

# Homosexuality: Judicial, Literary & Historic Probing



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### Abstract

The concept of Marriage of a man with a woman is no doubt acceptable to all and it has ever been continued since time immemorial of course writers in their literary texts have been commenting upon the role a man has to play as a husband and a woman has to play as a wife in broad terms in their own domesticity and in this context men were to take on to public spheres say earning wages & working outside whereas women were to remain in private spheres such as boundary walls of the house building. Such examples of corelated works to be done could be traced in the Victorian books of conduct such as Mrs. Beeton's book "Household Management" but later on women have been demanding more & more freedom for their pattern of living in society as a result of which movements came up like feminism, women empowerment, womens' reservation bill etc. Women felt fully empowered and they kept on living in full completeness of the marital relations so long as man became a bridegroom and woman became a bride but there came up another way of living which has been called as homosexual marriages but before it the issue of homosexuality was very much alive in literature and in medical science. Doctors (Psychiatrists) identified male homosecuality and female homosexuality and now subsequently two types of marriages – homosexual marriage (male) and homosexual marriage (femal) have been identified so as not to complicate the issue of living together of the homosexual pairs under the licence of marriage. What has been social rating of these homosexual marriages, why such marriages come up, How society views them, how law and court values them and what has been the historicity of these would be taken up in the proposed research paper and besides this, the cultural differences that grow up because of such marriages will also be a point of consideration.

**Keywords:** Lesbianism, Feminism, Homosexual, Bisexual, Homosexaul Marriages, Thervada Monks, Decriminalize, Recriminaliged, Taboo, Ambit, Dogmas, Conjecture, Enshrined, Fantasy.

### Introduction

Homosexuality in India presently, is considered as an offence u/s 377 of Indian Penal Code. It is an archaic law introduced during British era, and the punishment can be up to a life term.

### Review of Literature

We can find the issues like racism, lesbianism, homosexuality, homosexual marriages in literature of any country worldwide but such issues are generally discouraged by the society, religious institutions and even by law but still such literature is being composed. What impact such type of literature leaves on society is being known by and by of course the impact is not nourishing and it invites contraversies in society. It causes restlessness, anxieties and delimmas for social health and it earns ill reputation to those who so ever undergoes the impact of such literature and takes on to homosexuality or homosexual marriages male or female types.

Audre Lorde (1934-1992) an African American feminist born in Newyork created ample of such literature with the foresaid issue which could be enlisted like this Black Unicorn (1978), Burst of Light (1988), Coal(1976), Sister Outsider(1984). Her literature could be read to have a real feeling of such issues. Likewise Adrienne, Cecile Rich(1929-2012) an American poetess, essayist and feminist produced the pieces of writings which could be suggested for further reading. These are – 1.Blood, Bread and Poetry: Selected Prose 2. Human Eye: Essays on Art in Society (2009), 3. Of Women Born: Motherhood: As experience and Institution, Norton (1976), 4. On lies Secrets and Silence: Selected Prose (1979), 5. Poetry and Commitment: An Essay.

If we talk about Indian writings in English Kamla Das is one of the prominent literary figures.

#### **Aim of The Study**

Homosexuality is an issue which keeps on appearing through news papers, magazines, mass media, social media, localized talks in discussions which we hear generally around us. People try to avoid talking about such issues but it has been noticed that rather than keeping mum, we should have our views, opinions, ideas in proper manner with the purpose that how such issues are to be dealt with and what does law and literature say about such issues? Further the aim of this study is to find out if homosexual marriages provide any satisfaction to those who get into such social bindings & what type of treatment they receive socially and when & how did it (homosexual marriages) begin in the past?

Homosexuality in India presently, is considered as an offence u/s 377 of Indian Penal Code. It is an archaic law introduced during British era, and the punishment can be up to a life term.

In 2009, Delhi High Court had described Sec. 377 as a violation of Fundamental Rights guaranteed by the constitution. In 2013, Supreme Court cancelled the Delhi HC order and re-criminalised homosexuality. While prosecutions under Sec. 377 are rare, activists have said that the police used the law to harass and intimidate members of LGBT (Lesbian, Gay, Bisexual, Transgender) community.

