

HOMOSEXUALITY – LOVE AND RELATIONSHIP IN INDIA

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Abstract :

Gay, lesbian bisexual and transgender (GLBT) people in India face legal and social difficulties not experienced by non-LGBT persons. Sexual activity between two persons of the same sex is criminalized, and is punishable by incarceration. India does, however, legally recognize Hijras as a gender separate from men or women, making the country one of the few in the world to legally recognize a third gender.

Homophobia is prevalent in India. Public discussion of homosexuality in India has been inhibited by the fact that sexuality in any form is rarely discussed openly. In recent years, however, attitudes towards homosexuality have shifted slightly. In particular, there have been more depictions and discussions of homosexuality

Introduction :

India does not have a uniform civil code and every citizen has the right to choose the civil code that applies to them based on their community or religion. Although marriage is legislated at the federal level, the existence of multiple marriage laws complicates the issue. The following Acts cover Marriage Laws in India:

- Indian Christian Marriage Act of 1872
- Special Marriage Act 1954
- Hindu Marriage Act, 1955
- Muslim Marriages are not codified and are governed by Islamic Sharia Law 1937

None of the codified Marriage Acts enacted by the Union of India explicitly defines marriage between a man and a woman. **Neither do these acts explicitly prohibit same sex unions** However; the laws have "heteronormative underpinnings" and **have been interpreted not to recognize same-sex unions.**

India may be the biggest democracy in the world but its stance on GLBT rights makes it one of the smallest. **Homosexuality** is mostly a **taboo subject in Indian civil society and for**

the government. *Section 377 of Indian Penal Code (IPC) makes sex with persons of the same gender punishable by law.*

There are no official demographics for GLBT population in India, but the GOI submitted figures to the Supreme Court (SC) in 2012. According to the figures, there were *about 2.5 million gays* recorded in India and these figures are only based on those individuals who have self declared to the Ministry of Health and there can be much higher statistics for individuals who have concealed their identity, since a major number of Homosexual Indians are living in closet due to fear of discrimination. *There are many websites in India which cater to Gay, Lesbian, Bisexual, Transgender Communities (GLBT) and many people are registered and actively communicate and interact, counsel each other through these sites.* A very popular gay dating Website which has about *1.8 million men registered from around the world*

India has about approx 140,000 individual males registered, a figure more than Western countries like USA (46,645), UK (41,021) and ranks 3rd in the highest number of people registered from a country and *nearly 80 per cent of them are under the age of 15-30 yrs* with the highest numbers registered in State are **Maharashtra** (25,564), **Tamil Nadu** (16,380), **Karnataka** (14,763), **Delhi** (13,441) and cities are in highest numbers are New Delhi (13,391), Mumbai (11,001), Hyderabad (10,273), Bangalore (8,000).

In the Indian news media and in Bollyhood several organizations, including the **Naz Foundation (India) Trust**, **Union Health National Human Rights Commission of India** and the **Planning Commission of India** have expressed *support for decriminalizing homosexuality in India*, and *pushed for tolerance and social equality for gay, lesbian, bisexual, and transgender people (GLBT).*

India is among countries with a social element of a third gender. But mental, physical, emotional and economic violence against GLBT community in India prevails. Lacking support from family, society or police, many gay rape victims don't report the crimes. Religion has played a role in shaping Indian customs and traditions. While homosexuality has not been explicitly mentioned in the religious texts central to Hinduism, the largest religion in India, Hinduism has taken various positions, ranging from positive to neutral or antagonistic.

Historical Background/Evidence :

Modern attitudes toward homosexuality have religious, legal, and medical underpinnings. Before the High Middle Ages, homosexual acts appear to have been tolerated or ignored by the Christian church throughout Europe. *Beginning in the latter twelfth century, however, hostility*

toward homosexuality began to take root, and eventually spread throughout European religious and secular institutions. Condemnation of homosexual acts (and other nonprocreative sexual behavior) as "unnatural," which received official expression in the writings of Thomas Aquinas and others, became widespread and has continued through the present day (Boswell, 1980).

Rig-Veda, one of the four canonical sacred texts of Hinduism says *Vikriti Evam Prakriti* meaning what seems **unnatural is also natural** which some scholars believe recognizes homosexual/transsexual dimensions of human life, like all forms of universal diversities. Historical literary evidence indicates that homosexuality has been prevalent across the Indian subcontinent throughout history, and that *homosexuals were not necessarily considered inferior in any way until about 18th century*.

