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SOCIETY, LAW, AND LGBTQIA+ RIGHTS: CHALLENGES AND OPPORTUNITIES IN LEGAL FRAMEWORKS

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ABSTRACT

The legal recognition of the rights of the individual belonging to the LGBTQIA+ individuals has always been a subject of global debate in the contemporary world and have always been influenced by the societal norms and cultural values. This paper critically examines the legal framework governing the issues of LGBTQIA+ individuals, including the struggles they face for social existence and the discrimination in the access to the legal rights. By analysing the case laws and pivotal legislative reforms this study identifies the challenges embedded within the historical legal prototype that has been continuously controlling over the lives of the LGBTQIA+ individuals leading to engendering inequitable practices. Furthermore, this paper also assesses the opportunities that could lead to legal reforms and policy interventions which could lead to fostering a better equitable legal landscape.

This paper also leads to illuminate the prospective legal strategies and reform which could lead to recalibrating the framework according to the contemporary principles of fairness and inclusive with the constitution. The analysis advocates for a harmonized approach that leverages legal innovation to fortify protection for LGBTQIA+ individuals into our legal framework.

KEYWORDS: LGBTQIA Rights, Jurisprudence, Judicial Activism, Equality, Anti-Discrimination Law, Policy and Statutory Reform, Constitutional Law, Socio-Legal Analysis

1. INTRODUCTION

The society across the globe through systematic exclusion has always left the people belonging LGBTQIA+ community scanner state of extreme poverty and marginalised. The society has always justified exclusion through sociocultural norms and by applying legal sanctions¹. Globally the people belonging to the LGBTQIA+ community have always faced institutional discrimination, but this has not let to the progressive countries having been left out of granting the equal rights to the people belonging to the LGBTQIA+ individuals. Even today in the 21st century the barriers to economic and social and economic participation remains this is because of lack of legal recognition further

leading to non-acceptance by the society.

²The legal system being the legislative executive and the judiciary with the laws are often reflection of what the society as a community is. It often has power to change the mindset of the society along with the power of changing law and order of a nation, this also sometimes play a crucial role in either reenforcing or dismantling the various kind of discrimination faced within the society. The most recent example of the reinforcement of discrimination in the lives of people belonging to the LGBTQIA+ individuals is seen in The United States of America where the president Donald Trump reinforced the existence of only two genders male and female. This has led to

a huge change in the mindset where the other people like transgenders can be side tracked in the society and could be denied the employment across the nation which could lead to degrading their lifestyle. Even in his previous term the president Donald Trump banned the transgenders to be employed in the military services. Such type of anarchy of power often lead to destroying millions of individuals who are in utmost need of upliftment and recognition in the society.

However, in India there have been progressive developments in law making the lives of the people belonging to LGBTQIA+ individuals where we have seen due to the judicial activism the formation of The Transgender Act, 2019 came to effect because of the judgement of NALSA. Furthermore, the decriminalisation of section 377 of the Indian Penal Code was also a blessing after the judgement of *Navtej Singh Johar versus Union of India*. This has always been seen as a progressive shift forward for the nation with an sustained efforts to harmonise legal structures with contemporary principles of equity, fairness, and human rights. The interaction between societal norms cultural values and legal framework have created both barriers as well as opportunities for formation of laws relating for the LGBTQIA+ individuals which demands a critical examination.

2. HISTORICAL CONTEXT

When we consider post constitution or post independent history, the laws that that lead to problems in the life of the LGBT community is shown in this chapter like it was not only section 377 of the IPC that was discriminatory in nature post India's independent, or we can say post constitution there was an act called The Criminal Tribes Act, 1871 which made certain people of the society being born as a criminal. The transgender was also considered as criminal under this act if they perform acts like dancing in public, appeared to be dressed like a woman, play music, take part in exhibition and were also reasonably considered as kidnappers. Also, if a eunuch as a boy under the age of 16 under his control or is residing in his home could be punished within imprisonment term of 2 years or fine or both. The Criminal Tribes Act, 1871 was also referred in the *NAZ* foundation judgement judges referring to the act said that while the act has been repealed the criminality

upon the hijra community is still prevailing and visible in the society. The transgender identity demonstrates the relational and fragmented nature of identity and challenges the distinct separation of categories this is one of the reasons why their bill should be taken seriously.³

The legal system has always been responsible in reinforcing the criminalisation of heteronormativity while having restrictive definitions of marriage and family which has led to the non-recognition of non-binary and transgender identity legally.⁴ The colonial era laws had criminalised the existence and relationship of people belonging to LGBTQIA+ individuals, despite being repealed in the home country back who were two introduce them. To give an illustration section 377 of IPC which criminalised the sexual act of a homosexual individual was a vestige of British colonial rule, criminalized consensual same-sex relationships until it was read down in *Navtej Singh Johar v. Union of India* (2018).⁵ Similarly, the legacy of sodomy laws in the United States persisted until the landmark ruling in *Lawrence v. Texas* (2003), which struck down anti-sodomy laws as unconstitutional leaving lasting scars on legal frameworks and societal attitudes.

