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EQUAL RIGHTS FOR EVERYONE – THE JOURNEY OF SECTION 377

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ABSTRACT

People around the world face inequality, torture and violence because of their sexual orientation. Gender identity and sexual orientation of a person are integral aspects which should never be used as a matter for discrimination. Due to lack of adequate legal protection they are often disowned by their own families and acquaintances. They are discriminated from schools, place of work and where not. Many countries even have laws criminalizing private same-sex relationships leading to prosecution and imprisonment. People often feel incapable to fit in with the society with orthodox ideas and beliefs. Even after modern mindsets of the people LGBT population still hesitates to show up their sexual orientation. LGBT supporters have overcome enormous challenges and risks to their own safety to shout out the abuses against the LGBT people. Sexual preference does not define a person; it is the personality that decides who you are in the society.

The journey of LGBT: lesbian, gay, bisexual and transgender community, in India has come a long way. This was the movement for the basic rights of community which has long struggled to be accepted by the society and law. Our society believes that the only acceptable relationship is heterosexual relationships; society does not accept the homosexual ones.

Now the question that arises is:

- How do people approach and interact with people of this community?
- What kind of discrimination this community has to face?
- Do they have all legal and fundamental rights like other have ?
- What are the impacts of discrimination on their lives?

This article discusses the history and evolution of the rights of LGTB community and what kind of discrimination they have to face in India.

INTRODUCTION

I want to live

Amidst the army of human beings

I want to live

*In the midst of the rays of the rising sun
Amidst the flowers and foliage of gardens
Of beauty and fragrance
How I wish I could get a little place
Amidst the hearts of living beings'*

-Rabindranath Tagore

The above poem of Rabindranath Tagore passionately advocates the natural right of Human Beings to lead a dignified life.

In India everyone has equal rights either it is male, female, or other gender. The LGBT stands for Lesbian, Gay, Bisexual, Transgender community. This LGBT community people are still fighting for their acceptance in the society, when we look at this society they faces lots of difficulties and most of the times they are abandoned by their family.

Due to our perceptions we make the LGBT community think that they are not acceptable in our society. In today's scenario even after modern thinking, acceptance of LGBT is still a struggle. They are people who are living a dual life and afraid of disclosing their real identity to their family.

India was introduced to the law against homosexuality about 80 years before the independence. The early battle was fought by **Aids Bhedbhav Virodhi Andolan (ABVA)** to enact the section 377 in 1994, but their petition was dismissed by court. A petition filed by **Naz Foundation** to Delhi High Court was also dismissed in the year 2003.

In July 2009, the High Court said that section 377 of IPC was a violation of fundamental rights and decriminalized the same. In 2015 Shashi Tharoor had moved a private member bill to do away with entire section but that was defeated in Lok Sabha by his own party members.¹

WHAT IS SECTION 377?²

¹https://www.google.com/search?source=hp&ei=XObIXualN9u7rQGojZOABA&q=shashi+tharoor+on+lgbt+2015&oq=shashi+tharoor+on+lgbt+2015&gs_lcp=CgZwc3ktYWIQAzoFCAAQgwE6AggAOgUIABCxAzoECAAQAz oGCAAQFhAeOggIIRAWEB0QHIC6BljXR2DXSmgAcAB4AIABkwGIAb0SkgeEMy4xN5gBAKABAaoBB2d3 cy13aXo&scient=psy-ab&ved=0ahUKEwjm7zy94DqAhXbXSsKHajGBEAQ4dUDCAc&uact=5

² <https://indiankanoon.org/doc/1201044/>

The IPC stated in section 377 unnatural offences. Whoever has carnal intercourse against the order of nature with any man and woman or animal shall be punishable with imprisonment for life, or with imprisonment if either description for a term which may be extended to 10 years.

This section was introduced in 1860 during the British Rule in India. This clause held that forms of sexual intercourse that were “against the order of nature” are offences against the law. Reasons offered for this opposition to sexual relations between member of the same sex were many. some called it a social vice and many even called the homosexuality an offence against the religion and culture. But section 377 ended up being a constitutional way to discriminate a specific group of Indian citizens.

HOW SECTION 377 IMPACTS LIVES OF LGBT COMMUNITY?

The Supreme Court’s decision to decriminalize homosexual behavior is the first step towards providing equal rights to LGBT community in India. It further opens the gates for the community to claim their right to marry, adopt, and have a family. As the judgment only dealt with the criminalization aspect of section 377, it can be expected that the laws on same sex marriage, adoption, and inheritance of LGBT community may soon follow.

