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Why Legalizing Same-Sex Marriage is Long Overdue?

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ABSTRACT

Marriage has been an essential institution in human society throughout history, and its meaning and purpose have evolved over time. Traditionally, marriage was seen as a union between a man and a woman for the purpose of procreation and raising a family. But in recent years, the definition of marriage has changed to reflect the changing social and cultural norms of modern society. One of the most significant changes to the institution of marriage is the recognition of same-sex marriage, which many countries have legalized, recognizing the rights of LGBTQ+ individuals to form committed relationships and start families. This change in the legal and social status of marriage has brought greater equality and acceptance for LGBTQ+ individuals and challenged traditional notions of marriage. However, in India, same-sex marriage is not yet legally recognized. Article 21 provides the fundamental right to marry, but the state and its machineries are reluctant to consider this right. The demand stated is not for the creation of any new rights, instead the demand is just for the enforcement of the existing right.

Legalizing same-sex marriage is an overdue step towards equality and recognition of LGBTQ+ rights. The history of marriage has shown that it is a dynamic institution that has evolved over time, reflecting the changing social, cultural, and religious beliefs of various societies. Denying same-sex couples the right to marry based on traditional beliefs about marriage is unjust and discriminatory. Marriage provides stability and security for individuals and families and is an essential building block of society. Legalizing same-sex marriage recognizes the rights of LGBTQ+ individuals to form committed relationships and start families, bringing greater equality and acceptance..

Keywords: Same-Sex Marriage, Article 21, The right to marry, LGBTQ+.

I. INTRODUCTION

Marriage is a union between two people that is recognized by law, culture, and society. The institution of marriage has existed in many cultures throughout history, and its meaning and purpose have varied depending on the time and place. Traditionally, marriage has been viewed as a way to formalise a relationship between a man and a woman for the purpose of procreation

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and raising a family. This traditional view of marriage is rooted in religious and cultural beliefs and has been the dominant form of marriage for centuries. However, in recent years, the meaning and purpose of marriage have evolved to reflect the changing social and cultural norms of modern society.

One of the most significant changes to the institution of marriage is the recognition of same-sex marriage. Many countries have legalized same-sex marriage, recognizing the rights of LGBTQ+ individuals to form committed relationships and start families. This change in the legal and social status of marriage has brought greater equality and acceptance for LGBTQ+ individuals and challenged traditional notions of marriage.

Marriage also plays an important role in society. It provides stability and security for individuals and families and is an essential building block of society. In many cultures, marriage is seen as a way to maintain social order and ensure the continuation of family traditions and values. Marriage also provides economic benefits, such as shared resources, social security benefits, and tax breaks. However, marriage can also be a source of inequality, as it may exclude individuals who are not legally allowed to marry or who do not fit into traditional gender roles.

Throughout human history, the institution of marriage has existed in one form or another. But the concept of marriage has evolved over time, reflecting the changing social, cultural, and religious beliefs of various societies. In this article, we will explore the history of marriage, from its earliest origins to the present day and why legalizing same-sex marriage is long overdue. The earliest form of marriage can be traced back to ancient civilizations, such as the Sumerians and Egyptians, who practised arranged marriages between families for economic and political reasons. In these early societies, marriage was seen as a way to establish alliances between families and ensure the continuation of the family line.

In ancient Greece, marriage was considered a duty that was required for the continuation of the city-state. Marriage was strictly regulated by the state, and women were expected to marry at a young age and produce children to ensure the survival of the community.

In medieval Europe, marriage was an important religious sacrament that was considered essential for salvation. The Catholic Church exerted significant influence over the institution of marriage, setting strict guidelines for marriage and family life. Divorce was considered a sin and was prohibited, and marriages were arranged by families for political and economic gain.

During the Renaissance and Enlightenment periods, there was a shift towards individualism and

a new emphasis on the importance of personal happiness and satisfaction in marriage. The idea of romantic love emerged as a central theme in marriage, and the notion of companionate marriage, in which couples married for love and companionship, gained popularity.

In the 20th century, marriage continued to evolve, reflecting changing social and cultural norms. The women's liberation movement challenged traditional gender roles and the idea that women were inferior to men. As a result, marriage became more egalitarian, with both partners having equal say in decision-making and sharing responsibilities.

It is quite evident from the above paragraphs that marriage is not a static institution, it was always dynamic. The roles and characteristics of marriage altered from place to place, society to society and time to time. Hence denying legalization of marriage on the concept that it is to happen only between a male and female does not hold good.

The legalization of same-sex marriage has been a significant development in the history of marriage in the 21st century. Same-sex marriage has been recognized in many countries around the world, reflecting a greater acceptance of LGBTQ+ rights and challenging traditional notions of marriage.

In India, same-sex marriage is not yet legally recognized, and there have been very few cases related to this issue in the Indian judiciary system. However, there have been a few landmark cases related to LGBTQ+ rights and discrimination that can impact the legal recognition of same-sex marriage in the future.

