
LGBT: A VULNERABLE PREY TO DISCRIMINATION**Richa Krishan****Assistant Professor****Balaji Law College, University of Pune****Postal Address- A-412, Nisarg Darshan Building,****Sector 26, Nigdi, Pradhikaran, Pune 411044****ABSTRACT**

Women and men have been defined in quintessential physical connotations from the time immemorial. People having different sexual inclinations and not falling under such specific demarcations of men and women i.e. Lesbian, Gay, Bisexual and Transgender (LGBT) are not treated equally under the so called modern dominion. Yogyakarta Principles in 2006 provided a universal guide to apply international human rights law to LGBT people too. But despite such instigating advancements in the social, legal, and political regime to grant LGBT people basic human rights their position across the globe is not satisfactory. Members of the LGBT community are differentiated based on their sexual orientation and gender identity resulting in transcending that community. Stereotypes, oppressions, discriminations and prejudicial attitudes against LGBT are generally justified by taking support of the social attitudes towards them. Abuses affecting life and dignity of LGBT people include stigmatization, social exclusion, and denial of family rights, discriminatory treatment in jobs and health facilities, denial of asylum, physical and mental torture, medically irreversible surgeries, domestic violence, and arrest under unjust laws etc. Social rejection and discrimination, results in both physical and psychological degradation that inadvertently affects the right to life and free expression of LGBT people. Today there is a dire need to bring changes in the prevalent legal systems of different states. At every stage of administration of justice making of special laws and taking all other inevitable legislative, executive and other measures to prohibit and eliminate all kinds of inimical treatment of LGBT is essential to give them their due rights in all facets of life.

Keywords: Discrimination, human rights, LGBT, social rejection, Yogyakarta Principles.

INTRODUCTION

Women and men have been defined in quintessential physical connotations from the time immemorial. Every human being has got a gender identity¹ and they don't tend to give much emphasis on it as generally it is harmonious with the sex imputed to a being at the time of birth, still there are examples wherein the sex and the gender identity of an individual are not same. The gender identity is very important for maintaining societal balance as societal expectations and responses are based on how one expresses that gender identity². People not falling under specific demarcations of men and women and having different sexual inclinations i.e. Lesbian, Gay, Bisexual and Transgender³ are members of a social minority group, who suffers from various forms of cultural, socioeconomic and legal injustice and are not treated equally under the so called modern dominion. Considering of high weightage the general views of people in regard to what is the most fitting and pertinent gender identity, the LGBT people are being prejudiced, treated with inequity and are differentiated upon, based on their sexual orientation⁴ and gender identity, resulting in transcending that community. Legal systems worldwide depending on narrow definitions of sex and gender have not recognized existence of gender expression beyond the categories of "women" and "men", as a result causing the transgender community to fight for their right to gender identity with actual existence and space in the society⁵.

Stereotypes, intolerance, oppressions, and prejudicial attitudes against LGBT are generally justified by taking support of the social attitudes towards them. Universal acceptance of considering heterosexuality as the only normally existing sexual orientation i.e., heterosexism results into infringement of right to live with dignity of the LGBTs. Social resentment and contempt to homosexuality, leads the people of LGBT community to face segregation, harassment and discrimination to a higher degree as compared to that faced by the other vulnerable sections of the heterosexuals. Other reasons for huge violations of human rights of LGBT community have been at rise due to the lack of adequate legal protection against discrimination and homophobic or say transphobic attitudes that had been profoundly engrained in our social systems.⁶

What physical connotation individuals are in, how they look, whom they prioritize to love, etc. are the basic criteria for causing unequal treatment, elevated threat of violence, execution etc. of the LGBT.⁷ Through this work an attempt had been made to actually look into the different kind of prejudices that affect the human rights of the transgender with providing suggestive measures to curb the menace.

LEGAL REGIME

¹ Gender Identity: The innermost concept of self as male or female or both or neither i.e., how individuals perceive themselves and what they call themselves. It can be same or different to the sex assigned at birth.

² *Transgender Legal Issues*, Glad Answers For The LGBTQ Community, New England, (April 2015), <http://www.glad.org/uploads/docs/publications/trans-legal-issues.pdf>.

³ Hereinafter referred as LGBT.

⁴ Sexual Orientation: The fact of one being heterosexual, homosexual, or bisexual i.e., a person's sexual identity in relation to the gender to which they are attracted.

