

# LEGALFOXES LAW TIMES

## LGBTQ+ AN IDNETITY IN DISGUISE

By Kaushal Saini

### Abstract

Even after the decision of the Hon'ble Supreme Court in suresh kumar koushal v. Naz Foundation where the court set aside the order of high court by terming the same sex relationship illegal and decriminalizing section 377 whereby and lgbt+ community individual can live freely enjoying his/her basic fundamental rights to love and live with anyone of their choice but on the ground level they faces alot of issues and problems which one might not think of.

This article discusses about the wrong and unpleasant behaviour by heterosexual society which the LGBTQ+ community individual suffers in his/her life on the basis of the individual's preferences, likes/dislikes and hatred on ground of their sex in the society which turns out to be the violation of their fundamental and basic human rights, that a individual gets by birth, as being the citizen of this country {india}.The article will brief about the concept ,definition of lgbt and other basic things along with the problems faced by the community people.

**Keywords** : lgbtq+,decriminalizing, fundamental rights ,issues and problems

### INTRODUCTION

The customs and norms set and updated by the society in accordance to the prevailing things, suppress the freedom, hopes, rights, liberty and livelihood of many people who do not get fit into

the matrix of the society. People around the globe suffer a lot of violence, hatred, inequality, discrimination and sometimes torture, even realization because of their sexual preferences, on the terms that who they love, how they present themselves, how they believe to be or how they think that who they are. The LGBTQI+ Community has suffered and is suffering a lot for their existence in the society. There should be no abuse or discrimination on the integral aspects of sexual orientation and gender identity of an individual. The Homophobic and trans-phobic violence and unfairness are a serious mess in which the basic and general rights of a person get hampered and also the hardship towards fundamental rights such as right to have a family and privacy is hindered.

More or less universally, mankind undergoes ferocity, bigotry & infringement of their cardinal integrity in the form of murder, molestation, oral or bodily assault, irrational detention, refusal of right of gatherings, articulation and pronouncement, also the discrimination on the spherical aspects of education, medical employment etc. by the virtue of people's real or recognized sexual preferences or orientation and gender identification that leads towards the helpless and unprotected mankind. This was with regard to the elders but the children who face a lot of ordeals at the tender age of their childhood is really painful and are hard to digest and also children become the soft targets to the ordeals due to their young age, physique, lack of knowledge of good or bad touch which happens to give rise to the basic human right abuse due to which they suffer social stigma that disturbs them mentally as they are being pronounced in such ways to which they are not known like bullying by not so good names, verbal and physical harassment. Family exclusion and assaults are very common in India with the children belonging to the LGBTQ community. In practice, through ways that suit those in the heterosexual majority or those whose gender identity and gender position correspond to roles for men and women sex, parents commonly induce their children to undergo multiple reparative therapies in attempt to transform their sexual orientation or gender identity, which is deemed child abuse. All of these unjust behaviours and acts of violence have a negative impact on the physical and mental health of the LGBTQIA+ community, and perhaps an alarming rate of suicidal ideation, addictive behaviours, drugs misuse, HIV, and sexually transmitted infections. Despite the seriousness of the situation, this critical problem has received little coverage.

## CONCEPT OF LGBT

Previously, the word "GAY" was used to refer to the LGBTQ community, although it is now believed that it does not accurately reflect the whole community. This community's members vary from one another based on their gender identity and sexual orientation. When we speak about sexuality that does not have an extensive overview, it is generally thought of as a person's sexual desire or expression towards someone of the opposite gender. However, this is not entirely correct. In general, there are various forms of sexuality. It is not appropriate for people to just have sexual preference against the opposite gender. There are people who have it in various ways, for the same sex or of both sexes. And people who tend of experiencing different sexualities based on their genders are regarded as a part of the LGBTQ+ community. There are only a few of the terminology used to describe sexual orientation, as well as gender identity and expression. A cautionary note is that one should avoid imposing any of these phrases on others. Allow others to identify themselves in ways that make them feel safe and genuine for themselves.

