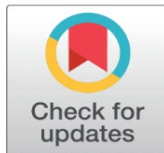


# THE PARADIGM SHIFT OF THE LGBTQ COMMUNITY IN INDIA: A STUDY CONCERNING THE FUTURE OF SAME-SEX MARRIAGE AND CONJUGAL RIGHTS

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## ABSTRACT

The LGBTQ community has been fighting for decades, and various movements are taking place around the world. While there have been notable advancements in LGBTQ rights activism in India in recent years, obstacles still exist on both a social and legal level. Although the government must make sure that these rulings are broadly accepted by society, the courts have been crucial in rendering just and equitable verdicts. Unfortunately, neither the federal government nor the state governments have taken concrete steps to support LGBTQ people, and social acceptance is still elusive. LGBTQ people have fought and won lots of small battles in recent years, but their major concern is about marital status. Same-sex marriage is still illegal in India, and homosexuality was decriminalized there in 2018. Notably, same-sex couples now have rights comparable to those of married individuals, according to a historic Supreme Court ruling from August 2022. The Supreme Court has begun considering several petitions asking for same-sex marriage to be recognized. Advocates for LGBTQ people and same-sex couples hope for the best, but government authorities and religious organizations are adamantly against them. With a significant LGBTQ community of almost 10 million people in the nation, this conversation is crucial. To ensure full acceptance and equitable treatment for LGBTQ people within the framework of traditional Indian culture, the courts and legislature must set the direction for LGBTQ rights in India. They must also determine what legislative and social changes are necessary.

**Keywords:** LGBTQ Rights, LGBTQ Movements, Homosexuality, Same-Sex Marriage, Legal Recognition.

## 1. INTRODUCTION

The LGBTQIA+ individuals in India have experienced significant growth during the last several decades. The legal discourse surrounding LGBTQIA+ issues in India from 2009 to 2019 has been closely followed by significant social dialogue. This began with the Delhi High Court's 2009 ruling, the Supreme Court's binding verdict in 2018, the decision made by the National Legal Services Authority (NALSA), and debates encircling the Trans Rights Bill.

### Defining the LGBTQ Community

The LGBTQIA+ individuals' Lesbian, gay, bisexual, transgender, and queer people as well as LGBTQ organizations and collectives bound by common social

movements and culture make up the LGBTQ community. In general, these communities support sexuality, uniqueness, variety, and inclusion.

**L - LESBIAN:** Defines a woman who has a strong inclination for other women, either sexually or emotionally.

**G - GAY:** A guy who develops same-sex emotional relationships and feels romantic and sexual desire toward other males is referred to be gay.

**B - BISEXUAL:** Contains people who are attracted to both men and women on a physical, sexual, and emotional level.

**T - TRANSGENDER:** Contains people whose gender identification deviates from what is expected of them by society because of their biological sex.

**Q - QUEER:** Denotes an individual whose sexual orientation deviates from the accepted "norms" of society related to their biological sex. Anywhere in between conventionally established gender norms is where the term "queer" describes a flexible gender identification.

### **What is the definition of homosexuality?**

As the name implies, homosexuality is the combination of the words "homo," which means "same," and "sexual," which describes a person's "sexual inclination" or "sexual behavior." A person's sexual or romantic appeal to other people of the same gender is referred to as homosexuality. This includes women inclined to other women as well as males attracted to other men.

### **Is it not a natural phenomenon?**

Simple as that: the response is "no." Research has demonstrated that homosexuality exists in around 1,500 distinct animal species. This tendency seems to be a natural occurrence because it seems to be embedded in one's DNA.

### **ANTI-RELIGION?**

Contrary to popular belief, a large portion of classical Indian literature has pro-LGBTQ themes. There is no disparaging portrayal of these people. Hindu epics, for example, have characters like Chitrangada and Shikandi from the Mahabharata who have a variety of gender identities and sexual orientations.

