

Homosexuality peoples so first of there is

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HOMOSEXUALITY AND LGBT RIGHTS IN INDIA Ø Introduction § In this present era many type of new things are emerging because change is the law of nature and change is also the demand of time so emergence of new challenges and events are necessary for the development of society.

§ As we know that LGBT (Lesbian, Gay, Bisexual and Transgender) peoples are under conflict regarding their legal rights because in India there is a poor mindset involved in minds of Indians in respect of LGBT peoples so first of there is a thing that is humanity and they have right to treat like other humans. § In this present era where constitution is supreme and equality before law exist; it is necessary to provide them equal status as like other peoples of India. § In our judiciary various steps are also taken and some steps are in process which is made for the protection and promotion of the rights of LGBT peoples in the society. § LGBT peoples facing various type of critical situations in society which bars their life of living and according to Maneka Gandhi v/s Union of India, court held that right to life guaranteed under Article 21 of Indian Constitution, does not mean mere only right to breath, right to life includes right to prestigious life. § LGBT peoples face many problems in various fields such as employment, education, behaviour from society, standard of living, etc so all these things make their dignity in danger which is the violation of Article 21 of Indian Constitution. § In the step of development of our country it is necessary to develop each and every citizen of country so non development of LGBT peoples will affect the development of whole country so if we want to make our country developed then we have to provide all equal rights as like others to these

peoples. Definition§ The word homosexuals literally means as ' of the same sex.

§ The Greek term homo meaning ' same' and Latin root meaning ' sex'.§ Homosexuality is a sexual orientation characterized by sexual attraction or romantic love exclusively for people who are identified as being of the same sex. § People who are homosexual, particularly males are known as ' gay', gay females are known as ' lesbians'. § That is homosexual marriages, sometimes referred to as gay marriage, indicates a marriage between two persons of the same sex. History§ If we read our history then it can be concluded that homosexual relationships come from Ancient Greece, where same sex relationships were the societal norm. § According to researchers suggest that the Catholic Church, which has been extremely vociferous in its opposition to homosexuality in general, approved of same-sex marriages for over 1 500 years, only ceasing to perform them in the nineteenth century.

§ In preindustrial societies also homosexuality was generally accepted by the lower classes while some members of upper classes considered it immoral. § The sexual orientation in premodern era as depicted in love poetry and paintings and even in historic figures such as Alexander the Great, Plato, Hadrian, Virgil, Leonardo da Vinci, Michelangelo and Christopher Marlowe included or were centered upon relationships with people of their own gender. § Homosexual marriages are also known as gender-neutral marriage, equal marriage, and gay marriage. However the term homosexuality appears in print for the first time in 1869 in an anonymous German. § Thus homosexuality is not a new phenomenon. Even instances of homosexuality are available in Hindu Mythology.

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§ The literature drawn from Hindu, Buddhist, Muslim, and modern fiction also testifies the presence of same-sex love in various forms. Ancient texts such as the Manu Smriti, Arthashastra, Kamasutra, Upanishads and Puranas refer to homosexuality. 9 Also there are reports that same-sex activities are common among sannyasins, who cannot marry. Thus instances of homosexuality are available in historical and mythological texts world over and India is not an exception to this. § The Cultural residues of homosexuality can be seen even today in a small village Angaar in Gujarat where among the Kutchi community a ritualistic transgender marriage is performed during the time of Holi festival. This wedding which is being celebrated every year, for the past 150 years is unusual because Ishaak, the bridegroom and Ishakali the bride are both men. 10 § Thus the history is filled with evidences proving the existence of homosexuality in past.

Whereas in the past 10 years world over, for the lesbian and gay rights, we find that the legal initiatives have shifted from the right to be privately sexual, that is the right to have same-sex relationships at all, to the right to be individual civic subjects, protected from discrimination in the work place and in the provision of services, toward the right to have relationships given status by the law. § This shift in rights-focus, from decriminalization, to civil protection, to civil recognition is, not entirely a linear one. Thus in recent years a number of jurisdictions had relaxed or eliminated laws curbing homosexual behavior.

Legal Status of Homosexuals in India § Section 377 of the Indian Penal Code (1860) relates to Unnatural Offences and includes homosexuality within its domain. § In India this Law relating to homosexuality was adopted from <https://assignbuster.com/homosexuality-peoples-so-first-of-there-is/>

the British penalcode dating to 19th century. Section 377 states:"

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.

"§ Section 292 of IPC refers to obscenity and there is ample scope to include homosexuality under this section. § Section 294 of Indian Penal Code, which penalizes any kind of " obscene behaviour in public", is also used against gay men. § Sexual Offenders Act 1967 in England the offence of homosexuality between consenting partners has been abolished by the Sexual Offenders Act 1967 (that is in the country of origin of this law) whereas in India, the consent is quite immaterial for constituting an offence as defined under this section. § Thus in India it is primarily section 377 which explains and defines unnatural offences.

