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LGBTQIA+ Unequal Diversity: Same Sex Marriage

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ABSTRACT

The authors delve into the historical trajectory of same-sex marriage (SSM) in India, tracing its roots from ancient texts to the colonial era and beyond, while juxtaposing it with the global landscape where SSM is legalized. India's historical background reflects a rich tapestry of diverse sexuality, evident in ancient texts such as the Kama Sutra and temple sculptures depicting same-sex relationships. However, the colonial period brought about significant changes, with the imposition of Victorian morality and the criminalization of homosexual acts under Section 377 of the Indian Penal Code. The struggle for LGBTQIA+ rights gained momentum in post-independence India, culminating in the landmark Navtej Singh Johar v. Union of India case, which decriminalized consensual homosexual acts in 2018. However, the legal status of SSM remains ambiguous, with no explicit laws either permitting or prohibiting it. A comparative analysis with British India sheds light on the impact of colonial legacy on LGBTQIA+ rights in India. Meanwhile, countries like the United Kingdom, which once enforced similar anti-sodomy laws, have progressed towards legalizing SSM, showcasing global shifts towards inclusivity and equality. This abstract underscores the complexities and nuances surrounding SSM legalization in India, informed by its historical context and comparative perspectives with global legal frameworks while offering the suggestions for future legal reforms towards greater inclusivity and equality. This abstract asked you that how our Indian culture & mythology also talks about the transgender & SSM.

Keywords: *Same-sex marriage (SSM), Juxtaposing, Decriminalized, legalized, inclusivity, equality, homosexual.*

I. INTRODUCTION

The 6th of September 2018, was not an ordinary day. Something momentous happened on the day that “blew a life of “constitutionality” in the dead members of the LGBTQIA+ community, who have been subjected to centuries of mind-numbing toil. What marked the day special for

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the LGBT+ community was that the Supreme Court of India delivered a historical verdict decriminalizing homosexuality by partially striking down Section 377 of IPC.

The LGBT community all across the country erupted in the jubilant celebration enjoying their victory against the 200-year-old British-era law that criminalized same-sex relationships.

LGBTQIA+: An acronym used to signify Gay, Lesbian, Bisexual, Transgender, Queer, Intersex, and Asexual people collectively.

Lesbian: A woman who has a significant attraction, primarily to members of the same gender, or who identifies as a member of the lesbian community.

Gay: One who has significant sexual attractions primarily to members of the same gender or sex, or who identifies as a member of the gay community. Typically associated with men.

Bisexual: The potential to be sexually attracted to people of more than one sex and/or gender, not necessarily at the same time, not necessarily in the same way, and not necessarily to the same degree.

Transgender: Umbrella term for those whose gender expression or identity is not congruent with the sex assigned at birth and/or whose gender is not validated by the dominant culture.

Queer: Reclaimed derogatory slang by many who reject gender and sexual binaries. Also used as a political identity by many who want to dismantle oppressive systems in society.

Intersex: A general term used for a variety of bodies in which a person is born with reproductive or sexual anatomy that does not fit into the sex binary.

Asexual: Umbrella term for those to tend not to have a sexual desire towards others; asexuals may experience romantic attractions and engage in sexual behavior.

Non-Binary: "Non-binary" is generally used as an umbrella for various gender nonconforming identities, and is most often used by those who do not strictly identify as "male" and "female."

Pansexual: One who can feel an attraction to anyone, including individuals who do not identify as a specific gender. Pansexual people may describe their attraction as focusing on personality rather than gender.

Cisgender: Umbrella term for those whose gender expression and gender identity are congruent with the sex assigned to them at birth, and whose gender is validated by the dominant culture.

Biological Sex: Category assigned to each of us at birth based on a variety of physical and biological characteristics, usually determined by genitals.

Gender Identity: The internal perception of one's gender, and how they label themselves, based on how much they align or don't align with what they understand their options for gender to be. Common identity labels include man, woman, genderqueer, trans and more. Gender identity is sometimes confused with biological sex, or sex assigned at birth.

Sexual Identity: The way in which one understands oneself in regard to one's sexuality.

Ally: Someone that aligns with and supports a cause with another individual or group of people. A straight ally, more specifically, is an individual outside of the LGBTQIA+ community that supports their fight for equality and rights.

Heterosexual Privilege: The benefits and access to resources one receives from society by virtue of being heterosexual and/or by virtue of being perceived to be heterosexual.

