

SARVOCHCHKAANOON

LAW MAGAZINE

Vol 1 Issue 1 | Sep 2020

#LOVEISLOVE
#LGBTQPRIDE

challenges of being an
LGBTQ in India

LGBTQ

LEGALISED SAME-SEX
MARRIAGE

TRANSGENDER (PROTECTION
OF RIGHTS) BILL, 2019

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At Sarvochchkaanoon we provide comprehensive information on various legal topics. We help our readers develop understanding and knowledge about our legal system and keep them updated with the current laws and amendments through our write-ups.

The sole purpose of this place is to share opinions, views, updates, and content on the legal system.

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THE TIMELINE OF LGBTQ+ STRUGGLE IN INDIA

We all remember 6th September 2018, for it was the day when a path-breaking judgment was delivered by the Supreme Court. The archaic Section 377 of the Indian Penal Code, 1870 which criminalized sexual acts which were “against the order of nature” was struck down by the Hon’ble Supreme Court and gave an opportunity to the LGBTQ+ community to celebrate this victory. The reason why it is being referred to as a victory for the LGBTQ+ community is that, for ages and decades, they were viewed as criminals in the eyes of law.

While stigma attached to the community continues to persist, however, the decriminalization of Section 377 has no doubt, broadened the mindset of the Indian society. While we celebrate this landmark judgment, it is equally important to respect and acknowledge the struggle undertaken by the community and many other individuals and organizations over the years. We will be providing you with a timeline that will help you understand the long journey undertaken by them to achieve respect and equality in the eyes of law and in society in general.

TIMELINE OF STRUGGLES AND ACHIEVEMENTS

1861- Section 377 is introduced

The colonial-era law, Section 377 was drafted by Thomas Macaulay in the year 1838 and developed on the model of the Buggery Act, 1533. Buggery meant sexual acts which were against the order of nature or will of God or man. It thereby criminalized the act of sodomy and the concept of something which later came to be known as ‘homosexuality’.



2001- Petition against Section 377 filed for the first time

Through the years, as people tried to understand homosexuality and acknowledge the Queer community, the archaic Section 377 began to receive a lot of flak and sparked a lot of debate and discussion. Finally, in 2001, Naz Foundation, an NGO which was in the fore-front fighting for gay rights, filed a petition in the Delhi High Court challenging the constitutionality of the said Section. They sought homosexual relationships between consenting adults should be allowed in the eyes of law.

September 2004

In the year 2004, the petition filed by Naz Foundation was dismissed by the Delhi High Court on the grounds that Naz Foundation had no locus standi in the instant matter.

December 2004

After the dismissal of the Petition, the Petitioner approached the Supreme Court against the order rendered by the Delhi High Court.

2006- Petitioners approach Supreme Court

3rd April 2006- When the Petitioner approached the Supreme Court, considering the matter at hand, the highest Court ordered the Delhi High Court to reconsider the matter.

18th September 2008

The Congress-led govt. sought for extra time to decide its stand on the issue given that there were contradictory stances being taken by the then Home Minister and Health Minister regarding Section 377 and its subsequent decriminalization. The High Court rejected the plea and moved forward with the arguments.

25-26th September 2008

Activists fighting for gay rights contended that the Government has no right or power to infringe upon the Fundamental Right of Equality guaranteed under the Constitution, seeking decriminalization of Section 377 on the grounds of morality. The Centre put forward the argument that unnatural sex is not only immoral but also reflects the perversion of mind. Hence, the decriminalization of Section 377 would ultimately lead to the moral degradation of Indian society.

15th October 2008

The Delhi High Court reprimands the Centre for not having a scientific basis to their arguments and relying upon religious and traditional texts.

7th November 2008

The Centre in its written statement addresses that the judiciary has no place to decide upon the matter and should not interfere in this issue, as that is the duty of the Parliament to decide on this matter. The High Court reserved the verdict on the pleas filed by the gay rights activists seeking decriminalization of Section 377.

2nd July 2009- Section 377 decriminalized for the first time

On 2nd July 2009, the Delhi High Court in its landmark judgment decriminalized Section 377 and held that it was unconstitutional as it violated Article 14, 15, 21 of the Indian Constitution.

11th December 2013- Supreme Court overturns Delhi HC's order

However, this victory for the LGBTQ+ Community was short-lived as the Supreme Court overturned the decision held by the Delhi High Court in 2009 and held that the decision rendered by the High Court was 'legally unsustainable'. It was further held by the Hon'ble Court that the Parliament should address this matter as they have the requisite power to do, thereby recommend the matter to the Parliament of India.

15th April 2014- Transgender recognized as the Third Gender

In a landmark judgment rendered by the Supreme Court in the case of NALSA v. Union of India, it was held by the Hon'ble Court that transgenders are to be recognized as the third gender and should be guaranteed Fundamental Rights under the Indian Constitution just like any heterosexual individual. They shall not be discriminated on the basis of their sexual orientation.

December, 2015 - Private Member Bill introduced by Mr. Tharoor

Lok Sabha MP, Mr. Shashi Tharoor introduced a Private Member Bill in the Lok Sabha contesting the constitutionality of Section 377 and its subsequent decriminalisation. However, a year later, Lok Sabha voted against the Bill.



