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ACCEPTING THE UNACCEPTABLE: SAME SEX MARRIAGE AROUND THE WORLD

“Homosexuality is not a crime and it is not a sin. Stop using god to justify your prejudice. Religion is about loving one another. You are looking just looking for an excuse to hate”

ABSTRACT

This research paper is the analysis of the homosexual marriages in the Indian context as an invisible conflict which was successfully kept under cover. It also attempts to describe and explain various aspects of Homosexuality including the evolution, the reasons, the societal attitude and reactions towards such relations after the decriminalization of section 377. The researcher also draws insight from our country India where homosexual marriages are legalized and also highlights their outcome out of legalizing Homosexual relations. At the end taking fair and strong arguments both in favor and in against of the decriminalization of sec 377 and the research analysis through the statistical approach and carving out an outcome of the decision of the apex court in the favor of the third gender category.

KEYWORDS: Homosexuality, Gay, Rights, Marriage, Legal, Gender, Prejudice, Bias

THE EXORDIUM

What is marriage?

Marriage is one of the common social foundations established to control and regulate the life of mankind. It is closely associated with the institution of family. In fact, both the institutions are complementary to each other. It is an institution with different implications in different cultures. Its purposes, functions and forms may differ from society to society but it is present everywhere as an institution.

Types of Marriage

Meaning and Types of Marriage:

Marriage is one of the universal social institutions established and nourished by human society. It is closely connected to the institution of family. According to Gillin and Gillin, "Marriage is a socially approved way of establishing a family of procreation." Westermarck says that marriage is rooted in the family rather than the family in the marriage. Marriage is an institution of society with different purpose, functions and forms in different societies but is present everywhere as an institution. According to Malinowski, "Marriage is a contract for the production and maintenance of children." According to Robert H Lowie, "Marriage is a relatively permanent bond between permissible mates."

Now I will try to answer this question that why this is happening in today's modern society. Marriage is formally defined as the legally or formally recognized union of two people as partners in a personal relationship. Marriage has become such an instrumental part of a person's life that every individual aspires to a part of. Its importance is such that a battle is waged between public policy religion and social norms every time a group of people is excluded from being able to marry. For ages, the concept of marriage has been hallowed as sacred. It is believed

to be an institution which binds within its boundaries certain principles and ideals that have been upheld as sacrosanct. For a concept that is so deeply entwined in society that everyone is expected to be a part of it, it has always been inclined towards a gender and sexual orientation-based approach. Its definitions, though many, can be interpreted in a myriad of ways but the one thing that holds a strong stance is its interpretation in accordance with the societal context. A battle between public policy, religion, and social norms is waged every time a group of people is included, or excluded, from being able to marry. The current polarizing issue is that of same-sex marriage. The Indian scenario weaves a story of its own on the tapestry of time when it comes to the discussion of same-sex marriage. A quick jog through the pages of history and mythology sets up numerous examples of the prevalence of such relationships.

Though the texts of Manusmriti put down any form of homosexuality as a sin, the Sutras which are considered to be supplemental to the Vedas supported the persistence of such relationships in the past. The sacred texts on Hinduism have nowhere shown any direct condemnation of such relationships. This unusual practice has been carried on for around 150 years which involves the marriage of Ishaak (the bridegroom) and Ishaakali (the bride) who happen to be two men. The instances of homosexuality is preserved everywhere, only the difference being, the shift in the focus of their place in society. This paper aims to explore the social, political, and legal aspects of same-sex marriage in India. It also examines the roots of marriage, and why people are hesitant to acquiesce to a more inclusive form of marriage.

