



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

LGBT RIGHTS AND LIVE-IN-RELATIONSHIP IN INDIA: AN ANALYSIS

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ABSTRACT

Live in Relationship literal means cohabitation. There is always a strong presumption in favour of existence of Marriage. Today is the World of free will no body care about their religion, morals and values. We can say that “A dream modern world”. Basic Human rights are on the centre of the thinking that all humans beings are equals in the world. All humans beings whether they are man or woman have dignity. We should expect that they should be treated equally in all over the country. Article- 14 of Indian Constitution also define the term of equality before the law and equal protection of laws. Anything that underestimate that the dignity of a human being is a violation and as it violates the principle of equality which are defined in Article 14 of the constitution and its open the doors for the discriminations which is also given in Article 15 and 16 of the Indian Constitution. Homosexuality is one of the most current and hot issues not only in the India but also in the world which raises the questions on human rights. People in the world become the victim of violence and discrimination from time to time. The reason only is the whom they love and how they look. In the year 2018 ushered a ray of hope for the LGBT community who has been fighting for a long period for their rights. The result of this long battle is that, homosexuality has been decriminalized by the supreme court of India, no doubt, the laws have changed but violence and discrimination against the LGBT community still persists. That is the evidence of the low status its actually grants to the LGBT community. In India same-sex marriage is still a dream. We must look forward to the Human rights statues for the attainment of the real objective of the Constitution .Which means that all citizens are equal. There is a need to bring reform in the society and to amend the thinking that it is no shock or mental condition and to make everyone believe that human rights stand for all and all humans beings are equal.

Keywords: Homosexuality, LGBT, India, Section 377, Transgender, Human Rights.

INTRODUCTION-Some People in the world are the victim of violence or inequality and sometimes of torture and the main reason is that who they are and how they look . Sexual orientation and gender identity are integral aspects of one works for lesbian, gay, bisexual, and transgender peoples' rights or activists representing a multiplicity of identities and issues. Some documents and expose the abuses based on sexual orientation and gender identity worldwide including the torture, killing and arrests under unjust laws or unequal treatment, medical abuses, discrimination in health and jobs, domestic violence, abuses against children, and denial of family rights and recognition. The advocate for laws and policies that will protect every single persons dignity. We work for a world where all people can enjoy their rights fully. September 2018 Section- 377 of Indian Penal Code a era that was not favour for some people that criminalised “carnal intercourse against the order of nature” was read down and homosexuality was decriminalized in the case of *Navtej Singh Johar v. Union of India*¹. The Supreme Court has finally upheld that every human being has a right to be free in respect of sexual orientation or gender identity . At present homosexuality is decriminalized .But with the myths and narrow thinking and the reaction of society is still challenging to accept the law.

MEANING OF HOMOSEXUALITY AND LIVE -IN- RELATIONSHIP

The term homosexuality literally means as of the same sex. Homosexuality is a sexual orientation specified by sexual attraction or romantic love only for people who are recognized as being of the same sex. As time passes by Homosexuality is used by different terms. Presently it is known as LGBTQ . LGBTQ stands for Lesbian, Gay, Bisexual, and Transgender and Queer.

1.Lesbian -A lesbian means, a woman who is sexually attracted to a woman.

2.Gay -A gay means, a man who is sexually attracted to the man.

3.Bisexual- A bisexual person is someone who is sexually attracted to people of both sexes.

4.Trans-gender - It is a term used to define people whose gender identity and gender expression, differs from that usually associated with their birth sex.

5.Queer: - Queer is a term used to refer to sexual and gender identities who are neither heterosexual nor cisgender.

LIVE -IN -RELATIONSHIP

Live-in-relationship is an arrangement where two people are not married but live together. It is an arrangement where by two people decide to live together on a long term or permanent basis in an emotionally and sexually intimate relationship. They are often involved in a romantic or sexually intimate relationship on a long term or permanent basis. The live-in-relationship in India has been legalised.

¹AIR 2018 SC 4321.

REASON FOR LEGISLATION OF LIVE-IN RELATIONSHIP

There are some prominent reasons to legalise the live-in-relationship such as-

1. Such consensual arrangement is helpful to test the compatibility before marriage.
2. Some reason unable to marry legally.
3. No, involvement of difficulty of formal marriage.
4. Due to economic conditions ,they can not afford to marry again.
5. Due to some personal egos.
 - 5.1 Non observance of husband surname.
 - 5.2 To maintain own personal identity.
 - 5.3 Separate informally without court intervention If parties want to be.

