

CALL FOR A DIGNIFIED LIFE -LGBT¹

ABSTRACT

This paper is to analyze the current situation that is still being faced by the members of LGBTQ community despite a global picture of changing laws with the change in time. The Indian Constitution provides for their fundamental rights, and the judiciary endeavors to avail and protect them by their rulings and verdicts. But the society doesn't seem to be at par with these judgments. Marriage, for instance, is believed to be a foundation for procreation, but incapability of the same-sex couples in this aspect leads to their discrimination from the general the public. Refutation of their equal rights for many other facets has also been discussed in this paper. Societal treatment has forced them to undertake extreme steps, even ending up their life. Significant movements across the globe have been covered so as to adopt a positive outlook and make necessary amendments in the system from the side of State and society, towards inclusion the community and bringing resolution to their predicaments. The paper, in its concluding paragraphs also comes up with certain suggestions and proposals so as to deal with such incidences and help them live a dignified life

Key words: Gender sensitization, LGBT, dignity, Equality, better living, inclusion in society.

‘Those who deny freedom to others deserve it not for themselves.’ -Abraham Lincoln

INTRODUCTION:

Constitution of India has granted us various rights and duties. It is the supreme law of the land and it is binding on all other laws and statutes to follow the principles that are enshrined in the Constitution of India. Fundamental Rights is one of the six basic principles of the Constitution. It provides freedom to people in various forms for a better living and life of human beings. The state is prohibited to interfere with the private personal activities of an individual as per Article 21 of the constitution. Privacy recognizes that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community.² Under Article 15 it is established that no particular standard or pattern of behavior is attached to the genders. This prohibits discrimination on the basis of sex. Moreover, “Equality is one of the magnificent corner-stone of the Indian democracy.” Article 14 provides us with equality before the law which demands for equal treatment for everyone. The under lying objective of Article 14 is to secure all persons, citizens, or non-citizens, the equality of status and opportunity referred to in the Preamble of our Constitution. Through *Maneka Gandhi case* it was assured that the principle of natural justice is an integral part of Article 14. But till date people belonging to LGBT group are not given equal treatment. They are considered separate from the mainstream society. And hence are not provided with equal rights that are bestowed to rest of the society. Supreme Court states that it is possible that every right may not be expressly mentioned in any clause of Art. 19(1) and yet be covered by some clause therein. Article 19 (1) (a) provides citizens with freedom of speech and expression. This freedom of expression also includes sexual expression, though it has not been specifically mentioned or covered but an individual has the freedom to exercise his sexual expression in the way he/she

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² National Coalition for Gay and Lesbian equality V. Ministry of Justice, 1999 (1) South African 6 (CC).

likes. This freedom of speech and expression is considered as the first condition of liberty and is helpful in protection of all other liberties. It is essential for proper functioning of the democracy in the nation. Article 21 deals with right to life and personal liberty to person and secure his/her life with human dignity. That means anything that is important for human subsistence and existence should be protected. The expression 'personal liberty' was given the 'widest amplitude' and expansive interpretation. This article consists widest of all the rights that are bestowed through the Indian constitution. Therefore right to sex is also an important aspect here. In a recent judgment in August 2017³, the SC declared that the Sexual orientation is an essential attribute of privacy. The nine-judge panel decided it should be considered as part of the right to life and liberty enshrined in the country's constitution. "Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform."

Not allowing minority to exercise their rights just because majority of people do not consider it morally right is violative of constitutional rights that are given to us. Professor *Hart and Devlin's debate* about the concept of morality of law is also studied with this. The debate differentiates between the pragmatic and idealistic philosophies. Devlin's philosophy about legal moralism is based on an idealistic approach for role of law in society. He argued that the public or private behavior that is deemed to be immoral should be controlled by enactment of laws that are to be guided by the collective judgment of the society. He believed that when a behavior reaches the limit if "intolerance, indignation and disgust," it is necessary to frame a legislation against such behavior. Whereas, Hart takes a pragmatic approach towards the role of law in the society. His is the philosophy of legal positivism. He believed that the law should not only be based on the common moral consensus, unless other harms are present or being caused by such behavior. He brought forward the important aspect that the role of law is to protect the personal liberty of an individual. Therefore, according to Hart's approach the present act of sexual relations by the consenting adults does not cause any harm to the society. It has been proven that such behavior in the society had been existing since ancient times and have been given due recognitions. When the constitution provides with certain rights and freedom to people no other law statute or person can violate that.