### **IS THERE A CURE?**

Being gay is not a disease that can be "treated." People have their sexual orientation from birth. It is not a disease that can be cured, nor is it an acquired habit or issue that can be resolved.

## **2. LGBTQ ACTIVISM AND SOCIO-LEGAL EXPANSION**

This minority group of people advocating for their specific social, psychological, and sexual rights and needs is the goal of the LGBTQ movement. It is mostly led by non-profit organizations (NGOs) and is not connected to any one political party. The movement attracted a lot of attention, especially following a significant Supreme Court decision. Prominent individuals who have endorsed the legalization of homosexuality include Prince Manvendra Singh Gohil, Amartya Sen, Vikram Seth, Bilal Nazki, Health Minister Anbumani Ramadoss, and the Human Rights Council of the UN.

LGBTQ rights have been the subject of several initiatives, such as assistance lines, Gay Parades, diversity education programs, and legislative changes. One significant milestone toward the progress of LGBTQ rights was the nullification of Section 377 of the Indian Penal Code by the Delhi High Court. Respectable companies are also attempting to foster diversity and inclusivity by creating welcoming workplaces for members of the LGBTQ community. Additionally, NGOs are establishing helplines dedicated to the LGBTQ community, offering guidance and support tailored to their particular need.

Across the world, people are becoming more aware of their sexuality and moving towards acceptance of gender preferences. These movements take the evolution in the various terms related to the LGBTQ. The new term "Two-Spirit Community" (2S) refers to the people who identify as both masculine and feminine spirits—including same-sex desire and a range of gender variance—and are referred to as members of the Two-Spirit Community.

### 3. INFLUENCE OF THE INDIAN JUDICIAL

The Indian judiciary, which is primarily based on the core principles of the Constitution, including the right to privacy, freedom of speech, the assurance of equal treatment, and protection from discrimination, has been instrumental in advancing LGBTQ+ rights. Legal study and handling cases have a major role in the interpretation of the law and factual dispute resolution. On September 6, 2018, Section 377, IPC 1860, was changed, marking a significant turning point. It is yet unknown, though, how successfully the new laws have been applied and how much the LGBTQ+ community has benefited from them. There is an urgent need for legislation that explicitly defends people's rights based on their sexual orientation and gender identity.

Five Landmark Decisions that marked the road for LGBTQ+ Recognition in India:

- 1) Naz, 2009 (Naz Foundation v Government of NCT Delhi) - In a landmark ruling, the High Court of Delhi declared Section 377 of the IPC 1860, unlawful and stated infringement of Indian Constitution Articles 14, 15, and 16.
- 2) NALSA, 2014 (National Legal Service Authority v UOI) - Despite a short decriminalization of homosexual conduct in 2013 (Koushal v UOI), this decision acknowledged transgender people as citizens of India who identify as the "Third Gender," an important step toward integration.
- 3) Puttaswamy, 2017 (Union of India v. Justice K S Puttaswamy) - Known as the "integral judgment," it expanded the scope of individual liberty by upholding the right to privacy as a fundamental component of Article 21 (Right to Life and Liberty) of the Indian Constitution.
- 4) Navtej Johar, 2018 (Union of India v. Navtej Singh Johar) - This landmark decision declared that every person has the right to live in dignity and autonomy, free from government intervention, irrespective of one's gender or sexual orientation, and found that Section 377 violated Articles 14, 15, 16, and 19(1)(a) of the Constitution.
- 5) Arun Kumar, 2019 (Arun Kumar v Inspector General of Registration) - Arun Kumar filed a lawsuit against Tamil Nadu's Inspector General of Registration. The Madras High Court's decision broadened the concept of women to include transwomen, acknowledging transgender persons as

qualified candidates for marriage and, thus, extending the definition of women to include transgender people.

- 6) Together, these historic rulings demonstrate the Indian judiciary's progressive posture in support of LGBTQ+ rights, laying the groundwork for both social acceptance and legal protection.

