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# Reimagining Matrimony: The Evolution and Perspectives of Same-Sex Unions in India

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## ABSTRACT

*Marriage, is the union of two individuals. In the majority of developed countries, the traditional definition of wedding as “a union between a man and a woman is increasingly giving way to the union of two people, regardless of gender.” Nonetheless, there is uncertainty in Indian law regarding the legality of same-sex unions and the implications and rights that would follow if they were approved. Since homosexuality is typically perceived as a Western phenomenon, it might be difficult to embrace on both a social and legal level. Since Supreme Court has already partly decriminalised section 377 the next approach appears to be to legalise same-sex unions. The researcher examines the Evolutionary journey of same-sex unions in the diverse landscape of India, exploring societal perspectives, and legal intricacies involved. Furthermore, the paper critically evaluates the legal frameworks governing same-sex unions in India, analysing the impact of key judicial pronouncements and legislative measures.*

**Keywords:** same-sex, homosexuality, Marriage, legality.

## I. INTRODUCTION

India is renowned for having a diverse and rich cultural heritage. The Country is home to individuals with varying sexual orientations and genders. In India, the history of same-sex relationships is all-embracing. Even if there are opposing views, a study of ancient Indian writings and scriptures shows a civilization that was more progressive than that which developed in post-colonial India.<sup>4</sup> In fact it used to be more welcoming of different sexual orientations and had a more illustrious past than it has now. The various ancient Hindu scriptures and texts have embraced the concept of different gender orientations. Sutra 36<sup>5</sup> of the in the Kama Sutra, same-sex relationships were referred to as “sadharana,” which suggests

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<sup>4</sup><https://indianexpress.com/article/explained/explained-culture/starbucks-history-transgender-community-india-8616767/>

<sup>5</sup> Keene, Manu (2002). *Religion in Life and Society*. Folens Limited. p. 58. ISBN 978-1-84303-295-3.

that these relationships were common place.<sup>6</sup> Women are pictured erotically embracing at the Khajuraho temples. A tale about Shikhandini, a warrior and King Drupada's daughter, can be found in the Mahabharata. Mitra-Varun, a same-sex couple thought to symbolize the two parts of the moon, is mentioned in the Rig Veda. India is a secular country that upholds everyone's right to freely practise, declare, and spread any religion. Due to their religious leanings, many social norms and private regulations are founded in faith. Aspects pertaining to same-sex relationships are also included. Examining the historical progression of same-sex partnerships paints an intriguing image of a liberal, open society giving way to a conservative one. This was made possible by the legal authority that the British imposed in India through Section 377 of the Indian Penal Code. This clause created a climate of dominance and discrimination against same-sex couples by making such relationships illegal and subject to fines and jail.<sup>7</sup>

Marriage being a universal phenomenon has been the backbone of human civilisation which creates new social relationship and reciprocal rights between the spouses. It establishes the rights and the status of the children when they are born. Each society recognises certain procedures for creating such relationship and rights. So, it can be said to be a socially recognised universal institution which is found in every society. The sacred and fundamental tie of marriage unites two distinct people into one, combining likes and dislikes as well as ideas, attitudes, and habits. The institution of marriage has been revered as a sacrament rather than a legal agreement since ancient times; the Rigveda itself mentions this. Modern and Western values are reshaping the perceptions and ideologies with respect to marriage. The idea of same-sex marriage in India is largely recognised in many other countries, but it's important to note that most of those other countries disagree on this issue. One such nation where same-sex marriage is a contentious issue is India. Same-sex marriages are defined as unions of individuals of the same gender. Same-sex unions are illegal in India, despite persistent attempts to recognize and legalize them. This topic is important because it deals with the recognition and defense of the relationships and fundamental human rights of LGBTQ+ individuals. Legalizing same-sex relationships will help LGBTQ+ couples by increasing their legal protection and acknowledgment, decreasing discrimination against them, and promoting more public acceptance. For advocates and supporters of LGBTQ+ rights around the world, it is a crucial problem whose significance extends beyond the legal sphere to encompass larger social and cultural perspectives of the LGBTQ+ community<sup>8</sup>.

