

Social and Religious View after Amendment in Section 377 of I.P.C

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ABSTRACT:

In the recent times the Indian Society has witnessed significant changes in moral ethos and social stigma. In these series of event the recent amendment in Criminal law relating to section 377 has its own importance.

In this research project the researcher wants to analyze the importance of criminal law amendment Act 2018 on section 377 Of I.P.C.

The author further wants to analysis the impact of changes in section 377 and its effect to the criminal justice system, social ethos, morals and on Indian Society at large.

I. INTRODUCTION

Section 377 of IPC 1860, was incorporated when the code was drafted originally. This law from British Time period was one of the untouched law by Indian law makers even after many years of independence. The section 377 is titles as Unnatural- Offences and punishes for sodomy and bestiality (before amendment). The section read out as follow-

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.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section

So, as we have seen that the offence is of heinous nature and consent is not a ground for defense and moreover the person giving the consent is charged as abettor. In broad sense the section covers the two offences namely “Sodomy” & “Bestiality”.

Sodomy refers to intercourse per anus by man or woman to animal homosexually or hetrosexually.

Bestiality refers to intercourse per anus by man or woman to an animal or inmate object.

So intentionally or unintentionally the section was violating many rights of L.G.B.T community in terms of equality, sexual relations or marriage rights. It directly bans the homosexuality which violates many rights of L.G.B.T Community. As we know conjugal rights includes rights to have sexual relations with your partner and

such rights are recognized by statutory laws as well as by many personal Laws, even though same gender sexual relation or marriage is seen as a sin in Indian Society and many people see these sex minorities with a discriminatory perspective.

II. CASE LAWS BACKGROUND OF AMENDMENT

The issue was first raised by the NGO named as “NAZ FOUNDATION” in its case *Naz Foundation VS. Government of NCT Delhi*, 160 Delhi Law Times 277 (Delhi High Court AIR 2009) popularly known as NAAZ FOUNDATION case in 2009. In the petition seek to decriminalize section 377 Of the IPC on the ground that it violates the article 14,15,16,19 and 21 of our Constitution. High Court considered the case in 2 angels first that A.21 includes right to live with dignity, privacy and article 14 and 15 prohibits unreasonable discrimination which is done under section 377 by criminalizing the Consensual sex of two Adult Homosexual’s and also that it violates the A 15 on the ground that article includes Sexual orientation, and the court declare part of section 377 decriminalize that criminalize the consensual sex between two adult homosexuals.

The Judgment was appealed in Supreme Court in case of *Suresh Kumar Koushal Vs. Naz Foundatio Civil Appeal no.10972 of 2013*. Two issues were raised- 1. Homosexual is a criminal offence. 2. Parliament is the only one who can decriminalize the law, not the court. In the case the Supreme Court held that “ we cannot extent right to privacy so that it leads to an offence.”

In 2014 in *National Legal Service Authority Vs. Union of India & Ors(2014)5 SCC 438*. Issue raised that the existing Indian laws deals with the gender (Male & Female) and no law protects the transgender community which is causing discrimination to the transgender community. Supreme Court recognize multi-faced rights of transgender – 1. Article 14 covers the right enjoyed by any person (man, women or transgender.) 2. Under article 15&16 gender based discrimination are prohibited, so if discrimination is on the basis of sexual orientation, it is the violation of article 15&16. 3. Privacy, gender, identity and integrity these all are protected under article 19 (1) (A). 4. Right to live with dignity includes rights to choose gender identity.

In *Puttaswamy case* a 9 judge supreme Court bench hearing petition against India’s Biometric program Aadhar unanimously rules that privacy is a fundamental right. In this judgment the court also held, “sexual orientation is an essential attribute of the society. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual”.

Finally on 6th September 2018 in the case of *Navtej singh Johar Vs. Union of India* a 5 judge bench of Supreme Court Including C.J.I Deepak Mishra decriminalize all the consensual sex among adults in private including Homosexual sex.

