CHAPTER-2

SEXUAL MINORITIES: THEORETICAL EXPLANATION

“Heterosexuality is not normal, it’s just common” - By Dorothy Parkar

2.1. Introduction

A harmonious reading of the Constitutional provisions as well as the provisions of the Citizenship Act, 1955 and the General Clauses Act, 1897 Act would show that in fact there is no conflict or limitation imposed on the concept of ‘person’ by any law and hence sexual minorities person would undoubtedly fall within the definition of ‘person’ (Sec. 42 of General Clauses Act, 1897 and Sec. 11 of IPC, 1860). The use of term ‘person’ gives originally gender neutral feelings hence, this study begins with emphasising more on the use of ‘person’ instead of human, although the earlier frequent use of human is followed similarly. The introduction of human sexuality has always been a difficult task because of so many complexities whether physiological or psychological. The proverb ‘Birds of a feather flock together’ implies that ‘individuals who are similar in certain respects are drawn together’ remains the basis of studying homosexuality and a homosexual as it is called the ‘principle of homogamy’.

While discussing about the complexities of human beings and personality, the book “Personality Theory” tells ‘of all the problems that have confronted human beings since the beginning of recorded history, perhaps the most significant has been the riddle of their own nature. Countless attempts have been made to answer the question “What sort of creatures are we?” A great many avenues have been explored, with an enormous variety of concepts employed along the way, yet a satisfactory answer still eludes us. One important reason for the difficulty in getting a clear answer is that there are so many differences to be accounted for. Human beings come in many shapes and sizes and behave in exceedingly complex ways. Of the several billion people who presently inhabit the earth, no two are exactly alike. The vast differences among them have made it difficult, if not impossible, to identify what they share in

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common as members of the human race.’\textsuperscript{2} While referring about the origins of human sexuality, R. V. Short discusses that ‘human sexual behaviour is infinitely variable, within the cultural constraints imposed upon it.’\textsuperscript{3}

‘The social reality we confront, however, tells us a different story. We are driven by all sorts of limiting identities emanating from caste, ethnicity, language, religion, gender and nationality. These identities tend to determine our politics and worldviews. The world, as a result, becomes a site of identity conflict, ethnocentrism, racism, colonialism, casteism and parochialism. All these are symptoms of a culture that restricts and limits the human mind. Yes, it seems impossible to live without identities.’\textsuperscript{4}

Firstly, this chapter includes the definitions, meaning and concept of human sexuality plainly after that various perspectives like historical, anthropological, anatomical, psychological, biological, medical, sociocultural and scientific have been included to understand the wider knowledge of human sexuality. Secondly, the work done in the field of queer studies has been taken. The chapter moves with the definitions of sexual minorities and some other related terms for coming on to the generalized inference. By looking into heterosexuality and homosexuality both we find a commonality i.e. sexuality. Hence, before going into the heterosexuality or homosexuality, we understand the sexuality (human sexuality in general) first. Here, the study of human sexuality is referred in next section.

2.2. Human Sexuality: Definitions and Meaning

‘The study of sexuality is an interdisciplinary enterprise that draws upon the scientific expertise of anthropologists, biologists, medical researchers, sociologists, and psychologists, to name but a few of the professional groups involved in the field. No other area of study draws on so many disciplines. These disciplines all have contributions to make, since sexual behaviour reflects our biological capabilities, our psychological characteristics, and social and cultural influences. Biologists inform us

\textsuperscript{4} Avijit Pathak, \textit{Modernity, Globalization and Identity: Towards A Reflexive Quest} 112 (Aakar Books, Delhi, 2006).
about the physiological mechanisms of sexual arousal and response. Medical science teaches us about sexually transmitted diseases and biological bases of sexual dysfunctions. Psychologists examine how our sexual behaviour and attitudes are shaped by perception, learning, thought, motivation and emotion, and personality. Sociocultural theorists consider the sociocultural contexts of sexual behaviour. For example, they examine relationships between sexual behaviour and religion, race, and social class. Anthropologists focus on cross-cultural similarities and differences in sexual behaviour. Scientists from many disciplines explore parallels between the sexual behaviour of humans and other animals.\(^5\)

‘There are many assumptions concerning sexuality based on one’s attitudes, which are invariably very conservative or liberal. The subject matter abounds with myths, fallacies, exaggerations, secrecy and value laden judgements. In such a situation, in order to gain accurate knowledge and develop a more complete understanding about sexuality, research is the only answer. Research enables us to test assumptions in a systematic way to support or refute claims. Like other disciplines, researchers who study human sexuality share certain goals as understanding, predicting and controlling or influencing the events that are subject matter of their respective fields.’\(^6\)

‘To speak of sexuality and of same-sex love in particular, in India today is simultaneously an act of political assertion, of celebration, of defiance and of fear. For far too long, gay, lesbian, bisexual, and transgender people have simply been the distant and hypothetical subjects of theories and ideas, looked upon either with pity, curiosity or disdain.’\(^7\)There are many myths and misconceptions available in the society and ‘the ignorance or false and inaccurate information about sex and sexuality has been adversely affecting not only individuals but also the entire process of social development.’\(^8\) According to Psychoanalyst Sigmund Freud, ‘The misunderstanding of sexuality is no intellectual error, nor an accidental ignorance, but one way in which

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5 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), *Human Sexuality in a world of diversity* 5 (Allyn and Bacon, United State of America, 4\(^{\text{th}}\) edn., 2000).
6 Dr. T.S. Sathyanarayana Rao, ‘Some Thoughts on Sexualities and Research in India’, 46 (1) *IJP* 3 (2004).
7 Arvind Narrain and Gautam Bhan (eds.), *Because I Have a Voice* 2 (Yoda Press, New Delhi, 2012).
8 Kavita Joshi, *Sexuality in India: Teenager and Teacher* 16 (Kalpaz Publications, Delhi, 2004).
culture conspires to obtain “the mental energy it needs by subtracting it from sexuality”.

In the context of studying sexuality, it is very hard to state that one can claim anything approaching the full understanding of sexuality. With the application of different approaches to understand sexuality, we include the efforts of various disciplines’ researchers, writers and speakers in this. ‘Sexuality refers to enormous range of social and individual acts and attitudes that engage ‘mind and body’ in manifold and diverse forms and meanings depending on one’s gender, class or position. It is learnt socially.’

A sexual minority activist said that ‘sexuality was connected to and rooted in, “many different politics”. Sexuality cannot be understood without its intersections with class, caste, religion, or race. It is about so much more than sex, or sexual identities’. Further, ‘Sexuality was described as “beginning with the basic idea of freedom from violence and from disease, but then moving onto more positive articulations of choice, pleasure, and dignity, as well as diverse understanding of the body, desires, and sexual preferences.” Sexuality was “different from just speaking of sex,” and was not just “located on the body,” but “about both personal decisions, and about the legal, social, and cultural conditions in which these choices played out”.

‘Sexuality the document defined “as a quality of maleness or femaleness that determines the anatomy, behaviour, characteristics and personality of the individuals through which he is able to procreate or have children, which determines his relationship with other individuals and groups”. Sexuality may be intimately related to human biology, but it is embedded in the sociocultural fabric of human society. Taking the multicultural perspective in relation of sexuality, Spencer Rathus, Jeffrey Nevid, and Lois Fichner-Rathus suggested four categories.

(1) The rich diversity found in gender roles, sexual attitudes, and sexual behaviours and customs;

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10 Kavita Joshi, *Sexuality in India: Teenager and Teacher* 44 (Kalpaz Publications, Delhi, 2004).
12 Ibid.
13 Kavita Joshi, *Sexuality in India: Teenager and Teacher* 86-87 (Kalpaz Publications, Delhi, 2004).
(2) Critical thinking;

(3) Making responsible sexual decisions and

(4) Sexual health

Generally, in the study of sexuality, heterosexual framework remains under consideration but in his study of sexuality, Havelock Ellis, an English physician ‘promoted acceptance of the view that a gay male or lesbian sexual orientation was a naturally occurring variation within the spectrum of normal sexuality, not an aberration. Presaging some contemporary views, Ellis treated gay male and lesbian sexual orientations as inborn dispositions, not as vices or character flaws.’ The Ellis acceptance shows the direction towards existence of availability of another framework except heterosexual i.e. homosexual framework.

During study of sexuality, Sexologist, Richard von Krafft-Ebing viewed sexual deviations as mental diseases that could be studied and perhaps treated by medical science. ‘At about the same time, a Viennese physician, Sigmund Freud, was developing a theory of personality that has had an enormous influence on modern culture and science. Freud believed that the sex drive is our principal motivating force.’ Some theorists have suggested that there is a genetic basis to social behaviour, including sexual behaviour, among humans and other animals. This theory, called socio-biology, proposes that dispositions toward behaviour patterns that enhance reproductive success—as well as physical traits that do so—may be genetically transmitted. Kinsey saw sexuality as a continuum (1948).

‘Sigmund Freud propounded a theory of personality termed psychoanalysis. He believed that we are all born with biologically based sex drives. More specifically, the theory of personality, originated by Sigmund Freud, which proposes that human

14 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity xvii (Allyn and Bacon, United State of America, 4th edn; 2000).
15 Id. at 19.
16 Ibid.
17 Ibid.
18 Id. at 22.
19 Arvind Narrain and Gautam Bhan (eds.), Because I Have a Voice 262 (Yoda Press, New Delhi, 2012).
behaviour represents the outcome of clashing inner force.’

Sigmund Freud, known as ‘Father of Psychology’ gave a new direction to psychology. He wrote about structural and functional definitions of mind, hypnosis and psychoanalysis, dream interpretation, psychosexual stages of development and properties of cocaine. He described the psychoanalytic causes of mental disorders.

In American culture, ‘sexuality usually refers to the behaviours associated with adult male-female relationship in which intercourse or the expectation of intercourse plays a vital role.’

David M. Halperin suggested the two form of sexuality i.e. ‘active’ sexuality and ‘passive’ sexuality. ‘That is why the currently fashionable distinction between homosexuality and heterosexuality (and, similarly, between ‘homosexuals’ and ‘heterosexuals’ as individual types)’

Mclary, Jamesleslie (1973), identified sexuality as a deep and meaningful relationships rather than the more fulfilment of a biological function.

In his book “Three essays on Sexuality”, Sigmund Freud ‘declared that sexuality “remains the weak spot” in the process of “cultural development.”’

Further, ‘In a reformed character, sexuality would be acknowledged as an objective need, demanding expression whatever the subjective complications.’

While arguing the gender and sexuality, Lacan, discusses that ‘the self and sexuality are socially constructed via language, and language/culture is seen as masculine, with femininity being seen as the negative pole to this.’

In this context ‘Butler develops her analysis of gender via Foucault, Freud, Derrida, Lacan and the French feminists. She sees physiological sex, as well as gender, as socially constructed phenomena (1990).’

‘Sexuality is more than just an internal, psychological or biological aspect of our selves; it is also a part of the structure of society, built into its institutions, statuses,

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21 Manjeet Singh Bhatia, Mental Disorders: Misconceptions and Realities 6 (National Book Trust, India, 2006).
24 Kavita Joshi, Sexuality in India: Teenager and Teacher 85-86 (Kalpaz Publications, Delhi, 2004).
26 Id. at 168.
28 Id. at 28.
and social lives, like family, education, or work, sexuality is something that is inevitably linked to other institutions within society.‘29

‘Marianna Valverde suggests that: Sexuality is not something we ‘have,’ our personal property that we might choose to ‘share’ with others, but rather is a process in which the powers of the state, of the scientific and moral establishments, and the sexist ideology of male defined pleasure, are constantly meeting resistance from individuals and groups. The experience of individuals gives them a starting point to challenge the ideas and power of those who create oppression.’30 Although, sexuality has different meanings within individual, institutional and cultural contexts but in his book “The Third Sex and Human Rights” Rajesh Talwar believes ‘that one’s sexuality is essentially a private affair which is why neither the State nor any outside authority should be permitted to interfere without justifiable cause.’31 ‘Sexuality is part and parcel of our existence and it matters to a great extent of our living.’32

‘Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thought, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical and religious and spiritual factors. (World Health Organization 2002).’33

‘We can now define sexuality as the ways in which we experience and express ourselves as sexual beings.’34 ‘Sexuality involves bodily arousal and pleasure; bodily processes such as pregnancy and childbirth, bodies as objects of desire. Sexual

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30 Sara Delamont and Paul Atkinson (eds.), Gender and Research 191 (Sage Publications, New Delhi, Vol. 4; 2008).
31 Rajesh Talwar, The Third Sex and Human Rights 13 (Gyan Publishing House, New Delhi, 1999).
32 Dr. T.S. Sathyanarayana Rao, ‘Some Thoughts on Sexualities and Research in India’, 46 IJP 3 (2004).
33 Radhika Chandiramani and Geetanjali Misra, Unlearning and Learning: The Sexuality and Rights Institute in India 131-132 (book?).
34 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 5 (Allyn and Bacon, United State of America, 4th edn., 2000).
practice, then, is body-reflexive practice, even in its most refined cultural forms.'

Watsa (1994), discusses that ‘in India sexuality continues to be tied closely to the institution of marriage and to the function of reproduction.’

‘Sedgwick labels this approach to sexuality a “universalizing discourse”.’ Further, various aspects of human sexuality needs to refer for deep understanding of it in general and sexual minorities in particular. The next section presents the same.

