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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EXTENDING DOMESTIC VIOLENCE PROTECTIONS TO LGBTQ+ LIVE-IN RELATIONSHIPS: LEGAL CHALLENGES AND POLICY RECOMMENDATIONS

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ABSTARCT

Every human being has a right to live a life upholding dignity and self-respect irrespective of gender. The concept of third gender is ever evolving. The sexual orientation which is one's personal identity is to be safeguarded by the government. A homosexual couple entering into live in relation mat encounter with the marital conflicts that happen to heterosexual couples as well. But in India where we have identified numerous gender identities have not formatted a proper legislation to protect the rights of individuals of this community.

A person entering into such a relation without a legal recognition is drowned completely when they have to be faced with a pathetic situation. Domestic violence beats them mentally and physically as they lacks societal and systemic support. There are numerous studies and surveys which have revealed the misfortune faced from police and administrative agencies. Thus there is no protection or remedy for a third gendered individual who faces a domestic violence from their partner.

As their association is not legalized in India they are not mentioned in domestic violence act as well. Even though constitution provides an umbrella protection to every individual irrespective of their gender there is no specific legislation or provisions which could solve their issue. Hence the need to amend the existing laws to cater the needs of the all communities are to be made shaped accurately.

This paper looks into various dimensions where there is a need for government intervention to provide a life of equal status, life and liberty.

Key words: LGBTQA+, domestic violence, dignity, liberty, personal choice.

Introduction

Live-in relationships, once frowned upon, have become much more common in India particularly among the LGBTQ+ communities over recent years. The practice of two single people living together and having romantic and sexual relationships is growing in popularity, especially among the younger metropolitan populations. An increasing number of LGBTQ+ people are opting to live together without formally tying the knot through marriage as cultural acceptance grows and legal protection improves.

Judicial decisions like the decriminalization of Section 377¹ of IPC in *Navtej Singh Johar v. Union of India*² (2018) have created a more encouraging climate for these types of relationships. Even with this development, live-in partnerships encounter cultural opposition because conventional marital attitudes still hold power particularly in rural areas. Conventional perspectives on marriage and family persist, and those in cohabitation may encounter social disapproval and marginalization.

While live-in relationships are not expressly prohibited by law in India, they do exist but in a gray area with no established guidelines. The Right to Life protected by Article 21³ of the Constitution was extended to live-in partners by the Supreme Court of India in the significance case of *S. Khushboo v. Kanniammal & Anr.*⁴ (2010). The Court affirmed that cohabitation between consenting adults is neither illegal nor unconstitutional by classifying these partnerships as "domestic relationships" protected under the Protection of Women from Domestic Violence Act, 2005⁵.

In India, The Protection of Women from Domestic Violence Act⁶ of 2005 has permitted live-

¹ The Indian Penal Code, 1860, § 377, No. 45, Acts of Imperial Legislative Council, 1860 (India).

² *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

³ INDIA CONST. art. 21.

⁴ *Khushboo v. Kanniammal & Anr.*, AIR 2010 SC 3196.

⁵ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

⁶ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

in relationships. But unfortunately, Same-sex couples in India have less legal safeguards in domestic abuse instances since the Domestic Violence Act (DVA) does not specifically acknowledge them. Because of this omission, LGBTQ+ people are left without sufficient legal protection from domestic abuse, and their circumstances are made even more difficult by prejudices in society and inadequate police training.

For LGBTQ+ couples, the Domestic Violence Act is especially important since it tackles particular challenges they encounter, such as prejudice and miscommunication in legal arenas. Domestic violence occurs frequently in same-sex relationships, but it is not given the same priority as it is in heterosexual couples, which results in underreporting and insufficient help.

Legal recognition encourages equality in protection against domestic abuse and aids in the fight against social stigma. The Act's legal safeguards support equality and safety in these communities by ensuring that LGBTQ+ people can seek redress and use vital amenities without fear of prejudice.



Unveiling the legal truth

“The Protection of Women from Domestic Violence Act, 2005 (PWDVA) aims to provide protection to women who are victims of domestic violence defined as physical, emotional, verbal, and economic abuse within domestic relationships and primarily addresses heterosexual relationships.”⁷ It gives women the legal right to live in shared households, apply for protection orders, and get financial assistance.

Despite the fact that the Act has changed to cover live-in relationships, same-sex couples are still frequently left unprotected because of the legislation's heterosexual bias in both its historical background and its wording. Given that same-sex marriages are not recognized by Indian law, there are difficulties in applying the Act to same-sex couples.

