

CIVIL AND POLITICAL RIGHTS OF LGBT: THE PRESPECTIVE OF INDIAN CONSTITUTION

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ABSTRACT

The LGBT community has been in a debate for many years. The notions to secure this community by justice, equity and unity have been the prime motto of government. The word LGBT stands for Lesbian, Gay, Bisexual and Transgender. Earlier, these LGBT were referred as Gay community, but later it included other types of homosexual people. Discrimination against this community has become common, they are isolated and alienated from the society and they are denied the basic fundamental rights, which they are entitled to being the citizen of India.

This paper analyses the provisions which are not sufficient to protect their rights and followed by the composition of them and their difficulties nowadays. In recent times the rights of this community have been realised and there is an intervention of judiciary to protect them. The same has been discussed in the paper after the verdict of Supreme Court declaring, “Third gender rights.”

Keywords: LGBT, Homosexual, Discrimination, Fundamental Rights, Third Gender.

INTRODUCTION

LGBT is the abbreviation for Lesbian, Gay, Bisexual and Transgender. Previously this community was known as Gay community but the word Gay only refers to men. Thus, later in mid 1980s the community was introduced as LGBT community.

“Sex is what you are born with, Gender is what you recognize and Sexuality is what you discover.” By Anita Chettiarⁱ

The term Gay was traditionally used to refer to the people who are attracted to people of same gender. But generally Gay refers to men who are sexually attracted to men only. Lesbian refers to women who are sexually attracted to women only. A bisexual person is the one who is attracted to both men and women. Transgender people have a gender identity or gender expression that differs from their sex assigned at birth. Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual. Transgender, often shortened as trans, is also an umbrella term. In addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not exclusively masculine or feminine (people who are non-binary or gender queer, including bigender, pangender, genderfluid, or agender.) Other definitions of transgender also include people who belong to a third gender, or else conceptualize transgender people as a third gender. The term transgender may be defined very broadly to include cross-dresserⁱⁱ.

The status of transgender community was different during Mughal times, they were respected, but later during the times of British they criminalized this community and today they live as sex workers and beggars and they are humiliated.

Transgender individuals and communities face many barriers to full acceptance in society. One of the issues that have been receiving growing attention is the experience of discrimination that transgender individuals face when they interact with the criminal justice system. It is generally observed that in present circumstances, there are three basic kinds of exclusions of Transgender in Indiaⁱⁱⁱ:-

1. Exclusion from Social and Cultural Participation (Social Exclusion) –
 - a) Exclusion from family and society.

- b) No protection from violence Limited entry in education sector, health services and public spaces.
2. Exclusion from Economy (Economic Problem) –
- a) Exclusion from economy.
 - b) Exclusion from livelihood and employment opportunities.
3. Exclusion from Citizen Participation (Political Status) –
- a) Limited entry to collectivization
 - b) Limited rights to citizenship.
 - c) Limited right to participation in community decision making process.

Though, the situation has changed after the honourable Supreme Court judgment in 2014, the perception of Indian society mind set and their behaviour towards Transgender has not changed much^{iv}.

Moreover, sometimes LGBT is known as LGBTIQ which means LGBT as intersex people questioning their sexual identity and embracing spectrums of gender and sexuality.

DIFFICULTIES FACED BY LGBT IN TODAY'S SOCIETY

The LGBT face innumerable difficulties in the society where the only accepted orientation is heterosexuality and homosexuality is regarded as abnormal. Abuse is their daily routine and faced by them almost every day. They are more likely to experience intolerance, discrimination, harassment, and threat of violence due to their sexual orientation than those that identify themselves as heterosexual. They face inequality and violence at every place around the world. In many countries, the rights enjoyed by opposite-sex couples are not enjoyed by the same-sex couples. They are prohibited from those rights. As a result, they face discrimination and cannot enjoy social protection schemes like health care and pensions. The LGBT people even hide their gender and do not disclose it due to fear of losing their job. They gradually develop low self-esteem. The parents of normal children don't allow them to mix with the LGBT children acting completely out of care and concern without realizing that this

leads to isolation for the other one. Lack of communication between LGBT child and the parents often leads to conflict in the family. Much LGBT youths are placed in foster care or end up in juvenile detention or on the streets. LGBT teens have a very high risk of health and mental problems when they become adults because they are rejected by their parents and caregivers.^v There are times where they get addicted to drugs or alcohol to get themselves relieved of stress. They isolate themselves from everyone. They become the victims of hate crime. In many countries, homosexuality is considered as crime and often met by imprisonment and fines. Moreover, in some of the personal laws it is considered as a sin and is unlawful.

