CHAPTER-6

INDIAN CRIMINAL JUSTICE SYSTEM AND SEXUAL MINORITIES

“To not respect the human rights is against the humanity”
-Nelson Mandela

6.1. Introduction

Before discussing about the research study conducted in field, it is needful to have an understanding of Indian criminal justice system. Indian criminal justice system includes the structure of police, prosecution, jail authorities and judiciary with policies and procedures relating to investigation, arrest, prosecution, punishment, sentencing and decision making available and applied on all including sexual minorities. This chapter is based on the relationship between sexual minorities and Indian criminal justice system. Sexual minorities are studied in socio-legal context. After writing the previous chapters based on various theoretical conceptualizations under different relevant disciplines such as history, biology, psychology, anthropology, medical science, human sexuality, sociology, etc. the study turns towards practical experiences and observations under empirical study. The most important part of research study is compiled in this chapter which basically introduces a methodological chapter. The chapter presents whole discussion about the research methodology, methods, and tools used step by step and outcomes through collection of research related data followed by its analyses and interpretation in a wider manner. This chapter also produces the hypotheses testing with a categorical explanation of the data analysis and interpretation. Although, the issues related with sexual minorities persons are very complex but due to having the deep relation with the human rights, the same has been explained within human rights perspective. This chapter includes the discussion of a journey undertaken by researcher during the empirical or field study and puts a relationship between law, legal institutions and system (particularly criminal) and sexual minorities. This chapter could have include various photos, pictures, names and personal profiles but it has been avoided because of maintaining the privacy and confidentiality issues related to sexual minorities and other persons.
Due to not defining the population and because of not having the exact number of research respondents and researcher’s unknown-ness about the research respondents, the selection of any sample was a difficult task. This data collection was based on the first hand study under empirical method of research for which the snowball approach was used. Under this approach researcher took the help of some NGO’s which are working for similar issues either directly or other. Social networking was also helpful and with the help of this the information about sexual minority related events and programs were come into the knowledge of researcher. Various mixed approaches like descriptive, analytical, qualitative, correlation, inferential were also used in respect of research study. The participatory observation method and in-depth case study method have been the most relevant one during the data collection. However, the questionnaire schedule was also used for recording of responses of the research respondents which was not satisfactory in actual. After, completing of this chapter, researcher puts a best suitable method or approach for collection of data, which is also becoming a part of suggestion. Without having any hesitation in accepting that the responses on questionnaire e-mailed were not very satisfactory, let the researcher admit that it was turned as case study research with participatory observation that was really a useful method for collection of data and a co-relation approach in writing of Ph.D. thesis as far as this type of research problem or subject of study is concerned. The inferences of data analysis and its interpretation produce the proving and disproving of related hypotheses of research. The values after analyzing the data indicate towards violation of human rights of sexual minority persons under Indian criminal justice system.

6.2. Indian Criminal Justice System

Whatever views one holds about the penal law, no one questions its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual-Mallimath Committee Report.
In the criminal law, as in all laws, questions about the action to be taken do not present themselves for decision in an institutional vacuum. They arise rather in the context of some established and specific procedure of decision: in a Constitutional Convention; in a legislature; in a prosecuting attorney’s office; in a court charged with the determination of guilt or innocence; in a sentencing court; before a parole board; and so on. This means that each agency of decision takes account always of its own place in the institutional system and of what is necessary to maintain the integrity and workability of the system as a whole. A complex of institutional ends is served, in other words, as well as a complex of substantive social ends. It is axiomatic that each agency of decision ought to make those decisions which its position in the institutional structure best fits it to make.¹ The dealing of Indian criminal justice system is related to protect and provide remedy in case of violence or violating the rights of persons living in the society. The sexual minorities and their relationship with Indian criminal justice system is under no approach zone yet the socio-legal observations with reference to Indian criminal justice system were observed and included here.

For this purpose, the next section is divided in three major parts. Out of these, first part discusses non-empirical findings (includes HIV/AIDS data, data on sec. 377 IPC recorded by National Crime Record Bureau and found experiences with sexual minorities). This part basically focuses on non-empirical findings. The second part is based on empirical observations further categorized in three categories i.e. personal experiences, social and legal observations. The part third is related to responses on questionnaire during data collection, socio-legal data analysis and its interpretation and ends with testing of hypotheses.

**Part-I**

**6.3. Non Empirical Findings**

This part includes the data found on basis of existing literature. This includes secondary source of data. The already referred names and identities are included with ethical considerations.

6.3.1 HIV/AIDS Data

Prior to year 2014, the cases of Sec. 377 IPC were only based on the child sexual abuse and sexual act of anal intercourse against the women in heterosexual relationship. The same were not recorded for same-sex sexual intercourse act between the consenting adults. It is fact that there is no case registered with reference to same-sex sexual intercourse between the consenting adults in private as there is police atrocities exist in the name of executing Sec. 377 of IPC then after a long time, the cases related to crime committed with respect to Sec. 377 of IPC were started recording. In National Legal Service Authority v. Union of India case the court has referred the data relating to HIV/AIDS. The report states that the HIV Human Immunodeficiency Virus and Sexually Transmitted Infections (STI) are now increasingly seen in Hijras/transgenders population. The estimated size of men who have sex with men (MSM) and male sex workers population in India (latter presumably includes Hijras/TG communities) is 2,352,133 and 235,213 respectively. It was stated that no reliable estimates are available for Hijras/TG women. HIV prevalence among MSM population was 7.4% against the overall adult HIV prevalence of 0.36%. It was stated Hijras/TG people were included under the category of MSM in HIV sentinel sero surveillance. It is also reported in studies that Hijras/TG women have indicated a very high HIV prevalence (17.5% to 41%) among them. Study conducted by NACO also highlights a pathetic situation. Report submitted by NACI, NACP IV Working Group Hijras TG dated 5.5.2011 indicated that transgender are extremely vulnerable to HIV. This is only for knowing the continuous existence of problem of HIV/AIDS. Various ministries have already admitted that for removing the problem of HIV/AIDS, the section 377 IPC is main hurdle. The next section includes data on Sec. 377 IPC.

6.3.2. National Crime Record Bureau (NCRB) Data of Sec. 377 IPC

The not addressing of any issue is also an issue. An agency of Indian government is available in India to record the data of crime committed and registered under Indian Penal Code or any other laws. But for a long time there was no recording of data with respect to Sec. 377 of IPC specifically relating to same-sex sexual act crime under this section. The data of Sec. 377 IPC was related to the cases of women
and child sexual abuse only. It was because of not having the clear meaning and application of Sec. 377 of IPC. According to Crime in India 2014, “1148 incidences of ‘unnatural offences’ were reported to the police. This is the first time that we have collected data on crimes registered under this particular section of the IPC. While 383 of them were cases involving adults, the remaining 765, were cases of child abuse registered under Section 377 IPC. In the cases involving adults, we do not know whether sex was consensual or non-consensual,” said an NCRB official.

According to a report, ‘there have been 587 arrests under Section 377 IPC in India and 778 cases were registered under this Section till October 2014, according to data provided by the Home Ministry, reported Deccan Herald. The numbers of cases are expected to be much more as the data is not complete since some States like Karnataka and West Bengal have not submitted the data to the ministry, while others have not shared the data for all the months’\(^2\). ‘Delhi, which has submitted the data till September 2014, tops the list with 140 cases and 110 arrests, while Uttar Pradesh, which has shared the data for the first six months only, comes second with 127 cases and 36 arrests. Haryana registered 99 cases and arrested 89 people under Sec 377 IPC, while Kerala had 69 cases and arrested 64 people. Maharashtra too registered 98 cases, while Madhya Pradesh had 64 cases and 48 arrests. Gujarat and Andhra Pradesh are the only States to have submitted data until October 2014. With the data available for only a few months, and some States not having submitted any data, the actual number of registered cases and arrests were bound to be much more than what has been available by the NCRB. It is imperative to note that the Supreme Court, in its judgment, had said that since 1857, only around 200 persons had been prosecuted under Sec. 377 IPC and thus the said Section was not being misused\(^3\).

The data shows that there is no proper functioning by the government as far as the cases under Sec. 377 of IPC is concerned. It is only because the consenting parties act whether criminal or not remains out of the reach of law. In case of making sexual crime without the will and consent also come under the definition of rape. Hence, the status of Sec. 377 of IPC was only applied when the sexual crime was committed against the will and consent followed by sex other than penile non-vaginal. In


\(^3\)Ibid.
understanding the problem of sexual minorities, the next section includes some stories of sexual minorities which was taken from various newspapers, magazines and other reliable sources. The study takes it important through the data of NCRB as Delhi is placed on first place so far as the cases of Sec. 377 IPC is concerned.

6.3.3. Experiences attached with Sexual Minorities

Manoj Bajpai will perform a character of gay professor in an upcoming film of Hansal Mehta. According to Manoj Bajpai “this is a new challenge for me but I am ready for it”\(^4\). This film has been sent to the approval by the Central Board of Film Certification and after getting approval, it has been released now. “After the Supreme Court verdict, the sexual minority community has had no space to meet. They either meet in dark rooms or online. So we decided to start this group (sexual minority Delhi Professionals Networking Group)”, said group founder Punit Jasuja\(^5\). “There’s an invisible epidemic of depression and suicidal tendencies among the Lesbian, Gay, Bisexual, Transgender (LGBT) youth”\(^6\).

Sushant Divgikar, in an interview mentioned his experience about Sec. 377 of Indian Penal Code and homosexuality. According to Sushant Divgikar, “If there would not be Sec. 377, then I would be ‘Mr. Gay Would’: Sushant’, Sushant was also a contestant in a reality show namely ‘Big Boss-8’. He further discussed that the issues of sexual minority rights are ‘human rights issues’. He expressed that being a gay is not in my hand, it is natural. He believes that the mind-sets of people are now changing but there is lot of things to be done specially on legal front i.e. the repealment of Sec. 377 of IPC\(^7\).

‘No sooner did the ‘Breaking News’ strip show that the Delhi High Court had legalised homosexuality among consenting adults, than Sunil Kumar (name changed) busied himself in sending congratulatory e-mails to the members of his gay community. An executive with a private telecom company, Sunil is set to celebrate the ‘defining judgment with his community. He is one of the 12,000 strong self-confessed gay members in Lucknow. “It is a matter of great relief that two adults of

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\(^4\) Ajay Brahamatmaj, ‘Came Together after 14 Years’, Dainik Jagran (Saptrang), 22 January, 2015.
the same gender will not be under the prying eyes of the police personnel and consensual homosexual activity will no longer be a crime,” chuckled Sunil. Sunil has a partner Ratnesh Kumar (not his real identity), but they do not stay together. “It is because the society is yet to accept this relationship. We have other problems. So it is difficult for me to leave my house and live with him. But we meet daily and often move out together.” Added Sunil.”

‘The Indian police often catch homosexuals in a public park, or a quiet corner in a dark street socialising with friends, looking to meet lovers or potential sexual partners, or showing some degree of same sex affection in public-just as is common with heterosexuals. However, the police faced with a deep confusion on how to apply Sec. 377 IPC. The police would often begin by making threats under Sec. 377 IPC, only to realise that is too difficult to make out a case. The minimum requirement in terms of medical evidence to prove a sexual offence would need the couple to be rushed to a hospital, examination to be conducted of their private parts to record any physical signs indicating that “carnal intercourse” took place’.

‘The recent termination from service of a Tamil Nadu Police constable on grounds of her sexual identity could be dismissed as a farce from a bigoted, bygone era’.

‘The incident should serve as a wake-up call for all those concerned about gender discrimination at the workplace. If a public institution such as the police can get away with such callous treatment in dealing with an out-of-the ordinary employee, it sends all the wrong signals to private organisations that may be predisposed to pursuing a more inclusive policy on hiring’.

It was a time of successful recognition of a transgender when ‘the swearing-in-ceremony of the then Chief Justice of India Altamas Kabir as he took over the reins from Justice S. H. Kapadia on Saturday (29-09-2012) was historic in more ways than one. Akkai Padmashli, a transgender from the organization Sangama in Bangaluru, was also invited to the Rashtrapati Bhawan and participated in the event along with other dignitaries including President Pranab Mukherjee, then Prime Minister Manmohan Singh, then Speaker Meira Kumar, Chairperson of National Alliance

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9 Alok Gupta, ‘Sec. 377 and the Dignity of Indian Homosexuals’, EPW 4820 (November 18, 2006).
11 Ibid.
Congress (NAC) Sonia Gandhi and others.\textsuperscript{12} Referring the position of homosexuality in different religion and countries, Dr. Urusa Mohsin, Lecturer, Faculty of Law, Unity Degree College, Lucknow concluded the recognition of homosexuals as patients. She also suggested for not to hate homosexuals.\textsuperscript{13}

‘Sexual minority champions dismayed by the Supreme Court verdict can take heart in the fact that a Marathi play, which has given a queer twist to Kalidas’s classic, got both popular and critical acclaim.\textsuperscript{14} The play was having the homophobia and its acceptance and “After watching the play, a mother who was not able to accept her son’s sexual orientation is now okay with the idea of two men or women staying together”. Play Director Sarang Bhakre Claimed.\textsuperscript{15}

Of all the cruelties that we as human beings can visit on one another, one of the most cruel is to say: “You shall not love or make love with the person you love, not because of excessive youth or because of unwillingness, but because he or she comes from a different religion, a different caste, the same village, the same gender. You may say you love each other, that you are happy with each other, that you give each other solace and courage and delight, but your love disgusts me. It runs counter to custom, it is an offence in law, it is against the order of nature, it brings dishonour to our family, it will dilute our blood, it will bring about Kalyuga, it will corrupt everyone around you, and it is an abomination in the sight of the Lord. It must be forbidden. You may say you love each other, but I do not care. No, I cannot turn away and simply let you live your life in peace and happiness. I must do something about it. I will indeed do something about it. No, you have not harmed me, but I will harm you. I will disown you. I will break your legs. I will fling acid on your face. I will hang you from a crane. I will stone you to death. If the mob helps me, so much the better. If the law helps me, so much the better. If I can wrap myself in a flag, so much the better. If I can drape religion around myself, so much the better. But by one means or another, I will tear the two of you apart. It is fit and proper that I should do this. I will do this because my clan tells me to, my Panchayat tells me to, this Book tells me to, this Sec. of this Act tells me to, civilization itself tells me to, God himself tells me to. No

\textsuperscript{12} Diiva Trivedi, ‘Special Guest’, The Hindu, October 2, 2012.
\textsuperscript{13} Urusa Mohsin, ‘Homosexuality Under Personal Laws’, CriLJ (July 2009).
\textsuperscript{14} Shibu Thomas, ‘Love isn’t always a straight road’, The Times of India, December 22, 2013.
\textsuperscript{15} Ibid.
appeal to reason will touch me. No appeal to humanity will touch me. No appeal to Indian history or modern science will touch me. My brain is a science-free zone. My brain is a history-free zone. My brain is a fact-free zone. This, at its core, is a simple matter. My love is right. Your love is wrong.” With these points, author goes into the mind of people, ‘What can one say to people who think this way? How can one understand their frame of mind—people who, not content with living their own lives, seek to destroy the life, the liberty, the happiness of others?’

‘Twenty-five year old Sonal Sharma works as a research assistant at the Ambedkar University in Delhi. His mother works as a domestic help and his father is employed as a money collector in a local bazaar. Revealing his sexual orientation to his mother took a bit of explaining. “I didn’t tell my mother I was gay, she wouldn’t understand,” he says. “So I told her I was attracted to men and that I wouldn’t get married. I don’t plan to tell my father.” Sharma says that the law makes it difficult for gay men to report rape. “If I got rapped, I can’t tell the police because I will be considered a criminal,” he says’. This issue also includes some more stories of sexual minority persons under the title “Cover Story: Gay Rights”.

Analysing the Naz Foundation case, Chintan Chandrachud believed that ‘notwithstanding, whether the Supreme Court chooses to uphold or reverse the Naz Foundation judgment, there is little doubt about the fact that it will be considered a path-breaking decision for time immemorial’. By critical-appraisal of Naz Foundation v. NCT of Delhi, H. S. Rai, discussed that ‘the Delhi High Court has delivered a brilliant judgment of far reaching consequences. This is welcome step, particularly because it dispels many misconceptions about the sexual orientation, homosexuality, public morality and fundamental rights. While the decision technically one only to decriminalize consenting homosexuality in private, arguments around equality, privacy, dignity and morality have meant a far widen impact in jurisprudence on liberty, diversity and pluralism in India. It inaugurates intersexual jurisprudence that examines questions of Constitutionalism in

16 Vikram Seth, ‘To not be able to love the one you love is to have your life wrenched away’, India Today, December 30, 2013.
18 Chintan Chandrachud, ‘Restricting the Ambit of Sec. 377: An Analysis of the Judgment in Naz Foundation V. Govt. of NCT of Delhi’, XI AIR 166 (November 2009).
relational terms that underscore inclusiveness, further it strengthens minority rights by making it clear that public morality and majorities’ opinion has to be subservient to Constitutional morality and protection of fundamental rights. The Court’s interpretation of ‘privacy’ to refer to a broad notion of autonomy and personhood has tremendous potential in other spheres as well. That’s why judgment has been rightly hailed as blow for the fundamental rights of individuals and an affirmation of the equal rights of sexuality minorities’. Further, he suggested that ‘apart from it we have to understand that law is not merely the solution to all problems existing in our society as well as law is not always the best tool to change entrenched moral values and social attitudes. That’s why legality is in no way social acceptance, in India homosexuality among consenting adults will legally no longer be an deviant behaviour but may continue to be looked upon so. The judgment is simply an endeavour of the Court to appreciate the global trend towards decriminalizing consenting homosexuality and granting protection for rights of homosexuals. The seed was sowed by the Court and now it is high time for the society as well as legislatures that this judicial innovation be nurtured in right perspective.

