

RIGHTS AND LAWS FOR HOMOSEXUALS IN CONTEXT OF MARRIAGE: A COMPARATIVE STUDY OF INDIA AND NETHERLANDS

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Abstract

Most of us has the idea of classifying people according to the gender of the people we have sex with would seemed downright bizarre and shows moral preoccupation centered on sexual practices, not on the subject of desire. Firstly, this paper focuses on societal view of marriage as an institution. The society governs our life and conduct through various institutions which are named to be an essential part of our life. One of the institutions which limit our right to live and share love with the partner of same sex is called marriage. Marriage as an institution does not supports homosexuality because it does not fulfill the criterion which is procreation. But what if a heterosexual couple is not able to reproduce or give birth, then their marriage is void? Secondly, this paper further proceeds with the concept of marriage in India, as we know marriage is a union between man and women for certain social and religious purpose. Marriage in India is a religious necessity. In India polygamy and polyandry are present and permissible but to legalize homosexuality and same sex marriage to provide them their rights through marriage are still considers as a sin. In India we are taught about liberalism, democracy, we have right to expression which reflects that nowhere in India people are restricted to talk and learn about homosexuality but when it come under practice, our law penalize it. Thirdly, this paper deals with the origin and existence of homosexuals in world and their present condition in India where it mainly focuses on the myths regarding homosexuality and homosexuals. Fourthly, this paper proceeds with the comparative analysis of laws for homosexuals in India and The Netherlands (first country to legalize homosexual marriage). In its fifth part, this paper reflects the deep study of evidence and facts which clearly confirms the presence of homosexuals and practice of homosexuality in our past through the monuments of Khajuraho and painting of Ajanta Alora along with the text of Kamasutra. Lastly this paper criticizes the section 377 of CrPC laws should not be based on "controversial conceptions of the good" or that homosexual conduct is not wrong but these arguments are not enough to legalize homosexuality because to convince the

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average people in today's scenario we need to have political argument because indirectly it is the state which is governing our life through law. Section 377 has pushed India as a country backward in time. Apparently a push further back in time may be exactly what India needs. Perhaps reminding the country about its liberal and tolerant past will be exactly what India needs to help it overcome prejudices. In an age where there is growing acceptance of the idea that LGBTs (lesbian, gay, bisexual, transgendered) must be allowed to live in dignity and respect, it is shame that India cannot bring itself to legalize gay behavior.

I. Introduction

We live in a country where our leaders and nationalist borrowed features of democracy, constitution, liberalism etc. to bring modernization and development but had they ever thought that just mentioning about these terms alone in our words can bring changes or first we altogether have to change to bring the change. I think that now the time has come when we should reconsider to nehruvian philosophy of modern world and accept that law is dynamic in nature which keeps on changing according to the change in our society which we cannot stop. Although we define ourselves in part through our sexuality but in a country like India we do not talk much about sexuality. Although we define ourselves in part through our sexuality but in a country like India we do not talk much about sexuality. It is the way in which people experience their bodies, pleasure and desire. Sexual identity is in fact a modern phenomenon which was emerged in Europe during eighteenth and nineteenth centuries.¹ Our sexual orientation cannot be define as a difference between man and women with reference to biological factor but it can be understand through the concept of gender which takes into account the social meanings that differ societies altogether to masculinity and femininity.

Sex, gender and sexuality are closely interlinked where cultural understanding of sexuality has gave proper ways for men and women to behave. The struggle around sexuality in modernity can be primarily seen in the east which is not on sexual practices but on raising sexuality as a social and political question.² Most of us has the idea of classifying people according to the gender of

¹ Veronique Mottier, *SEXUALITY: VERY SHORT INTRODUCTION*, Vol. 10/2, 7 (3rd edn., 2010).

² *Ibid.*

the people we have sex with would seemed downright bizarre and shows moral preoccupation centered on sexual practices, not on the subject of desire.³

Heterosexual and homosexual are a central source upon which we draw in order to make sense of our own sexuality. According to WHO “*sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction.*”⁴ But in India sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors.

For an example, the movie FIRE⁵, released in 1998 depicts a sexual relationship between two middle class Indian married sister-in-law and aroused the ire of the shiv sena, a powerful right wing political party which raised hooligans to vandalize cinema in Delhi and Mumbai to ban the movie because it was against the Indian culture and tradition.⁶ The another example which supports my argument is when in 2003, minister for health and family welfare raised condom centric public education campaign it was laid down by our government by saying that it will lead people to have more sex and if there is loyalty and fidelity between husband and wife then there is no space for HIV/AIDS where the burden was especially on women to prove monogamy.⁷

Although India has commission for human rights and women rights but it focus more on civil and political rights with few exception has engage with the issue of sexuality.

