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Harmonizing Values and Laws: The Socio-Legal Evolution of Same-Sex Marriage in India

P. SAMAY KUMAR¹

ABSTRACT

The discourse surrounding same-sex marriage has emerged as a global conversation, reverberating across diverse societies, and India's landscape is no exception. While many nations have ventured into legalizing same-sex marriage, India's socio-legal milieu presents a nuanced narrative. This research embarks on an intricate journey, aiming to comprehensively analyze the socio-legal dynamics enveloping the domain of same-sex marriage within India.

The core purpose of this study is to dissect the multifaceted factors that contribute to the dynamic perception and reception of same-sex marriage in the Indian context. Delving deep into history, culture, and legal frameworks, the research scrutinizes the intricate interplay between these dimensions to decipher the complex attitudes and stances toward same-sex unions.

Marriage transcends individual privacy due to its legal implications, and its recognition involves more than a private matter between two individuals. It holds substantial legal and statutory consequences under various legislative enactments. The definition of marriage in India's statutory and personal law systems remains confined to unions between biological men and women, explicitly reflected in the use of terms like "husband," "wife," "male," "female," "bride," "bridegroom," and more. This legal framework underscores that marriage is recognized as an institution solely between a biological man and woman, aligning with legislative intent. Consequently, the argument contends against seeking a court's intervention to alter this established legislative framework. As India continues to navigate this complex terrain, it becomes crucial to foster open dialogues that consider both cultural roots and the evolving aspirations of a progressive society.

Keywords: *Homosexual, LGBTQ, Same sex Couples.*

I. INTRODUCTION

(A) Background

Same-sex marriage has been a contentious and evolving topic in India, deeply rooted in its

¹ Author is a student at ICFAI Law School, Hyderabad, India.

historical, cultural, and legal context. For centuries, Indian society has grappled with diverse perspectives and attitudes towards same-sex relationships. Traditional cultural values and religious beliefs, coupled with the influence of colonial-era laws, have shaped the societal landscape surrounding same-sex marriage.

In recent years, there has been a growing movement advocating for LGBTQ+ rights and recognition, challenging the prevailing norms and seeking legal reforms. Landmark court cases, such as the *Navtej Singh Johar v. Union of India*² in 2018, have played a pivotal role in decriminalizing consensual same-sex relationships and opening up discussions about the legal recognition of same-sex marriage.

However, the socio-legal dynamics surrounding same-sex marriage in India remain complex and multifaceted. Societal acceptance and resistance continue to coexist, with contrasting perspectives stemming from cultural traditions, moral values, and societal norms. The role of the judiciary, legislative bodies, and legal activism in shaping the discourse on same-sex marriage has been significant but subject to ongoing debate.

It is crucial to undertake a comprehensive analysis of the socio-legal dynamics of same-sex marriage in India. This research aims to delve into the historical, cultural, and legal aspects influencing the acceptance or resistance toward same-sex marriage, examine the evolving legal framework, and explore the potential implications of legalizing same-sex marriage in the Indian context. By doing so, this study seeks to contribute to a deeper understanding of the socio-legal dynamics and facilitate informed discussions surrounding same-sex marriage in India at the same time answer the question of research.

(B) Research Questions

Against this backdrop, this research project seeks to explore the socio-legal dynamics of same-sex marriage in India and address the following research questions:

1. Whether same-sex marriage be legalized and recognized constitutionally in India?
2. To what extent should ethics, social thinking, and taboo be considered in determining the constitutionality of same-sex marriage in India?

(C) Objectives

The primary objective of this project is to analyse the socio-legal dynamics of same-sex marriage in India. Specifically, the project aims to:

² (2018) 10 SCC 1.

1. Explore the historical and cultural context of same-sex relationships in India.
2. Investigate the legal framework and relevant legislations pertaining to same-sex marriage.
3. Examine the impact of socio-cultural factors on the acceptance or resistance toward same-sex marriage.
4. Analyze the role of judiciary and legal activism in shaping the discourse around same-sex marriage.
5. Evaluate the potential implications and consequences of legalizing same-sex marriage in India.

(D) Hypothesis

The project is guided by the following hypothesis:

H1: The socio-legal dynamics surrounding same-sex marriage in India are influenced by cultural and religious beliefs, colonial-era laws, and prevailing social norms.

H2: The legal recognition of same-sex marriage in India has the potential to challenge traditional notions of marriage and family, and may lead to significant shifts in societal attitudes and acceptance.

(E) Methodology

The methodology emphasises the investigation of primary and secondary legal sources and is centred on a doctrinal research approach. The primary sources may be the various provisions of the Constitution of India and the decisions rendered by the Supreme Court of India, High Courts and Consumer Forum. The Secondary sources may include leading works on judiciary, Legal dictionaries and articles written by eminent judges, Lawyers and Academicians etc. However, depending on the research question and objectives, other research methods such as empirical research or case studies may be incorporated to complement the doctrinal analysis.

(F) Significance of the Study

The study on the socio-legal dynamics of same-sex marriage in India holds significant importance for several reasons. Firstly, it addresses a pressing issue of human rights and equality, as it examines the potential legalization and constitutional recognition of same-sex marriage. Understanding the socio-legal dynamics surrounding this topic is crucial in fostering inclusive policies and ensuring equal rights for LGBTQ+ individuals in India.

Secondly, the study contributes to the existing body of knowledge on the subject by providing

a comprehensive analysis of the historical, cultural, and legal factors influencing the acceptance or resistance toward same-sex marriage. This analysis can help inform policy debates, legal reforms, and societal discussions related to same-sex marriage in India.

Furthermore, the study explores the role of ethics, social thinking, and taboo in determining the constitutionality of same-sex marriage. By examining these factors, the research aims to deepen the understanding of the complex interplay between law, culture, and societal attitudes, and their impact on the legal recognition of same-sex marriage.

