

Homosexuality in India: Social acceptance and human rights issue

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Abstract

In India, talking about homosexuality is like a sin, except few social activists and likeminded people almost everyone have their own thinking about such people and their relationships. It's like a taboo. There is either lack of awareness or people just don't want to accept the truth behind it. What is LGBT? Is it just a name given to a community and what this community consists of...aren't they humans? Doesn't they exist in society? Studies have revealed that being a homosexual is not by choice but have biological base. It's basically a feeling that comes from within a person as he or she feels trapped when they are not allowed to behave in a way they exactly want to according to their biological needs. It is in the nature, homosexuality exists not only in humans but also in animals. For these people to be a part of so called civilised society is like living in the hell. Due to so much of disapproval from the society they feel oppressed, depressed and many a times commit suicides too. These people too have right to live a dignified life and everybody has to learn to respect their identity their feelings. Some says it is mental disorder, some people even goes to the extent of saying that it is a new fashion to be a homosexual. But i wonder how people will go for a fashion that excludes them from being part of the society that gives them so much hatred disappointment, disrespect. Studies have now revealed that being homosexual is not always by choice.

Hon. Delhi High Court through its judgement in NAZ foundation case tried to restore faith of people belonging to transgender community in judicial system thereby being in favour of decriminalising section 377 of IPC. But the Hon. Supreme Court is not of the same view and has kept the section and its meaning as it is. This has again started nationwide debate whether same sex relationship be criminalised or not.

There is need to be patient and understand clearly that being a homosexual is not a drama or fashion but its biological and there may be other factotrs too as different scientists have found in their studies. Through this paper the author wants to discuss various aspects related to homosexuality and its effect on society.

Keywords: homosexuality, nature, criminalising, section 377, LGBT

Introduction

In simple words "homosexuality" means attraction towards same sex. Sexual activity of humans as well as animals is a natural act. It forms the basis of life on earth. Sexual activity is not just related to giving birth but it plays a major role in social, emotional, physical, mental and other biological needs of human beings. Now what is sexual orientation? According to American Psychological Association, "Sexual orientation is an enduring emotional, romantic, sexual or affectional attraction towards others... Sexual orientation exists along a continuum that ranges from exclusive heterosexuality to exclusive homosexuality and includes various forms of bisexuality" [1].

Though everyone may have their own interpretation of sexual orientation, the author believes that to have our own sexual preference is no crime. Studies have also revealed that being a homosexual is not by choice. According to an article published on Live Science, the study conducted in 2014 found that "there is gene, Xq28 on X chromosome and a gene on chromosome 8 are found in higher pevelance in gay men. Another study has revealed that being lesbian or being gay tends to run in the family. In 2012 a study showed that homosexuality may also be, because of epigenetic changes in marks on DNA that turns certain genes on and off and this epigenome can also be passed on from generation to generation" [2].

Scientists have also found that there are differences in DNA between gay men and their twin brother [3].

Homosexuality Exist Not Only In Humans But It Is Found In Animals Too

By far many research studies have proved that homosexuality exists in animals too. Many animals like dwarf Chimpanzees, dolphins, lions etc. practice homosexuality. In the words of Peter Boeckman, an Academician "One fundamental premise in social debates has been that homosexuality is unnatural. This premise is wrong. Homosexuality is both common and highly essential in the lives of a number of species" [4].

It is quite evident from these studies that homosexuality should not be termed as unnatural. In the most famous Indian book on sex called as kamasutra, a separate chapter has been dedicated to the topic of homosexuality where it is written that "it is to be engaged in and enjoyed for its own sake as one of the arts" [5].

Law and Homosexuality in India Section 377 (IPC). Unnatural offences

Section 377 of IPC criminalises same sex relationships and says: whoever voluntarily has carnal intercourse against the order of the nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of

either description for a term which may extend to 10 years, and shall also be liable to fine" [6].

It is very important to raise a question here that from where did this law come to India. Whether homosexuality was a crime in ancient India? Did ancient India consider homosexuality as against nature?

