



## LEGAL RECOGNITION OF SAME SEX MARRIAGES: AN ANALYTICAL STUDY WITH SPECIAL REFERENCE TO USA AND INDIA

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### ABSTRACT

Gender- neutrality issue had been one of the major burning issues in the current scenario. We always used to hear that '*Marriages are made in heaven*'. It is a general perception (especially in Hindu mythology) that marriage is a sacramental union or a legal contract between two people (of different genders) to procreate children. In 2018, one of the commendable jobs had been done by Indian Supreme Court by striking down age old arbitrary colonial made rule of criminalizing same sex intercourse referring it as unnatural offence under sec. 377 of IPC. SC held the section in contravention of Art. 14, 19 and 21 of COI. The centre of attraction of this paper is the efforts made by LGBTQ community in establishing their separate identity in the eyes of law as well as we will see judicial journey of legal recognition of same sex marriages. Further on, we are going to study what struggles they are still facing in present world.

### INTRODUCTION

Marriage legalizes the sexual relationship between the spouses. Society does not accept the homosexual relation i.e. relations between two couples of same sex. Earlier, sexual intercourse with same sex had been categorized under unnatural offence and criminalized under sec. 377 of IPC, 1860.

However, researches have proven that it is natural and due to genetic factors not under the control of humans. Moreover, UNHRC had also focused on grave issue of violence and discrimination amongst people on the basis of sex orientation.

Sexual orientation or gender discrimination has been one of the biggest global issues. Discriminating a group of community or denying them from exercising their basic human rights on the basis of their sex orientation is retracting their humanity. We keep out saying equality among and for all but in reality, we have developed feeling of hatred for third gender people. Third gender refers to people belonging to LGBTQ (Lesbian, Gay, Bisexual, and Transgender Queer) community.

Today, even there are many countries where LGBTQ rights have not been recognized and the communities members are not given that amount of respect which they ought to be and are discriminated. In 1989, Denmark became the first ever country in the world to give legal recognizance to the LGBTQ rights. Finally in 2018, Indian Supreme Court took an initiative towards recognition of LGBTQ rights by decriminalizing sec. 377 of IPC, 1860 and legalized the same sex marriage under Special Marriage Act, 1954.

Basically, same sex (or gay) marriage is defined as union of two people who belongs to same sex or gender. In current era, on 1<sup>st</sup> April 2001, Netherlands became the first country to legalize the same sex union. There are 29 countries who have accepted the same sex marriage like Australia, Canada, Columbia, Finland, Denmark, India, Norway, etc. It had been seen that majority times the groups who supports the LGBTQ rights and



same sex marriages are Human Right Organizations while religious group plays the important role of opposing the idea. In 2019, Taiwan bagged the status of first Asian country to legalize gay marriages.

### **PROSPECTS OF SAME SEX MARRIAGE (SPECIAL REFERENCE TO USA)**

Legislation was introduced during the presidential tenure of Bill Clinton known as Defence of Marriage Act which accepts only heterosexual marriages and does not believe in giving federal benefits homosexual couples. However, in June 2013, US SC outlawed those provisions which were not providing the benefits to homosexual couples. USA had been spectator to an exceptional transformation towards the recognition of LGBTQ rights. But the track was very tough. In 2019, 3 cases (i.e. Zarda, Bostock and Harris case) (in which 2 cases were filed by gay employees who were out of their jobs because of their sex orientation) raised common issue that whether the provision under Title-VII of Civil Rights Act, 1974 regarding the prohibition of discrimination against workers on the basis of religion, race, sex, color and national origin covers up the LGBTQ members also. Court answered in affirmative and recognizes that the Act covers up the LGBT employees too.

Various movements have been organized in order to get the civil marital rights and other liberties of same sex marriage for a long time but failed for at least 40 years. In the year 2004, only Massachusetts of USA permitted the same sex marriage. At first, same sex marriage had been legalized in 36 states

majority by court order (i.e.24). But later on, upto 2015, all 50 states have legally recognized gay marriage. Before legalizing the gay marriages, the discrimination against them was at huge level. They were being tortured and bullied by the other members of the society.

In the landmark case of **Bowers vs. Hardwick**<sup>1</sup>, Apex Court of US by majority of 5:4 upheld the constitutional validity of Georgia sodomy law which punishes the person who commits oral and anal sex in private although not expressly mentioned either of homosexual or heterosexual one. The judgment was overruled by **Lawrence vs. Texas** in 2003.