THE EXEGESIS

Meaning of LGBT: -

L.G.B.T. is the term for Lesbian, Gay, Bisexual, and Transgender. Originally, this society was called as the Gay Community. But it was not adequate to include the ones who are different from normal human beings altogether in the gay community, as it refers only to the men. So, the abbreviation LGBT was introduced in the middle of 1980s. These people have different sexual orientation than a normal person where sexual orientation generally includes sexual fantasies, sexual attraction, sexual behavior, social and lifestyle preferences and self-identification. The term "Gay" traditionally was used to refer to the people attracted to people of the same gender and be in a relationship with same gender people. But the lesbians, transgender, and bisexuals are not included in the gay community. A lesbian is generally referred to a woman who is sexually

attracted to woman only. They are similar to the gay people but only men are included in gay category whereas only such women are known as lesbians. They are not at all attracted to opposite genders. The other category i.e. bisexual, is a person who is sexually, romantically and emotionally attracted to both male and female sexes.

They are not only attracted to one but find a connection in both the genders. Transgender is the term used to portray those individuals whose gender identity 'differs from that which is usually associated with their birth sex. Many transgender people live part-time or full-time in another gender. Transgender people can identify as transsexual, transvestite or another gender identity.' The initialism has become conventional as self-designation and many of the English-speaking countries have adopted this initialism to identify and differentiate the individuals on the basis of sexuality and gender-identity and emphasizes gender-based culture and diversity of sexuality in the country. It indicates anyone who is non-heterosexual. Sometimes LGBTIQ or LGBT+ is used by some people meaning LGBTIQ as intersex people questioning their sexual identity and LGBT+ embracing spectrums of gender and sexuality.

Marriage from the perspective personal laws: -

In India marriages are performed according to the personal laws that the person belongs to. This means following the common features of mainstream religions is the prescription of rituals and rules of conduct of marriage. Every major religion in India i.e. Hinduism Islam and Christianity, prescribe their own definitions and conduct of marriage. In India none of the religion acknowledges same sex marriage Hinduism defines marriage as association of two individuals so that they can pursue Dharma and attain Moksha together. In Hinduism the matrimonial bond is considered to be sacred there are both conservative and liberal views about homosexuality and same-sex marriages in Hinduism with Hindu priests having performed marriage of same sex couples. The Kama Sutra acknowledges third-gender marriages wherein same-sex couples with "great attachment and complete faith in one another" get married together. In Islam marriage the marriage is supposed to be a contract binding between the two persons. It is a formally binding contract upon the parties. The consent of the bride is necessary for the performance of the marriage. It is not a sacrament as of Hindu law. The Muslim law is very against when it comes to the concept of same sex marriage. The sharia law imposes death penalty of couples engaging in homosexual activity be it active or passive. In Christian marriage, the union between a man and a

woman is instituted and ordained by God as the lifelong relationship between one man as husband, and one woman as wife. For example, a passage in the Bible states that husbands should love their wives as Jesus loved the church. Although there is no definition of marriage, most of the traditional Christian societies and churches do not recognize same-sex unions.

They believe that marriages should be restricted to “traditional” marriage. Some far-right groups even believe that homosexuals should be stoned to death due to a passage in the Old Testament. The above-mentioned examples depict that personal laws have hesitated in providing any legitimacy to the concept of same sex marriage. The marriage of the couples through the personal law seems like a far cry in today’s India. The legislature should come up with ways to inculcate the provisions for marriage of such couple in legal framework. One way out is same sex marriage act with all the necessary provisions to be brought before the parliament.

Difficulties Faced by LGBT in Today’s Society: -

The LGBT category individuals face innumerable difficulties in the society where the only accepted orientation is the heterosexuality while in the contrary homosexuality is regarded as abnormal. Abuse is their daily routine and faced by them almost every day. They are more likely to experience intolerance, discrimination, harassment, and threat of violence due to their sexual orientation than those that identify themselves as heterosexual. It is mainly due to homophobia. They face inequality and violence at every place around the world. They face torture from people who mock at them and make them realize that they are different from others. It’s just because of whom they are and how they look. In many countries, the rights enjoyed by opposite-sex couples are not enjoyed by the same-sex couples. They are prohibited from those rights. As a result, they face discrimination and cannot enjoy social protection schemes like health care and pensions. The LGBT people even hide their gender from the neighbor individuals and do not disclose it to the others due to the fear of losing their job. The young LGBT people face ragging and harassment in schools, colleges, and university which in many cases lead to depression, school drop-out and homelessness. They gradually develop low self-esteem and low self-confidence and become isolated from friends and family. The parents of normal children don’t allow them to mix with the LGBT children acting completely out of care and concern without realizing that this leads to isolation for the other one. The gap in the communication between LGBT born child and the parents often leads to several conflicts in the family. Much

