

Original Research Article

Evolutionary Social Contract of Homosexuals in India

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Abstract

Homosexuality is predominantly prevalent since the ancient era and has continued to prevail until now. The study of an evolutionary social contract of homosexuals focuses on the vicious circle of atrocities, roadblocks and interpersonal relationships between the community member and the other institutions in society. It tries to analyse the acceptability and adaptability of the public toward minuscule minorities of homosexuals with the changing legal scenario. This study provides a comparative analysis of the public, ranging in the age structures of 35+ years and less than 35 years over the concept of homosexuality and verifies the evolving social contract.

Keywords: Homosexuality, Homosexuals, Social Contract, Section 377, Supreme Court Judgement, India

Date Received : 09th April 2019

Date Accepted: 10th June 2019

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Introduction

A human being is a sexual being, and the sexual existence of people has numerous features. From the day of birth onwards, a child is available to a wide range of social boost, regardless of whether lifeless or vitality, and as an individual develops, different occasions and natural elements affect that person. On our planet today, heterosexual intercourse is simply the favoured mode of intercourse for most adults.

However, numerous individuals participate in different types of sexual conduct, for example, suggestive appreciation for an individual from the same sex. Such people who routinely experience solid sentiments of this sort are often referred to as homosexuals (Devi. S, 1997).

Developmentally speaking, Individuals are conceived with no mark or generalisations. It is with the beginning of a development

that an individual begins to investigate its actual personality and as an individual develops; different occasions and ecological elements affect the person in question. The term 'gay' is gotten from the Greek word 'homo', signifying 'the equivalent' as opposed to from the Latin root 'homo', meaning the 'man' and it has different equivalents, both vernacular and specialised. The prospect of close physical contact with an individual with one's very own sex appals the vast majority. Significant findings uncover that extraordinarily a considerable number men have a gay involvement with some point or other in their lifetime. An individual can have a gay encounter without being dominantly gay, and such an encounter may go from an idea or a fantasy to real sexual contact. These encounters, in any case, might be or may not be identified with an individual's general sexual inclinations (Varma P., 1979). Homosexuality till 2018 was a criminal offence under Section 377 of the Indian Penal Code, but to the average individual in India, homosexuality is 'unnatural', an unyielding bad habit and 'moral corruption'.

Problem Statement

The study makes a minuscule effort at highlighting the vulnerability of the minorities of Homosexuals within society. It tries to analyse the parameters for 'Homosexuals being a Repressed Subculture' throughout history. It collects accounts in the form of

responses from individuals that have a positive or negative outlook on the concept of homosexuality.

Review of Literature

Homosexuality has existed ever since written history began. The ancient Indian moral code may seem, by all accounts, to be unpleasant to current sexologists as the old Indian Penal Code was extremely severe on 'unreasonable' sexual conduct. Still, human instinct being what it is, homosexuality and lesbian conduct were not by any stretch of the imagination missing in antiquated India. Indeed, even today, Indian citizens think that it is hard to imagine the general thought of homosexuality. Although homosexuality is the subject of widely well-known folklore, amazingly little is thought about it logically or truthfully. In history, genuine investigations on homosexuality have, in general, ignored, for the most part, to shield youngsters from too develop soon a consciousness of what is viewed as the most 'undesirable side of life' (Altman, 1971).

The Indian Penal Code, 1860 portrays segment 377-Unnatural Offenses-"whoever willfully has fleshly intercourse against the request of nature with any man, ladies or creature, will be rebuffed with detainment forever, or with detainment of either depiction for a term which may reach out to ten years, and will likewise be at risk to fine" (Bhatia P.,1992). The above area was tested with various claims documented over decriminalisation,

testing the article 14, 15 and 21 of the Indian Constitution. *Naz Foundation v. Govt. of NCT of Delhi* (WP(C) No. 7455/2001) was a milestone Indian case chosen by the two-judge seat of the Delhi High Court, which held that treating consensual gay sex between grown-ups as wrong doing is an infringement of fundamental rights secured by Indian Constitution. The decision brought about the decriminalisation of gay acts including consenting 'grown-ups', in the locale of the Delhi High court. This was later tested in the Supreme Court of India. Segment 377 of the Indian Penal Code, presented amid British guideline of India, condemns 'lewd intercourse against the request of nature'. This expression was deciphered to mean all structures of sexual movement other than hetero penile-vaginal intercourse.