The exclusion and discrimination have more impact on the lives of LGBT persons. This has resulted in the following-

- Dropping out of school earlier
- Leaving home and family
- Being ignored in the community
- Lacking family support
- Attempt suicide

INDIAN CONSTITUTION AND LGBT

The idea of Fundamental Rights was first conceptualized within the Bill of Rights of the American Constitution and has been adopted into the Indian one. Preamble to the Constitution of India mandates Justice - social, economic, and political, equality of status. In essence, the Constitution of India is sex blind, that's to mention, the basic premise of equality is predicated on a Constitutional mandate that the sex of an individual is irrelevant save where the Constitution itself requires special provisions to be made for everyone.

Right to Equality:

- Article 14 of the Constitution provides one and all an equal status before the law and an equal protection of laws within the territory of India. The word „any person“ here

means every individual, with none discrimination supported any of the category which includes, caste, creed, religion, sex, etc.

- In the case of, *National Legal Service Authority V. Union of India*^{vi}, the interpretation of the word person was widened and was held that Article 14 of the Indian Constitution does not restrict the word „person“ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression „person“ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country. The transgender community falls within the purview of the Constitution of India and thereby they are entitled to all the rights as guaranteed under the same.

Equality of Opportunity and Right against all forms of Discrimination:

- Articles 15 and 16 prohibit discrimination against any citizen on certain enumerated grounds, include the bottom of ‘sex’. In fact, both the Articles prohibit all varieties of gender bias and gender-based discrimination. Constitution makers, gave emphasis to the elemental right against sex discrimination so on prevent the direct or indirect attitude to treat people differently, for the explanation of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one’s character, the deep psychological or emotional sense of sexual identity and character. The discrimination on the bottom of ‘sex’ under Articles 15 and 16, therefore, includes discrimination on the bottom of identity.
- Articles 15(2) and 16(4) has also been interpreted to provide social equality to these communities such as equality in public employment, it provides that the states shall have the power to make any special provision for the betterment of these vulnerable minority who are now included within the category of socially and educationally backward classes.^{vii}

Right to Life and Personal Liberty:

- **Article 21** of the Constitution of India reads as follows: Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.” Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right.^{viii}
- In the case of, *I.R. Coelho V. State of Tamil Nadu*^{ix} it was stated that, the right to choose one’s own identity is one of the most essential right under this article to life with dignity. The transgender communities have a right to dignified life which is one amongst the most important aspects of Article 21 of the Constitution of India. Recognition of gender identity provides the popularity of their right to dignity and non-recognition violates the identical, they need full right to precise and live their life without fear. Also, the proper to reputation extend to their protection.

Right against Exploitation:

- Various inhuman acts like human trafficking and beggary are declared as an offence and punishable per law. The scope of Article 23 of the Constitution of India is extremely wide because it includes within any type of discrimination which are forbidden. Immoral activities like prostitution are usually seen down in the society.^x
- Everyone incorporates a right to non-public development, and this might be secured only when there exists a right against exploitation which creates a free environment for an individual. Transgenders are the worst victims of exploitation; due to their degraded economic status they indulge into prostitution and other immoral activities and are usually seen as taboo by the society. The intention behind this Article is to secure independence of a personal identity by preventing exploitation of men by men.^{xi}

WHY DID LGBT COME UP AS AN ISSUE?

In recent years, the problems regarding lesbian, gay, bisexual and transgender became a source of estranging among the nations. The earliest organizations supporting LGBT rights may be traced to the 19th century. During the 18th and 19th century, homosexual behaviour wasn't socially accepted and was thought to be crimes. The social attitude towards homosexuality became bitter within the late Victorian Era round the 1800s, social reformers started defending the homosexuals but thanks to adversities, they kept their identities secret. A British association also campaigned for the legalisation of homosexuality within the society. A book called "Sexual Inversion" by sexologist Havelock Ellis faced lots of controversies and a bookseller was also charged for selling such a book. A movement was started by a Social Reformer in Germany against a law which stated that having sex with the identical gender is prohibited^{xii}.

