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## Same-Sex Marriages - Need of the hour or not?

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*Homosexuality has become a tumultuous theme of discourse these days. The greater part of the discussion has rampaged about whether homosexuality is a choice or a condition, good or shameless, and even whether it is lawful or illicit to lock in such action. The paper talks about how far India as a country has come concerning the laws related to same-sex relationships.*

*Even though we have come a long way and same-sex couples can live together without violating any of the laws now but marriage or a common association of a same-sex couple is still not permissible. For an idea that it is profoundly weaved in the public eye that everybody is who is normal is expected to be married not allowing a certain group of people to get married just because their relationship is unconventional is against the law of equality. Over the course of this paper various communal, political, and legal angles of same-sex marriage are explored. The paper hashes out that if same-sex marriage is really against our culture? It is discussed how ahead or far we are from other countries in terms of laws related to the LGBTQ+ community. The paper also talks about recent decisions by the Delhi High Court and why people are so indecisive to accommodate a more inclusive form of marriage.*

**Keywords:** *homosexuality, marriage, decriminalise.*

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## INTRODUCTION

The organization of marriage in the public eye is for the most part viewed as stretching out just to male-female connections, albeit most marriage resolutions use sexually biased language. Whereas numerous instances of acknowledgement of gay relationships have just been as of late approaching as society is bit by bit turning out to be more tolerant. This change is reflected in the expanding number of jurisdictions, which have decriminalized such demonstrations. Be that as it may, numerous jurisdictions have held their legal forbiddances on gay relationships notwithstanding much analysis from groups and people who accept that the homosexuality law is out of date and ought to be revoked. Subsequently, same-sex connections, paying little mind to their length, are not legitimately perceived in many nations, and accordingly, gay accomplices are denied a considerable lot of the lawful and monetary advantages consequently gave by conjugal status. The objective of searching for equality with same sex couples can be evaluated considering the fact that same sex couples and family connections are implanted with the old-fashioned considerations of the patriarchal society.

If a family is seen as a microcosm of society, one cannot hope to achieve revolutionary changes in the public eye while searching for affirmation into its conventional family guidelines. It is a big point to consider that heterosexual relationships are not illegal in India and coming to that was a journey itself, but the destination is yet to be reached because same-sex marriage is still unlawful. Couples create a life together but no legitimacy to that life exists. While the present ought to motivate same-sex associations to have lawful assent in 29 nations, cross country or in specific locales, there are such countless instances of very much endured strange associations in Hindu folklore that it ought to be humiliating for anybody to guarantee that India's 'social ethos' does not permit this. The public authority needs to in the end drive the traditionalist segment of the general public to fight with change authorization of same-sex associations will reduce roads for separation.

Even if living together of same-sex couple is decriminalized a couple's absence of lawful acknowledgment can make many parts of normalizing their relationship progressively troublesome in bureaucracy loaded India. One of the couples who filed a petition for the

legalization of same-sex marriage realized how big of a problem this is when they were refused to open a joint bank account together and one of them had a very difficult time changing her permanent address. Every organization they approached had a similar kind of question that what kind of relationship they share? Are they sisters, mother-daughter, or landlord-tenants? They were no terminology they could refer to themselves as.<sup>1</sup>

Some of the many problems faced by same-sex couple just because they can't get married legally are that they will not be allowed to take medical decisions for each other if anyone of them falls ill. This can be a huge problem considering the current pandemic also, in case of a death of a partner the other partner legally does not hold any property rights even though they were a couple but just not married.

