ABSTRACT

This paper aims to present the current scenario of homosexuals. Taking into consideration the past pattern of discrimination faced by them. Providing the present condition of the laws. Critical examining all the aspect related to current law, jurisprudence and medical findings. And also providing suggestion for the betterment of the homosexuals.

INTRODUCTION

Society a mixture of different human identities, every single person have its own identity and this identity develops a societal attitude. One’s identity differentiate it from the other and it can be its gender, caste, religion, color, etc. and so as society have different attitude towards these different identities. Those who have same identity forms a group one can share two or more groups or sub-groups. Sexual orientation and gender is also one type of identity and we can see different societal attitudes, (as of sexual desires and relationships) which vary in different cultures. Lesbian, Gay, Bisexual and Transgender (LGBT) community based on sexual identity is getting discriminated and marginalized in society and it’s the shared a shared fact. Homosexuality which generally define as the state of being romantically and sexually attracted very exclusively or almost primarily to person of same-sex, and we can say an inability to form a permanent bond with a member of the opposite sex. Most used term to refer a homosexual is lesbian for females and gay for males (coined in 1960-70s), though gay used as a common term to refer both and all this word carried a negative connotation.. It is one of the highly debated and controversial issue prevailing in the world. Homosexuality is considered such a big taboo, that in many countries it is criminalized, and having sexual relation with same-sex is considered to be as “unnatural”. Society considered it as an ‘immoral act’ and most of them look it as a ‘psychical disorder’. While the various scientific research shows that homosexuality is complex interplay of genes and hormones, and it is a normal and natural

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phenomenon in human sexuality and not a psychological disorder. However, many of the cultures in the world recognized norms of same-sex love.

Homosexual people is more like to experience discrimination, intolerance, threat of harassment and violence due to their sexual orientation, than those are heterosexuals. Such a hatred towards these people termed as homophobia, and factors that emphasize homophobia to a greater extent are moral, political and religious belief of the masses. That’s why in some countries, homosexuality is illegal and thus punishable by fines, imprisonment, life imprisonment and even with the death penalty. Although many societies have taken significant steps, towards the acceptance of rights to LGBT group, who is also a member of this society and being a human they also have rights, now more and more people start expressing their sexual orientation and start demanding rights. Because of certain struggle of these groups, many countries in the world legitimate or have started accepting rights, equal privileges and anti-discriminating laws for these group of people.
PROBLEMS

Homosexuals or LGBT people face terrific problems in society. They have to face discrimination and exclusion across all the societies in the world, very few societies accept them. Even though their families stop supporting them. Homosexual does not enjoy the same rights compare to that of others. Often they suffer discrimination and disadvantages in access to benefits like healthcare, services, pension, etc., not only this harassment at working place, school and in society. Harassment at school is more common. According to Sara Kost\(^2\), Studies done by the Gay, Lesbian, and Straight Education Network (GLSEN) report that around nine out of ten LGBT students face harassment. Not only that LGBT students were harassed, but in 2007 National School Climate Survey found out that 31.7% of LGBT students missed a class and 32.7% missed a day of school because of feeling unsafe. Over 4000 Gay-Straight Alliances are registered with GLSEN, which provide them a safe space as well as an educational tool for the rest of the school to help them with better climate and diminish harassment. Too many LGBT students find it hard to speak up about harassment because it is highly embedded in our culture all across the world. Fear of these situations made them hide their reality from society.

Discrimination at the working place or denial from equal access to social goods is not the only problem, one of the biggest problem is of marginalization. Marginalization is at a core of exclusion from fulfilling and full social lives at individual, interpersonal and societal level. Marginalization makes them a vulnerable group in society which increases the risk of becoming socially excluded. Multiple type of marginalization like- racism, sexism, alongside with transphobia and homophobia had negatively affected the mental health, which lead in some cases to under achievement at school and workplace, mental-illness, homelessness, depression and even to suicide. Stigmatizing these people may develop low self-confidence and self-esteem and maybe they feel isolated in such condition, their contributions to society may get limited. Marginalization of homosexual starts with family in which they are born. According to one study, approximately 30 percent of LGBT youth in the U.S. have been physically abused by their families because of their sexual orientation or gender identity or expression, and such youths estimated to comprise up to 40% of the homeless youth population in the U. S\(^3\) treatment like this by their own family may hinders them initially and mentally, thus encourages risk-taking behavior that can lead to HIV infection and places obstacles in


