In this chapter an exertion has been made to focus a bird’s eye view on the entire research topic in a nutshell from alpha to omega, reliable, realistic and rational suggestions with the milk of human kindness followed by a logical euphoric conclusion by reckoning the global trends in the LPG Scenario embedded with the buzz words of certain Legal luminaries and legendaries.

7.1 SUMMARY

Homosexuality is romantic or sexual attraction or behavior among members of the same sex or gender. As a sexual orientation, homosexuality refers to "an enduring pattern of or disposition to experience sexual, affectional, or romantic attractions" primarily or exclusively to people of the same sex; "it also refers to the individuals sense of personal and social identity based on those attractions, behaviors expressing them, and membership in a community of others who share them".

Homosexuality is as old as humanity. The queer practices were secretly existent among the queens in harems, cowherds, soldiers, slaves, prisoners, nuns, priests, harvesting women and the highly spinning maidens in the olden days. The instances of “Ghilman” in Islam, "Sodom and Gomorrah" in Christianity; and "Ardhanarishwar" in Hinduism testify further to the ancient inscriptions of homosexuality in the prominent religions of the world.

Homosexuality is one of the three main categories of sexual orientation along with bisexuality and heterosexuality within the heterosexual-homosexual continuum. The longstanding consensus of the behavioral and social sciences and the health and mental health professions is that homosexuality is a normal and positive variation in human sexual orientation, though many religious societies, including Catholicism, Mormonism and Islam and some psychological associations, such as NARTH, teach that homosexual activity is sinful or dysfunctional.
The most common adjectives in use are lesbian for women and gay for men, though gay can refer to either men or women. The number of people who identify as gay or lesbian and the proportion of the people who have same sex sexual experiences are difficult for the researchers to estimate reliably for a variety of reasons. In the modern West, according to major studies, 2% to 13% of the population are homosexual. A 2006 study suggested that 20% of the population anonymously reported some homosexual feelings, although relatively few participants in the study identified themselves as homosexual. Homosexual behavior in animals is also widely encountered.

Many gay and lesbian people are in committed same-sex relationships. These relationships are equivalent to heterosexual relationships in essential psychological respects. Homosexual relationships and acts have been admired as well as condemned throughout the recorded history, depending on the form they took and the culture in which they occurred. Since the end of the 19th century, there has been a movement towards increased visibility, recognition and legal rights for homosexual people, including the rights to marriage and civil unions adoption and parenting, employment; military service and equal access to health care.

‘Lesbian’ is a term most widely used in the English language to describe sexual and romantic desire between females. The word may be used as a noun, to refer to women who identify themselves or who are characterized by others as having the primary attribute of female homosexuality, or as an adjective, to describe the characteristics of an object or activity related to female same-sex desire.

‘Lesbian’ as a concept, used to differentiate women with a shared sexual orientation, is a 20th century construct. Throughout history, women have not had the freedom or independence to pursue the homosexual relationships as men have, but neither have they met the harsh punishment in some societies as homosexual men. Instead, lesbian relationships have often been regarded as harmless and incomparable to heterosexual ones unless the participants attempted to assert privileges traditionally enjoyed by men.
‘Gay’ is a word that primarily refers to a homosexual person. The term was originally used to refer to feelings of being "carefree", "happy", or "bright and showy"; it had also come to acquire some connotations of "immorality" as early as 1637. The term is used as a reference to the homosexuality may date as early as the late 19th century, but it’s used gradually increased in the 20th century. In modern English, gay has come to be used as an adjective, and as a noun referring to the people, especially to men and the practices and cultures associated with homosexuality. By the end of the 20th century, the word ‘gay’ was recommended by major LGBT groups and style guides to describe people attracted to members of the same sex.

The word "gay" arrived in English during the 12th century from Old French gai, most likely deriving ultimately from a Germanic source. For most of its life in English, the word's primary meaning was "joyful", "carefree", "bright and showy", and the word was very commonly used with this meaning in speech and literature.

‘Bisexuality’ is romantic or sexual attraction or behavior towards males and females. The term is especially used in the context of human sexual attraction to denote romantic or sexual feelings towards men and women. It is one of the three main classifications of sexual orientation along with a heterosexual and a homosexual orientation, all a part of the heterosexual-homosexual continuum.

People who have a distinct but not exclusive sexual preference for one sex over the other may identify themselves as bisexual. ‘Bisexuality’ is the romantic or sexual attraction to males and females. The American Psychological Association states that "sexual orientation falls along with a continuum. In other words, someone does not have to be exclusively homosexual or heterosexual, but can feel varying degrees of both. Sexual orientation develops across a person's lifetime-different people realize a different that they are heterosexual, bisexual or homosexual.

‘Transgender’ is a general term applied to a variety of individuals, behaviors and groups involving tendencies to vary from culturally conventional gender roles.
‘Transgender’ is the state of one's "gender identity" not matching one's "assigned sex". "Transgender" does not imply any specific form of sexual orientation; transgender people may identify as heterosexual, homosexual, bisexual, pansexual, polysexual, or asexual; some may consider conventional sexual orientation labels inadequate or inapplicable to them.

A Transgender individual may have characteristics that are normally associated, with a particular gender, identify elsewhere on the traditional gender continuum, or exist outside of it as "other", "a gender", "Gender queer", or "third gender".

The controversial law on homosexuality goes back 156 years when Lord Macaulay, who chaired - the First Law Commission, introduced the section while drafting the Indian Penal Code. Section 377 says, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

Introduced in 1860, Section 377 was amended in 1935 when the lawmakers to include oral sex. It had earlier been restricted to anal sex in 1884. Section 377 continues to be applicable to non-consensual and non-vaginal sex.

Prosecutions based on consensual sex between adults in private would require the prosecutorial powers of the state to have access to the bedrooms of gay people in this country, which, both as an impracticality and abomination under Indian law, is next to impossible. The mere presence of a law like 377 in its current form, creates apprehensions of arrest and fear among gays, bisexuals, and transgender people in India - evident through an overwhelming evidence of blackmail, sufficient to constitute "cause of action" by itself. The discriminalization of sodomy, a private right, has an immediate and concurrent effect of restoring the dignity of homosexuals and providing enormous public benefits of expression and openness.

The Indian Penal Code was an important experiment in. the larger colonial project along with exercises in codification like the Civil Procedure. Code and
Criminal Procedure Code to apply the collective principles of common law in British India. Thomas Babbington Macaulay, the president of the Indian Law Commission in 1835, was charged with the testing task of drafting the Indian Penal Code also as a unifying effort to consolidate and rationalise the "splintered systems prevailing in the Indian Subcontinent".

Section 377: Unnatural offences - “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine”.

It is humbly submitted that the Part III of the Constitution primarily carries the common theme of human right. The international conventions and the principles of natural justice also focuses on the aspect of right to life with the full of dignity and liberty. The fundamental rights are basic rights of the people. They are considered as basic rights to live a perfect life. Moreover Article 13 (2) says that "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void" So, according to the constitutional provisions, Section 377 violates number of fundamental rights of the homosexual people.

Article 14 of the Indian Constitution provides that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 14 also focuses on the doctrine of intelligible differentia according to which there should be clear nexus between the enacted, provisions or act and its objective as for what purpose they have been enacted. The same makes it clear that a law enacted by legislature must be dear and must be rational. The Supreme Court has held that a statute is void for valueless if its prohibitions are not clearly defined. The rationale for this is that the provisions enacted should be clear so that persons affected know the true intention.

Further, the Supreme Court has held that where a law does not offer a clear, construction and the persons applying it are in a boundless sea of uncertainties and the
law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution.

Moreover Section 377 punishes "carnal intercourse against the order of nature." However the expression is not defined. Nor does section 377 provide any indication as to what acts are comes under the ambit of it Courts have interpreted section 377 to cover not only non-penile-vaginal sex but also to include imitative sex and acts that amount to sexual perversity. The inconsistency and irregularities have been followed over years as to what Sec. 377 contains and it is not on par with the present globalised world and in that for developing country like India as every citizen want to maintain its liberty and wants to be an Individual first. Therefore Section 377 is vague and does not clearly defined its prohibitions. Such vagueness leads to arbitrary application of section 377 against sexuality minorities. Hence section 377 should be held void for its vagueness and attendant arbitrariness. Further Section 377 creates an arbitrary and unreasonable classification between penile-vaginal and penile-non-vaginal sexual acts in the name of procreative sex and non-procreative sex and hence violative of Article 14's guarantee of equal protection before and under the law.

By its very nature sexual acts engaged in by gay men being penile-non-vaginal, are non-procreative. Therefore section 377 targets predominantly sexual acts engaged in by homosexuals. In doing so, it targets a group of persons mainly homosexual men based on their sexual preferences which are necessarily of a non-procreative nature. At this point of time in the fastest world in the era of technology, it is very important to note that even the gay couple can have procreation with the IVF technology which is rampant in India also.

The purpose of Article 14 is equal protection clause to offer redress to the vulnerable groups assailed by discriminatory practices. Section 377's prohibition of non-procreative sexual acts criminalizes predominantly homosexual sexual relations and is propelled by a prejudicial and irrational notion of sex. Thus it violates Article 14 because it disproportionately affects the gay men. Indeed vulnerable minorities require protection from prejudice that can only be done by judicial decision, in the absence of any special legislative work.
Article 15(1) of the Indian Constitution provides that "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

The expression "sex" is not a static concept. It cannot be restricted to only the biological male and female sex. It is not an essential condition that the law expressly makes the prohibited ground on the basis of classification. As held by the Supreme Court "The courts are always had to interpret any law by the way of 'schematic and technological’ method of interpretation. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design of purpose which lies behind it."

Hence in present scenario the term "Sex" has a wider meaning and it includes sexual orientation as well which includes homosexual people.

Article 21 of the Indian Constitution conforms on every person the fundamental right to life and personal liberty which has become an inexhaustible source for many other lives. These rights are as much available to citizen as to foreigner. And this article has been given paramount position by the hon'ble Supreme Court Homosexual people are also included under article 21 as they are also human beings.

The Supreme Court in the case of Kharak Singh v. State of Uttar Pradesh, held that right to life is most fundamental of all. The word life in the article 21 does not confine itself mere animal existence, but the word life includes wider meaning than mere an animal existence in the society. The inhabitation against its deprivation extended to all those limbs and faculties by life is enjoyed. The provision also equally prohibits the mutilation of the body by amputating off any part of the body or any other organ through which the soul communicates with outer world. And sexual orientation not being outer part of the body but if a person deprived of being having sexual orientation, this also amount to mutilation of the body.
In Bandhu Mukti Morcha V. Union of India, the honorable Court held that "There are minimum human requirements which exist in order to enable a person to live with human dignity, and no state has right to take away action which will deprive a person of the enjoyment of this basic essentials".

The basic essentials of a person's life can be named as follows:
- Privacy
- Human Dignity
- Health,

The privacy is that "area of a man's life which in any given circumstances a reasonable man with an understanding of the legitimate need of the community would think it wrong to invade". Although Indian constitution like America does not guarantee right to privacy explicitly, yet we may say that right to privacy is Implicit in Article 21 of the Constitution. A question arose for the first time in Kharak Singh vs State of U.P, whether right to privacy is included in the right to personal liberty, Justice Subba Rao, speaking for minority held that right to privacy though not expressly declared in our constitution is an essential ingredient of the personal liberty.

