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Conceptualising Sexuality in India: Trends and Reactions

Dr. Mehzbeen Sadriwala, Department of English, Janardan Rai Nagar Rajasthan Vidyapeeth, Udaipur

Abstract

The concept of marriage generally refers to a life-long relationship between a male and a female. Globally, males and females get married, and their marriages are made public. One contemporary deviation from the original marriage concept is homosexuality, which has risen to some noticeable extent across the globe. This research paper analyses the practice of homosexual marriages in the Indian context as an invisible conflict which is kept successfully undercover. It also describes and explains various aspects of homosexuality, including the evolution, reasons, societal attitude and reactions towards such relations in India.

Keywords: Homosexuality, India, Reactions, Injustice, Law.

Introduction

The institution of marriage in every society implies only male-female relationships, although most marriage statutes use gender-neutral language. Whereas many examples of acceptance of homosexual marriages have only been recently forthcoming as society is gradually becoming more permissive, it is pertinent to explore the case of India. This change reflects the increasing number of jurisdictions, which have decriminalized such acts. The concept of same-sex relationships, regardless of their duration, are not legally recognized in most countries and as a result, deny homosexual partners many of the legal and economic privileges automatically bestowed by marital status. These include employee benefits, the ability to file joint tax returns and perhaps most importantly, since the advent of AIDS -health benefits and rights arising on the death of a partner, including interstate inheritance, among others. There are many benefits of heterosexual de facto partners in many societies which are not available, to homosexual partners.

The word homosexuals mean 'as of the same sex', being a hybrid of the Greek prefix homo

meaning ‘same' and Latin root meaning ‘sex'. Homosexuality sexual orientation is a sexual display or romantic love, particularly for same-sex people. People who are homosexual, mainly males are known as ‘gay'; while gay females are known as ‘lesbians'. Therefore, a homosexual marriage, sometimes referred to as gay marriage, indicates a marriage between two persons of the same sex.

Homosexual marriages: A global scenario

The earliest western document concerning homosexual relationship comes from Ancient Greece, where same-sex relationships were the societal norm. In preindustrial societies, homosexuality was also generally accepted by the lower classes while some members of upper classes considered it immoral. However, with the rise of urbanization and nuclear family, homosexuality became much less tolerated and even outlawed in some cases. The sexual orientation in a pre-modern era as depicted in love poetry and paintings, and even traditional bodies such as Alexander the Great, Plato, Hadrian, Virgil, Leonardo da Vinci, Michelangelo and Christopher Marlowe included or centres on a connection with the personalities of their gender.

Civil authorities adopt different positions when faced with the fact of homosexual unions. At times they tolerate the phenomenon; at other times they advocate legal recognition of such unions, under the pretext of avoiding, concerning certain rights, discrimination against persons who live with someone of the same sex. In other cases, they favour giving homosexual unions' legal equivalence to marriage properly so-called, along with the legal possibility of adopting children. An increasing number of jurisdictions have thus de-criminalized homosexual acts. Although many groups and people criticizes the present laws claiming that such laws are obsolete and need a replacement; many jurisdictions have retained their statutory prohibitions on homosexual acts.

Surprisingly the last century witnessed significant changes in the conception of homosexuality. Since 1974, homosexuality ceased to be considered abnormal behaviour and removed from the classification of mental disorder. Consequently, homosexuality became de-criminalized in different countries. Globally anti-discriminatory or equal opportunity laws and policies to protect the establishment of powers to gays and lesbians. Improvements towards and bans of same-sex marriage created a topic of debate among scholar in the 1990s and 2000s

The problem

Sexuality history has pieces of evidence proving the existence of homosexuality in the past. Globally, for more than ten years, laws and legal initiatives on the lesbian and gay rights moved from the right to be secretly sexual. That is from the right to have same-sex relationships at all; to the right to be individual civic subjects, protected from discriminations in workplaces; and provision of services, toward the right to have a relationship. This alteration in rights-focus: from decriminalization to civil assurance and public acknowledgement is not entirely a linear one. Thus, in recent years, several jurisdictions had relaxed or eliminated laws curbing homosexual behaviour.

Before the modern period, homosexuality differed from modern homosexuality in terms of gender, class, age, gender or class. Homosexuality in different periods had different features; the underlying phenomenon has always existed and is not a recent invention of our society. Although the particular manifestation of homosexuality may highly depend on social factors, its fact remains constant. In a research of about 1500 animal species behaviour extensively studied; homosexual behaviours were ascribed to 450 species. The result established its commonness which begs for explanation and socio-biologists have suggested an extensive assortment of explanations to account for it. This reality, therefore, calls for inquiry in the Indian context to further understand the extent and challenges of homosexuality practice in the country.

Theoretical explanation

The antecedents of sexual familiarisation are presently under investigation by global researchers. Generally, different factors determine each individual's sexual orientation. Nurture, Nature or some combination of the two is often thought to determine human sexual behaviour. Research suggests that homosexuality is mostly genetic in origin. It also assumes that individuals with homosexual genes will feel less inclined to behave heterosexually and will thus reproduce less frequently. Findings also suggest that homosexual men look feminine; whereas other study found that homosexual men and homosexual women are masculine. Another reason given is an imitation, a significant mechanism of cultural transmission, which also accounts for some homosexual behaviour. An irregular level of sex hormones during the development of a child inside the womb is an influence. Family upbringing may also affect when they train a male child like a female; or by creating guilt about early heterosexual contacts; or by blocking initial heterosexual behaviour produce less frequently.

