

## A LEGAL AND SOCIAL ANALYSIS OF SAME SEX MARRAIGE IN INDIA

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**BEST CITATION** – PALAK CHETAN GALA, A LEGAL AND SOCIAL ANALYSIS OF SAME SEX MARRAIGE IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (9) OF 2025, PG. 119-133, APIS – 3920 – 0001 & ISSN – 2583-2344.

This article is published in the collaborated special issue of Amity Law School, Amity University, Mumbai and the Institute of Legal Education (ILE), titled “Emerging Trends in Law: Exploring Recent Developments and Reforms” (ISBN: 978-81-986345-1-1).

### CHAPTER – 1

#### INTRODUCTION

Anytime we discuss civil and human rights, same-sex marriage is the key measure of equality and fairness. Although there are many industrialized and emerging nations that support marriage equality, India still remains behind in establishing this basic right for LGBTQ+ people. Notwithstanding tremendous leaps in acknowledging LGBTQ+ rights, the lack of legal acknowledgment for same-sex unions continues to harbor discrimination and unfairness.

The LGBTQ+ community, especially the transgender community, has had to endure gender discrimination for long periods, fighting incessantly for their basic rights. The legal system needs to recognize and safeguard same-sex relationships equally with heterosexual relationships. Marriage is a globally established human right, but there is no law in India to make this right applicable to LGBTQ+ individuals.<sup>203</sup>

Marriage is a foundation stone of human life with far-reaching consequences in the political, legal, social, and health arena. It is not only a religious or a cultural institution but also a piece of legislation giving a host of rights and responsibilities, such as property rights, inheritance, social security, decisions about medical care, and tax benefits. Removing the right of same-sex couples to marry deprivations them of these all-important protections leaving them open to legal and social discrimination.

All over the world, same-sex marriage has been recognized in different legal frameworks, establishing firmly that marriage is not merely a civil right but a basic human right. India's marriage laws today, as they empower the couple to choose their marriage partners, do so only within the context of hetero-sexual union. The *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*<sup>204</sup> judgment upheld that Article 21 of the Indian Constitution provides for a life of dignity, integrity, and personal liberty. Marriage is a vital aspect of human dignity, and the refusal to grant this right to same-sex couples is a clear affront to constitutional values.

Even though courts have maintained the basic character of the right to marry, the judicial system has not extended these safeguards to same-sex couples. The LGBTQ+ community continues to face systemic obstacles in exercising even their most basic rights. Lawmakers have made no substantial efforts to secure marriage equality, leaving LGBTQ+

<sup>203</sup> Mind and Society, ‘Marriages between Two People of the Same Sex: Legal and Social Perspectives in India’ (Mind and Society, 20 February 2025, 14:35) <https://mindandsociety.in/index.php/MAS/article/view/820#:~:text=Marriages%20between%20two%20people%20of,are%20nonetheless%20illegal%20in%20India> accessed 22 March 2025.

<sup>204</sup> *Olga Tellis and Others v Bombay Municipal Corporation and Others* (1986) AIR 180 (SC).

individuals in legal limbo. In many countries where same-sex marriage is recognized, LGBTQ+ individuals receive social and legal protections, including rights related to pensions, inheritance, and medical benefits. The absence of such protections in India reinforces the marginalization of same-sex couples.

Perhaps the greatest loss of LGBTQ+ rights in India came with the Suresh Kumar Koushal v. Naz Foundation<sup>205</sup> case, which brought back Section 377 of the Indian Penal Code and made gay sex illegal. Even though the decision was reversed in Navtej Singh Johar v. Union of India<sup>206</sup>, which legalized consensual same-sex relationships, the verdict did not touch on the bigger question of marriage equality. Homosexual discrimination contravenes inherent rights under Article 15 of the Constitution, and the denial of legalization of same-sex marriages continues to accord such inequality.

Opponents contend that legalizing homosexual marriage endangers religious and cultural heritage. Nonetheless, the Indian Constitution is built on secularism and basic human rights, safeguarding that private laws change in accordance with times to incorporate emerging values of equity and justice. A progressive move would be making amendments to prevalent personal laws instead of employing religion to deprive LGBTQ+ community members of their rights.<sup>207</sup>

Restricting same-sex marriage is not only an infringement on human rights but also a form of discriminatory treatment toward LGBTQ+ individuals. The fight for equality in India is reflected across the world in fights for LGBTQ+ rights, with most countries going a considerable step toward legalizing same-sex marriage. But about 76 nations, mostly in West Asia and Africa, still criminalize same-sex relations, and India's hesitation to extend marriage rights to

LGBTQ+ people puts it with such backward legal systems instead of with liberal democracies.

The same-sex marriage movement in India is not about legality—it is about dignity, safety, and the basic right to love and start a life with someone of one's own choosing. The law needs to change to accommodate evolving social mores, so that LGBTQ+ citizens have the same rights and protections as their heterosexual peers. The struggle for marriage equality is a struggle for justice, and India needs to step up to the plate by passing legislation that respects the rights and dignity of all its citizens, irrespective of their sexual orientation.