29th June, 2016- Petition filed by Five LGBT+ Activists

Five petitioners named, famous dancer Navtej Singh Johar, journalist Sunil Mehra, chef Ritu Dalmia, hotelier Aman Nath and business executive Ayesha Kapur filed a petition in Supreme Court challenging the constitutionality of Section 377. The LGBTQ+ activists claimed that their right to equality, right to live a life with dignity, right to sexuality, right to choose their sexual partners and other such rights guaranteed under Fundamental Rights laid down in the Constitution are being violated.

24th August 2017- Right to Privacy is a FR

In a landmark decision, the Supreme Court held that an individual's Right to Privacy is a guaranteed Fundamental Right within Article 21 of the Indian Constitution which guarantees Right to Life and Personal Liberty. The Supreme Court further held that an individual's sexual orientation falls within the ambit of privacy.

8th January 2018- 11th July, 2018

The Supreme Court agrees to revisit its order rendered in the Naz Foundation petition and the matter is referred to a larger Bench to decide. On 10th July, 2018, the Constitution Bench of Justices R F Nariman, A M Khanwilkar, D Y Chandrachud and Indu Malhotra is constituted and on 11th July, 2018 the Central Government led by Bharatiya Janata Party (BJP) leaves it to the Supreme Court to decide on the matter regarding constitutionality of Section 377.

6th September, 2018

The historic judgement which changed lives of the LGBTQ+ community was delivered wherein, Section 377 of the IPC was decriminalised by the Supreme Court. It was further held by the Court that the said Section was unconstitutional as it violated Right to Equality under Article 14 of the Indian Constitution. In other words, it held that homosexual relationship between consenting individuals is no longer a crime.



AN APATHETIC ANSWER FOR A RHETORICAL QUESTION

- JINCY ANSA

5TH YEAR LAW STUDENT AT K.L.E. SOCIETY'S LAW COLLEGE,
BANGALORE

“A transgender [person’s] sense or experience of gender is integral to their core personality and sense of being. Insofar as I understand the law, everyone has a fundamental right to be recognized in their chosen gender.”

- Justice Siddharth Mridul, Delhi High Court, 2015.

The Law reflects society. It is an integral part of catering to the need of society but often time law or judiciary acts as the forerunner and leads a path to the generations. A corresponding step was taken by the judiciary in the verdict of NALSA v. Union of India, on 15th April 2014, where the transgender community was accepted initially and their rights as an individual were perceived. India has always witnessed the presence of the third gender but the same was belatedly legalized. Acceptance of the transgender community varies with culture and geography and named from deification and damnation including Hijras, Aravanis, Kothis, Jogtas/Jogappas, and Shiv-Shakthi, etc.

In 2018, when Kochi Metro announced the appointment of 14 transgender personnel as the workers the whole country appreciated the initiative of the KMRL (Kochi Metro Rail Limited). Later most of them were forced to quit because they were not provided with enough restroom facilities. That is, they were asked to collect the keys from the authorities, and additionally, they were not provided with accommodation. Localities were reluctant to provide them rental buildings. This proved to be another improvident plan and eventually, all of them were forced to quit. The actual predicament of the Transgender community does not end here, it goes far beyond opportunities or amenities and education. It is more about the existential crisis and lack of individuality that the society flags them

The aforementioned scenario contemplate law to assert and bring reforms. In turn, a new law was supposed to bring the marginalized community upliftment, in turn, keep them stuck with formalities, procedures, and impractical technicalities. The Transgender Persons (Protection of Rights) Act 2019 failed in many ways and was critiqued and opposed by various communities.

The act failed to comprehend the severity of the actual plight of the community and in turn created a gimmick apparently save the face of the government. They failed to believe that the future of certain communities is above the fellow political supremacy. Over a period of time, the laws in our country were inspired and motivated by international jurisprudence. The data used is from the Census 2011, which did not comprehend several factors including their education, income. The credibility or the implementing glitches to be faced by this lack of information is large. Furthermore, even after receiving wide objections from different groups and communities, the Bill was not revised to accommodate the proper changes. The public platform was not utilized for constructive criticism rather a mere procedure to complete.

The Act provides various ‘definitions’, including “family” (under Section 2(c)) which is conclusive of the adoptive family and the biological family. The Act itself prejudice and discriminate Transgender Community. The penalty of atrocities or rape against a Transgender Person as compared to the provisions in the Indian Penal Code is deficient. Rape crime, no matter what is a heinous crime and it should not be treated light-hearted.

Furthermore, the act implies the need for a "Gender Certificate" at the discretion of the District Judge, whereas does not provide the criterion or the documents which will prove the same. The intent of every social welfare legislation is for the upliftment of the marginalized rather than the demoralization of the community. The Act lacks enforcing authorities and institutions, furthermore, the support system of the Transgender communities is usually either any public-spirited citizen, NGOs. The lack of government initiatives in this field is alarming.

