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From Banned to Beloved – The Legal Journey of LGBTQ+ Marriage Rights in India

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One of the oldest challenges of Indian society includes homophobia, which also comprehends transphobia. In the past few decades, there has been an undeniable shift to the mainstream view and embrace the members of the LGBTQ+. People who fall in love with individuals of the same sex on sexual, emotional, and physical footage are deemed to be homosexual. They are often referred to as being Gay, Lesbian, Bisexual, Transgender, and Queer; they are collectively represented by the abbreviation LGBTQ+. Yet, LGBTQ+ people continued to face prejudice, marginalization, and discrimination in various facets of their lives. In addition, these individuals mostly stand as alien to their parents and kinfolks. Still, they have adequate emotion and consciousness, hoping to live like other sectors of society. After family, partners play a vital role in assisting and elevating a member belonging to the LGBTQ+ community. Nomination for the right soulmate should be the primary motive. After that, marriage enables the struggle to endure mutually. According to Hindu Law, Marriage is a religious sacrament where both spouses must support one another for reasons of procreation, dharma, and sexual pleasure—physical, social, and spiritual satisfaction. LGBTQ+ sections have the right to choose their life partner and marry the same viewing Article 21¹ of the Constitution of India. The LGBTQ+ individuals have long battled for the official recognition of same-sex marriage. This paper traces the history of LGBTQ+ marriage rights, accessing the legal conflict, landmark judgments, and amendments that have sailed the voyage from restriction to approval—the topography of LGBTQ+ marriage rights across the globe. While LGBTQ+ marriage rights are improving gradually societal acceptance remains elusive for such associates of the society. As a result, these individuals bear intense mental and emotional

¹ Constitution of India 1950, art 21

difficulty deep down the lane. Concerning analogous adverse social responses, it is vital to move forward with legislative steps that advocate LGBTQ+ marriage rights. This article discusses the legal route toward same-sex marriage rights for those who are LGBTQ+ in detail. It concludes with advice and recommendations for society to acknowledge same-sex couples with open arms.

Keywords: *lgbtq+, marriage rights, community, same-sex marriage, discrimination.*

INTRODUCTION

“Everyone has the freedom to evaluate the ethics of their own life, including LGBTQ+ people. LGBTQ+ people must not face inequality to be treated equally.”

- D.Y. CHANDRACHUD (CJI, India)²

People who fall in love with individuals of the same sex on sexual, emotional, and physical footage are deemed to be homosexual. They are often referred to as being Gay, Lesbian, Bisexual, Transgender, and Queer; they are collectively represented by the abbreviation LGBTQ+. This sexual orientation is separate from ‘heterosexuality,’ which is defined as an affinity for people of the opposite sex and frequently equates with being ‘straight’. A wide range of experiences, including romantic or sexual attraction and taking part in actions with individuals of the same sex, belong to the broad term of homosexuality.³ The word ‘homosexuals’ first appeared in the late nineteenth century, and its primary meaning—which has since changed—was anatomical. Love may take a multitude of forms. It would be unfair to state that one cannot marry another only because they are not tied to the identical gender. Everyone in the community, regardless of gender, should have access to ways. It is now time for society to acknowledge the existence of more than two genders. Many members of the LGBTQ+ community strive to engage in long-term relationships, identical to what heterosexuals

² ‘Non-heterosexual unions are entitled to protection under Constitution’: Top quotes from SC verdict on same-sex marriage’ *The Indian Express* (19 February 2024) <<https://indianexpress.com/article/india/sc-verdict-same-sex-marriage-top-quotes-8986704/>> accessed 15 April 2024

³ Nayantara Ravichandran, ‘Legal Recognition of Same-Sex Relationships in India’ (1999) 5 (Winter) *Journal of Indian Law and Society* <<https://docs.manupatra.in/newslines/articles/Upload/B07BDF52-0AA4-4881-96AC-742B9DB217D.pdf>> accessed 20 April 2024

