



THE SPIRIT BEYOND GENDER- UNRAVELING THE ENIGMA OF LGBTQA+ RIGHTS

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ABSTRACT

Life is about finding yourself, embracing your strengths and weaknesses and being true to who you are.¹

In the realm of human existence, the identity of a human being is a labyrinth tapestry woven from threads of choice, orientation, status and gender , but not on the basis of their spirit and capabilities. This profound dichotomy had witnessed umpteenth scuffles for justice and equality. It's a matter of remorse that , our so called binary world is heavily leaning towards masculinity , which has taken several centuries of tireless efforts for women to gain equality on par with men. Thankfully , now the society has shifted its gear from patriarchy towards the harmonious path of equality. But, again this society is further committing another vice by marginalizing some segments of society. We are boosting high for achieving the long awaited goal of equality , but still some segment of society are far away from streamline of the path of equality . Despite being a human, they are deprived of human rights. Their so called unusual sexual orientation which is not in conformity with accepted norms of society has kept them at a bay from other so called social animals. Yes, I am evincing the misery of LGBTQIA+ communities, who has been denied to possess basic human rights essential for existence of human being.

Keywords- LGBTQA+ , gays, lesbians , transgenders , queer , homosexuality

1. WHO ARE LGBTQA+ INDIVIDUALS ?

What does the phrase 'LGBTQA+' denote? Simply put, these are segments of our society that don't conform to traditionally framed binary sexual world. These individual's sexual orientation shows a remarkable departure from conventional heterosexual and traditional prototypes.

1. Lesbian - These women are drawn to women , forming same-sex couples comprising two women.

¹ Quoted by Oprah Winfrey published in today.com (75 powerful LGBTQ quotes for Pride month and every month)

2. Gay - Men attracted to men, diverging from traditional male-female attraction norms.

3. Bisexual - individuals fostering attraction towards both men as well as female

4. Transgender - A marginalized community whose gender identity differs from their assigned sex at birth, long suppressed by our binary society.

5. Queer - An umbrella term for those uncertain about their sexual orientation and gender identity.

6. Asexual - People devoid of sexual feelings and attraction, thus nonconforming to traditional heterosexuality and marriage.

7. Plus (+) - As our mindset, freedom of expression, and technology advancing at a fast pace, introverted individuals are identifying their non-binary orientation. Initially focused on Transgender rights, LGBTQIA+ now encompasses lesbian, gay, bisexual, queer, asexual, and more. Future additions are anticipated, hence denoted by infinite plus. Ex-Intersex, pansex etc

2. DISCRIMINATION AND PREJUDICE IN DAILY LIFE

Societal expectations and norms have since long dictated what is acceptable and what is not. The LGBTQIA+ community's departure from those norms has led to ostracism, discrimination, atrocity and violence.

LGBTQIA+ individuals often face tremendous difficulties in their daily lives, struggling to find acceptance and equality. When seeking rental accommodations or employment, they are frequently rejected due to their unique sexual orientation or gender identity. Highly educated and qualified LGBTQIA+ individuals are denied jobs they deserve, solely because of their sexual orientation. Transgenders, in particular, face significant challenges due to their distinctive appearance, blending masculine and feminine characteristics.

Similarly, individuals who are already employed may face discrimination and termination, if their employer shall discover their sexual orientation. This unwarranted interference in personal choices is a clear violation of human rights. Just as we have the right to choose our attire or lifestyle, LGBTQIA+ individuals deserve the same autonomy.

Society's unwarranted interference and discriminatory attitudes force these individuals to the fringes, denying them their rightful place. Here a person's personal choice has become hindrance in his existence. One must remember that, gender is a social construct and individuality transcends binary categorization.

It's crucial to recognize and challenge these prejudices, ensuring equal opportunities and acceptance for all, regardless of sexual orientation or gender identity.

