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CHALLENGES TO SAME SEX MARRIAGE- A COMPREHENSIVE ANALYSIS FROM SOCIO- LEGAL PERSPECTIVE

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Abstract-

The LGBT rights has been a burning question in 21st century socio-legal landscape. One of the prominent questions of them is same sex marriage. The demand for marital rights by LGBT community has been the centre of LGBT movement as it can be the destination of their demand. The recognition of same sex marriage can give LGBT community a legally justified position for societal acceptance. But the Hon'ble supreme court has denied the right of marriage to same sex couples.¹ This denial is creating a conflict between constitutional morality and social reality. So, this paper will discuss about the challenges that are creating a problem in the path of legal recognition of marital rights of same sex couples.

Keywords- same-sex marriage, LGBT, homosexuality, marital right, Supriyo @ Supriya Chakraborty v Union of India

Introduction-

The institution of marriage has long been regarded as a cornerstone of human society, deeply embedded within social, cultural, religious, and legal frameworks. Traditionally viewed as a union between a man and a woman, marriage has undergone substantial transformation, particularly in the context of evolving understandings of gender and sexuality. In recent decades, the global discourse surrounding the legal recognition of same-sex marriage has intensified, sparking debates that traverse moral, religious, legal, and societal boundaries. While many countries have legalized same-sex unions, recognizing them as equal to heterosexual marriages, India has denied its recognition. In India, this journey toward universal acceptance remains fraught with multiple socio-legal challenges. Despite the landmark *Navtej Singh Johar v. Union of India*² judgment, which decriminalized consensual homosexual acts by striking down Section 377 of the Indian Penal Code, 1860, the legal and social acceptance

¹ Supriyo v. Union of India [2023] SCC OnLine SC 1348

² Navtej Singh Johar v. Union of India, [2018] 1 SCC 791

of same-sex unions continues to face significant resistance, the Same-sex couples in India continue to face legal invisibility and societal prejudice when it comes to marriage. Also, the judiciary through the case of *Supriyo @ Supriya Chakraborty v. Union of India*³ have denied the legal recognition of same sex marriage, which makes it more difficult for the non-heterosexual couples to get recognition of their relationship. The reasoning behind this judicial reluctance is that the marriage is a matter within the scope of legislature, which shows hesitance of judiciary to confront the deeply rooted societal prejudice and reveals a critical gap between the constitutional morality and social reality. This creates a legal vacuum which leaves same-sex couples without access to the numerous rights and protections associated with marriage, afforded to heterosexual married couples under various personal and civil laws. These include rights associated with inheritance, maintenance, adoption, medical decision-making, taxation, and social security benefits.

Statement of Problem-

The core of the problem lies in the heteronormative structure of existing Indian marriage laws, such as the Hindu Marriage Act, Special Marriage Act, and personal laws applicable to Muslims, Christians, and other communities. These laws explicitly or implicitly define marriage as a union between a male and a female, thereby excluding same-sex couples from their scope. In addition to legal constraints, same-sex couples also face significant societal stigma, cultural conservatism, and religious opposition, which collectively hinder their ability to live openly and with dignity. This situation raises a serious question: what are the socio-legal impediments in recognition of same sex marriages in India?

Research Objectives-

The primary objective of this article is to address the socio-economic challenges faced by same sex couples in India in quest for recognition of their rights.

The specific objectives of this article are-

- To examine the present status of same-sex marriage in India.
- To identify the legal and social impediments faced by queer couples.
- To analyse the judicial pronouncement and legislature's respond towards this issue.
- To propose solution and reforms to be made that align with constitutional morality and social reality.

³ Supriyo v. Union of India [2023] SCC OnLine SC 1348

Research Questions-

This study seeks to address the following key research questions to explore the socio-legal challenges surrounding same-sex marriage in India:

- What are the existing laws in India concerning marriage, and how do they exclude same-sex couples?
- How have Indian courts responded to petitions for same-sex marriage recognition?
- How does India's stance compare with global trends on marriage equality?
- What legal reforms are necessary to ensure marriage equality in India?

Research Hypothesis-

The hypothesis for this article can be framed as "Despite the decriminalization of homosexuality, The socio-legal challenges pertaining within India are the factors behind non-recognition of same sex marriage."

Literature review-

The issue of same-sex marriage in India lies somewhere between the complex dynamics of constitutional law, social reform, human rights, and cultural traditions. After the decriminalization of homosexuality in 2018, the discussion about the LGBTQ+ community and their rights. Also, huge number of academic, judicial, and activist research and articles has been published around LGBTQ+ rights. The literatures on same-sex marriage in India reflects a dynamic but incomplete narrative. Legal scholars and human rights activists have made compelling arguments grounded in constitutional law, dignity, and international human rights principles. However, marriage as an institution remains heavily guarded by socio-cultural values that are often exclusionary and patriarchal. The absence of legislative action and the cautious approach of the judiciary reflect an ongoing tension between progressivism and traditionalism. To bridge this gap, more socio-legal empirical studies are needed that explore how law interacts with everyday realities. So, this article seeks to explore the challenges that same-sex couples face in their pursuit of marriage equality in India, from both social and legal perspectives. It also investigates why India's legal system continues to resist marriage equality despite progressive rulings on LGBTQ+ rights. It examines the contradictions between constitutional guarantees of equality (Articles 14, 15, 21)⁴ and the heteronormative assumptions underpinning personal laws like the Hindu Marriage Act, 1955 and the Special

⁴ Constitution of India 1950

Marriage Act, 1954. The study also draws upon international legal developments and comparative jurisprudence to contextualize India's position within the global landscape.

