

# GENDER AND SEXUALITY IN THE AGE OF GLOBALISATION: MOVING QUEER RIGHTS FORWARD

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*Abstract*—Divergent gender and sexuality have long been the basis of discrimination and ostracism. The normalcy associated with cisnormativity and heteronormativity is so deeply entrenched in our societies that it guides every aspect of our human life. However, the era of globalization has brought with it diversity of thought, identity, and expression, making it possible to propagate and advocate for a fairer and egalitarian society for every human – queer or non-queer. Despite this, globalization has in many respects become the catalyst of growing hate and aversion towards the same cause. Thus, understanding the impact of globalization on queer rights needs inspection of both the opportunities and threats presented by it. This paper seeks to look into gender and sexuality from a sociological perspective as opposed to the normative binary understanding of gender/sex and the gendered understanding of sexuality. The paper attempts to highlight how gender and sexual identities and practices have been stereotyped and limited through discourse on appropriate gender roles, propagated in name of morality, culture and natural order. This not only denies the existence of diverse sexual and gender identities but encourages their discrimination and pushes them towards oblivion. The paper also delves into how globalization has impacted the queer rights movement. With globalization there has been exchange of ideas, images, and movements that have reproduced both negative and positive outcomes, thereby acting both as a boon and a bane. In this

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*context, the paper seeks to imagine the possibility of complete justice in the future with globalization acting as the driver of equality and justice.*

**Keywords:** globalization; sexual and gender minorities; LGBTQI+; queer; human rights; cultural relativism.

## I. INTRODUCTION

The conceptions and understanding regarding ‘gender’ and ‘sexuality’ have been analysed and contested since time immemorial, placing primary focus on gender and sexual minorities and the moral legitimacy of their identity. Even though the emphasis on securing the rights of the LGBTQI+ community has sore to prominence in the 20<sup>th</sup> century, it has always and mostly been part of intellectual and political discourse. A glance through the history provides evidence of the existence of persons diverging from the rules of heteronormativity and cisnormativity, with a differing degree of recognition varying from civilization to civilization and period to another. However, the prevailing discourse surrounding gender and sexuality continues to place primary focus on the sexual and gender minorities and the moral legitimacy of their identity and practices.

The emergence of LGBTQI+ movement has raised questions on rights and concerns of non-traditional sexual and gender identities in the forefront. The questions raised by the activists are not particularistic claims but rather profound enquiries about humanity and what it means to be a human in a globalized world that still continues to deny basic rights to non-heterosexual and gender diverse people.<sup>1</sup> The movement strives to assert the reality of diverse sexual and gender identity, not as inner truth, not as a sexual practice, “but as one of the defining features of the social world in its very intelligibility”.<sup>2</sup> The assertion of non-heterosexual and gender diverse identity is a challenge to the existing realities and showing that there are different valid realities of being a human. The growth of queer rights movement coupled with the increasingly interconnected world, courtesy to the liberalization of national barriers and the emergence of globalization, the movement of ideas about the rights of the queer community made its way to different corners of the world. This has encouraged people to accept and express their identity and demand legal

<sup>1</sup> Judith Butler, *On being besides oneself: on the limits of sexual autonomy*, in *The Oxford Amnesty Lectures 2002*, 48-78 (Nicholas Bamforth Edn., 2005), See also, Jeffery Weeks, *The World We Have Won: The Remaking of Erotic and Intimate Life*, (Routledge, 2007).

<sup>2</sup> *Id.* at 37.

recognition thereby leading to changes in laws all across the world, and has overall made the world a more open and accepting place.

While globalization did pave a way for ensuring equality, its effects have been rather paradoxical. While on one hand, it has facilitated the movement; on the other, it has provoked backlash – with the rise of religious fundamentalism and cultural conservatism against these movements and recognition of these identities. Furthermore, it has also been argued that the globalization of western ideas has overtaken such discourses and has led to many nations parting ways with their rich culture of inclusivity.

In this context, the main objective of this paper is to understand ‘gender’ as a social construct that limits gender expression to two binaries – ‘male’ and ‘female’ through the prescription of gender roles. These normative roles attached to this binary understanding dictates the type of gender expression and sexuality accepted in society. In analysing the impact of globalization in terms of the rights of sexual and gender minorities, the paper seeks to contemplate whether globalization can help in bringing complete justice to the queer community. The authors have used the doctrinal research study approach for this paper and have relied upon secondary sources of data such as books, articles, journals, reports, and research papers.

## II. UNDERSTANDING GENDER AND SEXUALITY

The terms ‘gender’ and ‘sex’, even though used interchangeably, have different connotations. While sex is a biological concept, gender is a social construct – it is accompanied by socially and culturally prescribed roles and ideas that determine the social expectations as to how a person from a certain ‘sex’ is supposed to act or behave. In this context, it is pertinent to analyse the ideas and narrative surrounding ‘gender’ and ‘sexuality’ in a socio-cultural context. Gender as a social construct is formed through the societal process of determining the attitudes, behaviour and expectations based on the sex of an individual.<sup>3</sup> These norms dictate how an individual is supposed to be or is to be represented. Even if this representation is not uniform, it is upheld by the majority of society. Society is as much a collective, as much as it is an aggregate of individuals, with distinct values and standards – these standards and values may differ from that of majority norm. Difficulty ensues when the majority norm suppresses the expression of individual identity and reprimands for showing divergence.

