



CONCEPTUAL FRAMEWORK OF HOMOSEXUALITY WITH REFERENCE TO ITS CAUSES AND JUDICIAL CONCLUSIONS

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ABSTRACT

Homosexuality is one of the most controversial topics in a country like India where people are ready to judge each other based on their gender and sexual identity rather than on the principle of intelligible differentia. The fundamental concept of human rights rests on the cynosure of thinking that all humans irrespective of their looks, colour, sexual orientation, and gender identity are treated equally in the eyes of society. Anything which undermines that dignity is a violation as it violates the principle of equality and paves the way for discrimination. Such discrimination also violates the basic essence of the preamble of the Indian Constitution which mandates justice and equality of status for everyone in all spheres whether it is social, economic or political. Anything that questions or doubts their dignity comes under the periphery of violation as it violates the principle of equality before the law and leads to discrimination in society. The term LGBTQ is an acronym for Lesbian, Gay, Bisexual, Transgender, and Queer commonly known as Gay community. The term is used to describe various groups within the gay culture. With the passage of time and diversified perceptions of the term gay, homosexuality is used by different terms which are collectively called LGBTQ. Lesbian: - A woman who is sexually attracted to a woman.

The main aim of the researcher to discussed about factors responsible for LGBT People, to discuss the judicial decision and also tried to give focus on legal definition and its scope, lacunas, issues and challenges before LGBT minority people in India.

Keywords: Gay, Community, Constitution, Equality, Women.

I. Introduction

The 'LGBT' acronym stands for lesbian, gay, bisexual, and transgender. A lesbian is a woman attracted to another woman. Gay is used to denote men who are attracted to other men. Bisexual means that a person is attracted to more than one gender. A transgender person is someone whose gender identity differs from the one they were assigned at birth. People in the LGBT community are fighting for equal rights and acceptance. These rights are also referred to as necessary rights, birth rights, fundamental rights, natural rights or inherent rights. Such rights begin with the birth of individual and are necessary for human pleasure and growth. They are essential

for the material and ethical upliftment of the human pursuit.¹ Homosexual behavior has been described and documented in various forms through the ages: ancient temple carvings depicting same-sex love and the Kama Sutra are perhaps the earliest documentation of same-sex love in our culture. Sub-continent homosexuality has been accepted as a sexual practice- though generally as an identity. There have been other periods of history when same-sex love has been the subject of decision and condemnation. Denial of the reality of same-sex love in India was codified in Indian Penal Code² during British rule – a colonial hangover we have yet to get over. Despite over a century of section 377 however, homosexual behavior is tacitly accepted in many Indian cultures.³

Homosexuality in India is mostly a taboo subject in Indian civil society and for the government. The Indian Penal Code makes sex with persons of the same gender punishable by law.⁴ On 2 July 2009,⁵ the Delhi High Court held that provision to be unconstitutional with respect to sex between consenting adults, but the Supreme Court of India overturned that ruling on 11 December 2013, stating that the court has no power to decriminalize a law. On 2 February 2016, however, the Supreme Court agreed to reconsider its judgment, stating it would refer petitions to abolish section 377 to a five-member constitutional bench, which would conduct a comprehensive hearing of the issue.⁶

II. Meaning

The "Homosexuality" means attraction towards same sex. Sexual activity of humans as well as animals is an expected act. It forms the root of life on earth. Sexual activity is not just associated to giving birth but it plays a key role in social, emotional, physical, mental and other biological needs of human beings. The Universal Declaration of Human Rights assures a world in which everyone is born free and equal in dignity and rights. Yet, it is a petty guarantee for many hailing from LGBT (Lesbian, Gay, Bisexual and Transgender) community who are confronted with hatred, violent behavior and prejudice on daily basis. *The United Nations* have recognized extensive physical, sexual and psychological violence against LGBT people including murder, assault, kidnapping, rape, sexual violence as well as torture and ill-treatment. Human Rights are in fact, essential requirements in the form of certain claims of an individual recognized by the society and the state, without which one cannot live as human being. Every individual has, consequently, specific rights which are inherent in all individuals irrespective of their caste, creed, colour, religion, sex, language, ideology and nationality

III. LGBT SOCIETY IN INDIA: A HISTORICAL OVERVIEW

The term "Homosexual", coined in 1869 by the *Hungarian doctor Karoly Maria Benkert*, who wrote under the pseudonym Karl-Maria Kertbeny, was not in popular usage till the early 20th century. Mid-20th century

¹ Bina Fernandez, *Humjinsi, A Resource Book on LESBIAN, Gay & BISEXUAL Rights in India*, 1 (India Centre for Human Rights and Law, Mumbai, 1999).