Ultimately, the findings of this study have the potential to contribute to social progress, foster inclusive legal frameworks, challenge traditional norms, and promote equality for the LGBTQ+ community in India. By shedding light on the socio-legal dynamics of same-sex marriage, the research aims to facilitate informed discussions and decision-making processes that can shape a more inclusive and equitable society.

II. HISTORICAL PERSPECTIVES ON SAME-SEX RELATIONSHIPS IN INDIA

Homosexuality was prevalent even 5000 years back with a punishment of physical and eternal death prescribed in most religion. Nowhere in the history was there an instance seeking legitimacy of such marriage. However, the exposure of homosexuality has increased significantly in recent years due to the planned as well as unstructured movements to obtain tolerance for it that have spread throughout western society and into every aspect of culture, including media, education, and law.

All marriage laws have sanctioned the prohibited relationships as prescribed in the religious texts is legislated and incorporated in the respective laws, and are in consonance with nature that, humanity is designed for heterosexual relationship for carrying on the heritage of a healthy family lineage. That is why all the Marriage laws have incorporated degrees of prohibited relationship which incidentally were practised as per ‘customs and usage’ as per the Hindu Marriage Act and other Marriage Act of other religion and it is as per the ‘Levitical Law’ for the ‘Indian Christian Marriage Act.

This shakes the conscience religious people as, the same will tread upon the Fundamental Rights of many who belief, practise and propagate the pronouncement of eternal punishment in many religions including in the Bible for such acts, to quote ;

“Romans 1: 26- 32 –

26 For this reason God gave them up to dishonorable passions. For their women exchanged natural relations for those that are contrary to nature;

27 and the men likewise gave up natural relations with women and were consumed with passion for one another, men committing shameless acts with men and receiving in themselves the due penalty for their error.

28 And since they did not see fit to acknowledge God, God gave them up to a debased mind to do what ought not to be done.²⁹ They were filled with all manner of unrighteousness, evil, covetousness, malice. They are full of envy, murder, strife, deceit, maliciousness. They are gossips,³⁰ slanderers, haters of God, insolent, haughty, boastful, inventors of evil, disobedient to parents,³¹ foolish, faithless, heartless, ruthless.³² Though they know God's righteous decree that those who practice such things deserve to die, they not only do them but give approval to those who practice them."³ (See English Standard Version)

All religious branches, including Mitakshara, Dayabhaga, and equivalent variations in other religions, are covered by both codified and uncodified personal rules. The nature of marriage as an institution varies depending on the personal laws in effect. It is a holy union for the fulfilment of reciprocal responsibilities between a man and a woman among Hindus. Muslims view it as a contract, but once more, they only see it as involving a biological man and a biological woman. Therefore, requesting a writ from this Honorable Court to alter the nation's whole legislative strategy—which is firmly rooted in cultural and religious traditions—will not be permitted.

(A) Legal Framework and Legislative Developments

a. Prohibition under Hindu Marriage Act, 1955

Under the Hindu Marriage Act, 1955, there are certain restrictions on who can marry whom, known as "degrees of prohibited relationship." These provisions are outlined in Section 3 (g) of the Act. According to this section, two individuals are considered to be within the degrees of prohibited relationship if one was the **wife or husband** of a lineal ascendant or descendant of the other, or if one was the **wife of the other's brother, father, mother, grand father, or grandmother's brother, or if the two are brothers or sisters, uncle and niece, aunt, or children of brothers or sisters, or children of two brothers or sisters"**⁴ The provision explicitly bars marriage on the basis of gender lineage.

Section 5 which provides conditions for a Hindu marriage in its sub-section (iii) mentions the

³ BIBLE GATEWAY, <https://www.biblegateway.com/passage/?search=Romans%201%3A26-32&version=ES>, (last visited 24th of July, 2023).

⁴ Hindu Marriage Act, 1955, § 3(g), No. 25, Acts of Parliament, 1955 (India).

age restriction of **Bride** as 18 years at the time of marriage and **Bridegroom** to be 21 years of age⁵.

While stipulating the ceremonies for Hindu Marriage under section 7, the provision explicitly mentions **bidegroom and the bride** to jointly take seven steps before the sacred fire for the marriage to be considered as complete⁶.

Section 9 of the Hindu Marriage Act pertains to the 'Restitution of Conjugal Right.', wherein the legislation highlights, it must be **either husband or the wife** who has withdrawn from the society of the other, may apply for restitution of conjugal rights⁷.

Similarly, section 12 on voidable marriages, in its subsection 2 clause (a) subclause (i) prohibits annulment of marriage (subject to subsection 1) on the ground if the petitioner lives as **Husband and Wife** with full consent after a year of discovery of fraud⁸.

One of the prominent provision on divorce under section 13 of the act, in its sub section 2 enacts specific grounds of divorce that can be taken by the **Wife** only in case the **Husband** marries again in the lifetime of wife or if the **Husband** is guilty of bigamy, rape or bestiality or a decree or order, as the case may be, has been passed **against the husband** awarding maintenance to the wife⁹.

It is worth noting that India's marriage laws and regulations are gender-specific, recognising either a husband or a wife. The Indian Parliament has been clear about its position on this matter, focusing on the binary notion that marriage is a relationship between a man and a woman. The legal recognition and benefits of marriage have been denied to same-sex couples by such rules, and they have no further options. The current legal system's gender uniqueness reflects the prevalent sociological and cultural views on marriage. Additionally, additional grounds for divorce that apply only to the "wife" have been specified in many of the provisions.

Moreover section 17 of the Act, while stipulating the punishment for bigamy states that at the time of marriage either party had a **husband or wife** living, then such marriage shall be void¹⁰. Further, 18 of the Act wherein punishment for contravention of certain other conditions for a Hindu marriage specifies gender as **himself or herself**, while discussion on the contravention of the conditions mentioned in section 5 of the Act shall be punishable¹¹.

⁵ Hindu Marriage Act, 1955, § 5, No. 25, Acts of Parliament, 1955 (India).

⁶ Hindu Marriage Act, 1955, § 7, No. 25, Acts of Parliament, 1955 (India).