While on the other hand the LGBQIA+ identities have been existing throughout centuries where some civilizations enjoyed its existence and some demonised its existence. India in their ancient period Accepted its existence which is reflected in a widely known book called as kamasutra. '*Vikriti Evam Prakriti*' in Rig Veda meant whatever is unnatural is also natural, as a result the transgenders were also considered a part of our natural coexisting society, some of the areas also considered the transgenders '*Devi*' (Goddess).

3. CHALLENGES IN LEGAL FRAMEWORKS

Religion has shaped the way a human being behaviour and it was up till now 200 years before the countries were ruled in the name of the religion. With the development of democracy the religion did not vanish the rule of law does not mean the rule of religion decreases by any value. India and the world is full of religion and cultural diversity. There has always been debates between law and morality, what forms and shapes morality has direct connection with

the religion connected to the moral nature. The three most influential and populated religion preached are Hinduism, Christianity and Islam they have clearly mentioned what a relationship between two human beings should be like and have clearly and directly reflected as of how same sex relationships should be treated. The Political leaders who belong to National party such as (BJP) also cleared their opposite stand on homosexuality claiming it to be against Indian morality and Hindu culture⁶

It is very difficult for the people belonging to LGBTQIA+ individuals to ascertain the human rights as many jurisdictions have criminalised same sex relationships. This has led to no legal safeguards against discrimination in employment, healthcare, and housing for LGBTQIA+ individuals.⁷ Many individuals belonging to the LGBTQIA+ community face restrictive legal requirements for changing gender markers on identification documents, often requiring sterilization or medical interventions.⁸

4. LEGISLATIVE REFORMS AND CASE STUDIES

The legislative body has always opposed the formation of laws relating to LGBTQIA+ individuals but the judiciary has always been a saviour in safeguarding the rights of being created equal through judicial activism. The landmark judgments like *Obergefell v. Hodges* (2015) of The United States Of America, which was responsible for legalization of same-sex marriages in USA and *Toonen v. Australia* (1994), which led to the decriminalization of homosexuality in Tasmania, illustrate the transformative power of judicial activism and judicial intervention.⁹ Similarly in India we have seen the instances of judicial activism in cases like *NALSA v Union of India* which has led to the formation of The Transgenders Act, 2019 which is responsible for the recognition of the lives and gender of a trans individual. The judgement in the case of *Navtej Singh Johar* has also made a homosexual individual feel safe while indulging in love and affair situation. Before *Navjot Singh Johar* case in many instances section 377 of the Indian Penal Code was used as a threat to both men and women belonging to LGBT community.

While there have been some developments in law to aid the lives of an individual belonging to LGBTQIA+

community there's certainly have been laws which discriminates the homosexual and the heterosexual, the family law is exemplary evidence of it, where an homosexual individuals right to get married or have a legal association is infringed. India has already legally recognised the existence of an individual belonging to LGBTQIA+ individuals but to ensure substantial equality robust legal mechanisms are required which can lead to strong policy framework and mechanisms. Key international legal instruments, such as the Yogyakarta Principles, provide a foundation for guiding national policies on gender identity and sexual orientation.¹⁰ On the contrary the legislative reforms varied across nations with a few of them protecting the rights of the community. The disparities remain in areas such as adoption rights, military service, and protections against hate crimes¹¹.