Heterosexism or Heteronormativity: The presumption that heterosexuality is superior to all other sexual orientations. The oppression, discrimination, and bias against people who are not heterosexual.

II. BACKGROUND: HISTORY OF HOMOSEXUALITY IN INDIA

We all have taken immense pride in India's rich cultural history. The traditions have been modified without taking away their essence and we have welcomed these changes with changing times. The queer community has played a huge part in shaping India's culture and we as Indians should together celebrate this beautiful heritage, not because they were a part of it too but because they deserve as much love and respect as any other community.

The queer community forms 8% of our population, and we have slowly started opening ourselves to this "new" outlook of practicing tolerance and treating other individuals with respect, irrespective of the differences. But if we look at our history, this idea is not as new as we think. Love has been celebrated in India in every form.

Ancient India was about acceptance and celebration of all forms of love. This can be seen in Indian religious books which contained homosexual characters and themes in their texts which were neutral to the idea of homosexuality.

The Rigveda contains the phrase *Vikriti Evam Prakriti* meaning what seems unnatural is also natural. Kama Sutra mentions that lesbians were called "Swarinis", who often married each other and raised children together. Another very visual example is the Khajuraho temple of Madhya Pradesh, built in the 12th century, known for their overt erotic sculptures showcasing the existence of sexual fluidity between homosexuals.

During the medieval times, there was some disapproval for homosexuality but LGBT people were not ostracized. The society was tolerant towards them and nobody was hounded for having a different sexual preference

Mubarak, son of Alauddin Khalji who ruled The Delhi Sultanate between 1296 and 1316, was known to be in a relationship with one of the noblemen in his court. Babur, who founded the Mughal Dynasty, wrote about his love for a boy named Baburi and his writing faced no disapproval during his time or after it. There were many such incidents in which noble class Mughals engaged in homosexuality.³

III. EARLIER PROVISION OF HOMOSEXUALITY

SECTION 377⁴

Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section.

Section 377 of IPC criminalized all kinds of non-procreative sexual intercourse was enacted in the pre-independence era by the British colonial Government. The despotic law was not only directed against homosexuals but also covered all other forms of non-traditional sexual intercourse even in the course of heterosexual union. So this law was nothing but a residue of the orthodox Victorian morality which had no place in a democratic country like India.

IV. MARRIAGE EQUALITY AROUND THE WORLD

In 2011, pursuant to Human Rights Council resolution 17/19, the United Nations High Commissioner for Human Rights submitted a report to the Council in which she described a pattern of discrimination and violence directed at people in all regions on the basis of their sexual orientation and gender identity.⁵ Almost three years on, in its resolution 27/32, the Council requested the High Commissioner to update the above-mentioned report with a view to sharing good practices and ways to overcome violence and discrimination, in application of existing international human rights law and standards.

³ <https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india/>

⁴

https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=434#:~:text=Whoever%20voluntarily%20has%20carnal%20intercourse,Explanation

⁵ A/HRC/19/41.

The present report draws on recent findings of United Nations human rights bodies, regional organizations and non-governmental organizations, and information submitted by Governments, including 28 replies to a note verbal addressed to Member States on 29 December 2014.⁶

(A) Recent Development

In recent years, Governments in all regions have pursued a variety of initiatives aimed at reducing levels of violence and discrimination based on sexual orientation and gender identity. For example, since 2011, 14 States have adopted or strengthened anti-discrimination and hate crime laws, extending protection on grounds of sexual orientation and/or gender identity and, in two cases, also introducing legal protections for intersex persons. Three States have abolished criminal sanctions for homosexuality; 12 have introduced marriage or civil unions for same-sex couples nationally; and 10 have introduced reforms that, to varying degrees, make it easier for transgender persons to obtain legal recognition of their gender identity.

In dozens of countries, police, judges, prison guards, medical staff and teachers are receiving gender and sexuality sensitivity training, anti-bullying programme have been launched in schools, and shelters have been built to house homeless lesbian, gay, bisexual and transgender (LGBT) youth. Popular television programme have integrated LGBT characters in a positive way and celebrities have helped to raise awareness by “coming out” as LGBT persons themselves or speaking out in support of members of the LGBT community. In all regions, LGBT and intersex⁷ human rights defenders are more vocal and visible – in several cases successfully challenging in the courts attempts by authorities to restrict their legitimate activities.

