

A COMPARATIVE STUDY OF COUNTRIES PASSED LDBTQ+ PROTECTION BILL AND COMPARING IT WITH PRESENT RIGHTS PROVIDED UNDER INDIA

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ABSTRACT

The paper focuses on the progression of queer rights in the contemporary era while placing special emphasis on the lived experiences of the intersex population. It examines the status of queer rights in the United Kingdom and India. The primary objective is to trace the timeline of the queer rights movement in the aforementioned regions, and draw out a contrast between the public policy and approach towards this pressing agenda by the two nations. 'Sex', refers to the sex (male or female) assigned to a child at birth, most often based on the child's external anatomy. Sexual orientation, read 'sexuality' refers to an inherent or immutable enduring emotional, romantic or sexual attraction to other people. Gender identity refers to one's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. Throughout this paper, the word 'Queer' is used to express a spectrum of identities and orientations that are counter to the mainstream. The methodology used is comparative analysis, and the parameters for the same, are as follows: religion, marriage and adoption, public discourse and social movements, and governmental laws and policies. The paper aims to fulfil its objectives through the analysis of the comparison drawn between the two nations.

Keywords: LDBTQ+, Queer, Gender Identity, Sexual Orientation, Intersex Population.

Introduction

LGBTQ+ is an initialism that is in use since 1990, it is an umbrella term for sexuality and gender identity, where 'L' stands for lesbian, which means the females who are sexually attracted toward females, 'G' Stands for Gay, which means the males who are sexually attracted towards males, 'B' for bisexual means the person who is sexually attracted toward both the sexes. 'T' stands for transgender, which means the people whose gender identity and gender expression and differ from that usually associated with their birth sex. 'Q' stands for Queer, it is a term used to refer to sexual and gender identities that are neither heterosexual nor cisgender

Although the idea of LGBTQ rights battles has been around for a while, the LGBTQ community is still fighting for these rights today. Now that many nations throughout the world have started to treat the community equally with the other gender, there are still some where people don't want to even bring up the subject since they believe it to be just a psychological issue on which they should not concentrate.

In her speech to the United Nations on Human Rights Day in Geneva, Switzerland, on December 6, 2011, Secretary of State of the United States Hillary Clinton said that one of the current global human rights problems is preserving the equality and dignity of LGBT community members. She claimed that since invisible minority' human rights were under threat everywhere in the globe, they required additional protection. Human rights and LGBTQ rights are related since both comprise individuals.

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Situation in India

Homosexuality is an even more taboo topic in India since open discussion of sexuality in any form is so uncommon. The LGBTQ community has, nevertheless, advanced quickly in India in recent years. LGBTQ people still have societal and legal challenges, nevertheless. Prior to 2018, same-sex relationships were not regarded as legal in India. The Supreme Court of India decriminalised same-sex relationships in 2018 by overturning section 377 of the Indian Penal Code in the historic case of *Navtej Singh Johar v. Union of India*. In 1860, the Indian Penal Code was adopted. It is a legislation from the British era as a result. A person who engages in voluntary sexual activity against the laws of nature, including gay activity, is criminal by law under Section 377.2 In India, homosexuality is no longer a crime as of 2018. This was a triumph that the community was happy to see, but there is still more work to be done before LGBTQ persons in India are truly free and accepted by their fellow citizens. They may still endure discrimination, harassment, bullying, violence, stigma, and rejection. Since 1999, India has hosted pride marches, which are currently held yearly in the majority of the country's main cities. Numerous non-profit organisations offer services such as health care and education to the LGBTQ population. India does not recognize same-sex marriage or civil unions, although there are no uniform marriage laws; instead, marriage rights rely on legislation particular to various religions. Same-sex couples are not eligible for the adoption or surrogacy rights. Laws against workplace discrimination and maternity leave do not take LGBTQ persons into consideration. Only females are taken into account by the Sexual Harassment at Workplace Act of 2013. In India, there are many conservative people who are against this community as according to them it is unnatural but according to various types of research, homosexuality is present in at least 1500 species then how can a single species, namely humans, assert that homosexuality is against the natural order of things, while a lot of families neglect their children and force them out of the house if a child in the family declares that they are a part of the community because they are afraid of what the community will think if they learn about it or think that being transgender, gay, or lesbian is a medical or psychological condition that can be fixed. They are not yet ready to accept that being one of these things is completely natural. But after the 2018 judgment, more and more people are understanding it and trying to accept it.