2.3. Human Sexuality: Various Perspectives

The plain study of human sexuality gives very general understanding related to sex and gender role while the study of human sexuality has been widely expressed within various perspective that indicates towards a specific knowledge. For understanding very specific knowledge about human sexuality, some other aspects are needed to refer so that a relationship relating to the causes of coming on to the different orientation and gender identity are understood.

2.3.1. Historical Perspective

In historical perspective ‘all societies have some form of an incest taboo. Most societies have placed a value on procreative sex within the context of an enduring relationship. The societal value of an enduring social, economic, and intimate relationship-usually in the form of marriage-lies in the roles its serves in providing security for children, maintaining or increasing the population, and ensuring the orderly transfer of property from generation to generation’.

Out of many contributors like ‘Ellis wrote the first objective study of homosexuality, (the term was coined by Kertbeny) as he did not characterize it as a disease, immoral, or a crime. The work assumes that same-sex love transcended age taboos as well as gender taboos. Seven of his twenty-one case studies are of inter-generational relationships.’

The role of Michal Foucault’s ground breaking work in the exploration of history of human sexuality is price worthy.

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36 Kavita Joshi, Sexuality in India: Teenager and Teacher 40 (Kalpaz Publications, Delhi, 2004).
37 Popular Culture and Queer Representation: A Critical Perspective, 98.
38 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 20-21 (Allyn and Bacon, United State of America, 4th edn., 2000).
2.3.2. Biological Perspective

The biological perspective ‘focuses on the role of biological processes, such as genetic, hormonal, vascular, and neural factors, in explaining human sexual behaviour.’\(^{40}\) There is no conclusive research on the relationship between biology and sexual orientation however biological scientists have only hypothesized that a combination of genetic, hormonal and social factors determines sexual orientation. They also believe this relationship as a subject of research. ‘Genetic factors can be controlled through breeding, and experiments can be performed on their developmental and physiological processes’.\(^{41}\) Chromosome linkage studies of sexual orientation have indicated the presence of multiple contributing genetic factors throughout the genome. This perspective focuses on the various micro level research around the probability of a ‘gay gene’ responsible for sexual orientation.

2.3.3. Psychological Perspective

Various psychologists have propounded theories which basically discuss about the personality of a person and give a general understanding about person’s identity, behaviour and personality. These theories are categorised under broad area of ‘Personality Theories’\(^{42}\). Hjelle and Ziegler in the book personality theories examined various theories propounded by well-known theorists under that nine basic assumptions\(^{43}\) i.e. freedom-determinism; rationality-irrationality; holism-elementalism; constitutionalism-environmentalism; changeability-unchangeability; subjectivity-objectivity; proactivity-reactivity; homeostasis-heterostasis; and knowability-unknowability were discussed.

2.3.3.1. Sigmund Freud: Psychoanalytic Theory

‘Sigmund Freud, the founder of psychoanalysis, based his theory almost entirely on extensive clinical observation of neurotic patients as well as self-analysis.

\(^{40}\) Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 32 (Allyn and Bacon, United State of America, 4th edn., 2000).
\(^{43}\) Id. at 22.
Freud proposed three levels of consciousness—the conscious, preconscious, and unconscious—to describe the degree to which mental events take place in the unconscious. In Freudian theory, human psychological makeup comprises three structural components—id, ego, and superego. The id, representing the instinctual core of the person, is irrational, impulsive, and obedient to the pleasure principle. Reflex actions and primary process thinking are used by the id in obtaining gratification of instinctual urges. The ego represents the rational component of personality and is governed by the reality principle. Its task, through secondary process thinking, is to provide the individual with a suitable plan of action in order to satisfy the demands of the id within the restrictions of the social world and the individual’s conscience. The superego, the final structure developed, represents the moral branch of personality. It has two subsystems, the conscious and the ego-ideal.\footnote{44 L. A. Hjelle and D. J. Ziegler, \textit{Personality Theories 64} (Mcgraw-Hill International Book Company, Tokyo, 2\textsuperscript{nd} edn., 1981).}

Finally, psychoanalytic theory ‘reflects (1) a strong commitment to the assumptions of determinism, irrationality, unchangeability, homeostasis, and knowability; (2) a moderate commitment to the assumptions of holism, constitutionalism, and proactivity; and (3) a slight commitment to the assumption of subjectivity.’\footnote{Id. at 65.}

\subsection*{2.3.3.2. Alfred Adler: Individual Psychology Theory}

‘Alfred Adler’s individual psychology holistically depicts the human being as single, indivisible, self-consistent, and unified. As a personological system, individual psychology has as its basic tenets the individual as a unified and self-consistent entity, human life as a dynamic striving for perfection, the individual as a creative and self-determined entity, the social embeddedness of the individual, and individual subjectivity. Adler developed a parsimonious and pragmatic theory designed to be helpful to people in understanding themselves and others. In this personality theory, individuals are depicted as experiencing inferiority feelings during childhood for which they attempt to compensate. Rooted in these inferiority feelings of childhood, people spend their lives striving for superiority. Indeed, each person develops a
unique style of life in which he or she strives for fictional final goals involving superiority or perfection.

Furthermore, Adler believed that a person’s style of life is most evident in his or her attitude and behaviour toward the three major life tasks—work, friendship, and love and marriage; based upon the dimensions of social interest and the degree of activity in relation to these three life tasks, Adler distinguished four basic types of life-styles attitudes; the ruling, getting, avoiding, and socially useful types. Of paramount importance in developing one’s style of life is Adler’s superordinate personological construct, the creative self. Essentially, Adler theorised that style of life is developed by the individual’s creative power. Also of some influence on personality development is one’s ordinal position within the family; Adler focused theoretical attention upon four such birth-order positions: the first-born, second-born, youngest, and only child. A final important construct in individual psychology is social interest, a person’s innate tendency and striving to help society attain the goals of an ideal community. In Adlerian theory, degree of social interest is viewed as a barometer of psychological health.46

Finally, individual psychology theory ‘reflects (1) a strong commitment to the assumptions of freedom, holism, unchangeability, subjectivity, proactivity, heterostasis, and unknowability; (2) a moderate commitment to the rationality assumption; (3) a “middle of the road” position on the constitutionalism-environmentalism dimension.47

2.3.3.3. Erik Erikson: Psychosocial Theory

‘Erik Erikson’s psychosocial theory, developed within a psychoanalytic framework emphasizes the importance of ego psychology, developmental change throughout the life cycle, and understanding personality against the background of social and historical forces. In contrast to Freud, Erikson regards the ego as an autonomous personality structure; his theory focuses on ego qualities that emerge at various developmental periods. Erikson asserts that ego development proceeds

47 Id. at 108.
through a series of universal stages. In his epigenetic conception of human development, each stage in the life cycle has an optimal time to change. The sequential unfolding of these life stages is a function of the individual’s biological maturation interacting with his expanding social radius. In Erikson’s view, eight psychological stages characterize the human life cycle. Each is marked by a particular kind of crisis or turning point in the person’s life. The eight stages, depicted in terms of the essential psychosocial conflicts associated with each, are as follows: (1) basis trust versus mistrust, (2) autonomy versus shame and doubt, (3) initiative versus guilt, (4) industry versus inferiority, (5) ego identity versus role confusion, (6) intimacy versus isolation, (7) generativity versus stagnation, and (8) ego integrity versus despair. The individual’s personality is determined by the resolutions of these conflicts. Erikson’s theory is rooted in his basic assumptions about human nature. His psychosocial theory reflects (1) a strong commitment to the assumptions of holism, environmentalism, and (2) a moderate commitment to the assumptions of determinism, rationality, objectivity, proactivity, heterostasis, and knowability.”

2.3.3.4. Henry Murray: Need Theory

‘Murray portrays personality as the hypothetical integrating agent within individuals that serves to organise and stabilize their behaviour over time. In this scheme, all psychological events are functionally dependent upon underlying brain processes; without a brain, there would be no personality. Murray’s central theoretical concept-need-represents a force in the brain region which organizes psychological processes and behaviour. There are various means of classifying needs in Murray’s theory, such as viscerogenic-psychogenic, proactive-reactive, overt-covert, and effect-modal. Further, needs are organized and interrelated according to such principles as prepotency, fusion, subsidiation, and conflict. Needs constantly interact with environmental forces (press) to produce behaviour. Different need-press combinations that characterize a person’s behaviour are called themas. Moreover, each person’s uniqueness resides in the basic underlying pattern of his or her individual need-press relationships: the unity thema. Murray maintains that personality is deeply embedded in a time dimension, and portrays its roots in early childhood complexes. To represent

behavioural continuity over time, he employs concepts such as “proceeding” (a temporal unit of either subject-subject or subject-object interaction). Murray also believes that as personality develops, it is powerfully influenced by four major groups of determinants: constitutional, group membership, role, and situational. Murray’s basic assumptions about human nature reflect an interesting blend of psychoanalytic and humanistic elements in his thinking. Need theory is based upon (1) a strong commitment to the assumptions of determinism, rationality, and homeostasis; (2) a moderate commitment to the assumptions of holism, unchangeability, subjectivity, and proactivity; and (3) a midrange position on the constitutionalism-environmentalism and knowability-unknowability assumptions.49

2.3.3.5. Burrhus Frederic Skinner: Behaviouristic-Learning Theory

‘Skinner’s behaviouristic-learning approach to personality is characterized by a rejection of an inner “autonomous” man as the cause of human actions and a disregard for physiological-genetic explanations of behaviour. Skinner contends that behaviour is lawfully determined, predictable, and environmentally controlled. Further, he holds that the fundamental principles underlying human behaviour are most readily discerned by studying lower organisms, e.g., rats, pigeons. Skinner has focused most of his scientific attention upon operant behaviour, i.e., behaviour which is emitted by, rather than elicited from, the organism. In a professional lifetime of operant conditioning research, Skinner has shown quantification of such behaviour, indicated the lawful control of various reinforcement schedules, conditioned reinforcers, and aversive stimuli, demonstrated the shaping of operant behaviour through successive approximation, and indicated its extension and appropriate adaptation to new stimuli (stimulus generalization and discrimination). No other personologist has done more than B. F. Skinner to empirically demonstrate lawful behaviour-environment relationship. Skinner’s basic assumptions about human nature are strong and explicit. Behaviouristic-learning theory reflects a strong commitment to determinism, elementalism, environmentalism, changeability objectivity, reactivity,

and homeostasis-heterostasis are not applicable to Skinner’s position since he rejects internal sources of behaviour.  

2.33.6. Albert Bandura: Social-Learning Theory

‘Albert Bandura’s social-learning theory depicts psychological functioning in terms of the continuous reciprocal interaction of behavioural, cognitive, and environmental influences. This conception of human behaviour casts people into a role of neither pawns controlled by external forces nor free agents able to become whatever they choose; rather, the reciprocal interplay of behavioural and environmental forces is highlighted, a fluid, dynamic process in which cognitive factors play a central role in the organization and regulation of human activity. Bandura’s major theoretical concept is that of modelling, or learning through observation. A key assumption here is that modelling influencing generates learning chiefly through their informative function, a depiction of learning which clearly reflects the cognitive orientation of Bandura’s theory. Furthermore, observational learning is governed by four interrelated factors-attentional, retention, motor reproduction, and motivational processes. Bandura’s treatment of reinforcement in observational learning also reflects his cognitive orientation. In social-learning theory, external reinforcement often serves two functions-information and incentive-for the individual. Additionally, Bandura emphasizes the role of vicarious reinforcement, the observation of others being reinforced, and self-reinforcement, in which people reinforce their own behaviour. Self-regulation, or how people regulate their behaviour, is also an important feature of social-learning theory. In self-regulation, the major processes of self-observation, judgment, and self-evaluation are highlighted.’

‘Finally, in describing self-regulation, Bandura discusses such issues as how it is learned, how behaviour is monitored through self-produced consequences, the conditions which sustain self-reward systems, why people punish themselves, and the role of self-evaluation and self-concept in the process of self-regulation. While Bandura is often characterized as a moderate behaviourist, his basic assumptions about human nature suggest a different view of the person from that espoused by

51 Id. at 273.
Watson, traditional stimulus-response behaviourist, and particularly B. F. Skinner. Social-learning theory reflects (1) a strong commitment to the assumptions of rationality, environmentalism, changeability, and knowability; (2) a moderate commitment to the elementalism assumption; and (3) a midrange position on the freedom-determinism, subjectivity-objectivity, and proactivity-reactivity dimensions. The homeostasis-heterostasis assumption does not apply to Bandura’s position, since he conceptualizes motivation in a fashion that does not readily lend itself to this type of analysis.\textsuperscript{52}

2.3.3.7. Gordon Allport: Trait Theory

‘Gordon Allport’s trait theory represents a blend of humanistic and personalistic approaches to the study of human behaviour. Believing that the explanation of an individual’s uniqueness is the paramount goal of psychology, Allport viewed personality as the dynamic organization of that internal psychology system that determines a person’s characteristic behaviour and thought. Within the individual, personality is real; it is “what a person really is.” Allport regarded the trait as the most valid unit of analysis for understanding and studying personality. In his system, traits are predispositions to respond in an equivalent manner to various kinds of stimuli. In short, traits account for a person’s behavioural consistency over time and across situations. They may be classified under one of three headings-cardinals, central, or secondary-according to their degree of pervasiveness within a personality.’\textsuperscript{53}

‘Allport also distinguished between common and individual traits, the former being generalized dispositions to which most people within a given culture can be compared, whereas the latter refer to personal dispositions peculiar to an individual which do not permit comparisons with others. The overall construct that unifies traits and provides direction for the person’s life is termed the proprium. This concept essentially refers to the “self-as-known,” including all aspects of personality that contribute to an inward sense of unity. Another of Allport’s personality concepts, his best-known and most controversial, is that of functional autonomy. This principle

\textsuperscript{52} L. A. Hjelle and D. J. Ziegler, \textit{Personality Theories} 273-274 (Mcgraw-Hill International Book Company, Tokyo, 2\textsuperscript{nd} edn., 1981).

