

# LEGALFOXES LAW TIMES

## THE REQUIREMENT OF GROWTH MIND-SET OVER FIXED MIND-SET: LEGAL APPROACH TO HATE CRIMES

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### Introduction

Every citizen has the right to live in a healthy environment to ensure his safety, liberty and dignity. Even Indian constitution give the privilege to prisoners to enforce legal rights equally to its citizen. But the LGBTQ community stands as vulnerable and free from those privilege globally due to hate crimes. This article is going to allude the extent of hate crime and its aspects with other country reference and acknowledge the legislature to support the community with respect to the section 377 under Indian Penal Code, 1860.

### What are hate crimes

The act of violence towards the people approaching the personal safety, liberty along with dignity of the LGBTQ Community falls under the domain of hate crimes or bias crimes. According to its gravity, England and wales makes a distinction between the hate crime and hate incidents. The classification makes it clear that the illegal act which are more heinous in nature falls under the criteria of the hate crime. The offender must be punished under the Criminal Disorder Act 1998 or Criminal Justice Act 2003<sup>1</sup>. But unfortunately, the intersectionality of

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<sup>1</sup> Nish Vasco-Knight, As this year's Disability History Month comes to an end, Stonewall's Accessibility Forum have highlighted 8 ways you can become a better ally to LGBT disabled people, Stonewall (18<sup>th</sup> Dec, 2020) <https://www.stonewall.org.uk/about-us/news/8-ways-be-better-ally-lgbt-disabled-people>

crime cannot be recognised by legislature. On the other hand, the prejudice towards a person's identity by verbal abuse or physical attacks, threat call or online abuse comes under the domain of hate incident.

The LGBTQ community stands for the homophobic, biphobic, transphobic people who suffered the hostility from the society without any justifiable reason. Today, not only the Indian society but also globally, this community is facing hatred due to their identity. Apart from legislation and strong judiciary, we need to develop a growth mind-set that can promote each community without any hesitation.

Homophobic and transphobic offence has been accounted as a global issue. It goes from forceful mental tormenting to actual attack, torture and murder. Sexual savagery has additionally been broadly revealed, including punitive rape, in which men assault women thought to be lesbian and attempt to fix their identity of homosexuality. It's one of the grievous savagery happens in the city, openly stops, schools, in work environments, and in police cells too. A typical attribute to non-supporter of LGBTQ violations is their mercilessness.

Torment and abuse to lesbian, gay, bisexual, transsexual and intersex individuals has additionally been widely archived. Regular torment happens in spots of confinement, where LGBT individuals might be exploited by cops. A few types of compulsory clinical treatment may likewise be conducted to prove their identity which is against the liberty and dignity. 95 percent of this community has suffered the verbal abuse in the work place till now.

### **Background of Hate Crimes**

Assaults on the individual belonging to LGBTQ community, resulting to a challenge to a nation for securing equality and preserving legal rights due to their sexual orientation. Their identifications are viewed as a type of sex based brutality. Since 550 BC, the community is facing challenges even for survive in the society due to their identification with regards to their sexual orientation. For securing the essence of justice and equity in the nation, kings along with superiors started developing new rules and regulations to their existing legislature. The Leviticus

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book of the Bible and Comparative laws of ancient Rome for prehistoric Germanic culture give us the idea of formulation of specific law with regards to secure the community's legal rights.

Ironically, laws were developed but their legal rights are not secured till date. In 400 AD, the Gay community was announced unlawful in Rome and suffered starvation as their punishment.

In many law books of Muslim nations, it was written to give capital punishment to the gay people. According to the report of the Leicester Hate crime research, the offences related to hate crime was emerged more than 400 years from a diverse socio-economic background. In 1933 the Nazis had detained 100,000 gay people for 12 years.

The United Nations political bodies has the rights and convention for the LGBTI community since 1945. But it was remained idle before the people until 1994. By the landmark case of 'Toonen V. Australia' which highlighted the Universal Human Rights Committee to set a resolution before the world. By the International Covenant on Civil and Political Rights it was decided that the violation to homosexuality as a sexual orientation is same as the infringement to human rights. By this statement made by the Universal Human Rights Committee sexual orientation became a topic of debate for the 4<sup>th</sup> conference on woman in Beijing. The challenges faced by the people was added into 'woman's right to control their sexuality'. It was addressed by the lesbian lady named Beverly PalesaDitsie before the world. After her challenging speech, LGBT issues and challenges were added to the state list along with its respective resolutions.

Today, the LGBTI community are marginalized although human rights standard is accountable to everyone. In seventy- five countries the relationship between LGBTI community is marked illegal which is infringement to Universal Declaration of Human Rights. Existing law creates a gap among the citizen that give rises to decimation among all due to their sexual orientation. They face inferiority not only in work place but also in their private lives. It makes many transgender to opt medical treatment to meet all the legal rights without any discrimination.