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<sup>6</sup> *ibid*

<sup>7</sup> <https://www.thehindu.com/news/international/tracing-the-history-of-pride-and-lgbtq-rights-in-india/article66989326.ece>

<sup>8</sup> <https://timesofindia.indiatimes.com/readersblog/dopamineffable/same-sex-marriages-in-india-a-complete->

## II. DIMENSIONS AND NUANCES OF SEXUALITY

The acronym “LGBTQIA+” encompasses a diverse range of individuals who do not conform to traditional understandings of gender and sexuality. While it includes terms like lesbian, gay, bisexual, transgender, and queer, it is important to note that the acronym is often extended with a '+' sign to acknowledge its inclusivity. These terms encompass both sexual orientation and gender identity. For instance, “gay”, “lesbian”, and “bisexual” pertain to sexual preferences, whereas “transgender” denotes individuals whose gender identity does not align with the binary notions of male and female. “Queer” serves as an umbrella term, encompassing the diverse identities within the community, including those who are intersex, asexual, and more.<sup>9</sup> Understanding the nuances of gender and sexuality is crucial in comprehending the complexities of this collective. By challenging heteronormative standards, the LGBTQ+ community seeks to assert and affirm their unique identities within the spectrum of gender and sexuality.

It is equally crucial to comprehend the distinction between sex and gender. Although these terms are sometimes used interchangeably, they are not the same thing. Sex refers to a person’s innate physiological and biological traits, such as being male or female.<sup>10</sup> Sex determines a person's gender. The biological indicators that underpin the distinction such as chromosomal, anatomical, and endocrine factors may not always co-vary in lockstep and do not always create a clear boundary. In certain circumstances, these indicators are continuous variables. Therefore, even though the great majority of people are clearly male or female, some people are unsure of their sex.<sup>11</sup>

Gender is a person’s unique approach to engaging with and exhibiting themselves to the outside world. Physical, mental, spiritual, sexual, interpersonal, and connected expression are all forms of gender expression. Gender is the way we relate to the world and to one other. Our gender determines how we behave in the world.<sup>12</sup> Gender is an individual’s sense of self in the world. A person’s identity is connected and organic. That corporeal, relational, expressive self is known as gender. Gender is multifaceted. There are numerous ways to express one's gender. Each of our genders should ideally be unique to us as defined by us.

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<sup>9</sup> Saif Rasul Khan, Same-Sex Relationships and Marriage In India: The Path Forward,

<sup>10</sup> Diamond, Milton, Sex and Gender Are Different: Sexual Identity and Gender Identity Are Different, 7, *Clinical Child Psychology and Psychiatry*, 320–334, 2002.

<sup>11</sup> Lestie Green, Sex-Neutral Marriage, published in *Current Legal problems*, 2011, volume 64, at page no1.

<sup>12</sup> Dylan Vade, “Expanding Gender and Expanding the Law: Toward A social And Legal Conceptualization of Gender That is more Inclusive of Transgender People”, 11 *Mich. J. Gender & L.* 253\*277.

Gender encompasses the roles, behaviours, expectations, and societal norms attributed to individuals based on their perceived identity as men or women within different cultures and societies. Unlike the traditional binary view, contemporary discourse acknowledges gender as existing along a spectrum. This recognition empowers individuals to express themselves authentically, transcending rigid notions of male and female identities.<sup>13</sup>

The Yogyakarta principles<sup>14</sup> defines gender Identity in following words “*Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.*”<sup>15</sup>

### III. SAME-SEX MARRIAGE IN INDIA: LEGAL LANDSCAPE

The legal environment for same-sex marriage in India is murky and complicated. The Indian Constitution does not specifically acknowledge same-sex relationships, even though it guarantees equality of rights and prohibits discrimination based on gender.

