

THE FRUITION OF HOMO-SEXUALITY IN HINDU MYTHOLOGY & INDIAN SOCIETY: FROM KARMA TO THE SOCIOLOGICAL ACCEPTANCE IN THE CONTEMPORARY PERIOD

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Abstract

Homosexuality is viewed as a sin in Hindu mythology, where it is considered to be karma. We are karma-based beings, and our current deeds affect how we will be judged in the future. Thus, homosexuality is considered to be a result of karma. The history of homosexuality in India dates back to the thirteenth century. The homo-erotic sculptures that still exist in temples throughout India serve as historical proof of the country's presence and tolerance of homosexuals. Ancient epics, religious texts, mediaeval prose, poetry, art, and architecture are all signs and sources that suggest that homosexual activities in various forms did exist in ancient India. The Kama Sutra also devotes an entire chapter to discussing homosexual sex. At that time, homosexuality was less viewed as a sin and more as a component of religion and spirituality. The topic of homosexuality has been debated from antiquity to the current period and gay activity is ingrained in Indian society. This path to liberation has been difficult for the LGBTQ group because of obstacles. The paper looks at the impact on the Indian Society after decriminalization of section 377.

Keywords: Buggery Act, Fundamental Rights, Homosexuality, Karma, LGBTQ, Naaz Foundation, Section 377, Third gender.

Introduction

“You don’t fall in love with the gender. You fall in love with the person”

~Andy Biersack

The emotional sensation of same-sex attraction is referred to as homosexuality. It is a sexual attraction, not a gender identity like male, female, or non-binary; it is a sexual attraction between same sexes. Gays, lesbians, LGBTQ people, queer people, and other labels are used by homosexuals to identify themselves. This group of people have relationships and experiences with same-sex love.

Lesbian, gay, bisexual, transgender, and queer are collectively referred to as LGBTQ. These phrases are used to define one's gender identity or sexual orientation.

LESBIAN

A woman who consistently feels attracted to other women on a romantic, sexual, or emotional level are termed as lesbian. Lesbians who wish to self-identify as gay men or gay women can do so. Lesbian is occasionally the chosen term for women.

GAY

A term used to describe people who have long-lasting sex-based physical, romantic, and/or emotional attraction. Gay is the term usually used for the men.

BISEXUAL

A person who has the capacity to develop strong, long-lasting feelings of attraction toward individuals of the same gender or individuals of a different gender. Over the course of a person's lifetime, they may encounter this attraction in varying forms and intensities.

TRANSGENDER

A general term used to describe people whose gender identity and/or gender expression do not correspond to the sex they were assigned at birth. People who fall within the transgender category may identify with one or more of the many words used to describe them, including transgender.

QUEER

A term used by some individuals, especially younger individuals, whose sexual orientation is not exclusively heterosexual. The terms lesbian, gay, and bisexual are typically seen as being too restrictive and or loaded with cultural connotations that they feel don't apply to them by people who identify as queer. When describing their gender identity and/or gender expression, some people use the word queer, or more frequently gender queer.

The legacy of British rule, the regulation concerning unnatural sexual offences in India is one of the penal code's most recent amendments, and it is covered under Section 377 of the Indian Penal Code. In 1864, while India was controlled and dominated by the British, Section 377 of the Indian Criminal Code was enacted. Article 377 of the British Colonial Penal Code said that any form of sexual activity that did not occur naturally was forbidden. Two people who engaged in homosexual behaviour, as well as oral and anal relations, were prosecuted under the statute. In addition to punishing homosexuals, Section 377 also targets heterosexual couples who engage in anal sexual intercourse. For instance, if a heterosexual married couple does not have normal intercourse and instead take part in anal intercourse with both parties consent then both the husband and wife will be held accountable under Section 377 IPC. But in the case where the wife does not give consent for anal intercourse, then the husband alone will be held accountable.

