

LEGAL IMPLICATIONS OF LGBT – AN ANALYTICAL STUDY

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ABSTRACT

Section 377 punishes whoever, voluntarily has a carnal intercourse against the order of nature. There has been a great evolution in the lives of the LGBT people. From the time they had to face many difficulties, now is the time for them to enjoy their rights. Gone are those days, where same sex intercourse was illegal. Now, they have their rights in their hands. Section 377 is decriminalised now. For the “OTHERS” category of people, this is a great step the government has taken, in their favour. There has been a great fight and revolt, that they had to go through to get what they wanted. The research also highlights the legal implications and provisions involved in detail. It deals with the abridgement of various articles in the constitution such as article 14, 15, and 21. Article 21 is violated because the section states the homosexual category people must be given their private space just like the others, and what they do in their confined space isn't going to affect the society or the others around them. Privacy is a very essential aspect in everyone's lives and that shouldn't be violated in any circumstances. The next fundamental right, section 14 and 15 talks about discrimination in general and how this injustice affects the TRANSGENDERS and their rights as a whole. The above articles states everyone must be treated equally, and all must be given equal treatment and protection. Article 15 expresses that everyone must be respected, irrespective of their age, sex, gender, and place of birth. The last and major part of the research talks about the transgender persons (protection of rights) bill, 2016, which states all the rights given to transgenders exclusively and all the offences or penalties for the violation of these rights. In addition, it also states the reforms or measures taken by the government and the parliament for their betterment.

INTRODUCTION

LGBTQI refers to a broad coalition of groups that are diverse with respect to gender, sexual orientation, race, ethnicity and socioeconomic status. Having 3 different categories of gender everywhere viz. male, female and others, LGBTQI, will come under the umbrella of

OTHERS. Having said this, it is important to understand what LGBTQI (lesbian, gay, bisexual, transgender, queer/ questioning, intersexes) is.

People usually have a notion about the term LGBTQI, and assume that it is all the same, but it's not. The only thing they share is that they belong to a common category called others and have a common departure from heterosexuality and gender norms. Each letter in the umbrella – like word (LGBTQI) denotes different meanings. Lesbian is females getting attracted towards other females, whereas gay is males getting captivated towards other males. Bisexual, like it is implied by the term, is a person getting attracted towards his/ her own and opposite gender. Transgender as wrongly understood by many, is a sub- category wherein a person does not belong to either of the sexes (male or female). Q stands for questioning/queer determining the sexual identity or the gender of a person. A person is categorized into the category of intersex if the person does not have the ability to fit into either male or female.

EVOLUTION

It is well known that same gender sex is not accepted in countries like India. There were many objections raised since the early times. In 1924, after the publishing of the Hindi short story named chocolate in the newspaper, male-to-male sex among urban, educated men was revolted against. In the year 1929, Mahatma Gandhi thought and told that if homosexuality is not looked upon properly, then the consequences would be serious. But there was an opposite trend that began in the year 1936, where Firaq Gorakhpuri, a great Urdu poet, in his essays, wrote for the homosexuality and also told that there were many great poets, who were homosexual or had expressed their desire towards the same, in their works. In 1974, a Malayalam book named 'Randu pettikul', the author prays for the growth and prosperity of lesbianism, which was the first ever Indian book that gave a serious attempt in discourse in the issue of homosexuality. In 2003, the Indian Government said that if homosexuality is decriminalised, then, it would lead to open and delinquent problems. Homosexuality, which was a criminal offence under chapter 16, section 377 of Indian Penal Code 1860, was not decriminalised even after 70 years of Independence. The LGBT people had to struggle a lot to get justice. There are instances where gay people were abducted and raped, they were raped by the police too. In December 2013, after the Nirbhaya case, Supreme court stated that amending or repealing Section 377 should be a matter left to the Parliament, not the judiciary. When in January 2014, central government filed a review petition, Supreme

court dismissed it. By December 2015, Parliamentarian Shashi Tharoor introduced a Bill to Lok Sabha for the decriminalisation of Section 377. But inspite of this, the Bill was rejected by the house by a vote of 71-24. In February 2016, the review petition filed by Naz Foundation was investigated by a five-judge bench in the supreme court. Even in 2016, during the West Bengal elections, though the transgenders were allowed to cast their vote in the 'others' category, homosexuality was still a criminal offence having a sentence of up to 10 years in jail. When this case was taken up, finally on 6 September 2018, gay sex got decriminalised and homosexuality gets legal approval and recognition.