Marriage in India-

Marriage is one of the foundational social institutions within any society. It is a dynamic and evolving institution deeply influenced by centuries of tradition, religious beliefs, socio-political changes, and legal reforms. Marriage serves as both a legal contract and a cultural symbol across societies. In the Indian context, marriage transcends individual relationships—it is deeply embedded in religious traditions, caste structures, and kinship networks that define social identity and belonging. Marriage provides state-sanctioned legitimacy, granting access to a spectrum of rights, such as inheritance claims, spousal insurance, medical decision-making authority, tax benefits, and parental recognition. Beyond its legal dimensions, marriage in India is deeply entwined with family honour, religious customs, caste identities, and community expectations in the Indian social landscape. It is often considered a rite of passage and a cornerstone of adulthood and societal legitimacy.

From a historical point, the concept of marriage finds its earliest expressions in the Vedic era texts and literatures. In the Vedic period, marriage was predominantly regarded as a sacred sacrament (*samskara*) due to the Sanatana culture, and it was one of the essential obligations of life.⁵ Various forms of marriage were categorized during this era, such as *Brahma Vivah* (marriage arranged by the families based on the groom's merit), *Gandharva Vivah* (marriage based on mutual love), and others like *Rakshasa Vivah* and *Asura Vivah*, which were later disapproved.⁶

However, during the British era, the colonial rule (1757-1947) fundamentally altered India's marital landscape through a dual process of legal codification and social reform. During British colonial rule, personal laws for different religious communities were codified, creating formal distinctions between various marriage systems. Victorian moral values gradually influenced the legal reforms of personal laws. The legislations such as the Hindu Widow Remarriage Act of 1856 and the Special Marriage Act of 1872 marked early attempts to reform marital customs and allow inter-caste and interfaith marriages through secular legal procedures.

⁵ Edward Westermarck, *the history of human marriage* (The Allerton book company, 1922)

⁶ J.D.M. Derrett, *religion, law and the state in India* (Oxford university press, 1999)

Even culturally the marriage has very contrasting perception. In Hindu culture, marriage is a sacrament, one of the sixteen *samskara*, symbolizing the union of two souls and a religious duty to relieve the *Pitra Rina* by procreation. While on the contrast, under Muslim personal laws, marriage is considered as a civil contractual relationship grounded in mutual rights and responsibilities. The Cristian marriages considered as sacrament symbolizing the union of Christ with church. In Sikhism, marriage signifies the spiritual union of two individuals moving together towards God known as *Anand Karaj*. So being a culturally rich state, marriage in India is seen through multiple lenses.

Marriage Under Legal Statutes-

Post independence, the Indian legislature made personal law reforms and enacted multiple laws to regulate the marriage, particularly keeping the idea of secularism in view to uphold the constitutional tenets of religious freedom and secularism.

Hindu Marriage Act, 1955- The Hindu Marriage Act of 1955 codifies marriage among Hindus, Jains, Sikhs, and Buddhists. It reiterates marriage as a sacred union, but incorporates modern elements like conditions for valid marriage, grounds for divorce, and monogamy requirements. Section 5 of the Act⁷ defines marriage as a union between a Hindu male and female, outlining the requirement of specific conditions, including monogamy, appropriate age, mental soundness, and absence of prohibited relationships. The Act⁸ recognizes both religious ceremonies (like *saptapadi*) and civil registration, reflecting the legislature's attempt to balance tradition with modernity. But the act did not talk about non-heterosexual couples, excluding them highlights the weak spot of this legislation.

Muslim Personal Law (Shariat) Application Act, 1937- Muslim personal laws are mostly uncodified which creates a unique constitutional challenge. However, the Muslim personal law (Shariat) application act, 1937 defines marriage as a contractual agreement, with essential components such as offer (*Ijab*), acceptance (*Qubul*), and the payment of *Mahr*.

Special Marriage Act, 1954- It is a landmark statute representing Indias most progressive marital legislation, allowing interfaith and civil marriages without religious rituals. The Special Marriage Act of 1954 provides a civil form of marriage applicable to individuals of any religion

⁷ Hindu Marriage Act 1955, s 5

⁸ Hindu Marriage Act 1955, s 7

or no religion at all. Section 4⁹ establishes marriage as a contractual union based on mutual consent between “any two persons” without religious specifications.

Other relevant legislations- Indian Christian Marriage Act, 1872, Parsi Marriage and Divorce Act, 1936 are other legislations regulating marriages in India.

All these regulations discussed above have viewed marriage as a union between a man and woman, categorically excluding same sex couples, either explicitly or impliedly.

LGBTQ+ rights, Marriage equality and demand for same sex marriage-

In India, the demand for legal recognition and protection for LGBT individuals gained momentum with a series of landmark judicial interventions, beginning in the 2000s. But the most historic feat was the legal recognition of transgender people as third gender by the Hon'ble Supreme Court.¹⁰ Through this decision, the Hon'ble Court affirmed their rights to self-identification, social inclusion, and protection under the law to transgender people and LGBTQ+ community, marking a significant shift in the judicial attitude toward gender diversity.¹¹ This decision also gave a great boost to the LGBT movement.

