
EVALUATING THE LEGALITY OF SAME-SEX UNIONS: A COMPARATIVE ANALYSIS CONCERNING INDIA

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ABSTRACT

In India, same-sex relationships have a long history. Despite the view of some who disagree, an analysis of ancient Indian literature and traditions reveals a more progressive society that emerged in post-colonial India. The British authorized the Indian Penal Code and instituted criminal sanctions for same-sex relationships. Section 377 made these exchanges unlawful and enforced penalties and jail terms, creating a hostile climate for all parties. India's social framework did not make things easy for this disadvantaged segment. With the advent of the 21st century, India saw a similar uprising propelled by global movements against oppression and discriminatory behaviors. Ultimately, the Supreme Court of India decriminalized same-sex partnerships with the landmark Navtej Johar case, and the privacy ruling gave the community a solid platform to promote their identity and rights. In light of the aforementioned paper, a doctrinal analysis of the LGBTQ+ movement in India will be carried out. The judiciary's perspective and the Supreme Court's role in evaluating and providing a liberal interpretation to protect the rights of this oppressed minority will be the main points of focus. The most recent developments will also be discussed, with special attention to the question of marital rights in light of the Delhi High Court case and possible future developments in India.

Keywords: same-sex, LGBTQ rights, Navtej Johar, Privacy, India

INTRODUCTION

India is home to 17.5% of the world's population. Each national citizen is responsible for their own needs and has rights. Each person has unique likes and preferences based on their lifestyle. From a young age, a great deal of various cultures, faiths, and customs are accepted. It has long been understood that marriage is the joining of two people of opposing sexes who are subsequently referred to as husband and wife following wedlock, marriage is the most significant tradition in this nation. Marriage is a widespread cultural relationship that is only acknowledged as being between males, and females, even though most marriage laws utilize gender-neutral terminology. Although there haven't been many examples of homosexual marriage being accepted in the past few years, society is gradually growing more permissive. Yet, several states have kept their constitutional bans on homosexual marriages in place despite strong opposition from individuals and groups who support legalizing same-sex marriage is not regarded as legal in several nations, including India. No matter how long they have been dating, gay couples are therefore not eligible for many of the financial and legal benefits that accompany being legally acknowledged as a married couple. In addition to fighting for their basic right to marry anyone they choose and to have same-sex marriage recognized by Indian law, the LGBTQ+ community is still very concerned about the legality of same-sex unions.

REVIEW OF LITRERATURE

A varied and developing viewpoint on this important social and legal problem is offered by same-sex marriages in India. Numerous facets have been investigated by academics and researchers, such as historical viewpoints, legal frameworks, cultural and societal views, and the effects on health and well-being. Studies have historically shown that same-sex relationships occur in ancient Indian writings and customs, providing insight into the acceptance of various gender identities and sexual orientations before colonial impact. However, Victorian morality and laws from the colonial era erected a restricted framework that marginalized homosexuality in Indian society. There have been significant changes to the legal environment around same-sex unions. A new chapter in the history of law was opened by the historic ruling in *Navtej Singh Johar v. Union of India*, which decriminalized consensual gay activities. The Indian Constitution's tenets of equality, non-discrimination, and privacy are the basis for ongoing debates on the constitutionality of recognizing same-sex marriages. The acceptability or opposition to same-sex marriages in India is influenced by cultural and

socioeconomic viewpoints. Attitudes toward LGBTQ+ people are greatly influenced by cultural conventions, religious convictions, and traditional values. Even though there is an increasing amount of support and awareness from different sources, issues like discrimination, stigma, and the need for social acceptability still exist. Studies also look at how legalizing same-sex unions affects the health and happiness of the LGBTQ+ community. Research has been conducted on the effects of social support networks on same-sex couples, access to healthcare, and mental health outcomes. These studies demonstrate how legalizing same-sex unions may improve general well-being and lessen health inequalities. Overall, it shows how the conversation over same-sex marriages in India is shaped by the intricate interaction of historical, legal, cultural, and social issues. To promote a more accepting society that respects and acknowledges the rights of LGBTQ+ people, it emphasizes the necessity for increased study and activism.