While these advances are welcome, they are overshadowed by continuing, serious and widespread human rights violations perpetrated, too often with impunity, against individuals based on their sexual orientation and gender identity. Since 2011, hundreds of people have been killed and thousands more injured in brutal, violent attacks – some of which are chronicled below. Other documented violations include torture, arbitrary detention, denial of rights to assembly and expression, and discrimination in health care education, employment and housing. These and related abuses warrant a concerted response from Governments, legislatures, regional

⁶ Replies are available on the website of the Office of the High Commissioner at www.ohchr.org/EN/Issues/Discrimination/Pages/SOGIHRC29Replies.aspx.

⁷ While “LGBT” is used in the present report, other terms are used in different regions. References are also included to violations against intersex persons, who may have any sexual orientation or gender identity. United Nations human rights mechanisms have repeatedly addressed such violations together with those directed at LGBT persons.

organizations, national human rights institutions and civil society, as well as from United Nations bodies – the Human Rights Council included.

Concerns regarding the extent and gravity of violence and discrimination against LGBT and intersex persons have been raised repeatedly by United Nations human rights treaty bodies and special procedures. In recent years, the Office of the High Commissioner (OHCHR) has published a range of guidance and public information materials – including factsheets, booklets and short videos – and has sought to engage States in a constructive dialogue on ways to better protect the rights of LGBT and intersex persons. In July 2013, the High Commissioner launched UN Free & Equal (www.unfe.org), a global education campaign to combat homophobia and transphobia that has so far reached more than a billion people around the world through events and via traditional and social media.

The rights of LGBT persons have also been a focus of work going on across the wider United Nations system. In his message to the Oslo Conference on Human Rights, Sexual Orientation and Gender Identity, the Secretary-General described the fight against homophobia and transphobia as “one of the great, neglected human rights challenges of our time” and pledged to work for an end to criminalization and for action to tackle violence and prejudice. United Nations agencies are increasingly integrating issues of sexual orientation and gender identity into their programmatic work, including in the areas of development, education, labour rights, child rights, gender equality, refugee protection, HIV and public health.⁸



⁹ Fig. 1.

⁸ See “*The Role of the United Nations in Combatting Discrimination and Violence against Individuals Based on Sexual Orientation and Gender Identity*”, OHCHR, 2014.

⁹ <https://www.pewresearch.org/religion/fact-sheet/gay-marriage-around-the-world/>

(B) Current State of Marriage Equality

¹⁰There are currently 36 countries where same-sex marriage is legal: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, the United Kingdom, the United States of America and Uruguay.

Processes of Legalization

25 countries have legalized same-sex marriage nationally through legislation. Among these, Australia, Ireland and Switzerland legalized same-sex marriage through legislation only after nation-wide votes.

10 countries have legalized same-sex marriage nationally through court decisions — Austria, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Slovenia (followed by national legislation), South Africa, Taiwan and the United States of America.

2 countries, South Africa and Taiwan, enacted legislation legalizing same-sex marriage after courts mandated them to do so.

(C) Places to Watch for Marriage Equality in 2024

This list includes a few of the many countries where HRC Global is tracking developments in support of marriage equality.

Czechia

India

Japan

Nepal (Supreme Court ruling expected in March)

Philippines

Thailand

Countries that Legalized Marriage Equality in 2024

Greece: On February 15, Greece's Parliament voted to legalize same-sex marriage, becoming the first Christian Orthodox majority country to do so. The same vote also legalized same-sex adoptions.

¹⁰ <https://www.hrc.org/resources/marriage-equality-around-the-world>

Estonia: On June 20, 2023, Estonia's parliament voted in favor of marriage equality, becoming the first post-Soviet Union country to legalize same-sex marriage. The law went into effect January 1, 2024.

V. DEMOCRATIC COUNTRIES LEGALIZED SAME SEX MARRIAGE

Yes, many democratic countries have indeed legalized same-sex marriages in recent years, recognizing the rights of LGBTQ+ individuals to marry and have their partnerships legally recognized. This movement toward marriage equality has been a significant step forward in promoting equal rights and inclusivity.

