

LGBT RIGHTS IN CONTEMPORARY INTERNATIONAL LAW AND UNITED NATIONS

Written by *Harshit Hassanwalia** & *Shivani Dewalla***

* 4th Year BALLB student, Amity Law School, Noida, UP

** 4th Year BALLB student, Amity Law School, Noida, UP

INTRODUCTION

In all regions, people experience violence and discrimination because of their sexual orientation or gender identity. In many cases, even the perception of homosexuality or transgender identity puts people at risk. Violations include – but are not limited to – killings, rape and physical attacks, torture, arbitrary detention, the denial of rights to assembly, expression and information, and discrimination in employment, health and education¹

The human rights situation of lesbian, gay, bisexual, transgender (LGBT) and intersex persons remains a matter of grave concern worldwide, with continuing, serious and widespread violations perpetrated against individuals based on their sexual orientation, gender identity and sex characteristics. These violations, which are too often met with impunity, include killings, violent attacks, torture, arbitrary detention, denial of rights to assembly and expression, and discrimination in accessing health care, education, employment and housing.²

People around the world face violence and inequality because of whom they love, how they look, or who they are. Sexual orientation and gender identity are the most intrinsic expressions of Human Beings and should never be a subject of discussion, mockery or a reason for discrimination, but

¹ Report of the United Nations High Commissioner for Human Rights* A/HRC/19/41

² <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

need of the hour calls for a comprehensive research and analysis of the worldwide trends regarding the development of LGBTQ rights

The case for extending the same rights to lesbian, gay, bisexual and transgender (LGBT) persons as those enjoyed by everyone else is neither radical nor complicated. It rests on two fundamental principles that underpin international human rights law: equality and non-discrimination. The opening words of the Universal Declaration of Human Rights are unequivocal: “All human beings are born free and equal in dignity and rights.” Nevertheless, deeply embedded homophobic attitudes, often combined with a lack of adequate legal protection against discrimination on grounds of sexual orientation and gender identity, expose many LGBT people of all ages and in all regions of the world to egregious violations of their human rights.³

LGBTQ is an Umbrella Term covering all the differently sexually oriented people or having a different gender identity, and hence contains-

‘Lesbian’, a lesbian woman is one who is romantically, sexually and/or emotionally attracted to women,

‘Gay’, a gay man is one who is romantically, sexually and/or emotionally attracted to men. The word gay can be used to refer generally to lesbian, gay and bisexual people but many women prefer to be called lesbian,

‘Bisexual’, a bisexual person is someone who is romantically, sexually and/or emotionally attracted to people of both sexes,

‘Transgender is a term used to describe people whose gender identity and/or gender expression, differs from that usually associated with their birth sex.

In this era of technology, modes of connectivity have widened extensively and hence “OPEN THE CLOSET” campaigns have come up and regained strength from all over the world, from the sympathisers of LGBT people and promoters of liberal Human Rights.

³ <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>

LGBT rights have always been a highly controversial issue globally, as it seems there is a great divide concerning how they should be treated and dealt with. However, it seems that many nations clash, in regards to LGBT Rights, as it seems that certain nations condemn homosexuality, whereas other condone it. Whether it is tradition, religion, beliefs or different perceptions on equality, there have always been disagreements whether these people should be considered equal to others or not. Many countries oppose the rights of LGBTs on the basis of religion, resorting to extreme tactics such as implementing the death penalty and outlawing homosexuality. Other nations believe it is unjust to treat them differently. Nations such as the Canada, US, as well as European nations, often defend rights of the homosexuals, by signing major Human Rights documents which safeguard homosexual rights. LGBT Rights is still a problem that burdens the United Nations and the world today.

In recent years, these and related violations have been receiving increased attention at the international level. The United Nations Human Rights Council, since 2011, has adopted three resolutions on human rights, sexual orientation and gender identity. In one of those resolutions, which was adopted in September 2014, the High Commissioner for Human Rights was requested to issue a report on related violence and discrimination “with a view to sharing good practices.” The requested report, presented to the Council in June 2015, highlighted the many positive steps taken by Governments in all regions, but also noted the ongoing and pervasive violence, discrimination and abuse against LGBT and intersex people⁴

The scope of this research paper is to collect information as of the worldwide trends for the human rights of LGBT community and to answer a question as to

What has been done & what more can be done in order to finish this scourge and clean this blemish on the human rights forum of the 21st century?