In the case of R. Rajagopalan v. State of Tamil Nadu, the Supreme Court held that it is right to be let alone and a citizen has 'the right' to safeguard the privacy of his own, his family marriage, protection, motherhood, child-bearing and education among other matter. No one can punish anything concerning the above matter without his consent whether truthful or otherwise and whether laudatory or critical. As far as this matter is concerned the impugned section clearly violates the right to privacy guaranteed by the Constitution as it peeps into the houses of people without their consent and still punishes them for their private matters. Generally, criminal provisions are justified on the basis that they, prevent harm. In the realm of sex, whether or not harm is caused is dependent on consent. Where consent is given a person is not harmed and the conduct falls back with the realm of personal autonomy that does not require policing by the State. Only where there is no consent is criminal sanction justified.
It is also recognized that at the core of the right to privacy are those matters related to one's private life and intimate relationships. This sphere of private intimacy and autonomy must allow persons to develop human relationships without interference from the outside community or from the State. The right to privacy is thus premised on the proposition that there exists a zone of privacy created by various fundamental rights into which the State cannot intrude. It is submitted that sexual intimacies between individuals whether homosexual or heterosexual, fall within the protected zone of privacy, Section 377, by criminalizing certain consensual sexual acts, violates the right to privacy. Hence the impugned section clearly violates right to privacy of the people concerned and hence violates right to life and personal liberty guaranteed under Constitution of India.

The case law also recognizes that the right to privacy is derived from and intimately related to the right of each person to dignity where in Gobind vs. State of Madhya Pradesh, the honorable Supreme Court has held "Privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior".

Dignity, then, is concerned with the rights of an individual and is linked to personal self-realization and autonomy. If the right to privacy derives from a respect for human dignity, it must also be an individualistic right accruing to a person wherever he may be. In this matter, section 377 of the IPC affects dignity of a man as it exposes a person of his sexual orientation and also punishes him and sends him to prison which violates his right to live a dignified life.

The Supreme Court has held that "every act that offends against or impairs human dignify would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable fair and just procedure established by law which stands the test of other fundamental rights.

In the present case, section 377, by criminalizing private consensual sex between adults, offends against and impairs the expression of the human self of sexuality, more particularly men who have sex with men, and thus violates their right to live with dignity.
Section 377 of IPC denies the objectives enshrined in the preamble namely: justice, Liberty and Equality to the homosexual people. These objectives constitute the basic feature of the constitution. Further, it denies equality and equal protection and makes inequality and hence it is clear violation of basic features of the Constitution and hence liable to be interfered with by the courts.

A Division Bench of justice A.P. Shah and justice S. Muralidhar of Delhi High Court in its order on July 2009, said that “Section 377 of the IPC, insofar as it criminalises consensual sexual acts of adults in private, is violative of Articles 21 [Right to Protection of Life and Personal Liberty], 14 [Right to Equality before Law] and 15 [Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth] of the Constitution”.

However, the court clarified that "the provisions of Section 377 will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors." The judges also said that by adult they meant "everyone who is 18 years of age and above." According to them "A person below 18 would be presumed not to be able to consent to a sexual act". The Bench further said that "this clarification will hold till, of course, Parliament chooses to amend the law to effectuate the recommendations of the Law Commission of India in its 172nd Report which would remove a great deal of confusion." The judgment also made it clear that it would not result in re-opening of criminal cases involving Section 377 that had already attained finality.

The verdict came on a PIL plea by Delhi based non-governmental organization, Naz Foundation that the Section 377 provision criminalising sexual acts between consenting adults in private violated the Articles 14, 15, 19 and 21 of the Constitution. The Foundation works among sex workers in Delhi.

Supreme Court maintained that homosexuality was a crime, its judges gave a landmark ruling saying that the people of a third gender, neither male nor female, are now legally recognized and must have equal rights to education, jobs and driving licenses. “Recognition of trans genders as a third gender is not a social or medical
issue but a human rights issue," the court said, and urged the government to set aside quotas in jobs and education for the fiercely independent but segregated community of eunuchs in India. The ruling said that transgendered people face distinction in their access to public spaces like restaurants, cinema halls, shops, malls and public toilets.

But ironically, the progressive ruling applies only to eunuchs or hijras as they are called in Hindi in India and not to gays, lesbians and bisexuals. In many ways, expanding the rights to transgendered people is far easier than legalizing homosexuality in India. For centuries, eunuchs - called hijras in Hindi were given a special place in Indian religious epics and parables. “Granting rights to transgender is more acceptable to our psyche because we find many transgender characters in our religious, cultural mythologies and literature. Some of our Hindu Gods were of third-gender, some Gods changed their gender seamlessly to perform specific roles and rituals," said Rose Venkatesan, who transitioned from being a man to a woman four years ago and is a former television host and an independent film maker in the southern city of Chennai. "There are temples and annual religious festivals for the transgender community.

But in modern times, the eunuch community has lived in closed and segregated communes, either feared or reviled by their neighbors. In cities, it is not uncommon for eunuchs to show up at wedding parties and celebrations of the birth of a child wearing vibrant clothing and singing and dancing, Clapping their hands aggressively and demanding money in return for blessing. India's gay community suffered a bruising defeat when the Supreme Court overturned an earlier, historic lower-court ruling of 2009 that said homosexuality was not a crime. But after four years of celebrations and gay pride parades across India, the Supreme Court pushed the community back in the closet after it heard appeals filed by several religious, cultural and political groups.

The Supreme Court had upheld the British colonial-era law describing homosexuality as "against the order of nature" and said that the Parliament must decide whether the Indian Penal Code has to be changed. Section 377 has become a weapon in the hands of the police to harass those who have alternative sexual orientations. The IPC which was drafted in the 19th century is bearing Sections like
which are completely obsolete and repugnant to modern emerging trends. In an age where there is growing acceptance of the idea that LGBTs (lesbian, gay, bisexual, transgendered) must be allowed to live in dignity and respect, it is shame that India cannot bring itself to legalise gay behavior.

The English law was reformed in Britain by the Sexual Offences Act, 1967, which de-criminalised homosexuality and acts of sodomy between consenting adults (above age of 21) pursuant to the report of Wolfenden Committee. The Committee advising the Parliament had recommended in 1957 repeal of laws punishing homosexual conduct. Before this even in England, homosexuality was crime, but they reformed their law according to need and want of their society. Lord Macaulay drafted Indian Penal Code, 1860 and introduced it in 1861. But are still bearing the odds of Section 377 and IPC, a code which was drafted approximately 156 years ago. Ironically, while the British drafted Section 377 of the IPC, while replacing a tolerant Indian attitude towards sexuality with a highly oppressive one, this law was repealed in the UK.

Homosexuality is not a disease or mental illness that needs to be, or can be, 'cured' or 'altered', it is just another expression of human sexuality. Homosexuals are as normal as 'you' and 'me'. Yet, just because they love 'their own kind', they are ostracised and hounded by the law. And branded as 'queers' and 'aberrations' precisely what they are not. Homosexuals are normal humans attracted to their own gender. Relationships are defined by comfort levels and not societal sanctions, "Like heterosexuality, homosexuality is an orientation which is not unnatural. The world accepts this orientation; society is changing." What is not changing is the legal mindset in India. The Indian Constitution does not contain an explicit provision in relation to the right to privacy. However, the Supreme Court has interpreted such a fight on the basis of Article 19 protecting freedom of expression and movement, and Article 21 protecting the right to life and liberty. The development of this right in India including the case of Kharak Singh v. The State of U.P which traced the right to privacy in India to the right to 'life' in Article 21 of the Constitution.

After the Delhi High Court had pronounced its judgement on 2nd July 2009, lots of hue and cry was made by various religious organisations as well as eminent
religious and social leaders. As a result, a petition was filed by Suresh Kumar Koushal, an astrologer against the Delhi High Court’s Judgment in the Supreme Court of India. On 20th July, 2009, the Supreme Court heard Suresh Kumar Koushal's Petition. This matter was mentioned in the Chief Justice's court on 9th July, 2009 and the court had issued notices to the parties including the Union of India and Naz Foundation, a Delhi based Non-Governmental Organization (NGO).

On 20th July, 2009 the Bench comprising Chief Justice K.G. Balakrishnan and Justice Sathasivam heard the matter for admission and grant of stay. Mr. Goolam Vahanvati, Advocate General of India, appearing for the Government stated that the government had taken a particular stand in the High Court and in the light of the present situation it is yet to decide on the matter. However the government did not support the granting of interim stay and sought further time. The counsel for Suresh Kumar Koushal submitted that the decision of the Delhi High Court would lead to a rise in "gay parlours" and "gay prostitution". He mentioned that instances of same sex marriages have also been reported. Anand Grover appearing for Naz Foundation said that the Home Ministry had itself admitted that Section 377 of the Indian Penal Code was rarely invoked against the adult consensual sex and therefore there would be no prejudice caused if the decision remains operative. He further argued that the Appellants have failed to plead that they were prejudicially affected and therefore had no Locus Standi. The Chief Justice however, said that in a public interest matter such as this, third parties may be heard. Anand Grover further stated that marriage and prostitution were unrelated to the judgment and had no bearing on the matter. He further argued that as far as male prostitution is concerned, the Immoral Traffic (Prevention) Act is gender neutral and would cover this.

The Bench declined to grant an interim stay for it found that no adverse consequences would follow. Meanwhile, Tijarawala, private secretary to yoga guru Baba Ramdev and former Uttar Pradesh DGP and senior VHP leader B P Singhal also filed separate petitions against the Delhi High Court’s judgment on 17 August, 2009 and 13 December, 2009 respectively. In both the attempts to get a stay against the Delhi High Court judgment decriminalising gay sex between two consenting adults drew a blank as the Supreme Court declined to stay the High Court judgment dated July two of this year. The Division Bench comprising the then Chief Justice K G
Balakrishnan and Justice P Sathasivam, however, issued notices to the Centre and Naz Foundation on the application seeking stay of the operation of the impugned judgment till final disposal of the petitions.

The All India Muslim Personal Law Board (AIMPLB) also moved the Supreme Court challenging the Delhi High Court’s judgement on legalising the homosexuality between the consenting adults by filing a petition on 2nd February, 2010. The AIMPLB in its petition has contended that Gay sex is against the principle of nature and will lead to sexual corruption in society and may also increase the incidents of people contracting serious ailments like cancer and Aids. However, the gay community has finally found its lone supporter in noted film director and Rajya Sabha Member, Shyam Benegal, who has approached the Supreme Court in support of Delhi High Court, judgement, legalising an act of homosexuality between the two consenting adults. Mr Benegal, in his petition filed on 22nd February, 2010, has contended that there was nothing wrong and illegal in the High Court’s ruling because no FIR can be registered without a complaint and the High Court’s ruling clearly implies if either of the party complains, then only gay sex would be an offence.