If we focus on transgender concerns in particular, then The Transgender Persons (Protection of Rights) Bill, 2019, was enacted with the intention of protecting the rights of the transgender community by prohibiting discrimination against them with regards to employment, education, healthcare, access to government or private establishments, etc., but she will further expose them to institutional oppression and dehumanisation. Since 2014, India has recognised the third gender, and the parliament has several bills protecting the Hijra community. Still, given that men and women are typically kept apart in social settings, it might be particularly challenging for transgender people to navigate space in India. For instance, public restrooms are still typically gendered even today, which presents a big barrier for transgender persons, especially for those who do not pass.

Despite the fact that homosexuality is no longer a crime, there are still many ways in which the LGBT population in India is nonetheless subject to discriminatory policies. The reason for this is because there is a significant disconnect between the judicial and legislative evolution of LGBT legislation in India. Therefore, even though the supreme court of India has laid the foundation for granting the queer and non-binary community a slew of fundamental human rights through the landmark decisions of *National Legal Services Authority V. Union of India*³, *Navtej Singh Johar V. Union of India*⁴, and *Justice K.S. Puttaswamy V. Union of India*⁵, the legislature has been unable to keep up with the most recent developments.

Same-Sex Union

In India, same-sex marriage is not permitted, despite several legal rulings to the contrary.

- **Adoption**

In India, regulations that are both secular and religious govern adoption. Although the IPC's Section 377 has been decriminalised, the law still prohibits the LGBTQ community from adopting any children, proving unequivocally that homosexual couples are not treated equally under the law. Another reason for this is because same-sex unions are not recognised in India; in that case, how can their adoption be acknowledged?

- **Surrogacy**

In accordance with the recently established surrogacy law, it is illegal for single persons and LGBTQ couples to become parents through surrogacy.

- **Inheritance**

Laws governing inheritance are also not gender-neutral and solely mention men, women, and husbands.

Government Laws and Policies Revoking Section 377 of the Indian Penal Code On September 6th 2018, the Supreme Court of India delivered a historical verdict decriminalising homosexuality by partially striking down Section 377 of IPC. The revoking of Section 377 meant that same-sex couples now have the legal right to cohabit and conduct their personal affairs without any fear of persecution. But we must note that they are still denied equality of treatment in various aspects. Thus, it is imperative to take the conversation forward and talk about the various laws that continue to discriminate against LGBT+ persons. It includes anti-discriminatory laws such as no recognition of same-sex marriages, no rights for adoption, surrogacy etc. The court rationalised that Section 377 is vague and does not create intelligible differentia between what is "natural" and what is "unnatural". It also curbs freedom of expressing one's sexual identity, ie. right to freedom of expression as enshrined under Article 19 of the Indian constitution. It was also emphasised that discrimination on the basis of sexual orientation is unconstitutional considering it is a natural phenomenon as proven by scientific and biological facts.

