

IS LEGALIZATION OF HOMOSEXUALITY A THREAT TO INDIAN SOCIETY?

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INTRODUCTION

Indian society is famous for its rich culture and its moral values. Indians follow these values in each and every facet of their life. We as a part of Indian society are always concerned about what society thinks or considers correct. The question of whether a particular notion is acceptable by the society majorly regulates the customs in our society but this question now needs to be modified with the pace of development and changes in our society.

In India, on historic date of 6 September, 2018 Indian Supreme Court legalized same-sex marriage. But there were a number of protests against this order; all of them contending legalizing homosexuality will damage the moral fiber of our society but is it so?

Many time we come across an old saying- Nothing lies in the name it's the work which creates your identity in the society. Then why society is concerned more about sexual identity than the work rendered by a homosexual? For instance, working as an HR in a big corporate firm has nothing to do with the sexuality of that HR then, why homosexuals are looked down by others. If we closely analyse the lives of homosexuals we will find that they are always discriminated on the basis of their sexuality and are generally considered unacceptable among their colleagues as well as their family members. According to a report published by Mission for Indian Gay & Lesbian Empowerment (MINGLE) 2016¹, 40 % of the people belonging to LGBTQ often or sometimes are subjected to workplace harassment in India, this shows the backward mentality of educated Indian society which openly praises legalization of homosexuality but covertly refuses to accept a homosexual person.

¹ Mission for Indian Gay & Lesbian Empowerment (MINGLE), Workplace Environment, The Indian LGBT Workplace Climate Survey 2016, (2016), https://mingle.org.in/pdf/Indian_LGBT_Workplace_Climate_Survey_2016.pdf.

Many people consider homosexuality as the reason behind discriminatory attitude but the explanation lies in the fact that humans are afraid of something which they are unaware of. Human mind always tries to resist change by giving various reasons and arguments the same thing is happening with the new concept of homosexuality. We as heterosexual think that it is against nature or common trends; therefore, we try to resist its legality in the guise of moral fiber. We forget that these people of LGBTQ community are also humans and they are conferred with some fundamental rights irrespective of their sexuality.

LGBTQ community is even sometimes deprived of human rights which are available to every human by virtue of that person of being born as a human. If we surf over the internet we will find numerous stories of homosexuals reciting their ordeals which they have to face merely because of their different sexuality. Some homosexuals are some are assaulted, given death threats, some are beaten, some are gang-raped and even some are killed because of their sexuality. This is the reason why homosexuals do not come up openly about their sexuality.

Currently, same-sex marriages are legal in 26 countries. Netherland was the first country to address the issue and legalize same-sex marriages. Recently India also took this big step of legalizing gay marriages but still, it remains a challenge to implement this decision.

WHAT IS THE LGBTQ COMMUNITY?

LGBTQ is an acronym used for Lesbian, Gay, Bisexual, Transgender, and Queer community. It is the group of people who do not fit in the customary definition of gender in the society. Generally, according to society there exist two genders either male or female but with changing time there has been an emergence of certain other genders forms.

These genders can be defined as – ‘Gay’ means a person who has feelings for a person of his same gender. This term is used interchangeably for both male and female. ‘Lesbian’ stands for female gay or female having attraction or sexual feelings for other females. ‘Bisexual’ are those persons who are gender fluid i.e. they have feeling for both males and females irrespective of their own gender whereas ‘Transgender’ are those people who are either male or female but are not comfortable with their body and consider themselves as the opposite gender. ‘Queer’ stands for all sexual and gender minorities that are not straight or heterosexuals. They basically observe themselves out of binary genders.

LGBTQ community is recognized by their special rainbow-coloured flag although all sexualities have their own flag, they march under a single rainbow-coloured flag. This flag was made by Gilbert Baker and it symbolizes the feeling of joy, expression of unity and freedom. These people use this flag because they demand all things that their flag denotes they are deprived of happiness and joy because they do not have equal rights and opportunity in the society. They have been parading in cities for various years but still in many countries this community has not been recognized.

