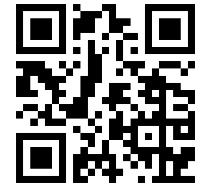


## **Decriminalisation of Homosexuality - Corrupting Indian Culture through Westernisation?**



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Homosexuals have been cast out as sinners and anomalies worldwide, while even being criminalised in some countries, like India, which uphold religious sentiments to advocate its criminalisation. Heterosexuality has been accepted as Nature's default, the "normal", banishing any other sexual orientation. It is little known how a variety of sexual orientations were accepted and celebrated in various cultures, prior to the colonisation of those countries. The physiognomy and dress of "natives" often confounded Europeans' notions of gender propriety and sexuality, whether it was due to the long grown hair of Ceylon men, or the dangerously oversexed Black African men or the perceived sexual voracity of Arabs - casual perceptions that often reflected Europeans' insecurities turned into obsessions about "native" sexual misconduct, provoking new sorts of sexual regulation and repression.

A closer look at the history of homosexuality in India brings its colonial legacy in the limelight. A read of the Indian scriptures and ancient texts provides evidence that unlike popular belief, homosexuality and cross dressing has been widely represented and accepted in the Pre-colonial India. The criminalisation of same sex relations is both culturally and legally, a British construct. My crucial question then, is what allows politicians and courts to carelessly wield "culture and tradition" to prove decriminalisation of homosexuality as a sin? How is decriminalisation not westernisation or not simply a result of the fascination with western concepts? The aim of my research is to take a closer look at the history of the LGBTQIA++ community in India, especially referring to the Indian scriptures and sacred texts to bring out an argument that the criminalisation of homosexuality in India has been entirely a British construct. It is to look at the instruments that allow politicians and courts to advocate Section 377 by citing Indian tradition and culture to prove homosexuality as unnatural, abhorrent and a sin. The objective of this paper is to argue against the commonly believed idea that "Gay rights" is a 'western' concept and decriminalisation of homosexuality is a brutal 'westernisation' of India's 'culture' and 'tradition' thus corrupting it. This paper is aimed to prove the existence, celebration and acceptance of homosexuality in pre-colonial Indian culture through numerous readings of sacred texts, scriptures as well as taking a look at Temple sculptures and art.

There exists a repository of literature that looks at the history of homosexuals in India. Devdutt Pattanaik has written various articles and books confirming the existence of homosexual practices in the Ancient Hindu scriptures and Temple Art. He not only talks about its existence but also its acceptance and prominence. He supports his arguments with textual examples spread across various sacred texts, scriptures and mythologies. He writes, "As Hinduism was less monastic, transgenders were accepted in society, though not mainstreamed, forming part of the community of entertainers, or serving in the temple collective..... They (homosexuals) existed, of course, but were probably expected to marry, and produce children, one way or another. Their sexual activity itself was no way considered worse than heterosexual transgressions. Both demanded purification — a bath."<sup>1</sup>

Enze Han and Joseph O'Mahoney talk about the criminalisation of homosexuality as brought in by the British in their colonies through their book *British Colonialism and the Criminalization of Homosexuality: Queens, Crime and Empire*. It focuses on the legacy of British colonialism on LGBT issues - "If we look at Singapore, or Malaysia, or Brunei, each country has a law, numbered section 377, or 377A, criminalising homosexual conduct to some degree. This is not a coincidence. These laws were imposed during British imperial rule and have survived to the present."<sup>2</sup>

Such similar works show the imposition of Criminalisation of homosexuality in formerly British colonies via the laws introduced during the British imperial rule. These laws did not exist in the traditional Indian culture and mythologies. Homosexuality was accepted and regarded a part of the society, with references even in our sacred texts and temple art. It was not punishable in the pre-colonial era. Hence, decriminalisation of homosexuality is not a 'western' concept and if anything, it is taking us back to our roots. My research will provide a comprehensive outlook on the false idea of acceptance of homosexuality as a 'western' concept, untrue to the Indian culture and tradition and hence a sin. The Indian culture and scriptures accepted homosexuality as a reality of society.

<sup>1</sup> Devdutt Pattanaik, 'Gender Fluidity in Hinduism', *Devdutt.com*, 2020. <sup>2</sup> Enze Han and Joseph O'Mahoney, *British Colonialism and the Criminalization of Homosexuality: Queens, Crime and Empire*, (London : Routledge, 2018), p. 2.

## Decriminalisation of Homosexuality - Corrupting Indian Culture through Westernisation?

There were innumerable gay couples living normal lives, who were not punished for it let alone criminalised. The argument that decriminalising homosexuality is a form of dirty westernisation of Indian culture and values is simply based on a bed of ignorance, distorted history and lack of knowledge of the pre-colonial Indian culture. The sheer fact that Section 377 was imposed by the British in India and no law, legal or social, criminalising homosexuality ever existed in India before that, proves that in fact, criminalisation of homosexuality is entirely a British construct. What are the tools that advocate Section 377 as being in accordance to the Indian tradition, if not ignorance and distortion of history. I believe this is a crucial topic that needs to be discussed and researched, now more so than ever, when the world is on the brink of achieving equal rights for the Queer community yet is so far from it and the Indian politicians frown upon the abolishment of Section 377 by claiming the act as something that tarnishes India's traditions and values. According to Ram Gopal Yadav, a member of the Rajya Sabha, "It (homosexuality) is completely against the culture of our nation." Research in this area allows validation of queer feelings by backing them up with Indian tradition, culture and scriptures, the same tools that were once used against them.