\textsuperscript{53} Id.at 315-316.
asserts that adult motives are not related to the earlier experiences in which they originally appeared. Allport further distinguished between perseverative functional autonomy (reverberatory, or feedback, mechanism in the nervous system) and appropriate functional autonomy (the individual’s acquired interests, values, attitudes, and intentions). In essence, the latter allows for the development of the truly mature person, the salient characteristics of which Allport carefully delineated. Allport’s profound disagreements with the psychoanalytic and behaviouristic conceptions of human nature are clearly evident in his basic assumptions. Trait theory refers (1) a strong commitment to the assumptions of rationality, proactivity, and heterostasis; (2) a moderate commitment to the holism and knowability assumptions; (3) a slight commitment to the assumptions of freedom and subjectivity; (4) a midrange position on the constitutionalism-environmentalism and changeability-unchangeability dimensions.  

2.3.3.8. George Kelly: Cognitive Theory

‘George Kelly’s cognitive theory is based on the philosophical position of constructive alternativism, which holds that reality is what one construes it to be. Accordingly, an individual’s perception of reality is always subject to interpretation and modification. Man is a “scientist,” constantly generating and testing hypotheses about the nature of things so that adequate predictions of future events can be made. Persons comprehend their worlds through transparent patterns, or templates, called constructs. Each individual has a unique construct system (personality) which he or she uses to construe or interpret experience. Kelly theorized that all constructs possess certain formal properties: range of convenience, focus of convenience, and permeability-impermeability. Kelly also recognized various types of constructs: preemptive, constellatory, propositional, comprehensive, incidental, core, peripheral, tight, and loose.’

‘Kelly’s theory is formally stated in terms of one fundamental postulate and eleven elaborative corollaries. The former stipulates that a person’s processes are psychologically channelized by the ways in which she or he anticipates events, while

55 Id. at 355.
the corollaries explain how a construct system functions, changes, and influences social interaction. Kelly was much more cognizant of and explicit about the philosophical underpinnings of personality theory than most personologists. His position is nonetheless founded upon his basic assumptions concerning human nature. Cognitive theory reflects (1) a strong commitment to the assumptions of rationality, changeability, subjectivity, and unknowability; (2) a moderate commitment to the assumptions of holism and environmentalism; and (3) a midrange position on the freedom-determinism dimension. The proactivity-reactivity and homeostasis-heterostasis assumptions do not apply to Kelly’s position, since he regarded motivation as a redundant construct.’56

2.3.3.9. Abraham Maslow: Humanistic Theory

‘Humanistic psychology, or the third force movement, has given rise to an image of humanity in psychology radically different from that of either psychoanalysis or behaviourism. Heavily influenced by existential philosophy, humanistic psychology has as its basic tenets the individual as an integrated whole, the irrelevance of animal research, the perception of the person as a basically good, creative being, and an emphasis on the study of psychological health. One major statement of humanistic psychology, the theory of Abraham Maslow, depicts human motivation in terms of a hierarchy of ascending priorities. Lower (more basic) needs in the hierarchy must be satisfied before higher-level needs emerge as dominant energizing forces in the individual’s behaviour. In order of potency, Maslow’s hierarchy of human needs is: (1) physiological; (2) safety ;( 3) belongingness and love; (4) self-esteem; and (5) self-actualization. The humanistic nature of Maslow’s theory is epitomized in the self-actualization level, the highest fulfilment of self. Maslow’s basic assumptions concerning human nature are reasonably strong and generally explicit. Maslow’s humanistic theory reflects (1) a strong commitment to the assumptions of freedom, rationality, holism, changeability, subjectivity,

proactivity, heterostasis, and unknowability and (2) a slight commitment to the constitutionalism assumption."^{57}

2.3.3.10. Carl Rogers: Phenomenological Theory

‘Reflecting a close affinity with humanistic psychology, Rogers holds that the innermost core of human nature is essentially benevolent, purposive, and trustworthy. These basic attributes of human nature will surface of the proper conditions encourage the fulfilment of individual’s innate potential. In Rogers’ system, all human motives are subsumed under a single master motive—the actualizing tendency—the innate tendency of the individual to actualize, maintain, and enhance himself or herself. Within the broad context of the humanistic movement, Rogers’ particular theoretical position is phenomenological. He holds that the only reality, from the person’s perceptual vantage point, is subjective reality—the person’s private world of experience. And central to that subjective world is the concept of self, Rogers’ most important personological construct. In his system, elements important in self-concept development are the need for positive regard, conditions of worth, and unconditional positive regard.”^{58}

‘Rogers argues that most ways of behaving that an individual adopts are consistent with her self-concept. Threat exists when a person senses an incongruity between her self-concept and total organismic experience; she then attempts to defend herself by means of perceptual distortion and denial. When the incongruence between self-concept and actual experience becomes too great, personality disorganization and psychopathology result. In sharp contrast, persons who are open to their experience, fully trust it, and are freely moving in the direction of actualizing themselves are termed “fully functioning” in Rogers’ system. Rogers’ basic assumptions concerning human nature are generally strong, explicit, and reflective of the fundamental cleavage between phenomenology and behaviourism in American psychology. Rogers’ phenomenological theory reflects (1) a strong commitment to the assumptions of freedom, rationality, holism, changeability, subjectivity, proactivity, proactivity, heterostasis, and unknowability and (2) a slight commitment to the constitutionalism assumption.’^{57}


58 Id. at 436-437.
heterostasis, and unknowability and (2) a moderate commitment to the constitutionalism assumption.\textsuperscript{59}

2.3.4. Anatomical Perspective

‘The human body is rather like a highly technical and sophisticated machine. It operates as a single entity, but is made up of a number of systems that work interdependently. Each system is associated with a specific, and sometimes related, function that is normally essential for the well-being of the individual.’\textsuperscript{60} ‘Anatomy is study of the structure of the body and the physical relationship between body systems.’\textsuperscript{61}

2.3.5. Anthropology Perspective

Anthropologists focus on cross-cultural similarities and differences in sexual behaviour. ‘Anthropologists contribute to our understanding of cross-cultural variance in sexuality’\textsuperscript{62}.

2.3.6. Medical Perspective

Medical perspective tells about the sexually transmitted diseases and biological bases of sexual dysfunctions. In medical perspective, the medical science has already developed ‘artificial sexual organs’\textsuperscript{63} which are including most of the body parts.

2.3.7. Sociocultural Perspective

‘Sociocultural theorists focus on differences in sexuality among the groups within a society, as defined, for example, by differences in religion, race, country of

\textsuperscript{59} L. A. Hjelle and D. J. Ziegler, Personality Theories 437 (Mcgraw-Hill International Book Company, Tokyo, 2\textsuperscript{nd} edn., 1981).

\textsuperscript{60} Ross and Wilson, Anatomy and Physiology in Health and Illness 4 (Churchill Livingstone Elsevier Limited, Edinburgh, UK, 2011).

\textsuperscript{61} Ibid.

\textsuperscript{62} Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 32 (Allyn and Bacon, United State of America, 4\textsuperscript{th} edn; 2000).

\textsuperscript{63} Sadhna Shah, ‘Kritim Yonang: Chikitsa Vigyan Ki Kalakari’, Sarita (Health Special) 99 (July1, 2012).
origin, socioeconomic status, age, educational level, and gender.'

Studying the book on ‘Human Sexuality in a World of Diversity’ it is expressed that ‘sexual behaviour is determined not only by biological and psychological factors, but also by social factors. Social factors contribute to the shaping of our sexual attitudes, beliefs, and behaviour. Sociocultural theorists focus on differences in sexuality among the subgroups of a society, as defined, for example, by differences in religion, race/ethnicity, country of origin, socio-economic status, marital status, age, educational level, and gender’. Further, ‘the socio-cultural perspective informs us of the relationship between sexuality and one’s social group within a society. Sociocultural theorists view sexual behaviour as occurring within a particular sociocultural system. They study the ways in which the values, beliefs, and norms of a group influence the sexual behaviour of its members. To a certain extent, we share attitudes and behaviour patterns with people from similar backgrounds—for example, people with the same ethnic identity. Even so, not all Protestants or all members of a given ethnic group act or think alike’.

2.3.8. Scientific Perspective

‘The Scientific perspective to human sexuality describes sexual behaviour through techniques as varied as the field study, the survey, the individual case study, and the laboratory experiment.’

In conducting scientific research on human sexuality many scientists have taken the example of ‘tropical fish.’

Researchers attempt to relate their observations to other factors, or variables that can help to explain them. ‘Some commonly used to explain sexual behaviour include biological (age, health), psychological (anxieties, skills), and sociological (educational level, socioeconomic status, ethnicity) one. Explanations of behaviour can involve reference to many variables, even those that cannot be measured directly, such as

65 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 28 (Allyn and Bacon, United State of America, 4th edn; 2000).
66 Id. at 30.
68 Ibid.
69 Ibid.
unconscious motivation." Sexuality particularly homosexuality was scientifically studied in the nineteenth century by some eminent researchers like Kinsey, Janus and they have contributed in scientific study of human sexuality.

The scientific study of human sexuality has explored various issues with the help of interdisciplinary and multidisciplinary research. Under this scientific approach, scientists have preferred the study of human cells, cell-cycle, chromosomes, genes, DNA, etc. ‘Scientifically, sex of a person is best seen as a tuple of parameters corresponding to hormonal sex, clinical sex, chromosomal sex, physical sex and more. Population data relating to this cannot be properly classified. Gender is a vague social concept characterised by arbitrary norms and prescriptions. Modern people recognize that genders exist on a spectrum and do not abide by religious ideas of binary gender with its rigid prescriptions of heteronormativity’. 

Further, various perspectives provide understanding of human sexuality in wider sense. Before going into the understanding of sexual minorities, it is necessary to know the sex and gender because the understanding of sex and gender remains the basis of understanding sexual minorities.

2.4. Sex: Meaning and Definition

Generally, we do not talk and discuss about sex mostly in public spaces because of many reasons like immoral; eroticism; absenteeism of sex knowledge from curriculums and prohibited norms of society, that results as an inadequate and improper knowledge of sex among persons and concludes with behavioural problems. ‘It is well recognized that sexual health is one of the important component of health in general. It is both the cause and effect of varied behavioural and physical disorders. In spite of this, sexuality research has received only a cursory or negligible interest by Indian researchers. Physicians either show no interest or ignore patients’ psychosexual concerns (Avasthi & Nehra, 2000). We lack to great extent the reliable measures and the estimates of sexual disorders (Kulhra & Avasthi, 1995), specialized clinics (Rao. TSS, 2000) special groups,(Rao. TSS,1989), training

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71 A. Mani, Do You Have Gender Dysphoria or Incongruence? 1 available at: http://gaysifamily.com (last visited on June 20, 2014).
facilities (Singh et al, 1987) and concerned practitioners (Avasthi et al, 1994). 

‘There are widely prevalent myths, misconceptions and prejudices concerning sex in our culture (Mishra, 1963) and the so-called ‘sex specialists’ and ‘quacks’ have added to the self-perpetuating, iatrogenic disorders.’ In her book ‘sexuality in India: Teenager and Teacher’, ‘Kavita Joshi’, emphasises various sex and sexuality values and perceptions relating to variables, need for sex education, gender equality, homosexuality, deviant behaviour, etc. for adolescent through inculcating sex and sexuality in different curriculums. ‘Dickinson believes that sex is first of all a physical fact.’ Sex denotes the physical and mental traits that distinguish between males and females; and also the physiology and psychological processes related to procreation and sensual pleasure (Goldenson, 1984). Khujraho temples or Ajanta Alora caves were carved to educate about sex, sex is a matter of one’s personal conduct. When says sex, Freud, means ‘sex-genitalia and their direct expression’ and ‘at the same time he comes to the tacit understanding that sex really is nasty, an ignoble slavery to nature.’

When Robyn Ryle asks to her students of sociology about the difference between sex and gender they ‘usually agree that sex describes the biological differences between women and men’ while using biosocial approach Robyn Ryle discusses that ‘sex describes the biological differences between people we call males and people we call females.’ Biosocial approach is being applied by the bio-socialists and they particularly focus on the sexual dimorphism which means ‘the claim that sex marks a distinction between two physically and genetically discrete categories of people. Sexual dimorphism is the belief that there is something meaningful out there called sex and that we can use certain characteristics to objectively sort people into

72 Dr. T. S. Sathyanarayana Rao, ‘Some Thoughts on Sexualities and Research in India’, 46(1) IJP 3 (2004).
73 Ibid.
75 Kavita Joshi, Sexuality in India: Teenager and Teacher 15 (Kalpaz Publications, Delhi, 2004).
76 Id. at 79.
78 Id. at 154.
80 Ibid.
two categorises called male and female. In his book titled “Human Sexuality in a world of diversity” Rathus, pointed out that, ‘the word (sex) derives from Latin roots meaning “to cut or divide,” signifying the division of organisms into male and female genders. One use of the term sex, then, refers to our gender, or state of being male or female. The word sex (or sexual) is also used to refer to anatomic structures, called sex (or sexual) organs, that play a role in reproduction or sexual pleasure. We may also speak of sex when referring to physical activities involving our sex organs for purposes of reproduction or pleasure: masturbation, hugging, kissing, coitus, and so on. Sex also relates to erotic feelings, experiences, or desires, such as sexual fantasies and thoughts, sexual urges, or feelings of sexual attraction to another person. ‘Sex indicates the difference in Morphology and Anatomy Morphology is which separates from male from female.’

