

**Role of NGOs in Creating Space for Gender and Sexual Minorities in India & Pakistan:
A Legal Perspective**

Dissertation submitted to Jawaharlal Nehru University

in partial fulfilment of the requirements

for award of the degree of

MASTER OF PHILOSOPHY

BHARTI MAHLYAN



Centre for South Asian Studies

School of International Studies

JAWAHARLAL NEHRU UNIVERSITY

New Delhi 110067

December 2022



Centre for South Asian Studies
School Of International Studies
JAWAHARLAL NEHRU UNIVERSITY
New Delhi-110 067

29 December 2022

DECLARATION

I declare that the dissertation entitled “**Role of NGOs in Creating Space for Gender and Sexual Minorities in India and Pakistan**” submitted by me in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this University or any other university.

Bharti

Bharti Mahlyan

CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

Sahadevan

Prof. P. Sahadevan
(Chairperson, CSAS)

Mahendra P. Lama

Prof. Mahendra P. Lama
(Supervisor)

सहसंचालक / Chairperson
दक्षिण एशियाई अध्ययन केंद्र
Centre for South Asian Studies
अंतर्राष्ट्रीय अध्ययन संस्थान
School of International Studies
जवाहरलाल नेहरू विश्वविद्यालय
Jawaharlal Nehru University
नई दिल्ली / New Delhi-110067

दक्षिण एशियाई अध्ययन केंद्र
Centre for South Asian Studies
अंतर्राष्ट्रीय अध्ययन संस्थान
School of International Studies
जवाहरलाल नेहरू विश्वविद्यालय
Jawaharlal Nehru University
नई दिल्ली / New Delhi-110067

Room No. 219, SIS-I, JNU, New Delhi, India | Tel. no. +91 011 2670 4350 | Email: chair.csas@mail.jnu.ac.in

Contents

<i>Acknowledgement</i>	v
<i>List of Abbreviations</i>	vi
<i>List of Tables</i>	vii
<i>List of Figures</i>	viii
Chapter One: Introduction	1-26
What does the Acronym LGBT stand for?.....	02
The idea of Self and Quest for Identification.....	03
Cultural Understanding of Violence.....	04
Rise of Queer Discourse.....	08
Rise of Transgender Theory.....	12
Victorian History of Sexual Repression: Foucault.....	14
Gender Performativity: Judith Butler.....	20
Understanding the Case Studies.....	23
Chapter Two: Understanding the Problems of the LGBT Community in India and Pakistan: A Multidisciplinary Study	27-49
Implications of Colonialism on Social Lives of the LGBT Community.....	28
Homosexuality and Religion: An Enquiry into Christianity, Hinduism & Islam.....	35
Capitalism and the LGBT community in the Indian Subcontinent.....	43

State, Society and the LGBT community.....47

Chapter Three: The Role of NGOs in Pushing Forward the Issue: A Case Study of Naz Foundation in India **50-70**

Why they fear what they fear?.....51

NGOs working with the LGBT community in India: History.....52

Legal Battle and Naz Foundation: A Case study of Sexual Minorities.....56

De-criminalisation and Re-criminalisation of Homosexuality: Post-2009 Developments.....57

Struggle of Gender Minorities: A Case of Tamil Nadu.....59

Passage of Private Member Bill in Rajya Sabha.....64

A Diluted Draft.....64

Impact of Decriminalization on the Masses.....69

Chapter Four: Tracing the Legal Trajectory of Transgender Person (Protection of Rights Act), 2018 in Pakistan **71- 88**

General Zia and Hudood Ordinance.....71

Recent Sociological Developments in Pakistan: Sexual Minorities.....74

Gender Minorities: Legal Battle.....80

Spill-over effect on Pakistan.....83

Chapter Five: Conclusion **89-102**

Acknowledgements

I would like to express my sincere gratitude to my supervisor **Prof. Mahendra P. Lama** for his continuous support and immense knowledge. I am thankful for his willingness to help me, his generosity with ideas and his valuable comments on my drafts.

Beside my supervisor, I would like to thank all the professors of the South Asian Studies: Prof. P. Sahadevan (Chairperson), Prof. Amita Batra Prof. Rajesh Kharat, Prof. Sanjay Bhardwaj and Dr. Saurabh for their valuable insights on my term papers and assignments, and helping me throughout this year-long journey of MPhil coursework.

My sincere thanks goes to my parents and my brother for supporting and encouraging me throughout this journey.

Last but not the least, a special thanks to my batchmates: Pinki, Pallavi and Kunga for their constant support. I am grateful to Shantanu Dahiya and Kanika Dua for their encouragement and support.

List of Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
BJP	Bhartiya Janata Party
CII	Clerics of Council of Islamic Ideology
CSDS	Centre for the Study of Developing Societies
CTA	Criminal Tribal Act
FTM	Female-to-male
HIV	Human Immunodeficiency Virus
IPC	Indian Penal Court
JUIF	Jamait e Ulema e Islam Fazal
LGBT	Lesbian, Gay, Bisexual, Transgender
MOSJE	Ministry of Social Justice and Empowerment
MTF	Male-to-female
NACO	National AIDS Control Organisation
NADRA	National Database and Registration Authority
NALSA	National Legal Service Authority
NGO	Non-Governmental Organisations
NIC	National Identity Cards
PIL	Public Interest Litigation
PPC	Pakistan Penal Code
SC	Supreme Court
SHG	Self-help Group

SRS	Sex Re-Assignment Surgery
SSP	Senior Superintendent of Police
UCSC	University of California, Santa Cruz
WVS	World Value Survey (WVS)

List of Tables

Table 1:	Comparative analysis of essentialists and constructivists stand with regard to Britain & India
Table 3:	Census of India 2011

List of Figures

- Figure 3 Study of Human Rights of Transgenders of India
- Figure 3.1 Sample Data of Delhi and Uttar Pradesh on Transgenders

Chapter-1

Introduction

Quoting Rousseau,

“Man is born free and everywhere is in chains.”

The statement invokes many questions: if a man is born free, what about other genders let's say a woman or a transgender. What about the sexual minorities like lesbian, Gay and Bisexuals? Why have they not been included or recognized in the idea of freedom? Can we say that every category is a passive recipient but the 'Y' chromosome? The dissertation does not revolve around a feminist or queer critique of Rousseau's ideas but to look at the historical oppression of the LGBT community in India and Pakistan. The oppression of the LGBT community cannot be understood by using a single lens of social, political, and economic nature; the problem is embedded deeply in academia as well where an alternate lifestyle was being treated as a disease. We will explore this issue in detail but before that, let us look at the difference between sexual and gender minorities that exist in India and Pakistan. There is a difference between people who associate with the 'LGB' (lesbian, gay, and bisexual: one's sexual orientation) category and those who associate with the 'T' (transgender: one's psychological identification as male or female) group. But the 'T' group is often combined with other non-heterosexual individuals and sometimes ignored in studies (Law 2011: 713). Reddy (2005), 'With Respect to Sex: Negotiating Hijra Identity in South India', argued that *hijra* is a deeply complicated and contested term (Reddy 2005: 2). Hence, the study aims to undo these mistakes in academic understanding of various terms and to engage with the issues at various levels and would also factor in four variables namely governmental, non-governmental, judicial, and societal. The study will examine the relationship between these four variables and how their interaction impacts and shape the lives of the LGBT community in India and Pakistan.

The objective of the research is to locate the genesis of their marginalization in both the countries and how non-governmental organizations like Naz Foundation departed from their role as health amenities providing agencies to institutions that helped the community is

waging a legal battle against the state for the appropriation of their rights as citizens and more importantly as humans with basic needs which must be fulfilled by the state.

The study is divided into five chapters. The first chapter will set the base of the study by employing theoretical tools from gender and cultural studies. This section will incorporate the classical work of Simone de Beauvoir, Michel Foucault, and Judith Butler.

The second chapter will be devoted to understanding and locating the causes and reasons for their marginalization in both the countries. The section will employ variables like religion, colonialism, capitalism, and medical advancements and assess how these variables build a narrative about the community in the eyes of the state and society.

The third and the fourth chapters are devoted to understand the interaction between the state, society, civil society and NGOs. These two chapters are devoted to discuss the nature and the contents of various legal bills and acts followed by the final chapter of conclusion. The scope of the study is confined to developments around the issue within India and Pakistan. The study is based on secondary sources like books, articles from journals and websites, magazines, online sources, and documentaries and videos from various online platforms. It is a descriptive study based on a qualitative analysis of the events and developments that have taken place in both countries around the issue.

What does the Acronym LGBT stand for?

The acronym LGBT represent the needs of two distinct groups of people who belong to sexual and gender identities. Before engaging with sexual minorities, one must understand the difference between sexual orientation, sexual identity and gender identity. Sexual orientation of a person refers to their capacity to feel emotional and sexual attraction towards other people. This attraction can be towards people belong to same-sex (homosexual) or to opposite sex (heterosexual). Sexual identity of a person refers to individual conception of oneself. For example, a person may choose to identify as a heterosexual under various pressure however their sexual orientation could be homosexual in nature. Their orientation can be different from the projected social identity. Gender Identity refers to one's deeply felt and individual experience of relating to gender. For instance: there are people who are born with male genitalia but choose to associate with a women's identity or vice versa. Some on

the other hand, shun the gender binary completely and believe in a non-binary where they do not choose not to associate with any gender (Moradi, 2013).

Sexual identities namely LGB or Lesbian (women to women), Gay (men to men) and bisexual (not exclusive to people of a particular gender), feel attracted (sexually) to people belong to same sex. Their sexual orientation is homosexual however, due to social stigma, discrimination and boycott, they choose not to associate with their orientation openly. Hence, a need was felt by the community to wage a legal battle for recognition of their sexual identity. Bisexual identity presents a peculiar case where people feel attracted both towards same -sex as well as people of opposite sex. They do not have equal sexual attraction for both the sexes rather they have distinct not exclusive sexual preference towards one of the sexes (Rosario, 2006: 49). Transgender minorities are different from sexual minorities and their issues are related to recognition of gender identity. Transgender people associate with a gender other than what is assigned to them at their birth. For instance: a person is born with male genitals but he feels misfit in the normative gender roles of the society or vice versa. People who belong to this community often undergo sex re-assignment surgeries as well (Moradi, 2013) (Ghosh S. , 24).

After looking at these distinctions one must be curious to know about the reasons for deviations from heterosexual norms, whether LGBT people are born this way or there are certain conditions which result in altered sexuality. Modern medicine ruled out the argument which states that people of alternate sexuality have mental disorder of some kind. In 1973, the American Psychiatric Association stated that homosexuality is not a mental disorder. A variety of theories has been proposed to understand the genesis of homosexuality in humans but there is no single theory which could provide a conclusive answer in this regard. A detailed theoretical explanation of modern medical understanding of the issue is explored in the next chapter.

The idea of Self and Quest for Identification

Identity theorists never consider self to be an autonomous unit. Rather, it is a collection of identities, and at a personal level, it acts as an entity that defines who a person is (Hogg 1995:256). Self is a product of social interaction with others, and via these communications, people get to know who they are (Hogg 1995:256). Every identity or collection of identities associated with self has its own set of meanings (Burke 2004: 574). It means that the

identities of an individual carry different weightage in different contexts. For instance, the identity of a transgender individual is celebrated at a wedding and people may seek their blessings but the same identity would create a problem if a person of the same identity dares to go to school or college. They need state's help to be considered as a part of a society.

A sociological approach to self and identity began with the assumption that there exists a reciprocal relationship between the self and society (Burke 2003:575). Individual actions lead to the creation of homogenous groups and institutions, thereby influencing the functioning of society one belongs to. The word society refers both to the homogenous group and to the people who live nearby. Similarly, society also influences an individual via shared language and meaning. This process constitutes the core of self (Burke 2003: 578). This line of argument is usually followed by identity theorists like Burke, McCall and Simmons, Stryker, and R.H. Turner to name a few.

Identity theories maintain that society plays an important role in the creation of the self and identities associated with it. With this argument it would be safe to say that the birth of a child in a family is not a neutral construct because babies inherit various identities from the moment, they take their first breath. These inherited identities are loaded with judgments and prejudices. Families and society play a significant role in ascribing identities to these tiny lives, and in the process, they sometimes end-up imposing identities of certain kinds with which the individual may not want to associate, i.e., it may not be part of the self they want to be. There could be many such identities, but the question which we are exploring here is what will happen if a person chooses to defy societal rules and adopt an identity that finds no place in the rule book of society? More importantly, one should ask why certain identities, such as LGBT identities, find it difficult to fit into the rule book of society? Answers to these questions cannot be formulated without understanding the cultural value systems of India and Pakistan which are located in the global south (Burke 2003: 578).

Cultural Understanding of Violence

Can culture be a source a violence? Which culture justifies violence towards its fellow humans? What convinces them to proceed on this brutal pathway? These are some of the questions which we will explore in this section but before that we will look at the work of Johan Galtung and his ideas on cultural violence that help is understand the legalization and normalisation of violence within a society. Galtung (1990), 'Cultural Violence', define

culture as “symbolic sphere of our existence” constitute of language, religion, ideology, art, empirical and formal science (logic, mathematics) could be used to legitimize violence in a society. For instance, a potential killer may feel encouraged by statements like killing is emancipatory. If with this statement someone feels encouraged about killing other, can we say that English language is violent in nature? Killings in the name of religion like lynching humans for cow protection or curbing other’s freedom of speech to protect oneself from getting offended as in the case of recent Nice attack in France made us believe that religion which teaches people to love everyone could be a source of violence too. Such instances are reported often in fundamentally rigid and orthodox societies or by people who are orthodox and choose to protect their right to feel offended sacrosanct over other’s rights to express themselves. After looking at these instances can we say that English language or religion are direct source of violence?

One must refrain from making totalizing judgments as this could result in cultural stereotyping. Instead of using totalizing statements like culture ‘x’ is violent rather one must point out specific aspects of a culture that are violent. Presence of fundamentalists could be observed in every culture but one must not do injustice to other aspects of a culture by making such totalizing statements. Cultural violence often makes us believe that direct and structural violence is right or at least not wrong (Galtung 1990: 291). For instance: in Pakistan, killing someone who belong to the LGBT community is totally justified because the perpetrator has fulfilled a moral responsibility by eliminating the disobedient from the society¹ (Banerjee, 2019) (Bureau of Democracy, 2019) (Research Directorate, 29 November 2007). Interestingly, killing a person who belong to the LGBT community in Asia especially west Asia (Muslim majority countries) can be justified using Quran and Hadis (as it

¹ Sexual minorities do not constitute as recognized minorities of the country so any case of violence and injustice against them either go unreported or the law enforcing agencies hardly take any action against them. On 13th April, 2019, an unidentified person stabbed a 30-year-old transgender person in Karachi. Prior to her death, on 26th March, 2019, an elderly trans woman was tortured who died subsequently (Bureau of Democracy, 2019). As far as homosexual marriages are concerned then these are illegal in Pakistan however, a marriage had taken place between two men in the Khyber region in October 2005 and a tribal council reportedly told them to leave the area or face death since they broke the “religious and tribal values”. In 2007, a couple was charged with perjury because the husband went for sex-reassignment surgery and the bride’s side accused him of being a woman. The aggrieved couple went to court for protection against bride’s family who were harassing them instead the Supreme Court of Pakistan imposed perjury charges on them however, they were released on bail after a month (Research Directorate, 29 November 2007).

condemns homosexuality and the society follows strict gender binary norms) but the same wouldn't be justified in a western country like the United States of America. Western states have excelled in the field of protection of human rights and their freedoms but west Asia is a relatively conservative society where basic freedoms like freedom to speech and expression is controlled both by the state. What could explain this difference in approach in the USA and west Asia? Does it have something to do with developed and developing nations commitment towards human rights? To understand this, we must enquiry into the value systems of the developed and the developing nations across the world.

Salem (1993), 'In Theory: A Critique of Western Conflict Resolution from a Non-Western Perspective' provides a window into understanding approaches to conflict resolution in the western countries, which are different from those in non-western ones. He argues that not all religion celebrates the idea of peace, which he believes sets the foundation of a great empire. He drew a comparison between Islam and Christianity and held that the latter "adopted outward doctrine of peace to partially insinuate itself throughout the Roman Empire". Islam, on the other hand, unapologetically declared a sacred political program and started to proselytize people with its army. The prophet himself was a great warrior. This provides an insight into the belief systems of two parts of the globe, where one-part values peace more than the other in situations that require conflict resolution.

Historically, the western world was engaged in some of the bloodiest wars of all time, such as the two World Wars. Interestingly, these countries have started to sell the idea of peace and its importance to the world. This raises the following question: within a span of around 70 years, how did the western world abandon its expansionist ideas and make peace with the idea of peace? He argues that philosophers like Jeremy Bentham and John Stuart Mill popularised these ideas in the global north. Western conflict resolution theorists work on the idea that pain and suffering, be it mental or physical, are inconvenient that need to be eradicated. Their approach puts great emphasis on the suffering generated by conflict than on justice and the morality of the cause. On the contrary, the concept of suffering was an integral part of life in the pre-modern societies, and still is for countries in a transitory phase. Pain and suffering are an important means of moral and spiritual purification of the human and a "necessary divinely-ordained component of life" (Salem: 1993).

Salem elaborated the argument that commitment to peace and eradication of suffering is a characteristic of the 20th-century post-war development in western culture. Socio-economic

developments in the healthcare system, higher standards of living, electronic appliances, the culture of consumerism and immediate need satisfaction are some of the essential parts of the western world, giving impetus to a comfortable life, and causing suffering and pain to stand out. Whereas, in relatively developing and less advanced countries, the outcome of a dispute and the impetus for justice are the driving forces, where the idea of suffering blends in. At this juncture it is relevant to ask: are the conflict resolution techniques of the two worlds involved in a zero-sum game? If 'A' is right for one, can 'B' ever be right for it, or vice versa? He argues that the work of postmodern thinkers and their commitment to relativism is a great boon for a modern approach to conflict resolution. The interplay of right and wrong is not necessarily a zero-sum game. Traditional developing or less developed societies have rigid codification of right and wrong and follow rigid accounts of truth, which may not be the case in western countries.

The relativity argument must be subjected to critical analysis because in a way the argument leaves space for and provides legitimacy to violence against the LGBT community in the developing world or the global south. The argument gives primacy to evil cultural practices over their eradication. Salem's arguments make it clear that right and wrong do not constitute a zero-sum game in the context of conflict resolution. If we apply this logic to a micro-level setting like the LGBT community, then can we have a conflict at hand which requires the state to acknowledge their identity and provide them all the rights which any other citizen would get. The community has been yearning for recognition since the independence of India and Pakistan, but neither state did anything substantial for them², even though the community is subjected to all sorts of suffering, mental as well as physical. The approach adopted by these developing countries must look at the matter in zero-sum game terms, because violence of any kind must not be accepted at any cost.

There should be certain universal standards of morality that must be accepted and followed by all states keeping their cultural practices aside since it is possible for a culture to help

² The issue of the LGBT community started to get traction in the third world countries post Ban Ki Moon's speech at International Human Rights Day on 11th December 2021. Prior to that the community was living at the margins of the society and even today, the sexual minorities wait for recognition in Pakistan and for a proper legislation in India. NGOs and civil societies were making efforts as we have observed in the case of Naz Foundation in India while NGOs like 'O' were working in Pakistan to create a better space for the LGBT community. NGOs working with the sexual minorities are working under disguise as they work under constant fear of being killed by religious followers in Pakistan (Research Directorate, 29 November 2007).

perpetuate violence as in the case of sati in India, the foot-binding practice in China and halala in Islamic countries like Pakistan. All the countries in the world must accept that violence shall not be tolerated against any citizen of the country. This commitment will make this world a better place to live for its citizens. In the next section, we will look at the rise of queer theoretical discourse, under which we will study the work of Foucault, Sedgwick and Butler. We also try to explore questions around value systems within a cultural framework, which could potentially lead us to understand why societies practice certain kinds of rituals and what is the guiding light of their belief systems.

Rise of Queer Discourse

People who associate with alternate sexuality (other than heterosexuality) are often classified under queer category. The term queer could be understood in various ways as it is an identity, a theory about alternate or nonheteronormative sexuality and a theoretical guide to understand various other identities like sexual and gender. The term has more to offer as it “open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning when the constituent elements of anyone’s gender, of anyone’s sexuality aren’t made (or can’t be made) to signify monolithically” (Sedgwick, 1998: 208) (Nagoshi & Brzuzy 2010: 434). The term not just a theoretical tool to understand alternate sexualities but a way to get recognition for these minorities. It represents gap and dissonance between majority and minority community in a society.

Queer theory came into being as a joke because these minorities were never taken seriously in any of societal institution like judiciary, religion and culture etc. The term was used by Teresa de Lauretis for the first time as the title of a conference in February of 1990 at the University of California, Santa Cruz (UCSC). She used the word “queer” because this word was tossed about in a gay-affirmative sense by activists, street kids, and members of the art world in New York during the late 1980s. She was courageous enough to pair word “queer” with theory and the sympathetic faculty of UCSC welcomed her decision (Halperin 2008: 339). The rise of queer discourse cannot be said to have begun on an exact date, but it can be said that it is surely a product of developments that took place in the late 20th century when AIDS and queer activism when people of sexual and gender minorities started to assert their right to express, pushed intellectuals to see themselves as the life-giving force for queer

discourse (Berlant & Warner 1995: 344) (Jagose 1996: 20). The developments of the 1990s³, when queer issues were taken seriously, were also a product of cultural and theoretical pressure and structured debates regarding gay and lesbian identity discourse both within and outside academia. Its emergence also provides legitimacy to experiments going on in various fields like psychiatry and psychology (Berlant & Warner 1995: 346).

Queer theoretical discourse is embedded in critical theory⁴ which uses post-structuralist techniques of unmasking the multiple layers power structures and make progress towards a just and equitable society. The theory is devoted to deconstruct the historical oppression of gay and lesbian identities and the operation of power dynamics by introducing changes at social, political and academic levels (Jagose 1996:50). Initially, its scope was limited to identity politics and how the subjugation of these identities in state sponsored. Interestingly, gay and lesbian identities do not constitute the only alternative to heterosexuality: there are other identities like bisexuality, different from homosexuality and heterosexuality. Bisexual people for instance cannot be figure under any fixed category of homosexuality or heterosexuality. Their sexual identity is beyond these two classified categories. Their sexual orientation is fluid and dynamic and hence, it is difficult to label homosexuality as alternative to heterosexual discourse. Moreover, there are transgender persons who experience discrepancy between their biological sex and their identified gender role in society. In short, one could safely conclude that homosexuality is not the only available choice to counter heterosexuality. This way, the heterosexual paradigm gradually expanded from countering heteronormativity to encompass various other identities which challenge this dominant sexual discourse (Marinucci 2010: 6).

³ The year of 1990 had been important particularly for the LGBT community for various reasons and one of the most important reasons were that the World Health Organization declared that homosexuality is not an illness. Countries like UK and Australia decriminalized homosexuality. LGBT organizations started to work freely in both in the developed countries like the USA (BiNet USA and Queer Nation), UK (OutRage) as well as developing countries like India (The Humsafar Trust) (NCS, 2021).

⁴ Critical theory traces its roots from the ideas of Karl Marx and the Frankfurt school that are committed to the cause of elimination of oppression and promotion of justice. In the contemporary times, the theory also deals with oppression in the social relations such as race and gender. This way critical theory expanded its horizons and acquired a social character and gave rise to critical race theory, feminist theory and critical pedagogy. Critical social theory challenges the structural domination and inequality of certain institutions and pave way for a just an equal world. critical scholarship deals with oppression of every kind be it feminist issues, differently-abled people, people of colour, the poor and LGBTQ+ individuals to name a few (Sawyer & Shenvi: 2019).

The term queer, which was once used as a slang for homosexuals or as a homophobic abuse, has earned respect in academia. It is used as an umbrella term that encapsulates all culturally marginal self-identified identities which are also known as LGBTQ+ community. The term also describes a nascent theoretical model of understanding these identities which has been developed using traditional and gay studies (Jagose 1996: 1). In the 1990s, the debate around homosexuality revolved between the essentialist and constructionist positions. Essentialists believed that identity is natural, fixed, objective and innate whereas the latter believed in its fluidity. Constructionists argue that homosexuality has different cultural meanings and its history is different across time and space, whereas essentialists believe in its universality and its marginalized, continuous and coherent history (Jagose 1996: 9).

As far as the argument on coherent history of the subject, homosexuality, is concerned then both the theories have different notions to present. On the one hand, we have essentialists who believe that awareness on the subject of homosexuality was there on an epistemological level although it may not cover the wider masses. But presence of some-kind of homosexual practices could be observed rather than creating a fixed category of its own. For example: in ancient Greece people were aware of their sexual preferences but the lack of terminology should not be taken as lack of continuity in category. Essentialist approach has been used by historians and researchers in their work during gay liberation movement of 1960s and 1970s. Essentialist thinker like Louis Crompton and John Boswell has contributed significantly to the approach (Brent 2021).

Another important argument in the essentialist approach is that certain consistent features of homosexuality could be observed through history and culture which makes it a natural phenomenon than a cultural and historical one. Social constructivists on the other hand believes in the absence of homosexuals prior to a certain time. Scholars like Edward Stein puts it “it (sexual orientation) is cultural dependent, relational and, perhaps not objective”. Their presence in a geography provides us a hint of it being cultural and relational in nature. Scholars like Richard Mohr has worked extensively on the approach (Brent 2021).

Essentialists were often criticized for being conservative and constructionists were known for their progressive and radical strategies which is also been proved by medical science that homosexuality is not a pathological discourse rather it is natural and biological (Jagose 1996: 37). Essentialists argue that people are born homosexuals and this position is used by people in anti-homophobic countries like India to secure civil rights for the community.

Constructionists’ belief that homosexuality is acquired by people through social conditions and, is often used by homophobes to suggest that the condition is treatable through medical intervention (Jagose 1996: 9). These two positions form the basis of the debate regarding whether homosexuals are born or made. The ideas of sexuality in both settings were completely opposed: whereas one can find the fluidity of sexuality where sexual and gender identities change easily in the Indian subcontinent, the case is not the same in the context of the British Empire. We will explore this question in-depth in the next chapter.

Table 1: Comparative analysis of essentialists and constructivists stand with regard to Britain and India

	Britain (essentialists)	India (constructivists)
Identity	<ul style="list-style-type: none"> - Natural, fixed and objective identities - Provision of punishment for alternate sexuality was also there - Took preventive measures to save their far serving soldiers from ‘moral corruption’ 	<ul style="list-style-type: none"> - Fluid Identities - Enough evidence is available to prove that criminalization of homosexuality was a euro-centric construct (please refer chapter II) - Criminalisation of homosexuality and third gender is associated deeply with colonialism in India
History	<ul style="list-style-type: none"> - It wouldn’t be wrong to conclude that the criminalisation of third gender and homosexuality in British Empire has a continuous and 	<ul style="list-style-type: none"> - India on the other hand was being subjected to different cultural meanings and the history of homosexuality and third gender is

	coherent history	different across time and space
--	------------------	---------------------------------

Rise of Transgender Theory

We have discussed the rise of queer theory from its inception to its encapsulation of sexual and gender minorities. Simultaneously, academicians are working on developing a transgender theory that deals primarily with the needs of gender minority people. People from gender minority desire to pursue their life as a member of opposite sex. In other words, people from gender minorities choose to associate with opposite sex or gender role than what they are assigned at birth by the doctors and society. People from gender minority usually undergo sex reassignment surgeries, hormone therapy, and cosmetic therapy to fit in the physical body of the gender they want to associate with⁵. Gender minorities are different from sexual minorities although they are clubbed together. The theory is at a nascent stage and deals with the nature of gender and gender identity to understand the unique lived experience of the community (Nagoshi & Brzuzy 2010: 431). It is difficult to compartmentalize the complex nature of gender and gender identities not just for the minority community but also for people who associate with majority heteronormative community. It would be easy to understand with an example, we often come across men who wear nose ring. Nose ring is a piece of jewellery which is made exclusively for women if we look at it in the conventional sense. When a man wears it, who is neither a transgender nor a gay, he certainly challenges the established role of gender identities and this way one could say that the nature of gender has also changed. Similarly, the case of saree worn by a man is no different. Saree is a piece of clothing which is being associated with women but this particular piece of garment is also being used to defy societal gender norms by male members of the society. On International Men’s Day 2022, Influencers like Siddharth Batra donned saree proudly to defy gender stereotypes (Singh, 2022). The transgender theory in this regard deals with the complex and often confusing nature of gender and gender identities and their life experiences which are different from the masses.

⁵ Sex-Reassignment Surgeries (SRS) are often performed to alleviate gender dystopia. It is also known as Gender Confirmation Surgery (GCS). The surgery involves a surgical intervention that alters a person’s physical appearance and sexual characteristics to the one they want to associate with. The famous Indian celebrities who opened about their transition are Saisha Shinde, Gauri Arora, and Anjali Ameer (India, 2021).

Transgenderism refers to gender identity and gender role and crossing boundaries from one gender identity or role to another (Nagoshi & Brzuzy 2010: 432). The emergence of transgender theory challenges both the feminist and queer theories. The feminist approach to gender challenges the essentialist understanding of gender identity along with cultural and historical subjugation of women in a society. Essentialist understanding would prescribe a man to behave in a masculine way like provide for the family and feel attracted only towards a woman. Similarly, women must behave in feminine ways like taking care of children and must feel attracted to men. This binary of sexes where women is the 'egg producer' and men is 'sperm producer' become natural and gets reinforced in the societal institutions via multiple channels like law, religion, cultural practices etc (Nagoshi & Brzuzy 2010: 433). Queer theory like the feminist theory challenges the essentialist understanding of gender and propose that these gender roles, gender identities and sexual orientations are product of social construction hence, they are open to questions. Judith Butler, a philosopher and gender theorist in her work (performativity) reinforces the argument regarding social construction of gender identity. Transgenderism presents a peculiar challenge both for feminist and queer theories (Nagoshi & Brzuzy 2010: 435).

Heyes (2003), 'Feminist solidarity after queer theory: The case of transgender' argues that essentialist views make one's body a proxy for identity. Female-to-male (FTM) transgenders may be tagged as betrayers of their oppressed identities as they were never born naturally with a male body. Male-to-female (MTF) transgenders who have relinquished their privileged status in a society and adopt a less privileged identity of a woman. Also, they may not be considered real women because they lack the physical and emotional aspects of a women's perceived identity in a society. The social and psychological understanding, gender roles and one's identification with on identity, of reassignment of biology or body would problematize gender identity discourse. He further argues that many MTF transgenders have already started to develop independent feminist consciousness (Nagoshi & Brzuzy 2010: 435). They assert their own forms of politics by claiming their right to choose to refuse certain medical interventions (sex-reassignment surgery) and by asserting their right to be subject to different medical requirements like hormonal treatment and cosmetic surgeries to name a few (Nagoshi & Brzuzy 2010: 435). Roen (2001), "'Either/or'" and "'both/neither'": Discourse tensions in transgender politics' presents a pioneering idea of transgenderism which critiques queer theory. The queer theory challenges the social construction of gender identity. This very belief is also challenged by transgender theorists. Hausman (2001), 'Recent Transgender

Theory', argues that queer transgender theory promotes gender role stereotyping by accepting gender categories though they try to queer them. Transgender community often engage in sex reassignment surgeries and hormonal treatments. If we observe closely, a transgender person is trying to fit in the body of opposite sex which is also dictated by the society (Hausman 2001:486).

