
LEGISLATING MARRIAGE EQUALITY IN INDIA: A COMPREHENSIVE STUDY ON THE NEED FOR LEGAL RECOGNITION OF SAME-SEX MARRIAGE

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ABSTRACT

The legal recognition of same-sex marriage remains a significant constitutional and human rights issue in India despite the progressive expansion of LGBTQIA+ rights. While consensual same-sex relationships are no longer criminalized, the absence of a comprehensive legislative framework continues to deny same-sex couples equal access to the legal, social, and economic rights associated with marriage. This reflects a persistent gap between constitutional guarantees of equality, dignity, liberty, and non-discrimination and their practical realization. Existing literature has primarily focused on judicial interpretation of LGBTQIA+ rights, while comparatively less attention has been devoted to the need for comprehensive legislative reform as a durable and rights-based solution. This study addresses that gap by critically examining the constitutional principles governing marriage equality, relevant international human rights norms, and comparative legal approaches adopted in other jurisdictions. Adopting a doctrinal and comparative research methodology, the paper argues that legislative recognition of same-sex marriage is essential to ensure legal certainty, protect fundamental rights, and promote substantive equality within India's constitutional framework.

Keywords: Same-Sex Marriage; Marriage Equality; LGBTQIA+ Rights; Legislative Recognition; Constitutional Law; Equality; Human Rights; India.

INTRODUCTION

Homosexuality according to Oxford Dictionary means “the quality of being sexually attracted solely to people of one’s own sex”. According to Webster, “Homosexuals is the sexual attraction or the tendency to direct sexual desire towards another of the same sex”. The term ‘homosexuality’ was first coined in 19th century by Austrian born Hungarian psychologist Caroline Maria Benkert.¹ The concept of same sex sexual behavior was first noted in Egypt 4,400 years ago and subsequently found in ancient Greece, Rome and China². Homosexuality in India can be trace backed from ancient epics and scriptures to medieval prose, poetry, art and architecture³. Attraction towards same sex was considered as a mental disability until through various clinical researches it was proved that it is quite a normal form of sexual behavior. The attitude of different religions has great role to play in opposition to societal acceptance of homosexuality and same sex marriage. In Christianity it is considered as sinful as different bible passages speaks it as immoral. When it comes to Hinduism, the ancient Hindu scriptures describe the homosexual condition to be a biological one⁴. Practicing homosexuality is a sin and is punishable in Islam. Many countries like Taiwan, New Zealand, Australia, Canada etc. have legalized the same sex marriage⁵. The concept of new era regarding marriage has changed from normal heterogeneous marriages to a modern view which includes homosexual relations and marriage. As marriage creates a legal binding with rights and obligations between the parties the government should take measures for legalizing same sex marriage by enacting laws governing homosexual marriage, adoption, inheritance etc.

SEX AND GENDER

Sex and gender are often used interchangeably, notwithstanding having different meanings. The term sex is a biological term. According to National Institute of Health, sex is a multidimensional biological construct based on anatomy, physiology, genetics and hormones. It relates to the physiological aspects of humans and animals which consist of chromosomes,

¹ STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/homosexuality/> (last visited June 10, 2026)

² HOMOSEXUALITY, <https://www.britannica.com/topic/homophobia> (last visited June 10, 2026)

³ THE PRE-COLONIAL HISTORY OF HOMOSEXUALITY IN INDIA: WHY LOVE IS NOT WESTERN (PART 1/111), <https://www.lawctopus.com/academike/history-of-homosexuality-in-india/> (last visited June 10, 2026)

⁴ THE GUARDIAN, <https://www.theguardian.com/commentisfree/belief/2009/jul/02/gay-rights-india>, (last visited June 10, 2026)

⁵ PENACCLAIMS, www.pinaccliams.com, (last visited June 10, 2026)

genes, hormone levels and sexual anatomy⁶. Therefore, sex is usually categorized as male and female. Usually the sex of a person is assigned at the time of birth. The assignment of biological sex may or may not align with what's going on with a person's body, how they feel, or how they identify. The factors that determine our assigned sex begin as early as fertilization.