⁴ <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

In order to understand the issue completely and in depth, some terms have to be extensively defined. These terms undisputedly form an intrinsic part of our research on the LGBT issues, and hence are as follows-

DEFINITIONS

Several terms essential to understanding this topic are defined below:

Sexual orientation refers to a person's sexual identity, in relation to the gender to which the individual is physically and emotionally attracted.⁵

Homosexuals (gay and lesbian) are attracted to individuals of their own sex, while heterosexuals are attracted to individuals of the opposite sex.

Bisexuality refers to individuals who are attracted to both sexes.

Asexuality is a form of sexual orientation that concerns people who do not experience sexual attraction.⁶

The term **gender** refers to the social roles and attitudes attributed by society to women and men, while the term sex refers to the biological and physiological features that characterize them. Thus, gender identity is a person's private experience and own sense of his or her gender.⁷

Transgender describes a wide range of individuals whose identity is considered as third gender, or more typically people whose appearance and features are considered as gender atypical.

Intersex refers to individuals who are born with sexual anatomy or reproductive organs that do not typically fit into the gender norm. They can identify as woman, man, or third gender.

⁵ UNFE, Factsheet: Frequently Asked Questions, 2013,

⁶ Asexuality Visibility and Education Network, Welcome to AVEN, 2014.

⁷ WHO, What do we mean by sex and gender?, 2014.

UNFE, Factsheet: Frequently Asked Questions, 2013, p. 2.

Sexual rights are human rights which aim at protecting individuals' rights to fulfil and express their sexuality free from discrimination; to enjoy sexual health and pleasure, including reproductive rights; and to benefit from bodily integrity and dignity.⁸

SGBV(Sexual and gender based violence) refers to violence that is directed against a person on the basis of gender, and entrenched within gender inequalities and power dynamics. Women are the most vulnerable to this form of violence, but men can also fall prey to it. SGBV reflects on a wide range of abuses including rape, exploitation, domestic violence, involuntary prostitution, torture, female genital mutilation or cutting, and sexual harassment.⁹

Understanding Discrimination Based on Sexual Orientation and Gender Identity

In order to address this topic efficiently, it is essential to comprehend where discrimination based on SOGI stems from. While it is hard to ascertain the precise origins of homophobic and transphobic attitudes, consistent research indicates that they are generally articulated within underlying cultural, religious, and traditional moral values. LGBTI persons are often perceived as transgressing socially accepted values of gender roles, sexuality, nationalism, and family, which underpins discrimination based on SOGI. In some countries, it is considered an act of betrayal and disloyalty to express a non-heterosexual sentiment, as it goes against the unity portrayed by the nation and the moral order instated by the government.¹⁰ For example, following an lesbian, gay, bisexual and transgender (LGBT) pride parade in Russia, the Moscow Patriarchate Department of External Church Relations stated: "If people refuse to procreate, the nation degrades. So the gay propaganda ultimately aims at ruining our nation."¹¹ Additionally, negative attitudes towards the LGBTI community often arise from religious beliefs, the act of homosexuality being categorized as "sinful" in most historic accounts of major religions.¹² This notion of "immorality" is strongly reinforced with the impression that varied form of sexual orientation and gender identity defy

⁸ International Planned Parenthood Federation, Sexual Rights: an IPPF declaration, 2013.

⁹ UNFE, Factsheet: Homophobic and Transphobic Violence, 2013, p. 1.

¹⁰ Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011, p. 29

¹¹ CAL, Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa, 2013, p. 33.