Recently, from the verdict of Justice K.K. Puttaswamy (Retd.) V/s. Union of India, which established Right to Privacy as a Fundamental Right under the Constitution, it was observed that "equality demands that the sexual orientation of each individual in society must be protected on an even platform. Of course sexual orientation lie at the core of fundamental rights guaranteed by article 14, 15 and 21 of the constitution". The 9 judge constitutional bench deciding on right to privacy also noted that "The morality that public perceives, the constitution may not conceive of and what is natural to one may not be natural to others." Thus, there is fresh hope that the Delhi HC judgment of 2009, which read down Sec. 377, to decriminalize consensual sex between adults, may be restored. In this the court, must not confine itself to the issue of privacy, but also address discrimination inherent in Sec. 377 on basis of sexual orientation.

Ours is a country where 'Rule of Law' is followed and the state claims itself to be sovereign and propagates virtues of liberty & equality as enshrined in the constitution of India and in its preamble. In this research paper the researcher assumes that discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self worth of an individual, if hindered by laws. A section of people who exercise their choice should never remain in a state of fear. As per data submitted to the Supreme Court of India by government in 2012, there were about 2.5 million gay (homosexual) people recorded in India. These figures are only based on those individuals who have declared themselves to ministry of health. This

number would have been higher, if those concealing their orientation would have opened up publicly.

Homosexuality is a term used for people who are sexually attracted towards the same sex. In this context, two terms are widely used 'Lesbian' (for female) & 'Gay' (For a male). 'Bisexual' is a term used for either a male/a female who is attracted equally towards opposite same sex. In India, it is a taboo to discuss such issues openly. People refrain from discussions due to dogmas & societal conjectures associated with it. Putting it simply, it is perceived as unnatural. People who open up on this issue are treated offensively. The debate on homosexuality is on the ground of social equality and tolerance. Presently in our country, Sec. 377 of the Indian Penal Code makes homosexuality a crime. There are so many instances where repeal of this section has been demanded by various NGOs, social groups & noted eminent persons. The basis of repealing lies on the ground that discrimination on basis of a person's sexual orientation is unfair and absurd. This choice of any person falls under the ambit of Right to Privacy as enshrined in the constitution of India.

Indian society per se has had various views as to this subject. Some sections find it offensive for which others are liberal. Such is the composition because there are certain mentions of homosexuality in religious texts as well. For instance, 'Rigveda' says "Vikrati Evam Prakriti" meaning what seems unnatural is also natural. The ancient text 'Kamasutra' written by Vatsyayana dedicated a complete chapter to it. These mentions make it apparent that homosexuality was prevalent & accepted in ancient Indian culture.

The term 'Homosexuality' came into being in late 19<sup>th</sup> century Europe. It was declared 'unnatural' by colonial laws as it was not aimed at conception. Let us see how similar sexual activity was perceived in other cultures. Love of a man for a boy was institutionalized in ancient Greece, even amongst Samurais in Japan, and also in certain African as well as Polynesian tribes. Amongst some native and South American tribes, erotic relationships between men were acceptable as long as one of the partners accepted to be in the role of feminine. Arabs and medieval travelers claim- women were for home and health while boys were for pleasure.

To find out if homosexuality or same sex intercourse existed in Indian, and in what form, we need to turn to 3 sources: images on temple walls, sacred narratives and ancient law books. On the walls and gateways of magnificent temples, we find a variety of images. Amongst scenes from epics and legends, one invariably finds erotic images including those that modern law deems unnatural and society considers obscene. Similar images also embellish prayer halls & cave temples of monastic orders such as Buddhism and Jainism built around the same time. In Khajuraho, western group of temples, built around more than one thousand years ago one does find images of either women erotically embracing other women or men displaying their genitals to each other. There have been many explanations offered for these images.<sup>1</sup>Dr. Rajaram Panda (2010 : 31) writes about the erotic images at Khajuraho "Vishwanath temple in

which an ascetic is seen copulating with a woman from the rear. In this process of depicting varied modes and postures of sexual orgies, there are autoerotic scenes where attendants, while assisting the main couple, are often shown touching their own sexual parts in many temples of Khajuraho."