AUSTRALIA, IRELAND, SWITZERLAND: Following a nationwide referendum in 2017, Australia's Parliament passed a law recognising same-sex marriage. The referendum showed majority support — 62 per cent — in favour of the law. In Ireland and Switzerland too, a popular vote led to the formal recognition of LGBTQ marriages. same-sex marriage based on various grounds, including:

- (A) **Equality and Human Rights:** These countries recognized that denying same-sex couples the right to marry was a form of discrimination and a violation of their human rights. Legalizing same-sex marriage was seen as a step toward achieving equality for all citizens.
- (B) **Public Opinion and Social Progress:** There was significant public support for same-sex marriage in these countries, reflecting changing societal attitudes and values. Politicians responded to this shift by enacting legislation to reflect the evolving views of the population.
- (C) **Constitutional and Legal Interpretations:** Courts in some of these countries ruled that denying same-sex couples the right to marry was unconstitutional or violated principles of equality and non-discrimination. This legal interpretation prompted legislative action to legalize same-sex marriage.
- (D) **International Influence:** International human rights norms and pressure from international organizations may have played a role in encouraging these countries to legalize same-sex marriage. Participation in global discussions on LGBTQ+ rights and human rights standards may have influenced policymakers to enact legislative change.

Overall, the legalization of same-sex marriage in Australia, Ireland, and Switzerland represents a combination of societal, legal, and political factors converging to recognize the rights of LGBTQ+ individuals to marry and have their relationships legally recognized.

VI. COMPARATIVE TO INDIA

India has not legalized same-sex marriage primarily due to a combination of cultural, social, and legal factors:

(A) Cultural and Social Factors: India has a deeply ingrained cultural and societal tradition that often emphasizes traditional family structures and conservative values. Many people in India adhere to religious and cultural beliefs that view homosexuality as taboo or immoral, which can influence public opinion and political decision-making.

(B) Legal Framework: India's legal framework does not currently recognize same-sex marriage. The Indian Penal Code, which dates back to the British colonial era, criminalized homosexuality until 2018 when the Supreme Court of India struck down the law as unconstitutional. However, despite this legal milestone, there has been no legislation passed to legalize same-sex marriage.

(C) Political Landscape: While there is a growing LGBTQ+ rights movement in India, progress toward legalizing same-sex marriage has been slow. Political parties may be hesitant to take decisive action on this issue due to concerns about backlash from conservative segments of society or potential electoral consequences.

(D) Lack of Public Consensus: Unlike in some other countries where there is widespread public support for same-sex marriage, opinions on this issue in India are diverse and often polarized. While there is a growing acceptance of LGBTQ+ rights among certain segments of the population, there are also significant pockets of opposition.

(E) Legal Challenges: Even after the decriminalization of homosexuality, there are legal challenges and hurdles to overcome before same-sex marriage can be legalized in India. This includes drafting and passing legislation that explicitly allows for same-sex marriage, which may face resistance in the Indian Parliament.

Overall, while there has been progress in LGBTQ+ rights in India, including the decriminalization of homosexuality, the legalization of same-sex marriage continues to face significant cultural, social, and legal obstacles.

VII. CASE LAWS IN INDIA

1. NAZ FOUNDATION V. NCT OF DELHI, Delhi High Court, 160 (2009) DLT 277

Background: In July 2001, eager to press charges under Section 377 of IPC, Lucknow police raided a park and detained a few men on the suspicion of them being homosexuals.

The police also arrested nine more men associated with “Bharosa Trust”, an NGO which was working to create awareness amongst people about safe sexual practices and STD’s. These people were then accused of running a sex racket and were denied bail. It was then that The Lawyers Collective, a legal aid organization, came forward and established that the charges pressed against these people were false and finally they were released.

After the Lucknow incident, an NGO Naz Foundation along with Lawyers Collective went ahead and filed a petition before the Delhi High Court in 2001 challenging the constitutional validity of Section 377 of IPC.

Arguments: The petitioner argued that Section 377 of IPC violated the fundamental right to life and liberty, right to privacy and dignity, right to health, right to equality and freedom of expression. It was also submitted that the law undermined the public health efforts that aimed at reducing the risk of transmission of HIV/AIDS, as the fear of prosecution under the Section prevented people from talking openly about sexuality and lifestyle.

Judgment: Finally, In 2009 in the case of Naz Foundation Govt. v. NCT of Delhi¹¹, the High Court of Delhi held that Section 377 of IPC imposed an unreasonable restriction over two adults engaging in consensual intercourse in private. Thus, it was in direct violation of their basic fundamental rights enshrined under Articles 14,15,19 and 21 of the Indian Constitution.

2. Suresh Kumar Koushal vs Naz Foundation, 2014(1) SCC 1

Background: Various Individuals and faith-based groups vehemently rejected the idea of decriminalizing homosexual relationships, in light of India’s rich history bathed in ethics and tradition. They further appealed before the Supreme Court of India to reconsider the constitutionality of Section 377.