This Research paper takes a unique approach by not only looking at the history of homosexuality to bring out evidence of its acceptance in the Indian culture but also looking at the history of heterosexuality. Why is heterosexuality considered Nature's default state, the normal? Does it not have a history of origin, similar to how homosexuality has been scrutinised over the years? Heterosexuality is usually confused with reproduction, the sexual act that has existed as long as mankind has, no wonder it is considered the normal state. But according to the Queer theorist David Halperin, "Sex has no history," because it's "grounded in the functioning of the body." Sexuality, on the other hand, precisely because it's a "cultural production," does have a history.<sup>2</sup> In other words, while sex is something that appears hardwired into most species, the naming and categorising of those acts, and those who practise those acts, is a historical phenomenon, and can and should be studied as such. Therefore, there can be no default sexual orientation. Hence, India's conservative outlook about homosexuality started with British Rule and became stronger after Independence. Prior to British Colonisation, fluid sexuality was accepted as a reality of society and equally represented in Ancient Hindu scriptures. In Purushayita, a chapter from Kama Sutra, a Second Century ancient Hindu text, lesbians were called "Swarinis", which were women who married other women and raised children together. Such marriages were readily accepted. Gay men were called "Klibas", who could either marry each other or remain in relationships of a frivolous nature.

A plethora of instances of representation of people with diverse sexual orientations question the existing notion of how same sex relationships are considered as defying the Hindu culture. Transgenders have always been revered in the hierarchy of society. In Ramayana, when Lord Rama asked all "men and women" to go back, the transgender individuals stayed back to assist him. This act of loyalty and love touched Lord Rama and he sanctioned them with the power to confer blessings on auspicious occasions like marriage, childbirth, and inaugural functions. Such numerous illustrations as well as the erotic temple art of the Khajuraho Temple, Ajanta and Ellora caves etc dispense how normalised homosexuality was in the Indian culture.

The Mughal Empire was also popularly known to be open to the concept of same sex relationships. Alauddin Khalji's son, Mubarak Shah was known to be in a relationship with one of the noblemen in his court. Babur, who ruled India in the 16th and 17th centuries wrote about his love for men, especially for a boy named Baburi. There was no disapproval about his writing during his time or even after that. Jahanara Begum's love for a slave girl is quite well known as she burnt herself in order to save the slave girl's life. There seems to be hardly any consciousness of these emotions being unnatural or forbidden in the pre-modern mind.

According to Devdutt Pattanaik, "The term homosexuality and the laws prohibiting 'unnatural' sex were imposed across the world through imperial might. Though they exerted a powerful influence on subsequent attitudes, they were neither universal nor timeless. They were - it must be kept in mind - products of minds that were deeply influenced by the 'sex is sin' stance of the Christian Bible."<sup>3</sup> Institutionalised heterosexuality was a primary structure of British colonialism. The third world sexualities were considered to be in need of Western Political Development. British colonial categorisation aimed to streamline sexuality by imposing their Victorian mindset in the colonies, disregarding existing tradition and culture. "Heterosexual" virtues of bravery, endurance and aggression were given utmost importance. One of the objectives of the missionaries sent out to spread the Gospel was to "moralise" heathen populations. Same sex intercourse was considered a sin by the colonisers which was to be eradicated through pious Christian belief before it "corrupted" Christianity. As a result, Section 377 of the Indian Penal Code was introduced in 1861 in India, under the British Raj, more than 300 years after sodomitical acts were criminalised in England. British colonisation criminalised what used to be a part of the Indian culture, where homosexuals and transgenders were a part of divinity in Indian mythology, of the Age of the Mughals and the Indian society. This Victorian mindset trickled down to the Indian bureaucrats and corrupted the real mythologies and scriptures which lost meaning over time.

The methodologies employed in this paper will be Post Colonial Theory and Queer Theory. I find it crucial to study Queer Theory and weave it into my research paper considering how essential it is to answering the questions I raised. It will assist in challenging the notions surrounding the normalcy of heterosexuality and taking a closer look at the cultural and social practices that deem it so. It will help in analysing the categories of gender, binaries and languages, both pre and post colonialism. It not only studies history

<sup>2</sup> David Halperin, 'Is there a History of Sexuality?', *History and Theory*, 28 (3), 1989, p. 257.

<sup>3</sup> Devdutt Pattanaik, 'Did Homosexuality exist in Ancient India', *Devdutt.com*, 2009.

## Decriminalisation of Homosexuality - Corrupting Indian Culture through Westernisation?

of homosexuality but looking at Queer practices in contrast with the default, normal heterosexual norms and how it affects the power structure and privilege as reinforced in society through the institutions of marriage, taxes, employment, adoption rights and laws introduced by the British. The trickle down effects of these are as seen in the post colonial world. Thus, Post Colonial theory forms a crucial aspect of this paper, to understand and analyse the cultural legacy, left behind by the colonisers which had long term repercussions on the cultural practices and tradition of the colonised. The discourses of sexuality are inextricable from prior and continuing histories of colonialism.

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