² 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 term which may extend to ten years, and shall also be liable to fine.

³ Ibid.,

⁴ Section 377 of the IPC.

⁵ *Naz Foundation V. Govt. Of Nct of Delhi*, 2009.

⁶ Homosexuality in India Available at: https://en.m.wikipedia.org/wiki/Homosexuality_in_India, (visited on 07.04.2021).

homosexual activists preferred the term “homophile” over homosexual, seeing it as a more nonpartisan and acceptable option because it removed the word “Sexual” while positively declaring same gender attraction. Homosexuality in India has been a subject of discussion from old times to 21st century. Hindu texts have taken positions regarding the homosexual characters and themes. Rigveda, one of four canonical sacred texts of Hinduism says Vikriti Evam Prakriti (meaning what seems unnatural is also natural) which some scholars believe recognises homosexual dimensions of human life, like all forms of universal diverseness. Homosexuality means sexual desire or behavior directed toward people of one's own sex or gender i.e., when a person is attracted towards the same gender to which he belongs, the he is said to be Homosexual.⁷ It is not a new concept; it has been prevalent in India from a very long time. Ancient texts like Rig Veda which dates back to around 1500 BC and sculptures depict sexual acts between women as revelations of a feminine world where sexuality was based on pleasure and fertility. The description of homosexual acts in the Kamasutra, the Harems of young boys kept by Muslim Nawabs & Hindu Aristocrats, male homosexuality in the Medieval Muslim history like Malik kafur are some historical evidences of same-sex relationships. Amara Das Wilhelm in her book compiled years of extensive research of Sanskrit texts from medieval and ancient India, and proved that homosexuals and the "third gender" were not only in existence in Indian society back then, but were also widely accepted. In the Kama Sutra, a 2nd century ancient Indian Hindu text, the chapter "Purushayita" in the book mentions that lesbians were called "Swarinis".⁸ These women often married other women and raised children together. They were also readily accepted both within the 'third gender' community and ordinary society. However, these experiences started losing their significance with the advent of Vedic Brahmanism and, later on, of British Colonialism. Giti Thadani (a researcher) claims that Aryan invasion dating back to 1500 B.C began to suppress homosexuality through the emerging dominance of patriarchy. In the Manusmriti there are references to punishments like loss of caste, heavy monetary fines and strokes of the whip for gay and lesbian behavior. Imposing of these punishments clearly indicate that Homosexuality was practiced at that time. Since 1974, homosexuality ceased to be considered an abnormal behavior and was removed from the classification of mental disorder.⁹

LGBT in India has been documented for different times, in recent times due to the unbanning of homosexuality and promotions of LGBT rights has made caused large number of researches and opinions regarding the LGBT in India. No individual has been arrested under anti homosexuality in Indian history. While people have been arrested under anti-homosexuality laws, no individual is known to have been convicted of homosexuality in India in India post-independence. Construction of Hindu temples in stone began around the sixth century of the ¹⁰ Common Era. Construction reaches climax between the twelfth and the fourteenth century when the grand pagodas of eastern and southern India such as Puri and Tanjore came into being. On the walls and gateways of these magnificent structures we find a variety of images: Gods, Goddesses, demons, nymphs, sages, warriors, lovers, priests, monsters, dragons, plants and animals. Amongst scenes from epic and legends, one invariably

⁷ Amara Das Wilhelm, Tiritiya-Prakriti: People of the Third Sex: Understanding Homosexuality, Transgender Identity and Intersex Conditions through Hinduism 24 (Xilbris Corporation, 2013).

⁸ Hareem Fatima Nomani, Problems and Challenges of LGBT: Social Work Perspectives, Volume 10, Issue 2 (International Journal of Creative Research Thoughts, February 2022).

⁹ Rachit Sharma, Rights of LGBTQ in India and the Struggle for Societal Acceptance. volume 4 issue 3. (International Journal of Law Management & Humanities , 2021).

