

Rainbow Embedded in The Indian Culture

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Abstract

Since times immemorial the Indian culture has been guided by such beliefs. A culture which has been known and acknowledged to include everyone and tie them in the threads of love and acceptance. The Vedic literature such as the dharma shastras and sutras have touched almost every bit of the human life and have spoken vividly on matters such as economics, astrology, geography, love and pleasure and many more. They are an eminent example of how the purpose of a human being is just not worshipping the upper self but that it has to be achieved by various other acts during the life span of a being. It is pertinent to mention that the times when the idea of love, pleasure and sexuality was 'hushed' in the contemporary civilizations, Indian culture accepted and addressed these in the form of scriptures such as the 'Kama Sutra'. Such ideas were also termed as just part and parcel of life in the 'Srimad Bhagvatam' and were also simply tolerated during the Islamic regime. However, what we see today is a grotesque version of such beliefs and practices. When Indians began reading and exploring their sexualities and gender identities way back, how did we end up marking all these things as a stigma and taboo? Apart from the aggressive ideas of Victorian Morality under colonization, what went wrong? The largest democracy in the world struggles today to ascertain basic human rights to the people who don't fit into the fanatical dichotomy of 'man' and 'woman'. We have our one hand up straight bearing the flag of 'human rights and 'inclusiveness' while the other hand dipped in the horrendous waters of discrimination, conversion therapy and shaming people who are self-aware of their identity and sexualities. The paper is an effort to address this journey of the Indian Subcontinent and the path still left to cover to achieve the very essence of Equality and Liberty as guaranteed by the Constitution of India.

Key Words: *Third sex, Homosexuality, Tritya Prakrati, Indian Culture, Vedic Literature, Laws and regulations*

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1. INTRODUCTION

Throughout Vedic Literature, the sex or gender of a human being has been divided into three categories according to nature. These are: pums-prakrati or male, stri-prakarati or female and the tritya prakrati or third sex.¹ The times when contemporary civilizations were still trying to understand the basic human behaviour, the Vedic Literature was way ahead of its time and had acknowledged how 'gender' and 'sex' are not the terms that can be interchangeable and how these two aspects largely affect the life of a human being. Considering the foundation laid by such texts and literature, the Indian subcontinent was supposed to have a bright understanding of sex, gender, love, pleasure, choice and 'prakrati' of a being. But the present scenario is an outcome of various invasions, political and 'ethical' agendas of our colonizers. Years after years, the world saw various struggles of the gay community for their 'identification'. They all had a voice but not a unanimous one. The issue was addressed by artist, activist Gilbert Baker in 1977 who created the 'Rainbow' flag to symbolize the belonging of the gay community.² The flag which symbolizes powerful values such as Vitality, Healing, Sunlight, Nature, harmony and Spirit through vibrant colors were chosen to resemble all the attributes of those who embrace in themselves the 'Tritya-Prakrati'. The Rainbow became the gay community's banderole and 'Pride', their power. And thus, the idea of 'Gay Pride' emerged and started challenging all the orthodox and oppressive ideas of 'sexual orientation' and 'gender identities'. After years of tyranny when the ideas of 'sexual identities' were submerged under the veil of 'morality' as laid by the British, it was not before the year 1999 that India encountered its first Pride rally in the city of Kolkata.³ The 'Rainbow' flag touched the fair skies of Kolkata and became the first thread to weave the fabric of 'pride culture' all over again in our country which had been long forgotten.

2. RAINBOW IN OUR ROOTS

2.1 The Vedic Era

¹ Available at: <https://www.galva108.org/single-post/2014/05/13/tritiyaprakriti-people-of-the-third-sex-1> (visited on 1/7/21).

² Available at: <https://www.britannica.com/story/how-did-the-rainbow-flag-become-a-symbol-of-lgbt-pride> (visited on 1/7/21).

³ Available at: <https://feminisminindia.com/2019/06/24/pride-parades-india-history/> (visited on 1/7/21).

