LGBTQIA RIGHTS AND MARRIAGE LAWS IN INDIA: A CRITICAL EXAMINATION

B. Prateeksha, B.Com., LL.B. (Hons), SASTRA Deemed University
K.K. Sudhishna, B.Com., LL.B. (Hons), SASTRA Deemed University

ABSTRACT

This paper mainly focused on the LGBTQ community, focusing particularly on the legal recognition of same-sex relationships under personal laws in India. It begins by examining the evolution of human sexuality across cultures, noting that same-sex relationships and diverse gender identities have existed since ancient civilizations, including references in indigenous traditions and early societies such as Ancient Greece. Where a month of June is considered as LGBTQ+ pride month, the study provides a conceptual foundation by defining key identities within the LGBTQ+ community, which including lesbian, gay, bisexual, transgender, queer, intersex, and asexual is highlighting diversity of the human sexuality and gender expression. A crucial part of this paper is the critical analysis of the position of same-sex relationship under the personal laws in India. Under the Hindu Marriage Act, 1955, marriage is traditionally interpreted as a union between a man and woman, in spite the lack of provisions addressing same-sex unions. Under The Indian Christian Marriage Act 1872, informed by Biblical principles, marriage was considered within a heterosexual framework. In Muslim law, marriage is treated a civil contract between the men and women, with same-sex relationships viewed as conflicting with the established religious doctrine. Additionally, the in Special Marriage Act, 1954, was enacted and allowed only inter-religious and inter-caste marriage within a legal framework. Which promotes the freedom of individuals to choose their partner, its gender-specific language presents challenges for the legal recognition of same-sex marriage. The paper was thus able to conclude that "despite the progress made in the decriminalization of homosexuality, the absence of legal recognition of same-sex marriages perpetuates inequalities and thus emphasizes the need for legislation in line with constitutional values and ideals to bring about greater inclusion of LGBTQ+ persons."

Introduction

[1] "Owning our story and loving ourselves through that process is the bravest thing that we'll ever do." – Brene Brown. Anthropologists had an enthusiasm and made research on the sexuality of the human being. They made research not only for the purpose of differentiating the sexuality of human beings, but also to catch their attention towards the culture of the sexuality people in various regions. Development of societal change: LGBTQ+ has come out in four various stages: annalist, first compensation, contribution, revision and social construction. 'Were', 'LGBTQ+' stands for L – lesbian, G – gay, B – bisexual, T - transgender, Q - queer. These historians erupt LGBTQ+ by investigating their history and developing an area and analysing their impact. The historians use the information and change the history on the thought about gender and sexuality. New gender had been formed after the revolution of America through the, civil war, where interest had been developed in the same gender. Preliminary, it was turned down in the later period of the 1700s it was taken as societal consideration. On the other hand, over 256 years (roughly from the 1770s till now), some of the leaders and peoples have faced difficulty to notifying about the issues of lesbians, gays, transgenders. In the Ancient Greece period forward, homosexuality has appeared, and it was forbidden in the Bible. It was raised in different indigenous civilisations that came across conflict from European and Christian settlers. In North America the death sentence has been ordered for the first case of homosexual activity, which came up in 1566. Felt that women have been considered as a men by themselves for some specific things in their lives for the purpose of fighting in the military, working and so on. Plenty of women have taken this option who were not transgender. To broaden the LGBTQ+ acronym in the mid-2010s, they have included "IA", which stands for intersex and asexual. Where this IA has been introduced to acknowledge the individuals who are different in sex characteristics and do not have exposure to sexual attraction. Later, it became more common and regular; it started to grow among society around 2015.

Definition

[2]Lesbian – A woman whose enduring physical, romantic, and/or emotional attraction is

[1] Wikipedia, *LGBTQ People*, https://en.wikipedia.org/wiki/LGBTQ_people (last visited Oct. 19, 2026).
[2] The Lesbian, Gay, Bisexual & Transgender Community Center, *LGBTQ+ Community*, https://gaycenter.org/community/lgbtq/ (last visited Oct. 19, 2026).

to other women. Some lesbians may prefer to identify as gay or as gay women.

Gay - The adjective describes people whose enduring physical, romantic, and/or emotional attractions are to people of the same sex. Sometimes 'lesbian' is the preferred term for women.

