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# **SAME SEX MARRIAGE: DOES IT CONTRAVENE THE NATURAL, SOCIETAL AND SCRIPTURAL ORDER AND NORMS?**

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## **ABSTRACT**

This paper explores the contentious issue of same-sex marriage and its alignment with natural, societal, and scriptural norms. As debates surrounding same-sex marriage intensify across the globe, this paper examines whether such unions fundamentally contravene established norms and values. The analysis is divided into three core perspectives: the natural order, societal conventions, and religious teachings across major faiths, including Hinduism, Islam, and Christianity. Through a comparative review of global perspectives and legal frameworks, alongside a survey of societal attitudes, the paper reveals the evolving but contested status of same-sex marriage. While many societies have begun to recognize same-sex unions as a matter of human rights, significant opposition rooted in traditional and religious beliefs persists. The findings highlight the complexities of integrating same-sex marriage into societies that value both progress and cultural heritage, underscoring the need for further dialogue and understanding.

## Introduction

Marriage is a legally and mutually agreed-upon partnership between spouses, recognized by law. (*Marriage Definition & Meaning - Merriam-Webster*, n.d.). The institution of marriage can be seen in every society, and the majority of people get married once in their lifetime(*Anthropology : Ember, Carol R : Free Download, Borrow, and Streaming : Internet Archive*, n.d.). The practices, manners and ceremonies performed in a marriage are different around the world which are based on the cultural, religious and regional differences, but the typical definition of marriage according to Carol R. Ember in her book “*Physical Anthropology and archaeology*” is, socially approved sexual and economic union, usually between a woman and a man(*Anthropology : Ember, Carol R : Free Download, Borrow, and Streaming : Internet Archive*, n.d.). The practice of marriage of heterosexuals has always been regulated by customs, religion and law in various countries of the world.

Same sex marriage can be regarded as the practice of marriage between two males or between two females. Many lesbians, gay and bisexual also want to form relationships and researchers have found that various homosexual adults are indeed in a committed relationship(*Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation*, n.d.). Currently there are two narratives regarding this practice. Many countries have welcomed this practice while others have criminalized or do not recognize it, on the grounds that it contravenes the natural, societal and scriptural orders.

## Status of same sex marriage around the globe

### European countries

The European countries do not have similar narratives regarding the practice of same sex marriage, in western Europe, at least 50% of the country uphold the concept of marriage equality. In a survey done by Pew Research Centre(*Where Europe Stands on Gay Marriage and Civil Unions | Pew Research Center*, n.d.-a) in 2017, the adults of the western European countries did support the same sex marriage, including Sweden (88%), Netherlands (86%) and Denmark (86%).

**Western European countries that support Same sex marriage**

Country	Year of Legalization
Netherlands	2001
Belgium	2003
Spain	2005
Norway	2009
Sweden	2009
Portugal	2010
Iceland	2010
Denmark	2012
France	2013
United Kingdom	2013
Luxembourg	2015
Ireland	2015
Finland	2017
Malta	2017
Germany	2017
Austria	2019
Switzerland	2021

In the eastern and central European countries, the practice of same sex marriages is not allowed by law, according to the survey by Pew research centre (*Where Europe Stands on Gay Marriage and Civil Unions* | Pew Research Center, n.d.-b), 5% of the Russians and 9% of the Ukrainians in the eastern Europe are in favour of the same sex marriage. No country in the eastern and central Europe has legalized same sex marriage, although in the countries like Croatia, Estonia, Hungary and others in the region have allowed same sex relationships.

The European Union does not mandate the members to recognise same sex marriage in their countries, but the court of justice in EU, in the case of *Relu Adrian Coman and others v. Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* (The Term “spouse” within the Meaning of the Provisions of EU Law on Freedom of Residence for EU Citizens and Their Family Members Includes Spouses of the Same Sex, 2018), nails an obligation on the

member nations to recognize the same sex marriage which had been done in any other member state. This prevents any harm which could be done to same sex couples their freedom of movement.

