
VOICES UNHEARD: LGBTQ+ NARRATIVES AND SOCIAL CHANGE

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"The beauty of standing up for your rights is that others see you standing and stand up as well."

- Cassandra Duffy

ABSTRACT

LGBTQ++ is an abbreviated term for lesbians, gay, bisexuals, transgender, queer and plus plus. It may refer to anyone who is non-heterosexual, non-heteromantic, or non-cisgender. 1. These communities typically commemorate pride, diversity, uniqueness, and sexuality. LGBTQ+ individuals have varying sexual preferences and occasionally differing sexual orientations. Members of this community have historically faced mistreatment due to their uniqueness. As a result of ongoing mistreatment and prejudice, these individuals are being denied various rights such as marital rights, equal standing in areas like employment, education, and more. Despite progress in recent years, LGBTQ+ individuals still face discrimination and marginalisation in many parts of the world. Hate crimes, bullying, and harassment are all too common for members of this community. This ongoing mistreatment highlights the importance of continued advocacy and support for LGBTQ+ rights. In addition to facing societal challenges, LGBTQ+ individuals also often struggle with internalised homophobia, transphobia, and other forms of self-doubt and shame. This can lead to mental health issues such as depression, anxiety, and substance abuse. Support groups, therapy, and other resources are crucial for helping LGBTQ+ individuals navigate these challenges and build a strong sense of self-acceptance and pride. It is essential for society to recognize and respect the diversity and uniqueness of LGBTQ+ individuals. The rights of LGBTQ in Indian legal systems are being protected by the courts. This scholarly article delves into various issues relating to LGBTQ and mechanisms for protecting their rights and a part of social justice.

Keywords: LGBTQ++, Homosexuality, Individual rights, Pride, Sexual orientation.

INTRODUCTION

Throughout human history, the topic of sexuality has consistently been a source of controversy for LGBTQ individuals. From ancient civilizations to the present era of modern liberal democracy, discussing sexual orientation in a neutral manner within the context of individual freedoms and equal opportunities has proven to be difficult. Certain groups of individuals, distinguished by their sexual behaviours and customs, often stand out when compared to societal norms. Finding solutions to the various issues arising from being unique remains challenging. As a minority group in relation to the majority, LGBTQ individuals have always faced challenges and stigma. The LGBTQ community is growing worldwide, with a presence felt in countries such as India, the United States, Britain, China, Japan, and others.¹ In recent decades, there has been a growing global focus on human rights issues concerning lesbian, gay, bisexual, and transgender (LGBT) individuals and other sexual minorities. The emphasis has been on the fundamental importance of these rights from a social, cultural, and ethical standpoint. Upholding these rights signifies a dedication to equality for marginalised communities and ensuring universal freedoms for all individuals. Implementing these rights to achieve equality involves efforts to eradicate discrimination and violence against LGBT individuals. It is evident that there is a pressing need for attention to these issues, as human rights organisations and researchers worldwide have documented numerous human rights violations, including discrimination, family rejection, violence, imprisonment, and various forms of exclusion experienced by LGBT individuals in all countries examined¹. India is a country of rich culture and heritage and it's known for preserving that culture. This makes it difficult for establishing social justice for the LGBTQ community. "So long as people face criminalization, bias and violence based on their sexual orientation, gender identity and sex characteristics, we must redouble our efforts to end these violations," Antonio Guterres, UN Secretary General, on 25 September 2018.

