

HOMOSEXUALITY - A NATURAL GIFT OF GOD**- TRIPTI¹**

Love is something which is not done after checking whether the person is rich, good looking, attractive, to which religion they belong, their caste, and creed and so on. In a similar way our perception of love isn't strictly confined to heterosexuality.

It is very natural that a man can love man and a woman can love woman. But is it correct or is it something to be ashamed of? So before moving ahead with my topic I would like to explain what does the word homosexuality means. Homosexual is a term derived from the Greek word "**homos**", which means '**the same**'. Homosexuality means when an individual is sexually oriented towards a person of the same gender and seeks gratification from the same.

For example a man loves man and a girl loves girl but they may be told that it violates the law of nature as the mainstream upholds heterosexuality. But this is not the scenario with everyone. And this will be discussed further in this essay.

For many years homosexuality was treated as a punishable offense and people who were homosexuals found it difficult to survive with others and also had to fight for their equal rights. This sect comprised of lesbians, gays, trans genders and bisexuals who were forced to hide their identities from everyone even from their parents and friends because homosexuality was perceived by medical practitioners as a sign of mental instability.

It was till 1967, that they used to be imprisoned if caught and at times had their serving time extended. In the year 1950 the government appointed a group of people to make a report on the life of gay people. But when they saw their life they thought that there must be a law for them which give them equal rights as any other person gets. They sent their report to the government but till that time government didn't frame any law for them but the government eventually framed a law in favor of them in the year 1967 and mentioned that two gay person can live together and they will not be prosecuted for the same.

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1969 - In New York called the Stonewall riots started when the police raided a bar called the Stonewall Inn, it was a popular place for gay people to hang out. It is considered as a first step taken by the people to fight for the rights of gay.

1972 - The first Pride festival, which celebrates the gay community and supports equal rights which took place in London on 1 July, 2000 several people became the part of this. At present more than one million people celebrate this in the UK's capital, and Pride events take place all over the world.

1988 - A law was introduced which stated that the teachers are not allowed to 'promote' gay relationships in schools. Many people argued that this prevented teachers from talking about gay relationships.

2000 - Subsequently, law was changed and it allowed the people who were gay and bisexual to be in the armed forces and military.

2002 - It was then amended and allowed gay people and also unmarried couple to adopt the children.

2003 - The law which was prevailing in the year 1988 that teachers should not promote this in the schools and institutions was overruled and changed.

2004 - In this year civil partnerships for gay people was first started. Which means that they had similar rights to people who were married, but civil partnerships are not exactly the same as marriage. Some people argued it and didn't wanted gay people to get married.

2008 - It became illegal to encourage homophobic hatred. More than 7,000 hate crimes were reported against gay men and women in the UK.

2013 - Gay marriage was made legal in England and Wales, and later in Scotland. In Northern Ireland, gay marriage is not legal.

In India homosexuality was treated as an offence under **section 377 of Indian Penal Code, 1860** which states 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 pay fine".

But recently in the case of **NAZ FOUNDATION V. Govt. OF NCT OF DELHI**², the Supreme Court held that by criminalizing homosexuality Art. 14, 15 and 21 of Indian Constitution is infringed and it is unnecessary to deal with the issue of Art. 19(1) (a) to (d). And **Sec 377 of IPC is an infringement of right to privacy**. The Supreme Court focuses upon two constitutional right i.e, "**right to personal liberty**" and "**right to equality**". The Apex Court stated that these two things are fundamental human right which belongs to every individual since the time they are born. Constitution does not 'confer' human right whereas it '**confirms**' human right. It accords there protection and confirms its existence.

The Supreme Court through various cases laid down the importance of RIGHT TO PRIVACY; similarly in the case of **District Registrar and collector, Hyderabad and anr v. Canara Bank and anr.**³, it was laid down that right to privacy deals with person and not places. And it is implied in our Constitution. And in the case of **R. Rajgopal v. St. Of T.N**⁴, it was held that right to privacy is implicit in right to life and personal liberty guaranteed under Article 21. A citizen has right to privacy of his own, his family, marriage, procreation, child bearing, education, motherhood and so on. Through the decision given the Court it fortifies my stand on an individual pursuing the sexual orientation of their choice.

During the ancient time we used to live in a very improper way. And it was much after the concept of civilization came into effect which enforced the need for law and order. Moreover the framers of law only wanted that the person should feel secure everywhere and anytime. But when we criminalize homosexuality we are threatening their sense of security. But in a country like India where many things are legal some of it still stands to be perceived as a taboo by the very society. This ultimately results in torture for the sect concerned. For example: in India inter caste marriage is allowed but whenever any person marries the person who is of another caste it usually results in people severing ties from them, thus isolating them. In the same way love marriage is also allowed but generally they are not accepted in the society.

² 2nd July,2009

³ (2005) 1 SCC 496

⁴ (1994)6 SCC 632

Therefore my point is only that where these all small things are not accepted in our society then how will the marriage between the same sex person will be accepted? It is considered as a disease or a certain kind of disorder. But this is not the fact; our Indian society has to accept it that this is something completely normal. They also have a right to choose their life partner irrespective of religion, caste, creed and sex.

The basic motive of law is that whenever a person is choosing any person as a life partner he or she must feel secure and must be happy in his or her marriage life and that what has been held the Apex Court in its judgement. What will the person do if he is following the so called rules of society and can't love a female and marries her? Although he abides by the rules but it will finally result in his marital life turning out to be a big disaster. I agree that human being is a social animal and if they have to live then they have to follow certain norms and rules of the society but it is not necessary to follow all the norms of society if these norms are hampering our mental peace making our lives miserable in the end.

