CHAPTER-7
CONCLUSION & SUGGESTIONS

“Law should not sit limply, while those who defy it go free and those
who seek its protection lose hope”

-Malimath Committee Report

7.1. Conclusion

With reference to research problem, research questions, research objectives, research hypotheses, research methodology and findings out of theoretical study and empirical observations, the research study comes to its conclusion. In writing the conclusion of this Ph.D. thesis, it is necessary to understand the relationship of human rights, society and law by quoting that “All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all the others. I cannot detach myself from the wickedest soul.”-Mahatma Gandhi.

After completing this whole research study, it is concluded that primarily this subject is not much explored because it is considered as a taboo subject and a number of complicated issues are attached with this. Because of not exploring and very short writing on this subject, the very powerful fact with this study concludes that the writing of this thesis was carried out with relational and co-relational approach hence this specific writing comes out as a specific work for sexual minorities. Further, it is relating to the sexual minorities to be deemed as person and on this basis the violence and discrimination against them has to be treated and recognized as violence against a person. Because of availability of human rights to all, every individual including sexual minorities is very much entitled to have these human rights. The study concludes that being a person, the violence against sexual minorities is violation of human rights and in case of asking and demanding the protection against such violence and discrimination is vehemently an issue of human rights protection. Hence, the violation of sexual minorities’ rights is violation of their human rights and the demand of protection of such human rights is a demand of protection of human rights. The study concludes that “Sexual Minority persons also have the Human Rights”.

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Further, an understanding of human sexuality plainly and within various perspectives primarily describes the process of sex determination followed by different types of orientations, identities, behaviors and performances. Generally, a person inherits at least one biological sexual identity but the understanding of enumeration of different sexual orientations, gender identities, behaviors and performances always remain a herculean task. The study of human sexuality provides the knowledge of sex, gender and related activities like sexual orientation, sexual behavior, gender identity, gender behavior and performances etc. In conclusion, the study refers that the understanding of human sexuality provides a study of ‘Spectrum of Sex and Gender’.

Out of the study of human sexuality, the study concludes that understanding of sex is related to ‘The biological identity and its various identities and activities of one or more parts of a person’s body in the process of socialization’ and for understanding gender, the study refers that generally, an individual is identified with his or her sexual and gender identity. It is not only on the basis of his or her identity assigned by biological sexual identity but also the perception relating to every person at large. Hence, in case of socialization process of gender identity formation every individual not only imbibes a ‘Determination of individual’s own gender identity personally’ but also has a ‘Determination of individual’s gender identity by others’. Whenever, we talk about ‘determination of individual’s own gender identity’ it is related to an individual’s feelings, thinking, behaviors, perception, reactions and experiences for its own but in case of ‘determination of individual’s gender identity by others’ it is related to the feelings, thinking, behaviors, reactions, perception and experiences of others for individual other than own. Hence, the study concludes that gender seems ‘An imagination and determination of different identities of person’s body and its various activities’.

As a consequence of theoretical understanding of human sexuality, sex, gender, queer studies, sexual minorities, homosexuality, Sec. 377 of IPC and various related terms, the issues relating to orientation and identity remains central on the basis of different perceptions, looking, thinking, understandings, behaving and performances. To be anything (being anything) and to be identified anything (being identified anything) are two different concepts to understand as far as the sexual
minorities’ related study is concerned. The concept of identity formation process becomes relevant in this case which has multiple complexities.

Generally, the conception of human sexuality includes the male and female sexuality studies but inside the male and female sexuality related studies, the study of heterosexuality and homosexuality comes next keeping in view the spectrum of sex and gender. For this the sexual orientation and gender identity are important factors. Hence, homosexuality needs to understand within the separate contexts i.e. psychological and physiological with and without limitation up to individual. When, we understand homosexuality in terms of psychological context with a limitation up to an individual, it looks incomplete because for understanding homosexuality, we need a group of at least two persons of same sex. But with a limitation up to an individual, the study considers such homosexuality as a concept based on personal feelings, attraction, perception, attachment, liking, thinking, loving, and desire of one person towards the other person of same sex. The study considers this situation as ‘Imagination Situation’ or ‘No Sharing Situation’ because such homosexuality remains in mind or in closet until comes out. It means, an individual is just having his or her own affairs limited to the boundaries of its own mind. The study considers this homosexuality as a concept of ‘Psychological Homosexuality’ or ‘Perceived Homosexuality’ or ‘Latent Homosexuality’ or ‘Mental Homosexuality’ or ‘Desired Homosexuality’ or ‘Attractional Homosexuality’ or ‘Orientation Based Homosexuality’ or ‘unshared homosexuality’ relating with a limitation up to one particular individual separately.

Now, if we discuss homosexuality in terms of physiological context, a group of at least two persons of same sex is required. Such persons of same sex initiate, accept and finally agree for a friendship on the basis of same feelings, perception, attractions, attachments, likings-disliking, thinking, loving and desiring with sharing, will and consent. This situation is considered as ‘Sharing Situation’ subject to mutual acceptance and agreement. This situation reflects in expressing the behavior based on same feelings, attraction, attachment, liking-disliking, thinking, loving, and desire of one person towards the person of same sex. It means the behavioral part comes in picture. Here, the concept of coming out works. Such homosexuality is a concept of same-sex behavior, same-sex expression. The study concludes and
considers this homosexuality as a concept of ‘Physical Homosexuality’ or ‘Behavioral Homosexuality’ or ‘Sharing Homosexuality’ or ‘Friendship Homosexuality’, or ‘Romantic Homosexuality’ or ‘Expressional Homosexuality’ without a limitation up to particular individual. In this situation, will, consent and coming out become the key points for deciding the agreed and non-agreed homosexuality.

Further, this category turns and goes for a mutual acceptance and agreement for exclusive sexual performances, practices and relationships between the same sex persons again subject to mutual acceptance and agreement. This situation is considered as ‘Doing Situation’ or ‘Performing Situation’ or ‘Practicing Situation’ or ‘Executing or implementing Situation’.

Now, when we see the context of sexual activities and performances, the homosexuality turns a concept of relationship based on same-sex sexual activity, same-sex relationship. The study concludes this homosexuality as ‘Sexual Homosexuality’ or ‘Relationship Homosexuality’, ‘Performed Homosexuality’ or ‘Acting Homosexuality’ or ‘Executed Homosexuality’ or ‘Popular Homosexuality’ without a limitation up to particular individual. With reference to this research study particularly for sexual minorities, the researcher understands and comes to the conclusion about existence of some working theories such as ‘Theory of Confusion’ or ‘Confusion Theory’ more specifically ‘Sexual Orientation and Gender Identity based Confusion Theory’ and similarly, the ‘Theory of Alternative Love’ or ‘Alternative Love/ Liking Theory’ (ALT Theory). It is a matter relating to alternative likings and disliking. Sexual minorities are sexuality loving with different liking and disliking. It means that homosexuality as concept and sexual minorities as persons represent identity, expression, behavior, act, friendship and relationship with a temporary content of confusion.

After this, the male and female homosexuality goes in the conclusive study of lesbian, gay, bisexual, transgender, etc. The study concludes that there are active and passive sexualities having active gay and passive gay, active lesbian and passive lesbian and so on when we go in to the sexual context of homosexuality. Similarly, there are transsexual and transgender. Due to the sexual homosexuality, the
psychological and expressed homosexuality is also targeted as same. Hence, this
problem of sexual minorities is specifically related with the sexual orientation and
gender identity.

On the basis of this, sexual orientation and gender identity has become key
issues for study of sexual minority persons. The status of various approaches has been
very selective one and includes day and nights efforts of academician, researchers,
scientist to find out the uniformity in the existence of different orientation, behavior
and identity of sexual minority persons. Out of this, the present focus of sexual
minorities’ related study has become so much centric around the issue of whether
homosexuality is ‘Born or Created’ in general and existence or non-existence of
‘Gay Gene’ in particular. It means, there is no consensus on the factors responsible
for specific sexual orientation and gender identity. Except this the scientists and
researchers are also putting their advanced experimental development keeping in view
the reproduction and having the biological children out of the same-sex relationships.

The study also concludes that the research on sexual minority identified
persons and their related issues are not much explored in various other disciplines
such as biological, medical, psychological, anthropological, etc. The socio-legal
aspects only put the facts related to the issues of inequalities, stigma, trauma,
discrimination, non-recognition and non-acceptance of sexual minority identified
persons. ‘A number of contributors discussed the need for a less heavily gendered
society- for example, the use of ‘male’ and ‘female’ on forms when sex/gender is
irrelevant to the matter at hand. In a society where there was less concern with gender,
androgynous and gender ambiguous people would face fewer barriers to social
inclusion, and gender norms overall would be less heavily enforced. A certain amount
of de-gendering is clearly helpful in achieving a more equal, inclusive society. In
think if the whole world could simultaneously reduce the amount of society and
convention that rests on gender divisions and sexuality divisions, that would work.’
Similarly, de-categorizing sexuality is seen as a useful strategy. For example
contributor Grant Denkinson said that ‘what I’d like to see is more of a connection
with not having binaries, so that rather than having another box that says “bisexual”,
it’s saying it’s complicated, fuzzy, but also sometimes you don’t need to know the
category’, and another contributor to project further argued that ‘people need to start thinking and stop putting other people in boxes’.

