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INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 4

2024

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Legal Status under Family Law of LGBT Community in India: A Review of Research on The Status of Same Sex Marriage Pre and Post Navtej Singh Johar v. Union of India (2018)

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ABSTRACT

By overturning Section 377 of the Indian Penal Code partially, the Apex Court decriminalized homosexuality on September 6, 2018. It is believed that despite of this epic victory, the LGBT population in India still face numerous legislative and legal challenges that need to be addressed to provide them with complete justice and freedom. It continues to be denied equal rights in numerous areas, including marriage with one's choice, adoption of children, surrogacy, inheritance of property of one's partner, as well as the right to divorce, alimony payment, the ability to charge one's partner, and acquiring custody of children. The quest for equal rights persists in various domains, encompassing matrimonial selection, child adoption, surrogacy, inheritance of conjugal estate, divorce entitlements, spousal maintenance, the capacity to litigate against one's partner, and the attainment of child custody. Despite these myriad endeavors, parity in these aspects remains elusive. Under various statutes such as the Employees' Provident Fund and Miscellaneous Provisions Act , Pension Act , Workmen Compensation Act , Insurance Act and Housing Laws; non-consanguineous or non-affinal associations are not eligible for Social Security benefits. The removal of the colonial law is only one of several obstacles the LGBT community in India must face to gain legal acknowledgment of their rights. The primary objective of this research is to conduct an analysis of the apertures that exist in relation to the legal status of the LGBT community within India, specifically with respect to family laws.

Keywords*: Family Law, India, Same-Sex Marriage, LGBT, Right to Marry, Personal Autonomy.*

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I. INTRODUCTION

"History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution."[3]

- *Hon'ble Shri Justice Indu Malhotra*

LGBT is an initialism that stands for Lesbian, Gay, Bisexual and Transgender[4].

The corpus of Family Law presides over establishments that regulate the most private and personal decisions of individuals. Family Law encompasses the regulation of important interpersonal relationships that bear upon the allocation of responsibilities, entitlements, benefits and obligations associated with caregiving. Nevertheless, analogous to the majority of legal systems, Family Law accords preferential treatment to heterosexual, exclusive, conjugal partnerships. Therefore, persons who identify outside the binary are immediately excluded from a range of civil rights such as marriage, divorce, inheritance, custody and adoption.

Further, these laws operate on the presumption that the gender assigned at birth is constant throughout the course of one's life. Therefore, legal rights of persons who transition from one gender to another remain uncertain. Those relationships and intimacies that do not fall under this rubric are invisibilised in the law. In his judgment in the case of *Navtej Singh Johar v. Union of India (2018)*[5], Justice Chandrachud formulated a nuanced legal opinion. The Justice expressed with strong conviction that the manner in which individuals opt to manifest intimacy extends beyond the legitimate concerns of the state. Though a *right to intimacy for all was recognised, the judgment stopped short of directing the state to facilitate recognition of such alternate forms of unions either through marriage or otherwise*.

At the outset, it is important to clarify that family laws can be broadly categorised as secular and personal laws. While secular laws apply to all citizens regardless of religion, personal laws derive their sanction from religion and differ for each religious community. However, both categories of family laws recognise only opposite gender relationships and are restricted to the binary of male and female. Further, there is an ignorance of the fact that gender assigned at the time of the birth cannot be constant throughout one's lifetime. So, the rights of a person who

[3] SUPREME COURT OBSERVER, https://www.scobserver.in/journal/j-indu-malhotras-9-most-significant-judgments/ (July 28, 2024).
[4] Florida Atlantic University Libraries, https://libguides.fau.edu/primary-sources-lgbtq (last visited June 1, 2023).
[5] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

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had transition from one gender to another remain uncertain.

The International Covenant on Civil and Political Rights (ICCPR)[6] adopted by the United Nations General Assembly clearly states RIGHT TO FAMILY under –

Article 17 – No *one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence*[7]

The question lies here that whether LGBT community in India actually enjoys right to personal autonomy and right to family?

(A) Identification of statement of research problem

The purpose of this inquiry is to ascertain whether right to marriage recognised by the Supreme Court of India under Article 21 of the Indian Constitution[8] is sufficient expansive to encompass same-sex marriages. This study aims to examine the religious standing of same-sex marriages in India and investigate the potential efficacy of amending personal laws to promote gender neutrality with regard to support the LGBT community within the context of marital purposes.

(B) Research Methodology

This paper is based on research articles published between 2014 and 2024. A database search for literature SSRN, Taylor & Francis Online, JSTOR, Hein Online and Academia.edu was conducted using the keywords "same sex marriages in India", "legal recognition of same sex marriage", "right to marry", "Family Law and same sex marriage", "personal laws and same sex marriage". The entire content of each article was examined to comprehend the points of importance. The reference records from the articles were inspected to extract other pertinent papers.

The following criteria were used to select papers for review:

- Publications spanning the period from 2014 to 2024.
- Studies published in scholarly journals that undergo a rigorous peer review process.
- Studies published as reports.
- Studies on the legal recognition of Same-Sex Marriages in India.

[6] Office of the High Commissioner for Human Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#:~:text=Article%2017-,1.,against%20such%20interference%20or%20attacks. (Last visited July 5, 2024).
[7] *Id.*
[8] INDIA CONSTI. art. 21.