To answer this we should note what Goolam Vahanvati said before UN Human rights Council. "Around the early 19th century, you probably know that in England they frowned on homosexuality, and therefore there are historical reports that various people came to India to take advantage of its more liberal atmosphere with regard to different kinds of sexual conduct. As a result, in 1860 when we got the Indian Penal Code, which was drafted by Lord MACAULAY, they inserted Section 377 which brought in the concept of 'sexual offences against the order of nature'. Now in India we did not have this concept of something being against the order of the nature' it was essentially a western concept, which was remained over the years. Now homosexuality as such is not defined in IPC and it will be a matter of great argument whether it is 'against the order of nature'" [7].

In India homosexuality is a crime and that's what is the major concern of the author that How something natural which is also inevitable as in Act of God can be criminalised? In that case if a child who shows sign of homosexuality is criminal by law, just because he is born that way? A child does not know about the fashion or the societal norms either he or she is interested in sexual activity at that age. At that point of time they just feel uncomfortable which many a times they cannot even express, also if few of them talk to their parents about their problem some of them just misguide their own children due to the fear of the society and force them to behave as they appear. Law also believes in the saying that criminals are not born or no one can be a criminal by birth so criminalising same sex relationship law seems to be very contradictory and against nature.

Naz Foundatioin's Initiative for Rights of LGBT Community

It started when a Gay man's plea was rejected by NHRC. This man approached NHRC with a complaint that he was subjected to an aversion therapy by the doctor in the name of treating his homosexuality. It was told to him that the treatment includes counselling and drug administration. Also the identity of the drug was not disclosed by the doctor to him as he used to give him loose medicines, this treatment was meant to convert him in to heterosexual. He took those medicines for four years. Not only was this he was subjected to electric shocks and also homoerotic pictures shown to him. This all made his life even more miserable, he suffered a serious psychological and emotional change and felt highly disgusted and devastated.

On this NHRC said that it cannot do anything for this as practicing homosexuality is illegal in India. And also asked him whether he wants NHRC to take cognizance of something which is an offence.

At this point Naz Foundation challenged sec. 377 in Delhi High Court on the grounds that sec 377 of IPC violates Constitutional protection embodied in article 14,19 and 21 [8].

On 2nd July 2009 delhi high Court delivered its judgement legalising gay sex among consenting adults and held that the law which criminalises the same is violative of fundamental

rights [9].

It has been well submitted and explained by Mr. Shaleen Rakesh, (co-ordinator of msm project at Naz Foundation) in a letter to NHRC, regarding dismissal of complaint for medical treatment of homosexuality, that Section 377 does not criminalise same sex relationship instead says that carnal intercourse against order of nature is a criminal act, and the same has been interpreted to include anal sex oral and some other forms of sex.

Now a very important question that author wants to arise is that who is going to see what form of sex two people are enjoying in their privacy. Isn't it an invasion of their privacy and who gave them right to do so. Also, he went on stating that these forms of sex can be practised by heterosexuals as well with their respective partners. This clearly shows that there is lack of understanding about homosexuality.

It has also been proven scientifically that sexual orientation does not depend on gender and varies genetically [10].

Provisions under Indian Constitution

Right to equality

Equality before law and equal protection of law. In case of homosexual this equality right does not exist at all. People around them do not treat them equally instead they are either topic of fun or hatred. Since their relationship does not have any meaning in the eyes of law they many a times feel hesitant to go to police for any kind of help because what general public do to them police does even more worst and it has been reported too. There was this important piece of news posted on India Today on 19th October 2015 with headings, "Gays raped, blackmailed by organised gangs and police in India" [11]. It was reported that an IT professional who is gay and the same fact was known to few men who were constantly keeping an eye on him and one day while he was returning from office at about 11 pm, these men bullied him and forced him to do oral sex also threatened that denial will lead to a police complaint stating that he is a gay.

This shows how section 377 is being misused and the term equality under article 14 seems to be losing its meaning in full entirety.

