


Chapter 7

Law and the LGBTQAI+ Community: Evolution and the Way Forward

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ABSTRACT

This chapter on the law and the LGBTQAI+ community will examine perspectives and insights on legal protection and rights granted to this population, as well as a multitude of dimensions and instances where these rights and privileges are not upheld in reality. Lesbian, gay, bisexual, transgender, queer, asexual, and intersex (LGBTQAI+) people's human rights are becoming more recognized all over the world, with the introduction of new legislative safeguards in India and in other countries. The Navtej Singh case and NALSA case, though it was a revolting point for the community's way to liberalization, only brought to light how the community faces discrimination and violence in every area of life and every stage of life. The main mission of this chapter is to educate and enlighten the readers on the current legislative safeguards available to the community and deliberate on the way forward from the point of view of both the judiciary and the community.

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INTRODUCTION

There has been a major advancement made in the human rights of LGBTQAI+ community globally and several global campaigns to protect LGBTQAI+ community rights have achieved a momentous progress recently. The report on “Social acceptance of LGBTI people in 175 countries and locations” highlighted certain facts which says, the acceptance level of this community has been increased since 1980. Iceland, Norway, Netherland, Sweden and Canada had occupied top five positions in accepting this community. Australia & Oceania, North and South America, Western Europe are undergoing positive changes in accepting LGBTQAI+ community largely since 1990 (Flores, 2021). Yet in many countries, this community still face various issues like repression, imprisonment and even death. There were both progress and pitfalls in the Global rights which create huge impacts (Angelo & Bocci, 2021). The social stigma and discrimination faced by LGBTQAI+ community has various negative effects on individuals, businesses and the economy (Mallory et al., 2017).

Human Rights are inalienable and are based on the fundamental notion that all humans are treated as equals. Any element that results in the encroachment of anyone’s dignity or respect paves the way to discrimination and is a blatant violation of the equality principle as enshrined under the constitution.

Over the recent past, the LGBTQAI+ Community’s Human Rights have evolved and grown instance in our country. There have been notable advancements via the introduction of new safeguards and amendments made to existing statutory provisions. The preamble of the Indian constitution provides for equality in social, economic, and political aspects. Equality before the law and the right to life and personal liberty is enshrined under the constitution of our country.

While the Ramnath case emphasized the fact that custom prevails over the law, this principle cannot apply to all ambits of our society. Our country’s LGBTQAI+ laws are very repressive and obsolete. So many years of independence and yet the community is still perceived by the inculcated Victorian ideals from the colonialism era. In fact, because of generational internalized homophobia, transphobia, and honor culture, the community has always been cornered and lacked societal acceptance. People of our country have either been ignorant towards the community or extremely negative towards it. The attention drawn has almost always backfired and the community has only faced more discrimination and support. While it is worthy to note that the community has gotten support from the judiciary, the government and the general public have failed the recognize and adopt the significance and pronouncements of the judiciary.

Readers of this chapter will be educated and enlightened on the current legislative safeguards available to the community and deliberate on the way forward from the

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