



LGBTQ+ PEOPLE AND THEIR RIGHT

ABSTRACT

It is only the majority that we all came to know but the reality and fact is that there exist a minority and they do have their own rights. Queer is thus a minority that exist among us it is very important that we need to know about them. As there were humans there were homosexuals they are not aliens that shipped from spaced immigrated into the earth. They do exist from the very early. But even in this 21st century they are not getting acceptance in the society they are denied of their rights and dignity. Time had crossed we as humans we need to do and acknowledge about the rights and welfare of this community. People from this community is in their battle for thousands of years. Here we discuss about the issues and problems that queer people face and the history behind there stigma and legality of their existence.

INTRODUCTION

Humanbeings are like colours in a rainbow ,all are different in their own ways .‘It takes no compromise to give people their rights... it takes no money to respect the individual.It takes no political deal to give people freedom.it takes no survey to remove repression.Likewise queer people to have their rights they need to be represented in the sphere of the society.Even in this twenty first century queer people are submitted and they are still fighting the war to get their representation. It is still a stigma that the society cant accept and they treat as abnormal . Even queer are not even accepted by their family and they are not even coming out because of the doubt of their existence.The major drawback is that people are not getting awareness about the sexual orientation that exist in this mankind. People need to be more educated and more empowered. And its being stated that queer is against Indian cultural norms. But the fact is that even Christianity and islamisam directly criticise queer but there is no single document which criticise queer in Indian culture . Eventhough India is still not ready to accept them as the foreign countries do.

WHO CAN BE CALLED A QUEER?

LGBTQ can be expressed as 'L' lesbian 'G' gay 'B' bisexual 'T' transgender 'Q' queer . Lesbain are people , women who sexually gets attracted to a women. Gay are men who sexually gets attracted to men. Bisexual are people who gets sexually attracted to both men and women .Queer is people who are not hetrosexual or are not still identified their gender it is an umbrella term. There are many other categories too like asexual, gender fluid, pansexual , demisexual ,polyamoruous, agender ,nonbinary ,intersex and many more .There are more than 70 genders that are being identified till date. People who shows solidarity with queer people are being termed as ally. Nowadays there are many organisation that stands with queer and support them.

HISTORY OF QUEER!

People and stories of queer had been found from the very back of AD itself. From the 4th century AD book Kamasutra it is evident that there where gay couples it mentions about physical pleasure in male -male unions in vivid details.And also there is a transgender character in the epic book of Mahabharata which depicts the character shikandi who is a trans human . And it is also evident that the God vishnu had changed into female version , mohini to produce ayappa with god shiva .In the 14th century Bengal folklores depicites sexual activity by two widows and even it tells that they had given birth to a child . And bhakthi saints feminise themselves in the medival period to worship shiva and krishna .Even in the Rigveda which way back to 1500BC ststes about sexual pleasure between women .The two slogans in Manusmrithi,11:175 and 8:370 too doesn't directly stood against homosexuality it only depicts harmful way of sexual intercourse only.

Nowhere in those ancient sculptures do we find any explicit referenceto homosexual. The vedas neither condemn nor condone same sex relations .Queerness is not against Indian culture but at the very core of it .

IPC 377 AND THE STIGMA

Macaulay the first law commissioner framed IPC and there came the section 377 .Section 377 states about the so called 'unnatural offences', 377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[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.It was modelled after the English buggery act of 1533. The irony is that in 1967 british legalised same sex relation but the Victorian idea had become entrenched as an integral part of Indian values.And it was india's openness to sex and sexulity ironically becomes the british classified it as a backward civilization.

As the constitution itself gurantees the rights of its citizen basically by the fundamental rights which is considered as the core of Indian constitution section 377 ipc is clearly a violation of it . It can be considered as the violation for article 14 which states about the right to equality and equal protection of law including men women and transgender . And article 15 which prohibits discrimination on the basis of religion , race, caste, sex or birth of place .It is evident from the above mentioned facts that no gender based discrimination on the bais of sexual orientation.And also article 19(1)(a) which states about the right to freedom of speech and expression , and it is clear ffrom this that every person has the right to express their gender identity .And mainly article 21 which states about the right to life and personal liberty.

THE WORLD OF HOMOSEXUALS

It was in 1977, Shakunthala Devi who wrote a book on homosexuals, and that book was unnoticed and criticized because of the content in it. The idea of writing the book came into her mind by marrying a homosexual man. This itself shows that even being a homosexual human he was forced to marry a woman without his will. This being happening everywhere because people are afraid to come out as who they really are. And that story mainly focused on getting legal rights for marriage of two young gay couples. Even though the book didn't get its actual value at that time it is being circulated and read by many people in today's time and it is also being accepted, it shows the acceptance and change that occurred in the society in recent times.

