

# Human Rights and the LGBT community

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## ABSTRACT

**Human rights are rights inherent to all human beings, irrespective of the nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All people are equally entitled to human rights without discrimination. These rights are interrelated, interdependent and indivisible. International human rights law lays down obligation for the Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.**

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## INTRODUCTION

According to Vienna World Conference 1993 on Human Rights, it is the duty of States to promote and protect all human rights and fundamental freedoms regardless of their political, economic and cultural systems. Human rights are inalienable rights. They cannot be taken away except in some situations and with due process of law. All human rights are indivisible, whether they are civil and political rights such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights such as the rights to work, social security and education, or collective rights such as the rights to development and self-determination, are indivisible, interrelated and interdependent.<sup>1</sup>

LGBT rights situation /Problems faced by LGBT people

“All human beings are born free and equal in dignity and rights” are the opening words of the Universal Declaration of Human Rights. It is rather sad that even today LGBT people of all ages and of all religions of the world face violation of their human rights due to their sexual orientation and gender identity. They are thoroughly discriminated in the labor market, in school, hospitals and even thrown out by their families. This group of people are singled out, physically and mentally attacked, beaten, tortured and killed. The LGBT people have hardly any rights that can give them a trouble free life with dignity. Amnesty International believes that all people irrespective of their sexual orientation or gender identity should be able to enjoy their human rights. There are innumerable instances across the globe where individual's sexual orientation or gender identity has led to imprisonment, torture, violence, rape, assault, burning of their homes, shooting etc. The range of abuse is limitless and is in contrast with the very fundamental tenets of human rights law. Amnesty International calls for decriminalization of homosexuality and punishment and prosecution of people who are solely responsible for carrying out such crime against LGBT community. It would be rather wrong for people to think that they can engage in any criminal activity simply because the individuals against whom the crimes are committed are of LGBT group.

The Universal Declaration of Human Rights does not mention much about sexual orientation or gender identity but includes a broad interpretation for protection of the rights of LGBT people around the world. The Universal Declaration of Human Rights guarantees certain protections under Article 3 and article 6, 9 of the International Covenant on Civil and Political Rights which are as follows:-

- Article 3- Everyone has the right to life, liberty and the security of the person.
- Article 6- Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- Article 9- Everyone has the right to liberty and security of person.

LGBT people face abuses based on sexual orientation and gender identity worldwide including torture, killing and executions, arrest under unjust laws, unequal treatment, censorship, medical abuses, discrimination in health and jobs and

housing, domestic violence, abuses against children and denial of family rights and recognition. Human Rights Watch advocates for laws and policies that protect LGBT people's rights.<sup>2</sup>

Hate motivated violence against LGBT people is perpetrated by non-state actors whether private individuals or organized groups. It is a breach in the state's obligation to protect every individual's right if such kinds of violence take place against the group. Homophobic and transphobic violence includes physical (murder, kidnapping, rape, and sexual assault) and psychological (threat, coercion)<sup>3</sup>. These attacks are gender based violence for disobeying the gender norms.

LGBT persons are also the victims of so called 'HONOUR KILLINGS'. Generally the targets are the women but attacks have often taken place against individuals of any sex<sup>4</sup>. There are cases where it has been seen that lesbians are attacked, raped and forcibly impregnated because of their sexual orientation<sup>5</sup>.

Forced anal examinations go against the very essence of human rights. According to the Working Group on Arbitrary Detention 'non-consensual anal test' are intrusive in nature and violates the individual's bodily rights under the Human Rights Law. Forced anal examination is a kind of inhuman torture and degrading in nature and this was generally employed to get a confession or punish. These tests are medically worthless for determining whether a person has engaged in same-sex sexual conduct or whether the person is involved in prostitution or not.

The committee against torture has stated that men, women, boys and girls who are subjected to violations should be protected and not subjected to any biased views on sexuality. Since LGBT members do not confirm to socially accepted gender expectations they are often victims of sexual torture and ill treatment. Thus, it is very necessary that this dehumanization of persons be dealt with more seriousness by the country. Murders of the individuals solely because of their sexual orientation or gender identity are absolutely deplorable and those responsible for such killing should be brought to justice. In a special report of 2006 of Human Rights Council attention has been drawn on the subject regarding death threats and killings simply because of their sexual orientation and gender identity. The members of LGBT community have often been killed and dehumanized due to their sexual orientation. These murders and crimes go unpunished and no prosecution ever takes place. According to the Human Rights the matter is of deep concern rather than a source of controversy<sup>6</sup>.