By overturning Sec. 377 IPC, ‘the Delhi High Court has fore grounded the importance of sexual rights, lent dignity to people of different sexualities and upheld the Constitutional values of democracy and equality’. ‘In the last two decades, sexual minority activism played a major role in creating awareness on the issue. In 2006 writer Vikram Seth released a public letter demanding that the “cruel” law be struck down. The letter was supported by a large number of signatories including Captain Lakshmi Sehgal, Aruna Roy, Soli Sorabjee, Shyam Benegal, Shubha Mudgal, Arundhati Roy, Aparna Sen, Mrinalini Sarabhai and demanded the scrapping of the “brutal law” that punitively criminalizes romantic love in private, and consensual

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20 Ibid.
sexual acts between adults of the same sex” while being used to “systematically persecute, blackmail, arrest and terrorize sexual minorities”.

Sanjay Kumar Singh concludes that ‘it is stated that, in twenty-first century due to recognition of rights to life and personal liberty, as a basic human rights, interference of law in private life of an individual is considered as invasion on an individual’s private life and bedroom. Hence, the demand for decriminalization of homosexuality in India needs to an hour and the Government may draft suitable legislation on the same, keeping in view, the aspirations of the homosexuals in India’.

In view of Bibha Tripathi, ‘In legalizing gay rights in India, the Delhi High Court has shown its abject acceptance of a community which has long been eschewed in our society. It has nothing to do with religious decrees and narrow social fiats through which sexual minorities’ lives were governed. This was accepting those who live life as they think was good and natural for them. There are some misconceptions that handicap society from accepting change. Good or bad, social changes need time to manifest their full impact.

Taking the reference of Sec. 377 of IPC, K I Vibhute stated that ‘It is also important to note a few distinct aspects of unnatural sexual acts criminalized under the IPC. Firstly, ‘unnatural’ sexual offence is a consensual sexual act between its players, active or passive. Secondly, penetration, by virtue of explanation appended to Sec. 377 IPC, as in the case of rape, is required to constitute the unnatural ‘carnal intercourse’. It means that this offence can be committed by a man against man or a woman or an animal if he penetrates an orifice of his victim. Thirdly, the players, perpetrator and the consenting party, of a consensual sexual act attract criminal liability. Fourthly, a court, like in rape cases, is not required to seek, as a rule, corroboration for testimony of a victim of unnatural offences, if it is reliable and

23 Id. at 241.
cogent, for holding a person criminally responsible for it.\textsuperscript{26} Fifthly, the offence of unnatural offence is cognizable, non-bailable, non-compoundable and triable by magistrate of the first class.\textsuperscript{27}

In his article titled ‘Homosexuality does not preclude paternity’, gay activist Vinay Chandran talks of his dream of bringing up a daughter and concluded that ‘I agree with the people who argue that sexual minorities’ movement should perhaps not have focused on 377 IPC (given Indians’ complicated relationship with the law). We should have focused on marriage instead. Rather than assume that acceptance of gay marriage will come later’\textsuperscript{28}.

‘When 21-year-old Damien (name changed) turned 18 “he decided he was old enough to tell his mother he was gay. So, one day he said, he needs to tell you something, and asked her to sit down.” Then he lost the words. “He kept saying it was ‘something about him’, and asking her if she’d ‘ever noticed anything’ and she kept saying, ‘What’re you talking about?’, until finally he just said it, ‘He is not attracted to women’. “What do you mean?” “I’m gay”. A series of questions followed: “How do you know? Are you sure? May be it’s just a phase”. No it’s not. “Maybe somebody has influenced you”. No, that’s not it. “Do you want to see a doctor?” It’s not a medical condition, it can’t be fixed. “But what about all those girls you used to bring home?” He called them to do homework with, not for any other reason. “Does that mean you won’t get married?” Not to a woman, no. The conversation wasn’t going well. Damien went to his room, but the tears were threatening to flow so he went back to the kitchen for some juice. “Just then, his mother came from behind and hugged him. She said, ‘No matter what happen, you’re still my son; whether you’re gay or straight, as long as you’re not doing anything wrong. She is going to support him’.” “And he started crying right there”\textsuperscript{29}.

\textsuperscript{28} ‘Cover Story’, Tehalka 33 (October 18, 2008).
\textsuperscript{29} Id. at 36.
‘There was a moving sameness to the gratitude and affection with which gay and lesbian children who have come out to their parents tell the story. A more complicated emotion runs through the parents’ words: Pride, lingering worry, a slight defiance against a world that may hurt their kids. Mrs Kanchan Karani, mother of 37-year-old Nitin, a trustee of Humsafar, remembers how she was “a little scared, a little nervous” when she discovered gay magazines in Nitin’s drawer almost 15 years ago. When he told her what this meant, “I wouldn’t believe that this was natural; I kept saying that you can still get married”. According to Nitin, his mother visited astrologers while his father offered to take him to the best doctors, “abroad if necessary”. But the conversations continued. “I sat with him and listened to him”, says Mrs Karani, “after all, he’s ours, and how can we leave him?” Some years later, Nitin’s parents hosted a Gay Bombay Parents’ Meet—a series of annual meetings held in Mumbai since 2000; and his mother has spoken publically for gay rights.\(^{30}\)

‘Coming out to family involves a series of difficult and intimate conversations; and requires equal courage and patience from both sides. But, as acceptance and understanding dawns, there was also relief and a certain free camaraderie—a willingness to allow both parties adulthood. Mr. and Mrs Ahluwalia, parents of 35 year old lesbian Priya, happened to be in Mumbai before the 2008 Pride. They decided to attend. Afterwards, says Mr. Ahluwalia, “We all went to a Colaba café and had a glass of beer with Priya’s friends. They were all well-spoken, from nice families. There should be no reason for people to look down on them”. Priya was more circumspect. “Maybe they were a little shocked by the drag queens. But they were happily wearing Ban Sec. 377 IPC T-shirts, raising banners, cheering”. Also at the march were 33 year old Harpreet’s two aunts and his mother. One aunt feels that the gay community “won’t get anything out of it. We need to protest in a different way. When I see shows on television and people opposing Sec. 377 IPC, I feel they are so backward, that people need education”. But they too have broken rules in their time, and know what it’s like. “I married a Gujarati, my sister a Maharashtrian, Harpreet’s mother a Parsi—so we are already considered ultra-modern”. Still, whether it’s inter-community marriage or same-sex love, there is something primal about the comfort parents can provide. Bangalore-based Ponni Arasu was 16 when she came

\(^{30}\)‘Cover Story’, Tehalka 36 (October 18, 2008).
out to her mother. They were walking to a beach and her mother replied, “I knew this was coming; I didn’t think so soon.” Ponni will never forget what her mother said next. “It’s going to be difficult, but please remember, I’m always there for you”. Whether you’re breaking the family tradition of studying medicine or have a lover of the same gender, that’s always good to know. Faithfully following the western trajectory, we could see what is around us. In the 1970s, Shankuntala Devi (yes, the mathematical genius) wrote a treatise on homosexuality in which she interviewed a priest who spoke of Hindu marriage being between two souls, not two bodies. In 1987, when Leela and Urmila were married, their priest used the same words as justification.31

‘Violence against transgender is routinized. “It begins at our own homes from biological family members, relatives, neighbours; in educational institutions and the friend circle,” says Akkai Padamshali from Sangama in Bangalore. If they leave the society and this atmosphere, they are out on the streets, either begging or doing sex work where they face violence from goondas and police personnel. Even after they join the community, violence remains a part and parcel of their daily lives’.32

‘Besides, there are a lot of laws on paper for women regarding healthcare, domestic violence, etc. but the transgender or hijras cannot make use of them. For sex-reassignment surgery, there is no clear law or national level protocol. There are World Health Organization guidelines but they have not been adopted in India and sex reassignment surgery (SRS) is still a grey area, says Shaleen Rakesh, Director, Technical Support at HIV/AIDS Alliance. “Our moment has arrived. Last year, there was a lot of uncertainty and anxiety, but this year things have been much easier. Even the support from the police has been excellent,” said Gautam Bhan, one of the organizers of the gay pride parade. He further said, “our hard work and campaign seems to be paying off and it’s time the government recognized that we are also citizens of this country”.

31 ‘Cover Story’, Tehalka 36-37 (October 18, 2008).
32 Divya Trivedi, ‘Come together, right now, over me’, The Hindu, June 5, 2012.
33 Ibid.
35 Ibid.
“Last year (2012) as well as this year, some right-wing groups threatened us against organizing this march. They said it was against the Indian culture. Also, we don’t know what the Delhi High Court is going to say in the case against Sec. 377 IPC. But we are hopeful of a positive result,” said Lesley Esteves, one of the main organizers of the march. ‘In July 2009, the Delhi High Court ruled that Sec. 377 IPC could no longer be used to criminalize consensual sex between adult men and women. The section technically covers heterosexual non-reproductive sex too, but in practice it has managed to demonize anal sex and influence the public misperception of it as being an exclusively gay male act. The High Court’s reading down of the law was thus an extremely far-sighted move’.

‘Anubhav Gupta’s Jeevan Trust, an NGO working for the underprivileged, in collaboration with Abhivyakti Foundation and their main supporter Planet Romeo Foundation, pushing for the rights of sexual minority communities, will soon be releasing an album called “Songs of the Caravan”. What constitute this album are the nine songs that have been sung by nine transgender artists from across the country’.

‘Vineetha, a transgender from Kolkata migrated to Chennai 26 years ago and has been working for the welfare of her community. She lived with a partner for 13 years and brought up a destitute girl along with him. Five years ago she was forced to leave her partner and the girl in a crisis. Vineetha decided to leave her house and all her belongings to them. She started life from scratch and since then has been surviving on begging and dancing. Her aim in life is to prevent people from addiction. She is concerned about government apathy towards transgender even as she actively engages with like-minded people to advocate on their behalf with various government departments’.

‘The message in the article, “The third gender’s right to dignity” (May 31, 2012), should reach all, particularly students. Many universities have gender studies as part of their syllabus. The study material deals with gender rights, which are understood as women’s rights. The subject does not throw much light on the

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differently gendered. It cannot serve its purpose unless the younger generation becomes aware of the difficulties faced by the transgender community. It should be realizing the need to treat the third gender with dignity.

‘When Harvard graduate Nishit Saran (name changed) “came out”, he recorded the moment for the world to see. In the last minutes of his short-film, summer in my veins (1999), he falteringly admits to his mother he’s gay and has ‘been with men’. His mother looks a little taken aback; she lights a cigarette, calms herself and assures her son that nothing has changed between them. In those few minutes, Nishit caught on film a response that every homosexual probably wishes for when he or she comes out to a parent: acceptance and a spontaneous offering of love and support.

‘The onerous weight of his parents’ ambitions is what keeps 26 year-old Sutirtho Ganguly from coming out. Sutirtho has an orkut account and a blog (banglore heights. Blogspot.com) on which he posts original fiction. He is an only child—parents want the ‘normal’ life for him. “I have no idea how I’ll tell my parents. I am very clear about who I am and what I want but I am not and have never been in a relationship. I don’t even know on what basis I can initiate the conversation,” says the Bangalore based software engineer. It’s a similar dilemma for many gays across the country.

Filmmaker Ravi Jadhav, in his ‘recent short film Mitraa on homosexuality has won awards in two categories at Kashish 2014-Mumbai International Queer Film Festival. Declared the Best India Narrative Short and special mention for its lead actor Veena Jamkar, the script melds a poem and a short story.

Ravi Jadhav again emphasized that “When it was writing the screenplay and thinking about people who are affected by Sec. 377 IPC, everything was colourless. In real life too, these people may appear happy but internally, they are displeased by society’s insensitive attitude towards them”, says Jadhav.

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41 Shreya Roy Chowdhury, ‘when your son says, ‘Mamma I am gay’, The Times of India, June 29, 2009.
42 Ibid.
43 Garima Mishra, ‘What’s the Color of Love?’, The Sunday Express, June 8, 2014.
44 Ibid.
‘Justice Shah, who also served as Chairman of the Law Commission of India, said homosexuality is another way of sexuality and an expression of love towards the same sex. “I can only say, in another case, the same court has said the red beacon (on vehicles) offends the dignity of citizens. I don’t think how (Sec.) 377 IPC will not offend the dignity of a person”, Shah said. In an interview with Sushant Digvikar at a discussion with India HIV/AIDS Alliance, he emphasized that if there would not be existing Sec. 377 of IPC in India, then I would be ‘Mr. Gay World’. During his interview, he also emphasized about his role in Big Boss house and mentioned that our community (sexual minority Community) is easily targeted for violence. He also mentioned that government is confused in respect of Sec. 377 of IPC. He stated that law in society is for protection of rights and not for violation of rights, and because the issue of homosexuality and sexual minority persons are human rights issue so we should be protected from all violence of sexual harassment, inhuman treatment and rape activities, he emphasized that many sexual minority persons do not approach police after facing a crime.

While accepting an award for a film, Rituparno Ghosh, a film maker from Kolkatta, on the status of sexual minorities said that “This award has been given to non-conventional sexuality. People in India had started accepting it at their individual level but this award to the subject is from the government’s side. So it is a signal that they are accepting it,”-Rituparno Ghosh. “Sec. 377 of IPC does not criminalize homosexuality. You cannot be arrested for being gay. But you can be arrested for engaging in non-peno-vaginal sex,” explains Arvind Narrain, activist, lawyer and founder member of Alternative Law Forum. Which is to say, you can be a homosexual, but you cannot engage in homosexual sex, explains Kavi, “Not all homosexual couples are into penetrative sex, But if a homosexual couple does want penetrative sex, it has to be either anal or oral sex. So that lands them immediately under the purview of Sec. 377 of IPC.” Agrees Narrain, “There is a close link between the act and the identity.”

‘The article “The third gender’s right to dignity” (May 31, 2012 by Prabha Sridevan) was written with great sensitivity. As a child, I never realized that transgender are also, like me, normal human beings. Only after some detailed

interaction with them did I understand the pain and agony they experienced as social outcasts. Every human being has the inherent right to lead a dignified life. Transgender deserve equal rights in all aspects like education, employment and social status. ‘Recently, one student of Harcourt Butlar Technological Institute (HBTI) in Kanpur, changed his sex from male to female and asked for a room in girls’ hostel. The HBTI administration is in confusion due to this. According to Dean, the decision shall be taken after the report of medical board constituted by the HBTI administration as it is the first case in overall institutions of Kanpur’.

In Delhi University, after the lectures delivered by 3 newly selected teachers in English department, it was found a protest against them on the ground of ‘the dismal teaching skills’. The subject of teaching was involving the issue of teaching homosexuality in India as brought by Muslim and taught Indians how to cheat and gamble. After enduring two months of such remarks combined with “extremely dissatisfactory lectures”, about 200 students of MA English signed a written compliant to the head of the department about “the dismal teaching skills” of “three newly appointed teachers for English”. They want them replaced.

Priya Vedi, a doctor killed herself because of her husband’s (Kamal Vedi) gay character.

“Three years ago I told my parents that I am gay. My parents didn’t take it well. They subjected me to some homoeopathy treatment and also took me to a godman to ‘cure’ me. But the day the SC judgment came, my father told me to marry a girl. They are worried that I might get arrested,” Mr. Sharma told The Hindu. ‘Echoing the sentiment was a 24-year-old IIT student who spoke on the condition of anonymity. “In 2009, when the Delhi High Court passed the landmark judgment (decriminalizing gay sex) I told my parents that I am gay. They reacted very calmly and have been supportive since then. But when the SC judgment came, my father has been keeping a close eye on me. He doesn’t allow me to go anywhere. I too had to lie

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to be here (at protest place)", he said, while holding a placard that read ‘Say No to 377’.\(^{50}\)

‘Had the Supreme Court’s ruling reinstating Section 377 IPC been delivered in 1986, the year I moved back to India after completing graduate studies in the United States, I would not have been surprised at all. In that era, a quarter-century ago, as a 25-year-old trying nervously to make my way as a gay man, I had witnessed little else but homophobia. For gay men or women there were virtually no safe places in the word—where we could live without fear, where we could hope to lead ordinary, full lives\(^{51}\). Not same-sex sexuality but modern homophobia is western import—says by Ruth Vanita a famous same-sex sexuality literature writer.

‘My father had urged me not to return to India, apprehensive that my characteristic candor, including about my orientation in matters of the heart and desire, would lead to my being persecuted for being gay. I didn’t take his advice. I was aching to work back in my own country, on the issues of poverty and social justice, about which I felt passionately. And I thought I was aware of the difficulties I was likely to face\(^{52}\).