Gender is much bigger and more complicated than assigned sex. According to WHO gender refers to “the socially constructed characteristics of men and women – such as norms, roles and relationships of and between groups of men and women”⁷. The concept of gender includes five important elements: relational, hierarchical, historical, contextual and institutional. Moreover, these attributes, opportunities and relationships are socially constructed and are learned through socialization process. Gender is a part of broader sociocultural context and gender norm vary across different cultures and over time. They are often upheld and reproduced in the values, legislation, education systems, religion, media and other institutions of the society in which they exist⁸.

GENDER IDENTITY AND GENDER EXPRESSION

Gender identity refers to a person's innate deeply felt internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth. According to American academy of pediatrics “By age of four, most of the children have a stable sense of their gender identity.”⁹ Gender identity is an inherent factor of a person's make up. Moreover, the words used to describe gender identity can change and naming one's gender can be a complex and evolving matter. As many things evolve there are high chances for gender to evolve. Gender expression refers to how an individual expresses their gender identity, including dress and speech.¹⁰ Gender identity is not always an indication of gender identity. Gender expression can include behavior and outward appearance such as dress, hair, make-up, body language, voice, etc.¹¹ A person's chosen name and pronoun are also common ways of

⁶ CANADIAN INSTITUTES OF HEALTH RESEARCH, <https://cihr-irsc.gc.ca/e/48642.html> (last visited June 10, 2026)

⁷ WORLD HEALTH ORGANISATION, <https://www.who.int/news-room/questions-and-answers/item/gender-and-health> (last visited June 10, 2026)

⁸ *Id.* at 2.

⁹ GENDERSPECTRUM, <https://genderspectrum.org/articles/understanding-gender>

¹⁰ *Id.* at 4.

¹¹ ONTARIO HUMAN RIGHTS COMMISSION, <https://www.ohrcca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression/3-gender-identity-and-gender-expression> (last visited June 10, 2026)

expressing gender.

LGBTQIA+

The acronym LGBTQIA+ stands for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and others. As society's understanding of diverse sexual identities and gender expressions has grown more inclusive this acronym is used to describe them. The LGB letters was the first to come into existence. Even though trans people have existed throughout the history the term only came into being in 1960s, and the use of the term can be found in the 1965 psychology textbook and it was popularized by trans feminine activists like Virginia Prince, who argued that sex and gender are separate identities. Later T was added to that after several movements¹². Thereafter came "queer", this term was to the acronym. Though queer was in use since 1910, it was also once a slur used to separate people from a heteronormative society¹³. Q also stands for questioning as a way to acknowledge those who are exploring their gender or sexual identity. "I" stands for intersex and A for asexual which were recently added. Intersex describes a person born with sex characteristics that are not typical for male or female bodies whereas Asexual describes a person who is not sexually attracted to others and has no desire to engage in sexual behavior. Apart from this there are many other gender identities.

HOMOSEXUALITY

Homosexuality refers to the sexual attractiveness and interest to ones own sex. The word homosexual originates from Greek and Latin. The word "homo" means same. At different times in different cultures, homosexual behaviour has been variously approved of, tolerated, punished and banned. Homosexuality has been called among other things a sin, an illness, a way of life, a normal variant of sexual behavior, a behavioral disturbance and a crime.¹⁴ Apart from that homosexuality was not uncommon in ancient Greece and Rome. Even ancient Indian texts mention about homosexuality. Currently, homosexuals are identified as Gays and Lesbians. Gay refer in case of male and lesbian in case of female.

HISTORY AND EVOLUTION OF HOMOSEXUALITY

¹² NATIONAL GEOGRAPHIC, <https://www.national-geographic.com/history/article/from-lgbt-to-lgbtqia-the-evolving-recognition-of-identity> (last visited June 10, 2026)

¹³ Id.at 7.

¹⁴ Vern L Bollough, HOMOSEXUALITY: A HISTORY (FROM ANCIENT GREECE TO GAY LIBERATION), 2019 edition, Routledge publishers