Navtej Singh Johar v. Union of India¹²-

With the recognition of transgender as third gender the demand for LGBT rights increased. A new petition challenging the constitutional validity of section 377¹³ was filed in supreme court. The court finally constituted a constitutional bench comprising Chief Justice Dipak Misra, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud, Justice R.F. Nariman, and Justice Indu Malhotra to decide this matter. On 6th September 2018, the five-judge Bench struck down a part of section 377¹⁴, which criminalizes same-sex relationships between consenting adults. Individuals who identify as LGBT can now engage in consensual intercourse lawfully. The Court upheld the part of Section 377¹⁵ which was prohibiting non-consensual intercourse or sexual acts on animals. The four judgments unanimously invalidated Section 377¹⁶ based on a violation of fundamental rights. They determined that Section 377¹⁷ violates the

⁹ Special Marriage Act 1954, s 4

¹⁰ National Legal Services Authority v. Union of India [2014] 5 SCC 438

¹¹ National Legal Services Authority v. Union of India, [2014] 5 SCC 438

¹² [2014] 5 SCC 438

¹³ Indian Penal Code 1860, s 377

¹⁴ Indian Penal Code 1860, s 377

¹⁵ Indian Penal Code 1860, s 377

¹⁶ Indian Penal Code 1860, s 377

¹⁷ Indian Penal Code 1860, s 377

Constitution's¹⁸ Articles 14 and 15 by discriminating against individuals based on their sexual orientation and/or gender identity. Additionally, they ruled that Section 377¹⁹ violates the rights to life, dignity, and personal autonomy guaranteed by Article 21²⁰. This judgment not only decriminalized homosexuality but also laid a foundation for future demands such as marriage equality and anti-discrimination legislation. This judgement, however, did not address marriage or civil rights for LGBT couples but recognized that everyone the freedom of sexual orientation including homosexual people.

Despite this decriminalization, same-sex couples in India lack legal recognition. Marriage laws, such as the Special Marriage Act, 1954 and personal laws (Hindu Marriage Act 1955, Muslim Personal Laws), neither include same-sex unions nor any efforts were made in this regard. This exclusion denies LGBT couples rights like inheritance, adoption, and spousal benefits. So, the constitutional demand for marriage equality has emerged as the next frontier in LGBTQ+ rights. In recent years, petitions have been filed seeking marriage equality under the Special Marriage Act. The most prominent of them was *Supriyo @ Supriya Chakraborty v. Union of India*²¹, a case demanding legal recognition for same-sex marriages.

Supriyo v. Union of India, 2023 SCC OnLine SC 1348-

Supriyo Chakraborty and Abhay Dang, along with 20 other couples reached supreme court with the primary demand that the language of the Special Marriage Act, 1954 should be interpreted in a gender-neutral manner to permit same-sex couples to legally marry. They highlighted the adverse effects of being denied legal recognition—ranging from denial of next-of-kin rights in emergencies to exclusion from health insurance and property benefits. The petitioners made compelling arguments rooted in fundamental rights jurisprudence. They contended that exclusion of same sex marriage from marriage laws constituted discrimination violating Article 14's equality guarantee and Article 15's prohibition of discrimination based on sexual orientation toward same sex couples. The petitions emphasized how denial of marital status infringed upon Article 19's freedom of expression and Article 21's protection of life and dignity²², particularly regarding rights to inheritance, adoption, medical decision-making, and spousal benefits.

The Union Government places strong opposition, making three principal arguments. First, it

¹⁸ Constitution of India 1950

¹⁹ Indian Penal Code 1860, s 377

²⁰ Constitution of India 1950

²¹ [2023] SCC OnLine SC 1348

²² Constitution of India 1950

asserted that Indian societal values and traditions did not accommodate same-sex unions. Second, it maintained that any modification to marriage laws fell exclusively within Parliament's legislative domain. Third, it proposed civil unions as a potential compromise, stopping short of endorsing full marriage equality. The government also argued that the absence of a statutory bar against same-sex relationships (post-Navtej²³) did not imply an obligation to affirmatively recognize same-sex marriages.

The five-judge Constitution Bench, presided over by Chief Justice D.Y. Chandrachud, delivered a complex verdict reflecting the judiciary's cautious approach to this socially challenging issue. The Bench wrote four opinions. Which are as follows-

- All five Judges found that there is **no fundamental right to marry** under the Constitution. the Court found that the institution of marriage cannot be elevated to the realm of a fundamental right based on the importance people accord to it or the content of marriage laws. As the right to marry is a personal preference which confers social status, it is not an enforceable right which courts can compel the government to provide.
- All five Judges further held that the Special Marriage Act, 1954 allows marriage only between a male and a female and cannot be interpreted to cover non-heterosexual marriages as this would amount to an extensive re-writing of the law beyond the role of the Court. Reading gender-specific terms in the Special Marriage Act (e.g., "man" and "woman" or "bride" and "bridegroom") gender neutrally (to mean "spouse") to allow same sex marriages would involve rewriting the law, which was the role of Parliament and not the Court. The Court noted that various provisions of the Special Marriage Act specifically referred to 'men' and 'women' and treated them differently (e.g., specifying different legal ages for marriage and different rights on issues of divorce, maintenance, and inheritance). Thus, applying the Special Marriage Act to same-sex couples would lead to numerous complications when applying the gender-specific provisions of the law. So, the **Court did not strike down the Special Marriage Act, 1954 as unconstitutional**. However, Justice Kaul found that the Act's failure to provide for same-sex marriage was discriminatory but did not strike it down for the same reasons as the Chief Justice.
- The court denied the legal recognition for civil unions of LGBTQIA+ couples. All five judges held that queer persons have the right to relationships and choice of partners under Article 21. However, a majority of three judges (Justices Bhat, Kohli, and

