CHAPTER 10

CONCLUSION AND SUGGESTIONS

A state that recognises difference does not mean a state without morality or one without a point of view. It does not banish concepts of right and wrong, nor envisage a world without good and evil. It is impartial in its dealings with people and groups, but is not neutral in its value system. The Constitution certainly does not debar the state from enforcing morality. Indeed, the Bill of Rights is nothing if not a document founded on deep political morality. What is central to the character and functioning of the state, however, is that the dictates of the morality which it enforces, and the limits to which it may go, are to be found in the text and spirit of the Constitution itself.

J. Albie Sachs

National Coalition for Gay and Lesbian Equality v. Ministry of Justice and others

These quotes by J. Albie Sachs had truly guided and inspired the two judges who delivered the landmark verdict in Naz Foundation case. Both judges held 'moral indignation, howsoever strong, is not a valid basis for overriding individual's fundamental rights of dignity and privacy. In our scheme of things, constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view'.

But unfortunately, the supreme court of India disappointed when retained section 377 IPC in its original form. It seems that as if 'The sun may have set on the British Empire, but the empire lives on'. It's amazing how millions of yellow-and brown-skinned people have so absorbed Victorian prudishness that even now, when their countries are independent and they are all happy and proud they're free from the yoke

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408 CJ. Ajit Prakash Shah & Justice Murlidhar, Delhi High Court.
of the British they stoutly defend these law as the embodiment of their ancestral Asian values.’

South Africa's Constitutional Court justice Albie Sachs, concurring with the historic decision to overturn his country's law against sodomy, wrote:

*It is important to start the analysis by asking what is really being punished by the anti-sodomy laws. Is it an act, or is it a person? Outside of regulatory control, conduct that deviates from some publicly established norm is usually only punishable when it is violent, dishonest, treacherous or in some other way disturbing of the public peace or provocative of injury. In the case of male homosexuality however, the perceived deviance is punished simply because it is deviant. It is repressed for its perceived symbolism rather than because of its proven harm. Thus, it is not the act of sodomy that is denounced but the so-called sodomite who performs it; not any proven social damage, but the threat that same-sex passion in itself is seen as representing to heterosexual hegemony.*

409 The legal scholar Dan Kahan writes that 'Sodomy laws, even when unenforced, express contempt for certain classes of citizens. 410 This contempt is not simply symbolic. Ryan Goodman, in exhaustive research based on interviews with lesbian and gay South Africans before the sodomy law was repealed, found the statutes have multiple 'micro-level' effects. These are independent of occasion when the law is actually enforced. To the contrary: even without direct enforcement, the laws' malign presence in the books still announces inequality, increases vulnerability, and reinforces second-class status in all areas of life. The statutes empower social and cultural arbiters to call the homosexual a criminal. The criminal reach of anti-sodomy laws as they have been under-stood by the State and its agents political leaders, judges, police (not to mention the public) has gone beyond the mere act of sodomy and criminalises the very personhood of people with same-sex desires. This broad

criminalisation of the homosexual identity and sub-culture under criminal law speaks volumes of the emancipatory potential of decriminalising consensual homosexual sex.

10.1 CRITICAL ANALYSIS OF SECTION 377 IPC- A HISTORICAL INJUSTICE

The legal lobbying around section 377 within the ambit of sexuality right has been of enormous political and symbolic significance. In terms of ground realities, however, it is a much more complicated socio-legal battle.

As a textual matter, section 377 proscribes sexual acts involving carnal intercourse that are considered ‘unnatural’ irrespective of whether they involve same-sex or opposite sex partners. Case law under this section shows that it has been used in prosecutions involving oral sex and anal sex. There is ample evidence to suggest that anal sex is not an exclusive homosexual preserve; many heterosexual couples routinely engage in it. And oral sex is commonly practiced by both same sex and opposite sex partners.

The historic ‘injustice' of the law lay not only in sanctioning arbitrary state action against LGBT persons, but more fundamentally in setting in place a regime of citizenship wherein the lives and loves of LGBT persons were consistently read within the framework of unnatural sexual acts’. The question of love or intimacy, desire or longing, was always reduced in the judicial register to ‘carnal intercourse against the order of nature’. Though emotions such as love formed a part of the history of same-sex desiring people in colonial India, this history remains untold.