The **Arthashastra**, an ancient Indian treatise on statecraft, mentions *a wide variety of non-vaginal sexual practices* which, whether performed with a man or a woman, were sought to be punished with the lowest grade of fine. While homosexual intercourse was not sanctioned, it was treated as a very minor offence, and several kinds of heterosexual intercourse were punished more severely.

Sex between non-virgin women incurred a very small fine, while homosexual **intercourse between men** was sought to be censured by a prescription of a bath with one's clothes on, and a penance of "*eating the five products of the cow and keeping a one-night fast*"- the penance being a replacement of the traditional concept of homosexual intercourse resulting in a loss of caste.

In 1977 **Shakuntala Devi published the first study of homosexuality in India**. Whilst convictions under Section 377 were rare, with no convictions at all for homosexual intercourse in the twenty years to 2009 Human Rights Watch have said that the law was used to harass HIV/AIDS prevention activists, as well as sex workers, men who have sex with men, and other GLBT groups.

Tussle for and against GLBT Rights :

- ❖ *Homosexual intercourse was a criminal offence until 2009—under Section 377 of the Indian Penal Code, 1860*. This made it an offence for a person to voluntarily have "carnal intercourse against the order of nature."
- ❖ In 2009 Delhi High Court decision *Naz Foundation v. Govt. of NCT of Delhi*, which found **Section 377 and other legal prohibitions against same-sex conduct to be in direct violation of fundamental rights provided by the Indian Constitution**.
- ❖ Decisions of a High Court on the constitutionality of a law (i.e. judicial review) apply

throughout India, and not just to the territory of the state over which the High Court in question has jurisdiction. However, even after the **pronouncement of verdict, there have been (rare) incidents of harassment of homosexual groups**

- ❖ On 16 February 2012, the Supreme Court, during a hearing of a bunch of appeals filed against **decriminalization of gay sex**, observed that **homosexuality should be seen in the context of changing society as many things which were earlier unacceptable have become acceptable with passage of time.**
- ❖ The two-judge bench, composed of **Justices G S Singhvi and S J Mukhopadhaya**, opined that homosexuality should be seen in the light of changing times where phenomena of **live-in relationship, single parents and artificial fertilization have become normal.** They had also pointed out that many things, which were considered immoral 20 years ago, have become acceptable to society now. The bench said that **gay sex was not an offence prior to 1860** and referred to paintings and sculptures of *Khajuraho*.
- ❖ In September 2006, **Nobel Laureate Amartya Sen acclaimed** writer Vikram Seth and other prominent Indians publicly ***demand the repeal of section 377 of the IPC*** The open letter demanded that ***"In the name of humanity and of our Constitution, this cruel and discriminatory law should be struck down."***
- ❖ On 30 June 2008, Indian Labour Minister Oscar Fernandes backed calls for ***decriminalization of consensual gay sex***, and Prime Minister Manmohan Singh called for ***greater tolerance towards homosexuals.***
- ❖ On 23 July 2008, Bombay High Court Judge Bilal Nazki said that ***India's unnatural sex law should be reviewed.***
- ❖ On 9 August 2008, then Health minister, Anbumani Ramadoss began his ***campaign for changing Section 377 of the Indian penal code, which makes homosexuality an unnatural act and thus illegal.***
- ❖ At the International AIDS Conference in Mexico City, Health minister, Anbumani Ramadoss said, ***"Section 377 of IPC, which criminalizes men who have sex with men, must go."*** His ministerial portfolio had put him at odds with the Indian Home Minister Shivraj Patil and other several other ministers in seeking to scrap Section 377.
- ❖ Various Hindu organizations based in India and abroad have supported decriminalization of homosexual behaviors. In 2009, **the Hindu Council UK** became ***one of the first major religious organizations to support GLBT rights*** when they issued a statement ***"Hinduism does not condemn homosexuality"***

