

God Made Adam and Eve, Not Adam and Steve: Conceptualising the Legality of Sexual Minority Identity Highlighting Judicial Interpretations

Evnat Bhuiyan

Bangladesh Open University

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ABSTRACT

This research aims to addressing the status of Sexual and Gender Minority (SGM) identity in a society. The paper pivots on three key parts- firstly, theorising minority identity and extreme social abhorrence and structural discrimination faced by SGM; secondly, assessing the legal vacuum in the existing international human rights law; thirdly, examining the judicial interpretation on right to sexual freedom as human rights and finally investigating the legality of sexual identity. For critical understanding, the study analysed how the contradictory usage of 'public morality and decency' creates a legal bar to avail human rights protection for SGM. For that, the paper reconnoiters ample human rights instruments and landmark US constitutional judgements to portray the nexus between sexual minority rights and human rights. The paper found SGM as a vulnerable status quo identity group who faces substantially systematic, sexuality targeted, institutional discrimination on a different scale, in extensive range and acute level which the normative binary identity minority group does not face in a heterogenous society. Court opined that sexual diversity opens newer dimension of human rights that contextualise the idea of respect to sexuality, sexual privacy, sexual freedom, sexual integrity as human rights reemphasizing SGM people's entitlement to exercise these rights as equally as the binary people. The author primarily proposes cogent role of judicial interpretation and the establishment of an International Gender and Sexuality Protection Charter to be efficacious strategy to address sexual minority discrimination and their rights' recognition.

Keywords: Minority identity, Sexual and Gender Minority (SGM), Gender and Sexuality Diverse (GSD) people, gender nonconformity, heteronormativity.

THE GENESIS OF MINORITY IDENTITY AND MINORITY INFLUENCE

Minority identity is a concept intertwined with right-based inequity and discrimination. The term minority, surprisingly, is neither directly addressed nor defined from legal perspective via any international legal instrument. Other social science disciplines defined the meaning of minority but not from legal angle.¹ Minority identity theory emerges from the variability of different belief mechanism. Diverse minority groups in a society experience certain deprivations such as structural violence², institutional inequalities³, statutory discrimination⁴, legal inadvertences⁶, racial and gender prejudice⁷, religious zealotry⁸, spiritual selectivity and disparity like

¹ Rezaei Ramin, 'The Legal Definition of Minority in the European Context: A Disquisition on the Term with a Focus on Ethnic Aspects' (2015) 3 Acta Humana — Human Rights Publication 53 <<https://folyoirat.ludovika.hu/index.php/actahumana/article/view/2534>> accessed 12 July 2024.

² Nadia Zaheer Ali, Barrister Muhammad and Ali Binyameen, 'Exclusion of Minority Group through Structural Violence : A Case Study of Rohingya' (2023) 4 Annals of Human and Social Sciences 739.

³ Bethany G Everett and Madina Agénor, 'Sexual Orientation-Related Nondiscrimination Laws and Maternal Hypertension Among Black and White U.S. Women' (2023) 32 Journal of Women's Health 118.

⁴ Sharan Grewal and Shadi Hamid, 'Discrimination, Inclusion, and Anti-System Attitudes among Muslims in Germany' (2024) 68 American Journal of Political Science 511.

⁵ Irena Kogan, Markus Weißmann and Jörg Dollmann, 'Police Discrimination and Police Distrust among Ethnic Minority Adolescents in Germany' (2024) 9 Frontiers in Sociology 1.

⁶ Vrinda Narain and Margot Young, 'Notwithstanding Minority Rights : A Canadian Democratic Failure' (2023) 32 Constitutional Forum Constitutionnel 43.

⁷ Ganna Pogrebna and others, 'The Impact of Intersectional Racial and Gender Biases on Minority Female Leadership over Two Centuries' (2024) 14 Scientific Reports 1 <<https://doi.org/10.1038/s41598-023-50392-x>>.

⁸ Muhammad Riaz and M Wakil Khan, 'Structural Violence and Christian Minority in Pakistan: The Monolithic Image to Be Blamed' (2015) 10 The Dialogue 338.

disproportionate availability of cemeteries⁹ etc. Deprivations of such nature constantly implies lenient pressure upon the group to adopt prevalent customary societal and cultural norms dissociative with their individualistic social identity. Social identity is composed of various elements like nationality, religion, race, gender, or sex.¹⁰ Any social being choosing not to follow traditional customary practices or showcasing unconventional attributes in terms of gender revealing is often seen as social deviation. It marks as the determinant of distinctiveness or contentiousness of that person as an individual identity in society, for example, nonbelievers, nonbinary people. Identity of any form of practice or belief creates its presence by influencing the society. Social influence is a tool of synthesizing existential acceptability of an identity who can be minor in number and unique in nature. They can do it by constantly pushing the society for equal acceptance as like as majority section of a society. Uniqueness is also a persuasive tool of social influence.¹¹

But the social identity of sexual minority has always been questioned. The twisted identity complex of sexual minority is linked with identity management theory. This theory depicts Sexual and Gender Minority (SGM) people's self-categorization and self-expression. Identity management indicates that members of deprived groups are dynamic who creates self-expression strategies by perusing features from their social atmosphere and from the bigger framework in which they are surrounded.¹² Mostly people in a regularizing social structure exist as followers of social rules making them the majority section. But some people deviate from the normative process who impact the majority section of the society by their distinct perception, belief, ideology and idea of identity. I call it Normative Identity Deviation (NID), an identity that chooses to remain outside of the normative perception of 'I', 'self' or 'being' who grow his own world devoid of traditional layers of social practices; who unapologetically rejects social imposition of gender role, sexual orientation, operational belief system, societal role, cultural assimilation or anything that is socially and impliedly forced upon human in the name of custom. Sexual minority group is an ideal example of such 'being'. They are independent from normative identity by choice.

The minority identity analysis can be done in two ways- the traditional normative aspect and the minority influence aspect. The conventional weighing parameters of minority cluster in the social stratification such as numbers, power politics, oppression or systematic, gradual deprivation from rights is greatly replaced by the theory of 'Minority Influence'. This replacement signifies the impact of the significant less numbered i.e., the minority group that differs from society's belief mechanism, culture and ideal. The image and acts of this minority identity group enhance noticeable change in the normative social setting and traditional social structure by instilling an alternate proposal to social norms, introducing personal autonomy, creating individual belief route instead of the grounded traditional one.

Minority alternative group is a small fraction or even can be one individual of a society who challenges social normative settings and narratives through gradually consistent negotiating process, who establishes a threshold of separatism from conservative social customs and propose ancillary social practices invoking societal conflict.¹³ Through this attempt to challenge societal norms, cultural tradition, social mindset or normative politics, the sexual minority group of a society interposes reformation between cultural lethargy and customary rigidity of social dimension. The SGM people in a society are basically Gender and Sexually Diverse (GSD) people in nature. They are more specifically known as the LGBTQIA+¹⁴ people.

This group encapsulate their unique identity perception, individuality, sense of being, sense of choice, alternative lifestyle to heterogeneity that constructs the group as sexual minority from the minority alternative influence aspect. Another minority identity related theory is the Minority stress theory. Minority stress theory pivots to

⁹ Avril Maddrell and others, 'Intersections of (Infra)Structural Violence and Cultural Inclusion: The Geopolitics of Minority Cemeteries and Crematoria Provision' (2021) 46 Transactions of the Institute of British Geographers 675.

¹⁰ Ajay Mehra, Martin Kilduff and Daniel J Brass, 'At the Margins: A Distinctiveness Approach to the Social Identity and Social Networks of Underrepresented Groups' (1998) 41 Academy of Management Journal 441.

