
SAME-SEX MARRIAGE AND INDIAN CASE LAWS: A JOURNEY TOWARDS EQUALITY

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ABSTRACT

Same-sex marriage, a prominent issue in the 21st century, questions traditional norms while advocating for inclusivity. The Indian context is examined by focusing on the legal developments, cultural perspectives, and milestone court verdicts that have defined the story of LGBTQ+ rights and marriage equality in the country.

India's LGBTQ+ rights journey, which started some decades ago, reached a critical stage with the 2018 Navtej Singh Johar vs. Union of India case. After a unanimous ruling, the Indian Supreme Court overturned Section 377 of the Penal Code, making room for consensual same-sex relationships without fear of criminalization. Judgement served as the cornerstone for safeguarding LGBTQ+ individuals' rights and dignity.

After decriminalising homosexuality, the LGBTQ+ community collaborated with activists and legal professionals to fight for legal recognition of same-sex marriages. From the Indian Constitution, this advocacy derives its authority grounded in equality, non-discrimination, and individual autonomy.

Courts in India have been implementing progressive measures favouring same-sex couples, enabling them to exercise their rights. A landmark case, Alok Kujur v. State of Jharkhand, recognized the right to same-sex marriage as a fundamental right. Based on dignity, privacy, and equality, the court ruled that same-sex couples should not have marriage rights. Per the Delhi High Court, restraining marriage to opposite-sex partners contravenes the LGBTQ+ community's fundamental rights, and the right to marry is a crucial component of the right to life and personal autonomy. Although significant strides have been made, the legal landscape for same-sex marriage in India is still shifting. To ensure full protection, a complete legal framework is needed for LGBTQ+ individuals, including the right to marry. Courts in India have received numerous requests requesting legal recognition of same-sex marriage.

In India, societal views on same-sex marriage have changed over time. Although prejudice and discrimination persist, there is an increase in

recognition of LGBTQ+ individuals' right to love and marry. Bollywood and popular media have played a key role in challenging stereotypes, with many positive depictions of same-sex relationships in films and TV shows.

Legal and societal advancements shape same-sex marriage's path to equality in India. Although significant strides have been made toward endorsing LGBTQ+ rights and same-sex marriage, issues linger. To achieve equity and inclusivity for all its citizens, irrespective of sexual orientation, the Indian legal system must persist in collaboration with advancing case laws and social evolution. India's journey to embrace love's vast array of forms is part of a broader global movement.

INTRODUCTION

The LGBTQ community is a diverse collection of individuals who do not conform to the terms of conventional gender and sexuality. The term itself includes so much that it's impossible to cover in one word. It includes lesbian, gay, bisexual, transgender, and queer. This confuses many people because it spans both sexual orientation and gender identity. For example, transgendered individuals don't follow the traditional concept of male or female genders. The term queer summarizes the diversity within this group which also encompasses terms like intersex and asexual. All of this adds more complexity to understanding gender and sexuality as everyday parts of human life. It questions our default idea of the standards for being straight.

In India, acceptance from society has been a long-standing challenge for the LGBTQ community. A considerable part of this stems from British colonial rule, which enforced a law known as Section 377 in the Indian Penal Code. This law oppressed sexual minorities, further intimidating them with fear, oppression, and violence before eventually striking them into criminals altogether. While there has been some progress in moving away from these laws and their terrible effects they still pose a challenge today such as fighting for same-sex couples' marriage rights. Despite the decriminalization, the government's persistent opposition makes progress in this regard particularly difficult. This underscores the ongoing fight for comprehensive social and legal recognition for the LGBTQ community in India.

RESEARCH QUESTIONS

1. What were the conditions of people in ancient time?
2. What are the arguments against the same sex marriage?

3. What are the arguments in favour of Same-sex marriage?

4. What could be the way forward?

RESEARCH OBJECTIVE

The objective of the research paper is to-

- To understand the conditions of people belonging to LGBTQ+ community in ancient period.
- To understand the arguments made against the same-sex marriage.
- To know the arguments made in favour of same-sex marriage.
- To know what can be the way to move forward.

SIGNIFICANCE OF STUDY

Main purpose of this study is to highlight the issues faced by people with same-sex marriage and how it has evolved in India and in other countries as well as it will give a brief identification that how in the previous cases the rights of LGBTQ+ were overlooked. It will also help people understand how these laws are coming from the Ancient India and what kind of punishment were given. It's important that LGBTQ+ get to know that their dignity, autonomy, rights and privacy should not be and cannot be challenged.

SCOPE AND LIMITATION OF STUDY

The scope of study for this research paper is not just limited to India, but also to foreign countries in order to get a proper knowledge of how LGBTQ+ community have faced challenges in ancient period, and idea of laws and punishments for same-sex marriage in India and different countries.

LITERATURE REVIEW

In the article, *“Recognition of Foreign Same-Sex Marriage in India: A legal exploratory analysis”* it is discussed about how strong support and opposition on social, political and religious grounds to same-sex marriage got and about different jurisdictions that either permit full-fledged marriage between same-sex couples or do not recognise it at all. Also, if someone

from another country where same-sex marriage is allowed comes to a country like Pakistan or India.

In the article, *“Same-sex relationships and marriage in India: The path forward”* it is discussed about post-colonial India and introduction of criminal punishment for same-sex relationships was owing to the British who drafted the IPC. It highlights how things have uplifted in 21st century.

