

LEGALFOXES LAW TIMES

RAPE IN LGBTQ COMMUNITY

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ABSTRACT

The decriminalisation of homosexuality led to the addressing of further issues and problems suffered by the LGBTQ people. The community has struggled a lot to get the rights they have today but have a long way to go in order to achieve equality. In most of the countries of the world, homosexuality is a crime and is criminalised with the punishment of up to life imprisonment or the death penalty. The stigma around the community needs to be removed, and the people should be made aware of the violation of the rights of the LGBTQ people, which needs to be addressed as soon as possible. The lack of legislation and laws is one important aspect which hinders their protection from various crimes such as rape, sexual assault, etc. This research work focuses on the prevalent problems regarding crimes against the LGBTQ community and lack of laws to address the same and protect them from being victims of heinous crimes. The research work suggests some steps which can be taken in order to help the community flourish and achieve equality.

CHAPTER 1- INTRODUCTION

Forceful indulgence in physical activity against the will of the other person constitutes as sexual abuse. Rape is a kind of sexual abuse and is a heinous crime. The definition in the Indian

Constitution only includes the women being raped by men. It excludes the members of the LGBTQ community and men that can also be the sufferers of rape. The definition does not take into account the rights of the LGBTQ community and only focuses on women being the victim at the hands of men. People are not even aware that the lesbians, gay, bisexual, transgender and queer are subject to sexual abuse and crimes as rape as well. Through this study, the aim is to analyse the prevalence of rape in the LGBTQ community and create awareness about the same along with the focus on the absence of legal provisions. The community has been subject to sexual assault and crimes like rape since long times, but their rights have not been recognised adequately. Proper justice and fairness do not prevail with regards to the crimes against the LGBTQ community.

With regards to the LGBTQ community, other than rape, the concept of corrective rape also exists. Women who regard themselves as lesbians are subject to rape so as to correct their behaviour of being a lesbian which is considered deviant in the society. This type of rape is prevalent in Indian society, especially in rural areas due to neglect about the feelings and behaviour of the children by the parents.

RESEARCH QUESTIONS

- Are the members of the LGBTQ Community subject to offences like rape and sexual abuse?
- Are people aware of the community?
- Are there any laws regarding the protection of the community?

OBJECTIVES OF THE STUDY

- To create awareness about the existence of sexual abuse and rape in the LGBTQ community.
- To analyse the aspects of its legalisation.
- To analyse the laws existing in various countries regarding the position of the LGBTQ community.

SIGNIFICANCE OF THE STUDY

This research project will help the society and in general, create awareness about the position of the LGBTQ Community. It will enlighten the people about the plight and sufferings of these people.

It will be helpful to the legislature to create laws which can help the community to attain equality and prevent the discrimination that prevails. It will further help in providing an understanding of the magnitude of sexual assault and rape cases taking place and thus creating laws with regard to their rights to report about such measures and seek justice without humiliation and shame.

RESEARCH METHODOLOGY

- **DOCTRINAL LEGAL RESEARCH**

In this study, doctrinal legal research would be used to consider various international legalisations and legal principles with regard to the rape in the LGBTQ community.

- **ANALYTICAL LEGAL RESEARCH**

In this study, various components of the topic are divided and analysed to come to a conclusion and have knowledge about the existing laws and their sources and shortcomings.

- **COMPARATIVE METHOD OF LEGAL RESEARCH**

This involves a comparison of various rules to conclude, which can be the best. In this study, the statutes and rules with regards to the topic existing in other countries can be compared with the remedies, if available in India.

SOURCES OF DATA

There are primarily two sources of data, i.e., primary sources and secondary sources. In this research project, there is the use of the primary sources like the Indian Penal Code, legislatures

of different countries and the secondary sources like the research articles, reports and studies on the concerned topic and material available on the internet.

REVIEW OF LITERATURE

The main sources and statistics available regarding the community were the surveys and studies conducted in countries like the U.S. The developing countries like India neglect the aspects of this community, and even there are no proper demographics available about the number of LGBTQ community members in the country.

“Problems faced by LGBT people in mainstream society”¹ by Subhrajit Chatterjee covers the struggles and problems of the community which are usually neglected by the society. It critically analyses the reasons and gives suggestions to overcome them.

“The future of Bisexual Activism”² by Camille Holthaus discusses the problems and issues faced by the community along with their needs and the future prospects and what actions are required in the future to ensure equal rights.