MOVEMENTS AROUND THE GLOBE:

Social movements related to LGBT are based on the process of governing doctrine and these are the movements which demand an abounding approval of this "minuscule community" in society. These movements portray a variety of sex and genre present in our customs, beliefs and thoughts and therefore demand the respect for this diversity. LGBT community have an extended past of operations performed in order to accomplish a set objective known as "LGBT rights". Social movements to equalize the status of LGBT people were first started in the 19th century. And as of 28 June 2014, sixteen countries like Argentina, Belgium, Brazil, Canada, Denmark, France, Iceland, Netherlands, New Zealand, Norway, Portugal, Spain, South Africa, Sweden, United Kingdom, Uruguay and several sub-national jurisdictions including parts of Mexico and the United States allow same-sex couples to marry. Polls in various countries show that there is

³ Justice K.S.Puttaswamy vs Union Of India And Ors., Writ Petition (Civil) No 494 Of 2012.

rising support for legally recognizing same-sex marriage across race, ethnicity, age, religion, political affiliation, and socioeconomic status.

While many countries around the world are still fighting the legal battle for the rights of LGBT persons, it has been 16 years since the legalization of same-sex marriage in the *Netherlands*. Though LGBT persons of the Netherlands enjoy their same-sex marriage rights but it took them decades to curb this mistaken belief. It was gradual process where changes were at slow pace yet in productive manner. “The Catholic psychiatric hospitals, facing a great number of severely depressed homosexual patients, who started to raise their voices against discrimination” explains Laurent Chambon, a French sociologist living in Amsterdam⁴. In 1983, discrimination on any person whether homosexual or not was banned. Following an emergence in demand of unions of same-sex and after that, in 1998 a law was passed to create civil partnerships including the same-sex individuals. In the same year special rights of straight-sex couples were made available to the LGBT community following in the increase of political distress with the increase in demand for opening up of marriage. The distress of the large scale resulted in the legalization of same-sex marriage on April 1, 2001.

Though, 16 years after the legalization of same-sex marriage the scenario is conventional. LGBT couples still face problems regarding the adoption policies. Bullying and victimization also still occurs on a daily basis. A study by Dutch and American scientists concluded that lesbian, gay and bisexual youths are still victims of stigmatization in their families, schools and neighborhoods⁵. After the Dutch struggle, many countries have pursued the example set by the Netherlands and some are still struggling for the legalization of their same-sex marriage rights.

After the Netherlands, *Belgium* is one of the most likely winners of the LGBT rights. It is the second country in the world (after the Netherlands) to legalize the same-sex marriage. Gay and lesbian movements of Belgium played important role in the extension of legal rights to gay and lesbian people. Belgian same-sex movement is unparalleled and unmatched in many ways. The uprising of LGBT movement in Belgium can be traced just after the Second World War where associations of LGBT persons were established in European countries resulting in the formation of the International Committee for Sexual Equality (ICSE) which were meant to share knowledge and opinions. Still after so much of failures and backsets LGBT movement took a new start with the involvement of groups like ‘groep rode hond’ and ‘rooie vilder’ and made a positive impact by their actions. In the year 2003, finally after all the positive efforts made by LGBT movement and by various writers and authors Belgium legalized the same-sex marriage.