Throughout the history homosexuals have comprised a small and significant group of society. The evidence of homosexual behavior dates back to the oldest written texts, first noted in Egypt 4400 years ago, and subsequently it was found in ancient Greece, Rome and China¹⁵. Plato, one of the greatest of all ancient Greek philosopher spoke highly about same sex relations among young men. The discussions about sexuality and same sex attraction in particular have occasioned philosophical discussion ranging from Plato's *symposium* to contemporary queer theory¹⁶. Despite this, the ancient Greeks had no word which corresponds to "gay" but, to them sexuality was seen as a preference. One preferred either men women or both and this preference didn't carry a label. Moreover, homosexual behavior has also been found in animal species including mammals, birds, reptiles, etc. Homosexuality was also widely accepted among the Romans. However, there were some sexual taboos that made homosexuality in Rome quiet different from modern western gay life. The moral and immorality in ancient Rome has mostly to do with social class. Many other cultures including the ancient Chinese, Japanese and Indians also saw homosexuality as a normal part of life. One of the major exception was Hebrew people. in the old testament of Bible (Jewish Bible) homosexuality is condemned as a sin. And the punishment for committing this sin was death. Christian morality in larger part was derived from Jewish tradition, so when Romans converted into Christianity in late 4th century AD, the biblical condemnation of homosexuality gradually became incorporated into Roman and the later medieval European society. In the 11th and 12th centuries homosexuals along with Jewish people were common targets of hatred due to their status of "the other".¹⁷

In England during the reign of Henry VIII, sodomy was classified as an illegal act between man and man, and man and beast this law which was reenacted in 1563 was the basis for all male homosexual convictions until 1885 and until 19th century sodomy laws were prevalent in European countries. A sodomy law is a law that defines certain sexual acts as crimes. But some people in the 19th century saw homosexuality as a natural and normal state. One example for that is the English writer Oscar Wilde, who was imprisoned because of same sex relationship¹⁸. Karl Heinrich Ulrichs, a 19th century German lawyer and writer who may have identified as gay, was the first to try to label his own community. As early as 1862, he used the term "urning" to refer to men who attracted to men. "we urnings constitute a special class of human gender

¹⁵ Thomas K Hubbard, *HOMOSEXUALITY IN GREECE AND ROME*, (University of California Press 2003)

¹⁶ STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/homosexuality> (last visited June 10, 2026)

¹⁷ Florence Tamagne, *A HISTORY OF HOMOSEXUALITY IN EUROPE*, (Algora publishing 2006)

¹⁸ Douglas linder, *The Trials Of Oscar Wilde: An Account*, SSRN, Oct.23 2007

we are our own gender, a third sex” he wrote. But the term was quickly replaced by a word coined by Austro-Hungarian journalist Karoly Maria Kertbeny. In 1869, the Prussian government contemplated adding language that forbade male same gender sexual activity to its constitution. In response Kertbeny wrote a letter calling the proposed law “shocking and nonsense”¹⁹. However, few people in the west saw homosexuality as a concept of natural law. In other words it was something that was found in nature which is normal and acceptable. But on the other hand few people argued that human beings are heterosexual by nature; therefore homosexuality is unnatural. A major change with regard to homosexual rights were seen at the end of 20th century, especially in Europe. But it took 21st century for several countries to accept same sex marriage and to decriminalize homosexuality.

INTERNATIONAL ASPECTS IN SAME SEX MARRIGE

The history of same sex marriage is complex and varied,as attitudes towards homosexuality and marriage have evolved in different cultures and societies. One of the earliest know examples of same se unions comes from ancient Egypt, where historians have found evidence of male – male marriages among the upper classes.However these relationships were not recognised as legal marriages in the modern sense. In the 20 th century, the first campaigns for legal recognition of same sex marriage began in Europe and North America. Denmark became the first country to legalise same sex unions in 1989, followed by Norway in 1993. The Nertherlands became the first country to legalise same sex marriage in 2001, and several other countries followed suits over the next decade. In 2015, the united, states Supreme Court legalised same sex marriage nation wide, a landmark decision that has since been followed by many countries and regions where same sex marriage is not recognised or is actively discriminated against. However the trend towards marriage equality continues to spread as more and more people of LGBTQ2 + individual.

As of 2021, same sex marriage is legal in at least 30 countries , including Argentina, Australia,Belgium, Brazil, Canada, Colombia, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, portugal, South Africa, spain, sweden, Taiwan, the United Kingdom, the united states and Uruguay. In some of these countries, same sex couples have been able to marry for decades, while in other, the

¹⁹ Id. at 7.

legalization of same sex marriage is more recent development.²⁰

In some countries, same sex marriage is legal in certain regions or provinces, but not in others. For example same sex marriage is legal in most states in the United States, but some states still have laws banning it²¹. In many other United States, same sex marriage is not recognised or is not actively discriminated against. In some countries, homosexuality is even punishable by law.

LEGAL AND POLITICAL DEVELOPMENTS

Here are the some key legal and political developments on same sex marriage.