## CHAPTER – 2

### HISTORICAL PERSPECTIVE ON LGBTQ+ RIGHTS IN INDIA

The historical and legal context of same-sex marriage in India is a multifaceted story that evolves against the context of cultural mores, colonial legacy, and contemporary legislative reforms. India, with its renowned rich cultural tapestry and multicultural societal norms, is grappling with centuries of tradition and contemporary ideals of equality and human rights. This review explores the legal and historical context of same-sex marriage in India, highlighting the complexities and setbacks of the struggle for LGBTQ+ rights and inclusion.

#### Ancient Acceptance and Colonial Disruptions

India boasts a rich heritage of embracing multiple sexual orientations and gender identities, as witnessed by ancient literature, mythology, and culture. The existence of LGBTQ+ themes in literature such as the Kamasutra, illustrations of homosexual intimacy in temple reliefs, and the respected status of the hijra community during pre-colonial India testify to an inclusively oriented society. Yet the advent of colonialism in the 19th century precipitated a sharp reversal of attitudes toward non-heteronormative relationships<sup>208</sup>.

<sup>205</sup> Suresh Kumar Koushal v Naz Foundation (2014) AIR SC 563.

<sup>206</sup> Navtej Singh Johar v Union of India (2018) AIR SC 4321.

<sup>207</sup> TLC Legal, 'India's Same-Sex Marriage: A Comparative Analysis' (TSCLD, 17 March 2025, 10:12) <https://www.tsclcd.com/india-same-sex-marriage-comparative-analysis> accessed 25 March 2025.

<sup>208</sup> SSCBS Newsletter, 'A Brief History of LGBTQ+ in India' (SSCBS Newsletter, 29 March 2025, 08:45) <https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in->

The enactment of British laws, especially Section 377 of the Indian Penal Code, made "unnatural offences," such as consensual same-sex relationships, a criminal act, institutionalizing stigma and prejudice against LGBTQ+ persons. The colonial law imposed a strict and discriminatory view of sexuality, drastically changing Indian societal attitudes and providing the foundation for systemic discrimination against the LGBTQ+ population.

For over a century, Section 377 served as a legal tool to persecute and marginalize individuals based on their sexual orientation or gender identity. Its legacy cast a long shadow over LGBTQ+ communities, inhibiting their ability to express themselves freely and access fundamental rights and protections. Despite occasional pushes for reform and advocacy efforts, the legal and social landscape remained largely hostile toward LGBTQ+ rights throughout much of India's post-colonial history.

### Legal Milestones and the Struggle for Equality

The beginning of the 21st century saw a positive turn in cultural attitudes toward LGBTQ+ concerns, propelled by international movements for human rights and equality. Activists and groups like the Naz Foundation were crucial in challenging the validity of Section 377 under the Constitution.

### The Push for Marriage Equality

The call for marriage equality in India represents a nuanced dynamic between legislative reform, cultural values, and societal attitudes towards LGBTQ+ persons. Activists and legal professionals contend that withholding same-sex couples the right to marry contravenes basic constitutional rights such as equality (Article 14), non-discrimination (Article 15), and the right to life and dignity (Article 21). Presently, several petitions in support of same-sex marriage recognition are ongoing in the Delhi High Court & Supreme Court. The cases

appeal for legal acknowledgment and registration of same-sex marriages under current provisions like the Special Marriage Act (SMA) and the Foreign Marriage Act (FMA). The Indian government has, however, resisted the petitions, contending that marriage is a traditionally accepted union between a man and a woman<sup>209</sup>.

The struggle for same-sex marriage in India is not merely a battle for legal validation—it is a battle of establishing the dignity, rights, and humanity of LGBTQ+ citizens. A forward-thinking legal system embracing marriage equality will not merely strengthen India's reputation on the international stage as a democratic and accepting country but also guarantee that all of its citizens, regardless of their sexual orientation, have access to the universal right to marry the individual they love. The future of LGBTQ+ rights in India depends on ongoing activism, legislative change, and a change in societal attitudes towards equality.

## CHAPTER – 3

### CHALLENGES AND DISCRIMINATION CONFRONTED BY LGBTQIA+ MEMBERS

Members with various sexual orientations and diverse gender identities are connected through this community of LGBTQIA+. The plight confronted by the members of the community resonates with reasons to them to break away from the existing society and establish their own community. Contrary to the world outside, within the community they are not ostracized, belittled or stigmatized.

Though, Despite the Hon'ble Supreme Court's decriminalisation of section 377 of IPC<sup>210</sup>, society's deep-rooted narrow mindedness subjects such persons to harsh conditions and

<sup>209</sup> AK Legal, 'The Evolution of LGBTQ+ Rights in India: A Journey Towards Equality' (AK Legal, 26 February 2025, 12:23) <https://aklegal.in/the-evolution-of-lgbtq-rights-in-india-a-journey-towards-equality/> accessed 28 March 2025.