LGBT youths are chucked out of the house and are often forced to live the life on streets as a beggar, because of family conflict related to their LGBT identity. Most of the LGBT teens have a very high risk of health and mental problems when they attain the age group of adults because they are rejected by their parents and guardians. A survey revealed that about 40 percent of the homeless people constituted of LGBT. 'Studies done by the Gay, Lesbian and Straight Education Network [GLSEN] report that nearly 9 out of 10 LGBT students face harassment.

The 2007 National School Climate Survey found not only those LGBT students were harassed but 31.7% of LGBT students missed a class and 32.7% missed a day of school because of feeling unsafe.' Additionally, lesbian, gay, bisexual and transgender people often face poverty and racism daily. They suffer from social and economic inequalities due to continuous discrimination in the workplace. These people who are thrown out of their house mostly get addicted to drugs, alcohol, and tobacco to get themselves discharged of stress and rejection and discrimination. LGBT elders also face several problems. They cannot avail of the opportunities which are received by other senior citizens. Most of them isolate themselves from everyone. Very less is known about them because of widespread failure of governmental and academic researchers to include questions about sexual orientation and gender identity in their studies of the aged. They also become victims of hate crimes. In some countries, homosexuality is regarded as a crime. It is illegal and is often met by imprisonment and fines. For example, in Muslim law, the holy book Quran the term homosexuality is regarded as a sin and is unlawful. 'The exclusion and discrimination have more impact on the lives of LGBT persons. This has resulted in the following-

- Dropping out of school earlier
- Leaving home and family
- Being ignored in the community
- Lacking family support
- Attempt suicide

Why there was Need for Legal Recognition of Same Sex Marriage: -¹

¹Vidhan Maheshwari, Same Sex Marriage: Is it the time for legal Recognition.

A recent study of sexual practices in rural India by the United Nations Population Fund (UNFPA) found that 'male-to-male sex is not uncommon. In fact, a greater percentage of men in the study were reported having male-to-male sex than with sex workers. The men were both married as well as unmarried. Near to 10 per cent unmarried men and 3 per cent married men were reported having had sexual intercourse with other men in the past two years" The survey covered 50 villages in five districts of five states with reaction on sexual practices from close to 3,000 respondents and in-depth interviews on close habits from 250 people. The data is indicative of a reality which the government is either unable to see or unwilling.

Love is affection. The peril to marriage is the alarmingly high divorce rate. Marriage is considered as a legal union of two individuals. People who do not believe in religion choose to get married in a registry office and not in church or a temple. Marriage shows the strongest commitment that one individual can make to the other. LGBT are also the human and have the similar needs and desires just as heterosexual human beings. Getting into marital relationship is the ultimate way of showing one's love and commitment to his partner, so why should gay people be deprived of this right. Same sex marriages should be legalized. If people find same sex marriage contrary to their religious beliefs than it is up to them to refrain. Those individuals who do not disclose their religious opinions should be free to make their own choice on this matter of concern as on other important issues. Although gay men and lesbians are also human beings and have the same needs and desires as heterosexual human beings.

Most of the people put forward the argument that same sex marriages should not be made legal "because they do not produce kids" is ridiculous. If two people are in love with each other and want to unite their destinies and live collectively, then it is a beautiful thing which should be celebrated. Whether it will be termed as "marriage" or "life pact" does not matter. Union of individuals belonging to same sex does not harm anyone; one's support or opposition to this is a matter of personal belief and morality, with which the government has no business to interfere.

If we were to accept the government's arguments in the Delhi high court case, then many of the progressive legislations in our country would never have been enacted. For example, it is believed by many men even today that the tradition gives them a right to beat up their wives, or that they have the right to get a very fat dowry just because they were born with a penis. If we

give in to these cultural beliefs, then there is nothing to turn around the legislations that we have made to stop violence against women or dowry and dowry related deaths.