- The Netherlands became the first country to legalise same sex marriage in 2001. Since then many other countries have followed suit, including Belgium, Spain, Canada, South Africa, Norway, Portugal, Iceland, Denmark and the United Kingdom
- In the United States, the Defence of marriage Act (DOMA) which defined marriage as between a man and a woman, was struck down as unconstitutional by the Supreme Court in 2013. This decision paved the way for same sex marriage to be legalised in all 50 states in 2015
- In 2017, Australia legalised same sex marriage after a national postal survey found that 61.6 % of Australia supported marriage equality²²
- In some countries such as India and Russia, same sex marriage is still illegal and faces opposition from conservatives religious and political groups
- Despite the legalization of same sex marriage in many countries, there are still ongoing debates and legal challenges surrounding issues such as adoption, discrimination, religious freedom.
- In many countries there is still a significant amount of opposition to same sex marriage from conservative groups who argue that it undermines traditional values and family

²⁰ William N Eskridge, A HISTORY OF SAME SEX MARRIAGE, Virginia Law review

²¹ Kathleen E Pull, SAME SEX MARRIAGE THE CULTURAL POLITICS OF LOVE AND LAW, Cambridge University Press

²² Britannica, <https://www.britannica.com/topic/same-sex-marriage>, (last visited June 10, 2026)

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Overall there have been significant legal and political developments on same sex marriage in many countries around the world, with increasing acceptance and recognition of marriage equality²³. However there still ongoing debates and challenges surrounding the issues in some parts of the world.

PUBLIC ATTITUDE TOWARDS HOMOSEXUAL MARRIAGE

Public attitudes towards same sex marriage vary widely. Around the world in some countries, a majority of the population support marriage equality, while in other, there is significant opposition to same sex marriage in the United States supports for same sex marriage has increased steadily over the past few decades with a majority of Americans now in favour of marriage equality. In 2020 a pew research centre survey found that 42% were opposed by 2021 support had risen to 62 % while the opposition had fallen to 32%

In many other countries including somewhere same sex marriage is legal there is still a significant amount of social stigma and discrimination against LG BTQ + individuals. Overall, while significantly progressive has been made in the fight for marriage equality there is still a long way to go in terms of achieving full legal recognition and social acceptance for LGBTQ + individuals around the world.

MARRIAGE EQUALITY AROUND THE WORLD

There are currently 34 countries where same-sex marriage is legal: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, the United Kingdom, the United States of America and Uruguay.²⁴

Estonia's parliament passed on June 20, 2023, a law legalizing same-sex marriage that will come into effect January 1, 2024.

²³ Evans Gertsman, *Same sex marriage and constitution*, Cambridge University Press

²⁴ HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/marriage-equality-around-the-world>, (last visited June 10, 2026)

JUDICIAL REVIEW OF LGBTQ RIGHTS IN INDIA

A judicial analysis of LGBTQ rights in India reveals that while the legislature has been on the backfoot on this matter, the judiciary has been quite proactive in the last few years. Specifically, in the last decade, many important judgements were decided by the Supreme Court which paved way for recognition of basic rights of this marginalised group. The failure of the lawmakers in this regard reflects the conservative nature of the Parliament which had to be addressed by a liberal judiciary. The following are some of the most prominent judgements of the Supreme Court on the subject.

Naz Foundation v Government of NCT Delhi²⁵

In this landmark case, the Delhi High Court declared Section 377 of the Indian Penal Code as unconstitutional. Based on a Public Interest Litigation filed by the NGO, the judgement paved way for the legal review of the British era law. The Court declared it to be in violation of Article 14, Article 15 and 16 (all rights around the concept of equality) of the Constitution of India.

Suresh Kumar Koushal v Naz Foundation²⁶

In this case, the hon'ble Supreme court struck down the Delhi High Courts decision in the Naz Foundation case. The supreme court held that sec 377 is not violative of articles 14,15 and 21 of the Constitution and that carnal intercourse means unnatural lust ought to be punished. The supreme court states that a minuscule fraction of countries population constitutes LGBT and Delhi high court had inaccurately relied on International precedents in its distress to protect the rights of LGBT community peoples. Justice Sanghvi said that as Section 377 is a pre Constitutional legislation and if there were any violation of rights guaranteed under part 3 of the Constitution parliament would have noticed that and repealed the section 377 long ago. Supreme Court held that section 377 of the IPC does not suffer from any constitutional infirmity and left the competent legislature to assess the desirability and legitimacy of deleting the sec from the statute book or altering the same to allow the sensual sexual activity between 2 adults of the same sex.

