

THE CHANGING PERSPECTIVE ON HOMOSEXUALITY IN INDIAN CULTURE

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Abstract

In 2018, a ray of hope finally broke through the lengthy veil of prejudice that has surrounded LGBTQ people in India. The historic decision that decriminalized consenting gay conduct was a major victory in the fight for equality. But it's important to understand that, despite its significance, this legislative shift is only the start of a much-needed shift in public opinion. LGBTQ people have suffered greatly, sometimes even from inside their own families and society at large. The community has been forced to the periphery of understanding and acceptance time and time again.

Although the Indian Penal Code, 1860 formerly had a particular section that dealt with same-sex desire, the historic Navtej Singh Johar case compelled an analysis of these antiquated statutes. By decriminalizing consenting same-sex sexual behavior (Section 377, IPC, 1860), the Honourable Supreme Court made a daring move. It's important to remember that section 377 of IPC, 1860, still applies and punishes nonconsensual intercourse. Even if legalization is an important step, it is not enough to provide LGBTQ people the social and legal respect they are due. This research paper aims to offer a perceptive synopsis of the current situation that this minority group is facing. It aims to spread knowledge and debunk the damaging myths that have supported their marginalization. This research is about to illuminate the difficulties faced by people in this community by utilizing an abundance of social data and behavioral patterns. By doing this, we hope to promote a more accepting society and highlight the reality that these persons are just like everyone else and should be treated with respect and dignity they are neither unique nor odd.

Keywords: LGBTQ, Same-Sex Relations, Homosexuality, Indian culture, Socio-Legal Justice

INTRODUCTION

The term "human being" refers to a member of the "homo sapiens" species, which suggests that a person is more developed mentally than an animal. It is, in essence, all men, women, and children who can think, which distinguishes them from the animal kingdom. Moreover, it might also link to a "natural person," that is, a person having a unique personality as opposed to a "legal person." All people are included under the broad phrase "human being," Which makes no distinction between persons depending on their sexual beliefs. In our constitution, Article 14, ensures the right to equality before the law for everyone.¹ Unfortunately, earlier a particular clause in the Indian Penal Code² that made same-sex relationships illegal for a whopping 158 years. Even after the highest judicial system of India (Supreme Court) ruled in 2018 that homosexuality is unconstitutional, many in Indian culture still believe that homosexuality is wicked or even a mental illness. On the other side of the coin, several progressive nations, like Norway, Denmark, Finland, and Belgium, firmly support same-sex marriage and fiercely reject any discrimination based on sexual choices. In Indian society, opinions about same-sex weddings or relationships that are consensual have gradually changed. Our goal in writing this article is to clarify the present situation of LGBTQ people in Indian society.

RESEARCH OBJECTIVES

To analyze the current state of affairs for LGBTQ people, this research paper aims to answer the following important questions:

1. Is it intrinsically abnormal to be gay?

¹ The Constitution of India, Art.14.

² The Indian Penal Code, 1860 (Act 45 of 1860), s.377.

2. Does the LGBTQ community's rights get in the way of the Indian Penal Code?
3. What are the elements that have contributed to the rise of homosexuality?
4. What are the consequences of self-identifying as gay?
5. How has the judiciary contributed to Section 377's decriminalization?
6. What is the current situation in Indian society for LGBTQ people?



DEFINITION OF SEXUALITY AND HOMOSEXUALITY

Sexuality is different and can evolve over time. Accepting your sexuality may be both freeing and rewarding. It's a crucial aspect of what you are, and there's no definitive answer. Accepting those who are different may be difficult. It includes your sexual experiences, attitudes, wants, and interactions with other individuals, irrespective of the number of sexual encounters. It is a distinct and personal component of one's personality, and identifying it may be an exciting and fulfilling experience. Sexuality has different types but mainly it is divided into two terms heterosexuals and homosexuals.

Heterosexuals are most people who are drawn to the opposite or different sex, for example, a man attracted to a woman, and a girl/woman who likes a boy/man is called "straight" and the other term is heterosexual.

Homosexuals, any human attracted to people of the same gender romantically and sexually is considered to be homosexual; this includes both girls and boys who are attracted to each other. It's an essential component of the LGBTQ spectrum, which also includes bisexuals (attracted to both genders), lesbians (women attracted to women), homosexual males, and transgender people (those whose gender identification doesn't fit into standard classifications). It is in the LGBTQ spectrum, where "lesbian" refers to women who are attracted to other women, "gay" to men who are drawn to other men, "bisexual" who has physical affection to both genders and "transgender" to those whose gender identity defies conventional labels. It is critical to recognize being homosexual is a sexual inclination and not a sickness or psychological issue. The necessity for acceptance and knowledge is emphasized that misconceptions can result in discrimination and unfavorable attitudes. It is important to stress that preference for the same sex is not a sickness or mental problem, but rather a normal sexual inclination. It is required to debunk these myths on the way to promote tolerance and acceptance in society.³

³Jane P. Sheldon, Carla A. Pfeffer *et.al.* (eds.), "Beliefs about the Etiology of Homosexuality and about the Ramification of Discovering its Possible Genetic Origin," 52 *Journal of Homosexuality* 3-4(2007).