Moreover the basic objective of law is to serve justice and Justice cannot be only for one class of people but justice must cover every class of people. In the words of Francis Bacon, "if we will not maintain justice, justice will not maintain us".

There are many futuristic consequences of this verdict. Some of them can be:

1) Objective of marriage- The basic objective of the marriage is to produce a child who can carry forward the lineage of the family. And Hindu marriage Act, 1955 also states that the basic objective of the marriage is procreation of the child. And by legalizing this the objective of marriage is not being fulfilled. Therefore legislature has to make some kind of law related to the objective of marriage for the people who are lesbian, gay, bisexual and transgender

2) Adoption made by married gay couple- A married gay couple is not entitled to adopt the child. And according to me this is not right. They should be granted the right to do the same. We should not restrict the person if he is eligible and competent to give a healthy life to a child. And I don't see any connection between a child's upbringing and the sexual orientation of his foster parents. That's simply ridiculing.

3) Divorce- Divorce can be taken either by husband or by the wife but can divorce can be taken by a man who is in a relationship with a man. The personal laws have mentioned certain ground for divorce and it is only applicable in case of a husband and wife and not to a man who has married to a man. Then can the former seek divorce in the court on similar grounds. Logically it's no but ethically the framers of law must make some laws to regulate such kind of cases.

4) Maintenance- Maintenance can be claimed by the wife under personal law. And it can also be claimed under sec 125 of code of criminal procedure, 1973 but whether it can be claimed by that person who falls under the category of LGBT? As per law they can not. But there's a loophole here as to what a homosexual would do if they are dependent on their spouses for their livelihood and what if they leave them.

5) Cruelty- Cruelty is defined under sec 498A of IPC, 1860 as "Whoever being the husband or the relative of the husband of a woman, subjects her to cruelty shall be punished with imprisonment for a term, which may extend to three years and shall also be liable to a fine." Here also it is mentioned that if a HUSBAND or HIS RELATIVES does cruelty to a woman only then can he or his relatives can be punished. But in this situation there is no consideration for gay as such. And the relatives of man are doing those acts due to which another man is facing physical and mental cruelty.

Then whether the offender will be punished for the offence of cruelty. In this situation also there is the big question and no one has an answer for this. It is said that law punishes the person who does any crime or wrongful act but here the law is silent upon the matter.

6) Dowry- Under dowry prohibition Act giving and taking of dowry is punishable under Sec 3 and it is only applicable on bridegroom and bride. And not between bridegroom and bridegroom or bride and bride. Now for instance if a man while marrying a man takes either directly or indirectly or abets the person to give any valuable property for marrying the man then whether they will be prosecuted under this Act? Or they just have to keep quiet and face all kind of traumas? Again we all are blank that what should be the remedy for these peoples.

7) Dowry death- as a general rule when a woman dies within 7 years of marriage due to the cruelty either voluntarily or by being abetted or she has been murdered then the person who has murdered or abetted her to commit suicide is being punished with imprisonment not less than 7

years but which may extend to life imprisonment. It is regulated under sec 304B of IPC, 1860. Then whether this section is applicable on LGBT?

8) Acceptance- How can we expect the Indian society which doesn't entertain the concept of love marriage to go easy on accepting homosexuality Even though the law has recognized this but whether society will recognize it or not? Because in order to live in this society one has to be flexible enough to entertain and accept the changing time and also the preferences of the people associated with them.

9) Restitution of conjugal right- restitution of conjugal right means restoration of marriage. Sec 9 of Hindu Marriage Act, 1955 states that when either the husband or wife without reasonable cause withdrawn from their wedlock then the either of the spouse can file the petition for restoration of marriage. But if I see that if the gay are Hindus and either of the man has withdrawn from their wedlock then can they file the petition for the restoration of marriage?

Hence, it's not by our will that we are engaging in this category or entertaining the society by having orientation towards biological sex. People belonging to LGBTQ society are natural gift of God. Now on the basis of this we cannot impose stereotypes mindset of the society. Because before this they are human being and human right is the apex right.

10) Marital Rape - Although there is no as such provision for marital rape in India but in case of homosexuality there is vague question that who will be punished when the spouse are homosexual. In case of marital rape if a husband forcefully cohabit with his wife then it will be regarded as marital rape. But when a man is marrying a man or a woman is marrying a woman then what will be the circumstance. So here all we all are left blank with no answer in our mind.

In the **United Nations charter, 1945** it was stated that "All humans are born free and equal in dignity and in right. They are endowed with reason and consicence and should act towards one another in a spirit of brotherhood" So, we must also respect the people irrespective of their caste, religion, creed, place of birth, kind of work they door who they are either gay, lesbian, bisexual or transgender. Similarly constitution also does not violate private biological orientation of a person on the basis of a member of LGBTQ community. Moreover, **Art. 12 of the UniversalDeclaration of Human Rights, 1948** states that "No person is entitled to arbitrary interference with his privacy, family, home or correspondence."

So they should be allowed to do so what a normal being does. And accordingly decriminalizing of homosexuality is a very best decision taken by the Supreme Court. There are many futuristic consequences of this. Some of them are mentioned and some not. On the consequences can be that how registration of marriage will be made? If the person is belonging from Muslim community then how the divorce will be made; as they have their different personal law. And accordingly Parliament must need to fill the loopholes as soon as possible. Because there are many things where the law is silent and it need to be specifically mentioned. And our society has to accept those people in our society who fall under the category of LGBT. Thus it is very true to say that "love is blind."

It was correctly said my **Martin Luther King, Jr.** "Injustice anywhere is a threat to justice everywhere". Therefore in order to be in a peaceful society in is necessary to follow the law and must respect human being, animals and environment.