In the article, *“The Evolution of LGBTQ+ Rights in India: A Journey towards Equality”* it is discussed about how same-sex relationships existed in India for ages, and it was homophobia that was imported from the West, not homosexuality. It highlights the historical background, its prevalence in India, situations faced by homosexual individuals and how homosexuals are considered as third genders.

HYPOTHESIS

The ancient art and sculptures of Hinduism show that the idea of same-sex relationships is quite prevalent in India. This challenges the notion that they are a recent phenomenon or go against Indian traditions. The LGBTQIA+ community in India also faces many societal and legal challenges. To combat this, there are several steps that can be taken, such as going through the court to challenge any discriminatory laws, engaging religious leaders in conversations to promote acceptance, raising awareness through campaigns, and making legal reforms like altering the Special Marriage Act. In order to recognize fundamental rights for all individuals regardless of sexual orientation, the government, religious leaders, civil society and the LGBTQIA+ community need to work together towards same-sex marriage.

DATA ANALYSIS

Homosexuality has a rich historical presence in India, with evidence spanning across ancient texts and artworks from various cultures and religions. From the Rigveda to sculptures in Khajuraho, these depictions showcase the existence of same-sex love and relationships, debunking the misconception that homosexuality is a recent phenomenon or contrary to Indian traditions.

In terms of legal frameworks, the Special Marriage Act of 1954 was specifically created to circumvent religious personal laws, not to introduce a novel form of marriage. It underscores

the state's role in regulating personal relationships, as reflected in laws pertaining to age of consent and prohibited degrees of marriage and divorce. Although the right to marry isn't absolute and is subject to state laws, it mirrors a parent's authority over a child's education.

While the Supreme Court's recognition of the right to privacy in 2017 was a significant milestone, it's imperative to acknowledge that marriage carries a public dimension that can't be disregarded. Parliament's jurisdiction over the decision on same-sex marriage stems from it being a democratic right. The intricate nature of the LGBTQIA+ community further accentuates the need for meticulous legislative deliberation.

Specifically, the Special Marriage Act can't be readily interpreted to encompass same-sex marriage, as it demands a comprehensive evaluation of the entire Act's framework. This presents challenges concerning rights, such as divorce, within same-sex marriages. Moreover, adopting children within queer couples may face societal prejudice and discrimination, which can adversely impact the well-being of the child. Additionally, the usage of gendered terms like 'mother' and 'father' may pose obstacles in same-sex marriages.

Advocating against same-sex marriage based on its perceived impact on procreation is unfounded, as adoption offers a valid alternative for queer couples aspiring to raise children. The notion that marriage equality is exclusively a concern for urban elites overlooks the genuine need for legal protection among less privileged individuals, as exemplified in the story of Leela and Urmila. Extending the Special Marriage Act to encompass queer Indians through the use of gender-neutral language would grant them the basic right to marry without necessitating special privileges.

In conclusion, the journey toward same-sex marriage in India necessitates a multifaceted approach. This encompasses raising awareness, implementing legal reforms, engaging in constructive dialogues with religious leaders, and challenging discriminatory laws. Collaborative efforts between the government, civil society, religious leaders, and the LGBTQIA+ community are pivotal for creating an inclusive society where everyone has the freedom to love and marry without facing judgment based on gender or any other factor.

Judicial review of LGBTQ+ rights in India

1. Naz Foundation v Government of NCT Delhi: In this landmark case, the Delhi High Court

declared Section 377 of the Indian Penal Code unconstitutional, paving the way for the legal review of this British-era law. The court found it violated several articles about equality in the Constitution of India.

2. *NALSA v. Union of India*: This case followed a controversial judgment where the Supreme Court re-criminalized Section 377 after decriminalizing it in the Naz Foundation case. NALSA's judgment was vital in recognizing transgender persons as the third gender and established comprehensive guidelines to protect their rights.

3. *Justice (Retd.) K. S. Puttaswamy v. Union of India*: This judgment granted the right to privacy as an integral part of a person's life, extending to all individuals regardless of gender or sex. The judgment emphasized the right to privacy, autonomy, and freedom from state interference for the LGBTQ+ community.

4. *Navtej Singh Johar v. Union of India*: This landmark judgment decriminalized homosexuality in India by reading down Section 377. It recognized the right to live with dignity, autonomy, and personal choice, affirming that the section violated various articles in the Constitution.

5. *Abhijit Iyer Mitra case*: This case addresses recognizing same-sex marriage under the Hindu Marriage Act and the Special Marriage Act in India. The petitioner argues for recognizing same-sex relationships in line with international standards. However, the central government argues that the definition of 'spouse' in Hindu law only includes a male and female and that decisions regarding marriage rights should be a matter for the government and legislature to determine.

These cases collectively represent a significant progression in recognizing and protecting the rights of the LGBTQ+ community in India, from decriminalization to affirming fundamental rights and advocating for marriage equality. They highlight the evolving legal landscape and the ongoing efforts to achieve greater inclusivity and equality for the LGBTQ+ population.

CONCLUSION

In conclusion, the journey towards securing rights for the LGBTQ+ community has been challenging, with a need for more comprehensive legislation. Prioritizing their needs and representation in the law-making process is crucial for their protection. Additionally, society

must foster an inclusive and accepting environment, recognizing that sexual preference is just one aspect of a person's identity. Normalizing social engagement and eliminating shame surrounding different sexual orientations is essential. A clear statute would ensure uniform legal protection and empower the community to speak up against abuse and discrimination, providing them with a vital voice in their pursuit of justice and equality.