LGBTQ people are mavericks of the age-old concept of gender and want to bring the change in the thinking of the society. The notion of two genders is nothing else but the plant of our dirty mind-set only this can be proved by the presence of homosexuality in the past. In ancient time there were numerous homosexual encounters this fact is evident from the scriptures and literature of the old era.

Therefore, we can say that homosexuality was legal or validated by the society in ancient times but with changing society homosexuality was considered as sin and thereby was made illegal. What is legal or illegal is decided by the stance of society on the particular topic therefore, now the aversion of heterosexuals towards homosexuals needs to be changed and new laws are needed to give these gender minority community the right which they deserved initially but were deprived of.

HISTORY OF HOMOSEXUALITY

The term 'homosexuality' was coined in the late 19th century by a German psychologist, Karoly Maria Benkert.² Homosexuality refers to having some sort of attraction or desire to create sexual relations with a person of same-sex or gender. Homosexuality, as described by people, is not a new concept it existed in ancient times as well in different time and different religion. Many countries nowadays have decriminalized homosexuality and have allowed same-sex marriage.

The earliest published studies of lesbian activities were written in the early 19th century. Pre-history believes that as far back as 9660 to 5000 BC Mesolithic rock art depicting homosexual

² Brent Pickett, Homosexuality, Stanford Encyclopedia of Philosophy, (Aug.6, 2002), <https://plato.stanford.edu/entries/homosexuality/>.

intercourse was found in cave walls in Sicily, Italy.³ One of the earliest homosexual couple evidence is from Egypt where two males lived legally married life.

Moreover, a homosexual scripture found by an archaeologist in Ain Sakhri Caves in Bethlehem provide scripture dating back approximately 11,000 years which gives evidence of homosexuality in the ancient era.

One of the countries in which homosexuality was initially pervading was Greece, where in many scriptures it was mentioned of men having sexual intercourse with an adult man or an adolescent boy. The most common form of homosexuality which existed in Rome in ancient time was Pederasty which means 'boy love'. There were many litterateurs also who have described and praised homosexuality in their poems and other works.

In Indian literature also there is numerous evidence of homosexuality such as –

- Ramayana tells the tale of a king named Dilip, who had two wives. He died without leaving an heir. The story says that Lord Shiva appeared in the dreams of the widowed queens and told them that if they made love to each other, they would have a child. The queens did as ordained by Lord Shiva and one of them got pregnant. They gave birth to a child, who went on to become famous king Bhagirath, best known for "having brought River Ganga from heaven to the earth."⁴
- The Mahabharata has an interesting story about Shikhandini, the feminine or transgender warrior of the time and responsible for the defeat and killing of Bhishma. Shikhandini was a daughter of King Drupada, who raised her as a prince to take revenge from the Kurus, the rulers of Hastinapur. Drupada even got Shikhandini married to a woman. After her wife discovered the reality, she revolted. The day was saved by divine intervention bestowing Shikhandini with manhood during night. Shikhandini henceforth lived like a hermaphrodite.⁵
- In Sabarimala Temple, Lord Ayyappa the deity of Sabarimala is considered as the son of Lord Shiva and Lord Vishnu which are two male gods which give evidence of homosexuality in ancient India.

³ Landon Schott, *Gay Awareness: Discovering the Heart of the Father and the Mind of Christ on Sexuality*, 15, (2016).

⁴ Devdutt Pattanaik, *Did Homosexuality exists in ancient India?*, *Applied Mythology* (2000), <http://devdutt.com/articles/applied-mythology/queer/did-homosexuality-exist-in-ancient-india.html>.

⁵ id. at 3.

Not only in literature there are many temples and monument which depicted homosexual intercourse in ancient time such as Khajuraho, Puri, Tanjore, etc.

The irony lies in the fact that we as Indians are ready to worship and revere these gods and temples, who on the basis of ancient scriptures themselves have witnessed homosexuality but we are unable to accept homosexuals openly. This problem of social acceptance of homosexuality is not a problem only in India but in other countries as well but on a lower magnitude than India. This problem of social acceptance aroused when around 19th century the colonies made all same-sex sexual act as an illegal and punishable offence. This provision made a notion in society that natural sex means sexual acts which leads to procreation. This notion is incorrect no book defines sex as a sole base of procreation.

