



THE INTERSECTION OF JURISPRUDENCE AND LGBTQ RESEARCH: AN ANALYSIS OF 'OTHERIZATION' AND THE 'INSIDE-OUTSIDE' PARADIGM

AUTHOR – AKSHAT KANSAL, STUDENT AT SYMBIOSIS LAW SCHOOL, PUNE

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INTRODUCTION

To begin with it is necessary to understand what is LGBTQ. Lesbian, gay, bisexual, transgender, and queer/questioning are together known as LGBTQ. It is a phrase that is used to describe a wide range of people whose sexual orientation or gender identification deviates from the heterosexual and cisgender social norms. Gay refers to males who are attracted to other men, whereas lesbian refers to women who are emotionally, romantically, or sexually attracted to other women. Both men and women are attractive to bisexuals, and transgender persons have a different gender identification from the sex that was given to them at birth. Those who identify as non-heterosexual and/or non-cisgender or who are unsure of their sexual orientation or gender identity are referred to as queer or questioning.

The legal recognition and protection of LGBTQ+ rights have made tremendous strides in recent years. Yet, LGBTQ+ people still have a lot of difficulties in their life, such as marginalisation, harassment, and discrimination. These issues are frequently caused by the inside/outside and otherization theories of law, which see the LGBTQ+ group as distinct or "other" and uphold a distinct line between those who are a part of the community from those who are not.

This paper aims to provide a critical analysis of the LGBTQ+ community's treatment as "the other" and the inside/outside legal theory. The study seeks to provide light on the ways in which otherization and inside/outside theory have been employed to perpetuate discrimination and marginalisation of LGBTQ+ people through an analysis of legal and policy frameworks, case law, and societal attitudes. The study also aims to investigate how this otherization affects LGBTQ+ people's quality of life, mental and physical health, and wellbeing.

The paper will first provide a brief overview of the otherization and inside/outside theory of jurisprudence and its historical and cultural roots. It will then examine specific legal and policy frameworks that perpetuate otherization and inside/outside theory, including those related to marriage equality, gender identity recognition, and anti-discrimination laws. The paper will also analyze case law that has perpetuated otherization and inside/outside theory and discuss the impact of this otherization on LGBTQ+ individuals' mental and physical health.

The study ultimately wants to contribute to continuing initiatives to support the recognition and protection of LGBTQ+ rights and to fight the otherization and inside/outside paradigm of jurisprudence that upholds prejudice and marginalisation.



THEORY

The inside-outside and otherization theoretical frameworks will be used to link the current problem to them in this research article. We must understand what they signify before advancing forwards.

INSIDE-OUTSIDE THEORY

The Inside-Outside Theory is a jurisprudential legal theory that aims to distinguish between law as a set of regulations and law as a social phenomenon. This theory holds that there are two different viewpoints on law: the internal perspective (from the inside) and the outward perspective (outside).

The legal professions' understanding and application of the law, such as judges, attorneys, and legal academics, are referred to as having a "inside viewpoint." Under this viewpoint, the law is viewed as a stand-alone system of regulations, precepts, and practises that is different from other social phenomena. To settle disputes and interpret legal documents in a way that is compatible with the underlying legal framework, lawyers employ legal principles and norms.

The Inside-Outside Theory recognises the need of both viewpoints in comprehending the nature of law. While understanding the external viewpoint is crucial to comprehend the larger social, economic, and political forces that influence the law, legal practitioners must be knowledgeable with both to successfully interpret and implement legal principles.²¹

One important aspect of the Inside-Outside Theory is that legal practitioners need to be mindful of the boundaries of the law and the possibility that social prejudices and power dynamics might impact the application of the law. For instance, laws that discriminate against disadvantaged groups may appear to be OK on

the inside, but from the outside, they may appear to be unfair and in need of revision.

The Inside-Outside Theory underlines the necessity for legal practitioners to connect with both internal and exterior viewpoints in order to achieve justice and equality in the legal system and offers a helpful framework for understanding the complicated relationship between law and society.

OTHERIZATION THEORY

The Otherization Theory is a jurisprudential legal theory that investigates how social groups are excluded or marginalised in the legal system. This idea contends that rather than serving as a neutral or objective set of guidelines, the law serves as a reflection of the beliefs and values of the dominant social groups. As a result, some groups could be "otherized" or considered as outsiders by the legal system, which might lead to prejudice, discrimination, and uneven treatment in the eyes of the law.