¹² Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011, p. 30

conventional concepts of gender and family.¹³ Traditional gender roles outline typical characteristics of what it entails to be a “man” or a “woman”, often within a patriarchal paradigm.¹⁴ By disturbing this established moral order, LGBTI persons are considered as acting provocatively and unacceptably, and are even at times accused of threatening the archetypal heterosexual family model.¹⁵

These negative cultural perceptions are bolstered by several factors, including the public discourse within the media, which at times serves as a destructive force by simplifying, sensationalizing, or stereotyping LGBTI persons and the issues they face.¹⁶ Similarly, the legacy of criminalization of same-sex relationships in certain countries has contributed to the persistence of historical homophobic or transphobic attitudes, long after the repeal of such laws.¹⁷ Another external influence to take into account is the medical field, which in the past regarded LGBTI persons as suffering from diseases. Until 1990, the World Health Organization (WHO) classified homosexuality in its International Statistical Classification of Diseases and Related Health Problems.¹⁸ To this date, WHO still defines homosexuality as a mental and behavioral disorder.¹⁹ Using medical terminology when dealing with issues of SOGI complicates the ongoing debate and contributes to the idea that LGBTI people can be “cured.”²⁰ Due to these detrimental values and perceptions, the LGBTI community often faces stigma, ridicule, and outright rejection, without any public outcry given that these harmful attitudes are perceived as socially acceptable.²¹

¹³ 5 UNFE, Factsheet: Frequently Asked Questions, 2013, p. 2.

¹⁴ CAL, Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa, 2013, p. 36

¹⁵ Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011, p. 30.

¹⁶ Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011

¹⁷ CAL, Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa, 2013, p. 37

¹⁸ Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011, p. 23

¹⁹ 1 UNFE, Factsheet: Frequently Asked Questions, 2013, p. 1.

²⁰ Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011, p. 23

²¹ 3 UNFE, Factsheet: Frequently Asked Questions, 2013, p. 2.

Persistent stigmatization and marginalization has forced the LGBTI community to act invisible, and issues of human rights in relation to SOGI remain controversial.²²

Discriminatory laws on the grounds of SOGI are often accompanied by discriminatory practices, affecting access to employment, education and health care significantly. They are the result of direct discriminatory policies applied by state governments, or simply due to the lack of laws condemning homophobic and transphobic acts.²³ The areas of concern include unequal access to justice, social welfare, education, employment, housing, and health care.²⁴ Homosexual or transgender employees are more vulnerable to verbal harassment within the workplace, and their access to benefits such as paid family leave or health care insurance is more likely to be denied.²⁵ Regarding health services, national health plans do not necessarily cover specific physical and psychological needs required of LGBTI persons, which can deter them from accessing basic medical care. Education is another public area in which LGBTI youth experience stigma and harassment, often in the form of bullying, and at times at the risk of academic expulsion.²⁶ In many countries, transgender persons are unable to obtain identity documents respecting their chosen gender, rather than the one assigned at birth. Similarly, lack of official recognition of same-sex relationships can cause denial of benefits for homosexual couples, particularly by private businesses such as health care and insurance providers.²⁷

Some eminent Stigma's attached, and consequential problems for the LGBT people in different spheres of life

AIDS/HIV

²² Council of Europe, Discrimination on the grounds of sexual orientation and gender identity in Europe, 2011, p. 31.

²³ UNHRC, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41), 2011

²⁴ UNFE, Factsheet: Equality and Discrimination, 2013, p. 1.

²⁵ CAL, Violence Based on Perceived or Real Sexual Orientation and Gender Identity in Africa, 2013, p. 25

²⁶ UNHRC, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41), 2011, p. 17

²⁷ UNFE, Factsheet: Homophobic and Transphobic Violence, 2013, p. 2.

AIDS/HIV related legal issues have grown so much in number and complexity, but are included under the LGBT rights umbrella because of the disparate effect on the LGBT community and the stigma of AIDS as the “gay disease.” Because of this erroneous perception, and the fear stemming from misunderstanding of how AIDS is contracted, some cases in the AIDS/HIV area are also sexual orientation discrimination cases involving denial of employment, public accommodations and other services. Other issues include the rights of AIDS/HIV patients to keep their conditions from being revealed without their consent, their right to refuse mandatory HIV/AIDS testing, which may be motivated by perceived sexual orientation, and their right to receive medical care and insurance.