²³ [2018] 10 SCC 1

Narasimha) did not recognise a right for non-heterosexual couples to form legally recognized civil unions. They noted that recognizing civil unions would involve creating a separate legal framework for such unions, including registration, eligibility, age restrictions, and other rights related to marriage, which is beyond the power of the Court. However, Chief Justice Chandrachud and Justice Kaul (in the minority) ruled that queer couples have the right to enter in a civil union, and the State has a corresponding duty to recognize such unions.

- The Supreme Court held that **a transgender person in a heterosexual relationship is entitled to marry**. A majority of three judges (Chief Justice Chandrachud, Justice Bhat, and Justice Kohli) expressly stated that transgender persons in heterosexual relationships as well as Intersex persons who identify as either male or female have the right to marry under existing law. The Court reasoned that marriage laws in India permit marriages arising out of heterosexual relationships. The existing laws such as the Special marriage act, 1954 or other personal laws describe a marital relationship between a 'man' and a 'woman', 'husband' and a 'wife', 'bride and a bridegroom'.

Furthermore, the court issued several consequential directives. It mandated formation of a high-level government committee to examine practical solutions for protecting queer couples' rights in areas like hospital visitation and joint financial accounts. The judgment also reinforced constitutional protections against discrimination based on sexual orientation, building on previous progressive rulings.

Challenges in legal recognition of same sex marriage-

The legal vacuum created due to the denial of same sex marital right further contributes to the ongoing discrimination against LGBTQ+ individuals and raises important questions about equality, dignity, and constitutional rights. The legal framework governing marriage in India is deeply rooted in religious personal laws and statutory provisions that exclude same-sex couples, leading to conflicts between constitutional morality and societal reality. The challenges in recognition of same sex marriage are multifaceted.

Statutory challenges-

India faces significant challenges in reconciling personal laws with the recognition of same-sex marriage. Existing personal laws, including the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and others, define marriage as a union between a man and a woman. The country's marriage laws remain deeply rooted in heteronormative traditions, systematically

excluding LGBTQ+ couples from marital rights and protections. Personal laws like Hindu marriage act and Shariat laws did not accommodate same sex marriage and only recognise marriage as union between male and female.

The Special Marriage Act 1954, despite being a progressive legislation, failed to accommodate for the same sex marriages and explicitly uses the gender-oriented terms like male and female. While activists have pushed for gender-neutral amendments, the government has resisted, maintaining that marriage in India remains a heterosexual institution.

Further, beyond the matrimonial statutes, Adoption laws, including the Juvenile Justice Act and Hindu Adoption and Maintenance Act, favour married heterosexual couples, making joint adoption nearly impossible for LGBTQ+ partners. Inheritance laws, such as the Hindu Succession Act, 1956 predicate spousal rights on legally recognized marriages, excluding same-sex partners from automatic succession benefits. A same-sex spouse cannot be a legal nominee for government benefits, health insurance, or even hospital visitation rights. Medical and insurance regulations also fail to acknowledge same-sex relationships in critical areas like hospital visitation rights, medical decision-making authority, and insurance beneficiary designations. Tax laws, pension schemes, and property inheritance rules all assume and support heterosexual marriages, rendering same-sex partners legally irrelevant in the eyes of the state. So, all these laws create a legal invisibility around the same sex couples. These legal gaps compound the disadvantages faced by LGBTQ+ couples in India.

Absence of alternative legal framework like Uniform civil code etc.-

Unlike other countries that offer civil unions or domestic partnership registries, India lacks any legal mechanism that could override religious personal laws and provide a secular framework for same-sex couples to formalize their relationships. This lack of a Uniform Civil Code further expands this legal vacuum, as religious personal laws continue to dominate in the space marital regulations without a secular, inclusive alternative.

Constitutional challenges-

The Indian Constitution guarantees several fundamental rights that are directly relevant to the recognition of same-sex marriage, yet their interpretation has created significant legal hurdles. Article 14²⁴ ensures equality before law and equal protection of laws, while Article 15²⁵ prohibits discrimination on various grounds including sex are directly violated due to the non-

²⁴ Constitution of India 1950, art 14

²⁵ Constitution of India 1950, art 15

recognition of same sex union. The government has argued that marriage is a statutory right rather than a fundamental right, allowing Parliament to restrict it to heterosexual couples. This creates a constitutional paradox where personal liberty under Article 21²⁶ - which includes the right to choose one's partner- clashes with the state's authority to regulate marriage through legislation. The Supreme Court by Supriyo's case stopped short of extending this to marriage rights, creating what legal scholars call "rights without remedies"²⁷.