‘But within months of moving to Delhi, I realized that my calculus had been naively optimistic. There was no escaping the burdens of secrecy and fear that came with being gay in India in that era, even for privileged gay men and women. The overwhelming majority desperately hid their orientation from almost everyone. Only the luckiest ones had been able to safely confide in close friends and relatives. Many had married despite being gay, in a desperate effort to keep their orientation from becoming known. The threat of exposure, blackmail and abuse by the police or thugs was an everyday reality because most gay men had no place to meet each other, or to have sex, beyond public parks and toilets, this being many years before gay groups and gay friendly bars emerged in India. Over everything loomed the fear of being persecuted under Section 377 of the Indian Penal Code\(^{53}\).

\(^{50}\) Rashmi Rajput, ‘LGBT make themselves heard’, The Hindu, December 16, 2013.


\(^{52}\) Ibid.

\(^{53}\) Ibid.
‘It was no doubt because of the constant stress that so few people were in relationship. And given the risks of being openly gay, there were still no prominent, outspoken gay Indians. Most of us did such a good job of hiding ourselves that we truly were invisible, individually and as a group. “The country’s most silent and secretive minority” was how we were described in a 1988 newspaper articles.’

‘I coped because I was young, because I loved my work, and because by a great stroke of luck I met a wonderful man with whom I began my first relationship. But once we began to live together in a rented flat in Jor Bagh, rather than at my family home, these myriad apprehensions intensified into a constant low-level fear, much like a chronic fever. My fear was always just this: sleeping cuddled together, we were violating IPC Section 377—even though we were in the privacy of our flat—and we could possibly be arrested and jailed as a consequence’. And then, less than a year after we had begun to live together, I found that my apprehensions were not misplaced. One night late in 1988, my boyfriend and I were arrested by the officer heading the Jor Bagh police station. The officer had called me earlier that day at my office at the Washington Post’s South Asia Bureau, saying he had received some complaints and I should come by the police station. I had foolishly agreed, assuming that as an accredited foreign correspondent I could handle whatever problems emerged. But within seconds of entering his office I realized I had made a terrible mistake. The officer looked at me with such loathing that I momentarily thought he must have mistaken me for someone else. He then erupted, the words burning themselves into my memory: “Mr. Dube, I know all about you. I have enough complaints about you. You are homo! You have naked men dancing at your house, exposing themselves. Go back to America! You think you can live here but you’re wrong. If you want to live here, you will live as an Indian, not like an American!”

‘The most hellish hours of my life followed. My boyfriend and I were held under armed guard in one of the station’s offices. I was not allowed to use the station phone to call anyone. Most terrifying, my boyfriend, who was dependent on insulin to keep his diabetes in check, was not allowed to return to our nearby home to have the

55 Ibid.
56 Ibid.
injection that he needed by early evening. Hour after hour passed. My beloved boyfriend was increasingly in physical distress. But even so, the officer refused my entreaties to let him have his injection and return. Finally, close to midnight, by which time my boyfriend had passed out on the bench, he was taken to our flat under police escort. A phone call to my family had me freed within minutes.\(^57\)

‘That night was the breaking point. I resolved that my boyfriend and I had to leave India. I was sick of feeling fearful every day just because I lived with him, tired of feeling that I was a criminal for being gay. I knew that the only reason that things hadn’t ended disastrously at the police station was because the homophobic officer had held back because of my social status. From all that I had seen in my years back in India, I knew that if I had been just an average gay man, my boyfriend and I would probably have been beaten, raped, and then blackmailed, our lives ruined, with no scope for recourse because under the law we were criminals.\(^58\)

‘We left India as soon as we could. From then on, I returned for extended periods only to do field research for my books—I had no plans to stay and I left as soon as my work was completed. It was nearly two decades later, in 2006, by which time I was middle-aged, that my fears about living in India finally ended. My friend Vikram Seth and I began an Open Letter campaign in support of the Naz India Foundation’s challenge to Section 377 IPC, which had languished for half a decade in the Delhi High Court. When the signatures of support poured in, I realized that the India of 2006 was not the India I had encountered in 1986. Then, I had feared that no one barring my family and close friends would help if I were persecuted.\(^59\)

‘But here were countless affirmations of support from eminent Indians from every walk of life—Swami Agnivesh, the legendary freedom fighter Captain Lakshmi Sehgal, former Attorney-General Soli Sorabjee, former chief of the Navy Admiral Ram Tahiliani, Doon School head master Kanti Bajpai, Planning Commission member Sayeeda Hameed, and stellar civil servants John Dayal, N.C. Saxena and J.B. D’Souza. Amartya Sen joined us with a supporting Open Letter. He wrote: “It is surprising that Independent India has not yet been able to rescind the colonial era

\(^58\) Ibid.
\(^59\) Ibid.
monstrosity in shape of Section 377 IPC, dating from 1860 to today, 156 years later, we surely have urgent reason to abolish in India, with our commitment to democracy and human rights, the un-freedom of arbitrary and unjust criminalization.”

‘The Open Letters marked a turning point in my fears about India—I knew I could return there as an openly gay man as India had changed so much, that I and other gay people now had a legion allies and defenders, right minded people who understood that our cause was a basic human rights concern for equality and fair treatment. The following year, I moved back to India. It was indeed an astonishingly different place where gay issues were concerned. The killing invisibility of the past had ended—the invisibility which meant both that we were too stigmatized to even be mentioned in the press or in society, as well as too fearful to draw public attention to ourselves. There were gay support groups and openly gay men and women, not just in the metropoles but in smaller towns too. Gay issues were discussed seriously in literature and the news.’

‘Most astonishingly, I soon came to conclude that there was a remarkable level of acceptance of same-sex love amongst average Indians, far more than in sharply polarized America. Almost no one I met socially—even in small-town Nilgiris where I settled—or interviewed for a forthcoming book on sex work and homosexuality, expressed any homophobia. I was finding that the traditional tolerance and acceptance that Ruth Vanita, Saleem Kidwai and other scholars of Indian culture had pointed to was indeed true for many Indians. My orientation was inconsequential and irrelevant to them, rightly so.’

‘And then, on the morning of July 2, 2009, what I and countless other gay Indians had yearned and fought for became reality: Justice Shah and Muralidhar of the Delhi High Court ruled that “Section 377 IPC, insofar it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14, and 15 of the Constitution.” They wrote: “The criminalization of homosexuality condemns in perpetuity a sizeable section of society and forces them to live their lives in the shadow of harassment, exploitation, humiliation, cruel and degrading treatment at the

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61 Ibid.
62 Ibid.
hands of the law enforcement machinery…This vast majority…is denied moral full citizenship.”

‘I was free at last. I was no longer presumptively a criminal in my own country. The source of my sharpest and most abiding adult fears had been destroyed with this wonderful judgment. I was proud to be Indian. I was happy to be living in India. I even began to dream that one day soon I would have equal rights to other societies by now. My beloved father, ailing from cancer, told me he could pass away peacefully now that he knew he no longer had to fear for me because of this hateful law, as he had when I first returned to India a quarter century earlier. So for me, the Supreme Court’s ruling is not just baffling, it is a tragedy of epic proportions. Welcomed only by irrational conservatives and the lunatic fringe, it goes against everything that so many Indians, whatever their personal orientation, have fought for over the past several decades. It goes against the wonderful quality of acceptance that is indisputably part of our cultural fabric. It goes against the tide of recent history. It goes against every measure of justice. It must be reversed. It will be reversed. This is India after all, not Putin’s Russia or the Ayatollahs’ Iran’.

‘On an everyday basis, the Court adjudicates legal and moral questions that affect the lives of millions of people, it makes value judgments, uses its discretion to fill gaps in law, makes choices in preferring one argument over another. For too long we have refrained from asking the basis on which the Court comes to these conclusions, sanguine in the antiquated and artificial view of the Court comprising a few good, apolitical men. In upholding the constitutionality of Section 377 of the IPC, the Court has made a judgment that is value laden and based on a particular worldview that many disagree with. By doing so, it has unarguably exercised a political choice. If it is legitimate for the Court to make such a choice, it is even more legitimate for citizens to ask: who will judge our judges? It is high time the Supreme Court reaps what it sows’.

‘The law may have decriminalized homosexuality, but showing it in art is still taboo in the minds of many. The attack on gay painter Balbir Krishan just rubs the

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64 Ibid.
uncomfortable truth in. ‘Intolerance for homo-erotic art is a reflection of our inability to engage with the issue of homosexuality with maturity, even after its legal decriminalization’. Balbir Krishan in his interview to Sunday Times, discussed about the attack at Lalit Kala Academy, New Delhi, that ‘though his family accepted his homosexuality, he tried to commit suicide when he first realized his “gayness” was irreversible.

‘Till July 2013, she was Sunil, not Sunaina (name changed), a 25-year old man, who had for years struggled to accept his male body, and who grew to embrace the woman within him with the help of his family, friends and colleagues. Seven month ago, he underwent a sex reassignment surgery. And today, she would like to share her story. “I, Sunaina (name changed) felt like a girl, even as a child. Every time I watched a movie, I could identify myself with the heroine. But people like me learn to hide their femininity and feelings quite well. So, apparently, I was a ‘normal’ child”–she says. Further, “I, Sunaina (name changed) was acting like a man, but no one knew that I was a girl inside.”

‘Padma Iyer, mother of Mumbai based gay rights activist Harish Iyer, was in the eye of a storm recently for placing a matrimonial advertisement that read: “Seeking 25-40, well placed, animal loving, vegetarian groom for my son 36, 5’11’ who works with an NGO caste no bar (though Iyer preferred)”. People were not angry that Ms. Iyer had transgressed the norms of heterosexuality, but that she had shown preference for a particular caste for her son. ‘India, or probably the World, will get its first transgender college principal when Manabi Bandopadhyay takes charge of Krishnagar Women’s college in West Bengal on June 9, 2015.

On social networking site, there are many coming out stories that speaks about the life struggle of sexual minorities. A respondent story of coming out is as he discussed about his homosexual orientation to his father, the conversation from Hindi

67 Ibid.
68 Ibid.
70 Ibid.
to English in true including some tuff words used in modern social media are available and goes like this-

“Respondent: Daddy aapko kuch batana hai. ..Mere life se related.

Father: Han bolo

Respondent: smiling, Daddy pata nahi kahan se aur kaise aapko bataun..

Father: are bolo beta, jo bolna h befikr bolo.

Respondent: ahh! ‘started idhar uthar ki baatein’.

Father: ‘after few mins’ are bolo kya baat karna tha.

Respondent: again smiling nd by making a sad face I said” Daddy I’m Gay”

Father: hein. .. kya?

Respondent: Daddy “I’m Gay”

Father: Hindi mei bolo, kya kehna cahh: re ho.

Respondent: Daddy aapko samlanging pata h..?

Father: Haan..kya hua?

Respondent: Daddy mai wahi hu.

Father: kya? kiske saath?

Respondent: are daddy kisi k saath nahi , Mujhe bs ladke pasand aatey h ladkiyan nahi.

‘samlankgik jo log apne gender k log pasand kartey h’.

Father: haan pata hai, ye khayal aya kahan tumhare mann mei aur kab se?
Respondent: daddy I was born as a Gay, mujhe bachpan se ladko mei hi intrest aata tha like, mai sochta tha 'kaash wo ladka mera dost, uss ladke se mujhe baat karni chaiye n all'

fир jab mai 13-14 ki age mei aya tab mera attraction aur v badhtey gaya, mujhe lagta tha ye bimari h mujhe… ya mai aise kaise ban gaya ..mujhe apne aap se nafrat hone lagi thi, every day I use to fight with myself ki mai aisa nahi hu...mai normal hun.

muhje lagne laga ki mai 'hizra' hun..isiliye jo maine sucide attempt kia tha wo xam results se related nahi tha..Main reason ye tha...

uss waqt toh mujhe khud pata nahi tha mere saath kya ho ra hai,,mai q aisa feel kar ra hun same sex k log ko dekh kar.

fir mai iske baare mei net.pe search kia aisa q mai feel kar ra hun, mai aisa q bantey jar a hun, fir social media k through jana mere jaise bahut se log se log h...mujhe khud ko accept karne mei 5-6 saal lagg gaye.

Father: are beta ye sab samlangik kuch nahi hota ye sab videsh ka aya hua h, hamari sabhyata mei aisa kuch nahi hai, ye west k logo ki dein hai.. unki koi sabhyata nahi h koi rokk tok nahi hai...wo jo cahein kartey hai, har cheeze try kar chuke hai, dekhtey ho tv pe dikhata h ki abb wo insaan ka mans v khatey h...

Respondent: daddy mai gay paida hi hua tha,ye mera choice hi nahi tha, mai toh kabhi kisi foreigner se mila nahi jo mujhe ye sab bataya, aur ye feelings toh bachpan se hi tha.mujhe toh kuch pata hi nahi tha iss sab k baare mei.

aur mere jaise bahut log h dunia mei, mere bahut se frnds h yahan , unke parents ko pata h unke baare mei.

Father: unke parents kya bole unke baare mei

Respondent: they are very ok with it.ye natural hai.

Father: kahin aisa toh nahi. .. ki koi ladki chorr di tumhe love failure smthng?

Respondent: nai daddy aisa kuch ni hai.
Father: tumhari itni saari girl friends hai...kabhi tum ya kisi nei tumhe propose nahi kia?

Respondent: nai daddy mera intrest kabhi nai tha unpe bs wo acchi friends thi, lekin 2 ladki propose ki thi 1 school n 1 college mei.

Father: accha abhi ye sab mann pe depend karta hai...aage chal k shadi hogi sab normal ho jayegaa...

Respondent: shadi ..No daddy kabhi nahi wo b ladki se...jindgi shadi karna nd baccha paida karna hi nahi h...

Father: are shadi k baad jindgi khud change ho jayegi ye sab sochne ka time nahi milega..

Respondent: nahi daddy aap samjh nahi rahe hai..mujhe ladke pasand h agar mei kisi ladki se shadi b kar lun..kitna din mera relation chalega hardly 4-5 saaal...mere se nahi ho payega daddy,,,kisi ladki ki jindgi mai nahi kharab kar sakta.

Father: bahut log shadi k darr se b ye sab sochne lagtey h...mere bahut se umar se bade mitra hai jo shadi nahi kiye, apna sara jivan social work ya novels n books likhne mei bita diye...tum v abhi soical work mei lagae ho orpnage jatey ho...agar tumhara dhyan udhar hai toh kuch galat nahi hai…

Respondent: nahi daddy aapko iske baare mei kuch malum nahi h... Mai paida hi aisa hua tha…mai aapko bata v nahi sakta jab mai bada ho raha tha aur ye sab attraction jab se start hua…kaise kaise mai ander ander hi khud se ladai karta tha, udaas rehta tha,,hamesha suicide ki baat sochta thay…mujhe pata hi nahi chal raha tha aakir ho kya raha hai… kitna frusted and depression k saath mai bada hua jab tak mujhe iske bare mei pata nahi chala.

mai kaise samjhau aapko ...mai gay hun aur ye baat sach hai kuch galat nahi hai.

Father: hmmm. .. Okay koi baat nahi...mujhe time do...mujhe isko samjhe mei waqt lagega..But tum ghabrana mat tumhare dad tumhare saath hai aur dunia mei kuch galat sahi nahi hota hai. It’s a very new thing for me.
mujhe abhi bahut jankari lena hai iske baare mei.

Respondent: daddy you tube pe isse related thode videos hai jise dekh k aapko samjh ayega .. “Satyamev Jayatey” 3rd season ka 3rd episode dekhiye aapko jyada knowledge milega"

Father: haan haan ..wo sab hum aaram se dekhenge aur samjhenge.

aur jahan tak shadi ki baat hai wo toh secondary hai...koi force nahi hai.

Respondent: grin emotion smile emotion

Father: are coffee piyo mera khatam b ho gya tum waise hi rakhe hue ho.aur ye baat apne doston se share kiye ho?

Respondent: chandan ko bataya tha daddy usko samjh ni aya, ujjwal ko batana b nahi hai..Last year maine Swati n Nancy ko bataya tha( Swati n Nancy are my own sisters)

Father: acha !! unko toh samjh b nai aya hoga ye sab..

Respondent: lol! Daddy unko sab pata h iske bare mei isiliye toh bataya..They are very ok with it.

news, social media tv pe kittey cheezein dikhatey h iske bare mei. So they had enough knowledge nd they were mature enough to understand isiliye bataya.

Father: Mummy ko pata h?

Respondent: naii daddy..Mummy ko toh batane ka himmat b nai hai...aap samjhenge isiliye aapko bataya.

Father: hmm..Ok abhi mat batana tum toh jantey hi ho mummy ko kaisi h rona dhona nd fir health kharab kar legi.Sahi waqt pe unko batana.

Respondent: haan daddy...

Father: aur baithna h yahan ya chalein..

Respondent: nahi ..chaliye Daddy..
‘while coming out from ccd...I really felt ki something heavy released from my body...I was feeling so lite n relieved.. .

“The respondent is a software engineer by profession and her partner is a finance graduate. We believe that we are nothing but mere objects of desire falling deep into the abyss of lust and love and that everybody has the right to explore their emotional as well as their physical needs as per their own preferences. Hence, sexuality in many ways defines our own existence in a subtle subjective way. Perhaps for the first time ever when the respondent had a brief sexual encounter with a girl at a very tender age, it etched a mark on respondent life and made respondent ask herself a lot of questions. It shook respondent because respondent was totally unaware of the things respondent was experiencing. Only if everyone was enlightened about the facts that we are humans, that we are genetically programmed the same way as any other straight individual, that we are not an abomination of nature and that we need to be respected and treated as equals in society.