If we observe closely then the vantage point of all the presented theories is different. Theorization of each theory enhances the scope and understanding of gender and sexual politics in a society. But it is important to note that each theory came into being to fill the gap and loop holes of a particular theory. Queer theory for instance, may provide advance understanding of sexual identity and its oppression but transgender community showed dissatisfaction regarding social constructivist portrayal of gender identity by queer theory (Nagoshi & Bruzuzi 2010: 435). Also, queer theory does accept the identities of feminine male and masculine female along with plurality of gender identities but it is still based on male versus female gender categories as suggested in the acronym itself. In the next section we will explore the original texts of Foucault, Sedgwick and Butler to understand more about gender identity and its manifestation in society.

Victorian History of Sexual Repression: Foucault

We have explored queer scholarship and discussed the formation of self and its manifestation within a social and cultural framework. We have also dealt with the question of why societies behave the way they behave and adopted a general framework to understand the roots of morality in a developing country and its society. Then we explored the rise of theoretical discourse on queer theory. One thing which still needs exploration is the idea of power and its manifestation in private lives, especially in individual sexuality. The idea of power and its manifestation would provide answers to questions like what gives one human power over another who chooses to associate with a different sexual identity? Does patriarchy or religious practices or social behaviour or social practices or cultural ecology have something to do with it, or is there something beyond patriarchy that dominates the power discourse over the sexuality of people in society? Who constructs a value judgment discourse around sexuality? Is there societal sexuality that must be practiced by every member of society? We will try to look for answers to these question in this section where we will be discussing the ideas of Michel Foucault.

Foucault⁶ (1970), 'History of Sexuality: An Introduction' (Volume-1) presents a strong case of the relationship between power, knowledge, and sexuality. Certain themes could be observed in his book (History of Sexuality) and we will discuss them in detail. Firstly, he tries to understand the nexus of power and knowledge, and how they create a normative discourse around personal issues like sexuality. Secondly, his work is not confined to discussing how sodomy turned into sin but also deals with an important issue like how the expression of love became an identity (Sullivan 2003). Thirdly, it deals with the omnipresence of government and its apparatus and how medical advancements were used to categorize non-procreative sex as sinful acts against nature.

History witnessed that same-sex people have existed across cultures but whether it is punishable or not is a subject worth exploration. Gwen Broude and Sarah Greene (1976) undertook a cross cultural study to understand and compare attitudes and frequency towards homosexuality. They worked on a sample size of 186 societies where they found that around 17 societies strongly disapprove homosexuality and also assign punishment to it (Broude & Greene: 1976: 412-413). Homosexuality was accepted in the ancient Greece but the terminology was absent which should not be taken as evidence against the presence of the act (Pickett, 2020). Gradually, under the influence of Abrahamic religion, the law and church established punitivity with the act, what we now call as 'sodomy' laws. Sodomy laws are believed to be against the divine law or crime against nature (Sullivan 2003).

This way religion played an important role in supporting states in keeping surveillance and disciplining the sexuality of the masses. Foucault in this regard argues that the "history of sexuality is nothing but repression" where religion provide validation for these barbaric practices and states are also implementing them. Overt manifestation of repression can be seen in the laws even in the 21st century. Countries especially former British colonies till date are living with British religious morality and also have sodomy laws imposed not just on people of same-sex but also on heterosexual people who choose to engage in carnal intercourse. These laws were not new in Europe or in the former British colonies as there are

⁶ Michel Foucault (1978) is associated with postmodernism and his work was influenced by Hegel and Nietzsche (Dale, Foucault's Sexuality 2011). He presented a strong case against the established Victorian sexual repression in the 20th century. He was gay and died of AIDS in 1984 (Spargo 2000:11). His aim was to locate the forms of power and the channels it takes to reach individual modes of behaviour, and how it penetrates into the desire system of the human body. In other words, he remained focused on locating the 'polymorphous techniques of power' (Spargo 2000:11).

records from several centuries which proves the case although their implementation may have been slow. The Dutch, for instance, launched an anti-sodomy campaign in 1730s and tortured people to obtain confessions. This way hundreds of men and boys were executed and also denied burial later on (Pickett, 2020).

Isn't sex all about pleasure? If so, then why does the states have been using it as a tool to govern and discipline the masses from the last three hundred years? One major transformation could be observed in these three hundred years is that the economic structure of society has transformed from self-sufficiency model to contract labour. Is there any relationship between the changing structures of economy and gender roles? Does the advent of capitalism and repression of same-sex love in European societies share any common link? It is obvious that capitalist structure needs people not only to meet the labour demands but also to create large markets for the consumption of products and services. According to this argument, the LGBT community constitute a minority and also cannot participate in the creation of new life. Hence, they may contribute both their labour and consumption but from a future stand point their contribution is nil as they aren't going to produce children (Camila Brown, 2019). This is where Foucault argues that sex have been used to maintain the productivity of the nation. It has been done systematically by regulating the reproduction cycle (producing children become the end product in a marriage) and bodily economy of the masses (commodification of human labour). He further explores the subject and maintains that sexuality during these years turned into a 'repressive hypothesis' which could be summed up as: the history of sexuality is nothing but repression. In other words, discourse around sexuality got repressed during the late 17th, 18th, 19th and early 20th century which was a by-product of the rise of capitalist structures and bourgeois class (Foucault, 1970).

To liberate oneself from this cycle of repression, one must talk about the subject freely in public and shun the sexual morality of the past where people were order to follow a strict or disciplined sexual behaviour which favours heteronormativity. He discusses about the rules of Victorian society⁷ which are followed to date in various parts of the world under which

⁷ In the British history, Victorian era (1820- 1914) refers roughly, not exactly, to the period of queen Victoria's reign (1837-1901). During this time, Britain used to figure among the powerful nations with rich cultural heritage. But the period was marked by sexual double standards where men always wanted and needed sex whereas women were free of sexual desires and often end up submitting themselves to please their husbands. But the wide prevalence of prostitute (female) and women with sexual desires proves otherwise. Also, people used to explore same-sex desires (Steinbach, 2019).

sex, other than for procreation, is considered taboo (Foucault 1978). Childless married women for instance, have always been ridiculed, harassed and are often labelled as infertile or incomplete women. It was believed that the only purpose of a woman's life is to procreate. Alternate sexualities have presented a novel challenge in this regard (also gets validation from the religious texts) and as no one could not find a solution to that. Hence, people stopped engaging in constructive debate around the issue.

During the 17th century, there was little to no need for secrecy around sexuality or sexual practices as people were relatively open in describing their body parts and their uses with either vulgar or academic terminology (DeMarce, 2015). According to the modern standards, the 17th century literature which was either satirical or polemic is considered obscene (DeMarce, 2015). But things started to change for the worse around the 18th century when priests started to enter the personal lives of people by making them confess their hidden desires, fantasies, and temptations. This was done as a part of religious ritual but eventually used to discipline sexuality of the masses (Foucault 1978:56) These confessions become the primary technique in the production of truth and its impacts could be seen in other areas like medicine, justice and relationships. People who didn't confess out of internal constraints were forced to confess using violent threats. This way these confessions are used to discipline the masses deviating from the prescribed path in this case heteronormativity (Foucault 1978: 59). This was the sexual behaviour of people not only became an important object to study demography and perform statistical analysis, but also became a weapon to control, censor, and discipline their sexuality (Rocha 2011). The modern literature, medicine, justice and religious bodies were convinced that homosexuality is against the law of nature. We will deal with this aspect in great details in the next chapter.

As sex became a "privileged theme of confession" and gradually, the object of inquiry shifted from heterosexuality between couples to homosexuality and child sexuality, and sexuality became a determining factor in assessing an individual's character. Interestingly, in the western cultures (Christian societies) give more importance to the morality of sex and the subject of morality turn into sexual morality (Farley, 2006 :22). In the late 19th century, the subject slipped under the carpet of moral conduct and was established as a *raison d'être* which made heterosexuality the sole purpose of one's existence (Rocha 2011). Foucault was critical of Western Christian culture for treating sex and related subjects as what he calls 'scientiasexualis', meaning that the confessions of common people at church entered the scientific realm and were codified to unravel the truth. These confessions were codified and

studied by medical science. This way not just the confession but the confessor also becomes a subject to study in the medical research (Foucault 1988: 18)

We have looked at the major arguments presented by Foucault in his *History of Sexuality*, but the power discourse of the time did not operate in this simple way. Dale (2011), 'Foucault's *Sexuality*', provides a perspective on Foucault's work and argues that when he discusses power, he does so in an 'analytical' concerning the domain of 'relations of power'. His approach was to explain the manifestation of power in a subject like sexuality and how it was disciplined systematically. He rejects the traditional conception of power where 'a' does something because of 'b's' powerful position. Similarly, his aim was not just to analyse the impact of law in discipline of a society. Instead, he suggests five features of 'analytical power'. It starts with having a "negative relation" which subsequently "negates" sex. For instance, the sexual practices other than heteronormativity is against the order of nature. Secondly, it focuses on "insistence of the rule" in terms of sexual disciplining of the masses via legal means. The whole instance of de-criminalisation and re-criminalisation and de-criminalisation of homosexuality in India portrays the rigidity of states in imposing absolutely unnecessary rules on its people.

Thirdly, the "cycle of prohibition" resulting in the renunciation of sex operates either via self-abnegation or by external suppression. States, societies and families often took upon themselves that to "undo" homosexuality and in the process an individual starts to question their existence. Fourthly, wide use of the "logic of censorship" is used to remove or systematically erase the existence of alternate sexualities. Finally, the "uniformity" of power relations in society against alternate sexualities. The intensity of problem may vary in the scale of its strength; however, power relations exist in every situation. An amalgamation of these features not only gives rise to prejudices against subaltern sexual identities where their existence is negated and also spread an orthodox narrative regarding their lives which alter the outlook of people towards them for worse (Dale: 2011). Although Foucault was one of the early writers on the subject, his work is never associated with the rise of queer discourse (Spargo 2000:10). The work of feminist scholars like Eve Kosofsky Sedgwick and Judith Butler is well linked to the rise of queer discourse in academia. We will look at their work and ideas to understand the lives of the LGBT community and queer politics.

Bridging Gaps between Theory and Practice: Sedgwick

Sedgwick (1990) is known for her seminal work 'Epistemology of the Closet' which was published in the 1990s by, University of California Press. It was the time when the AIDS epidemic was on its rise, calling for attention on both social and political fronts around what she calls 'Homosexual Panic'. She adopts a deconstructivism approach to deal with the issue. Deconstructive theorists like Jacques Derrida, also the pioneer of the approach, and Sedgwick deal with the relationship between the text and the meaning associated with it (Lawlor, 2019). Their arguments revolve around the perception of language and other complex concepts like truth and justice that cannot be determined. For instance, we often watch or read books but we always associate differently with it. We may not necessarily perceive it in the same way we used to perceive it 20 years ago.

Sedgwick argues that a social binary between two terms or variables can never create symmetry, even without binary it may not create symmetry as they are two different biological beings. In other words, she points to the fact that the world we live in can never be symmetrical. Male, female, and, the LGBT community, all of them not just have different identities but also have different needs in every sense of the word. They may converge at some point but positive discrimination is a must to cater to their specific needs and this is what she refers to will lead to asymmetry. As in the case of same-sex love, the relation between the variables (homosexuality and heterosexuality) will be asymmetrical because heteronormativity has acquired a dominant status which was supported by the traditional power discourse leading to the subordination of one over the other. Her reference to the two terms or variables can be linked to two different life choices - heterosexuality and homosexuality, where the latter is labelled as "other". Her work put great emphasis on 'the closet' which is used as a metaphor concerning the hidden/private or open/public lives of gay people. People from the LGBT community are forced to live in silence where they aren't allowed to express their true feelings like any other heterosexual person. They are wrongfully and forcefully being disciplined by their families and the society they live in to which Sedgwick refers to as 'closet' (Sedgwick, 1990).

She explained this dichotomy between the public and private life of gay people by giving an example of a gay school teacher named Acanfora. The idea of a gay school teacher may find acceptance in upper-class parlance, but back then the subject was considered taboo and the disclosure of one's sexual orientation could cost everything as happened in Acanfora's case. Technically, a school must look for a capable teacher for the students and must refrain from poking into the private lives of individuals. But unfortunately, these were not the norms or

values of the past. For gay people, she argues, this dichotomy is a double-edged sword because if they choose to stay in the closet by maintaining secrecy about their sexual orientation, there is always a danger of being found out. Conversely, if they dare to come out of the closet, they are forced to live a life of pain and oppression. Like Sedgwick, Foucault has also discussed the relationship between sexual orientation and its effect on personal lives which involved exploitation at the hands of state and society (Sedgwick, 1990).

Gender Performativity: Judith Butler

Butler (1990), 'Gender Trouble' made a feminist inquiry which seeks to unveil hidden power dynamics to understand the foundational categories of identity which later on encompassed queer theory. Her work reflects upon two matters: the epistemology of academic literature and the social normativity of gender. Butler further engages with the already established body of knowledge around issues like social gender normativity. Her work challenged the sources of knowledge that are controlled by people of a particular sex in any society (males) and how public and private dichotomy gave rise to the gender binary. For instance, the idea of an ideal woman in any society. An ideal woman in an Indian society must understand that her family is her prime responsibility and her aspirations, career, and wishes are secondary. Her work inquires on what basis these norms are being followed in any society.

Butler collected the thoughts of 20th-century feminists on sex and gender division to understand the differences in cultural expression of gender. She argues a case against biological determinism has nothing to do with the social construction of gender identity. Biological determinism supports the idea that men are naturally stronger (physically and mentally) and rational and thus inherently smarter than women (Singh, 2018). Both the sexes are born with certain characteristics (masculine and feminine) and this separation decide their position in society whether they will stay in the public or private sphere. As men are considered "inherently" smarter than women, they remain in the public sphere, and women's presence is always challenged in the public on these bases. Women remain confined to the private sphere on these unproven facts which are very much created by society on lives in.

She holds that while feminists may have shunned the idea of biological determinism, they unintentionally created a social account of femininity because they happened to define the term 'women' which implies that there is a correct gendered way of being a 'woman' (Marinucci 2010: 90). She furthers this argument by proposing that identities are never

descriptive but are rather exclusionary and normatively created. In other words, identities can never be perceived in a non-judgmental way and they tend to create a 'us' and 'them' distinction. This is the reason Butler criticizes feminists by holding that the attempt to define 'women' as a category is problematic in itself.

Her work provides a reinterpretation to Simon De Beauvoir's argument in 'Second Sex' that "one is not born a woman, but rather becomes one" (Nash 1990). De Beauvoir's argument deals with the human vs. female distinction, where men are born humans but women are born females. Beauvoir's ideas of this distinction are based on Hegel's account of master-slave dialect where men and women are compared respectively (Bergoffen, 2020). Men identify with the Hegelian master who is an absolute human type. Women, on the other hand, are being judges according to those 'fixed human standards' and they are always relegated to an inferior status. This way women lose their way in a male-centric world and have never been able to identify the real oppressor.

Butler discusses the relationship between sex and gender, and holds that sex does not define one's behaviour but rather society dictates to them what apt conduct is. This is nothing but gender performance where one must stay in character and keep reassuring their gender to society by performing it. For instance, post-retirement a man must not spend his time engaging in household chores but rather must behave according to the prescribed norms of society. Women, on the other hand, get absorbed in the house and will never get retirement from the kitchen and other household tasks like cooking and cleaning. This is what she called 'gender performativity' (Magazine 2006). This distinction between sex and gender, where one is associated with biological and the other one is associated with societal normativity aspect, will dilute when the latter one-stop pressurizing people to behave in a certain way. It will dilute when people get to choose whosoever they want to and their biology would not define their characteristics rather they will get to choose the characteristics they want to have.

Butler refers to Foucault's argument when she discusses power discourse and the censorship of the internal and external (sex and gender) fronts of the bodily economy (Nash 1990). Like Foucault, she also maintained that the physical form of the body is a 'prison' of individual identity which is observed constantly and closely by societal 'panopticons' (Theory of Gender Performativity 2018). In other words, "controversial" identities like that of a woman and LGBT people remain under close surveillance of society and their actions and freedom of expression are always being curbed by the people of the society. One could ask if everything

is observed by societal panopticons then how did subaltern sexual and gender identities create space for themselves amidst this orthodoxy?

If we look at societies like India and Pakistan then which are segregated on gender lines, people or society, in general, won't get to know about same-sex people. It is highly unlikely that people will raise suspicion on two men or women living together but they will raise an alarm if a man and woman are living together without getting married. Marriage gives license to people of the opposite sex to live together but same-sex people won't need to fulfil any such condition to live together and this is how they avoid societal panopticons and make their little world in disguise (Research Directorate, 29 November 2007). Butler (1993), "Imitation and Gender Insubordination" dissects several themes like identity, queerness, and performativity. Her premise remains the same, namely that a normative understanding of identity can never accept its subjectivity because it is seated in our 'psyche' and our choices are meaningless in terms of choosing our gender identities. For instance, children understand the working of society by observing and also by learning things from their parents, how do they operate in society? What is allowed given their sexual and gender identity and what is prohibited? Interestingly, this system is working for ages and there is an absence of revolution within the society.

If we look at the 21st century then one could say that LGBT people or women do have access to right to contest election. But can we expect people to vote for those who have been subjugated for centuries? The answer is probably no because both the state and society find it difficult to abandon their whole value system which they have inherited and learned from their forefather. State may be able to provide them with the legal rights but social acceptance will take time. Society will find it difficult to give due attention to those lives which have always remained on the edge. Due to these reasons, society finds it difficult to understand the subjectivity of gender identity in society. She explained how getting labelled as a gay or lesbian theorist could become a "site of necessary trouble" and also the 'fixitivity' of categories must be challenged as identities can never be captured in categories (Jagose 1996: 87). Identities are fluid and any attempt to compartmentalize them would create unnecessary trouble. For instance, being a man should not mean that he has to wear pants only. His choice of clothing doesn't make him less of a man than he already is. Similarly, a girl may have born with a female body but may not necessarily feel like or choose not to succumb to societal morality. Hence, characteristics that are associated with one's physical self should not be dictated by anyone. Interestingly, she challenges the process of "coming out" as this signifies

that there is a “closet”⁸. In the case of subaltern sexualities, there is a process called “coming out” where a homosexual admits that he/she/they are homosexual to their loved ones or to the society they live in. It is an emotional part of a homosexual person’s life because they look at themselves as different who are not in line with normative aspects of society. The idea of “coming out” complicates the argument because one could raise questions like: what are people coming out of and where are they are planning to go? As it is evident that the term “coming out” was used by Sedgwick in the context of homosexual people who challenged the heteronormative discourse of the society and Butler’s usage of the term is different from hers (Nash 1990). Butler’s argument deals with the positivists' aspects where she questions that is it really necessary for anyone to confess in front of family and friends, heterosexuals never tell it to the world like this. Sedgwick's arguments on the other hand deal with empiricism where it could be observed that the LGBT community does live under the fear of persecution and she compared that fear with “being in a closet”.

Butler argues that the process of “coming out” may help them in losing one totalisation of identity explain ??? but end up making them embrace elements of another totalized identity because sexuality has a mysterious nature that cannot be captured in words. In other words, the process of “coming out” may help them get away from an identity which they do not want to associate with but in the hindsight, it would construct another sexual identity for the person and sexual identities cannot be captured in terms. She wants to eliminate labels or categories which define sexuality and holds that it should be fluid, but she does acknowledge their political arenas.

Understanding the Case Studies

The chapter made an attempt to understand the lives of the LGBT community from various theoretical stand points where the attempt is to understand the extent of their marginalization within India and the Pakistan. Identity theory proposed that society play an important role in the creation of self and the identities associated with that. India and Pakistan are homophobic societies and the lack of legal and constitutional protection towards the community is an

⁸ There is a long list of celebrities who grabbed everyone’s eyeballs by “coming out of closet” and it include some big like the singer Sir Elton John (bisexual) who came out publicly in 1976 in an interview with the magazine Rolling Stone (WENN, 2018). The list goes on there are people like the novelist and Poet Vikram Seth who shield away from his sexuality and became a leader of the campaign against section 377.

example of the same. This argument led us to conclude that identity is not a neutral construct and it is our identity that decides our place within a society. Let's start by understanding male identity in a society who are the most privileged section across the world. If we look specifically in the patriarchal states like India and Pakistan then men are not just the bread-winners for a family rather they control the lives of each and every individual within a household. The prevalence of honour killings⁹ in India is an example of that. We have safely established those male identities are celebrated in both the patriarchal states, India and Pakistan. The term patriarchal state has been used because women in both the societies are treated as secondary citizens¹⁰.

Now coming to the second privileged identity in these societies are female identity. Women are subjugated and marginalized. They are over-worked and under-paid and the issue has been addressed by Cynthia Enloe (2014) in her book *Banana, Beaches and Bases*. They are the queens of free labour and their contribution as an equal citizen has never been recognised and India and Pakistan present no exception to it. They face humiliation and discrimination on daily basis and often subjected to physical, mental and emotional violence and newspapers across the world are enough to prove this claim. Their voices are often unheard and their pleas often go unreported. Even then we could say that they are better than the LGBT community because they do fit in the societal caricature of identities. They are not out of the box and are not trying to create space for themselves unlike the LGBT community. The categorization of the LGBT community is out of rule book of the society and they challenge the existing framework of a highly rule driven societal mechanism. Now one could say that two grief-stricken people would be able to share each other's pain.

It is the idea of subjugation identities that help both the women and the LGBT community to bond. But we are so wrong in assuming that. If men are the perpetrator of violence so does

⁹ Nandish (SC) and Swati (Upper caste) fell in love and got married but this did not go well with the girl's father and he murdered both of them and threw their bodies in a river in Tamil Nadu's Krishnagiri district. Similarly, Harish (SC), a cab driver married his high school sweetheart Meenakshi (Upper caste). Harish was killed by Meenakshi's brother while Meenakshi committed suicide (Krithiha, 2018). There are many such cases where people are being killed in the name of honour.

¹⁰ In India, the Supreme Court has refrained from criminalising marital rape and, in Pakistan, a woman must produce eye-witnesses if she is raped and, the testimony of two women will be considered equivalent to one man. These state sponsored protection to male members of the society led us to conclude that women are nothing but objects at the disposal of male members of the society.

women. Their ideas around an issue are shaped by a common society. If a society believes in justifying violence against the LGBT community, then every other section of a society will end up justifying that and these ideas will travel from generations-to-generations. It is an 'us' versus 'them' mentality where them is always a villain (McLeod, 2019). We have established the presence of violence toward the LGBT community in both the countries, now the question is what justifies violence towards the community when the state has the sole authority to use violence? There is no denial that the violence towards the LGBT community is state-sponsored as well, and we will discuss about this aspect in detail in chapter 3 & 4. The prevalence of violence towards the community at a societal level worth discussion. There are many factors at play in understanding this aspect ranging from identity to number (population). The genesis of the problem lies in the colonial morality which was being imposed on the subcontinent. Gradually, the sexual binary of identity took over other identities like the gender and sexual identities. They were started to be perceived as nuisance in the subcontinent and gradually, they lose their social space and were being pushed to the margins where they were nothing but as Agamben puts it 'bare lives'. With time, their condition deteriorated as they were being subjected to constant humiliation and violence. The value system in the former British colonies changed for the worse. As Paul Salem (1993) puts it in his article that people in the developing countries are convinced of the fact that suffering is part of life. It was not just the people but the community itself being conditioned to believe that there is something wrong with them. It is not just the belief system but the advancements in the field of medicine also strengthened the belief among the masses that there is something inherently wrong with them and it must be treated. We have talked about this aspect in great details in chapter 2.

At this juncture it is obvious to ask from where did our colonial masters got the idea of banning homosexuality and eliminating transgenders from public spaces? The most important link that has dictated the whole concept of criminalisation and elimination of community from the public spaces is religion. Religion provides us with rigid accounts of truth. It also goes on to dictate us about the idea of right and wrong. Homosexuality had never been a part of the so called 'right' discourse and the case stands the same for all the other Adharmic faiths. So, by this logic Britishers were simply following the right and the just path laid out to them by God himself. They have criminalised homosexuality in their country and imposed it in the colonies under them and this particular aspect have changed the whole belief system of the people in the subcontinent (O'Mahoney, 2018). If criminalisation of homosexuality is an

alien concept in the south Asian subcontinent than what was the original understanding of the idea of homosexuality and the transgender community? Sexuality was a fluid concept in subcontinent and it was not disciplined like the way it is now. People had enjoyed ample amount of freedom over their bodies and the society was not divided strictly on gender lines or binaries of male and female like it is in the present scenario. One explanation for that could be is sexuality was never disciplined by religion in the subcontinent unlike the Abrahamic faiths. We will discuss about this aspect in detail in the next chapter.

If homosexuality was never banned nor prohibited neither by the religion nor by the society then why did people of the subcontinent succumbed? Why did they accept their belief system while abandoning their own values? Why did they never resist and if resistance voices were present then what were their manifestations like? There could be many explanations but the more suitable one is the idea of civilisation. People in the colonies have always believed that their colonial masters were way more civilised and sophisticated and they must inherit their lifestyle while abandoning their whole belief system. If we look into the socio-religious movements of the colonial era then we get a glimpse of a society where reformers (Prarthana Samaj and Brahma Samaj) were engrossed in reforming the public and the private lives of masses. As it is evident from various examples like the widow remarriage act and the Age of Consent Bill. Also, Britishers came to India as traders and they were interested in nothing but extraction of wealth from India. They had always refrained from interfering in the sociological matters of the colonies unless they found an Indian face to lead the movement (Bandyopadhyay, 2006). Even in the case of homosexuality their first concern was to protect the morality of the English soldiers serving in the colonies away from their wives and families. With time they had established themselves and started to change the sociological fabric of the country. To please the authorities the local people had also started to imbibe their ideas instead of protesting against them. This idea of power over individual's body is well defined in the work of Michael Foucault and this control is well evident even in 21st century where people are not allowed to marry the person of their choice and they are being treated as cog in a machine that regulates the smooth functioning of this rigid society (Dadhwal, 2019).

Chapter-2

Understanding the Problems of the LGBT community in India and Pakistan: A Multidisciplinary Study

Introduction

One of the reasons for proscribing homosexuality or same-sex love is that it is believed to be ‘unnatural’. But have we ever pondered over why it is branded as ‘unnatural’? If homosexuality is ‘unnatural’ there must be an ‘order of nature’ and someone must have codified it. Who codified the ‘order of nature’? Is it a god, religion, or humans who designed the ‘natural’ order, and should the slightest deviation from the prescribed guidelines be considered ‘unnatural’ and a ‘criminal’ offense against humanity? How could a life choice to love someone pose a threat to humanity or to any individual? These are some fundamental questions that we have often neglected, falling prey to a linear mentality that lacks not just a critical appraisal of the issue but also fails to encapsulate the available knowledge of various disciplines on it. This chapter attempts to trace the history of homoerotic beings and transgenders to locate the exact cause of their oppression and marginalization in the 21st century.

We have often come across the term ‘unnatural’¹¹ in the context of same-sex love, in contrast to heterosexuality which the state and society assume to be the ‘law of nature’. This belief system exposes us to the intricacies of the issue and makes us question: how is homosexuality paired up with the ‘unnatural’ discourse and since when? If the practice is not considered unnatural from time immemorial, then why and at what point of time did it acquire to be called so, or was given this label? If we head towards disciplines like philosophy, Plato is one philosopher whose work does make mention of the ‘law of nature’. Interestingly, Plato’s

¹¹ Levin (1984) argues in favour of homosexuality being abnormal and hence, undesirable. He did not attach any moral or evolutionary connotation with it rather his arguments were purely mechanical in nature. He simply argues that homosexuality is nothing but misuse of bodily parts. Homosexuality is branded unnatural due to various reasons like it denied lesbians of motherhood and cost men their fatherhood. This is the evolutionary argument of the discourse being unnatural. His major argument is that penis and vagina are made for each other and they fit well and are made each other while the same is not true in the case of homosexuality. The very idea of putting one’s Penis in the anus of another man makes it unnatural because this is not how it is supposed to function (Levin, 1984: 251).

stance on the issue varied. For instance, in ‘Symposium’ and ‘Phaedrus’, Plato celebrated same-sex desire and took pride in what he called ‘Platonic love’ which was also applicable to heterosexuals (Pickett, 2015). In the ‘Laws’ he adopted an opposite view and assigned a fixed characteristic to love and called heterosexuality the ‘natural’ law of sex (Pickett, 2015; Jacobs, 2015). The theory was followed by philosophers like Aristotle and the Stoics. Their perspectives can be summed up as “True law is right reason in agreement with nature” (Pickett, 2015). In the 13th century, the theory was furthered by Thomas Aquinas who never dealt with this issue per se. His views are largely in consideration of other topics like marriage (Kinney, 2014).

Contemporary theorists like Germain Grisez, John Finnis, and Joseph Boyle have also maintained a position strongly favouring the church on the proscription of homosexuality (George, 1999:19). Smith (1999) in his work, ‘Thomas Aquinas on homosexuality’, argued that throughout the long tradition of Judeo-Christian thought, homosexuality was considered incompatible with God’s plan for humans. The Catholic Church had always maintained, based on scriptures like the Bible, traditions, and the ‘law of nature’ that God has always believed in the union of male and female because their union creates new life. The church may have considered homosexuality as an ‘unnatural’ and a ‘disordered’ practice but never believed it to be a ‘sinful’ act. It is important to note that there are many denominations within Christianity in which all do not have the same position on the issue. The limited scope of this study doesn’t allow covering every position within a denomination or outside it. However, forgiveness is considered a supreme virtue in Christianity. Every sin will be forgiven by God, who will take the blame on Himself to show His love (Wellum, 2017). If this is the case, then why did the colonial masters treat the LGBT community as criminals?

Implications of Colonialism on Social Lives of the LGBT Community

Before partition, Pakistan was a part of the colonized Indian subcontinent which was ruled by the British. Much ink has been spilled on recording the positive impacts of colonialism on the colonies but it is also well-established that even after independence the post-colonial societies live with colonial baggage (O'Mahoney, 2018). British colonists not only destroyed the economy of the colonies but also imposed their gender and religious morality on them through institutions, codified laws, and other practices, hence altering the social structures in

the then colonial Indian subcontinent. They took it upon themselves to launch a ‘civilizing mission’ to civilize the ‘barbaric’ colonies they ruled (Bandyopadhyay, 2004).

Han & O’Mahoney (2018), ‘British Colonialism and the Criminalisation of Homosexuality’, assessed the impact of British colonialism on the lives of the LGBT community in the colonies. He argued that in 1833, Thomas Babington Macaulay began to codify laws for the Indian subcontinent. He introduced a criminal code known as the Indian Penal Code which was not accepted until the 1860s. From the 1860s onwards, unlike the French colonizers¹², the British started to impose certain common laws regarding male-to-male sexual relations in all their colonies (Han & O’Mahoney, 2014). These laws were drafted to uphold the moral and religious teachings of the Catholic Church.