In Indian epics and chronicles, there are occasional references to same sex intercourse. For example, in Valmiki Ramayan Hamuman is said to have seen Rakshasa women kissing and embracing those women who have been kissed & embraced by Ravana. According to a folk narrative from Koovagam in Tamil Nadu, Pandavas were told to sacrifice Arjuna's son Aravan if they wished to win the war at Kurukshetra. Aravan refused to die as a virgin. As no woman was willing to marry a man doomed to die in a day, Krishna's help was sought. Krishna turned into woman married Aravan and when he was finally beheaded, mourned for him like a widow. Such stories allow homosexual behavior. These tales may be interpreted as repressed homosexual fantasies of a culture. Let us see literary historicity of homosexuality world wide. In Germany between 1898 and 1908 over a thousand articles were published regarding the topic of homosexuality. Between 1896 and 1916, 1566 articles on womens' 'perversions' were published in United States. Literary historian Jeannette Howard Foster includes in his Book of Ruth, an ancient mythological tradition as an example of lesbianism in classical literature. Greek stories of heavens included a female figure whose virtue and virginity were unspoiled, who pursued more masculine interests. Foster cites Camilla and Diana, Artemis and Callisto, Iphis and Lanthe as examples of female mythological figures who showed remarkable devotion to each other or defied gender expectations.

French & English depictions of relationships between women has been present in-Lives of Gallant Lesbians by Brantome in 1665. In French literature lesbianism became almost exclusive in the 19<sup>th</sup> century. Until the publication of The Well of Loneliness, most major works involving lesbianism were penned by men. Works were written in 20<sup>th</sup> century, which had popular themes of the same sex relationships or gender transformation even by the lady writers like Katherine Mansfield, Amy Lowell, Gertrude Stein, Virginia Woolf & Gale Wilhelm. 1928 was 'peak year' for lesbian themed literature in the west, as in addition to The Well of Loneliness, three other novels with lesbian themes were published in England- Elizabeth Bowen's-The Hotel, Woolf's-Orland and Compton, Mackenzie's satirical novel-Extra Ordinary Women. Rita Mae Brown's-Ruby Fruit Jungle (1973), presents a feminist heroine who chooses to be a lesbian. All these examples of literary writings prove that lesbianism had ever been a topic of writing almost everywhere in the world.

So many early gothic fiction authors like Matthew Lewris, William Thomas Backford and Francis Lathom were homosexual. The first American Gay novel was Joseph and His Friend : A story of Pennsylvania (1870) by Bayard Taylor. By the 20<sup>th</sup> century, discussion of homosexuality became more open. Nobel prize winner Andre Gide's semi

autobiographical novel The Immoralist (1902) finds a newly married man reawakened by his attraction to a series of young Arabic boys. Other gay novels are-A Memorandum (1906) by Edward Prime Stevenson's Death in Venice (1912) by Thomas Mann, In Search of Lost Time (1913-1927) by Marcel Proust, Better Angel (1933) by Forman Brown.

In India, there have been works on those subjects, for instance-Lihaf (1942) by IsmatChughtai, in 1980s Suniti Namjoshi an openly lesbian author of Indian origin wrote books like Feminist Fables (1981), From the Bedside Book of Nightmares (1984); The Conversations of Cow (1985), Flesh and Paper (1986), Vijay Tendulkar's Marathi play 'Ek Mitrachi Goshta' in 1980s. All are the examples of Indian origin. Mahesh Dattani wrote plays in English, he is Sahitya Academy Award winning playwright. Another Indian born author who voiced unabashed support for gay rights and sexuality in general was Firdaus Kanga. His notable work include Trying to Grow (1990). Shobha De followed with her strange obsession in 1994. 'A Lotus of Another Colour (1993), edited by Rakesh Ratti offered a clutch of stories about South Asian gay & lesbian experiences. 'Facing The Mirror' : Lesbian Writing From India' was yet another work on this subject by Ashwini Sukthankar. Later, there were works by Anita Nair-Ladies Coupe' (2001), Manju Kapoor's-A Married Woman (2002) , Saleem Kidwai and Ruth Vanita's-Same Sex Love in India : Readings in Indian literature (2001), R. Raja Rao's-The Boy Friend (2003) & Hostel Room 131 (2010), Hoshang Merchan's-Yaraana : Gay Writing form India (2000), Forbidden Texts : New India's Gay poets (2008), The Man Who Would Be Queen : Autobiographical Fictions (2011). In Marathi literature Bindu madhav Khire a gay rights and AIDS activist self published novels, Partner (2005), Indradhanu (2009) and Antosong (2013), all these are examples of Indian English Literature of on this subject of Homosexuality.

