

CONTEMPORARY INDIAN PERSPECTIVE ON HOMOSEXUALITY

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ABSTRACT

In our culture, there has always been a stigma linked to the concept of homosexuality. There have been reforms that have transformed attitudes around homosexuality, but Indian culture still has a long way to go. According to the author, there are three basic views to consider while considering homosexuality: legal, religious, and societal. The researcher believes that religious and social perspectives are appropriate for this piece of writing because the stigma associated with homosexuality stems from imperialists' gross misrepresentation and misinterpretation of our religion, which was accomplished by influencing people's social lives. On the one hand, the legal position has played a significant influence in molding people's views on homosexuality; on the other hand, we haven't made enough progress in changing people's minds. Religion is what inspires and pushes individuals towards acceptance, or denial, in a country like India, and the author feels compelled to shed some light on this aspect of religion. We are those who believe in God and put our faith in Him; we believe in the presence of an ultimate power that is greater than our conscience and science, and we have been impacted by it for over 5,000 years! Another key justification for the author's comment is that, when examined from a socio-religious perspective, he was able to grasp this concept quickly.

Key words: Homosexuality, Religion, Social, Legal, Perspective, Contemporary

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Legal & Judicial Dimensions

In terms of law, the first case that springs to mind is that of *Navtej Singh Johar*¹, which we will explore further. But few people are aware that four different judgments relating to S.377 of the Indian Penal Code, 1860, were handed down in close proximity to one another. In the matter of the *Naz Foundation*², the Delhi High Court overturned S.377 in 2009 because it was contrary to constitutional spirit. In *Suresh Kumar Kaushal and Anr. v. Naz Foundation and Ors.*³, the legality of the section was upheld by a 3-Judge bench of the Supreme Court by overruling the Delhi High Court's decision prior to it. The main point of contention in all the cases with respect to this Section was, that it violated a wide array of Fundamental Rights, right from Article 14 to Article 21. Even if Article 14 of the Constitution gives for equal protection of law and equal representation before the law for all, it does to a certain extent allow differentiation provided that it is done with intelligible variation. Even in the famous *NALSA*⁴ judgement, The Supreme Court noted that the Constituent Assembly stressed the right against discrimination on the basis of sex in order to ban the State's direct or indirect attitude of treating people differently because they do not correspond to society's gender-binary paradigm. As a result, the Supreme Court concluded that Article 15 of the Constitution covered "gender identity" and "sexual orientation." The Supreme Court stated in the *Navtej Singh Johar* decision that there was no discernible difference between persons who allegedly indulge in "natural" fornication and those who perform 'carnal fornication which is against the natural order of things.' The Apex Court has given a liberal interpretation of A.15, expanding its scope to cover discrimination on any basis, including, in this case, "sexual orientation," not simply caste, color, gender, religious belief, or birth place. A.19(1)(a) provides the right to freedom of expression, subject to the limitations set forth in clause (2) of the same Article. S.377 could not be a justifiable restriction for consensual carnal intercourse, according to the Court. It was stated that this did not breach public decency in any way. Finally, the Court claims that under A.21, everyone has the right to a dignified life as well as the right to privacy. As a result, to say that society or the state should not interfere in someone's private concerns is to imply that what people do in their beds is unimportant to them. In 2017, Senior Advocate Saurabh Kirpal was

¹ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

² *Naz Foundation v. Government of NCT Delhi and others*, 160 Delhi Law Times 277.

³ (2014) 1 SCC 1.

⁴ *National Legal Services Authority v. Union of India and others*, AIR 2014 SC 1863.

recommended by the Delhi High Court College as a High Court judge. The Central government even after such massive changes in the jurisprudence surrounding the issue pulls foot on this issue, in essence denying its first openly gay judge to India, despite its backing of the Supreme Court proposal, more than three years later. Therefore, the intent behind writing this article is to provide readers a source for accepting homosexuality to which they are more open i.e., the Indic perspective.

