



Homosexuality: Not a mental illness

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Abstract

The term homosexuality, has always been linked with some kind of mental illness or disorder. While some people fail to understand the true meaning of this words, others have significantly failed to understand it in a true sense.

Over the centuries, the people who had the different sexual orientation than that of others have co-existed and this is not a fact per se but its evidence can be traced from the history of the world. But not until the few decades it has been brought to notice that the homosexual community has been facing major challenges to survive in the society. The most crucial part of this is the landmark case of Navtej Singh Johas and Ors. V. Union of India, which contributed greatly on the impression how the homosexual community is viewed in the recent time.

Keywords: homosexuality, homophobia, society, mental illness

Introduction

Countries such as India, America, Europe, Egypt, Africa, Middle East have accommodated homosexuality among the minority of its citizens since the earliest recorded times. The world's earliest events of homosexuality can be traced back from 8000 B.C. in the prehistoric San rock portraits of Zimbabwe, Africa. Its whereabouts can also be found in the ancient history of India, majorly in Sushruta Samhita, Narada Smriti, Manusmriti and Kamasutra which depicted engagement of same sex persons in various sexual acts. Hence, existence of homosexuality among citizens cannot be denied. But the fact that homosexuality was looked up as an act of crime could also not be ignored, over the times people have assumed it as a criminal act and have treated homosexual people as criminal offenders which has played a major role in the rising of hatred crimes against homosexuals. So much hatred towards this class of people gave rise to the term, homophobia, which is considered as disliking of homosexual people or prejudice against them.

Homosexuality can be widely termed as when one person is attracted towards the person of same sex. Homosexuality is deemed as a sexual attraction or sexual behaviour among the people of same gender or sex. Along with bisexuality and heterosexuality, homosexuality is also believed as one of the main classifications of sexual orientation. The common terms use for homosexual persons are gay and lesbians for male and female respectively. The percentage of people who are homosexual is very difficult to determine because there are a large proportion of people who hide their identity due to various reasons, such as family fear, societal pressure which could be termed in two simple ways i.e., homophobic and heterosexist.

Is homosexuality a disease or a way of life?

It is not a concealed fact that around the world, homosexuality is still seen as a disease which might be reversed with a proper treatment. In many countries it is yet a punishable offence where the punishment may even comprise of death penalty. The stigma around the word has always been there which contributed in it being perceived as

some kind of disorder which would differentiate a person from others. Because of notions like these, it is very difficult for a homosexual person to lead a normal life. In all the steps of life, he/she is treated differently as if they are not normal or have some kind of contagious disease. It is still unacceptable in the society to speak up your true identity if it does not matches with the pre-set up standards which often lead to the fact that homosexual people never truly disclose their true identity and live their whole lives hiding it with self-doubts and shame. The very important fact that should not be ignored that love cannot be depicted as a disease even though if it is between the individuals who are in same sex relationship. Just because somebody does not matches your pre-determined conscience does not imply they do not have the right to live according to their will. So, it would be highly wrong on the account to say that homosexuality is a disease, but it should rather be seen as a way of life as mentioned in the earliest of historical books, scriptures, etc. Its presence has been determined and uplifted on the various occasions for us to just decline the fact only because it does not live up to our expectations does not mean that they cannot live according to their will. It should be conceived as a mater of fact that some people might have different choices and to respect their choices should be our fundamental duties and not to discriminate because of their sexual choice. As it is stated by the various psychiatrists that it is not in the hands of a person to choose whom to like or not like, and also that it is not a disorder which can be cured just by medicines and therapy, but it is a part of identity of a person which shall not be rejected on the notion that it is difficult to accept in general. To be against homosexual people is considered to demonstrate lack of love. This statement was said in the light that since homosexuality is not a disease or some kind of disorder but something such as a natural aspect of a person, to ignore that would not only be regarded as one lacks love but also disregards the choice of God since the way we are is not to be debated how the supreme power wanted us to be. So, it could be said that homosexuality ceases to be a disease but is perceived as a way of life and every effort should be

made by the society to accept wholly on their part such people so that they do not have to live with a fake identity their whole life.

When homosexuality stopped being a mental disorder

The struggle of homosexuals to be considered as heterosexuals is a one that has been struggled for decades. Homosexuality was against the rule of nature around the world for thousands of years.

Prior to 1973, homosexuality was seen as a mental illness in Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association. But it was not until 1987, homosexuality completely fell out of the DSM.