enjoy.⁴ The legal development of LGBTQ+ marriage rights traces the transition from comprehensive constraints to the modern context when marriages between people of the same gender have been commonly accepted and celebrated worldwide. Analyzing the growth of LGBTQ+ marriage rights via a legal lens aims to clarify the complexities, obstacles, and victories that have shaped one of the most momentous civil rights movements in modern history. The legal journey of LGBTQ+ marriage rights will be addressed in this research paper, along with the root causes of bias and unfairness across time.⁵ They are reviewing the facts and events underlying broad acceptance and evaluating the key legal breakthroughs that contributed to the current scenario. Since the term has no exact meaning the abbreviation is sometimes used with a plus symbol (+) to denote that the collective is not complete. In India, the community was repeatedly protected by the judiciary throughout an ongoing battle. The concept of 'unnatural offences' embraced the LGBTQ community, and it led to an aura of violence, threats, and panic from both the police and the general populace. The decision made by the Supreme Court granted the group a legal foundation and signified an important milestone in the mainstreaming of sexual minorities in India.⁶ Globally, the LGBTQ community is expanding into different nations, such as India, the US, the UK, China, Japan, and other places. India swiftly strikes one as the nation with the world's greatest diversity of religions and cultures, where age-old customs continue to thrive in today's world. However, basic rights continued to be denied even after decriminalization. The community has taken this obvious move to ensure normal living, but it is very tough due to the government's constant hostility. The discussion unfolds and concludes that 'one man, one woman' marriage constraints disagree with constitutional morals, the right to life with dignity guaranteed by Article 21, and the liberty to disclose one's sexual orientation under Article 19.⁷ It adds to state that same-sex marriage is admissible under the

⁴ Akshaya Kishor, 'Validity Of Same-Sex Marriage In India: Past & Future' (2021) 3(2) Indian Journal of Law and Legal Research <<https://www.ijlr.com/post/validity-of-same-sex-marriage-in-india-past-future>> accessed 10 April 2024

⁵ *Ibid*

⁶ M. Sariga Ramachandran, 'The Dilemma behind Same-Sex Marriages' (2023) 5 (2) Indian Journal of Law and Legal Research <https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_733439498de143f1a7b70babd912083c.pdf> accessed 12 April 2024

⁷ Corinne Lennox and Matthew Waites, *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change* (Human Rights Consortium, Institute of Commonwealth Studies 2013)

Hindu Marriage Act and the Special Marriage Act and that marriage equality should not be viewed to infringe on religious freedom.

OVERVIEW - HISTORICAL BACKDROP

Classical literature and folklore abound with tales of same-sex couples in India – for example, the Temple of Khajuraho. India's illustrious and rich past stretches back to the era of the ancient Harappans and Mohenjo-Daro civilizations.⁸ The early views of these civilizations on homosexuality and the LGBTQ+ population are unknown. However, the Vedic period brought along medieval Hindu literature that included references to homosexuality and the 'third gender'. Hindu philosophy refers to the idea of a third gender as 'Tritiya Prakriti,' which is a unique notion. Members of this group do not view gender and sexuality as discrete thoughts. There are many instances of Hindu gods relating to this community. One such story is the Aravan tale, in which Krishna, a Hindu deity believed to be the one who makes amends for human offences, shifts into his feminine form, Mohini, to wed the hero Aravan before his demise. In addition, there exists Khajuraho, a temple from the 12th century that holds a varied array of sculptures that examine sexual plasticity. Some more works address Tritiya Prakriti and homosexuality.⁹ While some provide conflicting ideas when considered collectively, they suggest that Ancient India, like modern society, saw gender and sexuality as a state of being. One more woman referred to in Chapter Purushayita is Svairini, an independent and self-reliant woman who has a relationship with other women. Men who are drawn to people of the same gender are further addressed in the book. Along with that, Kamasutra outlines eight categories of marriages. For example, lesbian or homosexual marriage was acknowledged by the phrase 'Gandharva Vivah'.¹⁰ It means getting married or living together without your parents' permission. The Rig Veda mentions the story of Varun and Mitra, which is often known as Mitra-Varun. The couple, who are of the same sex, are believed to be the two facets of the

⁸ Prabhaskar K Dutta, 'Homosexuality in ancient India: 10 instances' *India Today* (10 July 2018) <<https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10>> accessed 13 April 2024

⁹ Deepanshi Mehrotra, 'The Pre-Colonial History of Homosexuality in India: Why Love Is Not Western (Part I/III)' (*Lawctopus*, 29 June 2021) <<https://www.lawctopus.com/academike/history-of-homosexuality-in-india/>> accessed 15 April 2024

¹⁰ *Ibid*

moon.¹¹ Many more Hindu mythological literature discuss same-sex relationships but oppose them. Notably, the Manu smriti, Arthashastra and Narada Purana all mention justice for acts of comparison. Probably, it indicates that homosexuality flourished across that period.

