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Legal Protections and Analysis of LGBTQ+ Rights

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ABSTRACT

The Legal Protection for LGBTQ+ rights has always been evolving, but still concerns persist. This research paper mainly focused about the legal landscape which is established by national and international bodies on the states to bind the human rights treaties or declarations, which is been articulated by the Universal Declaration of Human Rights, the Yogyakarta Principles, etc., this framework was to safeguard the rights of Homosexual identity from discrimination, torture and guarantee freedom of speech. Human rights are inherently applicable from birth and is meant for each well-being.

*In the landmark ruling of *Bostock v. Clayton County*, it was been held that the discrimination based on sexual orientation is form of sex discrimination under Title VII of the Civil Rights Act which lead to the inclusion of LGBTQ+ community in employment. But still the various states challenge the practice of equality in all sectors of work, including healthcare, education and housing, such as, Arkansas's Interstate Commerce Improvement Act which hinders the local government association for endorsing civil liberties protection for LGBTQ+ distinct to avail this privileges, which underscore struggle for equality at State level.*

*It is evident that domestic laws overpower the international obligation on the Human rights perspective. Specially the legal framework of India, the progress for legalization of Homosexuality is been made, and consequently various landmark judgments like *Navtej Singh Johar v. Union of India* (2018) which have documented certain rights, nevertheless there are substantial gaps which remains unaddressed, for instance lawful grant on the adoption and inheritance rights for the same-sex couples.*

Since ancient era, the LGBTQ+ association individualities have existed, for instance the varied cultures, such as Greece, Rome, and Mesopotamia which have accepted the ethos of same-sex relationships. But then the modern social fabric is not showing acceptance to these communities despite this historical acceptance and remains a subject of discrimination. This paper is based on the analyses of the legal protection given to LGBTQ+ communities in various countries, the role of International Human Rights for Homosexuality, United Nations resolutions to ameliorate these community, and the legal reformation to address the concern of LGBTQ+.

KEYWORDS

Sexual Orientation, LGBTQ+, gender identity, discrimination, same-sex relationship, communities, Human rights, International law, violation, homosexual, discrimination, violence, equality, acceptance, Independent Expert.

INTRODUCTION

“Equality means more than passing laws. The struggle is really won in the hearts and minds of the community, where it really counts.”

- Barbara Gittings

Historically, the LGBTQ+ communities' ideology was being accepted. In Greece and Rome, in the city like Athens where the same-sex relationships were accepted in their social and educational practices where older men having sexual relationships with the young boys known recognized as 'pederasty', without any societal stigma, which seen as favorable for both parties in Plato's *Symposium*. They valued both homosexual and heterosexual sexual orientation. Likewise, it was found in Rome the homosexual relationship considered a common practice between men, they observed as changing aspects to a certain extent than sexual orientation, characters like Julius Caesar who was involved in same-sex relationships. Various other cultures outside the Mediterranean, in Mesopotamia substantiation of the homosexual relationships and the concept of gender mutability existed in Egypt. Whereas the records demonstrate that in Aztec civilization, the same-sex relationships looked upon as religious perspective due to higher acceptance of same-sex love from the community.

But, the circumstances in contemporary world is different from earlier, the acceptance of LGBTQ+ is not increasing but remains stagnate due to various dynamics. From cultural view point, only heterosexual relationship considered as custom, and from religious perspective it looked as immorality. These community does not get political affiliation for lawful encouragement owing to which it upsurge resentment towards these community. Since these negative approach in social circles, peers, and publics start to create isolations from LGBTQ+ community.

Due to negative attitude towards this community, does not help to push the lawmakers to implement such policies and laws in favor of LGBTQ+, because society's agitation or acceptance push the legislation for making laws for non-discrimination. Today, there is call for abundant efforts in laws enforcement to defend the rights of LGBTQ+.

RESEARCH HYPOTHESIS

States are obligated under International Human Rights Law to safeguard the LGBTQ+ rights including all kind of discrimination, torture, violence, sexual orientation and gender identity under various human rights treaties and principles;

RESEARCH METHODOLOGY

This research paper have employed methodology of Doctrinal research for the comparative analysis. The data processing were made through primary and secondary resources and various statistics to understand the subject of focus to make improvement in legal for recognition of LGBTQ+ and to make this paper more qualitative and empirical analysis.¹

The method of comparative analysis of the legislation in various country regarding the legal rights of LGBTQ+ community were made to understand the substantial gaps. For proper reasoning the paper is backed with landmark judgment, reports and various case studies. The normative research is also done to address the societal attitude and norms with regards to this community.²

DEFINITION OF LGBTQ+

The LGBTQ+ is the abbreviated term to address the wide term of sexual orientation (umbrella term) which stands for lesbian, gay,

¹ Rattan Singh, LEGAL RESEARCH METHODOLOGY 145-157 (2nd ed. 2016).

