Article

Homosexuality: Reserved Acceptance and Incomplete Social Change

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I N F O

A B S T R A C T

In a time where a person's social behaviour is greatly influenced by their relational social identity, gender is an integral factor in determining one's self-concept. With the concept of heteronormativity being questioned and a movement towards a more gender-fluid and non-binary acceptance of gender, it is important to take cognizance of the inception of a shift where the lines bordering the concept of sexual orientation are blurred. As we move from the black and white to more grey areas in defining and differentiating between sex and gender, the avenues of research further increase with the widening of the ambit but in lieu of the purpose of this research, this paper will specifically tackle the issue of Homosexuality. The recent changes in legislations and laws prevailing in the country has brought this issue to the limelight as well as caused a lot of controversy. This paper aims to critically analyse and scrutinize the history of homosexuality in India from perusing the ancient Hindu texts which iterated the sexual lifestyle of individuals to inspecting modern laws currently in practice, all this to holistically determine how homosexuality became a taboo and is a source of scorn for those of orthodox and dogmatic ideologies. This paper also contains an empirical part where a survey was conducted to help the readers get acquainted with the mindset of a sample se of the population which in specific ways could represent the society as a whole.

Keywords: Social Identity, Heteronormativity, Gender Fluid, Sexual Orientation, Legislations, Homosexuality, Taboo, Hindu Texts, Modern Laws

Statement of Problem

Homosexuality is a reserved legal change and an incomplete social change.

Justification

In spite of all the positive changes in the right direction towards the normalisation of alternative sexual orientations, especially homosexuality, the approach towards the acceptance of such individuals has been met with prejudice which needs to be addressed. Furthermore, even though laws criminalizing homosexual relations have been repealed, there are still certain important rights which are yet to receive recognition.

Methodology

For the purpose of this research work, the researcher has cardinally depended on empirical and doctrinal modes of research. This has been done keeping in view the sociolegal nature of the topic as also the need to incorporate public opinion in the same.

Primary data has been collected by way of a survey that has been conducted by online medium and channels of

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communication, secondary data has been collected by extensive referencing of books, articles, research papers, published pieces of legislation and data published by authorities. Data collection has been wholly through internet and online modes.

Survey method has been used for data collection. Twenty respondents were sampled out and selected for the purpose of this study. Purposive sampling has been conducted to determine the sample sets of population. Brainstorming method was used to decide on the nature and the number of questions and it was compiled into a questionnaire that was administered to our respondents from sample population set. Video calling and interview was used to elicit responses and carry out the data collection to perfection.

Ancient History

It is a common belief that homosexual relations and homosexuality in general has stemmed from the western civilization thriving in India and finds its root cause in western culture. However, this is a huge misconception since same-sex relations have existed in India since ages and is not a notion alien to our civilization or culture. It is ironic to note that it was homophobia and heteronormativity which were exported to India with the colonization of the country. Same-sex love has existed in Indian society and culture and this can be seen if one were to do a literature survey. Ancient Hindu scriptures like the Vedic literature as well as the two greatest epics of Hinduism the Ramayana and Mahabharata have openly mentioned and celebrated homosexual acts. Hence, Homosexuality has an ancient history in India. The Rig Veda, which dates back to 1500 BC, refers to the pre - patriarchal period where there was a structure of thought, which was triadic, anti - binary, focused on female sexuality.

Hence, prior to the Vedic period, sexuality was founded on pleasure and on fertility, but not on procreative or reproductive nature, that is, the ability to produce off spring. The temple structures and remnants found in diverse parts of India evidently proclaim the pleasure principle of sexuality. On the question of ayoni or nonvaginal sex, Hindu Law seems to deny directly the Epic and Puranic stories. It tends to prohibit nonvaginal sex, whereas the sacred stories often show heroic children springing from such sex.

With the intensification of Vedic Brahmanism, patriarchal social systems developed and procreative sexual nature became protuberant. Phallic discourses appeared and pleasure became excluded from female sexuality. The emerging dominance of the hetero-patriarchal social order started suppressing expressions of same-sex erotic desires and behaviours and considered them devaluated. Even after Vedic Brahmanism made its presence felt, homosexual and transgender cultures have coexisted with

obligatory heterosexuality in the Indian culture.The Kama Sutra is universally known as a classic, premodern work on sexuality. It presents a realistic picture of the contemporary sexual mores. It includes homoerotic description of both female and males which are described in the chapter on Auparishtaka. The Kam Sutra specifically caters for all inclinations. The book is instructional and not prescriptive. It says that one should act according to local customs and one's own inclinations and desires. It specifies three types of genders pums prakriti, stri prakriti and tritiya prakriti man, woman and third sex. The third sex was further broken down to various categories which included manly and effeminate gays and manly and effeminate lesbians. Despite recognizing homosexuality as a natural universal constant, the Kam Sutra does not consider homosexuality to be the ideal natural dharmic path. Hence the contradiction.