There are five important judgements by the honorable judicial system of India which took the progressive steps in decriminalizing the sec 377 of Indian Penal Code and providing a gender identity to the third gender i.e. LGBTQ. The important decisions and the main arguments put forward by the honorable courts in their respective judgements have been discussed in the section below:

1. NAZ foundation case in 2009

In the NAZ Foundation case², the primary motive in the filing of this case was the removal of sec 377 of Indian Penal Code or better to say “Decriminalisation of sec 377” for the sake of homosexual community by NAZ Foundation. Section 377 was seen as to be a violative of article 21 i.e. Right to Life. Under this article the right to life specifies that no individual can enjoy the right to life without dignity and privacy.

While the judgement was passed by the Delhi High Court, the court discussed the Right to Equality as per the raised contention and laid down that sec 377 is the violative of article 14 & 15 i.e. Right to Equality as it takes along with it an unreasonable discrimination on the basis of sex and gender. It classifies the homosexuals as a different class away from the two major classes of male and female. Sec 377 not only makes the sexual activities “against the order of nature” illegal but also criminalises the consensual sex done by the individuals belonging to this particular class i.e. homosexuals.

The High Court of Delhi also discussed the article 15 in which the discrimination on the basis of sex is prohibited. The court laid down that under this article the sex included is not only the biological sex but also the sexual orientation. The more importance should be given to not the biological sex but to the psychological test that determines the state of an individual.

And finally, in its judgement, Delhi High Court laid down that the part of the section 377 which criminalises the homosexual act should be declared unconstitutional. They recommended the Parliament to make the required changes as per directed by the Delhi High Court in its judgement.

² NAZ Foundation v. Government of NCT of Delhi &Ors. (2009) 111 DRJ 1 (DB)

2. Suresh Kumar Koushal v. NAZ Foundation in 2013

The second step in the direction of the decriminalisation of sec 377 was taken by the case filed by eminent jurist of supreme court of India Suresh Kumar Koushal against the judgement passed by the Delhi High Court in the favour of NAZ Foundation i.e. *Suresh Kumar Koushal and another v NAZ Foundation and Others*³. The main arguments raised in this case were as follows:

Homosexuality is a criminal offence and only parliament have the power to make necessary changes through legislation and amendments and the court cannot interfere in the legislation process. It is upon the discretion of the parliament to pass any law or make any necessary change in the laws according to the majority of the parliament members.

Another argument raised in the supreme court was that the right to privacy cannot be extended to that extent that an individual commits an offence. Thus right to privacy does not cover homosexual acts. The judgement laid down in this case was considered to be a backward step by several known international organisations. The individuals belonging to the homosexual class who came out of the closet after the judgement laid down in the case of NAZ Foundation case were seen as a criminal in the society. This judgement of SC was purely in contrast to the judgement of the Delhi High Court and again criminalised the homosexual activities.

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3. NALSA v. UOI &Ors. in 2014

The next major step taken is by the National Legal Services Authority of India in the case of *National Legal Services Authority v. Union of India &Ors.*⁴ The main outcome of this case is that the court recognised that all existing laws in our country are purely on basis of the two major binary genders male and female and the rights of the individuals belonging to the transgender community are not protected by any of the provisions and laws. Thus the basis of discrimination with the transgender community has been established by our own law.

In order to fulfil this loophole of our constitution the supreme court in its judgement recognised several laws of the transgender community which are as follows:

³ Suresh Kumar Koushal and another v NAZ Foundation and Others (2014) 1 SCC 1

⁴ National Legal Services Authority v. Union of India &Ors. AIR 2014 SC 1863.

Art. 14, Equality before Law, here SC verdict states that the phrase “any person” in the article 14 includes not just only male and female but also transgender. Thus transgender community should be seen as an ordinary people in the eyes of law.

Art. 15 & 16, No discrimination on the basis of gender. Supreme Court laid down that if there is any kind of discrimination on the grounds of sexual orientation then it is the violative of the art. 15 and 16 and thus the individual whose right is infringed can directly approach to the supreme court because of the infringement of the fundamental right under art. 32 i.e. right to constitutional remedies.

