



**NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM**

**PROGRAMME: B.A.LL.B.(HONS.)**

**DETAILS OF COURSE OFFERED**

**ODD SEMESTER – ACADEMIC YEAR 2022-23**

SL. No	COURSE CODE	COURSE TITLE	L	T	P	CR	CH
1.	507	SEXUAL MINORITIES AND THE LAW IN INDIA	1 PER WEEK	1 PER WEEK		2	2

**A. CODE AND TITLE OF THE COURSE: SEXUAL MINORITIES AND**

**THE LAW IN INDIA**

**B. COURSE CREDIT: 2 (TOTAL MARKS 50)**

**C. MEDIUM OF INSTRUCTION: ENGLISH**

**D. COURSE COMPILED BY: DR. GITANJALI GHOSH**

**E. COURSE INSTRUCTOR: DR. GITANJALI GHOSH**

## **1. COURSE OBJECTIVES**

When it comes to understanding the laws relating to sexual minorities in India, the focus is largely on de-criminalization of homosexuality and transgender rights but the truth remains that there is an entire gamut of international and national legal regime governing the lives of people falling under the LGBTQIA+ umbrella. The objective of this course is to enhance the understanding of the students on various international instruments, national legislations, judicial decisions etc. pertaining to the sexual minorities.

The objectives of the course, in particular, are as follows:

- To familiarize students with the conceptual framework of rights of sexual minorities as human rights;
- To familiarize them with terminologies such as LGBTQIA+ and SOGI
- To provide them with an understanding of the rights of sexual minorities vis-à-vis international human rights law as well as Indian constitutional law, criminal law, family law and;
- To analyse legal regime governing sexual minorities from a gender perspective;
- To enhance capacity of students to form their own opinions on vital issues pertaining sexual minorities.

## **2. TEACHING METHODOLOGY**

The teaching methodology shall aim at the generation of critical thinking among the students. The topic for a particular class shall be informed to the students beforehand and readings shall be assigned to them for the said topic. They are expected to have a basic idea about the topic prior to the class. Subsequent to a brief lecture on the topic, there shall be class discussion on the same as well as on the readings assigned. Pursuant to the class discussion, the teacher shall substantiate the issues raised and answer any questions posed or left unanswered. Case study method shall be also adopted for relevant topics. Movie review will be used as well.

## **3. EXPECTED OUTCOMES OF THE COURSE**

At the completion of the course, it is expected that the students shall:

- Comprehend the subject matter of the course
- Be able to analyse contemporary problems faced by sexual minorities in the light of the concepts learnt
- Be able to articulate their ideas on the subject matter of the course
- Produce at least one research paper of publishable quality
- Desire to take up the subject matter for further studies

## **4. COURSE EVALUATION METHOD**

The course shall be assessed for 50 marks. There shall be a test carrying 30 marks and an assignment carrying 20 marks.

## 5. DETAILED STRUCTURE OF THE COURSE (SPECIFYING COURSE MODULES AND SUB-MODULES)

### Module 1

- Understanding terminologies
  - Sexual Orientation and Gender Identity and Expression (SOGIE)
- International Jurisprudence on Sexual Minorities
  - UN Free and Equal campaign
  - Human Rights Council and General Assembly Resolutions
  - Independent Expert on Sexual Orientation and Gender Identity
  - Principles on the application of international human rights law in relation to sexual orientation and gender identity (Yogyakarta Principles)
  - Additional Principles and State Obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles (Yogyakarta Principles plus 10)

### Module 2

- Sexual Minorities vis-à-vis Indian Laws
  - Constitution of India
    - Right to equality, life, liberty, dignity, privacy, health, freedom of expression
  - Criminal Laws of India
    - Criminalization and subsequent de-criminalization
  - Family Laws of India
    - Same sex marriage, Adoption, Inheritance
  - Law for Transgender Persons

## 6. PRESCRIBED READINGS

### BOOKS AND ARTICLES

- ENVISIONING GLOBAL LGBT HUMAN RIGHTS (Nancy Nicol et al. eds., University of London Press 2018).
- Nivedita Menon, *Sexuality, Caste, Governmentality: Contests Over 'Gender' In India*, 91 FEMINIST REVIEW 94 (2009).