It is interesting to note that our colonial masters not only imposed their religious morality but also imposed what Maria Lugones called the “coloniality of gender”, union of man and wife for the creation of a new life, from the European gender system (Lugones, 2016) (Khan, 2016). People in the then Indian subcontinent used to follow a much fluid gender and sexual arrangements where sex was associated with pleasure more than procreation. This lax sexual discourse irked or challenged the working of the colonial masters because it goes against the religious teachings of Christianity. Gradually, they began to codify laws favouring gender binaries which drew upon the European understanding of heteronormativity. They introduced the Criminal Tribes Act¹³ (CTA) which was aimed to suppress the ‘predatory caste’¹⁴ or one should say people of specific identities to build a secure and prosperous

¹² Former French colonies had a different legacy to follow. French colonists worked around the development of enlightenment concepts like liberty. Interestingly, after the French Revolution, “the French penal code of 1791 decriminalized sodomy between overage consenting adults in private”. This code was subsequently spread by Napoleon’s conquests in continental Europe and through the French Empire.

¹³ The Criminal Tribes Act was enacted in 1871 in north India for the first time, and then in Bengal in 1876 and gradually spread to other parts engulfing other castes from different provinces (Heredia, 2002). The Act made special mention of Eunuchs (including the Hijra community) and limited their rights because they were believed to engage in practices like castration, sodomy and kidnapping. Even then the community continued to survive or exist on the margins of society (Khan, 2016).

¹⁴ Predatory Caste or tribes refer to the people who placed themselves on inaccessible places like hills or where sovereign is weak. This was done to maintain their freedom and control over land. These tribes were mentioned under the act either because of their nomadic lifestyle or their unproductive use of forest land (Hinchy 2019). Such tribes include Maravars and Kallars of southern India and groups like Bhils and Gujjars in the

country¹⁵. Now one could question what makes a gang or tribe criminal? Who decides their offenses? According to the original text of the Act, it was stated clearly that Governor-General had the power to declare any tribe or gang criminal if the local government choose to file a complaint against them. Part I of the act states that

“if the Local Government has reason to believe that any tribe, gang or class of persons in addicted to the systematic commission of non-bailable offenses, it may report the case to the Governor-General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe”

Interestingly, eunuchs or the transgender community also figure under this act and the act makes clear reference to the transgender community. Part II of the act criminalizes gender non-conformity people. Part II of the Criminal Tribal Act (CTA) exposes some of the British assumptions regarding their lifestyle. Quoting from the original text

“a register of the names and residents of all eunuchs residing in any town or place to which the Local Government specifically extends this part to this Act, who are reasonably suspects of kidnapping or castrating children, or of committing offenses under section three hundred and seventy-seven of the Indian Penal Code, or of abetting the commission of any of the said offense”

The excerpt makes it clear that the British government used to treat the transgender community as a kidnapper or someone who would have the potential of castrating children. Now the question is why would they inflict pain upon other humans? In the colonial understanding hijras cannot have children of their own so to keep disciples or chelas they tend to castrate young boys and adult men (Hinchy 2019). There are many reasons for the colonizers to initiate a series of legal actions against the community which we will discuss in

northwestern part of the country (Dirks 2001: 175). These socially marginalized castes are known as Denotified Tribes or Vimukta Jatis in Independent India (Hinchy 2019).

¹⁵ The Criminal Tribes Act, 1871 was modified in 1897 and 1911 and worked on the logic as stated by T.V. Stephens, the then member of the law and governance, while introducing the bill: “the special feature of India is the caste system. As it is, traders go by caste: a family of carpenters will be carpenters, a century or five centuries hence, if they last long” (Kapadia, 1952). This logic made them conclude that there must be some tribes whose ancestors were criminals since time immemorial. The logic creates problems at many levels like: a. the Act represents a group of people who were born criminals; b. crime was hereditary in nature c. criminals could be reformed via “ruthless punishment and lifelong harassment” (Kapadia, 1952)

this section. One major reason to do so was that Britishers find it hard to govern them. They were being treated as ‘professional sodomites’ who were challenging the religious and legal order of Christian society which was based on heteronormative practices where procreation is the end goal of union between man and wife (Hinchy 2019).

Hijra culture of asking for ‘*badhai*’ (donations collected after birth and wedding) was also a public nuisance and they were being labelled as ‘wanderers’ because they travel from village to village or take sort trips to collect ‘*badhai*’. Britishers had associated mobility or migration from place to place with criminality (Hinchy 2019). In their opinion wanderers were criminals which was the essence of CTA (imprison people who cannot be governed). Another cultural practice of hijra culture which irked the Britisher was men dressing in feminine clothing. Since the colonizers were having trouble governing the community, they planned for a ‘gradual extinction’ for the hijra community (Hinchy 2019). In 1865, R Simon, the secretary to the North West Provincial Government, wrote a letter to the Inspector General that the administration aims “to prevent an increasing number of Eunuchs and thus gradually lead to their extinction” (Hinchy 2019). The implementation of CAT along with other acts and the inclusion of the community in these acts seems like a systematic attempt to eliminate the community from the subcontinent. The Britishers believed that prohibition on castration would eliminate the hijra population from the subcontinent but they were unaware of the fact that castration is not an important part of Hijra-hood. Prohibition on public performances and wearing of the feminine dress had impacted the livelihood of the community. An instance had been reported by hijras to the district officials of Gazipur in 1874 that they were starving (Hinchy 2019).

If cases like starvation had been reported then one could imagine that they are treated less than animals in their own country by a bunch of foreigners. One thing worth mentioning that the hijra community was policed differently in different parts of colonial India. At some places, one could find that hijras were prosecuted falsely under CTA for wearing feminine clothing while in other places anti-hijra campaign was not taken seriously (Hinchy 2019) which resulted in the removal of part II of CTA in 1911. Evidence to support the argument, J.P. Hewett, a high-ranking official once mentioned that “the eunuchs must be dying out”. We have discussed that how the community was treated during the colonial era but to establish that the community suffered a downfall in terms of socio-economic status one must enquire about their status in the pre-colonial era. This will also help us understand the impacts of colonialism on the community. To understand the spill-over effects of colonialism

one must compare and contrast in the laws and policies implemented by the government of India post-Independence? If we assume that the community had lost its status after the advent of colonialism, now the question is, did they get it back in the independent era, if yes why, and if not then why not? These are some foundational questions that will help us set up the larger argument concerning the rights of the community as a citizen of independent sovereign states like Indian and Pakistan

why did the transgender community figure under this act is a subject that needs some serious consideration and to locate that we must look into the social and economic status of the community in the pre-colonial India. We have dealt with the religious and legal morality of the colonizers but there is another important economic reason which gave impetus to barbaric and discriminatory practices towards the community. Michelraj (2015), 'Historical Evolution of Transgender Community in India', stated that the Hijra community used to play a significant role in royal courts of the Islamic world especially in the Ottoman Empire and Mughal courts in medieval India. The community was forced to live a life of petty beggars during and after the colonial era due to two reasons. Firstly, the Criminal Tribal Act maintained surveillance over their lifestyle. This stripped them of their rights like the right to food and land (only biological children could claim the land); and secondly, the colonial masters were interested in their large land holdings which they received from kings as grants or gifts. The British introduced inheritance rules and according to which land could only be inherited by the biological heir or by any blood relations¹⁶. Because the community is incapable of having any biological child of their own this would take away the right of the community to distribute their property among the members of their community. Gradually, the community lost its social and economic status in the Indian sub-continent and the process continues after more than seventy years of Independence.

Interestingly, CAT had been removed by the government of India in 1949 but it was being replaced by another act known as 'Habitual Offender Act, 1952' (Hinchy 2019). The act also includes chapter sixteen which consists of section 377 of IPC and states that

¹⁶Hijra or the transgender community can't have biological heirs but have chelas (followers). Acceptance in the community would require one to have a guru (head) and gurus often transfer their wealth or property to one of their chelas (Nayar, 2012).

“any person convicted of an offense punishable under Chapter XVI of the Indian Penal Court, whose previous conviction or convictions, taken in conjunction with the facts of the present case, show that he habitually commits offenses against the person”

The act may not make mention of the transgender community but the inclusion of section 377 provide space to the authorities to intervene in the lives if the people who are either transgender or same-sex partners. By this logic the whole LGBT community was perceived as habitual offenders. Transgenders were stigmatised as people who would castrate children or may kidnap them to make them their chela (disciple). Inclusion of section 377 in the Habitual Offender Act, 1952 also make a homosexual person an eligible candidate for jail term. We have another evidence to prove that the community was not treated differently than it was being treated in the colonial India. Section 377 of IPC survived in India because of section 372(1) which states that

“all laws in force prior to the commencement of the constitution shall continue to be in force until altered or repealed” (The Wire, 2018)

Now one could safely conclude that section 377 was being inherited by independent India as they made no attempt to either alter or repeal it. In fact, chapter sixteen of Indian Penal Court (section 377 figures under it) was being put under Habitual Offender Act, 1952 which hints towards a deep-seated prejudice and stigma against the LGBT community in the independent India. The story remains the same in Pakistan post-partition. Like India, Pakistan also inherited section 377 and declared carnal intercourse against the order of nature (Pakistan Penal Code, 1860). Interestingly, the section applies on men and females are kept away from it because to constitute an act against the order of nature penetration is must. Along with section 377 of Pakistan Penal Code, Hudood Ordinance, 1979 was also put in place to eliminate any scope of progress in the case concerning the LGBT community. Hudood Ordinance was introduced by General Zia-ul-Haq as part of his Islamisation process of Pakistan (Lau 2007:1292). If we observe carefully then by an indirect logic Hudood ordinance, in accordance with Sharia Law, criminalize the LGBT community. Section 4 of Hudood ordinance states that sexual intercourse outside the institution of marriage is illegal and is a punishable offence.

“a man and a woman are said to commit ‘Zina’ if they wilfully have sexual intercourse without being married to each other”

As homosexual marriages aren't legal in Pakistan then the act of same-sex love automatically qualifies for punishment. Section 4 of the ordinance make explicit provision of punishment of death by stoning, if married, or 100 lashes for unmarried people (Human dignity Trust).

“(a) if he or she is a muhsan, be stoned to death at a public place; or (b) if he or she is not muhsan, be punished, at a public place; with whipping numbering one hundred stripes”

As one could observe that the former colonies are still living with the colonial baggage although things have started to change legally to some extent but social reality remains the same for the LGBT community both in India and Pakistan. Scholars like Michelraj (2015) and Khan (2016) who press the argument that the Criminal Tribes Act included hijras precisely because the colonists were interested in their large land holdings. Their argument along with arguments regarding their legal and religious morality seems plausible because the transgender community, during the Mughal period, used to enjoy considerable freedom as they used to guard the royal harems (a separate section has been devoted to this aspect below). But after the implementation of CTA, they began to flee and took shelter in areas which were not ruled by the British in order to avoid punishment (Khan, 2016). The British colonists had made their life a living hell also by introducing Dramatic Performance Act, 1876, according to which “obscene act and songs”, which was their prime source of livelihood, was declared a punishable offence (Jamil, 2014). A public act turns out to be obscene if

“a. of a scandalous nature; b. likely to excite feelings of dissatisfaction to the Government established by law in India; c. likely to deprave and corrupt persons present at the performance”

A notice under this act was served to people for “*disobeying orders*” in any forms like taking “*part in the performance so prohibited*” or to the owners of room or space where “*such performance is intended to take place*”. There was a provision for punishment for offenders and the concerned person shall serve “*for a term which may extend for three months, or with fine or with both*”. This way the *hijra* community suffered at the hands of the colonial masters and the community entered the trap of a never-ending cycle of poverty, humiliation and social stigmatisation. Around 1860, as mentioned above, the British started to codify some common laws and, in the process, they criminalised sodomy and introduced Section 377 of the IPC (Khan, 2016). Section 377 figures under chapter sixteen of the Indian Penal

Code, 1860 under a header dealing with ‘of Offences Affecting the Human Body’. Section 377 of IPC, 1860 states,

“Whosoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”

As one could observe that the section prohibits two consenting adults from enjoying a life which they deemed fit for themselves. The section not only curb their expression of love but also disrespect their choices. It is a clear case of infantilisation of adult citizens who were old enough to decide about other aspects of their life but not mature enough to decide about their sexual partner. This is a classic case of paternalistic state where state will decide for the adult population because any deviation from the standard norm would be beyond accommodation in the British empire and its colonies. Ironically, the makers of these oppressed laws, the British, had shun this section a long ago but the colonies which were ruled by them at some points of time are holding them sacrosanct. Section 377 is very much a reality in the 21st century in India and Pakistan. We will discuss about section 377 in detail in chapter three and four.

Homosexuality and Religion: An Enquiry into Christianity, Hinduism & Islam

We have looked at how the colonial masters had been trying to impose their religious, gender and legal morality on the colonies but this still leaves an important question unanswered: why were they doing this? What gave impetus to their sudden urge to reform the colonies? Were they doing it because they believed that they are more cultured and civilized than their colonial subjects? One must engage with these questions since their prime purpose was extortion. They entered the Indian subcontinent under the garb of a trading company and ample amount of evidence exist on this aspect that their prime aim was to enhance their wealth to maximise their national power (Bandyopadhyay, 2004). To answer these questions, one must engage with the ideology of British imperialism which is a combination of four ideals namely enlightenment ideals, Christian/Evangelical ideas, racist ideas about white superiority and liberalism (Pekanan 2016:1).

In this section we will explore about Christian/evangelical ideas which impacted the social, political and legal morality of British India concerning the lives of the LGBT community and

to so one must enquire the progress of the idea of homosexuality from ancient Greek city states to the modern British Empire.

Sacks (2005), "Encyclopaedia of the Ancient Greek World" provide detailed description on the ideas concerning homosexuality in the ancient Greek society. He discusses that Greek art and literature celebrates homosexual relationship between two men and considered natural and even admirable. Such relationships provide a deep sense of romance which were usually missing in traditional heterosexual marriages because women were viewed as morally and intellectually inferior to men in the Greek society. By this one should not conclude that female homosexuals or lesbians were missing from the society or their sexuality was being curbed in any sense rather female homosexuality was an approved practice among some locals at least in the 600-500 BCE.

Poets like Sappho and Alcman (around 600 BCE) had recorded this aspect in their work where aristocratic young women had sexual feelings for each other¹⁷ (Sacks 2005:160). One thing which is interesting to note is that such literature and information is not available in abundance because of scarcity of writings about women's life in general. There are cities like Athens in the 400 BCE that proscribe female homosexuality while male homosexuality was being celebrated like a tradition (Sacks 2005:162). After looking at these examples it would not be wrong to anticipate the presence of homosexual love in the ancient Greek society although literature and information is relatively less on female sexuality and in some places its proscription could also be observed as women were not considered morally and intellectually equal to men in the society. Sex was seen as a symbol of power where one partner dominates the other one. Men are usually considered as the dominant partner because of their biology (having a penis) while the other partner (a woman or a slave) submits or become the passive recipient of sex. Since slave, prostitute and woman tend to submit their bodies to the dominant one hence they were being labelled with inferior status in society. Interestingly, any male citizen who wanted to be penetrated sexually was considered bizarre and morally debased (Sacks 2005: 181).

No stigma was attached to active partner while the passive partner was considered weak and had low social status. As the practice puts honour of young males in grave danger in society

¹⁷ Plutarch wrote female sexuality and held that in Sparta it was usual for mature women to have relations with unmarried girls. But not much literature is available on female homosexuality since it was not encouraged like male homosexuality (Sacks 2005: 161)

and hence maybe the practice of sodomy was socially stigmatized first and then criminalized in later times. This observation needs to be explored before concluding anything in this regard and to do so one must look at the progress of the idea of homosexuality in medieval and modern era. If homosexuality was celebrated in the ancient Greek society, then how did the idea progressed from the ancient time to the contemporary times and how did a celebrated idea was being labelled as immoral and sinful? What went wrong and when in this timeline (from ancient to contemporary) that the practice is being labelled as sinful and immoral by the catholic church?

Interestingly, the ideas concerning homosexuality varied by era and region in medieval Europe. At some places the sodomy was punishable to death while other places did record homosexual relationships. But major changes in attitude started to occur with the rise of Christianity. The old testaments (Leviticus 18:22, 20:13) prohibits and criticize homosexual intercourse between two men and women (Brundage 1987: 57). It states that

“Do not have sexual relations with a man as one does with a woman; that is detestable”

Leviticus 20:13 suggest the same thought on issue pertaining to homosexuality while adding punishment aspect to it. It states that

“and if a man also lies with mankind, as with womankind, both of them have committed abomination; they shall surely be put to death; their blood shall be upon them”

Boswell (1979), “The Church and the Homosexual: An Historical Perspective, 1979”, maintains that the advent of Christianity turned the discourse around homosexuality less tolerant among people. But the question is does people started to associate with the everything written in the Bible? If this is the case then it would be safe to say that with the advent of Christianity people stated to implement its teachings in their lives hence abandoning their norms and traditions like gay relationships were celebrated in Rome. We have looked at old testaments and mentioned some of its excerpts against homosexuality, can we say the same about new testaments? Do the new testaments mention anything about homosexuality, if yes, then what does it state and how did those teachings shape the discourse of Christianity in this regard? In the new testaments, reference to homosexuality could be found in three places namely I Corinthians 6:9, I Timothy 1:10 and Romans 1:26-27 respectively as

“9. know you not that the unjust shall not possess the kingdom of God? Do not err: Neither Fornicators nor idolaters nor adulterers”

“10. the sexually immoral, men who practice homosexuality, enslavers, liars, perjurers and whatever else is contrary to sound doctrine”

“26. For this reason, God gave up to dishonourable passion. For their women exchanged natural relations for those that are contrary to nature; 27. And the men likewise gave up natural relationship with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error”

These references are enough to prove that new testaments do make mention of homosexuality and the practice is regarded as immoral and sinful but the modern discourse in developed Christian states have undergone a great change. The practice is not only acceptable in certain denomination but is also legally protected in countries like Britain. What explains this change in attitude? Does this mean that religion does not guide the legal morality in developed countries like Britain while the same may not be true in the context of developing countries like India where the practice is not legally protected? We will explore this aspect in great detail in the following chapters.

We have looked at how the advent of Christianity turn the discourse around homosexuality less tolerant among masses but the question remains unanswered why? What could be the reasons for proscription of practice in Christianity? Saint Paul (Christian apostle and a prolific contributor to new testaments who spread the teachings of Jesus in the first century world) and other contributors generally get questions related to social and moral problems posed to them by the heterosexual society. There are general teachings of Jesus which could be used in reference but Jesus does not provide detailed accounts on all the aspects of human life like loving your children is one such aspect for instance (Boswell 1979). Interestingly, the quoted text from the new testaments varies according to translations and this is one of the major reasons for acceptance of LGBT people in certain denomination.

There are other reasons also which triggered this biased attitude towards the community in early European Christian society like the absence of procreation and even then, the biased attitude does not seem to stem from Christian principal. The reason to argue on this line is because neither the old nor the new testaments make mention of non-procreative sexual activities among married people (Boswell 1979). If something is not mentioned in the text the

whole argument of tolerance attitude towards the community stands null. Also, theologians of the time may have rejected non-procreative sex but it has nothing to do with gay people. They had done so to impress the larger Christian society that they bound to have kids after intercourse and gradually the narrative changed from meaningless lust to meaningful discourse around creation of new life and the idea stayed in society since then (Boswell 1979).

Coming back to the question of enquiry why did colonial masters impose their religious morality on the colonies/ We have explored the stand of Christianity on the issue and how the narrative on same-sex relationship/marriage changed with time where it was acceptable in the ancient European society then with the advent of Christianity it became less tolerant and in the modern era the idea was being accepted by many developed Christian societies. A contradiction could be observed when we put Christianity and its teaching on one side and same-sex relationship on the other side. As far as religion is concerned, if Christianity indeed advocates the forgiveness of every crime, why did they continue to put the colonies under such draconian laws? Why did they switch from focusing on the economy to the social structures of the colonies? The time period of codification and implementation of common laws in the colonies was also the late 19th century. We need to look into why they made a shift in their policies towards the colonies? What could possibly explain the choices of their policies on the social front in the colonies?

In those days, British soldiers used to serve in different countries away from their homes and wives, resulting in the development of homosexual practices among them. As mentioned above, homosexual behaviour was/is, in some denominations, considered a corrupt practice in Christianity and the Empire had to deal with it somehow. To prevent their soldiers from 'moral' corruption, the British empire proscribed homosexuality not only in their own country but in all the colonies they used to rule at that time, colonised India being no exception (O'Mahoney 2018). The proscription was not centrally administered: rather, immense power was given to the administrators and it was their prerogative to approach the issue the way they deemed fit (O'Mahoney 2018). The proscription of homosexuality in the colonies suggests that the policies of the British Empire were guided by religion because the church of England is still in dilemma whether to bless same-sex marriage in 2022 or not (Sherwood, 2021). The Anglican church of England has exercised enormous control over parliamentary policies and the tussle between church and state in England is nothing new in that regard. Also, we could argue that people of colonial India used to follow fluid gender and

sexual identities. We will look at this aspect in great detail and also compare and contrast legal and religious texts in India and Pakistan in 21st century.

It is a well-documented fact that the British implemented Section 377 IPC in the Indian-subcontinent in a blatant manner (Kapadia, 1952; Lugones, 2016; Khan, 2016; Kidwai, 2000; Biswas, 2008). They did not bother to look at the stand of the indigenous people on what they believed to be ‘immoral or ‘unnatural’. Homosexuality was never a criminal offence in pre-colonial India¹⁸ (Biswas, 2008). If we look at Hindu religion, erotic temples like Khajuraho which were built by the Rajput rulers of Chandela dynasty from 10th to 13th century CE provide strong evidence in support of the acceptance of this practice. These temples were built over a stretch of 100 years (Cartwright 2015). Similar temple art could also be observed on Sun temple of Konark in the eastern state of Orissa which was built in 13th century and the caves of Ajanta and Ellora in the western state of Maharashtra reflects the same aspect (Pandey 2018).

If we look at Hindu mythology then evidence of homosexuality could also be found there. Devdutt Patnaik, renowned Indian mythologist also believe that proscription of homosexuality is a foreign concept which totally disregards “how similar sexual activity was perceived in other cultures” (Pandey 2018). Along with temple art, ancient texts like the Kamasutra which is believed to be written around 2000 years ago also strengthens the argument that same-sex love was not a prohibited act in pre-colonial India (Joseph, 2015). Unlike the architecture, Hindu religious texts provide a mixed picture regarding its stand on same-sex love. Dharma texts like the sacred law of Manu, vide Atri Smriti, Vide Baudhayana Dharmasutra and the Vide Apastambha Dharmasutra proscribe both homosexuality and anal intercourse and consider it a sin which is legally punishable as well. A number of Hindu texts consider it joyous expression of human sexuality like Kamasutra (Siker, 2007). Manu smriti text present a peculiar case where female homosexuality is not punished because two women engage in a sinful practice but because it would result in loss of virginity. Chapter eight, verse 369 & 370 of Manu Smriti reads,

Relationship between two virgin girls:

“a damsel who pollutes (another) damsel must be fined two hundred (panas), pay the double of her (nuptial) fee, and receive ten (lashes with a) rods”

¹⁸The scope of the study is confined to India and Pakistan and the religion practiced by the majority of people in both the countries. So, we will look at religious practices in Hinduism and Islam only.

Relationship between an older woman and young virgin girl:

“a woman who pollutes a damsel (Unmarried girl) shall instantly have (her Head) shaved or two fingers cut-off, and be made to ride (through the town) on a donkey”

As it could be observed that in both the cases girls and women must be punished for their act not because they commit a sinful act but because this would make a girl unworthy for marriage. It has nothing to do with the gender of the person in the case of women because the text is inherently patriarchal in nature and mentions ways to control women and their sexuality in a Hindu society. This argument could also be proved if we look at the aspect of gay relations between two men. The text makes no mention of severe punishment aspect concerning homosexual relationship between two men. Men are prescribed to bathe with one's cloths on and penance of *“eating the five products of the cow and keeping a one-night fast”* (Vinita & Kidwai 200: 25). Having said this, there is no documented evidence which favours its proscription at large in the pre-colonial era (Siker 2007). These examples are enough to prove that gender and sexual minorities were fluid in nature in pre-colonial India.

We have explored religious stand of Christianity and Hinduism on homosexuality and found that homosexuality was not an alien concept in the pre-colonial India and the country fell prey of colonial religious morality. The practice had been celebrated and is manifested in the architecture and text (sun temple, Ajanta & Ellora, Khajuraho and Kamasutra text) of Hindu Indian society. At this juncture one could argue that the pre-colonial India was ruled by Mughal rulers and how did they address the issue of homosexuality back then? What are the religion teachings of Islam and how did they strike a balance between the fluid sexual identities of Hindu Indian society and the teachings of Islam?

Islamic rulers had ruled India prior to the British, so Islam had also become a part of the Indian subcontinent. We will be looking at postcolonial developments in Pakistan on the issue but let us first look at the Islamic religious texts. The religious teachings of Islam are different from Hinduism but shares commonality with the religion of India's colonial masters. One of the reasons for this similarity can be assigned to the nature of both the religions as they both are Abrahamic faiths. Islam contains directions prescribed by the holy book 'Qur'an' (literal words of Allah) and the Hadith (sayings of Prophet Muhammad). Both the holy Qur'an and the Hadith condemn homosexuality and the latter also explicitly prescribes punishment for it (Siraj, 2014). In one of the Hadith, the Prophet is reported to have said:

'If you find anyone doing as Lut's people did, kill the one who does it, and the one to whom it is done'; 'if a man who is not married is seized committing sodomy, he will be stoned to death' (Abu Dawud, prescribed Punishment Books 33: 4447/4478) (Siraj, 2014).

All the four schools of legal thought of Islam converge on the point that it is a sinful practice but they differ greatly in the intensity of its punishment¹⁹ (Siraj, 2014). It could be observed that Islam prescribe strict punishment for homosexuals even then many prominent Muslim rulers like Babar as well as Sufi mystics are known to have engaged in homoerotic²⁰ practices (Siraj, 2014). Interestingly, Iran, also an Islamic state, is often associated with male homoeroticism. In countries like Afghanistan and Pakistan social evils like *bachabazi* or sexual acts with a male sex-slave dressed as a girl, is widely prevalent (Banerjee, 2019). Appallingly, the Afghan government is not focusing on eliminating this heinous crime against children and instead focusing on keeping consenting homosexual adult partners away from its social security net. One thing which needs to be noted here is that Islam follows a strict public and private dichotomy on sexuality. Sex and sexual relationships are meant to be kept private and are to be done in secrecy. Due to this, same-sex love in post-colonial Pakistan is hardly ever punished²¹ if it isn't harming the public order or not done publicly (Siker, 2007). In 1980s, during General Zia's rule the punishment for homosexuality was

¹⁹The four schools of legal thought in Islam are as follows: Maliki, Shaf'i, Hanbali and Hanafi. All the four schools use the Hadith to formulate their legal course of action. The Hanafi school of thought like others considers homosexuality or same-sex act a crime but it does not constitute adultery. The punishment in this case is based on the Judge's discretion. The remaining schools of thought consider it Zina (illegitimate sexual intercourse) and their rules of punishment are different from one another. In Hanbali school of thought the accused should be stoned to death. The Maliki school believes in *hadd* punishment (punishment prescribed by God in Qur'an and in Hadith) and takes into account the marital status of the person. The Shafi school acts in accordance with the marital status of the accused: if the accused is married then the act is punishable by death (stoning) but an unmarried man is looked upon as a fornicator and given a much milder punishment (flogging) than the one who engaged in adulterous practices (Siraj, 2014).

²⁰ Homoeroticism is a practice of being with a person of same sex whereas homosexuality is associated with assertion of homosexual identity. Islam has no specific mention of a strict and permanent homoerotic orientation (Siker, 2007).

²¹ Homosexuality is "relatively" common in Pakistan however, its discussion in the public sphere is a taboo. Also, homosexuals are not open about their sexuality or are not allowed to practice it openly since it's a punishable act. Assaults on homosexuals are also rare. It is well-known that in the country's North West Frontier Province (NWFP), ethnic Pashtun men take young boys as lovers (Research Directorate, 29 November 2007).

increased to life imprisonment or death by stoning. This was the result of the addition of sharia law (Barth, 2014).

Capitalism and the LGBT community in the Indian Subcontinent

Apart from a philosophical and religious understanding, there are many other developments which need to be mentioned to understand the real cause of the problem. We have established a link between colonialism and religion and how it shaped the lives of the LGBT community in postcolonial societies. Capitalism is an important epoch in the history of humankind which not only changed the economic structures but also impacted the social and political structures of states. There are scholars who have studied the link between the rise of capitalism and the conditions of LGBT community in England. Drucker (1958), 'Warped: Gay Normality and Queer Anti-Capitalism', argued that the sexual patterns in Asia pre-date capitalism as they lie within traditions (we have observed fluidity of gender and sexual identities in pre-colonial India). He discussed a comparative picture of the spread of homosexuality in different parts of the world. Like Han & O'Mahoney (2018), he also maintained that the presence of the British resulted in the suppression of "indigenous same-sex forms". His work traced the history of colonialism and subsequent emergence of capitalism in Europe and its impact on the social fabric in various societies.

D'Emilio (1993), in 'Capitalism and Gay Identity', argued that homosexual identity never existed "throughout the history". This identity was a product of a "historical era". Like Peter Drucker (1958), he did not rule out the prevalence of homoeroticism in pre-capitalist or agrarian societies. Homoeroticism may have existed before, but the concretisation of this identity took place with the gradual spread of capitalism to various parts of the world. He discussed the transition from the pre- to the post-capitalist society in Europe and how the structures were changing both economically and socially²². The new system replaced the

²² During the pre-capitalist era, the economy was based on the self-sufficiency model where every member of the family would work on the farms to produce consumable goods. But around the 19th century, capitalism started to strengthen its roots and the structures of economy and society were going through a transitory phase where both the agrarian and capitalist models existed and were running parallel to each other. The members of a family were still interdependent on each other for their survival. Interestingly, the family may not have produced grains like they used to but women would still be involved in the task of baking breads and they had to perform the compulsory reproductive role. Male members, on the other hand, would go out and work for wages which ensured the survival of the family (D'Emilio, 1993).

older ideas of the self-sufficiency model with contract and free labour. Labourers became free agents who could decide the terms of contract in exchange of their labour.

Women's freedom to labour was dependent on their marital status. Before marriage, women could participate in the labour market but post marriage they had to contribute to the family production which gradually became their primary task to fulfil (D'Emilio 1993). Interestingly, in the case of the LGBT identities this could not be possible. Same-sex relationships act as a hurdle in upholding the traditional gender norms of the society. Their relationship did not contribute in the labour force of the country as they could not produce children. From a capitalist perspective, the LGBT community does not contribute in the labour industry hence, their existence is less important.

Feminists like Oksala (2017), 'Feminism, Capitalism and Social Regulation of Homosexuality', had presented a strong case of gender oppression at the hands of the capitalist structure. The roots of female oppression lie within the rise of private property where women were being pushed to private sphere of the public private dichotomy and was also being treated as property of men. Rise of the concept of private property result in the legitimate need to inherit it (Engels, 2010). D'Emilio (1993) discussed a data set of the average birth rate in New England which was around seven children per woman of a childbearing age around the 1920s. Gradually, the society started to celebrate 'marriage' and not 'heterosexuality' per se because the aim behind it was procreation not pleasure²³. A societal revolution would have ended this oppression and people would not be thrown in loveless heterosexual relationships if a revolution had taken place (Engels, 2010). These arguments logically prove that intimate relationships which are motivated by same-sex love are devoid of any ulterior motives like greed for property because countries in the late 20th century did not give inheritance rights to same-sex partners (Oksala, 2017).

