



## Same-Sex Marriage in India: A Socio Legal Appraisal

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Date of Submission: 07-05-2024

Date of Acceptance: 19-05-2024

### Abstract

Same-sex marriage refers to marriage between two people of the same sex. In India, same-sex marriages are not currently legal, although efforts are underway to recognize and legalize them. This topic is important because it relates to the recognition and protection of the fundamental human rights of LGBTQ+ individuals and their relationships. Legalizing same-sex marriage will not only provide legal recognition and protection to LGBTQ+ couples but will also promote greater social acceptance and reduce discrimination against the community. It is an important issue for LGBTQ+ rights activists and advocates around the world, and its importance extends beyond the legal sphere to broader social and cultural attitudes toward the LGBTQ+ community.

**Keywords: Homosexuality, Decriminalization, Same Sex Marriage, Constitution, LGBTQ**

### I. Introduction

The Indian legal system does not recognize same-sex marriage, and the country's laws define marriage as a union between a man and a woman. Section 377 of the Indian Penal Code, which criminalized homosexuality, was struck down by the Supreme Court of India in 2018, a major victory for LGBTQ+ rights in the country. However, decriminalization of homosexuality did not legalize same-sex marriage. Several legal cases have been filed in Indian courts seeking to legalize gay marriage, but so far the courts have not granted legal recognition to gay couples. In 2017, the Delhi High Court declared that same-sex couples are entitled to be in a stable relationship, but stopped short of legalizing same-sex marriage.

There have been some recent developments in the Indian legal system that may have an impact on the future of same-sex marriage in India. In 2020, the Government of India introduced the Personal Data Protection Bill, which includes a provision that recognizes the right to

privacy as a fundamental right. Some legal experts believe that this provision could be used to argue for legalizing gay marriage, as it recognizes the right of individuals to have control over their personal lives.

The history of LGBTQ+ rights in India dates back to the colonial era when the British enacted Section 377 of the Indian Penal Code in 1860, which criminalized homosexual acts. This law persisted even after India gained independence in 1947 and was used to discriminate against and prosecute LGBTQ+ individuals for over a century.

However, the struggle for LGBTQ+ rights in India gained momentum in the late 20th century. In the 1990s, the first LGBTQ+ organization, AIDS Anti-Discrimination Movement (ABVA), was established in Delhi to fight against the discrimination and violence faced by the LGBTQ+ community. In 2001, the Naz Foundation, a non-governmental organization, filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of Section 377. Despite facing significant opposition from conservative groups and religious leaders, the LGBTQ+ community and their allies continued to fight for their rights and in 2009, the Delhi High Court declared Section 377 unconstitutional and decriminalized homosexuality. However, this decision was overturned by the Supreme Court of India in 2013, which reinstated Section 377.

In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and decriminalizing homosexuality once again. This was a major victory for LGBTQ+ rights in India and an important step towards ending discrimination and promoting equality. However, despite these legal victories, the LGBTQ+ community in India still faces significant challenges. Discrimination and violence against LGBTQ+ individuals is prevalent in Indian society, and many face stigma and marginalization from their families, communities, and workplaces.



Transgender individuals in particular face many forms of discrimination, including limited access to education, employment, health care, and housing. Furthermore, legal recognition of same-sex marriage remains a distant dream for LGBTQ+ couples in India. The lack of legal recognition not only deprives them of legal and social benefits but also increases the risk of discrimination and violence.

There have been several major events in India that have shaped the country's approach towards LGBTQ+ rights over the years. Here are some of the most important:

**Introduction of Section 377:** In 1860, the British colonial government introduced Section 377 of the Indian Penal Code, which criminalized sexual activities "against the order of nature" and effectively criminalized homosexuality.

**Establishment of LGBTQ+ organizations:** In the 1990s, the first LGBTQ+ organization, AIDS Anti-Discrimination Movement (ABVA), was established in Delhi to fight against discrimination and violence faced by the LGBTQ+ community.

