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Same-Sex Marriages: The Indian Context

KIRTI SEJWAL¹ AND KOMAL DALAL²

ABSTRACT

This study explores the historical development and the factors influencing the social and legal standing of this minority population as it dives into the complex dynamics surrounding same-sex partnerships in the Indian environment. An analysis of ancient Indian scriptures point to a historically progressive civilization that existed before the post-colonial era, notwithstanding the opinions of those who disagree. British colonial influence led to the establishment of criminal sanctions on same-sex partnerships, particularly under section 377 of the Indian penal code, which created a hostile climate characterized by fines and imprisonment. The difficulties this disadvantaged population faced were made worse by India's social system. India has to face its own prejudices as a result of the global movement against discrimination in the 21st century. The supreme court's decriminalization of same sex marriage in the landmark case Navtej Johar case established a legal basis for the community's rights and identity, which were subsequently upheld by privacy rulings. Challenges still exist despite judicial gains, demonstrating the complex interaction of social and legal factors affecting same-sex couples status in India.

Keywords: Same-Sex Relationships, Section 377 IPC, LGBTQ+ Rights.

I. INTRODUCTION

The ability to imagine different social realities and comprehend the larger social dynamics that influence personal experience is known as social imagination. The debate over same-sex marriages has been more prominent in India, especially since Section 377 of the Indian Penal Code was decriminalized in 2018. In addition to having an affect on the LGBTQ+ community, this historic decision forced a re-examination of cultural norms and values.

Despite the fact that same sex marriage has been the focus of numerous court cases in India, the highest court in the nation has so far declined to acknowledge same-sex couples as lawfully wed. In 2017, the Delhi High Court ruled that same-sex couples have the right to be in a committed relationship, but it did not go far as to legalize same-sex marriage.

In 2001, the Delhi High Court heard a public interest litigation (PIL) brought by the non-governmental organization Naz Foundation, which contested the validity of section 377.

¹ Author is a LL.M. student at FMIT, GGSIPU, India.

² Author is a LL.M. student at FMIT, GGSIPU, India.

The Delhi High Court declared section 377 invalid and decriminalized homosexuality in its 2009 ruling.

The supreme court of India ruled in 2013 to ban homosexuality once more and restore section 377, which the Delhi High Court had previously overturned.

In 2018, a five judge panel of India's top court declared section 377 unconstitutional, decriminalizing homosexuality.

The transgender persons (protection of rights) Act was passed in 2019 with the intention of protecting transgender people's rights and granting them official status.

(A) Review of literature

The legal status of same sex marriages has been the subject of numerous research and conversations lately. Scholars and legal experts have studied this issue from a number of angles, looking at how laws and public perceptions of same sex marriages have evolved in numerous countries, including India.

II. HISTORICAL CONTEXT

1. **Colonial legacy :** in many nations, same- sex marriage' s legal and social standing has been significantly impacted by the colonial past. European powers imposed their laws and morals on conquered countries during the colonial era, frequently making same-sex relationships illegal and establishing heteronormative norms. Current legislative frameworks and attitudes toward LGBTQ+ rights have been influenced by this history. A heteronormative framework was constructed and gay activities were made illegal by colonial legislation, such as Section 377.
2. **Post Independence Developments:** Traditional cultural traditions and religious beliefs have slowed the post -1947 progress of LGBTQ+ rights in India. the evolution of same-sex marriage in India since independence has been complicated and ever-changing, with significant social, legal and political shifts. After independence, particularly in the 1990s, LGBTQ+ advocacy gained visibility. Organizations such as the Naz Foundation played critical roles in pushing for rights and contesting discriminatory laws. Even pride marches, media coverage, and public discourse have all helped to raise awareness and promote acceptance of LGBTQ+ identifies in Indian society.

III. THE INDIAN PERSPECTIVE

At its core, Indian culture is conservative. India is a secular nation, therefore its people are free

to practice and propagate any religion they choose. Because religion is so common, religious concepts are ingrained in many facets of society and individual laws. This also includes all aspects of relationships between individuals of the same sex. An interesting window into the transition from a liberal, tolerant culture to a conservative one is offered by examining the development of same sex couples. The required legal authorization for this was given by section 377 of the Indian Penal Code, which was enforced by the British. By outlawing same sex partnerships and punishing them with fines and jail time, this system institutionalized discrimination and supremacy against them. The protracted process of later decriminalization was eventually handled in the Navtej Singh case in 2018.

(A) Legal Status of Same Sex Marriage in India

Legislation detailing the many rights of Indian citizen must be passed by the government, along with detailed instructions on how each state is to implement the law. The right to marry is guaranteed by the Indian special marriage Act of 1954. This statute and its rationale may be based on Yogyakarta plus 10 and the Yogyakarta principles. It was the largest piece of legislation ever prepared by a working committee in Indonesia. This highly helpful resource, which addresses community issues from a human rights perspective, is founded on the core idea of equality and freedom.

The second possible solution is to get involved with the LGBTQ community, which is crucial in the Indian context. The first step is for individuals to have more open and honest conversations about gender and sexuality in their communities and homes. For the community to prosper, everyone must participate in the mainstream.

Personal space should be respected and protected. Sexual orientation has no bearing on a person's social status. "Equality demands that the sexual orientation of each individual be protected on an even platform" since it is a person's sexual preference, as the Puttaswamy ruling accurately said. To accomplish this, education and awareness are required.