²⁵ *Naz Foundation v. Government of NCT of Delhi*, 160 DLT 277 (2009)

²⁶ *Suresh Kumar Koushal v. Naz Foundation* is (2014) 1 SCC 1

Justice (Retd.) K. S. Puttaswamy v. Union of India²⁷

Granting the right to privacy as a facet of Right to Life and Liberty, Article 21, this judgement held that privacy is an integral part of a human's life and that it extends to all individuals, notwithstanding gender and sex. In the judgment, Justice Chandrachud observed that the LGBTQ community should be entitled the right to privacy, particularly autonomy and freedom from interference from the state. A special observation was made in context of the right to choose partners of one's own choice, sexual freedom and autonomy. The Court observed that, "The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14 (right to equality), 15 (discrimination on grounds of sex) and 21 (right to life and personal liberty) of the Constitution." This judgement was the primary precursor to the breakthrough Navtej Johar case.

Navtej Singh Johar v. Union of India²⁸

The Supreme Court of India unanimously held that Section 377 of the Indian Penal Code, 1860, which criminalized 'carnal intercourse against the order of nature', was unconstitutional in so far as it criminalized consensual sexual conduct between adults of the same sex. The petition, filed by dancer Navtej Singh Johar, challenged Section 377 of the Penal Code on the ground that it violated the constitutional rights to privacy, freedom of expression, equality, human dignity and protection from discrimination. The Court reasoned that discrimination on the basis of sexual orientation was violative of the right to equality, that criminalizing consensual sex between adults in private was violative of the right to privacy, that sexual orientation forms an inherent part of self-identity and denying the same would be violative of the right to life, and that fundamental rights cannot be denied on the ground that they only affect a minuscule section of the population.

Abhijit Iyer Mitra case²⁹

The matter pertains to the question of recognition of same sex marriage under the Hindu Marriage Act and the Special Marriage Act in India. The argument forwarded by the petitioner is that with the recognition of same sex relationships consequent to the decriminalization; the

²⁷ Justice K.S Puttuswami (Retd) v Union of India (2017) 10 SCC 1

²⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1

²⁹ *Abhijit Iyer Mitra v. Union of India*, W.P. (C) 6371/2020 (Delhi High Court)

state should be responsive to the cause and also conform to the international standard and conventions that India is a signatory to. Contradicting this argument, Solicitor General Tushar Mehta argues that the term 'spouse' under Hindu law can include only a male and female and that such judicial interference will cause complete havoc with the delicate balance of personal laws. The central government stated that the decriminalization of Section 377 did not automatically mean that such relationships would be entitled the right to marry. Referring to the Indian traditions and that marriages are based on rituals, ethos and social values, marriages have a spiritual aspect to it and thus, such same-sex marriage rights cannot fall within the purview of the judicial adjudication; but it a matter for the government and legislature to review and determine³⁰.

Supriyo @ Supriya Chakraborty v. Union of India³¹

In this case, the Supreme Court of India considered a batch of petitions seeking legal recognition of same-sex marriages under the Special Marriage Act, 1954 and other personal laws. A Constitution Bench unanimously held that there is no fundamental right to marry under the Constitution and declined to read gender-neutral terms into the Special Marriage Act, reasoning that such an exercise would amount to judicial legislation and fall within the exclusive domain of Parliament. While the Court affirmed that LGBTQIA+ persons are entitled to equality, dignity, privacy, and protection from discrimination under Articles 14, 15, 19, and 21 of the Constitution, it concluded that the legal recognition of same-sex marriages requires legislative intervention rather than judicial interpretation. The Court also acknowledged the discrimination and practical hardships faced by queer couples and directed the Union Government to constitute a committee to examine the rights and entitlements of persons in queer unions, including issues relating to access to social welfare benefits and protection from discrimination. The decision thus reaffirmed constitutional protection for sexual minorities while leaving the question of marriage equality to Parliament.

