CHAPTER 2
CRITICAL ANALYSIS OF THE EXISTING INTERNATIONAL LEGAL FRAMEWORK
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Violence and discriminatory acts based on sexual orientation and gender identity includes, but are not limited to, murder, rape, assault, physical abuse, sexual abuse, torture, arbitrary detention, discrimination in the sphere of education, healthcare and employment, violation of basic rights such as right to freedom of speech and expression, right to peaceful assembly, right to information etc. Such violations have been documented by the United Nations mechanism for the monitoring of Human Rights issues and other Human Rights treaty bodies including the monitoring mechanism of Human Rights Council, for more than twenty years.

In the year 2010, the Secretary General of UN in his speech on Human Rights day, expressed his concern for violence and discrimination based on sexual orientation and gender identity. He said that the discrimination should be rejected in general and more particularly discrimination on the basis of sexual orientation and gender identity should be rejected by all the men and women of conscience. He further said that whenever there is a controversy between culture and universal human rights, human rights should prevail. And in the end of his speech, he further made a declaration to seek repeal of laws criminalizing consensual homosexuality which further lead to discrimination and violence on the basis of sexual orientation and gender identity and also encourages violence.

On Mar. 7, 2012, the Secretary General again expressed his concern towards ongoing discrimination and other issues based on sexual orientation and gender identity. He said that although sexual orientation and gender identity are very sensitive issues and most of the people did not grow up talking or discussing about such issues but it is high time when one should talk about it because human lives are at stake. He further stated that he chose to speak about sexual orientation and gender identity issues because, it is the duty to protect the rights of all individuals in all the parts of the

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103 Hereinafter referred to as UN.
world as prescribed by the United Nations Charter and the Universal Declaration of the Human Rights.\(^{105}\)

International Bill of Human Rights for the protection of the Human Rights of the individuals includes:-

1. Universal Declaration of Human Rights\(^{106}\)
2. International Covenant on Civil and Political Rights\(^{107}\)
3. International Covenant on Economic, Social and Cultural Rights\(^{108}\)

These three instruments do not address the issues related to discrimination against individuals on the basis of sexual orientation and gender identity separately.

Convention on the Elimination of all forms of Discrimination against Women\(^{109}\) (which is often described as an international bill of rights for women) and the United Nations Convention on the Rights of the Child\(^{110}\) (which is often described as an international bill of rights for children) also do not address separately the issues related to the discrimination and other forms of violence against women and children on the basis of sexual orientation and gender identity.

### 2.1 Standards and Obligations under International Human Rights Law

Article 1 of the Universal Declaration of the Human Rights declares that all individuals are born free and are equal in dignity and rights. The application of International human rights law is based on the principle of equality and universality as enshrined in the above mentioned provision of the Universal Declaration of the Human Rights.

All human beings irrespective of their sexual orientation and gender identity are entitled to certain basic human rights guaranteed by the International Human Rights law. These basic rights guaranteed by the International declarations, Covenants and

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\(^{106}\) Hereinafter referred to as UDHR.

\(^{107}\) Hereinafter referred to as ICCPR.

\(^{108}\) Hereinafter referred to as ICESCR.

\(^{109}\) Hereinafter referred to as CEDAW.

\(^{110}\) Hereinafter referred to as UNCRC.
Conventions include right to life; right to family and privacy; right to freedom from torture, arbitrary arrest and detention; right to freedom of speech and expression, right to peaceful assembly and association; right to freedom against discrimination. It was observed in the Vienna Declaration and Programme of Action that the respect for national, regional and various historical, cultural and religious background should be sustained but it is the duty of the States to promote and protect all human rights and basic freedoms irrespective of their political, economic, cultural or religious structure. 111

Protection against discrimination is the most crucial human rights principle embodied in the United Nation Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights and other core human rights conventions. The principle of non-discrimination enshrined and explicitly mentioned in the provisions of International Human Rights instruments provide that the rights guaranteed should be made available to all the individuals universally without any discrimination of any kind. It further provides that the States should ensure that their laws, policies and other programmes are not discriminatory in its implementation. Article 2 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provides that the State parties should ensure all the rights mentioned in the Covenants to all the individuals within their jurisdiction irrespective of their race, colour, sex, language, religion, political structure, national or social origin, birth or other status.