The first bold step was taken by USSR when it decriminalized homosexuality in around 1920s. It absolutely was at that point when society was conservative and was also socially backward regarding the matters of sexuality. But this victory was short lived as during the rule of Stalin, homosexuality was re-criminalized again. Immediately after war II, lots of homosexual groups came to the fore front and emphasized love over sex. A movement called Homophile movement was started in some European countries in 1945 and continued up to around 1970. A brand-new movement called Gay Liberation Movement started in 1970 and continued for four years. Homosexual groups like Gay Liberation Front [GLF] and Gay Activists' Alliance [GAA] were formed.^{xiii}

Till then, only gays and lesbians were within the limelight. Bisexuals started gaining prominence in LGBT movement within the 1970s. National Bisexual Liberation Group was formed in the big apple representing the bisexuals. The advocates of the Gay and Lesbian Rights argued that one's sexual orientation has nothing to do with individuality. Homosexuality was considered as an illness across the world. But in 1979, Sweden became the primary country within the world to get rid of homosexuality as an illness.^{xiv}

In modern India, Shakuntala Devi was the primary to publish a study on homosexuality in 1977. Section 377 of Indian legal code talks about unnatural offenses stating homosexuality is prohibited in India. The movement to repeal Section 377 was initiated by AIDS

“Bhedbhav Virodhi Andolan” in 1991. They published a piece regarding Section 377 and wanted its annulment. In 2001, it again gained a momentum when a Public Interest Litigation was filed by Naz Foundation in Delhi Supreme Court. It's continuing till date. De-criminalising homosexuality continues to be a myth in India.^{xv}

LEGAL PROVISIONS

The enactment of the various laws by the legislature is the outcome of the constitutional provisions. The relevant acts which establish the identity of this class though not specifically but they are discussed below.

The Citizenship Act, 1955 which provides for the acquisition and determination of Indian Citizenship also doesn't, expressly or impliedly require a determinate sex or gender identity as a pre-condition for acquiring citizenship. For someone to be a voter (elector), he/she needs to be a citizen of India. The committee of India has taken special measures to enrol the transgender persons as electors.^{xvi} The definition of “person” under the overall Clauses Act, 1897 is couched in even wider terms. The Act defines someone to include any company or association or body of individuals, whether incorporated or not'. Though Section 13 of the Act stipulates that words importing the masculine gender shall be taken to incorporate females, this stipulation is itself conditioned by the statutory direction that this can be so unless there's anything repugnant within the subject or context^{xvii}.

Interestingly, the Registration of Births and Deaths Act, 1969 does not mention anything about “sex”/ “gender” of a person to be registered in case of birth or death. The Act is gender neutral. The requirement of indicating the sex/gender of a person in case of a birth or death in the Birth or Death certificate, as the case may be, does not seem to flow from the provisions of the Act itself. Such a requirement may have been put in the formats of such certificates prescribed in the Rules under the Act, which are made by the States^{xviii}.

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV

care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, problems related to marriage and adoption^{xix}.

“Access to justice is a Fundamental Right guaranteed by the Constitution to the citizens.” said Justice Dipak Misra. India despite being world’s largest constitutional democracy, are still grappling within the heteronormative caves of undermining alternative sexualities.

In the case of, *Jayalaxmi V. Tamil Nadu*^{xx} Pandian, a transgender, was arrested by the police on charges of theft. He was sexually abused in the police station which ultimately led him to immolate himself in the premises of the police station. Similarly, policemen arrested Narayana, a transgender, in Bangalore on suspicion of theft without informing him of the grounds of arrest or extending any opportunity to him to defend himself. His diary was confiscated by the police and he was threatened with dire consequences if he did not assist in indentifying other transgenders he was acquainted with. Homosexuals have also been at the aggrieved end of financial extortion by the police in exchange for not revealing their identities to society.

In today’s date, the laws that cause a great harm to this transgender community is Section 377 of the Indian Penal Code, 1860 and the Immoral Traffic Prevention Act, 1986.