Judicial limitations-

Despite significant advancements in LGBTQ+ rights, including the decriminalization of homosexuality in the *Navtej Singh Johar v. Union of India*²⁸ case, the recognition of same-sex marriage remains elusive, largely due to judicial interpretation and the Indian judiciary's cautious approach to such socially sensitive issues. However, Justice Indu Malhotra's observation that "history owes an apology to LGBTQ+ community" wasn't accompanied by substantive civil rights recognition, which could have been a very progressive step. The recent Supriyo²⁹ judgment revealed the judiciary's institutional limitations. The Court held that the right to marry was not a fundamental right under the Indian Constitution and emphasized the separation of powers, stating that the issue must be addressed by the legislature. While sympathetic to the petitioners, the judiciary deferred to Parliament to address the broader legal vacuum through appropriate legislation.³⁰ Moreover, there is also the conservative judicial approach toward social reforms, particularly in relation to marriage and family law. While the Indian judiciary has often been at the forefront of upholding fundamental rights, it has displayed restraint when it comes to dealing with marriage laws. Courts have consistently held that marriage laws fall within Parliament's domain (*Lata Singh v. State of UP*³¹). In Supriyo, the bench emphasized that reading down gender-specific provisions in marriage laws would amount to judicial legislation. This is influenced by societal and cultural sensitivities, with judges often hesitant to make decisions that could spark public outcry or political backlash. The reluctance to challenge deeply ingrained societal norms further limits the judiciary's intervention on such matters.

²⁶ Constitution of India, art 21

²⁷ G. Bhatia, 'The Supriyo Judgment: Rights Without Remedies' [2023] Indian law review

²⁸ [2018] 10 SCC 1

²⁹ Supriyo v. Union of India [2023] SCC OnLine SC 1348

³⁰ N. Baruah, 'Supreme Court of India's Verdict on Same-Sex Marriage: A Setback or a Stepping Stone?' [2023] Indian Journal of Constitutional Law

³¹ *Lata Singh v. State of U.P.* [2006] 5 SCC 475

Legislative reluctance and governments opposition-

One of the major barriers to the legal recognition of same-sex marriage in India is legislative inertia and political sensitivities. Despite the progress made in decriminalizing homosexuality, the Indian legislature has been slow to address the issue of same-sex marriage, primarily due to the complexities surrounding political and social acceptance.

The Indian government has consistently opposed the legalization of same-sex marriage, citing social and cultural norms contesting that the traditional concept of family, i.e., husband, wife and children must be preserved. There have been calls for legislative change from LGBTQ+ rights advocates and legal experts, the Indian Parliament has not taken any significant steps to amend existing laws or introduce new legislation to recognize same-sex marriages. This stance reflects a lack of political will to address LGBTQ+ issues proactively. Moreover, religious and cultural opposition has played a significant role in shaping political discourse, often portraying same-sex marriage as contrary to Indian ethos.³²

Social stigma-

Social stigma surrounding LGBTQ+ individuals is another major barrier. In many parts of India, being gay, lesbian, bisexual, or transgender is still considered taboo and often associated with criminality or abnormality. Social stigma surrounding homosexuality is very pervasive, particularly in rural and semi-urban areas, where conservative values dominate family and community life. This stigma leads to discrimination in various aspects of life, including employment, education, and healthcare, which can discourage individuals from publicly acknowledging their sexual orientation or gender identity. LGBTQ+ individuals often face rejection from their families and communities, leading to social exclusion and mental health challenges, including depression and anxiety.³³ Families often disown or forcibly marry LGBTQ+ individuals to uphold social norms. This pressure results in many same-sex couples living in secrecy, denying them the public visibility and validation afforded to heterosexual couples. A 2019 study by the Humsafar Trust found that 60% of gay men in India face familial coercion to marry women. This social ostracization can extend to employment discrimination, denial of housing, and even physical violence, with limited recourse to legal remedies due to fear of further harassment or exposure.³⁴

³² M. Sharma, 'The politics of marriage equality in India' [2022] Indian political journal

³³ Indian journal of psychiatry, *Social Stigma and Mental Health Among LGBTQ+ in India*, (2019)

³⁴ R. Chakraborty, 'Changing Attitudes Towards LGBTQ+ Rights in Urban India' [2023] Journal of South Asian Social Issues.

Cultural resistance and stereotypes-

The cultural resistance to same-sex marriage is also reinforced by a lack of widespread awareness and education about LGBTQ+ issues. Many Indians remain unaware of the struggles faced by the LGBTQ+ community due to the limited visibility of LGBTQ+ persons in mainstream media and public life. Public opinion is significantly shaped by the media. The lack of diverse and positive depiction of LGBTQ+ people in the media have contributed to the spread of misconceptions and stereotypes. Bollywood and regional cinema have historically mocked or villainized LGBTQ+ characters, reinforcing stereotypes. Media representation has improved in recent years but often remains stereotypical. While some progressive platforms highlight queer narratives, mainstream media still tends to portray LGBTQ+ individuals through caricatures or as sources of comic relief. This perpetuates harmful stereotypes and impedes broader social acceptance. Recent films like *Shubh Mangal Zyada Saavdhan* (2020) attempt positive representation, conservative groups have protested such depictions as “corrupting Indian values”.

Religious opposition-

In India, religion play a significant role in shaping societal attitude. India’s pluralistic society is home to diverse religious communities, each with distinct views on marriage and sexuality. Religious doctrines across the major religions—Hinduism, Islam, Christianity, and others—tend to uphold a conservative view of marriage as a union exclusively between a man and a woman. This religious opposition is a major barrier to the legalization of same-sex marriage and the broader acceptance of LGBTQ+ rights in the country. These oppositions from religious groups are deeply intertwined with traditional norms and social expectations surrounding marriage. In India, marriage is seen as a cornerstone of family and social life, and deviations from heteronormative structures are viewed as threats to the social order. Traditional norms also emphasize the roles of women and men within a marriage, with marriage being seen as a duty to one’s family and society. This deeply rooted cultural framework contributes to resistance to the recognition of same-sex marriages.