Judgment: When the community, after eight years of a long battle, was just letting out a sigh of relief, the Supreme Court on 11th December 2013, overturned the judgment of the Delhi High Court and re-criminalised homosexuality. A bench of Justice GS Singhvi and Justice SJ Mukhopadhaya Court held that LGBT+ persons constituted a ‘minuscule minority’ and therefore did not deserve constitutional protection and further observed that Section 377 of IPC did not suffer from the vice of unconstitutionality.

3. National Legal Services Authority v. Union of India (NALSA), (2014) 5 SCC 438

Background: The transgender community in India has been the worst sufferer of exploitation amongst the whole LGBT+ community due to their degraded social, educational and

¹¹ <https://indiankanoon.org/doc/100472805/>

economical status. These people have never been considered as a part of society and have always been subjected to exploitation, ostracisation, humiliation and violence either in the hands of society or the authorities in power. The constant rejection and not having access to resources, these people often resort to beggary or prostitution, making them more vulnerable to discrimination, STD's and crimes such as human trafficking.¹²

But the 2014 Judgment of the Supreme Court brought in a new ray of hope and euphoria for these transgender people as for the first time in the history, they were recognized as the third gender.

Issue: In *National Legal Services Authority v Union of India*, the Supreme Court had to decide upon the question of whether there was a need to recognize the hijra and transgender community as a third gender for the purposes of public health, education, employment, reservation and other welfare schemes.

Judgment: The Supreme Court in its landmark judgment created the 'third gender' status for hijras or transgenders. As earlier, the transgender people were forced to describe themselves as either male or female, but after the judgment, they could proudly identify themselves as transgender. But apart from this, what made this judgment so special was that it laid down the framework to guarantee the transgender community a whole spectrum of basic human rights which can be surmised as follows

The court held that the non-recognition of their identities was in violation of Article 14,15,16 and 21 of the Constitution of India.

The Supreme court further directed the Government of India to treat the members of "Third Gender" as an economically and socially backward class.

It was also stipulated that government should make proper policies for the transgender community in the light of Articles 15(2) and 16(4) to ensure equality of opportunity in education and employment. As per the judgment, the third gender would be categorized as other backward classes [OBC] to confer them the benefit of reservation in relation to government jobs and educational institutions.

The court also took cognizance that a conflict between one's birth gender and identity is not essentially a pathological condition. So, rather than adopting a "treatment of the abnormality", the focus should be on "resolving distress over a mismatch".

¹² <https://privacylibrary.ccnlud.org/case/national-legal-services-authority-vs-union-of-india>

In simple words, it means that the court recognized the difference between both the gender and biological components of sex. The court defined biological characteristics to include genital, secondary sexual features, chromosomes etc. but defined gender attributes as one's self-image i.e an individual's deep emotional or psychological sense of sexual identity and character which is not restricted to the binary sense of male and female but can lie on a broad spectrum.

4. NAVTEJ SINGH JOHAR CASE, (2018) INSC 790

Navtej Singh Johar v Union of India¹³ or Navtej Johar, as it is popularly known, is the seminal judgment that decriminalized homosexuality in India. This judgment delivered by the Supreme Court of India is a result of multiple Public Interest Litigation that have been filed by different groups of the LGBTQIA community.

The Bench struck down Section 377 to the extent that it criminalized sex between two consenting adults. The Court upheld the provision that criminalizes non-consensual acts with children or animals. The Supreme Court further held that Section 377 violates Article 14, 15, 16 and 19 (1) (a) of the Constitution of India. It recognized that every individual irrespective of their gender identity and sexual orientation have the right to live with dignity, autonomy and make personal and private lives without State interference.

VIII. SOCIO-CULTURAL ASPECTS : INDIAN SOCIETY

The notion of gender as a spectrum may feel to some a modern revelation, but Hindu literature and mythology for centuries has taught of the figures who defied the binary. And while the reproductive connection between man and woman has always been revered in the faith, Hinduism, unlike most Western faiths, historically treats homosexuality as a natural behavior, one documented in folk tale and religious text alike. Behold, this incomplete list of Hindu deities and divine descendants who defied gender and sexual norms back in the day.¹⁴