CERTIFICATION - ACROSS THE STATES

International conventions, treaties, and documents act as a backbone to formulate laws on various grounds across the nations. This paper concentrates on the legal recognition of marriage rights. Article 12 of the European Convention¹² enunciates, 'As per the statewide national law, men and women of nubile mature have the right to marry and formulate a family'.¹³ The said Article states in general and does not differentiate homosexual and heterosexual marriage relationships. Therefore, it implies that the European Convention grants legal acknowledgement of same-sex marriage. Subsequently, the International Convention on Civil and Political Rights held that 'Men and women of marrying age have the right to get married and start a family. Without each of the spouses' consent in good faith, no marriage may be consummated.'¹⁴ Human Rights Committee (HRC) emphasizes the word 'spouses' and concludes that, in common parlance, the ICCPR does not forbid the validation of the right to same-sex marriage.¹⁵ In 2001, the Netherlands was the first state to legally recognize same-sex marriage.¹⁶ As of May 4, 2024, nearly thirty-seven different nations have legalized marriages between people of the same gender. In various countries, including the Czech Republic, India, Japan, the Philippines, and Thailand, there are persistent controversies and litigation over the legal status of same-sex marriages.¹⁷ Therefore,

¹¹ 'Mitra and Varuna- The same-sex couple in Hindu mythology' (*Gay Rights India*, 28 October 2016) <<https://gayrightsindia.wordpress.com/2016/10/28/mitra-and-varuna-the-same-sex-couple-in-hindu-mythology/>> accessed 20 April 2024

¹² European Convention on Human Rights 1953

¹³ *Ibid*

¹⁴ The International Covenant on Civil and Political Rights 1966

¹⁵ Meredith Render, 'Gender Rules: The Politics of Intimate Relationships' (2010) 22(133) *Alabama Law Scholarly Commons* <https://scholarship.law.ua.edu/cgi/viewcontent.cgi?article=1640&context=fac_articles> accessed 12 May 2024

¹⁶ Jyoti Shelar, 'How Denmark Became the First Country to Allow Same-Sex Unions Over 30 Years Ago' *The Indian Express* (12 May 2024) <<https://indianexpress.com/article/research/how-denmark-became-the-first-country-to-allow-same-sex-unions-over-30-years-ago-8567175/>> accessed 12 May 2024

¹⁷ 'Gay Marriage Around the World' (*Pew Research Center*, 28 June 2023) <<https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/>> accessed 08 May 2024

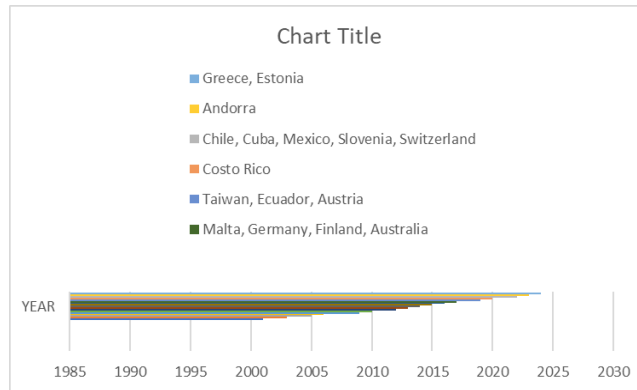


Fig. 1: The diagram indicates that (2001-till date) 37 countries across the globe certified same-sex marriage legally. These countries include 17% of the world’s population and are home to 1.4 billion people.¹⁸

India is working on awarding legal recognition of same-sex marriage even today. The legal validation for such marriage is still a complex and evolving issue nationwide. The Indian Parliament has been chosen by the Supreme Court as the decision-making body when it comes to the recognition of same-sex marriage in India. Surprisingly, India recognizes same-sex couples under Article 21 of the Indian Constitution, but it refuses to acknowledge the legal status of same-sex marriage. *Navtej Singh Johar v Union of India*¹⁹ and *Shafin Jahan v Asokan K.M. & Ors*²⁰. are two notable decisions that decriminalize Section 377 under the Indian Penal Code 1860, which dates to the colonial era. The second ruling upholds the fundamental right to marry, guaranteed in Article 21 of the Constitution. It emphasizes that adults can choose their partners regardless of gender or religion. However, these rulings do not prove same-sex marriage rights exist in India. Hence, though there is a significant shift in India's legal framework concerning LGBTQ+ rights, same-sex marriage recognition continues to be an issue of conflict and debate.²¹