In India, religiously inspired personal rules regulate marriage. Muslims are subject to uncodified Muslim personal laws, same as Hindus are governed by the Hindu Marriage Act, 1955, Christians by the Indian Christian Marriage Act, 1872, and Parsis by the Parsi Marriage and Divorce Act, 1936. All personal regulations pertaining to marriage have their roots in religion and are essential components of that religion.

Examining the Hindu Marriage Act, 1955 (HMA, 1955) closely reveals that there is no express clause requiring a marriage to be consummated between a man and a woman. Section 5 of Hindu marriage Act 1955 talks about the conditions of valid Hindu marriage. Only section 5(3) talks about the age of bride and bridegroom apart from this Act nowhere calls a marriage to take place between male and female. Even if same-sex marriages would have been legal under the HMA, 1955, there are no provisions to govern the said couple after marriage, such as matters of restitution of conjugal rights, divorce, alimony and maintenance, legal guardianship, and implementation of child rights. Instead, all conjugal rights arising out of marriage are to be applied to “husband” or “wife”. In the *Arunkumar and Sreeja v. Inspector General of*

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<sup>13</sup> <https://ujala.uk.gov.in/files/ch6.pdf>

<sup>14</sup> The result of an international conference of human rights organizations held in Yogyakarta, Indonesia, in November 2006, is a declaration known as the Yogyakarta Principles, which addresses human rights regarding sexual orientation and gender identity.

<sup>15</sup> <https://yogyakartaprinciples.org/introduction/>

Registration case<sup>16</sup>, the Madras High Court upheld the assertion that any individual who identifies as transgender or intersex may be regarded as a bride under Section 5, addressing the question of whether a transwoman can be treated as a woman and considered a “bride.”<sup>17</sup> Thus, the partnership remains between people of different sexes. The judgement primarily concerns whether transgender individuals can wed cisgender individuals but also sheds some light on the validity of same-sex unions under the Hindu Marriage Act.

The court made it clear that the definition of “bride” as it appears in section 5 of the Act could not be construed in a way that renders the meaning of the provision “static or immutable.” The book “Principles of Statutory Interpretation” by Justice G.P. Singh, which asserts that the court is free to apply a statute's current meaning to current circumstances, was also cited. The court concluded that “a statute must be interpreted in light of the legal system as exists today.” Given that section 5 of the Hindu Marriage Act mandates the presence of both a bridegroom and a bride, the question that now arises is whether same-sex couples can get married under the Act.

Will a marriage between two people who identify as the same gender and are biologically of the same sex be deemed legal by the statute? It is crucial to ascertain whether same-sex marriages are in line with Hinduism’s core beliefs before interpreting the Hindu Marriage Act’s provisions. In the Arun Kumar case, the Madras High Court examined a few myths that make it abundantly evident that same-sex unions are not incompatible with Hinduism. The birth of Lord Ayyappa, who is thought to have resulted from the marriage of Lord Shiva and Lord Vishnu (in the form of Mohini), is among the most significant incidents that the court recorded. The legislation also recognizes same-sex relationships and other forms of sexual contact that are not exclusively heterosexual.

In the Navtej Singh Johar case, the Supreme Court read down the punitive provision that made such agreements unlawful. Furthermore, Article 21 of the Constitution recognizes the right to marry the person of one's choosing as a basic freedom. Is it possible to interpret the Hindu Marriage Act in a way that brings same-sex marriages inside its purview?