After the Vedas were realized by the Brahma at the beginning of the creation of this universe, Manu set aside the verses concerning civic virtues and ethics in the form of a manuscript and named it, the Dharma Shastra. The work of compiling issues related to economics, politics, prosperity, spirituality and many other aspects of life was given to different Gods and Goddesses at the time being. Verses concerning pleasure and sexuality were compiled as the 'Kama Shastra' by 'Nandi' who is depicted as a bull, guardian deity of Kailash and a companion to Shiva in the Hindu religion. The same was finally put in writing by the sage Vyasadeva about five thousand years ago. It was then divided into parts by brahmana sage, Vatsyayana during the 'Gupta period'.⁴ The same is today referred to as 'codes of sensual pleasure' and gives a sneak into the sexual understandings of ancient Vedic India in totto. Human beings as according to the Vedic Literature could be of two categories. The ones who could procreate and it was their 'Dharma'. The second ones, the 'third sex' who were duly respected even though they couldn't procreate. They were duly welcomed in all the auspicious occasions and were usually involved in occupations such as those of artisans, performers, masseurs, etc.

People with tritya prakriti, according to whether their appearance is masculine or the feminine: Kilba, or gay males, Svairini' or lesbians, 'Shandha' or transgenders and 'Napumsa' or intersex, contrary to the conservative word 'Eunuch' which is used for everyone regardless of their differences in identities.⁵ Crossdressing was highly accepted and respected in the ancient Vedic Culture. It is said the fabric and authenticity of a society can be judged by how it treats its minorities. In the Vedic times, the women, cows, Brahmanas, women and the people belonging to neutral gender (tritya prakrati) were all offered protection as an extension of social responsibility. Nature, sexual preferences and the way people expressed themselves (gender identity) were not the basis to set anyone's 'social morality'. The Hindu religion is famous for preaching its essence and its beliefs through incarnations of deities. Even as we go through all those sonnets and tales, we can see the incarnations in various forms which also include the characters in resemblance to the third sex! The Brahmanada Purana mentions how Lord Shiva was assumed to have taken the form of Sri Ardhanarisvara after duly worshipping shakti. Sri Ardhanarisvara was believed to be a hermaphrodite. Also, in the famous epic, Mahabharata, one of the

⁴ Available at: <https://www.galva108.org/single-post/2014/05/13/tritiyaprakriti-people-of-the-third-sex-1> (visited on 2/7/21).

⁵ Available at: <https://www.galva108.org/single-post/2014/05/13/tritiyaprakriti-people-of-the-third-sex-1> (visited on 2/7/21).

protagonist characters 'Arjuna' (disciple of Lord Krishna and husband to Draupadi) takes the form of a male-to-female transgender 'Brihnala' to take disguised salvation and is truly welcomed and respected by the people of highest encounters in the kingdom of Maharaja Virata.⁶ These scenarios and incarnations are an explicit example of how the tritya-prakrati made a wholesome and revered part of ancient Vedic India.

2.2 The Islamic Regime

The most beautiful and revered memory of how Islam had accepted the presence of homosexual behaviour is the story that it was the eunuchs who were given the responsibility to guard Prophet Mohammad's tomb. Given such a responsibility in the life of Prophet himself, attached a sense of authority and importance to the eunuchs in the Mughal regime as well. The account of various travellers had vividly mentioned how eunuchs were most respected by the Nawabs and given the responsibility of guarding and administering the Harem (place of the Begums to live). The accounts of various foreign travellers into the Mughal Court mention the importance of eunuchs to the emperor as well as the Muslim women. They were known as 'Khwajasara' in the Mughal, were treated as 'sacred' and expected to serve not only as servants but as officers as well. The reality of the Indian Subcontinent is believed to be far more different than as painted by the once carrying westernization.⁷ The Mughal texts also had a sense of 'querness' even though the essence was arranged delicately by those writing it. The myth that prevails today is that 'Khwajasara' had their place only in the harems for the queens and princesses, on the contrary they were usually employed by the Emperor in different administrative works or other clandestine virtues for the State. The account of such scenarios is found in the writings of Francois Bernier, the French Traveler who visited the Mughal Court in the seventeenth century.⁸ Even though the holy book of the Quran holds contrary views to such homosexual behaviours, the queer identity was fairly protected and tolerated by most of the Mughal Emperors. It was not before the sixteenth century, that the acceptance started taking the shape of fear, hatred and neglect, apparently, it was the same time when the British had started landed on our soil and had started to capture our heritage as well our rich culture.

