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THE LEGAL TALE OF HOMOSEXUALS IN INDIA

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Summary

The history, law and views on sexuality in India represent a difficult journey through culture, religion and tradition. Ancient Indian texts such as the Kama Sutra acknowledged same-sex relationships, but British colonial laws introduced gender-based crimes such as Section 377 of the Indian Penal Code of 1861, until the Indian government ruled against racism. Protests and legal issues, including the Navtej Singh Johar decision, have played a significant role in promoting LGBTQ+ rights in India, but overall equality and acceptance remain a constant struggle.

Introduction

Sexuality is understood as sexual attraction towards individuals of the same sex or the same gender and has different interpretations and views across cultures and histories. In many societies, including ancient India, the relationship between the sexes has been accepted and often celebrated in literature, religious texts and art. However, the advent of colonial rule introduced many Victorians, which led to the criminalization of homosexuality. This research paper explores the history, legal and social aspects of homosexuality in India and highlights the significant changes in attitudes and laws over time.

Historical Background

Sexuality in India has a deep history influenced by culture and religion. Ancient Indian texts such as the Kama Sutra recognized same-sex relationships and outlined an understanding of sexuality. However, with the British colonization in 1861, Section 377 of the Indian Penal Code criminalized "carnal knowledge contrary to the order of nature", marking the beginning of a long period of legal and social oppression of LGBTQ+ individuals in India.

Traditional Views on Homosexuality

Traditional Indian society has many views on homosexuality. Information about same-sex romance is found in old books and stories, citing historical decisions. However, colonialism

and religious conservatives gradually pushed these relationships into immoral or amoral areas by encouraging homosexuality. Despite these changes, some communities, such as the Hijras, have preserved traditions that reflect India's historical relationship with gender and sexuality.

Legal Landscape

The legal landscape surrounding homosexuality in India has changed significantly in recent years. Historically, homosexuality was punishable under Section 377 of the Indian Penal Code, which carries the death penalty for “indecent offences” including same-sex sexual acts against women. However, in a landmark decision on September 6, 2018, the Supreme Court of India upheld homosexuality through the Interpretation of Section 377. This is a significant step towards equality and non-discrimination. Despite these advances, same-sex marriage and adoption for LGBTQ+ individuals are still not recognised in India, creating legal and social problems for the community. The fight for equality and social acceptance continues as advocates push for comprehensive reforms that would guarantee the full rights of LGBTQ+ individuals in the United States.

Colonial Era to Independence

During British rule, Article 377 criminalized homosexuality. This policy continued to be implemented even after India's independence, reflecting the healthcare system of the time.

Legal Challenges and Decriminalization

Activities in the early 2000s began in 2009 when the Delhi High Court ruled in *Naz Foundation v. Government to sanction homosexuality*. NCT of Delhi. However, this decision was overturned by the Supreme Court in 2013. The Union of India decriminalized consensual homosexual relations and in this regard declared Article 377 unconstitutional.

Post-Decriminalization and Ongoing Challenges

Despite decriminalization, social acceptance remains inconsistent. The exclusion of Section 377 from the new *Bharatiya Nyaya Sanhita (BNS)* 2023, which does not address sexual harassment of men and transgender people, highlights the legal challenges that have been delayed. The absence of clear protection for these groups highlights the need for legal reform to ensure equality and justice for all.

Social Attitudes

Indian society's views on sexuality are influenced by religion and culture, which many believe are contrary to traditional values. This stigma often leads to discrimination in the family, at work, and in relationships. However, in 2018, a renewed focus on LGBTQ+ issues and judicial decisions began to change public opinion, especially among young people and in urban areas. The challenge of overcoming unfounded prejudices and gaining widespread acceptance remains.

Activism and Progress

Activism is key to supporting LGBTQ+ rights in India. The campaign against Article 377, coupled with increased visibility through media and public events, has played a significant role in changing the culture. The 2018 gay judgement marked a significant legal victory, but the fight for broader rights, including marriage equality and non-discrimination, continues. The legal framework for LGBTQ+ rights was also strengthened in the landmark *Puttaswamy v. Union of India*, Justice K.S.

Conclusion

The history of homosexuality in India demonstrates the interplay of culture, religion, and law. While the decriminalization of homosexuality in 2018 marked a significant milestone, the path to full acceptance and legal equality for LGBTQ+ individuals continues. Advocacy and legal reform are essential to address critical issues and ensure that all people, regardless of sexual orientation or gender, are treated openly and respected in Indian society.

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