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Blooming Dawn On Rainbow Community-The Pro Bono Initiatives

N Reena Roy

Assistant Professor

Government Law College, Chengalpattu

Abstract: The Earth has witnessed and seen numerous living species. Many have left traces as stint for its survival and many has proved that to be wrong. Humans are only species who regard themselves to be naturally selected and has proved it vigorously by their travel and dominance. Their adaptation to changing environment and situations has proved them to be fittest with fight and rage to prove their survival with its own holistic perspective one such being the LGBTQ+ community. The article highlights about the problems faced by the community and the extent of social victimizing them. The initiatives taken by the law in extending the mechanisms of accessing justice. Furthermore, the efforts taken by Pro Bono in upbringing of these vulnerable. The article also lays emphasis on how to declutch the manacles and provides for appropriate mechanisms for elevating the community.

Keywords: LGBTQ+, Rainbow community, Transgender, Transpeople, Homosexual

Introduction

“When you put love out in the world it travels, and it can touch people and reach people in ways that we never even expected”

- Laverne Cox

The caravan of history marches slowly and steadily through several vicissitudes of human life leaving behind in every nation and in every society a caput mortuum of human beings. This unfortunate and worthless residue of human beings in every society has been the result of the full play of the doctrine of survival of the fittest. In every society the economically and socially stronger sections have invariably and mercilessly suppressed the weaker sections and tried to keep them under subjugation throughout.

The survival instincts of humans have labeled them as humans. But the question it leaves unanswered as ‘Are they Humane?’ The situation handling is decided by appropriately trying to figure out relevant road to travel is ‘road of fight’ or ‘road of flight’. This instinct of choosing is a very powerful and impactful drive. But quite surprisingly one of the highly intelligent species has vehemently failed to put it to reality. The end result being victimizations, marginalization, discriminations, submissions et cetera. There are many instances which are heaped to spotlight marginalized sections, one such being the Rainbow Community ie., LGBTQ+ community. Intersexuality itself is old news. Hermaphrodites, for instance are often featured in stories about human origins. Early biblical scholars believed Adam life as hermaphrodite and later divided in to two people --- a male and a female --- after falling from grace. According to Plato there once were three sexes --- male, female, and hermaphrodite --- but the third sex was lost with time.

Social Justice a reality or myth?

The Supreme Court took an opportunity in *Municipal Council, Ratlam vs. Vardhichand* to discuss the concept of social justice. Justice Krishna Iyer said, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off its jurisdiction vested for their benefit in any public functionary like a Magistrate under Section 133, Criminal Procedure Code. In the exercise of such power, the judiciary must be informed by broader principle of access to justice necessitated by the conditions of developing countries and obliged by Article 38 of the Constitution. This, according to him is the “processual branch” of the Indian Public Law and the new attitude of the procedural justice reflects what Prof Adolf Homburger has called a radical change in the hierarchy of values served by civil procedure. Then he says that “the paramount concern is increasingly with ‘social justice, i.e., with finding procedures which are conducive to the pursuit and protection of the rights of ordinary people”.

By understanding concept of justice and modes available, the efficaciousness of executing the same and whom to approach for restoration of Justice is always an oscillation to common man. It is of no wonder and surprise that LGBTQ+ community is of no exemption. The procedural flaws blockading efficient justice delivery system should always be looked into. Whether access to justice and declutching victimizations are bridging by itself? Furthermore, the percentage of LGBTQ+ community who are facing social inclusions is comparatively lesser than those who face discriminations. Many of them belonging to these communities though have stronger history and precedents still get succumbed themselves in cage of survival difficulty to make both ends meet.

Judicial recognition of Rainbow Community

In the *Naz Foundation VS. Govt. of NCT of Delhi*, the Division Bench comprising of two judges of Delhi High Court held that treating consensus homosexual sex between adults as a crime is violation of the basic fundamentals of the Indian Constitution. But this does not get its inclinations by the Hon'ble Supreme Court in *Suresh Kaushal v. Naz Foundation*. This judgment not only lacked legal logic but also empathy. The Supreme court more or less invalidated the independence of LGBTQ+ individuals from making personal choices about their lives, eliminating their freedom to love. When we look into by having a deeper look in to the judgement there is apparency that fundamental rights of these vulnerable community were dealt with discriminative outlook by withering out basic rights such as right to privacy and also core expectation of every human life that is nothing but the right to live with human dignity.