#### **4. RECOGNIZATION OF SAME-SEX WEDDING**

Our constitution provides its citizens various rights but the right to marriage is not a fundamental right still the year 2011 saw the notable milestone of a Haryana court recognizing a gay marriage between two women legally. Afterward, in October 2017, several people put out the idea of an updated Uniform Civil Code that would include same-sex marriage legislation. This redefined definition of marriage goes beyond conventional conventions to include partnerships between a male and a woman, two men and two women, transgender people and one another, or transgender people and one of the men or women. In addition, all married couples, regardless of gender composition, were granted adoption rights. Currently, the Indian judicial system is facing the task of resolving several applications that aim to recognize same-sex marriage.

Nonetheless, the Uttarakhand High Court decided against permitting same-sex marriage on June 12, 2020, although noting the value of cohabitation and "live-in relationships." Also, the Solicitor General of India, Tushar Mehta, claimed that same-sex marriage goes against Indian cultural values in response to a suit submitted in the High Court of Delhi by a couple of the same gender demanding the legalization of homosexual marriage. Although there has been a shift in the public perception of LGBTQ people in India, with 37% of Indians saying in 2019 that they think homosexuality should be accepted, there is still opposition to their acknowledgment of the institution of marriage. LGBTQ people and activists have been aggressively advocating for the nation's highest court to accept cases about marriage equality since 2020.

The controversy over whether same-sex marriages in India are recognized by the Hindu Marriage Act and the Special Marriage Act centers on the Abhijit Iyer Mitra case. The federal government has maintained that same-sex marriage rights were not automatically granted by the legalization of Section 377. Rather, it stressed that the government and legislature ought to examine and decide the issue. The case highlights the current legal and social debate in India about the legality of same-sex marriage.

#### **5. CURRENT COURT PROCEEDINGS AND MEASURES RELATING TO INDIA'S SAME-SEX MARRIAGE**

In recent cases, the Indian Supreme Court has been actively considering petitions from eighteen LGBTQ individuals who are ardently arguing for the nation to legalize same-sex unions. These couples contend that they are discriminated against and deprived of their basic rights as citizens by the present ban on same-sex unions. The Center, speaking for the government, on the other hand, is against marriage equality, claiming that the standard definition of marriage is limited to a union involving a biological man and a woman. On May 3, 2023, the Supreme Court will reconvene to hear more arguments on this important case.

## **6. THE 'URBAN ELITIST' DISPUTE**

The Centre presented a case during these hearings that questioned the petitions for same-sex marriage's feasibility and characterized them as being indicative of "urban elite" beliefs. The Supreme Court, however, quickly disregarded this viewpoint, highlighting the dearth of relevant statistical data. It is evident from the ruling of the highest court that the increasing number of people from urban regions who are coming out as gay does not make the desire for same-sex marriage an 'urban elitist' idea.

## **7. GENDER IDENTITY IS NOT ABSOLUTE**

The Supreme Court made a crucial remark when it stated that natural gender is not a rigid and absolute concept. In light of the Special Marriage Act's usage of the expression "man and woman," the court emphasized that a person's identity is not only defined by their physical genitalia. Senior attorney AM Singhvi persuasively argued that consenting persons spanning a wide range of biological sex and gender identities should be able to be married to someone of the same sex, regardless of traditional criteria. This acknowledgment is a big step toward recognizing how diverse and dynamic gender and sexuality are in modern Indian society.

## **8. REFUSAL OF RIGHTS**

The petitioners have brought up an important argument about how the Indian ban on same-sex marriage denies the LGBTQIA+ community basic rights. They contend that in addition to being denied the ability to marry, LGBTQ people are also being denied access to other legal advantages including inheritance rights, tax breaks, and adoption prospects. Senior lawyer Maneka Guruswamy rightly notes that marriage includes a wide range of privileges that are wrongfully denied to LGBTQ individuals, in addition to being an issue of dignity. In response, the Centre cites the legal meaning underlying marriage in India to argue that the legal system cannot award non-heterosexual couples extra rights.