Article 15

No discrimination on the basis of sex. Also Delhi High court while delivering its judgement in Naz foundation have presented precedents where the term sex has been interpreted to mean sexual orientation as well. The Court referred to the case of Toonen v. Australia where the Human Rights Committee considered that the Tasmanian criminal code criminalising sexual relations between men is violative of article 2 of International Covenant on civil and political rights. And stated that "We hold that sexual orientation is ground analogous to sex and that discrimination on the basis of sexual orientation is not permitted by article 15. Further, article 15(2) incorporates the notion of horizontal application of rights. In other words, It even prohibits discrimination on the ground of sexual orientation is impermissible even on the horizontal application of right enshrined under Article 15" [12].

Right To Life And Personal Dignity: Article 21

Where is life for homosexuals in India? It is very easy to talk on any topic these days. Everyone has right to express him/herself. But what is the effect of such expression on a

particular community. In India homosexuals hide from the society they are forced to enjoy their relationship in isolation. Even in heterosexual relationship it's not always about sex. The partners exchange other emotions and feelings too. It is always supposed that your partner understands you better than others. So why the homosexuals can't go shopping together, sit in the park or do their daily activities together? They cannot. Because people around them will either make fun of them or demean them. Then there is one question from those who says that homosexuality is becoming fashion among youngsters now a days...why these youngsters will choose such a life style or fashion which gives them lots of sufferings at the hands of the society in which they have to live.

Due to non-acceptance from the family and friends, these people starts living in isolation and this eventually leads to depression. There are many stories to state that how these people commit suicide to end this horrible journey of life, where their parents do not understand them and instead of becoming their support and strength they also leave them to get exploited at the hands of the so called society. one of the story repoted by times of india ia quiet alarming with the heading "high rate of suicides haunts LGBT youths" ^[13] it was a sad story of two men who while being with family were trying hard to be happy and to make their life as normal as others were forced by their family to leave each other. One he got a call from mother of his male friend who told him to leave his son and on top of that told him to convince him to get married. The very thought of losing the only person on earth who understands him led him to commit suicide. What was his crime? What harm did he do to others? Now are the parents happy after losing their son. Is this the choice of parents that if their children are homosexuals it's better to lose them forever than accepting them as they are?

Human Rights of LGBT and International Laws

International human rights law lays down rules for all the member nations, in case of failure of human right address and protection issue at domestic level the same is to be tried at International level by following all due procedures and formalit Human rights are rights which are inherent in all of us by birth. UN Fact sheet volume 6 in" Internentional human rights law and gender identity" It has been clearly stated that human rights are available to all of us equally irrespective of nationality, place of residence, sex, national or ethnic origin, color, relegion, language, or any other status such as age, disability, health status, sexual orientation or gender identity or economic social or cultural rights (such as right to work, social security and education) are indivisible, universal, interrelated and interdependent" ^[14]

Also it has been clearly stated that "there is no legality in discriminating LGBT People, as right to euqlity and non-discrimination are the core principles of human rights"

"Amnesty International believes that all people regardless of their sexual orientation or gender identity, should be able to enjoy their human rights. Although the Universal Declaration of Human rights does not explicitly mention sexual orientation or gender identity, evolving conceptions of International human rights law include a broad interpretation to include the rights and the protection of the rights of LGBT people around the world ^[15].

Recently, Justice Sikri made an observation in New Delhi that Courts can ignore Indian laws and look up to International

laws when it comes to upholding human rights ^[16].

Position of Law in U.K.

The creator of the said law (Section 377) itself has changed with the time as U.K. has amended the law by The Sexual amendment Act 1967. The said act has decriminalised private homosexual acts between men aged over 21, while there are heavy penalties for such act in public. It's been 49 years they themselves have amended the law who created it so what seems to be the problem with India Government? Why are we still following it and making lives of our citizens miserable.

Reported Stories on Plight of Homosexuals

There are many reported stories on the plight of homosexuals in India. Usually while performing their daily activities they stick to the norms of straight people and do not want to reveal that they are homosexuals. As they live in constant threat of losing their heterosexual friends not only that also the fear of getting bullied at times on revelation of their homosexuality. Also it has been reported that as soon as their hetrosexual friends come to know abot their sexuality they star behaving with them as untouchables and most of the time part their ways, as they fear of getting identified as one of them by the so called civilised society if they remain keep their company.the hetrosexuals also fear that what if at one point of time their homosexual friend get attracted to them.

