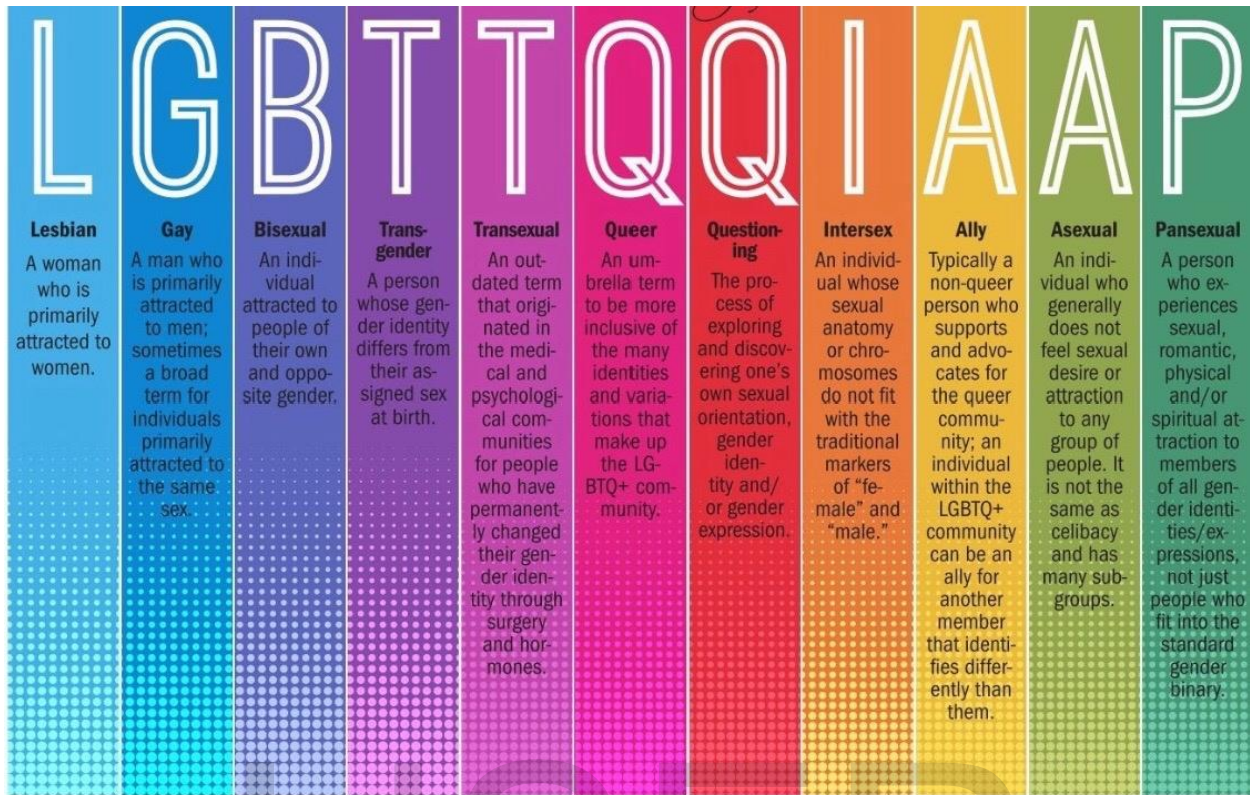




ASSIGNMENT TITLE: BEING LGBT IN INDIA: SOME HOME TRUTHS.

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L	G	B	T	T	Q	Q	I	A	A	P
Lesbian A woman who is primarily attracted to women.	Gay A man who is primarily attracted to men; sometimes a broad term for individuals primarily attracted to the same sex.	Bisexual An individual attracted to people of their own and opposite gender.	Trans-gender A person whose gender identity differs from their assigned sex at birth.	Transsexual An outdated term that originated in the medical and psychological communities for people who have permanently changed their gender identity through surgery and hormones.	Queer An umbrella term to be more inclusive of the many identities and variations that make up the LGBTQ+ community.	Questioning The process of exploring and discovering one's own sexual orientation, gender identity and/or gender expression.	Intersex An individual whose sexual anatomy or chromosomes do not fit with the traditional markers of "female" and "male."	Ally Typically a non-queer person who supports and advocates for the queer community; an individual within the LGBTQ+ community can be an ally for another member that identifies differently than them.	Asexual An individual who generally does not feel sexual desire or attraction to any group of people. It is not the same as celibacy and has many sub-groups.	Pansexual A person who experiences sexual, romantic, physical and/or spiritual attraction to members of all gender identities/expressions, not just people who fit into the standard gender binary.

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LGBTTQQIAAP- MEANING

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TABLE OF CONTENTS

S.No.	Content	Page No.
1.	Introduction	1-3
2.	Domain of Homosexuality	3
3.	Statement of Problem	4
4.	Terminology	4-5
5.	Research Design	5
6.	Methodology	5
7.	Data Collection	6
8.	Hypothesis	6
9.	Objectives	6
10.	Concept of LGBT	6-8
11.	History of LGBT minorities in India	8-11
12.	Review of Literature	12-13
13.	Legal Provisions and Constitutional Protection of LGBT minorities in India	13-18
14.	Responses of the interview schedule.	18-19
15.	Issues and Challenges Faced by LGBT minorities in India	19-24
	15.1. Legal discrimination against sexual minorities in India	20-21
	15.2. Some major issues faced by LGBT minorities in India in social aspects.	21-22
	15.3. Reasons for various problems faced by LGBT minorities in India.	22-24
16.	Gender neutrality as a solution to problems faced by LGBT minorities in India.	24-25
17.	Verification of Hypothesis	25-26
18.	Conclusion and Recommendations	26-29
19.	Questionnaire	30-34
20.	Bibliography	35-36

ABSTRACT:

After the decision of Hon'ble Supreme Court in Suresh Kumar Kaushal v. Naz Foundation where court set aside the order of High Court by terming same section relationship illegal court focuses its idea by saying that such type of relation increases the AIDS from 1% to 8%, also Section 377 does not violate Article 14, 19 and 21. Through this research, researcher will trying to analyze the effectiveness of section 377, how is it being implemented on ground level, various issues and challenges faced by LGBT's faced in India despite of certain laws in their favour and give some recommendations for better implementation of laws and protection of gay-rights as human rights if needed.

KEY WORDS:

LGBT, AIDS, GAY-RIGHTS, HUMAN RIGHTS.

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BEING LGBT IN INDIA: SOME HOME TRUTHS.

1. INTRODUCTION:

India, formally the Republic of India is a country in South Asia¹. It's the seventh largest country by area that, stands as the most inhabited democracy within the world. It's one of the world's oldest civilization nonetheless a really young nation that consists of 1.2 billion individuals which include twenty seven lakh gays.

The Constitution makers of Republic of India mentioned preamble as “**the place of pride**” declares the right to equality, liberty, and fraternity to its subject by stating, WE THE PEOPLE OF INDIA - in their context. On one hand where Republic of India guarantees Human Rights to its subject in our basic rights, the talk of Lesbian, Gay, Bisexual and Transgender gathered rather more attention at the present time.

Leading countries like European country, Belgium, Canada, Spain, South Africa, Norway, Sweden, Iceland, Portugal, Brazil etc., where gay wedding is legal, but majority of states like Republic of India prohibits the sexual relations between adults of same sex².

In 2001, the foremost landmark call of Hon'ble Supreme Court in the case of *Naz foundation v. Government of NCT*³ of Delhi that gave relief to Lesbian, Gay, Bisexual, Transgender (LGBT) for their relations by declaring Section 377 of IPC as unconstitutional⁴. However in 2013, the decision of High Court was challenged in the Apex court, where our constitutional court put aside the order of high court by holding that Section 377 of Indian legal code doesn't violate Article 14, 19 and 21 of Indian Constitution and term same sex relations not legal⁵.

Also they declared that it's the duty of parliament to amend or to repeal this section however until then this sort of relationship is harmful to society as because of same sex relations and intercourse's the share of HIV/Aids in Republic of India grows from 1% to 8%⁶.

The reference of same-sex activity⁷ is also found in pre-colonial societies of Republic of India. Same-Sex activity has been treated as evil offence in Manusmriti⁸ and penalization for such offence was there. Within the Manusmriti, Lesbianism was treated as serious offence and for it a

¹ Kaminsky, Arnold P. & Long, Roger D., *India Today-An Encyclopedia Of Life In The Republic*, available at: <https://www.abc-clio.com/ABC-CLIOCorporate/product.aspx?pc=B4629C> (Last visited on 10th March, 2020).

² Suresh Kumar Kaushal & Anr. Vs. Naz Foundation and ors., available at: www.manupatrafast.com (Last visited 10th March, 2020).

³ Naz foundation v. Government of NCT of Delhi, available at: www.indiankanon.org (Last visited on 10th March, 2020).

⁴ *Ibid.*

⁵ Suresh Kumar Kaushal & Anr. Vs. Naz Foundation and ors., available at: www.manupatrafast.com (Last visited on 10th March, 2020).

⁶ *Ibid.*

⁷ Acharya Y., Raghavendra MV, Acharya B, Priyanka RNK and Raj BV, *Understanding Homosexuality: Challenges and Limitations*, available at: <https://www.omicsonline.org/open-access/understanding-homosexuality-challenges-and-limitations.php?aid=91276> (Last visited on 10th March, 2020).

⁸ Devdutt Pattanaik, *What Does Dharmashastra and Manusmriti Say About Homosexuality?* Available at: <https://www.dailyo.in/lifestyle/dharmashastra-manusmriti-karma-devdutt-pattanaik-mythology-hindu-epics/story/1/14814.html> (Last visited on 10th March, 2020).

lot of serious punishment was there. Amongst the Muslim, the Shariat law⁹ additionally treats homosexual conduct as a grave offence. Therefore, in several religions, totally different punishments were provided to homosexual offences in India.