Bisexual – A person who can form enduring physical, romantic and/or emotional attractions to those of the same gender or more than one gender. People may experience this attraction in differing ways and degrees over their lifetime.

Transgender- An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms including 'transgender' or 'nonbinary.'

Queer – An adjective used by some people whose sexual orientation is not exclusively heterosexual or straight.

Intersex – an adjective used to describe a person with one or more innate sex characteristics, including genitals, internal reproductive organs, and chromosomes, that fall outside of traditional conceptions of male or female bodies.

Asexual- The adjective describes a person who does not experience sexual attraction.

Plus - The plus is used to signify all of the gender identities and sexual orientations that letters and words cannot yet fully describe.

Boston Marriage – women who could support themselves in living together

Hindu Personal Law and LGBTQIA Rights:

[3]Hindu dharma traditions are abundant and vast. The word "Hindu" is derived from the river Sindhu, otherwise known as the Indus, which flows from the Punjab. The word "Sa" was noticeable by the Persians as "Ha", and the Aryans who had determined in the area near the river Sindhu were called Hindus. Close to one of his monuments in Persepolis, the kings of Darins of Persia mention "Hinduish." Dr. S. Radhakrishnan stated in his observation that the

[3] American Psychological Association, *LGBTQ* (https://www.apa.org/topics/lgbtq/) (last visited Oct. 19, 2026).

people on the Indian side of the Sindhu were called Hindu by the Persians and the later Western invaders. Hindus were undertaking some spiritual practices that are guided by their spiritual teacher in order to follow their traditional rules. In the Vedic period of law, for Tritiyaprakriti were not refused their basic rights. The Tritiyaprakriti, they were denied their rights, but they got a permission to keep their social activities and live together within marriage with respect and they were allowed to attend marriage, birth, and other religious ceremonies. [4]Later, the society was given a space and particular status to them to maintain their dignity. On mentioning that, the Vedic law has no specific law for the third gender, but they have some punishment regarding to them, which fines third-gender men and Woman for their behaviour. They have been punished for certain crimes they have committed but they were never fined. The third gender men will be punish for doing a sexual offense against Woman and Gautama Dharmasutra. [5]On consideration, female homosexuality is considered as offense when it involve the violation of young, unmarried girls. Based on some, research, the society is able to identify third-gender people by their uniqueness. Under the Vedic Period they had a chance to develop their personality and uniqueness in the society. [6]Compare to Vedic Period today in India were Tritiyaprakriti were faced a lot of problems relating to their employment, opportunities, condition of their life, social status and similar things. [7]In the case **Urmila Srivastava and Leela Namdeo** were two policewomen from Madhya Pradesh Police force, they were become first documented same sex couple to marry in India. According to Hindu ceremony and rituals through a Gandharva ritual in presence of few people they have exchanged garland. On February 24,1988 their wedding photos were broadcast in media under the controversial headline “Lesbian Cops”. This become emphasizes and strived to face their problems in society. For this reason, they made a petition in court to obtain justice and to understand their feeling and love. Later, in India according to the same sex relationship they have taken shape and understand them. Under Hindu Marriage Act,1955 section 5 which defines the A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:(i)neither party has a spouse living at the time of the marriage;(ii)at the time of the marriage, neither party(a)is incapable of giving a valid consent to it in consequence of unsoundness of mind; or(b)though capable of giving a valid consent, has been suffering from

[4] Milne Open Textbooks, *Milne Open Textbooks*, https://milnepublishing.geneseo.edu/ (last visited Oct. 19, 2026).
[5] Hindu American Foundation, *Issues*, https://www.hinduamerican.org/issues/ (last visited Oct. 19, 2026).
[6] Dipak Kumar Singh, *LGBT Community in India: A Study*, 7 Int’l J. Humanities & Soc. Sci. Invention 62 (2018), https://www.ijhssi.org/papers/vol7(1)/Version-1/K0701016265.pdf.
[7] SheThePeople, https://www.shethepeople.tv/ (last visited Oct. 19, 2026).

mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or(c)has been subject to recurrent attacks of insanity ;(iii)the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;(iv)the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;(v)the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two; by looking into this definition under Hindu Marriage Act were they did not scrutinize marriage between same sex . According to section 5(iv) of Hindu Marriage Act 1955 were in that sub-section which explains about the degree of prohibited relationship but which is not mention about the same sex people. So, this sub-section will not applicable for LGBTQ+. For the people who are considered as a Hindu are all requires the performance followed in Hindu Marriage such as Saptapadi and Dattahoma. In that marriage is considered as connection of two souls not about the gender. There is no statutory prohibition against such practices.