Comparison with other Nations

How can one not mention the 'free land' when discussing LGBTQ rights? The United States of America, to be precise. In comparison to Indian society, the west is usually faster in going forward with what we anoint as "modernization." The pride flag is currently emblazoned on even American F-16s. Despite the author's failure to appreciate the significance of this gesture, it demonstrates that today's Western culture is welcoming of persons of several genders and sexualities. But we forget that the United States, like the rest of the world, has faced legal obstacles in battling homophobia and stigma. Los Angeles Postal authorities seized editions of a magazine called "ONE: *The Homosexual Magazine*", a magazine for Gay readers, in a case claiming the magazine had broken obscenity laws⁵. The Supreme Court of the United States (SCOTUS) recently ruled that content oriented towards a specific community (in this case, the LGBTQ community) was not obscene, meaning implying that individuals had the right to print LGBTQ content. That became among the earliest cases whereby the Supreme Court of the United States upheld gay rights. However, the Court's position has changed over time. There have also been cases such as *Boy Scouts of America v. Dale*⁶, in which the Supreme Court denied a boy's readmission to the Boy Scouts after he was ousted for belonging to the LGBTQ community. The court justified its ruling by arguing that it may infringe on the Boy Scouts' First Amendment rights under the American Constitution. *Lawrence v. Texas*⁷ is a historic Supreme Court decision that declared sodomy statutes unconstitutional. This decision is significant because the court recognised that Individuals from the LGBTQ community have a right to constitutional safeguards without the need for government participation. How can one discuss homosexual rights without mentioning *Obergefell v. Hodges*⁸? The petitioners' contention that state officials are violating the 14th Amendment's equal protection guarantee by refusing to allow same-sex

⁵ One, Inc. v. Olesen (1958).

⁶ (1996).

⁷ (2003).

⁸ (2015).

marriage was upheld by the Supreme Court. Finally, gay marriage is permitted in the United States. From all of these incidents, we may deduce that American culture has had to battle for LGBT rights almost as much as we, as Indians, have. Adapting to change has not been simple for anyone, but we must recognize that it is not impossible.

Social & Religious Dimensions

As previously stated, social and religious perspectives would be vital to consider when deciding whether or not same-sex marriage is appropriate. The researcher has a number of friends and siblings who live in the United States and other western nations, and has heard them describe Indian culture as "regressive" for not having accepted homosexual and lesbian partners in the same manner in which the modernized countries have. The involvement of the west in generating the stigma around homosexuality that persists in India today is something that people with this perspective are unaware of, don't understand, or don't want to comprehend. Let us begin in the beginning, when India was only a colony within the vast British empire. We are all well aware of and have been taught that the education system was the first target of the Queen's people in India in order to weaken Indian society. Following the *Dharma Shastras* and *Puranas*, our educational system was founded on Vedic methods. The English men introduced us to a westernized way of education, to the so-called modern education, whereas it was really only based on Christian conservatism. As a result, a lot of Indians, some on will and some by force adapted to the western style of living. The Christianity that the westerners practised at the time categorically opposed gay individuals and their relationships, stating that they were incompatible with the Bible. Now, I've been told that the Bible doesn't contain anything harsh about same-sex couples, and there's a good probability that's true. Is it, however, incorrect for Indian society to blame the British and their holy Book for the corruption of our civilizations and faiths as a result of their misconceptions? No, I don't believe so. Imperialists have often juggled and wrongfully translated the content of our Sanskrit verses and inscriptions to the impoverished, ignorant Indians for their personal gain. Take, for example, the S.377 of the IPC. It is British pre-constitutional legislation! This, by the way, is still going on today, with western websites, for example, offering incorrect and deceptive interpretations of the Manu smriti. "Well, since so much has been misconstrued and misrepresented, what is the truth?" could be a reasonable query at this point. Yes, the truth.