It is not that that homosexuality is condemned by ancient Indian culture in fact, same-sex and gender fluid relationships hold an important place in ancient Indian texts and sculptures. And it was the British government who had considered these kinds of relationships against nature and prohibited anyone from being a part of such relationships.<sup>2</sup>

## **IS INDIA READY FOR SAME-SEX MARRIAGE?**

India from the very start is following the culture of arranged marriage. The transition from arrange marriage to love marriage is huge for society and some people are still having a hard time adapting to that change let alone them being comfortable with same-sex marriage. And talking about the LGBTQ+ people at the initial decriminalization of homosexual activity the judgement of the judiciary faced a lot of backlashes and was highly criticized among many. A survey was conducted in 2019 and 62% of the people who took the survey did not support same sex marriage. It is hence that a few activists trust India probably will not be prepared for same-sex marriage at least until gender and sexual orientation discrimination are outlawed. But history itself is the witness the any social even if it is for greater good face

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<sup>1</sup> Brian Wong, 'Column: Homophobia Is Not an Asian Value' (*Time*, 17 December 2020)

<<https://time.com/5918808/homophobia-homosexuality-lgbt-asian-values/>> accessed 27 May 2021

<sup>2</sup> Abhishyant Kidangoor, 'This Indian Same-Sex Couple Is Fighting for the Right to Marry. But Is Their Country Ready?' (*Time*, 6 January 2021) <<https://time.com/5926324/india-lgbtq-marriage-case/>> accessed 27 May 2021

backlash and is not accepted by everybody whole heartedly but that does not mean that the change is not necessary. “There are a host of other battles to be fought and won,” says Sukhdev Singh, an activist and founder of *Gaylaxy*, a LGBTQ magazine.

While decriminalizing gay sex the Chief Justice of India said, ‘When we say union, we do not mean the union of marriage, though marriage is a union.’ From the outset redder, the Chief Justice implies that Article 21 does not present a privilege to gay marriage, simply an association. Yet, on the off chance that association incorporates marriage, how might the privilege to marriage potentially be prohibited from the major right to life? The Chief Justice noticed that ‘even marriage was not compared to multiplication’ and thus, non-procreative sex could not be against the request for nature. That, obviously, makes one wonder, if reproduction is not the reason for marriage, why reject that correct that reaches out to hetero couples to gay couples?<sup>3</sup>

The Court has interceded on account of inter-caste and between inter-religious marriages to secure the decisions of the individuals who wish to get hitched in order to ensure their entitlement to poise. The Courts have by and large maintained their part as the sentinel on the qui vive – desirous and passionate watchmen of established freedoms. In any case, on account of the most recent landmark of marriage – same-sex relationships – the issue is open. The Constitution is prepared for gay marriage. The inquiry is whether the general public and the courts are prepared.

If the law of the nation can perceive ‘love of two spirits independent of sexual orientation’ for, what reason would not it be able to perceive their marriage too? What makes life significant is love. The correct that makes us human is the option to cherish. On the off chance that it isn’t permitted to tie this affection into a bunch of marriage, at that point, such love will consistently stay inadequate, and society won’t even acknowledge it. India’s Constitution is prepared for same-sex relationships yet there is a solid need to make individuals and the

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<sup>3</sup> Saurabh Kirpal, ‘India’s Constitution is ready for gay marriage. Are India’s society and courts?’ (*The Print*, 12 September 2020) <<https://theprint.in/pageturner/excerpt/indias-constitution-is-ready-for-gay-marriage-are-indias-society-and-courts/501145/>> accessed 29 May 2021

general public leave the simple shackles of supposed 'qualities and culture' and adjust to the change streaming in nature.

