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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

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LOVE KNOWS NO LABELS: NAVIGATING THE JOURNEY OF LGBTQIA+ COMMUNITY

AUTHORED BY - AHANA DOKADIA

ABSTRACT

The recent Supreme Court judgement on same sex marriage led by five judges bench, consisting of Justice D.Y. Chandrachud, Justice S.K. Kaul, Justice Ravindra Bhat, Justice Hima Kohli, and Justice P.S. Narasimha had stirred widespread disappointment among LGBTQIA+ community. The judgement leaves queer people with long standing struggle ahead for equality and is a huge legal setback to the queer community in the country. This article aims to discuss recent Supreme court judgement on same sex marriage and other Supreme court judgement on LGBTQIA+ community and make an analysis on the background of article 377. The article also discusses the basic rights of LGBTQIA+ community and the India's socio-cultural belief and custom regarding same sex relationships and how over a period of time it changed its mindset.

INTRODUCTION

What do you mean by transgender person

According to the Transgender Persons (Protection of Rights) Bill, 2016, a transgender is a person whose gender identity, gender expression or behavior does not conform to their biological sex. The bill defines a transgender person as a male or a female partly, or a combination of both, or neither male or female. In addition, as per the transgender person act, 2019, a transgender person is a person whose gender does not conform to the gender assigned at the time of birth and include trans-men, trans-women, gender-queer person and a person with intersex variation and person with socio-economic identities such as kinnar, hijra, jogta, aravani. The constitution of India has provided them certain rights however, the recent Supreme court judgement had led to widespread disappointment. With growing times, the position of transgender persons are improving.

What is LGBTQIA+

LGBTQIA+ is a short form for lesbian, gay, bisexual, transgender, queer, intersex and asexual. The addition "+" stands for all other identities not included in this abbreviation. It defines gender

and sexuality in others ways.

Background of article 377

Article 377 of Indian Penal Code is a colonial era law. It is an act which criminalize homosexuality. It criminalized all sexual acts 'against the order of nature'. It was referred to as 'unnatural offence' and this law prosecute people engaging in oral or anal sex along with homosexuality activity. The constitution validity of section 377 of Indian Penal Code was challenged in the case of Naz foundation, they filed a lawsuit to allow homosexual relations between two consenting adults. However, Delhi high court dismissed the petition.

Article 377 was modelled on buggery act, this section of buggery act was drafted by Thomas Hacula. However, Supreme court played an important role in decriminalizing section 377 of IPC in 2018 in the case of Navtej Singh Johar v. Union of India. The Supreme court in this case allowed consensual adult gay sex saying sexual orientation is natural and one has no control over it.

Section 377 of Indian Penal Code says: whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be imprisonment of either description for a term which may extend to ten years and shall be liable for fine. Article 377 prohibited consensual sexual intercourse between same-sex people and categorized it as an 'unnatural offence' which is 'against the order of nature'.

Transgender's right

The Constitution of India under article 14, 15 and 16 talks about right to equality as a fundamental right. These community had always faced discrimination. The transgender person (Protection of Rights) bill, 2019 was introduced in Lok Sabha by minister of social justice and empowerment Mr. Thaawarchand Gehlot. The bill later became an act after President's assent.

The act prohibits discrimination against transgender person, including denial of services and unfair treatment in relation to – (1) Education (2) Employment (3) Healthcare (4) access to goods, facilities, opportunities available to the public (5) Right to movement (6) Right to reside, rent or otherwise occupy property (7) Opportunity to hold public or private office (8) Access to govt. or private establishment in whose care and custody a transgender person is.

Employment – The act protects the transgender person against any discrimination in employment matters and held that no government or private institutions can discriminate against a transgender person in employment matters, including promotion.

Education – The act provides education facilities to transgenders without discrimination.

Right to reside – The act also protects their right to reside. It denies unfair treatment with regards to right to movement.

Healthcare – The act obliges government to take steps to provide healthcare facilities to transgender persons including separate HIV surveillance centers and sex reassignment surgeries. Despite all the rights, the recent Supreme court judgement in the case of Supriyo v. Union of India had led to widespread disappointment among the communities. The five judges bench of the Supreme court announced a 3:2 verdict on petition seeking the right of the LGBTQIA+ community to marry and choose family. The judgement does not legalize same sex marriage, placing it upon the parliament and state government to decide if non – heterosexual union can be legally recognized.

PROBLEMS AND ISSUE RAISED

In our society, homosexuality is not considered normal, LGBTQIA+ community had faced many challenges throughout the time. They face discrimination when it comes to education, employment, healthcare facilities etc. They also faced a lot of harassment. However, throughout the time Supreme court played an important role in providing them their legal right. However, as earlier discussed the recent Supreme court judgment in the case of Supriyo v. Union of India had broken hearts of many people.

