

Social and Workplace Equality for Same-Sex couples for Women Empowerment

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Abstract : Despite changes in national legislations and policies, such as the abolition of a ban on same-sex marriages ,the recognition of a third gender , they are often discriminated and excluded from their families and their communities. LGBT community and individuals also face deep seated stereotypes rooted into the cultural and social norms. Fear and anxiety against sexual and gender diversity remains. This paper highlights the discriminations and exclusions same sex couples face socially as well as in the workplaces.

IndexTerms – Same-Sex Couples , LGBT, Same-Sex Marriage.

I. INTRODUCTION

Traditionally, India has identified same-sex unions to be a trans-rooted alien culture-bound syndrome and associated social disorder. Hence, LGBT groups are working in the backgrounds for a step by step approach, required to tackle all the problems and rights of LGBT citizens in India. The previous focuses of these groups were to repeal Section 377 of the Indian Penal Code and to enact non-discrimination laws. Nevertheless, LGBT rights agencies are optimistic and are orking on winning the right to same-sex marriage, inspired by the progress achieved in several Western countries. In April 2014, Medha Patkar of the Aam Aadmi Party stated that her party supports same-sex marriage.[1]

A single case of legal recognition of a same-sex marriage was granted by the Punjab and Haryana High Court in 2011. The couple held a marriage ceremony in Gurgaon after signing an affidavit asserting that they meet all of the requirements of a legal marriage. [1]

The following acts cover India's marriage laws:

- The Indian Christian Marriage Act, 1872: regulates the marriage and divorce of Indian Christians. An ordained minister of a church or a marriage registrar may conduct marriages under the Act.
- Special Marriage Act, 1954:[a] provides for marriage for all Indian citizens regardless of the religion of either party. Marriages contracted under this Act are registered with the State as a civil contract. The Act applies to Hindus, Muslims, Sikhs, Christians, Jains, Buddhists, Parsis, partners with no religious beliefs as well as interfaith couples. [2]
- Hindu Marriage Act, 1955:[b] governs matters of marriage, separation and divorce of Hindus according to Hindu custom and rites. [2]
- Parsi Marriage and Divorce Act, 1936: regulates marriage and divorce for Parsis under Zoroastrian rites.
- Anand Marriage Act, 1909 and Anand Marriage (Amendment) Act 2012: governs marriage for Sikhs.
- Muslim Personal Law (Shariat) Application Act, 1937: deals with marriage, succession and inheritance among Muslims.

The Madras High Court issued a verdict in April 2019 to allow transgender women to marry under the Hindu Marriage Act, 1955. In July 2019, the Delhi High Court dismissed a legal challenge brought forward by advocates Tajinder Singh and Anurag Chauhan seeking directions to make rules and regulations to recognise same-sex marriages under the Hindu Marriage Act, 1955. [2]

- In 2019, two women from Hamirpur, Uttar Pradesh tried to get their relationship recognised as a marriage at the local registrar's office, who refused citing lack of relevant legal provisions. The couple's lawyer, Daya Shankar Tiwari, said they would challenge the registrar's decision. [3]
- In January 2020, a couple from Kerala, Sonu MS and Nikesh Pushkaran, filed a lawsuit in the state's High Court, arguing that prohibiting them from getting married under the Special Marriage Act, 1954 violates the principle of equality, non-

arbitrariness, non-discrimination, individual dignity and personal autonomy under Articles 14, 15(1), 19(1)(a) and 21 of the Constitution of India.

- According to a 2015 Ipsos poll, 29% of Indians supported same-sex marriage, while 18% supported other forms of legal recognition. Among the 23 countries polled, India had the fifth lowest support for same-sex marriage, in front of only South Korea (27%), Turkey (27%), Poland (21%) and Russia (11%). [4]
- According to a 2016 poll by the International Lesbian, Gay, Bisexual, Trans and Intersex Association, 35% of Indian people were in favour of legalising same-sex marriage, while 35% were opposed. A September–October 2016 survey by the Varkey Foundation found that support for same-sex marriage was higher among 18 to 21-year-olds at 53%. [4]
- A 2019 poll by Mood of the Nation (MOTN) found that 24% of Indians agreed with same-sex marriages, while 62% disagreed and 14% were undecided.
- In 2019, according to a survey of more than 200,000 Indian users of the dating app OkCupid, 69% said "it was time to legalise same-sex marriage", 24% said they were contemplating the issue, while 5% were against it. [4]
- A May 2021 Ipsos poll showed that 44% of Indians supported same-sex marriage. 14% favored another form of legal recognition, while 18% were opposed to all legal recognition for same-sex couples, and 24% were undecided