LEGAL STATUS OF LIVE-IN-RELATIONSHIP

There is no specific law to deal with the concept of live-in-relationship . But there are some Laws covering live-in relationships .

1. Protection under Domestic violence Act, 2005-

Section 2(f) defines domestic relationship as a relationship between two persons who live or have lived together at any point of time in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.²

Live-in relationships are not in the nature of marriage as the couples are living together for a long period and presenting themselves as husband and wife. So they come under the ambit of the Protection of women from domestic violence Act 2005, and the woman in a live-in relationship can take protection under this Act 2005 and can also claim maintenance. By this Act gives legal recognition to relations without marriage.

2. Protection under Code of Criminal Procedure, 1973 Section 125 of the children born out of such relationships can claim maintenance as the section itself expressly mentions both legitimate and illegitimate child.³ The view was that the woman in a live-in relationship is not legally married to the man and is not entitled to claim maintenance under Section 125 Cr. P. C but can only claim maintenance under Section 20(3) of the Protection of woman from Domestic Violence Act, 2005 if she proves that she was in a domestic relationship with the man like marriage.⁴

3. Protection under Hindu Marriage Act ,1955⁵ Section 16 of the Act⁶ confers legitimacy to children born out of the void and voidable marriages. But as sub-section (3) of the Act the right of inheritance of such children is limited to the property of the parents only. So such children do not have the coparcenary rights in the property of the Hindu undivided family and cannot claim their ancestral property as their parents were not legally wed to each other when they were born.

². Section 2(f), Protection of Women from Domestic Violence Act, 2005

³. Code of Criminal Procedure 1973 ,Section 125

⁴. Section 20(3) of the Domestic Violence Act ,2005

⁵. Section 16 Hindu Marriage Act ,1955

⁶. Section 26 Special Marriage Act ,1954

JUDICIAL APPROACHES TOWARDS ON LIVE-IN-RELATIONSHIP

In *Badri Prasad v. deputy Director of Consolidation*⁷- The supreme court recognized the Live-in Relationship as a valid marriage. And a fifty years Live-in -relationship was awarded the legal validity.

In *Tulsa v. Durgahatiya*⁸- The supreme court of India provides that if a couple lived together without marriages and the children born out of that relationship . The legal status to children born out from the Live-in Relationship provide by the supreme court of India.

In *D. Veluswamy v. D. Patchaiammal*⁹- In this case the supreme court laid down there are some pre requisites for a valid Live-in-relationship such as;

1. Partners should cohabit voluntarily.
2. For a significant period of time , they must be regarded as a couple before the outer world.

S. Khusboo v. Kannianmal and another¹⁰-The Supreme Court held that living together is a fundamental right under Article 21 of the constitution of India. It means that Right to life. It is not Illegal in the eyes of the laws although , it may be immoral in the eyes of the Conservative Indian Society.

In *Indira Sarma v. V. K.V. Sarma*¹¹ The Supreme court laid down that the Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country like India. The decision to marry or not to marry to any person or to have a heterosexual relationship is intensely personal.

CRIMINAL LAW VIS-A-VIS RIGHT OF L.G.B.T

At present the question is that Section 377 of Indian penal code is gone and the person of same sex is finally equal citizens. We full equality for the people who change their sex by medically or there is a need to go beyond Sec 377 of the Indian Penal Code 1860. In this paper research I am trying to focus on the history of legal battles of the LGBT Community against Section - 377 of the Indian Penal Code and its impacts on the society lives of the LGBT community. By this paper I have to discuss the difference between the Law and application of the existing case laws and the ground realities happening in the society of Indian culture.

HISTORY OF LEGAL BATTLES IN INDIA

In a climax of decades of legal challenges to Section 377¹² of the Indian Penal Code 1860 the Naz Foundation in the year of 2001 filed a writ petition in the Delhi High Court challenging constitutional validity of the law. The Writ petition was rejected by Delhi High Court in 2004 on the basis of the locus standi . But in 2006 they appealed against the order of Delhi High Court in the Supreme Court of India .And the Decision was in their favour and their petition sustained.

