

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

THE IMPACT OF SAME-SEX MARRIAGE LEGALIZATION: EXAMINING THE BROADER ISSUE OF LGBTQ+ RIGHTS AND EQUALITY

AUTHORED BY - KHUSHI DIXIT,

Law Student, University of Petroleum and Energy Studies

Equality means more than passing laws. The struggle is really won in the hearts and minds of the community, where it really counts.” – Barbara Gittings

ABSTRACT

The purpose of this paper is to examine the enormous social effects of same-sex marriage legalization and to examine the larger question of LGBTQ+ rights and equality. This study aims to shed light on the transformative effects of same-sex marriage legalization and its role in furthering LGBTQ+ rights by looking at the social, legal, and cultural repercussions of the historic change.

The paper starts by giving a thorough history of the background of same-sex marriage and the fight for LGBTQ+ rights. It explores the cases that were involved in the fight for marriage equality and identifies significant developments across the globe. It examines the advantages of marriage equality for LGBTQ people's mental health and wellbeing, including increased self-esteem, and enhanced family ties. The report also discusses how marriage equality can lessen prejudice and discrimination towards LGBTQ people in society.

Finally, this study digs into the remaining obstacles and research areas for the future. Despite advances, discrimination and inequality exist, especially for transgender and non-binary members of the LGBTQ+ community. The continued fight for transgender rights, healthcare access, and comprehensive anti-discrimination legislation is the next battleground in the fight for LGBTQ+ equality.

The study contributes to a thorough knowledge of how legalizing same-sex marriage will affect LGBTQ rights and equality by combining legal and social viewpoints. The conclusion will shed light on the progress made in promoting LGBTQ rights, point out areas that still need attention, and provide advice for decision-makers, activists, and scholars who are trying to make society more accepting and equal for LGBTQ people.

Keywords: same-sex marriage, LGBTQ+ rights, discrimination, equality, society

INTRODUCTION

One of the most important turning points in the ongoing fight for LGBTQ+ rights and equality is the legalization of same-sex unions. It serves as evidence of the effectiveness of activism, social transformation, and legal reform in influencing societal perceptions and attitudes concerning sexual orientation and gender identity. While same-sex marriage is frequently seen as a solitary success in and of itself, its effects go far beyond matrimonial rights. The goal of this study is to explore more into the consequences of same-sex marriage legalization to better understand how it affects and is affected by the larger problem of LGBTQ+ rights and equality.

While many nations have embraced the idea of marriage equality and made it legal for same-sex partnerships, other nations have chosen to uphold outdated notions of marriage that do not include LGBTQ+ relationships. In these situations, the denial of marriage rights to same-sex couples resonates through several areas of society, raising difficult considerations about human rights, societal norms, and legal systems.

¹In the case of *Supriyo v Union of India*, the Supreme Court does not recognize that same-sex marriage is legal. Same-sex marriage is still not recognized in India which is a matter of concern. If India legalizes same-sex marriage it will see a positive impact in society. Acceptance of same-sex marriage will promote acceptance of LGBTQ+ in society and will reduce discrimination among them in society. ²As per reports, 53% of Adults in India are in support of the legalization of same-sex marriage.

Issues of social justice, equality, and fundamental human rights are all touched on by India's non-legalization of same-sex unions. It is representative of the continuous fight for LGBTQ+ rights in a nation where culture, tradition, and modernity frequently converge. In addition to being important for India, understanding the dynamics and ramifications of this issue adds to the global conversation on LGBTQ+ rights by shedding light on the challenges that same-sex couples face

¹ "Same-Sex Marriage: The Petitioner Refers to Navtej Singh Johar Matter and Challenged the Constitutional Validity of Provision of Special Marriage Act, Foreign Marriage Act, and Hindu Marriage Act," SCC Online Blog (April 18, 2023), <https://www.sconline.com/blog/post/2023/04/18/same-sex-marriage-the-petitioner-refers-to-navtej-singh-johar-matter-and-challenged-the-constitutional-validity-of-provision-of-special-marriage-act-foreign-marriage-act-and-hindu-marriage-act-supreme/>.