¹¹ Gerd Bohner and others, 'Distinctiveness across Topics in Minority and Majority Influence: An Attributional Analysis and Preliminary Data' (1996) 35 British Journal of Social Psychology 27.

¹² David Matthew Doyle and Manuela Barreto, 'Toward a More Relational Model of Sexual Minority Identity Concealment' (2023) 52 Archives of Sexual Behavior 1911 <<https://doi.org/10.1007/s10508-022-02491-5>>.

¹³ Antonis Gardikiotis, 'Minority Influence' (2011) 5 Social and Personality Psychology Compass 679.

¹⁴ Refers to Lesbian, Gay, Bisexual, Transgender, Queer, Queer gender, Intersex, Asexual, Questioning, Pansexual and other undefined or assumed sexuality and gender fluid person.

two critical genres of stressor categories upon SGM or GSD identity- distal stressor and proximal stressor.¹⁵ Distal stressors are structural stressor of different institutional discrimination which release massive stress upon them like statutory deprivation, laws and policies to destroy or regulate the identity, employment adversity etc. On the other hand, proximal stressor indicates self-rejection attitude where SGM people hide their identity and socialize with heteronormative society to protect themselves from violence and discrimination. Minority stress theory also exemplifies the social stigmatization that pushes them to self-destructive habitual attributes leading them to suicidal, addictive, depressing and abusing activities as well as being victim of sexual violence and intimate partner abuse.¹⁶

SEXUALITY IN MINORITIZATION AND MARGINALISATION

Minoritisation originates from such marginalisation profoundly developed from racial discrimination and social stigmatisation. The major side of minority identity is the discrimination aspect, in extreme case, it can be marginalisation. Laws and statutes are often utilised as a tool of legalizing marginalisation combined with stigmatisation that threatens the very existence of a particular minority identity.¹⁷ SGM people are a great example of how laws are used to portray statutory segregation of SGM leading them to the den of stigma with the address of a marginalised community. The minority discrimination diaspora thus closely connected to marginalisation. Marginalisation is deeply embedded in the notion of sex and sexuality in the way that, sexuality and gender diversity cause diversified numerous forms of discrimination resulting into minoritisation followed by marginalisation.¹⁸ Collective societal expulsion of a nonnormative entity is a common phenomenon practiced from ancient era due to the unquestionable nature of normative principles which does not support multiple identity of sexuality. This breeds the existence of marginalisation followed by minoritisation. The reason perhaps lies in the question how sexuality is perceived by the society in general irrespective of modern, feudal or primitive age.

Sexuality is always seen as tabooed and ashaming perception, prohibited to discuss in public, socially labelled as diversity-restricted, religiously intolerant, collectively and structurally a cultural bashing tool and an ideal basis for heterogeneous society for generating gender and sexual stereotype in many aspects. Where woman is pigeonholed as 'weaker sex', 'sex machine' or 'reproductive pitch' in a heteronormative social setting, people of diverse sexuality remain in a more threatening position. Sexual minority group face unspeakable, predominantly suppressive legal, socio-cultural, developmental mechanism irrespective of gender identity, more than heterogeneous people.¹⁹

Marginalisation purports to be a gradual systematization created by power dynamics of normative majority community who enjoys supremacist and controlling position over non-normative section in a society who conjoins different pathway that challenges societal normativity or adopts a lifestyle that contradicts social normativity insight. Socio-culturally sidelined people prone to acute chronic depression and psychosocial distress leading to many health hazards.²⁰ Sexually minoritised people are even more targeted for marginalisation because of their unique lifestyle, individual belief mechanism, pervasive ideological stand and normative detachment. Hence, people of diverse sexuality become sexual minority through socio-cultural, legal, religious and structural expulsion.

RESEARCH OBJECTIVE

The paper intends to explore the legal vacuum on the legal recognition of SGM people as a minority group by

¹⁵ David M Frost and Ilan H Meyer, 'Minority Stress Theory: Application, Critique, and Continued Relevance' (2023) 51 *Current Opinion in Psychology* 101579 <<https://doi.org/10.1016/j.copsyc.2023.101579>>.

¹⁶ Esra Ummak, Salman Turken and Deniz Akin, 'Understanding Intimate Partner Violence Among Ethnic and Sexual Minorities: Lived Experiences of Queer Women in Norway' (2024) 30 *Violence Against Women* 1274.

¹⁷ Narain and Young (n 6).

¹⁸ Irie David Schimanski and Gareth J Treharne, "'Extra Marginalisation within the Community": Queer Individuals' Perspectives on Suicidality, Discrimination and Gay Pride Events' (2019) 10 *Psychology and Sexuality* 31.

¹⁹ Susan Wright, 'Second National Survey of Violence & Discrimination Against Sexual Minorities' (2008) Report by National Coalition for Sexual Freedom.

²⁰ Fiona Robards and others, 'Intersectionality: Social Marginalisation and Self-Reported Health Status in Young People' (2020) 17 *International Journal of Environmental Research and Public Health* 1.

assessing structural violence and discrimination towards them, analysing the protection mechanism of their rights by examining the nexus between sexual minority as social identity and legal identity.

Research Question

1. Can sexually diverse people be considered as a minority identity group?
2. Is the existing international human rights discourse sufficient for sexual minority rights protection?

METHODOLOGY

The research is normative qualitative study with comprehensively explorative analysis of international treaties, national statutes and judgements of the European Court, Supreme Court of United States as primary data. Secondary data are collected from journal articles, books, international reports, conference proceedings, working papers, policy papers, theses etc. I have conducted a thorough search in Google Scholar, MDPI, and PubMed for existing analyses with the keywords – minority influence, minority identity, violence and discrimination to diverse sexuality, sexual minority, society and sexuality, sexual minority protection, sexuality rights etc. Among the 135 downloaded documents, 94 published documents were read, analyzed and cross checked. Finally, materials consistent with the research objectives are used.

Basis of Minority Claim of Sexual and Gender Minority (SGM)

Sexual and gender minority people face disparity in availing basic human rights. These inequalities are centralized to the Sexual Orientation, Gender Identity and Expression (SOGIE) concept. Sexual minorities face primarily acute discriminations in recognition of their marital and/or companionship legality, decriminalisation of sexual diversity etc. But many aspects of non-physical violence and mentally associated latent discriminations are extreme in them which amounts to stir an irrevocably established vulnerability in their personality causing stronger psychosocial damage rather than just physical violence.²¹ Also, crimes like intimate partner violence are higher among sexual minority.²²

Criminalizing sexuality

A 2022 study on penal policies, criminal prosecutions and statutory restriction towards SGM community conducted over 8049 SGM participants from 10 African countries shows that, homosexuality practices are decriminalized in 39.3% countries, criminalized in 60.7% countries, punished with newer prosecutions in 48.2% countries and the overall 48.4% people among the entire participant group reported themselves as homosexual or MSM (Men having sex with Men).²³ These studies can picturize the nontolerant attitude of most of the countries in the world towards nonnormative sexuality. State of most of the countries interpose the nature of sexuality as a private thing or sex as a personal act, rather they condemn diverse sexuality and adjoin sexual diversity practices of the sexual minority into criminal offence by law and regulations.

This factor is evidential of the fact how society and State observe sexuality; how nonheteronormative sexual practices are witnessed as a peace breaker in the eye of law and society by integrating the practices as criminal offence in the legal setting of a country. In the reality of law enforcement and legal framework, GSD identity is not something approved in socio-cultural context impacting the legal purview.