Christian Personal Law and LGBTQIA Rights:

[8]One who professes the religion of Jesus Christ is known as Christian. They were following the primary scripture, the Bible. Under the Indian Christian Marriage Act, 1872, a minister of religion has solemnized the marriage. The marriage registrars appointed under the act or persons licensed under the act to grant certificates of marriage between Indian Christians are also competent to solemnise marriage. In the world, by the creation of God, male and female, when Jesus thinks of marriage. **"Therefore, a man shall leave his father and mother and hold fast to his wife" -Genesis 2:24,** where means the Jesus observed that the creation of the god is human which types of men and women are the key role of the existence of marriage. Where Genesis 2:24 which trying to account that God created the men and women and Jesus says that, marriage is exist because of the God. He believes that the marriage will be solemnized between men and women. Whether to accept the love and sexual union of two people of the sex were, Jesus made a simple point by mentioning that Genesis 2:24 is explaining that the marriage is take place between the men and women. There is no mention about same sex marriage. [9]Were in the case of **Supriyo V. Union of India** in this which deals in the Supreme Court of India. This case is basically about same sex couples. The whole thing started when

[8] Living Out, https://www.livingout.org/ (last visited Oct. 19, 2026).
[9] Indian Kanoon, https://indiankanoon.org/ (last visited Oct. 19, 2026).

same sex couples from over India asked for a help. They wanted to know if they could get married. In 2020 some couples went to the Kerala High Court and Delhi High Court to ask for their marriages to be recognized. They wanted the courts to say that their marriages are real and valid like any other couples. The Supreme Court with CJI in charge put together over 20 cases involving than 50 people. They did this so they could deal with all the cases at once. Later, the government of India with the help of the Attorney General and Solicitor General said no to the same sex couple requests. The court also got help from lawyers to manage all the people involved in the same sex couple case.

Muslim Personal Law and LGBTQIA Rights:

[10]Islam means "peace" and "submission to God's will." The foundation of Islam is known after as a Prophet Mahomedanism, which was inspired and worked by Prophet Mohammed. Around 570 A.D., the Prophet Mohammed was born in Mecca. He began advocating against paganism and idol worship. Till his death in 632 A.D., Prophet Mohammed merged together Islam and his followers. Those who have faith in Islam are called Muslims. According to the Muslim text, mentioned the Prophet as a Hadith and descriptions of his life as a Sunna after the Holy Quran. Under Muslim Law there are two schools Sunni Schools and Shia Schools. As per Sunni Schools of Muslim Law, which are the most powerful and major among Muslims in India. The supporters of the principle of filling the office by the election came to be called Sunnis. In Sunni Law, the schools are divided into four major types. They were the Hanafi school, the Maliki school, the Shafei school, the Hanbali school, and the Jafari School. Under the Hanafi school of law, they were named after the great jurist Abu Hanifa [699-767 A.D.]; it was founded in Kufa. And the Hanafi School which is oldest and followed worldwide. Maliki School, was founded by the great Malik-ibn-Anas. And this Maliki School which was importantly attached to the Ijmaa, a source of law. The people were believing the best in the lifestyle of the Prophet. Under Shafei School it was founded by Muhammad-ibn-idrisash-shafei in Egypt. It was given more importance to Ijmaa than Malik. Ahmed-ibn-Hanbal were founded a school which is known as the Hanabali School, and most of the schools were founded and followed in Syria and Palestine. Under the Jafari school, which is also known as the Ithna Ashari School after it is named Imam Jafar, who was followed by this school they believed that the 12th Imam, who disappeared, will one day reappear. [11]In Muslim Law, where

[10] Testbook, *UGC NET Law*, https://testbook.com/ugc-net-law (last visited Oct. 19, 2026).
[11] ResearchGate, https://www.researchgate.net/ (last visited Oct. 19, 2026).