<sup>210</sup> Section 377. Unnatural offences. Previous ; Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

cruel discriminations. Some of the greatest threats that face them are:

### 1. Access to healthcare:

Members of the LGBTQIA+ community are frequently coerced into accepting substandard health care services. Ironically, these are far more likely to fight against mental illnesses such as depression, anxiety even substance abuse because of the social stigma surrounding them. Additionally, they are presented with a number of while in search of treatment barriers because of the absence of care that is gender and sexually affirmative. In light of the history of the healthcare system's neglect and maltreatment of marginalized groups, not surprisingly, the absence of shock about this fact is palpable.<sup>211</sup> Similarly, the restriction of insurance coverage to these kinds of individuals is narrow rendering basic health care a costly endeavor. Even where they have insurance coverage, LGBTQIA+ patients have structural blocks in the way that prohibit their access to proper care. Most difficult to access are services like gender-affirming care and fertility treatments. The sad reality is that the community members rate it highly unlikely that they can speak with reliable therapists who don't exoticize or patronize them.<sup>212</sup>

### 2. Discrimination in Employment and Housing:

A head over the roof and food on the table though necessary are not the sole needs for survival. But even these things become impossible to achieve when a person is locked out of their own home. Even though, various states in India have enacted laws to safeguard LGBTQIA+ people from such discriminatory acts, the practical implication and its implementation requires improvement. Members of this community after long struggles to disclose their identity are then burdened with

such situations. Likewise, LGBTQIA+ renters are compelled to face such difficult situations by queerphobic landlords and neighbors. Therefore, 30% of members of this population are living below the poverty line with 17% remaining poor. Another widely controversial issue is the organized suppression, rough judgment, ill-treatment of them by some religious groups and whether they have the right to do so. Due to the delicate nature of this topic it threatens to get politicized instead of being treated as an elementary human rights issue. The inequality structures not only breed but a climate in which identification as a member of the LGBTQIA+ community is threat not just to the individual but also the people they love.

Recent world events like pandemic or economic downturns, harshly highlight how marginalized groups suffer disproportionate effects, taking longer recovery times.<sup>213</sup>

This destabilization renders survival tenuous. LGBTQ+ people always risk poverty and homelessness, something that can become a reality at any given time.

### 3. Violence:

Based on a study of gendered violence the LGBTQIA+ population are more prone to experience violence compared to other genders. Actually, 1 out of every 5 hate crimes in India is motivated by sexual orientation, while an additional 2% of those crime is caused by one's gender identification. The profound suspicion that the LGBTQ+ communities hold against the criminal justice system, based on a past history of ill treatment by the Indian Justice system.

This suspicion coupled with limited access to social and legal resources tends to make it hard to recognize and address the risk of violence.

<sup>211</sup> PMC, 'Mental Health and Well-being of LGBTQ+ Individuals' (PMC, 24 February 2025, 11:15) <https://pmc.ncbi.nlm.nih.gov/articles/PMC9423841/> accessed 22 March 2025.

<sup>212</sup> American Progress, 'Discrimination and Barriers to Well-Being: The State of the LGBTQ+ Community in 2022' (American Progress, 15 February 2025, 09:30) <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/> accessed 20 March 2025.

<sup>213</sup> Affirmative Couch, '5 Challenges Facing the LGBTQ+ Community' (Affirmative Couch, 18 March 2025, 16:50) [https://affirmativecouch.com/5-challenges-facing-the-lgbtq-community/?srsltid=AfmBOoq8LAasbsUKKzq\\_IzkvrNHZ7wNst0kZRg0FwXTGOsTmJacBssif](https://affirmativecouch.com/5-challenges-facing-the-lgbtq-community/?srsltid=AfmBOoq8LAasbsUKKzq_IzkvrNHZ7wNst0kZRg0FwXTGOsTmJacBssif) accessed 27 March 2025.

It underlines the need for therapists and other healthcare workers to remain well-versed with providing the LGBTQ+ community services and protection.

#### 4. Social Exclusion:

For most LGBTQ+ individuals, coming out is a process of abandoning friends and family because of intolerance and abuse in their home community. This process of self-discovery can result in cultural ostracism, threats to safety, and social exclusion. These experiences lead to increased risks of suicide, homelessness, and hate crimes among the LGBTQ+ population. Transgender youth, especially, experience staggering rates of suicidal ideation.

In retaliation, LGBTQ+ communities form support systems, providing comfort to marginalized and forsaken ones—a strong witness of strength amidst adversity.

#### 5. Parenthood:

LGBTQIA+ individuals who want to become parents are subjected to severe discrimination combined with their restriction of choosing artificial insemination as such activities are costly, hindering some may LGBTQIA+ members from family planning and adoption processes. In addition, only the individual who can give birth to the child will be legally declared as their parent, subjecting the other parent to undue hardships to simply be legally declared as such. This discrimination cycle is enough from excluding LGBTQIA+ members from ever getting to enjoy parenthood. Violation of basic rights The rights of the LGBTQ population have been restricted for a long time. They have numerous issues, particularly in a nation like India where there are a lot of foreigners.

### CHAPTER – 4

#### LEGAL FRAMEWORK GOVERNING MARRIAGE IN INDIA IN RELATION WITH SAME-SEX MARRIAGE

Marriage in India is subject to a multi-layered legal framework differing on religious and secular lines. The Indian Constitution promises

fundamental rights, such as equality, non-discrimination, and personal liberty. Nevertheless, the legal framework in the context of marriage remains heteronormative in large parts, neglecting same-sex unions. This section critically discusses the principal legal provisions governing marriage in India and analyzes their approach to same-sex marriage.