According to the Otherization Hypothesis, societal norms and power relationships can influence legal systems and lead to the exclusion or marginalisation of particular groups. Women, members of racial and ethnic minorities, LGBTQ+ people, and people with disabilities, for instance, may experience bias or discrimination in the legal system. There are several ways in which this might occur, including uneven access to legal counsel, prejudice among jurors or judges, or systematic bias in the application of the law.²²

Legal systems may strengthen social hierarchies and uphold injustice, according to the Otherization Hypothesis. For instance, regulations that prohibit sex work or drug usage may adversely affect underprivileged populations, resulting in uneven treatment under the law. The same goes for legislative frameworks that place a higher priority on property rights than on human rights, which can lead to social exclusion and economic injustice.

²² "The Concept of 'Othering' and the Problem of Institutional Racism" by James W. Nickel, *Philosophy & Social Criticism* (2008)

²¹ "The Inside-Outside Problem in Jurisprudence" by Stephen Perry



Overall, the Otherization Theory highlights the need for legal systems to be aware of their potential for bias and discrimination, and to actively work to address these issues. This may involve promoting diversity within the legal profession, reforming legal rules that perpetuate injustice, and creating mechanisms to ensure that marginalized groups have equal access to legal representation and protection under the law. By acknowledging the potential for otherization within the legal system and actively working to address it, legal professionals can help promote justice and equity for all individuals within society.

CRITICAL ANALYSIS

OTHERIZATION IN LGBTQ COMMUNITY

• **Criminalization of same-sex relationships:-**

The prohibition of same-sex relationships is one way that LGBTQ law may lead to otherization. In the past, several nations had anti-homosexuality legislation because it was believed that LGBTQ people were "deviant" and a danger to society. LGBTQ people suffered discrimination and stigmatisation as a result, and they were frequently the targets of assault, harassment, and persecution. Although many nations have already decriminalised homosexuality, several still maintain laws that make same-sex partnerships illegal, which continues to marginalise LGBTQ people.

• **Unequal treatment:-**

Unfair treatment in family and employment law is another way that otherization might take place in LGBTQ legal doctrine. For instance, same-sex couples may not be allowed to get married or adopt children, or they may experience discrimination at work. This might reinforce the idea that those who identify as LGBTQ are not entitled to the same protections and privileges as everyone else.

• **Negative stereotypes:-**

In addition, judges, attorneys, and other legal professionals may discriminate against LGBTQ people by using derogatory stereotypes and

bigotry. As a result, there may be unfair outcomes in judicial disputes involving LGBTQ people. In a legal matter, a judge or attorney, for instance, may have prejudices towards LGBTQ people that affect their decision-making, which can result in discrimination and otherization.

Legal systems can enact anti-discrimination legislation and regulations that safeguard LGBTQ people's rights to prevent otherization in LGBTQ jurisprudence. To be prepared to assist LGBTQ clients impartially and equitably, legal professionals can also acquire training and instruction on topics relating to sexual orientation and gender identity. Moreover, by guaranteeing that LGBTQ people are represented in the legal system and have equal access to justice, encouraging diversity and inclusion in the legal profession may aid in the fight against otherization. Otherization in law must be fought, and LGBTQ people and their supporters' advocacy is crucial. Discrimination in the legal system may be reduced and positive change can be effected through increasing awareness of the problem and fighting for equal rights and protections for LGBTQ people.

◆ **LEGAL ANALYSIS:-**

In India, where same-sex partnerships were illegal under *Section 377*²³ of the *Indian Criminal Code* until 2018, the issue of LGBTQ people being marginalised or otherized has been a serious problem. A key step was taken to counteract the otherization of LGBTQ people in Indian law with the Supreme Court of India's momentous ruling in *Navtej Singh Johar v. Union of India, 2018*,²⁴ which invalidated Section 377.

Nonetheless, LGBTQ people continue to be marginalised in Indian judicial precedents even after homosexuality was made a non-violent sin. One instance is the 2013 case of *Suresh Kumar Kaushal v. Naz Foundation*²⁵, in which the Indian Supreme Court maintained the validity of Section 377. The court ruled that the legislature had the authority to decide whether to repeal the statute and that the court could

²³ Section 377 of IPC

²⁴ Navtej Singh Johar v. Union of India, 2018 is (2018) 10 SCC 1.

