

HOMOSEXUALITY: ALL PERSASIVE YET SO MISUNDERSTOOD

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Abstract: *By the virtue of nature, everyone is equal. Society always preaches that everyone should have a right to live a happy and dignified life but still homosexuals have been subjected to inhumane treatment. They have been termed as; criminals, unnatural and mentally ill.*

But the recent researches have proved these contentions of homophobes wrong. Nowadays it is viewed as something which is completely natural and also that cannot be changed despite relentless efforts.

The research paper focuses on how homosexuality has always been existing in the society but yet has always been misunderstood. The inferences from the recent researches conducted by the leading research organizations like World Health Organization and American Psychiatric Association have been included in the research paper along with the historical evidences of homosexuality.

The research paper has also focused on the atrocities that homosexuals were subjected around a century ago and the ones that they are subjected to at present.

In addition to this how the provisions of IPC and media notions about homosexuality have modified over the period of time due to the efforts of public spirited individuals and advancement of science have also been included in this research paper.

Key Words: *ICD-10, American psychological association, erastes and eromenos, stonewall riots, corrective rapes.*

1. INTRODUCTION:

Heterosexuals and Homosexuals are the two facets of the same coin. Both have been glorified in the historical texts and have been a part and parcel of our lives since the very beginning. Both homosexuals and heterosexuals are what are termed in science as Homo sapiens. Their bodies are too made up of the skin and muscles and the composition of their blood is also same. The only difference that lies is in whom they feel sexually attracted to and with whom they get the sexual gratification and eternal bliss of life.

They say love is the strongest emotion that can do wonders. The feeling called love unites two souls and gives them the much needed feeling of comfort and solace in life.

But time and again the society has ridiculed and frowned upon the homosexuals for whom they are. They have been forced to live a life of misery and confined in a closet with the hope that one day the spring will come to their life too.

This research paper focuses on the historical evidences of homosexuality and how it is a high time to accept this community with open arms. Despite of the acceptance showered by the community at large there are still certain outfits that find the very existence of homosexuals and other LGBTs as exasperating and cannot tolerate the idea of them being on an equal footing with them.

2. WHAT IS SEXUAL ORIENTATION AND HOW IT DEVELOPS:

Sexual orientation can be defined as an attraction towards the people of a particular sex. In other words it refers to the desire of an individual to enter into the romantic or sexual relations with a person of a particular sex. Sexual orientation is today broadly categorized into three categories:

HETEROSEXUAL:

It means those individuals who are having emotional, romantic or sexual attractions to members of the other sex.

HOMOSEXUAL

It means those individuals who are having emotional, romantic or sexual attractions to members of one's own sex. To be a homosexual man or woman means having a personally significant and meaningful romantic and/or sexual attraction primarily to adults of the same sex.

BISEXUAL

It means those individuals who are having emotional, romantic or sexual attractions to both men and women. To be a bisexual man or woman means having a personally significant romantic and/or sexual attraction to both adult males and females. Those who self-identify as bisexual need not be equally attracted to both sexes.ⁱ

Sexual orientation is usually discussed as if it is solely a characteristic of an individual, like biological sex, gender identity or age. This perspective is incomplete because sexual orientation is defined in terms of relationships that one has with the others. Sexual orientation can be expressed through a plethora of actions and behaviors which can range from holding each other's hands to kissing.

Therefore, sexual orientation is more than a personal characteristic of an individual. It in some ways highlights those people in which one is likely to find the fulfilling romantic relationships that are a crucial component of one's personal identity.ⁱⁱ

DEVELOPMENT OF A PARTICULAR SEXUAL ORIENTATION:

Different groups in the society are having different opinions about how a sexual orientation develops. While some groups of society refer to homosexuality as a mental disorder while others attribute it to supernatural elements. In 1993, the National Association of Social Workers adopted the same position as the American Psychiatric Association and the **AMERICAN PSYCHOLOGICAL ASSOCIATION**, in recognition of scientific evidence.ⁱⁱⁱ The World Health Organization, which listed homosexuality in the ICD-9 in 1977, removed homosexuality from the **ICD-10** which was endorsed by the 43rd World Health Assembly on May 17, 1990.^{iv}

At present there is no consensus among scientists about the exact reasons about how an individual develops a heterosexual, bisexual, gay or lesbian orientation.

