# Inclusion of LGBTQs in Society – The Indian Scenario

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## ABSTRACT

Every society works on certain rules and regulations. To achieve goals without friction society emphasizes on norms to follow in the form of customs. Procreation or developing future generations for continuation of society is one among them. Marriage is the accepted custom or norm to raise future progeny for continuation of the society. Family is the unit to start the process of procreation. After marriage a couple establishes sexual relations to start procreation. Heterosexual relations are accepted norm of establishing sexual relations through marriage. No other forms of sexuality are accepted by the society in present context. But when we go through ancient scriptures we find descriptions of other types of sexual relations and gender identities. Now a days these descriptions are identified as LGBTQs i.e. Lesbian, Gay, Bisexual, Transgender and Queer. Till recent past these groups are not recognized as part of society and are discriminated to lead life with dignity and respect. But the onset of 21st century changed the outlook for these groups. Now their ideas are recognized as appropriate by constitution and legal provisions are also being made to recognize their rights, survival in the society with dignity. The present paper focuses on these groups and their fight for survival in present society. The main focus is to discuss the inclusion aspects of these groups in society with respect and dignity.

**Keywords:** *LGBTQ, Discrimination, Inclusion, Transgender, Legal Provisions.*

## INTRODUCTION

Society is guided by many rules and regulations for smooth functioning and to achieve goals. Marriage is one such custom to establish approved sexual relations in the society and also to propagate future generations. Generally a heterosexual relation, i.e. marriage between a male and female is the accepted norm in the society. Accepted gender forms are male and female to establish family through marriage. But there exists exceptions to these norms in society from ancient times. It may be biological and psychological. Sex is biological identity and gender is social identity. We find people who want to be other than their biological gender, who want to establish other types of sexual relationships than the accepted heterosexual nature. Ancient scripts, folk stories of different cultures give descriptions of these behaviours even though in small extent. Recent democratic governments all over started giving focus on these issues due to conscientious efforts of these groups. World over these groups are gaining legal protections in favour of their respectful survival. India as a country with heterogeneous cultures, languages and religions is also giving support for this endeavour.

## LGBTQ

LGBTQ is a term used to represent the community of people having other type of or not accepted sexual orientations by the society. The term is in use since 1990s. The acronym stands for Lesbian, Gay, Bisexual, Transgender and Queer or questioning. These terms are used to describe a person's sexual orientation or gender identity[1]. According to the activists fighting for these groups, the term better represents each and every one of the referring persons with other types of sexual orientations or gender identities. Now, this term has been adopted to mainstream the groups in to the society, to discuss such topics openly and even to identify groups and organizations working for the specified groups.

The term also represents a different culture referring to people with different sexual identity than normal heterosexuality. Many more additions to the term are there in western countries to represent these groups. Initial terms 'homosexual' and 'homophile' used during 1960s got replaced by gay and lesbian in 1970s. There is a dilemma or dispute in people whether to fight for women rights or gay/lesbian rights. There are disputes between lesbian woman and gay men to work with each other to fight for their rights. Equality occupies the priority than equal rights with normal groups for them. Gradually the fighting of trans-genders and bisexuals for survival and identity added to the scenario. Even though represented by the same term LGBTQ, all the groups are fighting for their own identity and common survival issues. There are exceptions to these groups also, which are identified with queers. But by 1990s the term in spite of many disagreements became a positive symbol of recognition and inclusion for these groups. There are variations in the ordering of letters in the term, like GLBT, LGBTIQ where I represent 'intersex' or 'asexual' persons. Worldwide there are different representations and even additions to the term LGBTQ according to the context. Whatever may be the recognition, the term came out to represent the movement that is fighting for these groups' equal rights to survive with respect in the society [2].

## Discrimination towards LGBTQ

Once the person announces the different sexual orientation / gender identity, the attitudes of people towards the person changes most of the times towards a negative sense. These people are rejected in all senses. They were out casted and all their rights, dignity were taken off. Society pressurizes them to change their attitudes to normal by out casting them. They were not allowed to take education, take up employment or any other amenities available for a normal citizen. In the absence of facilities to lead to dignified life, these people are generally marginalized and live the life of a destitute. Family under the pressure of out casting either disowns the person or maintains a secret relationship. In both the cases the person's life is damaged and takes a negative path. They have to mingle with the groups and lead life as it comes, but not by their choice. Even in today's world where awareness about the plight of these groups is known, no one openly supports for these groups' cause. When we look into the encounters of successful LGBTQ persons through their writings and interviews, the difficulties that are lying in their path are clear and visible. Today's celebrity world is also providing successful stories of LGBTQ persons working with normal people. Still much needs to be done to successfully include these groups into mainstream society. The living path selected by these people once their condition is known by the society coupled with the fear of out casting by society develops distancing. Fear and disgust is created automatically in people because of discriminatory attitudes owned by society towards these groups.