Nagpal (2001), ‘further opined that sex is gratification and lust is being confused with love.

Sorenson views ‘sex as a biological fact, meaning that it is non cultural, static and scientifically measurable and unproblematic. According to Michel Faucault, ‘the notion of “sex” made it possible to group together, in an artificial unity, anatomical elements, biological functions, conducts, sensations, and pleasures, and it enabled one to make use of this fictitious unity as causal principle, an omnipresent meaning, a secret to be discovered everywhere: sex was thus able to function as a unique signifier and as a universal signified. Discussing about the understanding of sex, Robyn Ryle point outs that ‘sex, then, is a causal factor dictating how gender gets expressed. ‘From a strong constructionist perspective, using sex infers a belief in two kinds of people, male and female. From a biosocial perspective, sex indicates the existence of two different kinds of people, male and female.’ Further, ‘In English,
sex can mean both the biological categories of males and females as well as engaging in some kind of sexual act.'

LeVay and Baldwin (2009) note that sex is about identity as well as relationships.

Many authors and writers have contributed in enlargement of knowledge of sex through various perspectives such as biology, anthropology, sociology, psychology, history, medical, science, etc. but we are lacking one perspective which has also contributed in the knowledge of sex. This perspective is known as spiritual perspective and the name of ‘Osho’ is very famous in this regard. In an article related to Osho ‘Sex is a mysterious phenomenon, which has puzzled even great sages.’

‘Sex for the Athenians was understood as an action performed always by a social superior on a social inferior. Sex was a deeply asymmetrical act that divided the world into penetrator and penetrated, and these categories were in no way interchangeable.’

‘Those deemed socially superior (male citizens) were the penetrators, and those seen as socially inferior (women, children, foreigners, and slaves) were the penetrated.’

Similarly, in a book entitled ‘India in Love: Marriage and Sexuality in the Twenty-first Century’ written by Ira Trivedi, a well-known English Novalist, says that ‘sex is a ‘historically-progressed subject’

She also refers the examples of Krishna and Radha love story and pointed out that the vatsyayan’s kamsutra has been accepted as a reference thesis in whole world. Sex was an unanimously accepted and respected presumption in ancient India. Richard Barton has interpreted kamsutra in English. In today, we cannot leave sex by saying ‘chi-chi’. It cannot be ignored now. Sex is also like the food as a natural necessity. This book also refers the homosexuality as natural.

‘Sex refers to the biological formation of the body in terms of genitals. The most common classification is male and female, but there are many more sexes

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90 Guryinder Kalra, Susham Gupta, et.al; ‘Sexual variation in India: A view from the west’ 52 (Suppl 1) IJP S264-S268 (2010).


93 Ibid.


95 Ibid.
including intersex, transsexual, hermaphrodite. The above mention discussion provides us knowledge about sex that reflects sex as biological phenomenon.

2.5. Gender: Meaning and Definition

It is that part of study in social science research which has a very long list of work. ‘Although much has been written in academic and policy circles on gender, on conflict, and on the impact of conflict on women,’ but there has been made an effort to discuss the currently debated issue related to sex, gender and sexuality i.e. homosexuality or same-sex-relationship particularly under Indian criminal justice system. Gender may also be a subject matter of various social scientists, anthropologists, psychologists; human and legal rights activists especially focused on women related issues. Bem & Wharton says, ‘that most people in western cultures grow up learning that there are two and only two sexes, male and female, and two and only two genders, feminine and masculine. We are taught that a real woman is feminine, a real man is masculine, and that any deviation or variation is strange or unnatural.

We have a long list of work on gender within different context as social, economic, political, cultural, legal and human rights. ‘Numerous theories explain how and why gender differentiation and inequality exist in most societies. We cannot describe them all.’ Before going into details of gender studies, we need to ‘develop a capacity to see what is hidden by the cultural blinders that we all wear at least some of the time.’ Discussing about gender, this term ‘defined as the meanings, practices, and relations of femininity and masculinity that people create as they go about their daily lives in different social settings.’ Kimmel and Tavris, ‘described gender as two “sex” roles- male/masculine and female/feminine by forwarding innate

96 A Booklet on ‘Body’, prepared by The Gender Studies Group, Delhi University, p-9.
99 Id. at xvii.
100 Id. at xiv.
101 Id. at xiii.
personality characteristics and biological sex characteristic such as hormones and reproductive functions.\textsuperscript{102}

Women are biological inferior to men was debunked by Tavris as women has been regularly participating and producing high level of achievement in comparison of men in different fields of sports. Researchers have tried to find out the ‘gender inequality within the economy, family, religion, and other social institutions’\textsuperscript{103} of life. Schwalbe, theorises gender is “human-made”\textsuperscript{104} and argues that ‘gender is a human invention is called social construction.’\textsuperscript{105} The situation becomes more complicated when gender is defined within different cultural context as Helliwell, defines ‘about the similarity of men and women while Herdt defines gender as flowing and changing across the life span.’\textsuperscript{106} In understanding of gender, ‘R.W. Connell argued in terms of hegemonic masculinity and emphasized femininity that reflects the dominance of men or emphasized femininity is always subordinated to masculinity.’\textsuperscript{107}

Now, taking the different categories of individual and institutional level, social scientists Howard & Alamilla, says that at Individual level ‘gendered expectations, including stereotypes, are incorporated into how we define ourselves, and shape how we act and react as well as how other perceive us. While, ultimately, gendered identities are the result of larger societal and cultural forces, they are deeply felt, and individuals act upon them.’\textsuperscript{108} According to West and Zimmerman, ‘gender is “done” in interaction with others in specific situations. They argue that the very process of interaction involves the presentation of a gendered self, the responses of the persons we are interacting with, and our reactions to their anticipated or actual responses. As such gender is an on-going activity that is carried out in interaction with other people, and people vary their gender presentations as they move from situation to situation.’\textsuperscript{109} Pleck (1981) defines ‘sex role (gender) as, “the set of behaviours and

\textsuperscript{102} Joan Z. Spade and Catherine G. Valentine (eds.), \textit{The Kaleidoscope of Gender: Prisms, Patterns, and Possibilities} xv (Sage Publications, New Delhi, 2\textsuperscript{nd} edn; 2008).

\textsuperscript{103} Id. at xvi.

\textsuperscript{104} Ibid.

\textsuperscript{105} Ibid.

\textsuperscript{106} Ibid.

\textsuperscript{107} Id. at xvi.

\textsuperscript{108} Joan Z. Spade and Catherine G. Valentine (eds.), \textit{The Kaleidoscope of Gender: Prisms, Patterns, and Possibilities} xviii (Sage Publications, New Delhi, 2\textsuperscript{nd} edn., 2008).

\textsuperscript{109} Ibid.
characteristics widely viewed as (1) typical of women or men (sex role stereotypes) and (2) desirable for women or men (sex role norms).”¹¹⁰

Further, some theorists use social constructionism to explain gender at the institutional level. Acker argues, “that institutions are gendered because “gender is present in the processes, practices, images and ideologies, and distributions of power in the various sectors of social life”.¹¹¹ Like Acker, Judith Lorber also combines a social constructionist perspective with the concept of social institutions. She argues that gender be viewed “as a society-wide institution that is built into all major organisations of society.” By viewing gender as an institution, Lorber, sees it as a basis for inequality in society because it is through gender that resources, power, and privilege are distributed. Gender, according to Lorber, is “a process of creating distinguishable social statuses for the assignment of rights and responsibilities.”¹¹² Further, Lorber argued that “gender is an institution that is embedded in all the social processes of everyday life and social organisations.”¹¹³ Postmodernist theorists argue that “gender is a product of the discourses within particular social contexts that define and explain gender.”¹¹⁴ Sorenson views ‘gender as a cultural attribute, a means by which people are taught who they are, how to behave, and what their roll will be.’¹¹⁵ Barbara J. Risman theorises gender ‘as a social structure’¹¹⁶ and examined the construction of gender within individual, intersectional, and institutional dimensions of social life. ‘The expression ‘gender’ denotes ‘the social meaning of sex categorization.”¹¹⁷

American sociologist, Betsy Luca, by giving her own biography and experiences in daily life, consequently provided the two categories i.e. ‘issue of identity and issue of interaction’¹¹⁸ for understanding of gender as social construction.

¹¹⁰ Sara Delamont and Paul Atkinson (eds.), Gender and Research 37 (Sage Publications, New Delhi, Vol. 4; 2008).
¹¹² Id. at xix.
¹¹³ Id. at 10.
¹¹⁴ Id. at xx.
¹¹⁶ Id. at 9.
¹¹⁷ Rajesh Talwar, The Third Sex and Human Rights 24 (Gyan Publishing House, New Delhi, 1999).
The most common experience “Sir” was emphasised by her. She categorically discussed gender as “perceived gender” and mentioned that gender is pervasive in our society. I cannot choose not to participate in it. Even if I try not to do gender, other people will do it for me. After analysing the incidences she realised that ‘gender is a substantial part of her personal identity’. Sharon Preves, a sociologist, has done ‘ground-breaking research on what it is like to live in contemporary America with an intersexed body that doesn’t confirm to “standard” medical definitions of male and female.’119 In her study she exclusively targeted the intersex people referred as ‘deemed sexually ambiguous’. Through her study, she tried to find out the root causes for gender variation with the help of medical literature. ‘Gender is an organizing principle of social life that affects different levels of social reality, not only individual people.’120

Another sociologists, anthropologists, researchers and scholars have also added many more knowledge in the area of gender research covering huge range of boundary or limit. The anthropologist, Serena Nanda, discussed in her book multiple sex/gender system around the world about the multiple genders. She emphasised on the variation of gender by taking the example of hijra and other sexual minorities. She categorically argued about gender variation on multiple levels like characteristics, transvestism, occupation, sexuality and power. She concluded her argument with that ‘a person who contains both masculine and feminine qualities or one who is transformed from the sex/gender assigned at birth into a different gender in later life manifests some of the many kinds of transformations and ambiguities that are possible, not only for humans, but for animals and objects in the natural environment.’121

‘Gender refers to the socially constructed roles ascribed to women and men, as opposed to biological and physical characteristics. Gender roles vary according to socioeconomic, political, and cultural contexts, and are affected by other factors, including age, class, and ethnicity. Gender roles are learned and negotiated, or

120 Tsjheard Bouta, Georg Frerks, et. al. (eds.), *Gender, Conflict, and Development* 3 (The World Bank, Washington, D.C., 2005).
contested. They are therefore changeable.'122 Judith Butler in her book Gender Trouble (Butler, 1990) seeks to demonstrate that ‘Gender is, thus, a construction that regularly conceals its genesis; the tacit collective agreement to perform, produce, and sustain discrete and polar genders as cultural fictions is obscured by the credibility of those productions-and the punishments that attend not agreeing to believe in them; the construction ‘compels' our belief in its necessity and naturalness.'123

In defining gender, we have different feminists and sociologists who provided their theories. These theories are known as feminist and sociological theories of gender. ‘Using the sociological imagination to investigate gender means performing the detailed archaeology of our own biography and learning to identify the larger structural forces at work in our lives surrounding issues of gender.'124 A network approach of gender provides ‘gender is really a product of the networks of relationships we find ourselves embedded in, going all the way back to the very first networks we belonged to as children.'125 Under feminist theory, ‘Gender is considered separately from statuses such as race, ethnicity, age, class, nationality, or sexuality.'126

On the basis of these statements, it comes out that gender has a very long list of work and many persons have defined it in their own ways and in defining of gender, they have adopted various approaches and context within the institutions of society. So, it is also very hard to understand and put a specific definition of gender as it keeps changing with the changing of time, context and circumstances. It is rightly said by Lorber and Tavris in understanding of gender that, ‘Lorber and Tavris, research shows that the behaviour of real women and men depends on time and place, and context and situation, not on fixed gender differences.'127 While concluding her paper, Shalini Mahajan emphasises that ‘We have seen it in past and as groups and individuals believing in the human rights of all people, we have stood up against the State and demanded accountability. This is yet another time when we need to do it

123 Sara Delamont and Paul Atkinson (eds.), Gender and Research 200 (Sage Publications, New Delhi, Vol. 4; 2008).
125 Id. at 51.
126 Id. at 52.
together. It is important that we not only talk of the lives of sexual minority people in the rights context vis-à-vis the State alone, but also work towards changing the ways in which society at large looks at issues of gender and sexuality. And for this we need to begin with expanding our mindscapes to include the multiple colours of plurality all around us, to recognize, respect, and reaffirm the diverse ways in which gender and sexuality are lived. We also need to see the intersections of oppressions and importance of sharing struggles as well as strategies. ‘Gender is the sociological division of sexes which transforms them mainly into the categories of man and woman, but also others—transgender, homosexual, gender queer’. After understanding sex and gender, the study enters into the understanding of sexual minorities which is a part of queer study.

2.6. Queer Studies

The numbers of studies in the field of queer theories have been extensive at international level in comparison of India. Many countries, where homosexuality or same-sex-relationship is recognised as legal, are working on advanced level of queer studies. In this part, some important queer studies efforts at international and national level have been produced. It is becoming a liking area increasing day by day for the purpose of research and politics as well. Although, it is having multiple disciplines to contribute yet separate efforts are started.