II. Societal view with marriage as an institution

Our society convinces that homosexuality is a rarity. A female wearing their hair short or who dresses in the fashion of men or pursue sports as pastime is considered as normal but having the feeling of masculinity in female and their attraction towards the same sex is not acceptable fact in our society. The historian and the social theorist Michel Foucault’s *The History of Sexuality* pointed out that Christian ethics define sex as something shameful, which should not be spoken

³ *Supra Note 1.*

⁴ *Supra Note 1.*

⁵ Geetanjali Mishra and Radhika Chandiramani, *Sexuality, gender and rights: exploring theory and practices in south and Southeast Asia*, sage publication 313, (2005).

⁶ *Ibid.*

⁷ *Supra Note 5.*

about.⁸ Through the evolution of procedures it can be seen that sex is our mind's deepest hidden desire but still the homosexuality is considered to be a sin in our Indian society.

There are some prescribed rules and norms for an individual that how one should behave and even it also covers our desire to choose a partner for intercourse. One cannot freely choose his/her partner if it is outside the prescribed norms of our society. The society governs our life and conduct through various institutions which are named to be an essential part of our life. One of the institutions which limit our right to live and share love with the partner of same sex is called marriage. Here, marriage has certain rules and principles according to which all the practices beyond its boundaries are considered as sin.

According to Professor J.B. Watson "*the institution of marriage is undergoing a change and passing through crisis*" but still it considerer's marriage of homosexuals against the morality. Morality consists of four independent ramifications or factors which are survival, existence, procreation and preservation. Here, marriage as an institution does not supports homosexuality because it does not fulfill the criterion which is procreation. But what if a heterosexual couple is not able to reproduce or give birth, then their marriage is void? Is it against the morality? They should also be punished because they are not able to reproduce? If no, then what is morality and who decides it?

III. Marriage in India

As we know marriage is a union between man and women for certain social and religious purpose. Marriage in India is a religious necessity. It is the source of every domestic comfort from infancy to old age, it is necessary for the preservation and the well being of our species; it awakens and develop the best feeling of our nature; it is the source of important legal rights and obligations; and, in its higher forms it has tended to raise the weaker half of the human race from a state of humiliating servitude.⁹ India has sometimes been regarded as an epitome of the world in respect to the variety of its climate, flora and fauna and forms of marriages but it is not different for the stage of social progress with reference to homosexuality.

⁸ Michel Foucault, *The history of sexuality: an introduction*, Vol. 1, 25 (1976).

⁹ Ram Ahuja, *Indian social system*, vol. 28, 52 (1993).

In India polygamy and polyandry are present and permissible but to legalize homosexuality and same sex marriage to provide them their rights through marriage are still considers as a sin. People in India are so careful to observe the rules concerning marriage, to avoid error and so strong in their disinclination to question the validity of marriage which arise outside their prescribed norms of religion.¹⁰ Marital or family role plays a very important part in the life of Indian people where this marital role is governed by their religion and society. Marriage in India does not deal with sexual relationship openly but stress more on psychological (affection and sympathy), economic (food, clothing and shelter) need of an individual and also acts as a primary source of morality and ethics which do not supports homosexuality.

Thus, marriage in India is a social system which wants to remain in a equilibrium. Equilibrium requires family, procreation, moral obligation, acceptance from society and religion etc. and what is significant is that we should perform these for the existence and stability of marriage.

In India we are taught about liberalism, democracy, we have right to expression which reflects that nowhere in India people are restricted to talk and learn about homosexuality but when it come under practice, our law penalize it. The state does not have a right to interfere in our privacy but again we can see that it also defines our privacy through its exclusive control over marriage or peoples understanding and attitude towards marriage through its favorite instrument-law. Is that the same democracy where we were promised to provide liberty?

In June 1980, a newspaper reports of a joint suicide by two young women Mallika (twenty) and Latithamvika (seventeen) in Kerala, south India. They left behind letters stating that they could not bear to be separated from each other.¹¹ We can find a series of such suicide. Same sex relationships and marriage has been a subject of debate for centuries in India but leaders and democrats can continue their debate at the cost of these suicides or should I say murder? They held that section 377 of the Indian penal code which was made by the Britishers in 1860 during the colonial rule and which criminalizes intercourse against the nature is legal.