MOVEMENTS AND REVOLTS

The very first movement began in the early 1930s in Germany. The movement was followed by the harsh law of criminalizing of sex between man and the lax censorship that Germany followed at that time. As the Christian mythology stood against homosexuality therefore German government too opposed it. The writers and thinkers at that time stood for the rights of homosexuals and they expressed their solidarity by writing about homosexuals and their love.

And it was in 1920 that the first society of human rights has been founded in Chicago. A major milestone was achieved when the first US televised documentary about homosexuality was aired in California in 1961, it was a step to make even the ordinary people know about homosexuals. Lambda Legal is the first legal organization established to fight for equal rights for gay and lesbians. In 1979 there was a massive march in Washington for lesbian, gay rights.

One among the major movements was the gay liberation movement that took place in the 1970s in New York City. The movement fought to end discrimination against gay and lesbian people. It seeks for equality for all. And to eliminate sodomy laws.

INDIA'S MOVEMENTS

It was the Bengaluru pride that was being formed in 2008 that came into India for the very first time. And many other such pride organizations were also formed like Chennai rainbow pride, Bhubaneswar pride, Chandigarh pride, Delhi Queer Pride Parade, Pune pride, Queer Gulabi Pride Jaipur and many more...

Kolkata rainbow pride walk that held in 1999 is the first pride march to be organized in South Asia. Hyderabad drag con 2019 by Hyderabad drag club has organized India's first drag convocation.

There are many organizations working for the rights and to support queer in India. HumSafar in Mumbai, Sangama in Karnataka, Queerala and Queerhythm in Kerala are some such organizations.

DECRIMINALIZATION OF IPC 377

After long 157 years of colonial law on 6th September 2018 the Supreme Court of India decriminalized homosexuality. It was struck down by a five-judge constitutional bench. The bench termed the part of section 377 as "irrational, indefensible, and manifestly arbitrary". It stated about the violation of fundamental rights and ended centuries-old ideas that did not allow people the freedom to live their life as they wish.

The case named Navtej Singh Johar v. Union of India^[1] was the case that was filed before the SC to decriminalize 377. The SC held that discrimination on the premise of sexual orientation was in violation of the right to equality that criminalizing consensual sex between adults in private and was also violation

of right to privacy, that sexual orientation forms an integral part of a humans identity and his right to freedom of speech and expression .

Even after 5 years of decriminalizing of 377 people are still not ready to reveal their identity because the Indian society is still not accepting them and they are even treated as aliens. The major drawback why our society is not treating them as equal is mainly because they are not aware about these kinds of sexuality and they are not educated on this topic. They need to be educated and provided with necessary awareness so as to make them acknowledge.

FUNDAMENTAL RIGHTS INVOLVED

As the constitution gurantees fundamental rights to every citizen and regard it as the very basic and foremost rights that every citizen need to get the section 377 was a complete violation of fundamental rights. It violates article 14[6] that is right enjoyed by any citizen it can be men women and transgender. Article 15[7] that states no person should be discriminated on the grounds of their sex and gender. Article 19[8] which states about the privacy that an individual has not only privacy, gender, identity all are protected under it .Last but not the least article 21[9] right to live with dignity, every person has the right to live with dignity but in Indian society who doesn't identify themselves as hetrosexuals are treated like abnormal humans.

SEX AND GENDER

Basically many people consider both sex and gender as equal and they define them as the same. But the reality is that as these terms are used hands in hands they are not the same and they differ in many ways . The biologically defined sex at the time of birth can be classified as sex whereas the gender is the sexual orientation that a human gets according to his hormonal developments.

SEX

It is the typical assignment that a newborn child has. That is whether the champ is male or female. A pair of XX chromosomes will contribute to a female champ and a pair of XY chromosomes will contribute into male champ. And this is assigned only at the time of birth according to the internal and external sex organs that a child has. There are also intersex kids that are born when they posses both male and female genitals at the time of birth.

GENDER

It is the way or characteristics in which a person themself identifies. They can be cisgender, transgender, genderfluid and many more. Gender is society based concept in which men and women are seen by the society and how they are been classified like the so called masculinity for men and feminine features for women. A person who identifies the same gender or sex at his time of birth as his gender is being termed as a cisgender human. Trans is the umbrella term that can ne used for person who are not cisgender.

YOUTH AND LGBT

It is very glad that more than the old generation, youth are showing hands to queer and they are ready to accept them without any hesitation and prejudice. Homosexuality and queer is being seen by them as normal as heterosexuals and cisgender as ... One of the main reason is that they are getting awareness about the community through various other ways. They are educated through campaign and marches and online platforms and influencers fighting for queer. It is clear from this that if a human is educated and given proper knowledge about the community they too will start to recognise this community.