⁵ *supra* note 2.

⁶ *Combating discrimination based on sexual orientation and gender identity*, United Nations Human Rights Office of The High Commissioner,

<http://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>.

⁷ *LGBT Rights*, Human Rights Watch, <https://www.hrw.org/topic/lgbt-rights>.

The Universal Declaration for Human Rights⁸, though does not specifically include sexual orientation still states that: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”.⁹

Now more and more people are openly expressing their sexual orientation, and organizing and demanding their rights. Because of the work of these groups and their allies, acceptance of LGBT rights around the world is growing, and governments in certain countries are beginning to legislate in favor of LGBT rights and hindering anti-discrimination laws.¹⁰

Yogyakarta Principles¹¹ provided a universal guide to apply international human rights law to LGBT people too. But despite much instigating advancements in the social, legal, and political regime to grant LGBT people basic human rights their position across the globe is not satisfactory. Though many states recognize same-sex marriages today still LGBT people struggle with a number of other institutional barriers to their freedom on a daily basis. Through this work the author has made an attempt to actually look into the issues of LGBTs and what possible initiatives are required to give them their due in the society.

FORMS OF DISCRIMINATION

In a general parlance the problems of the LGBT people are considered to be limited merely to the right to marry, as a huge amount of media attention is grabbed by this prejudice to LGBT people, but this prevalent conception is not true. There had been continuous infringement of the right to equality of transgender community of which freedom to marry is only a part.¹² Families, friends, educational institutions, administration are all a part of either direct or indirect discrimination against the LGBT which can be either conscious or unconscious in nature.

Treating someone less favorably than others in similar circumstances either because of the person’s own sexual orientation or because of the sexual orientation of someone associated or known to the individual is direct discrimination. Whereas framing of rules, policy or practice which someone of a

⁸ Hereinafter referred as UDHR.

⁹ Universal Declaration for Human Rights, Article 2 (1948).

¹⁰ Subhrajit Chatterjee, *Problems Faced by LGBT People in the Mainstream Society: Some Recommendations*, Vol 1, No.5, International Journal of Interdisciplinary and Multidisciplinary Studies, 317-331 (2014), http://www.ijims.com/uploads/cae8049d138e24ed7f5azppd_597.pdf.

¹¹ The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity (2007).

¹² Derrick Clifton, *11 Major Obstacles to Equality That LGBT Americans Still Face in 2014*, Identities.mic, (July 1, 2014), <https://mic.com/articles/92349/11-major-obstacles-to-equality-that-lgbt-americans-still-face-in-2014#.29dI4JugW>.

particular sexual orientation is less likely to be able to meet, causing that person at a disadvantage to people of a different sexual orientation falls under indirect discrimination.¹³

Abuses other than right to marry affecting the human rights and demoralizing the life of homosexuals includes, stigmatization, social exclusion, denial of family rights, discriminatory treatment in jobs and health facilities, denial of asylum, physical and mental torture, medically irreversible surgeries, domestic violence, and arrest under unjust laws etc. Herein the author has discussed a few forms of discrimination at length:

(I) FAMILY REJECTION

Rejection and discrimination starts for the first time at home. Fear of rejection keeps most of the LGBT people from openly sharing their choices within their families itself and the dilemma of whether to come out or not causes lot of personal distress to such people. The ones who decide to declare their sexual orientation generally face prejudice and discrimination from their families too. Homophobic individuals play an effective role in interfering with the lives of their LGBT family members, like by controlling their relations with their LGBT acquaintances to compulsorily make them fit in the heterosexual community. They do this with the expectation that it would help the LGBT have a good life but lack of communication and misunderstanding between parents and their LGBT children increases family conflict. All this leads to family disruptions resulting into the LGBT becoming lonely either because they are forced out of home or they themselves choose to leave.¹⁴

(II) REJECTION AT EDUCATIONAL INSTITUTIONS

LGBT youths face discrimination majorly at the hands of their peers at the educational institutes they attend. These institutes have an inclination to behave ignorantly and not taking any actions at all to minimize discrimination against transgender students. They don't provide any significant support system to help out such students to face the prejudicial attitude towards them resulting from the so called unacceptable sexual orientation they have. As a result of the unsafe environment created at schools the LGBT students generally tend to lack in their attendance in classes accompanied with bad results in exams.