Another paramount probe is regarding Sex Reassignment Surgery. Undergoing SRS at private hospitals or clinics can cost them a fortune. It ranges from Rs 2 lakh to Rs 5 lakh for Male to Female (MTF) and Rs 4 lakh to Rs 8 lakh for a Female to Male (FTM). Mental health and other health risk implication that follows the surgery is huge. In 2010, the World Professional Association of Transgender Health (WPATH), an international multidisciplinary professional association, stated: "No person should have to undergo surgery or accept sterilization as a condition of identity recognition." In 2015, WPATH broadened the scope of its claim and called on governments to "eliminate unnecessary barriers and to institute simple and accessible administrative procedures for transgender people to obtain legal recognition of gender, consonant with each individual's identity when gender markers on identity documents are considered necessary." The plausibility of SRS surgery in India when the destitute, mostly unemployed and stigmatized by the society would undergo is meager. The law should not force people to carry an identity marker that does not reflect who they are.

India is worlds biggest democracy with a constitution amended numerous times. Many at times question regarding upliftment of transgender community have crossed paths with judiciary. Somehow, our approach still lacks the required enthusiasm and more than a convenience factor. Reservation in job opportunities would not work if the reserved community lack required education. The baseline logic lacked when the Act was framed. India should and can do better.



They say our existence is against the religion,
The world is a prism,
But their thoughts have a different conclusion.
They think the angles are only three,
He, she, and everyone that shouldn't be.

They think in this world queer doesn't belong,
And our being is nothing but wrong.
Their love is love and ours a hideous sight.
What they see is the rainbow we form,
But can't notice that we are essentially the same
light.

It's just when we enter the prism of sexuality,
you pass straight, and we create diversity.
Remove that prism, we, like you, are part of
humanity,
We are the same light.
Then why there is hate, discrimination and
insanity?
Why are we still fighting this fight?

- Mr. Mahesh Mali



LEGALISED SAME SEX MARRIAGE

- Soumita Bhattacharyya

5th year BA LLB student at Bangalore Institute Of Legal Studies.

“Alas, the sheer awesomeness of such a union in such a place would blow your tiny bigoted minds out of your thick sloping skulls.”

- J.K Rowling

Loving is human. To condemn someone for who they love is inhuman. For ages same sex love and marriage has been a taboo and sadly criminalized in countries where orthodox psych runs deep. When love is divided by law, it is the law that needs to change. Marriage is to seek fulfillment and not to be left alone due to one of civilization oldest institutions.

What is Same- Sex Marriage?

The union of couples just like any ordinary marriage just with an eye turner that the bride or groom is of the same sex. Well, old tradition speaks of it as a devils work. But today standing in 21st century its nothing but overwhelming to see people around the globe accepting it with open arms. Marriage is like a burden gifted from one generation to another for procreation and keep up their bloodline. Well, what else reason could it be to denounce someone's love for the person of same sex? Science has advanced and today when male gestation news is doing round the corners we exactly don't understand what's stopping us? The very idea is to respect someone's love and nothing is against the nature because we are the part of the nature and what we accept and preach conceptualizes the nature.

History of Same- Sex Marriage-

The institution of marriage has taken many forms in different societies since its inception.

In marriage, sex provides a means for passing on wealth through progeny or a sacrament of union of two bodies.

Same sex marriages however weren't terribly uncommon in older civilizations. However due to their inability to produce offspring's, couldn't lead to marriage that one man or a woman, or one man with many women could have. (Source?)

In Middle age, people emphasized on procreation as Judeo- Christian belief and extra marital- relationship were punishable and were regarded as an immoral act which also included same sex relationship. Any form of non- procreative sexual act was considered as “Sodomy”.

In Rome it wasn't uncommon for men and women to have sexual partners of their respective genders. But only the rich and social influencers were allowed to gain recognition of the same. Some Roman emperors like Nero married a young boy in a traditional ceremony where even customs of dowry and bridal veil were observed. In Ancient Greek society, romantic relationships were about male to male relationship. Just like Roman Culture, aristocratic Greek men could marry other men. Recognition of the same for women was undermined but the idea of egalitarianism paved a way to their relationship too.

In part of pre- colonial Africa, some groups observed the right of women marrying other women respective of them being widows and not willing to remarry another man. It was normal for them to raise children under the wedlock.

Statistics on Legality of Gay Sex in different Countries-

Positive Status-

Out of 195 countries, 40 countries have legalized it and over 72 countries still remain indifferent.

Netherlands became the first country to legalize same-sex marriage in 2000;

Canada became second in 2005;

South Africa first in the Africa in 2006;

Norway, first Scandinavian country in 2009;

Argentina first Latin American state in 2010;

New Zealand in Asia-Pacific country, 2013;

Taiwan became the First Asian Country;

Negative Status-

Rate of people opposing it-

India- 44%

Ghana- 76%

Russia- 73%

Nigeria- 69%

Awarded with Death Penalty-

Saudi Arabia;

Iran;

Nigeria;

Yemen;

Awarded with Death Penalty but not Implemented-

Afghanistan;

Pakistan;

Qatar;

UAE;

Indian and Article 377- An Actual Tug of war

Same sex marriage is not illegal in India but also not "legal". The Section 377 criminalized homosexuality and dates back to 1861. The first challenge came from NGO Naz Foundation & AIDS Bedhbav Virodh Andolan in the Delhi High Court 2001. Both the petitions were dismissed. High Court of Delhi decriminalized consensual sex between adults of same sex in July 2009 in violation of Article 14, 15 & 21 of Indian Constitution.

In 2013, SC overturned the judgment of Delhi HC on the ground- "Legally Unsustainable". Also quashed the revised petition filed by Naz Foundation.