² Dr. T. Padma & K P C Rao, LEGAL RESEARCH METHODOLOGY 30-41 (1st ed.2011).

bisexual, transgender, queer, asexual, intersex, and various other identities. This gender personalities are belongs to heterosexual category. There is difference in the gender identity and sexual orientation. Gender identity is the core sense of sex, which may vary from the sex allocated biologically and the sexual orientation is sense of attraction to a particular sex. These notion is separate nonetheless intersected.

Lesbian	A woman who attracts towards other women sexually;
Gay	This gender identity also known as homosexual, in this type a men sexually attracted to men;
Bisexual	This gender attracts to women and men sexually;
Transgender	This typically have different gender individuality from the sex they are ascribed at born;
Queer	It is an umbrella term used for the individual who does fit in the LGBTQ+ ambit, but they are questioning their sexual orientation;
Intersex	Individual who are born with both the sex characteristics of male and female, but does not fit in any of the gender.
Asexual	People who do not experience any kind of sexual attraction to male or female;
Plus (+)	This symbol of plus is the addition of any other sexual orientation who does not signified or does not fit in the LGBTQ term.

HUMAN RIGHTS VIOLATION AGAINST LGBTQ+

1. Discriminatory criminal laws like criminalization of consensual same-sex relationships, which leads harassment and penalty for the sexual orientation conduct which violates the privacy rights and emancipation from prejudice;³

³ United Nations Free & Equal, International Human Rights Law (2020), available at <https://www.unfe.org/sites/default/files/download/International-Human-Rights-Law-English.pdf>.

2. Brutal attacks from hostile vocal abuse and mental persecuting to bodily assaults, kidnapping, sexually harassment, torture, murdering, hitting, etc.;⁴
3. Discriminations practice kills their various fundamental right of freedom of speech, and the freedom to assemble, and restriction on the conduct of same-sex relationship and bans on the dissemination of same-sex practice as spread of LGBTQ+ “propaganda”;⁵
4. Discriminatory conduct in everyday situation, be it employment place, family residence, hospitals, schools, colleges, etc. Due to lack of national laws on prohibition of such discrimination by the conduct of third parties on the sexual orientation of LGBTQ+ rights remains unhindered by the law, and no lawful remedy for such treatment. ⁶

INTERNATIONAL HUMAN RIGHTS LAW FOR LGBTQ+

The query raises to the mind that whether human rights are legal rights? The answer is “Yes”, as the legal rights are those rights which is recognized and safeguarded through legal system. Accordingly, on December 9, 1998, General Assembly have adopted the Declaration of the Human Rights Defenders, under which Article 27 Para 1 states that State has leading obligation to implement, protect and promote all human rights and conquering indispensable actions; and Para 2 of Article 2 says that the State should implement needed legislative, administrative and supplementary measures and numerous footsteps for guarantee right to protect human rights efficiently.⁸ Since from the above explanation it indicates that human rights is legal right. Although human being have rights, the State hold the corresponding onus to defend these rights.⁹

The LGBTQ+ community considered as non-dominant groups who shares same characteristics so there is requirement of positive discrimination actions by the State through Article 27 of the International Covenant on Civil and Political Rights (ICCPR)¹⁰ and the 1992 UN Declaration on Minority Rights.

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ Declaration of the Human Rights Defenders, under which Article 2 – “Reaffirmation of the Right to Promote, Defend and Protect Human Rights.

⁸ ILIAS BANTEKAS AND LUTZ OETTE, *INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE* 120 (2nd ed. 2016).

⁹ Dr. O.H. Agarwal, *International Law and Human Rights* 765-794 (22 ed. 2019).

¹⁰ Article 27 of International Covenant on Civil and Political Rights (ICCPR) - “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture,

According to the Exhaustion of Domestic Remedies, it mandates the state to establish internal remedies and the constitutional measures for the violation of human rights before approaching to the international mechanism.¹¹ And the Customary International law and Human Rights, which is under the state practice, have the provision regarding the prohibition of torture and principle of non-discrimination.¹²

The Universal Declaration of Human Rights is termed as “Moral Code of conduct” and a set of basic principles of human rights and freedoms, the state can include the provisions in the domestic jurisprudence, for instance, “India” where the constitutional framework is based on this principles and ideology.¹³ But the sexual orientation, gender identity, and expression, or sex characteristics (SOGIESC) and the community of LGBTQ+ were not been declared in any nine essential human rights treaties since LGBTQ+ rights hitherto address. Due to non-recognition of the term “SOGIESC” or “LGBTQ+” in any of the Committee’s documents and even 70 UN Member States have criminalize the practice of consensual same-sex relationships/ acts consequently making it more complex to amend and merely 60 countries have criminalized the homosexuality; and there is restraint to get into employment and access to healthcare. Meanwhile treaties organizations are addressing the issue of LGBTQ+ in their concluding observation.¹⁴ The legitimate advancement were made inside the treaties organization from the landmark ruling of *Toonen v. Australia*, the precedent establishes that the criminalization of sexual orientation infringes privacy rights. Through this judgment major 30 decisions were made in favor of LGBTQ+ rights recently. And the role of activism in reporting of the needed changes in the national level for the legal recognition. The UN bodies are inattention towards bisexual and hate crimes happening in the ambit of LGBTQ+.¹⁵

Another landmark case of U.S. Supreme Court in *Bostock v. Clayton County* have decided to highlight the importance and protection of LGBTQ+ rights in work place, where sexual

to profess and practise their own religion, or to use their own language.”