II. SOCIAL AND WORKPLACE INEQUALITIES

The idea of human rights rests on the central premise that all humans are equal. It follows that all humans have dignity and all humans should be treated as equal. Anything that undermines that dignity is a violation, for it violates the principle of equality and paves the way for discrimination. [4]

The human rights of lesbian, gay, bisexual, transgender and intersex people (LGBTI) are coming into sharper focus around the world, with important advances in many countries in recent years, including the adoption of new legal protections. The preamble to the Indian Constitution mandates justice -- social, economic, and political equality of status -- for all. The right of equality before law and equal protection under the law is guaranteed in Articles 14 and 21 of the Constitution. In April 2014, the Supreme Court of India ruled in *NALSA vs Union of India* that the rights and freedoms of transgender people in India were protected under the Constitution; in September 2018, the Supreme Court also decriminalized adult consensual same-sex relationships in the Section 377 judgment review. These judgments are considered a landmark both in terms of their expansive reading of constitutional rights and in empowering LGBT persons. Both judgments mark an important moment for LGBT rights that not only reversed a relic of British imperial rule but also ordered that LGBT Indians be accorded all the protections of their constitution. This was a welcome victory, but it does not necessarily mean that LGBT people in India are fully free or perceived as equal among their fellow citizens. It underscores how much work remains to be done in India and the rest of the world to overturn antiquated and repressive anti-gay laws. [5]

India is a vast and diverse country and attitudes towards this subject and experiences of LGBTI individuals vary vastly. The disparity between urban and rural India, language, caste, class and gender add further complexities to understanding this topic more fully. But what we do know is that India's LGBT citizens are not a -minuscule minority. They have a voice that is strong and refuses to be silent any longer in their efforts to reclaim equality.

So with the draconian Section 377 gone, what's the way forward?. Today we celebrate the International Day Against Homophobia and Transphobia. May 17 was specifically chosen to commemorate the World Health Organization's decision in 1990 to declassify homosexuality as a mental disorder. This day has received official recognition from several states, international institutions as the European Parliament, and by countless local authorities. Most United Nations agencies also mark the occasion with specific events. [5]

As a transwoman from India who was one of the original petitioners in the *NALSA* case, I can speak to how far we have come. But there is still much that remains to be done if the civil rights of LGBT persons in India are to be protected. We have the absolute and inalienable right to define ourselves in our own terms and in our own languages. We have the right to express ourselves and our identities without fear of violence or retribution. We are human beings, holders of human rights, and we need to be recognized as such within the societies we live in. [5]

In a nation where reportedly an estimated 90% of marriages are arranged, it wasn't surprising that the government chose to go against personal choice, love and same-sex love. After all the idea of choice doesn't fit in to the template, structures and every law and social norm that defines a marriage. The fluidity that comes with choice, love and passion that drives such affection, the honesty that is attached to breaking the norm, are hard for a government (and society) to engage with. [6]

If choice is offered (and therefore equality), it would disrupt the system of arranged marriages cemented over the years, revolving around the rigid classifications of caste, class, colour, economics, regions, religion and even looks-- reflected even in

urban matrimonial ads. As the government put it last week in response to a batch of petitions in the Delhi High Court, any change in the current laws that govern marriage, would lead to –complete havoc with the delicate balance of personal laws. [6]

The –delicatel, polite and dignified –personal rights that the petitioners have asked for is merely to include same-sex marriage, indirectly seeking to expand the institution of marriage. In fact, this would strengthen the –much-adored social construct of marriage. What they seek, in actuality, is the solemnisation of their love into marriage not necessarily because they want the institution desperately, it is the civil rights and privileges attached to the marriage act that they require.