Codification of laws started throughout British rule in India where 1st enactment came about for uniform criminal laws in India in 1860. In the IPC, uniform prescription of homosexual behavior within the sort of unnatural offences¹⁰ its nature and penalty has been prescribed.

Although gender minorities have continuously existed in India typically in varied forms like culturally sanctioned (such because the hijra) and at alternative times in invisibleness and silence, their problems haven't seriously been articulated. Before nineteenth century, these problems were solely restricted to the society, however in nineteenth century, the LGBT minorities raised their problems with reference to violation of their human rights. These serious problems move through by varied civil society organizations in India.

In India initially a gay magazine '**Bombay Dost**'¹¹ within the late 1980's and also the beginning of a lesbian collective in Old Delhi known as '**Sakhi**'¹², lesbian, gay and bisexual problems were 1st articulated in an exceedingly public forum. Since this, LGBT minority movement has been enlarged in India. It's solely within the final decade of the twentieth century that the gay/ lesbian/ bisexual/ transgender movement delivered to the fore the rights of those discriminated against due to their gender.

In the middle 1990's, the Human Rights Committee alleged that the anti-sodomy law of Tasmania¹³ desecrated the right to privacy and also the right of non-discrimination sure to all persons underneath the International Covenant on Civil and Political Rights. In Scandinavia, the laws relating to equal rights for gender minorities, as well as wedding rights, was a very important development. The major development has been in the South African Constitution that for the 1st time expressly prohibited discrimination on grounds of sexual orientation¹⁴. However, where the scope of human rights has been extended to incorporate up to now marginalized communities at the world level, the same movement nonetheless is yet required to take place in India. In fact, most human rights organizations in India, the People's

⁹ Huda, *What Does Islam Says About Homosexuality?* Available at: <https://www.thoughtco.com/homosexuality-in-islam-2004396> (Last visited 10th March, 2020).

¹⁰ Neerja Gurnani, *Unnatural Offences under the IPC*, available at: <https://www.lawctopus.com/academike/unnatural-offences-under-the-ipc/> (Last visited 10th March, 2020).

¹¹ Sherry Joseph, *Gay and Lesbian Movement in India*, available at: <https://www.jstor.org/stable/4404520> (Last visited 10th March, 2020).

¹² Naisargi N. Dave, *To Render Real the Imagined: An Ethnographic History of Lesbian Community in India*, available at: <https://www.jstor.org/stable/4404520> (Last visited on 10th March, 2020).

¹³ Alexandra Purvis and Joseph Castellino, *A History of Homosexual Law Reform in Tasmania*, available at: <https://www.jstor.org/stable/4404520> (Last visited on 10th March, 2020).

¹⁴ Mr. Mwanawina Ilyayambwa, *Homosexual Rights and the Law: A South African Constitutional Metamorphosi*, available at: http://www.ijhssnet.com/journals/Vol_2_No_4_Special_Issue_February_2012/6.pdf (Last visited on 10th March, 2020).

Union of Civil Liberties – PUCL haven't begun to take up the question of rights of gays, lesbians, bisexuals and transgender others who are burdened because of their gender identity¹⁵.

Sexuality is typically viewed even in liberal and radical circles as a light-minded, bourgeois issue. In such a context, sexual activity is seen implicitly as one thing deviant and unnatural that's at the best defended as a personal freedom however not a matter of priority for the human rights movement. Generally, problems with economic condition and gender, category and caste oppression are seen as a lot of vital than that of sex. However this ignores the actual fact that sex is integrally joined to ideologies and structures of social oppression like structure, capitalism, the class structure and non-secular Protestantism. Hence, the struggle for sex rights can't be separated from the broader human rights struggle for economic, political and social liberation.

2. DOMAIN OF HOMOSEXUALITY:

Researcher is conducting research on broad domain of same sex relationship and specializing in sexual activity, it's appropriate to grasp what the main focus of term 'Homosexuality and LGBT's' are:

According to Oxford Dictionary¹⁶, Homosexuals as a unit are those whose sexual preference is of a same sex. They are also referred to be as Gay or Lesbians.

According to Black's Law Dictionary¹⁷, all those people that attract the folks of same sex term to be as homosexuals.

The term sexual activity contains of 2 terms “**homo**” and “**sexuality**”. It's been derived from a Greek word which suggests love between the 2 persons of same sex.

LGBT is an initialism that stands for Lesbian, Gay, Bisexual and Transgender.

Homophobia term to be a phobic disorder between homosexuals. It absolutely was a fever that term as contamination; it's a religious concern that results in cruelty.

Crimes area unit wrongs whose approve is retributive and isn't any approach remissible by any non-public person however solely by crown, if remissible at all.

According to Blackstone, crime is finished against violation of law through committing any act or omitted.

¹⁵ Peoples' Union for Civil Liberties, Karnataka, *Human Rights Violation Against the Transgender Community*, available at: <http://ai.eecs.umich.edu/people/conway/TS/PUCL/PUCL%20Report.pdf> (Last visited on 10th March, 2020).

¹⁶ Available at: <https://en.oxforddictionaries.com/definition/homosexuality> (Last visited on 10th March, 2020).

¹⁷ Available at: <https://thelawdictionary.org/homosexual/> (Last visited on 10th March, 2020).

3. STATEMENT OF PROBLEM:

After the decision of Hon'ble Supreme Court in *Suresh Kumar Kaushal v. Naz Foundation*¹⁸ where court set aside the order of High Court¹⁹ by terming same section relationship illegal. Court focuses his idea by saying that such type of relation increases the AIDS from 1% to 8% also Section 377 does not violate Article 14,19 and 21. The researcher is trying to analyze the effectiveness of section 377, how is it being implemented on ground level, various issues and challenges faced by LGBT's faced in India despite of certain laws in their favour and give some recommendations for better implementation of laws and protection of gay-rights as human rights.

4. TERMINOLOGIES:

Definitions concerning some necessary terminologies supporting the subject are:

LGBT- Abbreviation for Lesbian, Gay, Bisexual and Transgender²⁰.

Bisexual - Attraction of someone towards male or feminine sexually, physically and showing emotion²¹.

Discrimination- once the powerful society or their members behave cruel with the less powerful society individuals then such behavior term to be as discrimination²².

Gay - Male attracted to another man sexually, romantically, physically and/or showing emotion. This term ask same sex men who got sexually hooked up²³.

Gender Identity - a personal sense of being male, feminine or different gender²⁴.

Gender queer - someone who is neither male nor feminine however a mixture of each or is between or beyond gender²⁵.

HIV – Human Immunodeficiency Virus, a species of virus that causes AIDS i.e. Acquired Immunodeficiency Syndrome²⁶.

Homosexual - Someone attracted to same gender or desires to own sex with same sex. It includes Lesbian, Gay, Bisexual, Transgender, Queer etc²⁷.

¹⁸ Suresh Kumar Kaushal & Anr. Vs. Naz Foundation and ors., *available at*: www.manupatrafast.com (Last visited on 10th March, 2020).

¹⁹ Naz foundation v. Government of NCT of Delhi, *available at*: www.indiankanoon.org (Last visited on 10th March, 2020).

²⁰ Green, R. & Peterson, N., *LGBTQIA Terminologies*, *available at*: <mailto:eli@trans-academics.org> (Last visited on 10th March, 2020).

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

Lesbian - Feminine attracted to another feminine sexually, physically, romantically and /or showing emotion. This term ask same sex ladies who get sexually hooked up. The term Lesbian has been derived from the name of Greek island named “Lesbos”²⁸.

LGBTQIA - Common abbreviation of Lesbian, Gay, Bisexual, Transgender, Queer, Intersexual and Asexual community²⁹.

Sexuality - A persons sexual desire, sexual acts, their orientation, pleasure exploration³⁰.

5. METHODOLOGY:

Methods adopted were both doctrinal method as well as empirical method. Therefore, data has been collected from various articles and newspapers etc. Questionnaires were used to collect on field data from various LGBT people. Methods which include collection of data also include review of literature, history of homosexuals etc. The sampling method used for the study was snowball sampling. Using the techniques seven (7) respondents were contacted for collecting data from the Lovely Professional University, Phagwara, Punjab and UT, Jammu and Kashmir.

6. RESEARCH DESIGN:

The research is based on exploratory study of LGBT community people from the point of view of social identity development. The research technique is the blend of Quantitative and Qualitative approaches.

One of the instruments used is Questionnaire which is based on the Inclusive questions of social awareness LGBT community aspects and issues/problems of community. The instrument that was used is used to measure level and type of involvement was specifically created for this study and is based in logical aspect to catch the mind of the people. The involvement instrument was in the form of a questionnaire that was given to LGBT community people.

This research design was intended to shed the light on social awareness and conundrums of the community, development and involvement, relate to each other. There were a number of challenges though, that needed to be resolved for this design to work.

²⁸Green, R. & Peterson, N., *LGBTQIA Terminologies*, available at: <mailto:eli@trans-academics.org> (Last visited on 10th March, 2020).

²⁹ *Ibid.*

³⁰ *Ibid.*

7. DATA COLLECTION:

All the data collected for study are both primary via. Questionnaires and also secondary, and are analyzed. The review and the study occurred from the various books from School of Law library and Central Library of Lovely Professional University, Phagwara, also e-books and various cases from e-data source that is from Indian Kanoon, Manupatra e-data base, Google e-books, and various research papers also from e-data.

8. HYPOTHESIS:

There is a need of separate laws for LGBT minorities in India so as to deal with various challenges and issues faced by them in various aspects of their legal and social life.