Acts of murder, death threats should be promptly investigated irrespective of the sexual orientation of victims. The protection and security is absolutely necessary to save them from criminal attacks and government should take a renewed effort to protect the right of life of persons belonging to this group.

States should take necessary steps to put an end to prejudice and social stigmatization of homosexuality. The states should have an obligation to make laws to safeguard such people and also address the problem of homophobic and transphobic violence.

The Human Rights Committee has made certain statements concerning Mongolia. This country has been asked to ensure that LGBT people have access to justice and that justice should not be denied to them simply because they belong to this community. It should be noted that the Penal Code has also mentioned about 'Hate Speech' and 'Hate Crimes' based on sexual orientation and gender identity and has stated that these speeches or crimes should be punished by law.

It goes quite naturally that State should also provide safe refuge to individuals fleeing persecution on grounds of their sexual orientation. UNHCR (United Nations High Commission for Refugees) has advised that individuals who fear prosecution should be considered as members of a particular social group and the State should ensure that these members are not compelled to return to the country where they have been persecuted. That granting asylum should also be there for these members of LGBT group. Some countries grant asylum without any clear policy while others do not track reasons for granting refugees asylum. Asylum laws and policies should recognize that prosecution on account of one's sexual orientation may be a valid basis for an asylum claim.

All over the world people face untold miseries and discrimination, torture, violence even execution- all because of how they dress, how they look, who they love or who they are.

The imposition of death penalty by countries has given rise to a separate violation under Article 3 of the Universal Declaration of Human Rights. Commission of Human Rights has urged Nations not to impose death penalty for non violent acts such as sexual relations between consenting adults. It is to be noted here that Article 6 of the International Covenant on Civil and Political Rights has clearly stated that death penalties should only be imposed on those for most serious crimes but nowhere does the article mention that death penalty should be given to those who have same sex relationships. A

special report further mentions that death penalty for consensual same-sex conduct is not only unconscionable but a serious infringement on the Right to Life recognized in Article 6.

In some recent cases, persecution of persons of same-sex has been condemned by the Working Group on Arbitrary Detention. In the case of Islamic Republic of Iran, the Human Rights Committee directed the country to immediately release those who were held solely on the grounds of mutually agreed sexual activities. The release of such persons should be unconditional. Nations should repeal all laws that criminalize consensual same-sex and let LOVE be the basic right for these LGBT persons.

Discrimination against women on the basis of their sexual orientation and gender identity has also become a cause for serious concern. In 2010 the human rights committee directed Uganda to provide effective protection to women and save them against discrimination based on their sexual orientation and gender identity. The Social and Cultural Rights Committee has taken this as a violation of article 12 where sexual and reproductive health rights are stated. Germany was asked to protect this personal integrity and sexual and reproductive health rights and thus ensure that such women live free with dignity. In the case of Costa Rica new identity card regulations respecting individual gender identity was welcomed by the committee on the elimination of discrimination against women. To treat trans people and inter-sex people as mentally ill has become a new criminal offence against the members of the LGBT group.

With regards to employment benefits a country cannot distinguish between heterosexual and same-sex unmarried couples. Right to the opportunity, to gain living by work which one freely chooses should not be denied to the member of the LGBT group. The principal of non-discrimination apply to all aspects of the right to work and a country cannot limit the access to decent work for all persons who belong to the LGBT group.

It is found that in many countries LGBT persons face difficulties in accessing health care. The Right to Health contains freedom like the right to control one's health including sexual and reproductive health. Countries should take immediate steps to see that right to access to health facilities are given to LGBT group without any discrimination. If Right to Health is not granted then it would prevent individuals from accessing health care out of fear that they would be treated in a discriminate manner and the medical professional would also deny proper services. In 2010 a special report of the Human Rights Council explained that Burundi's attempt to bring a law criminalizing same-sex acts would have a negative impact on the efforts made by the country itself. It would be contrary to international human rights law and would have a negative effect on nation's effort to combat HIV AIDS. This would result in making the LGBT people vulnerable to attacks by both the authorities and the public.

It has been further stated that criminalization of consensual sexual relationships has a tremendous negative impact on public health campaigns against HIVAIDS. Risk of infection would hamper health for the members of this group and thus impede public health programs. Implementation of effective educative programs in respect of the HIVAIDS prevention would not be possible if Homosexual activities are considered criminal and doctors deny proper medical treatment to them.