- ❖ **Sri Sri Ravi Shankar**, a prominent Hindu spiritual leader, has condemned sec 377 in a series of tweets, maintaining that *"Hinduism has never considered homosexuality a crime"* and *"to brand a person a criminal based on sexual preference would be absurd."*
- ❖ The United Nations has urged India to decriminalize homosexuality by saying it would help the fight against HIV/AIDS by allowing intervention programmes, much like the successful ones in China and Brazil.
- ❖ **Jeffrey O'Malley**, director of the United Nations Development Programme (UNDP) on HIV/AIDS, has stated *countries which protect men who have sex with men (MSM) have double the rate of coverage of HIV prevention services as much as 60 per cent* According to him, inappropriate criminalization hinders universal access to essential HIV, health and social services.
- ❖ **BJP senior leader Arun Jaitley** stated in February 2014 that *he supported decriminalization of homosexuality*. On 13 January 2015, BJP spokesperson Shaina NC, appearing on NDTV, stated, *"We [BJP] are for decriminalizing homosexuality. That is the progressive way forward."*

Court Proceedings on GLBT Rights

- ❖ In December 2002, Naz Foundation filed a Public Interest Litigation (PIL) to challenge IPC Section 377 in the Delhi High Court. On 4 July 2008, the Delhi High Court noted that there was **"nothing unusual"** in holding a gay rally, something which is common outside India.
- ❖ On 2 July 2009, in the case of *Naz Foundation v National Capital Territory of Delhi*, the High Court of Delhi struck down much of **S. 377 of the IPC as being unconstitutional**. The Court held that to the extent S. 377 criminalized consensual non-vaginal sexual acts between adults; it **violated an individual's fundamental rights to equality** before the law, **freedom from discrimination and to life and personal liberty under Articles 14, 15 and 21 of the Constitution of India**. The High Court did not strike down Section 377 completely. (It held the section to be valid in case of non-consensual non-vaginal intercourse or to intercourse with minors, and it expressed the hope that Parliament would legislatively address the issue).
- ❖ On 28 January 2014, Supreme Court **dismissed the review petition** filed by Central Government, Naz Foundation and several others, against its December 11 verdict on Section 377 of IPC.
- ❖ In January 2015, National Crime Records Bureau (NCRB) said that according to data

collected, 778 cases were filed under Section 377 of IPC and 587 arrests were made in 2014 until October after the Supreme Court verdict. Some states are yet to submit their full data etc.

Findings

- There are no official figures for GLBT population in India
- According to the figures submitted by GOI to SC in 2012 that, there were *about 2.5 million gays* recorded in India
- A very popular gay dating Website which has about *1.8 million men registered from around the world*
- *India has about approx 140,000 individual males registered*, a figure more than Western countries like USA (46,645), UK (41,021)
- Gay population ranks 3rd in the highest number of people registered from a country
- *Nearly 80 per cent of gay are under the age of 15-30 yrs* with the highest numbers registered in State are **Maharashtra** (25,564), **Tamil Nadu** (16,380), **Karnataka** (14,763), **Delhi** (13,441)
- In India New Delhi (13,391), Mumbai (11,001), Hyderabad (10,273), Bangalore (8,000) cities are *highest in numbers*.
- Homosexuality is lust, greed, sexual/emotional attraction or whether it is simply pure love and relationship—*Just seriously think about it.*
- Over 4 million women are currently married to gay men or have been married to gay men in the United States.

Suggestions :

- The Indians population and GOI cannot ignore gay existence
- All living persons on this planet deserves respect
- The attitude of society should change towards love and relationship
- People can fall in love and want to be in a relationship with people of the same gender or with people of a different gender.
- Making fun of people by calling them “gay” (or “sissy,” “queer,” etc.) is harmful and hurtful.
- Using the name of any group of people as an insult is not OK, because it is most often based on negative stereotypes.

Conclusion :

We should change with changing time .Indians have *traditionally interpreted Section 377, a 153-year-old colonial-era law, as condemning a same-sex relationship as an "unnatural offence", and also considering it punishable by a 10-year jail term.* Political, social and religious groups petitioned the Supreme Court to have the law reinstated in the wake of the 2009 court ruling.

Just wait and watch-Love will win in Indian context**Notes**

- A person who loves, in a very special way, someone who is the same gender is a **gay**.
- “Gay” can refer to either men or women but it is sometimes used just to refer to gay men. **Women who are gay are also called “lesbians.”**
- A **bisexual person** is someone who is sexually and/or emotionally attracted to people of all genders. Many people who experience a wide range of feelings towards both men and women –use the term bisexual
- **Transgender-** A term referring to when one's gender and sex are not always or ever equivalent. Often used as a referrant to the person themselves. For example
 1. Jen was born a female, but as a person is a man.
 2. Bob was born a male, but as a person is a woman.
 3. Karen was born a female, but as a person has no gender.
 4. John was born a male, but as a person switches gender.

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