9. OBJECTIVES:

There has not been enough understanding of the LGBT men and girls or their lives. The LGBT population has still been mostly invisible not solely because of disregard by a dominant patriarchal society however conjointly of concern of teasing and stigma and so, following are the objectives of this research:

- To make a case for the conception of LGBT.
- To analyze Legal provisions.
- To discuss Constitutional protection to LGBT Minority folks in Republic of India.
- To highlight their problems and challenges within the society.
- To give recommendations

10. CONCEPT OF LGBT³¹:

The following definitions illustrate the commonalities and variations between the LGBTQIA populations:

- **Lesbian** – a girl physically, emotionally, and mentally attracted to other females.
- **Gay** – a person physically, emotionally, and mentally attracted to same gender. This term is employed either to solely establish men or all sexual minority people.
- **Bisexual** – a person who is physically, emotionally, and mentally attracted to both genders.

³¹Peter Gamache, & Katherine J. Lazear, *Lesbian, Gay, Bisexual, Transgender, Questioning, Intersex, and Two-Spirit (LGBTQI2-S)*, available at: <http://rtckids.fmhi.usf.edu/rtcpubs/FamExp/lgbt-mono.pdf> (Last visited on 10th March, 2020).

- **Transgender** – an individual whose self-identity as male or feminine differs from their anatomical sex determination at birth.
- **Questioning** – an individual, typically a youngster, who raises queries as to his or her sexual orientation or identity and doesn't essentially establish as definitively gay, for example.
- **Intersex** – an individual born with associate indeterminate sexual anatomy or biological process hormone pattern that's neither male nor feminine. The conditions that cause these variations are typically classified under the terms “intersex” or “DSD” (Differences of Sex Development).
- **Two-Spirit** – an up to date term accustomed describe North American Aboriginal those that possess the sacred gifts of the female-male spirit that exist harmonic with those of feminine and male. Two-spirit folks were respected as contributive members of ancient Aboriginal societies. Today, Aboriginal those that are two-spirit may additionally establish as LGBT. The term isn't universally accepted among Native communities and nations; some use terms from their own nations.
- **Transitioning** – typically outlined because the method of ceasing to measure in one role and setting out to board another, undertaken by transgender and transsexual individuals. Many of us conjointly use the term to consult with the whole transgender/transsexual method (from living 24/7 within the starting role to once sexual assignment surgery).

The terms lesbian, gay, bisexual and trans-gender (LGBT) describe distinct persons in the gay culture. The first initiatives for folks that were gay centered totally on men. So, in a trial to draw attention to problems specific to gay ladies, “lesbian” is usually listen first.

People who are bisexual or transgender are historically unnoticed of, or under-represented in analysis studies and health initiatives. It's now considered standard to incorporate these two clusters besides gay men and lesbian.

In matters of gender, the terms individuals use and establish with will vary wide from culture to culture. In report the terms ‘lesbian’, ‘gay’, ‘bisexual’ and ‘transgender’ (LGBT) are used as they're English terms most typically employed in the international human rights discourse. However, this can be in no approach meant to ignore the variety of alternative terms and identities, nor to deny the cultural connotations attached to those terms. Within the interests of readability and so as to respect the wealth of terms, a variety of forms used in this report, mostly interchangeably. So, as an example, the term “lesbian and gay human rights” ought to be read as shorthand for the human rights of lesbian, gay, bisexual and transgender individuals.

- **Sexual orientation**³²: This term is employed to explain patterns of emotional, romantic, and sexual attraction and sense of non-public and social identity supported those attractions. Sexual orientation exists with exclusive attraction to the alternative or a similar sex. When a person's sexual and emotional attraction is towards the individuals of a similar gender, it is termed homosexual orientation. If attraction is towards opposite gender, it is known as heterosexual orientation and if the attraction is towards each gender then it is termed bisexual orientation individuals.
- **Gender identity**: It refers to a person's experience of expressive style in reference to social constructions of masculinity or femininity (gender). Someone might have a male or feminine personal identity, with the physiological characteristics of the alternative sex.
- **Sexual identity**: it's used to refer with sexual orientation and/or personal identity.
- **Transgender**: It suggests that somebody whose gender differs from the one after they were born. Transgender individuals might establish as male or feminine or neither the label fits to them. These people's internal feelings and labels may be male, feminine or transgender.

11. HISTORY OF LGBT MINORITIES IN INDIA³³:

LGBT in Republic of India has been documented for various times, in recent times thanks to unbanning of sexual activity and promotion of LGBT rights which has contributed to large number of researches and opinions concerning the LGBT in Republic of India. No individual has been executed for sexual activity in Indian history³⁴.

Although people have been arrested due to anti-homosexuality laws, no one is known to be guilty of homosexuality in India post-independence³⁵.

• PRE-COLONIAL ERA:

There are variety of ancient Indian texts that are relevant to contemporary LGBT causes.

The Arthashastra, an ancient Indian written material on diplomacy, mentions a good variety of non-vaginal sexual practices that, whether or not performed with a men or women, were sought-after to be punished with low grade of fine. Whereas homosexual intercourse wasn't sanctioned, it

³² Dr. Kalpana V Jawale, *Issues and challenges of 'LGBT' minority people in India*, available at: <http://www.allresearchjournal.com/archives/2016/vol2issue6/PartG/2-4-128-110.pdf> (Last visited on 10th March, 2020).

³³ Available at: https://ipfs.io/ipfs/QmXoyvizjW3WknFiJnKLwHCnL72vedxjQkDDPImXWo6uco/wiki/LGBT_history_of_India.html (Last visited on 10th March, 2020).

³⁴ Ruth Vanita and Saleem Kidwai, *Same-sex Love in India*, available at: https://books.google.co.in/books?id=P2nprDLPRLwC&pg=PT237&lpg=PT237&dq=homosexuality+conviction+india&source=bl&ots=5hE7W_d8RT&sig=1cwp2w5IBloSjCYEYf_wfPzjtYo&hl=en&sa=X&redir_esc=y#v=onepage&q=homosexuality%20conviction%20india&f=false (Last visited on 10th March, 2020).

³⁵ Javid Naqvi, *Gay But Not Quite Happy*, available at: <https://www.dawn.com/news/476520/gay-but-not-quite-happy> (Last visited on 10th March, 2020).

absolutely was treated as an awfully minor offence, and a number of other types of heterosexual intercourse were punished additional severely.

Sex between non-virgin girls incurred an awfully little fine, whereas homosexual intercourse between men was sought-after to be censured by a prescription of a shower with ones garments on, and a penance of “eating the 5 product of the cow and keeping a one-night fast” – the penance being a replacement of the standard construct of homosexual intercourse leading to a loss of caste.

A Dutch traveler in Mughal Empire wrote that male homosexual activity “is not solely universal in practice among them, however extends to a beastly communication with brutes, and above all with sheep.”³⁶

- **COLONIAL ERA:**

The British Rule in India prohibited homosexual relations under Section 377 of IPC that got in into force in 1861. It absolutely was equally instituted throughout most of land British Empire because of the Christian spiritual beliefs of British colonial governments.

- **MODERN INDIA:**

In 1977, Shakuntala Devi printed the primary study of sex in India³⁷. While convictions under Section 377 were rare, with no convictions in the least for homosexual intercourse within the twenty years to 2009, Human Right Watch have reported that the law was used to harass HIV/AIDS prevention activists, also sex employees/workers, men who have intercourse with men, and different LGBT groups. The cluster of documents show arrests in Lucknow of 4 men in 2006 and another 4 in 2001.

Homosexual intercourse was a criminal offence till 2009³⁸ by the virtue of Sec 377 of the IPC, 1860. This also declared it to be an offence for someone to voluntarily have “carnal intercourse against the order of nature.”

- **2009-2013:**

The law was struck down by the 2009 Delhi HC decision in *Naz Foundation v. Govt. of NCT of Delhi* that found Section 377 and alternative legal prohibitions against same-sex conduct to be in direct violation of rights provided by Part III of the Indian Constitution.

Decisions of the High Court on the constitutionality of a law (i.e judicial review) apply throughout Republic of India, and not simply to the territory of the state over that the court in

³⁶ Johan Stavorinus, *Voyages to the East Indies*, available at: <https://archive.org/details/voyagestoeastin00stavgoog/page/n9> (Last visited on 10th March, 2020).

³⁷ Shakuntala Devi, *The World of Homosexuals*, available at: https://books.google.co.in/books?id=PBwbAAAAYAAJ&redir_esc=y (Last visited on 1st October, 2019).

³⁸ *Where is it Illegal to be Gay?* available at: <https://www.bbc.com/news/world-25927595> (Last visited on 10th March, 2020).

question has jurisdiction³⁹. However, even after the pronouncement of verdict, there are (rare) incidents of harassment of homosexual teams⁴⁰.

On 16th Feb, 2012, the Supreme Court while hearing of a bunch of appeals filed against legislation decriminalizing of gay sex, discovered that sex ought to be seen in the context of dynamic society as several things that earlier were undesirable became acceptable with passage of time.

The two-judge bench, composed of Justices G.S. Singhvi and S.J. Mukhopadhaya, opined that sex ought to be seen within the light of changing times wherever the phenomena of live-in relationship, single parents and artificial fertilization became traditional that they had additionally seen that several things, that were thought-about immoral twenty years ago, became acceptable to society currently.

The bench were of the opinion that gay sex wasn't associate offence before 1860 and referred to paintings and sculptures of Khajuraho. Senior Advocate Amrendra Sharan, who opposed the the Delhi High Court order of decriminalizing gay sex on behalf of Delhi Commission for the "Protection of Children Rights", had then submitted that social problems can't be sorted on the basis of sculptures. The Apex Court bench, however, determined that it's a mirrored image of society of that point and sexual practice mustn't be seen solely in terms of sexual issues. Earlier, the Supreme Court bench had asked the anti-gay rights teams, challenging group action of gay sex to elucidate how such acts tend to be against the order of nature as submitted by them.