Five Petitions were filed by the LGBTQ Community in 2016 claiming their right to sexuality, choice of partners, dignity and above all equal human rights along with other fundamental rights.

When in August 2017, SC upheld the "Right to Privacy" it observed, "Sexual Orientation" as an essential attribute to privacy. In July 2018, Constitutional Bench of 5 Judges heard petitions challenging the Section 377. Finally on September 6, 2018, the bench announced, "ADULT GAY SEX" as not a "CRIME" & that Article 14 & 21 contradicted Section 377. Though, Section 377 still remains to be operative relating to sex with minors, non- consensual acts & bestiality. It is still an open question whether the un-amended marriage laws in their present state legally allow solemnization & registration of a marriage involving a trans-gender spouse. "Gay- sex" marriage right still remains alienated & outcasted as it is neither an offence nor recognized in law & treated as a silent subject in India. Same- Sex marriage per se is not "illegal" or "legal". No penalties or consequences are awarded though.

Importance of Legalizing "Same- Sex Marriage"-

The question is about equality. Do we deny equality on the basis of irrelevant characteristics? Denial of rights on the basis of someone's different sexual orientation is not equality. In a marriage, two people who like each other consensually agree to be each other's part of life. Where is the problem? What is marriage for? Social institutions have designed to facilitate the care of children born out of a sexual relationship between a man and a woman and encourage both to be committed to the children and each other thus in a way prospering the society.

The funny part is to understand how Society gets to have prosperity from someone's marriage or sexual life. Why are we so obsessed about someone's personal choice? With time the conception of marriage has evolved and is primarily concerned with the preferences of two adults irrespective of their sex.

The fault lies in the law which determined marriage as a social cause in the interest of children and family. The choices of individuals were neglected.

Legalizing of gay sex would lead to- First, more exposure and opportunities for gay people in making friends, and have a suitable marriage partner and definitely will lead to a happy married life. Secondly, if gay people are allowed to have an equal standard of life and choice they can come out more in numbers and work equally that will drive the economy of the particular state. Just like we are not given the choice of gender during birth, the third genders should be allowed to have their human rights starting from choosing their respective life partners.

Countries in which gay people feel outcasted and stigmatized, will lead to their isolation and pave ways to social issues and crimes.



Conclusion-

“.....marriage requires being a legal sanction for the LGBTQ community”.

In the case of Obergefell V Hodges the US Supreme Court has decided the 14th Amendment to the US Constitution. Now, all 50 states are allowed to recognize and license same- sex Marriages. It meant that 14 states with bans on same -sex marriage will no longer be able to enforce them.

Ex- President Barack Obama said the ruling as “Victory of America”, he added “When all Americans are treated as equal, we are all more free.”

In India Guruswamy & Katju came out as a couple soon after the judgment of Supreme Court also being the advocates and front- fighters they stated two aspects- legal and social. The marital arrangements will legally sign up for rights like inheritance, to nominate spouses to their bank accounts and other rights such property, live under the same shelter, raise kids etc; These rights till date where only available to blood relatives or legally recognized spouses. In India it is yet to be implemented and is a legal problem.

Socially, it will not lead to occupational success but also personal success as it will witness happiness in people’s lives where they get to choose their partners and the choice is not made by the society. Forbid them from taking steps like suicide or get killed under the name of “Honor killing”. Recognition of spouses is right of everyone irrespective of their sex.

Marriage is world’s biggest democracy and needs to be treated as one. The journey has been long and awaits more fights.



STONEWALL RIOTS

- Anushree Bhattacharjee.

second-year law student, pursuing BBA LLB from Christ Academy Institute of Law, Bangalore.

Introduction

Stonewall uprising, famously known as Stonewall Riots was a series of violent conflict that took place on June 28, 1969, between police and gay rights evangelists outside the Stonewall Inn, a gay bar in the Greenwich Village situated in New York. As the conflict began, a famous international gay rights movement was born. (source should be added)

The Extravaganza of the Riot

In 1969, the conjugation of homophile relationships was termed illegal in New York City (and all other urban centers). Gay bars and restaurants were seen as places of sin since homosexuals and other sexually suspected people could socialize with people without public harassment. However, these bars were under police harassment on regular basis.

The Stonewall Inn in Greenwich Village was one such well-known gathering place for young gay, lesbians, and transgender people. It was a dark, dark, infested, congested bar, and was operating without a liquor license. On Saturday, that is on June 28, 1969, nine policemen set their foot in the Stonewall Inn, arrested the employees for illegally selling alcohol without a license, unevenly roughed up many of its financiers, threw dragged all the people out of the bar, and arrested several people due to the violation of a New York criminal statute. It was not the first time that such a raid took place on Greenwich Village gay bars in a very short period.

The people, grinding, unlike the past, did not withdraw or dispersed. Their vexation was evident and vocal as they watched bar financiers being forced into a police van. They began to ridicule and bump into the police and then threw some bottles and trashes creating chaos. Routined with more submissive behavior, the policemen called for augmentation and obstructed themselves inside the bar while more than 400 people rioted. The police obstruction could not protect themselves, and the bar was set on fire.



Augmented police officers arrived in time to extinguish the fire, and they successfully disseminated the crowd.

