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Right To Privacy- LGBT A Study

Pathuri Venkata Subrahmanyam

Rachana Journalism College

advocate.pathuri@gmail.com

INTRODUCTION

The recent judgment of the honorable Supreme Court of India has once again thrown a light and the lifestyle of LGBT and their sexual behavior and orientation. Before going into the subject in detail let us have quick look at Indian scenario.

From ancient India to the recent past, Indians have got a joint family system, in which such a type of LGBT are not treated as separate, but allowed to live with the family and used to enjoy the same rights of the other family members. I will try to explain the same with the help of two examples from the epic '*Mahabharata*'

Ex: 1 During their '*Agnathavasa*' of the Pandavas the third member of the *Pandavas Arjuna* has become a transgender (Third Gender) person name as within '*Bruhannala*' and acted as a dance teacher in the Kings Court.

Ex: 2 Second example is also from *Mahabharatha*. The grand old bachelor of *Mahabaratha* is '*Bishma*' who has taken an oath not to fight with ladies and third gender people. Lord Krishna has taken advantage of this '*Sikhandi*' who is crown prince and also an efficient '*radhasaradhi*' i.e. (Driver of the war chariot). A Sikhandi is a transgender Bhisma leaves the armory and also battlefield. In both the above examples we can notice that LGBTs are treated on par with female gender and also allowed to live respectfully by practicing their choice of livelihood.

In the recent history also during the Mogul dynasties, a battalion of transgender are formed to look after the welfare of kings wife's (*Janana*) and the internal security of the fort. Thereby these transgender have got a respectable place in the society and their services were tactfully utilized.

Lord T.B Macaulay in his letter dated 14th October 1837 as submitted on behalf of Indian law commission to Lord Auckland the Governor General of India has submitted his report. T.B. Macaulay who was a disciple of Jeremy Bentham who has explained the famous theory of legislation. Lord Macaulay has selected India as an experimental field to implement the teachings of his guru. But this system of law is based on Anglo-Saxon pedestal of jurisprudence and which is meant for more sophisticated (?) and Europeans. But in India, the ancient sages have found otherwise efficacy of the third gender people and made use of them. As a result section 377 has been added in the Indian Penal Code under the chapter of unnatural offenses. It is the only section in this chapter.

But nowadays due to urbanization, different members of the same family are being migrated to different parts of the country. The combined family concept is dwindling thanks to the new education system which makes the millions of Indian youth

to be employees rather employers. But once in awhile due to genetically mal-function these people bisexuals and Tran's genders will be born. The offsprings with different gender and sexual orientation are being singled out and becoming homeless vagabonds. Many an occasion they are treated in-humanly and with hatred.

The other two varieties of people lesbians and gays are born as ladies or gents but their sexual orientation is towards the same sex or of the same gender. This is a psychological problem which may or may not be cured. But in most of the cases, they were branded as so would like to lead the same type of life due to the hatred from the rest of the society.

Till recent adding of the additional column for the third gender, as per general clauses act 1897 'he includes she' but not the third gender. As per IPC also it has not been mentioned anything about third gender rather ignorant about the third gender.

In the Indian Penal Code, the spirit of section 377 has been lowered by recent judgments and also by upholding the right to privacy. Changing the according to the times will definitely be a prospective one and the discrimination may come to end. In a real sense the menace if any will be minimized. By doing so the Supreme Court of India has effectively reduced the effect of section 377 of IPC. The LGBTs are also human beings. They have got their own sexual preferences. They got a right to live and also a right to privacy. The sexual orientation will fall under the category of the right to privacy.

Now a fundamental step has been laid to understand the problems of the LGBTs. First, they are allowed to mention their gender. There is a lot of debate going on the separate toilets for them in public places. They are being recognized on par with other people. They are entering into government and other services. A lot has to be done in this regard to treating them as genetically impaired people and not as sinners.