¹⁰ LGBT History of India”, Available at: <https://en.m.wikipedia.org/LGBThistoryofIndia>(visited on 09.04.2017).

finds erotic images including those that modern law deems unnatural and society considers obscene. Curiously enough, similar images also embellish prayer halls and cave temples of monastic orders such as Buddhism and Jainism built around the same time.¹¹

IV. CAUSES OF HOMOSEXUALITY

The reasons for such type of sexual behavior or choices are not yet fully known but several researches have been done and different experts have found different results or theories. The reasons may be biological, psychological or both.¹²

- **Biological reasons**

Several scientists have concluded that one is born with a particular kind of sexual orientation and it is the genes. Thus, it is a natural phenomenon. But no conclusive proof is there that homosexual behavior is simply a biological thing. There may be a factor of genetics in determining one's sexual choices but other factors might also be there.

- **Social and psychological factors**

It is a fact that socio-cultural environment affects the development of a child in significant ways. One's family, friend, society, and experiences decide how one views life, how one feels and how he or she acts. Thus, psychological factors are also very important in determining one's sexual preferences. But it is true that not one single factor but combination of many things determines one's sexual orientation. And whatever be the reason as it is natural for a person to decide what kind of food he/she wants to eat, what kind of living he/she wishes to have; similarly, it is also natural that with whom he/she wants to have sexual relationship either with opposite sex or with same sex. Sometime parents and family member may over-praise a boy or a girl with complements that¹³ are overdone, unrealistic, or insincere. They may feminize/masculinize him/her by using him/her in their make-believe play as another girl/boy, sometimes dressing him/her up as a girl/boy or even telling him/he that he/she is a girl/boy. They may develop Gender Incongruence-gender identity disorder where a boy/girl feels that he/she is a girl/boy by mind and soul, locked up in a male/ female body. This leads to Transvestism (also called transvestitism), the practice of dressing and acting in a style or manner traditionally associated with the opposite sex.¹⁴

- **Internet**

The internet has created a prolific gay cyber culture for the south Asian community. Khush – list, the first mailing list for LGBT south Asians, predominantly Indians in metropolitan cities and those living abroad, was established in 1993. In 1999, LGBT- India was established on e/groups, and later transitioned to yahoo groups. Such mailing lists, established well before the advent of social networking sites, continue to remain the mainstay for discussion

¹¹ *Ibid.*,
¹² Social issues homosexuality-in-India Available at: <https://www.indiacelebrating.com/social-issues/homosexuality-in-11-India/> (visited on 07.04.2022).
¹³ *Ibid.*,
¹⁴ What causes homosexuality”, Available at: <https://rationalistdebashis.wordpress.com/understanding-homosexuality/> (visited on 05.05.2023).

among middle-class, English-speaking Indians, and include LGBT-India, Gay Bombay, GoodasYou (Bangalore), PratiBimb (Hyderabad), and Movenpick/Orinam (Chennai). GayBombay.org (established in the late 1998) and Orinam.net (established in 2006) are among the oldest websites that function as online resources catering to a local (Mumbai and Chennai, respectively) and national readership. Dating websites provide an alternative way for meeting people, online communities also offer a safe and convenient environment for meeting gays all around India. The blogosphere has also not been immune to the modern emergence of a queer desi identity. Web logs highlight stories and issues specific to this marginalized community. With India becoming more open to homosexuality, several organizations in the country have recently started promoting the country as a destination for a gay tourist from around the world. Many online magazines like Pink Pages and Galaxy also publish regular issues.¹⁵

On September 11, 2013, India's first Queer Radio channel, Qradio- out and proud, completely dedicated to LGBT audience was launched. With variety of talk shows, music, debates etc, the channel now runs 24 hours a day. On February 2014, 'Wonderful Things Happen' was founded with the objective to serve the Indian lesbian/bi women community. It is India's first and exclusive match making service for gay women and their mission is to bring positive changes in the way Indian society perceives gay dating and relationships.¹⁶

- **Film and television depictions**

Though Bollywood has gay and transsexual characters, they have been primarily ridiculed or abused. There are few positive portrayals of late like Onir's 'My Brother Nikhil', Reema Kagti's 'Honeymoon Travels Pvt. Ltd', and Parvati Balagopalan's Rules: 'Pyaar Ka Superhit Formula' but they have been a few sporadic and not mainstream. There have also been a few independent films that deal with homosexuality like Sridhar Rangayan's Gulabi Aaina- The Pink Mirror, Girlfriend (2004 film), Yours Emotionally, 68 Pages and Ashish Sawhney's Happy Hookers.¹⁷ The first Indian film to deal openly with homosexual relations was 'Fire' by Indian- Canadian director Deepa Mehta. With its 1997 release in India it stirred up a heated controversy throughout the country. In 2004, The Journey (2004 film) Malayalam feature film written, directed and produced by Ligy j. Pullappally, inspired both by her short film Uli and a true story of two lesbian lovers in the south Indian state of Kerala. Fire is explicit in stating that the main characters enter their relationship due to the failure of their heterosexual marriages, sancharram: The Journey, the Malayalam name for the same movie, The Journey, is clearly a film about two lesbians who fall in love with each other.¹⁸