Elder & Healthcare

As LGBT people age, they become more aware of their second class citizenship. Because same sex couples cannot marry in most states, life partners are not considered “next of kin.” Thus, for estate planning purposes, gay and lesbian couples must obtain good legal advice and prepare essential legal documents to protect their surviving partner. Under similar “immediate family only” rules in hospitals, LGBT people may be denied the right to visit their life partners. Elders also face discrimination in assisted living facilities and health care. LGBT rights lawyers work with elders to put together the proper wills, health care proxies and other legal documents to ensure that their wishes are carried out. Advocacy groups work with nursing homes, hospitals and assisted living facilities to develop antidiscrimination policies.

Employment

Often LGBT people are fired, harassed and denied promotion for no reason other than their sexual orientation. While many companies, including over half of Fortune 500 companies, provide domestic partner benefits to unmarried same-sex couples, as well as including sexual orientation and gender identity in their non discrimination statements.

Family

Thanks to new reproductive technologies, changes in the law and more tolerant social attitudes, more and more LGBT people are becoming parents than ever before through birth, adoption, and foster care. Family LGBT rights lawyers work to repeal discriminatory adoption statutes to secure second parent adoptions, child custody, inheritance rights and dual-mother or dual-father birth certificates. They also deal with the difficult issue of partnership breakups that involve children by trying to establish custody based on “de facto parenthood.”

Hate Crimes

With the brutal death of college student Matthew Shepherd in 1998, more nationwide attention has been focused on anti-LGBT hate. Sadly, hate crimes against members of the LGBT community are all too common, following only race and religion in numbers of bias crimes every year.

Transgender Issues

People who express non-conforming gender identities have not until recently been included in what used to be just a lesbian and gay movement. In recent years, many specifically transgender groups have formed, such as the Transgender Law Center, and lesbian and gay groups have included transgender issues in their missions for equality, respect, and recognition. Transgender people face many of the same battles for equality in employment, housing and marriage and have even fewer laws to protect them. Attorneys and policy advocates work to include gender expression in non-discrimination statements and laws and hate crimes statutes, and litigate cases based on sex stereotyping principals. They also focus on rules and regulations regarding correct sex designation on passports, drivers’ licenses, and other identity documents, segregated facilities such as bathrooms, gyms, and prisons, and on gaining non discriminatory healthcare access and coverage, including transgender-specific operations.

UNHRC MANDATES AND RESOLUTIONS

United Nations Human Rights Commission has specified that Member States have a common shared responsibility to uphold international binding human rights standards.²⁸ This implies a direct obligation to protect the human rights of LGBTI people through five core legal obligations: (1) protect individuals from violence rooted in homophobia and transphobia; (2) prevent any forms of torture and cruel, inhuman and degrading treatment targeted at LGBTI persons; (3) rescind any legislation that criminalizes homosexuality; (4) prohibit any forms of discrimination on the grounds of SOGI; and (5) safeguard LGBTI people's rights to freedom of expression, association, and peaceful assembly.²⁹ Further, CSOs suggest that States should take a more proactive role in mainstreaming these issues within their national institutions.³⁰

Specifically, the repeal of detrimental national laws criminalizing and targeting the LGBTI community is indispensable.

Additionally, the omission of these issues within national policies that influence access to health care, education, housing, welfare, and justice can lead to unlawful discrepancies in everyday life.³¹ Emerging responses have shown that countries who include trade unions in combating LGBTI employment discrimination and train public officials on these matters have managed to bolster more positive and tolerant attitudes within society.³² Another key recommendation to take into account is the need to respect the right of asylum, so as to protect any individual fleeing persecutions on grounds of SOGI.³³ Similarly, countries should be encouraged to provide documentation that reflects each person's gender identity.

²⁸ OHCHR, *Combatting discrimination based on sexual orientation and gender identity*, 2014

²⁹ OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International HR Law*, 2012, p. 4

³⁰ UNFE, *Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity*, 2013, p. 2

³¹ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 8

³² UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 78

³³ South Africa & Norway, *International Conference on HR, SOGI*, 2013, p. 7.

Australian HR Commission, *Addressing sexual orientation and sex and/or gender identity and discrimination*, 2011, p. 37.