¹¹ ISHR. (2024). Treaty Bodies: UN Treaty Bodies Advance LGBTI Rights. Retrieved January 26, 2025, from <https://ishr.ch/latest-updates/treaty-bodies-un-treaty-bodies-advance-lgbti-rights/>.

¹² Malcolm N. Shaw, *International Law* 215-216 (8 ed. 2017).

¹³ *ibid.*

¹⁴ UN Free & Equal. *International Human Rights Law: Sexual Orientation and Gender Identity*. UN Free & Equal. Accessed January 26, 2025. <https://www.unfe.org/en/know-the-facts/challenges-solutions/international-human-rights-law-sexual-orientation-gender>.

¹⁵ Bodleian Libraries, 'Treaties', Bodleian Law Library, University of Oxford, available at: <https://libguides.bodleian.ox.ac.uk/law-lgbt/treaties> (accessed 26 January 2025).

orientation was considered as demarcation act. This judgment establishes that no one should be fired from employment on the basis of sexual orientation and which is linked to sex, against employees is protected under Title VII of Civil Rights Act, 1964.

YOGYAKARTA PRINCIPLES

The Yogyakarta principles was established in 2006 November, which is set of landmark principles of human rights which is relative to sexual orientation and gender identity. This document purposes is abide the international legal standards which consist of 29 principles, contains right to life, privacy, freedom from torture, and security. From principles 1-10¹⁶ focus on the legal protection of LGBTQ+.¹⁷ The framework helps to strengthen the rights of LGBTQ+ internationally and helped the human rights organization for the advancement in the legal and social status globally.¹⁸

CASE STUDIES

1. The Effect of Covid-19 on Transgender Community in Asia:

Due to pre-existence of inequalities, which was more pile on in pandemic in Asia and the Pacific. Since these community was already suffering from the discrimination, it leads to more harassment and inhuman treatment, in countries like Bangladesh, India, Indonesia, etc. Whatever the programs were launched the Trans people, they were exempted from the benefit. The pandemic laid to loss of job and pushed them in the less job safety in vulnerable section of job. When the lockout has announced it intensify the gap between the common people. This report was for the call for action for policymakers and Non-governmental organization to promote

¹⁶ Principle 1- The Right to the Universal Enjoyment of Human Rights

Principle 2- The Rights to Equality and Non-discrimination

Principle 3- The Right to Recognition before the Law

Principle 4- The Right to Life

Principle 5- The Right to Security of the Person

Principle 6- The Right to Privacy

Principle 7- The Right to Freedom from Arbitrary Deprivation of Liberty

Principle 8- The Right to a Fair Trial

Principle 9- The Right to Treatment with Humanity while in Detention

Principle 10- The Right to Freedom from torture and Cruel, Inhuman or Degrading Treatment or Punishment

¹⁷ Yogyakarta Principles on the Application of International Human Rights

Law in Relation to Sexual Orientation and Gender Identity, Mar. 2007,

https://data.unaids.org/pub/manual/2007/070517_yogyakarta_principles_en.pdf.

¹⁸ *ibid.*

their rights.¹⁹

2. Critical Condition of LGBTQ+ in Poland:

The aggression with regards to LGBTQ+ is developing gravely inferior in Poland. The State-run mechanism execute inimical retort towards the LGBTQ+ supporters and advocates. The country have disallows all Pride Parade, Equality protests, mass confinement, illegal charges against the use of rainbow flag- in these way government of Poland restricts the LGBTQ+ advocates to fight for their birthrights and respectability. Polish government department do support but add harassment on these community for freedom to assembly, give rise to prosecution of LGBTQ+ activist in courts for years merely put in writing in chalk or hanging of rainbow flag for their just mean. They are treated as criminal in their own country.

