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# Legitimizing Same Sex Marriages in India: An Urge for Advancement

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## ABSTRACT

*Love knows No Gender. It might be wrong to mention that someone cannot marry somebody simply because they're not from the alternative sex. The globe is evolving with times and we need to reconsider certain changes. Same-sex marriage is once somebody chooses to marry constant sex rather than the alternative. We ought to consistently not evade this idea any more. Quite a long time ago people must be embarrassed because of their sex. In this day and age, we should feel for every creature regardless of their sex. One should comprehend that there are multiple sexes. Our society need to follow the golden rule of live and let live. People will be happier once everybody feels they're welcomed with open arms. Same-sex marriage in Republic of India particularly isn't inspired. There are countries that have rigorous laws against it nevertheless the folks are broad-minded. In India, neither are the laws lenient however the folks are also conservative. Indian individuals need an ideal opportunity to be adjusted with the idea of same-sex marriage. Indians should realize that this concept is not a part of western influences but it's simply biological. The onus is on us to instruct ourselves and the world so a similar sex couples don't confront misuse. In India, same sex relationships are regardless to be authorized. Same-sex marriage is as of now one of our country's most antagonistic policy centered issues. People in India knowingly or unknowingly opposing the idea of homosexuality like anything. In such case no law could do anything at first we need to prepare ourselves mentally for the acceptance of the same. At the point when we see India, we perceive how it is on its method of development, Judiciary scratched Section 377, which condemns homosexuality. We actually have far to go as far as LGBTQ people are concerned. Thus; this study is concern with the importance of the Right of same sex marriage as societies as well as the laws don't allow LGBTQ community to marry the person they love which is again a gross violation of their basic human rights. The LGBTQ people group possesses battled for an extended dignity for their privileges. Still there are miles to go. This Article will also be dealing with the probable hurdles that are facing by the Indian Judiciary while reconsidering same sex marriages in India.*

**Keywords:** *same sex marriages, homosexuality, India, Indian judiciary, legal status*

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## I. INTRODUCTION

In Lately, Indian LGBTQ (Lesbian, gay, bisexual transsexuals and Queer) rights have created. Notwithstanding, Indian LGBTQ residents face certain unlawful and social difficulties that individuals outside of the LGBTQ group don't confront. The nation takes out British laws that obviously one-sided against gay and transsexual individuals. It likewise obviously clarified **Article 15 of the Constitution**, precluding disparity dependent on sexual direction and sex uniqueness. Be that as it may, it doesn't give a lot of legitimate security, including same-sex marriage.

**In 2018**, inside the milestone judgment of **Navtej Singh Johar v. Union of India**, the Supreme Court of India decriminalized consensual gay sex with the repeal of **Section 377** of the Indian Penal Code and acknowledges for consensual gay intercourse among grown-ups from its ambit. Homosexuality transformed into in no way, shape or form unlawful or a hooligan offense in notable codes with the guide of utilizing the British Raj all through their rule in India.

Humans in India are allowed to transform their legal gender by post- sex reassignment surgery under **The Transgender Persons (Protection of Rights) Act, 2019**, and feature a constitutional right to list themselves as a 3rd gender. Moreover, a couple of states secure **Hijras** a customary 1/3 sexual orientation people in South Asia through lodging planes and give government assistance benefits, annuity plans, free tasks in government clinics notwithstanding various conveniences planned to help them. There are about **4.8 lakh transgender** humans in India. (2011 Census).

According to a **survey in 2019**, despite recent political campaigns supporting LGBT rights, serious homophobia still exists in the Indian population, and **about half of Indians oppose same-sex** relationships. Regardless, most LGBT individuals in India stay silent, dreading segregation from their families who might perhaps consider homoeroticism to be despicable and unethical. Fortunately, in the past ten years, homosexuals have gained a certain degree of acceptance in India, especially in big cities. Many bars host gay nights, and some high-profile Bollywood movies, web-series are showcasing transgender rights as normal human rights which is praiseworthy in its own way.

Further, **The Center** expressed its opposition to any move to impose legal sanctions on same-sex marriages in India. The legitimization of Article 377 of the Indian Penal Code does not necessarily involve the basic right of marriage for same-sex couples. This would also violate codified laws and existing personal laws. The parties to a same-sex marriage do not fit into the legal framework because the legal framework clearly mentions man and woman as husband

and wife. It calls on parties of different genders to raise children "in the most natural way".