The Legal implications of Stonewall Riot-

Stonewall Riot was marked as the symbol of defiance to sexual discrimination. Though the Stonewall riots could not take the initiation of the gay rights movement as such, it did serve as a compulsion for a new generation of political involvement. The riot paved the way for many radical gay groups to come into force. In inclusion to set in motion, several public affirmations to protest the lack of civil rights for gay individuals, these groups often adopted such procedures as public conflicts with political officials and the disturbance of public meetings to challenge the conventions of the watch. Embrace and admiration from the set up were no longer being humbly requested but arrogantly and rightly demanded. The wide-based revolutionary strike of many gay and lesbians in the 1970s truly set into motion a new trend in government policies and helped in giving simple and easy education to the society regarding the same.

Conclusion

The Stonewall uprising was the bedrock that assisted the LGBT community to fight back against the legal acts that were repressing them, rather than just receiving and believing in the way it. The conflict helped the radical groups to take initiative to carry on the rally on particular issues that helped move the bait. Stonewall Riot became a significant movement for homosexual humankind and it also became the reason why homosexuals celebrate the pride month in the present years. This uprising is broadly considered to inaugurate one of the most important movements leading to LGBT liberty and the contemporary fight for their rights in the United States.

MR. AAYUSH KUMAR



Tell our readers about yourself.

My name is Aayush Kumar, I am Gay and my pronouns are he/him/his. Currently, I am a Masters student in the field of Forensic Psychology in Gujarat Forensic Sciences University. I am just another guy looking out there and hoping to lead a regular life with a family and kids and dogs and success in the career, just what anyone would want, but a tiny bit difference that I don't want a wife but a husband and that's the catch I currently have no hold of.

When did you figure out your sexual orientation?

I think I always knew I was different from other guys around me, be it my cousins or class. While growing, I didn't exactly know what I was, but I was sure I was anything but straight. I think I finally came into terms with it after I passed my school and was in a relationship with a girl since a few months and one fine day, something just didn't feel right and I started searching and Google-ing random stuff and came across a Gay Dating App which I downloaded and met up a guy, and since then all the exploring began.

What are the challenges of being an LGBTQ in India?

I think the biggest challenge in India for us is that from the very beginning of our childhood we've been put into either one of the boxes and are being treated that way or are expected to behave that way. We hardly even discuss how exactly we would like to express ourselves, neither do our parents. And the second we behave any different, we are put under surveillances and constant nagging, name-calling, bullying and shaming. This happens at homes to schools. Those are the places where a child, a person grows and nurtures and this is not how we are supposed to grow. We are supposed to have normal childhood like any other kid would have but we face such agony since that tender age. And where do those bullies learn such things? Again, from their surroundings! So it's not really their fault, it's the society that teaches them to be that way!

Have you faced any discrimination and how you cope -up?

Yes. A big yes. I, honestly, have become immune to all the discrimination I have been facing in my family, school and college. But yes, in the process of trying to be all strong and showing the world that it does not affect me, it becomes very exhausting because yes, it definitely does not affect me but you know, end of the day, when you process the whole day and think of stuff that happened, its dark and very bad to see the kind of stuff we hear and go through on a daily basis. I usually just smile looking at the person who says mean comments. And personally, I don't really take those things to my head because these are the people who do not really have any part to play in my life, so letting their opinions get to my head is just going to waste my energy. But yes, if the person says or does something terrible, I make sure I correct them, then and there.

Was it tough for you in the beginning to accept yourself?

As I mentioned earlier, I always knew there was something different with me which differed me and the rest of the guys. Although, there were some who I could relate to, but it feels awkward to ask someone outright right? So, no, it wasn't hard for me to accept myself but yes, it is still hard for people surrounding me to accept myself the way I am and the way I present myself.



Do you think after Article 377 judgement there is any change?

Yes, there definitely are changes after decriminalization of it and positive changes. I don't want to see changes to measure them as more or less, but if the changes are for good, I'm all in for it. But, decriminalizing does not bring much change in people's minds. The taboo there still exists and needs a lot of hard work and inclusivity, awareness, and sensitization to remove the taboo from the grass-root level. However, people from my community have become more visible and out now, because we have this sense of security that now the Law protects us and we have atleast something to hold on.

In your opinion what changes can be made in laws/society to support LGBTQ?

First of all, I'd really love if the Indian Education includes this subject in their syllabus because again, if the coming generation is normalized with this subject while they're growing up, it won't be a taboo for them when they grow old and they can also educate their previous generations about it and also, it will encourage the younger LGBTQIA people to be more positive and more stronger to express their identities and accept themselves openly. And also, if we get some lead on The Marriage Equality front, it'd be really great. Honestly, I want that for a personal reason, because after a few years I dream to have a family, like a husband and kids and that sort of thing.

At last, how will you motivate LGBTQ people who still have not accepted themselves?

I would only like to say that if I'm out to people today, its only because of the positivity that I built around me and took enough time to educate myself, learn myself and explore myself and gathered enough courage to come out to my friends, my college or anyone and everyone around me. So my message to people who are out there questioning themselves, y'all are no different, you are not alone, you are strong and accepting yourself is only going to make you stronger and make your life more independent and free of the burden that you've been carrying all this time. Trust me, it's the most liberating feeling ever to be yourself and be less bothered of what people are going to say to you or about you. We love you and you deserve all the love in this world!

