



QUEER HISTORY, FEMINIST INTERSECTIONALITY & CONTEMPORARY RIGHTS

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INTRODUCTION

“I am no bird; and no net ensnares me: I am a free human being with an independent will.”¹ - Charlotte Bronte

The differences in the perception of the LGBT+ community over the years provide a pronounced insight and discernment into the concrete refashioning of mainstream societal attitudes towards the queer community. Convictions and attitudes towards the queer community result mainly from ethnocentric bias, albeit it should be viewed as a social role that individuals play in the broader structure of society. LGBT+ movements come under the broad purview of socio-legal movements, and the idea of gender and sexuality are in themselves objects of social creation. Therefore issues relating to the community have become of vital interest over the past few decades.

The abbreviation LGBT+ holds within it tortuous and often contradictory assortment of identities and agendas. This lack of congruence does not hinder the media’s description of the community as a unified

one. The binary model of sexuality is damaging and destructive for those individuals left outside the “normality” of heterosexuality. “Essentialist categories of sexuality and gender are often enforced by harassment and violence, as is clear in the case of violence directed against sexual minorities such as homosexual men.”²

Queer theory has been instrumental in distinguishing new objectives and battles within LGBT movements. It has also pointed out ways to understand sexual orientation and advocated for a break with the heteronormative model. Further, the application of nuanced feminist perspectives reads into the role of intersectionality viewpoint in order to evaluate and redress power disparities, social inequities, privilege, and subjugation.³

The purpose of this paper is multifaceted and seeks to find a coherence in the role of different ingredients of the LGBT. First, we will focus on significant aspects of Queer history. We will then delve into the impact of essential feminist standpoints and intersectionality. Finally, in the context of these, we will try to decode contemporary issues. This will be done by keeping the abolition of section 377 and the demand for marriage rights as the nucleus of the paper while taking a blended and composite approach in critically analyzing the significance of the said focus. Finally we will understand the bias against homosexuality in the name of fundamentalist Hinduism.

¹ Brontë, C., 2006. *JANE EYRE; ED. BY STEVIE DAVIES*. Penguin Books.

² Tomsen, S., 2013. *Violence, prejudice and sexuality*. Routledge.

³ Few-Demo, A.L. and Allen, K.R., 2020. Gender, feminist, and intersectional perspectives on families: A decade in review. *Journal of Marriage and Family*, 82(1), pp.326-345.



HISTORY: STONEWALL RIOTS AND CHRISTOPHER STREET LIBERATION DAY

“The spirit that emerged outside a Mafia-run bar in 1969 became the pulse of the gay community and inspired not just an annual parade but ways to express gay pride in individual lives. Stonewall happens every day”⁴-Ann Bausum

The history of homosexuality can be traced to the Mesolithic rock art in Sicily, showing male pairs interpreted as depictions of male homosexual intercourse back in the 9th-millennium BCE – 5th-millennium BCE.⁵ However, the paper will be dealing with one of the more recent and most critical social movements for change: the Stonewall Riots of 1969. The building on 53 Christopher Street was much more than a mere architectural product.⁷ It was the only sanctuary for the LGBT community to be their true selves. The Stonewall Inn was their abode of acceptance filled with the enchanting atmosphere of the jukebox, the ball, where queer people would be free of their cages.

Back in the 1960s, raiding gay bars was a common phenomenon, with the police threatening and beating up the clientele and the staff. Nevertheless, when Stonewall Inn

was raided in the early morning hours of June 28, 1969, things took a turn for the unexpected. This time, the Queer Community decided to fight back, with lesbians and transwomen leading the protest. The numerous arrests and clashes over the last few days had made the people reach the top of their fury. Despite being destroyed and thrashed, Stonewall reopened the next day, only for the police to inflict harm and tear-gas the people.⁸ However, over the next few nights, queer rights activists returned and stood their ground.

In 1970, on the one-year anniversary of the raid, many activists including Craig Rodwell commemorated the event with the “Christopher Street Liberation Day”, which is now acknowledged as the first gay pride march.⁹ Since then, this has been a yearly celebration, although only in recent years have transgender people and black people of colour been widely recognized for their pivotal role and contribution.

Although the Stonewall uprising was not the start for the gay rights movement, it was an invigorating moment for LGBT political and legal activism, birthing numerous gay rights organizations, including the “Gay Liberation Front, GLAAD (formerly Gay and Lesbian Alliance Against Defamation), Human Rights Campaign and PFLAG (formerly

⁴ Bausum, A., 2016. *Stonewall: Breaking out in the fight for gay rights*. Penguin.