Imagine for a moment, my dear heterosexual friends, a situation where your spouse is in hospital and you are denied rights over her or him and treated like some stranger just because you aren't a –blood relativell, not a spouse. Think for once that if your spouse passes away and you are denied the automatic right over inheritance and a Will is challenged, what you would go through? Think of the tediousness involved in setting up a joint bank account where queer couples can't as they aren't legally recognised as a couple and are compelled to set up a company through which they run an account. You can't travel across the globe with your spouse as a spouse. And there are just so many more hurdles that committed same-sex partners go through. [6]

More importantly and very simply the petitioners representing the emotions of many queer people, are not taking away the rights of heterosexuals, they are just saying fundamentally the choice of marriage with the civil rights attached to it, should be theirs too. Think of it honestly, the Constitution is not yours or ours, it is for every citizen of India.[6]

III. POSITIVE LIGHT IN NEGATIVE WORLD FOR SAME-SEX

Corporate lawyer Aparna Mittal, who founded Samāna Centre for Gender, Policy and Law to help create diversity, inclusion and empowerment for women and members of the LGBTQ+ community, says workplace discrimination is still a big issue in post-377 India. [7]

–We interact a lot with transgender persons and we have often heard stories of how they were either not called for a job interview despite having due qualifications or called for a job interview, but because the guard at the gate wasn't sensitised, he tried to chase away the transgender person. We need sensitisation throughout — at every point of interaction in office, she explains. [7]

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act or POSH Act only recognises women as victims of sexual harassment at the workplace. This automatically precludes the possibility of LGBTQ+ people being victims of sexual harassment at workplace.

Mittal says that while things have changed slightly, most organisations in corporate India are still not willing to make LGBTQ-inclusive policies, though many progressive companies have made their POSH and other policies gender-neutral.[7]

On the issue of reservation for transgenders, Mittal says merely affirmative action is not enough, –it also needs to be supplemented by creating more sensitisation and awareness to also bring about much needed social inclusion.

While laws do need to be accompanied by social change, the lack of societal readiness cannot be used as an excuse to not change a law. In fact, sometimes the law needs to lead the way, and society will just have to follow.[7]

–This government is trying to show they treat trans people as God, she says Banu. –But we only want to be treated as humans.

Organizations have begun a spree of diversity hiring particularly related to gender. There are two elements that the success of this entire approach depends on: whether the term gender itself is being redefined and also includes individuals with different sexual orientations, and whether the next step of inclusion is taking place to ensure that diversity is being leveraged.

LGBT inclusion is a grey area in the context of Corporate India. A venture capital firm LGBT Capital reports that the spending power of the global LGBTQ community in 2015 was \$3.7 trillion, or around □ 254 trillion. If we put a microscope to the economic loss in India, there is a World Bank report which reports that India's loss in GDP due to homophobia was \$32 billion, or 1.7% of the country's GDP. [7]

Legally India has been making strides with respect to recognizing the rights of the LGBT community. The century old law, Section 377, was recently repealed to de-criminalize sexual orientation or relationship between two consenting adults of the same gender. The fundamental right to live and work with dignity was upheld. This landmark judgment is believed to have long-term impact, especially with companies which were worried about LGBT inclusion due to regulation issues. Equal opportunity and recognition of the fact that this preference is the right of the individual and within his or her personal space are the principles that the judgment was based on. [8]

The range of inclusion trends has been wide for India. On one end of the spectrum are some organizations that do great work in this space and have scaled up to become equal opportunity providers. On the other end of the spectrum, there are many organizations that have yet to initiative any form of people practices to encourage talent from this segment. When we see the global context, more Fortune 500 companies offer benefits to their LGBT employees, according to Catalyst, a diversity consulting firm. Also, as of 2017, 91% of Fortune 500 companies have non-discrimination policies that include sexual orientation. [8]

These are positive indicators of the steps being taken for LGBT inclusion. Let us take a closer look at some companies in India and the types of practices they have instituted.