The normative roles governing gender are ever so pervasive that they guide every aspect of person’s behavior as well as life. Both sexes are expected to adhere to the ideals associated with ‘masculinity’ and ‘femininity’. These

<sup>3</sup> Diane Richardson, “Patterned Fluidity: (Re)Imagining the Relationship between Gender and Sexuality, *Sociology: Sage Publication*”, 41(3), 457–474 (2007).

gender roles are deeply entrenched in every institution, creating a regressive environment that ensures the exclusion of any trait or behaviour that may transgress from the presumed normalcy associated with gender roles by labelling them as wrong, unnatural or perverse.<sup>4</sup> Michael Foucault, in his writings, focused on the dynamics between power and knowledge, and its interplay leading to the exclusion of sexual and gender minorities. According to him, the identity of an individual was created through discourse, which was in turn created by the system of knowledge power.<sup>5</sup> He further states that sexuality became a subject that was scientifically controlled and notions of sexual practices that catered to pleasure, rather than the purpose of procreation, were stigmatized. This process of searching and labelling of “perverse sexuality” by the medical/scientific community, did not lead to their elimination from society, rather it created a new type of person – “the sexual deviant”.<sup>6</sup> The norms being the decision of the power holders, the rigidity and associated resistance to those transgressing emanates through discriminatory and exclusionary practices. This translates to the stifled and confined environment an individual with a divergent opinion is subjected to and forced to conform as well.<sup>7</sup>

The norms around gender, sex, and sexuality compartmentalize two exclusive identities- male and female, by attaching certain traits to the biological and behavioral aspects of a person. The scientific ideas of sex as a natural and necessary ground for sexual and gender identity have normative functions – they constitute our idea of ‘normal men’ and ‘normal women’ and their ‘natural sexual desires’. For instance, gender and sexuality are viewed as interlinked concepts in a way that a person’s conformity with the associated gender role informs and impacts people’s perceptions of their sexuality. There exists a presumption towards heterosexuality for both men and women, but when they act contrary to their gender roles; there rises an assumption of homosexuality.<sup>8</sup> Judith Butler in her book “Gender Trouble: Feminism and the Subversion of Identity”, views gender as a construct made through a set of social acts that are in tune with the dominant norms of the society.<sup>9</sup> The performance of these assigned roles is ongoing and out of control, which produces a series of effects.

<sup>4</sup> Jimmy Jose, Beyond the existing norms and construction: Decisional Privacy and Freedom of Expression in Gendering Public Policy in A Global Context, (A. Bora and P. Dwivedi eds., 2019), 7.

<sup>5</sup> April S. Callis, “Playing with Butler and Foucault: Bisexuality and Queer Theory”, *Journal of Bisexuality*: Routledge, 9(3), 213-233, <<https://doi.org/10.1080/15299710903316513>, 221-22>. (Accessed on 25 March 2022).

<sup>6</sup> *Id.*

<sup>7</sup> Jimmy, *supra* note 4, at 10; See also P.C Reece-Miller, Chapter 7: Elephant in the Classroom: LGBTQ students and the Silent Minority, *Counterpoints*, 356, 67-76, (2010).

<sup>8</sup> April, *supra* note 5, at 226; See also Janet Shibley Hyde and Mary Beth Oliver, “Gender Differences in Sexuality: Results from Meta-analysis”, in *Sexuality, society, and feminism (Psychology for Women)*, 57–77, (Cheryl Brown Travis and Jacquelyn W. White eds., 2000).

<sup>9</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1999), 179; See also Mari Mikkola, “Feminist Perspectives on Sex and Gender”, *Stanford Encyclopedia of Philosophy* (12 May 2007), <<https://plato.stanford.edu/entries/feminism-gender/>> (accessed on 25 March 2022).

It means that we act in a way that consolidates an impression of a person being a ‘man’ or ‘woman’; we act as if that being a man or a woman is an internal reality, but in actuality it is acting out a set of norms to adhere to identify with the sex that we are assigned.<sup>10</sup> Thus, certain traits are associated with males (masculine traits) and some are associated with females (feminine traits), and any overlapping is perceived as abnormal. However, the issue is not much of ‘male’ and female’ traits overlapping between genders or sexes, because they can, but the issue stems from the fact that the rigid societal norms do not allow it and rejects it with aversion and resistance. For example, the hair on female bodies or male breasts are traits that are seen as unacceptable or unattractive. These narratives, supported by social mores, religion, morality, and politics limit the representation of gender by portraying the natural and legitimate existence for the binary sexes and justify this stance through the concept of procreation. This not only affects the way we perceive homosexuality but also characterizes transgender and intersex bodies as aberrations or abnormal or unnatural. This inclination is reflected in how intersex individuals are at times medically assigned sex with surgery during their infancy while transgenders sexualism are viewed as perverse or as denying nature. The prevalence of such narratives and continuing silence in the society forces the non-conforming identities to be best kept hidden to avoid any form of ridicule, discrimination, ostracism, and violence – rendering them to what could be described as “visible bodies, invisible identities”.<sup>11</sup> The stigma and discrimination that follows from their divergence only continue to deteriorate their lives even further. In this context, the question which arises is what is the significance and existential relevance of individual liberties and freedom.