marriage is known as Nikah and it is considered as a civil contract. And there is no religious ceremony is necessary to bring about this relationship. Where the proposal and its acceptance is more important in Nikah. The temporary marriage is known as Muta Marriage in Muslim law where it is only for fixed period with fixed dower(gift). But in Sunni Schools consider it as a void because under the school where marriage is considered as a permanent union. There is no maintenance and inheritance can be taken by the women who got married under Muta Marriage. Based on the Islamic Law, the marriage is civil contract which is take place between men and woman. Under the authority same sex marriage is not acknowledged in Islam and it is considered as an opponent to the basic principle of marriage. Imam Tirmidhi Rasulullah was detailed in hadith that "**Allah curses men who resemble women and women who resemble men".** This explains that the hadith also serves as a warning that the behaviour including the same sex marriage which is opponent to the Islamic Law. Were it balance the marriage between only men and women not in same sex relationship is recognised. But from various schools of thought that the marriage in same sex is considered as valid in Islam and there is no legal basis has been arising. From the point of view of modern human rights under Islamic law, where the marriage is considered a personal choice to chose their partners. Even though, choosing the life partners also considered as a human right, Islam still has followed their moral and legal rules to regulate the marriage. Under the Islamic law where the same sex marriage is not justified because which is opponent and against to their provisions of Allah and His Messenger.

Special Marriage Act Framework LGBTQIA Rights and Legal Challenges:

Here, the Special Marriage Act was created for interreligious and intercaste marriage, which was formerly not accepted under their personal laws. The Special Marriage Act was enacted in 1954. State law was undertaken for the process of marriage registration, divorce, and succession between the married couples. Under this act, everyone has their right to marry partners of their own choice, free from caste, religion, and community. In LGBTQ+, which is a non-religious framework, so they were taken under the Special Marriage Act. Under section 4 of the Special Marriage Act 1954, which defines the legal validity of the marriage as "the male has completed the age of twenty-one years and female the age of eighteen years". Where this section did not mention the same-sex couples. Under judicial intervention and special marriage the same-sex marriage through this particular amendment. Were personal law are not authorizing same-sex marriage in their particular law. If the personal law is allowed same-sex marriage, then special marriage act will also accept the same-sex couples. Despite the fact that

everyone has a right to choose their life partner at right time with right age where there is full freedom right is permitted under law. But under same sex marriage which mainly get an contradicts from political parties predominantly give the stance of the BJP and its ideology. We're comparing India with other Countries [like USA, UK parts and Netherlands]. In other countries where same sex marriage has been legalized. Even though there is some opposing in some part of United States the certain social group were very strong on their choice.

Remained that even if there is arguing against the opposing of same sex couple which may violate their right to marriage and freedom which becomes unconstitutional and which may lead to breach their personal liberty. In United States state court decided that accepting the same sex marriage is in constitution ground.

Later the issue was raised based on the decision. Whether the court or legislature has a power to decide such issues. It was coming to the conclusion that the court has a legitimate role in protecting the minorities' rights, chiefly when majoritarian governance fails to concerns itself with the issue, then the safety of minority rights will be violated, as seen in India's late decriminalisation of homosexuality.

Issues:

1. Whether personal laws such as the Hindu Marriage Act, 1955; the Special Marriage Act, 1954; Muslim Personal Laws; and the Indian Christian Marriage Act,1872 exclude LGBTQ+ persons by using heteronormative terms like "husband" and "wife"?

2. Should India move towards a Uniform Civil Code or amend personal laws to include same-sex unions?

3. In the absence of a recognized marriage, how can same-sex couples seek divorce or judicial separation?

4. Whether same-sex partners should be treated as legal heirs under personal succession laws?

5. In the absence of legal marriage, can LGBTQ+ partners claim maintenance or alimony?

Discussion on Issues Raised:

1. The analysis of Indian personal laws such as the Hindu Marriage Act,1955; the Special Marriage Act, 1954; Muslim Personal Laws; and the Indian Christian Marriage Act, 1872 reveals that the heteronormative nature of these laws excludes LGBTQ+ persons in terms like "Husband" and "Wife", which makes it difficult for the LGBTQ+ persons in recognition of their fundamental aspects of family life - marriage, divorce , inheritance and maintenance. In the absence of such recognition unavailable in personal laws, the question of same-sex marriage constituting bigamy in personal laws is still in a dilemmatic manner. This exclusion has cascading legal consequences. As a result, partners are treated as legal strangers, leading to economic insecurity, denial of dignity, and lack of legal remedies in cases of relationship breakdown.

