



**Background
Guide**



**LOK SABHA:
INCLUSION OF LGBTQ COMMUNITY
IN INDIA IN LIGHT OF ABOLITION
OF SECTION 377 OF I.P.C.**

2023

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LETTER FROM THE EXECUTIVE BOARD

Greetings Members!

It gives us immense pleasure to welcome you to this simulation of Lok Sabha. We look forward to an enriching and rewarding experience.

This study guide is by no means the end of research, we would very much appreciate it if the leaders are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Kush Kishor

Lok Sabha

(Speaker)

INTRODUCTION

WHO ARE LGBT COMMUNITY?

GAY AND LESBIAN It's important to start with the basics, and "gay" and "lesbian" are as basic as it gets. As "homosexual" began to feel clinical and pejorative, gay became the de

rigueur mainstream term to refer to same-sex attraction in the late 1960s and early '70s. Gradually, as what was then called the gay liberation movement gained steam, the phrase "gay and lesbian" became more popular as a way to highlight the similar-yet-separate issues faced by women in the fight for tolerance.

BISEXUAL:- Bisexuality is an attraction to more than one gender. Those who identify as bisexual feel a sexual and/or romantic attraction to people of a different gender as well as their own. While this offers a basic definition, bisexual people are a diverse group. Each individual perceives their sexual orientation differently

Transgender:- Transgender people have a gender identity or gender expression that differs from the sex that they were assigned at birth. Some transgender people who desire medical assistance to transition from one sex to another identify as transsexual

HISTORICAL BACKGROUND

There have been a lot of massive movements against the LGBTQIA+ community over the course of history, but the following two stand out for their large scale ramifications.

The Stonewall Riots

Fifty years ago, those who had grown tired of running away from the authorities – transgender people, bisexuals, lesbians, gay men, runaway youths – stood up against oppression at Stonewall. They have inspired generations of activists and jurists around the world, who have worked tirelessly to overcome legal obstructions to equality. Much of the progress we see today is owed to their courage.

The Stonewall Riots, also called the Stonewall Uprising, began in the early hours of June 28, 1969 when New York City police raided the Stonewall Inn, a gay club located in Greenwich Village in New York City. The raid sparked a riot among bar patrons and neighborhood residents as police roughly hauled employees and patrons out of the bar, leading to six days of protests and violent clashes with law enforcement outside the bar on Christopher Street, in neighboring streets and in nearby Christopher Park. The Stonewall Riots served as a catalyst for the gay rights

Though the Stonewall uprising didn't start the gay rights movement, it was a galvanizing force for LGBT political activism, leading to numerous gay rights organizations, including the Gay Liberation Front, Human Rights Campaign, GLAAD (formerly Gay and Lesbian Alliance Against Defamation), and PFLAG (formerly Parents, Families and Friends of Lesbians and Gays).

The Lavender Scare

The "Lavender Scare" was a moral panic during the mid-20th century about homosexual people in the United States government and their mass dismissal from government service. It contributed to and paralleled the anti-communist campaign known as McCarthyism and the Second Red Scare. Gay men and lesbians were said to be national security risks and communist sympathizers, which led to the call to remove them from state employment. It was thought that gay people were more susceptible to being manipulated, which could pose a threat to the country.

The Lavender Scare – the federal government's official response to both a visible lesbian and gay community and a perceived homosexual menace – normalized persecution of homosexuals through bureaucratic institutionalization of homophobic discrimination policy. Former U.S. Senator Alan K. Simpson has written: "The so-called 'Red Scare' has been the main focus of most historians of that period of time. A lesser-known element ... and one that harmed far more people was the witch-hunt McCarthy and others conducted against homosexuals."

In 1953 President Dwight D. Eisenhower signed Executive Order 10450, which set security standards for federal employment and barred homosexuals from working in the federal government. The restrictions set in place were cause for hundreds of gay people to be forcibly outed and fired from the State Department. With a stroke of a pen, President Eisenhower expanded the federal government's anti-homosexual policies and procedures to include every department and agency and every private corporation with a government contract – affecting the job security of more than six million workers and armed forces personnel. The executive order was also the cause for the firing of approximately 5,000 gay people from federal employment; this included private contractors and military personnel. Not only did the victims lose their jobs, but also they were forced out of the closet and thrust into the public eye as lesbian or gay.

MEASURES TAKEN BY UN: UN DECLARATIONS, RESOLUTIONS, TREATIES AND OTHER INSTRUMENTS

With the increased global media attention on violent acts of persecution inflicted on Lesbian, Gay, Bisexual & Transgender (LGBT) persons, a crucial question before the world community today is whether gay rights are included under our basic human rights. At the United Nations, this question is slowly taking centre stage.

In a statement produced by the UN General Assembly on 18 December 2008, the UN formally recognized non-traditional sexual orientation and gender identity and declared its commitment to the protection of LGBT people following a letter from the Organization of American States. The UN GA further expressed its concern regarding human rights violations of the LGBT community and its intention to discuss LGBT equality in the future.

Resolution 17/19 on Human rights, sexual orientation and gender identity adopted by the Human Rights Council in June 2011 acknowledges the injustices inflicted upon the LGBT community and mentioned that a study on the current treatment of LGBT people should be presented in a future panel session.

The United Nations High Commissioner for Human Rights produced this study (Report 19/41) in November 2011. It provides a comprehensive analysis of the experiences of LGBT

people around the world and emphasizes the role of the Member States in protecting and ensuring human rights.