The definition of "domestic relationship" is based on the assumption of a heterosexual marriage or relationship. “According to Section 2(f)⁸, a domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared

⁷ Protection of Women from Domestic Violence Act, 2005, § 3, No. 43, Acts of Parliament, 2005 (India).

⁸ Protection of Women from Domestic Violence Act, 2005, § 2(f), No. 43, Acts of Parliament, 2005 (India).

household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.” Here the expression “relationship in the nature of marriage” clearly recognizes live-in relationships and grants domestic violence protections to women who live with a male partner without being legally married. However, the Act does not explicitly address same-sex couples in live-in relationships. Specifically gendered terms such as woman and husband are used throughout the Act that excludes LGBTQ+ relationships.

The term "aggrieved person" defined under Section 2 (a)⁹ is restricted to women, complicating protections for same-sex couples. Additionally, the Act under Section 2 (q)¹⁰ defines "respondent" as an "adult male person". This language may exclude female same-sex partners from being considered respondents under the Act.

In the case of *Hiralal P. Harsora v. Kusum Narottamdas Harsora*¹¹, the constitutional validity of Section 2 (q)¹² of the DV Act was challenged saying it violates Article 14¹³ of the Indian Constitution. The SC held that the term "adult male person" in Section 2 (q) is unconstitutional and violates Article 14 of the Constitution.

This decision expanded the Act's application to cover all prospective offenders, not just adult males, by permitting allegations of domestic abuse to be made against any person, regardless of gender. The ruling affirmed that women are capable of committing domestic abuse, in line with the law's intention to protect all victims of domestic abuse. However, the "aggrieved person" or "complainant" is still a woman. There are no men present. Therefore, the DV Act only partially recognize the same sex or LGBTQ+ couples. Consequently, the LGBTQ+ couples might not be able to pursue legal action under the Domestic Violence Act as a result of these discriminatory criteria. The Act's failure to acknowledge LGBTQ+ relationships add to the community's continued stigma and prejudice.

⁹ Protection of Women from Domestic Violence Act, 2005, § 2(a), No. 43, Acts of Parliament, 2005 (India).

¹⁰ Protection of Women from Domestic Violence Act, 2005, § 2(q), No. 43, Acts of Parliament, 2005 (India).

¹¹ *Hiralal P. Harsora v. Kusum Narottamdas Harsora*, AIR 2016 SC 4774.

¹² Protection of Women from Domestic Violence Act, 2005, § 2(q), No. 43, Acts of Parliament, 2005 (India).

¹³ INDIA CONST. art. 14.

Challenges in expanding legal protection

Unrecognized marital rights

Same sex marriages are not recognized in India. The social advancement and reformative thoughts have not yet served to add the rights of community into the basket. The special marriage act which is declared to be inclusive and progressive is not wide enough to accommodate the community. In a recent judgment *Supriyo @ Supriyo Chakraborty and Anr v. Union of India*¹⁴, the Supreme Court declined the need of legalizing same sex marriages. Where the words man and women were suggested to be replaced with spouse, the court unanimously rejected the plea with guidelines to protect the life and dignity of same sex couples. The court left the right to make changes to legislations upon the legislature.

Marriage is an institution which has its foundation on trust, consent and love for each other. Hence the primitive idea of strict gender orientation must setback. But the reluctance on the part of court has dropped the confidence of the community. Only if a marriage is legalized, a non-heterosexual couple could enjoy their civil rights to the fullest. Otherwise they are subjected to continuous judicial scrutiny and social ridicule.

Indian Penal Code 1980 v Bharathiya Nyaya Sanhitha 2023

Before 2018 September 6th a homosexual couple were at a position to get penalized if found to be engaged voluntarily in carnal intercourse against the order of nature. But this was ruled out in *Navtej Singh Johar v Union of India*¹⁵ as it caused to interfere with the consensual homosexual sexual activities among adults. It was noted to have causing agony to individual autonomy and personhood. Before this landmark judgement the Delhi High Court in 2009 had read down section 377 of Indian Penal Code. But with wiping out of IPC and the in adoption of latest penal law has significantly removed such a provision which don't even mention about such an act. It is a progressive step toward inclusion where their privacy and dignity is honored.

But this deals with consensual sexual activities only the Bharathiya Nyaya Sanhitha 2023 has failed to address the needs of a queer person when in need to fight against domestic violence. They have no remedy to seek as per the new legal provisions adopted by the legislature. Hence, even though a room is sought to normalize such relationships the penal provisions are not yet contained to fight a misfortune they might face in their relationship.