Violence to sexually minoritized people

Violence perpetuation comes as predominantly higher with multiplicity, variety and continuity towards the homosexual minority section compared to heterosexual minority in three dimensional viewpoints: intersectional,

²¹ Molly Remch and others, 'Police Harassment and Psychosocial Vulnerability, Distress, and Depressive Symptoms among Black Men Who Have Sex with Men in the U.S.: Longitudinal Analysis of HPTN 061' (2021) 13 SSM - Population Health 100753 <<https://doi.org/10.1016/j.ssmph.2021.100753>>.

²² Judith Meijers and Sascha Bolt, 'Intimate Partner Violence among Sexual Minority Women: A Scoping Review' (2023) 24 Trauma Violence Abuse 3014.

²³ Carrie Lyons E and others, 'Punitive Policies, Prosecutions, and Legal Barriers to Consensual Same-Sex Sexual Acts: A Multi-Country Assessment of HIV among Gay Men and Other Men Who Have Sex with Men across Legal Environments in Sub-Saharan Africa' (2022) <<https://www.sciencedirect.com/science/article/pii/S2352301822003368>>.

cross-cultural, socioeconomic status and homonegativity.²⁴ Crimes targeting sexual orientation, organised murder and public execution²⁵, homophobic and transphobic attitude, moral policing, over policing, public space policing, hate crimes²⁶, police misconduct, mocking, sexuality shaming, verbal abomination, race-targeted violence²⁷, police violence, armed conflict atrocities²⁸, refugee persecutions²⁹ are persistent in sexual minorities. Due to these identity crisis, socially justified extremism, social adjustability issues, rooted negative mindset in society and non-cooperativeness, the sexual minority seldom vocalise their problems, rarely seek assistance from law enforcement and even do not proceed to reach to police most often.³⁰ Such experiences endorse Gender and Sexuality Diverse (GSD) people victimization. Sexual minorities thus forced to choose living in exile and unlocalized in society making them an ideal minority group.

Discriminatory treatment

LGBTQIA people is in real risk of violence and right based deprivation in any society. They encounter identity crisis and nonrecognition of identity in a medium to acute level depending on the societal facet on the issue of sexuality. Due to discriminatory treatment, it generates excessive trauma and stress disorders in sexually minoritized people causing them suffer from multiple diseases.³¹ A 2024 study carried on over 2296 SGM people found that, SGM who experience three distinct category level of discrimination – individual, institutional, and both level discrimination revealed high level of identity concealment compared to SGM who did not face as such.³²

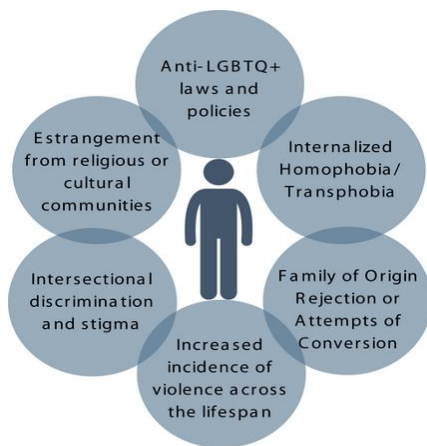


Figure 1: Factors for sexual minoritisation³³

Identity concealment is predominant catalyst for victimization and structural stigmatisation causing law and policy discrimination as well. A 2023 large scale study conducted over 28 European countries on SGM exhibits that, gender nonconformity and fragile socioeconomic condition of SGM generate substantial country level humiliation and victimisation.³⁴ In terms of workforce participation and invoking legal rights, marginalisation of diverse sexuality continues to grow within a heteronormative social structure. They face structural workplace

²⁴ Katherine G Quinn and others, “‘The Fight Is Two Times as Hard’”: A Qualitative Examination of a Violence Syndemic among Young Black Sexual Minority Men’ (2023) 38 *Journal of Interpers Violence* 1.

²⁵ Harry HJ Lehtolaakso, “‘Killed for the Abominable Crime of Sodomy’”: Building Legitimacy with Public Executions of Sexual and Gender Minorities in the Islamic State’ (2024) 17 *Critical Studies on Terrorism* 44 <<https://doi.org/10.1080/17539153.2023.2286712>>.

²⁶ Gregory M Herek, ‘Hate Crimes and Stigma-Related Experiences among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample’ (2009) 24 *Journal of Interpersonal Violence* 54.

²⁷ Katherine G Quinn and others, ‘Police Violence Experienced by Black Gay and Bisexual Men: The Effects on HIV Care Engagement and Medication Adherence’ (2024) 28 *AIDS and Behavior* 1642.

²⁸ Pinja Niskanen, ‘THE LGBTQ + LOST IN SHADES OF GREY IN IHL AND IHRL : A NEED FOR SPECIAL PROTECTION ?’ (ÅBO AKADEMI UNIVERSITY 2024).

²⁹ Katie Mcquaid, ‘There Is Violence across, in All Arenas’: Listening to Stories of Violence amongst Sexual Minority Refugees in Uganda’ [2020] *International Journal of Human Rights*.

³⁰ Rachele Girardi, “‘It’s Easy to Mistrust Police When They Keep on Killing Us’”: A Queer Exploration of Police Violence and LGBTQ+ Victimization’ (2022) 31 *Journal of Gender Studies* 852 <<https://doi.org/10.1080/09589236.2021.1979481>>.

³¹ Laura Sinko and others, ‘It Takes More than Rainbows: Supporting Sexual and Gender Minority Patients with Trauma-informed Cancer Care’ (2024) 130 *Cancer* 507.

³² Charlie Giraud and Michelle Leonard, ‘Types of Discrimination as Predictors of Identity Concealment in a Sexual and Gender Minority Sample’ [2024] *Sexuality and Culture* <<https://doi.org/10.1007/s12119-024-10202-6>>.

³³ Sinko and others (n 31).

³⁴ Richard Bränström, Daniel Fellman and John Pachankis, ‘Structural Stigma and Sexual Minority Victimization Across 28 Countries: The Moderating Role of Gender, Gender Nonconformity, and Socioeconomic Status’ (2023) 38 *Journal of Interpersonal Violence* 3563.

discrimination, heteronormative inclusion as preferred by heterogenous authority of the workplace and mass exclusion due to heteronormative supremacy in the workplace.³⁵

Religious internment

Most of the theologies prohibit sexual diversity concept.³⁶ The fundamental grounds are direct contradiction to birth sex, sexual perversion³⁷, threat to heteronormative family ideology, political agenda to normalize homosexual marriage, westernization, hammer to national culture and ethics etc.³⁸ Islamic scholars opined that, desiring to change or intentionally modifying birth sex is gender dysphoria³⁹, which some scientific research have found to be true.⁴⁰ Research shows that in comparison to heterosexuals, SGM people contain lower clarity about identity awareness, clear concept about own body and suffer from inferior sense of rationality.⁴¹ Islamic regions of nations around the world do not endorse the GSD practice.⁴² Islamic view sees GSD as a consequence of religious inadvertence, erroneous parenting, parental negligence or porn addiction.⁴³ Social rejection of GSD people is greater in Islamic countries in comparison to Christian.⁴⁴

However, a study on Islamic theory on sexuality shows, opposers of punishment theory think the Divine law of *Sin and morality* is the intent to punish LGBT whereas supporters of Care theory think Islamic rule of *equality and mercy* should be the attitude towards LGBT people.⁴⁵ In Christianity, Biblical view on sexual diversity is strictly sensed as "Abomination".⁴⁶ In Hinduism, although ancient cultural murals or scriptures conveyed homoerotic stories but ancient scriptures on Hinduism share equal share of common abhorrence towards GSD practice.⁴⁷ Such abandonment by religious institutions often turns the GSD people to leave their religious faith.