FACTORS LEADING TO HOMOSEXUALITY

Understanding the basic causes of homosexuality is critical for clearing up misunderstandings. While some mistake it for a mental disease or a fascination with sexual behavior, it is critical to remember that both internal and environmental variables influence one's sexual orientation.

INTERNAL FACTORS:

Internal components include biological and psychological aspects. Considering the root cause of homosexuality suggests that this is a permanent component of a person's character, rather than a simple choice or lifestyle. Research has indicated that perspectives about homosexuality are connected to perceptions about its origins. Positive attitudes are frequently related to the assumption that it has genetic foundations, whilst negative perspectives are linked with this that it is a human judgment.⁴

EXTERNAL FACTORS:

In addition to internal elements, external factors play a role in the growth of homosexuality, demonstrating that, it is not simply influenced by biological or mental factors.

1. Lack of Masculinity: People may classify someone as gay because they lack masculinity, according to stereotypes. Yet, such judgments are unjust and erroneous. Those who go through prejudice due to their perceived masculinity may experience despair and a drop in self-confidence. Individuals who fail to establish gender standards may encounter rejection and negative labeling, resulting in mental pain and self-doubt.

2. Lack of Faith in Opposite-Sex partnerships: Some people choose same-sex partnerships after having terrible encounters in opposite-sex associations, which can lead to resentment or separation. Such judgments are frequently the result of previous maltreatment by companions of other sex. In such instances, liking the same sex serves as safety and sanctuary.

3. Childhood trauma: Unfortunately, childhood sexual assault can leave permanent scars. When children are abused by older people, it can result in significant emotional damage. This trauma may alter a child's sense of sexuality as a whole, aiding in developing a sense of homosexuality.

4. Parental Attitude and Community Rejection: Unfair conduct toward children by families can have serious consequences. For instance, suppose a certain gender is preferred over the other in a home, the ostracized child may feel rejected. This uneven treatment can cause emotions of fear and shame about one's own identity, which may contribute to homosexuality.

To summarize, homosexuality is impacted by a complex interaction of internal and environmental influences, and it is critical to go past basic preconceptions and prejudices in a bid to foster understanding and acceptance.

THE CHALLENGES FACED BY THE HOMOSEXUALS IN INDIA

Individuals in the LGBTQ community face enormous problems and obstacles as a result of social prejudice based on their sexual orientation. These problems cause several difficulties:-

MARGINALIZATION

Marginalization is a common issue for homosexuals, specifying that they are treated as outlying or excluded members of society. On occasion, society rejects to admit the reality of their existence, making it challenging for them to flourish as people. They face stigma and unfavorable views, which impede their equitable involvement in Multiple facets of society. This marginalization commonly starts with their households, where they are nurtured. According to research, around 8% of transgender individuals In America, many people have been homeless in the last year, while 6% of African-American sexual minorities have had housing instability. A frightening 71% of sexual minorities become homeless as adults, with 20% experiencing homelessness before the legal age.⁵

⁴Samarghandian, Saeed, et al. (eds.), "Honey and Health: A Review of Recent Clinical Research." 9,2 *Pharmacognosy Research* 121-127(2017).

⁵ Bianca D.M. Wilson, Soon Kyu Choi et al. (eds.), "*Homelessness among LGBT Adults in the U.S.*", available at <<https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>> (4th January 2022)



DISCRIMINATION AND VIOLENCE

It is unusual to discover a homosexual who has not been harassed or mistreated in school, typically by peers. LGBTQ people face harassment in a variety of contexts, including schools, universities, and the streets. Lesbians, homosexuals, transgender, and bisexuals endure sexual violence at a higher rate than heterosexuals. According to the Disease Control and Prevention (CDC) Agency:-

- 44% of lesbians and 61% of bisexuals experienced rape, physical abuse, or bullying by an intimate companion, whereas just 35% of straight women had.
- Gay and bisexual guys are more likely than heterosexual men to encounter intimate relationship violence (26% and 37%, respectively).
- 40% of homosexual men and 47% of bisexual has lived sexual assault, excluding rape, as opposed to 21% of heterosexual men.⁶

OUTCASTED AND STIGMA

LGBTQ people endure rejection from both their families and society. Being homosexual or lesbian in society sometimes leads to marginalization and loneliness. Especially within their respective families, LGBTQ people are typically disregarded or rejected after their sexual preference becomes apparent.