“Gendered violence in the socio-legal context”³ by Christopher Norman Kujat is a research paper that discusses the aspects of gender in rape and considers the issues of sexual assault and rape against men and other communities as well.

“Hate crimes and violence against Lesbian, Gay, Bisexual and Transgender people”⁴ by Michelle A. Marzullo and Alyn J. Libman is a research work on the hate crimes against the LGBTQ people, the reasons behind it and future efforts to overcome such evils in the society.

¹Subhrajit Chatterjee, *Problems faced by LGBT people in mainstream society*, 1 INTERNATIONAL JOURNAL OF INTERDISCIPLINARY AND MULTIDISCIPLINARY STUDIES (2014) https://www.ijims.com/uploads/cae8049d138e24ed7f5azppd_597.pdf

² Camille Holthaus, *The future of Bisexual Activism*, 2 JOURNALS IN GLBTQWORLDMAKING (2014) [HTTPS://WWW.JSTOR.ORG/STABLE/10.14321/QED.2.1.0022](https://www.jstor.org/stable/10.14321/qed.2.1.0022)

³ Christopher Norman Kujat, *Gendered violence in the socio-legal context*, DIVA PORTAL (2017) <http://www.diva-portal.org/smash/get/diva2:1238438/FULLTEXT01.pdf>

⁴ Michelle A. Marzullo and Alyn J. Libman, *Hate crimes and Violence against Lesbian, Gay, Bisexual and Transgender people*, HUMAN RIGHTS CAMPAIGN (2009) https://assets2.hrc.org/files/assets/resources/Hatecrimesandviolenceagainstlgbtpeople_2009.pdf

The laws regarding the protection of these communities against the crimes that take place also exist in the countries of the West and in countries like Iran, homosexuality is banned and is punishable with the death penalty. So, the information and literature available regarding the community are mostly from the developed countries of the world.

CHAPTER 2- WHAT IS LGBTQ?

LGBTQ expands to lesbian, gay, bisexual, transgender and queer. This term is used since the 1990s. These words define a person's sexual identity. This term refers to anyone who is non-heterosexual and not just the people mentioned above. The terms are defined as follows:

Lesbian—*“A woman whose enduring physical, romantic, and/or emotional attraction is to other women. Some lesbians may prefer to identify as gay or as gay women.”*⁵

Gay —*“The adjective used to describe people whose enduring physical, romantic, and/or emotional attractions are to people of the same sex. Sometimes lesbian is the preferred term for women.”*⁶

Bisexual —*“A person who has the capacity to form enduring physical, romantic, and/or emotional attractions to those of the same gender or to those of another gender. People may experience this attraction in differing ways and degrees over their lifetime. Bisexual people need not have had specific sexual experiences to be bisexual; in fact, they need not have had any sexual experience at all to identify as bisexual.”*⁷

Transgender —*“This term refers to an individual whose gender identity does not match or is at some distance from their assigned-sex-at-birth. For some folks, transgender and/or trans are considered to be an umbrella term.”*⁸

⁵ What is LGBTQ, GAY CENTER ORG. <https://gaycenter.org/about/lgbtq/>

⁶*Id.* at 5

⁷*Id.* at 5

⁸ LGBTQA Glossary, MICHIGAN STATE UNIVERSITY <https://lbgtrc.msu.edu/educational-resources/glossary-of-lgbtq-terms/>

Queer –*“The term that is used in a few different ways: a catchall term for the LGBTQA+ community; a sexual identities term that is often characterised by the incorporation of fluidity and anti-normativity; academic nomenclature to represent a prolific postmodern feminist theoretical project centred on sexuality and gender. Simultaneously appears in the academic and organising circles in the late 1980s and early 1990s.”*⁹

The first most widely used word was homosexual, and then homophile was used to represent the community in the 1950s and 1960s. Later due to more involvement of lesbians in public, the phrase "lesbian and gay" came to be used. After the 1969 Stonewall riots, some gay men and lesbian women became non-acceptable of bisexual or transgender people. They thought that bisexuals were the gay men and the lesbian women who were afraid to accept their identity in public and the transgenders were acting too stereotypically.

