

TRAVERSING THE LGBT MOVEMENT IN INDIA

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Abstract

In recent years, several countries, including India, have legally recognized third sex and homosexuals as equal citizens, after a long struggle of several different movements and protests around the world. Equal rights of lesbian, gay, bisexual and transgender (LGBT) people are becoming more common in the world, with substantial progress in a variety of countries, including the adoption in recent years of new legal protections. The preamble to the Constitution of India ensures justice-social, economic and political for all. In September 2018, in the review of Section 377, the Supreme Court gave the judgment to decriminalize adult consensual same-sex marriages. This decision is considered a landmark, both in terms of its expansive interpretation of constitutional rights and in terms of empowering LGBT community. This was a big achievement, but it does not necessarily mean that LGBT people in India are absolutely free or treated as equal to their fellow citizens. It undermines the amount of work that remains to be done in India and the rest of the world to overturn antiquated and oppressive anti-LGBT laws. They have a complete and inalienable right to define themselves in their own terms and languages. They should have the right to express themselves and their culture without fear of violence or reprisal. They are human beings, human rights holders, and they must be regarded as such within the societies in which they live. This paper investigates the long history of their struggle and the subsequent shift in opinion of them.

Keywords: LGBT, India, constitution, human rights

INTRODUCTION

India is a vast and diverse nation, and attitudes towards this subject and experiences of LGBT individuals vary widely. The discrepancy between urban and rural India, language, caste, class and gender adds more complexity to the understanding of this subject. But what we do know is that Indian LGBT community is not a "minuscule minority."

The Indian lesbian, gay, bisexual and transgender (LGBT) movement is indeed a rainbow with many exciting hues. This movement is steadily bringing to light, documenting and reflecting the rich diversity of gender and sexuality that has existed in our societies for thousands of years. It proposes that this diversity should be accepted and that prejudice against LGBT people should be prevented.

The Indian LGBT movement is still quite young as an organized political movement, having taken its first steps only in the early 1990s. However, it's not as if the movement started overnight. Instead, it was the outcome of a multitude of evident and non-evident developments taking place in the world and the Indian contexts over the years. As far as current knowledge is concerned, these movements in modern-day India can be traced back to the early 20th century, although this timeline is likely to be frequently pushed back. Till maybe categories such as modern-day and earlier India blend and merge with each other.

TIMELINE

Here is a chronological account of milestones, small and large, accomplished so far by the Indian LGBT movement. But these are only the more political milestones and include well-known individuals or groups and organizations of LGBT people.

During the British rule in 1860, homosexual relations were considered unethical and were declared as a criminal offence under Section 377 of Chapter 16 of the Indian Penal Code.

After independence, on 26th November 1949, the right to equality was enforced under Article 14, but homosexuality still remained a criminal offence.

Decades later, on 11th August 1992, the first recognized gay rights protest took place.

In 1999, Kolkata hosted the first Gay Pride Parade in India. The parade, with just 15 participants, was called Calcutta Rainbow Pride.

In 2009, a landmark decision of the High Court of Delhi in the case of the Naz Foundation v/s Govt. of NCT of Delhi held that treating consensual homosexual sex between adults as a crime is a breach of fundamental rights protected by the Constitution of India.

In the Suresh Kumar Koushal and another v/s NAZ Foundation and others case in 2013, the Supreme Court reversed the Delhi High Court Naz Foundation v/s Govt. of NCT of Delhi case and reintroduced Section 377 of the Indian Penal Code.

In late 2015, MP Shashi Tharoor introduced a bill to decriminalize homosexuality but it was dismissed by the Lok Sabha.

In August 2017, in the landmark judgment of Puttaswamy, the Supreme Court upheld the right to privacy as a fundamental right under the Constitution. This brought in new hope for the LGBT activists.

On 6th September 2018, the Supreme Court unanimously ruled that Section 377 was unconstitutional "in so far as it criminalizes consensual sexual activity between adults of the same sex."

The war against Section 377 has ended, but there is still a huge struggle for fair treatment of the LGBT community.

CURRENT SCENARIO

Court judgments in recent years have paved the groundwork for greater defense against discrimination on the grounds of sexual orientation and gender identity, and the Indian Government's policy on LGBT rights has modified considerably. But much more is needed to protect people on the basis of their sexual and gender identity in India.

LEGAL ASPECTS/CIVIL RIGHTS

From the right to own and inherit property to the right to adopt and marry, here's a look of what the legal fight ahead for equality could look like for the LGBT community.

Right to marry: Matrimony laws are not universal. They are subject to legislation that is unique to certain sects, including the Hindu Code Bill. However, the road to reform can also be taken in particular cases, such as the recent one in which a marriage between a man and a trans-woman was upheld by the High Court of Madras. It is said that this is the first time that Article 21 of the Constitution (Right to Life and Personal Liberty) has been upheld in the case of a trans person.