But despite of religious prohibition and censure, scientific studies show that GSD identity is not the core reason and plays little role in religious identity rejection by SGM people.⁴⁸

EDUCATIONAL DISCRIMINATION

A recent study shows that, nonbinary sexual minority students are found to be in greater fear of discriminatory violence in comparison to heterosexual students.⁴⁹ Normalization or introducing academic course on diversity of sexuality or gender identity is challenging in countries which prohibits soliciting sexual divergence. In many countries, it is prohibited and in many other countries it faced backlash.⁵⁰ In US, Anti-LGBTQ+ legislation in

³⁵ Vincenza Priola and others, 'The Organisation of Sexuality and the Sexuality of Organisation: A Genealogical Analysis of Sexual "Inclusive Exclusion" at Work' (2018) 25 Organization 732.

³⁶ Leonard Ndzi, 'Homosexuality and God's Institution of Marriage: An African Evangelical Perspective' (2023) 3 International Journal of Theology & Religious Studies 157.

³⁷ Grace Ifeoma Otubah, 'GOD'S PLAN ON SEXUALITY AND MARRIAGE: BIBLICAL PERSPECTIVE' (IGBOSCHOLARS INTERNATIONAL JOURNAL OF IGBO SCHOLARSFORUM, NIGERIA, 2023) 17 <https://www.researchgate.net/profile/Grace-Otubah/publication/378970404_GOD'S_PLAN_ON_SEXUALITY_AND_MARRIAGE_BIBLICAL_PERSPECTIVE/links/65f435a71f0aec67e2928a19/GODs-PLAN-ON-SEXUALITY-AND-MARRIAGE-BIBLICAL-PERSPECTIVE.pdf> accessed 21 April 2023.

³⁸ Anwar Kholid, 'Criminalisation and Care: Indonesian Muslim Mass Organisations' Perspectives on LGBT People' in Monika Arnez and others (eds), *Engaging Indonesia: Critical Dialogues on Culture and Society* (Springer 2024).

³⁹ Sayyed Mohamed Muhsin and others, 'Sex Reassignment Surgery, Marriage, and Reproductive Rights of Intersex and Transgender People in Sunni Islam' [2024] Archives of Sexual Behavior 1.

⁴⁰ Julia Jastrzębska and Magdalena Błażek, 'Questioning Gender and Sexual Identity in the Context of Self-Concept Clarity, Sense of Coherence and Value System' (2022) 19 International Journal of Environmental Research and Public Health 1.

⁴¹ *ibid.*

⁴² Elsje Bonthuys and Natasha Erlank, 'Attitudes to Same-Sex Marriage in South African Muslim Communities: An Exploratory Study' in Jackie Jones and others (eds), *Gender, Sexualities and Law*, vol 24 (Routledge 2012).

⁴³ Siti Rafi'ah and Nabila Qonita, 'Universitas Lambung Mangkurat, Banjarmasin, Indonesia' (*Jurnal Religion: Jurnal Agama, Sosial, dan Budaya*, 2023) 290.

⁴⁴ Valerie A Earnshaw and others, 'LGBTQ Stigma' in Sel J Hwahng and Michelle R Kaufman (eds), *Global LGBTQ Health Research, Policy, Practice, and Pathways* (Springer and Florida State University Center of Population Sciences for Health Equity 2024).

⁴⁵ Kholid (n 38).

⁴⁶ Hendrik L Bosman, 'Discerning the So-Called Abomination in Lev 18:22 and 20:13 in Relation to Holiness, Honour and Shame' (2023) 36 Old Testament Essays 126 <https://www.scielo.org.za/scielo.php?pid=S1010-99192023000100007&script=sci_arttext> accessed 22 April 2024.

⁴⁷ SM Mukarram Jahan, 'Sexual Orientation and Indian Society-The Role of Religion in Shaping the Narrative' (2023) Dr. K.R. Narayanan Centre for Dalit and Minorities Studies Jamia Millia Islamia New Delhi 110 025 (Sponsored by ICSSR, Northern Regional Centre) <https://d1wqtxs1xzle7.cloudfront.net/107095683/Paper_Sexual_Orientation_and_Indian_Society-libre.pdf?1698892274=&response-content-disposition=inline%3B+filename%3DSexual_Orientation_and_Indian_Society_Th.pdf&Expires=1713730133&Signature=aemXySJ-zuPkUqzQg> accessed 22 April 2024.

⁴⁸ Gennady Vulakh and others, 'Attributions of LGBTQ+ Identity and Religious Views on Homosexuality to Disaffiliation from Orthodox Judaism' (2023) 14 Religions.

⁴⁹ Erin Grinshteyn, Reid Whaley and Marie Claude Couture, 'High Fear of Discriminatory Violence among Racial, Gender, and Sexual Minority College Students and Its Association with Anxiety and Depression' (2022) 19 International Journal of Environmental Research and Public Health.

⁵⁰ Tonya Callaghan and others, 'Religious Reactions to Gender Identity: A Comparative Analysis of Select Canadian and Australian Catholic Schools' (2023) 35 Gender and Education 572 <<https://doi.org/10.1080/09540253.2023.2222128>>.

2022 suggests 70 curriculum censorship bills tried to turn back the clock and restrict teachers from discussing LGBTQ+ issues and other marginalized communities in their classrooms. A total 7 bills passed into law.⁵¹ In 2021, it becomes six states who support no promo homo laws prohibiting discussion on GSD inside classroom.⁵² Interestingly, the first nationwide 2023 research on parental attitude to GSD people in Australia found has that, 80% of parents desired gender and sexuality diversity-inclusive education content included in their child's Relationships and Sexual Health Education (RSE) and 90% of parents endorsed the inclusion of such content in the national curriculum.⁵³

Sexuality Diversity in Human Rights Law Context

Sexuality is not conceptually, culturally, religiously, politically and statutorily accepted due to its private and confidential nature which is socially stigmatised and internalised. The proscribes of sexuality makes it a controlled and culturally cocooned idea that is forbidden to challenge due to normative social structure. Denial of the right to sexuality is often termed as the main reason for sexual minority to grow. The concept of sexual protection and sexuality or sexual freedom as 'fundamental rights' have different acceptability within a cultural setting. The laws regulating sexuality contains that element of societal restriction. The question whether sexuality should be regulated is critical. Law is believed to be greatly utilised in general as an instrument to protect sexuality in the rationale that some countries postulate law to decriminalise non-normative sexuality like Article 377 of Penal Code in India was removed, while other countries depict law to protect gender based sexual protection like abortion right.

But political and statutory structural setting mostly compartmentalize sexuality in the domain of customary practice and objectifies sexuality in the normative perspective. Human rights regime is considered as a good bypass here but human rights also get confused and complicated when sexuality is entered into any of its categories. Kate Shiell pointed out "*Human rights are about saving the innocent. As soon as you sexualise them, everyone has a problem*"⁵⁴, which hinted obviously that human right is a helplessly featured agenda in terms of sexuality rights because the very gender identities of human is a pressurizing element for human sexual normativity and human sexuality is also a determinant primal factor that shapes our gender identities. Sexuality rights' recognition and diverse sexuality is considered as universal human right. Sexual right is also internationally discussed as a sexual health right in the SDG-3, inclusive healthy lives and wellbeing.⁵⁵

Unfortunately, the only direct international principle on gender and sexual identity and their human rights application is the *Yogyakarta Principles* of 2006 which opines *Sexuality* is a feeling of strong neurotic, emotional bondage and intimate sexual attraction to persons of opposite sex, same sex or more than one sex.⁵⁶ The 2017 version of the principle introduced the inclusivity of sexual variety, diversity recognising right to bodily integrity and the State obligation to implement SOGIGESC.⁵⁷ Nevertheless, essence of gender inclusivity, linguistic universalization of sexual identity, global mass acceptance of GSD identity and the international standard of sexual identity legality can be traced through numerous international instruments. The legitimacy of sexual configuration is illustrated in the perspective of human rights, human dignity, a fundamental quality every human being must be allowed to enjoy. Most of the instruments validates the sexual diversity in the framing of "freedom from discrimination", "freedom from torture, inhuman and degrading treatment", "non-discrimination on ground

⁵¹ GLSEN, 'Laws That Prohibit the "Promotion of Homosexuality": Impacts and Implications' (2018) 1 <https://www.glsen.org/sites/default/files/GLSEN_Research_Brief_-_No_Promo_Homo_Laws_1.pdf> accessed 20 April 2024.