### **United States of America**

In a survey conducted by Pew Research centre(61% of Americans Say Same-Sex Marriage Legalization Is Good for Society | Pew Research Center, n.d.-a), a majority of the Americans are in favour of the statement that legalization of same sex marriage is good for society, nearly 61% of the Americans are in the favour of it, according to the survey the approval rating changes according to the age group and educational background. A trend of decrease in acceptability can be seen as the author moves from age 18-29 to age 65+, and a similar trend can be seen in the case of postgraduates to high schoolers. This suggests that education and exposure to the new practice does affect the acceptability among the society.

The Supreme court in the case of *Obergefell v. Hodges*(*Obergefell v. Hodges*:: 576 U.S. 644 (2015) :: Justia U.S. Supreme Court Center, n.d.) held that the constitution of the United States provides the same sex couples the right to marry in the year 2015. This case legalised same-sex marriage in thirteen states where it was previously banned. In the same year, the congress passed the Respect for Marriage Act, which was signed by President Joe Biden, recognizing these marriages at federal level. Additionally, 61% of Americans expressed support for same sex marriage in polls, a significant rise from 27% which was recorded in year 1996. Despite of the growing public support for these marriages, discussions are persistent between advocate for legal equality and individuals and institutions who opposed it on religious grounds.

### **Asian countries**

In Asia only country to have allowed this practice is Taiwan, Hong Kong even though does not allow the same sex marriage in the country but allows same sex spouses visas.

### **Indian Perspective**

In India, marriage is governed under various laws made by and for various religious groups, Hindu law has essence of the various scriptures while Muslim laws also are based on Quran. Nearly all these laws limit the practice of marriage to male-female couples only.

However, In the held case of *Navtej Singh Johar v. Union of India*(*Constitutionality of Section 377 IPC - Supreme Court Observer*, n.d.), the supreme court struck down section 377 of Indian penal code 1860 and decriminalized consensual same sex relationships. This law was included by the British in the code 1869 which made it punishable by law for a person who voluntarily have “carnal intercourse against the order of nature” which includes homosexual intercourse and all other acts that are not penile-vaginal penetration. Although after the case of 2018, same sex relationships are not criminal acts in India, the same sex couples have to face discrimination, harassment, rejection (*LGBTQ+ RIGHTS IN INDIA - Fulbright to India Guide – 2021-2022*, n.d.).

Supreme court in India, is now hearing various batches of petitions which seeks legal recognition of same sex/ Queer marriage in India, If Indian court legalizes same sex marriage it would become the largest country to legalize it(*How India's Supreme Court Could Make Same-Sex Marriage Legal | TIME*, n.d.).

### **Does same sex marriage contravene the natural, societal, and spiritual norms?**

According to a thesis(John, 2013)by Ivan Mathew, same sex community has always been around us but were rendered invisible by the Dominant Culture. This community is required to prove their existence or even their hope to live equal as heterosexual humans. In order to do so the same -sex community is seeking legalization of same sex marriage in their countries as this would give them rights to have a share in the society and be seen as an equal among others.

But, the practice of same-sex marriage may contravene the natural, societal and spiritual norms.

### **Natural order and norms**

Life on earth is very complex in nature, Professor Ursula Goodenough says that the key element of an organism is to be self, which means that they can engage in self-generation and maintenance, and to pass genome copies to offspring(*READ: Life and Purpose (Article) | Life | Khan Academy*, n.d.). Human beings which are a part of the animal kingdom are no different than other animal species if we consider the key element of any organism.

In the paper, by Dr. N.A Wimalasena(Wimalasena, 2016), the author gives a legal and biological definition of the marriage, she defines the fundamental element of marriage as

*“Marriage is a tradition where a personal bond between a man and a woman, rooted in biological functions related to mating and reproduction. As a social legal and religious institution, the concept of marriage has evolved in various ways over the course of time, but its core principles have remained unchanged. The permanent, sacramental union seen in Orthodox traditions, as those in modern Russia. Despite these differences, both forms of marriage share fundamental aspects, as both couple aim to create stability in their union, exercise the freedom of sexual relationship, and often seek to form a family. Biologically, the purpose of marriage extends beyond legalizing a sexual partnership, the continuation, survival of human race. In this sense, marriage is not just about two people coming together, but also creating a nurturing environment for children and continuing the cycle of life.*

From the above-mentioned definition given by Dr. Wimalasena, the author tries to draw a conclusion that the primary purpose of marriage has always been to secure the survival and continuation of the human race. In other words, main goal of marriage is not merely to formalize a sexual relationship, but to guarantee the survival of the species and humankind.

