

## MARRIAGES: LESBIAN, GAY AND LIVE-IN RELATIONSHIP

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### ABSTRACT

This particular research work talks about the marriage rights that all the citizens of the country are granted- be it lesbians, gays, or couples in a live-in relationship. The same-sex relationship or the live-in relationship has always been subject to debate in society since it is something which contrary to the normal marital relationship in society. In this research paper, we have done a review on the approaches toward the same-sex relationship and the live-in relationship and the challenges faced by the people in these affairs. In this research paper, you will find the answers to the research questions like whether a live-in relationship or same-sex marriage is constitutional or not. We have also discussed why people in Live-in relationships or same-sex relationships are still looked down on by the people in society, how many countries have made it consistently valid, and the promising strategies and methods to advance future research on live-in and the same-sex relationship. The paper even talks about the case laws related to live-in relationships like *Lata Singh vs State of Uttar Pradesh* in the year 2006 and the Supreme Court's Verdict related to Article 377 and same-sex marriages in the year 2008. Finally, we have given our personal opinion regarding same-sex marriages and live-in relationships and whether prohibiting such relationships infringes the fundamental rights of an individual.

### INTRODUCTION: CONCEPT OF MARRIAGE

Sociologists see marriage as a set of duties for a man and a woman whose union has been socially sanctioned as husband and wife. The system's equilibrium involves modification between the two partners so that one partner's role enactment matches the other's role expectations. Ideologists regard Hindu marriage as a *sanskara*, with three objectives: *dharma* (religious responsibilities), *rati* (sex pleasure), and *Praja* (procreation). Marriage for *dharma* was referred to as *dharmik* marriage, but marriage for sexual pleasure was referred to as *adharmik* marriage.

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### **Marriage was regarded sacred for a variety of reasons, including:**

- (i) Dharma was the greatest goal of marriage;
- (ii) The marriage ceremony comprised specific holy rituals (such as havan, Canadian, panigrahana, saptapadi, etc.);
- (iii) Rites were conducted before sacred deity Agni by reading mantras from sacred scriptures Vedas by a sacred Brahmin;

### **WHAT IS A SAME-SEX MARRIAGE?**

Same-sex marriage is a marital relationship between people of the same sex i.e- a lesbian or a gay. Same-sex marriage is different from a normal marriage where it is a union of the opposite sex. Same-sex marriage has been regulated in most countries either through law, religion, or customs, but the legal responses have ranged from celebration on one hand to criminalization on the other.

### **EMERGENCE OF THE SAME-SEX MARRIAGE**

There have been references to same-sex marriage in the Sifra, which was written in the 3<sup>rd</sup> Century which says that a man would marry a man and a woman would marry a woman. Many disputes and criticisms were prohibiting homosexual relations from the Hebrews who warned people not to follow such acts. Later in the 20<sup>th</sup> century, historian and Scholar, John Boswell argued that same-sex marriage was recognized by the Roman Catholic Church in Medieval Europe, a period when the laws relating to homosexuality were liberalized particularly in Europe and United States.

### **LIVE-IN RELATIONSHIP**

Live in- relationship, also known as cohabitation is a plan whereby two people decide to live together on a long-term or permanent basis in an emotionally or sexually intimate relationship. This word is most commonly applied to people who are not married. Today, Live-in relationships or cohabitation are most common among the people of the western world.

### **REASONS FOR EMERGENCE OF LIVE-IN RELATIONSHIP**

One of the core reasons for the emergence of the Live-in relationship in society is because partners get a chance to analyze each other before committing themselves to marriage. It gives them the occasion to figure out their habits with each other and decide whether they are

comfortable with each other to tie a knot. Other than these, there are many other reasons like there are no social pressures, no financial burden, deeper bonding, etc.

## **CONSTITUTIONAL VALIDITY OF SAME-SEX MARRIAGE & LIVE-IN RELATIONSHIP**

**Same-Sex marriages:** In India, same-sex marriage is not constitutionally recognized. Although in 2018, the Supreme Court of India abolished Article 377 which prevented sexual activities among same-sex people, the rights offering domestic relationship between same-sex people has been limited. In 2011, a Haryana court granted legal recognition to same-sex marriage involving two women but after the marriage, the couple began to receive threats from friends, family, and society. The couple eventually won the family's approval. A group of citizens in 2017 drafted a new uniform civil code that would help in legalizing same-sex marriage. Similar to this, there are many other petitions filed in the Supreme Court which are still pending. The Uttarakhand High Court held that although same-sex marriage may not be legal cohabitation and the live-in relationship may be protected by the law. Solicitor Tushar Mehta, in response to the petition filed in the Delhi High Court, responded that same-sex marriage is against the Indian Culture, depicting the government's abrupt decision to the issue.