After 1988, the activists started using the term LGBT thus leading to equal representation of lesbian, gay, bisexual and transgender in the 1990s. The term is very positive and includes the different members of the community. There are variants of the term as well:

- The interchangeability of L and G in the term thus making it LGBT or GLBT
- Extra Qs at the end of the term lead to it being LGBTQ and LGBTQQ, the Qs being Queer and Questioning.
- LGBT+ refers to LGBT and other communities.
- LGBTQIA is referring to lesbian, gay, bisexual, transgender, queer, intersex and asexual.
- LGBTIH has been used in India with H depicting the *hijra*, third gender identity.
- In Canada, the term LGBTQ2 is used to refer to Lesbian, Gay, Bisexual, Transgender, Queer and Two-Spirit.

There has been criticism of the term LGBTQ as well, as it is argued that being transgender has more to be concerned regarding gender identity rather than sexual orientation.

⁹*Id.* at 8

CHAPTER 3- PROBLEMS FACED BY LGBTQ COMMUNITY

The queer people have constantly been facing problems like gender discrimination, inequality, harassment and violence. They have been the victims of sexual assault and other heinous crimes. They face constant harassment at the hands of their colleagues, friends and family members too. They are usually not accepted by their families and thus do not dare to disclose their identities to their families and live a dual role in life hiding their original identity. They are discriminated against at public places like school, markets etc., mistreated and disowned by their own families. They are singled out for physical attack – beaten, sexually assaulted, tortured and killed. In 76 countries, discriminatory laws criminalise private, consensual same-sex relationships, thus exposing them to the risk of arrest, prosecution, imprisonment — even, in at least five countries, the death penalty.¹⁰

Homosexuality is considered as deviant behaviour, and only heterosexuality is considered as the way of acceptance in society. They are often harassed at their workplace and thus has to hide their identity in a fear to lose their job. Many people have been fired because of them being homosexual. There exist no laws as to the protection of the members of the LGBTQ community against workplace harassment.

The young homosexuals are particularly vulnerable, and experience harassment at school or college and the constant pressure of losing their friends and family prevails in their mind thus leading to various mental health issues at a very early age. This discrimination not only denies LGBT people equal access to key social goods, such as employment, health care, education and housing, but it also marginalises them in society and makes them one of the vulnerable groups who are at risk of becoming socially excluded.¹¹

Homosexuality is criminalised in more than 70 countries in the world. In countries like Iran, Sudan, Saudi Arabia and Yemen, homosexuality is punishable with the death penalty under Shariat Law. Same-sex relations – which are variously criminalised under laws covering sodomy, buggery and “acts against nature” among others – could lead to a prison sentence in 71

¹⁰Subhrajit Chatterjee, *Problems faced by LGBT people in mainstream society*, 1 INTERNATIONAL JOURNAL OF INTERDISCIPLINARY AND MULTIDISCIPLINARY STUDIES (2014) https://www.ijims.com/uploads/cae8049d138e24ed7f5azppd_597.pdf

¹¹*id.*

states in all.¹² Mostly the countries that follow the Shariat Law has homosexuality criminalised since according to Islamic teachings, sex between two men or sex with the same gender person is considered as sinful.

The major problems faced by the members of the LGBTQ community are:

- Social exclusion
- Discrimination
- Homelessness
- Effects of Homophobia on them
- Harassment at the workplace, schools etc.
- Psychological Distress
- Poor economic condition
- Drug abuse
- Lack of facilities
- Hate crimes and violence

Due to all these factors, the members of this community remain deprived of normal life and thus suffer injustice and discrimination in every walk of life and even sometimes think of ending their lives since living by assuming other identities because of fear of the society is equal to being dead for them. All these factors are also responsible for their reduced confidence and belief in themselves, thus reducing their capabilities to do whatever they want to do with full freedom.

¹² Gay relationships are still criminalised in more than 72 countries, THE GUARDIAN (2015)
<https://www.theguardian.com/world/2017/jul/27/gay-relationships-still-criminalised-countries-report>.

CHAPTER 4- DECRIMINALISATION OF HOMOSEXUALITY IN INDIA

There has been a reference to homosexuality since ancient times in India. Although, the way homosexuals were perceived has been changed. The ancient text of Kamasutra mentions about erotic homosexual behaviour. The inferiority of homosexuals came into consideration when the British came to India in the 18th Century.