In 2003, US SC had given the landmark judgment in case of **Lawrence vs. Texas**<sup>2</sup>, where court had pronounced the laws of USA which are restricting the consensual oral sex between two adults, sodomy or any other kind of homosexual activity for being ultra vires to US Constitution. Court had also preserved the security of privacy of the LGBTQ community in USA. In this case, two men were found engaged in sexual intercourse and were arrested under Anti-Sodomy law. In ratio of 6:3, court struck down the anti- sodomy law and legalizes the same sex acts in whole USA. Court recognized that same sex activity done voluntarily is legal and is covered under freedom and no government could interfere even if rights are not particularly mentioned anywhere in the US Constitution. The present case had countermand the decision given in Bower's case for narrowly interpreting the liberty of LGBTQ. Justice Kennedy opined that The Texas' anti- sodomy law was prohibiting the private consensual

<sup>1</sup> 478 US 186 (1986)

<sup>2</sup> 539 US 558 (2003)



intercourse with person of same sex which is directly infringing Amendment 14<sup>th</sup> of American Constitution. Private indulgence of two same gender people in sexual relations is covered under basic human rights.

**Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (CCRC)**<sup>3</sup>, in this, the Masterpiece cakeshop denied from baking cake for gay couples on their wedding ceremony. CCRC considered this as discrimination. But court reverses its decision considering the judgment as infringement of freedom of speech and expression and right to practice religion. Thus, the baker cannot be forced to bake the cake against his wishes.

In **Obergefell vs. Hodges**<sup>4</sup>, it was pleaded that state had prohibited the equal protection (given under 14<sup>th</sup> Amendment) of LGBTQ community by not permitting them to marry person of same sex. Court held that homosexual couples are free to choose their partners for marriage and even granted same rights which are given to heterosexual couples.

2000s onwards, country's judicial authority hears much of the disputes regarding the legal recognition of same sex marriage and LGBTQ identity rights. There are 3 main US leading cases in modern era regarding the recognition of same sex under Title VII of Civil Rights Act, 1964. Some leading cases are as follows-

**Altitude Express, Inc. vs. Zarda**<sup>5</sup>, here a person named as Donald Zarda was

suspended from his job as a skydiver at Altitude Express for being gay. Zarda filed suit against this suspension. Later on, he died in an accident and the suit was carried on by his Legal Representative. SC held that the LGBTQ members come under expression 'sex' in the statement 'prohibition of discrimination against workers.....sex....national origin, under the Title VII of CRA, 1964.

Similarly, in **RG&GR Harris Funeral Homes Inc. vs. Equal Employment Opportunity Commission**<sup>6</sup>, J. Gorsuch on behalf of majority ruled that Title VII of CRA, 1964 covers up the gay and transgender people also.

Again in case of **Bostock vs. Clayton County**<sup>7</sup>, where, Gerald Bostock was fired from his job after showed his interest in Gay softball League. Lower Court upheld that Title VII does not provide protection to third genders. On 15<sup>th</sup> June, 2020, US SC held that discrimination on the basis of sex orientation is also covered under the expression 'discrimination on the basis of sex' and hence Title VII extends upto gender identity and sex orientation.

### **MODERN SCENARIO IN USA**

It had been evident through case laws that in USA, the recognition to the relationship was not there in the ancient times. But with the modern changes and faster advancement, on June 2015, US higher judiciary gave constitutional right to marry to homosexual spouses/ couples. The latest judgment in Obergefell case had provided gay marriage, a

<sup>3</sup> 584 US(2018)

<sup>4</sup> 576 US 644

<sup>5</sup> 590 US(2020)

<sup>6</sup> 590 US(2020)

<sup>7</sup> 590 US(2020)



legal recognition within the whole territory. The verdict in this case was based on statutory interpretation (by judiciary) of 14<sup>th</sup> Amendment (which guarantees all its citizens equal protection of laws) and not limiting it to only opposite sex unions. According to the survey done by Pew Research Centre, the supporters of same sex marriages have been raised from 37% (in 2009) to 62% in 2017.

In 2012, President Obama became the first sitting President to support the gay and lesbian marriages as legal. Even the supporters of gay marriages argue for that homosexual marriage is no different than heterosexual marriages. This is what we called as marriage equality. This ideology was not among the ancient Americans as they think it as against religious sentiments and traditions. Moreover, the conservatives opined that a man and a woman as a couple form the base of the society as their union results in the procreation of next generation and a stable family. They consider same sex marriages as being against tradition. Today, also many religious rights' activists (except reform and Conservative Jewish) are not ready to accept homosexual marriages. Although major states have legalized same sex marriage, but still, there are certain regions left without legislation over the subject matter.