Since the English term of “bride” relates to a woman, a marriage between two people who identify as men would not be covered by this clause because there would not be a bride. But there are other legitimate rules of interpretation besides the literal rule, even while it does not offer a positive response to the question of whether same-sex marriages are legal under the Act. Section 5 can be interpreted in two different ways. One concludes that two people can only get

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<sup>16</sup> W.P. (Md) No. 4125 Of 2019

<sup>17</sup> <https://www.nationalheraldindia.com/india/can-same-sex-marriage-be-held-valid-under-hindu-marriage-act>

married if they are of opposite sexes. According to the alternative understanding, same-sex marriage is acceptable. According to the golden rule of interpretation, a broader view that also addresses some absurdity or injustice should take precedence over a narrower reading that could be used as a tool for injustice. Furthermore, provided the criteria are met, the golden rule of interpretation may also depart from the statute's exact literal and grammatical meaning. Justice Singh has noted in his book on statutory interpretation, which was previously mentioned, that the courts must interpret a law that has a valid meaning today. This must also be considered. Section 5 should recognize same-sex marriage as legitimate considering all these considerations.

Though court interpreted the marriage under Hindu marriage Act to take place among opposite sexes.

The Indian Christian Act of 1872 and Muslim Law, also makes it clear that only a male and female can get married.

An attempt was also made to make it legal under special marriage Act as on April 20, 2022, nationalist Congress party member Supriya Sule introduced a bill in the Lok Sabha to allow same-sex marriage under the Special Marriage Act.<sup>18</sup> The plan would have amended numerous statute provisions to grant same-sex couples the same legal rights as opposite-sex spouses. The proposed bill would introduce the phrase "notwithstanding anything contained in this Act or any other law for the time being in force, a marriage between any two persons of same sex may be solemnized under this Act" after Section 4 of the Special Marriage Act, 1954.<sup>19</sup>

“While the determination of one's sexual orientation has been realized, LGBTQIA individuals are still unable to marry and start their own families,” reads the bill's Objects and Reasons statement. LGBTQIA couples also lack access to rights like pensions, maintenance, and succession that heterosexual couples are granted upon marriage. Consequently, it is critical to change the Special Marriage Act of 1954 to legalize same-sex unions and grant married LGBTQIA couples’ legal status.<sup>20</sup>

#### **IV. JUDICIAL ACTIVISM: JOURNEY SO FAR**

Talking about same sex marriage, it is a concern which is being fought by homosexuals since long back and is still continuing. Judicial review of marginalization, oppression and discrimination of LGBTQ people and their journey to fight for rights in India reveals that the

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<sup>18</sup> <https://indianexpress.com/article/india/ncps-supriya-sule-brings-bill-to-legalise-same-sex-marriage-7848768/>

<sup>19</sup> Special Marriage (Amendment) Bill, 2022

<sup>20</sup> *ibid*

court has recently taken the lead on this subject, in contrast to the legislative branch, which has lagged behind. The Supreme Court has issued a number of important decisions that have paved the way for the recognition of the fundamental rights of this marginalized minority.

A division bench of the Supreme Court confirmed transgender people's constitutional rights under Articles 14, 15, 19, and 21 of the Constitution in April 2014, months after a two-judge bench in "Suresh Koushal v. Union of India"<sup>21</sup> upheld the constitutional validity of Section 377 of the Indian Penal Code.<sup>22</sup> To defend and preserve the rights of people who are a part of the transgender community, two writs were filed. A writ petition was filed by the National Legal Services Authority, which was established by the Legal Services Authority Act of 1997. The Poojya Mata Nasib Kaur Ji Women Welfare Society, a registered organization dedicated to defending the rights of the Kinnar (transgender) community, filed a second writ petition in response to the first. In the current case, Laxmi Narayan Tripathi, who identified as a Hijra, also approached the court and was admitted. He argued that because he is a hijra, the Court had to step in to ensure that he and other members of his community are not subjected to discrimination and that his rights under Articles 14 and 21 were being denied. These petitions were clubbed in the name of NALSA v. UOI. The main issue of this case was whether non-recognition of diverse gender identities violates Article 14 and 25 of Indian Constitution. The Supreme court affirmed transgender people's autonomy to choose their gender and ordered central and state governments to officially recognize transgender identities as either male, female, or third gender. This is the most celebrated judgement as after almost a decade of fight for rights the LGBTQIA+ got the recognition as third gender. The Court distinguished between sex that is psychological and that is biological and stated that gender identity must not only be based on biological but also psychological. The Court declared that as long as the terms of the international conventions—including the Yogyakarta Principles—are consistent with the fundamental rights protected by Part III of the Constitution, they must be acknowledged and adhered to. It also said that transgender people are covered by the Indian Constitution and have a right to all of its protections. According to Article 14, "any person" includes men, women, and transgender people, and as such, they are all entitled to equal protection under the law. In terms of employment, healthcare, education, and civil rights, they are equal. Discrimination based on sexual orientation and gender identity is against Article 14 and signifies unequal protection under the law as well as inequality before the law. The Court