There is no official record for the number of LGBT people in India, but in the 2012 submission of the government to Supreme Court, it mentions that 2.5 million LGBT people reside in India. There might be a higher number of LGBT people, but they might conceal their identity and not come forward to reveal their identity. The timeline for striking down Section 377 of IPC is as follows:

- **1991** – A report was revealed by AIDS BhedbhavVirodhiAndolan mentioning the violence, extortion etc. faced by gay people in India. It called for the decriminalisation of Section 377.
- **2001** –The Naz foundation filed a PIL in Delhi High Court regarding the constitutionality of Section 377 and the legalisation of homosexuality. The Delhi High Court dismisses the PIL. ¹³
- **2006** – The Naz Foundation files a review petition in the Supreme Court and Voices Against 377, a coalition of NGOs supports and joins the petition.
- **2009** – Delhi High Court bench decides to strike down Section 377 because of violation of fundamental rights of life, liberty and equality.
- **2013** – Supreme Court does not uphold the Delhi High Court judgment and thus overturns it.
- **2016** – Navtej Singh Johar files a writ petition along with four other people regarding Section 377. ¹⁴
- **2017** – Supreme Court declares privacy as a fundamental right and rules that sexual orientation is an important aspect of privacy. The court, in its judgment, says, "Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual."¹⁵
- **April 2018** – KeshavSuri, famous hotelier files a writ petition as well.¹⁶

¹³Naz Foundation v. Union of India, (2009) 160 Delhi Law Times 277

¹⁴Navtej Singh Johar&Ors. v. Union of India Ministry of Law and Justice Secretary, W. P. (Crl.) No. 76/2016

¹⁵ K. S. Puttaswamy (Retd.) v. Union of India and Ors., (2017) SC 762

¹⁶KeshavSuri v. Union of India &Ors., W. P. (Crl) No. 88/2018

- **September 2018** – The Supreme Court unanimously scraps Section 377 thus decriminalising homosexuality.¹⁷

Thus, the movement against the rights of the LGBTQ people triumphed after a long struggle that started three decades ago.

CHAPTER 5- REPORTING MATTERS OF SEXUAL CRIMES IN INDIA

Earlier due to the criminalisation of the homosexuality and prevalence of Section 377 in India, it fostered the homosexuals to not come forward and report about the crimes since they would be punished. The rights of the homosexuals or people of the LGBTQ community were suppressed and not properly exercised. The victims of sexual assault and rape in the LGBTQ community would never report about the same and thus remain silent. No justice could be delivered to them because of the absence of proper laws which could save them from such crimes. Their identity and sexuality would be questioned and made fun of if they tried to report about the same.

The non-reporting of sexual crimes against them also occurs due to the fear of revelation of their identity, which they keep on hiding due to the pressure of the society, friends and family. The members of the LGBTQ community sometimes do not reveal their identity to their family and friends, and in a case where they suffer from sexual assault and other such crimes, they remain mum due to the fear of the consequences that might follow due to the revelation of them being homosexual or non- heterosexual. Coming out can possibly lead to harassment from those related to supporting professions which include regulation enforcement and clinical specialists. Due to the constant fear of harassment and violence, LGBTQ humans often do not report their experiences of sexual violence. In some cases, the family fails to accept the person due to them being non-heterosexual and do not accept them and thus throws them out of the house.

Thus, fear of such kind forces them to suppress the crime that they have been a victim of and thus not report it. The perpetrators take advantage of this fact and repeatedly harass the victims. For LGBTQ survivors of sexual assault, the identity and stigma around the same hinder them

¹⁷*Supra* note 14

from seeking help from police, hospitals, or rape crisis centres, as they harass them, the very assets which must assist them.

There revolves stigma around the fact that men could be raped by men or women could be raped by women or any other such case. Even the definition of rape in the Indian Penal Code considers rape if a man forcibly, without the consent of the woman has sexual intercourse with her. It does not take into account the rape of the people of a particular gender by the same gender. Thus, there is no reference to the members of the LGBTQ community being raped or sexually harassed. Their rights to report such instances are not adequately present.

Only proper reporting of crimes can lead to proper enforcement of the rules and laws and thus delivery of justice to the people. Even if the person who is a lesbian, gay, transgender etc. goes to complain about being a victim of rape, sexual assault etc., they face humiliation at the hands of the police and the absence of proper laws protecting their rights of being raped or sexually assault adds to their problems and worries already existing. Thus, these people remain subdued and suppressed and are not able to report the crimes which they suffer.