¹⁸ *Ibid*

¹⁹ *Navtej Singh Johar & Ors. v Union of India* (2018) 10 SCC 1

²⁰ *Shafin Jahan v Asokan K.M. & Ors* (2018) 16 SCC 368

²¹ Saxena, Utkarsh, 'The Fight Will Continue' for India's LGBTQ+ Campaigners for Equal Marriage Rights' *The Guardian* (23 October 2023) <<https://www.theguardian.com/world/2023/oct/23/the-fight-will-continue-for-indias-lgbtq-campaigners-for-equal-marriage>> accessed 03 May 2024

UNSEEN SCARS - EMOTIONAL AND MENTAL

India is a rich populous country. Not only do people from different nations across the world the country gives shelter to various communities, tribes, and castes. The legality of marriage is essential because it offers security, psychological aid, and legal rights. In the LGBTQ+ community, not having their relationships validated may culminate in identity crises, increased vulnerability to mental health problems including anxiety and depression, and a feeling of social exclusion and marginalization.²²

Some of the notable grounds that should be focused on:

Stress and Emotional Distress: For LGBTQ+ people, the constant fight for marital equality can be mentally draining and distressing. Due to the absence of legal safeguards and the ongoing possibility of discrimination, they could feel anxiety, confusion, and dissatisfaction. Long-term stress can have detrimental effects on the body and mind, increasing the likelihood of drug use disorders, anxiety disorders, and depression.

Family Repercussions: Refuting a married couple their marital privileges can cause tension in families where acceptance and approval from family members are vital.²³ LGBTQ+ people might feel rejection or pressure to live up to heteronormative standards, which can cause conflict in their families and exacerbate mental health problems.

Impact on Identity: In the last half of the 20th century, the fight for LGBTQ+ rights in India gained momentum. Same-sex weddings are not recognized by Indian law, which defines marriage as a partnership between a man and a woman.²⁴ It holds significance because it touches on the acknowledgement and protection of LGBTQ+ relationship status as well as their fundamental human rights.

²² Warren Kealy-Bateman and Lisa Pryor, 'Marriage Equality is a Mental Health Issue' (2015) 23(5) *Australasian Psychiatry* <<http://dx.doi.org/10.1177/1039856215592318>> accessed 08 May 2024

²³ G S Becker, 'A Theory of Social Interactions. *Journal of Political Economy*' (1974) 82(6) *Journal of Political Economy* <<https://www.jstor.org/stable/1830662>> accessed 06 May 2024

²⁴ Sudipta Datta, 'What is India's stand on same-sex marriage?' *The Hindu* (09 April 2024) <<https://www.thehindu.com/news/national/explained-what-is-indias-stand-on-same-sex-marriage/article66636166.ece>> accessed 12 May 2024

Deep-rooted Homophobia: Often fostering messages in society that devalue LGBTQ+ relations can cause people to embrace homophobia and shame. They could internalize the idea that their relationships are inadequate or undeserving, which might result in low self-worth, self-hatred, and feelings of self-doubt.²⁵

Fear for the Future: When marriage rights remain to be denied, LGBTQ+ people may become pessimistic about the future. They might have thoughts of hopelessness and resignation over their chances of finding happiness and fulfilment if they believe that their relationships will never be completely acknowledged or appreciated.

Possibility of Suicide and Social Harm: LGBTQ+ people are more likely to harm themselves or harbour suicidal ideas when prejudice, hatred, and a lack of legal safeguards are combined.²⁶ Especially if they get ignored by relatives or don't have a supportive network, they might feel alone, hopeless, and depressed.

Legal and Social Insecurity: LGBTQ+ spouses may face a variety of obstacles if their marriages are not recognized by the law, including trouble obtaining healthcare benefits, inheritance rights, and safeguards in case of emergency or legal controversy. Insecurity and a sense of vulnerability may worsen because of this lack of legal protection.²⁷ Excessive stress can have detrimental effects on the body and mind, increasing the likelihood of drug use disorders, anxiety disorders, and depression.