Moreover, it should be the choice of an individual to decide with whom he/she desires to build sexual relations. Society cannot interfere in the Right of an individual to choose his partner neither can intrude in a personal arena of a person and criminalizing homosexuality intrudes in personal life and therefore, is unlawful and incorrect means immoral.

HOMOSEXUALITY IN INDIA

In India, section 377 of IPC criminalizes gay sex and makes it a punishable offence. Initially, it was considered that decriminalizing homosexuality will open the floodgates of delinquent behavior and immoral acts in the society.

IPC was drafted by Lord Macaulay in the 19th century when there no such concept of homosexuality was prevailing (although homosexuality was present) in the society but now with advancement, many countries have understood the need for change and have altered their laws and same was done in India also. India in a majority decision by 5 Supreme Court judges has decriminalized homosexuality. Justice Indu Malhotra while declaring her judgment said that-

“History owes an apology to the members of this community and their families for the ignominy and the ostracism that they have suffered through centuries. The members of this community are compelled to live a life full of fear of reprisal and persecution.”⁶

This statement makes it very clear that even judiciary thinks that this law was quite discriminatory and needed to be repealed earlier only which was not done and even neglected by the courts as well as lawmakers. But this goal was not achieved in a day or so it is the constant effort of LGBTQ community for numerous years. People of the LGBTQ community have been denied equal right and opportunity since the last 150 years.

Gay marriage first came into limelight in India with the marriage of the first lesbian couple in Gurgaon in 2011. Where two women named Savita and Beena married each other which resulted in disowning them by their own family although, later on they were accepted by their families although such marriages were illegal at that time.

This is not the only case where homosexuals openly came up and fought for their rights there are many other cases as well which have been discussed later in this paper.

Sashi Tharoor a Member of Parliament of Indian National Congress once tried to introduce a bill for decriminalizing homosexuality but that bill was called off by other parliamentarians. The reason for the bill being rejected was opposition party (BJP) up to some extent but the main reason was the age old thinking of these lawmakers of Indian National Congress who instead of supporting walked out of the parliament.

This law is from the 1860s and it has no place in the 21st century nor in people's private lives or in their bedrooms.⁷ But still, this law existed in India against the constitutional mandate.

The decision of decriminalization of homosexuality is still opposed by religious clerics like Maulana Madni of the Jamiat Ulema, Rabbi Ezekiel Issac Malekar honorary secretary of the Judah Hyam Synagogue, Reverend Paul Swarup of the Cathedral Church of the Redemption

⁶ Mayur Suresh, This is the start of new era for India's LGBT community, The Guardian, (Sep. 6, 2018, 5:43 PM), <https://www.theguardian.com/commentisfree/2018/sep/06/india-lgbt-homophobia-section-377>.

⁷ Agence France-Presse, India's Parliament blocks MP's bill to decriminalize gay sex, Rappler, (Dec. 19, 2015, 02:29 AM), <https://www.rappler.com/world/regions/south-central-asia/116433-india-blocks-mp-vote-decriminalize-gay-sex>.

in Delhi, etc. This was the first time when clerics of all the religion came together and stood up against a cause but the cause was wrong.

These clerics although speak for their religion but they ignored that in every religion there is proof of the existence of homosexuality in the old era. The fundamentalist thinking of clerics and their followers creates a problem because in India, religion is given lots of importance and people in the guise of religion sometimes commit crimes.

After the order of SC of India on 6 September, the government has appreciated the order and promised to lay some guidelines but the fastest response was from the Ministry of Health which prepared guidelines and appointed adolescent peer educators named 'Saathiya' for spreading awareness about homosexuality and opposite gender attraction in teenage.

It is worth mentioning that the Ministry of Health and NGO's like Naz Foundation have provided great assistance in decriminalizing homosexuality by highlighting the increase in the number of health hazard associated with the criminalization of homosexuality. This awareness and readiness of ministry and NGO have acted as a boon for the LGBTQ community.

HOW SECTION 377 VIOLATED THE FUNDAMENTAL RIGHTS OF HOMOSEXUALS

Fundamental rights are the basic rights which are available to every citizen of a country. These rights are conferred to every person irrespective of caste, creed, gender, sex, religion, etc. In India there are six fundamental rights some available to citizens and some to persons.