2.6.1. International Efforts

Without going into detail, the efforts in queer studies at international level may be understood as on driving seat because the international community including academicians, psychologists, sociologists, scientists, researchers, philosophers etc. have explored various issues involved with queer studies. Under queer studies, the doctrinal as well as empirical work has been forwarded and out of this, new theories and concept are emerged.

129 A Booklet on ‘Body’, prepared by The Gender Studies Group, Delhi University, p-11.
2.6.2. Indian Efforts

In case of Indian efforts in queer studies, only few persons have worked and contributed in this area. The scope of studies under this area includes historical findings of homosexuality in ancient Indian literature of different religions. The most popular names in this regard are Ruth Vanita and Saleem Kidwai, when they after a long study of Indian ancient literature found that there is an existence of homosexuality in ancient India for that the Ajanta Alora Caves, Kamasutra and Khajoraho Temples are evidences. After the work of Ruth Vanita and Saleem Kidwai, the new writings have been added keeping in view the different issues related to homosexuality within different context i.e. social, legal, political, psychological, medical, science. Some names like Arvind Narrain, Nevadita Menon, Akshay Khanna, Gautam Bhan, etc. are popular in this regard. Some persons from transgender community named Laxmi Narayan Tripathi, Manbi Bandhopadhyay, etc. are also related with such study.

2.7. Queer Theories

“Queer theory” has emerged in academic scholarship to identify a body of knowledge connected to but not identical with lesbian/gay studies. The term is itself open-ended, and its advocates argue that its fluidity is to be embraced rather than “fixed.” Though there is no consensus on the term’s meaning (and who is included and who excluded), there is general agreement that the “queer” is politically radical, rejects binary categories (like heterosexual/homosexual), embraces more fluid categories, and tends to be “universalizing” rather than “minoritizing,” to use literary theorist Eve Kosofsky Sedgwick’s (1990) distinction. That is, queer theory reads queerness throughout the culture and not simply as a fixed, clearly demarcated category. Further, queer theory problematizes certain sorts of questions that have been standard in gay and lesbian theory. Queer theory, for example, tends to be interested less in whether homosexuality is a result of nature or nurture and more in what function the question of causation serves in the culture and in ideology.  

130 Popular Culture and Queer Representation: A Critical Perspective, 98.
‘Queer theory embraces a kind of intellectual tension: where, on the one hand, the
viewer insists that sexuality and the domain of the sexual are cultural inventions and
not essential, on the other hand, it deploys sexuality as a (if not the) significant
determinant of cultural and individual identity.’\textsuperscript{131}

‘Queer theory is a strongly constructionist perspective. It emerges in part from
the work of Foucault (1876/1978), Butler (1990), Sedgwick (1990) and others. It is
distinct from, but akin to, poststructuralism, and it is a feminist project (e.g., Butler,
1990; Sedgwick, 1990). It is based, in part, on the reclamation of the word queer, once
(and sometimes still) considered pejorative. This is an intentional move, and a
controversial one. It leads us to ask, what is queer, exactly? However, it is asked to
keep in mind that the use of “is” reflects inherent limitations in the language. For,
while queer can be all of these things, it also, in many ways, evades description
entirely. Queer is difficult. It is sometimes used as a synonym for “gay, lesbian,
bisexual, and transgendered, et al.” in order to prevent writing out awkward
acronyms. In this way, it represents a coalition of “sexual minorities.” However, queer
is also a theoretical model finding its roots in poststructuralism, gay and lesbian
studies, and feminism. One of the strengths of queer lies in its resistance to
categorization. Borrowing from the notion of Derrida’s difference, the meaning of
queer is always already deferred.’\textsuperscript{132}

Human sexuality has been explored by various authors, writers, academicians
and researchers within different aspects i.e. biology, anatomy, anthropology, genetic,
psychology, socio-culture and science as well. The study of sexual minority persons
has a relation to understand the theories relating to person in general and sexuality in
particular whether physiological or psychological because all these theories primarily
apply to sexual minority persons too. Although, the study of sexual minority has
become specific and so much centric towards main factors i.e. sexual orientation and
gender identity, masculinity and femininity, heterosexuality and homosexuality, but
basic root always remains with the study of a person. Although queer is an umbrella

\textsuperscript{131} Popular Culture and Queer Representation: A Critical Perspective, 109.
\textsuperscript{132} Blaise Astra Parker, \textit{Sexual Identity Development And Dynamic Systems Theory:}
\textit{A Narrative Analysis} (2004) (A Dissertation Submitted To the Graduate Faculty of the University
of Georgia in Partial Fulfilment of the Requirements for the Degree Doctor of Philosophy, The
University of Georgia, Athens, Georgia).
term includes lesbian, gay, bisexual, transgender. Hence, for sexual minorities study, various new theories have been propounded and discussed. These sexual minorities’ specific theories are commonly known as “Queer Theories”. Further, these are also understood as the theories of homosexuality. The theories of homosexuality are mainly based on theories of psychology, theories of personality and theories of socio-culture having many complexities and uncertainties discussed above.

2.8. Sexual Minorities: Meaning and Definition

‘We live in a world that is deeply structured by sex and gender. The categorisation of people as ‘male’ or ‘female’ permeates our society on every level, including our language, relationships, social institutions, and academic debates. On a social level, biological determinism, or the belief that we act in certain ways because of our physical make-up, is life. This is the case despite the changes that have occurred over the past century in the way that gender and sexuality are constructed, and high levels of cross-cultural gender and sexual variance.’

For a common understanding to society, the status of sexual minorities is derived from various social, cultural and religious norms followed by law of State i.e. Sec. 377 of Indian Penal Code which is very much centric to this research study. The sec. 377 of IPC criminalises the sexual act treated as against the order of nature in both the relationship whether heterosexual or homosexual including animal and read as:

‘Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.’

According to G. R. Dunstan, accepted a sketch of human norm: ‘patterns and standards of human relationship, validated widely in ordinary experience, attainable and enjoyed by men and women in varying degrees, and approbated by the conventions, and in some respects by the laws, of societies with a developed

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133 Surya Monro, Gender Politics 10 (Pluto Press, London, 2005).
134 Arvind Narrain and Gautam Bhan (eds.), Because I Have a Voice 7 (Yoda Press, New Delhi, 2012).
awareness of human liberty.’135 He also discussed that ‘there can be no one universal pattern of human sexual behaviour. There must be variety and acceptance of variety.’136 Moreover, taking a deeper sense of understanding about the ‘Variant forms of human sexual behaviour’137 Rechard Green believed that ‘there is probably no limit to the number of ‘variant’ forms of human sexual lifestyles.’138

Forwarding the illustration of Alfred Kinsey, Richard Green pointed out that ‘People with an exclusive or major preference for a same-sex sexual partner make up a significant part of the population.’139 Responding against the developmental mechanism of homosexual behaviour, Richard Green suggested ‘prenatal endocrine programming of the central nervous system, various genetic factors, features in the child’s family life, such as resolution or non-resolution of the Oedipal conflict (‘family romance’), or the impact of early socialization on ‘social learning’ as the responsible factors.’140 Although, he was not sure about the ‘genetic loading’141 behind a homosexual orientation.

‘Sexual minorities are defined with reference to two distinct and complex characteristics: sexual orientation and gender identity.’142 Indian society is diverse and has conservative nature as ‘many Indians view transsexualism as a purely Western phenomenon, analogous to homosexuality and lesbianism, created by an over indulgent and over promiscuous society. They gloss over the evils of sexual repression in their own society, and ignore the evidence that homosexuality and lesbianism are as old as man himself, having been written about and discussed in ancient treatises such as the Kamsutra.’143 Talking about the categories such as homosexuality David Halperin, argues that, ‘homosexuality are indispensable to the experience of ‘being’ homosexual and further wants to make clear that such

136 Id. at 171.
137 Id. at 68.
138 Ibid.
140 Id. at 70.
141 Id. at 71.
143 Rajesh Talwar, The Third Sex And Human Rights 12 (Gyan Publishing House, New Delhi, 1999).
categories do not exist ‘outside of history and culture’, nor are they some form of ‘false consciousness’. A Public Union of Civil Liberties (PUCL)-K fact-finding report about Bangalore says that sexual minorities refer ‘people discriminated against due to their sexual identity/ orientation or gender identity. This includes gays, lesbians, bisexuals, hijras, kotis, transgender, etc.’

Marks and Spencer discussed about bullying that ‘unwanted behaviour whether physical or verbal which is offensive, humiliating and viewed as unacceptable to the recipient.’ ‘The Germans and the French call it “the slow poison”.’ Several recent studies of bullying found that bullying affects the person in many ways out of these ‘anxiety, depression, exhaustion, insecurity and self-doubt, shame, embarrassment and guilt, obsessive thinking and nightmares, poor concentration, and sleeplessness’ are most prevalent, although the outcomes of bullying are numerous. Now, bullying with sexual minority persons seems the first interactive activity committed by other persons. Sexual minority persons are highly vulnerable as far as the bullying is concerned.

Submitted by Georgia Lawrence, on ‘The Science of Homosexuality’ on Monday, 13-11-2006, ‘Homosexuality is an issue that has sparked tumultuous debate in the United States, and has been brought to the forefront in the last fifty to sixty years. While the legal and social implications have captured the attention of the media, the lingering question of biology remains at the core of the debate. Is it possible that one is born with the characteristic of being homosexual, or is it solely a learned behaviour embedded in cultural norms?’

Considering on the study of ‘Health and Medicine Week’, in 2004, Scientists at Oregon Health and Science University School of Medicine, Simon LeVay and Thomas A. Schoenfeld, Diamant, Louis, Kristof, Nicholas D, Georgia Lawrence concludes with a relationship between biology and sexual behaviour. Although, the definition of sexual minorities is not provided in social and legal related studies but

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146 Ibid.
147 Ibid.
148 Ibid.
149 Available at: http://serendip.brynmawr.edu/exchange/node/33.
there are certain organisations, working groups and authorities who have tried to put
definitions of terms used under the category of sexual minorities in express and
implied forms. Such definitions are available in the reports, working papers and
articles relating to sexual minorities. For sexual minorities, only some acronym terms
like LGBTQI are used.

2.8.1. Lesbian

‘The word lesbian comes from the Greek Island of Lesbos, where the poet
Sappho lived in 600 B.C. Sappho was an intellectual and poet who wrote many love
poems to other women’.‘Female, who are erotically attracted to, and desire to form
romantic relationship with, other females.’‘A woman who is attracted to women
emotionally/sexually/romantically.’ Sometimes, lesbians are also called
‘homosexual women’. ‘A woman who desires other women, the characteristic of
people who are female desiring other females.’ Deepa V. N. points out her idea
about lesbian that ‘a lesbian is someone who will have sex with anybody.’ Lesbian
is popularly known as female homosexuals.

2.8.2. Gay

‘Male who are erotically attracted to and desire to form romantic relationship
with other male.’ A man who is attracted to another men emotionally/ sexually/
physically. ‘Males who desire only other males, the characteristic of same-sex
male attraction.’ ‘A word used to describe a man who is attracted to another men
emotionally/ sexually/physically.’ Gay is popularly known as male homosexuals.

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151 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 267
(Allyn and Bacon, United State of America, 4th edn., 2000).
152 A PUCL-K fact-finding report, Human Rights Violations against Sexuality Minorities in India
(Bangalore 2001).
154 Arvind Narrain and Gautam Bhan (eds.), Because I Have a Voice 21 (Yoda Press, New Delhi,
2012).
155 Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 267
(Allyn and Bacon, United State of America, 4th edn.; 2000).
156 A PUCL-K fact-finding report, Human Rights Violations against Sexuality Minorities in India
(Bangalore 2001).
158 Arvind Narrain, Queer: Law and Despised Sexualities in India, Glossary.
2.8.3. Bisexual

‘Sigmund Freud admitted the bisexual nature of all human beings, in his system the ‘normal’ mode of sexual development was heterosexual; explanations were required only when sexual object choices or aims other than reproductive activity with the ‘opposite’ sex occurred.’\textsuperscript{159} Freud has strongly insisted ‘on “an original bi-sexuality in every individual” assumes the status of an ethical judgement. His idea of bisexuality presumes an original unity of male and female characteristics and sexual inclination.\textsuperscript{160} Bisexual refers, who has erotic attraction to, and interest in developing romantic relationship with, males and females both.\textsuperscript{161} Bisexual is sexually responsive to either gender i.e. male or female.\textsuperscript{162} A person who is attracted romantically/emotionally/sexually to both men and women.\textsuperscript{163} ‘The term ‘bisexuality’, whilst allowing for polysexual attraction (desire for people of more than one sex).\textsuperscript{164} People who are fluid about their desires might identify as bisexual.\textsuperscript{165} Alternative types of sexual orientation include those documented by Queen (1997): ‘Omni sexual’, (attracted to multiple genders), and ‘pansexual’, a term coined by Firestone (1970) to mean diverse, unbounded desire.\textsuperscript{166} Capable of desiring people of more than one gender, or a person who identifies as potentially desiring people of more than one gender. Bisexual has also been given other meanings, such as some who has two gender identities.\textsuperscript{167}

2.8.4. Transgender

‘Someone who is anatomically born in a certain sex, but is more comfortable with the gender /sexual identity of a different gender, and chooses to go in for a sex

\textsuperscript{159} Robert A. Nye (ed.), \textit{Sexuality} 10 (Oxford University Press, New York, 2009).
\textsuperscript{160} Philip Rieff, \textit{Freud: The Mind of the Moralist} 185 (University Paperbacks, Methuen: London, 1965).
\textsuperscript{161} Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), \textit{Human Sexuality in a world of diversity} 267 (Allyn and Bacon, United State of America, 4th edn; 2000).
\textsuperscript{162} Id. at 13.
\textsuperscript{163} A PUCL-K fact-finding report, \textit{Human Rights Violations against Sexuality Minorities in India} (Bangalore 2001).
\textsuperscript{165} Id. at 16.
\textsuperscript{166} Id. at 15.
\textsuperscript{167} Id. at 194.
reassignment surgery or hormonal treatment.  

