

# Footprints of the Yogyakarta Principles

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## INTRODUCTION

Yogyakarta Principles is a document published in 2006 after an international human rights group met in Yogyakarta, Indonesia. The Yogyakarta Principles addresses the issue of human rights violation of the LGBT community. This document prescribes standards for the international law that deals with the rights of the community.

The Supreme Court also has recognized the Yogyakarta Principles and had ruled that they should be applied as a part of Indian law. In the NALSA (landmark) judgment, the Supreme Court has recognized transgender as the 'third gender', the judges had noted, "Due to the absence of suitable legislation protecting the rights of the members of the transgender community... International Conventions, including the Yogyakarta Principles, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed."

All over the world there are 72 countries including India that criminalizes homosexuality. According to a report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), there are 8 countries where homosexuality can result in death penalty. Considering this scenario, the international commissions of jurists and the international services for the Human Rights, on behalf of a coalition of Human Rights Organizations, have developed the Yogyakarta Principles. The Yogyakarta Principles are a set of international legal principles on the application of the international law to human rights violations based on sexual orientation and gender identity. There (Yogyakarta Principles) main aim is to bring greater clarity and coherence in State's obligation towards human rights.

### What is Yogyakarta Principles

The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The Principles affirm binding international legal standards with which all States must comply. They promise a different future where all people born free and equal in dignity and rights can fulfill that previous birthright.<sup>1</sup>

Human Rights are rights inherent to all human beings whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All are equally entitled to human rights without discrimination.<sup>2</sup> As the Article 1 of the United Nations Universal Declaration of Human Rights states-

"All human beings are born free and equal in dignity and rights."<sup>3</sup> All human beings are universal, interdependent, indivisible and interrelated.

P.S. Sexual orientation (1) and gender identity (2) are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

[1] Sexual Orientation is understood 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.

[2] Gender identity is understood 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.

Here is the basic outline of all the principles of the Yogyakarta Principles:

Preamble: The Preamble acknowledges human rights violation based on sexual orientation and gender identity establishes the relevant legal framework and provides definitions of key terms.

Principles 1 to 3-Rights to Universal Enjoyment of Human Rights, Non-Discrimination and Recognition before the law

Principles 4 to 11-Rights to Human and Personal Security

Principles 12 to 18-Economic, Social and Cultural Rights

Principles 19 to 21-Rights to Expression, Opinion and Association

Principles 22 & 23-Rights of freedom of movement and Asylum

Principles 24 to 26-Rights of participation in cultural and family life

Principle 27-Right to defend and promote human rights

Principles 28 to 29-Rights of Redress and Accountability

Also there are 16 additional recommendations to national human rights institutions, NGOs, the High Commissioner for Human Rights, UN agencies, Treaty bodies' etc.<sup>4</sup>

The Yogyakarta Principles have come a long way since their inception. They have made huge developments in international human rights law and help in understanding the violation and discriminations faced by the LGBT community.

### **The YP Plus 10**

The YP plus 10 were adopted on 10<sup>th</sup> November 2017 to broaden the horizon of original Yogyakarta Principles. The YP plus 10 came into existence from the developments in international human rights law and better understanding of violations, discriminations faced by the LGBT people due to their sexual orientation and gender identity. The YP plus 10 were developed on the tenth anniversary of the Yogyakarta Principles. A Drafting Committee was framed by the International Service for Human Rights, ARC International in consultation with experts, civil society representative. The Drafting Committee asked for submissions from around the world. The main thought behind that was to gather all the data on the effect of development in International Human Rights Law and the experiences of the LGBT people. The Drafting Committee prepared a document based on all the submissions and the research done by experts in this matter, which was then discussed, elaborated and adopted in a meeting held in Geneva in Sept.2017. The experts were from all over the world with different legal traditions, diverse culture, of different sexual orientation and gender identity. The YP Plus 10 are an extension of original Yogyakarta Principles.

### **Origin of the Yogyakarta Principles**

29 human rights experts from 25 countries met at Gadjah Mada University in Yogyakarta, Indonesia between November 6 and 9, 2006. There they developed 29 principles originally. Ten additional principles have been added to the existing principles in a meeting in Geneva between September 18 and 20, 2017. Various UN bodies, regional human rights bodies, human rights commission, Council of Europe etc. have approved and sanctioned the Yogyakarta Principles. They consider them as an important tool for State's obligation towards human rights of all persons, regardless of their gender identity or sexual orientation. These Principles aim is to respect, protect and fulfill all the given human rights of a person worldwide.