Many do feel that sexual orientation develops as a result of interplay of both nature and nurture.^v

IS HOMOSEXUALITY AS A SEXUAL ORIENTATION A DISEASE?

The recent researches conducted by The **AMERICAN PSYCHOLOGICAL ASSOCIATION (APA)** and other such organizations has played a very crucial role in discarding an old conception about homosexuality which related it to the mental disorders. According to the experts, lesbian, gay and bisexual orientations are not disorders. There is no inherent association between any of these sexual orientations and psychopathology.

Thus the international organizations have long ago given up the idea that getting attracted to same sex is an ailment.^{vi}

IS THERE ANY CONNECTION BETWEEN HOMOSEXUALITY AND MENTAL DISORDERS?

It is now a widely accepted view that homosexuality is not a mental disease but being a homosexual can make one fall prey to numerous disorders.

In 2001 a study was conducted by Cochran and psychologist Vickie M. Mays, of the University of California on possible root causes of mental disorders in lesbian, gay and bisexual people.^{vii} It focused on analyzing that whether ongoing discrimination against LGBTs increases anxiety, depression and other stress-related mental health problems. A strong co-relation was found between the two. LGB respondents reported higher levels of perceived discrimination in every arena of life. However, while gay youth were considered to be at a higher risk for suicide, a later study showed that being gay itself is not the cause of the increase in suicide but the psychosocial stressors, including gender non-conformity, victimization, lack of support etc. which are more prevalent among gay adolescents can be.^{viii}

HOMOSEXUALS ARE NORMAL HUMAN BEINGS AND THUS CAN BE PARENTS

Many lesbians and gay men today are parents while the others wish to be one. In fact there are many examples of gay celebrity couples raising their children. Primetime Emmy Award winner and popular American comedian, actor and host Neil Patrick Harris and his celebrity chef husband David Burdka became dads in 2010 to twins via surrogacy. Similarly various other gay celebrities like Ryan Murphy, Tom Ford and Sir Elton John are proud parents along with their husbands. Thus it is now advocated that the notion that lesbian or gay parents sexually abusing their children should be given up for good.

3. DOGMA ASSOCIATED WITH THE HOMOSEXUALITY

Throughout the world there is a lot of dogma associated with homosexuality. LGBTs usually fall prey to discrimination, teasing and being called with specific names. There are a number of anti-gay stereotypes prevailing in society at present. This is recognized as the main reason of why still a large number of homosexuals prefer to stay in the closet and not come out. Coming out can lead to prejudicial attitude from family, friends and other near and dear who are not open-minded with regards to this concept. This problem is much more prevalent in the culture where people associate homosexuality with anti-religious behavior. People have wrong notions with regards to their sexual health, preferences, likes as well as dislikes.

4. HOMOSEXUALITY WAS NOT ALWAYS VIEWED WITH ABHORRENCE

Homosexuality has always been a part and parcel of our society. The homosexuals were not always viewed with abhorrence.

ANCIENT CHINESE CULTURE

Instances of homosexuality can be traced even in the Ancient China. Many historical instances prove that most of the emperors in the Han, Song, Ming and Qing dynasties practiced homosexuality and also that it was favored by the common folk alike.^{ix} Homosexuality in China is also known as the “passions of the cut peach”. Homosexuality has been explicitly mentioned in the works of various Chinese writers. The instances of same-sex affection and sexual interactions have been dealt in detail in the classic Chinese Novel Dream of the Red Chamber.

ANCIENT INDIAN CULTURE

In Hindu texts there are numerous descriptions of homosexuality. There are several stories which portray love between same sexes. Kamasutra, an ancient Indian book talks about union between same sexes.

Vishnu is depicted in the faith as gender-fluid. On a number of occasions he took the form of Mohini. According to a popular belief, Vishnu even procreated with Shiva in the form of Mohini which resulted in the birth of Lord Ayyappa, a major figure still worshipped by millions.^x

In another mythological instance Shikhandi one of the warriors in the Kurukshetra was female at birth but changed gender later in life. Born Shikhandini, he was raised as a male by King Drupada. The king got her married to the princess of Dasharna. Upon complaints from the new bride, Shikhandini fled into the forest where he met a Yaksha and exchanged his gender. With the new name Shikhandi, he remained a man until his death in the battleground of Kurukshetra.^{xi}

The gay sex has also been depicted on the walls of the Khajuraho Temple^{xii}. There are also some situations in which men have been depicted as engaged in fellatio.

