CHAPTER 6
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6.1 Conclusion

Discrimination against children on the basis of sexual orientation and gender identity remains a global threat. Most of the homosexual, bisexual and transgender children are subjected to hostile treatment not only by the society at large but also by the family members. However, bisexual individuals remain invisible as they can easily hide their sexual orientation.

Even in schools, other educational institutions, foster care and State care institutions, children are subjected to homophobic or transphobic bullying, discriminatory behaviours and other violent acts. These discriminatory practices and acts of violence affect the physical and mental health of the children badly. Although few States have taken initiatives to curb the discriminatory practices and acts of violence against children based on sexual orientation and gender identity but still the problem persists across the globe. Governments and inter-governmental bodies have mostly overlooked violence and discrimination based on sexual orientation and gender identity, against children. United Nations Convention on the Rights of the Child, which is the most important Convention for the protection of the rights of children, does not take into account the rights of homosexual, bisexual and transgender children. In Article 2 of the United Nations Convention on the Rights of the Child which provides that it is the obligation of the States Parties to respect and ensure the protection of rights enumerated in the Convention without any discrimination based on ethnic or social origin, birth, sex, color, race, language, political or other opinions, nationality, disability, or other status. The Convention does not explicitly include sexual orientation and gender identity as a prohibitive ground of discrimination. Similarly, the prohibitive grounds of discrimination referred to in Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights also do not include sexual orientation and gender identity. Despite no explicit mention of sexuality and transgenderism as a prohibitive ground of discrimination, it has been
held by the Human Rights Committee that the prohibitive grounds mentioned in the
provision of non-discrimination also includes sexual orientation and gender identity.

In India homosexuality still remains a taboo and so is the transgenderism. Consensual
sex among the adult members of the same sex is also an offence under Section 377 of
the Indian Penal Code which has a worse impact on homosexual, bisexual and
transgender children. Most of the homosexual, bisexual and transgender children hide
their sexual orientation and gender identity from their family and society under the
fear of stigmatization and rejection from others. Subsequently, the cases of
discrimination against children on the basis of sexual orientation and gender identity
do not come into light. And in a case, if a child discloses that he or she is a
homosexual or transgender, then most of the parents do not accept this fact and rather
they take their ward to psychiatrists considering being homosexual or transgender as
some sort of mental illness. Nevertheless, homosexuality is still being labeled as
‘unnatural offence’, despite the fact that homosexuality is discoverable in nature i.e.,
it is also found in other animal species.

Indian Constitution also prohibits discrimination on the grounds of religion, caste,
place of birth (Article 15) but does not include sexual orientation and gender identity
as a prohibitive ground. The Apex Court of the country also overturned the verdict
directing decriminalization of consensual same-sex activities between adults, and
hence restored homophobia in the Indian society. The judgment attracted
condemnation from many human rights activists and the members of sexual
minorities. Although the Apex Court gave legal recognition to the transgender
community and also considered them within the category of the other backward
classes, the homosexual individuals are kept distant from the given verdict and it has
been further maintained by the Court that the given judgment is not applicable to
homosexual and other members of the sexual minorities except transgender
community. The legal reforms and efforts for the mainstreaming of the sexual
minorities are largely inclined towards the transgender community. There are lesser
no. of convictions based on consensual same-sex behaviour and the major cause of
discrimination and non-acceptance of the LGBT community is ‘social inclusion’.
Social inclusion of the sexual minorities cannot be achieved only with the help of law
reforms but through other tools such as awareness programmes and sex education in educational institutions.

6.2 Suggestions

The researcher has the following suggestions in the given study along with a proposed legislation for the protection of the rights of sexual minorities in India drafted by the researcher and attached in the Appendices.

1. The International Human Rights Mechanism should explicitly include ‘sexual orientation’ and ‘gender identity’ within the prohibitive grounds enumerated in the non-discrimination clause of various Conventions, such as the Universal Declaration of Human Rights, United Nations Convention on the Rights of the Child, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights etc.

2. The State authorities and various Governmental organizations should adopt appropriate measures to ensure the protection of basic human rights and freedoms to the individuals irrespective of their sexual orientation and gender identity and also should take adequate steps in order to prevent discrimination and violence based on sexuality and transgenderism. The cases concerning discrimination or other violent acts including hate crimes targeted on the sexual minorities should be investigated expeditiously.

3. The States should adopt appropriate and comprehensive legislation for the protection of the sexual minorities against discrimination based on sexuality and transgenderism. Also, sexual orientation and gender identity should be included among the prohibitive grounds of the non-discrimination clause of the Constitution and other statutory acts.

4. The State authorities should promote various training programmes for the sensitization towards sexual minorities and also support public information campaigns to create awareness and impart knowledge to the general public in order to root out homophobia and transphobia.

5. The National Human Rights mechanisms and institutions should also adopt appropriate measures on the lines of International Human Rights law, to prevent discrimination based on sexual orientation and gender identity.
6. The law criminalizing homosexual acts should be restricted only to those acts which are not consensual or related to children. The consensual same-sex acts and behaviour should be decriminalized and the State authorities should also ensure to all the individuals of all ages that the criminal laws or other statutes are not misused by the police or other authorities in order to harass or illegally detain them.

7. The grievance redressal mechanism for the sexual minorities should be established in all public or private undertakings along with the educational institutions.

8. Appropriate sex education and information related to sexuality and gender issues should be included as a part of the curriculum in schools, colleges, and other higher educational institutions in order to root out the popular misconceptions regarding sexuality and transgenderism.

9. Educational institutions should also adopt appropriate measures in order to ensure the protection against homophobic or transphobic bullying to all the individuals of all ages.

10. The proper training should be given to the medical experts and other staff members of the agencies concerning the welfare of the individuals, such as child welfare and juvenile justice agencies, regarding sexual orientation and gender identity issues so that they understand the unique requirements of sexual minorities.