



SOCIAL IMAGINATION AND SAME SEX MARRIAGES IN INDIA

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ABSTRACT: Same-sex marriages refer to marriages between two individuals of the same gender. In India, same-sex marriages are not currently legal, although there are ongoing efforts to recognize and legalize them. This topic is important because it relates to the fundamental human rights of LGBTQ+ individuals and the recognition and protection of their relationships. Legalizing same-sex marriage would not only provide legal recognition and protection for LGBTQ+ couples but also promote greater social acceptance and reduce discrimination against the community. It is an important issue for LGBTQ+ rights activists and advocates around the world, and its significance extends beyond the legal sphere to broader social and cultural attitudes towards the LGBTQ+ community. The purpose of this research paper is to understand and study the social stigma in detail attached to the connotation of word "homosexuality" and "same sex marriages" in India and how it affects the fundamental right of life and liberty at the same time violates their right to live with dignity under Article 21 of Indian constitution.

Keywords: LGBTQ+, Article 21 of Indian constitution, homosexuality, heterosexuality, human rights .

INTRODUCTION-

The history of LGBTQ+ rights in India dates to the colonial era when the British introduced Section 377 of the Indian Penal Code in 1860, which criminalized homosexual acts. This law remained in place even after India gained independence in 1947, and it continued to be used to discriminate against and prosecute LGBTQ+ individuals for over a century.

However, the struggle for LGBTQ+ rights in India gained momentum in the late 20th century. In the 1990s, the first LGBTQ+ organization, the AIDS Bhedbhav Virodhi Andolan (ABVA²), was founded in Delhi to fight against discrimination and violence faced by the LGBTQ+ community. In 2001, the Naz Foundation, a non-governmental organization, filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of Section 377. Despite facing significant opposition from conservative groups and religious leaders, the LGBTQ+ community and their allies continued to fight for their rights, and in 2009, the Delhi

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² <https://indianexpress.com/article/india/a-timeline-of-section-377- last seen - 11 am 30th August 2023>

High Court declared Section 377 unconstitutional and decriminalized homosexuality. However, this decision was overturned by the Supreme Court of India in 2013, which reinstated Section 377.

In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and decriminalizing homosexuality once again. This was a major victory for LGBTQ+ rights in India and a significant step towards ending discrimination and promoting equality. However, despite these legal victories, the LGBTQ+ community in India still faces significant challenges. Discrimination and violence against LGBTQ+ individuals remain prevalent in Indian society, and many continue to face stigma and marginalization from their families, communities, and workplaces. Transgender individuals, in particular, face multiple forms of discrimination, including limited access to education, employment, healthcare, and housing.

Moreover, the legal recognition of same-sex marriage remains a distant dream for LGBTQ+ couples in India. The lack of legal recognition not only denies them legal and social benefits but also increases the risk of discrimination and violence.

Homosexuality and transgender identity in Indian subcontinent can be traced back to M³ahabharat in the disguise of Shikhandi, son of Maharaja Drupad and brother of princess Draupadi, commanded respect equal to other kshatriya warriors in battlefield which shows that homosexuality and transgender identity was not a taboo in our culture. We embraced it with utmost elegance and respected the difference graciously.

But after the advent of Abrahamic religions in India and imposition of British way of education and foreign culture, our Vedic identity began to fade with time and slowly but steadily we were brainwashed and a hatred towards the ills of Abrahamic societies were imposed upon us. One of those is “homosexuality is sin⁴⁵” whereas in traditional Indian scriptures, it is nowhere mentioned that being a homosexual or transgender for that matter is sin as well as no mention of looking down upon them.

In today’s scenario, unfortunately and unknowingly the so called “normal individuals proclaiming to be of heterosexual orientation” has developed a sense of hatred toward those who are homosexuals making it a taboo and absolute unbearable to their sight, making it difficult for them to live with peace and dignity in heterosexual society. This is nothing but shocking if we take the whole reference of the idea of homosexuality from the traditional Indian perspective.

In wake of existing taboo and hatred, a right to self-preservation of identity and dignity is being called out on top of their voice by homosexual community through NGOs like Humsafar trust and others which has been recognized by judiciary - **Decriminalizing homosexuality under IPC Sec 377 (unnatural offenses) in 2018.** This gave a sigh of relief to them but that was not enough⁶.