COMPREHENSIVE ANALYSIS OF JURISDICTIONS

1. Kenya

In Kenya, the homosexuality is been criminalized under their Penal Code under sections 162, 163, and 165, along with penalization 14 years in confinement, the LGBTQ+ personal have to facing extensive discrimination and the hostility.²⁰ The individual to advocates the rights for the same-sex relationship face repercussion. The High Court of Kenya in 2019, abstained to entertain the petition to challenge the legal provision of Penal Code, and encouraged the criminalization of homosexuality. In 2023, The Family Protection Bill have enforce severer punishment on same-sex relationships.²¹ But counterattack, discrimination and biasness have increased from the society after Supreme Court have acknowledged the recognition of National Gay and Lesbian Human Rights Commission (NGLHRC).²² On Contrary, South Africa have legalize the same-sex marriage but there is struggle for Africa, due to maintainability of anti-LGBTQ+ rights. Now, this scenario creates the legal obstacle for progression of rights of

¹⁹ Amnesty International, "LGBTI Rights," Amnesty International, last modified January 26, 2025, <https://www.amnesty.org/en/what-we-do/discrimination/lgbti-rights/>.

²⁰ Human Dignity Trust, Kenya, <https://www.humandignitytrust.org/country-profile/kenya/> (last visited Jan. 25, 2025).

²¹ Africanews, Kenya on the verge of tabling anti-LGBTQ bill in parliament, (July 18, 2023), <https://www.africanews.com/2023/07/18/kenya-on-the-verge-of-tabling-anti-lgbtq-bill-in-parliament/>.

²² Kenyan LGBTQ+ Community Encouraged to Push for Rights, VOA Africa (Jan. 25, 2025), <https://www.voaafrica.com/a/kenyan-lgbtq-community-encouraged-to-push-for-rights/7304487.html>.

LGBTQ+²³²⁴. 25

2. Brazil

In Brazil, since 2013 the state have legalize the same-sex marriage and rights given as same as heterosexual couples; the adoption rights for consolidated in family rights since 2010. And the country have adopted the process of gender declaration in the official documents with no medical examination since 2009. The Brazil Supreme Federal Court had upheld that the prejudice based on gender discrimination and sexual orientation is infringement of anti-racism laws. ²⁶A bill is going to amend the anti-racism laws of Brazil which have inclusion of homophobia and transphobia as offence, which is currently facing the uncertainty due to political conflict situation.

The murder rates of LGBTQ+ has been found in the Brazil internationally; according to reports 167 out of 369 murders are been reported in the last year. ²⁷During and under the President Bolsonaro administration the concerns have been raised for this issues. Despite the legal advancement in the Brazil for LGBTQ+ rights, the freedom and expression of LGBTQ+ is confined due to the created angle of unfairness by society and there is no specific laws for the hate crime against them, which escape them from consequences. But the activist makes attempts to create the mobilization of the recognition in the society and with the court's ruling the legal protection is been integrating into laws for better society.²⁸²⁹³⁰

²³ Pooja Chaudhary, An Analysis Of Legal Protections For Lgbtq+ Right In Developing Countries, ISSN : 2581-8503, International Law Journal,(7-21).

²⁴ GALCK, Submission on Colonialism and Sexual Orientation (2023), <https://www.ohchr.org/sites/default/files/documents/cfi-subm/2308/subm-colonialism-sexual-orientation-cso-galck.pdf>.

²⁵ J. K. Osei, Legislating Identity: A Critical Analysis of the Anti-LGBT Bills in Kenya and Ghana, JURIST (Apr. 2024), <https://www.jurist.org/commentary/2024/04/legislating-identity-a-critical-analysis-of-the-anti-lgbt-bills-in-kenya-and-ghana/>.

²⁶ WOLA, "Brazilian Congress Addresses LGBTQ+ Minorities Under Attack," (May 23, 2019), <https://www.wola.org/analysis/brazilian-congress-addresses-lgbtq-minorities-under-attack/> (accessed January 25, 2025).

²⁷ Outright International, "Brazil," accessed January 25, 2025, <https://outrightinternational.org/our-work/americas/brazil>.

²⁸ Wyllys, Jean. "Struggle for LGBT Rights in Brazil." PGA Action, January 25, 2025. <https://www.pgaction.org/news/struggle-for-lgbt-rights-brazil.html>.

²⁹ Wilson Center, LGBTQ Rights in Brazil: Could the Elections Impact a Challenging Landscape? (Jan. 25, 2025), <https://www.wilsoncenter.org/blog-post/lgbtq-rights-brazil-could-the-elections-impact-challenging-landscape>.

³⁰ Pooja Chaudhary, An Analysis Of Legal Protections For Lgbtq+ Right In Developing Countries, ISSN : 2581-8503, International Law Journal,(7-21).

