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Homosexuality and the Law

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Introduction

Science has reached an agreement on homosexuality, stating that a person's attraction to people of the same sex or gender is natural. They are neither compelled nor persuaded by anyone, and their feelings are instinctive. They are based on inbreeding. Our forefathers and mothers, on the other hand, could not embrace or comprehend the concept of this unchangeable sex. This lack of clarity has resulted in the devastation of the youth, who are now experiencing self-doubt. As a result, discussing it with parents and children is frowned upon. As a result of society's suppression of LGBTQ rights, such persons are distressed and experience emotional breakdowns. Many families reject their children for this reason, and the children suffer from serious mental and emotional problems as a result. Families are concerned about what others would think if their children are gay, lesbian, or bisexual. Society holds them in low regard.

Homosexuality vis-à-vis Constitutional Law

St. Peter Damian coined the phrase LGBTQ to explain the term "Sodomy," which is a short term for "Sin of Sodom," alluding to the Genesis tale of the males who tried to have intercourse with two angels and became obsessed with blindness. In the year 1050, this was provided. William Blacksmith, a well-known scholar, overruled this. He took sodomy in a really obnoxious manner. For his ideas, he enacted anti-sodomy legislation and wielded considerable power in the British colonies. As a result, section 377 of the Indian Penal Code was enacted, which was initiated by Lord Macaulay and was regarded as the country's most conservative view.

The Naz Foundation¹, a non-governmental organisation dedicated to the prevention of AIDS and the upliftment of bisexual minorities, is a well-known case that went against section 377 of the Indian Penal Code. In the year 2001, a campaign to change this clause was launched. Furthermore, the Delhi High Court knocked down section 377 of the Indian Constitution, which authorised harmonious sexual actions of adults in private, stating that it infringed the fundamental rights of life and liberty, as well as the right to equality, as stated in articles 21 and 14. It also went against

¹ Navtej Singh Johar vs. Union of India, (2018) SC 4321

the Indian Constitution's article 15(1), which states that no one can be discriminated against on the basis of sex or gender.

The Naz Foundation also argued that the LGBTQ community's fundamental rights under Article 19 were being violated because they were unable to move freely as they desired. Then, on September 6, 2018, a five-judge bench led by Chief Justice of India Dipak Misra sullied section 377 of the Indian Penal Code in the well-known case of Navtej Singh Johar vs. Union of India. This was done to acknowledge the people's bisexual nature in the books of law and to give them a social position. Minorities and animals are protected by the law against sexual assaults. The law establishes that minorities and animals are protected from sexual assaults. Section 377 cites the unnatural offence, and those who violate it will face life imprisonment or a minimum of 10 years in prison, with the possibility of life imprisonment. As a result, section 377 makes it plain that acts that are against the nature of the law, whether heterosexual or homosexual, would be regarded criminal. Following this decision, it was stated that all people should be treated equally, and the state should adhere to constitutional morality.

As a result of these investigations, the gay community's belief grew stronger, and it was certain that the gay community link must exist. Michel Foucault's work "The History of Sexuality Appetites" enlightened people's minds about sexual desires. Sexual desires are the ones that are in us and have the desire to find the truth, according to that book. Sexual desires aid in the discovery of our sexual identities. It has been viewed as a political and social issue that has been utilised to oppress the LGBTQ community because of their differences.

Various human rights development programmes have been performed on a global scale on numerous occasions. When it comes to LGBT rights, though, the situation is far more dangerous. The United Nations Declaration on Human Rights, which protects all human rights, included no mention of LGBT rights since homosexuality was deemed a mental disease at the time it was formed. "In 2003, the State of Brazil presented a resolution to the UN Commission on Human Rights to affirm rights based on sexual orientation." However, the proposal was deferred to 2004 and faced a dead end when, it expired from the UN agenda in 2005. In 2005, New Zealand's statement supporting the rights of these sexual minorities was backed by 32 states in the UN, but did not result in a formal vote.

According to the Special Marriage Act, any Indian citizen or foreign national can marry anyone, regardless of caste, creed, sex, or religion. There have been no such acts for the same-sex, but the apex court will have to deal with it eventually. Despite the fact that multiple petitions have been filed before the Supreme Court, the situation has not altered. Marriage is significant because it is founded on a love tie and commitments. As a result, the community should maintain their optimism and persevere in their efforts.

Conclusion

By examining the entire problem, we can see that society should help the LGBTQ community rather than being the cause of people's emotional and mental breakdowns. Society should be open enough to accept and respect the decisions of those who are born with disabilities. People should strive to be the best versions of themselves while maintaining sound morality. They should be treated like everyone else, not as if they were aliens from society. Whether or not we assimilate such variation in ourselves is determined by our biological matrix, which is reinforced by our character strength. However, just as we have the freedom to accept or reject this variation, the LGBTQ community should have the same freedom. To them, what society considers normal could just as easily be a variety. As a result, criminalising homosexuality is not a viable option. The goal is to keep a robust, liberal, and healthy attitude toward all members of society.