- **Organizations**

There are many organizations in many cities of India, such as Humsafar (Mumbai), alternative law forum (Bangalore), Sangama (Karnataka), Chennai Dost working for LGBT rights. Many of these organizations operate in a very informal way and locally funded. In Kerala, organizations named Queerla given a few faces to LGBT

¹⁵ "LGBT culture in India", Available at: https://en.m.wikipedia.org/wiki/LGBT_culture_in_India(visited on 14 07.04.2022).

¹⁶ *Ibid.*,

¹⁷ *Id.*,

¹⁸ *Id.*,

rights. Beyond NGO's and CBO's student movements which are registered under the government of India Srishti Madurai a student volunteer LGBTQIA and Gender queer movement based at Madurai. Chemistry club, a Queer youth campus was formed by Chennai Dost in 2011 to provide a support space for students in colleges and universities.¹⁹

V. Factors behind the problems of LGBT:

- LGBT witnesses' physical problem because of the societal norm that has been developed into society since childhood, related to the uniqueness of the body feature and how it defines the sexuality of a person.
- LGBT are mocked and judged by society for their behaviour and physical appearance, our society has its own definition for every behavioural aspect of individual, and if anything goes beyond societal definition that is considered to be immoral and is not acceptable.²⁰
- Lack of awareness and sensitivity is the major result of health issues faced by them, most of the medical practitioners are not aware about the problems of LGBT therefore there is no required treatment available for them which act as a barrier to come out and share their problem, and health problems that remain unanswered results in the major health problems.²¹
- Reason behind mental health issue is the discrimination on various levels that is being done to them. Homosexuality or LGBT is still a taboo in India; people make fun of them without even realising the damage they are causing to them, both mentally and physically. Discrimination on any basis in everyday life will make the person mentally exhausted.
- Most of the time they are not accepted by their families, and are thrown out of the house, since they don't have any source of income, they live a very poor and vulnerable life, they are often seen on traffic signals begging for money. We are responsible for this social problem of LGBT, they face this problem because we are not yet ready to accept them and that's why they are left alone in this society, struggling to make their life a little better.
- There are not very much job opportunities available for them, even though now employers have managed to provide job to them, they lacked in creating or making a comfortable and safe environment for LGBT, Comfortably and safety is very necessary for every individual at a workplace, without these two it's impossible for workers to work properly. LGBT often avoid to work because of uncomfortable and unsafe environment.²²

VI. Judicial Role on LGBT

- **Naz Foundation Govt. v. NCT of Delhi, 2009**²³

In July 2001, Lucknow police raided a park and detained a few men on the suspicion of them being homosexuals and then were charged under IPC²⁴. The police also arrested nine more men associated with 'Bharosa Trust', an NGO which was working to create awareness amongst people about safe sexual practices and STDs by

¹⁹ *Id.*,
²⁰ See Supra note-8
²¹ *Ibid.* also available at: [file:///C:/Users/anita/Downloads/SSRN-id4049099%20\(1\).pdf](file:///C:/Users/anita/Downloads/SSRN-id4049099%20(1).pdf). (Last visited on 20.07.2023).
²² *Id.*,
²³ Naz Foundation v. Government of NCT Delhi, (2009) WP (civil) No.7455/2001.
²⁴ Section 377 of IPC.

distributing pamphlets providing tips on safe sex to homosexuals.²⁵ These people were then accused of running a sex racket and were denied bail. As Gupta²⁶ argues, ‘the Lucknow incidents show that the mere existence of Section 377, even if it cannot and is not being enforced in prosecuting sexual acts in private, adds a certain criminality to the daily lives of homosexual men and puts them under the gaze of the law and a constant threat of moral terrorism’. After this, Naz Foundation (a non-governmental organization working on HIV/AIDS and sexual education and health since 1994) filed a petition in 2001 before the Delhi High Court challenging the constitutional validity of Section 377 of IPC.²⁷

