



LAVENDER MARRIAGES AND THE CONUNDRUM OF MARRIAGE LAWS IN INDIA

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The institution of marriage and the legal structure of India have come into conflict several times. While questions of morality and legality continue to be a debated topic, something that cannot be denied is the evolution of marriage laws in India. Highlighting the efficiency of a common law system that allows for the law to mould itself according to time and society, decriminalisation of homosexuality has been a step towards a more progressive and inclusive future. However, this step towards progression is layered with barriers that prevent it from becoming an all-encompassing law of progression and growth. The laws surrounding section 377 under the Indian Penal Code have always been a topic of contention for law and policymakers. While deep-rooted in its colonial past, societal acceptance in the current day and age seems like a far future. Section 377 under the Indian Penal Code was a provision that not only criminalized homosexuality but also deemed this as an unnatural offence which is against the order of nature. ¹A battle for decriminalization of section 377 had been going on for decades with landmark cases like the Naz Foundation case and the Suresh Kumar Koushal case, eventually in 2018 the Supreme Court in a historic moment, decriminalized homosexuality and gave a landmark judgement that would forever impact our country and society. ² However, while homosexuality might have been decriminalised, same-sex marriage rights still remain be right that people are fighting for.

As already mentioned, the struggle for the decriminalisation of section 377 under IPC saw monumental progress in the last two decades. Starting from the first Public Interest Litigation filed by Naz Foundation in 2001 to where we are currently. ³ In 2009, for the first time, the Delhi High Court in the Suresh Kumar Koushal v. NAZ Foundation deemed section 377 to be

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¹ TOI-online, 'what is section 377 of IPC' Times of India (India, 31 December 2018)

² CNBC-TV18, 'one year of section 377 verdict: A timeline of India's fight against the colonial era law' CNBC-TV18 (India, 6 September 2019)

³ NAZ FOUNDATION, 'Advocacy- Naz Foundation' (2022)

unconstitutional and violative of fundamental rights. However, in 2013, the Supreme Court of India overturned the Delhi High Court's judgement and upheld the constitutionality of section 377. This decision overturned years of hard work and deemed homosexuality as a criminal offence. In 2014, we see the first step towards a more inclusive society taken by the Supreme Court in *National Legal Services Authority v. Union of India*, where the court recognised the right of a person to express their self-identified gender. This was a huge step in favour of transgender people as it recognized their fundamental rights for the first time. The case that set the foundations for the groundbreaking judgement in 2018 was *Justice KS Puttaswamy v. Union of India* which recognized the right to privacy as a fundamental right. However, in the 2018 judgement in *Navtej Singh Johar v. Union of India* where after years of fights and struggles, section 377 was struck down and homosexuality and same-sex relationships were decriminalized. However, this road to progress and inclusivity has faced a massive barrier in the form of denial of marriage rights of same-sex couples where even after petitions like *Supriya Chakraborty v. Union of India*, the court has refused to legalise same-sex marriages.⁴

Now, where does the concept of a lavender marriage come into the picture with section 377 and these above-mentioned case trajectories? I would argue that the whole existence and concept of a lavender marriage go hand in hand with the struggle against 377 and the rights for marriage for homosexuals. A lavender marriage is a phenomenon where a man and a woman get married to each other and either one of them is homosexual. This type of marriage is mostly done to conceal the person's sexual identity and orientation which is majorly done due to societal and familial pressure. The institution of marriage is considered to be sacro-sant and can be only conducted between heterosexuals. This concept of marriage is commonly a pressure or a burden on people in Indian families where there is an unsaid compelled nature to marry at a certain age. To hide one's sexual identity which comes into conflict with society's morality and norms, people get into lavender marriages to not only fulfil the social condition of marriage but also as a means to hide themselves. This issue recently has come to light with movies like *Badhai Do* being released. While Bollywood is not known for its representation of queer characters or storylines, movies like *Badhai Do* come in as a breath of fresh air highlighting issues that the general public is unversed in.⁵

⁴ SCO Team, *Queer Person's Right To Marry: Court in Review* (28 June 2023)

⁵ Devrupa Rakshit, 'What is a lavender marriage, and why is it still popular in India?' (The Swaddle, 3 May 2023)

In 2009 the Delhi high court decriminalised homosexuality and in the judgement called out section 377 as being violative of articles 14, 15 and 21 of the Constitution of India. It was rightly called out to be so as this provision does violate the right to equality, the right to freedom and ultimately the right to life and liberty. A provision in the law that denies a person their basic human rights should not only be unconstitutional but should also be morally wrong. In a broader context, India is a conservative society. This is evident as even to this day after a few years of decriminalisation of homosexuality, societal and public acceptance of the same has been bleak. This mindset is also reflected in the very people who enforce the law. Police and law enforcement have had a history of chastising and punishing homosexuality and deeming any public display of affection as obscenity as seen in the case DASH DASH DASH. This sets a backdrop about the nature of conflict between societal morality and norms and the evolution of law. While the law has evolved and has the potential to evolve further, these notions of morality and norms are what prevent this progress and lead to concepts such as lavender marriages. If homosexual couples were allowed to marry each other as their human right to do so just like any other heterosexual couple, the rates of lavender marriages would while not completely be eradicated, they would diminish.