3. IS THIS A BANE TO HAVE A DIFFERENT CHOICE?

The question which often and often triggers my mind is whether, those having a different choice from popular society are sinners?? Just because their choices w.r.t. their personal front are not in conformity with mainstream of society, their orientations amount to vice ?? Why society will compel anyone to disregard own choices and to fit into the tailored norms created by some so called social animals?? How one will feel, if

he/she put on ill-fitted apparels ? Little bit try to visualize this situation. How uncomfortable it would be !! You won't get peace by sacrificing your comfort for the sake of society's unjustified rules.

Nobody truly comprehends the complexities and paradoxes that transgender individuals face in society. They are often ridiculed and mocked for not conforming to binary norms, due to their appearance or voice. However, nobody attempts to understand their agony and the unique challenges they encounter.

If their biological characteristics differ from ours, it's logical to assume they experience life differently, including their sexual feelings. Yet, society fails to empathize.

In our country, people mock those who don't fit traditional masculine or feminine norms. For instance, a weak or infertile man is often compared to a transgender person, and a woman who can't bear children is similarly ridiculed.

Transgenders deserve respect, but instead, their name is reduced to a slang term. Their strengths are ignored, and their stress is exacerbated by societal behavior. This makes it impossible for them to find solace in the world."

4. STATUS OF LGBTQA+ : THROUGH THE LENS OF LAW

"The Preamble to the Indian Constitution begins with '***We, the People of India***, encompassing all citizens, including those from the LGBTQA+ community.

Article 14² ensures equality, while Article 15³ prohibits discrimination based on gender, and Article 16 guarantees equal opportunities in public employment. The provisions of our Constitution are praiseworthy, still it is a matter of lassitude that LGBTQA+ individuals face challenges in exercising these rights. Equality for LGBTQA+ remains a distant dream and the quest is an uphill battle.

Article 17⁴ abolishes untouchability, which embodies not only SC/ST communities but also LGBTQA+ individuals who face systemic marginalization. Article 19⁵ guarantees freedom of expression, but LGBTQA+ individuals nevertheless struggle to express themselves due to societal pressure.

Article 21⁶ guarantees the right to life and personal liberty, including the right to choose one's partner. However, LGBTQA+ individuals are denied this fundamental right.

Article 25⁷ guarantees freedom of religion, but LGBTQA+ individuals face restrictions. They are denied entry to places of worship, forcing them to hide their true selves. Transgenders, revered in Hindu mythology, are reduced to begging outside temples. Their sacred status is contradicted by societal rejection. In mosques and

² Article 14: "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*". The Constitution of India

³ Article 15: *Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*. The Constitution of India

⁴ Article 17: "*Untouchability is abolished and its practice in any form is forbidden*." The Constitution of India

⁵ Article 19: *Protection of certain rights regarding freedom of speech*. The Constitution of India

⁶ Article 21: "*No person shall be deprived of his life or personal liberty except according to procedure established by law*". The Constitution of India

⁷ Article. 25: "*Freedom of Conscience and free profession, practice and propagation of religion*". The Constitution of India

temples, LGBTQA+ individuals are shunned, their religious rights ignored. The right to worship freely, without fear of persecution, remains elusive.

Rape⁸ definitions remain gender-specific, neglecting transgender victims. It is a matter of applaud that POCSO⁹ has included transgenders both as a victim as well as offender under its purview.

Gender-neutral laws are essential to protect all individuals including LGBTQA+.

5. FIGHT AGAINST A GOLIATH: LEGAL BATTLES FOR IDENTITY

The legal battle for recognition as a full fledged human being and acceptance by the society is a prolonged battle for LGBTQA+. The pioneer victory emerged from landmark Judgment of Delhi High Court in **Naz Foundation vs. Govt of NCT of Delhi (2009)**¹⁰, where Hon'ble Delhi High Court decriminalized the age old rotten English induced offence of homosexuality. This was the first step towards acknowledging the rights and status of homosexuals.