A notable growth in 2018 was the legalization of homosexuality. The LGBTQ+ community in India is being deprived of their basic rights and dignity due to their marriage rights being revoked.²⁸ This has profound impacts on their mental and emotional health, making this alienated minority more likely to experience sadness, anxiety, and other mental health

²⁵ Dominic Davies and Charles Neal, *Pink therapy a guide for counsellors and therapists working with lesbian, gay, and bisexual clients* (Open University Press 1996)

²⁶ Ann P. Haas et al., 'Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations' (2011) 58(1) *Journal of Homosexuality* <<https://doi.org/10.1080/2F00918369.2011.534038>> accessed 04 May 2024

²⁷ Kuran Christian et. al., 'Vulnerability and vulnerable groups from an intersectionality perspective' (2020) 50 *International Journal of Disaster Risk Reduction* <<https://doi.org/10.1016/j.ijdrr.2020.101826>> accessed 03 May 2024

²⁸ Holning Lau, 'Sexual Orientation and Gender Identity Discrimination' (2018) 2(2) *Brill Research Perspectives in Comparative Discrimination Law* <<http://dx.doi.org/10.1163/24522031-12340004>> accessed 12 May 2024

problems. It is fundamental to remember that the LGBTQ+ community is not equally impacted by the refusal of marriage rights in terms of mental health. Gender, colour, class, and religion are examples of overlapping identities that can further influence the realities of individuals and the unique obstacles they endure.

STATUTORY ACKNOWLEDGMENT

India is a rich and diversely populated country and home to 141.72 crore people (as of 2022).²⁹ Among them, 125 million (i.e. 10% of the total population) belong to the LGBTQ+ community.³⁰ To encourage better awareness and safeguarding of LGBTQ+ rights, LGBTQ+ activists and communities have taken legal action, advocated for policy changes, and assisted with therapy. The Indian Constitution is the supreme legislation that administers the nation's legal system. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, reads Article 14³¹ of the Constitution. Even though same-sex marriage is now illegal in India, there are still claims that this legal process is denying people opportunities and escalating inequality. It is agreed that the 'right to marry' is not quoted in the Constitution, but Article 21, 'right to life and personal liberty with dignity'³² undertakes the same. Then why such discrimination? Why do people belonging to the LGBTQ+ community are treated differently?

Back in 2009, when Section 377 of the Indian Penal Code, 1860 was still an offense the Hon'ble Delhi High Court in a leading case *Naz Foundation v Government of NCT (Delhi)*,³³ decriminalizing bilateral homosexual acts between two adults emphasizing Articles 14 and 21 of the Constitution, because it violates the aforesaid fundamental rights. Despite that, in 2013 in *Suresh Kumar Kaushal v Naz Foundation*,³⁴ a divisional bench challenged the judgment mentioned above on the ground that Section 377 of IPC was not yet decriminalized. On the other hand, the Naz

²⁹ 'Understanding India: A Vast and Richly Diverse Country, with Students from many Different Cultures and Backgrounds' (AIRC, 29 March 2024) <<https://www.airc-education.org/news-and-blog/understanding-india-a-vast-and-richly-diverse-country-with-students-from-many-different-cultures-and-backgrounds>> accessed 12 May 2024

³⁰ Government Equalities Office, *National LGBT Survey: Research Report* (2018)