(III) STIGMATIZATION/HOMOPHOBIA

There had been stigmatization of the LGBT people worldwide for who they are, whom they get sexually attracted to, depending on their sexual orientation and the major carriers of stigma are the derogatory labels expressing contempt and derision towards the LGBT people. Such terminological labels actually represent the mechanisms of social control that reinforces the disempowered state of the LGBT.¹⁵ The driving force behind such an attitude is homophobia whose existence is directly affected by moral, religious, and political beliefs of the dominant groups of the society about homosexuality. Homophobia

¹³ *Discrimination Because of Sexual Orientation*, Citizens Advice, England, <https://www.citizensadvice.org.uk/discrimination/discrimination-because-of-sex-or-sexual-orientation/discrimination-because-of-sexual-orientation/#h-what-is-discrimination-because-of-sexual-orientation>.

¹⁴ S. Wilbur & C. Ryan, & J. Marksamer, *Best Practices Guidelines: Serving LGBT Youth In Out-Of-Home Care*, Child Welfare League of America, Washington DC (2006), http://nccc.georgetown.edu/documents/LGBT_Brief.pdf.

¹⁵ B. Mullen & C. Johnson, *Cognitive Representation In Ethnophaulisms As A Function Of Group Size: The Phenomenology Of Being In A Group*, *Personality and Social Psychology Bulletin*, 19, 296–304 (1993).

being the root cause for discrimination towards the non-heterosexual community i.e., LGBT, is the hostile behavior towards their identity, behavior or relationship attitude.

As the social standards from the very childhood makes people to believe that homosexuality is wrong, the realization of themselves being an homosexual causes feelings of shame and self loathing, leading to losing self confidence. When the person himself or others suppresses the homosexuality it results into serious loss to the person's identity and relations with others.

(IV) SOCIAL EXCLUSION

Discriminatory attitude and social exclusion of the LGBT people from the main stream of the society results into low self-esteem and low self confidence of such people which eventually forces them to live in isolation. This exclusion majorly results from the discrimination LGBT face in all spheres of life, a discrimination which hampers their ability to access and enjoy equal rights, and to participate fully in society.¹⁶

(V) LEGAL INJUSTICE

The LGBT individuals are not legally protected from abusive and discriminatory actions rather there had been a huge number of laws that restricts transgender from sharing the same basic human rights and privileges as by the heterosexuals. At the hands of law and law enforcement machinery, there had been an asymmetric and lopsided effect of violence and prejudice on the LGBT community from the time immemorial. The administrative agencies especially the police departments continue to be accused of insensitivity, including not appropriately responding to the violence directed at LGBT people. Most vulnerable of the LGBT people are those of color, youth, and sex workers. There is high degree of vulnerability of LGBT of getting under bars for doing an offence in comparison to the other heterosexuals. They get a very inappropriate treatment when in police custody at the same time if they are imprisoned for any crime they are frequently targeted for additional harassment in an already inhumane prison system.¹⁷

(VI) HATE CRIME/PHYSICAL VIOLENCE

The LGBT people are also major victims of physical violence or hate crimes. Hate crimes are acts of violence or hostility directed at LGBT people because of who they are or who someone thinks they are. Homophobic, biphobic or transphobic hate crimes or incidents are motivated by the offender's hostility or prejudice towards LGBT.¹⁸ Such violence is often connected with conservative or religious leaning ideologies which condemn homosexuality, or it perpetrates by individuals who associate homosexuality to being weak, ill, feminine, or immoral.¹⁹

(VII) DISCRIMINATION AT WORKPLACE

¹⁶Judit Tacakus, *Social Exclusion Of Young Lesbian, Gay, Bisexual, And Transgender People In Europe*, ILGA Europe and IGLYO, (April 2006), <https://www.salto-youth.net/downloads/4-17-948/ReportSocialExclusionIGLYOilga.pdf>

¹⁷ Clarence Patton and Rachel Baum, *Anti-Lesbian, Gay, Bisexual, and Transgender Violence in 2004*, A Report of the National Coalition of Anti-Violence Programs (2005), www.ncavp.org.

¹⁸ *What Is Hate Crime?*, Stonewell Acceptance Without Exception Worldwide (August 10, 2015).

¹⁹ Rebecca Stotzer, [Comparison Of Love Crime Rates Across Protected And Unprotected Groups-An Update](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Stotzer-Hate-Crime-Update-Jan-2012.pdf), [Williams Institute](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Stotzer-Hate-Crime-Update-Jan-2012.pdf), School Of Law, University Of California (2007), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Stotzer-Hate-Crime-Update-Jan-2012.pdf>.

