

Kathmandu School of Law Review

ISSN 2091-2110

Volume 6

Issue 1

April 2018

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Sexual Orientation and Gender Identities: An Analysis of the Contemporary Laws and Literature

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Abstract

Where the expression of sexual orientation and gender identities is one of the fundamental human rights of an individual, there many people still face threat to their liberty and to their lives. Culture and religion play a vital role in establishing such detrimental ideologies; where, despite the understanding that every human being is born equal in freedom and in dignity, millions of queer people are deprived of their right, therefore being discriminated and at worst being persecuted with a simple reasoning that homosexuality is “unnatural” and is a “sin”. This paper will analyze the response of several nations in the Universal Periodic Review regarding their discriminatory law against the LGBT+ (it denotes – Lesbian, Gay, Bisexual, Transgender including other member of the queer community, hereafter “LGBT+”) individual. Further, the paper will establish how media and literature have misled to the general public reinforcing ideas that being anything other than “straight” or “cis-gendered” is not “normal” and could be never, which allows States to opt for these inhumane treatments against the LGBT+ people without any recourse. At the end, the paper puts forth approaches to properly implement international human rights law in protection of LGBT+ individuals in law and in daily life.

Introduction: Understanding the Notion of Sexual Orientation and Gender Identities

Everyone has a sexual orientation – i.e., the attraction or lack thereof that they feel towards a certain sex. Similarly, every individual has a specific gender identity – i.e., one’s innermost concept of self as male, female, a blend of both or neither.¹ However, the fight for recognition of diverse sexual orientation and gender identities have been immensely challenging in many parts of the modern world. Male and female are two words in the English Dictionary² which are as nonthreatening as words can be. However, these words have managed to create hurdles and obstacles in the everyday life of many individuals and communities.

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¹ Human Rights Campaign, ‘Sexual Orientation and Gender Identity Definitions’ available at <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> accessed on 8 September 2018.

² See Oxford English Dictionary; it defines “male” as - of or denoting the sex that produces gametes, especially spermatozoa, with which a female may be fertilized or inseminated to produce offspring, whereas as defines “female” as - of or denoting the sex that can bear offspring or produce eggs, distinguished biologically by the production of gametes (ova) which can be fertilized by male gametes, available at <https://en.oxforddictionaries.com/definition/male>, accessed on 8 September 2018.

Being a man, he ought to be masculine. Being a woman, she ought to be feminine. Anyone who doesn't "act" accordingly is treated as divergent who are either mentally ill or at extreme associated with behavior against the normal. These gender expectations are based on the sex of the individual at birth, presupposing what she/he ought to be and behave accordingly to an extent as that masculine and feminine are only two characteristics/behaviors which also cannot exist in a single person, like light and dark cannot exist in each other's presence.³ This is most apparent from a comparison of *Price Waterhouse v. Hopkins*,⁴ in which the United States Supreme Court held it permissible to advise a female candidate for an accounting partnership that she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hairstyle, to wear jewelry, and go to charm school⁵", with cases upholding an employer's right to fire or not to hire males specifically because they were deemed effeminate⁶.

In the international forum, not recognizing Sexual Orientation and Gender Identities (SOGI) was very much apparent in the first cycle (2008-2012) of the Universal Periodic Report (UPR); and an example of which could be seen in the response of Bangladesh to the recommendation made by Chile and Czech Republic⁷ to consider abolishing article 377 of the penal code that criminalized homosexuality as acts against the order of nature. Bangladesh plainly stated that homosexuality is not an issue in Bangladesh because there aren't any homosexuals in Bangladesh.⁸ This goes to the question of queer visibility in general. This has been alarming issue for the LGBT+ advocates as queer people are forced to live in secrecy due to fear of persecution from the State, and more immediately, being disinherited from the family. The fear is imbedded so much in them that they go on living life pretending to be straight which goes as per the "norm" as the spectrum of human sexuality; and gender identity have been the basis for discrimination among individuals of LGBT+ community around the world.⁹

Many LGBT youth struggle with these gender roles and the heterosexual norm, and struggle with their sexual orientation due to the prescribed sexual behavior of that gender.¹⁰ And the Medias do not soften the blows of the stereotypes, often over exaggerating in the name of dramatization. The portrayal of queer people is

³ Suzanne Romaine, *Communicating Gender*, Lawrence Erlbaum Associates, New Jersey, 1999, p. 41.