ANCIENT GREEK CULTURE

The earliest documented instances of same- sex relationships are available in the Greece. Even though such relationships were widely practiced and were not looked down upon but still these did not replace the institution of marriage between a man and a woman. According to creation reports, words **ERASTES (LOVER) and EROMENOS (LOVED ONE)** was used for an adult man and his young lover respectively. There was also a wide spread idea that homosexuality had pedagogic benefits and could also act as a popular means for population control.

ANCIENT ROMAN CULTURE

In Ancient Greece there existed a cult of people who worshipped the Goddess Cybele after undergoing castration. They wore female attires and referred to them as females. As per some scholars and historians this cult was the representative of transgender community in the ancient Rome.^{xiii} Many Roman emperors such Hadrian was renowned for their same sex relationships.

5. ATROCITIES DONE TO HOMOSEXUALS IN THE EARLIER 20TH CENTURY

In 1908, The Intersexes: A History of Similisexuality as a Problem in Social Life, was written by Edward Stevenson which was a 600 page defense of homosexu ality.^{xiv} It is considered as the first American defense of homosexuality. It contained classical examples in support of homosexuality.

Around the same time one of the earliest well known homosexual of The United States - Claude Hartland, wrote an account of his sexual history. It contained instances of his interactions with various doctors who termed his homosexuality as a disease but still failed to cure it.^{xv} In 1912, a scandal hit Oregon in which more than 50 prominent men in the community were arrested for engaging in homosexual activities. During the Second World War's Holocaust around 50,000 people were sentenced because of their homosexuality and thousands of them died in concentration camps. They were subjected to inhumane treatments and in some cases were also used for target practice by the Nazi Soldiers. The treatment given to homosexual women was not as gruesome as it was given to the homosexual men. The decade of 1980 in LGBT history marked the emergence of HIV which was earlier linked only to the gay men.

6. A WAVE OF ACCEPTANCE AND DEVELOPMENTS IN LATE 20TH AND EARLY 21ST CENTURY

In the late 20th and early 21st centuries, there has been an uproar for bringing marriage out of the clutches of heterosexuals and allowing even the homosexuals to enter into such unions. Legal recognition of same-sex marriages can confer various rights and privileges to the same –sex couples which are otherwise denied to them. The watershed moment came in the history in 2001 when Netherlands became first country to legalize same-sex marriages. As per certain official estimates at present 23 countries of the world the Netherlands, Belgium , Spain , Canada , South Africa

, Norway, Sweden, Portugal, Iceland, Argentina Denmark , Brazil, France, Uruguay, New Zealand , United Kingdom , Luxembourg , Ireland , Colombia , Finland, Germany, Malta , Australia ,Mexico^{xvi} and the United States of America.

THE LEGACY OF STONEWALL RIOTS

The pride marches began with the commemorative march organized by Craig Rodwell with respect to the Stonewall Riots. This march drew around 5000 people in the Sixth Avenue of New York City and was given a nationwide publicity. The Stonewall riots were a series of violent conflicts between gay men, drag queens, transsexuals, and butch lesbians against a police officer raid in New York City. The first night of rioting began on Friday, June 27, 1969 at about 1:20 am, when police raided the Stonewall Inn which was a gay bar operating without a state license in Greenwich Village. Newspaper coverage of the events was minor since at that point of time huge marches and mass rioting had become a common thing in the States.

PRIDE FLAG

The LGBT community is most commonly represented with the rainbow flags. There are a number of flags to represent subdivisions in the LGBT community, but the most commonly recognized one is the rainbow flag.

In the words of Gilbert Baker, creator of the rainbow flag, each color represents a value in the community. But later on two colors were removed and today the various colors in the rainbow flag represent the following ideas:

RED –LIFE
ORANGE -HEALING
YELLOW - THE SUN
GREEN - NATURE
BLUE –ART
VIOLET – SPIRIT

7. WHAT IS THE STATUS OF LEGAL PROVISIONS RELATED TO HOMOSEXUALITY IN INDIA EARLY TIMES?

As per the Section 377 of IPC,^{xvii} having sexual intercourse with any human or animal will make a person liable for an imprisonment of ten years along with fine if the sexual intercourse which has been done is against the order of nature.

