
LGBTQ RIGHTS IN INDIA AND ITS FUTURE

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ABSTRACT

We are living in an era where caste, creed, colour, religion etc all have taken a backseat in front of Human Rights. But still even as the society think itself as being in the peak on modernisation and liberalisation, still there is a community which is not considered as humane enough to be included in mainstream society called LGBTQ.

LGBTQ are people who have different sexual orientation from the mainstream society for example L stands Lesbian, these are basically females who are attracted to other females. This paper traces the evolution of LGBTQ rights in India, from being considered as a crime to being considered as unacceptable even after getting legalized by the courts. Further it looks discuss about the future of LGBTQ rights in India.

HISTORY

The concept of LGBTQ is not new to Indian Subcontinent, several ancient texts and scriptures put forth characters which can be seen away from conventional gender identities. For example the Ardhnareeshwar avatar of Lord Shiva where he is considered as having half body male and half of female. Another instance is the Mohini avatar of Lord Vishnu and the son born from the union of Mohini and Shiva named Lord Ayappa.

It is very interesting that though Indian society was considered as dogmatic and regressive by the Europeans, at a time when being homo sexual or transgender was seen as being a mental disease in west, on the other hand in India the gods like Ardhnareeshwar and Mohini were worshipped and preached by people. It was with colonization of the Indian people that an ideology against LGBTQ started being developed among Indian people. This reached its climax with the Legislation of Article 377 which criminalized homosexuality.

CASELAWS

1. **NAZ FOUNDATION VS NCT OF DELHI** – The court in a historic decision held that Sec 377 of IPC put unreasonable restriction over two adults having sexual intercourse in private. The Court considered it as the violation of Fundamental Rights under Article 14, 15, 19 and 21 of Indian constitution.
2. **SURESH KUMAR KOUSHAL VS NAZ FOUNDATION** – The judges of the Supreme Court overturned the decision of the Delhi High Court and recriminalized homosexuality. According to the decision the LGBTQ formed a miniscule minority and did not deserve constitutional protection and further held that Article 377 was Constitutional.
3. **NATIONAL LEGAL SERVICE AUTHORITY VS UNION OF INDIA** – The court held that not recognizing the gender identities of Transgender and Homosexuals amounts to violation of Article 14, 15, 19 and 21 of the Indian Constitution. Further, the court created a ‘Third Gender’ category for the Hijras and the transgender person as earlier they were forced to be recognized as either males or females. To ensure adequate protection the court asked the government to recognize transgender person as socially and economically backward and to make relevant policies for its upliftment under Article 15(2) and 16(4) of Indian Constitution.
4. **KS PUTTASWAMY VS UNION OF INDIA** – Justice Chandrachud in a discordant note stated that sexual orientation remains in the ambit of the Right To Privacy. Critiquing the Koushal judgement he said that having minimal population cannot be a reason to deprive someone of Fundamental Rights.
5. **NAVTEJ JOHAR VS UNION OF INDIA** -The court in an unanimous decision adjudicated that Article 377 encroached the Fundamental Right of maintaining individual autonomy related to intimacy, further it read down section which criminalised sexual activity among two consenting individuals.

PROTECTION TO LGBTQ UNDER INDIAN CONSTITUTION

Several Provisions in the Indian Constitution implicitly protected the rights of LGBTQ as -

ARTICLE 14 – Prohibits discrimination on the ground of religion, race, caste, sex or place of birth

ARTICLE 15 – No citizen shall on grounds of religion, race, caste, sex, place of birth be subjected to any disability, liability, restriction, or condition with regard to access to public places.

ARTICLE 19 – Gives the right to freedom to all the citizens of India

ARTICLE 21 – Right to Life, which includes Right to Individual Dignity, Right to Earn Living

ARTICLE 325 – No person to be ineligible for inclusion in or to claim to be included in special electoral roll on ground of religion, race, caste or sex.

FUTURE OF LGBTQ RIGHTS IN INDIA

The LGBTQ rights in India has been turbulent, from ancient times where they were even worshipped as gods to rule under the British where it was considered nothing less than a mental problem to Suresh Kumar Koushal case where being a miniscule minority proved to be a reason for deprivation of their rights and finally Navtej Singh Johar case where the Court tried to correct the gross injustice that the LGBTQ community had to face since Independence.

But even after the Navtej Singh Johar case the question that repeatedly appears is that whether justice has been served to the LGBTQ community, answer to which always comes in negative as mere reading down of few sections of Article 377 does not retrospectively change the gross socio – economic deprivation that this community had to suffer just due to their sexual orientation.

One of the important elements that will decide the future of LGBTQ community in India is the attitude of the ruling dispensation and the elected representatives of the people. Whether they hold regressive orthodox view of seeing LGBTQ as not capable enough to be absorbed in the society or even be given some basic rights to live individual life with Dignity. On the other hand if the legislature and ruling dispensation holds a liberal view then it will make policies that will ensure smooth assimilation of LGBTQ community in Indian Society.

The Political leaders who are keen to seek public mandate, hence the general view of public can have a transcending effect on the attitude of the policymakers. The general perception of Youth in India towards LGBTQ is changing hence it can provide a push to people sitting in New Delhi to take affirmative actions.

Apart from youth still there are sections of Indian population whose thought process are clouded by the regressive attitude towards LGBTQ. Now to change their attitude one of the prominent actors

can be Non – Governmental Organisations. Having the reach in the roots of the country they can sensitize the people towards the agony of the LGBTQ community has to go through and it is totally natural for a man to have sexual orientation towards a man and for a woman towards having sexual orientation towards woman by even citing ancient scriptures.

One more actor which can play a prominent role in sensitizing the people towards the LGBTQ people is media. Being the fourth pillar of the democracy it can truly democratize our society by helping to form a public perception where belonging to the queer is considered as totally normal. Further it can highlight the success stories of sex couples even after going through the trials and tribunals of the society.

We are living in a globalized world where any event happening in any corner of the world will have effect on other corner. Hence the movements and policies throughout the international arena will have a strong impact on India. If the world is moving towards acceptance and having liberal view of the LGBTQ, then holding on to dogmas and discrimination will effect the image of India in international arena. It could provide a nudge not only to government but also to youth, ngo's and society as a whole.

Lastly but most importantly the success of Judiciary in protecting the rights of queer will have a deep impact on their future. The Judiciary is moving towards being more sensitive towards the LGBTQ for example in a recent judgement the Madras High Court had established guidelines to sensitize people in government structures towards the LGBTQ. It is the Judiciary which is the only line of defense in case the LGBTQ community is unable to win the acceptance of people and the ruling dispensation.

CONCLUSION

As mentioned in the beginning of the paper we are living in an era where Human Rights are seen as supreme, we are living in an era where we flaunt our liberal credentials and cosmopolitanism. But on the face it on the other hand unable accept something which is different from our perception. It is only

for the betterment of the society that we accept and give queer its due rights as it will not only make our society more diverse but will also bring new set of people with whole new ideas and creativity contributing towards society as a whole. There is an ancient Indian saying ' VASUDEV

KUTUMBHAKAM ‘ which means the whole world is one family, hence to truly abide by this we should ensure inclusion of the LGBTQ in the society.