Art. 19, Protection of rights regarding freedom of speech, etc. Supreme Court in its verdict laid down that privacy, gender identity, and integrity of the transgender community are also protected under the article 19(A) of the constitution of India. In a way the sec 377 is also included under this article as stated by the honourable court.

Art. 21, Right to live with dignity also includes the right to choose gender identity.

This case lead to the legal recognition of self-identity and gender identity. That is of three major types :-

- i) Male
- ii) Female
- iii) Transgender



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4. Justice K.S. Puttaswamy v. Union of India 2017

The judgement laid down in this case⁵ affirmed that the right to privacy is one among the fundamental rights granted to the individuals by Constitution of India.

This case was decided by a 9-judge constitutional bench headed by Chief Justice Khehar. Chandrachud in his verdict laid down that the court realised the duty of the SC to rectify the mistake done by SC in the Suresh Kumar Koushal case. He laid down in its judgement that sexual orientation is the attribute of the privacy which is mainly protected under Art. 14, 15, 21.

5. Navtej Singh Johar v. Union of India 2018

And at last the completion of the milestone of the decriminalisation of section 377 was declared in the case of *Navtej Singh Johar v. Union of India*⁶. The honourable Supreme

⁵ Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.

⁶Navtej Singh Johar&Ors. v. Union of India (2018) 1 SCC 791

Court declared sec 377 partially unconstitutional. All consensual sex among adults in private including homosexual sex were de-criminalised by the court. The judgement was passed by the 5-judge constitutional bench headed by Chief Justice of India Dipak Mishra.

In support of article 14 Supreme Court laid down that there is not any valid intelligible differentia or any rational nexus to criminalise the consensual act of two consenting individuals just because they are homosexual. Such traditional norms based on morality or are ambiguous or based on subjective test should be give way.

In support of article 15 Supreme Court decreed that the approach of Delhi High Court in order to reach at any conclusion of the NAZ Foundation case that “sex includes both biological sex and sexual orientation” is considered to be the most appropriate approach. As this approach represents our improved understanding.

In support of article 19 Justice Chandrachud said that the human sexuality cannot be defined narrowly and the discrimination against LGBTQ is unconstitutional. Article 19 protects the right of a person to express his /her personal identity i.e. sexual orientation and expression freely to the whole world.

In the support of article 21 Supreme Court laid down that right to life and liberty includes privacy, dignity, and autonomy. With certain reasonable restrictions these rights of homosexual class can be curtailed but cannot restrict them from the enjoyment of these rights on the basis of sec. 377 IPC.

Chief Justice Mishra (on behalf of himself and J. Khanwilkar) relied on the principles of transformative constitutionalism and progressive realization of rights to hold that the constitution must guide the society’s transformation from an archaic to a pragmatic society where fundamental rights are fiercely guarded. He further stated, “constitutional morality would prevail over social morality” to ensure that human rights of LGBT individuals are protected, regardless of whether such rights have the approval of a majoritarian government.

J. Nariman in his opinion analysed the legislative history of Section 377 to conclude that since the rationale for Section 377, namely Victorian morality, “has long gone” there was no reason for the continuance of the law. He concluded his opinion by imposing an obligation on the Union of India to take all measures to publicize the judgment so as to eliminate the stigma faced by the

LGBT community in society. He also directed government and police officials to be sensitized to the plight of the community so as to ensure favourable treatment for them.

J. Chandrachud in his opinion recognized that though Section 377 was facially neutral, its “effect was to efface identities” of the LGBT community. He stated that, if Section 377 continues to prevail, the LGBT community will be marginalized from health services and the “prevalence of HIV will exacerbate”. He stated that not only must the law not discriminate against same-sex relationships, it must take positive steps to achieve equal protection and to grant the community “equal citizenship in all its manifestations”.