3. Uganda

In Uganda, ‘the Anti-Homosexuality Act’ was introduced in 2023,³¹ has criminalize the same-sex relationships along with harsh penalties, which includes death penalty for the conduct of “heightened homosexuality” incorporates undertaking including minors, disable person, and those who belongs from vulnerable conditions. The latest law is building on this current laws which previously have punishment for same-sex act with life confinement under Uganda’s penal code.³²The definition is been broaden of offenses which have unclear terminologies like “promotion of homosexuality”, which have imprisonment up to 20 years, for those who advocates for the rights of LGBTQ+. Due to such legislation, it creates the distress among LGBTQ+ community and the increase violence, discrimination, arbitrary detention and exploitation by police personnel.³³ Disapproval by the International Human rights organization and activists since violates the fundamental human rights definite underneath both in Ugandan and the international convention and treaties.³⁴ Opponents proclaims that it will intensifies the humiliation and lawful consideration for the violence to LGBTQ+ community. Uganda has the history of anti-LGBTQ+ rights.³⁵³⁶

4. India

India have made great advancement for the LGBTQ+ rights from the movements and protests.³⁷ Through the

³¹ Human Rights Watch, Uganda’s President Signs Repressive Anti-LGBT Law, (May 30, 2023), <https://www.hrw.org/news/2023/05/30/ugandas-president-signs-repressive-anti-lgbt-law>.

³² United Nations Human Rights Council, Uganda: UN Experts Condemn Egregious Anti-LGBT Legislation (29 March 2023), <https://www.ohchr.org/en/press-releases/2023/03/uganda-un-experts-condemn-egregious-anti-lgbt-legislation>.

³³ Rainbow World Fund, Helping Our LGBTQ+ Brothers and Sisters in Uganda, (2023), available at <https://www.rainbowfund.org/uganda-lgbtq> (last visited Jan. 25, 2025).

³⁴ Agchar, D. (2023) 'Enactment of the Anti-LGBTIQ+ Law in Uganda: A Look at National Consequences and Geopolitical Challenges', Institut du Genre en Géopolitique. Available at: <https://igg-geo.org/en/2023/07/13/enactment-of-the-anti-lgbtqi-law-in-uganda-a-look-at-national-consequences-and-geopolitical-challenges/> (Accessed: 25 January 2025).

³⁵ Pooja Chaudhary, An Analysis Of Legal Protections For Lgbtq+ Right In Developing Countries, ISSN : 2581-8503, International Law Journal,(7-21).

³⁶ Global Affairs, "The Unholy Relationship Between Uganda’s Anti-LGBTQ Law and the U.S.," (May 29, 2023), <https://globalaffairs.org/commentary-and-analysis/blogs/unholy-relationship-between-ugandas-anti-lgbtq-law-and-us>.

³⁷ Vishnu Gopinath, The Quint, LGBTQ+ Rights in India: A Brief History of Section 377 and Homosexuality (Sept. 6, 2022),

landmark judgment *Navej Singh Johar vs. Union of India*, which have partially struck down Section 377, and decriminalizes the consensual same-sex relationships. And the Transgender Persons Act, 2019 have made a legislation for the recognition for the transgender legal recognition and adoption rights. Notwithstanding the LGBTQ+ still faces the repercussion for the same-sex marriages and due to removal of section 377 in the new criminal laws of India that is Bharatiya Nyaya Sanhita, 2023, which consequently creates a legal gap and leaves behind the large number of potential victims.³⁸

Despite laws for these community Indian society carries a different attitude of separation towards LGBTQ+ community and created a societal and cultural norm which does not create effective on the ground-reality. The government have launched various schemes and policies, but due to poor law enforcement agencies, accountability and transparency, the community have to give huge bribery to government officials, for example-official document for the gender identity recognition to the LGBTQ+ community. ³⁹The huge discrimination towards this community, has kept them unemployment. Still there are various non-governmental organizations like 'the Humsafar trust', 'Naz Foundation', 'Kanpur Queer Welfare Foundation', etc are advocating rights for this community. ⁴⁰⁴¹

EFFECTIVE IMPLEMENTATION OF LAWS IN COUNTRIES

There were States which have accepted the LGBTQ+ community and have advance their laws for their dignity and equality. The notable achievement of Netherland, they have legalize the same marriages in 2001 and becomes great inspiration for other country to follow footsteps. Their understanding states that this

<https://www.thequint.com/explainers/lgbt-queer-rights-india-section-377-homosexuality-history>.

³⁸ Akshat Anunay, Same Sex Marriages in India: A Complete Overview, Times of India (Jan. 25, 2025),

<https://timesofindia.indiatimes.com/readersblog/dopamineffable/same-sex-marriages-in-india-a-complete-overview-53507/>.

³⁹Sucheta, SCC Online, 'Mapping the Progression of LGBTQ Rights in India: Important Laws and Judicial Pronouncements' (18 June 2023)

<https://www.sconline.com/blog/post/2023/06/18/mapping-the-progression-of-lgbtq-rights-in-india-important-laws-and-judicial-pronouncements/> accessed 25 January 2025.

⁴⁰ Yatin Gaur, Evolution of LGBTQ Rights in India and Taking the Narrative Forward: Living Free and Equal, iPleaders (Jan. 25, 2025),

<https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>.

⁴¹ Pooja Chaudhary, An Analysis Of Legal Protections For Lgbtq+ Right In Developing Countries, ISSN : 2581-8503, International Law Journal,(7-21).

step will promote the community acceptance and fairness.