## UNDERSTANDING THE TERM LGBTQ+

People sometimes use the term LGBTQ+ to refer to all of the identities represented by the acronym "LGBTQQIAA":

Which implies to be Lesbian , Gay , Bisexual , Transgender, Transsexual, 2/two spirit, Queer, Questioning, Intersex, Asexual, Ally and the + sign undertakes pansexual , agender , gender queer , Bigender , pangender , gender variant.

LGBTQ is the more widely used word in the world, perhaps because it is easier to remember LGBTQ2+, people can also be referred to as members of the "Queer Community" or "Rainbow Community." This initialism and its associated words are constantly changing, so memorising the entire list is not preferred. The most important thing is to be courteous and to use words that people like.<sup>1</sup>

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<sup>1</sup> Definition meaning of lgbt available at: <https://www.usatoday.com/story/news/2017/06/15/lgbtq-glossary-slang-ally-learn-language/101200092/>(visited on 18 april 2021).

## WHAT IS A PRIDE

Pride is a positive emotional response or attitude toward something that has a close relationship to oneself because of its relative benefits. Oxford defines it as "the trait of having an unduly high opinion of oneself or one's own importance," among other things. This could be tied to one's own qualities or accomplishments, favourable traits of friends or family, or one's country. Pride, as opposed to false pride or narcissism, is defined by Richard Taylor as "the justifiable love of oneself." Similarly, St. Augustine defined it as "love of one's own excellence", while Meher Baba referred to it as "the exact feeling through which egoism develops."

Pride rather than shame or societal stigma, is the dominating attitude that fuels most LGBT rights initiatives.

Pride takes numerous forms from dreamlike marches to film screenings and debates and is a time to celebrate those who are stigmatised by narrow ideas of what it means to be a man or a woman. Depending on where you are, events are planned throughout the year. In the Americas and Europe, the season normally begins in June, whereas Pride season in South Africa lasts from February to March.

Pride honours the LGBTI movement in all of its diversity and raises awareness of the need to respect and safeguard LGBTI rights.

The first Pride Parade in India, called the Kolkata Rainbow Pride Walk, was conducted on July 2, 1999, and it is also the oldest Pride march in South Asia. Despite participation from other places such as Mumbai and Bangalore, there were only approximately 15 people in total, none of them were women.

It is thought that the march, also known as the Friendship Walk, was chosen to take place in Kolkata because of its rich history and close ties to numerous human rights movements, including feminist, Dalit, disability, and child rights. This is analogous to why Stonewall happened so close to New York City as well as the fact that the world's first pride march was

staged there in the late 1960s. This demonstrates how Pride benefits from its interconnectedness. Another example is how Pride Parades in India often include caste-related debate and demonstrations.

It's been 20 years until the Rainbow Pride Walk in Kolkata in 1999. Pride Parades are being held in more than 21 Indian cities.

## **SEX AND GENDER**

Before we can understand the concept of third gender, we must first comprehend what the terms Sex and Gender means. Is there a distinction between the two, or are they interchangeable?

However, there is no specific definition for these two words, and they have been used interchangeably for a long time. They have been used identically or as synonyms for each other. Furthermore, as the society is changing, as well as growing it is becoming more acceptable and tolerant of the LGBTQ community. People from this community are also stepping out in the open and discussing their sexuality, accepting their gender identity, and speaking out for their legal rights. As a result, people are now aware and are understanding the distinction in between the phrases Sex and Gender.

Basically, sex is a biological term that refers to the biological differences that distinguish humans as male or female. Gender, on the other hand, relates to a person's sexual identity or sexual orientation. It depicts a human being's position in society or how a person individually identifies himself in terms of sexuality. People whose gender identification does not align or line up with their biological sex, or who are intersex, are regarded both male and female, or neither male nor female, and are considered to be members of the LGBTQ community.