⁵² ANDREW STEINBERG, 'Over the Rainbow: The Future of No Promo Homo Laws in Public Education' (*Brown Political Review*, 2021) <<https://brownpoliticalreview.org/2021/04/over-the-rainbow/>> accessed 20 April 2024.

⁵³ Tania Ferfolja, Jacqueline Ullman and Lucy Hobby, 'GENDER & SEXUALITY DIVERSITY IN SCHOOLS (GSDS) Parental Experiences & Schooling Responses: A National Focus' (2023) Centre for Educational Research, School of Education, Western Sydney University, Penrith, Australian Research Council <<https://researchdirect.westernsydney.edu.au/islandora/object/uws:70612/datastream/PDF/view>> accessed 20 April 2024.

⁵⁴ Andrea Cornwall, 'Marginalisation by Sexuality: Report of an IDS Workshop' (2006) 14 *Gender and Development* 273.

⁵⁵ Carmen H Logie, 'Sexual Rights and Sexual Pleasure: Sustainable Development Goals and the Omitted Dimensions of the Leave No One behind Sexual Health Agenda' (2023) 18 *Global Public Health*.

⁵⁶ 'The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity' (2006) <https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf> accessed 24 April 2024.

⁵⁷ UN and International Signatory Bodies, 'The Yogyakarta Principles +10: ADDITIONAL PRINCIPLES AND STATE OBLIGATIONS ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN RELATION TO SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS TO COMPLEMENT THE YOGYAKARTA PRINCIPLES' (*Yogyakarta Principles*, 2017) 27 <<https://transactivists.org/wp-content/uploads/2018/10/Intersex-and-the-Yogyakarta-Principles.pdf#0Ahttp://yogyakartaprinciples.org/>> accessed 24 April 2024.

of sexual orientation and gender" or "treatment as a human person irrespective of sexuality identity".⁵⁸596061626364

Common Article 2 of UDHR⁶⁵, ICCPR⁶⁶ and ICESCR⁶⁷, these international treaties of established customary practice known as jus cogens principles underscores the inclusion of sexual orientation in its provision and underpins statutory obligation of respecting human rights and the non-discrimination narrative for its member states. This proclaims that sexual legality resides in line with the human rights concept due to its multifarious interconnectivity of different human rights like equality before law⁶⁸, right to life, right to privacy, right to safety and security from torture, right to marry, right to family, right to freedom from torture, right to legal recognition, right to protection from medical abuse etc. Also, sexual legality is thought as a yardstick for the protection and fulfillment of human rights⁶⁹ and human dignity for which UN has incorporated privacy, marriage and family rights in these instruments⁷⁰. But unfortunately, neither any exclusive overt provision in existing treaties nor any single international instrument recognises or even mentions the right to sexual minority.

The Politics of 'Public Order', 'Public Morality' and 'Public Decency'

Public morality was the driving force of many legislators back in seventeenth century, which is still relevant in many countries Penal laws, basically criminalise sexual acts against nature, sodomy, MSM (Men having sex with Men), bestiality with rigorous punishment. Freedom of sexuality was tabooed and punished severely. The stigma evaporated with the ECHR first groundbreaking judgement in *Dudgeon case*⁷¹ which enshrined the need to protect intimate privacy and the right to lead sexual life with non-intervention from State. Public morality is a term to maintain social structure used by the legislators to avoid religious controversy or social anarchy. Hence, terms such as Public morale, public order or public morality is frequently used in penal provisions by States. These phrases often work as a restriction for citizens to exercise any human right or an excuse for States to impose force upon a particular community, minority or person of unconventional belief. Minority identity face danger due to such phrasal use by States in making statutes and laws. This makes the GSD group minoritized and stigmatised. One of the fundamental catalysts of international non-recognition of inclusivity of sexual minority rights is the option of reservation for example, many states pose reservation for CEDAW on the issue of inclusivity of sexual minority rights.⁷²

UN Human Rights Commission and ECOSOC illustrated the term *Ordre public* in Article 22-24 of ICCPR's

⁵⁸ United Nations, 'Convention on the Elimination of All Forms of Discrimination against Women 18 December 1979', vol 1249 (1979) GA Res 34/180, 34 UN GAOR Supp (No. 46), at 193, UN Doc A/34/46 <https://treaties.un.org/doc/Treaties/1981/09/19810903_05-18_AM/Ch_IV_8p.pdf> accessed 31 December 2023.

⁵⁹ United Nations General Assembly 61st Session, 'Convention on the Rights of Persons with Disabilities.' (2007) A/RES/61/106 <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_61_106.pdf> accessed 31 December 2023.

⁶⁰ Council of Europe, 'Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine' (1997) ETS 164 <<https://rm.coe.int/168007cf98>> accessed 14 January 2024.

⁶¹ Organization of American States (OAS), 'Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Adopted in San Salvador on November 17, 1988 (Not yet in Force)' (*OAS Treaty Series No 69*, 1999) <<https://www.refworld.org/docid/3ae6b3b90.html>> accessed 25 January 2024.

⁶² Council of Europe, 'The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights ECHR) Adopted on 4 November 1950' (*Council of Europe secretary general*, 1953) <https://www.echr.coe.int/documents/d/echr/Convention_ENG> accessed 27 January 2024.

⁶³ UN General Assembly, 'International Convention on the Elimination of All Forms of Racial Discrimination 21 December 1965', vol 660 Sup 14 (1969) GA Res 2106 (XX), Annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc A/6014 (1966) <<https://www.refworld.org/docid/3ae6b3940.html>> accessed 31 December 2023.

⁶⁴ United Nation, 'Convention on the Rights of the Child 20 November 1989', vol 44 (1989) GA Res 44/25, annex, 44 UN GAOR Supp (No 49), at 167, UN Doc A/44/49 (1989), <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf> accessed 31 December 2023.

⁶⁵ UN General Assembly, 'Universal Declaration of Human Rights' (1948) Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948 On <<https://www.refworld.org/legal/resolution/unga/1948/en/11563>> accessed 10 March 2024.

⁶⁶ United Nations General Assembly, 'International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966 and Its Optional Protocol' (*United Nations Treaty Series*, 1966) <<https://www.refworld.org/docid/3ae6b3aa0.html>> accessed 16 January 2024.

⁶⁷ United Nations General Assembly, 'International Covenant on Economic, Social and Cultural Rights Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 2200A (XXI) of 16 December 1966' (1966) UNTS vol. 993, No. 14531, p. 3 <<https://ohchr.org/sites/default/files/cescr.pdf>> accessed 16 January 2024.

⁶⁸ United Nations General Assembly (n 66). Article 16.