The other great example is Argentina, which have enacted an inclusive transgender legislation in the year 2012. This laws have enable the LGBTQ+ individuals to amend their gender identity without any intervention of medical and judicial. This initiative law for the recognition of the community have become most progressive in the international forum to uphold the rule of equality.

Canada has taken noteworthy step for advancement of LGBTQ+ rights and legal recognition. In 2005, the Canadian Parliament have add up 'sexual orientation' in list of prohibited criteria of demarcation in the Canadian Human Rights Act and further in 2005, Canada have legalize the same-sex marriage and becomes fourth country in the world for legal recognition of LGBTQ+ which have enhanced the social acceptance.⁴²

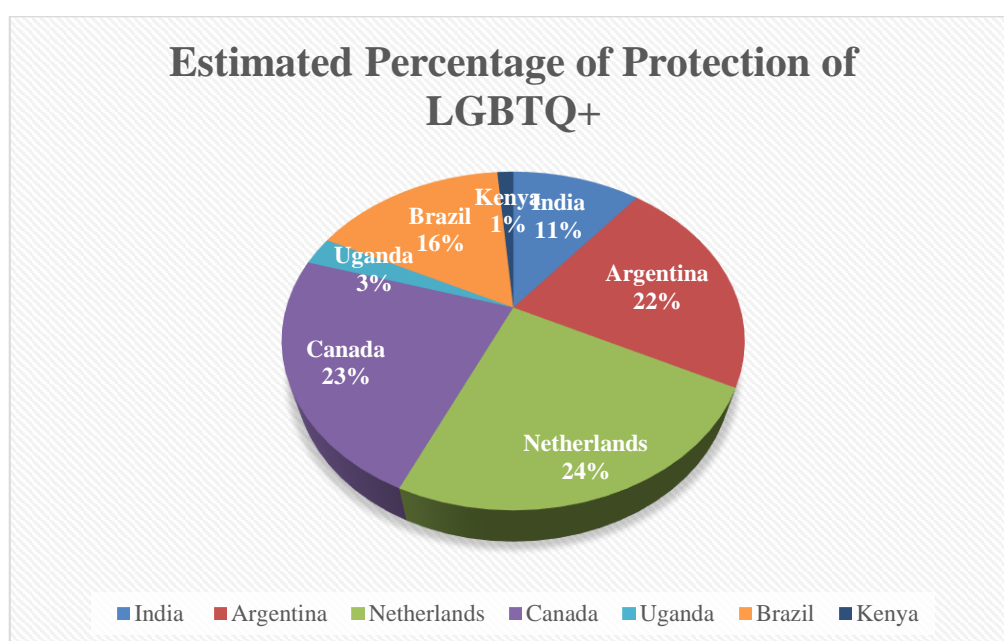


Fig. 1. Protection of LGBTQ+ rights in various jurisdiction⁴³

⁴² Aman Rai, Legal Narrative Of Lgbtq+ Rights And The Way Forward, ISSN (O): 2583-0066, JOURNAL OF LEGAL RESEARCH AND JURIDICAL SCIENCES, 189-207.

⁴³ SCC Online, Mapping the Progression of LGBTQ Rights in India: Important Laws and Judicial Pronouncements (June 18, 2023) <https://www.sconline.com/blog/post/2023/06/18/mapping-the-progression-of-lgbtq-rights-in-india-important-laws-and-judicial-pronouncements/> (accessed Jan. 26, 2025).

LGBTQ+ CULTURAL AND SOCIETAL ATTITUDE

The societal and cultural attitude regarding LGBTQI+ rights in progressing countries mainly affected by the religious instructions, ancients' traces, and socio-cultural norms. These belief are built upon the community opinion, government schemes and policies, and the extent of legal protection given to the LGBTQ+ persons. The factors which influenced in the developing countries are:

1. In the conservative society, were narrow and negative thinking towards the LGBTQ+ becomes the barrier for the law enforcement agencies to give effective to those laws and rights they own.
2. Some stubborn thinking from the religious texts about homosexuality and gender variation lead to exclusion from the main stream of society.
3. Due to lack of education and awareness about LGBTQ+ individuals rejection from the mainstream of the society.
4. Due to limited laws for anti-discriminatory attitude towards the LGBTQ+, the community faces repercussion from actions. ⁴⁴

POLICY RECOMMENDATION FOR LGBTQ+ INDIVIDUALS

Policy recommendation from the research by conducting on ground like gathering data on the issue for anti-discriminatory laws and reexamining the loopholes for effective implementation of the existing policies. Various relevant stakeholders policymakers should be involved such local government bodies, elected official, activists, and government enforcement agencies. For enhancement of legal protection to LGBTQ+ the legislative authorities have to work on this discriminatory laws. The laws which safeguard the rights and dignity towards the conduct of sexual orientation and gender expression. The government enactment need to be strengthen enough to prohibit the demarcation and degrading the reputation of LGBTQ+ individual at their work place, housing, healthcare sector, education, and community services.