### **Why these (YP) are needed?**

The Yogyakarta Principles were developed for two purposes.

First, to provide a fair assessment of the current state of human rights law and applied to sexual minorities, in particular, lesbian, gay, bisexual and transgender (LGBT) people. At the core of the Yogyakarta Principles are the human rights norms of Universality and Non-discrimination. That no human being or group of human beings are considered outside of the clear and straightforward language of the international treaties that are the foundation of international human rights law. That LGBT people are no exception to this basic understanding of the application of human rights law.

Second, the Yogyakarta Principles, by detailing obligations for State action with each of the 29 principles, are intended to enhance LGBT activists' and advocates' capacity to successfully challenge some of the more persistent human rights violations faced by the community.

Violation of human rights of persons because of their actual or perceived sexual orientation or gender identity has emerged as a serious concern globally. It includes extra-judicial killings, torture and ill treatment, sexual assault and rape, invasion of privacy, arbitrary detention, denial of employment and education opportunities and serious discrimination in relation to the enjoyment of other human rights. In some cases death punishment is given in name of 'honor killing'. Key human rights mechanisms of UN United Nation and its subsidiaries have affirmed State's obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the State's response has been inconsistent, different and fragmented making it impossible to help people of different sexual orientation or gender identity

against all types of discrimination. Yogyakarta principle helps in understanding the various international human rights law and their application on the issue of sexual orientation and gender identity.

Many advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled. Many states now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity. Nevertheless, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasion of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.

Many States and societies impose gender and sexual orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationships and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

The aim of these principles is to improve the interpretation of human rights treaties but, they have not become part of international human rights law yet. The signatories made efforts that the Yogyakarta Principles should become international legal standard with which all States must comply, but some States have expressed reservations.<sup>5</sup>

### **IMPACT OF YOGYAKARTA PRINCIPLES**

The Yogyakarta Principles are a milestone in establishing equal human rights for all without any exception through law and precedents. The human rights experts from around the world collectively aimed at providing an authoritative legal tool to seek justice and protection to the victims of human rights violation due to their sexual orientation and gender identity. Development of Yogyakarta Principles is perhaps the most significant international legal development in history in regard of sexual orientation and gender identity. These 29 principles are a universal guide on existing human rights. They assert legal standards at an international level; contribute towards development of law, policies and methods to stop and control discrimination and violence faced by LGBT people based on their sexual orientation and gender identity.

They have directly impacted the lives of LGBT people in various ways:-

1. Argentina brought Gender Identity Law in 2012 based on Yogyakarta Principles. It provided Trans people access to various services without medical intervention. Thus giving rights and maintaining dignity of trans people.
2. The UN High Commission for Refugees released guidelines for the refugees based on SOGI. This resulted in LGBT People getting relief from threats and violence at their home country.
3. The Principles have been an important toolkit for defenders of LGBT rights- even making their way into a comic book initiated by the Institute Perempuan.

Before the creation of Yogyakarta Principles, the international law focused only on sexual orientation and not on Gender identity. Gender identity came into picture only after the LGBT defenders started talking about it. Human Rights experts at Yogyakarta gave a legal definition which has been used since then (quoted verbatim in various judicial decision and documents and is used expansively worldwide).

The document, known as the Yogyakarta Principles, is named after the city where it was adopted and was launched on March 26, 2007 in Geneva by a group of 29 international human rights experts.

“These principles establish basic standards for how governments should treat people whose rights are too often denied and whose dignity is too often reviled,” said Scott Long, director of the Lesbian, Gay, Bisexual, and Transgender Rights Program at Human Rights Watch.

The Yogyakarta Principles were developed in response to well-documented reports and patterns of abuse all around the world. These abuses are committed due to actual or perceived sexual orientation or gender identity of a person. The principles addresses:-

- Rape & other gender-based violence;
- extrajudicial executions;
- Torture and other inhuman, degrading treatment;
- Medical abuse;
- Discrimination at workplace, in education, housing, health, access to justice; and much more.

