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LGBT: TORN BETWEEN EXISTENCE AND ACCEPTANCE



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## **LGBT: TORN BETWEEN EXISTENCE AND ACCEPTANCE**

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### **ABSTRACT**

At different times and in different cultures homosexual behavior been variously approved of, tolerated, punished and banned. Christian as well as Muslim cultures have generally perceived this behavior as sinful. However many Jewish and Christian leaders had gone to great lengths to make clear that it is the acts and not the individuals or even their “inclination” or “orientation” that their faiths prescribe.

The attitudes towards homosexuality is generally in flux, partially of increased political activism and great efforts by homosexuals themselves to be perceived not as any aberrant personalities but as differing from “normal” individuals only in their sexual orientations.

In the 19<sup>th</sup> and 20<sup>th</sup> century homosexuality was considered as mental illness. But with the progress of time and giant steps towards the rightful perception or at least increased tolerance for people having deviated sexual preference were started to surface. By 21<sup>st</sup> century many societies had been taking this to their table and open discussions in public platform became a common sight. The idea of effeminate mannerism and weak individuality in men, and masculinity and aggression in lesbians started to loose grounds.

In many countries both the subject and the behavior are considered taboo, with some slight exception made in urban areas. Even in parts of the world where physical violence is very less, intolerance of homosexuality persists. The fear of diseases like HIV, AIDS was the factors that added fuel to the fire. However in recent world, the LGBT community is holding marches, protest and fighting for a normal life with acceptance and respect in society.

### **INTRODUCTION**

The interdependent relationship between health and human rights is well recognized. Human rights are indivisible and inalienable. Universal Declaration of Human Rights (UDHR) addresses the rights to equality; freedom from discrimination; life, liberty, and personal security; and many more rights as a person before the law; equality before the law; and the rights to marry and have a family lesbian, gay, bisexual, and transgender (LGBT). In many places and circumstances their claim to the full set of human rights is denied. This puts LGBT people in many countries at risk of discrimination, abuse, poor health, and death — the ultimate human rights violation.

Denial of the recognition of human rights for any group of individuals is a denial of their humanity, which has a profound impact on health. For LGBT people, it may result in discrimination in housing and jobs (affecting the ability to purchase food, shelter, and health care); lack of benefits (affecting the ability to pay for health care and financial security); harassment and stress (affecting mental health and/or prompting substance abuse, smoking, overeating, or suicide); isolation (leading to depression); sexual risk-taking (exposing oneself and loved ones to sexual health risks, including HIV); physical abuse and injuries; and/or torture and

death. If health care organizations take a rights-based approach to health provision for LGBT people by explicitly recognizing their existence and targeting health interventions to their needs, it may alleviate fear of discrimination and discrimination itself, as well as improving health outcomes.

LGBT people in many societies are subjected to discrimination, abuse, torture, and sometimes state-sponsored execution. For many human rights violations, there exist laws under which countries punish perpetrators of such abuses. For LGBT people in most countries, abuses perpetrated against them are not viewed as human rights violations. Some countries, such as Iran and Saudi Arabia, have laws calling for the execution of “practicing homosexuals.” At least 40 countries criminalize same-sex behavior for both men and women, and an additional 35 or more criminalize it just for men. Countries most recently in the news in this respect include Uzbekistan, India and Saudi Arabia. In many Muslim countries, both civil law and *shari’a* criminalize homosexual activity. Police abuse of LGBT people is common and pervasive in many places, including the United States. Recent notable abuse cases have occurred in Nepal, Colombia, Peru, Taiwan and Zimbabwe. Many countries legalize and condone discrimination in housing and

employment. Laws providing citizens with benefits, including those in the US, do not provide equal benefits to LGBT couples. For example, a report by the US Government Accountability Office (GAO) documented more than 1,000 benefits, rights, and privileges that the federal government provides to opposite-sex married couples but not same-sex couples, including taxation and social security survivor benefits. Protections under the law are similarly lacking. Thirty-four of the 50 US states and the District of Columbia do not prohibit discrimination on the basis of sexual orientation. Twenty do not have “hate-crime” laws that include sexual orientation among their protected categories. Protection for transgender identity is even more limited.

Legal marriage conveys many additional benefits and protections to couples. Only a few governments (to date, Canada, Belgium, the Netherlands, and Spain) recognize LGBT rights to marry and form a family. South Africa, which in 1996 became the first country to include sexual orientation in its Constitution as a status protected from discrimination, is expected to allow same-sex marriage by the end of 2006. In Brazil, where state and federal laws prohibit discrimination based on sexual orientation, inheritance rights are provided to same-sex couples. Several European countries (Denmark, Sweden,

Norway, Finland, the UK, France, Germany, Switzerland, Portugal, Slovenia, Croatia, and Iceland) as well as Israel and New Zealand have some benefits for same-sex couples, but not equal to those for heterosexual couples. Within the US, only one state (Massachusetts as of May 2004) grants civil marriage rights to same-sex couples; however these are only the rights provided by the state, not the more than 1,000 federal benefits mentioned above. California, Connecticut, the District of Columbia, Hawaii, Maine, New Jersey, and Vermont have either civil unions laws or other domestic partnership laws to provide some benefits to unmarried couples (again, not equal to marriage rights).