(C) **Analysis & findings of the research**

1. **Name of the Study:** Legal Recognition of Same-Sex Relationship in India[9]

The study aims to explore legislative and judicial pathways for achieving legal recognition of same-sex relationships, including the consideration of 'civil partnerships' in India. Utilizing a doctrinal research approach with primary and secondary data sources, it employs comparative and analytical methods. The primary goal is to address remedial objectives, emphasizing the significance of legal recognition in combating discrimination, aligning with Article 15 of the Indian Constitution[10]. However, 'Civil Partnership' is deemed inadequate for this purpose due to societal and religious contexts. The optimal approach suggests facilitating same-sex marriages within personal laws, albeit challenging due to religious opposition. The most feasible method proposed involves amending the Special Marriage Act[11] or judicial interpretation to include same-sex marriages, addressing discrimination against the LGBT community. *The author advocates for a comprehensive approach to legalizing same-sex marriage in India, underscoring its imperative nature.*

2. **Name of the Study**: A Study on Legal Recognition on Same Sex Marriage[12]

The study aims to analyze the legal recognition of same-sex marriage in India. Utilizing a doctrinal research methodology, the study examines relevant laws such as Section 377 of the Indian Penal Code[13], the Hindu Marriage Act[14], and the Special Marriage Act[15]. It addresses the need to prevent STD transmission and protect cultural heritage. *The research discusses the legal and social challenges faced by homosexual individuals, the inconsistent legal status of same-sex couples, and the significance of legally recognizing same-sex marriages. The findings reveal that while same-sex marriages are not explicitly illegal, the absence of a legal framework results in social and political exclusion. The author recommends amending the Special Marriage Act[16] and personal laws to include same-sex marriages and advocates for legal and educational reforms to reduce societal biases and discrimination.*

[9] Nayantara Ravichandran, *Legal Recognition of Same-Sex Relationship in India,* 5 J. INDIAN LAW AND SOCIETY 95, 95-109 (2014).
[10] INDIA CONSTI. art. 15.
[11] Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).
[12] Kumar, R. Venkadesh., *A Study on the Legal Recognition of Same Sex Marriage, 120,* INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS 2945, 2945-2954 (2018).
[13] Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).
[14] Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).
[15] *Id* at 13.
[16] *Id.*

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3. **Name of the Study:** The Momentum of History: Releasing Marriage Equality[17]

The study aims to examine the constitutional framework surrounding the definition of marriage in India and its implications for same-sex marriage. It investigates the potential of the Hindu Marriage Act[18] and the Special Marriage Act[19] to accommodate same-sex unions, drawing on constitutional law principles and judicial precedents. Through doctrinal research and analysis of Indian jurisprudence, the author concludes that restricting marriage to 'one man, one woman' violates constitutional provisions and morality, with no valid reason for differential treatment between same-sex and opposite-sex relationships. *The paper emphasizes the concept of "marriage equality" over "same-sex marriage" and dismisses arguments against it encroaching on religious freedoms. While it does not address recognition of same-sex marriages conducted abroad extensively, it considers foreign writings in its analysis.*

4. **Name of the Study:** Homosexuality and Same - Sex Marriage: Need for Legislation[20]

The study explores the socio-legal aspects of homosexuality in India and the need for special legislation to regulate same-sex marriage. It reveals ongoing discrimination and violence towards homosexuals, emphasizing the need for awareness about LGBT rights and sexual orientation education. The study recommends legal recognition of same-sex marriage, as every individual has the right to choose their partner regardless of gender. The author calls for reform of marital legislation, transitioning from conventional heterosexual unions to a contemporary framework that acknowledges and validates same-sex relationships. The government should implement legislation addressing various aspects of homosexual unions, such as marriage, adoption, inheritance, and maintenance. *The author provides a chronological account of the Indian Judiciary's stance on homosexuality and same-sex marriages, drawing attention to international conventions and instruments supporting homosexuality and the right to marry.*

5. **Name of the Study:** Queering the Law: Making Indian Laws LGBT+ inclusive – FAMILY[21]

The study aims to evaluate Indian laws governing marriage, divorce, maintenance, custody, and inheritance through the lens of Formal Equality, as outlined in the judgments of NALSA v.

[17] Satchit Bhogle, *The Momentum of History: Releasing Marriage Equality*, 12, NUJS LAW REVIEW, (2019), http://nujslawreview.org/2020/02/22/the-momentum-of-history-realising-marriage-equality-in-india/.
[18] *Id.* at 16.
[19] *Id.* at 13.
[20] Deepali M. Babar, *Homosexuality and Same - Sex Marriage: Need for Legislation*, 7, Pen Acclaims 1, 1-6 (2019), http://www.penacclaims.com/wp-content/uploads/2019/11/Deepali-Kadam-Babar.pdf.
[21] Akshat Agarwal, D. Sanyal & N. Mukherjee, *Queering the Law: Making Indian Laws LGBT+ inclusive – FAMILY*, VIDHI – CENTRE FOR LEGAL POLICY (July 31, 2019), https://vidhilegalpolicy.in/research/queering-the-law-making-indias-laws-lgbt-inclusive/.

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Union of India (2014)[22] and Navtej Singh Johar v. Union of India (2018)[23]. It seeks to identify challenges in amending Family Laws following these judgments. Utilizing qualitative methodology, including observation and consultations with LGBT members and gender rights workers, the study finds Indian Family Laws to be exclusionary, failing to recognize gender identities beyond binary and diverse relationship structures. This exclusion may violate Article 14 of the Indian Constitution[24], resulting in unequal treatment based on sexual orientation and gender identity. Inclusion of the LGBT community in Family Laws could redefine concepts of marriage and family, potentially through a Uniform Civil Code[25] from a queer perspective. *The authors stress the need for democratic deliberation within the queer community to drive reforms. They emphasize the importance of integrating the LGBT community into existing legal frameworks and advocate for a flexible legal regime to prevent unjust discrimination against non-traditional familial structures.*

6. **Name of the Study:** How Can Families be Imagined Beyond Kinship & Marriage?[26]

The study delves into Indian family perceptions, examining matrimony, consanguinity, and adoption laws through a pragmatic lens. Employing doctrinal research with primary and secondary sources, it analyzes judicial precedents and enacted laws. Findings reveal a traditional family model centered on marital relationships, excluding non-conformist arrangements like Hijra households and same-sex couples. Sweety (Eunuch) v. General Public (2016)[27] & Arunkumar v. The Inspector General of Registration (2019)[28] acknowledge non-heteronormative relationships. Indian laws recognize only legally married, heterosexual unions, neglecting same-sex couples and polyamorous relationships. *Authors critique patriarchal, caste-based family laws, advocating for recognition of 'family of choice' and intimate relationships. They call for a comprehensive legal framework review, aligning with the Supreme Court's recognition of intimacy's importance to autonomy, promoting a pragmatic approach to lawmaking.*