The history of persecution in colonial India of homosexual desire did not change with the coming into force of the Constitution. Instead what marked a moment of azaadi for LGBT persons in India was the re-interpretation of the fundamental rights by C. J. Shah and J. Muralidhar in 2009. The shift in what the Constitution was to mean for LGBT persons was signaled by the Justices in the oral arguments where for the first time, the judicial attitude to homosexuality changed. By showing empathy for LGBT suffering and by refusing to think and talk about homosexuality merely within terms
of ‘excess’ and ‘societal degeneration’, the Justice gave a new vocabulary to the law in which to talk about homosexual expression.

The language the Justices evolved was the notion of ‘constitutional morality’, which was an advance in the way morality has been thought of in law. Morality as seen from the words of Lord Macaulay was a justification for the very enactment of Section-377 and the Judges turned the notion of morality upside down by concluding that constitutional morality requires that Section 377 be read down. Constitutional morality requires that the values of the right to form intimate relationships be protected and that freedom from persecution by the law be guaranteed to LGBT persons.

If there is one provision in the Indian Penal Code seemingly furthest from the language of love and intimacy, it seems to be Section 377. With its focus on ‘carnal intercourse against the order of nature’ and its requirement of ‘penetration sufficient to constitute an offence’, there seems little possibility that the dry judicial record can actually speak of emotions like love and longing. The case law interpretation under Section 377 has by and large focussed on non-consensual sex between adults and children and to judiciary has been quick to characterize homosexuals and homosexuality as something to ‘be abhorred by civil society’, unnatural’, ‘animal like’, sexual perversity’ and ‘despicable specimen of humanity’.

While it may be true that the majority of reported cases under the provision have to do with non-consensual sex, there is a hidden narrative of couples who have engaged in consensual intimacy and been subjected to the persecution of the law. If one reads from within the silent spaces in the judgement, one can see the use of Section 377 to persecute homosexual intimacy.

10.2 CRITICAL ANALYSIS OF NAZ JUDGMENT

After agitating for many years against the existence of section 377 of the Indian penal code, which decriminalized homosexuality, it is understandable that the Delhi high court’s 2 July, 2010 decision in the Naz foundation case, has been welcomed and celebrated by the LGBT community.
This is the classic formulation of the role of courts as counter majoritarian institutions which have a special role in protecting vulnerable groups\textsuperscript{411}. It was famously expressed in carolene products, where justice stone of the US Supreme court said that ‘prejudices against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry\textsuperscript{412}. This counter majoritarian theme in Naz Foundation was borrowed from \textit{Anuj Garg}\textsuperscript{413}, where the Supreme Court had expressed a similar sentiment:

“The issue of biological differences between sexes gathers an overtone of societal conditions so much so that the real differences are pronounced by the oppressive cultural norms of the time. This combination of biological and social determinants may find expression in popular legislative mandate. Such legislations definitely deserve deeper judicial scrutiny. It is for the court to review that the majoritarian impulses rooted in moralistic traditions do not impinge upon individual autonomy. This is the backdrop of deeper judicial scrutiny of such legislations world over\textsuperscript{414}.”

The Naz judgment recognizes the fact that discrimination includes not just direct discrimination but also indirect discrimination and harassment. Direct discrimination occurs when a provision unfairly differentiates on the basis of a protected ground on the face of it\textsuperscript{415}. Indirect discrimination occurs when a superficial non-discriminatory measure has a disproportionate impact on a vulnerable group. Indirect discrimination was clearly at issue in Naz foundation case. On the face of it, section 377 outlawed all sex that wasn’t peno-vaginal. It therefore, criminalised anal and oral sex between heterosexual couples as much as it did between homosexual couples. Despite this

\textsuperscript{412} United States v. Carolene Products 304 U.S 144, 153, (1938)
\textsuperscript{413} Anuj Garg V. Hotel Association of India & Ors., (2008) 3SCC 1
\textsuperscript{415} Naz, Direct and Indirect Discrimination should not be confused with direct and indirect t horizontal effect.
facial neutrality, the impact of criminalization largely affected gay man and lesbian woman alone, because all the sex acts they can possibly perform are non-peno vaginal. Thus section 377 discriminated indirectly against gay people.