Gradual awareness has resulted into a major transformation of public opinion from opposing gay marriages to proposing the legalizing of LGBT rights. Now it is clear, that the evolution of same sex marriage is not very antique, even no traces of homosexuality being practiced have been found in ancient America. Whatsoever legal recognition and societal acceptance given to same sex union, is only through judicial precedents and case-laws.

## COUNTRIES ARGUING AGAINST SAME-SEX MARRIAGES-

Still there are many countries which did not have favoured legalizing of same sex marriage. The main reason is due to their religious belief. Few countries are as discussed below-

### Russia

Russia is counted under the list of the countries which does not recognizes same sex union nor give them any kind of rights as that of opposite sex couples. Even any attempt in order to introduce same sex marriage is also deemed to be as unconstitutional. In-fact, Russia is not the only nation in Europe which had prohibited same sex unions, others doing the same are Latvia, Croatia, Hungary, Poland, etc. In Russia, no organization, political activists promote same sex unions. A survey done by Institute of Comparative Social Research, only 5% Russians are favouring recognition of homosexual marriages.

However, today, homosexual had been legalized in Russia but still, more than this, people have higher anti- gay emotions. Same sex marriage is illegal. Even no protection is given in case of discrimination with LGBT community.

### IRAN

Iranian laws have not legally recognized the LGBT rights and Death penalty is given to mature person, while minor is punished with scourges and women with 100 scourges. Homosexual relations are forbidden. However, Iran permits the changing of gender through Sex Reassignment Surgeries and is 2<sup>nd</sup> largest record of SRS in the whole



world after Thailand. The main reason behind non-recognition is that Iranian laws are based on Islamic principles. Even death penalty can be given for same sex marriage as considered as sexual assault. No laws are made prohibiting discrimination against LGBT community. Iranian govt. believe that gays are being justified being tortured.

### AFRICAN COUNTRIES

Except South Africa (legalized in 2006), all other African countries (for ex- Rwanda, Kenya, Uganda, Sudan, Zimbabwe etc) do not have provide legal recognition to homosexual activity. Zimbabwe prohibits the acts of homosexuality. In Gambia, the hatred level against lesbians and gays are so high that, they are executed. The African countries consider it as inhuman and anti- natural. Sadly, in 2014, Jammeh consider LGBT as vermin and they are dangerous for human existence. Similarly, other African countries also consider homosexual acts as unnatural and thus, forbid it.

### SAME SEX MARRIAGES IN INDIA: Constitutional Approach

The traces of homosexuality can be seen even in the ancient India. The best example can be seen in Mahabharata, a character named as 'Shikhandi' who was actually born as female but later on, she became male to kill Bhisma in the fight. Even it has been believed that Bahuchara Mata is the goddess of fertility and adore by Hijras. Naradsmriti, Shrut Samhita and Kama Sutra had recognized the transgender people. Even, evidences of statutes in Khajuraho temples depict the homosexual acts of that time. The act of homosexuality was never an offence in the

ancient India but Britishers had made legislation criminalizing the homosexual relations. The feeling of anonymity against such community arose today has its origin from the colonial times. Currently, there are approx. 4.8 lacs transgender people (commonly known as 'Hijras') in India. After Navtej Johar case, homosexuality gain equal status and legalization of same-sex relations. They are given freedom to choose their partners and hindering such freedom is violating their privacy. But even today, these are viewed as taboos and major part of society is not ready to accept transgenders as part of our society.

Through Judicial Interpretation, in Indian Constitution (i.e. the supreme law of country) the rights of LGBTQ community had been inculcated under Art. 14 and 21 considering them as the third gender or we can say recognizing their sex orientation which is covered under Right to life (i.e a dignified life). Although having legal recognition from Indian Constitution, still Indian social had not recognized homosexual marriages considering it as against our conventions. Infact, in case of **Shakti Vahini vs Union of India**<sup>8</sup>, SC held that if one's liberty to choose is hindered, then it cannot be said that he is living a dignified life and is a direct violation of Art. 19 and 21. Moreover, ex- CJI J. Dipak Mishra had observed that every individual had right to union under Art. 21 and here 'union' does not include only marriages but union of any type be it physical, mental, sexual or pyschic one. It is believed that COI has a liberal character besides its dynamic nature. Hence, its periodical development is necessary in order that it will not degrade anyone's basic rights required for their dignified survival.