⁷.AIR 1978,1557

⁸. AIR 2008 SC 1793

⁹. AIR (2010) 10 SCC 469

¹⁰. AIR 2010 SC 3196

¹¹. AIR 2013 SC 246

¹².AIR 2013 SC

JUDICIAL APPROACHES TOWARDS RIGHT

In Naz Foundation v Govt. of NCT of New Delhi and Others¹³

Popularly known as the ***Naz Judgement*** in the year of 2009 judgement by the Delhi High Court. By this judgement in the history for the first time Delhi High Court declared Section- 377 of the Indian Penal Code to be unconstitutional. Naz an NGO in Delhi which filed a Public Interest Litigation in the Delhi High Court and claimed Section- 377 of the Indian Penal Code to be unconstitutional. They have been at the final in the battle of decriminalization. In 2009 High Courts declared Section-377 to be unconstitutional which violates Articles 14,15 and 16 of the Indian Constitution¹⁴. The reading down of Section -377 by the Delhi High Court is a pivotal moment in Indian history. This judgment gave a ray of hope in the Dark era of the LGBT community. But this remained not much longer when Supreme Court ruled over the judgement of the Delhi high court in 2013.

In Souresh Koushal v. Union of India¹⁵

The Supreme Court held that Section – 377 of the Indian Penal Code could not be read down . For Parliament to decide on the decriminalization of homosexuality. Despite the Supreme Court judgement the movement of the LGBT Community against the Sec -377 of the Indian Penal Code expanded on a large scale in India.

In National Legal Services Authority v. Union of India¹⁶

NALSA held that the Rights to life, dignity and autonomy would include the right to o gender identity and sexual orientation .They have a right to choose and express their gender identity. The NALSA verdict gave a hope to the battle against section-377. Judgement was delivered by the Supreme Court. For the first time in legal history Transgender people were recognized as citizens of this country. All the Fundamental Rights were extended to them . They were given the identity of Third Gender.

This case Specially continues to be the landmark case for Transgender Rights in the country . The court laid down a different set of guidelines that the identity of Third Gender. This case continues to be the landmark case for Transgender Rights in this country. The court laid a different set of guidelines. That every State must follow to come Transgenders into public spheres and provide remedies for their marginalisation.

In Puttaswamy v. Union of India¹⁷

The Supreme Court of India held that the right to privacy cannot be refused . The Court declared that the right to privacy distinctively incorporates the right to have intimate relations of one's choice and includes the right to sexual orientation and gender identity. The year 2018 ushered in a ray of hope for the LGBTQ community who has been fighting a prolonged battle for their rights .

In Navtej Singh Johar v. Union of India¹⁸ case

A dancer who identified as part of the LGBT community filed a Curative Petition in the Supreme Court of India in 2016 and challenged the Constitutional validity of the decision of Suresh Kumar case. Petitioner contended

¹³. (2009) 111 DRJ 1.

¹⁴. Article 14, 15 ,16 of Indian Constitution.

¹⁵. (2014) 1 SCC 1.

¹⁶. (2014) 5 SCC 438.

¹⁷. (2017) 10 SCC 1.

¹⁸. AIR 2018 SC 4321

that Section 377 of Indian Penal Code was violative of Right to equality under Article 14¹⁹ of the Constitution .It was ambiguous in the sense that it did not define “carnal intercourse against the order of nature”.Navtej Johar is popularly known as the seminal judgement that decriminalized homosexuality in India for first time. Judgement delivered by the Supreme Court of India is the result of multiple Public Interest Litigations which had been filed by different groups of the community. The Bench quashed the Section 377 to the extent that it was criminalised sex between two consenting adults. The Court upheld that the provision of criminalize non consensual acts with children or animals. The Supreme Court further held that the Section 377 of Indian Penal Code violates Article 14, 15, 16 and Article 19 1 (a) of Constitution of India²⁰. It recognized that every individual irrespective of their gender identity and sexual orientation have the right to live with dignity, respect and make personal and private without State interference. On 6th September 2018, 5 judge bench of the Supreme Court led by the Chief Justice unanimously held in Navtej Johar Singh Case that Section 377 was unconstitutional to the extent that it criminalises consensual relationships of any kind between adults.

There was no intelligible differentia or reasonable classification between natural and unnatural consensual sex. The Petitioner further contended that

1. Section 377 violates Article 15²¹ of the Constitution sexual orientation is a ground related to sex and that discrimination on sexual orientation is not permitted under Article 15.
2. Section 377 of the Indian Penal Code had a relaxing effect on Article 19 of the Indian Constitution. When it denied the right to express one sexual identity and orientation.
3. Section 377 of the Indian Penal Code also violated the fundamental Right to privacy under Article 21 of the constitution. because it makes even the unnatural consensual sex between the two major of same gender offence and punishable.