J. Malhotra affirmed that homosexuality is “not an aberration but a variation of sexuality”. She stated that the right to privacy does not only include the right to be left alone but also extends to “spatial and decisional privacy”. She concluded her opinion by stating that history owes an apology to members of the LGBT community and their families for the delay in providing redress for the ignominy and ostracism that they have suffered through the centuries.

SOCIOLOGICAL INTERPRETATIONS

Western society constructs heterosexuality as the norm, but this was not always explicit.⁷ As sociologist Michael Foucault has shown,⁸ the invention of the word ‘**homosexual**’ only emerged during the Victorian era in the late 1800s. Queen Victoria wanted to stop male aristocrats from having sex with other men, something that was not openly talked about, but still practiced. There was no word for men having sex with other men, and Queen Victoria charged her physicians with studying this phenomenon. Having established a word for this, *homosexual*, these medical doctors invented a counter-position, that of the **heterosexual**. Thus, it was the will of one woman who established the latter as the “natural” and normative position from which human sexuality was henceforth categorized. This history shows that by its very invention of the word, homosexuality was set up as the Other of heterosexuality.

Homosexuality became medicalized, and doctors were charged with “curing” it, and it was soon outlawed. This history stays with our laws in the present day, and it explains why homosexuality is largely outlawed in British colonial states (it is illegal in 41 of 53 CW nations, India recently abrogated the said law).

⁷ Rethinking Gender and Sexuality: Case Study of the native American “Two Spirit People”.

⁸ The history of sexuality Vol.1.

This history also puts into context why most former European colonies have a higher age of consent for male-to-male sex than for male-to-female, or even female-to-female sex. Queen Victoria refused to believe that women would have sex with other women, which is why the laws today reflect more leniency (though not necessarily social acceptance).

Heterosexuality quickly became welded to ideas of sex categories – to be a man was to be a heterosexual man; to be a woman was to be a heterosexual woman. Heterosexuality – an idea that has only existed since the late 1800s – became normalized in the early 1900s. The alternative was to be legally punished. Judging gender and sexuality according to heterosexual norms is known as **heteronormativity** – the expectation that heterosexuality is “natural” and therefore needs no explanation. Homosexual people are expected to “come out” and identify themselves only because they are different to heterosexuals, and yet heterosexual people are not expected to publicly announce their heterosexuality.

Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (**LGBTQIA**) people are excluded because of how heteronormativity functions: it makes non-heterosexual people as Other, even though homosexuality has existed throughout human history. In many cases as I show below, homosexuality was permissible only for elite groups, or controlled for certain periods of time. In one way or another, all societies restrict the expression of sexuality, but the idea that heterosexuality is the mechanism by which this happens is false. Sexuality is historically and culturally variable.

SOCIOLOGICAL PERSPECTIVE ON SEX AND SEXUALITY

Sociologists representing all three major theoretical perspectives study the role sexuality plays in social life today. Scholars recognize that sexuality continues to be an important and defining social location and that the manner in which sexuality is constructed has a significant effect on perceptions, interactions, and outcomes.

STRUCTURAL FUNCTIONALISM

When it comes to sexuality, functionalists stress the importance of regulating sexual behavior to ensure marital cohesion and family stability. Since functionalists identify the family unit as the most integral component in society, they maintain a strict focus on it at all times and argue in favor of social arrangements that promote and ensure family preservation.

Functionalists such as Talcott Parsons have long argued that the regulation of sexual activity is an important function of the family. Social norms surrounding family life have, traditionally, encouraged sexual activity within the family unit (marriage) and have discouraged activity outside of it (premarital and extramarital sex). From a functionalist point of view, the purpose of encouraging sexual activity in the confines of marriage is to intensify the bond between spouses and to ensure that procreation occurs within a stable, legally recognized relationship. This structure gives offspring the best possible chance for appropriate socialization and the provision of basic resources.

From a functionalist standpoint, homosexuality cannot be promoted on a large-scale as an acceptable substitute for heterosexuality. If this occurred, procreation would eventually cease. Thus, homosexuality, if occurring predominantly within the population, is dysfunctional to society. This criticism does not take into account the increasing legal acceptance of same-sex marriage, or the rise in gay and lesbian couples who choose to bear and raise children through a variety of available resources.