The present scenario of LGBT community rights in Belgium is far better than the rest of the world where between 2011 and 2014, the prime minister of the federal government of Belgium was homosexual, Elio Di Rupo. These days the LGBT persons are allowed to adopt children nationally and internationally. Even a single LGBT person can adopt a child. Lesbian couples have relaxing reproductive technologies and they can become a legal parent. Apart from that Belgium has antidiscrimination laws to protect LGBT groups from harassment and

⁴ *Reflecting on 12 yrs of gay marriage in the Netherlands*, Euronews, (Nov. 20, 2020), www.euronews.com.

⁵ *Supra*.

discrimination. Belgium has set an everlasting example for the rest of the countries who are still struggling to achieve their rights⁶.

After the great contention of the Netherlands and Belgium, many other countries around the world started their LGBT movements with a higher pace. In the US, arguments to finish all types of unfairness against LGBT groups and demand for the same-sex marriage legalization by the campaigners of LGBT rights has taken an absolute nature. In the American gay movement, many rights which are given to the straight-sex couples like social security benefits, worker's compensation injured on the job, exemption from income tax on the spouse's health insurance are denied to LGBT couples and it became an enraged issue in 1970's⁷ which later was looked into. Records of the countries that recently legalized same-sex marriage are Malta (2017), Germany (2017), Colombia (2016) and United States (2015).

INDIA:

The historical background of homosexuality in *India* can be depicted from the *Manusmriti* and *Kama Sutra*, where the Manusmriti records the oldest phrases of acts and describes various punishments related to homosexual intercourse, though minute in nature. Kama Sutra recounts various details about the sexual life including group sex, adultery and prostitution. In India, the issue of LGBT couples is still not acceptable. The society still denies discussing this grave issue straightforwardly. Indian culture is not new to the concept of homosexuality, but till date it fails to accept these groups *in toto*. But on a positive front legalization of LGBT marriages in India is supported by many institutions and associations now.

But it is heartbreaking to come across some upsetting and alarming incidences in the country that portrays the mental status in which the Indian society is still stuck with respect to understanding the sentiments of these people. For instance, in Indian schools the menace of homophobia still persists and is unaddressed. In April 2018, Gopalapuram- Chennai, a girl was harassed by her classmates, teachers and the principal of her school over a social media post where she answered to a post explaining love for her first crush which happened to be a girl so eventually after being continuously bullied and maligned, she committed suicide. In another case, a 15-year-old boy from Tiruchirappalli, hangs himself from the ceiling fan and committed suicide because of the constant bullying and taunts from his four classmates for his manner of walking and behaving feminine as mentioned by him in his suicide note.⁸ In Kolkata girls' school, 10 students were arm-twisted to confess and write that they were 'lesbians'. When approached by the parents of the students about this ill conduct by the school management, the headmistress and other authority addressed the move as disciplinary action against the students so as to bring them on 'the right path'. Apparently, it is not only the fault of the students who harassed and bullied these youths which forced them to take the extreme step of committing suicide but here all the teachers and higher authorities who did not intervene in such instances of bullying rather accompanied in the process are to be blamed equally.

⁶ Paul Borghs, *The Gay and Lesbian Movement in Belgium from the 1950s to the Present*, (Nov. 21, 2020), <https://muse.jhu.edu/article/647657/summary>.

⁷ Lauren Altergott & Ms. Woolley, *The Injustice Involving Same-sex Marriage*, (Dec. 22, 2020), <https://sites.google.com/site/laurenaltergottsreflection/home/same-sex-marriage-research-paper>.

⁸ Satarupa Sen Bhattacharya, *Homophobia In Indian Schools*, (Dec. 22, 2020), <http://citizenmatters.in/india-city-schools-homophobia-lgbt-discrimination-gender-research-6863>.

This discrimination and denial can be very traumatic and unhealthy for their survival. Lack of legal recognition to the relationships of same-sex couples has affected adversely and majorly on the health of these people and their families. Homosexuals are not given the equal status as of heterosexuals till date. Their right to equality is being hampered and violated by the society at large even after them being recognized by the State. Only lifting up the offence and decriminalizing it will not address this menace because the need of the hour is a shift in the mindset of people. Public at large needs to understand that rather judging someone on their sexual orientation and gender identity; we are to respect their individuality and build an ambiance for them to live learn and prosper in a dignified manner.