This type of union creates a variety of rights and responsibilities. Same-sex couples cannot be compared with the Indian concept. Therefore, same-sex marriage can be legally sanctioned. This is a legislative matter, not a court matter. The jurisprudence of a country, whether through laws, regulations or other laws, is developed in accordance with social values. , Beliefs, cultural history and other factors, India are not ready to accept such bold laws at this time, centre stated. Nonetheless, what my point is notwithstanding the way that marriage is a holy relationship among man and woman, I also acknowledge that our country relies upon the standard that everyone has the advantage to pursue happiness. when a man marries a man or a woman marries a woman satisfies them then I trust it's alright. There's nothing horrendous in it. Moreover, I strongly believe that **“A drop of ink may make million think”**, A **thought** expressed in writing, **can** influence a large number of people who will read it and hence it's the high time that we should start normalizing such concepts within our home first by discussing or reading or writing about these classes of people as much as possible. Then only something positive will happen in near future.

## **II. INDIAN HISTORY AND SAME SEX RELATIONS**

In India, homosexuality has a long history. Sexual exercises between ladies are portrayed as revelations of a female existence where sexuality depended on delight and richness in old writings like the Rig-Veda, which traces all the way back to 1500 BC, just as figures and remnant. The Kama sutra describes homosexual acts, the Harems of young boys held by Muslim Nawabs and Hindu aristocrats, Evidences of sodomy in Tantric practices are some historical evidences of same sex marriages medieval Muslim culture.

However, this experience began to lose its importance with the advent of Vedic Brahmanism and later British colonialism which dates back to 1500 BC, began to curb homosexuality through a new rule of patriarchy. In the Manu Code there are mentions of penalties such as the loss of class and the blow of a whip for heavy fine gay and lesbian behavior. On account of wedded ladies, 'servant enticement' is known to be rebuffed by shaving the lady's hair, dislocated fingers etc. Manu's stricter punishment specification for married women may be suggesting that such a relationship is widespread among married women, suggesting that these practices are becoming more usual among single women. The reactions to all types of 'unnatural' sexual acts provide insight into how colonial people perceive sexual behavior. The Indian psyche embraced the Western 'moral and psychological' notion that sexuality is 'pathological,' rather than the normal manifestation of desire that was once part of Indian

culture. The manner in which individuals consider homosexuality has changed significantly in the course of the most recent century. Since 1974, homosexuality has no longer been classified as an unnatural behavior and is no longer classified as a psychiatric condition. In certain nations, it has even been decriminalized. Since then, anti-discrimination or equal opportunity laws and policies have been introduced in a number of countries to protect gay people's rights in certain nations, it has even been decriminalized. Since then, anti-discrimination or equal opportunity laws and regulations have been passed in different jurisdictions around the world to protect gay and lesbian rights. In 1994, South Africa turned into the only country on the planet to reverse lesbian and gay rights in its constitution.

### **III. IMPORTANCE OF LEGALIZING SAME SEX MARRIAGE**

Love has no Colors, shape and forms. Let's celebrate love. Marriage is likewise a legitimate association of two people. Non-religious people prefer to get married at the registry office rather than at the church or temple. Marriage shows your greatest promise. Gays and lesbians are so humane; they have the same needs and desires as us. I don't understand what God or culture or religion has to do with this marriage. In this case, this is not a religious alliance, but a legal alliance. Why should gay men be denied this right? Who should we sit down and judge? Same-sex marriage should be legalized. If people find a homosexual relationship that contradicts their religious beliefs, they should abstain. Those who disagree with your religious views should have the right to make their own decisions on this and other topics. Gays and lesbians have the same needs and wishes as heterosexuals. It is absurd to say that same-sex marriage should not be legal "because they have no children". Marriage between same sex human need not to be considered as communal evil, it's just a matter of choice.

The universal requirements of human rights emphasize the removal of current and universal cultural and social norms so that fundamental rights and constitutional rights are not circumvented or limited. If we accept the government's argument, many progressive laws will never be passed. For example, even today, many men still believe that tradition gives them the right to beat their wives or deserve them. Because they were born as men, they received a very generous dowry. If we succumb to these cultural beliefs, it will not change the laws we pass to stop dowry-related violence against women or death.

Same-sex marriage is not officially recognized in India, and same-sex couples are not granted restrictive rights such as civil rights unions or domestic partners. **In 2011, the Haryana high court** officially recognized the same-sex marriage of two women. After the wedding, the couple was threatened by relatives and friends in the village, and finally received approval from

the family. Even though the Navtej Singh decision was landmark, legal experts say same-sex couples still have a long road ahead of them. While this ruling portends dire changes, considerations like marriage, adoption, and property inheritance don't always copy. The government must now take action and pass legislation allowing same-sex partnerships and adoption by LGBTQ couples.