### **III. GLOBALIZATION AND ITS IMPACT ON THE QUEER RIGHT**

The flow of ideas and information across borders is not a novel event. The world has always been connected in one way or another, however, the present age of globalization has introduced superior and faster models of interconnect- edness. The process of globalization has led to social, cultural, and economic exchange across national boundaries, which has influenced our understanding and attitude towards issues of sexuality and gender. The extensive diffusion of ideas and perspectives have to a certain extent led to the universalization of understanding of queer identities in a new way.<sup>12</sup> There has been flow of people to new societies as well as a flow of information and stories that circulate sexual secrets, desires, practices, and identities and through their

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<sup>10</sup> J. Josh Jones, Theorist Judith Butler Explains How Behaviour Creates Gender: A Short Introduction to “Gender Performativity”, Open culture (7 February 2018), <<http://www.open-culture.com/2018/02/judith-butler-on-gender-performativity.html>> (accessed on 25 March 2022).

<sup>11</sup> Jimmy, *supra* note 4, at 8.

<sup>12</sup> Dennis Altman, *Global Sex* (University of Chicago Press, 2002), 38.

interactions new meanings and understandings are shaped,<sup>13</sup> with the flow of new technologies our understanding of gender and sexuality is re-modified; the flow of social movements,<sup>14</sup> campaigns, NGOs, lobby-groups as well as dissemination of literature and academic discussion have opened doors to new perspectives and insights, leading to the globalization of identities and subjectivities. The increasing media coverage has also brought about changes in the preconceptions and stereotypes about the LGBTIQ+ community and has bolstered their claim towards equal rights and dignity.<sup>15</sup> These changes are “simultaneously leading to greater homogeneity as well as greater inequality”,<sup>16</sup> as this complex and intricate process of globalization presents both opportunity and threats in the context of which understanding of sexual and gender identities are redefined and new subjectivities are developed.<sup>17</sup>

This effect of changing perceptions has been evidently felt, with several countries recognizing queer rights and stepping towards becoming a more egalitarian society celebrating different identities. With the growing possibilities of communication, there is a growing impetus towards international solidarity. Electronic communication, particularly, the internet has become a valuable source of connectivity and helped organizations to work clandestinely.<sup>18</sup> The transnational organizations, a novel product of globalization, have become key allies in dictating and re-defining sexuality and gender by bringing significant impact upon the intimate aspects of life. For instance, there have been relevant changes concerning homosexual or transgender rights, their working practices, etc. With the development in human rights laws and institutions, the focus on elimination of abuse meted out based on gender and sexual identity have become part of conscious discussions. The Universal Declaration on Human Rights (UDHR), European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR), the Yogyakarta Principles, The UNGA declaration on Statement on Human Rights, Sexual Orientation and Gender Identity (SOGI Statement), UN Human Rights Council “Joint Statement on Ending Acts of Violence Related to Human Rights Violations Based on Sexual Orientation and Gender Identity are some

<sup>13</sup> Jeffery Weeks, *Sexuality*, (Routledge, 2010),133; See also Ken Plummer, *Telling Sexual Stories: Power, Change and Social Worlds*, (Routledge, 1995); Ken Plummer, *Intimate Citizenship: Private Decisions and Public Dialogues*, (University of Washington Press, 2003).

<sup>14</sup> Id. at 133; See also Monica Threlfall, Edn., *Mapping the Women's Movement* (Verso, 1996); Barry D. Adam, Jan Willem Duyvendak, and Andre Krouwel (eds.), *The Global Emergence of Gay and Lesbian Politics: National Imprints of a Worldwide Movement* (Temple University Press, 1999).

<sup>15</sup> Chloe J. Roberts, “The Effect Globalisation has had on Cultural Identity and the LGBT Communities in a Global Context” (2017) (Unpublished Manuscript), (on file with <[https://www.academia.edu/30615818/The\\_effect\\_globalisation\\_has\\_had\\_on\\_cultural\\_identity\\_and\\_the\\_LGBT\\_communities\\_in\\_a\\_global\\_context](https://www.academia.edu/30615818/The_effect_globalisation_has_had_on_cultural_identity_and_the_LGBT_communities_in_a_global_context)>). (Accessed on 25 March 2022).

<sup>16</sup> Dennis Altman, “Globalization and the International Gay/Lesbian Movement” in *Handbook of Lesbian and Gay Studies*, 415-426 (Diane Richardson and Steven Seidman eds., 2002), 415.

<sup>17</sup> Jeffery, *supra* note 13, at 134.

<sup>18</sup> Graeme Reid, A Globalised LGBT Rights Fight, The World (2 November 2011), <<https://www.pri.org/stories/2011-11-02/opinion-globalized-lgbt-rights-fight>>. (Accessed on 25 March 2022).

international instruments that exemplify this progress. Furthermore, significant changes have also been brought through legislation and legal pronouncements upholding and protecting the rights of sexual and gender minorities. For instance, in 2007, the Supreme Court of Nepal ruled against discrimination based on sexual orientation and gender identity (*Sunil Babu Pant v. Nepal Government*).<sup>19</sup> In 2009, Mexican lawmakers ruled in favour of same-sex marriage, and in 2010 Argentinians witnessed the passing of the ‘Law of Egalitarian Marriage’.