⁷ Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

⁸ Hindu Marriage Act, 1955, § 12, No. 25, Acts of Parliament, 1955 (India).

⁹ Hindu Marriage Act, 1955, § 13, No. 25, Acts of Parliament, 1955 (India).

¹⁰ Hindu Marriage Act, 1955, § 17, No. 25, Acts of Parliament, 1955 (India).

¹¹ Hindu Marriage Act, 1955, § 18, No. 25, Acts of Parliament, 1955 (India).

Section 19 of the Act specifies the court to which petitioner shall be presented where in under sub-section (iiia) the provision live the liberty to the wife when she is the petitioner, to file the petition where she resides¹².

In case of maintenance under section 24, the Act mentions **husband or wife** to pay the petitioner expenses, if he or she has no independent income sufficient for his or her support¹³. Similarly in case of permanent alimony and maintenance under section 25, similar citing of **Husband or Wife** is done to distinguish the payer and payee of maintenance for his or her support. It is pertinent to note here that the provision under sub-section 3 states that *if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock*, then the court may modify or rescind its order¹⁴.

b. Indian Penal Code,

Wives and other women who are a part of such a legally recognised marriage relationship are afforded specific benefits under Section 498A of the IPC, according to that section of the IPC. It is asserted that any recognition that extends beyond the conventional marriage of a man and a woman would be in conflict with the provisions of the Act. For instance:

“Section 376B. Sexual intercourse by husband upon his wife during separation.—¹⁵

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.”

“Section 498. Enticing or taking away or detaining with criminal intent a married woman.—¹⁶

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

“Section 498A. Husband or relative of husband of a woman subjecting her to

¹² Hindu Marriage Act, 1955, § 19, No. 25, Acts of Parliament, 1955 (India).

¹³ Hindu Marriage Act, 1955, § 24, No. 25, Acts of Parliament, 1955 (India).

¹⁴ Hindu Marriage Act, 1955, § 25, No. 25, Acts of Parliament, 1955 (India).

¹⁵ Indian Penal Code, 1860, § 376B, No. 45, Acts of Parliament, 1860 (India).

¹⁶ Indian Penal Code, 1860, § 498, No. 45, Acts of Parliament, 1860 (India).

cruelty.¹⁷

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, “cruelty” means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

It is pertinent to mention here the provision of Dowry death under section 304B of the Indian penal Code wherein the death of a the women is caused due to subject to cruelty by the husband or his family, then it is called Dowry Death.

It is noteworthy that the Indian Penal Code's (IPC) and other relevant legislation's provisions principally intended to give women specific advantages and safeguards in the context of marriage. To protect the rights and well-being of women in heterosexual marriages, these rules cover a variety of topics such dowries, domestic violence, and cruelty. The lack of a gender-specific divide between husband and wife makes it difficult and impossible to apply these laws in the case of same-sex marriage. As a result, it becomes challenging to grant same-sex couples the same advantages and protections under the terms of these statutes. In order to ensure equality and protection without relying exclusively on the current rules that are designed for heterosexual couples, it is crucial to critically review and build adequate legal frameworks that address the particular needs and rights of people in same-sex marriages.

c. Prohibition under Special Marriage Act

The sacred space of marriage, in which healthy procreation is one of the hall marks, has been infused and legislated even into the Special marriage Act also as seen in the definition:

2(b). Definitions.—¹⁸ ***“degrees of prohibited relationship”-a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited***

¹⁷ Indian Penal Code, 1860, § 498A, No. 45, Acts of Parliament, 1860 (India).

¹⁸ The Special Marriage Act, 1954, § 2(b), No. 43, Acts of Parliament, 1954 (India).

relationship.

When a categorization is based on observable differences that separate those who are grouped from those who are excluded from the group, equality and a violation of fundamental rights cannot be applied. The distinction has a logical relationship to the law's goal, therefore homosexuals are unable to use the Special Marriage Act, which was designed for heterosexual marriages, to legitimise their relationships.

d. Prohibition by Judiciary

The Hon'ble Supreme Court ruled in **Navtej Singh Johar v. Union of India** (2018) 10 SCC1, that one cannot claim to have the legal right to a same-sex marriage by citing Article 21 of the Indian Constitution.

“167. The above authorities capture the essence of the right to privacy. There can be no doubt that an individual also has a right to a union under article 21 of the constitution. When we say union, we do not mean the union of marriage, though marriage is a union. As a concept, union also means companionship in every sense of the word, be it physical, mental, sexual or emotional. The LGBTQ community is seeking realization of its basic right to companionship, so long as such a companionship is consensual, free from the vice of deceit, force, coercion and does not result in violation of the fundamental rights of others.”¹⁹

This court has had to define marriage in the past in interpreting statute law. **Reema Aggarwal v. Anupam** (2004) 3 SCC 199 was decided as follows:

*8. In response, learned counsel for the respondents submitted that to constitute a marriage in the eye of the law, it has first to be established that the same was a valid marriage. Strong reliance was placed on **Bhaurao Shankar Lokhande v. State of Maharashtra** [AIR 1965 SC 1564 : (1965) 2 Cri LJ 544] in that context. Reference was also made to Sections 5(i), 11 and 16 of the Hindu Marriage Act, 1955 (for short “the Marriage Act”) to contend that the stipulations of conditions of a valid marriage, the circumstances in which the marriage becomes void and the protection given to children of void and voidable marriages respectively makes the position clear that wherever the legislature wanted to provide for contingencies flowing from void or voidable marriages, it has specifically done so. It is latently evident from Section 16 of the Marriage Act. There is no such indication in Section 498-A IPC. **The language used is***

¹⁹ (2018) 10 SCC1.