Though homosexuality was considered a part of sexual practices it was not always well accepted.

How Homosexuality became a Crime in India

This has its roots in the Judeo-Christian condemnation of non-procreative sex.[2] Shaming all non-procreative sexual activity has been a vital tool in upholding the heteronormative patriarchy. With the start of British colonization, the destruction of the images of homosexual expression and sexual expression in general became more systematic. The influence of imperialist Britain on Indian sexuality took the form of repression and domination. The Victorian puritanical value system had strong reproductive assumptions about sexuality. This value system got reflected in the statutes drafted and adopted in India during that period as per Section 377 of the Indian Penal Code, drafted in 1860.

With the increase in scientific and medical expertise with significant development in the field of biomedical science, anatomical understanding of the body came to be closely associated with the Victorian morality. The colonial rule in India was an accumulation with the prevalent standards of morality and perceptions of sexuality in the Victorian world. The traditional, oriental, societal, judgemental pattern collapsed under the newfound system that was idealised as western- with the increasing tendency of westernization by different social classes. Subsequently the spectrum of sexuality got restricted to a prevalent heteronormative structure with exclusion of homosexuality as observed in one of the colonial legislation section 377 of the Indian penal Code.

Contemporary Situation- Road towards Decriminalising Section 377

As we study self-identity there is a term which constantly pops up which is "othering". "other" is a counter part to self is refers to the neglected who are situated at the

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margin of the power structure. The creation of otherness happens when persons are classified into two categorical groups; them and us. The creation of this outgroup is thus due to its opposition to the ingroup. Hence, social othering happens when one group excludes other from society in terms of their identity, so it is a consequence of social exclusion. The ingroup-outgroup conflict in terms of a society non-inclusive of homosexuality is found in the stereotypical tendencies, homophobic thought process and ultimately results in practices of social exclusion. From the study, it is evidently noticed how homosexual couples or people who identified their mutual consent beyond societal consideration are found themselves to be objects of ridicule and humiliation. The prevailing normative structure has further resulted in rigidification of this "grouping" based on sexual orientation. Liberal ideologies and successive advancements in recognition of rights of homosexual people induced a wave of gender activism: this time not a feminist struggle against patriarchy but a struggle to get recognized. In 2001[3], an NGO called the Naz foundation working for the rehabilitation of individuals with HIV filed a Public interest litigation against the NCT of Delhi in the Delhi High Court challenging the validity of section 377 of the IPC. Significantly, the High court gave a verdict stating some portions of the section are ultra vires in nature and violated the fundamental rights as per the constitution.Later in 2006, the NGO filed a special leave petition before the supreme court demanding the decriminalization of homosexuality by repealing section 377. A number of appeals were filed to the supreme court against the verdict of the High Court. In 2012, the ministry of home affairs gave a note to the supreme court expressing dissent towards decision of the high court, but later, surprisingly, the central government changed its stand and supported the decriminalization of homosexuality. The supreme court even reprimanded the government for its capricious attitude. In December, 2013, the apex court set aside the decision of the high court and observed that the parliament should debate and decide later in this regard. On February 2, 2016, the Supreme Court of India finally decided to review the colonial era law regarding homosexuality. Finally, after nearly 18 long years of struggle and fighting, the Supreme Court on September 6, 2018 restored the landmark Delhi High court judgement which had decriminalized homosexuality. This was done in the case of Navtej Singh Johar v. Union of India, the Supreme court observed that section 377 criminalised consensual sex between two adults in an arbitrary, irrational and unconstitutional way and was hence liable to be partially struck down.

Incomplete Social Change - Acceptance vs Normalisation

Its time that after the jurisprudential landmark and the judicial decriminalization of homosexuality, the change needs to percolate down to the beliefs, values and patterns of judgement of the people. Mass scale awareness, sex education from an early age and in a bias free way needs to be propagated so as to initiate better acceptance of the change that has been set in motion. A society like India as a product of a democratic state cannot possibly ignore a particular class or section of its own. Abolition of a deep found prejudice with the help of a simple judgement is a far-fetched imagination.The context of a law matters.[4] When a 19th century law governs a 21st century society, the demand for justice obviously entails or brings the issues of social evaluation. Justice, renewing the law makes it new and extends its application. The call of Justice demands a creative citing of the law and clarifying the questions that arise out of it. In our present case, many questions arise after the supreme court verdict and it is a challenge now to rethink or remake the law in the best way possible.