When homosexuality was disregarded from the DSM-II, it amounted to an argument as there were some psychiatrists and psychologists who still believed it to be a mental disorder causing impairment and distress, whereas some used to believe that this impairment and stress was caused due to stigma and societal repression of homosexuals. Which is further explained that it is a fact that when a homosexual person seeks therapy, he is considered to be abnormal on the reality that his identity is made up and not real which takes him to a place of self-doubt that he questions his own individuality, self-worth. Basically, the therapy works as a fact that they are not normal and should be treated. Any person to whom it is believed that the life he was living was not real and something's wrong with his personality tends to take that person in distress and amounts to mental instability. So the question here arises that, the instability arises from the truth that something is wrong with him or he is forcefully made to believe that something is wrong with him.

Therapy was introduced to make sure that a person finds himself in a good place and for homosexuals, therapy should be doing only one work, and that is helping a person to accept himself fully where no place of self-doubt arises, any other notion which helps in demeaning the person's individual identity should be abandoned. We have problems, we have perspectives, we have feelings, we have habits, in short human specie is a complicated one, but it cannot take the liberty in their hands to prove that the whole community is mentally ill, it is not in our hands and should not be taken in our hands to prove whether a particular class of humans are mentally ill or not only because of their sexual choice. Human's self-pleasing effort to medicalize human problems is an institutionalized insult to human dignity, which should be stopped at very first instance. Though now homosexual community has liberalised itself from the psychiatric oppression, but still there is need on the part of heterosexuals to accept the community more openly as it is their disregard which demeans the morale of homosexual people and does not allow them to live in the society freely. When the society will stop seeing a homosexual person as someone who is mentally ill then only the true success of all the movements would be deemed in the true sense, as till it is accepted by the society no achievement is fulfilled.

Homosexuality in India

It does not exist, is a classic response when the phrase homosexuality is talked about in our country. The very important aspect behind this is the societal concept of procreation which also underpins the Indian sense of social and family order. Any danger to this social order is ought to be dissented because of the bubble which is created that

your existence is incomplete if you don't marry and have children who would keep your forefathers name alive after you are gone. And it is a preconceived notion that your purpose is incomplete if you don't follow these rules in this manner only. And for Indians, sex should only happen to procreate children within the marriage and any other meaning to it is a sin. As a result, many people live double lives, hiding their identity from everyone and denying themselves most of the preciousness of intimacies and self-knowledge. But since the beginning of 21st Century, there has been a shift of understanding homosexuality as of sin, crime, and pathology to a normal variation of human sexuality. The acceptance of homosexual community is a long race of which first step was taken when Supreme Court decriminalised homosexuality under section 377 of Indian Penal Code, 1860, it was regarded as a steppingstone for the additional developments in the country concerning the same. But there were many persons unaware of its existence on the first hand so the battle to achieve was a long race. It was believed education in India played a big role in understanding that it is not a birth defect but rather a choice if a person is homosexual or not. Where some people incline to accept the fact that just because the sexual choice of a person is different from what society has made, it does not make him any less of a human being and he should be treated equally, there were some people who made distance with homosexual community on the base that it is a sin to be any different than what it is selected for us to be. It is believed that after so much struggle, there has been rays of change in the urban India, where people have come forward to accept the homosexual community with open arms but the reality of homosexual people in rural India is way too different from that of metropolitan cities. It is believed that it is a long struggle to change regressive attitudes towards the homosexual community. One such story was of Rahul Singh, from Bihar who explained that when section 377 was decriminalised, it did not change the fact for him that it is not the law which creates hurdles but the society in his way to live fearlessly and openly. When he was 16, he came to know that he was gay but after 2 years he was wedded and had two children. His wife knows he is gay but still lives with him for the sake of their children. He further states that he knows certain people are gay but would never come out as they live in fear of being hated. In rural areas people believe that if you are not up to the societal standards and not straight you don't have the right to be recognized or loved. In conclusion from this, it could be stated that the only success for homosexual community will not come from repealing of laws on paper but to create an environment where homosexual people could open up freely not with the fear of being banned or separated from their family and removed from societies. Now also it is a long struggle in India for some people to come out in front of their families, hence it may take a prolonged time for it to succeed but the first bricks have been kept in the way which has made a huge impact in the success for homosexual community.