- Jennifer Ung Loh, *Transgender Identity, Sexual Versus Gender 'Rights' And The Tools Of The Indian State*, 119 FEMINIST REVIEW 39 (2018).
- David W. Austin et al., *Sexual Orientation and Gender Identity*, 44(1) THE INTERNATIONAL LAWYER 547 (2010).
- Suzanne M. Marks, *Global Recognition of Human Rights for Lesbian, Gay, Bisexual, and Transgender People*, 9(1) HEALTH AND HUMAN RIGHTS 33 (2006).
- Natalie E. Serra, *Queering International Human Rights: LGBT Access To Domestic Violence Remedies*, 21(3) JOURNAL OF GENDER, SOCIAL POLICY & THE LAW 583 (2013).
- Ruth Vanita, *"Wedding of Two Souls": Same-Sex Marriage and Hindu Traditions*, 20(2) JOURNAL OF FEMINIST STUDIES IN RELIGION 119 (2004).
- William N. Eskridge, *A History of Same-Sex Marriage*, 79(1419) VIRGINIA LAW REVIEW 1419 (1993).
- Geetanjali Misra, *Decriminalising Homosexuality In India*, 17(34) REPRODUCTIVE HEALTH MATTERS 20 (2009).

## INTERNATIONAL INSTRUMENTS

- Yogyakarta Principles 2006
- Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Human Rights Council Res. 41/18, Rep. of the Human Rights Council, 41st sess., June 24- July 12, 2019, A/HRC/RES/41/18 (July 19, 2019).
- Elimination of discrimination against women and girls in sport, Human Rights Council Res. 40/5, Rep. of the Human Rights Council, 40th sess., Feb. 25- Mar. 22, 2019, A/HRC/RES/40/5 (Mar. 21, 2019).
- Protection against violence and discrimination based on sexual orientation and gender identity, Human Rights Council Res. 32/2, Rep. of the Human Rights Council, 32nd sess., A/HRC/RES/32/2 (June 30, 2016).
- Human rights, sexual orientation and gender identity, Human Rights Council Res. 27/32, Rep. of the Human Rights Council, 27th sess., A/HRC/RES/27/32 (Sept. 26, 2014).
- Human rights, sexual orientation and gender identity, Human Rights Council Res. 17/19, Rep. of the Human Rights Council, 17th sess., A/HRC/RES/17/19 (June 17, 2011).
- Extrajudicial, summary or arbitrary executions, G.A. Res. 69/182, U.N. Doc. A/RES/69/182 (Jan. 30, 2015).
- Extrajudicial, summary or arbitrary executions, G.A. Res. 67/168, U.N. Doc. A/RES/67/168 (Mar. 15, 2013).
- Extrajudicial, summary or arbitrary executions, G.A. Res. 65/208, U.N. Doc. A/RES/65/208 (Mar. 30, 2011).
- Extrajudicial, summary or arbitrary executions, G.A. Res. 63/182, U.N. Doc. A/RES/63/182 (Mar. 16, 2009).
- Extrajudicial, summary or arbitrary executions, G.A. Res. 61/173, U.N. Doc. A/RES/61/173 (Mar. 01, 2007).
- Extrajudicial, summary or arbitrary executions, G.A. Res. 59/197, U.N. Doc. A/RES/59/197 (Mar. 10, 2005).

- Extrajudicial, summary or arbitrary executions, G.A. Res. 57/214, U.N. Doc. A/RES/57/214 (Feb. 25, 2003).

## **STATUTES**

- Transgender Persons (Protection of Rights) Act, 2019.
- Transgender Persons (Protection of Rights) Rules, 2020.

## **CASES**

- Naz Foundation v. Government of NCT of Delhi and ors. 2009 SCC OnLine Del 1762 (India).
- Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1 (India).
- Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
- National Legal Services Authority v. Union of India and ors., (2014) 5 SCC 438 (India).
- K.S. Puttaswamy and anr. v. Union of India and ors., (2017) 10 SCC 1 (India).
- S. Sushma and anr. v. Commissioner of Police and ors., 2021 SCC OnLine Mad 2096 (India).
- Udit Sood and ors. v. Union of India and anr., W.P.(C) 6371/2020 (India).
- Abhijit Iyer Mitra and ors. v. Union of India and anr., W.P.(C) 7657/2020 (India).
- Vaibhav Jain and anr. v. Union of India and anr., W.P.(C) 7692/2020 (India).
- Dr. Kavita Arora and anr. v. Union of India and anr., W.P.(C) 2574/2021 (India).