This verdict decriminalizes homosexuality and rules that consensual adult gay sex is not a crime. The lives of LGBT may be impacted in following ways:

1. **RIGHT TO HEALTH:** Under article 21, the right to life is meaningless unless it accompanied by the right to health. The apex court recognized that the laws criminalizing same sex intercourse create social barriers to accessing healthcare and curb the effective prevention of HIV/AIDS.
2. **STRENGTHEN TRANSGENDER BILL:** The abolishing of section 377 gives way to strengthen the rights of transgender person bill, 2014. The bill was granted a legal right to the transgender community.
3. **FROM DENIAL TO FREEDOM:** Before the section 377 they have to face various problems and difficulties and discrimination by the Indian society. They are denied from acceptance in society to have constitutional right to have equal citizenship

4. **IMPACTS ON CINEMA:** There have been films tried to portray the social stigma that the people from LGBT community have to undergo due to non-acceptance for something as basic as their sexual orientation and preferences.

HOMOSEXUALITY IN INDIA

In ancient India line dividing from male to female and from heterosexual to homosexual were blurred. In India metaphysics, a world where all manifestation of the divine are said to exist. There is no space, not only for men and women but also for men with women's heart and women with men's need. But in current scenario in our society believes that the only acceptable relationship is of heterosexual marriages. Our society still opposes the homosexual marriages. Society discriminate them and they faces many problems when they go to places like police station or the hospital. This is of course, is an addition to the social stigma of being gay.

The problems which they have to face are as follow:

1. **SOCIAL EXCLUSION:** In India there is lack of sex education, we segregate on the basis of everything, ranging from cast to complexion. So why not on the basis of sex or gender.
2. **HOMELESSNESS:** After the disclosing their identity of homosexual, people don't accept them to live in their house.
3. **HUMILIATION:** They didn't get proper education, facing problem of homelessness they feel insecure. They always have a fear of their different sexual orientation and fear from getting humiliated in society.
4. **BARRIERS TO CARE:** The anxiety of fear won't vanish and they don't care about the health as the medical is also a part of society.

IS THE ATTITUDE CHANGING?

There is more awareness has increased among the society. But still India is exactly not a country known for being a leader on LGBT rights. But still we can see the progress in this aspect:

- Lucknow hosted its first gay pride march and people loved it.

- India witnessed its first open transgender wedding, and it received a lot of love online.
- Indian cinema cast its first transsexual woman as the leading actress, Anjali Ameer
- Two Bollywood movies Aligarh and Kapoor and sons, made a lot of people happy for their positive picture of gay.

IMPORTANT CASES ON SECTION 377

(1) **Suresh Kumar Koushal v. Naz foundation**³: In this case there is mainly 2 arguments are there; first, homosexuality is a criminal offence. Only parliament can decriminalize this courts cannot interfere in this. Second, right to privacy cannot be extended too much that offence can be committed under this, so right to privacy will not covers homosexuality.

(2) **NLSA v. Union of India and ors.**⁴ : in this case a loop hole comes forward that every existing Indian laws focused on binary gender only and rights of transgender community is not protected by any provision, that's why transgender community get discriminated. To deal with this loop hole Supreme Court of India recognizes multifaceted rights of the transgender community.

(3) **Puttaswamy case**⁵: In this case Supreme Court of India affirmed that right to privacy is our fundamental right.

(4) **Navjeet Singh johar v. Union of India**⁶: on 6th September 2018, the supreme court of India decriminalized all consensual sex among adults in private. Including homosexual sex.

CONCLUSION

The LGBT community people who want to reduce this discrimination can be open about their sexual orientation. Homosexual intercourse became a criminal offence from the introduction of section 377 of IPC in 1860. From 2001 to 2018 there were several efforts and petition made to decriminalize the law with Naz foundation playing a important role in it. On 6 September 2018 the

³ <https://indiankanoon.org/doc/58730926/>

⁴ <https://indiankanoon.org/doc/193543132/>

⁵ <https://indiankanoon.org/doc/127517806/>

⁶ <https://www.scobserver.in/court-case/section-377-case>

supreme court of India invalidated part of section 377 of the Indian Penal Code making homosexuality legal in India. Changes in social attitude will follow and are caused by changes in government policy towards gay and lesbian. There is a clear need to educate people about the challenges faced by homosexual and LGBT community people. This article makes clear that in India, both laws and attitudes are changing for the better and that legal change is not only a positive step in itself, but it can also help shift attitudes too.