INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 6

2024

© 2024 International Journal of Legal Science and Innovation

Follow this and additional works at: https://www.ijlsi.com/

Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact **Gyan@vidhiaagaz.com.**

To submit your Manuscript for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at **editor.ijlsi@gmail.com.**

Gender Justice: A Legal Perspective

HARPREET KAUR[1]

ABSTRACT

The idea of gender justice is not a novel concept in the modern world. The moral rules and standards of society frequently shape an individual's identity. However, those who want to contradict these with their character traits, sexual orientations, and tendencies are frequently rejected, shunned, and labelled as the "other.". To be specific the transgender people are subjected to utter discrimination and are deprived of their fundamental human rights as a third gender. However, countries around the world laid down specific provisions and laws to eradicate the concept of gender inequality between men, women, and the third gender in socio-economic, political, legal, and another aspect of life. The research paper seeks to analyse the issues and challenges that the third gender in society faces especially in case of same sex marriages as well as to critically evaluate and examine the legal position on gender equality. Transgender rights have received a lot of attention as a result of the Supreme Court's pro-active action in the NALSA verdict; this topic will be covered in more detail in the research paper that follows. This research paper aims to shed light on the murky world of suffering and discrimination this community has been relegated to in India by highlighting the historical growth of the transgender population and making an effort to systematically analyse their positions in jurisdictions across the globe. Major issues continue affect this segment of society, despite certain beneficial advances that have helped to raise awareness and recognition of their suffering.

***Keywords**: Gender, Equality, Rights, Discrimination, Homosexuality, Transgender.*

I. INTRODUCTION

The term "homosexuality" was first used by German psychologist **Karoly Maria Benkert** in the late 19th century.

According to the Oxford Dictionary, the term "homosexuality" refers to "the quality or traits of being sexually attracted exclusively to members of one's own sex."

According to Webster, “Homosexuals is the sexual attraction or the tendency to direct sexual desire towards another of the same sex.”

Homosexuality was stigmatised as a mental condition until the 1970s. However, late on it has been discovered via several clinical studies that homosexuality is a typical aspect of human

[1] Author is a Research Scholar at Department of Laws, Panjab University, Chandigarh, India.

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]

sexuality.

As Per **Transgender Persons (Protection of Rights) Act 2019** Section 2 (k) "transgender person" means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

The research paper discusses the idea of gender justice with an emphasis on same-sex marriages and third-gender relationships. The purpose of the research paper is to examine and comprehend the legal implications of homosexuality, to distinguish between the legal standing of same-sex marriages and heterosexual relationships, and to determine if special law governing same-sex marriages is justified.

The study's doctrinal research approach included an examination of the literature from law books, law journals, and the internet.

II. THE PREVALENCE OF HOMOSEXUALITY IN INDIA

The existence of homosexuality in India since the beginning of time is proven by references to it in several writings and carvings on cave or temple walls. For Example:

- The Kamasutra uses the term 'tritiya-prakriti' to define men with homosexual desires and describe their practices in great detail. It describes Lesbian, bisexuals, transgender and inter sex people.
- The Sushrita Samhita and Charaka Samhita also mentions 'homosexuality'
- Mahabharata and Ramayana
- Arthasashtra and Manusmriti
- The Khajuraho temple, in Chhatarpur district, Madhya Pradesh, India consists of various scriptures which shows carvings of homosexual activity.[2]

However, such a conduct was viewed as immoral or unlawful in our Indian society.

During Mughal period also it was a penal offence.

During British period in India, it was made a criminal offence under Section 377 of The Indian

[2] Deepali. M. Babar "Homosexuality and Same Sex Marriages - Need for Legislation", 7 (2019)

Penal Code, 1860[3].

Section 377 of The Indian Penal Code,1860 states, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable for fine."

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This provision was added to make bestiality and sodomy crimes punished. Such behaviours were viewed as sinful or criminal and opposed to our society's values. As a result, homosexuals endured severe discrimination and humiliation at the hands of society without any fault of their own.