The principles also map out a positive road to provide for equality for LGBT people around the world. Each principle has a detailed recommendation for States to end discrimination and abuse. The principles also ask for action from the UN's human rights system, national human rights institutions, the media and nongovernmental organizations.

“These sweeping principles are a bold and important step forward. Addressing civil and political as well as economic, social and cultural rights, they show how sexual rights and gender equality are inextricably interwoven with the full scope of rights protection.”

The principles were introduced by the experts who were a former United Nations High Commissioner for Human Rights, independent experts, members of treaty bodies, judges, activists and academics.

In India with the progressive NALSA judgment, the transgender's decade-long struggle for dignity took a better turn. This judgment was delivered by a Supreme Court bench headed by Justice K.S. Radhakrishnan. This judgment gave recognition to transgender people as 'third gender' that also possesses rights including marriage, adoption, divorce, succession and inheritance. Most of important of all, this judgment condemned discrimination on the grounds of sex in violation of the fundamental rights to equality under the Constitution.

In August 2017, a nine judge bench of the Supreme Court, led by the then Chief Justice of India J.S. Khehar upheld the right of privacy as a fundamental right intrinsic to life and liberty. It gave boost to fight against Sec.377.<sup>6</sup>

## **CONCLUSION**

The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. They promise a different future where all people are born free and equal in dignity and rights can fulfill that precious birthright. These principles were developed and adopted in 2006 by a group of human rights experts from all over the world, from various regions and backgrounds. After ten years, new set of principles on international human rights law on sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) were also developed.

These principles are an invaluable tool for activists/people/human rights experts working in the favour of LGBT people. Though the Yogyakarta Principles are not binding law, they do provide an authoritative interpretation of international law. The Yogyakarta Principles are sort of a by-product of all the legal interpretation and text of all the human rights treaties. These principles are like a guiding light to help the States in their obligation under international law in dealing with problems faced by LGBT people.

The Delhi high court and the Supreme Court of Nepal used and cited these principles in delivering two of the World's most recent and important legal decisions in reference to the constitutional and human rights of the LGBT people. Argentina, Brazil, Canada, Uruguay, Mexico have passed or introduced bill based on Yogyakarta Principles. Legal mandates have been issued under the Yogyakarta Principles in various countries like Brazil, Bolivia, Spain, Belgium, Netherlands and the United Kingdom. 'An Activists guide to the Yogyakarta Principles' has also been developed to assist activists around the world for advancement of LGBTI rights.

The Yogyakarta Principles have launched a worldwide discussion and action on human rights of the LGBT community. All the violation and discrimination faced by LGBT people based on their sexual orientation and gender identity and breach of their human rights. These principles provide a precise and fair text for understanding the scope of human rights. Secondly they provide a basic standard of reference to measure how much a State is doing in support of LGBT people. Thirdly, they provide specific recommendations for the State's to comply. Fourthly they provide a universal definition of the terms 'sexual orientation' and 'gender identity' which has been used in various academic papers, bills, resolutions and other documents around the world. Fifthly they have invoked great discussions on sexual orientation and gender identity and other issues of LGBT community in the UN and all over the world which has resulted in advancement of work in favor of LGBT and also acceptance of human rights for them.

The Yogyakarta Principles are a comprehensible roadmap. If followed, they will exponentially and concretely change the conditions under which LGBT people live. Also the principles have garnered praise for enshrining the rights of persons of diverse sexual orientation and gender identities. Yet, they have also attracted critique as to their improvement beyond what some have described as radial and aspiration vision.<sup>7</sup>

#### **REFERENCES**

- [1] [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org). visited on 18<sup>th</sup> Sept. 2017
- [2] [www.onchr.org](http://www.onchr.org). visited on 15<sup>th</sup> September 2017.
- [3] UDHR 1948
- [4] <https://yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles-2/>
- [5] The finalized Yogyakarta Principles was launched as a global charter for gay rights on 26 March 2007 at the United Nations Human Rights Council in Geneva and later on at the United Nations event in New York on 7 November 2007. These meetings were seen as effort to decriminalize homosexuality in 77 countries that still carry legal penalties for people in same-sex relationships, and repeal of the death penalty in the seven countries that still have the death penalty for such sexual practice.
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