

# INTERNATIONAL JOURNAL OF LEGAL ENFORCEMENT

ISSN: 2582 8894|UIA: AA1003/2020



Volume 1 Issue 2

|June 2021|

Website: [www.internationaljournaloflegaleenforcement-ijle.com](http://www.internationaljournaloflegaleenforcement-ijle.com)

Email: editorialboard.ijle@gmail.com

## **About Us**

International Journal of Legal Enforcement is an online peer review journal dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative of the young students. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. With this thought we hereby present you, International Journal of Legal Enforcement.

**“Dharma is to protect the Needy”**

**Article on**

**IT'S NOT SIMPLY SEX WHEN IT COMES TO SEXUALITY**

**Lakshay Manchanda,**

**Student, JIMS ENGINEERING MANAGEMENT TECHNICAL  
CAMPUS SCHOOL OF LAW (Affiliated to GGSIPU)**

**Aendree Saxena**

**Student, JIMS ENGINEERING MANAGEMENT TECHNICAL  
CAMPUS SCHOOL OF LAW (Affiliated to GGSIPU)**

## ABSTRACT

The right to sexuality includes the freedom to express one's sexuality as well as the right to be free from discrimination based on sexual orientation. It is specifically concerned with the human rights of persons of various sexual orientations, particularly lesbian, gay, bisexual, and transgender (LGBTQ) individuals, and the preservation of such rights. It also applies to heterosexuality. The right to sexuality and the freedom from discrimination based on sexual orientation are founded on the universality of human rights and the inalienable character of rights that every person has by virtue of being human. There is no explicit right to sexuality in international human rights law; rather, it is found in a number of international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

Keywords- Human Sexuality, Sexuality Rights, Discrimination.

## 1. INTRODUCTION

The term human sexuality depicts two different words: human sexuality. Human means a living being and sexuality tells us what kind of living being we are; it tells us the personality. It is about the integral part that we are. This is a wide and complex topic. It can be said “that how humans experience an erotic and Express themselves as a sexual being. Sexuality can be described/expressed in many more ways like in the way of thought, fantasies, desires, behavior, roles, and relationships. The opinions and experiences surrounded by sexuality and unique in every manner vary person to person.”

**“<sup>1</sup>According to Rathus nevid Fichner - Rathus 1998”**

“How we experience and express yourself as sexual beings”

---

<sup>1</sup> *Sex and Society, Volume 2. Marshall Cavendish, 2010. p. 384. ISBN 978-0-7614-7907-9. Retrieved 21 June 2017. The term human sexuality broadly refers to how people experience and express themselves as sexual beings.*

Next to our 3-time meal and an 8-hour sleep it seems to be the most important difficulty we have to face as human beings. Human sexuality is just not active for the sake of reproduction but many more complex factors lead to maintaining a sexual relationship either to recognize their needs to satisfy themselves.

There is nothing to feel ashamed about your sexuality, what you are unique just recognize it. Sexuality is a way in which we express ourselves as a living being that can be sexual. But the most important factor is one actual gender that actually builds inbuilt traits that a particular gender exists if I am a female gender. The inbuilt traits of us will be the biological trait, the cognitive trait on it can also make a difference in our learning and thinking process that can be totally different in a male.

Sexualities tell us the way we dress, joke and talk and in many more ways like sexuality is about sexual attitudes and practices, not physiology or anatomy. It can be viewed as a person's capacity for sexual feeling. Researching none on sexual attitudes and practices is a particularly interesting field in sociology because behavior is universal.

Someone's sexual orientation is the layout or a sample of sexual hobby in a few different intercourses or the identical Physical and emotional components of sexuality consist of bonds among people which are expressed thru profound emotions or physical manifestations of love, trust, and care. Social components address the consequences of human society on one's sexuality, even as spirituality worries a person's religious reference to others. Sexuality additionally influences and is suffering from cultural, political, legal, philosophical, moral, ethical, and spiritual components of life.