Literature Review

With this much hatred in the society, many psychiatrists tried to prove that homosexuality is a problem which could be reversed if treated properly. One such incidence was recorded in the 19th Century, when a German psychiatrist claimed in a conference that he had turned a gay man straight. His theory suggested that all it took was 45 therapy

sessions and a few trips to brothel, he had manipulated the man's sexual impulses and that led to diversion of his interest into women from men. Later on this technique was named 'conversion therapy' and was widely used to quash LGBTQ people's sexuality and transform them into someone that would meet the fake standards of people which comprised of a society. The conversion therapy was looked upon as something which quashed the person's individuality, increasing of self-hatred, leaving shame and pain in its wake. WHO in its report, proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-6)? In 1948 the first time ever list of mental disorders was classified and maintained by WHO, where the mention of homosexuality was presumed to be a mental disorder however this wasn't supported by the recent research at that point of time and was eventually removed from the list. The removal of term reflected emerging human rights paving the way by deteriorating the pre assumed standards of society. United Nations High Commissioner for Human Rights stated that all people, including lesbian, gay, bisexual and transgender (LGBT) have the right to enjoy the protection provided by international human rights law which included right to life, personal security, privacy, right to freedom of expression, association, and peaceful assembly, right to be free from the fear of detention, arbitrary arrest and any type of violence. International professional organizations, like World Association for Sexual Health and the International Planned Parenthood Federation, have also emphasized that sexual rights, including rights pertaining to sexual orientation expression, are fundamental to human rights. United Nations is an intergovernmental organisation which aims to maintain international peace and security, achieve international cooperation and be a centre for harmonising actions of the nations, which was founded in 1945, but there was no discussion of LGBT rights till 1994 until the case of *Toonen V. Australia* which dictated that the laws in contradiction of homosexuality are the violation of human rights. After that there were number of conferences where sexual orientations were discussed. The Report came out on December 2011 which documented the human rights violation which included hate crimes against homosexual people, criminalisation of homosexuality and discrimination. High commissioner Navi Pillay called for repealing of any laws which criminalise homosexuality and promote laws which would protect LGBT persons. A meeting between Louis George Tin and French Minister of Human Rights and Foreign Affairs Rama Yade took place in 2008 in which Yade announced that she would appeal to the United Nations to decriminalise homosexuality universally, this was immediately taken up as an international concern and in the first declaration the rights concerning to gay people were read. The declaration included condemnation of harassment, violence, discrimination, exclusion, stigmatization, and prejudice based on gender identity and sexual orientation which undermines personal integrity and dignity. It also condemned killings, torture, executions, arbitrary arrest, and deprivation of social, economic, and cultural rights on those grounds. A report was released in December 2011 of High Commissioner in which it was found out that violence against LGBT community remains common and it was a confirmed report that seventy-six countries retain laws that are used to criminalise people on

basis of sexual orientation or gender identity and at least five countries have a law where capital punishment could be given to those who may be found guilty of conduct of consensual, adult homosexual conduct. The High Commissioner's report further led to a panel discussion by Human Rights council in 2012. In 2014, UNHRC adopted a resolution which provided for steps combating discrimination based on sexual orientation or gender identity. The most important milestone was achieved in 1994 when the World Health Organisation clarified that homosexuality was neither a disease nor a disorder removing sexual orientation from the International Classification of Diseases.

Challenges

The battles which are fought in court are distinct from the ones that in society. It is a presumptuous fact that it is not mandatory when a court of law passes an act or a resolution, it is to be concisely accepted by the people. Similarly happened when Section 377 of Indian Penal Code, 1980 was decriminalised in India. When homosexual community was rejoicing with the fact that they no longer had to hide their identity and could come in front of everyone, on the other hand they were still aware of the stigma surrounded with the fact that only because the decriminalisation of homosexuality has been done by the apex court, it would not lead to the transformation of the mind of the people. Indian society is considered to be very stagnant in the aspect that in all these years it has been witnessed that while western culture is being instilled in our society, it still has not find a way to change the mentality of the people regarding various things, out of which one is the attitude towards homosexual community. Even though now we claim that we are more modern than our previous generations, this all comes to a standstill when any question arises out the comfort zone of our made-up societal expectations. We are the proud carriers of new generation who act cool and modern in front of everyone but deep inside we take our stringent minds with only those philosophies which our older generations have carried out over the past few years. And the other facet of this is that the acceptance of homosexual community in more youth may be in more fraction than that of before but within the restrictions of parent, friends, family, this acceptance often is unheeded, and the voice which may be raised in favour of LGBT community gets lowered. Learning how to be yourself and dealing with other people's perspective of you can be challenging for a person especially when they are lesbian, gay, bisexual or transgender. The discrimination which is faced by the community can put any person under the greater risk of emotional health like depression, anxiety, substance abuse and even suicide. For the homosexuals, a truly inclusive society persists a distant dream. There are number of challenges faced by the homosexual community, some are named below:

Marginalisation and Social Exclusion

The term marginalisation can be defined where the people have comparatively less control over their lives and the resources accessible to them may be limited. They may become pilloried in their own surroundings and are frequently at the receiving ends of negative public attitudes. The impacts of marginalization, in terms of social exclusion, is similar, to whatever the origins and processes of

marginalization, regardless of whether these are to be placed in social attitudes (such as towards impairment, sexuality, ethnicity and so on) or social circumstances (such as closure of workplaces, absence of affordable housing and so on). Homosexual community may experience marginalisation in various forms such as – racism, sexism, poverty or other factors which include homophobia, etc. that negatively impact on the mental health of a person. The stigma attached to sexual orientation and gender identity or expression that fall outside the anticipated heterosexual, non-transgender norm downgrades many LGBT people to the margins of society. This marginalization often eliminates LGBT people from many support structures, often including their own families, leaving them with little access to services several others take for granted, such as medical care, justice and legal services, and education. Marginalization and bias near sexual orientation and gender identity and expression regularly foil homosexual people from accessing fundamental public services such as health care and housing and contributes to significant health disparities. Marginalization of LGBT people often starts with the family into which they were born. The exclusion and discrimination have a major impact on homosexual people such as- dropping out of school earlier, leaving home and family, unable to find regular jobs or having limited options, being ignored in the community and isolation, unaware of the rights they are granted, moving to other areas, lack of family support, rejection from religion, decide to follow their parents to marry opposite sex and then divorce, attempt to suicide are to name a few.

Impact of Family Reaction

One of the key factors which results in the stigmatization of homosexual people is parental reaction towards homosexuality. Fear of rejection and serious negative attitude of parents, family and friends is what keeps a homosexual person from disclosing his identity. We have been brought up in a society which has pre-determined norms for us, and we are expected to live under that bubble only, anything different is considered to be opposing the culture, religion or societal standards. It is a well-known point that parents have been protective of their children and if any case arises of homosexuality in front of them, they try to prevent access of their children to their other gay friends or gay community thinking that it would help their child leading a safe and secured life. But it is believed that the children who face this behaviour may act out on their own because of anger and frustration which could also increase the risk of abuse and harm their mental health. The challenges with interaction and absence of understanding about sexual orientation and gender identity can lead to rebellious children and family disruption that led to homosexual child being removed from or forced out of the home. It is supposed that homosexuals who are denied by their families are at very high risk of health and mental health problems. The risk of HIV, STD's, suicide, depression, use of drugs is ought to be increased in such people as they find it as a defence mechanism against fighting this.

Violence

Hate crimes against the homosexual community is still prevalent across the country. They take place in two forms, sexual orientation and gender identity, sexual and physical

assault and harassment respectively could be termed as examples for both. The main reason behind these crimes are that some people still believe that the homosexual community are less of humans and that their existence does not matter to anyone and that it is alright to commit acts of violence against them. Extra variables that will effect on mental wellbeing and well-being for LGBT individuals incorporate the method of- coming out (sharing one's LGBTQ personality with others), sexual orientation move, internalized persecution, confinement and distance, misfortune of family or social bolster, and the effect of HIV and Helps. In any case, people 'experiences of viciousness and segregation vary depending on several variables counting race, sex, wage, movement status and dialect obstructions. As it is very well known that a person's status is very much determined in a country like India. Where one person who may be praised for coming out, the other person may be shamed abruptly for doing the same, all depending upon his societal status. As a country we need to work on this that less privileged are also given equal opportunity to come out and should be provided the same environment irrespective of one's social status. The most saddening part is that the homosexual people know that their safety is not guaranteed. Although it does not let them to live in fear but still there are instances where they feel that they cannot hold the hand of their partner in public, or could kiss, etc. Such regressive attitude of people against the community leads them to live a life which does not let them be themselves in the open or to act in a way in which they want.

