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Legalization of Homosexual Marriages in India: Challenges and Possibilities



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Abstract

The institution of marriage in Indian society is a sacred and sacrosanct affair & is generally regarded as extended only to male & female relationships. Although most marriage statutes use gender neutral language, same sex relationship, regardless of their duration is not legally recognized in most countries including India. Nowadays some example of acceptance of homosexual marriages has been witnessed by our society as it is gradually becoming more permissive. Still homosexuality remains a taboo by our closely knitted society which is driven and ruled by its morality, culture and core traditional values.

This research paper is intended to analyze the challenges and possibilities of legalizing homosexual marriage in Indian social context. It also explains the various aspects of homosexuality

Keyword: Homosexuality, Gay Activism, Gay marriages, Legalization in India, Challenges, Possibilities.

Introduction

Homosexuality is a sexual orientation characterized by sexual attraction or romantic love exclusively for people who are identified as being of same sex. It also refers to an individual's sense of personal & social identity based on attractions, behavior expressing them & membership in the community of others who share them. Homosexuality in India is generally considered a taboo subject to Indian civil society, morality, customs & traditions. Public discussion of homosexuality in India has been inhibited by the fact that sexuality in any form is rarely discussed openly. Attitude towards homosexuality is overwhelmingly negative, homosexual activities were hidden & spoken in whispers. In our country, gay men were viewed as effeminate, lesbian were portrayed as mannish & both were seen as obsessed with sex, with little self control on morality. 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 1500 years. The earliest western document concerning homosexual relationship comes from ancient Greece, where same sex relationships were the societal norm. In pre industrial societies also homosexuality was generally accepted by the lower classes while some members of upper classes considered it immoral. The sexual orientation in pre modern era as depicted in love poetry & paintings even in historic figures such as Alexander the great, Plato, Hadrian, Virgil, Leonardo da Vinci, Michelangelo and Christopher Marlowe included or were centered upon relationship with people of their own gender. Homosexuality has not been explicitly mentioned in the religious texts central to Hinduism, the largest religion in India, Hinduism has taken various positions ranging from positive to neutral or antagonistic. Rig Veda one of the canonical sacred texts of Hinduism says "VIKRUTI EVAM PRAKRITI" (what seems unnatural is natural) which some scholars believe recognizes the cyclical constancy of homosexual/transsexual dimensions of human life, like all forms of universal diversities. Historical literary evidence indicates that homosexuality has been prevalent across the Indian sub continent throughout history & that homosexuals were not considered inferior in any way.

Gay Activism- Journey over the Years

Over the years, gay people formed various organizations to further their efforts for equal and fair treatment. Over time, many of these well-meaning efforts went to extremes, often including violence, vandalism, and clandestine efforts to change public opinion and public policy. We refer to these efforts as *gay activism*. Today, a number of highly organized, well-funded organizations attempt to mold public opinion in favor of homosexuality as a normal, alternative sexuality. In the 1960's, they simply wanted the public to leave them alone. They didn't want to be called names

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and didn't want to be arrested for going to gay bars. When dialog and reason didn't get results, they began to form organizations and develop protest strategies. Following the social protest strategies of the era, they turned social issues into political issues. Although homosexual behavior is as old as history itself, there had not previously been a social identity based entirely on sexual behavior. The gay rights movement took the behavioral definition and expands it to become a definition of a class of people. They began to rewrite history to show that ancient Greece had a gay culture. While it is true the ancient Greeks had a more naturalistic view of life including homosexuality, there was no gay identity. In fact, the Greek language had no word meaning *gay*. The concept of a *homosexual person* was created in the nineteenth century. Although homosexual behavior was certainly practiced before that time, it was seen as "something you *did*, and not who you *were*".