### **WHY IS INDIA SO ADAMANT ABOUT NOT ADAPTING SAME-SEX MARRIAGE?**

There is a widespread misinterpretation that Gay relationships are the result of today's complex individualized post current mechanical utilitarian culture. But there is nothing modern or new about homosexual relationships traces of it have been found in ancient, medieval, and modern India. And the several arguments are given by the people of India have all been counter-argued and it is time that we as a society accept homosexual marriage as equal to heterosexual marriage. The first and foremost argument given by Indians to support heterosexual marriage and speak against homosexual marriage is that the whole concept of marriage is that it is a sacred union between a man and a woman. But there is no moral evidence present to support marriage as a heterosexual union. Taking the example of sati: the practice existed in India for a very long time but was abolished on moral grounds. People also argue that one of the main reasons to marry is to procreate and the inability of the people of the same sex to procreate makes the whole purpose useless hence, there exists no need for them to marry. If that was the case, the same people should have opposed the idea of the marriage of an infertile person. And there does not exist any legislation which makes it compulsory for a married couple to procreate. A very prevailing societal misconception is that the absence of sexual complementarity in these unions creates obstacles in the normal development of children who are placed in the care of such parents. They would be deprived of the experience of either fatherhood or motherhood. Also, this is gravely immoral and in open contradiction to the principle, recognized by the United Nations Convention on the rights of children, that the best interest of the children as the weaker and more vulnerable party is to be of paramount consideration in every case. However, logical investigations and therapists are of the assessment that the affection and responsibility of the guardians make a contrast, not the sex. The youngsters raised by gay accomplices are similarly pretty much as great as those of straight couples. It is a very popular belief that decriminalization of homosexual marriage will become a reason for the increase in homosexuality though it is not

true at all sexual orientation of a person is affected by genetic factors only what decriminalization can do is it can inspire people to come out and feel confident about their sexuality instead of living in the closet for their whole life. So, the decriminalization of homosexual marriage has nothing to do with creating more homosexual people it is about giving the rights to homosexual people which they already deserved, and the rights are kept from them using morals and traditions as an excuse. The right to equality given by the constitution of India prevents us from discrimination based on sex but does it not protect us from discrimination based on sexuality?<sup>4</sup>

## INTERNATIONAL DEVELOPMENTS OVER THE YEARS

### **Netherland**

Legalized on April 1, 2001

The change came progressively in the Netherlands – the principal nation to authorize same-sex marriage. In 1998 a significant number of the marriage-related advantages permitted to hetero couples were stretched out to same-sex couples. At that point in December 2000, notwithstanding resistance from the country's Christian Democratic Party, an enactment passed that extended the meaning of union with incorporate individuals of a similar sex. This permitted same-sex couples to wed, separate, and embrace youngsters. At last, on April 1, 2001, four same-sex couples wedded, trailed by another 382 that month.

### **Belgium**

Legalized on June 1, 2003

Same-sex couples in Belgium started accepting acknowledgment through enlisted associations in 1998, yet it was not until 2003 that Parliament legitimized same-sex marriage. This gave same-sex couples in Belgium the option to wed – which allowed them the assessment rights

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<sup>4</sup> Anuradha Parasar, 'Homosexuality In India – The Invisible Conflict' (*Delhi High Court*, 2021) <<http://www.delhihighcourt.nic.in/library/articles/legal%20education/Homosexuality%20in%20India%20-%20The%20invisible%20conflict.pdf>> accessed 31 May 2021

that hetero couples previously appreciated – and furthermore authoritatively perceived the situation with same-sex couples who wedded in different nations. In 2006 same-sex couples were given the option to embrace youngsters.

### **Spain**

Legalized on July 3, 2005

Regardless of solid resistance from traditionalist pioneers and the Roman Catholic Church, the Spanish Parliament legitimized same-sex marriage in a vote of 187 to 147. This conceded same-sex couples' legacy, reception, and separation rights. The country's Socialist Prime Minister at that point, Jose Luis Rodriguez Zapatero, proposed the bill soon after his political decision in 2004.

### **Canada**

Legalized on July 20, 2005

Albeit the central administration of Canada stretched out precedent-based marriage rights to same-sex couples in 1999, it was not until 2005 that the Canadian Parliament authorized same-sex marriage from one side of the country to the other. At the point when Canada's decision Conservative Party endeavored to re-open the discussion in 2006, Parliament cast a ballot against the movement.

### **South Africa**

Legalized on November 30, 2006

In November 2005, South Africa's most elevated court decided that the country's marriage resolutions were infringing upon the Constitution's equivalent rights assurances and gave the public authority one year to revise the lawful meaning of union with incorporate same-sex couples. On Nov. 14, 2006, fourteen days before the cutoff time, Parliament cast a ballot to eliminate limitations to gay marriage in a dominant part vote of 230 to 41.

