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COMPARATIVE STUDY OF LGBTQ+ RIGHTS IN INDIA AND UK

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ABSTRACT

The study is concentrated on how the rights of the LGBTQ community have changed throughout time in the modern age, with a particular focus on the intersex population's lived experiences. It looks at the state of LGBTQ rights in both the UK and India. The major purpose is to document the history of the LGBTQ rights campaign and revolution in both jurisdictions and compare and contrast the policies of the two nations as well as approaches to this critical issue. At the time of birth, a child's sexuality (male or female) is assigned, usually based on the infant's outward physiology, is referred to as 'sex.' Sexual orientation, sometimes known as 'sexuality' refers to a persistent emotional, romantic, or sexual attraction to other persons that is either inherent or unchangeable.² On the hand, Gender distinctiveness refers to an individual's inner notion of themselves as how they see themselves and what they call themselves (as masculine, feminine, a blend of both, or neither). This paper will be divided into sections, wherein the author will use the term "LGBTQ" to refer to a wide range of identities and orientations that are diametrically opposed to the conventional stakeholders and sections of the society. The approach employed is comparative analysis, using the following parameters: “religion, marriage and adoption, public discourse as well as social movements, and governmental laws and regulations”. This study intends achieving the goals by a critical analysis and comparison established between the two countries.

Keywords: LGBTQ, Human Rights, Third Gender, UK, India

INTRODUCTION

World cultures, as it is prevalent as an open secret, has always been organized around divisions, resulting in prejudice and alienation of some groups. One of the most important pillars around which these categorization and discriminations were established, gender, continues to play a

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² Bailey JM, Vasey PL, Diamond LM, Breedlove SM, Vilain E, Epprecht M. Sexual Orientation, Controversy, and Science. *Psychological Science in the Public Interest*. 2016;17(2):45-101

factor in determining a person's social standing the terms "sex, sexuality, and gender" are commonly misinterpreted and thereby confounded. A new wave of awareness has swept the globe since the arrival of the internet. While this has helped to raise the exposure of the LGBTQ community, the most pressing concern is whether the increased visibility is credible. In the twenty-first century, LGBTQ rights have been the focus of intense global attention. From a global point of view, the LGBTQ people's rights have yet to be fully established as well as recognized, however the fulfilment of the larger objective of it will take a long time towards making the globe a secured place. While previous horrors have not been totally undone, the globe has seen a profound transformation in LGBTQ rights in the last two decades. The purpose of this research is to look at how the LGBTQ community's rights have progressed in two major players in the Asian and European nations.

For long now, it is seen that depending on how they identify, appear, or are attracted to, the LGBTQ population has been denied fundamental rights entitled to human globally and the societal respect.

Through the goal of this study, the author will draw inferences on LGBTQ rights' growth through a comparison of two major geographic areas: India and the United Kingdom, both of which have dramatically different approaches to gender equality. In addition, the goal of this research is to use an intersectional lens to look at the issues that the intersex community faces and provide ways to overcome them.

JUSTIFICATION OF SELECTION OF COUNTRIES: INDIA AND UNITED KINGDOM

The primary reason behind selection of India and United Kingdom is due to the proximity of the legal system of the two nations. India and the United Kingdom both have constitutions that feature the rule of law, whether written or unwritten. Separation of powers is a concept shared by both the countries. The approach provides for some flexibility, even if it is not rigorously followed. The judiciary has also integrated the concept of rule of law into its procedures for the public good and justice. Because the legislature is the sovereign authority to make laws in the United Kingdom, it can be difficult to implement the spirit of the rule of law because laws can sometimes lead to bias, whereas in India, sovereignty is vested in the Constitution, and every law is derived from it, so there is less chance of bias. Lord Macaulay, who based the provision on Britain's 16th-century Buggery Act, thought the IPC would "modernise" India's society. It's interesting to notice that the country that enacted anti-LGBTQ legislation in India has now

enacted more liberal rules and regulations for the same social groups. LGBT individuals in India rejoiced in September 2018 when the country's Supreme Court unanimously overturned a colonial-era prohibition on homosexual sex. It was a watershed event for LGBT rights, reversing a British legacy of tyranny. Before the British enacted the related provisions under the Indian Penal Code in the 1860s, in the form of Section 377. Hinduism, which is India's primary religion, was extremely accommodating of LGBT individuals, imposed harsh penalties on whoever has “carnal intercourse against the order of nature.” This provision was then expanded throughout the British Empire, starting in with its biggest colony in India, which did not do away with this mistaken-law for decades after its freedom. It is for this reason that most former British colonies are still averse to, if not openly opposed to, same-gender relation.