### **Duties of Nation against hate crimes**

States are obliged to the people of LGBTI for ensuring the legislature. It's the right of everyone to live a healthy life with their personal liberty with dignity. So it's the implied obligation not only the region but also the centre to amend the existing law to preserve the community's legal rights and privileges. In recent years, India has developed a law for ensuring the rights of LGBT

and make it decriminalised in the year 2018. It was the remarkable step taken to break the custom and colonial rule by interpreting the article 15 of Indian constitution. For the community's liberty, Indian constitution gives the privilege to undergo medical surgery under the legislation 2019. By supporting the essence of legislation, project hijras has been started by many states. For the community's welfare, government provide pension scheme and free assist to medication to more than 480000 transgender. Hinduism acknowledges the importance of third gender and its positive impact on our society. By the custom and the landmark judgement of 'Navtej Singh Johar V. Union of India' make Hon'ble Supreme court to decriminalise consensual homosexual intercourse under section 377 of the Indian Penal Code, 1860. This landmark decision of Hon'ble court was welcomed by the community and give them a hope for a discrimination free society dealing with equal rights. The infringement of said provision make the accused imprisoned for life. Previously, Gay sex was made illegal and 10 years of confinement given to the people belonging to community. By this amendment, the historic moment in Indian judiciary came into force to overrule the colonial rule. It was further extended to the state of Jammu and Kashmir by the provision of article 141 and Delhi agreement along with Ranbir Penal laws.

From the Gay Pride & HIV awareness march of 2011 in the old city area of Pune, it became the tradition to follow on every 11<sup>th</sup> Decemberto support the LGBTI community. It's well known as Pune Pride Parade which reflects to Indian society to stand with the LGBTQ community. Apart from the pride parade, many renowned companies started looking after their employee's sexual orientation along with demo graphs. To secure the equal job opportunities, they are creating more inclusive workplace to recruit those individuals.

After the enforcement of section 377 all over India, the fixed mind set of the society has not changed yet. The foundation has made in 2018, still society is not accepting the transformation within its tradition<sup>2</sup>. The youth named the judgement after 'victory of love' but there is an absence of due diligence to them. The people belonging to the community, finds it difficult to adapt themselves before the society because of past hatred. There life has not changed after the

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<sup>2</sup> Danish Sheikh, SanhitaAmbast, [The Criminalization of same sex relations in India comes at a high cost to the LGBT community](#), Policy Forum (26<sup>th</sup> April, 2016), [How India's law fails LGBT people - Policy Forum](#)

historic verdict. Indian society is not that progressive to have a discussion on homosexuality. Moreover, a growth mind-set is needed to eradicate the prejudice to the community. On the other hand, in metro areas the individuals became more confident and perusing their carrier accordingly. Vikram Seth, the name which does not need any recognition, the writer of the well-known novel 'The Suitable Boy' belongs to the gay community. He worked as the most influential personality and motivated the LGBTQ community. After the battle of 377, the unity of LGBTQ became more strong and the offences related to hate crime and hate incidents has reduced drastically.

As per the FBI's 2018 hate crime statics data, adolescents perpetrated 15.3 percent of the offence revealed in 2018, and 9.2 percent of occurrences happened at schools or universities. UNESCO reviewed 371 sexual and sex minority youth, and more than 60 focused activist gatherings in Tamil Nadu state. 84 percent of members revealed being tormented and most by different understudies, however in one-fifth of those cases by a male instructor. Just 18 percent of the individuals who were harassed said they mentioned that they told to their respective school authorities. This data suggest itself to add a subject regarding LGBTQ community with respect to the hate crimes and incidents. The international interdisciplinary council need to be promoted over the schools and university to reduce the hate incident rate. In other countries, the experts have seen an enthusiastic projection in homophobic and transphobic hostility of noticeable definitive advances. So it's the obligation of government not only to address discrimination to ensure equality but also adequate diligence to prevent such offences. The United Kingdom has achieved the adequate regulatory measures by guiding the gravity of the offence. To perceive the measure, the nation after addressing the offence made a supposition to the wrongdoing worldview. They develop the ACPO guidelines to diminish the rate of hate crime and hate incidents.

### **Steps taken worldwide to prevent Hate crime**

To prevent the extent of hate crime against the LGBTQ, North America has established the National Coalition of Anti-Violence Programs since 2013. It has been ensuring the legal rights of the victims of HIV affected as well anti-LGBTQ offence. It supports the victims those who have the fear to report against hate crime or hate incidents before the police. According to the report of NCAVP, the registered hate crimes declined at a rate of 11percent in previous years.

There were certain heart melting incidents taken place which made the LGBTQ community to report against the hate crime or incidents they faced. In 2016, the deadliest mass shooting was occurred in a gay club placed in Florida. It resulted into 50 deaths along with 53 injured. It was done without justifiable reason and attempted to prevent gay people's gatherings. After such incident, the legislature was amended to prevent malicious communication in order to prevent threats. Those offender committing hate crime using electronic medium also liable under the section 127 of Malicious Communication Act 2003.

### **Conclusion**

The international human rights law along with Universal Human Rights Declaration are providing equality and non-discriminatory laws irrespective of any sex, caste, religion or race. Apart from its essence, it's also applicable to any person regardless of sex, gender identity, sexual orientation or falls under the statues of others. The amendment in the section 377 to the Indian Penal Code by the remarkable judgement makes us to fall in love with Indian law and quite justifiable to name the verdict after victory of love. It's not only ensure the discrimination to consensual homosexual intercourse but also secure the essence of article 21 of Indian constitution. The development of criteria of hate crimes and hate incidents by the United Kingdom leads to the development of ACPO guidelines. Moreover, the judiciary along with legislature is working hand by hand, but the gap between the sexual orientation is due to the narrow mind-set of the society. The LGBTQ community has also the right to live with all legal rights so they are not supposed to suffer the hate crimes. To diminish the hate crime, a growth mind-set is required over the fixed narrow mind-set across the globe.