Religious Taboo

Very crucial aspect of non-acceptance of homosexual community can be traced to its religious opposition. When a person comes out in front of his/her family, the first notion which is raised is that what our god will say. To which the answer is given by them only stating that it is not in our religion to behave in that way. However, contradicting to this fact, it is a known perception that traces of homosexuality can be find in the Hindu mythologies, Manusmriti, Kamasutra, etc There are various Hindu temples which depicts the sexual acts between people of same sex. Even though there are various incidences to prove that homosexuality was deep rooted in our religion, in the modern India, it is considered as a taboo, which should be ceased to exist from our society. In Sikhism also, though there are no written views regarding the same but over the times Sikh Religious Authorities have described homosexuality as against the Sikh religion and Sikh code of conduct and against the laws of nature. All such incidences further create the situations where the non-acceptance of homosexual community takes place in the society, and people are ashamed to accept their own children in front of everyone. Often, we have heard from our parents that this type of behaviour will not be accepted in our community, that they will banish any such conduct which is against the pre-determined standards set up by the society. All this behavioural aspect regards to non-acceptance of homosexual people in the society.

Discrimination at Workplace

The very first difficulty for a homosexual person is to find a job as many places reject their applications since they are homosexuals. To overcome this issue, many a times they tend not to reveal their identity and live under a false

impression only because to keep their job. Many a times people lose their job also regarding the same aspect, which means that if a fact is disclosed that a person is Trans or homosexual, he may lose his job nevertheless of the fact that he may be best fit for his job. The question here arises, does such discrimination at work should exist? The answer to this without second thought should be NO, the only factor determining that a person is fit for a job or not should be his capability to the job and nothing should be related to what his gender identity is. There is an urgent need for protection laws for the homosexual and Trans community at workplaces to ensure that no person loses his/her job only because their boss disregards with their sexual identity. In this modern era, it is no hidden fact that there are some companies where this topic is regarded as an elephant in the room but still it has not been proven enough to provide a secured environment for the homosexual community. The voices of big businessmen and large companies is required which can vow to support its employees irrespective of their skin colour, gender or sexuality. Doing so would help their business's also, firstly by creating an image that the company promotes a sense of encouragement among employees and secondly by establishing an industry standard that can flag the way for change across society.

Homophobia

Lesbian, gay, bisexual, and transgender individuals are more likely to encounter intolerance, discernment, discrimination, harassment, and the risk of violence due to their sexual orientation, than those that recognise themselves as heterosexual. This is the main reason why the term homophobia was first coined. Homophobia can generally be defined as hostility towards gay people or fear of gay people or can also arise from the stigma rising from social ideologies about homosexuality. Some factors that may emphasize the establishment of homophobia on a larger scale are moral, religious, and political beliefs of dominant groups in a particular society. Living in an environment which tends to be homophobic, can tend a person to conceal their identity because of the fear of negative attitude, bad consequences of coming out. Homophobic behaviour can be caused by the negative feelings or attitude towards the non-heterosexual people, and this is the root of discrimination that is experienced by many people of homosexual community. Homophobia manifests itself in the form of homophobic jokes, physical attacks, negative media representation and discrimination at workplace. For the people who have been brought up with the mentality that homosexuality is wrong, the realisation that they might be gay can eat them alive leaving them doubting their own self, degrading their self-esteem and can cause the feeling of self-loathing. Suppressing homosexuality comprises denying an important part of a person's identity and can have a serious impression upon their life and relationships. Besides, the dilemma of whether to come out or not can cause a great deal of personal distress. LGBT individuals who make the choice to pronounce their sexual introduction can confront bias and separation from their family and companions. Homophobia can get to be the root of extraordinary hurt and disturbance to people's lives.

Hence, it could be said that theoretically, the educated class supports the homosexual community to its greatest sense but when it comes to day-to-day behaviour there is an urgent need to change the ground reality. There is a requirement to

bridge the gap between the academic knowledge and everyday experience; means we need to question stereotypes. Say, for example, a person telling a homophobic joke. We need to pause when that person is telling a joke and ask what is so funny about such an oppressive take. We need our partners to point out that such behaviour costs us our freedom and dignity. The overcoming of challenges will one day lead to a society where homosexuals would not be mistreated but equally treated as heterosexuals and there would be no incidences of any type of discrimination against the community.

Landmark Case and Its After Effects

Navtej Singh Johar and Ors. Versus Union of India thr. Secretary Ministry of Law and Justice

This case is a landmark case of Supreme Court of India which decriminalises the consensual sex among adults of LGBTQ community.