The words ‘other status’ used in the prohibitive grounds set forth in the Covenants connotes that the grounds of discrimination mentioned in the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights and other International Human Rights treaties is not exhaustive. It further implies that the drafters of the International Human Rights treaties, intentionally used the words ‘other status’ as one of the prohibitive grounds of discrimination to keep the prohibitive grounds of discrimination open for the inclusion of other grounds of discrimination. The prohibitive grounds of discrimination such as sexual orientation, gender identity, health status, disability, age

etc. are not explicitly mentioned in the International Covenants and Human Rights treaty bodies. In *Toonen v. Australia*\(^{112}\), it was held by the Human Rights Committee that the States are under the obligation to protect the individuals against discrimination based on sexual orientation and gender identity.\(^{113}\)

### 2.2 The Obligations of the Signatory States under International Human Rights Law

The States are under the obligation to protect the individuals, within its jurisdiction, from violence and discrimination based on sexual orientation and gender identity. This obligation of the signatory States has been derived from various International Human Rights Conventions. The obligation of the States towards individuals within its jurisdiction also includes the following, as explained below.

#### a. The obligation to protect the right to life, liberty, and security of individuals

Article 3 of the Universal Declaration of the Human Rights guarantees right to life, liberty and security to all individuals universally\(^{114}\). Article 6 of the International Covenant on Civil and Political Rights further declare that the Right to life is inherent in every individual\(^{115}\). The above mentioned rights are to be protected by the law of the States and no person shall be arbitrarily deprived of the right to life\(^{116}\). It is the obligation of the State to protect the lives of the individuals and also to exercise due


\(^{115}\) United Nations Human Rights Office of the High Commissioner, International Covenant on Civil and Political Rights, [http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx), (Last accessed on 20/04/16). Article 6 of ICCPR provides that the right to life is inherent in every human being and no person shall be arbitrarily deprived of life and the same shall be protected by the State.

\(^{116}\) United Nations, General Assembly, Sixty-fifth session, Resolution adopted by the General Assembly on 21 December 2010, 65/208. Extrajudicial, summary or arbitrary executions [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/208](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/208), (Last accessed on 20/04/16). In its resolution 65/208, the General Assembly commended that all the signatory States should ensure the effective protection of the right to life of all individuals under its jurisdiction and to investigate expeditiously and exhaustively all killings and violent acts intended to violate the right to life, including hate crimes targeted at a certain group, such as killing on the basis of sexual orientation and gender identity.
diligence in the expeditious redressal of deprivation of life. The States are also under the obligation to diligently investigate and prosecute the acts of violence and deprivation of life.

It is also provided under the Article 33 of the Convention relating to the Status of Refugees that the signatory States are under the obligation of protecting the right to life of refugees and also States shall not expatriate or replace a refugee to a place where they are under a fear of deprivation of their right to life or freedom on the grounds of race, religion, nationality, ethnic origin, membership of a social group or any political group. It was observed by the United Nations High Commissioners for Refugees that the individuals who are under the fear of discrimination on the basis of sexual orientation or gender identity, could be considered as a member of a particular social group. If the concerned individual fulfils the criteria mentioned for the status of refugee, the States shall recognize and protect them on the lines of provisions laid down in the Convention and also the States party to the Convention should ensure that such refugee is not replaced to a place where their right to life and other freedoms are at stake.

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120 United Nations Human Rights Office of the High Commissioner, Convention relating to the Status of Refugees, http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx, (Last accessed on 25/04/16). Article 33 of the Convention relating to the Status of Refugees provides for the prohibition of expulsion or return where a refugee is under the threat of deprivation of life or freedom on the grounds of his race, religion, nationality, membership of a particular social group or political opinion. Nonetheless, the prohibition on expulsion or return is not applicable on a refugee for whom there are reasonable grounds for regarding him as a threat to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

121 Hereinafter referred to as UNHCR

b. The obligation of the States to protect individuals against torture, inhuman or degrading treatment on the basis of sexual orientation and gender identity.