Taking the reference of latest development on the homosexuality issue in US, where the US Supreme Court has allowed same sex marriage in Washington DC and the Chief Justice John Roberts of the US Supreme Court rejected a request from opponents of gay marriage to put on hold a new law that allows same-sex couples to wed in Washington, DC on 3rd March, 2010.

In India and the most of the Asian countries, homosexual practices with or without consent is illegal and punishable. The British drafted personal law on homosexuality under the section 377 in the Victorian era when homosexuality was consider as an aberration that needed to be rectified by the State by criminalizing all forms of sexual behavior other than penile-veginal.

Historically it has been proved that homosexual 'erotic 'acts occur in all cultures and in all societies in all periods. In India there exist sufficient documentary, archaeological and anthropological evidences to suggest that same sexies especially among men, were not only culturally, but dignified and revered by attributing similar
traits to religious deities. The Kama sutra has a chapter on same sex love. The apparent acceptance of boy lovers in Mogul and lesbianism in the confines of harem's are well known facts of State approval and recognition of homosexuality. In Europe the colonial masters had two sets of morality in respect of sexual behavior. The countries with Napoleonic Code did identify the same sex acts for criminal sanction, whether as common law did criminalize the homosexuality act and carried it to India and other parts of the colonies. Even same sex marriage in China, Canada and other places got approval and state sanction. A recent case from Kerala, where the Judicial Magistrate has allowed two young nurses to live "together forever" and they have decided to solemnize their relationship in marriage soon in an example of judicial approval of same sex relationship.

However, in twentieth century due to recognition of rights to life and liberty, as a basic human right, interference of law in private life of an individual is consider as invasion on an individual's private life and bedroom. Perhaps it is to safeguard the individual's right to privacy that England decriminalized the homosexuality acts on private between consenting parties in 1967. Canada and Australia followed England. In the United State, it is considered in appropriate to regard homosexuality relations as blameworthy for assigning criminal sanction and the US Constitution does not require the state to do so.

There is the rapid changing jurisprudence and other law related practice that identities a significant application of Human rights law with regard to people of diverse sexual orientations and gender identities. This development can be seen at the international level, especially in the form of practice related to the United Nations Human Rights Treaties as well as Europeans Convention of Human Rights.

The present population of homosexuality in India is 50 lakhs rather than one or two person which is a considerable change in social attitudes. Therefore, it is required to change the interpretation of section 377 of IPC as a decriminalization nature.

The Victorian laws of Section 377 of IPC, their inherent rights are blatantly squelched down. It stands out as a deviance in the basic structure of the Indian
Constitution because it impairs the justice, liberty and equality of these friendly neighbors. Not only this, it also prevents a bundle of fundamental rights viz Articles 14, 15, 19(1) (a-d), 21 of the Constitution of India, which they as a citizen of India have lawful claim on.

Socio scientific evidences have also suggested that the prohibited acts are indeed not unnatural. Moreover it is to be understood that the import of the word 'unnatural' is dynamic and contingent to the societal sensitivity and appearance. The order of nature as purported by the section is 'sex for procreation'. If this is the grand norm then by its strict interpretation all sex done for pleasure today should be prosecuted and penalized, abortions be prohibited and contraceptives and the like family planning measures be criminalized. The justification to retain the section 377 is marinated by a religious and, cultural veneer. It is also debated that the culture of homosexuality is essentially borrowed from the West. In stark contrast to this stereotype historically evidences secure that it had been practiced in all cultures at all times.

By strict literal interpretation, section 377 does not purport to prohibit homosexual relations, it only restricts certain sexual acts. Such acts may be practiced by heterosexuals also but homosexuals being more vulnerable fall as susceptible targets of the state and the patent victims of human rights violation. Thus, this section has matured into a potent tool of oppression employed by the venal police to further victimize these peoples.

The crux of penal laws is protection of individual and society from unlawful wrongs and injustice, to ensure comfort rather than ensuing discomfort. It is not there to lay down autocratic standards for morality and immorality. The present is a multicultural society, with different inclinations and social, religious and moral affirmations. These co-exist in harmony. As a democratic state lacks authority to impose a particular religion, similarly it cannot bind the people with certain entrenched sexual norms. It cannot deprive an individual’s individuality, his own being.
Throughout Hindu and Vedic texts, there are many descriptions of saints, demigods, and even the Supreme Lord transcending gender norms and manifesting multiple combinations of sex and gender. These include male, female, hermaphrodite, and all other possibilities. In Hinduism, God is recognized as unlimited and untethered by any gender restrictions. For the purpose of enjoying transcendental pastimes (LILA), the Supreme Lord manifests innumerable types of forms—just like an actor on a stage.

As parts and parcels of the Supreme Lord, the various living entities can also be seen to manifest within the full spectrum of sex and gender possibilities. From the impersonal perspective the soul is not male, female, or hermaphrodite, but from the personal perspective the soul assumes such forms according to desire. In the mundane sphere, the soul manifests various gender roles in the pursuit of material enjoyment, but in the spiritual world these roles are adopted for the transcendental purpose of reciprocating with the Supreme Lord and rendering loving service.

In India, people of the third sex—homosexuals, transgenders, bisexuals, hermaphrodites, transsexuals, etc.—identify with Hindu deities and worship them with great reverence and devotion. Along with other Hindus, they arrive to celebrate the large holidays and festivals connected with them. In traditional Hinduism, such people were associated with these divine personalities due to their combined male and female natures. They were included in the various religious ceremonies and viewed as auspicious symbols of peace, good fortune and culture.

Throughout the Vedic literature, the sex or gender of the human being is clearly divided into three separate categories according to prakriti or nature. These are: pums-prakriti or male, stri-prakriti or female, and tritiya-prakriti or the third sex. These three genders are not determined by physical characteristics alone but rather by an assessment of the entire being that includes the gross (physical) body, the subtle (psychological) body, and a unique consideration based upon social interaction (procreative status]. Generally the word "sex" refers to biological sex and "gender" to psychological behavior and identity.
People of the third sex are analyzed in the Kama Sutra and broken down into several categories that are still visible today and, generally referred to as gay males and lesbians. They are typically characterized by a mixed male/female nature (i.e. effeminate males or masculine females) that can often be recognized within childhood and are identified by an inherent homosexual orientation that manifests at puberty. The homosexual behavior of these people is described in great detail within the eighth and ninth chapters of the second part of the Kama Sutra. While gay males and lesbians are the most prominent members of this category, it also includes other types of people such as transgenders and the intersexed.

The third sex is described as a natural mixing or combination of the male and female natures to the point in which they can no longer be categorized as male or female in the traditional sense of the word. The example of mixing black and white paint can be used, wherein the resulting color, gray, in all its many shades, can no longer be considered either black or white although it is simply a combination of both. People of the third sex; are mentioned throughout Vedic literature in different ways due to their variety of manifestations. They were not expected to behave like ordinary heterosexual men and women or to assume their roles. In this way, the third-sex category served as an important tool for the recognition and accommodation of such persons within society.

People of the third sex are also classified under a larger social category known as the "neutral gender." Its members are called napumsaka, or "those who do not engage in procreation," There are five different types of napumsaka people: (1) children; (2) the elderly; (3) the impotent; (4) the celibate, and (5) the third sex. They were all considered to be sexually neutral by Vedic definition and were protected and believed to bring good luck.

There is a strange being described within early British translations of Vedic literature. These beings are comic, mythical creatures that appear to have lost their relevance in modern times. They are described as neither man nor woman, or sometimes as both man and woman. They are compared to the gandharva or fairy and are believed to be a sexual or without sexual desire. Even Arjuna, the eternal companion of Lord Krishna and the hero of the Mahabharata, became one of these.
beings while hiding during his last year of exile, according to the Lord's plan. There, dressed as a woman, he wore his hair in braids, behaved in a feminine manner and taught dancing and singing to young girls with no attraction for them.

Homosexual people are the most prominent members of the third sex. While appearing as ordinary males and females, their third-nature identity is revealed by their exclusive romantic and sexual attraction for persons of the same physical sex. Gay men experience the attractions ordinarily felt by females, and lesbian women experience the attractions ordinarily felt by males. Such people commonly exhibit other types of "cross-gender" behavior, but not always.

A male child is produced by a greater quantity of male seed, a female child by the prevalence of the female if both are equal, a third-sex child (napumsa) or boy and girl twins are produced if either are weak or deficient in quantity, a failure of conception results. (Manusmriti 3.49)

This verse is very significant because it specifically states that the third sex is biologically determined during the earliest moments of conception, a statement also confirmed in Sanskrit medical texts such as the Sushruta Samhita. In other words, people of the third sex are born that way, as a fact of nature. They do not "become" third sex later on due to external reasons or causes.

The mechanisms of biological variation from the normal male and female construct always involve alterations in the standard developmental plan. This is not to say, however, that such alterations are biological "errors" or "mistakes" of nature or God. People commonly assume that every member of human society should be directly involved in the process of sexual reproduction, but we can observe that throughout nature this is quite often not the case.

In direct contrast to the three-gender system found in nature is the rigid, artificially imposed "two-gender" one commonly seen in many of today's cultures. In societies where only reproductive males and females are acknowledged and valued, there is no room for a non reproductive third sex. People who do not produce offspring are viewed as failures and delegated to the lowest ranks of human society.
Homosexuals and transgenders are pressured to assume heterosexual roles against their nature, and intersexed babies are forcibly assigned male or female identities through ghastly "corrective" surgeries. Such artificial attempts to negate the third sex against the arrangement of nature and God can be devastating for the individuals involved.

It is not necessary for each and every member of human society to engage in sexual reproduction. Human worth is not measured only in terms of fertility. While homosexual and intersex conditions affect a person's reproduction and socialization in species like man, they don't usually affect the individual's viability. Non-procreative persons account for a vast number of otherwise healthy, functional individuals who should be encouraged to engage themselves constructively in ways appropriate for them. In Vedic culture, people of the third sex traditionally contributed to society in a variety of useful ways. They utilized their extra time in cultivating the finer arts, sciences, and spirituality and were involved as a part of the extended family by serving and caring for others. The Vedic social system did not neglect or exclude people of the third sex, but rather it accepted and engaged them according to their nature.

Another important point to note is that people of the third sex were utilized to bestow blessings. Blessings can only be bestowed by the people who are auspicious, yet transvestites were well known for their homosexual behavior and often served as prostitutes. The answer to this apparent anomaly is that since they belonged to the third gender, transvestites were considered sexually neutral. In Vedic literature, the strongest bond within this material world is said to be the attraction between man, and woman. Combined, they create so many attachments such as home, property, children, grand children, etc., all of which entangle the living entity in samsara, the cycle of repeated birth and death that is perpetuated through the procreative process. People of the third sex were considered to be aloof from this attachment, particularly gay males. They typically did not engage in procreation or family life, and this was a special quality that made their status unique within the civilized Vedic culture.

The traditionally rigid male and female roles as we know them today are consistently broken and altered throughout the Vedic literatures by humans,
demigods, and even the supreme Lord- Himself. Lord Siva has a very popular half-man, half-woman form known as Ardhanareeswara. Cross dressing is quite common among Lord Krishna's most intimate cowherd boyfriends, the priya-narma-sakhas, who act as go-betweens in His loving affairs with Sri Radha. An important ritual at the Jagannatha Temple in Orissa involves a sequence in which a young man dressed in female attire seduces Baladeva, the elder brother of Lord Krishna. These countless stories and pastimes are far too numerous to mention herein, but their light hearted and flexible approach to both gender and gender roles is admirable and well worth mentioning here.