India and reactions to homosexual practices

Formerly, the general reactions in society were that many people deny the existence of sexual minorities in India and dismissed same-sex behaviour as a Western, upper-class phenomenon. However, the Indian gay community has in the last five years progressed in the gay campaign mainly on the Internet. To create strategies for their cause, they form NGOs, helplines and do a regular meeting. Some people even tag the behaviour as a disease that needs tackling medically or otherwise.

Legal status of homosexuals in India

Section 377: 30 of the Indian Penal Code (1860) relates to Unnatural Offences and includes homosexuality within its domain. In 2003, the Indian Government stated that authorising homosexuality would open the conduits of delinquent behaviour. In 2009, the Delhi High Court judgment in Naz Foundation v. Govt. of NCT of Delhi found Section 377 and other legal prohibitions on private, adult, consensual and non-commercial same-sex conduct to be in direct breach of primary rights granted by the Indian Constitution. Section 377 declared that:

> whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life]; or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,"

The section includes an attached comment that: "penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section." However, according to a former ruling by the Indian Supreme Court, judgments of a high court on the constitutionality of law concern India, and not just to the state over which the high court in question has jurisdiction. There have been occurrences of harassment of LGBT organisations by officials under the law.

On 23 February 2012, the Ministry of Home Affairs declared its resistance to the decriminalization of homosexual activity, stating that in India, homosexuality is being immoral. The Central Government reversed its stance on 28 February 2012, asserting that there was no legal error in decriminalising homosexual activity. The shift in stance resulted in two judges of the Supreme Court reprimanding the Central Government for frequently changing its approach to the issue. On 11 December 2013, the Supreme Court set aside the 2009 Delhi High Court order decriminalizing consensual homosexual activity within its jurisdiction.

Human Rights Watch also expressed concern that the Supreme Court ruling would render same-sex couples vulnerable to police harassment, stating that "the Supreme Court's ruling is a disappointing setback to human dignity and the basic rights to privacy and non-discrimination." The Naz Foundation stated that it would register an appeal for review of the court's decision. Activist group Kavi's Humsafar Trust has also reported that two-fifths of homosexuals in the country had faced blackmail after the 2013 ruling.

Meanwhile, on 28 January 2014, the Supreme Court of India rejected the review appeal filed by the Central Government, the Naz Foundation and several others toward its 11 December verdict on Section 377. The bench described the ruling by claiming that: "while reading down Section 377, the High Court overlooked that a minuscule fraction of the country's population constitutes lesbians, gays, bisexuals or transgender people, and in the more than 150 years past, less than 200 persons have been prosecuted for committing offence under Section 377, and this cannot be made a sound basis for declaring that Section ultra vires Articles 14, 15 and 21."

Similarly, on 18 December 2015, Shashi Tharoor, a member of the Indian National Congress party, proposed a bill for the abolition of Section 377, but it was declined in the House by a vote of 71-24. Shashi Tharoor is still planning to re-introduce the bill. On 2 February 2016, the Supreme Court chose to evaluate the criminalization of homosexual exercise. In August 2017, the Supreme Court concurrently ruled that the right to individual privacy is a natural and fundamental right under the Indian Constitution. The Court also ruled that a person's sexual orientation is a privacy issue, giving hope to LGBT activists that the Court would soon strike down Section 377.

However, in January 2018, the Supreme Court agreed to refer the question of Section 377's validity to a large bench and heard several petitions on 1 May 2018. In rejoinder to the court's request for its position on the petitions, the Government proclaimed that it would not question the petitions, and would withdraw the case "to the wisdom of the court". A hearing began on 10 July 2018, with a verdict expected before October 2018. Activists see the case as the most vital and "greatest breakthrough for gay rights since the country's independence", and it could have far-reaching entanglements for other Commonwealth countries that still outlaw homosexuality. On 6 September 2018, the Supreme Court announced its judgment. The Court unanimously decreed that Section 377 is illegal as it violated on the fundamental rights of independence, intimacy and citizenship, thus

authorising homosexuality in India. The Court therefore, explicitly overturned its 2013 judgment.

The realities of homosexuality: The arguments

The conflict between homosexuals and heterosexuals are evident in institutions of marriage not only in India but generally in the world where sodomy law is applicable. The debates about homosexuality arise, in part because they often involve public policy and legal issues, which tend to be sharply polarized. Those commonly concerned with homosexuality, positively or negatively, are also those most responsive, with natural law theorists supporting for gays and lesbians having a reduced legal status, and queer theorists engaged in a review and deconstruction of what they see as a heterosexist regime. The two types do not talk much to one another, but rather disregard or talk past one another. There are some theorists in the middle.

Conclusion

All the above arguments in favour and in against homosexuality suggest that Indians are not ignorant about homosexual events around the world and its legalization, but still they have some reservation about homosexual relations. Indian society, by and large, disapproves homosexuality and justifies it as a criminal offence, even when adults indulge in it privately.

Today, the majority of Indians are not even comfortable with homosexual marriages for oneself. However, at the same time, the demand for legalizing homosexual marriages is grave and intense, but somehow not getting the approval of society and is undercover. It seems as if it is still a long way to go for social acceptance of homosexual marriages in India. As the legal recognition of homosexual unions would mean not only the approval of homosexual activity with the result of making it a model in present-day civilisation; but may also obscure the fundamental values (of family, marriage, procreation and continuity of Species) which belong to the common inheritance of humanity.

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