The petitioner argued that Section 377 of IPC violated their fundamental right to life and liberty, right to privacy and dignity, right to health, right to equality and freedom of expression. It was also submitted that Section 377 undermined the public health efforts which aimed at reducing the risk of transmission of sexually transmitted diseases like HIV/AIDS, as the fear of prosecution under this Section prevented people from talking openly about their sexuality and lifestyle. Finally, in 2009, Delhi High Court held that Section 377 of IPC imposed an unreasonable restriction over the two consenting adults from engaging in sexual intercourse even in private. Thus,



²⁵ Arvind Narrain, *The Articulation of Rights Around Sexuality and Health: Subaltern Queer Cultures in India in the Era of Hindutva in health and human rights* 153 (2004)

²⁶ Gupta A. *Section 377 and the dignity of Indian homosexuals*. *Economic and Political Weekly*

²⁷ Naz Foundation. (n.d.), from Nazindia.org website: <https://www.nazindia.org/aboutus/> (last accessed on 3rd April, 2021).

it was in direct violation of their basic fundamental rights enshrined under Articles 14,²⁸ 15,²⁹ 19³⁰ and 21³¹ of the Constitution of India. The instant reaction to the judgment was of extreme elation from the sexual minorities across the nation while religious leaders condemned it with equal passion.³²

- **Suresh Kumar Koushal v. Naz Foundation, 2013**³³

After eight years of a long battle, When the LGBTQ+ community was just letting out a sigh of relief, various Individuals and faith-based groups outrightly rejected the idea of decriminalizing homosexual relationships as held by Delhi High Court in Naz Foundation Govt. V. NCT Of Delhi, 2009, citing India's rich history bathed in ethics and tradition. They filed an appeal before the Supreme Court of India to reconsider the constitutionality of Section 377. The division bench of Justice GS Singhvi and Justice SJ Mukhopadhaya in Hon'ble Supreme Court on 11th December 2013, overturned the judgment of the Delhi High Court and re-criminalized homosexuality.

²⁸ Article 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

²⁹ Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
 (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
 (3) Nothing in this article shall prevent the State from making any special provision for women and children
 (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

³⁰ 9. Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right
 (a) to freedom of speech and expression;
 (b) to assemble peaceably and without arms;
 (c) to form associations or unions;
 (d) to move freely throughout the territory of India;
 (e) to reside and settle in any part of the territory of India; and
 (f) omitted
 (g) to practise any profession, or to carry on any occupation, trade or business
 (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence
 (3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause
 (4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause
 (5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe
 (6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,
 (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
 (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

³¹ Article 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

³² Nirnimesh Kumar, Delhi High Court Strikes Down Section 377 of the IPC, THE HINDU, 2nd July 2009, New Delhi.

³³ Suresh Kumar Koushal & Anr v. Naz Foundation & Ors, (2013) WP (civil) No. 10972 of 2013.

The bench held that LGBT+ persons constituted a ‘minuscule minority’ and therefore did not deserve constitutional protection and further observed that Section 377 of IPC did not suffer from the vice of unconstitutionality and thus, is totally constitutional. Supreme Court vehemently ignored basic fundamental rights under Article 14,³⁴ 15,³⁵ 19³⁶ and 21,³⁷ just because LGBT constituted miniscule minority. Thereby, bypassing the essence of the Constitution of India.

- **Justice K.S. Puttaswamy (Retd) vs The Union Of India³⁸**

The apex court held that the right to privacy is an integral part of article 21 and it is extended to every individual irrespective of gender identity and sexual orientation. Thus, the bench gave the right to privacy to the members of the LGBTQ community and held that the state authorities must not interfere while exercising the practice of homosexuality.

- **Navtej Singh Johar vs The Union of India Ministry of Law And Justice³⁹**

The apex court gave its landmark judgment of decriminalizing all consensual sex including homosexuality. The court further held that section 377 violates articles 14,⁴⁰ 15,⁴¹ 16, and 19⁴² (1) of the Indian Constitution and it should not be exercised against the dignity and autonomy of any individual.

- **Shafin Jahan vs Asokan K.M.⁴³**

The order passed by the Supreme Court also stated that it is a fundamental right of every individual to choose a partner of his/her choice which can be extended to the same sex also.

VII. TRANSGENDER PERSONS (PROTECTION OF RIGHTS) Act, 2019⁴⁴

Transgender Persons (Protection of Rights) Act, 2019⁴⁵ was enacted with an objective to protect the rights of the Transgender Community by prohibiting discrimination against them. It is a significant step forward in protecting the rights of transgender individuals in the Country. The Act provides legal recognition of transgender individuals as a third gender, and recognizes their right to self-identification based on their gender identity. One of the major benefits of the Act is that it prohibits discrimination against transgender persons in education, employment,

³⁴ See supra-28.