³ Mahabharat by Ved Vyasa (Hindi version) publisher- Geeta press , Gorakhpur , U.P.

⁴ <https://quran.com/en/4:16/tafsirs/en-tafsir-maarif-ul-quran> last seen 4:20 pm 30th August 2023

⁵ https://www.catholicahawaii.org/media/224239/bible_verses_about_homosexuality.pdf last seen 4:44 pm 30th August 2023

⁶ Kumar, Sanjeev. *LGBT community in India: A study*. Educreation Publishing, 2019.

The right to stay together and love whomever you want is sanctified by the law and society under the seal of marriage which is not available to homosexual community because even if their existence is decriminalized, they still have a long battle to fight among the society for creating a dignified space for them without social boycott and harassment by heterosexual members which would require not only sensitizing them towards the agony of LGBTQIA community but it would also require a legal backing which would be nothing less than granting them equal marriage rights at par with heterosexual members to give their union a legal recognition, but this has to go through the litmus test of acceptance by society which is still a long journey, where mere imagining wedding of two boys or girls, transgenders give chills down the spine of people.

More importantly, heterosexuals describing homosexuality as a “wiring problem in the brain” is nothing but laughable and at the same time ridiculous. Unfortunately, parents – whose children are homosexual have taken them to psychologists and sexologists as well and some of them tried to treat them as if it’s a disease with the help of shock treatment leaving trauma forever.

Recently, a petition was filed at supreme court for legalizing same sex marriages in India sparked controversy in the name of open display of obscenity in public held to be against public morality as argued by lawyers opposing it but those arguing in favor raised a valid point – until when the conduct of one part of community would be regulated by other section of society in the name of public order and morality, culture, obscenity, values, ethics? till when homosexuals would be subjected to unjust and unlawful treatment at every strata of society and legal system, executive especially – harassed by the police every now and then, threatened, blackmailed to reveal discreet identities? till when they shall be subjected to a social boycott and hatred in the eyes of so called valued and cultured heterosexual members of our society? Those are some serious questions which are still waiting in the corridor of the supreme court to be answered by honorable judges based on principles of natural justice, at least!

AIMS AND OBJECTIVES OF THIS RESEARCH PAPER-

Aim and objective behind writing this research paper is to study in detail and analyze the social stigma attached to the term homosexuality and mentality of society behind treating them indifferently and denying them basic rights socially among which, marriage rights have been discussed at length here. violation of fundamental rights of homosexual community and legal battle ongoing in court for marriage recognition gives it a legal angle as well.

RESEARCH QUESTIONS ADDRESSED IN THIS PAPER-

- Prevalent social stigma in society, its trace in the past and changes.
- Reason behind social alienation of homosexuals.
- Agony of homosexuals in heterosexual society.
- Why are basic constitutional and human rights like Article 12, Article 21 and marriage rights denied to homosexuals?

HYPOTHESIS OF RESEARCH PAPER-

1. It is high time that people stop acting God and establishing a code of conduct and ethics for fellow members of society and dictating what is right and what is wrong, what is ethical and what isn't.
2. We all are different individuals with diversified mentality hence should be treated alike in circumstances which are very well defined and explained under Article 14 of Indian constitution.
3. We also must realize and recognize this fact that judges of supreme court and high court are members of society, and it is highly unlikely that their opinions wouldn't be influenced by so-called well-established narrative by alpha heterosexual tyrants proclaiming to protect the social strata which may fall prey to disgrace if homosexual marriage rights are recognized.

RESEARCH ANALYSIS-

The first hypothesis as mentioned above is proved by the below mentioned research analysis -

- 1) Prevalent social stigma in society, its trace in past and changes –

Understanding the basic shift from the concept of homosexuality being the different way of orientation, which is normal towards it being a sin, crime and then punishable severely is just like humans evolving from apes are going back to what they were. Surprisingly, this was not the INDIAN WAY of thinking since olden days, we were progressive and there are well accepted and revered traces of homosexuality – transgender identities in our ancient texts.

With the advent of Abrahamic invasions and their tyrant rule, they broke the back of our civilizational thoughts and values by belittling ours and placing theirs in high place. Slowly and steadily people accepted it and the whole society started following something which was totally foreign and evil at the same time towards what we cherished.