#### Same-sex marriage under various personal laws in India

##### 1. Hindu Marriage Act, 1955

The Hindu Marriage Act (HMA), 1955, applies to Hindus, Buddhists, Jains, and Sikhs. Marriage is defined in the Act as a sacrament between a "bride" and a "bridegroom," which enforces the conventional male-female marital structure. The Act bestows numerous rights, such as maintenance, divorce, and inheritance, but its gendered language does not permit same-sex couples. The courts have not construed the HMA to permit same-sex marriages, rendering it unavailable for LGBTQ+ persons.

Today, same-sex marriage is viewed more easily than rights of the individual. Hindu marriage law dictates that when one marries the groom should be not less than 21 years of age and the bride not less than 18 years of age<sup>214</sup>. Christian marriage law also has a similar regulation, in which the term man and woman is applied. All Indian laws but a few see marriage as a same-sex marriage. But Hindu marriage laws do not clearly forbid same-sex marriage. Some of these have been recognized as an individual's right and include: Existing legislation can be read to permit same-sex marriage. LGBT (Lesbian, Gay, Bisexual and Transgender) can be defined as a heterogeneous community whose traditions permit same-sex marriage.

Clarify that the law permits same-sex marriage unless otherwise mandated. Lastly, there were important changes to the law itself. Rule is not gender based but applicable solely to bride and

<sup>214</sup> Drishti IAS, 'Same-Sex Marriage in India' (Drishti IAS, 21 March 2025, 13:10) <https://www.drishtias.com/daily-updates/daily-news-analysis/same-sex-marriage-in-india> accessed 28 March 2025.

groom. Both same-sex couples can have same-sex marriages provided that one party (a same-sex individual) sees themselves as the groom while the other identifies as the bride. A heterosexual couple has gone the same route in a separate example with one declaring himself to be the groom and the other as the bride. Even though the words employed (groom and bride) go against rules of interpretation and logic, these words try to make same-sex marriage compatible with the other spouse. The second way is to regard the LGBT as a distinct community with its own practices and traditions that permit same-sex marriage. Anti-Brahman and Arya Samaj did the same. They initiated the era of self-respect and created their own marriages and cultures. Section 7A became a law when the Act was modified in 1967 by the inclusion of Section 7A. The third option is to interpret the law to permit same-sex marriage. Otherwise, the law will be considered unjust because it is discriminatory on the grounds of gender and deprives them of their rights. In the case of *Bombay State v. The Narasu Appa Mali*, Bombay High Court held that personal rights cannot be tested with the help of fundamental rights. The final means is to reform the personal rules. It is the best among all the aforementioned solutions. Yet it remains the most challenging and contentious as some parts of society do not accept the LGBT community's behavior.

## 2. Muslim Personal Law

Muslim marriages in India are regulated by Muslim personal law, based on religious texts and tradition. Marriage (nikah) is treated as a civil contract, but traditionally applies only to heterosexual couples. Marriage under Muslim Law is sexual intercourse whose final aim is "creation". Homosexuality is illegal, death, imprisonment etc. punishable and sinful. But he said that sex is not entirely banned because it doesn't have any definite meaning, it is only an exclusion. Divorce legislation and concepts such as "Muslim women". Consequently, there have been some recent changes or revisions of the private law concerning. Whereas some

progressive interpretations convince that Islamic law provides room for flexibility in non-traditional relationships being acknowledged, mainline jurisprudence within India is staunchly against same-sex marriage. A lack of a codified Muslim marriage law makes things more complicated, as there is always need for judicial intervention in order for legal acknowledgment of any amendments.<sup>215</sup>

## 3. Christian Marriage Act, 1872

The Christian Marriage Act, 1872, regulates Christian weddings in India. It requires a marriage to be solemnized in the presence of a licensed minister or registrar and clearly stipulates a union of a man and a woman. The Act neither recognizes same-sex marriage nor has there been a legislative or judicial effort to re-interpret its provisions in an inclusive sense.

## 4. Parsi Marriage and Divorce Act, 1936

The Parsi Marriage and Divorce Act, 1936, is applicable to the Parsi community and only accepts heterosexual marriages. Section 3 of the Act defines marriage as a union between a "man" and a "woman." There are no provisions for same-sex unions, and it is not possible for LGBTQ+ Parsis to get into legally valid marriages.

## 5. Special Marriage Act, 1954

The Special Marriage Act (SMA), 1954, is a secular law permitting interfaith and inter-caste marriages. It offers a law for civil marriage irrespective of personal law based on religion. Its provisions do, though, identify marriage in heterosexual terms, specifying that one needs to have a "male" and a "female" enter into matrimony. A number of same-sex couples have been contesting this exclusion in court on the grounds that the SMA could be interpreted in a gender-neutral way to afford equal rights. The outstanding petitions in the Delhi High Court are attempting to extend the SMA to same-sex couples, but the government has resisted these

<sup>215</sup> Law Chakra, 'Same-Sex Marriage: Why Supreme Court Declined Legalisation' (Law Chakra, 19 March 2025, 15:20) <https://lawchakra.in/blog/same-sex-marriage-why-supreme-court-declined-legalise/> accessed 23 March 2025.