In many marriages, this results in the parties hiding their sexual orientation, which leads to frustration, discontent, and self-hatred.

But with time the medical research in this area has revealed that homosexuality is a prevalent, innate trait in a person, wherein he will be sexually attracted to someone of the same gender. It is not an offence or a sin. The LGBTQI+ community is now more conscious of their basic rights to a satisfying personal life, privacy, and dignity thanks to human rights awareness and modern thought. They began advocating for their rights as a result. The LGBTQI+ community has received assistance from some people and organisations, including the Naz Foundation, The National Aids Control Organization, Law Commission of India, Navjit Singh Johar, Menaka Guruswamy, Ritu Dalmia, and others, in their quest for equal rights.

Worldwide also the freedom to marry and start a family is guaranteed by a number of international conventions, including the UDHR, ICCPR, and ICESCR, as well as regional conventions, like the American and European conventions. These Conventions mandate that the member states revoke their anti-homosexuality legislation and pass anti-discrimination legislation that forbids discrimination based on sexual orientation and gender equality.

III. SAME SEX MARRIAGES

The subject of same-sex marriage is controversial under domestic laws around the world and poses fundamental challenges about the conventional idea of family. Since marriage is regarded as the cornerstone of society, the legal and legislative framework governing it has been linked to the social, cultural, and religious values of the community. Religious beliefs disapprove of

[3] ACT 45 OF 1860

same-sex unions and marriages. Despite the fact that marriage has deep religious roots, the religious and secular components of marriage have often been separated by governments. Various jurisdictions have different legislative and policy responses to same-sex couples. The first is intolerance, in which legal systems make same-sex partnerships illegal in an effort to stifle them. Even presently, no same-sex marriage is permitted and the majority of jurisdictions still punish same-sex partnerships and, in many cases, homosexuality as a crime. Secondly, even in situations where the general population does not unambiguously favour same-sex partnerships, there have been some concerted initiatives to decriminalise them and the third step entails accepting same-sex relationships and recognising them to various degrees, from civil partnerships to full-fledged marriages.

The Indian Supreme Court's decision regarding Section 377 of the Indian Penal Code has made it possible for same-sex couples to lawfully engage in consenting sexual relations in India. But the law is silent if these couples wish to consummate their relationship through marriage. In the current context, same-sex marriage is neither forbidden nor permitted in India. No Indian statute mentions penalties or fines in relation to it. Therefore, the government should take steps to make such unions lawful.

When we look around the world, we see that many nations have legalised same-sex unions. The Netherlands and Belgium were among the first nations to do so. Lesbian and homosexual rights were first incorporated into a national constitution in South Africa. Religious traditions have a strong effect in Latin America, and the Catholic church's resistance has resulted in a ban on same-sex unions.

Except for Nepal and Taiwan, no nation in Asia accepts same-sex unions. Israel accepts same-sex unions that take place outside of its borders.

On June 26, 2015, the US Supreme Court handed down a historic decision that gave same-sex couples a legal "right to marry" (*Obergefell* v. *Hodges*)[4]

Same-sex unions are permitted throughout Europe, including in the Netherlands, Belgium, Spain, Portugal, Norway, Sweden, Iceland, Denmark, France, the United Kingdom, Ireland, Finland, Germany, and Austria.

The parliament of Italy, the largest country in Western Europe where same-sex marriage is illegal, legalised civil unions for same-sex couples in 2016.[5]

[4] 135 S. Ct. 2584 (2015)
[5] Stellina Jolly and Ritika Vohra, "Recognition of Foreign Same-Sex Marriage in India: A Legal Exploratory Analysis", 59 *Journal of the Indian Law Institute* 302-326 (2017).

The first nation in the western hemisphere to legalise same-sex unions was Canada in 2005. Argentina, Brazil, Mexico, etc. came after it.

Further, New Zealand and Australia also has legalized the same sex marriage.

In South and Central Asia, same sex relations are illegal in the countries such as Bangladesh, Pakistan, Iran, Saudi Arabia, Yemen.