² "53% of Adults in India Support Legalisation of Same-Sex Marriages, Finds Pew Research Center," The Wire (Publication Date not available), <https://thewire.in/lgbtqia/53-of-adults-in-india-support-legalisation-of-same-sex-marriages-finds-pew-research-center>.

in achieving full legal equality in a variety of cultural and legal contexts. The goal of this study is to clarify these complications and inspire additional debate and action in the direction of marital equality in India.

HISTORICAL EVOLUTION OF SAME OF SEX MARRIAGE

India, a country with a wide range of cultures, has a complicated past when it comes to accepting same-sex unions. Legal fights, societal changes, and the unwavering efforts of LGBTQ+ activists define the path from antiquated customs to colonial-era repression and, ultimately, to a more inclusive future.

India Before Colonization: A Cultural Tapestry

Diverse sexual orientations and gender identities were accepted and celebrated in ancient India. The acceptability of same-sex partnerships is alluded to in texts like the Kama Sutra and artworks from ancient temples. These cultural facets show that a range of gender and sexual identities were tolerated in ancient India.

Criminalization and Colonial Influence

But everything changed when British colonial authorities arrived. A strict perspective of sexuality was imposed on the subcontinent by the moral standards of the Victorian era. The Indian Penal Code passed Section 377 in 1860, outlawing "carnal intercourse against the order of nature." This Victorian-era regulation hurt same-sex relationships for more than a century.

Legal issues and advocacy

³Long after the British colonial era had come to an end, Section 377's legacy persisted. To overcome this antiquated law, it took decades of campaigning, judicial challenges, and public awareness campaigns. Organizations and people put out great effort to alter public opinion and demand that homosexuality be made less punishable.

Decriminalization, a Watershed Event

The turning point was the Indian Supreme Court's landmark decision in the ⁴case of Navtej Singh

³ "Analysis: Same-Sex Marriage in India," Legal Service India (Publication Date not available), <https://www.legalserviceindia.com/legal/article-8025-analysis-same-sex-marriage-in-india.html>.

⁴ "Navtej Singh Johar v. Union of India: Constitutionality of Section 377 IPC - Background," Supreme Court Observer (Publication Date not available), <https://www.scobserver.in/cases/navtej-singh-johar-v-union-of-india-constitutionality-of-section-377-ipc-background>.

Johar v. Union of India, which declared that consensual same-sex actions were no longer illegal in September 2018. This ruling was not just a legal turning point, but also a sign of shifting public perceptions of LGBTQ+ issues.

The promotion of same-sex marriage

The LGBTQ+ community and its supporters moved their focus to the urgent issue of same-sex marriage after using decriminalization as a step in that direction. One of the cornerstones of equality, according to activists, is the right to marry. Attempts to overturn the status quo and demand acknowledgment.

Political environment and public opinion

Even yet, there has been a progressive change in the public's attitude toward LGBTQ+ rights, especially same-sex unions. Legislative advancement is still a work in progress despite the support for LGBTQ+ rights expressed by politicians and MPs. Acknowledgment has been made through legal challenges and petitions.

The Future Route

The development of same-sex marriage in India historically shows a difficult path characterized by suppression, resiliency, and advancement. Although there are still issues, the legalizing of homosexuality and ongoing societal and legal debates give optimism for a time when same-sex marriage can find its proper place within the nation's cultural fabric.