But here, the basic question, the so-called stigma attached to the term homosexuality is not only challenged based on humanity but also legally in the court of law. If someone is different from what we are, do we get the right to exploit that human to any level we can? Why can't we let that person live his or her life irrespective of their orientation and give them the same dignity and respect as we treat other members of society? Who are we, God? When God almighty didn't differ them with basic human traits then who are we? I would not quote particularly any religion because I don't want to shift the limelight towards another topic which is worthy equally to be discussed at length but here, there were some religious councils which declared homosexuality as ultimate sin and those who practiced it shall be stoned to death as written in the religious law; shaitan plays with the mind and soul, nothing as such exist and this is just a façade which can be treated with the help of dark spells, charms, talis etc. which world are we living in? Is this the 21st century? On one hand, India has landed on the south pole of the moon and on the other hand such religious councils

⁷ how does India perceive homosexuality by Mansi gopalakrishna <https://www.dw.com/en/how-does-india-perceive-homosexuality/> last seen - 12:30 pm 31 August 2023.

⁸ <https://www.nih.gov/about-nih/what-we-do/nih-almanac/national-library-medicine-nlm> last seen - 12 45 pm 31 August 2023

spreading venom in the name of preaching spirituality is nothing but dangerous , inhuman and sheer hate monger stooge .

Medical science has progressed so well these days. there has been research conducted by psychiatry councils in U.S.A and by European Union under leadership of W.H.O and they found out that a homosexual human being's mental status is equal to the heterosexual human being's mental status and recognized absence of any irregularity , brain issues and abnormality among homosexuals hence deduced that this cannot be treated with any medicine because it's not a disease at all ! it is just as equal to the other different traits we have for example, someone is tall , short , fair , dark at the same time someone could be homosexual or transgender too ! there is nothing so huge as to make a fuss out of it . but what matters at the end is acceptance!

The fear of being mocked, boycott, bringing shame to the family scares that person so much that his/her inner soul starts dying slowly with time, slipping into depression and ultimately leads to suicide. A report by national library of medicine, an official website of united states government claims that at least 60% suicides in India are because of LGBTQ reasons who were suffering from constant bullying, mental stress.

The toxicity of alpha masculinity in the males has been ideal in society to counter homosexuality is poisoning our boys. this mindset of what is right and what is wrong based of conduct and self-made rules to be applied uniformly on everyone and those who disagrees and follows their own just like the civil union of two man or two women is seen as a threat to society's heterosexual arrangement which is important for procuring child and hence , attaching a stigma and boycotting them satiate their ego for maintaining a so called balance which is dangerous for harmony morally and legally.

2) Reasons behind alienation of homosexuals.

Hatred weaved in the name of social balance, culture, protection of social fabric, and the so-called Abrahamic principle that "God created Adam and Eve, not Adam and Steve" are major reasons behind social alienation of homosexual individuals in society. Moreover, parents who are the ultimate protectors of their child are in an emotional dilemma when their children come out as homosexual individuals because of the social boycott they may go through. This terrifies them and that's the reason they suppress the spirit of their wards and try turning them into heterosexual human beings irrespective of opinion and emotion which they must vent out. Slowly, that homosexual individual's feelings and spirit to live, to prosper is strangulated mercilessly in the name of medicines claimed to cure them and whole psychiatric melodrama, emotional blackmailing making lives hell. Majorly and ultimately, this leads to suicide. The root cause of this is nothing but toxicity developed around the whole concept of homosexuality in our society which demands alienation, starvation, and final attack! Without diplomacy, I condemn this barbaric, sadist ritual of society.

3) Agony of homosexuals in heterosexual society.