South Africa has Legalised the same sex marriages.

Therefore, it may be said that homosexual relationships and marriages are now accepted in many nations, replacing traditional heterogeneous marriages as the norm in modern families[6].

But if we look into the normative discussion on whether to allow same-sex people to form a family through marriage, and its possible consequences, on the traditional notion of family and marriage is a sensitive and contested issue in India.

IV. LEGISLATIVE FRAMEWORKS ON MARRIAGES CELEBRATED IN INDIA

As far as India is concerned the marriages are governed by the personal laws. Personal laws are applied depending upon the religion to which the parties belong.

1) Hindus- The Hindu Marriage Act, 1955
2) Muslims- The Muslim Personal Law (Shariat) Application Act, 1937
3) Christians- The Indian Christian Marriage Act, 1872
4) Parsi- The Parsi Marriage and divorce Act, 1936

The conditions of a valid marriage between two Hindus are given under **Section 5 of The Hindu Marriage Act, 1955[7].**

Section 5 prescribes that:

1. parties to the marriage do not have an existing living spouse;
2. there is no lack of consent due to unsoundness of mind or because of a mental
3. disorder, which makes a person unfit for procreation;
4. the minimum age for a bridegroom is 21 and for a bride 18 years;
5. the parties cannot be within the specified prohibited degrees of relationship or sapinda relationship, unless the custom or usage permits such a marriage.

[6] Fiza Khan and Dilsana Khan, "LGBT Rights in India: The Status Quo", 3 *International Journal of Law Management & Humanities* (2020)
[7] Act 25 of 1955

The Law is written in terminology that is gender-neutral and allows marriage to occur between two Hindus, but by requiring that the bride and the groom be at least 18 years old, the Act makes it clear that a heterosexual marriage is required for a marriage to be legal. But this claim has been refuted on the grounds that same-sex couples can apply to have their unions solemnised by referring to themselves as bride and bride, groom and groom, or even groom and bridegroom. As a result, the use of the terms bride and bridegroom in the provision does not always imply a heterosexual union.

However, such viewpoint is difficult to defend under statutory interpretation and goes against the ordinary understanding of the terms "bride" and "bridegroom." Is it conceivable for a 21-year-old and an 18-year-old gay couple to identify as the bride and groom, respectively, in order to fulfil the requirements of the Hindu Marriage Act? The goal of the legislation would be defeated if such a proposal were to be accepted. The definition of marriage in jurisdictions that have legalised same-sex unions has been changed to include same-sex marriages or those jurisdictions that have specifically allowed same-sex couples to enter into marriage contracts.

Further, the comprehensive reading of the Act's provisions, not just one in isolation, is how further legislative objectives should be inferred. There are specific reasons for divorce for wife under Section 13(2) of the Act. Her marriage (whether or not it was consummated) was solemnised before she turned 15 years old, and she renounced the union after turning that age but before turning 18 years old, according to Section 13 (2)(iv). Also, the terms "husband" and "wife" plainly indicate a heterosexual marriage in the clauses relating to permanent alimony and maintenance. These clauses make it quite obvious that the Act solely takes into account heterosexual marriages and excludes homosexual unions.

In addition to the above the ability to reproduce has also been used to argue against same-sex weddings as a necessary requirement of the Act. It should be emphasised that the Act's requirements state that neither party may have a mental problem that would preclude them from having children, making it clear that this restriction only applies to mental illness and not physical disability.

However, the Act does not allow for divorce or the annulment of a marriage based on infertility, and this has been reaffirmed in legal rulings. Therefore, it is questionable whether this clause can be expanded to support same-sex unions. According to one of the stories, a Tarulata underwent a sex change procedure to become Tarun kumar, who then wed Lila in 1989[8]. The

[8] Available at https://www.indiatoday.in/magazine/nation/story/19900415-case-of-a-curious-marriage-in-gujarat-812452-1990-04-14 (Visited on October 4th, 2022)

Gujarat High Court received a petition from Lila's father asking for a declaration of the marriage's nullity due to Lila's incapacity to bear children. The high court sent a notice to the marriage registry office and the surgeon inquiring as to why the petition should not be admitted.