As a result of the engagement of British and UK authorities in India's LGBTQ policies, the author decided to compare and contrast the two nations.

RESEARCH QUESTIONS

In the age of coming out in the society, what is the relationship between sexual identity formation and incorporation of religious experience?

The goal of this question is to examine and determine if religious and LGBT identity conflict indicators are linked to social stigma, and if internalized homophobia plays a role in mediating this relation.

If many individuals recognize the LGBTQ society as an integral part of the community, why are there restrictions on the protection of the Marriage and Adoption Rights?

This question is about the stigma that members of the LGBTQ+ community suffer in society when it comes to marriage and adoption rights. States are obliged to create regulations on adoption and foster care to safeguard the best interests of children in need of loving homes and families while also ensuring an equitable platform for all players in the marriage and adoption ecosystem to be eligible to participate. One of these issues will be addressed in this section.

How do movements change culture and legal system within a Jurisdiction?

Considering law is a mirror of society's wants as well as requirements, the Author has included this question. It is believed that if you wish to study any civilization, you must first study the laws created by that society, from which you may determine if the society is evolved or not.

Despite being a product of society, the law is accountable for social developments. As a result, it's important to look at the influence of LGBTQ+ movements throughout the world on the legal systems of the countries involved.

How does the discourse of LGBT rights articulate political boundaries that demarcate Government Laws and Policies?

The purpose of this research question is to offer a cohesive platform by focusing on the nature and repercussions of LGBT rights boundary-drawing processes. These activities are examined not only in their immediate context, but more importantly in the perspective and outlook of a much larger historical narrative that underlines how a particular articulation of LGBT rights developed from a specific set of political pressures.

RELIGION

The Ancient Vedas, an important and essential literature in the Indian Hindu religion, has in particular, extensively shown and expressed tolerance for the homosexual community including the gays and intersex people. On the other hand, Islamic traditions prohibit same-sex unions while accepting transsexual people into the society.³ However, with the arrival of colonization, these attitudes shifted, and homosexuality became criminal. Section 377 of the Indian Penal Code was introduced by the British government in the 19th Century, and was later on approved and accepted by the drafting committee of Indian Constitution, finding it to be upholding the basic principles and rights laid down by the Indian Constitution. According to documentary records, all varieties of love were embraced and valued in mediaeval India, as well as the transgender and intersex society. According to noted historian Harbans Mukhia, understanding why the British made homosexual sex criminal requires knowledge of India's past. "The British brought their own rules to India, including Section 377 which banned homosexuality and made it a criminal act. This law was enforced by them, but it didn't conform to India's attitude toward homosexuality. It had more to do with their Christian belief systems," added Harbans Mukhia. Since there is no single central Hindu authority, individual temples and ashrams have diverse stances toward LGBTQIA+ problems. In the Hindu Religion, there is no fundamental philosophical or religious reason to reject or exclude LGBTQ+ community individuals, which

³ *Stances on faiths on LGBTQ issues: Hinduism.* (n.d.). Human Rights Campaign.