Causes of Homosexuality

Why do attraction is a question in dispute. Homosexuality is learned through a complex combination of shaping factors and personal choices. Many same sex attracted people have a sense of being "different" from a very early age and consequently they believe that they were 'born gay'. Others believe that some people are gay because they choose to be a gay. Another factor may be what happened during their life time. They may have been hurt emotionally and it may affect what they feel about themselves. They may have been sexually abused or had a broken relationship with one or both of their parents. Generally, it seems that there are number of factors that are of different degrees of importance in different people's lives. These can include: Factors that you are born with (temperament genes), Person's family situation whether good or bad, the kind of moral training a child receive, the choices that were made in response to feelings and attraction, how clear or confused gender roles are in a particular culture. It has been observed that no two people adopt a homosexual self-concept or lifestyle for exactly the same reasons. One may have had a poor family background; another may have an ideal balance of love and discipline in the home. Parents may influence a choice for homosexuality, but they cannot be held entirely responsible. The homosexual is not merely a victim of circumstances. His own personal choices have a lot to do with the process of becoming gay. However, the interplay between shaping factors and personal choices is so complex and so different for each individual that only god has the knowledge. Not all homosexual are involved to the same extent. A gay person may be involved anywhere along these categories

FANTASY, BEHAVIOUR, IDENTITY, LIFESTYLE

Homosexuality begins at the behavior or fantasy level. A child may experiment with gay sex at an early age, or he may not have gay relations until later in life. (Experimentation does not mean that the child will become homosexual). Others become aware of homosexual attractions at a certain age. They may never act on their feelings or fantasies.

With some people, homosexual fantasy or behavior can lead to the IDENTITY level. At this point person begin to label himself "gay" or homosexual. The person has begun to base his personality upon homosexuality, even if they perhaps have never engaged in homosexual behavior. Some people stay in this identity and adopt gay's lifestyle. Thus fantasy, behavior, identity and lifestyle pattern are also deciding factors for homosexuals.

In many cultures, homosexuals are frequently subjected to prejudice and discrimination. Similar to other minority groups they can also be subject to stereotyping. Negative stereotypes characterize LGBT people as less romantically stable, more promiscuous and more likely to abuse children, but there is no scientific basis to such assertion. Gay men and lesbians also form stable committed relationships that are equivalent to heterosexual relationships in essential respects. Sexual orientation does not affect the likelihood that people will abuse children. Claims that there is scientific evidence to support and association between being gay and being a pedophile is based on misuse of those terms and misrepresentation of the actual evidence.

Homosexual males are often stereotyped as being limp-wristed, being interested in woman's fashion design or hairdressing, under the influence of alcohol or drugs, having a circle of friends consisting of heterosexual females or unable to be monogamous.

Lesbians are usually stereotyped as being man haters having an overly tough or unattractive appearance, having health problem such as obesity, interested in life risking occupations such as police force and having a preference for short haircuts, tattoos and male attires.

Bisexual men and women are portrayed as being sexually immoral, manipulative, insincere or undecided. Male bisexual are particularly stereotyped living on the down low and female bisexuals are stereotyped as attention-seeking and having bad experience with men.

Experts view says that, just as many heterosexuals control their desires to engage in premarital or extra marital sex, same can be done by homosexuals by curbing homosexual desires and disciplining themselves to abstain from homosexual contact. This way homosexual behavior and attitude can be positively dealt with.

Homosexuality and Religion

As with social attitudes in general, religious attitudes towards homosexuality vary between and among religions and their adherents. Traditionalist among the major religions generally disapproves of homosexuality. The prominent opponents of social acceptance of homosexuality often cite religious arguments to support their views although; liberal currents also exist within most religions. Modern lesbian and gay scholars of religion sometimes point to a place for homosexuality among historical traditions, and emphasis religious teachings of compassion and love. In Hinduism, Buddhism, Jainism teachings regarding homosexuality are less

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clear. Unlike in western religion homosexuality is rarely discussed. However most contemporary religious authorities in the various dharmic traditions view homosexuality negatively. Same sex sexuality and gender transformations are common among the Hindu pantheon of deities.