The right to protection against torture, cruel, inhuman or degrading treatment guaranteed under the International Human Rights law is absolute. Article 5 of the Universal Declaration of the Human Rights and Article 7 of the International Covenant on the Civil and Political Rights provides for the protection of individuals against torture, cruel, inhuman or degrading treatment or punishment.\(^{123}\)

The United Nations Human Rights Committee against Torture has commended that all the signatory States are under the obligation to protect all individuals within their jurisdiction from the torture, cruel, inhuman or degrading treatment, irrespective of their sexual orientation or gender identity\(^{124}\). It was also observed by the Committee that the States should expeditiously prohibit, prevent and provide redress for the torture and inhuman treatment\(^{125}\). The Committee also expressed concern, in its concluding observation on State parties report, regarding the allegations related to the abuses and ill-treatment on the grounds of sexual orientation and gender identity\(^{126}\).

c. The obligation of the States to protect the right to privacy and protection against arbitrary detention on the basis of sexual orientation and gender identity.

The right to privacy is guaranteed under Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights, which state that the State parties should ensure to all the individuals within their jurisdiction, the right to the protection of privacy and against arbitrary detention.

\(^{123}\) See The Universal Declaration of Human Rights, \textit{Supra} note 114. International Covenant on Civil and Political Rights, \textit{Supra} note 115. The mentioned provisions of the International Bill of Rights provide that no individual shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and the State parties are under the obligation to protect the individuals within their jurisdiction against such inhuman treatment or punishment. Article 7 of the ICCPR further provides that, no individual shall be subjected to medical or scientific experimentation without his free consent.

\(^{124}\) Committee against torture, Thirty-ninth session, Advance unedited version, Convention against torture and other cruel, inhuman or degrading treatment or punishment, General Comment No. 2, (CAT/C/GC/2), Para. 21 http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2. CRP.1.Rev. 4 _en.pdf (Last accessed on 1/05/16).

\(^{125}\) \textit{Id.} Para. 15

\(^{126}\) See UN report A/HRC/19/41, \textit{Supra} note 118 at 6.
detention. It also provides that no individual should be afflicted with arbitrary or unlawful interference with his private life, family, home or correspondence. All human beings are further guaranteed protection against arbitrary arrest and detention under Article 9 of the Universal Declaration of the Human Rights and the International Covenant on the Civil and Political Rights. It was observed by the Human Rights Committee in its General Comment no. 16 that any interference with the right to privacy and protection against arbitrary interference shall be in accordance with the provisions and preamble of the International Covenants and should also seem to be reasonable in the given circumstances.

It is held by the Human Rights Committee, since Toonen’s Case that the laws criminalizing private consensual same-sex acts and behaviour between adults violates the right to privacy and also violates the right to protection against discrimination. The argument against decriminalization of private consensual same-sex acts between adults, that such criminalization could be justified as reasonable on the grounds of preserving public health and morals, is also rejected by the Human Rights Committee. It is also observed by the Committee that the laws criminalizing such private consensual same-sex acts and behaviour are neither necessary nor reasonable. Amendment in such Draconian law or even its repeal is encouraged, in the concluding observation of various Human Rights treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee

127 The Universal Declaration of Human Rights, Supra note 114. International Covenant on Civil and Political Rights, Supra note 115. Article 12 of the UDHR and Article 17 of the ICCPR provide that no individual shall be subjected to arbitrary interference with his private life, family or other ancillary matters. It further provides that it is the obligation of the State parties to prevent such attacks upon the honour and reputation of its subjects.

128 The Universal Declaration of Human Rights, op cit. International Covenant on Civil and Political Rights, op cit. Article 9 of the UDHR and ICCPR provides that State parties shall ensure to all the individuals, right to liberty and security. It further provides that no individual shall be afflicted with arbitrary arrest or detention and also no person shall be deprived of his liberty except according to the procedure established by law. Article 9 of the ICCPR further provides for the various rights of the person arrested or detained in order to ensure that no person is a victim of unlawful arrest or detention.