32 It is this section which makes Homosexuality illegal with life imprisonment or with imprisonment for ten years with fine. § Under this clause, a third party can sue the partners who voluntarily entered into sodomy thereby infringing on the right to personal liberty and privacy as enshrined in the Fundamental Rights of the Constitution. § Dipika Jain, Impact of the Naz Foundation Judgement on The Gay, Bisexual and Transgender People in Delhi: An Empirical Investigation, 2 Centre for Health Law, Ethics and Technology, Jindal Global Law School § Nirnimish Kumar, Delhi High Court strikes down Section 377 of IPC, The Hindu (03/07/2009), available at <http://www.hindu.com/2009/07/03/stories/2009070358010100.htm> , last seen on 12/5/2014 §

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SureshKumar Koushal v. Naz Foundation and Ors, AIR 2014 SC 563.§

Govindarajaluln re, (1886) 1 Weir 382.

§ Khanuv. Emperor, AIR 1925 (Sind).§ LosanaVasantlal Devchand v. State, AIR 1963 Guj 252.

§ Stateof Kerala v. Kudumkara, (1969) CriLJ 818.§ Calvin Francis v. Orissa, (1992) 2 Crimes 455.§ Fazal Rab Choudhary v.

State of Bihar, (1982)3 SCC 9.§ SureshKumar Koushal v. Naz Foundation and Ors, AIR 2014 SC 563.§ SupremeCourt says gay sex illegal , govt hints at legislative route, Hindustan Times(11/12/2013)§ Jayalakshmi v. State of Tamil Nadu (2007) 4 MLJ 849.§ Ss. 299-377, The Indian Penal Code, 1960.

§ SKrishnan and Ors. v. The State of Madras, AIR 1951 SC 301.§

MuraliKrishnan, In Conversation with V Giri, Bar and Bench (18/12/2013)§ S. 377, The Indian Penal Code, 1960.§ Art. 21, the Constitution of India. Cases and Sentence§ Inthe history of the statute from, 1860 to 1992 there were only 30 cases in theHigh Courts and Supreme§ Court.

Out of these 30 cases, 18 were non-consensual, 4 were consensual of which 3were before 1940 and 8 were unspecified and 15 out of 30 cases registered wereassault on minors.§ Ina judgement Fazal Rab Vs State of Bihar, the Supreme Court was dealing with a case where a man had homosexual relations with a boy with the consent of theboy.§ TheSupreme Court in 1983 observed that: ' the offence is one under Sec.

377, IPCwhich implies sexual perversity. Considering the consent of the boy, theSupreme Court reduced the sentence from 3 years rigorous imprisonment
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to six months rigorous imprisonment. § Also Section 377 had been used to intimidate women, particularly in the case of women who have run away together or if they make their relationship known.

§ In 1987, Tarulata/Tarun Kumar underwent female to male sex change operation and married Lila in 1989. Lila's father filed a petition in the Gujarat High Court saying that it is a lesbian relationship and that the marriage be annulled. The petition contends that ' Tarun Kumar possesses neither the male organ nor any natural mechanism of cohabitation, sexual intercourse and procreation of children. Adoption of any unnatural mechanisms does not create manhood and as such Tarun Kumar is not a male. The petition called for criminal action under Sec. 377. § The legal status of homosexuality in the Indian Armed Forces follows the model set by Sec.

377 of IPC. § Sec. 46 of chapter VI - offences of the Army Act, 1950 states: any person subject to this Act who is guilty of any disgraceful conduct of a crude, indecent or unnatural kind shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or much less punishments as is in this Act mentioned. Similar provisions exist in the Air Force Act and Navy Act. § Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offences described in this section. Essential Ingredients i. That there must be voluntarily carnal intercourse against the order of the nature.

ii. That it may be with man, woman or animal. Classification of offence
Punishment - Imprisonment for life or imprisonment for 10 years and fine -
cognizable - Non-Bailable - Triable by Magistrate of first class - Non-

Compundable. § In 1992, 18 men were arrested from a park in New Delhi on the suspicion that they were homosexuals. § After protest and demonstration by gays, lesbians and human rights groups, they were released from police custody after filing a petty case against them.

In fact they were not indicated under Sec. 377 but under the provision of public nuisance under the Delhi Police Act. § Similarly in 2001, the Delhi High Court admitted a petition challenging the constitutional validity of the article on the ground that it “criminalizes homosexual acts” even between two consenting adults and impedes AIDS control efforts among homosexuals. § Delhi’s Tihar Jail, on the grounds that Section 377 makes homosexuality illegal. § A human rights activist group ABVA filed a Public Interest Litigation in the Delhi High Court.