Interest in sexual interest commonly will increase while a person reaches puberty. Although no unmarried principle at the reason of sexual orientation has received tremendous support, there may be notably greater proof assisting nonsocial reasons of sexual orientation than social ones, especially for males. Hypothesized social reasons are supported via way of means of best susceptible proof, distorted via way of means of several confounding factors. This is in addition supported via way of means of a cross-cultural proof; due to the fact cultures which are very tolerant of homosexuality do now no longer have appreciably better costs of it

## 2. HISTORY

The research by Swiss law specialist, Johann Bachofen had a promising effect on the investigation of the historical significance of sexuality. Various writers, especially Lewis Henry Morgan and Friedrich Engels were affected by Bachofen and castigated his thoughts regarding this topic, which were practically completely drawn from a nearby perusing of antiquated folklore. In his 1861 book *Mother Right*<sup>2</sup>: An Investigation of the Religious and Juridical Character of Matriarchy in the Ancient World, Bachofen composes that first and foremost human sexuality was chaotic and promiscuous.

This "aphroditic" stage was supplemented by a matriarchal "demeteric" stage, which came around because of mother being the only possible method of carrying forth the generation. Just upon the transformation to male-authorized monogamy, paternity was now surely conceivable, resulting in a male-lead society – a definitive "apollo" phase of mankind. While the perspectives on Bachofen are not found on exact proof, they carry significance as a result of the effect they made on masterminds to come, particularly in the field of human social studies. Present-day clarifications of the beginnings of human sexuality are situated in developmental biology, and explicitly the field of human ecology.

Transformative advancements in biology show that, “the human genotype, similar to that of any remaining creatures, is the consequence of those predecessors who reproduced with more prominent recurrence than others. The resultant sexual conduct modifications are thus not an effort concerning the person to supplement reproduction in a given circumstance – natural selection doesn't "perceive" into what's to come. Yet the current conduct is presumably the after-effect of particular powers that transpired in the Pleistocene.”

“The Evolution of Human Sexuality is a 1979 book about human sexuality by the anthropologist Donald Symons, in which the writer studies subjects like human sexual composition, ovulation, orgasm, homosexuality, sexual promiscuousness, and assault, attempting to show how evolution can be applied to humans. Symons contends that the female orgasm is certainly not an adaptable characteristic and that women have the ability for it simply because the orgasm is adaptable for

---

<sup>2</sup> <https://www.britannica.com/topic/family-kinship>

men, and that contrasts between the sexual conduct of male and female homosexuals help to show hidden dissimilarities among male and female sexuality. In his view, homosexual men will, in general, be sexually philandering in light of the inclination of men overall to desire sexual intercourse with many accomplices, an inclination that in heterosexual men is normally controlled by women's ordinary absence of interest in malicious intercourse. Symons likewise contends that assault can be clarified in transformative terms and women activist cases that it isn't physically inspired are mistaken."

"As per Symons, the thoughts that he created in *The Evolution of Human Sexuality* were somewhat stimulated by a discussion he had with the ethologist Richard Dawkins in 1968. Symons, who had reasoned that "men will in general need a range of sexual accomplices and women tend not to because this longing consistently was versatile for hereditary males and never was versatile for hereditary females", found that Dawkins had autonomously arrived at a similar resolution. Symons introduced an early draft of the book during a 1974 class on primate and human sexuality he co-taught with the anthropologist Donald Brown. Symons contended in the draft that there are widespread human sex contrasts."