5. POLICY AND SOCIAL INTERVENTIONS

A human should by birth should enjoy all the rights that a sovereign provides and should be equal for every citizen of the sovereign, he should also be allowed to live his life with dignity. Policy interventions play a major role in cultivating an inclusive society for LGBTQIA+ community. While legislation establishes the foundation for equal rights, the social intervention requires advocacy and efforts to help address deep-seated discrimination and marginalization against LGBTQIA+ community. To achieve meaningful legal and social transformation which can lead to a better life and future for LGBTQIA+ individuals, it is important to accept and adopt a multi-faceted approach that incorporates legal reforms, educational initiatives, and societal sensitization including the enactment of comprehensive anti-discrimination legislation, judicial activism, and community-driven legal advocacy. The necessity of harmonizing domestic legal frameworks with international human rights standards is also emphasized as a crucial step toward making a life better for the individuals belonging to LGBTQIA+ community. Incorporating LGBTQIA+ inclusive in schools curricula fosters awareness and reduces stigma attached to LGBTQIA+ community. Comprehensive sexual education should be included in schools and encourage discussions on gender identity, sexual orientation, and diversity to create an positive environment and acceptance from an early age.

Employers should implement anti-discrimination policies to provide diversity and training which help in creating a LGBTQIA+ employee support group to promote inclusivity in professional settings. Workplace protections and safeguarding LGBTQIA+ individuals from bias, harassment, and job insecurity can lead to a positive work atmosphere and attitude. Strengthening legal aid programs which can lead to and assurance that an individual's facing discrimination would have access to justice. Non-governmental organizations play a pivotal role in offering pro bono legal services and advocating for policy reforms which can often lead to educating a society full of bias. Government, mainstream media and civil society organizations should utilize media to challenge stereotypes and normalize diverse sexual orientations and gender identities which can lead to stop positive representation that could help shape progressive societal attitudes.

6. CONCLUSION

The legal recognition and safeguarding the rights of LGBTQIA+ community continue to be a complex and evolving issue which is shaped by historical precedents, societal norms, and political ideologies. Despite notable advancements achieved through judicial rulings and statutory reforms, entrenched systemic inequalities remain pervasive. There is a critical need for sustained legal advocacy, progressive policy development, and a multidimensional approach to dismantling discriminatory legal structures, ensuring that LGBTQIA+ individuals receive comprehensive and equal protection under the law. The path to achieving comprehensive legal parity for LGBTQIA+ individuals necessitates proactive governmental intervention, legislative amendments, and policy frameworks that acknowledge and affirm their fundamental human rights. By enacting inclusive legal reforms, the state can ensure that LGBTQIA+ citizens are not merely tolerated but are fully integrated and protected under the law, thereby fostering a society that genuinely upholds the principles of equality, justice, and human dignity.

Although significant legal strides have been made in securing LGBTQIA+ rights, formidable institutional and societal challenges persist. This research

has helped in exploring the historical evolution of LGBTQIA+ legal struggles, the prevailing structural impediments, and potential avenues for reform. However, legislative advancements alone are insufficient to drive substantive change; they must be reinforced by targeted social policies and proactive governance measures. To cultivate a truly inclusive and just legal framework, a collaborative effort among lawmakers, policymakers, civil society organizations, and advocacy groups is essential. By fostering intersectional approaches and promoting cultural transformation, it becomes possible to construct a legal and social environment that upholds the dignity, and rights of LGBTQIA+ individuals.

REFERENCES

1. Sanders, D. (2018). "Human Rights and Sexual Orientation in International Law." *International Journal of Human Rights*, 22(3), 381-405.
2. Human Rights Watch (2020). *LGBT Rights and Legal Reforms Worldwide*.
3. Graham Mayeda, 'Reimagining Feminist Legal Theory: Transgender Identity, Feminism and the Law', *Canadian Journal of Women and Law*, Vol. 17 (2005).
4. Foucault, M. (1978). *The History of Sexuality*, Vol. 1: An Introduction. Pantheon Books.
5. Foucault, M. (1978). *The History of Sexuality*, Vol. 1: An Introduction. Pantheon Books.
6. BJP President Rajnath Singh cleared Partys stand on Homosexuality after the "supreme Court of India overturned the Delhi high court judgment which has legalized consensual private sexual acts of adult homosexuals. He said "We support section 377 because we believe that homosexuality is an unnatural act and the court does not have to legalize or illegalize such a thing ., pg. no.10, Hindustan times, Delhi (15th December, 2013)
7. International Commission of Jurists (2007). *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.
8. Stychin, C. (2003). *Governing Sexuality: The Changing Politics of Citizenship and Law Reform*. Hart Publishing.
9. Katyal, S. K. (2016). "The Functional Case for Laws Targeting Anti-LGBT Discrimination." *Harvard Law Review*, 129(5), 1493-1535.
10. International Commission of Jurists (2007). *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*.
11. Sanders, D. (2018). "Human Rights and Sexual Orientation in International Law." *International Journal of Human Rights*, 22(3), 381-405.