**Naz Foundation's PIL:** In 2001, Naz Foundation, an NGO, filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of Section 377.

**2009 Delhi High Court judgment:** In 2009, the Delhi High Court declared Section 377 unconstitutional and decriminalized homosexuality.

**2013 Supreme Court decision:** In 2013, the Supreme Court of India overturned the Delhi High Court decision and reinstated Section 377, once again criminalizing homosexuality.

**2018 Supreme Court decision:** In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and once again decriminalizing homosexuality.

**Transgender Persons (Protection of Rights) Act:** In 2019, the Transgender Persons (Protection of Rights) Act was passed, which aims to protect the rights of transgender persons and provide them legal recognition.

Despite the legal victory, same-sex marriage is not recognized in India, denying legal and social benefits to LGBTQ+ couples. These events have played a significant role in shaping India's attitudes towards LGBTQ+ rights, from the decriminalization of homosexuality to the decriminalization of LGBTQ+ individuals, and ultimately legal recognition. However, challenges and discrimination still persist, and there is a need for continued advocacy and activism to ensure

equal rights and protection for the LGBTQ+ community in India.

Currently, same-sex marriage is not recognized in India. The country's legal system does not provide for marriage equality and the rights and benefits that come with it, such as inheritance rights, joint property ownership and adoption rights. The landmark judgment of Navtej Singh Johar vs Union of India delivered by the Supreme Court in 2018 decriminalized homosexuality in India by striking down Section 377 of the Indian Penal Code. This has been an important milestone for the LGBTQ+ community in India, recognizing their right to love and intimacy without fear of harassment or prosecution.

However, the LGBTQ+ community still faces significant challenges in India due to social discrimination, lack of legal recognition and limited protection under the law. Transgender individuals in particular face widespread discrimination and social exclusion. The Transgender Persons (Protection of Rights) Act passed in 2019 has been criticized by many activists and experts as it fails to provide adequate protection and legal recognition for transgender persons. The Indian legal system has taken some steps to recognize and protect the rights of the LGBTQ+ community. For example, the National Legal Services Authority (NALSA) decision in 2014 recognized the right for transgender persons to self-identify and legal recognition of gender identity. Additionally, the Protection of Women from Domestic Violence Act, 2005 is gender-neutral and also includes same-sex couples.

The decriminalization of homosexuality in India through the landmark judgment of Navtej Singh Johar vs Union of India in 2018 has had a significant impact on the LGBTQ+ community in the country. This marked a historic shift towards recognizing the fundamental rights and freedoms of LGBTQ+ individuals in India. Before the decision, homosexuality was criminalized under Section 377 of the Indian Penal Code, dating back to the colonial period. This law was used to harass, intimidate, and discriminate against LGBTQ+ individuals, and had a severe impact on their lives, including limiting their access to health care, education, and employment opportunities. The decriminalization of homosexuality has ended this criminalization and allowed for greater acceptance and visibility of the LGBTQ+ community.

One of the most significant impacts of decriminalization is the increased visibility of LGBTQ+ individuals and their rights. This has led to greater understanding and acceptance of same-



sex relationships and sexual orientations, challenging traditional societal norms and beliefs that have stigmatized LGBTQ+ individuals. This has encouraged the LGBTQ+ community to come forward and identify themselves openly without fear of legal prosecution. The criminalization of homosexuality has also created opportunities for the LGBTQ+ community to advocate for their rights and demand legal recognition and protection. This has led to increased activism and advocacy efforts by LGBTQ+ organizations and allies, leading to greater public awareness and support for LGBTQ+ rights in India.

However, while the decriminalization of homosexuality is an important milestone for the LGBTQ+ community in India, it is only the first step towards achieving full equality and legal recognition. There is still much work to be done to address the discrimination and marginalization faced by LGBTQ+ individuals, including addressing legal and policy shortcomings and changing societal attitudes. Overall, the decriminalization of homosexuality has had a significant impact on the LGBTQ+ community in India, marking a significant shift towards greater acceptance, visibility and advocacy for their rights and freedoms.