***"Race, gender, religion, sexuality,
we are all people and that's it.
We're all people. We're all equal."***

— Connor Franta



TRANSGENDER (PROTECTION OF RIGHTS) BILL, 2019

- Doyita Mukherjee

3rd Year BALLB student from MS Ramaiah College of, Bengaluru.

Lesbians, gays, bisexuals, transgender people, intersex people, asexual people, and several other groups with their own gender identities and sexual inclinations – all the groups which we will hereinafter collectively call LGBTQ+ have become a widely accepted designation for people who do not identify themselves as heterosexuals, and are the member of the minority group, popularly known as the LGBTQ+ community.

While the country was in a situation of turmoil last year related to the abrogation of Article 370 of the Constitution of India, the Union Cabinet passed the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter the Bill). While the bill had promised a lot of things and raised the expectations and hopes of this vulnerable community, however, inaction it failed to fulfill its promises.

The bill had promised equality, social security, anti-discrimination provisions as well as educational and health provisions for transgender.



In Contravention of the NALSA v. UOI Judgement

In this case, the Supreme Court declared transgenders the 'third gender', affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to them, and gave them the right to self-identification. And stated that surgery, hormone therapy, and other such likes will not be considered as determinants for an individual's gender identity and that transgender has a right to self-identification and the Fundamental Rights laid down in the Constitution are applicable to them. However, the Act states that a transgender individual can apply for a 'transgender certificate' by means of self-identification. The certificate holder then can change their gender to male or female in a legal manner by applying for 'change in gender certificate'. All this would require the individual to undergo surgery and also provide medical documentation. Hence, the provision of the Act is completely in contravention with the judgement of the case which provided ray of hope to transgender.



Definition of Family in the Act

The definition of 'Family' as given in the Act is, "as related by blood, marriage or by adoption made in accordance with law". However, it won't come as a shock for many that the first act of violence or ill-treatment is often practiced by close family members. This has resulted in many transgender leaving their homes and cutting off ties with their family. Therefore, the definition provided in the Act must be widened keeping in mind the ground reality. Along with this, Section 12(1) of the Act states that a transgender individual cannot be separated from his/her/their family without an order delivered by a competent court permitting the act of separation.

How To Tackle Discrimination

While the Bill does recognize the discrimination that transgenders are subjected to on a regular basis, however, Chapter V of the Bill holds a silent position when it comes to the action to be taken against those discriminating as well as the remedies available to the victims. Moreover, there is no mention of the authority who will be taking action in such situations. Hence, it seems like a very half-baked effort taken by the lawmakers to provide protection to the transgender from discrimination.

Lack of Transgender Representation in National Council for Transgender Person

The Bill states, that the National Council for Transgender Person will consist of 30 members, and out of that only five will belong to the transgender community while the rest will be nominated by the Central Government. This gives the government a larger and stronger hold on the body which puts a question mark on the independence and welfare promised to the community.



Illustration: Shruti Yatam

CONCLUSION

The framing of the Bill to provide help and assistance to the LGBTQ+ community in general and Transgender in specific does reflect that we as a society have evolved and tried to come out of the shackles of age-old prejudices and stereotypes. However, the fact that the legislation is riddled with inadequacies should not be overlooked. It is very imperative to see and analyze what happens at the ground level and requires proper one-on-one conversations with a particular community. We as a society, have a long way to go reforming the status quo; this Bill is just a stepping stone to Uplifting the LGBT community who has been struggling for many years.



creating consciousness about the Transgender Community

By Aravani Art Project

The Aravani Art Project is an artistic collective that creates spaces for people from the transgender community to connect with other communities and cultures in their local neighborhoods. Through public art and interventions, the Aravani Art Project reclaims the streets on which so many transgender people suffer violence and discrimination.

The collective's wall is based on inclusion and unity. Fifteen trans-women and several volunteers contributed to the execution of the wall making it a collective celebration of identity and representation.



**"Never be bullied into silence. Never allow yourself to be made a victim. Accept no one's definition of your life; define yourself."
--Harvey Fierstein**

LGBT rights and personal laws

- Nagesh Vinay S

He is pursuing B.A.LL.B. from BMS college of law.

In a lot of countries, any individual deviating from what the world believes to be the traditional sexual orientation, i.e., heterosexuality, leads to oppression, ostracism, and discrimination of that particular individual. This is not just limited to sexual orientation but also extends to gender expression or sex characteristics. The constant harassment that the LGBTQIA+ community has faced over the years has had a rampant effect over their lives. They have been bullied over, they have been subjected to constant embarrassment, they have been treated as criminals and they have been betrayed of the basic right to equality. All of this leads to a conclusive inference that people across the entire globe are subjected to continuous onslaughts merely because of who they love, how they appear, and ultimately for who they are. One should never be discriminated against or face oppression based on their sexual orientation or gender identity.



“History owes an apology to the members of the LGBT community and their families for the delay in providing redressal for the ignominy and ostracism they have faced through the centuries.”