<https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-hinduism>

thereby, in turn, contradicts popular belief. “Given their inherent spiritual equality, Hindus should not socially ostracized LGBT individuals, but should accept them as fellow sojourners on the path to moksha”.⁴ From the UK’s perspective Christianity, is the religion that is predominant and the "Catechism of the Catholic Church" is a document that includes the Church's belief systems and principles, which mentions “homosexual acts” as “intrinsically immoral and contrary to the natural law,” as well as states “homosexual tendencies” as “objectively disordered”. Although explicitly, Catholic Church does not consider “homosexual orientation” sinful in and of itself, it does have a very negative attitude towards it. The 1986 Letter states, “Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus, the inclination itself must be seen as an objective disorder”.⁵ Most Christians in the UK have seen homosexuality as morally evil since the beginning of Christianity, which has led to the viewpoint held by most prominent denominations today, including Catholics, Orthodox, and most Evangelical Protestants.⁶ However, many religious leaders and churches are becoming more welcoming of the LGBTQ population. The Living in Love and Faith initiative created a "suite of learning tools" a book, videos, podcasts, and a course to assist church members comprehend issues such as human identity and sexuality, societal attitudes, and Christian thought and ideology.

MARRIAGE AND ADOPTION

India has only just recently begun the process of establishing an equal society and providing fair recognition to the LGBTQIA++ population, but progress has been gradual. In India, granting marriage rights to the LGBTQIA++ population has been sluggish and difficult, depriving them of essential civic rights on a daily basis. Because of the biased and traditional view of Indian culture that states "Homosexual Relationships" are "Immoral and against their respective Cultures and Religions," it has been a hotly discussed issue that has sparked a lot of religious animosity.⁷ Despite the fact that Section 377 of the Indian Penal Code was decriminalized in

⁴ *Stances on faiths on LGBTQ issues: Hinduism.* (n.d.). Human Rights Campaign.
<https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-hinduism>

⁵ *Stances of faiths on LGBT issues: Roman Catholic Church.* (n.d.). Human Rights Campaign.
<https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-roman-catholic-church>

⁶ Subhi, N., & Geelan, D. (2012). When Christianity and Homosexuality Collide: Understanding the Potential Intrapersonal Conflict. *Journal of Homosexuality*, *59*(10), 1382–1402.
<https://doi.org/10.1080/00918369.2012.724638>

⁷ *Decriminalising of Section 377.* (2020, October 9), Lawctopus.
<https://www.lawctopus.com/academike/decriminalizing-of-section-377/>

2018, India is still a long way from providing the LGBTQIA++ population in India with the same rights as the cis-heterosexual community. India is still a long way from legalizing same-sex weddings, recognizing same-sex couples, allowing same-sex couples to adopt children together, or even implementing anti-discrimination legislation. Only the Indian states of Kerala and Tamil Nadu have legalized and authorized transgender adoption, as well as granted LGBTQIA++ persons the ability to alter their legal gender. In the domain of immigration, Britain began to recognize same-sex couples in 1997, and has since set a beautiful example for the rest of the globe in terms of recognizing civil rights for the LGBTQIA++ community.

PUBLIC DISCOURSE & SOCIAL MOVEMENTS

Since the 1990s, Pride Marches and Rainbow Parades have gained traction in India, and have had an effect on government policies and regulations in some form. The first recorded gay rights activism in India occurred on August 11th, 1992, when the AIDS Bhedbhav Virodhi Andolan (ABVA), an organization that addresses issues of discrimination against those affected by HIV/AIDS, blocked the entrance to the Delhi police headquarters to protest ongoing harassment of gay men.⁸ The first Pride Walk(s) in India were held in 2008 in three major cities: Delhi, Mumbai, and Bengaluru. Section 377 of the Indian Penal Code was likewise identified as discriminatory and was overturned by the Delhi High Court in 2009. This event fueled and expedited the number of Pride Marches across India in celebration of the repeal of Section 377. Chennai and Bhubaneswar (Odisha) celebrated their inaugural Pride March with rainbow-colored grins. In the next three years, states like Kerala and Gujarat, as well as municipalities such as Pune, Patna, and Chandigarh, celebrated and experienced their first LGBTQIA+ Pride. The Supreme Court overturned the Delhi High Court's decision, and Section 377 was reinstated. This sparked a nationwide rebellion, and Guwahati hosted its first-ever Pride Walk, as well as the first Rainbow Parade in North-East India. A protracted battle was eventually won in September of 2018. Section 377 was overturned by the Supreme Court of India about 160 years after it was enacted in colonial India. According to Mahika Banerjee, a renowned LGBTQ activist, legalizing 377 is "only the tip of the iceberg," and the LGBTQ and non-binary