7. **Name of the Study:** Same-Sex Marriage in India: A Socio-Legal Analysis[29]

[22] National Legal Service Authority (NALSA) v. Union of India, (2014) 5 SCC 438.
[23] *Id.* at 7.
[24] INDIA CONST. art. 14.
[25] INDIA CONSTI. art. 44.
[26] Arijeet Ghosh & D. Sanyal, *How Can Families be Imagined Beyond Kinship & Marriage?,* ECONOMIC AND POLITICAL WEEKLY (November 14, 2019), https://www.epw.in/engage/article/how-can-families-be-imagined-beyond-kinship-and-marriage.
[27] Sweety (Eunuch) v. General Public, AIR 2016 HP 148.
[28] Arunkumar v. The Inspector General of Registration, (2019) 7 MLJ 641.
[29] Rohit Beerapalli, *Same-Sex Marriage in India: A Socio-Legal Analysis,* 1 INTERNATIONAL JOURNAL FOR LEGAL DEVELOPMENTS AND ALLIED ISSUES INT'L 126, 126 – 135 (2019).

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The study investigates the complex nature of same-sex marriage in India, examining its social, political, and legal aspects. It reveals that Indian society often views these unions as invalid due to personal beliefs and cultural biases, resulting in a bias against the LGBT community. Although same-sex marriages are not illegal in India, there is no clear legal framework for them. There are no alternatives like Civil Unions for non-marital partnerships, and the LGBT community faces challenges in social integration and political acceptance. *The author has examined various definitions of marriage, analysed the reasons for opposition to same-sex marriage, and conducts a comparative analysis of same-sex marriages across different countries. It also examines contrasting personal laws in India and alternative institutions to marriage. The findings highlight the need for a more comprehensive approach to marriage in India.*

8. **Name of the Study:** The Validity of Same – Sex Marriages in India[30]

The study investigates the presence and current state of same-sex relationships in India throughout different historical periods and whether the recognition of same-sex relationships by the judiciary could pave the way for the acknowledgment of same-sex marriages. The methodology is based on historical and explanatory doctrinal legal research, using primary and secondary resources. *The author finds that homosexual relationships were recognized and prominently depicted in Ancient India, but societal and cultural acceptance of same-sex relationships was absent in the Medieval era. The emergence of societal homophobia in India can be attributed to British colonization. Existing marriage laws do not explicitly prohibit same-sex unions but are rooted in heteronormative principles and do not acknowledge or validate such relationships. The findings suggest that there are explicit limitations on same-sex marriages within the present legal framework and that no legal precedent has been established thus far to recognize same-sex marriages.*

9. **Name of the Study:** The Case of Same- Sex Marriages in India[31]

The study investigates the potential for the legalization of same-sex marriages in India, examining the discriminatory impact of the absence of legal recognition on LGBT individuals and analysing arguments about endorsement or disapproval of same-sex matrimony. It uses primary and secondary data to conduct doctrinal research with an analytical and socio-legal approach. The findings suggest that legalizing same-sex marriages could be facilitated through

[30] Ishita Goel, *The Validity of Same-Sex Marriages in India*, 8 SCHOLARLY RESEARCH JOURNAL FOR HUMANITY SCIENCE AND ENGLISH LANGUAGE INT'L 10069, 10069 – 10072 (2020).

[31] Bhumika Gupta, *The Case of Same- Sex Marriages in India*, SSRN (October 2, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4209007.

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a judicial process of reading down the Special Marriage Act[32]. Denying the right to marry person of choice is a form of discrimination against LGBT individuals, and denying them autonomy and unfair treatment is unacceptable. Same-sex couples are not eligible for government benefits such as healthcare, financial plans, life insurance, property inheritance, adoption, and pension. The Indian Judiciary has invalidated unconstitutional legislative provisions based on societal morality, uplifting constitutional morality derived from the Indian Constitution. *The author aims to explore ways to acknowledge same-sex marriages for the advancement and safeguarding of civil and social rights of the LGBT community.*

10. **Name of the Study:** Navtej: A queer rights jurisprudential Revolution?[33]

The study aims to assess the transformative impact of the Navtej Singh v. Union of India (2018)[34] verdict, examining how Indian Subordinate Courts have upheld and augmented the judgment. The judgment challenges heteronormativity in public spaces, promoting equal protection and dignity. Lower courts in India are demonstrating advancements in queer jurisprudence, recognizing the rights of the LGBT community to cohabit with a partner and engage in live-in relationships with same-gender individuals. The subordinate court has also legitimized relationships between trans-man and woman. The landmark ruling in Navtej Singh Johar v. Union of India (2018)[35] is a significant milestone in the recognition of LGBT rights in India, particularly in private spheres. *The author assesses the position adopted by lower courts and foreign courts regarding homosexuality to understand the implications of the Navtej Singh Johar vs. Union of India (2018)[36] on the legal system. The author emphasis on the ramifications of the case extend beyond personal sexual conduct, potentially acting as a catalyst for the eventual recognition and legalization of same-sex marriage.*

11. **Name of the Study:** The Significance of Arun Kumar v. Inspector General of Registration's case in the Indian Society[37]

The study delves into the landmark judgment of Arun Kumar v. Inspector General Registration (2019)[38] affirming transgender persons' right to marry under Article 21 of the Indian Constitution[39]. The objective of the study is to assess the judgment's impact on social and legal

[32] *Id*. at 13.
[33] Gayathree Devi KT & Sameer Rashid Bhat, *Navtej: A queer rights jurisprudential Revolution?*, *13* NUJS LAW REVIEW (2020), http://nujslawreview.org/2020/10/26/navtej-a-queer-rights-jurisprudential-revolution/.
[34] *Id.* at 7.
[35] *Id.*
[36] *Id.*
[37] Jay Gajbhiye, *The Significance of Arun Kumar v. Inspector General of Registration's case in the Indian Society,* 3, INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES 1, 1-11 (2020).
[38] *Id.* at 30.
[39] *Id*. at 10.

