ABSTRACT

“Homosexuality: Debating issues in the light of Indian legal and social system: An analytical research”

The above mentioned topic of my research work is centered on the most controversial and stigmatized term ‘homosexuality.’

To introduce homosexuality is romantic or sexual attraction or behavior among the people of the same sex. As a sexual orientation, homosexuality refers to an enduring pattern or disposition to experience sexual affection or romantic attractions primarily to people of the same sex. It also refers to an individual’s sense of personal and social identity based on those attractions, behavior expressing them, and membership in a community of others who share them. The common term used for homosexuals are ‘gays’, ‘lesbians’, ‘bisexuals’, or ‘transgender’ and collectively known as LGBT people.

Homosexuality which is believed to be of western origin and culture has swept in India past a decade, with a striking force on our Indian society and culture. The legal battle concerning decriminalization of homosexuality has begun. Today it is the most sensitive, controversial and debatable issue of high concern as the onus to do justice lies on apex court which involves issues of fundamental rights of LGBT people in our socio-legal system. Homosexuality is considered as a taboo subject, by both Indian civil society as well as our legal system. Public discussion of homosexuality has been inhibited by the fact that sexuality in any form is rarely discussed openly in our country. Attitude towards homosexuality is overwhelmingly negative, however it is a starke reality that homosexual behaviour has always existed in India, sometimes in the form which is culturally sanctioned such as, the Hijras, and other times in invisibility and silence.

Section 377 of Indian penal code, 1860 penalizes homosexual acts (both consensual and non-consensual). The Delhi high court in its landmark
judgment of Naz foundation (India) Trust, 2009 decriminalized consensual homosexual acts of adults in private, and held that bare interpretation of section 377 IPC is violative of fundamental rights enshrined in article 14, 15 and 21 of Indian constitution. Prior to this landmark judgment, LGBT people were struggling underground for their existence and identity. The Delhi high court judgment went in their favour because of which they gathered courage and confidence to come out of the closet. Since 2009 till 2013, a lot of LGBT activism was seen in newspapers, media, social networking sites etc. Many celebrities, both national and international, have also stood by the side of homosexuals when it came to supporting them for their basic and fundamental rights. During these four years in India, people from all walks of life have come forward advocating for decriminalization of homosexuality.

Every year, the metropolitan cities of India like Delhi, Mumbai, Kolkata, Bangalore, etc have witnessed Queer pride parades, where the LGBT community along with its supporter comes on street to express their identity and existence, claiming better rights and protection from the government. The Delhi High court Judgment was applauded highly by the LGBT activist, supporters and experts with a parallel criticism from religious leaders, politicians and common man. Our learned Yoga guru, Baba Ramdev, and health minister in 2011 Mr. Ghulam Nabi Azad and many others have claimed that homosexuality is an unnatural act, a disease which can be cured. The homophobic Indian society was adamant to accept decriminalization of homosexuality, resulting in special leave petition filed in supreme court of India.

After four years of Delhi high court judgment, the supreme court of India in its latest judgment dated 11 December, 2013 gave its verdict and again re-criminalized homosexuality. The judgment by the bench of justice G.S. Singhvi and Justice Mukopadhyaya held that section 377 of Indian penal code does not suffer from any constitution infirmity. Also the apex court has passed on
the ball to parliament’s court by stating that legislature is free to delete and amend the law if they find it inappropriate and un-necessary.

The government had filed a review petition in early 2014 which was also dismissed. Now a curative petition is pending before supreme court of India and the future of LGBT in India is in the hands of Indian judiciary. Till then the homosexuals have again become criminals in the eyes of law and has turned them back to their closet.

The objective behind this study is to analyze the homosexuality through different angles. The genesis behind its evolution & development, factors behind homosexual orientation, linkage to the religion, sociological view, position in the other countries, Indian society’s perspective, effects of homosexuality and the most important advocacy for decriminalization and re-criminalization is aimed to be achieved.

The scope of the study is wide. It lays down the background for advanced research on various issues. It is pertinent here to mention that homosexuality is still an unexplored and unexplained area for research. The literature available is still less and mostly in the form of novels andictions, documentary films, and few judgments. There is not even a single concise book which covers issues relating to homosexuality in Indian social and legal scenario. The unavailability of a concise, complete and exhaustive work on this topic is the most challenging as well as interesting part of this research work.

The results achieved with the completion of this work are newer, interesting, challenging and guiding in form and substance. The study has revealed that homosexuality is a natural phenomenon, a deviant sexuality existing in species. It has been found that the fundamental human rights of homosexuals must be protected in the interest of humanity.

The study has also come across various cases of harassment of LGBT people in India. This research work is concluded with some legal suggestions, suggestion for society, & that for LGBT Community.