⁸ *Pride and Privilege* "The Pride Movement in India: History and Obstacles, Part I". One Future Collective. <http://onefuturecollective.org/the-pride-movement-in-india-history-and-obstacles/>

communities in India face a far broader battle. Having said that, I am applauding this decision since it is a much-needed start”.⁹

In the United Kingdom, meanwhile, the 26th of November 2019 marked the signing of “The Transgender Persons (Protection of Rights) Bill”, which became an act. Due to the bill's inherent flaws, the LGBTQIA+ community protested in droves around the country. The governing body in the United Kingdom has been ensuring that every human being is entitled to the same respect and privileges and so are the members of the LGBTQIA community. Even before the Stonewall Riots in 1969, it was the New York City which set the tone for global LGBTQIA++ rights recognition. England and Wales passed the Sexual Offences Act in 1967, which legalized consenting gay conduct in private. By 2021, the year of the 50th annual London Pride march, the event had grown to become one of the world's largest Pride celebrations. This Pride 07 magazine is joyous rather than contentious, reflecting the enormous progress toward equal rights accomplished in the preceding years - progress won via the never-ending battle for political and social reform.¹⁰

GOVERNMENT LAWS AND POLICIES

On September 6th, 2018, India's Supreme Court made a momentous judgement partially repealing Section 377 of the Indian Penal Code, thereby rendering homosexuality as decriminalized. Because Section 377 was repealed, it means that “same-sex couples now have the legal freedom to live together and conduct their personal lives without fear of persecution.” As a result, it is critical to continue the discourse and discuss the many legislations that continue to discriminate against LGBT+ people. It covers anti-discriminatory regulations such as the refusal to recognize same-sex marriages, the denial of adoption and surrogacy rights, and so on. The court reasoned that Section 377 is ambiguous and fails to distinguish between what is “natural” and what is “abnormal.” It also restricts the freedom to express one's sexual identity, as well as the “Right to freedom of expression” guaranteed by provisions under the Constitution of India. The Transgender Persons (Protection of Rights) Bill, 2019, was passed with the goal of protecting transgender people's rights by outlawing discrimination in employment, education, healthcare, and access to government and private businesses. However, in the guise of

⁹ *The History and Activism of the LGBTQ Community in India*. (2018, September 10). TeleSUR. <https://www.telesurenglish.net/analysis/The-History-and-Activism-of-LGBTQ-Community-in-India-20180909-0009.html>

¹⁰ Collinson, A. (2021, December 2). *Hidden Pride: London's LGBT history*. Museum of London. *Law Laboratory Research Journal of Law & Socio-Economic Issues*

community empowerment, the law exposes individuals to more institutional tyranny and dehumanizes their bodies and identities. Despite the fact that the measure aims to give "inclusive education and opportunities" to the transgender population, it lacks a comprehensive strategy to do so. There are no provisions for scholarships, reservations, modifying the curriculum to make it LGBT+ inclusive, or guaranteeing safe inclusive schools and workplaces for transgender people. As a result, it may be stated that although the judiciary is taking initiative and putting in positive efforts to strengthen and sustain rights of the LGBTQIA+ community's, the legislature is rejecting those same rights. It is past time for the government to recognize and enact legislation in line with the landmark decision, or the LGBTQIA+ community will continue to experience setbacks in their fight for the same rights as heterosexuals.

In the United Kingdom and Wales, the Marriage (Same-Sex Couples) (MSSC) Act 2013, passed on July 17, 2013, allows same-sex weddings. It broadened the definition of "marriage" in order to include marriages between homosexual couples as legal, reversing the previous limitations of the Marriage Act 1949, which stated that a matrimony engagement will be considered annulled if the participants are not "man and woman". Furthermore, once married, same-sex couples enjoy the same legal rights as heterosexual married couples, but this is a point of contention. The Act also clarifies the original text of the Marriage Act of 1949, allowing same-sex couples to be treated equally. Furthermore, more persons pushing for equality among the "lesbian, gay, bisexual, and transsexual community" have had a favorable impact on how others regard same-sex partnerships. The MSSC Act, on the other hand, is confusing when it comes to survivor pension benefits since the sole alteration to the "State Pension Credit Act" was to replace the phrases "married or unmarried pair" with the expression "couple," and the definition of "same-sex partners" was added as stated "two people of the same sex who are civil partners of each other and are members of the same household". This demonstrates inequality because the language has not been amended to include married homosexual couples that will require further investigation. At the moment, the legislation on work related pension plans states that same-sex married couples have the same rights as civil partners. The CPA of 2004 went into effect on December 5, 2005. Another significant drawback is that, while CPA permits LGBTQ members to get married in social ceremonial service, it has failed to guarantee that they will be permitted to tie the knot at a religious temple or other faith-based institution, which in-turn is a sensitive topic that has caused a lot of debate.

