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## Issues and challenges of 'LGBT' minority people in India

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### Abstract

In this article the researcher has tried to discuss about concept, nature of LGBT People, discrimination on the ground of sex in the society it results in violation of their rights including fundamental rights and human rights. The researcher also tried to give focus on legal definition and its scope, lacunas, issues and challenges before LGBT minority people in India.

**Keywords:** LGBT, Minority People, Human Rights, Fundamental rights, issues and challenges.

### Introduction

The reference of homosexuality finds in pre-colonial societies in India. Homosexuality was treated as heinous offence in *Manusmriti* and punishment for such offence was there. In the Manusmriti Lesbianism was treated as serious offence and for it more serious punishment was there. In Islamic period, the Muslim *Shariat* law treats homosexual conduct as a serious offence. Therefore in different religion different punishments were provided to homosexual offences in India.

Codification of laws started during British period first enactment took place for uniform criminal laws in India in 1860. Under the Indian Penal Code uniform prescription of homosexual behavior in the form of unnatural offences its nature and punishment has been prescribed. Although sexuality minorities have always existed in India sometimes in various forms like culturally sanctioned (such as the *hijra*) and at other times in invisibility and silence, their issues have never seriously been articulated. Before 19<sup>th</sup> century these issues were only limited to the society but in 19<sup>th</sup> century the rights of LGBT minorities raised their issues relating to violation of their human rights. These serious issues come forward through by various civil society organizations in India. In India the first gay magazine *Bombay Dost* in the late 1980's and the starting of a lesbian collective in Delhi called *Sakhi*, lesbian, gay and bisexual issues were first articulated in a public forum. Since this Magazine LGBT minority movement has been increased in India.

It is only in the final decade of the 20th century that the gay/ lesbian/ bisexual/ transgender movement brought to the fore the rights of those discriminated against because of their sexuality. In the mid 1990's, the Human Rights Committee held that the anti sodomy law of Tasmania violated the right to privacy and the right to non discrimination guaranteed to all persons under the International Covenant on Civil and Political Rights. In Scandinavia, the provision of equal rights for sexuality minorities, including marriage rights, was an important. The other major development has been the South African Constitution, which for the first time expressly prohibited discrimination on grounds of sexual orientation. But while the scope of human rights has been extended to include hitherto marginalized communities at the global level, a similar movement is yet to take place in India.

In fact, most human rights organizations in India the People's Union of Civil Liberties – PUCL have not begun to address the question of rights of gays, lesbians, bisexuals and transgender others who are oppressed due to their sexuality. Sexuality is sometimes viewed even in liberal and radical circles as a frivolous, bourgeois issue. In such a context, homosexuality is seen implicitly as something deviant and unnatural that is at best defended

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as an individual freedom but not a matter of priority for the human rights movement. Generally, issues of poverty and gender, class and caste oppression are seen as more important than that of sexuality. But this ignores the fact that sexuality is integrally linked to ideologies and structures of social oppression such as patriarchy, capitalism, the caste system and religious fundamentalism. Hence, the struggle for sexuality rights cannot be separated from the broader human rights struggle for economic, political and social liberation.

**Methodology:** Researcher has adopted Doctrinal method therefore collected data from various Books, Journals, articles and News papers etc.

### Objectives

- To explain the concept of LGBT.
- To analyse Legal provisions.
- To discuss Constitutional protection to LGBT Minority people in India.
- To highlight their issues and challenges in the society.
- To find out consequences of discrimination in the society.
- To provide recommendations.

### Concept of LGBT

In matters of sexuality, the terms people use and identify with can vary widely from culture to culture. In this report the terms 'lesbian', 'gay', 'bisexual' and 'transgender' (LGBT) are used because they are the English terms most commonly used in the international human rights discourse. However, this is in no way intended to ignore the diversity of other terms and identities, nor to deny the cultural connotations attached to these terms. In the interests of readability and in order to respect the wealth of terms, a variety of forms are used in this report, largely interchangeably. So, for example, the term "lesbian and gay human rights" should be read as shorthand for the human rights of lesbian, gay, bisexual and transgender people.

- **Sexual orientation:** this term used to describe patterns of emotional, romantic, and sexual attraction and sense of personal and social identity based on those attractions. Sexual orientation exists with exclusive attraction to the opposite or the same sex. When a person's sexual and emotional attraction to people of the same gender is called homosexual orientation if attraction towards opposite sex called heterosexual orientation and if the attraction towards both gender is called bisexual orientation people.
- **Gender identity:** refers to a person's experience of self-expression in relation to social constructions of masculinity or femininity (gender). A person may have a male or female gender identity, with the physiological characteristics of the opposite sex.
- **Sexual identity** is used in this report to refer to sexual orientation and/or gender identity.
- **Transgender:** It means someone whose gender differs from the one when they were born. Transgender people may identify as male or female or neither the label fits to them. These people's internal feelings and labels may be male, female or transgender.