2. The question of reform presents two possible pathways: Introduction of Uniform Civil Code or the progressive amendment of Personal Laws to include LGBTQ+ persons. While Uniform Civil Code promises equality and uniformity, it remains socially contentious in various personal laws in the country as they follow their own customs and usages which becomes practically impossible to regulate and impose uniformity in these laws and include LGBTQ+ whereas the amendment of Personal Laws such as Hindu Marriage Act,1955 , Special Marriage Act, 1954, Muslim Personal Laws and Indian Christian Act, 1872 provide an immediate solution and answer to all the questions raised regarding fundamental aspects of family life for the LGBTQ+ community.

3. With respect to divorce and judicial separation, the non-recognition of same-sex unions results in a complete denial of legal remedies for relationship breakdown. This forces individuals to rely on indirect and often inadequate alternatives such as contract law or limited judicial interpretations of live-in relationships. Such an approach fails to provide structured relief, particularly in matters involving emotional, financial, and custodial consequences.

4. In the realm of Inheritance and Succession the lack of marital status means that the same sex couples are treated as legal strangers which becomes difficult to their right of inheritance in various personal laws.

5. Similarly, in terms of maintenance and alimony, LGBTQ+ individuals are excluded from statutory protections which makes them challenging to seek legal remedies.

Conclusion and Recommendation:

The examination of LGBTQ+ rights within the framework of Indian Personal Laws reveals that there is a need of legal framework regulating LGBTQ+ community. Firstly, while looking into Hindu Personal Laws Such as Hindu Marriage Act, 1955 it is observed that there is a clear need of legislative amendment for including LGBTQ+ community in the terms of "Husband" and "Wife". The law says same sex marriage is neither valid nor invalid, there is a clear dilemmatic situation to place same sex marriage as valid or invalid. While the law itself doesn't provide clear explanation of same sax marriages validity it is quiet challenging to provide rights for LGBTQ+ communities their fundamental family aspects such as marriage, divorce, maintenance and inheritance. Here a critical question raises whether same sex marriage constitute as bigamy as the law says it as neither valid or invalid.

Secondly, Christian personal Laws in India primarily governed by the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869 continues to reflect a strictly heteronormative understanding of marriage and family. The statutory framework also excludes same sex couples within the Christian community and they are denied access to marital recognition, divorce remedies, maintenance, inheritance rights and legal protection in cases of relationship breakdown. The Christian personal laws also remain inadequate and exclusionary in addressing the realities of LGBTQ+ individuals.

Thirdly, Muslim personal law in India, based on Shariat Principles recognizes marriage (nikah) strictly as a union between a man and a woman. As a result, same sex marriage isn't legally recognized, and LGBTQ+ individuals are excluded from rights relating to marriage, divorce, maintenance and inheritance.

Fourthly, the Special Marriage Act, 1954 provides a civil form of marriage for individuals irrespective of religion, allowing inter religious marriage without religious marriage ceremonies. It governs marriage, divorce, maintenance, and succession under a secular framework. However, it uses gender specific terms like "male" and "female", thereby excluding same sex couples. Thus, despite being secular it remains heteronormative in application.

Therefore, recommendation made that, rather than imposing Uniform Civil Code (UCC) which promises equality and uniformity it remains socially contentious in various personal laws in

the country as they follow their own customs and usages which becomes practically impossible to regulate and impose uniformity in these laws and include LGBTQ+ amending personal laws such as Hindu Marriage Act, 1956, Special Marriage Act, 1954, Muslim Personal Laws, Indian Christian Marriage Act, 1872 is highly recommended to regulate LGBTQ+ communities and provide them rights to their fundamental aspects of family life such as marriage, divorce, maintenance and inheritance. The legislators have to frame a legal framework to regulate and recognize LGBTQ+ individuals.