*Navtej Singh Johar v. Union of India*², The Supreme Court of India, decriminalised homosexuality in India. The Court held that Section 377 of the Indian Penal Code, which criminalized homosexual acts, was unconstitutional and violated fundamental rights. While the case did not specifically deal with same-sex marriage, it did open the door for the recognition of LGBTQ+ rights in India.

Currently, there is no marriage statute in India that recognizes same-sex marriage. The definition of marriage in Indian law is between a man and a woman. However, there have been ongoing efforts by activists and some politicians to legalize same-sex marriage and recognize the rights of the LGBTQ+ community.

The Hindu Marriage Act, 1955 defines marriage as a union between a man and a woman and does not provide for the recognition of same-sex marriages. Therefore, same-sex marriage is

² *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321

not legally recognized under the Act.

Under Islamic law, marriage is a contract between a man and a woman, and same-sex relations are prohibited. Therefore, same-sex marriage is not recognized under Muslim personal law in India.

The Indian Christian Marriage Act, 1872 defines marriage as a union between a man and a woman and does not provide for the recognition of same-sex marriages. Therefore, same-sex marriage is not legally recognized under the Act.

However, there have been calls from some progressive activists and scholars within the religions for the recognition of same-sex relationships. They argue that religious teachings emphasize compassion and justice, and that these values should extend to all individuals regardless of their sexual orientation or gender identity.

The Special Marriage Act, 1954 is a secular law in India that allows for marriages between individuals of different religions or those who do not wish to perform religious ceremonies for their marriage. The Act defines marriage as a union between two individuals and does not specify the gender of the individuals involved. Therefore, technically speaking, the Act does not explicitly prohibit same-sex marriage.

However, despite the absence of a specific prohibition, same-sex marriage is not legally recognized under the Special Marriage Act. This is because the Act does not provide for the registration of same-sex marriages, and government officials have been hesitant to grant marriage certificates to same-sex couples.

Though same-sex relations were decriminalised by the Supreme Court in 2018, there is no law that provides for the recognition of same-sex marriages. This means that same-sex couples in India do not have legal recognition of their relationship and are not entitled to the legal protections and benefits that come with marriage, such as inheritance rights, joint ownership of property, and spousal benefits.

However, there have been calls from civil society organisations and LGBTQ+ activists for the recognition of same-sex marriages in India. Some have argued that denying same-sex couples the right to marry is a violation of their fundamental rights, including the right to equality and the right to form a family.

Article 21 of the Indian Constitution recognizes the right to marriage as an integral part of the right to life. The Human Rights Charter also acknowledges the right to marry as a component

of the right to establish a family. This universal right is applicable to all individuals irrespective of their gender. In various court cases across the nation, the right to marry has been regarded as an inherent facet of the right to life guaranteed by Article 21.

In *National Legal Services Authority v. Union of India*³, The Supreme Court recognized transgender people as third gender and proclaimed that all the fundamental rights in the constitution of India will be equally applicable to them. As already stated above, it is quite evident that right to marriage is an integral part of Article 21. So isn't it be inferred that not just same sex marriage, but also transgenders too have the fundamental right to marry.

As evident from the doctrine of *Parens patriae*, The State is often termed as the Parent of its citizen. Thus, Government is synonymous with Guardian. Hence isn't the state accountable to the welfare of its citizens, particularly in a welfare state like ours. Consequently, it is the responsibility of the state to frame laws to improve the welfare of the people. Unfortunately, the state was reluctant to draft laws to consider the marital rights of the same sex and transgender couples. The demand stated is not for the creation of any new rights, instead the demand is just for the enforcement of the existing right. It is a very common fact that Article 21 provides the fundamental right to marry, but the state and its machineries are reluctant to consider this right. As a result, there is blatant violation of fundamental rights and one need not become a master of constitution to understand this, just a simple examination is more than enough to understand this injustice.

Supreme court is regarded as the guardian of the constitution. It is the responsibility of the Supreme Court to ensure that the fundamental rights are not violated, be it be a male, female or even transgender. Justice delayed is justice denied, hence each lackadaisical approach by the supreme court in this matter is justice denied. There existed historical injustice in this matter and even after years passed since we attained independence, there exist no independence for the same sex couples nor the transgenders to solemnize their marriage. Hence it is a disturbing fact that legalizing same-sex marriage is long overdue. Each delay is a delay on injustice and injustice to anyone is a threat to justice everywhere.

Legalizing same-sex marriage is an overdue step towards equality and recognition of LGBTQ+ rights. The history of marriage has shown that it is a dynamic institution that has evolved over time, reflecting the changing social, cultural, and religious beliefs of various societies. Denying same-sex couples the right to marry based on traditional beliefs about marriage is unjust and

³ *National Legal Services Authority v. Union of India*, 2014 5 SCC 438

discriminatory. Marriage provides stability and security for individuals and families and is an essential building block of society. Legalizing same-sex marriage recognizes the rights of LGBTQ+ individuals to form committed relationships and start families, bringing greater equality and acceptance.