Proponents of legalizing gay marriage argue that denying individuals the right to marry based on their sexual orientation violates their fundamental rights and freedoms. They give many arguments in support of the cause. First, they argue that denying individuals the right to marry based on their sexual orientation is a violation of their fundamental rights and freedoms and that all individuals, regardless of their sexual orientation, should have the right to choose whom they should marry and whether they should be allowed to do so. Enjoy the same legal benefits and protections as heterosexual couples. Secondly, legalizing it will promote equality and inclusivity in society as denial of same-sex marriage perpetuates discrimination against the LGBTQ+ community, which is already marginalized and faces social and legal challenges. Legalizing same-sex marriage would provide equal rights and protections to all individuals regardless of their sexual orientation and help create a more equitable society. Third, supporters of same-sex marriage argue that it would benefit society as a whole because legalizing same-sex marriage would have a positive impact on the mental health and well-being of LGBTQ+ individuals, who currently experience high rates of discrimination, harassment, Let's face it, and violence. Additionally, it will help create a

more accepting and tolerant society and reduce the stigma and discrimination that the LGBTQ+ community currently faces. Finally, it is in line with the principles of secularism and democracy on which India is founded because the Indian Constitution guarantees equality and freedom to all citizens regardless of their sexual orientation, and legalizing gay marriage fulfills this promise. is a necessary step towards completion. Of the Constitution.

On the other hand, opponents of legalizing gay marriage argue that marriage is a sacred institution defined as a union between a man and a woman. They believe that changing the definition of marriage to include same-sex couples would weaken traditional family values and the institution of marriage. They argue that the primary purpose of marriage is to produce and nurture children, and that same-sex couples cannot fulfill this purpose, thus their union is fundamentally different from that of opposite-sex couples. . Second, it will have a negative impact on children raised by same-sex couples. They argue that children need both a mother and a father to be well-raised and that same-sex couples cannot provide this. They claim that children raised by same-sex couples are more likely to have emotional and behavioral problems, and that legalizing same-sex marriage would lead to the adoption of children by same-sex couples, which would lead to their The argument is that this would be harmful to the child's health. Creature. Third, legalizing it would break down social norms as it would pave the way for other types of unconventional relationships and ultimately jeopardize the cultural and religious traditions of the country. They believe that same-sex marriage is not in line with Indian cultural and religious beliefs and that legalizing it would be a step towards Westernization and erosion of traditional values. Finally, opponents of gay marriage argue that the majority of the Indian population does not support it because the country's traditional values are under threat and legalizing gay marriage would go against the beliefs and views of the majority of the population. ,

It is important to note that these arguments are not exclusive to India and have been made in other countries as well.

The issue of same-sex marriage in India is complex and involves different cultural, religious and legal viewpoints. Cultural and religious attitudes are deeply entrenched in Indian society and are often cited as a reason for opposing same-sex marriage. From a cultural point of view, marriage is considered a sacred institution in India.



It is seen as a social contract between two families and a way to continue family lineage and traditions. Traditional Indian society is largely conservative, and homosexual relationships are not widely accepted. LGBTQ+ individuals are often stigmatized and discriminated against, and their relationships are considered unnatural. From a religious perspective, many major religions in India, including Hinduism, Islam, and Christianity, consider homosexuality a sin. These religions view marriage as a union between one man and one woman and do not recognize same-sex marriage. From a legal perspective, same-sex marriage is not currently recognized in India. The Indian Constitution does not explicitly mention sexual orientation, and homosexuality was decriminalized by the Supreme Court in 2018, but gay marriage is still not legal. LGBTQ+ individuals do not have the same legal rights as heterosexual couples, including the right to marry, adopt, and inherit.