LEGAL RECOGNITION OF SAME SEX MARRIAGE IN REALITY OR NOT

Section 377 was repealed in the year 2018 which decriminalized homosexuality. Moreover it was a historic win for the entire LGBT community. But the same-sex marriage is still not legalized practically and ultimately the community continues to suffer discrimination again and again in our country. There is a legal aspect of LGBT Rights

In Arun Kumar and Sreeja v. The Inspector-General of Registration & Ors ^{9 22}

The Court held that the term ‘bride’ as per the Hindu Marriage Act 1955 would also mean a transsexual and not just refer to someone born as a woman. The last decade from 2010 onwards has been the decades of LGBT rights. There has been a visibility of LGBT members in the public sphere and in the courts asking and demanding for the LGBT Rights. There have been judgment that paved the way for LGBT Rights in India. Judiciary the High

¹⁹. Article 14 of Indian Constitution.

²⁰. Article 19 1(a) of Indian Constitution

²¹. Article 15 of Indian Constitution

²². (2019) SCC On line Mad 8779

Courts and the Supreme Court have been Percipient of the issues raised by the NGO groups consisting of members of LGBT members and allies. It has resulted in some landmark judgments in the last decade which culminated in the reading down of section 377. In a post Section -377 of the Indian Penal Code judicial landscape the Courts continue to uphold the rights especially in the arena of Transgender rights. A case from the Madras High Court which reads into the category of brides to include transwomen . Under Hindu Marriage Act, 1955²³ the definition of marriage only includes men and women. This judgment expands the category of women to include transgender people to identify as women to be brides as well. I body to verify their identity. That among many other cases lays the foundation for marriages within the LGBT community broadening the right to marry. The battle for equal status, recognition and citizenship has been long and still ongoing time to time. Judicial recognition to address rights and provides remedies for the project of equal status and dignity. Judgments have been seminal in shaping the narrative of rights and recognition for the LGBT community.

DEVELOPMENT OF RIGHTS OF LGBT COMMUNITY

Section -377 of IPC criminalised all kinds of non-procreative sexual intercourse was enacted in the pre-independence by the British government. The despotic law was not only directed against the homosexuals but also covered all other forms of non-traditional sexual intercourse even in the course of heterosexual union. So this law was nothing but a residue of the conventionalist morality which had no place in India Which is a Democratic country. It took more than seventy years and almost two decades of the legal battle to block down this old age law. That had become a major weapon to harass and exploit all those who didn't conform with the traditional binary of sexuality and gender. But before proceeding to understand how the current laws in India even after the discard of Section -377 are not sufficient in securing basic human rights to the LGBT community in India.

CONCLUSION-In the end of this research paper it is concluded that all human beings are equal and treated equally. Human Rights for all people and ages without any discrimination on the basis of sex,color, caste,religion etc. In the present time Indian judiciary also decriminalized the LGBT rights. Navtej Singh johar is the landmark judgement in the history of LGBT Rights in India. But same-sex marriage is still not practically legalized in our traditional country like India. This type of marriage that bestows rights and responsibilities such as Adoption, inheritance and other such rights. Marriage is a basic right for every citizen in a country like India where so much dreams is attached to the marriage of there son and daughter but the LGBT community is still devoid of it. I want to suggested that there is a need of time to implement the transgender bill and make necessary amendments Which is favourable to the LGBT community. There is a need of time to legalise same-sex marriage and relieve Indian history from this dark spot. Same sex marriage will remain a stigma . The Government should also make some efforts to aware the public about sexual minorities. Shubh Mangal Zyada Savdhaan is a Hindi movie Which is a one step taken by India Cinema that has increased the LGBT Rights movement in India. People are now opening up and are talking about their issues and rights. Live-in-relationship there is no specific law to deal with

²³. Hindu Marriage Act ,1955

the concept of live-in-relationship . But there are some Laws covering live-in relationship. So they come under the ambit of the Protection of women from Domestic violence Act 2005 and the woman in a live-in relationship can take protection under this Act 2005 and can also claim maintenance. By this Act gives legal recognition to relations without marriage has been provided. Which is a remarkable step in the protection of the right of LGBT Community and the other who could not solemnize marriage due to one or other reason.

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6. Article 21 , Indian Constitution.
7. AIR 2018 SC 4321
8. AIR 2013 SC
9. Section 377, of the Indian Penal Code, 1860
10. Article 19(1)A , Indian Constitution