HISTORICAL ASPECT

According to several ancient sources, homosexuality has a long history in India. A feminine realm of play and fertility is portrayed in the Rig Veda and other ancient scriptures, as well as in statues and artifacts dating to roughly 1500 BC. Photos depicting gay practices in Kamasutra and of young boys preserved by Muslim nawabs and Hindu lords are among the documented evidence of homosexuality during the Muslim Middle Ages as well as the documentation of sodomy among Tantric rites couples. After colonial growth, Western Worldwide had a significant impact on reproductive expectations for sexuality. The explanation of imperial sexual behavior has gradually included these Victorian principles and practices which are seen in responses to any kind of “unnatural” sexual behavior. India considered the natural displays of desire that were previously a part of Indian society to be “pathological” in contrast to the Western idea of “moral and psychological” sexuality. The past century has seen a significant shift in how homosexuality is perceived. The classifications of psychiatric diseases stopped including homosexuality as an abnormal activity after 1974 because it was no longer regarded as such. In several nations, including India, this was decriminalized in 2018, as well. Without giving them a fair chance, several nations have also enacted laws and taken other measures to protect gays and lesbians from discrimination. In 1994, South Africa became the first country to explicitly acknowledge the civil rights of homosexuals and other LGBT individuals. Special legal rules also apply to Australia, Germany, Luxembourg, the Netherlands, Switzerland, Iceland, Denmark, Sweden, and New Zealand. The U.S. Supreme Court held in 1996 that no

state should enact laws that discriminate against gay people out of bias. In the *Navtej Singh case*, which was decided in 2018, Indians acknowledged homosexuality after decriminalizing section 377 of the IPC v. Union of India. We must consider these concepts in light of their respective historical points of view to decide how to proceed with same-sex unions and homosexuality. We must distinguish between the viewpoint that is ingrained in Indian culture and that which is common in Western society to have a clearer understanding of the legal status of homosexuality in India.

GLOBAL SITUATION REGARDING SAME-SEX MARRIAGES

Regarding same-sex marriage and homosexuality, different nations around the world are in different situations. While many countries are open to these relationships and formally recognize same-sex partnerships, others strongly oppose homosexuality and even see it as a crime. When tackling the issue, public entities adopt different views from LGBT NGOs. On rare circumstances, they openly advocate the practice, while on other occasions, they back legal recognition of these unions because it will prevent bigotry towards people of the same gender. They choose to give moral parity to legally recognized gay unions in other situations and to grant children the same right to adoption. As a result, gay activity has been decriminalized in an increasing number of states across several countries. However, in light of the advancements made in numerous Western nations, LGBT rights organizations remain optimistic and fight to secure the legalization of same-sex unions. The legalization of same-sex unions is currently being discussed by a five-judge Indian Supreme Court panel. The union administration has opposed legalizing same-sex unions by citing cultural and accepted norms. In India, homosexuality is legal, even though same-sex marriage is still illegal there. The first nation in the world to formally recognize same-sex relationships and grant them the right to register as domestic partners was Denmark, which did so even before the 21st century had begun. Such partnerships weren't referred to as "marriages" in the recognition. On October 2, 1989, six gay couples were formally merged into "registered partnerships", giving them most of the privileges of married heterosexual couples, but excluding the ability to adopt or acquire shared custody of the child. At the moment, same-sex marriage is permitted in 36 countries: Andorra; Argentina; Australia; Austria; Belgium; Brazil; Canada; Chile; Colombia; Costa Rica; Cuba; Denmark; Ecuador; Estonia; Finland; France; Germany; Greece; Iceland; Ireland; Luxembourg; Malta; Mexico; the Netherlands; New Zealand; Norway; Portugal; Slovenia; South Africa; Spain; Sweden; Switzerland; Taiwan; the United Kingdom; the U.S.A and

Uruguay.

INDIAN PERSPECTIVE ON SAME-SEX MARRIAGE

In India at the moment, same-sex marriage is not accepted. The legal framework of the nation does not support marital equality or the advantages and rights that go along with it, like joint property ownership, inheritance rights, and adoption rights. Section 377 of the Indian Penal Code was overturned in the Supreme Court's historic 2018 ruling in *NAVTEJ SINGH JOHAR V. UNION OF INDIA*, decriminalizing homosexuality in the country. For the LGBTQ+ community in India, this recognition of their right to love and intimacy without fear of retaliation or legal action has been a huge turning point. Despite judicial decisions, same-sex marriage is still prohibited in India, robbing LGBTQ+ couples of their legal and social rights. These events have had a significant impact on India's stance toward LGBTQ+ rights. Starting with the outlawing of homosexuality, they have led to the legalization and final legal acknowledgment of LGBTQ+ individuals. Since there are still barriers and prejudice against the LGBTQ+ community in India, campaigning and activity are necessary to ensure equal rights and protection for them. One of the many significant outcomes of decriminalization has been an increase in public understanding of the rights of LGBTQ+ individuals. As a result, long-standing societal norms and prejudices against LGBTQ+ persons are being challenged by a greater understanding of and acceptance of same-sex relationships and sexual orientations. This has also encouraged the LGBTQ+ community to come out and publicly identify themselves without fear of legal ramifications. The legalization of homosexuality has given the LGBTQ+ community more avenues to struggle for legal recognition and protection of their rights. As a result, there is now more public awareness of and support for LGBTQ+ rights in India thanks to the increased activism and advocacy efforts of LGBTQ+ organizations and allies. In India, same-sex marriage is a complex issue with a range of cultural, religious, and legal perspectives. Indian society's deeply ingrained cultural and religious views are often cited as reasons against same-sex unions. From a cultural perspective, marriage is considered a sacred institution in India. It is seen as a social agreement between two families, one protecting the other's traditions and family ties. With its strong conservative leanings, traditional Indian society does not typically accept same-sex partnerships. LGBTQ+ individuals frequently experience stigma and prejudice, and their relationships are viewed as aberrant. In India, 43% of adults are against same-sex marriage, while 53% believe it should be permitted. The legislation of same-sex marriage is currently the subject of litigation before the Indian Supreme