assertions, arguing that marriage is a legislative policy matter. In contrast to marriage under the Hindu Marriage Act, no religious and cultural rites are necessary under this Act. But since the rule uses the words "male" and "female" to refer to age, the rule is only applicable to the same gender now. If same-sex marriage is to be legalized, Section 4(c) needs to be either revised or a special clause inserted to permit same-sex marriage. Concurrently, reform, which is impossible given today's BJP regime, is the optimum choice. Even though Congress and CPI(M) members voted in the Lok Sabha elections, the BJP was behind the party leader's declaration that homosexuality is wrong and not supportable. Most nations today have laws that permit same-sex marriage. The Netherlands legalized same-sex marriage first in 2001. But there are also numerous anti-gay laws. The South African Constitutional Court has held that same-sex marriage is against their constitutional rights. According to paragraph 3 of Section 9 of its Constitution, "The State cannot directly or indirectly prohibit discrimination, homosexuality, age, disability, religion, opinion, belief, culture, culture, language and birth. stating that gender is also included, the court referred to the fact that many foreign courts are in the judicial process to support the above statement. evidence. Laws and restrictions on same-sex relationships are against Article 15 based on grounds of discrimination against same-sex couples. In other words, it can be known at a glance whether same-sex marriage is permitted under the divorce law. Thus, it is not possible to prohibit same-sex marriage without knowing the needs and feelings of same-sex couples. It cannot alter the prevailing rules and there are no special rules to eradicate these issues.

## CHAPTER – 5

### JUDICIAL INTERPRETATIONS AND LANDMARK CASES

Judicial interpretation has been instrumental in shaping the legal and social context for LGBTQ+ rights in India. Legislative reform has been

gradual, but the Indian judiciary has consistently reaffirmed the values of equality, dignity, and non-discrimination. This section examines some of the important judgments that have set the stage for the acknowledgment of same-sex relationships and the struggle for marriage equality.

#### 1. Navtej Singh Johar v. Union of India (2018)<sup>216</sup> – Homosexuality Decriminalized

Arguably one of the most impactful decisions for India's LGBTQ+ community, the Navtej Singh Johar v. Union of India case invalidated Section 377 of the Indian Penal Code (IPC) to the degree that it criminalized adult same-sex relationships. The Supreme Court, through a landmark judgment, held that:

- Section 377 abrogated Article 14 (Right to Equality) as it discriminated, in an arbitrary manner, against individuals based on their sexual orientation.
- It violated Article 15 (Prohibition of Discrimination) as it indirectly discriminated against LGBTQ+ persons.
- It trampled over Article 21 (Right to Life and Personal Liberty) as it took away from LGBTQ+ individuals their right to dignity, autonomy, and privacy.
- The judgment also reiterated that sexual orientation is a natural part of identity and that LGBTQ+ people are entitled to equal rights and protection.

Although the ruling was a giant leap, it did not touch upon marriage rights, adoption, and inheritance for gay couples, leaving the struggle for equality unfinished.

#### 2. NALSA v. Union of India (2014)<sup>217</sup> – Recognition of Transgender Rights

In National Legal Services Authority (NALSA) v. Union of India, the Supreme Court legally established the rights of transgender people and reaffirmed that gender identity is self-defined and not determined at birth. The major points of this case were:

<sup>216</sup> Supra

<sup>217</sup> National Legal Services Authority v Union of India, Writ Petition (Civil) No 400 of 2012, decided on 15 April 2014 (SC).

- The court conferred the status of the "third gender" on transgender people.
- It ruled that the fundamental rights enshrined in the Constitution extend to transgender individuals.
- The government was instructed to take positive steps for their integration into society, such as reservation in education and jobs.
- The ruling was a landmark in the recognition of gender diversity, albeit not directly focusing on same-sex relations.

### 3. Puttaswamy v. Union of India (2017)<sup>218</sup> – Right to Privacy

The court ruling against the Suresh Kumar Kaushal V. Naz Foundation was reversed in 2018. In this landmark ruling, the Supreme Court stated that privacy is a fundamental right of human life. The right to privacy is a significant aspect of the right to life and liberty and demands freedom of choice, including Gender. The court also stated that it is not right to discriminate against others based on their sexual orientation. In the case of Suresh Kumar Kaushal V. Naz Foundation, the court stated that Section 377 of the IPC impacted very few individuals and thus declined to punish homosexuality. Now, however, the argument has been turned around, claiming that truth cannot be accorded to most opinions. Supreme Court ruling on the case is a significant event in India's gay fight.

### 4. Arunkumar v. Inspector General of Registration (2019)<sup>219</sup> – Transgender Marriage Rights

In Arunkumar v. Inspector General of Registration, the Madras High Court held that the marriage between a trans woman and a cis man was valid according to the Hindu Marriage Act. The court held that the term "bride" in the Hindu Marriage Act had to be interpreted expansively to permit transgender people to get married. This ruling is a step toward greater

marriage equality and sets an example for making the case that marriage laws ought not to restrict themselves to heterosexual couples.