In India before September 6, 2018 when homosexuality was decriminalized, homosexuality was a punishable offence under section 377 of the Indian Penal Code. If we read section 377 we will find that this section is quite discriminatory as well as goes against the constitutional mandate.

Section 377 violates Right to equality-

In Indian Constitution, Article 14 confers fundamental right of equality to all its citizens but section 377 is contrary to this right. According to Article 15 of the Indian constitution, no citizen can be discriminated on the basis of religion, race, caste, sex or place of birth but these people belonging to LGBTQ community are discriminated on basis of their sexual orientation i.e. sex which is unconstitutional.

Generally words mentioned in constitution suffer from the problem of erroneous interpretation the same is the case with word mentioned as 'sex'. After detailed research, the court has given the correct interpretation of the term "sex" used in reference to the LGBTQ community. "Sex" is fluid and is not a static concept. It cannot be restricted to only the biological male and female sex. It is not an essential condition that the law expressly makes the prohibited ground for the basis of classification. As held by the Supreme Court, "The Courts are always had to interpret any law by the way of 'schematic and teleological' method of interpretation. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design of purpose which lies behind it."⁸

Meanwhile, if we observe the law stated in Section 377 talks about unnatural offences which in itself is a vague term as it is not explicitly mentioned in the constitution that what comprises unnatural offences thus, it should be interpreted judiciously which was not done previously but now the courts have come up with the actual interpretation of unnatural offences in its recent judgment.

Now, unnatural offences comprises only having sexual intercourse with animal i.e. bestiality and sodomy. Criminalizing sexual intercourse between two consenting same-sex adults was unlawful in the sense that in legal terms adults means a person above 18 years who is mentally sound and is able to take decision for his own benefit. Criminalizing an adult for the act which he himself has consented does not sound correct and moreover, unlawfully intrudes into the personal space of a person.

Since, the notion of what comprises natural sex is developed by the Victorian-era society where many other deeds which have been decriminalized now were considered unlawful. With the pace of time, everything changes so do the mindset of society. Therefore, it is the need of the hour to provide equal rights to the LGBTQ community as well.

Section 377 violates Right to Freedom

Section 377, by prohibiting homosexuality infringes the basic freedoms guaranteed under article 19(1)(a), Article 19(1)(b) and Article 19(1)(c). These rights are available to every citizen including LGBTQ community also. But this right has been violated by section 377 since past

⁸ Fuzlunbi v K Khader Vali, AIR 1980 SC 1730.

due to their faulty perception that decriminalizing homosexuality will damage the moral fiber of the society and will promote indecency.

"Indecency is not confined to sexual indecency; indeed it is difficult to find any limit short of saying that it includes anything which an ordinary decent man or woman would find to be shocking, disgusting and revolting."⁹ . Therefore, it needs to be taken into consideration that indecency is subjective and it cannot be objective or pre-defined therefore, the state has misinterpreted the meaning of indecency and applied the restrictions which are arbitrary in nature.

This perception of morality and decency by the state is erroneous as the restriction mentioned in article 19(2) talks about constitutional morality and decency not the public morality and decency as contended by the state. In Dr. Ambedkar's perspective, Constitutional morality would mean an effective coordination between conflicting interests of different people and the administrative cooperation to resolve them amicably without any confrontation amongst the various groups working for the realization of their ends at any cost¹⁰. But the state has not established coordination between state and the LGBTQ community thereby has infringed constitutional morality.

Fundamental right of freedom of speech and expression the right which is the core of democracy is being denied to these people without any reasonable restrictions. One might argue that this community comprises of small proportion in our society but still to implement constitutional morality it is necessary that this minority should also be heard. This denial of rights has left this community aloof and has caused severe damage to the LGBTQ.

Section 377 violates Right to privacy

Right to privacy was held fundamental rights by the SC in case of *K.S. Puttaswamy v. UOI* (2017) 10 SCC 1. This right has been guaranteed to every citizen of India under Article 21 i.e. right to life and personal liberty. Right to privacy is important to ensure other rights enshrined under Article 21 therefore, both rights cannot be separated

⁹ *Kneller (Publishing, Printing and Promotions) Ltd. and Ors. v. Director of Public Prosecutions* (1973) AC 435.