129 See UN report A/HRC/19/41, op cit.

130 See Toonen v. Australia, Supra note 112.

on the Elimination of Discrimination against Women and the Committee on the Rights of the Child 132.

d. The obligation to protect individuals against discrimination on the basis of sexual orientation and gender identity

The principle of non-discrimination and equality is embodied in the International Human Rights law. International Human Rights law comprising of all the International Covenants, Declarations and Conventions provides for the rights against discrimination of any kind. 133. Article 26 of the ICCPR also guarantees right to equality before the law, which further imposes an obligation on the State parties to prohibit discrimination of all kinds 134.

The obligation of the State parties to prohibit and protect all the individuals against discrimination on the basis of sexual orientation and gender identity is confirmed and commended by all the human rights treaty bodies in their general comments, observations, and communications. Being homosexual or a transgendered individual is no ground to restrict the entitlement to enjoy the basic Human Rights 135.

132 UN report A/HRC/19/41, Supra note 118 at 6.
133 The Universal Declaration of Human Rights, Supra note 114. International Covenant on Civil and Political Rights, Supra note 115. United Nations Convention on the Rights of the Child, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, (Last accessed on 6/05/16). Article 2 of the UDHR provides that every individual is entitled to all the rights and freedoms mentioned in the Declaration, without any discrimination on the grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
Article 2 of ICESCR also provides that the States Parties to the Covenant should ensure the rights guaranteed in the Covenant to all the individuals without any discrimination on the grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, developing Nations may determine the extent of guarantee related to the realization of Economic Rights on the grounds of their national economy. Article 2 of the UNCRC provides that the States Parties shall respect and ensure the rights guaranteed in the Convention to every child within their jurisdiction without any discrimination on the grounds of child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. It is the obligation of the State Parties to diligently prevent such discrimination and to expeditiously punish and redress such discrimination.
134 International Covenant on Civil and Political Rights, Supra note 115. Article 26 of ICCPR provides that the State Parties to the Covenant shall ensure equality before law and equal protection of law without any discrimination to all the individuals within their jurisdiction. More so, the law should provide for prohibition of any kind of discrimination and ensure protection against discrimination.
135 See UN report A/HRC/19/41, Supra note 118 at 6.
As per the directions of the Human Rights Committee, State Parties should ensure all the rights guaranteed in the Covenant to all the individuals irrespective of their sexual orientation and gender identity 136. The Human Rights Committee also commended reformation of the existing legal systems for the inclusion of sexual orientation and gender identity as one of the prohibitive grounds of discrimination. The principle of equality and non-discrimination on the grounds of sexual orientation and gender identity, in the realization of the right to livelihood, work, water, social security and the highest attainable standard of health has been upheld by the Committee on Economic, Social and Cultural Rights. The Committee in its general comments also included sexual orientation and gender identity as one of the prohibitive grounds of discrimination as provided by the Covenant. The recommendations on the protection of the individuals of all ages against the discrimination based on sexual orientation and gender identity are also included in the general comments and observations of the Committee on the Rights of Child, the Committee against Torture and the Committee on the Elimination of Discrimination against Women.

e. The obligation of the State Parties to protect the right to freedom of speech, expression, peaceful assembly and association without any discrimination

The right to freedom of expression, peaceful assembly and association is one of the most important fundamental right guaranteed by the International Human Rights law. These rights are also guaranteed by the Universal Declaration of the Human Rights under the Articles 19-20 and also by the International Covenant on Civil and Political Rights under Articles 19, 21-22. Article 19 of the UDHR provides that the right to freedom of speech, expression, and thoughts is inherent to all the individuals. It further provides that individuals also have a right to freedom to hold opinions without any interference and also they have right to seek, receive and impart information.