receiving proper medical treatment and also the psychosocial support for LGBT youth already living with HIV/AIDS\textsuperscript{4}. Furthermore, lacking in support derived them to criminal activities like sex work (to survive), which can expose them and raise risk for HIV/AIDS. Families and caregivers have a major impact on their LGBT children’s risk and well-being. A research from Family Acceptance Project (FAP)\textsuperscript{5} shows it. FAP researchers identified more than hundred behaviors that families and guardians use to react towards their LGBT children’s identity. Some of these behaviors are accepting and some are rejecting. After measuring the behavior, they found out that the families who are unhappy and in conflict with their children identity (as homosexual), believes that the best way to help their children is to make them fit in heterosexual peers. They restrict them to meet other gay friends and also forced them to undergo treatment and if not this, they throw them out of their houses or children itself get ran away to escape from such abusive situation. An estimate shows that 40-50 percent of the homeless youth living on New York City’s streets has been identified as LGBT. Many LGBT youth either placed in foster care, or end up in juvenile detention or on the streets, because of family conflicts related to their LGBT identity\textsuperscript{6}. Such family behavior puts them to higher risk of depression and feeling of isolation. Making a comparison between the young LGBT people who were not rejected by their parents or Guardians because of their identity as gay or transgender, to those who are highly rejected were:

- Around eight times as likely to have attempted suicide;
- Around six times as likely to report high levels of depression;
- Around three times as likely to use illegal drugs; and
- Around three times as likely to be at high risk for STDs and HIV/AIDS.

**STATUS OF HOMOSEXUALS**

**Across World:** When the whole world is fighting for the rights of homosexuals and where around 21 countries including United State, France, United Kingdom, etc. has legalized homosexuality, there are still many countries where homosexuality is considered to be a punishable offence. Either with

\textsuperscript{4}International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol 1, No.5, 317-331.
\textsuperscript{5}The Family Acceptance Project (FAP) is a community research, intervention, education, and policy initiative started in 2002. FAP studies how family acceptance and rejection affect the health, mental health, and wellbeing of lesbian, gay, bisexual, and transgender (LGBT) youth. FAP is affiliated with San Francisco State University.
simple imprisonment or life imprisonment or even with worse of all the death penalty. Over 75 countries across the globe continue to criminalize homosexuality. And the worse truth is that, there are some of the places where being a bisexual or a gay can result in state death. Around six countries made homosexuality punishable with death penalty. Iran is one of them where male homosexuality is punishable by death, while women are beaten to death for their offence. In fact, minors who are found “guilty” of homosexual acts can be whipped out. In Saudi Arabia Individuals who are found “guilty” of homosexuality for more than once are put to death, but some of them are murdered cruelly by the state on the first time they commit offense. Yemeni law states homosexuality as a crime which is punishable by death. But some LGBT citizens don’t make it to sentencing. Keeping in mind that, due to shift in legal and cultural landscapes, there are almost certainly even more number of countries where LGBT people face the death penalty. Even if not officially, LGBT’s face death in many parts of the world. Around 10 countries in the world which, punish the homosexual with death penalty.

IN INDIA: India one of the largest democracy in the world with the longest written Constitution, giving each and every citizen of the country equal rights regardless of sex, caste, creed, religion, gender etc. but still, India being one of the countries where LGBT rights are still not recognized and still there are laws which consider homosexuality as an offence. Homosexual intercourse was made a criminal offense under Section 377\textsuperscript{7} of Indian Penal Code, 1860. This made it an offence for a person to voluntarily have "carnal intercourse against the order of nature". And even though the person who found guilty of extortion in relation to Section 377 of IPC, may get punished under a special provision of Section 389 of IPC\textsuperscript{8}, which include death penalty. Relation of homosexuality with Section 377 of IPC. The connection of Homosexuality with Section 377 of IPC is still a contentious topic. In the year 2009, on 2\textsuperscript{nd} July the High Court of Delhi declared Section 377 of IPC as unconstitutional with respect to sex between consulting adults. But this judgment was overruled by the Supreme Court of India, on 11\textsuperscript{th} December 2013, with a holding that Judiciary has no right of

\textsuperscript{7} 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.