In the human rights arena, major international human rights organizations have only committed to including the rights of LGBT people within the past decade or so. Human rights organizations such as Amnesty International and Human Rights Watch now have campaigns to address LGBT human rights violations. Particularly designed LGBT human rights groups have been active for much longer. For example, the International Gay and Lesbian Human Rights Commission (IGLHRC) has existed for the past 16 years to secure the full enjoyment of the human rights of LGBT people and communities subject to abuse on the basis

of sexual nature or expression, gender identity or expression and/or HIV status. Likewise, for the past 28 years the International Lesbian and Gay Association (ILGA) has been fighting for equal rights for LGBT people.

There is some support for LGBT human rights at the United Nations (UN). UN Secretary-General Kofi Annan expressed his support in August 2003 for LGBT nondiscrimination, stating, "The United Nations cannot condone any persecution of, or discrimination against, people on any grounds." The UN Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights, found that laws punishing adult consensual homosexual acts violate the Covenant's guarantees of nondiscrimination and privacy and held that discrimination on the basis of sexual orientation is prohibited under Articles 2 and 26 of the Covenant.

However, advocates still have trepidation about using UN fora to claim the human rights of LGBT populations because of the threat of opposition from several sectors, including the Vatican, countries in the Organization of Islamic Cooperation (OIC), and, recently, the US.

This year, LGBT advocates were not allowed to join discussions at the UN Economic and Social Council (ECOSOC)

when the Council dismissed the applications of the ILGA and the Danish Association of Gays and Lesbians for observer status. This was the first time in its history that the Council, at the request of Iran, Sudan, and the US, dismissed the application of a nongovernmental organization (NGO) without the hearings usually given to applicants. The US action was a reversal of policy, as it had voted for ILGA observer status in 2002. Forty-one human rights organizations wrote a joint letter to US Secretary of State Condoleezza Rice condemning the US action. In 2003 and 2004, the US refused to endorse a Brazilian draft resolution to the UN Commission on Human Rights that would have condemned discrimination on the basis of sexual orientation, citing ideological values opposed to the resolution. The recent US action at the UN makes a mockery of the increased documentation by the US Department of State of LGBT human rights abuses around the globe. In the Department of State's annual report to Congress, entitled *Country Reports on Human Rights Practices*, both the reported number of human rights abuses and the reported number of countries in which such abuses have occurred have increased.

In February 2006, another deadly attack took place, this time in South Africa. Zoliswa Nkonyana, a lesbian who was

walking down a street in a Cape township with her partner, was killed by a mob. This occurred despite South Africa's constitutional protection against discrimination.

Human rights are the fundamental rights of every human being, regardless of culture or societal norms. Working for the recognition of LGBT human rights is about ensuring access to health services, but also involves speaking out and acting to ensure the visibility of LGBT people, understanding LGBT issues, and being aware of the range of human rights violations that occur. Principles must be codified into policies and laws, both international and country-specific, for LGBT human rights to be recognized, and prejudices must be challenged so that others treat LGBT people as human beings deserving of all human rights

Lesbian, gay, bisexual, transgender and intersex (LGBT) community in India face legal and social objections not experienced by non-LGBT persons. Sexual intercourse between people of the same gender is illegal and homosexual couples legally are not allowed to marry or to obtain a civil partnership. As of 2018, however, the Supreme Court of India is enhancing the constitutionality of the law criminalizing same-sex sexual activity.

Since 2014, transgender individuals in India are recognized to differ their sexual orientation without sex realignment medical procedure, and have a sacred option to enlist themselves under a third sex. Over the last decade, LGBT people have gained more and more clearance in India, especially in big cities. However, maximum LGBT people in India remain in the closet, fearing discrimination from their families, who may see homosexuality as disgraceful. Reports of honor killings, assault, torture, and beatings of members of the LGBT community are not unique in India.

On 6 September 2018, the Supreme Court of India made homosexuality legal by declaring **Section 377** of the **Indian Penal Code, 1860** unconstitutional. The Court collectively ruled that individual autonomy, intimacy, and identity are protected fundamental rights. The legalization of same-sex marriage and same-sex adoption is currently legal. Same-sex marriages are legally recognized in India and even same-sex couples are offered equal rights such as a civil union or a domestic partnership. In 2011, a court in Haryana granted legal recognition to a couple's wedding, involving two female. After marrying, the couple started getting threats from friends and relatives in their village. The couple eventually won family approval. In October 2017, a group of

people recommended a draft of a new Uniform Civil Code that would legalize same-sex marriage to the Law Commission of India. As of 2018, there are several same-sex marriage petitions pending with the courts.