Whereas the legal standpoint, where Section 377 explicitly forbids gay acts, directly contravenes Part III (Fundamental Rights) of the Indian Constitution, which places a strong emphasis on equality in all spheres. Like,

- Article 14: Equality before law and equal protection of law.
- Article 15: Discrimination against people based on their birthplace, ethnicity, caste, religion, or gender is forbidden.
- Article 21: Protection of personal freedom and life. (Laxmikanth, 2020, p. 73)

All of them are in direct conflict with one another, and it is clear that Section 377 ought to be repealed. However, the legal conflict about LGBT existence lasted for almost 20 years. On September 6th, 2018, the Supreme Court of India ruled in favour of homosexuals by allowing adult sexual contact, regardless of sex. However, the road was difficult and paved with numerous pitfalls.

Historical background

Many LGBT+ related tales originate from ancient India. The king of Awadh (today's Lucknow) would have a variety of sexual partners and gender identities. Lesbian relationships were mentioned in late 19th-century Bengali literature. Likewise, two-man relationships were portrayed in Sufi Muslim texts. Even the Kama Sutra provided instructions on how to agree to homosexual relationships. Even further back, it wasn't until about 3102 BCE that homosexuality was recognized as a separate gender. Graphic depictions of same-sex intercourse may be seen on the walls of Puri and Tanjore, which were built between the sixth and fourteenth centuries. Chapter nine of Vatsyayana's Kama sutra discussed oral sex and actions known as Auparashtika, homosexuality, and sexual behaviours among transgender people. There are homoerotic or same-sex references in several sufi poetry. Bulleh Shah, a Sufi saint, for instance, presented pre-modern views on religion and sexuality in his works. His poems demonstrated his sexual openness and love for his murshid, Shah Inayat.

Manusmriti- It is one of the significant codes of law that the vast majority of people at the time adhered to. It suggests punishment for homosexual conduct committed by either a man or a woman. The presence of homosexuality is demonstrated by this script, despite the fact that it doesn't exactly endorse gay behaviour at the time.

Khajuraho Temple- The well-known temple in Madhya Pradesh is embellished with several sculptures that depict sensuality that date back to ancient India. It was constructed in the tenth century by Rajput Chandela Dynasty emperors. There may not be another temple in India that represents every emotion that exists in human nature. It is clear from several of these sculptures that gay behaviour was prevalent in ancient India.

Other literature in Hindu mythology discusses but condemns same-sex love. In any case, it demonstrates the occurrence of homosexuality at the period.

BEFORE LEGALIZATION SCENARIO

Throughout the nineteenth century, the Indian Criminal Code was surrounded by British Colonial Rulers. The whole code was burdened by the British legal system that was in place at the time and was filled with inconvenient provisions, like section 377. The Buggery Act, a piece of legislation from the sixteenth century, surrounded Section 377 IPC. The penalty, at that period for most offences, was the death penalty. It was a capital offence up until 1861. The legislation was first enacted one year after Parliament ended papal rule over the English Church. The divorce case brought before Catholic courts had received little sympathy. The seizure of the monasteries was the result of a growing campaign against Catholics that started in earnest in 1536 and included the buggery statute.

It was a hard time for the people belonging to LGBTQ community as people treated them as sinners or someone with a mental disorder. Some of them even tried to commit suicide as their own people were not willing to accept them the way they are.

Then for the first time the Delhi-based NGO Naaz Foundation, which had petitioned the Delhi High Court in 2001 to make gay relations between consenting adults lawful, was the one who initially raised the issue of Section 377. Then, in 2009, the Delhi Supreme Court declared the penal provision "invalid," decriminalising sex between consenting individuals of the same sex. In *Suresh Kumar Koushal vs. Naaz Foundation*, the Indian Supreme Court overturned the Delhi High Court and stated that the Parliament should decide on this issue, after this verdict was swiftly challenged by several religious organisations and individuals. The 2015 introduction of the Section 377 subject to Parliament resulted in its rejection. The Supreme Court received a written petition from five LGBT individuals, including chef Ritu Dalmia, journalist Sunil Mehra, dancer Navtej Singh Johar, business woman Ayesha Kapur, hoteliers Aman Nath and Keshav Suri, and dancer Navtej Singh Johar, questioning the constitutionality of Section 377 of the IPC and the two-judge bench's decision in the case of *Suresh Koushal*.