HOMELESSNESS

Homelessness is a serious concern for LGBTQ. In cities such as New York, data stated that around 40% of the LGBTQ community is homeless and lives on the street. People are pushed to leave them just for their sex orientation, and residential centers for domestic violence may turn them aside. These homeless people very often get addicted to drugs, engage in sexual misconduct, and face financial difficulties.

PHYSICAL CHALLENGES

LGBTQ people have complicated body image demands as a result of socialization. They face competing aesthetic requirements from mainstream and gay cultures, with some rejecting conventional beauty norms and others adopting alternative values. Queer men worry about exaggerated masculine appearance. Some believe that physical fitness allows them to recover control of their identities and bodies.

PSYCHOLOGICAL CHALLENGES

The continual rejection that this minority group has faced always has a damaging impact on their mental health. When they seek friendship or assistance, they frequently face criticism from loved ones, society, and even colleagues. This rejection usually causes mental health problems, including despair. Some people engage in self-harm or consider suicide, demonstrating the frequency of suicidal ideation within the LGBTQ population.

⁶ Human Rights Campaign, “*Sexual Assault and the LGBT Community*, HRC.ORG,” available at <<https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>> (4th January, 2022)

In conclusion, the LGBTQ community has significant obstacles due to social prejudice, and tackling these concerns is critical to developing a more welcoming and diverse society.

THE RIGHTS OF THE LGBTQ COMMUNITY IN INDIA

The LGBTQ community has faced prejudice from society and persecution from the authorities because of Section 377 of the IPC, 1860, as it has been in effect for centuries. People were subjected to persecution because of sexual orientation or conduct for live-in or any other reason. The Buggery Act,⁷ which classified same-sex relations as unnatural sexual conduct and declared it to be against God's will, served as the model for Section 377, of the IPC, 1860, which was first authored by Thomas Macaulay.

The Offences Against Person Act, 1828, which replaced the Buggery Act⁸ in 1828, expanded the definition of unnatural sexual actions and, regrettably, included homosexuals in the category of unlawful sexual behavior. This development aided in the prosecution of rapists. Acts against the natural order are referred to as unnatural offenses and are punishable under the Indian Penal Code, 1860, section 377 to determine if homosexuality is included in this group, it is necessary to interpret the term "order of nature." It represents things that are seen as typical and developing organically without human intervention. Any other type of carnal intercourse, including anal or oral, is classified as unnatural under Section 377 of the IPC, 1860, which regards sexual contact Between an adult male and a woman as normal.

The ideology of what is considered unnatural or natural has developed over time. Consider polygamy. preceding the introduction of the Hindu Marriage Act 1955, polygamy was commonly tolerated and not deemed abnormal. However, women's suffering from polygamy led to its eradication in the statutes. So, if behaviors like polygamy, which were formerly considered unnatural, can evolve into natural, it marks the question of why same-sex partnerships are still perceived as abnormal. Sadly, it took over 158 years from the Indian Penal Code 1860's commencement to legalize consensual sexual behavior between gays.

CONTRIBUTION OF THE INDIAN JUDICIARY TO THE PROGRESSIVE STATUS OF LGBTQ



The Indian judiciary has established itself as an upholder of equal treatment and justice as it works to decriminalize Section 377 of the IPC, 1860. The legislative trajectory, distinguished by progressive decisions and a dedication to rights for everyone, has had a tremendous influence on the existence of LGBTQ people. While total decriminalization of Section 377 of the IPC, 1860 is still a work in progress, the court has had an essential significance in creating a more inclusive and egalitarian society.

⁷The Buggery Act, 1533 (25 Hen. 8. c. 6).

⁸*Ibid.*



a) The Naz Foundation case (2009) (I):⁹ This important lawsuit laid the groundwork for challenging the Indian Penal Code, 1860, Sec. 377. The High Court of Delhi held that Section 377 of the IPC, 1860 violated basic constitutional rights. It underlined the equality rights (Article 14)¹⁰ the prohibition of discrimination (Article 15),¹¹ and the constitutional right to life and personal liberty (Article 21)¹². Our Constitution applies to all persons, regardless of their sexuality. The decision represented a historic turning point in recognizing that consenting relationships between homosexuals should not be criminalized.

b) The Suresh Kumar Kaushal v. Naz Foundation case (II):¹³ Despite the first win at the High Court of Delhi,¹⁴ The legal path was hampered when the Supreme Court of India reversed the verdict and recriminalized Sec. 377. The development emphasized the hard struggle for LGBTQ rights while also fuelling the desire of activists and solicitors to continue fighting.