But what is nature and who defines that what is against the nature? The gentlemen who defined that these ways for intercourse are against the nature had already legalized it in their own country

¹⁰ Sir Gurudas Banerjee, The Hindu law of marriage and stridhana.

¹¹ Ruth Vanita, Wedding of two souls: same sex marriage and Hindu traditions, 20 Feminist studies in religion 119, (2004).

but a place like India, where homosexuality was present in its ancient time, which emphasizes love rather than sex is still a punishable offence. It is difficult for the people in India to accept that marriage whether cross-sex or same sex is based on love, commitment and companionship of which sexual desire is only one dimension.

IV. Homosexuals: Definition and Existence

Now we know the place of marriage in the life of an individual but what happens when one try to go against the norms of society. Either there step for the change or for their desire to live life with liberty get suppress or will bring the spark of change like U.S., UK, Canada, The Netherlands and South Africa etc. but still this spark is visible in our Indian society. In India when people go against the previously set rules of marriage are considered as going against the religion and god. Most of the arguments in opposition to homosexuality and same sex marriage are often made on religious grounds. Although India had a history of homosexuality in the form of painting and sculpture but still people in India neither allow practicing it nor socially accepting it. However, there are both conservative and liberal views about homosexuality is present in India.

A mathematician Shakuntala Devi gave her liberal views in 1977 in her book- The World of Homosexuals in which she interviewed Srinivasa Raghavachariar, head priest of the Srirangam temple. He said that same sex lovers must have been cross sex lovers in a former life. The sex may change but the soul retains its attachments, hence the love impels these souls towards one another.¹² But this millennium long debate in Hindu society is still going on which says that same sex marriage affects religion and the tradition of marriage. We can clearly see the opposition of Hindu nationalist in India like in 2002, an attack on cinema theaters by Hindu nationalist in order to prevent the screening of a movie that showed intimacy between two lesbians- The Fire (1998).

Now various questions come in my mind to whom should I considered as homosexuals? What is their history? What is same sex relationship?

¹² Shakuntala Devi, The world of homosexuals.

According to World Health Organization, sex refers to both physiological and biological characteristics that define men and women. But during 18th century another term was used to differentiate it with homosexuals and this was termed as homosexuals, non heterosexuals and the closest one is third gender but they never gained any social acceptance. Earlier they were referred as homophile in 1950s and 1960s and subsequently gay and lesbian in 1970s.¹³ In the late 1970s and the early 1980s there was a change in the perception; same gays and lesbians came forward with the identity of bisexuals and transgender which gave rise to the LGBT community. The transgender actress Candid Cayne in 2009 called the LGBT community ‘the last great minority’. LGBT is the abbreviation of lesbians, gay, bisexual and transgender. The term gay was originally used to refer to feelings of being carefree and happy but in the late nineteenth century ‘gay’ has come to be use to describe people attracted to member of the same sex where a male gets attracted towards an another male but the irony is they are neither carefree nor happy in the present scenario.

The concept of lesbian was constructed during twentieth century to differentiate a female who expresses romantic or sexual attraction to other females. Whereas bisexuals are people who has romantic attraction towards both male and female. It was carried in the nineteenth century. Transgender is independent of sexual orientation. Transgender is a person whose identity does not confirm unambiguously to conventional notions of male or female gender roles but combines or moves between these.

The history of same sex marriage has offensive or affirmative or persuasive power which have been suppressed and denied. In Plato’s symposium Aristophanes tells a story about the origins of human beings. According to his myths, human descend from creatures that had spherical bodies, genitals on the outside, four hands and feet, two faces on each and were divided into three genders: one group had two male genitals, the second group had two female genitals and the third group, hermaphrodites, had one of each. But the creature became arrogant and to punish them Zeus split them into two. In that state they clung to their other halves, dying from hunger and self neglect because they did not like to do anything apart. Zeus took pity on them and

¹³ Definition of Terms: Sex, Gender, Gender Identity, Sexual Orientation, APA Council of Representatives, on February 18-20, 2011.

therefore invented a new plan, moving their genitals so that they could have sexual relations with each other. Each of us is a half a human being and each of us seeks our other half.¹⁴

Men who are splits from the hermaphrodite desire women; women who descend from a female creature do not care for men but have female attachments and men who are split from male body prefer to per sue males.¹⁵ This story of Aristophanes shows the existence of homosexuality and heterosexuality in the history. Evans-Pritchard also recorded that male Azande warriors in the northern Congo routinely took on young lovers between the age of twelve to twenty, who helped with household task and participated in intercrural sex with their older husbands but this practice had died in the early twentieth century. The first homosexual couples in the history is commonly regarded as Khnumhotep and Niankhkhnum, an Egyptian couple who lived around 2400 B.C. Homosexual individuals were also common among other civilizations in Latin America such as Ahelbhe, Aztecs, Mayons, Cruechuas, Moches, Zapotech and the Tupinamba of Brazil.