Pre-requisite work of policy implementation push the society to accept the LGBTQ+ as they are. The laws need not to make compulsion for medical requirement for the recognizing the gender identity in the official document identification. Hate crime is another biggest cruelty which need legal reformation, which does violence and discrimination on LGBTQ+ individual. The laws

⁴⁴ Aman Rai, Legal Narrative Of Lgbtq+ Rights And The Way Forward, ISSN (O): 2583-0066, JOURNAL OF LEGAL RESEARCH AND JURIDICAL SCIENCES, 189-207.

strengthen enough to face the repercussion for inhuman action, by imposing penalties and imprisonment, to remove the prejudice and the person gets the recourse. The healthcare attention required for ensuring care and protection, services such as mental health program, gender ratification process, gender-affirming surgery, hormone replacement therapy without any kind of biasness. Equity should be implemented in terms of parental and family rights, lawful identification as a non-biological parents and also benefits of adoption rights which a heterosexual couples have to give a desired life.⁴⁵

Advancement In Education And Awareness

Inclusivity of LGBTQ+ in the mainstream of society and acceptance can happen through the inclusion of education to these community life. We usually see in all schools and colleges they don't have any column for LGBTQ+, sometimes they have column for 'transgender' but what about the other communities who recognized themselves as bisexual, lesbian, gay, queer, asexual, etc., it becomes a broader issue of inclusivity in the education. Curriculum need some changes for the acceptance through involvement. This help to remove the stigmatization and stereotypes which society have created through gradually. Various activities, campaigns and engaging environment to overcome homophobia, transphobia, biphobia, and promotion of equality can be implemented through educators. The desired target such as public, healthcare workers, employers, and various stakeholders. The role of media demonstration can be an innovative step to change the perception of society. The positive depiction of LGBTQ+ can oppose the stereotype, through various television, films, advertisement, etc. Media can play the vital role in developing public perception.⁴⁶

RECOMMENDATION FROM THE UNITED NATIONS RESOLUTIONS

1. Resolution by Human Rights Council

This resolution was espoused on 7 July 2022, to accreditation the strategies developed by "Independent Expert on protection against violence and demarcation on sexual orientation" grounded on sexual exposure and gender identity;

- ❖ Integrating the work of Independent Expert on protection against violence and demarcation and

⁴⁵ Ibid.

⁴⁶ Aman Rai, Legal Narrative Of Lgbtq+ Rights And The Way Forward, ISSN (O): 2583-0066, JOURNAL OF LEGAL RESEARCH AND JURIDICAL SCIENCES, 189-207.

- work with the discussion from applicable stakeholder, responsibility to visit countries different area, and the thematic reports;
- ❖ Condemn the act of violence and demarcation against the individual in all regions of the world on basis of sexual orientation and gender identity;
 - ❖ Calling on States to revoke the existing laws and policies in conflicts with the rights of sexual orientation and gender identity;
 - ❖ Extension of mandate for three years for the work of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity;
 - ❖ Allocation of financial, human and technical resources from the request of Secretary-General and the United Nations High Commissioner for Human Rights for the effective implementation of mandate;
 - ❖ Calling all Government have to cooperate with Independent expert for the required information needed by mandate holder,
 - ❖ Giving annual report to the Human Rights Council by the Independent Expert on the implementation of the mandate.⁴⁷

2. Resolution on safeguard against hostility and discrimination against sexual orientation and gender identity ⁴⁸

This resolution was adopted on 30 June 2016, this resolution focus on the convict the act of violence and intolerance against the conduct of sexual orientation and gender identity, confirming that all human beings have rights, liberty and autonomy;

- ❖ This resolution admit for the appointment of Independent Expert, for promotion of responsibility and application of all measures to safeguard the LGBTQ+ individual rights and investigate on the matter of reported issues,
 - a) To implement the prevailing international human rights mechanisms with subject to overcome the act of aggression and hostility on sexual orientation and gender identity and finding top practices and loopholes,