In socio-legal context, this issue is close to lack of education, misconception and lots of myths and misconceptions. In India, no such type of movement was ever initiated. The discussion about the homosexuality in general and sexual minorities in particular has been evident with history and contemporary period which has now become a movement. This movement is not only a movement but also a revolution and possesses many-many hardship and challenges. This issue of homosexuality and Sec. 377 IPC has been gaining rise in public debates and discussions through different modes like news, electronic and print media (Burkha Dutt on NDTV, Satyamev Jayatey, etc.) For sexual minorities, the movement, which is going not only in Delhi but also throughout the country, is known as sexual minorities’ movement and it is not exclusively related with the issue of right to have sex but a movement includes the issues relating to equality, dignity, privacy, liberty, life, non-discrimination, love, respect, identity recognition, non-interference, de-criminalization, protection, choice, solidarity and reclaiming the democracy, inclusion, marry, adoption, autonomy, human rights and justice. Presently, this movement is understood as a ‘Sexual Minorities’ Rights Movement’ or ‘LGBT Rights Movement’ or ‘Colorful Movement’ or ‘Rainbow Movement’ or ‘Cultural Mixing Movement’ or ‘Queer Rights Movement’ and a new ‘Human Rights Revolution’ with different categories like academic, civil society, media, corporate, political, legal and human rights etc. and based on sexuality and gender rights. In order to understand the impacts of this movement, it is clearly seen that the current issue is highly debated and discussed not only among the individuals but the institutions of various types whether social, legal, political, religious or other. Further, the impact of this movement is not limited up to Delhi and it has signs to spread all over India.

The study concludes that the demonstration during the program, pride parade, protest rallies, etc. by sexual minorities remains very peaceful and gentle despite having the gathering of young generation persons mostly between the age group from 18 to 30 and others. The movement goes with certain posters having written slogans, walking with not much hue and cry and maintaining silence as a rule. For this purpose, earlier permission of appropriate authorities (local administration i.e. police)
is also sought and received by the sexual minorities so that during the event a discipline should be observed. The central themes during protest remain based on the violence against sexuality, sex, gender, the role of Sec. 377 IPC for such violence, asking for recognizing the rights relating to love and marriage because of homophobic society. Delhi has many organizations which are working in this specific area and the study refers such organizations, groups and NGOs as ‘Sexuality and Gender Oriented Organizations/NGOs/Groups’. Some are specifically oriented on homosexuality as well. In this case, such are referred as ‘Homosexuality Oriented Organizations/NGOs/Groups’ or ‘Gay/Lesbian/Bisexual/Transgender Organizations / NGOs/Groups’.

Moreover, those who do not want to even think and talk about sexuality, homosexuality and sexual minorities are becoming the part of debate and discussion only because of impact of this movement. Delhi has been rising as a cultural hub for this movement. Many programs, events, cultural events, film screenings, lectures, pride parades, protest rallies, festivals, debate and discussion are evident during the study and this is still continues however the coming out of sexual minorities is limited one. Many NGOs, institutions, organizations and working groups, various others are joining hands with this movement. Number of other organizations relating to women’s rights, child rights, human rights and social-legal rights based groups have also joined and taken a progressive step in rising the voice for the protection of rights of sexual minorities and removing the violence against sexual minorities within families, society, legal and other institutions. After the study, it is concluded that Delhi has been gaining recognition in terms of leading this movement.

The study also concludes that in case of penalizing the offence relating to sexual activities between the same sex persons, it is popularly seen with the concept of homosexuality in general while in case of asking and recognizing the rights for same-sex sexual activities it is seen with the concept of same-sex marriage and civil union under the shadow of right to privacy, life and dignity. This is pertaining around the world. The study further concludes that due to recognition of sexual minorities’ rights as human rights at international level, the movement for protection of rights of sexual minorities has to be seen under the broader domain of human rights because Sexual Minorities’ Rights are Human Rights. In this case, the violence against
sexual minorities is violence against human rights and similarly the violation of sexual minorities’ rights is a violation of human rights. On the basis of this, it is concluded that human rights perspective has been using as an ‘Umbrella Perspective’. The movement has been gaining momentum and the scope is rising in the line of social, economic, political, religious, cultural, academic, educational, health and all other spheres keeping in view the human rights as fundamental.

In this series, many corporates institutions and business houses are coming forward in providing the free and equal space, and friendly atmosphere to sexual minorities. Except this, certain organizations are also formulating the sexual minorities’ policies in terms of employment and others benefits such as education, health and coming out. Such policies are initiatives towards inclusive policies. Although, many sexual minorities do not come out and remain in closet due to their own fears, the coming out stories and process has been started with the help of positive atmosphere and support by corporate house policies.

The legal battle against the colonial law that criminalizes the homosexuality in general and sexual minorities in particular is still a part of criminal law. Because of not having the clear definition and vague meanings of Sec. 377 of IPC, the problems against sexual minorities have been highly prevalent in Delhi. Delhi is most affective place in India as far as the violence against sexual minorities is concerned. The legal battle has been fluctuating between Indian Judiciary and Legislatives. There is ‘No Specific Policy and Legislation’ available for the issue of homosexuality in general and sexual minorities in particular because of lack of strong political will. The vague meaning of Sec. 377 IPC is not limited to the criminalization of sexual minorities but has an extension to heterosexual persons too. The violence against sexual minorities is very inhuman, degrading, horrible and harming. The role of government is very important in this regard but even after knowing the status of the problem, government is still unresponsive. The present socio-legal status of sexual minority identified persons in Delhi is unrecognized and unaccepted except some sigh of changing. Although, through the NALSA judgment of Supreme Court, the transgender have been legally recognized as ‘Third Gender’ but still they are not getting enjoyment of full recognition and benefits and hence remain far from the social, legal benefits available to other common persons. The government is confused in understanding the
definition of transgender as who must be treated as transgender? In this case the efforts of government are silent at policy as well as legislative level.

Although, some measures like including the options for transgender in education, governmental schemes like passport, driving license, ration card has been slowly started. For this, the guidelines of NALSA judgment, initiative by Ministry of Social Justice and Empowerment and civil society initiative have been very helpful. There is difference in homosexuality, performance of same-sex sexual activities and same-sex marriage. Lack of family and social acceptance are major problems. In concluding of this research study, the sexual minorities’ community in Delhi faces discrimination and violence. Sexual minority persons in Delhi are facing problems on regular basis. Some cases like Priyadarshini Mattoo case (1996), sexual harassment of boys by male professor in Delhi (2007), lesbian girl harassment in Delhi College were evident and popular in past. Sexual minority identified persons face identity crisis, family non-recognition and non-acceptance, social non-recognition and non-acceptance, religious and cultural non-recognition and non-acceptance, legal non-recognition and non-acceptance, and considered and treated as sin and mentally ill persons. The homosexuality is still treated as a disease and many seeks a treatment most of the time to psychiatrists and sometimes to religious and cultural gurus. Such are on the basis of their sexual orientation and gender identity.

The sexual orientation and gender identity are basic causes for such discrimination and violence. Due to this discrimination and violence, their rights are violated and not protected. The education and awareness relating to sexual minorities is not so good. However, Delhi has been raising as a cultural hub for sexual minorities in academics, social, legal and political arena as the demand for their rights is not limited to protest against the violence they face but now includes the demand for their identity recognition, autonomy, freedom of speech and expression, liberty in privacy, right to live with dignity as a citizen. Various NGOs, working groups, organizations are specifically working in the field of sexual minorities’ rights. The study concludes that sexual minorities’ rights are also human rights and need to understand in larger domain. The criminalization of sexual minorities is not limited up to criminalization by the law but includes the criminalization under concept of ‘Social Criminality’ in the name of culture, religion, identity, morality and naturalness. Not only the sexual
minorities are facing violence but also the activists who are working for them also face violence.

The homosexuality without indulging in sex performing acts is not a part of criminalization. Sec. 377 IPC in general, does not make any difference for particular class of criminal and hence the not only sexual minorities but also heterosexual or straight persons come under the purview of breaching this law because of no clarity in the meaning of words i.e. ‘carnal intercourse’ and ‘against the order of nature’ and also the explanation of Sec. 377 IPC. In understanding the Sec. 377, it is concluded that this law was enacted to punish the sodomy act (particularly anal sex) committed by any person (deemed to be accused) against anyone whether male, female or animal (deemed to be victim). The terms ‘Will’ and ‘Consent’ are two basic and main elements in terms of sexual offences. Under Sec. 377 IPC, the term ‘whoever’ is relating to the accused who commits the act of sodomy against the will and consent of victim. The Sec. 377 of IPC does not include the term ‘will’ and ‘consent’. It is not related to any party of consenting adults in private. In case of willfully consenting adults, the accusation and victimization remains incomplete similarly with the heterosexual sexual offence of rape defined under Sec. 375 of IPC.