Shiva and Parvati

The supreme god of Shaivism, Shiva has often been held as the ultimate embodiment of masculinity, but as far back as the Kushan era, there have also been depictions of Shiva in the Ardhanarishvara form, an androgynous composite of Shiva and his wife, Parvoti. The form originated when Parvoti, desiring to share Shiva's experiences, asked for their forms to literally be joined. "What is being said is that if the inner masculine and feminine meet, you are in a perpetual state of ecstasy," explains Hindu scholar Sadhguru. Most often, the Ardhanarishvara

¹³ <https://www.legalserviceindia.com/legal/article-6402-case-summary-navtej-singh-johar-v-s-union-of-india.html>

¹⁴ <https://www.advocate.com/religion/2016/9/06/19-lgbt-hindu-gods>

is depicted with the female form of Parvati on the left and the masculine attributes of Shiva on the right.

Vishnu/Mohini

A major deity of the religion regarded as protector of the world, Vishnu is clearly depicted in the faith as gender-fluid. This major Hindu deity frequently took on the female avatar of Mohini. Vishnu even procreated with Shiva in the Mohini form, resulting in the birth of Ayyappa, a major figure still worshiped by millions who make pilgrimages to shrines in India. The avatar Mohini frequently gets described as an enchantress who maddens lovers.

Homosexuality in Islam

There is little evidence of homosexual practice in Islamic societies for the first century and a half of the early history of Islam (7th century CE), although male homosexual relationships were known and discriminated, but not sanctioned, in Arabia. Homosexual acts were legally forbidden in traditional Islamic jurisprudence and subject to punishment, including flogging, stoning, and the capital punishment, depending on the situation and legal school. At the same time, homosexual relationships were in practice generally tolerated in pre-modern Islamic societies, and historical records suggest that laws against homosexuality were invoked infrequently, and mainly in cases of rape or other "exceptionally blatant infringement on public morals". Homoerotic and pederast themes were cultivated in poetry and other literary genres written in major languages of the Muslim world from the 8th century CE into the modern era. The conceptions of homosexuality found in classical Islamic texts resemble the traditions of Greco-Roman antiquity rather than the modern understanding of sexual orientation. A growing number of Islamic scholars, mainly in the West, have started re-examining Islamic teachings on same-sex relationships and whether a blanket condemnation of LGBTQ people is a misinterpretation. There are also growing opportunities for alternative and meaningful worship and community. Muslims for Progressive Values (MPV) has founded Unity Mosques in Atlanta, GA; Columbus, OH; and Los Angeles, CA. The Muslim Alliance for Sexual and Gender Diversity hosts a retreat for LGBTQ Muslims in Pennsylvania each year. MECCA Institute was recently established as an online school for the study of an inclusive theology of Islam for those seeking more expansive and inclusive interpretations of Islamic texts.

Transgender men and women are recognized and accepted in many Islamic cultures around the world. In fact, the idea of a man or woman identifying as a member of the opposite gender is

more likely to be accepted than that of a man or woman expressing sexual desire for someone of their own gender.¹⁵

IX. SOCIO-LEGAL ASPECTS : BRITISH SOCIETY

The Buggery Act of 1533, passed by Parliament during the reign of Henry VIII, is the first time in law that male homosexuality was targeted for persecution in the UK. Completely outlawing sodomy in Britain – and by extension what would become the entire British Empire – convictions were punishable by death.

It was not until 1861 with the passing of the Offences Against the Person Act, that the death penalty was abolished for acts of sodomy – instead being made punishable by a minimum of 10 years imprisonment.¹⁶

The Criminal Law Amendment Act 1885 however, went a step further once again, making any male homosexual act illegal – whether or not a witness was present – meaning that even acts committed in private could be prosecuted. Often a letter expressing terms of affection between two men was all that was required to bring a prosecution. The legislation was so ambiguously worded that it became known as the ‘Blackmailer's Charter’, and in 1895, Oscar Wilde fell victim

Female homosexuality was never explicitly targeted by any legislation. Although discussed for the first time in Parliament in 1921 with a view to introducing discriminatory legislation (to become the Criminal Law Amendment Bill 1921), this ultimately failed when both the House of Commons and House of Lords rejected it due to the fear a law would draw attention and encourage women to explore homosexuality. It was also assumed that lesbianism occurred in an extremely small pocket of the female population.

In the post-war period, transgender identities started to become visible. In 1946 Michael Dillon published *Self: A Study in Endocrinology*. The book, which in contemporary terms could be described as an autobiography of the first transgender man to undergo angioplasty surgery, recounted Dillon's journey from Laura to Michael, and the surgeries undertaken by pioneering surgeon Sir Harold Gillies. Dillon wrote: ‘Where the mind cannot be made to fit the body, the body should be made to fit, approximately at any rate, to the mind.’