The author wants the reader to understand that the practice of same sex marriage would indeed contravene the main essence of aim and object of the marriage, as the same sex marriage would fail to ensure the survival of the human species and race, as biologically it is impossible for two people of same sex to reproduce, that breaks the natural order of the world.

Notwithstanding the above-mentioned arguments, same-sex community has been implementing the use of technology to have biological children by means of assisted reproductive technology, not to be confused with adoption, in recent years biologist have been researching and developing techniques to facilitate same sex reproduction, but a question on the ethical values and should humans interfere in the natural order of the earth has been raised by various researchers. National Commission for Protection of Child Rights has filed a petition in the supreme court saying that allowing same sex couples to adopt will endanger children(NCPCR Opposes Same-Sex Marriage Petitions in Supreme Court; Says Allowing Same-Sex Couples to Adopt Will Endanger Children, n.d.).

### **Societal order and norms**

A society is a community, nation, or broad grouping of people having common traditions,

institutions, and collective activities and interests(*Society Definition & Meaning - Merriam-Webster*, n.d.). The basic fabric of the society is the relationship between the group of family, it is a kind of social relationship made because of human behaviour, customs, rituals etc.

The customs, practices, rules are all the product of the interaction among the society, and the laws are also influenced by the wants of the society. This can be understood by a simple fact that most of the countries that have legalized same sex marriages are those countries, where the people positively accept the practice. For example, same sex marriages are legalized by the government in Netherlands and around 86% of the people are in favour of this practice whereas in countries like Russia and Ukraine only around 5-8% people are in favour of this practice and there is no legal acceptance of the practice.

Recently, the supreme court while hearing a group of petitions, that wanted legal recognition for same sex marriage in India, orally had a discussion regarding the ambit of gender and whether it goes beyond the biological sex of the person. Justice DY Chandrachud said that *“there is not a definitive concept of man and woman. It goes beyond the physical anatomy or genitalia; the idea and concept of gender is far more complex. Therefore, even when the special marriage act refers to “man” and “woman”, these terms cannot be strictly defined by the biological traits alone.”*(*Same Sex Marriage | Will Not Deal With Marriage Equality In Personal Laws Now: Supreme Court*, n.d.) On observing the supreme court hearing the author can draw a conclusion that it is considering to legalize the same sex marriage, on the pretext that they are asking for the right to marry person of one's own choice, and that should be extended to LGBTQ citizens as well. Whereas parliament has a negative approach towards the legalization of same sex marriage and questions are being raised whether the court has any right to decide it, and also calls it as “Urban elitist views”(Same-Sex Marriage Petitions Represent “Urban Elitist Views”, *Popular Will Recognises Marriage As Exclusively Heterogenous : Centre To Supreme Court*, n.d.).

In order to check whether the practice of same sex marriage contravene the societal order or norms, the author conducted a survey, where various questions and polls were asked regarding the acceptance of the same sex marriage on an individual and society level. The respondents range from age 18-40+, and the educational background ranging from school level to employed or self-employed. The authors main motive behind questioning the age and educational background of the respondents was to test the trend of decreasing acceptance with increase in

age and decrease in educational background that followed in the research conducted by Pew research centre(61% of Americans Say Same-Sex Marriage Legalization Is Good for Society | Pew Research Center, n.d.-b) in America.

The author puts forward the observation from the survey conducted:

- a) That on being asked whether the person responding personally approves the practice of same sex marriage, nearly 67% people did approve of the practice and nearly 25% had a negative narrative about this practice, indicating that a clear majority of the people do accept the practice when not being bound by the societal chains.
- b) That on being asked whether the person's family would approve of same-sex marriage, a clear contrast between the approval rating at individual and family level, nearly 70% of the family had a negative narrative and only 6% of the family were accepting this practice, also 25% of the respondents were unaware whether the family would be approving the practice or not.
- c) That on being asked whether their educational institution supports same sex marriage, the responses were mixed, data shows that 48% of the students are not aware if the institution would be accepting the practice or not, and 33% of the respondents had negative responses, showing a lack of exposure and information regarding the issue.
- d) That on being asked whether the legal recognition of same sex marriage is a human rights issue, 75% of the respondents had a positive response, here the author want to point out that people are accepting the fact that this issue is indeed a human rights issue but the basic unit of the society i.e., family do not have a positive narrative towards it so does the society at large.