**LGBTQ+ activists and organizations in India are working tirelessly to promote better legal recognition and protection of their rights. Here are some efforts being made:**

**Legal challenges:** LGBTQ+ activists and organizations have been challenging Section 377 of the Indian Penal Code, which criminalizes homosexuality, for years. In 2018, the Supreme Court finally struck down the law that decriminalized homosexuality in India.

**Advocacy and Awareness:** Many LGBTQ+ organizations are working towards creating awareness and advocating for more rights and protections for the community. They organize rallies, protests and campaigns to raise awareness of issues facing the community and promote equality and acceptance.

**Policy and legal reforms:** Organizations like Naz Foundation and Humsafar Trust are working towards policy and legal reforms to protect the rights of the LGBTQ+ community. They are advocating for anti-discrimination laws, inclusive policies, and legal recognition of same-sex relationships, including marriage.

**Counseling and Support:** Many organizations provide counseling and support services to the LGBTQ+ community. These services help individuals deal with issues such as discrimination, bullying and mental health problems.

**Community building:** LGBTQ+ organizations are also working towards creating a sense of community and support within the community. They organize events, social gatherings and support groups to create a safe and welcoming space for the community.

The Indian government and judiciary have played a significant role in shaping the country's approach towards LGBTQ+ rights and same-sex marriage. And the efforts and cries of the workers are being echoed with a positive and sensible approach. Here are some key developments:

**Decriminalizing homosexuality:** In September 2018, the Indian Supreme Court struck down Section 377 of the Indian Penal Code, which criminalized homosexuality. This was an important milestone for LGBTQ+ rights in India, as it removed the threat of criminal prosecution for consensual same-sex relations.

**Legal recognition of transgender rights:** In 2014, the Supreme Court recognized transgender persons as the third gender and ordered the government to provide them equal rights and protections. In 2019, the government introduced the Transgender Persons (Protection of Rights) Act, which provides legal recognition to transgender persons and protects their rights.

**Gay marriage:** The Government of India has not yet legalized gay marriage. However, in 2017, the Delhi High Court ruled that the right to marry is a fundamental right and denying same-sex couples the right to marry is a violation of their rights. This decision was later overturned by the Supreme Court, which ruled that the issue of same-sex marriage should be left to the legislature.

**Anti-discrimination laws:** The Indian government has not yet passed comprehensive anti-discrimination laws to protect LGBTQ+ individuals from discrimination in employment, housing, and public accommodations. However, some states such as Tamil Nadu and Kerala have introduced anti-discrimination laws that include protections for LGBTQ+ individuals.

Overall, while the Indian government and judiciary have taken some steps towards recognizing and protecting LGBTQ+ rights, there is still a long way to go towards achieving full equality and acceptance for the community. Legal recognition of same-sex marriage and comprehensive anti-discrimination laws are still pending, and further advocacy and awareness-raising efforts are needed to ensure that the rights of the LGBTQ+ community are fully protected.

### Way forward

It is hoped that India will continue to make progress towards greater LGBTQ+ rights. There have been recent positive developments, such as the inclusion of gender identity in the country's census and the decision by several state governments to provide job quotas and reservation



benefits to transgender individuals. The Indian government is also considering legalizing same-sex marriage in the future, especially in light of the growing global trend towards marriage equality. The recent legalization of same-sex marriage in neighboring countries like Nepal and Taiwan may put pressure on India to do the same.

## II. Conclusion

There is still opposition to LGBTQ+ rights in India, especially from conservative religious groups. Any efforts to push for greater legal recognition and protection of LGBTQ+ rights may face opposition from these groups, leading to potential legal and political battles. Overall, the future of LGBTQ+ rights in India remains uncertain. While there are possibilities for positive development and progress, there are also challenges and obstacles that need to be overcome. It is important for LGBTQ+ activists and supporters to continue to advocate for their rights and push for change, while also working to raise awareness and promote greater acceptance and understanding in society as a whole.

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