⁶⁹ Anthony R Reeves, 'Sexual Identity as a Fundamental Human Right' (*Buffalo Human Rights Law Review*, 2009) 215 <<https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1070&context=bhrlr>> accessed 18 April 2024.

⁷⁰ Kate Sheill, 'Sexual Rights Are Human Rights: But How Can We Convince the United Nations?' (2006) 37 IDS Bulletin 40 <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/8374/IDSB_37_5_10.1111-j.1759-5436.2006.tb00300.x.pdf?sequence=1> accessed 18 February 2024.

⁷¹ R RYSSDAL and others, 'CASE OF DUDGEON v. THE UNITED KINGDOM' (1981) (Application no. 7525/76) COUR EUROPÉENNE DES DROITS DE L'HOMME EUROPEAN COURT OF HUMAN RIGHTS.

⁷² Emma Mittelstaedt, 'Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations' (2008) 9 Chicago Journal of International Law 353.

Limitation and Derogation Clause⁷³ as the ground rules "*which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order.*" The principles make the State structures accountable for the upkeep of public order subject to the supervision and control by legislative, executive, judicial or other autonomous bodies. The same document in Article 27-28 defined "Public moral" in a non-linear version which shows both statutory control and jus cogens obligation in case of putting any restriction on enjoyment of constitutional legal rights. It directs that State can constrain or limit exercise of human rights of particular class based on public morality but that discretion is outside the application of non-discrimination clause of ICCPR. The verbatim definition reads -

*"Since public morality varies over time and from one culture to another, a State which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the **limitation in question is essential to the maintenance of respect for fundamental values of the community.** The margin of discretion left to States does not apply to the rule of non-discrimination as defined in the Covenant."*

It does not clarify or define the permissible standard of fundamental communal value to get human rights respected and what rules are necessary to maintain the *very value*. Although it compulsorily stated that discrimination cannot be done in the name of public moral, state regulatory mechanisms do not cling to due process in terms of tolerating LGBTQIA practices.⁷⁴⁷⁵

This principle on ICCPR limitation, along with judicial unenforceability of fundamental state policies, is another scope enabling the State to curb any non-traditional diverse sexuality practice publicly or even privately depending on their national law and policy. In *Wilson case*⁷⁶ the Court opined that State has no jurisdiction in intervening sex life of consenting adults and uttering how they should perform sexual activity. However, as per *Brown case*⁷⁷ where a group of same sex people engaging in exceptionally vicious and excruciating acts for attaining erotic pleasure, court declared sadomasochistic performances as contradictory to public interest and such sexual act no more remains connected to the question of consent. The activities of the same sex people can be understood in the perspective that is not akin to healthy sexual encounters which contradicts to the concept of sex as human rights.

In *Bowers v. Hardwick (1986)*, Judge Byron White stated that the Constitution does not gays grant a basic right to participate in sodomy.⁷⁸ The assertion that previous Supreme Court rulings related to family connections, marriage, or procreation establish that any form of private sexual activity between adults who are consenting is protected by the Constitution and cannot be prohibited by the state is not backed by evidence. In *Stanley v. Georgia 394 U. S. 557 (1969)*, the Court prevents conviction for possessing and reading obscene material in the privacy of one's home.⁷⁹ Court thinks, State must not interfere in the viewers' or readers' choice what to read or watch when they are at home and respect their privacy.⁸⁰ In the UN Human Rights complaint case of *Toonen vs Australia*⁸¹, the complainant challenged specific provisions of section 122 and 123 of the Tasmanian Penal Code

⁷³ United Nations Economic and Social Council (ECOSOC), 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights: Status of The International Covenants on Human Rights' (1985) E/CN.4/1985/4 28 September 1984 <<https://www.refworld.org/legal/resolution/unchr/1984/en/57200>> accessed 14 April 2024.

⁷⁴ Human Rights Watch, "'I Want to Live with My Head Held High: Abuses in Bangladesh's Legal Recognition of Hijras' (2016) DECEMBER 2016 ISBN: 978-1-6231-34341 <https://www.hrw.org/sites/default/files/report_pdf/bangladesh1216_web.pdf> accessed 11 March 2024.

⁷⁵ Lucas Ramón Mendos and others, *STATE-SPONSORED HOMOPHOBIA: GLOBAL LEGISLATION OVERVIEW UPDATE* (Geneva: ILGA 2020) <https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf> accessed 22 February 2024.

⁷⁶ COLLEEN CONWAY j COONEY, AJ BLACKMON and J CORRIGAN, 'Wilson v. Harvey et Al.' (2005) 164 Ohio App.3d 278, 2005-Ohio-5722, COURT OF APPEALS OF OHIO, EIGHTH DISTRICT COUNTY OF CUYAHOGA.

⁷⁷ Lord Templeman and others, 'REGINA RESPONDENT AND BROWN (ANTHONY) APPELLANT REGINA RESPONDENT AND LUCAS APPELLANT REGINA RESPONDENT AND JAGGARD APPELLANT REGINA RESPONDENT AND LASKEY APPELLANT REGINA RESPONDENT AND CARTER APPELLANT' (1993) 11 Mar 1993 [1993] 2 WLR 556, HL(E).

⁷⁸ Justice White, 'BOWERS, ATTORNEY GENERAL OF GEORGIA v. HARDWICK ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, No. 85-140' (1986) 478 U.S. 186 (1986) <<https://tile.loc.gov/storage-services/service/ll/usrep/usrep478/usrep478186/usrep478186.pdf>> accessed 4 September 2024.

⁷⁹ Court in constitutional viewpoint opined in para 565 of the judgment that, "If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his house, what books he may read or what films he may watch."

⁸⁰ Justice Marshall and others, 'STANLEY v. GEORGIA, APPEAL FROM THE SUPREME COURT OF GEORGIA. No. 293' (1969) 394 U.S. 557 (1969) <<https://supreme.justia.com/cases/federal/us/394/557/>>.

⁸¹ United Nations Human Rights Committee, 'Toonen v. Australia, Communication No. 488/1992 (31 March 1994)' (1994) CCPR/C/WG/44/D/488/1992 (Working Group's rule 91 decision, dated 10 April 1992 <<https://juris.ohchr.org/casedetails/702/en-US>> accessed 6 September 2024.

that severely penalizes and prohibits MSM (men having sex with men), all kinds of private sexual acts of homosexuals allowing police to investigate and even detain intimate private acts of MSM people, to be utterly in violation of Article 17 of the ICCPR. The challenge was on the ground that these provisions endangered complainant's right to express and practice own sexuality, right to sexual privacy and right to unthreatened exercise of sexuality in private space. The Committee finds that, imposing stricter prohibition on MSM to safeguard moral fabric of Australian society is utterly unreasonable and unnecessary.

The travaux préparatoires of Article 17 which defines the term 'private' as an expression or act of confidentiality, individuality, personal nature which is refrained to share or show in public and declared that exercising consensual sexual act in private by two adults falls within the ambit of the meaning of right to privacy under Article 17 and Article 26 of ICCPR. *Griswold v. Connecticut*. 381 U.S. 479 (1965) and *Eisenstadt v. Baird*. 405 U.S. 438 (1972) also emphasized on right to privacy. In *Palko v. Connecticut*. 302 U.S. 319. 325. 326 (1937) Court invented a term for fundamental liberties that are "implicit in the concept of ordered liberty," arguing that neither liberty nor justice would exist if these are foregone. Unique terms for fundamental liberties also instilled in *Moore v. East Cleveland*. 431 U.S. 494. 503 (1977) where basic freedom elements are characterized as gravely enrooted in national history and custom.