Naz is among a handful of Indian decisions that actually rely on foreign precedents to shape an imaginative outcome relevant to the local context. Naz’s foreign references include materials from the usual suspects, the United States and the United Kingdom, as well as decisions from the Hong Kong, Fiji and Nepal.

The judicial restoration of a measure of dignity in Naz speaks to practice of collective humiliation imposed by the Indian Penal Code and variously administered and enforced by standard less use of force by the police and security forces. Dignity as a ground of the basic human rights of sexual minorities requires that the state and the law shall not reinforce social and cultural prejudices and practices of discrimination directed against these.

Naz is also a prelude to a fuller development towards the undeclared human rights of sexual orientation and conduct. Naz fully accepts and owns the affirmation of dignity in the Universal Declaration of Human Rights (UDHR), which majestically, says that all humans have inherent dignity because of the fact that they are born such. This obligation of dignity is owed to human beings because they possess the capacity for moral judgment as well the twin faculties of reason and will.

The Naz Foundation decision is after all, the affirmation of such a community’s right to assert love, and to do it with autonomy and dignity. This case is a very good instance of how the formidable walls of prejudice that inform most public institutions can be broken down. Naz does not outlaw all forms of morality based legislation or governmental action. Rather, the decision suggests that mere public disapproval of a practice or behaviour is an inadequate reason to restrict it. Naz unlike any other

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decision before it has the unique potential to diminish popular but irrational moral condemnation of stigmatized groups\textsuperscript{417}.

Like in \textit{Roe v. Wade} and \textit{Brown v. Board of Education}\textsuperscript{418}, which legalized abortion in the United States and ended racial segregation in public educational institutions, the Naz Foundation decision has the potential to be a case whose name conjures up the history of a particular struggle, celebrated the victory of a moment and inaugurates new hopes for the future. The victory is also highly significant because it introduces a radical politics of impossibility: by overturning what would have been impossible to imagine, the decision does not merely change the conditions of the group whose rights and demands are in question, but changes the horizon of possibility for the law and for constitutional interpretation itself.

Ultimately, it is only through politics and struggle that rights are created. Only in the mist covered regions of legal theory could we imagine that rights are the products of judicial authorship. This is a point acknowledged in the Naz Decision: the judges acknowledge that a constitution does not create rights, it merely confirms their existence.

\section*{10.3 CRITICAL ANALYSIS OF SURESH KAUSHAL JUDGMENT}

Judgment by learned judges in case of \textit{Suresh Kumar Kaushal v. Naz Foundation & Ors.} gave a huge setback to LGBT Activism in India, shaking the faith and confidence of many LGBT People who are struggling hard for their identity in Indian legal and social system. A host of academics and lawyers have critiqued the judgment in great detail, including the non-addressal of the Article 15 argument, and have found it wanting in many respects. The judgment revealed that both learning and science get rather short shrift. Instead of welcoming cogent arguments from jurisprudence outside India, which is accepted practice in cases of fundamental rights, the judgment

\footnote{\textsuperscript{417} Stigma against gays is widely prevalent even among urban middle class who are considered to be socially progressive, See, e.g. ‘The rainbow Schism’, Hindustan Times, 13 August 2009 ( according to a recent survey, 62\% of the respondents think that homosexuality is a disease, 80\% believe that same sex relationships are against Indian culture and over 90\% say they have no gay friends.}

\footnote{\textsuperscript{418} , 344 U.S. 1 (1952).}
specifically dismisses them as being irrelevant. Further, rather than following medical,
biological and psychological evidence, which show that homosexuality is a completely
natural condition, part of a range not only of human sexuality but of the sexuality of
almost every animal species we know, the judgment continues to talk in terms of
'unnatural' acts, even as it says that it would be difficult to list them.