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recognition of transgender rights in India. The paper discusses pertinent legal provisions including Articles 21[40] and 15 of the Indian Constitution[41] and Article 16 of the Universal Declaration of Human Rights[42]. Key court cases cited include S. Amutha v. C. Manivanna Bhupathy (2007)[43] and Shafin Jahan v. Asokan K.M. (2018)[44]. Utilizing a qualitative research methodology, *the author examines court judgments and legal texts to highlight the transformative nature of the ruling. The discussion focuses on the implications for gender inclusivity in marriage laws. The paper concludes that the Arun Kumar case[45] sets a significant precedent for transgender rights and recommends ongoing legal reforms to further support the transgender community in India.*

12. **Name of the Study:** Transwoman as a 'Bride': Discussing the Repercussions of the Arun Kumar Case[46]

The study analyzes the landmark Madras High Court judgment on the legal recognition of marriage between a cis-man and a transgender woman under the Hindu Marriage Act[47]. The author aims to assess the implications of this ruling for transgender rights in India. The study employs qualitative methodology to examine relevant legal provisions and court rulings, including Articles 14[48], 19[49], and 21[50] of the Indian Constitution, the Transgender Persons (Protection of Rights) Act[51], and significant cases like Arun Kumar v. Inspector General of Registration (2019)[52], National Legal Services Authority of India v. Union of India (2014)[53], and Navtej Singh Johar v. Union of India (2018)[54]. *The paper concludes that the judgment significantly advances the rights of transgender individuals, endorsing their right to self-identification and potentially facilitating the legalization of same-sex marriages in India. Recommendations include legislative reforms, enhanced societal awareness, and the eradication of discriminatory practices against the LGBT community.*

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[40] *Id.*
[41] *Id.* at 12.
[42] Universal Declaration of Human Rights, art. 16, December 10, 1948. U.N. OFFICE OF HIGH COMMISSIONER OF HUMAN RIGHTS, https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30- articles-30-articles-article-16 (July 11, 2024).
[43] S. Amutha v. C. Manivanna Bhupathy, (2007) SCC Online Mad 141.
[44] Shafin Jahan v. Asokan K.M. & Ors., AIR 2018 SC 1933.
[45] *Id.* at 30.
[46] Sonal Rawat, *Transwoman as a 'Bride': Discussing the Repercussions of the Arun Kumar Case,* 6, SOUTH ASIAN LAW REVIEW JOURNAL 88, 88-95 (2020).
[47] *Id.* at 16.
[48] *Id.* at 26.
[49] INDIA CONST. art. 19.
[50] *Id.* at 10.
[51] Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019 (India).
[52] *Id.* at 30.
[53] *Id.* at 24.
[54] *Id.* at 7.

13. **Name of the Study:** Legal Recognition of Same Sex Marriage in India[55]

The study aims to explore the need for legal recognition of same-sex marriages in India to ensure equality and dignity for homosexual individuals. The research analyzes various legal provisions, including the Indian Constitution[56] and the Special Marriage Act[57]. Notable cases cited include the Navtej Johar v. Union of India[58] and Kerrigan v. Commissioner of Public Health[59]. The study employs a doctrinal research methodology, utilizing secondary data from books, journals, and articles. *The author emphasizes the religious and social significance of marriage in India, the challenges of amending personal laws, and the potential for legislative changes. The conclusion calls for legal reforms to recognize same-sex marriages, balancing the right to equality with religious freedoms, and suggests amendments to the Special Marriage Act[60] as a viable solution.*

14. **Name of the Study:** Same Sex Marriage in India and Private International Law[61]

The study examines the complex interplay between international laws and same-sex marriages. The objective is to analyze international laws, implications of Private International Law on homosexual marriages, and dissolution procedures, alongside jurisdictional conflicts. The study leverages an exploratory research design, utilizing secondary data from various reports, journals, books, and official websites. Key legal provisions include Private International Law and relevant international statutes. The study references literature such as Linda Silberman's "Same-Sex Marriage: Refining the Conflict of Laws Analysis"[62] and Gerard-Rene De Groot's work[63] on homosexual couples. *The research concludes that substantial resistance rooted in tradition and religion exists against liberal legislation for same-sex marriages in India. It recommends legislative reforms and new laws to better address the rights and challenges of the LGBTQ+ community in India.*

[55] Shivam Garg, *Legal Recognition of Same Sex Marriage in India*, 9, CHANAKYA NATIONAL LAW UNIVERSITY JOURNAL (CNLU LJ) 158, 158-173 (2020-21).
[56] INDIA CONSTI. art. 14,19,21.
[57] *Id* at 13.
[58] Id. at 7.
[59]Kerrigan v. Commissioner of Public Health, 289 Conn. 135, 957 A. 2d 407
[60] *Id.* at 13.
[61] Rakshita Data, *Same Sex Marriage in India and Private International Law*, 4, INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 230, 230-244 (2021).
[62]Linda Silberman, *Same-Sex Marriage: Refining the Conflict of Laws Analysis*, 153 UNIVERSITY OF PENNSYLVANIA LAW REVIEW, 2195, 2195- 2214, (2005), http://www.jstor.com/stable/4150660
[63] Gerard-Rene De Groot, *Private International Law Aspects Relating to Homosexual Couples*, 113 ELECTRONIC JOURNAL OF COMPARATIVE LAW, (December 2007), http://www.ejcl.org

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15. **Name of the Study:** Is India Ready for Same-Sex Marriage?[64]

The study scrutinizes the legal status and societal reception of same-sex marriage in India. The researcher's objective is to trace the legal and social timeline of LGBT rights, focusing on Section 377 of the Indian Penal Code[65], which criminalized homosexuality until its partial decriminalization by the Supreme Court in Navtej Singh Johar v. Union of India (2018)[66]. The author employs a historical-legal analysis method, citing significant cases such as Naz Foundation v. Government of NCT of Delhi and others (2009)[67]. *The paper also examines recent petitions in the Delhi High Court advocating for the legal recognition of same-sex marriage. The author's discussion highlights societal opposition, legislative reluctance, and the judiciary's evolving stance on same-sex rights. The study concludes that while progress has been made, legal and social acceptance of same-sex marriage in India remains elusive, recommending continued legal advocacy and societal education to bridge this gap*.