## **9. EXPRESSION GENDERED**

The Center has voiced concerns with the definitions of terms like "husband" and "wife," along with "mother" and "father," in the larger picture of same-sex weddings. The Supreme Court recently ruled that legislative changes are necessary to update laws about gendered language. Senior lawyer Jayna Kothari contends that the freedom to marry is a part of Article 21, which also encompasses the freedom to start a family. Referring to both spouses as "persons" in a marriage could lead to legal issues, especially about the Succession Act's provisions regarding widows, widowers, husbands, wives, parents, and other members of the family, Solicitor General Tushar Mehta has warned.

## **10. WHO GETS TO JUDGE WHO IS ENTITLED TO SAME-SEX MARRIAGE?**

The Centre's Tushar Mehta has recommended that the Supreme Court postpone its ruling to allow same-sex couples to marry and give the Parliament more time to consider the issue. Amit Shah, the minister of homes, and Kiren Rijiju, the minister of law, have reaffirmed this position. Furthermore, the Indian Bar Council adopted

a resolution that opposes same-sex weddings being recognized legally. The resolution emphasizes the need for a legislative review of any changes that may have an influence on society as a whole. A major issue in this continuous legal and social debate is who gets to decide what will happen to same-sex marriage rights.

## **11. MODIFICATION TO THE SPECIAL MARRIAGE ACT, OF 1954 NECESSARY FOR SAME-SEX MARRIAGES**

The queer couples continue to be denied the affirmative right to marry in our country. The Special Marriage Act does not specify any gender terms or that a marriage can only be formally consummated between a man and a woman, registration authorities nationwide have refused to register weddings between LGBTQ people. The argument in favor of same-sex marriage legalization in India makes the point that the Special Marriage Act, of 1954 just has to be slightly amended. It makes the case that deeply ingrained cultural beliefs shouldn't prevent the acceptance of fundamental rights. Even though marriage is frequently viewed as a policy issue, any rights abuses call for legal action. The petitioners' case is based on the equality and non-discrimination tenets found in Indian Constitution Articles 14 and 15. In addition, the Supreme Court recently upheld that the right to privacy is a necessary component of the right to life and liberty.

The Special Marriage Act, 1954 which opened the door for same-sex marriage recognition, has been portrayed by the government as a secular statute that operates outside of religious personal laws. Important language adjustments are needed in the Act, especially those that deal with the usage of the definite word "the." With these modifications, the wording would be consistent with constitutional rights, therefore granting the court the authority to establish a legal right to homosexual marriage and direct the state to provide such partnerships equal recognition. Essentially, it emphasizes how easy it would be to change the law to allow gay couples to marry in India and bring it into compliance with equality and non-discrimination standards.

## **12. CONCLUSION**

It has become increasingly evident that the Legislature, Executive, Judiciary, and society as a whole cannot dismiss or diminish the existence and rights of individuals with same-sex desires. The claimer for LGBTQ human rights and the legalization of homosexual marriages has ushered in a novel conflict within the realms of marriage, family, and the law. Granting social and legal recognition in this traditionally rooted society is undoubtedly a complex endeavor. Therefore, it is imprudent to overlook this burgeoning conflict within the institution of family and marriage. Failing to address it with sensitivity could have dire consequences.

In conclusion, the pressing need of the hour is the cultivation of a new mindset. Laws should not merely reflect prevailing social norms but should be agents of progress, promoting inclusivity, equality, and human rights for LGBTQ individuals. This entails a concerted effort to foster a culture of human rights for the LGBTQ community, achieved through education, training, and public awareness campaigns. Embracing this shift in perspective can pave the way for a more equitable and just society where the rights and dignity of all individuals are respected and upheld.

## CONFLICT OF INTERESTS

None.

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