We need to educate the coming generations because education can work wonders-education in the true sense of the term is capable of changing mind-sets and attitudes. For us to be treated as equals, our legal system must acknowledge our existence not merely as a ‘minuscule minority’ that doesn’t matter. Only then can all of us step out of anonymity. Life is short and the end to this journey is same for every one of us. Spewing hate is just a loss of valuable time and energy. Live and let live.”

‘There are many complexities in the situation of sexual minority people in the countries covered by this review. There are similarities and there are differences that make the formulation of joint regional strategies for advocacy a challenging affair. However, the similarities can be leveraged for this purpose. The main similarities consist of the following:

(a) A shared legacy of laws inherited from the British;

(b) A shared common law culture that allows for judicial review (except in Nepal).

(c) Other laws in support of citizens’ rights that can be used to protect the interest of sexual minority persons.
(d) A supportive legal services community that can be sensitized to sexual minority issues and utilized to address and intervene in crisis situations.

(e) Common cultural trends in terms of the importance of the family.

(f) Common emphasis given on marriage and procreation.

(g) Common levels of social homophobia.

(h) A deep-seated influence of religion in matters of public policy.

It is by addressing the above commonalities that we can arrive at joint advocacy strategies. At the same time, while this review satisfies the need to understand the legal position of sexual minority persons, there is also a pending need to understand the prevalent situation of sexual minority in terms of violations of their rights. So a similar study that undertakes to explore in details the violation of the rights of sexual minority persons, the discrimination they face, the violation that they are subjected to, and the stigma that impedes their normal life situation, should be undertaken.\(^73\)

6.3.4. Project Bolo and Sexual Minorities

This project was related to the selecting interviews of sexual minority persons and the activists working for the protection of sexual minority. The videos of this project are also available on internet and you tube. After the Naz Foundation case, the project was started. This is one of its kinds when first time in India voices for sexual minorities came out. The interview explores the issues around the sexuality and gender in general and homosexuality, Sec. 377, sexual minority in particular. The interviews contained the structured questions. The researcher got to know and have knowledge about the subject and various issues involved with sexual minorities.

6.3.5. Uncovering of Mask Movement

As this research study was started after passing of Delhi High Judgment in Naz Foundation v Govt. of NCT Delhi case, so through study, it came to know that

\(^73\) Aditya Bandyopadhyay, ‘Laws affecting LGBT persons in South Asia’, A desk Review was commissioned by RFSU & Sida, commissioned- August 2010 and published on February 2011.
there was a movement named ‘Uncovering of Mask Movement’ is going on. After the Naz Foundation case judgment, the sexual minorities started to come out and open themselves in the public and society at large. On social media, a campaign in the name of uncovering the mask was started. This includes the acceptance of sexual minority identity within the public and society. The sexual minorities were happy with the Delhi High Court Judgment and in the light of this the legal barrier was somehow removed.

6.3.6. Special Book Stores for Study Material Relating to Sexuality and Gender

This was observed during the study that the study material relating to sexuality and gender in general and homosexuality in particular book stores was been increasing day by day. The ‘Queer-ink’ has a pioneer place in this relation as it is the first of its kind where the study material relating to sexual minorities is available exclusively. The researcher got help from this specific book store. This book store is also engaged in organizing some events relating to sexual minorities. The sexuality, gender and homosexuality related study material is available online as well as offline.

6.3.7. Mr. Gay Contest

Mr. Gay contest is organized at national and international level. India also has its representative at international level. After having Mr. Gay Indian crown in July 2014, Mr. Sushant Digvikar was strongly representing for Mr. Gay World 2014. During the interview with Sushant Digvikar, it was revealed that due to Sec. 377, it is very difficult to contest for Mr. Gay World. He also mentioned that it is not the business of law to interfere in the privacy of any individual. He believes that sexual minority rights are human rights. He claimed Sec. 377 of IPC as a responsible factor for his not winning the title of Mr. Gay World.

6.3.8. Election Manifestos of General Election 2014

Because of popularity of issue of homosexuality and Constitutionality of Sec. 377 of IPC, the political parties took interest in the said issue by addressing to include the issue in their election manifestos during the general election 2014. Although,
political parties verbally talked and committed about the inclusion of issue of homosexuality and Sec. 377 of IPC in their election manifestos but the same was not executed in practice. Only one party included the issue under the agenda of gender equality. None parties have tried to make further efforts for the same which shows that it was only a political strategy for getting the votes out of it. After the election, there is no even discussion by political parties to take initiation regarding solving the problem relating to sexual minorities and Sec. 377 of IPC.

6.3.9. ‘207 against 377’

This is a campaign started by India HIV/AIDS Alliance for raising the voice against the Supreme Court Judgment in Suresh Kumar Khosal case. The campaign was started with 207 organizations and on the basis of number of organizations involved in the campaign, the campaign was known as ‘207 against 377’. This campaign was based on the activities of different organizations to promote the rights of sexual minorities in India. The Supreme Court in its judgment referred the sexual minorities as minuscule minority hence this campaign was targeted to take challenge against this term ‘minuscule minorities’. This campaign has been witnessed to include various academicians, Parliamentarians, activists, cinema related persons, bureaucrats, media personals, etc.

Part-II

6.4. Empirical Observations and Major Findings

6.4.1. Empirical Observations

The study includes the difficulties, already pointed out in chapter first and in the starting of this chapter, at various points of time when this research study was undertaken. At primary level, the NGOs and organizations which are referred in chapter three were approached and it was made sure that the research study is undertaken for writing a Ph.D. thesis from a governmental academic institution i.e. central university. The main concern of study was related to find the social and legal aspect relating to sexual minority persons in Delhi. By approaching to NGOs, organizations and working groups in Delhi, the researcher started asking to the
persons who are engaged in activities of protecting the rights of sexual minorities in Delhi and known as sexual minorities’ rights activists. Various NGOs and organizations provided the information about the study material through on line and other sources. These were also helpful in referring to the researcher all the updates relating to sexual minority and the events related to them. This section primarily includes responses of respondents when the research questionnaire was forwarded to them followed by observations made by researcher during the field study. These participant observation based major findings have been written in socio-legal aspect.

6.4.2. Personal Meetings

After knowing the views of experts discussed in Project Bolo and in ‘Uncovering of Mask Movement’, the researcher started and tried to approach and meet the persons who were belonging to sexual minority community and their causes. The activists working in this area were also approach. This list includes more than hundred persons in number. It not only includes the sexual minorities and sexual minorities’ rights activists but also the academicians, lawyers, doctors and other professionals which cannot be named separately here because of privacy and confidentiality issue.

6.4.3. Celebration of Delhi High Court Judgment in Naz Foundation Case and NALSA Judgment

During this, one event of celebrating the judgment of Naz Foundation decision by Delhi High Court on 02\textsuperscript{nd} July, 2009 was attended by the researcher. On every 02\textsuperscript{nd} July, the members of sexual minority community and other related persons gather at selected place (mostly Jantar Mantar) for celebrating the anniversary of Naz Foundation case that decriminalized the homosexuality by reading down Sec. 377 in so far as it criminalizes the consensual sexual act between the consenting adults in private. Researcher has been attending this event since 02\textsuperscript{nd} July, 2013. During first time, researcher made some points among the sexual minority persons to come out as this was observed as the basic issue relating to sexual minorities. Researcher also emphasized on the support of family for easy coming out. This was also appreciated.
and recognized under the candle lights and writing timeline spaces on colorful posters and cards. Simultaneously, the NALSA judgment is also celebrated.

### 6.4.4. Sexual Minorities’ Parties/ Film & Documentary Screening/ Pride Parades

On 03-July-2013, researcher approached to Yodakin Book store, situated at Hauz Khas Village, New Delhi, for purchasing books on sexuality, sex, gender, and homosexuality. This book store was known for selling of these books. When researcher approached at the address mentioned here, it was found that the book store has been shifted to next building also available in the same area. Researcher visited there but no one met there due to construction work going on. Researcher asked to labors about the book store they told that book store is functioning from Connaught place area. During the visit, Reseacher came to know about a historical monument known as Firojshah Tomb and various hotels, restaurants, party clubs where sexual minority persons visit very frequently. The monument was also seen in some sexual minority related documentaries made in Delhi. Various hotels, restaurants and night clubs are famous and known for giving spaces and organizing gay parties. Later, it was also acknowledged that the Hauj Khas Village, Greater Kailash, Malviya Nagar are some places where sexual minorities’ meetings and night parties take place.

On dated 15th September 2013 one documentary named “You Thought You Knew Me” was screened at India International Centre, New Delhi. Researcher attended this event and met the documentary maker. This documentary presented the issue of marginalization and violence with sexual minority persons particularly based in Delhi. It was first of its kind. ‘Purple Sky’ is also a popular documentary related to sexual minority person. It is not limited up to some documentaries but there are numerous film festivals which are related to sexual minorities cause. In this series Mumbai International Queer Film Festival named ‘Kashish MIQFF’ is a very big name. Except this, the Bangluru Queer Film Festival, Delhi International Queer Theatre and Film Festival, etc. is very vibrant and leading.

During the field study, three pride parades were attended by the researcher. During this, it was found that thousands of sexual minorities with varieties of
dressing, slogans, dancing and singing together march from Barakhama Road to Jantar Mantar, Cauuaught Place, New Delhi. It was came to know that before doing the pride parade, there is permission required from the local police station. The task of getting permission is becoming easier after passing of years. The local police is quite supportive in this regard too. In the first parade, on the day of 22\textsuperscript{nd} September, 2013 (Sunday), a meeting, relating to sexual minority pride parade, was first time attended by the researcher at Indian Coffee House, Cannaught Place, New Delhi. This was a wonderful event as researcher first time made some friends identified as sexual minority. This friendship is still going on. Generally, the pride parade is organized in the month of November or December of every year. Such pride parades are not limited up to Delhi but it has been organizing almost in whole India. Recently, it is first time organized in Gurgaon and Chennai where the demands of repealing of Sec. 377 IPC and making social environment inclusive were prominent.

During the research study, the slogans like ‘I am gay; it’s ok’, ‘I am lesbian; it’s ok’, ‘I am bisexual; it’s ok’, ‘I am transgender; it’s ok’, ‘Kon sa kanoon sabse badttar, 377-377’, ‘Hum kya chahatey: Aajadi’, ‘No-377; Going Back’, ‘377 down-down’, ‘377-Quit India’, ‘Love is no more a crime’, ‘Make Love Legal’, ‘My body, my rights’, Hetero-Homo Bhai-Bhai, ‘Sexual Minorities’ Rights are Human Rights’, ‘Supreme Court Hoshiyar; Tere Samney Kareingay Pyar’, etc. were commonly observed when any event takes place.

6.4.5. Coming Out Stories

During the study, it was difficult to meet sexual minorities because of issues of privacy and confidentiality. The disclosing of identity based on sexual orientation or gender choice is known as the process of coming out which remains a very difficult task for sexual minority person but in present context, there are many coming out stories available with internet and you tube where it is found that the momentum for disclosing identity based on sexual orientation or gender expression has been continuously rising. This is understood in terms of exploration and expression of oneself orientation and identity without no more fear. Such incidents are now turning a process of believing in human rights particularly for equality, non-discrimination, privacy, life and liberty, dignity and self-respect of an individual. It is very hard to
understand the issue of homosexuality. Many sexual minorities remain silent and those who have been coming out express about this coming out process as the typical and hard one. It is long process too. Some say it takes five-six years, some say it takes ten years or more in understanding.

6.4.6. Criticism of Supreme Court Judgment in Suresh Kumar Khosal Case and Rejection of Review Petition

On 11th December 2013, the Supreme Court judgment in Suresh Kumar Koushal case came in which the Sec. 377 of IPC was again recriminalized by reversing the judgment of Delhi High Court earlier in 2009. A review petition against this judgment was filed but the same was also rejected by the Supreme Court. This recriminalization and rejection attached on sexual minorities and same was highly criticized by way of protest rallies, candle march, debate and discussion in public as well as various institutions of society. The list also includes the celebrities from Bollywood, academician, corporate houses and some religious gurus.

6.4.7. Signing of Open Letter against Supreme Court Judgment

The open letter signing campaign was started in favor of Delhi High Court judgment in Naz Fondation case and against the Supreme Court Judgment in Suresh Kumar Khosal case. Through this campaign, the objection on the judgment was tried to message to Supreme Court Judges to not look underestimate the rights of sexual minority persons. The open letters were appealing to make equal status of sexual minority persons by recognizing the sexual orientation and gender identity as a basis of violence against them. In included academicians, professionals, activists, etc. The sexual minority persons appealed to protect the rights of sexual minority persons particularly with the law (Sec. 377 of IPC) and its application by the police.

6.4.8. ‘Defeat’ v. ‘Starting with New Strength’

On dated 08-January-2014, a meeting, organized by CREA at Ford Foundation, was attended by me. The meeting was related to the discussion on Supreme Court Judgement on Sec. 377 of IPC. During the panel discussion renowned activists were present. One of the panelists mentioned the Supreme Court judgment as
a defeat for sexual minority movement. After this remark, researcher also expressed the objection on the term ‘defeat’ because, legally speaking, after the judgement there exists opportunities of review petition and a curative petition too. This gave an appreciation to me by the said panelist and others. ‘The year 2009 increased faith in democracy not 2013’ added by one another panelist.

6.4.9. Post Card Writing Against Supreme Court Judgment

On 11th January, 2014, it was the time to protest by way of writing post cards addressing the Hon’ble Supreme Court for delivering the Suresh Kumar Khosal judgment. This event was organized at the central park, Connaught palace, New Delhi where many sexual minority persons were gathered keeping banners, posters and post cards to write message for Supreme Court against the judgment in Suresh Kumar Khosal case. The researcher attended this event and found that the event was highlighted in media as well. It was the event organized with new strength and energy as many were having the hope from Supreme Court to be always being a protector of human rights.

6.4.10. Reclaiming Republic and We

This event was also organized at Jantar Mantar, Delhi. It was related to questioning the concept of republic. This event was organized on the occasion of republic day. Because the sexual minorities are also the people of India and a part of republic hence one cannot discriminate sexual minority on the basis of religion, race, caste, sex, place of birth, color, gender, language, etc. Because of having the spirit of equality, non-discrimination and inclusiveness in the Constitution, the reclaiming of republic and we has a serious concern so far as the case of sexual minority is concerned. Researcher also attended the event and observed that many institutional discriminatory practices against the sexual minority are prevalent in the society. Hence the need to re-claim the republic for which everyone is responsible. The videos of these events are available on social media site i.e. ‘You Tube’.
6.4.11. Celebration of Recognizing Transgender as Third Gender

After the Judgment of Delhi High Court in Naz Foundation v Govt. of NCT Delhi case and Suresh Kumar Khosal and Others v. Naz Foundation and Others case, another judgment in case of National Legal Service Authority v. Union of India came in which Supreme Court recognized transgender persons as ‘Third Gender’ and protected their social, economic, political and educational rights keeping in view the Constitutional obligations. Although, this judgment was related to hijra community but the same was celebrated by whole sexual minority community including lesbian, gay, bisexual, transgender, intersex, queer, etc. The judgment was delivered on 15th April 2014.

6.4.12. Delhi Queer Collective Event at Delhi University

An event on dated 24.04.2014, organized by some persons relating to political science department of Delhi University, about the panel discussion on two judgements of Supreme Court of India. These cases are Suresh Kumar Khosal and NALSA judgement. There were five panelists (name not included) for the panel discussion. One of the panelists argued that transgender community has been recognized as third gender by the Supreme Court judgement in NALSA case. The judgement was admired but it was again critically recognized the role of government in its non-effective implementation at ground level. All the panelists made their arguments for accepting violence against sexual minority community in broader and a need to make more efforts for sexual minority movement. It was observed from the discussion that there are lots of confusions at government level with respect to effective implementation of NALSA judgement and the sexual minority movement.

6.4.13. Protect Free Speech & Expression

The freedom of speech and expression has been given in the Constitution under Article 19(1) as the fundamental rights. This right is available to all the citizens of India. And whereas the sexual minority who are under the definition of citizenship are exclusively entitled to have this right but because of social and other non-recognition, the application of this right by such sexual minority persons remain at
risk and danger. They remain unable to freely speak and express themselves in disclosing their sexual orientation and gender identity. On disclosing their orientation or identity as sexual minority, they face violence and this is violation of their Constitutional rights. For raising the voice to get recognition of this right to sexual minority, an event namely ‘Protect Free Speech & Expression’ on 26 June, 2014 (Thursday) was organized by the sexual minority person. Most of the time, the place for demonstration remains Jantar Mantar, New Delhi, it was same this time too. In this event, the free speech and expression to sexual minority persons provided under Constitution was demanded to be protected.

6.4.14. Re-claim Azadi, Repeal/Amend Sec. 377 of IPC

Another event namely “Re-claim Azadi, Repeal Sec. 377 of IPC” was organized by the sexual minority group. The same was attended by the researcher. The event had the objective to reclaim azadi and repealing Sec. 377 of IPC. This shows that the sexual minority persons do not feel freedom with the application of Sec. 377 of IPC despite living in independent country. The reason being with them is their sexual orientation and gender identity. The same event was also at Jantar Mantar, New Delhi held on 28 June, 2014 (Saturday).