But what is most painful and harmful is the spirit of the judgment. The interpretation
of law is untempered by any sympathy for the suffering of others. The voluminous
accounts of rape, torture, extortion and harassment suffered by gay and transgender
people as a result of this law do not appear to have moved the court. Nor does the
court appear concerned about the parents of such people, who stated before the court
that the law induced in their children deep fear, profound self-doubt and the inability
to peacefully enjoy family life. The judgment fails to appreciate the stigma that is
attached to persons and families because of this criminalization.

The judgment claimed that the fact that a minuscule fraction of the country's
population was gay or transgender could not be considered a sound basis for reading
down Section 377. In fact, the numbers are not small. If only 5% of India's more than
a billion people are gay, which is probably an underestimate, it would be more than 50
million people, a population as large as that of Rajasthan or Karnataka or France or
England. But even if only a very few people were in fact at threat, the Supreme Court
could not abdicate its responsibilities to protect their fundamental rights, or shuffle
them off to Parliament. It would be like saying that the Parsi community could be
legitimately imprisoned or deported at Parliament's will because they number only a
few tens of thousands. The reasoning in the judgment that justice based on
fundamental rights can only be granted if a large number of people are affected is
constitutionally immoral and inhumane. The judgment has treated people with a
different sexual orientation as if they are people of a lesser value419.
What makes life meaningful is love. The right that makes us human is the right to love. To criminalize the expression of that right is profoundly cruel and inhumane. To acquiesce in such criminalization or, worse, to recriminalize it, is to display the very opposite of compassion. To show exaggerated deference to a majoritarian Parliament when the matter is one of fundamental rights is to display judicial low confidence for there is no doubt, that in the constitutional scheme, it is the judiciary that is the ultimate interpreter.  

10.4 LAW COMMISSION ‘S RECOMMENDATION OF 2000 RELATING TO SEXUAL OFFENCES

On 25 march, 2000, the Law Commission of India submitted its 172nd report on ‘Review of rape laws’ to the Supreme Court to recommend: a shift from Rape to the wider scope of sexual assault, gender-neutral language of sexual assault that includes women and men as perpetrators and victims and includes assault against male children, raising the age of the married girl from 15 to 16 years; strengthening the punishment for sexual assault against adults, children and pregnant woman perpetrated by people in position of trust and authority or by multiple perpetrators; deletion of section 377 since it would no longer be necessary to prosecute sexual assault on children.

In the 172nd report of the law commission and the criminal law amendment act, 2000 versions, the language is gender neutral in terms of perpetrators and victims of sexual assault. The implications of gender neutral sexual assault laws were raised effectively by a number of the groups left out of the consultative process.

The national meeting held in Mumbai, 7-9 December 2001, to respond to the recommendations of the 172nd LCI report and criminal amendment 2000, was attended by thirty woman’s rights, sexuality minority rights, child rights, and human rights organizations. The group rejected the LCI 172nd report and the criminal law amendment act, 2000 due to the lack of inadequate consultation beyond the three Delhi based organizations and the concerns with gender neutrality. Gender-neutral

420 ‘A mother and a judge speaks out on section 377’ TNN | Jan 26, 2014, 06.10AM IST
421 Full text available on: http://www.lawcommissionofindia.nic.in/rapelaws.htm.
language for victims of sexual assault would allow the prosecution of sexual crimes against boys under section 375/6, a move which has been widely hailed. In so far as gender neutral language on sexual assault implies women and men as perpetrators, it implicitly acknowledges same-sex desire, now following on the heels of the Delhi High Court verdict on section 377 and its forthright statement on the dignity, autonomy and the rights of same-sex sexualities. However, instead of seeing same-sex sexuality as a basis for legal and equal personhood, the law would recognise said persons as perpetrators and victims.

**Reason behind Non-Inclusion of LCI Recommendations relating to Sodomy Law in Criminal Law Amendment Act, 2013**

The LCI report and criminal law amendment Act 2000, each endorsed that section 377 should be deleted. Once sexual assault against girls, boys and women is adequately covered under sexual assault, there was no apparent reason for section 377 to be retained as a law.

But unfortunately the recommendations pertaining to deletion of sec. 377 and making 375/6 gender neutral were not implemented. One of the significant criticism against the 172nd report of law commission is that three women organizations, Sakshi, IFSHA and AIDWA, and the NCW were arbitrarily consulted, while other women’s groups, child rights, queer rights, among others were neglected.