- Justice Indu Malhotra

LGBTQ Rights in India

Partial decriminalization of Section 377 of the Indian Penal Code, 1860 by a Constitutional Bench in the Supreme Court while hearing the matter - Navtej Singh Johar v. Union of India marks a momentous beginning in the fight for the rights of the people of the LGBT community. Decriminalization of this draconian provision which was inserted during the colonial era can only be construed as the dawn of a new age in our country in which an individual can remain unapologetic about what his/her sexual orientation is, what their gender features are, and on a whole, who the person really is.

In order to establish equality in its real sense, the decriminalization of homosexuality is not sufficient. The various legislations that govern the personal lives of people such as the Hindu Marriage Act, the Indian Succession Act, the Special Marriages Act, etc. do not even acknowledge the presence of the LGBT community. This attracts prejudice and hostility. The judiciary has been an ardent supporter of LGBT rights and it has expressed this in various judgments including - Naz Foundation v. NCT of Delhi, National Legal Service Authority v. Union of India, Navtej Singh Johar v. Union of India, and Justice K.S. Puttaswamy v. Union of India. However, the legislative wing of the government has not been doing its bit in order to bridge the gap between LGBT community members and the rest of them.

Same-sex marriage under personal laws of India:

Being the secular country that India is, different religions have different personal legislation governing the institution of marriage. Hindus, Sikhs, Jains, and Buddhists fall under the ambit of the Hindu Marriage Act, 1955, the Christians are governed under The Indian Christians Marriage Act, 1872, and the Muslims marriages are not governed by any statute. It is important to understand that none of these religions or the statutes associated with it governing the institution of marriage have acknowledged the marriage of a same-sex couple. Homosexuality and the marriage of two people of the same gender have not been recognized. It is important to understand the terminology involved in these statutes. In the Hindu Marriage Act, 1955, the two constituting parties to the marriage are required to be Hindus which facilitates the union of any two Hindu individuals.

However, it is also mentioned that the Bridegroom is supposed to be not less than the age of 18 and the Groom is supposed to be not less than the age of 21 during the time of marriage. This is where the importance of terminology comes into the picture. The union of two individuals to be solemnized under the Hindu Marriage Act, 1955 has to satisfy the condition that it has to be a heterosexual union as the Act has clearly mentioned Bridegroom and Bride which is a female and a male, respectively. Even under The Indian Christians Marriage Act, 1872, it is prescribed that the age of the man should be 21 and the age of the woman should be 18, thus making it not possible for a homosexual couple to get married.

It is important to understand that various LGBT rights activists have suggested reforms to the law commission in order to include the union of same-sex couples as well.

However, there exists an option through which two homosexual individuals can come together in holy matrimony. Apart from the personal laws, there exists a statute named Special Marriages Act, 1954 which was drafted for the purpose of encouraging secularism. In its existing framework, it is necessary to amend Section 4(c) so that it reads that same-sex marriages are permitted. In the future, even if the personal laws were to be amended to include same-sex couples, the Special Marriages Act should be amended to be in consensus with the relationships between persons belonging to different religions.

It is important to understand the essence of the situation and act according to it. Either new laws will have to be formulated or the existing personal laws have to be modified to promote the idea of same-sex marriages and eliminate the stigma associated with it.



Way forward:

Engaging in a sexual encounter with a person of the same gender is considered to be a crime in almost 70 countries. People held guilty of this offense are also subjected to capital punishment in countries such as Sudan and Yemen. Whereas in other countries including our own, although same-sex encounters are not considered illegal, the members belonging to the LGBT community are not bestowed with any rights that the others are awarded, making them vulnerable to discrimination and harassment.

The conservative belief of the government in our country has always come in the way of instituting a piece of legislation that will strengthen the position of the members of the LGBT community. The stigma associated with the entire LGBT community will perish only with the vehement efforts of the public and effective affirmative action by the government.

ADV. SHIVANGI PRASAD

AUTHOR & FOUNDER PARTNER,
POSH AT WORK



What is poshatwork?

POSH at Work (www.poshatwork.com) is a legal cum psychology firm that focuses on laws related to anti-discrimination, harassment, health, safety as well as diversity & inclusion and assists organizations including educational institutions in not only becoming equal opportunity employers and inclusive but also in ensuring mental and physical safety and well-being of those associated with them, thereby assisting them in creating a healthy, professional and respectful environment.

We firmly believe that discrimination, harassment, stereotyping, etc. at work does not only cause mental and/or physical damage to the recipient but also seriously curtails opportunities at work by creating a discriminatory work environment. In order to ensure equal participation and equal opportunity at work, it is extremely important to do away with such behavior and instill faith in employees in the organization. The only way this can be done is by ensuring effective and efficient compliance with the law.

With this objective in mind, POSH at Work is currently assisting 350+ organizations from varied sectors in India with end to end compliance of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act & Rules, 2013 ("POSH Law"), Protection of Children from Sexual Offences (POCSO) Act, 2012, Domestic Violence Act, 2005, the Transgender Persons (Protection of Rights) Act, 2019, etc.



Do you think the life of LGBTQ has changed after struck down of section 377?

On 6th September 2018, the Supreme Court of India indeed passed a landmark judgment on Section 377 of the Indian Penal Code ("IPC"). However, it is important to note that what this judgment has done decriminalized consensual sex between homosexual adults (earlier any kind of 'unnatural' sex irrespective of consent, gender, or sexual orientation was a crime) and while this is a very significant step towards ensuring constitutional rights of an individual especially because it has enabled many couples to come-out, it is simply not enough.