III. SOCIAL AND RELIGIOUS VIEWS ON SECTION 377 JUDGMENT OF I.P.C

India is a secular country consisting of various religions. The Indian Constitution neither promotes any particular religion nor suppresses any, instead it provides basic fundamental freedom to all irrespective of anything, keeping in mind their effect on society at large. Many of them are prevailing from ancient times.

The common basis of these is procreation of life, or we can say continuing of heirs to make continuity of religion and name of the family. As we talk about two most vast religions of India, namely, Hinduism and Islam, they both oppose the homosexual relation because they violate customs of their religious practice.

As per Hinduism, Hindu ancient society accepted the existence and recognizes the homosexuality which can be proven by –

1. Sculptures in ancient temples of Khajurao, show the women embracing seductive behavior toward other women and men showing genitals to other women, which itself proves ancient people were engaged in homosexual acts.
2. In Mahabharat warrior name Shikhandini who was a transgender and was known to defeat many kings and she also got married to one woman which was accepted by society of that time without any objection.
3. The *Manusmriti* ancient law code of that time punishes the sexual act between two males and between two females, because it leads to loss to society and caste.
4. The ancient book *Kamasutra* entire chapter talks about homosexual acts.

And many more points can be raised which can easily prove the existence of homosexuality in ancient Hindu society, but according to its religious practice and customs homosexuality cannot be prevailed because it violates many forms of its *16 Sanskar* and other customs which are getting married, doing *kanya dan*, *pind dan*, and even marriage is believed as a religious ceremony which only deals with two genders i.e, male and female and are believed to be very important for procreation, but all of which are not possible with homosexuals.

When we talk about Islam, its ancient book *Quran* which governs its entire religion strictly prohibits the acceptance of homosexuality, according to it one can either be a Muslim or a homosexual but not same at a time. The reason is not specified but it is believed with the reason that it- 1. These acts (homosexual acts) are against the order of nature. 2. According to them homosexuality is not naturally occurred this is only persons psychological or genetic defect, which a person chooses himself unnaturally. 3. They believe that homosexual acts are more prone to sexually transmitted disease than of heterosexual acts. In Islam marriage is specifically a contract and it shall be between a male and a female for procreation, which also not possible in homosexuals.

And when we talk about Christianity its silent on topic of homosexual but as same as of other religions it works on procreation in which homosexuality fails.

The issue with religious sentiments and dogma for homosexuality is nothing more than but getting there customs violated, because according to religions natural procreation is the only way to continuance of human existence and of course of all particular religious beliefs. But the ideology is completely false the acceptance of homosexuals and their sexual relations is not going to influence society in bad manner it is only going to promote equality and fraternity.

In context of procreation religion is right in its point homosexuals can't reproduce naturally but so do some natural couples (male & female) because of some modern sexual illness but which is also cures by modern scientific ways which can also help homosexuals for procreation.

In India customs are sometimes widely misinterpreted like in Hindu some of the *dharma gurus* believed that there is no existence of homosexuality in ancient Hindu society but as the fact is completely wrong because many Hindu books and sculptures shows the existence of homosexuals even in ancient time as discussed above. Such misinterpretation is spread widely in Indian society with many fake facts such as homosexuality is a disease which is going to endanger the genders of their children, which is completely false.

IV. CONCLUSION

At the end of this research by studying both aspects of society the religious sentiments and LGBT community ideology, we can say that there is no logical or other effect on sentiments by amendment in section 377 of I.P.C legalizing consensual sex between adults of same sex. But the relations of homosexuals destroy the crux or basis of every religion ideology that is procreation which is not possible with homosexual relations in natural context. It is not like that homosexuality is a modern concept it has been existed in ancient period also and got recognition by our ancient people, but the ancient laws and customs are made by keeping in view about two genders only man and female. So that law which was made hundreds of years back will naturally going to contradict with newly recognized element which was ignored from so many years. Sexual orientation is not a choice it's natural and the one who believes in god and is against the homosexuals he is himself anti god because at last its god who made us all. Indian society just need time to accept and get comfortable with the fact that homosexuals are no different from us they are also made by same power of universe who created us.

V. REFERENCES

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