The majority of Indians are Hindus, which determines our country's societal norms. The author will discuss homosexuality in relation to the *Sanatan Dharma*. Our societal norms are derived from the Vedas, *Bhagwat Geeta*, and *Dharma Shastras*. Our *Shastras* mention *Kama* in the four *Purusharthas* for achieving *Moksha*. In order to achieve *Moksha*, it is a person's responsibility to fulfil his sexual cravings. This indicates that sexuality, or sexual behavior, is valued in Hindu scriptures. They make no distinction between heterosexual and gay acts, though. However, they do make a distinction between reproductive and non-reproductive sexual acts, and they admit that certain individuals engage in sexual activities for pure pleasure rather than procreation. Some people object to same-sex marriages because the *Dharma Shastras* state that the institution of marriage serves multiple functions, one of which is procreation. However, we must recognize that *Dharma Shastras* are not binding writings and can be read in a variety of ways. The son of Lord Shiva and Vishnu, i.e., Lord *Ayyappa*, is an example of *Prajaa*, or procreation from a same-sex relationship (*Hari-Hara*). Hindu *Dharma*, or *Sanatan Dharma* as it is more commonly known, is not founded on a single dictatorial figure or even a single book. As a result, finding a single hardline view on any issue, let alone same-sex relationships, is extremely difficult. With different religious denominations, we will find a wide range of thoughts and beliefs about homosexuality.

The Vedas mention a 'Third Sex,' who may not be able to reproduce through intercourse due to impotency or a lack of attraction to the opposing gender. However, none of the scriptures urge for outright rejection of the third gender. As a result, one could argue that, at least in terms of interpretation, Indians do not oppose homosexuality. I believe everyone has heard of the Kama Sutra, sometimes known as the 'Sex book' by many westerners. I was researching this topic a few months ago for an argument I was having, and I came upon a verse from the Kama Sutra's Section 2 that mentions two men performing sexual acts. This is verse 36 of the 9th Chapter of Section 2—

“*Tathā nāgarakāḥ kecidanyonyasya hitaiṣiṇaḥ |
kurvanti rūḍhaviśvāsāḥ parasparaparigrahaḥ ||*”

- Verse 2.9.36

The shloka is very similar to; “Certain city dwelling men (*kecid nāgarakāḥ*) in the same way desire another’s welfare (*anyonyasya hitaiṣiṇaḥ*) who have established trust (*rūḍha-viśvāsāḥ*)

do the (*kurvanti*) service, that is oral sex for one another (*paraspara-parigraha*).⁹ Let's take a closer look at the verse now. People who desire or wish to seek are referred to as "*hitaiṣiṇaḥ*." It's called a sandhi (*hita* + *eṣiṇaḥ*). The word *hita* means 'benefit' or 'beneficial,' and the word *eṣiṇaḥ* signifies 'seeking.' As a result, the terms might be construed as persons who seek/desire gain for themselves as well as others. This line is interpreted as *viśṛṣṭi-sukha-kāritvāt*, or causing the pleasure of discharge (of semen), by Jayamangala, a commentary on the Kama Sutra. However, because the commentary exclusively relates it to coitus, and provided that *hita* is a very broad, it can be concluded that there is a fair chance that the translation and understanding given in the Jayamangala commentary is not up to the mark. '*rūḍhaviśvāsāḥ* (*rūḍha* + *viśvāsāḥ*)' alludes to the faith or assurance placed in one another, meaning that the men had trust and belief in one another. *gūḍhaviśvāsāḥ*, which signifies private trust, is another way to translate this term, and it makes great sense in this context. It is clear from the verse's translation and interpretation that these guys were more than just acquaintances. Men doing *paraspara-parigraha*, or mutual service/help, as described in a literature like the Kama Sutra, only point in one way, which we know.¹⁰

Gender fluidity and the third gender are discussed in the Vedas as well as Hindu epics such as the *Mahabharata*. *Shikhandi* is an example of this. *Shikhandi* was a female named *Shikhandini* who was born to King *Draupada*, the father of *Draupadi*, the *Pandavas'* wife. King *Draupada*, on the other hand, raised *Shikhandini* as a man and taught him warcraft and statecraft. *Shikhandi* also fought in the *Kauravas'* army in the *Mahabharata*, and Lord Krishna praised them for their valour and valour. Because of the curse placed on him by *Apsara Urvashi* of Lord *Indra's* court, the *Pandava* brother *Arjuna* is made to live in disguise as a Eunuch in the final year of their exile. He lives under the garb of *Brihannala*, a eunuch. *Uttara*, King *Viarata's* daughter, is said to be taught dance and singing by *Brihannala*. *Brihannala* also serves as the charioteer for *Uttara Kumara*, who defeats the *Kauravas* and returns victorious. Lord Krishna has taken the form of a woman twice, once as *Mohini* and once as *Radha*. To grab the *Amrita* from the *Asuras* first, during the churning of the sea. The second time was when *Irawan*, *Arjuna's* son, requested to be married and consummate the marriage before being sacrificed to ensure the *Pandavas'* triumph. This Lord Vishnu avatar discusses the third gender, as well as gender flexibility among Hindu gods. Finally, I believe