⁴ *Price Waterhouse v Hopkins*, vol. 490, p. 228 (4th Cir 1989).

⁵ A charm school (finishing school) is a school for young women that focuses on teaching social graces and upper-class-cultural rites as a preparation for entry into society.

⁶ *Smith v Liberty Mut. Ins. Co.*, F.2d, vol. 569, pp. 325,327 (5th Cir 1978).

⁷ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bangladesh*, A/HRC/11/18, (3 March 2009) paras 41, 64.

⁸ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bangladesh, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State*, A/HRC/11/18/Add.1, 9 June 2009, para 27.

⁹ Mary Ann Case, 'Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence', *Yale Law Journal*, 1995 available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.ecosia.org/&httpsredir=1&article=2099&context=journal_articles, accessed on 23 January 2018.

¹⁰ Ann P. Haas et al., 'Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations', *Journal of Homosexuality*, 2010, pp. 10-51 available at <https://www.tandfonline.com/doi/abs/10.1080/00918369.2011.534038>, accessed on 23 January 2018.

underwhelming, and the represented few are often depicted in a manner of mockery. The issue at hand for the universalization of existing International Human Rights Law (IHRL) regarding sexual orientation and gender identities is cultural relativism, which has been the States' defense or responses in their discriminatory actions.

SOGI and International Human Rights Law

IHRL protects individuals against discrimination¹¹ based on their physical attribute and lineage, their affiliation to certain social or political groups. This provision imbedded in International Covenant on Civil and Political Rights (ICCPR) also applies to protection against discrimination towards individuals based on their sexual orientation as was observed in HRC's 1994 *Toonen*¹² decision, which was later reaffirmed in the *Young*¹³ case of 2003, where the Committee explained that the right of protection against discrimination applied in respect to sexual orientation. Regarding gender identity, the Supreme Court's Decision of Nepal in 2007 in the *Sunil Babu Pant v. Government of Nepal*,¹⁴ stands as historic for its recognition of the rights of people of the third gender.

In situation, where direct protection couldn't be afforded, right to privacy has been invoked against persecution. In the 1981 *Dudgeon*¹⁵ case, the European Court of Human Rights found that Northern Ireland's sodomy laws violated rights under privacy. In the light of the fact that "acts of carnal knowledge against the order of nature" were penalized in the law,¹⁶ the High Court of Uganda in *Mukasa and Oyo*¹⁷, made clear that the ill treatment of police, search and seizure of property and physical abuse, based on the sexual orientation of the Plaintiffs were unlawful. Of similar nature, in the case of *Rolling Stone*¹⁸, the question was about whether, in the heightened atmosphere around the proposed Anti-Homosexuality Bill in Uganda¹⁹, the constitutional rights of the plaintiffs had been breached and not about "homosexuality" per se. Despite widespread institutionalized and public discrimination in the country, the guarantees of universal human rights were asserted in this case regardless of SOGI.

The Universal Periodic Review, 2003 saw Brazil tabling a motion for "Resolution on Human Rights and Sexual Orientation"²⁰, in the 59th session of the Commission on

¹¹ *International Covenant on Civil and Political Rights*, adopted on 16 December 1966, 999 UNTS 171, 23 March 1976, art 26.

¹² See generally: *Toonen v Australia*, 1994, United Nations Human Rights Committee, U.N. Doc CCPR/C/50/D/488/1992, Communication No. 488/1992.

¹³ *Young v Australia*, 2003, United Nations Human Rights Committee, CCPR/C/78/D/941/2000, Communication No. 941/2000, para 10.4.

¹⁴ *Sunil Babu Pant et al., v Nepal Government et al.*, WN 917, 2064 (2007), cited at Supreme Court of Nepal, *Some Landmark Decisions of Supreme Court of Nepal*, Supreme Court of Nepal, Kathmandu, 2010, p. 387.