In 2001, non-governmental association Naz Foundation recorded an appeal challenging the legality of Section 377 in the Delhi High Court. They recorded a claim looking for the legitimization of same sex relations between consenting adults. In 2003 the Delhi High Court excused the Naz Foundation request, saying the body had no standing in the issue. In 2006, the Naz Foundation offered against the acquittal in the apex Court. The Supreme Court ordered the Delhi High Court to reevaluate the case. In 2009 In a milestone choice, the Delhi High Court decriminalized homosexuality among consenting adults, holding it abuses the right to equality, right against discrimination and protection of life under the Constitution of India. In 2012 after the high court's judgment, different appeals were made to the Apex Court, demanding the High Court's position to change a law. In December 2012, the Supreme Court toppled the high court's choice, in the wake of discovering it "legitimately unreasonable. In 2015 Shashi Tharoor acquainted a private part's Bill with decriminalize homosexuality, the Lok

Sabha casted a ballot against it. In 2016 five petitions were documented. The request asserted their "privileges to sexuality, sexual self-sufficiency, decision of sexual accomplice, life, security, pride, and equity, close by the extra principal rights ensured under Part-III of Constitution, are disregarded by Section 377." In 2018 a five-judge Constitutional bench, headed by Chief Justice of India Dipak Misra and including Justices R F Nariman, A M Khanwilkar, D Y Chandrachud, and Indu Malhotra, starts hearing petitions challenging Section 377. On sixth September the bench conveys four seperate, however agreeing, decisions that decriminalized sex between two consenting grown-ups independent of their sexual orientation. The Supreme court has additionally overruled its past decision in the 2016 case, which had switched the Delhi High Court administering decriminalizing gay sex.

*Navtej Singh Johar and Ors. versus Union of India* thr. Secretary Ministry of Law and Justice has been taken as a landmark judgement of the apex court of India in 2018 that decriminalized all consensual sex among adults in private, including same gender sex.

The court was solicited to decide the constitutionality of section 377 of Indian penal code, a provincial time law which

among others condemned sexual acts among same gender goes about as an "unnatural offense". On 6 September 2018, the court consistently announced the law unlawful "in so far in light of the fact that it condemns consensual sexual direct between adults of a similar sex". Segments of Section 377 concerning sex with minors, non consensual sexual acts, and bestiality are to stay effective.

On 27 April 2016, five personalities from the LGBT community filed a fresh writ petition in the Supreme Court challenging the constitutionality of Section 377 of the Indian Penal Code. The petitioners told that the problems which they raised in their petition were diversified and separate from those raised in the currently pending curative petition in the 2013 *Koushal v. Naz* case, in which the Supreme Court had backed the constitutionality of Section 377. The Naz case was earlier assigned to a five-judge bench in order to decide whether the curative petition could be approved for consideration. The petitioners were dancer Navtej Singh Johar; journalist Sunil Mehra, chef Ritu Dalmia hoteliers Aman Nath and Keshav Suri; and businesswoman Ayesha Kapur. Specifically, it happened to be the first case where the petitioners had argued that they had all been directly aggrieved due to

Section 377 alleging it to be an immediate violation of fundamental rights.

On 6 September 2018, the court delivered its verdict, declaring portions of the law relating to consensual sexual activities between adults unconstitutional in a consistent decision. This decision repeal the 2013 ruling judgement in Suresh Kumar Koushal vs. Naz *Foundation* during which the court upheld the law. Nevertheless, other portions of Section 377 relating to sex with minors, non consensual sexual acts, and bestiality are to remain in force.

The court found that the criminalization of sexual exercises between permitting grown-ups disregarded right to equality ensured by the constitution of India. While going through the judgment, Chief Justice Misra articulated that the court found that "criminalizing carnal intercourse" to be "irrational, self-assertive and obviously illegal". The court decided that in India are entitled for every constitutional right, including the freedoms secured by the Constitution of India. This included "the decision of picking whom to partner, the ability to discover fulfillment in sexual affections and the right not to be exposed to dicriminatory conduct are natural for the established assurance of sexual inclination". The judgment likewise made note that LGBTs are qualified for an



equivalent citizenship and assurance under law, without discrimination.

While Section 377 criminalized all sexual acts "against the order of nature", its criminalization of anal sex and oral sex has mostly affected same-sex relationships. As such, the verdict was hailed as a landmark decision for LGBT rights in India with campaigners waiting outside the court cheering after the verdict was pronoun

This community has covered a long path to become assured, firm and powerful and now has the certainty and capacity to come out transparently and commend their identities. An individual should have a very own decision to accept his identity which should not be questioned by any citizen or the government. It should be a person's choice to choose his partner and his sexual preference as he have fought a long battle and won the right to love and to be loved. In any case, their journey is yet not over, they have a long way towards genuine opportunity, acknowledgment, freedom and a general society where nobody will be victimized depending on what their identity is or who they decide to love.