The institution of marriage in our country is dictated by patriarchal and religious norms and this is reflected in our various marriage laws as well. One of the very popular arguments given by people fighting against the right to marry homosexual individuals is the concept of a conventional family unit. While it is true that marriage is considered not only a sacred union but also a social status. Marriage is considered something that is inevitable for every person and different age limits are also attached to it.⁶ This shows the nature of societal pressure put on every individual and how a lavender marriage becomes the only escape for homosexual individuals who are forced by society and their families to get married to a particular gender at a particular age. And in an ironic way, however flawed this concept might be, it proves to be the only escape for homosexuals to live with their sexuality while also succumbing to society's norms.

A very popular question might come up asking why the fight for the right to marry for same-sex couples is important when homosexuality has been decriminalised. What is not understood by the people who are perhaps ignorant is that marriage is not only a sacred union of two people, it is a legal union as well. Marriage is considered superior or more acceptable than any

⁶ Soumya Madireddy, 'Patriarchy in Indian Marriages' (15 June 2020)

relationship or a live-in relationship. Marriage is considered to be a legal union as it comes with financial, legal and social benefits.⁷ While a lavender marriage might provide these benefits, it is a marriage between two people who are essentially forced to marry each other because they cannot marry the person of their choice. This is clearly violative of Article 21 which is the right to life and liberty where every citizen should have the right to choose the person they want to marry and not need to marry. However, this is impossible for same-sex couples as they are not allowed the same privileges as heterosexual ones. Therefore they are denied the same rights and benefits that married heterosexual couples are entitled to due to the sole reason of their sexual identity.

Coming to the argument of a 'family unit' denotes the structure of a conventional family unit consisting of a mother, a father and their child. While no doubt this is a family unit, however, to impose the notion of it being the only acceptable type of family unit is detrimental. This notion completely disregards non-fertile couples single mothers, single fathers, surrogacy and adoption. Denoting only one kind of family unit as the only acceptable form proves to be an insult as concepts like adoption and surrogacy are very well legal and enforced by law. So this begs the question why can we not say the same for homosexual couples? It is because society most of the time only accepts what it can understand and will not have to put an effort into understanding. While adoption and single parenting can be accepted, the same is made illegal for homosexual couples.

The lack of social acceptance of the LGBTQ+ community has been a rising issue even after the decriminalisation of section 377 under the Indian Penal Code. Legalising same-sex marriages could be a vital step forward for social acceptance of the LGBTQ+ community and same-sex couples. This inference has two reasons; one is that legalising marriage gives same-sex relationships more legitimacy. The second reason is that the concept of a marriage between two people is held in higher regard than a relationship between two people. This is because India is a highly cultural and social country that puts marriage on a pedestal and deems it essential and mandatory for every individual. This reasoning is also why lavender marriages may see a rise if same-sex marriages are not legalised. Therefore, all in all, legalizing same-sex marriages not only helps same-sex couples but is a key step towards achieving the objective

⁷ Devrupa Rakshit, 'What is a lavender marriage, and why is it still popular in India?' (The Swaddle, 3 May 2023)

of striking down Section 377. These barriers prevent the fulfilment of these landmark judgements of inclusivity and progress.

Concluding my argument, I would like to put forward that while there will always be arguments in favour and against legalising same-sex marriages, in my opinion, it is necessary to treat every same-sex couple as any of their heterosexual counterparts as I feel it is clearly a violation of the right to equality under Article 14, prohibition of the discrimination based on your sexuality under Article 15 and the right to life and liberty enshrined under article 21. Therefore, denying marriage rights is against the basic principles of our country's constitution. A marriage ensures couples get financial and legal benefits which are simple mundane things like joint bank accounts, lease agreements and child rights which every same-sex couple should also be entitled to. While it may seem like for the time being lavender marriages are nothing but a solution to this problem, it is essentially not. It is essentially not a marriage of love or agreement due to free will but merely a compromise. Persons attracted to the same gender are forced to not marry the person they love or want to by their own choice and will marry someone else due to societal and familial pressures. However, this could be solved by legalizing same-sex marriage. It could completely erase the concept of lavender marriages and allow marriages for homosexual people with people they choose. While we have come a long way from our colonial past, with the 2018 judgement striking down Section 377 being a major breakthrough, there is still a long way to go. Laws like marriage laws not only surrounding same-sex marriages but also issues like marital rape and child marriages should be looked upon and evolved.