CHAPTER 6- THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2019

For the welfare and protection of the transgender community in India, this Bill was introduced. This Bill takes into consideration the sufferings and plight of the community and will help them in their upliftment.

The Transgender Persons (Protection of Rights) Bill, 2019, introduced in Lok Sabha on July 19, 2019, by Mr. Thaawarchand Gehlot had two precedents, The Transgender Persons (Protection of Rights) Bill, 2016 and The Transgender Persons (Protection of Rights) Bill, 2018.

Some of the features of the Bill are:

It gives the definition of a transgender. It defines it as one whose gender does not match with the one assigned at birth. It consists of trans-guys and trans-ladies, people with intersex versions, gender-queers, and persons with socio-cultural identities, together with kinnar and hijra. Intersex

versions are described to mean someone who at delivery shows the variation in his or her primary sexual characteristics, outside genitalia, chromosomes, or hormones from the normative standard of male or woman frame.¹⁸

It aims to prohibit the discrimination of the transgender people with regard to the following:

1. Education
2. Employment
3. Healthcare
4. Access to or enjoyment of goods, facilities, opportunities available to the public
5. Right to movement
6. Right to reside, rent, or occupy the property
7. Access to a government or private establishment in whose care or custody a transgender person is.

A transgender person can apply to the District Magistrate to issue them a transgender person certificate which will help them to change their name or upload documents accordingly.

The right to reside and be included in the household has also been considered in the Bill. If the family of the person cannot take care of the person, then on the order of a competent court, the person can be sent to a rehabilitation centre.

The transgender persons cannot be discriminated in matters of employment, including recruitment and promotion in either public or private entity. In the field of education, any institute funded or recognised by the government should provide facilities like education, sports etc. without any discrimination.

The Bill also takes into consideration the offences against the transgender persons with penalty varying between six months and two years and a fine. The offences considered are as follows:

1. Forced or bonded labour
2. Denial of use of public places
3. Removal from household and village
4. Physical, sexual, verbal, emotional or economic abuse

¹⁸THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 NO. 40 OF 2019, Ministry of Law and Justice <http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

A National Council for Transgender persons (NCT) will be formed consisting of five members from the transgender community and five experts from non-governmental organisations besides other government officials etc. The council will monitor the outcome of policies, legislations and projects for the upliftment of transgender persons as well as advise the central government.

CHAPTER 7- RAPE IN LGBTQ COMMUNITY

The LGBTQ community has been the constant victim of various types of crimes against them due to their position in society. They have been suppressed continuously since centuries. Their continuous rejection in the social sphere has led to their marginalisation and suppression. They are the victims of various types of crimes including murder, rape, sexual assault, extortion etc. besides being the constant victims of discrimination and oppression.

They are also victims of hate crimes all over the world. As defined in the Oxford dictionary, hate crime is "a crime, typically one involving violence, which is motivated by prejudice on the basis of race, religion, sexual orientation, or other grounds." Year by year, these crimes are increasing. In 2007 alone, 1,265 LGB-biased hate crimes were reported to the FBI, which is a 6-per cent increase from 2006.¹⁹ The crimes against the community not only take place in developing or under-developed countries but also the developed countries.

The people of the community have been victims of sexual assault and rape as well. These are attempted to oppress them or subdue them. Sometimes these are done so as to oppress the people of this community as such behaviour is considered against the social norms. Such crimes are often motivated by hate and bias towards the community. The victims of such crimes often struggle to overcome the incident but at the same time are oppressed and discriminated by the authorities.

¹⁹ Michelle A. Marzullo and Alyn J. Libman, *Hate crimes and Violence against Lesbian, Gay, Bisexual and Transgender people*, HUMAN RIGHTS CAMPAIGN (2009)
https://assets2.hrc.org/files/assets/resources/Hatecrimesandviolenceagainstlgbtpeople_2009.pdf

The study on discrimination and violence namely “Injustice at every turn: A report of the National Gender Discrimination Survey”²⁰ had the following results:

- 90 % of respondents were mistreated or harassed at work.
- 6% of respondents reported sexual assault at work
- 22% were sexually assaulted when they tried to access a homeless shelter
- 4% of them reported getting physically assaulted when they were seeking help at rape crisis centres.