The question of inadequate process cuts to the heart of the criticism of the Naz writ against section 377 as well. Numerous groups invested in the fight for sexual minority rights were left out of the consultation process. An informal coalition of lesbian, gay, bisexuals, and transgender, KOTHIS, MSM and HIV/AIDS group addressed a letter, dated 8th January, 2002, questioning the process through which the Naz writ was filed. Naz and Lawyer’s collective disputed this criticism by citing the hosting of three open meetings to which a variety of groups from Delhi were invited. The point remains that in a case where many representatives of groups and individuals report that they did not have knowledge about the petition prior to its filing or had heard some vague reports about it, the process appears to have been inadequate.
It is noteworthy here that, since the adoption of the IPC in 1950, around 30 amendments have been made to the statute, the most recent being in 2013 which specifically deals with sexual offences, a category to which Section 377 IPC belongs. The 172nd Law Commission Report specifically recommended deletion of that section and the issue has repeatedly come up for debate. However, the Legislature has chosen not to amend the law or revisit it. This shows that Parliament, which is undisputedly the representative body of the people of India, has not thought it proper to delete the provision. Such a conclusion is further strengthened by the fact that despite the decision of the Union of India to not challenge in appeal the order of the Delhi High Court, the Parliament has not made any amendment in the law and our custodian of fundamental rights, Supreme Court of India has again restored the sodomy law in its original form.

10.5 SUMMED UP ARGUMENTS FOR REPEALING/AMENDING SECTION 377 IPC

1. Interpretation of Section 377 is not in consonance with the scheme of the IPC, with established principles of interpretation and with the changing nature of society.

2. Section 377 is impermissibly vague, delegates policy making powers to the police and results in harassment and abuse of the rights of LGBT persons. In *State of MP v. Baldeo Prasad*[^422], which held that, ‘Where a statute empowers the specified authorities to take preventive action against the citizens it is essential that it should expressly make it a part of the duty of the said authorities to satisfy themselves about the existence of what the statute regards as conditions precedent to the exercise of the said authority. If the statute is silent in respect of one of such conditions precedent, it undoubtedly constitutes a serious infirmity which would inevitably take it out of the provisions of Article 19 (5).’

[^422]: (1961) 1 SCR 970 at 989
3. Widespread abuse and harassment of LGBT person u/s 377 has been incontrovertibly established. It was supported by various documents brought on record, such as Human Rights Watch Report, July 2002 titled, “Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India”; Affidavits giving instances of torture and sexual abuse; *Jayalakshmi v. State* 423, dealing with sexual abuse and torture of a eunuch by police; An Order of a Metropolitan Magistrate alleging an offence u/s 377 against two women even though there is an express requirement of penetration under the Explanation to Section 377.

4. Section 377 violates the dignity of homosexual men in particular. Sex between two men can never be penile vaginal and hence virtually all penile penetrative acts between homosexual men are offences. As the society associates these acts with homosexual men they become suspect of committing an offence thus creating fear and vulnerability and reinforcing stigma of being a criminal 424.

5. As the provision of S.377 stigmatizes homosexuality, not only homosexuals but their families also face stigma & discrimination.

6. The provision serves as a weapon for police abuse in the form of detention, questioning, extortion, harassment, forced sex & payment of bribes.

7. It perpetuates negative & discriminatory beliefs towards same sex relations and sexual minorities in general, which drives gay men and MSM and sexual minorities underground crippling HIV/AIDS prevention methods.

8. The act is not in the nature of sexual assault, causing harm to one of the two individuals indulging in it. When consenting adults commit the act in private, it cannot be regarded as an offence.

9. It targets LGBT community by criminalizing a closely held personal characteristic such as sexual orientation.

10. Therefore, it is concluded and suggested that section 377 be amended to protect the fundamental rights LGBT people, even though they form a miniscule population in India.