16. **Name of the Study:** Same Sex Marriage: A New Constitutional Paradigm[68]

The study explores the historical background of same-sex marriages in India, examining the jurisprudential aspect of marriage between same-sex individuals, and reviewing the Special Marriage Act[69] as a solution for recognition. The findings reveal that Indian society was tolerant and progressive towards same-sex couples, but English laws have established a detrimental paradigm for same-sex relationships. The decision in Navtej Singh Johar v. Union of India (2018)[70] is significant for same-sex relationships, as it acclaims the right to love as a matter of liberty, dignity, and choice. The Indian Constitution guarantees fundamental rights, including protection of life and personal liberty, and prohibits discrimination towards homosexuality. Denying same-sex couples the right to marry violates constitutional obligations and due process fundamentals. The Special Marriage Act[71] can serve as a facilitative mechanism for the recognition of same-sex marriages, with a revised provision enabling couples to solemnize marriage under the Act. Legalizing same-sex marriage benefits the LGBT community, as it addresses issues in domestic partnerships, such as lack of acknowledgment of partner on government documents and strict property transfer laws. *The author proposes a potential resolution for the recognition of same-sex marriage through modification of the provisions in*

[64] Priyanshi Jain, *Is India Ready for Same-Sex Marriage,* 1, JUS CORPUS LAW JOURNAL 476, 476 – 484 (2021).
[65] *Id*. at 1.
[66] *Id.* at 7.
[67] Naz Foundation v. Government of NCT of Delhi, 160 (2009) DLT 277 (Del.).
[68] Ojaswa Dev Jha & S. Jha, *Same Sex Marriage*: *A New Constitutional Paradigm*, 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES INT'L 90, 92-101 (2021).
[69] *Id.* at 13.
[70] *Id*. at 7.
[71] *Id*. at 13.

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the Special Marriage Act of 1954[72].

17. **Name of the Study:** Marriage Equality in India: Thinking Beyond Judicial Challenges to Secular Marriage Law[73]

The author argues that focusing solely on judicial challenges to India's Special Marriage Act (SMA)[74] *for achieving marriage equality is insufficient*. The paper examines the SMA, the Hindu Marriage Act[75], and the Foreign Marriage Act[76], alongside discussing Articles 14[77] and 15 of the Indian Constitution[78]. Significant cases such as Navtej Singh Johar v. Union of India (2018)[79] and Shayara Bano v. Union of India[80] are referenced. Employing a doctrinal approach, *the research critiques the limitations of the SMA in addressing the intersectional nature of LGBT+ identities within Indian family law. It concludes that relying solely on the SMA for marriage equality is inadequate and advocates for a comprehensive reform of personal laws and a broader legal recognition of LGBT+ relationships. Agarwal recommends pursuing alternative legal strategies, including reforming personal laws and addressing the legal non-recognition of LGBT+ relationships in a holistic manner*.

18. **Name of the Study:** Abolishing Consummation: The Need to De-Essentialise Sex within Marriage[81]

The study critically examines the legal framework and judicial discourse surrounding marital consummation and sexuality in India. *The authors argue for the removal of consummation as a ground for annulment and advocate for a no-fault divorce regime, challenging the centrality of heteronormative sex in marriage laws*. The paper references various sections of personal laws, such as the Hindu Marriage Act[82], and significant court cases like Naveen Kohli v. Neelu Kohli (2006)[83] and Independent Thought v. Union of India (2017)[84]. The research design includes a critical analysis of judicial decisions and legal provisions, drawing from anthropological, historical, and legal perspectives. *The study highlights the intrusive nature of current legal*

[72] *Id*.
[73] Akshat Agarwal, *Marriage Equality in India: Thinking Beyond Judicial Challenges to Secular Marriage Law*, 6, INDIAN LAW REVIEW 170, 170-188 (2022).
[74] *Id*. at 13.
[75] *Id.* at 16.
[76] Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1969 (India).
[77] *Id.* at 16.
[78] *Id.* at 12.
[79] *Id.* at 7.
[80] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[81] Diksha Sanyal & Arijeet Ghosh, *Abolishing consummation: The Need to De-Essentialise Sex within Marriage*, 6, INDIAN LAW REVIEW 331, 331-351 (2022).
[82] *Id.* at 16.
[83] Naveen Kohli v. Neelu Kohli AIR 2006 S.C. 1675.
[84] Independent Thought v. Union of India (2017) 10 SCC 800.

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practices and suggests reforms to protect individual privacy and autonomy. Moreover, it addresses the need for legal frameworks to accommodate same-sex relationships by decoupling sexual obligations from marital definitions. The paper concludes with recommendations for a more inclusive legal framework that redefines marriage beyond sexual obligations to encompass care-based relationships, promoting inclusivity for LGBTQ+ individuals.

19. **Name of the Stud**y**:** The Need for Legalising Same-Sex Marriage in India: A Future Possibility or a Possible Apprehension?[85]

The paper aims to explore the necessity of legalizing same-sex marriage in India. The study delves into various personal laws, such as the Hindu Marriage Act[86] and the Indian Christian Act[87] highlighting their limitations regarding same-sex marriages. Court cases like Arunkumar v. Inspector General of Registration (2019)[88], Abhijit Iyer v. Union of India (2020)[89], Lakshmi Bhayva Taneeru v. Union of India (2021)[90] and Suchita Shrivastava v. Chandigarh Administration (2009)[91] are cited to underline the judicial perspective on the issue. *The research employs a qualitative methodology, analyzing legal texts and historical contexts. The author concludes that the lack of legal recognition for same-sex marriages infringes on fundamental rights, recommending the creation of new legislation to ensure marriage equality. This progressive step is argued to enhance the happiness and rights of LGBTQ+ individuals, aligning India with global trends*.

