

What lies in the future of India's Queer community?

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Abstract

Recently the Supreme Court of India delivered a verdict on the same-sex marriage case and refused to legalise it stating it as "institutional limitations". This article analyses the verdict and seek its repercussion on the queer community of India. The judgement came as a blow to the queer community and raises questions on the social structure of Indian community. This article explores the position of queer people with reference to the marriage issues, legal issues and social factors prevailing in India. The article has tried to analyse the verdict from a macro perspective.

Keywords: Queer, Verdict, Marriage, Same-sex, Macro

Introduction:

The decision of the Supreme Court of India to not recognize the same-sex marriage in India was an unhappy moment for more than 10% of the Indian queer community. The court observed that marriage is not a fundamental right and cannot be claimed by homosexual couples. The background to this judgement is necessary to understand the verdict. On November 14th, 2022, two same-sex couples filed

a writ petition in the Supreme Court of India demanding the recognition of same-sex civil unions under the Special Marriage Act 1954, a law which recognizes all the marriages in India which are independent of religion or faith. The petitioners argued to make the Special Marriage Act, 1954¹ gender neutral and removing the words 'man' and 'woman'. After ten days of discussion in the court, the verdict came in favour of not recognizing same-sex unions with

¹ Commenced from 1st January 1955

all five judges agreeing to the fact that the queer community can opt for a live-in relationship. The judgment came as a setback to the queer community, an unanticipated one, given the Supreme Court's progressive jurisprudence on queer rights.

Denial of Marriage

Marriage apart from being a social union of two people, it also comes with a lot of advantage. While socially, in India marriage is a stepping stone in an individual's maturity and social progress, legally marriage has lot many mutual advantages. A married couple, heterosexual couple as is the case in India, can have a joint account; nominate the partner in financial matters; can adopt children mutually; nominate the spouse in insurance and medical claims. Hence marriage comes with lots of advantages which cannot be claimed by an unmarried individual. This very legal rights fail to show up equality for the queer community of India who is excluded from the institution of marriage. They, even after being a legal citizen of this country cannot claim the rights because of the limitations of law and rights in the country. Thus, the very notion of equality gets disturbed because it ignores a section of society. Marriage

as a civil union is usually considered a social construct but it does not guarantee equality as it has some norms which are traditionally weave but does not cater to large section of society. Marriage as a union has to be heterosexual, between a man and a woman, otherwise it is irrational. Thus, the petitioners in the court demanded this very equality but was devoid of it. Marriage may not be a fundamental right, but under the Article 21, right to life and personal liberty, one has liberty to choose, and the same must be extended to the same-sex marriages in India.

Increased Harassment

The next most important concern is to tackle the increased crime and harassment against queer people in India. There is no definite right against the harassments faced by queer people in their everyday life. It is a fact that in rural areas, the queer person is not only harassed but also threatened and sometimes even murdered. The newspaper and the law stay silent on such incidents. This very fact is obviously not mentioned in the Supreme Court judgement. The verdict is narrow in its approach and does not include wider perspectives. The survey of The Indian LGBT Workplace Climate Survey of

2016 conducted by Mission for Indian Gay & Lesbian Empowerment revealed that almost 80% of the queer people suffer harassment in their workplace in their everyday life. The lack of acknowledgment for the sexual and physical harassment against the LGBT community is dragging many people to opt for suicide. Also, the suicide cases are very high among the queer community.

Adoption Rights

The union of marriage also allows a couple to adopt children, but the same is not applicable to the same-sex couples. The court in its verdict shifted the burden to the parliament to make laws on adoption. The institution of family usually considers parents, heterosexual always in case of India, as the primary caregivers of children, in any society. This does not expand to the same-sex couple, who like any heterosexual couple, can provide the same love and security a family as a social institution requires. Further while individuals who are not married can go forward for adopting a child, same-sex couple usually opt this as a medium where one of the partners take the legal responsibility of a child and both the partners raise the child. But this is not a permanent solution and needs urgent

redressal by the government as well as policy makers. This structure of adoption is neither friendly nor morally correct, as a child, who is raised by the couple in union, only go forward with one name as a legal guardian everywhere required. If an individual man or an individual woman can raise a child alone, why can a same-sex couple do the same? Why the rigidity of family structure is confined to heterosexual outlook? The parliament and the policymakers should be inclusive and equal in defining adoption structure in India.

What has changed and the way forward

Clearly nothing much significant has been stated in the verdict. It is close, narrow and minor in its language and perception. There is no relief to the queer people and the petitioners and much of the burden has been shifted to the executive stating court's "institutional limitations". Merely hope have been provided and no guarantee has been given for future queer friendly laws. It is now up to the parliament to look into this matter and make laws. Although vast changes have to be made, but it is possible to include the LGBT community in the vast diversity of India, both legally and socially. Family laws need to be

gender neutral, non-discriminatory and inclusive.

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