Hence, the Sec. 377 of IPC is also an application of punishing the criminal act against the sexual crime as mentioned in Sec. 376 of IPC. It means, if any person in committing sexual crime (as defined in Sec. 376 of IPC) also does or only does the carnal intercourse (anal, oral or other form of sex) then the Sec. 377 IPC is also a penal law to come in picture. The explanation of Sec. 377 IPC has lacunae in terms of lesbian couple because of not executing the condition of penetration. It means, Sec. 377 of IPC has no relation in terms of willfully consenting adults engaging in private as far as the criminal law is concerned.

The study concludes that this issue is very close to policy formation as well as governance. After the NALSA judgment, the government has not executed the guidelines till today and presenting the view that there is no clarity in understanding the definition of transgender. It is submitted by the government that due to un-cleared definition of transgender the guidelines of NALSA judgment is unexecuted. It is also a sign of emergence of ‘Queer Rights Politics’, ‘Sexual Minorities’ Rights Politics’
and ‘LGBT Rights Politics’. The study further concludes that although, sexual minorities are confronted by the Bhartiya Janta Party (BJP) but there are some ministers from this party as well who gave the statement to reconsideration of case of Constitutionality of Sec. 377 IPC in the Supreme Court. In this series, the Arun Jaitley Statement was the main while the ideology of BJP is not liked by sexual minorities. Except this, many ministers from Congress Party’s side have favored to have a change in Sec. 377 of IPC. Sexual minorities do not come in the society because of fear and socio-legal complication and problems with them. They are in closet yet and search for a safe place where they can move. Delhi has many places and growing culture of their acceptance despite having, lot of myths and misconceptions available in society.

The myths and misconceptions are based on culture, morality, naturalness, civilization, religion and also the issue relating with their sexual orientation and gender identity. Because of these myths and misconceptions, sexual minorities are not treated equal in family, society and legal institutions.

The ultimate aim of criminal law is protection of right to personal liberty against invasion by others protection of the weak against the strong law abiding against lawless, peaceful against the violent. To protect the rights of the citizens, the State prescribes the rules of conduct, sanctions for their violation, machinery to enforce sanctions and procedure to protect that machinery. It is utter selfishness, greed and intolerance that lead to deprivation of life, liberty and property of other citizens requiring the State to step in for protection of the citizens’ rights. James Madison writes in his book The Federalist that “if men were angels no government would be necessary”. It is the primary function of the government to protect the basic rights to life and property. The State has to give protection to persons against lawlessness, disorderly behavior, violent acts and fraudulent deeds of others. Liberty cannot exist without protection of the basic rights of the citizens by the Government.

Further, the study concludes that most of the sexual minorities agree that society understanding relate sexual minorities’ identity with sexual intercourse activities. Sexual minorities are normal and same as other persons. The violence against them is violation of their Constitutional rights and denial of their existence. The three judgment in Naz Foundation Case, Suresh Kumar Khosal case and NALSA case have impacted on the society about the awareness relating to issue of
homosexuality in general and Sec. 377 of IPC in particular. The sexual minorities do not approach to Indian criminal justice system for their redressal of violence and violation of rights because of fear and risk involved within law (Sec. 377 IPC) itself. There is no judicial consensus on Constitutionality of Sec. 377 of IPC. Till today, the issue of homosexuality and Sec. 377 of IPC is hanging between judiciary and legislature.

The requirement to either repeal or amend in existing penal law Sec. 377 of IPC and enactment of a specific equality and non-discriminatory based legislation on the issue of homosexuality is also a key conclusion of the research. Sexual minorities’ movement believes that this is not the last hope, or the end of the road. The court doesn’t determines our destinies, the sexual minorities do. Sexual minorities did it when they fought their demons at 13, when they were bullied, beaten and ridiculed in schools and colleges, when their families disowned them and when their rights and desires were criminalized. Those among sexual minorities, who are homeless, sex workers, visibly queer face unimaginable brutality every day. Yes, they have hope. But that hope is backed with the belief that they have fought bigger battles and won every day, and no matter what happens, they won’t go back. Although facially neutral, the law has effectively stigmatized and criminalized a section more than others, namely same-sex desiring people, including those who identify as sexual minorities people. The law has been used by the police to intimidate same sex desiring people and has been a source of serious human rights violations. The fear of insecurities in terms of living alone throughout the life, family non-acceptance, police brutalities and stigma to be a uncultured, uncivilized, immoral and unnatural remains with sexual minorities.

The response on the questionnaire did not come satisfactory due to various issues of privacy, identity, confidentiality, dignity involved. The study concludes that the respondents, who were approached during the research study, are thoroughly gentle, moral, cultured, civilized, human rights, love and peace bearer and believer. For sexual minority persons in Delhi, the month of November and December remain very important and the annual pride parade also takes place during these two months. The pride parades are not limited up to Delhi itself but it is now covering whole India with increasing number and strength. The pride parade has taken a form of festival for
sexual minority persons. Their festivals are taking various shapes and known as “Queer-Festivals”. The place of Delhi has been turning as a ‘Cultural Hub’ for such activities relating to sexual minorities in Delhi.

The study also concludes that due to increasing scenario of sexual minorities’ identities in metro cities particularly, it is an era of metro-sexuality that identifies and includes various new emerging identities such as Gay/Lesbian/Bisexual/Transgender Doctor; Gay/Lesbian/Bisexual/Transgender Actor or Actress; Gay/Lesbian/Bisexual/Transgender Activists; Gay/Lesbian / Bisexual/Transgender Administrator; Gay/Lesbian/Bisexual/Transgender Academician, ‘Queer Cinema’, ‘Queer Media’, etc.

The study concludes that sexual minority persons are not educated about the rights i.e. Constitutional, legal and human rights and remains in closet because of not having such education and knowledge about the rights. The education and awareness about such rights is a grey area. The lack of specific rights education and awareness is also a grey area in this regard. Except this, there are lots of myths and misconceptions in the society and in the era of human rights education, this inadequate knowledge is not in line with the international human rights law obligation. The study also concludes that the sexual minority persons in Delhi are protesting against the violence takes place with them by raising their voices in the light of Constitutional and human rights law. Their demand is also relating to have an amendment/repealing in the existing penal laws like Sec. 377 of IPC followed by enacting a specific non-discriminatory, protective, preventive, remedial and equality based legislation in the light of Constitutional and human rights law.

The whole discussion argues towards an understanding of orientation, identity, dignity, autonomy, privacy, liberty, equality, respect, morality, justice (social, economic, political, educational, etc.), human rights and law which can further be seen with a lot more important phenomenon as love, attraction, emotion, feeling, sensitivity, duties and sacrifices. The things related with love remains favorable, personal and special too. No cases found reported by sexual minorities for violence against them however they have rights (generally includes person) in Constitution (Article 14, 15, 19, 21, 32, etc.), IPC (like sec. 341, 342, 351, 383, etc.). Presently,
Legislature v. Judiciary legal debate is still alive as the Supreme Court has referred the matter of deciding Constitutionality of Sec. 377 of IPC to the five judges bench. For the purpose of doing study on the subject like sexuality in general and homosexuality in particular, it is concluded that a lots of hardship, hurdles and risk involved in making it complete and for the purpose of securing equal rights and protection to the sexual minorities, the stand of government and its governing policies is not much progressive and seems unresponsive too.

7.2. Issues with Activists Working for Sexual Minorities

Except the problem related with sexual minority identified persons, the problems are also related with the persons who are working for the protection and promotion of rights of sexual minorities. Under the study, the researcher also has lots of experiences not only positive but also negative. The sexual minorities’ rights activists face mental and physical violence. It is well established now that the violence against sexual minorities is based on their sexual orientation and gender identity. Here, Researcher was treated discarded, inhuman and a disturbed person while doing this study. Researcher was questioned about his sexual orientation and gender role by asking the specific question as-are you gay?, have you engaged in sexual activities? Will you marry or not? etc.

7.3. Answers to Research Questions

The research study also concludes with the answers of the questions raised in starting of research keeping in view the statement of problem of research. The same research questions and their answers are presented:

Q. 1 How to understand the concept of homosexuality?

Ans. The concept of homosexuality is related with the study of relationship between two same-sex sexualities within psychological can be limited up to one person and physical more than one person context.

Q. 2 What is the understanding of nature?
Ans. What seems unnatural is also natural-According to Rigveda. It means that every person or thing whether living or non-living, material in original form is a part and parcel of nature.

Q. 3 What types of sexual acts qualify as against the order of nature?

Ans. It is only social consideration about defining the order of nature otherwise in sexual activities there is no clear order of nature in terms of sexual acts.

Q. 4 How the legal enforcement of morality can be understood?

Ans. After long debates in jurisprudence, this subject of deciding the interplay between law and morality seems undecided. In a democracy, there is only enforcement of law but not the enforcement of morality. For private acts, the morality lies with individual. For public acts, it is to be decided as per law in a democracy. In the context of same-sex sexual activities in private, the morality has the limitation up to the two willfully consenting adults who are engaged in such activities.