⁶ Available at: <https://www.galva108.org/single-post/2014/05/13/tritiyaprakriti-people-of-the-third-sex-1> (visited on 2/7/21).

⁷ Available at: <https://servantspasts.wordpress.com/2019/08/12/third-gender-and-service-in-mughal-court-and-harem/> (visited on 2/7/21).

2.3 REFLECTION OF VICTORIAN MORALITY

The Victorian Era was accompanied by the ideas of treating homosexuals as ‘abnormal’ or ‘sinners’. This vague idea of morality set up around 19th century Britain was called to be the ‘Victorian Morality’. It was an amalgamation of the treatises of the Catholic Church, the extremist preach of the Royals and the Priests to maintain the pleasures of their power. The attempt to distil people’s identities resulted in penalizing homosexual behaviours. Even though writers such as Virginia Woolf tried their hands writing around eroticism, sexuality and lesbian behaviours but the attempts were usually accompanied by a fear of being executed by the State.⁹ This was the same timeline when the British disguised as East India Company had successfully captured our country and laid their colonial roots in our Hindustan. The struggles for freedom were seen in every arena from trade to the regime. However, the shackles of our colonizers were strong enough not only to captivate our heritage but also our cultural values, beliefs and ethics. The perception of morality in India which was woven by the Vedic Literature was replaced by an altogether new concept of westernization and ‘Victorian morality’. The impact of these concepts was hypnotical and the people of India started questioning and looking down upon their religion, ethics and morals. Somehow, the hypnosis that we were moved into remains in the form of various discriminatory laws in practice today which were codified by our colonizers with the motive of suppressing our heritage and social norms.

The ‘Kama Sutra’ one of the most revered and eminent Vedic scripture in Indian history was first brought to a translation by East India Company political agent Sir Richard F Burton (1821-1890) in the years around 1880¹⁰. A text which was a sacred piece of literature as written by the famous Sage Vatsayana, which indulged in the topics of not just love and pleasure but acted as a guide for the people of that time to explore their nature, gender identities and sexualities and was indeed a scientific piece, was poorly and partially translated by the British officer and was seen as nothing more than an erotic piece manual for the western world. The Vedic literature had entrusted enough freedom to the ones who read and believed it. From acceptance to cross-dressing to vividly talking of the ‘Tritya-prakrati’ (third gender), the text was way ahead of its time. The sexological

⁹ Available at: <https://www.theatlantic.com/magazine/archive/2017/03/before-straight-and-gay/513812/> (visited on 2/5/21)

¹⁰ Available at: <https://www.firstpost.com/art-and-culture/how-richard-f-burtons-the-kama-sutra-symbolised-fantastical-orientalism-that-shaped-late-19th-century-imagination-about-india-9284531.html> (visited on 2/6/21)

manual was seen by the British and the western world as ‘unethical’ and an invasion over their ideas of ‘morality’. And thus, in an attempt to ‘civilize’ the Indian subcontinent such practices were first shamed, condemned and then penalized. Cross-dressers were stopped from appearing in public. The ones who identified themselves as the ‘third sex’ were forced to remain outside the civic gatherings and eventually pushed out of the city as well. With such social neglect, the community was forced to succumb to poverty and fill their bellies by taking up practices such as prostitution and other meagre occupations. The community which was once regarded as ‘good luck’ was now seen as an eyesore to the society of ‘colonizers’ and also to the ones ‘colonized’.

