

## CONCEPT OF GENDER EQUALITY IN CONTEXT WITH LGBTQAI

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**Abstract:** Gender discrimination is one kind of violence based on physical structure of human being and it is booms due to deep seated base of patriarchy system in India. In an academic word, we can call it as 'women or gender bias study'. The point of difference between these two is that women study is only focus on women related problems whereas gender study include not only women based study but also covers all types of genders such as third gender as well as LGBTQAI. An introduction of new technology in twenty first century study based on gender equality shows its significance as crime relates to gender bias increasing day by day and effect of ecological balance such as tremendous increase in offence of female foeticide based on sex determination test. This was less now in addition offences and problems related to LGBTQAI increasing in our society which is also based on gender inequality.

In the whole world there are number of legislative enactments deals with freedom of religion and culture but on the other hand takes away all fundamental rights of LGBTQAI on the basis of gender equality or we can say that our society do not accept them as human being. This can be happen because our discomfort and outdated gender difference while dealing with this people which leads to one kind of hatred against LGBTQAI. More than 41% of LGBT faced discomfort and unequal treatment in offices and at working places on the basis of their physical appearance.

So through this paper researcher wants to discuss about gender equality in light of LGBTQAI as still today there are gross violation of Human Rights as well as Fundamental Rights against this community.

**Introduction:** Without considering previous historical examples of LGBTQAI in our country they are not only discriminated but also terminated from jobs just because they are belongs to this category. In recent era there is progress in the field of law and social structure relates to person's identity on the basis of sex. Without considering gender based violence and inequality the people like LGBTQAI facing sex perverse violence everywhere in their day today life such as in public and personal life, working and educational places and still they are readily shoes their interest to run with general public life cycle. Even all foreign countries provided protection to the people at working places those are discriminated on the basis of sex, caste, race and

religion criteria but still in in foreign countries also there are no specific laws which are deals with such kind of discrimination based on gender.<sup>1</sup>

So many researchers mentioned their views on cruelty, harassment and discrimination against women still the study from the point of view of LGBTQAI is untouched. So there are number of questions which are still waiting for answer such as why violence is mostly gender biased? Why the people not treating LGBQAI like normal human being? Why women are always come under minority and subject to cruelty? Why powerful relationship always sex oriented? Now it is needed to find out answers for these and like question. So through this paper author just wants to emphasize on Human Rights of LGBTQAI and gender inequality.

**Key words: LGBTQI, Gender and Sex, Gender Equality and Judicial Pronouncement**

**Historical Background:** Transgender (हिजरा) occupy a special place in Hinduism. The historical background of Transgender in india is that, when king Rama was expelled from his kingdom *Ayodhya* and his whole empire including all people and children started to follow him into the forest, he told his followers: “*men and women, please wipe your tear and go back.*” So they left. Still, some group individuals remained behind, at the edge of the forest, since they were neither men nor women. They were *hijras*. Those people waited in the forest for 14 years until Lord Rama returned, which gives them a special place in Hindu mythology.

Hindu mythology supports transgender or third gender since ancient time as well as distinguish that people those making discrimination on the basis of sex. In Mahabharata also witnessed of these kind of people such as *Shikhandi*, who is born as female and afterword considered as male and at married to a lady.<sup>2</sup> So there are so many good and bad stories behind this community. But still as per our forefather said and mentioned blessings of these community people required when new born baby birth is there for its long life. On the other hand when we met these people in rail or road side we show our hatred towards them without considering the facts that, why these community people doing so? Hence history regarding transgender community is come with mixed view.

<sup>1</sup> <https://www.genderequalitylaw.org/lgbtq>

<sup>2</sup> [https://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_India](https://en.wikipedia.org/wiki/LGBT_rights_in_India)

**Meaning 'LGBTQI':** Meaning of LGNTQAI means 'L' stands for lesbian, 'G' stands for Gay, 'B' stands for bisexual, 'T' stands for transgender, 'Q' stands for Queer, 'A' stands for androgynous and 'I' stands for intersex.<sup>3</sup>

**Difference between Gender and Sex:** The social aspect of masculinity and femininity known as 'Gender' and it is outcome of gender biased thinking of stereotype people. 'Gender' is sexual oriented characteristics created by people as per their thinking regarding male and female such as general public raised presumption to recognize male and female ie boy always play with cars and guns but girls always play with dolls and household utensils on the basis of that they made difference between male gender and female gender.

Whereas term 'sex' is enumerate biological difference between women and men. There are similarities as well as differences between male and female bodies structure. Such as both male and female share many similar features example 23 pairs of chromosomes. Differences are only made up regarding internal sexual structures, production of hormones, and physiological aspects.

**Gender equality in light of the constitution of India:** Article 15 of our constitution said that:<sup>4</sup> Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth or any of them it further explained that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

- (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

In the case of *Navtej Singh Johar v. Union of India*<sup>5</sup>, the Supreme Court ruled that the Indian Constitution bans discrimination based on sexual orientation via the category of "sex". Similarly in the case of *National Legal Services Authority v. Union of India*<sup>6</sup>, the Supreme Court held that discrimination on the basis of gender identity is constitutionally prohibited.