In *Anarchy, State, and Utopia* (1974)³², Robert Nozick argues that individuals possess inherent rights that the state must protect rather than restrict. From this libertarian perspective, denying same-sex couples the right to marry constitutes an unjustified infringement of personal

³⁰ Times of India, <https://timesofindia.indiatimes.com/blogs/pet-igree/same-sex-union-fight-on-for-an-equal-marriage/>, (last visited on 12 June 2026)

³¹ *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) 16 SCC 175

³² Robert Nozick, *Anarchy, State, and Utopia* (1974)

autonomy and freedom of choice. Nozick maintains that the state's legitimate role is limited to protecting individuals from force, fraud, and coercion, not enforcing moral preferences. This principle resonates with the reasoning in *Navtej Singh Johar v. Union of India*, where the Supreme Court held that criminalizing consensual same-sex relationships violated constitutional values of liberty, dignity, and privacy. Consequently, the continued denial of legal recognition to same-sex marriages represents an unwarranted exercise of state power, incompatible with both Nozick's theory of individual rights and the constitutional commitment to equality and personal liberty.

SAME-SEX MARRIAGE: THE NEED FOR LEGISLATIVE RECOGNITION

Marriage in India is not merely a social institution but also a legal relationship that confers a wide range of rights, obligations, and protections. The right to marry a person of one's choice has been recognized as an integral facet of the right to life and personal liberty under Article 21 of the Constitution. However, despite the decriminalization of consensual same-sex relationships, same-sex couples continue to be denied legal recognition of their unions, leaving them without access to important rights such as inheritance, maintenance, adoption, succession, and spousal benefits. This legislative vacuum undermines the constitutional guarantees of equality, dignity, and personal autonomy under Articles 14, 15, and 21. The continued exclusion of same-sex couples from the institution of marriage amounts to discrimination based on sexual orientation and highlights the urgent need for comprehensive legislation that ensures equal marital rights and legal protection for all individuals, irrespective of their sexual orientation.

LACK OF OFFICIAL RECOGNITION OF SAME-SEX COUPLES

In 1993, Vinoda Adwekar and Rekha Chaudhary approached the Registrar of Marriages with the intent of obtaining a marriage certificate.³³ The Registrar did not turn the women away immediately, but held an emergency deliberation with the judiciary and law enforcement to determine whether they could be issued such a certificate. In this case, one of the women was dissuaded from the marriage. Regardless of the lack of a definite outcome, it could be seen from the uncertainty of the Registrar that there is a lack of clarity in the family laws. Asking whether there is law that expressly prohibits same-sex marriage might not be the best option.

³³ Page 84, IGLHRC Book India, INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION (2003)

Rather, the question that should be asked is whether same-sex couples can get married under existing laws. A question might be raised as to how important State recognition of a marriage is. In order to answer this question, the origins of the State authority of marriage must be considered. In pre-modern times, at least in Europe, marriage was a secular matter, so religious involvement was not needed. The Clergy merely blessed the institution as they did other secular undertakings.³⁴ Over time, with increasing pressure from the upper classes, the blessing ceremony moved from outside the church to inside. Eventually, the ceremony that is followed today evolved over time. The state's takeover of marriage was not completed until the French Revolution, when it was declared that the only valid marriages would be civil ceremonies that were registered by an officer of the State.³⁵ In the case of Hindu marriages, it is not unusual for people to get married and not get the official documentation of the marriage. In case the need for legal intervention was necessary, the judges would examine evidence of the marriage. Evidences like photographs and recordings are used to see if two people were married. The need for following the ceremonies is emphasized. Not following the ceremonies could result in the marriage not being legitimate.³⁶ If the ceremonies cannot be proved, there can be no valid Hindu marriage³⁷ Even though they might have completed all the required procedures and ceremonies for marriage, same-sex couples have not been able to get official recognition. The couples involved would have been married in every sense of the word, in accordance to the rites and ceremonies prescribed by religion, however, they would not be considered married from the perspective of the State³⁸. This would leave the couples of the same sex in the same legal grey area that is reminiscent of the gay marriages in US States, where same-sex marriages performed before a state ban left such relationships in a state of limbo. This lack of a legal recognition means that these couples will not get the benefits and protections available to other couples. For example, married people would be able to avail more financial aids than non-married couples. This would be a violation of the principles of equity, as people are being discriminated against solely based on their sexuality.