7.1.1 Homosexuality in Indian Context:

IPC was enacted in the year 1860 during the British regime. On July 2, 2009 the High Court of Delhi in the case of Naz Foundation V. Govt. of National Capital Territory of Delhi verdicted that since Section 377 of the IPC prohibits the sexual activities conducted with mutual consent violates the 14, 15 and 21 Articles which is against to the Constitution of India (COI), 1950.

Later the issue was moved to the Supreme Court of India. In the case of Suresh Kumar V.Naz Foundation, the Bench consists of Justice G.S.Singhvi and Justice S.J.Muktopadyaya has verdicted on December 12, 2013 that section 377 of the IPC, 1860 was not at all unconstitutional and there by the verdict delivered earlier by the Hon’ble High Court of Delhi was overruled and restored Section 377 of the IPC 1860. Albeit, the authorities of NAZ Foundation filed a review petition before the Hon’ble Supreme Court of India on December 21, 2013 which in turn was also dismissed by the Supreme Court on 28th Jan, 2014. However eventually the NAZ, foundation has filed a Curative Petition before the Supreme Court which was admitted by the Supreme Court Bench which consists of Justice TS Tagore, Justice AR Dave and Justice Jagadish Sing Khihar. The Bench again declared that the case was transmitted to the Full Bench consists of 5 Judges since the issue is being sensitive and linked with constitutional hitches.

The institution of marriage is generally accepted by the society only in respect of male-female relationships. Albeit in this LPG scenario, acceptance of homosexual marriages has been recently forthcoming as the society is gradually becoming more
permissive. This change is reflected in the increasing number of jurisdictions, which decriminalised such acts. However, many jurisdictions have retained their statutory prohibitions on homosexual marriages despite of much criticism from the groups and individuals who believe that the sodomy law is obsolete and should be repealed. Hence the same-sex relationships, regardless of their duration, are not legally recognized in most of the countries and as a result, homosexual partners are denied many of the legal and economic privileges automatically bestowed by marital status. These include employment benefits, the ability to file joint tax returns and perhaps most importantly since the advent of AIDS -- health benefits and rights arising on the death of a partner, including interstate inheritance etc. In the society at large many of these benefits are available to heterosexual de facto partners, but continued to be unavailable to the homosexual partners.

The earliest western document concerning homosexual relationship come from the Ancient Greece, where the same sex relationship were the societal norm. Even the homosexual marriages have occurred with relative frequency in the past, both within the Christian and non-Christian communities. Researchers suggested that the Catholic Church, which has been extremely vociferous in its opposition to the homosexuality in general, approval of same-sex marriages for over 1500 years, only ceasing to perform them in the nineteenth century. In the pre-industrial societies also homosexuality was generally accepted by the lower classes while some members of upper classes considered it immoral. However with the rise of the urbanization and the nuclear family, homosexuality became much less tolerated and even outlawed in some cases. The sexual orientation in pre-modern era as depicted in love poetry and paintings and even in historic figures such as Alexander the Great, Plato, Hadrian, Virgil, Leonardo Da Vinci, Michelangelo and Christopher Marlowe included or were centered upon the relationship with people of their own gender.

Thus homosexuality is not a new phenomenon. Even instances of homosexuality are available in Hindu Mythology. The literature drawn from Hindu, Buddhist, Muslim, and modern fiction also testifies the presence of the same-sex love in various forms. Ancient texts such as the Manu Smriti, Arthashastra, Kamasutra, Upanishads and Puranas refer to homosexuality. Also there are reports that the same-sex activities are common among sanyasins, who cannot marry. Thus instances of homosexuality are available in historical and mythological texts throughout the world.
and India is not an exception to this. The Cultural residues of homosexuality can be seen even today in a small village, Angaar in Gujarat where amongst the Kutchi community a ritualistic transgender marriage is performed during the time of Holi festival. This wedding which is being celebrated every year, for the past 150 years is unusual because Ishaak, the bridegroom and Ishakali the bride are both men. Thus the history is filled with the evidences proving the existence of homosexuality in past. Whereas in the past 10 years world over, for the lesbian and gay rights, we find that the legal initiatives have shifted from the right to be privately sexual, that is the right to have same-sex relationships at all, to the right to be individual civic subjects, protected from discrimination in the work place and in the provision of services, towards the right to have relationships given status by the law. This shift in rights-focus, from decriminalization, to civil protection, to civil recognition is, not entirely a linear one. Thus in the recent years a number of jurisdictions had relaxed or eliminated laws curbing homosexual behavior.

7.1.2 Homosexuality - The Global Scenario

The last century witnessed major changes in the conception of homosexuality. Since 1974, homosexuality ceased to be considered an abnormal behaviour and was removed from the classification of mental disorder. Since then homosexuality has been de-criminalized in different countries. There are various states across the globe that enacted anti-discriminatory or equal opportunity laws and policies to protect the rights of gays and lesbians. In the late 1990s and early 2000s, progress towards and bans of same-sex marriage created a topic of debate all over the world. Currently, same-sex marriages are recognized nation-wide in six countries: Netherland (2001), Belgium (2003), Canada (2005), Spain (2005) and South Africa (2006). The state of Massachusetts in the United States also recognizes the same-sex unions (although these marriages have no legal recognition at the federal level in the US). With this, an estimated 155 million people worldwide, or approximately 2.5% of the world's total population, will live in places where same-sex marriage exists. That is civil unions and other forms of legal recognition for same-sex couples, which offer most if not all the rights accorded in a civil marriage, exist in Croatia, Denmark, Finland, France, Germany, Iceland, Israel, New Zealand, Norway, Portugal, Slovenia, Sweden, Switzerland and the United Kingdom. Regions of Australia, and additional territories in the United States offer some rights and responsibilities as civil Unions.
Even events such as Mardi Gras in Sydney, Midsumma in Melbourne, Gay and Lesbian Pride in Johannesburg, Women’s Celebration Week in Greece, and the Gay and the Lesbian Film Festival in Lisbon express the essence of being homosexual. So, world over many countries has given social and legal recognition to homosexual marriages. Whereas, more than 70 countries, including India, consider homosexuality a crime, and 30 out of these deny homosexuals even basic human rights and the homosexual acts remain punishable by death in Afghanistan, Mauritania, Iran, Nigeria, Pakistan, Saudi Arabia, Sudan, United Arab Emirates, and Yemen, and by life in prison in Bangladesh, Bhutan, Guyana, India, Maldives, Nepal, Singapore, and Uganda. Thus the legal position of homosexuals differs from country to country. In England, for example, homosexual relationships involving anal intercourse is not illegal between consenting adults as long as they are 21 or over and conduct themselves in private. In India, however, such active sexual relationships between men are still illegal. The age of consent varies, too, according to the country being as young as 10 in Hungary and as old as 23 in Spain.

7.1.3 Country-Wise Legal Position of the Homosexuality:

Countries where Homosexuality is legalised

Greece, Greenland, Guadeloupe, Guatemala, Guinea, Bissau, Haiti, Honduras, Hongkong, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Montenegro, Albania, Andorra, Argentina, Armenia, Aruba, Austria, Azerbajan, Bahamas, Belarus, Belgium, Belize, Bolivia, Brazil (no Sodomy law for military person), Bulgaria, Burkinafaso Cambodia, Central African Republic Chad, Chile, China, Columbia, Comoros, Congo, Costa Rica, Croatia, Cuba (Article 303A of the penal code punishes ‘publicly manifested homosexuality), Cyprus ( Ban on military on health ground), Czech Republic, Denmark (homosexuals equivalent to heterosexuals), Dominican Republic, Dutch Antilles, Equador, Elsalvadore, Eritrea, Estonia, Falkland Islands, Farse Islands, Finland, France, French Guyana, French Polynesia, Gabon, Georgia, Germany, Japan, Jordon, Kazakhstan, Kosova, Kyrgyzstan, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Macau, Macedonia, Madagascar, Mali, Martinquits, Mexico, Moldora, Monaco, Netherland, Netherland Antilles, New Caledonia, Newzealand, Niger, Norway, Panama, Paraguay, Peru, Philppines, Poland, Portugal, Romania, Russia, Ruanda, San Marino, Soa Tome and Principe, Serbia, Sierra Leone, Slovenia, South Africa, South
Korea, Spain, Surinam, Sweden, Switzerland, Taiwan, Thailand, Ukraine, Uruguay, Vanuatu, Venezuela, Vietnam and Vojvodina.

**Countries where homosexuality is illegal**

Algeria, Angola, Barbados, Bhutan, Bosnia, Botswana, Burundi, Ethiopia, Ghana, Herzegovina, Kenya, Libya, Malawi, Malaysia, Morroco, Mozambique, Namibia (male Homosexuality is illegal), Nepal, Pakistan, Singapore, Togo, Turkey, Uganda, Zaire, Zimbabwe, Afghanistan, Antiglia, Bardlanda, Bahrain, Bangladesh, Bosnia, Heazegonia, Botswana, Brunei, Burma, Burundi, Cameroon, Cape Verda, Cook Islands, Dji Bonti, Ethiopia, Fiji, Ghana, Guinea, Guyana, India, Iran, Jamaica, Kenya, Kiri Bati, Kuwait, Laos, Lebanon, Liberia, Mali, Marshall, Islands, Mauritania, Mauritious, Mongolia, Naruru, Nicargua, Nigeria, Niue, Oman, Papua New Guinea, Puerto Rico, Qatar, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Slovakia, Soloman Islands, Somalia, Srilanka, Swaziland, Syria, Tajkistan, Tanzania, Tokelau, Tongo, Trinidad, Tobago, United Arab Republic Emirates, Uzbekistan, Zambia