While the Special Marriage Act of 1954 allows Indian citizens and Indian nationals in foreign countries to marry regardless of religion or faith, it does not allow same-sex couples to marry. The same is true for adoption: in August 2014, the Union cabinet decided to halt adoption by same-sex couples while considering amendments to the Juvenile Justice (Care and Protection of Children) Act, 2000. In fact, Article 16 of the Universal Declaration of Human Rights states that “men and women of full age... have the right to marry and to establish a family.” The language in this 72-year-old document is exclusionary, but even in 2021 India, only heterosexual men and women have the right to start a family. The fight that began with decriminalizing Section 377 must not stop here – it is only half-won. And what started with the lifting of a ban must now be expanded to include the complete realization of civil rights. Aside from that, the slide is always a danger. In India, the LGBTQ+ community still does not have the right to marry; intolerance against LGBTQ+ parents isn't even a topic of discussion in public. According to the Pew Research Center, as of October 2019, approximately 30 countries around the world had passed laws allowing same-sex marriages. The majority of these are in Europe, North America, and South America, with just one in Asia (Taiwan). So far, same-sex adoption is legal in approximately 40 countries.

On sexual behavior in rural India found that sex among men is not uncommon. A recent study by the **United Nations Population Fund (UNFPA)** stated . In fact, in this study, the proportion of men who had sex with male sex workers was higher than the proportion of men who had sex with sex workers. This applies to married men and single men. In the past 12 months, about 10% of single men and 3% of married men reported having sex with other men. The data shows that the government is not willing to see the reality.

#### **IV. LAWSUITS**

In October 2020, a lesbian couple, Dr. Kavita Arora and Ankita Khanna, sought approval from Supreme Court that 1954 Special Marriage Act. (SMA) should apply to couples regardless of their gender or sexual orientation. Applicants represented by senior lawyer Manek Guruswami and lawyers Arundati Katyu, Govind Manoharan and Surabhi Dhar argued that SMA violated Articles 14, 15, 19 and 21 of the Constitution by denying recognition of same-sex marriage.

The duo believes that Articles 21 and 19 of the Constitution of India mostly guard the right to marry an individual of their preference, and that this right must apply to the: same-sex couples and The applicant further claims that according to the Supreme Court's decision on sexual and gender identity in *Navtej Singh Johar v. Federation of India*, excluding same-sex marriage from SMA violated Articles 14 and 15 of the Constitution. Equality is protected as a basic right. The Supreme Court has requested an answer from the federal government on the cause of the problem.

### ***Abhijit Iyer Mitra & Ors v. UOI***

Abhijit Iyer Mitra, G.Oorvasi, Giti Thadan and Gopi Shankar Madurai presented *Abhijit Iyer Mitra & Ors v Union of India* in the Delhi high Court in 2020 affirmed that Right of same-sex couples to marry under the Hindu Marriage Act of 1955 (HMA). When it is clearly stated that marriage between two Hindus can be solemnly contracted, the State Aid Act makes no distinction between heterosexual and homosexual marriage. From this vantage point, it is possible to argue that the law violates the constitutional mandate of non-arbitrariness if it only applies to heterosexual couples rather than homosexuals.

Two gay couples, Vaibhav Jain and Parag Vijay Mehta, married in Washington, D.C. in the case *Vaibhav Jain & Anr v Union of India*, they argue that the Foreign Marriage Act 1969 should be reviewed to apply it to same-sex relationships. And it is unconstitutional in that it does not recognize the same. The High Court asked the Union government and the Indian Consulate General in New York to react to the request. Overall, we all know that the Union Government has strongly opposed calls to recognize same-sex marriage under the Special Marriage Act, citing a "**larger legislative framework**" that only recognizes marriage between men and women, and that interfering with it will cause havoc because there is no possibility of nationwide adaptability.

## **V. CONCLUSION**

On the point of view of same sex marriage ought to be sanctioned or not , this can be more of a religious and cultural squabble than a political one. In which I have given my contentions in support of decriminalizing it, I at long last conclude by saying that homosexuality isn't an offense, it is fair a way of interest of joy, a way to attain sexual happiness or want. I can see completely no reason, separated from dazzle prejudice, which prevents two cheerful individuals going through a wedlock which is able; give them the rights and securities which hetero couples appreciate. Marriage could be a sign of commitment and cherish. On the off chance that two men or two ladies need to appear that commitment, how does that devastate or

harm the beliefs of marriage. In my perceive, it clearly illustrates it. Aren't we living in an age which regards the individual's right to select Isn't India assumed to be the country of the free will? Homosexuality isn't new nor is it against the Indian culture; it has continuously existed in India before the British Raj, they only criminalized it.

What should be the correct approach to bargain with same sex relational unions, the issues are very endless and complex? Be that as it may, the eye-catching quality and possibility of such an approach remain to be discovered. In any occasion there's a developing conviction that our display strategy of criminalizing the same sex sexual movement not one or the other helps the homosexuals nor secures the society in common. We in this way have to be true to same sex relational unions in arranging to move forward within the heading of human rights.

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