¹⁴ *Supriyo @ Supriyo Chakraborty and Anr v. Union of India* W.P.(C) No. 1011/2022

¹⁵ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

Exclusion from Domestic Violence Act:

Even though the Protection of Women from Domestic Violence Act 2005 allows the scope of live in relations the Act doesn't extend its protection to homosexual couples. It is restricted more to women victims. In a country like India where women are more subjected to such atrocities, the time and situation of framing the Act could have made such a classification. As the penal laws itself is said to be favoring women victims largely, such a protective legislation cannot be expected to be more inclusive. But as with passage of time adequate changes were to be made to include all communities existing in the society. No such step is seen to have taken by the legislature. However a victim of domestic violence belonging to LGBTQ+ community reaching a protection officer still remains unrealistic.

Constitutional rights

Article 14, the general principle of equality saves the rights of the third gender community. Furthermore the specific rules are laid down in Article 15 which prohibits discrimination on several grounds which includes sex too. Hence the high time has occurred to consider the dignity and self-respect of the community and to welcome them into public domain and to have a peaceful and protected life. Article 21 the paramount protector of life and dignity is also wide enough to accommodate the community. Judicial activism must play an active role in throwing light to this shadowed part of world. In *National Legal Services v Union of India*¹⁶ and in *K. S Puttuswamy v Union of India*¹⁷ the court stated the need to recognize the third gender and to offer them a dignified life. It mandated the government to protect the constitutional rights of a person even to embrace their sexual orientation. This Court held that the Constitution protects the right of a person to exercise their sexual orientation.

The above mentioned are the major laws that play an important part in a citizens life during a civil union and at time of dispute and agony. However it can be noticed that they fall short at many instances to serve the purpose or to benefit all the genders and sexual orientations. This pause the growth and development and stands as a challenge in the reformation.

Furthermore the Human Rights Act¹⁸ and several international conventions¹⁹ advocates the

¹⁶ National Legal Services Authority v. Union of India is AIR 2014 SC 1863

¹⁷ K. S Puttuswamy v Union of India AIR 2017 SC 4161

¹⁸ Protection of Human Rights Act 1993

¹⁹ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

rights of queer community but their civil union is not yet recognized. Thus a remedy for victim of domestic violence among the community is to be framed immediately.

The Domestic Violence Act frequently overlooks men and non-binary people in favor of protecting women. This gender-specific approach may result in a lack of clear legal safeguards for victims who identify as male or non-binary, thereby reinforcing the idea that violence is primarily the domain of men. Because of the stigma associated with abuse, men are less likely to report it, and when they do, they frequently receive insufficient support from services meant primarily for women. Furthermore, transgender people experience specific risks and prejudice, which makes it harder for them to get protection under the current legal systems. Although there has been significant movement in the judiciary, live-in LGBTQ+ couples still need separate legislation to guarantee equal rights and protections.

Orissa High Court in *Chinmayee Jena @ Sonu Krishna Jena v State of Odisha and ors*²⁰ the court allowed same sex couples to live together. It also commented that the choice of person to live together with any person had their right to self-determination cannot be hindered by a judicial intervention. Also in *Paramjit Kaur and Another v State of Punjab and others*²¹ the court have granted police protection to the live in couples of LGBTQ+ couples. It said that the right to life enshrined in Article 21 of the Indian Constitution protects life and liberty of every individual irrespective of gender. Hence it becomes the states responsibility to provide with the same.

International activism

Netherlands was the first country to recognize as well as legalize same sex marriages long back in 2001. Even though they lack specific legislation on domestic violence its crimes as brought under the common penal laws. Now 36 countries around the world have recognized same sex marriages and deal with domestic violence either with a specific legislation covers it under the common penal legislation. Most of the American and European countries have legalized same sex marriages. Nepal India's neighboring country have legalized it in 2024 but to which local leaders are reluctant to. South Africa from African continent has also legalized same sex marriage. Taiwan was the first Asian country to legalize homosexual partners to have a union.

²⁰ *Chinmayee Jena v. State of Odisha and Ors.* Writ Petition (Criminal) 57/2020

²¹ *Paramjit Kaur and Another v State of Punjab and others* [CRWP-5024-2020(O&M)]

Even though India have political economic and social disparities among other countries the good practices are to be adopted. Civil and political rights can be enjoyed at its maximum only when economic social and cultural rights are recognized. Hence keeping in mind the needs of communities the legislature must take adequate steps to cater the issue.