But, their happiness was short lived because the Hon'ble Apex Court overturned the Delhi High Court's decision and restored S.377 IPC by recriminalizing homosexual acts in **Suresh Kumar Kaushal vs. Naz Foundation (2013)**¹¹ verdict. This case engrossed multiple demonstrations, opposition and curative petitions by LGBTQA+ community. This might be termed as reinstate of dark age for LGBTQA+ in India.

In 2014, the supreme Court recognized the rights of Transgender people in **NALSA vs. Union of India**¹². Undoubtedly this verdict has boosted the confidence of transgender individuals, who are nothing, but an integral part of LGBTQA+ community.

The most cherished landmark **Navtej Singh Johar vs. Union of India (2018)**¹³ judgment decriminalized the same-sex relationships by partially striking down Section. 377 IPC. This judgment dismantled the social taboo, paved the way for their acceptance and finally it granted them long overdue recognition by recognizing their human rights along with right to sexual orientation. Yet, the revised BNS lacks clarity on same-sex relationships, perpetuating ambiguity.

After victorious verdict of Navtej Singh Johar, LGBTQA+ couples knocked the door of Apex Court to recognize same sex marriage as a fundamental right and bestow them the status of legally recognized couples on par with heterosexual union under the Special Marriage Act, but this time they procured utter disappointment. In **Supriyo@Supriya Chakraborty vs. Union of India (2023)**¹⁴ although Judiciary did not deter them, but still exhibits its unwillingness to unwarranted encroachment in legislative sphere. Here Hon'ble Apex Court reiterated the fact that, there was no unqualified fundamental right to marry under Constitution. It graciously laid down that, Judiciary cannot confer a right to marry in the absence of a statute.

⁸ Section.63 of Bharatiya Nyaya Sanhita(second) 2023

⁹ The Protection of Children from Sexual Offences Act, 2012 (Act No.32 of 2012)

¹⁰ Naz Foundation vs. Govt of NCT of Delhi, 160 Delhi Law Times 277 (Delhi High Court 2009)

¹¹ Civil Appeal 10972 of 2013

¹² AIR 2014 SC 1863;(2014) 5 SCC 438

¹³ AIR 2018 SC 4321, (2018) 10 SCC 1

¹⁴ 2023 INSC 920

The 5 Judge bench held that the recognition of Queer Couples in the existing domain of heterosexual marriage law would amount to encroaching into the province of legislative domain.

It appears that , the LGBTQA+ community is poised on the cusps of yet another protracted and arduous legal battle, that will necessitates unwavering endurances and relentless efforts to reclaim their legally rightful entitlements.

6. THE RAINBOW OF HOPE: STATUTES TO RECOGNISE POLES APART AND INTEGRATE THEM

Systemic changes are crucial to ensure LGBTQ+ rights, aligning with favorable Supreme Court judgments. The Transgender Persons (Protection of Rights) Act, 2019, is a step forward, but more comprehensive legislation is needed.

The new Bharatiya Nyaya Sanhita(BNS) 2023 recognizes transgender individuals, which is a significant progress. Section 2(10) of BNS defines “pronoun “he” and its derivatives includes any person , whether male, female or transgender” under realm of “gender”. However, societal acceptance is crucial. We must recognize that transgenders are human beings with the same fundamental rights, emotions, and needs as everyone else.

There is an urgent need for legislation to prevent Indecent Representation of LGBTQA+ individuals, similar to the Indecent Representation of Women Act, 1986. This law would prohibit the derogatory portrayal of LGBTQA+ individuals in advertisements, media, and public spaces, which perpetuates ridicule and stigma.

Their sexual orientation is not a crime, and they deserve respect and acceptance. We must remember this is not a disease. The constant ridicule and rejection can lead to violence and desperation, driving some to commit crimes. We must address the root causes of these issues.

To create a harmonious society, we need to:

1. Enact laws protecting LGBTQA+ rights and representation.
2. Promote education and awareness about LGBTQA+ issues.
3. Encourage inclusivity and acceptance.
4. Provide support and resources for LGBTQA+ individuals.