**Live-in Relationship:** Under Indian law, the live-in relationship is not considered to be illegal. In the 2006 case of *Leela Singh v. State of Uttar Pradesh*, it was held that though a live-in relationship is considered to be immoral, it is not illegal nor an offense under the law. In another important case of *Khushboo vs Kanaimmal*, it was observed that a live-in relationship is not illegal in the eyes of the law, though it is something not considered to be moral and ethical in society. Living together is a right to life and hence live-in relationship cannot be considered to be illegal in the eyes of the law. Hence, it can be observed that a live-in relationship is constitutionally valid, unlike Same-sex marriage which is not constitutionally recognized.

## **SOCIAL PERSPECTIVE**

### **SAME-SEX MARRIAGES**

- In our society, a social unit called the family comprises a biological man as a husband and a biological woman as a wife. Children are born out of the union of the two. The purpose of marriage in a society is not only sex but also the procreation of young ones

who would become the future citizens of the country. But talking about the same-sex relationship, breeding of new offspring is not possible and so they have to adopt the children which sometimes raises certain questions like- Whether homosexual couples can give their adopted children the same love and affection as biological parents can? What if they adopt the children and they are subject to exploitation?

- Apart from these, it is a norm in society and custom followed for a long period that a marriage can be performed only between a man and a woman. Homosexual marriage is something that deviates from the normal course of action- something which is not morally and ethically accepted by most of society. Due to this, many homosexual couples like gay and lesbians have to face humiliation in society. Sometimes they are even banished by their family, friends, and society at large because they are believed to bring humiliation to society.
- Although in most western countries, people are breaking the family norms and performing homosexual marriages, this is not true in Indian Society where people with homosexuality and deviant behavior are still looked down upon by the people- the reason being most Indian have the same old orthodox thinking and way of living and sometimes they are unable to accept these progressive changes. However, in most of the metropolitan cities, the beliefs and attitudes are changing but in the rural areas, people still do not have a positive outlook towards it.

## LIVE-IN RELATIONSHIPS

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- As mentioned above, marriage is considered to be a sacred practice of the union of a man and a woman, the core reason is to give justification to the physical relationship and to have a legitimate child.
- Marriages in India are not only the tie-up of men and women but also a tie-up of the families and thus a great degree of caution is taken care of when two people are getting married. But when two individuals of opposing sex engage in a sexual relationship without getting married it is considered taboo and thus those couples have to face the crux of society.
- However, as discussed above, in most of the metropolitan cities like Delhi, Mumbai, Bangalore, and Chennai, things are changing and people are accepting live-in relationships but in the rural areas, still, people do not have a positive outlook toward life in a relationship.

- While in western countries, marriage and live-in relationships are seen as individual choices, in India, people compare live-in relationships with prostitution where people unite with each other just for the sake of fulfilling sexual desires. They view the live-in relationship as a bad influence on the youth of the country.
- This kind of mentality of the people needs to be changed as individual liberty and freedom are the two essences of democracy and they must be respected. The new and the upcoming generations of the society have realized that the restrictions of the society must not infringe on the freedom of an individual.

### **SAME-SEX MARRIAGE AND LIVE-IN RELATIONSHIPS AROUND THE WORLD**

Talking about same-sex marriage and live-in relationships, there has been a varied level of acceptance across the globe. There has been a rise in the acceptance of live-in relationships and same-sex marriage in the past two decades. According to a 2019 survey, 16 out of 34 countries say that same-sex marriages and live-in relationships should be accepted. Out of 34 countries, 52% agree that same-sex marriage or live-in relationships should be accepted while 32% think that it should be discouraged. In many of the countries surveyed, there also are differences in acceptance of homosexuality or same-sex marriage by age, education, income, and, in some instances, gender or religious affairs – and in several cases, these differences are substantial.

- In some countries, people affiliated with the religious group tend to be less accepting of same-sex marriage and live-in relationships than the ones who are unaffiliated.
- In many countries, political rights like Europe seem to be less accepting of homosexuality and live-in relationship than those on the left.
- In some cases, wealthier countries like Sweden and Netherlands are more accepting of these issues than the less wealthy countries.
- In many countries, young adults are in favor of same-sex marriage and live-in relationships. In countries like South Korea where 79% are in favor of Live-in relationships and Japan, 92% are in favor.
- Most countries with greater levels of education tend to accept these issues more than the countries with less education. For example, a country like Greece with 72% postsecondary education is more open to live-in relationships and same-sex marriage.

## ISSUES AND CHALLENGES OF SAME-SEX AND LIVE-IN RELATIONSHIP

**Social Censure:** Most people, especially the old citizens look down upon Same-sex and the live-in relationship as taboo in society. Sometimes, it may be the parents or the relatives who may outcast their children for being in same-sex or live-in relationships due to the 'generation gap'.