The first strategic penalization over the ‘third sex’ was seen in the form of the Criminal Tribes Act, 1871. Part II of this very act was titled ‘Eunuch’ and contained all the laws and regulations for registration of eunuchs in the area and punishment to be awarded in case they appear in public dressed as females.¹¹ The Act which was codified to control and penalize the castes, class or group of people who were seen as ‘born criminals’ in the eyes of British, saw the ‘Eunuch’ as kidnappers or castrators of children. The ‘Hijra’ class of the society was seen as an obscene nuisance to the civilized society.

Secondly, the private acts and behaviours of the third sex were penalized under the Indian Penal Code, 1860 under Section 377 which reads as follows:

“377. Unnatural offences. - 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 necessary to the offence described in this section.”

The inclusion of this section under the Indian Penal Code was a major step towards the exclusion of the third-sex from the society for it termed their very identity, behaviour, pleasure and sexual gratification as ‘unnatural’.

3. THE ‘FLAWLESS’ SEXUALITY

¹¹ Available at: <https://www.himalmag.com/long-history-criminalising-hijras-india-jessica-hinchy-2019/> (visited on 3/7/21)

Conversion therapy is a “pseudoscientific attempt aimed at changing a person's sexual orientation, gender identity, or gender expression”¹². Along the nineteenth century, even after worldwide movements, homosexuals, or the same-sex desire was seen to be an ‘illness’ or a ‘mental disorder’ that could be ‘cured’. The whole perception that homosexual behaviour nature was ‘flawed’ and that sexual desires are supposed to be ‘particular’ was the belief behind this notion of illness and treatment. The therapy uses various aversion techniques which were used for those addicted to drug abuse or alcoholism. However, the same was then seen as a ‘cure’ for homosexuality around the late nineteenth century. The horrendous character of the technique pushed the people of the third sex to associate their nature with discomfort and unacceptance. Electric shock therapies, showing sadist videos to develop traumatic cycles associated with ‘same-sex desire’ and corrective rapes were some of the many terrific methods taken up to eradicate same-sex eroticism. It was only around the 1970’s that India started adapting such techniques to cure the ‘illness’. Heterosexuality was supposed to be the only acceptable sexual desire and everything else was seen as ‘unnatural’ and as opposed to ‘God’s will’. The whole process was published in the Indian Journal of Psychiatry titled, ‘Treatment of Homosexuality by Anticipatory avoidance conditioning technique’ in the year 1979¹³. The western techniques were more deterrent, Indian techniques were focused on ‘behavioural programs’ which wanted to redirect homosexuality to heterosexuality and procreation. The whole practice is a clear violation of the human, civic and legal rights of a person. Even though homosexuality was officially removed from the WHO list of mental disorders in 1990¹⁴, it is only now, in the year 2021 that Madras High Court became the first to ban conversion therapy in India in the case of *S Shushma V Commissioner of Police (W.P no 7284 of 2021)*¹⁵. Further upholding the rights of the LGBTQA++ community, the judge held that “any attempts to medically cure or change the sexual orientation of LGBTIQ+ people to heterosexual or the gender identity of transgender people to cisgender, is the frustration of Article 21 of Indian Constitution which guarantees Right to dignified life and Liberty to an individual”.

¹² Available at: <https://www.bbc.com/news/explainers-56496423> (visited on 6/7/21)

¹³ Available at: <https://theconversation.com/lgbtq-conversion-therapy-in-india-how-it-began-and-why-it-persists-today-140316> (visited on 6/7/21)

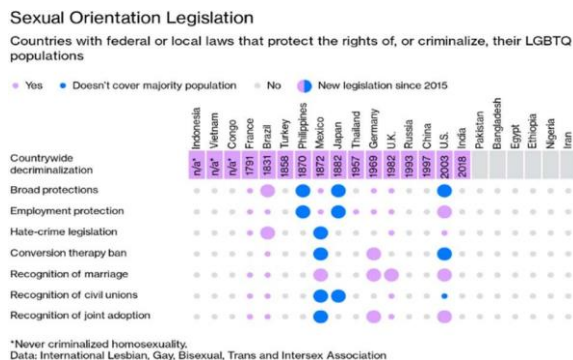
¹⁴ Available at: <https://www.galva108.org/single-post/2014/05/08/a-timeline-of-gay-world-history> (visited on 6/7/21)