Immoral Traffic Prevention Act (ITPA), 1956 (amended in 1986) is the principal instrument which prevents the trafficking of women and children into prostitution. With the Amendment of 1986, the scope and ambit of the Act now became applicable to both male and female sex workers and also to those whose gender identity was indeterminable. Thus, both male and hijra sex workers became criminal subjects of the ITPA and it provided the legal basis for arrest of the transgender sex workers population.^{xxi} **Section 377 of the Indian Penal Code, 1860** was drafted by Lord Macaulay. This provision provides the punishment for the prosecution of certain kinds of sexual acts deemed to be unnatural. The natural presumption in case of a homosexual or a hijra is drawn that they are engaging in acts against the order of nature. It is clear that this Section has been frequently used to harass and exploit homosexuals and transgender persons. Surprisingly, the Indian Council for Medical Research (ICMR) and Indian Medical Association (IMA) have not yet framed any guidelines for Sex Reassignment Surgery (SRS).^{xxii}

INTERNATIONAL LEGAL POSITION ON HOMOSEXUALITY AND INDIA'S STAND IN UN RESOLUTION

Views on homosexuality are divided in the world. It is thought-provoking to see how religious teachings influence attitude towards “natural sex tendencies of a human being”. About 81 countries have criminalized homosexuality including India and Pakistan. The scenario in Europe is somewhat different from third world countries. Right to have sex is a fundamental right which is part of Right to Life. Denying people of sexual rights is regarded as an act of cruelty and so no legislature, no country should try to abolish the right to sex. LGBT rights are human rights.^{xxiii}

The stand taken by United Nations Organisation regarding LGBT rights is always progressive. A resolution supporting LGBT rights was first moved at General Assembly by French/Dutch representatives in 2008. It included condemnation of harassment, violence, discrimination, and prejudice based upon gender identity and sexual orientation which undermine dignity.^{xxiv}

The United Nation Human Rights passed a strange resolution on 26th June 2014 on “protection of family”. This Resolution called upon the High Commissioner for Human Rights for drafting a report on the status of the ‘family’ asking for a panel discussion on the issue of protecting the family. But the resolution does not define ‘family’, the implication to a singular family could be used as a criterion to oppose rights for homosexual couples, single parents and other types of families in future UN negotiations. The concept of the family should not be limited only to the heterosexual families. There are families of homosexuals, families of homosexuals and their adopted child/children and families of a single parent. Due to lack of clear-cut definition of ‘family’ in the resolution, there are high chances that it would be directly used to violate the rights of LGBT Community who are willing to have a family of their own. India, by becoming a signatory to this resolution, multiplied the plight of LGBT community that already existed. The hostile stand taken against the LGBT community by Indian Diplomats representing Government of India at UN Human Rights Council is stigmatic to its international image as world’s progressive constitutional democracy.^{xxv}

It is almost two decades that the deliberations on LGBT rights have found place in the UN agenda, yet decriminalizing homosexuality and trans sexuality remains nowhere close to reality. On 24 September 2014, the UN Human Rights Council at its 27th Session adopted a

resolution on “Human rights, sexual orientation and gender identity”. This resolution vide Preambular paragraph 3, states that significance must be attached to “national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms” The language, however, does not categorically stress on decriminalizing. Further, it gives prominence to historical, cultural and religious backgrounds of States which does not make it obligatory on the part of States to repeal or amend either its criminal laws or discriminatory laws. In this regard, it is also important to note that India abstained from voting on the UN Human Rights Council resolution on “Human Rights, Sexual orientation and gender identities” which was adopted on 24 September 2014.^{xxvi}

JUDICIAL ROLE IN PROMOTION AND PROTECTION OF THE LGBT COMMUNITY

15TH April 2014 wasn't a standard day. Something exceptional happened on the summer of 15TH of April that ‘blown life within the “constitutionality” dead members of the sexual minority of India’. It had been that day which brought light and euphoria to the lifetime of ‘Hijras’. For the primary time within the history of India, ‘Third Genders’ was given recognition and was officially recognized as another gender as male and feminine. The Hon’ble Supreme Court of India within the case of National Legal Services Authority v. Union of India in its landmark judgment in 2013 created the ‘third gender’ status for hijras or transgenders. Earlier, while writing their gender, they were forced to put in writing male and feminine, but now after this judgment, they’ll proudly describe themselves as ‘third gender’.