SUSTAINABLE DEVELOPMENT OF QUEER

We can take many effective measure to increase the quality life of queer. Banning of discriminatory laws and sodomy laws can help to an extent. And also throwing away the so called socio cultural norms and stigmas that exist in the society. Social inclusion is another step that can be taken. It means dismantling all legislation that criminalize sexual orientation and the identity that an individual upholds. Starting government funded organisations to support the community and organising marches and campaigns to make ordinary people aware about the community also helps to an extent.

Everything starts from home and school. School is the place where kids are getting their primary knowledge, introducing sex education in the curriculum and making the kids aware about the different spectrum of gender can help them to identify their actual sexual orientation and to come out as who they really as.

Queer people are getting difficulties to get many amenities that ordinary people gets easily. Queer people finds it difficult for getting jobs, houses, and many more. Steps are to be taken to make queer people financially stable are can provide dignified jobs and amenities for them too...

BEING AN ALLY

An ally is someone who stands there for lgbtq people and have an empathetic relationship between them. Being an ally they will always fight for equal rights for the people regardless there sexual orientation and gender is. And they will be initiating to encourage queer to come up into the sphere of the society and will help them in all they in which they can support them.

IPC AND ITS HETRONORMATIVE LAWS

The Indian penal code had made many heteronormative laws and the laws which describes punishments only if it is done against a man or a women and it doesn't include the binary section who to have equal rights as those so called straight people has.

IPC section 10 denotes and defines man as a male humanbeing and women as female one. This itself is a discrimination toward the binary queer section of the society where they doesn't gets representation.

Section 313 and 313 describes about the offences relating to causing miscarriage in a woman but miscarriage can also happen for a transman. And it is a clear denial of his rights.

Section 354 and 354D states about the offences that a man commits against a woman and it doesn't include the binary people, even the law and justice denying the rights just to be represented. And it also shows how heteronormative and patriarchal the law and order of the country is.

Section 366 states about the kidnap or abduction of women to compel for marriage and there are many more sections like this ...

Section 375 which is the section regarding rape, a man raping a woman. And it is not granting any protection for transgender, intersex, man or any binary section of the community. And section 376B which states about the sexual intercourse of husband to his wife during separation and it is only the Madras High Court who give the same right for transwomen.

Section 498 and 498A also only stood for women and not describes transwomen in that. And section 509 also states about insult to modesty to a woman and they don't give mere consideration to any trans or queer individuals.

CASE LAWS RELATED TO QUEER

1. NAZ FOUNDATION GOVERNMENT vs. NCT OF DELHI [2009]

The HC court of Delhi held that section 377 of IPC as unconstitutional and also stated that apart of section 377 need to be declare unconstitutional. It was the first time court de-criminalized the homosexuality in India.

2. SURESH KUMAR KOUSHAL vs. NAZ FOUNDATION [2013]

The case was mainly focused on two issues they were homosexual acts are criminal offences and only parliament have the power to decriminalize it. And secondly privacy cannot be covered under homosexual act. But the judgement of the court was contrary to the precedent judgement that the court declared that queer are a less minority therefore there is no need for making 377 as unconstitutional.

3. NATIONAL LEGAL SERVICE AUTHORITY vs. UNION OF INDIA [2014]

It was a large milestone in the history of queer in India. In this case the court directed to see and recognise the LGBT community people as the third gender and give them recognition as part of OBC reservation and benefits. It also stated that the government should take necessary steps according to article 15[2] and article 16[4] to protect their rights and to give them equal opportunity in every field.

4. K.S. PUTTASWAMY vs. UNION OF INDIA [2017]

The nine judge bench declared that the sexual orientation is an essential attribute of privacy which is protected by various articles. And they ratified the judgement in the suresh kumar case and said that limitation of fundamental right cannot be held acceptable even when a few as opposed to alarge number of people , are subject to hostile treatment.

5. NAVTEJ SINGH JOHAR vs. UNION OF INDIA [2018]

It was the historical case ever in the history of queer in india. It was in this case that the section 377 ipc had held unconstitutional. As with the support of article 14 it was stated that consensual homosexual sex between adults was not a valid reason which stood against the morality of the nation. And it also stated that sex include biological sex with sexual orientation. And also it states about the right to uphold a dignified life and right to privacy that they can uphold.

CONCLUSION

It is not a great thing that you are accepting queer it is mere act of humanity and empathy toward fellowbeings. All should respect and give equal rights and opportunity to them. Accepting them and treating them as equal is the basic thing that we can do. Government can iniate steps to give them financial and social assistance in the society. People need to be more educated and empowered. Rainbows are always there in the atmosphere but we do only see them when they come out after the rain , and when they came out and we witness it we all admire its beauty thus dom the queer are, do look into them and admire them.

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