‘Transgender is an umbrella term that can be used to refer to anyone for whom the sex she or he was assigned at birth is an incomplete or incorrect description of her or himself. Individuals may use an array of terms to describe their gender identity including transgender woman, transgender man, female-to-male (FTM), male-to-female (MTF), Trans, two-spirit, gender nonconforming (GNC), or persons of transgender experience. Some trans-gender people may identify with the term transsexual and may utilize various interventions to medically transition into the gender they most identify with.’

‘An umbrella term which includes cross-dressers, transsexuals, androgynes, drag artists, third and other gender people, and other people with gender identities that are more complex than simply ‘male or ‘female’.’

Recently, Supreme Court has restrained lesbian, gay and bisexual to be treated as transgender or third gender.

After understanding the meaning and concepts of sexual minorities, it is also relevant to introduce meanings and definitions of various sexual minorities’ related terms so that the inferential value of conclusion is strongly putted. These terms are included in separate part.

2.9. Sexual Minority Related Terms: Meaning and Concept

2.9.1. Alternative Sexualities

‘Discarding the Eurocentric classification of sexuality into dichotomous categories of homosexual and heterosexual, new discourses of sexuality around a variety of experiences and desires started emerging. Thus the term alternate sexualities came into vogue. Using ‘alternate’ as an adjective and ‘sexualities’ in plural, it tries to describe those behaviours and meanings associated with those behaviours other than non-penetrative heterosexuality.’

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168 Surya Monro, 


170 Surya Monro, 

2.9.2. Autonomy

It is a state of ‘self-rulled’. It means power to make own decision on the basis of self-made rules without interference of other. Whenever, any person, group, institution or a nation is free to make its own rules and decisions without interference of others then this is known as autonomy of such individual, group, institution or a nation.

2.9.3. Bodily Rights

‘Bodily Rights are the rights of a person over his/her/its own body and over who will look at this body, touch this body, enter this body, engage with this body and comment on this body’\textsuperscript{172}.

2.9.4. Bullying

‘Bullying is the misuse of power to intimidate somebody in a way which leaves him/her feeling hurt, angry, vulnerable or powerless.’(Sheffield City Council)\textsuperscript{173} H. L. Kalia in his book ‘Bullying in Indian Organizations’ examined the workplace bullying which could lead our knowledge of bullying in other socio-cultural contexts. ‘Bullying constitutes unwanted, offensive, humiliating, undermining behaviour towards an individual or group.’\textsuperscript{174} Kalia, further explained the meaning of bullying and discusses ‘bullying is any intentional, repeated or hurtful act including inflicting physical pain, name-calling, and exclusion, defacing property, hurtful pranks and public humiliation. Bullying surrounds us in our daily lives. It’s all about power. Power can be intoxicating, exhilarating and addictive. When it is abused, power turns into bullying and hurts people, leaves lasting scars and can destroy lives.'\textsuperscript{175}

The Amnesty International has given its structure for understanding of bullying. According to Amnesty International bullying includes (1) Physical contact that is unwelcome; (2) Taking Things; (3) Teasing based on the way someone looks;

\textsuperscript{172} A Booklet on ‘Body’, prepared by The Gender Studies Group, Delhi University.
\textsuperscript{173} H. L. Kalia, Bullying in Indian Organizations 1 (The Associated Publishers, Ambala Cantt, 2007).
\textsuperscript{174} Ibid.
\textsuperscript{175} Id. at 2.
(4) Exclusion; (5) Making someone feel less like themselves; (6) Tricking others; (7) Mental, Physical and Emotional Harm.

2.9.5. Carnal Intercourse against the Order of Nature

While discussing on law and morality, K I Vibhute explained that ‘A plain reading of section 377 IPC reveals that carnal intercourse against the order of nature coupled with penetration is the gist of the offence. To be more precise, provisions of section 377 IPC come into play when a person accused of ‘unnatural offence’ (i) had carnal intercourse with man, woman or animal; (ii) such an intercourse was against the order of nature; and (iii) such an act was done voluntarily by the person accused of the offence.

However, the terms ‘carnal intercourse against the order of nature with any man, woman or animal’ and ‘penetration’, which are not defined under the Penal Code, as perceived by the judiciary in India, are of wide amplitude. These terms read together, ostensibly, take into their ambit a variety of ‘unnatural’ sexual acts. They are: (1) a (un)consensual sexual relation between two males, (ii) a (un)consensual anal intercourse between a man and a woman (including that between a husband and wife), (iii) (mutual) masturbation between partners (of same or different sex)

176 Roots of s. 377, IPC, are biblical and based on the principle that sexual activity is for procreation only. Any sexual act, therefore, not fitting that role is considered unnatural and against the order of nature. In Khanu v. Emperor, AIR 1925 Sind 286 the Supreme Court of India observed that ‘the natural object of carnal intercourse is that there should be possibility of conception of human being’. Available in K I Vibhute, ‘Consensual Homosexuality and the Indian Penal Code: Some Reflections on Interplay of Law and Morality’ 51 JILI 5 (January-March 2009).


of an act of sexual gratification, (iv) inter-femoral (thigh) sex\textsuperscript{181} between two males or a man and a woman, (v) oral sex between persons of same sex\textsuperscript{182} or of opposite sex\textsuperscript{183} (including a husband and wife)\textsuperscript{184}, and (vi) bestiality\textsuperscript{185}. In other words, any (un)consensual penile-anal, penile-oral and penile-animal penetration, howsoever minimal it be, amounts to ‘unnatural’ sexual relation between persons of opposite sex (anal, oral or inter-femoral), and bestiality. Section 377 of the Penal Code, in fact, corresponds to the (then) offence of buggery and of bestiality known to the English criminal law.\textsuperscript{186}

2.9.6. Choice

The act of choosing between two or more possibilities. The act of selection and adoption between two or more things as according to one’s like or dislike is known as choice.

2.9.7. Chromosome

A thread-like structure of nucleic acids and protein found in the nucleus of most living cells, carrying genetic information in the form of genes. A chromosome is a strand of DNA that is encoded with genes. In most cells, humans have 22 pairs of


\textsuperscript{182} Khanu v. Emperor; Brother John Antony v. State; Lohana Vasntal Devchand v. State. In this case, the Gujrat High Court observed that ‘sexual perversity’ is the condemnation of unnatural conduct performed for the purpose of sexual satisfaction both of the active and passive partners. Any person participating in the act of copulating the mouth of one person with the sexual organ of another is guilty of the offence, available in K I Vibhute, ‘Consensual Homosexuality and the Indian Penal Code: Some Reflections on Interplay of Law and Morality’ 51 JILI 6 (January-March 2009).


\textsuperscript{185} Khandu v. Emperor, AIR 1934 Lah 261, wherein sexual intercourse per nose with a bullock was held ‘unnatural’ sex within the meaning of s. 377 IPC, available in K I Vibhute, ‘Consensual Homosexuality and the Indian Penal Code: Some Reflections on Interplay of Law and Morality’ 51 JILI 6 (January-March 2009).

\textsuperscript{186} K I Vibhute, ‘Consensual Homosexuality and the Indian Penal Code: Some Reflections on Interplay of Law and Morality’ 51 JILI 6-7 (January-March 2009).
these chromosomes plus the two sex chromosomes (XX in females and XY in males) for a total of 46.

2.9.8. Close Friendship and Relationship

While classifying close relationship, Duncan Cramer described ‘there are various ways of trying to classify close relationship, none of which are entirely satisfactory on their own or are mutually exclusive. One way is in terms of kinship (such as wife and husband) and friendship (such as close or best friend)’. The second way of classifying relationship is in terms of romantic relationships and friendships. A third and more recent way of categorizing close relationships is in terms of same and cross-sex relationships. While most romantic relationships are cross-sex ones, most close friendships are same-sex ones. None the less, there are substantial numbers of same-sex romantic relationships and cross-sex close friendships. He further described an alternative way of classifying relationships in terms of their quality.

2.9.9. Coming Out

‘The process by which a gay/lesbian/bisexual person acknowledges his/her sexual identity to himself/herself and a transgendered person acknowledges his/her gender identity to himself/herself and then proceeds to tell others about it. Coming out has many levels, starting from coming out to oneself, to coming out to family, friends, colleagues and the wider society.’

2.9.10. Consent

Consent is said to be consent when two or more persons agree upon the same thing in same sense. And is given or obtained as per Sec. 12 of Indian Contract Act, 1872 followed by provision relating to free consent and consent is free consent when it is not caused by coercion, undue influence, fraud, misrepresentation and mistake.

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188 Ibid.
189 Ibid.
190 Arvind Narrain, Queer: Law and Despised Sexualities in India, Glossary
2.9.11. Conversion Therapy

The families, while knowing about the sexual orientation and gender identity deviation in any sexual minority, it is tried to make cure or change by using treatment by doctors. Various doctors give counselling, drug and electric shock treatment in the name of conversion therapy.

2.9.12. Culture

‘The meaning of culture may differ across the different languages. For examples, some of the definitions provided at Microsoft Encarta 2007 include:

a. shared beliefs and values of groups: the belief, customs, practices, and social behaviour of a particular nation or people

b. people with shared beliefs and practices: a group of people whose shared beliefs and practices identify the particular place, class, or time to which they belong

c. shared attitudes: a particular set of attitudes that characterizes a group of people’\textsuperscript{191}.

‘Culture is envisaged by Malinowski ‘as the handiwork of man and as the medium through which he achieves his ends’\textsuperscript{192}. While J. Biesanz and M. Biesanz define it as “a configuration of learned and shared patterns for behaviour and understanding concerning the meaning and value of things, ideas, emotions, and actions.”\textsuperscript{193}

2.9.13. Corrective Rape

Due to sexual orientation and gender identity of sexual minority persons, it is very difficult for them to come out to any member either from family or society. Whenever any member from the family of sexual minority comes to know about the sexual orientation and gender identity of his or her son or daughter, then such member


or whole family begins to torture that sexual minority to either change the sexual orientation or gender identity individually. On refusing to this, the family starts giving different treatments to sexual minority like by approaching to psychiatrist, tantric or other who gave them commitment for changing the said sexual orientation or gender identity. In this series some cases of rape by the family members or relatives of sexual minority persons come in to action. Such rape is committed in the name of curing or correcting the sexual orientation or gender identity of sexual minority and known as corrective rape.

2.9.14. Desire

According to Oxford Dictionary definition, desire is a strong feeling of wanting to have something or wishing for something to happen.

2.9.15. Diagnostic and Statistical Manual of Mental Disorder (DSM)

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) is the standard classification of mental disorders used by mental health professionals in the United States. It is intended to be used in all clinical settings by clinicians of different theoretical orientations. It can be used by mental health and other health professionals, including psychiatrists and other physicians, psychologists, social workers, nurses, occupational and rehabilitation therapists, and counsellors. DSM-5 can also be used for research in clinical and community populations. It is also a necessary tool for collecting and communicating accurate public-health statistics.

2.9.16. Dominance

Power and influence over others is called dominancy. In psychology, the disposition of an individual to assert control in dealing with others is known as dominance.
2.9.17. Erotic

In legal context, the reference of obscenity is provided in IPC and some other statutory laws but erotic is not defined as such. It is a term relating to sex or sexual desire.

2.9.18. Femininity

Femininity is a set of attributes, behaviours, and roles generally associated with girls and women. Femininity is made up of both socially-defined and biologically-created factors. Femininity is an expression particularly related to female activities. In case of femininity, the male person may also express the activities related to female persons. Femininity also includes the two categories as the masculinity. It has male femininity and female femininity. Out of these, male femininity goes beyond the socio-cultural norms of society.

2.9.19. Friendship

‘In the fullest sense of ‘friendship’, A is the friend of B when (i) A acts (or is willing to act) for B’s well-being, for the sake of B, while (ii) B acts (or is willing to act) for A’s well-being, for the sake of A, (iii) each of them knows of the other’s activity and willingness and of the other’s knowledge, and (iv) each of them co-ordinates (at least some of) his activity with the activity (including acts of friendship) of the other so that there is a sharing, community, mutuality, and reciprocity not only of knowledge but also of activity (and thus, normally, of enjoyment and satisfaction)’194.

2.9.20. Gay Gene

As a gene is a locus (or region) of Deoxyribonucleic acid (DNA) that encodes a functional Ribonucleic acid (RNA) or protein product, and is the molecular unit of heredity. The biological scientists and other genetic studying persons are searching a

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gay gene which is still not conclusive to determine the relationship between genetic and sexual orientation.

2.9.21. Gender

It has been referred earlier in section 2.5. above. However in an interview, one sexual minority rights activist considers the gender as a performative factor.

2.9.22. Gender Deviation

Gender deviation is the condition differing from a norm or from the accepted standards of a society in terms of gender roles.

2.9.23. Gender Dysphoria

It is the condition of feeling one’s emotional and psychological identity as male or female to be opposite to one’s biological sex.