LEGAL FRAMEWORK AND IMPACT

Significant events and landmarks have been reached on the path to legalizing same-sex marriage and recognizing LGBTQ+ rights and equality in India. Despite the advancements, problems, and ongoing struggles still exist. These significant occasions in India's journey toward LGBTQ+ rights and equality include:

- **Legal Challenge by the Naz Foundation in 2001:** The Naz Foundation (India) Trust petitioned the Delhi High Court in 2001 to decriminalize homosexuality. The complaint argued that Section 377 of the Indian Penal Code, which criminalized consensual oral and anal sex between adults in private, was unconstitutional. Section 377, according to the Naz Foundation, is unconstitutional. The first writ petition was dismissed by the Delhi High Court in 2004 due to a lack of a cause of action. However, a two-judge bench of the Delhi

High Court decided that criminalizing consenting homosexual sex between adults violates fundamental rights guaranteed by the Indian Constitution.

- **The Delhi High Court deemed homosexuality non-criminal in 2009:** ⁵In 2009, the Delhi High Court held that consensual same-sex intercourse between adults is not illegal. Section 377 of the Indian Penal Code (IPC) was declared illegal by the court because it infringed on the right to privacy and personal liberty. In addition, the court determined that Section 377 discriminated against the LGBTQ population. Section 377, which criminalized consenting same-sex actions between adults, was found to be unconstitutional by the Delhi High Court in the landmark Naz Foundation case. With this decision, homosexuality in India was effectively decriminalized.
- **Section 377 was reinstated by the Supreme Court in 2013:** Section 377 of the Indian Penal Code was reinstated by the Supreme Court of India in 2013. This reinstated the homosexuality taboo. The Supreme Court rejected a 2009 Delhi High Court judgment that decriminalized Section 377. The Supreme Court ruled that it was up to parliament to decide whether or not to repeal laws. The Indian Supreme Court overruled the Delhi High Court's verdict and reinstated Section 377, a blow to LGBTQ+ rights. This decision sparked significant protests and a resurgence of action.
- **2018 is a watershed year. Navtej Singh Johar Case:** In a landmark decision, the Supreme Court knocked down portions of Section 377, essentially decriminalizing homosexuality once more. Individual rights, dignity, and equality were highlighted by the court. Section 377 of the Indian Penal Code was pronounced unlawful by a five-judge bench unanimously. Section 377 made "carnal intercourse against the order of nature" a crime. The applicability of Section 377 to private consensual intercourse between men was deemed illegal by the court. In the Suresh Kaushal case, the court reversed its previous judgment.
- **The Kerala High Court has recognized transgender marriages in 2019:** In a groundbreaking move, the Kerala High Court accepted a transgender couple's marriage. This ruling established a beneficial precedent for the acceptance of LGBTQ+ couples. According to the Hindu Marriage Act of 1955, a marriage between a male and a transgender woman is valid. The court ruled that the marriage must be registered with the Registrar of Marriages. The judgment marked a watershed moment in 2019. In 2019, the

⁵ Naz Foundation v. Government of NCT of Delhi, 2009 160 Delhi Law Times 277, <https://www.livemint.com/Politics/sl3bjL7PX8MzUcOhPGEjyI/Delhi-high-court-decriminalizes-homosexuality.html>.

Madras High Court declared that the term "bride" in the Hindu Marriage Act includes transgender people.

- This decision permitted a marriage between a man and a transsexual woman to be registered.
- **Adoption Rights for Same-Sex Couples in 2020:** The Central Adoption Resource Authority (CARA) clarified that same-sex couples were entitled to adopt children, ensuring equal rights in adoption. The HAMA and JJ Acts in India allow a single person to adopt a child regardless of sexual orientation or gender. However, the law discriminates against same-sex couples by denying them the right to adopt. A single male, for example, cannot adopt a girl child. In the event of a married relationship, both spouses must agree to the adoption.

These events mark watershed points in India's march toward LGBTQ+ rights and equality, with a focus on the decriminalization of homosexuality, marriage recognition, legal reforms, and public acceptance. The Supreme Court still hasn't passed any law that can recognize same-sex marriage. In India, the subject of same-sex marriage is complicated, involving many cultural, religious, and legal perspectives. Cultural and religious beliefs are strongly embedded in Indian society and are frequently cited as reasons for opposing same-sex marriage. Marriage is regarded as a sacred institution in India from a cultural standpoint. It is regarded as a social compact between two families and as a means of carrying on family heritage and traditions.