LEGALITY IN OTHER JURISDICTIONS

Until the beginning of the 21st century, there was no modern law enacted that recognized the

³⁴ Ruth Vanita, *LOVE'S RITE* (Palgrave) (2005)

³⁵ 8 Vanita, *Supra* note 40

³⁶ Vishnu Prakash v. Sheela Devi, (2001) 4 SCC 729

³⁷ Margaret Palai v. Savitri Palai, AIR 2010 Ori 45.

³⁸ THE NEW YORK TIMES, <http://www.nytimes.com/2015/08/20/your-money/social-security-benefits-same-sex-couples.html> (last visited on 12 June 2026)

legality of same-sex marriages. Polls across the Americas³⁹ and Europe⁴⁰ show that support for same-sex marriage has been rising at a steady rate. On the other end of the spectrum, there has been a trend of African countries criminalizing homosexuality and enforcing extremely harsh penalties. Examples of this are the draconian laws enforced by Nigeria⁴¹, Uganda and several Central African countries. However, the most contentious of the battles is raging in the United States. Most Supreme Courts have struck down laws that prohibit same-sex marriages. This chain of judgements was started in 2013, when the Supreme Court ruled in favour of the rights of same-sex couples in *Hollingsworth v. Perry* and *United States v. Windsor*⁴². In these judgements, the Supreme Court ruled that any ban on same-sex marriage would be unconstitutional and that the Federal Government would have to recognize any marriages that were conducted at the state level. In 2015, the Supreme Court ruled in *Obergefell v. Hodges*⁴³ that states cannot refuse to issue same-sex marriage licenses, effectively legalizing gay marriage across the United States⁴⁴. The general trend in other jurisdictions has been a slow change in the legal status of same-sex marriages. In most of the western nations, homosexuality is de-criminalized⁴⁵ and are well on the way to recognizing same-sex marriage. The areas that have started criminalizing homosexual behaviour is limited to the Middle-East⁴¹⁴ and Africa⁴¹⁵, with some notable exceptions like Russia.⁴¹⁶ With the recent judgements like *Koushal*, India might have chosen a track that goes against the global trend in the aspect of same-sex relationships.

A clear legislative enactment is the need of the hour that addresses the numerous legal right that should be protected and safeguarded along with clear directions and recommendations to states in India to implement the law. This should also include the right to marriage under the Indian Special Marriage Act, 1954. The foundation of this law and the inspiration may be the Yogyakarta Principles and Yogyakarta Plus 10. This was the first major legal document created by a working group in Indonesia. This document is an extremely fruitful one that addresses the concerns of the community from a human rights perspective and it based on the core notion of

³⁹ GALLUP (2011) (accessible at <http://www.gallup.com/poll/147662/First-Time-Majority-Americans-Favor-Legal-Gay-Marriage.aspx>) (last visited on 12 June 2026)

⁴⁰ PINKNEWS (2011), <http://www.pinknews.co.uk/2011/02/24/most-irish-peoplesupport-gay-marriage-poll-says/> (last visited on 12 June 2026)

⁴¹ THE NEW YORK TIMES, <http://www.nytimes.com/2014/02/09/world/africa/nigeria-uses-law-and-whip-to-sanitize-gays.html> (last visited on 13 June 2026)

⁴² *United States v. Windsor*, 133 S. Ct. 2675

⁴³ *Obergefell v. Hodges*, 135 S. Ct. 2584

⁴⁴ THE NEW YORK TIMES, June 26, 2015, <http://www.nytimes.com/2015/06/27/us/supreme-court-same-sex-marriage.html> (last visited on 13 June 2026)

⁴⁵ *Toonen v. Australia*, [1994] PRIV. LAW. P. RPR 33; *Lawrence v. Texas*, 123 S. Ct. 2472.