2.9.24. Gender Identity

Before understanding the gender identity, the concept of identity and its development is a key. While discussing the identity development Jane Kroger accepted identity is a complex entity. Gender identity of a person is the person’s own sense of gender without regard to expression of the same in society. Recent research does prove that a part of the gender identity of a person is in the brain and that it develops in the fatal development stage itself-this is almost the same thing as brains. According to J. Venkatesan’s article, ‘Gender identity is one of the most fundamental aspects of life which refers to a person’s intrinsic sense of being male, female or transsexual, the Supreme Court said on Tuesday (April 15, 2014)”.

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2.9.25. Gender Identity Disorder (GID)

Gender dysphoria or gender identity disorder (GID) is the formal diagnosis used by psychologists and physicians to describe people who experience significant dysphoria (distress) with the sex and gender they were assigned at birth.

2.9.26. Gender Neutrality

Gender neutrality is relating to equal treatment of social identity of male and female without giving any preference to anyone of them. Person is a gender neutral term for social identity of male and female.

2.9.27. Hate

According to Merriam Webster Dictionary, hate is (a) intense hostility and aversion usually deriving from fear, anger, or sense of injury (b) extreme dislike or antipathy.

2.9.28. Hate Crime

A crime motivated by racial, religious, gender, sexual orientation, or other prejudice.

2.9.29. Heterosexuality

Heterosexuality is a relationship between the two persons of different sex. In general, the relationship between male and female is considered as heterosexual relationship. The identity based on performances from such heterosexual relationship is understood as heterosexuality.

2.9.30. HIV/AIDS

Acquired immunodeficiency syndrome (AIDS) is a chronic, potentially life-threatening condition caused by the human immunodeficiency virus (HIV). By damaging your immune system, HIV interferes with your body's ability to fight the organisms that cause disease. HIV is a sexually transmitted infection.
2.9.31. Homophobia

‘Homophobia refers to the irrational fear or hatred of homosexuals or homosexuality’\textsuperscript{197}. ‘Prejudice against or fear/hatred of homosexuals.’\textsuperscript{198} ‘Amnesty International (AI) notes that some governments (including governments in the Caribbean) have claimed that ‘sodomy’ laws are necessary for the prevention of HIV/AIDS. Linking HIV/AIDS to homosexuality is factually inaccurate, discriminatory, and acts as a barrier to effective HIV prevention work. HIV/AIDS workers have consequently been detained and harassed while distributing condoms to sex workers, for example. It also makes prevention work in prisons almost impossible (AI Crimes of Hate)\textsuperscript{199}. Krish Ashok examined the inter-connectedness of homophobia, sand mafia and lunges. He argued that ‘it is said that everything in this cosmos is fundamentally interconnected’\textsuperscript{200}. He further observed that ‘A while back, Pope Francis shocked the conservative Catholic world by announcing that he thinks it’s a good idea for religion to stay out of people’s bedrooms’. Then the establishment tried to do damage control by attempting to add nuanced subtitles to his “we have no right to judge gay people sentiment”\textsuperscript{201}.

2.9.32. Homosexuality

According to Rigveda-Whatever is a part of nature is itself natural’. The homosexuality is also a part of nature hence itself natural. ‘Homosexuality not a new word in this twenty first century became controversial in 1970’s with gay and lesbian movement in Latin America. In previous years in different part of the world there different issues are involved like same-sex marriage, recognition of homosexuality in society and further recognition of homosexuality in Human Rights instruments so that it will no more be identified as crime in Global Human Society\textsuperscript{202}.


\textsuperscript{200} The Theory of Everything, \textit{The Hindu (Magazine)}, Lucknow, Sunday, August 11, 2013.

\textsuperscript{201} Ibid.

The term ‘homosexual’ was coined in the late 19th century by a German psychologist, Karoly Maria Benkert; the word is a Greek and Latin hybrid with homos (often confused with the later Latin meaning of ‘man’) deriving from the Greek word for same, thus connoting sexual acts and affections between members of the same sex. At the time of the European discovery and colonization of the new world, homosexuality-labelled “sodomy-was considered by authorities to be “the most vile, filthy and dishonest of sins, inspiring God’s ire and detestable even to the devil.” “

‘Homosexuality literally means sexual orientation toward people of the same sex. Homosexuality contrasts heterosexuality, sexual orientation toward people of the opposite sex. It is popularly known in two types as male homosexuality (gay), female homosexuality (lesbian).

‘The Dictionary meaning of homosexuality is a sexual propensity for persons of one’s own sex. Homosexuality, then, is a state or condition, and as such does not, and cannot, come within the purview of the criminal law. ‘Homosexuality is about attraction, it’s not physical.’ While treating homosexuality as an abnormal one theory related to this was formulated in the west for removing the homosexuality that theory was ‘homosexuality means that the men are inadequately masculine and the women are overly masculine.’ Prior to 1973, the homosexuality was considered as a disease or mental illness on different psychological, physiological, medical and other socio-cultural context grounds. Hence, it was included as mental illness under the ‘Diagnostic and Statistical Manual (DSM II).’

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206 Wolfenden Committee Report, Report of the Committee on Homosexual Offences and Prostitution, Presented to Parliament by the Secretary of State for the Home department and Secretary of State for Scotland by command of Her Majesty (London, September 1957).
208 Arvind Narain and Gautam Bhan (eds.), Because I Have a Voice 52 (Yoda Press, New Delhi, 2012).
209 Id. at 54.
‘Homosexuality is a sexual orientation not a behaviour, connoting choice that describes people having sexual or romantic attraction to members of their own sex. One can be homosexual, bisexual or heterosexual. Etymologically, the word homosexual comes from the Greek word homo that means ‘same’. The word gay generally refers to male homosexuality, but is also used loosely for homosexuality in general. The word lesbian always refers to homosexuality in women. Homosexuality is an orientation that you are born with and not a behaviour choice. Being homosexuals is not a choice a person makes.’

‘In 1973, after several years of bitter dispute, the Board of Trustee of the American Psychiatric Association decided to remove homosexuality from the Diagnostic and Statistical Manual of Psychiatric Disorders, its official list of mental diseases.’ Some other statements, made by American Psychiatric Association after deletion of homosexuality from DSM II, are considered as DSM IV which directly or indirectly favours the civil as well as legal rights of homosexuals and further denies ‘any psychiatric treatment, such as repressive or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder.’ The doctor who first believed homosexuality is not a mental disorder has recently died.

In his book ‘Homosexuality and American Psychiatry’ Ronald Bayer discussed about the ‘political analysis of the psychiatric battle over homosexuality’ and did not accept that assumption, ‘seeing in it a mistaken view of the problem. The status of homosexuality is a political question, representing a historically rooted, socially determined choice regarding the ends of human sexuality. It requires a political analysis.’

Zaid Al Baset in the paper ‘Section 377 and the Myth of Heterosexuality’ took four points i.e. The (Unnaturally) Natural Homosexual, The Homosexual Erasure from the Public and the Private, All the World’s a Closet, Minoritising Manoeuvres,

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212 Arvind Narrain and Gautam Bhan (eds.), *Because I Have a Voice* 55 (Yoda Press, New Delhi, 2012).
213 Ibid.
214 Ibid.

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to examine the judgment of Delhi High Court in Naz Foundation case and concluded and equation ‘heterosexuality=procreative=meaningful= responsible=natural against homosexuality=hedonistic=irresponsible=meaningless=naturally unnatural’ and further as homosexuality conceived either as a compendium of identities or an assortment of acts is articulated in a way that ends up supporting the heterosexual hegemony.\textsuperscript{215}

While discussing about the book “Same-Sex Love in India: Reading from History and Literature” edited by Ruth Vanita and Saleem Kidwai, Mahendra Raja Jain ‘emphasised on the existence of homosexuality as more than two thousands year old. It was further added that homosexuality was explored in almost every religion i.e. Hindu, Muslim, Sikh, Christianity, etc. It showed a serious concern about the non-inclusion of this book into the mainstream discussion and concluded with a hope that academician would get benefit from this book in respect of debate on sec. 377 of IPC.\textsuperscript{216} Exploring the conceptualization relating to culture, health and sexuality, Akshay Khanna presented the understanding of ‘homosocial’, ‘homoerotic’ and the ‘homosexual’\textsuperscript{217}.

\textbf{2.9.33. Honour Killing}

An honour killing is the homicide of a member of a family or social group by other members, due to the belief the victim has brought dishonour upon the family or community. Human Rights Watch defines “honour killings” as the acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonour upon the family. A woman can be targeted by (individuals within) her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim of a sexual assault, seeking a divorce-even from an abusive husband-or (allegedly) committing adultery. The mere perception that a woman has behaved in a way that “dishonours” her family is sufficient to trigger an attack on her life. Such incidents are under the purview of “honour crime”.

\textsuperscript{217} Paul Boyce and Akshay Khanna, ‘Rights and representations: querying the male-to-male sexual subject in India’, 13 CHS 92 (January 2011).
In case of sexual minorities the sexual orientation, gender identity, sexual behaviour towards the same sex person becomes the ground of such crime.

2.9.34. Hormone Replacement Therapy

For changing the sex, it is first to give hormone replacement therapy to that person who want to change sex under the supervision of medical experts. This hormone therapy (HRT) is used to balance a person’s gender identity with their body’s endocrine system. Male-to-female candidates begin by taking testosterone-blocking agents (or anti-androgens) along with female hormones such as estrogen and progesterone and similarly in case of female to male sex re-assignment the testosterone therapy is applied.

2.9.35. Human Rights

As defined in Sec. 2 (d) of The Protection of Human Rights Act, 1993, “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

2.9.36. Inequality

Social inequality is a social term defined and understood by many philosophers, sociologists, academicians, writers, etc. In traditional Indian society, the basis of hierarchy and existence of social inequalities was the idea of purity and pollution. In modern industrial society, the basis of inequalities is ‘achievement’ which is the result of ‘open and fair’ competition. Hindu religious texts tell us that Indian society is divided into four varnas and into numerous castes arranged into certain types of mutual relations. Louis Dumont, a French sociologist, has explained ‘inequality’ in caste system on a different basis and holds that ‘hierarchy’ and not ‘inequality’ is the opposite of ‘equality’. Andre Beteille (Inequality Among Men, 1977:49) has talked of relationship between power and inequality. Power maintains inequality and it also transforms inequality. Social inequality refers to the unequal social status of individuals or group in a given society.
2.9.37. **International Classification of Diseases (ICD)**

The international Classification of Diseases (ICD) is the standard diagnostic tool for epidemiology, health management and clinical purposes. This includes the analysis of the general health situation of population groups. It is used to monitor the incidence and prevalence of diseases and other health problems, proving a picture of the general health situation of countries and populations.

2.9.38. **Invisibility**

According to Pamela Davies, it is considered the seven features of invisibility. These are ‘No Knowledge; No Statistics; No Theory; No Research; No Control; No Politics; No Panic’.

2.9.39. **Liberty**

The state of being free; enjoying various social, political, or economic rights and privileges. The concept of liberty forms the core of all democratic principles. The Article 21 of Indian Constitution also talks about the Right to life and personal liberty.

2.9.40. **Live-in-Relationship**

In technical terms, live-in together means an arrangement whereby two people decide to live or dwell together on a long term or permanent basis as husband and wife, in an emotionally as well as sexually, personally and closely acquainted connection or in other words intimate relationship. The marriage between the two persons has not actually taken place. Hence, the act of living together and having a sexual relationship especially without being married or the state or condition of living together as husband and wife without being legally married is cohabitation or a state of ‘Live-in Relationship’. Hence, living together without getting married is truly defined as a “Live-in Relationship”. In modern time, out of many reasons for live-in relationship, homosexuality is one of them.

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2.9.41. Love

In the film named ‘Chennai Express’, the dialogue i.e. ‘Love has no language’ makes it clear that it is a beautiful concept based on mature understanding. It was incidentally increasing the scope of love when the fever of ‘Kiss of Love’ arrived to Delhi starting from Kochi. The fever of ‘Kiss of Love’ would further convert into ‘Hug of Love’.

2.9.42. Marriage

‘Marriage is a union of two hearts. Success of married life depends on the edifice built with mutual love, understanding, affection, trust, service and self-sacrifice. Once this edifice is shaken, happy married life will be shattered into pieces. The result is one of misery and emotion—where it is impossible to live like husband and wife, any compulsion to unite them will lead to social evils and disturbance of mental peace and disorder in the family life. However rigid social fabric, it is not the social system but the personal safety of the parties to wedlock which shall prevail. It was said in Roopa Reddy v. Prabhakar Reddy’.

2.9.43. Masculinity

Masculinity is an expression particularly related to male activities. In case of masculinity, the female person may also express the activities related to male persons. According to Rahul Roy, masculinity is an expression of power. There are male and female masculinity. Out of these female masculinity is the subject that goes beyond the socio-cultural norms of society.

2.9.44. Mental Disorder

In his book ‘Mental Disorders: Misconceptions and Realities’ Manjeet Singh Bhatia, discussed that a layman’s knowledge about mental disorders is full of misconceptions. He further stated that ‘Mental disorders are prevalent in people of all

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222 Manjeet Singh Bhatia, Mental Disorders: Misconceptions and Realities (National Book Trust, India, 2006).
regions, countries and societies. A World Health Organization report states that a staggering 450 million people, in South-Asia region alone, suffer from mental and behavioural disorders, which is among the leading cause of ill-health and disability worldwide while one in four people are affected by mental or neurological disorders at some point of time in their lives.  