In 2010, the United Kingdom granted in-state refugee status for sexual minorities not wanting to return to the country of origin fearing persecution.<sup>20</sup> Numerous judicial decisions have redefined the course of law in understanding and accepting sexual and gender identities. In *In Re Anonymous* (1968) the court held that the applicant to be female because her anatomy had been brought into conformity with her psychological sex. The judge expressed the view that the question of a person’s identity should not be limited to the biological analysis.<sup>21</sup> In *Van Oosterwijck v. Belgium*,<sup>22</sup> the ECHR for the first time unanimously adopted the idea of a fundamental right of an individual to his/her “gender identity”.<sup>23</sup> In *Obergefell v. Hodges*,<sup>24</sup> the Supreme Court of the United States legalized same-sex marriage in the entire country. In *Navtej Singh Johar v. Union of India*,<sup>25</sup> the Supreme Court decriminalized same-sex relationships. In *National Legal Service Authority v. Union of India*,<sup>26</sup> the Supreme Court held that discrimination on the grounds of gender identity represents inequality before the law and unequal protection of the law, and therefore, violates fundamental rights granted to a person by the constitution, thereby granting recognition to transgenders as the third gender.

The movement towards protecting the rights of sexual and gender minorities has been strengthened by the international human rights regime. The UDHR unequivocally provides that – “All human beings are born free and equal in dignity and rights.” and the OHCHR report of 2012 elaborates that, “all people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law,

<sup>19</sup> Writ No. 917 of the year 2064 BS (2007 AD), <<https://www.icj.org/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf>>.

<sup>20</sup> Graeme, *supra* note 18.

<sup>21</sup> Subhas Chandra Singh, “Moving Transgendered Forward: Mapping the Emergence of Third Gender Human Rights”, *International Journal of Law and Legal Jurisprudence Studies*, 2(3), (2017), <<http://ijlljs.in/moving-transgendered-forward-mapping-the-emergence-of-third-gender-human-rights/>>.

<sup>22</sup> App. No. 7654/76 (Eur. Ct. H. R. 1980) < [https://www.stradalex.com/en/sl\\_src\\_publ\\_jur\\_int/document/echr\\_7654-76](https://www.stradalex.com/en/sl_src_publ_jur_int/document/echr_7654-76)>.

<sup>23</sup> Subhas, *supra* note 21.

<sup>24</sup> 2015 SCC OnLine US SC 6 : 192 LEd 2d 609 : 135 S Ct 2584 (2015) : 576 US 644 (2015).

<sup>25</sup> (2018) 10 SCC 1 : AIR 2018 SC 4321.

<sup>26</sup> (2014) 4 SCC 438 : AIR 2014 SC 1863.

including in respect of rights to life, the security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association, and peaceful assembly.”<sup>27</sup> Globalization has allowed human rights instruments and bodies to keep abreast of events all across the world and expand their influence to bring light upon issues of human rights violations. They have continued to highlight the instance of discriminatory practices and played an integral role in keeping check on state laws and policies and internationally condemning discriminatory practices. For instance, the Special Representative of the Secretary-General on human rights defenders has expressed concern at the “complete lack of seriousness” as to how issues of human rights violations pertaining to sexual and gender minorities are treated by the state authorities,<sup>28</sup> the High Commissioner of Human Rights has also expressed concern over the “shameful silence” surrounding instance of human rights violations of the queer community and the issue of under-reporting and impunity for such violations.<sup>29</sup> Similarly, regional human rights instruments such as the European Court of Human Rights, the Inter-American Commission of Human Rights, and the African Commission on Human and People’s Rights have also made a significant contribution.

The effect of globalization on the LGBTIQ+ rights, however, has not been only positive. Despite these great strides in creating a safe and inclusive environment, there are still numerous countries that continue to disregard and criminalize queer identities and practices. This is attributable to mainly two reasons – firstly, some states do not recognize discrimination, ostracism, and criminalization of queer identities as human rights concern (i.e., such discriminatory policies are considered legal and legitimate), and secondly, since proclamations made by the human rights treaty bodies are not binding, states may choose not to follow them if it goes against their policies or ideology. According to Koskeniemi, international law is “the gentle civiliser of nations”,<sup>30</sup> however, consent being an essential element to bind sovereign states, the extent of the force of international law upon state action is limited by state consent, thus state have the power to not recognize certain rights if they want to. For instance, Pakistan asserted on behalf of the Organisation of the Islamic Conference that “sexual orientation is not a human rights issue” (in letter from the Ambassador and Permanent Representative of the Permanent Mission of

<sup>27</sup> Office of High Commissioner for Human Rights (OHCHR), *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*, HR/PUB/12/06, (2012), 10.

<sup>28</sup> Human Rights Council (HRC), Report of the Special Representative of the Secretary-General on Human Rights Defenders, A/HRC/4/37, (2007), para. 95.

<sup>29</sup> “United Nations: Presentation by the United Nations High Commissioner for Human Rights, Madam Louise Arbour”, OutRight Action International, (26 July 2006), <<https://outrightinternational.org/content/united-nations-presentation-united-nations-high-commissioner-human-rights-madam-louise>>. (Accessed on 25 March 2022).