**Homosexuality-for and against arguments:**

<table>
<thead>
<tr>
<th>Arguments in favour of the Homosexuality</th>
<th>Arguments against the Homosexuality</th>
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<tbody>
<tr>
<td><strong>Homosexual Marriages Should Be Legalised</strong></td>
<td><strong>Homosexual Marriages Should Not Be Legalised</strong></td>
</tr>
<tr>
<td>1. There is no moral ground on which to support the tradition of marriage as a heterosexual institution. For example slavery once existed but now abolished on humanitarian ground.</td>
<td>The institution of marriage is traditionally the union between man and women.</td>
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<td>2. If it was so, then there would have been attempt to prohibit the unions between a sterile women and a fertile man or vice versa. Nor does legislation exist which requires a married couple to have children. It is true that homosexuals cannot procreate within their union but there are many options available which</td>
<td>Institution of marriage involves procreation and rearing of children.</td>
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<td>enable them to have children, including adoption and artificial insemination.</td>
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<td>3.</td>
<td>The traditional view of family as consisting of a mother, father and children is no longer representative of today’s society.</td>
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<td>4.</td>
<td>Scientific studies and psychologists are of the opinion that the love and commitment of the parents make difference not the gender. The children raised by homosexual partners are just as good as those of straight couples.</td>
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<td>5.</td>
<td>Religion is not an obstacle. Many sects of Buddhism celebrate gay relationship freely. Instances of homosexuality are available in all major religious mythology.</td>
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<td>6.</td>
<td>Homosexual marriages are not an untried experiment. In Denmark, since 1989, homosexuality is legally permitted. The result of the experiment suggests that homo-sexual marriages has actually been civilizing and strengthening, not just the institution of marriage but the society as a whole. So perhaps we should accept the fact that someone else has already done the experiment and accept the result as positive.</td>
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<td>7.</td>
<td>If the argument were true then it would have already happened in the countries, where legalized gay marriages already exist.</td>
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<td>8.</td>
<td>There is no contradiction to the argument as all are equal and have equal fundamental rights.</td>
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<td>9.</td>
<td>Homosexuality is natural. There is substantial agreement amongst Researchers that sexual orientation is due to genetic factor and is determined by age five or six.</td>
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<td>10.</td>
<td>Instances of homosexuality can be seen even in ancient, medieval and modern India. It is not the development of post modern society.</td>
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<td>11.</td>
<td>Denial of legal recognition infringes the rights of citizens.</td>
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<td>12.</td>
<td>Sexual orientation is due to genetic factor and it is unlikely that an increase in the incidence of homosexuality will occur as a consequence of decriminalisation.</td>
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<td>13.</td>
<td>Homosexual marriages have the potential to reject hierarchical concept of gender. They challenge patriarchy and the male supremacy derived from it and are consequently punished for not participating fully in daily maintenance of women oppression.</td>
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<tr>
<td>14.</td>
<td>Laws regulating and/or penalizing homosexual activity impede the public health programs as it drive underground many people at risk.</td>
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</table>
15. In fact gays are giving big favour by not bringing more hungary mouth into this excessive overpopulated world. At the same time the continuity of species can never be in danger due to sexual minority which represents not even 10% of the total world population. The human species will be in danger of dying out, if homosexuality is legalized due to lack of reproductive power in homosexuals.

16. Section 377 of the IPC violates the right to life and personal liberty, the right to equality and the right to freedom guaranteed to all the citizens as Fundamental Rights under Chapter-III of the Indian Constitution. The principle of respect, non discrimination and the people autonomy to support legal recognition of homosexual unions of the individual is not reasonable to invoke. It is something quite different to hold that activities which do not represents a significant or positive contribution to the development of the human in society can receive specific and categorical legal recognition by the State.

17. In countries where homosexuality is legalised sodomy law is repealed and has been considered obsolete taking into account the social dynamics. Sodomy was illegal and was until very recently.

18. The American Psychiatric Association (APA) has removed homosexuality from its list of mental illnesses in 1973 and the World Health Organization (WHO) did the same in 1981. Homosexuality is a disease. The Indian Psychiatric Society also acknowledges that homosexuality is a kind of mental illness.

19. Criminalisation reinforces negative Societal attitude regarding homosexuality which in turn results in greater discrimination and thus impact adversely on the self esteem of many homosexuals which often leads to deception and friction within the families. Decriminalization may be a step towards removing some of the stigma associated with homosexuality and may have positive repercussions on the relationship between homosexual and their families.
20. Beyond any skepticism that Section 377 of the IPC, 1860 is a hurdle to the personal liberty, bestowed by the articles 14, 15 and 21 of the Constitution of India (COI).

Prominent yoga Guru, Baba Ramdev opined that “Homosexuality is a bad conduct, which is against to the nature and albeit, it can be eradicated by practising yoga”.

21. Before incorporating Section 377 in the IPC, 1860, it was not deemed to be a crime. Therefore basing on it, no problems will be occurred after incorporation also.

The prominent religions such as Hindu, Muslim and Christianity are against to the Homosexuality.

22. The IPC, 1860 was mainly based on Vatsyanas Kamasuthra. Nowhere in that reference book, it was mentioned against comments in respect of the sexual activities of LGBT's.

Transmission of HIV and AIDS due to homosexuality is the first and foremost argument against gay marriages.

23. How far it is genuine to be penalized for 10 years of imprisonment if the LGBTs are involved in sexual activities with manual consent? Why this type of indiscrimination only towards the LGBTs. How far it is justified.

Since Transmission of HIV and AIDS due to homosexuality, it should be discouraged by way of penalization

24. There are quite a good number of instances in the epics regarding the LGBTs: In valmiki Ramayana, when Hanuman intruded in Srilanka, it was witnessed that the females who were kissed by Ravana are being kissed by other females subsequently. Similar instance can be witnessed in Padmapuranam, wherein a king before going to death, bestowed a Devine drug to his two wives. After his death, they engulfed the drug and

It was strongly argued that due to mingling of both Male and Female only the family in the society will be developed but not by Male and Male or Female and Female. If this unnatural practice will be permitted, surrogation and adoptions for the sake of money will be unnecessarily developed besides crimes.
as a result of the same, they gave birth a child sans bones and brain presumed that the flesh and blood will be derived from the mother and bones and brain will be derived from the father. There prevailed a famous folk tale in Tamilnadu and according to which due to attain flying colors in Kurukshetra, they wished to offer Aravan son of Arjun as bali. But Arvan put a condition that after getting marriage empathi only, he will be ready for bali. Since there is no other alternative, Sri Krishna himself become as female and married Arvan and satisfied his desire. After that only Arvan was scarified himself for bali.

25. Countries which are being accepting the sexual activities of LGBTs: Argentina in the year 2010 accepted the gay marriages. Like-wise England, Wales, Denmark, Brasil, France and New Zealand countries accepted the gay marriages. In the year 2012, Dr. Joyce Hilda Banda, president of Malavi country has declared that Homosexuality is not a crime. Similarly the president of USA, Barak Obama has declared that Gay marriages are accepted. Some states of USA are also being amended their Acts accordingly.

Countries hesitating the gay marriages: In Russia, there is no legal validity for gay marriages. Similar situation also prevailed in African countries. In Iran, awarding death penalty to those who indulges in homosexuality. Thus by and large, 79 countries across the world, the homosexuality is deemed to be a crime.
7.2 SUGGESTIONS:

1. LGBT people are also human beings like other citizens. They have also born from their parents like others. Born like LGBT is not their sin. Due to the defect of chromosomes, infirmity cum debility and other heredity cum genetical problems, they have born like that. It is not their fault. When other than LGBT people are entitled to enjoy the fundamental rights and the privileges of Directive principles of State policy, why can’t the LGBT community also entitled to enjoy the same fundamental rights and privileges that are provided by the Constitution of India. To enjoy the same is their birth right. Nobody can preclude in enjoying the same being citizens of India. Therefore, the Government of India through the Parliament shall annul the Section 377 of the IPC, 1860 by reckoning the principles of natural justice and law of the land.

2. Due to physical and mental infirmity, the physically challenged people are entitled to get reservations in the schools and colleges besides even in getting the Government jobs and other employments. Like-wise the LGBT people are also suffering from their physical infirmity for centuries together. Then why can’t the LGBT people are also entitled to enjoy such type of reservations in prosecuting their studies and thereafter getting the government jobs and other employments. Therefore, the Government of India shall be amend the statute in such a manner, that the LGBT people shall also enjoy the same benefits in all walks of their lives so as to treat them also like other human beings.

3. Since the SC, ST and other aboriginal people have been suffered from quite a good number of problems such as social, cultural, educational and political besides deprived from the same since centuries together, after attaining the Independency, the Government of India has been provided and being providing a myriad privileges through the Constitution and other statutes in the above fields. Like-wise the LGBT people have been also suffering from the same problems besides social struggles and other mental agonies, indiscrimination and look down upon as untouchables from centuries together. Therefore it shall be recognized by the Government of India and shall be provided the same privileges as had entitled and enjoying by the above cited people by making suitable amendments to the statutes by the parliament of India. The same shall be on par with the above cited
downtrodden people by reckoning the principles of natural justice besides socialistic pattern of society that is all are equal before law sans any discrimination.

4. Due to the deforestation and lack of food, the wild animals are off and on intruded in the nearby villages and causing damage and havoc to the crops and other properties of the people for the sake of their survival. Like-wise though the LGBT people are willing to work, nobody is ready to bestow employment to them in the society. Since there is no other alternative, they are habituated for begging and indulging in prostitution to eke out their livelihood for survival. Due to that fact only, they are thronging on the people at bus stations, railway stations, streets and during the time of journeys also. Due to precluding them from doing the work, they are forcefully habituated for begging and prostitution. We are experiencing in our daily life this type of pathetic episodes and scenarios. Therefore the Government shall implement such type of policies and programmes statutorily to bestow employment to the LGBT people in order to eke out their livelihood sans become parasites on others.

5. The LGBT people are being indiscriminating, humiliating and harassing by the people of the society. They are being treated as untouchables. Due to that, the LGBT people are suffering from mental agony and cultivating gludge against the society. They are being suffering from the atrocities caused by some sections of the people. In the recent past, the commercial capital, Kochi in Kerala has witnessed a rare battle between the police and members of the Sexual Minorities Front (SMF). The police lodged cases against them due to criminal activities such as prostitution and robbery. On the other hand, Sheetahal Shyam, Secretary of the SMF alleged that “those accusing us of begging and prostitution should know that there are not many options for transgender’s (TGs) to make a living here. Give us education and work, and we will not end up on the roads for prostitution”. This is the pathetic predicament of the TGs at present in the society. (Source: The Hindu, South Column P.No.8 dt.29.05.2016.). Therefore the Government shall implement such type of statutes and draconian laws and punish the people, who have been committing the atrocities against the LGBT people besides rigorous imprisonments.
6. From the foregoing facts and circumstances, it is suggested that the British relic Section 377 should be repealed by reckoning welfare of the LGBTs. In this connection, it is to be *nota bane* that in its delivery of verdict in the case of Naz Foundation V. Government of NCT of Delhi, the Supreme Court itself suggested that “notwithstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting Section 377 of the Indian Penal Code from the statute book”. Therefore it is the bounden duty of the parliament, which is the representative of the people of India to repeal the Section 377 of the IPC, 1860 by reckoning Articles 14, 15 and 21 of the Constitution of India. Therefore the Government of India through the parliament shall be annulled the British colonial relic of Section 377 of the IPC, 1860.

7. The Government shall establish separate rehabilitation centres and implement certain reforms for the well being of the LGBT people.

8. Like-wise, the Government shall establish hospitals and educational institutes separately if necessary for the wellbeing of the LGBT people so that make them to enjoy the benefits and privileges of the same on par with other human beings.

9. Besides the above, the mindset of the people shall also be changed and they should be sympathized towards the LGBT people and treat them as their siblings and fellow human beings and the people of the society should not be treat them as untouchables and not keep them aloof.

10. In this regard, the Non-Governmental Organizations (NGOs), Philanthropic institutions and charitable trusts shall also be come forward to assist and uplift the LGBT community and see that the LGBT people can stand upon their own legs sans depending upon others. They shall establish certain training centers to reform them. They shall establish and implement such type of institutions, plans, programmes and policies so as to develop them also educationally, culturally and socially besides other fields on par with other human beings.