¹⁵ *Dudgeon v United Kingdom*, App no 7525/76, ECtHR, 22 October 1981.

¹⁶ *The Penal Code Act (Cap.120)*, 1950, Uganda, s 145.

¹⁷ *Mukasa and Oyo v Attorney General* (2008), High Court of Uganda (Uganda).

¹⁸ *Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd and Giles Mubame*, (2010) High Court of Uganda (Uganda).

¹⁹ *The Anti Homosexuality Bill*, 2009, Uganda, Bill No.18.

²⁰ United Nations Human Rights Commission, *Resolution on Sexual Orientation and Human Rights*, E/

Human Rights 18 (hereafter CHR, predecessor to the HRC). Again, in 2006, Norway presented a statement to the Commission on Human Rights²¹, with the backing of 54 States from four of the five regions of the world. Of interest, this statement was not limited to sexual orientation but for the first time blended 'gender identity' into the categorical nomenclature, reflecting the data and voices emerging from civil society and establishing the acronym 'SOGI' in the CHR. Likewise, in 2008, Argentina presented a Statement to the United Nations General Assembly on behalf of 66 States, coordinated by France and the Netherlands, which focused on non-discrimination in relation to SOGI.²²

However, a major breakthrough was made in 2011 when resolution 17/19²³ delivered by South Africa on 'Human rights, Sexual Orientation and Gender Identity' was adopted by the HRC. And then in 2016, the UNHRC passed a resolution to appoint an "independent expert" to find the causes of violence and discrimination against people due to their gender identity and sexual orientation and discuss with governments about how to protect those people.²⁴

SOGI: Universalism and Cultural Relativism

So, why homosexuality is still banned in many countries around the world? To understand, we need to recall one of the earliest attempts at getting SOGI recognized at an UN-convened meeting, which met the same refusal repeatedly at women's rights advocates since the 1970s at the UN²⁵ - namely, "certain moral values embedded in tradition are sovereign and beyond the reach and purchase of IHRL imperatives in national legal and policy settings."²⁶

All most all the aforementioned resolutions strikingly met an immediate opposition from members of the Organization of the Islamic Conference (renamed as the Organization of Islamic Cooperation in 2011)²⁷, the Vatican on occasion (observer status), and many sub-Saharan African countries²⁸, even at times demanding the

CN.4/2003/L.92, 17 April 2003, 13 (annex III) available at <http://www.iglhrc.org/sites/default/files/213-1.pdf>, accessed on 23 January 2018.

²¹ United Nations Human Rights Council, *Norwegian joint statement on human rights violations based on sexual orientation and gender identity*, 1 December 2006, available at https://uklgig.org.uk/docs/Norwegian_Joint_Statement-UNHRC_06.doc, accessed on 23 January 2018.

²² United Nations General Assembly, *Statement on Human Rights, Sexual Orientation and Gender Identity*, G.A. Res. 2435, 18 December 2008, para 6 .

²³ United Nations Human Rights Council, *Resolution Human Rights, Sexual Orientation and Gender Identity A/HRC/RES/17/19*, 14 July 2011.

²⁴ 'UN: Victory for LGBT Rights', 21 November 2016, *Human Rights Watch*, available at <https://www.hrw.org/news/2016/11/21/un-victory-lgbt-rights>, accessed on 13/9/2018.

²⁵ See generally: R.E. Howard Hassmann, 'Universal Women's Rights Since 1970: The Centrality of Autonomy and Agency', vol.10, *Journal of Human Rights*, 2011, p. 433.

²⁶ D. Littman, 'Human Rights and Human Wrongs', *National Review*, 2003 available at <http://www.nationalreview.com/articles/205577/human-rightsand-human-wrongs/david-g-littman> accessed on 21 January 2018.

²⁷ See website of the OIC - Member States (57 UN Member States) available at <http://www.oicun.org/3/28/>, accessed on 21 January 2018.