Institutional challenges-

Institutional challenges are equally made it challenging for LGBTQ+ community for recognition of their basic rights. In the absence of specific anti-discrimination legislation that protects LGBTQ+ individuals, public and private institutions are under no obligation to accommodate non-heteronormative identities. Hospitals may deny visitation or consent rights

to same-sex partners; insurance providers frequently exclude non-spousal partners from family coverage; and government schemes often fail to recognize same-sex households. Administrative forms, ranging from bank applications to passport forms, continue to use binary gender language and heterosexual categories such as “husband” and “wife,” excluding or confusing non-conforming individuals.

Education systems also contribute to the problem. LGBTQ+ issues are largely absent from school curricula, and students who identify as queer often face bullying, harassment, or exclusion. A lack of supportive infrastructure—such as counselling services or inclusive policies—prevents educational institutions from serving as safe spaces for queer youth. This results in higher dropout rates, poor mental health, and reduced access to economic opportunities.

Legal Recognition of Same Sex Marriage- International Perspective-

The recognition of same-sex marriage has emerged as one of the most significant legal and socio-political issues of the 21st century, highlighting the intersection of human rights, constitutional morality, religious values, and cultural identity and social reality. Over the last two or three decades, there has been a global trend toward the legal acceptance of same-sex unions, reflecting a broader commitment to equality, non-discrimination, and the protection of minority rights. About 38 countries till date 2025 have recognized the same sex marriage, with Thailand being the latest joining.

The Netherlands was the first country in the world to legalize same-sex marriage in 2001, marking a historic moment in the fight for LGBTQ+ rights. **Belgium** legalized same-sex marriage in 2003, while **Spain** followed in 2005, and **Sweden** in 2009. In North America, **Canada** became the first country outside Europe to legalize same-sex marriage nationwide in 2005. The **United States** legalized same-sex marriage in 2015 through the landmark Supreme Court ruling in *Obergefell v. Hodges*³⁵, affirming that the right to marry is a fundamental constitutional right under the Fourteenth Amendment. In Latin America, **Argentina** was the first in the region to do so in 2010, followed by **Uruguay** in 2013. In Oceania, **New Zealand** became the first country in the region to allow same-sex marriage through legislation in 2013. **Australia** followed in 2017 amended the Marriage Act 1961, granting marriage equality. Asia remains largely conservative, with **Taiwan, Nepal and Thailand** emerging as the only exceptions thus far.

³⁵ *Obergefell v. Hodges* [2015] SCC OnLine US SC 6

Role of intentional instruments-

International human rights instruments have played a crucial role in the global movement for the recognition of same-sex marriage, pushing for equality and non-discrimination based on sexual orientation. **Article 16 of the UDHR**³⁶ asserts that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.” While the UDHR does not explicitly mention sexual orientation, its broad principles of equality and non-discrimination have been foundational in advocating for the right of same-sex couples to marry. The **International Covenant on Civil and Political Rights (ICCPR)** further emphasizes the right to marry and form a family under Article 23³⁷. The United Nations Human Rights Committee, which oversees the implementation of the ICCPR, has interpreted these provisions to include the rights of same-sex couples. Additionally, **the European Convention on Human Rights (ECHR)**, adopted in 1950, has been influential in shaping the rights of LGBTQ+ individuals within Europe. The European Court of Human Rights (ECtHR) has consistently interpreted the convention’s provisions, particularly the right to family life, to extend protections to same-sex couples. Even, the **Yogyakarta principles**, a set of 29 international legal principles on the application of the international law to human rights violations based on sexual orientation and gender identity, bring greater clarity and coherence in state’s obligations to human rights regarding homosexual people. The principle 24 states that, “Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination based on the sexual orientation or gender identity of any of its members.” The Supreme Court in the NALSA judgement³⁸ had recognized Yogyakarta Principles and had ruled that they should be applied as a part of Indian law.

Comparative Analysis: India And the Nations Recognizing Same-Sex Marriage—

A comparative analysis between India and nations that have legalized same-sex marriage reveals varying motivations, processes, and outcomes in terms of societal acceptance and legal equality for LGBTQ+ individuals. The first and foremost reason behind this recognition is the progressive judicial interpretation of Constitution. The nations like United States and Canada have interpreted their constitutions as guaranteeing marriage equality through expansive readings of equality clauses. In *Obergefell v. Hodges*³⁹, the U.S. Supreme Court held that the

³⁶ Universal Declaration of Human Rights 1948, art 16

³⁷ International Covenant on Civil and Political Rights 1966, art 23

³⁸ National Legal Services Authority v. Union of India [2014] 5 SCC 438

³⁹ *Obergefell v. Hodges* [2015] SCC OnLine US SC 6

Fourteenth Amendment's Due Process and Equal Protection Clauses protect the right of same-sex couples to marry, emphasizing dignity and equal citizenship. In contrast the India's apex court, despite giving a progressive ruling of decriminalizing homosexuality, have denied the fundamental right to marry.