³⁵ See Supra 29.

³⁶ See Supra 30.

³⁷ See supra-31.

³⁸ Justice K.S.Puttaswamy (Retd) v. The Union of India, (2018) WP (civil) No. 494 of 2012.

³⁹ AIR 2018 SC 4321.

⁴⁰ See Supra 34.

⁴¹ See supra-35.

⁴² See Supra 36.

⁴³ Shafin Jahan v. Asokan K.M, (2018) WP (crl) No. 366 of 2018

⁴⁴ The Transgender person (Protection of Rights) Act, 2019. Available at: [https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019#:~:text=The%20Transgender%20Persons%20\(Protection%20of%20Rights\)%20Bill%2C%202019%20was.the%20gender%20as%20signed%20at%20birth.](https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019#:~:text=The%20Transgender%20Persons%20(Protection%20of%20Rights)%20Bill%2C%202019%20was.the%20gender%20as%20signed%20at%20birth.) (Last visited on 13.07.2023).

⁴⁵ The transgender persons (Protection Of rights) Act, 2019, ACT NO. 40 OF 2019 gives president assent on 5th December, 2019. An Act to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

healthcare, and access to public spaces. The Act also mandates the creation of welfare boards at the State levels, which will be responsible for facilitating access to social welfare schemes for transgender persons.⁴⁶

The Act also makes provisions for transgender persons to obtain a certificate of identity, which will enable them to access various services and entitlements as per their self-identified gender. Additionally, the Act provides for the establishment of separate hospitals and clinics to provide healthcare services to transgender individuals. Moreover, the Act criminalizes offenses against transgender persons, including physical, sexual, emotional, and economic abuse. It also provides for the punishment of those who force transgender individuals into begging, or for those who deny them access to public places such as parks, hospitals, or restaurants.⁴⁷

Overall, the Government through Transgender Persons (Protection of Rights) Act, 2019 has provided major benefit to the transgender community in India. By providing legal recognition, protection, and welfare, the Act aims to create a more inclusive and equitable society for all.

VIII. Suggestions:

1. To create awareness about every gender and sexuality and how every individual is important in their own way, regardless of any Gender. And to let people know and understand that being of particular gender or to develop into particular sexuality in contradictory to the sex assigned during birth is not a choice but a natural and biological phenomenon.
2. To conduct/organize workshop with the direct participation of LGBT, to know about their problem and challenges they face in everyday life & Direct participation of LGBT to make policy and strategies for their well-being and to create a safe and comfortable environment.⁴⁸
3. To include topic of LGBT in school syllabus, so that one can understand the biological phenomenon of every gender and sexuality from childhood, this way we can stop new generation to discriminate or differentiate among every individual and to judge them on the basis of their sexuality.
4. To conduct workshop so that people can understand the only difference between gender and sexuality, that is their body functioning and nothing else and to make family members understand that if his/her child is different from sex assigned during birth, it is natural and there is no shame in accepting it.
5. To help LGBT in maintaining their confidence and accept themselves as they are, without getting trapped into any form of negativity regarding to their personality.

IX. Conclusion

Lastly concluded that the LGBTQ community not only faces gender inequality, violence, and harassment in India but also in different countries around the world. Till the 20th century, homosexuality was never given

⁴⁶ The Transgender Persons (Protection of Rights) Act 2019. Also available at: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2023/may/doc2023519200301.pdf> (last visited on 13.07.2023)

⁴⁷ Transgender Persons (Protection of Rights) Act, 2019 and its impact on the third gender. Also available at: <https://blog.ipleaders.in/transgender-persons-protection-rights-act-2019-impact-third-gender/> (Last visited on 23.07.2023).

⁴⁸ Legal Position of Lgbtq Rights In The Indian Judiciary. Available at: <https://theamikusqraie.com/legal-position-of-lgbtq-rights-in-the-indian-judiciary/> (Last visited on 24.07.2023)

recognition by the state as well as people and was recognized as a heinous crime or sin. In 2011, UNHCR released its first report on human rights and the LGBTQ community that mentions the provisions and the rights of the community including criminalization of homosexuality, discrimination against social violence and bullying, and many more. Despite these efforts, the UN's formal agencies face many obstacles in promoting awareness of the rights and protection dealing with homosexuality.

