
UNVEILING TRUTHS: THE RECOGNITION OF HUMAN RIGHTS FOR THE LGBT COMMUNITY IN INDIA - MYTHS AND REALITIES

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In many countries, being lesbian, gay, bisexual, transgender (LGBT) means living with routine discrimination. This discrimination could be based on their sexual orientation; gender identity), gender expression or sex. All throughout the planet, the basic freedoms of lesbian, gay, sexually unbiased, transsexual, and intersex (LGBTI) individuals are abused day by day. Individuals are treated with Cruelty, beaten, detained, or executed by their own administrations basically on account of their character.

More than 70 countries STILL with laws of sodomy; punishment includes flogging, imprisonment, and in many countries, even the death penalty., In 2014 there are 80 states where consensual same-sex conduct between adult males is still a criminal.¹ In five states, the death penalty can be imposed for these 'offences'. Rather than repealing these laws, many states are endeavouring to further criminalise homosexuality, including in recent years, Uganda, South Sudan, Burundi, Liberia and Nigeria. Many of those who speak up for LGBT rights regardless of their sexual orientation or gender identity are themselves treated with impunity.

LGBT (lesbian, gay, bisexual and transgender) people are struggling for equal rights. LGBT people are battling for their basic Human rights in parliament, in courtrooms and in the streets. LGBT People faces discrimination from name-calling and bullying, to being denied a job or appropriate healthcare, the range of unequal treatment faced is extensive and damaging. It can also

¹ Amnesty International, Facts and Figures, Making Love A Crime: Criminalization of same-sex conduct in Sub-Saharan Africa, 25 June 2013, AI Index: AFR 01/007/2013

be life-threatening.²

The United Nations Human Rights Committee, as the body responsible for monitoring States Parties' implementation of the International Covenant on Civil and Political Rights, has an important role to play in advancing and securing the basic freedoms of LGBT people.

There are number of Judicial decisions, Declarations and Legislations for protections of LGBT human rights but still there is a far way to go.

Concept of LGBT:

LGBT represents lesbian, gay, sexually open, transsexual. Gay is an individual who is pulled in basically to individuals from a similar sex, an individual who is gay. Gay can allude both to an individual of male or female sex. The term lesbian is explicitly for ladies who are pulled in to ladies. Transsexual is a term oftentimes utilized for individuals who don't distinguish themselves with their doled out sex upon entering the world or the twofold sex framework. A gathering ordinarily included under the 9 term transgendered are transgender people. A transgender is an individual who have, (or frequently wish to) right his/her sex error through sex reassignment (clinical medical procedure) implying that the transgender is medicinally amended to his/her genuine sex identity. The accompanying meanings of sex character and sexual direction can be find in the Yogyakarta Principles.³

Gender personality: "to allude to every individual's profoundly felt interior and individual experience of sex, which might compare with the sex allotted upon entering the world, including the individual feeling of the body (which may include, if openly picked, adjustment of real appearance or capacity by clinical, careful or different methods) and different articulations of sex, including dress, discourse and quirks".

² The HR Committee was established pursuant to Article 28 of the International Covenant on Civil and Political Rights 1966, 999 UNTS 171, and is made up of 18 independent experts who meet twice a year for three weeks at a time.

³ The Yogyakarta Principles is a framework of international principles relating to sexual orientation and gender identity, see <http://www.yogyakartaprinciples.org>

Sexual direction: "to allude to every individual's ability for significant passionate, affectional and sexual fascination in, and personal and sexual relations with, people of an alternate sex or a similar sex or more than one sex. LGBT is an initialism that represents lesbian, gay, sexually open, and transsexual. The initialism LGBT is intended to pressure a variety of sexuality and sex personality based societies and is for the most part used to ask any individual who is non-hetero or non cisgender as opposed to solely to individuals

Meaning of Human Rights:

Rights which are inherent to all human beings are Human Rights. All are equally entitled to human rights without discrimination, irrespective of our nationality, place of residence, gender, or ethnic origin, color, lanugae, releigion, etc, such as age, handicap, wellbeing status, sexual direction or sex character. These rights, whether they are civil and political rights or economic, social and cultural are indivisible, universal, interrelated and interdependent. Human rights were developed and originated in the Universal Declaration of Human Rights in 1948 as a response to the f World War II. Widespread Human Rights are regularly by law, in the types of deals, standard worldwide law, General standards and different wellsprings of global law. Human rights law imposes duties on governments to act in certain ways or refrain from acting in certain ways in order to promote and protect person and community human rights and fundamental freedoms. States assume responsibilities and duties under international law to support, protect, and fulfil human rights by being parties to international treaties.

History and Evolution of International LGBT Rights:

From many years domestically and internationally, interestested groups have advocated for protections of LGBT rights. Even of their efforts, LGBT rights are continually viewed as too heterogeneous, uncertain, or fusion. LGBT as a category encompasses sexual orientation, sexual expression, gender orientation, and gender identity.⁴ Many international instruments provide LGBT rights protections, include: the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on

⁴ Eric Heinze, Sexual Orientation and International Law: A Study in Manufacture of Cross-Cultural "Sensitivity," 22 MICH. J. INT'L L. 283, 285– 91 (2001).

Human Rights (European Convention).⁵ This segment will examine rights commonly denied to LGBT people, such as non-discrimination, anonymity, and marriage, in addition to examining how these instruments have interpreted and applied LGBT rights protections. This section aims to demonstrate how LGBT rights are not complicated, but rather consistent with the racial, ethnic, and religious protections that already exist.⁶

UDHR and LGBT Rights Provision

Article 2 of the UDHR Provides that : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷

Universally fundamental non-discrimination norms is enumerated in Article 2. Article 2 is differentiated from other international human rights provisions is that it protects both enumerated and unenumerated categories of persons. Article 2 explicitly prohibits discrimination against racial, religious, or ethnic minorities, it also implicitly forbids discrimination against LGBT individuals. In other words, Article 2's "other status" category can be construed to include LGBT individuals.⁸ Consequently, LGBT individuals seeking UDHR protections have used this "other status" category to create a new category for sexual minorities. In doing so, LGBT individuals have secured their fundamental rights to non discrimination.⁹ orientation as a new category has been steady, the European Court has effectively secured LGBT rights by other means. In *Goodwin v. United Kingdom*, for example, the claimant, a post-operative male Under Article 8 of the European Convention, she argued that the United Kingdom had breached her right to "respect for her private life." The applicant's sexual orientation was not recognised by the United Kingdom, which resulted in a slew of racist and degrading encounters in her daily life, including numerous types of violence and unequal treatment at work. Furthermore, the United Kingdom inability to

⁵ Global Rights Partners for Justice, *Demanding Credibility and Sustaining Activism* 12– 13, 15 (2008)

⁶ INT'L JUST. RESOURCE CENTER, *supra* note 13 (also note that these international instruments do not explicitly recognize LGBT individuals as protected class, but protect LGBT rights under various rights provisions)

⁷ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg. (III), para. 71 U.N. Doc. A/810 (Dec. 12, 1948)

⁸ UNITED NATIONS, *The Foundation of International Human Rights*. <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rightslaw/index.html> [<https://perma.cc/V4AN-DHZQ>]

¹⁰ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S

receive such benefits, such as a retirement pension, life insurance, auto insurance, or mortgage, was due to the provision of a birth certificate. Based on these facts, the European Court concluded that the United Kingdom had failed to meet its positive duty to protect the applicant's right to privacy, especially due to the lack of legal recognition given to her.¹⁰

Position in India:

The British colonial government introduced Section 377 of the Indian Penal Code in the pre-independence period, which criminalised all forms of non-procreative sexual intercourse. The despotic law not only targeted homosexuals, but also all other types of non-traditional sexual activity, including within heterosexual relationships.