Indian Supreme Court Judgments [2013-2018]

The court expressed that the judgment would hold until Parliament changes the law. Some uncommon leave petitions were documented in the Supreme Court mentioning a between time remain of the judgment, pending an intrigue. Be that as it may, the Supreme Court dismissed those solicitations. A group of offers were recorded with Supreme Court, testing the Delhi High Court judgment. On 27 March 2012, the Supreme Court saved decision on these. After restricting the judgment, the Attorney General G.E Vahanvati chose not to document any intrigue against the Delhi High Court's decision

expressing, "in so far as [Section 377 of the Indian Penal Code] was forced upon Indian culture because of good perspectives on British rulers". On December 11, 2013, the Supreme Court's two-part seat toppled the choice of High court. It is said that the 2009 request of the high court is "naturally unsustainable as only Parliament can change a law, not courts. The most recent Supreme Court judgment in 2018 has decriminalised consensual homosexuals' intimacy, with an amendment in the section, and is therefore treated as one of the landmark judgments in LGBT rights.

Theoretical Frameworks

1. Social Contract

As shown by the earlier studies, individuals at first lived in a 'trademark' condition with no managerial rules and laws. In the state of nature, individuals were faultlessly typical and free. These ordinary individuals simply had customary characteristics, characteristics are given to them basically, and these regular qualities, by then, must be the reason of making a prudent government (Akers, & Sellers, 2004). As demonstrated by the modern-day social contract, individuals in the state of nature are reasonable, independent and self-fascinated. They are ordinary in wording that they can appreciate their unique reality and control their destiny. They need

not waste time with the obedience and convenience of certainty. They are autonomous, as they have no typical social commitments (Siegal, 2000). They are typically free, as sensible individuals to do whatever they wish to do, with no hallowed, traditional responsibilities. A human as an individual devises their behaviour, which with subsequent interactions are associated with various groups, institutions, belief, etc. It led to the origin of continuous 'evolutionary social contract' over time.

2. Social Control

Social control involves managing systems with norms about how people should and should not continue and a game plan of formal and easy-going instruments used to control deviation from, and to raise acclimation to, these standards. Formal means of social control fuses law and the criminal value structure, in which the rules are definitively proclaimed and executed by and truly endorsed experts. Easy-going social control exists in the family, partnership get-togethers, and spots of love, neighbourhoods, and other distinctive get-togethers in the system. Social control depends on a broad measure on the socialisation, which is the path toward teaching and learning regards, principles and customs through a point of reference and the use of positive and negative social consents. Whereas no easy-going or formal social control depends totally on inside control (Ried, 2006).

The convergence of Theories

The association of criminological theories concerning the theme of the 'evolutionary social contract' of homosexuality can be well understood when we put some light over the criminality associated with the homosexuals in the Indian context. The theories, as mentioned above, explain the isolation, suppression, and exclusion of a minority that is segregated from society. The theories emphasise the issues and obstacles faced by a section of individuals due to the non-conference of the moral rules and regulations as set by the various agencies. The evolving legal scenario also puts doubt in the minds of the homosexuals in deriving the true social contract.

Method

Aim

The objective of the study is to analyse the factors that tend to reflect homosexuals as a repressed subculture considering the evolutionary social contract over the various legal course of action.

Instruments

Questionnaires were designed in both print and online mode to interview the LGBT community and to interview the public, respectively. The LGBT questionnaire was designed to address the issues of realisation, openness, support, adaptability, resistance and legal recourse in context with the public. The survey questionnaire constituted of 24-items relating to and

matching the criteria as mentioned above; and, the general public 16-item questionnaire was aimed at understanding the adaptability and acceptability of homosexuals in the society.