<sup>30</sup> Martti Koskeniemi, *The Gentle Civilizer of Nation: The Rise and Fall of International Law 1870-1960* (Cambridge University Press, 2001).



Pakistan), Nigeria has taken the stance that “death penalty by stoning under Sharia law for unnatural sexual acts should not be equated with extra-judicial killings”.<sup>31</sup> and Tanzania was opposed to UN granting accreditation to NGOs working on human rights violation based on sexual orientation.<sup>32</sup> Similarly, many countries continue to criminalize diverse gender expression through vague provisions about ‘cross-dressing’, ‘impersonation’, and ‘disguise’.<sup>33</sup> Such laws have been reported as being used in countries such as Myanmar, UAE, Lebanon, Sri Lanka, etc, where people are arbitrarily arrested for disjunctive biological makeup and gender identity. The arbitrary use of these legal provisions renders transgender and inter sex persons particularly vulnerable to harassment by both state actors and the general masses.<sup>34</sup>

As Roscoe Pound states, the law is a mechanism of social engineering to bring transformation into society. However, legislation and judicial pronouncements have not yet been able to ensure complete recognition of queer rights. It has become a matter of ‘tolerance’ of difference rather than ‘acceptance’. Furthermore, legal recognition of the LGBTQI+ community has not necessarily always brought social recognition. In many cases, these laws become white-washing of the actual issues prevalent in society. For example, in India, discrimination continues as laws related to marriage, adoption, sexual harassment, rape, prison guidelines, etc. still follow the binary and heteronormative narratives. The Transgender Persons Act, 2019 has also been criticized as being more ‘othering’ than ‘inclusive’ especially with regards to using the term ‘transgender’ as a blanket term without recognizing the wide spectrum of identities it connotes and secondly, for creating the category of ‘third gender’ disregarding the fact that some might choose to identify as female or male. Thus, the absence of proper laws or their exclusion from existing laws makes it impossible for them to become a well-integrated part of society.

With the globalized circulation of queer expressions, ideas and images, there has also been a severe backlash in some regions. It has led to a tussle between questions of law, culture, and morality, morality being subjective from one nation to another. Globalization has accelerated the creation of urban spaces; with people moving away from their homes and traditional lifestyles, people are encountering and engaging in new conversations, identities, and practices related to sexual orientation and gender identity. The exposure to new ideas

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<sup>31</sup> Michael O’Flaherty and John Fisher, “Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles”, *Human Rights Law Review*, 8(2), 207-248, (2008), 210-212.

<sup>32</sup> United Nations Information Service, Economic and Social Council Takes Action on Texts Concerning Consultative Status of Non-Governmental Organisations., ECOSOC/6231, (25 July 2006), <http://www.unis.unvienna.org/unis/pressrels/2006/ecosoc6231.html> (Accessed on 25 January 2022).

<sup>33</sup> Egerton-Peters Jonathon, Jo Jimenez, Alistair Stewart, and Lara Goodwin, “Injustice Exposed: Criminalisation of Transgender People and its Impacts” 23-27 (Human Dignity Trust, 2019).

<sup>34</sup> *Id.*

and assertion of their identity has encouraged the increasing visibility of queer identities; however, such visibility has also been perceived by some sections as a threat to traditions and customs.<sup>35</sup> Irrespective of the a historical existence of sexual and gender minorities, their identity and visibility are continuously regarded as a western import,<sup>36</sup> foregoing the fact that many non-western cultures recognized and respected the spectrum of varied identities and penal laws against them were mostly a product of colonialism.<sup>37</sup> For many, the desire for acceptance of diverse sexual and gender identities co-exist with the ‘desire for modernity’ which is associated with the images of freedom and riches associated with the Global North. As individuals strive towards actualizing these desires, the prevalence of traditional ways of regulating and controlling sexuality and gender has started to decline from the overall society. With the growing visibility of queerness, the tension between the local and the global is becoming prominent.<sup>38</sup>

Amidst the resistance and aversion towards queer identity and practices, the arguments of cultural relativism have become the central argument for those against the recognition of queer rights. The recognition of queer rights is seen as the hegemonic intervention of western ideals tainting the morality these nations are built upon. The visit of Barack Obama to Senegal in 2013 and the questions over the criminalization of homosexuality depicts the perfect picture of how both liberal and conservative ideas have travelled and impacted discourse on rights and how the debate of universalism vs. cultural relativism has been used as a justification for oppressive practices.<sup>39</sup> In the interviews that followed the visit, President Sal of Senegal stated that a universal standard of human rights irrespective of customs and traditions cannot be set for all nations. He famously stated that “You have only has same-sex marriage partnerships in Europe since yesterday and now you ask it today from Africans?”<sup>40</sup> His statement indicates how inclusive laws relating to homosexuality and gender identity are seen as European impositions, inconsistent with the cultures and beliefs of the rest of the world.

This notion of cultural corruption and dilution has led to moral and cultural panic in many instances, which has caused states to take regressive and stringent actions against sexual and gender minorities. For instance, in Indonesia, its gay and transgender communities has to go through homophobic

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<sup>35</sup> Mark Gevisser, *The Pink Line: Journey Across the World's Queer Frontiers* (Harper Collins, 2020).