Q. 5 What is the central debate relating to sexual minority rights?

Ans. It is relating to recognition of different sexual orientation and gender identity keeping in view the human rights, fundamental rights under Constitution of India. It is also relating to denial and removal of discrimination, inequalities, harassment, oppression, deprivation and physical and psychological violence based on any prejudices (social, legal, political, economic, etc.). The recognition of sexual minorities as person and treating them equal same as others is also very much central debate. The repealing/amending of Sec. 377 of IPC, enacting some specific anti-discriminatory policies and laws in the present situation and recognizing sexual minorities with full personhood and equal rights as others are also central debates.

Q. 6 Is the meaning of Sec. 377 confined only to anal, oral or other types of sex except penile-vagina sex?

Ans. Yes. The vague term ‘carnal intercourse against the order of nature’ used in Sec. 377 of IPC is a cause of this.
Q. 7 Is the criminal prosecution under Sec. 377 of the IPC, 1860 confined to certain sexual acts or homosexuality in general?

Ans. The definition of Sec. 377 of IPC does not make any difference between heterosexuals and homosexuals but it applies to certain acts which are considered as against the order of nature. Since, there is no clear meaning of order of nature hence whoever is found engaged in performing the sexual acts or activities against the order of nature shall remain in the purview of Sec. 377 of IPC. On the basis of this definition, the homosexuals in general are victimized by the law and police so far as the practical implementation of Sec. 377 IPC is concerned. It means the execution of Sec. 377 of IPC not only victimize certain sexual acts but also the homosexuality (Sexual Minorities) in general. There is a link between act and identity.

Q. 8 How the society is adversely affected by decriminalization of Sec. 377?

Ans. Within the period of decriminalization and again criminalization of Sec. 377 of IPC, there is nothing found that society is adversity affected and harmed physically.

Q. 9 Whether any case under Sec. 377 with reference to same-sex consensual partners was filed during research?

Ans. There was no case of same-sex sexual acts between the consenting adults in private addressed. The Sec. 377 of IPC was enacted for protecting the child sexual abuse and prosecutes the offenders who commit crime defined under Sec. 377 of IPC. but the implications with Sec. 377 IPC implementation are increasing in all the relationships.

Q. 10 How have the sexual minority persons affected with de-criminalization and re-criminalization under Sec. 377 of IPC?

Ans. The sexual minorities tried to be mainstreamed after de-criminalization of Sec. 377 IPC but after re-criminalization of Sec. 377 of IPC again they are either identified as criminal or have been remaining hidden, silence and out of mainstreaming.

Q. 11 How the homosexuality is related with HIV/AIDS disease?
Ans. It is related to HIV/AIDS because of the fact that anal intercourse as cause of spreading HIV/AIDS. Although, the unprotected sex and many other medical facts are basically the correct facts in this relation. In contextualizing the understanding of sexual minorities with sexual acts only, the sexual minorities are tagged and treated as a target group responsible for HIV/AIDS.

Q. 12 What is the social and legal reaction towards homosexuality?

Ans. There are many issues involved with the clear understanding of homosexual in general, same-sex sexual act and definition and execution of Sec. 377 of IPC. Hence, the same has been a long debated issue at present. Legally the issue is pending before a Constitutional Court to adjudicate.

Q. 13 What is relationship between sexual minority rights and human rights?

Ans. The human rights are for all. Since, the sexual minorities are also person or human hence makes it clear that the sexual minorities’ rights fall within the scope of human rights.

Q. 14 How can we better understand the concepts of homosexuality, Sec. 377 IPC, same-sex friendship, same-sex relationship, same-sex marriage?

Ans. For understanding the conceptual meaning of homosexuality, it has been concluded earlier within psychological and physical contexts both. In general, the friendship is found between two same sex persons even prior and after marriage too. It is a conceptual understanding of same-sex friendship. When we go with the conceptual understanding of same-sex relationship, it is engaging of two same sex persons in sexual activities however the psychological and physical context needs to be consider in this regard. The same-sex marriage is a contract between two consenting adults of same sex. The definition of Sec. 377 of IPC determines other types of rape. It has no relation with willfully consenting adults in private same as provided in rape definition. The application of Sec. 377 of IPC in heterosexual relationship sexual acts has been increasing. With all the efforts to understand the conceptualization of sexuality in general and homosexuality (Sec. 377 IPC) in particular, it is finally concluded that issue of homosexuality, Sec. 377 IPC and sexual
minorities has multiple complications which cover different discipline to study and providing a complete solution. The next section provides some concrete suggestions with respect to have better understanding and solving the research problem and fulfilling the research objectives in totality.

7.4. Suggestions

Keeping in view whole research study, it is suggested that the subject of homosexuality, sexual minority studies is an open subject and needs more and more research to be done. Primarily, the human rights based approach is required to look into the problems of sexual minorities. This requires small-2 studies through inductive, qualitative, in-depth interviews, case study and participatory approach under empirical research method. Academic institutions should include the study of homosexuality in course curriculum. Socio-Cultural studies with a relation to sexual minorities are needed to be researched. The study of homosexuality needs to be done more in various disciplines such as biological, psychological, historical, medical, anthropological, political, economic, cultural, law, human rights, etc. It means the contribution from all the disciplines need to be researched. Social criminality is an area of research and it should be studied keeping in view the sexual minorities. Artificial sexual organ is an area of grave concern to research. Sexuality and gender sensitivity program should be imparted in all the institutions like police, prosecution, judiciary, jails, academic and research institutions. Much need to research and documentation in context of sexual minority study specifically. Sexual minorities budgeting, sexual minority responsive budgeting, identifying the needs of sexual minorities than budgeting, sexual minority development index, bottom-up approach (inductive approach) and capabilities approach for addressing the development of sexual minority budgeting is separately required followed by a review through ex-post sexual minorities sensitive analysis of budgets.

Simply incorporating homosexuality as a special topic positions it as ‘other’ and serves to reinforce a homosexual-heterosexual dichotomy. By focusing instead on sexuality, it is possible to discuss various forms of sexuality on a par with one another and thus challenge heteronormativity, heterosexism and homophobia. A change in education is important, but that education about gender equality is also necessary for
changing attitudes about homosexuality. The principles of Rule of Law, democracy (social, economic, political and other), natural justice and human rights should be taken into consideration in case of understanding sexual minority persons.

It is also important that social exchange theories should be based on love, peace, equity and certain believes i.e. ‘to live in love is more pleasant than any other way of life in the world’; ‘love is feeling warm, close and involved, but not necessarily sexually excited’; ‘it is more important to feel calm and relaxed with the one you love, rather than excited and romantic’; ‘love is an intense flame which devours the roughness in each loved person, leaving only what is pure and fine’; ‘true love leads to almost perfect happiness’; ‘it is believed that if two persons are in love then they can overcome any differences and problems that may arise’; ‘to be truly in love is to be in love forever’; anyone is likely to fall in love almost immediately if meets the right person’; ‘the best kind of love grows out of a long friendship’. Homosexuality should be understood in various different contexts. Sexuality and gender studies should go beyond binary of male and female. Ethnographic fieldwork as a participant-observer in several organizations associated with ‘Sexual Minorities’ should be applied for research on homosexuality. “Sectoral Studies of Gender Budgeting” should be initiated keeping in view the sexual minorities.

Understand and treat each and every individual including sexual minorities as equal person without differentiating on sexuality and gender role basis. ‘Do others’ happiness’ should be understood as a principle of living life. Sexual minorities persons expressing behavior should be taken as inspirational and guiding for all because they only believe in love, peace and no fight. For individual’s reform, it is needful to go with ‘No Interference Approach’ (NIA) and ‘Satisfaction to Happiness’ (STH) Approach. Violence by way of moral policing should be prohibited. Advocacy tool kits to train sexual minorities, families, police, prosecution, judiciary, media, activists and larger society should be framed. Protect, Prevent, Repeal, Prohibit and Safeguard Model (PPRPS Model) is needed for sexual minorities. There is Marriage Equality, Military Inclusion, Media Visibility and Making Money (4M Strategy) required for sexual minorities. We should try to provide ‘Community Climate for Sexual Minorities (CCSM)’ by recognizing of
alternative sexuality, identities and different types of sexual intercourse practices mentioned in Indian historical literature like ‘Kamasutra’, Mahabharata, etc.

Sex education should be imparted in primary, secondary and higher level courses of study. There is a need to have ‘Right Based Inclusive Approach’ keeping in view the inclusive model approach in the matter of sexual minority persons. Gender equality, the equality between men and women in the first place, it would become easier for children to accept the difference between heterosexuals and homosexuals. A complete comfortable support system to look the sexual minorities under the supervision and guidance of sexual minorities’ rights experts should be established so that the sexual minorities could find a healthy support. Proper investigation and documentation on sexual minorities and their relating issues should be initiated and compiled with academic and research institutions for the purpose of education, awareness and advocacy with respect to sexual minorities.