## **CONNOTATION OF 3<sup>rd</sup> GENDER**

Previously, there were only two legally recognised genders in India: male and female. However, the supreme court of India has officially recognised a third gender as "Other." People, regardless of gender, have the right to legally register as third gender. Because sex refers to a human being's biological identity, whether he or she is male or female, but gender is a state of mind, which indicates how a person considers or believes himself to be. As a result, 3<sup>rd</sup> gender is a broader word for everyone whose gender identity does not correspond to his or her sex. It does not

include homosexuals and lesbians, but rather all those whose gender identity and sex are different, such as transgender, transvestites, and others, as well as those who choose sex reassignment surgery (SRS) to correct their sex and gender identity.

### **HOMOSEXUALITY MEANING**

There is no such thing as a thorough definition of homosexuality. Sexuality cannot be described in a single way: diverse types of sexuality are experienced by various people at different times.

Some people have it since childhood, but others became homosexuals after living as heterosexuals for a significant amount of time. As a result, people describe homosexuality in a variety of ways. In general, it refers to sexual attraction toward the same gender, such as a man being sexually attracted to another male or a woman being sexually attracted to another woman. Homosexuality is defined as "an enduring pattern of emotional, romantic, and/or sexual attraction" to individuals of the opposite sex. "It also refers to a person's sense of identity based on those attractions, related behaviours, and involvement in a community of individuals who share those attractions," according to the definition.

Although no single theory on the origins of sexual orientation has gained general acceptance, experts prefer biologically-based explanations. There is far more evidence supporting nonsocial, biological explanations of sexual orientation than social causes, particularly in men. There is no substantial evidence to show that parenting or early life experiences influence sexual orientation. While some people believe that homosexual activity is unnatural, scientific study demonstrates that homosexuality is a normal and natural variation in homosexuality and is not a source of harmful psychological impacts in and of itself.

The most popular adjectives for homosexuals are lesbian for females and gay for males, though the word gay also could refer to both homosexual males and homosexual females. For a number of reasons, including many gay and lesbian people not boldly identifying as such due to prejudice or discrimination such as homophobia and hetero-normativity.

### **Different parameters of homosexuality –**

#### **Identity-**

People in society are very eager to label everything, and this is especially true when it comes to identity. People label others based on their sexual identity, as well as themselves, and thus differentiate themselves from others. There is a label given to individual whose gender identity differs from their sexual identity, and this is the LGBT community.<sup>2</sup>

**Feelings-**

It is apparent that various persons have different feelings and emotions, and as a result, they describe homosexuality differently. Some describe it as a powerful and constant emotion, while others describe it as faded. Some people are drawn to someone sooner, while others are drawn to someone later. Some people experience the same sex attraction after a specific incident, whereas others experience it from the beginning. But one thing is certain: feelings vary and no one can control them, thus individuals cannot choose between being homosexual or heterosexual because it happens spontaneously.

**Lifestyle-**

Homosexuality can vary based on one's lifestyle. Sometimes people are surrounded by homosexuals and feel a strong connection and sense of belonging to them, leading them to identify as homosexuals. Some people have been in a relationship with another gay without feeling sexually attracted to him, but they eventually acquire such feelings. As a result, a person's way of life might also be a cause of homosexuality.

**Behaviour-**

People's behaviours vary, which adds to the diversity. Many persons experience same-sex desire but do not engage in homosexual actions, whereas others experience heterosexuality yet engage in homosexual actions. There are many people who are in heterosexual relationships, married, and have children, but feel an attraction to the same sex. As a result, behaviour can vary, as does the definition of homosexuality.

