LGBT, Marginalisation and Human Rights in India
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Abstract
Lesbian, gay, bisexual, and transgender (LGBT) people live in significant numbers in all over globe. They are members of every age, national, ethnic, and religious group. And in every country, LGBT people are subject to discrimination because of their gender identity and sexual orientation and treated with social stigma. People who are marginalized have relatively little control over their lives and the resources available to them. They may become stigmatized and are often at the receiving end of negative public perceptions. Their opportunities to make social contributions may be limited and they may develop low self-confidence and self-esteem and may become isolated. Social policies and practices may mean they have relatively limited access to valued essential and basic resources such as education and health services, housing, income, leisure activities and work. There are types of LGBT human rights or freedoms that are not easy to quantify, and thus not measured in existing multi-country datasets. Nevertheless, despite being difficult to measure, it is important that it should be acknowledged by the general mass.

Key words: LGBT, Human Rights, Marginalisation, Democracy

Introduction
Democracy is frequently considered to be a government by the people; a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected representatives under a free electoral system. While the definition of democracy conveys the basic premise that the citizens of a democracy govern their nation, it skips vital parts of the idea of democracy as practiced in countries around the globe. Democracy identifies the moral predominance of the individual and that all persons have certain fundamental rights. A central purpose of democracy is to protect these rights in the practical world of everyday life. Thus continuous advancement and progress of mankind would have been found possible only under the democratic system of government since it contains human values and legal procedures of governance.

The goals of human rights are sometimes seen as freedom from fear and want and to be able to develop one's potential. These are also the objective of governance; which is much more than the business of running the just state machinery to keep one's jurisdiction safe and the law and order situation under control. States also have the mandate to eliminate inequalities and inequities entrenched in society those results in the exploitation and the marginalization of certain groups, depriving them of basic rights to a life of dignity. In addition, States too have, at the international level, undertaken to guarantee protection for the human rights of all citizens by the mandates of UNHRC (United Nations Commission on Human Rights). The test of governance is the degree to which the State machinery delivers on these commitments. Every human rights corresponds to a human aspiration and a norm of treatment to which everyone is entitled. The international human rights regime, which is continuously evolving with the progress of time, provides universally accepted legal standards against which the performance of the State machinery can be measured. At a minimum, parliamentarians in a democracy must actively work to promote people's welfare, rejecting all forms of discrimination and exclusion, facilitate development with equity and justice, and encourage the most comprehensive and full participation of citizens in decision-making and action on diverse issues affecting society.

Globalisation tends to bring consensus and uniformity by smothering rough edges and makes human beings as well as nations move in a positive direction of understanding, peace, cordiality and enlarging areas of coop-
eration. Buy how far LGBT issues disseminated as human rights one is another important areas of debate and research. This does not apply to homosexuality where standpoints are irreconcilable and poles apart. At one end of the spectrum is total acceptance with connotations of normal human behaviour while at the other end it is viewed as a sin/crime to be crushed ruthlessly. There is no dialogue and reconciliation between the two extreme ends.

**Who are LGBT?**

The LGBT are not patients affected by any syndrome rather, they are normal human beings; Homosexuality has an ancient history in India. Ancient scriptures like Rig-Veda which dates back around 1500 BC and sculptures and vestiges depict sexual acts between women as revelations of a feminine world where sexuality was based on pleasure and fertility. The description of homosexual acts in the Kamasutra, the Harems of young boys kept by Muslim Nawabs and Hindu Aristocrats, male homosexuality in the medieval Muslim history, evidences of sodomy in the Tantric rituals are some historical evidences of same sex relationship. The subjugation of such groups under kingship or dictatorship is another side of human exploitation where LGBT had or have no consensus to orient with?

Sexual orientation involves attraction, behaviour, and identity and is expressed in relationship to others who fill a need for love, attachment, and intimacy (IOM, 2011; SAMHSA, 2014). In the past, very few adolescents have come out to their families or told others they were gay. Most lesbians, gay men, and bisexuals (LGB) waited until they were adults to talk about their LGB identity with others. Fear of rejection and serious negative reactions kept many LGB adults from openly sharing their lives. Until the 1990s, there were limited resources for LGBT youth. Gay and transgender adolescents had few sources of information to learn about their identity or to find support. Transgender is a term that encompasses a variety of ways people may identify or express their gender, usually in opposition to one's biological sex (Hopkins & Dickson, 2014). As Irvine explains: “[A] transgender girl is a girl whose birth sex was male but who understands herself to be female. A transgender boy is a boy whose birth sex was female but who understands himself to be male” (2010, p. 1). Transgender is not defined by whether a person has undergone surgery or hormone treatment to change his or her appearance or anatomy. Rather, it is defined by a person's internal sense of feeling male or female (Shuster, 2014).