## **Norway**

Legalized on January 1, 2009

In 1993, same-sex couples in Norway were allowed the privilege to common associations. After fifteen years, the public authority supplanted this decision with another law permitting same-sex couples to wed, receive youngsters, and go through state-supported manual semen injection. The law became real on the principal day of 2009. In 2017, the Lutheran Church of Norway, to which almost 3/4 of Norwegians have a place, embraced sexually impartial phrasing that would permit its ministers to direct same-sex relationships.

## **Portugal**

Legalized on June 5, 2010

The Portuguese Parliament passed a law permitting same-sex marriage in mid-2010. After a survey by the Constitutional Court, the law was endorsed in May and became real in June 2010. The law didn't concede selection rights to same-sex couples, nonetheless, and it wasn't until 2015 – after four rounds of parliamentary votes – that a law permitting reception was passed. The law likewise improved admittance to managed impregnation.

## **Denmark**

Legalized on June 15, 2012

Denmark, the principal country on the planet to permit same-sex couples the option to enroll as homegrown accomplices (in 1989), started permitting enlisted same-sex couples to embrace youngsters in 2010. At that point in 2012 the nation at long last sanctioned same-sex marriage. While the law commands that the state church – the Evangelical Lutheran Church of Denmark – permit same-sex couples to wed, it doesn't expect the pastorate to play out the relationships.

## **Brazil**

Legalized on May 16, 2013

Since 2011, Brazil has perceived same-sex common associations and conceded those couples many similar rights as hetero wedded couples, including reception, legacy, and annuity benefits. In 2013, with almost a large portion of the states in Brazil previously perceiving same-sex relationships, the nation made them legitimate from one side of the country to the other.

### **England and Wales**

Legalized on March 29, 2014

Long stretches of discussion finished in the British Parliament when an equivalent sex marriage bill passed in July 2013 and was confirmed by the Queen the following day. The law produced results on March 29, 2014, when the main same-sex relationships happened in England. The law, which applies to England and Wales, does not consider same-sex relationships inside the Church of England.

### **New Zealand**

Legalized on August 19, 2013

On April 17, 2013, New Zealand passed a revision to the Marriage Act of 1955 which refreshed the meaning of union with "the association of two individuals, paying little mind to their sex, sexual direction, or sex personality," just as alterations to different bills, for example, an appropriation rights bill, to guarantee that equivalent sex couples would have similar rights as hetero couples. The progressions produced results in August of that year.

### **Scotland**

Legalized on December 16, 2014

In the midst of fights by the Church of Scotland and the Roman Catholic Church, the Scottish Parliament passed an enactment sanctioning same-sex marriage in February 2014. The enactment, which became reality in December 2014, surrendered it to houses of worship to choose whether or not they would direct the relationships. The Scottish Episcopal Church chose to perform same-sex relationships in 2017, and the following year the Church of

Scotland cast a ballot to draft new laws permitting its ministers to direct the relationships too. The laws aren't expected for conclusive audit until 2021.

### **United States**

Legalized on June 26, 2015

While 36 states had effectively sanctioned same-sex marriage, a decision by the United States Supreme Court in 2015, at last, ensured the privilege at the government level. The court confirmed that restricting union with hetero couples was infringing upon the fourteenth Amendment's assurance of equivalent securities.

### **Austria**

Legalized on January 1, 2019

From 2010, gay and lesbian couples in Austria could frame common associations, yet a 2017 court choice decided that common organizations were unfair. The court expressed that if the nation neglected to pass an enactment countering same-sex marriage, it would become legitimate on Jan. 1, 2019. The principal same-sex marriage occurred soon after 12 PM that day.