3 KINDS OF RIGHTS THAT ARE BEING VOILATED

Individuals are denied basic *civil and political rights* on the grounds of their sexual orientation and gender identity.³⁴ For example, the concept of equality in rights and before the law does not apply worldwide, given that matrimonial laws for homosexuals differ around the world.³⁵ The principle of non-discrimination is obstructed by the absence of anti-discriminatory policies which refer to SOGI.³⁶ Further, the right to life and safety is infringed upon by States that retain the death penalty for acts of homosexuality. Freedom from violence, harassment, torture, or cruel, inhuman, and degrading treatment is violated by practices that encourage “corrective” or “punitive” rape, as well as arbitrary detention.³⁷ Transgender persons are also denied freedom of movement, given that in certain countries their gender identity is not legally recognized. The right to free expression and free association is also breached, considering the fact that LGBTI pride parades and other forms of expression are frowned upon across the world.³⁸ In certain cases, the rights to practice religion or the right to a fair trial will also be affected by the prevailing religious or judicial prejudices. Nonetheless, one of the most fundamental human rights which is denied is the right to privacy, as SOGI issues are often considered a matter of public opinion, despite their private nature.

Social and economic rights are often in the balance as well, when considering discrimination on the basis of SOGI. These rights include the right to social security, assistance, and benefits as well as the right to fair employment and work, which are all affected by unlawful workplace practices, and unequal access to social welfare.³⁹ The rights to physical and mental health are also challenged, in view of the fact that some health care institutions portray homosexuality and transgenderism as

³⁴ UNFE, Factsheet: Criminalization, 2013, p. 1

³⁵ UNFE, Factsheet: International Human Rights Law and Sexual Orientation and Gender Identity, 2013, p. 2.

³⁶ UNHRC, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41), 2011, p. 4.

³⁷ Ettlbrick & Trabucco Zeran, Impact of the Yogyakarta Principles on International HR Law Development, 2010, p. 11.

³⁸ Council of the EU, Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People, 2010, p. 7

Pan American Health Organization, The Right of Young People to Health and Gender Identities, 2011, p. 20.

³⁹ Council of the EU, Toolkit to Promote and Protect the Enjoyment of all Human Rights by LGBT People, 2010, p. 13

an illness or disease, and do not train appropriately their staff to respond to the unique needs of LGBTI patients.⁴⁰ The right to universal education can also be violated by either unsafe educational environment for LGBTI youth, or with the use of sexist, transphobic, and homophobic curricula. Finally, the rights to form a family are denied by governments who refuse to recognize same-sex relationships, or reject the rights to adopt a child for these same couples.⁴¹

Finally, discrimination based on SOGI restrains basic **sexual rights**. Sexual rights embrace the various human rights that have been mentioned above, in addition to the right to marry and found a family with the full consent of both spouses, and the right to equality in marriage. These two specific rights can be challenged by pervasive discriminatory practices, laws, and acts of violence in relation to SOGI.⁴² Sexual rights entitle individuals to a life in dignity and respect, no matter their sexual orientation, gender identity, or sexual expression.⁴³ This requires the establishment of a safe environment in which individuals can decide freely on their sexuality, without any form of pressure, coercion or intimidation, and with full access to sexual and reproductive health care information and education services.⁴⁴ More importantly, the full realization of sexual rights can occur only when individuals are safeguarded from discrimination based on the exercise of their sexuality, and when they have control and autonomy over their own bodies and desires.⁴⁵

COUNTRIES OBLIGATIONS TOWARDS LGBT COMMUNITY BY THE VIRTUE OF CONVENTIONS

- Protection from violence

⁴⁰ Ettelbrick & Trabucco Zeran, *Impact of the Yogyakarta Principles on International HR Law Development*, 2010, p. 11.

⁴¹ UNHRC, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41)*, 2011, p. 19.

⁴² Youth Coalition, *Including Youth in the Post-2015 Development Agenda: Youth SRR and the ICPD*, 2014.

⁴³ Sexual Rights Initiative, *Human Rights and Sexuality in the Context of Development*, 2013, p. 3

⁴⁴ UNECE, *UNECE Regional Youth Conference: Call to Action*, 2013, p. 1

⁴⁵ Sexual Rights Initiative, *Human Rights and Sexuality in the Context of Development*, 2013, p. 3.