INDIAN SOCIETY AND HOMOSEXUALITY

Indian Society is a traditional multicultural diversified integrated society where in Hindus dominate and for Hindus, marriage is an enduring heterosexual Sacrament. Other Indian communities have similar opinion that marriage is heterosexual institution. This is supported by Vishwa Hindu Parishad Party whose president says for Hindus, this behavior is not against nature, it is against culture. Even Shiv Sena members attacked theaters in New Delhi and Mumbai where the film 'fire' (1998) and 'Girlfriend' (2004) was being screened. The party advocated that the film which features the same sex relationship was an attack on India's centuries old Hindu culture. But at the same time Lesbian groups and women's rights organization organized rival protests to demand the film run.

The strong reaction of society is that many people deny the existence of sexual minorities in India, dismissing same sex behavior as a Western, upper class phenomenon. Many others treat it as a disease to be cured, an abnormality to be set right or a crime to be punished. While there are no organized hate groups in India as in west, the persecution of sexual minorities in India is more. In India; so far no such progressive changes have taken place as regard to social and legal recognition of homosexuals. They still remain victims of violence in different forms supported by the state and society.

In India from a scattered group of few hundreds, homosexuals are at present in some lakhs but only handfuls have come out as strong and growing community, leaving rest in their closet. They are weaving their way from metros into semi urban societies both online and offline. This number is gradually increasing with more and more such people coming out of the closet. While Delhi and Mumbai (with five lakhs gays each) and to lesser extent, Bangalore and Calcutta are the hub of the Indian gay movement, people from smaller towns in Gujarat, Maharashtra and Bihar are also coming out. Homosexual relationships are not unheard of in India, but they generally exist in the country's larger cities where people can be more open about their sexuality. A number of cities and larger towns had a number of resources for gays, lesbians and transgender communities that include-help lines, publication/newsletter, health resources social spaces and drop in centers. Now a days the homosexual community of metros also host the gay pride march (queer parade) every year in major metro cities. All the above instances show that the homosexual community in India is visible and is gradually becoming vocal in their demands.

But in 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 help lines and meeting regularly to evolve strategies for their cause. Above all, they are partying –not just in remote farm house in secret but also in starred hotels and at gatherings where gay fashion designers and diplomats are counted among the star guests.

Even then the ground reality is that sexual minorities in India are largely stigmatized and disempowered socially, culturally, politically and often legally and economically too, says Ashok Row Kavi (editor of "Bombay Dost", the quarterly gay magazine). Due to which isolation become intrinsic to the existence of a large number of lesbian and gay adolescents and this feeling of isolation is often accompanied by self loathing and confusions as to their future. This is so because Section 377 of Indian penal code, 1860 which is used to criminalize and prosecute homosexuals in actual legitimize the abuse of homosexuals.

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 the British penal code dating to 19th century. Section 377 states:

"Whoever voluntarily has carnal intercourse against the order of nature with any man, woman & animal shall be punished with imprisonment for life or with imprisonment of either description for a term which may be extended to ten years and shall also be liable to fine."

Similarly under section 292 of IPC which refers to obscenity, there lies ample scope to include homosexuality under this section. Also section 294 of IPC, which penalize any kind of "obscene behavior in public", is also used against gay men. It is important to note here that in England the act of homosexuality between two consenting partners has been abolished by the Sexual Offenders Act 1967 (that is in the country of origin of this law) where as in India, the consent is quiet immaterial for constituting an offence as defined under this law.

"In fact Gays are beaten up and even raped under the cloak of this law", says gay rights activist Rakesh Shaleen of Naaz Foundation India trust (NGO). Rakesh also refers to fact that gays are forced into medication to cure them. This mistreatment included shock and aversion therapy.