**Keeping the relationship secret:** Be it a live-in or same-sex relationship, the challenge for both is the same- to keep the relationship a secret. In most cases, the couples working away from home decide to move in together without letting knowing of the family out of the fear of disapproval.

**Expectation vs Reality:** When couples move into a Live-in or same-sex relationship, they first find their partners very attractive and charming. But in the long term, it often happens that people start finding their partners to be very dominating, over-possessive, etc. Due to this, the relationship starts growing to be annoying, irritating, and irrational and sometimes even people start hating their partners.

**No personal Space in Live-in:** Whether the couples of the same sex or the opposite sex move in live-in, they experience this problem where they have to share their own space with their partner due to whom they feel a lack of space and me-time in their life. This can lead to a bitter breakup.

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**Abandoning the woman after an unplanned pregnancy:** Unplanned pregnancy poses a challenge for couples in a live-in relationship. Some couples may decide upon abortion but if both couples are not on the same page, it can lead to ugly clashes which can ultimately lead to a breakup.

### CASE LAW: GURWINDER SINGH VS STATE OF PUNJAB AND ORS

Date: 4th June 2021

Court: Hon'ble Supreme Court of India

Petitioner: Gurwinder Singh and Anr.

Respondent: State of Punjab and Ors.

Bench: Hon'ble Justices Navin Sinha and Ajay Rastogi

## FACTS

This is the most current Supreme Court decision on the notion of a live-in relationship. The Petitioner couple had petitioned the Supreme Court after being denied protection by the Punjab and Haryana High Court because live-in relationships are socially and ethically inappropriate. Petitioners Gurwinder Singh and Gulzar Kumara experienced hostility from their families owing to their inter-caste relationship. They faced threats and risks to their lives from the woman's side of the family and sought protection in the Punjab and Haryana High Court. However, the Court took a regressive approach and refused them protection. Dissatisfied, the couple petitioned the Supreme Court, where they were granted justice.

## COURT'S ORDER

The Top Court observed that the petitioners had represented to the Superintendent of the Police; however, their grievance was not acknowledged by the police. The Court held that since the matter concerns the life and liberty of the couple, the Superintendent of police is required to act expeditiously according to the law and provide necessary protection to the couple because of the apprehension and threats faced by them irrespective of the High Court's Order. And hence the petition was disposed of.

## PETITION SEEKING FOR LEGAL RECOGNITION OF SAME-SEX MARRIAGE

- The division bench of Chief Justice D N Patel and Justice Jyoti Singh listed the petition for hearing on August 27 along with similar petitions seeking recognition of same-sex marriages under the Hindu Marriage Act, Foreign Marriage Act, and Special Marriage Act.
- The fresh petition was filed by a married same-sex couple Joydeep Sengupta and Russel Blaine Stephens along with queer rights activist Mario Leslie Dpenha.
- Sengupta, who is an Overseas Citizen of India, and his husband Stephens, in the petition, have stated that they met in New York in 2001 and got married on August 6, 2012, in New York. Stephens, a US citizen, according to the plea, wishes to apply for OCI status under the Citizenship Act as a spouse of an OCI cardholder.
- The petition argues that since the Consulate General of India in New York has already denied registration of same-sex marriage in a case, Stephens legitimately fears that his

application for OCI status as well as the request for fossilization of the marriage certification – a requirement in the application process – will not be accepted.

- Stating that consensual sexual acts between persons of the same sex have already been decriminalized by the Supreme Court of India in Navtej Singh Johar, the petition contends that “even though Indian law is silent on the recognition of same-sex marriages, it is a settled principle that where a marriage has been solemnized in a foreign jurisdiction, the law to be applied to such marriage or matrimonial disputes is the law of that jurisdiction. Thus, a marriage like that of Petitioners Nos.1 and 2, being validly registered under US law, must necessarily meet the requirements of the term ‘registered’ under Section 7A(1)(d) of the Citizenship Act”.

## CONCLUSION

Same-sex marriage or Live-in relationships is not wrong. They should have the liberty and the freedom of living their life how they want to. It just depends on how one chooses his/her partner and how he/she handles their relationship. As we have discussed in the research work a live-in relationship helps one to know their partners because people share personal space and it helps them to know whether they are comfortable tying a knot with each other. Talking about same-sex relationships, it cannot be said that people of the same sex cannot marry each other. Love comes in all forms and even the world is evolving and it is essential to keep ourselves with the time. Although in the metro cities, people are more diverse and more open to these new ideas, still in the rural areas, people do not carry a positive outlook. This needs to be changed. As we have discussed above, the live-in relationship is not illegal but it's against the morals and the ethics of society. Same-sex marriage is still not supported by Indian law, although people of the same sex can have sexual or intimate relationships after a scrap of Article 377. This brings hindrance to the hope and the expectation of the couples of the same sex or the live-in relationship. Society can only progress if it accepts the new changes and support people with the same-sex or live-in relationship.

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