The Apex Court was hearing petitions filed by anti-gay rights activists and conjointly by political, social and non-secular organizations that have opposed the Delhi High Court finding of fact decriminalizing homosexual behavior.

However, on 23rd February, 2012, the Union Home Ministry of the UPA Govt. replying to a Supreme Court observation, told the Supreme Court that it absolutely was against the decriminalization of gay sex. "This is extremely immoral and against the social order," the Home Ministry told the apex court. It said that India's ethical and social values were totally different from the other countries, and thus mustn't be controlled by them. The SC reversed its stand on 28th February, 2012 declarative that there was no error in decriminalizing gay sex. This resulted within the SC pulling up the Centre for again and again changing its stand on the problem, "*Don't create a mockery of the system and don't waste the courts time*", the Apex Court decide told the Government⁴¹.

³⁹ *Kusum Ingots v. Union of India*, (2004) 6 SCC 254: "An order passed on a writ petition questioning the constitutionality of a Parliamentary Act, whether interim or final, keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

⁴⁰ Pervez Iqbal Siddique, "Crackdown on Gay Party in Saharanpur, 13 held", Times of India, available at: <https://timesofindia.indiatimes.com/india/Crackdown-on-gay-party-in-Saharanpur-13-held/articleshow/7175530.cms?referral=PM> (Last visited on 10th March, 2020).

⁴¹ Agencies, *Supreme Court Pulls Up for Flip-Flop on Homosexuality*, available at: http://archive.indianexpress.com/news/supreme-court-pulls-up-centre-for-flipflop-on-homosexuality/917743/?google_editors_picks=true (Last visited on 10th March, 2020).

Also in 2012, a guide titled ‘Creating comprehensive Workplaces for LGBT workers in India’ was developed by the IBM, Goldman Sachs, Google at the side of Community Business, a non-profit organization⁴².

In Twelfth month of 2013, however, India’s prime court upheld the law that criminalizes gay sex, in ruling that reverses a landmark 2009 Delhi HC order that had decriminalized homo-sexual acts. The court same that it absolutely was up to parliament to pass ab order on the said problem.

India has historically taken Section 377, a 153 year recent colonial-era law, as condemning same-sex relationships as an ‘unnatural offence’ and conjointly considering it a punishable by a ten year jail term. Political, social and non-secular religious groups petitioned the Supreme Court to possess the law reinstated within the wake of the 2009 court ruling⁴³.

- **2013-present:**

The protests against the reinstatement of Section 377 took place across India, and resulted in political activism across political parties to declare their support the laws repeal. By April 2014, the month of upcoming election, at least three major political parties – the Aam Aadami Party, the Congress and the Communist Party of India (Marxist) - had included support for decriminalization of homosexual relations in their election manifesto, while the BJP’s leadership supported the law.

In 6th month of 2014, a book on Gender-queer in Tamil and 1st Tamil book on LGBTQIA was from Srishti Madural was discharged by BJP’s state general secretary Vanathi Srinivasan at the Sixth Hindu religious service foundations sixth service fair, Chennai⁴⁴.

In 5th month of 2016, a dating platform known as **Amour Queer Dating** was launched in India, for LGBTQIA folks seeking future companions⁴⁵.

⁴² Jayashree Nandi, *Lesbian, Gay, Bisexual and Transgender Resource Guide For Employees*, available at: <https://timesofindia.indiatimes.com/india/Lesbian-gay-bisexual-and-transgender-resource-guide-for-employers/articleshow/16739968.cms?referral=PM> (Last visited on 10th March, 2020).

⁴³ “Indian Top Court Reinstates Gay Sex Ban”, BCC News, available at: <https://www.bbc.com/news/world-asia-india-25329065> (Last visited on 10th March, 2020).

⁴⁴ Gopi Shankar, “It’s a great honour to be awarded for book on gender variant”, Times of India, available at: <https://timesofindia.indiatimes.com/city/madurai/Its-a-great-honour-to-be-awarded-for-book-on-gender-variants-Gopi-Shankar/articleshow/38769130.cms> (Last visited on 10th March, 2020).

⁴⁵ *Amour- A Dating Platform for Queer*, available at: <http://amourqueerdating.blogspot.com/> (Last visited on 10th March, 2020).

12. REVIEW OF LITERATURE:

Law Commission of India, 2000⁴⁶ - In 172nd report of law commission, the committee members recommended the deletion of Section 377 of IPC and pleaded that it is harmful to public health due to direct impact on the life of homosexuals. Also, they quoted that if we will ban such type of relation it results the homophobia in LGBT's which will generate the illegal way of same sex activities in privacy.

Public Union for Civil Liberties, 2003 in their study on Transgender i.e. kothi and hijra sex workers in Bangalore concluded that there is an urgent need of laws protecting the rights of transgenders as everywhere there is violation of transgender human rights.

Ray, 2006⁴⁷ in his research found that among all homeless youth 20% to 40% youth consist of the LGBT's and the reason behind that was the negative impact of society towards them, lack of understanding of their sexual orientation.

Suicide Prevention Resource Centre, 2008⁴⁸ in their research found that the suicidal behavior of LGBT's occur due to discrimination towards them by society, mental illness, isolation, victimization, stress full relationship. Also they found that this can be removed by supporting LGBT's and empowering their relation.

Gentlewarrior, 2009⁴⁹ in her research found that Sexual violence in LGBT people are on heights due to non-protection, discrimination, and criminalizing of such relations.

Naz Foundation International, 2012⁵⁰ - Sex activity isn't an offence; it's simply the way of pursuit of happiness, the way to attain sexual happiness or need. In our society individuals have branded homosexuals as 'queer'. Nevertheless sex activity isn't new neither is it against the Indian culture, it's continuously existed and with a lot of lesser prosecution, that under Section-377 of the IPC, that relies on British Offences against the Persons Act.

Amnesty International, 2013⁵¹ - In 1994 Amnesty International in public declared that violence and abuse against LGBTs is an infringement of human rights.

⁴⁶ Law Commission of India, 2000, 172nd Report on Rape laws, *available at:* www.lawcommissionofindia.nic.in (Last visited on 11th March, 2020).

⁴⁷ Ray, N., *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness*, *available at:* <http://www.nationalhomeless.org/> (Last visited on 11th March, 2020).

⁴⁸ Suicide Prevention Resource Centre, *Suicide risk and prevention for lesbian, gay, bisexual, and transgender youth*, *available at:* http://www.sprc.org/library/SPRC_LGBT_Youth.pdf (Last visited on 11th March, 2020).

⁴⁹ Gentlewarrior, S, *Culturally Competent Service Provision to Lesbian, Gay, Bisexual and Transgender Survivors of Sexual Violence*, *available at:* https://www.haven-oakland.org/assets/media/pdf/culturally-competent-service-provision-to-LGBT_survivors-of-sexual-violence.pdf (Last visited on 11th March, 2020).

⁵⁰ Naz Foundation International, 2012, *Section 377: 150 years on and still continuing*, *available at:* <https://www.outrightinternational.org/content/india-section-377-and-naz-foundation-india-trust-v-government-nct-delhi> (Last visited on 11th March, 2020).

⁵¹ Amnesty International, 2013, *Making Love a Crime - Criminalization of Same Sex Conduct in Sub-Saharan Africa*, *available at:* www.amnesty.org (Last visited on 11th March, 2020).

Vergheese, 2014⁵² in their article writes sex activity isn't a criminal offense ought to get punished by the judiciary, additionally it's not something to be treated a disorder. The gays should get the liberty to live their lives as they desire and should not be subjected to restrictions.

Hundreds of Gay rights activists in Delhi and in alternative cities came on road with black arms bands with rainbow color flags and banner to protest the choice of Hon'ble Supreme Court on *Suresh Kumar Kaushal v. Naz foundation* case that criminalize same sex relation as illegal. In 2009, Hon'ble Court in their call declared Section 377 of Indian legal code unconstitutional, this call was set aside by Supreme Court. The gay community and their activists demanded to undo the Supreme Courts call, additionally they mentioned that it's their elementary right and that they can solely decide whom they love.

13. LEGAL PROVISIONS AND CONSTITUTIONAL PROTECTION OF LGBTQIA MINORITIES IN INDIA:

a. RIGHT TO PRIVACY OF LGBT MINORITY PEOPLE⁵³:

The right to life and private liberty includes right to privacy. The Constitution of India doesn't directly give the correct to privacy as a vicinity of the fundamental right, however it's been stressed from time to time by the Supreme Court in some cases and therefore it is considered to be in a vicinity of fundamentals rights. Hence right to privacy mustn't be abridged by the state under any circumstances.

b. ARTICLE 14 PROVIDES RIGHT TO EQUALITY⁵⁴:

It states that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

c. ARTICLE 15 PROVIDES NON-DISCRIMINATION⁵⁵:

Art 15 (1) and 20 prohibit the state from discriminating any citizen on the ground of any religion, caste, race, sex, place of birth or any of them.

d. SECTION 377 OF THE INDIAN PENAL CODE⁵⁶:

Section 377 of IPC that was enacted throughout British people during their rule in India in 1860 created an offence of voluntarily having a carnal intercourse "against the order of nature" with any man, lady or animal, punishable by up to 10 years imprisonment or a fine. The section appears neutral in that it criminalizes a couple of sexual acts and their identities.

⁵² Vergheese, A, 2014, *A fresh look at homosexuality*, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4040081/> (Last visited on 11th March, 2020).