### **3. PROBLEMS/DILEMMA**

"Over the last few years a nation has made good progress towards lgbtq community but still neither the Federal government nor the other states have explicit statutory and nondiscrimination laws protecting people based on sexual orientation and gender identity. LGBTQ community has face and still faces discrimination everywhere in every sector. According to last year's report between 11 % to 28% of the LGBTQ workers have lost promotion simply because of their sexual identity orientation. 27% of the transgender workers reported that they were being fired, not hired and denied the promotions. not only at workplace LGBTQ community faces discrimination at various other places for example their education hampers as they faced problems in schools colleges etc., continuous problems at home and unable to enjoy much because a society issues. Last year the data was collected from the nation worldwide represented a survey of lgbtq community conducted by CAP shows 25.2 % of the LGBTQ community people have faced discrimination because of

their sexual identity. The January 2017 survey depicts that irrespective of the progress in 2016 discrimination was still there and it was continued to threaten of LGBTQ people in every way.”

Among people who experienced sexual orientation- or gender-identity-based discrimination in the past year:

“68.5 percent reported that discrimination at least somewhat negatively affected their psychological well-being.”

“43.7 percent reported that discrimination negatively impacted their physical well-being.”

“38.5 percent reported discrimination negatively impacted their school environment.”

“52.8 percent reported that discrimination negatively impacted their work environment.”

“56.6 report it negatively impacted their neighborhood and community environment.”

“The right to equality and non-discrimination are core concepts of human rights, enshrined with inside the United Nations Charter, The Universal Declaration of Human Rights (UDHR) and human rights treaties.” The starting phrases of the Universal Declaration of Human Rights are unequivocal:

“All people are born free and identical in dignity and rights.”

Equality and non-discrimination which is provided to everyone via worldwide human rights regulation applies to all kind of human being even if they have different sexual identity or status. There is nowhere written or no rule is made in our human rights treaties that give full rights to a few. However, withholds them from others on the idea of gender orientation.

#### ● **UNIQUE VULNERABILITIES IN THE WORKPLACE**

Since LGBTQ groups consider numerous people, the ones who felt powerless against segregation across different characters tried and stride of loathing practices. “Many LGBTQ ethnic minorities were constrained to show their own personality from others. As the research says 12% of them are eliminating things from their resumes while in contrast of 8% of white LGBTQ in last year. Similarly approximately 19% of young respondents of the age group around 18-24 year old were excluding more than 35-44 year old one with approximately 8%. These things might reflect on

them being jobless among the other minorities, crippled individuals and youthful grownups. On the other hand the ones who could confront separation which were usually based on their race, youth, and inability also felt powerless against being denied a task.”

- **UNIQUE VULNERABILITIES AT HEALTH CARE CENTRE**

“In 2010, the greater part of LGBT individuals detailed being victimized by medical services suppliers and in excess of 25% of transsexual respondents announced being denied clinical consideration inside and out. From that point forward, LGBT individuals have acquired security from medical services separation—most eminently, guidelines coming from the Affordable Care Act, or ACA, have restricted governmentally financed clinics, suppliers, and back up plans from victimizing LGBT patients. Regardless of progress, LGBT individuals, and transsexual individuals, specifically, stay defenseless against medical care segregation: In 2015, 33% of transsexual individuals who saw a medical services supplier revealed "in any event one negative experience identified with being transsexual." These negative encounters included being declined therapy or in any event, being genuinely attacked. Transsexual ethnic minorities and individuals with disabilities announced especially high paces of separation from medical care suppliers. Obviously, individuals in these weak gatherings are particularly prone to stay away from specialist's workplaces, deferring both safeguard and required clinical consideration: “

“23.5 percent of transsexual respondents kept away from specialists' workplaces in the previous year, versus 4.4 percent of cist-gender LGBT respondents.’

“13.7 percent of impaired LGBT respondents kept away from specialists' workplaces in the previous year, versus 4.2 percent of nondisabled LGBT respondents.”

“10.3 percent of LGBT ethnic minorities kept away from specialists' workplaces in the previous year, versus 4.2 percent of white LGBT respondents.”

These discoveries are steady with research that has likewise distinguished examples of medical care victimization ethnic minorities and handicapped individuals. For instance, one review of medical services in five significant urban communities tracked down that more than one of every five practices were blocked off to patients who utilized wheelchairs.