²⁵ Kumar Kaushal v. Naz Foundation is (2014) 1 SCC 128



not become involved in those deliberations. By maintaining a discriminatory statute and reiterating the idea that LGBTQ people were not entitled to equal protection under the law, this ruling contributed to the ongoing otherization of LGBTQ people.

Another instance is *Puttaswamy v. Union of India, 2017*²⁶, in which the Indian Supreme Court declared the right to privacy to be a fundamental right. Due to the fact that it acknowledged that people had a right to privacy and sovereignty over their bodies, including their sexual orientation and gender identity, this ruling was an important step in the direction of lessening the otherization of LGBTQ people.

The rights of LGBTQ people in India, such as the ability to obtain healthcare and the ability to marry and have children, have also been the subject of numerous additional court challenges. There is still a long way to go before LGBTQ people enjoy the same rights and protections under the law, notwithstanding recent progress achieved in lessening the otherization of LGBTQ people under Indian law.

INSIDE OUTSIDE THEORY ON LGBTQ COMMUNITY

Due to this community's long history of marginalisation and exclusion from legal protections and rights, the "inside/outside" notion is especially pertinent to how the LGBTQ community interacts with the legal system. According to the argument, the LGBTQ community is marginalised by the dominant legal culture and hence denied access to the legal system as well as legal safeguards since it is viewed as a "outside" to that culture.

The "inside" refers to the mainstream legal culture, which includes established legal institutions, legal practitioners, and prevailing legal standards and ideals. Marginalized groups are those that are left out of the legal system and legal culture, such as the LGBTQ community.

In the context of LGBTQ jurisprudence, the "inside/outside" idea has been utilised to study the experiences of LGBTQ persons inside the

legal system. LGBTQ people have historically experienced discrimination and exclusion from legal protections, such as same-sex relationships being criminalised and same-sex marriage not being recognised by the law.

LGBTQ people continued to face legal system marginalisation even after legal improvements were passed. For instance, anti-discrimination legislation could not be strictly implemented or might not offer LGBTQ people complete rights. This demonstrates how LGBTQ people continue to be excluded and marginalised by the prevailing legal culture and practises.

◆ LEGAL ANALYSIS:-

The "inside/outside" idea is helpful in understanding how the LGBTQ population interacts with the Indian legal system. The LGBTQ population in India has historically experienced severe prejudice and discrimination as well as exclusion from legal safeguards and rights.

The same-sex relationship was made illegal in India under Section 377 of the penal code from the colonial era, essentially making the LGBTQ community a "outside" to the mainstream legal culture. This law cultivated a hostile atmosphere for LGBTQ people by perpetuating stigma and prejudice against them.

The Indian Supreme Court invalidated Section 377 in 2018, recognising the freedom of LGBTQ people to participate in consensual sexual behaviour. Unfortunately, despite this important decision, the legal system in India still marginalises and discriminates against members of the LGBTQ community.

For instance, because same-sex marriages are not legally recognised, LGBTQ people do not have the same access to legal protections as heterosexual couples enjoy. Furthermore, it's possible that anti-discrimination laws don't offer LGBTQ people complete protections or aren't adequately enforced.

The "inside/outside" idea may be utilised to comprehend how, despite legislative advances, India's legal system still excludes and marginalises the LGBTQ population. This theory emphasises the need of recognising and

²⁶ Puttaswamy v. Union of India, 2017 is (2017) 10 SCC 1.



addressing the ways in which the legal system perpetuates marginalisation and exclusion for marginalised groups like the LGBTQ community for practitioners of law and politicians. India can make sure that everyone's rights and dignity are upheld by trying to create a more inclusive and equal legal system, regardless of a person's sexual orientation or gender identity.

SUGGESTIONS/OPINION

o **REGARDING OTHERISATION:-**

People are considered as "other" in the process of otherization, as if they don't belong or aren't a part of the dominant group. This can manifest itself in a variety of ways, such as the exclusion of people from social groups or the treatment of them as inferior due to their differences. Otherization can result in prejudice, harassment, and violence towards LGBTQ+ people. Following are certain actions to take to prevent otherization of the LGBTQ+ community:

1. Educate yourself:

The best way to prevent otherization is to educate oneself about the realities of LGBTQ+ people. This entails being familiar with their difficulties, such as prejudice, marginalisation, and resource limitations. You may better understand the experiences of LGBTQ+ people and be more attentive to their needs by learning about these problems.