With the advent of the contemporary epoch, the movement against the repressive and oppressive nature of Section 377 grew exponentially and it was finally on July 2, 2009 that the Delhi High Court passed a judgment in favour of the LGBT’s in the landmark judgment of *NAZ Foundation v. Government of N.C.T Delhi*^{xxvii} (hereinafter referred to as the NAZ Foundation case), declaring Section 377 of the Indian Penal Code, 1860 which criminalizes homosexuality in India to be unconstitutional and violative of Articles 14, 15 and 21 and read down the section, allowing consensual sexual activity between two homosexuals above 18 years of age.^{xxviii}

The matter went to appeal to the Supreme Court in *Suresh Kumar Koushal and another v. NAZ Foundation and Others* where the Supreme Court struck down the decision by the High Court in the NAZ Foundation Case.^{xxix}

Justice Singhvi said that Section 377 of the Indian Penal Code does not suffer from any constitutional infirmity and left the matter to the competent legislature to consider the desirability and legitimacy of deleting the Section from the statute book or altering the same to allow consensual sexual activity between two adults of the same sex in private.^{xxx}

The Court referred to Indian and foreign judgments, the Yogyakarta Principles²⁷ identifying with sexuality as a structure of personality and the worldwide patterns in the assurance of security and nobility privileges of gay people and held:

The Yogyakarta Principles consists of 29 principles, giving paramount importance to universality and inalienability of human rights devoid of sexual orientation and gender identities. The order of these principles explains the nature and extent of discrimination faced by the LGBT group which is embedded in society that is enforced through its legal system. These principles are based on the theory of rights-based approaches, which entrusts the State Parties with duty to implement the legal obligations, such as:^{xxxi}

- I. taking all necessary legislative, administrative and other measures to eradicate impugned practices which discriminate and violate the basic human rights of the individuals with diverse sexual orientation and gender identities;
- II. undertaking protection measures for the persons identifying themselves with the LGBT community or group; ensuring accountability of perpetrators violating the basic human
- III. a right of the LGBT community and also seeking redress for the victims; and,
- IV. promotion of a human rights culture by means of education, training and public awareness-raising.

Principle 1 explains the right to enjoyment of human rights, which obligates State parties to amend legislations, including criminal law to ensure full enjoyment of universal human rights. Mindful of the discrimination and abuse faced by the LGBT group, the Yogyakarta Principles emphasizes on the need to repeal criminal and other legal provisions that prohibit consensual sexual activity between same-sex individuals or transsexual/transgender individuals. Reiterating the right to recognition before the law, it has been explained that each individual's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.^{xxxii}

An overview of the Yogyakarta Principles reflects the attempt by the defenders of the LGBT group, of their fundamental rights to life, freedom from violence and torture, privacy, access to justice, fair trial, to be treated with humanity while in detention, and freedom from arbitrary detention as dealt from Principles 4 to 11. Another important provision explains protection against all forms of trafficking, sale and right against exploitation. This provision acknowledges and takes into account the vulnerability of people with diverse sexual orientation, due to discrimination and inequality based on social exclusion, which might lead them to fall easy prey to trafficking and exploitation.^{xxxiii}

The Principles 12 to 18 outlines the importance of equality and non-discrimination towards full enjoyment of economic, social and cultural rights, in terms of right to work, social security and other protection measures, adequate standard of living and housing, education, health and protection from medical abuses. The key aspect on right to attainment of highest standard of health requires States to ensure access to healthcare facilities, goods and services, especially in relation to sexual and reproductive health, and to their own medical records.^{xxxiv}