Understanding LGBTQ++

Nowadays, most people are familiar with the LGBTQ+ community. However, it is important to have a deeper understanding of the terminology. The umbrella term "Queer" encompasses a wide range of sexual orientations that are still being explored and defined, as indicated by the

¹ Research and documentation by Human Rights Watch, the International Gay and Lesbian Human Rights Commission (IGLHRC), and the United States State Department Country Reports on Human Rights Practices is extensive, among other sources.

symbol "+". The LGBTQ+ community continues to evolve and expand, with new terms and identities being introduced regularly. It is important for individuals to educate themselves on these terms and concepts in order to create a more inclusive and understanding society. By embracing the diversity within the LGBTQ+ community and respecting individuals' self-identified labels, we can create a more accepting and supportive environment for all individuals, regardless of their sexual orientation or gender identity. It is crucial to recognize and celebrate the unique experiences and identities of all individuals within the LGBTQ+ community, and to continue to advocate for equality and acceptance for all. Before understanding the homosexual community it's necessary to know about 'Sexual Orientation'

Sexual orientation: "refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender"² Homosexuality means sexual orientation towards the same gender. They are collectively and colloquially called the 'Queer community', 'Rainbow Community' or 'The Pride Community'.

Here are the definitions of the terms³:

Lesbian: Lesbians are individuals who are female and define themselves as gay, indicating that they are romantically or sexually attracted to other women.

Gay: The term "gay" is frequently employed to depict individuals who identify as homosexuals or homosexuality, predominantly referring to male homosexuals, although occasionally it is also used to describe lesbians.

Bisexual: Bisexuality encompasses experiencing romantic or sexual attraction towards individuals of both genders, while also being open to forming connections with individuals of any gender identity or sexual orientation.

Transgender: A transgender person is someone whose gender identity does not match the gender they were assigned at birth. The abbreviation "trans" is often used to describe this

² International Commission of Jurists (ICJ), "Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity", March 2007, available at: <https://www.refworld.org/docid/48244e602.html>

³ Khandelwal, A., 2023. A SocioLegal Study of Law Relating to LGBTQ in India Needs and Challenges.

phenomenon.

Transsexual: Individuals who feel uncomfortable with their assigned gender or have a gender identity that differs from their culture.

Intersex: Intersex is a condition where a person's genital or chromosomal traits do not clearly align with typical male or female characteristics.

Queer: The term "queer" is used to describe individuals who identify as a sexual or gender minority but are neither heterosexual nor cisgender. While it was once considered derogatory, queer scholars and activists have been reclaiming it since the late 1980s.

Traces Of Existence of Homosexuality in India

Ancient India has a well-documented history of homosexuality, which played a significant role in shaping the country's past. It had embraced and honoured all expressions of love, as evidenced by the presence of homosexual characters and themes in Indian religious texts. The Rigveda includes the phrase *Vikriti Evam Prakriti*, signifying that what may appear unnatural is actually natural. Additionally, the *KamaSutra* refers to lesbians as "Swarinis", highlighting their practice of marrying each other and raising children together. Hindu temples contain depictions that portray individuals of the same gender embracing or engaging in intimate acts, providing concrete evidence of same-sex relationships. Furthermore, references to homosexuality can be found in religious texts such as *Manusmriti*, *Shikhandi*, and even a chapter of the *Kamasutra* of Vatsyayana⁴ further confirming its existence in ancient Indian society. It is also stated: "Citizens with this kind of homosexual inclination, who renounce women and can do without them willingly because they love one another, get married together, bound by a deep and trusting friendship."⁵ There were instances of disapproving sexual activities within same sexual community but it was not an offence and there were few instances of homosexual relationships between the Mughal rulers also. Homosexuality was criminalised during British colonisation, being labelled as an unnatural offence that goes against nature in 1861. Unlike in ancient India, where the concept of something being 'against the order of nature' did not exist. This idea was introduced by the West and has persisted over time. Currently,

⁴ *Kama Sutra*, Chapter 9, "Of the Auparishtaka or Mouth Congress", Richard Burton, 1883 Translation

⁵ *The Complete Kama Sutra*, Alain Danielou. Rochester, VT: Park Street Press, 1994.

homosexuality is not explicitly defined in the IPC, leading to debates on whether it is 'against the order of nature'.