Sample

A sample of 300 research participants involved 100 from the LGBT community, 100 were from the general public under 35 years, and 100 were general public over 35 years in the year 2017-18.

The sample size of the survey concerning the community members were 100 individuals varying in their Sexual Orientation [SO] from Gay (20), Lesbian (5), Bisexual (25). Also, for studying 'Gender Identity' [GI], we recruited Transgender (50) respectively. The below mentioned Table 1 and Table 2 would depict the various responses for the parameters described in the methodology.

Table 1

The responses of the individual orientations are taken in two extremes, i.e. positive and negative; the neutral responses are excluded for now.

Factors\Orientation	Gay		Lesbian		Transgender		Bisexual	
	Positive	Negative	Positive	Negative	Positive	Negative	Positive	Negative
Realization	60	30	55	25	80	10	30	60
Openness	30	60	25	55	55	15	30	45
Support	28	62	18	74	62	24	32	58
Adaptability	42	38	32	48	22	62	52	26
Resistance	58	21	60	25	56	24	72	24
Legal Recourse	64	14	78	12	48	34	68	22

*figures in percentage

Table 2

The responses given through the questionnaire of the LGBT community are highlighted under six categories over three extremes, i.e. positive, negative and neutral responses.

Factors\Parameters*	Positive	Neutral	Negative
Realization	56.25	12.5	31.25
Openness	35	21.25	43.75
Support	35	10.5	54.5
Adaptability	37	19.5	43.5
Resistance	61.5	15	23.5
Legal Recourse	64.5	15	20.5

*figures in percentage

Table 3

The responses given through the questionnaire of the public are highlighted under six categories over three extremes, i.e. positive, negative and neutral responses. The below-mentioned table depicts the response of individuals ‘Below 35 years’ with a 55:45 ratio of the Male & Female.

Factors\Parameters*	Positive	Neutral	Negative
Awareness	76	21	3
Openness	42	45	13
Response	82	15	3
Acceptability	62	34	4
Legal Course	58	32	10

*figures in percentage

Table 4

The responses given through the questionnaire of the public are highlighted under six categories over three extremes, i.e. positive, negative and neutral responses. The below-mentioned table depicts the response of individuals ‘Above 35 years’ with a 70:30 ratio of the Male & Female.

Factors\Parameters*	Positive	Neutral	Negative
Awareness	32	28	40
Openness	24	32	44
Response	18	32	50
Acceptability	12	23	65
Legal Course	24	37	39

Result and Discussion

The study is focused on analysing the factors that suggest ‘Homosexuals as the Repressed Sub-Culture’. The factors were envisioned from the responses gathered through the cluster of individual's admissions as responses. The ‘Positive’ or ‘Negative’ response towards the parameter described in the methodology depicts the tendency

to conclude the subject as a repressed subculture within the society.

Analysis

The responses were judged by various parameters that analysed their attitude towards the topic of homosexuality. The analysis of the data gathered can be explained with the help of Table 1.

A. Factors depicted by the LGBT community as highlighted through their responses

Concerning the realization of the orientation and Identity by the community members, Transgender and Gays accumulate the most positive responses ranging from 60 to 80 percent, respectively. The parameter of openness is relatively low in each orientation, but it accounts for more than 50% within Transgender. The criteria of support from the family and friends can be witnessed the highest within the Gender Identity of Transgender accounting to more than 60%. The adaptability quotient stays highest with the Bisexual orientation accumulating in 52 %. The factors relating to resistance from the society and the legal recourse from the criminal justice system inclines on a positive note towards Bisexual with close to 70% in both the heads, respectively.