⁵³ The Constitution of India, 1950.

⁵⁴ *Ibid.*

⁵⁵ *Ibid*

⁵⁶ Section 377 of Indian Penal Code, available at: <https://indiankanoon.org/doc/1836974/> (Last visited on 11th March, 2020).

However, it's never been used against willing heterosexual persons and has been victimized against homosexual persons. The first issue with the law is that it doesn't take into its ambit age or consent. Therefore, it criminalizes adult same sex acts which are consensual. It started with the petition by Naz Foundation before the HC of Delhi.

- **Naz Foundation v. Govt. of NCT of Delhi⁵⁷:**

Facts of the case: Honourable High Court on July 02, 2009 ended the discriminatory treatment against LGBT people in India by declaring Section 377 of Indian Penal Code unconstitutional. Section 377 is a birth of British legal system which criminalizes homosexuality.

A writ petition has been brought up by an NGO named Naz Foundation who works for HIV/AIDS sufferers who term Section 377 of IPC as a constitution violation. Section 377 of IPC i.e. Unnatural Offences which provides that any person who has involved in activities of carnal intercourse against the order of nature with any man women or animal shall be punished with imprisonment for life or may extend to ten years, and shall also be liable to fine. Naz Foundation in their petition also submits the following:

- It violates fundamental rights under Article 14, 15, 19 and 21 of Indian Constitution.
- Article 15 of constitution which provide non-discrimination should also include non-discrimination among sexual orientation.
- At last they submit that Section 377 of IPC violates right to privacy, equality and dignity.

Ministry of Home Affairs and Ministry of Health and family Welfare oppose the petition by submitting that:

- It provides sexual abuse of children by prosecuting individuals.
- It filled a gap between rape laws.
- It will result into flood gates of delinquent behaviour which may harm public.

Judgment: In its 2009 call, the state supreme court found in favour of the Naz Foundation and accepted its arguments that consensual same-sex sexual relations between adults ought to be decriminalized, holding that such lawmaking was in resistance of the Constitutional rights to life and private liberty, equality before the law and non-discrimination.

In reaching its decisions, while the court placed a good deal of stress on domestic judgments, the court additionally relied on comparative law in reaching its decisions, pertaining to judgments from numerous jurisdictions as well as the European Court of Human Rights, the UK, the Republic of Ireland, Republic of South Africa and therefore the USA.

The Court additionally said that Section 377 offends the guarantee of equality enshrined in Article 14 of the Constitution, as a result of it creates unreasonable classification and targets

⁵⁷ Naz foundation v. Government of NCT of Delhi, *available at*: www.indiankanoon.org (Last visited on 11th March, 2020).

homosexuals as a category. Public animus and disgust towards a specific group or vulnerable minority, it held, isn't a sound ground for classification under Article 14.

Article 15 of the Constitution forbids discrimination based on certain characteristics, as well as sex. The Court commanded that the word "sex" includes not solely biological sex however additionally sexual orientation, and thus discrimination on the basis of sexual orientation isn't permissible under Article 15. The Court additionally noted that the right to life under Article 21 includes the right to health and held that Section 377 is an impediment to public health as a result of which it hinders HIV-prevention efforts.

The Court failed to strike down Section 377 as an entire. The section was declared unconstitutional in to this point it criminalizes consensual sexual acts of adults privately. The Court held that:

"Section 377 criminalizes the acts of sexual minorities, significantly men who have sex with men. It disproportionately affects them entirely on the idea of their sexual orientation. The supply runs counter to the constitutional values and therefore the notion of human dignity that is taken into account to be the cornerstone of our Constitution."

- **Suresh Kumar Koushal v. Naz Foundation⁵⁸:**

Facts of the case: This case concerns with the constitutionality of Section 377 of IPC which was enacted in 1860 during British rule by British legal system. Section 377 of IPC i.e. Unnatural Offences which provides that any person who has involved in activities of carnal intercourse against the order of nature with any man woman or animal shall be punished with imprisonment for life or may extend to ten years, and shall also be liable to fine. In 2001, Naz Foundation a NGO working in the field of HIV/AIDS filed a petition before Hon'ble High Court for decriminalizing sexual orientation activities by declaring section 377 of IPC as unconstitutional as this section violates Article 14, 15 and 21 of Indian Constitution. This decision was challenged in Supreme Court stating that decriminalizing of section 377 of IPC may harm to LGBT community especially the homosexual male. The submissions made before the Hon'ble court was:

- Section 377 management the expansion of HIV/AIDS and decriminalization would increase the speed of HIV/AIDS.
- Section 377 of IPC doesn't violate rights to privacy and dignity under Article 21 of Indian Constitution.
- Decriminalization of same sex activities might have an effect on the society and can make youngsters tempted towards homosexuals.

Judgment: The SC, during this case, reversed the judgment of the Old Delhi court and said that Section 377 doesn't violate the constitution and is so valid. The SC reasoned its judgment on many grounds.

⁵⁸ Suresh Kumar Kaushal & Anr. Vs. Naz Foundation and ors., *available at:* www.manupatrafast.com (Last visited on 11th March, 2020)

First, it held all laws enacted by Parliament are likely to be valid under the Constitution. This implies that so as to carry a law to be invalid, it should be shown, through proof, that the law is violating the Constitution. The Supreme Court command that there's not enough proof to point out that Section 377 of IPC is invalid under the Constitution. The Court command that there's little or no proof to point out that the provision is being misused by the police. Also, simply because the police could also be misusing a law, doesn't mechanically mean that the law is invalid. There must be one thing within the nature of the law itself that's unconstitutional.

According to the Supreme Court, the law will be enforced while not misuse, it absolutely was additionally argued before the SC that as a result of Section 377 applies to sure sexual conduct, it primarily means all sorts of sexual expression by LGBT folks would be unnatural. This may mean that any sexual conduct by such folks would be bootleg. Therefore, the section doesn't target LGBT persons as a category.

The Supreme Court disagreed with this argument and held that Section 377 speaks solely of sexual acts and doesn't discuss sexual orientation or personal identity. This may mean that even heterosexuals gratification within the acts lined under Section 377 would be illegal. Therefore, the section doesn't target LGBT persons as a category.

Further, the SC held that the Delhi HC in its anxiety to uphold the thus referred to as rights of LGBT persons had relied on cases from the other countries. They're of the opinion that cases from other countries can't be directly utilized in the context of Republic of India. Therefore, vital cases from South Africa, Fiji, Nepal, USA etc. wherever sexual activity was decriminalized wasn't taken into consideration by Supreme Court.

Laws are t likely to be valid, therefore, the responsibility of fixing laws is with the parliament. During this case, parliament is at a liberty to take into account deleting or changing Section 377. The SC additionally said that despite numerous years, the Parliament has not modified the law in spite of getting ample opportunities to try to do so.

In reviewing the reading down of the Section 377 by the court, the Supreme Court declared the court had not looked into the very fact that 'a very small fraction of the country's population represent lesbians, gays, bisexuals or transgenders' and that over the last 150 years, fewer than two hundred persons had been prosecuted under Section 377, closing from this that "this can't be taken to be a sound basis for declaring that Section ultra-vires the provisions of Articles 14, 15 and 21 of the Constitution". In light of the above factors taken into consideration, the SC reversed the choice of the Delhi HC and upheld section 377 as valid.

It held that "*Section 377 doesn't suffer from the vice of unconstitutionality*" with no additional elaboration. The judges noted that while the court found that Section 377 wasn't unconstitutional, the legislative assembly was still free to contemplate desirability and propriety of deleting of amending the section.

- **Comparison of Suresh Kumar Kaushal v. Naz Foundation and Naz Foundation v. Government of NCT of Delhi:-**

Naz Foundation which is a registered NGO works in the field of HIV/AIDS prevention and rehabilitation. Its work also focuses on homosexuals. Naz foundation in 2009 appeals before Delhi High Court and prayed to remove Section 377 of IPC by stating that it penalizes sexual acts in privacy between adults with consent which is violation of Articles 14, 15, 19(1) and 21 of the Indian Constitution. Further, they prayed for the grant of permanent injunction to restrain the official persons from the enforcement of Section 377 of IPC. Naz Foundation submits that Section 377 is to penalize sexual acts which are against order of nature and had values in Indian society concerning sexual relations.

Article 21 protects private consensual sex under privacy and dignity. Section 377 criminalizes consensual, non-procreative sexual relations which is again a violation of Article 14 of Indian Constitution. Further, they stated that privacy allow person to have sexual relations without interference by anyone and violation of sex will create more problem. Delhi High Court accepted all the submissions and term Section 377 of IPC as unconstitutional as it is violation of Article 14, 15, 19 and 21 of Indian Constitution.

But in 2011 the decision of Delhi High Court on homosexuals has been challenged in Honourable Supreme Court. NACO and Health ministry filed an affidavit by stating that NACO who works for prevention and control of HIV/AIDS in India in its survey of National Sentinel and Surveillance Data 2005 found estimated that HIV in homosexuals is 8% and while in general population it is 1%.

In this case, the petitioner said that High Court committed a serious error by declaring Section 377 as unconstitutional by saying that the respondent does not presented any tangible material which proves the unconstitutionality of Section 377 also they stated that affidavit filed by NACO that Section 377 throwing an adverse effect on controlling HIV is incorporated. Many arguments present by the challengers before Honourable Supreme Court which at last set aside the Delhi High Court decision by stating that it does not violate Article 14, 15, 19 and 21 of Indian Constitution also it is in the hands of parliament to amend or to repeal Section 377 but till that it is in force.

- **Criticisms of SC Judgment:**

The decision of the SC was received by a wave of protests spanning across the country. The choice of the SC is wrong as a result of many reasons.