CONFLICT AND FEMENIST PERSPECTIVE

Gore Vidal observes,

In order for a ruling class to rule, there must be arbitrary prohibitions. Of all prohibitions, sexual taboo is the most useful because sex involves everyone, we have allowed our governors to divide the population into two teams. One team is good, godly, straight; the other is evil, sick and vicious.

Vidal's statement addresses the focus of both these perspectives, how conflict in our society is based on sexual orientation, with heterosexuals given the advantage. Sociologists recognize that heterosexuals are granted a privileged place in our society. Heterosexism assumes that heterosexuality is the norm, encouraging discrimination in favour of heterosexuals and against homosexuals. Heterosexual privilege is defined as the set of privileges or advantages granted to some people because of their heterosexuality. For example, married couples receive more than 1,000 government benefits, ranging from the right to sue based on wrongful death of a partner, access to employment-based health benefits, and the ability to make medical decisions on behalf of a partner. From a conflict perspective, Amy Lind identifies how the DOMA helped institutionalize heterosexism because it blocks future proactive and protective legislation for gays and lesbians. She focuses specifically on heterosexual biases in social welfare policy, identifying its impact in three ways: through policies that explicitly target LGBT individuals as abnormal or deviant, through federal definitions that assume that all families are heterosexual, and through policies that overlook LGBT poverty and social needs because of stereotypes about affluence among LGBT families.

Evidence of the first type of heterosexual bias can be found in federal legislation such as DOMA and policy initiatives such as the healthy marriage promotion and fatherhood programs promoted by President George W. Bush, parallel to the previously functional part of section 377 of the IPC in the Indian subcontinent. Current legislation funds abstinence only until marriage education programs in schools. Lind explains that gay, lesbian, and bisexual adolescents have no access to sexual education that pertains to their sexual experience. In an effort to preserve the traditional heterosexual family, these programs deny LGBT people their rights and needs. The second type of heterosexual bias concerns how the U.S. Census defines the family and household. Lind refers to the 2003 definitions used by the U.S. Census.

Family is defined as “a group of two or more (one of whom is the householder) related by birth, marriage, or adoption and residing together.”

Household “consists of all people who occupy a housing unit” and is distinguished by family versus nonfamily households. Family households are defined as “a household maintained

⁹ Definition by U.S. census of 2003.

by a householder who is in a family (as defined above) and includes any unrelated people who may be residing there,” whereas a nonfamily household is “a householder living alone or where the householder shares a home exclusively with people to whom he/she is not related.”

Lind argues that these definitions privilege marital unions over domestic partnerships and the status of heterosexual families over other types of families. Finally, the third type of heterosexual bias is based on stereotypes of lesbian, gay, and bisexual (LGB) individuals and families as affluent, despite evidence that LGB families are as economically diverse and stratified as heterosexual families are. Lesbians, gays, and bisexuals remain invisible in poverty studies or policies because they are assumed to be childless, have fewer family responsibilities, and thus higher overall incomes than heterosexual households have. With the exception of HIV/AIDS, LGB individuals are considered as not needing any economic, social, or health-related services.

From a feminist perspective, the question about gay marriage rights is bound to the ongoing critique of marriage as an institution. Scholars have argued that lesbian and gay marriages will positively disrupt the gendered definitions of marriage and the assumption that marriage is a prescribed hierarchy. However, just as feminists have criticized traditional marriage as an oppressive and dominating institution against women, feminists have also supported sexual freedom. Supporting gay marriages would mean that feminists would be supporting the very institution that perpetuates women’s inequality.