<sup>8</sup> WP (Civil) No. 231 of 2010



### INDIA'S TAKE ON LGBT COMMUNITY

Homosexuality had been matter of debate in Indian society since a very long time. Hindu's famous text Rigveda says *Vikriti evam Prakriti (unnatural is natural)*. But homosexuality was not openly discussed in previous Indian society, and recognized homosexual consensual acts as a punishable offence since 1860 resulting in spread of homophobia. Indian culture after the colonial era does not gave equal status to the third gender and discriminate them. In the modern era, Media (especially social media) and NGOs had played an immense role in giving equal status to the LGBTQ community provide them with the equal status, dignity along with maintenance of their privacy.

Even through films and documentaries, efforts are being made to prevent hatred against third genders amongst the society members and accept their sexual relations. In early films, LGBT characters have been portrayed but were in negative sense and creates negativity and hatred among the viewers. But, now, Several homosexual relationships have been portrayed (in a positive manner) in modern films. For example- Dostana, Ek Ladki ko Dekha toh Aisa Laga etc. In 2004, 'The Journey' (a Malyalam movie) was released, inspired by two real life lesbian lovers. Even there are several famous personalities in India who have accepted their sexual orientation openly that they belong to LGBT community. Like Vikram Seth (famous writer and son of former SC judge Leila Seth), Karan Johar (Indian film Director and producer), Swami Laxmi Narayan Tripathi (first transgender to represent Asia Pacific in UN), etc.

Further on, efforts put on by various NGOs, organizations like NHRC, and social right activists to decriminalize sec. 377 of IPC. On the other hand, various religious group leaders and spiritual leaders had opposed. Like Baba Ramdev had considered homosexual as bad addiction and can be corrected by doing yoga. Maulana Madni (Jamat ulema-e-hind) had spoken against same sex union by saying that family is consists of man and woman and not man and man or woman and woman. Disintegration of society would take place if same sex unions are recognized. Finally the Delhi HC in Naz Foundation case court struck down the criminalizing of same sex carnal intercourse.

Govt. had started many programmes and implemented many policies in order to give equal chance to every person providing equal opportunity to transgenders to indulge in almost all the fields. They had taken steps to provide security to the privacy of same sex marriages like that of heterosexual marriages. In 2017, Ministry of health had started a program named as 'SAATHIYA' which is peer education plan in which peer groups are educated regarding homosexuality, because adolescents develop feelings wither for same or opposite sex rapidly, which is normal. It is no wrong to express their feelings to someone whom the adolescent loves but in respectful way.

### CONSTITUTIONAL VALIDITY OF LGBTQ RIGHTS IN INDIA: THROUGH LEADING CASE LAWS

The legal battle for legalizing the LGBTQ rights started from the case of Naz



**Foundation vs. Govt. (of NCT) of Delhi**<sup>9</sup>, in which the petitioner an NGO named Naz Foundation Trust (India) filed petition challenging the validity of sec. 377 of IPC which criminalizes carnal intercourse against nature. Petitioner contends the legal recognition should be given to homosexual carnal relations between the two consenting adults and decriminalizing sec. 377 of IPC for being violative of Art. 14, 15 and 21 of Constitution of India. Delhi HC, for the first time, pronounces sec. 377 to be unconstitutional and partially struck down, on the grounds of violating the guarantee of equality (Art. 14), discrimination on the basis of sex (Art. 15) and injuring dignity and privacy of LGBTQ community (Art. 21).

The judgment given in **Naz Foundation case** was hugely criticized and in 2013, a case was filed **Suresh Kr. Koushal and ors. Vs. Naz Foundation and ors.**<sup>10</sup>, reversing the verdict held in Naz Foundation case before SC. The apex court revises and reversing the Delhi HC judgment stating reason that the issue did not require judicial involvement, upholding the validity of sec. 377 of IPC. Challenging the verdict of Suresh Koushal case, again a case was filed named **NALSA Vs. Union of India**<sup>11</sup>. In this case, SC recognizes transgender as third genders and gave them equal rights as those enjoyed by other members of the society. The verdict was appreciated as a major step towards gender equality.