They contested the sentence "punishing adults for having sex and making it an offence"

A petition to reconsider the 2013 Naaz Foundation ruling was accepted by the Supreme Court in January 2018. Section 377 was declared unconstitutional on September 6, 2018, by the Supreme Court in *Navtej Singh Johar vs. Union of India*, which said that it did so "in so far as it criminalizes consensual sexual activities between adults of the same sex." A five-judge panel, including the former Chief Justice of India, Dipak Misra, and Justices R. F. Nariman, D. Y. Chandrachud, A. M. Khanwilkar, and Indu Malhotra, rendered the decision.

Justice Indu Malhotra had remarked in her reading of the judgement that sexuality lies at the core of a human being's innate identity and "Society owes an apology to the LGBTQ community for the years of stigma imposed on them"

The LGBTQ community has experienced several challenges until the Supreme Court of India decriminalized homosexuality on September 6, 2018. A five-judge constitutional panel overturned the 1861 colonial-era statute, which had been in effect for 157 years. The judges described the section of Section 377 that criminalized unnatural sex as "irrational, untenable, and clearly arbitrary" in the momentous decision. The majority decision noted violations of fundamental rights and overturned long-standing notions that prevented individuals from having the freedom to live their lives without discrimination and prejudice.

AFTER LEGALIZATION SCENARIO

A step in the right direction towards a more inclusive society, according to the most recent Supreme Court ruling on Section 377. Numerous organizations have supported decriminalizing homosexuality in India after Section 377 was repealed and called for tolerance and social equality for LGBTQ individuals. India is one of the nations with a third gender in society, yet there is still a lot of economic, emotional, physical, and mental abuse towards the LGBT population in India. Since homophobia is pervasive in India, open discussion about homosexuality is uncommon. Finally, members of the LGBTQ community are beginning to openly come out and integrate themselves. Some felt more prepared to handle the daily micro-aggressions they encountered at job, school, or universities.

JOB OPPORTUNITIES

The fact is that most laws in India only take into account "males" or "females," despite the community's great success in overturning the barbaric legislation. The third gender, what about it? This is especially true in the workplace, where harassment, abuse, and homophobic insults aren't really uncommon.

Social stigma, discrimination, which may include abuse and violence, and the requirement that LGBT individuals disclose their true identities are some of the factors they may have decided to avoid. However, organizations such as Pride Circle is putting in a lot of effort to dispel the taboos surrounding LGBTQ people as well as the preconceptions that keep them from leading regular lives like their straight counterparts.

Co-founder of Pride Circle Ramkrishna Sinha concurs. "In a world without the 377 verdict, the job affair would not have been feasible. This time, 38 firms participated in the employment fair; if the judgement had not been upheld, I doubt that would have happened. Even traditional businesses that you wouldn't believe would be accepting of hiring LGBT people made us offers."

As one might expect, the gay community welcomed this amazing chance with open arms after finally seeing some light at the end of a long dark tunnel. As a person's sexual inclinations have no bearing on their capacity as a working professional, this does not imply that queer people were unable to obtain good professions prior to the ruling. However, they stayed away due to the stigma surrounding the LGBTQ groups and their fear of marginalization and discrimination. India didn't hold its first LGBT job fair until over a year after decriminalization; and while we still have a long way to go before we can rest, suffice it to say that year '2018-2019' have been a step in the right direction in terms of equal opportunities and queer rights.

RELIGIOUS SENTIMENTS

Religious organizations have been one of the most ferocious and vocal opponents of LGBTQ+ rights. Examples include:

- The evangelical Christians in the USA who run gay conversion therapy camps,
- Baba Ramdev who says yoga can "cure" homosexuality, and
- The All-India Muslim Personal Law Board, whose secretary, Zafaryab Jilani, cites the Sharia's violent views on homosexuality as justification for the ban on "unnatural act" in a rather explicit and fearless manner.

The death sentence for homosexuality is enshrined in the three Abrahamic religions of Islam, Judaism, and Christianity, with Islam going one step further and specifying the manner of execution. For those who are unaware, Sharia law requires that the prisoner to be thrown from the highest building in the neighbourhood.