## Fight for Equality and Recognition

Since the last two to three decades the ideas of people about these groups slightly differed. These groups also fought for their rights and freedom of will to lead life. They made a significant progress in leading life with dignity and respect. All over the world political and legal recognitions were given in the form of rights to a little extent. They got freedom to marry. But their access to resources and services is limited. Still society prohibits these sections to come up openly to grab opportunities to live like normal people. The prohibition of discrimination in the form of access to education, employment, housing and other services are still seen. Explicit laws prohibiting discrimination need to be made for them.

The situation in India is still emerging in favor of these groups. A little is made and a long path is to be travelled still. The legal protection in form of strict laws need to be made with a caution taking into religious, social and emotional issues associated with these groups. The way the life styles of these groups are channelized because of rejection by society also becomes a hindrance for governments to bring in proper laws to marginalize them. According to a research report on legal status of LGBTQ in USA that "Lawmakers at the federal, state, and local level should work to ensure that LGBT people are protected from discrimination in employment, education, housing, healthcare, adoption and foster care, and public accommodations, and should repeal religious exemption laws that give government support to those who would discriminate based on their religious or moral belief [3]. Social attitude channelized by religious beliefs is to be changed to a positive direction to improve lives of these groups.

## Indian scenario

Hinduism acknowledged a third gender and has a strong tradition of portraying them positively; there are multiple characters in the Mahabharata who change genders, such as Shikhandi, who is born female but identifies as male and took part in kurukshetra battle. Shikhnadi is used by Arjuna during Kurukshetra war to defeat Bhishma, who puts down his weapons before a transgender; another famous character is Brihannala, the female disguise of Arjuna, during agnatavasa, the thirteenth year of their exile. It is taken to prevent kauravas to identify the mighty figure of Arjuna. Bahuchara Mata is the goddess of fertility, worshipped by *hijras* as their patroness in some parts of the country.

The Kama Sutra, a Sanskrit text on human sexual behaviour, uses the term 'tritiya-prakriti' to define men with homosexual desires and describes their practices in great detail. Likewise, the Kama Sutra also describes lesbians (with the term 'svairini'), bisexuals (referred to as kami or paksha), transgender and intersex people. Traditional story lines of emperors especially of Mughal time give descriptions of these groups and their weird behaviours in their tales. Historical evidences showed that pre-colonial Indian society never looked into these behaviours as criminal. The society never viewed same-sex relationships as immoral or sinful. Situations later changed to opposite during colonial ruling, Independent India also maintained the same stance as colonial rulers on this issue till recent times. Homosexuality was never illegal or a criminal offence in ancient Indian but was criminalized by the British during their rule in India [2].

## Legal Provision given in recent times

All over world these groups are successful in making legislations in their favour. The human rights of these groups are in focus worldwide. Indian constitution provides equal status and rights for all through Articles 14, 15 and 21. In 2014, Supreme Court of India ruled that the rights and freedom of transgender people in India is protected under the Constitution. In 2018 in a landmark resolution in favour of these groups, Supreme Court of India decriminalized adult consensual same-sex relationships in the Section 377 of the Constitution. These judgments proved these groups' equality with all other citizens of India and provided an empowering point for their

survival in otherwise discriminatory society. This is just beginning and much more need to be done to see them in light as other citizens.

India by nature is diverse where people speaking different languages, follow different religions, and thrive in different geographic regions. *Unit in diversity* is the special slogan to explain the heterogeneity existing in the nation. Naturally the attitude of people towards LGBTQ individuals is also heterogeneous. The disparity in the living conditions coupled with urban and rural divide, education, access to resources, language, caste, class and gender add further complexities to understand and react positively towards the plight of these groups in society. The LGBTQ groups in India are working religiously to gain support of the nation in realizing their plight of equality and dignified life.