Supriyo v. Union of India

Two same-sex couple Supriyo Chakraborty and Abhay Dand, as well as Parth Phiroze Merhotra and Uday Raj Anand, filed a writ petition in Supreme court challenging the constitutional validity of Special Marriage Act, 1954 which restrict marriage to a ‘male’ and a ‘female’. Their arguments were firmly grounded in the belief that non-inclusion of same-sex marriage infringes article 15 of our Indian constitution, which is a fundamental right. In this case, the majority judge refused to include same-sex marriage in Special Marriage Act, 1954. They held that right to marry is not

a fundamental right and they emphasized that it is upon the parliament to make amendment in the Special Marriage Act, 1954. According to them, it is upon the parliament to make determination regarding legalization of same-sex marriage. Justice D.Y. Chandrachud and Justice Hima Kohli held a contrary viewpoint. They firmly asserted that right to marry is a fundamental right.

Although the recent judgement of Supreme court on same-sex marriage led to widespread disappointment, the courts had been instrumental in upholding and even reshaping the rights of LGBTQIA+ community. Let us have a look on previous judgements of Indian courts on transgender person.

Naz Foundation v. Union of India

Naz foundation filed a petition challenging the constitution validity of Article 377 in Delhi high court. They filed a lawsuit to allow homosexual relation between the two. Naz foundation asserted that section 377 of Indian Penal Code violates article 14, article 15, article 19 and article 21 of our Indian constitution. Delhi high court ruled that section 377 cannot be used to punish sex between two consenting adults as it violates right to privacy and personal liberty guaranteed under article 21 of Indian Constitution. It attempted to decriminalize homosexuality.

However, in the case of Suresh Kumar Koushal v. Naz Foundation, the court upheld the constitutional validity of section 377 of IPC that make homosexuality a punishable offence. The court overruled its previous judgement and criminalized homosexuality.

National Legal Service Authority v. Union of India

In this case, the court held that basic fundamental rights are available to transgender persons as well and they are protected under article 14, article 15, article 16 and article 21 of our Indian constitution. In this case, the court attempted to recognize the identity of transgender. The court opinioned that not identifying a person male or female is not a social or medical problem.

Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India

The court unanimously recognized right to privacy as a fundamental right. In this case, the court noted that personal intimacies, including sexual orientation are a part of individual's dignity. Further, it held that discrimination on the basis of sexual orientation is offensive to dignity and self-worth. It strikes down the decision held in Suresh Kaushal v. Naz Foundation. The court held

that right to privacy is a fundamental right and is an intersection of article 15 and article 21 referring its decision in NALSA which grants right to self-recognition of gender.

Navtej Singh Johar v. Union of India

This case played an important role in decriminalization of section 377 of Indian Penal Code. In this case, five individuals from LGBTQIA+ community (Navtej Singh Johar, Ayesha Kapur, Sunil Mehra, Ritu Dalmia and Aman Nath) filed a writ petition challenging the constitutional validity of section 377 of IPC which dealt with ‘unnatural offence’ and criminalized ‘carnal intercourse against the order of nature’.

The main issue was whether section 377 of IPC violates article 14 as it creates discrimination on the basis of sexual orientation, article 19(1)(a) which deals with right to expression and article 21 as it penalizes private consensual act between same-sex person.

The five Judges bench of the Supreme court overruled the Koushal decision. It strikes down section 377 of Indian Penal Code and decriminalized same-sex relations between two consenting adults. Its judgement holds immense persuasive value for other nation who continue to criminalize homosexuality.

Arun Kumar v. Inspector General of Registration

Arun Kumar got married to Srija, a transwoman at a temple as per Hindu rites and customs under the Hindu marriage act, 1955. Although the temple authorities permitted the performance of the marriage they declined to vouch for it and when the parties submitted a memorandum for registration of marriage to the joint register no. II of Tuticorin, the registrar refused to register the marriage. The petitioners filed a writ petition in Madras high court to challenge the refusal to register the marriage. The respondent argued that the term ‘bride’ as mentioned in section 5 of Hindu marriage act meant only women and not transgender, given that Srija is a transgender.

The court held that a marriage solemnized between a male and a transwoman, both professing Hindu religion is a valid marriage. The court further stated that transgender persons had the right the right to decide their self-identified gender, as upheld by the Supreme court in NALSA v. Union of India, which has been reiterated in Justice K.S. Puttaswamy case and again in Navtej Singh Johar case. The court recognized transwoman as a ‘bride’ within the meaning of Hindu

marriage act, 1955.