The right to freedom of opinion and expression includes expressing one's sexual identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means. Such express mention of cross-dressing practice by the drag kings and drag queens, who may choose any medium for expressing their queer identity, is also recognised. The Principles from 19 to 21 also ensures that notions of public order, public morality, public health and public security are not to be employed in a discriminatory manner to restrict the rights of the LGBT community to express themselves of their diverse sexual orientation. Such freedom of expression, extends to their right to freedom of peaceful assembly and association,

including for the purposes of peaceful demonstrations as well. The right to freedom of thought, conscience and religion and movement and residence within borders of the State, thereby obligating States' not to impede such person's entry, egress or return to or from any State, including that person's own State. Principles 22 and 23 highlight the rights of persons to seek asylum from persecution. These principles are followed by the rights of persons to participate in family life, public affairs and the cultural life of their community. The crucial principles are enshrined in Principles 28 and 29 which affirms holding perpetrators of these rights to be accountable, and ensure appropriate redress for the victims belonging to diverse sexual orientation and gender identities.^{xxxv}

Yogyakarta Principles have been well received by the UN bodies, Regional Human Rights Bodies, National Courts, Government Commissions and the Commissions for Human Rights, Council of Europe and so on. These bodies have endorsed these Principles and recognized them as important tool for identifying the obligations of States to respect, protect and fulfill the human rights of the people belonging to the LGBT community.^{xxxvi}

"The sphere of privacy allows person to develop human relations without interference from the outside community or from the State. The exercise of autonomy enables an individual to attain fulfillment, grow in self-esteem, build relationships of his or her own choice, and fulfill all legitimate goals that he/she may set. In the Indian Constitution, the right to live with dignity and the right of privacy are recognized as dimensions of Article 21."^{xxxvii}

In April 2014, the Supreme Court of India declared transgender to be the 'third gender' in Indian law. Justice KS Radhakrishnan noted in his decision that,

"Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex."^{xxxviii}

By recognizing the transgender as a third gender, this Court is not only upheld the rule but also advanced justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to the transgenders but also

justice to the society as well.^{xxxix} Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them vulnerable to violence and sexual assault, in public spaces or in jail by the police. Further, non-recognition of identity of Hijras/transgender person results in facing extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. Hijras/transgender persons face huge discrimination in access to public spaces like restaurants, cinemas, shops, malls etc.^{xl}

The applicability of the judgment in this case was restricted by the Hon[’]ble Supreme Court only to transgender and explicitly excluded the Lesbians, Gays and Bisexual, thereby not going in the controversial question of validity of Section 377 of Indian Penal Code. The Court on the basis of Human Rights highlighted the importance of gender for applicability of various human rights^{xli}.

The Court directed that the recommendations by the report of Ministry of Social Justice and Empowerment Expert Committee must be examined based on the legal declarations made in this judgment and implemented within six months. This broadened the ambit of rights that can be granted to the transgender. However, though the judgment recognizes the harm done by Section 377 of IPC to the transgenders, it did not pass any orders or make any recommendations.^{xlii}

The Hon[’]ble Supreme Court of India declared that:^{xliii}

- I. Hijras, eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part – III of our Constitution and the laws made by the Parliament and the State Legislature.
- II. Transgender persons[’] right to decide their self-identified gender is also upheld and the Centre and State governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- III. The Court direct the Centre and the State governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

- IV. The Centre and State Governments are directed to operate separate HIV sero-surveillance Centre since Hijras/Transgenders face several sexual health issues.
- V. The Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for Sex Reassignment Surgery (SRS) for declaring one's gender is immoral and illegal.
- VI. The Centre and State Governments should take proper measures to provide medical care to the transgenders in the hospitals and also provide them with separate public toilets and other facilities.
- VII. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- VIII. The Centre and State Governments should take steps to create public awareness so that the transgenders will feel that they are also part and parcel of the social life and be not treated as untouchables.
- IX. The Centre and State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

Therefore, it can be observed that the role of judiciary has been very significant in the protection of the rights of the Transgenders in India. The status of "third gender" has given recognition to their identity in the society and has spread awareness about their existence. A Bench comprising Justice K.S. Radhakrishnan and Justice A.K. Sikri directed the government to treat them as "socially and educationally backward classes of citizens."^{xliv}

In the admission portals the education department of Tamil Nadu issued a government order by creating third gender category. Later, Javadhpur University in Kolkata inserted a column of third gender in the admission portal. Transgenders can now mention themselves as "third gender" while seeking information on governance related matters through online RTI application through the website. All transgenders can avail the benefits under the Other Backward Class (OBC) list, irrespective of their community background. The data of the

Election Commission stated that 23,019 people have registered themselves under the “Others” category.^{xlv}