These groups are generally discriminated in India as in other parts of the country. India has provided legal respite very recently to these groups. Persons are allowed to register their gender as third gender without much restriction than earlier. The discriminatory practices in the law for recognition of same sex marriage are removed. During its landmark judgment on section 377 of the Penal Code, the Supreme Court also directed the Government to take all measures to properly spread the fact that homosexuality is not a criminal offence, to create public awareness and eliminate the stigma faced by members of the LGBT community, and specifically to give the police force periodic training to sensitize them about the issue. "The judgment also included an inbuilt safeguard to ensure that it cannot be revoked again under the "Doctrine of Progressive Realisation of Rights". Legal experts have urged the Government to pass legislation reflecting the decision, and frame laws to allow same-sex marriage, adoption by same-sex couples and inheritance rights"[2].

Despite these constitutional interpretations, no explicit and discriminatory law has been enacted to ban discrimination on the basis of both sexual orientation and gender identity encompassing the whole societal arena. Indeed, India does not possess comprehensive anti-discrimination laws for discrimination and harassment in private employment, except for sexual harassment. Article 15 only extends to discrimination from the state or government bodies. The Transgender Persons (Protection of Rights) Bill, 2019 focused on discrimination of transgender in private employment, education and healthcare. So far no help is sought by anyone taking this law as help in courts. Private discrimination is a big hurdle in LGBTQ upliftment. Indian army also bans open service of these groups. In 2018, a bill was introduced in parliament regarding this issue.

## Present Legal Status of LGBTQs in India

Even after one year of enactment of decriminalization of same sex relationships, conditions are not improved for these groups in a large scale. Discriminatory attitudes are still persisting in providing them opportunities to survive. There is a need for framing anti discriminatory law for these groups. It is difficult to change the attitudes immediately of a conservative and divided society like India. The legal provisions for these groups are need in the following areas,

- Areas of urgent need are - the right to own and inherit property, nominate their same-sex partners on hospital and insurance forms, and receive legal recognition of same sex relationships and marriage
- Reservations for trans-persons in government jobs and educational institutions, and formation of transgender welfare boards.
- spousal recognition and benefits – such as joint bank accounts
- A consultancy firm for the members of the LGBT community in accessing equal pay, corporate representation and other benefits.
- Friendly policies towards businesses that cater to LGBT consumers.
- Basic rights – like the right to adopt, or right to surrogacy – are still lacking.
- Special physical provisions like toilets in public and working places

## Challenges in India for Mainstreaming of these groups

1. *Living conditions* – because of discrimination and outcast these groups are living in a isolated world. The opportunities to grow educationally and economically are lacking. They become subject abuse of different kinds. No opportunities to go to school and establish own employment or lack of employment in wider private sector make life difficult for them. In these conditions they are becoming a burden to the mainstream society. All their skills are not coming up for the growth of society because of discrimination.

2. *Difficulty to get opportunities* – their identity as different makes them unavailable to opportunities. They are thrown away from schools and working places. No one respects them and provides them opportunities to grow. Even with positive feeling a person cannot go against wider society to help them out openly. So opportunities to lead a respectful life are absent for these groups

3. *Discrimination* – societal discrimination is too harsh and varied. The extent and nature differs with the extent of social context. Discrimination takes away all the opportunities to survive and lead a dignified life.

4. *Lack of political support* – No political party till to date openly supported for the cause of these groups. In addition to legal support to maintain and sustain the legal support one needs support of ruling power. This can be done through political support only. These groups need representation in power structures to improve their status.

5. *Lack of organizational support* – In recent years organizations are coming up slowly. People from these groups who could establish themselves in the society are working to establish organizations to support their cause. There is a need to establish need based societies to work for the plight of these groups. They need support in form of funds, dissemination of information in power circles etc. which can be done by NGOs, societies and organizations only.