It begins when a person realizes the changes in the body like developing sexual feelings and moments of attraction, feelings towards the opposite sex, getting shy and aroused by mere rubbing of hands. sooner or later, everyone develops the above-mentioned feelings, but it is only when they realize that these feelings are developed towards their own sexual identity that means, a boy falling for boy and a girl falling for girl! and

that's traumatic because constantly when they see around that boys and girls are talking mysteriously about the other gender and that is not happening with you at all. infecting everything upside down is happening like masculine mannerism makes a boy fall for it, cute boys around, their friendly touch, the way they talk, the way they dress up makes you feel go in awe! But as per the social norms this isn't right and boys who do that are ridiculed and subjected to the most cruel bullying which breaks their spirit when it is most vulnerable. no help to call for, no one to understand how it feels like when you are subjected to unwanted sexual abusing hurled at you and the dilemma is, when the victim realizes enough is enough and decide to call for help from teachers, they bully him as well saying – "AS YOU SOW, SHALL YOU REAP". It boils my blood but unfortunately that is true!, a bitter truth of the Indian education system which focuses on excelling at studies, sports but fails terribly to sensitize children towards feelings of fellow mates and teaching them that being different is nothing to laugh at or ridicule. Not everyone is the same, and we must respect that. Sadly, we missed that point. Now this same youth develops a toxic masculine mentality which acts as fertilizer towards the accepted social phenomenon against homosexuality and shifts from mere bullying to violence against them. Many of those individuals hide their identity with fear of social stigma and hatred attached to the term, killing their innermost trait and feelings and trying to lead a heterosexual life which they hate almost every second. pretending all their life leads to chronic depression and social pressure to marry a girl and if they end up marrying in real life , destroys two lives . This whole agony of cramped up life of homosexuals with little to live for and absolutely nothing to dream, to live happily as other members is a distant dream and cruel reality of homosexual individuals in our society.

Second and third hypothesis as mentioned above are proved by below mentioned analysis-

- 4) Why are basic constitutional and human rights like Article 12, Article 21 and marriage rights denied to homosexuals?

After studying in detail and analyzing the reason and base of social alienation of homosexuals and stigma attached to their existence has not only led to social boycott but it has also alienated them legally.

Our Indian constitution, being the most detailed, lengthiest, and written constitution in the world which is the supreme document and basis of rule of law in India guarantees fundamental rights and other basic rights to everyone irrespective of race, caste, sex, place of birth etc. but has it been implemented in its real sense?

After looking at the plight of homosexual community in India , and conducting surveys where I have personally interviewed members of this community among whom many chose to remain discreet just for the above mentioned reasons which I respect , analyzing daily harassment cases coming into the radar of LGBTQIA+ NGOs , among whom Humsafar trust is major , It can be definitely be deduced that there is blatant abuse of constitutional rights at the hands of police in major , politicians of this country and social media at large . public shaming and demeaning this orientation have become a new trend and unfortunately there is no single action being taken. Police choose to stay silent; politicians are busy baking their own corrupt bread in the name of religious and caste politics. In such adverse situation, we can only approach the judiciary but when learned judges of supreme court says that – "homosexuals are miniscule population of this country

and hence their problem is beyond the reach of cognizance by court and sec 377⁹¹⁰ – criminalizing homosexuality does not suffer the vice of unconstitutionality" send chills down the spine. So basically, if you don't riot, protest violently, form a huge number of Indian strata whose rights are being impeded then you shan't be given the cognizance of court? This is nothing but an utter violation of principles of natural justice and humane moral values at the same time.

Blatant violation of Article 14 and article 16, as well as article 21 and principles of natural justice can be taken into consideration when we discuss this topic.

- 1) Article 14¹¹ is violated when homosexuals are denied equal rights at par with heterosexuals such as marriage, divorce and succession rights, nothing could be accepted less than this if we want to bring them at par with others and stop their harassment at the hands of police and executive organs of this country. There is absolute blackout in the sphere of this community and its high time we enlighten them by burning the torch of article 14 which is as essential as breathing.
- 2) Violation of article 16 can be seen where a person comes out as homosexual and he happens to be a government employee, harassment in the department and toxicity fed is limitless, leading to resignation. this is the scenario of current government employees who are homosexual, but where if a person is open and proud of his homosexual identity, then it is highly impossible that person would be selected for prestigious government positions like IAS, IPS, IFS where arguments given are like – alpha masculine behavior is required to establish authority.
- 3) The major abuse of fundamental rights of homosexuals is violation of Article 21 in broad daylight. The right to live with dignity, right to privacy, right to self-determination is strangulated while their application towards this community. It is sadly eclipsed by social stigma as the law implementers are also part of society and their opinions are not different from the popular ones. When two lovers share intimate details in messaging text, and it gets viral and no action against such complaints show that our system lacks sensitivity towards such issues and this again violates the same right. This shows that cleaning is required right at the bottom, the root cause of this taboo and stigma from where it originated. Without considering the agony and pain and sufferings of homosexual community and delivering a verdict by reinstating sec 377 shows the mentality and opinions of learned judges who's sitting at the highest pedestal of justice in the country. Even though the supreme court had reviewed its verdict and decriminalized the barbaric outdated 150-year-old colonial section, still we have to retrospect the problems where we lack. Mere legal backing towards homosexual community wouldn't suffice unless the stigma and social values are revolutionized just like the renaissance India witnessed in the early nineteenth century under the leadership of Raja Ram Mohun Roy¹² and other reformers.