This section of IPC was interpreted in such a way that it criminalized sex other than heterosexual penile-vaginal. This section was a part of Indian Penal Code since 1861 when it was drafted by Lord Macaulay and introduced in India.

NOW

Over the period of time it has been argued that this section has become outdated over the period of time and for the welfare of LGBTs and also to ensure them basic human freedom and dignity this section should be repealed to the extent that it does not criminalizes homosexuality. As a result this section is no longer applicable and homosexuality has been held legally valid.

8. CASE LAWS THAT SHAPED THE CURRENT LAW ON HOMOSEXUALITY NAZ FOUNDATION VS NCT OF DELHI:^{xviii}

In this case the constitutionality of section 377 was challenged by an NGO named NAZ Foundation. It was contended by the NGO that since it covers even the consensual sexual intercourse between two adults in a private place it is violative of fundamental rights guaranteed under articles 14,15, 19 and 21 of the Indian Constitution.

It was argued that this section goes against right to freedom and right to personal liberty and equality before law. It was argued that since section 377 criminalized sexual activity merely on the basis of sexual orientation so it is violative of Article 15 of constitution too.

It was argued by the Ministry of Home Affairs and Ministry of Health and Family Welfare that section 377 was constitutionally valid on the grounds of HIV prevention, public health, public morality and social disgust of the act.

In this infamous judgment delivered by the Delhi High Court, Section 377 IPC was declared as ultra vires to the Articles 21, 14 and 15 of the Constitution as it criminalized consensual sexual acts of adults in private. However, even after this judgment non-consensual sexual acts were declared to be a punishable offence.

This judgment led to a wave of jubilation amongst the LGBT community of India and was hailed by a number of activists from all over the India. By this judgment consensual sex between the two people of same sex was held to be legal throughout the territory of India.

SURESH KUMAR KOUSHAL & ANR VS NAZ FOUNDATION & ORS^{xix}

However certain so called public spirited individuals who were keen on protecting the dignity and morality of the Indian society filed a petition against the judgment of Delhi High Court in the Supreme Court of India.

The court held that Section 377 IPC did not suffer from the vice of unconstitutionality and the decision given by the Division Bench of the High court was legally unsustainable. The Supreme Court overruled the judgment of Delhi High Court and said that section 377 did not offend the provisions of article 14, 15 and 21 of Indian Constitution.

The Supreme Court added that there are two classes of people who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature and the court said that those who fall in the second category cannot argue that section 377 suffers from arbitrariness and irrational classification. It merely identifies carnal intercourse against the course of nature and provides punishment for the same.

The Supreme Court also reiterated the fact that a miniscule fraction of people in India form part of LGBT community and a very negligible number of people have been prosecuted for committing the offence against section 377 of IPC and hence there was not a just ground for declaring it unconstitutional. According to Supreme Court the mere fact that the police have used section 377 to perpetrate harassment, blackmail or torture on sexual minorities does not by itself assail the constitutionality of the said section.

This decision was highly criticized and led to huge uproar. The decision was termed by many as a step in the backward direction.

NAVTEJ SINGH JOHAR & ORS. V UNION OF INDIA THR. SECRETARY MINISTRY OF LAW AND JUSTICE^{xx}

The judgment delivered by the Supreme Court of India in this case led to a watershed event in the history of Indian legal atmosphere. This judgment struck down the section 377 of IPC by terming it as unconstitutional. It was delivered by a five judge bench consisting of Justice Dipak Mishra, DY Chandrachud, AM Khanwilkar, Indu Malhotra and Rohinton Fali Nariman.

This constitutional bench led by former CJI, Justice Deepak Mishra declared that even though the LGBT persons constitute a miniscule fraction of the country's population they cannot be deprived of their Fundamental Rights guaranteed by the Constitution by Articles 14, 15, 19, and 21.

It was also added that court has to keep in view the necessities of the needy and the weaker sections.