Ann Ferguson explains that there are two main sides of the feminist argument: radical feminists who reject marriage outright on the basis of marriage as an oppressive institution versus liberal reform feminists who support the choice to marry on the understanding that men and women (or same-sex couples) can conduct their marriages in nontraditional ways. She supports the liberal reform side, arguing, “We should not simply reject marriage and hope it withers away, but instead should attempt to reform it as a better way to achieve these feminist goals [equality, freedom, and care]”. On the topic of gay marriage, however, she concludes that some gay persons should not marry, not because it is a risky institution for women, but because the right to form one’s family should not be tied to a one’s

marital status. “We should defend gay marriage as the formal right to access a basic citizen right”

SYMBOLIC INTERACTIONISM

Interactionists focus on the meanings associated with sexuality and with sexual orientation. Since femininity is devalued in U.S. society, those who adopt such traits are subject to ridicule; this is especially true for boys or men. Just as masculinity is the symbolic norm, so too has heterosexuality come to signify normalcy. Prior to 1973, the American Psychological Association (APA) defined homosexuality as an abnormal or deviant disorder. Interactionist labeling theory recognizes the impact this has made. Before 1973, the APA was powerful in shaping social attitudes toward homosexuality by defining it as pathological. Today, the APA cites no association between sexual orientation and psychopathology and sees homosexuality as a normal aspect of human sexuality.

Interactionists are also interested in how discussions of homosexuals often focus almost exclusively on the sex lives of gays and lesbians; homosexuals, especially men, may be assumed to be hypersexual and, in some cases, deviant. Interactionism might also focus on the slurs used to describe homosexuals. Labels such as “queen” and “fag” are often used to demean homosexual men by feminizing them. According to Cooley, this subsequently affects how homosexuals perceive themselves. Recall Cooley’s “looking-glass self,” which suggests that self develops as a result of our interpretation and evaluation of the responses of others. Constant exposure to derogatory labels, jokes, and pervasive homophobia would lead to a negative self-image, or worse, self-hate. The CDC reports that homosexual youths who experience high levels of social rejection are six times more likely to have high levels of depression and eight times more likely to have attempted suicide.

QUEER THEORY

Queer Theory is an interdisciplinary approach to sexuality studies that identifies Western society’s rigid splitting of gender into male and female roles and questions the manner in which we have been taught to think about sexual orientation. According to Jagose, Queer [Theory] focuses on mismatches between anatomical sex, gender identity, and sexual orientation, not just

division into male/female or homosexual/heterosexual. By calling their discipline “queer,” scholars reject the effects of labeling; instead, they embraced the word “queer” and reclaimed it for their own purposes. The perspective highlights the need for a more flexible and fluid conceptualization of sexuality—one that allows for change, negotiation, and freedom. The current schema used to classify individuals as either “heterosexual” or “homosexual” pits one orientation against the other. This mirrors other oppressive schemas in our culture, especially those surrounding gender and race (black versus white, male versus female).

Queer theorist Eve Kosofsky Sedgwick argued against U.S. society’s monolithic definition of sexuality and its reduction to a single factor: the sex of someone’s desired partner. Sedgwick identified dozens of other ways in which people’s sexualities were different, such as:

Even identical genital acts mean very different things to different people.

1. Sexuality makes up a large share of the self-perceived identity of some people, a small share of others.
2. Some individuals spend a lot of time thinking about sex, others little.
3. Some like to have a lot of sex, others little or none.
4. Many have their richest mental/emotional involvement with sexual acts that they don’t do, or don’t even want to do.
5. Some like spontaneous sexual scenes, others like highly scripted ones, others like spontaneous-sounding ones that are nonetheless totally predictable.
6. Some, homo- hetero- and bisexual, experience their sexuality as deeply embedded in a matrix of gender meanings and gender differentials. Others of each sexuality do not.

Thus, theorists utilizing queer theory strive to question the ways society perceives and experiences sex, gender, and sexuality, opening the door to new scholarly understanding.

THE DENOUEMENT

The status of same sex marriage in India is under high ambiguity till now because there is no legislation available. The personal laws either term it as unethical or unnatural. The judgement on scarping of section 377 of IPC 1860 came as a ray of hope for these people, but still their

right to marry is not as recognized as a result of their they are not able to avail the benefits of marriage like maintenance,succession. The society in India is yet to dissolve in the concept of same sex marriage. Though there have been instances where the same sex marriage has actually taken places, but because these marriages are not recognized by the judiciary and hence, they can't get it registered.

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