“husband or relative of the husband”. Marriage is a legal union of a man and a woman as husband and wife and cannot extend to a woman whose marriage is void and not a valid marriage in the eye of the law.”²⁰

Again in **Mr ‘X’ v. Hospital ‘Z’** (1998) 8 SCC 296, it has been held as follows:

31. Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical union. When two souls thus unite, a new soul comes into existence. That is how, life goes on and on on this planet..”²¹

(B) Socio-Cultural Factors Influencing Same-Sex Marriage

Hon’ble Court in **M/s Jit Ram Shiv Kumar & Ors. V. State of Haryana & Ors** (1981) 1 SCC 11²², stated as under:

10. What are the moral values of the society is a complex question because the concept of moral values amongst different persons and classes of persons is not always the same. Being not a state one, it differs from time to time and from society to society. It is hazardous for a Court to attempt to enforce what according to it is the moral value. Before embarking on the mission of "closing the gap between the law and morality and bring about as near an approximation between the two as possible", it is necessary for the Court to understand clearly its limitations. The powers of the Court to legislate is strictly limited. "Judges ought to remember that their office is jus dicere and not jus dare to interpret the law, and not to make law or give law". [727 F, G, 728 A-C]

The courts by its very nature are most ill suited to undertake the task of legislating. There is no machinery for the Court to ascertain the condition of the people and their requirements and to make laws that would be most appropriate. Further two judges may think that a particular law would, be desirable to meet the requirements whereas another two judges may most profoundly differ from the conclusions arrived at by two judges. [728 G-H, 729 A] Shri Gurbaksh Singh Sibbia etc. v. State of U.P., [1908] 3 SCR p. 383 followed.”²³

Although two other judges may vehemently disagree with the two judges' viewpoints, two further judges may believe that a certain statute would be preferable to meet the requirements. There is no way for the court to ascertain the public's conscience and their just acceptance of

²⁰ (2004) 3 SCC 199.

²¹ (1998) 8 SCC 296.

²² (1981) 1 SCC 11.

²³ (1981) 1 SCC 11.

such topics that entail religion, custom, and the individual right to choice before passing the most suitable legislation because it lacks the authority to enact laws.

(C) Professionals and Scholars's Opinions

In the medical community, there are many professionals who hold the view that homosexuality is an acquired behaviour. Congressman William Danneneyer's book *Shadow in the Land*²⁴ quotes a number of writers who reject the scientific and genetic hypotheses.

It is not innate for a person to choose a mate who is of the same sex for romantic fulfilment. Sexual impulse and the preferred sexual object are unrelated. There is no genetically determined predisposition to choose a mate of the same sex or the opposite sex; such a behaviour is acquired²⁵.

Regardless of any potential unlearned support from constitutional sources, the child's & psychosexual identity is not prewritten, unlearned, in the genetic code, the hormone system, or the neural system at birth²⁶.

III. INTERNATIONAL PERSPECTIVES ON SAME-SEX MARRIAGE

(A) The United States of America

It is bizarre how homosexuality is acknowledged in America. In order to survive, the American Psychiatric Association has to accept homosexuality as a norm. The APA took homosexuality off of its list of mental illnesses in 1974. The gays frequently inform people of this, but they never explain how the APA reached its conclusion. Beginning in the first quarter of 1970, gays began to overrun the APA meeting. They would often enter the yearly celebrations despite not being invited, entering like uncivilised barbarians. They would start shouting and calling individuals names as soon as they entered the panel rooms in an effort to intimidate as many people as they could. They also found it useful for gaining sympathy by complaining about their miserable situation and equating it with extreme racism towards black people. A few psychiatrists and a panel of their own were won over by gays in 1973 thanks to their strong appeal to sympathy and paucity of factual proof. Following that, the homosexuals exerted enough pressure to win after a highly successful letter-writing campaign. By a vote of 58 to 40, the APA finally decided to remove homosexuality from its list of mental illnesses in 1974.

²⁴ WILLIAM DANNEMEYER, *SHADOW IN THE LAND: HOMOSEXUALITY IN AMERICA*, (Ignatius Pr 1989).

²⁵ CHARLES SOCARIDES, *Homosexuality: Basic Concepts and Psychodynamics*, 10, *International Journal of Psychiatry*, 25, 118, (1972).

²⁶ JOHN MONDAY, *Sexual Dimorphism and homosexual Gender Identity*, *Perspective in Human Sexuality*, 67 (1974).

In a recent decision, the US Supreme Court exposed the harsh realities of the problems and effects that same-sex marriage legitimization brings about, problems that the Court had created but was unable to remedy. In *Kim Davis v. David Ermold, et al.* on Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit No. 19-926, the Supreme Court of the United States. The Judges noted in their ruling on October 5, 2020 that:

“Due to Obergefell, those with sincerely held religious beliefs concerning marriage will find it increasingly difficult to participate in society without running afoul of Obergefell and its effect on other antidiscrimination laws. It would be one thing if recognition for same-sex marriage had been debated and adopted through the democratic process, with the people deciding not to provide statutory protections for religious liberty under state law. But it is quite another when the Court forces that choice upon society through its creation of a textual constitutional rights and its ungenerous interpretation of the Free Exercise Clause, leaving those with religious objections in the lurch.”*²⁷

Currently, the Supreme Court of the United States appears divided on this question and believes that the Legislative Assembly should have had the opportunity to consider it.

(B) Asia

Only Taiwan, Hong Kong, Indonesia and Nepal permit same-sex unions in Asia. Singapore's government enacted a measure ending the prohibition on men and women having sex, but it has obstructed progress toward marriage equality. In response to a petition from LGBT rights advocates, the Supreme Court of Nepal recently issued an interim decision enabling same-sex couples to register while they await the outcome of the case. Even after this order, another court of Nepal rejected the application of a gay couple stating that they are of same gender.

Recently, the Supreme Courts of Japan and Panama ruled that same-sex marriage is not constitutional and is not a human right. The Supreme Court of Panama ruled against same-sex unions, stating in its decision that *'no matter how many changes happen in reality,' gay marriages lack 'conventional and constitutional recognition.'* Globally, only around 34 countries out of about 195 countries had legalised same-sex marriage after the US. However, if the US later decides that this was wrong, the other countries won't be far behind.