20. **Name of the Study:** LGBTQ+ Community's right to marriage and Adoption: Need for Legislative Reforms[92]

This study examines the legal framework governing marriage in India, focusing on the legal recognition of same-sex marriages and the significant legal precedents that emerged over the past decade. The doctrinal research method is used to analyse the issue, finding a significant shift in societal attitudes towards homosexuality during the 20th century. This shift is a result of advocacy efforts by same-sex couples for their rights. The lack of legal recognition puts homosexual couples in a precarious situation, as they lack the legal safeguards and advantages provided to married heterosexual couples. Currently, personal laws in India only acknowledge

[85] Nivedita Baraily, *The Need for Legalising Same-Sex Marriage in India: A Future Possibility or a Possible Apprehension?*, 4, INDIAN JOURNAL OF LAW AND LEGAL RESEARCH 3797, 3797-3806 (2022).
[86] *Id.* at 16.
[87] Indian Christian Act, 1872, No. 15, Acts of Parliament, 1872 (India).
[88] *Id.* at 30.
[89] Abhijit Iyer Mitra v. Union of India, W.P. (C) No. 6371 of 2020.
[90] Lakshmi Bhayva Taneeru v. Union of India, W.P. (C) 5533/2021.
[91] Suchita Shrivastava v. Chandigarh Administration, 2009) 9 SCC 1.
[92] Aarushi Tomar, *LGBTQ+ Community's right to marriage and Adoption: Need for Legislative Reforms,* 3 INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION 1, 1-12 (2022).

marriages between individuals of opposite biological sexes, while discouraging same-sex marriages. However, minor modifications can be made to the Special Marriage Act[93] to incorporate same-sex marriages. *The author highlights the importance of legally recognising same-sex marriage and the various approaches and challenges associated with its legal recognition in India.*

21. **Name of the Study**: Same-Sex Marriage Laws: Judicial Evolution and Cultural Acceptance[94]

The study explores the legal recognition status of same-sex marriage in India, based on primary and secondary sources. It reveals that marriage is crucial in political, cultural, and sociological contexts, impacting various legal aspects such as inheritance and succession. The consequences of entering into a legally recognized marital relationship are significant. However, in India, just legalizing same-sex marriages may not be enough. Both legal and societal recognition are necessary for recognition. India is in the middle in this regard, with a revised iteration of Section 377 of the Indian Penal Code[95]. One potential avenue for same-sex marriage recognition in India is through the judicial interpretation and modification of the Special Marriage Act[96]. *The author argues that the "Right to marry", protected by Article 21 of the Indian Constitution[97] under "Right to Life", is significant in an individual's life, allowing them unrestricted autonomy in choosing their life partners. The absence of legal recognition for same-sex marriage constitutes a violation of the fundamental rights of the LGBT community.*

22. **Name of the Study:** The Question of Same-Sex Marriage in India: A Transnational Analysis[98]

The author explores the intersection of gender roles and human sexuality within the LGBTQ+ community, focusing on marital rights and the differences between the United States and the United Kingdom on same-sex marriage. The study uses historical, analytical, and comparative methods to analyze legal sources on LGBT rights, historical growth, and worldwide acceptance. The legal framework surrounding homosexuality in the UK has evolved over five centuries, while in the United States, it occurred over a condensed timeframe. In India, the Central Government has a detached stance on advancing legal rights for the LGBTQ community. The

[93] *Id.* at 13.
[94] Jannat Chuchra, *Same-Sex Marriage Laws: Judicial Evolution and Cultural Acceptance*, 2 JOURNAL OF LEGAL RESEARCH AND JURIDICAL SCIENCES 356, 356-360 (2022).
[95] *Id.* at 1.
[96] *Id.* at 13.
[97] *Id.* at 10.
[98] A. Pradhan and Dr. Jha, *The Question of Same-Sex Marriage in India: A Transnational Analysis*, 45 SAMBODHI INDOLOGICAL RESEARCH JOURNAL OF L.D.I.I. 44, 44-51 (2022).

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current era is moving away from binary gender roles and societal norms granting individuals the freedom to express their sexual orientation. To progress, the government should voice objections to decisions that exhibit bias based on gender and sexuality, and grant them the full spectrum of rights equivalent to heterosexual individuals. Emphasizing abilities and skills should be prioritized over gender or sexual orientation. *The authors also analyze the historical context of homosexuality in ancient civilizations and compare laws pertaining to same-sex marriage between India, the United Kingdom, and the United States.*

23. **Name of the Study:** Making Love Legible: Queering Indian Legal Conception of 'Family'[99]

The paper examines the legal landscape surrounding same-sex relationships in India. The objective of the study is to analyze the evolution and current status of legal provisions affecting same-sex relationships, emphasizing the need for greater legal recognition and protection. The paper discusses several significant laws and provisions, including Section 377 of Indian Penal Code[100], Article 21 of the Constitution of India[101], and various state-specific Freedom of Religion Acts. Key court cases cited include Navtej Singh Johar v. Union of India (2018)[102], K.S. Puttaswamy v. Union of India (2017)[103], and Obergefell v. Hodges (2015)[104]. The research employs a doctrinal methodology, analyzing statutes, case laws, and legal principles. *The discussion highlights the impact of landmark judgments on same-sex rights and the socio-legal implications of these decisions. The author concludes with findings that underscore the need for comprehensive legal reforms to ensure equality for same-sex couples. Recommendations include legislative amendments and policy changes to protect and promote the rights of LGBTQ+ individuals.*

24. **Name of the Study:** Advocating Same-Sex Marriages through Constitutional Morality[105]

The paper examines the discrimination faced by LGBTQ individuals under Articles 14[106], 15[107],

[99] Hrishika Jain, *Making Love Legible: Queering Indian Legal Conceptions of 'Family',* 10 ASIAN JOURNAL OF LAW AND SOCIETY 70, 70- 106 (2023).
[100] *Id.* at 1.
[101] *Id*. at 10.
[102] *Id.* at 7.
[103] Justice K.S. Puttaswamy & Another v. Union of Indian & Others, (2017) 10 SCC 1.
[104] Obergefell v. Hodges, 135 S. Ct. 2584 (2015).
[105] Mohit Kumar Manderna & Kritika Vatsa, *Advocating Same-Sex Marriages through Constitutional Morality,* SSRN (October 5, 2023), https://dx.doi.org/10.2139/ssrn.4712027.
[106] *Id.* at 16.
[107] *Id*. at 12.