²⁸ *The Resolution on Human Rights and Sexual Orientation* (n 20), p. 13 (annex I).

deletion of all references to sexual orientation.²⁹

Here the base of the relativist argument being presented was the understanding that Western notions of the universality of human rights is biased in favor of Western norms, as those notions are themselves derived from enlightenment-era philosophy. As Lau points out that the idea that has been repeatedly expressed is that as non-western states were not the authors of the Universal Declaration of Human Rights (hereafter UDHR)³⁰, at the time being subjects of colonialism and not members of the United Nations, their relativist viewpoints were not accommodated in the production of human rights standards and language. In Beijing, similar concerns were raised during 1995 World Conference on Women, where SOGI issues proved particularly contentious with states who justified their negative responses by evoking a presentation of public opinion from their own countries as rejecting “imported” or “western” notions that offend their indigenous or religious moral codes and values.³¹

These types of sentiments at present are hindering the justice for many individuals, at present context, of the queer people. Comparing the issues of universalizing of LGBT+ and woman rights, similar questions were raised. When chanting Convention on Elimination of All Forms of Discrimination against Women (CEDAW), several Muslim States rose several reservations which they deemed were not in line with the Sharia³² whereas, the very point of CEDAW is designed to protect the universal rights of women.³³ Cultural relativists argue that understandings of right and wrong vary along cultural lines, and thus, definitions of human rights should vary accordingly.³⁴ However, accordingly, one of the major arguments against same-sex marriage is that it is counter evolutionary.³⁵ Here, the argument raises several questions as to the construction and purpose of marriage. This line of argument would suggest that individual who are unable to bear a child or do not want to have children by choice, are unfit for marriage and unsuitable for the “normal” society.

Along the lines, Catholic Bishop Bakot, former arch bishop of Yaoundé, expressed, “We do not want homosexuality in Africa. The West has its culture and Africans have our, let each of us remain set in their own culture” further stating that “homosexuality

²⁹ United Nations Economic and Social Council, *Proposed Amendments by Saudi Arabia, Pakistan, Egypt, Libya and Malaysia*, E/CN.4/2003/L.106-110, (2003) p. 9.

³⁰ UNGA, Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810, 10 December 1948, p. 71.

³¹ United Nations, *Report of Fourth World Conference on Women*, A/CONF.177/20, 17 October 1995.

³² *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted on 18 December 1979, 1249 U.N.T.S. 14, entered into force 3 September 1981, 193.

³³ Aengus Carroll, 'Acknowledging the SOGI Norm: The Politics of its Recognition in the HRC and the Politics for its Recognition Through the UPR', *Upr-info.org*, 2013 available at https://www.uprinfo.org/sites/default/files/generaldocument/pdf/carroll_acknowledging_the_sogi_norm_2013_0.pdf, accessed 10 June 2018.

³⁴ H. Lau, 'Sexual Orientation: Testing the Universality of International Human Rights Law', vol. 71, *University of Chicago Law Review*, p. 1689, 2004, p. 1689.

³⁵ Jack Donnelly, *Universal Human Rights in Theory & Practice*, 2nd edn., Cornell University Press, New York, 2003, p. 86.

opposes humanity and destroys it,” and “same-sex marriage is a serious crime against humanity”³⁶. However, Professor Tamale describes a long history of same sex relationships in pre-colonial Africa; for example, among the Langi of northern Uganda, the *mudokodako* “males” were treated as women and they could marry men. And throughout history, homosexuality has also been openly acknowledged.³⁷ In these circumstances, firstly, the States are defending their own poor human rights records by recourse to a cultural relativist argument in the context of the sanctity of their sovereignty and their traditions.³⁸ And secondly, as Donnelly notes, cultures are complex, variable, multi-vocal, and above all contested.³⁹

The Vienna Declaration and Programme of Action that reaffirmed the principles of universality, indivisibility, inter-relatedness and interdependence of human rights,⁴⁰ speaks of the protection and promotion of these rights as being “the first responsibility of Governments”.⁴¹ The principle of non-discrimination underpins the world’s human rights instruments that States use regionally, as well as internationally.⁴² Following this, the High Court of Fiji⁴³ appeared to accept that public morality was a legitimate State interest but found that it failed the proportionality test, giving the importance of the rights involved.