<sup>36</sup> Dennis Altman, *Sexuality and Globalisation*. *Agenda: Empowering Women for Gender Equality*, Taylor and Francis, 18(62), 22 (2004), 26.

<sup>37</sup> Ruby Alexson, *State-Sponsored Hatred and Persecution on the Grounds of Sexual Orientation: The Role of International Criminal Law*, in *Globalization of Hate – Internationalizing Hate Crime*, 277-293 (Jennifer Scheppe and Mark Austim Walters eds., 2016), 280.

<sup>38</sup> Dennis, *supra* note 36, at 24.

<sup>39</sup> Mark, *supra* note 35.

<sup>40</sup> *Id.*

rhetoric made by political and religious groups, in addition to being attacked and arrested in raids and LGBTQI+ campaigns.<sup>41</sup> The Indonesian Minister of Defense Ryamizard Ryacudu described the LGBTQI+ movement as more dangerous than nuclear war; as a proxy war where another brainwashes the minds of the people. He regarded it as a moral war.<sup>42</sup> Similarly, ISIS uses moral and religious justifications to impose rigid gender norms with rules ranging from dress code to grooming. Even adorning of western attire or western hairstyle is perceived as emasculating and a sign of homosexuality/queerness.<sup>43</sup> This needs for protecting traditional values has become the standard justification for enforcing discriminatory laws. In 2013, Russia in an attempt to resist the spread of the EU and to protect ‘traditional values’ of orthodox Slavic society against the decadent secular West, started calling Europe as ‘gayropa’ as part of its strategy. While homosexuality is not a crime in Russia since 1991 since it is part of the Council of Europe, however, discrimination against sexual and gender minorities have continued to persist. Same-sex couples are provided with no rights that are provided to heterosexual couples. The gay propaganda law (The Russian Federal law to protect Children from Information Advocating for the Denial of Traditional Family Values, 2013) is the prime example that deters free expression and discussion on matters related to sexual orientation. In the case of transgenders, Russia allows for legal sex change however does not protect against discrimination.<sup>44</sup> Similarly, in Hungary, though homosexuality is not criminalized, same-sex marriage is constitutionally banned<sup>45</sup> and legal gender change is illegal since 2020.<sup>46</sup> In the fight against cultural corruption even the internet has become a tool of surveillance and entrapment, rather than a source of information and expression.

While these countries have been fearful of globalization, many countries such as Vietnam, Japan, the Philippines, Thailand have embraced globalization

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<sup>41</sup> Rosamond Hutt, This is the State of LGBTI Rights Around the World in 2018, World Economic Forum, (14 June 2018), <<https://www.weforum.org/agenda/2018/06/lgbti-rights-around-the-world-in-2018/>> (accessed on 25 March 2022).

<sup>42</sup> Mark, *supra* note 35.

<sup>43</sup> The Human Rights and Gender Justice (HRGJ) Clinic of the City University of New York School of Law, MADRE and the Organization of Women’s Freedom in Iraq (OWFI), Communication to the ICC Prosecutor Pursuant to Art. 15 of the Rome Statute Requesting a Preliminary Examination into the Situation of: Gender-Based Persecution and Torture as Crimes Against Humanity and War Crimes Committed by the Islamic State of Iraq and the Levant (ISIL) in Iraq, (2017) <<https://www.madre.org/sites/default/files/PDFs/CUNY%20MADRE%20OWFI%20Article%2015%20Communication%20Submission%20Gender%20Crimes%20in%20Iraq.pdf,2>>. (Accessed on 25 March 2022).

<sup>44</sup> Mark, *supra* note 35.

<sup>45</sup> Stephen Gray, “New Hungarian Constitution Comes into Effect with the Same-sex Marriage Ban”, *Pink News*, (3 January 2013), <<https://www.pinknews.co.uk/2012/01/03/new-hungarian-constitution-comes-into-effect-with-same-sex-marriage-ban/>>.

<sup>46</sup> Hadley Stewart, “Hungary’s New Anti-transgender Law is Threatening to Set Hard Won LGBT Rights Back Decades”, *Euro news* (1 June 2020), <<https://www.euronews.com/2020/06/01/hungary-s-new-anti-transgender-law-is-threatening-to-set-hard-won-lgbt-rights-back-decades>> (Accessed on 25 March 2022).

and the arguments of economic liberalisation brought in by a more inclusive society. Latin American countries have maintained distance from their colonizers and not made any neo-colonial claims against recognizing queer rights.<sup>47</sup>