Furthermore, in many Western nations, judicial rulings have compelled legislative changes. Canada's *Civil Marriage Act (2005)* followed advisory opinions from provincial courts, while the UK's *Marriage (Same-Sex Couples) Act 2013* was influenced by the European Convention on Human Rights.⁴⁰ Even in Taiwan, the Constitutional Court's 2017 ruling forced legislative recognition by 2019. But in India, the court has said that marriage is a subject of legislative competence and segregated itself. This highlights a key difference: in progressive nations, courts often lead social change, whereas in India, courts defer to a reluctant legislature.

Further highlighting the contrast, countries like Spain and Portugal legalized same-sex marriage through parliamentary consensus and legislative activism, reflecting broader social acceptance. However, India's Parliament has remained largely silent on the issue, with most political parties either opposing or avoiding the subject due to its perceived cultural and electoral sensitivity.

Unlike Western countries where LGBTQ+ advocacy has been mainstreamed into civil society movements and political agendas, in India, the movement remains relatively nascent and often marginalized. India faces deeper structural barriers. Personal laws (Hindu, Muslim, Christian) govern marriage, making uniform reform difficult.

Lessons from global trend for India-

The global trend towards the recognition of same-sex marriage offers several lessons for India, a country that has historically been conservative to such legal reforms. One of the most important lessons India can learn from the global experience is the importance of human rights in shaping public policy. Countries such as Canada, the Netherlands, and South Africa have adopted same-sex marriage based on the principles of equality and non-discrimination. In these jurisdictions, the legal recognition of same-sex marriage was seen as an extension of fundamental human rights. India's constitution also guarantees equality under Article 14, and the principle of non-discrimination is also embedded in Article 15, which could form the basis for legal challenges to laws that deny same-sex couples the right to marry. Also, the Article 21 Indian constitution guarantee right to life and personal liberty that is a basic human right

⁴⁰ M. Smith, 'The Global Rise of Same-Sex Marriage' [2020] Cambridge University Press

principle and must be given to everyone including non-heterosexual peoples. These provisions can guide India in aligning its marriage laws with its constitutional values and international human rights standards. Another lesson is the role of judicial activism in catalysing change. The United States' Supreme Court's 2015 *Obergefell v. Hodges*⁴¹ ruling and the South African Constitutional Court's decision in *Minister of Home Affairs v. Fourie*⁴² both played pivotal roles in legalizing same-sex marriage. India can draw inspiration from these judicial precedents, especially following the *Navtej Singh Johar v. Union of India* judgment, which decriminalized homosexuality and emphasized the need to protect individual dignity and equality.

Need for judicial interventions and legal reforms-

The Indian legal framework does not provide for same-sex marriage and the rights and privileges that accompanied by marital status. This denial not only perpetuates social exclusion but also raises critical questions about the scope of constitutional guarantees and the role of the judiciary in upholding them. However, the discourse surrounding same-sex marriage in India has witnessed a dramatic evolution over the past few decades, with a growing demand for legal recognition of marital rights. The need for legal reform and judicial intervention to recognize same-sex marriage in India has become increasingly urgent.

The Supreme Court acknowledged the fundamental rights of LGBTQ+ individuals under Articles 14 (equality), 15 (non-discrimination), 19 (freedom), and 21 (right to life and personal liberty) of the Indian Constitution through various judgements. Yet, the court has denied the same sex marriage, recognizing only heterosexual relationships.

The supreme court observed that transgender in heterosexual relationship who recognise themselves as male or female can marry. But the court, itself, in *Navtej Singh's*⁴³ case has recognized the freedom of sexual orientation under Article 21⁴⁴. So, the current observation seems contradictory with courts own previous observation. These contradictions pose some serious questions, such as-

- if one has the freedom to recognise them self as they are, then why they must identify themselves as male or female to get married?

⁴¹ *Obergefell v. Hodges* [2015] SCC OnLine US SC 6

⁴² *Minister of Home Affairs v. Marié Adriaana Fourie* [2005] SCC OnLine ZACC 20

⁴³ *Navtej Singh Johar v. Union of India* [2018] 10 SCC 1

⁴⁴ Constitution of India 1950, art 21

- if one has the freedom to choose its partner⁴⁵, then why does not give them legal recognition?
- Why one must identify themselves as a male or female in a relationship to be get married when there exist a third gender (transgender)⁴⁶, as recognized by supreme court?

It is very confusing as the court is contradicting its own previous decisions. The supreme court has the authority to issue order for inclusion of same sex marriage within current legal framework.

Furthermore, comprehensive legislative reform is needed to amend existing marital laws and include same-sex couples. Such reform would align India with other progressive countries that have recognized same-sex marriages and provided equal rights to LGBTQ+ individuals. Legal reform aligns statutory laws with constitutional values and the evolving jurisprudence on LGBTQ+ rights. The legislature bears the responsibility to amend existing marriage laws or enact a gender-neutral, secular civil union law. However, given the political sensitivity of the issue and the hesitation of lawmakers, the judiciary may need to play a proactive role, as it has in the past, to catalyse change. The necessity for judicial intervention stems from the doctrine of transformative constitutionalism, which envisions the Constitution as a living document committed to bringing about a society based on liberty and dignity. As Chandrachud J. observed in *Navtej Johar*, the role of the Court is “not to preserve the status quo but to recognize the dignity of those who have been marginalized.” Also, in minority opinion, Chandrachud J. Said that the queer couples have right to marry and it is the duty of state to recognise them. The judiciary must step in to interpret constitutional principles of equality, dignity, and personal liberty in a manner that extends to all individuals, irrespective of their sexual orientation.