The United Nations and other human rights mechanisms have documented hate-motivated violence against LGBT and intersex people committed by police officers and other State officials, as well as by private individuals, organized groups, extremist organizations and other non-State actors. Failure by State authorities to investigate and punish such violence – whether caused by State or non-State actors – is a breach of the State’s obligation to protect everyone’s right to life, liberty and security of person, as guaranteed by article 3 of the Universal Declaration of Human Rights and articles 6 and 9 of the International Covenant on Civil and Political Right⁴⁶

- Preventing Torture and cruel, Inhuman and Degrading Treatment

Countries have an obligation under international law to protect everyone from torture and other cruel, inhuman or degrading treatment. This includes the obligation to prohibit torture and other forms of ill treatment and to provide redress for such acts. Failure to investigate and bring to justice perpetrators of torture is in itself a breach of international human rights law. These rights are guaranteed by article 5 of the Universal Declaration of Human Rights, article 7 of the International Covenant on Civil and Political Rights and article 2 of the Convention against Torture.⁴⁷

- Repealing Discriminatory Laws

Laws that criminalize consensual, same-sex relationships or expression of gender identity and other such discriminatory laws give rise to a number of separate but interrelated human rights violations. Such laws violate an individual’s right to be free from discrimination, which is enshrined in article 2 of the Universal Declaration of Human Rights and core international human rights treaties, and the rights to be protected against unreasonable interference with regard to privacy and arbitrary detention, protected by articles 12 and 9 of the Universal Declaration and articles 17 and 9 of the International Covenant on Civil and Political Rights. Furthermore, laws that impose the death penalty for sexual conduct violate the right to life, as guaranteed by article 3 of the Universal Declaration and article 6 of the International Covenant on Civil and Political

⁴⁶ UNHRC report -Living Free and equal

⁴⁷ UNHRC report -Living Free and equal

Rights. Such laws, even if they are not enforced, breach State obligations under international human rights law.⁴⁸

- Protection of People from Discrimination

Everyone has the right to be free from discrimination, including on the basis of their sexual orientation, gender identity or expression, and sex characteristics. This right is protected by article 2 of the Universal Declaration of Human Rights as well as by the non-discrimination provisions of core international human rights treaties. In addition, article 7 of the Universal Declaration provides that all people are equal before the law and are entitled without discrimination to the equal protection of the law.⁴⁹

- Respecting freedom of expression, association and peaceful assembly

Everyone has the right to freedom of expression, association and peaceful assembly, as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the International Covenant on Civil and Political Rights. Limitations on these rights must be compatible with international human rights law, including provisions on non-discrimination. Restrictions on these rights that are based on prohibited grounds of discrimination, including sexual orientation, gender identity, gender expression or sex characteristics, violate international human rights obligations of States.⁵⁰

Role of National Human Right Institutions

National human rights institutions play a critical role in promoting and protecting the human rights of all persons, in line with the Paris Principles, which were adopted by the General Assembly on 20 December 1993.⁵¹ This includes combating all forms of human rights violations on the basis of sexual orientation, gender identity and expression, and sex characteristics. NHRIs can contribute to raising awareness, documenting and investigating instances and patterns of violence, ensuring

⁴⁸ UNHRC report -Living Free and equal

⁴⁹ UNHRC report -Living Free and equal

⁵⁰ UNHRC report -Living Free and equal

⁵¹ General Assembly resolution 48/134

remedy for victims, and advocating for the repeal of discriminatory laws and the adoption of policy measures to deal with human rights violations more systematically.

The Asia-Pacific Forum of National Human Rights Institutions has published a manual that provides guidance to NHRIs on the rights of LGBT and intersex people and highlights multiple examples of action by NHRIs in the region, such as education and awareness raising, monitoring, handling complaints, intervening in and monitoring court cases, advocacy and holding inquiries.⁵²

In the UPR of the United Nations Human Rights Council, NHRIs play a special role in the proceedings. They highlight patterns of human rights violations on the basis of sexual orientation, gender identity and expression and sex characteristics and make related recommendations

National human rights institutions can play an important role in raising awareness and building the capacity of national authorities to respect the rights of LGBT and intersex persons. The Human Rights Commission of Mongolia, in collaboration with LGBT civil society organizations, translated the Yogyakarta Principles into the national language, conducted training for police and law enforcement agencies and urged the Government to implement the recommendations of United Nations human rights mechanisms on the rights of LGBT persons.