Education, Awareness, Acceptance and Empowerment (EAAE Model) is required to take responsibility for changing in perceptions of the family, society and law particularly the marriage and family law as an important first step towards changing dominant societal attitudes about homosexuality. The negative representations of homosexuality in the media need to be replaced with more positive ones and the representations of sexual minorities in media are needed with more education about gender and sexuality. Educational programs on sexuality in general and homosexuality and Sec. 377 of IPC in particular are needed. Some online diploma and certificate course should also be introduced by academic institutions. There is need of gender sensitization in all the public and private institutions.

A gender neutral policy is also a needful to frame under which gender neutral schemes should be followed. Gender integration policies should be framed. ‘Special Gender University (SGU) should be established. Replace all gendered differentiating terms by including gender neutral term. It means include ‘person’ by replacing male and female. There should be either a specific policy on homosexuality or some inclusion in existing policies. Sexuality and gender sensitization schemes should be initiated. All existing policies should be inclusive to sexual minorities. Need to go beyond gender and establish the ‘Gender-Justice Cell’ (GJC). ‘Intra Gender
Marriage’ (IGM) is a developing concept and need to research. There is a need to include Growth-Centric Modal (GCM) for all. ‘Modern Growth Theory’ as given by Dipankar Das Gupta should be taken in to consideration keeping in view the present conditions in India. Community radio should be established to address the issue of homosexuality. For protecting the sexual minorities from violence, there should be an ‘All India Help Line Number’ established under the police department. Efforts should be made to make the institutions of society safe and sexual minority friendly. The ‘Travelling Campus’ (TC) relating to education and awareness about sexual minorities is needed to be established. New specific posts for sexual minorities should be created and reserved in public and private institutions.


A healthy debate on sexual minority related issues should be initiated by the government. Academicians should come forward to initiate talks, discussion and debate on the issue of homosexuality in general and Sec. 377 IPC (in legal aspect) particular. There is a need to either Repeal or amend sec. 377 of IPC by re-defining and clarifying the vague meaning of “carnal intercourse”, “order of nature”, etc. The definition of rape under Sec. 375 of IPC should be amended and made gender neutral. Keeping in view the will and consent of victim, marital rape should be recognized as an offence. The definition of rape and unnatural offences should be read and studied collectively. Sexuality related rights i.e. ‘Right to Love’, ‘Right to marry’ and ‘Right to form family’, should be recognized and incorporated as fundamental right under Article 21 i.e. Right to Life and Personal Liberty of the Indian Constitution. Sexual
minorities should be given equal opportunities as per Article 14 of the Indian Constitution to prove their skills for sharing the fruit of development of society. Sexual orientation and gender identity should be included in definition of sex under article 15 of Indian Constitution. There should have some specific identity protection laws. ‘Right to come out’ should be included as a fundamental right under Article 19 i.e. Freedom of Speech and Expression. There is a need to have informed Members of Parliament (MPs) who would have the current and traditional knowledge in national and international affairs. They should be up-to-dated regarding the issues in country. Ministry of Foreign Affairs needs to be more active in providing the knowledge of issues discussed at international level. As it was done by Fifth Law Commission a survey for Sec. 377 IPC, such types of survey are needed in present time too by either appointing a Commission or forming a Committee under the chairmanship of Supreme Court Judges whether holding a designation or retired.

2nd July should be recognized and celebrated as ‘World Honor Day’ (WHD) although the sexual minorities give this day the name as ‘Independent Day’ and gather to celebrate (mostly in Central Park, Connaught Place, New Delhi) with ‘We shall overcome Approach’. Anti-Harassment Policy in Public/Corporate/Private sectors should be made. The gender denoted offences against male or female should include the sexual minority persons. Section 354, 509, sexual harassment of women should include the sexual minorities too. There is an urgent need to enact a specific protective legislation on the issues relating to homosexuality/Sec. 377 IPC/sexual minority persons. There is a need of strong political will for taking legislative action. Easy coming out (ECO) schemes or campaigns should be initiated from the government level. Strict adherence to the DK Basu guidelines and the Code of Criminal Procedure Code, 1973 in the event of arrest of a sexual minority person should be applied. National Privacy Principles (NPP) related to sexual and gender rights should be made under which no one should be interfered in individual’s private affairs and only public affairs that harm others should be treated as offence. Social criminalization (particularly criminalization of identity) should be taken into consideration in criminal law. The rape definition should include the male rape as an offence. Sexual Assault Bill drafted by the National Commission for Women should be passed. Government should have collaborative efforts among its various
departments of ministries for making collective efforts to curb the violence and protect sexual minorities at every level which is also required to review after every year. ‘Sexual Minorities’ Task Force’ (SMTF) should be formed by the government to systematically identify the hard to reach regions and social groups where sexual minorities’ problems exist. The Right to Survival, The Right to Protection, The Right to Development, and The Right to Participation with full dignity should be provided to sexual minority persons. The government has obligations under international law, Constitutional law and other Conventional laws. For changing society, law, culture, etc. there is a need to go with activism at all level.

7.5. Future Scope for Further Research

The points included in section 2.9. (chapter 2), empirical observations and major findings (chapter 6) and conclusion and suggestions (chapter 7) have the relationship with further scope of future research, there is also scope in terms of looking into the changing in the conventional/traditional laws if homosexuality, same-sex marriage is allowed in India. This can be seen as consequences of changing in law (Sec. 377 of IPC) and includes the parenting, adoption, property, marriage, surrogacy, citizenships, workplace atmosphere, etc. The conclusion of this research study indicates towards many areas and provides a big scope of further research. Within the said areas, many qualitative and quantitative issues may also be included in scope of further research.

7.6. Proposed Model of Legislative Bill

The Protection of Sexual Minorities Act, 20……

No… of 20……

[Date]

An Act to provide for more effective protection of the rights of sexual minorities by treating them person for which the rights are guaranteed under the Constitution who are victims of violence of any kind occurring within the all institutions including family and for matters connected therewith or incidental thereto.
And further, to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the sexual minorities persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto.

Be it enacted by Parliament in the Year (whenever come into force) of the Republic of India as follows:-

Chapter-I

PRELIMINARY

1. Short title, extent and commencement:

(1) This Act may be called ‘The Protection of Sexual Minorities Act, 20..’.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions: In this Act, unless the context otherwise requires;

a) ‘Abuse’ means and includes verbal and physical abuse.

b) ‘Account’ means and includes the maintenance of records by authorities and officials functioning under this Act.

c) ‘Aggrieved Person’ means and includes any person or authorized in this behalf by such person against whom any crime is committed under this Act.

d) ‘Allowance’ means and includes the monetary benefits to officials, administrative and other employees paid against the functions with respect to duties performed under this Act.

e) ‘Annual Report’ means and includes the yearly submitted report by National Commission under Sec. 32(1) and by State Commission under Sec. 39(1).
f) ‘Appointment’ means and includes the selection of officials, administrative and other employee under this Act.

g) ‘Appropriate Government’ means and includes-

(i) In relation to an establishment of the Central Government, or an establishment, wholly or substantially owned or financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 1924, or a Union Territory without legislature, or the provider of a service which pertains to List 1 in Schedule VII of the Constitution, the Central Government;

(ii) In all other cases, the State Government or, as the case may be, the Government of a Union Territory with legislature.

h) ‘Authorities’ means and includes the persons who are authorized to exercise functions under this Act.

i) ‘Barrier’ means and includes any factor including attitudinal, cultural, economic, institutional, political, religious, social or structural factors which hamper the full and effective participation, of sexual minority person in society.

j) ‘Budgetary Allocation’ means and includes the financial distribution of fund under this Act.

k) ‘Bullying’ means and includes the situation of putting any person under fear, inhuman and degrading condition by expressing words and intention in this regard.

l) ‘Business’ means and includes the functions and affairs under this Act.

m) ‘Chairperson’ means and includes an authority heading the Sexual Minorities Commission (National or State) and appointed under this Act.

n) ‘Commission’ means and includes a body constituted under Section 21(for National Commission) and 33 (for State Commission) of this Act.
o) ‘Complaint’ means and includes the registered written information with intention to take appropriate action under this Act.

p) ‘Comprehensive Insurance Scheme’ means and includes the schemes mentioned in Sec. 13(2) of this Act.

q) ‘Counselling’ means and includes a process of counselling about any matter or situation relating to the activities with respect to sexual orientation and gender identity or other in this regard of sexual minority person under this Act.

r) ‘Counsellor’ means and includes the person appointed as an authority in the name of Counsellor under Sec. 41(1) of this Act.

s) ‘Court’ means civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.

t) ‘Cruelty’ means and includes the physical and mental torture of sexual minority.

u) ‘Degrading Treatment’ means and includes disrespect and inhuman situation for sexual minority.

v) ‘Discrimination’ means and includes any distinction, exclusion or restriction on the basis of gender identity and expression which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination, including denial of reasonable accommodation.

w) ‘Document’ means and includes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter.

x) ‘Empathy’ means and includes the behavior of favoring and putting utmost care to sexual minority persons.
y) ‘Equality’ means and includes the equal treatment and equal protection to sexual minority persons.

z) ‘Establishment’ means and includes

(i) Departments and Ministries of Government;