Henceforth, although sexual minority group detect sexual regulations to be a hindrance for exercising sexual privacy, freedom, integrity or sexual autonomy and so state should remain away from this, on a different note, sexuality if dangerous to human safety could rationally be a subject of statutory intervention in the logic of public interest. Ultimately, the public morality concept must have fair and justified utilisation by the state authority in cases of offences, nudity or public vulgarity but not in case of publicly expressing sexual identity.

Judicial Interpretation on Sexual Minority Rights

Exercising right to choose sexuality can be very challenging in the heteronormative society. Court is the last resort to recognise legality of SGM rights by judicial interpretation. Right to diverse sexuality, sexual autonomy, sexual liberty, sexual privacy, expressing sexual identity has been recognized by courts of different State jurisdiction. Judicial recognition is paving the way of sexual minority rights recognition and protection. United States has set up some progressive landmark judgement regarding sexual minority recognition. The Supreme Court of the United States, in the case of *Bostock v. Clayton County (2020)*, ruled that an employer who terminates an individual solely based on their sexual orientation or gender identity is in violation of Title VII.⁸² Anthony Kennedy is a highly acclaimed Judge who wrote the initial and most significant rulings on acknowledging rights related to sexuality, individual autonomy, diversity sexuality, sexual integrity, and sexual privacy.

In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (2018)*, the Judge expressed the view that the baker's refusal of wedding cake order from a same sex couple due to their sexual orientation and using religious ground to justify the action of not to serve specific customer is discriminatory and illegal according to anti-discrimination laws.⁸³ While laws and the Constitution can and should safeguard the civil rights of gay individuals and couples, it is also important to recognise that religious and philosophical objections to same-sex marriage are considered protected viewpoints and sometimes protected forms of expression.

In the case of *Obergefell v. Hodges (2015)*, Anthony J pointed that according to the Fourteenth Amendment, a State is obligated to provide a marriage license to two individuals of the same sex and to acknowledge a marriage between two individuals of the same sex if it was legally licensed and performed outside of the state.⁸⁴ In *U.S.*

⁸² Justice Gorsuch, Justice Alito and Justice Kavanaugh, 'BOSTOCK v. CLAYTON COUNTY, GEORGIA CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT No. 17-1618' (2020) 590 U.S. 644 (2020), No. 17-1618, 723 Fed. Appx. 964, reversed and remanded; No. 17-1623, 883 F. 3d 100, and No. 18-107, 884 F. 3d 560, affirmed. <<https://www.oyez.org/cases/2019/17-1618>> accessed 4 September 2024.

⁸³ Justice Anthony Kennedy and others, 'MASTERPIECE CAKESHOP, LTD., ET AL. v. COLORADO CIVIL RIGHTS COMMISSION ET AL. CERTIORARI TO THE COURT OF APPEALS OF COLORADO No. 16-111' (2018) 584 U.S. 617 (2018) <https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/16-111_f29g.pdf> accessed 4 September 2024.

⁸⁴ Anthony M Kennedy, 'JAMES OBERGEFELL, ET AL., PETITIONERS v. RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL., VALERIA TANCO, ET AL., PETITIONERS v. BILL HASLAM, GOVERNOR OF TENNESSEE, ET AL., APRIL DEBOER, ET AL., PETITIONERS v. RICK SNYDER, GOVERNOR OF MICHIGAN', (2018) No. 14-556, No. 14-562, No. 14-571, No. 14-574, ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT <<https://www.justice.gov/sites/default/files/crt/legacy/2015/03/06/obergefellhodgesbrief.pdf>> accessed 24 April 2024.

v. Windsor (2013), the judge stated that the Defence of Marriage Act was discriminatory because it defined "marriage" and "spouse" in a way that excluded same-sex couples who were lawfully married.⁸⁵ This decision was based on the judge's views on the legitimacy of same-sex marriage and civil rights.

Therefore, it is imperative that the federal estate tax deduction for surviving spouses is accessible to legally married same-sex couples. In *Lawrence v. Texas (2003)*, Judge Anthony became the first to acknowledge same-sex relationships as legally protected.⁸⁶ He determined that the Constitution safeguards the freedom of homosexual individuals to engage in relationships within the privacy of their homes, while still maintaining their dignity as free individuals. Similarly, in *Romer v. Evans (1996)*, Judge Anthony was the first to assert the legal rights of sexual minority individuals. In this instance, he stated that the Equal Protection Clause does not allow for the categorization of individuals based on their status, just for the purpose of doing so.⁸⁷

Therefore, a State constitutional amendment was in violation of the Equal Protection Clause by prohibiting any executive, legislative, or judiciary proceeding at any level of local or state administration that aimed to safeguard the rights of individuals based on their sexual orientation, conduct, behaviours, or relationships. In *Hollingsworth v. Perry (2013)*, Judge John Roberts ruled that Article III standing requires a genuine dispute to exist at every phase of the legal process. Specifically, when a federal court ruled that a California measure, which sought to characterise marriage as an association between a man and a woman, was unlawful, the individuals who officially supported that idea were not legally allowed to defend its legitimacy.⁸⁸

The *Boy Scouts of America v. Dale (2000)* case is a lawsuit pertained to the removal of a homosexual scoutmaster from the Boys Scouts which the Court declared discriminatory.⁸⁹ Judge William Rehnquist determined that government activities that violate the Constitution by placing a burden on the freedom of public association also include interfering with a group's internal matters by compelling it to accept somebody whom it does not wish to include. In *Oncale v. Sundowner Offshore Services, Inc. (1998)*, Judge Antonin Scalia determined that same-sex sexual harassment qualifies as sex discrimination and can be legally prosecutable under Title VII.⁹⁰ In *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc. (1995)*, Judge David Souter ruled that a state cannot force private persons organising a parade to include a group that promotes a message that the organisers do not want to communicate.⁹¹ Hence, Judicial minds considers that the perceptual originality of SGM personality must be respected because it boosts renovation in the epistome of societal norm.

Analysis

The anatomy of minority discourse based on minority influence theory and minority stress theory showcase the sexual minority as a legitimate group to be detected as a minority group who have been facing a robust all rounded form of deprivation. There is ample evidence that SGM people have been living under the vicious cycle of radicalization, marginalisation and stigmatisation. Hence, SGM people have not been recognised by many countries due to their particular societal image, history, social structure, cultural context and legal periphery, not even recognised as a minority group. The analysis above signifies the minority characterization of SGM. But they will continue to suffer until any universal charter on sexual minority rights or international convention on sexual minority protection or any specific international instrument pivoting to the recognition of sexual minority

⁸⁵ Chief Justice Roberts and others, 'United States v. Windsor, Executor of the Estate of Spyer, et Al.' (2013) certiorari to the united states court of appeals for the second circuit No. 12-307. Argued March 27, 2013—Decided June 26, 2013 <<https://tile.loc.gov/storage-services/service/ll/usrep/usrep570/usrep570744/usrep570744.pdf>> accessed 24 April 2024.

⁸⁶ Anthony M Kennedy, 'Lawrence v. Texas' (2003).

⁸⁷ Justice Anthony Kennedy, 'ROMER, GOVERNOR OF COLORADO, et Al. v. EVANS et Al. Certiorari to the Supreme Court of Colorado No. 94-1039' (1996) 882 P.2d 1335 (Colo. 1994) (Evans II) <<https://supreme.justia.com/cases/federal/us/517/620/case.pdf>> accessed 5 September 2024.