6.4.15. 377 se Azadi March towards Freedom

On 2\textsuperscript{nd} July, 2014 (Wednesday), the event namely “377 se Azadi March towards Freedom” was held at Jantar Mantar, New Delhi. The event was having same objective as Sec. 377 of IPC was protested on the basis of protecting the right to life, liberty, equality, dignity, non-discrimination, freedom of speech and expression, privacy, etc. as guaranteed.

6.4.16. Street Plays on Sexuality and Gender Issues

‘The students at college campus of Bhagwan Parshuram Institute of Technology (BPTI), New Delhi, witnessed two unique and powerful Nukkad Natak-Pehchan and Mard-on March 25\textsuperscript{th}, 2015. The event was a collaborative effort of the Delhi based queer collectives Harmless Hugs, Indradhanush and Asmita Theater group. “Pehchan” is a street play that focuses upon different issues faced by sexual
minorities. The queer community in India faces discrimination in different phases of life. Sometimes they are projected as an instrument of fun or simply faced sheer discrimination from the society. Gay and lesbians are forced towards forced marriages, exploitation from police. Pehchan is one such play that highlights these issues in the form of street play. This is becoming a best medium to spread education and knowledge about the issue of homosexuality.

6.4.17. Ek Madhav Bag

It is a play which is based on the exploring the issue of sexuality related issues attached with the sexual minority persons. This play was a story of a boy and his mother who came to know about the identity of his son as gay and finally accepted by her. Because for every mother, her son or daughter always remains her son or daughter even after knowing his or her identity of gay or lesbian or other. This play was twice seen by the researcher. The mother’s character is played by a television actress and sexual minorities’ rights activist. It was also discussed during the event that 80% of gay persons are married.

6.4.18. A Straight Proposal

This is also a play written and directed by Happy Ranajeet who is working in the area of film, documentary and play writing and direction. This play was a famous play based on the concept of homosexuality. The researcher had also be a part of watching the same one time in Delhi. During the play, it was observed that many people took interest in watching this play. The people not only include the male persons but also the female. After watching the play, the researcher interviewed the writer and director of the play and got to know that the due to social and legal complications and conservativeness, it is very difficult to organize such play as the issue of homosexuality is still considered a taboo in society. The issue of getting permission from competent authority for the play is very common all the time. The emotional demise of a gay person because of social and legal conservativeness was a conclusion of the play that put a question before all. The love centric play lays down a lesion for all.
6.4.19. Momentum in Academics

During a national seminar themed ‘Human Rights: Trends and Implications in Contemporary World’, organized by Institute of Management Studies (IMS) Law College Noida on 5th November 2015, it was quite similar when researcher presented a paper relating to his research study and found that three paper related with the sexual minorities’ issue were also presented by young students studying their LL.B. course. It gives the indication that this particular issue has been gaining momentum in the society especially in Delhi. It is also important to discuss that out of three paper presenters, two were by female presenters and one by male presenter. It means that female is showing more interest in this issue.

6.4.20. Aagaaj-e-Badlav (27-12-2015)

Aagaaj-e-Badlav was an event organized by the Harmless Hug group. The theme of the event was relating to put a message to government, executives, legislatives and judiciary to relook the condition of violence against the sexual minorities and providing a change in the existing dilemma of inequality, discrimination and humiliation in the upcoming future. The event was curious about a new change in the New Year. Perhaps, new policies may provide a better life to sexual minority persons.

6.4.21. Comedy Act by a Veteran Comedian

During the study, the researcher took part in an event relating to a comedy act by a famous veteran comedian. She performs her work around the sexual minority persons and related issues. The act was organized by the members of Delhi Queer Collective. The event was held at the conference hall of political science department, Delhi University. The event was centric to sexuality related issues with full humorous content parallel. The observation during the event explains how much sufferings one can feel when sexuality and gender related issues becomes a case of torture and harassment starting from family itself and goes up to the larger society and law. Through the comedy act, the issue of homosexuality and its relating issues were laid down.
6.4.22. Flash Mob by Working Group

One of the organization i.e. Harmless Hugs has been very active in raising the voices for sexual minority. This organization is a collective of voluntary group of persons who are either sexual minority or working for them. The event of flash mob is related with the active performance of Harmless Hugs members in public by dancing and showing the education and awareness about the sexual minority’s rights. The collective group is regularly performing this event in Delhi particularly at Connaught Place. During this, the slogans written banner and cards are used for attracting the attention of common people. The slogans include ‘I am gay, will you hug me’, ‘I am lesbian, will you hug me’, ‘I am bisexual, will you hug me’, ‘I am transgender, will you hug me’, ‘Love cannot be a crime’, ‘We all are equal’, etc. In this series, the Harmless Hug-2, Harmless Hug-3 episode have also organized and it is still continues. The researcher has also participated in the same and observed that people from Delhi are becoming more supportive as far as such events organized and their demands for protecting and recognizing the sexual minority in family, society and law.

6.4.23. Delhi International Queer Theatre and Film Festival (DIQTFF) and Sexual Minorities

It was the first time in Delhi when a specific film festival in the name of Delhi International Queer Theatre and Film Festival for sexual minorities was organized. This event was organized by Harmless Hugs, an organization working for sexual minorities and their related issues. This event was a great success as having the film screenings, discussions, and opportunity to come together for spreading the message of education and awareness in the society. The researcher was a part with the organizing team with a subscription for Delhi International Queer Theatre and Film Festival. The number of sexual minority persons and activists were also available in the event for taking part. During this, the researcher got the chance to interact with many sexual minorities’ rights activists and one Ambassador supporting the rights of sexual minorities.
6.4.24. Book Releasing of a Sexual Minority

During the field research, one of the well-known transgender (also well-known as transgender rights activities) has had a ceremony of book releasing written by that transgender. This event was organized at India Habitat Centre, Lodhi Road, New Delhi. The researcher had also participate in the same event and meet that transgender and more personally. The researcher also got an opportunity to face a local electronic media personal covering the event for taking interviews. The researcher discussed about the subject of research and multiple issues around it. The researcher tells about the research work in Delhi and attending such events wherever it takes place so that more knowledge is gained. It was a great learning experience.

6.4.25. Psychiatrist/Psychologist Views

‘The Indian Psychiatric Society, an umbrella body for psychiatrists across the country, said this in response to the furor over its former president Indira Sharma’s statement on homosexuality. “Based on existing scientific evidence and good practice guidelines from the field of psychiatry, the Indian Psychiatric Society would like to state that there is no evidence to substantiate the belief that homosexuality is a mental illness or a disease”, said the statement by IPS president T V Asokan and general secretary NN Raju’74. Article further views that ‘the media has a responsibility to create awareness regarding society’s view on sexual orientation, whether it approves or disapproves it’.

During the research, the psychiatrists were also engaged in discussing on the issues of sexual minorities. The most important one remains centric on relationship particularly in the sexual minority community. In a theme of event entitled ‘Relationships and Emotional Well-being in sexual minority community’ it was discussed that sexual minorities are finding its voice and becoming more strengthened day by day since the sexual minorities individuals are getting more comfortable and open, the dilemma and confusion revolving around relationships has become more complex. Sexual minorities have been at a junction where they just can’t decide or perhaps think. Whom to take advice or council from? What to do? Where to go? What

74 Malathy Iyer, ‘Homosexuality not a disease: Psychiatrists’, The Times of India.

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is right and what is wrong? Relationship plays a pivotal role in the holistic well-being of any individual. There are lot of discourse around the politics of gay rights and health issue concerning sexual minority persons from HIV to other medical issues. However, it is seen that there is very little to non-existent social discourse about relationship aspects of sexual minority community. The role of psychiatrist is highly crucial in understanding the psychological aspect of sexual minorities particularly and putting a difference between heterosexual and sexual minorities persons behavioral science.

6.4.26. Gender Studies Group, Delhi University

The researcher attended screening of sexual minority documentary followed by panel discussion at Delhi University. Here it was the time to meet Anjali Gopalan, the Executive Director of Naz Foundation Trust. While discussing with her, she appreciated the research work and ensured for providing help in this regard. On the same day, it was also come to know that a future event in the name of ‘Gender Mela’ will also be organized by the gender studies group working in Delhi University. This event was specifically for understanding the deeper issues involved with sexuality and gender in theories as well as practice. Researcher is attached with the group.

6.4.27. Joining of Various Rights based Organizations

The movement of sexual minorities’ rights has been increasing by way of joining of new rights based organizations including the women rights, child rights, equality rights, minorities’ rights and public health rights based. It is including the students’ organizations from academic institutions and NGOs from different sectors. Various groups from Voices Against 377, AIDWA, AISA, AIMAM, Anhad, Anjuman, Breakthrough, Citizen’s Collective against Sexual Assault (CCSA), CREA, Delhi Queer Pride Committee, Dhanak, duqueercollective, Haq: Centre for Child Rights, Jagori, JTSA, JNUSU, MKSS, Must Bol, Naz Foundation, Nigah, Nirantar, Partners for Law in Development, TARSHI, Youth ki Awaaz, The YP Foundation, etc. have joined this movement.
6.4.28. Live-in Relationship and Sexual Minorities

The sexual minorities put themselves within the concept of live-in relationship as the heterosexual persons. The live-in relationship is already a recognized and accepted concept by Indian Judiciary. The same has also been practiced and performed by Indian society after recognizing by the Indian Judiciary. The law permits this practice for further development of rights under Indian law like Hindu Law. Despite having the penal law and social, cultural, religious and other unacceptance, some of the research respondents are living together as partners. Except that, many are having friendship with their friends. It is hard to say about the availability of friendship or relationship between these couple.

6.4.29. Visited Organizations, Places and Events during Research

Although this section has a specific chapter no. 3 but it is also included here in brief only. The places and various organizations visited are Delhi University, Delhi Queer Collective, Jawahar Lal Nehru University, Dhanak, Jamia Millia Islamia, Indian Institute of Technology Delhi, Indradhanush, Ambedkar University Delhi, India International Centre, Shri Ram Centre of Art Delhi, School of Planning and Architecture Delhi, India Habitat Centre Delhi, Lok Kala Munch Delhi, Humrahi, Sangini, Campaign for Lesbian Rights (CALERI)/Shakhi, AIDS Bhedbhav Virodhi Andolan (ABVA), PRISM - People for Rights of Indian Sexuality Minorities, Sidhhartha Gautam Trust for Sexual Minorities, Naz Foundation India Trust, Human Rights Law Network, Lawyers Collective HIV/AIDS Unit, Adhikar, Creating Resources for Empowerment in Action (CREA), TARSHI Delhi, Ashmita Theatre, TEG Films, Ford Foundation, India HIV/AIDS Alliance, Harmless Hugs, QASHTI, NIGAH, Dwarika Gay Group, Mitr Trust (MSM/TG CBO), Vidhi Centre for Legal Policy, Voices Against 377, Hauj Khas Village, Lodhi Garden, Jantar Mantar, Cannaught Place Central Park (Gay Park), Nehru Park, Indian Coffee House, Bengali Market, Shahpur Jat Village, Sarojini Nagar, Green Park Extension, Jangpura Extension, Lajpat Nagar, South Extension, Gulmohar Park, Greater Kailash (India HIV/AIDS Alliance), Chanakyapuri, Malviya Nagar, Max Mullar Bhavan, Lodhi Road Institutional Area, Janakpuri, Badarpur Boarder, Lado Sarai, etc.
CREA-Meeting on 377 at Ford Foundation, New Delhi, A Talk on Homophobia at Oxford Book Store, New Delhi, “Khosal & NALSA Judgments: What went right with the court?” a Panel Discussion, at Delhi University, Harmless Hugs-Queer Hugs 1 & 2 at Connaught Place, New Delhi, Delhi Queer Pride, 2014 (Barakhamba Road to Jantar Mantar), Visible Evidence Conference at India International Centre, Purple Sky Documentary, “Zero-Tolerance: Resisting Campus Violence Against LGBTQ” at Delhi University, Human Rights Law Network-Ulgulan Conference at Panchgani, Maharashtra, No-377, “377 Se Azadi”, Inter-Congress at Thammasat University, Bangkok, Thailand, A Straight Proposal at Sri Ram Centre Delhi, Stand-up comedy-queer open mic with Vasu Primlani at Delhi University, QASHTI-LBTQ Pride Retromance followed by Fundraiser Party for LGBT Pride Parade, 2015, researcher’s interview on BBC India, Book launching of Laxmi Narayan Tripathi, workshop and Panel discussion on sexuality and gender at India Habitat Centre, New Delhi, Delhi Queer Fest, 2015 at Max Mullar Bhavan, Delhi, “Stories of Our Lives: An Insight into the Overlooked aspects of persecution of LGBTQ” (Movie Screening and Panel Discussion at Delhi University), Delhi International Queer and Theatre Film Festival, 2015 at Lok Kala Manch, Delhi, Bond4ever new year party for sexual minorities at Mathura Road, Badarpur, Delhi, Walk-by Maya Krishna Roy, Project Bolo, Satyamev Jayatey Program, Writing and Sharing Space for sexual minorities, Gaysi Magazine, Gayalaxy Magazine, Meetings, Lectures, Film Screenings, Events, Conferences in Delhi, Post Card Campaign, sexual minorities’ Pride Parades, Street Plays on Sexuality and Gender Issues, Psychiatrist/Psychologist Views, Curative Rape, Flash Mob by Harmless Hugs, Reclaiming Republic and We, Ek Madhav Bag, A Straight Proposal, Aagaaj-e-Badlav, Film having the character of a ‘Gay Professor’, and again Inter-Congress at Hotel Dubrovnik Place, Dubrovnik, Croatia (Eastern Europe).

6.4.30. Internal and External Fight and Sexual Minorities

For sexual minorities, it is not only the fight with external society but also an internal fight within them is available. It is because of not accepting the orientation and identities of sexual minorities. Before coming out to the family, friends and society, the sexual minority persons take a fight with themselves to come out as they themselves find confusions regarding their sexual orientation and gender identity.
Many of the sexual minorities do not come out easily and because of facing internal fighting and external abuses, deprivation and violence; they also take a decision to commit suicide.

6.4.31. Campus Violence against Sexual Minorities in Delhi

During the study, the researcher has been a part in the events relating to protesting against the campus violence against sexual minority persons who are either studying or visiting to different academic institutions. The campus violence against such sexual minority persons is prevalent with no specific redressal to them. Approaching to competent authorities, available for redressal in this regard, are not sensitive enough to understand the real problem with sexual minority. The problem becomes more severe when instead of understanding and recognizing the problem in realm they put their own misunderstandings and misconceptions with the issue of homosexuality and Sec. 377 of IPC. Delhi queer collective, Indradhanush, Dhanak and others groups in Delhi University, Indian Institute of Technology and Jawahar Lal Nehru University respectively. Similar to these there are academic groups in most of the academic institutions in Delhi which are raising the voice against the campus violence faced by sexual minority persons in Delhi.

6.4.32. Incidences of Bullying

Bullying is a factor which is used against sexual minorities keeping in view their sexual orientation and gender identity. The bullying is a serious crime and puts sexual minorities into dilemma, in humiliation, oppression, physical and mental agony. Because of the fear of bullying, the sexual minorities do not like to disclose their identity and hence remain in closet and isolated. It is also a reason to not attend the school, college, society even the family as well.

6.4.33. Moral Policing

The society has been engaged in moral policing starting from the family itself. This moves altogether whenever and wherever any sexual minority is presented. The characterization on the basis of sexual orientation and gender identity has been very problematic. The moral policing leads and rests with violence and violation of basic
human rights of sexual minorities. This is highly horrible when the killings of innocent people take place. The honor crime and honor killing are the outcomes of moral policing.

6.4.34. Unidentified Sexual Minorities are in Closet and Not Open at Present

Respondents are presently in closet and not open because of effects of law as well as society unrecognition. However, the scope of discoursing on the issues relating to them is getting pace. The lots of debate and discussion are going around in the sphere of academic, law, religion, politics, media, corporate sectors and society at large. As a result of this, many groups are coming to raise the voice of sexual minorities in Delhi.

6.4.35. Identified Sexual Minorities are Fearful in Public or Society

The sexual orientation and gender identity of sexual minority persons is root cause of not disclosing their identity within the family, groups and society. Because of many violence faced by them, they remain in fear to disclose their sexual orientation and gender identity. There are many incidents available where the respondents have faced the violence. The same are discussed in statement of problem within chapter first.

6.4.36. Sexual Minorities are Well-Educated and Professional
(English and Non-English Speaking)

The sexual minorities are similarly well-educated as other common persons. They are both English speaking and non-English speaking. The members of sexual minorities and their supporters are available within the respected classes of different professional like advocate, academician, doctor, artist, fashion designer, corporate professional, businessman, civil society personal, film director, film actor and actress, etc. The Hindi speaking and other than high status have now joined.
6.4.37. Sexual Minorities are Color Loving and Creative with Body

The sexual minorities are color loving as for asking their rights they possess a rainbow flag which has multiple colors. Except this rainbow flag, the hair and dressing sense of sexual minorities is also quite different and colorful. This community believes in natural feelings for which the color particularly of flowers gives the indication of love. This is seen with variety of hair color and cloths they generally wear. Sketching of tattoo art on different parts of body is most commonly used behavior of sexual minority persons.

