

Rights of LGBT's in India & New Perspective

Dr. Bimal Prasad Mishra

Sr. Lecturer, Pravasi Manjari Law College, Keonjhar

Sexual Orientation is integrally⁽¹⁾ linked to the intimate personal relationship that human beings establish with others to fulfill their deeply felt needs for love, attachment and intimacy. Sexual acts² and romantic attractions are categorized as homosexual. Complex personality characteristics, biological and environmental influence combine to produce a particular sexual preference. LGBT is abbreviation of Lesbian³, Gay, Bisexual and Transgender respectively. Gay means homosexual person. Homosexual means person sexually attracted only to the people of same sex. Homosexual⁴ denotes both homosexual man and homosexual woman. The term Gay is generally used to refer to homosexual man. Bisexual indicates two senses (a) person sexually attracted to both men and women (ii) person having both male and female sexual organ. The term transgender⁵ is used for the people whose gender identity, expression or behaviour is different from those typically associated with their assigned sex at birth. People who are identified as transgender are usually the people who are born with typical male or female anatomy but feel as they have been born into the wrong body.

Why they are called as transgender ?

Their attitude, their behaviour, their lifestyle and their postures only reason why such group of people looked at differently by society only they have seen at Railway Station, Railway Compartments, Buses⁶ or even near toll gates moving here and there, from person to person seeking some sort of financial assistance. What actually they were doing, where they are staying, what about their families and friends. What forced them to behave in such manner and adopt a life style quite different from the normal human being. They lead a very unhealthy life. They live in unhygienic condition deprived of all sanitary facilities. Even they are forced to stay in a small room either in jhopadi or in basti, away from civilized society. The transgender popularly known as Hijras in India belong from different community, different group and different identity. They are biological males who have rejected their masculine identity and identified themselves as women⁷. We see them on roads as daily routine with a little smile on their face and perhaps with malice towards none. Without caring for anybody they go on doing their duty. People look at them differently and some form their own opinion about them. Without being perturbed by all those they lead life of their own and that too on the way they like and they enjoy⁸ whether these people sometimes called creations of God deprived of all the benefit of society and being far from mainstream of society.

Constitutional Perspective:

Indian constitution has given Rights to the LGBT. Article 14 of the Constitution is concerned⁹, it declares 'state shall not deny to any person equality before law and equal protection of law within the territory of India. The word any person denotes not only includes men and women but also the transgender. Further state is under an obligation to protect any person. The transgender as third gender also come under the purview of this article. Article 15 and 16 clearly shows their intention to prevent¹⁰ any kind of sex based discrimination. By the same analogy given above discrimination on the basis of gender identity is prohibited. Article 19(i)(a) of the constitution provides¹¹ for free speech and expression. Article has been widened very such attracts the right of expression of these group of people who can express by their attitude, behavior and hence this Article protects the right. Article 21 promotes the right to dignity among so many rights and person¹² belonging to the third gender who has the right of self determination of their gender can very well be included.

Social Perspective:

The study on the topic reveals that the homosexuality was prevalent in all societies in all periods throughout the world either in the form of usual human activity or tradition or prohibition. Homosexual relationships or acts have been admired or condemned depending on the form they took and the society in which they

occurred. There are many theories on the origin of homosexuality, its social and personal meaning and its implications. It is understood as sinful act in religion. But, with the advent of Science, various aspect of homosexuality was considered and it was justified from various points of view giving particular theories for its causes. The shift in idea from a religious understanding to considering it a pathological state occurred in the late 19th and 20th centuries. Early theories included genetic, endocrine and anatomical differences which were considered responsible for a particular sex orientation. The Medical Science continued to debate the biological and psychological factors relating to homosexuality¹⁴. The Science has observed the cause of homosexuality and more generically the cause of human sexual orientation with general conclusions being related to biological and environmental factors. The biological factors, that have been researched, are genetic and hormonal, particularly, during the fetal development that influences the resulting brain structure and other characteristics such as handedness. There are a wide range of environmental factors such as sociological, psychological or early uterine environment that may influence sexual orientation¹⁵. Classical theories of psychological development hypothesize the origin of adult sexual orientation in childhood experience. However, research argues that psychological and interpersonal events explain the sexual orientation throughout the life¹⁶. Anthropologist have documented significant variations in the organization and meaning of homosexual practices across the cultures. The prevalence of homosexuality is difficult to estimate for many reasons including the associated stigma and social repression¹⁷. Anti-homosexual attitudes have been changed over time in many social and institutional settings in west while community and religious leaders in India reflect the existence of prejudice in India. Religious leaders who interpret ancient texts literally, view such liberal ideas as a variation from religion and morality. Mental health professionals and researchers have recognized that being homosexual poses no inherent obstacles to leading a happy, healthy and productive life; and that the vast majority of gay and lesbian people function well in the array of social institutions and interpersonal relationships. The longstanding consensus of research and clinical literature demonstrate that homosexual romantic attractions; feeling and behaviour are normal and positive variation of human sexuality¹⁸.

Legal Perspective

Carnal intercourse against the order of nature is criminalized as unnatural offence under section 377 of the Indian Penal Code, 1860 – the law of crime in India. The provision is as follows : “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine”. According to explanation to the provision, penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section¹⁹. Clearly, following are the ingredients of the offence under this Section - (1) The act of carnal intercourse with, man, woman or animal; (2) The act should be against the order of nature; (3) The act should be voluntarily and (4) penetration.

Delhi High Court in Naz Foundation Vs National Capital Territory of India in 2009 discriminated unnatural offence. It was good news for LGBT people but in 2013 Supreme Court of India reversed the decision. A five judge bench unanimously declared consensual sexual relationship between two consenting adults – homosexual can't be said to be unconstitutional. Justice Indu Malhotra opined cases with following words it is conveys an apology to the members of the committee and their families for the ignominy and ostracism that they have suffered through centuries. The member of the community were compelled to live a life full of fear, reprisal and persecution.

In National Legal Service Authority Vs Union of India declared by Supreme Court of India in 2014 April declared the transgender as third gender and affirmed that fundamental right guarantee under the Indian Constitution will be equally applicable to transgender.

Conclusion:

The third gender are also human beings. They also take birth clothed with human rights even if born defective. Their sexual aberration or their different sexual orientation is not a thing for which they are to

blame. They are also people to be sympathized not to be harassed. Social apathy shown to them and the family rejection and social isolation force them to resort to begging and prostitution.

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