvo.in/blog/is-gay-marriage-legal-in-india/> accessed 17 June 2022