The SC said that the LGBT community is a particularly little and insignificant minority. This can be wrong on the premise of knowledge in addition. However, although the population of LGBT folks is really little, it doesn't have an effect on the question of harassment or constitutional rights. The violation of the rights of 1 person is as serious as that of innumerable folks.

The SC has been unsuccessful in its call to know the dimensions of misuse of Section 377 by the police against folks of LGBT persons. However, this can be wrong as a result of it doesn't embrace the amount of police complaints, arrests or harassment on the premise of this

Section. There have been many well-known instances of abuse and harassment by the police that is something that the SC fails to contemplate.

The SC is wrong in its application of laws from other countries. It doesn't contemplate the actual fact that same-sex acts are decriminalized in a very heap of states, along with UK as well as USA. The SC ought to have thought of the selections from the other countries because it continuously has been doing so. But during this case, SC neglected foreign decisions.

The SC also said that the law applies solely to certain acts and to not the identities of individuals. However, this can be wrong as a result of it implies that for the members of LGBT community, any approach within which they may involve themselves in a sexually activity becomes a criminal act. This can be not for heterosexual folks who may have sexual intercourse without violating the law.

The SC said that the law ought to be modified by Parliament and not the Court. However, the SC was never asked to alter the law. It's the duty of the Court to limit or strike down a law that is against the Constitution. The SC had to try and do that during this case, but that it failed to do so.

14. RESPONSES OF THE INTERVIEW SCHEDULE:

- **Respondent 1:** Respondent 1 seemed to be a bit ashamed human being. So, responses received were quite less. To the question as to whom that person came out to first with regards to his/her being an third gender person, the answer received was that he/she had first told her/his mother about being a someone not being a part of socially accepted genders i.e., male and female. It was further added that after confessing the same, the behavior of the family changed a lot towards him/her. That person was not allowed to take further education and was treated as a servant at home due to which that person had been suffering from huge mental trauma. He/she even had tried to commit suicide but couldn't succeed in the same. He/she still faces the same issues.
- **Respondent 2:** Respondent 2 seemed to be a very confident transgender girl. She said that she wasn't ashamed of being a transgender female as she's not at fault at all. She is a fashion influencer and has completed education up to class 12th. She had first come out about her sexuality to her sister who further informed her mother. Her family accepted her whole heartedly and didn't treat her as something unacceptable. She had faced some ragging in school and on roads by various class mates for being a transgender girl. She couldn't make many friends in life as no one accepted her. But she accepted herself as she is and continued to progress in life. She is an inspiration to many others of same kind.
- **Respondent 3:** Respondent 3 was the most informative of all the respondents during the survey. To the various questions in the questionnaire, he answered very smartly. He stands to be a gay. And when he came out to his family about it, he was thrown out of the house. He said that it was the worst thing that could have ever happened to him. After that incident, other incidents seemed to be very small. He had slept on road for 5 to 7 days and had taken no food at all. He seeked help from the Respondent 2 who happens to his best friend now. They started living together and are living together for 3.5 years now. Respondent 3 never

went to school as he got to know about his disorder at a very young age. Because of being thrown out of the house, he had also started to take drugs to deal with depression. But eventually he came out of it. He tried to start working in a factory as a cleaner but for being a gay, his pay was lesser than those working with him and when he questioned the same, and he was thrown out of job too. Now, respondent 3 is looking for some other job but he seems to be very hopeless.

- **Respondent 4:** Respondent 4 was again a transgender female of 20 years old. She had faced various issues for being a transgender female. She has been called by various unacceptable names by those around her. She had been to school up to class 8th after which she dropped school because the school administrative staff thought that she may be a bad influence for those in her class. After first time coming out to her family about her being a transgender girl, they did accept her somewhat but they never treated her the same. She was also thrown out of house once and had been beaten up by family many times, but she returned to home because she didn't want to live without them. The facilities and opportunities that her family provides to her sister are far more than what she gets. She also added that she hates now being at home and wants to start working so that she could live alone independently and take on her own expenses but she also added that opportunities for people like her are very less. To everything she said, a shocking point was put forward as well. She had been sexually harassed by her cousins and when she said the same to her family, they didn't even react to it saying that "it hardly matters, you're not getting pregnant". Her family had also said, "You're enough of disgrace to us, now don't create a scene out of it. Already enough of our reputation is at stake because of you." She, weeping her tears, said that she is also a human and deserves to be treated like one.
- **Respondent 5:** Respondent 5 didn't mention much about anything about his life. He, being a gay, was now acting as a "middle man" of just 19 years old getting marriages fixed. When I asked him that why he doesn't work somewhere else, he said that "opportunities are for men and women. We are not humans and hence, we are not treated like one". He just said that he had been beaten up many times for being the way he is. He seemed to be very upset with life and it seemed like he held a lot of things inside but he preferred to stay silent most of the time.
- **Respondent 6 & 7:** Both of them were transgender female best friends who were brought up together and had completed their education up to class 12th. They haven't confessed to anyone for being transgender females as they both are afraid that they'll be disowned by their families who happen to be neighbours too. They said that in school time, it was very hard to keep it hidden being a transgender. Their behaviour was different from the other normal students so they used to tease them for their unusual behaviour and way of talking. They said that they want to be like normal men and women and live their life with full dignity. They hate being transgender and they said that they often question God for making them like that. They said that it's not at all easy being someone who is not like others. They feel separated from the human community. They further added that if they get a chance of rebirth, they'll prefer being normal ones because they have not yet confessed to their families about it and have a fear in their minds that if their families get to know somehow, they may be killed.

All the respondents formed just one friend circle which was highly confined to themselves only. They didn't have many of normal men and women as their friends and all are craving for equal status, freedom and liberty. They all dream of a life where they could live with a dignity of a human being.

15. ISSUES AND CHALLENGES FACED BY LGBT MINORITIES IN INDIA AS PUT FORWARD BY VARIOUS RESPONDANTS - AN ANALYSIS :

The LGBT face innumerable difficulties in the society where the only accepted orientation is heterosexuality and homosexuality is regarded as abnormal. Abuse is their daily routine and faced by them almost every day.

They are more likely to experience intolerance, discrimination, harassment, and threat of violence due to their sexual orientation than those that identify themselves as heterosexual. It is mainly due to homophobia.

They face inequality and violence at every place around the world. They face torture from people who mock at them and make them realize that they are different from others. It's just because of who they are and how they look. In many countries, the rights enjoyed by opposite-sex couples are not enjoyed by the same-sex couples.

They are prohibited from those rights. As a result, they face discrimination and cannot enjoy social protection schemes like health care and pensions. The LGBT people even hide their gender and do not disclose it due to fear of losing their job. The young LGBT people face ragging and harassment in schools, colleges, and university which in many cases lead to depression, school drop-out and homelessness.

They gradually develop low self-esteem and low self-confidence and become isolated from friends and family. The parents of normal children don't allow them to mix with the LGBT children acting completely out of care and concern without realizing that this leads to isolation for the other one. Lack of communication between LGBT child and the parents often leads to conflict in the family. Much LGBT youths are placed in foster care or end up in juvenile detention or on the streets, because of family conflict related to their LGBT identity. LGBT teens have a very high risk of health and mental problems when they become adults because they are rejected by their parents and caregivers.

15.1. LEGAL DISCRIMINATION AGAINST SEXUAL MINORITIES IN INDIA:

Legal discrimination against sexuality minorities operates through the criminal and civil law systems. The regime of discrimination can be analyzed under the following heads:

a. PREVENTION OF UNNATURAL OFFENCES UNDER INDIAN PENAL CODE:

Legal Discrimination against the sexuality minorities takes many forms, the most notorious being Section 377 of the Indian Penal Code (IPC), a British colonial legislation criminalizing

homosexual behavior, that continues to be in the Indian statute book although it has long since been removed from the British statute book.

This section says that, “*Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to 10 years and also be liable to fine.*” The unnatural offences under IPC are sodomy or bestiality. The parties involved in this offence active and passive both are liable for punishment as per the above section. Therefore, this section clearly shows that sodomy is prohibited in India.

b. SCOPE OF SECTION 377 OF IPC IS AMBIGUOUS:

Under section 377 of IPC scope of unnatural offences is an ambiguous because there is no clear distinction between consenting and coercive sex, against the order of nature etc.

c. DISCRIMINATION ON THE GROUND OF SEX:

The fundamental right under the Constitution of India prohibits discrimination on the ground of sex. Therefore, it is violation of fundamental rights of LGBT Minority people as under:

- Lack of educational facilities.
- Right to life and personal liberty.
- Right to live with family.
- Right to livelihood.
- Right to speech and expression.
- Right to profession and business.
- Equal pay for equal work.
- Freedom of Religion.
- Right to live with human dignity
- Right to equality and so on.

d. INJUSTICE ON LGBT MINORITY:

Human rights and fundamental rights are available to all persons but state is failed to create special legislation which protects rights of LGBT minority community and to provide real justice to them. They are also human being and such treatment should be provided by the state to these people. In many instances LGBT individuals are not legally protected from abusive and discriminatory actions.

15.2. SOME MAJOR ISSUES FACED BY LGBT MINORITIES IN INDIA IN DAY TO DAY LIFE:

• BEING CALLED “ CHAKKA” LIKE IT MEANS NOTHING:

From very young age, perhaps due to their upbringing, they are made to differentiate between male and female genders. Everything that seems in between is just plain wrong, so are they taught. They are being called ‘chakka’ so frequently that at one point it becomes their nickname at places like school. People go on to great lengths to invent new swear words like 0.6, sine30, half-half etc.