c) National Legal Service Authority v. UOI:¹⁵ This decision was another watershed moment when the Supreme Court upheld the fundamental liberties of third-gender people and acknowledged their equal status as their constitutional rights. The Court's focus on subjective sex over the biological factor in gender identification reflected a gradual trend in legal thinking.

d) Puttaswamy case:¹⁶ The bench reaffirmed right to privacy, which is acknowledged as an essential component underlying the Indian Constitution, was enhanced in this case. The verdict confirmed that irrespective of especially those who identify as LGBTQ, also have the right to privacy. It emphasized that the State's job is to defend LGBTQ people's rights whatever they decide about their relationships and personal lives, preserving their freedom to choose freely.

e) Navtej Singh Johar Case:¹⁷ This writ petition questioned the validity of Section 377, which effectively criminalizes consenting same-sex relationships between adults. The petitioner said that having the ability to select an intimate partner constitutes an aspect of the right to life and privacy which is protected by Article 21. The five-judge bench ruled with unanimity that Section 377, of the IPC, 1860 is unlawful since it applies to same-sex relations between consenting adults. Additionally, it was discovered that this clause discriminates against LGBTQ people based on their sexual orientation, which violates constitutional rights given in Articles 14 and 15. The Court observed section 377, of the IPC, 1860 restricts LGBTQ individuals from realizing their identity and infringes upon Article 19 of the Constitution. Consequently, the Court held that Section 377 was unconstitutional and decriminalized consensual same-sex activity among adults.

f) Madhu Bala v. State of Uttarakhand & Ors.:¹⁸ In this decision, the Uttarakhand High Court acknowledged the freedom of people in same-sex partnerships to dwell together without legal restrictions. The Court underlined the fundamental right to liberty, which includes the ability to select a spouse and cohabit. It emphasized the notion that voluntary partnerships among grownups of identical sex ought not to be governed by the law.

These legal monuments reflect the Indian judiciary's developing view on decriminalizing Section 377. While problems remain, these judicial triumphs have paved the way for wider recognition and equal consideration for all, who identify as LGBTQ, reinforcing the judiciary's position as a defender of human dignity and fairness.

⁹160 Delhi Law Times 277.

¹⁰The Constitution of India, Art.14

¹¹The Constitution of India, Art.15

¹²The Constitution of India, Art.21

¹³Civil Appeal No. 10972 of 2013.

¹⁴Supra note 10.

¹⁵2014 INSC 275.

¹⁶K.S. Puttaswamy v. UOI, Writ Petition (Civil) No 494 of 2012; (2017) 10 SSC 1; AIR 2017 SC 4161

¹⁷AIR 2018 SC 4321.

¹⁸Habeas Corpus Petition No. 8 of 2020.



CONCLUSION

In closing our consideration of homosexuality, its consequences, and the critical role of the judiciary, it is quite evident that the Hon'ble Courts had a very crucial role in equating the status of LGBTQ people and their heterosexual counterparts. However, it is vital to note that just declaring a provision unlawful or allowing same-sex people to coexist does not constitute the ultimate solution. The societal shame tied to homosexuality must be removed. The constant hunt for equality can only be completely won when society fully welcomes LGBTQ people and treats individuals with the same degree of acceptance as heterosexual people.

This ongoing cultural denial has serious consequences for homosexuals, frequently leading to a variety of mental health difficulties. Society must recognize that 'being homosexual is neither an illness nor a lifestyle choice; it is purely a sexual inclination.' As an outcome, we must accept persons interested in the same gender in the same way that we welcome those drawn to the other sex. There is nothing fundamentally amiss with this, and it is past time that we challenged and changed our conventional beliefs. Embracing diversity and cultivating acceptance are critical steps toward a more comprehensive and empathetic society.

SUGGESTIONS

The nation has experienced a rising amount of evidence of norm change toward increased acceptance as well as encouragement for LGBTQ persons, which is supported by data. Activists and legal efforts have been effective in encouraging same-sex marriage and respecting various gender identities in emerging nations. Support should be given to self-identified activist organizations and those utilizing LGBTQ rights language. International and national legislation continue to be crucial tools for building norms of fairness, inclusion, and acceptance for all sexualities and gender identities. Interventions and campaigns frequently prioritize human rights, pushing for LGBTQ inclusion within current systems rather than progressive change.

Concentrating on human rights seeks to shift norms toward more inclusive societies. These initiatives frequently argue for the important structural change. A queer approach challenges heteronormativity by allowing for more diverse manifestations of sexual orientation.