Indian courts have steadily upheld LGBTQ+ rights, highlighting dignity, privacy, and equality. While Navtej Singh Johar was a milestone ruling that decriminalized homosexuality, the next horizon in LGBTQ+ rights is legalizing same-sex marriage. The pending petitions before the courts will decide if India makes a big leap towards marriage equality. The judiciary can either interpret current marriage statutes in a way that is gender-neutral or insist on legislative reform so that homosexual couples have the same legal cover as heterosexual couples. As the international tide shifts towards the acceptance of same-sex marriages, India's constitutional system, based on human dignity and fundamental rights, gives a sound legal foundation for gay marriage. Now, the courts need to bridge the gap between decriminalization and complete legal recognition by not letting LGBTQ+ people be second-class citizens when it comes to love, marriage, and family life.

## CHAPTER – 6

### SOCIAL AND CULTURAL PERSPECTIVES ON SAME-SEX MARRIAGE

The social and cultural context of India plays a significant role in accepting same-sex marriage, shaped by traditional histories, religious dogma, and changing modern values. Although there are ongoing legal struggles for LGBTQ+ rights, societal acceptance plays an important role in guaranteeing actual equality. This section examines public opinion, social attitudes, cultural issues, and the shifting landscape of acceptance, especially among young people and urban dwellers.

#### 1. Societal Attitudes and Public Perception

Indian society attitude and perception regarding gay marriage is not homogenous, often determined by factors including education, geography, and generational background.

<sup>218</sup> Justice K S Puttaswamy (Retd) v Union of India (2018) AIR SC (Supp) 1841

<sup>219</sup> Arunkumar v Inspector General of Registration (2019) AIR Mad 265.

- Conventional Perspectives: Most Indians, particularly in rural and traditional society, perceive marriage as a religious institution characterized by religious rituals, which overwhelmingly support heterosexual marriages. LGBTQ+ individuals tend to be rejected by their families, socially ostracized, and even forced into heterosexual marriages.<sup>220</sup>
- Legal Awareness and Misinformation: In spite of the decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* (2018), there is still misinformation about LGBTQ+ rights. Most individuals falsely believe that homosexuality is still illegal or do not acknowledge the difference between decriminalization and legal marriage rights.
- Religious and Cultural Resistance: Resistance to same-sex marriage is frequently based on religion, with many religious leaders arguing that making such marriages legal would interfere with society's norms and customs.

## 2. Changing Attitudes: The Role of Youth and Urban Society

Urban and younger societies are proving to be unlike traditional views, as they show greater backing for LGBTQ+ rights and same-sex marriage.

- Education and Exposure: Greater exposure to international LGBTQ+ rights movements, media representation, and legal awareness campaigns have contributed significantly to changing attitudes among the youth.
- LGBTQ+ Representation in Media: Commercial movies and web series like *Shubh Mangal Zyada Saavdhan*, *Made in Heaven*, and *Four More Shots Please!* have contributed towards making same-sex relationships more

acceptable and breaking stereotypes. Corporate and Institutional Support: Numerous multinational corporations and urban Indian educational institutions have adopted LGBTQ+ friendly policies, creating a more welcoming climate for same-sex couples.

- Pride Parades and Activism: Activities like Pride parades in Delhi, Mumbai, and Bengaluru have established avenues for LGBTQ+ persons and allies to promote their rights, increase exposure, and cultivate tolerance.

## 3. Impact of Global Movements on Indian Society

Legalization of gay marriage in a number of nations, such as the United States, Canada, and various countries in Europe, has shaped Indian public debate. International precedent is used by activists and legal scholars to advance comparable reforms, creating pressure for changing attitudes.

The controversy surrounding same-sex marriage in India is not merely a legal one but a deeply entrenched social and cultural one. While liberal urban youth and LGBTQ+ activists advocate for equality, conservative resistance continues to be an obstacle. Yet, changing attitudes, greater visibility, and ongoing activism are slowly opening the door to greater acceptance. Legal recognition coupled with social change is required to see that LGBTQ+ individuals have the same dignity, rights, and protection as heterosexual individuals.

## CHAPTER – 7

### COMPARATIVE ANALYSIS WITH OTHER COUNTRIES

The legal status of same-sex marriage also differs globally, with various countries having different approaches based on their legal systems, cultural attitudes, and societal values. Some countries have legalized same-sex marriage, recognizing LGBTQ+ people as equals, while others still resist such recognition on

<sup>220</sup> NYU Journal of International Law and Politics, 'Same-Sex Marriage: Legal Status in India and Abroad' (NYU JILP, 28 February 2025, 14:00) <https://nyujilp.org/wp-content/uploads/2017/11/NYI404.pdf> accessed 25 March 2025.

religious, political, or cultural grounds.<sup>221</sup> This chapter offers a comparative examination of how various legal systems have tackled the question of same-sex marriage and what lessons India can derive from these experiences.

### 1. Global Trends in Same-Sex Marriage Legalization

The last decade has seen most countries significantly advance in legalizing same-sex marriage. The development started early in the 21st century and has spread, with more than 30 nations presently acknowledging same-sex marriages. Legalization efforts are mainly driven by constitutional provisions of equality, judicial decisions on human rights, and shifting social norms.