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

Homosexual Marriages: The Global Scenario

At different parts of the globe different civil authorities adopt different positions. At times they simply tolerate the phenomenon, at other times they advocate legal recognition of such unions under the pretext of avoiding, with regard to certain rights, discrimination against persons who live with someone of same sex. In other cases, they favor giving

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homosexual unions legal equivalence to marriage properly so called, along with the legal possibility of adopting children .Thus an increasing number of jurisdictions have decriminalized homosexual acts. However, many jurisdictions have retained their statutory prohibition on homosexual acts despite much criticism from groups and individuals who believe that the laws are obsolete and should be removed.

Any how, the last century witnessed major changes in the conception of homosexuality .Since 1974 homosexuality ceased to be considered an abnormal behavior and was removed from the classification of mental disorder .Since then homosexuality has been decriminalize in different countries .There are various states across the globe that enacted anti-discriminatory or equal opportunity laws and policies to protect the right of gays & lesbian. In late 1990s and early 2000s, progress toward the ban on same sex marriages created a topic of debate all over the world. Currently ,same – sex marriages are recognized nationwide in six countries : Netherland (2001), Belgium(2003), Canada (2005), Spain (2005) and South Africa (2006). The state of Massachusetts in the United States also recognizes same sex unions(although these marriages have no legal recognition at the federal level in the US).With this an estimated 155million people worldwide, or approximately 2.5% of the world's total population, will live in places where same sex marriages exists.

Civil unions and other forms of legal recognition for same-sex couples, which offer most if not all the rights accorded in a civil marriage ,exist in Croatia ,Denmark ,France ,Germany, Iceland ,Israel ,Newzealand ,Norway ,Portugal ,Slovenia ,Sweden, Switzerland and the United Kingdom. Regions of Australia and additional territories in the United States offer some rights and responsibilities as civil unions.

Even event such as Mardigras in Sydney, Midsumma in Melbourne, Gay and Lesbian Pride in Johannesburg, Women's Celebration week in Greece, and the Gay and Lesbian film festival in Lisbon express the essence of being homosexual. World over many countries has given social and legal recognition to homosexual marriages. Whereas more than 70 countries, including India, consider homosexuality a crime ,and 30 of these deny homosexuals even basic human rights and the homosexual acts remain punishable by death in Afghanistan ,Mauritius, Iran ,Nigeria ,Pakistan, Saudi Arabia ,Sudan, United Arab Emirates and Yemen and by life in prison in Bangladesh, Bhutan ,Guyana ,India ,Maldives ,Nepal ,Singapore and Uganda.

Thus the legal position of homosexual differs from country to country .In England for example, homosexual relationships involving anal intercourse is not illegal between consenting adults as long as they are 21 or over and conduct themselves in private .In India such activities are still illegal .The age of consent varies according to the country being youngest in Hungary and eldest in Sweden.

An overwhelming amount of research has been done showing that homosexuality has a biological causation; not a genetic one. Secondary sexual characteristics resemble the opposite sex. Homosexual males often have softer voices. Lesbians may have strong cheekbones and a more masculine body shape. It's all affected by those hormone switches.

Putting oneself in someone else's shoes and truly doing so can sometimes be very difficult. Doing so might make us feel uncomfortable, or like it is a waste of time; or sometimes it truly impossible to really know what someone else is experiencing. If we are able to drop our preconceived notions, and simply look at something from someone else's perspective, even if it is just partially experiencing it, we can evolve and progress in communication and interaction. Using deductive and inductive logic, reasoning and examples, coupled with own counter to an anti-thesis, one can hope to understand the tyranny, pain, and anguish of same sex couples, waiting to avail the status of civil marriage.