RECOMMENDATION / SUGGESTION

There are several laws in place to prevent discrimination on the basis of gender and sexual identities. However, LGBTQIA+ community are not included in the society due to people's backward mindset. Here are some ways to include LGBTQIA+ community in society and change people's mindset towards these community.

1. **Education and Awareness** – Education plays an important role in changing people's mindset. Educational initiatives should be implemented to increase understanding of diverse sexual orientation and gender identities dispelling myths and stereotypes. Inclusive curriculum that covers history, issue and perspective should also be implemented to create awareness and understanding.
2. **Workplace Inclusion** – Establishing and enforcing anti-discrimination policies, offering diversity training and providing support network would help create inclusive work environment.
3. **Media Representation** – Encouraging diversity, positive portrayals of LGBTQIA+ individuals and accurate representation of these community in media challenges biases and stereotypes and shape more inclusive perspective.
4. **Community Support** – Establish support groups, counselling services, and a safe space to provide emotional support and a sense of community for LGBTQIA+ individuals.
5. **Personal Support and Open Dialogue** – Sharing personal stories and experiences to humanize the LGBTQIA+ community fosters empathy and connection with people of all background. Facilitating open conversation about LGBTQIA+ issue creates a safe space for questions and discussion to address misconceptions.
6. **Legal and Policy Advocacy** – Advocating for and supporting legislations and policies that protects the rights of LGBTQIA+ individuals ensures equal treatment under the law in areas like employment, housing and healthcare.

CONCLUSION

Discrimination against LGBTQIA+ community is harmful as it leads you treat people differently, without giving them chance to be their authentic selves. When people feel respected, psychologically safe and valued their well-being tends to improve. Unfortunately, multiple research studies have found that some medical professional holds an implicit bias towards this group. This bias can lead to major LGBTQ health disparities. In conclusion, the journey of the LGBTQIA+ community is a testament to resilience, profess and the ongoing pursuit of equality. From the shadow of oppression to the light of acceptance, each milestone reflects a collective determination to break barriers and foster inclusivity. The trajectory of the LGBTQIA+ community unveils a poignant narrative of courage and societal evolution.

Historical milestone such as the decriminalization of homosexuality, recognition of same sex relationships and increasing reputation in media underscore the progress made. However, it is imperative to acknowledge that the journey is far from being complete. Discrimination and marginalization persist, reminding us of the need of the importance of continued advocacy and education to eradicate prejudices. By fostering inclusivity and embracing diversity, society can contribute to a future where everyone regardless of their sexual orientation or gender identity, can live free from fear and prejudice. As we reflect the journey, it is evident that there is still work to be done to ensure a world where love, acceptance and equality prevail for all.

FREQUENTLY ASKED QUESTIONS (FAQ)

Q. What is writ petition?

Ans. Writs are written order from Supreme court or a High court that commands constitutional remedies for Indian citizens against the violation of their fundamental rights. Article 32 in the Indian Constitution deals with constitutional remedies that an Indian citizen can seek from the Supreme court against violation of his/her fundamental rights, whereas the High court has the same power under article 226.

Q. What are the provisions of Special Marriage Act,1954?

Ans. The marriage under Special Marriage Act,1954 enables people from two distinct religious background to unite in a marriage bound. Unlike personal laws, the Special Marriage Act is applicable to all Indian citizen regardless of their religion.

Q. How many fundamental rights are there Indian Constitution?

Ans. There are six fundamental rights guaranteed under Indian constitution. They are (a) right to equality; (b) right to freedom; (c) right against exploitation; (d) right to freedom of religion; (e) cultural and educational rights.

REFERENCE

<https://m.timesofindia.com/india/what-is-section-377/articleshow/66067994.cms>

<https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>

<https://indianexpress.com/article/explained/explained-law/sc-verdict-on-same-sex-marriages-explained-live-8986361/>

<https://indianexpress.com/article/india/section-377-timeline-homosexuality-gay-sex-5253129/>

<https://indiankanoon.org/doc/1836974/>

<https://www.indialawoffices.com/legal-articles/rights-of-transgenders-in-india>

<https://www.legalserviceindia.com/legal/article-6958-rights-of-transgender-under-the-indian-legal-system.html>

<https://legalvidhiya.com/supriyo-chakraborty-v-union-of-india/>

<https://indiankanoon.org/doc/188806075/>

<https://translaw.clpr.org.in/case-law/navtej-singh-johar-vs-union-of-india-section-377/>

<https://www.shethepeople.tv/home-top-video/5-judgements-that-paved-the-way-for-lgbt-rights-in-india/>

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

<https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/>

<https://www.betterup.com/blog/lgbtq-acceptance>

<https://byjus.com/free-ias-prep/types-of-writs-in-india/>