I do not think much has changed even after the judgment and the reason I say this is because currently, none of our laws are ready. For example, Sections 354A-D of IPC (which deal with sexual harassment, stalking, etc.) are women-centric. Hence, if a person of any other gender is harassed or stalked, these provisions cannot be resorted to. POSH Law is also only for women (As far as aggrieved is concerned) and therefore, a person of any other gender facing sexual harassment at the workplace cannot use this law. Similarly, same-sex marriage is not legal in India yet as none of the personal laws have been amended and this raised a question not only on the marriage but also on all other associated rights such as the right to adopt, right to property, right to maintenance, domestic violence, etc. There is a complete lack of access to laws on these fronts. To add to this, the mindsets have also not changed much. For example, as reported by the Print on 11th January 2019, the Army Chief Bipin Rawat stated how "Homosexuality will be continued to be considered an offense in the Armed Forces" and as reported by Indian Express, there have been reports of police harassment against the LGBT community.

Access to medical help and assistance with HIV/AIDS treatment still seems to be a problem. While several organizations are making policies that would grant rights to LGBTQIA+ couples and these are definitely steps in the right direction. However, we still have a long way to go as a society.

What are some of the particular challenges of LGBT youth?

While there are several, one of the biggest challenges is family rejection. For example, on 27th May 2020, the better India reported that a 21yearold college student, through a video recounted the horrors she lived through after informing her family that she was bisexual and how she was forced into conversion therapy. Eventually, she committed suicide. There are several other stories of this kind that usually do not get reported. As a result, the child's growth suffers including their education, self-confidence, their ability to get a job - everything. As far as transgender persons are concerned, the new law has made provisions with respect to duties of family and it would be important that family members understand and accept their child for what they are and celebrate their individuality instead of thinking they have a mental disorder or are cursed, etc.

Another very serious problem is bullying - this is also a common challenge across the globe that a person from LGBTQIA+ community faces. As per a Thomson Reuters survey of 2019, of almost 400+ youth in Tamil Nadu conducted by the United Nation's Cultural Agency, UNESCO, more than half skipped classes to avoid bullying, while a third dropped out of schools.

A child who is a transgender/intersex may also face threats of rape, groping, hitting, kicking, being locked in a room, having their belongings stolen, and rumors are spread about them - all the more if they have physical features which categorically show that they are 'different' from the boys or girls or have behavior patterns that do not stick to the stereotypical understanding of the behavior of boys and girls. As per another survey, around 50-60% have never attended schools and faced discrimination. Around 99% have suffered social rejection and 96% are denied jobs.

How do LGBTQ community people face discrimination in the Workplace?

Discrimination at a workplace can happen in several ways. One of the most common examples is name-calling –for example, calling someone ‘gay’ or ‘chhakka’ repetitively. Often people believe that this is pure workplace banter or harmless fun or just a ‘joke’. However, little do they realize that it is only so till such time they are not on the receiving end. They also fail to realize how it impacts the person on the receiving end. Often, persons from the LGBTQIA+ community have said that for fear of being made fun of, they have pretended to go on a date with a person of the opposite gender or have made fun of bisexuals or homosexuals so that their sexual orientation or gender identity is not discovered and are able to continue to be a part of a group.

There are some extreme kinds of discrimination and harassment as well – for example, calling someone ‘he’ purposely in spite of knowing that they prefer to be referred to as ‘she’, disclosing private information about a person’s gender or sexual orientation, and gossiping about the same, etc.

How can we make a discrimination-free workplace for the LGBTQ community?

As the saying by Edmund Burke goes, “the only thing necessary for the triumph of evil is for good men to do nothing” - One of the first things required is to educate ourselves and make ourselves aware of the challenges, only then, as an employer and as a society we will be able to make a better and a discrimination-free environment. As part of this, regular training programs for employees and managers may be very helpful – as mindsets can only be changed over time by sharing examples, case studies and challenges faced. Having the knowledge of some of the key terms such as cisgender, bisexual, asexual, gender dysphoria, sex reassignment surgery, androgynous, ally, etc. may also be very helpful.

Over and above this, having policies in place may be extremely important – these policies may be related to transition, recruitment, promotion, couples benefits, etc. For example, if a person says they are planning to change their gender – during a hiring interview – how is the interviewer supposed to react? Many people say they have been so shocked in the past that they have almost frozen not knowing what to do. Having gender-neutral bathrooms, allowing androgynous dress codes, etc. may also go a long way in showing that the employer truly cares and is taking active measures to make the workplace inclusive. Another thing that may be required to be done over time is conversing with those from the community and implementing of solutions with respect to the problems faced. The idea is that, if we have a good intention and truly want to make an inclusive workplace, we need to act upon the intention.



*Let's celebrate difference
it's beautiful
but some people find it a reason to discriminate
and that's shameful*

*not everyone is similar
not everyone is perfect
It's their life their choice
and we are no one to inspect*

*Do not degrade them
they are humans too
It's nothing but love
and they have right to choose*

*Accept them with open arms
let's bring a change
practice the preached equity
and free mind from homophobia's cage*

- SAUMYA

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