**Other parameters-**

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<sup>2</sup>Meaning of homosexuality available at: <https://www.exodusglobalalliance.org/whatishomosexualityp95.php> (visited on 19 april 2021)



Other causes of homosexuality include biological, social, and psychological factors. There is no clear evidence, yet some scientists believe homosexuality is natural and genetic. They thought that people are born with a specific sexual orientation as a result of genetic causes. On the other hand, homosexuality could be the product of societal influence or their psychology that developed over time in a specific society. Because one's social environment and upbringing have a significant influence in shaping one's view, homosexuality can be based on one's social environment and upbringing.

### **Challenges faced by the LGBT community**

#### **Barriers in healthcare facilities**

People who identify as lesbian, gay, bisexual, or transgender (LGBT) experience unique obstacles, barriers, and challenges in finding and receiving competent and affirming healthcare. Heterosexist attitudes can have a severe impact on treatment quality, and many LGBT people are afraid to seek therapy for fear of having a bad experience. Organizations and individual therapists are not always welcoming to LGBT people, and some therapists may not even recognise their own heterosex. Staff may be critical about LGBT sexuality, or they may be misinformed/uninformed about LGBT resources.

Healthcare is not a priority for LGBTQQ people because they are afraid of what it might entail. Medicine and LGBTQ people may collide in the setting of sex reassignment, gender reassignment procedures, sexually transmitted illnesses, and mental health.<sup>3</sup>

Many transwomen decline to seek therapy at medical schools. They claim we don't want to go to medical schools even if they have a chest cold or a cough because the doctor's instant response is, "Take off your clothes, call the students, and explain this is what a trans woman looks like." They do this to their bodies without their permission. This is problematic because government medical colleges are the least expensive medical schools for them to attend. Most people, including LGB (Lesbian, Gay, and Bisexual) people, can pass (without being questioned about their sexuality) if they have a cough or cold, but not transwomen.<sup>4</sup>

<sup>3</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1070935/> (visited on 19 April 2021).

<sup>4</sup> <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/> (visited on 19 April 2021).



### **Drug Addiction of LGBT people**

LGBT individuals are more likely than the overall population to use alcohol, tobacco, and other substances, are less likely to abstain, have higher rates of substance abuse issues, and are more likely to sustain heavy drinking into older life. LGBT people use alcohol, tobacco, and other drugs for the same reasons as everyone else, but their proclivity is increased by personal and cultural difficulties caused by anti-gay prejudice. Reliance on bars for socialisation, stress caused by prejudice, and targeted advertising by cigarette and alcohol companies in gay and lesbian publications are all seen to contribute to increased pressures on LGBT people to use drugs.

The identified six substance abuse-specific risk factors for LGBT youths.

- Belief in one's own worthlessness or badness.
- A disconnect from helpful adults and peers.
- A scarcity of alternative perspectives on difference
- Inadequate access to role models.
- Other than bars, there are few opportunities to socialise with other gays/lesbians.
- The possibility of contracting HIV.

### **Mental health issues**

- Depression - This group is far more likely to suffer from depression since they are unable to express their feelings to others. This continual stress frequently leads to sadness.
  - Anxiety - The persistent fear of being identified as different. Many people say they struggle with the idea of coming out to their loved ones on a daily basis.
  - Adjustment problems - Acceptance is not always found when they anticipate it. It might be at work, with relatives, or somewhere else.
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- Body image issues- Many transgender people struggle with this urge for years. Few people spend the most of their lives as the sex to which they do not have a connection.
- Issues with abandonment fear & Relationship issues<sup>5</sup>

### **Experiences that could negatively impact mental health**

- Hostility or rejection from loved ones or religious groups
- Bullying at school, harassment by neighbours, danger of violence in public places
- Casual homophobic comments on a daily basis
- Prejudice/embarrassed response from professionals
- No protection against discrimination at work, housing, pensions, etc.

### **Marginalization and Social Exclusion**

Many LGBT persons are pushed to the edges of society due to the stigma linked to sexual orientation and gender identity or expression that differ from the conventional heterosexual, non-transgender norm.

