

## **PEOPLE OF THE THIRD SEX**

My memory is still green, “goof up” by Centre on Gay rights’ was the title of the news article and as I read it, the little sagacity inside me took a sharp turn to the Vedic period where gay sex was normal and the members of LGBT community contentedly formed a part of the society. Amara Das Wilhelm, the author of Tiritiya Prakriti: People of the third sex, says, “The recognition of a third sex in ancient India and Hinduism is highly relevant in many ways. Our own modern-day society has only recently begun to understand sexual orientation, transgender identity, and intersex conditions, and our legal and social systems are just beginning to catch up with and accommodate such people in a fair and realistic way...yet ancient India had already addressed and previously resolved this issue many thousands of years ago in the course of its own civilization’s development. Indeed, there is much we can learn from ancient India’s knowledge regarding the recognition and accommodation of a ‘third sex’ within society<sup>1</sup>.”

Delving into the subject matter provides much ground for a proper evaluation of the modern Indian society which is in a predicament about the gay sex where a set of anti-gay rights activists and few other religious and political leaders are opposing it while on the other hand decriminalization of Sec.377 has garnered pretty good support from different sections of the society.

In 2009 when the Delhi High Court passed its historic judgement of decriminalizing Sec.377 of Indian Penal Code there was a huge hue and cry over it. The judgement which struck down Sec.377 as unconstitutional and made private consensual sex between adults of the same sex legal came as a

---

<sup>1</sup>Excerpt from Tiritiya Prakriti: People of the third sex.

rude shock to the religious fundamentalists and to many stereotyped minds while the members of LGBT community rejoiced the victory for their rights.

It has to be agreed that the 152 year old colonial era law still holds good even for the present day circumstances. But as it has been said “The grandest of all laws is the Law of progressive development. Under it, in the wide sweep of things, men grow wiser as they grow older and societies better” – Bovee, Christian Nevell, Law has to satisfy the needs of the society while keeping its sanctity intact.

Recently the Additional Solicitor General of India P.P. Malhotra, appearing for the Union Home Ministry argued in the Supreme Court of India that “Gay sex is highly immoral and against social order and there is high chance of spreading of diseases through such acts.” The justification he gave for his stand is that, “Our Constitution is different and our moral and social values are also different from other countries, so we cannot follow them.”

A close interrogation of his approach brings us to a point where we'll have to consider India as a “progressive society” which is falling astern 126 other nations of the world (India is the 127<sup>th</sup> country to decriminalize Gay sex) which have accepted homosexuality with open mind and where such relations are treated as completely normal. As Mr. P.P.Malhotra ‘rightly’ points out, India is different. It has “unique social and moral values” where once child marriage, sati system and prohibition of widow re marriage was more than accepted and where the honour killings, flesh trade and child labour etc, still prevails. But as he says, homosexuality is highly unacceptable. It destroys the morality of the society and various “diseases” just creeps into human body making the mankind vulnerable to all kinds of malevolence in the world.

The Union Home Ministry's demeanor is deplorable as it should be held responsible for taking such slapdash decisions over a sensitive issue like Gay rights where in its top Law officer makes incongruous statements and the very next hour it hastily brings out a press release claiming that, "the Ministry has not taken any position on homosexuality... Ministry of Home affairs has also not given any instruction apart from conveying the decision of the cabinet". In a country like India small statements are enough to create a big stir in the society. This being the situation, when a highly accountable Ministry commits such blunders it becomes more evident that the Centre is trying to flee from reality and is not capable of taking a solid decision over the matter.

The Union Health Minister Gulam Nabi Azad's despicable statement on Gay sex holds perfect alongside Mr. P.P.Malhotra's perspective where he said, "The disease of MSM (Men having sex with Men) is unnatural and not good for India society. This disease has come to India from foreign shores. Unfortunately, the number of "such people" is increasing day by day".

Incidentally what these two respected officials have forgotten is that the gay sex is not a 'disease', it is just a sexual orientation of a particular person. Their claims of it spreading disease is unjustifiable as communicable diseases like HIV AIDS is increasing largely due to unprotected sex and not because of same sex relationships. Even the National Aids Control Organization declared that it is open to the new developments taking place in the society like growing number of LGBT community. It has condemned the remarks made by Mr. Gulam Nabi Azad and has held that gay sex is not the only reason for increasing cases of HIV AIDS in India. Infact it has whole heartedly welcomed the decision of Delhi High Court regarding Gay rights and said it is now easy for them to reach the gays/lesbians and create awareness about the sexually communicable diseases.

Despite these positive developments the majority attitude towards Gay sex in the country remains depressive. How could we recede from the sculptures and carvings in Khajuraho and Sun temple of Konark that depict same sex behavior including mutual fellatio and orgiastic scenes<sup>2</sup>? Perhaps the believers of God have forgotten that Lord Shiva is also called as 'Ardhanarishwara' (i.e. half women) and the politically motivated are making the most out of the situation by raking on the ignorance towards the minority affairs (LGBT) to increase their vote bank consisting of the majority. In the middle of all these what has to done is left unadorned.

A man loving a man or woman loving a woman is not new and is definitely not a disease. Being Gay is not anybody's choice; it is what he/she is. The humiliation faced by the homosexuals and transgender in our country seems incessant. Acceptance into the mainstream society is what they are asking for which is certainly everybody's fundamental right. According to a source, majority of homosexual relations remain complicated because of the abuse meted by the society and not because of its very nature. Instead of treating the LGBT community as outcast, the society should believe in them for what they are and not for what their sexual orientation is. A person's worth should be measured by his character, faculty and munificence and not for any other aspects.

**Bindu N Doddahatti**

4<sup>th</sup> year B.A., LL.B

---

<sup>2</sup> Kalra G, Gupta S, Bhugra D. Sexual variation in India: A view from the west. Indian J Psychiatry 2010;52:S264-8