Likewise, in the case of *X* v. *Hospital Z*[9], the court noted that "marriage is the sacred union, legally lawful, of two healthy bodies of opposite sexes," while understanding marriage as a part of the "right to private" under article 21 of the Constitution. According to the ruling, a marriage is a heterosexual partnership in the classic sense. The failure of consummation due to the respondent's impotence is one of the reasons a Hindu marriage may be cancelled or declared null. Penetration is the benchmark for potency.

The criterion that validates marriage is heterosexual penetration, with culmination serving as the corporeal yoke that unites the law and marriage and is invariably realised by vera copula, or the real consummation of bodies, in heterosexual penetration. The case law under the Act is suggestive of the legislative intention of heterosexual penetration.

Apart from the Hindu marriages the Christian weddings are governed under the Indian **Christian Marriage Act of 1872** and under **Muslim law**, marriage is viewed as a contract between the two parties, where there is an offer, an acceptance, and the dower as the consideration. The fundamental conditions of both these Acts are comparable to those of the Hindu Marriage Act.

Even the **Parsi Marriage and Divorce Act 1936**[10] regulates Parsi unions and lays down the prerequisites for matrimony, including the age requirements for both the bride and the groom. Marriages involving at least one Indian citizen are governed by the Foreign Marriage Act, 1969. Such a union may be consummated overseas and later registered in accordance with this Act.

None of the aforementioned Acts take into account a marriage between two homosexuals. Even though it is not expressly stated that a marriage must be heterosexual in nature, it is implied by the Acts requiring the minimum age of the bride and the bridegroom as well as the special ground for divorce in the case of the wife, which shows that homosexual unions are illegal in India under the current legal framework.

Also, as per **Section 2 of the Dissolution of Muslim Marriages Act, 1939**[11], a wife has the

[9] (1998) 8 SCC 296

[10] Parsi Marriage and Divorce Act, 1936, s. 3 prescribes rules on consanguinity; ceremony in the form of 'Ashirvad' by a priest, in the presence of two Parsi witnesses other than the priest; the bridegroom be at least 21 years of age, and the bride must be at least 18 years of age.

[11] Dissolution of Muslim Marriages Act, 1939, s. 2.

right to get a divorce decree in the event that her husband has a serious venereal illness.

As a result, it is abundantly evident from the terminology of all personal laws that they exclusively apply to heterosexual unions. The provisions are made taking into account the gender differences in a male and female's character. Therefore, homosexual marriages cannot be governed by current personal law. Additionally, couples of the same sex are not permitted to adopt children. They are also prohibited from using surrogates under the current legal system. Therefore, legislation must be changed to grant the LGBTQI+ people access to marriage and adoption.

However, some arguments contend that these Acts might be read to include same-sex marriage since they do not clearly forbid it. They mention several media accounts that illustrate instances of same-sex unions occurring after religious rituals. Although such ceremonies and marriages won't have any legal standing in the absence of a clear legal provision allowing same-sex unions. But by introducing an amendment to personal marriage rules to include same-sex marriage, there is a real chance of legalizing same-sex marriage. There is always a bigger question of whether changes to personal legislation will be accepted on the basis of religious convictions. So, seeking changes to **The Special Marriage Act, 1954**[12] is a choice that won't interfere with religious beliefs. As Special Marriage Act, is a secular law that allows couples from various religious backgrounds to wed in a civil ceremony that takes the form of registration in front of a marriage commissioner.

However, the problem is that such a legal initiative is left to the will of the legislative body which is still missing and in due to this the LGBT couples frequently choose to immigrate to nations that accept LGBT weddings so that their union can acquire legal status and enjoy all the same privileges as a heterosexual pair.