Article 20(1) of the Declaration provides that every individual has the right to freedom of peaceful assembly without any interference and discrimination. 137

However, these rights are not absolute and reasonable restriction on these rights is permitted by the International Covenant on Civil and Political Rights on certain grounds such as national security, public safety, public order, public health and public morals. The Human Rights Committee also observed that any restriction on the right to freedom of expression, peaceful assembly and association should be in accordance with the provisions and preamble of the Covenant. It was also upheld by the Committee that such restrictions should not violate the right to protection against discrimination including sexual orientation and gender identity as one of the prohibitive grounds of discrimination.

2.3 The Yogyakarta Principles

The International Human Rights mechanism has witnessed a great journey of progress towards gender equality and protection of individuals against violence and discriminatory acts in the States. As a matter of fact, International Human Rights law also provides that the State Parties are under the obligation to ensure the protection of all the individuals against discrimination on the grounds of sexual orientation and gender identity. Nonetheless, the response of various countries towards the human rights violations and violence on the basis of sexual orientation and gender identity has been ambiguous and inconsistent.

To overcome the ongoing discrimination and violence based on sexual orientation and gender identity, the International Commission of Jurists 138 and the International

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137 United Nations International Covenant on Civil and Political Rights, Human Rights Committee 102nd session, General comment No. 34 (CCPR/C/GC/34), para. 26. See also general comment No. 22 (CCPR/C/21/Rev.1/Add.4), para. 8, http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf, (Last accessed on 15/05/16).

138 The International Commission of Jurists, https://www.icj.org/commission/, (Last accessed on 25/08/16). The International Commission of Jurists, established in 1952, consists of sixty renowned judges and lawyers representing various parts of the world. Its function is to protect and promote Human Rights on the basis of Rule of law. It is an expert body dedicated towards strengthening of International and National Justice Systems. The aims and objectives of the International Commission of Jurists includes progressive development in the sphere of Human Rights, ensuring basic rights including various civil and political rights and economic, social and cultural rights to all the individuals, effective implementation of the International Human Rights law, to protect separation of powers and also to ensure the guarantee of independent judiciary and legal profession.
Service for Human Rights\textsuperscript{139}, had committed to develop and propose a set of International principles based on the notions of universality and equality for the protection of individuals of all ages against the discrimination and violence based on sexual orientation and gender identity. These International principles for resolving the issues related to the sexual orientation and gender identity were formulated, developed and discussed by a prominent group of human rights experts. The group consisted of 29 experts from 25 countries. After a meeting held at Gadjah Mada University in Yogyakarta, Indonesia from Nov 6- Nov 9, 2006, the group of Human Rights expert unanimously adopted the ‘Yogyakarta Principles’ as a part of International Human Rights law concerned with sexual orientation and gender identity issues.\textsuperscript{140} These principles formulated by the Human Rights experts address a wide range of human rights standards applicable on various issues related to the sexual orientation and gender identity.

The Yogyakarta Principles enumerate various obligations targeted towards the State to prevent discrimination and violence based on sexual orientation and gender identity. These principles are applicable on all the organs and functionaries of the Government running in a State. These principles also enumerate obligations to be imposed on various State agencies concerned with health, education, and social welfare and also applicable to police system, judiciary, military services, and other services on behalf of the State Parties.\textsuperscript{141}

\subsection*{2.3.1 An outline of Yogyakarta Principles: -}

\subsubsection*{2.3.1.1 The Preamble}

The Preamble of the Yogyakarta Principle provides the definitions of key terms related to the sexual orientation and gender identity issues. It also acknowledges the discriminatory acts and violence based on sexual orientation and gender identity and seeks to prevent such human rights violation through the appropriate legal framework established under the guidance of the Principles.

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\textsuperscript{139} The International Service for Human Rights, http://www.ishr.ch/, (Last accessed on 25/08/16). It is an independent civil society, which aims at promotion and protection of Human Rights.


2.3.1.2 Right to equality, protection against discrimination and recognition before the law

Principles 1 to 3 provides that the human rights are universally applicable without any discrimination and it further provides that all the individuals are entitled to the right of recognition before the law.