Facts of the Case

Section 377 of the Indian Penal Code states- "Unnatural offences: 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."

In 2009, in the case Naz Foundation v. Government of NCT of Delhi, the Delhi High Court struck down section 377 of the IPC. In this case the provision's constitutionality was challenged and was stated that section 377 was violative of article 14, 15, 19 and 21 of the Indian Constitution. The parties contended that it was a victorian- era law and had no position today. It also punished two consenting adults having consensual sexual intercourse which happened not in any manner peno- vaginal. The High Court struck the section down observing that the section clearly violated the right to personal liberty, right to live with dignity and privacy of an individual. It contravened the right of equal protection guaranteed by the Constitution of India through article 14.

Then in 2013, a petitioner Suresh Kumar Koushal contested the decision of the Delhi High Court in the above case. The Supreme Court in this case, Suresh Kumar Koushal v. Naz Foundation and Ors., overruled the Delhi High Court's decision and re-established section 377 based on the interpretation that only the Parliament had the power to debate and declare the section unconstitutional. "A miniscule fraction of the country's population constitutes lesbians, gays, bisexuals or transgenders and that the High Court had erroneously relied upon international precedents in its angst to protect the so-called rights of LGBT community." The bench comprised of Justice G. S. Singhvi and J. S. Mukhopadhyaya stated- "In view of the above discussion, we hold that section 377 IPC does not suffer from the immorality of unconstitutionality and the declaration made by the Division Bench of the High Court is legally unsustainable."

In 2016, a writ petition was filed by Navtej Singh Johar, a dancer from the LGBT community, journalist Sunil Mehra, businesswoman Ayesha Kapur, hoteliers Aman Nath and Keshav Suri and chef Ritu Dalmiato before the Supreme Court to challenge the constitutional validity of section 377 of Indian Penal Code, 1860 which criminalizes consensual sexual intercourse between same-sex adults in private. In the

petition, the petitioners prayed for declaration of “right to sexuality”, “right to sexual autonomy” and “right to choose of a sexual partner” to be a part of right to life guaranteed by article 21 of the Constitution of India. It was also appealed by the petitioners to declare section 377 of the Indian Penal Code as unconstitutional. They also challenged the “punishing of consenting adults having sexual intercourse and rendering it as an act against the order of nature”.

Issues Raised

- Whether section 377 of the IPC violated-Right to Equality guaranteed by Article 14 of the Constitution
- Freedom of Speech and Expression under Article 19
- Right to Privacy and Right to live with dignity under article 21 of the Constitution.
- Whether, rendering consensual relationship a crime as being against the order of nature according to section 377 of the IPC is arbitrary?
- Whether the fact that the law discriminates between individuals based on sexual orientation is violative of article 15 of the Constitution?

Judgement

On September 6, 2018, the court presented its unanimous verdict, declaring portions of the law relating to consensual sexual acts between adults unconstitutional. This decision overturned the 2013 ruling in *Suresh Kumar Koushal v. Naz Foundation* in which the court upheld the provisions of the section constitutional. However, other portions of Section 377 relating to sex with minors, non-consensual sexual acts, and bestiality remains in force.

The court found that the criminalisation of sexual acts between consenting adults contravened with the right to equality guaranteed by the Indian Constitution. While reading the judgment, Chief Justice Misra pronounced that the court found "criminalising carnal intercourse" to be "irrational, arbitrary and manifestly unconstitutional". The court ruled that LGBT community in India are entitled to all constitutional rights that are granted to all the citizens, including the liberties protected by the Constitution of India. It held that "the choice of whom to partner, the ability to discover fulfilment in sexual intimacies and the right not to be subjected to discriminatory behaviour are fundamental to the constitutional protection of sexual orientation". The judgement also gave the message that LGBT community is entitled to equal citizenship and protection under law, without any kind of discrimination.