¹⁰ Minu Elizabeth Scaria, *Constitutional Morality And Judicial Values*, (2017), <http://www.legalserviceindia.com/article/1186-Constitutional-Morality-And-Judicial-Values.html>.

“Rights to sexuality, sexual autonomy, choice of sexual partner, life, privacy, dignity and equality, along with the other Fundamental Rights guaranteed under Part III of the Constitution are infringed by section 377 of the Indian Penal Code.”¹¹

This right to sexuality and choice of sexual partners are denied to LGBTQ community these people are not given chance to choose their life partners on their own volition. They are forced to live the life designed by the society of heterosexuals. Moreover, this section 377 compels the community to live a life in a secretive way as disclosing their sexuality will land them into prison.

Moreover public as well as the government has no right to interfere in the private sphere of a person. Like every other individual, these people also have the right to have their personal sphere which cannot be altered by any person.

Even the Law Commission of India has held this section ultra vires in 172nd Law report by Law Commission of India which reads that -“In the light of the change effected by us in section 375, we are of the opinion that section 377 deserves to be deleted.”¹² But still, it took 150 years for the government to understand that this section needs to be altered.

Although, the government has neglected the advice initially but now it needs to be administered in our society so that a minor section of the society (LGBTQ community) would not suffer discrimination and opprobrium due to restrictions by Section 377.

HOMOSEXUALITY IS NOT AN ILLNESS

In this world nothing is same everywhere so does the concept of sexuality. Many people across the world consider homosexuality as a mental disorder or a sort of disease. It cannot be argued that initially in early 18-19th century homosexuality was validated as a mental disorder but with

¹¹ Live Law, SC To Reconsider Suresh Kumar Kaushal Judgment Which Upheld The Vires Of S.377 IPC, Live Law (Jan.8, 2018, 1:44 PM), <http://www.livelaw.in/breaking-sc-reconsider-suresh-kumar-kaushal-judgment-upheld-vires-s-377-ipc/>.

¹² Law Commission of India, Review of Rape Laws March 2000, Law Commission of India 172nd report (Mar. 25, 2000), <http://www.lawcommissionofindia.nic.in/rapelaws.htm#chapter3>.

scientific development and research it has been proved that homosexuality no longer falls into the category of mental disorder.

We consider anything which abruptly fits in the mold of society as an offence and tries to change that variation of difference by declaring the violating act as a disease or a crime. Same has happened with homosexuality as well it did not fit in the societal norms that men should always love and mate female which led to the declaration of homosexuality as both mental disorder as well as a crime in many countries.

In the 1950's -1960's homosexuality was a disease whose treatment involved aversion therapies like an electric shock, inflicting other physical pain to kill the desire of homosexuals although it helped up to some extent but were not successful. Many psychologists like Sigmund Freud, Havelock Ellis etc. have even proved that homosexuality is not a disease & they have accepted homosexuality. Citing the scientific explanation in 1975, the American Psychological Association (APA) has called off homosexuality from the list of mental disorder and has worked for eliminating the stigma associated with homosexuality. This decision was followed by the World Health Organization (WHO) also. Moreover, The Indian Psychiatric Society recognizes same-sex sexuality as a normal variant of human sexuality much like heterosexuality and bisexuality.¹³

According to various research conducted by scientist, it has been found that it is possible that, genes which are passed on by parents to their children are responsible for homosexuality. A very recent study found that mothers who had given birth to several male children are more likely to have a son born who will be gay. It is thought that something happened in the mother's uterus after she delivered her older children that altered the fetus of the last child in a way that makes him gay. It is speculated that hormonal changes occur in utero resulting in the brains of the individuals who become gay being affected in ways that are as yet unknown.¹⁴ The scans reveal that in gay people, key structures of the brain governing emotion, mood, anxiety and

¹³ Richa Taneja, Homosexuality not a disorder says Indian Psychiatric Society, NDTV, (Jul. 10, 2018, 1:30 PM), <https://www.ndtv.com/india-news/homosexuality-not-a-disorder-says-indian-psychiatric-society-1880806>.