(ii) Local authorities and authorities or bodies owned, controlled or aided by the Central or State Government;

(iii) Any statutory or non-statutory body created, owned, financially or administratively controlled or aided by the Central or State Government or any such body performing public or civic functions and includes Government Companies as defined in Section 617 of the Companies Act, 1956;

(iv) Any company, firm, cooperative or other society, association, trust, agency, institution, organization, union, industry, supplier of goods or services, factory or other non-statutory body which is not covered under clause (a) to (c) and provides services as defined in clause (r) section 2;

aa) Exploitation’ means and includes using a sexual minority person to one's own advantage to which one is not otherwise entitled, or to the latter's disadvantage, to which such latter person is not otherwise liable.

ab) ‘Free Legal Service’ means and includes the rendering of any free service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of free advice on any legal matter.

ac) ‘Gender Identity’ means and includes one of the most fundamental aspects of life which refers to a person’s intrinsic sense of being male, female or transsexual.

ad) ‘Guilty’ means and includes any person against whom the charge of an offence has been fixed by competent authority with due process of law.

ae) ‘Hate Crime’ means and includes the crime against the honor, respect, dignity of sexual minority person.
af) ‘Headquarter’ means and includes the central place, fixed and notified by appropriate government or authority, to sit and exercise the functions under this Act.

ag) ‘Homophobia’ means and includes prejudice against or fear/hatred of homosexuals.

ah) ‘Human Rights’ means and includes the meaning assigned to it in Clause (d) of Section 2 of the Protection of Human Rights Act, 1993.

ai) ‘Inclusion’ means and includes the providing of opportunity to participate in all proceedings of mainstreaming.

aj) ‘Inclusive education’ means and includes a system of education wherein all students learn together, most or all of the time.

ak) ‘Inhumanity’ means and includes disrespect, compelling to be a part of humiliation, indignity.

al) ‘Institution’ means and includes an institution for the reception, care, protection, education, training, rehabilitation or any other service of sexual minority persons.

am) ‘International Instruments’ means and includes the instruments of international law, human rights law, treaties, Covenants and other having force of law or otherwise relevant.

an) ‘Investigation’ means and includes the initiation of examination after information or complaint in writing.

ao) ‘Judicial Proceedings’ means and includes the proceedings initiated before a competent court.

ap) ‘Jurisdiction’ means and includes the meaning as referred in Part I of Civil Procedure Code, 1908.

aq) ‘List I, II, and III’ means and includes the lists referred in Seventh Schedule to the Constitution.
ar) ‘Magistrate’ means and includes the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the violence is alleged to have taken place.

as) ‘Medical Board’ means and includes a body constituted under Section 42 of this Act.

at) ‘Medical Certificate’ means and includes a certificate issued by the medical board established under Section 42 of the Act.

au) ‘Meeting’ means and includes the affair and functions of authorities under this Act.

av) ‘Member’ means and includes the member appointed for national or state commission under this Act.

aw) ‘Memorandum of Action’ means and includes as referred in Sec. 32 (2) and 39 (2) of this Act.

ax) ‘MSM’ means and includes a general term used to refer to Men who have Sex with Men.

ay) ‘Offence’ means and includes the offence as determined under this Act.

az) ‘Official Gazette’ means and includes the official document of respective governments whether central or state having authority to notification of government affairs from time to time.

aaa) ‘Penalty’ means and includes the penalties mentioned in this Act.

aab) ‘Privacy’ means and includes all the personal affairs within the private or public premises.

aac) ‘Protection Custody to Sexual Minority’ means and includes the safety by way of custody.
aad) ‘Public Building’ means and includes a building, irrespective of ownership, which is used and accessed by the public at large; and includes its entrance, exit, parking space, footpath and other appurtenant lands.

aae) ‘Punishment’ means and includes the penalties and punishment mentioned in chapter VIII of this Act.

aaf) ‘Registered Organization’ means and includes all the organizations registered to do acts as per the provisions of Societies Registration Act,----.

aag) ‘Rehabilitation of Sexual Minority’ means and includes all the possible ways to provide support by way of compensating and other resources to sexual minority person.

aah) ‘Rehabilitation Policies’ means and includes the policies chapter III of this Act.

aai) ‘Rules and Regulations’ means and includes Rules and Regulations made under this Act and laid down before the Parliament or competent legislature.

aaj) ‘Salary’ means and includes the emoluments paid to the officials, administrators and other employees under this Act.

aak) ‘Same-sex Relationship’ means and includes a relationship between same-sex person whether psychological and physical.

aal) ‘Secretary’ means and includes the secretary of either National or State Commission under this Act.

aam) ‘Selection Committee’ means and includes the all the committees constituted under this Act.

aan) ‘Sero-surveillance Centre’ means and includes the Centre provided under Sec. 13(1) (a).

‘aao) Service’ means and includes all the services under this Act.
aap) ‘Sex Reassignment Surgery’ means and includes the process of transforming birth assigned sex of person into the sex of his or her choice by way of medical surgery under the supervision of medical experts.

aaq) ‘Sexual Minority History Museum’ means and includes the monumental places constituted and established under Sec. 15(2) (b).

aar) ‘Sexual Minority Rights Court’ means and includes the courts established under Section 44 of this Act.

aas) ‘Sexual Orientation’ means and includes a term which is used to indicate the gender or sex towards which one is emotionally/sexually/romantically attracted to. It often denotes same sex attraction.

aat) ‘Sexuality Minority’ means and includes an umbrella term for people discriminated against due to their sexual identity/orientation or gender identity, including all non-heterosexuals.

aau) ‘Special Employment Exchange’ means and includes the exchanges referred in Sec. 19 (1) of this Act.

aav) ‘Special Report’ means and includes the report referred in Sec. 32 (1) (2) and 39 (1) (2) of this Act.

aaw) ‘Special Sexual Minority Rights Court’ means and includes the court established under Sec. 43 of this Act.

aax) ‘Therapeutic Intervention’ means and includes the process referred in Sec. 13(2).

aay) ‘Tolerance’ means and includes giving acceptance to everyone on the basis of being human.

aaz) ‘Torture’ means and includes a harm caused by physical and mental violence.

aaaa) ‘Utilization of Funds’ means and includes the competent authority’s use of money allocated for the purpose of achieving the objectives of this Act.

aaab) ‘Vacancy’ means and includes the vacancies created under this Act.
‘Victim’ means and includes any sexual minority person whose rights are violated under this Act.

‘Violence’ means and includes the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal development, or deprivation.

3. The appropriate Government and local authorities shall, subject to the provisions of this Act and any other law for the time being in force, take the following necessary steps to secure for sexual minority persons:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) Non-discrimination;

(c) Full and effective participation and inclusion in society;

(d) Respect for difference and acceptance of sexual minority persons as part of human diversity and humanity;

(e) Equality of opportunity; and

(f) Accessibility.

CHAPTER-II

RIGHTS OF SEXUAL MINORITIES AND PERSONS WORKING FOR SEXUAL MINORITIES

A. Rights of Sexual Minority Persons

4. The appropriate Government shall take all necessary steps to ensure that sexual minority persons enjoy the right of equality guaranteed by Article 14 of the Constitution of India on an equal basis with others.
5. The appropriate Government shall take all necessary steps to ensure that sexual minority persons enjoy the right of non-discrimination guaranteed by Article 15 of the Constitution of India on an equal basis with others.

6. The appropriate Government shall take all necessary steps to ensure that sexual minority persons enjoy the right of freedom of speech and expression guaranteed by Article 19 of the Constitution of India on an equal basis with others.

7. The appropriate Government shall take all necessary steps to ensure that sexual minority persons enjoy the right of life with dignity and personal liberty guaranteed by Article 21 of the Constitution of India on an equal basis with others.

8. The appropriate Government and local authorities shall take all appropriate administrative and other measures to protect persons from being subjected to torture, or cruel, inhuman or degrading treatment or punishment.

9. (1) The appropriate Government and local authorities shall take all appropriate administrative, social, educational and other measures to protect sexual minority persons, both within and outside the home, from all forms of abuse, bullying, hate crime, violence and exploitation.

(2) Any person, or registered organization who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any sexual minority person, may give information about it to the Executive Magistrate in whose jurisdiction such incident occurs or is likely to occur, who, on receipt of such information, shall take immediate steps to stop it or prevent its occurrence as the case may be, or pass such order as he deems fit for the protection of such sexual minority person including an order,—

(a) to rescue the victim by authorizing the police or any reliable organization working for sexual minority persons to provide for the safe custody, or rehabilitation of such sexual minority person, or both, as the case may be;

(b) For providing protective custody to the sexual minority person if such person so desires; and
(c) To provide for maintenance to such sexual minority person.

(3) No civil or criminal liability shall be incurred by any person who in good faith furnishes information under sub-section (2) of section 9;

(4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any sexual minority person shall inform the aggrieved person of:

(a) The right to apply for protection under sub-section (2) of section 9.