Evolution Of LGBTQ Rights by Judicial Activism

There has been a long history of discrimination and violence against the queer community. The implementation of Section 377 of the Indian Penal Code in 1860 exacerbated the situation. Many individuals were ostracised from society, subjected to mistreatment, and physically assaulted simply because their sexual orientation was deemed unnatural and contrary to cultural norms. The criminalization of homosexuality and queer relationships was a result of Lord Macaulay's introduction of Section 377 as part of Britain's attempt to enforce Victorian values on its largest colony.

“Section 377: Unnatural offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine. Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

Even if the sexual activity is consensual, the presence of the term "voluntary" in the law renders it illegal. Laws like Section 377 have been discarded in the majority of Western democracies, yet they remain in several post-colonial nations in Asia and Africa (excluding South Africa and Nepal). In the 1980s, the European Court of Human Rights declared that criminalising same-sex sexual conduct infringed upon the right to privacy. Britain, the creator of the Indian Penal Code and Section 377 during the colonial era, legalised homosexuality in 1967⁶. Several incidents have brought attention to the vulnerability of gay, lesbian, and transgender individuals in India due to Section 377. Men with homosexual inclinations who gather in parks and other public areas are frequently ensnared and extorted by law enforcement, who leverage the threat of punishment under Section 377. In response to such harassment, the arrest of men in Connaught Place park, New Delhi prompted the non-governmental organisation AIDS Bhedbhawe Virodhi Andolan (ABVA) to organise the first protest demonstration openly advocating for "gay rights" in August 1994 outside the Delhi police headquarters⁷. This

⁶ Miller A. Sexuality and human rights: discussion paper. Geneva: International Council on Human Rights Policy; 2009.

⁷ Geetanjali Misra (2009) Decriminalising homosexuality in India, Reproductive Health Matters, 17:34,20-28, DOI:10.1016/S0968-8080(09)34478-X<[https://doi.org/10.1016/S0968-8080\(09\)34478-X](https://doi.org/10.1016/S0968-8080(09)34478-X)>

demonstration came after the 1991 publication of *Less than Gay*, the first document in India to call for gay rights. In December 1999, the film *Fire* was released in major Indian cities, marking the first Hindi film to prominently feature a lesbian relationship. Despite approval from the National Film Censor Board, supporters of the Hindu fundamentalist group Shiv Sena responded by vandalising cinemas, assaulting movie-goers, and unsuccessfully demanding a ban on the film⁸. In the year 1999, the city of Kolkata played host to India's inaugural Gay Pride Parade. This momentous event, known as Calcutta Rainbow Pride, saw the participation of a modest group of 15 individuals.

Naz Foundation v/s Govt. of NCT of Delhi⁹

In 2009, a groundbreaking judgement was delivered by the High Court of Delhi in the case of *Naz Foundation v/s Govt. of NCT of Delhi*, declaring that deeming consensual homosexual intercourse between adults as illegal infringes upon the fundamental rights enshrined in the Constitution of India.

Suresh Kumar Koushal and another v/s NAZ Foundation and others¹⁰

The Supreme Court overturned the Delhi High Court's decision in the *Suresh Kumar Koushal and another v/s NAZ Foundation and others* case in 2013, thereby reinstating Section 377 of the Indian Penal Code.

NALSA v Union of India¹¹

In the case of '*NALSA v Union of India*', the Supreme Court reaffirmed the constitutional rights of transgender individuals under Articles 14, 15, 19, and 21 of the Constitution. This decision came months after a previous ruling in '*Suresh Koushal v Union of India*' where the court upheld the constitutional validity of Section 377 of the Indian Penal Code. Despite rejecting similar arguments in '*Suresh Koushal*', the Court in '*NALSA*' recognized the right of transgender individuals to determine their own gender and ordered the Centre and state

⁸ Ramasubban R. Political intersections between HIV/AIDS, sexuality and human rights: a history of resistance to the anti-sodomy law in India. *Global Public Health* 2008;3(2):22–38.

⁹ SCC 712, 2009 (4)

¹⁰ AIR 2014 SUPREME COURT 563

¹¹ 2014 (2014) 5 SCC 438

governments to legally recognize their gender identity, whether it be male, female, or the third gender.