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<sup>21</sup> (2014) 1 SCC 1

<sup>22</sup> <https://indianexpress.com/article/explained/explained-law/key-sc-verdicts-that-moved-the-needle-on-lgbtq-rights-8565720/>



went on to say that transgender people have the right to freedom of expression under Article 19, which allows them to act, speak, dress, and behave however they like. Under Article 21, they also have the right to a dignified life. A comprehensive set of regulations safeguarding the rights and freedoms of the transgender community were established by the ruling. Legislative modifications were then made to produce a clear law that would protect their rights. After extensive deliberations and multiple proposed laws, the Transgender Persons (Protection of Rights) Act, 2019 was finally passed in 2019.

After this in year 2017 via Puttaswamy judgement<sup>23</sup> Indian Supreme Court has established that, in accordance with article 21 of the Indian Constitution, privacy is a basic, unalienable right that is essential to human dignity and liberty. It also paved a way for Navtej Singh Johar v. Union of India (2018) which legalizes homosexuality, clearing the path for its decriminalization in India. Recognizing that everyone has the right to privacy, regardless of gender or sexual orientation, it acknowledged privacy as a fundamental component of the life and liberty provided by Article 21. According to Justice Chandrachud's opinion, the LGBTQ community ought to be entitled to privacy, which includes independence from government interference and autonomy. A particular note was made of the liberty and freedom of sexual behaviour in addition to the choice of partners. The Court declared, "At the core of the fundamental rights guaranteed by Article 14 (right to equality) are the protection of sexual orientation and the right to privacy."<sup>24</sup> The five-judge bench in Navtej Singh Johar v. Union of India<sup>25</sup> determined that Section 377 violates Articles 14 and 15 of the Constitution by discriminating against people based on their gender identity or sexual orientation. Additionally, they decided that Section 377 infringes with Article 21's rights to life, dignity, and the freedom to make one's own decisions. Ultimately, they discovered that it impedes the full realization of an LGBT person's identity by going against Article 19(1)(a) right to freedom of expression. All of them made reference to the Court's recent rulings in Justice K.S. Puttaswamy v. Union of India<sup>26</sup> and NALSA v. Union of India<sup>27</sup>. The Indian Supreme Court's bench unanimously ruled that Section 377 of the Indian Penal Code, 1860 was unconstitutional as it related to adults having consensual sexual relations in private.<sup>28</sup> Recently on October 17, 2023, the Indian Constitution bench, presided over by Chief Justice DY Chandrachud, issued the eagerly awaited ruling regarding the legal

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<sup>23</sup> Union of India v. Justice k.S Puttaswamy (Retd) 2017

<sup>24</sup> Ananya Mishra, "Same-Sex Marriage in India: Its Legal Recognition and Impacts - A Bird's Eye View", international journal of novel research and development.