Further, it is clear that sovereignty does not imply, or perhaps more accurately can no longer be seen to imply, that “one’s authority is absolute and unlimited”,⁴⁴ as was expressed in early modern-period conceptions of sovereignty in the work of Grotius.⁴⁵ The trajectory of conceptions of sovereignty over the centuries is illustrative of the

³⁶ ‘Cameroon Archbishop Calls Same-Sex Marriage Crime Against Humanity’, 25 December 2012, *Reuters* available at <https://www.reuters.com/article/us-cameroon-homosexuality/cameroon-archbishop-calls-same-sex-marriage-crime-against-humanity-idUSBRE8BO05O20121225>, accessed on 21 January 2018.

³⁷ Eric O. Lembembe, ‘What Traditional African Homosexuality Learned from West’, *Erasing 76 crimes*, 8 May 2012 available at <https://76crimes.com/2012/05/08/traditional-african-homosexuality-has-learned-from-west/>, accessed on 21 January 2018.

³⁸ L.A. Rehof, *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination against Women*, Martinus Nijhoff Publishers, Leiden, 1993, p. 60.

³⁹ Jack Donnelly (n 35).

⁴⁰ UNGA, *Vienna Declaration and Programme of Action*, A/CONF.157/23, 12 July 1993, para. 5.

⁴¹ *Ibid*, para. 1. “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion are the first responsibility of Governments”.

⁴² *Zimbabwe NGO Human Rights Forum v Zimbabwe*, 15 May 2006, African Commission on Human and Peoples’ Rights, Communication No. 245/2002, para 169: ‘Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights’

Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-American Court of Human Rights, 17 September 2003, para. 101: ‘considers that the principle of equality before the law, equal protection before the law and nondiscrimination belongs to jus cogens, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws’.

⁴³ *McCoskar and Nadan v State*, 26 August 2005, High Court of Fiji (Fiji).

⁴⁴ J. Donnelly, ‘State Sovereignty and Human Rights’, working Paper no. 21, Human Rights and Human Welfare, 2004 available at <https://www.du.edu/korbel/hrhw/workingpapers/2004/21-donnelly-2004.pdf>, accessed on 21 January 2018.

⁴⁵ See Hugo Grotius (Richard Tuck ed), *The Rights of War and Peace*, Indianapolis Liberty Fund, Toronto, 2005, Chap. 40.1, 40.4; Thomas Hobbes, *Leviathan*, Oxford University Press, Oxford, 1998.

telos of international law and it provides that the purpose or end is not just to protect states' territorial integrity, their political autonomy, but also primarily to protect the citizens and residents of those States. In 2008, former High Commissioner for Human Rights, Louise Arbour, in relation to the doctrine of the responsibility to protect wrote that a State's claims on being an impotent and powerless bystander is altogether unpersuasive, and that sovereignty must be conceived as duty.⁴⁶ Her statement seems to rest on the concept of sovereignty as not being limited to States (as legal persons) but pertaining primarily to the individual humans within those States.⁴⁷ And McMahon rightly points out that, "...in this view, rights should be protected not because they are intrinsically good, but because they are necessary to achieve the dignity, justice, worth and safety of their citizens".⁴⁸

The Portrayal of Queer Sexuality in Cinema and Literature

One of the reasons why the States are getting away with their discriminatory behavior is the large grown homophobia against the LGBT+ individuals and community. From Ireland's referendum to legalize same-sex marriage⁴⁹ to large number of groups protesting against the clean-up campaign targeted at the gay content in China⁵⁰, when the general crowd have raised their voices against discrimination towards LGBT+ community, states have been obliged to step in taking some affirmative actions. In this regard, we still do see discriminatory practices being upheld because a) the individuals in authority to make or pass laws are against SOGI laws and b) the general public is either scared to raise the voice or is, in simple term, homophobic as the people in the government.