\textsuperscript{8} Putting person in fear of accusation of offence, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with 1[imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with 1[imprisonment for life].
amending or repealing Section 377 and it is the Parliament which holds the responsibility. And till now no efforts is made by parliament with respect to this.

**WHY TO DECRIMINALIZE HOMOSEXUALITY**

If we look into the problems faced by the homosexuals, it is just because society is not accepting them. Society consider it to be an ‘immoral act’, which is against the ‘cultural practices’. We know that laws are made for the society, thus need consideration of the society for its implication. What if we say that the society is the main cause for these homosexual peoples, this can be proved in many ways. If we look into the psychological aspect of this which is more complex and requires factors and individual’s childhood events, where in some conditions individual is in need for love through some abnormal homosexual relationships⁹. Bad childhood experiences like rejection from parents or sexual abuse also trigger the sexual orientation. Sex is not a reason for homosexual orientation, a sense of identity and psychological needs for unconditional love (which individuals didn’t get in childhood) is also act as driving factors for such orientation. In some cases, boys which get bullied at home or school and derided as weak and effeminate by others may be because for others the definition of masculinity include to be stern, macho men with no sensitive and emotional behaviors. Such experiences and abuse at childhood by others may lead towards the rejection of maleness by such young timorous boy and sometimes develop a feeling where they do not want to be a man anymore in their life. Not only this, many societies and cultures give more importance to boy child and when in such cultures where families want to have boy child but have a girl child either they killed them, or they get rejected or projected to resentment if nothing like this than start treating them as a boy. In all these circumstances the girl child tried and struggled for his whole life to get a status to that of a son. Such conditions and ignorance or despise over their femininity distorting their relationships, leads to confusion over the knowledge of gender identity and trans-sexualism. Looking at the above findings we can easily found out that homosexuality is not an ‘immoral act’ neither it is an ‘unnatural act’. Homosexuality is born in the society and it is because of the society. Many research paper, reports and studies prove that it is a type of ‘mental disorder’, but later studies prove that it is a natural act and there is no kind of psychological disorder attached to it. That is why American Psychiatric

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Association, in 1973 remove the homosexuality from the list of mental disorders\textsuperscript{10}. But again in 1996, homosexuality was included in the list of ‘mental disorder’ by US Department of Defense, in a document known as “directive 1332.38: physical disability evaluation.”

Sometimes homosexual community accepted the idea of mental disorder because treating homosexuality as a disease looks better to them, rather than treating homosexual as criminal\textsuperscript{11}. Some consider homosexuality as a neurotic disease in which the personality of a person become extremely severe with self-damaging tendencies\textsuperscript{12}. But there are some people who think that it is natural, an article said that it has a biological origin, somewhere related to genetics, hormones, brain function and brain anatomy. “Brain has a structure called interstitial nucleus of the anterior hypothalamus, and this region of brain is known to be sexually dimorphic and during the sexual activity and arousal it get stimulated. Somehow it is responsible for the determination of sexual orientation. And it is found out that there is size difference of this brain structure in between the heterosexual and homosexual men\textsuperscript{13}.” If we look into this fact that clearly infer that homosexuality is not a disease or disorder rather it is something natural and biologically inherent. Haldeman, in one his article discussed about the interest of therapist and psychologist in homosexuality issue, because the right reason for homosexuality is still undiscovered some of the therapists uses their positional power and try to operate to change homosexuals, but he also concluded that homosexuality is not a disease but it become a political topic, and it is a dispute among mental health professionals\textsuperscript{14}. Some studies that talks about the etiology of homosexuality, looks birth order as the reason. “the larger the number of brothers a male has, the more likely the chances he is to be a gay(homosexual).\textsuperscript{15}”