V. Facts behind homosexuality

One question always comes in my mind that are homosexuals born that way? We can see various arguments in favor or against it. But I think that homosexuality is that homosexuality is an orientation that people are born with and it has the same moral value as the hair color someone has at birth.¹⁶ It can happen during the pregnancy which is not in our control. It is mostly seen among the older brothers. In 1993, a study published in the journal Science shows that if a family reproduces two gay children than it is better to abort the gay fetus rather than to increase the population of gay people, this clearly shows an assumption that the flaw lies within the birth and hormones of the child adopted by the parents.¹⁷ The fact cannot be avoided that future sexual orientation is affects in the womb during exposure to sex hormones. In 1991, a study published in the journal Science shows that the gland which controls the release of sex hormones (hypothalamus) from the pituitary gland differs from a gay man to straight men. The hypothalamus was found to be more than twice as large in homosexual men as compared to the heterosexual men.¹⁸ A study performed in 2001, showed that HIV status has no significant effect

¹⁴ *Supra Note 1.*

¹⁵ *Supra Note 1.*

¹⁶ Matt Slick, *Homosexuals are born that way. Therefore it is natural and good,*

¹⁷ Marcia Malory, *Homosexuality & Choice: Are Gay People 'Born this way.*

¹⁸ *Ibid.*

on the homosexuals on the basis of used brain tissue from autopsies, which did not show any difference between the size of the INAH3 in gay men and heterosexual men. The studies have also revealed that the amygdale of a gay man is similar to a heterosexual woman whereas amygdale of a gay woman was found similar with a heterosexual man. The amygdale functions for the processing of emotions.¹⁹ An another misleading assumption is that AIDS results more due to homosexuals and termed as “gay cancer”, however the fact cannot be ignored that this has been the result of some reckless homosexuals like another reckless heterosexuals. Considering the facts in contemporary India as per Ashok Row-Kavi, a self-acclaimed homosexual activist, the number of homosexual men in India is over 50 million and majority of them are married and living with their wives due to societal norms and fear of discrimination. Culturally identifiable groups known as "hijra", who are castrated males and dress as females, lives in most parts of India and depend for their livelihood on working as full-time or part-time male prostitutes in India seek male clients by offering massage services in parks, beaches, hotels, and houses to these homosexual men.²⁰

VI. Existence of homosexuality in India

Before early 20th century, 'heterosexuality' was used to refer to 'sexual practices' between men and women where even oral and anal intercourse are opposed to 'normal' procreative sex. The term homosexuality came in use when varied expressions of sex and sexuality became acceptable in academic circles due to usage of an everyday vocabulary in the European discussions. Earlier the term was used to describe "unhealthy sexual passion between members of the same sex." The sex which was not aimed at conception was declared unnatural and this also covered the sexual relation between homosexuals. The three sources: images on temple walls, sacred narratives and ancient law books can show that homosexuality or same-sex intercourse existed in India. Construction of Hindu temples in stone which was began around the sixth century of the Common Era reached climax between the twelfth and the fourteenth century where we find a variety of images of gods, goddesses, demons, nymphs, sages, warriors, lovers, priests, monsters, dragons, plants and animals. These images also shows erotic images including those that modern colonial law deems unnatural and society considers obscene (as per the Indian

¹⁹ *Supra Note 17.*

²⁰ Thappa DM, Singh N, Kaimal S, Homosexuality in India. *Indian J Sex Transm Dis* 2008;29:59-62.