D'Emilio traced the social history of the USA and held that in the late 20th century more and more people started to conduct their business independently. In other words, people started to move from one place to another for work and started putting up independently. Along with this, medical advancements also provided them with a chance to 'enjoy' sex instead of procreating and gradually the idea of procreation was replaced with pleasure. Both the male

²³ People can engage in heterosexual practices without necessarily desiring to start a family, but the case is different with marriage. The prime aim of the institution of marriage is to procreate. The point D'Emilio is arguing is that society was not celebrating the idea of heterosexuality but rather the institution of marriage, and the idea of procreation which is an important pillar of the traditional marital arrangement.

and female sexes started to pursue their erotic desires with members of the same sex sometimes out of curiosity or some are born this way. The house remains divided on nature and nurture aspect of the causes of homosexuality. In this way people explored their sexual desires and fantasies without hesitation. This gave rise to a new identity called 'homosexuality' in the western world (D'Emilio 1993).

While tracing their history D'Emilio also mentioned their struggle and held that no social space was given to them as their existence was being questioned by society, state and medical professionals. Like any heterosexual being two gay or lesbian people couldn't go out for drinks in a bar. Nobody would deny to serve to tow adult male or female but the moment they start to associate with their sexual identities, they would be asked to leave the place. In countries like India and Pakistan people could not muster strength to brave any such act in public even in the 21st century. The situation started to change around the second half of the 19th century. During this time, gay men and lesbian women began to find ways to meet after work for drinks and sustain group life as people who associate with a particular identity. The beginning of the 20th century witnessed the emergence of gay bars in the United States of America²⁴. Capitalism was progressing and so was medical technology. According to D'Emilio (1993) doctors had also started to develop theories around homosexuality. A conjecture was formulated by the doctors that homosexuals were born this way and that homosexuality is 'natural'. This was not postulated because of any scientific breakthrough, but was rather an ideological response to the new way of life (D'Emilio, 1993).

Research on homosexuality was ongoing in different medical fields like psychiatry, psychology, pathology and so on. Researchers in all the spheres were trying to find out reasons for this deviation from 'normal' lifestyle. The discourse around homosexuality was being looked at as pathologized, a mental illness which could be treated. Medical researchers started researching the subject with suspicion in their mind that it is disease of some kind which could be treated medically. Some early research on the subject was done regarding its pathological nature. Homosexuality was believed to be a pathological disorder and it caught the interest of the medical professionals.

²⁴ The gay bars in the United States of America were unofficial and illegitimate in nature and no social protection was given to them. These bars were often subjected to police raids. The illegitimate nature of these bars provided ample space to the law enforcement authorities to harass owners (D'Emilio, 1993).

Cameron (2016), 'What Causes Homosexual Desires and Can We Change It?', discussed a variety of research conducted over a period of time to inquire whether homosexuality is a disease or not. His work revolves around three questions: a. homosexuality is a bad habit and people fall into it because they are experimental in nature; b. homosexuality is a mental illness; c. homosexuality is natural. His work also mentions the findings of the Kinsey Institute to answer these questions. Kinsey institute conducted a study on 1700 homosexuals in the 1940s and another study was conducted in the 1970s on a sample size of 979 homosexuals. Both the studies were conducted when the subject was not taken seriously by the state and the society (Cameron 2016).

Both the studies share the same results that homosexual desires are caused by social and environmental influence meaning people tend to explore this alternate lifestyle under social influence or exposure to groups or people who associate with this identity. The results of the study cannot be generalised keeping in mind the limited size of the sample 1700 and 979 sample. Also, sampling was done randomly. In 1983, another study was conducted by Family Research Institute on 147 homosexuals who were randomly picked. The results showed that 35% believed that their sexual desires are hereditary in nature. Whereas 80% of 3400 heterosexuals in the same study said that their behaviour is learned by the social groups they got exposed to accidentally. From the 1930s to the 1970s, before a 'politically correct' answer was formulated, only 10% people claimed that they are born this way. Keeping in mind the limited sample size it becomes difficult to conclude anything concrete. Apparently, heterosexuals continue to believe that homosexuality is a result of social conditioning. Apart from these studies there were other medical fields which were conducting experiments like psychiatry and psychology.

Burr (1993), 'Homosexuality and Biology', argued that psychiatry was failing consistently in proving homosexuality to be a pathology. It was moved from the realm of sin and crime (religious understanding) to pathology (Biswas, 2008). The field of psychology was also researching it, and arguments started to float that it is not a disease but a personality disorder which is treatable via psychological therapies and tests (Biswas, 2008). Tests like the Rorschach ink-blot test were used to separate homosexuals from heterosexuals. But the test could not differentiate people based on their sexual orientation (Burr, 1993). The issue was testing the patience of medical professionals in various fields, and to get the answers some scientists were conducting research in every field ranging from biology to neurology.

Balthazart (2012), 'The Biology of Homosexuality' discussed an old hormonal theory (it states that the altered level of hormones could result in homosexuality) which has been regarded plausible by scientists like Roger Gorski. Chemical testing on rats have proved that altered hormonal balance could also result in homosexuality. The hypothesis²⁵ was tested again in the 1960s and 1970s which proved that "no hormonal difference seems to exist between homosexual and heterosexual people". The sexuality of rats is different from human sexuality (Burr, 1993). There were numerous scientists like Gunter Dorner (1969) and Heino Meyer-Bahlburg (1984), who worked to find the exact cause of homosexuality but failed to say anything conclusively about its origin (Burr, 1993). Noticeably, after five decades of research, psychiatric evidence has proved that homosexuality is "immutable" and "non-pathological" in nature. Homosexuality is neither a disease nor a personality flaw which could be treated via medicines, therapies or testes. Rather it's a conscious choice which a human makes due to number of reasons stated above. It was concluded from surveys and scientific research that homosexuality is a variant of normal human sexuality or it is an alternative lifestyle. In other words, homosexuality can be anything but pathology (Biswas, 2008).

State, Society and the LGBT community

In the mid-20th century, when science was busy finding the cause of homosexuality, the homosexual community started to claim their identities and demanded to 'decriminalise' and 'de-pathologize' the practice (Biswas, 2008). Science was making all sorts of attempts to find the exact cause of homosexuality, but could not prove anything conclusive. This laid the basis for the community to get legal concessions as well which will make them a valid and acceptable citizen of a country. Section 377 of the Indian Penal Code defined homosexuality as an 'unnatural offence'. It was considered illegal due to being 'immoral', 'unnatural' and 'socially unacceptable' (Biswas, 2008). One may ask, when science has made it clear that it is not a disease, then why are people so hesitant to accept it? If not as natural, then at least as an alternative lifestyle? Homosexuality is an identity and a controversial one, indeed. After

²⁵ The hypothesis was an attempt to inquire whether human sexual behaviour is under control of testicular or ovarian hormones and do these hormones affect a person's sexual orientation? It was argued by Balthazart that the hypothesis cannot be tested only by employing biological mechanisms rather environmental factors also needed to be incorporated in it (Balthazart 2012: xi)

looking at all these aspects we could safely say that society in general find it difficult to comprehend that this relationship lacks the basic foundation of a normal couple relationship which is to have a family. Love is not the only reason to marry. Anthropologically, marriage provide security net to the progeny and marriage in itself declare in disguise that now these two people are going to procreate and their children are legitimate entities in every society. Now marriage in the case of the LGBT community has different notions. It is understood that a gay, lesbian and a transgender person cannot have a biological family and people who do not have children are not well received in the society (Mustanski, 2008).

Having children is a way to prove one's biology and that biology is attached with certain level of respect within the society. The LGBT community cannot procreate hence they lose their equal standing in the society as they failed to prove themselves as man or woman. They use their energies in engage in pleasure than doing anything productive for the future. This is one of the major contentions against the community. This has created a deep divide among people and turned the homosexuals into a class of 'others'. We will be looking at the state's perspective at length in chapters 3 and 4. After looking at various perspectives and debunking various myths about homosexuality we can safely conclude that homosexuals and transgender people are also humans like everyone else. They must get their share of rights and freedoms which they have been stripped of for many centuries. At this juncture, we must critically analyse our thinking processes and belief systems on the following lines: if homosexuality is non-pathological in nature, then can we call it natural? If they (LGBT community) are natural beings, then why discriminate against them? Why treat them like criminals²⁶ for no fault of theirs?

It seems as though for centuries; the human race has been guided by a 'belief system' which has no scientific proof or validity. As far as religions and their teachings are concerned, then that is a matter of faith and belief. Before believing religions and their texts blatantly, we must consider that any religion is based on a text written at some point of time in history. When we take that text out of its context, we are in grave danger of believing a twisted argument. No text can have universal appeal, except perhaps in mathematics where proofs have certainty because science and its theories also change with time in the light of new

²⁶ In May 2005, two men were flogged for having sex in Pakistan's north west Khyber region. Although, such incidents are punished rarely in Pakistan (Research Directorate, 29 November 2007). Forcing people of this community to go for Conversion Therapy is also common in India which is gross violation of human right and dignity of a person (Tripathi, 2021)

information and discoveries. Religious ideas and texts create problems at two different levels:

- a. if beliefs are not guided by scientific proof, they can prove fatal to human life as in the case of homosexuals and transgenders.
- b. no text, including religious texts, has universal applicability (what should be accepted universally is a different debate) except mathematical proofs. There is one Qur'an, and yet we witness so many sects within Islam which follow one book. The broader point is that we are living in a technologically advanced world and if we keep seeking inspiration from the holy texts about how a human should be treated then we may make this world an uncomfortable place to live in, not just for ourselves but for the whole of humanity, as religions keep guiding us to be a cause of misery for 'created marginalised' groups like the LGBT community.

Chapter-3

The Role of NGOs in pushing forward the issue: A Case Study of Naz Foundation in India

Introduction

History has seen battles both for food and identity. The case of the LGBT community is nothing but a fight for the right to assert one's identity. The community has existed in our society since time immemorial but not everyone pays heed to the struggle and discrimination meted out on them by their fellow humans. The discrimination towards the community makes us question the importance of identity in the contemporary world. In the previous chapter, we have looked at various factors like religion, colonialism, the rise of capitalism and advancements in the medical field, which has turned the LGBT minority into a state sponsored marginalised minority across the world. In this chapter, we will look at the case study of a non- governmental organisation in India, Naz Foundation, which remains at the forefront not only on the medical front but also provides assistance on the legal front in India. Identity comprises of dynamic qualities of a person, especially those with which a person wishes to be associated like a lesbian or a gay (Conroy, 2008). But people are not free to associate themselves with the identities they wish to associate with. The second half of the 20th century witnessed the emergence of various political movements like the civil rights movement in the United States, gay and lesbian rights movement and second-wave feminist movement among others in different parts of the world (Fukuyama, 2018). A close observation about the nature of movements tells us two things: a. all the movements of the time were demanding political concessions; b. all of them were dealing with some kind of identity like black identity, feminist identity or identity of a person who belongs to a sexual minority group. This observation exposes us to the changing dynamics of the global order, where people were negotiating terms around identity politics with an economic might like the USA (Fukuyama 2018).

Fukuyama (2018), 'Against Identity Politics: The New Tribalism and the Crisis of Democracy' argued the rising identity movements in the USA and Europe can have implications for democracy. Part of his work dealt with the question - why were/are people

mobilizing around identity issues in the age of globalisation? He argued that the rising demands for the dignity of work or jobs for the working class triggered their mobilization around the issue. The working class had achieved success both in the civil and the economic fronts but there were issues which they were facing on a daily basis like lack of dignity which provided inspiration to the movements of the time. The failure on government's part in making adequate measures to eradicate ill practices created unrest in the American society. Hence, the failure was challenging the very idea of a liberal democracy. He was critical of these developments and held that identity politics was taking attention away from more important issues faced by the masses like the opioid crisis (K 2019). This argument is problematic at two levels; a. it belittles the importance of identity issues for a section of the population; b. identity issues do not cater to a major section or big chunk of a society; hence it is never considered as 'important' as the opioid crisis. Fukuyama's arguments are affected by 'whataboutism' and taking attention away from the intensity of the issue.

Why they fear what they fear?

Minority issues are sensitive in nature and decisions on such issues are dependent on political, social and economic conditions of the country. Decisions on sexual and gender minorities of India also encountered many hurdles. The community fails to impress the masses on every front, be it political, economic or societal. They are least important for any political party due to their marginal share in the population. They are what D'Emilio called the "largest minorities" which suffer from "social persecution". The transgender community remains on the periphery of the economy as it earns its labour through begging, dancing and prostitution. Most of its population remains outside the tax-paying labour force which further reduces its bargaining power vis-a-vis the state and its institutions. This is not same in the case of homosexuality because unlike the transgender community, their biology or birth does not decide their place in society.

Members of the homosexual community may belong to the rich and affluent section of society, but the consequential nature of the issue keeps them away from taking any strong stand against discrimination. On a societal level, any deviation from the set norms will create unrest and eventually lead to social boycott (D'Emilio, 1983). Earlier generations found it puzzling to categorize a person based on their erotic behaviour which may have added

another problem to the already problematic discourse (D'Emilio, 1983). Overall, a person from the LGBT community can find no peace on any front.

Homoeroticism, in the USA, took roots in the 20th century as a gay sub-culture. But the culture was never accepted by the state or society, and police raids were common on gay restaurants, bars and house parties (D'Emilio, 1983). The June 27th 1969 Stonewall Inn riots in New York proved to be a watershed event in the history of the LGBT community. It was a usual raid on a gay bar but this time people chose to hit the streets against police brutality. Graffiti calling for “gay power” appeared around the street within a night. Before the end of July, men and women in New York formed a Gay Liberation Front. It was a self-proclaimed revolutionary organisation. The news of the Stonewall riots and the formation of GLF spread like a wildfire among young radicals. This gave impetus to many other gay liberation groups and within a year, substantial growth in terms of mobilization could be observed within the United States of America (D'Emilio, 1983). Gradually, the force of globalisation pushed this culture to other societies, operating under the garb of soft power. India was no exception to this and the homosexuals formed a community in a former British colony which is buried under colonial baggage. India's stand on the issue is nothing but a product of this baggage. Counter heteronormative identities have existed in India but they claimed public space only after the 1990s (Kidwai, 2000). A detailed explanation on this spread of culture is provided in the second chapter.

NGOs²⁷ working with the LGBT community in India: History

²⁷ NGOs, as the name suggests, are the non-profit organisations that work towards making this world a better place to live especially for the downtrodden and the marginalized sections of the society. These organisations work independently without government's aid (mostly). However, they function closely with the government organizations that are working on the same cause to execute and implement their plans. They work towards achieving growth and development in the social and political arenas of a society. These organisations function on a local, a national and at an international level too. Their work does not need the limit of a boundary (theoretically) (Naz, 1994). However, states do exercise enormous amount of control over the projects undertaken by them. They function majorly around issues related to human rights and child development, education and literacy, refugee crisis, humanitarian relief, poverty eradication, prevent social injustices (as in the case of the LGBT community), conservation of wildlife and environment, disease control, women empowerment, health and nutrition and aged people care routine (Naz, 1994)

NGOs are self-sufficient entities which are not dependent on any government for funding. They get their fundings via donation, interests or dividends on investments made on their name, grants from unilateral or multilateral organisations, charging membership fees and other miscellaneous sources (Naz, 1994) This self-sufficiency argument does insinuate that anyone with funding sources could open a personal NGO around the issue they feel close to. However, there are set protocols that need to be followed by an association to get recognition to function in India. An association can register under one of the following acts: the Indian Trust Act, 1982; Companies Act, 1956; Societies registration Act, 1860; the Charitable Endowment Act, 1920 (Naz, 1994)

The enactment of the Societies Registration Act, 1860 mark the official presence of NGOs in India. Prior to this, many self-help groups like the Friend-in-Need Society (1858), Prathana Samaj (1864), Satya Shodhan Samaj (1873), Arya Samaj (1875), the National Council for Women in India (1875) and the Indian National Conference (1887) used to function in the Indian society. These groups were dealing majorly with the nationalist cause and their focus was limited on issues related to social evil. In short, their organisation was societal and non-etatist in nature (Naz, 1994) A concrete shift in the modes of people's organisation could be observed in the colonial India where on one hand Christian missionaries were making efforts that were not limited to areas like eradication of poverty and building country's infrastructure like roads, schools and hospitals rather a clear intervention could be observed in socio-religious aspects of the indigenous population. These activities often receive patronage and protection from the colonial state (Naz, 1994). The 19th and the early 20th century, witnessed the growth of many indigenous organisations working towards social and religious reformation for the purpose of organising an anti-colonial resistance (Naz, 1994). While the NGOs were focused on social welfare, education and health, a more concrete secular foundation of NGOs was laid in India with the coming of Servants of India (NGO) in 1905. A second major paradigmatic shift in organising volunteer work could be observed in the late 19th century and early 20th century when Mahatma Gandhi joined the Indian Politics (Naz, 1994).

The coming of Mahatma Gandhi in the Indian politics also gave impetus to development programs like Swadeshi movement, advocating economic self-sufficiency of the country. A major trend in the organisation voluntary work could be observed in the post-independent India when congress party was in the forefront to dominate and shape the new realities of the country. In the post-Independence period, the Indian government continued to focus on social-welfare and development issues where its roots lie in the political system (Naz, 1994). The government had also recognized the importance of civil societies and NGOs in achieving desired output. Its mention could be found in the first Five-Year Plan. Quoting from the plan, "Any plan for social and economic regeneration should take into account the services rendered by these agencies and the state should give them maximum cooperation in strengthening their efforts." International NGOs entered India in significant numbers in agriculture sector when the sector was hit by drought for two consecutive seasons (1965-1966 & 1966-1967). From this time onwards, foreign funding for domestic NGOs begun to shower in, changing the character of civil society once again.

It was during 1970s when the government of India launched the 'minimum needs programme' focusing on improving the quality of life of the rural population by improving the quality and standards of education and

The question is why did this happen after the 1990s in India? It is difficult to map the starting and the end point in a movement and the case is same with the rise of 'Queer Politics' in India (Chatterjee, 2018). One can only look at the history and can trace the events that happened which gave rise to queer movement in India. Menon (2012), 'Seeing Like a Feminist' argued that the increasing awareness about the AIDS epidemic had made the subject of sex speak-able outside the realm of law, demography and medicine. An evident example of this 'new normal' was a petition against section 377²⁸ which was filed by a non-funded, left-group who called themselves AIDS Bhedbhav Virodhi Andolan. It was a 70-page report describing the horrific conditions of the community²⁹. The report was released in the

medical infrastructure and agencies like 'People's Action for Development of India' were established. Many foreign return professionals joined these sectors to professionalize them. During the decade of 70s and 80s, NGOs were started to be recognised as the development partners of the states that works majorly with the grassroots level in terms of intervention and advocacy at various levels. Also, NGOs played a significant role in the mobilisation of the marginalized sections of the society (Naz, 1994). Naz Foundation is one such NGO that works with the historically marginalized community across the world i.e., the LGBT community.

The organisation came into being in 1994 to serve the people affected from HIV/AIDS not just physiologically but sociologically too, raising awareness and removing stigma associated with the issue. The organisation has remained in the forefront since the very beginning and have also tried get philanthropic help both with in, and outside side the country. The foundation is not overtly known to be associate with any international organization, however, the financial statements indicate that the foundation has been getting international fundings from various international sources. UK Online Giving Foundation, England and Whales based organisation has been funding the cause since early 2021.

The foundation had also received funding from the Swiss Philanthropy Foundation (2018). International Organisations like UNICEF has also contributed to the cause in June 2016. Netball Australia Ltd. (2017), Australian High Commission (2017) had also contributed. Apart from International funding, the foundation is also associated with various other organisations that are working with the marginalized and the downtrodden like Mukti Foundation (since 2016), Shanti Ashram Organisation (2016), Impact Foundation (2016) (Naz, 1994) Within the country, the foundation works closely with organisations like nazaria, basera, humsafar and lawyers collective.

²⁸ Section 377 of Indian Penal Court (IPC): A law driven by colonial morality; it makes homosexual activity an offence in India as it is considered unnatural. It maintains that any individual, if found engaged in carnal intercourse with man, woman or animal against the order of nature shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend for 10 years, and shall be liable to pay a fine (Online, 2018)

²⁹ The report debunk myths like homosexuality leads to AIDS when there is no inherent connection exist between the two. So, according to the report by ABVA, "Less than Gay: A Citizens Report on The Status of

press club of India in December 1991 and the journalists were so ashamed of the subject that they didn't ask any questions (Thomas, 2018). The filing of the petition was taken as a code for homosexuality in India argued Menon. The subject of homosexuality was first addressed in the context of the health risk posed by HIV/AIDS to the gay population in India (Chatterjee, 2018). International funding for HIV/AIDS prevention programs gave impetus to the growth of NGOs dealing with issues like sexuality. But the funding was extremely state controlled which opened new avenues for the state to exercise control over the community. Interestingly, the effects of central control of funding proved counter-hegemonic for the state (Menon, 2012).

The structural adjustment programme not only adjusted the economy of the country, but also adjusted the social fabric of the country. Sexually explicit and suggestive images coming from the west started to be circulated via private cable (Menon, 2012). This gave impetus to heterogeneous ideas. Under its influence, Indian cinema started to explore some controversial and bold themes like homosexuality. *Fire*³⁰, a film by Deepa Mehta released in 1998, was a product of this exploration. The movie generated criticism and violent threats from the Hindu right-wing community. It was the very first time that lesbian women came out to protest against Shiv-Sena's attack on the film (Chatterjee, 2018: 14). The self-aware community acted as a catalyst and many people hit the streets of Delhi and Mumbai in defence of freedom of speech and expression and against homophobia (Menon, 2012). This kind of resistance against homophobia was unknown in India. Importantly, this had brought all the opponents of the Hindu right-wing together, ranging from human rights activists to gay liberation activists (Menon, 2012). The contentions between the women's movement and the queer movement are beyond the scope of the dissertation.

Homosexuality in India", Homosexuality is a political issue and they will keep fighting for the rights of sexual minorities and decriminalization of the act in India. They strive towards getting justice for the community by securing a clear political stand on the issue and only this could save the community from police harassment, violence, blackmail and discrimination of other kinds in their daily lives

³⁰ The movie was about two sisters-in-law in a traditional Hindu household setting who fell in love with each other. The film was nothing but an acknowledgement for lesbian woman of India. Gay community had picked a different trajectory altogether in the context of disease, sexuality health while lesbian women's movement started within the women's movements where the question pertaining to women sexuality were addressed (Chatterjee 2018: 14).

Legal Battle and Naz Foundation ³¹: A Case study of Sexual Minorities

A controversy erupted in 1994 when the Inspector General of Tihar Jail in Delhi refused to circulate condoms among the prison inmates saying that it would encourage homosexuality; the issue became a headline in national newspapers (Thomas, 2018). The issue was problematic at two levels: a. being adults, it should be their choice to decide their sexual preferences; b. the denial to circulate condoms was against the government suggested precautions for AIDS prevention (Summary of Civil Writ Petition 1784 OF 1994 in the High Court of Delhi as Prepared by ABVA, 1995). A writ petition was filed by the members of the ABVA arguing for the striking down of Section 377³² as unconstitutional (Thomas, 2018). The petition was dismissed by the court in 2001 because they failed to follow through with the petition (Nair, 2018). In 2001, the Naz foundation³³ for the first time filed a Public Interest Litigation (PIL) challenging the constitutionality of Section 377 (Thomas, 2018). This was what is often cited as a proper challenge to Section 377 (Nair, 2018). The petition

³¹ Naz foundation has remained in the forefront in waging a battle against criminalization of section 377. The foundation helps the LGBT community in almost every way to fight for their rights and has always been on their side throughout this long and tedious legal journey. The foundation's commitment to the cause is one of the major reasons for choosing it as a case study over other organisations like nazaria, bi-collective, humsafar trust, Sappho for equality, sangma and many more. The organisation came into existence in the context of raising awareness about prevention of HIV/AIDS, providing necessary support and care to the infected people and their children and removing stigma by creating awareness among the masses around the issue in 1994. Along with HIV/AIDS combating actions, the foundation work with women and young girls from economically disadvantaged section and educate them about critical life skills like creating awareness about financial literacy that provide them an agency, sexual and reproductive health and gender equality. In 2001, the foundation set-up its very own orphan house for children living with HIV/AIDS in Delhi. The foundation aims to achieve a just and equitable society where individuals from socially and economically deprived communities could become the agents of change.

³² The need to repeal section 377 was felt by the LGBT community specifically because the section was used by authorities to clamp down on homosexuality. As far as the perception towards homosexuality is concerned, people in India are also conservative. The people of the community were denied state's protection and were not even give the basic fundamental rights. The constitutional apathy persists even till date because the same-sex marriages are not recognised by the state even after the decriminalization of homosexuality in India. They can participate in live-in arrangements without persecution from the authorities however, their union is not recognised by the state till date (Ghosh, 2022)

³³ Naz Foundation is not an uncommon name in India. The foundation works on various projects dealing majorly with the issues related to HIV/AIDS (PLWHA).

was dismissed by the Delhi High Court stating “*purely academic issues cannot be examined by the court*” (Suresh Kumar Koushal & Anr vs Naz Foundation & Ors on 11 December, 2013, 2004). A review petition was filed by Naz foundation which also met the same fate (Thomas, 2018).

In 2006, a special petition was filed by Naz foundation along with a coalition of NGOs (a group of over 10 NGOs and groups in Delhi) before the Supreme Court of India (Thomas, 2018). The Supreme Court reinstated the case in the High Court calling it an issue of public interest which should be entertained. Around the same time, the Ministry of Home Affairs under Shivraj Patil also filed an affidavit calling for the decriminalisation of offences under Section 377 (Thomas, 2018) (Nair, 2018). Along with this, the National AIDS Control Organisation (NACO) under the Ministry of Health and Family Welfare led by Dr Anbumani Ramadoss filed a separate affidavit arguing that its criminalisation would impede efforts to control HIV/AIDS (Nair, 2018). On July 2nd 2009 came the much-awaited judgement in the case. The Delhi High Court bench consisting of Chief Justice Ajit Prakash and Justice S Muralidhar struck down Section 377 of the Indian Penal Code. They reinforced the importance of the right to life, liberty and equality which was curbed by Section 377 (Thomas, 2018). However, the court maintained that the Section will continue to govern non-consensual penile non-vaginal sex both in the case of adults and minors (Nair, 2018).

De-criminalisation and Re-criminalisation of Homosexuality: Post-2009 Developments

The High Court judgement was challenged by Suresh Kumar Koushal, a Delhi based astrologer along with others the same year (Thomas, 2018) (Nair, 2018). A two-judge Supreme Court bench of Justices G S Singhvi and S Mukhopadhaya maintained that Section 377 “*does not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of the High Court is legally unsustainable*” (Suresh Kumar Koushal & Anr vs Naz Foundation & Ors on 11 December, 2013, 2004). The court handed over the matter to the Parliament to “*consider the desirability and the propriety of deleting Section 377 IPC from the statute book or amend the same*” (Nair, 2018) (Suresh Kumar Koushal & Anr vs Naz Foundation & Ors on 11 December, 2013, 2004).

An interesting development took place between its de- and re-criminalisation almost 20% people belonging to gay and lesbian community had already revealed their sexual identities in the public, and two out of every five homosexual persons faced blackmail after its re-

criminalisation, according to Hamsafar Trust (Saberin, 2018). The judgement blew the hopes of the community and Naz foundation including others filed a review petition but it was dismissed by the Supreme Court in 2014 (Nair, 2018). In 2016, a writ petition³⁴ was filed by Navtej Singh Johar, an award-winning Bharatanatyam dancer, chef Ritu Dalmia, journalist Sunil Mehra and hoteliers Aman Nath and Keshav Suri (India, 2018) (Thomas, 2018). The case was taken up by lawyer Menaka Guruswamy along with Naz foundation. Simultaneously, a nine-judge³⁵ Supreme Court bench was hearing a petition concerning India's biometric programme Aadhaar. The judgement of the case maintained the importance of privacy not only in digital sphere but also in private sphere and maintained that "sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual (Justice K.S.Puttaswamy (Retd) ... vs Union Of India And Ors. on 24 August, 2017, 2017). The judgement declared the right to privacy a fundamental right which is legally justiciable by the Constitution of India. The judgement also made reference to the needs of LGBT community and mentioned that "*a miniscule fraction of the country's population constitutes lesbian, gay, bisexual or transgender, is not a sustainable basis to deny the right to privacy*". After this judgement the court had to revise the verdict, it had delivered in 2013. On 23rd April 2018, Keshav Suri filed a petition with the SC seeking their response to it. The court agreed to hear his plea and sought a response from the government (Tandon, 2018).

Initially, the Central government sought adjournment for filing its response and later put the onus on the court to settle the matter (Online 2019). But the government maintained that the provisions dealing with minors and adults should be allowed to remain in the statute book (Online, 2018). Finally, on 6th September 2018 came the much-awaited news that the

³⁴ One can file a writ petition in the high court under Article 226 and in the supreme court of India under Article 32 when any of their fundamental rights are violated (Shah, 2019). Public Interest Litigation can be filed to claim matters concerning public interest. This can also be used in the case of fundamental rights (Desk, 2019)

³⁵ The nine-judge supreme court bench was adjudicated by K Kaul, D Chandrachud, K Agrawal, S Khehar, A Bobde, A Nazeer, D Chandrachud, K Agrawal, S Khehar (Justice K.S. Puttaswamy (Retd) ... vs Union of India and Ors. on 24 August, 2017, 2017). It is also interesting to note that the government was showing resentment to the decision and kept maintaining that Right to privacy is not a fundamental right as maintained in the previous cases in 1954 (MP Sharma vs Satish Chandra) and 1962 (Kharak Singh vs State of Uttar Pradesh) (Panday, 2017)

Supreme Court of India has lifted the ban on homosexuality. A five-judge bench³⁶ restored the landmark Delhi High Court judgement and also gave due importance to the provisions mentioned by the Centre. The law still stands with respect to unnatural sexual offences against minors and animals such as sodomy and bestiality (Rautray, 2018).

All four judges reiterated the importance of fundamental rights and how the criminalisation of the act was keeping people from exercising their rights under Articles 14 and 15 of the Indian Constitution. The 2013 petition in Suresh Koushal was dismissed by the court on the ground that the court need not intervene on the issue as it concerns only a miniscule minority of the population. But the Constitution of India bestows these rights upon its citizens independently of their identities or numbers. Importantly, Justice Indu Malhotra stated that *“an apology [is owed] to members of the LGBT community... for the ostracization and persecution they faced because of society’s ignorance”* (Knight, 2019).

It is important to note that the legal trajectory of sexual and gender minorities have followed different paths in India. The case of sexual minorities was taken up by Naz foundation in India whereas the National Legal Service Authority (NALSA) took the case of gender minorities in India. Before looking at legality of the case of the gender minorities let us look at case of Tamil Nadu first which was the first Indian state to make special provisions for the community like sex reassignment surgery along with their enrolment in various government schemes introduced by the central government.

Struggle of Gender Minorities: A Case of Tamil Nadu

The transgender³⁷ community may have become a part of the broader LGBT acronym or queer movement but it was argued by scholars like G Karunanithi (2015) that theoretically the issues of the transgender community should not be clubbed with the LGB category. The LGB community is fighting for ‘sexual orientation’ whereas the transgender community has a

³⁶ The five-judge bench consists of the then chief justice of India Deepak Mishra, Justice A.M. Khanwilkar, Justice Rohinton Nariman, Justice D.Y. Chandrachud and Justice Indu Malhotra (Rautray, 2018). Chief Justice Mishra’s delivered the judgement for himself and on behalf of Justice Khanwilkar.