In addition to this, there is a problem with the globalised notion of LGBTQI+ identity and it relates to the “modernising process”, which identifies improvements and advancements in terms of civil rights as related to the Western ‘ideals’, although, it is seen that many western countries still continue to oppress queer people, if not legally then socially, culturally or religiously.<sup>48</sup> This emphasis on western liberal ideals by referencing the models prevalent in the United States and Europe has erased and marginalized the expression of non-western perspectives on gender and sexuality while highlighting the purported civilizational superiority of the western world.<sup>49</sup> This is resulting in countries forgetting their inclusive cultural heritage and looking at the western ideas of liberty and recognition, foregoing the fact that oppressive laws such as ‘buggery’ and ‘unnatural offences’ were mostly brought in by European colonizers.<sup>50</sup> The history of some non-European countries indicates that inclusivity of sexual minorities is not an ideal of the western civilized nations, but it very much part of the other regions. South Africa, under the leadership of Nelson Mandela, was one of the first countries to include a provision for the protection of sexual minorities in its constitution, way back in 1994. Furthermore, it was South Africa in 2011 that introduced the “Resolution on Human Rights, Sexual Orientation, and Gender Identity” to the United Nations Human Rights. In 1998, Ecuador followed the example of the South African constitution by incorporating in its constitution provisions protecting from discrimination based on sexual orientation. Furthermore, many non-European countries such as Nepal, India, Brazil, etc., have recognized the rights of the LGBTQI+ community.

In the Indian context, historians have time and again emphasized that Indian society was inclusive of different identities in the pre-colonial times. According to historian Rana Safvi “Whether ancient or medieval India, fluid sexuality was present in the society. One can see the depictions of homosexuality in the temples of Khajuraho and Mughal chronicles.” The most vivid example of the same can be seen in the Khajuraho town (Madhya Pradesh), 13th-century Sun Temple in Konark (Orissa), and Buddhist monastic caves at Ajanta and Ellora (Maharashtra).<sup>51</sup> According to Joseph Massad, the western world has affected age-old modes of homosexuality in the Arab world by imposing the label ‘gay’

<sup>47</sup> Mark, *supra* note 35.

<sup>48</sup> Graeme, *supra* note 18.

<sup>49</sup> Ratna Kapur, The (im)possibility of queering international human rights law, in *Queering International Law: Possibilities, Alliances, Complicities, Risks*, 131-147 (Diane Otto ed., 2017), 138.

<sup>50</sup> Graeme, *supra* note 18.

<sup>51</sup> Vikas Pandey, “Why Legalising Gay Sex in India is not a Western Idea”, *BBC News* (31 December 2018), <https://www.bbc.com/news/world-asia-india-46620242>.

on certain activities and behaviours. He states that these unspoken practices have been exposed and required laws to be attached to them. He contends that Western advocacy prompted cultural wars by forcing fluid sexuality of Arab men into the ‘western binary’ of ‘straight’ or ‘homosexual’, and normal behaviour such hand holding between men became a matter of suspicion.<sup>52</sup> Even in Nigeria the mere act of hand holding became a matter of suspicion after the passing of the law in 2014 that criminalized “public show of same-sex amorous relationship” and in Senegal, an age-old transgender community called ‘goorijenn’ disappeared after a moral panic in 2008.<sup>53</sup>

While some states continue to fight against queer identities and expression as a fight against western cultural imposition, many scholars believe that increasing aversive views on queer identities are brought in by the western world, especially America. According to Kapya Kaoma, it was American religious groups that exported homophobia into Africa and his native country of Zambia. They were seen as trying to influence public policy in Africa based on culture war script after losing their fight in their own country. In his report ‘Globalizing the Culture Wars’ he highlighted how American dissidents provided and funded African Anglicans in propagating the anti-gay message, which for long has been portrayed as an authentic African voice and culture.<sup>54</sup> Similarly, some scholars contend that globalization brought in aggressive Islamic ideas from the Arab to the West African Muslim countries at the time of the AIDS epidemic, thereby further villainizing the queer community and its practices.<sup>55</sup> This provides the evidence to shatter the false dichotomy between the “liberal West” and the “conservative rest”. However, despite the more nuanced positions presented by post colonial scholars, the hegemonic eurocentric signifiers for same-sex love/non-heterosexual desire and diverse gender identities are fast becoming the prescribed blueprint across the world and an antidote to the third world.

Nevertheless, globalization has helped in the universalization of the human rights regime and the fight for queer rights. With its growing development, the human rights regime continues to exert pressure upon states and hold them accountable for their actions by making them liable to provide answers to the international community. Even though the pronouncements made by human rights bodies are non-binding, they have developed extensive jurisprudence about the rights of sexual and gender minorities that are constantly relied upon by national and regional judicial bodies to protect the rights of the queer community. Furthermore, with the convergence of human rights and economics, new avenues have opened up for advocating queer rights and putting pressure

<sup>52</sup> Mark, *supra* note 35; See also Joseph A. Massad, *Desiring Arabs*, (The University of Chicago Press, 2007).

<sup>53</sup> Mark, *supra* note 35.

<sup>54</sup> Mark, *supra* note 35; See also Kapya Kaoma, *Globalizing the Culture Wars: US Conservatives, African Churches and Homophobia* (Political Research Associates, 2009).