19[108], and 21 of the Indian Constitution[109]. The study argues that the non-recognition of same-sex marriages violates fundamental rights and draws on judicial precedents, including Navtej Singh Johar v. Union of India (2018)[110] and National Legal Services Authority v. Union of India (2014)[111], to support its stance. The research employs a doctrinal methodology, analyzing legal provisions and case law, and emphasizes the need to prioritize constitutional morality over societal norms. *The paper highlights the legal and social implications of recognizing same-sex marriages and critiques the current legal framework under the Special Marriage Act[112]. The author concludes that the non-recognition of same-sex marriages is unconstitutional and recommends judicial interpretation and legal reforms to ensure equality and non-discrimination for LGBTQ individuals.*

25. **Name of the Study:** Legal Recognition and Protection of Same-Sex Relationships in India: An Analysis[113]

The paper explores the legal framework concerning the recognition and protection of same-sex relationships in India. The study explores the historical, current, and prospective legal landscapes for LGBTQ+ rights, focusing on Section 377 of the Indian Penal Code[114] and constitutional guarantees of equality and non-discrimination. It cites landmark judgements such as Naz Foundation v. Government of NCT of Delhi (2009)[115], Suresh Kumar Kaushal v. Naz Foundation (2013)[116], and Navtej Singh Johar v. Union of India (2018)[117]. Employing a historical-legal analysis, the research reviews legal texts, court rulings, and existing literature. *The author highlights the evolution of LGBTQ+ rights, the impact of colonial laws, advocacy efforts, and the challenges faced by the LGBTQ+ community, emphasizing the 2018 Supreme Court ruling on decriminalizing same-sex relationships. Despite this milestone, the study concludes that substantial legal and societal barriers persist for LGBTQ+ individuals in India. Recommendations include the legal recognition of same-sex marriages and partnerships, enhanced anti-discrimination laws, and increased societal acceptance to ensure comprehensive rights and protections for the LGBTQ+ community*.

[108] *Id.* at 19.
[109] *Id.* at 10.
[110] *Id.* at 7.
[111] *Id*. at 24.
[112] *Id. at 13.*
[113] Dr. Somlata Sharma, *Legal Recognition and Protection of Same-Sex Relationships in India: An Analysis,* 12 INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH 233, 233-242 (2023).
[114] *Id.* at 7.
[115] *Id.* at 69.
[116]Suresh Kumar Kaushal v. Naz Foundation, (2014) 1 SCC 1.
[117] *Id.* at 7.

26. **Name of the Study:** LGBT+ Rights claims for Marriage Equality and the possibilities of transforming Indian Family Law[118]

The paper critically examines the implications of the Indian Supreme Court's 2018 decision to decriminalize homosexuality and the subsequent petitions for marriage equality[119]. The study aims to explore how recognizing marriage equality for LGBT+ individuals can transform Indian Family Law by promoting the recognition of diverse family structures. *The author critiques traditional approaches to LGBT+ equality that prioritize assimilation into existing patriarchal institutions, arguing instead for a transformative approach that acknowledges diverse family configurations.* The paper employs qualitative research methodology and analyzes key legal provisions, including Articles 14[120], 19[121], and 21 of the Indian Constitution[122], along with landmark cases such as Navtej Singh Johar v. Union of India (2018)[123] and Supriyo Chakraborty v. Union of India (2023)[124]. *It concludes that achieving marriage equality through the recognition of LGBT+ relational rights has the potential to expand Indian parenthood laws, benefiting diverse families, single parents, and non-marital relationships. Recommendations include pursuing legislative reforms and increasing societal awareness to support these changes, thereby highlighting the broader impact of LGBT+ relational rights on the legal system.*

27. **Name of the Study:** Examining the Legal Status of Same-Sex Marriages in India: Reconciling Tradition with Modernity[125]

This paper investigates the complex legal status of same-sex marriages in India, highlighting the challenges posed by traditional personal laws despite the decriminalization of homosexuality following Navtej Singh Johar v. Union of India (2018)[126]. *The authors utilize a historical-legal analysis methodology to discuss the implications of various laws, including the Special Marriage Act[127], Hindu Marriage Act[128], and Foreign Marriage Act[129]. They emphasize*

[118] Akshat Agarwal, *LGBT+ rights claims for marriage equality and the possibility of transforming Indian Family Law*, 21 INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW (I.CON) 1116, 1116-1139 (2024).
[119] *Id.* at 7.
[120] *Id.* at 26.
[121] *Id.* at 19.
[122] *Id.* at 10.
[123] *Id.* at 7.
[124] Supriyo @ Supriya Chakraborty & Anr. v. Union of India, 2023 INSC 920.
[125] Jyotirmoy Banerjee & Ishan Atrey, *Examining the Legal Status of Same-Sex Marriages in India: Reconciling Tradition with Modernity*, 5 INTERNATIONAL JOURNAL OF RESEARCH PUBLICATIONS AND REVIEWS 9702, 9702-9706 (2024).
[126] *Id.* at 7.
[127] *Id.* at 13.
[128] *Id.* at 16.
[129] *Id.* at 78.

that societal attitudes remain mixed, necessitating both legislative reforms and educational initiatives to foster acceptance. The conclusion underscore the need for explicit legal recognition of same-sex marriages and comprehensive anti-discrimination protections. The authors recommend aligning India's legal framework with international standards to promote equality and justice for LGBTQ+ individuals, reflecting a broader societal shift towards inclusivity.