As the theory of *tabula rasa*⁵¹ goes, nobody is born homophobic. It is the manner in which they are raised, we find them shaped to view that individuals of the LGBT+ community are less of a human or mentally ill. And in the modern times, Medias play a vital role shaping the perception of its generation. More than often, medias have been known for (mis)educating the general public to plant homophobia in their

⁴⁶ L. Arbour, 'The responsibility to protect as a duty of care in international law and practice', vol. 34, *Review of International Studies*, 2008, p.445.

⁴⁷ Anne Peters calls this the "humanising of sovereignty", See A. Peters, 'Humanity as the A and Ω of Sovereignty', vol. 20(3), *European Journal of International Law*, p. 513, 2009, p.533.

⁴⁸ E. R. McMahon, *The Universal Periodic Review: A Work in Progress an Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council*, Friedrich-Ebert-Stiftung Publishers, Berlin, 2013, p.9.

⁴⁹ Henry McDonald, 'Ireland Becomes First Country to Legalise Gay Marriage by Popular Vote', *The Guardian* (May 2015) available at <https://www.theguardian.com/world/2015/may/23/gay-marriage-ireland-yes-vote>, accessed on 10 June 2018.

⁵⁰ Shannon Liao, 'China's Microblogging Platform Weibo Reverses Its Decision To Ban All Gay Content After Online Protests', *The Verge* April 2018, available at <https://www.theverge.com/2018/4/16/17242282/china-sina-weibo-banned-gay-content-protests>, accessed on 10 June 2018.

⁵¹ 'Tabula Rasa | Philosophy', *Encyclopædia Britannica* available at <https://www.britannica.com/topic/tabula-rasa>, accessed on 10 June 2018: 'Tabula rasa, (Latin: "scraped tablet"—i.e., "clean slate") in epistemology (theory of knowledge) and psychology, a supposed condition that empiricists attribute to the human mind before ideas have been imprinted on it by the reaction of the senses to the external world of objects'.

minds, as to accept misbehavior of the State towards the queer community.

Now one might be skeptic about the idea, however, a pattern of negative/tragic portrayal concerning the LGBT+ individuals and the community has emerged over time which subtly has affected the general population in forming a perception towards LGBT+ community. One of the alarming issues is a trope “Bury Your Gays”⁵² where a queer character dies or has similar tragic ending. What seems to be the problem is that it tends to happen most of the times. The problem here is that most writers and directors, consciously or unconsciously, disseminate a toxic trope that not being straight and instraight acting is not okay.

Autostraddle’s Ultimate Infographics Lesbian/Bisexual TV History⁵³ took survey of American scripted television from 1976 to 2016. Among all the characters, 1586 TV shows had only straight characters and only 193 of all had queer characters as well. In the midst of staggering low representation, which is only 11% of all the shows between 40 years, only 20% of lesbian characters survived when the series ended. To add more, among the surviving, only 10% had a happy ending.

Just in a single year (2015-2016 TV seasons), 22 lesbian characters who appeared in 3 episodes or more, were killed off. That’s 25% of all female deaths on TV and 10% of all deaths on TV.⁵⁴ A study done in 2008,⁵⁵ regarding Bollywood movie industry and television found that LGBT+ individuals in the mainstream Bollywood medias were often depicted in some stereotypically comic roles, worse, as villainous because of their orientation; sexual predators, murderous transsexual, and the effeminate gay best friends to name a few.

These portrayals of LGBT+ individuals as visibly and behaviorally different in manner often leave a stamp ingrained in minds of the viewers, and these are dangerous because they vilify or make light of marginalized and misunderstood groups. These enforce the idea that anything other than “straight” or “cis-gender” is undesirable, morally corrupt or mentally unstable.⁵⁶

A further study in this matter sheds light to the seriousness of the problem. To understand what is happening, one has to go back to lesbian pulp fiction novels 1950s and 1960s in the United States of America, where the genre was notoriously

⁵² 'Bury Your Gays', *Tropes*, available at <http://tvtropes.org/pmwiki/pmwiki.php/Main/BuryYourGays>, accessed on 23 January 2018: 'Often when gay characters just aren't allowed happy endings. Even if they do end up having some kind of relationship, at least one half of the couple has to die at the end. (Often the one who was more aggressive in pursuing a relationship, thus "perverting" the other one)'.