### **Taiwan**

Legalized on May 17, 2019

A 2017 Constitutional Court choice announced that Taiwan's marriage definition should have been refreshed to incorporate same-sex couples. The court gave the public authority until May 24, 2019, to change the law. On May 17, 2019, the assembly passed a bill sanctioning same-sex marriage, making Taiwan the principal country in Asia to do as such.<sup>5</sup>

## **WHAT IS HAPPENING IN INDIA RIGHT NOW?**

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<sup>5</sup> Josie Green, '29 countries where same sex marriage is officially legal' (*USA Today*, 13 June 2019) <<https://www.usatoday.com/story/money/2019/06/13/countries-where-same-sex-marriage-is-officially-legal/39514623/>> accessed 31 May 2021

On September 8<sup>th</sup> a petition was filed by representatives of the LGBTQ+ community that the notion of marriage under the Hindu Marriage Act, 1955 gives permits same-sex marriage. The topic has a huge stigma around it and is only talked about in hushed voices and this was the first petition related to the topic to move to the High Court after the decriminalization of section 377.

The petition was based on two conjectures:

- Section 5 of the Hindu Marriage Act expresses "any two Hindus" which can be extended to incorporate same sex marriage.
- The all-inclusive advantages of same-sex marriage for the whole LGBTQIA+ people group

Further another two pleas were filed which argued that registration of same-sex marriage should be allowed under the Special Marriage Act and Foreign Marriage Act. In October and November, the High Court had promulgated a notice to the government on the three pleas concerning the legislation around same sex marriage. The government stated that any different understanding than considering a biologically male person as husband and a biologically female person as the wife will make all the already prevailing legislations impractical. The government opposed the proposition of any alteration to the ongoing legislations, saying such hindrance can cause a total disorder with the fragile equilibrium of personal laws. It is stated that the landmark judgement of 2018 was "neither intended to nor did it in fact, legitimize the human conduct in question". According to the center recognizing same sex, marriage can violate prevailing personal and codified laws as well. During the pandemic when the petition was heard the center submitted a notice for the adjournment claiming that the court is only hearing very urgent matters, and this does not fall under the category of that. Delhi High Court stated that a marriage certificate is not required for hospitals and nobody is dying due to the unavailability of one. With the ongoing situation, people are losing their loved ones frequently than ever and it was very insensitive of the court to pass such a statement.

Between all this chaos a very positive thing happened when Justice N Anand Venkatesh of the Madras High Court pronounced his aim of going through a "psycho-schooling meeting" with a specialist on LGBTQI+ matters so he may convey a superior judgment on account of an equivalent sex couple looking for security from their folks. The appointed authority said that he was not adequately "woke" on queer issues, so the meeting would prompt his "development". It is not every day that a person at such a higher post is willing to learn. Different judges and lawmakers should focus. Since his words are a delicate update that everybody, even the people pulling the strings, can and should tune in and learn, and advance.

## CONCLUSION

No matter what our sexual orientation is at the end of the day we are all humans. The problem of marriage legislation has disconnected the LGBTQ+ community and has disconnected people. Same sex relationship is not considered rightful in normal society and several individuals ponder that their associated religion and culture does not approve of such relationships and consider them unnatural. And this creates a network of standardization of prejudice against the community. It is disheartening that a fresh democracy is so rigid that it took us 24 years just to legitimize homosexuality and permit everybody to love irrespective of gender even after that the society and its moral codes still stand so rigid that a community of sexual minorities is kept from marrying someone of their choice. Considering the public matrix and the rising differences in the institution of marriage the call of homosexuals is somehow unanswered and overlooked. Acceptance of conflicts should be promoted in academic institutions and the students should be taught about human rights. It is disappointing that an individual's liberty of his/her/their personal life is taken away from them by enforcing a certain notion of morality. If provided with equal access to the same sex couples as to the different sex couples the only difference which can be seen is of gender composition. It is undeniable that there has been significant progress in queer issues, but it has been very sluggish and slacked. The legalization of same sex marriage is just part of the journey. There are numerous sexual orientations people are unaware of. The term same sex

marriage does not include trans, non-binary and intersex people. Society is in desperate need of some education with respect to homosexuality because even after marriage is legalized acceptance of society is very important and in Indian society marriage is given such high regards so, it is important that they are integrated into the society. India's constitution is prepared for same sex marriage however there is a solid need to make individuals and society leave the simple shackles of alleged qualities and culture and adjust to the change streaming in nature. on the off chance that the laws should address socially satisfactory dos and don'ts, another mindset is the need of the hour.