2. Respecting people's identities

Preventing otherization begins with respecting people's identities. Using people's preferred names, pronouns, and gender identities is what is meant by this. It also entails staying away from presumptions or prejudices about someone's sexual orientation or gender identity based only on how they seem. Respecting someone's identity is that you recognise their humanity and their right to self-identification.

3. Challenge stereotypes and biases:

In order to overcome preconceptions and biases, it's vital to be aware of and confront your own prejudices. In order to do this, you must examine any preconceived notions you may have about LGBTQ+ people and be receptive to what they have to teach you. Also, it entails

leveraging your privilege to elevate the voices of oppressed people and speaking out against offensive jokes and remarks.

4. Listen to the experiences of others

You must prevent otherization by paying attention to other people's experiences, particularly those of LGBTQ+ people. This entails providing a friendly environment where they feel comfortable sharing their experiences and being validated for doing so. Also, it entails giving someone the benefit of the doubt and not downplaying their emotions but still giving them space to express their viewpoint.

5. Appreciate diversity:

In order to avoid otherization, celebrating diversity is a crucial step. This entails acknowledging the variety within the LGBTQ+ community and refraining from making judgements about people based on their sexual orientation or gender identity. You honour each person's distinctive experiences and contributions by honouring variety.

6. Take action:

A potent strategy to prevent otherization is to take action in favour of LGBTQ+ people and communities. This entails making donations to LGBTQ+ groups, participating in events and protests, and speaking out in favour of LGBTQ+ rights. It also entails speaking up against injustice and prejudice while leveraging your status to bring about change.

o **REGARDING INSIDE/OUTSIDE:-**

There are a number of measures that may be taken in order to avoid supporting the "inside/outside" theory in regard to the LGBTQ+ population. Here are few instances:

1. Non-Discrimination Policies:

Businesses and institutions can implement non-discrimination guidelines that specifically mention gender identity and sexual orientation. In sectors including work, housing, education, and healthcare, these rules can aid in preventing discrimination against LGBTQ+ people.

2. Inclusive Language:

Language is a potent instrument that may either support or contradict prejudices and



preconceptions, thus it is important to use language inclusively. In order to avoid othering or marginalising LGBTQ+ people, organisations and individuals can utilise inclusive language. This may entail employing language that is gender-neutral, avoiding assumptions regarding a person's sexual orientation and gender identity, and respecting a person's choice of name and pronouns.

3. Training on LGBTQ+ Diversity and Inclusion:

Educating people about LGBTQ+ problems and providing a secure environment in which they can learn, ask questions, and share stories can help lessen stereotypes, ignorance, and prejudices. Schools, companies, or healthcare facilities may all benefit from this training that is specifically designed for them.

4. Community Support:

LGBTQ+ people frequently experience violence, prejudice, and social exclusion. Access to networks of support, including LGBTQ+ organisations, peer support groups, and counselling services, may lessen the negative effects of othering and foster a sense of empowerment and belonging.

5. Legal and Policy Reforms:

Legal and policy changes can support the advancement of LGBTQ+ rights and lessen prejudice and marginalisation. This can involve same-sex marriage, anti-discrimination legislation that cover sexual orientation and gender identity, and policies that support the acknowledgment of gender identity.

It is imperative to advance acceptance, comprehension, and respect for LGBTQ+ people and their rights in order to prevent the spread of these myths. This may be accomplished by using a variety of measures, including anti-discrimination laws, terminology that is inclusive of all people, LGBTQ+ diversity and inclusion training, community support, and legal and policy changes.

It is critical to understand that LGBTQ+ people are not "different," but rather a vital component of society's diversity, deserving of equal rights and opportunities. We can lessen the harmful effects of othering and foster a sense of belonging and empowerment for LGBTQ+ people by fostering a safe and inclusive atmosphere. In the end, it is to our mutual interest to promote diversity, equity, and inclusion for all people, regardless of their sexual orientation or gender identity.

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CONCLUSION

The otherization and inside/outside idea of the LGBTQ+ community is a damaging and enduring problem that needs to be addressed. These ideas support the notion that LGBTQ+ people are unique or distinct, which leads to exclusion, marginalisation, and discrimination against them. Their well-being, quality of life, and mental and physical health may all be adversely affected by this.