Then in 2017, again a landmark judgment came in case of **(Rtd.) Justice K.S. Puttaswamy Vs. Union of India**<sup>12</sup>, in which SC held that Right to Privacy is included

under Right to Life and Personal Liberty, guaranteed under Art. 21 (along with Art. 14 and 19) of Indian Constitution and thus, broadening the definition of Right to Life. The judgment further stated that right to privacy is provided to every person no matter as to which gender they belongs. The judgment had provided a way for LGBTQ members to exercise their FRs and state could not restrict them from choosing their partners. While delivering judgment, J. D.Y. Chandrachud specifically stated that the basic elements covered under Privacy are preservation of personal intimacy, purity of family life marriage, procreating and sexual orientation. He even stated that all the individual (including third gender) have liberty and freedom, included in right to life and covered under privacy. Moreover, the Puttaswamy judgment is a progenitor to Navtej Johar case.

At last, in 2018 the case named **Navtej Singh Johar and ors. Vs. Union of India**<sup>13</sup> came, which changed the face of LGBTQ rights. On 6<sup>th</sup> December, 2018, constitutional bench led by ex- CJI Justice Mishra, partially struck down the provisions contained under sec. 377 of IPC, 1860 stating the reason that it violates the liberty of LGBT members. The court stated that every individual not matter belongs to which gender has the right to live with full dignity, autonomy and can make their personal decisions. The court said that everyone irrespective of their gender, has the right to choose their partners and with whom they are comfortable in indulging in the sexual intercourse. Infringing their liberty is a direct attack on their privacy.

<sup>9</sup> (2009) WP(C) No. 7455/2001

<sup>10</sup> (2013) C.A. No. 10972/2013

<sup>11</sup> (2014) WP(C) No. 400/2012

<sup>12</sup> (2017) WP(C) No.494/2012

<sup>13</sup> (2018) WP(Cri.) No. 76/2016



### MODERN SCENARIO IN INDIA

Although court had given recognition by legalizing homosexual marriage, but still the current scenario shows there is a dearth of acceptance by society members. 3 years have passed on, but still some people are against it arguing that it is against our Indian culture. Very recently, 2 separate PILs had been filed in before the Delhi HC regarding legal recognition of same sex marriage under Hindu Marriage Act taking plea that language of the Act does not prevent same sex marriage as well as it does not limit the marriage to a bond between man and a woman. Hearing over the matter was scheduled to the 8<sup>th</sup> January, 2020. The word 'between two Hindus' have been used and not particular about any sex. Neither sec. 5 of the Act advocates that a marriage is considered to be valid only when it takes place between a man and a woman. This scenario specifies that in India, although same sex carnal intercourse have been decriminalized but same sex marriage is yet to be recognized from practical point of view because even decriminalization of sec. 377 had been given in 2018 but still, the matters are being filed before court for legal recognition of homosexual unions.

There are different marriage laws in India which neither specifies that marriage should be between male and a female nor expressly prohibits the homosexual marriages. Further on, various ancient sculptures (like designs and statues in Khajuraho temples etc.) and scriptures gave us an idea about existence of homosexual activity in those times (although neither legalized nor criminalized). The Indian statutes have not yet expressly recognized LGBTQ as couples. This is the point where a homosexual hesitate in selecting life partner

of his choice. This will again be against basic structure of Constitution (i.e. right to life and personal liberty ultimately harming their privacy). But today, condemnly the situation is this that although technically, LGBTQ community had been recognized but most of them are not being accepted by their own family members. Today, they want the recognition and equal respect in the eyes of their own family members. This shows that even the verdict had been laid down by Country's apex court in 2018 but still India is not ready to leave its traditionalistic attitude towards LGBTQ community.

We can find in our Hindu holy books that marriage is union of two souls and soul does not have any gender then why, the community is not accepting that union could be of (apart from union between males and females) two males or two females also. Same sex marriage is not a matter of legality but mainly a matter of morality. Unless people did not accept this, then what could a legislation would do. There are variations in opinions of different HCs also. For eg. After Navtej Singh Johar's judgment, in 2019, Madras HC gave judgment allowing homosexual marriage to be included in the Act, but on the other hand, after 3 months, Delhi HC viewed that is parliament's concern and not court concern issue.

### PRACTICAL REALITY AFTER NAVTEZ SINGH JOHAR JUDGMENT:

#### Analytical approach

It is visible that whatever written is not actually being followed in practical life. We could see the practical reality is far apart from legal documents. Even today, people don't consider LGBTQs equal to their status and consider same sex marriage as alien culture which is corrupting Indian culture. Three



years have passed since LGBTQ got legal recognition, but still we could not see any further changes in other statutes recognizing their rights. For eg. if we see our personal laws (like Hindu Marriage Act, 1955, Special Marriage Act, 1956 etc.), there is no explicit recognition of homosexual marriages.