There is an obvious contrast between the activist role of the judiciary and the passive role of the judiciary. According to Justice Bhagwati, the former is necessary for the Indian society, which is ‘pulsating with urges of gender justice, worker justice, minorities justice, dalit justice and equal justice between chronic unequals’. As he said in the battle between those who are socially or economically unequal the judicial process may prove disastrous from the point of view of social justice, if the judge is merely passive or negative. They should adopt a positive and creative approach. Judges cannot remain mere bystanders or spectators. They must become active participants in the judicial process ready to use law in the service of social justice through a proactive goal-oriented approach. But, Justice Bhagwati, advocated for judicial cares who share the fighting faith of the Constitution and who are imbued with the constitutional values.

However, in its five judges Constitutional Bench decision in *Navtej Singh Johar v. Union of India*, 2018 the Supreme Court set aside its earlier decisions in *Suresh Kumar Kaushal* case and upheld the Delhi High Court decision in *Naz Foundation* case and ultimately held that unnatural sex between competent persons cannot be allowed to continue as an offense on the statute book and that part section 377 of IPC that comes in between should be struck down as unconstitutional on the touchstone of Article 14 and Article 21 of the Constitution of India as a human rights issue.

The role of the judiciary in reaching the constitutional goal of social justice described by Justice Bhagwati has been supported by Justice Desai, who pleaded for co-operation of the Executive, Legislature and Judiciary in striving to achieve this ideal. In this co-operative venture the judiciary has to be inspired by the values enshrined in the Constitution. This inspiration is necessary, if rule of law is to run akin to rule of

life and a fetal society is to be transformed into an egalitarian society by the rule of law. Proceeding further he said, “the judiciary must keep pace with the changing moves of the day, its decision must be informed by values enshrined in the Constitution, the goals set forth in the fundamentals law of the land, peoples yearning desire for a chance for the better and promised millennium. An activist role in furtherance of the same is a *sine qua non* for the judiciary. It has been decades to decades that vulnerable communities were waiting for permanent dawn that will certainly throw light upon darker days, came into reality by passing of ‘The Transgender Persons (Protection of Rights) Act, 2019’. Despite initiatives taken still position of LGBTQ+ community has not been changed in a remarkable manner. When someone who is voiceless or whose voices are or made inaudible, in such a situation the access for restoration of Justice is brought through various mechanisms, one such being Pro-Bono legal services.

Legal aid an invincible connect

Legal aid, the professional legal assistance given, either at no charge or for a nominal sum, to indigent persons in need of such help. In criminal cases most countries- especially those in which a person accused of a crime enjoys a presumption of innocence- provide the services of a lawyer for those who have sufficient means of their own. In some countries defender offices with salaried personnel, either publicly or privately supported, have found to be the most economical solution. Where there is no storage of lawyers skilled in criminal law and trial practice, private lawyers undertake this duty, being assigned by the court or being chosen by the accused person himself. In many countries these private lawyers receive no remuneration or only a nominal fee paid either by the state or from charitable funds.

There are numerous laws which provides for free legal aid in India. The preamble to the Indian Constitution lays an emphasis on securing social, economic and political justice. Article 38(1) provides that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all institutions of the national life. Article 39-A provides that the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The securing of justice to vulnerables are also emphasized by The Legal Services Authority Act, 1987. It is an act to constitute legal services authorities to provide free and competent legal services to weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize lok adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. Apart from these, section 304 of the Code of Criminal Procedure and Order 33 of the Code of Civil Procedure also provides for free legal services to vulnerables.

The Triangular Light

Earlier, in the absence of money, the poor class couldn't go through the whole legal process and formalities and failed to get justice. “No more, Justice delayed means justice denied, through Pro Bono Legal Services”. We all know, fighting a long dispute or a battle drains the funds and time, and if you belong to the category of have notes then it's a double jeopardy. To seek timely justice and disbursal of your case or litigation, it is important to avail the services of a top lawyer who could fight your case with great professionalism.

The Union Law Minister has launched three different schemes such as Pro Bono Legal Service, Tele Law Service and Nyaya Mitra Scheme.