#### **4. HUMAN SEXUALITY RIGHTS**

There has been a broader change in society that has driven a greater recognition to the rights of this community such as a more equitable relations of genders and a greater respect for personal dignity of someone. Within that context, you noticed “the LGBT populace progressively coming out, so humans unexpectedly located that that they'd a homosexual brother or son or neighbor or near colleague, which began out shaping public notion and strengthened the social changes.”

It's smooth for bigotry to exist in a context of ignorance, however whilst you're being bigoted closer to a near buddy or neighbor, you begin thinking: “Maybe LGBT humans are virtually simply humans; perhaps I ought to understand their rights.”

With the evolving conditions of democracy and governance there is also an evolution of our society with respect to time in their thinking and analytical skills. “There is an evolution in recognizing a special community that is LGBT community (Lesbian, gay, bisexual and transgender). in the recent years Indian citizens are facing difficulties likely a non- LGBT person is not facing the country abolished colonial laws that clearly discriminated against homosexuality and transgender identity, and clearly explained Article 15 of the Constitution, which prohibits discrimination based on sexual orientation and gender identity, but lacks many safeguards. Legal, including marriages between the same sex.”

“According to the law passed in 2019, transgender people in India can change their legal sex after undergoing sex reassignment surgery and enjoy the constitutional right to be registered under the third sex. In addition, some states protect hijras, the traditional third-sex population in South Asia, through housing programs, and provide social benefits, retirement benefits, free surgery in public hospitals, and other programs to help them. There are approximately 480,000 transgender people in India.”

“In 2018, in Navtej Singh Johar's landmark ruling on the Commonwealth of India, the Supreme Court of India read Article 377 of the Indian Penal Code and excludes homosexuality between adults. [Legalization of consented homosexual relations]. Despite the strong political movement for LGBT rights, there is still a considerable amount of homophobia in the Indian population: According to a poll, about a quarter of Indians oppose same-sex relationships. In the 2010s, LGBT people in India became more tolerant and accepting, especially in large cities. The overwhelming

opinion of Judge Chandrachud opened up a new way to understand and interpret Article 15(1) of the Indian Constitution which states that "non-discrimination based on gender". The consensus opinion is in line with the formal interpretation of Article 15 in previous cases such as "Air India. Contradiction. V. Nergesh Meerza,<sup>3</sup> who allows the state to argue that discrimination is based on gender and some other motives ("Sex Plus"), and therefore does not fall within the scope of Article 15, such as the rule that only people over 6 years old will be recruited."

If people believe that gender and height discrimination has occurred, then the legs of the armed forces can withstand attacks because it has a disproportionate impact on women. Due to different conditions of service, the Nergesh Meerza court ruled that the employment of employees based on the gender of flight attendants is not based on Article 15 not only on gender but also on other considerations<sup>4</sup>. This is an isolated interpretation of gender discrimination. Marital status, age, or pregnancy is not regarded as coincidence with gender or even for similar reasons. It not only limits the scope of discrimination considered as "sex", but also limits the possibility of discrimination. Intersection, me. H. Based on multiple numbers or similar intersections. This isolated reading rejects the real impact of discrimination through different personalities and characteristics, and was created by Chandrachud J. Noting that a sturdy stereotype underlines the Nergesh Meerza judgment, Chandrachud J. emphasizes that when 'A provision challenged as being extremely vires the prohibition of discrimination at the grounds best of intercourse below Article 15(1), it's far to be assessed now no longer through the items of the kingdom in enacting it, however through the impact that the supply has on affected people and on their essential rights.'