⁹ Virtual Vinodh, *Writings: Assorted: Homosexuality Kamasutra*, VIRTUAL VINODH (Accessed Dec. 09, 2021, 04:55 PM), <http://www.virtualvinodh.com/writings/assorted/homosexuality-kamasutra/>.

¹⁰ DURGAPRASAD, VEDIC PHILOSOPHY; VATSYAYANA, KAMASUTRA; YASODHARA, JAYAMANGAL

that gender fluidity is implied in Lord Shiva's name, *Ardhanareeshwar* [*Ardha* (Half) + *Naree* (Woman) + *Ishwar* (God)], which translates to "half woman, half man." According to legend, *Maata Parvati* asked Lord Shiva what "austerity" she would have to practise in order to experience the state in which Lord Shiva resides, as explained by Jaggi Vasudev (Sadhguru). Lord Shiva requests that she sit on his left lap, and when she does, he simply pulls her in and she merges with him! This is something that indicates the presence of two halves of your body, one half male and the other half woman. Your eventual gender will be determined by the attribute that is prominent in you. However, for some people, both are equally powerful. Isn't it all starting to make sense now? In response to a question about his thoughts on homosexuality, Shri Shri Ravi Shankar Ji stated, "Homosexuality has never been regarded a crime in Hindu culture." Hari-Hara was the mother of Lord Ayyappa (Vishnu & Shiva). In any Smriti, it is not a crime. There are male and feminine elements in everyone. Tendencies emerge and evolve depending on their dominance. Nobody should be treated unfairly because of their sexual orientation.

Conclusion

Everything the author had said up to this point had been facts and religious beliefs meant to demonstrate how the world is gradually changing its attitude towards LGBTQ people and same-sex relationships and marriages. Now, let me share my personal thoughts on the subject. Despite the author's difficulty grasping the significance of undue influencing in the name of wokeness by many LGBTQ activists, the researcher is a staunch advocate of Same-Sex marriage. If someone had asked me a year or two ago, "Do you support Gay people?" I would have had a very different response. However, after reading about the various legal, scientific, and even theological perspectives on the subject, I have altered my mind. But, above all, I asked myself, and I believe any homophobe should ask themselves, "Is it hurting you or the world?" "Is it going to kill people?". The answer is always a resounding "NO." It's simple; it has nothing to do with anyone who isn't a community member! It's an issue of natural selection, as determined by nature. People must understand that they do not get to choose their gender or sexuality. In terms of Indian society, it is known to us, that God has a stronger influence on Indians than anybody else. Thankfully, the religion they practice has enough ancient civilizational evidence to begin to justify this. All that remains is for us to ensure that these realities are communicated to everyone, particularly young men and women. So, how do we do it? Re-shaping educational paradigms is a great

way to start! By focusing on how Ancient Indic scriptures and legends advocate same-sex couples rather than how Indian society has been backward in accepting them.

Recently, the NCERT (National Council of Educational Research and Training) has issued a gender-neutral training manuals, which asked for installing gender neutral washrooms in schools and removing the concept of gender binary from schools altogether. Again, the author fails to grasp the intent behind this, and it was taken down from the website of the council. It is pertinent to note here, that again, wokeness in the name of reform and development is not the right way to change the educational paradigm of India. We need well-structured education patterns, with which the students of a younger age can cope, and grasp the concept of homosexuality, gender fluidity and non-binary. What the government should do instead is, make children learn about the Indian examples and instances of Homosexuality being normalized, though history, religion and legal ways for students in their teens. Once that is done, they can be introduced to the western methods. Changing to gender neutral washrooms is where the West stands with respect to their acceptance on the said issue, and as aforementioned, we are yet a long way to go. It would be a lengthy process, but Rome was not built in a day!