Transgender Persons (Protection of Rights) Bill, 2019 Transgender Persons (Protection of Rights) Bill, 2019 was enacted with an objective to protect the rights of the Transgender Community by prohibiting discrimination against them with regards to employment, education, healthcare, access to government or private establishments. But in the name of empowering the community, the bill further exposes them to institutional oppression and dehumanises their body and identity. The bill snatches from an individual the right to determine their sexual orientation which is an integral component of the right to privacy as pronounced in the (National Legal Services Authority) NALSA judgement. As per the bill, the change of gender identity in documents can only be done after proof of sex reassignment surgery which must be certified by the District Magistrate. Another discriminatory aspect of the bill is that the punishment prescribed in the case of 'Sexual abuse against any Transgender person' is only two years while a similar kind of offence if, happens against women attracts a serious punishment extending up to 7 years. Thus, stipulating different levels of punishments for the same nature of crime only on the basis of gender identity is inherently discriminatory, arbitrary and against the equal protection clause. Although the bill seeks to provide "inclusive education and opportunities" to the transgender community but fails to lay down any concrete plan to achieve the same. There are no provisions in relation to providing any scholarships, reservation, changing the curriculum to make it LGBT+ inclusive or ensuring safe inclusive schools and workplaces for the trans-community.

Situation in Mexico

LGBT issues are now more well known among people thanks to Mexico. They have enacted legislation and recognised rights for the LGBT people. Since 1871, same-sex marriage has been legal in Mexico under the Napoleonic Code. A federal legislation that was passed in 2003 to prevent and eradicate discrimination included "sexual preferences" as a protected class. Mexican legislation now makes it the second nation in Latin America to prohibit discrimination against members of the LGBT community. In 2011, the Mexican constitution became official.

The first identical-sex marriage was made legal in 2015, and it was declared that any other states that disagreed would be guilty of discrimination and would be punished by the law. The Mexico court issued a warning against violence against the LGBTQ community, especially against transgender women, and mandated that they grant same-sex couples the right to get married in accordance with the court's order. Regarding same-sex adoption, a comparable law was enacted in 2016.

Regarding same-sex individuals, Mexico has had tremendous progress (LGBT community). Although it can take a while to obtain a court order for an adoption or marriage, it is hoped that states would legalise adoption and enable identical-sex marriage so that full equality can be achieved. Several people have argued that Mexico is superior to some other countries since it has established the strongest rights for the LGBTQ population. Things are improved by the law. As late as 2005, 48% of Mexicans admitted that they might not tolerate homosexuality in their household. However, things are changing drastically over several decades, and opinions on this issue are shifting quickly. Additionally, there is a significant gap generation that views this issue as a time-wasting cover. They are adapting to the global changes that are taking place and making an effort to understand that same-sex marriage is not a huge thing and that individuals may pick who they want to be with. 70% of people between the ages of 18 and 29 believe that homosexuality should be accepted too, The homosexual community (LGBTQ community) is more apparent in Mexico as it is in most other nations. LGBTQ centres are also

hotels that draw tourists who identify as homosexual. 137 hate crimes against LGBTQ people were committed in Mexico between 1995 and 2005, according to a research, prompting grave alarm about the country's homophobic hate crimes. Between 2014 and 2016, 202 LGBTQ people died as a result of violence, with gang violence being blamed for many of these deaths. LGBTQ will not be well recognised in remote locations, although it depends on the setting. Since 2004, a number of legislation have been established in Mexico that have made it simple for transgender persons to legally alter their gender, without undergoing reassignment surgery. However, there is a lot of violence against transgender persons, especially among trans women, and significant steps must be taken to educate people and raise more awareness among them regarding this matter.

United Kingdom

Britain started recognising same-sex couples in 1997, in the area of immigration and has presented itself as a wonderful example to the world in the pathway of recognising Civil rights for the LGBTQIA++ community. The Marriage (Same-Sex Couples) Act was passed in Wales and England in 2013 after completing its historic journey of struggles. Women and Equalities Minister Maria Miller also announced that the first same-sex wedding could take place by as early as summer 2014. The Act, which applies to England and Wales:

- allows same-sex couples to marry in civil ceremonies
- allows same-sex couples to marry in religious ceremonies, where the religious organisation has 'opted in' to conduct such ceremonies and the minister of religion agrees
- protects those religious organisations and their representatives who don't wish to conduct marriages of same-sex couples from successful legal challenge
- enables civil partners to convert their partnership to a marriage if they wish to
- enable married individuals to change their legal gender without having to end their marriage

Conclusion

The twentieth century has witnessed social uprising all around the world demanding human and civil rights for everyone. With the growing awareness, acknowledgement and acceptance of the LGBTQIA++ community through the twenty-first century's biggest communication tools- the Internet and Social Media, the world definitely is becoming a safer, and a better place to live in.