³⁷ Transgender community is known by various names in various parts of the country like Kinner- in Delhi and other parts of North India; Aravani or 'Thirunangi' - in Tamil Nadu; Kothi- they are born males with varied degree of femininity in them, not all kothis associate with hijra community; Shiv-shakti- used in Andhra Pradesh; Jogtas/Jogappas- in Maharashtra and Karnataka (Hangsing, 2018).

different fight to wage around the appropriation of their ‘sexual identity’. A community (transgender) of around 4,87,803 (Census, 2011) people in India have different legal trajectory to follow (Karunanithi, 2015) (Nagarajan, 2014). Out of the estimated figure, around 54,854 are less than 6 years of age ³⁸ (Hangsing, 2018) (Census, 2011). Their literacy rate is around 50.06% (Census, 2011)³⁹. They can be found across India and their population concentration is mentioned in the table below state-wise (Hangsing, 2018). If we look at the literacy level than half of the community is illiterate with only 50.6% of literacy rate and there is a strong link between illiteracy, poverty and unemployment (Pawan Chaurasia, 2019) With this argument it would not be wrong to establish that the community is living under poverty and the employment opportunities available to them are scarce because of social stigma and also because of lack of proper skillset.

Table 3: Concentration in various states of India

Census of India, 2011				
<ul style="list-style-type: none"> • Total Population - 1,21,01,93,422 • Total Population of Transgenders in India - 4,87,803 (0.040% of total population of India) • Literacy Rate- 50.6% 				
Concentration in various states of India				
State	Population	Scheduled Caste	Scheduled Tribe	Literacy Rate
Uttar Pradesh	1,37,465/104480510 (0.068% of total population of UP)	26,404	639	56.07%
Maharashtra	40,891/ 112374333 (0.036% of total population of	4691	3529	67.57%

³⁸ The census data may have under-represented the actual figures of the transgender community as “the data have been primarily linked to the males’ section as they are usually counted as men, but on request, they may be counted as women” (Biswas, 2019). In 2011, a survey was conducted by NGO Salvation of Oppressed Eunuchs which put the number of the community at 19 lakhs (Nair, 2017).

³⁹ It is interesting to note that the Government of India has started keeping record of third genders in the country and the census of 2011 is a proof of that. The LGB people are not enumerated in the census as of now.

	Maharashtra)			
Andhra Pradesh	43,769/ 84580777 (0.051% of total population of Andhra Pradesh)	6226	3225	55.80%
Madhya Pradesh	29,597/72626809 (0.040% of total population of Madhya Pradesh)	4361	5260	53.01%
West Bengal	30,349/91276115 (0.033% of total population of West Bengal)	6474	1474	58.83%
Tamil Nadu	22,364/ 72147030 (0.030% of total population of Tamil Nadu)	4203	180	57.78%
Punjab	10,243/ 27743338 (0.036% of the total population of Punjab)	3055	0	59.75%
Haryana	8,422/ 25351462 (0.033% of total population of Haryana)	1456	0	62.11%

(Source: Census of India 2011)

These figures shows that transgender community constitute around 0.040% of the national population. Their marginal contribution (politically, demographically and economically) in the country is one of the reasons for their perpetual marginalisation. The marginalization of the LGBT community is not only taxing the community but also taxing the national economy. Quoting from a report published by the World Bank in 2014, ‘The Economic Coast of Homophobia in India’, “India suffers a loss between 0.1 to 1.7 percent of GDP because of homophobia? Or that Section 377 costs the nation between \$712 million to \$23.1 billion in health costs (HIV, depression and suicides)? There’s a price to be paid for bigotry, and the

whole nation is paying it.” (Kumar, 2016). Moreover, Political parties pay little heed to their problems because of their marginal share in almost all walks of life and this newspaper clipping of The Times of India depicts their deplorable conditions in the Indian society.



Figure 3: Study of Human Rights of Transgenders of India

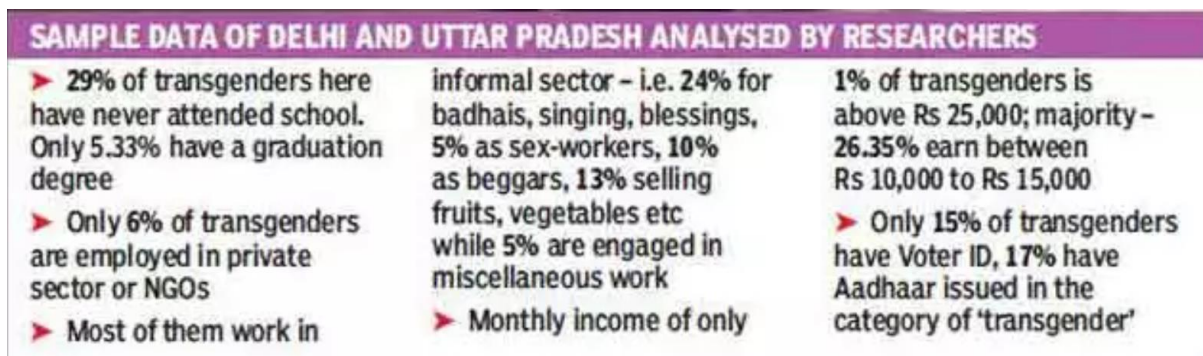


Figure 3.1: Sample Data of Delhi and Uttar Pradesh on Transgenders

In spite of these regressive conditions, there are states like Tamil Nadu that paints a hopeful future for the community. Tamil Nadu was the first state to accord third gender status to the transgender community⁴⁰.

⁴⁰ Tamil Nadu is the first state in India to include LGBTIQ+ issues in the school curriculum. They are working towards eradicating discrimination from the society by sensitizing the younger generation and also by sensitizing teachers on how to address the issue. The state government also aims to work on developing school infrastructure to suit the needs of the community like giving way to gender neutral bathrooms for those who do not confirm to any gender. Also, schools are preparing to give an additional column for 'transsexual' people beside 'male' column in the school applications. These are some of the significant steps towards gender inclusivity initiated by Tamil Nadu (Wavhal, 2022).

This was a product of the efforts put in by a group of transgender activists. Their aim was to procure legal documents like ration cards, voter cards and passports for the community so that they can claim or secure civil rights for themselves in the country. The state of Tamil Nadu gave orders for the establishment of a special welfare board for the community on 15th April 2008⁴¹ to address issues related to social exclusion, education and vocational activities for income generation. The state government allocated a special budget to the board for initiating various programmes and activities for the community (Karunanithi, 2015). The state government also introduced welfare schemes for the community like the free housing scheme under Indira Awaas Yojana, free sex-reassignment surgery in government hospitals, admission in government colleges and scholarship for higher studies, and providing them all the necessary government documents like any other citizen of the country. Along with these schemes, the Tamil Nadu government provided for the formation of self-help groups (SHGs) to inculcate money saving habits and enable alternative sources of livelihood through these SHGs (Semmalar, 2014). Some progress can be seen in central departments as well, like the Election Commission of India and the census. Both these departments acknowledged transgenders as ‘others’ prior to the formal judgement given by the Supreme Court of India. But their acknowledgement was not done to incorporate them into the system: both the departments were confused and doubtful regarding their status, and for this reason they were put under the ‘other’ category (Hangsing, 2018). In 2014, after a tough fight, a Supreme Court bench under Justices K.S. Radhakrishnan and A.K. Sikri recognized the community as Third Gender category (National Legal Ser.Auth vs Union of India & Ors on 15 April, 2014, 2014). It is interesting to note that the case of the transgender community was picked up by the National Legal Service Authority (NALSA)⁴². NALSA was the prime petitioner in the case along with two other petitioners, namely the Poojaya Mata Nasib Kaur Ji Women’s Welfare Society, an organization working for kinnars (a transgender community) and Laxmi Narayan Tripathi, a transgender rights activist from Mumbai (Acharya, 2019) (Semmalar, 2014).

⁴¹ Tamil Nadu government announced the date of formation of the welfare board for the community (15 April) as ‘Thirunangai Day’ (Transgender Day) to commemorate its formation (Karthikeyan, 2017).

⁴² NALSA was constituted under the Legal Services Authority Act, 1987. The prime purpose of NALSA is to provide free legal services to the weaker sections of the society and to organise Lok Adalat to reduce the burden of courts and to amicably resolve issues (Acharya, 2019).

Passage of Private Member Bill in Rajya Sabha

After the judgement, the community and the NGOs supporting them were pressing for a legislation for its implementation. It was on 24th April 2015 when, for the first time, a private member's bill, the Rights of Transgender Persons Bill, piloted by Tiruchi Siva, a member of the Rajya Sabha witnessed a historic unanimous passage⁴³. The Rajya Sabha chairperson remarked that this was a "rare thing". The Bill was transferred to the Lok Sabha and was scheduled to be discussed in the monsoon session of 2015. But it was neither discussed in the monsoon nor in the winter session of 2015. It was listed in second position for discussion of private member's bills. The bill listed above Siva's Bill was discussed for more than 9 hours which was about 5 times the usual amount of time set for the discussion of a private member's Bill. This "manufactured" delay started to make sense when on 26th December 2016, the Ministry of Social Justice and Empowerment published a new draft bill titled "Rights of Transgender Persons Bill, 2015". The contents of this new draft bill were diluted compared to Siva's Bill, with weaker provisions (Pulickal and Siva, 2016).

A Diluted Draft

A new draft bill was introduced in the Lok Sabha as the Transgender Persons (Protection of Rights) Bill, 2016. It consists of 9 chapters and 24 sections. It contains a "scientifically incorrect" and degrading definition⁴⁴ of transgender using binary of sexes as the reference point which was in contravention of the definition provided by the Supreme Court's NALSA judgement⁴⁵, the sanctioned (Rajya Sabha) private member's bill and the central

⁴³ It happened after 46 years when a private member's bill was passed by either House of the Parliament. Siva (2016) demanded a study of the non-passage of other private member's bills.

⁴⁴ Section 2(i) of the draft bill defines a transgender person as someone who is—(a) neither wholly female or male; (b) a combination of female and male; or (c) neither female nor male. Such a person's gender does not match the gender assigned at birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers (Jos, 2017).

⁴⁵ Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behaviour does not conform to their biological sex. TG may also take in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third gender". Among Hijras, there are emasculated (castrated,

government's own expert committee on transgenders. The Bill takes away the right of transgender persons to self-identify their gender and instead makes it mandatory for the person to go through a district screening committee which will certify the gender of the concerned person.

Along with this, the Bill deliberately removed many socio-cultural identities like shiv-shaktis⁴⁶ and jogappas (Jos, 2017). This provision not only goes against the NALSA judgement but also tries to institutionalize the identity of transgender persons. Self-identification is basic to their identity and countries like Ireland, Argentina, Malta, Colombia and Denmark have allowed for self-identification and also eliminated the requirement for medical treatment or certification (Jos, 2017). The Bill does provide for National Council for Transgender Persons which would be nothing but a massive bureaucratic chain of command without any enforcement abilities. Importantly, the Bill makes no mention of any designated authority to deal with cases of discrimination or harassment (Jos, 2017). The NALSA judgement and the private member's bill sanctioned by the Rajya Sabha make clear reference to reservation in educational institutions and in employment, but this clause is absent from the 2016 Bill. Section 13(1) of the bill makes it mandatory for transgender persons to reside with their family. This provision fails to acknowledge that biological family can also be a source of violence (Datta, 2017). Families seldom accept a transgender child as it brings shame to them. They also succumb to societal pressure. Moreover, it limits the options of a transgender person to unite with their community (Guru-Chela system) or to live independently or in an adoptive family.

nirvana) men, non- emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). TG also includes persons who intend to undergo Sex Re-Assignment Surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. Further, there are persons who like to cross-dress in clothing of opposite gender, i.e., transvestites. Resultantly, the term "transgender", in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex; male and female (National Legal Ser.Auth vs Union of India & Ors on 15 April, 2014, 2014).

⁴⁶ Shiv-Shaktis: A community of transgender people in Andhra Pradesh who consider themselves to be either "possessed by" or "married to" the gods and Hindu deity Shiva in particular. They are male and have feminine gender and cross-dress as women during rituals and festivals. They work as astrologers or spiritual healers (Johari, 2014).

Section 19(a) of the Bill criminalises beggary for a transgender person. This provision provides ample room for law enforcement to trouble transgender people if found indulging in beggary. The Bill does not provide for any protection against police assault, although the cases of violence at the hands of law enforcement agencies is well documented (Datta, 2017) (Jos, 2017). In other words, the Bill not only contravenes the Supreme Court judgement, but is also under-researched. The Bill tries hard to keep a tight control over the lives and bodies of members of the community. It takes away their independence and deals with a sensitive issue with the utmost apathy, and the discussion of the Bill in the Lok Sabha reflects the same. On 29th April 2016, a Bharatiya Janata Party (BJP) MP made a statement saying:

“But the transgender takes poor children with them and later make them transgender through surgery. This is [sic] huge criminal racket. Even their family members do not accept them afterwards. Right now, our learned colleague was pleading for reservation to them. If it is done, this crime will further escalate. This way, unknowingly, we would be doing great harm to the society” (Lok Sabha Synopsis of Debates, 2016)

The MP did not stop there and also proposed that no law should be enacted unless society accepts the transgender community (Lok Sabha Debate, 2016). If we evaluate the statement logically then it is true that cases of castration are being reported but the whole community is not engaged in the mentioned vice. Every transgender may not indulge in these criminal activities but every transgender person may have been victimized by the state and society at some point of time. This issue was also raised by a national daily (Indian Express) and they published a front-page report on 19th November 2017 stating that Tawaar Chand Gehlot, heading the Ministry of Social justice and Empowerment (MOSJE), has rejected all the recommendations of the Parliamentary Standing Committee on the Transgender Bill (Sampoorna, 2017). Apart from this manufactured delay, an extremely short window of 10 days was assigned for consultation and feedback from the stakeholders. This was extended for 10 more days on community’s request for extending it to at least some months. The transgender collective managed to send their detailed comments but they were neglected and the result of which was an under-researched draft bill.

Amid this turmoil, the Bill was forwarded to a standing committee which submitted its report in July 2018. The committee proposed 27 amendments which were accepted by the government and the bill was tabled on 17th December 2018 and passed with the proposed

amendments (Kondaiah, 2019). The passed Bill also generated criticism across India from the transgender community as it once again neglected the amendments proposed by the committee and the community itself like the right to marry and inherit property (Kondaiah, 2019). The Bill was reintroduced post-general elections on 19th July 2019 by the Minister of Social Justice and Empowerment, Thawar Chand Gehlot. Interestingly, the Bill was passed by a voice vote in the Lok Sabha on 5 August 2019 (Sirohi, 2019).

This excerpt from a leaflet intended for nationwide mobilisation and protest summarises the problems of the community and depicts how shallow the proposed Bill is:

The bill got passed from the Lok Sabha and was sent to the Rajya Sabha for discussion. The bill was not received well by the members and there were some of the MPs who have proposed some heavy amendments in the bill. The issue of certification for transgenders was raised by Jaya Bachchan; a Rajya Sabha MP from Samajwadi Party who stated that the “Certification is discriminatory. Its humiliation of a human being”. Along with this, she also raised concerns regarding how a “person can forcibly be made a transgender”. She concluded her speech by saying that these issues need to be addressed and there is a need for a more “sensitive bill” (Rajya Sabha, 2019).

“This regressive Bill, if tabled in its current form, would take away the right to self-determine one’s own gender because a District Screening Committee has been proposed to ‘certify’ someone as transgender. This Screening Committee would use a physical examination, which is denigrating and humiliating for transgender persons, and also goes against the Right to Privacy that has recently been guaranteed by the Supreme Court as a fundamental right. Also, this Bill criminalizes various ritualized occupations that involve blessing people for money or gifts (e.g., badhai, mangti, etc.) and sex work (known as dhanda, khanjra, etc.). Owing to the lack of alternative forms of employment, this clause would become a reason for transgender persons who engage in badhai and sex work to face increased state and police violence. They can be fined, and/or jailed for 6 months to 2 years. This Bill has also ignored the recommended reservation clause of the NALSA judgement. The Bill does not properly define ‘discrimination’ against transgender persons, and thereby, no proper criminal action is guaranteed against those who discriminate against transgender persons” (Datta, 2017).

Another Rajya Sabha MP Shanta Chhetri (elected unopposed) from All India Trinamool Congress Party had also raised her concerns and stated that the “bill must be scrutinized by the standing committee”. In her parliamentary speech she raised concerns over various clauses of the bill like the “bill is silent on self-identity aspect” and it “fails to deliver on fundamental rights like the right self-identity”. Like Jaya Bachchan she also believed that the “bill empowers the magistrate to provide legal certificate”. She wanted the government to add clauses like the community’s “right to marry and inherit property”. Along with these the government “must set-up transgender commission like women’s commission”. She called the bill “half-baked” and it need major amendments (RajyaSabha, 2019).

There is no doubt that the bill is half-baked and need major amendments like the setting up of national and state level transgender welfare commissions like women commission and the community must get legal recognition to marry and inherit property. The government knew that the bill is not competent to make any substantial change in the conditions of the transgender community. The MPs wanted to send the bill to select committee and the issue was put to vote and the motion was defeated. The results of the voting were: Yes: 55; No: 74; Abstain: 1; Total:116 (RajyaSabha, 2019). The bill was not sent to select committee and got passed by the Rajya Sabha as well. The transgender community was not happy with the move and they protested against the government across the country. The community has the following suggestions with regard to the bill:

- Begging and sex work was criminalised by the government in the bill that was presented in the Lok Sabha. The community was protested against these provisions because these are the primary sources of livelihood of the community. After much protest from the community, the government agreed to decriminalise these acts.
- The definition of the word transgender is not adequate because the definition conflicts an intersex person with a transgender and takes the agency to self-identity a person away.
- The major protest against the bill came for the clause regarding certification of transgender person which is done by the Magistrate. The bill also proposes for the setting up of a district screening committee for the purpose. The community is not opposing this provision vehemently because it requires a transgender person to get a government certificate saying that they are transgender and post sex reassignment surgery, they can obtain a certificate proving their identity as a male or a female. The provision takes away a person’s agency to identify freely. It’s a two-step programme

where they have to apply for a transgender certificate and then apply again for another certificate post-surgery. Their ordeal will not end with this, they must satisfy the magistrate regarding their surgery. The provision provides enormous power to the magistrate and has also open new avenues for the community to get harassed

- It is not uncommon for the community to feel discriminated by the medical professionals. The doctors are not just ill-equipped but are judgemental too. The community has raised this concern time and again. Moreover, a trans-person needs parent's consent for the surgery.
- Families can be a source of emotional and physical abuse for a transgender community and the bill made it mandatory for a transgender person below 18 years of age to stay with their family. This has put the life a trans-person on stake. They are not allowed to go to the traditional community houses, often called gharans. They will be sent to the government's rehabilitation centres.
- Interestingly, our criminal system is also ill-equipped in providing protection to the community. The penal code of India recognise punishment for sexual offences only for male and female and the word transgender or third gender is still omitted from the list. This enhances the chances of the community to get harassed both by the citizens and the justice providing agencies. Moreover, the offence against the transgender persons is listed in bailable crimes (Saransh, 2019).

The government must ponder over these issues in the bill and must undertake serious amendments. The issue pertaining to the rights of the LGBT community is still pending. The supreme court may have given a verdict on decriminalisation of homosexuality but an act in that regard is still awaited.

Impact of Decriminalization on the Masses

It would not be wrong to assume that the Indian society is homophobic however people's perception towards homosexuality has begun to change in the late 90s while the judgement on the petition filed by the Naz foundation came in 2009. According to the World Value

Survey (WVS)⁴⁷ the perception of people towards homosexuality changed drastically. One of the questions from the survey was that “homosexuality was never justified” and the data from 1990-2014 suggests that it came down from 89% to 24% (S., 2018). Earlier more than half of the Indians were against the practice but with time the value system has started to change this could be because of cultural globalisation as well when explicit content started to circulate in the Indian society. Because of these declining trends in value system the WVS has placed India in the liberal top consisting of 60 other countries (S., 2018). A similar study was conducted by Centre for the Study of Developing Societies (CSDS) and Azim Premji University in 2017-18 where 28% of the respondents agreed that sexual relations between two men and two women should be accepted by the society. The study consisted of people from eight states were 46% still believe otherwise and the remaining population does not have an opinion on the issue (S., 2018).

The value system of India has started to change in the post-liberalisation era especially because of surge of new ideas via cable and via technology in the 21st century. The society’s attitude towards the community have started to change slowly and major progress in the attitude of state could also be observed with the decriminalisation verdict in the issue. The verdict has instilled a new confidence in the community. People of the community feel safe not just physically but emotionally too. The verdict give confidence to those who are on the edge and still ‘under the closet’ because of societal pressure. A supporter and member of the community stated that “I feel a lot braver now, after the judgment. I can face the police with courage now that I am not doing anything wrong in the eyes of the law” (Jain, 2013). These reports are enough to prove that India is heading in the right direction in terms of making this world a better place to live for everyone and that day is not far when the supreme court of India will recognize and legalise the union between same-sex people as well.

⁴⁷ World Value Survey (WVS) is an international research programme that works to develop scientific and academic study of social, political, economic, religious and cultural values of people across the world (World Value Survey, 1980). The programme conducts periodic polls since 1980s and in the year 2014, the share of Indian respondents was very small. Only 1500 people participated in the survey and the results of those were generalised accordingly.

Chapter-4

Tracing the legal trajectory of Transgender Person Protection Act, 2018 in Pakistan

Introduction

The creation of Pakistan in the mid-20th century can be compared with national movements of the 19th century like the Armenian national movement and with some recent ones like the Chechnyan, Bosnian, and Palestinian. One commonality which can be observed among these movements is that like Pakistan, they were also “seeking homelands for oppressed minorities” (Cohen, 2004). Ironically, Pakistan provided strong support to these movements while neglecting the critical minority question which lay within its own territory. Before addressing the LGBT question in Pakistan, let us first look at the nature of state and its interaction with society and non-governmental organizations along with its commitment to democratic principles. Pakistani society is fundamentally male-dominated. Patriarchal social structures are embedded in gender segregation (the male-female binary) and people have deep faith in the institution of marriage (heterosexual) (Khan, 2019).

Unlike India, Pakistan is not a secular state and its commitment to democracy and its values keeps changing from time to time. One major reason for this can be ascribed to the presence of an informal political system which ties the senior ranks of the military, the civil service, key members of the judiciary, and other elites together like a “core” as argued by Immanuel Wollerstein in world system theory (Cohen, 2004). Not every powerful person in Pakistan belongs to this “core” group but their membership to the “core” group depends greatly on their adherence to a set of values and norms which are embedded deeply in the idea of nation or Islamic Nationalism (Cohen, 2004). Even being a subset of what Cohen (2004) called the Establishment (core group), Islamic nationalists sometimes find themselves at odds with the former. Islamic nationalists are conservatives who share their ideology with al Qaeda. They

believe in the cooperation of Muslim states and total defiance of the United States of America and Israel. Pakistan witnessed a Prime Minister who furthered this ideology.

General Zia and Hudood Ordinance

General Zia-ul-Haq overthrew the then Prime Minister Zulfikar Ali Bhutto on July 5th 1977 and “established his own authority” (Cohen, 2004). General Zia was a deeply religious man and wanted to build a Pakistan on Islamic teachings. He was the first leader who argued for an Islamic legal system as prior to his regime, Pakistan’s legal system worked on a secular penal code (Burki, 2016). Some even argue that he launched the Islamization campaign to seek political and social legitimacy for his regime by appealing to certain sections of the society (Burki, 2016) (Ahmad, 1996) (Cohen, 2004) (Haqqani, 2013) (Reeves, 1984) (Rizvi, 1991) (Kennedy C. H., 1996). The Islamization campaign provided a perfect opportunity for him to justify his coup d’etat (Lau, 2007)⁴⁸. In one of his speeches he said, “preservation of that Ideology [Pakistan ideology] and the Islamic character of the country was . . . as important as the security of the country’s geographical boundaries”. General Zia not only influenced the political life but also tried to change the social life of the country. The implementation of the Hudood Ordinance on 10th February 1979 was a step closer to turning Pakistan into an Islamic state and bringing the legal system of the country closer to the precepts of Islam (Kennedy C. H., 1987). The Offence of Zina⁴⁹ (Enforcement of Hudood)

⁴⁸ Pakistan adopted many constitutions after independence in 1954, 1962 and in 1973. The provision of turning Pakistan into an Islamic state was there in each of these constitutions but was taken seriously. This was the justification given by General Zia for his coup d’etat against the Bhutto government in 1977 (Lau, 2007).

⁴⁹ Homosexuality is a punishable act and all sexual activities outside marriage are criminalised under the zina provision of the Hudood Ordinance 1979. However, there is no evidence that zina is imposed on LGBT community. One possible explanation of this could be that homosexuality is not recognised hence, never even being reported and persecuted in Pakistan the way adultery is dealt with (Pakistan , 2022). Quoting from the original text of the ordinance, zina is defined as

“A man and a woman are said to commit 'Zina' if they wilfully have sexual intercourse without being married to each other” (Pakistan , 2022)

Like India, Pakistan was also ruled by Britishers and their sexual morality was also being imposed on the country via Penal Code 1860, and the trend continued in the Independent Pakistan as well. In the recent past, reports of violence against the LGBT community have started to surface and many international organisations like the Human Dignity Trust have reported them too (Pakistan , 2022)

Ordinance, 1979 changed the social fabric of the country on regressive orthodox religious lines.

The Ordinance changed the criminal laws of the land, bringing them closer to the teachings of the Quran while reversing the slow and significant gains made by women in Pakistani society (Burki, 2016) (Lau, 2007). It enforced punishment mentioned in the Quran and sunnah for zina (extramarital sex), qazf (false accusation of Zina, theft, highway robbery, apostasy, falsely accusing someone of having illicit sexual relations and alcohol consumption⁵⁰ (Ali, 2015). In 1991, the zina punishment was extended to other crimes as well like kidnapping, enticement, sodomy, attempted rape, abetment of zina crime, deceitful marriage and conspiracy to engage in prostitution (Kennedy C. H., 1996). It can be observed that the provisions of Hudood ordinance were not only engulfing but also gripping other crimes which were out of their ambit. Before the implementation of the Hudood Ordinance, these crimes were dealt with by the secular Pakistan Penal Code and adultery and fornication were never criminally punished. These legislations were adopted by Pakistan post-partition which had been enacted by their colonial masters in the 1860s (Lau, 2007). Zia's notion to turn Pakistan into an Islamic state was divided into two measures namely: hadd offences and the creation of Federal Shariat courts (Lau, 2007). These offences were divided into two types, namely hadd and tazir. Crimes which fell under the hadd denomination required a higher standard of proof than crimes under the tazir denomination. Islamic punishment was severe and fixed in the former case whereas in the case of the latter, punishment was discretionary in nature (Paracha, 2011).

The second measure dealt with the creation of Federal Sharia Courts which came into existence in June 1980 in Islamabad (Kennedy C. H., 1987). The Sharia courts were given enormous power to review laws on the basis of Islamic principles and entertain petitions filed by the common citizens of the country (Kennedy C. H., 1987) (Lau, 2007). The Hudood Ordinance had a marginal impact on the criminal law system of the country with middle class and upper caste Pakistanis seldom charged under it (Kennedy C. H., 1987). It also made changes in the forms of punishment and also introduced some new punishments like stoning,

⁵⁰ These laws create six distinct categories of sexual offences and assign different punishments to them. The six distinct categories are as follows: a. zina liable to hadd; b. zina liable to tazir; c. zina-bil-jabr liable to hadd; d. zina-bil-jabr liable to tazir; e. qazf liable to hadd; f. qazf liable to tazir (Paracha, 2011).

amputation and whipping (Lau, 2007). Since its inception, women's groups⁵¹ and NGOs in Pakistan had been opposing it and the law was revised in 2006 under huge pressure from women's rights groups and international agencies (Lau, 2007). We have already looked at the religious point of view of Islam towards the LGBT community in the second chapter where we established that homosexuality is a sin in Islam even then homosexuality is being practiced in the Pakistan and the act is rarely punished (Research Directorate, 29 November 2007). We have also looked at the prevalence of homoerotic practices among Sufi saints and social evils like bachabazi in countries like Afghanistan and in the western part of Pakistan which shares a border with Afghanistan.

The aim of the chapter is to look at how the amalgamation of religion and politics shaped the lives of the LGBT community in Pakistan and the role played by the NGOs in waging a legal battle against the state for appropriation of their rights in Pakistani society. The Hudood Ordinance was inherently misogynistic in nature. It pulled an already conservative society into deeper shackles of orthodoxy. Islamic quazis and ullemas got a new tool to harass women and the LGBT community in the name of Islam. They not only limited women's presence in the public sphere but also dictated basic human choices like dress code. It was made mandatory for women to cover their head and wear 'decent' clothes before they appeared on state-controlled channels. The Federal Government issued 'Chador' directives for women employees (Burki, 2016). The impact of this orthodoxy can also be observed on the portrayal of women in television and cinema in Pakistan. Women were portrayed as insatiable creatures, always hungry for money and jewellery and causing men to engage in corrupt practices like bribery to fulfil their demands (Burki, 2016). This deadly amalgamation of religion and politics leads us to believe that each and every identity is subordinate to the male identity in Pakistan. Now one question is worth asking at this juncture that if women are treated as second class citizens in Pakistan's society, then it must be difficult to even estimate the pain, suffering and darkness in the lives of the LGBT community in the country.

⁵¹ The ordinance was opposed precisely because it turned a rape victim into a criminal because she had to produce four witnesses to her rape failing which she would be charged on various grounds e.g., if married, she would be charged under the adultery law (Lau, 2007). If four people witnessed a crime like rape then why would they just stand there instead of helping the victim? Importantly, no criminal would rape someone in a public place in broad daylight. Rapes usually take place in secluded places to avoid suspicion and witnesses but the ordinance negated every other aspect and focused only on proving a victim wrong even after medical tests proved otherwise. The ordinance did grave injustice to the women of Pakistan in the name of Islam.

Recent Sociological Developments in Pakistan: Sexual Minorities

“Apna moza khud dhoondo” (look for your sock on your own) to “Mera jisam meri marzi” (my body, my choice) are a couple of provocative⁵² slogans which were used during the Aurat March last year in Pakistan. The march irked the conservative faction and their like-minded allies because it pushed aside public morality while simultaneously exposing the myth of these man-made norms and their beneficiaries. Interestingly, in Lahore and Karachi, the women refrained from shouting slogans on LGBT politics in the country (Zia, 2020). This pick and choose attitude of the Aurat March raised many important questions like why did they refrain from incorporating a marginalized community like their own into their struggle? Did this have anything to do with the religious teachings of Islam or were they not aware about the intricacies of the issue?

We do not know the exact reasons behind this picky behaviour but one thing is clear that very little research is available on the LGBT community in Pakistan, especially sexual minorities, because of the sensitive nature of the subject. Homosexuality is considered a taboo and issues of sexual orientation are hardly discussed. Debates are almost non-existent on the subject. There are many reasons for this ranging from the illegality of the act to its unsanctioned nature with respect to religion. Hardliners or religious fanatics often consider sodomy as an aberration brought by western culture (Walsh, 2006). Interestingly, sodomy laws are rarely invoked and assaults on gay men are hardly reported but gay parties are thriving in the big cities of Pakistan like Lahore and Karachi (Walsh, 2006). One may ask, how are gay people and parties not facing the wrath of the conservative Pakistani state? If reports are available on a criminal activity being conducted in Pakistan, then why are the concerned authorities not taking any action against it?