<sup>55</sup> Mark, *supra* note 35.

on states to stop discriminating. In present times, states are largely reliant on each other and businesses for investment, trade, and overall economic development. With increasing business and commitment towards corporate social responsibility and inclusive capitalism, the convergence between human rights and economics have become ever more important. Numerous studies show that economic growth and inclusiveness of society are co-related. For instance, The Global Index on Legal Recognition of Homosexual Orientation and the Transgender Rights Index reveals that countries with more rights for LGBT people have higher per capita income and higher levels of well-being.<sup>56</sup> Countries that criminalize and allow abuse of sexual and gender minorities are perceived as less attractive as a destination for global capital in terms of lesser productivity, brain drain, and association with human rights violations. Also, the protection of human rights and empowering people are considered important for strengthening economic outcomes and sustainable development. Thus, with the growing impetus of economic globalization, trade and commercial relationships have a greater impact on criminalizing regimes than traditional diplomatic interventions. As key players and stakeholders in civil societies, businesses have the means to influence the debate on queer rights at home and abroad.<sup>57</sup> In this sense, the globalization of commerce and human rights regime has helped businesses in association with civil societies are to put pressure on states to become more inclusive and liberal.

Thus, globalization has had a paradoxical effect on the queer rights movement and the attitude of various nations towards sexual and gender minorities. Some regions have seen significant transformation while other changes have been very rudimentary. On the contrary, some states have acted aggressively in denying the right to persons on the grounds of not conforming to the heteronormative and binary understanding of gender and sexuality. However, realistically the degree of change that the present world has seen would not have been possible without the tools of globalization.

#### IV. CONCLUSION

In this paper, the authors have discussed how normative narration relating to gender and sexual roles have led to the exclusion and discrimination of queer individuals and how such flawed understanding has become the yardstick of identifying people with alternate identity. However, with changing times norms are being questioned and fluidity of gender and sexualities are acknowledged. Globalisation has been a major catalyst in bringing this paradigm shift, with reactions unique to different parts of the world. With this different interest groups have come up with different claims justifying their stance,

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<sup>56</sup> Peter Laverack, "Criminalising Homosexuality and International Business: The Economic and Business for Decriminalisation" (Human Dignity Trust, 2015), 8.

<sup>57</sup> *Id.* at 4.

thereby leading to greater assimilation and universalisation of the queer rights movements.

The impact of globalization on the rights of sexual and gender minorities cannot be said to entirely positive or negative - while there have been numerous efforts to recognizing queer rights; there has also been vehement rejection and push back against the same. Some scholars view globalization along with the cosmopolitanism, can be the solution for ending differences and finding the common ground of life and rationality as well as embracing the otherness of the other.<sup>58</sup> It calls for moving away from rigid perspectives and welcoming intermingling co-existence and acceptance of different identities and ways of living. It requires looking beyond one's immediate society and engaging in discourses and dialogues to expand beyond the meanings that trap us in our prejudices, fears, and anxieties.<sup>59</sup> Queer identities and practices are not limited to a certain culture; similarly, acceptability and aversion towards queer identities have existed in different cultures in some form or another. Whether it was pre-existing or brought in through religion, western discourse or colonization is a matter of separate discussion. However, the overused reasoning of cultural differences to deny the universal nature of human rights and legitimize discriminatory practices certainly cannot be justified. Cultural and religious texts and practices do serve a certain purpose in society. However, its antiquity and continuity cannot be a valid reason for its 'rightness' or 'moral upstanding'. Just because a custom has been prevalent in society for centuries does not mean it is justified. For context, the practice of 'sati', 'child marriage', or 'dowry' has been practiced for centuries, however morally and legally such practices are viewed as wrong.

It may be suggested that a stricter protective regime with binding treaties and sanctions may compel states to bring an end to discriminatory practices. But such states will most likely not give consent to be bound by such treaties. Expecting stringent imposition of sanctions against conservative states will be a quixotic project as geo-political and economic implications often outweigh the goodwill of the nations. However, there has been a display of political will in terms of states condemning discriminating laws in the international legal regime. These softer mechanisms have allowed for the conversation and movement to continue. Drastic and rigid steps may lead to an even extreme form of opposition from the states that may end up doing for harm than good.

Nevertheless, the contribution of globalization has to be recognized. Without the tools of globalization – the internet, technologies, organizations/

<sup>58</sup> Ulrich Beck, *Risk Society: Towards a New Modernity* 41 (Sage Publication, 1999).

<sup>59</sup> David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton, *Rethinking Globalization in The Global Transformation Reader: An Introduction to the Globalization Debate*. 67-74. (David Held and Anthony McGrew eds., 2000); See also Jeffery Weeks, *The World We Have Won: The Remaking of Erotic and Intimate Life*, (Routledge, 2007).

networks, and the media, this movement would not have been possible. Irrespective of the difference in opinions and attitudes of states, globalization made it possible to discuss issues about 'gender' and 'sexual identity' from local to international level. It is evidenced by the academic and legal discourse that recognize and protect the rights of minority identities. Furthermore, globalization has made the possible migration and pollination of ideas into other cultural spaces thereby gradually dismantling in the homosexual/heterosexual, male/female, us/them, the west and the rest theoretical binaries.<sup>60</sup> There is still a long way to go before one can say that complete justice has been ensured for sexual and gender minorities, but it is to be recognized that exchange of ideas and the efforts of the international community do indicate a possibility. The overall impact of globalization on queer rights can be understood by looking into laws and societies of various states; however, its actual impact is a matter of continuous analysis of subsequent developments.

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<sup>60</sup> Ratna, *supra* note 48, at 139; See also Gayatri Gopinath, *Impossible Desires: Queer Diasporas and South Asian Public Cultures*. (Duke University Press, 2005), 50.