All in all the efforts of National Human Rights institutions are highly encouraging in countries where there is less of political intervention in the work of them and isn't encouraging where there seems to be a substantial political will behind actions of NHRI's

Importance of United Nations

While progress is directly articulated at a national level, reports stress that an intergovernmental organization such as the UN should take leadership on this issue, to prevent further violence and prohibit harassment based on homophobia and transphobia. In particular, creating accountability measures and effective monitoring mechanisms focused specifically on sexual orientation and gender identity to record and reduce the widespread pattern of violence is critical. UN leadership

⁵² Chris Sidoti, Promoting and Protecting Human Rights in Relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions, (Asia Pacific Forum of National Human Rights Institutions and UNDP, June 2016)

would also allow Member States to share best practices more efficiently, encourage standardized legal reform, and safeguard the pre existing legal framework already grounded within UN institutions.⁵³

Hence United Nation's has to continue to play a leaders role which it has been playing from the past so many years.

INFERENCE FROM RESEARCH

Combating LGBTI prejudices requires the promotion of social change, and cultural awareness, as well as the implementation of education programs targeting different groups, including law enforcement and educators.⁵⁴ Public awareness campaigns can help individuals identify, register, and respond to hate crimes and everyday discrimination in an appropriate and healthy manner.⁵⁵ For example, British transportation systems carried billboards promoting LGBTI acceptance and the government of Brazil launched the national "Brazil without Homophobia" campaign.⁵⁶ Additionally, the adoption of CSE is advocated for in order to foster a greater understanding of sexual orientation and gender identity. CSE can also help root out discrimination and help young individuals make responsible, safe, and healthy decisions in relationships.⁵⁷ CSE's ambitions are to provide the youth with inclusive, accurate, and age-sensitive sex education. However, these programs can also be targeted at a wider audience, as all individuals are concerned by health rights, and should be kept informed on the risks of HIV/AIDS contraction, or other sexually transmitted infections, in addition to reproductive health issues relating to pregnancy.⁵⁸ Further, education

⁵³ 7 South Africa & Norway, International Conference on HR, SOGI, 2013, p. 7,8,9 and 10

⁵⁴ Ettlbrick & Trabucco Zeran, Impact of the Yogyakarta Principles on International HR Law Development, 2010, p. 37

⁵⁵ South Africa & Norway, International Conference on HR, SOGI, 2013, p. 10.

⁵⁶ UNHRC, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the UN High Commissioner for Human Rights (A/HRC/19/41), 2011, p. 23

⁵⁷ Youth Coalition, Resource Map on SOGI for Young Sexual and Reproductive Rights Activists, 2013, p. 67

⁵⁸ International Planned Parenthood Federation, Sexual Rights: an IPPF declaration, 2013, p. 2

programs and curricula are efficient methods to address discrimination, and counter homophobic and transphobic attitudes.⁵⁹

Conclusion

The closet people have started coming out and expressing themselves. They have used modern technologies to broadcast their struggles worldwide as to gather support of people sensitive to their emotions. Modern medical knowledge has in fact helped in determining that being a homosexual isn't a mental disease.

United Nations has come up to become the flag bearer of Human Rights of this century and has see itself as the immediate stakeholder in guarantying equality of human rights and abolishment of discrimination against the LGBT community.

National Human right Institutions have to start assuming the responsibility of being the flag bearer's and take some stake in promising equality and non discrimination

For the Asia pacific region, with time the Victorian morality and the draconian laws against LGBT community are weathering away.

Nations like Canada and Belgium have come to be known as Rainbow nations for their unending support to the Community and have become the leading nations for determination of equal rights to the LGBT community

Cultural attitudes have to give way to Human rights as in the words of BAN-KI-MOON 'let there be no confusion: where there is tension between cultural attitudes and universal human rights, universal human rights must carry the day.'⁶⁰

⁵⁹ Australian HR Commission, Addressing sexual orientation and sex and/or gender identity and discrimination, 2011, p. 11

⁶⁰ www.un.org/press/en/2010/sgsm13311.doc.htm