³¹ Constitution of India 1950, art 14

³² Constitution of India 1950, art 21

³³ *Naz Foundation v Government of NCT (Delhi)* (2009) 6 SCC 712

³⁴ *Suresh Kumar Kaushal v Naz Foundation* (2013) 1 SCC 1

Foundation (an NGO) believed that provisions like Section 377 should be eliminated from the statute for the betterment, and restoration of self-respect and dignity among the LGBTQ+ people. In 2014, the *National Legal Services Authority v Union of India*³⁵ though the prime court focused more on equal rights and opportunities for transgender people and this may not have a straight-cut link with same-sex marriage but this decision is a breakthrough for the upgradation of the LGBTQ+ sector as well. Thereafter, on 6 September 2018, the apex court in the case of *Navtej Singh Johar v Union of India*³⁶ enunciated, that the statute is unlawful 'insofar as it criminalizes consensual sexual conduct between adults of the same sex,' the court unanimously resolved the same. Candidates waiting outside the court cheered as the ruling was announced, hailing it as a historic win for LGBTQ+ rights in India. Hence, the battle of validating same-sex relationships comes to an end. This gives birth to the fight for the legal validation of same-sex marriage in India. The study reveals that the Special Marriage (Amendment) Bill 2022³⁷ was proposed to the Parliament for legal validation of same-sex marriage rights in India assigning the same footage as that of opposite-sex couples. Meanwhile, on the fifth anniversary of the decriminalization of Section 377 IPC, the Supreme Court in the case of *Supriyo @ Supriya Chakraborty & Anr v Union of India*³⁸ has ruled against legalizing same-sex marriages, which has outraged LGBTQ rights representatives, who termed the verdict as 'inimical'. The ruling cites that, 'Indians will now be assured by constitutional protection whenever they desire to be in same-sex relationships. Marrying a member of a same-sex group is still outlawed.'³⁹ Therefore, the LGBTQ+ community remains at the same seashore where same-sex couples are accepted and bound by constitutional rights but are deprived of their legal rights under the definite statute in India.

³⁵ *National Legal Services Authority v Union of India* (2014) INSC 275

³⁶ *Navtej Singh Johar & Ors v Union of India* (2018) 10 SCC 1

³⁷ The Special Marriage Amendment Bill 2022

³⁸ *Supriyo @ Supriya Chakraborty & Anr v Union of India* (2023) INSC 920

³⁹ 'Unpacking Indian Supreme Court's Verdict on Same-Sex Marriage' *Al Jazeera* (17 October 2023)

<<https://www.aljazeera.com/features/2023/10/17/unpacking-indian-supreme-courts-verdict-on-same-sex-marriage#>> accessed 09 May 2024

AN IMPERFECT JOURNEY

The overview of LGBTQ+ marriage rights in India has been groundbreaking, leading to an enormous shift in the legal framework. India endeavours to fight for the accreditation of LGBTQ+ community rights, but the struggle for recognition of marital rights among same-sex couples remains a vital chapter yet to be written. From the landmark decriminalization of homosexuality in *Navtej Singh Johar v Union of India*⁴⁰ to the recognition of the right to self-identify gender in *NALSA v Union of India*,⁴¹ the judiciary has played a pivotal role in advancing LGBTQ+ rights. The fight for LGBTQ+ marriage rights in India has been a prolonged yet challenging one, filled with both triumphs and a loss. The legal battle for LGBTQ+ marriage rights in India offers proof and potentiality of the judiciary to achieve significance in societal shifts. What notable legal barriers and shifts did the LGBTQ+ community confront to fight for the legal recognition of marriage rights in India? There is still an absence of appropriate laws despite judicial initiatives. The government must give the LGBTQ+ community's issues prominence and intervene to alleviate their anxieties. In addition, society should put effort toward fostering an atmosphere that is friendly and accepting so that LGBTQ+ people may feel valued and live in peace. Setting priorities, gaining awareness of their fundamental liberties, and providing sufficient legal support to guarantee their protection. Only if they are adequately portrayed in the lawmaking process would this be feasible. To ensure justice and equality for everyone, regardless of gender identity, society at large and the state must collaborate. The apex court allowed the right to choose a desirable life partner but refused to legalize same-sex marriage. What legal rights and protections have now become accessible to married LGBTQ+ couples in India, and how do they vary from those granted to married heterosexual couples? Eventually, is specific legislation relating to same-sex marriage necessary, or is it possible to amend the present laws and incorporate provisions for LGBTQ+ couples? Unlike other thirty-seven countries, India has not legally validated same-sex marriage. If same-sex marriage remains illegal, what extra-legal safeguards for the rights of same-sex couples should be explored? Several NGOs work on the LGBTQ+ community countrywide. Experts in social work try to form an activist group for proper assistance. But nothing stands firm if the root remains

⁴⁰ *Navtej Singh Johar & Ors. v Union of India* (2018) 10 SCC 1

⁴¹ *National Legal Services Authority v Union of India* (2014) INSC 275

shaky, often lifting questions like What purpose have grassroots entities, like Nongovernmental organizations (NGOs) and activist groups played in influencing legal reforms in India and fighting for LGBTQ marriage rights?