In addition to the actions taken by the High Commissioner and the Human Rights Council, the United Nations is currently sponsoring Free & Equal, a campaign started in 2013 dedicated to public education for LGBT equality. The campaign “works to inform individuals of their human rights, identify and address human rights challenges, and assist governments in fulfilling their human rights obligations” and is aimed at challenging LGBT discrimination.

United Nations Resolutions –

Sexual orientation and gender identity Human Rights Council resolution - Protection against violence and discrimination based on sexual orientation and gender identity (adopted 30 June 2016) – A/HRC/RES/32/2

Human Rights Council resolution – Human rights, sexual orientation and gender identity (adopted 17 June 2011) – A/HRC/RES/17/19

Human Rights Council resolution – Human rights, sexual orientation and gender identity (adopted 26 September 2014) – A/HRC/RES/27/32

The United Nations Declaration on Human Rights is one of the most important “laws” in place to protect the LGBTI community and their rights in everyday life. “LGBTI rights are human rights”, this is a statement that not many countries stand behind and follow. The UDHR is one of the most relevant laws in this topic since, as its title states, it is a Universal law and is mandatory for all countries around the globe to follow and respect. The UN also gradually expanded the UDHR to encompass minorities and vulnerable groups. Besides the UDHR, there are other international regulations, among them various UNHRC resolutions.

Summarizing the actions of the UN in regard to this particular agenda over the years, in 2011, the U.N. Human Rights Council passed a wide-ranging resolution on human rights, sexual orientation and gender identity, expressing concern about violence towards LGBTQ people and commissioning the first-ever U.N. study focused on LGBTQ issues.

In 2012, the U.N. General Assembly (UNGA) passed a resolution on extrajudicial killings that included crimes motivated by the victim’s sexual orientation and gender identity. This was the first time that was mentioned in a UNGA-passed resolution.

In July 2013, the U.N. High Commissioner for Human Rights launched the U.N.’s Free & Equal campaign to promote understanding of the human rights of LGBTQ people. The campaign has reached an estimated two billion people through traditional and social media, and generated a stream of widely shared materials.

In August 2015, the U.N. Security Council held its first-ever meeting to address the human rights of LGBT people under ISIS. The briefing was convened by the U.S. and Chile, with nine out of 15 Security Council member countries attending, as well as dozens of other countries. The U.N. refugee agency has played a crucial role in assisting LGBTQ people in fleeing violence and persecution, and in helping them resettle in countries that are more welcoming to LGBTQ people. They have repeatedly updated their guidance on how to effectively and sensitively assist LGBTQ refugees and asylum seekers. When the U.N. released its Sustainable Development Goals (SDGs) in 2015, many countries committed to interpreting their language to ensure that LGBTQ people are not “left behind.” In July 2017 the U.N. Human Rights office criticized the proposed U.S. ban on qualified transgender

people serving in the military. Throughout his tenure (2010-17) UN Secretary-General Ban Ki-moon repeatedly and consistently used his platform to advocate for equality.

PROBLEM IN INDIA FOR THE TRANSGENDER COMMUNITY

Political: There is no political representation of Transgender in the Indian society. No representation of transgender in the political institutions. No member of parliament in Rajya sabha (Upper house of the Parliament) and in Lok Sabha (lower house of the Parliament) No MEMBER OF LEGISLATIVE ASSEMBLY AND MEMBER OF THE LEGISLATIVE COUNCIL in any of the state legislature in India.

Economical:- 92% of transgender do not participate in economic activities. According to the World Bank report of 2016 India lost \$32 billion because of non-inclusion of transgender in the process of development. In India no billionaire or millionaire comes from transgender communities

Social:- 62% of the transgender is face discrimination in India the number is a statistic but in reality it should be more than that less than 50% Of transgender are educated. In India there is only one university for transgenders. They are not provided with the reservation benefits.

LGBT POSITION IN INDIA AND LAW

Construction of Hindu temples in stone began around the sixth century of the Common Era. Construction reached climax between the twelfth and the fourteenth century when the grand pagodas of eastern and southern India such as Puri and Tanjore came into being. On the walls and gateways of these magnificent structures we find a variety of images: gods, goddesses, demons, nymphs, sages, warriors, lovers, priests, monsters, dragons, plants and animals. Amongst scenes from epics and legends, one invariably finds erotic images including those that modern law deems unnatural and society considers obscene. Curiously enough, similar images also embellish prayer halls and cave temples of monastic orders such as Buddhism and Jainism built around the same time. Interpretations and judgements aside, these images tell us that the 'idea' of same-sex and what the colonial rulers termed 'unnatural' intercourse did exist in India.

In Indian penal code Section 377 is not merely a law about anal sex alone but applies to homosexuality in general. The lack of a consent-based distinction in the offence has made homosexual sex synonymous to rape and equated homosexuality with sexual perversity. Section 377 is the biggest affront to the dignity and humanity of a substantial minority of Indian citizens.

in 2014 supreme Court in national legal service authority vs union of India open the gates for the trans-genders in this judgement the court realised that transgender should be given is

the preference of the third gender and they should not be neglected because the word gender or the word sex under article 15 does not mean men or woman it is based on the biology so transgender is also one of the genders which is specified under the article 15.

Finally, on 6 September 2018, the Court ruled unanimously in Navtej Singh Johar v. Union of India that Section 377 was unconstitutional "in so far as it criminalises consensual sexual conduct between adults of the same sex.

Now the LGBT community has been provided with the sexual rights but they are not provided right to marry.