Pakistan may not be a conducive place to uphold the agenda of gay liberation publicly but it is one of the best to conduct homosexual activities. This is so because marriage and cultural factors offer camouflage for homosexual activities (Walsh, 2006). Pakistan is divided strictly on gender lines i.e., follows strict dichotomy between the two sexes so it is not difficult to get

⁵² The very idea of organizing a protest for women’s rights in Pakistan is provocative because of the patriarchal nature of the society. Deutsche Welle, a renowned German broadcaster has held that “Pakistan ranks as the sixth most dangerous country in the world for women, with cases of sexual crimes and domestic violence recording a rapid rise. Activists blame society’s patriarchal attitudes for the problem” (Shah, 2021).

into the company of same-sex people (Walsh, 2006) (Ladly, 2012). In fact, being with a person of the opposite sex can raise suspicion and can also have serious implications as extramarital affairs are harder to conduct (Ladly, 2012). It is also not uncommon for affection between men to be shown publicly and one can easily spot men holding hands in public. Hugging and kissing are also well spotted in public places in Pakistan (Ladly, 2012). In short, it is easier for a man to be with his gay partner than with a woman.

People in Pakistan not only engage in homosexual acts because they are gay but some even engage in them as a profession while conducting their private life simultaneously with their wives and kids. A BBC Magazine article by Azhar (2013) gives us a chance to peep into the lives of gay people in Pakistan. He incorporated many interviews of people belonging to the gay and lesbian community in Pakistan and he came across many cases where men are involved in homosexual practices for business. One of his interviewees was Ahmed who lived with his two wives and eight children. Both his wives did not have any problem with their husband being involved in the homosexual business. In fact, they wanted people to keep an open mind towards the profession. One obvious question here is, how did these people strike a balance between their faith and inner self having been brought up in a place like Pakistan with a highly religious and orthodox society?

It is more of a subjective question which can be answered using the nature versus nurture debate. Geneticists have a divided opinion on the issue. One group can be represented by Ben Neale, statistical geneticist at the Broad Institute of MIT and Harvard, who states, “It’s effectively impossible to predict an individual’s sexual behaviour from their genome” (Kaiser, 2019). Whereas Brendan Zietsch, a geneticist at the University of Queensland in Australia maintains, “We find that there are many, many genes that predispose one to same-sex sexual behaviour” (Kaiser, 2019) (Choi, 2019). Each of them individually has a very small effect, but together they have a substantial effect”. There is no evidence that the presence of any one gene can influence a person’s sexual orientation.

Rather, it is an amalgamation of hundreds of genes each of which seem to be involved to a small extent (Kaiser, 2019). Predisposition to homosexual activities results after a complex mix of genetic and environmental influences (Choi, 2019). These pieces of research may have been conducted on a large sample size but their results cannot be universalized for two reasons: a. these tests were conducted only in high-income countries b. the age spectrum of the participants was also limited (Choi, 2019). The older generations in these countries may

have lived in societies which were segregated along gender lines. It would have been easier for them to conduct parallel lives as in the case of Pakistan than for later generations (Choi, 2019).

It would not be wise to use the genetic argument in the context of Pakistan but if we look at external conditions, they provide ample space for homosexuality to flourish in its territory. In Pakistan, men are discouraged from getting involved in a physical relationship with a woman due to which boys end up having their first sexual encounter either with a male friend or a cousin (Azhar, 2013). These incidents are often dismissed by the families and considered a part of growing up. This is so because eventually they will have to marry a girl and these incidents won't matter after their marriage.

Above all, there is a patriarchal idea behind this discounting which is that boys will be boys (Azhar, 2013). Homosexuality may constitute a crime both legally and, in the religion, but in the case of children such incidents are never taken seriously and sometimes doesn't have any implications either. Azhar (2013) in his article shared an interesting case where police found two boys having sex in a field and despite the pleadings of their family members the police did not let this go. The family of one boy wanted details of the FIR to be changed. They wanted their son to be presented as the active sexual partner. The reason for this is that a boy being a passive partner is an even more shameful charge than a boy being involved in homosexual activity.

Much has been said about the gay population of the country. It is said that they reside especially in the port city of Karachi which is "a gay man's paradise" in Pakistan (Azhar, 2013). They operate in disguised ways like having underground parties, group sex at shrines and marriages of convenience with members of the opposite sex (Azhar, 2013). The rural religious people may hold conservative beliefs but the city is bustling with same-sex activities. Now it's time to explore the lesbian population of the country and their condition. Their public presence is very bleak and their lives are far more difficult than the gay population of the country (Azhar, 2013).

As Pakistan is a patriarchal society, it keeps a strict check on women's mobility. They remain confined to the four walls of their houses. Even then there are lesbians like Beena and Fatima who have devised ways to live together along with twenty something other lesbian couples. In an interview with Azhar (2013) Beena said that she is hopeful about the future and she thinks they "will have a marriage of convenience" with some "gay guys" she knows. They

can put in “money together and they have one portion of the house” leaving the other side for them. This idea doesn’t seem very feasible because in Pakistan people often get into marriages arranged by their families and not many people are in favor of a girl choosing her groom. The reports of honour killings in Pakistan are an evident example. Beena herself said that her “father is a gentleman” but she “wouldn't put it past him to put a bullet through” her head. “I'm all for being 'true to myself' but I don't want to die young," This statement depicts her insecurity and uncertainty regarding her parents accepting her relationship with a woman (Azhar, 2013). Interestingly, this is not the only reason that she is keeping her relationship discreet from her parents. She feels there are other issues which also need to be dealt with first. As she said, “it's selfish for me to come out and campaign for gay rights now. It's selfish to the women in my family who are fighting for education and the right to marry the man of their dreams, or not to marry at all”. The statement makes it clear that women in her family are fighting for the right to marry the “man” of their dreams (not the woman) because nobody has ever thought on these lines, certainly not her parents’ generation nor many who belong to her generation but think traditionally like the previous generation.

Despite these problems Beena is hopeful for the future because she believes that in Pakistan people get private space to express their sexuality though it will take some generations to change the situation for better. Some exceptional cases are also reported and Azhar (2013) came across one such case. A gay couple Ali and Akbar made things work fighting against all odds. Ali belongs to a matriarchal household which means that if he convinces his grandmother, everything will fall into place. This is exactly what he did and now the couple live happily and Akbar shares a good relationship with Ali’s mother.

A same-sex couple ending up together is an exception in Pakistan and it is an upper-class phenomenon as well because “middle class or working-class women are refusing to call themselves lesbian because that to them is an insult, so they’ll say ‘woman loving woman’” (Ladly, 2012). Like lesbians, gay men also refrain from calling themselves gay because they themselves are not aware that they are gay (Azhar, 2013). Common people still believe that it is a sin and must be eradicated from society. To fight these challenges the lesbian and gay community of Pakistan along with ‘O’ NGO⁵³ is running a silent movement which is not

⁵³ ‘O’ NGO is an activist group formed by two women who choose to stay anonymous due the state’s attitude towards homosexuality in Pakistan. The group does not want the name of the organisation to be released as well because it is registered under the banner of an NGO concealing its true purpose from the authorities. The NGO conduct research on the LGBT community in Pakistan and help them with legal advices as well. The true

asking for acknowledgment from the state. Rather, it is trying to convince their families (Ladly, 2012).

NGOs are also working with the community but to protect themselves from public morality and the law of the land they also operate in disguised ways. A lesbian couple formed an activist group called 'O'. They both refrained from disclosing their identity, and the name of the NGO as it is registered with the government of Pakistan, to conceal their real purpose (Ladly, 2012). The aim of the group is to provide legal assistance to the members of the LGBT community and help them fight difficult family situations. The 'O' NGO has made it clear that this is not the right time to deal with legal discrimination faced by the community. Rather, they are putting efforts into building social acceptance for the community (Ladly, 2012). The reason for refusing to wage a legal battle against discrimination is that on 26th June 2011, the first LGBT pride parade held by the American Embassy in Pakistan met with severe backlash and demonstrations, ironically in the gay men's paradise Karachi and Lahore (Ladly, 2012).

Rina Harris, an embassy spokesperson said, "we are committed to standing up for these values around the world, including here in Pakistan". A 33-year-old activist from 'O' NGO strongly believes that the event will prove detrimental for the slow rising movement in Pakistan and was a mistake because it has created a fear among the masses which was not there earlier. The event was seen by the Pakistani masses as America trying to dilute and disrespect their ideology. It was nothing but an ideological clash (Ladly, 2012). Pakistani people believe that homosexuality is an abhorrent western practice and Islam provides no space to such acts which are against the law of nature (Walsh, 2006). No one knows when the sexual minorities of Pakistan will get legal recognition as there is no coherent movement on a national or regional level. But some efforts are better than no effort at all in that direction. In the next section, we will look at gender minorities of the country and will discuss their condition to determine whether they are any better off than sexual minorities.

Gender minorities (the transgender community) may have got acknowledgement as citizens of Pakistan in 2009 but their issues are under-researched till date (Abubakr Saeed, 2017). In

purpose of the NGO is to work with civil society to create awareness regarding homosexuality and building social acceptance instead of launching a legal battle against these state-sponsored atrocities. In short, the NGO is preparing a base for movement among the masses that could help the authorities change its attitude towards the community instead of adopting a top-to bottom approach (Ladly, 2012).

recent years, academia has shown considerable interest in their lives. Still, this population is under-researched in the country (McFadden, 2015) (Abubakr Saeed, 2017). Even after recognition as citizens of the country, they face social exclusion along with exclusion on various other fronts like access to health care facilities, education and employment opportunities. Lack of these basic amenities make their case more severe than other minorities which exist in Pakistani society (Jamil, 2014) (Abubakr Saeed, 2017). In this context, the next section will explore the intricacies of the lives of the transgender community living in Pakistan.

Gender Minorities: Legal Battle

As mentioned above, Pakistan did not witness any significant social movement as far as the issue of LGBT is concerned. We have discussed sexual minorities and their status in Pakistani society. Now we will turn our attention to the case of the transgender community in Pakistan. We have already discussed the historical marginalization of the transgender community in the second chapter. This chapter will cover their status in an independent and sovereign Pakistan. Redding (2015), 'From 'She-males' to 'Unix': Transgender Rights and the Productive Paradox of Pakistan Policing' provides insightful details about the police raid at a wedding in Rawalpindi and a PIL that was filed by Khaki and Yasmin Hayder which ignited the debate around the rights of transgender people in Pakistan. His work provides a detailed analysis of the hearings that took place in 2009 and how a random case of violence against the community became a landmark in getting justice for the transgender community.

On 24th January 2009, Rawalpindi's police got secret information that people in a wedding were enjoying a vulgar dance of women and castrated men and some were playing cards and were involved in gambling. The wedding scene turned into a police raid and people were sent to jails for dancing and gambling. This random case of violence against the transgender community was picked up by the Supreme Court of Pakistan. The Chief Justice of the Supreme Court of Pakistan, Iftikhar Muhammad Chaudhry⁵⁴ decided, *Suo Moto*, the Human Rights Constitutional Petition 63/2009 to protect the rights of the transgender community (*Suo Moto*, 2009). After the arrest, the transgender community protested in front of the

⁵⁴ Iftikhar Muhammad Chaudhry is a controversial person in Pakistan. He has been accused of abusing legal tools like *Suo moto* especially in cases of his choice. To silence critics, he has often used contempt of court rules (Boone, 2013)

Senior Superintendent of Police (SSP) and after 3 days a petition was filed by Almas Shah aka Bobby. After a through enquiry 3 dancing ladies and 5 ‘she males’⁵⁵ or castrated men were released from jail. But one person was held back and was charged under Punjab Gambling Ordinance and Pakistan Penal Code for gambling and conducting non-approved lottery games.

On 6th February 2009, an Islamabad lawyer, Mohammad Aslam Khaki along with his wife and colleague, Yasmin Haider, filed a human rights petition with the supreme court of Pakistan. Khaki and his wife were also supported by the Insaaf Welfare Trust. Khaki’s petition had opened up a pandora’s box of problems on the political, religious and moral fronts. In his petition, Khaki⁵⁶ argued for political rights for the community by using religious texts and the constitution of the Islamic Republic of Pakistan. The petition stated that the transgender community is a part of civil and Islamic society but has always been denied the right to dignity which is enshrined both in the Quran as well as the constitution of the land. The petition also stated that it is their legal and Islamic right to inherit property from their parents which they are usually deprived of and their education and employment opportunities are violated by various government practices and policies. He also asked the Supreme Court to take strict action against the Rawalpindi police force and also direct the government to protect their fundamental rights. Responding to Khaki’s petition on 16th June, the Supreme

⁵⁵ The Supreme Court of Pakistan has changed the nomenclature frequently by referring to a transgender person as ‘shemale’, ‘eunuch’, ‘unix’ and persons with ‘gendered disorder’. There are various explanations for this and the most common one is carelessness of the system which is a typical characteristic of any legal system.

Secondly, the case which was filed by Rawalpindi police was in Urdu-language and consisted of 6 pages. The complaint sent to the Regional Police Officer was of 1.5 pages and was written in English and both reports were different from each other. The English report provided a summary of the event while the report written in Urdu language also contained ‘testimonies’ of various parties involved in the case. In the process of translation, transgenders were described as a combination of male and female which was written as ‘she-male’. The legal operations office segregated the detainees on the basis of two factors a. honour b. kinship. The females or the dancing girls are preceded by the honorific “musmat” or “musammat” while hijra names are not so preceded. The girls were identified as daughters of their father in the report and the transgender people as sons of their father. Also, Rawalpindi police made a bizarre distinction between people who threw currency notes on others and those upon whom the notes landed. The police assumed that the latter ones are not-male or are feminized genders. The police made this arbitrary distinction which proves that they had limited understanding of the gender framework and so did the Supreme Court of Pakistan. Gradually, the Supreme Court of Pakistan adopted terms like ‘eunuchs’ and ‘unix’ (Redding, 2015).

⁵⁶ Khaki has also challenged restrictions on alcohol and conjugal visits for prisoners as they are inconsistent with the Quran (Sanders, 2014)

Court ordered the provincial governments to conduct a census and identify the names and locations of transgenders in each province. The court also directed the provincial governments to keep track of the parents and Gurus of the transgender community to ensure whether a child is handed over to them willingly or under any compulsion (Appellate Jurisdiction , 2009).

After another hearing on 14th July, an order was issued by the Supreme Court of Pakistan that acknowledged the transgender community as citizens of the land. With this, the community became entitled to protection particularly under Articles 4 & 9⁵⁷ of the Pakistani constitution (Omer, 2013). The court also warned the police not to engage in “any highhandedness” with the community in the future. Along with this, the court also asked for recommendations from the provincial governments for the ‘social upliftment’ of the community. The Court changed the term to describe them from ‘shemale’ to ‘eunuchs’ in the hearing of 4th August 2009. The Court took some significant steps in that hearing and ordered the provincial governments to enable transgenders to get education and respectable jobs other than their traditional occupations of begging and flesh trade (Appellate Jurisdiction , 2009).

The Court also ordered police officials to ensure the protection of the community against harassment (Original Jurisdiction, 2009). In the next hearing on 20th November 2009, the court used a different terminology and called them ‘Unix’. Interestingly, the court reinforced the importance of education, employment and inheritance rights while denoting them as a “class of society” suffering from a “gender disorder” (Appellate Jurisdiction, 2009). The court also ordered the National Database and Registration Authority (NADRA) to record the exact status of a transgender person (Unix) after undertaking a hormonal test of the person and also to provide national identity cards (NICs) to them (Original Jurisdiction, 2009) (Iqbal, 2009). The question here is why should anyone undertake any test to prove their gender to the authorities? Gender is ingrained in societal structures and hormones have nothing to do with it (Wanjek, 2015).

From a scientific perspective, the Court was going in the wrong direction. In the Supreme Court’s defence, the court received information (source undisclosed in the Supreme Court document) that some people who have no gender disorder adopt Unix status and commit

⁵⁷ Article 4 of the Pakistani constitution provides for all its citizens an ‘inalienable right’ to enjoy the protection of law and to be treated in accordance with law. Article 9 of the constitution provides for the protection of the life and liberty of its citizens (Redding, 2015).

crimes bringing bad name to the Unix community. To eradicate this problem, the court issued orders to record the exact hormonal status of Unix. There are two problems with the issued orders: a. why would someone want to be associated with an already marginalized and stigmatized community especially when committing crimes? b. police officials are also not free from gender biases. We have seen that mere information of the presence of transgender people at a wedding invited a police raid. The law enforcement agency did arrest people of the transgender community even though they were engaged in their traditional occupation. A logical analysis of the situation would prove that it is better to stick to one's identity than adopting an already marginalized, stigmatized and oppressed identity. The Supreme Court of Pakistan may not have taken a logical decision by calling for a hormonal test but the orders sparked a vigorous public debate on the issue around: a. gender/identity b. public accountability of police authorities c. responsibilities of Islamic state institutions towards citizens (Redding, 2015). Responding to the Supreme Court's order in 2011, the national election authorities allowed people of third gender to self-identify and register for national identity cards but only after undertaking due medical procedure (Sanders, 2014). In 2012, the Supreme Court of Pakistan ordered for the implementation of affirmative action for the community to undo the effects of historical marginalization. It was ordered that a transgender person's metric degree will be considered equivalent to a non-transgender person's bachelor's degree (Sanders, 2014). Along with this, the Court ordered for the appointment of a focal person in every district of Pakistan to ensure their health, safety and education. All health and education officials were ordered to work with local transgender people to ensure free education and health care for the community (Zaman, 2012).

Spill-over effect on Pakistan

India and Pakistan are not only close in terms of proximity rather the legal decisions of one country do have some spill-over effect on the other country. The case of decriminalization of homosexuality in India may have failed in given hope to the LGBT community of Pakistan but it surely has mounted pressure on the government to undo this age-old practice. The community is waiting for this progressive move since many decades and India's revised stand on the issue put enormous pressure on the Pakistan's judiciary to think on the same lines. The much-awaited verdict on decriminalization of homosexuality in India has certainly left a poignant mark on the LGBT community of Pakistan. People in the urban cities like Lahore,

Karachi and Islamabad have shared their views on the issue and a 28-year-old, non-binary person said that he is happy for India, however, they are “heartbroken” that people of Pakistan “may never be able to experience that”. They also describe the kind of hatred prevalent in the Pakistani society towards the community that their own parents would kill them in the name of religion if they utter the word ‘gay’ (Saad, 2021). They added that the Indian verdict on the issue was not even televised because it is considered *wahyat* or gross by media houses of Pakistan. Ironically, the policies on religious conversions and building of mosques and temples in the neighbouring country has always in the news. Another respondent from Lahore, Sasha, a 24-years-old cisgender bisexual person said that their “generation may never be able to come out of shadow’ and it is extremely uncomfortable to see ‘something so tabooed in Pakistan is acceptable in a neighbouring country” (Saad, 2021). These views from anonymous people of Pakistan reflect upon the prevalence of homophobia in the Pakistani society. Now the question is why is it so? Why do they fear homosexuality so much? One could understand that people succumb to alarmist views like if everyone give into it then how the world would progress. The existence of the world is in threat because of the LGBT community. The issue is way more complex and layered than this simplistic understanding of the issue in the Pakistani society. According to a report from Pew Research Centre (2013), 90% of Pakistan’s population believed that homosexuality is morally wrong and only 1% people of the 5th largest country (population-wise) in the world are able to justify it morally (Wormald, 2013) (Saad, 2021). Interestingly, these 1% people come from a particular class of Pakistani society comprises majorly the upper-class of the Pakistani society. The low-income strata of the society have a convoluted perception towards the LGBT community ranging from justifying Allah’s wrath towards deviants to choosing to not reveal their true orientation and participating in the dominant ideas of heteronormativity by marrying a person from opposite sex. People from the upper class, on the other hand, deal in a slightly different ways like choosing to identify themselves with the given label of the LGBT. This could be done only when they are outside Pakistan while maintaining a straight image inside the country (Saad, 2021).

These facts and narratives again force us to ask the question, why do they fear homophobia? The existential argument of the world does not have any logical explanation because sexual orientation of each and every human in this world cannot be the same. The argument does not make much sense. If it is not existence then what is it that force the civil society of Pakistan to fear homosexuality? The idea of religion in Pakistan gives us a better argument to

understand this fear among the masses. We have discussed the idea of religion and its strict proscription towards homosexuality above, we will not dwell into that. At this stage we will try and establish a relationship between state, religion and blasphemy. we have discussed about the role of religion in Pakistan and how it shapes the lives of the masses on daily basis. Now we will dwell into the arguments related to blasphemy and how people are being persecuted in the state on the name of religion.

According to a report on International Freedom 2020, Pakistan states that the people are being persecuted on the name of religion and strict blasphemy laws are being imposed against them. A data has been released stating that a significant increase in the number of people charged with blasphemy laws could be observed in 2019 where around 199 people were tried under blasphemy charges and these figures are highest in the country's history till date. Out of these, 29 people had already received death sentence in 2019 (2020 Report on International Religious Freedom: Pakistan, 2020).

The Human Rights Commission of Pakistan has also raised concerns over the surging figures in relation to blasphemy charges. The minorities bear the brunt of these charges especially the Shia community. Around 40 cases were registered against the Shia community by August 2020. The data is enough to state that the Shia community do face sectarian violence on the name of religion in Pakistan. Constitutionally, Pakistan is a religious state. The constitution of Pakistan states that "Islam to be State Religion" however, it does provide space to people from other religions to "profess" and "manage religious institutions" but the data from religious freedom report says otherwise. According to the Penal Code of Pakistan, any act that involves "defiling the Prophet Muhammad" and "defiling, damaging, desecrating the Quran" would come under the preview of blasphemy. Any person found involving in any of these activities would be strictly punished with death and life imprisonment respectively. Now it become much clear that why is the Pakistani society so homophobic?

It is not just the religion but the state and constitution of the land shape the morality of the masses around the issue. Quran on the other hand, have defined the role of both men and women in the society and remain silent on the issue of transgender people. Homosexuality is strictly proscribed and due to these reasons people from the LGBT community not just face discrimination but state persecution too. It wouldn't be wrong to say that it is almost impossible for the state to pass a legislation that goes against or bypass the teachings of their

holy book Quran (Mustafa, 2021). The passage of Transgender Persons (Protection of Rights) Act, 2018, is a revolutionary and watershed movement in the history of Pakistan⁵⁸.

⁵⁸ The passage of Transgender Persons (Protection of Rights) Act, 2018 provides for various provisions for their protection ranging from Gender self-perception to inheritance rights (Redding, 2019). The Act define a “transgender person” as

- (i) intersex (khusra) with mixture of male and female genital features or congenital ambiguities; or
- (ii) eunuch assigned male at birth, but undergoes genital excision or castration; or
- (iii) a transgender man, transgender woman, Khawaja Sira or any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth (Transgender Persons (Protection of the Rights) Act, 2018 s. 2(n)).

The definition is capacious enough to provide space to various cases within the folds of transgenders like someone who is born as a transgender while the others who associate with it. Also, the act provides for self-recognition of identity and states that

Recognition of identity of transgender person. — (1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.

(2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to, NADRA [the National Database & Registration Authority].

(3) Every transgender person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to get himself or herself registered according to self-perceived gender identity with NADRA on the CNIC [national identity card], CRC [child registration certificate], driving licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000) or any other relevant laws (Transgender Persons (Protection of the Rights) Act, 2018 s. 3).

The Act also provide for inheritance rights to a trans person who are often abandoned by their families and it is stated that the share of inheritance for transgender persons will be provided on the basis of the gender the particular person associates with: —

- (i) for transgender male, the share of inheritance will be that of man;
- (ii) for transgender female; the share of inheritance will be that of woman;

Now the question is how did this bill become a law? Was its passage smooth like any other bill or has it faced backlash from the civil society, opposition parties and military? It was obvious that the bill would face hurdles but it was not obvious that it would be passed by the majority in both the houses. The bill was drafted by the Human Rights Committee of Pakistan and was table in the upper house by Rubina Khalid and Karim Khawaja (Hamza Iftikhar, 2021). The bill got approval in the upper house and was sent for voting in the national assembly. There were groups who were not in favour and were showing hesitation towards the bill were Jamiat e Ulema e Islam Fazal (JUIF) and the Clerics of Council of Islamic Ideology (CII) (Hamza Iftikhar, 2021). Their major concerns were that the clauses of the bill are against the teachings of Islam while the latter was not happy with the definition of the bill. Even after their reservations the bill got passed in the lower house as well.

The bill may have got a green light from the parliament but in the eyes of the society it is still a social ill and its implementation remain unsatisfactory if the people's perception towards the transgender community will not change. The state has adopted a top-down approach and is trying to modify (change would be a stronger word at this juncture) the value system of the society by giving them political rights in its territory. It is also been observed that even after opposition from the theological circles (fundamentalists) the bill got passed, what could be

(iii) for person who has both male and female or ambiguous characteristics, such as their state is

difficult to determine upon birth, following shall apply: —

(a) upon reaching the age of eighteen years, if the person's self-perceived gender identity is

transgender male, the share of inheritance will be that of man;

(b) upon reaching the age of eighteen years, if the person's self-perceived gender identity is

transgender female, the share of inheritance will be that of woman;

(c) upon reach the age of eighteen years, if the person's self-perceived gender identity is

neither transgender man nor transgender woman, the share of inheritance will be an average

of two separate distributions for a man and a woman; and

(d) below the age of eighteen years, the gender as determined by medical officer on the basis

of predominant male or female features (Transgender Persons (Protection of the Rights) Act, 2018 s. 7(3)).

the possible explanation for that? We can see a contradictory attitude of state in this sense where on one hand, people are being persecuted (often times minorities) under blasphemy law and, on the other hand, the state let the bill slide even after reservations from the fundamentalists. With this one instance it would be too soon to say that the Islamic states have embarked upon the journey of reforming Islam. A more appropriate explanation of this instance could be, because Quran is silent or have no proper laid out plan for the transgender community then the state got a chance to achieve twin purpose with this: a. a new vote bank for the party, b. improving its international image. Moreover, the government will be able to deal with the fundamentalists also by using the omission argument. So, it's a win-win situation for everyone.

Everyone is well aware that it is impossible to achieve a substantial change in terms of change in the people's perception towards the community just with the passage of a bill. The transgender community may get the fundament rights and state's protection against discrimination and assaults, the sexual minorities are still suffering in silence. They have no way to function freely in Pakistan and maybe a law on protection of sexual minorities in Pakistan could pave way for real reformation in Islamic values.

Chapter-5

Conclusion

We are living in a globalized world where technology treats every individual equally as long as they know how to operate it. Humans are different in this regard. They don't treat their fellow humans equally and objectively. The treatment of one human towards another is dependent on set of identities one carries. For instance, a woman will face discrimination in a patriarchal society like India and Pakistan by default no matter which class they belong to. Its modus operandi could be subtle but it remains there. Her identity as a woman is enough to send a message that she is more of a liability than an asset to any institution. Her birth is never celebrated like that of a boy. She will face discrimination within the family structures and out in the public sphere too. Men on the other hand, are the privileged products of patriarchy. They are the breadwinners of a family which enhances their importance within a family. This gender binary is enough to prove that identities can make an individual vulnerable and weak in a society. Now let's reflect upon the case of gender and sexual minorities in a patriarchal society of India and Pakistan where they are denied access to all the dignified means that are essential for one's survival.

Gender and sexual identities are controversial and they find limited space not just within family structures but both the state and society often turn a blind eye towards them. The prevalence of social apathy is convenient in the case of gender minorities and it changes with occasion to occasion. People want their blessings on auspicious occasions and they will shun their existence in a society on a daily basis. This led us to believe that every identity or collection of identities associated with an individual has its own set of meanings (Burke 2004: 574). It means that the identities of an individual carry different weightage in different contexts. The case of gender minorities fits aptly in this situation where their presence is celebrated at a wedding (for limited purpose), and the same set of people require state

protection if they dare to go to a public school. The case of sexual minorities is different because they are not welcomed inside the so-called 'respected families or izzatdaar ghar' even on auspicious occasions. Part of the reason is white man's burden. People in these former British colonies are following British morality which is not in practice even in the Great Britain these days. The advent of capitalism has divided the society into two spheres where women were relegated to the private sphere and men nailed the art of domination both in the public and in the private sphere. Amidst this, the heteronormative values strengthened its roots which had discouraged the masses from accepting and recognizing the existence of homosexuals in society. The nexus of religion and the medical advancements had also played an important role in the subjugation of the LGBT community in India. Michael Foucault had worked on the issue extensively and argued that the confidential confessions by people became the subject of medical inquiry. This way people who were already burdened with guilt and self-loathing were questioned by the states for their odd choices.

Homosexuality had never been accepted and recognised as a 'decent' or 'normal' by the states like the then Great Britain, India and Pakistan. There could be many reasons for that and the stronger one is the proscription of homosexuality in Christianity. They were trying to protect their soldiers, serving away from their families in foreign land from moral corruption and the same religious morality was being imposed in the former colonies. At this juncture one raise questions like why did the constitution makers never thought of these issues? Why did both the community got marginalized even in the independent India where the adult suffrage was extended to the women even before Britain? There could be many possible reasons for these and let's look at each one of them. The demand from within the LGBT community was absent at that time because of the absence of consciousness among them about their own identity and history. They were also made to believe that they are weird and lie outside the normative structures of the society. If we decode the thinking process of our constitution makers then the community was never taken seriously by them too. They also succumbed to the colonial morality and adopted it without questioning it. Also, they had to tend to 'more important' issues like untouchability and partition. If we look at the case of Baba Saheb Ambedkar then he also never taken into account the plight of lower caste transgenders community that had existed in the mid-20th century.

The process continued and the community continued to survive on the edges of society by begging and engaging in paid sex services. If we look at the case of Pakistan the same

morality has been adopted by them. Along with this, both Christianity and Islam are Abrahamic faith and homosexuality is proscribed in both the religions. It is interesting to note that the act may have been proscribed in Islam but it was never taken seriously by regime till general Zia made an entrance on the political front of the country. He imposed Zina laws on the Pakistan and since then the issue has become even more controversial in Pakistan. We have observed the country has a thriving gay community in the port city of Karachi but in the absence of reforms in Islam and the staunch attitude of the state, the community is forced to live as Sedgewick said 'under the closet'. According to New York Times, there are men in Pakistan who often engage in paid sexual services for men to earn extra cash. They are not homosexuals and are happily married but it is one such profession that could help them live in a better way. Now the question is these people are also aware about the proscription of homosexuality in Islam and the idea of punishment associated with it, why do they choose to engage in it? Is it's a belief imposed by the state on the people of Pakistan who may believe otherwise? It is true that majority of Pakistani society is religious and they do conduct their daily routine according to the guidelines of their holy book. The homosexual community is in minority both in India and Pakistan so they are of least importance electorally and could be used as a bait during elections too.

If we look at the transgender community in the British India then they were never treated with respect and dignity since the beginning. They were being treated as a joke because it was difficult for them to comprehend the idea of a man dressing up like a woman or vice versa. Due to these reasons, they have banned the community from expressing themselves in public. They were persecuted under Criminals Act and almost all the sources of their livelihood were being snatched from them. Evidentially, the hijra community used to enjoy state patronage as they were associated with the profession of dancing and entertaining people via various ways and sex was one such way. During Mughal era, the community had enjoyed considerable power as they used to guard the 'harem or Zenana' where queen and other females used to reside.