Revealing sexuality at work by LGBTs leads to negative consequences for them because of homophobia, exclusion in valuable promotions, giving baseless improvement plans, or wrongful termination just because the employer or manager disagrees with LGBTs sexual orientation. Many a time harassment also includes comments and name-calling regarding sexual orientation of LGBT.²⁰

(VIII) HEALTH CARE

Health is another major sector in which LGBT community faces discrimination uninterrupted, particularly facing the obstacles, barriers, and challenges that frequently make it difficult for them to find and receive competent and affirming healthcare. The people working in the health care units including number of medical practitioners are not always in favor to LGBT rather, there exists situations wherein they themselves are judgmental because of LGBT's sexuality.²¹As a result LGBTs tend not to seek help due to fear of negative experience and heterosexist assumptions.

(IX) VICTIMIZATION

Standing up of the LGBT community for one's right or even for someone else's right of the same community is generally discriminated against based on sexual orientation in many situations, like: when filing a complaint, or going to the court or reaching the employment tribunal etc.²² Victimization can happen at any time of life of an individual like school, work, family time, while fighting over legal issues etc. As a result of such victimization LGBT people are to be found with higher health and adjustment problems, while those with low levels of victimization have higher [self-esteem](#) and life satisfaction.²³

COST/IMPACT OF LGBT DISCRIMINATION

The hostile verbal and physical harassment of the LGBT community is majorly agonizing to them psychologically and emotionally both. Lack of support and guidance from the family, social rejection and discrimination all result in physical humiliation, disgrace and psychological degradation of LGBT people, inadvertently affecting their right to life and free expression. Experiencing discrimination early in life can lead a person to become [anxious](#) and [fearful](#) of future discrimination and thereafter it really becomes tough for LGBT people to fight or even face the never ending harassment and discrimination they suffer. The alternatives LGBT generally contemplate while facing prejudice and discrimination in their day to day life include depression, violence, and even suicidal tendencies.

²⁰ *Sexual Orientation Discrimination In The Workplace*, Find Law, http://files.findlaw.com/pdf/employment/employment.findlaw.com_employment-discrimination_sexual-orientation-discrimination-in-the-workplace.pdf.

²¹ Michael King & Eamonn McKeown, *Mental Health And Social Wellbeing Of Gay Men, Lesbians And Bisexuals In England And Wales, A Summary Of Findings*, Mind (National Association for Mental Health), London (2003), <http://www.mindout.org.uk/wp-content/uploads/2012/06/SummaryfindingsofLGBreport.pdf>.

²² *Discrimination Due To Sexual Orientation*, Citizens Advice, <https://www.citizensadvice.org.uk/discrimination/discrimination-because-of-sex-or-sexual-orientation/discrimination-because-of-sexual-orientation/>.

²³ Rick Nauert, *Victimization of LGBT Youth Can Be Deadly*, Psych Central (2015), <http://psychcentral.com/news/2011/05/18/victimization-of-lgbt-youth-can-be-deadly/26253.html>.

It is rightly said by Radcliffe²⁴, “Gay and lesbian youths are four times more likely to contemplate or attempt suicide. Trans youth are ten times more likely to do so”. It is really awful what LGBTs go through and how most people are clueless or even careless about what these people endure.²⁵ Many people take the discrimination for the time being by immediately feeling the distress and fear and then just have that in their subconscious, while others keep those fears lingering deep down in their heart for many years.

Few major impacts that LGBT community on a regular timeframe faces due to discrimination are:

- (i) It becomes very tough for LGBT community to open about their sexual orientation, which certainly increase stress, limits social support, and negatively affects health too, and
- (ii) It results into poor mental health and lack of self confidence to ever cope up with the prejudice, and
- (iii) It effects the capability to get job and even to work in good working conditions
- (iv) It makes the LGBT people to feel that they are not a part of the society, and if at all they need to fit in the society, they have to compromise with their actual sexual orientation, and to follow what is socially accepted