Moreover, marriage laws in India had not recognized certain rights of homosexuals which have been given to heterosexual couples like right to get their marriage registered, right to divorce, claim maintenance, or right to adoption of child, etc. Just providing right to sexual orientation is not sufficient, there is a need of social and legal recognition of their other rights to provide them with equal status as that of other citizens of country. There is an immediate need to take step regarding acceptance of few approaches in favour of homosexual marriages like, interpretation of subsisting laws in such way as to include homosexual marriages, making LGBTQ community, a separate group and giving space to their customs and marital practices (under the category of forms of marriage) just like we recognize Arya samaji marriages, few words in the Act needs to be re- interpreted like male and female needs to be replace with term like 'union of spirits' so that LGBTQ can also find their place in it. They should be given certain marital rights like adoption of child, right to file for divorce, etc. I, sometime, wonder that if one of their basic right (i.e. right to choose partner) is not being allowed to them, then what is the use of just giving sexual recognition to LGBTQ community.

Societal factors are another major aspect of personal laws not dealing with homosexual marriages. Society needs to change their approach towards same sex unions and

should not try to degrade it by considering it as a pollutant affecting our Indian culture. Choosing partner is the right of every person who had attained majority. Parents need to understand the choice (regarding partners) of their children and should not force them to indulge in such relations which they are not willing to keep. In order to keep their family reputation and preserve their orthodox thinking, such parents are spoiling two lives i.e. of their child as well as his partner.

Even we could see conflicts among different HCs, i.e on one side, Kerala and Punjab and Haryana HCs have recognized homosexual unions to remove the old fetters of humankind while on the other hand, Bombay HC in case of **State of Bombay vs Narasu Appa Mali**, held that personal laws could not be based on standards of fundamental rights, as personal laws are based on customs and traditions. Apart from this, the need is awaited from Union Legislature of our country, which has not been possibly yet due to critical thinking of some politicians who still had objections on homosexual union in private stretch. The most appropriate solution is to make required changes by way of amendments in these personal legislations.

We as a society need to understand that LGBTQ community also forms an immense part of our culture and nation. They could not be separated as they are the incarnation of 'Ardhyanarishwar' that means 'Lord whose half part is a woman' (referring to Lord Shiva and Goddess Parvati). We should respect everyone's choice because it indicates their further happy and comfortable life. Choosing partner of same sex is not a crime or any kind of misdemeanor but their basic right (which had even been recognized by our supreme law). In modern era, legality of same sex marriages is not the actual



defiance but the conservative attitude which we have within us.

### CONCLUDING REMARKS

Privacy is covered under human right and every human have the right to privacy as a part of their life. Marriage (either homosexual or heterosexual) is considered as private act and sacramental bond. But, still somewhere, around the globe, the way heterosexual couples get the respect, in the similar way, homosexual couples get hatred. This needs to be prevented. Every person had the right/ freedom to choose with whom they would be spending his or her whole life, which is covered under right to life.

If we do a comparative analysis between India and America, I must say that Indian culture had been evident of homosexual acts whereas, Christianity only believes in union between males and females. Even the traces searched in Hindu scriptures and sculptures gave us an idea of homosexuality being practiced in India. Even criminalization of act was done during British regime and not before. But as time surpasses, changes and awareness spread, legal rights have been provided to LGBTQ community in both the nations. But still there have been lot differences in practical application of the concept. It is really a sad ideology that, today, Indian society is not ready to accept the homosexual marriages considering it as not part of our Indian culture though, it had been proved that homosexuality had been practiced since a long time, meaning thereby, it is there in our Indian culture. On the other hand, recognition of homosexuality in America began from the judicial precedents and today, more than 60% people support same sex marriage. This is what the real change is. Only giving verdicts and

introducing legislation will not protect their privacy and earn them respect, rather people needs to accept their biological creation and respect them for what they are. This is what Indian needs to learn from Americans. We are not one to bind someone's life and personal liberty on the basis of customs. This is really sarcastic that people just hate other because he or she is not of their gender.

The one should not be prevented from exercising their liberty only on the ground of their sex orientation. Although, certain countries have taken initiative and legalizing the same sex marriage securing the privacy of LGBT members. But, until every single country recognizes the rights of homosexual couples, right to equality and privacy is meaningless. It is the high time where people should look into how LGBT community could be productive for our society instead of to which gender they belong.

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