So, it wouldn't be wrong to say that community faced decline during colonialism and the community is another victim of British morality like the homosexual community of the subcontinent. The colonials wanted to get rid of homosexual activities completely and due to which they shut down almost all the livelihood sources of the community. The community has become a joke for the society as they were never treated equally by states as well. The

passage of bill on transgender after more than 70 years of independence witnessed this political apathy both in India and Pakistan.

We have evaluated the impact of colonialism, capitalism, religion and medical advancements in forming a narrative around the LGBT community in India and Pakistan. Now let's evaluate the issue from societal perspective and its impact on the formation of value system in both the societies. We have concluded that both the Indian as well as the Pakistani society is homophobic and resent the presence of transgenders. The national daily of both the countries are enough to prove that the LGBT community is maltreated and often persecuted publicly in Pakistan even by the common citizens as well as we have seen in the case of Pakistan where the violence against the community led to the initiation of bill with regard to their protection. There is an important link between state protection and the treatment of citizens towards a particular community.

If a particular community receives state protection, then people would think about the consequences as we can see in the case of SC/ST & OBC community of India. People refrain from using casteist slur or overtly discriminate against them. They are well aware that a complaint from the victim could help them land in trouble. The same kind of punity needed to be attached to the issues concerning the LGBT community and its strict implementation needed to be ensured by the state. Now one could argue that even in the presence of laws and its implementation caste related violence and discrimination exist in India which in a way failed the whole purpose of having a law. If laws cannot ensure a discrimination free life, then why to even have them in the first place?

It is a valid argument and one could question its existence in the absence of satisfactory results but its always better to have something then nothing. One must look at the effectiveness of social laws in relative ways. If the mere instalment of a law in educational institutes ensures education for a transgender child, then why not have it? The laws are like entry pass to society and they will get legal recognition and a hope for a better future. Laws would help in solving various problems like renting an apartment, admission in schools, colleges and universities and so one. So legal recognition of the community would mark the beginning of better life and it would normalize their presence in society.

It may take generations but the society will be able to navigate its way in these discriminatory societies even with these partial and half-hearted acts. The case goes with the homosexual

community as well. The legal recognition of the community would help them do away with the cycle of negativity and they will be able to express themselves like any other citizen of the country. They will also be able to realise their full potential in the absence of these additional internal and external constraints. The life of the community must have been like a living hell and it brings the question back that how did the community bridge this gap between their real and the self that is 'behind the closet'? How did they associate with the identities they never wanted to associate with but were forced?

Identities carry different values in different societies and this dissertation is also an attempt to understand the value of the LGBT community in India and Pakistan. It is obvious to question what makes some identities better than the others in a particular society? What are the factors needed to be taken in account when deciding about the merits of an identity? Why does the identity as a 'human' takes a back seat when we are deciding about the fate of gender and sexual minorities in India and Pakistan? Why can't a human be treated with a certain amount of respect and dignity because of the virtue of being human?

The answers to all these questions are rooted in the structures of society we are dealing with. Identity theorists never consider self to be an autonomous unit; rather, it is a collection of identities, and at a personal level, it acts as an entity that defines who a person is (Hogg 1995:256)? On an individual level, self is a product of social interaction with others, and via these communications, people get to know who they are (Hogg 1995:256). Sometimes people find it difficult to adjust between their real self and their pretended self and this is frequent in societies which do not provide a safe space for gender and sexual minorities to grow like any other individual of the society.

A sociological approach to self and identity began with the assumption that there exists a reciprocal relationship between the self and society (Burke 2003:575). Individual actions lead to the creation of homogenous groups and institutions, thereby influencing the functioning of society one belongs to (Burke 2003: 578). If we look at the homogenous groups and institutions than the gender minorities have found a space for themselves in the form of 'Gharana' both in India & Pakistan while the sexual minorities of Pakistan still await this safe space. India on the other hand, is in the process of creating a space for sexual minorities by providing them legal protection.

It would be wrong to say that Indians have accepted the sexual minorities but it wouldn't be wrong to say that the verdict has helped the community in getting a space for themselves in limited ways (legally only). Social acceptance may take generations for a being to reform and also because it is more difficult to unlearn human biases. It would definitely take many generations before the values in these countries would change for better in India although the imagination of mere idea of legal acceptance for sexual minorities in Pakistan seems like an impossible dream but one must not lose hope of a better future.

Identity theories maintain that society plays an important role in the creation of the self and identities associated with it. With this argument it would be safe to say that the birth of a child in a family is not a neutral construct because babies inherit various identities from the moment, they take their first breath. Their inherited identities are value loaded and often subjected to societal judgments and prejudices like birth of a dusky child in a brahmin family; brahmins are supposed to have white skin tone. Families and society play a significant role in ascribing identities to these tiny lives, and in the process, they sometimes end-up imposing identities of certain kinds with which the individual may not want to associate with, i.e., may not be part of the self they want to be. There could be many such identities, but the question which we are exploring here is what will happen if a person chooses to defy societal rules and adopt an identity that finds no place in the rule book of society?

More importantly, one should ask why certain identities, such as LGBT identities, find it difficult to fit into the rule book of society? Answers to these questions cannot be formulated without understanding the cultural value systems of India and Pakistan which are located in the global south. Both the countries are developing countries in every sense of the word. The pace of their development is different socially, politically and economically.

Socially, Pakistan would find it difficult to change its social values because of their rigid way of life prescribed by their religion and implemented even more staunchly by its leaders as seen in the case of general Zia. India on the other hand is relatively flexible and try embrace its contemporary values as we have seen in the case of sexual minorities where the supreme court of India struck down decades' old moral shackles by decriminalizing homosexuality in India. This has proved that India is trying to keep pace with the contemporary values be it in the pressure from international agencies. This shows that there is a willingness to improve and move towards better values unlike in the case of Pakistan.

Pakistani society is rooted deeply in Islamic values and they believe in its superiority and validity irrespective of the fact that time is changing. They believe that there is no scope of reform in Islam and its values are suitable and irrefutable. Politically, India has reminded a stable country. A robust system of checks and balances ensures its political health while the case is missing in the Pakistan. History has witnessed that democracy has never survived in Pakistan, the society has been ruled by military dictators. The disturbed political structures of the country have a deep impact on the stagnant values of the country. Economically, Pakistan has made more than 20 trips to IMF which is a proof that country's leaders are not taking interest in improving the financial health of a country. While India is doing better as compared to Pakistan although there has been rounds of sluggish growth but the country has never gone to IMF post 1991 reforms.

These factors are incorporated to prove that both the societies have a different vision for their respective nations where on one hand, India is trying to keep pace with the contemporary values while maintaining its secular character (often gets disturbed though). On the other hand, Pakistan is trying hard to keep its Islamic values intact amidst pressure from international agencies like united nations, human rights watch and amnesty international. They have no vision to adopt contemporary values especially in the absence of sanctity from their holy book. Islam need some heavy reforms to be able to keep pace with the contemporary values otherwise thousands of humans will be forced to live in disguise and meet an unfortunate fate as well.

It would be wrong to say that religion created homophobia in both the societies rather there were number of issues that led to subjugation of both the identities. In these limiting conditions the community had no other option but to become an imposter. They become actors who are pretend each and every day till they die. This led us to conclude that a society exert considerable amount of power over the lives of the LGBT community even when they belong to the same species. This also led us to conclude that without social validation a human finds it difficult to survive in a society.

The only aspect that left untouched in this sad and grim reality was the presence of NGOs in India and Pakistan which were working with the community since many decades. NGOs have provided much needed support to the community and a break from their miseries and better ways to cope with the harsh realities of their lives. The community received immense support from the NGOs working in the field of sexuality, gender and healthcare. If we look

specifically at the case of India then Naz foundation has reminded in the forefront and supported the community in every possible way. The NGO has been associated with the community since 2001. Let's look briefly at the journey of Naz foundation in India.

The NGO filed a Public Interest Litigation (PIL) challenging the constitutionality of Section 377 and the NGO's action was often cited as a proper challenge to Section 377 in India (Thomas, 2018) (Nair, 2018). The petition was dismissed by the Delhi High Court stating "*purely academic issues cannot be examined by the court*" (Suresh Kumar Koushal & Anr vs Naz Foundation & Ors on 11 December, 2013, 2004). A review petition was filed again by Naz foundation which also met the same fate (Thomas, 2018). In 2006, a special petition was filed by the Naz foundation along with a coalition of NGOs (a group of over 10 NGOs and groups in Delhi) before the Supreme Court of India (Thomas, 2018). On July 2nd 2009 came the much-awaited judgement in the case when homosexuality was decriminalised in India for the very first time. The NGO was with the community when it was decriminalised, recriminalized and decriminalised again and they have supported the community in every possible way be it education, healthcare or providing safe houses to the members of the community.

The case of the working of NGOs is slightly different in the case of Pakistan. The state exercise enormous control over the functioning of NGOs and since the subject is barred from public domain, NGOs cannot work openly. It is not clear how many NGOs are working with the community because they operate in discrete ways. They have to protect themselves both from the public morality and the law of the land. According to a report by New York Times, a lesbian couple formed an activist group called 'O'.

They both refrained from disclosing their identity, and the name of the NGO as the NGO is registered with the government of Pakistan, to conceal its real purpose (Ladly, 2012). The aim of the group is to provide legal assistance to the members of the LGBT community and help them fight difficult family situations. 'O' NGO is an activist group formed by two women who choose to stay anonymous due the state's attitude towards homosexuality in Pakistan. The group does not want the name of the organisation to be released as well because it is registered under the banner of an NGO concealing its true purpose from the authorities. The NGO conducts research on the LGBT community in Pakistan and helps them with legal advice as well. The true purpose of the NGO is to work with civil society to create awareness regarding homosexuality and building social acceptance instead of launching a

legal battle against these state-sponsored atrocities. In short, the NGO is preparing a base for movement among the masses that could help the authorities change its attitude towards the community instead of adopting a top-to-bottom approach (Ladly, 2012).

The 'O' NGO has made it clear that this is not the right time to deal with legal discrimination faced by the community. Rather, they are putting efforts into building social acceptance for the community (Ladly, 2012). The reason for refusing to wage a legal battle against discrimination is that on 26th June 2011, the first LGBT pride parade held by the American Embassy in Pakistan met with severe backlash and demonstrations, ironically in the gay men's paradise Karachi and Lahore (Ladly, 2012). Rina Harris, an embassy spokesperson said, "we are committed to standing up for these values around the world, including here in Pakistan". A 33-year-old activist from 'O' NGO strongly believes that the event will prove detrimental for the slow rising movement in Pakistan and was a mistake because it has created a fear among the masses which was not there earlier. The event was seen by the Pakistani masses as America trying to dilute and disrespect their ideology. It was nothing but an ideological clash (Ladly, 2012).

Pakistani people believe that homosexuality is an abhorrent western practice and Islam provides no space to such acts which are against the law of nature (Walsh, 2006). No one knows when the sexual minorities of Pakistan will get legal recognition as there is no coherent movement on a national or regional level. But some efforts are better than no effort at all in that direction. We have discussed about all the aspects that were important for the LGBT community except the content of the formulated acts. The content would help us bridge a gap between the present and the future of the community in both the countries.

The legal recognition of homosexuality is an impossible dream for Pakistan even with the presence of thriving homosexual community within its territory. The society is divided on gender lines and homosexual couples can camouflage easily. Nobody would suspect two men or women spending time together rather the reverse would raise some serious questions and often will be subjected to harsh punishments. The rigid religious values and zero political will of the shattered political system contribute in the subjugation of the community in Pakistan. If we look at the case of transgender communities in both the countries then they are also a victim of state sponsored violence.

Both the states have failed to improve the living conditions of the transgender communities. The community never received legal protection however, they received tonnes of social, political and economic apathy in both the countries. Both the countries never pay any heed towards their educational needs and healthcare until 2018 (Pakistan) and 2019 (India). The passage of the Transgender Persons (Protection of Rights) Act, 2019 was difficult particularly for Indian community and even after its passage the community is raising serious concerns over its effectiveness. The following concerns have been raised by the Indian transgender community:

- Begging and sex work has been criminalised by the government in the bill that was presented in the Lok Sabha. The community protested against both the provisions because these are the primary sources of livelihood of the community. After much protest from the community, the government agreed to decriminalize these acts.
- The definition of the word transgender is not adequate because the definition conflicts an intersex person with a transgender and takes the agency to self-identity a person away.
- The major protest against the bill came for the clause regarding certification of transgender person which is done by the Magistrate. The bill also proposes for the setting up of a district screening committee for the purpose. The community is not opposing this provision vehemently because it requires a transgender person to get a government certificate saying that they are transgender and post sex reassignment surgery, they can obtain a certificate proving their identity as a male or a female. The provision takes away a person's agency to identify freely. It's a two-step programme where they have to apply for a transgender certificate and then apply again for another certificate post-surgery. Their ordeal will not end with this, they must satisfy the magistrate regarding their surgery. The provision provides enormous power to the magistrate and has also open new avenues for the community to get harassed
- It is not uncommon for the community to feel discriminated by the medical professionals. The doctors are not just ill-equipped but are judgemental too. The community has raised this concerned time and again. Moreover, a trans-person need parent's consent for the surgery.
- Families can be a source of emotional and physical abuse for a transgender community and the bill made it mandatory for a transgender person below 18 years of age to stay with their family. This has put the life a trans-person on stake. They are not allowed to go to the

traditional community houses, often called ‘gharans’. They will be sent to the government’s rehabilitation centres.

- Interestingly, our criminal system is also ill-equipped in providing protection to the community. The penal code of India recognise punishment for sexual offences only for male and female and the word transgender or third gender is still omitted from the list. This enhances the chances of the community to get harassed both by the citizens and the justice providing agencies. Moreover, the offence against the transgender persons is listed in bailable crimes (Saransh, 2019).

The community has requested the government to ponder over these issues and must undertake serious amendments. Now let’s look at the case of Pakistan and the provisions of the Transgender Persons (Protection of Rights) Act, 2018. On 7th March 2018, the senate unanimously passed a law for the Protection of Rights of Transgender Persons and its provisions are as follows:

“Transgender person” is a person who is—

(i) intersex (khusra) with mixture of male and female genital features or congenital ambiguities;

or

(ii) eunuch assigned male at birth, but undergoes genital excision or castration;

or

(iii) a transgender man, transgender woman, Khawaja Sira or any person whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth (Transgender Persons (Protection of Rights) Act, 2018).

The mentioned definition bears resemblance to the definition adopted by India in defining the word transgender. Interestingly, section (iii) of the definition which makes it clear that the expression of gender can be different from the sex assigned at birth provides space to the community to express their gender the way they wish to. Chapter 2 of the Act does recognize the importance of self-perception of gender and states that “a transgender person shall have a

right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act” (Transgender Persons (Protection of Rights) Act, 2018). It is important to note that the provisions of the Act do not prescribe the establishment of a committee of any kind to certify the gender of a person as in the case of India. This is certainly a progressive step because the Act does not institutionalize the bodies of transgender persons. Although the Court is still stuck with the problem of segregating real and fake transgender people (Redding J. A., 2019).

Chapter 5 of the Act discusses the inheritance rights of the community and states that “there shall be no discrimination against transgender persons in acquiring the rightful share of property as prescribed under the law of inheritance”. Their share in property “will be determined in accordance with the gender recorded on the individual’s national identity card”. Property is divided on the basis of gender in Islam and Pakistan is a patriarchal society. Hence, the share of males is greater than females in a household. In the case of transgenders, if a person is born female but chooses to identify as male then they will be in an advantageous position as they will be entitled to a greater share in property than they would as a female. People who are born as male but choose to identify as female will get a lesser share than before. People who are neither male nor female will get an average share of male and female identities after attaining 18 years of age.

Along with these rights, the community is entitled to the fundamental rights of the land that any other citizen of Pakistan has like voting, obtaining a driving license and passport. The community has the option of having their gender changed in the National Database and Registration Authority records. The law provides for the establishment of safe houses, free access to health care, educational and psychological counselling facilities. The government must ensure separate jail rooms for transgender people and law enforcement agencies should be sensitized towards the needs and the rights of the community.

For their economic upliftment, loans on easy terms will be made available for them and discrimination against them in any public office has been made a punishable offence. Forcing a transgender to beg has also been made a punishable offence and the convict will be sentenced to 6 months in prison along with a fine of Rs. 50,000. The Act is bringing justice to all aspects of human life but it is important to see how successful its implementation will be.

After looking at the provisions of the Transgender Persons (Protection of People) Act, 2018 of Pakistan, it wouldn't be wrong to say that the country has done a much better job in protecting the civil liberties of the community as compared to the India. It is also true that having legal protection on papers and in reality, are two different entities and both the countries must work towards bridging a gap between the both.

After looking at all the aspects, it wouldn't be wrong to say that the criminalization of homosexuality in the Indian subcontinent was a result of British morality and the former colonies are suffering from its ill effects. Along with this would be safe to say that the marginalization of the LGBT community both in India and Pakistan are state sponsored. If we look at academia, lack of relevant theories that could fit the case of gender and sexual minorities are missing. If we look at gender minorities then nothing substantial is available on Dalit transgenders who face the wrath from fellow community members because they belong to lower caste. Cases are also being reported in India in this regard. In the context of sexual minorities, the available literature caters to the developed nations where as the global south is using the western literature as manuals to theorize a southern discourse on the issue. South Asian societies are different from developed societies and they are different from each other too. For instance, caste, unique to India and a discourse around that would provide a unique and authentic understanding about the transgender community of India. As far as society is concerned then it would be safe to say that conception of an idea and its implementation are different and the latter is way harder than the former one.

State must provide incentive both to the community and to the rest of the society to mingle with each other and build a mutual trust. The first step in that direction would be to introduce gender sensitive courses as part of school curriculum. This would not only sensitize the future of a society but would give confidence to the children from LGBT community. School authorities must take necessary steps in this regard like separate toilet for transgender children. Proper sex education must be ensured by the Indian state so that teenagers will not feel left out or 'othered'. The recent reports on Pakistan and its stand on the LGBT community shows that it will not take any concrete action in terms of recognition of the community anytime soon. If not, recognition then providing them protection against physical assaults could be a decent start for Pakistan. Violence should not be justified at any cost and Pakistan must recognize that at least.

If we look at the structures of family then the community faced worse possible humiliation by their hands. Starting from the child birth, transgenders are neither desired nor wished by any couple. Their birth is considered punishment against their bad karmas. The moment a family finds out about a transgender baby, they try to hide it from the society because it can cost them their reputation and honour. The child will not be treated like a child anymore and they will be subjected to discrimination of various kinds like keeping them in a room away from society's glare, not letting them enjoy like other kids and extreme cases get rid of them either by abandoning them or giving them to the community. Amidst this, a child will start to understand that something is wrong but they are unable to find out the reasons for such harsh treatment by their own family members.

Life is not easy even in a community shelter often called gharanas. They are never sent to schools because there is no space for a transgender child to survive in a school system like identity provision of a third gender, sperate toilets, sensitive teachers, name of father and mother and also a welcoming environment in the school system. These inadequacies lie within the system while the community is not financially stable to meet their own requirements.

At this juncture, we must engage with questions like where are we heading towards as a society? We are celebrating a culture that is rooted in violent barbaric practices and people refrain from exercising simple choices like whom to love and how to express themselves. If our culture is a source of violence and subjugation then we must shun those particular practices. We must move towards a society based on the principle of compassion and acceptance. Human life in every form must be accepted and they must be given adequate space to grow and shine like other identities. The picture that we have just painted is portraying the grim realities of 21st century in India and Pakistan where people are subjected to correction rapes and lavender marriages.

The nature of democratic states has changed and, state has become the facilitator and service provider. If this is so then how come state has become selective in its approach? How can a state discriminate among its citizens and can dictate that you are eligible for our services and a particular identity must be eliminated and systemically wiped out from the public sphere? In the absence of any logical justification from the state's side, it would not be wrong to conclude that the state is a party to the subjugation of the whole LGBT community both in

India and Pakistan. State plays an important role in upholding the value system in a society. The state could be agents of change but for that state must act rationally and objectively.

References

(* indicate primary sources)

- *(2020). *2020 Report on International Religious Freedom: Pakistan*. United States Department of State : Office of International Religious Freedom.
- * (2018), Transgender Persons (Protection of the Rights) Act, 2018 s. 2(n).
- * (2018), Transgender Persons (Protection of the Rights) Act, 2018 s. 3.
- *(1994). Retrieved from Naz: <https://www.nazindia.org/>
- *(2011), *Census*, New Delhi: Government of India.
- *(2018), Transgender Persons (Protection of Rights) Act, 2018, s. 7(3).
- *(2020). *2020 Report on International Religious Freedom: Pakistan*. United States Department of State: Office of International Religious Freedom.
- *Appellate Jurisdiction, 43 (The supreme Court of Pakistan November 4, 2009).
- *Justice K.S.Puttaswamy(Retd) ... vs Union Of India And Ors. on 24 August, 2017, Writ Petition (CIVIL) NO 494 OF 2012 (The Supreme Court of India September 24, 2017).
- *National Legal Ser. Auth vs Union of India & Ors on 15 April, 2014, 400 (The Supreme court of India April 5, 2014).
- *Original Jurisdiction, 43 (The Supreme Court of Pakistan December 23, 2009).

- *Original Jurisdiction, 43 (The supreme Court of Pakistan November 4, 2009).
- *Pakistan Penal Code (Act XLV of 1860). (1860, October 6). Retrieved from www.pakistani.org: <https://pakistani.org/pakistan/legislation/1860/actXLVof1860.html>
- *Rajya Sabha. (2019, November). Debate. New Delhi.
- *Summary of Civil Writ Petition 1784 OF 1994 in the High Court of Delhi as Prepared by ABVA, Petition 1784 (High Court of Delhi February 8, 1995).
- *Suo Moto, 63 (The Supreme Court of Pakistan 2009).
- *Suresh Kumar Koushal & Anr vs Naz Foundation & Ors on 11 December, 2013, Civil Appeal NO.10972 Of 2013 (Supreme Court of India September 2, 2004).
- *The Offence of Zina (Enforcement of Hudood): Ordinance, 1979, Ordinance No. VII of 1979 (Supreme Court of Pakistan February 9th, 1979).
- *World Value Survey. (1980). Retrieved from World Value Survey: <https://www.worldvaluessurvey.org/WVSContents.jsp>

Abubakr Saeed, U. M. (2017), “It’s Complicated: Socio-Cultural Factors and the Disclosure Decision of Transgenders in Pakistan: Socio-cultural factors and the disclosure decision of transsexuals”, *Journal of Homosexuality*, 65(8):1051-1070.

Acharya, N. (2019), *NLSA vs. Union of India*, [Online: Web] Accessed on 15 March 2020 URL: <http://lawtimesjournal.in/nlsa-vs-union-of-india/>

ADB. (2009). *India: Overview of Civil Society Organisations*. USA: ADB Nongovernment Organization and Civil Society.

Ahmad, M. (1996), “The Crescent and the Sword: Islam, the Military, and Political Legitimacy in Pakistan, 1977-1985”, *Middle East Journal*, 50(3): 372-386.

Ali, A. H. (2015), *Heretic: Why Islam Need a Reformation Now*, New York: HarperCollins.

Ali, S. S. (1998/99), “The Rights of Ethnic Minorities in Pakistan: A Legal Analysis”, *International Journal on Minority and Group Rights*, 6(1/2): 169-195.

Ali, S. S. (1998/99), “The Rights of Ethnic Minorities in Pakistan: A Legal Analysis (with particular reference to the Federally Administered Tribal Areas)”, *International Journal on Minority and Group Rights*, 6(1/2): 169-195.

Appellate Jurisdiction , Const. Petition Number 43/2009 (The Supreme Court of Pakistan November 11, 2009).

Azhar, M. (2013), *Gay Pakistan: Where sex is available and relationships are difficult*, [Online: Web] Accessed on 25 March 2020 URL: <https://www.bbc.com/news/23811826>

Balthazart, J. (2012), *The Biology of Homosexuality*, New York: Oxford University Press.

Bandyopadhyay, S. (2004), *From Plassey to Partition: A History of Modern India (Old Edition)*, India: Orient Black Swan.

Bandyopadhyay, S. (2006). *From Plassey to Partition*. New Delhi : Orient Longman Private Limited .

Banerjee, S (2019), *Why Silent on Bacha Baazi, Pakistan?*, [Online: Web] Accessed on 7 February 2020 URL: <https://www.dailyo.in/voices/pakistan-and-its-silence-on-the-sexual-slavery-of-its-own-children/story/1/31600.html>

Banerjee, S. (2019 , August 19). *How Pakistan tortures its LGBTQs: With its brutal mix of silence and violence, Pakistan routinely targets this vulnerable group*. Retrieved from Daily O: <https://www.dailyo.in/variety/pakistan-lgbtq-in-pakistan-pakistan-s-trans-people-human-rights-violations-in-pakistan-31907>

Barth, R. (2014). *'Manjam Murders' Spotlight Pakistan's Hidden, Flourishing Gay Scene*. [Online: Web] Accessed on 7 May 2020 URL: https://www.vice.com/en_us/article/vbnxmj/manjam-murders-spotlight-pakistans-hidden-flourishing-gay-scene

Baxi, U. (2011) “Dignity in and With Naz”, in A. G. Arvind Narrain, *Law Like Love: Queer Perspectives on Law* (pp. 231-252), New Delhi: Yoda Press.

BBC (2019), *What are Pakistan's blasphemy laws?*, [Online: Web] Accessed on 20 March 2020, URL: <https://www.bbc.com/news/world-asia-48204815>

Bergoffen, Debra & Megan Buke (2020), "Simon de Beauvoir", The Stanford Encyclopaedia of Philosophy [Online: Web] Accessed October 28 2020 URL <https://plato.stanford.edu/entries/beauvoir/>

Biswas, D. (2019), "Challenges for Transgender-inclusive sanitation in India", *Economic and Political Weekly*, 54(18).

Biswas, R. (2008), *Polymorphous Sexualities*, Kolkata, West Bengal.

Boone, J. (2013), *Pakistan's chief justice Iftikhar Chaudhry suffers public backlash*, [Online: Web] Accessed on 21 March 2020 URL: <https://www.theguardian.com/world/2013/aug/28/pakistan-judges-backlash-ftikhar-haudhry>

Bornstein, Kate, (1994), *Gender outlaw: On men, women, and the rest of us*, New York: Vintage Books.

Brent, Pickett (2021), "Homosexuality", *The Stanford Encyclopaedia of Philosophy* [Online: Web] Accessed November 20 2020 URL <https://plato.stanford.edu/entries/homosexuality>

Broude & Greene, Gwen J. & Sarah J. (1976), "Cross-Cultural Codes on Twenty Sexual Attitudes and Practices", *Ethnology*, 15(4): 409-429.

Nagoshi & Brzuzy, Julie L. and Stephan/ie (2010), "Transgender Theory: Embodying Research and Practice" *Journal of Women and Social Work* 25(4): 431-443.

Bureau of Democracy, H. R. (2019). *2019 Country Reports on Human Rights Practices: Pakistan*. USA: US Department of States .

Burke, Jan E. Stets and Peter J. (2003), "A sociological approach to self and identity: Thoughts on Social Structures." *Semantic Scholar*. [Online: Web] Accessed: 15 March. 2020 URL:https://pdfs.semanticscholar.org/b6a3/3134c18536f4fb36d95db050ec43d871cde7.pdf?_ga=2.126514317.1277021609.1585563039-286425785.1584011359.

Burke, Peter J. (2004), "Extending Identity Control Theory: Insights from Classifier Systems" *Sociological Theory* 22(4): 574-594.

Burki, S. K. (2016), "The politics of misogyny: General Zia-ul-Haq's Islamization of Pakistan's Legal System", *Contemporary Justice Review*, 19(1): 103-119.

Burr, C. (1993), *Homosexuality and Biology* [Online: Web] Accessed on 7 February 2020 URL:<https://www.theatlantic.com/magazine/archive/1993/03/homosexuality-and-biology/304683/>

Camila Brown, D. C. (2019). Sexual Orientation and Labor Force Participation: Findings from Chile and Uruguay. *Feminist Economics* , 90-115.

Cartwright, M. (2015), *Khajuraho* [Online: Web] Accessed on 15 February 2020 URL: <https://www.ancient.eu/Khajuraho/>

Chatterjee, S. (2018), *Queer Politics in India: Towards Subaltern Subjects*, London & New York: Routledge: Taylor and Francis Group.

Cherry, K. (2020), *Rorschach Inkblot Psychological Test*, [Online: Web] Accessed on 7 February 2020 URL: <https://www.verywellmind.com/what-is-the-roorschach-inkblot-test-2795806>

Choi, C. Q. (2019), *The 'Gay Gene' Is a Total Myth, Massive Study Concludes*, [Online: Web] Accessed on 20 March 2020 URL: <https://www.livescience.com/no-single-gene-makes-someone-gay.html>

Cohen, S. (2004), *The Idea of Pakistan*, Washington, DC: Brookings Institution Press.

Conroy, D. D. (2008), “The Formation of Identity: The importance of Ideals”, *Oxford Review of Education*, 28(4): 509-522.

Cooley, Charles, (1902), *Human Nature and Social Order*. New York: Scribners.

Curtis, L. (2016), “Religious Freedom in Pakistan: Glimmers of Light on a Darkening Horizon”, *The Review of Faith and International Affair*, 9.

Curtis, L. (2016), “Religious Freedom in Pakistan: Glimmers of Light on a Darkening Horizon”, *The Review of Faith & International Affairs*, 23-30.

Dadhwal, A. (2019, July 22). *Tracing The Colonial Past Of Modern Indian Regressive Laws*. Retrieved from Feminism in India : <https://feminisminindia.com/2019/07/22/colonial-past-indias-regressive-laws/>

Dale, William (2011), *Foucault's Sexuality* [Online: Web] Accessed: 17 January. 2020 URL: <https://atlassociety.org/objectivism/atlas-university/deeper-dive-blog/4403-foucault-s-sexuality>.

Datta, S. (2017), “We Refuse to be Subjects of Experiment for Those Who Do Not Understand us: Transgender Persons Bill”, *Economic and Political Weekly*, 52(49).

DeMarce, Virginia (2015), “Sexuality of the Seventeenth Century”, [Online: Web] Accessed November 4, 2020 URL <https://grantvillegazette.com/article/sexuality-in-the-seventeenth-century-2/>

D'Emilio, J. (1983), *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970*, Chicago & London: The University of Chicago Press.

D'Emilio, J. (1993), “Capitalism and Gay Identity”, in M. A. Henry Abelove, *The Lesbian and Gay Studies Reader* (pp. 467- 478), New York: Routledge.

Desk, I. T. (2019), *Want to file a Public Interest litigation (PIL)? Here's all you need to know*, [Online: Web] Accessed on 12 March 2020 URL: <https://www.indiatoday.in/information/story/want-to-file-a-public-interest-litigation-pil-here-s-all-you-need-to-know-1592174-2019-08-27>

Dirks, Nicholas B. (2001), “Castes of Mind: Colonialism and the Making of Modern India”, New Jersey: Princeton University Press.

Drucker, P. (1958), *Imperialism and Inversion*, Leiden, Boston: Brill.