Public health policies regarding HIVAIDS have clearly stated that if homosexuality is not decriminalized, efforts to halt the spread of HIVAIDS would not be possible and will jeopardize the efforts of nations to tackle the HIVAIDS epidemic. According to some reports health insurance policies are denied to the LGBT members and insurance coverage is rarely available. Health care professionals are often insensitive to the needs of transgender persons and inter-sex children who are born with atypical sex characteristic. Also they are subjected to discrimination and go through unnecessary surgery performed by the doctors in an attempt to fix their sex.

It has been found that education authorities and schools actively discriminate students because of their sexual orientation or gender expression. Sometimes these students are refused admission or are expelled from school. LGBT youths and children face violence and harassment in school from classmates and teachers. Right to Education gets severely impaired if the LGBT youth face discrimination in school and other educational institutions. Countries need to end this kind of prejudice and intimidation and make serious efforts to end such discriminations and try to bring diversity in school curriculum and discourse. Countries should ensure that LGBT students are not denied educational qualifications and professional qualifications which would help them to earn their living.

According to UNESCO reports primary schools play grounds are probably the places where young girls and boys first get their 'blows' due to either effeminate ways or tom boyish behavior. These children fail to fit in with the hetero-normative gender identity. Thus countries are urged to take effective steps on such homophobic discrimination in schools by the committee on the rights of the child.

A survey carried out in UNITED KINGDOM has found that 65% of LGBT youth have been bullied in schools because of their sexual orientation and many of them have been physically abused also.

The Right to Education which includes the right to receive accurate and age appropriate information regarding homosexuality must ensure that young people are thoroughly informed about healthy lives and sexually transmitted infections. Since everyone has the right to deal with his or her own sexuality, education on sex should pay special attention to diversity regarding this issue.

The Universal Declaration of Human Right Article 19, Article 20 (1) and Article 22 (1) guaranties Freedom of Expression and Peaceful Assembly irrespective of the individual's sexual orientation or gender identity.

**Article 19** guarantees the right to freedom of thought and expression without interference.

**Article 20 (1)** guarantees to every individual the right to freedom of peaceful assembly and association.

**Article 22 (1)** further adds that every individual has the freedom to join trade unions for the protection of his or her rights.

Regardless of these rights there were many cases where the police or government officials used force, violence and threats against the LGBT members and prohibited their demonstrations, meetings and conferences. But the United Nation special procedure has re-affirmed that the right to freedom of expression is right for everyone regardless of sexual orientation and gender identity.

To protect LGBT people from violence and discrimination a new set of LGBT specific rights are not required nor is the requirement of establishing new international human rights standards. It is the duty of a nation to protect the LGBT persons from violations of the human rights which are well established and are binding on all United Nation member states. The United Nations has been working with member States to remove the discrimination and criminalization based on homophobia against LGBT people. Though the human rights are denied to LGBT people throughout the world today, over 30 countries have decriminalized homosexuality in the past 20 years. Regardless of resistance determined efforts by the UN, associated NGOs and representatives of member States to guarantee the human rights of LGBT persons have been gaining momentum. There is no doubt that the UN is making progress toward the inclusion of LGBT rights as basic human rights globally there is still work to do.<sup>7</sup> It's a long road ahead.

## REFERENCES

- [1] [www.ohchr.org](http://www.ohchr.org) what are human rights
- [2] [www.hrw.org](http://www.hrw.org) LGBT rights.
- [3] Article 2 of the Declaration on the Elimination of Violence against Women notes the violence against whom encompasses violence within the family, within the community, and physical, sexual or psychological violence perpetrated and condoned, by the State, wherever it occurs.
- [4] See Report of the Secretary-General on violence against women(A/61/122/Add.1), para. 124. Reports of the Special Rapporteur on violence against women: E/C4/2002/83, paras 27-28: A/HRC/4/34/Add.2, para 19, and A/HRC/4/34/Add. para 34.
- [5] The Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women have addressed so-called "curative" or "corrective" rape, perpetrated by men who claim their intent is to "cure" women of their lesbianism.
- [6] Oral presentation of report E/COMPLAINANT.4/2006/53 by the Special Rapporteur to the Human Rights Council, 19 September 2006, available of [www.unhcr.org/webcast/unhcr/archieve.asp](http://www.unhcr.org/webcast/unhcr/archieve.asp) go=060919(accessed 1 June 2012).
- [7] [www.apa.org](http://www.apa.org) UN MATTERS Are LGBT rights human rights? Recent developments at the United Nations