penal Code). Buddhism and Jainism also built around the same time similar images at embellish prayer halls and cave temples. The erotic sculptures include a wide range from dignified couples exchanging romantic glances, to wild orgies involving warriors, sages and courtesans. This also includes images depicting bestiality coupled with friezes of animals in intercourse, elephants are shown copulating with tigers and monkeys molest women while men mate with asses. And the major source in Khajuraho where one can find images of either women erotically embracing other women or men displaying their genitals to each other. Further there are both apologetic and ridiculous explanations have been offered for these images. Some considers devotees to be idealistic which means one should keep aside the sexual thoughts before entering the sanctum sanctorum. Some groups also believes that these images are sacred tantric geometry, images represents fertility ceremonies and others call it as that phase of history when corrupt were obsessed with sex. However ancient treatise on architecture says that a religious structure is incomplete if their wall fails to show something erotic or sensual pleasure which is also an expression of life like Dharma, Artha and Moksha. Keeping aside the judgments and interpretations of few groups, these images do tell us the existence of homosexuality in India which under colonial rule became an 'Unnatural sex' and punishable offence. One can only speculate if the images represent the common or the exception.²¹ The existence of homosexuality can also be traced by various evidences like Vatsyana's Kamasutra (written between the first and the fourth century AD) refers to the practice of eunuchs and male servants giving oral sex to their male patrons and masters respectively, Hindu temples depicting lesbian acts and harems of young boys during Muslim rule in India. During the British rule, sodomy (anal intercourse) was made illegal under section 377 of the Indian Penal Code, enacted in 1861: this legislation is still in force. Indian homosexual activists think that because of this legal provision, male homosexuals are often subjected to undue harassment and blackmail. A self acclaimed homosexual activist had claimed that more than 50 million populations of men in India are homosexual based on the assumption that the prevalence of homosexual behavior is not less than what Kinsey found for white American males in 1938-1947. The societal norms and rigid beliefs of few groups forces the Indian male to engage in the institution of marriage and perform sexual activity with the opposite sex, whatever are the sexual orientation. The most common locations

²¹ Dr. Devdutt Pattanaik, Homosexuality in Ancient India, Debonair Anniversary Issue, 2001.

of the first homosexual experience in both regions were parks and toilets. Relatives, mostly male cousins and uncles, were the second most common category of first homosexual partners, strangers being the most common category. Mutual masturbation was mentioned as the most common type of homosexual act. The drawback why homosexuality has not been recognized in India is due to lack of awareness in its people which lead to the wrong assumption that HIV/AIDS is the result of homosexuality. Also the government should not continue to ignore homosexuals' needs in its AIDS prevention programs and recognized the need for intervention programs among homosexuals and the initiative should be taken to collect information necessary for the purpose.²²

VII. The Netherlands

From time being Netherlands depicts its history of LGBT, its tolerance and rigidity which was further adopted by rulers of various periods. After Second World War liberalization galvanized the movement of LGBT rights across abroad and hundreds of people were executed for homosexuality during 1730 considering sodomy as a capital crime. Homosexual relations between two consenting adults were first legalized when France installed the Napoleonic code. After the Dutch received independence in 1813 no new sodomy law was enacted but in 1911, an article was enacted along with the rule of public decency against gay men which rose the age of homosexuality to 21 though the age of heterosexuality remained 16. Against these new laws a scientific humanitarian committee was organized under the leadership of Jacob Schorer which was shut down by Nazis army during Second World War. Also Nazis prohibited homosexuality in ditch laws. This does not stopped the movement of LGBT and it was reprieved during 1945 with the end of German Nazis when the Center for Culture and Recreation was created in The Hague by Niek Engelschman which published the "Right to Live" publication. The assumptions of homosexuality being a mental illness not remain untouched in Dutch. The sexual revolution of 1960 changed the mindset of the people and legalized legalization of adultery, abortion, pornography and prostitution. 1971 turned out to be a golden period for homosexuals in Dutch when Article 248 was struck down, military lifted its ban on homosexuality, gay publication like gay Krant started to be published, and left-wing Dutch political parties started to support LGBT

²² *Supra Note 20.*

rights. This also provide an awareness to prevent AIDS-HIV by changing their sexual habits to practice safe sex, comprehensive sexual education was introduced in schools to avoid infection. In 1993 “Equal rights law” was enacted by the parliament which protected the discrimination against sexual orientation in housing, services and employment etc... Although in 1998 Dutch parliament granted same sex couple domestic partnership benefits but the institution of religion shows its affect when religious school discriminated against teachers for being in a same sex relationship. Despite of the opposition by conservative Muslim community and conservative Christian community, Netherlands became the first nation to recognize same sex marriage in 2001. With the continue battle between Aruba and the Netherlands Antilles for Netherlands' liberal legislation regarding sexual orientation. However, this battle was concluded by the Supreme Court of Netherlands by declaring in 2007 that the all marriages contracted in the different parts of the Kingdom of the Netherlands should be accepted in the other parts of the Kingdom as well. This further led to more liberty when in 2005 Dutch government started allowing married same-sex couples to adopt children from overseas and in 2006 when Dutch government allowed the stay of LGBT Iranian immigrants who claimed that they would be killed if they were sent back. Despite of being the strongest supporters of same-sex marriage at 82% in 2006 according to the European Union the Dutch government had also took care of the fact that blood donation is not done by MSMs (Men who have Sex with Men) to donate blood and this policy was termed as Sanquin. The universally applicable institution of religion has also reflected its impact in Netherlands as the acceptance of homosexuality by Islam and Christian churches remains low.²³