GLOBAL COMPARISONS OF MARRIAGE EQUALITY

Same-sex marriage is not legally recognized in India. Although Section 377 of the Indian Penal Code has been decriminalized, same-sex marriage remains illegal. At the national level, LGBTQ+ rights are not protected by comprehensive anti-discrimination legislation. LGBTQ+ couples have the legal right to marry and enjoy the related legal advantages in countries that recognize same-sex marriage (e.g., Canada, the Netherlands, South Africa, and many more). These countries have comprehensive anti-discrimination legislation that protects LGBTQ+ people in a variety of situations, including employment and housing.

The lack of same-sex marriage recognition in India has resulted in hurdles to LGBTQ+ rights, such as limited access to spousal benefits, healthcare inequities, and adoption and inheritance issues. Recognition of same-sex marriage in progressive countries has considerably enhanced LGBTQ+ rights, offering equal access to legal protections and benefits. Societal acceptance is stronger in these countries, and LGBTQ+ people enjoy greater visibility and inclusion. India also

faces legal difficulties and ongoing issues connected to LGBTQ+ rights, including court disputes, advocacy, and efforts to gain broader recognition and protection. While same-sex marriage recognition is a big step forward, progressive countries are still working on topics such as transgender rights, non-binary recognition, and LGBTQ+ healthcare access.

LGBTQ+ activists and groups in India continue to work for legal recognition, anti-discrimination safeguards, and broader LGBTQ+ rights. Their efforts are critical in advocating for change and raising awareness about the community's inequities. In nations where same-sex marriage is already legal, lobbying activities frequently move to further LGBTQ+ rights, such as transgender and non-binary recognition, comprehensive sex education, and combatting harmful practices like conversion therapy.

The absence of recognition for same-sex marriage in India may contribute to health and well-being disparities among LGBTQ+ people. When there is no legal acknowledgment, mental health inequities, restricted access to healthcare, and general quality of life suffer. LGBTQ+ people have better mental health outcomes and access to healthcare in nations where same-sex marriage is recognized because legal recognition decreases stigma and discrimination.

CONCLUSION

Legalizing same-sex marriage is a critical step toward safeguarding LGBTQ+ rights and equality. While it is regrettable that same-sex marriage is not yet legal in some areas of the world, it is important to recognize the progress that has been made in many parts of the world. The legalization of same-sex marriage is about more than just the right to marry the person you love; it is also about ending systemic discrimination and prejudice towards LGBTQ+ people in all facets of life. It is a symbol of societal acceptability and an important step toward achieving equal rights in areas ranging from adoption and inheritance to healthcare and housing.

To summarize, the consequence of legalizing same-sex marriage goes far beyond the boundaries of marriage itself. It is a symbol of development and acceptance, representing a society's dedication to recognizing and valuing LGBTQ+ individuals' love and relationships. It is a step toward greater equality and the protection of LGBTQ+ rights, particularly those concerning adoption, inheritance, healthcare, and other issues.

Even in regions where same-sex marriage is still banned, the global campaign for LGBTQ+ rights

is gaining traction. The campaign for equality continues, motivated by the idea that love is love and that everyone, regardless of sexual orientation or gender identity, deserves the same legal rights and protections. As society continues to progress and accept variety, it is hoped that complete recognition of same-sex marriage will become a universal reality, fostering a world in which all LGBTQ+ people may live truthfully and without discrimination.

In conclusion, even in the absence of universal acceptance, the influence of same-sex marriage legalization extends beyond the bounds of marriage itself. It acts as a potent change agent, sparking discussions about LGBTQ+ rights and equality that can lead to broader cultural transformations. While there is still work to be done, the tide is turning in favor of justice, and with ongoing commitment, the ideal of marriage equality can become a reality for all.