⁵³ 'Autostraddle’s Ultimate Infographic Guide to Dead Lesbian Characters on TV', *Autostraddle*, (March 2016) available at <https://www.autostraddle.com/autostraddles-ultimate-infographic-guide-to-dead-lesbian-tv-characters-332920/>, accessed 10 June 2018.

⁵⁴ Caroline Framke, 'Queer women have been killed on television for decades. Now the 100's fans are fighting back', 25 March 2016, *Vox* available at <https://www.vox.com/2016/3/25/11302564/lesbian-deaths-television-trope>, accessed on 23 January 2018.

⁵⁵ Kaur, Puspinder, 'Queer Hindi Cinema: A Study on Understanding LGBT Identities', vol. 3, *International Journal for Innovative Research in Multidisciplinary Field*, no. 3, 2008.

⁵⁶ Amber B. Raley & Jennifer L. Lucas, 'Stereotype or Success?', vol. 51, *Journal of Homosexuality*, No 2, 2008, pp. 19-38.

known for bringing up a relationship between two women but then at the very end, they would be punished in same way. Marijane Meeker (pseudonym Van Paker) was the most famous Lesbian pulp novelists of the time and for her novel “Spring Fire”, she was told by her editor from the very beginning that homosexuality should not be presented as “attractive” and there could be “No Happy Ending”⁵⁷. In the end, one character gets killed and the next renounces her lesbianism.

The fact that ‘queer character’s deaths and tragic endings are so common’ is crucial in understanding its effects on the public. These radicals instill homophobia among the general public, and more dangerously among the members of the queer community, often leading to stress and depression forcing them to stay in the closet and worst cases, suicides.⁵⁸ At instance, deaths or tragic endings on their own might not seem concerning but let’s put this into perspective and decades of portrayal as that anything other than straight or straight acting is unnatural and can never be accepted as normal in the society does leave a scar in the minds of the public about the LGBT+ community. We need to acknowledge that in the name of heightening the drama, this trope, “Bury Your Gays” undermines the LGBT+ fighting for equality but anyone barely notices it.

Conclusion: Addressing the Prejudice against Queer Community

The Medias present opportunities for interactions those are not available in the everyday lives of many people. Studies have provided an exhaustive account of the influence that television has upon viewers.⁵⁹ One of which is the “*Parasocial Contact Hypothesis*”, the phenomenon by which viewers form beliefs and attitudes about people only through media they know, regardless of caring whether those people are real or fictional.⁶⁰

Studies testing the contact hypothesis and *parasocial contact hypothesis* have found that it helps in reducing the prejudice of a person towards different groups of people toward which they hold negative attitudes. Specifically, for sexual minorities, it has been found that college students, who had experienced pleasant interactions with an either gay man or a lesbian, have tended to generalize from that experience and accept gay men and lesbians in general.⁶¹

In the contemporary time, precisely, the incision of the notion that homosexuality is abnormal in schools is almost equal to a mental disease or act of empty defiance

⁵⁷ JodieMedd (ed), *The Cambridge Companion to Lesbian Literature*, Cambridge University Press, Cambridge, 2015, p.161.

⁵⁸ Ann P. Haas (n 10).

⁵⁹ Schartel Dunn & Stephanie G., ‘Parasocial Interaction and Narrative Involvement as Predictors of Attitude Change’, vol. 82, *Western Journal of Communication*, no. 1, 2017.

⁶⁰ E. L. Paluck, ‘What’s in a norm? Sources and processes of norm change’, vol. 96(3), *Journal of Personality and Social Psychology*, 2009, pp.594–600.