11. By reckoning Corporate Social Responsibility (CSR), the Corporate Bigwigs, MNCs, Business Tycoons and Financial Wizards shall allocate funds from their Net Profits and implement certain programmes and establish an adequate reforms centers so as to uplift the downtrodden LGBT community on par with others with
the milk of human kindness. The Government shall also encourage this type of charitable acts as rendered by the said companies and exempt from Income Tax against the allocated funds meant for the LGBT people.

12. The Government shall establish Health Centers and hospitals preferably for the LGBT people, who are suffering from HIV, AIDS and other chronic and communicable deceases. They shall be educated and enlightened for the cause and effects of such deadly deceases so as to prevent the same.

13. In the good olden days, the kings and the Zamindars have nourished and encouraged the LGBT people by way of performing dances during the course of certain auspicious functions by treating the same as augur well for them. Therefore the elite community in the society shall invite and provide the LGBT people to perform their programmes in such type of auspicious functions so as to eke out their livelihood sans become parasites. Further the elite people bestow an opportunity to display their innate talents during the course of rituals, anniversaries and other ancestral celebrations.

14. Quite a good number of countries across the world such as USA, Greece, Hungary, Ireland and Austria etc have legalized the Homosexuality and the countries such as Netherland, Belgium, Canada, Spain and South Africa have recognized the same sex marriages. The state of Massachusetts in USA recognized the same-sex unions. Countries like Australia, UK and Sweden etc are offering some rights and responsibilities as civil unions. Therefore by reckoning the changing global scenario, though it become high time, the rights and responsibilities shall be recognized by the Government and enact necessary statutory provisions and implement such type of policies and programmes for the wellbeing of the homosexuals on par with others besides all are equal before law sans any discrimination by way of gender and sex etc.

15. It is suggested that by reckoning the UNOs UDHR on 10th December, 1948, all the countries across the globe shall enact and implement such type of laws by which the LGBT people are entitled to the full enjoyment of Human Rights such as freedom from discrimination; recognition, life, liberty and security; freedom from arbitrary detention and fair trial; an adequate standard of living with decent work and housing; freedom of education; health and protection from medical
abuses; right to have children by adoption; right to participate in public life; freedom of expression and association; freedom of thought, conscience and religion and right to entitle property from their legal heirs.

16. Further, it is suggested that all the Governments across the World, by reckoning the Yogyakarta Principles declared on 26th March, 2007 by UNHRC at Geneva shall enact and implement such type of laws exclusively meant for the well being of the LGBT people such as universality of the human rights and its application; right to life, freedom from violence and torture, privacy, access to justice and freedom from arbitrary detention; non-discrimination in respect of economic, social and cultural rights including employment and education; right to seek asylum from persecution based on sexual orientation and right to participate in public affairs etc.

17. Furthermore, all the States across the globe shall initiate suitable steps towards legalizing the Gay marriages and protection of Human Rights on par with general public besides protecting legally. On the other side, the judiciary should carefully look after the protected status of the same sex couples. Besides that the laws which are discriminatory in nature against the LGBT should be checked. Further, the states should frame their constitutions in such a way not only to predict and safeguard the rights of the LGBT but also against discrimination. In addition to that, the states shall initiate an appropriate measures to protect the LGBT from homophobic and transphobic violence by way of repealing those laws which criminalizing homosexuality, implementing suitable training programmes for law enforcement personnel and public information campaigns to counter discrimination and facilitate legal recognition of preferred gender of LGBT.

18. There was no moral ground on which to support the tradition of marriage as a heterosexual institution by reckoning the instance that slavery is once existed but now abolished on humanitarian ground. Therefore the same will be squarely applies in respect of homosexual marriages.

19. The Apex court in *S.Khushboo Vs. Kannaiammal and another (2010)(5)SCC 600 case* has recognized and upheld the cohabitation between the un-married couples. By reckoning the same, why can’t it applies in case of homosexuals in leading cohabitation and marriages sans bestowing impediments to others in the society.
Therefore, it is suggested that suitable steps shall be taken by the Government in this regard.

20. At present, the traditional view of family consisting mother, father and children is no longer representative of today’s society. In fact though homosexuals cannot procreate within their union but there are many options available which enable them to have children by way of adoption and artificial insemination. Therefore the Government should be encouraged homosexuals in this regard.

21. Myriad scientific studies and psychologists come to a conclusion and opined that the love and commitment of the parents make difference but not the gender. Therefore the children raised by homosexual partners are squarely as good as those of straight couples. Therefore it can be encouraged in this regard also by the Government and the people of the society.

22. It is not true and correct that religion is an obstacle. Many sects of Buddhism celebrate gay relationship freely. Myriad instances of homosexuality are available in all major religious mythology. Therefore the people, who are criticizing the homosexuality can be changed their mindset in this regard by reckoning the ground reality.

23. It shall be *nota bane* that the experiment of homosexual marriages at Denmark since 1989, where legally permitted which resulted civilizing and strengthening not just the institution of marriage but the society as a whole. Therefore it is wholeheartedly suggested that homosexual marriage can be permitted by and large beyond any skepticism.

24. Homosexuality is not a new one and it is natural. Myriad instances can be witnessed even in ancient, medieval and modern world. Quite a good number of researches and analytical studies divulged that sexual orientation is due to genetic factor and is determined by age 5 or 6. Therefore denial of legal recognition infringes the fundamental rights of the citizens. Therefore it is suggested to encourage the homosexual marriages sans impediments by reckoning the basic fact that all are equal before the law sans any discrimination.

25. In fact, gays are bestowing a great favour by not bringing more hungary mouth into this excessive over populated world. At the same time, the continuity of
species can never be in danger due to sexual minority, which represent not even 10% of the world’s population. In view of this aspect also, it can be suggested that the homosexual marriages shall be encouraged and recognized.

26. Studies unveils that the America psychiatric Association has already removed homosexuality from its list of mental illness in 1973 and the World Health Organization (WHO) did the same in 1981. Further in the countries where homosexuality is legalized, sodomy law has been repealed the same as obsolete by reckoning the rapid social dynamics. Therefore by reckoning the global view by and large, it can be suggested that the homosexual marriages shall be legalized.

27. Beyond any skepticism that section 377 of the IPC, 1860 violates the right to life and personal liberty, the right to equality and the right to freedom guaranteed to all the citizens as fundamental rights under articles 14, 15, 21 and Chapter III of the Constitution of India, the said section shall be annulled in the interest of the gay community and thereby legalize the gay marriages.

28. Myriad analytical studies, researches and empirical observations divulged that criminalization re-enforces negative social attitude regarding homosexuality which in turn results in greater discrimination and there by impact adversely on the self-esteem of many homosexuals which often leads to deception, mental agony, stress and friction with in the families. Thus it can be suggested that homosexuality can be permitted and legalized the homosexual’s marriages so as to mitigate the above cited problems that are being encountered in the society by reckoning that all are equal before law to lead a peaceful life and liberty sans impediments.

29. It is an apt to mention here that while recognizing the transgender community as a third gender entitled to the same rights and constitutional protection as other citizens, the Bench of the Apex Court highlighted the misuse of the Section 377 of the IPC, 1860 as one of the principle forms of discrimination against the transgender community. Further it observed that “even though insignificant in numbers, transgender were entitled to human rights”. On the global front, the USA Supreme Court held last year that the gay community was entitled to due process and equal protection in the matter of marriage, thus allowing the same sex
marriages. In view of these global developments, it is hereby suggested to legalize the gay marriages.

30. Further, the parents should not preclude in entitling and enjoying the share of their assets since they have every right to enjoy the same on par with their siblings as all are equal before law.

31. Parents should treat the LGBT children on par with their siblings in all respects. In the event, if the expected natural love and affection could not get from the parents, how the same can will be expected from the society. Therefore it hereby suggested that basically the parents should bestow love and affection to their LGBT children.

32. In this context it is to be nota bane that during the course of unveiling the draft of the third women’s policy by the then Chief Minister of Maharashtra, Sri Prithviraj Chowhan includes the transgender community which states that “no person should be forced to live the life of a transsexual. In the case of hormonal imbalance, the right to get medical assistance should be provided to the transgenders. In case of personality disorder, the affected should be given proper help. Awareness should be spread in the society about such issues and solutions there of”. Therefore it can be suggested that the rest of the states of India should implement such type of policies and programme as had taken by the state of Maharashtra.

33. A study report on PAGFB (Person Assigned Gender Female at Birth) by LABIA stated that non-cooperation from the police in filing complaints by queer PAGFB. The report also stress upon the need of PAGFBs to be financially independent. Therefore it was suggested that to encourage PAGFBs to acquire economic independence to resist various pressures to confirm societal norms. The Government shall initiate suitable steps to assist the PAGFBs financially through Banks and other Financial institutions sans any redtapism to stand up on their own legs in the society.

34. After reviewing the entire literature, by and large, like the panacea to cure all the diseases, it can be suggested that there should be needed a comprehensive outlook. The problem with the IPC cannot be solved in a piecemeal manner by
taking isolated sections of the code and attempting to modernize them. Just like the Varma Committee tried to do with the laws of the sexual assault, in the aftermath of the Nirbhaya Case. Further, this is not a task that the judiciary can accomplish, with all the will in the world and with the best of intentions. It is for the legislature to take a comprehensive relook at the IPC for the first time in its annals of 156 years history and introduce reforms that do not merely tinker at the edges but transform the very philosophy of the penal law in a manner that is consistent with our constitutional principles. Such a move is not sans precedent in the commonwealth: as recently as 2003, the criminal law of the UK was comprehensively reviewed and changed, via the Criminal Justice Act.

35. It was also suggested that any such reform would have to be carried out in conformity with the basic principles of the Constitution of India. Three of these principles are – individual autonomy, the freedom of speech and conscience and equality. In the light of these principles, laws that claim to protect individuals from moral degradation and corruption, that privilege community sentiment over the individual right of speech and conscience and that are based upon stereotypical assumptions about men and women’s must be reviewed and modernized in a manner that is consistent with the constitution by reckoning that change has never been more overdue or more urgently required.

36. On June, 30, 2016, the UNHRC passed a resolution creating a post of an independent expert on sexual orientation and gender identity. He will discharge the duty of studying and reporting annually on the nature, the cause and the extent of discrimination faced by the LGBT persons across the globe. Therefore by reckoning the same, it is suggested that in our country also there should be an independent expert to be appointed on similar lines to study the problems that are being encountered by the LGBT community and report the same periodically to the Government to solve the problems.

37. While drafting the section 377 of the IPC, Lord Macaulay, who had specifically aimed to enforce the Victorian morality through the Criminal Justice System quoted that “We are unwilling to insert, either in the text, or in the notes, anything which could give rise to the public discussion on this revolt subject”. He added that “We are decidedly of the opinion that the injury which would be done to the
morals of the community by such discussion would far more than compensate for any benefits which might be derived from legislative measures framed with the greatest precision”. Likewise, the American Philosopher, Martha Nussbaum and the legal philosopher, Ronald Dworkin have also vehemently criticized the verdict delivered by the Apex Court in the case of *Naz Foundation Vs Koushal* since it violates the innate natural autonomy that every person has over his or her respective sexuality. In view of the above, it is suggested that Section 377 shall be repealed in the interest of the LGBT Community.