⁹ <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background> last seen 9 am 1st September 2023

¹⁰ Ratanlal and dhirajlal's IPC 1860 2013 amendments (34th edition)

¹¹ V.N. Shukla Indian Constitution (27th edition)

¹² <https://byjus.com/free-ias-prep/ncert-notes-rajaram-mohan-roy-indian-social-reformer> last seen 9 pm 31st August 2023

- 4) Moreover, we cannot ignore the fact that India is a signatory to UDHR¹³ i.e., universal declaration of human rights also, India is a member of OHCHR¹⁴ (office of high commissioner for human rights) and human rights council membership around the world.
- 5) The right to sexuality as incorporated under UDHR warrants the basic human right to all individuals across the world including homosexual community for self-determination and to be free from all kinds of discrimination on the basis of sexual orientation.

specifically, it relates to the protection of interests and basic human rights of homosexuals which is available mutatis mutandis to heterosexuals as well . India being signatory to this Human rights covenants and declarations accepted worldwide , must oblige with provisions and honor it by changing the draconian laws and providing them their rightful opportunity to live with dignity in society . Hence recognition of homosexual marriage is the first line of control which has to be crossed by the judiciary and validation by the Indian parliament to break all the barriers present.

Equal marriage rights for same sex gender in India is still a stigma and it would require a long time for people to understand that we cannot exercise any control over the liberty and desires of others unless by established due process of law and it has to be exercised only by the judiciary . The sovereignty of India and prosperity of its people would be incomplete unless the rights of our citizens are protected under one equal sphere rather than acting as an oppressive regime dictated by clergies , traditional conservative politicians , hooligans in the name of culture . Marriage right is the most basic civil and human rights which every individual must be awarded with regardless of any conditions and that's what is the whole intention behind writing this research paper .

“Marriage is a union of two souls , be it between a girl and boy , or between two boys or two girls or transgenders and government and judiciary must act to do what is required under Indian constitution rather than acting as guardian of so called Indian culture and ethics which smells of foreign invasion “

CONCLUSION AND SUGGESTION-

Denial of basic human rights , oppression at the hands of executive and influence of abrahamic taboo attached to the word “homosexuality” is the foremost reason behind a long battle to decriminalize barbaric, obsolete sec 377 - which stated homosexuality as unnatural offense and later a prolonged-fruitless argument in apex court of law for recognition of same sex marriages in India has been discussed at length above and deduced with the help of current ongoing legal scenario in New Delhi regarding the same .

with the help of references of books , research papers by fellow members of community , indian statutes and interview of homosexual individuals who choose to remain discreet , it is very well proved that social stigma in society towards homosexuality and homosexuals is increasing day by day without any concrete reason especially in the name of protection of Indian culture and public obscenity when same sex marriage argued before the court , is evident.

¹³ <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-2> last seen 12 00 Noon 1st September 2023.

¹⁴ <https://www.ohchr.org/en/countries/india> last seen 2:20 pm 1st September 2023.

A humble honest suggestion which is being delivered through this paper is that , judiciary must recognise same sex marriage in India in the interest of homosexual community and Government of India should act to sensitise members of society to accommodate homosexuals with dignity living exactly the same normal life which others claim to be abnormal through govt machineries , NGOS , self help groups , skit , awareness campaigns , anti ragging cells to be formed to prevent bullying of homosexual , effeminate humans in educational institutions and ministry of law and justice should draft a codified act at par of hindu codified marriage act , special marriage act for regulation of homosexual marriages stating marriage , adoption , succession , alimony and domestic violence .

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