⁵ Starnini, E., 2002. Margherita Mussi, Earliest Italy. An Overview of the Italian Palaeolithic and Mesolithic. (New York: Kluwer Academic/Plenum Publisher, Interdisciplinary Contributions to Archaeology, 2001, 399 pp., index included, hbk, ISBN 0 306 46463). *European Journal of Archaeology*, 5(3), pp.372-373.

⁶ Schott, L., 2016. *Gay awareness: Discovering the heart of the father and the mind of Christ on sexuality*.

⁷ Akash Nath et al., *Safe Spaces in the LGBTQ+ Community* (2020), <https://hardcoremeninsky.netlify.app/a-mental-article16-safe-spaces-in> (last visited Sep 28, 2021).

⁸ *Ibid.*

⁹ Blakemore, E., 2020. How the Stonewall uprising ignited the modern LGBTQ rights movement. *National Geographic*. <https://www.nationalgeographic.com/history/article/stonewall-uprising-ignited-modern-lgbtq-rights-movement> (last visited Sep 29, 2021).



Parents, Families and Friends of Lesbians and Gays”)¹⁰.

The Stonewall Riots of 1969 therefore, play an important and significant role in queer history even decades after. It is still seen as a revolutionary turning point that electrified and energised the gay rights movement that has secured widespread recognition of LGBTQ rights in the United States and that continues to fight for equality around the world.¹¹

INTERSECTIONALITY IN QUEER AND FEMINIST MOVEMENTS

“We are living in a world for which old forms of activism are not enough and today’s activism is about creating coalitions between communities.”¹² - Angela Davis.

The notion that prevails in society is that the sex assigned to us at birth defines our gender. Both this and the subsequent gendering decide and dictate our gender role and social orientation as social beings.¹³ Anyone who deviates or challenges the said pattern is likely to experience devastating consequences that exhibit themselves in the form of violence, ill-treatment and discrimination of women and LGBT+ people.

Coming to the question of feminist and LGBT intersectionality, it becomes necessary to understand the commonality of the nexus. The feminist movement has played an important role in questioning the belief that our sex and gender identity define our roles in society. Owing to the feminist movement, the inherent gender-based discrimination, and externally perpetuated violence have been dismantled for centuries. The nexus arises out of a simple notion that the discrimination and ill-treatment of women and LGBT folk have the exact root cause. Everything is about sex and gender and should therefore be tackled together.¹⁴

The amalgamation of third-wave contemporary feminist activism arises out of the lived experiences of feminists in recent times who have been brought up in a world that is allegedly out of a need for social movements because “equal rights” for different minority groups - racial, sexual, and women have been recognized and guaranteed by law in most countries.¹⁵ However, the patent and noticeable gap between law and reality reveal the urgent necessity of both old and new forms of activism.

Increasingly, therefore, feminists have realized the importance of coalitional politics, including other groups based on their shared but varying experiences of oppression rather than their specific identity. A key goal

¹⁰ Stonewall Riots, *History*, <https://www.history.com/topics/gay-rights/the-stonewall-riots> (last visited Sep 29, 2021).

¹¹ See *Supra* 7

¹² COLONIZE THIS! YOUNG WOMEN OF COLOR ON TODAY’S FEMINISM, (Daisy Hernández & Bushra Rehman eds., Revised and updated edition ed. 2019).

¹³ Ehrt, J., Director of Programmes. “Gender Is Where the Feminist and LGBTI Movements Meet. Here’s Why.”. In *World Economic Forum*

<https://www.weforum.org/agenda/2019/07/gender-where-feminist-movements-and-lgbti-movements-meet/> (last visited Sep 29, 2021).

¹⁴ *Ibid.*

¹⁵ Kang, M., Lessard, D., Heston, L. and Nordmarken, S., 2017. *Introduction to women, gender, sexuality studies. Independent*, <https://courses.lumenlearning.com/suny-introwgss/chapter/third-wave-and-queer-feminist-movements/> (last visited Sep 29, 2021).



for the third wave is “the development of modes of thinking that can come to terms with the multiple, constantly shifting bases of oppression concerning the multiple, interpenetrating axes of identity, and the creation of a coalitional politics based on these understandings.”¹⁶

SCRAPPING OF SECTION 377

“The first step on the long path to acceptance of the diversity and variegated hues that nature has created has to be taken now by vanquishing the enemies of prejudice and injustice and undoing the wrongs done so as to make way for a progressive and inclusive realisation of social and economic rights embracing all and to begin a dialogue for ensuring equal rights and opportunities for the —less than equal sections of the society.”¹⁷

In 2018, the Supreme Court legalized homosexuality, overturning a hundred and fifty seven year ban on same sex intercourse. Earlier in 2009 the Delhi High Court had decriminalised homosexuality but this decision was overturned in 2013 by the apex court.¹⁸

Section 377 of the Indian Penal code was enacted during the British Administration in 1860. It was a manifestation of the ethos of societal values present in the Victorian Era.