6.4.38. Families of Sexual Minorities are Supportive (Delhi Scenario)

Delhi is a lot of things to a lot of people. And to the sexual minority community, it is a city of acceptance, progress, activism and expression. The city’s liberal and ever-encompassing fabric has put the cause of sexual minorities’ rights under a bright spotlight. Delhi is indeed a torchbearer for India’s sexual minorities’ movement for many reasons. Be it the highly popular and robust Delhi Queer Pride Parade, or the Delhi Queer Bazaar, the now-sprawling gay nightlife and get-togethers, several books and web portals dedicated to the cause, interests and recreational activities of the sexual minority community, Delhi has a lot of avenues for the community to express, expose and enjoy.

Flaunting rainbow-hued mufflers and rejoicing to foot-tapping drumbeats, thousands of rainbow warriors created a festival-like atmosphere at Barakhamba Road, as they marched towards Jantar Mantar to celebrate the Delhi Queer Pride Parade every year. The annual parade is seen as an outlet for people to come out openly and claim their rights without fear. Started in 2008 with just a handful of people, the parade has assumed huge significance for promoting the cause of sexual minority community, and is seen as a symbol of hope, self-esteem, unity and acceptance. In fact, it was heartening to see hundreds of people from the community walking hand-in-hand, alongside their straight friends and supporters, holding placards and shouting slogans demanding their rights. Manak Matiyani, one of the organizers of the parade, feels any event that takes place in Delhi gets the maximum spotlight. “Delhi is a symbolic place for the sexual minorities’ rights movement as it
is a high-attention place and always gets widely covered by the media. The protests that we have been undertaking have got a lot of push from several organizations in the city.”

“Delhi, with its progressive outlook, serves as the perfect place to hold a national level meeting like this that was attended by community members from all over India. After all, it is here that the genesis of the movement began,” says Rakesh. Author Saleem Kidwai feels, “SC ruling is a blessing in disguise. The verdict will keep the issue alive in the city and beyond.” Ever the cosmopolitan city, Delhi is not only the frontrunner of movements and activism, but is also a hub of vibrant gay nightlife, get-togethers and parties. With special gay nights and bars mushrooming in posh South Delhi localities and NCR region, gay nightlife has got a huge impetus in the city. Often, artists, fashion designers and other celebs from the community, are seen mingling and hanging out at these clubs. “We have a lot of avenues to party and hang out, just be ourselves, without fear. In fact, I met my boyfriend at a bar I visited some time back. It feels great to mingle and have fun without being judged,” says a gay media professional, wishing not be named. Yoga expert and Bigg Boss 7 ex-contestant Vivek Mishra, who flits in and out of the Capital, feels gay nightlife is now a big part of Delhi party fabric. “I keep visiting Delhi and feel it is emerging as a great party zone for the community.” “There are several avenues for the community to let their feet down and be themselves,” adds Priya Gangwani of Gaysi, an online portal for gay community.

It is a fact, for instance, that for the last two years, the Facebook group called “We support decriminalizing homosexuality” only sent regular invites to parties at fancy clubs in Delhi. And just a few days ago it cheerfully declared “The SC verdict doesn’t mean we will stop having parties. Join in!” In the words of Dr B.R. Ambedkar: “Political tyranny is nothing compared to social tyranny, and a reformer who defies society is a much more courageous man than a politician who defies government.” Akshay Pathak is a writer based in Pondicherry. During various lectures, events, program and pride parade rallies, the families of sexual minority person have been supportive particularly in Delhi. It is supportive as a matter of recognizing the human rights of all and believing that there is no fault of those persons who are sexual minorities however, it remains reluctant too. There are well-
established ‘Group of Parents of Sexual Minorities’ which are supportive at every level whether social, legal, political, educational or other.

6.4.39. Fighting for Solidarity

The voice of sexual minority is to fight for solidarity. It means that if the rights of sexual minorities is recognized and mainstreamed with society then there is a scenario of social solidarity through inclusion of all. By inclusion and sexual minority into mainstream society, the growth of society will automatically increase and multiply in every sphere whether social, economic, political, educational, religious or other.

6.4.40. Increasing Sex Re-assignment Surgery Cases

During the study, the cases of sex re-assignment surgery have also been found increasing. The respondents are coming out for taking a decision to change their identity through sex reassignment surgery. Keeping in view the situation of sexual minorities, the sex-reassignment surgery clinics are also increasing. This is a long process and includes the hormonal therapy for changing the sex whether male to female or female to male.

6.4.41. Marriage v. Reproduction

In terms of recognizing the marriage related rights of sexual minorities, the procreation is the main issue before all with a question as how can this relationship be procreative? Although, the scientific community at international level has been experimenting and working on the same issue but the society look both the concept of marriage and procreation jointly, however, the sexual minority say about the building of concept of family out of marriage. It is argued by sexual minorities that although the same-sex relationship does not reproduce or procreate till today yet the family can be formed by way of adoption of child. So, procreation is not a barrier to form a family for sexual minorities, if marriage law, adoption law and other civil laws give some relaxation to them. It is a case of ‘Single Parenting’ under ‘Alternative Parenting’.
6.4.42. Needy v. Greedy

The identification of actual sufferer and beneficiary for which the solution is to be provided becomes the issue during the study. Under this situation, who actually needs the solution has to be based on the identification of actual victim or sufferer. During the study, it was found that some persons are only using the issue or subject for their personal interest. This situation has been taken cared in the provisions included in the proposed Bill for sexual minorities. This point has been written here because it comes before the researcher many times whenever the discussion on victims and proposed Bill’s provisions are concerned. So the issue to take care of deciding the respondents as needy vs greedy has to be considered keeping in view the testing by biologists, psychologists, sociologists and medical personals.

6.4.43. A Rainbow Sky for Delhi

Since the petition of Naz Foundation before Delhi High Court till now, the Delhi has been regularly witnessing with progress in raising the voice of rights of sexual minority. It has been done with certain programs, rallies, festivals, lectures, panel discussions, etc. The case of Delhi is leading in this sense. Hence, it is a rainbow sky for Delhi whenever any event takes place. It is mostly evident when the pride parades or rallies happen as it is the biggest moment when most of the sexual minority persons not only from Delhi but also from whole country gathered under a colorful flag know as rainbow flag. This situation is published in news as ‘Rainbow Sky in Delhi’. The flag of rainbow is an international flag and found everywhere the events are taking place. The rainbow sky gives a message of cultural mixing through inclusiveness.

6.4.44. Myths and Misconception and Sexual Minorities

There are many myths and misconceptions are available with sexual minorities and their related issues. Out of all myths and misconceptions, most are the biological, psychological and socio-cultural perspectives related. The issues are centric to sex and sexual intercourse. During the study, it was observed that the sexual minorities are not the persons who have the relation with sexual intercourse only. This is also a biggest
problem in terms of non-acceptance of sexual minorities by the family and society. The major myth and misconception relating to sexual minority persons are related to sex, sexual activity based relationship advancement yet it is not all the time correct because many respondents responded to not having the talks and other activities relating to sex and sexual activities. The concept of homosexuality is imported from western countries is also a myth and misconception. Many well-educated persons also relies that homosexuality is against nature, culture, morality, civilization, customs and traditions, law etc.

6.4.45. Campaign against Sec. 377 of IPC and Sexual Minorities

After the Supreme Court judgment in Suresh Kumar Khosal vs Naz Foundation case, a group of twelve organizations and NGOs came into existence for protecting the rights of sexual minorities particularly in legal context. This is known as campaign against Sec. 377 of IPC. This includes the legal as well as social campaign particularly in Delhi. This is understood as a campaign for visibility of sexual minorities. Recently, the Humsafar Trust, a NGO working for sexual minorities has appealed to all the stake holders such as police, politicians, judiciary, doctors, etc. through a presentation for addressing the issues relating to Sec. 377 IPC, violation of rights of sexual minorities followed by asking required remedies to sexual minority community as per Constitutional law. This presentation is also e-mailed to all the Members of Parliament. It is an implementation of advocacy action plan for Section 377 IPC.

6.4.46. Believe in Love and Peace

Sexual minority persons are observed as a love and peace lover. They are so kind and moral during the conversation and behavior. They do not like disputes and fighting. One of the persons remarked them as ‘Creamy Persons’ as far as the moral sense is concerned.

6.4.47. Researcher Personal Experiences and Others’ Responsiveness

The thesis already includes the hurdles and difficulties in research study. This starts with the selection of subject of research problem followed by conducting the
research study and ends with writing of the present Ph.D. thesis. The whole duration of conducting this research has become memorable struggled journey experiencing with lots of up and downs. In an informal discussion with some students of LL.M., it was said by one student that “the right to privacy of every individual is provided and protected by God or nature”. The psychological contents remain in mind and keep with every individual separately. Only the physiological facts remain open for visualization but the psychological facts are only assumed, presumed imagined or supposed. It means the psychological facts remain within the individual mind in his or her right to privacy. The researcher has been identified as the ‘sexual minority researcher’ with many identities related to sexual minority persons. This includes introspective questions and comments like why have you selected this subject? Where would you find sexual minorities? Is anything wrong in your sexual orientation or gender identity? Are you gay? (More specific); you will also become gay if takes and conduct study on this subject; Have you engaged in sexual activities with this community persons? You should not take such subject as it is considered a taboo subject on the basis of unnaturalness, culturalism, civilization, immorality and illegal. It was quite interesting that whenever the researcher disclosed to anyone about this subject of research, many people were curious and also put their own experiences regarding the subject.

Generally, in conversation about the research study, many comments were supportive in terms of choosing the subject while on the other hand the discussion remained centric on the naturalness, culturalism, civilization, morality based debate and arguments. The human rights aspect remains less touched or untouched. Most of the time when presenting any paper or discussing on the subject under study, the reactions from the listeners’ side were more inquisitive and debating. The researcher got chances to present his talk in various parts of India as well as the platforms outside India where the responses were admiring, supportive and successful. Except this it important to put very significant presentations relating is research.
6.4.47.1. Presentation in International Conferences outside the Country

6.4.47.1.1. Presentation in Bangkok, Thailand

In the month of July, 2015, researcher got a chance to present a paper titled “The Rising Scope of LGBT Rights in India: A Human Rights Perspective” organized at Thammasat University, Bangkok, Thailand. In this international conference, the audience took the issue of sexual minority persons in India very seriously and provided anthropological and sociological perspective on the same as the issue has not been very much explored in India. However, the point that the issue and scope of sexual minority rights has been rising in India in general and Delhi in particular was duly accepted and recognized. During the study, it was evident that lots of events and programs were regularly organized and the same have been continuous in the form of sexual minorities’ rights movement in Delhi particularly.

6.4.47.1.2. Presentation in Dubrovnik, Croatia (Eastern Europe)

In a paper titled “Unresponsiveness of Governance and Social Inequality: A Case Study of LGBT Rights in India”, it was argued by the researcher that while studying the social inequality, the unresponsiveness of governance is found to be a responsible factor that leads for social inequality. So, there is a linkage between unresponsiveness of governance and social inequality and visa-a versa. This situation of unresponsiveness of governance with reference to sexual minorities’ rights in India has been very crucial and considered as a present serious challenge for social equality as well as justice. The new challenge before the social equality needs to be addressed in the light of human rights because human rights have the universal scope when we discuss about the principles of equality and non-discrimination. The government and governance needs education and sensitization for understanding the rights of sexual minority persons in India. The paper also concluded that various governance related issues are against the rights of sexual minority persons in India. For curbing this situation, more efforts are required in 21st century. The example of non-implementation of Supreme Court guidelines in NALSA case was also referred.
6.4.48. Various Developed Metro-Identities

Because of these identities of sexual minorities as lesbian, gay, bisexual and transgender many concerning and relative identities are coming in to force. Such identities are known as Gay/lesbian/transgender academician, Gay/lesbian/bisexual/transgender Doctor, Gay/lesbian/bisexual/transgender/artists, queer cinema, queer politics, queer media, etc. these identities are known as ‘Metro Identities’. Various new groups are coming as the sexual minority related groups.

6.4.49. Sexual Minorities Struggle with their Different Orientation and Identity Treated as Criminal

The law does not treat sexual minorities as criminal and it only specifies certain acts to be treated as offence under Section 377 of IPC that becomes a ground to criminalize not only sexual minorities but also the persons in heterosexual relationship. In social practice, on the basis of certain acts treated offence under Section 377 IPC, the sexual minorities, even after not involving in such acts in public or private, are mainly targeted as criminal in comparison to same acts performed or committed in heterosexual relationship. This is a case of social criminalization of identity and certain acts. The sexual minorities feel apprehension to be treated as criminal make them more and more vulnerable in social practices.

6.4.50. Homophobic Society

Because of not having the exact knowledge about the concepts of homosexuality, same-sex friendship and relationship, culture, morality, civilization, naturalness, equality, non-discrimination, there are problems which always remain the problem before all. The knowledge about homosexuality in general has been homophobic because of its relationship with sexual acts only. While discussing about the homosexuality and related issues, it is most of the time hated and discarded which shows a homophobic nature of society.
6.4.51. Various Embassies Supporting Places in Delhi and Sexual Minorities

During the field research, it was also found that some of the embassies are quite supportive regarding the rights of sexual minorities. The support of embassies includes the providing of spaces and other logistic support to organize any lecture, workshop, meeting, event like festival, parties, etc. The researcher has attended such events too.

6.4.52. Sexual Minorities’ Coming Out of Binary Box of Male and Female

There are male and female sexual and gender group is known by the society and the identities of sexual minorities rest with a difference which comes out of the binary box of male and female. Although, one has to choose only one identity but the case of sexual minorities remains with an alternative sexuality or alternative gender that puts a confusing identity before the society. On the basis of recognizing the transgender as third gender, the public official documentation has started to include either ‘Other’ or ‘Transgender’ as extra box to declare the status of sex or gender. Similarly, ‘Face Book (FB) 56 new gender options may confuse some and please others, but what do they mean, literally and for social attitudes? While Facebook has added 56 more gender options for user profiles to its existing list of only male and female, not everyone is well-versed with the meaning of all these options including us’.

6.4.53. Hope Alive with Curative Petition before Supreme Court

After the judgments in Naz Foundation v. Govt. of NCT of Delhi and others, Suresh Kumar Koushal and another v. Naz Foundation and other, Review Petition against Suresh Kumar Koushal and another v. Naz Foundation and other, National Legal Service Authority v. Union of India, the curative petition is line up pending as has been referred to the Constitutional bench of five judges. This curative petition has been a hope for sexual minorities so far as the legal remedy is concerned. However,

the fight to raise the voices, even in case of not succeeding in curative petition, shall also remain alive for sexual minorities.

6.4.54. Social Observations and Sexual Minorities

The study has been very useful in social context as the researcher was participating with the research respondents after getting less response on research questionnaire given to the respondents. The research respondents are treated discriminatory. They are not open in society and remain silence about their sexual orientation and gender identity. They face social unacceptance. The study includes social factors attached with the respondents. In social context, many observational points were explored and these are presented here to take the help for legal aspect. It is important to write that these many observational points were not explored more hence there is need to explore and do research on these. So, the points included in social aspect are to be treated as a larger scope of further research on these. The sexual minorities, who are open and identified as sexual minorities, have different issues and stand in comparison to those who are not open or identified as sexual minority.

6.4.54.1. Writing and Sharing Space for Sexual Minorities

On social media in particular, there are number of following pages available where the sexual minorities are open to discuss, tell and write about their personal stories relating to experiences they have. Initially, it was started with magazine named ‘Bombay Dost’ which has numbers of opportunities now. Such stories are written to attract the larger domain of society as make it possible to spread education and awareness about the issues relating to sexual minorities. Most of the time, the name of respondents are changed or not mentioned because of protecting the identity from disclosing to anyone. The social media particularly face book has been very much used place for sexual minorities. Many groups of sexual minorities are available on social media. These groups are actively engaged in spreading information among the sexual minorities and others who are interested. Such groups provide space for writing about the personal stories, experiences, and incidents relating to sexual minorities. Out of many some are ‘1 Million Indians support LGBT rights’, ‘All India

6.4.54.1.1. Gaysi Magazine

Gaysi Magazine is the place available for sexual minority persons to share their personal experiences through writing on it. This also includes the stories and short stories of sexual minority persons. This is an online magazine based its coordinator in Mumbai. During the research, it was found that while discussing anything about the personal stories and experiences of sexual minorities, they do not put or share their real name with the story or experiences. This is because of identity crisis, maintaining the right to privacy, and protection from legal as well as social criminalization because of Sec. 377 of IPC. The researcher also got the chance to meet the author of this Gaysi Magazine.

6.4.54.1.2. Gayalaxy Magazine

Gayalxy Magazine is very famous one magazine among the sexual minorities as it is a place of sharing the variety of issues and discussion in the form of personal experiences and thought by way of paper writing. This magazine is managed with the hope to spread knowledge about the problems and challenges faced by the sexual minority persons. It also provides the opportunity to provide solution of such problems. The spreading of education and awareness within and outside the group of sexual minority and other socio-cultural groups is also in the list of agenda of gaylaxy magazine.

6.4.54.1.3. Asian Pride Project

This project is an online space for family and friends of sexual minority persons who are do not have such places where they can share and support to sexual
minority persons. It also has Asian & Pacific Islander (API) people under its reaching capacity. Except these some are available on subscription basis.