423 (2007) 4 MLJ 849
10.6 CONCLUSION

Constitutions are not merely charters of governance; they are also ethical documents that lay down a collective commitment that members of a community make to set principles and to each other about the kind of life they would wish to pursue. Thus, the political form that we choose to govern our societies is not separable from the way in which we choose to govern ourselves as individuals and in our relations to each others. Who or how I choose to love is, then, both an individual choice and a question of political form and expression. Following Jawaharlal Nehru’s Quote included in the court’s judgment of words being ‘magical things’, one way of reading the constitution is to see it as a city of words built on the foundation promise made in its preamble—towards securing for its citizen Justice, Liberty, Equality, and Fraternity. It is important to recall that these are virtues that justify why we give ourselves a constitution.

The campaigns for law reform are not merely for a right to have sex, but to be able to live a life without fear of arrest, detention and harassment. No country can defend its anti-sodomy laws on the basis of cultural, moral or religious arguments if they otherwise commit themselves to human rights. Decriminalisation of consensual sex between adults goes to the core of human rights and dignity. Anti-sodomy laws are a historical wrong that needs to be rectified. The recent victory in the Delhi High Court with decriminalisation of consensual sodomy by the reading down of Section 377 is a huge step forward not just for India, but for the global battle against anti-sodomy laws. Countries like Hong Kong, South Africa and Fiji in Asia and Africa have already shown us the way by decriminalising consensual sex, in lieu of their commitment to human rights for all. A similar step is required to be undertaken by us in order to fulfill our commitments to constitutional values. The divergent views of Delhi High court & of Supreme court of India, over-ruling HC’S verdict, has clearly established the SC intention of putting the ball in the court of parliament.

Therefore, the assumptions made in the hypotheses that there is no effect of homosexual activities on the health of person & society at large is also found
incorrect. The assumption that there will be no effect of legalization of homosexuality in Indian legal, social & political system is also found to be non-convincing as a partial legalization of homosexuality in 2009, has successfully affected the LGBT Activism & has brought a new wave of hope in socio-legal & political environment of India.

10.7 SUGGESTIONS:

10.7.1 Legal Measures Suggested

- Recommendation of 172 report of Law commission must be implemented & section 377 of the IPC that single out same sexual acts between consenting adults should be repealed. A renewed proposal must be floated by the law commission of India to all stakeholders involved in legal battle against section 377 IPC and specifically to the complainant stakeholders who asserted before that they were not consulted when the recommendation of law commission were discussed in 2000. A fresh call for discussion and reconsideration must be initiated by the law ministry.

- Section 375 of the IPC should again be amended to punish all kinds of sexual violence, including sexual abuse of children. A comprehensive sexual assault law should be enacted applying to all men, women & others irrespective of their sexual orientation & marital status.

- Comprehensive civil rights legislation must be enacted to offer sexual minorities the same protection and rights now guaranteed to others on the basis of sex, caste, creed, and color. *The constitution should be amended to include sexual orientation as a ground of non-discrimination.*

- Police reforms must be introduced & implemented. Police at all levels should undergo sensitization workshops to break down their social prejudices and to train them to accord sexual minorities, the same courteous & humane treatment, as they give towards general public. Also, transparency should be adopted in dealing with sexual minorities.
10.7.2 Suggestion for Government Bodies

- Govt. should make an Endeavour to end violence against the LGBT community; both from the police & anti-social elements, and also from within the family.

- Govt. should enact an anti-discrimination law that addresses sexual orientation and gender identity issues and protect LGBT persons by ending discrimination at educational institutions, workplaces, hospitals, clubs, other public & privately run institutions etc.

- Govt. should forbid surgical & psychiatric medical interventions to alter sex, gender or sexual orientation; unless the person’s complete & free legal consent is obtained.

- Setting up of transgender boards on the lines of the TamilNadu government & Karnataka government’s initiatives. Separate public toilets for third gender, sensitization work conducted by social workers etc. must also be adopted by other states.

- Providing gender sensitization and counseling facilities in various educational institutions so that LGBT youth & parents of such people can have access when required.

- The govt. must also ensure that S.377 is not used as a weapon against innocent homosexuals. A deep insight into reality of offence & careful investigation must be done in cases of section 377.