As a result, this law was nothing more than a holdover from Victorian orthodoxy, which had no place in a democratic country like India.

However, it took more than 70 years and almost two decades of court challenges to abolish this antiquated statute, which had become a tool for bullying and manipulating those who didn't fit into the conventional binary of sexuality and gender. There are many efforts to recognise the rights of LGBT which starts from Naz foundation case and end with transgender protection bill 2019.

The Indian Constitution's preamble demands that all citizens be treated fairly in terms of social, economic, and political status. Articles 14 and 21 of the Constitution guarantee equality before the law and equal treatment under the law. The Supreme Court of India ruled in *NALSA vs Union of India* in April 2014 that the Constitution protected the rights and freedoms of transgender people in India; in September 2018, the Supreme Court decriminalised adult consensual same-sex relationships in the Section 377 judgement study. Both judgments represent a watershed moment for LGBT rights in India, as they not only overturned a relic of British colonial rule but also required that LGBT Indians be given full constitutional protection. This is a significant victory, but it does not imply that LGBT people in India are entirely free or treated equally by their fellow citizens.

¹⁰ Goodwin v. United Kingdom, App. No. 28957/95, Eur. Ct. H.R. (July 11, 2002).

Even though section 377 of Indian constitution is delted now but still there are number of provisions which demands amendments or modification:

1. **Word, Husband and Wife:** Since it is an ordinary agreement that the husband is viewed as a male and the wife is viewed as a female. In any case, if there should arise an occurrence of LGBT marriage since both the accomplices are of a similar sexual orientation this definition cannot be applied.

Further, If the significance of the terms a couple are not appropriately deciphered then it will bring about equivocalness concerning the use of the law. For example, Section 27(1-A) of the Special Marriage Act, 1954 gives the grounds on which a husband can take separate however in the event of LGBT relationships there is disarray with respect to the term wife. Subsequently, Section 3 of the Act for example definition provision can be reworked to eliminate the vagueness in LGBT relationships.

2. **Prohibited relationship:** According to the Special Marriage Act (additionally in the Hindu Marriage Act), there are sure precluded levels of relations between which the marriage can't occur. Notwithstanding, the level of these connections differs on account of the two people. Yet, since the LGBT relationships don't occur between a male and female, hence these terms should be reclassified.

3. **Grounds of Divorce:** In spite of the fact that grounds like infidelity, renunciation and mercilessness are relevant to both the sexes however their understanding shifts if there should be an occurrence of people. Along these lines this force lopsidedness must be obviously characterized on account of same-sex relationships.

4. **Succession Act and word, son and daughter:** In succession Act also the heir is categorised as Son and Daughter. So it required amendment

5. **Adoption Act:** In Hindu Adoption Act word son and daughter is used to whom we can adopt So there is need of modification

6. **Guardianship Act:** In Guardianship Act also word son and daughter is used.

Conclusion

It is vital to instruct individuals about LGBT rights. Common liberties are regular rights which are natural, indestructible and are presented upon everybody since birth. It is fundamental that individuals observe the way that gay people are not debilitated, they are not outsiders, their sexual direction is totally in line with the direct of nature.

LGBTQ rights ought to be perceived as a component of basic freedoms. Non Recognition of same-sex relationships, not permitting selection, guardianship, surrogacy, IVF, not approaching safe and LGBT+ comprehensive schools, universities and working environments are on the whole violative of Article 14, 15, 19, 21, 29. Further, segregation exclusively on the grounds of sexual direction abuses Article 14, 15, 21 corresponding to Army, Navy, Air power Act.

The general law of Human Rights states normal practices, custom, culture or customs can never be a substantial defence to stifle another person from attesting his/her crucial and established rights.

In the event that we begin supporting everything based on social perspectives, cultural qualities and public strategy then there would have been no reformist enactment ordered in our country and we couldn't ever have had the option to kill the social shades of malice of youngster marriage, Sati, endowment, and child murder and so forth.