- Godrej - Even before Section 377 was repealed, Godrej Industries was a trendsetter by becoming one of the few companies partnering on a UN initiative to fight prejudice and discrimination against gays and lesbians at the workplace. This was also done through a report called the UN Standards of Conduct for Business report for LGBTQ Inclusion. It has founded the Culture Lab, which works with the internal D&I team to raise awareness about LGBT individuals in the workplace. There were some significant policy changes that the company made. Employees are allowed to select gender when they join the company. Terminology such as 'spouse' has been changed to 'partner'. Also crucial to note is the fact that LGBTQ individuals are given a three-month paid break for primary care-giving if they choose to adopt. Health insurance coverage includes same sex partners. The company's leadership has been extremely vocal about their support for the community and their efforts towards creating a safe workplace for LGBT employees. [8]
- RBS - One of the most forward-thinking moves from the organization was to include the provision of extended hospitalization benefits to same-sex partners of its employees. The company has decided to bear the cost of this provision, as well as a surrogacy leave policy provided irrespective of the gender of the partner. This was done to encourage their employees to express themselves without the fear of being judged or humiliated. Their approach is targeted towards creating a culture where all employees receive equal opportunity to grow into bigger roles. [8]
- Infosys - This Indian IT employer has been one of the first few companies to create an employee resource group called "Infosys Gays Lesbians and You" (IGLU) to bring together their LGBT employees. The focus of the ERG is to encourage open discussions on policy changes that are needed and the support that can help LGBT employees perform better in the workplace. Infosys also works actively in hosting workshops and sessions to raise awareness and foster a culture of respect. [8]
- Intuit - This Bangalore-based IT organization is seen as one of the frontrunners in providing inclusion for LGBT individuals. It was voted one of the best companies to work for in 2017. Intuit has its own Pride Network and has been advocating for the creation of safe spaces in all offices. In addition, they offer regular counseling sessions where experts are brought in to offer advice to all employees. There is a consistent focus on building greater awareness around LGBT inclusion. Due to its efforts, Intuit has achieved a 100% rating on the Human Rights Campaign's Corporate Equality Index for many years in a row.
- Barclays - One of the few organizations with a clear non-discrimination policy in India, Barclays made its diversity strategy stronger by sponsoring India's first LGBT film festival some years ago. They encouraged free dialogue and internal discussions about the business impact of inclusion. One of their biggest strengths was to ensure that the senior leadership was engaged in the process from the beginning. For example, the Barclays India CEO attended the opening night of the film festival. He also sent an internal communication to employees emphasizing the importance that Barclays attaches to equality of opportunity irrespective of gender identity and sexual orientation. [8]

Many other firms are also doing excellent work in this area, such as Google, which runs a voluntary employee group called Gayglers to raise awareness; Tata Steel, which is aiming to have 25% of its workers from diverse groups by 2020, of which 5% will be from the LGBT community; and Intel, which has the IGLOBE initiative towards LGBT inclusion that works as a support network and also conducts awareness sessions. [8]

These are some ways in which organizations are taking big and small steps towards LGBT inclusion. HR has a significant role to play as always by being the process owner and driver of future-focused interventions. Running a diversity initiative for this community is no longer about following a regulation or simply hiring a certain percentage into the workforce. Some concrete steps such as those below will need to be taken to make an impact. [9]

- Regular and focused sensitization programs to enable individuals to overcome their inherent biases and homophobic ideas.
- Development of policies that are gender-neutral and focused on zero-tolerance towards discrimination. Provisions should also reflect some requirements of this segment, such as medical health coverage for any transition-related procedures.
- Leadership buy-in forms the core of any inclusion strategy, and the same applies to LGBT. Company leaders need to demonstrate how they value the individuals for their performance and not due to their gender identity or sexual orientation.
- Forming buddy groups or support groups between those who are part of this community and those who are not is a good way to sensitize each segment to the other segment's thought process.
- Design induction processes that enable trans-employees to get extra time to scale-up and fit into the organizational culture, since many of them might be exposed to a corporate setup for the first time.

IV. CONCLUSION

Discrimination, harassment, and violence against LGBT people has always been common in society as well as in offices. A comprehensive law or provision for banning discrimination based on sexual orientation and gender identity in employment, public accommodations, housing, credit etc. , as well as critical way to hold employers and other people accountable , will then send the message that LGBT people are both accepted and respected by all levels..

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