

## SAME-SEX MARRIAGE LAWS: JUDICIAL EVOLUTION AND CULTURAL ACCEPTANCE

**Jannat Chuchra\***

### ABSTRACT

*Marriage is one of the most important components of a person's life in political, cultural, and sociological occasions. A five-judge Supreme Court bench ordered to decriminalise Section 377 of the Indian Penal Code<sup>1</sup> in the landmark decision of Navtej Singh Johar vs. Union of India<sup>2</sup>. The LGBT community won the recognition and equality for which they had fought for decades through this landmark decision. Although many viewed it as a significant victory, same-sex marriage still remains illegal. The "Right to marry," protected by Article 21<sup>3</sup> of the "Right to Life," is such an important component of a person's life that our constitution provides everyone with the entire freedom to select their spouse. So it can be said that by not providing legalization to same-sex marriage we are in one or another curtailing the fundamental rights of the LGBT community.*

### INTRODUCTION

Marriage is one of the most important components of a person's life in political, cultural, and sociological occasions. It is a legitimate organization that acknowledges interpersonal relationships in compliance with various constitutional clauses. Given that it significantly affects rights and obligations including inheritance, succession, and other related rights, it is of enormous national significance. These rights and protections are the outcomes of a married union. One such form of marriage is same-sex marriage. It is the practice of marriage between two men or two women. Having a liking for the same sex as yours is a quite common phenomenon. But it is considered not good in Indian society but since it is a psychological phenomenon, you cannot help it. The number of gay groups has increased throughout the country in the past few decades. One of the main reasons is the spreading of awareness and the addressing of the existence of the LGBT community has been started.

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\*BA LLB, SECOND YEAR, UNIVERSITY OF PETROLEUM AND ENERGY STUDIES, DEHRADUN.

<sup>1</sup> Indian Penal Code, 1860, s 377

<sup>2</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

<sup>3</sup> Constitution of India, 1950, art 21

Marriage has always been regarded as a fundamental human right and whether same-sex marriage should be legalised has been more of a religious debate than a political one.

Many nations have kept their constitutional restrictions on homosexual marriages in place, despite numerous protests from individuals and organisations demanding that same-sex marriage be acknowledged legally. Furthermore, same-sex unions or same-sex marriages are not legally recognised in many countries, including India. As a result, homosexual couples—regardless of their relationship's length—are denied many of the legal and financial benefits that come automatically with matrimonial status.

### **LEGALITY OF HOMOSEXUALITY**

A five-judge Supreme Court bench ordered to decriminalise Section 377 of the Indian Penal Code<sup>4</sup> in the landmark decision of *Navtej Singh Johar vs. Union of India*<sup>5</sup>. Modern India, and particularly the LGBT community, won the key conflict with traditional society. One of the judges stated: "*Sexual orientation of a person is an essential attribute of privacy...The right to privacy is broad-based and pervasive under our Constitutional scheme, and encompasses decisional autonomy, to cover intimate/personal decisions and preserves the sanctity of the private sphere of an individual.*"

The LGBT community won the recognition and equality for which they had fought for decades through this landmark decision. Although many viewed it as a significant victory, same-sex marriage still remains illegal. LGBTQ couples are still denied legal and social recognition as worthy spouses. In India same-sex marriages, despite the fact that the constitution of India and our nation's personal laws grant every person the right to marriage notwithstanding that person's gender, have still not been legalised and accepted. And we must take into consideration that, in a Country like India, just legalising same-sex marriages won't be enough because both legal and social recognition validates marriages here. Even if it will take time, one day our society and the law will approve marriages between same-sex.

### **RELIGIOUS VIEW**

They do so for one or more of the following reasons: Homosexual activities are sinful because they go against natural law or divine intentions; they are condemned in sacred writings; and

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<sup>4</sup> Indian Penal Code, 1860, s 377

<sup>5</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

according to religious tradition, the only valid marriage is that between one man and one woman; since gay couples cannot have children, so their marriage shouldn't be allowed. Then should older heterosexual couples who are unable to have children be prohibited from getting married? It is a beautiful thing to be celebrated when two individuals have fallen in love and desire to join their destinies through marriage.