IV. SOCIO-LEGAL ANALYSIS OF SAME-SEX MARRIAGE IN INDIA

(A) Analysis of Primary Legal Sources

In essence, "marriage" is a legally recognised relationship between two people that is controlled

²⁷ 2020 SCC OnLine US SC 53.

by either uncodified personal rules or statutory laws. The institution of marriage between two people of the same gender is not recognised by any personal laws that are not codified or by any statutory laws that are codified. It must be remembered that awarding recognition, conferring rights, and granting privileges that recognise human interactions and have legal repercussions are fundamentally legislative functions and cannot ever be the focus of a court's decision-making process. Any human relationship between a biological man and a biological woman that is acknowledged legally, religiously, and socially can be considered marriage according to the functional definition.

According to Black's Law Dictionary, "marriage" means as follows:

*“MARRIAGE. Marriage, as distinguished from the agreement to marry and from the act of be-coming married, is the civil status, condition, or relation of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.”*²⁸

*A contract, according to the form prescribed by law, by which a man and woman, capable of entering into such contract, 10 mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and wife.”*²⁹

*The word also signifies the act, ceremony, or formal proceeding by which persons take each other for husband and wife.”*³⁰

Marriage is strictly viewed as the union of a biological man and a biological woman in the Indian statutory and personal law framework. Criminal laws only allow marriage between a biological "man" and a biological "woman.". Marriage is strictly viewed as the union of a biological man and a biological woman in the Indian statutory and personal law framework. Criminal laws only allow marriage between a biological "man" and a biological "woman."

(B) Examination of Relevant Court Cases and Judgments

In the case of **Shayara Bano v. Union of India**³¹, would be relevant. The said portion is quoted as under:

“322. “Personal law” has a constitutional protection. This protection is extended to

²⁸ Bish.Mar. & Div. § 3; Collins v. Hoag & Rollins, 121 Neb. 716, 238 N.W. 351, 355; Allen v. Allen, 73 Conn. 54, 46 A. 242, 49 L.R.A.142.

²⁹ Shelf. Mar. & Div. 1; Seuss v. Schukat, 358 Ill. 27, 192 N.E. 668, 671, 95 A.L.R.1461.

³⁰ Davis v. Davis, 119 Conn. 194, 175 A. 574, 575.

³¹ (2017) 9 SCC 1.

“Personal Law” through Article 25 of the Constitution. It needs to be kept in mind that the stature of “Personal Law” is that of a fundamental right. The elevation of “Personal Law” to this stature came about when the Constitution came into force. This was because Article 25 was included in Part III of the Constitution. Stated differently, “Personal Law” of every religious denomination is protected from invasion and breach, except as provided by and under Article 25.”

“350. The debates in the Constituent Assembly with reference to Article 25, leave no room for any doubt that the Framers of the Constitution were firm in making “Personal Law” a part of the fundamental rights, with the liberty to the State to provide for social reform. It is also necessary to notice at this stage that the judgment in Valsamma Paul case [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772] , cannot be the basis for consideration in the present controversy, because it did not deal with issues arising out of “Personal Law” which enjoy a constitutional protection. What also needs to be recorded is that the judgment in John Vallamattom case [John Vallamattom v. Union of India, (2003) 6 SCC 611] , expresses that the matters of the nature, need to be dealt with through legislation, and as such, the view expressed in the above judgment cannot be of any assistance to further the petitioners' cause.”³²

In Raghunath Rai Bareja v. Punjab National Bank,³³ it has been held

“40. It may be mentioned in this connection that the first and the foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match ABv. Securities and Exchange Board of India.³⁴ As held in Prakash Nath Khanna v. CIT³⁵ the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct

³² (2017) 9 SCC 1.

³³ (2007) 2 SCC 230.

³⁴ AIR 2004 SC 4219.

³⁵ (2004) 9 SCC 686.

or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide Delhi Financial Corpn. v. Rajiv Anand.³⁶ Where the legislative intent is clear from the language, the court should give effect to it, vide Govt. of A.P. v. Road Rollers Owners Welfare Assn.³⁷ and the court should not seek to amend the law in the garb of interpretation.”

Additionally, it is not permitted to enlarge the meaning of the contested sections by reading them down. Reading down is a method of interpretation that should only be used when a provision's literal interpretation leads to ludicrous or impossible outcomes. The law is interpreted by the court to carry out the legislative intent, not to give the provision a meaning that is completely at conflict with that intent. In the case of **Subramanian Swamy v. Raju**³⁸, this decision was made. It was also held that,

“61 ...the second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute...”

In India, where there is a clear larger statutory framework around the legislative understanding of marriage between opposite sexes, i.e. between a woman and a man, it is therefore obvious that there is a legitimate state interest in limiting the legal recognition of marriage to only people of opposite sexes.

The Hon'ble Supreme Court started in **Indra Sarma v. V.K.V. Sarma**³⁹, that in contrast to those entering into live-in relationships, married couples who choose to get married are fully aware of the legal responsibility that emerges by the operation of law on the solemnization of the marriage and the rights and duties they owe to their children and the family as a whole. The court cited the case of **Pinakin Mahipatray Rawal v. State of Gujarat**⁴⁰ wherein it was held that the term "marriage relationship" refers to the legally recognised marriage between two people, which includes the obligations of companionship, shared housing, sexual intimacy and the sole enjoyment of it, the desire to have children, their upbringing, services provided in the

³⁶ (2004) 11 SCC 625.

³⁷ (2004) 6 SCC 210.

³⁸ (2014) 8 SCC 390.

³⁹ (2013) 15 SCC 755,

⁴⁰ (2013) 10 SCC 48 : (2013) 4 SCC (Civ) 616 : (2013) 3 SCC (Cri) 801

home, support, affection, love, and liking, among other things.