¹⁴ Allan Schwartz, *Being Gay: A lifestyle choice?*, MentalHelp.net, <https://www.mentalhelp.net/blogs/being-gay-a-life-style-choice/>.

aggressiveness resemble those in straight people of the opposite sex. This study demonstrates that homosexuals of both sexes show strong cross-sex shifts in brain symmetry.¹⁵

In other words, it can be said that there is no fault on the part of homosexuals for being so different it's the genes and hormones which compel them to behave and act like homosexuals it is just the different type of gender. We being straight and as taught in the initial phase of our lives do not consider any other form of a gender other than male and female. Exploration of gender can be considered analogous to aliens, we initially thought there are none but with development in science and technology, there are some proofs.

Therefore, it cannot be said that homosexuality is an illness or a mental disorder it is just a type of gender variation which needs to be accepted in our society. Human feelings are quite complicated and cannot be confined within limits and in the case of homosexual; these feelings are suppressed by family as well as society in the guise of honor. If we want development in our society, then even miniscule part of our society needs to be taken care of. Every person should be given equal rights and respect in society irrespective of their gender & sex.

ROLE OF PUBLIC OPINION IN DECRIMINALIZING HOMOSEXUALITY

In a democracy public opinion plays a vital role. Public opinion can create a huge change in society. The principle of democracy requires that while all public decisions are taken with the approval of the majority, due regard may be given to the view of the minority. The majority must behave in a responsible manner. It should take care of the interest of the minority. It should try to accommodate the opinion of minority on essential issues.¹⁶ For decriminalization of homosexuality also public opinion played a key role. Decriminalization of homosexuality in India was not a one day success it took years of hard work to make courts and government realize that criminalization of homosexuality causes such a huge loss to LGBTQ community as well as all other people.

Indian fight for legalization of homosexuality was started in the year 1994 when members of an NGO, ABVA (AIDS Bhedbhav Virodhi Aandolan) filed a case in Delhi High Court for

¹⁵ Andy Coghlan, Gay brains structured like those of opposite sex, *New Scientist*, (Jun.16, 2008), <https://www.newscientist.com/article/dn14146-gay-brains-structured-like-those-of-the-opposite-sex/>.

¹⁶ O.P. Gauba, *An Introduction To Political Theory*, 565, (7th ed.2018).

repealing Section 377. Later on this case was carried forward by Naz Foundation (NGO) which filed a PIL in Delhi HC for repealing Section 377. This PIL faltered for 8 years due to political interference and in 2009, Delhi HC decriminalized homosexuality. This decision of HC created kindled the agitations among religious groups who thereby challenged the decision in SC and in 2013 the SC sets aside the matter and leaves this decision solely on the discretion of parliament. Amid all these chaos an MP of Indian National Congress tried to introduce a bill decriminalizing homosexuality. This bill was not passed due to lack of support. Thereafter, in 2016, 3 judge bench of SC ordered all the petitions filed under homosexuality to be reviewed by a larger bench and matter is then referred to a constitutional bench comprising of 5 judges. Thereafter, in August 2017, when SC held Right to Privacy as a fundamental right the petitions were reconsidered in light of the right to sexual privacy and subsequently on 6 September, 2018 SC decriminalized homosexuality.

Initially, the government was not in favour of decriminalizing homosexuality this is evident from the fact that Prime Minister Narendra Modi's government tried to postpone the hearing in the Supreme Court by asking for an adjournment. When that failed and the court pushed the government for a response on whether it would support or oppose giving LGBTQ citizens equal legal rights, the best it finally could manage was to say it would leave the outcome to the "wisdom" of the judiciary.¹⁷ The party does not want to destroy its image in the society therefore, has indirectly said that homosexuality is Anti- Hindu and threat to national security.