38. Recently the Govt. of Kerala has implemented the First Transgender Policy and through which, it established an Authorized Legal Institution to safeguard the self respect, equal rights and liberty besides employment of the LGBT Community on par with the fellow human beings. Besides that, in order to provide Employment to them, it started ‘G Taxi’, (Gender Taxi), a special scheme exclusively meant for the LGBT People. Therefore it is suggested that the rest of the states shall also be implemented such type of welfare and social security measures for the LGBT Community.

39. Likewise, in order to bestow an opportunity for employment, recently the Govt. of West Bengal has also established ‘Civic Police Volunteer force’, exclusively for the benefit of the LGBT people, who will assist to the Traffic police in discharging their legitimate duties, so that it maintains their self respect in the society. Therefore, it is suggested that similar steps for self employment opportunities shall be taken up by the Peer states so as to safeguard the dignity and respect of the LGBT Community.

40. Similarly, of late, the Govt. of Orissa has incorporated the LGBT people in the list of BPL (Below Poverty Line), so as to enable them entitled to get all the benefits of all the social security schemes on par with other fellow human beings which is an eulogisable step. Therefore, it is suggested that the rest of the states shall also be implemented such type of welfare and social security measures in the interest of the LGBT people.

41. In order to safeguard the rights and liberty besides well being of the transgender people, there is *sine qua non* for a National Commission with statutory powers on
the similar lines of other such National Commissions of the country for strict implementation with periodical reviews and appraisals.

42. It is a dire need to pass a Bill that should be guaranteed reservations in education and jobs, financial aid and social inclusion besides skill development for prevention of abuse, violence, exploitation and discrimination against the LGBT people. At least 2% reservations shall be provided in Govt. jobs and prohibit discrimination in employment. It is heartening to mention here that after the Nalsa Ruling, the Central Govt. sent out notices to the States to implement 5 steps in the matter: a central grant of Rs.1,000/- per month to the parents of Transgender Children; a class VII to X scholarship; a scholarship for higher studies; Skills Training Schemes; and finally a Monthly Pension Scheme with the Centre – State contribution set at 75:25. By reckoning the principles of natural justice besides all are equal before law, the Govt. of India shall place the Bill passed by the Rajya Sabha before the Lok Sabha with resounding majority as had done at Ireland.

43. In this connection, it is not an out of place to mention here that in the recent past, the US Supreme Court delivered its momentous verdict allowing the same-sex marriages across the country which sparked celebrations among the LGBT community, whose long battle for equal rights has reached its logical conclusion. USA is also a biggest democratic country like India. When it is possible for implementation of same-sex marriages at it’s peer democratic country, why can’t in India also on similar lines. Therefore, it is positively extrapolate that the Apex court will deliver its land mark judgement against the Curative Petitions in favour of the Transgenders.

44. It is suggested that the LGBT Community shall be constitutionally recognized as a Third Gender entitled to enjoy the same rights and constitutional protection on par with other citizens. Further, it is suggested that besides prohibiting discrimination and harassment, with the milk of human kindness, the Apex court shall be extended the global principles of Dignity, Freedom and Autonomy to this unfairly marginalsied and vulnerable community. It cannot be forgotten that discrimination is the antithesis of equality and that is the recognition of equality which will foster the dignity of every individual.
45. In this connection, it is quite apt to quote here the buzz words of Justice K S Radha Krishnan and A.K.Sikri, which robust the above cited suggestion. They opined that “Social justice does not mean equality before law on paper but translating the spirit of the Constitution enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy, into action, whose arms are long enough to bring within its reach and embrace this light of recognition to the Transgenders which legitimately belong to them”.

46. It is a fact that Section 377 of the IPC with its broader shadow of criminality is the biggest affront to the dignity and humanity of a substantial minority of Indian Citizens. Beyond any skepticism, that the public benefits of this decriminalization would start with a sense of self acceptance, comfort, confidence and evolving pride among the LGBT. Therefore decriminalization will certainly prevent another Khairati and Lucknows and allow for the opportunities and the space for the LGBT movement to emerge from the shadows out into the open and create a space for itself to interact with the rest of the civil society and relatively more equal position. In this connection, it an apt to quote here the buzz words of Justice Kennedy: “The state cannot demean their existence or control their destiny by making their private sexual conduct a crime”.

47. It is also suggested that Indians should realize that sex orientation is a biological one and is a natural process and it is not a disease. Therefore, homosexual community should not be exploited and mistreated. Further the sterio type attitude of the society for marriage as heterosexual institution associated with procreation and rearing of children may also include homosexual marriages where love between the partners will be given importance rather than Gender. Therefore, it is high time for the Legislature, Executive, Judiciary, Society at large that they cannot demean the existence of people with same sex desires. Albeit, it can be said that if laws are supposed to be represent socially acceptable dos and donots, then a new mind set is the need of the hour. Otherwise, normal human beings will be continued to suffer inhuman exploitation just because nature has nourished them with the need to be different. In this connection, it is an apt to quote here the buzz words of the legal luminaries, Marsha K.Ternus: “Only an independent judiciary can ensure that the minority is protected from the tyranny of the
majority. Only an independent judiciary committed to the rule of law can safeguard every citizen’s liberties and rights”.

48. It is also to be nota bane that the effect of decriminalization by resorting the dignity of Gays and Lesbians opens the Pandora’s Box of other associated rights for equal recognition of the same sex couples. Therefore the British Regim’s relic of Sec 377 shall be repealed according to the whims and fancies of the people across the Globe by reckoning the aphorism “a stitch in time saves nine”. In this connection it is an apt to quote here the buzz words of “Justice Lord Delvin in Kailash Vs State of Hariyana, “Extreme limits of logic sometimes expose the perversity of a doctrine and fail to promote public good. The practice of adopting English Laws is not always conducive to our own society and therefore we must rely on our own laws best suitable to our society and needs”.

49. Beyond any doubt that Sec 377 of the IPC which criminalizes people who engage in ‘unnatural offenses’, violates the fundamental rights such as right to equality, freedom from discrimination besides life and personal liberty pursuant to the Constitution of India. Therefore it is suggested that by reckoning the adage that ‘better late than never’, it shall be repealed in the interest of the well being of the LGBTs and to the present context.

50. Besides that, haplessly homosexual acts forms a part of this law and end up bestowing an opportunity to law enforcement agencies to harass the LGBT community. Moreover ‘adding salt to the injury’, homosexuals used to face in coming out of the closest and being open about their sexual identity. Furthermore, this draconian law is an affront to the Fundamental Right of the equality, that we have been promised under the Constitution of India. Therefore, it is suggested that unequivocally, Sec 377 should be struck down as unconstitutional.

51. Since Sec 377 of the IPC criminalises ‘carnal intercourse against the order of nature’ is discriminatory, there by violating Article 14 of the Constitution; violating the right of LGBT people to live with dignity as protected under Article 21 of the constitution; and criminalizing Private consensual acts between adults violates their right to privacy as protected under Article 21 of the Constitution, it is suggested that the British relic draconian Sec 377 shall be struck down as unconstitutional.
52. Further it is to be nota bane that while delivering its verdict, in reversing the Delhi High Court’s Judgement, the Apex court itself quoted that ‘not withstanding this verdict, the competent legislature shall be free to consider the desirability and propriety of deleting Sec 377 of the IPC from the statute book’, which is remarkable here. Therefore it is suggested that the Parliament, which is the representative to the people of India shall take up the issue by raise up to the occasion as a pivotal one and the Section is to be repealed in the interest of the deprived minority LGBT community which will be stood as a testimony and a role model in the annals of the proceedings of Indian Parliament.

53. While delivering its verdict on 15-04-2014, in the case of National Legal Services Authority Vs. Union of India, the bench of the Apex court aptly quoted that ‘recognition of transgender as a third gender is not a special or medical issue but human rights issue. Transgenders also citizens of India. The spirit of the Constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion, gender besides directing the Centre and State to treat them as a socially and educationally backward class so as to extend reservation for them in educational institutions and public appointments’. It also said that ‘these transgenders even though insignificant in numbers, are still human beings and therefore they have every right to enjoy their human rights.

54. In this connection it an apt to recapitulate the Universal Declaration of Human Rights adopted on December 10, 1948 states that ‘all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brother hood’. Further the preamble of our Constitution Crystal clearly guarantees ‘… and to secure all its citizens Justice, Social, Economic and Political; Liberty of thought, Expression, Belief, Faith and Worship; Equality of Status and of Opportunity; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the nation…’. Therefore democracy would be meaningless, if it fails to guarantee the spirit of all are equal before all sans any discrimination. Since the preamble is the heart and soul of the Constitution, which crystal clearly says the equality of status besides dignity of the individual, it is suggested that Sec 377 shall be repealed no matter how miniscule the LGBTs are, since the
fundamental rights are one and the same to all the citizens of India to lead a dignified life sans any discrimination.

55. Further it is to be *nota bane* that Sec 377 did not apply to the consenting adults and had resulted in a change in the attitudes of society towards the third gender and sexuality people. Moreover, when the heterosexual orientation exhibited by majority persons is accepted by all, then why not the sexual orientation of LGBTs, be recognized as they are born with different expression of human sexuality. Therefore on this count also, it is suggested that the draconian Sec 377 shall be repealed by the Apex court while delivering its final verdict by reckoning its glorious status as the protector of the Fundamental Rights, by asserting that when it comes to the dignity of the individual and fraternity, constitutional morality should trump religious and social morality.

56. On the Global front, the USA’s Supreme Court in the year 2015 held that ‘Gay community was entitled to due process and equal protection in the matter of marriage and thus allowed same-sex marriages’. In view of these latest developments across the World, it is suggested that the time has come for an honest judicial evaluation of where India stands on the issue of homosexuality.

57. Homosexuality has been treated as an unnatural act against the divine order. India is struggling to enact egalitarian laws even as other developed economies are carrying out reforms. The case of Alan Turing divulges how Queers are tortured despite being revered in their respective professions in the good olden days. Therefore it is suggested that both the Legislature and the Judiciary simultaneously rise up to the occasion and shall pave the way for happiness and rights of minorities of the LGBTs. If we fail to make this minority safe and secure, the very basic values of democracy and inclusively will touch the rock bottom.

58. It is suggested that there are acts of carnal intercourse that are not against the order of nature, even though it did not list what these acts might be. ‘The order of nature’ here means nothing – it is too broad and under examined a term since everyone who has sex has non-procreative ‘against the order of nature’ for large parts of their sexual lives; if they did not, our population problem would be a million times worse than it is today. In fact, sexual identity is the furthest thing from ‘nature’. We all have desires that tug in different directions and we all have
different faces and personas that assume ‘our’ identity at different movements. To be a Lesbian is to presume a category, it is to assume an identity. We have always been Lesbians because our desires run against the order of nature; we have never been Lesbians because we cannot be categorized by desire. Furthermore, the said disputed section technically covers heterosexual non-reproductive sex, but in practices it has managed to demonise anal sex and influence the public misconception of it as being an exclusively Gay male act. Now in India, we did not have this concept of something being ‘against the order of nature’ … homosexuality as such is not defined in the IPC, and it will be a matter of great argument whether it is ‘against the order of nature or not’. In view of the above reason and rationale analysis of thinking, it is here by suggested that Sec 377 shall be repealed.