The Government of India has been directed by the Supreme Court for treating the members of ‘Third Gender’ as socially and economically backward. The Supreme Court further opined that absence of law recognizing hijras as the third gender could not be continued as a ground to discriminate them in availing equal opportunities in education and education and employment. The third gender would be categorized as Other Backward Classes [OBC] which will help them to avail the opportunities of reservations in educational institutions and government jobs. The ideals enshrined in the constitution of India by our founding fathers are defended by the Supreme Court’s judgment. The verdict though pertains to only eunuchs or transgender people; it is indeed a ray of wisdom that at last penetrated into the dark chambers of the mystery of human sexuality to illuminate the dark age reason. On 2 February 2016, criminalization of homosexual activity was reviewed by the Supreme Court. In August 2017, the Supreme Court unanimously ruled that the Right to Privacy is an inherent and fundamental right under Article 21 in the Indian Constitution, providing hopes to LGBT activists that the Court would soon strike down Section 377. The Court also ruled that a person's sexual orientation is a matter of privacy issue.^{xlvi}

In a landmark **verdict, the Supreme Court today scrapped the controversial Section 377- a 158-year-old colonial law on consensual gay sex.** The Supreme Court reversed its own decision and said Section 377 is irrational and arbitrary. "LGBT Community has same rights as of any ordinary citizen. Respect for individual choice is the essence of liberty; LGBT community possesses equal rights under the constitution. Criminalizing gay sex is irrational and indefensible," said Chief Justice Dipak Misra, who headed the five-judge bench hearing the case. The judgment was delivered by a Bench of Chief Justice of India Dipak Misra and Justices Rohinton Nariman, AM Khanwilkar, DY Chandrachud and Indu Malhotra. CJI Misra and Justices Nariman, Chandrachud and Malhotra delivered separate, concurring judgments. And Section 377 which had a great history decriminalized.

CONCLUSION

Homosexuality is not a mental disease. It is as natural as heterosexual. The human mind has no control of it. The situation of LGBT community is worst in India. They are subjected to harassment, violence, and mockery. The resolution passed by UN have created a positive impact all over the world. Stand of India at UN regarding LGBT issues has been so far very disappointing as India have been stigmatizing its own image as a democratic republic by persistently opposing LGBT rights at international level. It is very important to make people aware of the presence of LGBT community. Human rights are natural rights which are indestructible and inalienable that are conferred upon man since birth. Homosexuals are not aliens, they are not sick, their sexual behaviour is perfectly in tune with the dictate of nature. The Government of India should wipe away its conservative nature and take concrete steps for the welfare of sexual minority.^{xlvii} The supreme court's verdict on Decriminalization of section 377 was a significant milestone for the LGBTQ community because it gave them the correct to reveal their emotions and live a dignified life but at the identical time it will affect various other laws especially personal laws like section 32(d) of the Parsi Marriage and divorce act 1936; section 27(1-A) of the special marriage act, 1954 etc. Therefore, to cater to this problem several amendments within the family laws shall be conducted.^{xlviii}

The marriages of the LGBTQ community should happen under the special marriage act, 1954 despite personal laws because it are more clear and unambiguous as compared to the private laws, moreover, in Shariat law homosexual marriages don't seem to be allowed therefore Muslims cannot do homosexual marriages if they are going with their personal laws.^{xlix} Therefore all the marriages of LGBTQ shall be done under the Special Marriage Act to get rid of the paradox and to forestall the chaos or the legislators should draft a brand new act which, specifically will cater to the marriages of LGBTQ community.

In the end, I might prefer to say that though, the judgment by the Hon'ble Supreme Court was given within the favor of the LGBTQ community but the social implications of it might be a huge task to be dealt by the community members. The judgment should work effectively both on paper and in practicality.

ENDNOTES

ⁱ Anita Chettiar, “Problems Faced by Hijras (Male to Female Transgenders) in Mumbai with Reference to Their Health and Harassment by the Police”, available on URL, <http://www.ijssh.org/papers/551-W10007.pdf>, last accessed on 06/06/2020

ⁱⁱ Definition available on URL, dictionary.cambridge.org/.../english/transgender, last accessed on, 06/06/2020

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