Civil *marriage* is a legal status that automatically confers over a thousand federal rights and benefits, which include an automatic right to visit a spouse in a hospital or to make medical decisions for an incapacitated spouse. A civil *union* is a separate legal status that provides all the rights and responsibilities of marriage under a different name. Differences between a civil union and a civil marriage include the fact that parties to a civil union are denied all of the 1,138 federally conferred rights, benefits, and responsibilities of marriage. Also, it remains uncertain whether other states will honor civil unions (especially with the passing of the Defense of Marriage Act). The Defense of Marriage Act (DOMA) denies federal recognition of gay marriages and gives each state the right to refuse recognition of same-sex marriage licenses issued by other states. Lastly, a *domestic partnership* refers to a committed relationship between two people who are not married. The rights and responsibilities of a domestic partnership vary, ranging from providing domestic partners with nearly all of the rights and responsibilities of married couples under state law to jurisdictions that have much more limited rights. Also, none of these domestic partnership laws provide any federal rights or benefits. Stipulation of these three "terms" is important because of their connotations, especially when they are juxtaposed; then we are able to see the discrepancies and inequalities between them. This hopefully throes some light on how simply giving same-sex marriage non-recognition and a bad name is still unequal, inhumane and further unconstitutional.

Same-sex marriage issues have been in the court systems for nearly forty years, and although progress has been made, there are very few states that support same-sex marriages. The reasons I believe is centralized around many fundamental ideals and foundational concepts that our nation had in mind during its developmental stages and subsequently its conception. These ideals and concepts also boil down to what is perceived as humane, benevolent,

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compassionate, etc.—basically along the lines of the “Golden Rule” of treating others the way you would like to be treated—and unfortunately, opinions differ on those ideals regarding this subject. Denying someone this basic and fundamental right (or any “universal” right) because of the way they were born, or even just because of their sexual preference (assuming homosexuality is not hereditarily-based in this instance), is an everyday occurrence that needs to be remedied, for this infringes upon equal treatment laws, and what I perceive to be common decency “laws.” Much of the opposition to same-sex marriages is derivative of religion (usually cited from the Bible), which brings up the issue of separation of church and state. Imposing one’s religious beliefs through state or federal law is, in turn, violating the constitutional right to freedom of religion to those affected. Not allowing same-sex couples to marry carries the connotation of inequality. It is virtually punishment for a different life-style: you are not man and wife so you are going to get similar, but a lesser degree of rights. It could also be seen as punishment in the sense that these couples are condemned by constitutional law. This country was founded with the ideals that all people were created equal, and those people also possess inalienable rights, and denying these marriages is the exact opposite of those ideals. It is un-evolutionary in the sense of civil rights and equality; though it is important to recognize the discrepancy and problems that can arise regarding religion in this specific situation—the Bible predates the Constitution, so when people reference the Bible saying that God tells us it is a sin to be homosexual, and people have believed and followed this for thousands of years, in these people’s eyes, the Bible takes precedent over the Constitution.

Gays and lesbians suffer, often unjustly and unfairly. In addition to their difficult internal struggles, they also encounter the ignorance and prejudice of others. Instead of receiving love and support from their families, they are often ostracized. Rather than being involved in supportive church groups, they find themselves on the outside because even good Christians often don’t know how to react to someone with same-sex attraction.

Gay people are sometimes evicted by landlords, fired by employers, and even face violent physical attacks. Hate crimes are increasing and some people use AIDS as an excuse to show their hatred. Less than 2% of the gay population survives to age 65. They are 116 times more likely to be murdered and 24 times more likely to commit suicide than the average person. It is a difficult lifestyle where AIDS and other factors cause suffering and premature death. The collective anger over mistreatment and the frustration caused by their internal struggles are powerful forces behind the gay rights movement.

CHALLENGES AND POSSIBILITIES OF LEGALIZING HOMOSEXUAL MARRIAGE IN INDIA: THE ARGUMENTS

This is true that the conflict between homosexuals and heterosexuals can be witnessed in the institution of marriage not only in India but across

the world where sodomy law is applicable. This conflict is arising on account of the reason given in support as well as against the two different types of marriages which involves very delicate issues for social and legal recognition of sexual minority that is whether the social and legal recognition should be given or not and the same has been tabulated below:

Homosexual Marriages Should Not Be Legalized	Homosexual Marriages Should Be Legalized
1. The institution of marriage is traditionally the union between man and women. Homosexual relations are un-natural, unethical, immoral and against our traditions.	1. There is no moral ground on which to support the tradition of marriage as a heterosexual institution. For e.g. slavery once existed but now abolished on humanitarian ground.
2. Institution of marriage involves procreation and rearing of children. As people of same sex cannot reproduce a child biologically, this specific purpose is defeated.	2. If it was so then there would have been attempt to prohibit unions between a sterile woman and a fertile man or vice versa. Nor does legislation exist which requires a married couple to have children. It is true that homosexuals cannot procreate within their union but there are many options available which enable them to have children including adoption and artificial insemination.
3. Decriminalized homosexual marriages will lead to an increase in homosexuality and this in turn will undermine the whole institution of marriage and family.	3. Sexual orientation is due to genetic factor and it is unlikely that an increase in the incidence of homosexuality will occur as consequence of decriminalization. A person is born gay and does not choose to be gay.
4. Societal attitude is that people oppose it, hate it, and even fear it. That is people are not comfortable with the idea of homosexual marriages.	4. Homosexual marriages have the potential to reject hierarchical concept of gender. They challenge patriarchy and the male supremacy derived from it.
5. Heterosexuality has the advantage of slowing the speed of sexually transmitted disease. Homosexuals are at higher risk of transferring HIV/AIDS.	5..It cannot be ruled out that heterosexuals are not the carriers of HIV/AIDS. Laws regulating and/or penalizing homosexual activity impede public

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<p>6. The human species will be in danger of dying out if homosexuality is legalized due to lack of reproductive power in homosexuals.</p> <p>7.The principle of respect, non discrimination and the people autonomy to support legal recognition of homosexual unions the individual is not responsible to invoke.It is something quite different to hold that activities which do not represents a significant or positive contribution to the development of the human in society can receive specific and categorical legal recognition by the State.</p> <p>8. Sodomy was illegal and was until very recently.</p> <p>9. Homosexuality is a disease, The Indian Psychiatric Society also acknowledges that homosexuality is a kind of mental illness.</p> <p>10. Decriminalization may be a step towards removing some of the stigma associated with homosexuality and may have positive repercussions on relationship between homosexual and their</p>	<p>health programs as it drives underground many people at risk.</p> <p>6. In fact gays are giving big favor by not bringing more hungry mouth into this excessive overpopulated world. At the same time the continuity of species can never be in danger due to sexual minority which represent not even 10% of the total world population.</p> <p>7. Section 377 of IPC 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 Indian Constitution .Due to which nearly 25 lakhs homosexuals of our country suffer discrimination many times in their life.</p> <p>8. In countries like united kingdom, where homosexuality was once illegal, has repealed sodomy law as it is considered obsolete taking into account the social dynamics.</p> <p>9. The American Psychiatric Association has removed homosexuality from its list of mental illnesses in 1973, and the World Health Organization did the same in 1981.</p> <p>10.Criminalization reinforces negative societal attitude regarding homosexuality which in turn results in greater discrimination and thus impact adversely on the self esteem of many homosexuals which often</p>	<p>families.</p> <p>11. The absence of sexual complementarity in these unions creates obstacles in the normal development of children who are placed in the care of such parents .They would be deprived of the experience of either fatherhood or motherhood. Also this is gravely immoral and in open contradiction to the principle, recognized by the United Nation Convention on the rights of children, that the best interest of the children as the weaker and more vulnerable party are to be of paramount consideration in every case.</p> <p>12. Marriage is a sacred institution. The homosexual inclination is however objectively disordered and homosexual partners are sins gravely contrary to chastity.</p> <p>13. Same sex marriages is an untried experiment.</p> <p>14. Same sex marriages would start us down a slippery slope towards legalized incest, bestial marriages, polygamy and all kinds of other horrible consequences.</p>	<p>leads to deception and friction within families.</p> <p>11. Scientific studies and psychologists are of the opinion that the love and commitment of the parents make difference not the gender. The children raised by homosexual partners are just as good as those of straight couples.</p> <p>12. Religion is not an obstacle. Many sects of Buddhism celebrate gay relationship freely. Instances of homosexuality are available in all major religious mythology.</p> <p>13.. Homosexual marriages is not an untried experiment. In Denmark since 1989 homosexuality is legally permitted The result of the experiment suggests that homosexual marriages has actually been civilizing and strengthening, not just the institution of marriage but the society as a whole. So perhaps we should accept the fact that some one else has already done the experiment and accept the result as positive.</p> <p>14. If the argument were true than it would have already happened in countries where legalized gay marriages already exists.</p>
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15. Gay marriages would mean forcing business to provide benefits to homosexual on the same basis as Heterosexual sex couples.	15. There is no contradiction to the argument as all are equal and have equal fundamental rights.
16. Homosexual marriages are unnatural. Hence Sodomy law needs to be more strict.	16. Homosexuality is natural. There is substantial agreement amongst researchers that sexual orientation is due to genetic factor and is determined by age five or six.
17. Homosexual marriages are the outcome of today complex individualized post modern industrial utilitarian society.	17..Instances of homosexuality can be seen even in ancient , medieval and modern India. Its not the development of post modern society.
18. No rights exists that can compel a state to recognize any relationship contrary to the definition of traditional marriages.	18.. Denial of legal recognition infringes the rights of citizens.

