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MY RAINBOW IS MY PRIDE NOT MY SHAME

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“History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognise that homosexuality is a completely natural condition...”

-Justice Malhotra

INTRODUCTION

Indian constitution is a document that is made up of the tough fabric of democracy, justice, and human rights. Human rights are the essence of living a life of equality and dignity. The word "human rights" as called includes the word "human" without any

discrimination of any sort but unfortunately, a community has been discriminated from the last 158 years. The LGBTQ+ community has been discriminated on the basis of their sexual orientation and looked down by the society so much that most of the queer people have remained closeted. Over the years now, the issue around LGBTQ rights in the society is gaining a lot of attention and people have come around to talk and even accept the said community as a part of the hetero-dominated society in a nation like India. The judicial system of India has proved to be a big supporter of the LGBTQ community in the recent years. The Apex Court passed the landmark judgment on 6th September 2018 in the case of *Navtej Singh Johar v. Union of India*¹ decriminalizing section 377 to the extent of consensual intercourse between two homosexual adults. The judgment came as a result of a long constant fight against the labelling of the "homosexual intercourse" as "criminal and punishable offence". It was seen as a monumental step in giving the due equality

¹ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

and freedom to the people of the community.

TRUE MEANING OF CELEBRATION

Since 1969 all over the world including India in 1999, every year the month of June is celebrated as the "Pride Month" wherefrom social media platforms to the roads of the big cities is filled with the members of the LGBTQ community and those who support them taking out parades and rallies in the support of the homosexuals. Apart from celebrating the pride month and showing the acceptance of the said community by the society some issues need to be considered. Some of the rights that LGBTQ people are still not entitled to are as follows:

1. **RIGHT TO MARRY OR LEGAL MARITAL UNIONS-** Marriage in India is seen as a very important affair both in the eyes of the tradition as well the society. It is called a sacred act and holds utmost importance for the religious purposes as well as for procreation. The heterosexual couples are given full right to marry and a concrete structure in the form of laws made by the legislature. But the LGBTQ couples are devoid of the right to marry. Even after

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decriminalization of section 377, gay couples are not entitled to have a legal union as a married couple and all other rights that arise from such unions like divorce, adoption, maintenance, abuse, and inheritance rights. They can separately deal with such issues under law but not under any personal law.

2. **RIGHT TO ADOPT AND SURROGACY-**

The laws in India that deal with adoption do not allow the same-sex couple to adopt a child or have a child through surrogacy as in India commercial surrogacy is banned. The Child Adoption Resource Authority (CARA) has stopped such adoptions of both inter-country as well as foreigners of same-sex to adopt the child in India. The guidelines for adoption state that "*a parent is required to be physically, mentally and emotionally stable, financially capable and not have a life-threatening medical condition. Also, the prospective age difference between the child and the parent or either parent should not be less than twenty-five years*". Therefore, legally the same-sex couples should not be denied such right but only because of stigmas and lack of acceptance of such

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unions the LGBTQ community is devoid of having a family.

3. **RIGHT TO EDUCATION AND EMPLOYMENT:**

Article 16 of the Indian Constitution guarantees that no citizen shall be discriminated based on religion, race, caste, sex, descent, place of birth, residence or any of the and Article 21 includes the right to livelihood as a fundamental right within the scope of the article. Yet with such provisions the LGBTQ community especially the trans people who are traditionally called *hijras* in the Indian culture are discriminated against, treated as untouchables, feared, and never given the adequate opportunity to get an education and reasonable jobs. The only way they can feed themselves is by begging, selling their bodies for sex, or extract money from families celebrating the birth of a child or a marriage by threatening to curse them with infertility or bad luck.

4. **SOCIAL DISCRIMINATION AND PERSISTING HOMOPHOBIA:**

The homophobia that is still there in Indian society makes the environment for such a community very toxic leading to their harassment, abuse, and ultimately leading to hosting their pity party. The negative remarks from the

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people can sometimes be so painful that they may even commit suicide or live a life in a closet. The homophobia comes in many forms it's not always the direct rejection of the members of such community, for example, homophobic jokes, physical attacks, discrimination in the workplace, and negative media representation.

If we as a society accept the community with open arms and allow them to live a normal life with their rights conformed to them, then in the true sense we will be celebrating the spirit of homosexuality.

SEVEN COLORS OF HAPPINESS FOR THE LGBTQ COMMUNITY

1. **MARRIAGE BETWEEN A MAN AND TRANSWOMAN IS VALID,**

MADRAS HIGH COURT - The madras high court in its ground-breaking decisions has said that the marriage between a man and transwoman is valid allowing them to register their marriage. This will help a lot of couples to legalize their marriage.

2. **STATES SETTING UP OF LGBTQ AND TRANS WELFARE BOARDS-**

Many states have in the recent year, set up welfare boards for the community that look after different problems and issues faced by

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the people of such community and working efficiently for the upliftment and protection of the said community. Like Maharashtra government set up a board for education and employment of the Trans people, Bihar government set up a board for medical issues of the community, etc.

3. EMPLOYMENT OPPORTUNITIES FOR THE TRANS COMMUNITY-

Many Indian companies and MNCs are giving equal employment opportunities to the LGBTQ community like Kochi Metro last year hired 23 Transwoman as employees. Big companies like IBM, Royal Bank, and others are encouraging the employees to talk more about their identity and creating a homosexual friendly working environment and proudly calling it part of diversity at the workplace. They are also putting efforts into medical insurance and organizing counselling sessions etc. for such employees.

4. RELIGION COMING ABOARD WITH THE LGBTQ COMMUNITY-

religious communities in India are now accepting and welcoming the LGBTQ community with better regard. The members of the religious community itself have come out to their fellow mates about their sexual orientation. The resistance to such acceptance is now declining. The Hindus priests, Sikh gurus, Buddhist

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monks, and Christian fathers have shown support and started initiatives with people about homosexuality being a natural way of life and not a sin or a social evil.

5. NOIDA SECTOR 50 NAMED AS

“RAINBOW STATION”- Delhi Metro Rail Corporation (DMRC) has dedicated the section 50, Noida metro station to the LGBTQ community as a way of celebrating pride month in June 2020.

6. SOCIAL SUPPORT ON A RISE-

The recent developments in the social culture through books, movies, and television like *Kapoor and sons*, *Shubh Mangal Savdhaan*, *Made in Heaven*, etc. have changed the mindset of the people to a great extent allowing them to see beyond traditional taboos and stigmas.

7. LGBTQ PETITION FOR LEGALIZING

SAME-SEX MARRIAGE- A gay couple has filed a petition in the Kerala High Court for legalizing same-sex marriages under the Special Marriage Act, 1954 and thus, giving them the same status and rights as other heterosexual couples.

CONCLUSION

The fight for equal rights and freedom has come a long way from the 90s, and there has been a major development in this direction

of which decriminalizing of section 377 remains the game-changer. Society has started to accept the LGBTQ community with less resistance and general population apart from the activists, lawyers and social workers are talking about their rights and freedom which is a big win in itself. Yet a lot is left to be done like addressing the

issue of safety and hate crimes against the community members, legalizing same-sex marriage and adoption rights to the couples. But looking at the bright side now in a country like India, the members of the LGBTQ+ community can proudly shine their rainbow with no shame.



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