28. **Name of the Study:** Reimagining Matrimony: The Evolution and Perspectives of Same-Sex Unions in India[130]

The paper explores the historical and legal evolution of same-sex unions in India, aiming to highlight societal attitudes and the complex legal landscape surrounding their recognition. It extensively analyzes the Hindu Marriage Act[131], Section 377 of the Indian Penal Code[132], and Article 21 of the Indian Constitution[133], referencing landmark cases such as Navtej Singh Johar v. Union of India (2018)[134], NALSA v. Union of India (2014)[135], and Arunkumar v. Inspector General of Registration (2019)[136]. *Utilizing qualitative analysis of legal texts and judicial rulings, the authors argue for the urgent need to legalize same-sex marriage to ensure equality and protect the rights of LGBTQ+ individuals. They conclude that the lack of legal recognition for same-sex unions perpetuates discrimination and denies fundamental rights, ultimately advocating for comprehensive legislative action to foster a more inclusive society.*

(D) **Synthesis of reviewed literature**

a. **Legal Recognition and Rights:**

The literature consistently highlights the lack of comprehensive legal recognition for same-sex marriages in India. Most of the reviewed papers point out that while there have been significant strides in recognizing the rights of the LGBT community, particularly with the decriminalization of homosexuality in 2018[137] (Section 377 of the Indian Penal Code[138]), the legal framework remains insufficient in addressing same-sex marriages. Authors argue that the absence of legal recognition denies same-sex couples the myriad of rights and benefits available

[130] Priyanka, Nikhil Bajpai & Dr. Y Ganga Reddy, *Reimagining Matrimony: The Evolution and Perspectives of Same-Sex Unions in India*, 7 INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES 3693, 3693-3704 (2024).
[131] *Id.* at 16.
[132] *Id*. at 1.
[133] *Id.* at 10.
[134] *Id*. at 7.
[135] *Id.* at 24.
[136] *Id.* at 30.
[137] *Id.* at 7.
[138] *Id.* at 1.

to heterosexual couples, including inheritance rights, adoption rights, and spousal benefits.

b. Societal Attitudes and Cultural Context:

Many studies emphasize the role of societal attitudes and cultural norms in shaping the legal landscape for same-sex marriages. The deeply ingrained traditional values and heteronormative expectations in Indian society contribute to the resistance against legal reforms. The literature indicates that societal acceptance is a significant barrier, with many LGBT individuals facing discrimination, stigma, and marginalization. This cultural resistance complicates the implementation and acceptance of any potential legal reforms recognizing same-sex marriages.

c. Judicial Perspectives and Court Cases:

The reviewed papers provide an in-depth analysis of various court cases and judicial pronouncements that have influenced the legal status of the LGBT community in India. Key cases, such as the Naz Foundation case[139], the NALSA Judgment[140], and the Navtej Singh Johar case[141], are frequently cited. The judicial perspective on LGBT rights and same-sex marriage in India reflects a progressive evolution towards recognizing equality and personal autonomy. Landmark cases, including Navtej Singh Johar v. Union of India (2018)[142] and Supriyo Chakraborty v. Union of India (2023)[143], have decriminalized homosexuality and highlighted the need for legislative action on same-sex marriage. Courts have affirmed the fundamental rights of the LGBTQ+ community, emphasizing the importance of privacy, dignity, and non-discrimination. Despite these advancements, the judiciary calls for comprehensive legislation to ensure equal recognition and protection for same-sex unions, underscoring the ongoing struggle for legal acknowledgment and societal acceptance.

d. Comparative Analysis with International Jurisdictions:

Several papers conduct comparative analyses with jurisdictions where same-sex marriage is legal. These studies highlight the legal frameworks and societal changes that have facilitated the recognition of same-sex marriages in countries such as the United States, Canada, and various European nations. The literature suggests that India's legal system could benefit from examining these international models, adapting best practices to fit the Indian context, and addressing specific cultural and legal challenges unique to India.

e. Policy Recommendations and Advocacy:

[139] *Id.* at 69.
[140] *Id.* at 24.
[141] *Id.* at 7.
[142] *Id.*
[143] *Id.* at 126.

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The synthesis of the literature reveals a strong advocacy for policy reforms aimed at recognizing and protecting the rights of same-sex couples. Recommendations include the introduction of specific legislation that grants legal status to same-sex marriages, comprehensive anti-discrimination laws, and public awareness campaigns to shift societal attitudes. Authors also call for greater involvement of civil society organizations and LGBT advocacy groups in the legislative process to ensure that the voices of the LGBT community are heard and considered in policy-making.

f. Challenges and Gaps in Research:

The literature review identifies several challenges and gaps in the current research on the legal status of same-sex marriages in India. Many studies point out the lack of empirical data and comprehensive research on the lived experiences of same-sex couples in India. There is also a need for interdisciplinary research that combines legal analysis with insights from sociology, psychology, and cultural studies to provide a holistic understanding of the issues faced by the LGBT community.

II. CONCLUSION

This review has critically examined the legal status of same-sex marriage within the Indian context, focusing on the findings from 28 key studies. Despite significant strides in decriminalizing homosexuality, as evidenced by landmark judgments like Navtej Singh Johar v. Union of India (2018), the legal framework governing same-sex unions remains largely inadequate. The analysis reveals persistent gaps in legal recognition, particularly concerning family law, which continues to privilege heterosexual marriages. The reviewed literature highlights a pressing need for comprehensive legislation that protects the rights of LGBTQ+ individuals and recognizes their relationships formally. By legalizing same-sex marriage, India could uphold constitutional principles of equality, dignity, and non-discrimination, fostering a more inclusive society. Furthermore, future research should explore the socio-cultural dimensions influencing public acceptance and the legislative process surrounding LGBTQ+ rights, contributing to a more nuanced understanding of this critical issue.

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