6.4.54.2. Yoga and Sexual Minorities

No doubt yoga is a medium to have physically and mentally concentration but so far as the issue of relationship between yoga and homosexuality is concerned there is no research study or data available that could establish the fact relating to change in sexual orientation or gender identity of homosexuals by way of yoga. The yoga guru ‘Baba Ramdev’ has allegedly claimed that homosexuality is unnatural and disease and yoga can cure it. It is not an applied or tested by any of the religious guru including Baba Ramdev. The connectivity between effect of yoga on changing the sexual orientation and gender identity seems anti-homosexuality in nature.

6.4.54.3. Satyamev Jayatey Television Show

In the program ‘Satyamev Jayatey’ season-3, the episode on star plus discussed the issue of homosexuality in India. The program is hosted by ‘Aamir Khan’. In this episode various issues such as acceptability of sex-change, presumptions against homosexuality and homosexuals, status of hijras in society were discussed. According to Aamir Khan, “these issues must be discussed openly but parents do not accept this”. In the discussion, one of the participants namely ‘Gajal’ was an example for whole nation. Gajal was born a boy (biologically male) but refused to accept as boy and performed all the acts like a girl/female. According to Gajal, after completing engineering, she started her carrier as a writer in Bollywood, and decided to change sex from male to female which was also supported by her parents. According to Gajal, she is now happily living her life as a female and feels proud for the support of her parents. Further, Deepak, a psychologist from Ajmer, Simran Shek from Mumbai and Divya from Kolkatta were also discussing their own story of being homosexuals. On asking question-what would remain the message from this issue to the upcoming generation-by Shivam from Gorekhpur, Aamir Khan replied, ‘Every person is equal’. Sarabjeet from Delhi mentioned that the
homosexuals must be fully supported. Cricketer Harsha Bhogle also mentioned that the parents of Gajal are remarkable.  

‘According to Dr. Priti Pathak, the then Joint Director, UP State AIDS Control Society, “we are living in democracy; every person must be equal in this. Homosexuality is a natural phenomenon. Only one can understand this who has been experiencing it oneself. First of all, homosexuals must understand themselves. They must understand that they are doing anything wrong. If any person understands about himself or herself that he or she is homosexuals then no one should react wrong towards that homosexual”. Similarly, ‘according to Ajay Shukla, the then Assistant Director, UP State AIDS Control Society, “homosexuals must also be provided the same rights. Before changing the law, common people must change their thinking. No one discusses openly on these issues. They should be promoted equally as others”.

6.4.54.4. Other Television Shows

The day, on which the curative petition before Supreme Court on the issue of deciding the Constitutionality of Sec. 377 of IPC, various electronic media channels were telecasting a regular debate and discussion session on the same issue. Various eminent persons were presented in the same discussion. This was covered and telecasted mostly by NDTV channel. The Burkha Dutt, a well-known news reporter, was in a leading role at that time. During the discussion, the voices for recognizing the violation of rights of sexual minorities through discriminatory practices based on sexual orientation and gender identity, declaring the Sec. 377 of IPC as unconstitutional and reinstating the Delhi High Court judgment in Naz Foundation case were supported.

6.4.54.5. Rights of Transgender Persons Bill and Political Leader’s View

For the first time on 12th December 2014, a bill concerning the protection of the rights of transgender persons was introduced by Tiruchi Siva, Member of

77 Ibid.
Parliament (Rajya Sabha) from DMK, Tamil Nadu. The bill was discussed in Rajya Sabha and passed. This bill aims to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by State. The bill is pending in Lok Sabha. On the same issue, Dr. Shashi Tharoor, congress party Member of Parliament again introduced a bill to repeal/amend Sec. 377 of IPC. In this line ministers of present government are also speaking. This includes Arun Jaitley, Dr. Harsh Vardhan, etc. Although, the political movement in respect of sexual minorities’ rights is not so much vibrant, yet the movement is still forwarding and known in the name of ‘Queer Politics’. This study has also proposed a bill with the help of present bill as included in seventh chapter.

**6.4.54.6. Corrective Rape and Sexual Minorities**

Due to sexual orientation and gender identity of sexual minority persons, it is very difficult for them to come out to any member either from family or society. Whenever any member from the family of sexual minority comes to know about the sexual orientation and gender identity of his or her son or daughter, then such member or whole family begins to torture that person to either change the sexual orientation or gender identity individually. On refusing to this, the family starts giving different treatments to sexual minority like by approaching to psychiatrist, tantric or other who gave them commitment for changing the said sexual orientation or gender identity. In this series some cases of rape by the family members or relatives of sexual minority persons come in to action. Such rape is committed in the name of correcting and curing the sexual orientation or gender identity of sexual minority and known as corrective rape which is against the rights of any persons. The honor crime or killing is next in this line. This is so painful when the individuals are tortured in the name of honor. There are judgments of Indian Judiciary to protect the sexual minority persons who willfully consent to live together, if having the age of maturity.

**6.4.54.7. AIIMS Doctor Suicide**

The issues attached with homosexuality in general and Sec. 377 of IPC in particular are numerous and major. One of the major concerns relating to this is
disputes in marriage. In a case of Delhi, the wife suicided only because her husband was a gay. In case of marriage between the persons having orientation based dispute then the marriage disputes arise. In case of marriage, it is now a considering point to understand.

6.4.54.8. Gay Professor Hindi Film named ‘Aligarh’

After the death of a gay professor in Aligarh Muslim University, a film named ‘Aligarh’ directed by Hansal Mehta has now been telecasting in Indian cinema. Before its telecast, it was with the censor board to give certification for releasing because the issue is highly controversial in Indian society as well as law. After getting the approval from censor board, the film is available with mix reactions. Manoj Bajpai has played the role of gay professor after the name of Prof. Ramchandran Siras. This is first of its kind which is very centric to the issue of same-sex relationship, homosexuality, Sec. 377 of IPC and various complexions involved with sexual minority persons. This film is latest one and many documentaries and sexuality based films like fire, dostana, etc. The gay characters are getting more inclusion in the mainstreaming cinema too. Except this, there are separate film, documentary, play and cultural show makers who are now coming with the inclusion of sexual minority and their related issues. This releasing as well as screening of this film has vibrantly increased the debate and discussion on the homosexuality and Sec. 377 IPC as like the Deepa Mehta’s film ‘Fire’ (1996) released in 1998.

6.4.54.9. Beyond Gender

Sexual minorities believes not to be identified within the gender roles yet they believe to go and look beyond gender. The dynamics of sexuality and gender do not only depend on individuals but also on time, place, circumstance, and situation and other term and conditions within socio-cultural fabric of society.

6.4.54.10. Sexual Minorities Availability in Delhi

During the field study, the various organizations and place were visited by the researcher. In this series, it was observed that such organizations were supportive and co-operative. They provided information about sexual minority persons and the
matters related to them. Various places were visited for attending the academic and non-academic programs whenever it was informed by such organizations and persons engaged with these. Due to this most of the part of Delhi was covered wherever the sexual minority persons could be approached and meet. All the NGOs, organizations and places have already referred in chapter three. Many sexual minority persons are personally known by the researcher. They are found during the field research study. It is also important to mention that females are more than the number of males in attending and supporting the cause of protection of rights of sexual minorities. The actual number of sexual minorities is an issue and various organizations are working for this but except some tentative data, no government data is available in this regard. However, it is not so easy to find out the sexual minorities as they do not immediately faith on other because of facing violence.

6.4.54.11. Total no. of Sexual Minorities

The total number of sexual minorities is a big issue in this study as the same is not so easy to find. No actual statistical data is available till today. The humsafar trust is the only organization which is working in this regard as the data provided by humsafar trust which was relied by ministries of the then government and same has been referred by Indian Judiciary in Naz Fondation v Govt. of NCT of Delhi and Suresh Kumar Khosal and Naz Foundation case. Although, there is no actual statistical data on the number of sexual minorities but the number of coming out sexual minorities is increasing even after having the social and legal hurdles.

6.4.54.12. Social Unacceptance and Sexual Minorities

It is a great challenge for sexual minorities even after having recognizing the transgender as third gender. Social unacceptance argument is based on the ground of immorality, uncultured, non-civilization, dishonor, and unnaturalness, against the social norms, customs, religion and also the law. Having such social disapproval and unacceptance by the larger society, Delhi is having a different story as it is becoming a rising hub for sexual minorities. The increasing in the events of sexual minorities is taking a lead to put education and awareness about the issues relating to sexual
minorities in Delhi. The situation in Delhi is turning towards acceptance and recognition of sexual minorities.

6.4.54.13. Social Exclusion and Sexual Minorities

The Indian society at large considers sexual minorities as mentally ill persons. The identity, act and behavior are not inclusive in mainstream and remains excluded. The problem becomes more dangerous when the situation of conservativeness remains unchanged. The issue needs a re-look and understanding for solving the problem. The human rights perspective is used as an ‘Umbrella Perspective’. The social exclusion has to convert into social inclusion.

6.4.54.14. Personalities Speaking Positive for Sexual Minorities’ Rights

The issue of homosexuality, Sec. 377 of IPC and same-sex marriage has been discussing more till today and it is becoming the latest topic of debate and discussion not only in Indian society (particularly Delhi) but also in international communities including the famous celebrities like Barak Obama, Tim Cook (Apple CEO), United Nations Authorities (Navi Pillay, Ban Ki Moon, etc.), Anjali Gopalan, Anand Grover, Celina Jaitley, Akkai Padamshali, etc. They are discussing sexual minorities’ relating issues not only at national level but also at international level.

6.4.55. Legal Observations and Sexual Minorities

6.4.55.1. Indian Criminal Justice System and Sexual Minorities

Out of various criminal justice institutions i.e. police, prosecution and judiciary, the sexual minorities are more vulnerable in dealing with police. They are harassed in the name of Sec. 377 of IPC. It amounts the extraction of money from them. It includes blackmailing, mental and physical violence. Even after having the Constitutional provisions for protection of all including sexual minorities, they do not approach for further remedy from Police, Prosecution and Judiciary particularly with reference to same-sex consensual sexual activities in private. The sexual minorities are more vulnerable with reference to Indian Criminal Justice System with police.
Police atrocities target sexual minorities for getting money with the use of Sec. 377 of IPC. This Sec. 377 of IPC is known as ‘British Colonial Law’ and ‘Sodomy Law’. Although, sexual minorities do not approach Indian criminal justice, however, the fresh petition Navtej Singh Johar & ors. v. Union of India is the first case in which judiciary is approached for protecting and providing rights of sexual minorities in general through repealing of sec. 377 IPC.

6.4.55.2. Demand for Protecting Constitutional Rights

The right to equality under Article 14 of the Constitution always remains in picture when the victimization is based on the discrimination and prejudice by any individual, society, law, judiciary or other authority. This movement has also the basis of protecting and providing the status of equality in society and law keeping in view the violence based on sexual orientation and gender identity. The discrimination on the basis of sexual orientation and gender identity is demanded to be protected under Article 15 of the Constitution. The right to freedom of speech and expression with certain restrictions has been given under Article 19 of the Indian Constitution but the same is very centric in realizing the debate and discussion to which subject of study talks about. The right to privacy has been considered as an intrinsic part under Article 21 of the Constitution which is also in line with this movement.

6.4.55.3. Demand of Repealing Sec. 377 of IPC

This whole movement is moving around the Sec. 377 of IPC. Except the social demands for protection of rights of sexual minorities, the repealing of Sec. 377 of IPC is mainly focused. The mental and physical atrocities by police make it more relevant to repeal Sec. 377 of IPC. This sodomy law was passed during the time of Britishers. The same law has already been repealed by the legislature of England itself. Indian Parliament has a serious task of repealing this law even after experiencing the changes in this regard.

6.4.55.4. Demand of Amending Sec. 377 of IPC

The demand of amending this Sec. 377 of IPC is parallel to the demand of repealing this section as some wants this section should to be available for the
protection of victims of sexual offence if committed as per the definition of Sec. 377 itself because in case of not amending Sec. 375 and 376 IPC, the punishment of offences committed as per the definition of Sec. 377 IPC, such offences shall remain out of the reach of law. There is requirement to punish act which is criminal as per established law. Mere identity should not be criminalized as sexual minorities face.

6.4.55.5. Demand of Legalizing Same-Sex Sexual Activity between two Consenting Adults in Private as Similar in Delhi High Court Judgment in Naz Foundation Case

As per the decision of Delhi High Court, the sexual activity between two consenting adults in private does not commit offence was treated as a vital judgment for sexual minorities as this judgment itself protect the rule of natural justice where no one has the right to interfere in the private life of others if it is not harming them. The same is also attached with the J S Mill’s ‘Harm v. Offence Principles’. So, the demand is close to recognize the decision of Delhi High Court in Naz Foundation case earlier in July 2009.

6.4.55.6. Demand of Passing Anti-Discrimination Specific Legislation for Sexual Minorities

As per the situation of brutalities against sexual minorities in Delhi, there is a demand to protect them by legislating specific law particularly ‘Anti-Discrimination Legislation’ that has a relation to have a specific legal remedy through an established procedure of law. Out of this exercise, one Bill for protection of rights of transgender has already been introduced in the Parliament and same is pending. This writing also has a proposal of such specific legislation with some extra efforts keeping in view that available Bill.

6.4.55.7. Demand of Gender Neutral Terms in Legislative Language

On the basis of equality and non-discrimination treatment, the sexual minorities are asking to make changes in the existing laws which prefer to use the gender terms like he or she, male or female, and husband and wife, etc. It is demanded
that the within the relationship of two bodies it should be understood and used as ‘civil partnership’ and gender neutral terms like ‘person’. This combined effort of asking for a better life to the sexual minorities, the movement has dealing with ‘No-377, Breaking Free India’ is present. The cause is now relating to either repeal or amend Sec. 377 IPC and make all legislative language approachable as equal to all.

6.4.55.8. Issues and Implications with the Application of Sec. 377 of IPC

The definition of Sec. 377 IPC has an implication in its application as there is no existence of will and consent which always remains important in establishing an offence relating to sexual crime like rape. In the case of committing a crime under Sec. 377 IPC it has been observed that the same is applied on the heterosexual sexual relationship partners’ act of doing penile-non vaginal sex. Hence, in case of having such issues and implications with the application of Sec. 377 IPC, it is pertinent to think, discuss and debate on the Sec. 377 IPC. During study, it was found that no. of cases in which sec 377 IPC was alleged and charged on the husband by his wife. It means the ratio of applying 377 IPC has been in creating in heterosexual relationship.

6.4.55.9. Non-implementation of Guidelines of Supreme Court to Recognition of Transgender as ‘Third Gender’

The transgender has been recognized as ‘Third Gender’ by the Supreme Court in its judgment in National Legal Service Authority v Union of India case. The said judgment includes number of guidelines to the Centre as well as State Governments for implementing the same within a stipulated time of six months after the judgment but the government is still not fulfilling the same. The government is still in confusion and trauma in implementing these guidelines as there are theoretical as well as practical issues involved in this. The transgender rights are yet to be implemented properly. During the study, it was observed that transgender would seek and avail ‘Right to Marry and Form Family’ under this judgment. Which will be a step forward in establishing same-sex marriage.
6.4.55.10. Indian Judiciary Response

Indian Judiciary has always been a protector of human rights of every individual citizen of India. The issue of Constitutionality of Sec. 377 of IPC has been dealt with national and international references yet the clear stand of judiciary needs more to be done. There is no clear cut denial of having and protecting the rights of sexual minorities by the judiciary itself. In this case, the ‘referral strategy’ is present as an observation. The response of Indian Judiciary looks as shifting the liability on legislative because in Suresh Kumar Khosal judgment judiciary said that legislature is competent to either repeal or amend Sec. 377 IPC. This seems a shifting game between legislative and judiciary under the said referral strategy.

6.4.55.11. Law and Morality Debate

Within the jurisprudence itself, this debate has not final conclusion and it is only based on the different views and debate on a particular time and context framework. Obviously, this debate looks like a continuous process which is now furthered and strike after the Naz Foundation case, Suresh Kumar Khosal and NALSA case. The debate on inter play between law and morality is very much centric in case of homosexuality issue.

6.4.55.12. Public v. Privacy Rights Debate

The study observes that this movement and discussion is centric to the debate and discussion on public v. private rights for which we need to take into consideration the very concepts of morality, law and justice. Although, judiciary has a long list to discussion on public and privacy rights yet the case of sexual minority persons lots of contentions in favour and against for which efforts are going.

6.4.55.13. Restroom Policy

During the study, it was observed that the use of public common room as well as the places for specific purposes like washroom, restroom etc. has been a giant issue within the legal perspective. Some of the places were known as specifically reserved for sexual minorities keeping in view the non-acceptance and facing of violence from
the society at large. Some of the countries are looking forward to have some specific policy in the name of ‘Restroom Policy’ for sexual minorities. Except this, the policies on various other specific issues have also been initiated in other countries. These are relating to marriage, documentation, social security schemes, etc. The issue of using washroom was also observed during the research.