He has also mentioned the types and cause of mental disorders. In case of sexual minority persons the issue of mental illness, mental disorders was always attached and due to this attachment the homosexuality, same-sex behaviour was considered as a mental disease and was mentioned in the Diagnostic and Statistical Manual (DSM). But after 1973, homosexuality was removed from the official list of mental diseases. After removal of homosexuality from DSM, it is still considered as mental disorder by the individuals, society and State also. Manjeet Singh Bhatia also discussed that after identifying mental disorders it can be treated.

2.9.45. Minuscule Minorities

This term was first used in the case of Suresh Kumar Khosal and Others v. Naz Foundation and Others, when Supreme Court judgment said and referred the sexual minority community as ‘minuscule minorities’. It is related to have the less or few numbers of sexual minority persons. Because of many complications with their identity, it is not easy to coming out for them. Hence, out of all minorities, it was considered as one part of minorities by giving them the identity of minuscule minority.

2.9.46. Morality

Ethics or morals are the study of what we ought to do; what are the right way to act and what the wrong is. Morality is ‘personal’ to the individual conduct and behaviour. It is a claim people would think is justified but not necessarily supported by law. Out of various kinds of morality discussion, the Delhi High Court in Naz Foundation case referred the ‘Constitutional Morality’ in a democracy.

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2.9.47. Moral Policing

It is a blanket term used to describe vigilante groups which act to enforce a code of morality. It is executed in the name of morality protection.

2.9.48. Myth and Misconception

Myth is a traditional story, especially one concerning the early history of a people or explaining a natural or social phenomenon, and typically involving supernatural beings or events. It is also a widely held but false belief or idea. Misconception is a view or opinion that is incorrect because based on faulty thinking or understanding.

2.9.49. Oppression/Deprivation

Oppression is a prolonged cruel or unjust treatment or exercise of authority. The deprivation is a damaging lack of material benefits considered to be basic necessities in a society.

2.9.50. Orgasm

It is the state of climax of sexual excitement, characterized by intensely pleasurable feelings centred in the genitals and experienced as an accompaniment to ejaculation.

2.9.51. Patriarchy

It is a system of society or government in which the father or eldest male is head of the family and descent is reckoned through the male line. It is also a system of society or government in which men hold the power and women are largely excluded from it.
2.9.52. Person

As defined in Sec. 42 of General Clauses Act, 1897 and Sec. 11 of IPC, 1860, “Person” shall include any company or association or body of individuals, whether incorporated or not.224

2.9.53. Privacy

Privacy is a state in which one is not observed or disturbed by other people. ‘Right to privacy, Vani Saraswathi says, is a core principle in Islam’225. Indian judiciary has recognized privacy (right to privacy) as the core fundamental rights within the right to life and personal liberty (Article 21 of the Indian Constitution). Keeping in view the importance of privacy rights, in a ‘speech made by Navi Pillay, the then United Nations High Commissioner for Human Rights at the council session, where she had said referring to the scope of the surveillance regimes of countries including United States and United Kingdom, “Laws and policies must be adopted to address the potential for dramatic intrusion on individuals’ privacy which have been made possible by modern communications technology. While national security concerns may justify the exceptional and narrowly-tailored use of surveillance, I would urge all States to ensure that adequate safeguards are in place against security agency overreach and to protect the right to privacy and other human rights”, T. Ramachandran suggested that ‘the judiciary should determine the scope of monitoring private information’.226

2.9.54. Queer

‘Historically used as a derogatory term to describe homosexual people in the west, and home to the rather unflattering meaning of ‘odd’ or ‘strange’ in the English language, ‘queer’ might seem a perplexing choice of name for a community or movement.’227 Discussing about queer, Nivedita Menon argued, ‘even at its best, society’s response to the question of sexuality has been in the form of ‘respecting

224 Sec. 42 of The General Clauses Act, 1897.
225 Vani Saraswathi, ‘Sex Religiously’, The Hindu, Lucknow, Tuesday, August 6, 2013.
227 Arvind Narrain and Gautam Bhan (eds.), Because I Have a Voice 3 (Yoda Press, New Delhi, 2012).
choice’. Such a response as we have seen leaves unquestioned heterosexuality as the norm—that is, ‘most of us are heterosexual, but there are others out there who are either lesbian or gay, or B, T, or K’. The alphabets proliferate endlessly outside the unchallenged heterosexual space. But if we recognise that this ‘normal’ heterosexuality is painfully constructed and kept in place by a range of cultural, biomedical and economic controls, precisely in order to sustain existing hierarchies of class and caste and gender, then we would have to accept that all of us are—or have the potential to be—‘queer’. 228

‘The term ‘queer’ is, in some ways, both a deeply personal identity and a defiant political perspective. It embodies within itself a rejection of the primacy of heterosexual, patriarchal family as the cornerstone of our society. In doing so, it rejects the assumption of compulsory heterosexuality-society’s firm yet unsaid belief that the world around us (and everyone in it) is heterosexual until proven otherwise. It captures and validates the identities and desires of gay, lesbian, bisexual and transgender people, but also represents, for many, an understanding of sexuality that goes beyond the categories of ‘homosexual’ and ‘heterosexual’. It speaks, therefore, of communities that name themselves (as gay or lesbian, for example) as well as of those that do not, recognising the spaces for same-sex desire and sexuality that cannot be captured in identities alone. To speak of queer politics is, in some sense, different from just speaking of gay, lesbian, bisexual, transgendered, kothi, and hijra communities. Queer politics does not speak only of the issues of these communities as ‘minorities issues’, but instead it speaks of larger understandings of gender and sexuality in our society that affects all of us, regardless of our sexual orientation. It speaks of sexuality as a politics intrinsically and inevitably connected with the politics of class, gender, caste, religion and so on, thereby both acknowledging other movements and also demanding inclusion within them. 229 ‘Queer is any type of trans identity that is not always male or female. It is where people feel they are a mixture of male and female.’ 230 ‘Queer theory deconstructs gender and sexual identities, primarily via interpretations of cultural texts.’ 231 In defining queer it may include that

228 Arvind Narrain and Gautam Bhan (eds.), Because I Have a Voice 3 (Yoda Press, New Delhi, 2012).
229 Id. at 3–4.
231 Id. at 31.
‘Combinations of (usually oppositional) gender and sexual orientation characteristics.’

‘Queer’ is fashioned as an inclusive term while acknowledging, at the same time, that any act of inclusion will create its own set of exclusions. The term, arguably, is used in at least three senses: 1. As a noun, where it functions as an ‘umbrella’ term aiming to bring together diverse sexual proclivities, gender identifications and sexual practices within its fold as an opposition to heterosexuality. This meaning of queer is commonly employed in political practice; 2. As a verb which poses a theoretical critique to the crystallisation of sexual identities into fixed essences; 3. As an adjective, whereby it operates as an identity marker for those who do or choose not to fit into sexual minority categories and claim a more fluid sexuality.

2.9. 55. Rape

After April 2, 2013 the term ‘Rape’ has been defined under Sec. 375 of Indian Penal Code, 1860 as follows:

A man is said to commit “rape” if he:-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with his or any other person; or

(b) inserts, to any extent, any object or part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or make her to do so with him or any other person; or

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(d) applies his mouth to the vagina, anus, urethra of woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

Firstly.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

Explanation 1.- For the purpose of this section, “vagina” shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exceptions-1. A medical procedure or intervention shall not constitute rape;
2. Sexual intercourse or sexual acts by a man with his own wife, the not being under fifteen years of age, in not rape.

2.9.56. Reproduction

It is the act or process of producing babies, young animals, or plants.

2.9.57. Same-sex Marriage

It is the marriage between partners of the same sex (as recognized in some jurisdictions). It is also known as ‘gay marriage’, ‘civil union’, ‘civil partnership’.

2.9.58. Same-sex Relationship

It is an involvement in sexual relationship between two or more persons of same sex or same gender (either man and man or woman and woman).

2.9.59. Sec. 377 of Indian Penal Code

The chapter XVI (Of Offences Affecting The Human Body), the Sec. 377 includes the offence relating to ‘Unnatural Offences’. The Sec. 377 reads as-

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.- Penetration is sufficient to constitute the carnal intercourse to the offence described in this section.

2.9.60. Sex

It has been referred earlier in section 2.4. above.

2.9.61. Sex Reassignment Surgery

Sex reassignment surgery is a medical treatment of any person for conversion of one biological identity of sex to other identity of sex.
2.9.62. Sexual Minorities

The sexual minority is a group whose sexual identity, orientation or practices differ from the majority of the surrounding society. It can also refer to transgender, genderqueer (including third gender) or intersex individuals. The term is primarily used to refer to lesbian, gay, bisexual (LGB) individuals, particularly gay people. When their sexual identity, orientation or practices are discriminated or not treated equal then they are known as sexual minorities or gender minorities.

2.9.63. Sexual Orientation

“A term which is used to indicate the gender or sex towards which one is emotionally/sexually/romantically attracted to. It often denotes same sex attraction.” The American Psychological Association states that “sexual orientation falls along a continuum”. In other words, some does not have to be exclusively homosexual or heterosexual, but can feel varying degrees of both. Sexual orientation develops across a person’s lifetime-different people realize at different points in their lives that they are heterosexual, bisexual or homosexual.

2.9.64. Sexually Transmitted Diseases (STD)

It is an infection transmitted through sexual contact, caused by bacteria, viruses or parasites. It is also referred as sexual transmitted infections (STI). It is commonly spread by sex, especially vaginal intercourse, anal sex and oral sex.

2.9.65. Stereotype

A stereotype is a preconceived notion, especially about a group of people. Many stereotypes are racist, sexist, or homophobic. It is also a widely held but fixed and oversimplified image or idea of a particular type of person, group of persons or thing.

234 Arvind Narrain, Queer: Law and Despised Sexualities in India, Glossary.
2.9.66. Transsexual

‘A person with a gender-identity disorder who feels that he or she is really a member of the other gender and is trapped in a body of the wrong gender.’\(^\text{235}\). The term “transsexual” may be broadly defined to include all individuals who hold the deep conviction that the body into which they were born does not represent or reflect the gender they feel themselves to be. The source of this conviction, however, can differ from individual to individual: it can arise from a perceived physical anomaly, an unrelated mental disorder, or even a particularly compelling social situation.\(^\text{236}\) A transsexual is a person who has the internal and an external bodily feature of one sex, but has the irrefutable conviction that he or she belongs to the opposite sex.\(^\text{237}\) Elaborating the meaning of transsexual, Robert Wintemute makes the point that ‘transsexual person could be heterosexual, bisexual, gay or lesbian.’\(^\text{238}\) A person who feels a consistent and overwhelming desire to transition and fulfil their lives as members of the opposite gender. Most transsexuals actively desire and complete Sexual Reassignment Surgery.\(^\text{239}\)

2.9.67. Unnatural and Abnormal

Sukhdeep Singh writes that using terms like unnatural or abnormal for alternate sexuality just shows our lack of understanding of things and ‘the debate on homosexuality has always centred around two things- unnatural and abnormal.’ He argues that the word normal and abnormal actually means in medical terms. As ‘freedictionary.com puts it, being normal is being free from any infection or other form of disease or malformation, or from experimental therapy or manipulation; which essentially means that the person should be able to perform all basic activities freely, without any difficulties whatsoever. However, the word normal in daily English usage is often confused (and used as a replacement for) common, and therein lies the folly. When talking about homosexuality, we confuse between what is

\(^{235}\) Spencer A Rathus, Jeffrey S. Nevid, et. al. (eds.), Human Sexuality in a world of diversity 137, 161 (Allyn and Bacon, United State of America, 4th edn; 2000).


\(^{237}\) Rajesh Talwar, The Third Sex And Human Rights 17 (Gyan Publishing House, New Delhi, 1999).

\(^{238}\) Ibid.

\(^{239}\) Surya Monro, Gender Politics 196 (Pluto Press, London, 2005).
common and what is normal\textsuperscript{240}. Anything that is found in Nature (that includes Earth, and also Universe) is natural further added by Sukhdeep Singh.

Taking the examples of temple of Konark in Orissa and Khajuraho in Madhya Pradesh, Devdutt Pattanaik in his paper ‘Why Tagore was right and Gandhi was not’ provided that ‘Rabindranath Tagore wrote an impassioned plea that, good or bad, moral or immoral, this was a national treasure that we could not wish away. We had to preserve it. And so it has survived, continuing to baffle us as they have baffled onlookers for hundreds of years.’\textsuperscript{241}

2.9.68. Victimization

Victimisation means punishing or threatening to punish someone. It is against the law to punish or threaten to punish some because they have:

1. Asserted their rights under equal opportunity law;
2. Made a complaint;
3. Helped someone else make a complaint;
4. Refused to do something because it would be discrimination, sexual harassment or victimisation.

Except all the terms included, there are many more to understand but the interrelated study of human sexuality in various perspectives, sex, gender, queer theories, sexual minorities and related terms provides the understanding of role of human sexuality, sex and gender in studying the sexual minorities on theoretical basis that indicates towards those factors which play an important role in further understanding of determination of sexual orientation and gender identity. Since, the study is based on empirical methodology that includes the various organizations which are working in the area of sexuality, gender, homosexuality and Sec. 377 of IPC. The next chapter includes such organizations which are either found or visited during the research study in Delhi. This functioning of such organizations has been named as a movement.

\textsuperscript{240} Available at: http://www.ismdiaries.com
\textsuperscript{241} Available at: http://churumuri.wordpress.com/2012/03/15/why-tagore-was-right-and-gandhi-was-not.