equality and freedom. The next possible solution, which is desperately needed in the Indian context, is engagement with the LGBTQ community. This should begin with a more open- and broad-minded discussion on sex and sexuality within families and communities. Participation of the community in the mainstream is critical. Privacy should be respected and protected. The fact that one is gay, or a lesbian does not affect the society. It is the sexual preference of a person and thus, as rightly observed in the Puttaswamy judgement, “equality demands that sexual orientation of each individual be protected on an even platform”. To that end, what is needed is training and sensitization programmes. The first misconception that is needed to be addressed is it is a matter of choice and not of biology. Many such misconceptions exist in the community and these need to be addressed with relevant programmes. Education should be disseminated at all levels, starting with schools as a part of sex education. It should be taught sincerely and without engulfing it in shame or discernment. Another critical sector is the police and law enforcement. Indian police are not known to be sensitive and there are cases of abuse and violence in the hands of the police against the community. It has been suggested that proponents of same-sex marriage should instead concentrate on changing secular laws, such as the Special Marriage Act, which makes it simpler for people of different religions to get married or for those who don't want to be bound by their religion's personal laws, or on declaring the Special Marriage Act unconstitutional because it discriminates against sexual and gender minorities. Even though this strategy seems like it could work, it doesn't address the big problem: Specifically, our society's and our legal system's failure to properly address the glaring contradictions between fundamental rights and gender/sex discrimination in personal law. Furthermore, people need to be educated and made aware to the point that they can understand that everyone has the freedom to choose their own life partner. It should be spread to such a level that apprehension in the minds of guardians could be removed in regard to their child's future. It is time to acknowledge that there exists a community within us who conform to a different sexual preference than heterosexuals and that sexual preference is only one aspect of their existence. They are as human as any other heterosexual human being. Social engagement aimed towards inclusion should be the focus. This should be normalized, and the idea of shame should be eradicated. There is no need to be offended by one's choice of sexual partners, it is a personal preference. A clear statute can be extremely effective not only in bringing about a sense of uniformity in legal protection in relation to social, economic and cultural rights but it will surely provide an avenue to ensure justice. A legislative enactment will empower them to question instances of abuse, violence and discrimination and that will

give them a voice, which is critical.⁴⁶

CONCLUSION AND SUGGESTIONS

The recognition of same-sex marriage remains one of the most pressing constitutional and legislative challenges in contemporary India. While significant progress has been made in safeguarding the rights of LGBTQIA+ individuals through judicial recognition of equality, dignity, privacy, and personal autonomy, the absence of legislative recognition for same-sex marriages continues to create a disconnect between constitutional guarantees and their practical implementation. Marriage is not merely a social institution but also a legal status that carries recognition, legitimacy, and equal citizenship. Excluding same-sex couples from this institution perpetuates discrimination and undermines the constitutional promise of substantive equality.

The study demonstrates that constitutional principles alone are insufficient to ensure effective protection unless they are translated into statutory rights. The existing legal framework, which is predominantly based on a heterosexual conception of marriage, fails to accommodate the realities of a diverse and evolving society. Comparative legal developments across several democratic jurisdictions reveal that legislative recognition of same-sex marriage strengthens constitutional values without weakening the institution of marriage. Instead, it reinforces the principles of inclusivity, dignity, and equal protection before the law. In a constitutional democracy governed by the rule of law, legal recognition should not be determined by majoritarian morality but by the guarantees of justice, equality, and individual liberty.

The responsibility of addressing this legislative vacuum now rests with Parliament. A comprehensive and gender-neutral legal framework should be enacted to recognise same-sex marriages and ensure equal legal status for all consenting adults, irrespective of their sexual orientation. Rather than creating a separate legal regime, the legislature should consider amending existing marriage laws, particularly the Special Marriage Act, 1954, by replacing gender-specific expressions such as "husband" and "wife" with gender-neutral terminology such as "spouse." Such amendments would extend legal recognition without disturbing the broader framework governing civil marriages.

⁴⁶ORINAMWEBBER,<https://issuu.com/orinamwebber/docs/samesexmarriageandotherqueerrelationshipinindia> (last visited on 13th June 2026)

Legislative reform should also be accompanied by corresponding amendments to allied statutes to ensure consistency across the legal system. Equally important is the need for administrative reforms, including the revision of official forms, registration procedures, and governmental policies to reflect gender-neutral language and eliminate institutional discrimination. Public awareness initiatives and sensitisation programmes for government officials, judicial officers, law enforcement agencies, and educational institutions are also essential to foster an inclusive social environment and ensure the effective implementation of legal reforms.

Ultimately, the recognition of same-sex marriage is not a demand for special rights but a claim for equal treatment under the Constitution. Legislative recognition would reaffirm India's commitment to constitutional morality, human dignity, and international human rights principles while strengthening the democratic values of equality and inclusiveness. As society continues to evolve, the law must also evolve to reflect changing social realities. Enacting comprehensive legislation recognising same-sex marriage would therefore represent a significant step towards fulfilling the constitutional vision of justice, liberty, equality, and fraternity, ensuring that every individual enjoys equal protection and recognition before the law irrespective of sexual orientation.