⁴⁷ A/HRC/RES/50/10

⁴⁸ A/HRC/RES/32/2

- b) Recognizing the reason for act of violence and demarcation and increase awareness of such acts opposed to persons on the basis of sexual orientation and gender identification,
 - c) Discussing with the United Nations agencies, human rights organizations, various stakeholders, national institution on human rights institutions, non-governmental organizations, and educational intuitions, and these institutional bodies have to co-operate with the Independent Expert,
 - d) Working with the State member to rigorously implement the rights and principles established in Universal Declaration of Human Rights,
 - e) Understanding numerous, overlapping and exacerbated form of violence confronted on the subject of sexual orientation and gender identity,
 - f) Conducting the cooperation with the consultative services, strength building, troubleshooting, multilateral collaboration in support of national endeavors to tackle the violence and discrimination in oppose of person on the grounds of their sexual orientation or gender identity,
 - g) State should request the Independent Expert for the visit in the state to discharge the mandate drawn for implementation which have suggested,
- ❖ It states that all human being are allowed for the entitlement for free and equality in self-esteem and privileges. And the articles of Universal Declaration of Human Rights which mention about rights and freedom without such kind of discrimination, for instance, color, sex, language, religion, religion, political, birth, status, social origin, property, etc.;
 - ❖ Condemnation of the act of violence and discrimination in any region of this world, against the LGBTQ+ individuality on the basis of sexual orientation and gender identity.⁴⁹

EXISTING CHALLENGES

⁴⁹ *ibid.*

According to statistics, there are 20% of homosexual individualities population in the worldwide, and face the discriminations due to lack of laws and the not proper recourse for discrimination through legal aid. Majorly all other countries have criminalize the same-sex marriage and the created stigmatization of their gender expression. All the countries focusing on the financial and infrastructure sectors, but are backed behind in implementation of those laws to prohibit the exploitation of the LGBTQ+. These community is deprived from work and becomes a burden on the state and involve in illegal or vulnerable work to earn and faces discrimination and harassment.

Whenever any petition or case is filed before court, judiciary can make judgment on the prevailing laws but this justice is not satisfied by the LGBTQ+. The legislation have to play the foremost role in making laws for the LGBTQ+ rights. But still the work is not disposed, because without heavy-duty on the enforcement agencies to implement those laws in all sectors, the programs will not benefit the community. In some countries there are 46% of policy protection to the LGBTQ+ which considered to be “medium”, which shows disparity. The enforcement doesn't have established mechanism for LGBTQ+ to avail the benefits. And despite numerous efforts of legislative, social attitude becomes a challenge for any LGBTQ+ protection laws.

SUGGESTIONS

1. Decriminalization of the consensual same-sex marriages and revoke all the laws which criminalize the conduct of LGBTQ+;
2. Ban all the laws which are discriminatory in the nature of sexual orientation, gender identity, and their sexual personalities;
3. Need to penalize the laws which commit hate crime to LGBTQ+ community;
4. Prevention of any kind of dangerous practices such as “conversion therapy” in addition to any forced surgeries specially on the intersex people, deprived of approval;
5. Assessing the legal documents for the individual identity to LGBTQ+ community grounded on free-will and without any abusive activity;
6. Training of the administrative officials, police personnel, teachers, activist, and prisons staff to avoid any discrimination against LGBTQ+ community;
7. Introduction of programs like “Anti-bullying” in the workplace, schools, colleges and society.

CONCLUSION

The research paper have delved into the human rights agenda of, as becomes significant aspect for legal protection for LGBTQ+ highlighting importance of dignity and equivalence to all human beings. Despite the attempts of United Nations treaties and convention, various landmark judgment on same-sex marriages and anti-discrimination laws, there disputes and challenges which need to be addressed. It also approves that the states have obligation to safeguard individual from violence and discrimination under international human rights law, which orders for revoke of all harmful laws which hinders the implementation of human rights.

The current laws which was been established by the international human rights laws, treaties, and convention for instance the Universal Declaration of Human Rights, make obligation on the member states to safeguard the LGBTQ+ rights from any kind of violence and demarcation. There is no requirement of new laws, but the current laws need to be obligated and enforced thoroughly. There is need of implementation of those laws to be pass by legislative authority.

From the past history, whenever there is case on the LGBTQ+, the judiciary always make decision to give power to legislation for making of 'Anti-discrimination law' due to the principle of separation of power, because judiciary have only power to give judgment on the existing laws and give judicial review and cannot intervene the work of legislation but to encourage the legislative business on these issue.

The world is progressive to tackle the issues of these community, but since due to stereotype which society have created about it is discriminatory to accept them, every human being have equal protection of laws since birth and no one have power to infringe upon this in any sort. All treaties and conventions in happened in the past world focus on the human rights, and LGBTQ+ are the part of it. State government need to co-operate with the international forum mandates with the expert on human rights on the working issue of LGBTQ+ with on-ground research with what kind of criticism face due to their sexual orientation and gender identity. Ratified state member to the treaties and organization need to raise agenda for the discussion on these topic with other country through lobbying and building recommendations with the states to achieve the goal enforcement of legal rights of LGBTQ+, the state must insist to international bodies to visit and need to make annual report on the issues.

States need to inculcate the laws of international human rights and decriminalize the conduct of sexual orientation, gender identity, same-sex marriages, and adoption rights. Gradually, the state and society will change the perspective of looking and judging towards LGBTQ+ community and positive perspective will develop in the people's mind considering them as a part of their society. And the social acceptance leads to advancement of legal rights of LGBTQ+.