Summary

This case fulfilled the very important purpose of giving the stand to homosexual people and LGBT community which was longed from a long period of time. Ever since the community has been discovered, it has faced immense number of problems out of which very crucial was that the community was deemed to be mentally ill. The judgement in the case clarifies in the most effective way that the people who have different sexual orientation are not mentally ill. The petitioners challenged in the case challenged the fact that homosexuals, bisexuals and other sexual orientations are natural and reflect expression of choice and persons practicing it are in no sense physically or mentally ill. If the history is to be traced there are certain events recorded where homosexuality was considered a mental disorder and its treatment was also to be looked upon. But in 1993, The

American Psychological Association stated that research on homosexuality is very clear and in no way homosexual people are mentally ill or morally deprived. In recent enactment, Mental Health Care Act, 2017, under section 2(s): mental illness was characterized as a significant clutter of considering, disposition, recognition, introduction or memory that horribly impedes judgment, conduct, capacity to perceive reality or capacity to meet the conventional requests of life, mental conditions related with the mishandle of liquor and drugs, but does not incorporate mental impediment which may be a condition of captured or deficient advancement of intellect of an individual, extraordinarily characterised by sub typicality of insights. This definition of mental illness cleared all the earlier misconceptions that stated that homosexual people are mentally ill. As there has been no scientific notions that sexual orientation can be altered by treatment or cured anyhow and any such attempts made in this direction will only lead to self-loathing, self-doubt, and stigmatization of the person, so mentally ill or any other pronoun should be used only for those as prescribed by national and international medical standards. Therefore, now is the time we stop treating the homosexuals and their community as mentally ill and start giving the recognition they deserve.

Impact after Judgement

Sixty-eight years after the encoding of Constitution of India which instils right to freedom of life and liberty, Supreme Court upheld the rights of every human being to be free, irrespective of their gender identity and sexual orientation. With this, the draconian and anachronistic section 377 of the Indian Penal Code, 1980 will no longer apply to consensual sexual relationships among adults in private. It marked the end of an era, where any such provision will cease to exist which is derogatory to human rights in any kind and promotes abuse, humiliation, or violative actions. It put at an end to the discrimination which has been faced by millions of people because of their gender identity or sexual orientation.

After the judgment was passed, it was a time of new India, the one where no discrimination would take place based on identity of a person or his/her sexual preference. The judgement paved its way to be reformative as now more people would feel confident in talking about this and coming out more easily, now that motion exists that law favours them. And it no hidden belief that before coming out was a crime, because of which many people were living a two-faced life. Next, there was no remedy or recourse available if any sexual harassment took place with the homosexual community, which now is available as the sufferer could go to the police and file a complaint for the same. And the very important topic which could be openly discussed is if any person is infected with HIV or AIDS, he/she feared going to hospital for treatment or check up because not only there was presence of societal discrimination but also discrimination by law. Also, now that people could come out easily, it has put the discussion in open to provide equal opportunities in the work field, housing, healthcare etc. because it not a debatable issue that before people stigmatized keeping homosexual people near them. It's a high time that this notion is also rejected, and we let them feel more at home than before by bringing the end to all the discriminatory reforms which used to take place before the judgement. Also, after the judgement, the

youth became more aware of the struggles faced by the homosexuals and especially the younger generation found it difficult to fit in with the fear of getting judged always. The topic has been brought up in the society, and it made people less reluctant regarding the same. Now we have started accepting the community with a broader mentality and have made it a little less difficult. As it is believed that friends play a very important part in the lives of people nowadays, so a person coming out to a friend, and he is being supportive has encouraged a lot of people to come out. Another important step to this success is that though pride parades have been organising in India since many years, but after the judgement came out, the crowd in the pride parades have been increasing which shows that public opinion has always mattered to the homosexual community, and not only mattered but encouraged them also to come out leaving behind the fear of being judged, being shamed, or being attacked in any manner. The most important achievement since the judgement came till now, is that now more parents have started accepting their children coming out to them. There have been stories flooded all over of how supportive parents were to their children and even they have gone out of their ways to provide them with extra care, helping them meet other people of their nature, talked with them through if they were facing any problems and number of other protective acts, which has over the time encouraged more people to come out and worked as an advice to more parents on how to react when their child comes out to them.

Still Miles to Go

It is nowhere a hidden fact that India, as a country has progressed a lot when it comes to accepting of homosexual community in the society. There has been an increasingly number of people who participate in the pride parades every year, our parents have been more accepting, there has been a landmark judgement which decriminalised the consensual sex between two adults and many other instances which have proved in the past few times that we are progressing.