⁸⁸ Roberts CJ and others, 'SUPREME COURT OF THE UNITED STATES HOLLINGSWORTH ET AL. v. PERRY ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT No. 12-144.' (2013) WL 367053 (2013) <<https://supreme.justia.com/cases/federal/us/570/12-144/case.pdf>> accessed 4 September 2024.

⁸⁹ Chief Justice Rehnquist and others, 'Boy Scouts of America et Al. vs. Dale, United States Supreme Court No. 99-699' (2000) 530 US 640 (2000) <https://web.stanford.edu/~mrosenfe/more_cases/Boy_Scouts_v_Dale_US_SC_2000.pdf> accessed 9 September 2024.

⁹⁰ Justice Scalia and Justice Clarence, 'ONCALE v. SUNDOWNER OFFSHORE SERVICES, INC., et Al. Certiorari to the United States Court of Appeals for the Fifth Circuit No. 96-568.' (1998) 523 U.S. 75 (1998) <<https://supreme.justia.com/cases/federal/us/523/75/case.pdf>> accessed 6 September 2024.

⁹¹ Petitioner South, Boston Allied and War Veterans, 'HURLEY et Al. vs. IRISH_ AMERICAN GAY, LESBIAN AND BISEXUAL GROUP OF BOSTON , INC ., et Al . Certiorari to the Supreme Judicial Court of Massachusetts, No. 94-749' (1995) 515 U.S. 557 (1995) <<https://supreme.justia.com/cases/federal/us/515/557/>> accessed 6 September 2024.

rights and their protection is undertaken. The existing celebrated human rights instruments failed to recognise the sexual diversity as human rights in reality by direct linguistic expression. This is destabilizing to the existence and protection of sexual minority around the world. Judicial decisions outpoured the vital necessity of right to fearlessly announce own sexuality, right to sexual privacy, right to sexual freedom, right to freedom from torture inflicted for sexual diversity, decriminalisation of sexual practice and orientation in consonance of constitutional validity backed by international human rights law. It symbolizes that Court interpreted the disputes to detect the marginalisation of sexual minority from the equality, equity, personal integrity, constitutional spirit, individuality, social inclusivity and rule of law thresholds. Gender and Sexuality Sensitivity Law (GSSL) will play a vital role in diminishing sexuality targeted discrimination and creating social acceptance for SGM. Research shows anti-discrimination laws enhance significant change is reducing discrimination against sexual minority.⁹²⁹³

Community storytelling initiative are proven to be effective in accentuating sexual minority acceptance, tolerance, empathy, understanding and conceptual clarity in the society.⁹⁴ Moreover, some of the vital steps such as ensuring the recognition to Gender and Sexuality Diverse Identity as sexual minority, United Nations activism, world consensus to augment the legal recognition of sexual minority people, inclusivity of sexual minority rights in existing international human rights law regime, ensuring sexual minority rights protection through anti-discrimination laws, familiarizing international gender sensitivity laws, promulgating sexual minority awareness through policymaking, introducing specific international treaties solely focusing on sexual minority people and their rights protection, establishing gender and sexuality inclusive education- can be effectual measures to remove the sufferings and dark reality of sexual minority people and bring light at the end of the tunnel.

FINDINGS

Optimising decriminalisation of sexual diversity and promulgating a separate unanimous international sexual minority protection charter are the root level initiative fundamental for SGM social identity acceptance. The main aim for protecting sexuality minority is to be understood in the aspect of rights recognition. If the rights are recognised legally, their identity and minority status will automatically be recognised and consequently it will pave the way of protection of rights. To fulfill this perspective, at first judicial activism needs to be strengthened of a state. The international activism must be accelerated in propagating and advocating the decriminalisation of sexual diversity. For that, a single distinct international charter must be developed by UN with other international organisations creating a collective consensus by its state parties. As the conventional human rights instruments have failed to determine the interest, equality, just dignity for SGM, a separate instrument International Gender and Sexuality Diversity Protection Charter will be a pathbreaking initiative for both national and international SGM protection. Secondly, reservation schemes on sexual minority provisions must have to be minimised. Thirdly, discriminatory provisions or criminalizing provisions of statutes are inevitable to remove the existential crisis of SGM and attain legality in recognition. Fourthly, the imposition of public morality should be reasonable to the extent which does not violate rights of the sexually diverse nonheteronormative people. Fifthly, sexual minority rights should be legally recognised and protected by domestic laws as fulfillment of the universal charter on sexual minorities.

CONCLUSION

Contextualising sexual minority is an underestimated chapter in the legal paradigm of International Law which has been a growing concern in many countries around the world. While we vocalized the minority rights protection talks that predominantly surrounds in the context of religious minority or underprivileged marginalised community like the Dalit, the minority question on diversified sexual identity such as Hijra, transgender, nonbinary or non-heteronormativity is often overlooked. This is the selective nature of legal structure of many countries where selective sections are being decided to be recognised as minority whereas section like sexual minority is unanimously avoided by mass let alone recognise them as a minority at all. With no direct legal instruments on human rights to particularly frame the sexual minority protection or even their

⁹² Douglas Sanders, 'Human Rights and Sexual Orientation in International Law' (2002) 25 International Journal of Public Administration 13.

⁹³ Scott Delhommer, 'Effect of State and Local Sexual Orientation Anti-Discrimination Laws on Labor Market Differentials' [2020] arXiv:2404.03794 [econ.GN].

⁹⁴ James Valentine, 'Relating Our Selves: Shifting Frames of Identity in Storytelling with Communities Marginalised through Sexuality and Gender' (2016) 9 Methodological Innovations.

recognition, the sexually diversified people around the world will hardly witness any change in their national, statutory, societal and legal identity of their respective country. Therefore, nonheteronormative people who possess diverse sexuality should be recognised as sexual minority and provided with equal facilities that the heteronormative people own. Active international collaboration can mitigate the human rights violation of the SGM community, sex based and sex targeted discrimination and violence towards them. Proper international legal address can only enkindle the light for hope for sexual minority identity recognition around the world. More discussion and academic endeavor with legal approval from United Nations Human Rights Commission and world consensus about recognising the sexual minority identity, decriminalization SGM, positive social mentality, inclusively awareness education, and working for SGM rights in the pro human rights sense might bring a change in SGM recognition and alter the hanging scenario of sexual minority vulnerability and discrimination.

ABOUT AUTHOR

Evnat Bhuiyan is currently serving as Lecturer of Law in School of Social Science, Humanities and Languages at Bangladesh Open University. Additionally, she works as an Adjunct Faculty at the Department of Law and Justice, Jahangirnagar University, Bangladesh. She is also the Executive member of Empowerment Through Law of the Common People (ELCOP), a renowned human rights organisation in Bangladesh. She started her academic career as Lecturer of Law at the Department of Law, European University of Bangladesh. She was the Research Associate and the Ziauddin Tareq Ali Research Fellowship Awardee for Cambodia from Center for the Studies of Genocide and Justice, Liberation War Museum, Bangladesh. She served as the presiding Judge at the 7th and 8th Philip C Jessup International Law Moot Court Competition, Bangladesh Preliminary Rounds in 2023 and 2024 respectively. She was the team lead and 1st Oralist of Team Bangladesh who secured Best South Asian Team accolade in the 4th Prof Madhava Menon International Law Moot Court Competition (SAARC Moot) and Colloquium, Greater Noida, Delhi, India in 2019. She was also the first Bangladeshi Representative at the prestigious International Jean Pictet Competition organised by Concours De Jean Pictet on 2020 at Bali, Indonesia. Her particular research interests are genocide studies, gender and sexuality studies, sexual violence, Gender Based Violence, women rights, international criminal law, international environmental law and human rights law. She can be reached at: evnat.elcop@gmail.com.

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