Court. The issue of same-sex marriage is illegal in various countries. According to Indian tradition, same-sex relationships are a trans-rooted, alien culture-bound syndrome. To address all the issues facing LGBT people in India, LGBT groups are primarily pushing for a step-by-step strategy. These organizations' prior priorities were to pass anti-discrimination legislation and repeal section 377 of the Indian Penal Code.

JUDICIAL APPROACH REGARDING SAME-SEX MARRIAGE

The Indian Supreme Court's decision to not recognize marriage between people of the same sex has dealt the nation's LGBTQ+ community a severe legal blow. There are general expectations that the five-judge Constitution Bench would interpret the Special Marriage Act (SMA), a law that permits marriage between any two people, in a gender-neutral manner to include people of the same sex, given the advancements in law in recent years and the expanding meaning of individual rights. The rights to privacy, dignity, and marital choice have been included in the scope of Article 21 of the Constitution over time. However, the highest court has refrained from going so far as to permit non-heterosexual marriages or civil unions. The five judges have all decided to let the legislature pass this kind of legislation. Although they declined to read down the SMA's provisions to that effect, Chief Justice of India D.Y. Chandrachud and Justice Sanjay Kishan Kaul have decided that LGBTQ+ couples have the right to seek recognition for their relationship. However, Justice S. Ravindra Bhat, Hima Kohli, and P.S. Narasimha disagree, arguing that any such acknowledgment can only be predicated on statute. In effect, the court has accepted the government's view that any move to legalize same-sex marriages will fail in the legislature's domain. The court's decision to rule that there is no fundamental right to marry rejected expectations that it would outlaw discrimination against same-sex couples in the context of marriage. It is true that marriage is a social institution, and that what constitutes a legally binding relationship is governed by a set of legal criteria and requirements. The court continues to hold that a person's freedom to pursue marriage as a way of gaining social and legal recognition is subject to state restrictions, even if the constitution protects the rights. The majority disagrees that gay couples should be able to adopt children, even while it agrees with the minority that transgender individuals shouldn't be barred from marrying heterosexuals. Regarding such same-sex couple's right to cohabit and be free from threats and compulsion, there is no disagreement among the judges. It is quite unlikely that Parliament will take the initiative to legalize same-sex marriages, as many Indian regions may object on religious and cultural grounds. It may now be necessary for the LGBTQ+ community

to find solace in the court's ruling that the government should establish a committee to determine the rights and privileges of gay couples. But before the law catches up to the community's desire for equality, there is still a long way to go.

SUGGESTION

Legalizing same-sex marriages will contribute to the fact that marriage's primary goal is no longer solely to bear children, as has been stated in several rulings. A better future for the adopted children and a reduction in the burden of overcrowding are two benefits that homosexual couples, unable to conceive, may look forward to when adopting children from orphanages. Keeping in mind the current state of affairs regarding homosexual couples in India, the administration's decision to allow them to be matrimonial by the law will be regarded as highly beneficial to a wide range of societal groups.

Involvement with the LGBTQ+ community is the next potential remedy, which is greatly needed in the Indian setting. First and foremost, families and communities should have more frank and inclusive conversations about sex and sexuality. The community must engage with the mainstream. Respecting and safeguarding privacy is important. The identity of a lesbian or gay person has no bearing on society.

CONCLUSION

The time has come to recognize that there is a group of people among us who identify as heterosexual but whose sexual preference is who they are. Like all other heterosexual people, they are human. The emphasis should be on social involvement that leads to inclusion. It is important that leads to inclusion. It is important to normalize this and do away with the concept of shame. One's choice of sexual partners is a matter of personal preference, therefore there's no reason to take offense. A well-crafted statute can be very beneficial in ensuring justice as well as establishing consistency in the legal protection of social, economic, and cultural rights. In India, same-sex unions are currently not recognized by the government as lawful. The study's thesis is that same-sex marriage is not acceptable in Indian society or the law but 36 countries have legally approved the concept of same-sex unions in their respective states. There is an infringement on the rights of gay persons because they are not allowed to participate in the marriage institution, which is highly prized in Indian culture, they are unable to integrate into Indian society.

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