### 2. Countries That Have Legalized Same-Sex Marriage

Some states have successfully enacted legal recognition of same-sex couples. The below case studies provide examples of various strategies to obtaining marriage equality:

#### (a) United States –

- Same-sex marriage was legalized in the entire country by the landmark Supreme Court case <sup>222</sup>.
- The decision stated that the refusal to grant marriage rights to same-sex couples was a violation of the Due Process and Equal Protection Clauses of the 14th Amendment.
- Before this, a patchwork of state legislations created discrepancies, resulting in legal challenges culminating in federal recognition.
- The ruling prioritized marriage as a basic right and highlighted dignity and equality.

#### (b) Canada –

- Canada was one of the earliest nations

to legalize same-sex marriage in 2005 with the Civil Marriage Act.

- Before national law, many provinces recognized same-sex marriage based on court judgments finding exclusion unconstitutional.
- Smooth legalization was facilitated by firm political and popular backing, solidifying Canada's image as a progressive country on human rights issues.

#### (c) United Kingdom –

- The UK presents a model wherein civil partnerships and same-sex marriage coexist.
- The Marriage (Same-Sex Couples) Act 2013 gave same-sex couples the same rights as heterosexual couples in England and Wales.
- Scotland, however, enacted its own law in 2014, and Northern Ireland did so later in 2020 after court battles.
- The UK solution provides a model of legal accommodation, with religious institutions able to opt-out of conducting same-sex marriages but not denying legal equality.

#### (d) South Africa –

- South Africa legalized same-sex marriage in 2006 after the Constitutional Court's decision in Minister of Home Affairs v. Fourie (2005).
- The court held that withholding the right to marry from same-sex couples infringed the equality and dignity guarantees of the South African Constitution.
- In contrast to most other nations, the ruling was based on post-apartheid constitutional reconstruction that placed non-discrimination first.

#### (e) Taiwan –

- Taiwan was the first Asian nation to legalize same-sex marriage in 2019 after the Constitutional Court decision in 2017, which ruled that the ban on same-sex

<sup>221</sup> The Amikus Qriae, 'Same-Sex Marriage: Legal Status in India and Abroad' (The Amikus Qriae, 27 February 2025, 09:55) <https://theamikusqriae.com/same-sex-marriage-legal-status-in-india-and-abroad/> accessed 24 March 2025.

<sup>222</sup> Obergefell v Hodges 576 US 644 (2015).

marriage was unconstitutional.

- The government passed a law to give full marriage rights to same-sex couples despite opposition from conservative forces.
- Taiwan's achievement proves that cultural norms can change together with legal acceptance of LGBTQ+ rights.

### 3. Partial or Alternative Recognition Countries

Not all nations completely accept same-sex marriage, but others have alternative legal frameworks:

- **Japan:** Although same-sex marriage has not been legalized yet, same-sex partnerships are recognized by many municipalities, providing few rights.
- **Mexico:** Marriage legislation is different according to the state, but the Supreme Court has declared that prohibitions of same-sex marriage are unconstitutional.
- **Italy & Greece:** These nations have civil unions, which provide most but not all of the marriage-related rights.

### 4. Lessons for India

India can learn useful lessons from nations that have legalized same-sex marriage successfully:

- **Legislative Reform:** Canada's strategy of blending judicial mandates with legislative action may prove an effective model for India.
- **Public Awareness and Societal Shifts:** The experiences of the UK and Taiwan demonstrate that public campaigns and slow-motion societal changes are key to achieving wider acceptance.
- **State-Level Steps:** Similar to Mexico, India might consider recognizing same-sex unions at the state level prior to national-scale implementation.

International experience with same-sex marriage demonstrates that though legal acceptability is countered by opposition, it finally begets larger public acceptance and equalization. India is at crossroads where it can learn lessons from the positive models to make its own integrating legal model. Through the

coordination of judicial activism, legislative policy, and societal involvement, India can chart its way to the future where any person, without regard to sexual orientation, shall have equal rights to marriage.

## CHAPTER – 8

### THE WAY FORWARD: POLICY RECOMMENDATIONS AND FUTURE PROSPECTS

Legalization of same-sex marriage in India is still a long battle, closely connected with legal, social, and political forces. Although the decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* (2018) was a landmark victory, complete marriage equality is still to be achieved. The future needs a mix of legal reforms, social acceptance, and positive legislative changes<sup>223</sup>. This section provides primary policy suggestions and future directions in order to implement equal recognition of same-sex marriages in India.

#### 1. Legal Reforms towards Marriage Equality

In order to attain marriage equality, the following legal reforms have to be done:

##### (a) Amending Current Marriage Laws

- **Special Marriage Act (SMA), 1954:** The Act must be modified to eliminate gendered expressions like "husband" and "wife" and use gender-neutral terms like "spouse" or "partner." This would guarantee that the same rights are granted to same-sex couples as to heterosexual couples.
- **Hindu Marriage Act (HMA), 1955 & Other Personal Laws:** The laws must be reformed to cover same-sex couples under religious marriage legislation, albeit this might encounter opposition from traditional societies.
- **Foreign Marriage Act (FMA), 1969:** This must be amended to acknowledge same-sex marriages performed

<sup>223</sup> Drishti IAS, 'Perspective: Legalising Same-Sex Marriage' (Drishti IAS, 15 March 2025, 18:30) <https://www.drishtiiias.com/loksabha-rajyasabha-discussions/perspective-legalising-same-sex-marriage> accessed 28 March 2025.

overseas so that LGBTQ+ Indians in foreign marriages are given legal safeguard.