¹⁵https://www.researchgate.net/publication/372972120_Quranic_Lut_Passages_and_the_Juridical_History_of_Homosexuality_in_Islam_A_Critical_Study

¹⁶ <https://ifnaukandireland.org/edi-lgbtqi-history-month-barry-hill-assistant-professor-in-nursing-university-of-northumbria/>

In May 1951 Roberta Cowell, a former World War II Spitfire pilot, became the first transgender woman to undergo angioplasty surgery in the UK. Cowell continued her career as a racing driver and published her autobiography in 1954.

Meanwhile, a significant rise in arrests and prosecutions of homosexual men were made after World War II. Many were from high rank and held positions within government and national institutions, such as Alan Turing, the cryptographer whose work played a decisive role in the breaking of the Enigma code. This increase in prosecutions called into question the legal system in place for dealing with homosexual acts.

The Report of the Departmental Committee on Homosexual Offenses and Prostitution, better known as the Wolfhound Report¹⁷, was published in 1957, three years after the committee first met in September 1954. It was commissioned in response to evidence that homosexuality could not legitimately be regarded as a disease and aimed to bring about change in the current law by making recommendations to the Government. Central to the report findings was that the state should focus on protecting the public, rather than scrutinizing people's private lives.

It took 10 years for the Government to implement the Wolfhound Report's recommendations in the Sexual Offenses Act 1967. Backed by the Church of England and the House of Lords, the Sexual Offenses Act partially legalized same-sex acts in the UK between men over the age of 21 conducted in private. Scotland and Northern Ireland followed suit over a decade later, in 1980 and 1981 respectively. The Sexual Offenses Act represented a stepping stone towards equality, but there was still a long way to go.

In 1966 The Beaumont Society was set up to provide information and education to the general public, medical and legal professions on 'transvestism' and encourage research aimed at a fuller understanding. The organization is now the UK's largest and longest running support group for transgender people and their families.

In the wake of the Stonewall Riots in New York in June 1969 over the treatment of the LGBT community by the police the UK Gay Liberation Front was founded (GLF) in 1970. The GLF fought for the rights of LGBT people, urging them to question the mainstream institutions in UK society which led to their oppression. The GLF protested in solidarity with other oppressed groups and organized the very first Pride march in 1972 which is now an annual event.

¹⁷ <https://www.britannica.com/event/Wolfenden-Report>

When the GLF disbanded in late 1973 the Campaign for Homosexual Equality (CHE), based in Manchester, led the fight for equality by legal reform. Age of consent equality however, did not come until 2001 in England, Scotland and Wales, and 2009 in Northern Ireland.

The fight for sexual equality however, was far from over. Section 28 of the Local Government Act 1988¹⁸, introduced by the Conservative Government under Margaret Thatcher, banned local authorities from ‘promoting homosexuality’ or ‘pretended family relationships’, and prohibited councils from funding educational materials and projects perceived to ‘promote homosexuality’. The legislation prevented the discussion of LGBT issues and stopped pupils getting the support they needed. Section 28 was repealed in 2003, and Prime Minister David Cameron apologized for the legislation in 2009.

In 2004 the Civil Partnership Act 2004 allowed same-sex couples to legally enter into binding partnerships, similar to marriage. The subsequent Marriage (Same-Sex Couples) Act 2013 then went further, allowing same-sex couples in England and Wales to marry; Scotland followed suit with the Marriage and Civil Partnership (Scotland) Act 2014. Northern Ireland enacted the Northern Ireland (Executive Formation etc) Act 2019, making same-sex marriage legal on 13 January 2020.

The Gender Recognition Act 2004, which came into effect on 4 April 2005, gave trans people full legal recognition of their gender, allowing them to acquire a new birth certificate – although gender options are limited to ‘male’ or ‘female’. Between July and October 2018 the UK Government consulted the public on reforming the Act. As of 1 September 2020 no report from the consultation has been published.

The Equality Act 2010 gave LGBT employees protections from discrimination, harassment and victimization at work. The legislation brought together existing legislation and added protections for trans workers, solidifying rights granted by the Gender Recognition Act.

The LGBT community continues to fight for equality and social acceptance.