CORRECTIVE RAPE

It is a type of hate crime in which people (homosexuals and others) are raped because of their sexual identity or gender identity. It is done to correct that person's deviant behaviour of being a homosexual and to correct it to be a heterosexual. This term was coined in South Africa after well-known cases of corrective rapes of lesbians such as Eudy Simelane (who was also murdered in the same attack) and Zoliswa Nkonyana became public. Corrective rape has often been overlooked. The popularisation of the term has led to the awareness, and the people of the community have come forward to dictate their own stories wherein they were raped to correct their behaviour.

The United Nations UNAIDS 2015 Terminology Guidelines indicates that the term "corrective rape" ought to not be used because it gives off the notion that something desires to be fixed. The guidelines suggest that instead, the term "homophobic rape" should be used. Since women are the majority who are victims of this type of rape, a 2013 global study on HIV/AIDS suggests using the term "lesbian rape".

Corrective rape is targeted for rape against non-heterosexuals as a punishment for violating gender roles. It is a form of hate crime against LGBT individuals, mainly lesbians, in which the rapist justifies the act as an acceptable response to the victim's perceived sexual or gender orientation and a form of punishment for being gay. Often, the stated argument of the

²⁰ Grant, J. M., Mottet, L. A., Tanis, J., Harrison, J., Herman, J. L., & Keisling, M., *Injustice at every turn: A report of the National Gender Discrimination Survey*. (2011)

Retrieved from The National Gay and Lesbian Task Force: http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf

corrective rapist is that the rape will turn the person straight, "correcting" their sex or gender, i.e. make them conform to societal norms.

In India, the parents use corrective rape to correct the child's behaviour which they feel is deviant so as to protect the family name and to prevent the way homosexuals are perceived in society. This happens because of the negative attitude of the society towards the LGBTQ community in general. According to statistics from the Crisis Intervention Team of LGBT Collective in Telangana, India, there have been 15 reported instances of corrective rape that have been reported in the last five years. In general, there has been a 902 per cent increase in reported rapes in India from 1971 to 2012; however, it is estimated that 90% of sex crimes in the country go unreported.²¹

CHAPTER 8- CRIME AGAINST HOMOSEXUALS V. HETEROSEXUALS

It has been seen that the homosexuals or the members of the LGBTQ community are more vulnerable to being victims of different types of crime than those who are heterosexuals. There are higher instances of sexual assault and rape against the homosexuals than the heterosexuals because of their identity.

In the U.S., The CDC's National Intimate Partner and Sexual Violence Survey gave the following statistics²²:

- 44 per cent of lesbians and 61 per cent of bisexual women experience rape, physical violence, or stalking by an intimate partner, compared to 35 per cent of heterosexual women.
- 26 per cent of gay men and 37 per cent of bisexual men experience rape, physical violence, or stalking by an intimate partner, compared to 29 per cent of heterosexual men

²¹Anna MM Vetticad, *India's Bollywood speaks out against rape*, AL JAZEERA (2016)
<https://www.aljazeera.com/indepth/features/2014/07/india-bollywood-speaks-out-against-rape-201471075423510320.html>.

²²The CDC's National Intimate Partner and Sexual Violence Survey, centre for disease control and prevention
<https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html>.

- 46 per cent of bisexual women have been raped, compared to 17 per cent of heterosexual women and 13 per cent of lesbians.
- 22 per cent of bisexual women have been raped by an intimate partner, compared to 9 per cent of heterosexual women.
- 40 per cent of gay men and 47 per cent of bisexual men have experienced sexual violence other than rape, compared to 21 per cent of heterosexual men.

A 2011 study analysed data from more than 75 research reports and found that lesbian and bisexual women may be up to 3 times as likely as heterosexual women to report having been sexually assaulted during their lifetime; gay men may be up to 15 times as likely as heterosexual men to report having been sexually assaulted during their lifetime.²³

Sexual violence towards the LGBTQ community has various forms like gender bullying in colleges and the workplace, road harassment, sexual harassment etc. Members of the LGBTQ community are victims of hate crimes and do not have equal rights as heterosexual people. LGBTQ sufferers of sexual assault have much less access to services/laws that defend them. Reporting their sexual attack might also mean they should reveal themselves as LGBTQ, which isn't always viable. Coming out can lead to extra harassment from those who are in supporting professions which include regulation enforcement and clinical specialists.