¹⁵ SCC Online (visited on 4/6/21)

Even in this 21st century, when the freedom of speech and expression is given the highest regard, various teenagers and adults who come out expressing their ‘pride’ are forced into such therapies. Unfortunately, such cruelty has caused people to succumb to depression, anxiety and even suicide.

4. JUDICIAL JOURNEY AND LAWS

We broke our colonial prison back in the year 1947, ended up repealing various oppressive laws and codified new ones to achieve the real significance of the Constitution of India. Since then we have struggled to fit in the boxes of idealism and perfection, however, the very nature of democracy is quite contrary. Democracy requires painstaking brawls and a dynamic society motivated to change with the need of time. The state of the LGBTQA++ community was left in shambles after our colonizers moved out of our land. The community which was once self-aware and empowered was now doubtful of their existence and feared coming out to people. They were even subjected to physical violence, while harassment, exclusion, shaming and other hate crimes ran parallel. Legislations that addressed the issues of LGBTQA++ were often avoided and were deemed unnecessary.



It was only in the years around 2000 that people started pushing their limits to grab their rights to safeguard and honour their sexual orientation and gender identities. The fight was just not about getting basic credentials but to change their association with ‘unnatural’ to ‘natural’.

Timeline

- First Pride Parade in Kolkata, 1999
- Naz. Foundation Govt. V. NCT of Delhi –

Background – In July 2001 the police raided a park and detained a few men at the suspicion of them being homosexuals and pressed charges against them under Section 377, IPC.

Judgement – Finally held in 2009 By the High Court of Delhi that section 377 of IPC imposed unreasonable restrictions on two adults engaged in consensual intercourse in private. Thus, it was violative of their basic fundamental rights enshrined under Articles 14, 15, 19 and 21.

- Suresh Kumar Koushal Vs. Naz Foundation –

Background – Various individuals and religious groups rejected the idea of decriminalizing homosexual relationships, based on the contention that India's culture and tradition did not support such values. Reconsideration of the constitutionality of section 377 was appealed in the Supreme Court of India.

Judgement – The judgement of the Delhi High Court was overturned in 2013. The stance of the Apex Court of India faced criticism worldwide and gave fuel to another surge of LGBT movement in the country. Protests and activism were at par and people now demanded the recognition of the 'tritya-prakrati' unanimously.

- National Legal Services Authority V. Union of India-

Background - The LGBTQA++ community has been subjected to exploitation and degradation for a very long time. The history of discrimination towards this community is unfortunately long trodden and runs in every aspect such as economic, social, educational, etc. These people were never considered to be a part of our society and humiliated for their choices, sexual desires and sexual preferences. The constant neglect had forced them to resort to poverty, prostitution and beggary. This community is much more vulnerable to hate crimes, oppression, prejudice, STD's and human trafficking.

Judgement – The landmark judgement passed by the Supreme Court in 2014 gave recognition to 'third gender' status for the hijras or transgenders. It also directed the government to make policies for the upliftment of this class and grant them reservations in jobs and educational institutions.

- The Transgender Bill, 2014 was tabled in the Upper House, Rajya Sabha but never discussed in the Lok Sabha. The Bill still lies pending and is yet to be discussed. The bill is focused on providing anti-discriminatory regulations for the

Transgender community and also upon providing rehabilitation, educational and employment opportunities.