Further analysing the above mention questions, the author points out that the society which plays a crucial role in framing and enforcing various norms to guide a behaviour, at a large scale do not approve of the same sex marriage but the individual level people are accepting the same sex marriage and considering its legal recognition as a human right.

Various other questions were asked in the survey by the author in order to determine the exact thought process and opinion of the society regarding this practice.



On being asked “*What do you think are the reasons why some people do not support same-sex marriage?*”, there were various different responses ranging from it being illegal, against human nature, lack of tendency of change in the mind of society at large, lack of empathy, and public embarrassment. A respondent gave a reason that “*Usually due to the societal norms, also lack of awareness of one's sexual orientation and the taboo of accepting it socially and living with it. There's also scientific perspective of natural generation of life by two opposite genders but we cannot ignore the fact that people live their life oppressing their sexual desires which is a violation of human rights*”.

Another respondent himself had conducted a survey on LGBT community and he gave his observations that *I recently conducted a survey on LGBT community, though my religion (Sanatan dharma) does support this phenomenon but one common thing which I have noticed in my survey, was that people were okay with LGBT community but when it comes to their own child, they strictly prohibited this phenomenon which proofs that they are not comfortable yet.*

Interestingly, there are some respondents who personally are against the same sex marriage and still acknowledge that the society is evolving and will eventually accept it. On the contrary others believe that legalising same sex marriage would negatively impact society and goes against laws of nature.

Overall, the author is trying to put forward that as of now the society is still in transitional phase i.e., they have started to accept the same sex marriage at individual level but on a societal level there is no consensus regarding the approval of this practice, thus the author can conclude that the practice of same sex marriage contravenes the societal order and norms.

### **Scriptural order and norms**

Religion is an important part of society, various political thinkers and social psychologist have been interested to know what makes humans happy, as happy people tend to be law-abiding(*Why Religion Matters: The Impact of Religious Practice on Social Stability | The Heritage Foundation*, n.d.). According to B. Beit Hallahmi who is a professor of psychology at university of Haifa, the practice of religion has significant effect on their happiness and over all sense of well-being(Beit-Hallahmi, 1908).

The author refers here to a survey done by Pew Research centre(*Importance of Religion and Religious Beliefs | Pew Research Center, n.d.*), which states that more than half of the Americans say that religion is very important in their life. A similar survey done by this research centre(*Key Findings about Religion in India | Pew Research Center, n.d.*) in India states that, more than 97% of the Indians believe in God and religion is a very important part of their life. Religious scriptures are the text that are considered authoritative and holy by the followers of a religion. The authority of religious texts develops over time and is derived from the ratification, enforcement, and its use across generations(McDonald & Charlesworth, 2012). This creates a religious binding on the people to be abided by the norms and orders of the religious scriptures.

According to the survey conducted by the author, it can be observed that the 72.7% of the religious communities of the respondents do not support the practice of same sex marriage where as approval ratings are close to none. Nearly 21% of the respondents are unsure whether their religion supports or approves of this practice.

## Hinduism

*“In Hindu culture, homosexuality has never been regarded as a crime. In fact, the birth of Lord Ayyappa, born from the union of Vishnu and Shiva (Hari-Hara), reflects this perspective. There is no mention of it being a crime in any Smriti. Every individual possesses both male and female elements, and depending on which is dominant, certain tendencies may emerge and even shift over time. Discrimination based on sexual preference is unjust, and labelling someone a criminal for their orientation is utterly absurd..” – H.H. Sri Ravi Shankar*

In a recent survey by Pew Research Centre(*Views about Same-Sex Marriage among Hindus - Religion in America: U.S. Religious Data, Demographics and Statistics | Pew Research Center, n.d.*), around 68% of the Hindus are in favour of the practice of same-sex marriage. Also, in the held case of *Arun Kumar v. Inspector general of registration & Ors*(*ARUNKUMAR & OTHER VS. THE INSPECTOR GENERAL OF REGISTRATION & OTHERS - South Asian Translaw Database, n.d.*), madras court analysed the legal backing of the cis trans marriage in reference to the Hindu Marriage Act, 1955 and the conformity of the practice with Hinduism, the court held that it would be legally sound, but the court had taken in consideration section 5 of the Hindu marriage Act, and interpreted whether the word “bride”

include a transgender woman or not. Before interpreting the Hindu marriage Act 1955, it is important to understand if same sex marriage can be in conformity with the tenets of Hinduism or not. Madras high court in the above-mentioned case of Arun Kumar discussed various mythological stories which indicates that Hinduism is not against same sex marriage. Also marrying a person of one's choice is considered as a fundamental right under Art. 21 of the constitution.