⁶¹ G. M. Herek, ‘Can functions be measured? A new perspective on the functional approach to attitudes’, vol. 50, *Social Psychology Quarterly*, 1987, pp. 285–303.

that subtly adds to the internalized homophobia. Even in the smaller actions and statements, the schools failing to recognize the diversity among their students or *per se* oppressing it, is often due to the controversy surrounding the topic resulting to negligence of their queer students. In failing to take proper measures, the school environment may be the one in which heterosexist attitudes are sometimes institutionalized, and a homophobic atmosphere may actually be promoted.⁶²

These little incidents coupled with cinematic tropes, cumulatively and unconsciously, foster internalized homophobia. And even after the laws are passed in national level in line with principle of international human rights law, the mindset of many individuals towards LGBT+ community remains unchanged; that accounts for bullying or acts of hatred in their daily life. These, over the times, result in crimes as heinous as murder, and if not, it results in suicides among members of the community after years of bullying or depression.

It is not, however, the suggestion that books and media should not kill off queer characters and that the writers ought to be forbidden to write tragic love stories about the LGBT+ individuals. However, it is worth being conscious of “*Bury Your Gays*” trope or the negative light they portray and knowing what they are doing when they are doing it. Making sure that the death or the personality provides some resonance, because truly that is what we are supposed to do with characters and their deaths, that the characters’ behaviors and their contributions to the story and their deaths mean something. Even in cases, where a queer death might serve the story, the greater history of these deaths and tragic endings cast ideas that being queer is choosing a difficult life for oneself, and that is also among reasons why families of queer individual opt for conversion therapy.⁶³

If we address these storylines, to make the creators responsible, we might be able to address and uplift the LGBT+ community. LGBT+ storyline in the mainstream media with true to life portrayal in the recent years, the likes of American movies such as *Moonlight*, *Love Simon*, *Call Me By Your Name*, *The Danish Girl*, *Broke Back Mountain*, and the likes of movies from other countries such as *God’s Own Country*, *Close-Knit*, *The Way He Looks*, *Esteros* to name a few have questioned the already diluted perception of people towards LGBT+ community and their issues and have tried to bring about a much required change. To help remove apathy, diverse representation of the LBGT+ group in various narratives and storylines, in media and in educational institution can help to erase the ‘culture and religion’ aspect as seen in the case of African nations and others, and that the idea of homosexuality is a “Western Colonial Concept”.

Consequently, these changes have and will inspire people to come forward and to support the cause – to small instances of pressuring schools to be more inclusive

⁶² A. R. D’Augelli, ‘Coming out in community psychology: Personal narrative and disciplinary change’, vol. 31, *American Journal of Community Psychology*, 2003, pp. 343-354.

⁶³ Christi R. McGeorge et al, ‘To Refer or Not to Refer: Exploring Family Therapists’ Beliefs and Practices Related to the Referral of Lesbian, Gay, and Bisexual Clients’, vol. 42, *Journal of Marital and Family Therapy*, no. 3, 2015.

and LGBT+ friendly - to encourage the public to participate in referendums to make LGBT+ friendly laws as seen in the case of Ireland and Australia in the recent same-sex marriage referendum. At large, we see that states are taking affirmative actions to uplift the LGBT+ individuals in their respective country.

In the realm of international law, the *Yogyakarta Principles*⁶⁴ speaks against the logic of formulating a description of “SOGI” that refers not to a new and separate identity, but to status that has always existed as not doing so might feed into the accusation that the call being made is for ‘new rights’, rather than the application of existing human rights law.⁶⁵ As a status, we know that every human being has a *sexual orientation* which also includes straight, and every human being has a gender identity which also includes cis-gender. In the bigger picture, it is important to acknowledge that SOGI rights stem not because an individual belongs to certain orientation, but by the virtue of being a member of the human family. Of course, this shouldn’t undermine some compensatory treatments that some communities receive thorough the history for infringement of their rights throughout.

⁶⁴ The Preamble to the Yogyakarta Principles sets out a description of SOGI:

Understanding ‘sexual orientation’ to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender; understanding ‘gender identity’ to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms... .

⁶⁵ Michael O’Flaherty, ‘Not Rights for Gays; Rights for All!’, 2 October 2011, *radio interview* available at <http://www.lawthink.co.uk/2011/10/not-rights-for-gays-rights-for-all/>, accessed on 21 January 2018.