RECOMMENDATIONS

Legal Combats and Landmark Cases: The Apex Court through various judgments such as *Safin Jahan v Ashokan*⁴², Article 21 of the Indian Constitution guarantees anybody has the freedom to choose their life partner, and the freedom to marry someone of the same sex, again in *Laxmibai Chandarangi v the State of Karnataka*⁴³, it was held that, the legal basis for LGBTQ+ marriage rights by reiterating that the freedom to select a life partner is a basic right under Article 21 allowed homosexual couples to live together. But, even after quite a few landmark judgments, the Hon'ble Supreme Court rejected the proposal to give legal recognition to same-sex marriage citing that, the legislature should take charge of this matter. The LGBTQ+ community saw this decision as a defeat since it precluded them from enjoying the social and legal advantages of marriage.

Shifts in Marital Relationships: The shifts set in motion since 2018, with the decriminalization of homosexuality where Section 377⁴⁴ was struck down reducing the possibility of criminal punishment for relationships involving adult consent. In 2019, the Hon'ble High Court of Madras acknowledged a Hindu male and transwoman can marry lawfully. Supreme Court subsequently upheld this ruling, declaring that transgender people are entitled to marry under the present laws or their laws.⁴⁵ Again in 2017, the Delhi High Court held that the right to marry is a fundamental right, and stopping same-sex couples from this right enunciates a violation of fundamental rights.⁴⁶ However, the apex court eventually reversed this ruling and decided that the legislature should have the last say on the matter of same-sex marriage. There

⁴² *Shafin Jahan v Asokan K.M.* (2018) 16 SCC 368

⁴³ *Laxmibai Chandarangi B & ANR v the State of Karnataka & Ors* (2021) 3 SCC 360

⁴⁴ Indian Penal Code 1860, s 377

⁴⁵ Advay Vora and Gauri Kashyap, 'Plea for Marriage Equality: Judgement Summary' (*Supreme Court Observer*, 18 October 2023) <<https://www.scoobserver.in/reports/plea-for-marriage-equality-judgement-summary/>> accessed 25 April 2024

⁴⁶ Aaratrika Bhaumik, 'Same-sex marriage and the fundamental right to marry | Explained' *The Hindu* (5 April 2024) <<https://www.thehindu.com/news/national/same-sex-marriage-and-the-fundamental-right-to-marry-explained/article67437747.ece>> accessed 05 May 2024

is still a lot to be done before the LGBTQ+ community in India achieves success in equality and acceptance, but these achievements are a little remarkable change.

Fostering Legal Discoveries -

Campaigning and Educating: Advocacy and public awareness initiatives may strengthen the case for LGBTQ rights and advance legislative changes;⁴⁷

Legal Impediments: Successive legal disputes may centre on specific factors such as insurance benefits, inheritance rights, and other legal rights that apply to LGBTQ spouses;⁴⁸

Global Assistance: International human rights frameworks and the experiences of other nations—like the United States and several European countries—that have allowed same-sex marriage can serve as inspiration for India. By embracing these legal breakthroughs, India can keep moving in the direction of a society that is more welcoming and inclusive of its LGBTQ+ citizens.⁴⁹

Effects of Transformation on Society -

This shift is mostly due to a historic ruling held by the Apex Court in *Navtej Singh Johar v Union of India*⁵⁰.

Augmented Recognition and Retention: Discovering a path to a more inclusive society. The increasing number of LGBTQ+ people are progressively outspoken about their sexual and gender identities.⁵¹

⁴⁷ Paul J. Angelo and Dominic Bocci, 'The Changing Landscape of Global LGBTQ+ Rights' (*Council on Foreign Relations*, 29 January 2021) <<https://www.cfr.org/article/changing-landscape-global-lgbtq-rights>> accessed 04 May 2024

⁴⁸ 'Legal challenges faced by LGBTQ+ couples in India: Progress and remaining hurdles' *Times of India* (15 May 2024) <<https://timesofindia.indiatimes.com/life-style/relationships/love-sex/legal-challenges-faced-by-lgbtq-couples-in-india-progress-and-remaining-hurdles/articleshow/110137735.cms>> accessed 16 May 2024

⁴⁹ 'Marriage Equality: Global Comparisons' (*Council on Foreign Relations*, 30 March 2024) <<https://www.cfr.org/backgroundunder/marriage-equality-global-comparisons>> accessed 04 May 2024