This marginalisation frequently removes LGBT individuals from numerous support structures, including their own families, leaving them with limited access to resources that many others take for granted, such as medical care, justice and legal services, and education. LGBT persons are frequently denied access to basic public services such as health care and housing due to marginalisation and intolerance surrounding sexual orientation and gender identity and expression, which adds to substantial health problems. The marginalisation of LGBT persons frequently begins with the family into which they are born.

### **Impact of Exclusion and Discrimination**

Exclusion and prejudice have a significant impact on the lives of lesbian, gay, and transgender people. As a result, the following have occurred:

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<sup>5</sup> <https://www.slideshare.net/IPGCounseling/challenges-faced-by-the-lgbt-community-63913776>

- Dropping out of school earlier than others
- Leaving Home and Family
- Unable to obtain regular jobs, have fewer possibilities
- Isolation and being ignored in the community
- Inability to access various services and being unaware of what they are entitled to
- Mobility, moving to different areas (such as the city and urban areas)
- Lack of family and social support
- Migrate to other nations in search of a better living and acceptance
- Rejected from Religion (especially Muslims and some Christian Fundamentalist factions)
- Suicide Attempt
- Decide to follow in their parents' footsteps by marrying opposite sex and subsequently divorcing.

### **Problems of Homelessness**

A shortage of housing and resources that suit the special needs of LGBT individuals who are homeless is one of the many issues they face

Homeless LGBT youth lack economic support, are more likely to participate in drug use and unsafe sexual behaviours, and are more likely to develop mental health concerns. Homeless LGBT youth miss out on education and social support during important formative years, with more than half reporting peer discrimination.

### **Problems of Homophobia**

Lesbian, homosexual, bisexual, and transgender people are more likely to face intolerance, discrimination, harassment, and the threat of violence because of their sexual orientation than heterosexual persons. This is because of homophobia. Moral, religious, and political convictions of a dominant group are some of the reasons that may reinforce homophobia on a larger scale. Many LGBT people are forced to conceal their sexuality because they are afraid of the harsh reactions and consequences of coming out in a hostile atmosphere.

Actually, there is no single definition of homophobia because it encompasses a vast spectrum of various perspectives and attitudes. Homophobia is often characterised as animosity or fear of gay individuals, but it can also relate to stigma associated with homosexuality based on social ideas. Negative thoughts or attitudes against non-heterosexual behaviour, identity, relationships, and community can lead to homophobic behaviour, which is at the foundation of the prejudice faced by many lesbians, gay, bisexual, and transgender (LGBT) persons. Homophobia presents itself in a variety of ways, including homophobic jokes, violent assault, occupational discrimination, and unfavourable media portrayals.

People who have been raised to believe that homosexuality is bad may have feelings of shame and self-loathing as a result of discovering they are gay, resulting to low self-esteem. Suppressing homosexuality entails denying an important aspect of a person's identity, which can have major consequences in a person's life and relationships. Furthermore, the quandary of whether or not to come out can create a tremendous lot of personal misery. LGBT people who choose to reveal their sexual orientation may encounter prejudice and discrimination from family, friends, and society as a whole.

Homophobia may be extremely damaging and disruptive to people's lives. Many LGBT people, for example, have become homeless as a result of being rejected by their family after disclosing their sexual orientation. Homophobic people play a significant role in interfering with the lives of LGBT people. They are unable to control their feelings of hatred and their refusal to accept LGBT people. As a result, they verbally or physically harass LGBT people and expose them to harm. LGBT people are subjected to stress, unhappiness with their surroundings, physical disruption, loneliness, and ostracism as a result of such attitudes.

### **Poor Economic Condition and Discrimination in the Workplace**

Lesbian, homosexual, bisexual, and transgender persons face racism and poverty on a daily basis, in addition to homophobia. Discrimination against LGBT people in the workplace is a significant contributor to the disparities in socioeconomic position for LGBT people. Gay and transgender people face socioeconomic inequality in large part because of occupational discrimination<sup>6</sup>. Discrimination directly causes job insecurity and high turnover, resulting in higher rates of unemployment and poverty for homosexual and transgender persons, as well as a wage disparity between homosexual and straight persons.