But the Madras High Court Verdict is one indication that India is changing, though. Undoubtedly, the Madras High Court's ground-breaking decision offers optimism. According to the Hindu Marriage Act, "the term 'bride' would also mean a transsexual and not just refer to someone born as a woman," the court stated in *Arunkumar and Sreeja* v. *The Inspector-General of Registration & Ors.*[13]

V. SAME-SEX MARRIAGES UNDER THE SPECIAL MARRIAGE ACT, 1954

In order to provide Indian citizens, the freedom to marry outside of their faith or caste, the

[12] The Special Marriage Act, 1954 (Act 43 of 1954)
[13] (2019) SCC Online Mad 8779.

Special Marriage Act, 1954[14], was passed. The Hindu Marriage Act of 1955's conditions are likewise covered by this law.

The Special Marriage Act is a piece of secular legislation that makes it easier for people to marry each other regardless of their personal beliefs or religion. A Marriage Officer documents the marriage rather than holding a religious ceremony. The only alternative that might not offend religious zealots is to revise the Special Marriage Act of 1954 to allow same-sex unions. The Special Marriage Act now only applies to heterosexual couples because it stipulates that the man must be 21 years old and the female must be 18 years old. However, it is not as challenging as it may seem to include homosexual marriages under the Special Marriage Act.

Only one thing that has to be done is to change Section 4(C) to state that a party, if male, must be at least twenty-one years old and, if female, must be at least eighteen years old. Alternatively, it can add a special clause stating that same-sex weddings are allowed. This is to be believed one of the best and easiest legislative alternative as an amendment.

(A) Legality of Same-Sex Marriages in India:

The Indian Constitution does not expressly recognise the right to marriage as a basic or constitutional right. Although marriage is governed by a number of statutory laws, its recognition as a basic right only came about as a result of Supreme Court of India rulings.

Further, according to Article 141 of the Constitution[15], this pronouncement of law is obligatory on all courts in India.

VI. IMPORTANT SUPREME COURT RULINGS

In 2001, the Naz Foundation filed a writ petition in the Delhi High Court contesting the constitutionality of Section 377, the conclusion of decades of legal challenges to the statute. On the grounds of locus standi, Delhi High Court dismissed their suit in 2004. They then filed an appeal with the Supreme Court of India in 2006 against the Delhi High Court's decision. Their petition was upheld, and the decision was in their favour.

Section 377 was read down and declared illegal in a landmark decision made by the Delhi High Court in the case of *Naz Foundation* v. *Govt. of NCT of New Delhi and Others*[16] in 2009. An important turning point in Indian history was the Delhi High Court's reading down of Section 377. The LGBT community saw a glimmer of optimism thanks to this verdict during a dark time. But this didn't last long because in 2013, the Supreme Court overturned the Delhi High

[14] The Special Marriage Act, 1954 (Act 43 of 1954)
[15] The Constitution of India
[16] 2009 (160) DLT 277

Court's decision. In *Souresh Koushal* v. *Union of India*[17], the Supreme Court overturned the Delhi High Court's decision in 2013. According to the Supreme Court, Section 377 cannot be read down and Parliament must determine whether to decriminalise homosexuality. Despite the Supreme Court's ruling, the opposition to Sec. 377 grew significantly.

In *National Legal Services Authority* v. *Union of India* ("NALSA")[18], a bench of two judges of the Supreme Court of India ruled in April 2014 that a person's gender identity and sexual orientation are protected under the rights to life, dignity, and autonomy, and that they have the right to express the gender they have chosen. The NALSA decision revived hopes that the fight against Sec. 377 would succeed.

After that in the *K. S. Puttaswamy* v. *Union of India*[19] case, the Supreme Court rendered a significant decision in 2017, holding that the right to privacy cannot be denied "even if a minute fraction of the population is harmed." The Court ruled that the right to privacy clearly encompasses the freedom to engage in personal relationships with people of one's choosing, as well as the freedom to express one's sexual orientation and gender identity.