<sup>25</sup> W.P no. 76 of 2016

<sup>26</sup> Union of India v. Justice K.S Puttaswamy (Retd) 2017

<sup>27</sup> (2014) 1 SCC 1

<sup>28</sup> Navtej Singh Johar v. Union of India W.P no. 76 of 2016

recognition of same-sex unions in *Supriya Chakraborty vs. Union of India*<sup>29</sup>. There are four distinct opinions in this ruling. With a 3:2 majority, the bench decided that non-heterosexual couples could not assert an unconditional right to marriage. The five justices couldn't agree on whether to provide gay couples the legal status of marriage or civil union, but they did agree that homosexuality is neither urban nor elite. The judges also concurred that Parliament should have the authority to determine whether to broaden the definition of marriage to include gay marriages and declared that "this court cannot make law." Justice PS Narasimha, Justice Hima Kohli, and Justice S Ravindra Bhat presented the majority opinion in the case. The Supreme Court upheld the ability of transgender people in heterosexual partnerships to get married while ruling that non-heterosexual couples do not have the right to have their relationships recognized as marriage or as a civil union. The two justices who declared minority opinions in this landmark decision had a very different stand on the question of accepting unions on the basis of sexual orientation. These justices adamantly maintained that a person's sexual orientation should not be a factor in limiting or restricting their ability to form a union. They believed that it was blatantly illegal to discriminate against someone based on their sexual orientation, as stated in Article 15 of the Constitution. The minority opinion of the judges highlighted the significance of maintaining the equality and non-discrimination values entrenched in Article 15 of the Constitution. They argued that regardless of a person's sexual orientation, these ideals ought to encompass the freedom to create partnerships or unions. Asserting that discrimination on the basis of sexual orientation violates constitutional rights, the judges aimed to contest and overthrow the established legal and social conventions that had refused to recognize non-heterosexual couples'

Chief Justice of India DY Chandrachud and Justice Sanjay Kishan Kaul presented the minority opinion in the case, contending that a person's ability to form a relationship cannot be restricted according to their sexual orientation. Article 15 of the Constitution is violated when someone is discriminated against because of their sexual orientation. In addition, CJI noted that "in order to prevent discrimination against same-sex unions, the Court should address whether the LGBTQIA+ community, as a sexual minority, deserves protection even in the absence of a specific law, recognize the challenges faced by LGBTQIA+ unions, and implement administrative guidelines acknowledging sexual orientation as a physiological phenomenon." "If the special Marriage Act's intent is to facilitate interfaith marriages, then excluding non-heterosexual relationships lacks a rational basis," said Justice Kaul, concurring with the CJI's ruling. Considering that sexual orientation is a protected class under Article 15(1) of the

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<sup>29</sup> Writ Petition (Civil) No. 1011 of 2022

Constitution, regulating only heterosexual marriages would not be a justifiable state goal. The five-judge constitution panel unanimously concluded that marriage was not a basic right. The Supreme Court declared that it has sent the decision of same-sex marriage legislation to Parliament.<sup>30</sup>

## **V. SAME SEX MARRIAGE: NEED OF HOUR?**

It is clear from the personal laws and the aforementioned rules that same-sex marriage is not recognized by personal laws, neither recognised by Supreme Court in its recent judgement. It necessitates new legislation to provide them sense of security in matrimony. It is ironic that homosexual couples are granted no marriage rights and just restricted sexual rights.

Exclusive access to rights, benefits, protections, and duties is granted to married couples. These legal aspects include, but are not limited to, social security, deductions from taxes, immigration, employee benefits, health and insurance, joint properties, inheritance or estate transfers, and family power and representation.

The benefits of same-sex marriage to society and the engaged couples are fundamental. Marriage provides the couples emotional, social, political, and financial stability. With the backing of social and family support, legal guarantees of rights and privileges, and shared obligations, they are able to work as partners through their marriages, promoting their well-being and relationship. Encouraging societal stability also requires that same-sex couples right to marriage be recognized legally. Recall that families and marriage together constitute the fundamental social unit. LGBT people would become more integrated into society through same-sex marriage.<sup>31</sup>