Even the painting related to Homosexuality existed even in the times of Chola Emperors. In the book Chola Murals by <sup>2</sup>P.S. Sriraman published by the Director General Archaeological Survey of India, New Delhi Sriraman writes describing a painting (2011 :156) "The group of Bhaktas are also from various quarters as indicated by the differences in body complexions. Many of them are clasping too. They are excited in hearing the saintly figure who was obviously their Guruji.' Queer writing is now being seen in the space of young adult fiction. Authors writing on this topic has a long list, each telling a different story of love, sensitivity, sexuality and everything in between. The political parties or socially working group of people who have their ties with political parties do not express their clear cut and straight forward opinion regarding homosexual marriages or lesbian marriages for such issues may damage their vote banks but sometimes it is the hammer of law that thunder strikes in between but regarding such intervening<sup>3</sup>Michel Foucault (1998 : 89) negates the role of law saying "It is entirely incongruous with the new methods of power (court and law) whose operation is not ensured by right but

## Innovation The Research Concept

by technique (trick) not by law but by normalization, not by punishment but by control, methods that are employed on all levels and in forms that go beyond the state and its apparatus. We have been engaged for centuries in a type of society in which the juridical is increasingly incapable of coding its power, of serving as its system of representation. Our historical gradient carries us further and further away from a reign of law that had already begun to recede into the past."

According to James William Coleman early Buddhism is almost silent on sexual orientation as this subject does not come up in the early Buddhist scriptures like Pali and Agama but one group of Monk Theravada supports it for whom <sup>4</sup>James William Coleman (2002 : 146) writes "Theravada Monks argue that homosexual relations do not violate the rule of sexual misconduct." This group of Monk believes in pleasure & fun rather than hardship of religion."

On religious grounds these homosexual marriages are rejected as it is not the question of physical pleasure in sexual intercourse but it is the question of sexual contentment of the soul and that is more important in every religion. Rejecting such male homosexual marriages on natural ground <sup>5</sup>Michael Foucault (1990: 142) writes "If one is to perform the acts of pleasure in an appropriate manner, without danger or harm he must address to a discourse of "truth" to himself; it should teach him, given what sexual acts are by nature, how to resort to them in a way that conforms as closely, as strictly as possible to the nature".

Medical science views homosexuality as a sexual disorder on account of depression or on account of inability to marry in a natural way by finding out the other counter part may be a male or a female. Sexual disorder of a male to have sexual attraction for a male could be set right if that particularly disordered person is left in the company of ladies and the same could also be true for a lady being attracted sexually for another lady if she is left in the company of men according to psychiatrist.

### Conclusion

According to social estimation of such homosexual marriages this type of living is nothing

more than a drama of marriage which leads nowhere as they can't beget children of their own and to compensate for the next generation, they will have to adopt children. Once it is known to the children that they are adopted, they always remain dissatisfied and they find hundreds of disabilities in their unnatural parents of the same sex. They go on to the extent of asking about the drama of their marriage. On the other hand homosexual parents keep on thinking that the adopted children aren't their own so they can't be their own despite of their best efforts to satisfy them.

Some times law intervenes but it does not mean that the law should remain silent always. Sometimes crimes increase in such cases time to time for which the role of law is essential. We can't leave such issues entirely for the society to decide their fate. For further research investigation, analysis, assumptions and conclusions a researcher should approach to those who declare themselves to be lesbian or homosexual and take their personal interviews to keep a data based record to come up with new findings and at the same time keep an eagle's eye on judiciary enforcing law on such issues time to time and on the basis of researcher's keen study and experience it has been found out that discrimination against an individual on the basis of sexual orientation is not deeply offensive to the dignity and self respect of an individual if hindered by law which could be further verified by the other tools of research methodology.

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