- Until & unless the legislative provision of Sec. 377 is neither amended nor deleted, judiciary must act as Guardian and custodian of this minority community in India. Judiciary must carefully do the justice by ensuring that homosexuals do not suffer harassment only because of their sexual orientation, otherwise it would amount to infringement of Article, 14, 15 & 21 of the constitution.
10.7.3 Suggestions for LGBT Community

➢ The LGBT people have to continue their struggle & fight for gender justice against all odds.

➢ The LGBT community has to spread awareness about their identity & rights from grass-root level by organizing more seminars, workshops & awareness drives in schools, colleges & Universities in collaborations with various Government & NGOs.

➢ The LGBT people must also educate themselves more, as it has been observed during visits to NGOs etc. that many of them leave schools in between, are not educated enough, or lack seriousness towards their studies. Many of them are engaged in typical work of barber, fashion designing, & other such vocational jobs. Few of them pick up prostitution as easy way to make money. All this leads to failure to influence mindset of general public, and ultimately leads to hatred, disrespect, non-acceptance on part of society.

➢ On the whole, they have to boost up their self esteem, earn respect so that their issues can be seriously considered & supported by society at large. They need to bring political awareness & send representatives in parliament, only then the favorable legislature can be expected for them. Because the crux remains that until & unless they are not supported by society, neither legislature, nor judiciary will stand beside them.

10.7.4 Suggestions for Society

➢ The society must have rationale, open, thoughtful, judicial & unbiased approach towards minority’s community in general & homosexuality in particular. It is observed during research work that, most of the people in society, especially middle aged and elderly people have a firm belief that if homosexuality is legalized, it will open flood gates for many homosexuals to come out and the overall moral standards of the society will deteriorate.
The people must understand that homosexuality is neither an adopted behavior nor a way of life (except in very few cases where it’s been adopted by some people to take undue advantage of a situation or person\textsuperscript{425}), but an inherent characteristic of their personality. It is a deviant behavior in the sense that it does not conform to what the majority do, and such cases ought to be treated with compassion and understanding. It is essential to realize here that such orientation is also given to them by the nature itself, and cannot be changed just by being a friend or relative of a gay man or lesbian woman.

Such persons don’t get anything by walking on a path which is full of thorns,(\textit{rather nobody would like to make one’s life complicated or difficult for no good cause}). A homosexual goes through a lot of emotional turmoil unless accepted by family and people of concern. During research it was observed in some case studies that even one they declare their sexuality to the world, their pain and sufferings continue until and unless they manage to live their life to the fullest, either by continuing to be a gay or lesbian or going for a sex change surgery. This surgery itself is too complicated, costly and time consuming. Thus, we must try to accept them respecting their sexuality.

LGBT people need to be counseled, educated, uplifted & motivated so that they can also live a life of dignity. It is the responsibility of the stakeholders of society to bring such people in mainstream. It is the responsibility of the Psychologist to counsel the homosexuals that it is a natural though a deviant sexual orientation. It is also their utmost duty to counsel the parents as well; who desperately approach them to have their ‘gay’ child cure of his such orientation. It is the moral and professional responsibility of the sexologist to guide and encourage homosexuals on safe- sex practices. It is the professional and moral responsibility of teachers, teaching at various levels to educate children in such a way that the values of compassion, love for humanity, 

\textsuperscript{425} Observation study- an observation study was conducted and noted on may31, 2011 where it was observed that sometimes people intentionally misrepresent their sexual preference and pretend to be gay to take undue advantage of a particular person/situation. (study related to fashion designer Rohit Bal (for details see: Annexures)
rationality in decision making, courage and confidence to face the world against all odds can be developed. It is the moral and professional responsibility of our police that they do not misuse and abuse innocent homosexuals by screening them the weapon of section 377 IPC.

- The various employers, including organizations, MNCs, various institutions etc. must also have empathetic attitude towards LGBT employees & must adopt anti- discriminatory & zero tolerance of harassment in HR policies towards homosexuals. It is the responsibility of the employer to ensure that LGBT people are treated at par with the other employees. They must also receive same level of dignity and respect, job opportunities at workplace, benefits and incentives along with encouragement to work. At last, the society must get rid of homophobia, which is not only prevailing against homosexuals but also against people who discusses homosexuality.