Conclusion

In any case the demand for legalizing homosexual marriages is giving birth to new conflict in the institution of marriage family and Law which cannot be denied But at the same time giving social and legal regal recognition is not that easy in this traditional society as it has been in the western societies but in any case to ignore this emerging conflict in the institution of family and marriage will be short sighted and can have fatal results if not handled sensitively.

So, it is high time for the Legislature, Executive, Judiciary and Society at large that they cannot deny the existence of people with same sex desires, They also need to acknowledge that by legalizing homosexual relations they will not permit a mere sexual activity but will also decriminalize the lives of citizens who are connected to such sexual act.

Finally it can be said that if laws are supposed to represent socially acceptable do's and don'ts then a new mindset is the need of the hour. Otherwise, normal human beings will continue to suffer inhuman exploitation just because nature has nourished them with the need to be different.

References:

1. Arvind Kala, *Invisible Minority: the unknown world of the Indian homosexual* (Dynamic Books, New Delhi, 2004)
2. Human Rights Violations against the Transgender Community, People s Union of Civil Liberties, Karnataka,2003.

3. India Pioneer: Ashok Row Kavi Interview by Perry Brass at www.gaytoday.badpuppy.com
4. Lane Tim Dean, *Homosexuality And Psychoanalysis* (The University of Chicago Press, Chicago, 2011)
5. Robert Winter mute, 'From Sex Rights to Love Rights': Partnership rights as Human Rights in Nicholas Bamforth (ed)' *Sex Rights : The Oxford Ammesty Lectures 2002* Oxford university, Press,2005.
6. Ryan Goodman,' Beyond the enforcement Principles: Sodomy laws, Social Norms and Social Panoptic', *California law Review*, vol 89, No,3, May 2011.
7. Sandip Roy Chowdhury, The best of both worlds? South Asian bisexuals speak out India Currents, February issue, 1996.
8. Alok Gupta, Secion 377 and the dignity of Homosexuals, *Economic and Political Weekly*, November 18, 2006
9. Shamona Khanna:' Gay Rights' *Ale Lawyers*, June 1992.
10. Shivananda Khan' Cultural constructions of male sexualities in India'. in P .Aggleton (ed) *Bisexuality and AIDS* (Taylor and Francis, Austalia, 1996).
11. Vanita Ruth, Kidwai Saleem (Eds.) *Same Sex love In India: Readings From Literature And History*, (St Martin Press, 2000).
12. W. Michael Ross,' A Taxonomy of Global Behavior' in R. Tielman, M. Carballo and A. Hendriks eds *Bisexuality and HIV /AIDS : A Global Perspective* (Prometheus Books, Buffalo, 1991).