Religious of various groups either do not support LGBTQ rights or avoid commenting on it. In 2018, RSS, a Hindu Nationalist group, while agreeing with the supreme court on decriminalizing the gay sex, did not allow the same sex marriage considering them as "neither natural nor desirable".

### **Islam**

The All-India Muslim Personal Law Board (AIMPLB) considered the practice as immoral. In a survey by the Pew Research Centre(*Views about Same-Sex Marriage among Muslims - Religion in America: U.S. Religious Data, Demographics and Statistics* | Pew Research Center, n.d.) the responses given by the members of Muslim community were mixed, around 42 % of the Muslims were in favour of the same sex marriage in contrast to 52% who strongly oppose of such practice

### **Christianity**

The biblical scripture clearly shows homosexuality as outside of God's intended design for humanity, where men and women were created as sexual beings to reflect his image as male and female(*Biblical Perspective on Homosexuality and Same-Sex Marriage - Focus on the Family*, n.d.). The bible leaves no space for uncertainty and ambiguity regarding the homosexual behaviours.

In a similar survey by Pew Research(*Views about Same-Sex Marriage among Christians - Religion in America: U.S. Religious Data, Demographics and Statistics* | Pew Research Center, n.d.) the responses are rather similar to the Muslim community; 44% Christians believe in favour of same sex marriage where as 48% were strongly opposing it.

The author points out that the practice of same sex marriage boils down to the competing interest of the right of the society to conserve the traditions within their religion

circumference and the right of the individual to enjoy their constitutional freedoms.

### **Conclusion and suggestions**

Based on the responses from the survey done by the author, conclusion can be drawn that on individual level majority of the people have started to accept the concept of same sex marriage yet their family do not approve of the practice of same sex marriage. On asking the question that how the respondent think, the society can become more accepting and supportive of the LGBTQ+ community and their rights. Various responses were received ranging from some radical answers that the society should not change and they should not accept the LGBTQ+ community.

Further observing the responses various suggestions were provided on how the society can become more accepting and supporting of the LGBTQ+ community and their rights.

Suggestions given by respondents are-

- Give them chance and promote to encourage them to have their life same as us and providing with education facilities.
- According to a respondent, it is very hard to convince old generation to accept LGBTQ, all we can try is to teach newer generations by conducting lectures in educational institution. We can also make certain laws for people who shame and stop people from accepting themselves.
- By not thinking them as outcast and weird.
- Public awareness, by understanding psychological traits and behaviour and normalising it by talking on the issue.
- Everyone has their own opinion on everything. But we should also respect others choices by simply accepting as the way they are. We should not burden them with our own believes.
- By making them realize that world does not revolves around them. Someone who is not straight is not affecting their life.

- By stopping unnecessary prejudice towards them. And realising they are just humans.
- Introduction of LGBTQ+ rights at school levels (basic), promoting at films and televisions, promoting at Panchayati levels
- More job opportunities for LGBTQIA+ community ensuring their standard of living, wellbeing, and financial Independence.
- Introducing studies on alternative sexualities in school and college curriculum
- I think every individual has its own thoughts and processing. We don't owe each other anything and we shouldn't try to manipulate anyone's opinion but we shouldn't be affected by anyone's thoughts or opinion.

According to author's analysis of the survey conducted by the author and various other researchers and the position of courts and parliament, the author points out some conclusions that the practice of same-sex marriage is as of the present situation is highly concentrated in the European nations and India as a society still has their reservations regarding the practice of same sex marriage and India is not yet ready to see such changes that may tear the fabric of society itself, also some individuals are in support of the practice but that is not enough to make it legal in India, there should be preparation of proper plan on how awareness regarding this social change would be made acceptable in the society of India without breaking the Fabric of it.

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