Recommendations

When it comes to domestic abuse, LGBTQ+ people experience numerous barriers. They are routinely victims of violence at rates comparable to those of their heterosexual counterparts, and current laws often fail to acknowledge their unique needs, leaving them without proper assistance and access to justice. In order to effectively protect and support all victims of domestic abuse and take into account the specific dynamics of LGBTQ+ relationships, a more inclusive legislative framework is necessary. Recommendations for enhancing the conditions of LGBTQ+ couples include:

1. In order to guarantee that same-sex couples are acknowledged as having the same rights and protections as heterosexual couples, the Domestic Violence Act²² should be amended to specifically include them. Same-sex partnerships are frequently excluded by current legislation, which might result in victims receiving little support. Take out the gender-specific terminology and define domestic relationships to include all types of relationships. This modification would alleviate discrimination, comply with international human rights commitments, and uphold the rights to equality and dignity guaranteed by the constitution.
2. Comprehensive training on LGBTQ+ topics is necessary for the judiciary, law enforcement, and service providers to overcome prejudices and enhance responses to same-sex intimate partner assault. Since LGBTQ+ relationships have different dynamics, current training programs frequently concentrate on heterosexual models. An appropriate risk assessment toolkit, techniques to reduce prejudice against LGBTQ+ people and awareness of the variety of victimization experiences should all be included in effective training. Further continuous education can improve awareness and sensitivity, which will improve the support that the criminal justice system provides for LGBTQ+ victims.
3. Provide fund to domestic violence shelters and services catering specifically to the LGBTQ+ community to guarantee that victims have access to suitable and secure

²² Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

resources. This involves providing resources that are suited to their requirements and educating employees on the unique challenges of LGBTQ+ people. Ensuring sufficient funds will improve these marginalized communities' access to services and their efficacy.

4. Initiate public awareness campaigns on domestic abuse in LGBTQ+ relationships. Public awareness campaigns are essential in order to lessen stigma, educate the public about domestic abuse in LGBTQ+ relationships, and motivate victims to get assistance.
5. Establish an organized approach to gathering data on LGBTQ+ domestic abuse in order to gain a deeper understanding of the problem and to guide the creation of policies and services. In order to systematically gather statistics on domestic violence against LGBTQ+ individuals, it is vital to acknowledge the notable prevalence and distinct problems encountered by this population.
6. Amendments are to be brought into several legislations, specifically into special marriage act, inheritance laws and penal laws to accommodate the rights and to provide adequate remedy to the victims from the community. Hence it would lead more people to open up stick on to their sexual orientation and to live with their intrinsic core trait.
7. Legislation should be passed that forbids discrimination on the basis of sexual orientation and gender identity to safeguard the rights and access to services of LGBTQ+ people. Even though the Supreme Court has upheld some LGBTQ+ rights, discrimination and stigma still exist in society, especially towards transgender people. It is critical to pass legislation that specifically forbid discrimination in all contexts, including work, housing, healthcare, and education, in order to safeguard the rights and access to services of LGBTQ+ people. This will ensure that everyone has equal rights and protections.
8. Legal recognition to same-sex unions and marriages will give LGBTQ+ victims of domestic abuse legal safeguards and redress. Insufficient legal frameworks that specifically address same-sex relationships persist in many jurisdictions, which results in victims receiving insufficient assistance. Adopting laws that are inclusive will improve LGBTQ+ victims of domestic abuse's access to legal remedies and safeguards.
9. Hotlines must be kept active to serve the issues of homosexual couples. NGO's are to be provided with financial support to hear their needs.

The Domestic Violence Act²³ can be used more successfully to safeguard not only married LGBTQ+ couple but also live-in LGBTQ+ couple from violence by their intimate partners and to give them equitable access to the legal system and support services by putting these suggestions into practice. Recommendations of this kind are necessary to address the specific challenges these communities encounter in obtaining assistance and justice.

Conclusion

Domestic violence itself is an act that imposes mental and physical agony to the victim. Even with an effective legislation and force to fight against this misfortune the persons involved in a heterosexual marriage faces a number of issues. Hence the condition of a person involved in a homosexual marriage facing a domestic violence is tragic. As their union itself is unregistered a remedy is eclipsed. They enter to this relationship after a lot of hassle from family society and peer groups hence a going back is a tight spot. More gay couples have reported to have faced atrocities from police and administrative officers. Furthermore their separation is again a matter which is debatable. A strict legislation to cover the rights and liabilities of the gay couples and necessary amendments to the existing legislations to ensure a dignified life to the community is the need of the hour.

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²³ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).