⁵⁰ *Navtej Singh Johar & Ors v Union of India* (2018) 10 SCC 1

⁵¹ Nerilee Ceatha et. al., 'The Power of Recognition: A Qualitative Study of Social Connectedness and Wellbeing through LGBT Sporting, Creative and Social Groups in Ireland' (2019) 16(19) *International Journal of Environmental Research and Public Health* <<https://doi.org/10.3390/ijerph16193636>> accessed 04 May 2024

Social Transformation: Social change has also resulted from the transition, as the consciousness of the value of inclusion and plurality has grown. The growing number of groups and people fighting for LGBTQ+ rights and questioning social norms is indicative of this. There are still issues to be resolved, the advancements made so far demonstrate the viability of social and legal change.⁵²

Grant Legal Validity to Civil Unions –

Minority – A Perspective: The minority included Chief Justice of India (CJI) Chandrachud and Justice S.K. Kaul, who argued in favour of accepting homosexual relationships and the freedom to participate in a civil union. They said that the capacity of an individual to create an association is in no way restricted because of their sexual orientation and that for these relationships to be fully enjoyed, the state must recognize them.⁵³

Acceptance by the State: Both Justice Kaul and the CJI stressed how crucial it is for states to recognize gay marriage to protect LGBT couples from institutionalized prejudice and to let them fully enjoy their relationships.⁵⁴

Drawbacks: The CJI recommended that gay couples in civil unions be entitled to all government benefits that would otherwise be provided to a heterosexual pair in a married relationship. A set of laws that secures equal rights and benefits for LGBTQ+ couples when they act and are recognized as a partnership.⁵⁵

⁵² Angelo (n 47)

⁵³ Raghav Ohri, 'Recognise queer couples' right to civil union: Minority verdicts of SC' *The Economic Times* (17 October 2023) <<https://economictimes.indiatimes.com/news/india/non-heterosexual-unions-and-heterosexual-marriages-ought-to-be-considered-as-two-sides-of-same-coinjusticekaul/articleshow/104506283.cms?from=mdr>> accessed 04 June 2024

⁵⁴ Padmakshi Sharma, 'Right to Civil Union, Adoption, Transgender Persons' Right to Marry: Where Supreme Court Bench Agreed & Disagreed in Marriage Equality Case' *Live Law* (04 April 2024) <<https://www.livelaw.in/top-stories/right-to-civil-union-adoption-transgender-persons-right-to-marry-where-supreme-court-bench-agreed-disagreed-in-marriage-equality-case-240420>> accessed 05 May 2024

⁵⁵ 'Same-Sex Marriage Verdict highlights: For Parliament to decide on legal status, rules SC' *Hindustan Times* (18 October 2023) <<https://www.hindustantimes.com/india-news/same-sex-marriage-verdict-live-updates-supreme-court-judgment-on-legality-today-lgbtqia-same-sex-couples-101697501701708.html>> accessed 05 May 2024

Implement Adequate Anti-Discrimination Policies: The Supreme Court's recognition of the broad spectrum that distinguishes the area and the significance of safeguarding non-heterosexual marriage under the Constitution is a light of hope for the whole South Asian region, as the march towards real equality continues. To guarantee a better and more inclusive future for all, governments, civic society, and the LGBTQ+ community must work together.

The author took the initiative to spotlight how significant it is for the LGBTQ+ community to have their marital rights honoured. India does not have adequate legislation to combat the obstacles that that group of people has to face to get married legally. The journey of LGBTQ+ marriage rights in India, from 'Banned to Beloved,' is an incredible story of bravery, love, and persistence above all obstacles. India has seen a major change in recognition and embrace of LGBTQ+ rights due to the hard work of campaigners, the assistance of associates, and the boldness of those ready to challenge traditional norms.⁵⁶ Even while there are still barriers to overcome, the developments made, offer hope and motivation to nations not merely in India but also worldwide that continue to grapple with LGBTQ+ justice.

⁵⁶ Akshat Anunay, 'Same Sex Marriages in India: A complete overview' *Times of India* (06 May 2023) <<https://timesofindia.indiatimes.com/readersblog/dopamineffable/same-sex-marriages-in-india-a-complete-overview-53507/>> accessed 07 May 2024