- **BULLYING:**

There are so many people who would pin point and act the way they walk, mimic their voice, try to pull their pants down, grope them etc. The hard part is when adults like teachers join them.

- **PHYSICAL VIOLENCE:**

There are countless incidents when trans-genders face violence. As obtained from my research, there were incidents when a gay was dating a gay and were sitting in the garden and someone got hold of him and started beating him up while shouting “unnatural bastard”.

- **KICKED OUT OF HOUSE:**

A trans-woman that I found, who was educated till class 10th and liked to dress up like a girl was beaten up by her father when he got to know about her gender. Her mother kicked her out saying that she was a disgrace to her family.

- **DENIED TO GET JOBS AND EDUCATION:**

Also most of LGBT's or effeminate guys are denied from the jobs and education opportunities.

- **FAMILY ISSUES:**

Lack of communication and misunderstanding between parents and their LGBT children increases family conflict. These problems with communication and lack of understanding about sexual orientation and gender identity can lead to fighting and family disruption that can result in an LGBT adolescent being removed from or forced out of the home.

- **DISCRIMINATION AT WORKPLACES:**

Discrimination of LGBT persons at workplace is a significant factor in the differences in socioeconomic status for LGBT persons. Gay and transgender individuals suffer from socioeconomic inequalities in large part due to discrimination in the workplace. Discrimination directly causes on their job stability and it result in unemployment and poverty.

- **VICTIMS OF CRIME:**

These LGBT minority people become victims of violence and crime. However, LGBT individual's experiences of violence and discrimination differ depending on a number of factors including race, gender, income, immigration, status and language barriers. LGBT immigrants are more likely to face violence based on race and ethnicity and/or sexual identity and/or gender identity. In Muslim Countries, homosexuality is heinous crime and for it fine, imprisonment and capital punishment has been imposed on LGBT minority people.

15.3.REASONS FOR THE VARIOUS PROBLEMS FACED BY LGBT MINORITIES IN INDIA:

- **THERE IS NO PROPER SEX EDUCATION IN PLACE:**

While the idea of sex is still a huge taboo in our society, sex education has a critical role to play in our process of growing up. We have, however come a long way and there has been a considerable increase in the levels of awareness about the birds and bees amongst the teenagers in the contemporary society. When it comes to queer individual growing up in Indian society, however, the situation is dismal. Most of us have no idea how to go about getting dirty, until we get down to doing some practical “research”.

- **HEALTH ISSUES END UP GETTING IGNORED:**

Growing up heterosexual, the distinct dangers associated with sex are restricted to accidental pregnancy and sexually transmitted diseases. But homosexuality leads to a whole host of different health problems that don't get talked about. There are a plethora of STD's at large, and because of lack of information available, we end up ignoring health issues that we might potentially be threatened by.

- **THERE IS NO END TO THE UGLY LABELLING AND HOMOPHOBIC SLURS:**

Other than the fact that the members of the LGBT community face physical assaults far too frequently, there is also the incessant verbal assault that they have to deal on daily basis. More often than not, the terms 'gay' and 'faggot' are used loosely with a blatantly negative connotation and it is just not cool. Being a gay is not expletive.

- **BEING GAY IS STILL LARGELY DISMISSED AS A MENTAL ILLNESS:**

Even in the age of information, the lack of awareness that exists is daunting. And not just amongst the older generation that refuses to come to terms of reality of alternate sexualities, but even amongst the millennial's. It's awfully disheartening to come across young, seemingly educated individuals doling out misinformed opinions.

- **COMING OUT IS AN ORDEAL THAT THEY HAVE TO GO THROUGH WITH EVERY TIME THEY MEET SOMEONE NEW:**

Coming out to loved ones with their sexuality is one of the most tumultuous, gut wrenching experiences that anyone could go through in their lives. But even they have made it through that ordeal unscathed, talking about their sexuality and discussing it with every single person they meet is not very inviting prospective. Other than frequent loose judgments passed, there are also risks of being ostracized and assaulted for being just who they are.

- **SEXUAL ASSAULT WITH LGBT IS A REALITY:**

Victims of same-sex sexual assault are invisible to professionals used to handling male-on-female rape, and are shunned by a community that will accuse victims of destroying their glorious vision with the idea of inconvenient victimhood. A lot of people still have trouble believing that it's even

possible for a woman to rape someone. Clarifying the reality invites comparisons to an evil, predatory lesbian, but ignoring it is doing nothing to battle the epidemic of gay people being assaulted.

- **CONSTANT EXPOSURE TO INVASIVE, UNCOMFORTABLE QUESTIONS:**

While they're more than welcomed to ask questions and clarify doubts they might have in their understanding of alternate sexualities, wanting to delve into the details of one's private sexual life is a point to blank rude.

- **THERE ARE INHERENT PROBLEMS WITHIN THE COMMUNITY:**

This one time, at Jantar Mantar, where members of the community and allies flocked to protest the re-criminalization of Sec 377, there was blatant display of a very apparent classist attitude. The movement for gay rights in the country is inherently an elitist one, despite the fact that this 'minuscule minority' consists of the working class and lower middle class as well. Watching people on stage talking about their experience being boo-ed at because of their imperfect diction by seemingly educated allies, has been an extremely jarring experience.

The public image of the gay man is still sculpted slab of muscle-cake, and there is a prevalent pressure to comply with that very image to be taken seriously within the community, and also, in the search for partners.

16. GENDER NEUTRALITY AS A SOLUTION TO PROBLEMS FACED BY LGBT MINORITIES IN INDIA^{59,60}:

Gender neutrality is one in all the foremost mentioned and misunderstood topic that we have a tendency to confront currently a days. It's been a hot topic within the news, inflicting an outsized quantity of disputation and criticism.

Gender neutrality suggests that treating all genders as equal with none discrimination. It conjointly means policies, language, associated alternative social establishments ought to avoid characteristic roles per an individual's gender, to stop discrimination arising from that there are social roles that one gender is additional suited than another. Generally, once we verbalize genders, male and feminine are the genders that come back to our mind. However in the current state of affairs, we've to incorporate the LGBT minorities too when we verbalize gender neutrality.

When we talk of gender neutrality, we have a tendency to concentrate on girls and ladies first. Girls and ladies represent the half the world's population and so the half its potential. Gender neutrality, besides being a basic right, is important to realize peaceful societies, with full human potential and property development. Moreover, it's been shown that empowering girls spurs productivity and economic process. Sadly, there a long way to go before achieving the equality of right's and opportunities for both women and men. It's of the preponderant importance to

⁵⁹ Available at: <https://www.refworld.org/pdfid/566140454.pdf> (Last visited on 20th March, 2020).

⁶⁰ Megna Ahuja, *Is India Ready for Gender Neutrality*, available at: <https://www.refworld.org/pdfid/566140454.pdf> (Last visited on 20th March, 2020).

finish multiple styles of gender violence and secure equal access to equality in education and health, economic resources and participation in political life for each men and girls.

Stark gender disparities, however, stay in economic and political realms. Whereas there has been some progress over the decades, on the average girls within the labour market still earn 24% less than man globally. The movement is already expanding and also the same is seen with the introduction of gender-neutral languages or gender comprehensive languages. This type of language is to avoid bias towards a specific sex or gender. Being comprehensive from a gender language perspective suggests that speaking and writing in a very approach that doesn't discriminate against a specific sex, social gender or individuality and doesn't preserve gender stereotypes. In English, pronouns like he and she or he or him or his are to be avoided to create a language gender neutral. As an example, For example, the policeman and stewardess are gender-specific job titles; the corresponding gender-neutral terms are police officer and flight attendant.

The Tata Institute of Social Sciences⁶¹, Bombay has introduced India's 1st gender-neutral hostel area. The hostels are going to be offered to MA students WHO establish themselves as transgender, non-binary, and gender non-conforming students. The campaign for making a secure area for LGBTQ+ students on field was pioneered by a casual student body that goes by the name TISS Queer Collective (QC). The QC worked with the scholars running for college students union elections to incorporate the demand for a gender comprehensive area in their manifesto. The ground floor of an existing ladies hostel has been marked as a gender-neutral area, and its rooms are going to be assigned to twenty students on a unreserved basis. Earlier, this institute also gave students the choice of gender-neutral salutation ' Mx' in their certificates. This meant that graduating students may make a choice from Ms, Mr, Mrs and Mx. honorifics.

17. VERIFICATION OF HYPOTHESIS:

In India, a part of minority rights has been discriminated by declaring Section 377 as unconstitutional. In 2008 a research has been conducted by Suicide Prevention Resource Centre where it was found that the suicidal behaviour of homosexuals is due to discrimination towards them by the society. It was also found that such can be removed by empowering them through law.

In 2009 research on homosexuals found that due to criminalizing of same sex activities acts many places such as school, library, public places etc. homosexuals are being discriminated and being

⁶¹ Available at: <https://indianexpress.com/article/education/in-a-first-tiss-introduces-gender-neutral-hostel-5125633/>
(Last visited on 20th March, 2020).

misbehaved by the heterosexuals of the society which pressurize LGBT's to commit suicide or they suffer from mental illness. 15% of homosexuals were scared about the treatment by their families when they will come to know about that they are homosexuals.

In 2003, Public Union for Civil Service in their study said that there is an urgent need of laws for the protection of homosexuals as they are being discriminated by the society. In 2006 research it was found that 20% to 40% of youth are homeless because of the discriminatory behaving by the society towards them.

Keeping all the above into mind and conducting this survey accordingly, and comparing my survey with the above mentioned ones, I come to the conclusion that there is a need to take a fair stand on homosexual issue by the government of India. There is a highly need of more research and laws for the homosexuals so that they may get opportunity to stand in the society. Thus, it can be concluded that the above hypothesis has been accepted as there is an urgent need of homosexuals separate law so that they may live with dignity in the society. The hypothesis, hence, made in the beginning stands to be verified.