Legal provisions under section 377

Section 377 refers to unnatural offences and states whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or for specific period.

Section 377 of course in all means abridges fundamental right to privacy i.e. section 377 of the Indian constitution. This is because the right to choose a person's life partner has been endowed with a lot of restrictions and rules. Every individual must be given the autonomy to express their choices without fear of persecution and criminal prosecution. When the liberty of a single person has been taken away under some vague stipulation or is considered as an immoral and a 'wrong' behaviour by the society and in such circumstances when an individual, despite knowing the laws and facts, exercises his/her choice in a confined/private space, he/she shouldn't be punished or penalised. Criminalising section 377 is not going to affect or disturb any other individual if there is no public display of affection. The societies morale and ethics must be considered as important but that shouldn't be the only aspect that must be taken. For example: pre-marital sex was not acceptable by the society for a very long period until very recently.

Different people have different views about various things and taking every single point of views and aspects into account would complicate issues. Same sex marriage being taken as immoral shouldn't be the only base for its criminalisation. Criminalising it should be supported by other valid, essential, or real points. Legalising same sex marriages wouldn't cause a bad impact on the society, as wrongly understood by the society.

Majority of people contemplate that if it becomes decriminalised then soon a plethora of people would get persuaded and influenced by it and start considering it as a viable option.

This is a very wrong notion and that's not how it works. Being attracted to the same sex is a natural phenomenon and it's something which nature gives. It shouldn't be despised or looked down upon. It is also a personality that should be respected. Demolition of individual identity would lead to abridging of intrinsic dignity that periodically encapsulates the values of choice and freedom of speech and this in turn would lead to a lot of other problems, such as depression, decreasing levels of self-esteem and confidence. Thus, they shouldn't be isolated and instead be supported by people around them.

It is also to be noted that it's not just the homosexuals who have been denied of their rights. The transgenders and the transgender community also face a lot of problems and discrimination in the society. The transgender community have been denied of a few fundamental rights such as article 14 which provides the right to equality. It declares that the state shall not deny to any person the equality before the law or equal protection of laws within the territory. Under this article the government strives to provide special protection to hijras and transgenders. The court declared that firstly they should be given legal recognition of their actual gender identity such as male, female or third gender and must be made to feel part and parcel of the society instead of being alienated and kept aloof. In addition, separate forums must be formed to address their problems and solutions must be brought about making them feel normal. apart from these, special reservations must be created to extend their rights in every sphere possible. However, all this was only stated in the constitution, but no real steps or, measures seem to be implemented. This country has 4 million hijras and yet they have been despised or looked down upon. This indiscriminate alienation and discrimination have led to major problems such as unemployment among themselves, and thus forcing them into menial and cheap occupations such as prostitution, begging, burglary etc. The condemnation can be simply and plainly attributed to this.

There is also a clear abridgement of article 15(1) wherein the state prohibits discrimination based on religion, race, caste and sex, place of birth or any of them. The term "sex" also includes the transgenders. generally only women are taken as the weaker sex and are intended in the clause but transgenders and the discrimination which they face must also be taken into consideration.

In view of the increasing troubles and problems faced by the third gender category people, the Lok Sabha passed The Transgenders Persons (protection of rights bill), 2016 to give

transgenders equal rights and protection under the law. The aims of the bill are to prevent discrimination in all forms and issuing of a certificate as a proof of identity and establish rights under this bill. The bill contains in it chapters such as prohibition of certain acts which states all the rights which could be enjoyed by them exclusively. The bill also expresses the grounds or bases in determining whether a person is a transgender or not and all the proofs that one would be require as evidence. Knowing well, the sense of insecurity and inferiority complex they are going through the bill also includes the welfare schemes brought about by the government and the measures that must be implemented by them to safeguard their rights. an exclusive council has been set up to view the grievances filed by the transgenders and to come up with solutions for the same. A major part of the bill is the offences and penalties discharged by the court of law if there are violations of their rights and if harm of any sort has been caused them in any form. However, these rights have been restricted and limits have been well placed in a way such that they have been well protected and are provided with freedom and liberty but at the same time not too much liberty at their disposal which they can misuse.

CONCLUSION

The article 377 pertaining to homosexuality has undergone a tremendous change in the recent years. Not only that, even the people belonging to LGBT category had to go through a lot of difficulties to get success and justice. The decriminalising of section 377 would be a great advancement in their lives.

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