(b) The particulars of the nearest organization or institution working for the rehabilitation of sexual minority person who have been subject to abuse, violence or exploitation;

(c) The particulars of the Executive Magistrate having jurisdiction to provide assistance to aggrieved persons;

(d) the right of the sexual minority person to free legal services under the Legal Services Authorities Act, 1987 and any other services offered by the National Legal Services Authority or the State Legal Services Authority for the benefit of sexual minority persons; and

(e) The right to file a complaint under the relevant provisions of the Indian Penal Code, 1860 or any other law dealing with such crimes:

Provided that nothing in this section shall be construed to free such Police Officer of his obligation to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

(5) If the Executive Magistrate finds that the alleged act or behavior would also be an offence under the Indian Penal Code, 1860 or under any other law imposing criminal sanctions on such acts, he may forward a complaint to that effect to the judicial or metropolitan magistrate, as the case may be, having jurisdiction in the matter, whereupon the latter shall act on it forthwith in accordance with law.
(6) The appropriate Government shall take all appropriate measures to prevent abuse, violence and exploitation against sexual minority persons by, inter alia providing information and raising awareness on:

(a) Taking cognizance of incidents of abuse, violence and exploitation;

(b) The legal remedies available against such incidents;

(c) Steps to be taken for avoiding such incidents;

(d) Procedure for reporting such incidents; and

(e) Steps required for the rescue, protection and rehabilitation of sexual minority persons who have been victims of such incidents.

(f) Provide necessary support in environments that maximize academic and social development, consistent with the goal of full inclusion.

B. Rights of Persons Working For Sexual Minorities

10. The appropriate Government and local authorities shall take all appropriate administrative, social, educational and other measures to protect the rights of all the persons who are working for the rights of sexual minority persons, both within and outside the home, from all forms of abuse, bullying, hate crime, violence and exploitation.

11. For the purpose of protecting the rights under Sec. 10, the provisions from Sec. 4 to Sec. 9 shall be applied to the persons who are working for sexual minorities.

CHAPTER-III

EMPLOYMENT, SOCIAL SECURITY, HEALTH, REHABILITATION & RECREATION

12. (1) No establishment shall discriminate against any sexual minority person in any matter relating to employment including but not limited to recruitment, promotion and other related issues.
Any sexual minority person, if eligible for any post which is to be filled, shall have the right to appear for selection and hold the post if selected.

13. (1) the appropriate Government and local authorities shall take necessary measures to provide sexual minority persons:

(a) Separate HIV Sero-surveillance Centers since they face several sexual health issues;

(b) Sex reassignment surgery, free of cost;

(c) barrier-free access in the hospitals and other healthcare institutions and centers;

(2) To fulfil its obligation under this Section, the appropriate Governments shall make schemes and programs with participation and involvement of sexual minority persons and care-givers that inter alia makes provision for coverage of medical expenses and therapeutic intervention by a comprehensive insurance scheme for sexual minority persons.

14. (1) The appropriate Government and local authorities shall undertake or cause to be undertaken services and programs of rehabilitation, particularly in the areas of health, education and employment for all sexual minority persons.

(2) The service and programs shall be designed so to begin at the earliest possible stage and to be based on a comprehensive assessment of issues faced by sexual minority persons.

(3) For purposes of sub-section (1) of section 14, read with sub-section (2), the appropriate Government and local authorities shall, subject to fulfilment of financial and other norms, and availability of budgetary allocation, grant financial assistance to non-governmental organizations.

(4) The appropriate Government and local authorities, while formulating rehabilitation policies, shall consult the non-governmental organizations working for the cause of sexual minority persons.
(5) Without prejudice to the generality of sub-section (1) of section 14, the appropriate Government shall by notification formulate schemes to provide aid to sexual minority persons.

15. (1) the appropriate Government and local authorities shall take suitable measures to promote and protect the rights of all sexual minority persons to have a cultural life and to participate in leisure and recreational activities on an equal basis with others.

(2) Without prejudice to the general obligation in sub-section (1) of section 15, such measures shall include,—

(a) Sponsoring of sexual minority film, theatre, music and dance festivals;

(b) Establishment of a sexual minority history museum which chronicles and interprets the historical experiences of sexual minority persons;

16. All Government institutions of primary, secondary and higher education and all primary, secondary and higher education institutions receiving aid from the Government shall reserve two per cent of the total seats in each class or course for sexual minority persons:

Provided that sexual minority persons are not to be prevented from competing for seats which are not reserved for them.

17. Every appropriate Government shall reserve, in every establishment under them, not less than two per cent of the vacancies meant to be filled by direct recruitment, for sexual minority persons.

18. The appropriate Government shall, within a period of one year from the commencement of this Act, provide incentives to employers in the private sector to ensure that at least two per cent of their work force is composed of sexual minority persons within a period of five years from the commencement of the Act.

19. (1) The appropriate Government may, by notification, specify that the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for sexual minority persons that have occurred or are
about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such information.

(2) The form in which and the intervals of time for which information or returns shall be furnished and shall contain such particulars as may be prescribed.

CHAPTER-IV

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENT

20. (1) The appropriate Government in consultation with the National or State Commission, as the case may be, shall conduct, sponsor, encourage, support or promote on a regular and continuous basis information campaigns and sensitization programs to ensure that the rights recognized in this legislation are respected, protected and promoted.

(2) The campaigns shall aim at enabling both state and civil society to comprehend sexual minorities as an integral part of the human condition, to recognize the capabilities and contributions of sexual minority persons, and to combat the stereotypes, prejudices and harmful practices which impede the participation of sexual minority persons on an equal basis with others;

(3) Without prejudice to the general awareness raising obligation in sub-section (1) of section 20, such programs, campaigns and workshops shall inter-alia,—

(a) Promote values of inclusion, tolerance, empathy and respected for diversity;

(b) Advance recognition of the skills, merits and abilities of sexual minority persons and of their contributions to the workforce, labor market and professional fee;

(c) Poster respect for the decisions made by sexual minority persons on all matters related to family life, relationships, bearing and raising children;

(d) Provide orientation and sensitization at the school, college, university and professional training level on the human condition of sexual minorities and the rights of sexual minority persons; and
(e) Provide orientation and sensitization on sexual minorities and rights of sexual minority persons to employers, administrators and co-workers.

CHAPTER-V

NATIONAL AND STATE COMMISSIONS FOR SEXUAL MINORITIES

A. National Commission

21. (1) The Central government shall, by notification, constitute a body to be known as the National Commission for sexual minority persons to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

(2) The Commission shall consist of the following Members, namely,—

(a) A Chairperson, who is an eminent person with a distinguished record of service in the field of sexual minority rights and rehabilitation; and

(b) Six members, of whom at least three shall be sexual minority persons and to be popularly acknowledged by the representatives of the sexual minority community and the other three members must have a distinguished record of service in the fields of rehabilitation, advocacy, human rights, law, relating to sexual minorities.

(3) The Chairperson and the Members shall be appointed by the Central Government on the recommendation of a Selection Committee with such composition as may be prescribed.

(4) The Headmistress of the National Commission should be at such place as the Central Government by notification, specify.

22. The Chairperson and a Member of the National Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty five years, whichever is earlier and shall be eligible for reappointment for another term of three years.

23. (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the President, resign his office.
(2) Subject to the provisions of sub-section (3) of Section 23, the Chairperson or any Member shall only be removed from his office by order of the President on the ground of proven misbehavior or incapacity has, on an inquiry held in accordance with the procedure, prescribed under this Act.

(3) Notwithstanding anything in sub-section (2) of Section 23, the President may, by order, remove from office the Chairperson or any Member, if the Chairperson or such Member, as the case may be:—

(a) Is adjudged an insolvent; or

(b) Engages during his term of office in any paid employment outside the duties of his office; or

(c) Is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.

24. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorize one of the members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) If the Chairperson is unable to discharge his functions, owing to absence on leave or otherwise, one of the Member, as the President may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

25. The salaries and allowances payable to and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a member shall be varied to his disadvantage after his appointment.

26. No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.
27. (1) The Commission shall meet at such time and place as the Chairperson may think fit.

(2) Subject to the provisions of this Act and the rules made thereunder, the Commission shall have the power to lay down, by regulations, its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf.

28. (1) The Central Government shall make available to the Commission an officer of the rank of an Additional Secretary to the Government of India who shall be the Secretary to the Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative and technical officers and staff, as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) of section 28 shall be such as may be prescribed.

29. The Commission shall perform all or any of the following functions, namely:—

(a) Identify, suo-moto, or on a representation received, provisions of any laws, policies, programs and procedures, which are inconsistent with this Act, and recommend necessary corrective steps;

(b) Review and coordinate the activities of all Departments of Government and other Governmental and non-Governmental Organizations which are dealing with matters concerning sexual minority persons;

(c) inquire, suo-moto or on a complaint by an affected sexual minority person or any person or organization on his behalf, with respect to deprivation of his rights and safeguards in respect of matters for which the Central Government is the appropriate Government and take the up the matter with the appropriate authorities for corrective action, as necessary;
(d) Intervene in any proceeding involving any allegation of violation of the rights of sexual minority persons pending before a court with the approval of such court;

(e) Review the safeguards provided by or under this Act or any law for the time being in force for the protection of rights of sexual minority persons and review the factors that inhibit the enjoyment of rights of sexual minority persons and recommend appropriate remedial measures;

(f) Study treaties and other international instruments on the rights of sexual minority persons and make recommendations for their effective implementation;

(g) Undertake and promote research in the field of the rights of sexual minority persons;

(h) Promote awareness of the rights of sexual minority persons and promote awareness of the safeguards available for their protection;

(i) monitor implementation of the provisions of this Act and of schemes, programs, etc., meant for sexual minority persons;

(j) Monitor utilization of funds disbursed by the Central Government for the benefit of sexual minority persons; and

(k) Such other functions as the Central Government may assign.