## **RIGHTS ASSOCIATED WITH SAME-SEX MARRIAGE**

In a nation like India, marriage is viewed as a very powerful social and legal institution. Social responsibilities and legal rights are both associated with marriage in our culture. The "Right to marry," protected by Article 21<sup>6</sup> of the "Right to Life," is such an important component of a person's life that our constitution provides everyone with the entire freedom to select their spouse. Same-sex marriages are not covered by the fundamental right to marry the person of one's choice, despite this right having been recognised as such. This highlights how the fundamental rights of LGBT people are in jeopardy. The lack of legislative action leaves them vulnerable to losing their constitutional right to marry. Homosexual couples cannot take advantage of benefits like maintenance and succession that are available to heterosexual partners. "Article 15 of our constitution says that the state shall not discriminate on any grounds of religion, race, caste, sex, or place of birth against any citizen."<sup>7</sup> This shows that the ban on same-sex marriage is a blatant violation of our fundamental rights.

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## **IMPORTANT JUDGEMENTS**

In the decision of *Obergefell v. Hodges*, The United States Supreme Court determined that "same-sex marriage results from the right to marry, which is also a fundamental right". In the *Shakti Vahini* case,<sup>8</sup> it was held "that an adult has the fundamental right to marry any person of his choice, by the Supreme Court. Also, it is nowhere said that a marriage union should only be formed between a man and a woman only even in the Hindu Marriage Act, of 1955". In 2014, the landmark judgement of *NALSA*<sup>9</sup> out the Apex Court for the first time acknowledged 'the constitutional rights of the transgender'. In a similar manner, subsequent decisions by the

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<sup>6</sup> Constitution of India, 1950, art 21

<sup>7</sup> Constitution of India, 1950, art 15

<sup>8</sup> *Shakti Vahini v. Union of India*, (2018) 7 SCC 192

<sup>9</sup> *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

Supreme Court, such as *Puttaswamy*<sup>10</sup> in 2017 and *Navtej Singh Johar* in 2018, accomplished the same thing for sexual minorities.

## **GLOBAL STANDING ON GAY MARRIAGES**

Governments have started to think about making same-sex marriages legal as LGBT people have begun to raise their voices for their rights. The Netherlands legalised same-sex unions more than 20 years ago, making it the first country in the world to do so. Since then, 31 nations have adopted the same policy. Gay individuals were accepted into the US military in 2010. Same-sex marriages received official recognition in Costa Rica in May 2020. But in 70 nations, it is still against the law to identify as LGBT, and in several nations, homosexuality is even a capital offence. India falls halfway in the centre; because of a modified version of section 377,<sup>11</sup> it is now legal to engage in adult, consenting, and private same-sex relationships. These challenges can only, however, be sidelined due to a lack of strong LGBT-inclusive policies.

## **RECOMMENDATION TO IMPROVE SAME-SEX MARRIAGE STATUS**

It has been suggested that proponents of same-sex marriage should instead concentrate on changing secular laws, such as the Special Marriage Act, which makes it simpler for people of different religions to get married or for those who don't want to be bound by their religion's personal laws, or on declaring the Special Marriage Act unconstitutional because it discriminates against sexual and gender minorities. Even though this strategy seems like it could work, it doesn't address the big problem: Specifically, our society's and our legal system's failure to properly address the glaring contradictions between fundamental rights and gender/sex discrimination in personal law. Furthermore, people need to be educated and made aware to the point that they can understand that everyone has the freedom to choose their own life partner. It should be spread to such a level that apprehension in the minds of guardians could be removed in regard to their child's future.

## **CONCLUSION**

In India, there have been no notable socially conscious advancements in political and social acceptance up to this point, and homosexuals continue to be the victims of maltreatment in a variety of ways. The number of homosexuals in India is increasing as more people sign up

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<sup>10</sup> *Puttaswamy v. Union of India*, (2017) 10 SCC 1

<sup>11</sup> Indian Penal Code, 1860, s 377

because they are coming out of their closets and demanding the rights that should be given to them because denying them would be a violation of their fundamental rights. Given India's constitutional basis as a secular republic and the progress LGBT activists have achieved over time, it is crucial that the Indian judiciary take action to resolve some of these issues and contradictions once and for all.