### **Victims of hate Crimes and Violence**

Lesbian, Gay, Bisexual, and Transgender people, as well as those assumed to be LGBT, are frequently victims of hate crimes and violence. LGBT persons face stigma and prejudice throughout their lives, and they are victims of sexual and physical abuse, harassment, and hate crimes. Other variables that may have an impact on LGBT people's mental health and well-being include the process of coming out (disclosing one's LGBTQ status to others), gender transition, internalised oppression, loneliness and alienation, loss of family or social support, and the effects of HIV and AIDS. However, the experiences of LGBT people with violence and prejudice vary depending on a variety of criteria such as colour, gender, income, immigrant status, and language problems. LGBT immigrants are more likely to encounter violence because of their race and ethnicity, as well as their sexual identity and gender identity.

### **Problems of Terminology**

Language problems arise when terminology is ambiguous or when terminology is associated with negative perceptions. When the vocabulary used to describe lesbians, gay men, and bisexual people is overly ambiguous or the concepts are inadequately defined, problems arise. Language may be ambiguous in reference, leaving the reader unsure of its meaning or inclusion and exclusion criteria; and the term homosexuality has historically been associated with deviance,

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<sup>6</sup> LGBT From Wikipedia, the free encyclopedia, from <http://en.wikipedia.org/wiki/LGBT>

mental illness, and criminal behaviour, and these negative stereotypes may be perpetuated by biased language.

For psychological literature, the term sexual orientation is favoured over sexual preference, and it relates to lesbian, gay, bisexual, and heterosexual people's sexual and affectional relationships. The term preference implies a level of deliberate choice that is not always stated by lesbians and gay men and has not been proven in psychological studies. Lesbian sexual orientation, heterosexual sexual orientation, gay male sexual orientation, and bisexual sexual orientation are more appropriate than lesbianism, heterosexuality, homosexuality, and bisexuality.

### **CONCLUSION AND RECOMMENDATION**

- Everyone should be able to be proud of themselves and others they care about. We all have the right to freely express ourselves. Article 19 of the Universal Declaration of Human Rights (which for the first time lays out the rights to which we are all entitled) safeguards everyone's freedom to freely express themselves.
- Ending homophobia and transphobia will save lives. Anti-lgbti harassment puts those who identify as LGBT at a higher risk of physical and psychological damage. Everyone has the right to life, liberty, and security. "OUR MISSION YOUR SUCCESS"
- We may learn how to remove many of the limits imposed by gender norms by loving lgbti persons and recognising their identities. These stereotypes have a negative impact on society because they define and limit how people are expected to live their lives. By removing them, everyone is free to reach their full potential, free of unfair social restraints.
- Lgbti persons, particularly transgender and gender nonconforming people, are frequently subjected to economic and social discrimination. Fighting for more inclusive policies for people of all sexual orientations and gender identities will give them access to their rights to health, education, housing, and employment.
- Don't turn your back on someone from the community if you know them. Accept them for who they are and act normally in their presence. Just like you do not violently decide on your favourite colour or food, you do not aggressively decide on your sexuality and attraction. It is

a biological and psychological phenomenon that is innate. Parenting and early events do not cause people to change their sexual inclinations.

Based on the preceding discussion, it is concluded that LGBT minority persons endure discrimination in the family and society because they have different sexual orientations. However, because they are human beings, they are entitled to all human rights and fundamental rights in India. Lesbian, gay, bisexual, and transgender persons have long been involved in racial and economic justice movements. Today, LGBT activists and groups are increasingly focusing on the intersection of movements for LGBT rights and movements for economic, social, political, and racial justice. As a result, it is necessary to preserve their rights as human beings in society today.