Engels, F. (2010), *The Origin of Family, Private Property and the State*, London: Penguin.

Faderman, Lillian (1981), *Surpassing the love of Men: Romantic Friendship between Women from Renaissance to the Present*, New York: Marrow.

Farely, Margaret A (2006), *Just Love: A Framework for Christian Sexual Ethics* New York, Continuum International Publishing Group.

Foucault, Michel (1978), *The History of Sexuality: An Introduction (Volume-1)*, New York: Pantheon Books.

Foundation, N. (2016-2021). Annual Report and Financial Statement. Delhi: Naz Foundation.

Fuchs, M.-M. F. (2019), “Religious Minorities in Pakistan: Identities, Citizenship and Social Belonging”, *South Asia: Journal of South Asian Studies*, 43(1): 52-67.

Fuchs, M.-M. F. (2019), “Religious Minorities in Pakistan: Identities, Citizenship and Social Belonging”, *South Asia: Journal of South Asian*, 1-16.

Fukuyama, F. (2018), *Against Identity Politics: The New Tribalism and the Crisis of Democracy*, [Online: Web] Accessed on 12 March 2020 URL: <https://www.foreignaffairs.com/articles/americas/2018-08-14/against-identity-politics-tribalism-francis-fukuyama>

Fukuyama, F. (2018), *Identity: Contemporary identity Politics and Struggle for Recognition*, London: Profile Books.

Gannon, S. (2011), "Exclusion as Language and the Language of Exclusion: Tracing Regimes of Gender through Linguistic Representation of "Eunuchs"". *Journal of the History of Sexuality*, 20(1): 1-27.

George, R. P. (1999), *In Defence of Natural Law*, New York: Oxford University Press.

Ghosh, L. (2022 , April 3). *You Can Love, Live-in but Can't Marry* . Retrieved from Times of India : <https://timesofindia.indiatimes.com/india/how-gay-and-lesbian-couples-in-india-cope-in-the-absence-of-same-sex-marriage/articleshow/81637450.cms>

Ghosh, L. (2022, April 3). You can love, live-in, but can't marry. Retrieved from Times of India: <https://timesofindia.indiatimes.com/india/how-gay-and-lesbian-couples-in-india-cope-in-the-absence-of-same-sex-marriage/articleshow/81637450.cms>

Ghosh, S. (24, 02 2020). *Battle for right body: The reality of sex reassignment surgeries in India*. Retrieved from The Indian Express : <https://www.newindianexpress.com/cities/delhi/2020/feb/24/battle-for-right-body-the-reality-of-sex-reassignment-surgeries-in-india-2107686.html>

Green, Jamison (2004), *Becoming a visible man*, Nashville, TN: Vanderbilt University Press.

Halperin, David M. (2008), "The Normalization of Queer Theory" *Journal of Homosexuality* 45:2-4, 339-343.

Hamza Iftikhar, S. H. (2021). Analysis of the Transgender Persons (Protection of Right) Act 2018: Implications for Implementation. *International Journal of Academic Research in Business and Social Science*, 121-133.

Hamza Iftikhar, S. H. (2021). Analysis of the Transgender Persons (Protection of Right) Act 2018: Implications for Implementation. *International Journal of Academic Research in Business and Social Science* , 121-133.

Hangsing, K. D. (2018), "Socio–Cultural Exclusion and Inclusion of Trans-genders in India", *International Journal of Social Sciences and Management*, 5(1): 10-17.

Haqqani, H. (2013), *Magnificent Delusions: Pakistan, the United States, and an Epic History of Misunderstanding*, New York: Public Affairs Press.

Hausman, Beenice L. (2001), "Recent Transgender Theory." *Feminist Studies*, 27(2), 465-490.

Heredia, R. C. (2002), "Dishonoured by History, Branded by Law", *Economic and Political Weekly*, 37(5): 389-390.

Heyes, Cressida J. (2003), "Feminist Solidarity after Queer Theory: The case of Transgender" *The University of Chicago Press Journals*, 28(4): 1093-1120.

Hinchy, Jassica (2019), "The Long History of Criminalising Hijras", [Online: Web] Accessed on 25 December 2020 URL: <https://www.himalmag.com/long-history-criminalising-hijras-india-jessica-hinchy-2019/>

Hogg, Michael H et al. (1995) "A Tale of Two Theories: A Critical Comparison of Identity Theory with Social Identity Theory" *Social Psychology Quarterly* 58(4): 255-269.

Humphreys, Stephen (2006), "Legalizing Lawlessness: On Giorgio Agamben's State of Exception" *The European Journal of International Law*, 17: 3 677-687.

India, P. T. (2018), "Celeb group behind change in gay laws: Dancer, journalist, chef, hotelier, biz executive", [Online: Web] Accessed on 15 March 2020 New Delhi: India.

India, T. o. (2021, January 8). *Transsexual celebrities who opened up about their transition*. Retrieved from Times of India : <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/saisha-shinde-to-laverne-cox-transsexual-celebrities-who-opened-up-about-their-transition/photostory/80167687.cms?picid=80167710>

Irfan, L. (2018, September 2018). *From Babur to Dara Shukoh: Fluid sexuality was never 'unnatural' during Mughal era*. Retrieved from Daily O : <https://www.dailyo.in/arts/section-377-from-babur-to-dara-shukoh-homosexuality-was-never-unnatural-during-mughal-era/story/1/26694.html>

Irfan, L. (2018, September 2018). *From Babur to Dara Shukoh: Fluid sexuality was never 'unnatural' during Mughal era*. Retrieved from Daily O : [https://www.dailyo.in/arts/section-](https://www.dailyo.in/arts/section-377-from-babur-to-dara-shukoh-homosexuality-was-never-unnatural-during-mughal-era/story/1/26694.html)

377-from-babur-to-dara-shukoh-homosexuality-was-never-unnatural-during-mughal-era/story/1/26694.html

Ispahani, F. (2015), *Purifying the Land of the Pure: Pakistan's Religious Minorities*, New York: Oxford India Press.

Ispahani, F. (2017), *Purifying the Land of the Pure: Pakistan's Religious Minorities*, New York: Oxford University Press.

Jacobs, M. J. (2015), *Introduction to Women's and Gender Studies: An Interdisciplinary Approach*, New York: Oxford University Press.

Jagose, Annamarie (1996), *Queer theory: An Introduction*, Malaysia: New York University Press.

Jain, D. (2013). Impact of the Decriminalization of Homosexuality in Delhi: An Empirical Study. *The Arkansas Journal of Social Change and Public Service*.

Jain, D. (2013). Impact of the Decriminalization of Homosexuality in Delhi: An Empirical Study. *The Arkansas Journal of Social Change and Public Service*.

James, K. (2017, October 25). Causes Taken by an NGO or Non Profit Organisation . Retrieved from Medium : <https://medium.com/@kananjames123/causes-taken-up-by-an-ngo-or-non-profit-organisation-b06b151ed177>

Jamil, S. T. (2014), “Plight of Marginalized: Educational Issues of Transgender”, *Review of Arts and Humanities*, 3(1): 107-119.

Johari, A. (2014, April 17). *Hijra, kothi, aravani: a quick guide to transgender terminology*. Retrieved from Scroll.in: <https://scroll.in/article/662023/hijra-kothi-aravani-a-quick-guide-to-transgender-terminology>

Jos, J. (2017), “Limiting Gender Variance: Critical Reflections on the Transgender Persons Bill”, *Economic and Political Weekly*, 52(4).

Joseph, M. (2015), *The Kama Sutra as a Work of Philosophy*, [Online: Web] Accessed on 2 March 2020 URL: <https://www.nytimes.com/2015/07/23/world/asia/the-kama-sutra-as-a-work-of-philosophy.html>

K. (2019), *Summary of Fukuyama's "Against Identity Politics"*, [Online: Web] Accessed on 15 March 2020 URL: <https://medium.com/iterative-adaptation/summary-of-fukuyamas-against-identity-politics-124c866c8081>

Kaiser, J. (2019), *Genetics may explain up to 25% of same-sex behavior, giant analysis reveals*, [Online: Web] Accessed on 21 March 2020 URL: <https://www.sciencemag.org/news/2019/08/genetics-may-explain-25-same-sex-behavior-giant-analysis-reveals#>

Kapadia, K. M. (1952), "The Criminal Tribes of India" *Sage Publications*, 1(2): 99-125.

Karthikeyan, D. (2017), *Tamil Nadu, once a pioneering state for welfare of transgenders, now shuns the third gender*, India: First Post.

Karunanithi, G. (2015), "Transgenders and the Mainstream", *Economic and Political Weekly*, 50(48).

Kennedy, C. H. (1987), "The Implementation of the Hudood Ordinances in Pakistan", *Islamic Studies*, 26(4): 307-319.

Kennedy, C. H. (1996), *Islamization of Laws and Economy, Case Studies on Pakistan*, Islamabad: Institute of Policy Studies.

Khan, F. A. (2019), "Translucent Citizenship: Khwaja Sira Activism and Alternatives to Dissent in Pakistan", *South Asia Multidisciplinary Academic Journal*, 1-23.

Khan, S. (2016), "Trans* Individuals and Normative Masculinity in British India and Contemporary Pakistan", *Hong Kong Law Journal*, 46(1): 9-30.

Khanna, A. (2011), "The Social Lives of 377: Constitution of the Law by the Queer Movement" in A. N. Gupta, *Law Like Love: Queer Perspectives on Law* (pp. 174-202). New Delhi: Yoda Press.

Kidwai, R. V. (2000), *Same-Sex Love in India*, USA: Palgrave Macmillan.

Kidwai, R. V. (2000), *Same-Sex Love in India: Readings for Literature and History*, New York: St. Martin's Press.

Kinney, R. L. (2014), "Marcin", *The Linacre Quarterly*, 81(2): 130-161.

Knight, K. (2019), *Section 377 is History but Young LGBT Indians Need Concrete Policies to Protect them from Bullying*, [Online: Web] Accessed on 15 March 2020 URL:

<https://www.hrw.org/news/2019/06/24/section-377-history-young-lgbt-indians-need-concrete-policies-protect-them-bullying>

Krithiha. (2018, December 29). *Crying shame: The honour killings that shocked India in 2018*. Retrieved from The Indian Express: <https://www.newindianexpress.com/nation/2018/dec/29/2018-a-look-at-the-trend-of-honour-killings-in-india-1916828.html>

Kumar, S. (2016, February 23). *A New Hope For India's LGBT Community*. Retrieved from The Diplomat : <https://thediplomat.com/2016/02/a-new-hope-for-indias-lgbt-community/>

Ladly, M. D. (2012), *Gay Pakistanis, Still in Shadows, Seek Acceptance*. [Online: Web] Accessed on 21 March 2020 URL: https://www.nytimes.com/2012/11/04/world/asia/gays-in-pakistan-move-cautiously-to-gain-acceptance.html?pagewanted=all&_r=0

Lau, M. (2007), "Twenty-Five Years of Hudood Ordinances- A Review", 64 (4): 1292-1313.

Lau, Martin (2007), "Twenty-Five Years of Hudood Ordinance-A Review", *Washington and Lee Law Review* 64(4).

Lauren & Warner, Berlant & Michael (1995), "Guest Column: What Does Queer Theory Teach Us about X?" *Modern Language Association* 110(3): 343-349.

Law, Charlie et al. (2011), "Transparency in the workplace: How the experiences of transsexual employees can be improved." *Journal of Vocational Behaviour* 79(3):710-723.

Lawlor, Leonard (2019), "Jacques Derrida", The Stanford Encyclopedia of Philosophy, [Online: Web] Accessed on October 28 2020 URL <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=derrida&archive=fall2019>

LeVay, S. (1994), *The Sexual Brain*, USA: MIT Press.

Levin, M. (1984). Why Homosexuality Is Abormal. *Oxford University Press* , 251-283.

Lugones, M. (2016), "The Coloniality of Gender. In W. Harcourt", *The Palgrave Handbook of Gender and Development* (pp. 13-33), London: Palgrave Macmillan.

Magazine, The New York Times (2006), "Gender Trouble." *New York Times*, [Online: Web] Accessed 15 March 2020 URL: <https://www.nytimes.com/2006/03/12/style/tmagazine/gender-trouble.html>.

- Marcin, R. B. (1998), "Natural Law, Homosexual Conduct, and the Public Policy Exception", *The Catholic University of America, Columbus School of Law*, 1-17.
- Marinucci, Mimi (2010), *Feminism is Queer: The intimate connection between queer and feminist theory*, London & New York: Zed Books.
- McConnell-Ginet, Penelope Eckert & Sally (2003), *Constructing, deconstructing and reconstructing gender*, United Kingdom: Cambridge University Press.
- McFadden, C. (2015), "Lesbian, Gay, Bisexual, and Transgender Careers and Human Resource Development: A Systematic Literature Review", *Sage Journal*, 14(2): 125-162.
- McLeod, S. (2019, January 15). *Social Identity Theory*. Retrieved from Simple Psychology : <https://www.simplypsychology.org/social-identity-theory.html>
- Mead, George (1934) *Mind, Self, and Society: From the Standpoint of a Social Behaviourist*. Chicago: Chicago University Press.
- Menon, N. (2012), *Seeing Like a Feminist*, New Delhi: Zubaan.
- Michelraj, M. (2015), "Historical Evolution of Transgender Community in India", *Asian Review of Social Sciences*, 4(1): 7-9.
- Millet, Kate (2000) *Sexual Politics*, Urbana and Chicago: University of Illinois Press.
- Monro, Surya (2000) "Theorizing Transgender Diversity: Towards a Social Model of Health", *Sexual and Relationship Therapy*, 15(1): 33-45.
- Moradi, M. C. (2013). Approaches to Research on Intersectionality: Perspectives on Gender, LGBT, and Racial/Ethnic Identities. *Sex Roles*, 68:639–645.
- Mustafa, F. (2021, December 8). *Why Pakistan's blasphemy legislation has no basis in law or religion*. Retrieved from Indian Express : <https://indianexpress.com/article/opinion/columns/why-pakistans-blasphemy-legislation-has-no-basis-in-law-or-religion-7659792/>
- Mustanski, B. (2008, November 8). *Why Not Allow Gay Marriage?* Retrieved from Psychology Today : <https://www.psychologytoday.com/us/blog/the-sexual-continuum/200811/why-not-allow-gay-marriage>

Nagarajan, R. (2014), *First Count of Third Gender in Census: 4.9 Lakh*, [Online: Web] Accessed on 10 March 2020 URL: <https://timesofindia.indiatimes.com/india/first-count-of-third-gender-in-census-4-9-lakh/articleshow/35741613.cms>

Nair, S. (2018), *Many ups and downs in battle against 377*, [Online: Web] Accessed on 15 March 2020 URL: <https://indianexpress.com/article/explained/many-ups-and-downs-in-battle-against-ipc-section-377-homosexuality-lgbtq-5019604/>

Nash, Margaret (1990) "Review Work: Gender Trouble: Feminism and the Subversion of Identity by Judith Butler; Homophobia: A Weapon of Sexism by Suzanne Pharr." *Wiley on Behalf of Hypatia Inc.* 5(3): 171-175.

NCS. (2021, 02 11). *LGBTQ+ History by the Decade: (1990S)*. Retrieved from NCS : <https://wearencs.com/connect/lgbtq-history-decade-1990s>

Nimmons, D. (1994), *Sex and the Brain*, [Online: Web] Accessed on 2 March 2020 URL: <https://www.discovermagazine.com/mind/sex-and-the-brain>

Oksala, J. (2017), "Feminism, Capitalism, and the Social Regulation of Sexuality", in B. B. Bottici, *Feminism, Capitalism, and Critique: Essays in Honor of Nancy Fraser* (pp. 67-83), New York: Palgrave Macmillan.

Olson, John (2019) "Feminism." *History* [Online: Web] Accessed January 8, 2020 URL: <https://www.history.com/topics/womens-history/feminism-womens-history>.

O'Mahoney, E. H. (2018), *British Colonialism and the Criminalization of Homosexuality*, New York: Routledge Publications.

O'Mahoney, E. H. (2018), *How Britain's colonial legacy still affects LGBT politics around the world*, [Online: Web] Accessed on 2 March 2020 URL: <https://theconversation.com/how-britains-colonial-legacy-still-affects-lgbt-politics-around-the-world-95799>

Omer, R. (2013), *Authority without accountability: The Search for Justice in Pakistan*, Geneva: International Commission of Jurists.

Online, E. (2018), *Section 377: Here is everything you need to know*, [Online: Web] Accessed on 15 March 2020 URL: <https://economictimes.indiatimes.com/news/politics-and-nation/sc-delivers-historic-verdict-heres-everything-you-need-to-know-about-section-377/articleshow/65698429.cms?from=mdr>

Online, E. (2019), *Section 377: Government leaves decision to the wisdom of the Supreme Court*, [Online: Web] Accessed on 10 March 2020 URL: [conomictimes.indiatimes.com/news/politics-and-nation/section-377-government-leaves-decision-on-the-wisdom-of-the-supreme-court/articleshow/64942825.cms](http://economictimes.indiatimes.com/news/politics-and-nation/section-377-government-leaves-decision-on-the-wisdom-of-the-supreme-court/articleshow/64942825.cms)

Pakistan . (2022). Retrieved from Human Dignity Trust : <https://www.humandignitytrust.org/country-profile/pakistan/>

Pakistan . (2022). Retrieved from Human Dignity Trust : <https://www.humandignitytrust.org/country-profile/pakistan/>

Pakistan Penal Code, Act XLV of 1860 (The Supreme Court of Pakistan October 6, 1860).

Panday, J. (2017), *India's Supreme Court Upholds Right to Privacy as a Fundamental Right—and It's About Time*, [Online: Web] Accessed on 12 March 2002 URL: <https://www.eff.org/deeplinks/2017/08/indias-supreme-court-upholds-right-privacy-fundamental-right-and-its-about-time>

Pandey, Vikas (2018), “Why Legalising Gay Sex in India is not a Western Idea” [Online:Web] Accessed on 20th February 2021 URL: [Why legalising gay sex in India is not a Western idea - BBC News](https://www.bbc.com/news/india-55811111)

Paracha, N. (2011), *The Hudood Ordinances*, [Online: Web] Accessed on 21 March 2020 URL: <https://www.dawn.com/news/626858/the-hudood-ordinances>

Pawan Chaurasia, P. P. (2019). “Illiteracy – A social Issue” A brief study in the Indian Population . *International Journal of Engineering and Technical Research (IJETR)*, 2454-4698 .

Pekanan, Thanapat (2016), “How Important is the Notion of the ‘Civilising Mission’ to Our Understanding of British Imperialism Before 1939”, *Journal of International Affairs*, 2015-16(3).

Pickett, B. (2015), *Homosexuality*, [Online: Web] Accessed on 2 March 2020, URL: <https://plato.stanford.edu/entries/homosexuality/>

Pickett, Brent (2020), “Homosexuality”, *The Stanford Encyclopaedia of Philosophy*, [Online: Web] Accessed on November 2 2020 URL: <https://plato.stanford.edu/entries/homosexuality/#NatLaw>

- Porter, R. (1996), *Born That Way?*, [Online: Web] Accessed on 5 March 2020 URL: <https://archive.nytimes.com/www.nytimes.com/books/97/07/27/nnp/19945.html>
- Pulickal, A. and Siva, T. (2016), “No Country for Transgenders?”, *Economic and Political Weekly*, 51(37): 19-22.
- RajyaSabha. (2019, November). Debate. New Delhi.
- Rautray, S. (2018), *Section 377: Supreme Court rewrites history homosexuality no longer a crime*, [Online: Web] Accessed on 12 March 2020 URL: <https://economictimes.indiatimes.com/news/politics-and-nation/sc-delivers-historic-verdict-section-377-gone-being-gay-no-more-a-crime-in-india/articleshow/65696771.cms?from=mdr>
- Redding, J. A. (2015), “From 'She-males' to 'Unisex': Transgender Rights and Productive Paradoxes of Pakistani Policing”, in D. B. Bordia, *Regimes of Legality: Ethnography of Criminal Cases in South Asia* (pp. 259-289), India: Oxford University Press.
- Redding, J. A. (2019). The Pakistan Transgender Persons (Protection of Rights) Act of 2018. *SSRN Electronic Journal* .
- Reddy, Gayatri (2005), *With Respect to Sex: Negotiating Hijra Identity in South India*, London: Chicago Press.
- Reeves, R. (1984), *Passage to Peshawar: Pakistan: Between the Hindu Kush and the Arabian Sea Paperback – September, 1985*, New York: Simon and Schuster.
- Research Directorate, I. a. (29 November 2007). *Pakistan: Situation of homosexuals, including the application of laws towards homosexuals, the number of prosecutions of homosexuals and their outcomes; whether any regions have an open and active gay community*. Ottawa : Canada: Immigration and Refugee Board of Canada.
- Rizvi, H.-A. (1991), “The Military and Politics in Pakistan”, *Journal of Asian and African Studies*, 26(1): 27–42.
- Rocha, Leon Antonio (2011), “Scientia sexualis versus ars erotica: Foucault, van Gulik, Needham.” *Studies in History and Philosophy of Biological and Biomedical Sciences* 42:328–343.
- Roen, Katrina (2001) ““Either/Or” and “Both/Neither”: Discursive Tensions in Transgender Politics” *The University of Chicago Press Journal* 27(2): 501-522.

Rosario, Margaret et al. (2006), “Sexual Identity Development among Gay, Lesbian, and Bisexual Youths: Consistency and Changes Over Time”, *National Institute of Mental Health (NIMH)* 43(1): 46-58.

S., R. (2018, September 14). *Homosexuality in India: What data shows*. Retrieved from Live Mint : <https://www.livemint.com/Politics/nLQiPp15UICajLDXETU3EO/Homosexuality-in-India-What-data-shows.html>

Saad. (2021, April 19). *The Flickering Edge of Hope: Pakistan’s LGBTQ+ Community Battles Prejudice and Discrimination*. Retrieved from The Diplomat : <https://thediplomat.com/2021/04/the-flickering-edge-of-hope-pakistans-lgbtq-community-battles-prejudice-and-discrimination/>

Saberin, Z. (2018), *India decriminalises gay sex in landmark verdict*, [Online: Web] Accessed on 15 March 2020 URL: <https://www.aljazeera.com/news/2018/09/india-decriminalises-gay-sex-landmark-verdict-180906051219637.html>

Sabir, S. (2017), “Constitutional Rights of Minorities: A Critical Analysis”, in D. A. Aziz, *Constitutional Rights*. Bengaluru, Karnataka: National Law School of India University (NLSIU).

Sacks, David (2005), *Encyclopaedia of the Ancient Greek World*, New York: Facts On File, Inc.

Saeed, Abubakr et al. (2017), “It’s Complicated: Socio-Cultural Factors and the Disclosure Decision of Transgenders in Pakistan”, *Journal of Homosexuality* 65(8):1051-1070.

Salem, Paul E (1993) “In Theory: A critique of Western conflict resolution from a non-Western perspective.” *Negotiation Journal* 9:361–369.

Sampoorna (2017), *SPWG Response to the BJP Government's En-masse Rejection of the Parliamentary Standing Committee's Recommendations on TG Bill 2016*, [Online: Web] Accessed on 13 March 2020 URL: <https://sampoornaindiablog.wordpress.com/2017/11/23/spwg-response-to-the-bjp-governments-en-masse-rejection-of-the-parliamentary-standing-committees-recommendations-on-tg-bill-2016/>

Sanders, S. D. (2014), “India, Nepal, and Pakistan: A Unique South Asian Constitutional Discourse on Sexual Orientation and Gender Identity”, in S. H. Williams, *Social Difference and Constitutionalism in Pan-Asia* (pp. 316-348), New York: Cambridge University Press.

Saransh, R. &. (2019). The Wire. (P. Kaur, Interviewer)

Saransh, R. &. (2019). The Wire. (P. Kaur, Interviewer)

Sawyer & Shenvi, Pat & Neil (2019), “Gender, Intersectionality, and Critical Theory”, [Online: Web] Accessed 26-12-2020 URL <https://cbmw.org/2019/11/20/gender-intersectionality-and-critical-theory/>

Sedgwick, Eve Kosofsky (1990) *Epistemology of the Closet*. Berkeley, Los Angeles: University of California Press.

Semmalar, G. I. (2014), *Gender Outlawed; The Supreme Court judgment on third gender and its Implications*, [Online: Web] Accessed on 13 March 2020 URL: https://roundtableindia.co.in/index.php?option=com_content&view=article&id=7377:because-we-have-a-voice-too-the-supreme-court-judgment-on-third-gender-and-its-implications&catid=120:gender&Itemid=133

Sethi, D. S. (1991). The NGO Sector in India: Historical Context and Current Discourse. *Jstor*, 2(2), 49-68.

Shah, S. (2021, July 28). *An overview of crimes against women in Pakistan*. Retrieved from The News International : <https://www.thenews.com.pk/print/869740-an-overview-of-crimes-against-women-in-pakistan>

Shah, V. (2019), *What Is A Writ and What Is A Writ Petition?*, [Online: Web] Accessed on 16 March 2020 URL: <https://vakilsearch.com/advice/writ-petition-india-filing-drafting/>

Sherwood, H. (2021, June 26). *Church of England should recognise same-sex weddings, says bishop*. Retrieved from The Guardian : <https://www.theguardian.com/world/2021/jun/26/church-of-england-should-recognise-same-sex-marriage-says-bishop>

Siker, J. S. (2007), “Homosexuality, Religion and Law”, in K. M. Sands, *Homosexuality and Religion* (pp. 8-18), USA: Greenwood Press.

Singh, Perna (2018), “How Biological Determinism Perpetuate Sexism Using Science” [Online: Web] Accessed October 28 2020 URL <https://feminisminindia.com/2018/06/18/biological-determinism-science-sexism/>

Singh, S. (2022, November 19). *International Men's Day 2022: Indian Men Defy Stereotypes by Choosing Saree over Suits*. Retrieved from English Jagran : <https://english.jagran.com/entertainment/international-mens-day-2022-indian-men-defy-stereotypes-by-choosing-sarees-over-suits-10054720>

Siraj, A. (2014), Islam, "Homosexuality and Gay Muslim: Bridging the Gap between the Faith and Sexuality", in Y. T. Snowdon, *Queering Religion, Religious Queer* (p. 17), New York: Taylor & Francis.

Siva, A. P. (2016). No Country for Transgender . *Economic and Political Weekly* , 19-22.

Smith, Dinitia (1998), "Queer Theory' Is Entering the Literary Mainstream" *The New York Times*, New York, 17 January 1998.

Smith, J. E. (1999), "Aquinas's Natural Law Theory and Homosexuality", in C. Wolfe, *Homosexuality and American Public Life* (pp. 129-140), Dallas: Spence Publishing Co.

Spargo, Tamsin (2000), *Foucault and Queer Theory: Post-Modern Encounter*, Duxford; New York: ICON Books UK; TOTEM Books USA.

Stainbach, Susie (2019), "Victorian Era" [Online: Web] Accessed November 4, 2020 URL <https://www.britannica.com/event/Victorian-era#ref343820>

Stryker, Sheldon, (1980), *Symbolic Interactionism: A ASocial Structural Version*, Menlo Park: Calif: Benjamin/Cummings Pub. Co.

Sullivan, Nikki (2003) *A Critical Introduction to Queer Theory*, New York: New York University Press.

Tandon, S. (2018), *A 33-year-old hotelier is taking the fight for gay rights to India's supreme court*, [Online: Web] Accessed on 13 March 2020 URL: <https://qz.com/india/1261399/keshav-suri-the-indian-hotelier-fighting-for-gay-rights-in-the-supreme-court/>

Tandon, S. (2018), *A 33-year-old hotelier is taking the fight for gay rights to India's supreme court* [Online: Web] Accessed on 13 March 2020 URL: <https://qz.com/india/1379618/section-377-indias-crusaders-who-stood-up-for-gay-rights/>

Thomas, M. (2018), *Timeline: The struggle against section 377 began over two decades ago*, [Online: Web] Accessed on 15 March 2020 URL: <https://qz.com/india/1379620/section-377-a-timeline-of-indias-battle-for-gay-rights/>

Tripathi, K. (2021, September 03). *The Violence of 'Uncodified Crimes' Against the LGBTQIA+ Community*. Retrieved from The Quint : <https://www.thequint.com/news/law/violence-of-uncodified-crimes-against-lgbtqia-community#read-more>

Trust, H. D. (2022). Pakistan. Retrieved from Human Dignity Trust: <https://www.humandignitytrust.org/country-profile/pakistan/>

UK Essays (2018) "Theory of Gender Performativity" [Online: Web] Accessed March 15, 2020 URL: <https://www.ukessays.com/essays/english-literature/theory-of-gender-performativity-english-literature-essay.php>.

Vanita, K. (2021, March 05). An Overview of Roles and Functions of NGO in India. Retrieved from Corpbiz: The Power of Collaboration : <https://corpbiz.io/learning/roles-and-functions-of-ngo-in-india/>

Walsh, D. (2006), *Pakistani Society Looks Other Way as Gay Men Party*, [Online: Web] Accessed on 21 March 2020 URL: <https://www.theguardian.com/world/2006/mar/14/pakistan.gayrights>

Wanjek, C. (2015), *Being Transgender Has Nothing to Do with Hormonal Imbalance*, [Online: Web] Accessed on 21 March 2020 URL: <https://www.livescience.com/51652-transgender-youth-dont-have-hormonal-imbalance.html>

Watson, Katherine (2005), "Queer Theory: Group Analysis", *SAGE Journals* 67-81.

Wavhal, J. (2022 , December 11). *Tamil Nadu: Govt To Include LGBTQIA+ Issues In School Curricula, Aims To Work Towards Inclusivity*. Retrieved from The Logical India: <https://thelogicalindian.com/lgbtq/tamil-nadu-govt-include-lgbtqia-issues-school-curricula-work-towards-inclusivity-39172>

Wellum, S. (2017), *If All My Sins Are Forgiven, Why Must I Continue to Repent?* [Online: Web] Accessed on 5 March 2020 URL: <https://www.thegospelcoalition.org/article/if-all-my-sins-are-forgiven-why-must-i-continue-to-repent/>

WENN. (2018, July 18). *Elton John Talks Coming Out, Thought Everyone Knew He Was Gay*. Retrieved from Huffpost : [huffingtonpost.co.uk/2012/07/18/sir-elton-john-gay-coming-out_n_1681793.html#:~:text=Elton%20On%20Coming%20Out%3A%20%27I%20Thought%20It%20Was,sure%20news%20of%20his%20homosexuality%20was%20%20common%20knowledge](https://www.huffpost.com/2012/07/18/sir-elton-john-gay-coming-out_n_1681793.html#:~:text=Elton%20On%20Coming%20Out%3A%20%27I%20Thought%20It%20Was,sure%20news%20of%20his%20homosexuality%20was%20%20common%20knowledge)".

Wormald, B. (2013). *The World's Muslims: Religion, Politics and Society* (Chapter- 3: Morality) . Washington, DC, USA: Pew Research Center .

Zia, A. S. (2020), "Who Is Afraid of Pakistan's Aurat March?", *Economic and Political Weekly*, 55(8): 49-56.

Turnitin Report

Turnitin Originality Report
Thesis by Bharti Bharti
From Ph.d & M.Phil Theses (Theses 2022)

- Processed on 15-Dec-2022 16:59 IST
- ID: 1981930685
- Word Count: 38335

Similarity Index
5%
Similarity by Source

Internet Sources:
4%
Publications:
3%
Student Papers:
3%