X. PROVISIONS AND LAWS ON HOMOSEXUALITY : BRITAIN

1. Sexual Offenses Act 1967

It is an Act of Parliament in the United Kingdom (citation 1967 c. 60). It legalised homosexual acts in England and Wales, on the condition that they were consensual, in private and between two men who had attained the age of 21. The law was extended to Scotland by the Criminal

¹⁸ <https://www.jstor.org/stable/1395169>

Justice (Scotland) Act 1980 and to Northern Ireland by the Homosexual Offenses (Northern Ireland) Order 1982.

Finally, on **6 September 2018**, the Supreme Court struck down the part of section 377 which criminalized consensual homosexual activities.

On November **26th 2019**, the Parliament passed the Transgender Persons (Protection of Rights) Bill. This bill defined a trans person as someone whose gender doesn't match the one assigned at birth. It prohibited discrimination against them in employment, education, healthcare, and other services. However, it was rejected by the queer communities in India as it made it mandatory for each person to be recognized as transgender on the basis of a certificate of identity issued by the district magistrate after a proof of sex reassignment surgery is provided. There was little emphasis on intersex, gender queer and trans men, and it majorly focused on hijras or transwomen. This year in July, the Ministry of Social Justice and Empowerment passed the revised Transgender Persons (Protection of Rights) Rules, 2020. Under this, the government will provide access to the costly sex reassignment surgeries free of cost at state run hospitals. Along with this, the government will also bear the cost of schooling and accommodation for the transgender community.

We have come a long way from where we started, but we need to know that no law can change our mindsets, and it can only come from the realization that everyone is unique and it is not right to judge someone's worth on the basis of what we expect them to be.

XI. SUGGESTION: LEGALIZED SAME SEX MARRIAGE

There is need of Public Awareness increase awareness and understanding of LGBTQ+ issues through education and public campaigns. Secondly, Advocacy and Activism support LGBTQ+ advocacy groups and activists working for legal recognition and equality. Thirdly, Legal Reform advocate for legislative changes to legalize same-sex marriage through parliamentary action. fourthly, Judicial Advocacy pursue legal challenges and litigation strategies aimed at securing marriage equality through the courts. Fifthly, International Support Seek guidance and support from international organizations and allies who promote LGBTQ+ rights. Sixth one is, Community Building create safe spaces and support networks for LGBTQ+ individuals and couples to connect and share resources & Interfaith Dialogue Foster dialogue with religious leaders to promote acceptance of LGBTQ+ individuals within religious contexts. In Corporate and Institutional Support Encourage businesses and organizations to adopt inclusive policies that support LGBTQ+ rights & Media Representation encourage positive and accurate representation of LGBTQ+ individuals and relationships in media and popular culture.

And Youth Engagement engage young people in discussions and initiatives promoting LGBTQ+ rights and marriage equality & Alliance Building Form alliances with allies from various sectors, including civil society, academia, and the arts, to advocate for legal change.

- **Research and Data** conduct research and gather data on the social and economic benefits of legalizing same-sex marriage to support advocacy efforts.
- **Coalition Building** build coalitions with other marginalized groups to advocate for broader social justice and equality issues.
- **Political Lobbying** lobby political leaders and parties to prioritize LGBTQ+ rights and marriage equality on their agendas.
- **Local Initiatives** support grassroots initiatives at the local level to create change and raise awareness within communities. It's present in our society from very beginning since the satyug and if it's coming forward openly then people are having difficulty in accepting it.
- **Continued Dialogue** maintain open and constructive dialogue with opponents of same-sex marriage to address concerns and misconceptions.

By implementing these suggestions, India can take significant steps toward legalizing same-sex marriage and promoting equality and inclusion for all its citizens.

XII. CONCLUSION

In conclusion Around the world, the legalization of same-sex marriage has been a significant step toward promoting equality, dignity, and human rights for LGBTQ+ individuals. Many democratic countries have recognized the rights of same-sex couples to marry, acknowledging that love and commitment should not be restricted by gender. These legal changes have been driven by a combination of factors, including evolving societal attitudes, legal challenges, political activism, and international pressure.

However, India lags behind in this regard, primarily due to cultural, social, and legal barriers. Despite the decriminalization of homosexuality in 2018, same-sex marriage remains unrecognized. India's conservative societal norms, coupled with the influence of religious and cultural beliefs, have hindered progress toward marriage equality. Additionally, there is a lack of political will and consensus on the issue, as well as legal challenges to overcome.