Referring to unnatural transgressions, it stated that “whoever voluntarily has carnal intercourse against the natural order with any man, woman or animal, shall be punished for life.”¹⁹

What Section 377 failed to consider is that the sexual orientations of people are natural and an expression of their individual. It is surprising that it took us so many years to do away with this hateful colonial law, as decolonization is much more than just being granted mere independence. This also raises questions about the unrelenting obsession with colonial laws, which were never ours, to begin with.

It was not easy for petitioners in Navtej Singh Johar & Ors v. Union of India & Ors²⁰ to return to the Supreme Court and ask for their rights and the legitimacy for their love for a second time after it was taken away. Members of the LGBTQ+ community have already lived lives in fear, lives compromising and hiding their true selves. These people made brave decisions and showed immense faith in the constitutional provisions. The presence of these petitioners this time, instead of earlier, when Organizations filed PILs, added to the notion of having the people at the center of the change. The litigation that was put together as one for ‘right to love’²¹ resulted in a

¹⁶ Heywood, L. and Drake, J. eds., 1997. Third wave agenda: Being feminist, doing feminism. U of Minnesota Press

<http://www.jstor.org/stable/10.5749/j.ctttv3bd> (last visited Sep 29, 2021).

¹⁷ Navtej Singh Johar & Ors. v. Union of India, AIR 2018 SC 4321 (India).

¹⁸ Supreme Court decriminalises Section 377: All you need to know, *Times Of India*, [https://timesofindia.indiatimes.com/india/sc-verdict-on-section-377-all-you-need-to-](https://timesofindia.indiatimes.com/india/sc-verdict-on-section-377-all-you-need-to-know/articleshow/65695884.cms)

[know/articleshow/65695884.cms](https://timesofindia.indiatimes.com/india/sc-verdict-on-section-377-all-you-need-to-know/articleshow/65695884.cms) (last visited Sep 30, 2021).

¹⁹Vibhute, K.I., 2009. Consensual homosexuality and the Indian penal code: Some reflections on interplay of law and morality. *Journal of the Indian Law Institute*, 51(1), pp.3-31.

²⁰ See *Supra* 17

²¹ Sheikh, D., 2018. By protecting the expression of love and intimacy, the SC has protected the right to love, *Hindustan Times*

<https://www.hindustantimes.com/analysis/by-protecting-the-expression-of-love-and-intimacy-the->



victory judgement regarded as a ‘victory of love.’ The atmosphere of personal struggles and aspirations of the petitioners made the movement more than just a change in law, adding to it human feelings.

The Supreme Court judgement in Navtej Singh Johar & Ors v. Union of India & Ors is a testimony to the fact that ideas of morality and righteousness of the majority can and should not dictate the minority even if the minority is a single person. That being said, it is pertinent to point out that the LGBT community consists of about 7-8% of the Indian population.

In the 495-page judgement, the 5 judges acknowledged that the recognition of identity with dignity constitutes the liberty and equality of individual autonomy for the people.²² Only when each and every person is emancipated from the parochial and narrow ways of thinking, notions tinted with prejudice, and bigoted perceptions, can we as a society call ourselves truly free and advocating development.

STRUGGLE FOR MARRIAGE RIGHTS

“It is through diversity that we will have different kinds of storytelling and the law will learn to reflect the country that it is meant to speak for.” - Menaka Guruswamy

In spite of India’s decriminalization of gay sex, the journey toward absolute and unprejudiced acceptance of Queer rights is complicated and full of hindrances. In

general, queer activists and the queer population are striving for the unimpeded right to marriage. If left out of the institution of marriage, people are discriminated against in a lot of ways. The right to marriage rests on a straightforward and fundamental notion that all citizens of the country should be able to choose whom they want to share their lives with. Apart from this, marriage also provides the same self-determination, dignity, and equality for queer people as for cis heterosexual people. Further, the kin-based social structure that prevails in a country like India makes marriage one of the most significant determiners of the nation’s social fabric.