Those who mock at the homosexuals symbolises them as man with femine characteristics and do not consider them as men. Many a times when families come to know about homosexuality of their son or daughter they force them to get married to a heterosexual a lead a life which seems to be normal to them without thinking about their children's feeling. The very feeling of leaving their homosexual partners makes their life more devastated and most of the times they end up committing suicides.

The family members should also think of the other person to whom they forcing their homosexual children to get married to. These parents not only affects their own children's life but also the one whom get married to them.

In 2015 we came across the similar issue which was reported by Indian Expressin an article published on April 21, 2015 by Pritha Chatterjee and Sarah Afeez. With atitle "He is gay, She was in love. He could not change, she could not live" this is a story of a husband and wife both happens to be doctors in AIIMS Soth Delhi. They were married for 5 years. soon after their marriage wife discovered that her husband was homosexual and tried alot to save the marriage but the husband could not change himself, situation became more worst and she landed up committing suicide and left a suicide note behind stating about her plight ^[17].

As discussed earlier by the author that the homosexuals hesitate and fear to reveal their identity to others, nobody actually comes to know till a big loss like this takes place. As soon as this revelation takes place, many lives associated with such person gets affected.

Another horrifying story reveals that being a homosexual you are deprived of right to privacy your life is no more yours. Once if it is somehow revealed or heard that a person is gay the other get right to enter in their life and ruin them completely. This happened in a case of of a Professor of Indian Literature from reputed Aligarh Muslim University in Uttar Pradesh and the same was reported by Jason Overdorf

on www.newsweek.com on 02/12/20 16.

He was found dead, as few days before his death people dared to enter his house with video cameras when he was privately indulged in asexual activity with a local rickshaw puller. Also he was humiliated and set aside by the society. He was suspended from his teachings at the University, terming his act as immoral sexual activity.

It was reported that poison was found in his blood and police declared it to be a suicide. Though his mobile phone was missing and ATM card used and also there were some odd circumstances by which one cannot say at once that it was a suicide, whatever it was a life was completely devastated, ruined and at last taken away.

Few important questions that author wants to raise here is that, who gave them right to interfere with his privacy?

What people have to do with personal life for that matter with anybody's personal life? What harm he did to any one? Why these people can't be tried for abetment of suicide?

These questions need immediate answers and necessary steps should be taken before more such cases are reported.

Effects of criminalising same sex relationship

1. Without doing any harm to others they are forced to feel guilty and this guilt will isolate them from everyone.
2. It will create hatred for the people who tease them or do not accept them, which may result in to actual criminal act which may range from heated arguments to assaults and even to murders.
3. These people might not feel as the actual citizen of the country as they might feel suffocated to survive in a country where their rights are not well protected in such case anti-social elements may misguide them and allure them to either become a terrorist or a naxalist.
4. Many of them might can't take all this and choose the easiest solution of committing suicide.

Suggestions

- Section 377 needs to be removed as consensual private relationship between two persons irrespective of their gender cannot be a crime, or the law makers have to redefine the term "crime".
- There is a need of judicial activism.
- Politics should not be done to outshine the opposition at the cost of somebody's life and immediate action should be taken.
- People should understand that every relationship has its own importance humans can keep pets and get attached to them, then how do we even think of criminalising a relationship between two humans just because of same sex.
- We should not forget that no one can be a criminal by birth and homosexuals are born like that only.
- Societal sensitivity towards their own species is required if humans can love animals and live with them care for them, then there should not be any hesitation for accepting homosexuals as members of the civilised society.
- Already we have adopted almost every good legislation from around the world similarly, we can learn from the countries who have legalised same sex relationship, India won't be the only country to do so. Also it does not mean that the countries who have legalised homosexuality are all moral less or characterless and India is only country where character and morality is given importance.

- Sex education should be given in schools a clear concept of sexual relationship is needed.

Conclusion

Now it's high time these so called civil society should change their mind and perception about homosexuals. They should have all the rights to enjoy their relationship without any fear or sense of guilt. Section 377 needs to be removed as soon as possible because a law that discriminates one section of human beings from others just on the basis of their sexual orientation is not only vague but also unconstitutional.

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