<sup>3</sup> By Dr. Niharika Tiwari, Assist. Prof. (Pol.Sc.), DDU Govt. P.G. College, Saidabad, Prayagraj, UP in "Core Concepts of Gender/ Evolution in Gender Studies" p. 12

<sup>4</sup> "Article 15 in The Constitution Of India 1949"

<sup>5</sup> (2018) 10 SCC 1

<sup>6</sup> AIR 2014 SC 1863

Therefore the Supreme Court Judge K. S. Panicker Radhakrishnan rightly stated *that* “Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution”.

**Judicial Pronouncement:** The Delhi High Court decision in *Naz Foundation v. Govt. of NCT of Delhi* of 2009 found Section 377 and other legal prohibitions against private, adult, consensual, and non-commercial same sex conduct to be in direct violation of fundamental rights provided by the Indian Constitution. Section 377 stated that: “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,” with the added explanation that: “Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”<sup>7</sup> In 2018, in the landmark decision of *Navtej Singh Johar v. Union of India*,<sup>8</sup> the Supreme Court of India rightly stated that legalized consensual homosexual intercourse by considering section 377 of IPC and discarding consensual homosexual sex between adults from its ambit. It has further stated that, homosexuality was never being illegal or crime in ancient Indian history rather it was criminalized by British rule during their regime in India.<sup>9</sup>

After this landmark judgment the Supreme Court has also issued directions to the Government to take all necessary measures to correctly transmit the fact that homosexuality is not crime, to create awareness amongst public at large regarding this fact and to eliminate all form of stigmatized image of LGBTQAI community amongst the member of society. It was further directed that, to issues directions to the police organization through periodical training to sensitize them regarding this issue and problem faced by LGBT community.

**Recent Trend:** On dated 23.02.2012, home affairs ministry mentioned its decent opinion regarding decriminalization of homosexual activity, by saying that in our country homosexuality

<sup>7</sup> "India: The Indian Penal Code". www.wipo.int. World Intellectual Property Organization.

<sup>8</sup> (2018) 10 SCC 1

<sup>9</sup> [https://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_India](https://en.wikipedia.org/wiki/LGBT_rights_in_India)

is seems to be immoral.<sup>10</sup> Then further the union Government revised its opinion on 28.02.2012 declaring that there was no illegality in decriminalizing homosexual activity. Thereafter on 11.12.2013, the Supreme Court set aside order passed by Delhi High Court in 2009 to decriminalized sonesual homosexual activity within its jurisdiction.

Afterward the Union Government filed review petition against Naz Foundation and others but the Supreme Court dismissed this petition on dated 28.01.2014. The Bench of the Supreme Court explained the ruling by stating that, *“While reading down Section 377, the High Court overlooked that a minuscule fraction of the country's population constitutes lesbians, gays, bisexuals or transgender people, and in the more than 150 years past, less than 200 persons have been prosecuted for committing offence under Section 377, and this cannot be made a sound basis for declaring that Section ultra vires Articles 14, 15 and 21”*.<sup>11</sup>

The Supreme Court of India pronounced its verdict on 06.09.2018 and finally declared Section 377 is unconstitutional as it takes away fundamental rights of autonomy, intimacy and identity of particular community and in this way legalized homosexuality in India.<sup>12</sup>

The Transgender Persons (Protection of Rights) Act, 2019 is introduced with aim that, to stop discrimination against transgender in various sectors on the basis of physical structure such sectors like education, employment and healthcare. It also directed central and state government to introduce and provide welfare scheme of this community people.

The UGC Regulation on curbing the menace of Ragging in Higher Education institutions (3<sup>rd</sup> amendment) 2016 rightly prohibited discrimination, harassment and ragging which target students on the ground of their sexual or gender identity.

In February 2019, the Maharashtra Government set up a “Transsexual Welfare Board” to lead prosperity projects and give formal guidance and work opportunities to transgender people. The board gives ability improvement ventures to assist transgender people with getting another profession and free comfort for those searching for awards.

**Notable LGBRQ Personality in India:** Parvex Sharama, Ramchandra Siras, Manil Suri, Lakshami Nrayan Tripathi, Riyad Vinci Wadia, R. Raj rao, Ismail Marchant and many more.

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<sup>10</sup> Mahapatra, Dhananjay (23 February 2012). "Centre opposes decriminalization of homosexuality in SC". Economic Times, Times Internet.

<sup>11</sup> J Venkatesan (11 December 2013). "Supreme Court sets aside Delhi HC verdict decriminalizing gay sex". The Hindu. Chennai, India

<sup>12</sup> "NAVTEJ SINGH JOHAR v. UNION OF INDIA MINISTRY OF LAW AND JUSTICE SECRETARY. [2018] INSC 746 (6 September 2018)". Legal Information Institute of India

**Conclusion and Suggestions:**It is rightly said by *Justice Indu Malhotra* “*History owes an apology to these people and their families. Homosexuality is part of human sexuality. They have the right of dignity and free of discrimination. Consensual sexual acts of adults are allowed for [the] LGBT community.*”

LGBTQAI are minority people who basically have special sexual orientation which leads to face discrimination not only inside families but also in society. But being human they are eligible for all Human Rights as well as Fundamental rights in our country. In present scenario Indian society is not mentally prepared to accept homosexuality as well as homosexual marriages. But in near future definitely our society accepts these changes regarding homosexual relationship and marriages without making difference on the basis of gender. Therefore the duty is cast on executive, legislation, judiciary and society to create more awareness regarding rights of LGBTQAI so far as our traditional society is concerned.