The LGBTQI+ community, which has fought a protracted war for its rights, received some hope with the arrival of the year 2018. A dancer named Navtej Singh Johar, who identified as a member of the LGBT community, petitioned the Supreme Court in 2016 to challenge the constitutionality of the Suresh Kumar Koushal case ruling. Because Section 377 was unclear and did not define "carnal intercourse against the order of nature," the petitioner claimed that it violated Article 14 of the Constitution.

There was no discernible distinction or logical division between natural and illicit consenting sex. The petitioner also argued that:

(i) Section 377 violated Article 15 of the Constitution, because sexual orientation is a sex-related basis for discrimination, and that Article 15 forbids discrimination based on sexual orientation.

(ii) Since Section 377 prohibited expressing one's sexual identity and orientation, it had a "chilling impact" on Article 19.

(iii) Section 377 also infringed on a person's basic right to privacy.

LGBTQ Community Entitled to all Constitutional Rights (*Navjet Singh Johar and others* v.

[17] (2014) 1 SCC 1
[18] (2014) SCC438
[19] (2017) 10 SCC 1

Union of India)[20]:

In the Navtej Johar Singh Case, the Supreme Court's five-judge panel, chaired by the Chief Justice, ruled unanimously on September 6 2018, that Section 377 was unconstitutional insofar as it criminalises any form of consensual interactions between adults. LGBTQ individuals "are entitled, as all other citizens, to the full spectrum of fundamental rights, including the liberties protected by the Constitution," as well as to equal citizenship and "equal protection of the law," according to the Supreme Court.

Marriage as a Fundamental Right (*Shafin Jahan* v. *Asokan K.M. and others*)[21]:

- The Supreme Court ruled that Article 21 of the Constitution[22] explicitly guarantees the freedom to marry a partner of one's choice, using both Article 16 of the Universal Declaration of Human Rights[23] and the Puttaswamy case[24] in support of its conclusion.
- According to Article 16(2) of the Indian Constitution[25], discrimination cannot be based only on a person's race, caste, sex, ancestry, place of birth, or place of residence.
- The ability of each person to make judgments on issues essential to the pursuit of happiness is embodied in the right to marry, which is a fundamental right guaranteed by the Constitution. The fundamental right guaranteed by the constitution is the freedom of religion and belief, including the choice to believe.

VII. THE TRANSGENDER PERSONS' (PROTECTION OF RIGHTS) ACT, 2019 – OR THE MURDER OF GENDER JUSTICE

With the intention of ensuring the protection of transgender people's rights, welfare, and other connected issues, Parliament passed the Transgender Persons (Protection of Rights) Act in 2019[26]. The bill was passed after much effort, yet it still has many flaws and doesn't benefit the community. It is stated that except for the transgender community, everyone is given power and equality under the Act.

Nearly all of the definitions in the Act are excessive or repetitive when it comes to community issues. There is no enforcement authority, no corrective action, and no punitive action in the discrimination prohibition chapter. The bill's description of the complaint officer is quite

[20] AIR 2018 SC 4321
[21] AIR 2018 SC 1933
[22] The Constitution of India
[23] Universal Declaration of Human Rights 1948 Available at https://www.un.org/en/about-us/universal-declaration-of-human-rights.
[24] K. S. Puttaswamy v. Union of India (2017) 10 SCC 1
[25] The Constitution of India
[26] The Transgender Person' (Protection of Rights), 2019 (Act 40 of 2019)

ambiguous, and as of right now, it doesn't even exist. It is utterly unfair to limit children's ability to live apart from their parents and to permit this only with a court order. The statute doesn't contain a single coordinated plan that would instruct medical professionals on how to treat transgender patients.

Additionally, the National Council for Transgender Persons only has five transgender people serving as its representative and lacks the independence to carry out its duties. Also, any form of violence, including sexual assault against transgender people, has a maximum 2-year sentence which is very less.

In this context there was a message that, "Raping a woman is very awful; raping a child is worse; but what is this Bill that we are passing, these people are on the streets, they are begging, they are in high danger?" asked Derek O'Brien, a member of the Trinamool Congress.