CONCLUSION AND SUGGESTIONS:

In concluding the same, it can be noted that every person has the right to life and liberty. They have a right to marry, to choose the person they want to be with irrespective of the sex they belong to. Literature reviews have given ample source that proves that homosexuality has been existing since a long time. It is neither a new concept nor against the Indian culture. When we talk about the concept of marriage, it creates an image of heterosexual couples as these customary laws only recognize existence of this particular section which is the direct consequence of the gender biased laws and legislations that do not provide any recognition to the people who belong to LGBT groups in the society. These laws state that marriage is to be solemnized between a man and a woman, husband and wife or bride and bride-groom. Marriage is believed to be solemnized basically for – one, procreating and nurturing of children, and two, for creating lifelong companionship from societal point of view. But, this does not give a confirmation that the people from minuscule sect do not want to uphold or respect the same. Just because they are incapable of procreation should not affect their right to marry or in that case adoption. Many people believe that couples of same-sex are not susceptible to raise a kid as the latter is not raised by the qualities of both mother and father. This is because conservatives only assume that a consummate family only includes a male and a female, i.e., a father and a mother. But in contrast to the same, a child will grow and develop like any other child if he/she is provided with all love and care by parents irrespective of their sexuality. They too have life and therefore, rights attached to it for a better living. There is a need of stringent advances to save the youth of this community. For example; in *Japan*, government has changed its national bullying prevention policy to protect the LGBTQ youth and schools have implemented a policy by the education ministry where students are allowed to wear uniforms and use restrooms according to their gender identity. These policies save LGBTQ from the humiliation and unreasonable taunts from the public at large. In *Philippines*, a law was passed in 2013 which states the responsibility of the school to address the problem of bullying.

Therefore, in the contemporary world as well, laws should be gender-neutral rather than being gender-biased. The laws are not phrased in terms of sexual orientation. Through the points put up in this article, it could be concluded by saying that homosexuality shall never be considered an offence: it is just a way by which such people constitute their existence and fulfill or achieve their desire and sexual happiness. Law has recognized this, but recognition of the same by people at large will give them the same rights and securities being enjoyed by heterosexual couples today. This is the age where we respect the individual's right to choose. We thus need to protect them and love them in order to move forward in the direction of human rights. Justice is not vestigial rather it is to provide safety and security to maximize happiness of human beings, even

if it is for a single individual. This is the greatest work of law. The only doublethink is that there is need to make lot many changes and amendments in the present legislations of the State. But we cannot overlook the dynamic aspect of the society as well. For that matter if laws need to be changed they should be changed as law exists for no other reason but to provide a better place for living. To curb this long suffering of solitude by LGBT persons, commencement of “assistance” system is a need of an hour. Assistance in the matter of economic support which one gets from family, employment from outside family networks is necessary. There should be a complete check upon the harassment these persons face at the work place and neighborhood and other public places. Denial of ‘employment’ due to homosexuality should be criminalized. The rate of domestic violence is same between homosexual couples and straight couples. But regrettably, they do not get assistance in this matter which develops a sense of insecurity amongst them. Proper watch towards the domestic violence among homosexuals would give them solace from the feeling of aloneness. We have often come across many such amendments that have helped the country to develop and to compete with other economically developed countries and have also exhibited our performance at the international level. An outcome of the same, India is at par with other nations such as U.S, China etc. in context to many economical particulars. But when it comes to the social and cultural development and improvements in social aspect we stand nowhere but at par with nations such as Pakistan and Saudi Arabia, lacking behind in providing proper human rights to their own people. This is where India still needs to ameliorate and revamp its legislations for an overall growth of the nation. LGBT persons go through the hardships of psychological disorders. They lack self-assurance and positive attitude and have weakened perception in critical circumstances due to the fact that the society will never accept them. Thus, for free love and freedom of sexuality, we ought to respect each other more and in act of humaneness by us contains more beauty and rationality.