Fundamental rights like the right to life<sup>32</sup>, the right to equality<sup>33</sup>, the right to freedom of speech and expression (Article 19(1)(a)), the right to live in dignity (Article 21), the right to choose a partner (Article 21), and the right to privacy (Article 21) would be violated if same-sex marriage is not made legal. Article 15 of the Indian Constitution mandates that the State refrain from discriminating solely on the basis of religion, race, caste, sex, place of birth, or any combination of these factors.<sup>34</sup>

Legalizing same-sex unions will provide these partnerships a feeling of purpose, direction, and

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<sup>30</sup> <https://www.indiatoday.in/law/story/same-sex-marriage-verdict-supreme-court-bench-judgement-highlights-2450232-2023-10-17>

<sup>31</sup> <https://www.profolus.com/topics/explained-arguments-for-same-sex-marriage/>

<sup>32</sup> See article 21 of Indian Constitution

<sup>33</sup> See article 14 of Indian Constitution

<sup>34</sup> Nivedita Baraily, The Need for Legalising Same-Sex Marriage in India: A Future Possibility Or A Possible Apprehension? *Indian Journal of Law and Legal Research*, Volume Iv Issue Iii | ISSN: 2582-8878

identity. It is essential to advancing non-discrimination and equality. The constitution's articles 14 and 15 forbid discrimination based on gender. In the Navtej Singh Johar case<sup>35</sup>, the Supreme Court expanded the definition of "sex" to include "sexual orientation." Denying same-sex couples the opportunity to marry is discrimination against them due to their sexual orientation. Legalizing same-sex unions would protect the private rights of homosexual couples right to privacy. In the 2017 K.S. Puttaswamy case,<sup>36</sup> the Supreme Court ruled that the right to privacy is a fundamental right (under Art. 21). The freedom to make decisions about one's body and intimate relationships is included in the right to privacy. Apart from this Legalizing same-sex marriage would encourage societal acceptance of LGBT people and their partnerships. It would lessen stigma and social discrimination. Proponents of same-sex marriage contend that marriage is a dynamic institution that changes over time in response to prevailing social ideals.<sup>37</sup> The prevalent social values of those eras led to Gandharva weddings, Daiva marriages, Arsha marriages, etc. These days, same-sex marriage is in demand. Thus, it ought to be permitted.

## VI. CONCLUSION

The journey towards achieving equality in marriage rights for individuals regardless of sexual orientation has been a long and arduous one, marked by significant milestones and legal battles. From the earliest struggles for recognition to recent landmark judgments such as the case of Supriya Chakraborty vs. Union of India<sup>38</sup>, the LGBTQ+ community has tirelessly fought for their rights to love and marry freely.

While the Supreme Court's decision in the aforementioned case did not legalize same-sex marriage, it underscored the pressing need for legislative action on this matter. The judiciary's role in interpreting laws and upholding constitutional rights is crucial, but true societal change often requires legislative intervention. It is imperative for the legislative body to enact comprehensive legislation that recognizes and protects the rights of same-sex couples to marry. The absence of legal recognition for same-sex marriage not only perpetuates discrimination but also denies LGBTQ+ individuals the fundamental rights and benefits afforded to heterosexual couples. By legalizing same-sex marriage, legislators can affirm the principles of equality and justice enshrined in the constitution, fostering a more inclusive and equitable society for all.

In conclusion, the time has come for lawmakers to act decisively and affirmatively in support

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<sup>35</sup> Navtej Singh Johar v. Union of India W.P no. 76 of 2016

<sup>36</sup> Union of India v. Justice K.S Puttaswamy (Retd) 2017

<sup>37</sup><https://forumias.com/blog/upsc-current-affairs-news/same-sex-marriage-verdictimplications-explained-pointwise/>

<sup>38</sup> Writ Petition (Civil) No. 1011 of 2022

of same-sex marriage. By doing so, they can uphold the values of dignity, equality, and freedom for all individuals, regardless of sexual orientation, and ensure that love knows no bounds under the law.

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