Although Indians have accepted homosexuality as a sexual orientation more than ever before the ruling, there are still many social injustices. Additionally, homosexuals deny that they expose themselves in settings like businesses, households, and schools. This is forbidden in most Indian societies. Most Indian families don't mind the term "homosexuality" unless one of their own decides to identify as one. Sexual conflict often begins at home.

The majority of them are exposed to statements like It's only a stage, or "There is nothing like this; it defies the rules of nature," It's not really convenient to go outside either. Even at job or school, they continue to live in constant terror of hiding their identity. They occasionally receive taunts from co-workers and friends, or worse, bullies who blackmail them. They are constantly terrified of never finding true love or a life partner.

When gays come out, they are often forced to undergo surgery and forced makeovers since it is believed that they have some sort of mental illness. They experience maltreatment all throughout. Additionally, they are required to keep quiet if they are molested or abused.

It is abundantly evident from the above discussion that, even after Section 377 was decriminalized for two years, things are still not going well for the country's gays. They continue to encounter a great degree of hostility and violence. The verdict did not grant them any respect in society, even if it permitted them to enjoy legal sex with their relationship. No matter how it is organised politically, economically, or culturally, the state is required by law to promote and protect the human rights of its citizens. Every day, they have to battle for their rights. They don't even meet their most basic demands as a heterosexual pair. They must deal with public criticism from onlookers.

Due to the lack of a law that would assist them, when reporting rapes and other attacks, the LGBT community feels powerless. It is past due for India to create rape laws that are gender neutral. The government needs to understand how crucial it is for people to raise awareness. The Indian curriculum must incorporate sex education. It is essential to set up suitable healthcare facilities and services that will address the unique demands of the homosexual population.

The above analysis also makes it clear that, despite the decriminalization of Section 377 of the IPC, the nation's homosexual population has not reaped the benefits that were anticipated. They are currently limited to engaging in private, consensual intercourse.

The LGBTQ community in India does not possess equality. They do not enjoy the fundamental rights that a heterosexual person would. They continue to be unable to adopt or get married. India now asks for new laws that would safeguard the gay population or at the very least provide it room under the present regulations. It's time to face reality and change for the better as a result. Since homosexual people are equally as human as heterosexual people, we need to start accepting them for who they are.

People belonging to the LGBT continue to battle for social acceptance despite all the advances. A Supreme Court decision can only issue a resolution; nonetheless, society must make sure that LGBT individuals are treated with respect and are not exposed to prejudice. Simply allowing sexual activity between same-sex partners won't equalize them with other citizens

because the future of same-sex marriage, the legality of same-sex adoption, the right against oppression, and other issues are still up in the air, and the community is still fighting for them. Therefore, it is evident that the struggle has not yet been won, and India still has a long way to go before being truly inclusive.

Conclusion

LGBTQ community has existed in India as a third gender since ancient times as well as discrimination against it. After arrival of British rule in India they brought along the rules and regulation they followed in their own country and applied it here, one such rule was Section 377. Section 377 prohibited any kind of homosexual relationship. This rule was abolished in September 2018 after Suresh Kumar Kaushal vs Naaz Foundation scenario. The abolition paved the path for those people who felt the need to hide their sexuality and counted themselves in LGBTQ community, to express themselves freely. This abolition also proved beneficial for the people of LGBTQ community to find a better standing among their peer in workplaces. As far as the religious sentiments are concerned people of certain communities' still show resistance to accept the people in LGBTQ community, some even treat it as a mental disorder. Due to this the LGBTQ people have been seen changing their religion to those who are more accepting towards their gender preference. Now is the twenty-first century, a man has grown to the point that he is capable of choosing his own partners and sexual preferences, but because of certain prejudices, the idea that two persons of the same gender may fall in love and commit their lives to one another is still beyond the comprehension of many Indians. People continue to struggle even after section 377 LGBTQ was decriminalised, for some basic rights as well. When the decriminalization of section 377 had been granted in the court people from the LGBTQ community thought this would uplift their conditions but soon they realized this was only the first step and they have a long way to go.

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