For example, the laws criminalizing consensual same-sex acts between adults violate the International human rights relating to the protection against discrimination. The Human Rights Committee also upheld that the law criminalizing same-sex acts between consensual adults to be violative of the rights guaranteed in the ICCPR.  

2.3.1.3 Right to life and Security

Principles 4 to 11 address provides for various basic rights such as the right to life; the right to protection against violence, torture, cruel or inhuman treatment; the right to privacy; the right to protection against arbitrary detention and access to justice.

In the present times, there are many instances of violation of the right to life and security on the grounds of sexual orientation and gender identity. Despite the mandates of International Human Rights law which provide that the death penalty may not be imposed on consensual same-sex acts between adults, death penalty is still awarded in the cases relating to consensual same-sex acts between adults.

Recently a case related to the arbitrary detention of homosexual men attracted the attention of International Human Rights mechanism. In this case, eleven men were arrested in a gay bar and were also detained for consensual same-sex activity between adults. It was observed by the United Nations Working Group on Arbitrary Detention that the detention of men on the account of consensual same-sex activity is a gross violation of International Human Rights law, where one of the homosexual prisoners died due to the arbitrary detention.

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2.3.1.4 Protection against discrimination in the enjoyment of economic, social and cultural rights

Principles 12 to 18 provides that all the individuals have a right to enjoy economic, social and cultural rights as guaranteed in the International Human Rights law, including the right to work, livelihood, shelter, social security, education and access to health care services, without any discrimination. Nonetheless, according to a report of UN Special Rapporteur on adequate housing, women belonging to sexual minorities are at a higher risk of homelessness, discrimination, and violence 144.

In another report of UN Special Rapporteur on the right to education, it was observed that women belonging to sexual minorities are also at a higher risk of being expelled and discriminated in the higher educational institutions 145.

The UN High Commissioner for Human Rights has also expressed a concern about the laws prohibiting transgendered individuals to undergo sex reassignment surgery or requiring transgenders to undergo the process of sterilization irrespective of their consent 146.

2.3.1.5 Right to freedom of Expression, Opinion and Peaceful Assembly

Principles 19 to 21 deals with the right to freedom of speech and expression, opinion; the right to peaceful assembly and association; the right to choose one’s identity without any discrimination based on sexuality or transgenderism. Therefore all the individuals are free to choose their community and express their sexuality and also participate in a peaceful assembly and associations.

According to the report of UN Special Rapporteur on racism, discrimination and other targeted violent acts, in many States, a peaceful symposium to promote the rights of sexual minorities and to propagandize the right to equality and the protection against discrimination based on sexual orientation and gender identity was proscribed by the

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146 Born free and equal, Supra note 142.
State authorities. Moreover, the participants were also intimidated and harassed by the police authorities. The participants of such gathering who intend to promote non-discrimination on the basis of sexual orientation and gender identity are often also intimidated by the extremist nationalists

2.3.1.6 Right to freedom of movement and asylum

Principles 22 and 23 elucidate and further provide that the right to seek asylum is inherent in all the individuals and it also includes the right to seek asylum for the protection against violence and discriminatory acts based on sexual orientation or gender identity.

As per the guidelines of the United Nations High Commissioner for Refugees the States should ensure the right to protection also to the refugees under the fear of persecution based on sexual orientation or gender identity

2.3.1.7 Right to participate in cultural and family life

Principles 24 to 26 provides that all the individuals, irrespective of their sexual orientation and gender identity, have the right to family and to participate in the cultural life of the community. It is also provided that the right to participate in the administration and other public affairs without any discrimination should also be protected by the States

As per the observation of the UN Human Rights Committee, the State Parties are under the obligation to protect individuals against discrimination and the States should also ensure that in the matters related to the allocation of partnership benefits such as survivors’ pension, the individuals should not be discriminated on the basis of their sexuality or homosexual relationships

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147 LGBT PRIDE 2010, Supra note 145.
2.3.1.8 Protection of Human Rights Defenders

Principle 27\textsuperscript{150} provides that the right to promote and also defend Human Rights in inherent in all the individuals irrespective of their sexual orientation and gender identity. It further explains that the States should ensure the protection of the individuals engaged in the promotion and the acts of defending Human Rights.