VIII. India

It is an irony that India is lacking behind Netherlands by not recognizing Homosexuals rights despite India has a vast history of homosexuality. It will be against the reality if we go with the flow of some conservative groups who criticize homosexuality on moral grounds and blame western culture for its existence in India. The author Vikram Seth during the judgment of Supreme Court on Section 377 reminded the country of its homosexual history. According to him Khajurao monuments in India which are nothing but erotic sculptures, are actually temples

²³ Anna C.M. Tijsseling, Professional intervention in sex crime - Policing and expert witnessing hetero- and homosexual sex crimes, June 2006, University of Leeds.

of Hindu and Jain. These temples were built between 950 to 1050 A.D. and show the activities of everyday life along with the sexual activity. These temples are not only visual guide of Kamasutra but also show the tolerance and acceptance of Indian history for sexual activity and Homosexuality. It is an irony that most Indians consider Kamasutra as a book of sexual position whereas people outside India consider it as a complete manual to how to live a good life. Kamasutra mentions the existence of sodomy and third sexual nature which is different from a heterosexual norm. At present the third sexual nature is practiced by eunuchs in India who are who though genetically male, look, dress, and act like females. Although Hijras have been a part of India for over 4000 years but due to prejudice and discrimination they have to remove their sexual member in order to complete their female identity and to engage in sexual activity which is not considered as homosexuality. The non recognition of this community in India results in the violence, hatred and being disowned by the family. This discrimination has not remain untouched with the royal class of India, as mentioned by Vikram Seth the founder of India's Mughal Dynasty Babur in his autobiography speaks how he had not interest in the woman and developed a strange inclination towards market boy named Baburi. Seth calls the accounts "very moving", while others may find it to be quite scandalous.²⁴

IX. Conclusion

Some arguments are based on highly controversial assumptions, for example, the assumption that laws should not be based on "controversial conceptions of the good" or that homosexual conduct is not wrong²⁵ but these arguments are not enough to legalize homosexuality because to convince the average people we need to have political argument because indirectly it is the state which is governing our life through law. Earlier Section 377 was enacted to prevent morality and decency in the society but at present it has been used by the police and other law enforcement agencies to harass those who enjoy alternate sexual orientation. On the same page, thought of India's legislatures regarding reservation is same with the existence of Section 377 of IPC, despite of the existence of homosexuality in ancient India and current practice of it which made it repugnant to the emerging modern trends. In the other parts of the world where LGBTs are allowed to live with freedom, integrity and dignity, India has failed to recognize gay behavior as normal and

²⁴ India Reminded of Its History and Homosexuality, Earnestine Jones, India, World, 2013.

²⁵ Alex Rajczi, *A Populist law journal. Argument for Legalizing Same-Sex Marriage* 91, 475-505, (2008).

acceptable. The institution of marriage and laws related with it have been changed and this can be seen in the laws enacted by Hindu Marriage Act which talks about the marriage between two consenting equals whereas India fails to recognize same sex marriage because it treats as two different changes which are not analogous but of two different kind. Advocates of heterosexuality argues that because men and women are able to procreate therefore they should be allowed to get marry and homosexuals should be excluded from the society but this concepts fails to meet the fundamental Human rights of homosexuals. The Khajuraho Monuments, the Kama Sutra and Babur's autobiography are only a few remnants of that history and contain only a few of the evidences of India's homosexual past then how the upholding of section 377 has pushed India as a country backward in time. Apparently a push further back in time may be exactly what India needs. Perhaps reminding the country about its liberal and tolerant past will be exactly what India needs to help it overcome prejudices.

The logo for IJESLS is presented on a stylized, aged scroll with a yellowish, parchment-like texture and slightly irregular, torn edges. The text "IJESLS" is rendered in a large, bold, grey, blocky font with a thin white outline, centered horizontally across the middle of the scroll.

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