Suggestions-

As India continues to evolve socially and constitutionally, the lack of legal recognition for same-sex marriage remains a glaring gap in the country’s commitment to equality and non-discrimination. comprehensive legal and policy reforms are essential to promote the dignity, autonomy, and equality of same-sex couples in India.

1. Amendments to Existing Marriage Laws:

One of the most direct legal reforms would be to amend the Special Marriage Act, 1954, to define marriage in gender-neutral terms. This would allow couples of any gender to

⁴⁵ *Shafin Jahan v. Asokan K.M.* [2018] 16 SCC 368

⁴⁶ *National Legal Services Authority v. Union of India* [2014] 5 SCC 438

marry without infringing upon personal religious laws. Making marriage laws inclusive of same- sex unions ensure the right to equality under Article 14, the right to life and personal liberty under Article 21, and protection from discrimination under Article 15 of the Constitution.

2. Adoption and Surrogacy Rights:

Current Indian laws such as the Juvenile Justice (Care and Protection of Children) Act, 2015 permit single individuals to adopt, but not same-sex couples jointly. This leads to legal ambiguity and denies the child the benefits of dual guardianship. Amendments must explicitly permit same-sex couples to jointly adopt and be recognized as legal parents. Furthermore, the Surrogacy (Regulation) Act, 2021 must be amended to allow same-sex couples to access altruistic surrogacy on equal terms as heterosexual married couples.

3. Inheritance and Property Rights:

To ensure financial and legal security, same-sex partners must be granted spousal rights under the Indian Succession Act, 1925 and other personal succession laws. This would enable the surviving partner to inherit property, pension benefits, and other entitlements, mirroring the rights of heterosexual spouses.

4. Employment and Health Benefits:

Legal recognition of same-sex marriages would allow LGBTQ+ partners to access spousal benefits in employment—such as insurance, health benefits, and family leave. Employers, both public and private, must be mandated by law to extend such benefits to all spouses, regardless of sexual orientation.

Implementation of universal civil code-

universal civil code may replace the religion based personal laws that which are regulating marriage and establish a uniform framework for the civil laws applicable to all equally. Also, the adoption of universal civil code may create a way for the adoption, inheritance and other institutional rights, that were denied to same sex couples.

Recognition of Civil Unions as an Interim Measure-

Until legislation with full marriage equality is legislated, the government may consider enacting a Civil Union Act that grants same-sex couples' legal recognition and associated rights such as inheritance, property, medical decision-making, and tax benefits.

5. Awareness and Sensitization Programs:

In parallel with legal reforms, the government must undertake Regular training and

sensitization programs for police personnel and government officials, which are necessary to eliminate prejudice and ensure effective implementation of LGBTQ+ rights. Judicial officers must be equipped to handle same-sex marriage cases with fairness and empathy.

6. Judicial Guidelines and Interpretation:

Pending legislative reforms, the judiciary must adopt a proactive stance by interpreting the Constitution in favour of expanding rights under Articles 14, 15, and 21⁴⁷ to cover same-sex marriages. Courts can also issue guidelines directing the registration of such marriages under the Special Marriage Act, thereby setting judicial precedent.

Conclusion-

The issue of same-sex marriage in India rests at the intersection of law, society, culture, and human rights. As the India progresses on the path of constitutional morality and individual liberty, the denial of marriage rights to same-sex couples stands in stark contrast to the guarantees enshrined under the Indian Constitution.

The paper has discussed about the how Indian society has viewed marriage, the impact it is making on legislative and judicial decisions and the challenges faced by same sex couple in their path of marital recognition. The paper has found that the statutes regulating marriages and personal laws in India are the primary reason behind this non-recognition. They are formed in such a manner that did not include same sex marriages. This statutory seclusion along with judicial hesitance and legislative reluctance has made it more challenging. Also, the social stigma and cultural resistance along with the religious views are not aligned with the idea of same sex marriage. This social denial is making it more challenging for both, judiciary and legislature, to not take any aggressive decision which hurts people's sentiments in a democracy like India, where religion plays a major role in decision making.

This paper has also observed some contradictions between judgements of supreme court. These contradictions need to be address as on one hand the judiciary is granting everybody freedom of sexual identity and granting transgender as the status of third gender. But on the other hand, it is denying the marital rights of homosexual saying that they have to identity themselves as male or female to get married and only a male and female can get married. Then what is the point of

⁴⁷ Constitution of India 1950

giving transgender people status of "third gender" and granting them freedom of sexual orientation.

However, the Indian judiciary has made some progressive decision regarding LGBT rights, but it has failed to recognise the same sex marriage citing marriage is a matter within legislatures scope. But the reluctant view of government shows that the legislature is of no opinion to recognise same sex unions as the union government believes that it will disturb the balance between personal laws and societal values.

But in all this, the actual people of LGBT community are facing the real problem. The LGBT community comprises 10% of total population in India, that is, more than 140 million people, who are being denied of their marital rights. This is not only the denial of marriage but also the rights associated with it. The paper has suggested some measures which can be taken to provide marital equality to LGBT community and provide them the right of equality, non-discrimination, expression and life and liberty given to all by Indian constitution. This recognition of marital rights is also essential for the social acceptance of LGBT community in Indian society.