Considering all the above facts and reasoning into the matter of homosexuality, it will clearly have inferred that it is not a disease or any kind of disorder, though no proper facts to prove that, but it somehow clear that it has his etiology in the human origin, society and anatomy. Why to discuss this

\textsuperscript{10} Lisa Michelle Cannizzaro, The Evolution of the Medical Definition of Homosexuality Wit, Wisdom, and Courage: Women's Activism in U.S. Dashboard, (22/08/2016), https://confluence.cornell.edu/display/WWC/The+Evolution+of+the+Medical+Definition+of+Homosexuality
\textsuperscript{15} Hughes, John R, "A General Review of Reports on Homosexuality and Lesbianism." Sexuality and Disability. 24 (200601): 195205
things, the answer is very simple and clear, that the view of society considering homosexuality as ‘immoral act’ is wrong, and it is also wrong to consider it as a disease or disorder. Therefore, the question now arises that why to criminalize it, because neither it is against the moral of society considering that it is born in and by the society and it is not an ‘unnatural act’. Wolfenden Committee Report, 1957 talks about clearly the same things that homosexuality is not a disease but something which has is origin in biology, genetics and because of some prenatal developments.

Discussing on the law point of view the purpose of the law is to do justice and regulate society for welfare of all, considering all equals without any discrimination. And punish those who have done an act which is against the moral values and have injurious for the society causing harm. Law provided us the basic liberty, the natural law school or any other law school talks about one basic law that is right to life, which provides every individual freedom of basic liberty and private or personal liberty. Treating homosexuals in this way and criminalizing homosexual acts is against the principles of law. It is one’s fundamental right which cannot be taken away in anyway. Privacy is an essential ingredient of personal or private liberty. Indian constitution provides the same personal liberty in Article 21, and it also talks about right to equality in Article 14 of Constitution of India. And the Section 377 of Indian Penal Code, which criminalizes homosexuality provided with punishment is clearly violates of the Article 21 and 14. If we look into the heading of the Section 377 i.e., Unnatural offences, so it is clear that punishment should be given to those who have done an unnatural act and the above findings have clearly showed that Homosexuality is not an ‘unnatural act’, then why we should law punished homosexual in this section. Or if we also take homosexuality as a disease or mental disorder than according to law same-sex relation should not come into offences. Some or the other punishing homosexuals is against the law of nature and as well as the law of land. Now taking into consideration the society, so as it is stated above only, that homosexuality is originated in society and by the society. And when the socialist pointed out that it is against the cultures, so in many cultures homosexuality was defined in the past, like in ancient Greece it was practiced and in India as given in the passages of Kamasutra, and in China many emperors used to be indulged in bisexual activity. Taking all these facts into consideration, we can say that homosexuality was practiced in past also and it is not against any cultural values and does not injures any kind of social values neither it is harmful for society in any way. And it is the right of every individual which is provided by every

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country to its every citizen, to have privacy and personal liberty and being homosexual or indulge in any homosexual activity is not a crime in view of natural law, therefore it should not be criminalized.

CONCLUSION

Aforesaid discussion is evident that homosexuality is a contentious topic from the past time of its formation. No one is aware of its origin and neither able to find out the true reason behind such attitude. Although, the person practicing homosexuality is in minority, but present in every society. Some hide it but the present political activism boosts the confidence of such people and now many openly says that we are homosexual. Homosexual people faced discrimination from the past, pattern has been observed relating to the harassment of homosexuals. Now many countries took initiative for this group of society providing them rights and many organization are still fighting for their justice. It is not a common practice but it doesn’t mean it is not normative.

India also take a step ahead by recognizing transgender, but there is still a long way to go. The Supreme Court order rejecting the order of Delhi High Court in the Naz foundation’s case, may be incentive took look forward towards the unjust section 377 of Indian Penal Code, which need a change for betterment. Such laws become outdated to current position and requires an innovative change in it taking into consideration the present society, international trends, jurisprudence and medical findings. And certain rights should be given to this class of group because of the problem faced by them, and for the protection of their basic rights.