SUGGESTIONS

1. Families have a major role to play in reducing discriminations against LGBT people leading to lack of confidence, failure in life, and suicidal tendencies etc. To ease the agony for LGBT people and to help them live a normal and happy life, families need to have open discussions with their children over their sexual orientation making them feel actually comfortable with their gender identity. This would certainly result in fostering a feeling of belongingness to the society and no more to observe segregation.
2. Capacity of schools in curtailing the never ending intolerant atmosphere against LGBTs also cannot be undermined. Schools can help create safer and more supportive environments by preventing bullying and harassment, promoting school connectedness, and promoting parent engagement. Providing training sessions against homophobia for students and school officials certainly would provide good results by educating all on the problem of discrimination of LGBTs. An interactive platform between families of LGBT students and the school authorities also would help in curbing the menace.²⁶
3. Effort should be made to provide non-discriminatory laws in employments. Employer, employment agencies or labor organizations should be prohibited from discriminating against any individual because of his or her sexual orientation or gender identity. It should cover most significant job actions, like employing, dismissing from job, promotions, demotions etc.
4. There should be an endeavor to provide advocates, arbitrators and judges better training on LGBT issues and at the same time training the prison staff to deal with LGBTs without

²⁴ Charles Radcliffe, Chief Global Issues Section, Office of the High Commissioner for Human Rights, New York.

²⁵ Gael Jocelyn, *How Are LGBT Youths Affected by Discrimination and What Can Schools Do to Help?*, The York Review, York College, <https://www.york.cuny.edu/academics/writing-program/the-york-scholar-1/volume-5-fall-2008/how-are-lesbian-gay-bisexual-and-transgender-lgbt-youths-affected-by-discrimination-and>.

²⁶ Nauert, *supra* note 23.

discrimination. An end to solitary confinement is also a necessity. The LGBT prisoners should also be given open access to gender affirmatory health care, as per their constitutional rights.²⁷

5. Attempts for encouraging reporting of situations of discrimination, especially while seeking and receiving healthcare services are a prerequisite today. Hospitals and medical care units should aim at providing equal treatment of all and no discrimination based on sexual connotations. In order to bring the LGBTs at par with others in visiting their loved ones in the hospitals the health care units should strive for making [nondiscriminatory hospital visitation policies](#).²⁸ Respective authorities should also ensure that health, mental health and social care services are provided in a way that is accessible and appropriate to LGBT people.
6. A lot is to be done by media to change societal attitude towards LGBTs. Media should strive to promote a culture of tolerance and equality towards the LGBTs and that aim can be efficiently be achieved by reporting on LGBT issues and enhancing their social acceptability.

CONCLUSION

We human beings are taught in our social lives from the very childhood supported by the legal paradigms, not to judge someone basing on race or religion and therein judging someone because of their sexual orientation is no different. LGBTs are also normal ordinary people just different in their gender identity and differentiating or discriminating them basing on their sexual orientation is not an acceptable phenomenon for an overall balanced development of the society.²⁹

Still LGBT people are harassed verbally and physically and they are exposed to violence too many a times. Such attitude towards the LGBT individuals directs them to stress, dissatisfaction of the place they live in, exposure to physical disturbance, loneliness and feeling of rejection and exclusion.

Today there is a dire need to bring changes in the prevalent legal systems of different states. But Protecting LGBT people from violence and discrimination does not require the creation of a new set of LGBT-specific rights, nor does it require the establishment of new international human rights standards. The legal obligations of all states to safeguard the human rights of LGBT people are already well established on the basis of the Universal Declaration of Human Rights at the international level and are also subsequently agreed through by the international human rights treaties.³⁰

Curtailement of homophobia, stigmatization, and discrimination is inevitable to have a fair and just society. Effective social support from the family, friends and also the society at large is the substantial and undeniable step towards curbing the impact of harassment and also the harassment itself of the LGBT community.

²⁷Steve Williams, *LGBT People Face Discrimination, Violence in Justice System*, Care 2 (Oct. 26, 2015), <http://www.care2.com/causes/lgbt-people-face-discrimination-violence-in-justice-system.html>.

²⁸ Stigma and Discrimination, Gay and Bisexual Men's Health, Centers For Disease Control And Prevention (Feb. 29, 2016), <http://www.cdc.gov/msmhealth/stigma-and-discrimination.htm>.

²⁹ Anonymous & Head Bay d'Espoir, *Discrimination Against Homosexuals*, Teen Ink, Magazine, Canada, http://www.teenink.com/opinion/love_relationships/article/438798/Discrimination-Against-Homosexuals/.

³⁰ *supra* note 6.

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