The first myth that needs to be debunked is that it is a matter of free will rather than biology. Appropriate programming is required to debunk the numerous myths that are spread across the community.

(B) Role of determinants of same – sex marriage in India

Understanding the factors that influence same sex marriage in India is essential to comprehending the obstacles and advancements made in the legality of these unions. These variables, which include legal, social, cultural, and political elements, have a direct impact on LGBTQ+ people's lived experience as well as influencing public opinion and policy decisions.

Here, we dissect how each factor contributes significantly to the discussion around same-sex marriage in India.

1. Legal framework

- Decriminalization of homosexuality (2018) – consensual same sex marriage were decriminalized by the supreme court’s historic ruling in *Navtej Singh Johar V. Union of India* (2018), which invalidated Section 377 of the Indian Penal Code. LGBTQ+ people are now able to live more openly without worrying about facing criminal charges because to this verdict, which has had a significant psychological and legal impact on them.
- Absence of Legal Recognition of Same Sex marriage – Even though decriminalization has advanced, current marriage laws still do not recognize same-sex unions. The legal rights of LGBTQ+ couples, including inheritance, property rights, adoption, social security and healthcare benefits, are still discriminated against in comparison to their straight counterparts due to the lack of marital equality.
- Role of Judiciary – though there is reluctance to completely confront the subject of same-sex marriage, the Indian judiciary has been instrumental in the gradual advancement of LGBTQ+ rights. Courts have made it apparent that parliament must take action because legalizing same-sex weddings is a legislative issue rather than a judicial one. How vigorously the government can be pressured toward legal reform depends on the court’s position.

2. Cultural and Religious Influence

- Traditional view on marriage – marriage is frequently seen in India as a social compact entwined with custom, family, and religion. Many people believe that marriage is essentially a connection between a man and a woman, which is essential to social structure and the formation of families. The acceptance of same-sex unions is hampered by this conventional viewpoint.
- Religious opposition – the teachings or interpretations of the major Indian religions- Hinduism, Islam, Christianity, etc. are against same-sex marriage. Many religious leaders and adherents still believe that same-sex marriage are against divine law. The political discourse and public opinion surrounding the subject are greatly influenced by this religiously motivated resistance.

- Cultural norms of Gender and sexuality – Rigid gender norms and heteronormative assumptions about marriage and sexual orientation have long existed in India. people’s perspective on same-sex marriage and LGBTQ+ rights in general are greatly influenced by these social standards. Redefining these cultural viewpoints in favour of a more inclusive view of identity, relationships, and love is the difficult part.

3. Generational Shifts

- Youth and changing attitudes – In India, younger generations are often more accepting of marriage equality and LGBTQ+ rights. Younger people are likely to embrace LGBTQ+ rights more readily as education becomes more inclusive and awareness of sexual orientation and gender identity grows. This will eventually have an impact on public opinion and policy.
- Shift in public discourse – the necessity for gender neutral laws that acknowledge many types of partnerships and family structures is a topic of increasing discussion. Younger youth who have a more liberal, egalitarian perspective on relationships and love are increasingly supporting marriage equality.

4. Global Influence

- Interantional Pressure – International pressure is growing on nations like India to protect the rights of sexual minorities as LGBTQ+ rights become a major topic in the global human rights conversation. International human rights organization, the European Union, and the United Nations are among the global players who push for marriage equality.
- Liberalization in other countries – India has taken inspiration from other countries that have legalized same-sex marriage, especially western democracies like the United States, Canada, numerous European nations, and Tiawan. For LGBTQ+ campaigners in India, the increasing approval of same-sex marriage around the world serves as a significant precedent.

IV. FUTURE OF SAME SEX MARRIAGE

More tenacious advocacy and comprehension would be required. Even if same sex marriage are now legal in several countries, other regions still do not accept them or are adamantly against them. Ongoing action, education, and awareness initiatives that seek to foster acceptance and understanding can help progress marriage equality.

Additionally, there is space to strengthen legal protections. LGBTQ+ rights individuals and couples still require robust legal protections within marriage laws, despite the fact that same sex marriage are now permitted in many nations. The demands of same sex couples must be met in areas such as healthcare benefits, anti-discrimination laws, inheritance regulations and rights to adopt in order for them to enjoy complete equality and protection.

V. CONCLUSION

Human rights activists and legal experts contend that preventing same sex marriage from getting married is against fundamental rights protected by the Indian Constitution, such as the rights to equality, dignity and personal freedom. A wider, more inclusive interpretation of constitutional rights is suggested by the Supreme Court's ruling in cases like Navtej Singh Johar and K.S Puttaswamy (the privacy case), which may poen the door for same-sex marriage to be recognized in the future.

An further strong argument for legislative reforms in India comes from the worldwide movement to recognize LGBTQ+ rights, including same sex marriage. The united states, Taiwan and Argentina are among the nations that have established precedents for this kind of recognition, impacting judicial and public opinion globally. India might very well choose this course, striking a balance between its cultural uniqueness and a growing dedication to human rights.

Even if same sex marriage is not yet legally recognized in India, there is hope for change in the future due to the continuous debate and legal issues. Whether India joins the global movement toward marriage equality will probably depend on the convergence of legal improvements, changing public attitudes, and ongoing activism for LGBTQ+ rights. In the meantime, the push for same sex marriage continues to be a significant part of the nation's larger fight for LGBTQ+ equality and human rights.

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