LGBT youths are also at higher risk for mental health–related issues such as depression, mood and anxiety disorders, and suicidal ideation and attempts, compared with their heterosexual peers. Although most LGBT youths are well adjusted and healthy, LGBT youths, on average, are 2 to 7 times as likely to have attempted suicide, compared with their heterosexual peers (IOM, 2011; Craigslist, 2012). More recently, the Internet, school diversity clubs, and LGBT youth groups have helped gay and transgender youth find accurate information, guidance, and support.

The LGBT community or GLBT community, commonly referred to as the gay community, is a loosely defined grouping of lesbian, gay, bisexual, and transgender (LGBT) and LGBT-supportive people, organizations, and subcultures, united by a common culture and social movements. In addition, LGBT youths, especially those who are homeless, are more likely to engage in high-risk sexual behaviours, such as survival sex or other sex work, compared with heterosexual youths (Burwick et al., 2014). A 2013 report by the Institute of Medicine and the National Research Council (IOM, 2013) found that being gay, bisexual, or transgender was an individual-level factor that increases boys' and girls' vulnerability to commercial sexual exploitation and sex trafficking.

These communities generally celebrate pride, diversity, individuality, and sexuality. Although homosexuality has a long history in India, the gay movement is relatively nascent. Until recently, most homosexuals in India did not have many social and cultural avenues to express their sexuality. Judith Butler's theory of 'performativity', using post-structuralist tools of Jacques Derrida, Michel Foucault and Jacques Lacan, conceptualized gender/sexuality as 'performativ, that is, a role performed by the subject, according to her/his choice which resulted in (i) pluralism of gender identities and (ii) considering gender/sex as fluid and a matter of choice. Its effect can be seen in India where the Gay Pride Marches in Delhi, Kolkata, Bangalore and Chennai include lesbians, gays, hijras, transgenders, and others who come together as ‘Queer’ to forge coalitional politics against the homophobic Indian society. This is changing now, thanks to greater awareness and education. Many men of homosexual orientation are choosing to identify themselves as ‘gay’ and embracing a lifestyle that resists marriage and other conventions of an otherwise heterosexual society. They remain
largely invisible and form networks that shy away from the public glare for fear of social and familial backlash.

**LGBT in the era of Globalisation**
A historical study on the subject shows that homosexuality was never accepted by state as well as religion till the Twentieth Century and was always regarded as a crime by the state and a sin by the religion. The shift in the understanding of homosexuality from sin, crime and pathology to a normal variant of human sexuality occurred in the late 20th century, The American Psychiatric Association, in 1973, and the status. Many countries have since decriminalised homosexual behaviour and some have recognised same-sex civil unions and marriage. World Health Organisation in 1992 officially accepted its normal variant However with the march of time the negative view of homosexuality has been eroding with more and more states accepting it as a normal human behaviour and has been treating homosexuals as equal citizens with the same rights and privileges as enjoyed by other citizens. This metamorphosis is attributable to human rights movements and a relook at religious concepts. The Roman Catholic Church, once in the forefront of oppositions is gradually moving towards permissiveness and conciliations. The acceptance of homosexuality as a part of society has made giant strides. Homosexuality is generally considered a taboo subject by both Indian civil society and the government. Public discussion of homosexuality in India has been inhibited by the fact that sexuality in any form is rarely discussed openly. In recent years, however, attitudes towards homosexuality have shifted slight.

**LGBT and surrounded issues**

Lesbian, gay, bisexual, transgender (LGBT) people face tremendous difficulties growing up in a society where heterosexuality is often presented as the only acceptable orientation and homosexuality is regarded as deviant. They continue to face discrimination and exclusion across the world in all spheres of life. Homophobic violence and abuse targeting LGBT people occur on a regular basis. The most vulnerable are the young LGBT people who experience estrangement from family and friendship networks, harassment at school and invisibility, which can lead in some cases to underachievement at school, school drop-out, mental ill-health and homelessness. Marginalization is at the core of exclusion from fulfilling and full social lives at individual, interpersonal and societal levels. LGBT individuals may experience multiple forms of marginalization-such as racism, sexism, poverty or other factors – alongside homophobia or transphobia that negatively impact on mental health. The stigma attached to sexual orientation and gender identity or expression that fall outside the expected heterosexual, non-transgender norm relegates many LGBT people to the margins of society. This marginalization often excludes LGBT people from many support structures, often including their own families, leaving them with little access to services many others take for granted, such as medical care, justice and legal services, and education. Lesbian, gay, bisexual and transgender people are more likely to experience intolerance, discrimination, harassment, and the threat of violence due to their sexual orientation, than those that identify themselves as heterosexual. This is due to homophobia. Some of the factors that may reinforce homophobia on a larger scale are moral, religious, and political beliefs of a dominant group. Living in a homophobic environment forces many LGBT people to conceal their sexuality, for fear of the negative reactions and consequences of coming out. Actually there is hardly any single definition for the term ‘homophobia’, as it covers a wide range of different viewpoints and attitudes. Homophobia is generally defined as hostility towards or fears of gay people, but can also refer to stigma arising from social ideologies about homosexuality. In addition to homophobia, lesbian, gay, bisexual and transgender people confront racism and poverty on a daily basis. Discrimination of LGBT persons in the workplace is a significant factor in the differences in socioeconomic status for LGBT persons. Gay and transgender individuals suffer from socioeconomic inequalities in large part due to pervasive discrimination in the workplace. Discrimination directly causes job instability and high turnover, resulting in greater unemployment and poverty rates for gay and transgender people, as well as the wage gap between gay and straight.