In the very judgement there was mention of DV Act which by recognising different other types of familial relationships as legitimate, modern Indian society rejects the notion that such relationships may only exist through a few previously established acceptable patterns. The relationship between two people (of the opposite sex) who live or have lived together in a shared household when they are related by: (a) consanguinity (b) marriage (c) through a relationship in the nature of marriage (d) adoption (e) family members living together as joint family is covered by Section 2(f), as previously mentioned. The Act is clear and explicitly does not recognise such relationship as domestic relationship between same sex partners as marriage under section

Despite the fact that Section 2(f)⁴¹ of the DV Act refers to "two persons," Section 2(a)'s definition of "aggrieved person"⁴² only includes "women." As a result, the Act does not recognise relationships between people who are the same sex (gay or lesbian), and as a result, none of the parties' actions, inactions, or conduct would constitute domestic violence that would qualify them for relief under the DV Act.

The norm throughout history and the basis for the creation and maintenance of the State is the statutory recognition of marriage as confined to unions, relationships, and marriages that are heterosexual in character. Given the importance of heterosexual marriage to society, the State has a compelling interest in recognising it exclusively to the exclusion of other varieties of marriage or partnership.

(C) Exploration of Constitutional Provisions and Legislative Debates

Article 14

According to Article 14⁴³, heterosexual and same-sex relationships are fundamentally separate groupings that cannot be treated equally. Because of this, there is a discernible distinction (normative foundation) between individuals who are classified as heterosexual couples and those who are not (same sex couples). This categorisation makes sense in light of the objective being sought (ensuring social stability via recognition of marriages).

Article 15

This unique status given to heterosexual marriage cannot be interpreted as a preference for

⁴¹ THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, § 2 (f), No. 43, Acts of Parliament (India).

⁴² THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, § 2 (a), No. 43, Acts of Parliament (India).

⁴³ INDIA CONST. art. 14.

heterosexuality or as discrimination against same-sex couples in violation of Article 15(1). This is so because heterosexual live-in relationships and all other forms of cohabitation do not have the same status as heterosexual marriage. In fact, as was determined in the case of *Badri Prasad v. Director of Consolidation*, the presumption of marriage is rebuttable in live-in partnerships.⁴⁴ Thus, it is evident that not all heterosexual unions are equal to marriage in status. Only sex-based discrimination would be required to violate Article 15(1). It is clear that the current situation in no way satisfies this prerequisite criterion. Therefore, Article 15 is not applicable and cannot be used to contest the pertinent statutory requirements.

Article 19 and 21

In actuality, there is no fundamental right that guarantees the acceptance of a specific type of social connection. Article 19⁴⁵ clearly grants all citizens the right to form associations, but this right does not entail that the State must automatically recognise these associations as legitimate. Furthermore, no implicit endorsement of same-sex marriage can be found in the right to life and liberty guaranteed by Article 21⁴⁶. People of the same sex are no longer forbidden from engaging in consenting sexual contact by Section 377 of the Indian Penal Code as a result of the *Navtej Singh Johar (Supra)* decision. The aforementioned behaviour has been decriminalised but in no way has it been made acceptable. Instead, as can be apparent from the aforementioned extract, *Johar* clearly excludes marriage from its view of Article 21.

It was decided as follows in **Santokh Singh v. Delhi Administration**:

“...In our opinion, it is hardly fruitful to refer to the American decisions particularly when this Court has more than once clearly enunciated the scope and effect of Article 19(1)(a) and 19(2). The test of reasonableness of the restriction has to be considered in each case in the light of the nature of the right infringed, the purpose of the restriction, the extent and the nature of the mischief required to be suppressed and the prevailing social and other conditions at the time. There can be no abstract standard or general pattern of reasonableness. Our Constitution provides reasonably precise, general guidance in this matter. It would thus be misleading to construe it in the light of American decisions given in different context...”⁴⁷

Article 25

The constitutional protection of every religious denomination's personal law against protection

⁴⁴ (1978) 3 SCC 527.

⁴⁵ INDIA CONST. art. 19.

⁴⁶ INDIA CONST. art. 21.

⁴⁷ (1973) 1 SCC 659 at 664, Para 11.

and violation is reaffirmed in Article 25⁴⁸ of the Indian Constitution. The marriage laws created by the Parliament to recognise the union of a man and a woman according to the customs of various religious communities have legal and statutory significance. If the Parliament creates marriage structure, which does not comply with personal laws, it would lead to religious strife and have an impact on people's beliefs and religions.

DPSP

All of our country's marriage laws are in line with not only customs and religious practises, but they have also so far withstood the test of time and changes in laws from other countries because they are in line with The Constitution of India, which promotes an intellectual and scientific temperament and imposes it as one of every Indian citizen's Fundamental Duties. The pertinent clauses are as follows:

“Article 51A in The Constitution Of India 1949⁴⁹

51A. Fundamental duties It shall be the duty of every citizen of India (a) to abide by the Constitution and respect its ideals and institutions,.....

(f) to value and preserve the rich heritage of our composite culture;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;”

It is clear from reading Article 51A of the Constitution that every Indian citizen is accountable for upholding its tenets and institutions. Fundamental obligations also include appreciating and protecting the rich heritage of India's diverse cultural heritage. Marriage between homosexuals is against long-standing religious and cultural values that are regarded as essential to the history of India. Furthermore, because it violates ingrained societal conventions and conventional family structures, same-sex marriage could not be consistent with the obligation to cultivate a scientific temperament, humanism, and the spirit of inquiry and reform.

In **Javed v. State of Haryana**⁵⁰, the Hon'ble Supreme Court upheld limitations on candidates running in specific local elections if they had more than two children. The following was noted::

"39. Fundamental rights are not to be read in isolation. They have to be read along with the Chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Article 51 A. Under Article 38 the State shall strive to promote the welfare of the people and developing a social order empowered at distributive justice - social,

⁴⁸ INDIA CONST. art. 25.

⁴⁹ INDIA CONST, art. 51A.

⁵⁰ (2003) 8 SCC 369 (389) Pa 39-41.

economic and political. Under Article 47 the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular the constitutionally down-trodden. Under Article 47 the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. None of these lofty ideals can be achieved without controlling the population inasmuch as our materialistic resources are limited and the claimants are many.....”