Chiefly, there are certain areas that the purview of law should cover so as to substantiate the social change:

- **Marital Rights:** marriage, Divorce, separation, children borne out of marriage, thir custody and disputes thereof
- **Inheritance:** owning the property and the procedure
- Application of personal laws and the recognition of homosexuality
- Adoption, guardianship and other laws as regards children
- Strict laws against homophobic discrimination and penal provisions against the same

Removal of a social exclusion does not naturally pave the way towards establishment of inclusion. In this case, it is the duty of a liberal state like India and the deep-rooted liberal discourse in it to the pave the way for true freedom of the LGBTQIA+ community that peacefully enjoys its rights. If the liberal democratic state does not ensure the demands of this so called "other" then the liberal democracy turns into what J.S. Mill[5] opined as "tyranny of the majority". In fact, all "so-called" egalitarian, libertarian and utilitarian states have failed to accept "otherness".

However, "tyranny of a majority" versus protection of the minority is a battle that has socio-legal connotations. The question of incorporation of new rights is that part of the social change which is still latent. The state has to take initiative in legislative codification so that the inherent bias can be defeated. Affirmative action, proper transparent policy framing and a strict implementing machinery needs to be established towards the ends of manifesting the desired change.With a society that still struggles to ensure social justice, paucity of rights is a bane for the community that struggles to find a place. Social communication, reciprocity, exchange of ideas and feelings are all important in building up the cohesion and in an elimination of the strict ingroup-outgroup boundaries.Social inclusion does not mean only

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at a substantive level, it is also procedural inclusion, the right to choose and the needs associated with the choice is a subject that the state needs to guard towards establishing justice to the community.

Empirical Research-How Far has the Society Come

The topic entailing a social investigation needs to be compulsorily supported with an evaluative aspect of what people think of the same. the researcher has included an empirical study in order to estimate the relevance of this endeavour.

1. Do you think homosexuality is an exception to normal system of society?
- Yes/ No
2. Do you think homosexuality is an aberration in the system of sexual interaction?
- Yes/ No
3. Do you think Homosexuality should be accepted as a norm in the society and people should be allowed to be in homosexual relationships?
- Yes/ No
4. Do you think Homosexual relations deserve legal recognition and hence should be allowed to marry?
- Yes/ No
5. Do you think Homosexual couples should be allowed to foster children, whether through biological means or through adoption?
- Yes/ No

Interpretation and Analysis

Table 1

Questions	Yes	No
1	6	14
2	12	8
3	15	5
4	13	7
5	10	10

- **Question 1:** Overwhelming response in rejecting the notion to be an exception while a small proportion agreed as a result of their dogmatic thought process
- **Question 2:** Substantial response in rejecting homosexuality as an aberration shows that the social change has set its course in the Indian society while it is observed that many have agreed which shows that our respondents are yet to identify and internalise the change
- **Question 3:** Overwhelming support for homosexual relationships shows that our respondents have appreciated the new found freedom of the LGBTQIA+ community and are moving towards acceptance of the

same. A minor disagreement still remains and is yet to be touched upon by the change

- **Question 4:** We find that our respondents are divided to some extent on this notion. A comparatively poor affirmative response shows that the social change is yet to influence the subject of marriage. Comparatively higher disagreement in this issue shows that some of our respondents are yet to accept and normalise the change
- **Question 5:** Our respondents are totally divided with respect to this issue. While half of them have supported the aforementioned right, the other half seems sceptical about it. It simply denotes the partiality of the social change that exists
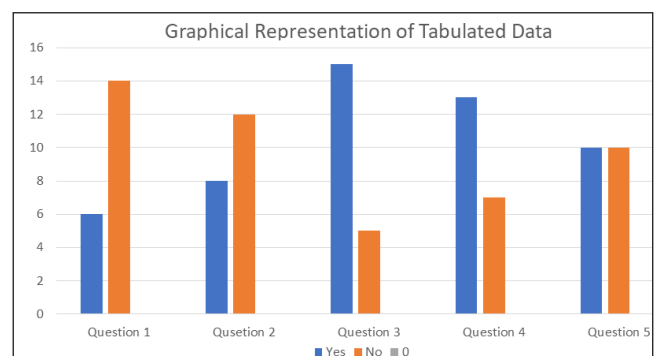

Figure 1

Findings

- Data was uniform
- There is a general trend noticed in the data- an inclination towards greater agreement than disagreement
- It has been observed that while there was more agreement with some issues in comparison to others-shows a reserved attitude towards the particular social change that is being studied
- Issue 5 has shown a divided opinion- it can be inferred that there is still prevailing ambiguity over certain aspects of the social change that has been studied
- Respondents seem to have related with the questionnaire: justifying the research undertaken.

Conclusion

The statement of problem had clearly indicated two objectives of the study. Firstly, that homosexuality is a reserved social change and secondly, that the change is incomplete. The approach undertaken has been justified in the light of the results obtained from the research. While literature on this topic had provided a reasonable ground and direction to take up this notion, the project work has further established the relevance and importance of this notion in contemporary times. The results of the empirical data have proved the notion with which this research work was undertaken. Although there have been swift

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changes in the entire gamut of homosexuality, swinging from decriminalization to subsequent demand for rights the social change has been set in motion while people still struggle to accept it.

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