6. *Public opinion*: Public opinion regarding LGBT rights in India is mixed and not easy to be explained in simple terms. According to State, religion, age, education, living context the opinions are varied, both positive and negative statements. Further the opinions are different for transgender and LGBQs. The nature of reactions is also different on their marriage status, provision of education and employment and discrimination in society. Social acceptance of these groups is also different according to the context of living [2]. Provided the following data on public support for these groups.
   1. According to a 2019 survey, the Indian states/union territories which showed the highest acceptance of the LGBT community were Uttar Pradesh (36%), followed by Tamil Nadu (30%) and Delhi (30%). The states which showed the highest rejection to same-sex relationships were Mizoram (87%), followed by Nagaland (63%), Jammu and Kashmir (63%) and Kerala (58%). The states with the most undecided respondents were West Bengal (60%), followed by Assam (40%), Punjab (39%) and Tripura (37%).
   2. Acceptance of same-sex relationships was highest in the Hindu community. Around 22% of Hindus, while only 13% of Muslims and Christians, expressed acceptance of same-sex relationships. Opposition was highest among Christian respondents (70%), followed by Muslims (50%) and both Hindus and Sikhs at 40%.
   3. A survey by the Varkey Foundation found that support for same-sex marriage was higher among 18-21 year olds at 53%.
   4. Acceptance toward LGBT people is reportedly far higher in top government institutes, such as IITs. According to a poll conducted at IIT Delhi in 2015, 72% of respondents agreed that "being homosexual is normal as being heterosexual". Many IITs have their own LGBT clubs, namely "Saathi" (English: Friend) at IIT Bombay, "Indradhanu" at IIT Delhi, "Ambar" at IIT Kharagpur, "Unmukt" at IIT Kanpur and more.
   5. As for transgender people, 66% agreed that they should have the same rights, 62% believed they should be protected from employment discrimination and 60% believed they should be allowed to change their legal gender
   6. .According to a 2016 poll by the International Lesbian, Gay, Bisexual, Trans and Intersex Association, 35% of Indian people were in favor of legalising same-sex marriage, with a further 35% opposed.
   7. According to a 2017 poll carried out by ILGA, 58% of Indians agreed that gay, lesbian and bisexual people should enjoy the same rights as straight people, while 30% disagreed. Additionally, 59% agreed that they should be protected from workplace discrimination. 39% of Indians, however, said that people who are in same-sex relationships should be charged as criminals, while a plurality of 44% disagreed.

The above results regarding public opinion are indicating the complicated nature of reactions to analyze and come to a conclusion about the public support at present. But it is clear that Indian public is giving a conscious thought regarding these groups and their survival in the society. If these ideas are channelized towards appropriate attitudes for these groups' dignity and self respect, inclusion will be successful.

**Inclusion Pathways**
In the present conditions, to develop pathways for successful inclusion of these groups in the society is to develop awareness and providing constitutional support. The following pathways can be thought of.
- Transgender community is demanding for reservations through constitution to improve their lives. Reservation provides the opportunity to get access to education and employment like other marginalized groups.
- Developing awareness through education. This is very important inclusion pathway. Because of their seclusion not much is known about these groups in the normal society. No one talks about them openly in the family. It is a taboo to discuss. So there is a mystery surrounding the existence of these groups in normal society. What are their physical problems, psychological problems? What are their needs to lead a different life? And many other things are not known. There are hunches or myths about their existence.
  Education being the tool identified to develop awareness in people; we can use this sector to develop formal awareness of the topic. There are issues that may come up like, parental help, resistance from societal groups, and awareness from what level of education? (School, college….) Considering the need

of the situation careful plan needs to be worked.  It is important to develop positive attitudes of teachers' and other functionaries of school and other institutions to take up this awareness programmes.

- Social inclusion of these groups is very important.  Once social inclusion is possible it extends to everywhere.  Intentional and planed efforts are needed from leaders to develop social inclusion.  Public awareness campaigns, taking the help of celebrities etc. can develop positive attitudes to some extent.  This change coupled with legal and constitutional provisions help to channelize inclusion towards success.

**Conclusion**

Inclusion of LGBTQ is based on the provision of basic need of human beings for survival in the society. Not only these, even in the mainstreamed society many groups are struggling and fighting for their equality, dignity and self respect.  Society discriminates not only LGBTQ but many other normal human beings basing on gender, race, caste, language and region.  Why not add one other group into this fight?  All human beings are equal and need dignity to survive, lack of which leads to discrimination.

A beginning is made with removal of Section 377, but much more is needed for mainstreaming of these groups. World over many events are being organized for the recognition of these groups, like, celebration of the International Day Against Homophobia and Transphobia on May 17  to commemorate the World Health Organization's decision in 1990 to declassify homosexuality as a mental disorder. We need awareness about the plight of these groups through such commemorations.

Efforts are needed from the groups themselves to remove the negative attitude and stigma attached to them by changing their ways of living.  They have to strive hard to develop a fearless, friendly image of them in the society in order to be included in the society. Then only they can visualize the dream of being recognized as they are in the societies in which they live.

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