The demand for gay marriage rights in India has grown considerably in contemporary times, owing to the striking down of Section 377 in 2018 and the landmark decision in NALSA Vs. Union Of India, where the apex court legally recognized a “third gender” for the first time.²³

Unfortunately, however, the Government has on multiple occasions made problematic statements, pointing to their ignorance. In an affidavit to the Delhi High Court, the Government said that in India, marriage is a “bond between a biological man and a biological woman” and that question of granting same-sex marriage legal recognition should be left to the discretion of the legislature.²⁴

In May 2021, the Centre argued against the urgent hearing of pleas seeking recognition to

sc-has-protected-the-right-to-love/story-R8xQfSOc9xfmkER9QrP0IK.html (last visited Sep 30, 2021).

²² See *Supra* 17

²³ NALSA v. Union of India and Ors, AIR 2014 SC 1863 (India).

²⁴ Mandhani, A., 2021, Gay marriage not a fundamental right, wedding a bond between man, woman — Centre to Delhi HC, *The Print* <https://theprint.in/judiciary/gay-marriage-not-a-fundamental-right-wedding-a-bond-between-man-woman-centre-to-delhi-hc/611698/> (last visited Sep 30, 2021).



same-sex marriages in India under various personal laws, saying that "You don't need marriage certificate for hospitals, nobody is dying because they don't have marriage certificate."²⁵ This statement can be completely rebutted because so many couples in a living relationship with their partners were and still are unable to get medical insurance during covid because the insurances cover only couples of the opposite sex. Also, there were difficulties in getting admission in hospitals and availing medical treatment. More importantly, the urgency of the matter should have ideally been considered and neutrally decided by only the court.

HINDUISM AND HOMOSEXUALITY

Homosexuality has, for a long time now, been portrayed as a western phenomenon by the right-wing Hindu nationalists. Homosexuality, according to Narendra Modi's BJP government's Subramanian Swamy, "is not a normal thing." After Section 377 was struck down, the Rashtriya Swayamsevak Sangh or the RSS, an armed Hindu nationalist group, declared that same-sex marriages and relations do not align with nature.²⁶

These perspectives on homosexuality are unfounded, baseless, and uncorroborated. From as far back as 4000 B.C, in the Vedic period, Hindus have a history of embracing a plethora of thinking on varieties of gender

and sexuality. Hindu texts have mentions and stories on gender morphing creatures and same-sex love. The Hindu deity Shiva is sometimes worshiped in his 'Ardhanarishvara' form, a multi-gendered figure composed of him and his wife, Parvati.²⁷

Mentions of the third gender in texts from 1500 B.C. and the theme of male-male attraction in pre-colonial Urdu poetry are other examples of a rich, fluid history. A character Svairini in the erotic book Kama Sutra is a free woman who lives in union with another woman. Other examples are the depiction of same sex orgies and erotic architecture. The hijras and eunuchs held high-ranked positions in Mughal courts in the 16th Century.²⁸

CONCLUSION

The paper has given us a comprehensive insight into the intricacies of the LGBT movement, its history, and its relevance in contemporary times. The importance of intersectionality when dealing with related issues is immense, as shown in the paper. Further, the NALSA judgement and Navtej Singh Johar judgement are progressive elements. They decided upon the issue at hand, but they even laid down the basic groundwork to confer a plethora of other civil rights that were not available to the LGBT community earlier and only constricted to cis heterosexual individuals. Further, since

²⁵ Agarwal, S., 2021, Nobody Is Dying Because They Don't Have Marriage Certificates' : Centre Opposes Urgent Hearing Of Plea For Same-Sex Marriage Recognition, *Live Law*, <https://www.livelaw.in/top-stories/centre-argues-against-urgency-delhi-hc-lea-for-same-sex-marriage-recognition-174584?infinite-scroll=1> (last visited Sep 30, 2021).

²⁶ Bhatt, A., 2018, India's sodomy ban, now ruled illegal, was a British colonial legacy, *The Conversation* <http://theconversation.com/indias-sodomy-ban-now-ruled-illegal-was-a-british-colonial-legacy-103052> (last visited Sep 30, 2021).

²⁷ *Ibid.*

²⁸ *Ibid.*



heteronormative ideas are deeply embedded in society, there is a strong need to change at the roots. The state should strive to give up on its Right-wing Hindutva propaganda and pass new and amend old laws to make them inclusive of different spectrums of sexuality and gender.