Let's strive for a society where everyone coexists peacefully, regardless of gender or sexual orientation."

7. EMBRACING DIVERSITY: THE NEED FOR LGBTQA+ INCLUSION

Here are some key points to embrace the and accept LGBTQA+ individuals as a civilized human beings in our society.

- **Breaking Down Barriers and Stereotypes**

LGBTQA+ individuals have long faced discrimination, rejection, and marginalization. Despite progress, societal attitudes persist, hindering their integration. It's crucial we recognize the importance of inclusivity, respect, and equal rights.

- **The Power of Education and Awareness**

Teaching children to respect and consider LGBTQ+ individuals as equals is vital. Decades ago, individuals with disabilities faced similar social bullying, but progressive laws and awareness campaigns transformed the scenario. IAS Ira Singhal's remarkable achievement, topping the UPSC exam without quotas, demonstrates differently-abled individual's capabilities. Unbiased education and non judgmental awareness is key to upliftment of marginalized community.

- **Encouragement and Empowerment**

Similarly, encouraging and empowering the LGBTQA+ community is crucial. Promoting inclusivity and acceptance creates a society where everyone thrives. Recognize sexual orientation and gender identity don't define worth or potential. Reservations of transgender individuals in Tamil Nadu Govt service is an eye opener for other State Government. The decision of Odisha Govt to employ transgenders in MO BUS as conductor is another step toward equality and empowerment of transgenders.

- **Creating a Supportive Environment**

To foster inclusivity, followings are indispensable:

1. Implement education and awareness programs.
2. Enact inclusive policies and laws.
3. Promote role models and representation(Ex- TedEx talk , podcast to vindicate their struggle).
4. Encourage supportive family and community and urge their parents for not abandoning them.

Together, we can build a society where everyone feels valued, respected, and empowered. By embracing diversity, we can create a brighter future for all.

8. THE FORGOTTEN NARRATIVE: UNVEILING LGBTQA+ STRUGGLES AND TRIUMPHS

● Ancient Roots and Modern Resistance

LGBTQA+ individuals have faced centuries of marginalization, despite their presence in ancient cultures. Hindu mythology's Shikhandi and Ardhanarishwara, and Greek mythology's Apollo and Hyacinth, showcase diverse sexualities. In Khajuraho temple, many rock images of homosexuality have been found. It shows that people in ancient time, were also engaged in homosexual acts. Hence, it might be presumed that homosexuality is not a new phenomenon.

● Colonial Legacy and Post-Independence Struggle

British colonialism introduced Section 377 IPC , criminalizing same-sex relationships. Post-independence, LGBTQA+ individuals continued to face prosecution.

● Continuing Challenges and Hope

Despite progress, LGBTQA+ individuals face violence, discrimination, and rejection. Ongoing struggles include:

- Legal recognition and protection
- Social acceptance , inclusivity and integrating
- Physical as well as mental health and well-being

● A New Dawn

LGBTQA+ individuals are reclaiming their narrative, demanding equality and justice. Their resilience inspires a brighter future. By integrating them in our society and embracing them with open arms , we can truly uphold the Constitution's promise of equality and justice for all citizens, including those from the LGBTQA+ community.

9. PROTECTING LGBTQA+ RIGHTS AT THE WORKPLACE : THE NEED FOR INCLUSIVE LEGISLATION

Inspired by the landmark Vishakha judgment (1997)¹⁵ and the Prevention of Sexual Harassment of Women at Workplace Act (2013)¹⁶, it is imperative to enact similar legislation protecting LGBTQA+ individuals from workplace harassment and discrimination.