### Legal discrimination against sexual minorities in India

Legal discrimination against sexuality minorities operates through the criminal and civil law systems. The regime of discrimination can be analyzed under the following heads:

### Prevention of unnatural offences under Indian Penal Code

Legal Discrimination against the sexuality minorities takes many forms, the most notorious being Section 377 of the Indian Penal Code (IPC), a British colonial legislation criminalizing homosexual behavior, that continues to be in the Indian statute book although it has long since been removed from the British statute book. This section says that, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to 10 years and also be liable to fine."

The unnatural offences under IPC are sodomy or bestiality. The parties involved in this offence active and passive both are liable for punishment as per the above section. Therefore e this section clearly shows that sodomy is prohibited in India.

### Right to privacy of LGBT minority People

The right to life and personal liberty includes right to privacy. The Constitution of India does not directly provide the right to privacy as a part of the fundamental right but it has been emphasised time to time by the Supreme Court in in some cases therefore it is considered as a part of fundamentals rights. Hence right to privacy should not be violated by the state under any circumstances.

### Issues of LGBT minority Communities in India

#### Scope of the Section 377 of IPC is Ambiguous

Under section 377 of IPC scope of unnatural offences is an ambiguous because there is no clear distinction between consenting and coercive sex, against the order of nature etc.

#### Discrimination on the ground of sex

The fundamental right under the Constitution of India prohibits discrimination on the ground of sex. Therefore it is violation of fundamental rights of LGBT Minority people as under.

- ❖ Lack of educational facilities.
- ❖ Right to life and personal liberty.
- ❖ right to live with family
- ❖ right to livelihood
- ❖ Right to speech and expression.
- ❖ Right to profession and business.
- ❖ Equal pay for equal work.
- ❖ Freedom of Religion
- ❖ Right to live with human dignity
- ❖ Right to equality.

#### Family issues

Lack of communication and misunderstanding between parents and their LGBT children increases family conflict. These problems with communication and lack of understanding about sexual orientation and gender identity can lead to fighting and family disruption that can result in an LGBT adolescent being removed from or forced out of the home.

#### Discrimination at workplace

Discrimination of LGBT persons at workplace is a significant factor in the differences in socioeconomic status for LGBT persons. Gay and transgender individuals suffer from socioeconomic inequalities in large part due to discrimination in the workplace. Discrimination directly causes on their job, stability and it result in unemployment and poverty.

### **Drug Addict**

Due to loneliness LGBT people becomes drug addict and turn toward alcohol, tobacco and other drugs than the general population.

### **Victims of crime**

These LGBT minority people become victims of violence and crime. However, LGBT individuals 'experiences of violence and discrimination differ depending on a number of factors including race, gender, income, immigration, status and language barriers. LGBT immigrants are more likely to face violence based on race and ethnicity and/or sexual identity and/or gender identity. In Muslim Countries, homosexuality is heinous crime and for it fine, imprisonment and capital punishment has been imposed on LGBT minority people.

### **Injustice on LGBT minority**

Human rights and fundamental rights are applicable to all persons but state is failed to create special legislation which protects rights of LGBT minority community and to provide real justice to them. They are also human being and such treatment should be provided by the state to these people. In many instances LGBT individuals are not legally protected from abusive and discriminatory actions.

### **Following are recommendations**

- State has to protect their fundamental rights without any discrimination.
- Special law should be enacted.
- Provide opportunities in social and economic activities.
- Need to protect human rights.
- Need to take preventive measures in family, public and domestic violence.
- Government should take initiatives to support employers in making workplace and workplace culture more supportive and inclusive of LGBT people.
- Need to change social attitude toward LGBT Minority people.
- Free health facilities should be provided by the states to them, including health.
- Need to organize workshops and seminars about their rights.

### **Conclusion and Recommendations**

On the basis of above discussion it comes to the conclusion that, LGBT minority people who basically have different sexual orientation which results in face discrimination in the family and society. But prima facie they are the human being and therefore they are entitled to all human rights as well as fundamental rights in India. Lesbian, gay, bisexual and transgender people have long been involved in efforts for racial and economic justice. Today, LGBT organizers and groups are increasingly drawing attentions between the movements for LGBT their rights and the movement for economic, social, political and racial justice. Therefore today there is needed to protect their rights as a human being in the society.

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