### (b) Having a Separate Civil Union Law

If legislative challenges stand in the way of full marriage equality, a transitional step might be to pass a Civil Union Act, as in Italy and Japan. This would give same-sex couples legal status and rights in inheritance, taxation, adoption, and medical decision-making.

### (c) Extending Anti-Discrimination Protection

A full Anti-Discrimination Law must be passed to prohibit discrimination against same-sex couples in housing, employment, health care, and public services.

Legal measures should clearly prohibit discrimination by marriage registration offices, so that LGBTQ+ couples are not confronted with administrative obstacles.

### (d) Facilitating Judicial Review and Constitutional Guarantees

The Supreme Court needs to step in proactively to interpret Article 21 (Right to Life and Dignity) to deem same-sex marriage a basic right.

Frequent judicial reviews and progressive judgments can facilitate the promotion of LGBTQ+ rights, similar to the U.S. Supreme Court's contribution in *Obergefell v. Hodges* (2015).

## 2. Promoting Societal Acceptance and Public Awareness

Legal changes are not enough without wider societal acceptance. Cultural attitudes and public perception need to change with legal reforms.

### (a) Inclusive Education and Awareness Campaigns

- School Curriculum Reforms: Incorporating LGBTQ+ inclusivity in school curriculum can create awareness and acceptance since childhood.
- Media Portrayal: Promoting positive LGBTQ+ portrayal in films, television

shows, and commercials can desensitize society to same-sex relationships and fight stereotypes.

- Corporate Diversity: Companies must implement non-discriminatory practices, gay-friendly healthcare benefits, and diversity training initiatives to make workplaces more LGBTQ-friendly.<sup>224</sup>

### (b) Mobilizing Religious and Community Leaders

Most opposition to same-sex marriage is rooted in religious grounds. Positive discussions with religious leaders can bridge the divide between tradition and contemporary human rights values.

Progressive religious groups must be motivated to advocate for LGBTQ+ inclusion in religious marriage structures.

### (c) Building Support Networks

Legal aid centers and LGBTQ+ counseling services can offer emotional support and legal assistance to victims of discrimination.

Grassroots-based initiatives must ensure the establishment of safe spaces for LGBTQ+ people, particularly in rural regions where social stigma is more pronounced.

## 3. Legislative Prospects: Navigating the Political Landscape

Considering the intricacies of Indian politics, marriage equality can be achieved through strategic lobbying and legislative action.

### (a) Lobbying for Political Support

Forming Alliances: Involving liberal political parties, human rights activists, and legal professionals can be instrumental in advocating for legislative changes.

Public Petitions and Social Movements: Countrywide campaigns like the Nirbhaya

<sup>224</sup> Georgetown Law Scholarship, 'Legal Perspectives on Same-Sex Marriage' (Georgetown Law, 22 March 2025, 11:05) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2096&context=facpub> accessed 29 March 2025.

Movement can generate public pressure for legal reform.

### (b) Role of Judiciary vs. Legislature

Though judicial directives are possible with courts, legislative support is crucial for durability.

Parliament should have deep debates and make laws that outright legalize same-sex marriage.

Legalization of same-sex marriage in India is not just a matter of law but a basic human rights necessity. The path ahead needs a multi-faceted approach—extensive legal reforms, increased public awareness, and continued advocacy. Drawing lessons from advanced legal traditions around the globe and creating an inclusive mindset in society, India can transition towards real equality, where love, commitment, and marriage rights do not get hindered based on gender or sexual orientation. The struggle for same-sex marriage is a struggle for dignity, justice, and human rights, and the quest for equality must continue with strong conviction.

### CONCLUSION & SUGGESTIONS

Legal and social acceptance of gay marriage in India is a tricky and dynamic issue. Traditionally, LGBTQ+ rights in India evolved from criminalization to decriminalization, with the Navtej Singh Johar v. Union of India (2018) judgment declaring Section 377 of the Indian Penal Code as unconstitutional. Though it was a landmark judgment, gay couples are still discriminated against, especially when it comes to marriage, adoption, property rights, and rights of spouses.

India's marriage law base is religious personal laws, of which none in express terms give recognition to same-sex marriages. The judiciary has been strong on equality and dignity but has yet to impose the requirement of marriage equality. Popular and cultural understanding is sharply divided—urban space and younger

generation are more accommodating, but still, conservative religious opposition is vibrant. In relative terms, states like Canada, the U.S., and the U.K. have been able to enact marriage equality, setting legal and social examples for India to follow.

### Policy Suggestions and Recommendations

1. Legislative Reform – Amend the Special Marriage Act to cover same-sex couples.
2. Judicial Progress – Reinforce judicial acceptance of LGBTQ+ family rights.
3. Public Awareness – Support education and sensitization initiatives to lower discrimination.
4. Policy Implementation – Grant equal rights in adoption, inheritance, healthcare, and employment.
5. Comparative Legal Study – Draw lessons from international legal systems to craft inclusive policies.

Legalizing same-sex marriage would not only be constitutional but also create a more inclusive society.

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