Main threats to the concept of homosexuality are the people having fundamentalist mentality. For example, Vishwa Hindu Parishad (VHP) vice president Om Prakash Singhal said that - *"This is a right decision (criminalization of Homosexuality), we welcome it. Homosexuality is against Indian culture, against nature and against science."*

These sorts of people are not only threat to the LGBTQ community but also to the society as a whole. There are many examples of atrocities against the homosexual community by religious groups. According to the report, there are an estimated 3.1 million men who prefer sex with men in India, according to the United Nations General Assembly Special Session on HIV/AIDS

¹⁷ Barkha Dutt, The Shameful Cowardice of India's Politicians on Gay rights, The Washington Post, (Jul.12, 2018), https://www.washingtonpost.com/news/global-opinions/wp/2018/07/12/the-shameful-cowardice-of-indias-politicians-on-gay-rights/?noredirect=on&utm_term=.7e4670c24c2f.

Report. Homosexual men who face violence are most likely (41.3%) to not report if it is physical, less likely (39.8%) if it is sexual and least likely (32.4%) if it is emotional.¹⁸

In India being called as a gay is considered derogatory and shameful. Homosexuality is linked with ignominy one of the famous instances of such mindset is disinheritance of Indian prince Manvandra Singh Gohil descendent of Rajpipla family of Gujarat. This prince was disowned by his family because he openly confessed of being a gay prince. He now lives separated from his family and runs a trust named Lakshya to help similar kind of people.

This feeling of opprobrium associated with sexuality deviation needs to be done away otherwise LGBTQ community can never come to the same footing as heterosexual people.

CONCLUSION

Granting equal rights to the gay community has been always a challenge for almost every country. Many countries have struggled through this phase and have successfully accepted gay culture in their country. In India, there are equal rights given to male and female but no rights to people who have gender deviation. Recently in the case of *NALSA v Union of India* (2014) 5 SCC 438 which recognized any other form of gender than above mentioned this gender was referred as the third gender used to denote transgender people but there is no separate category formed for Gays, Lesbians, Bisexuals and Queer community which leaves them in dilemma of how to fit in the gender structure system of India.

For the people of LGBTQ community to define their gender is no less than a labyrinth. India is a country where one hand we worship lord in his Ardhnarishwara form which is famous for being half male and half female and on the other hand we are not ready to accept transgender in the society. This shows orthodoxy overpowering rights and constitution also.

If I talk about my personal experience I found that people generally consider homosexuality as a curse and even in some part of India calling someone homosexual is a slang as well as

¹⁸ Sumit Chaturvedi, 52% of the Gay men in India without peer support suffer violence: Survey, Hindustan Times, (Oct.9, 2018, 12:50 PM), <https://www.hindustantimes.com/india-news/52-of-gay-men-in-india-without-peer-support-suffer-violence-survey/story-HKOutVLK7YbIleafqsTrwL.html>.

considered as an opprobrium. Even on social media people troll homosexuals and make their fun.

Criminalization of homosexuality has done nothing good to the society it has just cause harm. It is found by NGO's and even Ministry of Health that criminalization of homosexuality has led to rise in number of HIV/AIDS cases.

Although in India, one might argue that there are number of religion and diverse cultures in India which creates it impossible to accept such changes when mostly every religion prohibits homosexuality but the problem does not lie in diversified culture of India the problem lies in the fact the as long as we remain homophobic we cannot bring change. To bring the change in condition of homosexuals it is needed that we should start with accepting homosexual people living around us. Just emulating western countries is not enough we need to implement these changes in our lives as well. The government can make a number of laws and guidelines but it rests on us to bring a change.

The proposition that homosexuality is a threat to culture and Indian society is false in itself. Accepting a part of our own society doesn't create a threat to anyone. By legalizing homosexuality we are accepting sexually deviated population. In India, this population comprises of whopping 3.1 million which is not a miniscule section of society. Even judiciary accepted the fact that this section 377 of IPC was unconstitutional then who are we to oppose. Constitution makers have given equal rights to everyone then no one can deny these rights without any reasonable cause.

Legalization of homosexuality will not destruct the moral fiber of our society it's just a lame reason given by people to disagree with homosexuality. This is the time we need to end the bloat or stigma associated with homosexuality and give these people rights which they deserved since the last 150 years. It's time to end the alienation which the LGBTQ community has suffered and furnish them with the right of expression, liberty and provide them support and social acceptance which they needed since long.

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