"In the case of Navtej Singh Johar v. Union of India, the Supreme Court dominated that the Indian Constitution bans discrimination primarily based totally on sexual orientation thru the class of "intercourse". Similarly with inside the case of National Legal Services Authority v. Union of India, the Supreme Court held that discrimination on the idea of gender identification is constitutionally prohibited. Gender identification, in our view, is a quintessential part of intercourse and no citizen may be discriminated against at the floor of gender identification, which includes individuals who are discovered as 0.33 genders. We, therefore, finish that discrimination

<sup>3</sup> <https://indiankanoon.org/doc/168671544/>

<sup>4</sup> <https://indconlawphil.wordpress.com/category/non-discrimination/article-15-general/#:~:text=Article%2015%20provides%20for%20specific,form%20the%20basis%20for%20discrimination.&text=Therefore%2C%20for%20the%20violation%20of,will%20have%20to%20be%20proved.>

on the idea of sexual orientation or gender identification consists of any discrimination, exclusion, restrict or preference, which has the impact of nullifying or transposing equality with the aid of using the regulation or the identical safety of legal guidelines assured beneath Neath our Constitution.”

“— Supreme Court Judge K. S. Panicker Radhakrishnan<sup>5</sup>”

“Sex because it takes place in Article 15, isn't simply confined to the organic attributes of an individual, however additionally consists of their sexual identification and character”.

“— Supreme Court of India”

Despite those constitutional interpretations, “no legislative regulation has been enacted to prohibit discrimination on the idea of sexual orientation in employment for the reason that Article 15 most effective prolonged to discrimination from the country or authorities bodies. However, on four February 2021, the Allahabad High Court ruled that firing and discriminating towards someone on the idea of sexual orientation is a contravention of Navtej Singh Johar v. Union of India Supreme Court judgment, subsequently extending the anti-discriminatory provisions to employment everywhere.”

Furthermore, “the Real Estate (Regulation and Development) Act, 2016 outlawed discrimination in housing on the idea of religion, caste, gender, sexual orientation, marital popularity and nutritional preference. In case of bodily assaults towards LGBT human beings, Section 307 (Attempt to murder) or Section 323 (voluntarily inflicting hurt) of the Indian Penal Code is used towards the perpetrator. In case of hate speech, Section 153 A (Hate Speech Law) of the code has been formerly used.”

Wikisource has authentic textual content associated with this article:

“Transgender Persons (Protection of Rights) Act, 2019<sup>6</sup>”

---

<sup>5</sup>

<sup>6</sup> <http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

Adopted in 2019, “the Transgender Persons (Protection of Rights) Act, 2019 bans discrimination towards transgender human beings in instructional established order and services, employment, healthcare services,” get entry to the "use of any goods, accommodation, service, facility, benefit, privilege or possibility committed to the usage of the overall public or usually to be had to the public", the proper to movement, the proper to "reside, purchase, hire or in any other case occupy any property", the possibility to face for or preserve public or non-public office, and in authorities or non-public establishments.

There had been reservations amongst a few with inside the transgender network, each concerning the problem of acquiring a certificate, and due to lack of knowledge and shortage of sensitivity to the problem amongst nearby public officials. “LGBTQ protests towards the invoice have occurred, with claims that the invoice hurts the transgender network rather than assisting it. Protesters referred to the supply for certification, however criticized the truth that this will require human beings to sign up with the authorities as a way to be diagnosed as transgender.” They additionally criticized the inequality inherent with inside the large variations in punishment for the equal crime, which include sexual abuse, dedicated towards violating a transgender or cisgender individual.

“LGBT activists are encouraging human beings who've confronted discrimination due to their sexual orientation or gender identification in different non-country regions to mount demanding situations in court, in search of to check the jurisprudence set with the aid of using the 2 rulings.” They also are campaigning for a specific anti-discrimination regulation that could amplify everywhere.

- **“SECTION 377<sup>7</sup>”**

“On 6 September 2018 the landmark judgment where the LGBT community came into recognition by the approval of the Supreme Court of India where a 5 judge Bench in part struck down Section 377 of the Indian Penal Code, "decriminalizing same-intercourse members of the family among consenting adults." LGBT people are actually legally allowed to have interaction in consensual intercourse. The Court has upheld provisions in Section 377 that criminalize non-consensual acts or sexual acts completed on animals.”