The petition challenged the constitutional validity of Sec. 377 of IPC and advocates supply of condoms to jail inmates, with a plea to restrain the authorities from segregating or isolating prisoners with homosexual orientations or those suffering from HIV/AIDS. § The petition urges that Sec. 377 is obsolete and must be struck down as being unconstitutional on the grounds that Right for Privacy is part and parcel of the Fundamental Rights of life and liberty under Article 21 of the constitution and recognised by the 1948 International Convention on Human Rights. Sec.

377 is a violation of Article 14 of the constitution since it discriminates persons on the basis of their sexual orientation; having been enacted in 1860, Sec. 377 is archaic, absurd and implemented by the British in all its colonies, including India, but now been repealed in England, the country of origin. §

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48 Section 292 to 294 of Indian Penal Code enumerates obscenity.

Subsection (1) to section 292 of the code defines obscene publication and rest of the part of section 292 and Section 293 of the code, Prohibits the sale and distribution of obscene Publications and Sec 294 of the code prohibits obscene acts and songs. § two months' imprisonment. In yet another case the Supreme Court reduced the sentence of the accused to six months imprisonment as the accused while committing sodomy did not use force on the boy.

§ In a case of Himachal Pradesh where a truck driver twice committed sodomy on a boy in his truck, a sentence of one year's imprisonment and a fine of Rs. 500. 00 were imposed on the accused. § All these instances indicate that the actual sentence imposed under this section is not usually heavy. Activists Movement § Gay rights activists have been battling against Section 377 for a decade.

In 1994, lesbian and gay groups filed a petition challenging the law in the Delhi High Court. The case has dragged on for five years and has evoked strong reactions. 52 In 1996 even members of the Indian lesbian collective Stree Sangam made a presentation on domestic-partnership laws to a government conference on marriage and family law. § It was "perhaps the first time that a lesbian/gay group attempted to create public opinion on the issues in such a forum," the group said in a letter to the gay magazine Trikone.

"§ In Feb 99 there was second national LGBT conference Indian National Gay Conference YAARIAN -99. § Similarly the attacks on the film ' Fire' and '

'Girlfriend' have led a number of organizations to set up the campaign for Lesbian Rights. The petition, filed by the voluntary organization, argued that it is wrong for homosexuality to be a punishable offence in 21st century India. § However the most recent legal challenge comes from the Naaz Foundation Trust, New Delhi. 58 Naaz India has filed a writ petition challenging Section 377 in the Delhi High Court on December 7th, 2001 on. § Section 377 violates the right to life and personal liberty, the right to equality and the right to freedom guaranteed to all citizens as Fundamental Rights under Chapter III of our Constitution.

Similarly other gay and lesbian groups like Hamsafar of Mumbai, Sahayathrika of Kerala, etc. are also raising gay issues in the mainstream. Mainstream Reaction § Indian society is a traditional multicultural diversified integrated society where Hindus dominate. And for Hindus marriage is an enduring heterosexual Sacrament.

§ Other Indian communities also have similar opinion that marriage is a heterosexual institution. This is supported by Vishwa Hindu Parishad Party, whose president says for Hindus, this kind of behavior is not just against nature, it is against our culture. § Even Shiv Sena members attacked theaters in New Delhi and Bombay where the film 'Fire' (1988) and 'Girlfriend' (2004) was being screened they tore down posters, smashed furniture and organized violent protests. § The last five years, the Indian gay community has moved into and flourished on what has probably been the most accepting space they could have ever hoped to find - the Internet. Thus they are forming NGOs, calling up help-lines and meeting regularly to evolve strategies for their cause. § Above all, Although the high court in Delhi has dismissed the <https://assignbuster.com/homosexuality-peoples-so-first-of-there-is/>

legal petition that sought to legalise homosexuality. The court ruled that the “ validity of law” cannot be challenged by anyone who is “ not affected by it”.

§ This feeling of isolation is often accompanied by self-loathing and confusion as to their future. This is so because Section 377 which is used to criminalise and prosecute homosexuals in actual legitimizes the abuse of homosexuals. In fact “ Gays are beaten up and even raped under the cloak of this law,” says gay rights activist Rakesh Shaleen of Naaz Foundation. Rakesh also refers to a case that “ Two years ago, gays were forced into medication to ‘ cure’ them. § This mistreatment included shock and aversion therapy.

When we petitioned the NHRC, the case was rejected in the light of Section 377.” § Thus Gay right activists and homosexuals has now started demanding social and legal recognition of homosexuality because they have a firm opinion that Legal protection is probably the only way by which homosexual community can be guaranteed social rights, rights against exploitation and more importantly, health rights.