¹⁵ AIR 1997 SC 3011

¹⁶ Act No 14 of 2013

LGBTQA+ employees face unique challenges, including:

- Lack of inclusive policies
- Insufficient training on LGBTQA+ issues
- Discrimination and bias
- Inadequate support systems
- Curiosity-driven harassment due to unfamiliarity with diverse sexual orientations and gender identities
- Increased vulnerability to sexual harassment, stalking, and bullying

Their diverse sexual orientation leads to:

- Public curiosity and misunderstandings
- Resulting sexual harassment and inappropriate behavior
- Negative impact on mental health and well-being

It is pertinent to mention that diverse sexual orientations has nothing to do with productivity of work. Productivity depends upon knowledge and wisdom.

To address these concerns, we propose:

- Amending existing laws to include LGBTQA+ individuals
- Enacting comprehensive anti-discrimination legislation
- Implementing workplace diversity and inclusion initiatives
- Providing training and sensitization programs for employees
- Creating safe and confidential reporting mechanisms

By safeguarding LGBTQA+ rights, we foster an inclusive work environment, promoting equality, productivity, and well-being.

10. LGBTQA+ RIGHTS AND SUSTAINABLE DEVELOPMENT- A NEW PROSPECTIVE

Sustainable development obliges social justice, economic growth and environmental conversations. Integrating LGBTQA+ rights into sustainable development is crucial in achieving these goals. Lets discuss an integrating approach by achieving SDG by upholding rights of LGBTQA+.

- SDG.1 (NO POVERTY)- It will open the door for social protection and economic opportunities w.r.t LGBTQA+ communities.
- SDG. 3 (GOOD HEALTH AND WELL BEING)- Access to adequate health care and mental health support for LGBTQA+ individuals is *sine qua non* to address their concern and develop a healthy spirits for them.

- SDG. 4 (QUALITY EDUCATION) – According to Dr. B.R.Ambedkar , education is the sharpest weapon for upliftment of any marginalized society. Inclusive education and awareness regarding them is crucial in attaining equilibrium in society.
- SDG. 5 (GENDER EQUALITY) – We used to deliver stupendous sermons about gender equality , but our spectrum of equality remained under the threshold of binary world i.e. men and women. Our vision for equality have not been penetrated the bedrock of humanity. We used to ignore the fact that they too, are sentimental beings , endowed with blood, flesh and intellect , akin to us. Ergo, this is high time to recognize them as our cohabitant in this society.

Undoubtedly , this initiatives of uplifting LGBTQA+ communities in collaboration with SDG is a remarkable step towards an inclusive society.

11. PERSONAL SUGGESTIONS

"I inflexibly believe that the LGBTQA+ community deserves empathy, compassion and understanding, rather than judgment or sympathy. We must recognize that their choices and identities are valid, just like ours. By putting ourselves in their shoes, we can empathize with their struggles and create a supportive environment.

Respecting their individuality and promoting inclusivity is crucial. We should strive to eliminate mockery, ridicule, and discrimination and should strive for fostering a culture of acceptance and kindness.

Every person, regardless of their sexual orientation or gender identity, deserves dignity and respect. Let's work together to build a society where everyone feels valued and empowered."

12. WAY FORWARD

As we delve into the realm of the human experience, we find that the spirit beyond gender transcends boundaries, shattering the shackles of conformity. The LGBTQA+ community's resilient struggle for equality illuminates the path to inclusivity, reminding us that love knows no bounds. Like a rainbow after the storm, acceptance and understanding emerge, refracting the prism of diversity into a kaleidoscope of beauty. The enigma of identity unfolds, revealing a tapestry woven with threads of courage, resilience, and hope. As we have started our journey toward a horizon of equality, we recognize that rights are not privileges, but fundamental human entitlements. Every voice, every story, and every struggle contributes to the symphony of freedom. May our collective efforts orchestrate a world where love is unapologetic, identity is unshackled, and the human spirit soars beyond the confines of gender. Embracing diversity, we rise together, our differences weaving a rich narrative of unity and strength. In this radiant landscape of acceptance, we celebrate the beauty of being, unbound by labels, and unshackled by fear. The spirit beyond gender shines brighter, guiding us toward a brighter tomorrow.