“41. To say the least it is futile to assume or urge that the impugned legislation violates right to life and liberty guaranteed under Article 21 in any of the meanings howsoever expanded the meanings may be.”

The expression "person of one's own choosing" used therein cannot be taken in an absolute sense and must be constrained by the statute created by Parliament, the court held in **Shafin Jehan vs. Asokan K.M**⁵¹. The decision explicitly said that "The law may regulate (subject to constitutional conformity) the criteria of a lawful marriage, as it may regulate the circumstances in which a marital relation may be dissolved or annulled," which makes it quite clear that this is the case.

(D) Societal Attitudes and Acceptance

Same-Sex Marriage is not legal and goes against both morality and societal approval. The legislative has the authority to impose social requirements that are based on the society's religion, moral standards, culture, and ethos. In the future, people will file applications stating that they want to wed animals because they have been living together under the same roof for a long time and are in love.

There are already several examples of mothers and sons, fathers and daughters, and siblings living together. The elimination of any restrictions on the current legal framework will only allow those relationships—which are forbidden from getting married and engaging in sexual activity with one another—to knock on the doors of justice, citing the GSA phenomenon and arguing that they should be free to love and enjoy one another. This will also pave the way for petitions calling for the repeal of drug restrictions in US jurisdictions where the conditions of the homeless are worse than those of animals. Although it seems like a human rights concern right now, it will eventually unleash a Pandora's Box.

For a social institution with a fundamentally different function, having sex for pleasure cannot

⁵¹ (2018) 16 SCC 638.

become the norm since doing so will alter society as a whole. The claim that homosexuality is just and only inborn is unsupported by any evidence. The biological truth of gender identity and sexual orientation, as well as the biological need of heterosexuality, underpins both. We cannot "build" that is, put together or take apart a separate reality in which gender and sexual identity are not in accordance with biology. The body tells us who we are.

V. DISCUSSION AND FINDINGS

(A) Analysis of Research Questions

The first question of research is ‘Whether same-sex marriage be legalized and recognized constitutionally in India?’ which is a burning issue today in India because India's adherence to its constitution is emblematic of its commitment to upholding the principles of democracy and governance. India, being the largest democracy in the world, aspires to uphold and respect its constitution at all times. India strives to advance equality, justice, and freedom for all of its residents through its constitutional framework, regardless of their upbringing or religious views.

While exploration of Constitutional Provisions along with its relevant cases in Chapter 3.3, it is clear that there has been no violation of fundamental rights which is being claimed by the Homosexual. The Constitution of our country guarantees equality and non-discrimination to all its citizens, regardless of their sexual orientation. However, homosexuals do not constitute a distinct category of individuals for the purpose of requesting this right. Giving people the option to wed in accordance with their same-sex choice would go against the legal precepts of equality and decency. As a result, neither the courts nor the parliament are under any obligation to recognise same-sex marriages under the Constitution.

So far as second question of research is concerned i.e. ‘To what extent should ethics, social thinking, and taboo be considered in determining the constitutionality of same-sex marriage in India?’, homosexual marriage doesnot stand a chance. India is a nation renowned for the rich tapestry of culture and religion that is intricately woven into its civilization. India's laws are designed to respect and accommodate its diverse population's many different religious and cultural traditions. The legal framework of the nation seeks to strike a difficult balance between defending individual rights and respecting the common history of its citizens.

Any society's formation and enactment of laws are greatly influenced by ethics and morality. A community's common beliefs, guiding ideals, and accepted conventions are reflected in its laws. Laws that are fair, just, and consistent with the moral compass of the society they control are made possible by ethical considerations. Respecting moral principles while crafting laws encourages confidence in the justice system and builds social cohesiveness.

As seen in Chapter 3.4 on societal attitudes and acceptance of same sex marriage and Historical perspectives on same sex marriage in chapter 2.2, it is evident that the society of India never accepted Homosexual marriage, rather homosexuality itself used to be a criminal offence. The court did the best it could by decriminalising the offence in light of the times and with open leniency. However, India's society will not accept same-sex marriage becoming legal owing to western influence because it is against its culture and religion. The Hon'ble Court is aware of this, which is why, as can be seen above, in *Navtej's case*, the court expressly rejected the claim.

(B) Evaluation of Hypothesis

H1: The socio-legal dynamics surrounding same-sex marriage in India are influenced by cultural and religious beliefs, colonial-era laws, and prevailing social norms.

The socio-legal dynamics surrounding same-sex marriage in India are indeed multifaceted and influenced by various factors. Cultural and religious beliefs deeply shape societal attitudes towards same-sex relationships. Religion is a key component of Indian society that has a big impact on how people feel about same-sex unions. Different religious groups have different perspectives on LGBTQ+ rights, which can affect the general population and legislators.

Historically, India's legal landscape concerning same-sex relationships has been shaped by colonial-era laws. Section 377 of the Indian Penal Code, inherited from British colonial rule, criminalized consensual homosexual acts until it was struck down by the Supreme Court in 2018. The repeal of Section 377 marked a significant step towards recognizing the rights of LGBTQ+ individuals in India.

However, despite the decriminalisation, the subject of same-sex marriage's legal recognition is still complicated. For same-sex couples, the lack of formal laws recognising same-sex unions generates uncertainty and difficulties in matters of inheritance, property rights, and child custody. The approval of same-sex marriage is also influenced by prevailing social standards. Traditional gender roles and family structures may cause opposition to the acceptance of non-heterosexual partnerships as valid marriages.

Cultural, religious, and prevailing social values are intended to be essential parts of the legal framework that sustains our country. Our laws' drafting and application are significantly influenced by the rich tapestry of cultures, languages, and faiths that make up India as a whole. Therefore, H1 is true.

H2: The legal recognition of same-sex marriage in India has the potential to challenge traditional notions of marriage and family, and may lead to significant shifts in societal attitudes and acceptance.