As per the report of UN Special Rapporteur on the protection of Human Rights Defenders, the individuals of all ages engaged in the protection and promotion of the rights of sexual minorities have been threatened, physically and sexually abused, assaulted, intimidated and even murdered. The Special Representative of the UN Secretary-General also expressed concern regarding the casual attitude of the State authorities towards such serious cases\textsuperscript{151}.

\textsuperscript{150} The Yogyakarta Principles also provide for the protection of the right to promote Human Rights. The mentioned right enshrined in the Principle states that the right to promote and defend human rights is inherent in all individuals. Every person has a right to promote human rights either individually or in a group, without discrimination based on sexuality or transgenderism. This right to protect and defend human rights also includes right to promote and defend the rights of sexual minorities such as homosexual and transgendered individuals. This further connotes that all the individuals have right to promote and defend the rights of homosexual and transgendered individuals and also work towards developing new human rights principles for their protection. The Principles also enumerates certain directions for the States to ensure the protection of the mentioned right. These directions include:

1. States should adopt all the pivotal measures required to ensure the protection of individuals in the acts intended to promote and defend human rights including the rights of homosexuals and transgenerated individuals. States should also make efforts to ensure a favorable environment for the promotion of human rights.

2. States should also adopt appropriate measures for the protection of the individuals engaged in the promotion and realization of the rights and issues related to sexual orientation and gender identity and also ensure the protection of human rights defenders belonging to the sexual minority.

3. States should also ensure the protection of the right to participate in various international and national programmes and organizations without any discrimination based on sexual orientation and gender identity. States should also ensure that all the individuals, irrespective of their sexual orientation or gender identity and also irrespective of the issues they advocate, should have a right to access various organizations and bodies.

4. States should also ensure the protection of all persons of all ages engaged in the promotion of human rights and issues related to sexuality and transgenderism against violence, threats, vengeance, pressure, arbitrary actions, discrimination etc. States should also ensure the same protection to various human rights defenders who belong to the LGBT community.

5. States should also promote and recognize various organizations engaged in the promotion and protection of the rights of individuals belonging to diverse sexual minorities.

\textsuperscript{151} Yogyakarta Principles Supra note 149.
2.3.1.9 Rights to redress violations based on sexual orientation and gender identity

Principles 28 and 29 provides that the States should adopt appropriate measures for the redress of discriminatory acts and violations of human rights based on sexual orientation and gender identity and also should adopt appropriate legislative measures for holding such perpetrators accountable for their acts.

It was also observed by the UN Commissioner for Human Rights that the violence against sexual minorities and non-liability and acquittal of such perpetrators is a matter of great concern and the States should also ensure extended protection for the protection of individuals against hate crimes, other forms of violence and discrimination based on sexual orientation and gender identity. It was also stated by the UN High Commissioner that failure of the States to protect sexual minorities from the violation of human rights and also excluding them from the protections and other rights not only violates International Human Rights norms but is also against the principles of humanity. \(^\text{152}\)

**Additional Recommendations:** The Principles also enumerates several additional recommendations for the effective working of International and Regional Human Rights mechanisms, NGOs, UN agencies, Human Rights treaty bodies and other organizations.

The Yogyakarta Principles also summarize the responsibilities of various organs of the State and other organizations for the promotion and protection of human rights and also suggested the inclusion of these Principles as standards for their effective functioning.

On Dec 1, 2006, it was submitted to the UN Human Rights Council by various representatives of 54 States that the violations of Human Rights based on sexual orientation and gender identity is a matter of a serious concern and protection and prevention such discriminatory acts should remain the focus of the Council. It was further recommended that special procedures should be adopted the sexual orientation

\(^{152}\) *Id.*
and gender identity issues should be included in the treaty bodies within their scheme of relevant provisions.

It was rightly observed in the given joint statement of the State representatives from four UN regions and also by the Yogyakarta Principles that the protection of Human Rights is the responsibility of every individual.\textsuperscript{153}