1. Pro Bono Legal Service:

The main objective is to encourage lawyers and legal professional to provide pro Bono legal services, to recognize pro Bono legal work being provided by lawyers and legal professionals, to create a database capturing vital information of lawyers for appropriate positions in the relevant field.

2. Tele Law Service

Department of Justice has partnered with NALSA and CSC e-Governance Service India Limited for mainstreaming legal aid to the marginalized communities through Common Services Center. Tele-Law means the use of communications and Information Technology for the delivery of legal information and advice. This e-interaction between lawyers and people would be through the video-conferencing infrastructure available at the CSC's and to facilitate delivery of legal advice through a panel of lawyers stationed at the State Legal Services Authorities (SALSA) and CSC. The project initiates to connect citizens with lawyers through video conferencing facilities by the Para-Legal Volunteers.

3. Nyaya Mitra Scheme

Nyaya Mitra (NM) aims to facilitate expeditious disposal of 10-15 years old pending cases in High Courts and Subordinate Courts.

Pro-Bono a voice for “the voiceless”

Pro Bono is an abbreviation for the Latin phrase *pro bono publico*, which translates as “for the public good”. The phrase typically refers to professional services that are provided for free or at a reduced cost. Many advocates also inclined for providing legal services to marginalized, underprivileged and vulnerable sections of society. They provide such services by not getting any fee for their professional assistance. Their prime goal is to declutch manacles of such victimizations and highly ensure for restoration of Justice by accelerating the hope of society that access to justice is not always a day dream.

The nationwide network offers quick response and pro Bono expertise to those who have little or no access to the justice system. Lawyers offer legal representation and advice to people who cannot afford legal representation. WHRPC is a part of the access to justice movement. They work with selfless attitude by keeping in prime motto of providing that equal justice to all. There are so many constraints faced by many sections of the society, when it comes in particular to LGBTQ+ community these constraints and obstacles includes the problems of identity acceptance, social inclusion, effective implementation of inclusive education, marriage, adoption, inheritance of property, hinderance free enjoyment of trade and business, employment opportunity, surrogacy, medical benefits, lack of financial stability, etc.

The LGBT community continues to be the last community of people on the planet that suffer from both criminalization and extensive discrimination. Over 70 countries in the world criminalize LGBT people who are imprisoned, victimized and sometime killed because of their sexual orientation or gender identity. Discriminatory legal frameworks and societal prejudice, even in the most progressive of countries, leave the LGBT community vulnerable with little or no access to legal help. iProbono's LGBT Justice programme aims to reach out to those people and the organizations that advocate on their behalf to find them the legal resources needed to not only seek justice and legal advice but also to assist the LGBT community in achieving a more dignified life, free from discrimination and the fear of violence.

Conclusion and Suggestions

By having a closer look at statutory initiatives taken, there are many progressive steps to be appreciated for upliftment and betterment of community. But, at the same time it cannot be withered out that initiatives have not absolutely pushed LGBTQ+ community to a safer zone. The societal mindset to be transformed with humane thought of looking at community as weird and off normalcy. The shift of adapting to modernization should be there in thoughts of humans. The instances of making them as symbol of ridicules should at least be wiped out by contemporary efforts. The efforts taken should be in such a way that job opportunities should be expanded to change the stereotypical social minds and make a confidence in these community to literally have assurances of making their livelihoods. Pro Bono initiatives be by extending hand not only adding them for access to restoration of Justice but also to declutch social inequalities. The instances wherein they are pulled into the trap of frivolous accusations, victimizations both anatomically and mentally, medical aid given to them is not absolute, survival hunt has pushed them to extremes of ending their lives etc. The following suggestions are to be incorporated and improvised for serving the rainbow community:

1. The availability of pro Bono services should be made in all legal institutions by disseminating awareness.
2. Their duties and functions should be made clearly available to public for easy access.
3. The services can be brought in as mandatory norm for specific time to all advocates by inculcating spirit of services.
4. The versatile use of constitutional remedies should be made aware of by these clubs.
5. Their part to be intensified in giving effect to social justice and inclusiveness.
6. Law students can be pulled-in by creating clubs in all legal institutions along with legal aid cell.
7. The remedies and solutions for grievances of marginalized differs from one another. Hence the lawyers should be trained by expertising them.
8. The community participation by bridging Bar Councils with legal institutions, NGO's, media, etc with expansions.

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