But the elephant in the room is still the question, are we ready to give them the equal rights which are given to every citizen of the country? This question is not answered by anyone else, but the law, our judicial system of the country. And agonizingly, the answer to this question is NO! Even after years of struggle, not only judicial system, but every body of our democratic nation failed to do so. Recently, a PIL was filed in the Delhi High Court by the activists and members of LGBT community seeking a declaration acknowledging the right of same-sex couples to get married under the Hindu Marriage Act, 1955. The petition stated that according to section 5 of Hindu Marriage Act, 1955 it is stated that 'two Hindus' can get married under the act and it is nowhere mentioned under the act that they must be one male and one female, and that marriage can be performed by any two Hindus. In the plea it was also contended that the act does not discriminate between homosexual and heterosexual couple. It also mentioned that denying the right to marriage between homosexual couples may bring rise to psychological disorder. Contradicting this view, the centre opposed the move to recognise same-sex union, saying that the same is not recognised by our laws, legal system, society and our values. Solicitor General of India, Tushar Mehta, representing the Centre said that the "Constitutional Bench of Supreme Court merely decriminalised the homosexuality or lesbianism, nothing more, nothing less". Though the

decision to accept or reject the plea is still under construction, but the fact which is to be considered from here is that the Central Government, the party to which we have voted to come into power is promoting such regressive thinking among the people. Where it should have stepped up in support of the PIL, it is making every effort to vanish it away by opposing to the plea. This shows the overall thinking of our leaders, whom we have elected for the purpose to make India a better place to live in. So, the question now arises is that where the front leaders would possess such mentality, can the public be woke enough to shut the regressive views regarding the community? Well, the answer to this could not be in the form of yes or no but rather that steps should be taken on our part, either to choose better leaders who would lead our country to more progressive society or to change the mentality of such leaders that they would not promote such aggression towards homosexual community.

Conclusion

History owes an apology to the homosexual community for the delay in providing their rights in the society which has led to years of agonizing of pain and health. Over the years, members of homosexual community were forced to live two faced lives with a fear of reprisal and persecution. The whole blame for this would be put on the societal standards that have for decades conceived homosexuality as a mental illness, and not as a natural condition, part of a range of human sexuality. These standards have led to sacrificing of number of lives either due to suicides among homosexuals or hate crimes against homosexuals. Firstly, after all these years of struggles, there is no coded law available in the country which would secure the rights of the homosexual community and this is a very oppressive fact and now that we are working to move to a new age society, now would be the perfect time for the legislature to draw out the coded law which would protect rights and interests of the homosexual community. So ideally, we should be enacting a law that would explicitly protect against any kind of discrimination. It must be recognized that striking down of detrimental laws like Section 377 of Indian Penal Code, 1860 have put an effect for generations in our society. Homosexual community have been a subject to violence, not just at the hands of police or authorities but society at large also. So, the provisions must exist in the country which would protect the homosexual community from any kind of discrimination. Secondly, the most important connotation which should be taken into consideration is the legalizing of marriage between same-sex couple as even after decriminalization no such rights have been given to the homosexual community. And in repercussion to this, people who belong to well off families goes outside of India to perform the marriage rituals between same sex but the thought should be put in the favor of those who cannot go outside of India to perform the marriage. Legalization of marriage would be a big step in the indulgence to promote the interests of homosexual community in the country. Thirdly, the other important aspect is there have been various surveys regarding the fact that there are a lot of people in the society who does not want their neighbors to be homosexual people because they believe it would adversely distress their children and the environment in which they live in. We are living in 21st Century, this is a very serious question which we need to ask is that we really

want our children to grow up in an environment where we discriminate on the basis of one's sexual orientation or gender identity. In contrast to this, we should help children learn the concept of sexuality, so they do not fear in any way if their sexuality is indifferent. And with this we should be promoting that no discrimination shall be done based on a person's gender identity or sexual orientation when it comes to providing for a house, as everyone has an equal right to live where they wish to if they can afford so. Fourthly, there is the utmost need for promotion of homosexual rights and interests in the corporate world, as mostly discrimination is done at the places of work. The awareness must be promoted either by educating the people or by implementing the policies that would work in the favor of homosexual community. As it is very important that such environment is created at the workplaces where the homosexual people would not confide to hide their identity and can be themselves and not only this but their upliftment by the people working there would help them build a place in the society and help them boost their morale.

This is the dawn of new era. A lot must be done now also and freedom in true sense is yet to be achieved but the acquainted fact is that the first step has been taken on this road. Though, we can say that true freedom would be achieved on the day when every citizen of the country genuinely and whole heartedly would believe that no person is 'different'. The idea that everyone can love equally, freely and fearlessly without the fear of being judged or punished, the day this impression would succeed in our society, is the day we can say freedom is entirely achieved by the homosexual community.

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