Concerns about the possible repercussions of altering conventional ideas of marriage and family are expressed through the legal acceptance of same-sex marriage in India. It could be argued that India's diversity of cultures and religions has developed a special concept of marriage, and changing it might cause cultural conflicts and societal unrest.

The institution of marriage as it is currently understood may be weakened by the legalisation of same-sex unions, and family structures based on enduring social values may be destroyed. Marriage, which has historically been between a man and a woman, is considered to be a pillar of cultural stability, and any alteration to this definition could have a negative impact on social cohesiveness.

The possible effects on kids raised in same-sex households are yet another issue. Understanding their identities and roles in non-traditional families may be difficult for the kids. This debate frequently centres on the idea that conventional families offer the most stable setting for raising children.

Legalizing same-sex unions might violate citizen's moral and religious principles. Allowing same-sex relationships could be perceived as a breach of their right to freedom of conscience and their right to practise their religion.

Hence, the legal recognition of same-sex marriage in India has the potential to challenge traditional notions of marriage and family, and may lead to significant shifts in societal attitudes and acceptance which are not good for the society.

(C) Interpretation of Research Findings

When it comes to the matter of formally establishing their relationship and the legal repercussions that follow, a marriage cannot be reduced to merely a concept inside the realm of an individual's privacy. It could be private between two people and significantly affect their personal life but marriage has substantial statutory and other legal ramifications as an institution under several legislative enactments. Since this relationship involves two adults, any governmental recognition of it cannot be seen as purely a matter of private.

The statutory and personal law systems in India firmly restrict the definition of marriage to unions between biological men and women. Criminal laws only allow marriage between a biological "man" and a biological "woman."

There are numerous instances where the terms "husband" and "wife," "male" and "female," "bride" and "bridegroom," "father" and "mother," "minor son," "minor daughter," "him" and "her," "himself," "full blood" and "half-blood," "uterine blood," "ancestress," etc. are used

explicitly to refer to the opposing sexes. It is asserted that each of these demonstrates that marriage in India is solely a union of a biological man and a biological woman, and that the legislative policy of the relevant Legislature is consistent with this. Hence, no one be allowed to request a mandamus from the court to change the legislative plan.

The General Clauses Act of 1897's⁵² provisions cannot be applied here as they don't have clear legislative aim on the goal of family laws, and the criminal provisions related to marriage, etc. All statutory provisions will become inapplicable if "husband" is not understood to mean a biological man and "wife" is not understood to mean a biological woman, in addition to being completely at odds with the consistent legislative policy that is based on the deliberate judgments of legislators that are based on cultural ethos and societal values in each country. According to the legislative framework of several Statutes, it is neither possible nor practical to refer to one partner in a same-sex marriage as the "husband" and the other as the "wife." As a result, the legislative framework of numerous statutory enactments

Smaller family units that are predominantly heterogeneously constituted make up the society on a normative level. The family unit's continued existence is a prerequisite for this organisation of society's fundamental unit. It is possible for a society to recognise as legal the type of union that it views as the fundamental tenet of its existence, even when other forms of union may exist in the society that are not illegal.

Article 21's exception for life and liberty in this situation would constitute a justifiable state interest. The acceptance of marriage as a heterogeneous institution and the acceptance of Indian society based on its own cultural and societal values, which are recognised by the appropriate legislation, are said to be inextricably linked to the statutory recognition of marriage as a union between a "man" and a "woman."

VI. CONCLUSION AND RECOMMENDATIONS

The conflict between traditional beliefs and changing society standards is reflected in India's debate over legalising same-sex unions. Opponents voice concerns about potential effects on culture, tradition, and family values while advocates promote inclusivity, equality, and human rights. The problem remains complicated and delicate as the nation develops, necessitating open communication and comprehension on all sides.

(A) Conclusion

Law is an Expression of God's Will to govern His people in peace and maintain harmony in the

⁵² The General Clauses Act of 1897, No. 10, Acts of Parliament, 1897 (India)

state. Family Law especially should appeal to the personal moral convictions of the larger community in order to answer the question of what is the precise function of law within a society. The purpose of legislation, the bounds of state power, and legislation itself should all address each person's rights. Even now only many independent and forward countries like Japan, Russia and other countries which hold high value for religion, cultural and moral values have not aped the west in this

The Hon'ble Court being conscious of its own limitations to function within the frame work of the Constitution should refrain from interference in such matters of public morale, public policy which is the larger domain of the state. The nation should be asked to decide this issue by way of a referendum or atleast be debated in the legislation so that it would be the voice and vote of the people which will be reflected in such a serious matter which involves a nations identity also.

(B) Policy Recommendations

The law pertaining to same sex marriage is clear by the interpretation of laws of land and the landmark judgements by the Hon'ble Supreme Court. Hence, there is no requirement of any changes in law or policy relating to Homosexual marriage. The homosexual couples can be considered as livein partners and the law of the same can be applicable to them.

(C) Areas for Further Research

A thorough comparison analysis can be used to undertake additional study on same-sex marriage. Assessing the legal frameworks for same-sex marriage in many nations, examining the various approaches adopted by various jurisdictions, and comprehending the historical and cultural factors that have influenced their judgments are all part of this topic. Further research can find patterns and trends that emerge from the experiences of many jurisdictions by performing a detailed investigation of the legal provisions and societal attitudes toward same-sex marriage.

Additionally, case studies from countries that have already legalized same-sex marriage would offer valuable insights. In-depth investigations into the impact of legalization on these societies, including changes in social attitudes, family dynamics, and legal implications, can provide a nuanced understanding of the effects of recognizing same-sex unions. Examining the challenges faced and the benefits gained by these countries can shed light on potential pitfalls and opportunities that India may encounter if it were to move towards legalizing same-sex marriage.

In the end, India's response to the problem might be greatly influenced by the lessons and implications that can be drawn from the comparative research and case studies. This research

can help legislators, activists, and politicians make well-informed choices that are consistent with the nation's cultural and legal environment. Understanding the benefits and drawbacks of alternative legal systems as well as potential societal repercussions can help India take a careful and forward-thinking approach to same-sex marriage.