- K.S. Puttuswamy V. Union of India-
Background – The Right to Privacy was discussed at length in front of the honourable Supreme Court of India. The evolution, jurisprudence and scope of the right to privacy were debated and taken up for reconsideration.
Judgement – The Right to Privacy was declared as an eminent part of Article 21 of the Constitution of India which guarantees the Right to dignified life and liberty to every individual. Justice Chandrachud also acknowledged that ‘sexual orientation’ also falls in the preview of privacy. This judgement sparked a ray of hope among the queer community.
- Navtej Singh Johar V. Union of India-
Background – After overruling of Delhi High Court judgement in 2013, the LGBTQA++ community people were again seen as criminals, and were marginalized. The increasing protests in the country led Supreme Court to reconsider the constitutionality of section 377, IPC on a petition by some high profile names of the society.
Judgement – The verdict was passed in September 2018 which was seen as a great triumph in this fight for the right for the LGBTQA++ community. Section 377 was held unconstitutional and in contravention to basic fundamental rights guaranteed by the Constitution. It also gave the right of autonomy, identity and intimacy to individuals. The Court further held that the language of section 377 which gave a distinction between natural and ‘unnatural’ intercourse was too ambiguous and primitive.
- Three years past the judgement of the Supreme Court laid these guidelines for the treatment of LGBTQA++ people, the community still struggles to fit in the societal norms. There have been no regulations that address the marriage, adoption, inheritance and succession rights of the queer people. further, the Indian Penal Code, 1860 still uses ‘man’ and ‘woman’ in its language rather than gender-neutral terms. This leaves no resort for the LGBTQA++ people who become victims of rape, molestation, harassment etc.

- The LGBTQA++ people make a large section of society engaged in surrogacy. The lenient laws still don't address much the plight of the queer and remains a blunt weapon to entail.

5. CONCLUSION AND SUGGESTIONS

अयं बहुरयनेति गणना लघुचेतसाम्

उदरचरतानां तु वसुधैव कु

टुक्कम् ॥

The mantra finds its place in *Maha Upanishad* which belongs to the *Samveda* tradition¹⁶.

Meaning: “The distinction “This person is mine, and this one is not” is made only by the narrow-minded (i.e. the ignorant who are in duality). For those of noble conduct (i.e. who know the Supreme Truth) the whole world is one family; one unit)

(The meaning of words like ‘family’ etc. should be understood in the context of what the Upanishad is talking about. It is describing the quality of a man who understood the Truth, transcending the multiplicity of the world).”

The mantra is another eminent example of how the Indian Culture and Vedic Literature have the values of unity and acceptance embedded in themselves since time memorial. It is only because of the wrath of time, that we have moved into believing otherwise and have forgotten our roots.

Such ethics and beliefs in our manuscripts stand as answers to all those who attach pseudo standard of ‘morality’ with the Indian *Sanskriti* and to those who double-standardly categorize things, beings, identities and sexualities into ‘natural’ and ‘unnatural’. It is the time that we go back to where we belonged and enlighten ourselves with the true essence of our culture. It is also to be understood that the Vedic literature should not be just seen as religious texts but a ‘way to life’ and thus its knowledge and guidance extend beyond any geo-political-social-cultural structure.

And as it has been held in the well-known case of Indian Young Lawyers Association and others (Sabrimala Temple Re) V. State of Kerala & Others:

"....in the public law conversations between religion and morality, it is the overarching sense of constitutional morality which has to prevail- It

¹⁶ Available at: <https://vasudaikakutumbam.wordpress.com/2015/03/05/vasudhaiva-kutumbakam-%> (visited on 6/7/21).

is the duty of the courts to ensure that what is protected conforms with fundamental constitutional values and guarantees, and accords with constitutional morality..... While the Constitution recognizes religious belief and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance.....”

A consensus has to be brought with consideration to such precedents of our Apex Court which not only bind the public law but also the very ‘action’ and ‘thought’ of every individual of this nation. We as the largest democracy have always been the advocate of peace and being the country where the oldest religion of the world is seated have always propagated ‘acceptance’. Neglecting those whose identities, expressions or sexual desires stand beyond our notions of ‘right’ or ‘wrong’ and ‘black’ or ‘white’ is just contrary to our foundational values. For peace to prevail, we shall extend our hands to some ‘grey’ as well.