CHAPTER 9- RIGHTS OF LGBTQ IN USA

The USA recognises the rights of the LGBTQ community, and thus continuously makes provisions regarding their well being and upliftment. There exist a variety of laws in the country which protect the community from the stigma and suppression of the society and the way the community is looked upon. Some of the laws and legislations are as follows:

²³The prevalence of sexual assault against people who identify as Gay, Lesbian or Bisexual in the United States: A systematic review, NATIONAL CENTRE FOR BIOTECHNOLOGY INFORMATION

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3118668/>

After the ruling in the Supreme Court case of *Lawrence v. Texas*²⁴, sexual activity between people of the same sex was recognised to be legal.

In 2015, the Supreme Court ruling of *Obergefell v. Hodges*²⁵, made marriage between same-sex couples to be legal.

There exist laws regarding discrimination based on sexual orientation in the country which though vary state by state.

Under Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, hate crimes based on sexual orientation are banned.

Title VII of the Civil Rights Act of 1964 prevents employment discrimination based on gender identity.

In 2015, the Supreme Court ruling of *Obergefell v. Hodges* allowed the adoption of children by a same-sex married couple.

Asylum on the basis of gender identity or sexual expression is allowed and codified under the U.S. Federal Law.

Health protection on the basis of sexual expression is also available in the country.

The Equality Act is a bill passed in the House of Representatives on May 17, 2019, that could amend the Civil Rights Act to "limit discrimination on the basis of the sex, sexual

orientation, gender identity, or pregnancy, childbirth, or a related medical condition of a person, in addition to because of sex-primarily based stereotypes."²⁶

CONCLUSION

LGBTQ people have unique sexual orientation and face discrimination and exclusion. Lesbian, gay, bisexual and transgender people have long been trying to strive for racial and financial

²⁴*Lawrence v. Texas*, 539 U.S. 558 (2003)

²⁵*Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)

²⁶ Eric Bachman, *What is The Equality Act And What Will Happen If it Becomes a Law*, FORBES (May 30, 2019, 09:29 am) <https://www.forbes.com/sites/ericbachman/2019/05/30/what-is-the-equality-act-and-what-will-happen-if-it-becomes-a-law/>

justice. The public, in general, is unaware of the community, and there are neglect and stigma revolving around the sexuality of a person or being LGBTQ. The behaviour of such people is considered deviant, and they are not accepted in society. There is a need for proper laws to be enacted and implemented in order to give equality to the community. There are many countries where homosexuality is criminalised with sentences like even the death penalty in some countries. There are some countries where homosexuality is not criminalised, but same-sex marriages are criminalised. In such cases, the rights of these people to choose their life partner are violated. Some countries have laws as to the adoption of children by same-sex married couples, but there are very few countries where such provisions are available. The rights of the community must be considered at the global level, and laws must be present in every country to protect the community.

There is ignorance of the fact that the members of the LGBTQ Community can be victims of crimes such as sexual assault and rape. This ignorance is harmful as the victims of such crimes do not avail proper justice, and in the process of reporting of such crimes, they are the ones who face humiliation and disrespect.

Thus, the members of the LGBTQ Community face lots of complications throughout their life and face trauma and mental stress. Their non-acceptance in society is a major concern for them, and this is the reason why most of them do not come out publicly and hide their identities and live their lives by being disguised.

RECOMMENDATIONS/ SUGGESTIONS

The people of the community need support for their rights to be considered and properly enforced. There is a dire need for changes to be made in order to improve their lives. With the collective efforts of the public and the competent authorities, the problems that they suffer can be solved.

Efforts must be made by individuals and institutions for the sake of the people of the LGBTQ Community. Some of them being as follows:

- Supporting the members of the community, specifically people of colour, low income etc.
- Engaging staff in public education regarding issues distressing LGBT
- Schools and education programmes must focus on sensitising young minds about the community and thus create awareness at the most basic level.
- Media can help in changing the mindset of the society by reporting LGBT issues and encouraging a culture of acceptance, broad-mindedness and liberty for minorities.
- It must be ensured that general health, social care services are made available in a way that is accessible to LGBT people.
- Workplace and workplace culture must be made kind and more inclusive of the LGBTQ people to prevent harassment at the workplace and provide employment opportunities to the community.
- The domestic violence law pertaining to the LGBTQ must be expanded in a way to include parental violence and partner violence as well.
- The police force needs sensitisation on LGBTQ issues and fundamental human rights so that the LGBTQ people go through proper treatment at the hands of the police when they file for a grievance.

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