Right to adopt: Under the family laws of the country, marriage alone is the "only legitimate form of emotional and financial dependence." Consequently, the rights concerning the institution, for example, the right to adoption, is closed to same-sex couples. The Hindu Adoptions and Maintenance Act, 1956 states that while "unmarried" females could adopt, males only fulfil the requirement "if he has a living wife." Take the case of Nikesh Usha Pushkaran and Sonu MS, the first openly gay couple in Kerala, for example. While the decriminalization of homosexuality has taken place in our modern age, life has been bitter-sweet considering that they still cannot adopt. Their only hope remains the LGBTQI organization based in Chennai, which is intending to approach the Supreme Court to legalize homosexual marriage.

Right to Surrogacy: The right to surrogacy is still far-off for the LGBTQI community under the existing judicial framework and, in the case that the Upper House passes the pending Surrogacy Bill, the exclusion of the LGBTQI community will be further increased. The bill aims to prohibit commercial surrogacy in the country

and has already been passed by the Lok Sabha. According to the bill, only couples who have been married for at least five years are eligible for surrogacy.

Right to employment: The workplace discrimination and maternity benefits laws are not accountable for LGBTQ+ persons. Apart from the fact that the HR policy is not inclusive in most companies, our judicial provisions also do little to protect a self-identifying LGBTQI community member from harassment. For example, the Sexual Harassment at Workplace Act of 2013 only considers a female subject, completely forgoing "victim neutrality." The Transgender Bill, now passed by the Lok Sabha, would also do nothing to ensure employment for the trans-community.

In the past, the Supreme Court rejected a petition to reconsider a petition requesting different civil rights, including marriage, adoption and surrogacy. However, at the end of the day, though, "It can only be by questioning each of the existing laws."

POSITIVE ASPECTS

The LGBTQ community's struggle for equality began some 25 years ago, but the positive portrayal of the community in the mainstream has increased, especially in the last two years.

The Aam Aadmi Party backed Bhawani Nath Valmiki from Prayagraj Lok Sabha in Uttar Pradesh, and the Bahujan Samaj Party backed Kajal Nayak for the Korei Assembly in Odisha. They both lost their seats, but symbolism was more than welcome, assert community leaders.

In January 2019, the Congress appointed Apsara Reddy, a trans woman, as Secretary General Secretary of the All India Mahila Congress.

In July 2019, Lok Sabha approved the Transgender People (Protection of Rights) Bill 2019, which aimed to establish policies for the individuals of the community and to help them acquire identity documents.

To explore job opportunities, the country's first LGBTQ Job Fair was organized in Bangalore in July by Pride Circle, a volunteer forum that engages LGBTQ individuals. Another all-inclusive job fair Vividh by 6 Degrees, a Mumbai-based LGBTQ growth network, followed suit.

The movement received a huge boost as the sprinter and national champion Dutee Chand came out as a lesbian, becoming the first Indian athlete to do so. Though she faced criticism from her family and friends in her small village in Odisha, people on social media came out to extend their support.

Movies like Sonam Kapoor starrer "Ek Ladki Ko Dekha To Aisa Laga" that talked about stigma around same sex relationships, have a role in showing that some sort of acceptance has come in the country, which is very optimistic.

Although there is still a long way to go, these certain recognitions by the society lead to awareness and acceptance to certain degree.

CONCLUSION

The concept of human rights is based on the fundamental principle that all human beings are equal. It follows that all human beings have dignity and that all human beings should be treated equally. Anything that compromises that dignity is a breach of the concept of equality and paves the way for discrimination.

LGBT individuals, who inherently have a diverse sexual orientation, face prejudice on the part of the family and community. But firstly, they are human beings, and in this regard, they are eligible for all human rights, just like everyone else in India. According to figures, the demand for social and legal recognition of homosexual marriages is limited to just 10% of the Indian population. In the current Indian cultural grid and the growing conflict in the institution of marriage, the interest in legitimizing same-sex marriage is in some way or another overlooked. In the not-so-distant future, the attitude of the society towards marriage as an institution linked to child-rearing will also incorporate same-sex relationships where love between partners is given priority in child-rearing instead of the sexual orientation. It seems as if there is still a long way to go for the mainstream acceptance of homosexual marriages in India. Because legal recognition of homosexual unions would not only mean acceptance of homosexual behavior as a result of making it a model in today's society, it could also obscure the basic values (family, marriage, procreation and continuity of species) which belong to the universal heritage of humanity.

Indians should understand that sexual preference is innate and that it is a normal phenomenon that is not a disease. It is true that the acceptance of the petition for social and legal recognition of homosexuality has not been accepted today, but in any case the homosexual community should not be oppressed and mistreated. They also need to understand that, by legitimizing same-sex relationships, they have also decriminalized the lives of people who are involved with such sexual acts, and that society must attempt to acknowledge them socially with open arms.

Enumerating sexual orientation and gender identity in non-discrimination and anti-bullying policy is an significant step towards the acceptance of diversity and the protection of vulnerable individuals. Thus, the younger generations of Indians will grow up to know that criminalization is a thing of the past, and it will be a blessing to their human rights.

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