CONCLUSION

The involvement of the LGBTQIA communities' members in key legislation and community assessment is essential. in the political realm, not just for policies that affect them, but also for policies that affect the general public. A historically marginalized minority brings variety, inclusion, and viewpoint to a group of policymakers, resulting in policies that are more well-rounded and thus better benefiting a broad number of people. Reservations for students and working professionals publicly funded organizations such as educational organizations, universities, and employment contribute to a more equal society. In 2019, India's Centre for Law and Policy Research created a broad as well as extensive Equality Bill, which fills in the loopholes left unattended in past initiatives. It provided protection towards people against prejudice founded on a variety of "protected characteristics," such as "gender, sexual orientation, gender identity, gender expression, disability, marital status, political convictions, linguistic identity, or any combination of these".¹¹ The law additionally puts forward establishing "Equality Courts," that include "designated District Courts with exclusive jurisdiction and authority to resolve any violations of the bill's requirements and give civil remedies".¹² Firms should seek to make their workplaces more comprehensive, establish Infrastructures and policies that are "gender-neutral", assistance and counsellor sessions, and legislation that safeguard LGBTQIA people from aggravation, all of which should be the responsibility of Human resource division in the organization. On an individual basis, influential employees should be more challenge and prohibit in the face of heterosexist remarks, appreciate an LGBTQIA++ member's coming out, and They must equip themselves mentally and logically. The clothing and media industry has knownto have a big impact on society standards, which should include more members of the LGBTQIA communities rather than cis-genders. To reflect all aspects of society, more models who are part of the LGBTQ community along with, people of color, and members of minority groups should be included in the fashion business, to increase awareness as well as recognition of the society. Throughout the twentieth century, social uprisings throughout the world demanded universal human and civil rights. The world is clearly progressing towards a better and more desirable and tolerant place to reside, using the most

¹¹ Sexual orientation and gender identity: review of concepts, controversies and their relation to psychopathology classification systems, *Front. Psychol.*, 01 October 2015

¹² Devaprasad, A. (2005, October 5). *CREATING LGBT INCLUSIVE WORKPLACES IN INDIA: THE PUSH FOR AN ANTI-DISCRIMINATION LAW*. George Town

Public Policy Review. <http://gppreview.com/2020/10/05/creating-lgbt-inclusive-workplaces-india>

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powerful communication means of the twenty-first century the Internet - Based social media rising knowledge, recognition, and tolerance towards the members of the LGBTQIA community. The amount of acceptance of the LGBTQ population within societies also varies: it happens at varying rates depending on the culture and preconceptions of a given place. “*Religion, Marriage, Adoption, Governmental Laws & Policies, and Public Discourse*” are all utilized in the current research to weigh against the scenario in the jurisdiction of India and that of the United Kingdom, and they all play a key part in portraying the two nations' varied backgrounds and histories, which define stereotypes and cultures. It has an impact on their country, their policies, and their people, all of which vary throughout time. Almost often, a flame of transformation toward something better originates from inside new brains, as it does in every human society. Young brains are once again leading the way-aware, well-informed students and young professionals across the country, including members of the LGBTQIA++ community as well as members of the conventional genders who are socially considered as acceptable are stepping up and helping to educate the people. Compassion, tolerance, and the ability to unlearn engrained cultural notions may move towards transforming the world as we know it today, to be a more welcoming, safe, and equal place for everybody.