18. CONCLUSION & RECOMMENDATIONS:

- **Conclusion:**

India, which is termed to be as the world largest democratic country is a developing country that incorporates a minority of homosexuals. Indian constitution provides fundamental rights to its voters that embody right to life, equality, equity etc. However, the rights of LGBT particularly the Human Rights are violated in Republic of India because of the criminalizing of the same-sex relationships. Criminalizing of same sex activities isn't honest towards human rights of Republic of India on the idea as- Homosexuality in several countries has been legalized and also, several countries have amended their constitution to incorporate rights for them like South Africa.

In Republic of India, such relationships have been criminalized as in our country it has been termed as unnatural. In Republic of India the problem of homosexuals has been a controversial topic that has been heatedly debated and has attracted the eye of general public likewise as our judiciary. Although Republic of India is a lively member of UNHR and has signed most of the resolutions, however homosexuality topic is yet not within the books. According our judiciary, these are unnatural offences and currently the discretion to repeal this section is on parliament.

India is a nation of various cultures, and here, completely different people have differing kinds of thinking and living. Legalizing the activities of homosexuals is modern trend over the world. In the ancient times, homosexuality has been adopted by different Gods and kings not solely in Republic of India however over the world. UNHR says each human has right to equality and every one are equal before law however their rights has been violated.

Many researches have been conducted all over the world on homosexuals and it found that sexual orientation is because of the atmosphere nobody has adopted on such kind behavior and it's a natural cause.

In 172nd report of law commission it was term that criminalizing of such activities could term to the expansion of crime and HIV in privacy and these crimes embody rape and killing likewise. This report, in addition to this, recommended decriminalizing section 377 of IPC.

On the basis of discussion, it leads to the conclusion that LGBT minority people who have completely different sexual orientation which ends in face discrimination within the family and society. However, clearly they're the human creatures and so they're entitled to all human rights likewise as fundamental rights in Republic of India.

Lesbian, gay, bisexual and transgender folks have long been concerned in efforts for racial and economic justice. Today, LGBT organizers and groups are progressively drawing attention between the movements for LGBT their rights and therefore the movement for economic, social, political and racial justice. So nowadays there's requirement to safe-guard their rights as a human being within the society.

Further, homoseualityx isn't a psychopathy. It's as natural as heterosexual. The human mind has no management of it. The case of LGBT community is worst in Republic of India. They're subjected to harassment, violence, and mockery. European countries have protected the sexual rights of the members of the LGBT community. The resolution elapsed international organization, UN, has created a positive impact everywhere.

Stand of India at UN regarding LGBT issues has been so far very disappointing as India have been stigmatizing its own image as a democratic republic by persistently opposing LGBT rights at international level. It's vital to make people aware to the presence of LGBT community. Human rights are natural rights that are indestructible and inalienable, that are given upon man since birth. Homosexuals don't seem to be aliens, they're not sick, their sexual behavior is utterly in tune with the dictate of nature. The government of Republic of India ought to wipe out its conservative nature and take concrete steps for the welfare of sexual minority.

Re-criminalization of sexual activities between homosexuals was the "biggest reversal to the movement of LGBT rights". One judgment severely affected the rights of the complete community inflicting large harm to shallowness and self-esteem of the LGBT

community. Just and fair struggle for social recognition by LGBT will go on. The planet can evolve and sooner or later, it'd illuminate the dark age of reasoning.⁶²

There is a need and requirement of 'Human Rights' and not men rights or women rights or gay rights because Women rights are human rights, Gay rights are human rights, Black rights are human rights and LGBTQIA+ rights are human rights. We're all humans, and an initiative should be to treat each other that way.

As is alleged by Tracee Ellis Ross, "*Human rights, race relations, gender politics, health care, and foreign policy – it's a lot to keep track of, and yet all of these things affect us in our daily lives. Making sense of everything requires meticulous unpacking of feelings, delicate navigation of social norms, and a community of love to help along the way*"⁶³

- **Recommendations:**

After the research the researcher noticed that though our country guarantee human rights to its citizens but a minority of Indian population which term themselves to be LBGT's have been some where neglected. After concluding the judicial decision in researchers own views here are some humble submissions:

- **Repeal of Section 377 of IPC** - The researcher humbly recommends to the guardian of the constitution to repeal section 377. A country where law term to be as the father of nation, there it is mandatory to follow the law hence citizens get punished. After decriminalizing Section 377 of IPC the friendly behaviour will came before judiciary for the LGBT's which result that such behavior will impact the society at large and with the fear of punishment society will provide equal treatment to homosexuals and by interaction society will understand their feeling which may increase respect for these people.
- **HIV/AIDS** - AIDS have been found in MSM, this reason has been focused by our judiciary while criminalizing the same sex conducts. The researcher submits that every citizen has right to live with their own choice just because the percent of HIV has been increased due to MSM one cannot criminalize it.

⁶²Ananya Das, *Analysis of LGBT rights in India*, available at: <https://www.ijernd.com/manuscripts/v1i2/V1I2-1140.pdf> (Last visited on 8th October, 2019).

⁶³ Available at: <https://www.brainyquote.com/topics/gender> (Last visited on 8th October, 2019).

HIV use to find in heterosexual peoples also but in India many programmes used to be operated by government which spread HIV awareness. Daily in newspaper, in television, magazines, radio channel we found government awareness programmes or advertisement for the awareness of HIV. Not only in cities but in village also various camps use to be conducted by government of India who use to teach how one can get protected from HIV. Even in school and colleges students learn to protect them. Doctors and scientist said that the only way this virus spread by the means of sexuality is doing sex without protection. When government can spread awareness for normal individuals how to get protected from HIV then why not for LGBT's. LGBT can be controlled by making them aware, by distributing condoms to them by giving special privilege so they may stand equal to the society.

- **Distribution of Condoms** - Condoms should be distributed to LGBTs freely by government in villages, prisons etc. also awareness programme should be specially conducted for the homosexuals in schools, colleges, television and on radio.
- **Privilege to LGBT's** - In education, employment and other activities a special privilege should be provided to LGBT's, so that they may stand equal to society. As today criminalizing of same sex activities created hatred towards the homosexuals by the society which leads discrimination in public places, employment, schools etc. due to which homosexuals create suicide. It is the duty of government to provide privilege to them so that they may bring equal to the society.
- **Prohibition for their personal rights should be stopped** - Homosexuals are not by their choice it's because of the environment or their gene. So prohibiting them for their personal sexual rights should be stopped as if you will going to interfere in their personal lust they will going to fulfil their needs in privacy which may convert that into criminal activities such as rape, killing, sexual abuse etc.
- **Safer body process** - Promotion of sexual health, replica of LGBT ought to be inspired for safer body process.

- State needs to shield their elementary rights with none discrimination.
- Special laws ought to be enacted.
- Provide opportunities in social and economic activities.
- Need to shield human rights.
- Need to require preventive measures in family, public and violence.
- Government ought to take initiatives to support employers in creating geographic point and geographic point culture a lot of auxiliary and inclusive of LGBT folks.
- Need to vary social angle toward LGBT Minority folks.

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20. BEING LGBT IN INDIA: SOME HOME TRUTHS

Questionnaire.

This survey is being conducted so as to derive information about the issues and challenges faced by LGBT minorities in India and is purely for academic purpose. All the information collected will be confidential. Anonymous identity shall be maintain.

AGE:

EDUCATIONAL STATUS:

OCCUPATION:

1. What do you identify yourself as?
 - Lesbian
 - Gay
 - Bisexual
 - Transgender M/F
 - Transgender F/M
 - Pansexual
 - I don't label myself as anything
2. Have you ever been abused for being who you are (being on the street/ at home etc)?
 - Verbally abused
 - Physically abused
 - Friends/ Family too piss out of me as a joke
 - Never
 - Other (Please specify)
3. Who did you come out to first?
 - Mother
 - Father
 - Sister
 - Brother
 - Best Friend
 - Friendship group
 - Stranger
 - Other (Please specify)
4. As a transgender person, has your identity ever confused you? How?

5. Is your friendship group is:
 - Mostly LGBT
 - Mainly the opposite gender to yourself
 - Mixed gender
 - Mixed LGBT/ Straight
 - Other (Please specify)

6. What would you categorize the representation of LGBT in media (TV, Magazines etc)?
 - Stereotypical
 - Realistic
 - Other (Please Specify)

7. Are you ashamed of your sexuality?
 - Sometimes
 - No
 - Yes
 - Other (Please specify)

8. Do you think it is important to have celebrity LGBT role models?
 - Yes
 - No
 - I don't care

9. What is your favourite part about being a part of LGBT community?

10. If you had a choice, would you want to be straight? Why?

11. Do you think sexual orientation is a choice or something you are born with?
 - It is a choice
 - You are born with it
 - I have no option
 - Other (Please specify)

12. Do you feel LGBT citizens are discriminated against at work places/ Schools/ elsewhere?

- Yes
- No
- Just at work place
- Just at schools
- Depends on individuals work place, school etc
- Not sure

Elaborate:

13. What is your political ideology?

- Conservative
- Moderate
- Liberal

14. Have you ever experienced any form of social injustice due to your sexuality?

- Yes
- No

Explain:

15. Are there still people in your life that you keep your sexuality form because you are afraid of their response?

- Yes
- No

16. Did social aspects of your life change when you became open about your sexuality?

- Yes
- No

17. Are there certain places you avoid going because you feel as if you're treated differently because of your sexual orientation?

- Yes
- No

18. Do you feel it life would have been easier to handle if you were straight?

- Yes
- No

Thank you.

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