During the general election 2014, most of the political parties were engaged in discussing about the issue of homosexuality and Sec. 377 IPC as an agenda but after the election no parties has come forward to take initiation on the issue. ‘The Modi government’s record on sexual minorities’ issues is not a happy one. India has either abstained or voted against sexual minorities’ rights at the international level. In September 2014, less than four months after Modi came to power, India abstained on a resolution on sexual orientation and gender identity at the human rights council. In March, 2015, India joined Russia, Pakistan, Saudi Arabia, China and Iran in voting against the extension of benefits available to heterosexual couples to same-sex couples in the UN General Assembly’78. India has also to vote on sexual orientation and gender identity resolution (SOGI Resolution) at the United Nations that seeks to establish an independent expert on sexual orientation and gender identity at the human rights council. The resolution was moved in June, 2016 by six Latin American countries (Brazil, Argentina, Mexico, Chile, Uruguay and Columbia) and for the first time in UN history seeks to focus dedicated and systematic attention on the violence and discrimination faced by sexual minorities.’79 Again, India abstained from voting for the resolution but UN on 29th June, 2016 has just voted and passed to have a special rapporteur on the issue of sexual orientation and gender identity.

6.4.55.15. Human Rights’ Issues of Sexual Minorities with Reference to Indian Criminal Justice System

After studying human sexuality in general and sexual minorities in particular, help from various NGOs and meeting with research respondents (sexual minorities)

78. Arvind Narrain, ‘At the UN, We must uphold LGBT Rights’, Hindustan Times, Lucknow, Wednesday, June 29th, 2016.
79. Ibid.
personally, researcher observed many things. Due to ethical responsibilities and limitation of work the names, identities and other privacy matters are not disclosed. Researcher discussed with research respondents to know about their personal experiences relating to Indian criminal justice system such as police, prosecution and judiciary. Although researcher has concern with the issues faced by respondents relating to Indian criminal justice system but for producing better solution of the research problem some other issues related to respondents within the family and society were also needed to give very briefly. The issues discussed in social and legal context has a perspective of human rights which were basically relating to life, liberty, equality, dignity and development. Broadly discussing about the human rights has a relation to Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966, International Covenant on Economic, Social and Cultural Rights, 1966, and various other provision mentioned in international human rights law. Although, Delhi has been turning as a cultural hub for sexual minorities, yet the human rights violence against them is still a subject of big concern.

The human rights perspective is a wider aspect and covers all human society. The real life experiences of sexual minorities are complex, complicated, misunderstood and often misrepresented. The limited studies on the psycho-social nuances of sexual minorities’ existence and the implications of it on their life, especially their ‘closeted’ lives point out their extremely marginalized and very unhealthy life and lifestyles as they grew up as gay, lesbian and bisexual beings which were perceived by their fellow men and women as ‘un-natural’, ‘bad’, ‘wrong’ and immoral’. The disclosure of sexual orientation and gender identity had often resulted in disowning of them by their family members leading to homelessness and financial instability. Researchers have also unearthed how these aspects of their life have impacted on their ‘risk taking behaviors’ such as drug abuse. Lives of many sexual minorities in Delhi are closeted mainly by social institutions such as religion, education, marriage, family etc. with their normative prescriptions and proscriptions, molded on widely prevalent ‘homophobia’ and ‘heteronormative bias’ which in turn created personal, legal and social barriers to the normal lives of sexual minorities. These institutional barriers are further supported by international health bodies such as WHO which endorsed the ‘abnormality’ and ‘behavioral disorder’ nature of sexual
For sexual minorities normative prescriptions and proscriptions on sexuality by social institutions have resulted in deep rooted conflicts with religious beliefs, upbringing practices, and in that process many of them also have internalized homophobia and they subsequently nurtured feelings of fear and isolation. These have resulted in many serious ‘psychosocial issues’ that positively or negatively impacted their self-acceptance, self-esteem and confidence. At social, legal, and economic level closeted sexual minorities have encountered disputes with family and peers, discrimination at work place, indebtedness, violence, blackmail, legal actions, and restrictions on having or adopting children, criminalization, and punishment. Psychosocial problems of sexual minorities are induced by an external environment which could be hostile to their orientation, identity and lived realities of life. The inequality arising from normative constructions of masculinity, social attitudes toward feminized males and their ‘unusual or unnatural’ sexual practices, instances of sexual abuse, assault and rape, poverty and disempowerment, alongside legal prejudice adversely impacted their lives. Many legal and social barriers contribute to psychosocial issues and hence much harder to deal with them at societal and individual level. Homophobia and heteronormative bias of society forced them to live with extremely low self-esteem, depression, sexual aggression, and drug or alcohol abuse.

This situation is against to their human rights relating to the ‘Right to Life and Personal Liberty’, ‘Right to Autonomy’, ‘Right to Privacy’, ‘Right to Equality’, ‘Right to Dignity’, ‘Right to Development’, ‘Right to Health (curing from HIV/AIDS)’, ‘Right to Freedom’, ‘Right to Marry and form Family’, ‘Rights in Property’, ‘Parenting and Adoption’s Rights’, ‘Right to free Expression’, ‘Right to Identified as Person’, and various aftermath rights. Common Law Ministers’ meeting in Sydney, Australia on July 11th-14th 2011 had also concerned regarding this, and it was emphasized that India is an important example of what it is possible for other Commonwealth Countries to do. Currently, 41 of the 53 Commonwealth Countries penalize homosexuality. This is having a profoundly negative impact on our being
able to reach men who have sex with men (MSM) with HIV services—said by Anton Kerr, Chair of Commonwealth HIV & AIDS Action Group (CHAAG) and Head of Policy at the Alliance.

Part-III

6.5. Responses on questionnaire, data Analysis, Interpretation and Testing of Hypotheses

6.5.1. Responses on Research Questionnaire and Analysis of Data

After contacting to respondents, the questionnaire was e-mailed but not much response was received even after ensuring to do the same. A new social survey based website i.e. survey monkey was used to collect data hence total no’s of responses received from this were twenty. Except these twenty responses, one response was also received personally. The analysis of both is separately presented.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Questions</th>
<th>Yes</th>
<th>No</th>
<th>Skipped</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Society relates LGBT identity specifically with sexual intercourse acts, activity, preferences:</td>
<td>15</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>How do you see and understand LGBT persons (Homosexual Persons) in Delhi</td>
<td>11</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Normal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Abnormal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Minorities</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Others</td>
<td>1. Better than normal</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Why only in Delhi. (What those who didn’t visit Delhi). In general, minorities and most of closeted).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3. **How do you see and understand the Orientation/Identity/ behavior of LGBT persons (Homosexual Persons) in Delhi?**

<table>
<thead>
<tr>
<th>Disease /No disease</th>
<th>Natural/Unnatural</th>
<th>Moral/Immoral</th>
<th>Legal/Illegal</th>
<th>All above</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>10</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

**Others**

1. Natural
2. it's normal and an individual choice
3. Normal
4. I didn’t understand this question.

4. **Do you think violence against LGBT persons (Homosexual Persons) in Delhi exist?**

| 18 | 1 | 1 |

5. **Do you think the rights of LGBT persons (Homosexual Persons) in Delhi are violated through such violence?**

| 17 | 2 | 1 |

6. **Do you think Sec. 377 of IPC violate the rights of LGBT persons (Homosexual Persons) in Delhi?**

| 17 | 2 | 1 |

7. **What types of violation of right of LGBT persons (Homosexual Persons) in Delhi do you see and understand?**

<table>
<thead>
<tr>
<th>Violation of Constitutional Rights</th>
<th>Violation of Statutory Rights</th>
<th>Violation of Human Rights</th>
<th>Violation of Social Rights</th>
<th>All above</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
<td>7</td>
<td>1</td>
<td>10</td>
<td>1</td>
</tr>
</tbody>
</table>

Other

1. Violation of their existence
8. How will you respond about the LGBT rights (Homosexual’s Rights) particularly in Delhi and India in general now after passing of three judgments in Naz Foundation Case, Suresh Kumar Khosal Case and NLSA Case?

| No Comment | 11 | 2 |

Other

1. Naz foundation case—great achievement but again not so positive.
2. Just let them be. Stop interfering in their personal lives.
3. I will congratulate them.
4. it’s not LGBT rights---its right of individual---if being yourself is crime then freedom is illusion.
5. Visibility, outreach, activism.
6. LGBT rights are progressing slowly in our country. But lot of education is required in all forms.
7. The three judgements are not going to help Indian society that much. People here will still think from their point of view. Yes these judgments are going to help people to have awareness about us that we exist and that our right to live like we want is there as well.

9. According to you, how can the socio-legal problems of LGBT persons
<table>
<thead>
<tr>
<th></th>
<th>(Homosexual persons) in Delhi be solved?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>By repealing Sec. 377 of IPC</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>By amending Sec. 377 of IPC</td>
<td>8</td>
</tr>
</tbody>
</table>

1. Other

1. by repealing Sec. 377, as well as law for gay marriage, for protecting child abuse.
2. it’s not all about amending but also to see the basic needs of them---yes, there is need to amending the Sec. 377 of IPC as well as rights to the minorities (LGBT) should be given to live in society.
3. Both, amending of laws and social/cultural awareness and change.
4. By changing the attitudes of the citizens of India.
5. By amending Sec. 377 and adding rape for same-sex person to be covered under this.

10. Any other information you want to share?

<table>
<thead>
<tr>
<th></th>
<th>No comment</th>
<th>9</th>
</tr>
</thead>
</table>

Other

1. What is research title, objective, for which exam, if specified at beginning, very helpful and assurance for confidentiality of the information.
2. Don’t let anyone decide who someone cares for, loves, or grows old with. There should be 1-1
equality between what a heterosexual can do and what a homosexual is allowed to do.

3. I think everybody has right to live their life no one can judge them to live there life.

4. I have many friends who are from LGBT community, they are not open because of societal pressure, family pressure and pressure by law also. So I want to appeal to change the law so that the people live their life as their sexual orientation not under pressure. Thanks!!!.

5. All LGBT people should be proud of their identity. They need to tell about themselves and educate the people around them. If this is done most of our society will accept LGBT community.

6. hgdgfdf.

7. Next time before you prepare a questionnaire please get it reviewed. The questions are so vague.

8. People are tortured or not accepted for being a part of the LGBT community. They are also disowned by their family. It’s mostly because of what we’re not taught in the class that it’s natural and not a disease that can be cured. And also that sex-education in India is the worst, same
as null.
9. Yes an important aspect relating to behavior of your colleagues and other people around you they just want to make feel upset everyday.

<table>
<thead>
<tr>
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<th>No</th>
<th>Skipped</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>Society relates LGBT identity specifically with sexual intercourse acts, activity, preferences:</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>How do you see and understand LGBT persons (Homosexual Persons) in Delhi</td>
<td>Normal</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Abnormal</td>
<td></td>
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<td></td>
<td></td>
<td>Minorities</td>
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<tr>
<td></td>
<td></td>
<td>Others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>How do you see and understand the Orientation/Identity/behaviour of LGBT persons (Homosexual Persons) in Delhi?</td>
<td>Disease /No disease</td>
<td>Natural, but illegal as per current law.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Natural/Unnatural</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>All above</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Do you think violence against LGBT persons (Homosexual Persons) in Delhi exist?</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5. Do you think the rights of LGBT persons (Homosexual Persons) in Delhi are violated through such violence?  
   Yes

6. Do you think Sec. 377 of IPC violate the rights of LGBT persons (Homosexual Persons) in Delhi?  
   Yes

7. What types of violation of right of LGBT persons (Homosexual Persons) in Delhi do you see and understand?  
   - Violation of Constitutional Rights  
     Yes
   - Violation of Statutory Rights
   - Violation of Human Rights  
     Yes
   - Violation of Social Rights  
     Yes
   - All above
   - Other

8. How will you respond about the LGBT rights (Homosexual’s Rights) particularly in Delhi and India in general now after passing of three judgments in Naz Foundation Case, Suresh Kumar Khosal Case and NLSA Case?  
   - No Comment
   - Other
     The Supreme Court judgment in the Naz Foundation case doesn’t do justice to India’s Constitutional obligations or International Covenant on Economic, Social and Cultural Rights. LGBTs and their issues need to be considered in the larger domain of human rights and dignity. Criminalization is a complete no.

9. According to you, how can the socio-
legal problems of LGBT persons (Homosexual persons) in Delhi be solved?

<table>
<thead>
<tr>
<th>Option</th>
<th>Yes</th>
<th>No</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>By repealing Sec. 377 of IPC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>By amending Sec. 377 of IPC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
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</tbody>
</table>

10. Any other information you want to share?

<table>
<thead>
<tr>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>No comment</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>

6.5.2. Data Analysis

Research related data has already been included in earlier table. Now, for the purpose of analyzing data, the survey monkey website has helped a lot. The data was analyzed through survey monkey. The analysis of data in its original has been included in annexure part of thesis. However, the data interpreted is as according to its analysis.

6.5.3. Interpretation of Data

Interpretation of Data shows that 15 respondents (78.95%) say that society relates sexual minority identity with sexual acts and activities. Further, 11 respondents (57.89%) say that sexual minority is normal. In case of sexual minority identity, the data shows that 10 respondents (52.63%) say that sexual minorities’ sexual orientation, identity and behavior is natural. However, one has responded for this as a matter of individual choice. Major findings from the question relating to violence against sexual minorities, the data reveals that 18 respondents (94.74%) say that there is violence against sexual minorities exist in Delhi.

With reference to Sec. 377 of IPC, for the question whether it violates the rights of sexual minorities, the data reveals that 17 respondents (89.47%) say that Sec. 377 of IPC violates their rights. On asking about the nature of rights, data shows that 10 respondents (52.63%) say that there is violation of all types of rights whether Constitutional, Statutory, Human Rights and Social. However, one responded about
the violation of their existence. Further, the 11 respondents (61.11%) did not commented on the sexual minorities’ rights after passing of three judgments i.e. Naz Foundation Case, Suresh Kumar Khosal Case, NLSA Case) although 7 respondents responded on the same in terms of Naz Foundation case as a great achievement but not so positive, non-interference in personal life, congratulation, recognition of sexual minorities’ rights for realization of freedom, visibility, outreach, activism, sexual minorities’ rights are progressing but lot of education requires in all forms, changing of mentality. Further, with reference to change in existing law i.e. Sec. 377 of IPC and knowing other ways to solve the problem relating to sexual minorities, the data reveals that 8 respondents (40%) say that the Sec. 377 of IPC must be amended. In furtherance, 7 respondents (40%) say that the Sec.377 must be repealed. There are also some respondents who responded for enacting new legislation for sexual minorities keeping in view the human rights of all. Data from one response received personally reveals that society relates sexual minorities’ identity with sexual intercourse acts, activities, and preferences. The respondent believed sexual minority persons as normal, natural but illegal as per current law. The respondent says that violence against sexual minorities’ persons exists in Delhi and due to this violence the rights i.e. Constitutional, Human and Social right of sexual minorities’ persons are violated in Delhi. The respondent responded that the Supreme Court judgment in Naz case does not do justice and the rights of sexual minorities’ persons need to be considered in larger domain of human rights and International Covenants. The major findings are divided in social and legal aspects.

From the data analyzed, it is interpreted that society has generally related sexual minorities with the sexual activities specifically sexual intercourse. However, some has different opinions about it. Further, the identity of sexual minorities was generalized has normal. In case of orientation and identity of sexual minorities, it was generalized to be natural one. With reference to violence against sexual minorities in Delhi, it was generalized that the violence against them was prevalent and such violence has violated their rights (Constitutional, Statutory, human and social rights). Further, the numbers of respondents do not want to respond on the issue however seven respondents responded on three major judgments. In case of changing in law (Sec. 377 IPC) it reflects mix responses i.e. seven wants to repeal this Sec. 377 IPC
and eight want to amend it. However, social, cultural and educational awareness was also responded. In last, data reveals that issues relating to torture, in human, degrading behaviour were also responded with some suggestions too.

6.5.4. Testing of Hypotheses

At the beginning of study, the two major hypotheses were framed. Out of these two, first was related to the causality of violence against sexual minorities as the sexual orientation and gender identity are directly related to violation and denial of human rights of sexual minorities. After the research study completed and on the basis of participant observation, data analysis and interpretation, this prior hypothesis is found proved. As there are incidents of violence against sexual minorities exist in Delhi and due to this their human rights are violated because of sexual orientation and gender identity. So, the sexual orientation and gender identity are two major causes for such violence and violation of rights of sexual minorities in Delhi. The second hypothesis was solution oriented as the specific legislation may provide solution for the problem faced by sexual minorities. The same hypothesis is also found proved after research study. There is strong demand of a new specific legislation particularly anti-discriminatory legislation for protection of their rights. Hence, after the research study, both the hypotheses are proved as the sexual minorities in Delhi face violence and because of this their rights are violated. For such violence and violation of rights the law (Particularly Sec. 377 IPC) is also a responsible factor in legal context. With reference to second hypothesis, not only the new specific legislation is demanded but also amendment and repealing in existing law has also been found in addition.

After writing of this chapter, it remembers all the efforts made and issues faced during this whole journey of mix ups and downs in research study. The researcher accepted this study as a new subject of knowledge. How much this study has been successful in achieving the answers of the research questions, its research objectives and a better solution of this research problem with understanding of new conceptualization and theorization is discussed in next chapter. The conclusion and suggestions chapter is based on the data observed, analyzed and interpreted. It makes no favor to anyone related to research study. The ethics of research are taken care in doing and writing of this Ph.D. thesis.