30. Whenever the Commission makes a recommendation to an authority in pursuance of clause (c) of Section 29, that authority shall take necessary action on it, and inform the Commission of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the Commission within the above period of three months, and shall also inform the aggrieved person.

31. (1) The Commission shall, for the purpose of discharging its functions under the Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 and in particular in respect of the following matters, namely,—
(a) Summoning and enforcing the attendance of witnesses and examining them on oath;

(b) Discovery and production of any document;

(c) Receiving evidence on affidavits;

(d) Reinvesting for any public record or copy thereof from any court or office;

(e) Issuing commissions for the examination of witnesses or documents; or

(f) Any other matter which may be prescribed.

(2) The Commission may, while investigating a complaint, make written requests so furnish information question people, review documents or visit the premises to determine upon the nature of violation or non-compliance of regulations.

(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code 1860 and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

32. (1) The National Commission shall submit an annual report to the Central Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

(2) The Central Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission, and the reasons for non-acceptance of the recommendations, if any.

B. State Commission

33. (1) Every State Government may constitute a body to be known as the State Commission (name of the State) for sexual minority persons to exercise the powers
conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall, with effect from such date as the State Government may be notification specify, consist of—

(a) A Chairperson who is an eminent person with a distinguished record of service in the field of sexual minority rights; and

(b) Six members, of whom at least three shall be sexual minority person and to be popularly acknowledged by the representatives of the sexual minority community and the other three members must have a distinguished record of service in the field of rehabilitation, advocacy, human rights, law, relating to sexual minorities.

(3) The Chairperson and the Members shall be appointed by the State Government on the recommendation of Selection Committee with such composition as may be prescribed.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire suo-moto or on a complaint by an affected sexual minority person or any person or organization on his behalf, with respect to deprivation of his rights and safeguards in respect of matters for which the State Government is the appropriate government.

34. (1) The Chairperson or any Member may, by notice in writing under his hand addressed to the Governor resign his office.

(2) Subject to the provisions of sub-section (3) of section 34, the Chairperson or any Member shall only be removed from his office by order of the Governor on the ground of proved misbehavior or incapacity has, on inquiry held in accordance with the procedure prescribed under this Act.

(3) Notwithstanding anything in sub-section (2) of section 34 the Governor may, by under, remove from office the Chairperson or any Member, if the Chairperson or such Member, as the case may be—
(a) Is adjudged an insolvent; or

(b) Engages during his term of office in any paid employment outside the duties of his office; or

(c) Is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude.

35. The Chairperson and Members of the State Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of three years.

36. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of the death, resignation or otherwise, the Governor may, by notification authorize one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) If the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, one of the Members as the Governor may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

37. The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and the Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

38. (1) The State Government shall make available to the Commission an officer of the rank of the Secretary to the State Government who shall be the Secretary to the Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other administrative and technical officers and staff as it may consider necessary.
(3) The salaries, allowances and conditions of service of the officers and other appointed under sub-section (2) of section 38, shall be such as may be prescribed.

39. (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

40. The provisions of section 21, 22, 24, 25, 27 and 29 shall apply, mutatis mutandis to a State Commission and shall have effect, subject to the following Modifications, namely,—

(a) Reference to “commission” clause be construed as references to “State Commission”; and

(b) In section 29, clause (8) shall be omitted.

CHAPTER VI

APPOINTMENT OF COUNSELLERS AND MEDICAL BOARD

A. Counsellors

41. (1) The appropriate Government in consultation with the National or State Commission, as the case may be, shall appoint Counsellors for the purpose of counselling of sexual minority persons.

(2) The eligibility, functions and other terms and conditions relating to the counsellors shall be as prescribed under this Act.

(3) The counsellors shall be treated as public servant.
(4) The counsellors shall perform their duties under the supervision of medical board.

**B. Medical Board**

42. (1) The appropriate Government in consultation with the National or State Commission, as the case may be, shall appoint medical board for looking into the matters relating to counselling and any other dispute arises in case of counselling, sexual or gender determination, documentation related with sexual minorities and other matters as may be prescribed from time to time.

(2) The eligibility, functions, powers and duties or the persons in medical board shall be as prescribed under this Act.

(3) The medical board shall perform its duties under the supervision of National or State Commission as the case may be.

**CHAPTER VII**

**SEXUAL MINORITY RIGHTS COURTS**

43. For the purpose of speedy disposal of suits of a civil nature which may be filed by on behalf of sexual minority persons regarding infringement of their rights as a sexual minority person, under this or any other law for the time being in force, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, specify for each sub-division, a court to be a Special Sexual Minority Rights Court for the hearing and disposal of such suits and criminal cases, as prescribed.

44. Notwithstanding anything contained in Section 43, the State Government, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette:—

(i) May establish for each district, and

(ii) shall establish for each city with a population of 10 lakh or more as per the last Census, a court as an exclusive Sexual Minority Rights Court, and such court shall hear and dispose of only suits of the type mentioned in Section 43.
45. Where a district has one or more exclusive Sexual Minority Rights Courts established under Section 44, their jurisdiction vis-a-vis that of Special Sexual Minority Rights Courts specified under Section 43, shall be such as the State Government may, by notification in the official Gazette, specify.

CHAPTER VIII

OFFENCES & PENALTIES

46. (1) Where any offence under this Act has been committed by an establishment, every person who, at the time the offence was committed, was the appointed head or was directly in charge of, and was responsible to the establishment for the conduct of its business, as well as the establishment, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in sub-section (1) of Section 46, shall render any such person liable to any punishment provided in this Act, if he proved that the offence was committed without his knowledge or that all due diligence was exercised to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) of section 46, Where an offence under this Act has been committed by an establishment and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any other officer of the establishment, such person shall also deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

47. Whoever voluntarily or knowingly commits or abets the offence by words, either spoken or written, or by signs or by visible representations or otherwise, shall be punished with imprisonment for a term which may extend to one year and with fine.

48. Whoever fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, he is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order,
regulation or direction made or given thereunder, shall be punishable with fine which may extend to rupees twenty-five thousand in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to rupees one thousand for each day, of continued failure or refusal after the date of original order imposing punishment of fine.

CHAPTER IX

MISCELLANEOUS

49. The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds, from time to time, for carrying out the purposes of this Act.

50. The provisions of this Act or the rules made there under shall be in addition and not in derogation of any other legislation, rules, orders or instructions which provides any entitlement or benefit to sexual minority persons.

51. No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act or any rule there made under.

52. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided, that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

53. (1) Subject to the Other Provisions of this Act, the appropriate Government may, by notification, make rules for carrying out the provisions of this Act.
(2) Prior to the formation of the rules, the appropriate Government shall make available the draft of the rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made before each house of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule of both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one house, before that house.

54. (1) The National Commission may with the previous approval of Central Government, by notification make regulations consistent with this Act and the rules for the effective implementation of the purposes of this Act, in respect of the matters to any of the entries enumerated in List I and List III in the Seventh Schedule to the Constitution.

(2) Without prejudice to the generality of sub-section (1) of section 54, the National Commission shall make regulations relating to the,—

(a) Establishment of such committees, counsellors, medical board as may be required for the efficient performances of its functions;

(b) Composition, membership, qualification, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees, counsellors, medical board formed by the National Commission;

(c) Rules of procedure for transaction of business;
(d) Rules of procedure for convening meetings of Chairpersons of State Commissions;

(e) Form in which and the time at which the meetings to be called;

(f) Manner in which and the time at which meetings of National Commission to be convened; and

(g) Any other matter incidental or ancillary for the enforcement of this Act.

(3) Prior to be finalization of the regulations, the National Commission shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

55. (1) The State Commission shall have the power to issue regulations with the Previous approval of state governments, which are in conformity with the Act and the Rules for the effective implementation of the purposes of this Act, in respect of the matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that where any regulation has already been issued in any such matter pertaining to List III by the National Commission, such regulations shall prevail over the regulations of the State Commission pertaining to the said matter.

(2) Without prejudice to the generality of sub-section (1) of Section 55, the State Commission shall make regulations relating to the,—

(a) Establishment of such Committees, counsellors, medical board as may be required for the efficient performance of its functions;

(b) Composition, membership, qualifications, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees, counsellors, medical board formed by the State Commission; and

(c) Any other matter incidental or ancillary for the enforcement of this Act.
(3) Prior to the finalization of the regulations, the State Commission shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.