The acceptance level of the queer community within societies also varies: all of them are happening at different rates that are a result of the cultures and stereotypes of a particular region. The parameters used in this paper to compare India and the United Kingdom- Religion, Marriage, Adoption, Governmental Laws & Policies and Public Discourse- all have a fundamental role in describing the different backgrounds and histories that the two countries come from, that shape these stereotypes and cultures. It shapes their country, their policies, their people; that also changes over time. With the increasing number of International Organisations like Amnesty International, United Nations, Red Cross, their role in promoting gender equality and spreading awareness to make people more sensitive and inclusive has increased greatly. The United Kingdom, in comparison to India, as we can conclude from the paper above is doing far better- Its struggle and fight began way before India even recognised and acknowledged the LGBTQIA++ community. India has started progressing only recently in the second decade of the twenty-first century, and it has a long way to go from here. Like every human civilization, a spark of change towards something better almost always comes from fresh minds. The young minds are ahead, again- aware, well-informed students and young professionals all over the country, including people from both the LGBTQIA++ community and the ones from the socially-accepted normative genders are speaking up, and are playing their role in educating the masses. Kindness, empathy and unlearning the societal-constructs that have been ingrained in us will always go a long way- in making the world more inclusive, safe and equal, for everyone.

References

1. Juneau gary, *Are LGBT rights human rights? Recent developments at the United Nations, American psychological association (june 2012)*, <https://www.apa.org/international/pi/2012/06/un-matters>
2. Moksha Sanghvi, *History of the pride movement in India, Deccan Herald, (Jun. 26 2019)*
3. *National Legal Services Authority vs. Union of India (UOI) and Ors, MANU/SC/0309/2014*
4. *Navtej Singh Johar and Ors. vs. Union of India (UOI) and Ors., MANU/SC/0947/2018*

5. *K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors., MANU/SC/0352/2018*
6. <https://www.equaldex.com/compare/india/mexic>
7. *The History and Activism of the LGBTQ Community in India. (2018, September 10). TeleSUR. <https://www.telesurenglish.net/analysis/The-History-and-Activism-ofLGBTQ-Community-in-India-20180909-0009.html>*
8. *The Transgender Persons Bill explained. (2019, November 30).*
9. *Prasad, A. (2018, September 7). A Win, With A Long Road Ahead: The Supreme Court Repeals Section 377. Feminism in India. <https://feminisminindia.com/2018/09/07/section-377-supreme-court-judgement/ Pride and Privilege |>*
10. *The Pride Movement in India: History and Obstacles | Part I. (n.d.). One Future Collective. Retrieved January 26, 2021, from <http://onefuturecollective.org/the-pride-movement-in-india-history-and-obstacles/ Pride and Privilege |>*
11. *The Pride Movement in India: Inclusiveness and the Future | Part II. (n.d.). One Future Collective. Retrieved January 26, 2021, from <http://onefuturecollective.org/the-pride-movement-in-india-inclusiveness-and-thefuture/>*
12. *Unmarried and same-sex couples free to adopt. (2005, December 30). The Guardian. <https://www.theguardian.com/society/2005/dec/30/adoptionandfostering.childrens services>*
13. *Youth Ki Awaaz. (2020, September 24). Can Hinduism act as an ally for homosexuals? <https://www.youthkiawaaz.com/2020/09/can-hinduism-act-as-an-ally-forhomosexuals/>.*