Further, it is completely inhumane to check their gender and issue them certificates which indicates that this is a bill against them, not for them. To add on the act does not even have any mechanism for catching those who harass, bully, or discriminate against them resulting in the some of the most fundamental and basic rights that a person ought to have are denied to this section of society as a result of this act. Last but not the least no transgender people were involved in the drafting or passage of the legislation that was intended to safeguard their rights, and no one from the community was consulted regarding their issues or needs making this act more Questionable.

VIII. CONCLUSION AND SUGGESTIONS

India is a growing nation, and in order to encourage that growth and development, the country needs progressive laws that treat all residents equally and provide them the same opportunities to contribute significantly to the nation's future. One of the harshest laws from the Victorian era has finally been repealed in India. But Many LGBTQIA+ people are still not recognised by society, despite the ruling.

If we look into the legalisation of same-sex unions is still pending. Marriage which confers rights and obligations on two people, including those related to adoption, inheritance, tax planning, life insurance plans, and other similar privileges. Marriage is seen as an enduring bond between two people who go through joy and suffering together. It is the institution that recognises the couple's sexual relationship with the blessings of God and elders. Marriage establishes between the partners their legal rights and obligations. Considering the Supreme Court's ruling to recognise consenting same-sex relationships as legal. To legalise same-sex unions, the government should enact regulations governing homosexual marriages, adoption,

inheritance, etc.

As Marriage is a basic right for every citizen in a country like India where so much importance is attached to the marriage, but the LGBT community is still devoid of it. What would be the point of decriminalizing homosexuality in a county like India where LGBTQIA+ people are still unable to get married to the partner of their choice? Even the Transgender Persons' (Protection of Rights) Bill was passed by the Lok Sabha discussed which came after so many efforts still serves no good to the LGBTQIA+ community and has several lacunae.

So, in this regard researchers aim to make the case that the transgender bill has to be strengthened and that there should be changes made that benefit the LGBTQIA+ population. Legalizing same-sex unions is urgently needed to remove this dark chapter from Indian history. As, long as people are ready to sweep homosexuality under the rug of amnesia, it will continue to be stigmatised. So, the government ought to make an effort to inform the people and increase public understanding of sexual minorities in order to achieve Gender Justice.

Further, in order for the LGBTQIA+ community in India to have dignity, sexual autonomy, and individuality, the three pillars of the State and society must work together to ensure that the morality and values derived from the Constitution are upheld. This can be done by making joint efforts mentioned below:

1. **Transforming Social Mindset Toward LGBTQIA+ Persons:** Since TV and movies are accessible to rural populations where social media hasn't yet made a significant impact, they are probably the best tools for redefining family roles and attitudes through programmes and stories that educate and enlighten while also relaying LGBTQIA+ experiences in authentic and diverse ways. Movies like Badhaai Do, Shubh Mangal Zyada Saavdhan, and Aligarh can significantly alter society's unfavourable perception of the LGBTQIA+ community.
2. **From Special Treatment to Equal Treatment**: People who identify as LGBTQIA + don't seem to be aliens, they're not ill, and their sexual preference is innate. Being homosexual is also not an illness but a normal thing. They should be treated equally, not differently, and once they are integrated into Indian society as equals, they will completely participate in the growth of the entire country.
3. **Gender Neutrality**: All genders must be treated equally and without prejudice. Additionally, it means that societal norms, language, and regulations should steer clear of gender-specific roles.
4. **Towards Better Parenting**: Any parent's basic responsibility is to accept their

children's identities. They will change society into one that celebrates diversity and respects each person's uniqueness by accepting the child.

5. **Awaking and Empowering LGBTQIA+ Youth:** They require a public venue where they may express themselves freely and feel accepted. Gaysi and Gaylaxy are a couple of the platforms that have helped create spaces for LGBT individuals to communicate, discuss, and work together. Another positive step in this direction is the Pride Month and Pride Parade Initiative.

*****

© 2024. International Journal of Legal Science and Innovation [ISSN 2581-9453]