---

<sup>7</sup> <https://indiankanoon.org/doc/1836974/>

“Chief Justice Dipak Misra, Justice Rohinton Nariman, Justice DY Chandrachud and Justice Indu Malhotra authored 4 concurring decisions.” Read the whole judgment here.

“CJI Misra's judgment (on behalf of himself and Justice Khanwilkar)”

“Justice Nariman's judgment”

“Justice Chandrachud's judgment”

“Justice Malhotra's judgment”

Read our judgment matrix here, so that you can quickly make yourself familiar with every of the 4 concurring decisions. Read our pre-judgment matrix here, so that you can recognize what alternatives the Court had earlier than itself previous to making its judgment.

“The 4 judgments unanimously referred to essential rights violations in analyzing down Section 377. They found that Section 377 discriminates in opposition to people on the idea of their sexual orientation and/or gender identity, violating Articles 14 and 15 of the Constitution. Further, they ruled that Section 377 violates the rights to life, dignity and autonomy of private preference beneath Neath Article 21. Finally, they found that it inhibits an LGBT individual's cap potential to absolutely recognize their identity, with the aid of violating the proper freedom of expression beneath Neath Article 19(1) (a). They all stated Court's current decisions in NALSA (acknowledged transgender identity) and Puttaswamy (acknowledged essential proper to privacy).”

“In part hanging down Section 377, the Bench overruled Suresh Koushal 2013. In Suresh Koushal the Court had upheld the constitutionality of Section 377. Not the best, the Bench discovered that Suresh Koushal did not apprehend how Section 377 violates essential rights, however in addition that it trusted a constitutionally impermissible rationale. Suresh Koushal used the miniscule minority rationale, which holds that considering best a small minority of residents are negatively impacted with the aid of using Section 377, the Court now no longer intervenes. The Constitution ensures all residents, impartial of sexual orientation or gender identity, their essential rights. The Court is worried about safeguarding ‘constitutional morality’, now no longer ‘famous morality’.”

## 5. TYPE OF SEXUALITY

Pride Month 2021						
SUN	MON	TUE	WED	THU	FRI	SAT
		1. Gay 	2. Lesbian 	3. Bisexual 	4. Polysexual 	5. Pansexual 
6. Omnisexual 	7. Ceterosexual 	8. Demisexual 	9. Grey Asexual 	10. Asexual 	11. Polyamory 	12. Intersex 
13. Trans MTF 	14. Trans FTM 	15. Agender 	16. Genderfluid 	17. Bigender 	18. Trigender 	19. Pangender 
20. Genderqueer 	21. Demigirl 	22. Demiboy 	23. Androgyne 	24. Intergender 	25. Non Binary 	26. Questioning 
27. Homoromantic 	28. Biromantic 	29. Panromantic 	30. Aromantic 			

@SAKURA\_HEALTH\_SERVICES

## 6. CONCLUSION

Probably the most generally held perspectives about sexual direction, for example, the "conceived that way" speculation, basically are not upheld by science. The writing in this space depicts a little troupe of organic contrasts between non-heteros and heteros, however those natural contrasts are not adequate to foresee sexual direction, a definitive trial of any logical finding." The most grounded explanation that science offers to clarify sexual direction is that some natural elements show up, to an obscure degree, to incline a few people to a non-hetero direction. The idea that we are "conceived that way" is more unpredictable on account of sexual orientation. "In one sense, the proof that we are brought into the world with a given sex appears to be all around upheld by direct perception: guys overwhelmingly recognize as men and females as ladies. The way that youngsters are (with a couple of special cases of intersex people) conceived either naturally male or female is past banter. The organic genders assume integral parts in generation, and there are various populace level normal physiological and mental contrasts between the genders." In any case, while organic sex is an inborn component of people, sexual orientation personality is a more subtle idea.