KS Puttaswamy v Union of India¹²

The Supreme Court's historic ruling in the Puttaswamy case in August 2017 recognized the right to privacy as a fundamental right safeguarded by the Constitution, which brought hope and enthusiasm to LGBT activists.

Navtej Johar v Union of India¹³

The Supreme Court, in August 2018, considered a curative petition challenging the 'Koushal' ruling. A Constitution Bench composed of five judges invalidated IPC Section 377 to the extent that it deemed homosexuality as a criminal offence. The 'Navtej' ruling, on the other hand, emphasised that the LGBTQ community should be treated as equal citizens and highlighted the importance of eliminating discrimination in the law based on sexual orientation and gender.

Supriyo v. Union of India¹⁴

On October 17, 2023, the Supreme Court issued a ruling stating that it was unable to legally acknowledge same-sex marriages. This decision came after considering a series of pleas requesting legal approval for such unions. The highest court in the country has now placed the responsibility on the Parliament to establish the required legislation.

The battle against the LGBTQ++ community should come to an end, yet the fight for respect and dignity continues. Currently, Section 377 has been repealed.

World Wide Recognition of Human Rights of the Rainbow Community

The human rights principles enshrined in the Universal Declaration of Human Rights are compromised by the discrimination faced by LGBTI individuals. Unfortunately, acts of discrimination and violence against members of the LGBTI community are prevalent. Homophobic, biphobic, and transphobic attitudes persist in numerous cultures across the globe. The Universal Declaration of Human Rights (UDHR) encompasses various rights in its articles.

¹² 2018 AIR 2018 SC (SUPP) 1841

¹³ 2018 AIR 2018 SUPREME COURT 4321

¹⁴ W.P.(C) No. 1011/2022 Diary No. 36593/2022

Specifically, Article 1 emphasises the right to equality, while Article 2 focuses on freedom from discrimination. Article 3 highlights the fundamental rights to life, liberty, and personal security. Additionally, Article 5 emphasizes freedom from torture and degrading treatment. Article 6 recognizes every individual as a person before the law, while Article 7 emphasises equality before the law. Lastly, Article 16 addresses the rights to marry and establish a family. This applies to the LGBTQ community as they are also human beings who should be treated equally with dignity¹⁵. In a human rights context, lesbian, gay, bisexual and transgender people face both common and distinct challenges. Intersex people (those born with atypical sex characteristics) suffer some of the same kinds of human rights violations as lesbian, gay, bisexual and transgender, people. They also face institutional violence within healthcare systems, with lifelong consequences to their physical and psychological health. The United Nations has taken several measures to preserve and protect the rights of queer community. Safeguarding the human rights of LGBTI individuals does not necessitate the creation of new human rights laws or standards. States are mandated by law to ensure the protection of the human rights of LGBTI individuals, as outlined in international human rights law. These obligations are rooted in the Universal Declaration of Human Rights and various international human rights treaties.

The fundamental legal responsibilities of States in upholding the human rights of LGBTI individuals encompass:

- Protecting individuals from violence motivated by homophobia and transphobia
- Preventing torture and other forms of cruel, inhuman, or degrading treatment
- Abolishing laws that criminalise same-sex relationships and transgender individuals
- Prohibiting discrimination on the basis of sexual orientation and gender identity

Guaranteeing the freedoms of expression, association, and peaceful assembly for LGBTI individuals¹⁶. Over the past few years, numerous States have enhanced human rights safeguards

¹⁵ Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), UN GAOR, Res. 71, UN Doc. A/810 (1948).