In the words of their lordships of Supreme Court, "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries.

Thus since this section violated Fundamental Right by Article 14, Article 15, and 21 the judgment given in the Suresh Kumar Kaushal case was overruled.

9. PROJECTION IN MEDIA

Bollywood cinema has often represented gay and queer people in a stereotypical manner. The gay characters have always been represented in a comical manner. There is some change in the way in homosexual characters are being represented in the modern day Bollywood Movies.

Hollywood and English cinema has accepted homosexuals as a main stream group and is making a number of movies and serials on this. Some of the notable projects include Call Me By Your Name, Moonlight, God's Own Country, Quantico etc. In the episodes of various reality shows like The Voice Australia and Italia Got Talent homosexuals have come forward and proposed live in front of the world. All these movies and shows have been well received by audience globally.

Contrary to this, in India the movies like Fire, Un-freedom and Dunnoy which specifically dealt with some aspects homosexuality were either banned or met with negative reviews from public and media alike.

At the global level nowadays even the well-known brands like Tiffany, Coca-Cola and Mc Donald's are advocating for homosexual rights through various advertisements which deal with some or the other aspect of a life of homosexual be it be crush, coming out or proposal.

10. CURRENT TREATMENT GIVEN TO HOMOSEXUALS IN INDIA^{xxi}

Following is a brief discussion on the few documented instances regarding treatment given to homosexuals in India which is in sharp contrast to the support shown at the pride parades.

CORRECTIVE RAPES

Vyjayanti Vasanta Mogli, a transwoman LGBT activist has said that transmen as well as the lesbians are the groups which suffer the most as the human rights for such groups in rural areas are non-existent. The rapes are often suggested as treatment for lesbians by babas.

SOCIAL BOYCOTT

Prince Manvendra Singh Gohil, who heads several initiatives to help LGBT people once shared a story of a guy who got a sudden rush of inspiration from a TV programme and decided to come out to his family. It didn't work. He lost his home, his job, everything.

PSYCHIATRIC TREATMENTS AND CORRECTIVE THERAPY

In another incident a homosexual girl was administered psychotic drugs which pushed her into depression and confusion. The doctor conducted torturous psychosexual experiments on her by forcing her to stay with other mentally ill women. The doctor wanted to see how she reacted to their interaction and sexual advances

11. CONCLUSION:

Even though the international organizations have declared homosexuality as something which is completely normal and natural and it is also a thing which has been in existence from the ancient times but still society has looked down upon homosexuals.

They have been denied equal rights and have been subjected to a hapless treatment for no fault of their own. The countries like USA, UK, Australia and lately India has adopted a liberal attitude towards homosexuality but in the middle east and Islamic republic's homosexuality is an unpardonable sin as it is considered to be against the order of nature as well as that of the religion. ISIS is also subjecting homosexuals to inhumane treatment and in some cases has even murdered these people in the most inhumane manner possible.

Today, homosexuality and queer identities are acceptable to a large chunk of the population of Indian youth than ever before but within the boundaries of families, homes and schools, acceptance still remains a constant struggle for LGBT people. Instances of corrective rapes, religious treatments etc. are quite common but society needs to understand that that homosexuality is natural and each and every individual has a right to live a free and dignified life as per the provisions of constitution.

Howbeit, it is not confined only to the families. Every year, a huge chunk of LGBT people face issues ranging from violence to unemployment and discrimination to poverty. Prejudiced sections of the society have issues with the way people from the LGBT community lead their lives.

But there is still a ray of hope. With the decriminalizing of homosexuality more and more people will come forward and accept as well as embrace who they are. This will lead to awareness amongst the people of all the sections of the society. Hatred will eventually fade away and love will blossom. Special courses about LGBT rights will further help the society in accepting homosexuals with open arms..

With the decriminalizing of Homosexuality the right to privacy, right to dignity and equality before law which were earlier denied to the LGBT people despite being the equal citizens of the country have been upheld and protected. Now an Individual irrespective of his or her sexual orientation will be able to make personal statements about his sexual preferences sans a fear of being penalized by the court of law.

The judgment delivered in the case of Navtej Singh Johar is a stepping stone towards the journey of giving homosexuals their rights but still India has a mile to go before it sleeps as far as this issue is concerned.

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