The cumulative analysis of the LGBT community accounts for the parameters as 56.25 % of the community members was aware of their orientation during an early age and was realised by themselves. Also, 43.75% of the members have shown a negative response towards being public about their orientation, and 54.5% of the members lacked public support over their sexual orientation. The Adaptability clause within the community members from the 'general public' has shown a negative trend accounting to close to 44%. Close to around 65% of community members feel resistance from the

'general public' in day to day routine over their orientation, and an approximately same percentage of community members have encountered a cordial response from the criminal justice system over their sexual orientation over issues related to it.

This provides an overview of the perspective towards the LGBT community that needs a varied outlook concerning the evolutionary culture of various age groups.

B. Comparison to responses from Individual below and above 35 years

The cumulative analysis of the responses from the general public ranging from individuals above 35 years of age and individuals below 35 years of age accounts concerning the parameters as 3/4th of the individual below 35 years are well aware of the topic of homosexuality as compared to 1/3 of the individuals above 35 years. 43% of the members below 35 years have shown a positive response towards being open about homosexuality within the family and friends as compared to 24% of the later age category. More than 80% of the individual below 35 years show support over the orientation as compared to only 18% with the later age category. The Adaptability clause with the community members from the 'general public' above 35 years has shown a negative trend accounting to close to 65% as compared to 80% positive trend with the age bracket less than 35 years. Also, 65% of the individuals

less than 35 years have acknowledged a cordial response of criminal justice system towards the LGBT community as compared to a 70% of negative rating including no response by the individuals above 35 years.

C. Comparison to responses from Individual below 35 years and the LGBT community

The cumulative analysis of the responses from the 'general public' ranging from individuals below 35 years of age and members of the LGBT community shows a positive relationship over the parameters. It indicates that 3/4th of the individual below 35 years are aware of the concept of homosexuality. 43% of the members below 35 years have shown a positive response towards being open about homosexuality within the family and friends as compared. More than 80% of the individual below 35 years show support to an individual's orientation. The adaptability clause with the community members from the general public less than 35 years has shown 80% positive trend. Similarly, 65% of the individual less than 35 years have acknowledged a cordial response of the criminal justice system towards the orientation of the LGBT community.

D. Comparison to responses from the LGBT community and individual above 35 years

The cumulative analysis of the responses from the 'general public' ranging from individuals below 35

years of age and members of the LGBT community shows a negative relationship over the parameters. It shows that the rest are reluctant to acknowledge the issue. 24% of the members above-35 years have shown a positive response towards being open about homosexuality within the family and friends. Close to 18% of the individual below- 35 years show support over the orientation of an individual. The Adaptability clause with the community members from the 'general public' above-35 years has shown a negative trend accounting to close to 65%. The individual above-35 years has acknowledged a neutral response of the criminal justice system towards the LGBT community.

Discussion

The above analysis shows the various parameters and their subsequent response by the members of both the community and the 'general public'. The trend shows that even if the community members have realised their sexual orientation and gender identity, but a minority proportion is open and is being supported by the 'general public'. The acceptability and resistance factor are not on a positive note for the community members due to the widespread moral norms. It reflects an exclusion from the society of the community members from the desired social contract.

Concerning the comparative study of the 'general public' above 35 years and below, it can be highlighted that the response from

the individuals below the age of 35 years has accounted on a positive note as compared to the individual above 35 years. The conservative or stereotypical ideology holds itself as a major setback to the individuals above 35 years to portray a negative image of homosexuality. The individual below 35 years can primarily be referred to as youth have accessibility to the latest technology and are aware of the current affair through social media holds a cordial and individualistic approach over the issue of homosexuality. It's expected that the recent Supreme Court judgment may invoke a change in the evolutionary social contract amongst different age groups.

The findings resonate the theoretical framework providing the LGBT community as a subculture with have a distinct social contract with individuals below 35 years of age and above, respectively. The evolving legal course of action by criminal justice machinery through various judgments revolutionised the perspective in the different age groups as reflective in the finding of the study. This study provides an outline towards the stark difference in the outlook of the diverse subcultures of the society with their social contract

perceptions towards the LGBT community.

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