¹⁶ United Nations Human Rights Office of High Commissioner “*OHCHR and the human rights of LGBTI people*” <<https://www.ohchr.org/en/sexual-orientation-and-gender-identity/about-lgbti-people-and-human-rights>> accessed on 24 February 2024

for LGBTI individuals through various measures such as:

- Removing criminal penalties for same-sex relationships
- Enacting legislation prohibiting discrimination
- Imposing penalties for hate crimes based on homophobia, biphobia, and transphobia
- Recognizing same-sex partnerships and facilitating the issuance of identity documents that align with transgender individuals' gender identity without undue obstacles
- Implementing training programs for law enforcement, correctional officers, educators, social workers, and caregivers to better support the LGBTI community
- Launching anti-bullying campaigns in numerous educational institutions

The U.N. has published several groundbreaking reports covering “discrimination and violence against individuals based on their sexual orientation and gender identity,” including guidelines and recommendations for national governments. United Nations Secretary-General Ban Ki-moon urged the international community to continue working for equal rights and fair treatment for lesbian, gay, bisexual and transgender (LGBT) people, reiterating the UN’s commitment to securing their human rights. “I will always fight for the equality of the LGBT members of our human family,” the UN chief said at a high-level side event of the UN’s LGBT Core Group, entitled “#Path2Equality: Global leaders discuss progress towards LGBT equality,” held at UN Headquarters in New York this afternoon¹⁷. The International Convention on Civil Political Rights of 1966, specifically Article 17, stipulates that individuals should not be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence. Furthermore, it prohibits any unlawful attacks on their honour and reputation. The article also emphasises that everyone has the right to legal protection against such interference or attacks. Similarly, the European Convention on Human Rights of 1950, through Articles 1 and 2, as well as Article 8, imposes an obligation on all member states to uphold human rights. This includes ensuring the right to life, the right to privacy, and the freedom to enjoy all human rights for all individuals within their borders. These obligations apply without any exceptions.

¹⁷ United Nations Sustainable Development Goals “Ban calls for efforts to secure equal rights for LGBT community” <<https://www.un.org/sg/en/content/sg/statement/2016-09-21/secretary-generals-remarks-high-level-side-event-lgbt-core-group>>

Human rights are the inherent entitlements of all individuals, irrespective of their cultural background or societal conventions. Advocating for the acknowledgment of LGBT human rights entails not only guaranteeing their access to healthcare services but also actively voicing concerns and taking action to promote the visibility of LGBT individuals. It necessitates comprehending the intricacies of LGBT issues and acknowledging the various forms of human rights abuses they face. In order for LGBT human rights to be acknowledged, it is imperative to translate these principles into comprehensive policies and laws at both the international and national levels. Additionally, it is crucial to challenge and confront prejudices so that LGBT individuals are treated with dignity and respect, and are granted the full spectrum of human rights they deserve.

Concluding Remarks

While the decriminalisation of homosexuality in India is a positive step towards acceptance, there is still a long way to go in achieving genuine and comprehensive acceptance of the LGBTQ+ community. Human rights belong to everyone and all are entitled to be treated in a dignified manner. The repeal of S.377 has brought a glimmer of hope and optimism for the LGBTQ community. This pivotal development has instilled them with newfound bravery and resilience to confront the social prejudices. This significant milestone has emboldened them to stand up against discrimination and fight for their rights with unwavering courage. Despite the recognition of the "third sex," transgender individuals continue to face significant challenges and are often subjected to cruel forms of torture. For instance, some are denied medical treatment by doctors who fear contracting illnesses from them, both mentally and physically. This is particularly distressing for transgender individuals with HIV, as they face dual discrimination for their infection, which is considered taboo in India, and for not conforming to the gender they identify with. It is disheartening that despite the longstanding presence of the hijra community in Indian history, they are not fully acknowledged as an integral part of society.

In spite of the numerous challenges faced, the LGBTQ community is making significant strides by actively engaging in various societal roles. From advocates to actors, there is a notable presence of individuals from the Pride community who are confidently asserting themselves. Overall, the LGBTQ community is making significant strides in various societal roles, proving that diversity and inclusion are not only beneficial but essential for a thriving and progressive

society. By actively engaging and asserting themselves in all aspects of life, LGBTQ individuals are challenging stereotypes, breaking down barriers, and creating a more inclusive and accepting world for everyone.