59. While delivering its final verdict, it is suggested that the Apex court shall reckon one of the most powerful paragraphs of the 2009 Delhi High Court’s judgement: ‘For every individual, whether homosexual or not, the sense of gender and sexual orientation of the person are so embedded in the individual that the individual carries this aspect of his/her identity whatever he or she goes. While recognizing the unique worth of each person, the constitution does not presuppose that the holder of rights is an isolated, lonely, and abstract figure possessing a disembodied and socially disconnected self. It acknowledges people live in their bodies, their communities, their cultures, their places and their times’.

60. In this connection it is to be reckoned the ground reality that basically homosexuality is not a disease or mental illness that needs to be, or can be, cured or altered, it is just another expression of human sexuality. Homosexuals are as normal as ‘you’ and ‘me’. Yet, just because they love ‘their own kind’, they are ostracized and hounded by the law and branded as ‘Queers’ and ‘aberrations’—precisely what they are not. Homosexuals are normal humans attracted to their own gender. Relationships are defined by comfort levels and not societal sanctions. “Like heterosexuality, sexuality is an orientation which is not an unnatural. The World accepts this orientation, society is changing”. What is not changing is, the legal mind set of the people in India. Therefore it is suggested that the people of the society shall reckon this ground reality by changing their mind set with broad sense and mind towards the deprived minority LGBT community.
7.3 CONCLUSION:

Thus there is much heated debate is going on across the world in respect of the legality of homosexuality. India is the biggest democratic country in the world. Therefore it is the bounden duty of the Government to bestow liberty and equality to the citizens of the country. In this connection it is not an out of place to mention here about AH.Maslow’s need of hierarchy. According to him, the people of the society will give much importance to the primary needs such as Food, Cloth, Shelter and Sex. After having satisfied these basic needs only, he will shift to the next phase of the needs in the pyramid such as self actualization and esteemed needs in the society.

Now a days the LGBT community is suffering from both physical and mental agony in understanding their own problems and not in a position to express the same patently and latently and suffering a lot of stress besides humiliation in the society and consequently committing suicides. Like a coin having both sides, there is some reasonability and genuinity in both for and against arguments in respect of Homosexuality. If it will be encouraged and accepted the homosexuality, there is every possibility to occur atrocities against children, sexual harassment on all sections of the people, pervading and disseminating of deadly diseases of HIV and AIDS. 

*Raison d’etre,* Section 377 of the IPC, 1860 strictly prohibiting the homosexuality and awarding a draconian punishments to those who are committing atrocities against the children sans their will and wish. Thus it gives a great legal shelter to the victims and innocents thus beyond any skepticism, it is a great reasonably good provision. 

Albeit in the day to day fast changing Liberalization, Privatization and Globalization (LPG) scenario, there should be amendments to the provisions of the IPC preferably to the Section 377 of the IPC, 1860. Therefore the Apex Court shall take a reasonable and rationale decision by reckoning all the merits and demerits and deliver its verdict which will be immensely useful to the larger public interest and well being.

Further it is an apt to mention here that certain Empirical Studies amongst middle class youths although favours legalisation of homosexual marriages but they in themselves are not much attracted for such type of marriages. This shows that Indian youth still maintains the sanctity of the marriages, as scared, heterosexual institution where homosexuality even if legalised may result only in 4 to 6% homosexual minority. Although as per statistics the demand for giving social and legal recognition to homosexual marriage is limited to only 10% of the Indian
Population. This small representation is also one of the factors responsible for exploitation of the sexual minority. Even today majority of Indians are not comfortable with homosexual marriages for oneself. But at the same time the demand for legalizing homosexual marriages is grave and intense but somehow not getting approval of society and is under cover. It seems as if still it is long way to go for social acceptance of the homosexual marriages in India. As the legal recognition of homosexual unions would mean not only approval of homosexual behaviour with the consequence of making it a model in present day society but may also obscure the basic values which belong to common inheritance of humanity. But at the same time Indians should realize that sex orientation is biological and is a natural process, it is not a disease. It is true that acceptance of the demand for social and legal recognition of homosexuality has not been approved today but in any case homosexual community should not be exploited and mistreated.

Hence taking into consideration the present Indian societal matrix and the emerging conflict in the institution of marriage, the demand for legalizing homosexual marriage is somehow overlooked and ignored. But in near future the stereotype attitude of the society for marriage as heterosexual institution associated with procreation and rearing of children may also include homosexual marriages where love between the partners will be given importance rather than the gender. Then the failure to acknowledge the changing nature of society and the family will result in more harm than good. Although it is long to go for this to happen. But in any case the demand for legalizing homosexual marriages is giving birth to a new conflict in the institution of marriage, family and Law which cannot be denied. But at the same time giving social and legal recognition is not that easy in this traditional society as it has been in the western societies but in any case to ignore this emerging conflict in the institution of family and marriage will be short sighted and can have fatal results if not handled sensitively.

Therefore, it is high time for the Legislature, Executive, Judiciary and Society at large that they cannot demean the existence of people with same sex desires. They also need to acknowledge that by legalizing homosexual relations they will not permit a mere sexual activity but will also decriminalize the lives of citizens who are connected to such sexual act. Finally it can be said that if laws are supposed to
represent socially acceptable dos and do nots, then a new mindset is the need of the hour. Otherwise, normal human beings will continue to suffer inhuman exploitation just because nature has nourished them with the need to be different.

In this connection it is not an out of place to mention here that when arguing before the Supreme Court Bench comprising Chief Justice of India, Justice T.S.Thakur, Justice Anil R.Diwe and Justice J.S.Khahar, the senior Advocate, Sri Kapil Sibal, who represented for the mother of a LGBT person, stated that “Right to express sexuality is the most precious right and curtailing that right in the private sphere is unconstitutional. He added that the decision in the case would bind the present and future generations, and the outcome would determine whether it enhanced the dignity of every citizen or further stigmatized them”. Raison d’etre, the said Bench heard in open court the Curative Petitions against the Supreme Court’s 2013 judgment setting aside the Delhi High Court’s 2009 judgment decriminalizing consensual sex between two adults is private and decided to refer them to a five judge Constitution Bench in view of the significant constitutional issues raised by them with a positive comment that “the issues sought to be raised are of considerable importance and public interest”. Further Harvard-affiliated physicians and Behavioral scientists, who have conducted HIV prevention research and education in India for more than 15 years, stated that “a survey with MSM in Chennai, it was found at 39% experienced high rates of stigma. They added that the survey with MSM in Mumbai and found that high rates of suicidal ideation, depression and anxiety. Laws criminalizing homosexuality, and social pressure to marry, negatively affect the mental and physical health of MSM and place female partners at increased risk of HIV”. The then US secretary of State General, Hillary Clinton on an International Human Rights Day, stated that “Some seen believe that Homosexuality in a western phenomenon and therefore people outside the west have ground to reject. Well, in reality, Gay people are born into and belong to every society in the world.... Being Gay is not a western invention; it is a Human Reality”. Similarly the Secretary General of UNO, Ban-Ki-Moon said that “Culture, tradition and religion can never justify the denial of the basic rights and called for an end to the criminalization of same-sex behavior”. By narrating as cited supra, the Fenway Institute, Bostan, USA has respectfully urged India to repeal the section 377 of the IPC, 1860 and move forward on the path towards equal rights for all and sundry sans any bias. Since it is
the right thing to do and it will also have a positive impact on public Health. It is to be nota bane that even Pope Francis during the course of a single conservation said that “homosexual orientation was not a sin, that gay people should not be marginalized, that they should be integrated into the society.” He added that “if a person is gay and seeks God and has good will, who am I to judge him”.

Thus much criticism has been scattered against the verdict delivered by the Supreme Court in the case of Naz Foundation V. NCT of Delhi, by upholding the section 377 of IPC, 1860, which is nothing but violation of Articles 14,15 and 21 of the Constitution of India (COI). Consequently it brought human rights of LGBT people in line with intentional norms applied in Europe, USA, Canada–south Africa, Australia, Newzeland, Hongkong and Fizi etc. In this connection it is an apt to quote here the most powerful paragraphs of the 2009 Delhi High Court’s judgment that “for every individual whether homosexual or not, the sense of gender and sexual orientation of the person are so embedded in the individual that the individual carries this aspect of his or her identity whenever he or she goes while recognizing the unique worth of each person, the constitution does not pre-suppose that the holds of rights is an isolated – lonely, and abstract figure possessing a disembodied and socially disconnected self. It acknowledges that people live in their bodies, their communities, their cultures, their places and their times”. Therefore the balance must be rapidly restored by institutional action of the Supreme Court. The reference of the Curative Petitions to a Constitutional Bench is the first step in the right direction. In this connection, it is an apt to quote here the buzz words of Lord Dennings that “the doctrine of the precedent does not compel your lordships to follow the wrong path until you fall over the edge of the cliff. As soon as you find that you are going in the wrong direction, you must at least be permitted to strike off in the right direction”. It is also to be apt to quote here the well experienced legal luminary, Justice Robert H. Jackson of the USA Supreme Court’s observation that “I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday”. To conclude with the admirable words of the Judicial Saint, Justice V.R.Krishna Iyer that “Horace wrote: But if Hamer, who is good, nods for a movement, I think it is shame, we in the Supreme court do ‘nod’ despite great care to be correct, and once a clear error in judgment is revealed, no sense of shame or infallibility complex obsesses us or dissuades this courts from the anxiety to be ultimately right not consistently
wrong”. Therefore by reckoning all the above cited facts and circumstances, it can be positively extrapolated that the full Bench of the Apex Court with a cool head and a warm heart will be pronounced its landmark historical judgment against the curative petition in respect of section 377 of the IPC, 1860, which would be binded over by the present and further generations by reckoning the wellbeing of the transgender besides principles of natural justice with the milk of human kindness. Further it is to be nota bane that if Indian’s LGBT community is denied its potential, we would be failing to live by the maxim ‘Vasudhaiva Kutumbakam’, perhaps the most valuable idea from India ever. Besides that, the very basic values of democracy and inclusivity will touch rock bottom. In view of the facts and circumstances as cited supra, It can be positively extrapolated that an erudite, euphoric and eulogisable land mark judgement will be pronounced by the August Apex Court and will be recorded an indelible mark which lies in the annals of its historical judgements perpetually and perennially besides stood as a role model to the entire world for the well being of the homosexuals as all are equal before law in order to lead a peaceful and dignified life. Therefore by extrapolating the ensuing land mark judgement of the Apex Court, before going to epilogue, it is an apt to quote here the buzz words of Githa.

**Sloka:**
Yad yad acarati sresthas tat tat evetaro janah
Sa yat pramanam kurute lokas tad anwartate

- Bhagavath Githa.

**Epitome:** Whatever action is performed by a great man, common men follow in his footsteps. And whatever standards he sets by exemplary acts, all the world pursues.