**LGBT and their livelihood**

There is huge confusion as state often failed to deliver the welfare state to marginalised communities such as LGBT. The livelihood of the same community worsened both by economic aspects as well as access to the resources and income and employment opportunity. LGBT work has been livelier in fields of history, psychology and social sciences. Academics from other field and also occasional economist have found economic factors to be quite important in understanding the development of LGBT identity. When LGBT are subject
to violence, denied equal access to education, stigmatized social sphere, and discouraged from pursuing the jobs that maximize their skills, their contributions to the whole economy are diminished, holding back economic advancement for the national economy. These individual level connections between human rights and economic development scale up to negative impacts on the level of economic development. Since LGBT people might constitute 1-5% or more of the adult population in a country (Gates, 2011), depending on how sexual orientation and gender identity are defined, a reduction in productive capacity and utilization could account for a measurable component of economic output. State and international community have the obligation to extent the economic liberation to LGBT community, to attain the same, there need to be sensitisation of the larger society.

International and National Rights of LGBT

There are types of LGBT human rights or freedoms that are not easy to quantify, and thus not measured in existing multi-country datasets. Nevertheless, despite being difficult to measure, it is important that we acknowledge the ways that the limitation of these freedoms constrains the ability of LGBT people their contribution to GDP (Gross Domestic Product) of a nation. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights protect LGBT people from violence based on their sexual orientation and gender identity (Dworkin & Yi, 2003). However, LGBT people face disproportionate rates of physical, psychological, and structural violence. Violence can limit the economic productivity of individuals for many reasons. The Yogyakarta Principles (2007, principle 12) state, “Everyone has the right to decent and productive work, to just and favourable conditions of work and to protection against unemployment, without discrimination on the basis of sexual orientation or gender identity.” LGBT people are not as productive when they face discrimination in the workplace. As the human capital approach suggests, LGBT people may be working in less productive positions than they are qualified for (e.g. working in the informal economy) because employers refuse to hire them or because they do not have the proper identification documents to be hired in more productive jobs. The Yogyakarta Principles (2007, principle 17) state, “Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity.” Sexual and reproductive health is a fundamental aspect of this right.” However, LGBT people experience many health disparities, such as elevated rates of depression, anxiety, suicide attitude, HIV/AIDS, and substance abuse. Article 26 of the Universal Declaration of Human Rights states, “Everyone has the right to education” (UNGA, 1948, emphasis added), which includes LGBT students. However, LGBT students face discrimination in schools by teachers and other students. Discrimination discourages LGBT students from getting an education and/or hampers their ability to fully take advantage of their schooling opportunities. The economic impact is clear: education discrimination excludes LGBT students from opportunities to increase their human capital (that is, their knowledge and skills) and to be employed in higher-skilled jobs that contribute to overall economic productivity.

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. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution. On 24 August 2017, the Supreme Court of India in its landmark judgement held that Right to Privacy is a fundamental right protected under Article 21 and Part III of the Indian constitution. The Supreme Court judgement also found the mention of Section 377 as a discordant note.

Conclusion

It is evident that, LGBT individuals who basically have different sexual orientation face discrimination, exclusion from the society, thus quite often, meet with obstacles to satisfy their needs. This exclusion and ostracism could vary from the simplest personal relations to the most general social ignorance, exclusion, ostracism, working simultaneously together, and can even violate the rights of life. Lesbian, gay, bisexual and transgender people have long been involved in efforts for racial and economic justice. Today, LGBT organizers and groups are increasingly drawing connections between the movement for LGBT rights and the movement for economic and racial justice, noting that people have multiple, layered identities and are members of more than one community at the same time, simultaneously experiencing oppression and
privilege. It can be said that, protecting LGBT people from violence and discrimination does not require the creation of a new set of LGBT specific rights, nor does it require the establishment of new international human rights standards. The legal obligations of States to safeguard the human rights of LGBT people are well established in international human rights law on the basis of the Universal Declaration of Human Rights and subsequently agreed international human rights treaties. All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly.

Democratic nations who solely depend on the vote of the people to form government have obligation to pay back to the people in terms of their rights. LGBT having voting rights cannot be treated separate than other people as one person can have only one vote as validly spoken by the Chairman of Constitutional drafting committee Dr B.R Ambedkar

“One Man, One Value, One Vote” and the great quote of Abraham Lincon “ democracy is all about “ for the people , bye the people and to the people”, and LGBT are very much people whose vote to make government.

The papers have the limitation of not substantiating proposed debate with relevant data. The descriptive and secondary nature of the paper have attempted understand the issues of the LGBT. There is huge scope to study and research on the same area, which is the recommendation from the author.

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